CHAPTER 71

INCOME AND FRANCHISE TAXES FOR STATE AND LOCAL REVENUES

SUBCHAPTER I

TAXATION OF INDIVIDUALS AND FIDUCIARIES

71.01 Definitions. In this chapter in regard to natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds:

(1) "Adjusted gross income", when not preceded by the word "federal", means Wisconsin adjusted gross income, unless otherwise defined or the context plainly requires otherwise.

(1m) "Department" means the department of revenue.

(2) "Entertainer" means a nonresident natural person who, for consideration, furnishes amusement, entertainment or public speaking services, or performs in one or more sporting events in

this state and includes both employes and independent contractors.

(3) "Federal net operating loss" of persons other than corporations means net operating loss as determined by the taxpayer under the internal revenue code, or if redetermined by the department, as determined by the department under such code or as may be determined on final appeal therefrom.

(4) "Federal taxable income" and "federal adjusted gross income" of natural persons and fiduciaries mean taxable income or adjusted gross income as determined under the internal revenue code or, if redetermined by the department, as determined by the department under the internal revenue code or as may be determined on final appeal therefrom.

(5) "Fiduciary", "income" and "person" and all other terms not otherwise defined, have the same meaning as in the internal revenue code unless otherwise defined or the context requires otherwise.

(5g) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(5m) "Head of household" has the meaning given in section 2 (b) and (c) of the internal revenue code, except that "head of household" includes surviving spouse, as defined in section 2 (a) of the internal revenue code.

(6) (e) For taxable years that begin after December 31, 1989, and before January 1, 1991, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−280, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1989, do not apply to this paragraph with respect to taxable years beginning after December 31, 1989, and before January 1, 1991, except that changes to the internal revenue code made by P.L. 101−280, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the federal internal revenue code made by P.L. 101−280, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(f) For taxable years that begin after December 31, 1990, and before January 1, 1992, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−90, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1990, do not apply to this paragraph with respect to taxable years beginning after December 31, 1990, and before January 1, 1992, except that changes to the internal revenue code made by P.L. 102−90, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the federal internal revenue code made by P.L. 102−90, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(g) For taxable years that begin after December 31, 1991, and before January 1, 1993, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1991, do not apply to this paragraph with respect to taxable years beginning after December 31, 1991, and before January 1, 1993, except that changes to the internal revenue code made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(h) For taxable years that begin after December 31, 1992, and before January 1, 1994, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1992, do not apply to this paragraph with respect to taxable years beginning after December 31, 1992, and before January 1, 1994, except that changes to the internal revenue code made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(i) For taxable years that begin after December 31, 1993, and before January 1, 1995, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1993, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66 and as amended by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179,

P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1993, do not apply to this paragraph with respect to taxable years beginning after December 31, 1993, and before January 1, 1995, except that changes to the internal revenue code made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34, apply for Wisconsin purposes at the same time as for federal purposes.

(j) For taxable years that begin after December 31, 1994, and before January 1, 1996, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−117, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−117, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1994, do not apply to this paragraph with respect to taxable years beginning after December 31, 1994, and before January 1, 1996, except that changes to the internal revenue code made by P.L. 104−7, P.L. 104−117, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−7, P.L. 104−117, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(k) For taxable years that begin after December 31, 1995, and before January 1, 1997, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−117, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−117, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1995, do not apply to this paragraph with respect to taxable years beginning after December 31, 1995, and before January 1, 1997, except that changes to the internal revenue code made by P.L. 104−117, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−117, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(L) For taxable years that begin after December 31, 1996, and before January 1, 1998, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "internal revenue code" means the federal internal revenue code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as amended by P.L. 105−33 and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−117, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1996, do not apply to this paragraph with respect to taxable years beginning after December 31, 1996, and before January 1, 1998, except that changes to the Internal Revenue Code made by P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(m) For taxable years that begin after December 31, 1997, for natural persons and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−280, P.L. 101−508, P.L. 102−90, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−117, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal Internal Revenue Code enacted after December 31, 1997, do not apply to this paragraph with respect to taxable years beginning after December 31, 1997.

(7) Notwithstanding sub. (6), for natural persons, fiduciaries, trusts and estates, at the taxpayer's option, "internal revenue

code", for taxable year 1986 and subsequent taxable years, includes any revisions to the federal internal revenue code adopted after January 1, 1986, that relate to the taxation of income derived from any source as a direct consequence of participation in the milk production termination program created by section 101 of P.L. 99−198.

(7m) Notwithstanding sub. (6), for natural persons, fiduciaries, trusts and estates, at the taxpayer's option, "internal revenue code" for taxable years beginning after December 31, 1987, includes any revisions to section 67 (c) of the internal revenue code adopted after January 1, 1988, that relate to the indirect expenses of regulated investment companies.

(7r) Notwithstanding sub. (6), for purposes of computing amortization or depreciation, "internal revenue code" means either the federal internal revenue code as amended to December 31, 1997, or the federal internal revenue code in effect for the taxable year for which the return is filed, except that property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980.

(7u) "Last day prescribed by law" has the meaning given in s. 71.738, except that in s. 71.03 (2) (e) 1. and 2. "last day prescribed by law" includes extensions.

(8) "Married person" or "spouse" means a person determined under section 7703 (a) of the internal revenue code to be married, unless the context requires otherwise. A decree of divorce, annulment or legal separation terminates the marriage and the application of ch. 766 to property of the spouses after the date of the decree, unless the decree provides otherwise.

(8g) "Member" does not include a member of a limited liability company treated as a corporation under s. 71.22 (1).

(8m) "Partner" does not include a partner of a publicly traded partnership treated as a corporation under s. 71.22 (1).

(8r) "Pay", in regard to submissions to or for the department, means mail or deliver funds to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(9) "Person" includes natural persons and fiduciaries, unless the context requires otherwise.

(9c) "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

(10) "Small business stock" means an equity security that the taxpayer has held for at least 5 years and that is issued by a corporation that, on the December 31 before acquisition by the taxpayer, or, for a corporation which was incorporated during the calendar year in which the stock is issued, as of the date of the acquisition of the stock, fulfills all of the following requirements and so certifies to the taxpayer upon acquisitions:

(a) Has at least 50% of its property and at least 50% of its payroll, both as computed under s. 71.25, in this state.

(b) Has no more than 500 employes covered by Wisconsin unemployment insurance, including employes of any corporation that owns more than 50% of the stock of the issuing corporation.

(c) Derives no more than 25% of its gross receipts from rents, interest, dividends and sales of intangible investment assets combined unless the corporation derives less than $3,000 of that income and has not been incorporated for more than 2 calendar years.

(d) Has not issued stock that is listed on the New York stock exchange, the American stock exchange or the national association of securities dealers automated quotation system.

(e) Has not liquidated its assets in whole or in part for tax purposes only in order to fulfill the requirements under this subsection and then reorganized.

(11) "Taxable income" when not preceded by the word "federal" means Wisconsin taxable income unless otherwise defined or the context plainly requires otherwise.

(12) "Taxable year" means the taxable period upon the basis of which the taxable income of the taxpayer is computed for federal income tax purposes. The taxable year of a taxpayer who keeps his or her accounting records on the basis of a 52−53 week period ends on the last day of the month closest to the end of the 52−53 week period.

(13) "Wisconsin adjusted gross income" means federal adjusted gross income, with the modifications prescribed in s. 71.05 (6) to (12), (19) and (20).

(14) "Wisconsin net operating loss" of persons other than corporations means "federal net operating loss" adjusted as prescribed in s. 71.05 (6) (a) and (b), (7) to (12) and (19) to (21), except s. 71.05 (6) (b) 9., except that no deductions allowable on schedule A for federal income tax purposes are allowable.

(16) "Wisconsin taxable income" of natural persons means Wisconsin adjusted gross income less the Wisconsin standard deduction, with losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other negative income items determined according to the manner that income is or would be allocated, except that the negative income items on individual or separate returns for net rents and other net returns which are marital property attributable to the investment, rental, licensing or other use of nonmarital property shall be allocated to the owner of the property.

History: 1987 a. 312; 1987 a. 411 ss. 6 to 8, 26, 27, 31; 1989 a. 31, 100, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237.

71.02 Imposition of tax. (1) For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax on all net incomes of individuals and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds subject to the tax under s. 71.23 (2), by every natural person residing within the state or by his or her personal representative in case of death, and trusts administered within the state; by every nonresident natural person and trust of this state, upon such income as is derived from property located or business transacted within the state including, but not limited by enumeration, income derived from a limited partner's distributive share of partnership income, income derived from a limited liability company member's distributive share of limited liability company income, the state lottery under ch. 565, any multijurisdictional lottery under ch. 565 if the winning lottery ticket or lottery share was purchased from a retailer, as defined in s. 565.01 (6), located in this state or from the department, winnings from a casino or bingo hall that is located in this state and that is operated by a Native American tribe or band and pari−mutuel wager winnings or purses under ch. 562, and also by every nonresident natural person upon such income as is derived from the performance of personal services within the state, except as exempted under s. 71.05 (1) to (3). Every natural person domiciled in the state shall be deemed to be residing within the state for the purposes of determining liability for income taxes and surtaxes. A single−owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code is disregarded as a separate entity under this chapter, and its owner is subject to the tax on the entity's income.

(2) In determining whether or not an individual resides within this state for purposes of this section, the following are not relevant:

(a) Contributions made to charitable organizations in this state.

(b) Directorships in corporations operating in this state.

(c) Accounts, as defined in s. 710.05 (1) (a), held in financial institutions, as defined in s. 710.05 (1) (c), located in this state.

(d) Corpuses of trusts, in which the individual is a trustee or a beneficiary, located in this state.

(e) Retention of professional services of brokers, as defined in s. 408.102 (1) (c), and of attorneys and accountants located in this state.

(3) This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74 (1) and (2).

History: 1987 a. 312; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1995 a. 27; 1997 a. 27, 237, 297.

71.03 Filing returns; certain claims. (1) DEFINITION. In this section, "gross income" means all income, from whatever source derived and in whatever form realized, whether in money, property or services, which is not exempt from Wisconsin income taxes. "Gross income" includes, but is not limited to, the following items: compensation for services, including salaries, wages and fees, commissions and similar items; gross income derived from business; interest; rents; royalties; dividends; alimony and separate maintenance payments; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive shares of partnership gross income except distributive shares of the income of publicly traded partnerships treated as corporations under s. 71.22 (1); distributive shares of limited liability company gross income except distributive shares of the income of limited liability companies treated as corporations under s. 71.22 (1); income in respect of a decedent; and income from an interest in an estate or trust. "Gross income" from a business or farm consists of the total gross receipts without reduction for cost of goods sold, expenses or any other amounts. The gross rental amounts received from rental properties are included in gross income without reduction for expenses or any other amounts. "Gross income" from the sale of securities, property or other assets consists of the gross selling price without reduction for the cost of the assets, expenses of sale or any other amounts. "Gross income" from an annuity, retirement plan or profit sharing plan consists of the gross amount received without reduction for the employe's contribution to the annuity or plan.

(2) PERSONS REQUIRED TO FILE; OTHER REQUIREMENTS. The following shall report in accordance with this section:

(a) *Natural persons.* Except as provided in sub. (6) (b):

1. 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, or $7,040 or more if the natural person files as a head of household, 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. 71.06 or the exemption under s. 71.07 (8) (a).

2. Every nonresident person and every person who changes domicile into or out of this state during the taxable year shall file a return if the person is unmarried and has gross income of $2,000 or more, or if the person is married and the combined gross income of the person and his or her spouse is $2,000 or more.

3. For taxable years beginning before January 1, 1993, every natural person for whom a deduction from tax under s. 71.07 (8) (b) is allowable to another taxpayer for the taxable year shall file a return if that natural person has any amount of unearned income and that person has gross income of $550 or more.

4. For taxable years beginning after December 31, 1992, and before January 1, 1994, every natural person for whom a deduction from tax under s. 71.07 (8) (b) is allowable to another taxpayer for the taxable year shall file a return if that natural person has any amount of unearned income and that person has gross income of $600 or more.

5. For taxable years beginning on or after January 1, 1994, every natural person for whom a deduction from tax under s. 71.07 (8) (b) is allowable to another taxpayer for the taxable year shall file a return if that natural person has any amount of unearned income and that person has gross income of at least $500 adjusted for inflation in the manner prescribed by sections 1 (f) (3) to (6) and 63 (c) (4) of the internal revenue code. The department of revenue shall incorporate the changes in the income tax forms and instructions.

(b) *Deceased person.* The executor, administrator or other person charged with the property of a decedent shall file a return of such individual required under this section.

(c) *Person to make return for individual unable to file.* The guardian, custodian or other person charged with the care of the person or property of an individual who is unable to make a return required under this section shall file a return for such individual.

(d) *Husband and wife joint filing.* 1. Except as provided in subds. 2. and 3. and par. (e), a husband and a wife may file a joint return for income tax purposes even though one of the spouses has no gross income or no deductions.

2. No joint return may be filed if either the husband or wife at any time during the taxable year is a nonresident alien, unless an election is in effect for the taxable year under section 6013 (g) or (h) of the internal revenue code.

3. No joint return may be filed if the husband and wife have different taxable years, except that if their taxable years begin on the same day and end on different days because of the death of either or both the joint return may be filed with respect to the taxable year of each unless the surviving spouse remarries before the close of his or her taxable year or unless the taxable year of either spouse is a fractional part of a year under section 443 (a) (1) of the internal revenue code.

(e) *Death of a spouse; joint returns.* For the taxable year in which the death of one spouse or both spouses occurs:

1. A joint return may be filed and shall be signed by both the decedent's personal representative and the surviving spouse, if any, if a personal representative is appointed before the last day prescribed by law, including extensions, for filing the return of the surviving spouse.

2. A joint return may be filed by the surviving spouse with respect to both that spouse and the decedent if no return for the taxable year has been filed by the decedent and no personal representative is appointed at the time the joint return is filed or before the last day prescribed by law, including extensions, for filing the return of the surviving spouse.

3. If a personal representative of the decedent is appointed after the filing of the joint return by the surviving spouse, the personal representative may disaffirm the joint return by filing, within one year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was filed. If the joint return is disaffirmed, the return filed by the survivor is the survivor's separate return and the tax on the return shall be determined by excluding all items properly includable in the return of the decedent spouse.

(f) *Election by a spouse.* The election under par. (d) may be made by a spouse if the requirements of section 6013 (f) of the internal revenue code are met.

(g) *Joint return following separate return.* Except as provided in par. (i), if an individual has filed a separate return for a taxable year for which a joint return could have been filed by the individual and the individual's spouse under par. (d) or (e) and the time prescribed by law for timely filing the return for that taxable year has expired, the individual and the individual's spouse may file a joint return for that taxable year. A joint return filed by the husband and wife under this paragraph is their return for that taxable

year, and all payments, credits, refunds or other repayments made or allowed with respect to the separate return of each spouse for that taxable year shall be taken into account in determining the extent to which the tax based upon the joint return has been paid. If a joint return is filed under this paragraph, any election, other than the election to file a separate return, made by either spouse in that spouse's separate return for that taxable year with respect to the treatment of any income, deduction or credit of that spouse may not be changed in the filing of the joint return if that election would have been irrevocable if the joint return had not been filed.

(h) *Death of a spouse after separate return.* In the taxable year in which the death of one or both spouses occurs, a joint return may be filed by the decedent's personal representative and the surviving spouse, if any, under this paragraph if one or both spouses filed a separate return for a taxable year for which a joint return could have been filed. If any condition under par. (i) occurs before a personal representative is appointed, a joint return may not be filed under this paragraph.

(i) *Election precluded.* The election under par. (g) or (h) may not be made if any of the following conditions applies:

1. The amount shown as tax upon that joint return is not paid in full at or before the time the joint return is filed.

2. Four or more years from the last day prescribed by law for filing the return for that taxable year have elapsed, determined without regard to any extension of time granted to either spouse.

3. There has been mailed to either spouse, with respect to that taxable year, a notice of adjustment under ss. 71.74 to 71.77 and the spouse, as to that notice, files a petition for redetermination under subch. XIV, except that, if both spouses request and the department consents, the election under par. (g) may be made.

4. Either spouse has commenced a suit in any court for the recovery of any part of the tax for that taxable year.

5. Either spouse has entered into a closing agreement with respect to that taxable year or if any civil or criminal case arising against either spouse with respect to that taxable year has been compromised.

(j) *Joint return assumed.* For purposes of subchs. XII and XIII, a joint return is deemed to have been filed under this section if any of the following conditions applies:

1. Both spouses filed separate returns before filing the joint return, on the day when the last separate return was filed, but not earlier than the last day prescribed by law for filing the return of either spouse.

2. Only one spouse filed a separate return before filing the joint return and the other spouse had less than $3,420 of gross income for that taxable year, on the day of the filing of that separate return, but not earlier than the last day prescribed by law for the filing of that separate return.

3. Only one spouse filed a separate return before filing the joint return and the other spouse had $3,420 or more of gross income for that taxable year, on the date the joint return was filed.

(k) *Filing date assumed.* For purposes of s. 71.75, a joint return filed under this section is deemed to be filed on the last day prescribed by law for filing the return for that taxable year, determined without regard to any extension of time granted to either spouse.

(L) *Limits extended.* If a joint return is filed under this section, the periods of limitations under ss. 71.74 to 71.77 and subch. XV on the making of assessments and the beginning of levy or of a proceeding in court for collection shall, with respect to the return, be extended to the extent necessary to include one year immediately after the date of the filing of the joint return, computed without regard to par. (j).

(m) *Separate return following joint return.* 1. Except as provided in subds. 3. and 5., for a taxable year for which a joint return has been filed, separate returns may be filed by the spouses on or before the last day prescribed by law for timely filing the return of either has elapsed.

2. If a husband and wife change from a joint return to separate returns within the time prescribed in subd. 1., the tax paid on the joint return shall be allocated between them in proportion to the tax liability shown on each separate return.

3. In the taxable year in which the death of one or both spouses occurs, a separate return may be filed under this paragraph within the time prescribed in subd. 1., or as provided for a personal representative under par. (e) if a joint return has been filed under par. (e) by the surviving spouse or by the decedent's personal representative and the surviving spouse. If a separate return is filed by the surviving spouse or by the decedent's personal representative under this paragraph, the joint return previously filed shall be the separate return of the surviving spouse or the decedent for whom the separate return was not filed, unless both the surviving spouse and the decedent's personal representative file a separate return under this paragraph. The tax on the separate return of the surviving spouse shall be determined by excluding all items properly includable in the separate return of the decedent, and the tax on the separate return of the decedent shall be determined by excluding all items properly includable in the return of the surviving spouse.

4. The time allowed the personal representative to disaffirm the joint return by the filing of a separate return does not establish a new due date for the return of the deceased spouse, and sub. (8) and ss. 71.91 and 71.92 apply to that return.

5. A separate return may not be filed unless the amount shown upon that separate return is paid in full on or before the date when the separate return is filed.

(3) FRACTIONAL PART OF YEAR. If a natural person or fiduciary files a federal income tax return for a fractional part of the year, the person shall file a Wisconsin income tax return for that fractional year. That person shall compute and report income on the basis of the period for which that return is filed, and that fractional year shall constitute a taxable year.

(4) ELECTION TO HAVE DEPARTMENT COMPUTE TAX. (a) Natural persons whose total income is not in excess of $10,000 and consists entirely of wages subject to withholding for Wisconsin tax purposes and not more than $200 total of dividends, interest and other wages not subject to Wisconsin withholding, and who have elected the Wisconsin standard deduction and have not claimed either the credit for homestead property tax relief or deductions for expenses incurred in earning such income, shall, at their election, not be required to record on their income tax returns the amount of the tax imposed on their Wisconsin taxable income. Married persons shall be permitted this election only if the joint income of the husband and wife does not exceed $10,000, if both report their incomes on the same joint income tax return form, and if both make this election.

(b) The tax on income reported by persons making the election under par. (a) shall be computed by the department of revenue. After applying all known applicable credits, the department shall notify the taxpayer by mail of the amount of taxes due or the amount of taxes to be refunded.

(5) COPY OF FEDERAL RETURN. To the extent necessary for the administration of the tax imposed by this chapter, when required under rules prescribed or orders issued by the department or upon the written request of the department, natural persons and fiduciaries subject to this chapter shall file with the department a true and complete copy of their federal income tax return and any other return or statement filed with, or made to, or any document received from, the internal revenue service.

(6) TIME RETURN REQUIRED. (a) Reports required under this section shall be made on or before April 15 following the close of a year referred to in sub. (2) (a), or if such person's fiscal year is other than the calendar year then on or before the 15th day of the 4th month following the close of such fiscal year, or if the return is for less than a full taxable year on the date applicable for federal income taxes under the internal revenue code, to the department of revenue, in the manner and form prescribed by the department of revenue, whether notified to do so or not. Such persons shall

be subject to the same penalties for failure to report as those who receive notice. If the taxpayer is unable to make his or her own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(b) Nothing in this section precludes the department of revenue from requiring any person other than a corporation to file an income tax return when in the judgment of the department a return should be filed.

(6m) TIME TO FILE CLAIMS; NO RETURN REQUIRED. A claim for a credit under s. 71.07 (3m) or subch. VIII or IX that is filed by a natural person who is not required to file a report under sub. (2) (a) shall be filed on a calendar year basis in conformity with the filing requirements in subs. (6) and (7).

(7) EXTENSION OF TIME TO FILE. Returns of natural persons and fiduciaries that require a statement of amounts or information contained or entered on a corresponding return under the internal revenue code shall be filed within the time fixed under that code for filing of the corresponding federal return. Any extension of time granted by law or by the internal revenue service for the filing of that corresponding federal return extends the time for filing under this chapter if a copy of the taxpayer's application to the internal revenue service requesting the extension is filed with the return under this chapter or if a copy of any request for an extension required by the internal revenue service is filed with the return under this chapter or at an earlier date that the department prescribes by rule and if the taxpayer pays the Wisconsin tax in the manner applicable to federal income taxes under the internal revenue code. Taxes payable upon the filing of the return do not become delinquent during the period of an extension but are subject to interest at the rate of 12% per year during such period except as follows:

(a) For taxable years beginning after December 31, 1989, and before January 1, 1991, for persons who served in support of Operation Desert Shield, Operation Desert Storm or an operation that is a successor to Operation Desert Shield or Operation Desert Storm in the United States, or for persons who served in Egypt, Israel, Diego Garcia or Germany, or for persons who qualify for a federal extension of time to file under 26 USC 7508, who served outside the United States because of their participation in Operation Desert Shield, Operation Desert Storm or an operation that is a successor to Operation Desert Shield or Operation Desert Storm in the Desert Shield or Desert Storm theater of operations.

(b) For taxable years beginning after December 31, 1994, and before January 1, 1997, for persons who served in support of Operation Balkan Endeavor or an operation that is a successor to Operation Balkan Endeavor, or for persons who served in Croatia, Bosnia and Herzegovina, Serbia, Macedonia, Montenegro, Hungary, Austria, Slovakia, Czech Republic or Slovenia, or for persons who qualify for a federal extension of time to file under 26 USC 7508, who served outside the United States because of their participation in Operation Balkan Endeavor or an operation that is a successor to Operation Balkan Endeavor in the Balkan Endeavor theater of operations.

(8) PAYMENT OF TAX. (a) All income and franchise taxes shall be paid to the department of revenue, at its office at Madison or at such other place the department designates.

(b) The final payment of taxes on incomes of persons other than corporations who file on a calendar year basis shall be made on or before April 15 following the close of the calendar year, except for persons electing to have the department compute their tax under sub. (4). If the return of a person other than a corporation is made on the basis of a fiscal year, such final payment shall be made on or before the 15th day of the 4th month following the close of such fiscal year, except for persons electing to have the department compute their tax under sub. (4).

(c) If the taxpayer elects under sub. (4) (a) to have the department compute the tax on his or her income and the taxpayer files his or her return on or before the date on which such return is required to be filed, the amount of taxes due thereon, as stated in the notice from the department under sub. (4) (b), shall become delinquent if not paid on or before the due date stated in the notice to the taxpayer. Such amounts of taxes due shall not be subject to any interest, other than extension interest, prior to the date of delinquency. Taxes due on returns filed after the date on which returns are required to be filed shall be deemed delinquent as of the due date of the return.

(d) The department of revenue shall accept in advance income taxes and surtaxes from taxpayers desirous of making such payments before the same shall become due and payable. Advance payment of taxes under this provision shall not relieve the taxpayer from additional taxes which may result from subsequent legislation or from additional taxable income disclosed or discovered subsequent to such payment.

(e) No person is required to pay a balance due of less than $1.

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 3, 39, 269, 301, 305, 315; 1993 a. 16, 112, 204, 213, 491; 1995 a. 255, 428.

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

71.04 Situs of income; allocation and apportionment.

(1) SITUS. (a) All income or loss of resident individuals and resident estates and trusts shall follow the residence of the individual, estate or trust. Income or loss of nonresident individuals and nonresident estates and trusts from business, not requiring apportionment under sub. (4), (10) or (11), shall follow the situs of the business from which derived. All items of income, loss and deductions of nonresident individuals and nonresident estates and trusts derived from a tax−option corporation not requiring apportionment under sub. (9) shall follow the situs of the business of the corporation from which derived. Income or loss of nonresident individuals and nonresident estates and trusts derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property shall follow the situs of the property from which derived. Income from personal services of nonresident individuals, including income from professions, shall follow the situs of the services. A nonresident limited partner's distributive share of partnership income shall follow the situs of the business. A nonresident limited liability company member's distributive share of limited liability company income shall follow the situs of the business. Income of nonresident individuals, estates and trusts from the state lottery under ch. 565 is taxable by this state. Income of nonresident individuals, estates and trusts from any multijurisdictional lottery under ch. 565 is taxable by this state, but only if the winning lottery ticket or lottery share was purchased from a retailer, as defined in s. 565.01 (6), located in this state or from the department. Income of nonresident individuals, nonresident trusts and nonresident estates from pari−mutuel winnings or purses under ch. 562 is taxable by this state. Income of nonresident individuals, estates and trusts from winnings from a casino or bingo hall that is located in this state and that is operated by a Native American tribe or band shall follow the situs of the casino or bingo hall. All other income or loss of nonresident individuals and nonresident estates and trusts, including income or loss derived from land contracts, mortgages, stocks, bonds and securities or from the sale of similar intangible personal property, shall follow the residence of such persons, except as provided in par. (b) and sub. (9).

(b) For purposes of determining the situs of income under this section:

1. The situs of income derived by any taxpayer as the beneficiary of the estate of a decedent or of a trust estate shall be determined as if such income had been received without the intervention of a fiduciary.

2. The situs of income received by a trustee, which income, under the internal revenue code, is taxable to the grantor of the trust or to any person other than the trust, shall be determined as

if such income had been actually received directly by such grantor or such other person, without the intervention of the trust.

3. The residence of an estate or trust shall be as provided under s. 71.14.

(2) PART−YEAR RESIDENT LIABILITY DETERMINATION. Liability to taxation for income which follows the residence of the recipient, in the case of persons other than corporations, who move into or out of the state within the year, shall be determined for such year on the basis of the income received (or accrued, if on the accrual basis) during the portion of the year that any such person was a resident of Wisconsin. The net income of such person assignable to the state for such year shall be used in determining the income subject to assessment under this chapter.

(3) PARTNERS AND LIMITED LIABILITY COMPANY MEMBERS. (a) *Part−year residents, time of residence.* Partners or members who are residents of this state for less than a full taxable year shall compute taxes for that year on their share of partnership or limited liability company income or loss under this chapter on the part of the taxable year during which they are residents in the following manner:

1. Assign an equal portion of each item of income, loss or deduction to each day of the partnership's or limited liability company's taxable year.

2. Multiply each daily portion of those items of income, loss or deduction by a fraction that represents the partner's or member's portion, on that day, of the total partnership or limited liability company interest.

3. Net the items of income, loss or deduction, after the calculation under subd. 2., for all of the days during which the partner or member was a resident of this state.

(b) *Part−year residents, nonresidents.* All partners or members who are residents of this state for less than a full taxable year or who are nonresidents shall compute taxes for that year on their share of partnership or limited liability company income or loss under this chapter for the part of the taxable year during which they are nonresidents by recognizing their proportionate share of all items of income, loss or deduction attributable to a business in, services performed in, or rental of property in, this state.

(c) *Disregarding agreements.* In computing taxes under this chapter a partner or member shall disregard, for purposes of determining the situs of partnership income of partners, all provisions in partnership or limited liability company agreements that do any of the following:

1. Characterize the consideration for payments to the partner or member as services or the use of capital.

2. Allocate to the partner or member, as income from or gain from sources outside this state, a greater proportion of the partner's or member's distributive share of partnership or limited liability company income or gain than the ratio of partnership or company income or gain from sources outside this state to partnership or company income or gain from all sources.

3. Allocate to a partner or member a greater proportion of a partnership or limited liability company item of loss or deduction from sources in this state than the partner's or member's proportionate share of total partnership or company loss or deduction.

4. Determine a partner's or member's distributive share of an item of partnership or limited liability company income, gain, loss or deduction for federal income tax purposes if the principal purpose of that determination is to avoid or evade the tax under this chapter.

(4) NONRESIDENT ALLOCATION AND APPORTIONMENT FORMULA. Nonresident individuals and nonresident estates and trusts engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such nonresident individual or nonresident estate or trust within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except financial organizations, public utilities, railroads, sleeping car companies and car line companies there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to Wisconsin by use of an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction.

(5) PROPERTY FACTOR. For purposes of sub. (4):

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. Cash on hand or in the bank, shares of stock, notes, bonds, accounts receivable, or other evidence of indebtedness, special privileges, franchises, goodwill, or property the income of which is not taxable or is separately allocated, shall not be considered tangible property nor included in the apportionment.

(b) Property used in the production of nonapportionable income or losses shall be excluded from the numerator and denominator of the property factor. Property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the property factor so as to exclude, as near as possible, the portion of such property producing the nonapportionable income or loss.

(c) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub−rentals.

(d) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the secretary of revenue may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(6) PAYROLL FACTOR. For purposes of sub. (4):

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(b) Compensation is paid in this state if:

1. The individual's service is performed entirely within this state;

2. The individual's service is performed within and without this state, but the service performed without this state is incidental to the individual's service within this state;

3. A portion of the service is performed within this state and the base of operations of the individual is in this state;

4. A portion of the service is performed within this state and, if there is no base of operations, the place from which the individual's service is directed or controlled is in this state;

5. A portion of the service is performed within this state and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in this state; or

6. The individual is neither a resident of nor performs services in this state but is directed or controlled from an office in this state and returns to this state periodically for business purposes and the

state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

(c) Compensation related to the operation, maintenance, protection or supervision of property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the payroll factor so as to exclude, as near as possible, the portion of pay related to the operation, maintenance, protection and supervision of property used in the production of nonapportionable income.

(d) Payments made to an independent contractor or any person not properly classified as an employe are excluded from the payroll factor.

(e) If the taxpayer has no employes or the department determines that employes are not a substantial income−producing factor, the department may order or permit the elimination of the payroll factor.

(7) SALES FACTOR. For purposes of sub. (4):

(a) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. For sales of tangible personal property, the numerator of the sales factor is the sales of the taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

(b) Sales of tangible personal property are in this state if any of the following occur:

1. The property is delivered or shipped to a purchaser, other than the federal government, within this state regardless of the f.o.b. point or other conditions of the sale.

2. The property is shipped from an office, store, warehouse, factory or other place of storage in this state and delivered to the federal government within this state regardless of the f.o.b. point or other conditions of sale.

2m. The property is shipped from an office, store, warehouse, factory or other place of storage in this state and delivered to the federal government outside this state and the taxpayer is not within the jurisdiction, for income or franchise tax purposes, of the destination state.

3. The property is shipped from an office, store, warehouse, factory or other place of storage in this state to a purchaser other than the federal government and the taxpayer is not within the jurisdiction, for income or franchise tax purposes, of the destination state.

(c) Sales of tangible personal property by an office in this state to a purchaser in another state and not shipped or delivered from this state are in this state if the taxpayer is not within the jurisdiction for income tax purposes of either the state from which the property is delivered or shipped or of the destination state.

(d) Sales, other than sales of tangible personal property, are in this state if the income−producing activity is performed in this state. If the income−producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by sub. (6).

(e) In this subsection, "sales" includes, but is not limited to, the following items related to the production of business income:

1. Gross receipts from the sale of inventory.

2. Gross receipts from the operation of farms, mines and quarries.

3. Gross receipts from the sale of scrap or by−products.

4. Gross commissions.

5. Gross receipts from personal and other services.

6. Gross rents from real property or tangible personal property.

7. Interest on trade accounts and trade notes receivable.

8. A partner's or member's share of the partnership's or limited liability company's gross receipts.

9. Gross management fees.

10. Gross royalties from income−producing activities.

11. Gross franchise fees from income−producing activities.

(f) The following items are among those that are not included in "sales" in this subsection:

1. Gross receipts and gain or loss from the sale of tangible business assets, except those under par. (e) 1., 2. and 3.

2. Gross receipts and gain or loss from the sale of nonbusiness real or tangible personal property.

3. Gross rents and rental income or loss from real property or tangible personal property if that real property or tangible personal property is not used in the production of business income.

4. Royalties from nonbusiness real property or nonbusiness tangible personal property.

5. Proceeds and gain or loss from the redemption of securities.

6. Interest, except interest under par. (e) 7., and dividends.

7. Gross receipts and gain or loss from the sale of intangible assets, except those under par. (e) 1.

8. Dividends deductible by corporations in determining net income.

9. Gross receipts and gain or loss from the sale of securities.

10. Proceeds and gain or loss from the sale of receivables.

11. Refunds, rebates and recoveries of amounts previously expended or deducted.

12. Other items not includable in apportionable income.

13. Foreign exchange gain or loss.

14. Royalties and income from passive investments in the property under s. 71.25 (5) (a) 21.

16. Pari−mutuel wager winnings or purses under ch. 562.

(8) RAILROADS, FINANCIAL ORGANIZATIONS AND PUBLIC UTILITIES. (a) "Financial organization", as used in this section, means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, brokerage house, underwriter or any type of insurance company.

(b) "Public utility", as used in this section, means any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam, the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. "Public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

(c) The net business income of railroads, sleeping car companies, car line companies, financial organizations and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state.

(9) NONRESIDENT INCOME FROM MULTISTATE TAX−OPTION CORPORATION. Nonresident individuals and nonresident estates and trusts deriving income from a tax−option corporation which is engaged in business within and without this state shall be taxed only on the income of the corporation derived from business transacted and property located in this state and losses and other items of the corporation deductible by such shareholders shall be limited to their proportionate share of the Wisconsin loss or other item.

For purposes of this subsection, all intangible income of tax−option corporations passed through to shareholders is business income that follows the situs of the business.

(10) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any nonresident individual or nonresident estate or trust engaged in business within and without the state of Wisconsin and required to apportion its income as provided in this section, it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided under sub. (4) gives an unreasonable or inequitable final average ratio because of the fact that such nonresident individual or nonresident estate or trust does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income.

(11) DEPARTMENT MAY APPORTION BY RULE. If the income of any such nonresident individual or nonresident estate or trust properly assignable to the state of Wisconsin cannot be ascertained with reasonable certainty by the methods under this section, then the same shall be apportioned and allocated under such rules as the department of revenue may prescribe.

History: 1987 a. 312; 1987 a. 411 ss. 34 to 40, 61; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39, 189, 269; 1993 a. 112, 204, 491; 1995 a. 27; 1997 a. 27, 237.

71.05 Income computation. (1) EXEMPT AND EXCLUDABLE INCOME. There shall be exempt from taxation under this subchapter the following:

(a) *Retirement systems.* All payments received from the U.S. civil service retirement system, the U.S. military employe retirement system, the employe's retirement system of the city of Milwaukee, Milwaukee county employes' retirement system, sheriff's annuity and benefit fund of Milwaukee county, police officer's annuity and benefit fund of Milwaukee, fire fighter's annuity and benefit fund of Milwaukee, or the public employe trust fund as successor to the Milwaukee public school teachers' annuity and retirement fund and to the Wisconsin state teachers retirement system, which are paid on the account of any person who was a member of the paying or predecessor system or fund as of December 31, 1963, or was retired from any of the systems or funds as of December 31, 1963, but such exemption shall not exclude from gross income tax sheltered annuity benefits.

(b) *State legislature allowance for expenses.* All amounts received in accordance with s. 13.123 (1) (a) which are spent for the purposes specified in s. 13.123 (1) (a) if the person does not claim a deduction for travel expenses away from home on legislative days. In this chapter, the place of residence of a member of the state legislature within the legislative district which the member represents shall be considered the member's home.

(c) *Certain interest income.* Interest received on bonds or notes issued by any of the following:

1. The Wisconsin housing and economic development authority under s. 234.65, if the bonds are used to fund an economic development loan to finance construction, renovation or development of property that would be exempt under s. 70.11 (36).

2. The Wisconsin housing and economic development authority, if the bonds are to fund a loan under s. 234.935.

3. A local exposition district created under subch. II of ch. 229.

4. A local professional baseball park district created under subch. III of ch. 229.

(f) *Income from the sales of certain insurance policies.* Income received by the original policyholder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract, as defined in s. 632.68 (1) (d).

(2) NONRESIDENT RECIPROCITY. All payments received by natural persons domiciled outside Wisconsin who derive income from the performance of personal services in Wisconsin shall be excluded from Wisconsin gross income to the extent that it is subjected to an income tax imposed by the state of domicile; provided that the law of the state of domicile allows a similar exclusion of income from personal services earned in such state by natural persons domiciled in Wisconsin, or a credit against the tax imposed by such state on such income equal to the Wisconsin tax on such income.

(3) MENOMINEE INDIAN TRIBE; DISTRIBUTION OF ASSETS. No distribution of assets from the United States to the members of the Menominee Indian tribe as defined in s. 49.385 or their lawful distributees, or to any corporation, or organization, created by the tribe or at its direction pursuant to section 8, P.L. 83−399, as amended, and no issuance of stocks, bonds, certificates of indebtedness, voting trust certificates or other securities by any such corporation or organization, or voting trust, to such members of the tribe or their lawful distributees shall be subject to income taxes under this chapter; provided, that so much of any cash distribution made under said P.L. 83−399 as consists of a share of any interest earned on funds deposited in the treasury of the United States pursuant to the supplemental appropriation act, 1952, (65 Stat. 736, 754) shall not by virtue of this subsection be exempt from the individual income tax of this state in the hands of the recipients for the year in which paid. For the purpose of ascertaining the gain or loss resulting from the sale or other disposition of such assets and stocks, bonds, certificates of indebtedness and other securities under this chapter, the fair market value of such property, on termination date as defined in s. 70.057 (1), 1967 stats., shall be the basis for determining the amount of such gain or loss.

(5) FRACTIONAL YEAR. When an income tax return is required to be filed for a fractional part of a year under s. 71.03 (3), the Wisconsin taxable income shall be placed on an annual basis using the method applicable for federal income taxes under section 443 (b) (1) of the internal revenue code.

(6) MODIFICATIONS AND TRANSITIONAL ADJUSTMENTS. Some of the modifications referred to in s. 71.01 (13) and (14) are:

(a) *Additions.* To federal adjusted gross income add:

1. The amount of any interest, except interest under par. (b) 1., less related expenses, which is not included in federal adjusted gross income, and except the amount of any interest or original issue discount derived from bonds issued under subch. IV of ch. 18.

2. Losses not allocable or apportionable to this state under s. 71.04.

3. Any amount deducted as a capital loss carry−over from any taxable year prior to the 1965 taxable year.

4. The amount of any lump sum distribution taxable under section 402 (d) (1) of the internal revenue code (relating to distributions from employe benefit plans).

5. Any amount deducted as a capital loss carry−over from any taxable year prior to the 1975 taxable year if the capital asset which generated the loss had a situs outside of Wisconsin.

6. Any amount received in taxable year 1979 or thereafter by a Wisconsin resident shareholder as a proportionate share of the earnings and profits of a tax−option corporation which was accumulated prior to the beginning of its 1979 taxable year and not considered a dividend when received under section 1375 (d) (1) of the internal revenue code as amended to December 31, 1978.

7. Any amount deducted under section 170 (i) of the internal revenue code (relating to the deduction of charitable contributions by individuals who do not itemize deductions).

8. Wages paid to an entertainer or entertainment corporation unless the taxpayer complies with ss. 71.63 (3) (b), 71.64 (4) and (5) and 71.80 (15) (b).

9. Any amount excluded from adjusted gross income under section 641 (c) (1) of the internal revenue code (relating to gain on the sale of any property by a trust within 2 years of acquisition).

10. For the taxable year, for a person who is not "actively engaged in farming", as that term is used in 7 CFR 1497.201, combined net losses, exclusive of net gains from the sale or exchange of capital or business assets and exclusive of net profits, from businesses, from rents, from partnerships, from limited liability companies, from S corporations, from estates or from trusts, under section 165 of the internal revenue code, except losses allowable under sections 1211 and 1231 of the internal revenue code, otherwise includable in calculating Wisconsin income if those losses are incurred in the operation of a farming business, as defined in section 464 (e) 1. of the internal revenue code to the extent that those combined net losses exceed $20,000 if nonfarm Wisconsin adjusted gross income exceeds $55,000 but does not exceed $75,000, exceed $17,500 if nonfarm Wisconsin adjusted gross income exceeds $75,000 but does not exceed $100,000, exceed $15,000 if nonfarm Wisconsin adjusted gross income exceeds $100,000 but does not exceed $150,000, exceed $12,500 if nonfarm Wisconsin adjusted gross income exceeds $150,000 but does not exceed $200,000, exceed $10,000 if nonfarm Wisconsin adjusted gross income exceeds $200,000 but does not exceed $250,000, exceed $7,500 if nonfarm Wisconsin adjusted gross income exceeds $250,000 but does not exceed $300,000, exceed $5,000 if nonfarm Wisconsin adjusted gross income exceeds $300,000 but does not exceed $600,000 and exceed $0 if nonfarm adjusted gross income exceeds $600,000, except that the amounts applicable to married persons filing separately are 50% of the amounts specified in this subdivision.

12. All alimony deducted for federal income tax purposes and paid while the individual paying the alimony was a nonresident of this state; all penalties for early withdrawals from time savings accounts and deposits deducted for federal income tax purposes and paid while the individual charged with the penalty was a nonresident of this state; all repayments of supplemental unemployment benefit plan payments deducted for federal income tax purposes and made while the individual making the repayment was a nonresident of this state; all reforestation expenses related to property not in this state, deducted for federal income tax purposes and paid while the individual paying the expense was not a resident of this state; all contributions to individual retirement accounts, simplified employe pension plans and self−employment retirement plans and all deductible employe contributions, deducted for federal income tax purposes and in excess of that amount multiplied by a fraction the numerator of which is the individual's wages and net earnings from a trade or business taxable by this state and the denominator of which is the individual's total wages and net earnings from a trade or business; the contributions to a Keogh plan deducted for federal income tax purposes and in excess of that amount multiplied by a fraction the numerator of which is the individual's net earnings from a trade or business, taxable by this state, and the denominator of which is the individual's total net earnings from a trade or business; the amount of health insurance costs of self−employed individuals deducted under section 162 (L) of the internal revenue code for federal income tax purposes and in excess of that amount multiplied by a fraction the numerator of which is the individual's net earnings from a trade or business, taxable by this state, and the denominator of which is the individual's total net earnings from a trade or business; and the amount of self−employment taxes deducted under section 164 (f) of the internal revenue code for federal income tax purposes and in excess of that amount multiplied by a fraction the numerator of which is the individual's net earnings from a trade or business, taxable by this state, and the denominator of which is the individual's total net earnings from a trade or a business.

13. The amount claimed by a fiduciary as an itemized deduction under section 164 or 216 (a) (1) of the internal revenue code on the federal fiduciary return.

14. Any amount received as a 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. 71.365 (4) not to be a tax−option corporation, to the extent not included in federal adjusted gross income for the current year.

15. The amount of the credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx) and (3s) and not passed through by a partnership, limited liability company or tax−option corporation that has added that amount to the partnership's, company's or tax−option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

16. Any amount recognized as a loss under section 1001 (c) of the internal revenue code if a surviving spouse and a distributee exchange their interests in marital property under s. 857.03 (2).

17. The amount received under s. 71.07 (3m) (c) or 71.60, or both, that is not included in federal adjusted gross income.

18. Any amount deducted as moving expenses under section 217 of the internal revenue code if the expense relates to a move made by an individual who changes his or her domicile from this state as a result of the move or if the expense relates to a move made by an individual who is not domiciled in this state as a result of the move.

20. The amount of any excess distribution, as that term is used in section 1291 (b) of the Internal Revenue Code, from a passive foreign investment company.

(b) *Subtractions.* From federal adjusted gross income 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. 71.36 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:

1. The amount of any interest or dividend income which is by federal law exempt from taxation by this state less the related expense in regard to both the distributable and nondistributable interest and dividend income on a fiduciary return.

2. Net income not allocated or apportioned to this state under s. 71.04.

3. Any other amount not subject to taxation under this chapter, less any amount allocable thereto which has been deducted in the computation of federal taxable or adjusted gross income except amounts used to calculate the credit under s. 71.07 (5).

4. Disability payments, if the individual either is single or is married and files a joint return, to the extent those payments are excludable under section 105 (d) of the internal revenue code as it existed immediately prior to its repeal in 1983 by section 122 (b) of P.L. 98−21, except that if an individual is divorced during the taxable year that individual may subtract an amount only if that person is disabled and the amount that may be subtracted then is $100 for each week that payments are received or the amount of disability pay reported as income, whichever is less. If the exclusion under this subdivision is claimed on a joint return and only one of the spouses is disabled, the maximum exclusion is $100 for each week that payments are received or the amount of disability pay reported as income, whichever is less.

5. Any amounts that are recoveries of federal itemized deductions for which no tax benefit was received for Wisconsin purposes.

6. For the original purchaser of small business stock that is purchased at the time that the business is incorporated, the amount of net capital gains on small business stock otherwise subject to the tax under s. 71.02 if the taxpayer has not acquired the stock by gift, has not acquired the stock in a stock−for−stock exchange and

submits with the taxpayer's return a copy of the certification under s. 71.01 (10).

8. The difference between the amount included in federal adjusted gross income for the current year and the amount calculated under section 85 of the internal revenue code (relating to unemployment compensation) as that section existed on December 31, 1985.

9. On assets held more than one year and on all assets acquired from a decedent, 60% of the capital gain as computed under the internal revenue code, not including capital gains for which the federal tax treatment is determined under section 406 of P.L. 99−514 and not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage.

10. Farm losses added to income under par. (a) 10. in any of the 15 preceding years, to the extent that they are not offset against farm income of any year between the loss year and the taxable year for which the modification under this subdivision is claimed and to the extent that they do not exceed the net profits or net gains from the sale or exchange of capital or business assets in the current taxable year from the same farming business or portion of that business to which the limits on deductible farm losses under par. (a) 10. applied in the loss year.

11. The amount of recapture under s. 71.07 (2di) (e).

12. Any amount recognized as a gain under section 1001 (c) of the internal revenue code if a surviving spouse and a distributee exchange their interests in marital property under s. 857.03 (2).

13. Any amount of basic, special and incentive pay income or compensation, as those terms are used in 37 USC chapters 3 and 5, received from the federal government by a person who is a member of a reserve component of the U.S. armed forces, as defined in 26 USC 7701 (a) (15), and is below the grade of commissioned officer, for services performed for Operation Desert Shield or Operation Desert Storm. In this subdivision, "services performed for Operation Desert Shield or Operation Desert Storm" means service in a unit of the U.S. armed forces if:

a. The person is activated for Operation Desert Shield or Operation Desert Storm; and

b. The service occurs during the period that there is in effect a designation by the president of the United States that the service is part of Operation Desert Shield or Operation Desert Storm.

14. Up to $500 per month of basic, special and incentive pay income or compensation, as those terms are used in 37 USC chapters 3 and 5, received from the federal government by a person who is a member of a reserve component of the U.S. armed forces, as defined in 26 USC 7701 (a) (15), and is a commissioned officer, for services performed for Operation Desert Shield or Operation Desert Storm. In this subdivision, "services performed for Operation Desert Shield or Operation Desert Storm" means service in a unit of the U.S. armed forces if:

a. The person is activated for Operation Desert Shield or Operation Desert Storm; and

b. The service occurs during the period that there is in effect a designation by the president of the United States that the service is part of Operation Desert Shield or Operation Desert Storm.

17. For taxable years beginning after December 31, 1992, and before January 1, 1994, an amount paid by a self−employed person, or an amount paid by a person who is the employe of another person if the person's employer pays no amount of money toward the person's medical care insurance, for medical care insurance for the person, his or her spouse and the person's dependents, calculated as follows:

a. Twenty−five percent of the amount paid by the person for medical care insurance. In this subdivision, "medical care insurance" means a medical care insurance policy that covers the person, his or her spouse and the person's dependents and provides surgical, medical, hospital, major medical or other health service coverage, and includes payments made for medical care benefits under a self−insured plan, but "medical care insurance" does not include hospital indemnity policies or policies with ancillary benefits such as accident benefits or benefits for loss of income resulting from a total or partial inability to work because of illness, sickness or injury.

b. From the amount calculated under subd. 17. a., subtract the amounts deducted from gross income for medical care insurance in the calculation of federal adjusted gross income.

c. For a person who is a nonresident or a part−year resident of this state, modify the amount calculated under subd. 17. b. by multiplying the amount by a fraction the numerator of which is the person's net earnings from a trade or business taxable by this state and the denominator of which is the person's total net earnings from a trade or business.

d. Reduce the amount calculated under subd. 17. b. or c. to the person's aggregate net earnings from a trade or business that are taxable by this state.

18. For taxable years beginning after December 31, 1993, and before January 1, 1995, an amount paid by a self−employed person, or an amount paid by a person who is the employe of another person if the person's employer pays no amount of money toward the person's medical care insurance, for medical care insurance for the person, his or her spouse and the person's dependents, calculated as follows:

a. Fifty percent of the amount paid by the person for medical care insurance. In this subdivision, "medical care insurance" means a medical care insurance policy that covers the person, his or her spouse and the person's dependents and provides surgical, medical, hospital, major medical or other health service coverage, and includes payments made for medical care benefits under a self−insured plan, but "medical care insurance" does not include hospital indemnity policies or policies with ancillary benefits such as accident benefits or benefits for loss of income resulting from a total or partial inability to work because of illness, sickness or injury.

b. From the amount calculated under subd. 18. a., subtract the amounts deducted from gross income for medical care insurance in the calculation of federal adjusted gross income.

c. For a person who is a nonresident or a part−year resident of this state, modify the amount calculated under subd. 18. b. by multiplying the amount by a fraction the numerator of which is the person's net earnings from a trade or business taxable by this state and the denominator of which is the person's total net earnings from a trade or business.

d. Reduce the amount calculated under subd. 18. b. or c. to the person's aggregate net earnings from a trade or business that are taxable by this state.

19. For taxable years beginning on or after January 1, 1995, an amount paid by a self−employed person for medical care insurance for the person, his or her spouse and the person's dependents, calculated as follows:

a. One hundred percent of the amount paid by the person for medical care insurance. In this subdivision, "medical care insurance" means a medical care insurance policy that covers the person, his or her spouse and the person's dependents and provides surgical, medical, hospital, major medical or other health service coverage, and includes payments made for medical care benefits under a self−insured plan, but "medical care insurance" does not include hospital indemnity policies or policies with ancillary benefits such as accident benefits or benefits for loss of income resulting from a total or partial inability to work because of illness, sickness or injury.

b. From the amount calculated under subd. 19. a., subtract the amounts deducted from gross income for medical care insurance in the calculation of federal adjusted gross income.

c. For a person who is a nonresident or a part−year resident of this state, modify the amount calculated under subd. 19. b. by multiplying the amount by a fraction the numerator of which is the

person's net earnings from a trade or business that are taxable by this state and the denominator of which is the person's total net earnings from a trade or business.

d. Reduce the amount calculated under subd. 19. b. or c. to the person's aggregate net earnings from a trade or business that are taxable by this state.

20. For taxable years beginning on or after January 1, 1995, an amount paid by a person who is the employe of another person if the person's employer pays no amount of money toward the person's medical care insurance, for medical care insurance for the person, his or her spouse and the person's dependents, calculated as follows:

a. Fifty percent of the amount paid by the person for medical care insurance. In this subdivision, "medical care insurance" means a medical care insurance policy that covers the person, his or her spouse and the person's dependents and provides surgical, medical, hospital, major medical or other health service coverage, and includes payments made for medical care benefits under a self−insured plan, but "medical care insurance" does not include hospital indemnity policies or policies with ancillary benefits such as accident benefits or benefits for loss of income resulting from a total or partial inability to work because of illness, sickness or injury.

b. From the amount calculated under subd. 20. a., subtract the amounts deducted from gross income for medical care insurance in the calculation of federal adjusted gross income.

c. For a person who is a nonresident or a part−year resident of this state, modify the amount calculated under subd. 20. b. by multiplying the amount by a fraction the numerator of which is the person's net earnings from a trade or business taxable by this state and the denominator of which is the person's total net earnings from a trade or business.

d. Reduce the amount calculated under subd. 20. b. or c. to the person's aggregate net earnings from a trade or business that are taxable by this state.

21. The difference between the amount of social security benefits included in federal adjusted gross income for the current year and the amount calculated under section 86 of the internal revenue code as that section existed on December 31, 1992.

22. For taxable years beginning after December 31, 1995, an amount up to $5,000 that is expended during the period that consists of the year to which the claim relates and the prior 2 taxable years, by a full−year resident of this state who is an adoptive parent, for adoption fees, court costs or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered under s. 48.91 (3) during the taxable year.

23. Any increase in value of a tuition unit that is purchased under a tuition contract under s. 16.24.

25. All gains that are not excluded from taxation under subd. 9., on business assets or on assets used in farming, including shares in a corporation or trust that meets the standards under s. 182.001 (1), or both, held more than one year, that are sold or otherwise disposed of to persons who are related to the seller or transferor by blood, marriage or adoption within the 3rd degree of kinship as that term is used in s. 852.03 (2), [1995 stats.,] as computed under the Internal Revenue Code, not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason.

NOTE: Section 852.03 (2) was repealed by 1997 Wis. Act 188. Corrective legislation is pending.

26. For taxable years beginning on or after January 1, 1998, an amount paid by a person for a long−term care insurance policy for the person and his or her spouse, calculated as follows:

a. One hundred percent of the amount paid by the person for a long−term care insurance policy. In this subdivision, "long−term care insurance policy" means a disability insurance policy or certificate advertised, marketed, offered or designed primarily to provide coverage for care that is provided in the insured person's home or in institutional and community−based settings and that is convalescent or custodial care or care for a chronic condition or terminal illness; the term does not include a medicare supplement policy or medicare replacement policy or a continuing care contract, as defined in s. 647.01 (2). "Long−term care insurance policy" applies to a policy that covers the person and his or her spouse.

b. From the amount calculated under subd. 26. a., subtract the amounts deducted from gross income for a long−term care insurance policy in the calculation of federal adjusted gross income.

c. For a person who is a nonresident or a part−year resident of this state, modify the amount calculated under subd. 26. b. by multiplying the amount by a fraction the numerator of which is the person's wages, unearned income and net earnings from a trade or business that are taxable by this state and the denominator of which is the person's total wages, unearned income and net earnings from a trade or business.

d. Reduce the amount calculated under subd. 26. b. or c. to the person's aggregate wages, unearned income and net earnings from a trade or business that are taxable by this state.

28. An amount paid by a claimant for tuition expenses for a student who is the claimant or who is the claimant's child and the claimant's dependent who is claimed under section 151 (c) of the Internal Revenue Code, to attend any university, college, technical college or a school approved under s. 39.51, that is located in Wisconsin or to attend a public vocational school or public institution of higher education in Minnesota under the Minnesota−Wisconsin reciprocity agreement under s. 39.47, calculated as follows:

a. An amount equal to not more than $3,000 per student for each year to which the claim relates.

b. From the amount calculated under subd. 28. a., if the claimant is single or married and filing as head of household and his or her federal adjusted gross income is more than $50,000 but not more than $60,000, subtract the product of the amount calculated under subd. 28. a. and the value of a fraction, the denominator of which is $10,000 and the numerator of which is the difference between the claimant's federal adjusted gross income and $50,000.

c. From the amount calculated under subd. 28. a., if the claimant is married and filing jointly and the claimant's and his or her spouse's federal adjusted gross income is more than $80,000 but not more than $100,000, subtract the product of the amount calculated under subd. 28. a. and the value of a fraction, the denominator of which is $20,000 and the numerator of which is the difference between the claimant's and his or her spouse's federal adjusted gross income and $80,000.

d. From the amount calculated under subd. 28. a., if the claimant is married and filing separately and the claimant's federal adjusted gross income is more than $40,000 but not more than $50,000, subtract the product of the amount calculated under subd. 28. a. and the value of a fraction, the denominator of which is $10,000 and the numerator of which is the difference between the claimant's federal adjusted gross income and $40,000.

e. For an individual who is a nonresident or part−year resident of this state, multiply the amount calculated under subd. 28. b., c. or d. by a fraction the numerator of which is the individual's wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state and the denominator of which is the individual's total wages, salary, tips, unearned income and net earnings from a trade or business. In this subd. 28. e., for married persons filing separately "wages, salary, tips, unearned income and net earnings from a trade or business" means the separate wages, salary, tips, unearned income and net earnings from a trade or business of each spouse, and for married persons filing jointly "wages, salary, tips, unearned income and net earnings from a trade or business" means the total wages, salary, tips, unearned income and net earnings from a trade or business of both spouses.

f. Reduce the amount calculated under subd. 28. e. to the individual's aggregate wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state.

g. No modification may be claimed under this subdivision by a claimant who is single or married and filing as head of household if the claimant's federal adjusted gross income is more than $60,000, by a claimant who is married and filing jointly if the claimant's and his or her spouse's federal adjusted gross income is more than $100,000 or by a claimant who is married and filing separately if the claimant's federal adjusted gross income is more than $50,000.

(7) ADDITION OR SUBTRACTION OF TRANSITIONAL ADJUSTMENTS. Add or subtract, as appropriate, any transitional adjustments computed under sub. (13).

(8) LOSSES. (a) The carry back of losses to reduce income of prior years shall not be permitted. There shall be added any amount deducted as a federal net operating loss carry−over and there shall be subtracted for the first taxable year for which the subtraction may be made any Wisconsin net operating loss carry−forward allowable under par. (b) in an amount not in excess of the Wisconsin taxable income computed before the deduction of the Wisconsin net operating loss carry−forward.

(b) A Wisconsin net operating loss may be carried forward against Wisconsin taxable incomes of the next 15 taxable years, if the taxpayer was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset against other income of the year of loss and to the extent not offset against Wisconsin modified taxable income of any year between the loss year and the taxable year for which the loss carry−forward is claimed. In this paragraph, "Wisconsin modified taxable income" means Wisconsin taxable income with the following exceptions: a net operating loss deduction or offset for the loss year or any taxable year thereafter is not allowed, the deduction for long−term capital gains under sub. (6) (b) 9. is not allowed, the amount deductible for losses from sales or exchanges of capital assets may not exceed the amount includable in income for gains from sales or exchanges of capital assets and "Wisconsin modified taxable income" may not be less than zero.

(9) PARTNERS OR LIMITED LIABILITY COMPANY MEMBERS. In determining Wisconsin adjusted gross income or Wisconsin taxable income of a partner or member, any applicable modification described in this section which relates to an item of partnership or limited liability company income, gain, loss or deduction shall be made in accordance with the partner's or member's distributive share, for federal income tax purposes, of the item to which the modification relates. Where a partner's or member's distributive share of any such item is not required to be taken into account separately for federal income tax purposes or the modification relates to no ascertainable item of the partnership or limited liability company income of the current year, each partner's or member's share of such modification shall be proportional to his or her distributive share for federal income tax purposes of partnership or company taxable income or loss generally.

(10) OTHER ADJUSTMENTS. Add to or subtract from federal adjusted gross income, as appropriate:

(b) Except as provided in sub. (21), the shareholder's proportionate share of the amount by which any item of income, loss or deduction of a tax−option corporation subject to taxation under this chapter differs from federal taxable income, loss or deduction of the corporation for the same year attributed to its shareholders, and any amount necessary to prevent the double inclusion or omission of any item of income, loss, deduction or basis, except that credits against gross tax may not be subtracted under this paragraph.

(c) The amount required so that the net capital loss, after netting capital gains and capital losses to arrive at total capital gain or loss, is offset against ordinary income only to the extent of $500. Losses in excess of $500 shall be carried forward to the next taxable year and offset against ordinary income up to the limit under this paragraph. Losses shall be used in the order in which they accrue.

(d) 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. 71.365 (4), not a tax−option corporation.

(e) Add or subtract, as appropriate, on sale, exchange, abandonment or other disposition in a transaction in which gain or loss is recognized by the owner of the property acquired from a decedent, the difference between the federal basis and the Wisconsin basis. For this purpose, property acquired from a decedent is as described in section 1014 of the internal revenue code, exclusive of property constituting income under section 102 (b) of the internal revenue code. The Wisconsin basis of property acquired from a decedent is determined under the internal revenue code, except that the value used for property is the value properly includable for Wisconsin death tax purposes rather than the value of property includable for federal estate tax purposes. In this paragraph, property deemed to be includable for Wisconsin death tax purposes includes exempt property under s. 72.15 (5), 1985 stats., but the exclusion under s. 72.12 (6) (b), 1985 stats., is not deemed to be property properly includable. If at least 50% of the marital property held by a decedent and the decedent's surviving spouse is includable for purposes of computing the federal estate tax, all of the decedent's and the decedent's spouse's marital property and all of the decedent's individual property is deemed property properly includable for Wisconsin death tax purposes.

(f) The amount necessary to reflect the inapplicability of section 66 (a) of the internal revenue code to the computation of income under this chapter.

(g) The amount necessary to reflect the applicability of s. 71.10 (6) (b) to (d) to the computation of income under this chapter.

(h) The amount necessary to reflect any other differences between the treatment of marital income for federal income tax purposes and the treatment of marital income under this chapter or under rules promulgated under this chapter.

(11) WASTE TREATMENT PLANT; POLLUTION ABATEMENT EQUIPMENT. (a) The federal adjusted basis at the end of the calendar year 1968 or corresponding fiscal year of waste treatment plant or pollution abatement equipment acquired pursuant to order or recommendation of the committee on water pollution, state board of health, city council, village board or county board pursuant to s. 59.07 (53) or (85), 1971 stats., may be treated as a subtraction modification on the return of the calendar year 1969 or corresponding fiscal year but not in later years. In case of such subtraction an add modification shall be made in 1969 and later taxable years to reverse federal depreciation or amortization of such basis or to correct gain or loss on disposition. The cost of such plant or equipment acquired in 1969 or thereafter pursuant to order, recommendation or approval of the committee on water pollution, department of resource development, department of natural resources, state board of health, city council, village board, or county board pursuant to s. 59.07 (53) or (85), 1971 stats., (less any federal depreciation or amortization taken) may be deducted as a subtraction modification or as subtraction modifications in the year or years in which paid or accrued, dependent on the method of accounting employed. In case of such election, appropriate add modifications shall be made in subsequent years to reverse federal depreciation or amortization or to correct gain or loss on disposition. This paragraph is intended to apply only to depreciable property except that where wastes are disposed of through a lagoon process, lagooning costs and the cost of land containing such lagoons may be treated as depreciable property for purposes of this paragraph. In no event may any amount in excess of cost be deducted. The taxpayer shall file with the department copies of all recommendations, orders or approvals relating to installation of such property and such other documents or data relating thereto as the department requests.

(b) The cost of the following described property, less any federal depreciation or amortization taken, may be deducted as a sub-

traction modification or as subtraction modifications in the year or years in which paid or accrued, dependent on the method of accounting employed: All property purchased or constructed as a waste treatment facility utilized for the treatment of industrial wastes as defined in s. 281.01 (5), or air contaminants as defined in s. 285.01 (1) but not for other wastes as defined in s. 281.01 (7) and approved by the department of revenue under s. 70.11 (21) (a) for the purpose of abating or eliminating pollution of surface waters, the air or waters of the state. In case of such election, appropriate add modifications shall be made in subsequent years to reverse federal depreciation or amortization or to correct gain or loss on disposition. This paragraph is intended to apply only to depreciable property except that where wastes are disposed of through a lagoon process, lagooning costs and the cost of land containing such lagoons may be treated as depreciable property for purposes of this paragraph. In no event may any amount in excess of cost be deducted. Paragraph (a) applies to all property purchased prior to July 31, 1975, or purchased and constructed in fulfillment of a written construction contract or formal written bid, which contract was entered into or which bid was made prior to July 31, 1975.

(12) BASIS. (a) Except as provided in pars. (b) and (c), the Wisconsin basis of an asset owned by an individual, estate or trust and acquired before the individual became a resident of this state or before the estate or trust became subject to taxation under this chapter is the federal adjusted basis.

(b) Whenever an individual acquires a new residence, as defined in section 1034 (a) of the internal revenue code, in this state, the adjusted basis of the new residence is not required to be reduced as required under sections 1016 (a) (7) and 1034 (e) of the internal revenue code upon the sale or exchange of an old residence located outside this state if:

1. The sale or exchange of the old residence occurred in taxable year 1975 or thereafter and the individual was not a resident of this state at the time of sale or exchange of the old residence; or

2. The sale or exchange of the old residence occurred before taxable year 1975, regardless of whether the individual was a resident of this state at the time of sale or exchange of the old residence.

(c) Whenever a resident of this state sells or exchanges a principal residence located outside this state and the nonrecognition of gain provision of section 1034 (a) of the internal revenue code does not apply to that sale or exchange, the adjusted basis of the residence sold or exchanged is not required to be reduced as required by sections 1016 (a) (7) and 1034 (e) of the internal revenue code for any nonrecognized gain on the sale or exchange of any old principal residence located outside this state if:

1. The sale or exchange of the old residence occurred in taxable year 1975 or thereafter and the individual was not a resident of this state at the time of sale or exchange of the old residence; or

2. The sale or exchange of the old residence occurred before taxable year 1975, regardless of whether the individual was a resident of this state at the time of sale or exchange of the old residence.

(d) Property exchanged under s. 857.03 (2) shall be treated as if acquired by gift for the determination of basis.

(13) TRANSITIONAL ADJUSTMENTS. It is the purpose of this subsection to prevent the double inclusion or omission of any item of income, deduction or basis by reason of change to reporting on the basis of federal taxable income or federal adjusted gross income.

(a) *Definitions.* In this subsection:

1. "Adjusted basis" of a liability or reserve account created by accruals or other charges deducted from income for federal or Wisconsin income tax purposes is the current balance of such account on the transitional date.

2. "Changing basis assets" means inventories and assets or accounts, including liability and reserve accounts created by accruals or other charges deducted from income, other than annuity contracts or constant basis assets. "Changing basis assets" include property subject to deprecation, depletion or amortization of cost, premium or discount; capitalized intangible expenses such as trademark expense, research and development expense and loan expense if the same are being amortized for federal income tax purposes; and accruals, reserves and deferrals of either income or expense.

3. "Constant basis assets" means assets, other than inventories, the federal adjusted basis of which does not affect and is not affected by the computation of the taxpayer's federal taxable income except when such asset is sold, exchanged, abandoned or otherwise disposed of.

4. "Federal adjusted basis" means the adjusted basis of the asset or account for the purpose of determining gain on the sale or other disposition thereof computed as of the transitional date for federal income tax purposes.

5. "Owner" means successively the owner of changing basis assets or constant basis assets as of the transitional date and any subsequent owner whose basis for such assets is found by reference to the basis therefor of another person.

6. "Transitional date" means the first day of the taxpayer's 1965 taxable year.

7. "Wisconsin adjusted basis" means the adjusted basis of the asset or account which would have been applicable in determining gain on the sale or other disposition thereof on the day preceding the transitional date.

(b) With respect to a constant basis asset any excess of federal adjusted basis over Wisconsin adjusted basis shall be added to income, and any excess of Wisconsin adjusted basis over federal adjusted basis shall be subtracted from income in the year in which such asset is sold, exchanged, abandoned or otherwise disposed of by the owner in a transaction in which gain or loss is recognized to the owner.

(14) TRANSITIONAL ADJUSTMENT; LOSS CARRY−FORWARDS. The amount of any long−term capital loss carry−forward from any taxable year prior to the 1982 taxable year which is not allowed as a deduction under section 1211 (b) of the internal revenue code may be deducted, subject to the annual limitations provided in section 1211 (b) of the internal revenue code. A deduction is authorized under this subsection only when the amount of capital loss or capital loss carry−forward deducted in determining federal adjusted gross income for the taxable year is less than the limitations provided in section 1211 (b) of the internal revenue code. For taxable years 1982 to 1985 for married persons, the annual limitation referred to in this subsection shall be determined under the separate return provisions of section 1211 (b) (2) of the internal revenue code. For taxable year 1986 and thereafter for married persons, the annual limitation shall be determined under section 1211 (b) of the internal revenue code.

(15) TRANSITION. In regard to property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the internal revenue code as amended to December 31, 1980, and that was placed in service by the taxpayer during taxable year 1986 and thereafter but before the property is used in the production of income subject to taxation under this chapter, the property's adjusted basis and the depreciation or other deduction schedule are not required to be changed from the amount allowable on the owner's federal income tax returns for any year because the property is used in the production of income subject to taxation under this chapter.

(16) DEPRECIATION CONTINUATION. Property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980.

(17) DIFFERENCE IN BASIS. With respect to depreciable property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the internal revenue code

as amended to December 31, 1980, and that was disposed of in taxable year 1986 and thereafter, any difference between the adjusted basis for federal income tax purposes and the adjusted basis under this chapter shall be taken into account in determining net income or loss in the year or years that the gain or loss is reportable under this chapter.

(18) CARRY−OVER BASIS PRECLUDED. With respect to property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the internal revenue code as amended to December 31, 1980, and that was acquired in a transaction occurring in taxable year 1986 and thereafter in which the adjusted basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor, the Wisconsin adjusted basis of that property on the date of transfer is the adjusted basis allowable under the depreciation provisions of the internal revenue code as defined for Wisconsin purposes for the property in the hands of the transferor.

(19) MODIFICATION OF FEDERAL ADJUSTED GROSS INCOME. Whenever a person other than a corporation acquires, after the transitional date, as defined in sub. (13) (a) 6., a constant basis asset, the federal basis of which is different from the Wisconsin basis, an appropriate modification of federal adjusted gross income shall be made in the year of sale, exchange, abandonment or other disposition of such asset properly to reflect the income consequences of such difference. Whenever such a person acquires, after said transitional date, a changing basis asset the federal basis of which is different from the Wisconsin basis, appropriate modifications of federal adjusted gross income shall be made each year properly to reflect the income consequences of such difference; in any such case the secretary of revenue or his or her delegate may agree with the taxpayer for an amortization of such difference in basis over a period of 5 years or less.

(20) PARTNERSHIP INTERESTS. Whenever a person other than a corporation sells, exchanges or otherwise disposes of an ownership interest in a partnership in a transaction in which gain or loss is recognized, an appropriate modification to federal adjusted gross income may be made in the year of disposition to reflect an increase or decrease in the basis of the partnership interest equal to any reductions or additions in such basis occurring in calendar or fiscal years prior to 1975 as a result of losses or gains relating to business or property which had a situs outside of this state under the provisions of s. 71.07, 1985 stats., in effect for years prior to 1975.

(21) CAPITAL GAIN AND LOSS TREATMENT FOR ADJUSTMENTS FOR DIFFERENCE IN WISCONSIN AND FEDERAL BASIS OF CAPITAL ASSETS. Notwithstanding the provisions of subs. (7), (10) (b) and (e), (13), (19) and (20), the amount of any adjustment relating to the basis of a capital asset shall be combined with other long−term or short−term capital gains and losses reportable for the taxable year or carry−over year, as appropriate. The provisions of sections 1202, 1211 and 1212 of the internal revenue code, to the extent recognized or allowed by this chapter (including any addition required by s. 71.05 (1) (a) 2., 1983 stats., for the taxable year 1983), apply to the resulting net gain or loss determined. Add or subtract, as appropriate, from federal adjusted gross income of the taxable year or a carry−over year an amount to reflect the income consequences of making the amount of a basis adjustment required under this subsection subject to capital gain and loss treatment.

(22) STANDARD DEDUCTION. (a) *Election of deductions; husband and wife deductions.* Natural persons who have not elected the federal standard deduction, or tax tables based on adjusted gross income, in filing their federal income tax return, may elect the Wisconsin standard deduction in reporting Wisconsin's taxable income of the same year.

(b) *Deduction precluded.* The standard deduction shall not be allowed in computing the taxable income of:

1. A nonresident alien individual.

2. A U.S. citizen entitled to the benefits of section 931 of the internal revenue code for federal income tax purposes, applicable with respect to taxation of individuals on 1973 income, and income of subsequent years.

3. An individual making a return for a period of less than 12 months because of a change in his or her annual accounting period.

4. An estate or trust, common trust fund, partnership or limited liability company.

(c) *Deduction limits; 1987.* For taxable year 1987, the Wisconsin standard deduction is whichever of the following amounts is appropriate. For a single individual who has a Wisconsin adjusted gross income of less than $7,500, the standard deduction is $5,200. For a single individual who has a Wisconsin adjusted gross income of at least $7,500 but not more than $50,830, the standard deduction is the amount obtained by subtracting from $5,200 12% of Wisconsin adjusted gross income in excess of $7,500 but not less than $0. For a single individual who has a Wisconsin adjusted gross income of more than $50,830, the standard deduction is $0. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of less than $10,000, the standard deduction is $7,560. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of at least $10,000 but not more than $70,480, the standard deduction is the amount obtained by subtracting from $7,560 12.5% of aggregate Wisconsin adjusted gross income in excess of $10,000 but not less than $0. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of more than $70,480, the standard deduction is $0. For a married individual filing separately who has a Wisconsin adjusted gross income of less than $4,750, the standard deduction is $3,590. For a married individual filing separately who has a Wisconsin adjusted gross income of at least $4,750 but not more than $33,470, the standard deduction is the amount obtained by subtracting from $3,590 12.5% of Wisconsin adjusted gross income in excess of $4,750 but not less than $0. For a married individual filing separately who has a Wisconsin adjusted gross income of more than $33,470, the standard deduction is $0. The secretary of revenue shall prepare a table under which deductions under this paragraph shall be determined. That table shall be published in the department's instructional booklets.

(d) *Deduction limits; 1988 to 1993.* Except as provided in par. (f), for taxable years beginning on or after January 1, 1988, but before January 1, 1994, the Wisconsin standard deduction is whichever of the following amounts is appropriate. For a single individual who has a Wisconsin adjusted gross income of less than $7,500, the standard deduction is $5,200. For a single individual who has a Wisconsin adjusted gross income of at least $7,500 but not more than $50,830, the standard deduction is the amount obtained by subtracting from $5,200 12% of Wisconsin adjusted gross income in excess of $7,500 but not less than $0. For a single individual who has a Wisconsin adjusted gross income of more than $50,830, the standard deduction is $0. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of less than $10,000, the standard deduction is $8,900. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of at least $10,000 but not more than $55,000, the standard deduction is the amount obtained by subtracting from $8,900 19.778% of aggregate Wisconsin adjusted gross income in excess of $10,000 but not less than $0. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of more than $55,000, the standard deduction is $0. For a married individual filing separately who has a Wisconsin adjusted gross income of less than $4,750, the standard deduction is $4,230. For a married individual filing separately who has a Wisconsin adjusted gross income of at least $4,750 but not more than $26,140, the standard deduction is the amount obtained by subtracting from $4,230 19.778% of Wisconsin adjusted gross

income in excess of $4,750 but not less than $0. For a married individual filing separately who has a Wisconsin adjusted gross income of more than $26,140, the standard deduction is $0. The secretary of revenue shall prepare a table under which deductions under this paragraph shall be determined. That table shall be published in the department's instructional booklets.

(dm) *Deduction limits; 1994 and thereafter.* Except as provided in par. (f), for taxable years beginning on or after January 1, 1994, the Wisconsin standard deduction is whichever of the following amounts is appropriate. For a single individual who has a Wisconsin adjusted gross income of less than $7,500, the standard deduction is $5,200. For a single individual who has a Wisconsin adjusted gross income of at least $7,500 but not more than $50,830, the standard deduction is the amount obtained by subtracting from $5,200 12% of Wisconsin adjusted gross income in excess of $7,500 but not less than $0. For a single individual who has a Wisconsin adjusted gross income of more than $50,830, the standard deduction is $0. For a head of household who has a Wisconsin adjusted gross income of less than $7,500, the standard deduction is $7,040. For a head of household who has a Wisconsin adjusted gross income of at least $7,500 but not more than $25,000, the standard deduction is the amount obtained by subtracting from $7,040 22.515% of Wisconsin adjusted gross income in excess of $7,500 but not less than $0. For a head of household who has a Wisconsin adjusted gross income of more than $25,000, the standard deduction shall be calculated as if the head of household were a single individual. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of less than $10,000, the standard deduction is $8,900. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of at least $10,000 but not more than $55,000, the standard deduction is the amount obtained by subtracting from $8,900 19.778% of aggregate Wisconsin adjusted gross income in excess of $10,000 but not less than $0. For a married couple filing jointly that has an aggregate Wisconsin adjusted gross income of more than $55,000, the standard deduction is $0. For a married individual filing separately who has a Wisconsin adjusted gross income of less than $4,750, the standard deduction is $4,230. For a married individual filing separately who has a Wisconsin adjusted gross income of at least $4,750 but not more than $26,140, the standard deduction is the amount obtained by subtracting from $4,230 19.778% of Wisconsin adjusted gross income in excess of $4,750 but not less than $0. For a married individual filing separately who has a Wisconsin adjusted gross income of more than $26,140, the standard deduction is $0. The secretary of revenue shall prepare a table under which deductions under this paragraph shall be determined. That table shall be published in the department's instructional booklets.

(ds) *Standard deduction indexing.* For taxable years beginning after December 31, 1998, the dollar amounts of the standard deduction that is allowable under par. (dm) and all of the dollar amounts of Wisconsin adjusted gross income under par. (dm) shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the year before the previous year, as determined by the federal department of labor. Each amount that is revised under this paragraph shall be rounded to the nearest multiple of $10 if the revised amount is not a multiple of $10 or, if the revised amount is a multiple of $5, such an amount shall be increased to the next higher multiple of $10. The department of revenue shall annually adjust the changes in dollar amounts required under this paragraph and incorporate the changes into the income tax forms and instructions.

(e) *Proration for fiscal year filer.* For a fiscal year taxpayer, any increase in the standard deduction over the standard deduction permissible in the previous calendar year must be prorated by taking into account the number of days of the taxpayer's fiscal year falling in each calendar year.

(f) *Limitation for dependent who files return.* 1. For taxable years beginning before January 1, 1993, in the case of a taxpayer with respect to whom a deduction under s. 71.07 (8) is allowable to another person, the Wisconsin standard deduction shall not exceed the taxpayer's earned income, as defined in section 911 (d) (2) of the internal revenue code, that is taxable under this chapter if that earned income is more than $550 and shall not be less than $550 if that earned income is $550 or less.

2. For taxable years beginning after December 31, 1992, and before January 1, 1994, in the case of a taxpayer with respect to whom a deduction under s. 71.07 (8) is allowable to another person, the Wisconsin standard deduction shall not exceed the taxpayer's earned income, as defined in section 911 (d) (2) of the internal revenue code, that is taxable under this chapter if that earned income is more than $600 and shall not be less than $600 if that earned income is $600 or less.

3. For taxable years beginning on or after January 1, 1994, and before January 1, 1998, in the case of a taxpayer with respect to whom a deduction under s. 71.07 (8) is allowable to another person, the Wisconsin standard deduction shall be $500 adjusted for inflation in the manner prescribed by sections 1 (f) (3) to (6) and 63 (c) (4) of the Internal Revenue Code. The department of revenue shall incorporate the changes in the income tax forms and instructions.

4. a. For taxable years beginning after December 31, 1997, in the case of a taxpayer with respect to whom a deduction under s. 71.07 (8) is allowable to another person, the Wisconsin standard deduction shall be the lesser of the amount under subd. 4. b. or one of the amounts calculated under subd. 4. c., whichever amount under subd. 4. c. is greater.

b. The standard deduction that may be claimed by an individual under par. (dm), based on the individual's filing status.

c. $500, as adjusted for inflation in the manner prescribed by sections 1 (f) (3) to (6) and 63 (c) (4) of the Internal Revenue Code or the taxpayer's earned income, as defined in section 911 (d) (2) of the Internal Revenue Code, plus $250, as adjusted for inflation in the manner prescribed by sections 1 (f) (3) to (6) and 63 (c) (4) of the Internal Revenue Code.

d. The department shall incorporate the changes in this subdivision in the income tax forms and instructions.

(g) *Nonresidents.* With respect to nonresident natural persons deriving income from property located, business transacted or personal or professional services performed in this state, including natural persons changing their domicile into or from this state, the Wisconsin standard deduction and itemized deductions are based on federal adjusted gross income and are limited by such fraction of that amount as Wisconsin adjusted gross income is of federal adjusted gross income. In this paragraph, for married persons filing separately "adjusted gross income" means the separate adjusted gross income of each spouse, and for married persons filing jointly "adjusted gross income" means the total adjusted gross income of both spouses.

(h) *Part−year residents.* If a person and that person's spouse are not both domiciled in this state during the entire taxable year, the Wisconsin standard deduction or itemized deduction on a joint return is determined by multiplying the Wisconsin standard deduction or itemized deduction, each calculated on the basis of federal adjusted gross income, by a fraction the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income. For a married person who is not domiciled in this state for the entire taxable year and who files a separate return, the Wisconsin standard deduction and itemized deduction are determined under par. (g).

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237.

Shareholder distributions derived from investments in direct obligations of the federal government are exempt under (6) (b) 1. Capital Preservation v. Rev. Dept. 145 W (2d) 841, 429 NW (2d) 551 (Ct. App. 1988).

Adoption Assistance Offers Tax Relief. Franklin. Wis. Law. Feb. 1998.

71.06 Rates of taxation. (1) FIDUCIARIES, SINGLE INDIVIDUALS AND HEADS OF HOUSEHOLDS; 1986 TO 1997. The tax to be assessed, levied and collected upon the taxable incomes of all fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, and single individuals for taxable years beginning on or after August 1, 1986, and before January 1, 1994, and upon the taxable incomes of all fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, and single individuals and heads of households for taxable years beginning after December 31, 1993, and before January 1, 1998, shall be computed at the following rates:

(a) On all taxable income from $0 to $7,500, 4.9%.

(b) On all taxable income exceeding $7,500 but not exceeding $15,000, 6.55%.

(c) On all taxable income exceeding $15,000, 6.93%.

(1m) FIDUCIARIES, SINGLE INDIVIDUALS AND HEADS OF HOUSEHOLDS; AFTER 1997. The tax to be assessed, levied and collected upon the taxable incomes of all fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, and single individuals and heads of households shall be computed at the following rates for taxable years beginning after December 31, 1997:

(a) On all taxable income from $0 to $7,500, 4.77%.

(b) On all taxable income exceeding $7,500 but not exceeding $15,000, 6.37%.

(c) On all taxable income exceeding $15,000, 6.77%.

(2) MARRIED PERSONS. The tax to be assessed, levied and collected upon the taxable incomes of all married persons shall be computed at the following rates:

(a) For joint returns, for taxable years beginning after July 31, 1986, and before January 1, 1998:

1. On all taxable income from $0 to $10,000, 4.9%.

2. On all taxable income exceeding $10,000 but not exceeding $20,000, 6.55%.

3. On all taxable income exceeding $20,000, 6.93%.

(b) For married persons filing separately, for taxable years beginning after July 31, 1986, and before January 1, 1998:

1. On all taxable income from $0 to $5,000, 4.9%.

2. On all taxable income exceeding $5,000 but not exceeding $10,000, 6.55%.

3. On all taxable income exceeding $10,000, 6.93%.

(c) For joint returns, for taxable years beginning after December 31, 1997:

1. On all taxable income from $0 to $10,000, 4.77%.

2. On all taxable income exceeding $10,000 but not exceeding $20,000, 6.37%.

3. On all taxable income exceeding $20,000, 6.77%.

(d) For married persons filing separately, for taxable years beginning after December 31, 1997:

1. On all taxable income from $0 to $5,000, 4.77%.

2. On all taxable income exceeding $5,000 but not exceeding $10,000, 6.37%.

3. On all taxable income exceeding $10,000, 6.77%.

(2e) BRACKET INDEXING. For taxable years beginning after December 31, 1998, the maximum dollar amount in each tax bracket, and the corresponding minimum dollar amount in the next bracket, under subs. (1m) and (2) (c) and (d) shall be increased each year by a percentage equal to the percentage change between the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the previous year and the U.S. consumer price index for all urban consumers, U.S. city average, for the month of August of the year before the previous year, as determined by the federal department of labor. Each amount that is revised under this subsection shall be rounded to the nearest multiple of $10 if the revised amount is not a multiple of $10 or, if the revised amount is a multiple of $5, such an amount shall be increased to the next higher multiple of $10. The department of revenue shall annually adjust the changes in dollar amounts required under this subsection and incorporate the changes into the income tax forms and instructions.

(2m) RATE CHANGES. If a rate under sub. (1), (1m) or (2) changes during a taxable year, the taxpayer shall compute the tax for that taxable year by the methods applicable to the federal income tax under section 15 of the internal revenue code.

(2s) NONRESIDENTS AND PART−YEAR RESIDENTS. (a) For taxable years beginning after December 31, 1996, and before January 1, 1998, with respect to nonresident individuals, including individuals changing their domicile into or from this state, the tax brackets under subs. (1) and (2) shall be multiplied by a fraction, the numerator of which is Wisconsin adjusted gross income and the denominator of which is federal adjusted gross income. In this paragraph, for married persons filing separately "adjusted gross income" means the separate adjusted gross income of each spouse, and for married persons filing jointly "adjusted gross income" means the total adjusted gross income of both spouses. If an individual and that individual's spouse are not both domiciled in this state during the entire taxable year, the tax brackets under subs. (1) and (2) on a joint return shall be multiplied by a fraction, the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income.

(b) For taxable years beginning after December 31, 1997, with respect to nonresident individuals, including individuals changing their domicile into or from this state, the tax brackets under subs. (1m) and (2) (c) and (d) shall be multiplied by a fraction, the numerator of which is Wisconsin adjusted gross income and the denominator of which is federal adjusted gross income. In this paragraph, for married persons filing separately "adjusted gross income" means the separate adjusted gross income of each spouse, and for married persons filing jointly "adjusted gross income" means the total adjusted gross income of both spouses. If an individual and that individual's spouse are not both domiciled in this state during the entire taxable year, the tax brackets under subs. (1m) and (2) (c) and (d) on a joint return shall be multiplied by a fraction, the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income.

(3) TAX TABLE. The secretary of revenue shall prepare a table from which the tax in effect on taxable personal income shall be determined. Such table shall be published in the department's appropriate instructional booklets. The form and the tax computations of the table shall be substantially as follows:

(a) The title thereof shall be "Tax Table".

(b) The first 2 columns shall contain the minimum and the maximum amounts, respectively, of taxable income in brackets of not more than $100. Computation of tax on taxable income in excess of the amount shown on the table may be set forth at the foot of such table.

(c) The 3rd column shall show the amount of the tax payable for each bracket before the allowance of any credit. The tax shall be computed at the rates in effect, which rates shall be applied to the amount of income at the middle of each bracket. The amount of tax for each bracket shall be computed to the nearest dollar.

History: 1987 a. 312; 1989 a. 31; 1993 a. 16; 1997 a. 27, 41, 237.

71.07 Credits. (1) 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. (5) (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.

(2) COMMUNITY DEVELOPMENT FINANCE AUTHORITY CREDIT. Any individual receiving a credit under s. 71.09 (12m), 1985 stats., may carry forward to the next succeeding 15 taxable years the amount of the credit not offset against taxes for the year of purchase to the extent not offset by those taxes otherwise due in all intervening years between the year for which the credit was computed and the year for which the carry−forward is claimed.

(2dd) DEVELOPMENT ZONES DAY CARE CREDIT. (a) In this subsection:

1. "Day care center benefits" means benefits provided at a day care facility that is licensed under s. 48.65 or 48.69 and that for compensation provides care for at least 6 children or benefits provided at a facility for persons who are physically or mentally incapable of caring for themselves.

2. "Employment−related day care expenses" means amounts paid or incurred by a claimant, during the 2−year period beginning with the day that the member of the targeted group begins work for the claimant, for providing or making day care center benefits available to a qualifying individual in order to enable a member of a targeted group to be employed by the claimant.

4. "Member of a targeted group" means a person under sub. (2dj) (am) 1.

5. "Qualifying individual" means a dependent of a member of a targeted group who is employed by a claimant and with respect to whom the member is entitled to a deduction under section 151 (c) of the internal revenue code for federal income tax purposes, a dependent of a member of a targeted group who is employed by a claimant if the dependent is physically or mentally incapable of caring for himself or herself or the spouse of a member of a targeted group who is employed by the claimant if the spouse is physically or mentally incapable of caring for himself or herself.

(b) Except as provided in s. 73.03 (35), for any taxable year for which that person is certified under s. 560.765 (3) and begins business operations in a zone under s. 560.71 after July 29, 1995, or certified under s. 560.797 (4) (a) for each zone for which the person is certified or entitled a person may credit against taxes otherwise due under this subchapter employment−related day care expenses, up to $1,200 for each qualifying individual.

(c) Subsection (2di) (b), (c), (d) 1., (f) and (g), as it applies to the credit under sub. (2di), applies to the credit under this subsection.

(d) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

(dm) No credit may be allowed under this subsection unless the claimant includes with the claimant's return a statement from the department of commerce verifying the amount of qualifying employment−related day care expenses.

(e) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(2de) DEVELOPMENT ZONES ENVIRONMENTAL REMEDIATION CREDIT. (a) Except as provided in s. 73.03 (35), for any taxable year for which a person is certified under s. 560.765 (3) and begins business operations in a zone under s. 560.71 after July 29, 1995, or certified under s. 560.797 (4) (a), for each zone for which the person is certified or entitled the person may claim as a credit against taxes otherwise due under this subchapter an amount equal to 7.5% of the amount that the person expends to remove or contain environmental pollution, as defined in s. 299.01 (4), in the zone or to restore soil or groundwater that is affected by environmental pollution, as defined in s. 299.01 (4), in the zone if the person fulfills all of the following requirements:

1. Begins the work, other than planning and investigating, for which the credit is claimed after the area that includes the site where the work is done is designated a development zone under s. 560.71 or an enterprise development zone under s. 560.797 and after the claimant is certified under s. 560.765 (3) or certified under s. 560.797 (4) (a).

(b) Subsection (2di) (b), (c), (d), (f) and (g), as it applies to the credit under sub. (2di), applies to the credit under this subsection.

(c) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

(d) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(2di) DEVELOPMENT ZONES INVESTMENT CREDIT. (a) Except as provided in pars. (dm) and (f) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter 2.5% of the purchase price of depreciable, tangible personal property, or 1.75% of the purchase price of depreciable, tangible personal property that is expensed under section 179 of the internal revenue code for purposes of the taxes under this chapter, except that:

1. The investment must be in property that is purchased after the person is certified under s. 560.765 (3) for tax benefits and that is used for at least 50% of its use in the conduct of the business operations for which the claimant is certified under s. 560.765 (3) at a location in a development zone under subch. VI of ch. 560 or, if the property is mobile, the base of operations of the property for at least 50% of its use must be a location in a development zone.

2. The credit under this subsection may be claimed only by the person who purchased the property the investment in which is the basis for the credit, except that only partners may claim the credit based on purchases by a partnership, only members may claim the credit based on purchases by a limited liability company and except that only shareholders may claim the credit based on purchases by a tax−option corporation.

3. If the credit is claimed for used property, the claimant may not have used the property for business purposes at a location outside the development zone. If the credit is attributable to a partnership, limited liability company or tax−option corporation, that entity may not have used the property for business purposes at a location outside the development zone.

4. No credit is allowed under this subsection for property which is the basis for a credit under sub. (2dL).

(b) 1. Except as provided in subd. 2., the credit, including any credits carried over, may be offset only against the amount of the tax otherwise due under this chapter attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from directly related business operations of the claimant.

2. If the claimant is located on an Indian reservation, as defined in s. 560.86 (5), and is an American Indian, as defined in s. 560.86 (1), an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, and if the allowable amount of the credit under this subsection exceeds the taxes otherwise due under this chapter on or measured by the claimant's income, the amount of the credit not used as an offset against those taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft. In this subdivision, "tribal enterprise" means a business that is at least 51% owned and controlled by the governing body of one or more Indian tribes, is actively managed by the governing body, or by the designee of the governing body, of one or more Indian tribes and is currently performing a useful business function.

3. Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for, and amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or com-

pany shall compute the amount of the credit that may be claimed by each of its shareholders, partners or members and shall provide that information to each of its shareholders, partners or members. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the partnership's, company's or corporation's business operations in the development zone and against the tax attributable to their income from the partnership's, company's or corporation's directly related business operations.

(c) Except as provided in par. (b) 2., the carry−over provisions of s. 71.28 (4) (e) and (f) as they relate to the credit under s. 71.28 (4) relate to the credit under this subsection and apply as if the development zone continued to exist.

(d) No credit may be allowed under this subsection unless the claimant includes with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

2. A statement from the department of commerce verifying the purchase price of the investment and verifying that the investment fulfills the requirements under par. (a).

(dm) In calculating the credit under par. (a), a claimant shall reduce the purchase price of the property by a percentage equal to the percentage of use of the property during the taxable year the property is first placed into service that is for a purpose not specified under par. (a) 1.

(e) The recapture provisions under section 47 (a) (5) of the internal revenue code as amended to December 31, 1985, as they apply to the credit under section 46 of the internal revenue code, apply to the credit under this subsection, except that those provisions also apply if the property for which the credit is claimed is moved out of the development zone or, for mobile property, if the base of operations is moved out of the zone and except that the determination of whether or not property is 3−year property shall be made under section 168 of the internal revenue code.

(f) If the certification of a person for tax benefits under s. 560.765 (3) is revoked, that person may claim no credits under this subsection for the taxable year that includes the day on which the certification is revoked or succeeding taxable years and that person may carry over no unused credits from previous years to offset tax under this chapter for the taxable year that includes the day on which certification is revoked or succeeding taxable years.

(g) If a person who is certified under s. 560.765 (3) for tax benefits ceases business operations in the development zone during any of the taxable years that that zone exists, that person may not carry over to any taxable year following the year during which operations cease any unused credits from the taxable year during which operations cease or from previous taxable years.

(h) Section 71.28 (4) (g) and (h) as it applies to the credit under s. 71.28 (4) applies to the credit under this subsection.

(i) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(2dj) DEVELOPMENT ZONES JOBS CREDIT. (am) Except as provided under par. (f) or s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter an amount calculated as follows:

1. Modify "member of a targeted group", as defined in section 51 (d) of the internal revenue code as amended to December 31, 1995, to include persons unemployed as a result of a business action subject to s. 109.07 (1m) and persons specified under 29 USC 1651 (a) and to require a member of a targeted group to be a resident of this state.

2. Modify "designated local agency", as defined in section 51 (d) (15) of the internal revenue code, to include the job training partnership act organization for the area that includes the development zone in which the employe in respect to whom the credit under this subsection is claimed works, if the department of commerce approves the criteria used for certification, and the department of commerce.

3. Modify the rule for certification under section 51 (d) (16) (A) of the internal revenue code to allow certification within the 90−day period beginning with the first day of employment of the employe by the claimant.

4. a. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, modify "qualified wages" as defined in section 51 (b) of the internal revenue code to exclude wages paid before the claimant is certified for tax benefits and to exclude wages that are paid to employes for work at any location that is not in a development zone under subch. VI of ch. 560. For purposes of this subd. 4. a., mobile employes work at their base of operations and leased or rented employes work at the location where they perform services.

b. If certified under s. 560.765 (3) for tax benefits after December 31, 1991, modify "qualified wages" as defined in section 51 (b) of the internal revenue code to exclude wages paid before the claimant is certified for tax benefits and to exclude wages that are paid to employes for work at any location that is not in a development zone under subch. VI of ch. 560. For purposes of this subd. 4. b., mobile employes and leased or rented employes work at their base of operations.

4c. Modify the rule for ineligible individuals under section 51 (i) (1) of the internal revenue code to allow credit for the wages of related individuals paid by an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in sub. (2di) (b) 2., if the Indian business or tribal enterprise is located in a development zone designated under s. 560.71 (3) (c) 2.

4e. Modify section 51 (c) (2) of the internal revenue code to specify that the rules for on−the−job training and work supplementation payments also apply to those kinds of payments funded by this state.

4g. Delete section 51 (c) (4) of the internal revenue code.

4h. Modify section 51 (a) of the internal revenue code so that the amount of the credit is 25% of the qualified first−year wages if the wages are paid to an applicant for a Wisconsin works employment position for service either in an unsubsidized position or in a trial job under s. 49.147 (3) and so that the amount of the credit is 20% of the qualified first−year wages if the wages are not paid to such an applicant.

4i. Modify section 51 (b) (3) of the internal revenue code so that the amount of the qualified first−year wages that may be taken into account is $13,000.

4m. Modify the rule on remuneration under section 51 (f) of the internal revenue code so that it does not apply to persons who are exempt from tax under this chapter.

4t. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, modify section 51 (i) (3) of the internal revenue code so that for leased or rented employes, except employes of a leasing agency certified for tax benefits who perform services directly for the agency in a development zone, the minimum employment periods apply to the time that they perform services in a development zone for a single lessee or renter, not to their employment by the leasing agency.

5. Calculate the credit under section 51 of the internal revenue code.

6. For persons for whom a credit may be claimed under subd. 5., modify "qualified wages" under section 51 (b) of the internal revenue code so that those wages are based on the wages attributable to service rendered during the one−year period beginning with the date one year after the date on which the individual begins work for the employer.

7. Modify section 51 of the internal revenue code as under subds. 1. to 4t.

8. Calculate the credit under section 51 of the internal revenue code based on qualified wages for the 2nd year as determined under subds. 6. and 7.

8m. For each person, whether or not he or she is a member of a targeted group, who is determined by the department of commerce to be a resident of the development zone in which he or she is employed, calculate a credit equal to 10% of the wages earned by such person during the 1st and 2nd years of the person's employment in the development zone, up to a maximum credit of $600 per year.

9. Add the amounts under subds. 5., 8. and 8m.

(b) In computing the credit under this subsection, the wages of leased or rented employes may be claimed only by their employer, not by the person to whom they are rented or leased.

(c) The credit under this subsection may not be claimed by partnerships, limited liability companies and tax−option corporations but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of credit that may be claimed by each of its shareholders, partners or members and shall provide that information to each of its shareholders, partners or members. That credit may be claimed by partners, members of limited liability companies and shareholders of tax−option corporations in proportion to their ownership interests.

(e) No credit may be allowed under this subsection unless the claimant includes with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

3. a. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, a statement from the department of commerce verifying the amount of qualifying wages and verifying that the employes were hired for work only in a development zone or are mobile employes whose base of operations is in a development zone.

b. If certified under s. 560.765 (3) for tax benefits after December 31, 1991, a statement from the department of commerce verifying the amount of qualifying wages and verifying that the employes were hired for work only in a development zone or are mobile employes or leased or rented employes whose base of operations is in a development zone.

4. A copy of any claims for the credit under section 51 of the internal revenue code that are based on wages that also are the basis for a claim under this subsection.

(f) The rules under sub. (2di) (f) and (g) as they apply to the credit under that subsection apply to the credit under this subsection.

(g) Section 71.28 (4) (g) and (h) as it applies to the credit under s. 71.28 (4) applies to the credit under this subsection.

(h) The rules under sub. (2di) (b) and (c) as they apply to the credit under that subsection apply to the credit under this subsection.

(i) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(2dL) DEVELOPMENT ZONES LOCATION CREDIT. (a) Except as provided in pars. (ag), (ar), (bm) and (f) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this subchapter an amount equal to 2.5% of the amount expended by that person to acquire, construct, rehabilitate or repair real property in a development zone under subch. VI of ch. 560.

(ag) If the credit under par. (a) is claimed for an amount expended to construct, rehabilitate, remodel or repair property, the claimant must have begun the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the place where the property is located was designated a development zone under s. 560.71 and the completed project must be placed in service after the claimant is certified for tax benefits under s. 560.765 (3). In this paragraph, "physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications or stabilizing the property to prevent deterioration.

(ar) If the credit under par. (a) is claimed for an amount expended to acquire property, the property must have been acquired by the claimant after the place where the property is located was designated a development zone under s. 560.71 and the completed project must be placed in service after the claimant is certified for tax benefits under s. 560.765 (3) and the property must not have been previously owned by the claimant or a related person during the 2 years prior to the designation of the development zone under s. 560.71. No credit is allowed for an amount expended to acquire property until the property, either in its original state as acquired by the claimant or as subsequently constructed, rehabilitated, remodeled or repaired, is placed in service.

(aw) In par. (ar), property is previously owned by a claimant or a related person if a claimant may not deduct a loss from a sale to, or exchange of property with, that related person under section 267 of the internal revenue code, except that section 267 (b) of the internal revenue code is modified so that any ownership percentage, rather than 50% ownership, makes a claimant subject to section 267 (a) (1) of the internal revenue code for purposes of this subsection.

(b) No credit is allowed under this subsection for property which is the basis for a credit under sub. (2di).

(bm) In calculating the credit under par. (a) a claimant shall reduce the amount expended to acquire property by a percentage equal to the percentage of the area of the real property not used for the purposes for which the claimant is certified to claim tax benefits under s. 560.765 (3) and shall reduce the amount expended for other purposes by the amount expended on the part of the property not used for the purposes for which the claimant is certified to claim tax benefits under s. 560.765 (3).

(c) 1. Except as provided under subd. 2., the credit under par. (a), including any credits carried over, may be offset only against the amount of the tax otherwise due under this chapter attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from directly related business operations.

2. If the claimant is located on an Indian reservation, as defined in s. 560.86 (5), and is an American Indian, as defined in s. 560.86 (1), an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in sub. (2di) (b) 2., and if the allowable amount of the credit under par. (a) exceeds the taxes otherwise due under this chapter on or measured by the claimant's income, the amount of the credit not used as an offset against those taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft.

(d) Except as provided in par. (c) 2., the carry−over provisions of s. 71.28 (4) (e) and (f) as they relate to the credit under s. 71.28 (4) relate to the credit under this subsection and apply as if the development zone continued to exist.

(e) Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of credit that may be claimed by each of its shareholders, partners or members and provide that information to its shareholders, partners or members. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities

in proportion to their ownership interest and may offset it against the tax attributable to their income from the partnership's, company's or corporation's business operations in the development zone and against the tax attributable to their income from the partnership's, company's or corporation's directly related business operations.

(f) Subsection (2di) (d), (f) and (g) as it applies to the credit under that subsection applies to the credit under this subsection.

(g) Section 71.28 (4) (g) and (h) as it applies to the credit under s. 71.28 (4) applies to the credit under this subsection.

(h) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(2dr) DEVELOPMENT ZONES RESEARCH CREDIT. (a) *Credit.* Any person may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the person's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (2dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the person's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.04 (7) (b) 1. and 2. and (d) and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this paragraph. The rules under sub. (2di) (f) and (g), as they apply to the credit under that subsection, apply to claims under this paragraph. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

(b) *Development opportunity zones.* The development zones research credit under par. (a), as it applies to a person certified under s. 560.765 (3), applies to a person that conducts economic activity in a development opportunity zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A development opportunity zone credit under this paragraph may be calculated using expenses incurred by a claimant beginning on the effective date under s. 560.795 (2) (a) of the development opportunity zone designation of the area in which the claimant conducts economic activity.

(bm) *Adjustments.* Adjustments for acquisitions and dispositions of a major portion of a trade or business shall be made under section 41 of the internal revenue code as limited by this subsection.

(c) *Annualization.* In the case of any short taxable year, qualified research expenses shall be annualized as prescribed by the department of revenue.

(d) *Proration.* If a portion of qualified research expenses is incurred partly within and partly outside this state and the amount incurred in this state cannot be accurately determined, a portion of the qualified expenses shall be reasonably allocated to this state. Expenses incurred entirely outside this state for the benefit of research in this state are not allocable to this state under this paragraph.

(e) *Change of business or ownership.* In the case of a change in ownership or business of a person, section 383 of the internal revenue code, as limited by this subsection, applies to the carry−over of unused credits.

(f) *Carry−over.* If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry−forward credit is claimed.

(g) *Administration.* The department of revenue has full power to administer the credits provided in this subsection and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed in this chapter. The income and franchise tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest and penalties apply to the credits under this subsection.

(h) *Timely claim.* No credit may be allowed under this subsection unless it is claimed within the period specified in s. 71.75 (2).

(i) *Sunset.* No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(2ds) DEVELOPMENT ZONES SALES TAX CREDIT. (a) In this subsection:

1. "Development zone" means a zone designated under s. 560.71.

2. "Eligible property" means construction materials and supplies and other materials that are used to construct, rehabilitate, repair or remodel real property that is eligible for the credit under sub. (2dL) and investment credit property.

3. "Investment credit property" means depreciable, tangible personal property that is eligible for the credit under sub. (2di) and leased or rented depreciable, tangible personal property that would be eligible for the credit under sub. (2di) if it had been purchased.

(b) Except as provided in pars. (dm) and (e) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter the taxes paid under subchs. III and V of ch. 77 on their purchases, leases and rentals of eligible property. Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their partners, members or shareholders. The partnership, limited liability company or corporation shall compute the amount of credit that may be claimed by each of its partners, members or shareholders and shall provide that information to each of its partners, members or shareholders. Partners, members of a limited liability company and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest.

(d) No credit may be allowed under this subsection unless the claimant submits with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

2. A statement from the department of commerce verifying the amount of taxes paid under subchs. III and V of ch. 77 for eligible property by the claimant.

(dm) In calculating the credit under par. (b) a claimant shall reduce the sales tax paid for building supplies and materials by the reduction under sub. (2dL) (bm) and shall reduce the sales tax paid

for investment credit property by the percentage reduction under sub. (2di) (dm).

(e) The rules under sub. (2di) (f) and (g) as they apply to the credit under that subsection apply to the credit under this subsection.

(f) Section 71.28 (4) (g) and (h) as it applies to the credit under s. 71.28 (4) applies to the credit under this subsection.

(h) The rules under sub. (2di) (b) and (c) as they apply to the credit under that subsection apply to the credit under this subsection.

(i) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(2dx) DEVELOPMENT ZONES CREDIT. (a) *Definitions.* In this subsection:

1. "Brownfield" means an industrial or commercial facility the expansion or redevelopment of which is complicated by environmental contamination.

2. "Development zone" means a development zone under s. 560.70, a development opportunity zone under s. 560.795 or an enterprise development zone under s. 560.797.

3. "Environmental remediation" means removal or containment of environmental pollution, as defined in s. 299.01 (4), and restoration of soil or groundwater that is affected by environmental pollution, as defined in s. 299.01 (4), in a brownfield if that removal, containment or restoration fulfills the requirement under sub. (2de) (a) 1. and investigation unless the investigation determines that remediation is required and that remediation is not undertaken.

4. "Full−time job" means a regular, nonseasonal full−time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. "Full−time job" does not include initial training before an employment position begins.

5. "Member of a targeted group" means a person under sub. (2dj) (am) 1., a person who resides in an empowerment zone, or an enterprise community, that the U.S. government designates, a person who is employed in an unsubsidized job but meets the eligibility requirements under s. 49.145 (2) and (3) for a Wisconsin works employment position, a person who is employed in a trial job, as defined in s. 49.141 (1) (n), or a person who is eligible for child care assistance under s. 49.155; if the person has been certified in the manner under sub. (2dj) (am) 3. by a designated local agency, as defined in sub. (2dj) (am) 2.

(b) *Credit.* Except as provided in s. 73.03 (35) and subject to s. 560.785, for any taxable year for which the person is certified under s. 560.765 (3), any person may claim as a credit against taxes the following amounts:

1. Fifty percent of the amount expended for environmental remediation in a development zone.

2. The amount determined by multiplying the amount determined under s. 560.785 (1) (b) by the number of full−time jobs created in a development zone and filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

3. The amount determined by multiplying the amount determined under s. 560.785 (1) (c) by the number of full−time jobs created in a development zone and not filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

4. The amount determined by multiplying the amount determined under s. 560.785 (1) (b) by the number of full−time jobs retained, as provided in the rules under s. 560.785, excluding jobs for which a credit has been claimed under sub. (2dj), in a development zone and filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

5. The amount determined by multiplying the amount determined under s. 560.785 (1) (c) by the number of full−time jobs retained, as provided in the rules under s. 560.785, excluding jobs for which a credit has been claimed under sub. (2dj), in a development zone and not filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

(c) *Credit precluded.* If the certification of a person for tax benefits under s. 560.765 (3) is revoked, that person may not claim credits under this subsection for the taxable year that includes the day on which the certification is revoked or succeeding taxable years and that person may not carry over unused credits from previous years to offset tax under this chapter for the taxable year that includes the day on which certification is revoked or succeeding taxable years.

(d) *Carry−over precluded.* If a person who is certified under s. 560.765 (3) for tax benefits ceases business operations in the development zone during any of the taxable years that that zone exists, that person may not carry over to any taxable year following the year during which operations cease any unused credits from the taxable year during which operations cease or from previous taxable years.

(e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection. Subsection (2dj) (c), as it applies to the credit under sub. (2dj), applies to the credit under this subsection. Claimants shall include with their returns a copy of their certification for tax benefits and a copy of the department of commerce's verification of their expenses.

(2fd) FARMERS' DROUGHT PROPERTY TAX CREDIT. (a) *Credit.* Except as provided in par. (b), if the director of the agriculture stabilization and conservation service certifies on or before October 1, 1988, that at least 40% of the crops in this state have been lost, for taxable year 1988 any claimant may credit against taxes otherwise due under this chapter an amount equal to 10% of the property taxes exclusive of special assessments, delinquent interest and charges for service, up to $10,000, on that claimant's farm for the year for which the claim under this subsection is made. In this subsection, "farm" means 35 or more acres of real property in this state owned by the claimant or any member of the claimant's household during the taxable year for which a credit under this subsection is claimed if the farm, during that year, produced not less than $6,000 in gross farm profits resulting from the farm's agricultural use, as defined in s. 91.01 (1), or if the farm, during that year and the 2 years immediately preceding that year, produced not less than $18,000 in such profits. In deciding who is a claimant under this subsection, the department of revenue shall be guided by s. 71.58 (1) (a) to (g).

(b) *Limits.* The credit under this subsection plus the credit under subch. IX may not exceed 95% of the property taxes on the farm. A claimant may claim the credit under this subsection on only one return if the claimant files more than one return for taxable year 1988 and may not claim the credit on a return filed for any 1988 taxable year beginning after July 31, 1988.

(c) *Form.* No claim under this subsection may be allowed unless the claimant completes a form prescribed by the department of revenue and submits that form with the claimant's income or franchise tax return and within 12 months following the close of the taxable year in which the property taxes accrued.

(d) *Payment.* If the allowable amount of the claim under this subsection exceeds the income or franchise taxes otherwise due on or measured by the claimant's income or if there are no income or franchise taxes due on or measured by the claimant's income, the amount of the claim not used as an offset against those taxes shall be certified by the department of revenue to the department

of administration for payment to the claimant by check, share draft or other draft drawn on the general fund. No interest may be allowed on any payment under this subsection.

(e) *Administration.* Section 71.28 (4) (g), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

(3) FARMLAND PRESERVATION CREDIT. The farmland preservation credit under subch. IX may be claimed against taxes otherwise due.

(3m) FARMLAND TAX RELIEF CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an owner of farmland, as defined in s. 91.01 (9), domiciled in this state during the entire year for which a credit under this subsection is claimed, except as follows:

a. When 2 or more individuals of a household are able to qualify individually as a claimant, they may determine between them who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue, whose decision is final.

b. For partnerships except publicly traded partnerships treated as corporations under s. 71.22 (1), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 (1), "claimant" means each individual partner or member.

c. For purposes of filing a claim under this subsection, the personal representative of an estate and the trustee of a trust shall be deemed owners of farmland. "Claimant" does not include the estate of a person who is a nonresident of this state on the person's date of death, a trust created by a nonresident person, a trust which receives Wisconsin real property from a nonresident person or a trust in which a nonresident settlor retains a beneficial interest.

d. For purposes of filing a claim under this subsection, when land is subject to a land contract, the claimant shall be the vendee under the contract.

e. For purposes of filing a claim under this subsection, when a guardian has been appointed under ch. 880 for a ward who owns the farmland, the claimant shall be the guardian on behalf of the ward.

f. For a tax−option corporation, "claimant" means each individual shareholder.

2. "Department" means the department of revenue.

3. "Farmland" means 35 or more acres of real property, exclusive of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), and owned by the claimant or any member of the claimant's household during the taxable year for which a credit under this subsection is claimed if the farm of which the farmland is a part, during that year, produced not less than $6,000 in gross farm profits resulting from agricultural use, as defined in s. 91.01 (1), or if the farm of which the farmland is a part, during that year and the 2 years immediately preceding that year, produced not less than $18,000 in such profits, or if at least 35 acres of the farmland, during all or part of that year, was enrolled in the conservation reserve program under 16 USC 3831 to 3836.

4. "Gross farm profits" means gross receipts, excluding rent, from agricultural use, as defined in s. 91.01 (1) including the fair market value at the time of disposition of payments in kind for placing land in federal programs or payments from the federal dairy termination program under 7 USC 1446 (d), less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the taxable year.

5. "Household" means an individual and his or her spouse and all minor dependents.

6. "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest and charges for service, levied on the farmland owned by the claimant or any member of the claimant's household in any calendar year under ch. 70, less the tax credit, if any, afforded in respect of the property by s. 79.10. "Property taxes accrued" shall not exceed $10,000. If farmland is owned by a tax−option corporation, limited liability company or by 2 or more persons or entities as joint tenants, tenants in common or partners or is marital property or survivorship marital property and one or more such persons, entities or owners is not a member of the claimant's household, "property taxes accrued" is that part of property taxes levied on the farmland, reduced by the tax credit under s. 79.10, that reflects the ownership percentage of the claimant and the claimant's household. For purposes of this subdivision, property taxes are "levied" when the tax roll is delivered to the local treasurer for collection. If farmland is sold during the calendar year of the levy the "property taxes accrued" for the seller is the amount of the tax levy, reduced by the tax credit under s. 79.10, prorated to each in the closing agreement pertaining to the sale of the farmland, except that if the seller does not reimburse the buyer for any part of those property taxes there are no "property taxes accrued" for the seller, and the "property taxes accrued" for the buyer is the property taxes levied on the farmland, reduced by the tax credit under s. 79.10, minus, if the seller reimburses the buyer for part of the property taxes, the amount prorated to the seller in the closing agreement. With the claim for credit under this subsection, the seller shall submit a copy of the closing agreement and the buyer shall submit a copy of the closing agreement and a copy of the property tax bill.

(b) *Filing claims.* 1. 'Eligibility and qualifications.' a. Subject to the limitations provided in this subsection and s. 71.80 (3) and (3m), a claimant may claim as a credit against Wisconsin income taxes otherwise due, the amount derived under par. (c). If the allowable amount of claim exceeds the income taxes otherwise due on the claimant's income or if there are no Wisconsin income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft paid from the appropriation under s. 20.835 (2) (q).

b. Every claimant under this subsection shall supply, at the request of the department, in support of the claim, a copy of the property tax bill relating to the farmland and certification by the claimant that all taxes owed by the claimant on the property for which the claim is made for the year before the year for which the claim is made have been paid.

2. 'Ineligible claims.' No credit may be allowed under this subsection:

a. Unless a claim is filed with the department in conformity with the filing requirements in s. 71.03 (6) and (7).

b. If the department determines that ownership of the farmland has been transferred to the claimant for the purpose of maximizing benefits under this subsection.

(c) *Computation.* 1. Any claimant may claim against taxes otherwise due under this chapter 10% of the property taxes accrued in the taxable year to which the claim relates, up to a maximum claim of $1,000, except that the credit under this subsection plus the credit under subch. IX may not exceed 95% of the property taxes accrued on the farm.

2. Any claimant may claim against taxes otherwise due under this chapter, on an income or franchise tax return that includes the levy date, an additional one−time credit of 4.2% of the property taxes accrued, that are levied in December 1989, up to a maximum of $420.

(d) *General provisions.* Section 71.61 (1) to (4) as it applies to the credit under subch. IX applies to the credit under this subsection.

(3s) MANUFACTURING SALES TAX CREDIT. (a) In this subsection:

1. "Manufacturing" has the meaning given in s. 77.54 (6m).

2. "Sales and use tax under ch. 77 paid by the person" includes use taxes paid directly by the person and sales and use taxes paid by the person's supplier and passed on to the person whether separately stated on the invoice or included in the total price.

(b) The tax imposed under s. 71.02 or 71.08 shall be reduced by an amount equal to the sales and use tax under ch. 77 paid by the person in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. Shareholders in a tax−option corporation and partners may claim the credit under this subsection, based on eligible sales and use taxes paid by the partnership or tax−option corporation, in proportion to the ownership interest of each partner or shareholder. The partnership or tax−option corporation shall calculate the amount of the credit which may be claimed by each partner or shareholder and shall provide that information to the partner or shareholder.

(c) 1. The credit under par. (b), including any credits carried over, may be offset only against the amount of the tax imposed upon or measured by the business operations of the claimant in which the fuel and electricity are consumed. If the credit computed is not entirely offset against taxes otherwise due, the unused balance shall be carried forward and credited against taxes otherwise due for the following 15 taxable years to the extent not offset by taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry−forward credit is claimed.

2. For shareholders in a tax−option corporation, the credit may be offset only against the tax imposed on the shareholder's prorated share of the tax−option corporation's income.

3. For partners, the credit may be offset only against the tax imposed on the partner's distributive share of partnership income.

4. If a tax−option corporation becomes liable for tax for a taxable year that begins on or after January 1, 1998, the corporation may offset the credit against the tax due, with any remaining credit computed for a taxable year that begins on or after January 1, 1998, passing through to the shareholders.

5. If a corporation that is not a tax−option corporation has a carry−over credit from a taxable year that begins on or after January 1, 1998, and becomes a tax−option corporation before the credit carried over is used, the unused portion of the credit may be used by the tax−option corporation's shareholders on a prorated basis.

6. If the shareholders of a tax−option corporation have carry−over credits and the corporation becomes a corporation other than a tax−option corporation after October 14, 1997, and before the credits carried over are used, the unused portion of the credits may be used by the corporation that is not a tax−option corporation.

(4) HOMESTEAD CREDIT. The homestead credit under subch. VIII may be claimed by individuals against taxes otherwise due.

(5) ITEMIZED DEDUCTIONS CREDIT. Single persons, married persons filing separately and married persons filing jointly may claim as a credit against, but not to exceed the amount of, Wisconsin net income taxes due an amount calculated as follows:

(a) Add the amounts allowed as itemized deductions under the internal revenue code except:

1. Interest paid to purchase or hold securities issued by the federal government or by any of its instrumentalities the interest on which is exempt from taxation under s. 71.05 (6) (b) 1.

2. Taxes under section 164 or 216 (a) (1) of the internal revenue code.

3. Casualty and theft deductions under section 165 (c) (3) of the internal revenue code.

4. Expenses to move from this state under section 217 of the internal revenue code.

5. Interest incurred to purchase or refinance a residence that is not a principal residence and is not in this state, and interest incurred to purchase or refinance a residence that is a boat.

6. The amount claimed for repayment of income previously taxed under this chapter if that amount is used in calculating the credit under sub. (1).

15. The amount claimed as a deduction for medical care insurance under section 213 of the Internal Revenue Code that is exempt from taxation under s. 71.05 (6) (b) 17. to 20. and the amount claimed as a deduction for a long−term care insurance policy under section 213 (d) (1) (D) of the Internal Revenue Code, as defined in section 7702B (b) of the Internal Revenue Code that is exempt from taxation under s. 71.05 (6) (b) 26.

(b) Subtract the standard deduction under s. 71.05 (22) from the amount under par. (a).

(c) Multiply the amount under par. (b) by .05.

(d) With respect to persons who change their domicile into or from this state during the taxable year and nonresident persons, the credit under this subsection shall be limited to the fraction of the amount so determined that Wisconsin adjusted gross income is of federal adjusted gross income. In this paragraph, for married persons filing separately "adjusted gross income" means the separate adjusted gross income of each spouse and for married persons filing jointly "adjusted gross income" means the total adjusted gross income of both spouses. If a person and that person's spouse are not both domiciled in this state during the entire taxable year, their credit under this subsection on a joint return shall be limited to the fraction of the amount so determined that their joint Wisconsin adjusted gross income is of their joint federal adjusted gross income.

(5m) WORKING FAMILIES TAX CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an individual who is eligible to claim the credit under this subsection.

2. "Department" means the department of revenue.

3. "Household" means a claimant and an individual related to the claimant as husband or wife.

4. "Net tax liability" means a claimant's income tax liability after he or she completes the computations listed in s. 71.10 (4) (a) to (dr).

(b) *Filing claims.* Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.02, up to the amount of those taxes, one of the following amounts:

1. If the claimant is single and his or her adjusted gross income is less than $9,000 in the year to which the claim relates, an amount equal to his or her net tax liability.

2. If the claimant is single and his or her adjusted gross income is at least $9,000 but less than $10,000 in the year to which the claim relates, an amount that is calculated as follows:

a. Calculate the value of a fraction, the denominator of which is $1,000 and the numerator of which is the difference between the claimant's adjusted gross income and $9,000.

b. Subtract from 1.0 the amount that is calculated under subd. 2. a.

c. Multiply the amount of the claimant's net income tax liability by the amount that is calculated under subd. 2. b.

3. If the claimant is married and filing jointly and the sum of the claimant's adjusted gross income and his or her spouse's adjusted gross income is less than $18,000 in the year to which the claim relates, an amount equal to the married couple's net tax liability.

4. If the claimant is married and filing jointly and the sum of the claimant's adjusted gross income and his or her spouse's adjusted gross income is at least $18,000 but less than $19,000 in the year to which the claim relates, an amount that is calculated as follows:

a. Calculate the value of a fraction, the denominator of which is $1,000 and the numerator of which is the difference between the married couple's adjusted gross income and $18,000.

b. Subtract from 1.0 the amount that is calculated under subd. 4. a.

c. Multiply the amount of the married couple's net income tax liability by the amount that is calculated under subd. 4. b.

5. If the claimant is married and filing separately and his or her adjusted gross income is less than $9,000 in the year to which the claim relates, an amount equal to his or her net tax liability.

6. If the claimant is married and filing separately and his or her adjusted gross income is at least $9,000 but less than $10,000 in the year to which the claim relates, an amount that is calculated as follows:

a. Calculate the value of a fraction, the denominator of which is $1,000 and the numerator of which is the difference between the claimant's adjusted gross income and $9,000.

b. Subtract from 1.0 the amount that is calculated under subd. 6. a.

c. Multiply the amount of the claimant's net income tax liability by the amount that is calculated under subd. 6. b.

(c) *Limitations.* 1. No credit may be allowed under this subsection unless it is claimed within the time period under s. 71.75 (2).

2. Part−year residents and nonresidents of this state are not eligible for the credit under this subsection.

3. Except as provided in subd. 4., only one credit per household is allowed each year.

4. If a married couple files separately, each spouse may claim the credit calculated under par. (b) 5. or 6., except a married person living apart from the other spouse and treated as single under section 7703 (b) of the Internal Revenue Code may claim the credit under par. (b) 1. or 2.

5. The credit under this subsection may not be claimed by a person who may be claimed as a dependent on the individual income tax return of another taxpayer.

(d) *Administration.* The department of revenue may enforce the credit under this subsection and may take any action, conduct any proceeding and proceed as it is authorized in respect to taxes under this chapter. The income tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest and penalties apply to the credit under this subsection.

(6) MARRIED PERSONS CREDIT. (a) For taxable years beginning before January 1, 1998, married persons filing a joint return, except those who reduce their gross income under section 911 or 931 of the internal revenue code, may claim as a credit against, but not to exceed the amount of, Wisconsin net income taxes otherwise due an amount equal to 2% of the earned income of the spouse with the lower earned income, but not more than $300. In this paragraph, "earned income" means qualified earned income, as defined in section 221 (b) of the internal revenue code as amended to December 31, 1985, plus employe business expenses under section 62 (2) (B) to (D) of that code, allocable to Wisconsin under s. 71.04, plus amounts received by the individual for services performed in the employ of the individual's spouse minus the amount of disability income excluded under s. 71.05 (6) (b) 4. and minus any other amount not subject to tax under this chapter. Earned income is computed notwithstanding the fact that each spouse owns an undivided one−half interest in the whole of the marital property. A marital property agreement or unilateral statement under ch. 766 transferring income between spouses has no effect in computing earned income under this paragraph.

(am) 1. In this paragraph, "earned income" means qualified earned income, as defined in section 221 (b) of the internal revenue code as amended to December 31, 1985, plus employe business expenses under section 62 (2) (B) to (D) of that code, allocable to Wisconsin under s. 71.04, plus amounts received by the individual for services performed in the employ of the individual's spouse minus the amount of disability income excluded under s. 71.05 (6) (b) 4. and minus any other amount not subject to tax under this chapter. Earned income is computed notwithstanding the fact that each spouse owns an undivided one−half interest in the whole of the marital property. A marital property agreement or unilateral statement under ch. 766 transferring income between spouses has no effect in computing earned income under this paragraph.

2. Married persons filing a joint return, except those who reduce their gross income under section 911 or 931 of the Internal Revenue Code, may claim as a credit against the tax imposed under s. 71.02, up to the amount of those taxes, an amount equal to one of the following:

a. For taxable years beginning after December 31, 1997, and before January 1, 1999, 2.17% of the earned income of the spouse with the lower earned income, but not more than $304.

b. For taxable years beginning after December 31, 1998, and before January 1, 2000, 2.5% of the earned income of the spouse with the lower earned income, but not more than $350.

c. For taxable years beginning after December 31, 1999, and before January 1, 2001, 2.75% of the earned income of the spouse with the lower earned income, but not more than $385.

d. For taxable years beginning after December 31, 2000, 3% of the earned income of the spouse with the lower earned income, but not more than $420.

(b) A claimant who has filed a timely claim under this subsection may file an amended claim with the department of revenue within 4 years of the last day prescribed by law for filing the original claim.

(7) OTHER STATE TAX CREDIT. (a) In this subsection, "state" includes the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(b) If a resident individual, estate or trust pays a net income tax to another state, that resident individual, estate or trust may credit the net tax paid to that other state on that income against the net income tax otherwise payable to the state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes of this paragraph, amounts declared and paid pursuant to the income tax law of another state shall be deemed a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed. Income and franchise taxes paid to another state by a tax−option corporation or limited liability company that is treated as a partnership may be claimed as a credit under this paragraph by that corporation's shareholders or that limited liability company's members who are residents of this state and who otherwise qualify under this paragraph.

(8) PERSONAL EXEMPTIONS CREDIT FOR NATURAL PERSONS. On income of calendar year 1986 and corresponding fiscal years and thereafter, there may be deducted from the tax after it has been computed according to the rates of this section personal exemptions for natural persons as follows:

(a) An exemption of one of the following amounts if the taxpayer has reached the age of 65 prior to the close of the calendar or fiscal year and if one of the following applies:

1. If the taxpayer is an individual, the taxpayer files an individual return, and has adjusted gross income of less than $30,000 in the year to which the claim relates, $25.

3. If the taxpayer is married, the taxpayer files a joint return, and has adjusted gross income of less than $40,000 in the year to which the claim relates, $25.

4. If the taxpayer is married, the taxpayer files a joint return, and has adjusted gross income of at least $40,000 but less than $41,000 in the year to which the claim relates, the amount obtained by subtracting from $25 2.5% of the amount by which the taxpayer's adjusted gross income exceeds $40,000.

5. If the taxpayer is married, the taxpayer files a separate return, and has adjusted gross income of less than $20,000 in the year to which the claim relates, $25.

6. If the taxpayer is married, the taxpayer files a separate return and has adjusted gross income of at least $20,000 but less than $21,000 in the year to which the claim relates, the amount obtained by subtracting from $25 2.5% of the amount by which the taxpayer's adjusted gross income exceeds $20,000.

(b) An exemption of $50 for each person for whom the taxpayer is entitled to an exemption for the taxable year under section 151 (c) of the federal internal revenue code.

(c) With respect to persons who change their domicile into or from this state during the taxable year and nonresident persons, personal exemptions shall be limited to the fraction of the amount so determined that Wisconsin adjusted gross income is of federal adjusted gross income. In this paragraph, for married persons filing separately "adjusted gross income" means the separate adjusted gross income of each spouse and for married persons filing jointly "adjusted gross income" means the total adjusted gross income of both spouses. If a person and that person's spouse are not both domiciled in this state during the entire taxable year, their personal exemptions on a joint return are determined by multiplying the personal exemption that would be available to each of them if they were both domiciled in this state during the entire taxable year by a fraction the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income.

(9) SCHOOL PROPERTY TAX CREDIT. (a) In this subsection:

1. "Claimant" means a natural person who files a claim or on whose behalf a claim is filed under this subsection but does not include an estate, fiduciary or trust.

2. "Principal dwelling" means any dwelling, whether owned or rented, and the land surrounding it that is reasonably necessary for use of the dwelling as a primary dwelling of the claimant and may include a part of a multidwelling or multipurpose building and a part of the land upon which it is built that is used as the claimant's primary dwelling.

3. "Property taxes" means real and personal property taxes, exclusive of special assessments, delinquent interest and charges for service, paid by a claimant on the claimant's principal dwelling during the taxable year for which credit under this subsection is claimed, less any property taxes paid which are properly includable as a trade or business expense under section 162 of the internal revenue code. If the principal dwelling on which the taxes were paid is owned by 2 or more persons or entities as joint tenants or tenants in common or is owned by spouses as marital property, "property taxes" is that part of property taxes paid that reflects the ownership percentage of the claimant. If the principal dwelling is sold during the taxable year the "property taxes" for the seller and buyer shall be the amount of the tax prorated to each in the closing agreement pertaining to the sale or, if not so provided for in the closing agreement, the tax shall be prorated between the seller and buyer in proportion to months of their respective ownership. "Property taxes" includes monthly parking permit fees in respect to a principal dwelling collected under s. 66.058 (3) (c).

4. "Rent constituting property taxes" means 25% of rent if heat is not included, or 20% of rent if heat is included, paid during the taxable year for which credit is claimed under this subsection, at arm's length, for the use of a principal dwelling and contiguous land, excluding any payment for domestic, food, medical or other services which are unrelated to use of the dwelling as housing, less any rent paid that is properly includable as a trade or business expense under the internal revenue code. "Rent" includes space rental paid to a landlord for parking a mobile home. Rent shall be apportioned among the occupants of a principal dwelling according to their respective contribution to the total amount of rent paid. "Rent" does not include rent paid for the use of housing which was exempt from property taxation, except housing for which payments in lieu of taxes were made under s. 66.40 (22).

(b) 1. Subject to the limitations under this subsection and except as provided in subd. 2., a claimant may claim as a credit against, but not to exceed the amount of, taxes under s. 71.02, 10% of the first $2,000 of property taxes or rent constituting property taxes, or 10% of the first $1,000 of property taxes or rent constituting property taxes of a married person filing separately.

2. Subject to the limitations under this subsection, a claimant may claim as a credit against, but not to exceed the amount of, taxes under s. 71.02, the amounts specified in the proposal under 1997 Wisconsin Act 237, section 9256 (2c).

(c) For an unmarried person or a married person filing a separate return who is a part−year resident of this state, the credit under this subsection is limited to that fraction of the amount determined under this subsection that Wisconsin adjusted gross income is of federal adjusted gross income. No credit is allowed under this subsection for unmarried persons or married persons filing separate returns who are nonresidents of this state. If one spouse is not domiciled in this state during the entire taxable year, the credit on a joint return is determined by multiplying the school property tax credit that would be available to them if both spouses were domiciled in this state during the entire taxable year by a fraction the numerator of which is their joint Wisconsin adjusted gross income and the denominator of which is their joint federal adjusted gross income. No credit is allowed under this subsection on a joint return if both spouses are nonresidents of this state.

(d) No credit may be allowed under this subsection unless it is claimed within the period specified in s. 71.75 (2).

(e) In any case in which a principal dwelling is rented by a person from another person under circumstances deemed by the department of revenue to be not at arm's length, the department may determine rent at arm's length, and, for purposes of this subsection, such determination shall be final.

(f) The department of revenue, on its forms and instructions, shall refer to the credit under this subsection as the school property tax credit.

(9e) EARNED INCOME TAX CREDIT. (a) For taxable years beginning before January 1, 1994, any natural person may credit against the tax imposed under s. 71.02 an amount equal to one of the following percentages of the federal basic earned income credit for which the person is eligible for the taxable year under section 32 (b) (1) (A) to (C) of the internal revenue code:

1. If the person has one qualifying child who has the same principal place of abode as the person, 5%.

2. If the person has 2 qualifying children who have the same principal place of abode as the person, 25%.

3. If the person has more than 2 qualifying children who have the same principal place of abode as the person, 75%.

(ac) For taxable years beginning after December 31, 1994, and before January 1, 1996, any natural person may credit against the tax imposed under s. 71.02 an amount equal to one of the following percentages of the federal basic earned income credit for which the person is eligible for the taxable year under section 32 (b) (1) (A) to (C) of the internal revenue code:

1. If the person has one qualifying child who has the same principal place of abode as the person, 4%.

2. If the person has 2 qualifying children who have the same principal place of abode as the person, 16%.

3. If the person has 3 or more qualifying children who have the same principal place of abode as the person, 50%.

(ad) For taxable years beginning after December 31, 1993, and before January 1, 1995, a person who has one qualifying child who has the same principal place of abode as the person may credit against the tax imposed under s. 71.02 an amount equal to the amount calculated by one of the following methods, based on the person's earned income or federal adjusted gross income:

1. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is the maximum credit income under par. (at) or less, the credit shall be the person's earned income multiplied by 1.15%.

2. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is more than the maximum credit income under par. (at) but not more than the phase−out income threshold, the credit shall be the maximum credit income multiplied by 1.15%.

3. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is more than the phase−out income threshold but not more than the maximum income under par. (at), the credit shall be the amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 0.82%, the difference between the person's earned income and the phase−out income threshold.

4. If the person's federal adjusted gross income is at or above the phase−out income threshold under par. (at) but not more than the maximum income under par. (at), the credit shall be the lesser of one of the following:

a. If the person's earned income is the maximum credit income under par. (at) or less, the person's earned income multiplied by 1.15%.

b. If the person's earned income is more than the maximum credit income under par. (at) but not more than the phase−out income threshold under par. (at), the maximum credit income multiplied by 1.15%.

c. If the person's earned income is more than the phase−out income threshold under par. (at) but not more than the maximum income under par. (at), the amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 0.82%, the difference between the person's earned income and the phase−out income threshold.

d. The amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 0.82%, the difference between the person's federal adjusted gross income and the phase−out income threshold under par. (at).

(af) For taxable years beginning after December 31, 1995, any natural person may credit against the tax imposed under s. 71.02 an amount equal to one of the following percentages of the federal basic earned income credit for which the person is eligible for the taxable year under section 32 (b) (1) (A) to (C) of the internal revenue code:

1. If the person has one qualifying child who has the same principal place of abode as the person, 4%.

2. If the person has 2 qualifying children who have the same principal place of abode as the person, 14%.

3. If the person has 3 or more qualifying children who have the same principal place of abode as the person, 43%.

(ah) For taxable years beginning after December 31, 1993, and before January 1, 1995, a person who has 2 qualifying children who have the same principal place of abode as the person may credit against the tax imposed under s. 71.02 an amount equal to the amount calculated by one of the following methods, based on the person's earned income or federal adjusted gross income:

1. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is the maximum credit income under par. (at) or less, the credit shall be the person's earned income multiplied by 6.25%.

2. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is more than the maximum credit income under par. (at) but not more than the phase−out income threshold, the credit shall be the maximum credit income multiplied by 6.25%.

3. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is more than the phase−out income threshold but not more than the maximum income under par. (at), the credit shall be the amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 4.47%, the difference between the person's earned income and the phase−out income threshold.

4. If the person's federal adjusted gross income is at or above the phase−out income threshold under par. (at) but not more than the maximum income under par. (at), the credit shall be the lesser of one of the following:

a. If the person's earned income is the maximum credit income under par. (at) or less, the person's earned income multiplied by 6.25%.

b. If the person's earned income is more than the maximum credit income under par. (at) but not more than the phase−out income threshold under par. (at), the maximum credit income multiplied by 6.25%.

c. If the person's earned income is more than the phase−out income threshold under par. (at) but not more than the maximum income under par. (at), the amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 4.47%, the difference between the person's earned income and the phase−out income threshold.

d. The amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 4.47%, the difference between the person's federal adjusted gross income and the phase−out income threshold under par. (at).

(ap) For taxable years beginning after December 31, 1993, and before January 1, 1995, a person who has more than 2 qualifying children who have the same principal place of abode as the person may credit against the tax imposed under s. 71.02 an amount equal to the amount calculated by one of the following methods, based on the person's earned income or federal adjusted gross income:

1. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is the maximum credit income under par. (at) or less, the credit shall be the person's earned income multiplied by 18.75%.

2. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is more than the maximum credit income under par. (at) but not more than the phase−out income threshold, the credit shall be the maximum credit income multiplied by 18.75%.

3. If the person's federal adjusted gross income is below the phase−out income threshold under par. (at) and the person's earned income is more than the phase−out income threshold but not more than the maximum income under par. (at), the credit shall be the amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 13.40%, the difference between the person's earned income and the phase−out income threshold.

4. If the person's federal adjusted gross income is at or above the phase−out income threshold under par. (at) but not more than the maximum income under par. (at), the credit shall be the lesser of one of the following:

a. If the person's earned income is the maximum credit income under par. (at) or less, the person's earned income multiplied by 18.75%.

b. If the person's earned income is more than the maximum credit income under par. (at) but not more than the phase−out income threshold under par. (at), the maximum credit income multiplied by 18.75%.

c. If the person's earned income is more than the phase−out income threshold under par. (at) but not more than the maximum income under par. (at), the amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 13.40%, the difference between the person's earned income and the phase−out income threshold.

d. The amount obtained by subtracting from the maximum credit under par. (at), the amount obtained by multiplying by 13.40%, the difference between the person's federal adjusted gross income and the phase−out income threshold under par. (at).

(at) 1. For taxable years beginning after December 31, 1993, and before January 1, 1995:

a. The maximum credit income is $7,980.

b. The phase−out income threshold is $12,570.

c. The maximum income is $23,740.

3. For taxable years beginning after December 31, 1993, and before January 1, 1995, the maximum credit is one of the following amounts:

a. If the person has one qualifying child who has the same principal place of abode as the person, the maximum credit income under subd. 1. a. multiplied by 1.15%.

b. If the person has 2 qualifying children who have the same principal place of abode as the person, the maximum credit income under subd. 1. a. multiplied by 6.25%.

c. If the person has more than 2 qualifying children who have the same principal place of abode as the person, the maximum credit income under subd. 1. a. multiplied by 18.75%.

(b) No credit may be allowed under this subsection to married persons, except married persons living apart who are treated as single under section 7703 (b) of the internal revenue code, if the husband and wife report their income on separate income tax returns for the taxable year.

(c) Part−year residents and nonresidents of this state are not eligible for the credit under this subsection.

(d) The department of revenue may enforce the credit under this subsection and may take any action, conduct any proceeding and proceed as it is authorized in respect to taxes under this chapter. The income tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest and penalties apply to the credit under this subsection.

(e) No credit may be allowed under this subsection unless it is claimed within the time period under s. 71.75 (2).

(f) Except as provided in s. 71.80 (3) and (3m), if the allowable amount of the claim under this subsection exceeds the taxes otherwise due under this chapter or no taxes are due under this chapter, the amount of the claim not used to offset taxes due shall be certified by the department of revenue to the department of administration for payment by check, share draft or other draft drawn from the appropriation under s. 20.835 (2) (f).

(9m) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. (a) Any person may credit against taxes otherwise due under this chapter, up to the amount of those taxes, an amount equal to 5% of the costs of qualified rehabilitation expenditures, as defined in section 47 (c) (2) of the internal revenue code, for certified historic structures on property located in this state if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989.

(c) No person may claim the credit under this subsection unless the claimant includes with the claimant's return evidence that the rehabilitation was approved by the secretary of the interior under 36 CFR 67.6 before the physical work of construction, or destruction in preparation for construction, began.

(d) The Wisconsin adjusted basis of the building shall be reduced by the amount of any credit awarded under this subsection. The Wisconsin adjusted basis of a partner's interest in a partnership, of a member's interest in a limited liability company or of stock in a tax−option corporation shall be adjusted to take into account adjustments made under this paragraph.

(e) The provisions of s. 71.28 (4) (e), (f), (g) and (h), as they apply to the credit under s. 71.28 (4), apply to the credit under this subsection.

(f) A partnership, limited liability company or tax−option corporation may not claim the credit under this subsection. The individual partners, members in a limited liability company or shareholders in a tax−option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, company or tax−option corporation, in proportion to the ownership interest of each partner, member or shareholder. The partnership, limited liability company or tax−option corporation shall calculate the amount of the credit which may be claimed by each partner, member or shareholder and shall provide that information to the partner, member or shareholder.

(9r) STATE HISTORIC REHABILITATION CREDIT. (a) For taxable years beginning on or after August 1, 1988, any natural person may credit against taxes otherwise due under s. 71.02 an amount equal to 25% of the costs of preservation or rehabilitation of historic property located in this state, including architectural fees and costs incurred in preparing nomination forms for listing in the national register of historic places in Wisconsin or the state register of historic places, if the nomination is made within 5 years prior to submission of a preservation or rehabilitation plan under par. (b) 3. b., and if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, except that the credit may not exceed $10,000, or $5,000 for married persons filing separately, for any preservation or rehabilitation project.

(b) The department of revenue shall approve the credit under this subsection if all of the following conditions are met:

1. The costs are incurred and the claim is submitted by the owner of the historic property.

1m. The costs included in the claim relate only to preservation or rehabilitation work done to any of the following:

a. The exterior of the historic property.

b. The interior of a window sash if work is done to the exterior of the window sash.

c. Structural elements of the historic property.

d. The heating or ventilating systems.

e. Electrical or plumbing systems, but not electrical or plumbing fixtures.

2. The historic property, including outbuildings that contribute to the significance of the historic property, is an owner−occupied personal residence if the residence is not actively used in a trade or business, held for the production of income or held for sale or other disposition in the ordinary course of the claimant's trade or business.

3. The state historical society certifies that:

a. The property is listed on the national register of historic places in Wisconsin or the state register of historic places, or is determined by the state historical society to be eligible for listing on the national register of historic places in Wisconsin or the state register of historic places, or is located in a historic district which is listed in the national register of historic places in Wisconsin or the state register of historic places and is certified by the state historic preservation officer as being of historic significance to the district, or is an outbuilding of an otherwise eligible property certified by the state historic preservation officer as contributing to the historic significance of the property.

b. The proposed preservation or rehabilitation plan complies with standards promulgated under s. 44.02 (24) and the completed preservation or rehabilitation substantially complies with the proposed plan.

4. The preservation or rehabilitation work is completed within 2 years after the date that the physical work of construction or destruction in preparation for construction begins, except in the case of any preservation or rehabilitation which is initially planned for completion in phases, in which case the work shall be completed within 5 years after the date that the physical work of construction or destruction in preparation for construction begins.

5. The expenditures for preservation or rehabilitation of the historic property exceed $10,000.

6. The costs are not incurred to acquire any building or interest in a building or to enlarge existing building.

7. The costs were not incurred before the state historical society approved the proposed preservation or rehabilitation plan under subd. 3. b.

(c) The Wisconsin adjusted basis of the historic property shall be reduced by the amount of any credit awarded under this subsection.

(f) No natural person may claim a credit under this subsection and under sub. (9m) for the same expenses.

(g) The provisions of s. 71.28 (4) (f), (g) and (h), as they apply to the credit under s. 71.28 (4), apply to the credit under this subsection.

(i) If the historic property is owned by 2 or more natural persons that hold legal title or equitable title as a land contract vendee and are not joint tenants, tenants in common or spouses owning marital property, the credit under this subsection may be claimed as follows:

1. For projects benefiting one owner, a natural person may claim the credit based on eligible costs incurred individually.

2. For projects benefiting 2 or more owners, a natural person may claim the credit based on eligible costs incurred by the benefiting owners in proportion to the natural person's ownership interest.

(j) No natural person may claim the credit under this subsection for any of the following:

2. Rehabilitation of historic property if the historic property was acquired by the claimant under an agreement requiring the claimant to sell or otherwise dispose of the historic property back to the previous owner within 5 years after the date that the historic property was acquired.

(k) A natural person who receives a credit under this subsection shall add to his or her liability for taxes imposed under s. 71.02 one of the following percentages of the amount of the credits received under this subsection for rehabilitating or preserving the property if, within 5 years after the date on which the preservation or rehabilitation work that was the basis of the credit is completed, the person either sells or conveys the property by deed or land contract or the state historical society certifies to the department of revenue that the historic property has been altered to the extent that it does not comply with the standards promulgated under s. 44.02 (24):

1. If the sale, conveyance or noncompliance occurs during the first year after the date on which the preservation or rehabilitation is completed, 100%.

2. If the sale, conveyance or noncompliance occurs during the 2nd year after the date on which the preservation or rehabilitation is completed, 80%.

3. If the sale, conveyance or noncompliance occurs during the 3rd year after the date on which the preservation or rehabilitation is completed, 60%.

4. If the sale, conveyance or noncompliance occurs during the 4th year after the date on which the preservation or rehabilitation is completed, 40%.

5. If the sale, conveyance or noncompliance occurs during the 5th year after the date on which the preservation or rehabilitation is completed, 20%.

(10) CREDITS NOT ALLOWED. The credits under s. 71.28 (4) and (5) may not be claimed by partners, including partners of a publicly traded partnership treated as a corporation under s. 71.22 (1), members of a limited liability company, including members of a limited liability company treated as a corporation under s. 77.22 (1), or shareholders of a tax−option corporation.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299.

71.08 Minimum tax. (1) IMPOSITION. If the tax imposed on a natural person, married couple filing jointly, trust or estate under s. 71.02, not considering the credits under ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (6) and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than the tax under this section, there is imposed on that natural person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax computed as follows:

(a) 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 (6) to (21), except s. 71.05 (6) (a) 13. and (b) 5. and (8), 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.

(b) Subtract the amount under section 57 (a) (5) of the internal revenue code from the amount under par. (a).

(bm) For stocks acquired after December 31, 1987, under incentive stock options, as defined in section 422A (b) of the internal revenue code:

1. At the time that the incentive stock option is included in alternative minimum taxable income under section 56 (b) (3) of the internal revenue code, subtract from the amount in par. (b) 20% of the amount included in federal alternative minimum taxable income under section 56 (b) (3) of the internal revenue code.

2. At the time that the stock that was subject to subd. 1. is disposed of, add 20% of the gain or loss adjustment resulting from the basis adjustment made under section 56 (b) (3) of the internal revenue code to the amount in par. (b).

(c) For nonresidents and part−year residents, adjust the amount under par. (bm) so that itemized deductions and personal exemptions are prorated on the basis of the ratio of Wisconsin adjusted gross income to federal adjusted gross income.

(d) Subtract from the amount under par. (c) the appropriate amount under section 55 (d) (1) and (3) of the internal revenue code; except that surviving spouses shall be treated as single individuals; except that the amount under par. (c), not the federal alternative minimum taxable income, shall be used in calculating the phase−out and except that for nonresidents and part−year residents the amount under section 55 (d) (1) and (3) of the internal revenue code shall be prorated on the basis of the ratio of Wisconsin adjusted gross income to federal adjusted gross income.

(e) Multiply the amount under par. (d) by 6.5%.

(2) JOINT LIABILITY. If the requirements under sub. (1) are applicable and the spouses file a joint income tax return, they shall file a joint minimum tax return and are jointly and severally liable for the tax imposed under sub. (1) and for the interest, penalties, fees, additions to tax and additional assessments with respect to the tax.

(3) ADMINISTRATION. The department of revenue shall have full power to impose, enforce and collect the minimum tax provided in this section and may take any action, conduct any proceeding and in all respects proceed as it is authorized in respect to income taxes imposed in this chapter. The income tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest and penalties shall apply to the minimum tax.

(4) TAX BENEFIT RULE. The department of revenue shall promulgate rules to provide that the amount under sub. (1) may be reduced to prevent the inclusion of any amounts, except the federal standard deductions, itemized deductions and personal exemptions, that do not reflect a benefit in respect to the tax imposed under s. 71.02.

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27, 237.

71.09 Payment of estimated taxes. (1) DEFINITIONS. In this section:

(a) "Farmers or fishers" are individuals, estates or trusts whose estimated gross income from farming or fishing for the taxable year is at least two−thirds of the total estimated gross income from all sources for the taxable year or individuals, estates or trusts whose gross income from farming or fishing for the preceding taxable year was at least two−thirds of the total gross income from all sources shown on that return. If a person files a joint return, the

income of both that person and that person's spouse shall be considered in determining whether the person is a farmer or fisher.

(am) "Return" means a return that would show the tax properly due.

(b) "Tax shown on the return" and "tax for the taxable year" mean the net tax imposed under s. 71.02 after reduction for exemptions to, and credits against, that tax but before reduction by amounts withheld under subch. X and before reduction for amounts paid as estimated tax under this section for that tax plus the tax imposed under s. 71.08 before reduction for amounts paid as estimated tax under this section for that tax plus the surcharge imposed under s. 77.93 before reduction for amounts paid as estimated tax under this section for that surcharge.

(2) WHO SHALL PAY. Every individual, estate and trust deriving income subject to taxation under this chapter, other than wages as defined in s. 71.63 (6) upon which taxes are withheld by the individual's employer under subch. X, shall pay estimated income tax, the surcharge under s. 77.93 and alternative minimum tax. This section does not apply to any person on active duty with the U.S. armed forces while stationed outside the continental United States. This section does not apply to any taxable year ending before the date 2 years after the date of a decedent's death with respect to the estate of such decedent or any trust all of which is treated under subpart E of part I of subchapter J of chapter 1 of the internal revenue code as owned by the decedent and to which the residue of the decedent's estate will pass under his or her will. This section does not apply to any trust that is subject to tax under this chapter on unrelated business taxable income as defined under section 512 of the internal revenue code. Those trusts are subject to estimated tax payments under s. 71.29.

(3) FARMERS OR FISHERS. Payments of estimated income tax required by sub. (2) from farmers or fishers may be made at any time on or before the 15th day of the first month of the succeeding taxable year.

(4) FARMERS OR FISHERS EXCEPTION. Except as provided in sub. (1) (am), if on or before the first day of the 3rd month of the succeeding taxable year a farmer or a fisher files a return for the taxable year, for which estimated taxes were required on or before the 15th day of the first month of the succeeding taxable year under sub. (3), and pays in full the amount computed on the return as payable, then that payment satisfies any required estimated tax instalments.

(5) AMOUNT. The amount of the estimated income tax shall be the total estimated tax, including surtaxes, if any, reduced by the amount, if any, the individual, estate or trust determines will be withheld from wages pursuant to subch. X.

(7) REFUND CARRY−FORWARD. If the taxpayer claims a refund on any tax return and, concurrent with or subsequent to the filing of the return upon which such refund is claimed, is required to pay an estimated tax, and at the time of paying that tax the refund has not been paid, he or she may deduct the amount of such refund from the first instalment of estimated taxes, and any excess from the succeeding instalments. If a refund is paid after the due date of the last instalment, its receipt shall be reflected on the income tax return covering the year. If the refund is disallowed in whole or in part after the due date of the last instalment, that disallowance must be reflected on the income tax return covering the year.

(8) PREPAYMENTS. Any instalment of the estimated tax under this section may be paid prior to the date prescribed for its payment.

(9) SHORT YEAR. Application of this section to taxable years of less than 12 full months shall be made pursuant to rules of the department.

(10) OVERPAYMENT. When the amount of an instalment payment of estimated tax exceeds the amount determined to be the correct amount of such instalment payment, the overpayment shall be credited against the unpaid instalment, if any.

(11) EXCEPTIONS TO INTEREST. No interest is required under s. 71.84 (1) if any of the following conditions apply:

(a) The tax shown on the return or, if no return is filed, the tax, minus amounts withheld under subch. X, is less than $200.

(b) The preceding taxable year was 12 months, the taxpayer had no liability under s. 71.02 or 71.08 for that year and the taxpayer was a resident of this state for all of that year.

(c) The secretary of revenue determines that because of casualty, disaster or other unusual circumstances it is not equitable to impose interest.

(d) The secretary of revenue determines that the taxpayer retired during the taxable year or during the preceding taxable year after having attained age 62 or becoming disabled and that the underpayment was due to reasonable cause and not due to wilful neglect.

(12) INSTALMENT DUE DATES. Taxpayers shall make estimated payments in 4 instalments, on or before the 15th day of each of the following months:

(a) The 4th month of the taxable year.

(b) The 6th month of the taxable year.

(c) The 9th month of the taxable year.

(d) The first month of the next taxable year.

(13) INSTALMENT AMOUNTS. (a) Except as provided in pars. (b), (c) and (d), the amount of each instalment required under sub. (12) is 25% of the lower of the following amounts:

1. Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

2. The tax shown on the return for the preceding year. If a husband and wife who filed separate returns for the preceding taxable year file a joint return, the tax shown on the return for the preceding year is the sum of the taxes shown on the separate returns of the husband and wife. If a husband and wife who filed a joint return for the preceding taxable year file separate returns, the tax shown on the return for the preceding year is the husband's or wife's proportion of that tax based on what their respective tax liabilities for that year would have been had they filed separately.

(b) Paragraph (a) 2. does not apply if the preceding taxable year was less than 12 months or if the taxpayer did not file a return for the preceding taxable year.

(c) Paragraph (a) 2. does not apply if the taxpayer is an estate or trust and has a taxable income of $20,000 or more.

(d) If 22.5% for the first instalment, 45% for the 2nd instalment, 67.5% for the 3rd instalment and 90% for the 4th instalment of the tax for the taxable year computed by annualizing, under methods prescribed by the department of revenue, the taxpayer's income for the months in the taxable year ending before the instalment's due date is less than the instalment required under par. (a), the taxpayer may pay the amount under this paragraph rather than the amount under par. (a). Any taxpayer who pays an amount calculated under this paragraph shall increase the next instalment computed under par. (a) by an amount equal to the difference between the amount paid under this paragraph and the amount that would have been paid under par. (a). The income of any estate or trust for the months in the taxable year ending before the date one month before the due date for the instalment shall be annualized in calculating the instalments under this paragraph.

(14) EXCEPTION TO FINAL INSTALMENT. If a taxpayer files a return for a calendar year on or before January 31 of the succeeding calendar year (or if a taxpayer on a fiscal year basis files a return on or before the last day of the first month immediately succeeding the close of such fiscal year) and pays in full at the time of such filing the amount computed on the return as payable, then, if estimated taxes are not required to be paid on or before the 15th day of the 9th month of the taxable year but are required to be paid on or before January 15 of the succeeding taxable year (or the date corresponding thereto in the case of a fiscal year), such return shall be considered as such payment.

(15) EXEMPTION FROM WITHHOLDING. (a) Any individual deriving income from wages, as defined in s. 71.63 (6), which is subject to taxation under this chapter who pays 100% of the esti-

mated tax for the following calendar or taxable year on or before the last day of the current calendar or taxable year is entitled to complete exemption from payroll withholding under subch. X for such following calendar or taxable year.

(b) No employer shall recognize exemption from payroll withholding for any employe who does not furnish a certificate prepared by the department of revenue satisfactorily showing that the employe has paid the estimated tax within the time and manner prescribed in this subsection with respect to the calendar or taxable year for which such exemption is sought.

(c) So far as applicable the additions to tax prescribed in this section shall apply to estimated taxes paid under this subsection.

(d) No employer shall force or attempt to coerce an employe into estimating and prepaying his or her income taxes. The penalty under s. 71.83 (2) (a) 4. applies to any employer who violates this paragraph.

(16) JOINT PAYMENTS. Married persons may jointly pay estimated taxes unless either spouse is a nonresident alien or the spouses have different taxable years. If they do pay jointly, the provisions under this section applicable to individuals are applicable to the married persons jointly. If a married person files a separate return for a taxable year for which a joint payment was made, the payments may be allocated between themselves as they choose, but if they do not agree on an allocation the department of revenue shall allocate the payments to each spouse on the basis of the ratio of taxes shown on their separate returns or pursuant to default assessment under s. 71.74 (3). If either spouse pays separately, no part of the payment may be allocated to the other spouse.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 16, 204; 1997 a. 27.

71.10 General provisions. (1) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE BUSINESSES. In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the secretary or the secretary's delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if the secretary determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.

(2) ASSESSMENT OF INCOME DISTRIBUTABLE TO A NONRESIDENT BENEFICIARY. The income of a trust distributable or distributed to a nonresident beneficiary shall be assessed as the income of other nonresidents is assessed. No personal exemptions shall be allowed in assessing the income of such nonresident beneficiary unless that person makes a complete return under this chapter.

(3) CAMPAIGN FUND. (a) Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate $1 for the Wisconsin election campaign fund for the use of eligible candidates under s. 11.50. If the individuals filing a joint return have a tax liability or are entitled to a tax refund, each individual may make a designation of $1 under this subsection.

(b) The secretary of revenue shall provide a place for those designations on the face of the individual income tax return and shall provide next to that place a statement that a designation will not increase tax liability. Annually on August 15, the secretary of revenue shall certify to the elections board, the department of administration and the state treasurer under s. 11.50 the total amount of designations made during the preceding fiscal year. If any individual attempts to place any condition or restriction upon a designation, that individual is deemed not to have made a designation on his or her tax return.

(c) The names of persons making designations under this subsection shall be strictly confidential.

(4) COMPUTATION ORDER. Notwithstanding any other provisions in this chapter, all persons other than corporations computing liability for the tax under s. 71.02 shall make computations in the following order:

(a) Tax under s. 71.06.

(b) Personal exemptions under s. 71.07 (8).

(c) The credit under s. 71.07 (5).

(d) School property tax credit under s. 71.07 (9).

(dm) Supplement to federal historic rehabilitation credit under s. 71.07 (9m).

(dr) State historic rehabilitation credit under s. 71.07 (9r).

(du) Working families tax credit under s. 71.07 (5m).

(f) Alternative minimum tax under s. 71.08, including any surtax on alternative minimum tax.

(g) Married persons credit under s. 71.07 (6).

(gb) The manufacturing sales tax credit under s. 71.07 (3s).

(gd) Development zones jobs credit under s. 71.07 (2dj).

(ge) Development zones sales tax credit under s. 71.07 (2ds).

(gg) Development zones investment credit under s. 71.07 (2di).

(gm) Development zones research credit under s. 71.07 (2dr).

(gr) Development zones location credit under s. 71.07 (2dL).

(gs) Development zones day care credit under s. 71.07 (2dd).

(gt) Development zones environmental remediation credit under s. 71.07 (2de).

(gu) Development zones credit under s. 71.07 (2dx).

(h) Payments to other states under s. 71.07 (7).

(i) The total of claim of right credit under s. 71.07 (1), farmland preservation credit under subch. IX, homestead credit under subch. VIII, farmland tax relief credit under s. 71.07 (3m), farmers' drought property tax credit under s. 71.07 (2fd), earned income tax credit under s. 71.07 (9e), estimated tax payments under s. 71.09, and taxes withheld under subch. X.

(j) Any amount computed under s. 71.83 (1) (c).

(5) ENDANGERED RESOURCES. (a) *Definitions.* In this subsection:

1. "Conservation fund" means the fund under s. 25.29.

2. "Endangered resources program" means purchasing or improving land or habitats for any native Wisconsin endangered or threatened species as defined in s. 29.604 (2) (a) or (b) or for any nongame species as defined in s. 29.001 (60), conducting the natural heritage inventory program under s. 23.27 (3), conducting wildlife and resource research and surveys and providing wildlife management services, providing for wildlife damage control or the payment of claims for damage associated with endangered or threatened species, repaying the general fund for amounts expended under s. 20.370 (1) (fb) in fiscal year 1983−84 and the payment of administrative expenses related to the administration of this subsection.

(b) *Voluntary payments.* 1. 'Designation on return.' Any individual filing an income tax return may designate on the return any amount of additional payment or any amount of a refund due that individual for the endangered resources program.

2. 'Designation added to tax owed.' If the individual owes any tax, the individual shall remit in full the tax due and the amount designated on the return for the endangered resources program when the individual files a tax return.

3. 'Designation deducted from refund.' Except as provided under par. (d) if the individual is owed a refund for that year after crediting under ss. 71.75 (9) and 71.80 (3), the department of revenue shall deduct the amount designated on the return for the endangered resources program from the amount of the refund.

(c) *Errors; failure to remit correct amount.* If an individual who owes taxes fails to remit an amount equal to or in excess of the total of the actual tax due, after error corrections, and the amount designated on the return for the endangered resources program:

1. The department shall reduce the designation for the endangered resources program to reflect the amount remitted in excess of the actual tax due, after error corrections, if the individual remitted an amount in excess of the actual tax due, after error corrections, but less than the total of the actual tax due, after error corrections, and the amount originally designated on the return for the endangered resources program.

2. The designation for the endangered resources program is void if the individual remitted an amount equal to or less than the actual tax due, after error corrections.

(d) *Errors; insufficient refund.* If an individual who is owed a refund which does not equal or exceed the amount designated on the return for the endangered resources program, after crediting under ss. 71.75 (9) and 71.80 (3) and after error corrections, the department shall reduce the designation for the endangered resources program to reflect the actual amount of the refund the individual is otherwise owed, after crediting under ss. 71.75 (9) and 71.80 (3) and after error corrections.

(e) *Conditions.* If an individual places any conditions on a designation for the endangered resources program, the designation is void.

(f) *Void designation.* If a designation for the endangered resources program is void, the department of revenue shall disregard the designation and determine amounts due, owed, refunded and received without regard to the void designation.

(g) *Tax return.* The secretary of revenue shall provide a place for the designations under this subsection on the individual income tax return and the secretary shall highlight that place on the return by a symbol chosen by the department of revenue that relates to endangered resources.

(h) *Certification of amounts.* Annually, on or before September 15, the secretary of revenue shall certify to the department of natural resources, the department of administration and the state treasurer:

1. The total amount of the administrative costs, including data processing costs, incurred by the department of revenue in administering this subsection during the previous fiscal year.

3. The total amount received from all designations for the endangered resources program made by taxpayers during the previous fiscal year.

4. The net amount remaining after the administrative costs, including data processing costs, under subd. 1. are subtracted from the total received under subd. 3.

5. From the moneys received from designations for the endangered resources program, an amount equal to the sum of administrative expenses, including data processing costs, certified under subd. 1. shall be deposited in the general fund and credited to the appropriation under s. 20.566 (1) (hp), and the net amount remaining certified under subd. 4. shall be deposited in the conservation fund and credited to the appropriation under s. 20.370 (1) (fs).

6. Amounts designated for the endangered resources program under this subsection are not subject to refund to the taxpayer unless the taxpayer submits information to the satisfaction of the department within 18 months after the date taxes are due or the date the return is filed, whichever is later, that the amount designated is clearly in error. Any refund granted by the department of revenue under this subdivision shall be deducted from the moneys received under this subsection in the fiscal year that the refund is certified.

(6) MARRIED PERSONS. (a) *Joint returns.* Persons filing a joint return are jointly and severally liable for the tax, interest, penalties, fees, additions to tax and additional assessments under this chapter applicable to the return. A person shall be relieved of liability in regard to a joint return in the manner specified in section 6013 (e) of the internal revenue code, notwithstanding the amount or percentage of the understatement.

(b) *Separate returns.* A spouse filing a separate return may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments under this chapter with regard to unreported marital property income in the manner specified in section 66 (c) of the internal revenue code. The department may not apply ch. 766 in assessing a taxpayer with respect to marital property income the taxpayer did not report if that taxpayer failed to notify the taxpayer's spouse about the amount and nature of the income before the due date, including extensions, for filing the return for the taxable year in which the income was derived. The department shall include all of that marital property income in the gross income of the taxpayer and exclude all of that marital property income from the gross income of the taxpayer's spouse.

(c) *Marital property agreements.* The department of revenue shall notify a taxpayer whose separate return is under audit that a marital property agreement or unilateral statement under ch. 766 is effective for tax purposes for any period during which both spouses are domiciled in this state only if it is filed with the department before any assessment resulting from the audit is issued. A marital property agreement or unilateral statement under ch. 766 does not affect the determination of the income that is taxable by this state, or of the person who is required to report taxable income to this state, during the period that one or both spouses are not domiciled in this state or if it was not filed with the department before an assessment was issued.

(d) *Part−year residents and nonresidents.* If a spouse is not domiciled in this state for the entire taxable year, the tax liability and reporting obligation of both spouses during the period a spouse is not domiciled in this state shall be determined without regard to ch. 766 except as provided in this chapter.

(6m) RETURNS OF FORMERLY MARRIED AND REMARRIED PERSONS. (a) A formerly married or remarried person filing a return for a period during which the person was married may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments under this chapter for unreported marital property income from that period as if the person were a spouse under section 66 (c) of the internal revenue code. The department may not apply ch. 766 in assessing the former spouse of the person with respect to marital property income that the former spouse did not report if that former spouse failed to notify the person about the amount and nature of the income before the due date, including extensions, for filing the return for the taxable year during which the income was derived. The department shall include all of that marital property income in the gross income of the former spouse and exclude all of that marital property income from the gross income of the person.

(b) The department may not apply ch. 766 or s. 71.55 (1), 71.61 (1) or 71.80 (3) or (3m) to collect from an individual for any tax liability owed to the department by the individual or by the former spouse of the individual if a judgment of divorce under ch. 767 apportions that liability to the former spouse of the individual and if the individual includes with his or her tax return a copy of that portion of the judgment of divorce that relates to the apportionment of tax liability.

(7) MINNESOTA INCOME TAX RECIPROCITY. (a) For purposes of income tax reciprocity reached with the state of Minnesota under s. 71.05 (2), whenever the income taxes on residents of one state which would have been paid to the 2nd state without reciprocity exceed the income taxes on residents of the 2nd state which would have been paid to the first state without reciprocity, the state with the net revenue loss shall receive from the other state the amount of the loss. Interest shall be payable on all delinquent balances relating to taxable years beginning after December 31, 1977. The secretary of revenue may enter into agreements with the state of Minnesota specifying the reciprocity payment due date, conditions constituting delinquency, interest rates and the method of computing interest due on any delinquent amounts.

(b) The data used for computing the loss to either state shall be determined by the respective departments of revenue of both states on or before November 1 of the year following the close of the previous calendar year. If an agreement cannot be reached as to the amount of the loss, the secretary of revenue of this state and

the commissioner of taxation of the state of Minnesota shall each appoint a member of a board of arbitration and these members shall appoint a 3rd member of the board. The board shall select one of its members as chairperson. The board may administer oaths, take testimony, subpoena witnesses and require their attendance, require the production of books, papers and documents and hold hearings at such places as it deems necessary. The board shall then make a determination as to the amount to be paid the other state which shall be conclusive. This state shall pay no more than one−half of the cost of such arbitration.

(7e) ILLINOIS INCOME TAX RECIPROCITY. (a) For purposes of income tax reciprocity reached with the state of Illinois under s. 71.05 (2), whenever the income taxes on residents of one state which would have been paid to the 2nd state without reciprocity exceed the income taxes on residents of the 2nd state which would have been paid to the first state without reciprocity, the state with the net revenue loss shall receive from the other state the amount of the loss. Interest shall be payable on all delinquent balances relating to taxable years beginning after December 31, 1999. The secretary of revenue may enter into agreements with the state of Illinois specifying the reciprocity payment due date, conditions constituting delinquency, interest rates and the method of computing interest due on any delinquent amounts.

(b) The data used for computing the loss to either state shall be determined by the respective departments of revenue of both states on or before December 1 of the year following the close of the previous calendar year. If an agreement cannot be reached as to the amount of the loss, the secretary of revenue of this state and the director of taxation of the state of Illinois shall each appoint a member of a board of arbitration and these members shall appoint a 3rd member of the board. The board shall select one of its members as chairperson. The board may administer oaths, take testimony, subpoena witnesses and require their attendance, require the production of books, papers and documents and hold hearings at such places as it considers necessary. The board shall then make a determination as to the amount to be paid the other state which shall be conclusive. This state shall pay no more than 50% of the cost of such arbitration.

(c) 1. The payments under this subsection may be made only if the secretary of revenue of this state and the director of taxation of the state of Illinois enter into a written agreement relating to income tax reciprocity that applies to taxable years beginning after December 31, 1997.

2. Subject to subd. 1., for taxable years beginning after December 31, 1997, and before January 1, 1999, the maximum amount that may be paid to Illinois under this subsection is $5,500,000, and for taxable years beginning after December 31, 1998, and before January 1, 2000, the maximum amount that may be paid to Illinois under this subsection is $8,250,000.

(7m) DISCHARGE OF INDEBTEDNESS; MODIFICATIONS. If a person excludes from gross income an amount of income from a discharge of indebtedness because of discharges of debts described under section 108 (a) of the internal revenue code, the person shall make the adjustments specified in section 108 (b) of the internal revenue code, but the net operating loss under s. 71.01 (14), not the federal net operating loss, and Wisconsin credits, not federal credits, and the capital loss carry−forward as limited under s. 71.05 (10) (c), not the federal capital loss carry−forward, shall be applied, and the reduction rate for a credit carry−over is 6.93%, not 33 1/3%.

(8) PENALTIES. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter unless the context requires otherwise.

(9) PUBLICATION OF STANDARD DEDUCTION AND TAX BRACKETS. The department of revenue shall annually publish notice of the standard deduction amounts and the brackets for the individual income tax in the administrative register.

History: 1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248.

SUBCHAPTER II

SPECIAL PROVISIONS APPLICABLE TO FIDUCIARIES

71.12 Conformity. Unless specifically provided in this subchapter, fiduciaries shall be subject to all of the provisions, requirements and liabilities of this chapter, so far as applicable, unless the context requires otherwise.

History: 1987 a. 312.

71.122 Definition. In this subchapter, "Wisconsin taxable income" means federal taxable income, as defined in s. 71.01 (4), as modified under s. 71.05 (6) to (12), (19) and (20).

History: 1997 a. 27.

71.125 Imposition of tax. (1) Except as provided in sub. (2), the tax imposed by this chapter on individuals and the rates under s. 71.06 (1), (1m) and (2) shall apply to the Wisconsin taxable income of estates or trusts, except nuclear decommissioning trust or reserve funds, and that tax shall be paid by the fiduciary.

(2) Each electing small business trust, as defined in section 1361 (e) (1) of the Internal Revenue Code, is subject to tax at the highest rate under s. 71.06 (1) or under s. 71.06 (1m), whichever taxable year is applicable, on its income as computed under section 641 of the Internal Revenue Code, as modified by s. 71.05 (6) to (12), (19) and (20).

History: 1987 a. 312; 1997 a. 27, 237.

71.13 Filing returns. (1) ESTATE OR TRUST. Annual returns of income of an estate or a trust shall be made to the department by the fiduciary thereof at or before the time such income is required to be reported to the internal revenue service under the internal revenue code. Under such rules as the department prescribes, a return made by one of 2 or more joint fiduciaries shall be sufficient compliance with the requirements of this section. A return made pursuant to this subsection shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him or her to make the return, and that the return is, to the best of his or her knowledge and belief, true and correct.

(2) RETURNS REQUIRED PRIOR TO CLOSING ESTATE OR TRUST. (a) An executor, administrator, personal representative or trustee applying to a court having jurisdiction for a discharge of his or her trust and a final settlement of his or her accounts, before his or her application is granted, shall file all of the following with the department:

1. Returns of income received by the deceased, any previous guardian, executor, administrator, personal representative or trustee, during each of the years open to assessment under s. 71.77, if such returns had not theretofore been filed, including a return of income for the year of death to the date of death.

2. Returns of income received during the period of his or her administration or trust except for the final income tax year of the estate or trust.

3. Gift tax returns or reports, sales and use tax returns, and withholding returns or reports which were required to be filed, if not theretofore filed.

(b) Upon receipt of such returns, the department shall immediately determine the amount of taxes including interest, penalties and costs to be payable, as well as any delinquent income, withholding, sales, use and gift taxes, penalties, interest and costs due, and shall certify such amounts to the court. The court shall thereupon enter an order directing the executor, administrator, personal representative or trustee to pay the amounts found to be due by the department and take its receipt therefor. The receipt shall be evidence of the payment and shall be filed with the court before a final distribution of the estate or trust is ordered and the executor, administrator, personal representative or trustee is discharged. The filing of such receipt shall in no manner affect the obligation of the executor, administrator, personal representative or trustee to file income, sales and withholding returns covering transac-

tions reportable during the final taxable year of the estate or trust and to pay income, sales, use and withholding taxes, penalties, interest and costs due as the result of such transactions.

(3) REQUIRED FILING MAY BE DISPENSED WITH BY COURT. Returns of income required to be made by sub. (2) may be dispensed with by order of the court having jurisdiction in cases where it is clearly evident to the court that no income tax is due or to become due from the trust or estate.

History: 1987 a. 312; 1989 a. 31.

71.14 Situs of income. For purposes of determining the situs of income under this subchapter:

(1) The estate of a decedent shall be considered resident at the domicile of the decedent at the time of his or her death.

(2) A trust created at death by will, contract, declaration of trust or implication of law by a decedent who at the time of death was a resident of this state shall be considered resident at the domicile of the decedent at the time of the decedent's death until transferred by the court having jurisdiction under s. 72.27 to another court's jurisdiction. After jurisdiction is transferred, the trust shall be considered resident at the place to which jurisdiction is transferred. The hearing to transfer jurisdiction shall be held only after giving written notice to the department of revenue under s. 879.05.

(3) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts created by contract, declaration of trust or implication of law shall be considered resident at the place where the trust is being administered. The following trusts shall be considered to be administered in the state of domicile of the corporate trustee of the trust at any time that the grantor of the trust is not a resident of this state:

(a) Trusts that have any assets invested in a common trust fund, as defined in section 584 of the internal revenue code, maintained by a bank or trust company domiciled in this state that is a member of the same affiliated group, as defined in section 1504 of the internal revenue code, as the corporate trustee.

(b) Trusts the assets of which in whole or in part are managed, or about which investment decisions are made, by a corporation domiciled in this state if that corporation and the corporate trustee are members of the same affiliated group, as defined in section 1504 of the internal revenue code.

(4) The unrelated business taxable income of trusts shall be apportioned under the department of revenue's rules.

History: 1987 a. 312, 411; 1989 a. 31.

71.15 Income computation. (1) The standard deduction shall not be allowed in computing the taxable income of an estate, a trust or a common trust fund.

(2) A personal exemption for the decedent under s. 71.07 (8) shall not be allowed the executor or administrator, except against the tax on income of the decedent in the year of death. If the decedent would have been entitled to an exemption for the decedent's spouse or a dependent under s. 71.07 (8), had the decedent lived, such exemption shall be allowed to the executor or administrator so long as over one−half of the support of the spouse or dependent is supplied by the decedent or by the executor or administrator from the decedent's estate and the gross income of the spouse or dependent for the calendar year in which the taxable year of the executor or administrator begins is less than $500.

History: 1987 a. 312.

71.16 Allocation of modifications. The Wisconsin modifications applicable to the Wisconsin taxable income or Wisconsin adjusted gross income of estates, trusts and beneficiaries thereof with respect to income derived from such estates or trusts shall be computed and allocated as follows:

(1) A modification or portion thereof which relates to an item of income, gain, loss or deduction which affects the computation of the federal distributable net income of the estate or trust for the current year shall be apportioned among and taken into account by the fiduciary and the beneficiary or beneficiaries in the same proportion that the item to which it relates is considered as distributed among them for federal income tax purposes.

(2) Any remaining modifications or portions thereof shall be taken into account by the fiduciary.

(3) If an additional assessment is made against the fiduciary or any beneficiary as a result of correction of an erroneous allocation of the modifications applicable to the income of an estate or trust, any overpayment resulting from consistent application of such correction to all other taxpayers interested in such estate or trust shall be refunded notwithstanding any rule of law which would otherwise bar such refund.

History: 1987 a. 312.

71.17 General provisions. (1) ASSESSMENT OF TRUST INCOME DISTRIBUTABLE TO NONRESIDENT BENEFICIARY. The income of a trust distributable or distributed to a nonresident beneficiary shall be assessed as the income of other nonresidents is assessed. No personal exemptions shall be allowed in assessing the income of such nonresident beneficiary unless that beneficiary makes a complete return under this chapter.

(2) LIEN ON TRUST ESTATE; INCOME TAXES LEVIED AGAINST BENEFICIARY. All income taxes levied against the income of beneficiaries shall be a lien on that portion of the trust estate or interest therein from which the income taxed is derived, and such taxes shall be paid by the fiduciary, if not paid by the distributee, before the same become delinquent. Every person who, as a fiduciary under the provisions of this subchapter, pays an income tax shall have all the rights and remedies of reimbursement for any taxes assessed against him or her or paid by him or her in such capacity, as provided in s. 70.19 (1) and (2).

(3) LIABILITY FOR PAYMENT OF TAXES DUE FROM DECEDENT. Any income, withholding, sales, use or gift taxes, penalties, interest and costs found to be due from a decedent, an estate or a trust for any of the years open to assessment under s. 71.77 and any delinquent income, withholding, sales, use or gift taxes, penalties, interest and costs found to be due shall be assessed against and paid by the executor, administrator, personal representative or trustee; any of such items found to be due after the executor, administrator, personal representative or trustee is discharged shall be assessed against and paid by the beneficiaries in the same ratio that their interest in the estate or trust bears to the total estate or trust.

(4) TRUSTS ESTABLISHED OR MAINTAINED OUT−OF−STATE; GRANTOR LIABLE FOR TAX. The establishment or maintenance of a trust outside Wisconsin by a Wisconsin resident as grantor, the income from which trust is taxable to the grantor or to any person other than the trust under the internal revenue code, is hereby declared to be a tax avoidance device designed to avoid the legal application of the Wisconsin income tax to income properly taxable to the grantor or such other person. Any Wisconsin resident who is the grantor of such a trust shall be liable for the Wisconsin income tax on the income of such trust which is federally taxable to such grantor or other person under the internal revenue code.

(5) TRUSTS THAT ARE EXEMPT FROM FEDERAL INCOME TAX. Trusts exempt from federal income tax pursuant to subtitle A, chapter 1, subchapter F of the internal revenue code shall to the same extent be exempt from taxation under this chapter.

(6) FUNERAL TRUSTS. If a qualified funeral trust makes the election under section 685 of the Internal Revenue Code for federal income tax purposes, that election applies for purposes of this chapter and each trust shall compute its own tax and shall apply the rates under s. 71.06 (1) and (1m).

History: 1987 a. 312; 1989 a. 31; 1997 a. 237.

SUBCHAPTER III

PARTNERSHIPS AND LIMITED LIABILITY COMPANIES

71.19 Conformity. Unless specifically provided in this subchapter, partnerships and limited liability companies shall be sub-

ject to all of the provisions, requirements and liabilities of this chapter, so far as applicable, unless the context requires otherwise.

History: 1987 a. 312; 1993 a. 112.

71.195 Definition. In this subchapter, "partnership" includes limited liability companies and other entities that are treated as partnerships under the Internal Revenue Code, and "partnership" does not include publicly traded partnerships treated as corporations under s. 71.22 (1).

History: 1997 a. 27.

71.20 Filing returns. (1) Every partnership shall furnish to the department a true and accurate statement, on or before April 15 of each year, except that returns for fiscal years ending on some other date than December 31 shall be furnished on or before the 15th day of the 4th month following the close of such fiscal year, in such manner and form and setting forth such facts as the department deems necessary to enforce this chapter. A partnership that is the owner of a single−owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code shall include that entity's information on the owner's return under this subchapter. The statement shall be subscribed by one of the members of the partnership.

(2) Nothing in this section precludes the department of revenue from requiring any person other than a corporation to file an income tax return when in the judgment of the department a return should be filed.

History: 1987 a. 312, 411; 1993 a. 112; 1997 a. 27.

71.21 Computation. (1) The net income of a partnership shall be computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations.

(2) The standard deduction shall not be allowed in computing the taxable income of a partnership.

(3) The credits under s. 71.28 (4) and (5) may not be claimed by a partnership or by partners, including partners of a publicly traded partnership.

(4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2ds), (2dx) and (3s) and passed through to partners shall be added to the partnership's income.

(5) Section 164 (a) (3) of the internal revenue code is modified so that state taxes and taxes of the District of Columbia that are value−added taxes, single business taxes or taxes on or measured by all or a portion of net income, gross income, gross receipts or capital stock are not deductible.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 1995 a. 27, 400; 1997 a. 27.

SUBCHAPTER IV

TAXATION OF CORPORATIONS

71.22 Definitions. In this chapter in regard to corporations and to nuclear decommissioning trust or reserve funds:

(1) "Corporation" includes corporations, publicly traded partnerships treated as corporations in section 7704 of the internal revenue code, limited liability companies treated as corporations under the internal revenue code, joint stock companies, associations, common law trusts and all other entities treated as corporations under section 7701 of the Internal Revenue Code, unless the context requires otherwise. A single−owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code is disregarded as a separate entity under this chapter, and its owner is subject to the tax on or measured by the entity's income. "Corporation" does not include any entity that is a qualified subchapter S subsidiary under s. 71.365 (7).

(1m) "Department" means the department of revenue.

(2) "Entertainment corporation" means a domestic or foreign corporation which derives income from amusement, entertainment or sporting events in this state or from the services of an entertainer, as defined in s. 71.01 (2).

(2m) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(3) "Gain" means gain as computed under the internal revenue code.

(4) (e) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1989, and before January 1, 1991, means the federal internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1989, do not apply to this paragraph with respect to taxable years beginning after December 31, 1989, and before January 1, 1991, except that changes to the internal revenue code made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(f) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1990, and before January 1, 1992, means the federal internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1990, do not apply to this paragraph with respect to taxable years beginning after December 31, 1990, and before January 1, 1992, except that changes to the internal revenue code made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(g) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1991, and before January 1, 1993, means the federal internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L.

100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1991, do not apply to this paragraph with respect to taxable years beginning after December 31, 1991, and before January 1, 1993, except that changes to the internal revenue code made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(h) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1992, and before January 1, 1994, means the federal internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1992, do not apply to this paragraph with respect to taxable years beginning after December 31, 1992, and before January 1, 1994, except that changes to the internal revenue code made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−66, P.L. 103−465. P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(i) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1993, and before January 1, 1995, means the federal internal revenue code as amended to December 31, 1993, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, and as amended by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1993, do not apply to this paragraph with respect to taxable years beginning after December 31, 1993, and before January 1, 1995, except that changes to the internal revenue code made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(j) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1994, and before January 1, 1996, means the federal internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1994, do not apply to this paragraph with respect to taxable years beginning after December 31, 1994, and before January 1, 1996, except that changes to the internal revenue code made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(k) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1995, and before January 1, 1997, means the federal internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34. The internal revenue code applies for

Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1995, do not apply to this paragraph with respect to taxable years beginning after December 31, 1995, and before January 1, 1997, except that changes to the Internal Revenue Code made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(L) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "internal revenue code", for taxable years that begin after December 31, 1996, and before January 1, 1998, means the federal internal revenue code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as amended by P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1996, do not apply to this paragraph with respect to taxable years beginning after December 31, 1996, and before January 1, 1998, except that changes to the internal revenue code made by P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(m) Except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g) and 71.42 (2), "Internal Revenue Code", for taxable years that begin after December 31, 1997, means the federal Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191 , P.L. 104−193, P.L. 105−33 and P.L. 105−34. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal Internal Revenue Code enacted after December 31, 1997, do not apply to this paragraph with respect to taxable years beginning after December 31, 1997.

(4m) (c) For taxable years that begin after December 31, 1989, and before January 1, 1991, "internal revenue code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1989, do not apply to this paragraph with respect to taxable years beginning after December 31, 1989, and before January 1, 1991, except that changes to the internal revenue code made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(d) For taxable years that begin after December 31, 1990, and before January 1, 1992, "internal revenue code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1990, do not apply to this paragraph with respect to taxable years beginning after December 31, 1990, and before January 1, 1992, except that changes to the internal revenue code made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(e) For taxable years that begin after December 31, 1991, and before January 1, 1993, "internal revenue code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1991, do not apply to this paragraph with respect to taxable years beginning after December 31, 1991, and before January 1, 1993, except that changes to the internal revenue code made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(f) For taxable years that begin after December 31, 1992, and before January 1, 1994, "internal revenue code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1992, do not apply to this paragraph with respect to taxable years beginning after December 31, 1992, and before January 1, 1994, except that changes to the internal revenue code made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(g) For taxable years that begin after December 31, 1993, and before January 1, 1995, "internal revenue code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal internal revenue code as amended to December 31, 1993, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, and as amended by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1993, do not apply to this paragraph with respect to taxable years beginning after December 31, 1993, and before January 1, 1995, except that changes to the internal revenue code made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(h) For taxable years that begin after December 31, 1994, and before January 1, 1996, "internal revenue code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1994, do not apply to this paragraph with respect to taxable years beginning after December 31, 1994, and before January 1, 1996, except that changes to the internal revenue code made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34, and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(i) For taxable years that begin after December 31, 1995, and before January 1, 1997, "internal revenue code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, PL. 105−33 and P.L. 105−34. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1995, do not apply to this paragraph with respect to taxable years beginning after December 31, 1995, and before January 1, 1997, except that changes to the Internal Revenue Code made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(j) For taxable years that begin after December 31, 1996, and before January 1, 1998, "Internal Revenue Code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal Internal Revenue Code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188 and as amended by P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L.

104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the Internal Revenue Code enacted after December 31, 1996, do not apply to this paragraph with respect to taxable years beginning after December 31, 1996, and before January 1, 1998, except that changes to the Internal Revenue Code made by P.L. 105−33 and P.L. 105−34 and changes that indirectly affect provisions applicable to this subchapter made by P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(k) For taxable years that begin after December 31, 1997, "Internal Revenue Code", for corporations that are subject to a tax on unrelated business income under s. 71.26 (1) (a), means the federal Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191 , P.L. 104−193, P.L. 105−33 and P.L. 105−34. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the Internal Revenue Code enacted after December 31, 1997, do not apply to this paragraph with respect to taxable years beginning after December 31, 1997.

(5) Notwithstanding s. 71.26 (2) and (3), for corporations, at the taxpayer's option, "internal revenue code", for taxable year 1986 and subsequent taxable years, includes any revisions to the federal internal revenue code adopted after January 1, 1986, that relate to the taxation of income derived from any source as a direct consequence of participation in the milk production termination program created by section 101 of P.L. 99−198.

(5s) "Last day prescribed by law" has the meaning given in s. 71.738.

(6) "Loss" means loss as computed under the internal revenue code.

(7) "Nuclear decommissioning reserve fund" and "nuclear decommissioning trust fund" have the meanings under section 468A of the internal revenue code.

(8) "Pay", in regard to submissions to persons other than the department, has the meaning appropriate to the taxpayer's method of accounting.

(9) "Person" includes corporations, unless the context requires otherwise.

(9m) "Subscribe" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

(10) "Taxable year" means the taxable period upon the basis of which the taxable income of the taxpayer is computed for federal income tax purposes. The taxable year of a corporation that keeps its accounting records on the basis of a 52−53 week period ends on the last day of the month closest to the end of the 52−53 week period.

(11) Except as provided in s. 71.45 (2), "Wisconsin net income", for corporations engaged in business wholly within this state, means net income and, for corporations engaged in business both within and outside this state, means the amount assigned to this state under s. 71.25 (6), (10) (c) or (13) or by a separate accounting or allocation, if allowed under s. 71.25 (6), or by another method approved under s. 71.25 (11), (12) or (14).

History: 1987 a. 312; 1987 a. 411 ss. 14, 19, 109, 112; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 112, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237, 252, 299.

71.23 Imposition of tax. (1) INCOME TAX. For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state or whose business within this state during the taxable year, except as provided under sub. (3), consists exclusively of foreign commerce, interstate commerce, or both; except as exempted under s. 71.26 (1). This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74 (1) and (2).

(2) FRANCHISE TAX. For the privilege of exercising its franchise or doing business in this state in a corporate capacity, except as provided under sub. (3), every domestic or foreign corporation, except corporations specified in s. 71.26 (1), and every nuclear decommissioning trust or reserve fund shall annually pay a franchise tax according to or measured by its entire Wisconsin net income of the preceding taxable year at the rate set forth in s. 71.27 (2). In addition, except as provided in sub. (3) and s. 71.26 (1), a corporation that ceases doing business in this state and a nuclear decommissioning trust or reserve fund that is terminated shall pay a special franchise tax according to or measured by its entire Wisconsin net income for the taxable year during which the corporation ceases doing business in this state or the nuclear decommissioning trust or reserve fund is terminated at the rates under s. 71.27 (2). Every corporation organized under the laws of this state shall be deemed to be residing within this state for the purposes of this franchise tax. All provisions of this chapter and ch. 73 relating to income taxation of corporations shall apply to franchise taxes imposed under this subsection, unless the context requires otherwise. The tax imposed by this subsection on national banking associations shall be in lieu of all taxes imposed by this state on national banking associations to the extent it is not permissible to tax such associations under federal law.

(3) ACTIVITIES THAT DO NOT CREATE NEXUS. A foreign corporation may do business, exercise its franchise and own property in this state to the limited extent referred to in the following activities, in addition to those activities permitted under P.L. 86−272, without subjecting itself to the imposition of the income or franchise tax under subs. (1) and (2):

(a) The storage for any length of time in this state in or on property owned by a person other than the foreign corporation of its tangible personal property and the delivery of its tangible personal property to another person in this state when such storage and delivery is for fabricating, processing, manufacturing or printing by that other person in this state.

(b) The storage for any length of time in this state in or on property owned by a person other than the foreign corporation, and the shipment or delivery outside this state by another person in this state, of the entire amount of the foreign corporation's tangible personal property fabricated, processed, manufactured or printed in this state.

(c) If the foreign corporation is a publisher, the purchase from a printer of a printing service or of tangible personal property printed in this state for the publisher and the storage of the printed material for any length of time in this state in or on property owned by a person other than the publisher, whether or not the tangible personal property is subsequently resold or delivered in this state or shipped or delivered outside this state.

History: 1987 a. 312.

71.24 Filing returns; extensions; payment of tax. (1) FILING RETURNS. Every corporation, except corporations all of whose income is exempt from taxation and except as provided in sub. (1m), shall furnish to the department a true and accurate statement, on or before March 15 of each year, except that returns for fiscal years ending on some other date than December 31 shall be furnished on or before the 15th day of the 3rd month following

the close of such fiscal year and except that returns for less than a full taxable year shall be furnished on or before the date applicable for federal income taxes under the internal revenue code, in such manner and form and setting forth such facts as the department deems necessary to enforce this chapter. Every corporation that is required to furnish a statement under this subsection and that has income that is not taxable under this subchapter shall include with its statement a report that identifies each item of its nontaxable income. The statement shall be subscribed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The fact that an individual's name is subscribed on the return shall be prima facie evidence that the individual is authorized to subscribe the return on behalf of the corporation.

(1m) UNRELATED BUSINESS INCOME STATEMENT. Every corporation subject to a tax on unrelated business income under s. 71.26 (1) (a), if that corporation is required to file for federal income tax purposes, shall furnish to the department of revenue a true and accurate statement on or before the date on or before which it is required to file for federal income tax purposes. The requirements about manner, form and subscription under sub. (1) apply to statements under this subsection.

(2) COPIES OF FEDERAL RETURN. Each corporation that is required to file a return under this section shall file with that return a copy of its federal income tax return for the same taxable year.

(3) INACTIVE CORPORATIONS. Whenever a corporation has been completely inactive for an entire taxable year, in lieu of filing the statements and information otherwise required by this section, it may file a declaration, on a form to be provided by the department, subscribed by its president, if a resident of this state, and, if not a resident, then by another officer residing in this state, attesting to such inactivity. Such declaration must be filed prior to the otherwise due date for its Wisconsin return for such taxable year. Thereafter the corporation need not file such statements or information for any subsequent year unless specifically requested to do so by the department or unless in a subsequent year the corporation has been activated or reactivated.

(4) FILING RETURNS BY RECEIVER, TRUSTEE IN BANKRUPTCY OR ASSIGNEE. If a receiver, trustee in bankruptcy or assignee, by order of a court, by operation of law or otherwise, has possession of all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee or assignee shall make the return of income for such corporation in the manner and form that corporations are required to make such returns.

(5) DEPARTMENT MAY REQUIRE FILING. Nothing contained in this section shall preclude the department from requiring any corporation to file a return when in the judgment of the department a return should be filed.

(6) CHANGING REPORTING PERIOD. (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.

(b) If a corporation changes its basis of reporting from a calendar year to a fiscal year a separate return shall be made for the period between the close of the last calendar year and the date designated as the close of the fiscal year. If the change is from a fiscal year to a calendar year, a separate return shall be made for the period between the close of the last fiscal year and the following December 31. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. In no case shall a separate income or franchise tax return be made for a period of more than 12 months.

(c) If a separate corporation income tax return is made for a fractional part of a year for federal income tax purposes, the corporation shall file a separate Wisconsin income or franchise tax return for that fractional year. The income shall be computed and reported on the basis of the period for which the separate return is made, and that fractional part of a year shall constitute a taxable year, except that if a corporation terminates, under section 1362 (d) (1) or (2) of the internal revenue code, its election to be treated as an S corporation for federal income tax purposes the corporation may allocate its items of income, loss or deduction between its short taxable year as a tax−option corporation and its short taxable year as a nontax−option corporation according to the method under section 1362 (e) (2) of the internal revenue code.

(d) If a separate income [or franchise] tax return is made for a short period under par. (b) on account of a change in the taxable year, the net income for such short period shall be placed on an annual basis using the method applicable for federal income taxes under section 443 (b) (1) of the internal revenue code.

(7) EXTENSIONS. In the case of a corporation required to file a return, when sufficient reason is shown, the department of revenue may on written request allow an extension of 30 days or until the original due date of the corporation's federal return, whichever is later, if the corporation has not received an extension on its federal return. Any extension of time granted by law or by the internal revenue service for the filing of corresponding federal returns shall extend the time for filing under this subchapter to 30 days after the federal due date if a copy of any extension requested of the internal revenue service is filed with the return. Termination of an automatic extension by the internal revenue service, or its refusal to grant such automatic extension, shall similarly require that any returns due under this subchapter are due on or before 30 days after the date for termination fixed by the internal revenue service. Except for payments of estimated taxes, income or franchise taxes payable upon the filing of the tax return shall not become delinquent during such extension period, but shall be subject to interest at the rate of 12% per year during such period.

(9) DELINQUENCIES. (a) Corporation franchise and income taxes not paid on or before the 15th day of the 3rd month following the close of the taxable year shall be deemed delinquent.

(b) Additional income or franchise taxes assessed under s. 71.74 (1) to (5), (7) and (8) shall become delinquent if not paid on or before the due date stated in the notice to the taxpayer.

(10) ADVANCE PAYMENTS. The department of revenue shall accept in advance income or franchise taxes and surtaxes from taxpayers desirous of making such payments before the same shall become due and payable. Advance payment of taxes under this subsection shall not relieve the taxpayer from additional taxes which may result from subsequent legislation or from additional taxable income disclosed or discovered subsequent to such payment.

(11) SMALL BALANCES. No person is required to pay a balance due of less than $1.

History: 1987 a. 312; 1987 a. 411 ss. 91, 116; 1989 a. 31; 1991 a. 39; 1993 a. 199; 1995 a. 428; 1997 a. 27.

71.25 Situs of income; allocation and apportionment.

For purposes of determining the situs of income under this section:

(1) BENEFICIARIES. The situs of income derived by any taxpayer as the beneficiary of the estate of a decedent or of a trust

estate shall be determined as if such income had been received without the intervention of a fiduciary.

(2) GRANTOR TRUSTS. The situs of income received by a trustee, which income, under the internal revenue code, is taxable to the grantor of the trust or to any person other than the trust, shall be determined as if such income had been actually received directly by such grantor or such other person, without the intervention of the trust.

(4) CORPORATIONS ENGAGED IN BUSINESS WHOLLY WITHIN THIS STATE. For corporations engaged in business wholly within this state, all income is subject to, or included in the measure of, the Wisconsin income or franchise tax.

(5) CORPORATIONS ENGAGED IN BUSINESS BOTH WITHIN AND WITHOUT THE STATE. (a) *Apportionable income.* Except as provided in sub. (6), corporations engaged in business both within and without this state are subject to apportionment. Apportionable income includes all income or loss of corporations, other than nonapportionable income as specified in par. (b), including, but not limited to, income, gain or loss from the following sources:

1. Sale of inventory.
2. Farms, mines and quarries.
3. Sale of scrap and by−products.
4. Commissions.
5. Sale of real property or tangible personal property used in the production of business income.
6. Royalties from intangible assets.
7. Redemption of securities.
8. Interest on trade accounts and trade notes receivable.
9. Interest and dividends if the operations of the payer are unitary with those of the payee, or if those operations are not unitary but the investment activity from which that income is derived is an integral part of a unitary business and the payer and payee are neither affiliates nor related as parent company and subsidiary. In this subdivision, "investment activity" includes decision making relating to the purchase and sale of stocks and other securities, investing surplus funds and the management and record keeping associated with corporate investments, not including activities of a broker or other agent in maintaining an investment portfolio.
10. Sale of intangible assets if the operations of the company in which the investment was made were unitary with those of the investing company, or if those operations were not unitary but the investment activity from which that gain or loss was derived is an integral part of a unitary business and the companies were neither affiliates nor related as parent company and subsidiary. In this subdivision, "investment activity" has the meaning given under subd. 9.
11. Management fees.
12. Franchise fees.
13. Treble damages.
14. A partner's share of income or loss from a partnership or a member's share of income or loss from a limited liability company.
16. Foreign exchange gain or loss.
17. Sale of receivables.
18. Rentals of, or royalties from, real property or tangible personal property if that real property or tangible personal property is used in the business.
19. Sale or exchange of petroleum at the wellhead.
20. Personal services performed by employes of the corporation.
21. Patents, copyrights, trademarks, trade names, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals and technical know−how.
22. Redemption of the corporation's bonds.
23. Interest on state and federal tax refunds on business income or business property.
24. Pari−mutuel wager winnings or purses under ch. 562.

(b) *Nonapportionable income.* 1. Income, gain or loss from the sale of nonbusiness real property or nonbusiness tangible personal property, rental of nonbusiness real property or nonbusiness tangible personal property and royalties from nonbusiness real property or nonbusiness tangible personal property are nonapportionable and shall be allocated to the situs of the property.

2. All income, gain or loss from intangible property that is earned by a personal holding company, as defined in section 542 of the internal revenue code, as amended to December 31, 1974, shall be allocated to the residence of the taxpayer.

(6) ALLOCATION AND SEPARATE ACCOUNTING AND APPORTIONMENT FORMULA. Corporations engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state. The amount of such income attributable to Wisconsin may be determined by an allocation and separate accounting thereof, when the business of such corporation within the state is not an integral part of a unitary business, but the department of revenue may permit an allocation and separate accounting in any case in which it is satisfied that the use of such method will properly reflect the income taxable by this state. In all cases in which allocation and separate accounting is not permissible, the determination shall be made in the following manner: for all businesses except financial organizations, public utilities, railroads, sleeping car companies, car line companies and corporations or associations that are subject to a tax on unrelated business income under s. 71.26 (1) (a) there shall first be deducted from the total net income of the taxpayer the part thereof (less related expenses, if any) that follows the situs of the property or the residence of the recipient. The remaining net income shall be apportioned to Wisconsin by use of an apportionment fraction composed of a sales factor under sub. (9) representing 50% of the fraction, a property factor under sub. (7) representing 25% of the fraction and a payroll factor under sub. (8) representing 25% of the fraction.

(7) PROPERTY FACTOR. For purposes of sub. (5):

(a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period. Cash on hand or in the bank, shares of stock, notes, bonds, accounts receivable, or other evidence of indebtedness, special privileges, franchises, goodwill, or property the income of which is not taxable or is separately allocated, shall not be considered tangible property nor included in the apportionment.

(b) Property used in the production of nonapportionable income or losses shall be excluded from the numerator and denominator of the property factor. Property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the property factor so as to exclude, as near as possible, the portion of such property producing the nonapportionable income or loss.

(c) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the taxpayer less any annual rental received by the taxpayer from sub−rentals.

(d) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the secretary of revenue may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(8) PAYROLL FACTOR. For purposes of sub. (5):

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(b) Compensation is paid in this state if:

1. The individual's service is performed entirely within this state;

2. The individual's service is performed within and without this state, but the service performed without this state is incidental to the individual's service within this state;

3. A portion of the service is performed within this state and the base of operations of the individual is in this state;

4. A portion of the service is performed within this state and, if there is no base of operations, the place from which the individual's service is directed or controlled is in this state;

5. A portion of the service is performed within this state and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in this state; or

6. The individual is neither a resident of nor performs services in this state but is directed or controlled from an office in this state and returns to this state periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

(c) Compensation related to the operation, maintenance, protection or supervision of property used in the production of both apportionable and nonapportionable income or losses shall be partially excluded from the numerator and denominator of the payroll factor so as to exclude, as near as possible, the portion of pay related to the operation, maintenance, protection and supervision of property used in the production of nonapportionable income.

(d) In this subsection, compensation includes deductible management or service fees paid to a related corporation as consideration for the performance of personal services, and the situs of those fees is in this state if the services fulfill one of the requirements under par. (b). The recipient of the fees may not include the compensation paid to its employes with respect to personal services in either the numerator or denominator of its payroll factor. Except for management or service fees, payments made to a related corporation, an independent contractor or any person not properly classifiable as an employe are excluded. In this paragraph, "related corporation" means a corporation which is part of a controlled group as defined in section 267 (f) (1) of the internal revenue code.

(e) If the company has no employes and pays no management or service fees or the department determines that employes are not a substantial income−producing factor and that the management or service fees paid are insubstantial, the department may order or permit the elimination of the payroll factor.

(9) SALES FACTOR. For purposes of sub. (5):

(a) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period. For sales of tangible personal property, the numerator of the sales factor is the sales of the taxpayer during the tax period under par. (b) 1. and 2. plus 50% of the sales of the taxpayer during the tax period under pars. (b) 2m. and 3. and (c).

(b) Sales of tangible personal property are in this state if any of the following occur:

1. The property is delivered or shipped to a purchaser, other than the federal government, within this state regardless of the f.o.b. point or other conditions of the sale.

2. The property is shipped from an office, store, warehouse, factory or other place of storage in this state and delivered to the federal government within this state regardless of the f.o.b. point or other conditions of sale.

2m. The property is shipped from an office, store, warehouse, factory or other place of storage in this state and delivered to the federal government outside this state and the taxpayer is not within the jurisdiction, for income or franchise tax purposes, of the destination state.

3. The property is shipped from an office, store, warehouse, factory or other place of storage in this state to a purchaser other than the federal government and the taxpayer is not within the jurisdiction, for income or franchise tax purposes, of the destination state.

(c) Sales of tangible personal property by an office in this state to a purchaser in another state and not shipped or delivered from this state are in this state if the taxpayer is not within the jurisdiction for income tax purposes of either the state from which the property is delivered or shipped or of the destination state.

(d) Sales, other than sales of tangible personal property, are in this state if the income−producing activity is performed in this state. If the income−producing activity is performed both in and outside this state the sales shall be divided between those states having jurisdiction to tax such business in proportion to the direct costs of performance incurred in each such state in rendering this service. Services performed in states which do not have jurisdiction to tax the business shall be deemed to have been performed in the state to which compensation is allocated by sub. (8).

(e) *Sales defined.* In this subsection, "sales" includes, but is not limited to, the following items related to the production of business income:

1. Gross receipts from the sale of inventory.

2. Gross receipts from the operation of farms, mines and quarries.

3. Gross receipts from the sale of scrap or by−products.

4. Gross commissions.

5. Gross receipts from personal and other services.

6. Gross rents from real property or tangible personal property.

7. Interest on trade accounts and trade notes receivable.

8. A partner's share of the partnership's gross receipts or a member's share of the limited liability company's gross receipts.

9. Gross management fees.

10. Gross royalties from income−producing activities.

11. Gross franchise fees from income−producing activities.

(f) *Items that are not sales.* The following items are among those that are not included in "sales" in this subsection:

1. Gross receipts and gain or loss from the sale of tangible business assets, except those under par. (e) 1., 2. and 3.

2. Gross receipts and gain or loss from the sale of nonbusiness real or tangible personal property.

3. Gross rents and rental income or loss from real property or tangible personal property if that real property or tangible personal property is not used in the production of business income.

4. Royalties from nonbusiness real property or nonbusiness tangible personal property.

5. Proceeds and gain or loss from the redemption of securities.

6. Interest, except interest under par. (e) 7., and dividends.

7. Gross receipts and gain or loss from the sale of intangible assets, except those under par. (e) 1.

8. Dividends deductible by corporations in determining net income.

9. Gross receipts and gain or loss from the sale of securities.

10. Proceeds and gain or loss from the sale of receivables.

11. Refunds, rebates and recoveries of amounts previously expended or deducted.

12. Other items not includable in apportionable income.

13. Foreign exchange gain or loss.

14. Royalties and income from passive investments in the property under sub. (5) (a) 21.

16. Pari−mutuel wager winnings or purses under ch. 562.

(10) RAILROADS, FINANCIAL ORGANIZATIONS AND PUBLIC UTILITIES. (a) In this section, "financial organization" means any bank,

trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, brokerage house, underwriter or any type of insurance company.

(b) In this section, "public utility" means any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications or the production, transmission, sale, delivery, or furnishing of electricity, water or steam the rates of charges for goods or services of which have been established or approved by a federal, state or local government or governmental agency. "Public utility" also means any business entity providing service to the public and engaged in the transportation of goods and persons for hire, as defined in s. 194.01 (4), regardless of whether or not the entity's rates or charges for services have been established or approved by a federal, state or local government or governmental agency.

(c) The net business income of railroads, sleeping car companies, car line companies, financial organizations and public utilities requiring apportionment shall be apportioned pursuant to rules of the department of revenue, but the income taxed is limited to the income derived from business transacted and property located within the state.

(11) DEPARTMENT MAY WAIVE FACTOR. Where, in the case of any corporation engaged in business within and without the state of Wisconsin and required to apportion its income as provided in sub. (6), it shall be shown to the satisfaction of the department of revenue that the use of any one of the 3 factors provided in sub. (6) gives an unreasonable or inequitable final average ratio because of the fact that such corporation does not employ, to any appreciable extent in its trade or business in producing the income taxed, the factors made use of in obtaining such ratio, this factor may, with the approval of the department of revenue, be omitted in obtaining the final average ratio which is to be applied to the remaining net income.

(12) DEPARTMENT MAY APPORTION BY RULE. If the income of any such corporation properly assignable to the state of Wisconsin cannot be ascertained with reasonable certainty by the methods under this section, then the same shall be apportioned and allocated under such rules as the department of revenue may prescribe.

(13) UNRELATED BUSINESS TAXABLE INCOME. The unrelated business taxable income of organizations that are subject to tax on that income under s. 71.26 (1) (a) shall be apportioned under the department of revenue's rules.

(14) ALTERNATIVE ALLOCATION. (a) Upon request by a corporation on or before January 1, 2000, the department of revenue may authorize a corporation or a subsidiary thereof to use or continue to use a different method of apportioning its income to this state for purposes of this subchapter, and may specify the method of apportionment that the corporation or subsidiary shall use. This paragraph is to be used exclusively in the event of a corporate restructuring that would result in an unfair representation of the degree of business activity in this state. In no instance may the alternative method proposed under the new corporate structure result in less franchise or income tax revenue to the state than the current corporate structure is liable for, given the same overall level of sales, payroll and property.

(b) Before the department of revenue grants permission to any corporation to use an alternative method of allocation under par. (a), the department of revenue shall promulgate rules that specify in more detail the circumstances in which that authority may be granted and the kinds of alternative methods that the department may authorize.

(c) At least 14 days before giving final approval to an alternative method of apportionment under par. (a), the department of revenue shall submit the proposed alternative method of apportionment to the cochairpersons of the joint committee for review of administrative rules, together with a description of the proposed alternative and the reasons for the proposed alternative. If, within 14 days after receipt of the proposed alternative method, the cochairpersons of the joint committee for review of administrative rules do not notify the department of revenue that the proposed alternative must be promulgated as an administrative rule in order to be used, the department of revenue may give final approval to the proposed method without promulgating an administrative rule. If the cochairpersons of the joint committee for review of administrative rules notify the department of revenue within 14 days after receipt of the proposed alternative that the proposed alternative must be promulgated as an administrative rule, the proposed alternative may not be used until it is promulgated as an administrative rule under ch. 227.

History: 1987 a. 312; 1987 a. 411 ss. 57, 62, 117 to 123; 1989 a. 31; 1991 a. 39, 269; 1993 a. 112; 1997 a. 299.

Under (6) it is within the department's discretion to decide whether to permit multistate business to deviate from apportionment method. Nelson Bros. v. Revenue Dept., 152 W (2d) 746, 449 NW (2d) 328 (Ct. App. 1989.)

When an entity's operations constitute a "unitary business" under sub. (6) subjecting its income to apportionment discussed. Chilstrom Erecting Corp. v. DOR, 174 W (2d) 517, 497 NW (2d) 785 (Ct. App. 1993).

Corporation's investment income which served an "operational" function and was not unrelated to corporate functions within the state was subject to apportionment. Port Affiliates, Inc. v. DOR, 190 W (2d) 271, 526 NW (2d) 806 (Ct. App. 1994).

71.26 Income computation. (1) EXEMPT AND EXCLUDABLE INCOME. There shall be exempt from taxation under this subchapter income as follows:

(a) *Certain corporations.* Income of corporations organized under ch. 185, except income of a cooperative sickness care association organized under s. 185.981, or of a service insurance corporation organized under ch. 613, that is derived from a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3), or operating under subch. I of ch. 616 which are bona fide cooperatives operated without pecuniary profit to any shareholder or member, or operated on a cooperative plan pursuant to which they determine and distribute their proceeds in substantial compliance with s. 185.45, and the income, except the unrelated business taxable income as defined in section 512 of the internal revenue code and except income that is derived from a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3), of all religious, scientific, educational, benevolent or other corporations or associations of individuals not organized or conducted for pecuniary profit. This paragraph does not apply to the income of savings banks, mutual loan corporations or savings and loan associations. This paragraph applies to the income of credit unions except to the income of any credit union that is derived from public deposits for any taxable year in which the credit union is approved as a public depository under ch. 34 and acts as a depository of state or local funds under s. 186.113 (20). For purposes of this paragraph, the income of a credit union that is derived from public deposits is the product of the credit union's gross annual income for the taxable year multiplied by a fraction, the numerator of which is the average monthly balance of public deposits in the credit union during the taxable year, and the denominator of which is the average monthly balance of all deposits in the credit union during the taxable year.

(b) *Political units.* Income received by the United States, the state and all counties, cities, villages, towns, school districts, technical college districts, joint local water authorities created under s. 66.0735 or other political units of this state.

(be) *Certain authorities.* Income of the University of Wisconsin Hospitals and Clinics Authority.

(bm) *Certain local districts.* Income of a local exposition district created under subch. II of ch. 229 or a local professional baseball park district created under subch. III of ch. 229.

(c) *Cooperative associations or corporations.* Income of cooperative associations or corporations engaged in marketing farm products for producers, which turn back to such producers the net proceeds of the sales of their products; provided that such corporations or associations have at least 25 stockholders or mem-

bers delivering such products and that their dividends have not, during the preceding 5 years, exceeded 8% per year; also income of associations and corporations engaged solely in processing and marketing farm products for one such cooperative association or corporation and which do not charge for such marketing and processing more than a sufficient amount to pay the cost of such marketing and processing and 8% dividends on their capital stock and to add 5% to their surplus.

(d) *Bank in liquidation.* Income of any bank placed in the hands of the division of banking for liquidation under s. 220.08, if the tax levied, assessed or collected under this chapter on account of such bank diminishes the assets thereof so that full payment of all depositors cannot be made. Whenever the division of banking certifies to the department of revenue that the tax or any part thereof levied and assessed under this chapter against any such bank will so diminish the assets thereof that full payment of all depositors cannot be made, the department of revenue shall cancel and abate such tax or part thereof, together with any penalty thereon. This paragraph shall apply to unpaid taxes which were levied and assessed subsequent to the time the bank was taken over by the division of banking.

(e) *Menominee Indian tribe; distribution of assets.* No distribution of assets from the United States to the members of the Menominee Indian tribe as defined in s. 49.385 or their lawful distributees, or to any corporation, or organization, created by the tribe or at its direction pursuant to section 8 of P.L. 83−399, as amended, and no issuance of stocks, bonds, certificates of indebtedness, voting trust certificates or other securities by any such corporation or organization, or voting trust, to such members of the tribe or their lawful distributees shall be subject to income or franchise taxes under this chapter; provided that so much of any cash distribution made under said P.L. 83−399 as consists of a share of any interest earned on funds deposited in the treasury of the United States pursuant to the supplemental appropriation act, 1952, (65 Stat. 736, 754) shall not by virtue of this paragraph be exempt from the individual income tax of this state in the hands of the recipients for the year in which paid. For the purpose of ascertaining the gain or loss resulting from the sale or other disposition of such assets and stocks, bonds, certificates of indebtedness and other securities under this chapter, the fair market value of such property, on termination date as defined in s. 70.057 (1), 1967 stats., shall be the basis for determining the amount of such gain or loss.

(f) *Real estate mortgage investment conduits.* The income of a real estate mortgage investment conduit that is exempt for federal income tax purposes under section 860A of the internal revenue code.

(1m) EXEMPTION FROM THE INCOME TAX. The interest and income from the following obligations are exempt from the tax imposed under s. 71.23 (1):

(b) Those issued under s. 66.40.

(c) Those issued under s. 66.431.

(d) Those issued under s. 66.4325.

(e) Those issued under s. 234.65 to fund an economic development loan to finance construction, renovation or development of property that would be exempt under s. 70.11 (36).

(f) Those issued under subch. II of ch. 229.

(g) Those issued under s. 66.066 by a local professional baseball park district.

(2) NET INCOME. (a) *Corporations in general.* The "net income" of a corporation means the gross income as computed under the internal revenue code as modified under sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit computed under s. 71.28 (1) and (3) to (5) plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds) and (1dx) and not passed through by a partnership, limited liability company or tax−option corporation that has added that amount to the partnership's, limited liability company's or tax−option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or other disposition of assets the gain from which would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise disposed of at a gain and minus deductions, as computed under the internal revenue code as modified under sub. (3), plus or minus, as appropriate, an amount equal to the difference between the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned or otherwise disposed of in a taxable transaction during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

(b) *Regulated investment companies, real estate mortgage investment conduits, real estate investment trusts and financial asset securitization investment trusts.* 5. For taxable years that begin after December 31, 1989, and before January 1, 1991, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit or real estate investment trust under the internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income or federal real estate investment trust taxable income of the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1989, do not apply to this subdivision with respect to taxable years that begin after December 31, 1989, and before January 1, 1991, except that changes to the internal revenue code made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

6. For taxable years that begin after December 31, 1990, and before January 1, 1992, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit or real estate investment trust under the internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−227, P.L. 102−486, P.L.

103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income or federal real estate investment trust taxable income of the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1990, do not apply to this subdivision with respect to taxable years that begin after December 31, 1990, and before January 1, 1992, except that changes to the internal revenue code made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

7. For taxable years that begin after December 31, 1991, and before January 1, 1993, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit or real estate investment trust under the internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income or federal real estate investment trust taxable income of the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1991, do not apply to this subdivision with respect to taxable years that begin after December 31, 1991, and before January 1, 1993, except that changes to the internal revenue code made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

8. For taxable years that begin after December 31, 1992, and before January 1, 1994, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit or real estate investment trust under the internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1., 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income or federal real estate investment trust taxable income of the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L.

100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1., 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1992, do not apply to this subdivision with respect to taxable years that begin after December 31, 1992, and before January 1, 1994, except that changes to the internal revenue code made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

9. For taxable years that begin after December 31, 1993, and before January 1, 1995, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit or real estate investment trust under the internal revenue code as amended to December 31, 1993, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, and as amended by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income or federal real estate investment trust taxable income of the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1993, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, and as amended by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1993, do not apply to this subdivision with respect to taxable years that begin after December 31, 1993, and before January 1, 1995, except that changes to the internal revenue code made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

10. For taxable years that begin after December 31, 1994, and before January 1, 1996, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit or real estate investment trust under the internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income or federal real estate investment trust taxable income of

the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, and P.L. 105−34 except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1994, do not apply to this subdivision with respect to taxable years that begin after December 31, 1994, and before January 1, 1996, except that changes made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

11. For taxable years that begin after December 31, 1995, and before January 1, 1997, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit or real estate investment trust under the internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income or federal real estate investment trust taxable income of the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1995, do not apply to this subdivision with respect to taxable years that begin after December 31, 1995, and before January 1, 1997, except that changes to the Internal Revenue Code made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

12. For taxable years that begin after December 31, 1996, and before January 1, 1998, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit, real estate investment trust or financial asset securitization investment trust under the Internal Revenue Code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as amended by P.L. 105−33 and P.L. 105−34, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d),

13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income, federal real estate investment trust or financial asset securitization investment trust taxable income of the corporation, conduit or trust as determined under the internal revenue code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188 and as amended by P.L. 105−33 and P.L. 105−34, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The Internal Revenue Code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as amended by P.L. 105−33 and P.L. 105−34, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the internal revenue code enacted after December 31, 1996, do not apply to this subdivision with respect to taxable years that begin after December 31, 1996, and before January 1, 1998, except that changes to the Internal Revenue Code made by P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

13. For taxable years that begin after December 31, 1997, for a corporation, conduit or common law trust which qualifies as a regulated investment company, real estate mortgage investment conduit, real estate investment trust or financial asset securitization investment trust under the Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191 , P.L. 104−193, P.L. 105−33 and P.L. 105−34, "net income" means the federal regulated investment company taxable income, federal real estate mortgage investment conduit taxable income, federal real estate investment trust or financial asset securitization investment trust taxable income of the corporation, conduit or trust as determined under the Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191 , P.L. 104−193, P.L. 105−33 and P.L. 105−34, except that property that, under s. 71.02 (1) (c) 8. to 11., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980, and except that the appropriate amount shall be added or subtracted to reflect differences between the depreciation or adjusted basis for federal income tax purposes and the depreciation or adjusted basis under this chapter of any property disposed of during the taxable year. The Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191 , P.L. 104−193, P.L. 105−33 and P.L. 105−34, applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the Internal Revenue Code enacted after December 31, 1997, do not apply to this subdivision with respect to taxable years that begin after December 31, 1997.

(3) MODIFICATIONS. The income of a corporation shall be computed under the internal revenue code, except a corporation under sub. (2) (b), as modified in the following ways:

(ag) Section 61 (relating to the definition of gross income) is modified to exclude income received by the original policyholder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract, as defined in s. 632.68 (1) (d).

(ar) Section 78 (relating to treating taxes as dividends) is excluded.

(b) Section 103 (relating to an exemption for interest) is excluded and replaced, for corporations subject to taxation under s. 71.23 (1), by the rule that any interest income not included in federal taxable income, except interest under sub. (1m), is added to federal taxable income and any interest income which is by federal law exempt from taxation by this state is excluded, and replaced, for corporations subject to taxation under s. 71.23 (2), by the rule that any interest income not included in federal taxable income is added to federal taxable income.

(c) Section 108 (b) (relating to reduction of tax attributes) is modified so that the net operating loss under sub. (4), not the federal net operating loss, and Wisconsin credits, not federal credits, are applied, and the reduction rate for a credit carry−over is 7.9%, not 33 1/3%.

(d) Section 133 (relating to an exclusion for interest) is excluded.

(e) Section 162 (relating to trade or business expenses) is modified as follows:

1. 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 $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.

2. 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. 71.70 (2).

3. So that payments for wages, salaries, bonuses, interest or other expenses paid to an entertainer or entertainment corporation may be deducted only if the corporation complies with ss. 71.63 (3) (b), 71.64 (4) and (5) and 71.80 (15) (e).

(f) Section 164 (a) is modified so that foreign taxes are not deductible unless the income on which the tax is based is taxable under this chapter and so that gross receipts taxes assessed in lieu of property taxes, the license fee under s. 76.28 and the taxes under ss. 70.375, 76.81 and 76.91 are deductible.

(g) Section 164 (a) (3) is modified so that state taxes and taxes of the District of Columbia that are value−added taxes, single business taxes or taxes on or measured by all or a portion of net income, gross income, gross receipts or capital stock are not deductible.

(h) Section 164 (a) (4) as it relates to a deduction for the windfall profits tax is excluded.

(hd) Section 164 (a) as it relates to a deduction for the environmental tax that is imposed under section 59A is excluded.

(hm) Section 171 is modified so that the rules for federally taxable bonds also apply to bonds that are taxable under par. (b) and the rules for federally tax−exempt bonds apply to bonds that are exempt from tax under this chapter.

(i) Section 172 is excluded and replaced by the treatment of business loss carry−forwards under sub. (4).

(j) Sections 243, 244, 245, 246 and 246A are excluded and replaced by the rule that corporations may deduct from income dividends received from a corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 70% of the total combined voting stock of the payor corporation. In this paragraph, "dividends received" means gross dividends minus taxes on those dividends paid to a foreign nation and claimed as a deduction under this chapter. The same dividends may not be deducted more than once.

(k) Section 247 (relating to dividends on preferred stock of public utilities) is excluded.

(L) Section 265 is excluded and replaced by the rule that any amount otherwise deductible under this chapter that is directly or indirectly related to income wholly exempt from taxes imposed by this chapter or to losses from the sale or other disposition of assets the gain from which would be exempt under this paragraph if the assets were sold or otherwise disposed of at a gain is not deductible. In this paragraph, "wholly exempt income", for corporations subject to franchise or income taxes, includes amounts received from affiliated or subsidiary corporations for interest, dividends or capital gains that, because of the degree of common ownership, control or management between the payor and payee, are not subject to taxes under this chapter. In this paragraph, "wholly exempt income", for corporations subject to income taxation under this chapter, also includes interest on obligations of the United States. In this paragraph, "wholly exempt income" does not include income excludable, not recognized, exempt or deductible under specific provisions of this chapter. If any expense or amount otherwise deductible is indirectly related both to wholly exempt income or loss and to other income or loss, a reasonable proportion of the expense or amount shall be allocated to each type of income or loss, in light of all the facts and circumstances.

(m) Section 267 (relating to transactions between related taxpayers) is modified so that gains may be reduced only if the corresponding loss was incurred while the corporation was subject to tax under this chapter.

(ms) Section 291 (a) (3) is modified so that it does not apply to deductions that are allocable to income that is taxable under this chapter.

(n) Sections 381, 382 and 383 (relating to carry−overs in certain corporate acquisitions) are modified so that they apply to losses under sub. (4) and credits under s. 71.28 (1di), (1dL), (1dx) and (3) to (5) instead of to federal credits and federal net operating losses.

(o) Section 468A (relating to nuclear decommissioning trust and reserve funds) is modified so that the deduction under section 468A (a) is allowed only if the fund is subject to tax under this chapter.

(p) Sections 501 to 511 and 513 to 528 (relating to exempt organizations) are excluded, except as they pertain to the definitions of unrelated business taxable income in section 512, and replaced by the treatment of exemptions under sub. (1).

(q) Sections 613 and 613A (relating to percentage depletion) are excluded.

(s) Sections 951 to 964 (relating to controlled foreign corporations) are excluded.

(t) Sections 991 to 994, 995 as amended by section 802 of P.L. 98−369, and section 999 as amended by section 802 of P.L. 98−369 (relating to domestic international sales corporations) are excluded.

(tm) Section 1016 (a) is modified so that the rules for federally taxable bonds also apply to bonds that are taxable under par. (b) and the rules for federally tax−exempt bonds apply to bonds that are exempt from tax under this chapter.

(u) Section 1017 (relating to adjustments to basis because of discharge of indebtedness) is modified to reflect the modification under par. (c).

(v) Section 1033 is modified so that it does not apply to involuntary conversions of property in this state that produces nonbusiness income and that is replaced with similar property outside this state and to involuntary conversions of property in this state that produces business income and that is replaced with property outside this state if at the time of replacement the taxpayer is not subject to tax under this chapter.

(x) Sections 1501 to 1505, 1551, 1552, 1563 and 1564 (relating to consolidated returns) are excluded.

(y) A corporation may compute amortization and depreciation under either the federal internal revenue code as amended to December 31, 1997, or the federal internal revenue code in effect for the taxable year for which the return is filed, except that property first placed in service by the taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the internal revenue code as amended to December 31, 1980, and property first placed in service in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980.

(4) NET BUSINESS LOSS CARRY−FORWARD. A corporation, except a tax−option corporation or an insurer to which s. 71.45 (4)

applies, may offset against its Wisconsin net business income any Wisconsin net business loss sustained in any of the next 15 preceding taxable years, if the corporation was subject to taxation under this chapter in the taxable year in which the loss was sustained, to the extent not offset by other items of Wisconsin income in the loss year and by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed. For purposes of this subsection Wisconsin net business income or loss shall consist of all the income attributable to the operation of a trade or business in this state, less the business expenses allowed as deductions in computing net income. The Wisconsin net business income or loss of corporations engaged in business within and without the state shall be determined under s. 71.25 (6) and (10) to (12). Nonapportionable losses having a Wisconsin situs under s. 71.25 (5) (b) shall be included in Wisconsin net business loss; and nonapportionable income having a Wisconsin situs under s. 71.25 (5) (b), whether taxable or exempt, shall be included in other items of Wisconsin income and Wisconsin net business income for purposes of this subsection.

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237.

Under s. 71.06 (1), 1975 stats. [now see 71.26 (4)], loss carry−over privilege was limited to "identical taxpayer"; merging corporations not entitled to privilege. Dept. of Revenue v. U.S. Shoe Corp. 158 W (2d) 123, 462 NW (2d) 233 (Ct. App. 1990).

71.265 Previously exempt corporations; basis and depreciation. The Wisconsin adjusted basis of the property of any corporation that has, in any taxable year before it ceases to be exempt from tax under this chapter, taken depreciation or amortization of depreciable property for federal income tax purposes shall be the adjusted basis of that property as computed for federal income tax purposes as of the beginning of the taxable year in which the corporation ceases to be exempt. The corporation may continue, after it ceases to be exempt, to depreciate that property under the method used previously for federal income tax purposes.

History: 1987 a. 399; 1987 a. 411 s. 33; Stats. 1987 s. 71.265.

71.27 Rates of taxation. (1) The taxes to be assessed, levied and collected upon Wisconsin net incomes of corporations shall be computed at the rate of 7.9%.

(2) The corporation franchise tax imposed under s. 71.23 (2) and measured by Wisconsin net income shall be computed at the rate of 7.9%.

History: 1987 a. 312.

71.275 Rate changes. If a rate under s. 71.27 changes during a taxable year, the taxpayer shall compute the tax for that taxable year by the methods applicable to the federal income tax under section 15 of the internal revenue code.

History: 1989 a. 31.

71.28 Credits. (1) COMMUNITY DEVELOPMENT FINANCE CREDIT. (a) Any corporation which contributes an amount to the community development finance authority under s. 233.03, 1985 stats., or to the housing and economic development authority under s. 234.03 (32) and, in the same year, purchases common stock or partnership interests of the community development finance company issued under s. 233.05 (2), 1985 stats., or s. 234.95 (2) in an amount no greater than the contribution to the authority may credit against taxes otherwise due an amount equal to 75% of the purchase price of the stock or partnership interests. The credit received under this paragraph may not exceed 75% of the contribution to the community development finance authority.

(b) Any corporation receiving a credit under this subsection may carry forward to the next succeeding 15 taxable years the amount of the credit not offset against taxes for the year of purchase to the extent not offset by those taxes otherwise due in all intervening years between the year for which the credit was computed and the year for which the carry−forward is claimed.

(c) A claimant who has filed a timely claim under this subsection may file an amended claim with the department of revenue within 4 years of the last day prescribed by law for filing the original claim.

(1dd) DEVELOPMENT ZONES DAY CARE CREDIT. (a) In this subsection:

1. "Day care center benefits" means benefits provided at a day care facility that is licensed under s. 48.65 or 48.69 and that for compensation provides care for at least 6 children or benefits provided at a facility for persons who are physically or mentally incapable of caring for themselves.

2. "Employment−related day care expenses" means amounts paid or incurred by a claimant, during the 2−year period beginning with the day that the member of the targeted group begins work for the claimant, for providing or making day care center benefits available to a qualifying individual in order to enable a member of a targeted group to be employed by the claimant.

4. "Member of a targeted group" means a person under sub. (1dj) (am) 1.

5. "Qualifying individual" means a dependent of a member of a targeted group who is employed by a claimant and with respect to whom the member is entitled to a deduction under section 151 (c) of the internal revenue code for federal income tax purposes, a dependent of a member of a targeted group who is employed by a claimant if the dependent is physically or mentally incapable of caring for himself or herself or the spouse of a member of a targeted group who is employed by the claimant if the spouse is physically or mentally incapable of caring for himself or herself.

(b) Except as provided in s. 73.03 (35), for any taxable year for which that person is certified under s. 560.765 (3) and begins business operations in a zone under s. 560.71 after July 29, 1995, entitled under s. 560.795 (3) (a) and begins business operations in a zone under s. 560.795 after July 29, 1995, or certified under s. 560.797 (4) (a), for each zone for which the person is certified or entitled a person may credit against taxes otherwise due under this subchapter employment−related day care expenses, up to $1,200 for each qualifying individual.

(c) Subsection (1di) (b), (c), (d) 1., (f) and (g), as it applies to the credit under sub. (1di), applies to the credit under this subsection.

(d) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

(dm) No credit may be allowed under this subsection unless the claimant includes with the claimant's return a statement from the department of commerce verifying the amount of qualifying employment−related day care expenses.

(e) The credit under this subsection, as it applies to a person certified under s. 560.765 (3), applies to a corporation that conducts economic activity in a zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A credit under this subsection may be credited using expenses incurred by a claimant on July 29, 1995.

(f) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1de) DEVELOPMENT ZONES ENVIRONMENTAL REMEDIATION CREDIT. (a) Except as provided in s. 73.03 (35), for any taxable year for which a person is certified under s. 560.765 (3) and begins business operations in a zone under s. 560.71 after July 29, 1995, entitled under s. 560.795 (3) (a) and begins business operations in a zone under s. 560.795 after July 29, 1995, or certified under s. 560.797 (4) (a), for each zone for which the person is certified or entitled the person may claim as a credit against taxes otherwise due under this subchapter an amount equal to 7.5% of the amount that the person expends to remove or contain environmental pollu-

tion, as defined in s. 299.01 (4), in the zone or to restore soil or groundwater that is affected by environmental pollution, as defined in s. 299.01 (4), in the zone if the person fulfills all of the following requirements:

1. Begins the work, other than planning and investigating, for which the credit is claimed after the area that includes the site where the work is done is designated a development zone under s. 560.71, a development opportunity zone under s. 560.795 or an enterprise development zone under s. 560.797 and after the claimant is certified under s. 560.765 (3), entitled under s. 560.795 (3) (a) or certified under s. 560.797 (4) (a).

(b) Subsection (1di) (b), (c), (d), (f) and (g), as it applies to the credit under sub. (1di), applies to the credit under this subsection.

(c) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies to the credit under this subsection.

(d) The credit under this subsection, as it applies to a person certified under s. 560.765 (3), applies to a corporation that conducts economic activity in a zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A credit under this subsection may be credited using expenses incurred by a claimant on July 29, 1995.

(e) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1di) DEVELOPMENT ZONES INVESTMENT CREDIT. (a) Except as provided in pars. (dm) and (f) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter 2.5% of the purchase price of depreciable, tangible personal property, or 1.75% of the purchase price of depreciable, tangible personal property that is expensed under section 179 of the internal revenue code for purposes of the taxes under this chapter, except that:

1. The investment must be in property that is purchased after the person is certified under s. 560.765 (3) for tax benefits and that is used for at least 50% of its use in the conduct of the business operations for which the claimant is certified under s. 560.765 (3) at a location in a development zone under subch. VI of ch. 560 or, if the property is mobile, the base of operations of the property for at least 50% of its use must be a location in a development zone.

2. The credit under this subsection may be claimed only by the person who purchased the property the investment in which is the basis for the credit, except that only partners may claim the credit based on purchases by a partnership, only members may claim the credit based on purchases by a limited liability company and except that only shareholders may claim the credit based on purchases by a tax−option corporation.

3. If the credit is claimed for used property, the claimant may not have used the property for business purposes at a location outside the development zone. If the credit is attributable to a partnership, limited liability company or tax−option corporation, that entity may not have used the property for business purposes at a location outside the development zone.

4. No credit is allowed under this subsection for property which is the basis for a credit under sub. (1dL).

(b) 1. Except as provided in subd. 2., the credit, including any credits carried over, may be offset only against the amount of the tax otherwise due under this chapter attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from directly related business operations of the claimant.

2. If the claimant is located on an Indian reservation, as defined in s. 560.86 (5), and is an American Indian, as defined in s. 560.86 (1), an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in s. 71.07 (2di) (b) 2., and if the allowable amount of the credit under this subsection exceeds the taxes otherwise due under this chapter on or measured by the claimant's income, the amount of the credit not used as an offset against those taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft.

3. Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for, and amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of the credit that may be claimed by each of its shareholders, partners or members and shall provide that information to each of its shareholders, partners or members. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the partnership's, company's or corporation's business operations in the development zone and against the tax attributable to their income from the partnership's, company's or corporation's directly related business operations.

(c) Except as provided in par. (b) 2., the carry−over provisions of sub. (4) (e) and (f) as they relate to the credit under that subsection relate to the credit under this subsection and apply as if the development zone continued to exist.

(d) No credit may be allowed under this subsection unless the claimant includes with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

2. A statement from the department of commerce verifying the purchase price of the investment and verifying that the investment fulfills the requirements under par. (a).

(dm) In calculating the credit under par. (a), a claimant shall reduce the purchase price of the property by a percentage equal to the percentage of use of the property during the taxable year the property is first placed into service that is for a purpose not specified under par. (a) 1.

(e) The recapture provisions under section 47 (a) (5) of the internal revenue code as amended to December 31, 1985, as they apply to the credit under section 46 of the internal revenue code, apply to the credit under this subsection, except that those provisions also apply if the property for which the credit is claimed is moved out of the development zone or, for mobile property, if the base of operations is moved out of the zone and except that the determination of whether or not property is 3−year property shall be made under section 168 of the internal revenue code.

(f) If the certification of a person for tax benefits under s. 560.765 (3) is revoked, that person may claim no credits under this subsection for the taxable year that includes the day on which the certification is revoked or succeeding taxable years and that person may carry over no unused credits from previous years to offset tax under this chapter for the taxable year that includes the day on which certification is revoked or succeeding taxable years.

(g) If a person who is certified under s. 560.765 (3) for tax benefits ceases business operations in the development zone during any of the taxable years that that zone exists, that person may not carry over to any taxable year following the year during which operations cease any unused credits from the taxable year during which operations cease or from previous taxable years.

(h) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(i) The development zones credit under this subsection, as it applies to a person certified under s. 560.765 (3), applies to a corporation that conducts economic activity in a development opportunity zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A development opportunity zone credit under this paragraph may be calculated using expenses incurred by a claimant beginning on the

effective date under s. 560.795 (2) (a) of the development opportunity zone designation of the area in which the claimant conducts economic activity.

(j) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1dj) DEVELOPMENT ZONES JOBS CREDIT. (am) Except as provided under par. (f) or s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter an amount calculated as follows:

1. Modify "member of a targeted group", as defined in section 51 (d) of the internal revenue code as amended to December 31, 1995, to include persons unemployed as a result of a business action subject to s. 109.07 (1m) and persons specified under 29 USC 1651 (a) and to require a member of a targeted group to be a resident of this state.

2. Modify "designated local agency", as defined in section 51 (d) (15) of the internal revenue code, to include the job training partnership act organization for the area that includes the development zone in which the employe in respect to whom the credit under this subsection is claimed works, if the department of commerce approves the criteria used for certification, and the department of commerce.

3. Modify the rule for certification under section 51 (d) (16) (A) of the internal revenue code to allow certification within the 90−day period beginning with the first day of employment of the employe by the claimant.

4. a. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, modify "qualified wages" as defined in section 51 (b) of the internal revenue code to exclude wages paid before the claimant is certified for tax benefits and to exclude wages that are paid to employes for work at any location that is not in a development zone under subch. VI of ch. 560. For purposes of this subd. 4. a., mobile employes work at their base of operations and leased or rented employes work at the location where they perform services.

b. If certified under s. 560.765 (3) for tax benefits after December 31, 1991, modify "qualified wages" as defined in section 51 (b) of the internal revenue code to exclude wages paid before the claimant is certified for tax benefits and to exclude wages that are paid to employes for work at any location that is not in a development zone under subch. VI of ch. 560. For purposes of this subd. 4. b., mobile employes and leased or rented employes work at their base of operations.

4c. Modify the rule for ineligible individuals under section 51 (i) (1) of the internal revenue code to allow credit for the wages of related individuals paid by an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in s. 71.07 (2di) (b) 2., if the Indian business or tribal enterprise is located in a development zone designated under s. 560.71 (3) (c) 2.

4e. Modify section 51 (c) (2) of the internal revenue code to specify that the rules for on−the−job training and work supplementation payments also apply to those kinds of payments funded by this state.

4g. Delete section 51 (c) (4) of the internal revenue code.

4h. Modify section 51 (a) of the internal revenue code so that the amount of the credit is 25% of the qualified first−year wages if the wages are paid to an applicant for a Wisconsin works employment position for service either in an unsubsidized position or in a trial job under s. 49.147 (3) and so that the amount of the credit is 20% of the qualified first−year wages if the wages are not paid to such an applicant.

4i. Modify section 51 (b) (3) of the internal revenue code so that the amount of the qualified first−year wages that may be taken into account is $13,000.

4m. Modify the rule on remuneration under section 51 (f) of the internal revenue code so that it does not apply to persons who are exempt from tax under this chapter.

4t. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, modify section 51 (i) (3) of the internal revenue code so that for leased or rented employes, except employes of a leasing agency certified for tax benefits who perform services directly for the agency in a development zone, the minimum employment periods apply to the time that they perform services in a development zone for a single lessee or renter, not to their employment by the leasing agency.

5. Calculate the credit under section 51 of the internal revenue code.

6. For persons for whom a credit may be claimed under subd. 5., modify "qualified wages" under section 51 (b) of the internal revenue code so that those wages are based on the wages attributable to service rendered during the one−year period beginning with the date one year after the date on which the individual begins work for the employer.

7. Modify section 51 of the internal revenue code as under subds. 1. to 4t.

8. Calculate the credit under section 51 of the internal revenue code based on qualified wages for the 2nd year as determined under subds. 6. and 7.

8m. For each person, whether or not he or she is a member of a targeted group, who is determined by the department of commerce to be a resident of the development zone in which he or she is employed, calculate a credit equal to 10% of the wages earned by such person during the 1st and 2nd years of the person's employment in the development zone, up to a maximum credit of $600 per year.

9. Add the amounts under subds. 5., 8. and 8m.

(b) In computing the credit under this subsection, the wages of leased or rented employes may be claimed only by their employer, not by the person to whom they are rented or leased.

(c) The credit under this subsection may not be claimed by partnerships, limited liability companies and tax−option corporations but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of credit that may be claimed by each of its shareholders, partners or members and shall provide that information to each of its shareholders, partners or members. That credit may be claimed by partners, members of limited liability companies and shareholders of tax−option corporations in proportion to their ownership interests.

(e) No credit may be allowed under this subsection unless the claimant includes with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

3. a. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, a statement from the department of commerce verifying the amount of qualifying wages and verifying that the employes were hired for work only in a development zone or are mobile employes whose base of operations is in a development zone.

b. If certified under s. 560.765 (3) for tax benefits after December 31, 1991, a statement from the department of commerce verifying the amount of qualifying wages and verifying that the employes were hired for work only in a development zone or are mobile employes or leased or rented employes whose base of operations is in a development zone.

4. A copy of any claims for the credit under section 51 of the internal revenue code that are based on wages that also are the basis for a claim under this subsection.

(f) The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to the credit under this subsection.

(g) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(h) The rules under sub. (1di) (b) and (c) as they apply to the credit under that subsection apply to the credit under this subsection.

(i) The development zones credit under this subsection, as it applies to a person certified under s. 560.765 (3), applies to a corporation that conducts economic activity in a development opportunity zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A development opportunity zone credit under this paragraph may be calculated using expenses incurred by a claimant beginning on the effective date under s. 560.795 (2) (a) of the development opportunity zone designation of the area in which the claimant conducts economic activity.

(j) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1dL) DEVELOPMENT ZONES LOCATION CREDIT. (a) Except as provided in pars. (ag), (ar), (bm) and (f) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this subchapter an amount equal to 2.5% of the amount expended by that person to acquire, construct, rehabilitate or repair real property in a development zone under subch. VI of ch. 560.

(ag) If the credit under par. (a) is claimed for an amount expended to construct, rehabilitate, remodel or repair property, the claimant must have begun the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the place where the property is located was designated a development zone under s. 560.71 and the completed project must be placed in service after the claimant is certified for tax benefits under s. 560.765 (3). In this paragraph, "physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications or stabilizing the property to prevent deterioration.

(ar) If the credit under par. (a) is claimed for an amount expended to acquire property, the property must have been acquired by the claimant after the place where the property is located was designated a development zone under s. 560.71 and the completed project must be placed in service after the claimant is certified for tax benefits under s. 560.765 (3) and the property must not have been previously owned by the claimant or a related person during the 2 years prior to the designation of the development zone under s. 560.71. No credit is allowed for an amount expended to acquire property until the property, either in its original state as acquired by the claimant or as subsequently constructed, rehabilitated, remodeled or repaired, is placed in service.

(aw) In par. (ar), property is previously owned by a claimant or a related person if a claimant may not deduct a loss from a sale to, or exchange of property with, that related person under section 267 of the internal revenue code, except that section 267 (b) of the internal revenue code is modified so that any ownership percentage, rather than 50% ownership, makes a claimant subject to section 267 (a) (1) of the internal revenue code for purposes of this subsection.

(b) No credit is allowed under this subsection for property which is the basis for a credit under sub. (1di).

(bm) In calculating the credit under par. (a) a claimant shall reduce the amount expended to acquire property by a percentage equal to the percentage of the area of the real property not used for the purposes for which the claimant is certified to claim tax benefits under s. 560.765 (3) and shall reduce the amount expended for other purposes by the amount expended on the part of the property not used for the purposes for which the claimant is certified to claim tax benefits under s. 560.765 (3).

(c) 1. Except as provided in subd. 2., the credit under par. (a), including any credits carried over, may be offset only against the amount of the tax otherwise due under this chapter attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from directly related business operations.

2. If the claimant is located on an Indian reservation, as defined in s. 560.86 (5), and is an American Indian, as defined in s. 560.86 (1), an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in s. 71.07 (2di) (b) 2., and if the allowable amount of the credit under par. (a) exceeds the taxes otherwise due under this chapter on or measured by the claimant's income, the amount of the credit not used as an offset against those taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft.

(d) Except as provided in par. (c) 2., the carry−over provisions of sub. (4) (e) and (f) as they relate to the credit under that subsection relate to the credit under this subsection and apply as if the development zone continued to exist.

(e) Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of credit that may be claimed by each of its shareholders, partners or members and provide that information to its shareholders, partners or members. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the partnership's, company's or corporation's business operations in the development zone and against the tax attributable to their income from the partnership's, company's or corporation's directly related business operations.

(f) Subsection (1di) (d), (f) and (g) as it applies to the credit under that subsection applies to the credit under this subsection.

(g) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(i) The development zones credit under this subsection, as it applies to a person certified under s. 560.765 (3), applies to a corporation that conducts economic activity in a development opportunity zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A development opportunity zone credit under this paragraph may be calculated using expenses incurred by a claimant beginning on the effective date under s. 560.795 (2) (a) of the development opportunity zone designation of the area in which the claimant conducts economic activity.

(j) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1ds) DEVELOPMENT ZONES SALES TAX CREDIT. (a) In this subsection:

1. "Development zone" means a zone designated under s. 560.71.

2. "Eligible property" means construction materials and supplies and other materials that are used to construct, rehabilitate, repair or remodel real property that is eligible for the credit under sub. (1dL) and investment credit property.

3. "Investment credit property" means depreciable, tangible personal property that is eligible for the credit under sub. (1di) and

leased or rented depreciable, tangible personal property that would be eligible for the credit under sub. (1di) if it had been purchased.

(b) Except as provided in pars. (dm) and (e) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter the taxes paid under subchs. III and V of ch. 77 on their purchases, leases and rentals of eligible property. Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their partners, members or shareholders. The partnership, limited liability company or corporation shall compute the amount of credit that may be claimed by each of its partners, members or shareholders and shall provide that information to its partners, members or shareholders. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest.

(d) No credit may be allowed under this subsection unless the claimant submits with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

2. A statement from the department of commerce verifying the amount of taxes paid under subchs. III and V of ch. 77 for eligible property by the claimant.

(dm) In calculating the credit under par. (b) a claimant shall reduce the sales tax paid for building supplies and materials by the reduction under sub. (1dL) (bm) and shall reduce the sales tax paid for investment credit property by the percentage reduction under sub. (1di) (dm).

(e) The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to the credit under this subsection.

(f) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(h) The rules under sub. (1di) (b) and (c) as they apply to the credit under that subsection apply to the credit under this subsection.

(i) The development zones credit under this subsection, as it applies to a person certified under s. 560.765 (3), applies to a corporation that conducts economic activity in a development opportunity zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A development opportunity zone credit under this paragraph may be calculated using expenses incurred by a claimant beginning on the effective date under s. 560.795 (2) (a) of the development opportunity zone designation of the area in which the claimant conducts economic activity.

(j) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1dx) DEVELOPMENT ZONES CREDIT. (a) *Definitions.* In this subsection:

1. "Brownfield" means an industrial or commercial facility the expansion or redevelopment of which is complicated by environmental contamination.

2. "Development zone" means a development zone under s. 560.70, a development opportunity zone under s. 560.795 or an enterprise development zone under s. 560.797.

3. "Environmental remediation" means removal or containment of environmental pollution, as defined in s. 299.01 (4), and restoration of soil or groundwater that is affected by environmental pollution, as defined in s. 299.01 (4), in a brownfield if that removal, containment or restoration fulfills the requirement under sub. (1de) (a) 1. and investigation unless the investigation determines that remediation is required and that remediation is not undertaken.

4. "Full−time job" means a regular, nonseasonal full−time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. "Full−time job" does not include initial training before an employment position begins.

5. "Member of a targeted group" means a person under sub. (1dj) (am) 1., a person who resides in an empowerment zone, or an enterprise community, that the U.S. government designates, a person who is employed in an unsubsidized job but meets the eligibility requirements under s. 49.145 (2) and (3) for a Wisconsin works employment position, a person who is employed in a trial job, as defined in s. 49.141 (1) (n), or a person who is eligible for child care assistance under s. 49.155; if the person has been certified in the manner under sub. (1dj) (am) 3. by a designated local agency, as defined in sub. (1dj) (am) 2.

(b) *Credit.* Except as provided in s. 73.03 (35) and subject to s. 560.785, for any taxable year for which the person is certified under s. 560.765 (3), any person may claim as a credit against taxes under this subchapter the following amounts:

1. Fifty percent of the amount expended for environmental remediation in a development zone.

2. The amount determined by multiplying the amount determined under s. 560.785 (1) (b) by the number of full−time jobs created in a development zone and filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

3. The amount determined by multiplying the amount determined under s. 560.785 (1) (c) by the number of full−time jobs created in a development zone and not filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

4. The amount determined by multiplying the amount determined under s. 560.785 (1) (b) by the number of full−time jobs retained, as provided in the rules under s. 560.785, excluding jobs for which a credit has been claimed under sub. (1dj), in a development zone and filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

5. The amount determined by multiplying the amount determined under s. 560.785 (1) (c) by the number of full−time jobs retained, as provided in the rules under s. 560.785, excluding jobs for which a credit has been claimed under sub. (1dj), in a development zone and not filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

(c) *Credit precluded.* If the certification of a person for tax benefits under s. 560.765 (3) is revoked, that person may not claim credits under this subsection for the taxable year that includes the day on which the certification is revoked or succeeding taxable years and that person may not carry over unused credits from previous years to offset tax under this chapter for the taxable year that includes the day on which certification is revoked or succeeding taxable years.

(d) *Carry−over precluded.* If a person who is certified under s. 560.765 (3) for tax benefits ceases business operations in the development zone during any of the taxable years that that zone exists, that person may not carry over to any taxable year following the year during which operations cease any unused credits from the taxable year during which operations cease or from previous taxable years.

(e) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection. Subsection (1dj) (c), as it applies to the credit under sub. (1dj),

applies to the credit under this subsection. Claimants shall include with their returns a copy of their certification for tax benefits and a copy of the department of commerce's verification of their expenses.

(1fd) FARMERS' DROUGHT PROPERTY TAX CREDIT. (a) *Credit.* Except as provided in par. (b), if the director of the agriculture stabilization and conservation service certifies on or before October 1, 1988, that at least 40% of the crops in this state have been lost, for taxable year 1988 any claimant may credit against taxes otherwise due under this chapter an amount equal to 10% of the property taxes exclusive of special assessments, delinquent interest and charges for service, up to $10,000, on that claimant's farm for the year for which the claim under this subsection is made. In this subsection, "farm" means 35 or more acres of real property in this state owned by the claimant or any member of the claimant's household during the taxable year for which a credit under this subsection is claimed if the farm, during that year, produced not less than $6,000 in gross farm profits resulting from the farm's agricultural use, as defined in s. 91.01 (1), or if the farm, during that year and the 2 years immediately preceding that year, produced not less than $18,000 in such profits. In deciding who is a claimant under this subsection, the department of revenue shall be guided by s. 71.58 (1) (a) to (g).

(b) *Limits.* The credit under this subsection plus the credit under subch. IX may not exceed 95% of the property taxes on the farm. A claimant may claim the credit under this subsection on only one return if the claimant files more than one return for taxable year 1988 and may not claim the credit on a return filed for any 1988 taxable year beginning after July 31, 1988.

(c) *Form.* No claim under this subsection may be allowed unless the claimant completes a form prescribed by the department of revenue and submits that form with the claimant's income or franchise tax return and within 12 months following the close of the taxable year in which the property taxes accrued.

(d) *Payment.* If the allowable amount of the claim under this subsection exceeds the income or franchise taxes otherwise due on or measured by the claimant's income or if there are no income or franchise taxes due on or measured by the claimant's income, the amount of the claim not used as an offset against those taxes shall be certified by the department of revenue to the department of administration for payment to the claimant by check, share draft or other draft drawn on the general fund. No interest may be allowed on any payment under this subsection.

(e) *Administration.* Subsection (4) (g), as it applies to the credit under sub. (4), applies to the credit under this subsection.

(2) FARMLAND PRESERVATION CREDIT. The farmland preservation credit under subch. IX may be claimed against taxes otherwise due subject to the provisions, requirements and conditions of that subchapter.

(2m) FARMLAND TAX RELIEF CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an owner of farmland, as defined in s. 91.01 (9), domiciled in this state during the entire year for which a credit under this subsection is claimed, except as follows:

a. When 2 or more individuals of a household are able to qualify individually as a claimant, they may determine between them who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue, whose decision is final.

b. For partnerships, except publicly traded partnerships treated as corporations under s. 71.22 (1), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 (1), "claimant" means each individual partner or member.

c. For purposes of filing a claim under this subsection, the personal representative of an estate and the trustee of a trust shall be deemed owners of farmland. "Claimant" does not include the estate of a person who is a nonresident of this state on the person's date of death, a trust created by a nonresident person, a trust which receives Wisconsin real property from a nonresident person or a trust in which a nonresident settlor retains a beneficial interest.

d. For purposes of filing a claim under this subsection, when land is subject to a land contract, the claimant shall be the vendee under the contract.

e. For purposes of filing a claim under this subsection, when a guardian has been appointed under ch. 880 for a ward who owns the farmland, the claimant shall be the guardian on behalf of the ward.

f. For a tax−option corporation, "claimant" means each individual shareholder.

2. "Department" means the department of revenue.

3. "Farmland" means 35 or more acres of real property, exclusive of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), and owned by the claimant or any member of the claimant's household during the taxable year for which a credit under this subsection is claimed if the farm of which the farmland is a part, during that year, produced not less than $6,000 in gross farm profits resulting from agricultural use, as defined in s. 91.01 (1), or if the farm of which the farmland is a part, during that year and the 2 years immediately preceding that year, produced not less than $18,000 in such profits, or if at least 35 acres of the farmland, during all or part of that year, was enrolled in the conservation reserve program under 16 USC 3831 to 3836.

4. "Gross farm profits" means gross receipts, excluding rent, from agricultural use, as defined in s. 91.01 (1) including the fair market value at the time of disposition of payments in kind for placing land in federal programs or payments from the federal dairy termination program under 7 USC 1446 (d), less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the taxable year.

5. "Household" means an individual and his or her spouse and all minor dependents.

6. "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest and charges for service, levied on the farmland owned by the claimant or any member of the claimant's household in any calendar year under ch. 70, less the tax credit, if any, afforded in respect of the property by s. 79.10. "Property taxes accrued" shall not exceed $10,000. If farmland is owned by a tax−option corporation, a limited liability company or by 2 or more persons or entities as joint tenants, tenants in common or partners or is marital property or survivorship marital property and one or more such persons, entities or owners is not a member of the claimant's household, "property taxes accrued" is that part of property taxes levied on the farmland, reduced by the tax credit under s. 79.10, that reflects the ownership percentage of the claimant and the claimant's household. For purposes of this subdivision, property taxes are "levied" when the tax roll is delivered to the local treasurer for collection. If farmland is sold during the calendar year of the levy the "property taxes accrued" for the seller is the amount of the tax levy, reduced by the tax credit under s. 79.10, prorated to each in the closing agreement pertaining to the sale of the farmland, except that if the seller does not reimburse the buyer for any part of those property taxes there are no "property taxes accrued" for the seller, and the "property taxes accrued" for the buyer is the property taxes levied on the farmland, reduced by the tax credit under s. 79.10, minus, if the seller reimburses the buyer for part of the property taxes, the amount prorated to the seller in the closing agreement. With the claim for credit under this subsection, the seller shall submit a copy of the closing agreement and the buyer shall submit a copy of the closing agreement and a copy of the property tax bill.

(b) *Filing claims.* 1. 'Eligibility and qualifications.' a. Subject to the limitations provided in this subsection and s. 71.80 (3) and (3m), a claimant may claim as a credit against Wisconsin income or franchise taxes otherwise due, the amount derived under par. (c). If the allowable amount of claim exceeds the income or franchise taxes otherwise due on or measured by the claimant's income or if there are no Wisconsin income or fran-

chise taxes due on or measured by the claimant's income, the amount of the claim not used as an offset against income or franchise taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft paid from the appropriation under s. 20.835 (2) (q).

b. Every claimant under this subsection shall supply, at the request of the department, in support of the claim, a copy of the property tax bill relating to the farmland and certification by the claimant that all taxes owed by the claimant on the property for which the claim is made for the year before the year for which the claim is made have been paid.

2. 'Ineligible claims.' No credit may be allowed under this subsection:

a. Unless a claim is filed with the department in conformity with the filing requirements in s. 71.24 (1), (1m) and (7).

b. If the department determines that ownership of the farmland has been transferred to the claimant for the purpose of maximizing benefits under this subsection.

(c) *Computation.* 1. Any claimant may claim against taxes otherwise due under this chapter 10% of the property taxes accrued in the taxable year to which the claim relates, up to a maximum claim of $1,000, except that the credit under this subsection plus the credit under subch. IX may not exceed 95% of the property taxes accrued on the farm.

2. Any claimant may claim against taxes otherwise due under this chapter, on an income or franchise tax return that includes the levy date, an additional one−time credit of 4.2% of the property taxes accrued, that are levied in December 1989, up to a maximum of $420.

(d) *General provisions.* Section 71.61 (1) to (4) as it applies to the credit under subch. IX applies to the credit under this subsection.

(3) MANUFACTURING SALES TAX CREDIT. (a) In this subsection:

1. "Manufacturing" has the meaning given in s. 77.54 (6m).

2. "Sales and use tax under ch. 77 paid by the corporation" includes use taxes paid directly by the corporation and sales and use taxes paid by the corporation's supplier and passed on to the corporation whether separately stated on the invoice or included in the total price.

(b) The tax imposed upon or measured by corporation Wisconsin net income under s. 71.23 (1) or (2) shall be reduced by an amount equal to the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. Shareholders of a tax−option corporation and partners may claim the credit under this subsection, based on eligible sales and use taxes paid by the tax−option corporation or partnership, in proportion to the ownership interest of each shareholder or partner. The tax−option corporation or partnership shall calculate the amount of the credit that may be claimed by each shareholder or partner and shall provide that information to the shareholder or partner.

(c) 1. If the credit computed under par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance shall be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry−forward credit is claimed.

2. For shareholders in a tax−option corporation, the credit may be offset only against the tax imposed on the shareholder's prorated share of the tax−option corporation's income.

3. For partners, the credit may be offset only against the tax imposed on the partner's distributive share of partnership income.

4. If a tax−option corporation becomes liable for tax for a taxable year that begins on or after January 1, 1998, the corporation may offset the credit against the tax due, with any remaining credit computed for a taxable year that begins on or after January 1, 1998, passing through to the shareholders.

5. If a corporation that is not a tax−option corporation has a carry−over credit from a taxable year that begins on or after January 1, 1998, and becomes a tax−option corporation before the credit carried over is used, the unused portion of the credit may be used by the tax−option corporation's shareholders on a prorated basis.

6. If the shareholders of a tax−option corporation have carry−over credits and the corporation becomes a corporation other than a tax−option corporation after October 14, 1997, and before the credits carried over are used, the unused portion of the credits may be used by the corporation that is not a tax−option corporation.

(4) RESEARCH CREDIT. (a) *Credit.* Any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" includes only expenses incurred by the claimant, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. and (d). Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

(am) *Development zone additional research credit.* 1. In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. and (d) and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this subdivision. The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to claims under this subdivision. Section 41 (h) of the internal revenue code does not apply to the credit under this subdivision.

2. The development zones credit under subd. 1., as it applies to a person certified under s. 560.765 (3), applies to a corporation that conducts economic activity in a development opportunity zone under s. 560.795 (1) and that is entitled to tax benefits under s. 560.795 (3), subject to the limits under s. 560.795 (2). A development opportunity zone credit under this subdivision may be calculated using expenses incurred by a claimant beginning on the effective date under s. 560.795 (2) (a) of the development oppor-

tunity zone designation of the area in which the claimant conducts economic activity.

3. No credit may be claimed under this paragraph for taxable years that begin on January 1, 1998, or thereafter. Credits under this paragraph for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, and thereafter.

(b) *Adjustments.* For taxable year 1985 and subsequent years, adjustments for acquisitions and dispositions of a major portion of a trade or business shall be made under section 41 of the internal revenue code as limited by this subsection.

(c) *Annualization.* In the case of any short taxable year, qualified research expenses shall be annualized as prescribed by the department of revenue.

(d) *Proration.* If a portion of qualified research expenses is incurred partly within and partly outside this state and the amount incurred in this state cannot be accurately determined, a portion of the qualified expenses shall be reasonably allocated to this state. Expenses incurred entirely outside this state for the benefit of research in this state are not allocable to this state under this paragraph.

(e) *Change of business or ownership.* In the case of a change in ownership or business of a corporation, section 383 of the internal revenue code, as limited by this subsection, applies to the carry−over of unused credits.

(f) *Carry−over.* If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry−forward credit is claimed.

(g) *Administration.* The department of revenue has full power to administer the credits provided in this subsection and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed in this chapter. The income and franchise tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest and penalties apply to the credits under this subsection.

(h) *Timely claim.* No credit may be allowed under this subsection unless it is claimed within the period specified in s. 71.75 (2).

(i) *Nonclaimants.* The credits under this subsection may not be claimed by a partnership, except a publicly traded partnership treated as a corporation under s. 71.22 (1), limited liability company, except a limited liability company treated as a corporation under s. 71.22 (1), or tax−option corporation or by partners, including partners of a publicly traded partnership, members of a limited liability company or shareholders of a tax−option corporation.

(5) RESEARCH FACILITIES CREDIT. (a) *Credit.* For taxable year 1986 and subsequent years, any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount paid or incurred by that corporation during the taxable year to construct and equip new facilities or expand existing facilities used in this state for qualified research, as defined in section 41 of the internal revenue code. Eligible amounts include only amounts paid or incurred for tangible, depreciable property but do not include amounts paid or incurred for replacement property.

(b) *Calculation and administration.* Subsection (4) (b) to (i) as it relates to the credit under that subsection applies to the credit under this subsection.

(6) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. (a) Any person may credit against taxes otherwise due under this chapter, up to the amount of those taxes, an amount equal to 5% of the costs of qualified rehabilitation expenditures, as defined in section 47 (c) (2) of the internal revenue code, for certified historic structures on property located in this state if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989.

(c) No person may claim the credit under this subsection unless the claimant includes with the claimant's return evidence that the rehabilitation was approved by the secretary of the interior under 36 CFR 67.6 before the physical work of construction, or destruction in preparation for construction, began.

(d) The Wisconsin adjusted basis of the building shall be reduced by the amount of any credit awarded under this subsection. The Wisconsin adjusted basis of a partner's interest in a partnership, of a member's interest in a limited liability company or of stock in a tax−option corporation shall be adjusted to take into account adjustments made under this paragraph.

(e) The provisions of sub. (4) (e), (f), (g) and (h), as they apply to the credit under that subsection, apply to the credit under this subsection.

(f) A partnership, limited liability company or tax−option corporation may not claim the credit under this section. The individual partners, members of a limited liability company or shareholders in a tax−option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company or tax−option corporation, in proportion to the ownership interest of each partner, member or shareholder. The partnership, limited liability company or tax−option corporation shall calculate the amount of the credit which may be claimed by each partner, member or shareholder and shall provide that information to the partner, member or shareholder.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299.

71.29 Payments of estimated taxes. (1) DEFINITIONS. In this section:

(a) "Return" means a return that would show the tax properly due.

(b) "Tax shown on the return" and "tax for the taxable year" mean the net taxes imposed under s. 71.23 (1) or (2) after reduction for credits against those taxes but before reduction for amounts paid as estimated tax under this section plus the surcharge imposed under s. 77.93 before reduction for amounts paid as estimated tax under this section for that surcharge.

(c) "Virtually exempt entity" means any entity, other than a corporation, that is subject to a tax under this chapter on unrelated business taxable income as defined under section 512 of the internal revenue code.

(2) WHO SHALL PAY. Every corporation subject to tax under s. 71.23 (1) or (2) and every virtually exempt entity subject to tax under s. 71.125 or 71.23 (1) or (2) shall pay an estimated tax.

(3) REFUND CARRY−FORWARD. If a corporation or virtually exempt entity claims a refund on any tax return and, concurrent with or subsequent to filing the return upon which that refund is claimed, is required to pay an estimated tax, and at the time of paying that tax the refund has not been paid, the corporation or virtually exempt entity may deduct the amount of that refund from the first instalment of estimated taxes and may deduct any excess from the succeeding instalments.

(3m) REFUNDS. The department of revenue may refund estimated taxes after the completion of the taxable year to which the estimated taxes relate if the refund is at least 10% of the taxes estimated for that taxable year and is at least $500. A refund under this subsection may be subject to s. 71.84 (2) (c).

(4) PREPAYMENTS. Any instalment of the estimated tax under this section may be paid before the due date.

(5) SHORT YEAR. Application of this section to taxable years of less than 12 full months shall be made under the department of revenue's rules.

(6) OVERPAYMENTS. If the amount of an instalment payment of estimated tax exceeds the amount determined to be the correct amount of that payment, the overpayment shall be credited against the next unpaid instalment.

(7) EXCEPTION TO INTEREST. No interest is required under s. 71.84 (2) (a) or (b) for a corporation or virtually exempt entity if any of the following conditions apply:

(a) The tax shown on the return or, if no return is filed, the tax is less than $500.

(b) The preceding taxable year was 12 months, the corporation or virtually exempt entity had no liability under s. 71.125 or 71.23 (1) or (2) for that year and the corporation or virtually exempt entity has a Wisconsin net income of less than $250,000 for the current taxable year.

(8) INSTALMENT DUE DATES. Taxpayers shall make estimated payments in 4 instalments, on or before the 15th day of each of the following months:

(a) The 3rd month of the taxable year.

(b) The 6th month of the taxable year.

(c) The 9th month of the taxable year.

(d) The 12th month of the taxable year.

(9) INSTALMENT AMOUNTS; INCOME OF LESS THAN $250,000. (a) For corporations or virtually exempt entities that have Wisconsin net incomes of less than $250,000, except as provided in pars. (b) and (c), the amount of each instalment required under sub. (8) is 25% of the lower of the following amounts:

1. Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

2. The tax shown on the return for the preceding year.

(b) Paragraph (a) 2. does not apply if the preceding taxable year was less than 12 months or if the corporation did not file a return for the preceding year.

(c) If 22.5% for the first instalment, 45% for the 2nd instalment, 67.5% for the 3rd instalment and 90% for the 4th instalment of the tax for the taxable year computed by annualizing, under methods prescribed by the department of revenue, the corporation's income, or the virtually exempt entity's unrelated business taxable income, for the months in the taxable year ending before the instalment's due date is less than the instalment required under par. (a), the corporation or virtually exempt entity may pay the amount under this paragraph rather than the amount under par. (a). For purposes of computing annualized income under this paragraph, the apportionment percentage computed under s. 71.25 (6) and (10) to (12) from the return filed for the previous taxable year may be used if that return was filed with the department of revenue on or before the due date of the instalment for which the income is being annualized and if the apportionment percentage on that previous year's return was greater than zero. For purposes of computing annualized income of corporations that are subject to a tax under this chapter on unrelated business taxable income, as defined under section 512 of the internal revenue code, and virtually exempt entities, the taxpayer's income for the months in the taxable year ending before the date one month before the due date for the instalment shall be used. Any corporation or virtually exempt entity that pays an amount calculated under this paragraph shall increase the next instalment computed under par. (a) by an amount equal to the difference between the amount paid under this paragraph and the amount that would have been paid under par. (a).

(10) INSTALMENT AMOUNTS; INCOME OF $250,000 OR MORE. (a) Except as provided in par. (c), for corporations or virtually exempt entities that have Wisconsin net incomes of $250,000 or more, the amount of each instalment required under sub. (8) is 25% of the amount under par. (b).

(b) Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

(c) If 22.5% for the first instalment, 45% for the 2nd instalment, 67.5% for the 3rd instalment and 90% for the 4th instalment of the tax for the taxable year computed by annualizing, under methods prescribed by the department of revenue, the corporation's income, or the virtually exempt entity's unrelated business taxable income, for the months in the taxable year ending before the instalment's due date is less than the instalment required under par. (a), the corporation or virtually exempt entity may pay the amount under this paragraph rather than the amount under par. (a). For purposes of computing annualized income under this paragraph, the apportionment percentage computed under s. 71.25 (6) and (10) to (12) from the return filed for the previous taxable year may be used if that return is filed with the department of revenue on or before the due date of the instalment for which the income is being annualized and the apportionment percentage on that previous year's return is greater than zero or may be used if that return is filed with the department of revenue on or before the due date of the 3rd instalment, the apportionment percentage on that previous year's return is greater than zero and the apportionment percentage used in the computation of the first 2 instalments is not less than the apportionment percentage on that previous year's return. For purposes of computing annualized income of corporations that are subject to a tax under this chapter on unrelated business taxable income, as defined under section 512 of the internal revenue code, and virtually exempt entities, the taxpayer's income for the months in the taxable year ending before the date one month before the due date for the instalment shall be used. Any corporation or virtually exempt entity that pays an amount calculated under this paragraph shall increase the next instalment computed under par. (a) by an amount equal to the difference between the amount paid under this paragraph and the amount that would have been paid under par. (a).

(11) EXCEPTION TO FINAL INSTALMENT. If a corporation or virtually exempt entity files a return for a calendar year on or before January 31 of the succeeding calendar year (or if a corporation or virtually exempt entity on a fiscal year basis files a return on or before the last day of the first month immediately succeeding the close of such fiscal year) and pays in full at the time of such filing the amount computed on the return as payable, then, if estimated taxes are not required to be paid on or before the 15th day of the 9th month of the taxable year but are required to be paid on or before the 15th day of the 12th month of the taxable year, such return shall be considered as payment.

History: 1987 a. 312; 1987 a. 411 ss. 111, 140 to 143; 1989 a. 31; 1991 a. 39; 1993 a. 16, 204; 1997 a. 27.

71.30 General provisions. (1) ACCOUNTING METHOD. (a) A corporation shall use a method of accounting authorized under the internal revenue code and shall use the same method used for federal income tax purposes if that method is authorized under the internal revenue code.

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

(2) ALLOCATION OF GROSS INCOME, DEDUCTIONS, CREDITS BETWEEN 2 OR MORE BUSINESSES. In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the secretary or his or her delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if he or she determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.

(3) COMPUTATIONS ORDER. Notwithstanding any other provisions in this chapter, corporations computing liability for the tax under s. 71.23 (1) or (2) shall make computations in the following order:

(a) Tax under s. 71.23 (1) or (2).

(b) Manufacturing sales tax credit under s. 71.28 (3).

(c) Research credit under s. 71.28 (4).

(d) Research facilities credit under s. 71.28 (5).

(e) Community development finance credit under s. 71.28 (1).

(eb) Development zones jobs credit under s. 71.28 (1dj).

(ec) Development zones sales tax credit under s. 71.28 (1ds).

(eg) Development zones investment credit under s. 71.28 (1di).

(em) Development zones location credit under s. 71.28 (1dL).

(en) Development zones day care credit under s. 71.28 (1dd).

(eo) Development zones environmental remediation credit under s. 71.28 (1de).

(eom) Development zones credit under s. 71.28 (1dx).

(ep) Supplement to federal historic rehabilitation credit under s. 71.28 (6).

(f) The total of farmers' drought property tax credit under s. 71.28 (1fd), farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.28 (2m) and estimated tax payments under s. 71.29.

(4) DEFENSE CONTRACT RENEGOTIATION. If the renegotiation or price redetermination of any corporation defense contract or subcontract by the government of the United States or any agency thereof or the voluntary adjustment of prices, costs or profits on any such contract or subcontract results in a reduction of income, the amount of any repayment or credit pursuant to such renegotiation, price redetermination or adjustment, including any federal income taxes credited as a part thereof, shall be allowed as a deduction from the corporate taxable income of the year in which said income was reported for taxation. Any federal income tax previously paid upon any income so repaid or credited shall be disallowed as a deduction from income of the year in which such tax was originally deducted, to the extent that such tax constituted an allowable deduction for said year. Any corporate taxpayer affected by such renegotiation, price redetermination or voluntary adjustment may within one year after the final determination thereof file a claim for refund and secure the same without interest, and the department of revenue shall make appropriate adjustments on account of said tax deductions without interest, notwithstanding the limitations of s. 71.75 or other applicable statutes.

(5) DISC INCOME COMBINING. In the case of a parent corporation, its DISC or affiliate, the net income of a DISC derived from business transacted with its parent shall be combined with the income of the parent corporation and the net income of a DISC derived from business transacted with the parent's affiliated corporation shall be combined with the net income of the affiliated corporation to determine the amount of income subject to taxation under this chapter for the DISC, the parent corporation or the affiliate of the parent corporation as separate taxable entities. The net income of the parent corporation shall not include dividends received from the DISC paid from income previously combined for taxation under this subsection. "DISC" (domestic international sales corporation) has the meaning specified in section 992 of the internal revenue code as amended to December 31, 1979. For purposes of this subsection, a corporation is affiliated if at least 50% of its total combined voting stock is owned directly or indirectly by its parent corporation.

(6) INSTALMENT METHOD; DISTRIBUTIONS AND FINAL YEAR. A corporation entitled to use the instalment method of accounting shall take the unreported balance of gain on all instalment obligations into income in the taxable year of their distribution, transfer or acquisition by another person or for the final taxable year for which it files or is required to file a return under this chapter, whichever year occurs first.

(7) PENALTIES. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with the provisions of this subchapter unless the context requires otherwise.

(8) PRICING EFFECT ON TAXABLE INCOME. (a) When any corporation liable to taxation under this chapter conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business, by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income, the department may determine the amount of taxable income to such corporation for the calendar or fiscal year, having due regard to the reasonable profits which but for such arrangement or understanding might or could have been obtained from dealing in such products, goods or commodities.

(b) For the purpose of this chapter, if a corporation which is required to file an income or franchise tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations or has income that is regulated through contract or other arrangement, the department of revenue may require such consolidated statements as in its opinion are necessary in order to determine the taxable income received by any one of the affiliated or related corporations.

(9) RESERVE ACCOUNT TRANSFER TO SURPLUS. If any transfer of a reserve or other account or portion thereof is in effect a transfer to surplus, so much of such transfer as had been accumulated through deductions from the gross or taxable income of the years open to audit under s. 71.74 (1) and (2) shall be included in the gross or taxable income of such years, and so much of such transfer as has been accumulated through deductions from the gross or taxable income of the years following January 1, 1911, and not open to audit under s. 71.74 (1) and (2) shall be included in the gross or taxable income of the year in which such transfer was effected.

History: 1987 a. 312; 1987 a. 411 ss. 144, 145, 182 to 185; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27.

SUBCHAPTER V

TAX−OPTION CORPORATIONS

71.32 Conformity. Unless specifically provided in this subchapter, tax−option corporations shall be subject to all of the provisions, requirements and liabilities of this chapter, so far as applicable, unless the context requires otherwise.

History: 1987 a. 312.

71.33 Intent. It is the intent of this subchapter and other subchapters 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.

History: 1987 a. 312.

71.34 Definitions. In this subchapter:

(1) "Net income or loss" of a tax−option corporation means net income or loss computed under the internal revenue code, as defined under sub. (1g), except that:

(ag) Section 164 (a) (3) of the internal revenue code is modified so that state taxes and taxes of the District of Columbia that are value−added taxes, single business taxes or taxes on or measured by all or a portion of net income, gross income, gross receipts or capital stock are not deductible.

(ar) Section 1363 (a) of the internal revenue code does not apply.

(b) The items referred to in section 1366 (a) (1) (A) of the internal revenue code shall be included.

(c) The deduction referred to in sections 212 and 703 (a) (2) (E) of the internal revenue code shall be allowed.

(d) An addition or subtraction, as appropriate, shall be made for the net amount of state and federal differences including differences arising from the different basis of assets disposed of in a transaction in which gain or loss is recognized for state tax purposes, different depreciation methods or difference in basis of

depreciable assets, different elections, or transitional adjustments due to differences in the statutes for taxable years 1986 and 1987 pertaining to the computation of net income of a tax−option corporation.

(e) An addition shall be made for the amount of credit computed under s. 71.28 (3) and used by the corporation in the current year.

(f) An addition shall be made for the amount of interest, less related expenses, excluded by reason of section 103 of the internal revenue code (relating to interest received on state and municipal obligations and on volunteer fire department and mass transit obligations) or any other federal law.

(g) An addition shall be made for credits computed by a tax−option corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx) and (3) and passed through to shareholders.

(h) Section 162 of the internal revenue code (relating to trade or business expenses) is modified so that payments for wages, salaries, bonuses, interest or other expenses paid to an entertainer or entertainment corporation may be deducted only if the corporation complies with ss. 71.63 (3) (b), 71.64 (4) and (5) and 71.80 (15) (e).

(i) In section 1366 (f) of the Internal Revenue Code, the tax under s. 71.35 is substituted for the taxes under sections 1374 and 1375 of the Internal Revenue Code.

(1g) (e) "Internal revenue code" for tax−option corporations, for taxable years that begin after December 31, 1989, and before January 1, 1991, means the federal internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34, except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1989, do not apply to this paragraph with respect to taxable years beginning after December 31, 1989, and before January 1, 1991, except that changes to the internal revenue code made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect provisions applicable to this subchapter made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(f) "Internal revenue code" for tax−option corporations, for taxable years that begin after December 31, 1990, and before January 1, 1992, means the federal internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1990, do not apply to this paragraph with respect to taxable years beginning after December 31, 1990, and before January 1, 1992, except that changes to the internal revenue code made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect provisions applicable to this subchapter made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(g) "Internal revenue code" for tax−option corporations, for taxable years that begin after December 31, 1991, and before January 1, 1993, means the federal internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1991, do not apply to this paragraph with respect to taxable years beginning after December 31, 1991, and before January 1, 1993, except that changes to the internal revenue code made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(h) "Internal revenue code" for tax−option corporations, for taxable years that begin after December 31, 1992, and before January 1, 1994, means the federal internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1992, do not apply to this paragraph with respect to taxable years beginning after December 31, 1992, and before January 1, 1994, except that changes to the internal revenue code made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the provisions

applicable to this subchapter made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(i) "Internal revenue code" for tax−option corporations, for taxable years that begin after December 31, 1993, and before January 1, 1995, means the federal internal revenue code as amended to December 31, 1993, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, and as amended by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1993, do not apply to this paragraph with respect to taxable years beginning after December 31, 1993, and before January 1, 1995, except that changes to the internal revenue code made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(j) "Internal revenue code" for tax−option corporations, for taxable years that begin after December 31, 1994, and before January 1, 1996, means the federal internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1994, do not apply to this paragraph with respect to taxable years beginning after December 31, 1994, and before January 1, 1996, except changes to the internal revenue code made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(k) "Internal revenue code" for tax−option corporations, for taxable years that begin after December 31, 1995, and before January 1, 1997, means the federal internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1995, do not apply to this paragraph with respect to taxable years beginning after December 31, 1995, and before January 1, 1997, except that changes to the Internal Revenue Code made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(L) "Internal Revenue Code" for tax−option corporations, for taxable years that begin after December 31, 1996, and before January 1, 1998, means the federal Internal Revenue Code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as amended by P.L. 105−33 and P.L. 105−34 and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal Internal Revenue Code enacted after December 31, 1996, do not apply to this paragraph with respect to taxable years beginning after December 31, 1996, and before January 1, 1998, except that changes to the Internal Revenue Code made by P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made

by P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(m) "Internal Revenue Code" for tax−option corporations, for taxable years that begin after December 31, 1997, means the federal Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected in the provisions applicable to this subchapter by P.L. 99−514, P.L. 100−203, P.L. 100−647 excluding sections 803 (d) (2) (B), 805 (d) (2), 812 (c) (2), 821 (b) (2) and 823 (c) (2) of P.L. 99−514 and section 1008 (g) (5) of P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191 , P.L. 104−193, P.L. 105−33 and P.L. 105−34, except that section 1366 (f) (relating to pass−through of items to shareholders) is modified by substituting the tax under s. 71.35 for the taxes under sections 1374 and 1375. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal Internal Revenue Code enacted after December 31, 1997, do not apply to this paragraph with respect to taxable years beginning after December 31, 1997.

(2) "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. 71.365 (4) (a) for the current taxable year.

(3) "Tax−option item" means an item of income, loss or deduction.

(4) "Wisconsin net income", for tax−option corporations engaged in business wholly within this state, means net income and, for tax−option corporations engaged in business both within and outside this state, means the amount assigned to this state under s. 71.25.

History: 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237.

71.35 Imposition of 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 a corporation that qualifies for the exception under section 1374 (c) (1) of the internal revenue code and that has not elected to change from tax−option status under s. 71.365 (4) (a) for that taxable year, that has a net recognized built−in gain, as defined in section 1374 (d) (2) of the internal revenue code, during a recognition period, as defined in section 1374 (d) (7) of the internal revenue code as modified by this section, a tax computed under section 1374 of the internal revenue code except that the rate is that under s. 71.27 (2), the net 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. 71.365 (4) (a) for any intervening year. If a corporation that elected to change from tax−option status under s. 71.365 (4) (a) subsequently elects to become a tax−option corporation, its recognition period begins with the first day of the first taxable year affected by the subsequent election.

History: 1987 a. 312; 1989 a. 31.

71.36 Tax−option items. (1) It is the intent of this section that shareholders of tax−option corporations include in their Wisconsin adjusted gross income their proportionate share of the corporation's tax−option items unless the corporation elects under s. 71.365 (4) (a) not to be a tax−option corporation.

(1m) 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 (6) (b) 9. and all amounts not taxable to nonresident shareholders under ss. 71.04 (1) and (4) to (9) and 71.362. For purposes of this subsection, interest on federal obligations, obligations issued under s. 66.066 by a local professional baseball park district, obligations issued under ss. 66.40, 66.431 and 66.4325, obligations issued under s. 234.65 to fund an economic development loan to finance construction, renovation or development of property that would be exempt under s. 70.11 (36) and obligations issued under subch. II of ch. 229 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 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 computing the Wisconsin adjusted gross income of shareholders, tax−option items shall be reported by the shareholders and those tax−option items, 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.

(2) A tax−option corporation shall separately state all tax−option items the separate treatment of which may affect the liability of any shareholder for tax under this chapter.

(3) (a) The tax treatment of all tax−option items shall be determined at the corporate level.

(b) All shareholders of tax−option corporations shall treat tax−option items on their returns under this chapter in a manner consistent with the manner in which those tax−option items are treated on the corporation's Wisconsin income or franchise tax return or shall notify the department of revenue of any inconsistency and the reason for it.

History: 1987 a. 312; 1995 a. 27, 56.

71.362 Situs of income. (1) All tax−option items of nonresident individuals, nonresident estates and nonresident trusts derived from a tax−option corporation not requiring apportionment under sub. (2) shall follow the situs of the business of the corporation from which they are derived.

(2) Nonresident individuals, nonresident estates and nonresident trusts deriving income from a tax−option corporation which is engaged in business within and without this state shall be taxed only on the income of the corporation derived from business transacted and property located in this state and losses and other items of the corporation deductible by such shareholders shall be limited to their proportionate share of the Wisconsin loss or other item. For purposes of this subsection, all intangible income of tax−option corporations passed through to shareholders is business income that follows the situs of the business.

History: 1987 a. 312.

71.365 General provisions. (1) ADJUSTED BASIS OF SHAREHOLDERS' STOCK IN TAX−OPTION CORPORATION. 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) (a).

(1m) TAX−OPTION CORPORATIONS; DEPRECIATION. A tax−option corporation may compute amortization and depreciation under either the federal internal revenue code as amended to December 31, 1997, or the federal internal revenue code in effect for the taxable year for which the return is filed, except that property first placed in service by the taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the internal revenue code as amended to December 31, 1980, and property first placed in service in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980. Any difference between the adjusted basis for federal income tax purposes and the adjusted basis under this chapter shall be taken into account in determining net income or loss in the year or years for which the gain or loss is reportable under this chapter. If that property was placed in service by the taxpayer during taxable year 1986 and thereafter but before the property is used in the production of income subject to taxation under this chapter, the property's adjusted basis and the depreciation or other deduction schedule are not required to be changed from the amount allowable on the owner's federal income tax returns for any year because the property is used in the production of income subject to taxation under this chapter. If that property was acquired in a transaction in taxable year 1986 or thereafter in which the adjusted basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor, the Wisconsin adjusted basis of that property on the date of transfer is the adjusted basis allowable under the internal revenue code as defined for Wisconsin purposes for the property in the hands of the transferor.

(2) CORPORATION BUSINESS LOSS CARRY−FORWARD PROHIBITION. The corporation net business loss carry−forward provided by s. 71.26 (4) may not be claimed by a tax−option corporation.

(3) CREDITS NOT ALLOWED. The credits under s. 71.28 (4) and (5) may not be claimed by a tax−option corporation or shareholders of a tax−option corporation.

(4) ELECTION TO CHANGE FROM TAX−OPTION STATUS. (a) If persons who hold more than 50% of the shares on the day on which this election is made consent, a corporation that is an S corporation for federal income tax purposes and that does not have a qualified subchapter S subsidiary 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) 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.

(5) FEDERAL RETURN COPY. A tax−option corporation shall file with its state franchise or income tax return an exact copy of its federal income tax return for the same year and shall file any other return or statement filed with or made to, or any document received from, the U.S. internal revenue service, and any form required of that corporation and prescribed by the department of revenue, affecting the taxation of its shareholders.

(6) NOTICE TO SHAREHOLDERS OF APPEALS AND OTHER PROCEEDINGS. Any notice of determination by the department of any tax−option item may be contested by a tax−option corporation under subch. XIV. 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.

(7) QUALIFIED SUBCHAPTER S SUBSIDIARIES. If a tax−option corporation elects to treat a subsidiary as a qualified subchapter S subsidiary for federal purposes, that election also applies for this chapter. If this state has jurisdiction to impose the taxes under this chapter on the qualified subchapter S subsidiary, this state has the jurisdiction to impose the taxes under this chapter on the tax−option corporation.

(9) ADJUSTMENT UNDER RULES. A corporation that elects under sub. (4) (a) not to be a tax−option corporation and a corporation that elects to become a tax−option corporation shall adjust its income, under rules promulgated by the department of revenue, for the taxable year for which that election is first effective to avoid the omission or double inclusion of any item of income, loss or deduction.

History: 1987 a. 312; 1987 a. 411 ss. 40, 50, 147; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380; 1997 a. 27, 37, 237.

SUBCHAPTER VI

URBAN TRANSIT COMPANIES

71.37 Conformity. Unless otherwise provided in this subchapter or the context requires otherwise, urban transit companies are subject to this chapter.

History: 1987 a. 312.

71.38 Definition. In this subchapter, "urban mass transportation of passengers" means the transportation of passengers by means of vehicles having a passenger−carrying capacity of 10 or more persons including the operator, such capacity to be determined by dividing by 20 the total seating space measured in inches, when such transportation takes place entirely within contiguous cities, villages or towns and in cities, villages or towns contiguous to that in which the carrier has its principal place of business, or within or between cities, villages or towns located within a radius of 10 miles of the city, village or town in which the carrier has its principal place of business, or entirely within one city, village or town contiguous thereto, or within a county having a population of 500,000 or more or within such county and the counties contiguous thereto, or suburban operations classified as such by the department of transportation.

History: 1987 a. 312; 1993 a. 16, 246.

71.385 Determination of cost. The cost of property used and useful in providing urban mass transportation of passengers and the depreciation accrued on such property shall be determined on the basis of the reports and orders on file with the department of transportation.

History: 1987 a. 312; 1993 a. 16.

71.39 Imposition of tax. (1) SPECIAL TAX; COMPUTATION. In lieu of the income and franchise tax rates prescribed in s. 71.27, there shall be assessed, levied and collected upon the taxable income of every corporation whose principal source (defined for purposes of this subchapter as being 50% or more) of gross income is the urban mass transportation of passengers a special income tax of 50% determined in accordance with this chapter, except that:

(a) United States income, excess or war profits and defense taxes shall be allowed as a deduction from gross income to the extent of the total payment actually made during the tax year.

(b) A deduction shall be allowed from such taxable income before the imposition of the special tax levied by this section, in an amount equivalent to 8% of the amount by which the cost of the property of such corporation used and useful in providing its urban mass transportation of passengers exceeds the cumulated amount of the depreciation accrued against such property as of the end of the fiscal year for which the income or franchise tax return is filed.

(c) An amount shall be added to such taxable income, before imposition of the special tax levied by this section, which amount shall be equivalent to the interest paid during the year in the operation of the business from which its income is derived.

(2) DETERMINATION OF NET BUSINESS LOSS. The addition to and deductions from income of urban transit companies under sub. (1) shall be used in determining the Wisconsin net business loss of such companies to be offset against the Wisconsin net business income as determined under this section for purposes of s. 71.26 (4).

History: 1987 a. 312; 1991 a. 39.

71.40 Filing of returns. The special income tax assessed under this subchapter shall be reported in an income or franchise tax return filed in accordance with this chapter, except as modified by this subchapter. The tax so reported and assessed shall be payable to the department of revenue.

History: 1987 a. 312; 1991 a. 39.

SUBCHAPTER VII

TAXATION OF INSURANCE COMPANIES

71.42 Definitions. In this subchapter:

(1) "Corporation" means insurance corporations, insurance joint stock companies, insurance associations and insurance common law trusts, unless the context requires otherwise.

(1m) "Department" means the department of revenue.

(2) (d) For taxable years that begin after December 31, 1989, and before January 1, 1991, "internal revenue code" means the federal internal revenue code as amended to December 31, 1989, and as amended by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that "internal revenue code" does not include section 847 of the federal internal revenue code. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1989, do not apply to this paragraph with respect to taxable years beginning after December 31, 1989, and before January 1, 1991, except that changes to the internal revenue code made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the federal internal revenue code made by P.L. 101−508, P.L. 102−227, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(e) For taxable years that begin after December 31, 1990, and before January 1, 1992, "internal revenue code" means the federal internal revenue code as amended to December 31, 1990, and as amended by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that "internal revenue code" does not include section 847 of the federal internal revenue code. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1990, do not apply to this paragraph with respect to taxable years beginning after December 31, 1990, and before January 1, 1992, except that changes to the internal revenue code made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the federal internal revenue code made by P.L. 102−227, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(f) For taxable years that begin after December 31, 1991, and before January 1, 1993, "internal revenue code" means the federal internal revenue code as amended to December 31, 1991, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13171 and 13174 of P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that "internal revenue code" does not include section 847 of the federal internal revenue code. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1991, do not apply to this paragraph with respect to taxable years beginning after December 31, 1991, and before January 1, 1993, except that changes to the internal revenue code made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the federal internal revenue code made by P.L. 102−318, P.L. 102−486, P.L. 103−66, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(g) For taxable years that begin after December 31, 1992, and before January 1, 1994, "internal revenue code" means the federal internal revenue code as amended to December 31, 1992, excluding sections 103, 104 and 110 of P.L. 102−227, and as amended by P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13101 (a) and (c) 1, 13113, 13150, 13171, 13174 and 13203 of P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 except that "internal revenue code" does not include section 847 of the federal internal revenue code. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1992, do not apply to this paragraph with respect to taxable years beginning after December 31, 1992, and before January 1, 1994, except that changes to the internal revenue code made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 and changes that indirectly affect the federal internal revenue code made by P.L. 103−66, P.L. 103−465, P.L. 104−188, excluding section 1311 of P.L. 104−188, and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(h) For taxable years that begin after December 31, 1993, and before January 1, 1995, "internal revenue code" means the federal internal revenue code as amended to December 31, 1993 excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, and as amended by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34, and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486 and P.L. 103−66, excluding sections 13113, 13150 (d),

13171 (d), 13174, 13203 (d) and 13215 of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34, except that "internal revenue code" does not include section 847 of the federal internal revenue code. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1993, do not apply to this paragraph with respect to taxable years beginning after December 31, 1993, and before January 1, 1995, except that changes to the internal revenue code made by P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 103−296, P.L. 103−337, P.L. 103−465 , P.L. 104−7, excluding section 1 of P.L. 104−7, P.L. 104−188, excluding section 1311 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(i) For taxable years that begin after December 31, 1994, and before January 1, 1996, "internal revenue code" means the federal internal revenue code as amended to December 31, 1994, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34, and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34, except that "internal revenue code" does not include section 847 of the federal internal revenue code. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1994, do not apply to this paragraph with respect to taxable years beginning after December 31, 1994, and before January 1, 1996, except that changes to the internal revenue code made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−7, P.L. 104−188, excluding sections 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(j) For taxable years that begin after December 31, 1995, and before January 1, 1997, "internal revenue code" means the federal internal revenue code as amended to December 31, 1995, excluding sections 103, 104 and 110 of P.L. 102−227 and sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, and as amended by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 except that "internal revenue code" does not include section 847 of the federal internal revenue code. The internal revenue code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal internal revenue code enacted after December 31, 1995, do not apply to this paragraph with respect to taxable years beginning after December 31, 1995, and before January 1, 1997, except that changes to the Internal Revenue Code made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34, and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 104−188, excluding sections 1123, 1202, 1204, 1311 and 1605 of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(k) For taxable years that begin after December 31, 1996, and before January 1, 1998, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1996, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as amended by P.L. 105−33 and P.L. 105−34 and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c) 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191, P.L. 104−193, P.L. 105−33 and P.L. 105−34 except that "Internal Revenue Code" does not include section 847 of the federal Internal Revenue Code. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal Internal Revenue Code enacted after December 31, 1996, do not apply to this paragraph with respect to taxable years beginning after December 31, 1996, and before January 1, 1998, except that changes to the Internal Revenue Code made by P.L. 105−33 and P.L. 105−34 and changes that indirectly affect the provisions applicable to this subchapter made by P.L. 105−33 and P.L. 105−34 apply for Wisconsin purposes at the same time as for federal purposes.

(L) For taxable years that begin after December 31, 1997, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 1997, excluding sections 103, 104 and 110 of P.L. 102−227, sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66 and sections 1123 (b), 1202 (c), 1204 (f), 1311 and 1605 (d) of P.L. 104−188, and as indirectly affected by P.L. 99−514, P.L. 100−203, P.L. 100−647, P.L. 101−73, P.L. 101−140, P.L. 101−179, P.L. 101−239, P.L. 101−508, P.L. 102−227, excluding sections 103, 104 and 110 of P.L. 102−227, P.L. 102−318, P.L. 102−486, P.L. 103−66, excluding sections 13113, 13150 (d), 13171 (d), 13174 and 13203 (d) of P.L. 103−66, P.L. 103−296, P.L. 103−337, P.L. 103−465, P.L. 104−7, P.L. 104−188, excluding sections 1123 (b), 1202 (c) 1204 (f), 1311 and 1605 (d) of P.L. 104−188, P.L. 104−191 , P.L. 104−193, P.L. 105−33 and P.L. 105−34, except that "Internal Revenue Code" does not include section 847 of the federal Internal Revenue Code. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes. Amendments to the federal Internal Revenue Code enacted after December 31, 1997, do not apply to this paragraph with respect to taxable years beginning after December 31, 1997.

(2s) "Last day prescribed by law" has the meaning given in s. 71.738.

(3) "Life insurance" includes annuities.

(3m) "Pay" means mail or deliver funds to the department or, if the department prescribes another method of payment or another destination, use that other method or submit to that other destination.

(4) "Person" includes corporations, unless the context requires otherwise.

(5) "Taxable year" has the meaning under s. 71.22 (10).

History: 1987 a. 312; 1987 a. 411 ss. 5, 148, 149; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237.

71.43 Imposition of tax. (1) INCOME TAX. For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state or whose business within this state during the taxable year, except as provided under s. 71.23 (3), consists exclusively of foreign commerce, interstate commerce, or both; except as exempted under ss. 71.26 (1) and 71.45 (1). This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74 (1) and (2).

(2) FRANCHISE TAX ON CORPORATIONS. For the privilege of exercising its franchise or doing business in this state in a corporate capacity, except as provided under s. 71.23 (3), every domestic or foreign corporation, except corporations specified in ss. 71.26 (1) and 71.45 (1), shall annually pay a franchise tax according to or measured by its entire Wisconsin net income of the preceding taxable year at the rates set forth in s. 71.46 (2). In addition, except as provided in ss. 71.23 (3), 71.26 (1) and 71.45 (1), a corporation that ceases doing business in this state shall pay a special franchise tax according to or measured by its entire Wisconsin net income for the taxable year during which the corporation ceases doing business in this state at the rate under s. 71.46 (2). Every corporation organized under the laws of this state shall be deemed to be residing within this state for the purposes of this franchise tax. All provisions of this chapter and ch. 73 relating to income taxation of corporations shall apply to franchise taxes imposed under this subsection, unless the context requires otherwise. The tax imposed by this subsection on insurance companies subject to taxation under this chapter shall be based on Wisconsin net income computed under s. 71.45, and no other provision of this chapter relating to computation of taxable income for other corporations shall apply to such insurance companies. All other provisions of this chapter shall apply to insurance companies subject to taxation under this chapter unless the context clearly requires otherwise.

History: 1987 a. 312; 1989 a. 31.

Sub. (2) is discriminatory within the meaning of 31 U.S.C. 3124 (1) (a) and in violation of that provision. American Family Mutual Insurance Co. V. DOR, 214 W (2d) 576, 571 NW (2d) 710 (Ct. App. 1997).

71.44 Filing returns; extensions; payment of tax. (1) FILING RETURNS. (a) Every corporation, except corporations all of whose income is exempt from taxation and except as provided in sub. (1m), shall furnish to the department a true and accurate statement, on or before March 15 of each year, except that returns for fiscal years ending on some other date than December 31 shall be furnished on or before the 15th day of the 3rd month following the close of such fiscal year and except that returns for less than a full taxable year shall be furnished on or before the date applicable for federal income taxes under the internal revenue code, in such manner and form and setting forth such facts as the department deems necessary to enforce this chapter. Every corporation that is required to furnish a statement under this paragraph and that has income that is not taxable under this subchapter shall include with its statement a report that identifies each item of its nontaxable income. The statement shall be subscribed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The fact that an individual's name is subscribed on the return shall be prima facie evidence that the individual is authorized to subscribe the return on behalf of the corporation.

(b) Each corporation that is required to file a return under this section shall file with that return a copy of its federal income tax return for the same taxable year.

(c) Whenever a corporation has been completely inactive for an entire taxable year, in lieu of filing the statements and information otherwise required by this section, it may file a declaration, on a form to be provided by the department, subscribed by its president, if a resident of this state, and, if not a resident, then by another officer residing in this state, attesting to such inactivity. Such declaration must be filed prior to the otherwise due date for its Wisconsin return for such taxable year. Thereafter the corporation need not file such statements or information for any subsequent year unless specifically requested to do so by the department or unless in a subsequent year the corporation has been activated or reactivated. If a corporation files a false declaration of complete inactivity, or, after filing a declaration, becomes activated or reactivated and fails to file timely statements and information hereunder covering such year or years of activity or reactivity its officers at the time of such filing or failure shall be jointly and severally liable for a civil penalty of $25 for such filing or each such failure, which penalty may be assessed and collected as income or franchise taxes are assessed and collected.

(d) Nothing contained in this subsection shall preclude the department from requiring any corporation to file a return when in the judgment of the department a return should be filed.

(1m) UNRELATED BUSINESS INCOME. Every corporation subject to a tax on unrelated business income under s. 71.26 (1) (a), if that corporation is required to file for federal income tax purposes, shall furnish to the department of revenue a true and accurate statement on or before the date on or before which it is required to file for federal income tax purposes. The requirements about manner, form and subscription under sub. (1) apply to statements under this subsection.

(2) CHANGING ACCOUNTING PERIODS. (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.

(b) If a corporation changes its basis of reporting from a calendar year to a fiscal year a separate return shall be made for the period between the close of the last calendar year and the date designated as the close of the fiscal year. If the change is from a fiscal year to a calendar year, a separate return shall be made for the period between the close of the last fiscal year and the following December 31. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. In no case shall a separate income or franchise tax return be made for a period of more than 12 months.

(c) If a separate corporation income tax return is made for a fractional part of a year for federal income tax purposes, the corporation shall file a separate Wisconsin income or franchise tax return for that fractional year. The income shall be computed and reported on the basis of the period for which the separate return is made, and that fractional part of a year shall constitute a taxable year, except that if a corporation terminates, under section 1362 (d) (1) or (2) of the internal revenue code, its election to be treated as an S corporation for federal income tax purposes the corpora-

tion may allocate its items of income, loss or deduction between its short taxable year as a tax−option corporation and its short taxable year as a nontax−option corporation according to the method under section 1362 (e) (2) of the internal revenue code.

(d) If a separate income or franchise tax return is made for a short period under par. (b) on account of a change in the taxable year, the net income for such short period shall be placed on an annual basis using the method applicable for federal income taxes under section 443 (b) (1) of the internal revenue code.

(3) EXTENSIONS. In the case of a corporation required to file a return, when sufficient reason is shown, the department of revenue may on written request allow an extension of 30 days or until the original due date of the corporation's federal return, whichever is later, if the corporation has not received an extension on its federal return. Any extension of time granted by law or by the internal revenue service for the filing of corresponding federal returns shall extend the time for filing under this subchapter to 30 days after the federal due date if a copy of any extension requested of the internal revenue service is filed with the return. Termination of an automatic extension by the internal revenue service, or its refusal to grant such automatic extension, shall similarly require that any returns due under this subchapter are due on or before 30 days after the date for termination fixed by the internal revenue service. Except for payments of estimated taxes, income or franchise taxes payable upon the filing of the tax return shall not become delinquent during such extension period, but shall be subject to interest at the rate of 12% per year during such period.

(4) PAYMENT OF TAX. (b) Corporation franchise and income taxes not paid on or before the 15th day of the 3rd month following the close of the taxable year shall be deemed delinquent.

(c) The department of revenue shall accept in advance income or franchise taxes and surtaxes from taxpayers desirous of making such payments before the same shall become due and payable. Advance payment of taxes under this provision shall not relieve the taxpayer from additional taxes which may result from subsequent legislation or from additional taxable income disclosed or discovered subsequent to such payment.

(d) No person is required to pay a balance due of less than $1.

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1993 a. 199; 1995 a. 428; 1997 a. 27.

71.45 Income computation. (1) EXEMPT AND EXCLUDABLE INCOME. There shall be exempt from taxation under this subchapter income of insurers exempt from federal income taxation pursuant to section 501 (c) (15) of the internal revenue code, town mutuals organized under or subject to ch. 612, foreign insurers, and domestic insurers engaged exclusively in life insurance business, domestic insurers insuring against financial loss by reason of nonpayment of principal, interest and other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real estate and corporations organized under ch. 185, but not including income of cooperative sickness care associations organized under s. 185.981, or of a service insurance corporation organized under ch. 613, that is derived from a health maintenance organization as defined in s. 609.01 (2) or a limited service health organization as defined in s. 609.01 (3), or operating under subch. I of ch. 616 which are bona fide cooperatives operated without pecuniary profit to any shareholder or member, or operated on a cooperative plan pursuant to which they determine and distribute their proceeds in substantial compliance with s. 185.45.

(1t) EXEMPTION FROM THE INCOME TAX. The interest and income from the following obligations are exempt from the tax imposed under s. 71.43 (1):

(b) Those issued under s. 66.40.

(c) Those issued under s. 66.431.

(d) Those issued under s. 66.4325.

(e) Those issued under s. 234.65 to fund an economic development loan to finance construction, renovation or development of property that would be exempt under s. 70.11 (36).

(f) Those issued under subch. II of ch. 229.

(g) Those issued under s. 66.066 by a local professional baseball park district.

(2) DETERMINATION OF NET INCOME. (a) Insurers subject to taxation under this chapter shall pay a tax according to or measured by net income. Such tax is payable under s. 71.44 (1). Except as provided in sub. (5), "net income" of an insurer subject to taxation under this chapter means federal taxable income as determined in accordance with the provisions of the internal revenue code adjusted as follows:

1. By adding to federal taxable income the amount of any loss carry−forward or carry−back, including any capital loss carry−forward or carry−back, deducted in the calculation of federal taxable income.

2. By adding to federal taxable income, if not already included therein, the amount of any federal tax refund or portion thereof previously applied to reduce the amount of tax payable under this chapter.

3. For insurers subject to taxation under s. 71.43 (1), by adding to federal taxable income the amount of any interest income, except interest under sub. (1t), that is not included in federal taxable income except the amount of any interest income which is by federal law exempt from taxation by this state and, for insurers subject to taxation under s. 71.43 (2), by adding to federal taxable income the amount of any interest income which is not included in federal taxable income.

4. By adding to federal taxable income an amount equal to dividend income received during the taxable year to the extent such dividend income was used as a deduction in determining federal taxable income.

5. By adding to federal taxable income the amount of taxes imposed by this or any other state, or the District of Columbia, that are value−added taxes, single business taxes or taxes on or measured by net income, gross income, gross receipts or capital stock, if any, that are deducted in the calculation of federal taxable income except that gross receipts taxes assessed in lieu of property taxes are deductible from gross income.

5m. By adding to federal taxable income the amount of the environmental tax that is imposed under section 59A of the internal revenue code and that is deducted in calculating federal taxable income.

6. By adding or subtracting, as appropriate, the difference between the federal basis and the Wisconsin basis of any asset sold, exchanged, abandoned or otherwise disposed of in a taxable transaction during the taxable year.

7. By adding or subtracting, as appropriate, the amount required to reflect the fact that property that, under s. 71.01 (4) (g) 7. to 10., 1985 stats., is required to be depreciated for taxable years 1983 to 1986 under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980.

8. By subtracting from federal taxable income dividends received that are deductible under s. 71.26 (3) (j) and are included in federal taxable income.

9. By subtracting from federal taxable income any net capital losses not offset against capital gains to the extent that subtraction is allowed to other corporations in computing net income under s. 71.26 (2).

10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dx) and not passed through by a partnership, limited liability company or tax−option corporation that has added that amount to the partnership's, limited liability company's or tax−option corporation's income under s. 71.21 (4)

or 71.34 (1) (g) and the amount of credit computed under s. 71.47 (1), (3), (4) and (5).

10m. By adding to federal taxable income the amount deducted under section 847 of the Internal Revenue Code.

11. By subtracting from federal taxable income the amount of any recapture under s. 71.47 (1di) (e).

13. By adding or subtracting, as appropriate, the difference between the depreciation deduction under the federal internal revenue code as amended to December 31, 1997 and the depreciation deduction under the federal internal revenue code in effect for the taxable year for which the return is filed, so as to reflect the fact that the insurer may choose between these 2 deductions, except that property first placed in service by the taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the internal revenue code as amended to December 31, 1980, and property first placed in service in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the internal revenue code as amended to December 31, 1980, shall continue to be depreciated under the internal revenue code as amended to December 31, 1980.

14. By subtracting from federal taxable income the amount that is included in that income from the sale by the original policyholder or original certificate holder of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract, as defined in s. 632.68 (1) (d).

(b) 1. With respect to any domestic insurer engaged in the sale of life insurance and also other insurance, the net income figure derived by application of par. (a) shall be multiplied by a fraction, the numerator of which is the net gain from operations on insurance, other than life insurance, and the denominator of which is the total net gain from operations; except that the multiplier is zero if the numerator is zero or the numerator is negative and the adjusted federal taxable income is positive or the numerator is positive and the adjusted federal taxable income is negative, and except that the multiplier is one if the numerator is positive and the denominator is zero or negative and the adjusted federal taxable income is positive or the numerator is negative and the denominator is zero or positive and the adjusted federal taxable income is negative or the numerator, the denominator and the adjusted federal taxable income are positive and the numerator is greater than the denominator, and except that if the numerator and denominator are both negative and the adjusted federal taxable income is negative the multiplier is positive but may not be more than one.

2. For purposes of the numerator, "net gain from operations on insurance, other than life insurance" includes net income, after dividends to policyholders, but before federal income taxes and foreign income or franchise taxes, from fire and casualty insurance; net gain from operations, after dividends to policyholders and before federal income taxes, from accident and health insurance; and net realized capital gains or losses on investments from accident and health insurance operations, said net realized capital gains or losses to be apportioned among life and accident and health insurance lines in the same manner as net investment income is required to be apportioned by the commissioner of insurance. "Net gain from operations", "net income", "net realized capital gains or losses", and "net investment income" shall be calculated and reported as required under rules adopted by the commissioner of insurance.

3. For purposes of the denominator, "total net gain from operations" includes net income, after dividends to policyholders, but before federal income taxes and foreign income or franchise taxes, from fire and casualty insurance; net gain from operations after dividends to policyholders and before federal income taxes, from accident and health and life insurance; and net realized capital gains or losses on investments from accident and health and life insurance operations. "Net income", "net gain from operations", and "net realized capital gains or losses" shall be calculated and reported as required under rules adopted by the commissioner of insurance.

4. The resultant figure shall constitute Wisconsin net income for purposes of the Wisconsin franchise tax measured by net income except with respect to such of said insurers as had, in the taxable year, premiums written on insurance other than life insurance where the subject of such insurance was resident, located or to be performed outside this state.

(3) APPORTIONMENT. With respect to domestic insurers not engaged in the sale of life insurance but which, in the taxable year, have collected premiums written on subjects of insurance resident, located or to be performed outside this state, there shall be subtracted from the net income figure derived by application of sub. (2) (a) to arrive at Wisconsin income constituting the measure of the franchise tax an amount calculated by multiplying such adjusted federal taxable income by the arithmetic average of the following 2 percentages:

(a) The percentage of total premiums written on all property and risks other than life insurance, wherever located during the taxable year, as reflects premiums written on insurance, other than life insurance, where the subject of insurance was resident, located or to be performed outside this state.

(b) The percentage of total payroll, exclusive of life insurance payroll, paid everywhere in the taxable year as reflects such compensation paid outside this state. Compensation is paid outside this state if the individual's service is performed entirely outside this state; or the individual's service is performed both within and without this state, but the service performed within is incidental to the individual's service without this state; or some service is performed without this state and the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is without this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is outside this state.

(3m) ARITHMETIC AVERAGE. The arithmetic average of the 2 percentages referred to in sub. (3) shall be applied to the net income figure arrived at by the successive application of sub. (2) (a) and (b) with respect to Wisconsin insurers to which sub. (2) (a) and (b) applies and which have collected premiums written upon insurance, other than life insurance, where the subject of such insurance was resident, located or to be performed outside this state, to arrive at Wisconsin income constituting the measure of the franchise tax.

(4) NET BUSINESS LOSS CARRY−FORWARD. Insurers computing tax under this subchapter may subtract from Wisconsin net income any Wisconsin net business loss sustained in any of the next 15 preceding taxable years to the extent not offset by Wisconsin net business income of any year between the loss year and the taxable year for which an offset is claimed and computed without regard to sub. (2) (a) 8. and 9. and this subsection and limited to the amount of net income, but no loss incurred for a taxable year before taxable year 1987 by a nonprofit service plan of sickness care under ch. 148, dental care under s. 447.13 or prepaid optometric service plans under s. 449.15 may be treated as a net business loss of the successor service insurer under ch. 613 operating by virtue of s. 148.03, 447.13 or 449.15.

(5) EXCEPTIONS. The net income of a cooperative sickness care association organized under s. 185.981, or of a service insurance corporation organized under ch. 613, that is derived from a health maintenance organization, as defined in s. 609.01 (2), or a limited service health organization, as defined in s. 609.01 (3), is the net income that would be determined if the cooperative sickness care association or service insurance corporation were sub-

ject to federal income taxation and as if that income were that of an insurance company.

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237.

71.46 Rates of taxation. (1) The taxes to be assessed, levied and collected upon Wisconsin net incomes of corporations shall be computed at the rate of 7.9%.

(2) The corporation franchise tax imposed under s. 71.43 (2) and measured by Wisconsin net income shall be computed at the rate of 7.9%.

(3) The tax imposed under this subchapter on each domestic insurer on or measured by its entire net income attributable to lines of insurance in this state may not exceed 2% of the gross premiums, as defined in s. 76.62, received during the taxable year by the insurer on all policies on those lines of insurance if the subject of that insurance was resident, located or to be performed in this state.

History: 1987 a. 312.

71.47 Credits. (1) COMMUNITY DEVELOPMENT FINANCE CREDIT. (a) Any corporation which contributes an amount to the community development finance authority under s. 233.03, 1985 stats., or to the housing and economic development authority under s. 234.03 (32) and in the same year purchases common stock or partnership interests of the community development finance company issued under s. 233.05 (2), 1985 stats., or s. 234.95 (2) in an amount no greater than the contribution to the authority, may credit against taxes otherwise due an amount equal to 75% of the purchase price of the stock or partnership interests. The credit received under this paragraph may not exceed 75% of the contribution to the community development finance authority.

(b) Any corporation receiving a credit under this subsection may carry forward to the next succeeding 15 taxable years the amount of the credit not offset against taxes for the year of purchase to the extent not offset by those taxes otherwise due in all intervening years between the year for which the credit was computed and the year for which the carry−forward is claimed.

(c) A claimant who has filed a timely claim under this subsection may file an amended claim with the department of revenue within 4 years of the last day prescribed by law for filing the original claim.

(1dd) DEVELOPMENT ZONES DAY CARE CREDIT. (a) In this subsection:

1. "Day care center benefits" means benefits provided at a day care facility that is licensed under s. 48.65 or 48.69 and that for compensation provides care for at least 6 children or benefits provided at a facility for persons who are physically incapable of caring for themselves.

2. "Employment−related day care expenses" means amounts paid or incurred by a claimant, during the 2−year period beginning with the day that the member of the targeted group begins work for the claimants for providing or making day care center benefits available to a qualifying individual in order to enable a member of a targeted group to be employed by the claimant.

4. "Member of a targeted group" means a person under sub. (1dj) (am) 1.

5. "Qualifying individual" means a dependent of a member of a targeted group who is employed by a claimant and with respect to whom the member is entitled to a deduction under section 151 (c) of the internal revenue code for federal income tax purposes, a dependent of a member of a targeted group who is employed by a claimant if the dependent is physically or mentally incapable of caring for himself or herself or the spouse of a member of a targeted group who is employed by the claimant if the spouse is physically or mentally incapable of caring for himself or herself.

(b) Except as provided in s. 73.03 (35), for any taxable year for which that person is certified under s. 560.765 (3) and begins business operations in a zone under s. 560.71 after July 29, 1995, or certified under s. 560.797 (4) (a), for each zone for which the person is certified or entitled a person may credit against taxes otherwise due under this subchapter employment−related day care expenses, up to $1,200 for each qualifying individual.

(c) Subsection (1di) (b), (c), (d) 1., (f) and (g), as it applies to the credit under sub. (1di), applies to the credit under this subsection.

(d) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

(dm) No credit may be allowed under this subsection unless the claimant includes with the claimant's return a statement from the department of commerce verifying the amount of qualifying employment−related day care expenses.

(e) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1de) DEVELOPMENT ZONES ENVIRONMENTAL REMEDIATION CREDIT. (a) Except as provided in s. 73.03 (35), for any taxable year for which a person is certified under s. 560.765 (3) and begins business operations in a zone under s. 560.71 after July 29, 1995, or certified under s. 560.797 (4) (a), for each zone for which the person is certified or entitled the person may claim as a credit against taxes otherwise due under this subchapter an amount equal to 7.5% of the amount that the person expends to remove or contain environmental pollution, as defined in s. 299.01 (4), in the zone or to restore soil or groundwater that is affected by environmental pollution, as defined in s. 299.01 (4), in the zone if the person fulfills all of the following requirements:

1. Begins the work, other than planning and investigating, for which the credit is claimed after the area that includes the site where the work is done is designated a development zone under s. 560.71 or an enterprise development zone under s. 560.797 and after the claimant is certified under s. 560.765 (3) or certified under s. 560.797 (4) (a).

(b) Subsection (1di) (b), (c), (d), (f) and (g), as it applies to the credit under s. 71.07 (2di), applies to the credit under this subsection.

(c) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

(d) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1di) DEVELOPMENT ZONES INVESTMENT CREDIT. (a) Except as provided in pars. (dm) and (f) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter 2.5% of the purchase price of depreciable, tangible personal property, or 1.75% of the purchase price of depreciable, tangible personal property that is expensed under section 179 of the internal revenue code for purposes of the taxes under this chapter, except that:

1. The investment must be in property that is purchased after the person is certified under s. 560.765 (3) for tax benefits and that is used for at least 50% of its use in the conduct of the business operations for which the claimant is certified under s. 560.765 (3) at a location in a development zone under subch. VI of ch. 560 or, if the property is mobile, the base of operations of the property for at least 50% of its use must be a location in a development zone.

2. The credit under this subsection may be claimed only by the person who purchased the property the investment in which is the basis for the credit, except that only partners may claim the credit based on purchases by a partnership, only members may claim the credit based on purchases by a limited liability company and except that only shareholders may claim the credit based on purchases by a tax−option corporation.

3. If the credit is claimed for used property, the claimant may not have used the property for business purposes at a location outside the development zone. If the credit is attributable to a partnership, limited liability company or tax−option corporation, that entity may not have used the property for business purposes at a location outside the development zone.

4. No credit is allowed under this subsection for property which is the basis for a credit under sub. (1dL).

(b) 1. Except as provided in subd. 2., the credit, including any credits carried over, may be offset only against the amount of the tax otherwise due under this chapter attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from directly related business operations of the claimant.

2. If the claimant is located on an Indian reservation, as defined in s. 560.86 (5), and is an American Indian, as defined in s. 560.86 (1), an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in s. 71.07 (2di) (b) 2., and if the allowable amount of the credit under this subsection exceeds the taxes otherwise due under this chapter on or measured by the claimant's income, the amount of the credit not used as an offset against those taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft.

3. Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for, and amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of the credit that may be claimed by each of its shareholders, partners or members and shall provide that information to each of its shareholders, partners or members. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the partnership's, company's or corporation's business operations in the development zone and against the tax attributable to their income from the partnership's, company's or corporation's directly related business operations.

(c) Except as provided in par. (b) 2., the carry−over provisions of sub. (4) (e) and (f) as they relate to the credit under that subsection relate to the credit under this subsection and apply as if the development zone continued to exist.

(d) No credit may be allowed under this subsection unless the claimant includes with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

2. A statement from the department of commerce verifying the purchase price of the investment and verifying that the investment fulfills the requirements under par. (a).

(dm) In calculating the credit under par. (a), a claimant shall reduce the purchase price of the property by a percentage equal to the percentage of use of the property during the taxable year the property is first placed into service that is for a purpose not specified under par. (a) 1.

(e) The recapture provisions under section 47 (a) (5) of the internal revenue code as amended to December 31, 1985, as they apply to the credit under section 46 of the internal revenue code, apply to the credit under this subsection, except that those provisions also apply if the property for which the credit is claimed is moved out of the development zone or, for mobile property, if the base of operations is moved out of the zone and except that the determination of whether or not property is 3−year property shall be made under section 168 of the internal revenue code.

(f) If the certification of a person for tax benefits under s. 560.765 (3) is revoked, that person may claim no credits under this subsection for the taxable year that includes the day on which the certification is revoked or succeeding taxable years and that person may carry over no unused credits from previous years to offset tax under this chapter for the taxable year that includes the day on which certification is revoked or succeeding taxable years.

(g) If a person who is certified under s. 560.765 (3) for tax benefits ceases business operations in the development zone during any of the taxable years that that zone exists, that person may not carry over to any taxable year following the year during which operations cease any unused credits from the taxable year during which operations cease or from previous taxable years.

(h) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(i) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1dj) DEVELOPMENT ZONES JOBS CREDIT. (am) Except as provided under par. (f) or s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter an amount calculated as follows:

1. Modify "member of a targeted group", as defined in section 51 (d) of the internal revenue code as amended to December 31, 1995, to include persons unemployed as a result of a business action subject to s. 109.07 (1m) and persons specified under 29 USC 1651 (a) and to require a member of a targeted group to be a resident of this state.

2. Modify "designated local agency", as defined in section 51 (d) (15) of the internal revenue code, to include the job training partnership act organization for the area that includes the development zone in which the employe in respect to whom the credit under this subsection is claimed works, if the department of commerce approves the criteria used for certification, and the department of commerce.

3. Modify the rule for certification under section 51 (d) (16) (A) of the internal revenue code to allow certification within the 90−day period beginning with the first day of employment of the employe by the claimant.

4. a. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, modify "qualified wages" as defined in section 51 (b) of the internal revenue code to exclude wages paid before the claimant is certified for tax benefits and to exclude wages that are paid to employes for work at any location that is not in a development zone under subch. VI of ch. 560. For purposes of this subd. 4. a., mobile employes work at their base of operations and leased or rented employes work at the location where they perform services.

b. If certified under s. 560.765 (3) for tax benefits after December 31, 1991, modify "qualified wages" as defined in section 51 (b) of the internal revenue code to exclude wages paid before the claimant is certified for tax benefits and to exclude wages that are paid to employes for work at any location that is not in a development zone under subch. VI of ch. 560. For purposes of this subd. 4. b., mobile employes and leased or rented employes work at their base of operations.

4c. Modify the rule for ineligible individuals under section 51 (i) (1) of the internal revenue code to allow credit for the wages of related individuals paid by an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in s. 71.07 (2di) (b) 2., if the Indian business or tribal enterprise is located in a development zone designated under s. 560.71 (3) (c) 2.

4e. Modify section 51 (c) (2) of the internal revenue code to specify that the rules for on−the−job training and work supplementation payments also apply to those kinds of payments funded by this state.

4g. Delete section 51 (c) (4) of the internal revenue code.

4h. Modify section 51 (a) of the internal revenue code so that the amount of the credit is 25% of the qualified first−year wages if the wages are paid to an applicant for a Wisconsin works

employment position for service either in an unsubsidized position or in a trial job under s. 49.147 (3) and so that the amount of the credit is 20% of the qualified first−year wages if the wages are not paid to such an applicant.

4i. Modify section 51 (b) (3) of the internal revenue code so that the amount of the qualified first−year wages that may be taken into account is $13,000.

4m. Modify the rule on remuneration under section 51 (f) of the internal revenue code so that it does not apply to persons who are exempt from tax under this chapter.

4t. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, modify section 51 (i) (3) of the internal revenue code so that for leased or rented employes, except employes of a leasing agency certified for tax benefits who perform services directly for the agency in a development zone, the minimum employment periods apply to the time that they perform services in a development zone for a single lessee or renter, not to their employment by the leasing agency.

5. Calculate the credit under section 51 of the internal revenue code.

6. For persons for whom a credit may be claimed under subd. 5., modify "qualified wages" under section 51 (b) of the internal revenue code so that those wages are based on the wages attributable to service rendered during the one−year period beginning with the date one year after the date on which the individual begins work for the employer.

7. Modify section 51 of the internal revenue code as under subds. 1. to 4t.

8. Calculate the credit under section 51 of the internal revenue code based on qualified wages for the 2nd year as determined under subds. 6. and 7.

8m. For each person, whether or not he or she is a member of a targeted group, who is determined by the department of commerce to be a resident of the development zone in which he or she is employed, calculate a credit equal to 10% of the wages earned by such person during the 1st and 2nd years of the person's employment in the development zone, up to a maximum credit of $600 per year.

9. Add the amounts under subds. 5., 8. and 8m.

(b) In computing the credit under this subsection, the wages of leased or rented employes may be claimed only by their employer, not by the person to whom they are rented or leased.

(c) The credit under this subsection may not be claimed by partnerships, limited liability companies and tax−option corporations but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of the credit that may be claimed by each of its shareholders, partners or members and shall provide that information to each of its shareholders, partners or members. That credit may be claimed by partners, members of limited liability companies and shareholders of tax−option corporations in proportion to their ownership interests.

(e) No credit may be allowed under this subsection unless the claimant includes with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

3. a. If certified under s. 560.765 (3) for tax benefits before January 1, 1992, a statement from the department of commerce verifying the amount of qualifying wages and verifying that the employes were hired for work only in a development zone or are mobile employes whose base of operations is in a development zone.

b. If certified under s. 560.765 (3) for tax benefits after December 31, 1991, a statement from the department of commerce verifying the amount of qualifying wages and verifying that the employes were hired for work only in a development zone or are mobile employes or leased or rented employes whose base of operations is in a development zone.

4. A copy of any claims for the credit under section 51 of the internal revenue code that are based on wages that also are the basis for a claim under this subsection.

(f) The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to the credit under this subsection.

(g) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(h) The rules under sub. (1di) (b) and (c) as they apply to the credit under that subsection apply to the credit under this subsection.

(i) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1dL) DEVELOPMENT ZONES LOCATION CREDIT. (a) Except as provided in pars. (ag), (ar), (bm) and (f) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this subchapter an amount equal to 2.5% of the amount expended by that person to acquire, construct, rehabilitate or repair real property in a development zone under subch. VI of ch. 560.

(ag) If the credit under par. (a) is claimed for an amount expended to construct, rehabilitate, remodel or repair property, the claimant must have begun the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the place where the property is located was designated a development zone under s. 560.71 and the completed project must be placed in service after the claimant is certified for tax benefits under s. 560.765 (3). In this paragraph, "physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications or stabilizing the property to prevent deterioration.

(ar) If the credit under par. (a) is claimed for an amount expended to acquire property, the property must have been acquired by the claimant after the place where the property is located was designated a development zone under s. 560.71 and the completed project must be placed in service after the claimant is certified for tax benefits under s. 560.765 (3) and the property must not have been previously owned by the claimant or a related person during the 2 years prior to the designation of the development zone under s. 560.71. No credit is allowed for an amount expended to acquire property until the property, either in its original state as acquired by the claimant or as subsequently constructed, rehabilitated, remodeled or repaired, is placed in service.

(aw) In par. (ar), property is previously owned by a claimant or a related person if a claimant may not deduct a loss from a sale to, or exchange of property with, that related person under section 267 of the internal revenue code, except that section 267 (b) of the internal revenue code is modified so that any ownership percentage, rather than 50% ownership, makes a claimant subject to section 267 (a) (1) of the internal revenue code for purposes of this subsection.

(b) No credit is allowed under this subsection for property which is the basis for a credit under sub. (1di).

(bm) In calculating the credit under par. (a) a claimant shall reduce the amount expended to acquire property by a percentage equal to the percentage of the area of the real property not used for the purposes for which the claimant is certified to claim tax benefits under s. 560.765 (3) and shall reduce the amount expended for other purposes by the amount expended on the part of the property not used for the purposes for which the claimant is certified to claim tax benefits under s. 560.765 (3).

(c) 1. Except as provided in subd. 2., the credit under par. (a), including any credits carried over, may be offset only against the amount of the tax otherwise due under this chapter attributable to income from the business operations of the claimant in the development zone and against the tax attributable to income from directly related business operations.

2. If the claimant is located on an Indian reservation, as defined in s. 560.86 (5), and is an American Indian, as defined in s. 560.86 (1), an Indian business, as defined in s. 560.86 (4), or a tribal enterprise, as defined in s. 71.07 (2di) (b) 2., and if the allowable amount of the credit under par. (a) exceeds the taxes otherwise due under this chapter on or measured by the claimant's income, the amount of the credit not used as an offset against those taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft.

(d) Except as provided in par. (c) 2., the carry−over provisions of sub. (4) (e) and (f) as they relate to the credit under that subsection relate to the credit under this subsection and apply as if the development zone continued to exist.

(e) Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection, but the eligibility for and the amount of, that credit shall be determined on the basis of their economic activity, not that of their shareholders, partners or members. The corporation, partnership or limited liability company shall compute the amount of credit that may be claimed by each of its shareholders, partners or members and provide that information to its shareholders, partners or members. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest and may offset it against the tax attributable to their income from the partnership's, company's or corporation's business operations in the development zone and against the tax attributable to their income from the partnership's, company's or corporation's directly related business operations.

(f) Subsection (1di) (d), (f) and (g) as it applies to the credit under that subsection applies to the credit under this subsection.

(g) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(h) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1ds) DEVELOPMENT ZONES SALES TAX CREDIT. (a) In this subsection:

1. "Development zone" means a zone designated under s. 560.71.

2. "Eligible property" means construction materials and supplies and other materials that are used to construct, rehabilitate, repair or remodel real property that is eligible for the credit under sub. (1dL) and investment credit property.

3. "Investment credit property" means depreciable, tangible personal property that is eligible for the credit under sub. (1di) and leased or rented depreciable, tangible personal property that would be eligible for the credit under sub. (1di) if it had been purchased.

(b) Except as provided in pars. (dm) and (e) and s. 73.03 (35), for any taxable year for which the person is certified under s. 560.765 (3) for tax benefits, any person may claim as a credit against taxes otherwise due under this chapter the taxes paid under subchs. III and V of ch. 77 on their purchases, leases and rentals of eligible property. Partnerships, limited liability companies and tax−option corporations may not claim the credit under this subsection but the eligibility for, and the amount of, that credit shall be determined on the basis of their economic activity, not that of their partners, members or shareholders. The partnership, limited liability company or corporation shall compute the amount of the credit that may be claimed by each of its partners, members or shareholders and shall provide that information to each of its partners, members or shareholders. Partners, members of limited liability companies and shareholders of tax−option corporations may claim the credit based on the partnership's, company's or corporation's activities in proportion to their ownership interest.

(d) No credit may be allowed under this subsection unless the claimant submits with the claimant's return:

1. A copy of the claimant's certification for tax benefits under s. 560.765 (3).

2. A statement from the department of commerce verifying the amount of taxes paid under subchs. III and V of ch. 77 for eligible property by the claimant.

(dm) In calculating the credit under par. (b) a claimant shall reduce the sales tax paid for building supplies and materials by the reduction under sub. (1dL) (bm) and shall reduce the sales tax paid for investment credit property by the percentage reduction under sub. (1di) (dm).

(e) The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to the credit under this subsection.

(f) Subsection (4) (g) and (h) as it applies to the credit under that subsection applies to the credit under this subsection.

(h) The rules under sub. (1di) (b) and (c) as they apply to the credit under that subsection apply to the credit under this subsection.

(i) No credit may be claimed under this subsection for taxable years that begin on January 1, 1998, or thereafter. Credits under this subsection for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(1dx) DEVELOPMENT ZONES CREDIT. (a) *Definitions.* In this subsection:

1. "Brownfield" means an industrial or commercial facility the expansion or redevelopment of which is complicated by environmental contamination.

2. "Development zone" means a development zone under s. 560.70, a development opportunity zone under s. 560.795 or an enterprise development zone under s. 560.797.

3. "Environmental remediation" means removal or containment of environmental pollution, as defined in s. 299.01 (4), and restoration of soil or groundwater that is affected by environmental pollution, as defined in s. 299.01 (4), in a brownfield if that removal, containment or restoration fulfills the requirement under sub. (1de) (a) 1. and investigation unless the investigation determines that remediation is required and that remediation is not undertaken.

4. "Full−time job" means a regular, nonseasonal full−time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and receives benefits that are not required by federal or state law. "Full−time job" does not include initial training before an employment position begins.

5. "Member of a targeted group" means a person under sub. (1dj) (am) 1., a person who resides in an empowerment zone, or an enterprise community, that the U.S. government designates, a person who is employed in an unsubsidized job but meets the eligibility requirements under s. 49.145 (2) and (3) for a Wisconsin works employment position, a person who is employed in a trial job, as defined in s. 49.141 (1) (n), or a person who is eligible for child care assistance under s. 49.155; if the person has been certified in the manner under sub. (1dj) (am) 3. by a designated local agency, as defined in sub. (1dj) (am) 2.

(b) *Credit.* Except or provided in s. 73.03 (35) and subject to s. 560.785, for any taxable year for which the person is certified

under s. 560.765 (3), any person may claim as a credit against taxes under this subchapter the following amounts:

1. Fifty percent of the amount expended for environmental remediation in a development zone.

2. The amount determined by multiplying the amount determined under s. 560.785 (1) (b) by the number of full−time jobs created in a development zone and filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

3. The amount determined by multiplying the amount determined under s. 560.785 (1) (c) by the number of full−time jobs created in a development zone and not filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

4. The amount determined by multiplying the amount determined under s. 560.785 (1) (b) by the number of full−time jobs retained, as provided in the rules under s. 560.785, excluding jobs for which a credit has been claimed under sub. (1dj), in a development zone and filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

5. The amount determined by multiplying the amount determined under s. 560.785 (1) (c) by the number of full−time jobs retained, as provided in the rules under s. 560.785, excluding jobs for which a credit has been claimed under sub. (1dj), in a development zone and not filled by a member of a targeted group and by then subtracting the subsidies paid under s. 49.147 (3) (a) for those jobs.

(c) *Credit precluded.* If the certification of a person for tax benefits under s. 560.765 (3) is revoked, that person may not claim credits under this subsection for the taxable year that includes the day on which the certification is revoked or succeeding taxable years and that person may not carry over unused credits from previous years to offset tax under this chapter for the taxable year that includes the day on which certification is revoked or succeeding taxable years.

(d) *Carry−over precluded.* If a person who is certified under s. 560.765 (3) for tax benefits ceases business operations in the development zone during any of the taxable years that that zone exists, that person may not carry over to any taxable year following the year during which operations cease any unused credits from the taxable year during which operations cease or from previous taxable years.

(e) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection. Subsection (1dj) (c), as it applies to the credit under sub. (1dj), applies to the credit under this subsection. Claimants shall include with their returns a copy of their certification for tax benefits and a copy of the department of commerce's verification of their expenses.

(1fd) FARMERS' DROUGHT PROPERTY TAX CREDIT. (a) *Credit.* Except as provided in par. (b), if the director of the agriculture stabilization and conservation service certifies on or before October 1, 1988, that at least 40% of the crops in this state have been lost, for taxable year 1988 any claimant may credit against taxes otherwise due under this chapter an amount equal to 10% of the property taxes exclusive of special assessments, delinquent interest and charges for service, up to $10,000, on that claimant's farm for the year for which the claim under this subsection is made. In this subsection, "farm" means 35 or more acres of real property in this state owned by the claimant or any member of the claimant's household during the taxable year for which a credit under this subsection is claimed if the farm, during that year, produced not less than $6,000 in gross farm profits resulting from the farm's agricultural use, as defined in s. 91.01 (1), or if the farm, during that year and the 2 years immediately preceding that year, produced not less than $18,000 in such profits. In deciding who is a claimant under this subsection, the department of revenue shall be guided by s. 71.58 (1) (a) to (g).

(b) *Limits.* The credit under this subsection plus the credit under subch. IX may not exceed 95% of the property taxes on the farm. A claimant may claim the credit under this subsection on only one return if the claimant files more than one return for taxable year 1988 and may not claim the credit on a return filed for any 1988 taxable year beginning after July 31, 1988.

(c) *Form.* No claim under this subsection may be allowed unless the claimant completes a form prescribed by the department of revenue and submits that form with the claimant's income or franchise tax return and within 12 months following the close of the taxable year in which the property taxes accrued.

(d) *Payment.* If the allowable amount of the claim under this subsection exceeds the income or franchise taxes otherwise due on or measured by the claimant's income or if there are no income or franchise taxes due on or measured by the claimant's income, the amount of the claim not used as an offset against those taxes shall be certified by the department of revenue to the department of administration for payment to the claimant by check, share draft or other draft drawn on the general fund. No interest may be allowed on any payment under this subsection.

(e) *Administration.* Subsection (4) (g), as it applies to the credit under sub. (4), applies to the credit under this subsection.

(2) FARMLAND PRESERVATION CREDIT. The farmland preservation credit under subch. IX may be claimed against taxes otherwise due.

(2m) FARMLAND TAX RELIEF CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means an owner of farmland, as defined in s. 91.01 (9), domiciled in this state during the entire year for which a credit under this subsection is claimed, except as follows:

a. When 2 or more individuals of a household are able to qualify individually as a claimant, they may determine between them who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue, whose decision is final.

b. For partnerships, except publicly traded partnerships treated as corporations under s. 71.22 (1), or limited liability companies, except limited liability companies treated as corporations under s. 71.22 (1), "claimant" means each individual partner or member.

c. For purposes of filing a claim under this subsection, the personal representative of an estate and the trustee of a trust shall be deemed owners of farmland. "Claimant" does not include the estate of a person who is a nonresident of this state on the person's date of death, a trust created by a nonresident person, a trust which receives Wisconsin real property from a nonresident person or a trust in which a nonresident settlor retains a beneficial interest.

d. For purposes of filing a claim under this subsection, when land is subject to a land contract, the claimant shall be the vendee under the contract.

e. For purposes of filing a claim under this subsection, when a guardian has been appointed under ch. 880 for a ward who owns the farmland, the claimant shall be the guardian on behalf of the ward.

f. For a tax−option corporation, "claimant" means each individual shareholder.

2. "Department" means the department of revenue.

3. "Farmland" means 35 or more acres of real property, exclusive of improvements, in this state, in agricultural use, as defined in s. 91.01 (1), and owned by the claimant or any member of the claimant's household during the taxable year for which a credit under this subsection is claimed if the farm of which the farmland is a part, during that year, produced not less than $6,000 in gross farm profits resulting from agricultural use, as defined in s. 91.01 (1), or if the farm of which the farmland is a part, during that year and the 2 years immediately preceding that year, produced not less than $18,000 in such profits, or if at least 35 acres of the farmland,

during all or part of that year, was enrolled in the conservation reserve program under 16 USC 3831 to 3836.

4. "Gross farm profits" means gross receipts, excluding rent, from agricultural use, as defined in s. 91.01 (1) including the fair market value at the time of disposition of payments in kind for placing land in federal programs or payments from the federal dairy termination program under 7 USC 1446 (d), less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the taxable year.

5. "Household" means an individual and his or her spouse and all minor dependents.

6. "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest and charges for service, levied on the farmland owned by the claimant or any member of the claimant's household in any calendar year under ch. 70, less the tax credit, if any, afforded in respect of the property by s. 79.10. "Property taxes accrued" shall not exceed $10,000. If farmland is owned by a tax−option corporation, limited liability company or by 2 or more persons or entities as joint tenants, tenants in common or partners or is marital property or survivorship marital property and one or more such persons, entities or owners is not a member of the claimant's household, "property taxes accrued" is that part of property taxes levied on the farmland, reduced by the tax credit under s. 79.10, that reflects the ownership percentage of the claimant and the claimant's household. For purposes of this subdivision, property taxes are "levied" when the tax roll is delivered to the local treasurer for collection. If farmland is sold during the calendar year of the levy the "property taxes accrued" for the seller is the amount of the tax levy, reduced by the tax credit under s. 79.10, prorated to each in the closing agreement pertaining to the sale of the farmland, except that if the seller does not reimburse the buyer for any part of those property taxes there are no "property taxes accrued" for the seller, and the "property taxes accrued" for the buyer is the property taxes levied on the farmland, reduced by the tax credit under s. 79.10, minus, if the seller reimburses the buyer for part of the property taxes, the amount prorated to the seller in the closing agreement. With the claim for credit under this subsection, the seller shall submit a copy of the closing agreement and the buyer shall submit a copy of the closing agreement and a copy of the property tax bill.

(b) *Filing claims.* 1. 'Eligibility and qualifications' a. Subject to the limitations provided in this subsection and s. 71.80 (3) and (3m), a claimant may claim as a credit against Wisconsin income or franchise taxes otherwise due, the amount derived under par. (c). If the allowable amount of claim exceeds the income or franchise taxes otherwise due on or measured by the claimant's income or if there are no Wisconsin income or franchise taxes due on or measured by the claimant's income, the amount of the claim not used as an offset against income or franchise taxes shall be certified to the department of administration for payment to the claimant by check, share draft or other draft paid from the appropriation under s. 20.835 (2) (q).

b. Every claimant under this subsection shall supply, at the request of the department, in support of the claim, a copy of the property tax bill relating to the farmland and certification by the claimant that all taxes owed by the claimant on the property for which the claim is made for the year before the year for which the claim is made have been paid.

2. 'Ineligible claims.' No credit may be allowed under this subsection:

a. Unless a claim is filed with the department in conformity with the filing requirements in s. 71.44 (1), (1m) and (3).

b. If the department determines that ownership of the farmland has been transferred to the claimant for the purpose of maximizing benefits under this subsection.

(c) *Computation.* 1. Any claimant may claim against taxes otherwise due under this chapter 10% of the property taxes accrued in the taxable year to which the claim relates, up to a maximum claim of $1,000, except that the credit under this subsection plus the credit under subch. IX may not exceed 95% of the property taxes accrued on the farm.

2. Any claimant may claim against taxes otherwise due under this chapter, on an income or franchise tax return that includes the levy date, an additional one−time credit of 4.2% of the property taxes accrued, that are levied in December 1989, up to a maximum of $420.

(d) *General provisions.* Section 71.61 (1) to (4) as it applies to the credit under subch. IX applies to the credit under this subsection.

(3) MANUFACTURING SALES TAX CREDIT. (a) In this subsection:

1. "Manufacturing" has the meaning given in s. 77.54 (6m).

2. "Sales and use tax under ch. 77 paid by the corporation" includes use taxes paid directly by the corporation and sales and use taxes paid by the corporation's supplier and passed on to the corporation whether separately stated on the invoice or included in the total price.

(b) The tax imposed upon or measured by corporation Wisconsin net income under s. 71.43 (1) or (2) shall be reduced by an amount equal to the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. Shareholders of a tax−option corporation and partners may claim the credit under this subsection, based on eligible sales and use taxes paid by the tax−option corporation or partnership, in proportion to the ownership interest of each shareholder or partner. The tax−option corporation or partnership shall calculate the amount of the credit that may be claimed by each shareholder or partner and shall provide that information to the shareholder or partner.

(c) 1. If the credit computed under par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance shall be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry−forward credit is claimed.

2. For shareholders in a tax−option corporation, the credit may be offset only against the tax imposed on the shareholder's prorated share of the tax−option corporation's income.

3. For partners, the credit may be offset only against the tax imposed on the partner's distributive share of partnership income.

4. If a tax−option corporation becomes liable for tax for a taxable year that begins on or after January 1, 1998, the corporation may offset the credit against the tax due, with any remaining credit computed for a taxable year that begins on or after January 1, 1998, passing through to the shareholders.

5. If a corporation that is not a tax−option corporation has a carry−over credit from a taxable year that begins on or after January 1, 1998, and becomes a tax−option corporation before the credit carried over is used, the unused portion of the credit may be used by the tax−option corporation's shareholders on a prorated basis.

6. If the shareholders of a tax−option corporation have carry−over credits and the corporation becomes a corporation other than a tax−option corporation after October 14, 1997, and before the credits carried over are used, the unused portion of the credits may be used by the corporation that is not a tax−option corporation.

(4) RESEARCH CREDIT. (a) *Credit.* Any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" includes only expenses incurred by the claimant, incurred for research conducted in this state for the taxable year, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified

research expenses" does not include compensation used in computing the credit under subs. (1dj) and (1dx), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. and (d). Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph.

(am) *Development zone additional research credit.* In addition to the credit under par. (a), any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained by subtracting from the corporation's qualified research expenses, as defined in section 41 of the internal revenue code, except that "qualified research expenses" include only expenses incurred by the claimant in a development zone under subch. VI of ch. 560, except that a taxpayer may elect the alternative computation under section 41 (c) (4) of the Internal Revenue Code and that election applies until the department permits its revocation and except that "qualified research expenses" do not include compensation used in computing the credit under sub. (1dj) nor research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), the corporation's base amount, as defined in section 41 (c) of the internal revenue code, in a development zone, except that gross receipts used in calculating the base amount means gross receipts from sales attributable to Wisconsin under s. 71.25 (9) (b) 1. and 2. and (d) and research expenses used in calculating the base amount include research expenses incurred before the claimant is certified for tax benefits under s. 560.765 (3), in a development zone, if the claimant submits with the claimant's return a copy of the claimant's certification for tax benefits under s. 560.765 (3) and a statement from the department of commerce verifying the claimant's qualified research expenses for research conducted exclusively in a development zone. The rules under s. 73.03 (35) apply to the credit under this paragraph. The rules under sub. (1di) (f) and (g) as they apply to the credit under that subsection apply to claims under this paragraph. Section 41 (h) of the internal revenue code does not apply to the credit under this paragraph. No credit may be claimed under this paragraph for taxable years that begin on January 1, 1998, or thereafter. Credits under this paragraph for taxable years that begin before January 1, 1998, may be carried forward to taxable years that begin on January 1, 1998, or thereafter.

(b) *Adjustments.* For taxable year 1985 and subsequent years, adjustments for acquisitions and dispositions of a major portion of a trade or business shall be made under section 41 of the internal revenue code as limited by this subsection.

(c) *Annualization.* In the case of any short taxable year, qualified research expenses shall be annualized as prescribed by the department of revenue.

(d) *Proration.* If a portion of qualified research expenses is incurred partly within and partly outside this state and the amount incurred in this state cannot be accurately determined, a portion of the qualified expenses shall be reasonably allocated to this state. Expenses incurred entirely outside this state for the benefit of research in this state are not allocable to this state under this paragraph.

(e) *Change of business or ownership.* In the case of a change in ownership or business of a corporation, section 383 of the internal revenue code, as limited by this subsection, applies to the carry over of unused credits.

(f) *Carry−over.* If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry−forward credit is claimed.

(g) *Administration.* The department of revenue has full power to administer the credits provided in this subsection and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed in this chapter. The income and franchise tax provisions in this chapter relating to assessments, refunds, appeals, collection, interest and penalties apply to the credits under this subsection.

(h) *Timely claim.* No credit may be allowed under this subsection unless it is claimed within the period specified in s. 71.75 (2).

(i) *Nonclaimants.* The credits under this subsection may not be claimed by a partnership, except a publicly traded partnership treated as a corporation under s. 71.22 (1), limited liability company, except a limited liability company treated as a corporation under s. 71.22 (1), or tax−option corporation or by partners, including partners of a publicly traded partnership, members of a limited liability company or shareholders of a tax−option corporation.

(5) RESEARCH FACILITIES CREDIT. (a) *Credit.* For taxable year 1986 and subsequent years, any corporation may credit against taxes otherwise due under this chapter an amount equal to 5% of the amount paid or incurred by that corporation during the taxable year to construct and equip new facilities or expand existing facilities used in this state for qualified research, as defined in section 41 of the internal revenue code. Eligible amounts include only amounts paid or incurred for tangible, depreciable property but do not include amounts paid or incurred for replacement property.

(b) *Calculation and administration.* Subsection (4) (b) to (i) as it relates to the credit under that subsection applies to the credit under this subsection.

(6) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. (a) Any person may credit against taxes otherwise due under this chapter, up to the amount of those taxes, an amount equal to 5% of the costs of qualified rehabilitation expenditures, as defined in section 47 (c) (2) of the internal revenue code, for certified historic structures on property located in this state if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989.

(c) No person may claim the credit under this subsection unless the claimant includes with the claimant's return evidence that the rehabilitation was approved by the secretary of the interior under 36 CFR 67.6 before the physical work of construction, or destruction in preparation for construction, began.

(d) The Wisconsin adjusted basis of the building shall be reduced by the amount of any credit awarded under this subsection. The Wisconsin adjusted basis of a partner's interest in a partnership, a member's interest in a limited liability company or of stock in a tax−option corporation shall be adjusted to take into account adjustments made under this paragraph.

(e) The provisions of sub. (4) (e), (f), (g) and (h), as they apply to the credit under that subsection, apply to the credit under this subsection.

(f) A partnership, limited liability company or tax−option corporation may not claim the credit under this subsection. The individual partners, members of a limited liability company or shareholders in a tax−option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company or tax−option corporation, in proportion to the ownership interest of each partner, member or shareholder. The partnership, limited liability company or tax−option corporation shall calculate the amount of the credit which may be claimed by each partner, member or shareholder and shall provide that information to the partner, member or shareholder.

History: 1987 a. 312, 411, 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292, 315; 1993 a. 16, 112; 1995 a. 27 ss. 3407m to 3412m, 9116 (5); 1995 a. 209, 227, 417; 1997 a. 27, 41, 237, 299.

71.48 Payments of estimated taxes. Sections 71.29 and 71.84 (2) shall apply to insurers subject to taxation under this chapter.

History: 1987 a. 312.

71.49 General provisions. (1) COMPUTATION ORDER. Notwithstanding any other provisions in this chapter, corporations computing liability for the tax under s. 71.43 (1) or (2) shall make computations in the following order:

(a) Tax under s. 71.43 (1) or (2).

(b) Manufacturing sales tax credit under s. 71.47 (3).

(c) Research credit under s. 71.47 (4).

(d) Research facilities credit under s. 71.47 (5).

(e) Community development finance credit under s. 71.47 (1).

(eb) Development zones jobs credit under s. 71.47 (1dj).

(ec) Development zones sales tax credit under s. 71.47 (1ds).

(eg) Development zones investment credit under s. 71.47 (1di).

(em) Development zones location credit under s. 71.47 (1dL).

(en) Development zones day care credit under s. 71.28 (1dd).

(eo) Development zones environmental remediation credit under s. 71.28 (1de).

(eom) Development zones credit under s. 71.47 (1dx).

(ep) Supplement to federal historic rehabilitation credit under s. 71.47 (6).

(f) The total of farmers' drought property tax credit under s. 71.47 (1fd), farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.47 (2m) and estimated tax payments under s. 71.48.

(2) ELECTIONS UNDER INTERNAL REVENUE CODE. Elections authorized by and made in accordance with the internal revenue code, except an election to file consolidated returns or to claim a credit against federal tax liability rather than a deduction from income, shall be deemed elections for the purpose of applying this chapter.

(3) PENALTIES. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter unless the context requires otherwise.

History: 1987 a. 312, 411; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27.

SUBCHAPTER VIII

HOMESTEAD CREDIT

71.51 Purpose. The purpose of this subchapter is to provide credit to certain persons who own or rent their homestead, through a system of income tax credits and refunds, and appropriations from the general fund.

History: 1987 a. 312.

71.52 Definitions. In this subchapter, unless the context clearly indicates otherwise:

(1) "Claimant" means a person who has filed a claim under this subchapter and who was domiciled in this state during the entire calendar year to which the claim for credit under this subchapter relates. 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.

(2) "Gross rent" means rental paid at arm's length, solely for the right of occupancy of a homestead. "Gross rent" does not include, whether expressly set out in the rental agreement or not, charges for any medical services; other personal services such as laundry, transportation, counseling, grooming, recreational and therapeutic services; shared living expenses, including but not limited to food, supplies and utilities unless utility payments are included in the gross rent paid to the landlord; and food furnished by the landlord as a part of the rental agreement. "Gross rent" includes the rental paid to a landlord for parking of a mobile home, exclusive of any charges for food furnished by the landlord as a part of the rental agreement, plus parking fees paid under s. 66.058 (3) (c) for a rented mobile home. If a homestead is an integral part of a multipurpose or multidwelling building, "gross rent" is the percentage of the gross rent on that part of the multipurpose or multidwelling building occupied by the household as a principal residence plus the same percentage of the gross rent on the land surrounding it, not exceeding one acre, that is reasonably necessary for use of the multipurpose or multidwelling building as a principal residence, except as the limitations under s. 71.54 (2) (b) apply. If the homestead is part of a farm, "gross rent" is the rent on up to 120 acres of the land contiguous to the claimant's principal residence plus the rent on all improvements to real property on that land, except as the limitations under s. 71.54 (2) (b) apply. If a claimant and persons who are not members of the claimant's household reside in a homestead, the claimant's "gross rent" is the gross rent paid by the claimant to the landlord for the homestead.

(3) "Homestead" means the dwelling, whether rented or owned, including owned as a joint tenant or tenant in common, or occupied as a buyer in possession under a land contract, and the land surrounding it, not exceeding one acre, that is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built.

(4) "Household" means a claimant and an individual related to the claimant as husband or wife.

(5) "Household income" means all income received by all persons of a household in a calendar year while members of the household, less $250 for each of the claimant's dependents, as defined in section 152 of the internal revenue code, who have the same principal abode as the claimant for more than 6 months during the year to which the claim relates.

(6) "Income" means the sum of Wisconsin adjusted gross income and the following amounts, to the extent not included in Wisconsin 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 (not including credit granted under this subchapter and amounts under s. 46.27), cash benefits paid by counties under s. 59.53 (21), 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, nontaxable interest received on state or municipal bonds, worker's compensation, unemployment insurance, 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, income of a nonresident or part−year resident who is married to a full−year resident, 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 and nontaxable deferred compensation. Intangible drilling costs, depletion allowances and depreciation, including first−year depreciation allowances under section 179 of the internal revenue code, 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 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 subsection in a previous year and repaid may be subtracted from income for the year during which they are repaid. Scholarship and fellowship gifts or income that are included in Wisconsin adjusted gross income and that were added to household income for purposes of determining the credit under this subchapter in a previous year may be subtracted from income for the current year in determining the credit under this subchapter. 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.

(7) "Property taxes accrued" means real or personal property taxes or monthly parking permit fees under s. 66.058 (3) (c), exclusive of special assessments, delinquent interest and charges for service, levied on a homestead owned by the claimant or a member of the claimant's household. "Real or personal property taxes" means those levied under ch. 70, less the tax credit, if any, afforded in respect of such property by s. 79.10. 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 such persons, entities or owners is not a member of the claimant's household, property taxes accrued is that part of property taxes accrued levied on such homestead, reduced by the tax credit under s. 79.10, that reflects the ownership percentage of the claimant and the claimant's household, except that if a homestead is owned by 2 or more natural persons or if 2 or more natural persons have an interest in a homestead, one or more of whom is not a member of the claimant's household, and the claimant has a present interest, as that term is used in s. 700.03 (1), in the homestead and is required by the terms of a will that transferred the homestead or interest in the homestead to the claimant to pay the entire amount of property taxes levied on the homestead, property taxes accrued is property taxes accrued levied on such homestead, reduced by the tax credit under s. 79.10. A marital property agreement or unilateral statement under ch. 766 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. For purposes of this subsection, property taxes are "levied" when the tax roll is delivered to the local treasurer for collection. If a homestead is sold or purchased during the calendar year of the levy, the property taxes accrued for the seller and the buyer are the amount of the tax levy prorated to each in proportion to the periods of time each both owned and occupied the homestead during the year to which the claim relates. The seller may use the closing agreement pertaining to the sale of the homestead, the property tax bill for the year before 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 property taxes accrued, but those taxes are allowable only for the portion of the year during which the seller owned and occupied the sold homestead. 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 under s. 71.54 (1). If a homestead is an integral part of a multipurpose or multidwelling building, property taxes accrued are the percentage of the property taxes accrued on that part of the multipurpose or multidwelling building occupied by the household as a principal residence plus that same percentage of the property taxes accrued on the land surrounding it, not exceeding one acre, that is reasonably necessary for use of the multipurpose or multidwelling building as a principal residence, except as the limitations of s. 71.54 (2) (b) apply. If the homestead is part of a farm, property taxes accrued are the property taxes accrued on up to 120 acres of the land contiguous to the claimant's principal residence and include the property taxes accrued on all improvements to real property located on such land, except as the limitations of s. 71.54 (2) (b) apply.

(8) "Rent constituting property taxes accrued", except as provided in ss. 71.54 (2) and 71.55 (8), means 25%, or 20% if heat is included, of the gross rent actually paid in cash or its equivalent by a claimant and his or her household solely for the right of occupancy of their Wisconsin homestead during the calendar year to which the claim relates if that rent constitutes the basis, in the succeeding calendar year, of a claim for relief under this subchapter by such claimant. A marital property agreement or unilateral statement under ch. 766 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.

History: 1987 a. 312, 411; 1989 a. 31, 100; 1991 a. 39, 195; 1995 a. 27, 201; 1997 a. 27, 39.

71.53 Filing claims. (1) ELIGIBILITY FOR CREDIT. (a) Subject to the limitations provided in this subchapter and s. 71.80 (3) and (3m), a claimant may claim as a credit against Wisconsin income taxes otherwise due, Wisconsin property taxes accrued, or rent constituting property taxes accrued, or both. If the allowable amount of claim exceeds the income taxes otherwise due on the claimant's income or if there are no Wisconsin income taxes due on the claimant's income, the amount of the claim not used as an offset against income 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.

(b) The right to file a claim under this subchapter is personal to the claimant and does not survive the claimant's death. When a claimant dies after having filed a timely claim the amount thereof shall be disbursed under s. 71.75 (10). The right to file a claim under this subchapter may be exercised on behalf of a living claimant by the claimant's legal guardian or attorney−in−fact.

(c) Only one claimant per household per year shall be entitled to credit under this subchapter.

(2) INELIGIBLE CLAIMS. No claim under this subchapter may be allowed if any of the following conditions applies:

(a) Such claim is not filed with the department of revenue in conformity with the filing requirements in s. 71.03 (6) and (7).

(b) The department finds that the claimant received title to his or her homestead primarily for the purpose of receiving benefits under this subchapter.

(c) The claimant was under 18 years of age at the close of the year to which the claim relates.

(d) The claimant was claimed as a dependent for federal income tax purposes by another person during the year to which the claim relates but this limitation shall not apply if the claimant was 62 years of age or older at the close of the year to which the claim relates.

(e) The claimant resided for the entire calendar year to which the claim relates in housing which was exempt from taxation under ch. 70 other than housing for which payments in lieu of taxes are made under s. 66.40 (22) except as provided under s. 71.54 (2) (c) 2.

(f) The claimant resides in a nursing home and receives assistance under s. 49.45 at the time of filing.

History: 1987 a. 312; 1989 a. 31, 198; 1991 a. 39.

71.54 Computation of credit. (1) HOUSEHOLD INCOME. (a) *1985 and 1986.* The amount of any claim filed in 1985 or 1986 and based on property taxes accrued or rent constituting property taxes accrued during the previous year is limited as follows:

1. If the household income was $7,400 or less in the year to which the claim relates, the claim is limited to 80% of the property taxes accrued or rent constituting property taxes accrued or both in that year on the claimant's homestead.

2. If the household income was more than $7,400 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 13.187% of the household income exceeding $7,400.

3. No credit may be allowed if the household income of a claimant exceeds $16,500.

(b) *1987 to 1989.* The amount of any claim filed in 1987 to 1989 and based on property taxes accrued or rent constituting property taxes accrued during the previous year is limited as follows:

1. If the household income was $7,600 or less in the year to which the claim relates, the claim is limited to 80% of the property taxes accrued or rent constituting property taxes accrued or both in that year on the claimant's homestead.

2. If the household income was more than $7,600 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 13.483% of the household income exceeding $7,600.

3. No credit may be allowed if the household income of a claimant exceeds $16,500.

(c) *1990.* The amount of any claim filed in 1990 and based on property taxes accrued or rent constituting property taxes accrued during the previous year is limited as follows:

1. If the household income was $8,000 or less in the year to which the claim relates, the claim is limited to 80% of the property taxes accrued or rent constituting property taxes accrued or both in that year on the claimant's homestead.

2. If the household income was more than $8,000 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 13.5% of the household income exceeding $8,000.

3. No credit may be allowed if the household income of a claimant exceeds $18,000.

(d) *1991 and thereafter.* The amount of any claim filed in 1991 and thereafter and based on property taxes accrued or rent constituting property taxes accrued during the previous year is limited as follows:

1. If the household income was $8,000 or less in the year to which the claim relates, the claim is limited to 80% of the property taxes accrued or rent constituting property taxes accrued or both in that year on the claimant's homestead.

2. If the household income was more than $8,000 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 13% of the household income exceeding $8,000.

(2) PROPERTY TAXES ACCRUED LIMITATIONS. (a) Property taxes accrued or rent constituting property taxes accrued shall be reduced by one−twelfth for each month or portion of a month for which the claimant received relief from any county under s. 59.53 (21) equal to or in excess of $400, participated in Wisconsin works under s. 49.147 (4) or (5) or received assistance under s. 49.19, except assistance received:

1. Under s. 49.19 (10) (a).

2. As a relative, other than a parent, with whom any dependent child is living, if the assistance does not include aid to meet the needs of the claimant or the claimant's spouse or children.

(b) In any case in which property taxes accrued, or rent constituting property taxes accrued, or both, in respect of any one household exceeds the following, the amount thereof shall, for purposes of this subchapter, be deemed to have been the following:

1. In calendar years 1984 to 1988, $1,200.

2. In calendar year 1989, $1,350.

3. In calendar year 1990 or any subsequent calendar year, $1,450.

(c) 1. If the claimant lived in a homestead that was subject to taxation under ch. 70 for any part of the year to which the claim relates, the property taxes accrued or rent constituting property taxes accrued or both on that homestead shall be allowed for that part of the year.

2. In addition to property taxes accrued or rent constituting property taxes accrued under subd. 1., if the claimant moves from a homestead owned by the claimant to housing that is exempt from taxation under ch. 70, other than housing for which payments in lieu of taxes are made under s. 66.40 (22) and other than a correctional or detention facility, a claim may be allowed based on property taxes accrued on that former homestead for the length of time, up to the first 12 months, that the claimant resides in the tax−exempt housing and owns the former homestead, if the claimant has attempted to sell the former homestead but has not rented it out or leased it out.

(3) QUALIFIED CREDIT MINIMUM. If the amount of a qualified claimant's claim is more than zero but less than $10 the amount of credit paid or credited shall be $10.

(4) DEPARTMENT WILL COMPUTE CREDIT. The claimant is not required to record on the claim the amount claimed. The claim allowable to persons who do not record the amount shall be computed by the department, which shall notify the claimant by mail of the amount of the allowable claim.

History: 1987 a. 312; 1989 a. 31, 198, 336; 1995 a. 27, 201, 289; 1997 a. 35.

71.55 General provisions. (1) APPLICATION OF CREDIT AGAINST ANY LIABILITY. The amount of any claim otherwise payable under this subchapter may be applied by the department of revenue against any amount certified to the department under s. 71.93 or 71.935 or may be credited under s. 71.80 (3) or (3m).

(2) FEE CHARGE BY LESSOR NOT PERMITTED. No lessor may charge a fee for supplying a claimant with the information necessary for the claimant to comply with sub. (7).

(3) FORMS TO BE PROVIDED BY DEPARTMENT. In administering this subchapter, the department of revenue shall make available suitable forms with instructions for claimants, including a form which may be included with, or as a part of, the individual income tax blank. In preparing homestead credit forms, the department of revenue shall provide a space for identification of the county and city, village or town in which the claimant resides.

(4) INTEREST NOT ALLOWED. No interest may be allowed on any payment made to a claimant under this subchapter.

(5) LEGISLATION MAY BE PROPOSED BY DEPARTMENT. At the end of each fiscal year, the department of revenue shall review the homestead tax credit program and may propose legislation to adjust the amounts of claims allowable under the program, taking into account findings that social security benefits and the cost of living, as reflected in the index computed by the U.S. bureau of labor statistics, have increased or decreased.

(6) PENALTIES. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter unless the context requires otherwise.

(6m) ADMINISTRATION. The income tax provisions in this chapter relating to assessments, refunds, appeals and collection apply to the credit under this subchapter.

(7) RECORDS MAY BE REQUIRED BY DEPARTMENT TO DETERMINE CORRECT CREDIT. To ascertain the correctness of any claim under this subchapter or to determine the amount of the credit under this subchapter of any person, the department may examine, or cause to be examined by any agent or representative designated by the department, any books, papers, records or memoranda bearing on the homestead credit of the person, may require the production of the books, papers, records or memoranda, and require the attendance, of any person having relevant knowledge, and may take testimony and require proof material for its information. Based on the information it discovers, the department shall determine the

true amount of homestead credit during the year or years under investigation.

(8) RENTAL NOT AT ARM'S LENGTH. In any case in which a homestead is rented by a person from another person under circumstances deemed by the department of revenue to be not at arm's length, it may, with the aid of its property tax bureau, determine rent constituting property taxes accrued as at arm's length, and, for purposes of this subchapter, such determination shall be final.

(9) TABLE SHALL BE PUBLISHED. The secretary of revenue shall prepare a table under which claims under this subchapter shall be determined. The table shall be published in the department's instructional booklets.

(10) MEDICARE ACCEPTANCE OF ASSIGNMENT INFORMATION. (a) In this subsection:

1. "Beneficiary" means an individual who is enrolled in medicare Part B for coverage.

2. "Medicare Part B" means the federal supplementary medical insurance program under 42 USC 1395j to 1395w−2.

3. "Physician" has the meaning given in s. 448.01 (5).

(b) Beginning in 1990, the department of revenue shall annually distribute enrollment cards for and materials explaining a program in this state under which a physician voluntarily agrees to all of the following:

1. Accept assignment of a beneficiary's benefits for reimbursement for the provision of medical or other health service authorized under medicare Part B from a beneficiary of medicare Part B to whom all of the following apply:

a. He or she is age 65 or older.

b. His or her household income, as defined in s. 71.52 (5) and (6), for the beneficiary's taxable year prior to the year in which treatment is received, did not exceed the maximum income allowed for claiming the homestead credit, as calculated under s. 71.54 (1).

2. Not require payment of any amount that is in excess of the medicare Part B allowed amount, as determined by the federal health care financing administration through the carrier for medicare Part B in this state, for the medicare Part B authorized medical or other health service that the physician renders to the beneficiary under subd. 1.

(c) Distribution under par. (b) shall be made to an individual in this state who meets all of the following requirements:

1. Is age 65 or older.

2. Has a household income, as defined in s. 71.52 (5), if known to the department of revenue, for the individual's taxable year prior to the year in which distribution is made, that does not exceed the maximum income allowed for claiming the homestead credit, as calculated under s. 71.54 (1).

(d) The Wisconsin state medical society shall provide the department of revenue with the enrollment cards and explanatory materials for distribution under par. (b).

(e) Beginning in 1991, the department of revenue shall annually submit a report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) concerning the numbers of individuals, by counties in this state, to whom the department distributed enrollment cards under par. (b).

History: 1987 a. 312; 1989 a. 31, 294; 1991 a. 39, 232; 1993 a. 205; 1995 a. 27.

SUBCHAPTER IX

FARMLAND PRESERVATION CREDIT

71.57 Purpose. The purpose of this subchapter is to provide credit to owners of farmland which is subject to agricultural use restrictions, through a system of income or franchise tax credits and refunds and appropriations from the general fund.

History: 1987 a. 312; 1991 a. 39.

71.58 Definitions. In this subchapter:

(1) "Claimant" means an owner of farmland, as defined in s. 91.01 (9), domiciled in this state during the entire year for which a credit under this subchapter is claimed, except as follows:

(a) When 2 or more individuals of a household are able to qualify individually as a claimant, they may determine between them who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue, whose decision is final.

(b) If any person in a household has claimed or will claim credit under subch. VIII, all persons from that household are ineligible to claim any credit under this subchapter for the year to which the credit under subch. VIII pertained.

(c) For partnerships except publicly traded partnerships treated as corporations under s. 71.22 (1), "claimant" means each individual partner.

(cm) For limited liability companies, except limited liability companies treated as corporations under s. 71.22 (1), "claimant" means each individual member.

(d) For purposes of filing a claim under this subchapter, the personal representative of an estate and the trustee of a trust shall be deemed owners of farmland. "Claimant" does not include the estate of a person who is a nonresident of this state on the person's date of death, a trust created by a nonresident person, a trust which receives Wisconsin real property from a nonresident person or a trust in which a nonresident settlor retains a beneficial interest.

(e) For purposes of filing a claim under this subchapter, when land is subject to a land contract, the claimant shall be the vendee under the contract.

(f) For purposes of filing a claim under this subchapter, when a guardian has been appointed under ch. 880 for a ward who owns the farmland, the claimant shall be the guardian on behalf of the ward.

(g) For a tax−option corporation, "claimant" means each individual shareholder.

(2) "Department" means the department of revenue.

(3) "Farmland" means 35 or more acres of real property in this state owned by the claimant or any member of the claimant's household during the taxable year for which a credit under this subchapter is claimed if the farmland, during that year, produced not less than $6,000 in gross farm profits resulting from the farmland's agricultural use, as defined in s. 91.01 (1), or if the farmland, during that year and the 2 years immediately preceding that year, produced not less than $18,000 in such profits, or if at least 35 acres of the farmland, during all or part of that year, was enrolled in the conservation reserve program under 16 USC 3831 to 3836.

(4) "Gross farm profits" means gross receipts, excluding rent, from agricultural use, as defined in s. 91.01 (1) including the fair market value at the time of disposition of payments in kind for placing land in federal programs or payments from the federal dairy termination program under 7 USC 1446 (d), less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the taxable year.

(5) "Household" means an individual and his or her spouse and all minor dependents.

(6) "Household income" means all of the income of the claimant and the claimant's spouse and the farm income, including wages, earned on the farm to which the credit applies of all minor dependents attributable to the taxable year while members of the household.

(7) "Income":

(a) For an individual, means income as defined under s. 71.52 (6), plus nonfarm business losses, plus amounts under s. 46.27, less net operating loss carry−forwards, less first−year depreciation allowances under section 179 of the internal revenue code and less the first $25,000 of depreciation expenses in respect to the farm claimed by all of the individuals in a household.

(b) For a corporate claimant, except a tax−option corporation, means the same as for an individual claimant except that net income plus any farm business loss carry−forward allowed under s. 71.26 (4) shall be included instead of income under s. 71.52 (6) and "income" of a corporate claimant shall include all household income of each of its corporate shareholders of record at the end of its taxable year, plus nonfarm business losses and depreciation expenses of the corporate claimant, except the first $25,000 of depreciation expenses in respect to the farm.

(c) For an estate or trust, means the same as "income" for an individual except that the net income of the estate or trust before subtracting any deductions claimed for income distributable to the estate's or trust's beneficiaries shall be included instead of Wisconsin adjusted gross income.

(8) "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest and charges for service, levied on the farmland and improvements owned by the claimant or any member of the claimant's household in any calendar year under ch. 70, less the tax credit, if any, afforded in respect of the property by s. 79.10. "Property taxes accrued" shall not exceed $6,000. If farmland is owned by a tax−option corporation, a limited liability company or by 2 or more persons or entities as joint tenants, tenants in common or partners or is marital property or survivorship marital property and one or more such persons, entities or owners is not a member of the claimant's household, "property taxes accrued" is that part of property taxes levied on the farmland, reduced by the tax credit under s. 79.10, that reflects the ownership percentage of the claimant and the claimant's household. For purposes of this subsection, property taxes are "levied" when the tax roll is delivered to the local treasurer for collection. If farmland is sold during the calendar year of the levy the "property taxes accrued" for the seller is the amount of the tax levy, reduced by the tax credit under s. 79.10, prorated to each in the closing agreement pertaining to the sale of the farmland, except that if the seller does not reimburse the buyer for any part of those property taxes there are no "property taxes accrued" for the seller, and the "property taxes accrued" for the buyer is the property taxes levied on the farmland, reduced by the tax credit under s. 79.10, minus, if the seller reimburses the buyer for part of the property taxes, the amount prorated to the seller in the closing agreement. With the claim for credit under this subchapter, the seller shall submit a copy of the closing agreement and the buyer shall submit a copy of the closing agreement and a copy of the property tax bill.

(9) "Taxable year" has the meaning under s. 71.01 (12).

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112.

71.59 Filing claims. (1) ELIGIBILITY AND QUALIFICATIONS. (a) Subject to the limitations provided in this subchapter and s. 71.80 (3) and (3m), a claimant may claim as a credit against Wisconsin income or franchise taxes otherwise due, the amount derived under s. 71.60. If the allowable amount of claim exceeds the income or franchise taxes otherwise due on or measured by the claimant's income or if there are no Wisconsin income or franchise taxes due on or measured by the claimant's income, the amount of the claim not used as an offset against income or franchise 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.

(b) Every claimant under this subchapter shall supply, at the request of the department, in support of the claim, all of the following:

1. A copy of the property tax bill relating to the farmland.

2. Certification by the claimant that all taxes owed by the claimant on the property for which the claim is made for the year before the year for which the claim is made have been paid.

3. A copy of the farmland preservation agreement or a certificate of the appropriate zoning authority, except that, if the claimant has obtained a certificate of the appropriate zoning authority to file a claim for a previous year and the claimant determines that the conditions described under par. (d) that caused the authority to issue the previous certificate have not changed and are still applicable, the claimant may certify that such conditions have not changed and still apply and such a claimant is not required to submit a certificate of the zoning authority unless the department, in writing, requires the claimant to submit a certificate because the department determines that it needs a certificate to process the claim.

4. Certification by the claimant that each county land conservation committee with jurisdiction over the farmland has been notified that the claimant intends to submit a claim under this subchapter.

(c) A farmland preservation agreement submitted under par. (b) 3. shall contain provisions specified under s. 91.13 (8) including either a provision requiring farming operations to be conducted in substantial accordance with a soil and water conservation plan prepared under s. 92.104 or a provision requiring farming operations to be conducted in compliance with reasonable soil and water conservation standards established under s. 92.105.

(d) The certificate of the zoning authority submitted under par. (b) 3. shall certify:

1. That the lands are within the boundaries of an agricultural zoning district which is part of an adopted ordinance meeting the standards of subch. V of ch. 91 and certified under s. 91.06.

2. That the ordinance has been approved, where necessary, by the board of the town within which the lands are situated, as required by s. 59.69, and shall indicate the date of approval.

3. That each structure or improvement on the lands conforms to the requirements of the exclusive agricultural use ordinance.

4. The portion of the claimant's farmland which is within the area zoned for exclusive agricultural use.

5. That soil and water conservation standards applicable to the land are established and approved as required under s. 92.105 (1) to (3) and that no notice of noncompliance is in effect under s. 92.105 (5) with respect to the claimant at the time the certificate is issued.

(1m) PERMITTED USES. The designation by the department of natural resources of any farmland in this state, for which a claim under this section may be filed, as part of the ice age trail, under s. 23.17, is a permitted use under a farmland preservation agreement, or a certificate of a zoning authority, under sub. (1) (b).

(2) INELIGIBLE CLAIMS. No credit shall be allowed under this subchapter:

(a) Unless a claim is filed with the department in conformity with the filing requirements in s. 71.03 (6) and (7) for a claimant filing under subch. I, in conformity with the filing requirements in s. 71.24 (1), (1m) and (7) for a claimant filing under subch. IV and in conformity with the filing requirements in s. 71.44 (1), (1m) and (3) for a claimant filing under subch. VII.

(b) If a notice of noncompliance with an applicable soil and water conservation plan under s. 92.104 is in effect with respect to the claimant at the time the claim is filed.

(c) If a notice of noncompliance with applicable soil and water conservation standards under s. 92.105 is in effect with respect to the claimant at the time the claim is filed.

(d) For property taxes accrued on farmland zoned for exclusive agricultural use under an ordinance certified under subch. V of ch. 91 which is granted a special exception or conditional use permit for a use which is not an agricultural use, as defined in s. 91.01 (1).

(e) If the department determines that ownership of the farmland has been transferred to the claimant primarily for the purpose of maximizing benefits under this subchapter.

History: 1987 a. 312, 411; 1989 a. 31, 359; 1991 a. 39, 309; 1995 a. 201; 1997 a. 137.

71.60 Computation. (1) Except as provided in sub. (2), the amount of any claim filed in calendar years based upon property taxes accrued in the preceding calendar year shall be determined as follows:

(a) The amount of excessive property taxes shall be computed by subtracting from property taxes accrued the amount of 7% of the 2nd $5,000 of household income plus 9% of the 3rd $5,000 of household income plus 11% of the 4th $5,000 of household income plus 17% of the 5th $5,000 of household income plus 27% of the 6th $5,000 of household income plus 37% of household income in excess of $30,000. The maximum excessive property tax which can be utilized is $6,000.

(b) The credit allowed under this subchapter shall be limited to 90% of the first $2,000 of excessive property taxes plus 70% of the 2nd $2,000 of excessive property taxes plus 50% of the 3rd $2,000 of excessive property taxes. The maximum credit shall not exceed $4,200 for any claimant. The credit for any claimant shall be the greater of either the credit as calculated under this subchapter as it exists at the end of the year for which the claim is filed or as it existed on the date on which the farmland became subject to a current agreement under subch. II or III of ch. 91, using for such calculations household income and property taxes accrued of the year for which the claim is filed.

(c) 1. If the farmland is located in a county which has a certified agricultural preservation plan under subch. IV of ch. 91 at the close of the year for which credit is claimed and is in an area zoned by a county, city or village for exclusive agricultural use under ch. 91 at the close of such year, the amount of the claim shall be that as specified in par. (b).

2. If the farmland is subject to a transition area agreement under subch. II of ch. 91 on July 1 of the year for which credit is claimed, or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, and the farmland is located in a city or village which has a certified exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, or in a town which is subject to a certified county exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, the amount of the claim shall be that as specified in par. (b).

3. If the claimant or any member of the claimant's household owns farmland which is ineligible for credit under subd. 1. or 2. but was subject to a farmland preservation agreement under subch. III of ch. 91 on July 1 of the year for which credit is claimed, or the owner had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, and if the owner has applied by the end of the year in which conversion under s. 91.41 is first possible for conversion of the agreement to a transition area agreement under subch. II of ch. 91, and the transition area agreement has subsequently been executed, and the farmland is located in a city or village which has a certified exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, or in a town which is subject to a certified county exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, the amount of the claim shall be that specified in par. (b).

4. If the claimant or any member of the claimant's household owns farmland which is ineligible for credit under subd. 1. or 2. but which is subject to a farmland preservation agreement or a transition area agreement under subch. II of ch. 91 on July 1 of the year for which credit is claimed, or the owner had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, the amount of the claim shall be limited to 80% of that specified in par. (b).

5. If the claimant or any member of the claimant's household owns farmland which is ineligible for credit under subds. 1. to 4. but was subject to a farmland preservation agreement under subch. III of ch. 91 on July 1 of the year for which credit is claimed, or the owner had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, and if the owner has applied by the end of the year in which conversion under s. 91.41 is first possible for conversion of the agreement to an agreement under subch. II of ch. 91, and the agreement under subch. II of ch. 91 has subsequently been executed, the amount of the claim shall be limited to 80% of that specified in par. (b).

6. If the farmland is located in an agricultural district under a certified county agricultural preservation plan under subch. IV of ch. 91 at the close of the year for which credit is claimed, and is located in an area zoned for exclusive agricultural use under a certified town ordinance under subch. V of ch. 91 at the close of such year, the amount of the claim shall be the amount specified in par. (b).

6m. If the farmland is located in an agricultural district under a certified county agricultural preservation plan under subch. IV of ch. 91 at the close of the year for which credit is claimed, and is located in an area zoned for exclusive agricultural use under a certified county or town ordinance under subch. V of ch. 91 for part of a year but not at the close of that year because the farmland became subject to a city or village extraterritorial zoning ordinance under s. 62.23 (7a), the amount of the claim shall be equal to the amount that the claim would have been under this section if the farmland were subject to a certified county or town exclusive agricultural use ordinance at the close of the year.

7. If the farmland is located in an area zoned for exclusive agricultural use under a certified county, city or village ordinance under subch. V of ch. 91 at the close of the year for which credit is claimed, but the county in which the farmland is located has not adopted an agricultural preservation plan under subch. IV of ch. 91 by the close of such year, the amount of the claim shall be limited to 70% of that specified in par. (b).

8. If the farmland is subject to a farmland preservation agreement under subch. III of ch. 91 on July 1 of the year for which credit is claimed or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, the amount of the claim shall be limited to 50% of that specified in par. (b).

(2) If the farmland is subject to a certified ordinance under subch. V of ch. 91, or an agreement under subch. II of ch. 91, in effect at the close of the year for which the credit is claimed, the amount of the claim is 10% of the property taxes accrued or the amount determined under sub. (1), whichever is greater.

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1993 a. 246, 420.

71.61 General provisions. (1) DEPARTMENT MAY APPLY CREDIT AGAINST ANY TAX LIABILITY. The amount of any claim otherwise payable under this subchapter may be applied by the department against any amount certified to the department under s. 71.93 or 71.935 or may be credited under s. 71.80 (3) or (3m).

(2) CREDITS ARE INCOME. All amounts allowed as credits under this subchapter constitute income for income and franchise tax purposes and are reportable as such in the year of receipt.

(3) INTEREST NOT ALLOWED. No interest may be allowed on any payment made to a claimant under this subchapter.

(3m) ADMINISTRATION. The income tax provisions in this chapter relating to assessments, refunds, appeals and collection apply to the credit under this subchapter.

(4) PENALTIES. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter unless the context requires otherwise.

(5) TABLE PREPARED BY DEPARTMENT. The department shall prepare a table under which claims under this subchapter shall be determined.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39; 1995 a. 27.

SUBCHAPTER X

WITHHOLDING

71.63 Definitions. In this subchapter, unless the context clearly indicates otherwise:

(1) "Department" means the department of revenue.

(1m) "Deposit" means mail or deliver funds to the department or, if the department prescribes another method of submitting or if the department of administration designates under s. 34.05 another destination, use that other method or submit to that other destination.

(2) "Employe" means a resident individual who performs or performed services for an employer anywhere or a nonresident individual who performs or performed such services within this state, and includes an officer, employe or elected official of the United States, a state, territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of these entities. The term includes an officer of a corporation, an entertainer and an entertainment corporation, but does not include a qualified real estate agent or a direct seller who is not treated as an employe under section 3508 of the Internal Revenue Code.

(3) "Employer" means a person, partnership or limited liability company, whether subject to or exempt from taxation under this chapter, for whom an individual performs or performed any service as an employe of that person, partnership or company and includes a person, partnership or company that engages the services of an entertainer or an entertainment corporation, except that:

(a) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for those services, "employer", except for purposes of sub. (6), means the person having receipt, custody or control of the payment of those wages.

(b) If a resident person, including but not limited to a ticket agency or box office manager, has receipt, custody or control of the proceeds of an event taking place and the proceeds are paid to an entertainer or entertainment corporation or to any nonresident person who has engaged the services of an entertainer or entertainment corporation, "employer" means the resident person, firm or nonresident person having the receipt, custody or control of the proceeds.

(c) In regard to a single−owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code, the owner, not the entity, is an "employer".

(3m) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or the department of administration designates under s. 34.05 another destination, use that other method or submit to that other destination.

(3r) "Furnish" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(4) "Income", "person" and all other terms not otherwise defined, have the same meaning as in the internal revenue code.

(5) "Payroll period" means a period for which a payment of wages is ordinarily made to the employe by his or her employer, and the term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual or annual payroll period.

(5m) "Remit" means mail or deliver funds to the department or, if the department prescribes another method of submitting or if the department of administration designates under s. 34.05 another destination, use that other method or submit to that other destination.

(6) "Wages" means all remuneration, other than fees paid to a public official, for services performed by an employe for an employer, including cash value of all remuneration paid in any medium other than cash and remuneration paid to an entertainer or entertainment corporation, minus the amount of remuneration not subject to tax under this chapter, but does not include remuneration paid:

(a) For active service as a member of the armed forces of the United States for any month during any part of which such member served in a combat zone during an induction period or was hospitalized as a result of wounds, disease or injury incurred while serving in a combat zone during an induction period, but this paragraph shall not apply for any month during any part of which there are no combatant activities in any combat zone and remuneration, for purposes of this paragraph, shall not include pensions and retirement pay.

(b) For agricultural labor, including all service performed:

1. On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur−bearing animals and wildlife;

2. In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

3. In connection with the production or harvesting of crude gum, gum spirits of turpentine or gum rosin, in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farm purposes;

4. In the employ of the operator of a farm in handling, planting, drying, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but only if such operator produced more than one−half of the commodity with respect to which such service was performed, or in the employ of a group of operators of farms (other than a cooperative organization) in the performance of such services, but only if such operators produced all of the commodity with respect to which such service is performed, but the provisions of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution or consumption;

5. On a farm operated for profit if such service is not in the course of the employer's trade or business;

6. In this paragraph, "farm" includes stock, dairy, poultry, fruit, fur−bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(c) For domestic service in a private home, local college club or local chapter of a college fraternity or sorority.

(d) For service not in the course of the employer's trade or business performed in any calendar quarter by an employe, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. An individual shall be deemed to be regularly employed by an employer during a calendar quarter only if on each of some 24 days during such quarter such individual performs, for such employer, for some portion of the day, service not in the course of the employer's trade or business, or such individual was regularly employed (as defined in this paragraph) by such employer in the performance of such service during the preceding calendar quarter.

(e) For services by a citizen or resident of the United States for a foreign government or an international organization.

(f) For services performed by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by such order.

(g) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news,

not including delivery or distribution to any point for subsequent delivery or distribution.

(h) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back.

(i) For services not in the course of the employer's trade or business to the extent paid in any medium other than cash.

(j) To, or on behalf of, an employe or his or her beneficiary from a trust created or organized in the United States and forming part of a stock bonus, pension or profit sharing plan of an employer for the exclusive benefit of his or her employes or their beneficiaries and which trust is exempt from taxation, unless such payment is made to an employe of the trust as remuneration for services rendered as such employe and not as a beneficiary of the trust.

(k) For personal services performed in Wisconsin in the form of retirement, pension and profit−sharing benefits, received by nonresidents after retirement from the employ of the employer for whom such personal services were performed.

(L) To, or on behalf of, an employe or beneficiary from a plan or contract described in s. 815.18 (3) (j) under which the benefits are fully funded by life insurance or annuities.

(m) If the remuneration paid by an employer to an employe for services performed during one−half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employe for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employe for services performed during more than one−half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employe for such period shall be deemed to be wages.

(n) In the form of tips paid to employes if:

1. The tips are paid in a medium other than cash; or

2. The cash tips received by an employe in any calendar month in the course of employment by an employer are less than $20. However, if such cash tips received in a calendar month amount to $20 or more none of such cash tips are excepted from wages under this section.

History: 1987 a. 312; 1989 a. 278; 1993 a. 112; 1997 a. 27.

71.64 Employers required to withhold.

(1) WITHHOLDING FROM WAGES. (a) Every employer at the time of payment of wages to an employe shall deduct and withhold from such wages, without regard for federal insurance contributions act deductions therefrom, an amount determined in accordance with tables to be prepared by the department under sub. (9). The secretary may grant permission to employers who do not desire to use the withholding tax tables provided by the department to determine the amount of tax to be withheld by use of a method of withholding other than the withholding tax tables, provided such method will withhold from each employe substantially the same amount as would be withheld by use of the withholding tax tables. Employers who desire to determine the amount of tax to be withheld by a method other than by use of the withholding tax tables shall obtain permission from the secretary before the beginning of a payroll period for which the employer desires to withhold the tax by such other method. Applications for use of such other method must be accompanied by evidence establishing the need for the use of such method.

(b) An employer may, at his or her discretion, deduct and withhold from any one payment of wages in a month, in the case of an employe paid more often than once during any month, the total amount which the employer reasonably estimates he or she will be required to withhold under this section from such employe during that month. Permission from the secretary under par. (a) is not needed by any employer acting under this paragraph.

(c) Withholding from marital income shall be allocated between taxpayers in the same manner that income is allocated or would be allocated.

(2) CHANGING AMOUNT OF WITHHOLDING BY WRITTEN AGREEMENT BETWEEN EMPLOYER AND EMPLOYE. (a) *Additional amount.* In addition to the amount required to be deducted and withheld, an employer and employe may agree in writing that an additional amount shall be withheld from the employe's wages. The amount deducted and withheld pursuant to such an agreement shall be considered as an amount required to be deducted and withheld for all purposes of this subchapter.

(b) *Lesser amount.* In lieu of the amount required to be deducted and withheld under this section, an employer and employe may agree in writing on a form prescribed and provided by the department that a lesser amount be withheld from the employe's wages if:

1. The employe determines that the lesser amount approximates the employe's anticipated income tax liability for the year.

2. The employe sends a copy of the completed agreement form to the department within 10 days after it is filed with the employer.

3. The agreement expires on April 30 of the following year, for calendar year taxpayers, or 4 months following the close of their fiscal year, for fiscal year taxpayers.

(c) *Department may void agreement.* If the department determines that an agreement under par. (b) would result in an insufficient amount of tax being withheld, the department may void the agreement by notification to the employer and employe.

(3) WITHHOLDING FROM PENSION OR SICK PAY PLAN. If a payee furnishes written notification to a payor of any pension or to a 3rd−party payor of any sick pay plan that the payee desires to have Wisconsin income tax withheld from the pension or sick pay plan, the payor shall withhold from each pension payment or sick pay payment an amount in accordance with the withholding tables or the amount that the payee designates to the payor. The amount withheld from each payment may not be less than $5. For purposes of this subsection, "pension" includes any retirement payment plan, and "sick pay" includes any amount paid to an employe as remuneration or paid instead of remuneration for any period when the employe is temporarily absent from work because of sickness or personal injuries. Payors withholding under this subsection are employers for all purposes of this section and shall withhold, remit and be subject to the other requirements of an employer in withholding Wisconsin income tax from employes.

(4) WITHHOLDING FROM PAYMENTS MADE TO ENTERTAINERS. For purposes of this section, all payments made to entertainers and entertainment corporations are presumed subject to withholding unless the recipient provides to the person making the payment a written statement, on a form prescribed by the department, certifying that the payment is exempt under sub. (6) (b) or s. 71.05 (2).

(5) WITHHOLDING FROM ENTERTAINER IN ABSENCE OF BOND OR CASH DEPOSIT. If no bond or cash deposit is made under s. 71.80 (15) (b) by an entertainer or entertainment corporation at the time of payment of wages to an entertainer, the employer shall either withhold the amount for which a bond should have been provided under s. 71.80 (15) (b) or deduct and withhold the tax reflected by the proper withholding table. If the entertainer establishes to the department's satisfaction that a lower rate is more appropriate, the department shall notify the employer to withhold at the lower rate. The department may notify the employer that it waives the withholding requirement on the amount specified. Payments to an entertainment corporation shall be withheld at the rate of 6% unless the payee establishes to the satisfaction of the department that a lower rate is appropriate, in which case the department may notify the employer to withhold at a lower rate.

(6) WITHHOLDING FROM PAYMENTS MADE TO NONRESIDENTS. (a) At the time of payment of wages to a nonresident employe

which wages were derived from the performance of services both within and without the state, the employer shall deduct and withhold from the wages derived from the performance of services within the state the amount as reflected by the proper withholding table.

(b) No amount shall be withheld from the wages paid to a nonresident employe for services performed in this state if the employer reasonably estimates that during that calendar year the employe will earn less than $1,500; but whenever it appears that the employe will earn more than $1,500 in this state during the calendar year, the employer shall withhold, from wages paid thereafter, such additional amounts as the employer reasonably estimates will be required to offset the amounts not withheld from previous payments.

(7) SPECIAL WITHHOLDING ARRANGEMENTS. The secretary of revenue, acting within his or her discretion, may authorize special withholding arrangements in hardship cases resulting from situations in which persons, domiciled in Wisconsin, are subjected to withholding in some other state by reason of the performance of substantial personal services in such other state, pursuant to s. 71.07 (7).

(8) EXCEPTIONS. (a) The employer of any employe domiciled in a state with which Wisconsin has reciprocity under s. 71.05 (2) is not required to withhold under this subchapter from the wages earned by such employe in this state.

(b) This subchapter shall not apply to any county fair association in regard to any employe receiving less than $100 annually in wages or salary from the association.

(c) The department of corrections is not required to withhold under sub. (1) from wages paid to an inmate working in a prison listed in s. 302.01, and if the inmate's wages do not exceed $2,000 per year the department of corrections is not required under s. 71.65 (3) to file reports relating to those wages.

(9) WITHHOLDING TABLES. (a) The department shall prepare, promulgate and publish in the official state paper, without regard to the requirements of ch. 227, rules establishing withholding tables prepared on a weekly, biweekly, semimonthly, monthly, and daily or miscellaneous pay period basis. Those rules shall also provide instructions for withholding with respect to quarterly, semiannual and annual pay periods.

(b) The department shall from time to time adjust the withholding tables to reflect any changes in income tax rates, any applicable surtax or any changes in dollar amounts in s. 71.06 (1), (1m) and (2) resulting from statutory changes, except that the department may not adjust the withholding tables to reflect the changes in rates in s. 71.06 (1m) and (2) (c) and (d) and any changes in dollar amounts with respect to bracket indexing under s. 71.06 (2e) and with respect to standard deduction indexing under s. 71.05 (22) (ds) for any taxable year that begins before January 1, 2000. The tables shall account for the working families tax credit under s. 71.07 (5m). The tables shall be extended to cover from zero to 10 withholding exemptions, shall assume that the payment of wages in each pay period will, when multiplied by the number of pay periods in a year, reasonably reflect the annual wage of the employe from] the employer and shall be based on the further assumption that the annual wage will be reduced for allowable deductions from gross income. The department may determine the length of the tables and a reasonable span for each bracket. In preparing the tables the department shall adjust all withholding amounts not an exact multiple of 10 cents to the next highest figure that is a multiple of 10 cents. The department shall also provide instructions with the tables for withholding with respect to quarterly, semiannual and annual pay periods.

History: 1987 a. 312; 1989 a. 31; 1997 a. 27, 41.

71.65 Filing returns or reports. (1) EMPLOYER MUST FURNISH STATEMENT TO EMPLOYE. (a) Every person, partnership or limited liability company required to deduct and withhold from an employe under the general withholding provisions of this subchapter shall furnish to each such employe in respect of the remuneration paid by such person, partnership or company to such employe during the calendar year, on or before January 31 of the succeeding year, or if his or her employment is terminated before the close of any such calendar year on the day on which the last payment of remuneration is made, 2 legible copies of a written statement showing the following:

1. The name of such person, partnership or limited liability company, and that person's, partnership's or company's Wisconsin income tax identification number, if any.

2. The name of such employe, and his or her social security number, if any.

3. The total amount of wages.

4. The total amount deducted and withheld as required by the general withholding provisions of this subchapter.

(b) The employe shall furnish the department of revenue one copy of such written statement along with his or her return for the year.

(2) EMPLOYERS' STATEMENTS. (a) Every person required to deduct and withhold from an employe under this subchapter shall furnish, in respect to remuneration paid by such person to such employe during the calendar year, on or before January 31 of the succeeding year, one copy of the statement under sub. (1).

(b) Every resident of this state and every nonresident carrying on activities within this state, whether taxable or not under this chapter, who pays in any calendar year for services performed within this state by an individual remuneration which is excluded from the definition of wages, in the amount of $600 or more, shall, on or before February 28 of the year following the year in which the payments are made, furnish a statement in such form as required by the department, disclosing the name of the payor, the name and address of the recipient and the total amount paid in such year to such recipient. The person who pays for the services shall, on or before January 31 of the year in which the statement is required to be furnished to the department, furnish the recipient of the payment with a copy of that statement. In any case in which an individual receives wages and also remuneration for services which remuneration is excluded from such definition, both from the same payor, the wages and the excluded remuneration shall both be reported in the report required under this subsection in a manner satisfactory to the department, regardless of the amount of the excluded remuneration.

(3) FILING REPORTS AND MAKING DEPOSITS OF WITHHELD TAXES. (a) Every employer who deducts and withholds any amount under this subchapter shall deposit such amount on a quarterly basis, except that if the amount deducted and withheld in any quarter exceeds $300, the department may require by written notice to the employer, that amounts deducted and withheld on and after the date indicated on such notice be deposited on a monthly basis. Employers who are required to file reports and deposit withheld taxes on a monthly, quarterly or annual basis, as the case may be, shall file such reports and deposit such taxes on or before the last day of the month next succeeding the withholding period. If the amount deducted and withheld in any quarter exceeds $5,000, the department may require by written notice to the employer, that for amounts deducted and withheld from the first day of the month through the 15th day of the month, the employer shall file reports and deposit such taxes on or before the last day of such month and that for amounts deducted and withheld from the 16th day of the month through the last day of the month the employer shall file reports and deposit such taxes on or before the 15th day of the next succeeding month. Employers shall file reports and deposit taxes with such public depository in Wisconsin as the department of administration designates a public depository therefor under s. 34.05 to the credit of the general fund. With each deposit the employer shall include a deposit report on a form to be provided by the department. The department may, when satisfied that the revenues will be adequately safeguarded, permit an employer whose withheld taxes do not exceed $50 per month to deposit withheld taxes and reports for other than quarterly periods. The

department may revoke such permission at any time. The department, if it deems it necessary in order to ensure payment to or facilitate the collection by the state of the amount of taxes, may require reports or payments of the amount of withheld taxes for other than quarterly periods. The public depository shall record on such deposit report the amount deposited and shall then forward such report to the department in such manner and at such time as the department by rule prescribes. On or before January 31 of each year every employer shall file a withholding report on a form to be provided by the department showing the amount withheld from the wages paid each employe in the previous calendar year, the amount deposited in respect to each employe on wages paid in the previous calendar year and a reconciliation of the aggregate of the amounts deposited in respect to each employe on wages paid in the previous calendar year with the aggregate of the amounts shown on the semimonthly, monthly and quarterly deposit reports filed in respect to such withholding. Every employer who discontinues business prior to the end of a calendar year shall, within 30 days of such discontinuance, deposit withheld taxes not previously deposited and submit a deposit report concerning such deposit with the public depository and file a withholding report with the department covering the period from the beginning of the calendar year to the date of discontinuance. No employe shall have any right of action against an employer in regard to money deducted from wages and deposited with the public depository in compliance or intended compliance with this subchapter.

(b) Upon not less than 6 months' notice to the public depository designated under par. (a), the secretary of revenue may direct that withheld taxes required to be reported and remitted by employers on and after a date specified be reported and remitted directly to the department of revenue. Every employer who deducts and withholds any amount under this subchapter required to be reported and remitted on or after such date shall report and remit directly to the department. Amounts withheld shall be paid over a quarterly basis but if the amount deducted and withheld in any quarter exceeded $300, the department may require, by written notice to the employer, that amounts deducted and withheld after the date indicated on such notice be paid over a monthly basis. Employers who are required to file reports and pay over withheld taxes on a monthly, quarterly or annual basis shall file such reports and pay over such taxes on or before the last day of the month next succeeding the withholding period. If the amount deducted and withheld in any quarter exceeded $5,000, the department may require by written notice to the employer, that for amounts deducted and withheld from the first day of the month through the 15th day of the month, the employer shall file such reports and pay over such taxes on or before the last day of such month; for amounts deducted and withheld from the 16th day of the month through the last day of the month, the employer shall file such reports and pay over such taxes on or before the 15th day of the next succeeding month.

(c) With each payment the employer shall include a withholding report on forms provided by the department. The department may, when satisfied that the revenues will be adequately safeguarded, permit an employer whose withheld taxes do not exceed $50 per month to pay over withheld taxes and file withholding reports for longer than quarterly periods. Such permission may be revoked at any time. The department, if it deems it necessary in order to ensure payment or to facilitate the collection by the state of the amount of taxes, may require reports or payments of the amount of withheld taxes for shorter than quarterly periods.

(d) On or before January 31 of each year every employer shall file an annual withholding report on forms provided by the department showing the amount withheld from the wages paid each employe in the previous calendar year, the amount deposited or paid over in respect to each employe on wages paid in the previous calendar year and a reconciliation of the aggregate deposited or paid over in respect to each employe on wages paid in the previous calendar year with the aggregate of the amounts shown on deposit and withholding reports filed in respect of such withholding.

(e) Every employer who discontinues his or her business prior to the end of a calendar year shall, within 30 days of such discontinuance, pay over withheld taxes not previously deposited or paid over, and shall file a withholding report covering the period from the beginning of the calendar year to the date of discontinuance.

(f) No employe shall have any right of action against his or her employer in regard to money deducted from his or her wages and paid over to the department in compliance or intended compliance with this subchapter.

(g) If the secretary of revenue elects to discontinue use of the public depository, reasonable notice of the change shall be communicated to employers subject to withholding.

(4) SELF−INSURERS. A person who is required to file an annual withholding report under sub. (3) (a) and who is a self−insurer for the purposes of ch. 149 shall indicate on the return that the person is such a self−insurer.

(5) EXTENSIONS. (a) If an employer applies for an extension and shows good cause why an extension should be granted, the department may grant the following extensions for the following statements:

1. Thirty days for filing a wage statement under sub. (1).

2. Sixty days for filing a statement of nonwage payments under sub. (2) (b).

(b) No extension under par. (a) extends the time to deposit with the public depository or pay to the department amounts that are required to be deducted and withheld under this subchapter.

History: 1987 a. 312; 1991 a. 39; 1993 a. 112; 1997 a. 27, 291.

71.66 Employe exemption certificates. (1) (a) On or before the date on which an employe commences employment with an employer each employe shall provide his or her employer with a signed withholding exemption certificate relating to the number of withholding exemptions he or she claims, which shall not exceed the number to which he or she is entitled. If the employe fails to provide such certificate, such employe, for withholding purposes, shall be considered as claiming no withholding exemptions.

(b) If the number of withholding exemptions to which the employe is entitled is less than the number of withholding exemptions claimed by him or her on the withholding exemption certificate then in effect, the employe shall within 10 days after the change occurs provide the employer with a new withholding exemption certificate, which shall not exceed the number to which he or she is entitled.

(c) If the number of withholding exemptions to which the employe is entitled is more than the number of withholding exemptions claimed by him or her on the withholding exemption certificate then in effect, the employe may provide the employer with a new withholding exemption certificate on which the employe must not claim more than the number of withholding exemptions to which he or she is entitled on such day.

(d) A withholding exemption certificate provided to the employer shall take effect as of the beginning of the first payroll period ending after the date on which such certificate is provided.

(e) Any employe who wilfully supplies his or her employer with false or fraudulent information regarding his or her withholding exemption or who wilfully fails to supply information which would increase the amount to be withheld may be fined not more than $200.

(f) Whenever the internal revenue code or regulations or rulings of the internal revenue service require an employer to submit copies of, or information taken from, an employe's withholding allowance certificate to the internal revenue service, the employer shall also provide copies of, or information taken from, the certificate to the department within 15 days after the employer is

required to file the certificate or information with the internal revenue service.

(2) An employe receiving wages shall be entitled to either the number of withholding exemptions allowable for federal withholding tax purposes or the following withholding exemptions that apply:

(a) An exemption for himself or herself.

(b) If the employe is married, an exemption to which his or her spouse is entitled, or would be entitled if such spouse were an employe receiving wages, but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption.

(c) An exemption for each individual with respect to whom, on the basis of the facts existing, there may reasonably be expected to be allowable an exemption under s. 71.07 (8) for the taxable year.

(d) An exemption as head of a family when on the basis of the facts existing such an exemption may reasonably be expected to be allowable under s. 71.07 (8) for the taxable year.

(3) An employer is not required to deduct and withhold any tax whenever an employe certifies to the employer, on a form prescribed by the secretary, that the employe incurred no liability for income tax imposed by this chapter for the employe's preceding taxable year and anticipates that the employe will incur no liability for the employe's current taxable year.

(4) (a) The department may verify any withholding exemption certificate, form or agreement filed by an employe with an employer directly from the books and records of any person or from any other sources of information. To ascertain the correctness of any withholding exemption certificate, form or agreement, the department may examine or cause to be examined by any agent or representative designated by it any books, papers, records or memoranda bearing on the certificate, form or agreement and may require the production of books, records and memoranda, and may require testimony and proof relevant to its investigation.

(b) If it appears that a person has filed an incorrect certificate, form or agreement with an employer, the department may void the certificate, form or agreement by notifying the employer and employe. The employer shall then withhold based on the number of exemptions prescribed by the department in its notice. If an employe fails to furnish information requested by the department to verify the correctness of the certificate, form or agreement, the employe shall be considered as claiming no withholding exemptions and the employer shall withhold on that basis upon notification by the department to the employer and the employe.

History: 1987 a. 312; 1991 a. 39; 1997 a. 27.

71.67 General provisions. (1) AGREEMENT WITH U.S. SECRETARY OF TREASURY. The secretary of revenue is authorized to enter into an agreement with the secretary of the treasury of the United States pursuant to P.L. 82−587 enacted July 17, 1952.

(2) PROVISIONS OF THIS CHAPTER APPLY. All provisions of this chapter on the following subjects relating to income taxes that are not in conflict with this subchapter apply to the administration of this subchapter: assessment, hearing and appeal procedures, preparation of assessments, certification of taxes due and correction of them, interest, penalties, collection, including s. 71.80 (3) and subch. XV, and refund procedures.

(3) WITHHELD AMOUNTS ARE FUNDS HELD IN TRUST FOR THE STATE. Whenever any person is required to withhold any Wisconsin income tax from an employe, until such amount is deposited with the public depository prescribed by s. 71.65 (3) (a) or paid over to the department as prescribed by s. 71.65 (3) (b), the amount so withheld shall be held to be a special fund in trust for the state. The amount of such fund may be assessed and collected from such person by the department as income taxes are assessed and collected, and such collection shall not abate any penalty imposed.

(4) WITHHOLDING FROM LOTTERY WINNINGS. (a) The administrator of the lottery division in the department under ch. 565 shall withhold from any lottery prize of $2,000 or more an amount determined by multiplying the amount of the prize by the highest rate applicable to individuals under s. 71.06 (1) or (1m). The administrator shall deposit the amounts withheld, on a monthly basis, as would an employer depositing under s. 71.65 (3) (a).

(b) The administrator shall furnish to each payee whose winnings are subject to withholding under par. (a) during the year, on or before January 31 of the succeeding year, 2 legible copies of a written statement showing the following:

1. The name of the payer and that payer's Wisconsin income tax identification number, if any.

2. The name of the payee and that payee's social security number, if any.

3. The gross amount of lottery prize winnings that are subject to withholding under par. (a).

4. The total amount deducted and withheld as required under par. (a).

(c) 1. The payee shall furnish the department of revenue with one copy of the written statement he or she receives under par. (b) along with his or her income or franchise tax return for the year.

2. The administrator shall furnish the department of revenue with a copy of the statement that he or she furnishes to the payee under par. (b).

(5) WITHHOLDING FROM PARI−MUTUEL WAGER WINNINGS. (a) *Wager winnings.* A person holding a license to sponsor and manage races under s. 562.05 (1) (b) or (c) shall withhold from the amount of any payment of pari−mutuel winnings under s. 562.065 (3) (a) or (3m) (a) an amount determined by multiplying the amount of the payment by the highest rate applicable to individuals under s. 71.06 (1) (a) to (c) or (1m) if the amount of the payment is more than $1,000.

(b) *Deposits.* The licensee under s. 562.05 (1) (b) or (c) shall deposit the amounts withheld under this subsection as would an employer depositing under s. 71.65 (3).

(c) *Statement of winnings to payee.* The licensee shall furnish to each payee whose winnings are subject to withholding under par. (a) during the year, on or before January 31 of the succeeding year, 2 legible copies of a written statement showing the following:

1. The name of the payer and that payer's Wisconsin income tax identification number, if any.

2. The name of the payee and that payee's social security number, if any.

3. The gross amount of pari−mutuel wager winnings that are subject to withholding under par. (a).

4. The total amount deducted and withheld as required under par. (a).

(d) *Statement furnished to the department.* 1. The payee shall furnish the department of revenue with one copy of the written statement he or she receives under par. (c) along with his or her income or franchise return for the year.

2. The licensee shall furnish the department of revenue with a copy of the statement that he or she furnishes to the payee under par. (c).

(6) WITHHOLDING REGISTRATION; FEE. Each employer who is required to withhold under this chapter shall obtain a valid certificate under s. 73.03 (50).

(7) WITHHOLDING FROM UNEMPLOYMENT COMPENSATION INSURANCE. (a) The department of workforce development may, in accordance with s. 108.135, deduct and withhold from any unemployment insurance payment, on a form prepared by the department of workforce development, a portion of the payment as Wisconsin income tax. The department of workforce develop-

ment shall deposit the amounts withheld, on a monthly basis, as provided in s. 108.135 (6).

(b) The department of workforce development shall furnish to each claimant who receives benefits during any year, on or before January 31 of the succeeding year, at least one legible copy of a written statement showing all of the following:

1. The name of the claimant and that claimant's social security number.

2. The gross amount of unemployment insurance that is subject to withholding under par. (a).

3. The total amount deducted and withheld under par. (a).

(c) 1. If the department of revenue so requires, the claimant shall furnish the department of revenue with one copy of the written statement that he or she receives under par. (b), along with his or her income tax return for the year.

2. The department of workforce development shall furnish the department of revenue with a copy of any statement that is furnished to the claimant under par. (b).

History: 1987 a. 312; 1987 a. 411 s. 104; 1991 a. 39, 269, 315; 1993 a. 16; 1995 a. 27 ss. 3417m, 3419, 9130 (4); 1995 a. 118; 1997 a. 3, 27, 39.

SUBCHAPTER XI

INFORMATION RETURNS

71.68 Definitions. In this subchapter:

(1) "Department" means the department of revenue.

(2) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

History: 1997 a. 27.

71.69 Capital stock transfers. All corporations doing business in this state shall file, on or before March 15, a statement of such transfers of its capital stock as have been made by or to residents of this state during the preceding calendar year. Such statement shall contain the name and address of the seller, date of transfer, and the number of shares of stock transferred.

History: 1987 a. 312; 1997 a. 27.

71.70 Rents or royalties. (1) PERSONS OTHER THAN CORPORATIONS. Persons other than corporations deducting rent or royalties in determining taxable income shall file a report that shows the amounts and the name and address of all natural persons who are residents of this state and to whom royalties of $600 or more were paid during the taxable year; and the amounts and the name and address of all natural persons to whom rent of $600 or more is paid during the taxable year for property having a situs in this state. Such information shall be filed on or before February 28 of the year following the year in which the payments were made. The person who deducts rent or royalties shall, on or before January 31 of the year in which the report is required to be furnished, furnish the recipient with a copy of that report.

(2) CORPORATIONS. All corporations doing business in this state shall file, on or before March 15, any information relative to payments made within the preceding calendar year of rents and royalties to all natural persons taxable thereon under this chapter. A corporation shall, on or before January 31 of the year in which the statement is required to be furnished to the department, furnish the recipient of the payment with a copy of that statement.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39; 1997 a. 27, 291.

71.71 Wages. (1) STATEMENT EMPLOYER MUST FURNISH TO EMPLOYE. (a) Every person, partnership or limited liability company required to deduct and withhold from an employe under the general withholding provisions of subch. X shall furnish to each such employe in respect of the remuneration paid by such person, partnership or company to such employe during the calendar year, on or before January 31 of the succeeding year, or if his or her employment is terminated before the close of any such calendar year on the day on which the last payment of remuneration is made, 2 legible copies of a written statement showing the following:

1. The name of such person, partnership or limited liability company, and that person's, partnership's or company's Wisconsin income tax identification number, if any.

2. The name of such employe, and his or her social security number, if any.

3. The total amount of wages as defined in s. 71.63 (6).

4. The total amount deducted and withheld as required by the general withholding provisions of subch. X.

(b) The employe shall furnish the department of revenue one copy of such written statement along with his or her return for the year.

(2) STATEMENT EMPLOYER MUST FILE. Every person required to deduct and withhold from an employe under subch. X shall file, in respect to remuneration paid by such person to such employe during the calendar year, on or before January 31 of the succeeding year, one copy of the statement referred to in sub. (1).

History: 1987 a. 312; 1991 a. 39; 1993 a. 112; 1997 a. 27.

71.72 Statement of nonwage payments. Every resident of this state and every nonresident carrying on activities within this state, whether taxable or not under this chapter, who pays in any calendar year for services performed within this state by an individual remuneration which is excluded from the definition of wages in s. 71.63 (6), in the amount of $600 or more, shall, on or before February 28 of the year following the year in which the payments were made, file a statement disclosing the name of the payor, the name and address of the recipient and the total amount paid in such year to such recipient. The person who pays for the services shall, on or before January 31 of the year in which the statement is required to be furnished to the department, furnish the recipient of the payment with a copy of that statement. In any case in which an individual receives wages, as defined in s. 71.63 (6), and also remuneration for services which remuneration is excluded from such definition, both from the same payor, the wages and the excluded remuneration shall both be reported in the statement required by s. 71.71 (2) in a manner satisfactory to the department, regardless of the amount of the excluded remuneration.

History: 1987 a. 312; 1991 a. 39; 1997 a. 27, 291.

71.73 General provisions. (1) PENALTIES. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter, unless the context requires otherwise.

(2) EXTENSIONS. If an employer applies for an extension and shows good cause why an extension should be granted, the department of revenue may grant the following extensions for the following statements:

(a) Sixty days for filing a rent and royalty statement under s. 71.70.

(b) Thirty days for filing a wage statement under s. 71.71.

(c) Sixty days for filing a statement of nonwage payments under s. 71.72.

History: 1987 a. 312; 1991 a. 39; 1997 a. 291.

SUBCHAPTER XII

ADMINISTRATIVE PROVISIONS APPLICABLE TO ALL ENTITIES

71.738 Definitions. In this subchapter:

(1) "Department" means the department of revenue.

(2) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes

another method of submitting or another destination, use that other method or submit to that other destination.

(3) "Last day prescribed by law" means the unextended due date of the return or of the claim made under subch. VIII.

(4) "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

History: 1995 a. 428; 1997 a. 27.

71.74 Department audits, additional assessments and refunds. (1) OFFICE AUDIT. The department shall, as soon as practicable, office audit such returns as it deems advisable and if it is found from such office audit that a person has been over or under assessed, or found that no assessment has been made when one should have been made, the department shall correct or assess the income of such person. Any assessment, correction or adjustment made as a result of such office audit shall be presumed to be the result of an audit of the return only, and such office audit shall not be deemed a verification of any item in said return unless the amount of such item and the propriety thereof shall have been determined after hearing and review as provided in s. 71.88 (1) (a) and (2) (a). Such office audit shall not preclude the department from making field audits of the books and records of the taxpayer and from making further adjustment, correction and assessment of income.

(2) FIELD AUDIT. (a) Whenever the department deems it advisable to verify any return directly from the books and records of any person, or from any other sources of information, the department may direct any return to be so verified.

(b) For the purpose of ascertaining the correctness of any return or for the purpose of making a determination of the taxable income of any person, the department may examine or cause to be examined by any agent or representative designated by it, any books, papers, records or memoranda bearing on the income of the person, and may require the production of the books, papers, records or memoranda, and require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information. Upon such information as it may be able to discover, the department shall determine the true amount of income received during the year or years under investigation.

(c) If it appears upon such investigation that a person has been over or under assessed, or that no assessment has been made when one should have been made, the department shall make a correct assessment in the manner provided in this chapter.

(3) DEFAULT ASSESSMENT. Any person required to file an income or franchise tax return, who fails, neglects or refuses to do so within the time prescribed by this chapter or files a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment.

(4) ASSESSMENT FOR FAILURE OF NATURAL PERSONS AND FIDUCIARIES TO FILE INFORMATION RETURNS. The department may assess as an addition to taxable income the amount of deductions taken in arriving at federal adjusted gross income or federal taxable income by natural persons and fiduciaries for wages, rent or royalties, upon failure to file information returns concerning such payments where required under s. 71.65 (1) and (2) (a) or (b) and 71.70 (1). Such assessments shall be made and reviewed in the same manner as other income tax assessments.

(5) ASSESSMENT WHEN PRICES AFFECT TAXABLE INCOME. When any corporation liable to taxation under this chapter conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business, by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income, the department may determine the amount of taxable income to such corporation for the calendar or fiscal year, having due regard to the reasonable profits which but for such arrangement or understanding might or could have been obtained from dealing in such products, goods or commodities.

(6) CONSOLIDATED STATEMENTS. For the purpose of this chapter, whenever a corporation which is required to file an income or franchise tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or whose income is regulated through contract or other arrangement, the department may require such consolidated statements as in its opinion are necessary in order to determine the taxable income received by any one of the affiliated or related corporations.

(7) ADDITIONAL ASSESSMENTS AGAINST DISSOLVED CORPORATION. If all or substantially all of the business or property of a corporation is transferred to one or more persons and the corporation is liquidated, dissolved, merged, consolidated or otherwise terminated, any tax imposed by this chapter on such corporation may be assessed and collected as prescribed in this section against the transferee or transferees of such business or property. Notice shall be given to such transferee or transferees under sub. (11) within the time specified in s. 71.77 irrespective of any other limitations imposed by law. If such corporation has dissolved, such notice may be served on any one of the last officers or members of the board of directors of such corporation.

(8) ADJUSTMENT OF CREDITS. (a) If an audit of a claim for a credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX indicates that an incorrect claim was filed, the department shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor under sub. (11) within 4 years of the last day prescribed by law for filing the claim. If the claim has been paid, or credited against income or franchise taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income or franchise taxes are assessed.

(b) If a claim for a credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX is false or excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid or a credit has been allowed against income or franchise taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income or franchise taxes are assessed.

(c) If a claim for a credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX is excessive and was negligently prepared, 10% of the corrected claim shall be disallowed and, if the claim has been paid or credited against income or franchise taxes otherwise payable, the credit shall be reduced or canceled and the proper portion of any amount paid shall be similarly recovered by assessment as income or franchise taxes are assessed.

(d) If a claim for a state historic rehabilitation credit under s. 71.07 (9r) is false or excessive, the department shall disallow the claim in full. If a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount may be recovered by assessment as income taxes are assessed. Notwithstanding par. (a) and s. 71.77, the department shall notify the claimant of the determination and shall give reasons for the disallowance under sub. (11) within 4 years after the date that the state historical society notifies the department that the preservation or rehabilitation is not in compliance with s. 71.07 (9r) (b) 3. b. or 4., but that notification must be made within 6 years after the date that the physical work of construction, or destruction in preparation for construction, begins.

(9) LIABILITY MAY BE ASSESSED TO MORE THAN ONE PERSON. If the department determines that a liability exists under this chapter and that the liability may be owed by more than one person, the

department may assess the entire amount to each person, specifying that it is assessing in the alternative.

(10) NOTICE TO TAXPAYER OF ADJUSTMENT. The department shall notify the taxpayer, as provided in sub. (11), of any adjustment, correction and assessment made under sub. (1).

(11) NOTICE OF ADDITIONAL ASSESSMENT. The department shall notify the taxpayer in writing of any additional assessment by office audit or field investigation. That notice shall be served as are circuit court summonses, or by registered mail, or by regular mail if the person assessed admits receipt or there is satisfactory evidence of receipt. In the case of joint returns, notice of additional assessment may be a joint notice and service on one spouse is proper notice to both spouses. If the spouses have different addresses at the time the notice of additional assessment is served and if either spouse notifies the department of revenue in writing of those addresses, the department shall serve a duplicate of the original notice on the spouse who has the address other than the address to which the original notice was sent, if no request for a redetermination or a petition for review has been commenced or finalized. For the spouse who did not receive the original notice, redetermination and appeal rights begin upon the service of a duplicate notice. If the taxpayer is a corporation and the department is unable to serve that taxpayer personally or by mail, the department may serve the notice by publishing a class 3 notice, under ch. 985, in the official state newspaper.

(12) TAXES DELINQUENT AFTER DUE DATE. Additional income or franchise taxes assessed under subs. (1) to (5), (7) and (8) shall become delinquent if not paid on or before the due date stated in the notice to the taxpayer.

(13) COLLECTION OF ADDITIONAL TAX AND ISSUANCE OF REFUNDS. (a) If the tax is increased the department shall proceed to collect the additional tax in the same manner as other income or franchise taxes are collected. If the income or franchise taxes are decreased upon direction of the department the state treasurer shall refund to the taxpayer such part of the overpayment as was actually paid in cash, and the certification of the overpayment by the department shall be sufficient authorization to the treasurer for the refunding of the overpayment. No refund of income or franchise tax shall be made by the treasurer unless the refund is so certified. The part of the overpayment paid to the county and the local taxation district shall be deducted by the state treasurer in the treasurer's next settlement with the county and local treasurer.

(b) No action or proceeding whatsoever shall be brought against the state or the treasurer thereof for the recovery, refund or credit of any income or surtaxes; except in case the state treasurer shall neglect or refuse for a period of 60 days to refund any overpayment of any income or surtaxes certified, the taxpayer may maintain an action to collect the overpayment against the treasurer so neglecting or refusing to refund such overpayment, without filing a claim for refund with such treasurer, provided that such action shall be commenced within one year after the certification of such overpayment.

(14) ADDITIONAL REMEDY TO COLLECT TAX. The department may also proceed under s. 71.91 (5) for the collection of any additional assessment of income or franchise taxes or surtaxes, after notice thereof has been given under sub. (11) and before the same shall have become delinquent, when it has reasonable grounds to believe that the collection of such additional assessment will be jeopardized by delay. In such cases notice of the intention to so proceed shall be given by registered mail to the taxpayer, and the warrant of the department shall not issue if the taxpayer within 10 days after such notice furnishes a bond in such amount, not exceeding double the amount of the tax, and with such sureties as the department shall approve, conditioned upon the payment of so much of the additional taxes as shall finally be determined to be due, together with interest thereon as provided by s. 71.82 (1) (a). Nothing in this subsection shall affect the review of additional assessments provided by ss. 71.88 (1) (a) and (2) (a), 71.89 (2), 73.01 and 73.015, and any amounts collected under this subsection shall be deposited with the state treasurer and disbursed after final determination of the taxes as are amounts deposited under s. 71.90 (2).

(15) PAYMENTS. All nondelinquent payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39; 1993 a. 205; 1997 a. 27.

Investigative power of department under s. 71.11 (20) (b), 1985 stats. [now 71.74 (2)] is similar to power of internal revenue service under 26 USC 7602. Taxpayer subpoenaed by department has limited discovery rights under United States v. Genser, 595 F (2d) 146, 152 (3rd Cir.), cert. denied 444 U.S. 928 (1979). State v. Beno, 99 W (2d) 77, 298 NW (2d) 405 (Ct. App. 1980).

71.75 Claims for refund. (1) Except as provided in ss. 49.855, 71.77 (5) and (7) (b) and 71.935, the provisions for refunds and credits provided in this section shall be the only method for the filing and review of claims for refund of income and surtaxes, and no person may bring any action or proceeding for the recovery of such taxes other than as provided in this section.

(2) With respect to income taxes and franchise taxes, except as otherwise provided in subs. (5) and (9) and ss. 71.30 (4) and 71.77 (5) and (7) (b), refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

(3) No refund shall be made on the over−withholding or overpayment of estimated income taxes or franchise taxes with respect to any person for any taxable year in an amount less than $1.

(4) Except as provided in subs. (5) and (5m), no refund shall be made and no credit shall be allowed for any year that has been the subject of a field audit if the audit resulted in a refund or no change to the tax owed or in an assessment that is final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015 and if the department of revenue notifies the taxpayer that unless the taxpayer appeals the result of the field audit under subch. XIV, the field audit is final. No refund shall be made and no credit shall be allowed on any item of income or deduction, assessed as a result of an office audit, the assessment of which is final under s. 71.88 (1) (a) or (2) (a), 71.89 (2), 73.01 or 73.015.

(5) A claim for refund may be made within 4 years after the assessment of a tax or an assessment to recover all or part of any tax credit, including penalties and interest, under this chapter, assessed by office audit or field audit and paid if the assessment was not protested by the filing of a petition for redetermination. No claim may be allowed under this subsection for any tax, interest or penalty paid with respect to any item of income, credit or deduction self−assessed or determined by the taxpayer or assessed as the result of any assessment made by the department with respect to which all the conditions specified in this subsection are not met. If a claim is filed under this subsection, the department of revenue may make an additional assessment in respect to any item of income or deduction that was a subject of the prior assessment. No claim for refund may be made in respect to items that were not adjusted in the notice of assessment or of refund. A person whose returns for more than one year have been adjusted may make a claim under this subsection whether or not the net result of the adjustments for those years is an assessment. This subsection does not extend the time to file under s. 71.53 (2) or 71.59 (2), and it does not extend the time period during which the department of revenue may assess, or the taxpayer may claim a refund, in respect to any item of income or deduction that was not a subject of the prior assessment.

(5m) In respect to overpayments attributable to a capital loss carry−back, a corporation may claim a refund within 4 years after the due date, including extensions, for filing the return for the taxable year of the capital loss that is carried back.

(6) Every claim for refund or credit of income taxes, franchise taxes or surtaxes, if any, shall be filed with the department and signed by the person or, in the case of joint returns, by both persons who filed the return on which the claim is based and shall set forth

specifically and explain in detail the reasons for and the basis of the claim. After the claim has been filed it shall be considered and acted upon in the same manner as are additional assessments made under s. 71.74 (1) and (2). No marital property agreement or unilateral statement under ch. 766 affects claims for refund or credit under this section.

(7) The department shall act on any claim for refund or credit within one year after receipt and failure to act shall have the effect of allowing the claim and the department shall certify the refund or credit unless the taxpayer has consented in writing to an extension of the one−year time period prior to its expiration.

(8) A refund payable on the basis of a separate return shall be issued to the person who filed the return. A refund payable on the basis of a joint return shall be issued jointly to the persons who filed the return.

(9) All refunds under this chapter are subject to attachment under ss. 49.855, 71.93 and 71.935.

(10) If an income tax refund or tax credit check is payable to a person who dies, the department shall pay the refund or credit check to the decedent's personal representative. If there is no personal representative, the department shall pay the refund or credit check either to a surviving relative, giving preference to relatives in the following order: surviving spouse, child, parent, brother or sister, or to a creditor of the decedent, as determined by the department.

History: 1987 a. 312; 1987 a. 411 ss. 96, 187; 1989 a. 31; 1991 a. 39; 1993 a. 205; 1995 a. 27, 404; 1997 a. 27.

Party challenging administration of taxing statutes must exhaust state administrative remedies before commencing action in state courts under 42 USC 1983. Hogan v. Musolf, 163 W (2d) 1, 471 NW (2d) 216 (1991).

71.76 Internal revenue service and other state adjustments. If for any year the amount of federal net income tax payable, of a credit claimed or carried forward, of a net operating loss carried forward or of a capital loss carried forward of any taxpayer as reported to the internal revenue service is changed or corrected by the internal revenue service or other officer of the United States, such taxpayer shall report such changes or corrections to the department within 90 days after its final determination and shall concede the accuracy of such determination or state how the determination is erroneous. Such changes or corrections need not be reported unless they affect the amount of net tax payable under this chapter, of a credit calculated under this chapter, of a Wisconsin net operating loss carried forward, of a Wisconsin net business loss carried forward or of a capital loss carried forward under this chapter. Any taxpayer submitting an amended return to the internal revenue service, or to another state if there has been allowed a credit against Wisconsin taxes for taxes paid to that state, shall also file, within 90 days of such filing date, an amended return if any information contained on the amended return affects the amount of net tax payable under this chapter of a credit calculated under this chapter, of a Wisconsin net operating loss carried forward, of a Wisconsin net business loss carried forward or of a capital loss carried forward under this chapter.

History: 1987 a. 312; 1991 a. 39; 1997 a. 27.

71.77 Statutes of limitations, assessments and refunds; when permitted. (1) Additional assessments and corrections of assessments by office audit or field investigation may be made of income of any taxpayer if notice under s. 71.74 (11) is given within the time specified in this section.

(2) With respect to assessments of a tax or an assessment to recover all or part of any tax credit under this chapter in any calendar year or corresponding fiscal year, notice shall be given within 4 years of the date the income tax or franchise tax return was filed.

(2m) Notwithstanding sub. (2), the department of revenue may assess a deficiency related to a contribution to the capital of the taxpayer, as defined in section 118 (c) of the Internal Revenue Code, within 4 years after the department receives notice by the taxpayer, in the manner that the department prescribes, of any of the following:

(a) The amount of the expenditure under section 118 (c) (2) (A) of the Internal Revenue Code.

(b) The intent of the person against whom the deficiency is to be assessed not to make the expenditure under section 118 (c) (2) (A) of the Internal Revenue Code.

(c) Expiration of the time period under section 118 (c) (2) (B) of the Internal Revenue Code and failure of the person against whom the deficiency is to be assessed to make the expenditure under section 118 (c) (2) (B) of the Internal Revenue Code.

(3) Irrespective of sub. (2), if any person has filed an incorrect income tax or franchise tax return for any year with intent to defeat or evade the income tax or franchise tax assessment provided by law, or has failed to file any income tax or franchise tax return for any of such years, income of any such year may be assessed when discovered. The department of revenue shall assess the taxes owed for taxable years beginning before January 1, 1990, by using the definition of "Internal Revenue Code" that applied to the year for which the assessment was made, as modified by P.L. 104−188 and P.L. 105−34 if P.L. 104−188 or P.L. 105−34 applied for federal purposes for that year.

(4) Irrespective of sub. (3), if additional assessments are made for any period more than 6 years before the year in which the assessment is made, the burden of proof shall rest with the state to prove its case by a preponderance of the evidence.

(5) The limitation periods provided in this section may be extended by written agreement between the taxpayer and the department prior to the expiration of such limitation periods or any extension of such limitation periods. During any such extension period, the department may issue an assessment or a refund, and the taxpayer may file a claim for a refund, relating to the year which the extension covers. Subsection (4) shall not apply to any assessment made in any such extended period. The department of revenue shall assess the taxes owed or compute the refund due for taxable years beginning before January 1, 1990, by using the definition of "Internal Revenue Code" that applied to the year for which the assessment was made, as modified by P.L. 104−188 and P.L. 105−34 if P.L. 104−188 or P.L. 105−34 applied for federal purposes for that year.

(6) Section 990.06 shall have no application to the provisions of this section.

(7) Notwithstanding any other limitations expressed in this chapter, an assessment or refund may be made:

(a) If notice of assessment is given within 6 years after a return was filed and if on that return the taxpayer reported for taxation, or the taxpayers jointly reported for taxation, less than 75% of the net income properly assessable, except that no assessment of additional income may be made under this subsection for any year beyond the period specified in sub. (2) unless the aggregate of the taxes on the additional income of such year is in excess of $100 in the case of a return other than a joint return or $200 in the case of a joint return.

(b) If notice of assessment or refund is given to the taxpayer within 90 days of the date on which the department receives a report from the taxpayer under s. 71.76 or within such other period specified in a written agreement entered into prior to the expiration of such 90 days by the taxpayer and the department. If the taxpayer does not report to the department as required under s. 71.76, the department may make an assessment against the taxpayer or refund to the taxpayer within 4 years after discovery by the department.

(8) For purposes of this section, a return filed on or before the last day prescribed by law for the filing of the return shall be considered as filed on such last day, and a return filed after the last day prescribed by law shall be considered as filed on the date that the return is received by the department of revenue.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39; 1995 a. 428; 1997 a. 27, 37, 291.

71.78 Confidentiality provisions. (1) DIVULGING INFORMATION. Except as provided in subs. (4), (4m) and (10), no person

may divulge or circulate or offer to obtain, divulge or circulate any information derived from an income, franchise, withholding, fiduciary, partnership, limited liability company or gift tax return or tax credit claim, including information which may be furnished by the department as provided in this section. This subsection does not prohibit publication by any newspaper of information lawfully derived from such returns or claims for purposes of argument or prohibit any public speaker from referring to such information in any address. This subsection does not prohibit the department from publishing statistics classified so as not to disclose the identity of particular returns, or claims or reports and the items thereof. This subsection does not prohibit employes or agents of the department of revenue from offering or submitting any return, including joint returns of a spouse or former spouse, separate returns of a spouse, individual returns of a spouse or former spouse and combined individual income tax returns, or from offering or submitting any claim, schedule, exhibit, writing or audit report or a copy of, and any information derived from, any of those documents as evidence into the record of any contested matter involving the department in proceedings or litigation on state tax matters if, in the department's judgment, that evidence has reasonable probative value.

(1m) BROWSING PROHIBITED. (a) No person, except the person who filed the return or claim, may inspect a return or claim that is filed under this chapter unless that person does so in performing the duties of his or her position. Violation of this subsection [paragraph] by a state employe is grounds for dismissal.

NOTE: Par. (a) was created as sub. (1m) by 1997 Wis. Act 323 and renumbered by the revisor under s. 13.93 (1) (b). The bracketed language indicates the correct cross−reference. Corrective legislation is pending.

(b) If any person is charged with a violation of sub. (1m) [par. (a)], the secretary of revenue shall notify each taxpayer whose return or claim was improperly inspected by that person.

NOTE: Par. (b) was created as sub. (2) by 1997 Wis. Act 323 and renumbered by the revisor under s. 13.93 (1) (b). The bracketed language indicates the correct cross−reference. Corrective legislation is pending.

(c) Any person who is notified under sub. (2) [par. (b)] may bring an action for damages in regard to the inspection.

NOTE: Par. (c) was created as sub. (3) by 1997 Wis. Act 323 and renumbered by the revisor under s. 13.93 (1) (b). The bracketed language indicates the correct cross−reference. Corrective legislation is pending.

(2) DISCLOSURE OF NET TAX. The department shall make available upon suitable forms prepared by the department information setting forth the net Wisconsin income tax, Wisconsin franchise tax or Wisconsin gift tax reported as paid or payable in the returns filed by any individual or corporation for any individual year upon request. Before the request is granted, the person desiring to obtain the information shall prove his or her identity and shall be required to sign a statement setting forth the person's address and reason for making the request and indicating that the person understands the provisions of this section with respect to the divulgement, publication or dissemination of information obtained from returns as provided in sub. (1). The use of a fictitious name is a violation of this section. Within 24 hours after any information from any such tax return has been so obtained, the department shall mail to the person from whose return the information has been obtained a notification which shall give the name and address of the person obtaining the information and the reason assigned for requesting the information. The department shall collect from the person requesting the information a fee of $4 for each return.

(3) DISCLOSURE LIMITATION. The information described in sub. (2) shall not be made available to any nonresident or to any resident who is making the request for such information for the use or benefit, directly or indirectly, of a nonresident person or firm or a foreign corporation except to the extent that similar information in the state of residence of such person or firm or the state of incorporation of such foreign corporation is made available to residents of Wisconsin or Wisconsin corporations. As part of the statement required by sub. (2), the department shall require any person desiring to obtain such information to declare whether the person is a nonresident of the state and whether the information is desired for the use or benefit of a nonresident person or firm or a foreign corporation. No copy of any return shall be supplied to any person except as permitted by sub. (4).

(4) PERSONS QUALIFIED TO EXAMINE RETURNS FOR SPECIFIED PURPOSES. Subject to subs. (5) and (6) and to rules of the department, any returns or claims specified under sub. (1) or any schedules, exhibits, writings or audit reports pertaining to the returns or claims on file with the department shall be open to examination by only the following persons and the contents thereof may be divulged or used only as follows:

(a) The secretary of revenue or any officer, agent or employe of the department.

(b) The attorney general and department of justice employes.

(c) Members of any legislative committee on organization or its authorized agents provided the examination is approved by a majority vote of a quorum of its members and the tax return or claim information is disclosed only in a meeting closed to the public. The committee may disclose tax return or claim information to the senate or assembly or to other legislative committees if the information does not disclose the identity of particular returns, claims or reports and the items thereof. The department of revenue shall provide assistance to the committees or their authorized agents in order to identify returns and claims deemed necessary by them to accomplish the review and analysis of tax policy.

(d) Public officers of the federal government or other state governments or the authorized agents of such officers, where necessary in the administration of the tax laws of such governments, to the extent that such government accords similar rights of examination or information to officials of this state.

(e) The person who filed or submitted the return or claim, or to whom the return or claim relates or by the person's authorized agent or attorney.

(f) Any person examining a return or claim pursuant to a court order duly obtained upon a showing to the court that the information contained in the return or claim is relevant to a pending court action or pursuant to a subpoena signed by a judge of a court of record ordering the department's custodian of returns or claims to produce a return or claim in open court in a court action pending before the judge.

(g) Employes of this state, to the extent that the department of revenue deems the examination necessary for the employes to perform their duties under contracts or agreements between the department and any other department, division, bureau, board or commission of this state relating to the administration of tax laws or child and spousal support enforcement under s. 49.22.

(h) 1. A member of the board of arbitration established under s. 71.10 (7) or a consultant under joint contract with the states of Minnesota and Wisconsin for the purpose of determining the reciprocity loss to which either state is entitled.

2. A member of the board of arbitration established under s. 71.10 (7e) or a consultant under joint contract with the states of Illinois and Wisconsin for the purpose of determining the reciprocity loss to which either state is entitled.

(i) The office of the commissioner of insurance with respect to information compiled under s. 71.80 (13).

(j) Employes of the legislative fiscal bureau to the extent that the department of revenue deems the examination necessary for those employes to perform their duties under contracts or agreements between the department and the bureau relating to the review and analysis of tax policy and the analysis of state revenue collections.

(k) The spouse or former spouse of the person who filed the return or claim if the spouse or former spouse may be liable, or the property of the spouse or former spouse is subject to collection, for the delinquency, or the department has issued an assessment or denial of a claim to the spouse or former spouse regarding the return or claim.

(L) The administrator of the lottery division in the department for the purpose of withholding lottery winnings under s. 565.30 (5).

(m) The secretary of commerce and employes of that department to the extent necessary to administer the development zone program under subch. VI of ch. 560.

(n) The state public defender and the department of administration for the purpose of collecting payment ordered under s. 48.275 (2), 757.66, 973.06 (1) (e) or 977.076 (1).

(o) A licensing department or the supreme court, if the supreme court agrees, for the purpose of denial, nonrenewal, discontinuation and revocation of a license based on tax delinquency under s. 73.0301.

(p) The secretary of revenue and employes of that department for the purpose of calculating the penalty under s. 71.83 (1) (d).

(4m) DISCLOSURE OF CERTAIN DATES TO SPOUSES AND FORMER SPOUSES. The department may disclose to the spouse or former spouse of the person who filed a return or claim specified under sub. (1) whether an extension for filing the return or claim was obtained, the extended due date for filing the return or claim and the date on which the return or claim was filed with the department.

(5) AGREEMENT WITH DEPARTMENT. Copies of returns and claims specified in sub. (1) and related schedules, exhibits, writings or audit reports shall not be furnished to the persons listed under sub. (4), except persons under sub. (4) (e), (k), (n) and (o) or under an agreement between the department of revenue and another agency of government.

(6) RESTRICTION ON USE OF INFORMATION. The use of information obtained under sub. (4) or (5) is restricted to the discharge of duties imposed upon the persons by law or by the duties of their office or by order of a court as provided under sub. (4) (f).

(7) CHARGE FOR COSTS. The department of revenue may charge for the reasonable cost of divulging information under this section.

(8) DISTRICT ATTORNEYS. District attorneys may examine tax and claim information of persons on file with the department of revenue as follows:

(a) Such information may be examined for use in preparation for any judicial proceeding or any investigation which may result in a judicial proceeding involving any of the taxes or tax credits specified in sub. (1) if:

1. The taxpayer is or may be a party to such proceeding;

2. The treatment of an item reflected in such information is or may be related to the resolution of an issue in the proceeding or investigation; or

3. The information relates or may relate to a transactional relationship between the taxpayer or credit claimant and a person who is or may be a party to the proceeding which affects or may affect the resolution of an issue in such proceeding or investigation.

(b) When the department of revenue allows examination of information under par. (a):

1. If the department has referred the case to a district attorney, the department may make disclosure on its own motion.

2. If a district attorney requests examination of tax or tax credit information relating to a person, the request must be in writing, clearly identify the requester and the person to whom the information relates and explain the need for the information. The department may then allow the examination of information so requested and the information may be examined and used solely for the proceeding or investigation for which it was requested.

(c) Such information may be examined for use in preparation for any administrative or judicial proceeding or an investigation which may result in such proceeding pertaining to the enforcement of a specifically designated state criminal statute not involving tax administration to which this state or a governmental subdivision thereof is a party. Such information may be used solely for the proceeding or investigation for which it is requested.

(d) The department may allow an examination of information under par. (c) only if a district attorney petitions a court of record in this state for an order allowing the examination and the court issues an order after finding:

1. There is reasonable cause to believe, based on information believed to be reliable, that a specific criminal act has been committed;

2. There is reason to believe that such information is probative evidence of a matter in issue related to the commission of the criminal act; and

3. The information sought to be examined cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the information constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

(e) If the department determines that examination of information ordered under par. (d) would identify a confidential informant or seriously impair a civil or criminal tax investigation, the department may deny access and shall certify the reason therefor to the court.

(9) DISCLOSURE OF DEBTOR ADDRESS. The department may supply the address of a debtor to an agency certifying a debt of that debtor under s. 71.93 or to a municipality or county certifying a debt of a debtor under s. 71.935.

(10) DIVULGING INFORMATION TO REQUESTER. The department shall inform each requester of the total amount of taxes withheld under subch. X during any reporting period and reported on a return filed by any city, village, town, county, school district, special purpose district or technical college district; whether that amount was paid by the statutory due date; the amount of any tax, fees, penalties or interest assessed by the department; and the total amount due or assessed under subch. X but unpaid by the filer, except that the department may not divulge tax return information that in the department's opinion violates the confidentiality of that information with respect to any person other than the units of government and districts specified in this subsection. The department shall provide to the requester a written explanation if it fails to divulge information on grounds of confidentiality. The department shall collect from the person requesting the information a fee of $4 for each return.

History: 1987 a. 312; 1987 a. 411 ss. 99, 100, 188; 1991 a. 269, 301; 1993 a. 112, 399; 1995 a. 27 ss. 3420x to 3423g, 9116 (5); 1995 a. 233, 404; 1997 a. 27, 63, 237, 323; s. 13.93 (1) (b).

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

71.80 General administrative provisions.

(1) DEPARTMENT DUTIES AND POWERS. (a) The department shall assess incomes as provided in this chapter and in performance of such duty the department shall possess all powers now or hereafter granted by law to the department in the assessment of personal property and also the power to estimate incomes.

(b) In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the secretary or the secretary's delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if the secretary determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses.

(c) The department may make such regulations as it shall deem necessary in order to carry out this chapter.

(d) The department may employ such clerks and specialists as are necessary to carry into effective operation this chapter. Sala-

ries and compensations of such clerks and specialists shall be charged to the proper appropriation for the department.

(e) Representatives of the department directed by it to accept payment of income or franchise taxes shall file bonds with the state treasurer in such amount and with such sureties as the state treasurer shall direct and approve.

(2) NOTICE TO TAXPAYER BY DEPARTMENT. The department shall notify each taxpayer by mail of the amount of income or franchise taxes assessed against the taxpayer and of the date when the taxes become delinquent.

(3) CREDITING OF OVERPAYMENTS ON INDIVIDUAL OR SEPARATE RETURNS. In the case of any overpayment, refundable credit or refund on an individual or separate return, the department, within the applicable period of limitations, may credit the amount of overpayment, refundable credit or refund including any interest allowed, against any liability in respect to any tax collected by the department, a debt under s. 71.93 or 71.935 or a certification under s. 49.855 on the part of the person who made the overpayment or received the refundable credit or the refund and shall refund any balance to the person. The department shall presume that the overpayment, refundable credit or refund is nonmarital property of the filer. Within 2 years after the crediting, the spouse or former spouse of the person filing the return may file a claim for a refund of amounts credited by the department if the spouse or former spouse shows by clear and convincing evidence that all or part of the state tax overpayment, refundable credit or refund was nonmarital property of the nonobligated spouse.

(3m) CREDITING OF OVERPAYMENTS ON JOINT RETURNS. For married persons, unless within 20 days after the date of the notice under par. (c) the nonobligated spouse shows by clear and convincing evidence that the overpayment, refundable credit or refund is the nonmarital property of the nonobligated spouse, notwithstanding s. 766.55 (2) (d), the department may credit overpayments, refundable credits and refunds, including any interest allowed, resulting from joint returns under this chapter as follows:

(a) Against any liability of either spouse or both spouses in respect to an amount owed the department, a certification under s. 49.855 that is subject to s. 766.55 (2) (b) or a debt under s. 71.93 or 71.935 that is subject to s. 766.55 (2) (b) and that was incurred during marriage by a spouse after December 31, 1985, or after both spouses are domiciled in this state, whichever is later, except as provided in s. 71.10 (6) (a) and (b) and (6m).

(b) Against the liability of a spouse in the proportion that the Wisconsin adjusted gross income which would have been the property of the spouse but for the marriage has to the adjusted gross income of both spouses as follows:

1. In respect to an amount owed the department that was incurred before January 1, 1986, or before marriage, whichever is later.

2. In respect to a debt under s. 71.93 or 71.935 or a certification under s. 49.855 if that debt or certification is not subject to s. 766.55 (2) (b).

3. In respect to an amount subject to s. 71.10 (6) (a) and (b) and (6m) (a).

(c) If the department determines that a spouse is otherwise entitled to a state tax refund or homestead or farmland credit, it shall notify the spouses under s. 71.74 (11) that the state intends to reduce any state tax refund or a refundable credit due the spouses by the amount credited against any liability under par. (a) or (b) or both.

(d) If a spouse does not receive notice under par. (c) and if the department incorrectly credits the state tax overpayment, refund or a refundable credit of a spouse or spouses against a liability under par. (a) or (b) or both, a claim for refund of the incorrectly credited amount may be filed under s. 71.75 (5) within 2 years after the date of the offset that was the subject of the notice under par. (c).

(4) PENALTIES. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter unless the context requires otherwise.

(5) PENALTIES NOT DEDUCTIBLE. No penalty imposed by this chapter, or by subch. III of ch. 77 may be deducted from gross income in arriving at net income taxable under this chapter.

(6) PROSECUTIONS BY ATTORNEY GENERAL. The attorney general is authorized, upon the request of the secretary of revenue, to represent the state or to assist the district attorney in the prosecution of any case arising under s. 71.83 (2) (a) 1. and (b) 1. and 2.

(6m) VENUE. A proceeding for a criminal violation under this chapter may be brought in the circuit court for Dane County or for the county in which the defendant resides or is located when charged with the violation.

(7) PUBLICATION OF NOTICES IN ADMINISTRATIVE REGISTER. The department shall annually publish notice of the standard deduction amounts and the brackets for the individual income tax in the administrative register.

(8) RECEIPT FOR PAYMENT OF TAXES. The department shall accept payments of income or franchise taxes in accordance with this chapter, and upon request shall give a printed or written receipt therefor.

(9) RECORDS MAY BE REQUIRED OF TAXPAYER. Whenever the department deems it necessary that a person subject to an income or franchise tax should keep records to show whether or not the person is liable to tax, the department may serve notice upon the person and require such records to be kept as will include the entire net income of the person and will enable the department to compute the taxable income. The department may require any person who keeps records in machine−readable form for federal income tax purposes to keep those records in the same form for purposes of the taxes under this chapter.

(10) REFUSAL TO FILE; COURT ORDER. (a) If any person, including an officer of a corporation, required by law to file a return fails to file the return within 60 days after the time required and refuses to file the return within 30 days after a request by the department to do so, the circuit court, upon petition by the department, shall issue a court order requiring that person to file a return. Any person upon whom a court order has been served shall file a return within 20 days after the service of the court order. The petition shall be heard and determined on the return day or on a later date that the court fixes, having regard for the speediest possible determination of the case consistent with the rights of the parties.

(b) The department shall file a petition for a court order in a circuit court for the county in which the respondent in the action resides.

(c) Filing a return after the time prescribed by law shall not relieve any person, including an officer of a corporation, from any penalties whether or not the department filed a petition for a court order under this subsection.

(11) RETURN PRESUMED CORRECT. The department shall presume the incomes reported on the current return to be correct for the purpose of preparing initial assessments.

(12) DEPARTMENT DEEMED LAWFUL ATTORNEY FOR NONRESIDENT. (a) The transaction of business or the performance of personal services in this state or the derivation of income from property the income from which has a taxable situs in this state by any nonresident person, except where the nonresident is a foreign corporation that has been licensed pursuant to ch. 180, shall be deemed an irrevocable appointment by such person, binding upon that person, that person's executor, administrator or personal representative, of the department of financial institutions to be that person's lawful attorney upon whom may be served any notice, order, pleading or process (including without limitation by enumeration any notice of assessment, denial of application for abatement or denial of claim for refund) by any administrative agency or in any proceeding by or before any administrative agency, or

in any proceeding or action in any court, to enforce or effect full compliance with or involving the provisions of this chapter. The transaction of business, the performance of personal services or derivation of income from such property in this state shall be a signification of that person's agreement that any such notice, order, pleading or process which is so served shall be of the same legal force and validity as if served on that person personally, or upon that person's executor, administrator or personal representative.

(b) The transaction of business in this state or the derivation of income which has a situs in this state under the provisions of this chapter by any person while a resident of this state shall be deemed an irrevocable appointment by such person, binding upon that person, that person's executor, administrator or personal representative, effective upon such person becoming a nonresident of this state, of the department of financial institutions to be that person's true and lawful attorney upon whom may be served any notice, order, pleading or process (including without limitation by enumeration any notice of assessment, denial of application for abatement or denial of claim for refund) by any administrative agency or in any proceeding by or before an administrative agency, or in any proceeding or action in any court, to enforce or effect full compliance with or involving the provisions of this chapter. And the transaction of such business or the derivation of such income shall be a signification of that person's agreement that any such notice, order, pleading or process which is so served shall be of the same legal force and validity as if served on that person personally, or upon that person's executor, administrator or personal representative.

(c) Service under par. (a) or (b) shall be made by serving a copy upon the department of financial institutions or by filing such copy with the department of financial institutions, and such service shall be sufficient service upon such person, or that person's executor, administrator or personal representative if notice of such service and a copy of the notice, order, pleading or process are within 10 days thereafter sent by mail by the state department, officer or agency making such service to such person, or that person's executor, administrator or personal representative, at that person's last−known address, and that an affidavit of compliance herewith is filed with the department of financial institutions. The department of financial institutions shall keep a record of all such notices, orders, pleadings, processes and affidavits and shall note in such record the day and hour of service upon the department.

(13) SELF−INSURERS. The department shall compile and maintain a current list of names and addresses of persons who indicate they are self−insurers as required by s. 71.65 (4). The list shall be furnished to the office of the commissioner of insurance on request.

(14) SIGNATURES REQUIRED. (a) Except as otherwise provided by par. (b), sub. (20) and ss. 71.03 (2) (b) and (c), 71.13 (1), 71.20 (1), 71.21 (1) and 71.24 (4), any return, statement or other document required to be made under this chapter shall be signed in accordance with rules promulgated by the department.

(b) The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by that person.

(15) SURETY BOND; ENTERTAINER. (a) In this subsection, "employer" means the resident person or firm which engages the services of an entertainer, as defined in s. 71.01 (2), or an entertainment corporation or, in the absence of that person or firm, the resident person last having receipt, custody or control of the proceeds of the entertainment event.

(b) All entertainers, except entertainers who work for an entertainment corporation, and entertainment corporations not otherwise employed or regularly engaged in business in this state shall file a surety bond with the department of revenue at least 7 days before a performance. That bond shall be payable to the department to guarantee payment of income, franchise, sales and use taxes, income taxes withheld under subch. X, penalties and interest. The amount of the bond shall be 6% of either the total contract price on all contracts that exceed $3,200 or, if the total contract price is not readily determinable and the department's estimate of the total remuneration to be received by the entertainer or entertainment corporation exceeds $3,200, 6% of the department's estimate. Amounts previously earned in this state by an entertainer or entertainment corporation during the same calendar year for which no bond or cash deposit has been filed under this paragraph or for which no amounts have been withheld under s. 71.64 (5) shall be added together to determine the total contract price. The department shall approve the form and content of the bond. The bond shall remain in force until the liability under the bond is released by the department.

(c) In place of the bond under par. (b) and with the department's approval, an entertainer or entertainment corporation may deposit with the department money equal to the face value of the bond required under par. (b). The department shall retain the money until it determines the depositor's liability for state income, franchise, sales and use taxes and income tax withheld under subch. X. If the deposit exceeds the liability, the department shall refund the difference to the depositor without interest.

(d) If the department concludes that a bond or money deposit is not necessary to protect the revenues of the state, it may waive the requirements of pars. (b) and (c).

(e) Each person who is an employer of an entertainer or entertainment corporation, as defined in s. 71.63 (3), shall, before paying for those services, require proof that the bond required by par. (b) or the money deposit required by par. (c) has been provided or that the department has waived those requirements. If proof is not provided, the person shall withhold and immediately transmit to the department from that person's payment the amount for which a bond should have been provided under par. (b). Failure to withhold or transmit the amount required under this paragraph or under s. 71.64 (5) shall make the person required to withhold it personally liable for the amount required under this paragraph.

(f) An employer of an entertainer or entertainment corporation under s. 71.63 (3) (b) who is required to withhold moneys under par. (e) or s. 71.64 (5) and who has no direct knowledge of the total contract price to be paid an entertainer or entertainment corporation is not liable under par. (e) if the employer withholds moneys based upon a signed statement provided by the entertainer, the entertainment corporation or the promoter attesting to the amount of the total contract price. The employer shall deliver the signed statement to the department within 30 days after the date of the performance. Statements under this paragraph are subject to s. 71.83 (2) (b) 1. and 2.

(16) SURETY BOND; NONRESIDENT CONTRACTOR. (a) All nonresident persons, whether incorporated or not, engaging in construction contracting in this state as contractor or subcontractor and not otherwise regularly engaged in business in this state, shall file a surety bond with the department, payable to the department of revenue, to guarantee the payment of income or franchise taxes, required unemployment insurance contributions, sales and use taxes and income taxes withheld from wages of employes, together with any penalties and interest thereon. The department shall approve the form and contents of such bond. The amount of the bond shall be 3% of the contract or subcontract price on all contracts of $50,000 or more or 3% of contractor's or subcontractor's estimated cost−and−profit under a cost−plus contract of $50,000 or more. When the aggregate of 2 or more contracts in one calendar year is $50,000 or more the amount of the bond or bonds shall be 3% of the aggregate amount of such contracts. Such surety bond must be filed within 60 days after construction is begun in this state by any such contractor or subcontractor on any contract the price of which is $50,000 or more (or the estimated cost−and−profit of which is $50,000 or more), or within 60 days after construction is begun in this state on any contract for less than $50,000, when the amount of such contract, when aggregated with any other contracts, construction on which was begun in this state in the same calendar year, equals or exceeds $50,000. If the department concludes that no bond is necessary to protect

the tax revenues of the state, including contributions under ch. 108, the requirements under this subsection may be waived by the secretary of revenue or the secretary's designated departmental representative. The bond shall remain in force until the liability thereunder is released by the secretary or the secretary's designated departmental representative.

(b) A construction contractor required to file a surety bond under par. (a) may, in lieu of such requirement, but subject to approval by the department, deposit with the state treasurer an amount of cash equal to the face of the bond that would otherwise be required. If an offer to deposit is made the department shall issue a certificate to the state treasurer authorizing said treasurer to accept payment of such moneys and to give his or her receipt therefor. A copy of such certificate shall be mailed to the contractor who shall, within the time fixed by the department, pay such amount to said treasurer. A copy of the receipt of the state treasurer shall be filed with the department. Upon final determination by the department of such contractor's liability for state income or franchise taxes, required unemployment insurance contributions, sales and use taxes and income taxes withheld from wages of employes, interest and penalties, by reason of such contract or contracts, the department shall certify to the state treasurer the amount of taxes, penalties and interest as finally determined, shall instruct the treasurer as to the proper distribution of such amount, and shall state the amount, if any, to be refunded to such contractor. The state treasurer shall make the payments directed by such certificate within 30 days after receipt thereof. Amounts refunded to the contractor shall be without interest.

(c) All persons subject to this subsection shall notify the department of revenue of the completion of a construction project in this state within 30 days after such completion.

(17) TAX RECEIPTS TRANSMITTED TO STATE TREASURER. Within 15 days after receipt of any income or franchise tax payments the department shall transmit the same to the state treasurer.

(18) TIMELY FILING DEFINED. Documents and payments required or permitted by this chapter that are mailed shall be considered furnished, reported, filed or made on time, if mailed in a properly addressed envelope, with postage duly prepaid, which envelope is postmarked before midnight of the date prescribed for such furnishing, reporting, filing or making, provided such document or payment is actually received by the department or at the destination that the department or the department of administration prescribes within 5 days of such prescribed date. Documents and payments that are not mailed are timely if they are received on or before the due date by the department or at the destination that the department or the department of administration prescribes.

(19) WHOLE DOLLAR AMOUNTS. (a) *Rounding amounts.* With respect to any amount required to be shown on a form prescribed for any return, statement or other document required by this chapter, if the amount of such item is other than a whole dollar amount the fractional part of a dollar shall be disregarded unless it amounts to 50 cents or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased to the next whole dollar.

(b) *Election not to use whole dollar amounts.* Any person making a return, statement or other document required by this chapter shall be allowed to make such return, statement or other document without regard to par. (a).

(c) *Inapplicability to computation of amount.* Paragraph (a) does not apply to items which must be taken into account in making the computations necessary to determine the total amount required to be shown on a form, statement or other document but applies only to such final amount.

(20) MAGNETIC MEDIA FILING. If the internal revenue service requires a person to file information returns or wage statements on magnetic media or in other machine−readable form for federal income tax purposes, the person shall also file the comparable state information returns or wage statements on magnetic media or in other machine−readable form with the department of revenue for income or franchise tax purposes.

History: 1987 a. 312; 1987 a. 411 ss. 70, 189 to 192; 1989 a. 31; 1991 a. 39, 301; 1993 a. 205; 1995 a. 27, 404, 418; 1997 a. 27, 39, 291.

SUBCHAPTER XIII

INTEREST AND PENALTIES

71.82 Interest. (1) NORMAL. (a) In assessing taxes interest shall be added to such taxes at 12% per year from the date on which such taxes if originally assessed would have become delinquent if unpaid, to the date on which such taxes when subsequently assessed will become delinquent if unpaid.

(b) Except as otherwise specifically provided, in crediting overpayments of income and surtaxes against underpayments or against taxes to be subsequently collected and in certifying refunds of such taxes interest shall be added at the rate of 9% per year from the date on which such taxes when assessed would have become delinquent if unpaid to the date on which such overpayment was certified for refund except that if any overpayment of tax is certified for refund within 90 days after the last date prescribed for filing the return of such tax or 90 days after the date of actual filing of the return of such tax, whichever occurs later, no interest shall be allowed on such overpayment. For purposes of this section the return of such tax shall not be deemed actually filed by an employe unless and until the employe has included the written statement required to be filed under s. 71.65 (1). However when any part of a tax paid on an estimate of income, whether paid in connection with a tentative return or not, is refunded or credited to a taxpayer, such refund or credit shall not draw interest.

(c) Any assessment made as a result of the adjustment or disallowance of a claim for credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX, except as provided in sub. (2) (c), shall bear interest at 12% per year from the due date of the claim.

(2) DELINQUENT. (a) *Income and franchise taxes.* Income and franchise taxes shall become delinquent if not paid when due under ss. 71.03 (8), 71.24 (9) and 71.44 (4), and when delinquent shall be subject to interest at the rate of 1.5% per month until paid.

(b) *Department may reduce delinquent interest.* The department shall provide by rule for reduction of interest under par. (a) to 12% per year in stated instances wherein the secretary of revenue determines that reduction is fair and equitable.

(c) *Adjustment to credits.* Any assessment made as a result of the disallowance of a claim for credit made under s. 71.07, 71.28 or 71.47 or subch. VIII or IX with fraudulent intent, or of a portion of a claim made under said subchapters or sections that was excessive and was negligently prepared, shall bear interest from the due date of the claim, until refunded or paid, at the rate of 1.5% per month.

(d) *Withholding tax.* Of the amounts required to be withheld any amount not deposited or paid over to the department within the time required shall be deemed delinquent and deposit reports or withholding reports filed after the due date shall be deemed late. Delinquent deposits or payments shall bear interest at the rate of 1.5% per month from the date deposits or payments are required under this section until deposited or paid over to the department. The department shall provide by rule for reduction of interest on delinquent deposits to 12% per year in stated instances wherein the secretary of revenue determines reduction fair and equitable. In the case of a timely filed deposit or withholding report, withheld taxes shall become delinquent if not deposited or paid over on or before the due date of the report. In the case of no report filed or a report filed late, withheld taxes shall become delinquent if not deposited or paid over by the due date of the report. In the case of an assessment under s. 71.83 (1) (b) 2., the amount assessed shall become delinquent if not paid on or before the first day of the calendar month following the calendar month in which the assessment becomes final, but if the assessment is contested before the

tax appeals commission or in the courts, it shall become delinquent on the 30th day following the date on which the order or judgment representing final determination becomes final.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39.

71.83 Penalties. (1) CIVIL. (a) *Negligence.* 1. 'Failure to file.' In case of failure to file any return required under s. 71.03, 71.24 or 71.44 on the due date prescribed therefor, including any extension of time for filing, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as tax on the return 5% of the amount of the tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. For purposes of this subdivision, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment and by the amount of any credit against the tax which may be claimed upon the return.

1m. 'Failure to file information return.' If a person fails to file a return required under subch. XI by the prescribed due date, including any extension, or files an incorrect or incomplete return, that person may be subject to a penalty of $10 for each violation. A penalty shall be waived if the person shows that a violation is due to reasonable cause and not due to wilful neglect.

2. 'Incomplete or incorrect return.' If any person required under this chapter to file an income or franchise tax return files an incomplete or incorrect return, unless it is shown that such filing was due to good cause and not due to neglect, there shall be added to such person's tax for the taxable year 25% of the amount otherwise payable on any income subsequently discovered or reported. The amount so added shall be assessed, levied and collected in the same manner as additional normal income or franchise taxes, and shall be in addition to any other penalties imposed by this chapter. In this subdivision, "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g) to (L) after the filing of that separate return, and a joint return filed by the spouses with respect to a taxable year for which a separate return is filed under s. 71.03 (2) (m) after the filing of that joint return.

3. 'Incomplete or incorrect deposit or withholding report.' If any person required under subch. X to file a deposit report or withholding report files an incomplete or incorrect report, or fails to properly withhold or fails to properly deposit or pay over withheld funds, unless it can be shown that the filing or failure was due to good cause and not due to neglect, there shall be added to the tax 25% of the amount not reported or not withheld, deposited or paid over. The amount so added shall be assessed, levied and collected in the same manner as additional income or franchise taxes, and shall be in addition to any other penalties imposed in this subchapter. "Person", in this subdivision, includes an officer or employe of a corporation or other responsible person or a member or employe of a partnership or limited liability company or other responsible person who, as such officer, employe, member or other responsible person, is under a duty to perform the act in respect to which the violation occurs.

4. 'Late filing of withholding report.' In case of failure to file any withholding deposit or payment report required under s. 71.65 (3) on the due date prescribed therefor, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount required to be shown as withheld taxes on the report 5% of the amount if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate.

5. 'Failure to notify.' Any employe who fails to notify the department as required by s. 71.64 (2) (b) 2. shall be subject to a penalty of $10.

6. 'Retirement plans.' Any natural person who is liable for a penalty for federal income tax purposes under section 72 (m) (5), (q), (t) and (v), 4973, 4974, 4975 or 4980A of the internal revenue code is liable for 33% of the federal penalty unless the income received is exempt from taxation under s. 71.05 (1) (a). The penalties provided under this subdivision shall be assessed, levied and collected in the same manner as income or franchise taxes.

7. 'Failure to keep records required by the department.' Any taxes assessed upon information not contained in records required by the department under s. 71.80 (9) to be kept by any person subject to an income or franchise tax shall carry a penalty of 25% of the amount of the tax. The penalty shall be in addition to all other penalties provided in this chapter.

8. 'Joint return replacing separate returns.' If the amount shown as the tax by the husband and wife on a joint return filed under s. 71.03 (2) (g) to (L) exceeds the sum of the amounts shown as the tax upon the separate return of each spouse and if any part of that excess is attributable to negligence or intentional disregard of this chapter, but without intent to defraud, at the time of the filing of that separate return, then 25% of the total amount of that excess shall be added to the tax.

(b) *Intent to defeat or evade.* 1. 'Income and franchise; all persons.' With respect to calendar year 1985 or corresponding fiscal year and subsequent calendar or fiscal years, any person making an incorrect, or failing to make a, report, including a separate return filed by a spouse with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g) to (L) after the filing of that separate return, and including a joint return filed by the spouses with respect to a taxable year for which a separate return is filed under s. 71.03 (2) (m) after the filing of that joint return, with intent, in either case, to defeat or evade the income or franchise tax assessment required by law, shall have added to the tax an amount equal to 100% of the tax on the entire underpayment. No amount paid under this subdivision may be deducted from gross income and assessments hereunder may be made with respect to decedents. Amounts added to the tax under this subdivision shall be treated as additional taxes for all purposes of assessment and collection. Repeated late filing of an income or franchise tax return evinces an intent to defeat or evade the income or franchise tax assessment required by law.

2. 'Personal liability.' The penalties provided by this subdivision shall be paid upon notice and demand of the secretary of revenue or the secretary's designee and shall be assessed and collected in the same manner as income or franchise taxes, except that the time limits under s. 71.77 do not apply to the assessment of personal liability under this subdivision if the corporation, other form of business association, partnership, limited liability company or sole proprietorship with which the person is associated is assessed within the time period under s. 71.77. Any person required to withhold, account for or pay over any tax imposed by this chapter, whether exempt under s. 71.05 (1) to (3), 71.26 (1) or 71.45 or not, who intentionally fails to withhold such tax, or account for or pay over such tax, shall be liable to a penalty equal to the total amount of the tax, plus interest and penalties on that tax, that is not withheld, collected, accounted for or paid over. The personal liability of such person as provided in this subdivision shall survive the dissolution of the corporation or other form of business association. "Person", in this subdivision, includes an officer, employe or other responsible person of a corporation or other form of business association or a member, employe or other responsible person of a partnership, limited liability company or sole proprietorship who, as such officer, employe, member or other responsible person, is under a duty to perform the act in respect to which the violation occurs.

3. 'Employes' statements.' Any person, whether exempt under s. 71.05 (1) to (3), 71.26 (1) or 71.45 or not, required under s. 71.65 (1) to furnish a written statement to an employe, who furnishes a false or fraudulent statement, or who intentionally fails to furnish a statement in the manner, at the time and showing the information required under s. 71.65 (1), or rules prescribed with respect thereto, shall, for each such failure, be subject to a penalty of $20. "Person", in this subdivision, includes an officer or

employe of a corporation or other responsible person or a member or employe of a partnership or limited liability company or other responsible person who, as such officer, employe, member or other responsible person, is under a duty to perform the act in respect to which the violation occurs.

4. 'Exemption documents.' Any employe who files a withholding exemption certificate, form or agreement under s. 71.64 (2) (b) or 71.66 (1) (a), (2) or (3) with the intent to defeat or evade the proper withholding of tax under subch. X shall be subject to a penalty equal to the difference between the amount required to be withheld and the amount actually withheld for the period that the incorrect certificate, form or agreement was in effect.

5. 'Joint return after separate returns.' If the amount shown as the tax by the husband and wife on a joint return filed under s. 71.03 (2) (g) to (L) exceeds the sum of the amounts shown as the tax on the separate return of each spouse and if any part of that excess is attributable to fraud with intent to evade tax at the time of the filing of that separate return, then 50% of the total amount of that excess shall be added to the tax.

6. 'Corporations.' If a corporation or limited liability company files a false declaration of complete inactivity, or, after filing a declaration, becomes activated or reactivated and fails to file timely statements and information under this chapter covering such year or years of activity or reactivity its officers or managers at the time of such filing or failure shall be jointly and severally liable for a civil penalty of $25 for such filing or each such failure, which penalty may be assessed and collected as income or franchise taxes are assessed and collected.

(c) *Medical savings account withdrawals.* Any person who is liable for a penalty for federal income tax purposes under section 220 (f) (4) of the Internal Revenue Code is liable for a penalty equal to 33% of that penalty. The department of revenue shall assess, levy and collect the penalty under this paragraph as it assesses, levies and collects taxes under this chapter.

(d) *Sale of certain business assets or assets used in farming.* 1. If a person who purchases or otherwise receives business assets or assets used in farming, of which the gains realized by the transferor on the sale or disposition of such assets are exempt from taxation under s. 71.05 (6) (b) 25., sells or otherwise disposes of the assets within 2 years after the person purchases or receives the assets, the person shall pay a penalty that is calculated under subd. 2.

2. The penalty described under subd. 1. shall be the amount of income tax that would have been imposed under s. 71.02 on the capital gains received by the transferor in the transaction described in subd. 1. if the exemption under s. 71.05 (6) (b) 25. did not apply to the transaction multiplied by a fraction, the denominator of which is 24 and the numerator of which is the difference between 24 and the number of months between the date on which the person who is liable for the penalty purchased or otherwise received the assets described in subd. 1. and the month in which the person sells or otherwise disposes of the assets.

3. The department of revenue shall assess, levy and collect the penalty under this paragraph as it assesses, levies and collects taxes under this chapter.

(2) CRIMINAL. (a) *Misdemeanor.* 1. 'All persons.' If any person, including an officer of a corporation or a manager of a limited liability company required by law to make, render, sign or verify any return, wilfully fails or refuses to make a return at the time required in s. 71.03, 71.24 or 71.44 or wilfully fails or refuses to make deposits or payments as required by s. 71.65 (3) or wilfully renders a false or fraudulent statement required by s. 71.65 (1) and (2) or deposit report or withholding report required by s. 71.65 (3), such person shall be guilty of a misdemeanor and may be fined not more than $10,000 or imprisoned for not to exceed 9 months or both, together with the cost of prosecution.

2. 'Penalties for certain false documents.' Any person who wilfully makes and subscribes any return, claim, statement or other document required by this chapter that that person does not believe to be true and correct as to every material matter or who wilfully aids in, procures, counsels or advises the preparation of any return, claim, statement or other document that is false or fraudulent as to any material matter related to, or required by, this chapter may be fined not more than $10,000 or imprisoned for not more than 9 months or both, together with the cost of prosecution.

3. 'Divulging information.' Any person who violates s. 71.78 shall upon conviction be fined not less than $100 nor more than $500 or imprisoned for not less than one month nor more than 6 months or both.

3m. 'Browsing in records.' Any person who violates s. 71.78 (1m) [s. 71.78 (1m) (a)] shall upon conviction be fined not less than $100 nor more than $500 or imprisoned for not less than one month nor more than 6 months or both.

NOTE: The bracketed language indicates the correct cross−reference. Corrective legislation is pending.

4. 'Coercing employe to prepay taxes.' Any employer found guilty of violating s. 71.09 (15) (d) may be fined not less than $25 nor more than $200 for each violation.

5. 'False withholding agreement.' Any employe who wilfully supplies an employer with false or fraudulent information regarding an agreement with the intent to defeat or evade the proper withholding of tax under subch. X may be imprisoned for not more than 6 months or fined not more than $500, plus the costs of prosecution, or both.

6. 'Construction contractor surety bond.' Any person who fails or refuses to comply with s. 71.80 (16) shall be fined not less than $300 nor more than $5,000.

(b) *Felony.* 1. 'False income tax return; fraud.' Any person, other than a corporation or limited liability company, who renders a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter shall be guilty of a felony and may be fined not to exceed $10,000 or imprisoned for not to exceed 5 years or both, together with the cost of prosecution. In this subdivision, "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g) to (L) after the filing of that separate return, and a joint return filed by the spouses with respect to a taxable year for which a separate return is filed under s. 71.03 (2) (m) after the filing of that joint return.

2. 'Officer of a corporation; false franchise or income tax return.' Any officer of a corporation or manager of a limited liability company required by law to make, render, sign or verify any franchise or income tax return, who makes any false or fraudulent franchise or income tax return, with intent to defeat or evade any assessment required by this chapter shall be guilty of a felony and may be fined not to exceed $10,000 or imprisoned for not to exceed 5 years or both, together with the cost of prosecution.

3. 'Evasion.' Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized with intent to evade or defeat the assessment or collection of any tax administered by the department may be fined not more than $5,000 or imprisoned for not more than 3 years or both, together with the costs of prosecution.

4. 'Fraudulent claim for credit.' The claimant who filed a claim for credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX that is false or excessive and was filed with fraudulent intent and any person who assisted in the preparation or filing of the false or excessive claim or supplied information upon which the false or excessive claim was prepared, with fraudulent intent, may be fined not to exceed $10,000 or imprisoned for not to exceed 5 years or both, together with the cost of prosecution.

NOTE: Par. (b) is amended eff. 12−31−99 by 1997 Wis. Act 283 to read:

(b) *Felony.* 1. 'False income tax return; fraud.' Any person, other than a corporation or limited liability company, who renders a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter shall be guilty of a felony and may be fined not more than $10,000 or imprisoned for not more than 7 years and 6 months or both, together with the cost of prosecution. In this subdivision, "return" includes a separate return filed

by a spouse with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g) to (L) after the filing of that separate return, and a joint return filed by the spouses with respect to a taxable year for which a separate return is filed under s. 71.03 (2) (m) after the filing of that joint return.

2. 'Officer of a corporation; false franchise or income tax return.' Any officer of a corporation or manager of a limited liability company required by law to make, render, sign or verify any franchise or income tax return, who makes any false or fraudulent franchise or income tax return, with intent to defeat or evade any assessment required by this chapter shall be guilty of a felony and may be fined not more than $10,000 or imprisoned for not more than 7 years and 6 months or both, together with the cost of prosecution.

3. 'Evasion.' Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized with intent to evade or defeat the assessment or collection of any tax administered by the department may be fined not more than $5,000 or imprisoned for not more than 4 years and 6 months or both, together with the costs of prosecution.

4. 'Fraudulent claim for credit.' The claimant who filed a claim for credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX that is false or excessive and was filed with fraudulent intent and any person who assisted in the preparation or filing of the false or excessive claim or supplied information upon which the false or excessive claim was prepared, with fraudulent intent, may be fined not more than $10,000 or imprisoned for not more than 7 years and 6 months or both, together with the cost of prosecution.

(3) LATE FILING FEES. If any person required under this chapter to file an income or franchise tax return fails to file a return within the time prescribed by law, or as extended under s. 71.03 (7), 71.24 (7) or 71.44 (3), unless the return is filed under such an extension but the person fails to file a copy of the extension that is granted by or requested of the internal revenue service, the department shall add to the tax of the person $30 in the case of corporations and in the case of persons other than corporations $2 when the total normal income tax of the person is less than $10, $3 when the tax is $10 or more but less than $20, $5 when the tax is $20 or more, except that $30 shall be added to the tax if the return is 60 or more days late. If no tax is assessed against any such person the amount of this fee shall be collected as income or franchise taxes are collected. If any person who is required under s. 71.65 (3) to file a withholding report and deposit withheld taxes fails timely to do so; unless the person so required dies or the failure is due to a reasonable cause and not due to neglect; the department of revenue shall add $30 to the amount due.

(4) SALES AND USE TAX REPORTING. This section does not apply to the failure to report, or the incomplete or incorrect reporting of, sales and use taxes due under subch. III of ch. 77 on any return filed under this chapter.

History: 1987 a. 312; 1989 a. 31, 90; 1991 a. 39, 190, 269, 315; 1993 a. 16, 112, 213; 1995 a. 428, 453; 1997 a. 27, 237, 283, 323.

71.84 Addition to the tax. (1) INDIVIDUALS AND FIDUCIARIES. Except as provided in s. 71.09 (11), in the case of any underpayment of estimated tax by an individual, estate or trust, except as provided under s. 71.09, there shall be added to the aggregate tax for the taxable year interest at the rate of 12% per year on the amount of the underpayment for the period of the underpayment. In this subsection, "the period of the underpayment" means the time period from the due date of the instalment until either the 15th day of the 4th month beginning after the end of the taxable year or the date of payment, whichever is earlier.

(2) CORPORATIONS. (a) Except as provided in s. 71.29 (7), in the case of any underpayment of estimated tax under s. 71.29 or 71.48 there shall be added to the aggregate tax for the taxable year interest at the rate of 12% per year on the amount of the underpayment for the period of the underpayment. For corporations, except as provided in par. (b), "period of the underpayment" means the time period from the due date of the instalment until either the 15th day of the 3rd month beginning after the end of the taxable year or the date of payment, whichever is earlier. If 90% of the tax shown on the return is not paid by the 15th day of the 3rd month following the close of the taxable year, the difference between that amount and the estimated taxes paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1) (a).

(b) For corporations that are subject to a tax under this chapter on unrelated business taxable income, as defined under section 512 of the internal revenue code, and virtually exempt entities, "period of the underpayment" means the time period from the due date of the instalment until either the 15th day of the 5th month beginning after the end of the taxable year or the date of payment, whichever is earlier. If 90% of the tax shown on the return is not paid by the 15th day of the 5th month following the close of the taxable year, the difference between that amount and the estimated taxes paid along with any interest due, shall accrue delinquent interest under s. 71.91 (1) (a).

(c) If a refund under s. 71.29 (3m) results in an income or franchise tax liability that is greater than the amount of estimated taxes paid in reduced by the amount of the refund, the taxpayer shall add to the aggregate tax for the taxable year interest at an annual rate of 12% on the amount of the unpaid tax liability for the period beginning on the date the refund is issued and ending on the 15th day of the 3rd month beginning after the end of the taxable year, or the date the tax liability is paid, whichever is earlier.

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39.

71.85 General provisions. (1) PENALTIES NOT DEDUCTIBLE. No penalty imposed by this chapter, including penalties imposed under s. 71.83 (1) (a) 3., 4. and 5. and (b) 2., 3. and 4. and (2) (a) 1., 4. and 5., or by subch. III of ch. 77 may be deducted from gross income in arriving at net income taxable under this chapter.

(2) PROSECUTIONS BY ATTORNEY GENERAL. The attorney general is authorized, upon request of the secretary of revenue, to represent the state or to assist the district attorney in the prosecution of any case arising under s. 71.83 (2) (a) 1. or (2) (b) 1. or 2.

(3) ABATEMENT OF INTEREST AND PENALTIES. No penalty or interest that has been imposed under this subchapter on a taxpayer who is eligible for the exemption under:

(a) Section 71.05 (6) (b) 13. or 14. may continue to accrue while the taxpayer is in the Operation Desert Shield or Operation Desert Storm theater of operations and for 180 days after the taxpayer leaves the Operation Desert Shield or Operation Desert Storm theater of operations.

History: 1987 a. 312, 411; 1991 a. 2; 1995 a. 255; 1997 a. 36.

SUBCHAPTER XIV

APPEALS

71.87 Definition. In this subchapter, "person feeling aggrieved" and "person aggrieved" include the spouse of a person against whom an additional assessment was made or who was denied a claim for refund for a taxable year for which a separate return was filed and include either spouse for a taxable year for which a joint return was filed or, if no return was filed, a joint return could have been filed.

History: 1987 a. 312.

71.88 Time for filing an appeal. (1) APPEAL TO THE DEPARTMENT OF REVENUE. (a) *Contested assessments and claims for refund.* Except for refunds set off under s. 71.93 in respect to which appeal is to the agency to which the debt is owed, except for refunds set off under s. 71.935 in respect to which an appeal is held under procedures that the department of revenue establishes and except for refunds set off under s. 49.855 in respect to which a hearing is held before the circuit court, any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination. A petition or an appeal by one spouse is a petition or an appeal by both spouses. The department shall make a redetermination on the petition within 6 months after it is filed.

(b) *Contested adjustments to credits.* Any person feeling aggrieved by the determination made by the department to adjust a credit claimed under s. 71.07, 71.28 or 71.47 or subch. VIII or IX may, within 60 days after receipt, petition the department for redetermination. The department shall make a redetermination on the petition within 6 months after it is filed and notify the claimant

under s. 71.74 (11). If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

(2) APPEAL TO THE WISCONSIN TAX APPEALS COMMISSION. (a) *Appeal of the department's redetermination of assessments and claims for refund.* A person feeling aggrieved by the department's redetermination may appeal to the tax appeals commission by filing a petition with the clerk of the commission as provided by law and the rules of practice promulgated by the commission. If a petition is not filed with the commission within the time provided in s. 73.01 or, except as provided in s. 71.75 (5), if no petition for redetermination is made within the time provided the assessment, refund, or denial of refund shall be final and conclusive.

(b) *Appeal of department's redetermination of credits.* Any person aggrieved by the department of revenue's redetermination of a credit under s. 71.07 (3m) or (6), 71.28 (1) or (2m) or 71.47 (1) or (2m) or subch. VIII or IX, except when the denial is based upon late filing of claim for credit or is based upon a redetermination under s. 71.55 (8) of rent constituting property taxes accrued as at arm's length, may appeal the redetermination to the tax appeals commission by filing a petition with the commission within 60 days after the redetermination, as provided under s. 73.01 (5) with respect to income or franchise tax cases, and review of the commission's decision may be had under s. 73.015. For appeals brought under this paragraph, the filing fee required under s. 73.01 (5) (a) does not apply.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39; 1995 a. 27, 404.

71.89 Appeal procedures. (1) If the taxpayer requests a hearing, the additional tax or overpayment shall not become due and payable until after hearing and determination of the tax by the tax appeals commission or disposition of the appeal pursuant to stipulation and order under ss. 73.01 (4) (a) and 73.03 (25).

(2) No person against whom an assessment of income or franchise tax has been made shall be allowed in any action either as plaintiff or defendant or in any other proceeding to question such assessment unless the requirements of ss. 71.88 and 71.90 (1) shall first have been complied with, and unless such person shall have made full disclosure under oath at the hearing before the tax appeals commission of any and all income that the person received. The requirement of full disclosure under this subsection may be waived by the department of revenue.

(3) As soon as the appellant shall have filed a petition with the tax appeals commission, all collection proceedings, except proceedings under s. 71.74 (14), shall be stayed until final determination of the appeal and any review thereof.

(4) Any person who contests an assessment before the tax appeals commission or in court shall state in his or her petition or notice of appeal what portion if any of the tax is admitted to be legally assessable and correct. Within 5 days after notice by the department, the appellant shall pay to the department the whole amount of the admitted tax and such tax shall be appropriated in accordance with s. 25.20. Any such payment shall be considered an admission of the legality of the tax thus paid, and such tax so paid cannot be recovered in the pending appeal or in any other action or proceeding.

(5) After final decision or other disposition, the record shall be returned to the department of revenue, and the department shall proceed to collect the taxes in the same manner as other income or franchise taxes are collected.

History: 1987 a. 312; 1991 a. 39.

71.90 Depositing contested amounts. (1) DEPOSIT. The department shall notify any person who files a petition for redetermination that the person may deposit the amount of an additional assessment, including any interest or penalty, with the department, or with a person that the department prescribes, at any time before the department makes its redetermination. The department shall notify spouses jointly except that, if the spouses have different addresses and if either spouse notifies the department in writing of those addresses, the department shall serve a duplicate of the original notice on the spouse who has the address other than the address to which the original notice was sent. Amounts deposited under this subsection shall be subject to the interest provided by s. 71.82 only to the extent of the interest accrued prior to the first day of the month succeeding the date of deposit. Any deposited amount which is refunded shall bear interest at the rate of 9% per year during the time the funds were on deposit. A person may also pay any portion of an assessment which is admitted to be correct and the payment shall be considered an admission of the validity of that portion of the assessment and may not be recovered in an appeal or in any other action or proceeding.

(2) DEPOSIT WITH THE STATE TREASURER. At any time while the petition is pending before the tax appeals commission or an appeal in regard to that petition is pending in a court, the taxpayer may offer to deposit the entire amount of the additional taxes, together with interest, with the state treasurer. If an offer to deposit is made, the department of revenue shall issue a certificate to the state treasurer authorizing the treasurer to accept payment of such taxes together with interest to the first day of the succeeding month and to give a receipt. A copy of the certificate shall be mailed to the taxpayer who shall pay the taxes and interest to the treasurer within 30 days. A copy of the receipt of the state treasurer shall be filed with the department. The department shall, upon final determination of the appeal, certify to the state treasurer the amount of the taxes as finally determined and direct the state treasurer to refund to the appellant any portion of such payment which has been found to have been improperly assessed, including interest. The state treasurer shall make the refunds directed by the certificate within 30 days after receipt. Taxes paid to the state treasurer under this subsection shall be subject to the interest provided by ss. 71.82 and 71.91 (1) (c) only to the extent of the interest accrued on the taxes prior to the first day of the month succeeding the application for hearing. Any portion of the amount deposited with the state treasurer which is refunded to the taxpayer shall bear interest at the rate of 9% per year during the time that the funds are on deposit.

History: 1987 a. 312; 1997 a. 27.

SUBCHAPTER XV

COLLECTION OF DELINQUENT TAXES AND STATE AGENCY DEBTS

71.91 Collection provisions. (1) TIME TAXES BECOME DELINQUENT. (a) *Income and franchise taxes.* Income and franchise taxes shall become delinquent if not paid when due under s. 71.03 (8) (b) and (c), 71.24 (9) or 71.44 (4) (b), and the department shall immediately proceed to collect the same. For the purpose of such collection the department or its duly authorized agent shall have the same powers as conferred by law upon the county treasurer, county clerk, sheriff and district attorney.

(b) *Withholding.* Any amount not deposited or paid over to the department, or to the person that the department prescribes, within the time required shall be deemed delinquent and deposit reports or withholding reports filed after the due date shall be deemed late. In the case of a timely filed deposit or withholding report, withheld taxes shall become delinquent if not deposited or paid over on or before the due date of the report. In the case of no report filed or a report filed late, withheld taxes shall become delinquent if not deposited or paid over by the due date of the report. In the case of an assessment under s. 71.83 (1) (b) 2., the amount assessed shall become delinquent if not paid on or before the due date specified in the notice of deficiency, but if the assessment is contested before the tax appeals commission or in the courts, it shall become delinquent on the 30th day following the date on which the order or judgment representing final determination becomes final.

(c) *Contested income and franchise tax assessments.* Any additional income or franchise tax assessment contested before the tax appeals commission or in the courts, which is finally deter-

mined to be correct, shall become delinquent if not paid on or before the 30th day following the date on which the order or judgment representing such final determination becomes final and conclusive. Any additional income or franchise tax assessment so contested shall be subject to s. 71.74 (14).

(2) TIME TAX OBLIGATION INCURRED. Any tax obligation, including interest, penalties and costs thereon, to the department of revenue is incurred on the date of the department's initial assessment or notice of the amount due of that tax.

(3) MARITAL OBLIGATIONS. All tax obligations to this state, including interest, penalties and costs thereon, incurred during marriage by a spouse after December 31, 1985, or after both spouses are domiciled in this state, whichever is later, are incurred in the interest of the marriage or family and may be satisfied only under ss. 766.55 (2) (b) and 859.18. However, if one spouse is relieved of liability under s. 71.10 (6) (a) or (b) or (6m), the tax obligation to this state of the other spouse may be satisfied only under s. 766.55 (2) (d) or by set−off under s. 71.55 (1), 71.61 (1) or 71.80 (3) or (3m).

(4) UNPAID TAX IS PERFECTED LIEN ON PROPERTY. If any person liable to pay any income or franchise tax neglects, fails or refuses to pay the tax, the amount, including any interest, addition to tax, penalty or costs, shall be a perfected lien in favor of the department of revenue upon all property and rights to property. The lien is effective at the time taxes are due or at the time an assessment is made and shall continue until the liability for the amount to be paid or for the amount so assessed is satisfied. The perfected lien does not give the department of revenue priority over lienholders, mortgagees, purchasers for value, judgment creditors and pledges whose interests have been recorded before the department's lien is recorded.

(5) WARRANT SHALL BE ISSUED. (ag) In this subsection:

1. "File" means mail, deliver or submit electronically.

(ar) If any income or franchise tax is not paid when due, the department of revenue shall file a warrant with the clerk of circuit court and may issue a copy of the warrant to the sheriff of any county of the state commanding the sheriff to levy upon and sell enough of the taxpayer's real and personal property found within the county to pay the tax with the penalties, interest and costs, and to proceed upon the property in the same manner as upon an execution against property issued out of a court of record, and to return the warrant to the department and pay to it the money collected, or the part of it that is necessary to pay the tax, penalties, interest and costs within 60 days after the receipt of the warrant, and deliver the balance, if any, after deduction of lawful charges, to the taxpayer.

(b) 1. The clerk of circuit court shall enter the warrant under par. (ar) as required by s. 806.11, and upon entering the amount of the warrant, together with interest required by s. 71.82 (2), the warrant shall be considered in all respects as a final judgment. The clerk of circuit court shall accept, file and enter the warrant without prepayment of any fee, but the clerk of circuit court shall submit a statement of the proper fee semiannually to the department covering the periods from January 1 to June 30 and July 1 to December 31. The fees shall then be paid by the state as provided by par. (h), but the fees provided by s. 814.61 (5) for filing and entering the warrants shall be added to the amount of the warrant and collected from the taxpayer when satisfaction or release is presented for entry.

2. The sheriff shall be entitled to the same fees for executing upon such warrant as upon an execution against property issued out of a court of record, to be collected in the same manner.

3. Upon the sale of any real estate the sheriff shall execute a deed of the same, and the taxpayer shall have the right to redeem the real estate as from a sale under an execution against property upon a judgment of a court of record.

(c) A like warrant may be issued to any agent of the department authorized to collect income or franchise taxes, and in the execution thereof and collection of said taxes such agent shall have the powers of a sheriff, but shall not be entitled to collect from the taxpayer any fee or charge for the execution of such warrant in excess of actual expenses paid in the performance of his or her duty. When a warrant is issued to such agent he or she may proceed upon the same in any county of the state designated in the warrant, in the same manner as provided in this subchapter with respect to sheriffs of such counties.

(d) Upon entry of a warrant in the judgment and lien docket, the department of revenue shall have the same remedies to enforce the claim for taxes, penalties, interest and costs as upon a judgment against the taxpayer.

(e) The department, if it finds that the interests of the state will not thereby be jeopardized, and upon such conditions as it may exact, may issue a release, of any warrant with respect to any real property upon which said warrant is a lien or cloud upon title, and such release shall be entered of record by the clerk upon presentation to him or her and payment of the fee for filing said release and the same shall be held conclusive that the lien or cloud upon the title of the property covered by the release is extinguished. Any person desiring that such release be issued shall present to the department a written application in affidavit form requesting that the release be issued. Such application shall give the reasons for the request and shall clearly describe the property with respect to which the release is desired. In support of the request, the applicant shall furnish the department with proof sufficient to establish satisfactorily the fair market value of the property, the amounts, character and dates, both of execution and of record, of all encumbrances of record prior to the warrant lien, as well as the amount and character of any unrecorded encumbrances believed to be prior to the warrant lien, including information as to how and when all such encumbrances arose. Appropriate references shall be made to the pages and volumes of the recording books in which any such encumbrances have been recorded. The department may require a certified copy of any record referred to in such application to be furnished by the applicant, at his or her expense, from the officer in whose office such record is kept.

(f) When the taxes set forth in a warrant together with penalties and interest to date of payment and all costs due the department have been paid to it or when such warrant has not been paid or discharged, but the taxes for which such warrant was issued have been canceled or credited, the department shall issue a satisfaction of the warrant and file it with the clerk and said warrant shall be immediately satisfied of record by such clerk. The department shall send a copy of such satisfaction to the taxpayer at the taxpayer's request. If the taxpayer so requests, the department shall indicate the amount that was paid to satisfy the warrant. When such warrant has not been paid or discharged but the enforcement of same would, in the opinion of the department, result in depriving the taxpayer of a substantial right, the department may issue a release of said warrant and file same with the clerk who shall immediately make an entry of same of record, and it shall be held conclusive of the extinguishment of the warrant and all liens and rights created thereby, but shall not constitute a release or satisfaction of the taxes for which such warrant was issued.

(g) If the department of revenue has issued an erroneous warrant, the department shall issue to the clerk of circuit court for the county in which the warrant is filed a notice of withdrawal of the warrant. The clerk shall void the warrant and any liens attached by it.

(h) All fees and compensation of officials or other persons performing any act or functions required in carrying out this subchapter, except such as are by this subchapter to be paid to such officials or persons by the taxpayer, shall, upon presentation to the department of revenue of an itemized and verified statement of the amount due, be paid by the state treasurer upon audit by the department of administration on the certificate of the secretary of revenue and charged to the proper appropriation for the department of revenue. No public official shall be entitled to demand prepayment of any fee for the performance of any official act required in carrying out this subchapter.

(i) The state may be made a party defendant in any action to foreclose a mortgage, land contract, or other lien upon any real property affected by such warrant lien, and the summons may be served by delivering a copy to the attorney general or leaving it at the attorney general's office in the capitol with an assistant or clerk. But no judgment for the recovery of money or personal property or costs shall be rendered against the state in any such action.

(j) The provisions of this subchapter shall be in addition to all other methods for the collection of income or franchise taxes, and the department of revenue may exercise the powers vested in it by virtue of ss. 73.03 (20) and 73.04 or any of the powers vested in it by virtue of any other statute for the purpose of enforcing collection of income or franchise taxes.

(k) All payments made on delinquencies shall be applied first in discharging costs, penalties and interest and the balance applied on the principal of the tax. In this paragraph, "principal of the tax" means the tax and interest added to it under ss. 71.03 (7), 71.24 (7), 71.44 (3) and 71.82.

(5m) APPLICABILITY OF PERSONAL PROPERTY TAX LAWS. (a) All laws not in conflict with this chapter relating to the assessment, collection and payment of taxes on personal property, the correction of errors in assessment and tax rolls, and the collection of delinquent personal property taxes except the provisions for the compromise or cancellation of illegal taxes and the refunds of moneys paid thereon, as shown by the 1985 statutes, shall be applicable to the income or franchise tax provided in this chapter.

(b) The provisions for the compromise or cancellation of illegal personal property taxes and for refunds of personal property taxes apply to the taxes under this chapter to the extent that those provisions do not conflict with par. (a) or s. 71.92.

(6) LEVY UPON PROPERTY FOR TAXES. (a) *Definitions.* In this subsection:

1. "Department" means the department of revenue.

2. "Levy" means all powers of distraint and seizure.

3. "Property" includes real and personal property and tangible and intangible property and rights to property but is limited to property and rights to property existing at the time of levy.

4. "Taxes" means the principal of the tax as defined in sub. (5) (k), interest, penalties and costs.

(b) *Powers of levy and distraint.* If any person who is liable for any tax administered by the department neglects or refuses to pay that tax within 10 days after that tax becomes delinquent, the department may collect that tax and the expenses of the levy by levy upon, and sale of, any property belonging to that person or any property on which there is a lien as provided by sub. (4) in respect to that delinquent tax. Whenever any property that has been levied upon under this section is not sufficient to satisfy the claim of the department, the department may levy upon any other property liable to levy of the person against whom that claim exists until the taxes and expenses of the levy are fully paid. A levy on commissions, wages or salaries is continuous until the liability out of which it arose is satisfied.

(c) *Duty to surrender.* 1. Except as provided in subd. 2., any person in possession of, or obligated with respect to, property subject to levy upon which a levy has been made shall, upon demand of the department, surrender that property unless it is subject to attachment or execution under judicial process, or discharge that obligation, to the department.

2. Levying upon a life insurance or endowment contract issued by a 3rd person, without necessity for the surrender of the contract document, is a demand by the department for payment of the amount under subd. 3. and for the exercise of the right of the person against whom the tax is assessed to an advance of that amount. The person who issued the contract shall pay over that amount within 90 days after the service of the notice of the levy. That notice shall include a certification by the department that a copy of that notice has been mailed to the person against whom the tax is assessed at that person's last−known address.

3. The levy under subd. 2. is satisfied if the person who issued the contract pays to the department, or to the person that the department prescribes, the amount that the person against whom the tax is assessed could have had advanced by the person who issued the contract on the date under subd. 2. for the satisfaction of the levy, increased by the amount of any advance, including contractual interest, made to the person against whom the tax is assessed on or after the date the person who issued the contract had actual notice or knowledge of the existence of the lien with respect to which that levy is made, other than an advance, including contractual interest on it, made automatically to maintain the contract in force under an agreement entered into before the person who issued the contract had notice or knowledge of that lien. Any person who issued a contract and who satisfies a levy under this paragraph is discharged from all liability to any beneficiary because of that satisfaction.

(d) *Failure to surrender; discharge.* 1. Any person, including an officer or employe, who fails to surrender property that is subject to levy upon demand of the department is liable to the department for a sum equal to the value of the property not surrendered, but not exceeding the amount of taxes for the collection of which that levy was made, together with costs and interest at the rate of 18% per year from the date of that levy. Any amount, other than costs, recovered under this paragraph shall be credited against the tax liability for the collection of which that levy was made. The liability under this paragraph may be assessed, levied and collected as are additional income or franchise taxes or may be recovered by the department in a civil action.

2. In addition to the liability imposed under subd. 1., if any person required to surrender property fails or refuses to surrender that property without reasonable cause, that person is liable for a penalty equal to 50% of the amount recoverable under subd. 1. No part of the penalty under this subdivision may be credited against the tax liability for the collection of which that levy was made. The penalty under this subdivision may be assessed, levied and collected as are additional income or franchise taxes or may be recovered by the department in a civil action.

3. Any person in possession of, or obligated with respect to, property upon which a levy has been made who, upon demand by the department, surrenders that property, or discharges that obligation, to the department or who pays a liability under subd. 1. is discharged from any liability to the delinquent taxpayer or, in the case of payments under par. (c) 2., to a beneficiary, with respect to that property arising from that surrender or payment.

(e) *Actions against this state.* 1. If the department has levied upon or sold property, any person, other than the person who is assessed the tax out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the state in the circuit court for Dane county. That action may be brought whether or not that property has been surrendered to or sold by the department. The court may grant only the relief under subd. 2. No other action to question the validity of or restrain or enjoin a levy by the department may be maintained.

2. In actions under subd. 1., if a levy or sale would irreparably injure rights to property, the court may enjoin the enforcement of that levy or prohibit that sale. If the court determines that the property has been wrongfully levied upon, it may order the return of specific property that the department possesses or grant a judgment for the amount of money obtained by levy. If the property was sold, the court may grant a judgment for an amount not exceeding the amount received by the department from the sale. If the property was purchased by the state at a sale under par. (f), the state shall be treated as having received an amount equal to the minimum price determined under that paragraph or the amount received by the state from the resale of that property, whichever is larger.

3. For purposes of an adjudication under this paragraph, the assessment of the tax upon which the interest or lien of the department is based is conclusively presumed to be valid. Interest shall

be allowed for judgments under this paragraph at the rate of 12% per year from the date the department receives the money wrongfully levied upon to the date of payment of the judgment or from the date of sale to the date of payment.

(f) *Notice and sale.* 1. As soon as practicable after obtaining property, the department shall notify, in writing, the owner of any real property, and the possessor of any personal property, obtained by the department under this subsection. That notice may be left at the person's usual place of residence or business. If the owner cannot be located or has no dwelling or place of business in this state, or if the property is obtained as a result of a continuous levy on commissions, wages or salaries, the department may mail a notice to the owner's last−known address. That notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property obtained and, in the case of real property, a description with reasonable certainty of the property seized.

2. As soon as practicable after obtaining property, the department shall notify the owner in the manner prescribed under subd. 1. and shall cause a notice of the sale to be published in a newspaper published or generally circulated within the county where the property was obtained. If there is no newspaper published or generally circulated in that county, the department shall post that notice at the city, town or village hall nearest the place where the property was obtained and in at least 2 other public places. That notice shall specify the property to be sold and the time, place, manner and conditions of the sale.

3. If any property liable to levy is not divisible so as to enable the department, by sale of a part, to raise the whole amount of the tax and expenses, the whole of the property shall be sold.

4. The sale shall occur not less than 10 days and not more than 40 days after the notice under subd. 2. The department may interrupt the sale, but not for a period longer than 90 days. The sale shall be in the county in which the property is levied upon or in Dane county.

5. Before the sale, the department shall determine a minimum price for which the property shall be sold. If no person offers for that property at the sale at least the amount of the minimum price, the state shall purchase the property for the minimum price; otherwise, the property shall be sold to the highest bidder. In determining the minimum price, the department shall take into account the expense of making the levy and sale in addition to the value of the property. If payment in full is required at the time of acceptance of a bid and is not paid then, the department shall sell the property in the manner provided under this paragraph. If the conditions of the sale permit part of the payment to be deferred and if that part is not paid within the prescribed period, the department may sue the purchaser in the circuit court for Dane county for the unpaid part of the purchase price and interest at the rate of 12% per year from the date of the sale or the department may declare the sale void and may sell the property again under this paragraph. If the property is sold again, the 2nd purchaser shall receive it free of any claim of the defaulting purchaser and the amount paid upon the bid price by the defaulting purchaser is forfeited.

6. No property of any person is exempt from levy and sale under this subsection.

(g) *Redemption.* 1. Any person whose property has been levied upon may pay the amount due and the expenses of the proceeding to the department, or to the person that the department prescribes, at any time before the sale. Upon that payment, the department shall restore the property to the person whose property has been levied upon and stop all proceedings related to the levy.

2. The owners of any real property sold under par. (f), their heirs, executors or administrators or any person having an interest in or a lien on that property or any person in behalf of a person specified in this subdivision may redeem the property sold or any part of that property within 120 days after the sale by payment to the purchaser or, if the purchaser cannot be found in the county in which the property to be redeemed is situated, then to the department, for the use of the purchaser or the purchaser's heirs or assigns, the amount paid by the purchaser and interest at the rate of 18% per year.

(h) *Certificate of sale.* 1. The department shall give the purchaser under par. (f) a certificate of sale upon payment in full of the purchase price. In the case of real property, that certificate shall specify the property purchased, the name of the purchaser and the price.

2. In the case of any real property sold under par. (f) and not redeemed under par. (g), the department shall execute to the purchaser, upon surrender of the certificate of sale, a deed reciting the facts set forth in the certificate.

3. If real property is purchased by the state under par. (f), the department shall execute and record a deed.

4. The certificate of sale for personal property sold under par. (f) is prima facie evidence of the right of the department to make the sale and conclusive evidence of the regularity of the proceedings of the sale. That certificate transfers to the purchaser all right, title and interest of the delinquent party to the property sold. If that property is stocks, that certificate is notice, when received, to any person of that transfer and authority to record the transfer on books and records as if the stocks were transferred or assigned by the party holding them, and all prior certificates are void. If the subject of sale is securities or other evidence of debt, the certificate is valid against any person possessing or claiming to possess the securities or other evidence of debt. If the property is a motor vehicle, the certificate is notice, when received, to the department of transportation as if the certificate of title were transferred or assigned by the party holding that certificate of title, and any prior certificate is void.

5. The deed of sale of real property is prima facie evidence of the facts stated in it and conveys all of the right, title and interest the delinquent party had to the property.

6. A certificate of sale of personal property given or a deed to real property executed under this paragraph discharges that property from all liens, encumbrances and titles subordinate to the department's lien.

(i) *Determination of expenses.* The department shall determine the expenses to be allowed in all cases of levy and sale.

(j) *Departmental records.* The department shall keep a record of all sales of real property under par. (f) and of all redemptions of that property. The record shall set forth the tax for which any sale was made, the dates of levy and sale, the name of the party assessed and all proceedings related to the sale, the amount of expenses, the names of the purchasers and the date of the deed.

(k) *Use of proceeds.* 1. The department shall apply all money realized under this subsection first against the expenses of the proceedings and then against the liability in respect to which the levy was made or the sale was conducted and any other liability owed to the department by the delinquent person.

2. The department may refund or credit any amount left after the applications under subd. 1., upon claim for and satisfactory proof of, to the person entitled to that amount.

(L) *Release of levy.* The department may release the levy upon all or part of property levied upon to facilitate the collection of the liability, but that release does not prevent any later levy.

(m) *Wrongful levy.* 1. If the department determines that property has been wrongfully levied upon, the department may return the property, an amount of money equal to the amount of money levied upon or an amount of money equal to the amount of money received by the state from the sale of that property.

2. The department may return property at any time. The department may return an amount of money equal to the amount of money levied upon or received from sale within 9 months after the levy.

3. For purposes of this paragraph, if property is purchased by the state under par. (f) the state shall be treated as having received an amount of money equal to the minimum price determined under that paragraph or, if less, the amount of money received by the state from the resale of that property.

(n) *Preservation of remedies.* The availability of the remedy under this subsection does not abridge the right of the department to pursue other remedies.

(7) WITHHOLDING BY EMPLOYER OF DELINQUENT TAX OF EMPLOYE. (a) In this subsection, "employe" includes any subcontractor.

(b) The department may give notice to any employer deriving income having a taxable situs in this state (regardless of whether any such income is exempt from taxation) to the effect that an employe of such employer is delinquent in a certain amount with respect to state taxes, including penalties, interest and costs. Such notice may be served by mail or by delivery by an employe of the department of revenue. Upon receipt of such notice of delinquency, the employer shall withhold from compensation due, or to become due to the employe, the total amount shown by the notice. The department may direct the employer to withhold part of the amount due the employe each pay period, until the total amount as shown by the notice, plus interest, has been withheld. The employer may not withhold more than 25% of the compensation due any employe for any one pay period, except that, if the employe leaves the employ of the employer or gives notice of his or her intention to do so, or is discharged for any reason, the employer shall withhold the entire amount otherwise payable to such employe, or so much thereof as may be necessary to equal the unwithheld balance of the amount shown in the notice of delinquency, plus delinquent interest. In crediting amounts withheld against delinquent taxes of an employe, the department shall apply amounts withheld in the following order: costs, penalties, delinquent interest, delinquent tax. The "compensation due" any employe for purposes of determining the 25% maximum withholding for any one pay period shall include all wages, salaries and fees constituting income, including wages, salaries, income advances or other consideration paid for future services, when paid to an employe, less amounts payable pursuant to a garnishment action with respect to which the employer was served prior to being served with the notice of delinquency and any amounts covered by any irrevocable and previously effective assignment of wages, of which amounts and the facts relating to such assignment the employer shall give notice to the department within 10 days after service of the notice of delinquency.

(c) In any case in which the employe ceases to be employed by the employer before the full amount set forth in a notice of delinquency, plus delinquent interest, has been withheld by the employer, the employer shall immediately notify the department in writing of the termination date of the employe and the total amount withheld.

(d) The employer shall, on or before the last day of the month after the month during which an amount was withheld, remit to the department or to the person that the department prescribes that amount. Any amount withheld from an employe by an employer shall immediately be a trust fund for this state. Should any employer, after notice, wilfully fail to withhold in accordance with the notice and this subsection, or wilfully fail to remit any amount withheld, as required by this subsection, such employer shall be liable for the total amount set forth in the notice together with delinquent interest as though the amount shown by the notice was due by such employer as a direct obligation to the state for delinquent taxes, and may be collected by any means provided by law including the means provided for the collection of delinquent income or franchise taxes. However, no amount required to be paid by an employer by reason of his or her failure to remit under this paragraph may be deducted from the gross income of such employer. Any amount collected from the employer for failure to withhold or for failure to remit under this subsection shall be credited as tax, costs, penalties and interest paid by the employe.

(e) Paragraphs (b) to (d) shall apply in any case in which the employer is the United States or any instrumentality thereof or this state or any municipality or other subordinate unit thereof except those provisions imposing a liability on the employer for failure to withhold or remit. But an amount equal to any amount withheld by any municipality or other subordinate unit of this state under this subsection and not remitted to the department as required by this subsection shall be retained by the state treasurer from funds otherwise payable to any such municipality or subordinate unit, and transmitted instead to the department, upon certification by the secretary of revenue.

(f) The department shall refund to the employe excess amounts withheld from the employe under this subsection.

(g) Employers required to withhold delinquent taxes, penalties, interest and costs under this subsection shall not be required to withhold amounts other than the total amounts certified to such employers by the department and shall not be required to compute interest, costs or other charges to be withheld.

(h) The department may, by written notice served personally or by mail, require any employer, as defined in s. 71.63 (3), to withhold from the compensation due or to become due to any entertainer or entertainment corporation the amount of any delinquent state taxes, including costs, penalties and interest, shown by the notice. The employer shall send the money withheld to the department on or before the last day of the month after the month during which an amount was withheld.

History: 1987 a. 312, 411; 1989 a. 31 ss. 2102b, 2102f; 1991 a. 39, 315; 1993 a. 205; 1995 a. 27, 224, 233, 428; 1997 a. 27, 237.

A lien docketed under sub. (5) (b) continues until the tax liability is satisfied, not for ten years. 81 Atty. Gen. 41.

71.92 Compromises. (2) Any taxpayer who is unable to pay the full amount of his or her delinquent income or franchise taxes, costs, penalties and interest may apply to the department of revenue to pay such taxes, costs, penalties and interest in instalments. Such application shall contain a statement of the reasons such taxes, costs, penalties and interest cannot be paid in full and shall set forth the plan of instalment payments proposed by the taxpayer. Upon approval of such plan by the department and the payment of instalments in accordance therewith collection proceedings with respect to such taxes, costs, penalties and interest shall be withheld; but on failure of the taxpayer to make any instalment payment, the department shall proceed to collect the unpaid portion of such taxes, costs, penalties and interest in the manner provided by law. The department of revenue may require taxpayers who make instalment payments under this subsection to do so by electronic funds transfer.

(3) Any taxpayer may petition the department of revenue to compromise his or her delinquent income or franchise taxes including the costs, penalties and interest. Such petition shall set forth a sworn statement of the taxpayer and shall be in such form as the department shall prescribe and the department may examine the petitioner under oath concerning the matter. If the department finds that the taxpayer is unable to pay the taxes, costs, penalties and interest in full it shall determine the amount the taxpayer is able to pay and shall enter an order reducing such taxes, costs, penalties and interest in accordance with such determination. Such order shall provide that such compromise shall be effective only if paid within 10 days. The department or its collection agents upon receipt of such order shall accept payment in accordance with the order. Upon payment the department shall credit the unpaid portion of the principal amount of such taxes and make appropriate record of the unpaid amount of penalties, costs, and interest accrued to the date of such order. If within 3 years of the date of such compromise order the department shall ascertain that the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax including costs, penalty and interest the department shall reopen said matter and order the payment in full of such taxes, costs, penalties and interest. Before the entry of such order a notice shall be given to the taxpayer in writing advising of the intention of the department of revenue to

reopen such matter and fixing a time and place for the appearance of the taxpayer if the taxpayer desires a hearing. Upon entry of such order the department of revenue shall make an appropriate record of the principal amount of such taxes, penalties, costs and interest ordered to be paid and such taxes shall be immediately due and payable and shall thereafter be subject to the interest provided by s. 71.82 (2), and the department shall immediately proceed to collect the same together with the unpaid portion of penalty, costs, and interest accrued to the date of the compromise order.

(4) Delinquent income or franchise taxes, interest and penalties, resulting from assessments pursuant to s. 71.74 (3), 71.82 (2) (d) or 71.83 (1) (a) 3. or 4. or (b) 2. or 3. or from assessments by virtue of disallowance of claimed deductions for failure to file information reports relating thereto, as required by this chapter, may be compromised by the department when such action is fair and equitable under the circumstances.

(6) If any delinquent income or franchise tax has been referred by the department to the attorney general for collection and after having fully investigated the matter the attorney general determines that it would be in the best interest of the state to compromise the tax, a written recommendation shall be made to the department stating the terms upon which the tax should be compromised and the reasons therefor. The department shall approve or disapprove the recommendation and notify the department of justice. If approved the department of justice may enter into a stipulation with the taxpayer providing for the compromise of the tax on the terms set forth in the recommendation and upon compliance by the taxpayer the tax shall be fully discharged. The department of justice shall furnish the department with a copy of such stipulation, and the department or its agents charged with the collection of income or franchise taxes may accept payment of such tax in accordance with the terms of such stipulation and upon payment being made shall credit the unpaid portion of the tax. This subsection shall be in addition to all other powers of the department of justice and the department of revenue with respect to compromise or settlement of income or franchise taxes.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39; 1997 a. 237.

71.93 Setoffs for other state agencies. (1) DEFINITIONS. In this section:

(a) "Debt" means all of the following:

1. An amount owed to a state agency that has been reduced to a judgment.

2. A delinquent child support or spousal support obligation that has been reduced to a judgment and has been submitted by an agency of another state to the department of workforce development for certification under this section.

3. An amount that the department of health and family services may recover under s. 49.497, if the department of health and family services has certified the amount under s. 49.85.

4. An amount that the department of workforce development may recover under s. 49.125 or 49.195 (3), if the department of workforce development has certified the amount under s. 49.85.

5. An amount owed to the department of corrections under s. 304.073 (2) or 304.074 (2).

(b) "Debtor" means any person owing a debt to a state agency and any person who owes a delinquent child support or spousal support obligation to an agency of another state.

(c) "Department" means the department of revenue.

(d) "Refund" means the excess amount by which any payments, refundable credits or both exceed a debtor's Wisconsin tax liability or any other liability owed to the department.

(e) "State agency" has the meaning set forth under s. 20.001 (1).

(2) CERTIFICATION. A state agency may certify to the department for setoff any properly identified debt exceeding $20. At least 30 days prior to certification each debtor shall be sent a notice by the state agency of its intent to certify the debt to the department for setoff and of the debtor's right of appeal. At the time of certification, the certifying state agency shall furnish the social security number of individual debtors and the federal employer identification number of other debtors.

(3) ADMINISTRATION. In administering this section the department shall first check with the state agency certifying the debt to determine whether the debt has been collected by other means. If the debt remains uncollected the department of revenue shall setoff any debt or other amount owed to the department, regardless of the origin of the debt or of the amount, its nature or its date. If after the setoff there remains a refund in excess of $10, the department shall set off the remaining refund against certified debts of other state agencies. If more than one certified debt exists for any debtor, the refund shall be first set off against the earliest debt certified, except that no child support or spousal support obligation submitted by an agency of another state may be set off until all debts owed to and certified by state agencies of this state have been set off. When all debts have been satisfied, any remaining refund shall be refunded to the debtor by the department.

(4) SETTLEMENT. Within 30 days after the close of each calendar quarter, the department shall settle with each state agency that has certified a debt. Each settlement shall note the opening balance of debts certified, any additions or deletions, amounts set off and the ending balance at the close of the settlement period.

(5) STATE AGENCY CHARGED FOR COSTS. At the time of each settlement, each state agency shall be charged for administration expenses, and the amounts charged shall be credited to the department's appropriation under s. 20.566 (1) (h). Annually on or before November 1, the department shall review its costs incurred during the previous fiscal year in administering state agency setoffs and shall adjust its subsequent charges to each state agency to reflect that experience.

(6) WRITTEN AGREEMENT AND AUTHORITY OF DEPARTMENT. Any state agency wishing to certify debts to the department shall enter into a written agreement with the department prior to any certification of debt. Any certification of debts by a state agency or changes to certified debts shall be in a manner and form prescribed by the department. The secretary of revenue shall be the final authority in the resolution of any interagency disputes in regard to certification of debts. If a refund is adjusted after a setoff, the department may readjust any erroneous settlement with a certifying state agency.

(7) EXCHANGE OF INFORMATION. Information relative to changes to any debt certified shall be exchanged promptly by each agency and the department setoff of refunds against debts certified by agencies and any reports of the setoff to certifying state agencies is not a violation of ss. 71.78, 72.06, 77.61 (5), 78.80 (3) and 139.38 (6).

(8) STATE AGENCY DEBT AGREEMENTS. Upon request by a state agency, the department of revenue may enter into an agreement with individuals who owe debts to the state agency. With the consent of the debtor, the department of revenue may arrange with the debtor's employer for the withholding from the debtor's pay of a specified amount to be applied against the debt.

History: 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27.

71.935 Setoffs for municipalities and counties. (1) In this section:

(a) "Debt" means a parking citation of at least $20 that is unpaid and for which there has been no court appearance by the date specified in the citation or, if no date is specified, that is unpaid for at least 28 days and an unpaid fine, fee, restitution or forfeiture of at least $20.

(b) "Debtor" means a person who owes a debt to a municipality or county.

(c) "Department" means the department of revenue.

(d) "Refund" has the meaning given under s. 71.93 (1) (d).

(2) A municipality or county may certify to the department any debt owed to it. Not later than 5 days after certification, the

municipality or county shall notify the debtor in writing of its certification of the debt to the department, of the basis of the certification and of the debtor's right to appeal and, in the case of parking citations, of the debtor's right to contest the citation. At the time of certification, the municipality or county shall furnish to the department the name and social security number of each individual debtor and the name and federal employer identification number of each other debtor.

(3) If the debt remains uncollected and, in the case of a parking citation, if the debtor has not contested the citation within 20 days after the notice under sub. (2), the department shall set off the debt against any refund that is owed to the debtor after the setoff under s. 71.93. Any legal action contesting a setoff shall be brought against the municipality or county.

(4) Within 30 days after the end of each calendar quarter, the department shall settle with each municipality and county for the amounts that the department setoff for the municipality or county during that calendar quarter.

(5) At the time of each settlement, each municipality and county shall be charged for administration expenses, and the amounts charged shall be credited to the appropriation account under s. 20.566 (1) (h). Annually on or before November 1, the department shall review its costs incurred during the previous fiscal year in administering setoffs under this section and shall adjust its subsequent charges to each municipality and county to reflect that experience.

History: 1995 a. 27; 1997 a. 27.

71.94 Penalties. Unless specifically provided in this subchapter, the penalties under subch. XIII apply for failure to comply with this subchapter unless the context requires otherwise.

History: 1987 a. 312.