



1995 ASSEMBLY BILL 990

March 7, 1996 - Introduced by Representatives BELL, R. YOUNG, BALDWIN, NOTESTEIN, SPRINGER, BALDUS, BLACK, BOYLE and TURNER, cosponsored by Senator BURKE. Referred to Committee on Ways and Means.

1 **AN ACT to renumber and amend** 71.27 (1), 71.27 (2), 71.46 (1) and 71.46 (2); **to**
2 **amend** 71.08 (1) (a), 71.23 (2), 71.29 (1) (b), 71.29 (2), 71.29 (7) (b), 71.35 and
3 71.43 (2); and **to create** 71.27 (1) (b), 71.27 (2) (b), 71.285, 71.30 (3) (g), 71.46
4 (1) (b), 71.46 (2) (b), 71.475 and 71.49 (1) (g) of the statutes; **relating to:** corpo-
5 rate income and franchise tax rates, capital gains and a minimum corporate tax
6 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Corporate rate structure

Under current law, the rate for the income tax and franchise tax imposed on corporations, including tax-option corporations and insurers, is 7.9%. This bill establishes a graduated rate structure, the highest rate of which is 7.9%.

Corporate minimum tax

This bill creates an alternative minimum tax that is based on the federal minimum tax; that is imposed on corporations, including tax-option corporations and insurers; and that is due if it results in greater liability than the regular corporate income tax or franchise tax.

Capital gains

This bill also changes current law by including one-half of the 60% capital gains exclusion and the net capital gains on certain small business stock as a tax preference item in the calculation of the alternative minimum tax that applies to individuals. Generally, tax preference items are benefits received in the form of deductions, lower tax rates and exclusions.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 71.08 (1) (a) of the statutes is amended to read:

2 71.08 (1) (a) Adjust the alternative minimum taxable income, as defined in sec-
3 tion 55 (b) (2) of the internal revenue code, by the amounts under s. 71.05 (6) to (21),
4 except s. 71.05 (6) (a) 13. and (b) 5. and 6. and (8) and 50% of the amount calculated
5 under s. 71.05 (6) (b) 9., by the amounts needed to modify federal alternative tax net
6 operating loss deductions to reflect differences between Wisconsin net operating loss
7 deductions and federal net operating loss deductions for minimum tax purposes. The
8 department of revenue shall by rule define Wisconsin net operating loss deductions
9 for minimum tax purposes.

10 **SECTION 2.** 71.23 (2) of the statutes is amended to read:

11 71.23 (2) FRANCHISE TAX. For the privilege of exercising its franchise or doing
12 business in this state in a corporate capacity, except as provided under sub. (3), every
13 domestic or foreign corporation, except corporations specified in s. 71.26 (1), and ev-
14 ery nuclear decommissioning trust or reserve fund shall annually pay a franchise tax
15 according to or measured by its entire Wisconsin net income of the preceding taxable
16 year at the ~~rate set forth in~~ rates under s. 71.27 (2). In addition, except as provided
17 in sub. (3) and s. 71.26 (1), a corporation that ceases doing business in this state and
18 a nuclear decommissioning trust or reserve fund that is terminated shall pay a spe-
19 cial franchise tax according to or measured by its entire Wisconsin net income for the
20 taxable year during which the corporation ceases doing business in this state or the
21 nuclear decommissioning trust or reserve fund is terminated at the rates under s.

1 71.27 (2). Every corporation organized under the laws of this state shall be deemed
2 to be residing within this state for the purposes of this franchise tax. All provisions
3 of this chapter and ch. 73 relating to income taxation of corporations shall apply to
4 franchise taxes imposed under this subsection, unless the context requires other-
5 wise. The tax imposed by this subsection on national banking associations shall be
6 in lieu of all taxes imposed by this state on national banking associations to the ex-
7 tent it is not permissible to tax such associations under federal law.

8 **SECTION 3.** 71.27 (1) of the statutes is renumbered 71.27 (1) (a) and amended
9 to read:

10 71.27 (1) (a) ~~The~~ For taxable years beginning before January 1, 1996, the taxes
11 to be assessed, levied and collected upon Wisconsin net incomes of corporations shall
12 be computed at the rate of 7.9%.

13 **SECTION 4.** 71.27 (1) (b) of the statutes is created to read:

14 71.27 (1) (b) For taxable years beginning after December 31, 1995, the taxes
15 to be assessed, levied and collected upon Wisconsin net incomes of corporations shall
16 be computed at the following rates:

- 17 1. On all net income from \$0 to \$99,999, 5.9%.
- 18 2. On all net income exceeding \$99,999 but not exceeding \$249,999, 6.4%.
- 19 3. On all net income exceeding \$249,999 but not exceeding \$499,999, 7.4%.
- 20 4. On all net income exceeding \$499,999, 7.9%.

21 **SECTION 5.** 71.27 (2) of the statutes is renumbered 71.27 (2) (a) and amended
22 to read:

23 71.27 (2) (a) ~~The~~ For taxable years beginning before January 1, 1996, the corpo-
24 ration franchise tax imposed under s. 71.23 (2) and measured by Wisconsin net in-
25 come shall be computed at the rate of 7.9%.

1 **SECTION 6.** 71.27 (2) (b) of the statutes is created to read:

2 71.27 (2) (b) For taxable years beginning after December 31, 1995, the corpora-
3 tion franchise tax imposed under s. 71.23 (2) and measured by Wisconsin net income
4 shall be computed at the following rates:

- 5 1. For all net income from \$0 to \$99,999, 5.9%.
- 6 2. For all net income exceeding \$99,999 but not exceeding \$249,999, 6.4%.
- 7 3. For all net income exceeding \$249,999 but not exceeding \$499,999, 7.4%.
- 8 4. For all net income exceeding \$499,999, 7.9%.

9 **SECTION 7.** 71.285 of the statutes is created to read:

10 **71.285 Corporate minimum tax. (1) IMPOSITION.** If the tax imposed on a
11 corporation under s. 71.23 (1) or (2), not considering the credits under s. 71.28 (1di),
12 (1dj), (1dL), (1ds) and (2m) and subch. IX is less than the tax under this section, there
13 is imposed on a corporation, instead of the tax under s. 71.23 (1) or (2), an alternative
14 minimum tax computed as follows:

15 (a) Adjust net apportionable income of a corporation subject to apportionment
16 and net Wisconsin income of a business subject to separate accounting in the manner
17 under section 56, except section 56 (a) (4), and section 58 of the internal revenue code.

18 (b) Add to the amount under par. (a) the preferences under section 57 of the in-
19 ternal revenue code to the extent that those preferences reduce net income for pur-
20 poses of the tax imposed under s. 71.23 (1) or (2).

21 (c) Multiply the amount under par. (b) by the apportionment percentage under
22 s. 71.25 applicable to the corporation for purposes of the tax imposed under s. 71.23
23 (1) or (2) if the corporation is subject to apportionment.

24 (d) Add nonapportionable income that has a situs in this state to the amount
25 under par. (c).

1 (e) From the amount under par. (d), subtract Wisconsin minimum tax net busi-
2 ness losses. The department of revenue shall promulgate rules defining net business
3 losses for minimum tax purposes.

4 (f) Multiply the exemption amount under section 55 (d) (2) and (3) of the inter-
5 nal revenue code by the apportionment percentage under s. 71.25 applicable to the
6 corporation for purposes of the tax imposed under s. 71.23 (1) or (2).

7 (g) Subtract the amount under par. (f) from the amount under par. (e).

8 (h) If the corporation is a tax-option corporation, subtract from the amount un-
9 der par. (g) the portion of that amount equal to the ownership percentage of share-
10 holders who are residents of this state and of nonresident shareholders who file indi-
11 vidual returns in this state for purposes of the tax imposed under s. 71.02 or 71.08.

12 (i) Multiply the amount under par. (h) by 4.6%.

13 (j) Subtract the credit under s. 71.28 (3) (b) from the amount under par. (i).

14 **(2) ADMINISTRATION.** The department of revenue may impose, enforce and col-
15 lect the minimum tax provided in this section and may take any action, conduct any
16 proceeding and in all respects proceed as it is authorized in respect to income or fran-
17 chise taxes imposed in this chapter. The income and franchise tax provisions in this
18 chapter relating to assessments, refunds, appeals, collection, interest and penalties
19 shall apply to the minimum tax.

20 **SECTION 8.** 71.29 (1) (b) of the statutes is amended to read:

21 71.29 (1) (b) "Tax shown on the return" and "tax for the taxable year" mean the
22 net taxes imposed under s. 71.23 (1) or (2) or 71.285 after reduction for credits against
23 those taxes but before reduction for amounts paid as estimated tax under this section
24 plus the surcharge imposed under s. 77.93 before reduction for amounts paid as esti-
25 mated tax under this section for that surcharge.

1 **SECTION 9.** 71.29 (2) of the statutes is amended to read:

2 71.29 (2) WHO SHALL PAY. Every corporation subject to tax under s. 71.23 (1) or
3 (2) or 71.285 and every virtually exempt entity subject to tax under s. 71.125 ~~or~~, 71.23
4 (1) or (2) or 71.285 shall pay an estimated tax to the department of revenue at its of-
5 fices in Madison unless the department, by rule, prescribes another place of pay-
6 ment.

7 **SECTION 10.** 71.29 (7) (b) of the statutes is amended to read:

8 71.29 (7) (b) The preceding taxable year was 12 months, the corporation or
9 virtually exempt entity had no liability under s. 71.125 ~~or~~, 71.23 (1) or (2) or 71.285
10 for that year and the corporation or virtually exempt entity has a Wisconsin net in-
11 come of less than \$250,000 for the current taxable year.

12 **SECTION 11.** 71.30 (3) (g) of the statutes is created to read:

13 71.30 (3) (g) Corporate minimum tax under s. 71.285.

14 **SECTION 12.** 71.35 of the statutes is amended to read:

15 **71.35 Imposition of additional tax on tax-option corporations.** In addi-
16 tion to the other taxes imposed under this chapter, there is imposed on every tax-op-
17 tion corporation, except a corporation that qualifies for the exception under section
18 1374 (c) (1) of the internal revenue code and that has not elected to change from tax-
19 option status under s. 71.365 (4) (a) for that taxable year, that has a net recognized
20 built-in gain, as defined in section 1374 (d) (2) of the internal revenue code, during
21 a recognition period, as defined in section 1374 (d) (7) of the internal revenue code
22 as modified by this section, a tax computed under section 1374 of the internal reve-
23 nue code except that the ~~rate is that~~ rates are those under s. 71.27 (2), the net recog-
24 nized built-in gain is computed using the Wisconsin basis of the assets and the Wis-
25 consin apportionment percentage for the current taxable year, the taxable income is

1 the Wisconsin taxable income and the credit and net operating losses are those under
2 this chapter rather than the federal credits and net operating losses. The tax under
3 this section does not apply if the return is filed pursuant to a federal S corporation
4 election made before January 1, 1987, and the corporation has not elected to change
5 its status under s. 71.365 (4) (a) for any intervening year. If a corporation that elected
6 to change from tax-option status under s. 71.365 (4) (a) subsequently elects to be-
7 come a tax-option corporation, its recognition period begins with the first day of the
8 first taxable year affected by the subsequent election.

9 **SECTION 13.** 71.43 (2) of the statutes is amended to read:

10 71.43 (2) FRANCHISE TAX ON CORPORATIONS. For the privilege of exercising its
11 franchise or doing business in this state in a corporate capacity, except as provided
12 under s. 71.23 (3), every domestic or foreign corporation, except corporations speci-
13 fied in ss. 71.26 (1) and 71.45 (1), shall annually pay a franchise tax according to or
14 measured by its entire Wisconsin net income of the preceding taxable year at the
15 rates set forth in s. 71.46 (2). In addition, except as provided in ss. 71.23 (3), 71.26
16 (1) and 71.45 (1), a corporation that ceases doing business in this state shall pay a
17 special franchise tax according to or measured by its entire Wisconsin net income for
18 the taxable year during which the corporation ceases doing business in this state at
19 the ~~rate~~ rates under s. 71.46 (2). Every corporation organized under the laws of this
20 state shall be deemed to be residing within this state for the purposes of this fran-
21 chise tax. All provisions of this chapter and ch. 73 relating to income taxation of cor-
22 porations shall apply to franchise taxes imposed under this subsection, unless the
23 context requires otherwise. The tax imposed by this subsection on insurance compa-
24 nies subject to taxation under this chapter shall be based on Wisconsin net income
25 computed under s. 71.45, and no other provision of this chapter relating to computa-

1 tion of taxable income for other corporations shall apply to such insurance compa-
2 nies. All other provisions of this chapter shall apply to insurance companies subject
3 to taxation under this chapter unless the context clearly requires otherwise.

4 **SECTION 14.** 71.46 (1) of the statutes is renumbered 71.46 (1) (a) and amended
5 to read:

6 71.46 (1) (a) ~~The~~ For taxable years beginning before January 1, 1996, the taxes
7 to be assessed, levied and collected upon Wisconsin net incomes of corporations shall
8 be computed at the rate of 7.9%.

9 **SECTION 15.** 71.46 (1) (b) of the statutes is created to read:

10 71.46 (1) (b) For taxable years beginning after December 31, 1995, the taxes
11 to be assessed, levied and collected upon Wisconsin net incomes of corporations shall
12 be computed at the following rates:

- 13 1. On all net income from \$0 to \$99,999, 5.9%.
- 14 2. On all net income exceeding \$99,999 but not exceeding \$249,999, 6.4%.
- 15 3. On all net income exceeding \$249,999 but not exceeding \$499,999, 7.4%.
- 16 4. On all net income exceeding \$499,999, 7.9%.

17 **SECTION 16.** 71.46 (2) of the statutes is renumbered 71.46 (2) (a) and amended
18 to read:

19 71.46 (2) (a) ~~The~~ For taxable years beginning before January 1, 1996, the corpo-
20 ration franchise tax imposed under s. 71.43 (2) and measured by Wisconsin net in-
21 come shall be computed at the rate of 7.9%.

22 **SECTION 17.** 71.46 (2) (b) of the statutes is created to read:

23 71.46 (2) (b) For taxable years beginning after December 31, 1995, the corpora-
24 tion franchise tax imposed under s. 71.43 (2) and measured by Wisconsin net income
25 shall be computed at the following rates:

1 1. For all net income from \$0 to \$99,999, 5.9%.

2 2. For all net income exceeding \$99,999 but not exceeding \$249,999, 6.4%.

3 3. For all net income exceeding \$249,999 but not exceeding \$499,999, 7.4%.

4 4. For all net income exceeding \$499,999, 7.9%.

5 **SECTION 18.** 71.475 of the statutes is created to read:

6 **71.475 Corporate minimum tax. (1) IMPOSITION.** If the tax imposed on a
7 corporation under s. 71.43 (1) or (2), not considering the credits under s. 71.47 (1di),
8 (1dj), (1dL), (1ds) and (2m) and subch. IX is less than the tax under this section, there
9 is imposed on a corporation, instead of the tax under s. 71.43 (1) or (2), an alternative
10 minimum tax computed as follows:

11 (a) Adjust net apportionable income of a corporation subject to apportionment
12 and net Wisconsin income of a business subject to separate accounting in the manner
13 under section 56, except section 56 (a) (4), and section 58 of the internal revenue code.

14 (b) Add to the amount under par. (a) the preferences under section 57 of the in-
15 ternal revenue code to the extent that those preferences reduce net income for pur-
16 poses of the tax imposed under s. 71.43 (1) or (2).

17 (c) Multiply the amount under par. (b) by the apportionment percentage under
18 s. 71.45 applicable to the corporation for purposes of the tax imposed under s. 71.43
19 (1) or (2) if the corporation is subject to apportionment.

20 (d) Add nonapportionable income that has a situs in this state to the amount
21 under par. (c).

22 (e) From the amount under par. (d), subtract Wisconsin minimum tax net busi-
23 ness losses. The department of revenue shall promulgate rules defining net business
24 losses for minimum tax purposes.

1 (f) Multiply the exemption amount under section 55 (d) (2) and (3) of the inter-
2 nal revenue code by the apportionment percentage under s. 71.45 applicable to the
3 corporation for purposes of the tax imposed under s. 71.43 (1) or (2).

4 (g) Subtract the amount under par. (f) from the amount under par. (e).

5 (h) If the corporation is a tax-option corporation, subtract from the amount un-
6 der par. (g) the portion of that amount equal to the ownership percentage of share-
7 holders who are residents of this state and of nonresident shareholders who file indi-
8 vidual returns in this state for purposes of the tax imposed under s. 71.02 or 71.08.

9 (i) Multiply the amount under par. (h) by 4.6%.

10 (j) Subtract the credit under s. 71.47 (3) (b) from the amount under par. (i).

11 **(2) ADMINISTRATION.** The department of revenue may impose, enforce and col-
12 lect the minimum tax provided in this section and may take any action, conduct any
13 proceeding and in all respects proceed as it is authorized in respect to income or fran-
14 chise taxes imposed in this chapter. The income and franchise tax provisions in this
15 chapter relating to assessments, refunds, appeals, collection, interest and penalties
16 shall apply to the minimum tax.

17 **SECTION 19.** 71.49 (1) (g) of the statutes is created to read:

18 71.49 (1) (g) Corporate minimum tax under s. 71.475.

19 **SECTION 20. Initial applicability; corporate minimum tax.**

20 (1) The treatment of sections 71.285, 71.29 (1) (b), (2) and (7) (b), 71.30 (3) (g),
21 71.475 and 71.49 (1) (g) of the statutes first applies to taxable years beginning on Jan-
22 uary 1, 1996.

