Purpose of 2016 Form 5S

Form 5S is the Wisconsin franchise or income tax return applicable to corporations that elect to be treated as tax-option (S) corporations for Wisconsin purposes. Tax-option (S) corporations use Form 5S to report their income, gains, losses, deductions and credits and to compute their Wisconsin franchise tax, built-in gains tax, and economic development surcharge liability.

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General Franchise or Income Tax Return Instructions (All Corporations)

Franchise or Income Tax

Franchise tax applies to –

- All domestic corporations (those organized under Wisconsin law) and
- Foreign corporations (those not organized under Wisconsin law) doing business in Wisconsin or buying or selling lottery prizes if the winning tickets were originally bought in Wisconsin, except where taxation is exempted by statute or barred by federal law.

The tax rate is 7.9%. Income from obligations of the United States government and its instrumentalities is included in income under the franchise tax law.

Income tax applies only to foreign corporations which are not subject to the franchise tax and which own property in Wisconsin or whose business in Wisconsin is exclusively in foreign or interstate commerce. The tax rate is 7.9%. Income from obligations of the United States government and its instrumentalities is **not** included in income under the income tax law.

Certain urban transit companies are subject to a special tax under sec. 71.39, Wis. Stats. Contact the Department of Revenue for further information.

Who Must File

"Corporation" includes corporations, joint stock companies, associations, common law trusts, and all other entities treated as corporations under section 7701 of the Internal Revenue Code ("IRC").

The following corporations are required to file a Wisconsin corporation franchise or income tax return:

- Corporations organized under Wisconsin law.
- Foreign corporations licensed to do business in Wisconsin.
- Unlicensed corporations doing business in Wisconsin.
- Foreign corporations engaged in buying or selling lottery prizes if the winning tickets were originally bought in Wisconsin.
- Foreign corporations issuing credit, debit, or travel and entertainment cards to customers in Wisconsin.
- Foreign corporations regularly selling products or services of any kind or nature to customers in Wisconsin that receive the product or service in Wisconsin.
- Foreign corporations regularly soliciting business from potential customers in Wisconsin.
- Foreign corporations regularly performing services outside Wisconsin for which the benefits are received in Wisconsin.
- Foreign corporations regularly engaging in transactions with customers in Wisconsin that involve intangible property and result in receipts flowing to the taxpayer from within Wisconsin.
- Foreign corporations holding loans secured by real or tangible personal property located in Wisconsin.
- Foreign corporations owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in Wisconsin, regardless of the percentage of ownership.
- Foreign corporations owning, directly or indirectly, an interest in a limited liability company treated as a partnership that does business in Wisconsin, regardless of the percentage of ownership.
- Foreign corporations that are the sole owner of an entity that is disregarded as a separate entity under IRC section 7701 and does business in Wisconsin, or of a qualified subchapter S subsidiary that does business in Wisconsin.

Conversely, the following entities are **not** required to file a Wisconsin corporation franchise or income tax return:

- A single-owner entity that is disregarded as a separate entity under IRC section 7701. Instead, the owner of the disregarded entity is subject to the tax on or measured by the entity's income and must file a Wisconsin franchise or income tax return if otherwise required.
- Corporations and associations exempt under sec. 71.26(1), Wis. Stats., except those with (a) unrelated business taxable income as defined in IRC section 512, (b) income derived from a health maintenance organization or a limited service health organization, or (c) income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin. Exempt entities include insurers exempt from federal income taxation under IRC section 501(c)(15), town mutuals organized under Chapter 612, Wis. Stats., foreign insurers, domestic insurers engaged exclusively in life insurance business, domestic mortgage insurers, some cooperatives, and religious, scientific, educational, benevolent, or other corporations or associations of individuals not organized or conducted for profit.
- Corporations that are completely inactive in and outside Wisconsin and have filed Form 4H.

- Credit unions that don't act as a public depository for state or local government funds and have filed Form CU.

When and Where to File

Generally, a corporation must file its franchise or income tax return by the 15th day of the 3rd month following the close of its taxable year.

Short Period Returns. Returns for short taxable years (periods of less than 12 months) are due on or before the federal due date. A corporation that becomes, or ceases to be, a member of an affiliated group and as a result must file two short period returns for federal purposes must also file two short period returns for Wisconsin. The Wisconsin returns are due at the same time as the federal returns. Each short period is considered a taxable year, the same as for federal purposes.

Extensions. Any extension allowed by the Internal Revenue Service ("IRS") for filing the federal return automatically extends the Wisconsin due date to 30 days after the federal extended due date. You don't need to submit either a copy of the federal extension or an application for a Wisconsin extension to the Department by the original due date of your return. However, you must submit a copy of the federal extension with the Wisconsin return that you file.

If you aren't requesting a federal extension, Wisconsin law provides an automatic extension of 7 months or until the original due date of the corporation's corresponding federal return, whichever is later.

The fee for filing a late return after the extension date is $150.

CAUTION: An extension for filing the return doesn't extend the time to pay the franchise or income tax. Interest will be charged on the tax not paid by the 15th day of the 3rd month following the close of the taxable year. You can avoid interest charges during the extension period by paying the tax due by that date. Submit your payment with Wisconsin Form Corp-ES, *Corporation Estimated Tax Voucher*.

Filing Methods. Corporations are required to file tax returns electronically and may file electronically through the Federal/State E-Filing Program. For a list of software vendors participating in this program, visit the Department's web page at revenue.wi.gov/eserv/corp/index.html.

If it is not possible to file the return electronically, a waiver must be obtained in order to file a paper return. More information is available from the Department's web page at revenue.wi.gov/Pages/TaxPro/news-2011-110727b.aspx

If an electronic filing waiver is approved, file your return on paper using these mailing instructions:

- **Do not fasten, staple or bind the pages of your return.** Use paper clips instead.
- If you are submitting multiple returns, separate them with **colored separator sheets.**
- Use the mailing address shown on the form.

Period Covered by Return

The return must cover the same period as the corporation's federal income tax return. A 2016 Wisconsin return must be filed by a corporation for calendar year 2016 or a fiscal year that begins in 2016. A fiscal year may end only on the last day of a month. The period covered by the return can't exceed 12 months.

Corporations reporting on a 52-53 week period for federal tax purposes must file on the same reporting period for Wisconsin. A 52-53 week taxable year is deemed to begin on the first day of the calendar month beginning nearest the first day of the 52-53 week taxable year. The taxable year is deemed to end on the last day of the calendar month closest to the last day of the 52-53 week taxable year for purposes of due dates, extensions, and assessments of interest and penalties.

Any change in accounting period made for federal purposes must also be made for Wisconsin purposes. For the first taxable year for which the change applies, file with the Wisconsin return a copy of the IRS's notice of approval of accounting period change if such approval is required or an explanation of the change if the IRS's approval isn't required.

If a tax-option (S) corporation elects, under IRC section 444, to have a taxable year other than the required taxable year, that election also applies for Wisconsin. Unlike the federal requirement, the corporation doesn't have to make required payments of Wisconsin tax.

Accounting Methods and Elections

In computing net income, the method of accounting must be the same method used in computing federal net income. However, if the method used for federal purposes isn't authorized under the Internal Revenue Code (IRC) in effect for Wisconsin, use a method authorized under the IRC in effect for Wisconsin.

Change in Accounting Method. A change in accounting method made for federal purposes must also be made for Wisconsin purposes, unless the change isn't authorized under the IRC in effect for Wisconsin. Adjustments required federally as a result of a change made while the corporation

is subject to Wisconsin taxation must also be made for Wisconsin purposes, except that in the last year a corporation is subject to taxation by Wisconsin it must take into account all remaining adjustments required.

For the first taxable year for which the change applies, file with the Wisconsin return either a copy of the application for change in accounting method filed with the IRS and a copy of the IRS's consent, if applicable, or an explanation of the change if the IRS's approval isn't required.

Elections. As explained above, a corporation can't make different elections for federal and Wisconsin purposes with respect to accounting periods and accounting methods, unless the federal method isn't permitted under the IRC in effect for Wisconsin. In situations where a corporation has an option under the IRC and the IRS doesn't consider that option to be a method of accounting, a different election may be made for Wisconsin than that made for federal purposes. If federal law specifies the manner or time period in which an election must be made, those requirements also apply for Wisconsin purposes.

Payment of Estimated Tax

If the total of a corporation's franchise or income tax and economic development surcharge due is $500 or more, it generally must make quarterly estimated tax payments using Wisconsin Form Corp-ES or by electronic funds transfer (EFT). Failure to make required estimated tax payments may result in an interest charge. You may download vouchers from the Department's web site at revenue.wi.gov/html/formpub.html, or you may request vouchers by calling any Department of Revenue office.

Quick Refund. A corporation that overpaid its estimated tax may apply for a refund before filing its tax return if its overpayment is (1) at least 10% of the expected Wisconsin tax liability and (2) at least $500. To apply, file Wisconsin Form 4466W, *Corporation or Pass-Through Entity Application for Quick Refund of Overpayment of Estimated Tax*, after the end of the taxable year and before the corporation files its tax return. Do not file Form 4466W at the same time as your tax return.

A corporation that has a tax due when filing its tax return as a result of receiving a "quick refund" will be charged 12% annual interest on the amount of unpaid tax from the date the refund is issued to the earlier of the 15th day of the 3rd month after the close of the taxable year or the date the tax liability is paid. Any tax that remains unpaid after the unextended due date of the tax return continues to be subject to 18% or 12% annual interest, as appropriate.

Electronic Funds Transfer Required for Certain Payments. Section Tax 1.12, Wisconsin Administrative Code, requires the payment of certain taxes by EFT. A corporation must pay its estimated franchise or income taxes and economic development surcharge by EFT if its net tax less refundable credits on its prior year return was $1,000 or more. The Department will notify a corporation when EFT payments are required. The corporation will have 90 days after being notified to register for EFT. The first EFT payment is due on the first tax due date following the end of the 90-day registration period.

Corporations not required to pay by EFT may elect to do so. For more information, visit the Department's web site at revenue.wi.gov/eserv/eftgen.html, send an e-mail to DORSalesandUse@wisconsin.gov, call (608) 266-2776, or write to the Electronic Funds Transfer Assistance, Wisconsin Department of Revenue, PO Box 8949, Madison, WI 53708-8949.

To make EFT payments of corporation franchise or income tax, choose the appropriate tax type code:

Tax Type	Tax Type Code
Corporation estimated tax payment	02100
Corporation tax due with return	02200
Corporation amended return tax due	02400
Corporation bill (except audit assessments)	02540

Note: For EFT payments of estimated franchise or income tax and economic development surcharge, enter the last day of your **taxable year**, not the last day of the quarterly installment period, for which the payment is being made.

Disclosure of Related Entity Expenses and Reportable Transactions

A corporation may be required to separately disclose certain expenses paid, accrued, or incurred to a related entity. A corporation or corporation's material advisor may also be required to separately disclose reportable transactions.

CAUTION: Wisconsin law provides that certain related entity expenses shall not be allowed as deductions if they are not timely disclosed as required by the Department of Revenue. Also, penalties may apply for failure to disclose reportable transactions to the Department.

Disclosure of Related Entity Expenses. If the corporation will be deducting more than $100,000 (after considering the effect of apportionment) of interest, rent, management fees, or intangible expenses paid, accrued, or incurred to a related person or entity, the corporation must generally file Schedule RT, *Wisconsin Related Entity Expenses Disclosure Statement*, with its franchise or income tax return. The

Schedule RT instructions explain the reporting requirements.

However, even if you are not required to file Schedule RT, if you are taking deductions for interest, rent, management fees, or intangible expenses, paid, accrued, or incurred to related entities, you must add those expenses back to federal income as a Wisconsin modification on Schedule 5K, line 18a. If the expenses meet the tests for deductibility, you may make an adjustment on Schedule 5K, line 18b.

Corporation's Disclosure of Reportable Transactions. If a corporation was required to include any form with its federal tax return to disclose a "reportable transaction," as defined under sec. 71.81(1)(c), Wis. Stats., it must file a copy of that form with the Department of Revenue within 60 days of the date it is required to file it for federal income tax purposes, provided that it is otherwise required to file a Wisconsin return.

This includes federal Form 8886, *Reportable Transaction Disclosure Statement*, and federal Form 114, *Report of Foreign Bank and Financial Accounts.* To file these forms for Wisconsin purposes, check the "yes" box for question 6 page 2 of Form 5S, and submit the form with your return.

See the instructions to federal Form 8886 to determine if you are required to file the form for federal purposes.

Material Advisor's Disclosure of Reportable Transactions. A "material advisor" means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction (as defined in the U.S. Treasury Regulations) and who, directly or indirectly, derives gross income from providing such aid, assistance, or advice in an amount that exceeds the threshold amount.

For a material advisor providing advice to an entity and not an individual, the "threshold amount" is any of the following:

- $25,000 if the reportable transaction is a listed transaction (as defined in the U.S. Treasury Regulations).
- $250,000 if the reportable transaction is not a listed transaction.

For a material advisor providing advice to an individual, the "threshold amount" is any of the following:

- $10,000 if the reportable transaction is a listed transaction (as defined in the U.S. Treasury Regulations).
- $50,000 if the reportable transaction is not a listed transaction.

A material advisor that is required to disclose a reportable transaction to the IRS must file a copy of the disclosure with the Department within 60 days of the date it is required for federal income tax purposes, if the reportable transaction affects the taxpayer's Wisconsin income or franchise tax liability. For federal purposes, the form required for this disclosure is Form 8918, *Material Advisor Disclosure Statement*.

If you are required to file Form 8918 for federal income tax purposes and the reportable transaction to which the form relates affects the taxpayer's Wisconsin income or franchise tax liability, send a paper copy, separate from the Wisconsin return, to the following address: Wisconsin Department of Revenue, Tax Shelters Program, PO Box 8958, Madison, WI 53708-8958. Include a listing of the names and identification numbers of each Wisconsin taxpayer for whom the advisor provided services to.

Internal Revenue Service Adjustments, Amended Returns, and Claims for Refund

Internal Revenue Service Adjustments. If a corporation's federal tax return is adjusted by the IRS and such adjustments affect the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net operating loss carryforward, or a Wisconsin capital loss carryforward of a shareholder, you must report such adjustments to the Department within 90 days after they become final by either filing an amended Wisconsin franchise/income tax return or mailing a copy of the final federal audit report.

Send a copy of the final federal audit reports and any associated amended Wisconsin returns to the Wisconsin Department of Revenue, PO Box 8908, Madison, WI 53708-8908. If submitting a federal audit report without an amended return, mail it to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 3-107, PO Box 8906, Madison, WI 53708-8906. Don't attach these items to the tax return for the current year.

Amended Returns. After you have filed a complete, original tax return, you may file an amended return to correct a tax return as you originally filed it or as it was later adjusted by an amended return, a claim for refund, or an office or field audit.

If you file an amended federal return and the changes affect the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net business loss carryforward, or a Wisconsin capital loss carryforward, you must file an amended Wisconsin return with the Department within 90 days after filing the amended federal return.

To file an amended Wisconsin return, put a check mark in the space next to item A1 on the front of the return, complete the return, and include an explanation of any changes made. Show computations in detail, including any applicable supplemental forms or schedules. Also show how you figured your refund or additional amount owed. **Do not attach a copy of the original return.**

For tax-option (S) corporations, if the change affects amounts reportable by your shareholders, you must file amended Schedules 5K-1 and provide a copy of the amended Schedule 5K-1 to each of your shareholders.

File your amended return electronically by using one of the third party software providers:

revenue.wi.gov/eserv/corp/index.html

If you have an approved electronic filing waiver, send amended returns to the Wisconsin Department of Revenue, PO Box 8908, Madison, WI 53708-8908. Don't attach amended returns to other tax returns that you are filing.

Claims for Refund. A claim for refund must be filed within 4 years of the unextended due date of the return. However, a claim for refund to recover all or part of any tax or credit paid as a result of an office or field audit must be filed within 4 years after such an assessment. That assessment must have been paid and must not have been protested by filing a petition for redetermination. See section Tax 2.12, Wisconsin Administrative Code, for more information.

Final Return

If the corporation liquidated during the taxable year, put a check mark in the space next to item A3 on the front of the return. Enter the date of liquidation as the taxable year ending date at the top of the return. Submit a copy of your plan of liquidation along with a copy of federal Form 966, *Corporate Dissolution or Liquidation*, with your Wisconsin return.

Generally, the final return is due on or before the federal due date. In most cases, this is the 15th day of the 3rd month after the date the corporation dissolved. The tax is payable by the 15th day of the 3rd month after the date of dissolution, regardless of the due date of the final return.

Economic Development Surcharge

The economic development surcharge applies to corporations having gross receipts from all activities of $4 million or more during the taxable year. Corporations that must file Wisconsin franchise or income tax returns must pay the economic development surcharge, with certain exceptions. The surcharge doesn't apply to:

- Domestic corporations that don't have any business activities in Wisconsin.
- Foreign corporations that don't have nexus with Wisconsin, unless the foreign corporation is part of a combined group that has nexus in Wisconsin.
- Corporations that have less than $4 million of gross receipts from all activities. "Gross receipts from all activities" means gross receipts, gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.
- Nuclear decommissioning trust funds.

For more information, refer to Publication 400, *Wisconsin's Economic Development Surcharge.*

Information Returns

Miscellaneous Income. If the tax-option (S) corporation paid $600 or more in rents, royalties, or certain nonwage compensation to one or more individuals, the corporation must file an information return to report those payments. You may use Wisconsin Form 9b, *Miscellaneous Income*, or you may use federal Form 1099 instead of Form 9b. For more information, see the Form 9b instructions.

Wisconsin Use Tax

The corporation may be liable for use tax. Use tax is the counterpart of sales tax. All tangible personal property, certain coins and stamps, certain leased properties affixed to real estate, certain digital goods, and selected services, taxable under Wisconsin's sales tax law, which are stored, used, or consumed in Wisconsin, are subject to use tax if the proper sales tax is not paid. Examples of purchases that frequently result in a use tax liability include the following:

- Mail order and Internet purchases. You owe Wisconsin use tax if you buy such items as computers, furniture, or office supplies from a vendor who is not registered to collect Wisconsin tax.
- Inventory. If you purchase inventory items without tax for resale, and then use these items instead of selling them, you owe use tax.
- Give-aways. Generally, if you purchase items without tax and then give them away in Wisconsin, you owe use tax.

If you hold a seller's permit, use tax certificate, or consumer's use tax certificate, report your use tax on your sales and use tax return, Form ST-12. Otherwise, complete and file Form UT-5 to report use tax.

For more information on use tax, visit the Department's web site at revenue.wi.gov/html/sales.html, call (608) 266-2776, e-mail DORSalesandUse@wisconsin.gov, or write to the Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison, WI 53708-8949.

Penalties for Not Filing or Filing Incorrect Returns

If you don't file a franchise or income tax return that you are required to file, or if you file an incorrect return due to negligence or fraud, interest and penalties may be assessed against you. The interest rate on delinquent taxes is 18% per year. Civil penalties may be as much as 100% of the amount of tax not reported on the return. Criminal penalties for filing a false return include a fine of up to $10,000 and imprisonment. Further, if you fail to disclose reportable transactions, you may be subject to the penalties described in sec. 71.81, Wis. Stats., including a $30,000 penalty for failure to disclose a listed transaction.

Obtaining Forms and Assistance

If you need forms or publications, you may:

- Download them from the Department's Internet web site at revenue.wi.gov.
- Request them online at revenue.wi.gov/faqs/pcs/forms.html.
- Call (608) 266-1961.
- Call or visit any Department of Revenue office.

If you need help in preparing a corporation tax return, you may:

- E-mail your question to DORFranchise@wisconsin.gov.
- Send a FAX to (608) 267-0834
- Call (608) 266-2772
  (Telephone help is also available using TTY equipment. Call the Wisconsin Telecommunications Relay System at 711 or, if no answer, (800) 947-3529. These numbers are to be used only when calling with TTY equipment.)
- Call or visit any Department of Revenue office.

General Instructions for S Corporations

Definitions Relating to S Corporations

Tax-Option (S) Corporation. For Wisconsin purposes, a "tax-option (S) corporation" is a corporation which is treated as an "S corporation" under Subchapter S of the Internal Revenue Code (IRC) as adopted for Wisconsin purposes, and has not elected out of tax-option corporation status under sec. 71.365(4)(a), Wis. Stats., for the current taxable year.

S Corporation. Under federal law, an S corporation is one that has an election in effect for a taxable year under Subchapter S of the IRC which generally permits the corporation's income to be taxed to its shareholders rather than to the corporation itself. If the corporation incurs a loss, the loss is treated as the shareholders' loss.

To qualify for federal S corporation treatment under the IRC, a corporation must meet certain requirements. These requirements include, but are not limited to:

- It must be created or organized in the United States under federal or state law.
- It must have no more than 100 shareholders.
- It must have as shareholders only individuals, estates, certain tax-exempt organizations, and certain trusts; it cannot have another corporation or a tax-option (S) corporation as a shareholder.
- It must not have a nonresident alien as a shareholder.
- It must have only one class of stock.

This is a very brief summary of the federal requirements. For further details of the federal requirements, refer to IRC section 1361(b), as amended to December 31, 2013. Also refer to Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders*.

Qualified Subchapter S Subsidiary. A qualified subchapter S subsidiary (also called a "QSub" or a "QSSS") is a corporation that meets all of the following requirements:

- It is created or organized in the United States or under the laws of the United States or any state.
- It is not an ineligible type of corporation, as defined in IRC section 1361(b)(2).
- 100% of its stock is held by an S corporation.
- The S corporation elects to treat the corporation as a QSub.

If a federal S corporation elects to treat a subsidiary as a qualified subchapter S subsidiary (QSub) for federal purposes, that election automatically applies for Wisconsin purposes. The QSub is disregarded as a separate corporation for Wisconsin purposes, and its assets, liabilities, and items of income, deduction, and credit are treated as those of the parent tax-option (S) corporation.

Corporations and Shareholders Subject to Wisconsin Tax-Option (S) Law

Corporations that are required to file Wisconsin franchise or income tax returns and are included in the definition of a "tax-option corporation" are subject to Wisconsin's tax-option (S) corporation law.

Wisconsin's tax-option (S) corporation law applies to all shareholders of a tax-option (S) corporation that is subject to Wisconsin tax-option (S) corporation law, whether or not the shareholders are Wisconsin residents. Therefore, all shareholders who meet the applicable Wisconsin filing requirements, after taking into account their pro rata shares of the corporation's gross income for Wisconsin purposes, must file Wisconsin income tax returns and report their pro rata shares of the tax-option (S) corporation's items of income, loss, and deduction.

For example, residents and nonresidents of Wisconsin are subject to Wisconsin tax-option (S) corporation law if they are –

- Shareholders of a tax-option (S) corporation which is organized under the laws of Wisconsin and engaged in business (1) completely in Wisconsin, (2) in and outside Wisconsin, or (3) completely outside Wisconsin.
- Shareholders of a tax-option (S) corporation which isn't organized under the laws of Wisconsin but which is authorized to transact business in Wisconsin or is engaged in business in Wisconsin and required to file a Wisconsin franchise or income tax return.

Tax-Option (S) Corporations With Nonresident Shareholders

A tax-option (S) corporation that has one or more nonresident shareholders is generally required to pay pass-through entity withholding. Additionally, the tax-option (S) corporation may file a composite individual income tax return on behalf of qualifying nonresident individual shareholders.

Pass-Through Entity Withholding. A tax-option (S) corporation is generally required to pay withholding tax on its distributable income which is allocable to a nonresident shareholder. A nonresident shareholder includes:

- An individual who is not domiciled in Wisconsin, or
- An estate or trust that is a nonresident under sec. 71.14(1) to (3m), Wis. Stats.

However, withholding is not required on behalf of the following nonresident shareholders:

- A shareholder who is not otherwise subject to Wisconsin income or franchise tax (such as a 501(c)(3) organization with no unrelated business taxable income).
- A shareholder whose share of income from the tax-option (S) corporation is less than $1,000.
- A shareholder who completes Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit*, and provides Part 2 of Form PW-2 to the tax-option (S) corporation. The completed Form PW-2 must be pre-approved by the Department. See the Form PW-2 instructions for details.
- A shareholder who provides a Continuous PW-2 Exemption letter to the tax-option (S) corporation.

Withholding Required. A pass-through entity is required to pay quarterly estimated withholding tax on a nonresident member's share of income attributable to Wisconsin. The pass-through entity must make quarterly payments of withholding tax on or before the 15th day of the 3rd, 6th, 9th, and 12th month of the taxable year. You must make the estimated withholding tax payments electronically. If you obtained a waiver from electronic payment, use Form PW-ES, *Wisconsin Pass-Through Entity Withholding Estimated Payment Voucher*, to make the estimated withholding tax payments.

The tax-option (S) corporation must also file Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, annually to report estimated withholding tax paid and to pay any additional withholding tax due on behalf of its nonresident shareholders. Form PW-1 is due with payment by the 15th day of the 3rd month following the close of the tax-option (S) corporation's taxable year. See the Form PW-1 instructions for details of the filing procedures.

Composite Return for Nonresident Individual Shareholders. A tax-option (S) corporation that has two or more nonresident individual shareholders who derive no taxable income or deductible loss from Wisconsin other than their distributive shares from the tax-option (S) corporation may file a composite individual income tax return on behalf of those shareholders. The tax-option (S) corporation files this return on Form 1CNS, *Composite Individual Income Tax Return for Nonresident Shareholders*.

Individuals that are fiscal year filers or part-year Wisconsin residents may not participate in the composite return. No tax credits are allowed on the composite return other than a credit for pass-through entity withholding tax paid on behalf of each participating shareholder. Additionally, participating shareholders cannot claim the IRC section 199 deduction or any amounts deductible as itemized deductions on the composite return.

Shareholders that do not qualify to participate in the composite return must file a separate Wisconsin return to report the income from the tax-option (S) corporation.

For more information on eligibility for composite filing and composite filing procedures, see the Form 1CNS instructions.

Interest Charge Domestic International Sales Corporations (IC-DISCs)

IC-DISCs have no special status for Wisconsin tax purposes. An IC-DISC that is a viable corporation with substance and has nexus in Wisconsin is taxed like any other corporation. However, if an IC-DISC doesn't carry on any substantial business activities and does nothing to earn the income that it reports, its net income is allocated to the corporation that earned the income.

Termination of Tax-Option (S) Treatment

A corporation ceases to qualify for Wisconsin tax-option (S) treatment for any year for which its S corporation election ceases to apply, regardless of whether the termination is voluntary or involuntary, or whether termination is discovered as the result of an audit after a return has been filed.

Voluntary Termination. Under the IRC as adopted by Wisconsin, a corporation may voluntarily revoke its S election at any time after the initial election is made. The revocation may be effective for the entire taxable year if made on or before the 15th day of the 3rd month of that taxable year. Otherwise, it may be effective for the following taxable year. In either case, the revocation may specify that it is to be effective on a date during the current year that is on or after the day of revocation.

Involuntary Termination. A corporation's Subchapter S status under the IRC as adopted by Wisconsin will be involuntarily terminated if either of the following is true:

- The corporation had accumulated Subchapter C earnings and profits at year-end and its passive investment income exceeded 25% of gross receipts for each of 3 consecutive taxable years. The election is terminated as of the first day of the taxable year beginning after the third consecutive taxable year in which there is excess passive investment income.

- The corporation ceases to be a qualifying Subchapter S corporation. The IRS may waive inadvertent termination and this waiver also applies for Wisconsin.

Split Taxable Year Caused by Termination. If the revocation date causes the corporation's taxable year to be split, the corporation must file two short-period returns for federal and Wisconsin purposes. One covers the period it is an S corporation and one covers the period it is a C corporation. Both returns are due on the 15th day of the 3rd month following the close of the corporation's normal taxable year, subject to the regular rules for extensions. The net income for each period may be computed under the daily proration method as provided in IRC section 1362(e)(2) or under normal tax accounting rules if the affected shareholders consent as provided in IRC section 1362(e)(3). The corporation must use the normal tax accounting rules if there was a sale or exchange of 50% or more of the corporation's stock during the year.

Election Out of Wisconsin Tax-Option Treatment

A corporation may elect, under sec. 71.365(4)(a), Wis. Stats., not to be a tax-option (S) corporation for Wisconsin tax purposes even though its federal S election remains in effect.

Making the Wisconsin "Opt-Out" Election. Generally, a corporation that is an S corporation for federal tax purposes may elect not to be a tax-option (S) corporation for Wisconsin tax purposes. However, if an S corporation has a QSub for federal income tax purposes, neither the S corporation nor the QSub may opt out of Wisconsin tax-option treatment.

The "opt-out" election requires the consent of persons who hold more than 50% of the shares of the tax-option (S) corporation on the day on which the "opt-out" election is made. To be effective for the current taxable year, the election must be made on or before the due date or extended due date of the corporation's current Wisconsin franchise or income tax return. To make the "opt-out" election, the corporation must file Wisconsin Form 5E, *Election by an S Corporation Not to Be Treated as a Tax-Option Corporation.*

The "opt-out" election is completed by filing a Wisconsin franchise or income tax return in accordance with the election. For more information, see the tax release in *Wisconsin Tax Bulletin* 91 (April 1995, page 18). Corporations that make the "opt-out" election must file Form 4 or Form 6 for Wisconsin rather than Form 5S.

Revoking the Wisconsin "Opt-Out" Election. Except as explained below, once the election not to be a tax-option (S) corporation is completed, the corporation and its successors may not claim Wisconsin tax-option status for the next 4 taxable years after the taxable year to which the "opt-out" election first applies. At any time after this 5-taxable-year period, the corporation may revoke the "opt-out" election by filing Wisconsin Form 5R, *Revocation of Election by an S Corporation Not to Be a Tax-Option Corporation.*

Revoking the "opt-out" election requires the consent of persons who hold more than 50% of the shares of the S corporation on the day the revocation is made. The corporation must file Form 5R on or before the due date, including extensions, of the Wisconsin franchise or income tax return for the first taxable year affected by the revocation.

Automatic Revocation of Wisconsin "Opt-Out" Election. The "opt-out" election is automatically revoked for the taxable year in which a federal S corporation acquires a QSub.

Wisconsin tax-option (S) treatment applies to the S corporation and its QSub. If the corporation subsequently disposes of the QSub, it could again elect not to be treated as a Wisconsin tax-option (S) corporation for the taxable year following the disposition by filing Form 5E.

Additional Information on Wisconsin Treatment of Tax-Option (S) Corporations

For more information on Wisconsin taxation of tax-option (S) corporations and their shareholders, see Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders.* You may access this publication through the Department's web site at revenue.wi.gov/html/taxpubs.html.

Conformity With Internal Revenue Code and Exceptions

The Wisconsin income and franchise tax law applicable is based on the federal Internal Revenue Code ("IRC"). The IRC generally applies for Wisconsin purposes at the same time as for federal purposes. For taxable years beginning on or after January 1, 2016, Wisconsin's definition of the IRC is the IRC as of December 31, 2013 with exceptions. Below is a listing of the exceptions.

Note: The exceptions and provisions adopted by Wisconsin listed below are those in effect as of the publication date of these instructions. It is possible that subsequent changes in Wisconsin law may add or eliminate some exceptions applicable to taxable years beginning in 2016.

Provisions of the Internal Revenue Code Not Adopted by Wisconsin:

- Section 13113 of P.L. 103-66, which created sec. 1202 of the IRC effective for small business stock issued after August 10, 1993.
- Sections 1, 3, 4, and 5 of P.L. 106-519, which repealed foreign sales corporation provisions and replaced with extraterritorial income provisions.
- Sections 101, 102, and 422 of P.L. 108-357, which repealed the exclusion for extraterritorial income, domestic production activities deduction, and the creation of sec. 965 – incentives to reinvest foreign earnings in the U.S.
- Sections 1310 and 1351 of P.L. 109-58, which provides for the modification to special rules for nuclear decommissioning costs, repeal of the limitation on contract research expenses paid so small businesses, universities, and federal laboratories.
- Section 11146 of P.L. 109-59, the tax treatment of state ownership of railroad real estate investment trust.
- Section 403(q) of P.L. 109-135, which provides incentives to reinvest foreign earnings from controlled foreign corporations in the U.S.
- Section 513 of P.L.109-222, which repeals foreign sales corporation/extraterritorial income exclusion binding contract relief.
- Sections 104 and 307 of P.L. 109-432, which increases the rates of the alternative incremental credit and provides a new alternative simplified credit and that gross income does not include an IRA distribution used to fund an HSA.
- Sections 8233 and 8235 of P.L. 110-28, which created a special rule for banks required to change from the reserve method of accounting in becoming tax-option (S) corporations and the elimination of all earnings and profits attributable to pre-1983 years.
- Section 11(e) and (g) of P.L. 110-172, which provides clerical amendments to research credits for controlled corporations and common control, and clerical amendments to the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.
- Section 301 of P.L. 110-245, which provides for tax responsibilities of expatriation.
- Sections 15303 and 15351 of P.L. 110-246, related to the deduction for endangered species recovery, and limits the amount of farm losses that may offset non-farming business income is limited to $300,000.
- Section 302 of division A, section 401 of division B, and sections 312, 322, 502(c), 707, and 801 of division C of P.L. 110-343, which limits executive compensation for employers participating in troubled assets relief program for the taxable year in which the troubled assets exceed $300,000,000. Caps the domestic production activities deduction at 6% for oil-related activities. The deduction for income attributable to domestic production activities

in Puerto Rico applies to the first 8 taxable years beginning before January 1, 2010. Tax incentives for investment in the District of Columbia includes exclusion for gain on sale of an asset held from more than 5 years. Defines wages for purposes of the domestic production activities deduction. Creates sec. 198A to provide for expensing of disaster expenses for control of hazardous substances. Specifies treatment of nonqualified deferred compensation plans maintained by foreign corporations.

- Sections 1232, 1241, 1251, 1501, and 1502 of division B of P.L. 111-5, which suspends the special rules for original issue discount on high yield obligations issued during the period 9/1/2008 and 12/31/2009. Allows a 75% exclusion for small business stock issued between 1/17/2009 and 12/31/2009. Provides that no built-in-gain tax is imposed on a tax-option (S) Corporation for a taxable year beginning in 2009 and 2010 if the seventh taxable year in the corporation's recognition period preceded such taxable year. Tax-exempt obligations held by financial institutions, in an amount not to exceed 2 percent of the adjusted basis of the financial institution's assets, are not taken into account for determining the portion of the financial institutions interest expense subject to the pro rata interest disallowance rule of sec. 265(b). Modification of the small insurer exception to tax-exempt interest expense allocation rules for financial institutions.
- Sections 211, 212, 213, 214, and 216 of P.L. 111-226, which adopts a matching rule to prevent the separation of foreign taxes from the associated foreign income, denies a foreign tax credit for the disqualified portion of any foreign income tax paid in connection with a covered asset acquisition, provides a separate application of foreign tax credit limitation to items resourced under treaties, limits the amount of foreign taxes deemed paid with respect to sec. 956 inclusions, treats a foreign corporation as a member of an affiliated group for interest allocation and apportionment purposes in more than 50% of gross income is effectively connected income and at least 80% of either the vote or value of all outstanding stock is owned directly or indirectly by members of the affiliated group.
- Sections 2011 and 2122 of P.L. 111-240, which provides a 100% exclusion for the gain on the sale of small business stock acquired after 9/27/2010 and before 1/1/2011, and clarifies the income sourcing rules for guarantee fees.
- Sections 753, 754, and 760 of P.L. 111-312, which excludes 60% of the gain on the sale of small business stock in an empowerment zone business to gain attributable to periods before 1/1/2016, specifies that gross income does not include gain on stock acquired before 1/1/2012 and held for more than 5 years, and excludes the gain on sale of small business stock acquired in 2011.
- Section 1106 of P.L. 112-95, which allows airline employees to contribute airline payment amounts under a bankruptcy claim to a traditional IRA as a rollover contribution.
- Sections 104, 318, 322, 323, 324, 326, 327, and 411 of P.L. 112-240, which makes the alternative minimum tax exemption permanent and indexed for inflation, extends through 2013 the deduction with respect to income attributable to domestic production activities in Puerto Rico, extends the subpart F exception for active financing income, extends the look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company, provides 100% exclusion for gain on small business stock acquired in 2012 and 2013, extends through 2013 the reduction in tax-option (S) Corporation built-in gains tax and clarifies treatment of installment sales, provides a 60% exclusion for gain on small business stock acquired before 2019, and extends through 2013 the rules that allow gain certain sales of electric transmission property to be recognized ratably over 8 taxable years.

Other Exceptions to Internal Revenue Code

The following federal provisions in effect as of December 31, 2013, are specifically excluded for Wisconsin franchise and income tax purposes:

Domestic Production Activities Deduction. For federal purposes, taxpayers may claim a deduction against gross income equal to a percentage of its qualified production activities income or its taxable income without regard to the deduction (sec. 102 of P.L. 108-357). Effective for taxable years beginning on or after January 1, 2009, the domestic production activities deduction no longer applies for Wisconsin purposes.

Depreciation and Bonus Depreciation

For taxable years beginning on or after January 1, 2014, for purposes of computing depreciation, depletion, and amortization, the Internal Revenue Code means the federal Internal Revenue Code in effect on January 1, 2014.

The provision that property required to be depreciated for taxable year 1986 under the Internal Revenue Code as amended to December 31, 1980, to continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980, is limited to taxable years beginning before January 1, 2014.

Section 179 Expense

For taxable years beginning on or after January 1, 2014, sections 179, 179A, 179B, 179C, 179D, and 179E of the Internal Revenue Code, related to expensing of depreciable business assets, apply for Wisconsin tax purposes. "Internal

Revenue Code" means the federal Internal Revenue Code in effect for the year in which the property is placed in service.

How to Report Differences

You must report any differences between federal income and income for Wisconsin purposes in Schedule 5K, column c. For differences relating to depreciation and amortization, you must prepare schedules detailing the differences between the federal and Wisconsin computations and submit them with your return.

Specific Instructions for Form 5S

You must complete pages 1 through 6 of Form 5S. Do not enter "See Attached" instead of completing the entry spaces. If more space is needed, prepare separate sheets using the same size and format as the printed forms, and submit these sheets with your Form 5S.

Round cents to the nearest whole dollar by eliminating amounts less than 50 cents and increasing amounts from 50 cents through 99 cents to the next higher dollar.

Note: Federal line numbers referenced in these instructions and on Form 5S may change.

Items A Through I

Before completing items A through I, fill in the tax-option (S) corporation's 2016 taxable year at the top of the form and the corporation's name and address. The name and address information should be written on single lines. Do not stack the information on the lines. If more room is needed, abbreviate where possible.

Do not write "None" on the amount lines if there is not an entry for the lines. Instead, leave the lines blank.

■ **Federal Employer Identification Number –** Enter the tax-option (S) corporation's federal employer identification number (EIN).

■ **Business Activity (NAICS) Code –** Enter the tax-option (S) corporation's principal business activity code, based on the North American Industry Classification System (NAICS), from your federal return.

■ **Number of Shareholders –** Enter the total number of shareholders that the tax-option (S) corporation had during the taxable year.

■ **Number of Nonresident Shareholders –** Enter the total number of nonresident shareholders that the tax-option (S) corporation had during the taxable year, including individuals, estates, and trusts not domiciled in Wisconsin.

■ **State of Incorporation and Year –** Enter the 2-letter postal abbreviation for the state (or name of the foreign country) under the laws of which the tax-option (S) corporation was incorporated and the year of incorporation.

■ **A1. Amended Return** – If this is an amended return, check here. Circle the line number of, or provide an explanation of, the lines you are changing and submit a detailed explanation of the changes made, including any supporting form or schedule.

■ **A2. First Return** – If this is the first year that you are filing a Wisconsin return because the corporation wasn't in existence or didn't do business in Wisconsin in prior years, check here.

■ **A3. Final Return** – If the corporation ceased to exist or withdrew from Wisconsin during the year, check here and submit a copy of your plan of liquidation and federal Form 966 if the corporation liquidated.

■ **A4-6. Short Period** – Indicate that a short period return is being filed due to a change in the corporation's accounting period, a stock purchase or sale, or termination of S-corporation election by checking the appropriate line.

■ **B. Extended Due Date –** If the tax-option (S) corporation has an extension of time to file its Wisconsin return, check here and enter the extended due date.

■ **C. No Business Transacted in Wisconsin –** If the corporation was incorporated under Wisconsin law or licensed to do business in Wisconsin but had no property or activity in Wisconsin for the taxable year, check here. Submit a complete copy of the corporation's federal return with your Form 5S.

■ **D. Filing Form 1CNS –** Check here if the tax-option (S) corporation is filing a composite Wisconsin individual income tax return (Form 1CNS) on behalf of its qualified and participating nonresident shareholders.

■ **E. Effective Date of Wisconsin Tax-Option Corporation Election –** Enter the month, day, and year that the corporation's Wisconsin tax-option (S) corporation election became effective.

■ **F. Schedule RT Required –** Check here if the tax-option (S) corporation is filing Schedule RT, *Wisconsin Related Entity Expenses Disclosure Statement*, with its return. Schedule RT is generally required if the tax-option (S) corporation pays, accrues, or incurs more than $100,000 of expenses to a related person or entity in the taxable year. See the Schedule RT instructions for details of the requirement to file Schedule RT.

■ **G1-G2. Wisconsin Property and Total Company Property –** Enter the total amount of the company's real and tangible property located in Wisconsin and the company's total amount of real and tangible property everywhere. Use the cost basis of the property as of the end of the year. Include the following types of property:

• Land

• Buildings

• Furniture and Fixtures

• Transportation equipment

• Machinery and other equipment

• Inventories

Include only property that is owned by the tax-option (S) corporation; you do not need to include property you are renting.

■ **H1-H2. Wisconsin Payroll and Total Company Payroll –** Enter the total amount of the company's payroll located in Wisconsin and the company's total amount of payroll everywhere. Include only amounts attributable to employees of the corporation. In the computation of payroll located in Wisconsin, include individuals that satisfy one or more of the following:

• The individual's service is performed entirely in Wisconsin.

• The individual's service is performed in and outside Wisconsin, but the service performed outside Wisconsin is incidental to the individual's service in Wisconsin.

• A portion of the individual's service is performed in Wisconsin and the base of operations of the individual is in Wisconsin.

• A portion of the individual's service is performed in Wisconsin and, if there is no base of operations, the place from which the individual's service is directed or controlled is in Wisconsin.

• A portion of the individual's service is performed in Wisconsin 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 Wisconsin.

■ **I. Internal Revenue Service Adjustments –** If a corporation's federal tax return is adjusted by the IRS and the adjustments affect the Wisconsin net tax payable, the amount of a Wisconsin credit, a Wisconsin net business loss carryforward, or a Wisconsin capital loss carryforward, you must report the adjustments to the Department of Revenue within 90 days after they become final.

File your amended return electronically by using one of the third party software providers:

revenue.wi.gov/eserv/corp/index.html

If you have an approved electronic filing waiver, send a copy of the final federal audit reports and any associated amended Wisconsin returns to the Wisconsin Department of Revenue, PO Box 8908, Madison, WI 53708-8908.

If submitting a federal audit report without an amended return, mail it to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 3-107, PO Box 8906, Madison, WI 53708-8906. Don't attach these items to the tax return for the current year.

Lines 1 Through 7

A foreign corporation subject to the Wisconsin income tax rather than the franchise tax (see page 2) should skip lines 1 through 6 and begin with line 7. All other tax-option (S) corporations subject to the Wisconsin franchise tax begin with line 1.

■ **Line 1. Federal, State, and Municipal Government Interest** – Enter the amount of interest income received from the following obligations:

- Obligations of the United States government and its instrumentalities.
- Municipal housing authority bonds issued under sec. 66.1201, Wis. Stats.
- Municipal redevelopment authority bonds issued under sec. 66.1333, Wis. Stats.
- Housing and community development authority bonds issued under sec. 66.1335, Wis. Stats.
- Bonds issued by the Wisconsin Housing and Economic Development Authority (WHEDA) under sec. 234.65,

Wis. Stats., to fund an economic development loan to finance construction, renovation, or development of property that would be exempt from property tax under sec. 70.11(36), Wis. Stats. (professional sports and entertainment home stadiums).

- Bonds issued by a local exposition district under subch. II of ch. 229, Wis. Stats.
- Bonds issued under sec. 66.0621, Wis. Stats., by a local professional baseball park district, a local professional football stadium district, or a local cultural arts district.
- Bonds issued on or after January 1, 2004, by the Wisconsin Housing and Economic Development Authority under sec. 234.08 or 234.61, Wis. Stats., to fund multifamily affordable housing projects or elderly housing projects.
- Bonds issued by the Wisconsin Aerospace Authority under sec. 114.70 or 114.74, Wis. Stats.
- Bonds issued on or after October 27, 2007, by the Wisconsin Health and Education Facilities Authority to fund acquisition of information technology hardware or software
- Conduit revenue bonds issued under sec. 66.0304, Wis. Stats., if the bonds or notes are used to fund multifamily affordable housing projects or elderly housing projects in Wisconsin and the Wisconsin Health and Education Facilities Authority has the authority to issue the bonds. The bonds or notes are used by a health facility to fund the acquisition of information technology hardware or software in Wisconsin and the Wisconsin Health and Educational Facilities Authority has the authority to issue the bonds. The bonds or notes issued to fund a redevelopment project or housing project in Wisconsin.
- Wisconsin housing and economic development authority bonds if the bonds or notes are issued to provide loans to a public affairs network under s. 234.75(4), Wis. Stats.
- Wisconsin Health and Educational Facilities Authority Bonds if the bonds or notes are issued for the benefit of a person who is eligible to receive the proceeds from another entity for the same purpose for which the bonds or notes are issued and the interest income received from the other bonds or notes is exempt from Wisconsin taxation.

The corporation may reduce the amount of interest income by any applicable amortizable bond premium or interest paid to purchase or hold these federal, state, or municipal government obligations. For Wisconsin purposes, neither the amortizable bond premium nor the related interest expenses are deductible by the shareholders since this federal, state, and municipal government interest isn't taxable to them.

■ **Line 2. Wisconsin Apportionment Percentage** – If the tax-option (S) corporation is not using apportionment, enter "100.0000%" on line 2 and check the100% apportionment box. If the corporation is using apportionment, enter the apportionment percentage from Form A-1, *Wisconsin Apportionment Data for Single Factor Formulas*, or Form A-2, *Apportionment Data for Multiple Factor Formulas*, as appropriate. If you are using a special apportionment formula on Form A-2, check the designated space next to line 2. If using separate accounting, check the designated space next to line 2.

■ **Line 3. Interest Income Attributable to Wisconsin** – Multiply the amount on line 1 by the percentage on line 2. Nonunitary, multistate corporations should enter the amount of federal, state, and municipal government interest attributable to Wisconsin as determined under the separate accounting method.

CAUTION: A tax-option (S) corporation cannot offset a net operating loss carryforward from a year when it was a regular (C) corporation against the interest income reported on line 3. Sections 71.26(4) and 71.365(2), Wis. Stats., prohibit tax-option (S) corporations from claiming net business loss carryforwards.

■ **Line 4. Franchise Tax** – Enter 7.9% of the amount reported on line 3.

■ **Line 5. Manufacturer's Sales Tax Credit** – Enter the manufacturer's sales tax credit carryforward from Schedule MS, line 3. A tax-option (S) corporation that had $25,000 or less of unused manufacturer's sales tax credit as of the beginning of its 2006 taxable year may claim any remaining unused credit. A tax-option (S) corporation's credit carryforward consists of the following:

- Unused credits computed for taxable years beginning before January 1, 1998.
- Unused credits computed for taxable years beginning after December 31, 1997, that were not passed through to shareholders.

CAUTION: You may not offset the manufacturer's sales tax credit against the built-in gains tax or the economic development surcharge.

■ **Line 6. Net Tax** – Subtract line 5 from line 4. If line 5 is more than line 4, enter zero.

■ **Line 7. Additional Tax on Tax-Option (S) Corporations**– Complete Schedule Q, page 2, and enter the amount of additional tax.

Schedule Q – Additional Tax on Certain Built-In Gains

A tax is imposed on a tax-option (S) corporation that has a "recognized built-in gain" during the "recognition period." A tax-option (S) corporation may be liable for the tax on built-in gains if *all* of the following are true:

- It was a regular (C) corporation before making its current election to be treated as a tax-option (S) corporation,
- It made its current election after 1986,
- It has a recognized built-in gain within 10 years from the first day of the first taxable year it became a tax-option (S) corporation under its current election (the recognition period), and
- The net recognized built-in gains for prior taxable years don't exceed the net unrealized built-in gain.

The Wisconsin built-in gains tax also may apply to a federal S corporation that has elected not to be a tax-option (S) corporation for Wisconsin purposes and subsequently re-elects Wisconsin tax-option (S) corporation status.

Line 1. Enter the amount that would be the corporation's taxable income for the taxable year if only recognized built-in gains and recognized built-in losses were taken into account. This is the amount computed under IRC section 1374(d)(2)(A)(i), but determined using the Wisconsin basis of the assets. Prepare a schedule showing the computation details and submit it with your Form 5S.

A "recognized built-in gain" is any gain recognized during the recognition period on the sale or distribution (disposition) of any asset, except to the extent the corporation establishes that:

- The asset wasn't held by it on the first day of the first year that the current tax-option (S) election became effective, or
- The recognized gain on any asset exceeds the excess of the fair market value of the asset on the date of conversion over the adjusted basis of the asset on that first day.

Recognized built-in gain for the taxable year includes any carryover of net recognized built-in gain from the preceding taxable year. Include on line 1 the carryover amount as recognized built-in gain.

A "recognized built-in loss" is any loss recognized during the recognition period on the disposition of any asset to the extent the corporation establishes that –

- It owned the asset on the date that the current tax-option (S) election became effective, and
- The loss doesn't exceed the excess of the asset's adjusted basis on the date of conversion over its fair market value at that time.

Line 2. Enter the amount that would have been the corporation's Wisconsin net income before apportionment if it were a regular (C) corporation. Generally, this is the taxable income determined under IRC section 1375(b)(1)(B), adjusted for any modifications prescribed by Wisconsin law. Net business loss carryforwards or capital loss carryforwards aren't used in figuring the net income. Submit with your Form 5S a schedule showing the computation details.

Line 3. Enter the smaller of the amount on line 1 or line 2. The net recognized built-in gain on which the tax may be imposed is limited by the corporation's net unrealized built-in gain. The "net unrealized built-in gain" is the excess of the fair market value of the corporation's assets over the aggregate adjusted bases of those assets on the date the current tax-option (S) election became effective.

If the amount on line 1 exceeds the amount on line 2, the excess is treated as a recognized built-in gain in the succeeding taxable year. This carryover provision applies only in the case of a corporation that made its tax-option (S) election on or after March 31, 1988.

Line 4. If the tax-option (S) corporation is not using apportionment, enter "100.0000%" on line 4. (Line 4 is required if there are any amounts entered on Schedule Q.) If the corporation is using apportionment, enter the apportionment percentage from Form A-1 or Form A-2, as appropriate. If you are using a special apportionment formula on Form A-2, check the designated space next to line 4.

Line 5. Multiply the amount on line 3 by the percentage on line 4. Nonunitary, multistate corporations should enter the net recognized built-in gain attributable to Wisconsin as determined under the separate accounting method.

Line 6. Enter any available Wisconsin net business loss carryforward from taxable years for which the corporation wasn't a tax-option (S) corporation. Include any capital loss carryforward to the extent of net capital gain included in recognized built-in gain for the taxable year after apportionment. See IRC section 1374(b)(2) for details. Prepare a schedule showing the computation details and submit it with your Form 5S.

Schedule S – Economic Development Surcharge

An economic development surcharge applies to tax-option (S) corporations that are required to file Form 5S, with certain exceptions. The surcharge doesn't apply to domestic corporations that don't have any business activities in Wisconsin, foreign corporations that don't have nexus with Wisconsin, and corporations that have less than $4 million of gross receipts from all activities.

Line 1. Complete Schedule 5K and enter the income (loss) from Schedule 5K, line 19, column d. This is the net income

(loss) as determined under Wisconsin law, before application of apportionment or separate accounting. It generally includes interest income from federal, state, and municipal government obligations. However, for a foreign corporation subject to the income tax rather than the franchise tax, don't include interest income that is exempt from state income tax under federal or Wisconsin law.

Line 2. If the tax-option (S) corporation is not using apportionment, enter "100.0000%" on line 2. If the corporation is using apportionment, enter the apportionment percentage from Form A-1 or Form A-2, as appropriate. If you are using a special apportionment formula on Form A-2, check the designated space next to line 2. If the corporation is using separate accounting, enter 100.0000% on line 2.

Line 3. Multiply the amount on line 1 by the percentage on line 2. Nonunitary, multistate corporations should enter the net income (loss) attributable to Wisconsin as determined under the separate accounting method.

Line 4. Enter nonapportionable and separately apportioned income that was not included on line 1.

Line 6. Enter the greater of $25 or 0.2% (0.002) of the amount on line 5, but not more than $9,800.

Form 5S, Pages 1 & 2: Lines 9 Through 25

■ **Line 9. Endangered Resources Donation** – Your donation supports the preservation and management of more than 200 endangered and threatened Wisconsin plants and animals. It also helps protect Wisconsin's finest remaining examples of prairies, forests, and wetlands.

Support endangered resources in Wisconsin. Fill in line 9 with the amount you wish to donate. Your gift will either reduce your refund or be added to tax due.

You can make an online donation at the following web site:

dnr.wi.gov/topic/EndangeredResources/DonateOnline.asp

You can also send a check directly to the Endangered Resources Fund, Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921.

■ **Line 10. Veterans Trust Fund Donation** – You may designate an amount as a veterans trust fund donation. Your donation will be used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents. Fill in line 10 with the amount you wish to donate. Your donation will either reduce your refund or be added to tax due.

■ **Line 12. Estimated Tax Payments** – Enter estimated tax payments made, and an overpayment applied from the prior year's return, minus any "quick refund" applied for on Form 4466W.

■ **Line 13. Wisconsin Tax Withheld on Amount on Line 1 –** Fill in this line if part or all of the interest income reported on Form 5S, line 1, was passed through from another entity of which you are a member **and** that entity withheld Wisconsin tax on that interest. Do not include tax withheld on income that is passed through to and taxable to your shareholders. To substantiate the withholding claimed on line 13, you must include a copy of Schedule 3K-1 or 2K-1 (as applicable) from that other entity with your Form 5S.

CAUTION: Do not include any withholding on line 13 that is attributable to income you pass through to your shareholders on Schedule 5K-1.

■ **Line 14. Amended Return, Amount Previously Paid –** Complete this line only if this is an amended 2016 Form 5S. Fill in the amount of tax you paid with your original Form 5S plus any additional amounts paid after it was filed.

If you did not pay the full amount shown on your original Form 5S, fill in only the portion that you actually paid. Also, include any additional tax that may have resulted if your original return was changed or audited. This includes additional tax paid with a previously filed 2016 amended return and additional tax paid as a result of a department adjustment to your return. Do not include payments of interest or penalties.

■ **Line 16. Amended Return, Amount Previously Refunded –** Complete this line only if this is an amended 2016 Form 5S. Fill in the refund from your original 2016 return (not including the amount applied to your 2017 estimated tax).

If your refund was reduced because you owed underpayment interest or any penalties, fill in the amount of your refund before the reduction for underpayment interest or penalty. If your 2016 return was adjusted by the department, fill in the refund shown on the adjustment notice you received. If the adjustment notice shows a tax due rather than a refund, complete line 14 instead of line 16.

■ **Line 18. Interest, Penalty, and Late Fee Due** – Enter any interest, penalty, and late fee due from Form U, line 17 or 26. Check the designated space if you computed underpayment interest using the annualized income installment method on Form U, page 2. **Amended Return:** If you previously were assessed interest for underpayment of estimated taxes, complete an amended Form U, Part I, based on the total of the amounts shown on lines 6 and 8. Enter the difference between the underpayment interest from the amended Form U, line 17, and the amount you previously

paid on line 18. Show an overpayment as a negative number. File Form U with your amended return. Otherwise, leave line 18 blank. The Department will compute interest on the amount of refund approved or tax owed.

■ **Line 19. Tax Due** – If the total of lines 11 and 18 is larger than line 17, enter the amount owed. Pay via EFT through My Tax Account, the Department's free online business tax system, or mail your check with a 2016 Form Corp-ES, *Corporation Estimated Tax Voucher*, to the address shown on the voucher. Otherwise, **paper clip** your check to the front of Form 5S if filing by paper and you have an approved electronic filing waiver attached to the return.

■ **Line 20. Overpayment** – If line 17 is larger than the total of lines 11 and 18, subtract the total of lines 11 and 18 from line 17.

■ **Line 21. 2017 Estimated Tax** – Enter the amount of any overpayment from line 20 that is to be credited to the corporation's 2017 estimated tax. The balance of any overpayment will be refunded. **Amended Return:** If you have already filed your 2017 return, enter the overpayment that you claimed as a credit on your 2017 return from your previously filed original or amended 2016 return. Otherwise, you may allocate the overpayment from line 20 between line 21 and line 22 as you choose.

■ **Line 23. Gross Receipts –** Enter total company gross receipts, gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross receipts passed through from other entities, and all other receipts that are included in gross income before apportionment for Wisconsin franchise or income tax purposes.

■ **Line 24. Total Assets –** Enter the total company assets from the federal return.

■ **Line 25. Total Nonresident Withholding Paid –** If the tax-option (S) corporation paid withholding tax on pass-through income reportable to nonresident shareholders for the 2016 taxable year, enter on line 25 the total amount of withholding paid for the 2016 taxable year. This amount should match the amount on Schedule 5K, line 13j.

Additional Information, Third Party Designee, Signatures, and Supplemental Schedules

■ **Additional Information Required** – Answer questions 1 through 6 on Form 5S, page 2.

■ **Third Party Designee –** If you want to allow a tax preparer or tax preparation firm, or any other person you choose to discuss your 2016 tax return with the Department of Revenue, check "Yes" in the "Third Party Designee" area of your return. Also, fill in the designee's name, phone number, and any five digits the designee chooses as his or her personal identification number (PIN). If you check "Yes," you are authorizing the department to discuss with the designee any questions that may arise during the processing of your return. You are also authorizing the designee to:

- Give the department any information missing from your return,
- Call the department for information about the processing of your return or the status of your refund or payment(s), and
- Respond to certain department notices about math errors, offsets, and return preparation.

You are not authorizing the designee to receive any refund check, bind you to anything (including any additional tax liability), or otherwise represent you before the department. If you want to expand the designee's authorization, you must submit Form A-222 (*Power of Attorney)*. The authorization will automatically end no later than the due date (without regard to extensions) for filing your 2017 tax return.

■ **Signatures** – An officer of the corporation must sign the form at the bottom of page 2. If the return is prepared by someone other than an employee of the corporation, the individual who prepared the return must sign the form, by hand, in the space provided for the preparer's signature and furnish the preparing firm's federal employer identification number. A self-employed individual must enter "PTIN" and the preparer tax identification number in the space for the preparer's federal employer identification number.

■ **Supplemental Schedules** – File the following items as supplemental schedules to your Form 5S:

- Federal Form 1120S.
- Supporting schedules for Form 1120S, including Schedule M-3 if required for federal purposes.
- Supporting schedules for Form 5S (supporting schedules that are not Department-prescribed forms may be submitted as Portable Document Format (*.pdf) documents with electronic returns).
- Wisconsin Schedule 5K-1 for each shareholder.
- A list of your solely owned LLCs and QSubs. Submit Schedule DE with your return.
- Any extension of time to file your return.
- If the tax-option (S) corporation has a nonresident shareholder who is not subject to income or franchise tax and would otherwise be subject to withholding tax based on income passed through to that shareholder, attach a statement from that shareholder stating why no tax was withheld.

- If you are filing an amended return, an explanation of the changes made, any supporting Department-prescribed forms or schedules, and a worksheet showing how you figured your refund or additional amount owed.

If you have an approved electronic filing waiver and are filing Form 5S on paper, **do not staple, fasten or bind these supplemental schedules to your return. Use paper clips instead.**

Specific Instructions for Schedule 5K

Schedule 5K is a summary schedule of all the shareholders' shares of the tax-option (S) corporation's income, deductions, credits, etc., as computed under Wisconsin law, similar to federal Schedule K.

Schedule 5K, Columns b Through d

■ **Column b. Federal Amount –** Enter the applicable amounts from federal Schedule K in column b of Schedule 5K. For dividends and the net long-term capital gain (loss) items reported on lines 5 and 8, use the totals from federal Schedule K.

■ **Column c. Adjustment –** Enter in column c any adjustments to the federal amount necessary to arrive at the amount under Wisconsin law. Show additions as a positive number. Show subtractions as a negative number. Use Schedule 5K – *Shareholder's Pro Rata Share of Additions and Subtractions* on page 6 of Form 5S to account for the additions and subtractions. See the instructions for Schedule 5K – Shareholder's Pro Rata Share of Additions and Subtractions.

However, don't make any adjustments on Schedule 5K to exclude a nonresident or part-year resident shareholder's share of tax-option (S) items that are attributable to business outside Wisconsin. These adjustments will be made on the Schedule 5K-1 of each affected shareholder, as described in the instructions for Schedule 5K-1 that follow.

For any adjustments you enter in column c, you must prepare Schedule 5K – *Shareholder's Pro Rata Share of Additions and Subtractions* on page 6 of Form 5S and submit it with your return. See the section that follows for examples of the adjustments that you are required to enter in column c.

■ **Column d. Wisconsin Amount –** Combine the amount in column b with any adjustment in column c and enter the result in column d.

Adjustments Reportable on Schedule 5K, Column c

You must make adjustment on Schedule 5K, column c in the following situations:

1. Adjustments for IRC provisions not adopted for Wisconsin purposes. As mentioned earlier in these instructions, Wisconsin has not fully adopted the Internal Revenue Code (IRC) as amended to December 31, 2013. If the federal amount in column b is affected by an IRC provision not adopted by Wisconsin, an adjustment must be computed in column c.

2. Basis, Section 179, Depreciation Differences – Difference in federal and Wisconsin basis of depreciated or amortized assets:

Starting with the first taxable year beginning in 2014, adjustments are to be made over a 5-year period for the difference between the Wisconsin adjusted basis and the federal adjusted basis of assets owned on the last day of the taxable year beginning in 2013. The assets must have been depreciated or amortized for both Wisconsin and federal tax purposes. As a result of these adjustments, the Wisconsin adjusted basis and the federal adjusted basis of these assets is deemed to be equal on the first day of the taxable year beginning in 2014.

You must first determine the difference between the Wisconsin adjusted basis and the federal adjusted basis of all assets that are being depreciated or amortized on the last day of your taxable year beginning in 2013. This would be on December 31, 2013, if you file your tax return on a calendar-year basis.

If the total federal adjusted basis of the assets is less than the total Wisconsin adjusted basis, a subtraction must be claimed to adjust for this difference. As result of this subtraction, your Wisconsin adjusted basis of all depreciated or

amortized assets on the first day of your taxable year beginning in 2014 (January 1, 2014, for calendar-year filers) will be the same as the federal adjusted basis.

If the total Wisconsin adjusted basis is more than the total federal basis, complete the following worksheet to determine the amount of your subtraction for 2014 and each of the next 4 years.

Worksheet for Difference in Basis
(Keep for your records)

1. Combined Wisconsin adjusted basis of all depreciated and amortized assets as of the last day of the taxable year beginning in 2013……..…_____
2. Combined federal adjusted basis of all depreciated and amortized assets as of the last day of your taxable year beginning in 2013……..…_____
3. Subtract line 2 from line 1……_____
4. Multiply line 3 by .20 (20%). This is your subtraction for 2016……..._____

If the total federal adjusted basis of the assets is more than the total Wisconsin adjusted basis, complete the worksheet below to determine the required addition to income. As result of this addition, your Wisconsin adjusted basis of all depreciated or amortized assets on the first day of your taxable year beginning in 2014 (January 1, 2014, for calendar-year filers) will be the same as the federal adjusted basis.

Worksheet for Difference in Basis
(Keep for your records)

1. Combined federal adjusted basis of all depreciated and amortized assets as of the last day of the taxable year beginning in 2013……..…_____
2. Combined Wisconsin adjusted basis of all depreciated and amortized assets as of the last day of your taxable year beginning in 2013……..…_____
3. Subtract line 2 from line 1……_____
4. Multiply line 3 by .20 (20%). This is your addition to income for 2016……._____

Enter the amount by which the Wisconsin deduction for depreciation or amortization exceeds the federal deduction for depreciation or amortization. Include a schedule showing the computation details.

These differences can happen because of IRC sections not adopted for Wisconsin purposes and electing a different depreciation method under the Internal Revenue Code in effect for Wisconsin purposes.

3. Differences between the federal and Wisconsin bases of assets disposed of during the taxable year. Sales of assets with different Wisconsin basis than federal basis will also require you to make adjustments in column c. For example, a corporation sold the following assets, which had been held more than one year:

	Selling Price	Wisconsin Basis	Federal Basis
Equipment	$1,000	$1,500	$500
Machinery	15,000	5,000	17,500
Building	200,000	150,000	120,000

The gains (losses) realized on these transactions are –

	Wisconsin Gain (Loss)	Federal Gain (Loss)
Equipment	($500)	500
Machinery	10,000	(2,500)
Building	50,000	80,000
Total	$59,500	$78,000

The corporation must recompute a federal Form 4797, substituting the Wisconsin depreciation allowed or allowable and Wisconsin basis of the assets for the federal amounts.

For federal purposes, the $500 gain on the sale of the equipment is determined to be depreciation recapture, which is treated as ordinary gain and included in the corporation's ordinary income or loss on Form 5S, Schedule 5K, line 1, column b.

For Wisconsin purposes, $5,000 of the gain on the sale of the machinery is determined to be depreciation recapture, which is treated as ordinary gain.

The corporation enters $4,500 ($5,000 Wisconsin ordinary gain minus $500 federal ordinary gain) on Schedule 5K, line 1, column c. The corporation makes the following entries on Schedule 5K, line 9: $77,500 in column b, $(23,000) in column c, and $54,500 in column d.

4. Different elections for Wisconsin and federal purposes. For example, since Wisconsin does not allow a credit for foreign taxes paid or the federal work opportunity credit, foreign taxes and wages included in the computation of the federal work opportunity credit may be deducted for Wisconsin purposes. The corporation may elect to deduct these expenses on line 1, column c.

5. Additions for tax credit amounts. Certain tax credits computed by the tax-option (S) corporation are required to be added back to the tax-option (S) corporation's ordinary income (line 1). These credits include the following:

- Business development credit
- Community rehabilitation program credit
- Development zones credits
- Economic development tax credit
- Enterprise zone jobs credit
- Jobs tax credit
- Manufacturing and agriculture credit
- Manufacturing investment credit
- Research expense credit
- Technology zone credit

6. Additions for state taxes. For Wisconsin purposes, 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 by tax-option (S) corporations. These amounts are adjustments on line 1. Also show nondeductible taxes as additional nondeductible expenses on Schedule 5K, line 16c.

7. Adjustments for related entity expenses. Tax-option (S) corporation must make an addition modification to "add back" interest, rental, or intangible expenses, or management fees paid, accrued, or incurred to a related entity. After the tax-option (S) corporation makes this addition modification, the tax-option (S) corporation completes Schedule RT to determine if it is eligible for a deduction for any of the amount added back. The tax-option (S) corporation then makes a subtraction modification in the amount for which it is eligible for a deduction.

See the Schedule RT instructions for further details of the expenses that require this modification and the specific criteria that must be met in order to deduct related entity interest, rental, intangible expenses, or management fees.

The tax-option (S) corporation reports the addition modifications for related entity expenses on Schedule 5K, line 18a. For the amount eligible for a deduction, the tax-option (S) corporation enters the subtraction amount on Schedule 5K, line 18b. Additionally, these amounts must be reported as adjustments in column c on the lines to which the expenses relate. For example, if the related entity rental expense is an item of ordinary income, the modifications must also be reported on Schedule 5K, line 1, column c.

8. Subtraction for expenses disallowed to related entity. If the tax-option (S) corporation has interest, rental, or intangible income, or management fees from a related entity, and that related entity was ineligible to claim a deduction for the interest, rental, or intangible expenses, or management fees because it did not meet the criteria set forth in Schedule RT, the tax-option (S) corporation may make a subtraction modification to exclude the income corresponding to the expense that the payor could not deduct. The tax-option (S) corporation makes the subtraction on the line of Schedule 5K corresponding to the type of income being modified. See Schedule RT-1 and instructions for further details on the treatment of disallowed expenses.

9. Adjustments for built-in gains tax. IRC section 1366(f), relating to the reduction in pass-through income for taxes at the S-corporation level, is modified by substituting the Wisconsin built-in gains tax for the taxes imposed under IRC sections 1374 and 1375. Thus, for Wisconsin purposes, the gain on the sale of an asset is reduced by any Wisconsin built-in gains tax paid by the corporation on that asset. For federal purposes, however, the gain is reduced by the federal built-in gains tax. The difference between the federal and Wisconsin built-in gains tax amounts must be reported in column c.

10. Additions for federal capital gains and excess net passive income taxes. If the tax-option (S) corporation reduced net long-term capital gain by an amount of federal capital gains tax or reduced items of passive investment income by an amount of federal excess net passive income tax, those tax amounts must be reported as additions in column c.

11. Differences in taxable interest income. Additions to or subtractions from the federal interest income amounts may be required for the following items:

- If the interest income reported on line 4, column b, includes any interest from obligations of the United States government and its instrumentalities, identify this amount on a separate schedule for line 17d. Do not subtract this amount on Schedule 5K, line 4, column c.
- If the tax-exempt interest income reported on line 16a, column b, includes any interest that is exempt for federal purposes but taxable by Wisconsin, such as state and local government bond interest, report this amount as an *addition* on line 4, column c, and as a s*ubtraction* on line 16a, column c.

12. Differences for other income and expense items. Income reported on line 16b that is exempt for federal purposes but taxable by Wisconsin is shown as a *subtraction* in column c. If more income is nontaxable for Wisconsin purposes than for federal purposes, show the additional amount of exempt income as an *addition*. The amount under Wisconsin law in column d is the amount of tax-exempt income for Wisconsin purposes.

Expenses on line 16c that are nondeductible federally but deductible for Wisconsin purposes are shown as *subtractions* in column c. If more expenses are nondeductible for

Wisconsin purposes than for federal purposes, show the additional amount of nondeductible expenses as an *addition*. The amount under Wisconsin law in column d is the nondeductible expense for Wisconsin purposes.

13. Differences in accounting for distributions. Adjustments to the federal amounts of property distributions and dividend distributions from accumulated earnings and profits may be necessary because of differences between the Wisconsin and federal accumulated adjustments accounts, previously taxed undistributed income, and accumulated earnings and profits. These differences may occur because the computation of Wisconsin and federal "net income (loss)" differed for the 1979 through 1986 taxable years and Wisconsin didn't recognize tax-option (S) corporations for years before 1979. See the instructions for Schedule 5M for more information about distributions.

Report the dividend distributions entered on line 17c to the shareholders on Schedule 5K-1, line 17c, for Wisconsin. This differs from the federal requirement to report the amount of the dividends on Form 1099-DIV rather than on Schedule K-1.

Credits Reportable on Schedule 5K, Line 13

To determine if you are eligible for any credits, see Publication 123, *Business Tax Incentives*, or refer to the instructions to the credit schedules referenced below. Except as otherwise indicated, you must file the credit schedule referenced below with your Form 5S in order to claim the credits on Schedule 5K.

Enter the abbreviation of the credit you are claiming next to the word "schedule" on line 13. The abbreviation for each credit is located in the upper left hand corner of the credit schedule and in parenthesis below. Use a separate line for each credit you are claiming. For example, if you are claiming the enterprise zone jobs credit, enter "EC" next to the "Schedule" line.

■ **Angel Investment Credit (VC) –** Enter the angel investment credit computed from Schedule VC, line 4.

■ **Business Development Credit (BD) –** Enter the business development credit computed from Schedule BD, line 3.

■ **Community Rehabilitation Program Credit (CM) –** Enter the community rehabilitation program credit from Schedule CM, line 5.

■ **Development Zone Capital Investment Credit (DC)** – Enter the development opportunity zone or agricultural or airport development zone capital investment credit computed from Schedule DC, line 13.

■ **Development Zones Credit (DC) –** Enter the development zones credit computed from Wisconsin Schedule DC, line 5.

■ **Early Stage Seed Investment Credit (VC) –** Enter the early stage seed investment credit computed from Schedule VC, line 11.

■ **Economic Development Tax Credit (ED) –** Enter the economic development tax credit computed from Wisconsin Schedule ED, line 3.

■ **Enterprise Zone Jobs Credit (EC) –** Enter the enterprise zone jobs credit computed from Schedule EC, line 3.

■ **Jobs Tax Credit (JT) –** Enter the jobs tax credit computed from Schedule JT, line 5.

■ **Manufacturing Credit (MA-M)** – Enter the manufacturing credit computed from Schedule MA-M, lines 18 or 18b.

■ **Agriculture Credit (MA-A)** – Enter the agriculture credit computed from Schedule MA-A, lines 18 or 18b.

■ **Manufacturing Investment Credit (MI) –** Enter the amount of manufacturing investment credit for which the tax-option corporation obtained certification from the Wisconsin Department of Commerce. Submit a copy of the Department of Commerce certification with the tax option corporation's Form 5S. The tax-option corporation is not required to complete Schedule MI.

■ **Research Expense Credit (R)** – Enter the research expense credit from line 16 or 16b of Schedule R.

■ **Supplement to Federal Historic Rehabilitation Credit (HR) –** Enter the supplement to the federal historic rehabilitation tax credit computed from Wisconsin Schedule HR, line 6 or 6b.

■ **Technology Zone Credit (TC) –** Enter the technology zone credit computed from Wisconsin Schedule TC, line 6 or 6b.

■ **Line 13i. Credit for Tax Paid to Other States –** If the tax-option (S) corporation does business in another state and either the tax-option (S) corporation or its shareholders must pay an income tax on the tax-option (S) corporation's income earned there, Wisconsin resident shareholders may be able to claim credit on their individual income tax returns for their pro rata shares of the tax paid. Credit is allowed only if the income taxed by the other state is considered taxable income by Wisconsin. Fill in line 13i if:

- The corporation's S status is recognized by the other state and the corporation files a combined or composite return with that state on behalf of the shareholders who are nonresidents of that state and pays the tax on their pro rata shares of the corporation's income earned there.
- The corporation's S status is recognized by the other state and the corporation files a corporate franchise or income tax return with that state and pays tax on the income earned there that is attributable to the shareholders who are nonresidents of that state.

- The corporation's S status isn't recognized by the other state and the corporation pays an income or franchise tax on or measured by the income earned there.

Enter the postal abbreviation of the state in the space provided and the amount of income tax paid to that state. If tax is paid to more than three states, enter "See Attached" on one of the entry lines, enter the total amount on that line, and submit a schedule listing all states and the amount of income tax paid to each state. Submit with Form 5S a copy of the income tax return filed with each state for which a credit is claimed. If you electronically file the Form 5S, do an attachment to the e-filed return.

■ **Line 13j. Wisconsin Tax Withheld –** If the tax-option (S) corporation is subject to withholding tax on the Wisconsin income of nonresident shareholders, enter the amount of Wisconsin tax withheld. Generally, this will be the amount the tax-option (S) corporation paid with Form PW-1. However, if the tax-option (S) corporation is a member of another pass-through entity that already withheld Wisconsin tax on income passed through to the tax-option (S) corporation, also include the tax withheld by that other pass-through entity on the tax-option (S) corporation's share of income.

CAUTION: On line 13j, do not include any withholding attributable to federal, state, and municipal government interest income passed through to the tax-option (S) corporation from another pass-through entity. Use line 13 on page 1 to report this withholding.

"Other Items and Amounts" Reportable on Schedule 5K, Item 17d

For line 17d, submit a schedule showing any items and amounts not included on lines 1 through 17c that must be reported separately to the shareholders. Include the federal amount, any adjustment, and the amount determined under Wisconsin law for each item. Amounts that may be included on this schedule include, but are not limited to, the following:

U.S. Government Interest. If the interest income on line 4, column b, includes any interest from United States government obligations that is taxable for federal purposes but exempt from Wisconsin individual income taxes, report the amount of United States government interest on this schedule.

Disposal of Section 179 Property. If the tax-option (S) corporation disposed of property for which a section 179 expense deduction was claimed in a prior year, provide the following information for each asset: description of the property; gross sales price; both the federal and the Wisconsin cost or other basis plus expense of sale (*excluding* the tax-option (S) corporation's basis reduction in the property due to the section 179 expense deduction); depreciation allowed or allowable (*excluding* the section 179 expense deduction); and both the federal and Wisconsin amount of section 179 expense deduction passed through in previous years for the property and the tax-option (S) corporation's taxable years for which the amounts were passed through.

Manufacturing and agriculture credit information: If the tax-option (S) corporation computed the manufacturing and agriculture credit on Schedule MA-M and/or MA-A, include on line 17d the amount of income that was used to compute the manufacturing and agriculture credit so that the shareholders can use this information when completing Schedule MA-M or MA-A, Part II, *Computation of Business Income Limitation for individuals and fiduciaries*, if required.

Schedule 5K, Lines 18 Through 20

■ **Lines 18a and 18b. Related Entity Expenses –** On line 18a, enter in column d the amounts attributable to interest, rental, intangible expenses, or management fees paid, accrued, or incurred to a related entity. On line 18b, enter the amounts eligible for a deduction as determined by the Schedule RT instructions. If line 18a exceeds $100,000, the tax-option (S) corporation must file Schedule RT with its Form 5S. See the Schedule RT instructions for details.

■ **Line 19. Income (Loss) –** For each of columns b and d, combine lines 1 through 10. From the result, subtract the sum of lines 11 through 12d. Add or subtract, as appropriate, any income or deductions reported on line 17d that affect the computation of taxable income. Be sure to include in column d interest income from federal, state, and municipal obligations that is reportable on Form 5S, page 1, line 1.

If you reported on line 17d the disposition of property for which a section 179 expense deduction was claimed in a prior year, complete federal Form 4797 to figure the amount of gain or loss to combine with the other items of income, loss, and deduction. If the federal and Wisconsin bases of the property or section 179 deductions differ, use two Forms 4797. Disregard the special instructions for tax-option (S) corporations and shareholders when filling out Form 4797. On one Form 4797, determine the federal gain or loss to combine with the other federal amounts reported in column b. Complete a second Form 4797 to compute the Wisconsin gain or loss to combine with the other Wisconsin amounts reported in column d.

■ **Line 20. Gross Income –** Enter the tax-option (S) corporation's gross income that is reportable to Wisconsin. Gross income is the total amount received from all activities, before deducting the cost of goods sold or any other expenses. Gross income includes gross receipts from trade or business activities, gross rents and royalties, interest and dividends, the gross sales price of assets, and all other gross receipts. If the tax-option (S) corporation is a member of one or more other pass-through entities, include gross income attributable to those other pass-through entities.

Specific Instructions for Schedule 5M

You must complete Schedule 5M to determine the Wisconsin tax effect of distributions from the corporation to its shareholders. The tax effect of the distributions depends upon the balances of the Wisconsin Accumulated Adjustments Account (AAA) and the Wisconsin Other Adjustments Account (OAA).

Wisconsin Accumulated Adjustments Account

The Wisconsin Accumulated Adjustments Account (AAA) is an account of a tax-option (S) corporation that is used in taxable years beginning after December 31, 1982. The Wisconsin AAA will have a zero balance on the first day of the corporation's first taxable year as a tax-option (S) corporation beginning after December 31, 1982.

For purposes of the Wisconsin AAA, taxable income and deductible losses and expenses are the total company amounts as determined under Wisconsin law. The total company amounts are those before application of either apportionment or separate accounting to compute a multistate corporation's income, loss, and deductions attributable to Wisconsin.

If the tax-option (S) corporation is subject to a Wisconsin franchise tax measured by certain federal, state, and municipal government bond interest, that interest is treated as taxable income which increases the Wisconsin AAA.

As with the federal AAA, the Wisconsin AAA may have a negative balance. Due to past and current differences in the computation of income, loss, and deductions, the federal AAA and Wisconsin AAA may not have the same balance. This may create a difference between the federal and Wisconsin treatment of all or a part of any corporate distributions at the shareholder level.

The computation of Wisconsin AAA depends on whether the tax-option (S) corporation has accumulated earnings and profits from taxable years in which it operated as a C corporation:

Corporations Without Accumulated Earnings and Profits. At the end of the current taxable year, if the corporation doesn't have accumulated earnings and profits for Wisconsin purposes, the Wisconsin AAA is increased or decreased by the following items:

Increased by:

- Taxable income and gains, as determined under Wisconsin law.
- Nontaxable income earned in taxable year 1987 and thereafter (nontaxable income earned before 1987 didn't increase the Wisconsin AAA).

Decreased by:

- Deductible losses and expenses, as determined under Wisconsin law.
- Nondeductible expenses, not due to timing differences (that is, expenses that are never deductible for Wisconsin purposes).
- Property distributions, including cash, made by the corporation that are applicable to the Wisconsin AAA.
- The amount of the supplement to the federal historic rehabilitation tax credit and early stage seed investment credit computed.

Corporations With Accumulated Earnings and Profits. At the end of the current taxable year, if the corporation has accumulated earnings and profits for Wisconsin purposes, the Wisconsin AAA is increased or decreased by the following items *in the order listed*:

1. Increased by taxable income and gains, as determined under Wisconsin law.

2. Decreased by:

a. Deductible losses and expenses, as determined under Wisconsin law, and nondeductible expenses (that is, expenses that are never deductible for Wisconsin purposes). However, if the total decreases exceed the total increases above, the excess is a "net negative adjustment" that is taken into account in **c** below.

b. Property distributions, including cash, other than dividend distributions from accumulated earnings and profits, unless the corporation elects to reduce accumulated earnings and profits first. **Note:** Distributions cannot reduce the Wisconsin AAA below zero.

c. Any net negative adjustment.

d. The supplement to the federal historic rehabilitation tax credit and early stage seed investment credit computed.

For corporations with accumulated earnings and profits, the Wisconsin AAA isn't increased by nontaxable income nor decreased by nondeductible expenses related to nontaxable income. Instead, adjustments for nontaxable income and related expenses are made to the Wisconsin Other Adjustments Account as explained below.

Wisconsin Other Adjustments Account

The Wisconsin Other Adjustments Account (OAA) is maintained only by corporations that have accumulated earnings and profits at year-end. Since 1987 was the first year for which a Wisconsin OAA may be used, the Wisconsin OAA will have a zero balance at the beginning of the corporation's 1987 taxable year. The account is increased by nontaxable income and decreased by related expenses. The account is also decreased by any distributions during the taxable year that are applicable to the Wisconsin OAA. The Wisconsin OAA may not agree with the federal OAA.

Note: If the tax-option corporation is subject to a franchise tax measured by certain federal, state, and municipal government bond interest, that interest is treated as taxable income which increases the Wisconsin AAA, not the Wisconsin OAA.

Treatment of Distributions

For Wisconsin, property distributions, including cash, are generally treated as made from the following sources in the order shown:

1. A nontaxable distribution of net income to the extent of the Wisconsin AAA, but not in excess of the shareholder's Wisconsin stock basis. For distributions made in taxable years beginning on or after January 1, 1997, the Wisconsin AAA is determined without regard to any "net negative adjustment" for the taxable year. A net negative adjustment is the excess, if any, of reductions in the AAA for the taxable year, other than for distributions, over the increases in the AAA for the taxable year.

2. A nontaxable distribution of the shareholder's Wisconsin "previously taxed undistributed income" from the 1979 taxable year through the last taxable year beginning before January 1, 1983, but not in excess of the shareholder's Wisconsin stock basis after applying the distributions in 1 above.

3. A taxable dividend to the extent of Wisconsin accumulated earnings and profits.

4. A nontaxable distribution of exempt income to the extent of the Wisconsin OAA, but not in excess of the shareholder's Wisconsin stock basis after applying the distributions in 1 and 2 above.

5. A nontaxable return of capital to the extent of the shareholder's Wisconsin stock basis after applying the distributions in 1, 2, and 4 above.

All nondividend distributions in excess of basis are treated as taxable gain from the sale or exchange of property. Dividends are taxable as ordinary income.

If a tax-option corporation makes more than one distribution to its shareholders during its taxable year and the total distribution exceeds the amount in the Wisconsin AAA at the end of the corporation's taxable year determined without regard to any net negative adjustment for the taxable year, allocate the amount in the Wisconsin AAA among the distributions on a proportionate basis.

The tax-option (S) corporation may elect, with the consent of its affected shareholders, to modify the ordering rules for distributions as follows:

- To distribute accumulated earnings and profits before making distributions from the Wisconsin AAA.
- To make a deemed dividend.
- To forgo distributions of previously taxed income.

If a Subchapter S election is revoked or terminated, distributions of money during the post-termination transition period by the former tax-option (S) corporation to its shareholders are nontaxable to the extent of the corporation's Wisconsin AAA, but not in excess of a shareholder's stock basis. These nontaxable distributions reduce the adjusted basis of the shareholder's stock. Alternatively, the tax-option (S) corporation may elect, with the consent of its affected shareholders, to have distributions of money treated as dividends not made from the AAA to the extent of the corporation's accumulated earnings and profits for Wisconsin purposes.

For more information on how to determine the Wisconsin tax treatment of distributions from a tax-option (S) corporation, see Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders.* You may access this publication through the Department's web site at revenue.wi.gov/html/taxpubs.html.

Specific Instructions for Schedule 5K – Shareholder's Pro Rata Share of Additions and Subtractions

The purpose of this schedule is to provide detail for the amounts entered on lines 1 through 12d, column c, of Schedule 5K. The total amount from this schedule should equal the amount of the adjustments reported on lines 1 through 12d in column c of Schedule 5K.

For many situations, the amounts from the additions/subtractions schedule will be entered in column c, line 1 or 2 of Schedules 5K and 5K-1.

If a taxpayer only has ordinary income, the net addition/subtraction will be entered on line 1, column c of Schedules 5K and 5K-1. Conversely, if the taxpayer only has net rental income, the net addition/subtraction will be entered on line 2, column c of those schedules.

If the taxpayer has both ordinary business income and rental real estate income, the net addition/subtraction should be allocated between column c, lines 1 and 2 of Schedules 5K and 5K-1.

For situations where a taxpayer has multiple sources of income and is required to make numerous adjustments in column c, the appropriate addition/subtraction adjustment should be made on each income/expense line in column c of Schedules 5K and 5K-1. The total adjustments made to column c should equal the total adjustment on the addition/subtraction schedule.

Line-by-Line Instructions

Additions:

■ **Line 1. State Taxes –** Enter taxes imposed by Wisconsin, any other state, and 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 and that were deducted in computing federal taxable income.

■ **Line 2. Related Entity Expenses –** A corporation must make an addition modification to "add back" expenses attributable to transactions with related parties. The expenses that must be added back include the following, if paid, accrued, or incurred to a related entity:

- Interest expenses
- Rent expenses
- Management fees
- Intangible expenses

Corporations that are members, or beneficiaries of pass-through entities must include on line 2 their share of the pass through entity's related entity expenses shown on line 18a of Schedule 5K-1.

NOTE: If the corporation meets one of the specific conditions provided in the Wisconsin Statutes, the corporation may take a subtraction modification on line 12 for some or all of the amount added back on this line. See the instructions for line 12 for details.

Definitions Applicable to Line 2. In determining whether an addback of related entity expenses is necessary, the following definitions apply:

***"Related entity"* –** A related person under one of the following sections of the Internal Revenue Code (IRC):

- Section 267(b), which defines relationships through which taxpayers would be considered "related" for purposes of the disallowance of deduction or loss on transactions between related taxpayers
- Section 1563, relating to controlled groups of corporations, which is incorporated into section 267 by reference
- Section 707(b), relating to partners of partnerships, which is also incorporated into section 267 by reference

A "related entity" also includes certain real estate investment trusts (REITs) if they are not "qualified REITs." For more on qualified REITs, see *Wisconsin Tax Bulletin* #158, page 17, Questions A2 and A3.

***"Interest expenses"* –** Interest that would otherwise be deductible under section 163 of the IRC and otherwise deductible in the computation of Wisconsin income.

***"Rent expenses"* –** Gross amounts that would otherwise be deductible under the IRC, as modified for Wisconsin purposes, for the use of, or the right to use, real property and tangible personal property in connection with real property, including services rendered in connection with such property, regardless of how reported for financial accounting purposes and regardless of how computed.

***"Management fees"* –** Expenses and costs, not including interest expenses, pertaining to accounts receivable, accounts payable, employee benefit plans, insurance, legal matters, payroll, data processing, purchasing, taxation, financial matters, securities, accounting, or reporting on compliance matters or similar activities, to the extent that the amounts would otherwise be deductible in determining net income under the IRC as modified for Wisconsin purposes.

"Intangible expenses" **–** Any of the following, to the extent the amounts would otherwise be deductible in determining net income under the IRC as modified for Wisconsin purposes:

- Expenses, losses, or costs for, related to, or directly or indirectly in connection with, the acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property
- Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions
- Royalty, patent, technical, and copyright fees
- Licensing fees

If a corporation purchases an amortizable intangible asset from a related entity, the amortization expenses on that asset are considered intangible expenses and should be added back.

Schedule RT Filing Requirement for Amount on Line 2. If the amount a corporation reports on line 2 exceeds $100,000, the corporation must file Schedule RT, *Wisconsin Related Entity Expenses Disclosure Statement*, with its return. However, for corporations using apportionment, you may multiply the amount on line 2 by the apportionment percentage for purposes of determining whether you meet the $100,000 threshold for filing Schedule RT.

■ **Line 3. Expenses Related to Nontaxable Income –** Enter expenses included in federal taxable income that are directly or indirectly related to nontaxable income. Include a schedule with your return showing the payers and amounts of nontaxable income and explaining why that income isn't taxable.

Interest, dividends, and capital gains from the disposition of intangible assets are nontaxable if both of the following are true:

- The operations of the payer are not unitary with those of the payee, and
- The payer and payee are not related as parent company and subsidiary or affiliates and the investment activity from which the income is received is not an integral part of a unitary business.

Income may also be nontaxable under the principles of the U.S. Supreme Court decision in Allied-Signal v. Director, Div. of Taxation, 504 U.S. 768 (1992), if the investment is passive and does not serve an operational function.

For corporations subject to the Wisconsin income tax rather than the franchise tax, nontaxable income also includes interest on United States government obligations.

Examples of expenses related to nontaxable income include taxes, interest, and administrative fees related to the production of nontaxable income.

Also enter on this line any losses included in federal taxable income from disposing of assets, if gains from disposing those assets would have been non-taxable income if the assets were disposed of at a gain.

■ **Line 4. Basis, Section 179, Depreciation Differences –**

Difference in federal and Wisconsin basis of depreciated or amortized assets:

Starting with the first taxable year beginning in 2014, adjustments are to be made over a 5-year period for the difference between the Wisconsin adjusted basis and the federal adjusted basis of assets owned on the last day of the taxable year beginning in 2013. The assets must have been depreciated or amortized for both Wisconsin and federal tax purposes. As a result of these adjustments, the Wisconsin adjusted basis and the federal adjusted basis of these assets is deemed to be equal on the first day of the taxable year beginning in 2014.

You must first determine the difference between the Wisconsin adjusted basis and the federal adjusted basis of all assets that are being depreciated or amortized on the last day of your taxable year beginning in 2013. This would be on December 31, 2013, if you file your tax return on a calendar-year basis.

If the total federal adjusted basis of the assets is more than the total Wisconsin adjusted basis, complete the worksheet below to determine the required addition to income. As result of this addition, your Wisconsin adjusted basis of all depreciated or amortized assets on the first day of your taxable year beginning in 2014 (January 1, 2014, for calendar-year filers) will be the same as the federal adjusted basis.

Note: If the total Wisconsin adjusted basis is more than total federal adjusted basis, see the instructions for line 14.

Worksheet for Difference in Basis
(Keep for your records)

1. Combined federal adjusted basis of all depreciated and amortized assets as of the last day of the taxable year beginning in 2013……_____
2. Combined Wisconsin adjusted basis of all depreciated and amortized assets as of the last day of your taxable year beginning in 2013……_____
3. Subtract line 2 from line 1……_____
4. Multiply line 3 by .20 (20%). This is your addition to income for 2016.._____

Section 179 expenses:

Enter the amount by which the Wisconsin section 179 expense exceeds the federal section 179 expense.

For taxable years beginning on or after January 1, 2014, sections 179, 179A, 179B, 179C, 179D, and 179E of the Internal Revenue Code, related to expensing of depreciable business assets, apply for Wisconsin tax purposes. "Internal Revenue Code" means the federal Internal Revenue Code in effect for the year in which the property is placed in service.

For further information about the differences between the limitations for federal and Wisconsin purposes, see the section titled *Conformity with Internal Revenue Code and Exceptions* in the Form 5S instructions.

Depreciation/Amortization (not section 179 expense):

Enter the amount by which the federal deduction for depreciation or amortization exceeds the Wisconsin deduction. Include a schedule showing the computation details.

These differences can happen because of IRC sections not adopted for Wisconsin purposes and also because of differences that existed between Wisconsin and federal law for assets placed in service before January 1, 1987.

For 2014 and beyond, bonus depreciation was reinstituted by the federal government, and an adjustment is required to account for the depreciation difference because Wisconsin has not adopted federal bonus depreciation provisions. For Wisconsin purposes, depreciation, depletion, and amortization is computed based on the Internal Revenue Code in effect on January 1, 2014, and bonus depreciation was not in effect on that date.

■ **Line 5. Amount by Which the Federal Basis of Assets Disposed of Exceeds the Wisconsin Basis –** Enter the amount by which the federal basis of assets disposed of exceeds the Wisconsin basis. If more than one asset is disposed of, you may combine the bases of the assets so that you need only one entry on either this line. Provide a schedule showing the computation details.

For example, assume a corporation sold the following assets during the current taxable year:

	Federal Basis	**Wisconsin Basis**	**Difference**
Equipment	$1,500	$500	$1,000
Machinery	1,000	2,000	(1,000)
Building	20,000	10,000	10,000
Totals	$22,500	$12,500	$10,000

The amount to enter would be $10,000. If the Wisconsin bases of the assets had exceeded the federal bases, an entry would be made on line 15.

The modification may also apply in cases where a parent corporation disposes of subsidiary stock for which the basis is determined under Treas. Reg. §1.1502-32. See s. Tax 2.61(6)(f), Wisconsin Administrative Code, for details.

■ **Line 6. Addition for Credits Computed –** Enter the total amount of credits from the list provided that you computed on your 2016 return. Note: The manufacturing and agriculture credit is the credit computed in 2015.

■ **Line 6a.** Business development credit (Schedule BD)

■ **Line 6b.** Community rehabilitation program credit (Schedule CM)

■ **Line 6c.** Development zones credits (Schedule DC)

■ **Line 6d.** Economic development credit (Schedule ED)

■ **Line 6e.** Enterprise zone jobs credit (Schedule EC)

■ **Line 6f.** Jobs tax credit (Schedule JT)

■ **Line 6g.** Manufacturing and agriculture credit (2015 Schedule MA-M and MA-A)

■ **Line 6h.** Manufacturing investment credit (Schedule MI)

■ **Line 6i.** Research credits (Schedule R)

■ **Line 6j.** Technology zone credit (Schedule TC)

■ **Line 7. IRC Provisions Not Adopted for Wisconsin Purposes –** Wisconsin has not fully adopted the Internal Revenue Code (IRC) as amended to December 31, 2013. If the federal amount is affected by an IRC provision not adopted by Wisconsin, an adjustment must be computed.

■ **Line 8. Adjustment for Built-In Gains Tax –** IRC section 1366(f), relating to the reduction in pass-through income for taxes at the S-corporation level, is modified by substituting the Wisconsin built-in gains tax for the taxes imposed under IRC sections 1374 and 1375. Thus, for Wisconsin purposes, the gain on the sale of an asset is reduced by any Wisconsin built-in gains tax paid by the corporation on that asset. For federal purposes, however, the gain is reduced by the federal built-in gains tax.

■ **Line 9. Addition for Federal Capital Gains and Excess Net Passive Income Taxes –** If the tax-option (S) corporation reduced net long-term capital gain by an amount of federal capital gains tax or reduced items of passive investment income by an amount of federal excess net passive income tax, those tax amounts must be reported as additions on line 9.

■ **Line 10. Other Additions –** Enter any other additions that have not been accounted for in the preceding lines.

Subtractions:

■ **Line 12. Related Entity Expenses Eligible for Subtraction –** If the corporation made an addition modification for related entity expenses on line 2, this is where you report the amount that qualifies for a deduction. Enter the amount of the expenses from line 2, that are deductible using the criteria described in *Conditions for Deducting Related Entity Expenses*, below.

For corporations that are members or shareholder's of pass-through entities, also include the amount of allowable related entity expense reported on line 18b of Schedule 5K-1.

Conditions for Deducting Related Entity Expenses. Section 71.80(23)(a)3., Wis. Stats., provides that a related entity expense that was added back on line 2, qualifies for a deduction if all of the following conditions are met:

- The primary motivation for the transaction was one or more business purposes other than the avoidance or reduction of state income or franchise taxes;
- The transaction changed the economic position of the taxpayer in a meaningful way apart from tax effects; and
- The expenses were paid, accrued, or incurred using terms that reflect an arm's length relationship.

Factors that may indicate that the expense does not qualify for a deduction include the following:

- There was no actual transfer of funds from the taxpayer to the related entity, or the funds were substantially returned to the taxpayer, either directly or indirectly.
- If the transaction was entered on the advice of a tax advisor, the advisor's fee was determined by reference to the tax savings.
- The related entity does not regularly engage in similar transactions with unrelated parties on terms substantially similar to those of the subject transaction.
- The transaction was not entered into at terms comparable to arm's length as determined by Treas. Reg. 1.482-1(b).
- There was no realistic expectation of profit from the transaction apart from the tax benefits.
- The transaction resulted in improper matching of income and expenses.
- An expense for the transaction was accrued under FIN 48.

The statutes (sec. 71.80(23)(a)1. and 2., Wis. Stats.) provide some additional conditions under which a related entity expense may qualify for a deduction, subject to some important exceptions. Those conditions are:

- If the expense was paid to a related entity that is merely acting as a conduit between the taxpayer and an unrelated entity, or
- If the related entity was subject to a tax measured by net income or receipts and the net income or receipts of the transaction were included in its tax base.

More Information on Related Entity Expenses. For more information on the deductibility of related entity expenses, see the Schedule RT instructions. Even if you weren't required to file Schedule RT for the expenses, the instructions to Schedule RT provide helpful information regarding deductibility of related entity expenses.

■ **Line 13. Income from Related Entities Whose Expenses Were Disallowed –** If the corporation has income from a related entity which paid, accrued, or incurred expenses to the corporation, and that related entity could not deduct those expenses according to the instructions for line 2, the corporation may subtract the corresponding income from its taxable income.

In order to claim a subtraction on line 13, the corporation must obtain Schedule RT-1 from the related entity and submit Schedule RT-1. See the Schedule RT-1 instructions for further details.

■ **Line 14. Basis, Section 179, Depreciation Difference, Amortization of Assets –**

Difference in federal and Wisconsin basis of depreciated or amortized assets:

Starting with the first taxable year beginning in 2014, adjustments are to be made over a 5-year period for the difference between the Wisconsin adjusted basis and the federal adjusted basis of assets owned on the last day of the taxable year beginning in 2013. The assets must have been depreciated or amortized for both Wisconsin and federal tax purposes. As a result of these adjustments, the Wisconsin adjusted basis and the federal adjusted basis of these assets is deemed to be equal on the first day of the taxable year beginning in 2014.

You must first determine the difference between the Wisconsin adjusted basis and the federal adjusted basis of all assets that are being depreciated or amortized on the last day of your taxable year beginning in 2013. This would be on December 31, 2013, if you file your tax return on a calendar-year basis.

If the total federal adjusted basis of the assets is less than the total Wisconsin adjusted basis, a subtraction must be claimed to adjust for this difference. As result of this subtraction, your Wisconsin adjusted basis of all depreciated or amortized assets on the first day of your taxable year beginning in 2014 (January 1, 2014, for calendar-year filers) will be the same as the federal adjusted basis.

Note: If the total Wisconsin adjusted basis is less than total federal adjusted basis, see the instructions for line 4.

Worksheet for Difference in Basis
(Keep for your records)

1. Combined Wisconsin adjusted basis of all depreciated and amortized assets as of the last day of the taxable year beginning in 2013……..._____
2. Combined federal adjusted basis of all depreciated and amortized assets as of the last day of your taxable year beginning in 2013……..…_____
3. Subtract line 2 from line 1……..…_____
4. Multiply line 3 by .20 (20%). This is your subtraction for 2016……..…_____

Section 179 expenses:

Enter the amount by which the federal section 179 expense exceeds the Wisconsin section 179 expense.

For taxable years beginning on or after January 1, 2014, sections 179, 179A, 179B, 179C, 179D, and 179E of the Internal Revenue Code, related to expensing of depreciable business assets, apply for Wisconsin tax purposes. "Internal Revenue Code" means the federal Internal Revenue Code in effect for the year in which the property is placed in service.

For further information about the differences between the limitations for federal and Wisconsin purposes, see the section titled *Conformity with Internal Revenue Code and Exceptions* in the Form 5S instructions.

Depreciation/Amortization (not section 179 expense):

Enter the amount by which the Wisconsin deduction for depreciation or amortization exceeds the federal deduction for depreciation or amortization. Include a schedule showing the computation details.

These differences can happen because of IRC sections not adopted for Wisconsin purposes and electing a different depreciation method under the Internal Revenue Code in effect for Wisconsin purposes.

■ **Line 15. Amount by Which the Wisconsin Basis of Assets Disposed of Exceeds the Federal Basis –** Sales of assets with different Wisconsin basis than federal basis will also require you to make adjustments in column c. For example, a corporation sold the following assets, which had been held more than one year:

	Selling Price	**Wisconsin Basis**	**Federal Basis**
Equipment	$1,000	$1,500	$500
Machinery	15,000	5,000	17,500
Building	200,000	150,000	120,000

The gains (losses) realized on these transactions are –

	Wisconsin Gain (Loss)	**Federal Gain (Loss)**
Equipment	($500)	500
Machinery	10,000	(2,500)
Building	50,000	80,000
Total	$59,500	$78,000

The corporation must recompute a federal Form 4797, substituting the Wisconsin depreciation allowed or allowable and Wisconsin basis of the assets for the federal amounts.

For federal purposes, the $500 gain on the sale of the equipment is determined to be depreciation recapture, which is treated as ordinary gain and included in the corporation's ordinary income or loss on Form 5S, Schedule 5K, line 1, column b.

For Wisconsin purposes, $5,000 of the gain on the sale of the machinery is determined to be depreciation recapture, which is treated as ordinary gain.

The corporation enters $4,500 ($5,000 Wisconsin ordinary gain minus $500 federal ordinary gain) on Schedule 5K, line 1, column c. The corporation makes the following entries on Schedule 5K, line 9: $77,500 in column b, $(23,000) in column c, and $54,500 in column d.

■ **Line 16. IRC Provisions Not Adopted for Wisconsin Purposes –** Wisconsin has not fully adopted the Internal Revenue Code (IRC) as amended to December 31, 2013. If the federal amount is affected by an IRC provision not adopted by Wisconsin, an adjustment must be computed.

■ **Line 17. Adjustment for Built-In Gains Tax –** IRC section 1366(f), relating to the reduction in pass-through income for taxes at the S-corporation level, is modified by substituting the Wisconsin built-in gains tax for the taxes imposed under IRC sections 1374 and 1375. Thus, for Wisconsin purposes, the gain on the sale of an asset is reduced by any Wisconsin built-in gains tax paid by the corporation on that asset. For federal purposes, however, the gain is reduced by the federal built-in gains tax.

■ **Line 18. Federal Work Opportunity Credit Wages –** Enter wages that aren't deductible in computing federal income because they are being used in computing the federal work opportunity tax credit.

■ **Line 19. Federal Research Credit Expenses –** Enter research expenses that aren't deductible in computing federal

income because they are being used in computing the federal credit for increasing research activities.

■ **Line 20. Other Subtractions –** Enter any other subtractions that have not been accounted for in the preceding lines.

Determining Wisconsin Income of Multistate Tax-Option (S) Corporations

Who Must Use Apportionment

Under the apportionment method, a corporation shows all income and deductions for the corporation as a whole and then assigns a part to Wisconsin according to a formula that determines Wisconsin net income. A corporation engaged in business in and outside Wisconsin is required to report a portion of its total company net income to Wisconsin using the apportionment method if its Wisconsin operations are a part of a unitary business, unless the Department gives permission to use separate accounting.

A unitary business is one that operates as a unit and can't be segregated into independently operating divisions or branches. The operations are integrated, and each division or branch is dependent upon or contributory to the operation of the business as a whole. It isn't necessary that each division or branch operating in Wisconsin contribute to the activities of all divisions or branches outside Wisconsin.

To use the apportionment method, a corporation must have business activity sufficient to create nexus in Wisconsin and at least one other state or foreign country.

"Nexus" means that a corporation's business activity is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income. Under Public Law 86-272, a state can't impose an income tax or franchise tax based on net income on a corporation selling tangible personal property if the corporation's only activity in the state is the solicitation of orders, which orders are approved outside the state and are filled by delivery from a point outside the state.

What Is the Apportionment Percentage

For unitary, multistate businesses (except direct air carriers, interstate air freight forwarders affiliated with a direct air carrier, motor carriers, railroads, pipeline companies, financial institutions, brokers-dealers, investment advisers, investment companies, underwriters, and telecommunications companies whose incomes are apportioned by special rules of the Department), the apportionment percentage is determined by the ratio of Wisconsin sales to total company (corporation) sales.

For most companies, the apportionment percentage is computed on Form A-1. However, direct air carriers, interstate air freight forwarders affiliated with a direct air carrier, motor carriers, railroads, pipeline companies, and telecommunications companies should see Form A-2 and its instructions.

What Is Nonapportionable Income

Nonapportionable income is that income which is allocable directly to a particular state. It includes income or loss derived from the sale of nonbusiness real or tangible personal property or from rentals and royalties from nonbusiness real or tangible personal property. This income is assigned to the state where the property is located.

All income that is realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin shall be allocated to Wisconsin.

Total nonapportionable income (loss) is removed from total company net income before the apportionment percentage is applied. The Wisconsin nonapportionable income (loss) is then combined with the Wisconsin apportionable income to arrive at Wisconsin net income.

Corporate Partners or LLC Members

A corporation that is a general or limited partner includes its share of the numerator and denominator of the partnership's apportionment factors in the numerator and denominator of its apportionment factors. A corporation that is a member of a limited liability company (LLC) treated as a partnership for federal tax purposes includes its share of the numerator and denominator of the LLC's apportionment factors in the numerator and denominator of its apportionment factors. The corporation should request a detailed breakdown of the partnership's or LLC's items and amounts to be included in the computation of its apportionment factors.

Note: Income from a partnership or LLC may be nontaxable under the principles of the U.S. Supreme Court decision in *Allied-Signal v. Director, Div. of Taxation*, 504 U.S. 768 (1992), if the investment is passive and does not serve an operational function. In this case, the corporation would not

include its share of the partnership's or LLC's apportionment factors in the numerator and denominator of its apportionment factors.

Separate Accounting

A corporation engaged in a nonunitary business in and outside Wisconsin must determine the amount of income attributable to Wisconsin by separate accounting. A nonunitary business is one in which the operations in Wisconsin aren't dependent upon or contributory to the operations outside Wisconsin. Under separate accounting, the corporation must keep separate records of the sales, cost of sales, and expenses for the Wisconsin business.

A unitary business may use separate accounting only with the approval of the Department. A request for such approval must set forth, in detail, the reasons why separate accounting will more clearly reflect the corporation's Wisconsin net income. It should be mailed to the Wisconsin Department of Revenue, Mail Stop 3-107, PO Box 8906, Madison, WI 53708-8906, before the end of the taxable year for which the use of separate accounting is desired.

Since a tax-option (S) corporation does not compute its income in the same manner as a C corporation, a tax-option (S) corporation cannot use Form C to determine its income attributable to Wisconsin. Instead, a corporation using separate accounting should prepare a 5-column schedule that provides the following information: (a) a listing of all of the distributive share items from Wisconsin Schedule 5K, column a, and any supplemental schedules, (b) the total amount from Wisconsin Schedule 5K, column d, for each of the share items, (c) the amount from Schedule 5K, column d attributable to Wisconsin, (d) the amount from Schedule 5K, column d attributable to other states, and (e) the basis for the allocation.

The schedule should also include a detailed explanation of how income and expenses were allocated in and outside Wisconsin. For example, if the allocation is based on actual expenses, write "Actual" in column e. If the allocation is based a percentage of sales at each location, enter the percentage in column e and provide details on how the percentage was computed.