

NEW WISCONSIN TAX LAWS

The Wisconsin Legislature enacted several changes to the Wisconsin tax laws in February, 1986. The following are brief descriptions of the major income, corporation franchise/income, sales/use, homestead, inheritance and excise tax provisions. All of the provisions described below are contained in 1985 Wisconsin Act 120, published February 7, 1986. The description for each item indicates the sections of the statutes affected and the effective date of the new provision.

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EXPLANATION OF TAX PROVISIONS OF 1985 WISCONSIN ACT 120

A. INCOME TAXES

1. Declaration of Estimated Tax Required for Estates and Trusts (Amend s. 71.21(title), (1), (2)(intro.), (3), (4), (6), (7) and (11), effective for 1987 taxable year and thereafter.)

Under prior law, estates and trusts were not required to make estimated tax payments. Beginning with the 1987 taxable year, estates and trusts will be required to make estimated tax payments in the same manner as individuals are required to, with one exception. The exception is that estates will not be required to make estimated tax payments for their initial taxable year.

B. CORPORATION FRANCHISE/INCOME TAXES

1. Declaration of Estimated Tax by Corporation - Due Date Changed (Amend s. 71.22(2)(c), (3)(a), (b) and (c), create s. 71.22(10)(c)4, effective for 1986 taxable year and thereafter.)

The due date by which corporations are required to make the final (4th quarter) installment payment of estimated tax for 1986 and subsequent tax years is moved up by one month. The final installment payment will now be due on or before the fifteenth day of the twelfth month of the income year. Under prior law, this payment was not due until the fifteenth day of the first month following the end of the income year. For example, a corpora-

tion with a calendar taxable year for 1986 will be required to make its final installment payment of 1986 estimated tax on December 15, 1986, rather than January 15, 1987, as prior law would have provided.

The exception to the addition to the tax penalty which is based on annualized net income (this exception is commonly identified as exception 3) is changed to reflect the new earlier due date for the final installment payment. The minimum payment amount for the final installment period for purposes of this exception will be determined on the basis of annualized Wisconsin net income for the first 11 months of the taxable year.

2. Situs of Income, Apportionable Income and Sales Factor Changed (Repeal and recreate s. 71.07(1m), create s. 71.07(2)(cm) and (cr), amend s. 71.07(2)(d)1.)

a. Effective Dates

- (1) Except as noted in (2) and (3) below, the repeal and recreation of s. 71.07(1m) and the creation of s. 71.07(2)(cm) and (cr), which relate to apportionable income and the definition of "sales" in the sales factor, apply to the 1986 taxable year and thereafter, or, at the taxpayer's option, to all taxable years prior to 1986 that are open to assessment or refund. (Note: If a taxpayer opts to use the provisions of s. 71.07(1m), (2)(cm) and (cr) in 1985 Wisconsin Act 120 for any year prior to the 1986 taxable year, it must use such provisions for *all* years prior to 1986 that are open to assessment or refund. A copy of Form 4B-OP, "Option to Compute Sales Factor Under 1985 Wisconsin Act 120 for Taxable Years Prior to 1986" is included on page 37 of this bulletin.)
- (2) The repeal and recreation of s. 71.07(1m)(b)2, which relates to the inclusion of income, gain or loss from farms, mines and quarries in apportionable income, applies to the first taxable year after the 1981 taxable year that is open to assessment or refund, and to subsequent taxable years.
- (3) The creation of s. 71.07(2)(cm)2, which relates to inclusion of gross receipts from the operation of farms, mines and quarries in the sales factor, applies to the first taxable year after the 1981 taxable year that is open to assessment or refund, and to subsequent taxable years.
- (4) The amendment to s. 71.07(2)(d)1 relating to the definition of "financial organization" is effective for the 1986 taxable year and thereafter.

b. Corporations Engaged in Business Wholly Within Wisconsin (Repeal s. 71.01(1m) and create s. 71.07(1m)(a))

For corporations which are engaged in business wholly within Wisconsin, all income is subject to, or included in the measure of, the Wisconsin income or franchise tax. (Note: The term "all income" does not include income which a state is constitutionally barred from taxing or including in the measure of a franchise tax.)

c. Apportionable Income (Repeal s. 71.07(1m) and create s. 71.07(1m)(b))

For corporations which are engaged in business both within and without Wisconsin and are subject to apportionment, apportionable income includes all income or loss (other than nonapportionable income in Part d below) including, but not limited to, income, gain or loss from the following sources:

- (1) Sale of inventory.
- (2) Farms, mines and quarries.
- (3) Sale of scrap and by-products.
- (4) Commissions.
- (5) Sale of real property or tangible personal property used in the production of business income.
- (6) Royalties from intangible assets.
- (7) Redemption of securities.
- (8) Interest on trade accounts and trade notes receivable.
- (9) Interest and dividends if the operations of the payer are unitary with those of the payee, or if those operations are not unitary but the investment activity from which that income is derived is an integral part of a unitary business and the payer and payee are neither affiliates nor related as parent company and subsidiary. In this subdivision, "investment activity" includes decision making relating to the purchase and sale of stocks and other securities, investing surplus funds and the management and record keeping associated with corporate investments, not including activities of a broker or other agent in maintaining an investment portfolio.
- (10) Sale of intangible assets if the operations of the company in which the investment was made were unitary with those of the investing company, or if those operations were not unitary but the investment activity from which that gain or loss was derived is an integral part of a unitary business and the companies were neither affiliates nor related as parent company and subsidiary. In this paragraph, "investment activity" has the same meaning as under (9) above.

- (11) Management fees.
 - (12) Franchise fees.
 - (13) Treble damages.
 - (14) A general partner's share of income or loss from a partnership.
 - (15) A limited partner's share of income or loss from a partnership if the investment activity from which that share of income or loss is derived is an integral part of a unitary business. In this paragraph, "investment activity" has the same meaning as under (9) above.
 - (16) Foreign exchange gain or loss.
 - (17) Sale of receivables.
 - (18) Rentals of, or royalties from, real property or tangible personal property if that real property or tangible personal property is used in the business.
 - (19) Sale or exchange of petroleum at the wellhead.
 - (20) Personal services performed by employees of the corporation.
 - (21) Patents, copyrights, trademarks, trade names, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals and technical know-how.
 - (22) Redemption of the corporation's bonds.
 - (23) Interest on state and federal tax refunds on business income or business property.
- d. Nonapportionable Income (Repeal s. 71.07(1m) and create s. 71.07(1m)(c))

Income, gain or loss from the following sources are nonapportionable and shall be allocated to the situs of the property:

- (1) Sale of nonbusiness real property or nonbusiness tangible personal property.
- (2) Rental of nonbusiness real property or nonbusiness tangible personal property.
- (3) Royalties from nonbusiness real property or nonbusiness tangible personal property.

(Note: All income, gain or loss from intangible property that is earned by a personal holding company, as defined in section 542 of the Internal Revenue Code, as amended to December 31, 1974, shall be allocated to the residence of the taxpayer.)

- e. Sales Factor (Create s. 71.07(2)(cm) and (cr))

Corporations subject to apportionment will continue to use a three-factor formula for determining the amount of net income to be apportioned to Wisconsin. The three factors include payroll, property and sales.

Section 71.07(2)(cm) which was created in 1985 Wisconsin Act 120, provides that for purposes of the sales factor in s. 71.07(2)(c), "sales" includes, but is not limited to, the following items related to the production of business income.

- (1) Gross receipts from the sale of inventory.
- (2) Gross receipts from the operation of farms, mines and quarries.
- (3) Gross receipts from the sale of scrap or by-products.
- (4) Gross commissions.
- (5) Gross receipts from personal and other services.
- (6) Gross rents from real property or tangible personal property.
- (7) Interest on trade accounts and trade notes receivable.
- (8) A general partner's share of the partnership's gross receipts.
- (9) Gross management fees.
- (10) Gross royalties from income-producing activities.
- (11) Gross franchise fees from income-producing activities.

Section 71.07(2)(cr) provides that the following items are among those that are not included in "sales" for purposes of the sales factor in s. 71.07(2)(c).

- (1) Gross receipts and gain or loss from the sale of tangible business assets, except those under s. 71.07(2)(cm) 1, 2 and 3.
 - (2) Gross receipts and gain or loss from the sale of nonbusiness real or tangible personal property.
 - (3) Gross rents and rental income or loss from real property or tangible personal property if that real property or tangible personal property is not used in the production of business income.
 - (4) Royalties from nonbusiness real property or nonbusiness tangible personal property.
 - (5) Proceeds and gain or loss from the redemption of securities.
 - (6) Interest, except interest under s. 71.07(2)(cm)7, and dividends.
 - (7) Gain or loss from the sale of intangible assets.
 - (8) Dividends deductible under s. 71.04(4).
 - (9) Gross receipts and gain or loss from the sale of securities.
 - (10) Proceeds and gain or loss from the sale of receivables.
 - (11) Refunds, rebates and recoveries of amounts previously expended or deducted.
 - (12) Other items not includable in apportionable income.
 - (13) Foreign exchange gain or loss.
 - (14) Royalties and income from passive investments in property listed in s. 71.07(1m)(b)21. (See item c.(21) above for a listing of these items.)
 - (15) A limited partner's share of income or loss from a partnership.
- f. Financial Organization (Amend s. 71.07(2)(d)1)

The definition of "financial organization" in s. 71.07(2)(d)1 is amended to include brokerage houses and underwriters.

(Note: The income of financial organizations continues to be apportioned according to rules of the Department of Revenue, s. 71.07(2)(e).)

3. Clarify Deduction for Taxes for Corporations (Other than insurance companies, regulated investment companies and real estate investment trusts) (Amend s. 71.04(3), effective for 1986 taxable year and thereafter.)

The amendment to s. 71.04(3) clarifies that sales and use taxes paid on items required to be capitalized are not deductible. It also clarifies that taxes imposed by any state or the District of Columbia on or measured by *all or a portion* of net income, gross income, gross receipts or capital stock are not deductible. (The words "all or a portion" were added to s. 71.04(3).)

4. Clarify Reference to Renewable Energy Resource System (Amend s. 71.04(16)(a) and (d), effective February 8, 1986.)

This provision clarifies that references to various parts of s. 16.957, Wis. Stats., which are made in the statutes that provide the rapid write-off provisions for a renewable energy resource system are references to the provisions of s. 16.957 of the 1985 Wisconsin Statutes.

C. SALES/USE TAXES

1. County Sales Tax - Adopting or Repealing an Ordinance Changed (Amend s. 77.70, create nonstatutory section 3046(5g), effective February 8, 1986.)

Repealing an Ordinance

If a county adopts an ordinance to impose a county tax, any repeal of such ordinance shall be effective on the date designated in the repeal ordinance; however, a certified copy of the repeal ordinance must be delivered to the Secretary of Revenue at least 30 days before the effective date of the repeal. (Note: Under prior law, the repeal was effective on December 31 of the year of repeal and 60 days notice to the Secretary of Revenue was required.)

Adopting an Ordinance

For the 1986 calendar year only, a county may adopt an ordinance imposing county sales and use taxes beginning on July 1, 1986, if a certified copy of the ordinance is delivered to the Secretary of Revenue at least 90 days prior to July 1, 1986.

D. HOMESTEAD CREDIT

1. Homestead Credit Formula Changed (Amend s. 71.09(7)(grm)(intro.), create s. 71.09(7)(grn), effective for 1986 claims (filed in 1987) and subsequent years' claims.)

Claimants with household income of \$7,600 (prior law was \$7,400) or less will receive a credit equal to 80% of their property taxes accrued and/or rent constituting property taxes accrued. If household income is more than \$7,600, the credit will be 80% of the amount by which property taxes and/or rent constituting property taxes accrued exceed 13.483% (prior law was 13.187%) of household income exceeding \$7,600.

E. INHERITANCE TAX

1. Consent to Transfer Fee Increased to \$5 (Amend s. 72.29(1)(b)2 and (2)(b)2, effective February 8, 1986.)

The fee for the issuance of the inheritance tax Consent to Transfer Property form is increased from \$1.00 to \$5.00.

F. EXCISE TAXES

1. Repeal Requirement for Liquor Tax Stamp (Create ss. 139.092, 139.094, 139.096 and 139.098, repeal and recreate s. 139.06(1), repeal ss. 125.57(9), 139.06(5) to (8), 139.061 and 139.25(1), amend ss. 125.07(1)(b)3(intro.), 125.11(1)(c), 139.05(2a), 139.06(title), 139.06(2)(b) and (c), 139.06(3) and (4), 139.08(1) and (4), 139.10(1), 139.11(2), 139.12, 139.18(2) and 139.25(2) to (6), effective July 1, 1986 and thereafter.)

Beginning July 1, 1986, intoxicating liquor will no longer require Wisconsin intoxicating liquor stamp indicia as proof of payment of Wisconsin's liquor tax. Persons liable for payment of intoxicating liquor tax shall pay the tax directly to the Department of Revenue four times annually on an estimated basis. The due dates of the estimated taxes and appropriate returns are February 15, May 15, August 15 and November 15. The estimated payment shall be based on the expected actual tax liability for the calendar quarter for which the payment is due. An administrative fee of 3 cents per gallon shall be paid along with the estimated tax liability.

All persons required to file a return and pay intoxicating liquor taxes shall first provide security in the amount, at the time and of the type required by the department, or enter into a surety bond with a corporate surety to secure payment of the tax. In addition, all persons who were liable for payment of liquor taxes in either of the fiscal years 1984-85 or 1985-86 shall maintain a deposit with the department equal to 20% of the estimated tax liability for fiscal year 1985-86 or an amount specified by the department. The deposit shall be returned to the persons liable for the tax in the form of a credit over a 4-year period beginning August 15, 1987.

The department shall audit the returns and correct them as appropriate. If additional tax is due, the department shall within 4 years after the return is filed assess the amount due along with interest and penalties. The taxpayer may appeal an assessment within 60 days after the mailing of the assessment.

All taxpayers will continue to file monthly information reports.

(Note: The new liquor tax provisions have no effect on current administrative policy, procedure and practice for taxes on wine.)