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Recent Changes in Wisconsin's Income and Franchise Tax Laws

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COMMENTS

RECENT CHANGES IN WISCONSIN'S INCOME AND FRANCHISE TAX LAWS

The 1975 Wisconsin legislature made substantial changes in Wisconsin's income and franchise tax law.[1] This article presents a summary of the major changes. As such, not every change is discussed, nor is this summary a substitute for referring to the statutes themselves. Although these changes were the result of several bills, they are organized here according to their effect on an area of the income tax law, rather than in chronological order. All changes should, of course, be viewed in the context of the income tax law as a whole. As a general rule, the changes discussed apply to the 1976 tax year, although many also applied to the 1975 tax year. For the exact effective date of each change, the specific session law should be consulted.

I. INDIVIDUALS

Situs of Income. Income or loss is taxable in Wisconsin if the situs of the income or loss is Wisconsin. In the case of income or loss from an interstate business, the amount attributable to Wisconsin is determined by allocation or apportionment.[2] Previously, the situs of income or loss depended on whether it was derived from a business not requiring apportionment, from real estate or tangible personal property, from intangible personal property, or from personal services. The situs of income or loss from a business not requiring apportionment was the location of the business; the situs of income or loss from real estate or tangible personal property was the location of the property; and the situs of income or loss from intangible personal property was the residence of the recipient. The situs of income from personal services of a resident individual was the individual's residence and the situs of income from personal services of a nonresident individual was the location of the services.[3] Now, while the above rules have not been changed for

1. WIS. STAT. ch. 71 (1973).
2. WIS. STAT. § 71.07(2) (1973).
3. WIS. STAT. § 71.07(1) (1973).

nonresidents, a substantial change was made for residents. The situs of all income or loss of a resident, including that which was subject to allocation or apportionment, is the residence.[4] In effect, all income of Wisconsin residents is taxable in Wisconsin and all losses of Wisconsin residents are deductible in Wisconsin.

Definition of "Internal Revenue Code." Wisconsin taxable income is defined by the statutes in terms of Wisconsin adjusted gross income, itemized deductions, and the Wisconsin standard deduction.[5] All three of these terms are affected in Wisconsin by the definition of "Internal Revenue Code." Previously, "Internal Revenue Code" meant the Federal Internal Revenue Code "as effective with respect to the taxpayer for the taxable year."[6] As a result, amendments by the federal government to the Internal Revenue Code flowed through to the taxpayer's Wisconsin taxable income and affected his Wisconsin income tax liability. Subsequently, the Wisconsin legislature redefined "Internal Revenue Code" for tax year 1975 as the Code in effect on December 31, 1974, thereby cutting off the flow to Wisconsin of federal amendments to the Code enacted after that date.[7] In conjunction with this redefinition, the legislature eliminated from the definition of standard deduction the clause which permitted changes in the federal standard deduction to result in similar changes in the Wisconsin standard deduction.[8] Since the federal government amended the Internal Revenue Code in 1975, Wisconsin Schedule I was created to eliminate the effects of the 1975 federal amendments on the taxpayer's 1975 federal adjusted gross income and itemized deductions. Now, the legislature has again redefined "Internal Revenue Code." For tax year 1976 and thereafter, it is the Code in effect on December 31, 1975, which controls.[9] This amendment has eliminated the need for Wisconsin Schedule I for 1976 and thereafter, since the 1975 federal amendments to the Internal Revenue Code which affected federal adjusted gross income and itemized deductions now flow through to the taxpayer's Wisconsin taxable income. However, if the federal government

4. Wis. Laws 1975, ch. 39, § 471m.
5. WIS. STAT. § 71.02(2)(d) (1973).
6. WIS. STAT. § 71.02(2)(b) (1973).
7. Wis. Laws 1975, ch. 39, § 471, *amending* WIS. STAT. § 71.02(2)(b) (1973).
8. Wis. Laws 1975, ch. 39, § 471, *amending* WIS. STAT. § 71.02(2)(gp)1 (1973).
9. Wis. Laws 1975, ch. 224, § 81, *amending* WIS. STAT. § 71.02(2)(b) (1973).

enacts new tax legislation, as it is attempting to do at the time of this writing, Wisconsin Schedule I will be back with new adjustments so that 1976 federal adjusted gross income and itemized deductions can be converted to the levels allowable under the Internal Revenue Code in effect on December 31, 1975. It should be noted that due to the earlier change in the definition of the Wisconsin standard deduction — even though "Internal Revenue Code" was redefined as the Code in effect on December 31, 1975 — the Wisconsin standard deduction is still frozen at its 1974 levels.

Proration of Deductions. Previously, nonresidents and part-year residents had to prorate their itemized deductions, the percentage standard deduction, and the low-income allowance by using the ratio of Wisconsin adjusted gross income to federal adjusted gross income. Married persons could use the higher of either spouse's individual ratio.[10] Now, the percentage standard deduction need not be prorated, and when prorating itemized deductions or the low-income allowance, married persons must use the ratio of their combined Wisconsin adjusted gross income to their combined federal adjusted gross income.[11] Single persons still use the same ratio.

Proration of Personal Exemptions. Previously, nonresidents and part-year residents of Wisconsin were entitled to the same amount for personal exemptions as Wisconsin residents.[12] Now, nonresidents and part-year residents must prorate their personal exemptions, but the total deduction for all personal exemptions will be a minimum of five dollars. A part-year resident's proration is based on the fraction of the taxable year that he is domiciled in Wisconsin. A nonresident's proration is based on the fraction of his Wisconsin adjusted gross income to his federal adjusted gross income, using combined incomes for married persons.[13]

Credit for Income Taxes Paid to Other States. Previously, a credit was allowed against Wisconsin income taxes for income taxes paid to another state by a Wisconsin resident on income from personal services he performed in that other state.[14] Now,

10. WIS. STAT. §§ 71.02(2)(f) and (gp)6 (1973).

11. Wis. Laws 1975, ch. 39, § 471, *amending* WIS. STAT. §§ 71.02(2)(f) and (gp)6 (1973).

12. WIS. STAT. § 71.09(6p) (1973).

13. Wis. Laws 1975, ch. 39, § 472m.

14. WIS. STAT. § 71.09(8) (1973).

in addition to that credit, a Wisconsin resident other than a corporation also gets a credit for income taxes paid to another state on business income and on income from real estate or tangible personal property located in that other state.[15]

The new credit alleviates the problem of taxation of the same income by more than one state, a problem which resulted from the new situs of income rules for Wisconsin residents discussed above. It is interesting to note that there is no credit for taxes paid to another state on income from intangible personal property. As a result of both this fact and the case of *Sweitzer v. Wisconsin Department of Revenue*,[16] which held that income from a limited partnership was income from intangible personal property rather than business income, a Wisconsin resident may have to pay income taxes to Wisconsin and to another state on the income he receives from an interest in a limited partnership located in that other state.

Capital Loss Carry-over Modification. Wisconsin adjusted gross income is computed by starting with federal adjusted gross income as the base and by making certain addition and subtraction modifications to that base.[17] Previously, any capital loss or capital loss carry-over which resulted from a capital asset located outside of Wisconsin had to be added back to the federal base under section 71.05(1)(a)3 of the Wisconsin Statutes since the situs of such loss was not Wisconsin. Now, since the situs of such losses of a Wisconsin resident is Wisconsin, as discussed above, a Wisconsin resident need not add back a capital loss or a capital loss carry-over under section 71.05(1)(a)3. However, to prevent a Wisconsin resident from taking a capital loss carry-over deduction relating to a pre-1975 disposition which would not have been deductible in the year of disposition, section 71.05(1)(a)9 was created.[18] It provides that any capital loss carry-over from a pre-1975 disposition of property located outside Wisconsin must be added back to the federal base.

Gain on Involuntary Conversion of Wisconsin Property. In general, under section 1033 of the Internal Revenue Code, a gain realized on the involuntary conversion of property is de-

15. Wis. Laws 1975, ch. 39, § 488r.
16. 65 Wis. 2d 235, 222 N.W.2d 662 (1974).
17. WIS. STAT. § 71.02(2)(e) (1973).
18. Wis. Laws 1975, ch. 39, § 471h.

ferred if a replacement property which is similar or related in service or use to the converted property is purchased within two years. The basis of the replacement property is reduced by this deferred gain. As a result, when the replacement property is disposed of, the deferred gain will then be taxed. Previously, if a gain on the involuntary conversion of Wisconsin property was excluded from the federal base under section 1033 of the Internal Revenue Code, and if the replacement property was located outside of Wisconsin, then the gain had to be added back to the federal base.[19] This prevented a taxpayer from deferring the gain on involuntary conversion of Wisconsin property, purchasing out-of-state replacement property, and selling that out-of-state property free from Wisconsin income taxes, thereby avoiding Wisconsin income taxes on the original gain. Now, since under the new situs of income rules, a gain on the sale of out-of-state property by a Wisconsin resident is taxable in Wisconsin, a Wisconsin resident need not modify his federal base for a deferred gain on involuntarily converted Wisconsin property and can purchase a replacement property anywhere. However, a nonresident must still make this addition modification if involuntarily converted Wisconsin property is replaced with out-of-state property.[20]

Ordinary Income Portion of a Lump Sum Distribution. Since 1974, under section 402(e) of the Internal Revenue Code, the ordinary income portion of a lump sum distribution from an employee benefit plan may, at the option of the taxpayer, be excluded from federal adjusted gross income and the tax on that amount computed separately from other income of the taxpayer. Now, in order to prevent that income from avoiding the Wisconsin income tax by not being included in federal adjusted gross income, the ordinary income portion of a lump sum distribution must be added back to the federal base.[21] Previously, no such modification was required in Wisconsin.

Moving Expenses. Under the Internal Revenue Code, subject to certain conditions, an individual may deduct reasonable expenses incurred in moving from one location to another in connection with the commencement of work in the new location.[22] Previously, such expenses incurred in moving from Wis-

19. WIS. STAT. § 71.05(1)(a)6 (1973).
20. Wis. Laws 1975, ch. 39, § 471fm, *amending* WIS. STAT. § 71.05(1)(a)6 (1973).
21. Wis. Laws 1975, ch. 39, § 471g.
22. INT. REV. CODE OF 1954, § 217.

consin were used to offset income earned outside Wisconsin. If the out-of-state income exceeded the moving expenses, the excess was subtracted from the federal base.[23] However, if the moving expenses exceeded the out-of-state income, there was no statutory provision for adding back the excess to the federal base.[24] In effect, in the latter situation, the individual enjoyed a deduction from his Wisconsin adjusted gross income for the excess of moving expenses incurred in moving from Wisconsin over his out-of-state income. Now, all moving expenses incurred in moving from Wisconsin must be added back to the federal base,[25] and out-of-state income subtracted from the federal base will not first be reduced by moving expenses. As before, no modification is necessary for moving expenses incurred in moving into Wisconsin, since such amounts are in effect fully deductible in computing Wisconsin adjusted gross income.

Contributions to Keogh Plans for 1975. The Pension Reform Act of 1974[26] allowed a cash basis taxpayer who made contributions to a Keogh retirement plan established after January 1, 1974, to deduct such contributions on his tax return if made by the due date for filing the return. The Tax Reduction Act of 1975[27] allowed a cash basis taxpayer who made contributions to a Keogh retirement plan established on or before January 1, 1974, to do the same thing. As a result of the definition of "Internal Revenue Code" used in Wisconsin for 1975, contributions made to Keogh plans established after January 1, 1974, were deductible in Wisconsin in 1975 if made during 1975 or from January 1, 1976, through April 15, 1976; contributions made to Keogh plans established on or before January 1, 1974, were deductible in Wisconsin in 1975 only if made during 1975.[28] This was the state of the law on April 15, 1976, when individuals' 1975 Wisconsin tax returns were due. However, a statutory provision which became effective on May 5, 1976, created a subtraction modification which in effect allows a de-

23. WIS. STAT. § 71.05(1)(b)4 (1973).

24. Wis. Dep't of Revenue Technical Information Memorandum No. I-21.1 (Jan. 5, 1976).

25. Wis. Laws 1975, ch. 39, § 471g.

26. Act of Sept. 2, 1974, Pub. L. No. 93-406, 88 Stat. 829.

27. Act of Mar. 29, 1975, Pub. L. No. 94-12, 89 Stat. 26.

28. Wis. Dep't of Revenue Technical Information Memorandum No. I-24 (Addendum 1.1) (May 12, 1976).

duction in Wisconsin for 1975 of contributions made from January 1, 1976, through April 15, 1976, to any Keogh plan regardless of when established.[29] If an individual did not take a deduction on his 1975 Wisconsin tax return for contributions made to a Keogh plan for 1975 between January 1, 1976, and April 15, 1976, then it seems that he must file an amended 1975 return if he wants to take the deduction at all, since such contributions for 1975 do not appear to be deductible in 1976.

Waste Treatment Facilities. Previously, if an individual purchased or constructed any waste treatment or pollution abatement equipment pursuant to an order, recommendation, or approval by specified state agencies or local governing bodies, not including the Wisconsin Department of Revenue, then the individual could elect to deduct the entire cost in the year paid, if a cash basis taxpayer, or in the year accrued, if an accrual basis taxpayer, by taking a subtraction modification from the federal base. If the election was made, appropriate addition modifications would have to be made in subsequent years to reverse federal depreciation and to correct any gain or loss on disposition.[30] If the election was not made, no modification of the federal base was necessary since the federal depreciation deduction simply flowed through to the individual's Wisconsin adjusted gross income. Now, this procedure applies only to purchases made prior to July 31, 1975, and to facilities purchased or constructed in fulfillment of a written construction contract or formal written bid which was entered into or made prior to July 31, 1975. As to all other facilities which are purchased or constructed on or after July 31, 1975, the individual may elect to deduct the entire cost only if the waste treatment facilities are used to treat industrial waste or air contaminants, as defined in Wisconsin Statutes sections 144.01(9) and 144.30(1) respectively. In addition, under recreated section 70.11(21)(a),[31] the facilities must now be approved by the Wisconsin Department of Revenue rather than by any of the various agencies or bodies previously authorized to approve them.[32]

29. Wis. Laws 1975, ch. 224, § 84m.

30. WIS. STAT. § 71.05(1)(h) (1973).

31. Wis. Laws 1975, ch. 39, § 450, *repealing and recreating* WIS. STAT. § 70.11(21)(a) (1973).

32. Wis. Laws 1975, ch. 39, § 471j.

Basis of Jointly Held Property to the Surviving Joint Tenant. Generally, under the Internal Revenue Code, the entire fair market value of jointly held property is included in the decedent's gross estate for federal estate tax purposes, except such portion as is attributable to the contribution of the surviving joint tenant.[33] The fair market value is determined either at the date of death[34] or at the alternate valuation date.[35] Therefore, the basis of the property to the surviving joint tenant for federal income tax purposes is the estate tax value of the portion of the property included in the decedent's gross estate plus the original basis of the remaining portion of the property.[36] Previously, the entire fair market value of jointly held property, except such portion as was attributable to the contribution of the surviving joint tenant, was also subject to the Wisconsin inheritance tax.[37] Fair market value was determined only at date of death.[38] The basis of the property to the surviving joint tenant for Wisconsin income tax purposes was the same as the federal basis unless the alternate valuation date was elected on the estate tax return. In that case, the date of death value of the portion of the property included in the decedent's gross estate was used instead of the estate tax value in computing the Wisconsin basis.[39] However, a major change has been made in Wisconsin's inheritance tax law as of July 1, 1976. Now, the previous rules apply only to joint property which requires only one joint tenant's signature to convey the property, as is the case with checking accounts, savings accounts, and savings bonds. If the jointly held property requires the signatures of all joint tenants to convey the property, as is the case with real estate and listed securities, then only the decedent's fractional share, determined by dividing the property's fair market value at date of death by the number of joint tenants, is taxed regardless of contribution by the survivor.[40] The basis of such jointly held property to the surviving joint

33. INT. REV. CODE OF 1954, § 2040.
34. INT. REV. CODE OF 1954, § 2031.
35. INT. REV. CODE OF 1954, § 2032.
36. INT. REV. CODE OF 1954, § 1014.
37. WIS. STAT. § 72.12(6) (1973).
38. WIS. STAT. § 72.13(1) (1973).
39. WIS. STAT. § 71.05(1)(g).
40. Wis. Laws 1975, ch. 222, § 2, *repealing and recreating* WIS. STAT. § 72.12(6) (1973).

tenant for Wisconsin income tax purposes consists of the inheritance tax value of the decedent's fractional share plus the original basis of the survivor's fractional share.[41]

Per Diem Allowance of Wisconsin State Legislators. Per diem allowances received by state legislators, pursuant to section 13.123(1)(a) of the Wisconsin Statutes, are tax exempt provided that they are used to cover food and lodging expenses actually incurred by the legislator while he is in Madison on legislative business.[42]

Homestead Tax Credit. Several changes were made in the homestead tax credit laws. Some of the major changes follow. Unemployment compensation is now included in household income.[43] For purposes of determining the property taxes accrued on a homestead which is an integral part of a larger unit such as a farm, the claimant may use the total property taxes accrued for the larger unit if the larger unit is not more than 120 acres, instead of 80 acres as before.[44] The maximum property taxes and rent which can be used in computing the credit has been increased from $500 to $535,[45] and the maximum household income to qualify for the credit has been increased from $7,000 to $7,500.[46] No claim for the credit is allowed to a claimant who is under 62 years of age and who was claimed as a dependent on another person's federal tax return for the year of the claim. Formerly, the claim was also disallowed if the claimant was claimed as a dependent in either of the previous two years.[47]

Tips Subject to Withholding Tax. Previously, tips were not subject to Wisconsin withholding tax. Now, tips received by an employee are subject to withholding unless they are not paid in cash or are less than $20 per month.[48]

Withholding Tax Exemption. Now, if an employee certifies that he incurred no Wisconsin income tax liability for the previous year and anticipates none this year, then the employer need not deduct Wisconsin withholding tax from the em-

41. Wis. Laws 1975, ch. 222, § 1, *amending* WIS. STAT. § 71.05(1)(g) (1973).
42. Wis. Laws 1975, ch. 224, § 82.
43. Wis. Laws 1975, ch. 39, § 473, *amending* WIS. STAT. § 71.09(7)(a)1 (1973).
44. Wis. Laws 1975, ch. 39, § 475, *amending* WIS. STAT. § 71.09(7)(a)8 (1973).
45. Wis. Laws 1975, ch. 39, § 483, *amending* WIS. STAT. § 71.09(7)(h)1 (1973).
46. WIS. LAWS 1975, ch. 39, § 482.
47. Wis. Laws 1975, ch. 39, § 488, *amending* WIS. STAT. § 71.09(7)(s) (1973).
48. Wis. Laws 1975, ch. 104, § 3.

ployee's paycheck.[49] Previously, no such exception existed in Wisconsin.

Trust Income Taxable to the Grantor. Generally, under the Internal Revenue Code, the income of a trust is taxable to the grantor if he has a reversionary interest which may reasonably be expected to take effect within ten years from the date of transfer,[50] if he has the power to control the beneficial enjoyment of the principal or income,[51] if he has certain administrative powers to deal with the trust at less than arm's length,[52] if he has the power to revoke the trust and regain title,[53] or if the trust's income may be accumulated or distributed for the grantor's benefit.[54] Previously, if the situs of the income of a trust was Wisconsin, it was taxable in Wisconsin. However, an exception provided that if such income was taxable under the Internal Revenue Code to a nonresident grantor, then the income was not subject to the Wisconsin income tax.[55] Now, that exception has been eliminated and all trust income with a situs in Wisconsin is taxable in Wisconsin.[56]

II. CORPORATIONS

Situs of Income. Previously, the situs of income or loss from a business not requiring apportionment was the situs of the business; the situs of income or loss from real estate or tangible personal property was the location of the property; the situs of income or loss from intangible personal property was the residence of the corporation; and the situs of income from personal services of employees of the corporation followed the situs of the business.[57] Now, although the situs of income rules for business income and income from personal services of employees are the same, changes have been made in the rules for income or loss from real estate, tangible personal property, and intangible personal property. While rental and royalty income or loss from real estate or tangible personal property still follows the location of the property, gains or losses realized on dispositions

49. Wis. Laws 1975, ch. 104, § 4.
50. INT. REV. CODE OF 1954, § 673.
51. INT. REV. CODE OF 1954, § 674.
52. INT. REV. CODE OF 1954, § 675.
53. INT. REV. CODE OF 1954, § 676.
54. INT. REV. CODE OF 1954, § 677.
55. WIS. STAT. § 71.07(7)(d) (1973).
56. Wis. Laws 1975, ch. 224, § 85, *amending* WIS. STAT. § 71.07(7)(d) (1973).
57. WIS. STAT. § 71.07(1) (1973).

of real estate or tangible personal property used in the production of business income follow the location of the business.[58] If the real estate or tangible personal property is not used in the production of business income, then gains or losses on disposition continue to follow the location of the property. As to income or loss from intangible personal property, the situs now follows the situs of the business instead of the state of incorporation of the corporation.[59] As such, it is now subject to apportionment in the same manner as other business income.

Gain on Involuntary Conversion of Wisconsin Property. Previously, if a gain was realized on property which was involuntarily converted into money, no gain was recognized for Wisconsin income tax purposes if the money was expended on a replacement property located in Wisconsin, similar or related in use to the converted property, and acquired within one year after the conversion.[60] Now, the replacement period is two years instead of one.[61]

Federal Income Tax Deduction. Previously, a corporation could deduct federal income taxes from its gross income up to a limit of ten percent of its net income computed without the charitable contribution and the federal income tax deductions.[62] Now, a corporation may not deduct any federal income taxes.[63]

Dividend Deduction. Previously, a corporation could deduct from its gross income dividends received from another corporation if that other corporation had income subject to Wisconsin income taxes, had filed Wisconsin income tax returns, and had its principal business in Wisconsin. A corporation's principal business was in Wisconsin if fifty percent or more of its entire net income or loss after adjustment for tax purposes, for the year preceding the payment of such dividends, was used in computing its Wisconsin taxable income.[64] Now, the receiving corporation may still deduct those dividends from gross income, but only upon the additional condi-

58. Wis. Laws 1975, ch. 224, § 84r.
59. Wis. Laws 1975, ch. 39, § 471p.
60. WIS. STAT. § 71.03(1)(g) (1973).
61. Wis. Laws 1975, ch. 214, § 1, *amending* WIS. STAT. § 71.03(1)(g) (1973).
62. WIS. STAT. §§ 71.04(3) and (3a) (1973).
63. Wis. Laws 1975, ch. 39, § 471d, *amending* WIS. STAT. § 71.04(3) (1973); Wis. Laws 1975, ch. 39, § 471f, *repealing* WIS. STAT. § 71.04(3a) (1973).
64. WIS. STAT. § 71.04(4) (1973).

tion that the paying corporation is not entitled to deduct those dividends from its gross income.[65] As a result of this additional condition, dividends received by a corporation on its savings accounts in Wisconsin savings and loan associations no longer qualify for the dividend deduction.

Dividend Exclusion. Previously, all dividends were includible in the gross income of a corporation,[66] although an offsetting deduction was allowed for certain dividends as discussed in the preceding paragraph. Now, dividends received by a Wisconsin holding company from a regulated corporation are excluded from the holding company's income if it owns eighty percent or more of the total combined voting power of all classes of stock of the regulated corporation. A Wisconsin holding company is a corporation which has a Wisconsin apportionment fraction of ninety-five percent or more under section 71.07 of the Wisconsin Statutes. A regulated corporation is basically a corporation whose business is regulated by a federal or state regulatory agency specifically created to regulate such business.[67]

Ordinary and Necessary Business Expenses. Previously, the Wisconsin Tax Appeals Commission held that interest paid by a corporation on loans used to purchase its own stock was deductible as an ordinary and necessary business expense if the purchase was beneficial to the continued income producing capacity, prosperity, and growth of the corporate business.[68] In addition, the Wisconsin Supreme Court has held that money spent to take a public official to dinner to explain the corporation's products is an ordinary and necessary business expense.[69] Now, both decisions have been legislatively reversed so that neither interest paid on an indebtedness incurred to purchase the corporation's own stock nor money spent on behalf of a public official are deductible, regardless of the purpose.[70]

Waste Treatment Facilities. Previously, if a corporation purchased or constructed any waste treatment or pollution

65. Wis. Laws 1975, ch. 214, § 2, *amending* WIS. STAT. § 71.04(4) (1973).

66. WIS. Stat. § 71.03(1)(d) (1973).

67. Wis. Laws 1975, ch. 224, § 82m.

68. Master Lock Co. v. Wisconsin Dep't of Revenue, Docket No. I-3006, Wisconsin Tax Appeals Comm'n, Feb. 27, 1975.

69. Wisconsin Dep't of Revenue v. Nagle-Hart, Inc., 70 Wis. 2d 224, 234 N.W.2d 350 (1975).

70. Wis. Laws 1975, ch. 224, § 83, *amending* WIS. STAT. § 71.04(2) (1973).

abatement equipment pursuant to an order, recommendation, or approval by specified state agencies or local governing bodies, not including the Wisconsin Department of Revenue, then the corporation could elect to either deduct the cost in the year paid, depreciate the cost over the estimated useful life, or amortize the cost over a period of five years.[71] Now, this procedure applies only to purchases made prior to July 31, 1975, and to facilities purchased or constructed in fulfillment of a written construction contract or formal written bid which was entered into or made prior to July 31, 1975. As to all other facilities which are purchased or constructed on or after July 31, 1975, the corporation may elect between deduction, depreciation, and amortization only if the waste treatment facilities are used to treat industrial waste or air contaminants, as defined in Wisconsin Statutes sections 144.01(9) and 144.30(1) respectively. In addition, the facilities must now be approved by the Wisconsin Department of Revenue under recreated section 70.11(21)(a),[72] rather than by any of the various departments or bodies previously authorized to approve them.[73] If the facilities are used to treat other wastes, as defined in section 144.01(10), or are not approved by the Department of Revenue, the corporation may not elect between the three options but may only depreciate the facilities over their estimated useful life.

Corporation Business Loss Carryforward. Previously, a corporation computed its net business loss carryforward before allocation or apportionment. In subsequent years, the amount carried forward was offset against net business income also computed before allocation or apportionment.[74] As a result, the Wisconsin portion of the loss was only matched against the Wisconsin portion of the income by coincidence. Now, only the Wisconsin net business loss is carried forward and it is offset against the Wisconsin net business income of the subsequent year. Wisconsin net business income and loss include both apportionable and nonapportionable income and loss attributable to Wisconsin.[75]

71. WIS. STAT. § 71.04(2b) (1973).

72. Wis. Laws 1975, ch. 39, § 450, *repealing and recreating* WIS. STAT. § 70.11(21)(a) (1973).

73. Wis. Laws 1975, ch. 39, § 471c.

74. WIS. STAT. § 71.06 (1973).

75. Wis. Laws 1975, ch. 224, § 84n, *repealing and recreating* WIS. STAT. § 71.06 (1973).

Additional Assessments against a Dissolved Corporation. Previously, any additional assessments made against a dissolved corporation had to be made within two years after the date of dissolution.[76] Now, such additional assessments may be made within the normal four year period.[77] Also, if all of the business or property of the dissolved corporation is transferred to one or more persons, the tax may be assessed against those persons instead of against the dissolved corporation.[78] When the tax is assessed against such persons, the statute of limitations is the same as if the tax had been assessed against the dissolved corporation.

Extension of Time to File. Previously, the only way that a corporation could get an extension of time to file its tax return was to make a written request to the Wisconsin Department of Revenue. The granting of an extension was not automatic and the maximum extension period was thirty days.[79] Now, any extension of time granted by the Internal Revenue Service for filing the federal tax return will extend the time for filing the Wisconsin tax return. This includes the automatic three month extension. A copy of the extension form must be filed with the Wisconsin return and any additional federal extension must be submitted to the Department within ten days after receipt by the taxpayer.[80]

III. INDIVIDUALS AND CORPORATIONS

Internal Revenue Service Adjustments and Amended Returns. Now, if the Internal Revenue Service changes the taxpayer's taxable income, normally as a result of an audit, or if the taxpayer files an amended federal return, or if the taxpayer files an amended state return for another state for which a tax credit was allowed against his Wisconsin taxes, and if any of these changes would affect the amount of income reportable or tax payable in Wisconsin, the taxpayer must report such changes to the Wisconsin Department of Revenue within ninety days after their final determination.[81] The Department then has ninety days after receiving the report to assess addi-

76. WIS. STAT. § 180.787 (1973).
77. Wis. Laws 1975, ch. 224, § 125, *amending* WIS. STAT. § 180.787 (1973).
78. Wis. Laws 1975, ch. 224, § 90.
79. WIS. STAT. § 71.10(5)(a) (1973).
80. Wis. Laws 1975, ch. 214, § 3, *amending* WIS. STAT. § 71.10(5)(a) (1973).
81. Wis. Laws 1975, ch. 224, § 89.

tional taxes, regardless of any other statute of limitations. In addition, if the taxpayer fails to make the report, the statute of limitations for making an additional assessment is extended to ten years from the date the original return was filed.[82] Previously, no such reporting requirement existed.

Burden of Proof. Generally, in the case of an additional assessment against a taxpayer, the taxpayer bears the burden of proving that the Department of Revenue's assessment is wrong. Previously, an exception to this general rule provided that if the additional amount was assessed more than six years after the tax year in question, the state had the burden to prove that its assessment was correct by a preponderance of the evidence.[83] Now, while that exception still exists in most cases, if a taxpayer agrees in writing to extend a statute of limitations, and if an assessment is made during such extended period, then the exception will not apply and the taxpayer will have the burden of proof.[84]

Interest Rates. Interest on additional taxes, refunds of overpayments, payments during a filing extension period, and underpayment of estimated taxes is increased from six percent per year to nine percent per year. Interest on fraudulent or negligent homestead credit claims, delinquent taxes, and delinquent deposits of withholding taxes is increased from one percent per month to one and one-half percent per month.[85]

Tax Lien. Previously, a warrant issued by the Department of Revenue, filed with the clerk of a circuit court, and docketed by that clerk, was a lien only against the real property of the taxpayer located in the county where docketed.[86] Now, it is a lien against both the real and the personal property of the taxpayer located in the county where docketed.[87]

Use of Whole Dollar Amounts. Now, a taxpayer may elect to round amounts shown on an income tax return to a whole dollar amount. Less than fifty cents is rounded down, fifty cents or more is rounded up.[88] Previously, there was no such provision.

RANDY S. NELSON

82. Wis. Laws 1975, ch. 224, § 88.
83. WIS. STAT. § 71.11(21)(cm) (1973).
84. Wis. Laws 1975, ch. 224, § 87, *amending* WIS. STAT. § 71.11(21)(d) (1973).
85. Wis. Laws 1975, ch. 39, §§ 472, 486m, 490, 491, 492, 496, 497, and 498.
86. WIS. STAT. § 71.13(3)(b) (1973).
87. Wis. Laws 1975, ch. 224, § 91, *amending* WIS. STAT. § 71.13(3)(b) (1973).
88. Wis. Laws 1975, ch. 104, § 2.