Corporate Income/Franchise Tax

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This paper provides general information regarding the Wisconsin corporate income/ franchise tax. Included in the paper are a general rationale for the tax, a description of the method by which the tax is applied to corporations, and summary and comparative data about the tax.

Theoretical Rationale for the Corporate Income Tax

One theoretical rationale given for the corporate income tax is based on the view that a corporation is a legal entity with an existence of its own. A corporation can be a significant factor in economic and social decision-making, operated by professional management subject to little control by the average shareholder. Proponents of the corporate income tax believe that, as a separate entity with substantial earnings and economic power, the corporation is properly subject to a separate tax. In addition, proponents believe that, since a corporation can be viewed as a separate income earning entity, it is appropriate to tax a corporation's profits, especially when a substantial amount of the corporation's income is from the sale of goods and services to the state's residents.

Critics of the corporate income tax believe it depresses the overall level of business investment in the U.S. They argue that although corporations operate as distinct, decision-making units, corporations should not be subject to a distinct tax because, ultimately, corporate taxes are borne by natural persons. Since corporate profits are part of the income of shareholders, some view the corporate income tax as a tax on the income of shareholders. Under this view, the corporation has no independent taxpaying ability but should be seen as a "conduit" through which earnings pass on the way to the shareholders. Those who hold this view criticize the corporate income tax because corporate profits that are distributed are taxed twice--first at the corporate level under the corporate income tax and then under the individual income tax when they are distributed as dividends to shareholders. However, many economists believe that the corporate income tax is borne not only by shareholders but by consumers and employees as well. Regardless of the specific incidence, critics of the corporate income tax argue that it is not a tax on corporate income but rather a tax on the income of people, including shareholders, consumers, and employees.

Another rationale for the corporate income tax is that corporations receive benefits from their form of organization. These benefits include perpetual life, limited liability of shareholders, liquidity of ownership through marketability of shares, growth through retention of earnings, and possibilities of intercorporate affiliations. In addition, corporations derive benefits from certain governmental services which may reduce corporate costs, expand markets, and facilitate financial transactions. Proponents of the corporate income tax believe that it is reasonable that corporations pay for such benefits through the tax. However, critics argue that the general level of the corporate income tax paid is too high for the benefits received. Moreover, individual corporations receive similar benefits from their status but pay different amounts of taxes. To the extent the tax is for services provided by government, a general business tax or value-added tax would more closely relate to the cost of services that are provided.

A practical justification for the corporate income tax is that it safeguards the individual income tax. If the corporate income tax were abolished, retained earnings would no longer be taxed and individuals could simply leave their wealth within corporations where it would be sheltered from taxes until it was withdrawn. There have been proposals to "integrate" the individual and corporate income taxes to make the income tax more efficient and equitable. However, these proposals have not been adopted on either the federal or state level and would involve substantial administrative problems if enacted.

A final rationale for the corporate income tax is that it is a significant source of revenue for the federal and state governments. Critics contend that the corporate tax is used because it is politically easier to increase taxes on corporations than to increase taxes on individuals.

Entities Subject to State Corporate Income/Franchise Tax

Wisconsin has both a corporate income tax and a corporate franchise tax. The corporate franchise tax is imposed upon corporations for the privilege of doing business or exercising their franchise in the state in a corporate capacity. The corporate franchise tax is also imposed on corporations that buy or sell lottery prizes if the winning tickets were purchased in the state. The corporate income tax is imposed upon corporations which are not subject to the franchise tax and own property in the state; that derive income from sources within the state or from activities that are attributable to the state; or if their business within the state consists exclusively of foreign commerce, interstate commerce, or both. As a result, companies having any intrastate business are subject to the franchise tax while those having only interstate business here are subject to the income tax. The basic difference between the corporate franchise and income taxes is that income from obligations of the U.S. government and its instrumentalities is subject to the franchise tax, but not the income tax. Typically, the corporate franchise tax is imposed on corporations subject to taxation in Wisconsin. Since both taxes are similar, they are jointly referred to as the corporate income/franchise tax in this paper.

In general, all corporations over which Wisconsin has taxing jurisdiction are subject to the corporate income/franchise tax. However, there are certain types of corporations that are specifically exempt. These include municipal corporations, nonprofit corporations or associations, except those subject to the unrelated business income tax, cooperatives, most credit unions, most insurance companies (Wisconsin nonlife, nonmortgage guarantee companies and the nonlife insurance business of Wisconsin life insurance companies are not exempt), and banks under liquidation.

The income of nonprofit cooperative sickness care associations, nonprofit service insurance corporations, and religious, educational, benevolent, and other nonprofit corporations that is derived from health maintenance organizations (HMOs) and limited service health organizations (LSHOs) is subject to the state corporate income/franchise tax. In addition, small corporations which elect to be treated as tax-option corporations (Subchapter S corporations) generally have corporate net income attributed to their shareholders who are taxed under the individual income tax. Similarly, business enterprises such as sole proprietorships, partnerships, and limited liability companies (LLCs) that are treated as partnerships for federal income tax purposes are not subject to the state corporate income/franchise tax but, rather, the net income of the business is taxed under the individual income tax.

Jurisdictional Nexus

There are two circumstances which give Wisconsin taxing jurisdiction over corporations. First, corporations which are created and authorized to act in a corporate capacity (incorporated) under Wisconsin law or foreign corporations which are licensed to transact business in the state are subject to the Wisconsin corporate income/franchise tax. Such firms are subject to the corporate income/franchise tax whether or not they conduct business or own property in the state. However, even though a corporation is subject to the corporate income/franchise tax, it may not have a tax liability.

Second, corporations which are organized under the laws of other states or foreign nations are generally subject to the Wisconsin corporate income/franchise tax if they exercise a franchise, conduct business, or own property within the state.

The Department of Revenue (DOR) has promulgated administrative rules which describe, for non-Wisconsin firms, what type of business activities are needed to make such firms subject to the state's corporate income/franchise tax. Under the administrative rules, a non-Wisconsin (foreign) corporation is generally considered to have "nexus" with Wisconsin and be subject to taxation if it has one or more of the following "activities" in the state:

1. Maintenance of any business location in Wisconsin, including any kind of office.

2. Ownership of real estate in Wisconsin.

3. Ownership of a stock of goods in a public warehouse or on consignment in Wisconsin.

4. Ownership of a stock of goods in the hands of a distributor or other nonemployee representative in Wisconsin, if used to fill orders for the owner's account.

5. Usual or frequent activity in Wisconsin by employees or representatives soliciting orders with authority to accept them.

6. Usual or frequent activity in Wisconsin by employees or representatives engaged in purchasing activity or in the performance of services, including construction, installation, assembly, or repair of equipment.

7. Operation of mobile stores in Wisconsin, such as trucks with driver-salespersons, regardless of frequency.

8. Miscellaneous other usual and frequent activities by employees or representatives in Wisconsin such as credit investigations, collection of delinquent accounts, or conducting training classes or seminars for customer personnel in the operation, repair, and maintenance of the taxpayer's products.

9. Leasing of tangible property and licensing of intangible rights for use in Wisconsin.

10. The sale of other than tangible personal property such as real estate, services, and intangibles in Wisconsin.

11. The performance of construction contracts and personal services contracts in Wisconsin.

12. Engaging in substantial activities that help to establish and maintain a market in Wisconsin.

Additionally, the following activities constitute "nexus" if not prohibited by federal law: issuing credit, debit, or travel and entertainment cards to customers in Wisconsin; regularly selling products or services of any kind or nature to customers in the state that receive the product or service in Wisconsin; regularly soliciting business from potential customers in the state; regularly performing services outside the state for which benefits are received in the state; regularly engaging in transactions with customers in the state that involve intangible property and result in receipts flowing to the taxpayer in the state; holding loans secured by real or tangible personal property located in the state; owning, directly or indirectly, a general or limited partnership that does business in Wisconsin, regardless of the percentage of ownership; and owning, directly or indirectly, an interest, in an LLC that does business in Wisconsin and is treated as a partnership for federal income tax purposes, regardless of the percentage of ownership.

An out-of-state (foreign) corporation is not considered to have "nexus" with Wisconsin and is not subject to the state corporate income/franchise tax if:

1. The corporation stores tangible personal property, such as inventory or a stock of goods, in or on property in the state that is not owned by the corporation, and the property is delivered to another corporation in the state for manufacturing, fabricating, processing, or printing in the state.

2. The corporation stores, in or on property not owned by the corporation, finished goods that have been fabricated, processed, manufactured, or printed in the state, and the entire amount of such goods is shipped or delivered out-of-state by another corporation in the state.

3. The corporation is an out-of-state publisher that has finished publications printed and stored in this state, in or on property not owned by the publisher, whether or not the publications are subsequently sold or delivered in this state or shipped outside of it.

In addition, current law provides that an out-of-state corporation does not have nexus with Wisconsin and is not subject to the state corporate income tax if each of the following conditions are met:

1. The out-of-state corporation stores tangible personal property in the state on property not owned by the corporation;

2. The property is stored for 90 days or less;

3. The property is stored on another person's property in the state and is transferred to the person for manufacturing, processing, fabricating, or printing on the parcel of property in or on which it is stored; and

4. The assessed value of the parcel of property in or on which the tangible personal property is stored and manufactured was between $10 million and $11 million on January 1, 1999.

Under provisions included in 2009 Wisconsin Act 2, corporations that are members of a combined group must file a combined income/ franchise tax return. For a combined group, nexus is determined for the unitary business as a whole. Therefore, if a member of a combined group has nexus with Wisconsin and that nexus is attributable to the combined group's unitary business, all members of the combined group have nexus in Wisconsin. The combined reporting requirements, which are described in detail later in this paper, took effect for taxable years beginning on January 1, 2009.

Federal Restrictions on State Taxation of Corporations

Federal restrictions on state taxing powers are contained in the U.S. Constitution. The states have the power to levy taxes in accordance with their own laws, subject to the restrictions imposed principally by the due process clause of the 14th Amendment and the commerce clause. Under the due process clause, a minimal connection must exist between a corporation's activities and the taxing state, and the income attributed to the state for tax purposes must be rationally related to income-generating activities within the taxing state. Under the commerce clause, a state is prohibited from adopting a taxation scheme which discriminates against, or places undue burden on, interstate commerce.

In 1959 the U.S. Congress enacted Public Law 86-272, which provides that a state may not impose its income tax upon a corporation that is organized under the laws of other states and that sells tangible personal property, if the corporation's only activities in the state are:

1. Solicitation, by employees, of orders for tangible personal property which are sent out-of-state for approval or rejection. (The orders must be filled from a delivery point outside the state.)

2. Solicitation activity by nonemployee independent contractors conducted through their own offices or businesses located in the state.

Public Law 86-272 does not apply to corporations which are organized (incorporated) under the laws of the taxing state or a foreign nation. The law also does not apply to corporations which sell services, real property, or intangible personal property in more than one state.

Corporate Income Tax Liability

In general, a corporation determines state corporate income/franchise tax liability by computing gross or total income, subtracting deductions, apportioning the net income to the state (if necessary), adjusting for nonapportionable income and net operating losses (if applicable), applying the 7.9% state tax rate, and subtracting tax credits. Corporations that operate entirely in Wisconsin do not apportion net income. However, if the corporation is a member of a combined group of corporations, an individual corporation's income/franchise tax liability is based on the group's combined income computed in a combined report that must be completed by each such group.

Generally, state definitions of income and deductions are referenced to federal law. For corporate income tax purposes, state provisions are referenced to the federal Internal Revenue Code (IRC) in effect on December 31, 2010, with numerous exceptions.

The components used in the calculation of corporate income/franchise tax liability are outlined below.

Total Income

Gross business income is income that is generated by a taxpayer in the active conduct of a trade or business. For tax purposes, federal total income includes gross profit, dividends, interest, rents, royalties, capital gains or losses, and other income.

Gross business income equals the net amount realized from sales (gross receipts less sales returns and allowances) minus the cost of goods sold. Cost of goods sold is an adjustment made to inventoried items to arrive at gross profit. The adjustment measures the cost of producing inventory or the cost of producing or acquiring property or merchandise for sale or resale. In general, the cost of goods sold is determined by adding related purchases and costs to the value of inventory at the beginning of the year and subtracting the value of inventory at the year's end.

Businesses do not have to determine cost of goods sold if the sale of merchandise is not an income-producing factor for their business. In these instances, gross profits are the same as net receipts. Most businesses and professions that sell services rather than products can figure profits in this manner.

Total income also includes income other than that generated from the sales of goods and services. The amount of a distribution representing a dividend is included in total income, subject to dividends received deductions for corporate recipients. A dividend is defined as any distribution made by a corporation out of its earnings or profits to its shareholders, whether in money or in property. Generally, all interest received or credited to the taxpayer is includable in gross income. (For federal income tax purposes, interest on U.S. obligations is defined as income but interest on state and local obligations is excluded. However, interest on state and local obligations is taxable under the Wisconsin franchise tax. Also, with limited exceptions, state and local interest is taxable under the state corporate income tax.) Profit from the sale or exchange of business property and other capital assets is taxable income. (Combined groups compute net capital gain/loss for the group as a whole.) Such profits are taxable if they are treated either as ordinary income or capital gains/loss. Rent received from property is income. Royalties are also included in income. Finally, other types of business income such as recoveries of bad debt adjustments due to a change in accounting, refunds of taxes deducted in prior years, and recapture of certain previously-claimed deductions are included in gross income.

Although the definitions of various forms of income are generally referenced to federal IRC provisions, Wisconsin law provides for certain modifications. Specifically, the federal exclusion for 100% of the gain on certain small business stock is not provided under state law. (The exclusion was increased from 75% to 100% by the federal Small Business Jobs Act of 2010.) Interest, dividends, and capital gains from the disposition of intangible assets must be subtracted from income for state tax purposes if: (1) the operations of the payer are not unitary with those of the payee; and (2) the payer and payee are not related as parent company and subsidiary or affiliate and the investment activity from which the income is received is not an integral part of a unitary business. This income is generally considered nonapportionable income. Income from transactions between members of a combined group is not included in combined returns. Wisconsin generally follows the capital loss limitations and carryovers provided under the IRC for corporations. However, for Wisconsin purposes, a corporation may not carry back a loss to tax years before 1987. Such losses may be carried forward up to five years. Also, taxpayers that use accrual basis accounting cannot use the installment method, and in certain cases there is a difference between the federal and Wisconsin basis of assets.

Job Creation Exclusion. 2011 Wisconsin Act 5, which was enacted during the January 2011, Special Session, provides an exclusion (subtraction) from income, under the individual income and corporate income /franchise taxes for increased employment. Specifically, an exclusion from income is provided equal to $4,000, multiplied times the increase in the number of full-time equivalent employees employed by the business in Wisconsin in the tax year for a business with gross receipts of $5 million or less in the tax year. For firms with gross receipts of more than $5 million, the exclusion amount is $2,000 per new employee.

The increase in employment is determined by subtracting the average employee count from the taxpayer's unemployment insurance (UI) quarterly wage reports from the preceding year from the average employee count from the taxpayer's UI quarterly wage reports for the tax year for which the exclusion is claimed. In cases where the business is not required to file a quarterly wage report, the deduction is based on the average quarterly increase in the number of full-time equivalent employees, calculated by the claimant. DOR can require other information in making this determination. A taxpayer cannot claim the exclusion from income and the relocated business tax credit (described below).

"Full-time equivalent employee" means an employee who is a resident of Wisconsin, is employed in a regular, nonseasonal job, and who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays.

"Gross receipts" means gross sales, gross premiums earned, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross income from pass-through entities, and all other receipts that are included in gross income, other than life insurance income, before apportionment for Wisconsin franchise or income tax purposes.

Deductions

Deductions are subtractions made from gross income in arriving at net or taxable income. In part, deductions are based on the proposition that certain components of income are not available for the taxpayer's own free use. For example, taxes are viewed as involuntary reductions in the amount of available income. In addition, deductions can affect taxpayer behavior and are sometimes used as incentives to encourage certain types of activities. Accelerated methods of depreciation are designed, in part, to encourage capital investment. Since the corporate income tax is a tax on business, many of the deductions allowed are, in general, related to the expenses incurred in operating a business. In order to be deductible as a business expense, an expense must be an ordinary and necessary expense of the taxpayer's trade or business, paid or incurred during the taxable year in which it is deducted, and connected with the trade or business conducted by the taxpayer.

As previously noted, definitions of deductions under the state corporate income/franchise tax are generally referenced to the federal IRC in effect on December 31, 2010. As a result, most corporate income/franchise tax deductions conform with federal corporate income tax provisions. However, state law includes provisions that exclude or modify IRC definitions. In addition, any new modifications to existing federal deductions enacted since December 31, 2010, do not apply for state corporate income/franchise purposes.

The following sections provide a brief description of the types of deductions that are allowed. More detailed information on corporate tax deductions is presented in Appendix 1.

Compensation of Officers and Employees. Salaries, wages, and other forms of remuneration to officers of the business are deductible expenses. However, a publicly-held corporation cannot deduct compensation excess of $1.0 million per tax year that is paid or accrued to certain executives. A deduction is also provided for a reasonable salary allowance or other compensation for services actually rendered by employees.

Repairs. A deduction is allowed for the cost of repairs and maintenance that keep business property in ordinarily efficient operating condition.

Taxes. In general, taxes that are ordinary and necessary expenses paid or incurred in carrying on a trade or business are deductible. Charges for specific services or special purposes (user fees) are often not considered taxes and are not deductible as such. However, these charges might be deductible under another provision--for example, as business expenses.

Interest. A deduction is allowed for interest on indebtedness incurred in the operation of a trade or business. Under provisions of 2007 Wisconsin Act 226, deductions claimed for interest or rent payments to related entities must be added back to income under the state corporate income tax, if certain conditions are not met. 2009 Wisconsin Act 2 expanded these provisions to also require certain intangible expenses and management fees paid to related entities to be added back to income. (These provisions are described in a subsequent section.)

Charitable Contributions. Ordinarily, a corporation can claim a limited deduction (up to 10% of taxable income) for charitable contributions made in cash or property to, or for the benefit of, a qualified organization. However, payments made to a charitable organization that are determined to be business expenses are deducible without regard to the 10% limit imposed on charitable contributions.

Depreciation. The deduction for depreciation allows taxpayers to recover, over a period of years, the cost of capital assets used in a trade or business or for the production of income. The deduction is an allowance for the wear and tear, deterioration, or obsolescence of the property. Depreciable property is generally tangible, and either real or personal property. In certain cases, intangible property may be depreciated. Land is not depreciable. To be depreciable, the property must have a determinable life of more than one year, and it must decline in value through use or the passage of time. Only property used in a trade or business or held for the production of income is eligible for a depreciation deduction. Depreciation may not be claimed on assets used in connection with a not-for-profit activity. No deduction is allowed for property used for personal purposes.

For tangible assets, depreciation applies to only that part of the property that is subject to wear and tear, to decay or decline from natural causes, or to exhaustion and obsolescence. The property must also be of a relatively permanent nature with a determinable useful life of over one year.

Intangible assets may be depreciated or amortized if it is known from experience or other factors that the assets will be of use in the business or in the production of income for only a limited period of time and if that time period can be estimated with reasonable accuracy. Certain patents, copyrights, and computer software are examples of depreciable intangibles.

In order to claim depreciation on any property, the taxpayer must have a capital interest in it. Generally, the owner of the depreciable property may claim the deduction. However, the right to deduct depreciation is not predicated solely upon ownership of the legal title, but also upon investment in the property.

The amount to be recovered by depreciation is the cost or other appropriate basis of the property. The life over which the depreciable basis of property is recovered depends upon the type of asset that is depreciated and the system of depreciation that is used.

There are a number of methods used to calculate depreciation under federal law, which depend on the type of property being depreciated and when it was first placed into service. The Modified Accelerated Cost Recovery System (MACRS) rules of depreciation apply to most tangible property placed in service after 1986. In recent years the federal government has also enacted a number of laws that permit businesses to claim accelerated "bonus" depreciation deductions. However, these provisions have generally not been adopted at the state level, and the Legislature must take action to reference state amortization and depreciation provisions to federal provisions that take effect after December 31, 2000.

However, 2005 Wisconsin Act 362 created an exception to the required legislative update for certain depreciable property used in farming. For property acquired and placed in service in tax years beginning on or after January 1, 2006, a corporation that is "actively engaged in farming" may compute amortization and depreciation on property used in farming under any changes enacted after December 31, 2005 to the federal IRC 30% and 50% bonus depreciation laws. To apply for state income tax purposes, the changes must be amendments to the specific laws and not be new laws that modify the IRC. The federal laws referenced in the statutes include: (1) the Job Creation and Workers Assistant Act of 2002 (PL 107-147); or (2) the Jobs and Growth Tax Relief Reconciliation Act of 2003 (PL 108-27). As of this writing, no federal amendments to these laws have been adopted.

Because state depreciation provisions are fully referenced to the Internal Revenue Code in effect on December 31, 2000, tangible depreciable property currently placed in service is generally subject to MACRS. More detail on MACRS and other methods of computing depreciation deductions is presented in Appendix 1.

Amortization. Amortization provisions allow a taxpayer to annually deduct a portion of certain capital expenses that are not ordinarily deductible. Generally, these expenses are not otherwise deductible because: (1) they relate to assets that are not depreciable because the assets have unlimited or indefinite life; or (2) they pertain to organizational or investigative expenses that were incurred before the taxpayer went into business. The deduction for amortization is similar to the straight-line method of depreciation in that a taxpayer is allowed to recover the capital costs through an annual deduction over a fixed period of time. Expenses which may be amortized in this manner include: the cost of certain computer software; the cost of certified pollution control facilities; certain bond premiums; research and experimental expenditures; the cost of acquiring a lease; qualified forestation and reforestation costs; business start-up expenditures; and certain organizational expenditures.

The capitalized costs of certain intangibles (referred to as section 197 intangibles) may be amortized over 15 years. These assets include: goodwill; going certain value; workforce in place; customer information bases; patents; copyrights, formulas and similar items; customer- and supplier-based intangibles; government licenses and permits; a covenant not to compete; a franchise, trademark or trade name; contracts for use of, or term interest in, a section 197 intangible.

Election to Expense Depreciable Assets. Under Section 179 of the IRC, a taxpayer may elect to treat all or a portion of the cost of qualifying property, up to a limit, as an expense rather than as a capital expenditure. Such an expense or cost is deductible in the year in which the property is placed in service. The amount claimed as a deduction is referred to as a Section 179 expense allowance. Except for certain agricultural structures, qualifying property is generally limited to tangible personal property.

Under federal law, the Section 179 deduction is the cost of qualifying property up to a maximum limit, and the deductible amount is reduced by the amount by which the total cost of the Section 179 property placed in service in a year exceeds a specified phase-out amount (investment limit). The federal deduction limits have been increased several times in recent years. Under current federal law, the maximum amount a taxpayer may expense is $500,000, and the investment limit is $2.0 million for 2010 through 2013. Beginning with property placed in service in 2014, the expense limit will be reduced to $25,000, and will not be adjusted for inflation. The investment limit will be reduced to $200,000 in 2014.

The dollar limitation on the amount of deduction is reduced on a dollar-for-dollar basis for the cost of qualifying property placed in service during the tax year over the investment limit. Federal law also places limits on the amounts that can be deducted for certain types of investments, such as automobiles. In addition, the American Jobs Creation Act of 2004 limited to $25,000 the amount that could be expensed for sport utility vehicles weighing between 6,000 and 14,000 pounds ("SUV exclusion").

Federal section 179 provisions enacted since 2003 have not been adopted for state income and franchise tax purposes for non-farm property. Rather, state taxpayers are generally subject to Section 179 IRC provisions that were in effect for tax years through 2002. As a result, under current Wisconsin law, a taxpayer may elect to deduct up to $25,000 of the cost of qualifying property (except for property used in farming) in the year it is placed in service rather than taking depreciation deductions over a specified recovery period. In general, qualifying property is depreciable tangible personal property that is purchased for the active conduct of a trade or business. The maximum deductible amount of $25,000 is reduced (but not below zero) by the amount by which the qualifying property placed in service during the tax year exceeds $200,000. In addition, the amount eligible to be expensed for a tax year may not exceed the taxable income of the taxpayer that is derived from the active conduct of a trade or a business for that year. Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding years and deducted, subject to the total investment and taxable income limits. The $25,000 expense limits also apply to sport utility vehicles weighing between 6,000 and 14,000 pounds.

Current state law is referenced to the Section 179 provisions included in the federal Tax Increase Prevention and Reconciliation Act of 2005, for property that is used in farming that is acquired and placed in service in tax years beginning on or after January 1, 2008, and used by a person who is actively engaged in farming. This treatment provided an increased deduction amount for farm property placed into service in 2008 or 2009. However, beginning in 2010, the general state expense limit of $25,000 and the investment limit of $200,000 also applied for farm property.

Bad Debts. A deduction is allowed for business or nonbusiness debt that becomes worthless. Separate rules apply to business and nonbusiness debt.

Rent. Rent expenses are deductible as business expenses if they are incurred as a condition to the continued use or possession of property used in a trade or business, and the taxpayer has not taken or is not taking title or has no equity in the property. A deduction is allowed where the amount of rent is fixed in an arm's-length transaction without a tax-avoidance motive. In general, rental expenses are deductible in the year they are accrued or paid.

As noted, under provisions of 2007 Wisconsin Act 226, interest and rent payments to related entities must be added back to income under the state income/franchise tax, if certain conditions are not met. These provisions are described in a subsequent section.

Depletion. A deduction for depletion is allowed in determining the income derived from the sale of natural resources; it returns to the owner or operator (extractor) the capital investment on a pro rata basis over the productive life of such resources. Depletion is the exhaustion of natural resources by the process of mining, quarrying, drilling, and felling. The depletion deduction, in effect, represents the reduction in the content of the reserves from which the resource is taken. The taxpayer must have an economic interest (capital investment) in the mineral deposit or timber in order to claim the deduction.

Methods for computing depletion are cost depletion or percentage depletion. Although a taxpayer must generally use the depletion method that produces the greatest deduction each year, the allowance for percentage depletion has historically been preferred over cost depletion, since percentage depletion may be claimed even though the total deductions exceed the cost basis of the resource. However, unless the taxpayer is an independent producer or royalty owner, percentage depletion generally cannot be used for oil and gas wells.

Under the Wisconsin corporate income tax, taxpayers are not allowed to claim the depletion deduction using the percentage depletion method. Therefore, for state tax purposes, depletion is only deductible using the cost method of computing the deduction.

To figure cost depletion, the taxpayer must determine the following: (1) the property's basis for depletion; (2) the total recoverable units, such as tons or barrels in the property's natural deposit; and (3) the number of the units sold during the tax year. That part of the basis in the property that is allocable to the depletable reserves is then divided by the number of total recoverable units. The quotient is the cost depletion per unit. This amount multiplied by the number of extracted units sold during the year determines the cost depletion deduction for the year. Each year the basis of the property is reduced by the amount of depletion deducted for that year. The remaining basis is used in computing cost depreciation for the following year.

Insurance. The cost of insurance can generally be deducted as a business expense if it is an ordinary and necessary expense paid or incurred in carrying on a trade or business.

As a general rule, payments made to a reserve fund set up for self-insurance are not deductible, even though the payments are based on estimated premiums that would be paid to an insurance company. Also, premiums paid on insurance purchased to secure a loan are not deductible.

Retirement Plans. Retirement plans are arrangements that provide employees with compensation, in addition to that paid currently, to be paid generally at retirement. Retirement plans include a number of different types of group pension and retirement plans, and retirement savings plans for individuals outside of a large group setting. In general, retirement plans can be divided into two major categories: qualified and non-qualified plans.

Qualified plans must meet specific Internal Revenue Code requirements concerning formation, operation, and funding. Qualified plans have a number of tax advantages, including the deductibility of employer contributions to the plan, deferral of current taxation for employer contributions on behalf of the employee, and tax-free accumulation of earnings and gains on a plan's investment funds. All other plans and arrangements are non-qualified plans. Non-qualified plans include funded plans provided for a group of employees outside of qualified plans, funded or unfunded arrangements provided to particular employees, either instead of or in addition to qualified plans, and unfunded promises to pay compensation in the future.

Nonqualified deferred compensation plans do not provide the same tax benefits as qualified plans, but are more flexible and can be structured to meet specific objectives regarding certain groups of employees. To be deductible, contributions to nonqualified deferred compensation plans must be ordinary and necessary business expenses, and must be combined with the compensation paid to an employee to determine whether the total compensation paid is reasonable.

Employee Benefit Programs. In general, a deduction is allowed for contributions to employee benefit programs or plans, plans not claimed as a deduction elsewhere on the tax return, and that are ordinary and necessary business expenses, and are not an incidental part of a pension, profit-sharing, or similar type of retirement plan. Amounts paid by an employer to improve the well-being and morale of employees that directly benefit the business in inducing low turnover in labor, absence, or services, and increase loyalty and similar outcomes are deductible as ordinary and necessary business expenses. Examples of employee benefit programs include educational assistance programs, cafeteria plans, and dependent care assistance programs.

Advertising. Advertising expenses that are reasonable in amount and related to the business activities in which the taxpayer is engaged are deductible. Advertising costs that generate future benefits beyond the current year may be treated as a capital expense and must be capitalized. The taxpayer is free to choose the advertising that best serves the taxpayer's purpose; however, the burden of proving the deductibility of advertising expenses is on the taxpayer.

Other Deductions. Ordinary and necessary business expenses related to the operation of a trade or business and not deducted elsewhere can be deducted under a general miscellaneous category. Deductible business expenses include: generally, 50% of business meal and entertainment expenses; certain start-up expenses; the cost of materials and supplies used in business operations; legal and professional fees; and expenditures for incidental repairs, maintenance, and improvements that are not capital expenditures.

Adjustments to Deductions

Corporations may be required to modify deductions or income for certain expenses connected with related entities, and disclose certain types of transactions or file information returns related to certain types of transactions. In addition, state corporate income/franchise tax provisions exclude or modify deductions that are provided under the IRC.

Related Entity Transactions/Tax Shelter Disclosure

Wisconsin taxpayers are required to add back to income certain expenses for payments to related entities. Specifically, rental expenses, interest expenses, intangible expenses, and management fees deducted or excluded under the IRC have to be added back if they are directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities. (These added back expenses may then be subtracted if certain conditions are met.)

An expense may not be deductible if certain factors indicate that the primary purpose of the transaction is tax avoidance. Examples of such factors include, but are not limited to: (1) there was no actual transfer of funds from the taxpayer to the related entity, or the funds were substantially returned to the taxpayer; or (2) if the transaction was entered into on the advice of a tax advisor, the advisor's fee was determined by reference to the tax savings.

"Intangible expenses" subject to the add-back provisions include royalty, patent, technical, copyright, and licensing fees; costs related to the acquisition, use, or disposition of intangible property (such as financial instruments, patents and trademarks); and losses related to factoring transactions or discounting transactions.

In general, a "related entity" is an entity that is at least 50% owned by the taxpayer or an entity related to the taxpayer.

A deduction is allowed for rent, interest, intangible expenses, and management fees that are added back if certain conditions apply indicating that the transaction had a legitimate business purpose other than tax avoidance.

If a deduction for rental, interest, intangible expenses, and management fees is denied to a taxpayer because the expenses were paid to a related entity, and the conditions to deduct the expenses were not satisfied, then such amounts are not included in the income of the related entity for state tax purposes. (This provision is intended to prevent double-taxation.)

Wisconsin law provides that the Secretary of Revenue (or designee) may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among two or more organizations, trades, or businesses that are owned or controlled directly or indirectly by the same interests, if the Secretary determines that such an action is necessary in order to prevent evasion of taxes, or to clearly reflect the income of any such organization, trade, or business. The law specifies that this authority is in addition to the related entity provisions. Also, a nonstatutory provision provided that the related entity provisions would have no effect on any bank settlement agreements that the Department of Revenue has entered into with banks and other financial institutions regarding their investment subsidiaries.

Taxpayers and tax advisors are required to report certain types of transactions that may indicate the existence of tax shelters. Penalties are imposed for engaging in and failure to report on such activities. These provisions apply to business and individual taxpayers. The law also requires material advisors to taxpayers to file disclosure statements.

Other State Adjustments to Federal Provisions

Although state income and deductions are primarily referenced to federal law, there are a number of modifications specified under the state corporate income/franchise tax law that must be made to reflect differences in the state treatment of certain items.

For example, as discussed above, state depreciation provisions generally reference federal law as of December 31, 2000, and state taxpayers are not permitted to use the federal percentage depletion provisions. In addition, under 2009 Act 28, effective with tax years beginning on January 1, 2009, Wisconsin no longer allows businesses to claim the federal tax deduction for qualified domestic production activities. The federal deduction was created in the American Jobs Creation Act of 2004, and is currently equal to the lesser of 9% of a business' qualified production activities income or its taxable income. The deduction was phased in from 2005 through 2010, and was allowed at the state level prior to 2009.

As noted, state corporate income and franchise tax provisions are generally referenced to the IRC as amended to December 31, 2010. In addition, the Legislature has not adopted certain corporate income tax provisions included in federal laws that were enacted between 2000 and 2010. Moreover, all IRC provisions enacted since 2010 have not been adopted for state corporate income tax provisions.

More detailed information regarding the required adjustments to federal provisions is provided in Appendix 1.

Allocation and Assignment of Income

For state tax purposes, specified rules and laws are used to allocate or assign income of a particular corporate taxpayer.

A corporation that conducts all of its business and owns property only in Wisconsin has all of its income subject to taxation in Wisconsin. Usually, such firms are incorporated in Wisconsin. These types of firms are often referred to as 100% Wisconsin firms, and they compute their taxes very much like a Wisconsin resident does under the individual income tax.

A corporation which conducts its business operations and owns property both within and outside of the state is subject to a different corporate income tax treatment than is a 100% Wisconsin firm. When the states tax the income of corporations generated by activities carried on across state lines, they are required under the due process and commerce clauses of the U.S. Constitution to tax only income that is fairly attributable to activities carried on within the state. In order to meet this constitutional obligation, Wisconsin generally employs one of three methods of assigning income to the state--separate accounting, apportionment, or specific allocation.

Separate Accounting. Under Wisconsin law, a multijurisdictional corporation must use separate accounting when the corporation's business activities in the state are not an integral part of a unitary business. Separate accounting implies that the income and expenses of each specific business function or activity of a multijurisdictional corporation can be accounted for individually and independently. The corporation must determine the income attributable to Wisconsin using separate records of the sales, cost of sales, and expenses for the Wisconsin business. Transactions that occur between in-state and out-of-state businesses must be valued at "arms-length." The Department of Revenue may permit separate accounting in any case (including for unitary corporations) in which it is satisfied that the use of the method will properly reflect the income that is taxable by the state. Currently, few multijurisdictional corporations in the state use separate accounting to determine their net tax liability.

Apportionment. Under apportionment, the corporation adds its total gross income from its in-state and out-of-state unitary activities, subtracts its deductions, and multiplies the amount of net income by its apportionment ratio or percentage as determined by the Wisconsin apportionment factor. The apportionment percentage is used to approximate how much of a corporation's total net income is generated by activities in Wisconsin.

Most multistate corporations, including multistate electric and gas utilities, apportion income to Wisconsin using single sales factor apportionment. Statutory provisions and administrative rules govern the definitions and sourcing of sales that are included in the sales factor. Multistate financial organizations, including financial institutions, broker-dealers, investment advisers, investment companies, and underwriters, use industry specific, single receipts factor apportionment factors, while multistate insurance companies use a single premiums apportionment factor. Interstate telecommunications companies, direct air carriers, motor carriers, pipeline companies, and railroads and sleeping car companies apportion income using multiple factor formulas.

The Wisconsin apportionment single sales factor is illustrated below:

Wisconsin Apportionment Factor

$$\text{Apportionment Percentage} = \frac{\text{Sales by WI Destination}}{\text{Total Sales}}$$

Generally, for individual multijurisdictional corporations, the sales factor is a percentage determined by dividing the total sales or receipts of the corporation in Wisconsin by the total sales or receipts of the corporation everywhere. Sales are generally all gross receipts from the course of the taxpayer's regular trade or business operations which produce apportionable business income. Specific provisions apply regarding receipts of interstate financial institutions, brokerages, and other investment businesses.

Interstate telecommunications companies apportion income using the arithmetic average of the percentages of payroll, property, and sales in Wisconsin to total company payroll, property, and sales, respectively.

As noted, interstate air carriers, interstate motor carriers, interstate railroads and sleeping car companies, and interstate pipeline companies use industry specific, multi-factor apportionment formulas to apportion income for Wisconsin corporate income/franchise tax purposes. The specific apportionment factors used by these types of companies and by interstate telecommunications companies are shown in Exhibit 1.

More detailed information regarding the application of the apportionment provisions is provided in Appendix 2.

Exhibit 1: Apportionment Factors Used by Certain Types of Multijurisdictional Corporations

Type of Corporation	Apportionment Factors
Interstate Telecommunications Company	1. Ratio of sales in Wisconsin to total sales everywhere. 2. Ratio of property in Wisconsin to total property everywhere. (The property factor is generally the average value of real and tangible personal property owned and purchased by the taxpayer.) 3. Ratio of payroll in Wisconsin to total payroll everywhere. (The payroll factor is generally the total amount of compensation paid.)
Interstate Air Carrier	1. Ratio of aircraft arrivals and departures in state to total aircraft arrivals and departures. 2. Ratio of revenue tons handled at airports in state to total revenue tons handled. 3. Ratio of originating revenue in state to total originating revenue.
Interstate Motor Carrier	1. Ratio of gross receipts from carriage of persons or property, or both, first acquired for carriage in Wisconsin to total gross receipts from carriage of persons or property, or both, everywhere. 2. Ratio of ton miles of carriage in Wisconsin to total ton miles of carriage. (Ton miles means the movement of one ton of persons or property, or both, the distance of one mile. One person equals 200 pounds.)
Interstate Railroads and Sleeping Car Companies	1. Ratio of gross receipts from carriage of property, or persons, or both, first acquired for carriage in Wisconsin to total gross receipts from carriage of property, or persons, or both, everywhere. 2. Ratio of revenue ton miles of carriage in Wisconsin to revenue ton miles of carriage everywhere. (Revenue ton miles means the movement of one net ton of property or persons, or both the distance of one mile, for consideration. One person equals 150 pounds.)
Interstate Pipeline Company	1. Ratio of average net cost of real and tangible property owned and used in Wisconsin to produce apportionable income to total average net cost of such property used everywhere. 2. Ratio of traffic units (e.g. barrel miles, cubic foot miles, or other appropriate measure of product movement) in Wisconsin to the total of such units everywhere. 3. Ratio of compensation paid to employees located in the state to total compensation paid to all employees to produce apportionable income.

Allocation of Nonapportionable Income. Allocation of nonapportionable income traces the income to the state of its supposed source and includes the income in that state's tax base. Generally, this method of assigning income is applied to income from property with the source of the income generally following the location of the property. Many states, for example, allocate the income from real and tangible personal property, such as rents from real estate, and oil and mineral royalties, to the state where the underlying property is located. Income from intangible property, such as dividends and interest, is often allocated to the taxpayer's commercial or legal domicile or to the state in which the intangible property is utilized.

Wisconsin law distinguishes nonapportionable income from apportionable income. In determining a corporation's tax liability, total corporate nonapportionable income or loss is removed from the total income of a unitary multistate corporation and the remaining income or loss is apportioned to the state. Nonapportionable income allocated to Wisconsin is then added to apportioned business income to determine Wisconsin net income.

Nonapportionable income is allocable directly to the state in which the nonbusiness property that produced the income, gain, or loss is located. For state income and franchise tax purposes, nonapportionable income includes income, gain, or loss from: (1) the sale of nonbusiness real property or nonbusiness tangible personal property; (2) rental of nonbusiness real property or nonbusiness tangible personal property; and (3) royalties from nonbusiness real property or nonbusiness tangible personal property. Expenses that are directly related to nonapportionable rents and royalties are offset against that income. Income from lottery prizes is nonapportionable income allocable to Wisconsin if the tickets were originally purchased in Wisconsin. For combined returns, the total aggregate net nonapportionable income of each member of a combined group is included in the unitary income of the group. In addition, income or gain or loss from intangible property that is earned by a personal holding company is nonapportionable income and is allocated to the state in which the business is incorporated.

The state statutes provide that income or loss from intangibles (interest, dividends, royalties from patents, and similar types of income) is generally apportionable business income which follows the situs of the business. However, interest, dividends, and capital gains may be exempt from state tax when the recipient and payor are not a unitary business, and the recipient and payor are not related as a 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, or the transaction does not serve an operational function. Conversely, if the corporation has commercial or legal domicile in Wisconsin, this intangible income is treated as business income for tax purposes.

Insurance Companies

Although most insurance companies that conduct business in the state are generally exempt from the state corporate income and franchise tax and, instead, pay the state insurance premiums tax, certain types of insurance companies are subject to the corporate franchise tax. Specifically, the state corporate income/franchise tax is imposed on most domestic nonlife insurance companies and on the nonlife insurance business of domestic life insurance companies. Insurers generally exempt from the state corporate income/franchise tax include:

1. Foreign insurance companies (companies not organized under Wisconsin laws);

2. Domestic life insurance companies engaged exclusively in life insurance business. If a life insurance company engages in a business other than life insurance, the net income from the nonlife insurance business is subject to the state income/franchise tax. These companies pay the state premiums tax on their life insurance business;

3. Domestic insurers transacting mortgage guaranty insurance business;

4. Town mutual insurers organized under, or subject to, state law;

5. Insurers exempt from federal income

taxation under the IRC; and

6. Certain corporations that are bona fide cooperatives operating without pecuniary profit to any shareholder or member, or operated on a cooperative plan pursuant to which they determine and distribute their proceeds in compliance with state law. However, the income of cooperative health care associations or service insurance corporations that is derived from a health maintenance organization or limited service health organization is subject to the franchise tax.

Under federal law and under state law, insurance companies, excluding life insurance companies, are generally exempt from the corporate income tax if their gross receipts for the tax year are $600,000, or less, and the premiums received exceed 50% of gross receipts. (For mutual insurance companies, gross receipts cannot exceed $150,000 and premiums must exceed 35% of gross receipts.) If net premiums do not exceed $1.2 million, a company may elect to only have its taxable investment income taxed. (Life insurance companies are subject to the state insurance premiums tax, but not the state corporate income/franchise tax.)

Insurers that derive income from the sale or purchase and subsequent sale or redemption of lottery prizes must pay state income/franchise tax on this income, if the winning ticket was purchased in Wisconsin.

When a corporation that is an insurance company determines its Wisconsin income, certain aspects of its tax liability are computed differently than for other corporations. In addition to the state adjustments to federal income made by corporations, there are further additions specific to insurance companies. Insurance companies must add the following to federal income: (1) loss carryforward, including any capital loss carryforward previously deducted for Wisconsin purposes, that was deducted in computing federal taxable income; (2) dividend income received during the tax year to the extent the dividends were deducted from, or not included in, federal taxable income; and (3) any deduction for discounting unpaid losses (customer claims). If an insurance company is a member of a combined group, these amounts must be included in the combined group's income. Insurance companies must also adjust net business losses to exclude the dividends received deduction.

Depending upon the type of insurance company involved, the adjusted federal taxable income amount might require further modifications before arriving at Wisconsin net taxable income. Domestic insurance companies not engaged in the sale of life insurance that have collected premiums written on property and risks located only in Wisconsin are not required to further modify this measure of income. For these insurance corporations, adjusted federal taxable income is Wisconsin net income (before any offset for business loss carryforwards).

As noted, the state corporate franchise tax is generally imposed on the nonlife insurance business of domestic insurance companies that sell both life and nonlife insurance. Consequently, in determining state franchise tax liability, these companies must exclude the income from life insurance operations. The insurance company first computes net income, which is federal taxable income modified to include Wisconsin addition and subtraction modifications to reflect the difference between Wisconsin and federal taxable incomes. This amount is then multiplied by a percentage calculated by dividing the insurance company's net gain from operations, other than life insurance, by that company's total net gain from operations. The resulting amount is subtracted from the insurance company's total federal taxable income and the remainder is the company's federal taxable income from life insurance operations. This life insurance income is excluded in determining state taxable income.

Net gain from operations other than life insurance includes: (1) net income, after dividends to policyholders and before federal and foreign income taxes, from property and casualty insurance; (2) net gain from operations, after dividends to policyholders, and before federal income taxes, from accident and health insurance; and (3) net realized capital gains or losses on investments from accident and health insurance operations.

Domestic insurance corporations that have received premiums written for insurance, other than life insurance, on property and risks located both in and outside of Wisconsin must allocate a portion of total adjusted federal income to the state based on a premiums factor, which is similar to the sales factor used by other types of corporations to apportion income. The premiums factor is the ratio of direct premiums written for insurance, other than life insurance, and assumed premiums written for reinsurance, other than life insurance, with respect to property and risks resident, located, or performed in the state, divided by the total of such premiums everywhere. The apportionment ratio (premiums factor) is applied to adjusted federal income to arrive at Wisconsin net income before any offset for business loss carryforwards. As noted, combined groups use a modified sales factor in apportioning income to the state. Insurance company premiums are treated like sales in the modified factor and are included in the modified factor in apportioning the combined group's unitary income to Wisconsin. If the insurance company is a member of a combined group, the company's share of combined unitary income is apportioned to the member insurance company based on the ratio of the company's combined unitary income to the group's combined unitary income.

"Direct premiums" is defined as direct premiums reported for the tax year on the annual statement required to be filed with the Commissioner of Insurance. "Assumed premiums" is defined as assumed reinsurance premiums from domestic insurance companies also reported for the tax year on the annual statement.

Under state law, the amount of tax that an insurance company pays under the state income/franchise tax cannot exceed 2% of gross Wisconsin premiums. (This limitation does not apply to income from lottery prizes.)

Net Business Losses

Although similar to federal law, Wisconsin has specific state provisions governing the determination and use of net business losses for state corporate income/franchise tax purposes. Under state law, a net business loss is generally defined as the excess of business expenses allowed as deductions in computing net income over the amount of income attributable to the operation of a trade or business in the state. Nonapportionable losses having situs in Wisconsin are included in Wisconsin net business loss; nonapportionable income having situs in the state is included in net business income.

Net business losses are determined in a manner similar to the way taxable income is determined. The taxpayer starts with gross income and subtracts business expenses allowable as deductions. If expenses are greater than income, a net business loss is generated. Wisconsin law allows net business losses to be carried forward for 15 years to offset income. Federal law permits net business losses to be carried back for two years, but state law does not provide for carrybacks of net business losses. Certain unused business loss carryforwards generated by members of a combined group can be shared with other members of the group to offset their net income. In addition, the pre-2009 unused net business loss carryforwards of combined group members can be shared with other group members over 20 years. Under state tax provisions, net business losses, if any, are used to offset state taxable income before the state tax rate is applied to net income.

State Corporate Income Tax Rate

The state corporate income tax rate is 7.9% and is applied to all income subject to the state corporate income tax. The resulting amount is the corporation's gross tax liability.

Economic Development Surcharge

Under provisions of 2011 Wisconsin Act 32, the state recycling surcharge was converted to the economic development surcharge. The economic development surcharge provides funding for economic development programs administered by the Wisconsin Economic Development Corporation (WEDC).

The economic development surcharge is imposed on farm and nonfarm businesses that have more than $4 million in "gross receipts from all activities." The economic development surcharge equals 3% of gross tax liability for corporations (including insurance companies and LLCs taxed as corporations), or 0.2% of net business income for sole proprietorships, partnerships, and LLCs taxable as partnerships. The minimum economic development surcharge is $25 and the maximum is $9,800. Sole proprietorships and partnerships engaged only in farming with more than $4 million in gross receipts pay the $25 minimum economic development surcharge. C corporations and S corporations solely engaged in farming determine surcharge liabilities in the same manner as other C and S corporations.

Economic development surcharge payments, including interest and penalties, are deposited into the segregated economic development fund. Economic development fund revenues are appropriated to WEDC and used to fund financial assistance for economic development projects.

"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 income/franchise tax purposes.

The Department of Revenue is authorized to administer the economic development surcharge under provisions governing administration of the individual and corporate income and franchise taxes, including provisions relating to audits and assessments, claims for refund, statutes of limitations, IRS adjustments, confidentiality, appeals, collections, and set-offs for debts owed other state agencies.

Corporate Income Tax Credits

A tax credit is an amount that is subtracted from the gross income tax liability of the taxpayer in a given year. In general, a tax credit differs from a deduction in that the credit is subtracted from the tax itself, resulting in a dollar-for-dollar reduction in the gross tax liability; a deduction is subtracted from income, resulting in a reduction in the amount of income subject to tax. Some tax credits are refundable. When a refundable tax credit exceeds gross tax liability, the taxpayer receives a payment for the difference between the credit amount and the tax liability. For the nonrefundable credits, unused amounts generally can be carried forward and claimed in future years.

Rather than adopting federal tax credits for state purposes, Wisconsin provides its own corporate income tax credits for certain business expenditures.

In general, partnerships, LLCs, and tax-option corporations (S corporations) cannot claim the tax credits provided under the state corporate income/franchise tax, but eligibility for, and the amount of, the credit is based on the entity's payment of eligible expenses, subject to any limit on the maximum aggregate amount of tax credits that a single entity can claim. A partnership, LLC, or tax-option corporation is required to compute the amount of the credit that each of its partners, members, or shareholders can claim and provide that information to them. Partners, members of LLCs, and shareholders of tax-option corporations can claim the credit in proportion to their ownership interest. However, only corporations can claim the research, research facilities, and super research and development tax credits. In addition, tax-option corporations are not eligible to receive or to distribute angel investment tax credits to their shareholders.

Many of the corporate tax credits are intended to encourage businesses to locate, expand, and hire employees in Wisconsin, and require certification by WEDC. In addition, for many of the credits, the amount that can be claimed in a year, or in the aggregate, is capped. Some of the credits have sunset dates.

The following non-refundable and refundable tax credits are provided under the state corporate income tax. Detailed descriptions of these tax credits are presented in Appendix 3.

Corporate Nonrefundable Tax Credits

Manufacturing and Agriculture Tax Credit. Equal to 7.5% of eligible production activities income from Wisconsin-based assets when fully phased in. The credit percentage is being phased in from 2013 to 2016.

Research Tax Credit. Equal to 5% or 10% of certain research expenses.

Research Facilities Tax Credit. Equal to 5% or 10% of investments in research facilities.

Super Research and Development Tax Credit. Equal to the amount of qualified research expenses that exceeds 1.25 times the average annual research expenses in the previous three tax years.

Early Stage Seed Investment Credit. Equal to 25% of investments made to a certified fund manager that the fund manager invests into a qualified new business venture (QNBV). Fund managers and QNBVs must be certified by WEDC.

Economic Development Tax Credit. Persons that conduct a job creation, capital investment, employee training, or corporate headquarters location or retention project are eligible to be certified by WEDC to claim various tax benefits.

Post-Secondary Education Tax Credit. Equal to 25% of the tuition paid for an individual to participate in a post-secondary education program if the student is eligible for a federal Pell Grant. The credit is 30% if the individual is enrolled in a course of instruction that relates to a projected worker shortage in the state

Manufacturing Investment Tax Credit. Can be claimed by taxpayers that have more than $25,000 of unused manufacturer's sales tax credits under prior law and that have maintained jobs or investments in Wisconsin.

Manufacturer's Sales Tax Credit Carry-forwards. Taxpayers having $25,000 or less of unused manufacturer's sales tax credits can continue to carry forward unused credit amounts to offset tax liabilities.

Dairy and Livestock Farm Investment Credit. Equal to 10% of amounts invested in dairy farm or livestock farm modernization or expansion.

Supplement to the Federal Historic Rehabilitation Tax Credit. Equal to 5% of qualified rehabilitation expenditures for certified historic structures.

Ethanol and Biodiesel Fuel Pump Credit. Equal to 25% of the amount paid to install or retrofit pumps located in Wisconsin that dispense ethanol or other renewable fuel.

Water Consumption Tax Credit. Equal to 50%

of the difference between the claimant's water usage costs for the tax year, and the claimant's 2009 water usage costs. In order to claim the credit, a claimant must be an industrial customer of a municipal water utility that is located in a federal renewal community in Wisconsin, and whose average annual water consumption from that utility for a 24-month period exceeds 1 million Ccf. "Ccf" means 100 cubic feet. Areas of the City of Milwaukee are designated as a federal renewal community.

Health Insurance Risk-Sharing Plan (HIRSP) Assessment Credit. Equal to a percentage of HIRSP assessments paid by insurers. The credit percentage is determined each year so that the aggregate amount of credits is as close as practicable to $5 million.

Internet Equipment Credit. Credit for businesses that purchase certain internet equipment used in the broadband market to enhance internet availability.

Community Development Finance Credit. Equal to 75% of the purchase price of stock or a partnership interest in the Community Development Finance Authority. Claimants must also contribute to the Wisconsin Housing and Economic Development Authority.

Electronic Medical Records Credit. Equal to 50% of the amount paid by a health care provider for information technology hardware or software that is used to maintain medical records.

Community Rehabilitation Program Credit. Equal to 5% of the amount paid to a community rehabilitation program to perform work for the claimant's business, pursuant to a contract.

Biodiesel Fuel Production Tax Credit. Equal to 10 cents per gallon for biodiesel fuel produced by biodiesel fuel producers located in Wisconsin that produce at least 2.5 million gallons of biodiesel fuel per year.

Relocated Business Tax Credit. Equals the corporate income/franchise tax liability for two years for a business that locates to Wisconsin from another state or country.

Veteran Employment Tax Credit. Equals $4,000 for the first year, and $2,000 for each of the next three years, for hiring a disabled veteran in a full-time job. A prorated credit of $2,000 for the first year, and $1,000 for the following three years, is provided for hiring a disabled veteran in a part-time job.

Kenosha and Janesville Development Opportunity Zones. WEDC is required to designate an area in the City of Kenosha, and an area in the City of Janesville as development opportunity zones that exist for five years. Any business that locates and conducts activity in the zones is eligible to claim tax credits based on environmental remediation expenditures, job creation and retention, and capital investments.

Corporate Refundable Tax Credits

Enterprise Zone Tax Credits. Tax benefits can be claimed by businesses that operate in enterprise zones established by WEDC based on jobs, payroll, job retention, training, capital expenditures, and purchases from Wisconsin vendors.

Jobs Tax Credit. Equals up to 10% of the wages paid to an eligible employee and/or the amount of costs incurred to undertake training activities in a tax year, as determined by WEDC.

Dairy Manufacturing Facility Credit. Equals 10% of the amount paid for modernization or expansion of a dairy manufacturing operation. The credit can also be claimed for eligible investments made by dairy cooperatives.

Meat Processing Facility Investment Tax Credit. Equal to 10% of the amount paid for meat processing modernization or expansion.

Food Processing Plant and Food Warehouse Investment Tax Credit. Equal to 10% of the amount paid for food processing or food warehousing modernization or expansion.

Woody Biomass Harvesting and Processing Tax Credit. Equal to 10% of the amount paid for equipment that is used primarily to harvest or process woody biomass, that is used for fuel or as a component of fuel.

Film Production Tax Credits. Tax credits for certain costs associated with in-state film productions and film production company investments.

Beginning Farmer and Farm Asset Owner Tax Credits. The beginning farmer credit equals the amount paid by a farmer to enroll in a financial management program. The farm asset owner tax credit equals 15% of the amount received by an established farmer for leasing agricultural assets to a beginning farmer.

Farmland Preservation Tax Credit. Corporate owners of eligible farmland can receive a refundable tax credit under the farmland preservation program based on the number of qualifying acres of state farmland.

Combined Reporting

Beginning in tax year 2009, corporations that are engaged in a unitary business with one or more other corporations are required to file a combined return. Specific provisions govern which corporations should file a combined return and the manner in which combined net tax liability is determined. As noted, the combined reporting requirements were enacted in 2009 Wisconsin Act 2. Prior to that legislation, Wisconsin used separate entity reporting, under which each corporation, including a member of an affiliated group of corporations, was taxed as a separate entity.

Combined Groups

Wisconsin's combined reporting law requires a corporation to use combined reporting if it satisfies all of the following conditions:

1. The corporation is a member of a "commonly controlled group."

2. The corporation is engaged in a "unitary business" with one or more other corporations in its commonly controlled group, or the commonly controlled group makes a controlled group election.

3. The corporation is not excluded from the combined group under "water's edge" rules.

Corporations that are tax-option corporations (S-corporations), real estate investment trusts (REITs), regulated investment companies (RICs), real estate mortgage investment conduits (REMICs), or financial asset securitization investment trusts (FASITs) cannot be included in a combined group. These corporations file separate Wisconsin returns if they are otherwise required to file.

Commonly Controlled Groups. A "commonly controlled group" can be any one or combination of four types of arrangements, based on ownership of stock that represents more than 50% of voting power. Specifically, there must be common ownership of stock representing more than 50% of the voting power of the corporations, in any commonly controlled group. A corporation owns stock representing more than 50% of voting power if it owns or controls more than 50% of all classes of stock entitled to vote.

The types of commonly controlled groups include the following:

Parent-Subsidiary Chain. A group in which a parent corporation directly or indirectly owns stock representing more than 50% of the voting power of one or more corporations, or chains of corporations, in the group.

Single Common Owner Brother-Sister Corporations. A group in which a common owner directly or indirectly owns stock representing more than 50% of the voting power of the corporations in the group. The common owner does not have to be a corporation.

Family Owned/Controlled Brother-Sister Corporations. A group in which stock representing more than 50% of the voting power of each corporation is directly owned by, or for the benefit of, members of the same family, to the third degree of kinship. Under the third degree of kinship, an individual is considered to be in the same family with his or her: parents; grandparents; great-grandparents; children; great-grandchildren; siblings; nieces and nephews; and aunts and uncles.

Stapled Entities. A group in which there is an arrangement where stock representing more than 50% of the voting power of each corporation cannot be separately transferred, even if there is not actual common ownership of the stock. If a group of corporations would be considered "stapled entities" under the IRC, without regard to whether the corporations are foreign or domestic, then the corporations would be in a commonly controlled group.

Unitary Business. In general, a "unitary business" is a group of commonly controlled companies, divisions, or branches that operates as a unit. "Unitary" operations are integrated, and each company, division, or branch is dependent upon and contributory to the operation of the business as a whole. However, each component of the "unitary" business does not have to contribute to all the other components of the business.

A commonly controlled group may elect to forgo the unitary business test and be treated as a unitary business. The election eliminates the need to determine which corporations in the commonly controlled group are engaged in the same unitary business. The election is generally binding for ten years.

The Wisconsin statutes and administrative code establish two analytical concepts for identifying a unitary business:

Sharing, Exchange, Flow of Value. Participants in a commonly controlled economic enterprise have sharing or exchange of value among them, and a significant flow of value to the separate parts of the group, and thus are a unitary business, if any of the following are true: (1) the companies in the enterprise contribute, or are expected to contribute in a nontrivial way to each other's profitability; (2) the companies are dependent on each other for achieving nontrivial business objectives; (3) the group offers one or more participants some economies of scale, or economies of scope that benefit the group's enterprise; or (4) the prices charged on transactions between participants in the enterprise are inconsistent with the arms-length principle. (Existence of arms-length pricing does not, in any way, negate the existence of a unitary business.)

Activities between group members that evidence a flow of value between them include any of the following: (1) assisting in the acquisition of assets; (2) assisting with filling personnel needs; (3) lending funds, guaranteeing loans, or pledging assets; (4) common future planning, or development of the enterprise; (5) providing technical assistance, general operational guidance, or overall operational strategic advice; (6) supervising; or (7) sharing use of trade names, patents, or other intellectual property.

Unity of Operation and Use. Participants in a commonly controlled economic enterprise are also engaged in a unitary business if they have both unity of operation and unity of use. Unity of operation means that there is functional integration among corporations, and is evidenced by shared support functions such as: (1) centralized purchasing, marketing, advertising, accounting, or research and development; (2) intercorporate sales or leases, including equipment and real estate; (3) intercorporate services, including administrative, data, management, computer support, employee benefits, human resources, insurance, tax compliance, legal, financial, and cash management services; (4) intercorporate debts; and (5) intercorporate use of proprietary materials, including trade names, trademarks, service marks, patents, copyrights, and trade secrets.

Unity of use is evidenced by centralized management or use of centralized policies including: (1) centralized executive force; (2) interlocking directorates or corporate officers; (3) intercompany employee transfers; (4) common employee and executive training programs; (5) common hiring and personnel policies; (6) common recruiting programs; (7) common employee handbooks; and (8) common employee benefit programs.

Administrative rules specify certain presumptions that apply in determining whether participants in a commonly controlled group of corporations are considered a unitary business. The rules include the following presumptions:

Horizontal Integration. An entity or commonly controlled group of entities is presumed to be engaged in a unitary business when all of its activities are in the same general line of business.

Vertical Integration. An entity or commonly controlled group of entities is presumed to be engaged in a unitary business when its various divisions, segments, branches, or affiliates are engaged in different steps of a vertically structured enterprise.

Centralized Management. An entity or commonly controlled group of entities is presumed to be engaged in a unitary business when there is strong central management coupled with the existence of centralized departments or affiliates for such functions as financing, advertising, research and development, or purchasing.

Different Business Segments. An entity that has different business segments within the organizational structure of the single business entity is presumed to be engaged in the same unitary business throughout the entity.

If a corporation forms a new corporation, the forming corporation and the new corporation are presumed to be in a unitary business with one another from the date of formation. If a corporation acquires a new corporation, the acquired corporation is presumed not to be unitary for the tax year that includes the acquisition, except where the corporations were commonly owned and engaged in a unitary business prior to the acquisition.

Generally, if a corporation files a combined return in another state as part of a unitary business, it should also file a combined return in Wisconsin. However, in cases where a state allows a corporation to elect to file a combined return in another state even though that state does not consider the corporation part of a unitary business, that treatment should have no effect on the position taken for Wisconsin.

A passive holding company that is in a commonly controlled enterprise and holds intangible assets that are used by other companies in the enterprise's unitary business is deemed (not just presumed) to be engaged in that unitary business, even if its activities are primarily passive. A passive parent holding company that directly or indirectly controls operating company subsidiaries engaged in a unitary business is deemed to be engaged in that unitary business, even if its activities are primarily passive.

"Water's Edge" Rules. Combined reporting "water's edge" rules provide that corporations that are either foreign corporations, or that have a substantial amount of business conducted outside the U.S. do not include certain income, loss, and apportionment factors in the combined report. Factors that determine a corporation's status under water's edge rules include: (1) whether it is a foreign or domestic corporation; (2) whether it qualifies as an 80/20 corporation; and (3) whether its income is sourced to U.S. or foreign sources.

Foreign or Domestic Corporation. Generally, determining whether a corporation is a domestic or foreign corporation is based on where the corporation is incorporated or organized. For purposes of determining whether a corporation is a domestic or foreign corporation the following rules apply:

1. If for federal purposes, a corporation is treated as created or organized under the laws of both the U.S. and a foreign jurisdiction, it is a domestic corporation.

2. A foreign corporation that domesticates and is treated by the state as organized under the laws of that state is a domestic corporation.

3. If an entity is organized in a foreign country and is recognized in that country as a corporation, but the entity's owner elects to treat that entity as a branch for U.S. tax purposes, the entity is treated as a branch of the owner, rather than as a separate foreign corporation.

Qualifying as an 80/20 Corporation. A corporation is an 80/20 corporation if 80% or more of its worldwide gross income during the testing period (generally the combined group's tax year) that would otherwise be included in the combined return is "active foreign business income" as defined under the IRC. Under the IRC, "active foreign business income" means gross income which is both: (1) derived from sources outside the U.S., or attributable to income derived from a subsidiary of the corporation; and (2) attributable to the corporation's active conduct of a trade or business in a foreign country or possession of the U.S. An 80/20 corporation may be either a foreign corporation or a domestic corporation.

Domestic 80/20 Corporations. The income of a domestic 80/20 corporation is includible in the combined unitary income of a combined group only if that income is U.S. source income as defined under the IRC. Further, that U.S. source income must be one of the following types of income to be included in combined unitary income: (1) interest income or income generated from intangible property, regardless of the payer; (2) income derived from interest or intangible expenses of other combined group members, if not already included; or (3) dividends from a real estate investment trust, and gains or losses derived from the sale or lease of real or personal property located in the U.S. Expenses attributable to this income, including an allocated share of indirect expenses, are also included in determining combined unitary income.

Foreign 80/20 Corporations. Generally, a foreign 80/20 corporation is not considered a member of a combined group. However, if a foreign 80/20 corporation has elected to be included in a consolidated return for federal tax purposes, it is treated in the same way as a domestic 80/20 corporation under Wisconsin combined reporting provisions.

Water's Edge Income Sourcing. Income is foreign source income if it is from sources outside the United States, as provided under the IRC. However, income that is "effectively connected" with conducting a trade or business within the U.S., as provided under the IRC, is considered to be U.S. source income, even if it is otherwise from sources outside the U.S. "Effectively connected" income can be "active foreign business income."

If a corporation's income is not taxable for federal purposes under the provisions of a federal treaty, it is not taxable for Wisconsin purposes and its income, expenses, and apportionment factors are not includible in a combined report.

Combined Returns

The general process of computing a combined group's net tax liability includes computing the combined unitary income of the group, determining each member's income and tax, and computing the group's tax liability.

Combined Unitary Income. Combined groups are required to aggregate and reconcile federal taxable income from the federal consolidated return or from federal separate returns, and to make certain adjustments related to intercompany transactions and limitations that apply on the combined group level, and report it on a combined return. Only the income of corporations that are members of the unitary combined group is included in a combined return. For Wisconsin combined reporting purposes, this includes federal consolidated group members that are also members of the combined group, companies that are members of the combined group that are excluded from federal consolidated groups because of less than 80% common ownership, foreign corporations that are combined group members with U.S. source income (not excluded by water's edge rules), and other corporations that are combined group members.

Pass-through entities that are numbers of a unitary combined group, including partnerships, LLCs, tax-option corporations, REITs, RICs, REMICs and FASITs, are not included in the combined report. However, the income of these entities that is derived from the group's unitary business is included in the combined unitary income of the group to the extent it is included in or distributed to a corporation that is a group member.

Intercompany Transactions. Intercompany transactions between members of the combined unitary group are identified, and adjustments are made to defer income, gain, or loss between those members in the same manner prescribed for members of a consolidated group under federal Treasury regulations. In general, the regulations provide that income, deduction, gain, or loss between group members is deferred so that these transactions do not affect the combined group's income as a whole. The intercompany transaction adjustments are separated into ordinary income/loss items and capital gain/loss items, including IRC section 1231 gains and losses (gains and losses from the sale of business property) and involuntary conversions (gain or loss from involuntary total or partial loss of property through destruction, condemnation, theft, seizure or requisition). Ordinary gain/loss transaction items are deferred, while separate adjustments are made for the capital gain/loss items. Any transaction that is deferred must be recognized when a triggering event occurs. Triggering events include the following: (1) the buyer resells the object of the deferred intercompany transaction to an entity that is not a member of the combined group; (2) the object of the deferred intercompany transaction is used outside the combined group's unitary business as a result of the resale, conversion, or transfer of the asset; or (3) the buyer and seller are no longer members of the same combined unitary group.

Capital Loss Limitation. Net capital gain includible in combined unitary income is computed for the combined group applying the capital loss limitation to the group as a whole, and using the federal basis of assets. (Differences between the state and federal basis of assets are accounted for in the Wisconsin modifications to federal income used by all corporations.) To be included in combined unitary income, the capital gains and losses must be derived from the unitary business of the group. Under the limit, a corporation may only deduct capital losses to offset capital gains. In applying the capital loss limitation to a combined group, the short- and long-term capital gains losses, section 1231 gains or losses, and gains and losses from involuntary conversion are aggregated for the group.

The treatment of capital loss carryforwards is based on combined reporting net business loss provisions. Only sharable net capital loss carryforwards can be used to offset net capital gains of the combined group. To be sharable, net capital loss carryforwards must meet the following conditions: (1) the net capital loss must have originated in a tax year beginning on or after January 1, 2009, and be attributable to combined unitary income; (2) the net capital loss must have been originally computed for the same combined group that will use the shared capital loss carryforward; and (3) the member that originally computed the capital loss must be a member of the combined group that will share the loss carryforward. If, after the capital loss limitation is applied to the combined group, the result is a net capital gain, the gain is apportioned to Wisconsin in the same manner as all other combined unitary income. If the result is a net capital loss for the group, the loss is assigned to the members that would have a net capital loss from the unitary business if the amounts were not aggregated, in proportion to the member's share of that net capital loss. Combined group members that are assigned unused capital losses can use the losses to offset the member's capital gains, such as gains from transactions reportable on a separate entity basis, that are not includable in the group's combined unitary income. Sharable net capital losses can be carried forward and used to offset net capital gains included in the combined unitary income of the group, subject to capital loss limitation and carryforward provisions.

Charitable Contributions. The charitable contributions deduction is limited to the lesser of the contribution amount or 10% of taxable income. This limit is applied to the combined group as a whole. Aggregate total deductions for charitable contributions for the tax year, including any carryforwards of those deductions, are computed. Unexpired carryforwards from tax years before January 1, 2009, can be included in the aggregate deduction amount. The aggregate charitable contributions amount is deducted from the combined group's unitary income. Any unused aggregate charitable contribution deduction amount is assigned to the member that incurred the expense, and can be used to offset any of the member's separate entity (non-unitary) income, subject to the 10% limit. Any remaining unused charitable contribution deduction amount may be carried over by the member and used in subsequent years. The unused carryover can be used by the individual member specifically to offset that member's income, or it may be shared in a combined report to offset the group's unitary income.

Wisconsin Modifications. Following these adjustments, the group computes the aggregate Wisconsin addition and subtraction modifications to federal taxable income that are generally required of all corporations to reflect the differences between Wisconsin and federal tax law provisions.

Dividends are subtracted from the income of a combined group if they are eligible for the state dividends received deduction, or they represent an intercompany transaction between members of the combined group. If the payee corporation is in a combined group, it must own the stock of the payer corporation for the payee's entire tax year that is included in the combined return to claim the dividends received deduction. Dividends paid between two members of the same combined group that are not eligible for the dividends received deduction may be eliminated from the group's combined unitary income if: (1) the dividend doesn't qualify for the Wisconsin dividends received deduction; (2) the dividend was paid out of earnings and profits attributable to net income or loss that was included in the group's combined unitary income; and (3) the dividend does not exceed the payee's basis in the payer's stock.

Items that can be included as either additions or subtractions from the combined group's income include expense, and gain or loss adjustments for depreciable and amortizable assets, and gain or loss adjustments for the sale of subsidiary stock. The Wisconsin basis of depreciable or amortizable property for the first year the corporation becomes subject to the state income tax is its federal basis. However, there may be a difference between federal and Wisconsin basis on the date of sale of the property. A combined member's stock basis in a subsidiary combined group member must be increased or decreased under federal Treasury regulations. Generally, the required adjustments cause gain or loss from the sale of a subsidiary to be different for Wisconsin purposes than for federal purposes.

Addbacks for related entity expenses are not required for transactions between combined group members, if both the payer's expense and payee's corresponding income are included in the combined unitary income of the group. Conversely, an addback modification is required where an expense subject to the related entity provisions is included in the combined unitary income of a group, but the corresponding income is or was not included. For example, expenses paid to a related entity that is not a combined group member, or expenses paid to a member that has excluded the corresponding income from combined items under the water's edge rules, are subject to related entity addback modifications.

Nonapportionable, Separately Apportionable Income. After aggregate additions and subtractions are made to the combined group's income, the nonapportionable and separately apportionable income (income subject to water's edge rules, lottery prizes, separate entity income/loss) of each group member is subtracted. As previously noted, these amounts are generally allocated to the state where the property that produced the income, gain, or loss is located. Amounts that are allocable or apportionable to Wisconsin are included in the group's combined unitary income, following apportionment. For combined groups, nexus is determined for the unitary group as a whole. If one member of a group has nexus with a state, then the combined group as a whole has nexus. Consequently, the unitary nonappportionable and separately apportionable income of each combined group member is included in the combined net income of the group.

Apportionment. The specific combined group adjustments and state additions and subtractions are used to determine the combined unitary income of the group, which is then apportioned to Wisconsin using an aggregate sales factor. For combined groups, the sales factor is the aggregate sales in Wisconsin of all corporate members divided by the aggregate total sales of all corporate members. The numerator of a combined group's apportionment factor includes each member's sales in Wisconsin associated with the unitary business of the combined group. The denominator includes each member's total sales associated with the unitary business. Receipts from transactions between members of the same combined group are excluded. As noted, a combined group is considered to be within the taxing jurisdiction of any state in which any member of the combined group has nexus. If one member of a combined group is considered to be doing business in the state, all combined group members are doing business in the state. Consequently, throwback sales can only be included in the numerator of a group member's sales factor if no member of the group is within the jurisdiction of the destination state for income/franchise tax purposes.

The combined group uses a modified sales factor that includes insurance company premiums and gross receipts of financial institutions, telecommunications companies, and other specialized industries, such as railroads and pipelines, if those types of corporations are members of the same combined group. Under the modified sales factor, interstate financial institutions and interstate broker-dealers, investment advisors, investment companies and underwriters include receipts specified for those types of corporations. Insurance companies include premiums, while corporations, such as interstate telecommunications companies, air carriers, railroads, and pipelines, which have multifactor formulas, include a percentage of their sales that reflects the apportionment ratio for the company under the multi-factor apportionment formula.

Although affiliated pass-through entities (LLCs, partnerships) are not subject to combined reporting, both the numerator and denominator of the combined group's sales factor includes the sales of pass-through entities that are directly or indirectly owned by a corporation in the combined group, based on the ratio of corporation's distributive share of the pass-through entity's unitary business income included in the combined group's income to the amount of the entity's total unitary business income.

Combined groups that do business solely in Wisconsin (100% Wisconsin groups) do not apportion aggregate income. Each member's net income subject to combination is determined on a separate entity basis, and then adjusted, such as excluding any non-unitary income, to reflect the member's status as a combined group member. These incomes are added together to arrive at the group's combined unitary income. If some combined group members have net income from the unitary business, and others in the same group have net loss from the unitary business, the combined group's tax liability is based on the total aggregate net income or loss of the unitary business. However, there are certain modifications that are made when a member of a 100% Wisconsin group determines its share of combined unitary income. Intercompany transactions that consist of interest or other expenses paid, accrued, or incurred by one member to another are excluded. Net capital gain or loss, after applying any sharable net capital loss carryover is first determined for the group. If the result is a net capital gain (or loss) for the group, it is assigned proportionally to the members that would have a net gain (or loss) if they were not members of the combined group. Also, adjustments are made to a group member's basis in subsidiary stock to reflect certain distributions, and income and loss of the subsidiary, and to a group member's earnings and profits to reflect the subsidiary's undistributed amounts of such items.

Computation of Member's Income. After the combined group's unitary income has been apportioned to Wisconsin using the aggregate sales factor, certain member level data is computed. Specifically, each member separately: (1) determines its share of the group's tax liability, including tax attributable to separate entity items, such as non-unitary income or loss; (2) computes the member's economic development surcharge liability; (3) tracks the use of the member's net business losses and credits; and (4) shares its research tax credits with other members of the group. These accounts are also aggregated and reported on the combined return.

Apportionment of Member's Income. The combined group member's share of the group's total Wisconsin income is apportioned to each member using the percentage calculated by dividing the member's sales in Wisconsin by the group's total sales. The group's unitary combined income is then multiplied by this percentage to determine the member's combined unitary income. Each member then calculates its tax liability separately starting with its share of combined unitary income.

Member Nonapportionable and Separate Entity Income. A corporation that is a member of a combined group can have income that is required to be apportioned separately from the group's combined unitary income. This can occur when a member has income or loss that is excluded from combined unitary income under "water's edge" rules. As noted, "water's edge" rules provide that foreign corporations or corporations that have a substantial amount of business conducted outside the U.S. do not include certain income or loss, or apportionment factors in the combined amounts. Also, separate apportionment is used in cases where a combined group member has apportionable income or loss from a separate unitary business.

Each member's combined unitary income is adjusted by adding nonapportionable income (rents and royalties from nonbusiness property, lottery prizes) and separately apportionable income (water's edge and separate unitary business income). If the combined group reports a net capital gain, and the individual member has nonsharable capital loss carryovers or a current year net capital loss, an adjustment is made to determine the amount of additional capital loss available to the member to offset its share of the group's net capital gain. Insurance companies that show a business loss must offset the loss amount to reflect the dividends received deduction.

Net Business Loss Carryforwards. Individual combined group members that show a positive income amount can offset the income with net business loss carryforwards. A net business loss carryforward is an attribute of the separate corporation that generated the loss. However, the combined group member may share all or a portion of its net business loss carryforward with other members of the combined group, if certain conditions are met.

Prior to January 1, 2012, net business loss carryforwards incurred in tax years prior to January 1, 2009 (pre-2009 carryforwards) could only be used by the individual combined group member that generated the loss carryforward to offset income. Only net business losses incurred in tax years beginning on or after January 1, 2009, were sharable. However, under provisions included in 2011 Wisconsin Act 32 (the 2011-13 biennial budget), up to 5% of pre-2009 net business losses incurred by individual members can be shared among members of the same combined group each year over 20 years.

A combined group member is required to apply net business loss carryforwards in the following order:

1. Net business loss carry forwards incurred by the combined group member in tax years beginning before January 1, 2009, in the order that the underlying net business losses were incurred.

2. Sharable and non-sharable net business loss carryforwards incurred in tax years beginning on or after January 1, 2009, in the order that the underlying net business losses were incurred. If the net business loss carryforward to be used consists of both a sharable amount and non-sharable amount incurred in the same tax year, the amount of sharable and non-sharable carryforward used is determined on a pro rata basis according to the amount of each type of carryforward available from that year.

3. For loss carryforwards shared in tax years beginning after December 31, 2011, pre-2009 net business loss carryforwards from other combined group members.

A combined group member may share its net business loss carryforward incurred in a tax year beginning on or after January 1, 2009 with other combined group members if the following conditions are met:

1. The net business loss is attributable to combined unitary income included in a combined report.

2. The member originally computed the net business loss in the combined report used for the same combined group that will use the shared loss carryforward, regardless of whether corporations have joined or left the combined group in the intervening years.

3. The member is still a member of the combined group for the year for which the loss carryforward will be shared.

The amount of net business loss carryforward incurred on or after January 1, 2009, that is eligible for sharing with other combined group members is computed and assigned as follows:

1. Each combined group member applies its total available net business loss carryforward against its total Wisconsin income, including net income or loss attributable to separate entity items (income or loss subject to water's edge rules, income or loss attributable to a separate unitary business, nonapportionable income, lottery prizes). The member's carryforward is first used to offset net income from separate entity items, and then its share of combined unitary income.

2. Each member then separates any remaining business loss carryforward into the sharable and nonsharable amounts. Each member's remaining sharable net business loss is aggregated for the combined group as a whole. (A member may elect to exclude some or all of its sharable net business loss from the aggregate sharable net business loss computed for the combined group.)

3. When a combined group member has unitary income that is not offset by that member's net business loss carryforwards, the group's aggregate sharable net business loss carryforwards are assigned to the member in proportion to its share of the combined unitary income of the group net of any losses from separate entity items, or loss carryforwards already applied. An amount of the group's sharable business loss carryforwards cannot be assigned to a combined group member whose share of combined unitary income, net of any losses already applied by that member, is zero or less.

4. The aggregate sharable business loss of the combined group is considered to be used proportionally to the individual sharable net business loss carryforwards of the corporations that contributed to the aggregate sharable amount. Any remaining sharable net business loss carryforward is an attribute of the corporation that originally incurred the loss. Consequently, the amount of the unused aggregate sharable business loss carryforwards retained by a combined group member is proportionate to the amount contributed by the member.

For tax years beginning after December 31, 2011, a combined group member may, after using its pre-2009 net business loss carryforwards to offset its own income in the tax year, and after using sharable loss carryforwards incurred on or after January 1, 2009, to offset its income for the tax year, use 5% of the pre-2009 net business loss carryforwards to offset the income of all other members of the combined group for the tax year, and for each of the following 19 subsequent tax years. The sharable pre-2009 net business loss carryforward is assigned to each combined group member in proportion to its share of combined unitary income, net of any losses from separate entity items or loss carryforwards already applied. An amount of the group's sharable business loss carryforwards cannot be assigned to a combined group member whose share of combined unitary income is zero or less. Any remaining sharable amount becomes part of the combined group's pre-2009 net business loss carryforward that may be shared by all combined group members in subsequent years. Any unused pre-2009 net business loss carryforward may be used to offset the income of the combined group members for the 20 tax years that begin after December 31, 2011.

If a 100% Wisconsin combined group includes members with net income in the unitary business and others with net loss in unitary income, a member's positive income may be offset by other member's business losses.

Computation of Tax. After a group member offsets its income with any net business loss carryforwards, the individual corporation determines its gross tax by applying the 7.9% state corporate income/franchise tax rate to the resulting measure of income. Combined group members that are insurance companies can adjust the company's tax liability so that it does not exceed 2% of gross premiums, plus 7.9% of income realized from lottery prizes. The aggregate gross tax liability for all group members is included on the combined group's return.

Economic Development Surcharge. The economic development surcharge is computed separately for each member of a combined group, based on the member's gross tax and gross receipts. The law provides that if one member of a combined group has nexus in Wisconsin for income/franchise tax purposes, all members of that combined group have nexus. This applies to the economic development surcharge as well. Consequently, the $4 million gross receipts threshold and the surcharge amount, subject to the $25 minimum and $9,800 maximum surcharge limits, are computed for each combined group member. The aggregate economic development surcharge for all group members is reported on the combined return.

Nonrefundable Tax Credits. Tax credits are attributes of the separate corporation rather than of the combined group, and credits are computed separately for each corporation. A combined group member's nonrefundable credits, other than research credits (but not the super research and development tax credit), including carryforwards of those credits, may only be used by the combined group member to offset the tax liability attributable to its own taxable income. The total amount of nonrefundable tax credits claimed by group members is reported on the combined return.

Research Tax Credits. A combined group member that computes a research and/or research facilities tax credit, or that has an unused carryforward of a research or research facilities tax credit, may share a portion of the credit with other members of the combined group. Research credit carryforwards incurred in tax years beginning before January 1, 2009, are sharable if the group member would have been in the same combined group had Wisconsin law required combined reporting in the year the credit originated.

The method of sharing research tax credits is as follows:

1. Each combined group member applies its total available tax credits, including research credits, against its gross tax liability. Available tax credits must first be applied against tax liability attributable to separate entity items and used in the order specified in the statutes. (Under the statutes, research credits must be applied against tax liability after the manufacturing investment, dairy investment, and community rehabilitation tax credits.) A combined group member may elect to first apply a research credit carryforward against its gross tax, before applying the research credit computed for the current year.

2. Each member then separates any remaining research tax credit into the sharable and non-sharable amount. If the corporation used a portion of both sharable and non-sharable research tax credits against its own gross tax, the credits are considered used on a pro rata basis from both their sharable and non-sharable amounts. The sharable research tax credits for each combined group member are then aggregated. A combined group member may elect not to share some or all of its sharable research tax credit amounts.

3. A portion of the sharable amount of research tax credits is assigned to each combined group member in proportion to the member's tax liability computed from its share of the group's combined unitary income. Sharable research credit amounts may only be allocated to a group member to the extent the member has a tax liability that has not been offset by the member's own tax credits and credit carryforwards. Members whose tax liability is entirely offset by other credits and credit carryforwards cannot be assigned sharable research credits.

4. In cases where the aggregate amount of

sharable research tax credits exceeds the aggregate net tax liability of all combined group members, any remaining sharable amount remains an attribute of the corporation that originally generated the credit. The amount of sharable research tax credits and/or credit carryforwards included in the aggregate amount and used to offset group members' liabilities, is considered to be used proportionately, based on the share of aggregate total credits and credit carryforwards contributed by the individual group member to the aggregate total. Remaining credits and credit carryforwards are retained by each group member based on the corporation's proportionate share of the total.

Generally, for purposes of claiming the research credit, "qualified research" does not include research that is funded by another party. Instead, the funding party may include 65% of the amount paid as "contract research" in its research expense tax credit. However, if a combined group member incurs expenses that are otherwise qualified research expenses under the IRC, except for the fact the research is funded by another combined group member, those expenses are treated as the qualified research expenses of the member performing the research for the purposes of claiming the research expense tax credit.

Combined Group Tax Liability. The corporate income/franchise tax liability computed separately for each group member and separately computed components including business loss carryforwards and nonrefundable tax credits, are aggregated and included on the group's combined return to determine the combined group's tax liability.

Each combined group member also separately reports its refundable tax credits. However, any refundable tax credits computed by combined group members are aggregated and used to offset the combined group's tax liability reported on the combined return. Any refundable amount not used is refunded to the group's designated agent. The combined group's designated agent files the combined return and pays any tax due for the group.

Designated Agent

Every combined group is required to appoint a corporation as the "designated agent" for the group. Any corporation in the group can be the designated agent, if the agent's tax year is the same as the combined group's. DOR considers the company that files the combined group's first combined return to be the designated agent, and the company remains the designated agent until the company leaves the group, ceases to exist, notifies DOR it has appointed another designated agent, or the combined group is acquired by another combined group.

The designated agent acts on behalf of the all the members of a combined group for matters that relate to the combined return. Specifically, the designated agent's responsibilities include:

1. Filing the combined return, including reporting any separate entity items attributable to combined group members.

2. Filing any extension of time to file the combined return.

3. Filing any amended combined reports or claims for refunds or credits relating to the combined return, including any separate entity items attributable to combined group members.

4. Sending and receiving all correspondence with DOR regarding the combined report. DOR may send correspondence relating to separate entity items or separate estimated payments of group members to the member.

5. Remitting taxes applicable to the combined return.

6. Participating, on behalf of the combined group in any investigation or hearing by DOR

regarding the combined return, including producing all information requested, and filing any appeal. Unless otherwise provided in writing, any appeal filed by the designated agent relating to the combined return is considered to be filed by all the members of the combined group.

7. Executing waivers, closing agreements, powers of attorney, and other documents relating to the combined return. Unless otherwise provided in writing by DOR and the taxpayer, any waiver, closing agreement, power of attorney, or other document executed by the designated agent relating to the combined return is considered executed by all members of the combined group.

8. Receiving assessment notices regarding the combined report. Notice received by the designated agent is considered received by all members of the combined group. The designated agent may request DOR to send notice to individual group members where it relates to separate entity items of the member.

9. Receiving any refunds relating to the combined return.

Comparative Examples

Exhibits 2 and 3 provide illustrations of how, in general, the tax liability of a single multijurisdictional corporation and a combined group of corporations compute net tax liability under Wisconsin law. Exhibit 2 shows the computation for a single multijurisdictional corporation. The individual firm computes gross income, subtracts deductions, apportions income to Wisconsin using the sales factor, adjusts for nonapportionable income and net business loss carryforwards, applies the tax rate, and subtracts tax credits to determine net tax liability.

Exhibit 3 provides an illustration of how net tax liability is computed for a combined group. Aggregate federal taxable income is determined for the group. Group level adjustments are made to the aggregate federal taxable income to reflect intercompany transactions, calculate net capital gain/loss and charitable contribution limits, and include Wisconsin additions and subtractions to federal income, including related entity adjustments, to arrive at the combined unitary income of the group. The Wisconsin share of the combined unitary income of the group is determined by applying the group's apportionment factor.

The net income and tax liability is then determined for each member. A member is allocated a portion of the group's combined Wisconsin income based on its proportion of the Wisconsin sales of the group. The member's income is modified to include nonapportionable income and offset by net business loss carryforwards to arrive at the member's taxable income. Excess sharable net business loss carryforwards can be shared with other group members proportionate to each member's share of the group's Wisconsin taxable income. The state tax rate is applied to each member's taxable income to arrive at gross tax liability. Each member offsets nonrefundable tax credits against the gross tax liability to arrive at net tax liabilities.

The components of the net tax calculation for each member are aggregated and reported on the group's combined return. The group's aggregate net tax liability is offset by any refundable credits claimed by group members.

Exhibits 4 and 5 provide comparative examples of the net tax liability determined under separate entity and combined reporting for a unitary business consisting of a Wisconsin parent corporation, and three affiliated corporations, including a Wisconsin subsidiary, an Illinois subsidiary, and a Delaware subsidiary. Exhibit 4 illustrates how each corporation would determine its Wisconsin tax liability as a separate corporation, rather than as a member of a combined group. The Delaware corporation does not have nexus with Wisconsin, and therefore would not pay state corporate income/franchise taxes. Also the Wisconsin subsidiary corporation would receive a $5,000 payment of its refundable tax credit, since its income is entirely offset by a business loss carryforward.

Exhibit 5 shows the calculation of tax liability for the same group of corporations using combined reporting. For purposes of the example, the intercompany transactions are assumed to be Wisconsin sales between the corporations. Consequently, these sales would be excluded from each member's sales apportionment factor, as well from each member's income. Note that combined unitary income is first determined on the group level. Then each member determines its net income and tax liability. The components used to determine each member's net tax liability, such as the member's nonapportionable income, are reported on the combined return. In the example, it is assumed that the net business loss carryforward of the Wisconsin subsidiary is a sharable business loss carryforward, and that the corporation chooses to share the unused carryforward with the other members of the group. Those members use the aggregate loss carryforward proportionate to their share of the group's Wisconsin taxable income, after each member applies its net operating loss carryforwards. The net tax liability of each member is aggregated on the combined return, and refundable tax credits are applied to the group's net tax liability.

In the example, the group's net tax liability is lower using combined reporting than the sum of the individual corporation's tax liabilities calculated as separate entities. Factors such as the change in the method of calculating apportionable income, the apportionment factor for the group and its members, and the availability and use of net sharable net business loss carryforwards, could cause the net tax liability for a group of corporations to increase, decrease, or be essentially unaffected by the use of combined reporting. In Wisconsin, the required use of combined reporting has resulted in a net increase in aggregate corporate income/ franchise tax collections.

Exhibit 2: Computation of Wisconsin Net Tax Liability for a Single Multijurisdictional Corporation

1. **Determine Total Income**
   a. Gross Sales - Cost of Goods Sold = Gross Profit
   b. Gross Profit + Other Income or Loss (Dividends, Interest, etc.) = Total Income

2. **Determine Apportionable Income**
   a. Total Income - Deductions (Wages, Depreciation, Interest Paid, etc.) = Net Income
   b. Net Income - Total Nonapportionable Income = Total Apportionable Income

3. **Determine Wisconsin Net Income**
   a. Wisconsin Apportionment Ratio = [Sales by WI Destination ÷ Total Sales]
   b. Total Apportionable Income x Wisconsin Apportionment Ratio = Income Apportioned to Wisconsin
   c. Apportioned Income + Income Allocated to Wisconsin - Wisconsin Net Business Loss = Wisconsin Net Income

4. **Determine Wisconsin Net Tax**
   a. Wisconsin Net Income x 7.9% = Gross Tax
   b. Gross Tax - Tax Credits (Manufacturing and Agriculture, Research, etc.) = Wisconsin Net Tax

Exhibit 3: Computation of Wisconsin Net Tax Liability for a Combined Group

1. **Determine Combined Unitary Income - Group Level**
   a. Aggregate Net Federal Income = Aggregate Federal Income - Aggregate Federal Deductions
   b. Aggregate Federal Taxable Income of Group + Adjustments:
      1. Defer Income, Expense, Gain or Loss on Transactions between Group Members
      2. Calculate Aggregate Net Capital Gain/Loss, Including Sharable Loss Carryforwards, and Apply Capital Loss Limit to Aggregate Capital Gains/Losses
      3. Calculate Aggregate Charitable Contribution Limitation
   c. Adjusted Aggregate Federal Taxable Income + Aggregate Wisconsin Additions to Income (State Taxes, Related Entity Expenses) - Aggregate Wisconsin Subtractions from Income (Foreign Dividend Gross Up, Dividends between Group Members, Related Entity Expenses) = Aggregate Group Income with Wisconsin Modifications
   d. Aggregate Group Income with Wisconsin Modifications - Nonapportionable and Separate Entity Income (Rents, Royalties, Water's Edge Income) = Aggregate Apportionable Group Income
   e. Aggregate Apportionable Group Income x Wisconsin Aggregate Apportionment Factor (Total Group Member Sales in Wisconsin ÷ Total Group Sales) = Wisconsin Combined Unitary Income

2. **Determine Each Member's Income and Tax***
   a. Combined Unitary Income x Member's Apportionment Factor (Member's Sales in Wisconsin ÷ Total Group Sales) = Individual Member's Apportionable Income
   b. Member's Apportionable Income + Member's Separate Entity and Nonapportionable Income (Rents, Royalties) = Member's Income before Business Loss Carryforwards
   c. Member's Income before Business Loss Carryforward - Business Loss Carryforwards, Including Business Sharable Loss Carryforwards = Member's Wisconsin Net Income
   d. Member's Wisconsin Net Income x 7.9% = Member's Wisconsin Gross Tax
   e. Gross Tax - Nonrefundable Tax Credits = Member's Net Tax

3. **Determine Combined Group Aggregate Tax Liability**
   a. Aggregate Net Tax of Group Members-Refundable Tax Credits = Combined Group's Net Tax Liability

* Each member calculates net tax individually. Individual amounts are aggregated and reported on the combined return.

Exhibit 4: Example Calculation of Separate Entity Net Tax Liability for Wisconsin Parent and Three Subsidiaries

	WI Parent	WI Subsidiary	IL Subsidiary	DE Subsidiary
A. Net Income				
Taxable Income	$4,000,000	$100,000	$500,000	$2,000,000
B. Apportionment Percentage				
Sales: Wisconsin	$5,000,000	$200,000	$1,000,000	$0
÷ Total	8,000,000	350,000	3,000,000	4,000,000
= Percent	62.50%	57.14%	33.33%	0%
C. Wisconsin Income Before Loss Carryforwards				
Taxable Income	$4,000,000	$100,000	$500,000	$2,000,000
X Apportionment Percentage	X .625	X .5714	X .3333	X 0
= WI Income Before Business Loss Carryforward	$2,500,000	$57,140	$166,650	$0
D. Net Business Loss Carryforward				
WI Net Income	$2,500,000	$57,140	$166,650	$0
Net Business Loss Carryforward	-0	-200,000	-0	-0
= WI Net Income	$2,500,000	-$142,860	$166,650	$0
E. Gross Tax Liability				
WI Net Income	$2,500,000	$0	$166,650	$0
X Tax Rate	X .079	X .079	X .079	X 0
Gross Tax	$197,500	$0	$13,165	$0
F. Tax Credits				
Gross Tax Liability	$197,500	$0	$13,165	$0
Nonrefundable Tax Credits	-10,000	0	0	0
Refundable Tax Credits	-0	5,000*	0	0
Net Tax Liability	$187,500	$0	$13,165	$0

Total Tax Liability/Refundable Credits - All Corporations = $195,665

*Will receive $5,000 payment for refundable tax credits.

Exhibit 5: Example Calculation of Combined Group Net Tax Liability for Wisconsin Parent and Three Subsidiaries

	WI Parent	WI Subsidiary	IL Subsidiary	DE Subsidiary	Combined Group
A. Combined Unitary Income					
Taxable Income	$4,000,000	$100,000	$500,000	$2,000,000	$6,600,000
-Income from Intercompany Transactions	-200,000	-50,000	-50,000	-100,000	-400,000
= Unitary Income	$3,800,000	$50,000	$450,000	$1,900,000	$6,200,000
B. Combined Group Apportionment Percentage*					
Sales: Wisconsin	$4,800,000	$150,000	$950,000	$0	$5,900,000
÷ Total	7,800,000	300,000	2,950,000	3,900,000	14,950,000
= Percent	61.54%	50.00%	32.20%	0%	39.46%
C. Combined Group Wisconsin Combined Unitary Income					
Combined Unitary Income					$6,200,000
X Combined Group WI Apportionment Percentage					X 39.46%
= Combined Group WI Income					$2,446,520
D. Members' Share of Wisconsin Combined Income					
Member's WI Sales	$4,800,000	$150,000	$950,000	$0	$5,900,000
Group Total Sales	14,950,000	14,950,000	14,950,000	14,950,000	14,950,000
= Member Percentage Share	32.11%	1.00%	6.35%	0%	39.46%
X Combined Group Inc	6,200,000	6,200,000	6,200,000	6,200,000	6,200,000
= Member WI Income Before Loss Carryforward	$1,990,820	$62,000	$393,700	$0	$2,446,520
E. Net Business Loss Carryforward**					
Member WI Income	$1,990,820	$62,000	$393,700	$0	$2,446,520
-Member Business Loss Carryforward	0	-200,000	0	0	-200,000
Income after Business Loss Carryforward	$1,990,820	-$138,000	$393,700	$0	$2,246,520
Sharable Business Loss Carryforward	$0	$138,000	$0	$0	$138,000
F. Allocation of Net Business Loss Carryforward					
Member's Net Positive Income	$1,990,820	$0	$393,700	$0	$2,384,520
Member's Percentage Share of Net Positive Income	83.49%	0%	16.51%	0%	100.0%
X Sharable Loss Carryforward	138,000	0	138,000	0	
= Member's Sharable Loss Carryforward	-115,216	0	-22,784	0	-138,000
+ Member's Net Positive Income	1,990,820	0	393,700	0	2,384,520
= Member's Taxable Income	$1,875,604	$0	$370,916	$0	$2,246,520
G. Gross Tax Liability					
Member's Taxable Income	$1,875,604	$0	$370,916	$0	$2,246,520
X Tax Rate (7.9%)	X 7.9%	0	X 7.9%	0	X 7.9%
= Gross Tax Liability	$148,173	$0	$29,302	$0	$177,475
H. Net Tax Liability					
Gross Tax Liability	$148,173	$0	$29,302	$0	$177,475
- Nonrefundable Tax Credits	-10,000	0	0	0	-10,000
Member Net Tax Liability	$138,173	$0	$29,302	$0	$167,475
I. Combined Group Wisconsin Net Tax Liability+					
Aggregate Member Net Tax Liabilities					$167,475
- Refundable Tax Credits	0	5,000	0	0	-5,000
= Group Net Tax Liability					$162,475++

* Intercompany sales are excluded from the apportionment factor.

** For purposes of this example it is assumed that the unused business loss carryforwards of the Wisconsin subsidiary are sharable.

\+ Refundable tax credits are applied against the entire group's tax liability.

++ This example shows that, compared to the total of individually calculated tax liabilities shown in Exhibit 4, the liability of the group is lower using combined reporting. Under combined reporting, some groups experience an aggregate tax increase, some experience a decrease, and some have no change in aggregate tax liability. However, in the aggregate, combined reporting increased corporate income tax revenues in Wisconsin.

Summary Data

The following tables provide summary data concerning the Wisconsin corporate income/ franchise tax.

Corporate income and franchise tax collections, state general fund tax collections, and corporate tax collections as a percent of total general fund collections for fiscal years 2001-02 through 2011-12 are shown in Table 1. The table indicates that corporate tax collections vary significantly from year to year. For example, annual growth rates ranged from -24.9% in 2008-09, to 32.6% in 2009-10. The large decrease in 2008-09 shows the effect of the recent recession on collections. The increases from 2009-10 through 2011-12 reflect improved corporate profits and the implementation of combined reporting. Corporate tax collections as a share of total general fund tax revenues have ranged from 5.0% in 2001-12 to 7.1% in 2006-07.

The distribution of corporate income tax liability by Wisconsin net income class for C corporations from 2009 tax year returns is illustrated in Table 2. The table reflects the implementation of combined reporting for combined groups. Combined reports are shown as single returns.

The table shows that although 43,609 corporations filed returns, only 12,886 had net tax liability. Corporations can have no tax liabilities because deductible expenses and loss carryforwards entirely offset income. In other cases, tax credits entirely offset tax liability. Table 2 also shows that a large proportion of the corporate income tax was from a relatively small number of returns. About 87% of total corporate tax liability was generated by 1.94% of the corporations and combined groups that filed tax returns.

Aggregate data indicates that multistate corporations represented about 34% of the total number of C corporation taxfilers (including combined returns), and paid about 88% of total corporate tax liabilities. Table 2 does not directly translate into taxes paid by size of corporation since, for example, a very large corporation which suffered a loss could have no taxable income in the year of the loss, or in succeeding years, if the loss was carried forward. Also, due to combined reporting many of the returns reflected the tax liabilities of combined groups of corporations. Because the table primarily shows the distribution of total tax liability for corporations from tax year 2009, it differs from the total corporate collections shown for fiscal year 2009-

Table 1: Wisconsin Corporate Tax Collections 2001-02 to 2011-12 ($ in Millions)

Fiscal Year	Corporate Tax Collections	Percent Change	Total General Fund Collections	Percent Change	Corporate Tax As Percent of General Fund Collections
2001-02	$503.0	-6.4%	$10,020.2	-0.4%	5.0%
2002-03	526.5	4.7	10,199.7	1.8	5.2
2003-04	650.5	23.6	10,739.3	5.3	6.1
2004-05	764.1	17.5	11,396.7	6.1	6.7
2005-06	780.3	2.1	12,030.1	5.6	6.5
2006-07	890.1	14.1	12,618.0	4.9	7.1
2007-08	837.8	-5.9	13,042.9	3.4	6.4
2008-09	629.5	-24.9	12,113.2	-7.1	5.2
2009-10	834.5	32.6	12,131.7	0.2	6.9
2010-11	852.9	2.2	12,911.6	6.4	6.6
2011-12	906.6	6.3	13,514.6	4.7	6.7

10 in Table 1. The table does not include corporate income and franchise taxes paid by S corporations. Tax year amounts do not include additional collections due to audit adjustments and delinquent collections. Finally, fiscal year collections include declaration payments for a more recent year than the tax year collections shown in Table 2. Note that a few returns shown in the zero income group have a net tax liability. This is because a small number of combined groups have zero income for the combined return, but have members with a net tax liability on nonapportionable income that is greater than the member's share of the group's current year net business loss.

Table 2: Corporate Tax Liability by Net Income Class (Tax Year 2009)

Wisconsin Net Income	Number of Returns	% of Returns	Total Income	% of Total Income	Number of Taxpayers	Total Liability	% of Total Liability
Zero or Less	30,480	69.89%	$0	0.00%	9	$39,504	0.01%
Zero to $10,000	5,309	12.17	16,289,118	0.23	5,175	1,271,566	0.23
10,001 to 25,000	1,939	4.45	31,845,678	0.45	1,910	2,477,224	0.46
25,001 to 50,000	1,594	3.66	57,741,764	0.81	1,563	4,453,561	0.82
50,001 to 100,000	1,272	2.92	89,563,294	1.25	1,252	6,933,805	1.28
100,001 to 250,000	1,084	2.49	170,360,071	2.39	1,069	13,120,480	2.42
250,001 to 500,000	619	1.42	218,296,668	3.06	612	16,590,596	3.06
500,001 to 1,000,000	466	1.07	333,978,397	4.68	459	25,488,892	4.70
1,000,001 to 5,000,000	604	1.39	1,356,247,495	19.00	598	102,663,377	18.94
5,000,001 to 10,000,000	114	0.26	801,515,310	11.23	111	59,074,301	10.90
Over 10,000,000	128	0.29	4,062,484,051	56.91	128	309,993,356	57.18
Totals	43,609	100.00%	$7,138,321,846	100.00%	12,886	$542,106,662	100.00%

Source: Department of Revenue, Corporation Aggregate Statistics.

APPENDIX 1

Corporate Income and Franchise Tax Deductions

Allowable deductions under the Wisconsin corporate income and franchise tax are described below.

Compensation of Officers. Salaries, wages, and other forms of remuneration to officers of the business are deductible expenses. However, a publicly-held corporation cannot deduct compensation (remuneration) in excess of $1.0 million per tax year that is paid or accrued to certain executives. The deduction limitation applies to: (1) compensation to the principal executive officer (or an individual acting in that capacity); and (2) any other employee having total compensation required to be reported to shareholders under SEC rules because the employee is among the four highest compensated officers in the tax year. Compensation subject to the limitation includes cash and noncash benefits paid for services except for certain specified types of remuneration. The $1.0 million limit on deductible compensation is reduced by the amount of excess golden parachute payments that are not deductible under the IRC. [The federal Emergency Economic Stabilization Act of 2008 (P.L. 110-343) generally limits the deductibility of compensation paid to certain executive officers employed by financial institutions that sell "troubled assets" under the Troubled Assets Relief Program (TARP)].

Salaries and Wages. A deduction is provided for a reasonable salary allowance or other compensation for services actually rendered by employees. The form of compensation (fixed salary, percentage of gross or net income, commissions, bonuses, contributions to pensions or profit sharing plans) or method of payment is not controlling as to deductibility. To be deductible, the compensation must be: (1) an ordinary and necessary expense; (2) reasonable in amount; (3) based on actual services rendered; and (4) actually paid or incurred. Amounts that are deducted from an employee's salary for federal payroll taxes (FICA) are deducted as part of the employee's wages.

Repairs. A deduction is allowed for the cost of incidental repairs and maintenance, such as labor and supplies that do not add materially to the value of property or appreciably prolong its life but rather keep the property in ordinarily efficient operating condition.

Taxes. In general, taxes that are ordinary and necessary expenses paid or incurred in carrying on a trade or business are deductible. To be deductible, taxes must be directly attributable to the taxpayer's trade or business, or to property from which rents or royalties are derived. The expense must be a tax imposed by a government that is paid into the government treasury for public purposes. Charges for specific services or special purposes (user fees) are often not considered taxes and are not deductible as such. However, these charges might be deductible under another provision--for example, as business expenses.

Under federal law, a deduction is allowed for the following types of taxes generally for the year in which they are incurred or paid: (1) one-half of the federal self-employment tax; (2) state, local, and foreign real property taxes; (3) state and local personal property taxes; and (4) state, and local, income, and excess profits taxes.

Corporations must withhold various taxes from their employees' pay, including their employees' share of Social Security and Medicare taxes, along with state and federal income taxes. Corporations may also be required to pay certain employment taxes from their own funds, such as the employer's share of Social Security and Medicare taxes. An employer's deduction for wages paid is not reduced by (and therefore includes) the income, Social Security, and Medicare taxes withheld. Employment taxes paid directly by the corporation are deductible. Contribution payments to a state unemployment insurance fund are deductible as a state employment tax.

Under federal law, a corporation generally can claim either a deduction or the foreign tax credit for foreign income taxes. All excise taxes that are ordinary and necessary expenses of carrying on a business are deductible. However, taxes on gasoline, diesel fuel, and other motor fuels used in the business are deducted as part of the cost of the fuel.

Sales taxes paid on a service or the purchase or use of property are treated as part of the cost of the service or property. If the service or the cost of the property is deductible as a business expense, the sales tax can be deducted as part of the cost of the service or property. If the property is merchandise bought for resale, the sales tax is part of the cost of the merchandise. If the property is depreciable, the sales tax is added to the basis of the property for depreciation.

Taxes that are not deductible under federal law include: (1) federal income taxes; (2) foreign income taxes if the foreign tax credit is claimed; (3) taxes not imposed on the corporation; and (4) taxes, including state or local sales taxes, that are paid or incurred with an acquisition or disposition of property. (These taxes must be treated as a part of the cost of the acquired property or, in the case of a disposition, as a reduction in the amount realized on the disposition.)

Under the Wisconsin corporate income and franchise tax, state and local income and franchise taxes that are value-added taxes, single business taxes, or taxes on or measured by net income, gross income, gross receipts, or capital stock, and the state economic development surcharge are not deductible. (Wisconsin gross receipts and ad valorem utility taxes and license fees, and net proceeds taxes on metallic mineral mining are deductible for state corporate income and franchise tax purposes.) Foreign taxes are deductible only if the income on which the foreign taxes are based is taxable under the state corporate income and franchise tax. As noted, contributions to state unemployment insurance funds are deductible.

Interest. A deduction is allowed for interest on indebtedness incurred in the operation of a trade or business. Interest is defined as compensation for the use or forbearance of money. Only interest on actual indebtedness is deductible. There must be both a legal and an economic obligation for the debt.

In most cases, the time when interest is deducted is determined by the taxpayer's method of accounting. Generally, the interest is deductible when it accrues or is paid in accordance with the interest provisions of the loan. However, in certain cases, interest must be accounted for using specific rules.

Interest on debt must be capitalized if the debt is incurred, or continued, to finance the production of real or certain tangible personal property that is produced by the taxpayer and that has: (1) a long useful life [20 years]; (2) an estimated production period exceeding two years; or (3) an estimated production period exceeding one year and a cost exceeding $1.0 million.

Deductions claimed for interest payments to related entities must be added back to income under the state corporate income tax, if certain conditions are not met. (These provisions are described in a subsequent section.)

Charitable Contributions. Ordinarily, a corporation can claim a limited deduction for charitable contributions made in cash or property to, or for the benefit of, a qualified organization.

However, payments made to a charitable organization that are determined to be business expenses are deducible without regard to the percentage limits imposed on charitable contributions. To be a business expense, the payments must bear a direct relationship to the taxpayer's business, and be made with a reasonable expectation of a financial return commensurable with the amount of the donation.

If the payments made by the business are in fact charitable contributions (made with a charitable intent) they may not be deducted as business expenses. Instead, they are subject to percentage limitations. The total amount of the deduction claimed may not be more than 10% of taxable income. Charitable contributions in excess of the 10% limitation may not be deducted for the tax year, but may be carried over and used to offset income for the next five years, subject to the 10% limit. Special rules govern contributions of certain property to charitable organizations. (For combined groups, the charitable contributions deduction limitation is computed so that it applies to the combined group as a whole.)

Depreciation. The deduction for depreciation allows taxpayers to recover, over a period of years, the cost of capital assets used in a trade or business or for the production of income. The deduction is an allowance for the wear and tear, deterioration, or obsolescence of the property. Depreciable property is generally tangible and either real or personal property. Land is not depreciable. In certain cases, intangible property may be depreciated. To be depreciable, the property must have a determinable life of more than one year, and it must decline in value through use or the passage of time. Only property used in a trade or business or held for the production of income is eligible for a depreciation deduction. Depreciation may not be claimed on assets used in connection with a not-for-profit activity. No deduction is allowed for property used for personal purposes.

For tangible assets, depreciation applies to only that part of the property that is subject to wear and tear, to decay or decline from natural causes, or to exhaustion and obsolescence. The property must also be of a relatively permanent nature with a determinable useful life of over one year.

Intangible assets may be depreciated or amortized if it is known from experience or other factors that the assets will be of use in the business or in the production of income for only a limited period of time and if that time period can be estimated with reasonable accuracy. Certain patents, copyrights, and computer software are examples of depreciable intangibles. Intangible assets cannot be depreciated under an accelerated method but, rather, must be depreciated using a reasonable method, usually the straight-line method. However, the cost of many intangibles can be amortized over 15 years.

In order to claim depreciation on any property, the taxpayer must have a capital interest in it. Generally, the owner of the depreciable property may claim the deduction. However, the right to deduct depreciation is not predicated solely upon ownership of the legal title, but also upon investment in the property.

The amount to be recovered by depreciation is the cost or other appropriate basis of the property. The life over which the depreciable basis of property is recovered depends upon the type of asset that is depreciated and the system of depreciation that is used.

The Modified Accelerated Cost Recovery System (MACRS) rules of depreciation apply to most tangible property placed in service after 1986. Generally, the Accelerated Cost Recovery System (ACRS) of depreciation applies to property placed in service after 1980 and before 1987.

Property, other than MACRS and ACRS

property, must be depreciated using general depreciation rules. Under the general rules, the basis to be recovered through depreciation must be charged off over the life of the property using recognized methods of depreciation including the straight-line declining balance, and sum-of-the-years-digits methods. MACRS and ACRS property is recovered using statutory percentages that are annually applied to the depreciable basis of the property over a specified recovery period.

Under the general depreciation rules, three particular methods of depreciation are generally authorized:

The straight-line method. The straight-line method involves writing off the cost or other applicable basis of the property in equal annual amounts over the established life of the property.

The declining-balance method. Under declining-balance methods, depreciation is greatest in the first year and smaller in each succeeding year. Each year, the depreciable basis of the property is reduced by a certain amount and the associated rate of depreciation is applied to the resulting balance in each of the remaining years of the property's life. For example, under the 200% or double declining-balance method, assets are depreciated at twice the straight-line rate. Generally, the taxpayer is allowed to switch to the straight-line method when it becomes advantageous.

Sum-of-the-years-digits method. To use this method, the taxpayer must first compute the sum of each of the digits comprising the asset's life. For example, for an asset with a depreciable life of four years, the numbers 4, 3, 2, and 1 are summed to a total of 10. In the first year, $4/10^{ths}$ of the depreciable basis is written off. In succeeding years, $3/10^{ths}$, $2/10^{ths}$, and $1/10^{th}$ of the depreciable basis, respectively, is written off until the entire basis of the asset, minus salvage value, is recovered.

The federal Job Creation and Worker Assistance Act of 2002 included provisions that allowed an additional first-year depreciation deduction equal to 30% of the adjusted basis of certain property that was acquired after September 10, 2001 (30% first-year bonus depreciation). The federal Jobs and Growth Tax Relief Reconciliation Act of 2003 increased the bonus depreciation rate to 50% for property that was acquired after May 5, 2003 (50% first-year bonus depreciation). The 30% rate generally applied to property acquired after September 10, 2001, and before May 6, 2003, and placed in service before January 1, 2005. The 50% rate generally applied to property acquired after May 5, 2003, and placed in service before January 1, 2005. A taxpayer could elect to continue to claim the 30% rate for property acquired after May 5, 2003, or not claim the allowance for eligible property.

The federal Economic Stimulus Act of 2008 provided a first-year depreciation deduction equal to 50% of the adjusted basis of qualified property for property purchased or acquired pursuant to a contract after December 31, 2007, and before January 1, 2009, and placed in service during the same time period. The American Recovery and Reinvestment Act of 2009 (ARRA) extended 50% first-year bonus depreciation to 2009. The Small Business Jobs Act further extended the 50% first-year bonus depreciation to 2010 and 2011. The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 increased first year bonus depreciation to 100% in 2011, and extended 50% bonus depreciation to 2012. The American Taxpayer Relief Act of 2012 extended 50% bonus depreciation to 2013, or 2014 in the cases of property with longer production periods and certain aircraft. The basis of the property and the depreciation allowances in the year the property is placed in service and in later years are adjusted to reflect the additional first year depreciation reduction.

Generally, changes in federal tax law concerning depreciation were effective for Wisconsin corporate income taxpayers. However, following enactment of the ACRS system by the federal government in 1981, the Legislature adopted a series of state limitations on federal depreciation provisions that applied for state corporate income tax purposes. These limits were repealed as a part of the federalization provisions included in 1997 Wisconsin Act 27. As a result of Act 27, state tax provisions related to amortization and depreciation were again automatically referenced to the federal IRC. This provision applied to the state corporate income tax until the bonus depreciation provisions were enacted as part of the federal Job Creation and Worker Assistance Act of 2002. The Legislature then included provisions in 2001 Wisconsin Act 109 that referenced state amortization and depreciation provisions specifically to the federal IRC in effect on December 31, 2000. Consequently, the federal bonus depreciation provisions that were enacted by Congress and other depreciation provisions enacted since 2000, such as special expensing for film and television productions, treatment of electric transmission property as 15-year property, and election to amortize musical works and copyrights over five years, were generally not adopted for state corporate income and franchise tax purposes. The Legislature must take action to reference state amortization and depreciation provisions to federal provisions that take effect after December 31, 2000.

However, 2005 Wisconsin Act 362 created an exception to the required legislative update for certain depreciable property used in farming. For property acquired and placed in service in tax years beginning on or after January 1, 2006, a corporation that is "actively engaged in farming," as defined in the federal code, may compute amortization and depreciation on property used in farming under any changes enacted after December 31, 2005, to the federal IRC 30% and 50% bonus depreciation laws. To apply for state income tax purposes the changes must be amendments to the specific laws and not be new laws that modify the IRC. The federal laws referenced in the statutes include: (1) the Job Creation and Workers Assistant Act of 2002 (PL 107-147); or (2) the Jobs and Growth Tax Relief Reconciliation Act of 2003 (PL 108-27). As of this writing, no federal amendments to these laws had been adopted.

Because state depreciation provisions are referenced to the Internal Revenue Code in effect on December 31, 2000, tangible depreciable property currently placed in service is generally subject to MACRS. MACRS consists of two systems that determine how a taxpayer depreciates property. The most commonly used system is called the General Depreciation System (GDS). There is also an Alternative Depreciation System (ADS), which must be used for certain types of property, such as property used predominately outside the U.S. Taxpayers also can elect to use ADS. The main difference between the two systems is that ADS usually provides for a longer period of depreciation and uses only the straight-line method. Although most property placed in service after 1986 is depreciated under MACRS, some types of property are excluded from MACRS treatment, including certain public utility property, intangible assets, and motion picture films, video tapes, and sound recordings.

Under MACRS, the cost of property is recovered by using accelerated methods of cost recovery and statutory recovery periods and conventions. The deduction is computed by first determining the MACRS basis of the property. Each item of eligible property is then assigned to a specific class, and each class establishes a recovery period over which the cost of the property is recouped, using the applicable depreciation method and convention. Depreciation tables may be used by multiplying the basis of the assets by the applicable percentage for the applicable year of the recovery period. Alternatively, the deduction can be calculated using the appropriate method, recovery period, and convention. Deductions can be claimed for used property, and the cost recovery methods and periods are the same as those used to depreciate new property.

Specifically, the cost of eligible property is recovered over a 3-, 5-, 7-, 10-, 15-, 20-, 25-, 27.5-, or 39-year period depending upon the type of property involved. Depreciation methods are prescribed for each MACRS class. Generally, personal property is assigned to the three-year class, the five-year class, the seven-year class, or the 10-year class. Real property is assigned to the remaining classes based on the type of property involved. Property included in the three-year, five-year, seven-year, and ten-year classes is depreciated using the double declining balance method, switching to the straight-line method at a time which maximizes the depreciation allowance. (Agricultural property used in farming and placed in service after 1988 must be depreciated using the 150% declining balance method.) Property included in the 15-year and 20-year classes is depreciated using the 150% declining balance method, again switching to the straight-line method at a time which maximizes the depreciation allowance. Fifteen-year property includes certain land improvements, municipal waste treatment plants, retail motor fuel outlets, and electric transmission property. Twenty-year property includes certain multipurpose farm buildings. Twenty-five year property is generally water utility property and depreciated using the straight-line method. Residential rental property is depreciated over 27.5, years and nonresidential real property not included in other classes is depreciated over 39 years, both using the straight-line method.

Amortization. Amortization provisions allow a taxpayer to annually deduct a portion of certain capital expenses that are not ordinarily deductible. Generally, these expenses are not otherwise deductible because: (1) they relate to assets that are not depreciable because the assets have unlimited or indefinite life; or (2) they pertain to organizational or investigative expenses that were incurred before the taxpayer went into business. The deduction for amortization is similar to the straight-line method of depreciation in that a taxpayer is allowed to recover the capital costs through an annual deduction over a fixed period of time. Generally, the capital expenses which are amortized are deducted in equal monthly amounts over the amortization period. The amortization period depends upon the type of asset that is acquired. Expenses which may be amortized include: the cost of certain computer software; the cost of certified pollution control facilities; certain bond premiums; research and experimental expenditures; the cost of acquiring a lease; qualified forestation and reforestation costs; business start-up expenditures; and certain organizational expenditures.

In addition, the capitalized costs of "amortizable section 197 intangibles" can be amortized over 15 years. Generally, section 197 intangibles are eligible for the amortization deduction if acquired after August, 1993, and held in connection with a trade or business, or in an activity engaged in for the production of income. The following assets are section 197 intangibles: goodwill; going concern value; workforce in place; business information base; patents, copyrights, formulas, and similar items; customer-based intangibles; supplier-based intangibles; licenses, permits, and other government granted rights; covenants not to compete; franchises, trademarks, and trade names; and contracts for use, or term interest in, a section 197 intangible.

Election to Expense Depreciable Assets. Under Section 179 of the IRC, a taxpayer may elect to treat all or a portion of the cost of qualifying property, up to a limit, as an expense rather than as a capital expenditure. Such an expense or cost is deductible in the year in which the property is placed in service. The amount claimed as a deduction is referred to as a Section 179 expense allowance. Qualifying property is generally:

1. Tangible personal property.

2. Other tangible property (except buildings and their structural components) used as: (a) an integral part of manufacturing, production, or

extraction, or of furnishing transportation, communications, electricity, gas, water, or sewage disposal services; (b) a research facility used in connection with any of these activities; or (c) a facility used in connection with such activities for the bulk storage of tangible commodities.

3. Single purpose agricultural property (livestock or horticultural structures).

4. Storage facilities (except buildings and their structural components) used in connection with distributing petroleum or any primary product of petroleum.

Off-the-shelf computer software is not considered qualifying property for Wisconsin purposes, although it is for federal purposes.

Under federal law, the Section 179 deduction is the cost of qualifying property up to a maximum limit, and the deductible amount is reduced by the amount by which the total cost of the Section 179 property placed in service in a year exceeds a specified phase-out amount (investment limit). Under provisions enacted in the federal stimulus Act of 2008, for property placed in service in 2008, the maximum amount a taxpayer could expense was $250,000, and the investment limit was $800,000. The federal Small Business Jobs Act of 2010 increased the maximum amount a taxpayer may expense to $500,000, and the investment limit to $2.0 million for 2010 and 2011. The American Taxpayer Relief Act of 2012 extended these amounts for 2012 and 2013. Beginning with property placed in service in 2014, the expense limit is $25,000, and will not be adjusted for inflation. The investment limit will decrease to $200,000.

The dollar limitation on the amount of deduction is reduced on a dollar-for-dollar basis for the cost of qualifying property placed in service during the tax year over an investment limit. As noted, for tax years 2010 through 2013, the investment limit was $2.0 million. Federal law also places limits on the amounts that can be deducted for certain types of investments such as automobiles. In addition, the American Jobs Creation Act of 2004 limited to $25,000 the amount that could be expensed for sport utility vehicles weighing between 6,000 and 14,000 pounds ("SUV exclusion").

Federal section 179 provisions enacted since 2003 have not been adopted for state income and franchise tax purposes for non-farm property. Rather, state taxpayers are generally subject to Section 179 IRC provisions that were in effect for tax years through 2002. As a result, under current Wisconsin law, a taxpayer may elect to deduct up to $25,000 of the cost of qualifying property (except for property used in farming) in the year it is placed in service rather than taking depreciation deductions over a specified recovery period. In general, qualifying property is depreciable tangible personal property that is purchased for the active conduct of a trade or business. The maximum deductible amount of $25,000 is reduced (but not below zero) by the amount by which the qualifying property placed in service during the tax year exceeds $200,000. In addition, the amount eligible to be expensed for a tax year may not exceed the taxable income of the taxpayer that is derived from the active conduct of a trade or a business for that year. Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding years and deducted, subject to the total investment and taxable income limits. The $25,000 expense limits also apply to sport utility vehicles weighing between 6,000 and 14,000 pounds.

Current state law is referenced to the Section 179 provisions included in the federal Tax Increase Prevention and Reconciliation Act of 2005, for property that is used in farming that is acquired and placed in service in tax years beginning on or after January 1, 2008, and used by a person who is actively engaged in farming. This treatment provided an increased deduction amount for farm property placed into service in 2008 or 2009. However, beginning in 2010, the general state expense limit of $25,000 and the investment limit of $200,000 also applied for farm property.

Bad Debts. A deduction is allowed for business or nonbusiness debt that becomes worthless. The debt must arise from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money. Generally a debt is worthless when the creditor who has made a reasonable effort to collect the debt no longer has a chance to be repaid. Bad debts are characterized as business or nonbusiness debts, with each type of debt having its own rules for deductibility.

A bad debt is deductible as a business bad debt if the creation of the debt was proximately related to the taxpayer's trade or business. In addition, the dominant motive for the creation of the debt must be to benefit the taxpayer's trade or business. The bad debts of a corporation are considered business bad debts. To deduct a bad debt, the taxpayer must have previously included the amount in income, or loaned out cash.

Nonbusiness debt is a debt other than: (1) a debt created or acquired in connection with the taxpayer's trade or business; or (2) a loss from the worthlessness of a debt that is incurred in the taxpayer's trade or business. Transactions not entered into for profit are treated as nonbusiness debts. If a nonbusiness debt becomes worthless, it is deductible only as a short-term capital loss, and only in the year the debt becomes totally worthless.

Rent. Rent expenses are deductible as business expenses if they are incurred as a condition to the continued use or possession of property used in a trade or business, and the taxpayer has not taken or is not taking title or has no equity in the property. The amount of rent claimed can be a fixed sum, or can be based upon a percentage of profits, a percentage of gross sales or a combination of these. A deduction is allowed where the amount of rent is fixed in an arm's-length transaction without a tax-avoidance motive. In general, rental expenses are deductible in the year they are accrued or paid. However, in certain cases, such as where advance payments are made by a cash-basis taxpayer, special rules for determining the deduction apply. (Royalties are deductible as business expenses under rules that are similar to those governing the deductibility of rent paid for business or income-producing purposes.)

Rent payments to related entities must be added back to income under the state income tax, if certain conditions are not met. These provisions are described in a subsequent section.

Depletion. A deduction for depletion is allowed in determining the income derived from the sale of natural resources; it returns to the owner or operator (extractor) the capital investment on a pro rata basis over the productive life of such resources. Depletion is the exhaustion of natural resources by the process of mining, quarrying, drilling, and felling. The depletion deduction, in effect, represents the reduction in the content of the reserves from which the resource is taken. The taxpayer must have an economic interest (capital investment) in the mineral deposit or timber in order to claim the deduction.

Methods for computing depletion are cost depletion or percentage depletion. Although a taxpayer must generally use the depletion method that produces the greatest deduction each year, the allowance for percentage depletion has historically been preferred over cost depletion, since percentage depletion may be claimed even though the total deductions exceed the cost basis of the resource. However, unless the taxpayer is an independent producer or royalty owner, percentage depletion generally cannot be used for oil and gas wells.

Under the Wisconsin corporate income tax, taxpayers are not allowed to claim the depletion deduction using the percentage depletion method. Therefore, for state tax purposes, depletion is only deductible using the cost method of computing the deduction.

To figure cost depletion, the taxpayer must determine the following: (1) the property's basis for depletion; (2) the total recoverable units, such as tons or barrels in the property's natural deposit; and (3) the number of the units sold during the tax year. That part of the basis in the property that is allocable to the depletable reserves is then divided by the number of total recoverable units. The quotient is the cost depletion per unit. This amount multiplied by the number of extracted units sold during the year determines the cost depletion deduction for the year. Each year the basis of the property is reduced by the amount of depletion deducted for that year. The remaining basis is used in computing cost depreciation for the following year.

Insurance. The cost of insurance can generally be deducted as a business expense if it is an ordinary and necessary expense paid or incurred in carrying on a trade or business. The deduction is usually allowed on a current basis, according to the taxpayer's method of accounting. However, in certain cases, such as where direct and indirect costs for certain production and retail activities are capitalized, a taxpayer may have to capitalize certain insurance costs. Premiums paid for the following kinds of insurance related to the taxpayer's trade or business are deductible:

1. Insurance that covers fire, storm, theft, accident or similar losses.

2. Credit insurance that covers losses from bad debts.

3. Group hospitalization and medical insurance for employees, including long-term care insurance, if the coverage represents compensation for services rendered by the employee and total compensation paid to the employee is reasonable.

4. Liability insurance.

5. Malpractice insurance that covers the taxpayer's personal liability for professional negligence resulting in injury or damage to patients and clients.

6. Workers' compensation insurance set by state law that covers any claims for bodily injuries or job-related diseases suffered by employees, regardless of fault.

7. Contributions to a state unemployment insurance fund that are considered taxes under state law. (As noted above, unemployment insurance contributions are deductible as employment taxes under Wisconsin law).

8. Car and vehicle insurance that covers vehicles used in the taxpayer's business for liability, damages, or other losses.

9. Life insurance that covers corporate officers and employees for services rendered by the officers or employees, if the total compensation paid is reasonable.

10. Business interruption insurance that pays for lost profits if the business is shut down due to a fire or other cause.

As a general rule, payments made to a reserve fund set up for self-insurance are not deductible, even though the payments are based on estimated premiums that would be paid to an insurance company. Also, premiums paid on insurance purchased to secure a loan are not deductible.

Retirement Plans. Retirement plans are arrangements that provide employees with compensation, in addition to that paid currently, to be paid generally at retirement. Retirement plans include a number of different types of group pension and retirement plans, and retirement savings plans for individuals outside of a large group setting, such as individual retirement arrangements (IRAs), simplified employee plans (SEPs), and savings incentive match plans for employees (SIMPLEs). In general, retirement plans can be divided into two major categories: qualified and non-qualified plans.

Qualified Plans. Qualified plans must meet specific Internal Revenue Code requirements concerning formation, operation, and funding. Qualified plans have a number of tax advantages, including the deductibility of employer contributions to the plan, deferral of current taxation for employer contributions on behalf of the employee, and tax free accumulation of earnings and gains on a plan's investment funds. All other plans and arrangements are non-qualified plans. Non-qualified plans include funded plans provided for a group of employees outside of qualified plans, funded or unfunded arrangements provided to particular employees, either instead of or in addition to qualified plans, and unfunded promises to pay compensation in the future.

Qualified plans generally are either pension plans, which are intended to provide retirement benefits, or profit-sharing plans, which are intended to provide deferred compensation and allow employees to participate in the employer's profits. However, for purposes of many of the IRC qualification requirements, qualified plans are divided into defined contribution plans and defined benefit plans.

A defined contribution plan is a plan that provides for a separate account for each participant, and benefits are based solely on amounts contributed or allocated to, and accumulated in, each account. Defined contribution plans include profit-sharing, stock bonus, and money purchase plans. A profit-sharing plan is established and maintained by the employer to provide for employees to share in the profits of the business. A stock bonus plan provides benefits similar to a profit-sharing plan, but benefits under the plan are distributed in the form of the company's stock. A money purchase plan is designed to provide employees with benefits that will be paid upon retirement, or for a period of years after retirement.

A common form of employer-sponsored retirement plan is a cash or deferred arrangement [referred to as a 401 (k) plan or CODA]. Such plans, which generally are included as part of a qualified profit-sharing or stock bonus plan, allow employees to defer a portion of their before-tax compensation to a qualified trust. Alternatively, employers can permit employees to elect to have all or a portion of their deferred compensation treated as after-tax contributions to a separate Roth IRA. Contributions to the 401 (k) trust or Roth IRA account can be invested in savings accounts, stocks, bonds, or other investment vehicles, and, subject to distribution rules, amounts accumulating in 401 (k) and Roth IRA accounts may be used to provide retirement benefits.

A defined benefit plan includes any plan that is not a defined contribution plan; that is, any plan that does not provide for an individual account for each participant, and for benefits based solely on the amount in the employee's account. Defined benefit plans are designed to provide a definitely determinable amount of benefits to an employee. Defined benefit plans can be pension plans, which are plans funded using trusts, or annuity plans.

A pension plan is a plan established by an employer to provide systematically for the payment of definitely determinable benefits to employees over a period of years (usually for life) after retirement. The benefits generally are measured by, and based on, factors such as years of service and compensation received by the employees. An annuity plan is a pension plan that is not funded through a trust or an individual account, but through the employer's purchase of annuity contracts from an insurance company.

In general, employer contributions to qualified deferred compensation and retirement plans are deductible, if they are ordinary and necessary business expenses, are compensation for personal services actually rendered, and together with other deductions allowed for compensation for an employee's services, constitute a reasonable allowance for compensation for services rendered. Deductions for contributions to qualified plans are usually deductible in the year in which they are made. However, there are separate limitations on deductions for employer contributions to qualified defined contribution and defined benefit plans, depending upon the type of plan.

The maximum deduction allowed for contributions to a pension or annuity plan (other than money purchase pension plans, which are treated like profit-sharing and stock bonus plans) generally is determined actuarially, based on the expected costs of the plan. Any amount contributed during the tax year that is not deductible because it exceeds the maximum deduction limit, is deductible in succeeding years, in order of time, to the extent the amount paid and deducted in the succeeding year is less than the maximum deduction limit.

The maximum deduction for contributions to a stock bonus plan, profit-sharing, or money purchase (subject to IRS regulations) plan is generally 25% of the compensation otherwise paid or accrued to the beneficiary (employee) for the year under the plan. Elective deferrals to 401 (k) and other plans are not subject to the limit. Elective deferrals are included in compensation.

Nonqualified Plans. Nonqualified deferred compensation plans do not provide the same tax benefits as qualified plans, but are more flexible and can be structured to meet specific objectives. Nonqualified deferred compensation plans include arrangements for groups of employees, arrangements designed to compensate selected employees, and arrangements negotiated with employees or others who provide services. Examples include supplemental executive retirement plans (SERPs) used to compensate and retain executives by providing benefits greater than those the executives receive under the employer's qualified retirement plan, and incentives used as part of early retirement offers.

To be deductible, contributions to nonqualified deferred compensation plans must be ordinary and necessary business expenses, and must be combined with the compensation paid to an employee to determine whether the total compensation paid is reasonable. Contributions to nonqualified plans are deductible by the employer only in the year that the amount attributable to the contribution is includible in the gross income of, and received by, the employee participating in the plan. Contributions are generally included in the income of an employee when the employee has the right to transfer them, or is not subject to a substantial risk of forfeiture. If more than one employee participates in the plan, contributions are deductible only if separate accounts are maintained for each employee, to which contributions along with income earned are allocated.

Employee Benefit Programs. In general, a deduction is allowed for contributions to employee benefit programs or plans, plans not claimed as a deduction elsewhere on the tax return, and that are ordinary and necessary business expenses, and are not an incidental part of a pension, profit-sharing, or similar type of retirement plan. Amounts paid by an employer to improve the well-being and morale of employees that directly benefit the business in inducing low turnover in labor, absence, or services, and increase loyalty and similar outcomes are deductible as ordinary and necessary business expenses. Examples of employee benefit programs include educational assistance programs, cafeteria plans, and dependent care assistance programs. Generally, such plans cannot discriminate in favor of highly compensated employees in terms of eligibility, contributions, or benefits.

Educational Assistance Programs. A deduction is allowed for amounts paid or incurred for employer education expenses under a qualified educational assistance plan. These expenses include, but are not limited to tuition, fees, books, supplies and equipment. "Education" generally means any form of instruction or training that improves or develops an individual's capacity, whether or not job-related or part of a degree program. Education paid for or provided under a qualified program may be furnished directly by the employer either alone, or in conjunction with, other employers, or through a third party, such as an educational instructor. An educational assistance program must be a separate written plan that provides educational assistance only to employees.

Dependent Care Assistance Programs. Amounts paid by an employer for dependent care assistance provided to an employee are deductible. A dependent care assistance program usually takes the form of a cash reimbursement arrangement in which the employer reimburses the employee for the costs incurred in obtaining dependent care from a third party.

The definition of dependent care assistance is referenced to the definition of employment-related expenses under the federal child and dependent care tax credit provisions. Under the rules for the credit, employment-related expenses are expenses incurred to enable the employee to be gainfully employed during any period in which there are one or more qualifying individuals (generally dependents under the age of 13, or who are physically or mentally incapable of caring for themselves) that require care. An employer's dependent care assistance program may offer dependent care assistance in kind, for example through an on-site facility maintained by the employer.

Cafeteria Plans. Employer contributions under a written cafeteria plan are deductible business expenses. A cafeteria plan, including a flexible spending arrangement, is a written benefit plan that allows the employee to choose among cash and qualified benefits. Specifically, a cafeteria plan must meet certain requirements including: (1) the plan must be in writing; (2) only employees can participate; (3) a decision/choice must be made by participants; (4) cash must be one of the choices; (5) qualified benefits must also be available; and (6) compensation generally cannot be deferred. Qualified benefits can include accident and health benefits, adoption assistance, dependent care assistance, and group term life insurance.

Employee Stock Options. A stock option is an agreement on the part of the corporation to sell a given number of shares of its stock at a given price (the option price) to an employee within a specified period of time. The decision to exercise the option and buy the shares is left entirely to the employee in most cases. Two primary types of employee stock option plans are incentive stock options and employee stock purchase plans. An incentive stock option is usually designed to give key employees an opportunity to acquire stock at a bargain price without incurring a tax liability until the shares are sold. An employee stock purchase plan is similar to an incentive stock option in that employees are given an option to buy the employer's shares at a price that may be below market when the option is exercised. Employee stock purchase plans are different than incentive stock options in that the plan may not discriminate among employees, and such plans are therefore aimed primarily at rank and file employees.

A third type of employer stock purchase plan is an employee stock ownership plan (ESOP). An ESOP is a qualified stock bonus plan or a qualified stock bonus and money purchase plan that is designed to invest primarily in qualifying employer securities and may borrow the funds to purchase the securities.

In general, a transfer of stock through an employee stock option plan is not a taxable event. No income is received by the employee when the employee exercises the option and receives the stock. The employee will not be taxed until the stock acquired under the option is sold or exchanged. Also, when stock is transferred pursuant to an option, the employer corporation may not take a business deduction with respect to the transfer, and no amount other than the price paid under the option may be considered as received by the corporation for the stock transferred. Generally, employers cannot claim a deduction for qualified stock options.

Advertising. Advertising expenses that are reasonable in amount and related to the business activities in which the taxpayer is engaged are deductible. Advertising costs that generate future benefits beyond the current year may be treated as a capital expense and must be capitalized. The taxpayer is free to choose the advertising that best serves the taxpayer's purpose; however, the burden of proving the deductibility of advertising expenses is on the taxpayer.

Other Deductions. Ordinary and necessary business expenses related to the operation of a trade or business and not deducted elsewhere can be deducted under a general miscellaneous category. Deductible business expenses include: generally, 50% of business meal and entertainment expenses; certain start-up expenses; the cost of materials and supplies used in business operations; legal and professional fees; and expenditures for incidental repairs, maintenance, and improvements that are not capital expenditures.

Adjustments to Deductions

Corporations may be required to modify deductions or income for certain expenses connected with related entities, and disclose certain types of transactions or file information returns related to certain types of transactions. In addition, state corporate income/franchise tax provisions exclude or modify deductions that are provided under the IRC.

Related Entity Transactions

Wisconsin taxpayers are required to add back to income certain expenses for payments to related entities. Specifically, rental expenses, interest expenses, intangible expenses, and management fees deducted or excluded under the IRC have to be added back if they are directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities. (These added back expenses may then be subtracted if certain conditions are met.)

Factors that may indicate that an expense is not deductible include: (1) 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; (2) if the transaction was entered into on the advice of a tax advisor, the advisor's fee was determined by reference to the tax savings; (3) the related entity does not regularly engage in similar transactions with unrelated parties on terms substantially similar to those of the subject transaction; (4) the transaction was not entered into at terms comparable to arms length as determined by U.S. Treasury regulations; (5) there was no realistic expectation of profit from the transaction apart from the tax benefits; (6) the transaction resulted in improper matching of income and expenses; (7) an expense for the transaction was accrued under federal rules for accounting for uncertain taxes; (8) the taxpayer is not sufficiently capitalized, or has no reasonable expectation to make payment on the debt underlying an interest expense; (9) there is no written contract underlying an interest expense that reflects an arm's length interest rate; and (10) interest is attributable to an unpaid charge that is not an allowable expense, such as an expense that has the characteristics of the above factors, or a loan from a captive insurance company, a dividend note, a loan from a related entity with net operating loss carryforwards, or a loan from a related entity that is an intermediary set up in a jurisdiction that imposes no corporate-level income tax.

"Intangible expenses" include the following, to the extent that the amounts would otherwise be deductible in computing Wisconsin income: (1) expenses, losses, and costs in connection with the acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property; (2) losses in connection with, factoring transactions or discounting transactions; (3) royalty, patent, licensing, technical, and copyright fees; and (4) other similar expenses, losses, and costs.

"Intangible property" includes securities, financial instruments, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.

"Related entity" is defined as any person related to a taxpayer as provided under specified sections of the Internal Revenue Code during all or a portion of the taxpayer's taxable year, and any real estate investment trust (REIT) under the IRC, except for a qualified REIT, if more than 50% of any class of the beneficial interests or shares of the real estate investment trust are owned directly, indirectly, or constructively by the taxpayer or any person related to the taxpayer during all or a portion of the taxpayer's tax year. Constructive ownership rules under specified sections of the IRC apply in determining the ownership of stock, assets, or net profits of any person.

Relationships that are related parties include: (1) certain family members; (2) corporations where 50% of outstanding stock is owned by an individual; (3) corporations in a controlled group of corporations with a common parent where 50% of the voting power or value of all shares of stock is owned by either one member or the parent corporation (excluding the stock of the parent); (4) a fiduciary of a trust and the grantor, another fiduciary or another trust with the same grantor, a beneficiary, a beneficiary of another trust with the same grantor; and a corporation where more than 50% of the value is owned by the trust or its grantor; (5) an exempt organization and a person, where the organization is controlled by the person or person's family; (6) a corporation and a partnership, if the same person owns more than 50% of the outstanding value of the corporation's stock and more than 50% of the capital interest or profits interest in the partnership; (7) an S corporation and another S corporation or a C corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation; and (8) an executor and beneficiary of an estate.

"Qualified real estate investment trust" means a REIT, except for a real estate investment trust where the shares or beneficial interest of the REIT are not regularly traded on an established securities market, and more than 50% of the voting power or value of any class of the beneficial interests or shares of the REIT are owned or controlled, directly, indirectly, or constructively, by a single entity that is treated as an association taxable as a corporation under the IRC.

The following entities are not considered an association taxable as a corporation:

1. An entity that is exempt from Wisconsin taxation under state law and exempt from federal income tax under the IRC.

2. A qualified REIT.

3. A qualified REIT subsidiary under the IRC which is a subsidiary of a qualified REIT.

4. A corporation, trust, association, or part-

nership organized outside the laws of the United States which satisfies all of the following criteria:

a. At least 75% of the entity's total asset value at the close of its tax year consists of real estate assets as defined in the IRC, cash and cash equivalents, and U.S. Government securities;

b. The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

c. The entity distributes at least 85% of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;

d. Not more than 10% of the voting power or value in the entity is held directly, indirectly, or constructively by a single entity or individual, or the shares or beneficial interests of the entity are regularly traded on an established securities market; and

e. The entity is organized in a country which has a treaty with the United States.

A deduction is allowed for rent, interest and intangible expenses and management fees that are added-back if any of the following conditions apply:

1. The related entity to which the taxpayer paid, accrued, or incurred such expenses during the tax year directly or indirectly paid, accrued, or incurred such amounts in the same tax year to a person who is not a related entity (the related entity acts as a conduit). The related entity to which the taxpayer paid, accrued, or incurred such expenses is a bank holding company or a direct or indirect subsidiary of a bank holding company as defined under specified sections of the U.S. Code, excluding any entity organized under the laws of another jurisdiction, that primarily holds and manages investments of a bank, subsidiary, or affiliate. If a portion of such an expense is paid, accrued, or incurred in the same tax year to a person who is not a related entity, then that portion is allowed as a deduction to the taxpayer. Also, "interest" excludes interest that is paid in connection with any debt that is incurred to acquire the taxpayer's assets or stock under the IRC.

2. The related entity was: (a) subject to tax on, or measured by, its net income or receipts in this state, or any state, U.S. possession, or foreign country; (b) the related entity's tax base in the state, U.S. possession, or foreign country included the income received from the taxpayer for such expenses; (c) the aggregate effective tax rate applied to such income or receipts was at least 80% of the taxpayer's aggregate effective tax rate; and (d) the related entity is not an REIT under the IRC, other than a qualified REIT.

3. The taxpayer establishes that the transaction satisfies any other conditions DOR considers relevant, based on the facts and circumstances, to determine that: (a) the primary motivation of the transaction was one or more business purposes other than the avoidance or reduction of state income or franchise taxes; (b) that the transaction changed in a meaningful way, apart from tax effects, the economic position of the taxpayer; and (c) that the expenses were paid, accrued, or incurred using terms that reflect an arm's length relationship.

"Any state, U.S. possession, or foreign country" does not include any state, U.S. possession, or foreign country under the laws of which the taxpayer files with the related entity, or the related entity files with another entity, a combined income tax report or return, a consolidated income tax report or return, or any other report or return that is due because of the imposition of a tax that is measured on or by income or receipts, if the report or return results in eliminating the tax effects of transactions directly or indirectly between either the taxpayer and the related entity, or between the related entity and another entity.

"Aggregate effective tax rate" is defined as the sum of the effective tax rates imposed by a state, U.S. possession, foreign country, or any combination thereof on the person or entity.

"Effective tax rate" means the maximum tax rate imposed by the state, U.S. possession, or foreign country multiplied by the apportionment percentage, if any, applicable to the person or entity under the laws of that jurisdiction.

Deductions under these provisions are not allowed unless the amounts paid, accrued, or incurred for the type of transactions are disclosed on a separate form prescribed by DOR in the manner prescribed by the Department.

If a deduction for rental, interest, and intangible expenses and management fees is denied to a taxpayer because the expenses were paid to a related entity, and the conditions to deduct the expenses were not satisfied, then such amounts are not included in the income of the related entity for state tax purposes. (This provision is intended to prevent double-taxation.) Wisconsin law provides that the Secretary of Revenue (or designee) may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among two or more organizations, trades, or businesses that are owned or controlled directly or indirectly by the same interests, if the Secretary determines that such an action is necessary in order to prevent evasion of taxes, or to clearly reflect the income of any such organization, trade, or business. The law specifies that this authority is in addition to the related entity provisions. Also, a nonstatutory provision provided that the related entity provisions would have no effect on any bank settlement agreements that the Department of Revenue has entered into with banks and other financial institutions regarding their investment subsidiaries.

Other State Adjustments to Federal Provisions

Although state income and deductions are primarily referenced to federal law, there are a number of modifications specified under the state corporate income/franchise tax law that must be made to reflect differences in the state treatment of certain items. These state modifications made to federal definitions include the following:

1. Income received by an original policy holder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate under a viatical settlement contract is excluded from gross income. A viatical settlement contract is a written agreement providing for the payment to the policyholder of a life insurance policy, or to the holder of a group life insurance certificate, insuring the life of a person who has a catastrophic or life-threatening illness or condition, in an amount that is less than the expected death benefit under the policy or certificate, for assigning, selling, devising, or otherwise transferring the ownership of, or the death benefit under the policy or certificate to, the person paying the viatical settlement.

2. The federal gross-up of dividends to reflect taxes claimed in computing the foreign tax credit is excluded in computing income.

3. Corporations subject to the state corporate franchise tax must add to income all interest income not included in federal taxable income under the federal corporate income tax. Also, corporations subject to the state corporate income tax must add to income all interest income not included in federal taxable income, except for interest income which by federal or state law is exempt from taxation. For corporations subject to franchise taxes, interest income from all state and local government bonds is included in the computation of Wisconsin net income. For cor-

porations subject to the income tax, all interest income from state and local government bonds, except that which is exempt by federal law from state taxation, and interest from certain state and local obligations, is included in the computation of Wisconsin net income. In addition, all interest income received by a bank or other corporation actively engaged in the business of lending money with respect to a securities acquisition loan, is includable in Wisconsin net income.

4. In certain specified circumstances where there is a nonrecognition of income from the discharge of indebtedness, the basis of assets or tax attributes (such as net operating losses, credits, and the depreciable and nondepreciable bases of assets) must be reduced in exchange for the income exclusion. In these cases, state net operating loss and credit provisions apply and the state basis of depreciable property or state tax attributes must be reduced. The reduction rate for credit carryforwards is 7.9%.

5. The federal deduction for wages, salaries, commissions, and bonuses can be claimed only if the name, address, and amount paid to each resident of Wisconsin to whom compensation of $600 or more has been paid during the taxable year is reported to the Department of Revenue, or if the Department is satisfied that failure to report has resulted in no revenue loss to the state. Rent payments may be deducted only if the amount paid along with the names and addresses of the parties to whom the rent is paid is reported. Also, payments for salaries, wages, bonuses, interest, and other expenses paid to an entertainer or entertainment corporation may be deducted only if certain withholding, and cash deposit or bond requirements are met.

6. The federal deduction for taxes paid is modified so that: (a) foreign taxes are not deductible, unless the income on which the taxes are based is taxable; (b) Wisconsin utility gross receipts and ad valorem taxes and license fees are deductible; and (c) the state net proceeds tax on mining of metallic minerals is deductible. Also, state taxes and the 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. The federal windfall profits tax and the environmental tax are not deductible.

7. The rules for federally taxable bonds also apply to bonds that are taxable under the state corporate income and franchise tax, and the rules for federally tax-exempt bonds apply to bonds that are exempt from Wisconsin taxation. Therefore, if a bond is taxable for Wisconsin purposes, a taxpayer may deduct the amortizable bond premium for Wisconsin. If the bonds are not taxable for Wisconsin purposes, the amortizable bond premium is not deductible. Also, federal provisions are modified for Wisconsin law to require the basis of certain tax-exempt state and local bonds to be reduced by the amount of amortizable bond premium disallowed as a deduction, so that it only applies to bonds that are tax-exempt for Wisconsin.

8. State net business loss provisions are substituted for federal law. Specifically, corporations may carry forward and offset against Wisconsin net business income, any Wisconsin net business loss sustained for up to 15 years after the year in which the loss is incurred. However, unlike federal law, net business losses cannot be carried back to offset income in prior tax years. Special provisions apply to unused pre-2009 net business loss carryforwards of combined groups.

9. Instead of federal dividends received provisions, corporations may deduct all dividends received from a corporation paid on its common stock if the corporation receiving the dividends owns, directly or indirectly, for its entire tax year, at least 70% of the total combined voting stock of the payor corporation "Dividends received" excludes taxes on dividends paid to a foreign nation and claimed as a deduction. The

dividends received deduction is available to corporations that are separate entity filers, and to combined group filers. The federal dividends paid deduction for certain preferred stock of public utilities is excluded from state law.

10. Federal provisions governing the treatment of expenses and interest relating to tax-exempt income are replaced by the state rule that amounts otherwise deductible that are directly or indirectly related to income that is wholly exempt from state tax are not deductible. Furthermore, amounts that are directly or indirectly related to losses from the sale of assets, gains from which would have been exempt under state law, if the assets were sold or otherwise disposed of at a gain, are also not deductible. "Wholly exempt income" includes amounts received from affiliated or subsidiary corporations as interest, dividends, or capital gains that, because of the degree of common ownership, control, or management between the payor and payee, are not subject to the state corporate income tax. "Wholly exempt income" also includes interest on obligations of the U.S. government for corporations subject to the state corporate income tax rather than the state franchise tax. "Wholly exempt income" does not include income that is excludable, not recognized, exempt, or deductible under specific corporate income tax provisions. Any expenses or amounts otherwise deductible that are indirectly related to both wholly exempt income or loss, and to other income or loss, are reasonably proportionately allocated to each type of income or loss based on all the facts and circumstances.

11. Federal provisions governing treatment of losses, expenses, and interest in transactions between related taxpayers are modified so that, in circumstances where it is applicable, gains on the sale of transferred property may be reduced only if the corresponding loss was incurred while the corporation was subject to the Wisconsin corporate income tax.

12. Federal provisions which require the reduction in the amount deductible for certain financial institution preference items do not apply to deductions that are allocable to income that is taxable under the state corporate income or franchise tax.

13. Federal laws relating to the treatment of net business loss carryforwards and excess credits in certain corporate acquisitions, and limitations on the use of net business loss carryforwards, certain credits, and capital losses in corporate acquisitions are modified so that Wisconsin net business loss and credit provisions are substituted for federal items.

14. The federal deduction for qualified payments to nuclear power plant decommissioning reserve funds is allowed only if the fund is subject to the Wisconsin corporate income tax.

15. State provisions concerning the treatment of nonprofit institutions (including veterans service organizations), political organizations, cooperatives, associations, and other tax-exempt organizations replace federal provisions except that state law includes federal definitions of the taxable unrelated business income of such organizations.

16. State law does not follow federal law regarding percentage depletion for certain natural resources. Corporations must use cost depletion in determining the depletion deduction under the state corporate income and franchise tax.

17. State law does not follow federal treatment of domestic international sales corporations (DISCs). In general, DISCs have no special status for state tax purposes. If the DISC has nexus in Wisconsin for tax purposes and if it is not a "paper corporation" without substance, it is taxed like any other corporation. However, if the DISC is a "paper corporation" having no employees and no actual involvement or activity in connection with the sales that give rise to its income, the income is allocated to the corporation that

actually earned the income (usually the parent corporation). The DISC's income is included in that corporation's income for state corporate franchise tax purposes. Generally, a DISC that meets only minimum qualifying requirements and does not carry on any substantial business activity is treated as a paper corporation.

It should be noted that the federal system of taxing DISCs was generally replaced after 1984 with a system of taxing foreign sales corporations (FSC). (The FSC provisions were repealed in 2004.) Although DISCs were not abolished by the Federal Tax Reform Act of 1984, their tax benefits were limited, and an interest charge for tax-deferred amounts was imposed on DISC shareholders. An interest charge DISC is a domestic corporation with income that is predominantly derived from export sales and rentals. Generally, all of the income of a DISC attributable to $10 million or less of qualified exports could be deferred. However, an interest charge is imposed on the shareholders of the DISC based on the amount of tax that would have been due if the deferred income had been distributed.

18. State law does not follow federal law governing controlled foreign corporations. As a result, Subpart F income is not includable in the computation of Wisconsin net income. Subpart F income is undistributed income from controlled foreign corporations which is required to be included in the federal net income of the U.S. shareholders of such corporations. Any actual income received from a controlled foreign corporation, such as dividends or interest, is included in the computation of Wisconsin net income, provided the income is not wholly exempt income.

19. Federal treatment of involuntary conversions as nontaxable exchanges is modified so that the federal provisions do not apply to involuntary conversions of property in this state that produce nonbusiness income when the property is replaced with similar property outside the state. In addition, federal provisions do not apply to involuntary conversions of property in the state that produce business income when the property is replaced with property outside the state if, at the time of replacement, the taxpayer is not subject to the Wisconsin corporate income tax.

20. Federal rules governing the filing of consolidated income tax returns and related provisions are not included in state law. However, the U.S. Treasury Regulation (1.1502-13) relating to deferred gain or loss from an intercompany transaction, applies to transactions between combined group members under state combined reporting provisions.

21. Federal provisions concerning amortization and depreciation authorized under the IRC in effect December 31, 2000, are included in state law. A corporation is required to compute amortization and depreciation under the federal IRC provisions which were in effect on December 31, 2000. In addition, specific state provisions which governed depreciation of property placed in service before January 1, 1987, under state law continue to apply for certain property. Future federal modifications to bonus depreciation provisions of the Federal Job Creation and Worker Assistance Act of 2007 (PL 107-147), and the Jobs and Growth Tax Relief Reconciliation Act of 2003 (PL 108-27) for property that is placed in service by a corporation engaged in farming would automatically apply for state income and franchise taxes.

22. The American Jobs Creation Act of 2004 provided a deduction against gross income for a portion of income attributable to domestic production activities. The deduction was phased in from 2005 through 2010, and is equal to the lesser of 9% of a business' qualified production activities income or its taxable income. Under provisions of 2009 Wisconsin Act 28, the state statutory references to this IRC provision were eliminated under the state individual income and corporate income/franchise taxes. Consequently, a

deduction for qualified production activities income is not provided under state law.

As noted, state corporate income and franchise tax provisions are generally referenced to the IRC as amended to December 31, 2010. In addition, the Legislature has not adopted certain corporate income tax provisions included in federal laws that were enacted between 2000 and 2010. Moreover, all IRC provisions enacted since 2010 have not been adopted for state corporate income tax provisions.

APPENDIX 2

Wisconsin Apportionment Formulas

Most multistate corporations, including multistate electric and gas utilities, apportion income to Wisconsin using single sales factor apportionment. Statutory provisions and administrative rules govern the definitions and sourcing of sales that are included in the sales factor. Multistate financial organizations, including financial institutions, broker-dealers, investment advisers, investment companies, and underwriters use industry specific, single receipts factor apportionment factors, while multistate insurance companies use a single premiums apportionment factor. Interstate telecommunications companies, direct air carriers, motor carriers, pipeline companies, and railroads and sleeping car companies apportion income using multiple factor formulas.

Multistate Corporations. Generally, for individual multijurisdictional corporations, the sales factor is a percentage determined by dividing the total sales of the corporation in Wisconsin by the total sales of the corporation everywhere. Sales are generally all gross receipts from the course of the taxpayer's regular trade or business operations which produce apportionable business income. Some revenues are not considered sales for purposes of apportionment. Examples include gains or losses from the sale of business assets (other than inventory), gains or losses from the redemption of securities, and certain rental income and royalties that are related to nonbusiness property.

Federal and state sales and excise taxes are included as part of the receipts if the taxes are passed on to the buyer, or included as part of the selling price.

The statutes and administrative rules include provisions for determining if certain sales are considered to be in Wisconsin, and therefore included in the numerator of the sales factor. (In general, all the corporation's sales or gross receipts are included in the denominator.) For the purposes of the sales factor, sales of tangible personal property are considered in the state, regardless of the f.o.b. point (where responsibility for goods is transferred) or other conditions of the sale, if: (1) the property is delivered or shipped to a purchaser, other than the federal government, within the state; or (2) the property is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin and delivered to the federal government within the state.

In addition, certain sales of personal property in states where a taxpayer has no nexus are treated as being in Wisconsin. These sales are known as "throwback sales", and include the following:

1. Sales of tangible personal property that is shipped from Wisconsin and delivered to the federal government outside the state, and the taxpayer is not within the jurisdiction, for income tax purposes, of the destination state.

2. Sales of tangible personal property that is shipped from Wisconsin to a purchaser, other than the federal government, and the taxpayer is not in the jurisdiction, for income tax purposes, of the destination state.

3. Sales of tangible personal property by an office in Wisconsin to a purchaser in another state, that are not shipped or delivered from Wisconsin, if the taxpayer is not within the jurisdiction, for income tax purposes, of either the state from which the property is delivered or shipped, or the destination state.

Under current law provisions, gross receipts from the use of computer software, sales of services and intangibles, and royalties are not subject to throwback rules.

In general, gross receipts from leases, rentals, or licensing of real property are considered to be in Wisconsin if the real property is located in the state. Gross receipts from the lease, rental, licensing, or other use of tangible personal property are treated as in Wisconsin to the extent that the property is used in the state.

Gross receipts from the use of computer software are treated as in the state if the purchaser or licensee uses the software at a location in the state. Computer software is used in Wisconsin if the purchaser or licensee uses the software in the regular course of business operations in the state, for personal use in the state, or if the purchaser or licensee is an individual whose domicile is in the state. If the purchaser or licensee uses the computer software in more than one state, the gross receipts are divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the software in those states. In order to determine computer software use in each state, the Department of Revenue is authorized to consider the number of users in each state where the software is used, the number of site licenses or workstations in Wisconsin, and any other factors that reflect the use of computer software in Wisconsin.

Gross receipts from services are considered in Wisconsin if the purchaser of the service received the benefit of the service in Wisconsin. The benefit of the service is received in the state if any of the following applies: (1) the service relates to real property that is located in Wisconsin; (2) the service relates to tangible personal property that is located in the state at the time the service is received, or tangible personal property that is delivered directly or indirectly to customers in the state; (3) the service is provided to an individual who is physically present in Wisconsin at the time the service is received; or (4) the service is provided to a person engaged in a trade or business in Wisconsin, and relates to that person's business in the state. If the purchaser of a service receives the benefit of the service in more than one state, the gross receipts are included in the numerator of the sales factor based on the portion of the service received in Wisconsin.

Gross royalties and other gross receipts received for the use or license of intangible property are treated as Wisconsin sales if any of the following applies: (1) the purchaser uses the intangible property in the operation of a trade or business at a location in Wisconsin; (2) the purchaser or licensee is billed for the purchase or license of the use of the intangible property in Wisconsin; or (3) the purchaser or licensee of the intangible property has its commercial domicile in Wisconsin. If the purchaser or licensee uses the intangible property in the operation of a trade or business in more than one state, the gross royalties and other gross receipts from the use of intangible property are divided among the states having jurisdiction to impose an income tax in proportion to the use of the intangible property in those states.

Sales of intangible property, excluding securities, are treated similarly to license receipts and royalties from intangible property in that the sales are considered in the state if the purchaser is billed or the purchaser's commercial domicile is in Wisconsin. In addition, the sales are considered in the state if the purchaser uses the intangible property in the regular course of business operations, or for personal use. Sales of intangible property used in more than one state are allocated proportionally among the states in the same manner as royalties and license receipts from intangibles.

Factors that may be considered to determine the purchaser's or licensee's use of intangible property in Wisconsin include the number of licensed sites in each state, the volume of property manufactured, produced, or sold, based on the arrangement at locations in Wisconsin, or other data on the relative usage of the intangible property in Wisconsin. In cases where the location of the use of the intangible property cannot be determined, the purchaser's billing address or commercial domicile can be used to determine if the usage of the intangible property is in Wisconsin.

"Intangible property" includes items such as patents, copyrights, trademarks, and customer lists. Intangible property does not include stocks, bonds, certificates of deposit, or other securities.

Interstate Financial Institutions. The apportionable income of financial institutions is apportioned using a single receipts factor. In general, the receipts factor is the ratio of the taxpayer's receipts in Wisconsin to the taxpayer's total receipts everywhere during the taxable year. Interest, dividends, gross receipts, or net gains from sales of securities held for investment purposes, and other income from investment assets cannot be included in the receipts factor.

A "financial institution" includes banks, savings banks, investment banks, credit unions, and similar institutions incorporated or organized under federal or state law, or the laws of any foreign country. Also included are personal bankers, bank holding companies, safe deposit companies, consumer finance companies, and legal entities that are authorized to act in a fiduciary capacity for individuals and businesses in the administration of trust funds, estates, and other related services.

The numerator of the receipts factor for financial institutions includes all of the items included in the following list. These receipts from the taxpayer's activities everywhere are also included in the denominator of the sales factor. Specifically, the numerator of the sales factor for financial institutions includes:

1. Gross receipts from the lease, rental, or licensing of, or the sublease of real property in the state.

2. Gross receipts from the lease, rental, or licensing of, or sublease of tangible personal property in Wisconsin, to the extent the property is used in the state;

3. Gross interest, fees, points, charges, and penalties from loans secured by real property to the extent the property securing the loan is located in Wisconsin.

4. Gross interest, fees, points, charges, and penalties from loans secured by tangible personal property, to the extent the personal property securing the loan is located in Wisconsin.

5. Gross interest, fees, points, charges, and penalties from loans that are not secured by real or tangible personal property if the loan borrower is located in the state.

6. Net gains (not less than zero) from the sale of loans secured by real or tangible personal property, and from the sale of loans not secured by real or tangible personal property, if the loan borrower is located in Wisconsin.

7. Gross interest, fees, points, charges, and penalties from credit card receivables, and gross receipts from annual fees and other fees charged to credit card holders, if the billing address of the credit card holder is in Wisconsin. "Credit card" includes a credit card, debit card, purchase card, and a travel or entertainment card.

8. Net gains (not less than zero) from the sale of credit card receivables, if the billing address of the credit card holder is in Wisconsin.

9. Credit card issuer's reimbursement fees from merchants, if the billing address of the credit card holder is in the state.

10. Gross receipts from merchant discount, net of credit card holder add-backs, but reduced by interchange transaction fees or issuer's reimbursement fees paid to another for charges made by its credit card holders. "Merchant discount" means the fee or negotiated discount that is charged to a merchant for accepting a credit card as payment for merchandise or services that are sold to the credit card holder.

11. Loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, secured by real or tangible personal property, or such fees that are not secured by real or tangible personal property, if the loan borrower is located in Wisconsin.

12. Gross fees or other charges for the issuance of travelers checks, cashiers checks, certified checks, and money orders if the checks or money orders are purchased in Wisconsin.

13. Gross receipts from the use of automated teller machines located in Wisconsin.

14. Gross receipts from the rental of safety deposit boxes, if the boxes are located in the state.

15. Fees and other gross receipts from the maintenance of accounts if the service is provided to an account holder that is not engaged in a trade or business, and the account holder's billing address is in the state, or the service is provided to an account holder engaged in a trade or business, the account holder maintains a regular place of business in Wisconsin, and the service received relates to business in Wisconsin. Similar provisions apply to receipts from electronic funds transfer services, research services, trust services, and investment banking services.

16. Gross receipts of any fees or charges generated from cash management services, including but not limited to, lockbox services, depository transfer checks, and payables management, if the service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in Wisconsin, and the service received relates to business in the state.

17. Gross receipts from international trade services, including but not limited to, letters of credit and bankers acceptance notes, if the service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in Wisconsin, and the service received relates to the business in the state.

18. Gross receipts from data processing services, document imaging services, and microfilming services, if the service is provided to a customer that is engaged in a trade or business, the customer maintains a regular place of business in Wisconsin, and the service relates to the business in the state.

19. Fees, commissions, margin interest, and other gross receipts from security brokerage services, and net gains, net of commissions, but not less than zero, from sales of trading assets if the customer's billing address is in Wisconsin. Gross receipts or net gains from sales or other dispositions of investment assets are not included in the receipts factor.

20. Gross receipts from other services if the purchaser of the service received the benefit of the service in Wisconsin, to the extent the benefit is received in the state, under the following circumstances: (a) the service relates to real property that is located in the state; (b) the service relates to tangible personal property that is located in the state at the time the service is received, or tangible personal property that is delivered directly or indirectly to customers in the state; (c) the service is provided to an individual who is physically present in the state at the time the service is received; or (d) the service is provided to a person engaged in a trade or business in Wis-

consin and relates to that person's business in the state.

21. Gross receipts from the use of computer software if the purchaser or licensee uses the computer software at a location in Wisconsin.

22. Gross royalties and other gross receipts received for the use of intangible property if the user, purchaser, or licensee uses the intangible property at a location in Wisconsin.

23. All other receipts includible in the basic sales factor generally used to apportion the income of corporations.

Specific provisions are used to determine the amount of gross receipts included in the numerator of the sales a factor in cases where the service is received in more than one state, or where the state in which the service is received cannot be determined.

The sales factor for financial institutions also includes gross receipts and net gain, as defined for purposes of the financial institution sales factor, from services provided to, or on behalf of, a regulated investment company (RIC) as defined under the IRC. Receipts received from a RIC include amounts received directly or indirectly from the RIC, and amounts received from shareholders in the RIC. The RIC is considered the purchaser or consumer of the services.

Interstate Brokerage Houses, Investment Companies and Advisors, and Underwriters A brokerage house, investment advisor, investment company, or underwriter apportions income using an industry specific receipts factor. Interest, dividends, gross receipts or net gains from sales of securities, and other income from investment assets held by a taxpayer in the taxpayer's investment account may not be included in the receipts factor. The sales factor for interstate broker-dealers, investment advisers, investment companies, and underwriters must include the types of receipts in the following list. The numerator must include:

1. Gross brokerage commissions earned, if the billing address of the customer is in Wisconsin.

2. Total margin interest earned on behalf of brokerage accounts owned by customers, if the billing address of the customer is in the state.

3. Account maintenance fees received on behalf of brokerage accounts owned by customers, if the billing address of the customer is in the state.

4. Gross receipts, net of commissions, from sales of trading assets, if the day-to-day decisions regarding the trading occur at a location in Wisconsin, or if the trading policies and guidelines are established in the state.

5. Gross payments received on investment contracts issued by the taxpayer and held by customers, if the billing address of the customer is in Wisconsin. "Investment contract" includes any bonds, shares, coupons, certificates of membership, or other obligations or agreements issued by the taxpayer to return to the holders or owners money or anything of value at some future date.

6. Gross receipts from performing activities on behalf of the issuer of the securities, if the issuer of the securities either: (a) is not engaged in a trade or business and the issuer's billing address is in Wisconsin; or (b) maintains a regular place of business in the state, and the securities relate to that person's business in Wisconsin, to the extent the service is received in the state.

7. All other receipts includible in the sales factor generally used to apportion the income of multistate corporations.

"Broker-dealer" means a person engaged in the business of effecting transactions in securities, commodities, and related financial instruments for the account of another, or for the person's own account.

Interstate Telecommunications Companies. Interstate telecommunications companies apportion income using the arithmetic average of the percentages of payroll, property, and sales in Wisconsin to total company payroll, property, and sales, respectively.

The property factor of the apportionment formula for telecommunications companies generally is the ratio of the average value of real and tangible personal property owned or rented and used by the taxpayer in the production of apportionable income in Wisconsin, to the average value of such property everywhere. Property owned by the taxpayer is valued at its original cost, while rented property is valued at eight times the net annual rental determined at arm's length. Average value is generally determined by averaging the value of the property at the beginning and end of the tax period. DOR may require the taxpayer to use average monthly values instead, if necessary for determining a reasonable value.

The payroll factor of the apportionment formula is the ratio of the total amount paid in Wisconsin during the tax period for compensation in the production of apportionable income to the total amount of such compensation paid everywhere. Specific rules are used to determine the amount of compensation paid in Wisconsin in cases where a portion of an employee's service is not performed in Wisconsin. Compensation includes; (1) wages, salaries, commissions, and any other form of remuneration paid to employees for personal services; (2) the value of board, rent, housing, lodging, and other benefits or services furnished to employees in return for personal services, provided that these amounts constitute income to the recipient under the IRC; and (3) deductible management or service fees paid, or allocated by DOR, to a related corporation, as consideration for the performance of personal services.

The sales factor in the apportionment formula for telecommunications companies is the same as that used to apportion the income of most other corporations, and is the ratio of gross receipts from sales derived in the production of apportionable income in Wisconsin to gross receipts from such sales everywhere. However, specific rules are used to determine (source) if a sale is in Wisconsin. In general, the gross receipts from the sale of telecommunications service, or mobile telecommunications service are considered in Wisconsin if the customer's place of primary use of the service is in Wisconsin. Similarly, gross receipts from the sale of ancillary services (such as directory assistance and voice mail) are in the state if the customer's place of primary use is in the state.

Gross receipts from the sale of telecommunications services sold on a call-by-call basis are considered in Wisconsin if: (1) the call both originates and terminates in Wisconsin; or (2) the call either originates or terminates in Wisconsin, and the service address is located in the state. Gross receipts from the sale of postpaid calling services, prepaid calling services, and prepaid wireless calling services are in Wisconsin if the origination point of the telecommunications signal, as first identified by the service provider's system, or, if the system used to transport telecommunications signals is not the seller's, as identified by information received by the seller from its service provider, is located in the state.

The following gross receipts from private communications services are treated as in Wisconsin:

1. Any separate charge attributable to a customer channel termination point located in Wisconsin.

2. If all customer channel termination points are located entirely in Wisconsin, the

gross receipts attributable to those customer termination points.

3. Fifty percent of the gross receipts attributable to segments of a channel between two customer termination points located in different states, if one of those customer channel termination points is located in Wisconsin.

4. If the segments are not charged separately, the gross receipts attributable to segments of a communications channel that is located in Wisconsin, and in more than one other state or equivalent jurisdiction, computed based on a percentage determined by dividing the number of customer channel termination points in Wisconsin by the total number of customer channel termination points in all jurisdictions where segments of the communications channel are located.

The following gross receipts from carrier network access and from the sale of telecommunications services for resale are considered in Wisconsin:

1. Gross receipts from access fees attributable to intrastate telecommunications service that both originates and terminates in Wisconsin.

2. Where the access fees gross receipts are not from service that both originates and terminates in the state, 50% of the gross receipts from access fees attributable to interstate telecommunications service, if the interstate call either originates or terminates in Wisconsin.

3. Gross receipts from interstate end user access line charges, including the surcharge approved by the Federal Communications Commission (FCC) and levied pursuant to federal law, if the customer's service address is in Wisconsin.

4. Gross receipts from sales of telecommunications services to other telecommunication service providers for resale, if the reseller's sale to the customer would be sourced to the state under the sourcing rules specified for telecommunications companies, provided that the information is readily available to make that determination. If the information is not readily available, the taxpayer is required to use a reasonable and consistent method to determine the amount of gross receipts that are derived from Wisconsin, based on the information that is available.

All other types of sales are sourced to the state using general sales factor statutory and administrative rule provisions.

"Telecommunications company" means any person that owns, operates, manages, or controls any plant or equipment used to furnish telecommunications services and cable television services within Wisconsin, directly or indirectly to the public, and that derives at least 70% of its gross income for the current tax year from the provision of telecommunications services and cable television services, excluding internet service and the resale of telecommunications by telecommunications resellers. An internet service provider is not a "telecommunications company."

"Telecommunications services" means electronically transmitting, conveying, or routing voice, data, audio, video, or other information or signals to a point, or between or among points. "Telecommunications services" include the transmission, conveyance, or routing of such information or signals in which computer processing applications are used to act on the content's form, code, or protocol for transmission, conveyance, or routing purposes, regardless of whether the service is referred to as voice over Internet protocol service, or classified by the FCC as an enhanced or value-added nonvoice data service.

"Telecommunications services" do not include: (1) data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic transmission, if the purchaser's primary purpose for the underlying transaction is the processed data; (2) installing or maintaining wiring or equipment on a customer's premises; (3) tangible personal property; (4) advertising, including directory advertising; (5) billing and collection services provided to third parties; (6) internet access services; (7) radio and television audio and video programming services, regardless of the medium in which the services are provided, including cable services, audio and video programming services delivered by commercial mobile radio service providers, and the transmitting, conveying, or routing of such services by the programming service provider; (8) ancillary services; and (9) digital products delivered electronically, including software, music, video, reading materials, or ringtones.

Interstate Air and Motor Carriers, Railroads, and Pipeline Companies. As noted, interstate air carriers, interstate motor carriers, interstate railroads and sleeping car companies, and interstate pipeline companies use industry specific, multifactor apportionment formulas to apportion income for Wisconsin corporate income/franchise tax purposes. The specific apportionment factors used by these types of companies and by interstate telecommunications companies are shown in Exhibit 1 (page 15).

APPENDIX 3

Corporate Income and Franchise Tax Credits

The credits available under the state corporate income and franchise tax are described below.

Corporate Nonrefundable Tax Credits

Manufacturing and Agriculture Tax Credit. The qualified production activities tax credit was created under the state individual income and corporate income and franchise taxes by 2011 Wisconsin Act 32. Under 2011 Wisconsin Act 232, the credit was renamed the manufacturing and agriculture tax credit, state specific definitions and other technical provisions were provided, a method for computing the credit was specified, and a circular calculation for computing income was corrected.

The manufacturing and agriculture tax credit equals the following percentages of the claimant's eligible qualified production activities income:

1. 1.875% for tax years beginning after December 31, 2012, and before January 1, 2014;

2. 3.75% for tax years beginning after December 31, 2013, and before January 1, 2015;

3. 5.526% for tax years beginning after December 31, 2014, and before January 1, 2016; and

4. 7.5% for tax years beginning after December 31, 2015.

To determine "eligible qualified production activities income" to which the credit rate (7.5% when fully phased-in) applies, "qualified production activities income" is first calculated. "Qualified production activities income" is defined as the amount of the claimant's production gross receipts for the tax year that exceeds the sum of: (1) the cost of goods sold that are allocable to such receipts; (2) the direct costs allocable to such receipts; and (3) indirect costs multiplied by the production gross receipts factor.

"Production gross receipts" are gross receipts from the lease, rental, license, sale, exchange, or other disposition of "qualified production property." "Qualified production property" means either of the following: (1) tangible personal property manufactured in whole, or in part, by the claimant on property that is assessed as manufacturing property, under state property tax law (s. 70.995 of the statutes); or (2) tangible personal property produced, grown, or extracted in whole, or in part, by the claimant on, or from, property that is assessed as agricultural property, under state property tax law [s. 70.32(2)(a) 4. of the statutes]. The Department of Revenue assesses manufacturing property, while agricultural property is assessed by local assessors.

"Direct costs" include all of the claimant's ordinary and necessary expenses paid or incurred during the tax year in carrying on a trade or business that are deductible under the IRC, and identified as direct costs in the claimant's managerial or cost accounting records.

"Indirect costs" include all of the claimant's ordinary and necessary expenses paid or incurred during the tax year in carrying on a trade or business that are deductible under the IRC, other than the cost of goods sold and direct costs, and identified as indirect costs in the claimant's managerial or cost accounting records. Indirect costs are allocated to qualified production activities income by applying the production gross receipts factor to total indirect costs. The "production gross receipts factor" is a fraction with the numerator production gross receipts, and the denominator all gross income from whatever source, except for those items specifically excluded from gross income under the IRC as adopted for Wisconsin income and franchise tax purposes, and otherwise excluded under Wisconsin law. For purposes of the denominator, income includes 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 income from pass-through entities, and all other gross receipts that are included in income, before apportionment for Wisconsin tax purposes.

"Qualified production activities income" does not include: (1) income from film production; (2) income from producing, transmitting, or distributing electricity, natural gas, or potable water; (3) income from constructing real property; (4) income from engineering or architectural services performed with respect to constructing real property; (5) income from the sale of food and beverages prepared by the claimant at a retail establishment; or (6) income from the lease, rental, license, sale, exchange, or other disposition of land.

"Qualified production activities income" is modified to determine eligible qualified production activities income. Specifically, the claimant is required to multiply the qualified production activities income from property manufactured by the claimant by the manufacturing property factor, and the qualified production activities income from property produced, grown, or extracted by the claimant by the agriculture property factor. For corporations, the amount of eligible qualified production activities income that can be claimed in computing the credit is the lesser of: (1) the eligible qualified production activities income determined under these provisions; (2) income apportioned to Wisconsin under state income and franchise tax allocation and separate accounting, and/or apportionment provisions; or (3) income determined as taxable under state combined reporting provisions.

The "manufacturing property factor" is a fraction with the numerator the average value of the claimant's real and personal property assessed as manufacturing property, under state property tax law, owned or rented, and used in Wisconsin by the claimant during the tax year to manufacture qualified production property, and the denominator the average value of all the claimant's real and personal property owned or rented during the tax year, and used by the claimant to manufacture qualified production property. Property owned by the claimant is valued at its original cost, and property rented by the claimant is valued at an amount equal to the annual rental paid by the claimant, multiplied by eight. The annual rental amount excludes rent received by the claimant from sub-rentals. The average value of property is determined by averaging the values of the property at the beginning and end of the tax year. However, the Secretary of Revenue can require the averaging of monthly values during the tax year, if such averaging is reasonably required to properly reflect the average value of the claimant's property.

The "agriculture property factor" is a fraction with the numerator the average value of the claimant's real property and improvements assessed as agricultural property, under state property tax law, owned or rented and used in Wisconsin by the claimant during the tax year to produce, grow, or extract qualified production property, and the denominator the average value of all the claimant's real property and improvements, owned or rented during the tax year, and used by the claimant to produce, grow, or extract qualified production property.

A business that conducts all of its business in Wisconsin and owns property only in the state (100% Wisconsin company) has all of its income taxed by the state. These firms would not have to use the production gross receipts, manufacturing property, or agricultural property factors to allocate indirect costs and qualified production activities income to Wisconsin, respectively, because all of the costs and property would be in the state. Each of the factors would equal one.

Unused tax credit amounts can be carried forward up to 15 years to offset future tax liabilities.

Current law generally requires state tax credits to be added to income in the tax year for which they are claimed. However, the qualified production activities credit is based on the eligible qualified production activities income of the claimant for that year. To address this issue, the claimant is required to include the current tax year's manufacturing and agricultural credit in income in the following tax year.

DOR administers the tax credit, and is authorized to take any action, conduct any proceeding, and proceed as authorized under state income and franchise tax laws. State tax provisions related to timely claims, assessments, refunds, appeals, collection, interest, and penalties apply to the credit.

Exhibit 6 shows how the manufacturing and agriculture tax credit is computed.

Exhibit 6: Computation of Manufacturing and Agriculture Tax Credit

100% Wisconsin Company

Production Gross Receipts
- Cost of Goods Sold
- Direct Costs (wages, depreciation)
- Indirect Costs (administrative overhead)

Eligible Qualified Production Activities Income
X Credit Rate (7.5% when fully phased-in)

Manufacturing/Agriculture Tax Credit

Multi-State Company

Production Gross Receipts
- Cost of Goods Sold
- Direct Costs (wages, depreciation)
- Indirect Costs (administrative overhead) allocated by production gross receipts factor

Total Qualified Production Activities Income
X Manufacturing Property Factor or Agriculture Property Factor

Eligible Qualified Production Activities Income
X Credit Rate (7.5% when fully phased-in)

Manufacturing/Agriculture Tax Credit

Notes:

Production Gross Receipts. Gross receipts from the lease, rental, license, sale, exchange or other disposition of qualified production property.

Qualified Production Property. Tangible personal property manufactured by the claimant that is assessed as manufacturing property, or tangible personal property produced, grown, or extracted by the claimant on or from property assessed as agricultural property.

Qualified Production Activities Income. Production gross receipts minus the sum of: (1) cost of goods sold allocable to such receipts; (2) direct costs allocable to such receipts; and (3) indirect costs, multiplied by the production gross receipts factor. Qualified production activities income does not include income from: (1) film production; (2) producing, transmitting, or distributing electricity, natural gas, or potable water; (3) constructing real property; (4) engineering or architectural services performed with respect to constructing real property, (5) the sale of food and beverages prepared by the claimant at a retail establishment; or (6) the lease, rental, license, exchange, or other disposition of land.

Exhibit 6: Computation of Manufacturing and Agriculture Tax Credit (continued)

Eligible Qualified Production Activities Income. For corporations, the amount of eligible qualified production activities income that can be claimed in computing the credit is the lesser of: (1) the corporation's eligible production activities income; (2) income apportioned to Wisconsin under state income and franchise tax allocation and separate accounting and/or apportionment provisions; or (3) income determined as taxable under state combined reporting provisions. This limitation does not apply to sole proprietors and other taxpayers who claim the credit under the individual income tax.

Credit Rate. The rate is phased in over four years as follows: (1) 1.875% for tax years beginning in 2013; (2) 3.75% for tax years beginning in 2014; (3) 5.526% for tax years beginning in 2015; and (4) 7.5% for tax years beginning in 2016, and thereafter.

Manufacturing Property Factor

Average value of real and personal property, assessed as manufacturing property, owned or rented, and used in Wisconsin to manufacture qualified production property.

Average value of all real and personal property owned or rented, and used to manufacture qualified production property.

Agriculture Property Factor

Average value of real property and improvements, assessed as agricultural property, owned or rented, and used in Wisconsin to produce, grow, or extract qualified production property.

Average value of all real property and improvements, owned or rented, and used to produce, grow, or extract qualified production property.

Production Gross Receipts Factor

Production gross receipts

Gross income from whatever source, except for items excluded under the federal IRC as adopted for state income and franchise tax purposes and other otherwise excluded under state law. (Gross income includes 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 income from pass-through entities, and all other gross receipts that are included in income, before apportionment for Wisconsin tax purposes.)

Research Tax Credit. The state research credit is equal to 5% of the increase in a corporation's qualified research expenditures in Wisconsin over the base amount. The "base amount" is calculated by multiplying the taxpayer's average annual gross receipts for the preceding four years by a fixed-base percentage. However, the base amount does not include sales treated as throwback sales in the corporate apportionment formula. The "fixed-base" percentage is the percentage that the taxpayer's total aggregate qualified research expenditures for a specified period is of the taxpayer's total aggregate gross receipts for those years. The fixed-base percentage cannot exceed 16%. In addition, the base amount cannot be less than 50% of research expenses in the year for which the credit is claimed. Consequently, the state research credit is 5% of the lesser of: (1) the excess of current year research expenses over the base amount; or (2) 50% of current year research expenses.

A 10% tax credit can also be claimed for qualified research expenses (less the base amount) for the following activities:

1. Designing internal combustion engines for vehicles, including expenses related to designing vehicles that are powered by such engines, and improving production processes for such engines and vehicles.

2. Designing and manufacturing energy efficient lighting systems, building automation and control systems, or automotive batteries for use in hybrid-electric vehicles that reduce the demand for natural gas or electricity, or improve the efficiency of its use.

"Internal combustion engine" includes substitute products such as fuel cell, electric, and hybrid drives. "Vehicle" means any vehicle or frame, including parts, accessories, and component technologies, in which an engine is mounted for use in mobile or stationary applications. "Vehicle" includes any truck, tractor, motorcycle, snowmobile, all-terrain vehicle, boat, personal watercraft, generator, construction equipment, lawn and garden maintenance equipment, automobile, van, sports utility vehicle, motor home, bus, or aircraft. The statutes also include a definition of "frame."

Start-up companies must use a minimum fixed-base percentage of 3%. As a result, start-up companies must spend 3% of their gross receipts on research in order to qualify for the credit. For years six to ten, the percentages are an increasing portion of the percentage which qualified research expenses bear to gross receipts for certain prior years.

The credit applies only to research expenditures paid or incurred in connection with the trade or business of the taxpayer that are research and development costs in an experimental or laboratory sense. In general, qualifying expenses are non-capital, and thus, do not include spending for buildings and equipment. Qualified research expenses are the sum of: (1) in-house expenditures for research, wages, and supplies used in research, plus certain amounts paid for research use of laboratories, equipment, computers, or other personal property; and (2) 65% of the amount paid by the taxpayer for qualified research conducted on behalf of the taxpayer. Examples of eligible costs include: (1) the costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention, or similar property; and (2) the cost of improving this type of property. Qualified research is research which is undertaken for the purpose of discovering information which is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer. In addition, substantially all of the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality.

Corporations may elect to determine the research credit under the federal alternative research credit rules. Under these rules, the research credit is the difference between certain percentages of average gross receipts and actual research expenses.

In all cases, only the expenses for eligible research activities conducted in Wisconsin qualify for the credit. If the credit amount exceeds the corporation's tax liability, it is not refundable, but unused amounts can be carried forward 15 years to offset future tax liabilities. Members of combined groups can share unused research tax credits and credit carryforwards to offset other members' tax liabilities.

Research Facilities Tax Credit. The research facilities credit is equal to 5% of the annual expenditures for constructing or equipping new facilities or expanding existing facilities in Wisconsin to conduct qualified research activities. Qualified research activities are defined as those eligible for the research expense credit.

Eligible capital expenditures include only amounts paid or incurred for tangible depreciable property, but do not include expenditures for replacement property. This credit also is not refundable, but unused amounts can be carried forward to offset corporate income tax liability for up to 15 years.

A research facilities tax credit can also be claimed for 10% of the amount paid to equip and construct new facilities or expand existing facilities used in Wisconsin for qualified research for: (1) designing internal combustion engines; or (2) designing and manufacturing energy efficient lighting systems, building automation and control systems, or certain automotive batteries.

Unused research facilities tax credits and credit carryforwards can be shared by combined group members, and used to offset the tax liabilities of other group members.

Super Research and Development Tax Credit. The super research and development tax credit is equal to the amount of qualified research expenses paid or incurred by the corporation in a tax year that exceeds 1.25 times the average annual amount of qualified research expenses paid or incurred in the previous three tax years. Unused credit amounts can be carried forward up to five years to offset future tax liabilities.

"Qualified research expenses" are qualified research expenses as defined under the IRC incurred by the claimant for research conducted in Wisconsin for the tax year. (This is the same definition used for the state research credit.)

This credit is not sharable among combined group members.

Early Stage Business Investment Tax Credits. The early stage business investment program includes the angel investment tax credit, which can be claimed under the state individual income tax, and the early stage seed investment tax credit, which can be claimed under the state individual income and corporate income and franchise taxes, and the insurance premiums tax.

Angel Investment Tax Credit. The angel investment tax credit equals 25% of the claimant's bona fide angel investment made directly in a qualified new business venture (QNBV) certified by the Wisconsin Economic Development Corporation. The maximum aggregate amount of angel investment tax credits that can be claimed for a tax year is $20 million, plus an additional $250,000 for tax credits claimed for investments in nanotechnology businesses. The maximum total amount of tax credits that can be claimed for all tax years is $47.5 million.

Early Stage Seed Investment Tax Credit. The early stage seed investment tax credit is equal to 25% of the claimant's investment paid in the tax year to a certified fund manager that the fund manager invests in a QNBV certified by WEDC. The maximum aggregate amount of early stage seed investment tax credits that can be claimed for a tax year is $20.5 million, plus an additional $250,000 for tax credits claimed for investments in nanotechnology businesses.

The aggregate amount of investment in any one QNBV that may qualify for angel investment or early stage seed investment tax credits is $8.0 million. Investments in a QNBV must be maintained in the business by an angel investor, angel investment network, or certified fund manager for at least three years.

WEDC is required to certify QNBVs and fund managers and to perform other administrative functions related to the allocation and transfer of credits, revocation of certifications, verification of investments and credits, and processing and compiling reports. Businesses and fund managers must apply to WEDC to be certified.

Qualified New Business Venture. A business may be certified as a QNBV by WEDC only if it meets all of the following conditions:

1. It has its headquarters in Wisconsin (principal administrative offices and 80% of payroll for Wisconsin employees).

2. At least 51% of its employees are employed in the state.

3. It has the potential for increasing jobs and/or capital investment in Wisconsin and the business is engaged in, or has committed to engage in, innovation in any of the following: (a) manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology; (b) processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative technology products, or other products that are produced using manufacturing methods that are enabled by applying proprietary technology; or (c) services that are enabled by applying proprietary technology.

4. It is undertaking pre-commercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying proprietary technology.

5. The business is not primarily engaged in real estate development; insurance; banking; lending; lobbying; political consulting; professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants; wholesale or retail trade; leisure; hospitality; transportation; or construction (except construction of power plants that derive energy from a renewable resource).

6. It has fewer than 100 employees, at the time of initial certification.

7. The business has not been operating in Wisconsin for more than 10 consecutive years, at the time of initial certification.

8. It has not received aggregate private equity investments of more than \$10.0 million, at the time of initial certification.

9. It has not received more than \$8.0 million in investments that have qualified for tax credits under the program.

In addition, in determining whether to certify a business, WEDC will consider at least the following factors: (1) the business is in one of Wisconsin's targeted industries; (2) high growth potential of the business; (3) management team experience; (4) financial need; (5) percentage of funds that will be spent in Wisconsin; (6) barriers to entry; and (7) innovative or novel product or process.

Certified Fund Manager. In order to be eligible for investments that qualify for early stage seed investment tax credits, the fund manager must be certified by WEDC. In determining whether to certify an investment fund manager, WEDC is required to consider: (1) the applicant's experience in managing venture capital funds; (2) the past performance of funds managed by the applicant; (3) the expected level of investment in the fund to be managed by the applicant; and (4) other relevant factors determined by WEDC. In addition, WEDC evaluates the following factors when determining whether to certify a fund manager: (1) the applicant's experience in investing in high growth, early stage businesses; (2) the past performance of businesses assisted by the applicant; (3) the portion of the investment fund's capital the fund manager expects to invest in QNBVs; (4) geographic distribution of the funds; (5) focus on targeted industries or target group members as determined by WEDC; (6) ability to access follow-on funding; (7) services provided; (8) commitment to Wisconsin; and (9) administrative and management fees.

WEDC is required to notify DOR of every certification issued, and the date on which any certification is revoked or expires. WEDC is required to revoke the certification of a business or fund manager, if the business or fund manager: (1) supplies false or misleading information to obtain the certification; (2) fails to continue to meet the required conditions or qualifications for obtaining the certification; (3) has violated state, federal, or local laws or regulations related to the conduct of the activities of the business or fund; (4) has had an officer or director arrested or convicted of a crime substantially related to the activities of the fund; or (5) is not using investment funds for a legitimate business purpose. WEDC must notify DOR of any revocation.

Angel investors, angel investor networks, and venture capital funds must follow a verification process in order to receive tax credits based on eligible investments. For each investment in the qualified new business venture, the angel investor, angel investment network, or certified fund manager is required to provide WEDC with a copy of its investor agreement and proof of investment. The investment must be a clearly identifiable cash investment in the form of common stock, preferred stock, a partnership, membership, or equivalent ownership interest. The qualified new business venture must provide an attestation to the investment. Cash exchanged for debt is not eligible for credits, unless the debt is later converted into an ownership interest, and only the original cash investment is eligible for credits. IRAs, Roth IRAs, 401 (k)s, or similar tax deferred or tax advantaged accounts are not eligible investment vehicles for tax credits. Investments made by certified fund managers, with principal offices based outside Wisconsin, must be made side-by-side with equity investors based in Wisconsin with a minimum participation of Wisconsin investors determined by WEDC.

Based on a review of submitted materials, WEDC issues a verification form to the angel investor, angel investment network, or certified fund manager stating the amount of credits that may be claimed. Investors must submit a copy of the certification for tax benefits issued for the business and/or fund manager and the verification form, including the amount of tax benefits that may be claimed and the date and amount of the investment, with the investor's tax return.

WEDC can revoke verification of tax credits if the investment in the QNBV by an angel investor, angel investment network, or certified fund manager is not maintained for a minimum of three years. However, the three-year requirement does not apply in cases where: (1) the investment becomes worthless prior to the end of the three-year period; or (2) the angel, angel investment network, or certified fund manager has held an investment for at least 12 months and there is a bona fide liquidity event, as determined by WEDC, prior to the end of the holding period.

If the demand for angel or early stage seed investment tax credits exceeds the annual aggregate limit, WEDC may reserve tax credits from the following year for qualifying investments. Conversely, the Corporation, in consultation with DOR, is authorized to carry forward unclaimed angel and early stage investment tax credits to future tax years. Carryforward recommendations must be submitted to DOR by July 1.

WEDC can reallocate unused angel and early stage seed investment tax credits amounts to increase the credit amounts that may be claimed under the refundable jobs tax credit. The proposed reallocation is subject to a 14-day passive review by the Joint Committee on Finance.

A person that makes an investment in a certified fund and who is eligible to claim an early stage seed investment tax credit may sell or otherwise transfer the credit to another person to offset that person's income, franchise, or insurance premiums tax liability. A certified fund manager is required to notify both WEDC and DOR of the transfer and submit a copy of transfer documents that show the transfer of credits from the seller to the buyer. The fund manager must pay WEDC a fee of 1% of the amount of tax credit that is sold or transferred.

"Accredited investor" means an individual who invests his or her own funds in a qualified new business venture and satisfies the U.S. Securities and Exchange Commission accredited investor definition at the time of investment. "Angel investment network" is defined as an entity comprised of accredited investors organized for the sole purpose of making investments in qualified new business ventures. "Angel investor" means an accredited investor who makes a bona fide angel investment.

"Bona fide angel investment" means a purchase of an equity interest, or any other expenditure, as determined under state law, that is made by any of the following: (1) a person who reviews new businesses or proposed new businesses for potential investment of the person's money; or (2) a network of persons who review new businesses or proposed new businesses for potential investment of the persons' money. "Bona fide liquidity event" means either: (1) the sale of a certified company, or the majority of its assets which results in a payout to shareholders; or (2) the company's shares begin trading in a public exchange.

"Investment" is defined as the investment of cash in a QNBV that is used for legitimate business purposes in exchange for any one of the following: (1) common stock; (2) partnership or membership interest; (3) preferred stock; or (4) an equivalent ownership interest in the QNBV approved by WEDC. "Legitimate business purposes" means investment proceeds used for normal operations of the business, and are not used for activities including refinancing any prior investments, paying dividends to shareholders, stock repurchase, or other uses as determined by WEDC.

Economic Development Tax Credits. WEDC is authorized to award up to $128.4 million in economic development credits to eligible business projects. Through October, 2012, a total of $102.5 million in credits had been awarded, leaving $25.9 million in unallocated credits. Economic development tax credits can be claimed for job creation or retention, capital investment, employee training, and corporate headquarters retention or location projects.

Job Creation and Retention Project. Economic development tax credits can be claimed for full-time jobs created and maintained, in addition to retaining existing full-time jobs. A tax credit is provided for each new job created or retained, depending upon the new employee's wages, and compliance with any of three requirements related to health insurance: (1) at least 50% of the health insurance benefit premium costs for the employees must be covered by the employer; (2) at least 50% of the full-time employees must utilize the health insurance provided by the employer; or (3) other employee health insurance benefits are provided that are acceptable to WEDC. The per-employee tax credits provided are based on Table 3.

Credits for job creation are based on the projected number of jobs created over three years, and must be maintained for five years, beginning with the certification date established in a contract between the claimant and WEDC. Credits are released annually, based on the number of new full-time jobs created during the previous year.

Economic development tax credits for job retention are released annually over a five-year period, at a rate of 20% of the total tax credit allocation per year, if the business retains 100% of the number of jobs required to receive the total credit allocation. Businesses that retain between 80% and 99% of required jobs receive a prorated portion of the annual allocation (20% of the

Table 3: Per-Job Tax Credits

Tier	Job Wage Range	Tax Credit
1	Full-time jobs paying from 150% to 200% of the federal minimum wage ($7.25/hr).	Up to $3,000 per job created.
2	Full-time jobs paying from 200% to 250% of the federal minimum wage.	Up to $5,000 per job created.
3	Full-time jobs paying 250% or more of the federal minimum wage.	Up to $7,000 per job created.

total allocation) for years in which the business retains less than 80% of the number of jobs required to receive the total credit allocation. WEDC will not release economic development tax credits for years in which the business retains less than 80% of the number of jobs required to receive the total tax credit allocation. Credits not released in years in which the required number of jobs falls below 100% of the amount needed for the total allocation cannot be earned in succeeding years.

Capital Investment Project. Economic development tax credits are provided for projects that involve significant investment in new equipment, machinery, real property, or depreciable personal property. The credit for capital investments is available for capital investments in a project, beyond a certified business's normal capital expenditures, that are needed to achieve a specific purpose acceptable to WEDC, including diversifying product lines, and modernizing and enhancing the efficiency of production processes. In addition, the investment must: (1) be the lesser of $10,000 for each full-time employee working at the certified business project location, or $1 million; or (2) retain existing full-time jobs that may be lost without investment.

Businesses may be allocated economic development tax credits equal to: (1) up to 3% of their eligible capital investment in equipment; and (2) up to 5% of their capital investment for real property. Credits are allocated based on eligible capital investments that are projected over a three-year period, and are released annually, based on the amount of actual investments made in the preceding year. Businesses whose primary activity includes retail, commercial development, recreation, entertainment, or direct health care are not eligible to earn capital investment credits.

Eligible capital investments include the purchase or lease price of depreciable tangible personal property, and the amount that is expended to acquire, construct, rehabilitate, remodel, repair, or lease real property, including directly-related consulting services, other fees, and permits. Working capital for items such as employment costs, moving costs, intellectual property, unrelated fees and permits are not eligible capital investments. Eligible lease payments are limited to a three-year period. The equipment, machinery, real property, or depreciable tangible personal property may not be previously owned, and 50% of the use of such property must be for the certified business' operations in Wisconsin.

Certified businesses may qualify for a tax credit for capital investment projects for amounts expended to construct, rehabilitate, remodel or repair real property if the business began the physical work of such activities, or any demolition or destruction in preparation for the physical work after the tax credit eligibility date established by WEDC. Physical work does not include preliminary activities such as planning, designing, securing financing, researching, development specifications, or stabilizing property to prevent deterioration.

"Previously owned" means equipment, machinery, real property, or depreciable tangible personal property that the certified business, or a related person, owned during the two years prior to submitting an application for the tax credits. "Related person" includes a brother, sister, parent, grandparent, child, grandchild, niece, nephew, uncle, aunt, spouse, or in-laws; a corporation or any entity that owns more than 50% of the certified business; or any corporation which is a part of a commonly controlled group of corporations (as defined for the purposes of combined reporting).

Employee Training Project. Economic development credits are provided for projects that involve significant investments in the training or education of employees for the purpose of improving the productivity or competitiveness of the business. Economic development tax credits of up to 50% of eligible training costs, or $5,000 per employee, are allocated for eligible training that is provided to existing and new employees in full-time jobs. WEDC can increase the credit amount at its discretion. Training credits can be claimed over a three-year period, and are released annually, based on eligible training costs incurred in the previous year.

Eligible training includes instruction that will: (1) enhance an employee's general knowledge, employability, or flexibility in the workplace; (2) develop skills unique to an individual company's workplace or equipment; or (3) develop skills that will increase the quality of the company's product. Eligible training costs include trainee wages, trainer costs, and trainer materials. Training may be on- or off-site, but must be performed by a provider that is approved or otherwise authorized by WEDC. Training that addresses any of the following is ineligible for tax credits: (1) orientation; (2) administration and compensation systems; (3) credit or degree courses; (4) diversity; (5) consulting services, including strategic planning; (6) sales training; (7) personal development, such as general educational testing; (8) human resources practices; (9) non-job-related training; (10) stand-alone basic or remedial training; (11) non-skill-related assessments; (12) state or federally mandated programs; (13) general safety procedures; (14) English as a second language; (15) basic skills, (16) on-the-job training that involves manufacture of a product for sale; or (17) routine training not related to a specific project.

Corporate Headquarters Location or Retention Project. Economic development tax credits can be allocated for projects that will result in the location or retention of a corporate headquarters in Wisconsin. Tax credits are allocated for corporate headquarters positions performing corporate headquarters functions that are created or retained by a project. The per-employee tax credit amount allocated by WEDC is determined using Table 4.

Businesses located or relocating in Wisconsin and that meet eligibility requirements can qualify for economic development tax credits for eligible activities that occur after an eligibility date is established by WEDC. However, the following types of businesses are ineligible for economic development tax credits: (1) payday loan and loan title companies; (2) telemarketing; (3) pawn shops; (4) media outlets, such as newspapers and radio stations [unless the job creation is significant]; (5) businesses in the tourism industry [unless the job creation is significant]; (6) retail; (7); farms; (8) primary care medical facilities; and (9) financial institutions. Positions that are created, retained, or trained, and for which economic development tax credits are claimed must be maintained for at least five years. No more than 10% of the total amount of credits allocated for jobs created or retained, or for employees that are trained, can be filled by nonresidents. Unused economic development tax credits can be carried forward up to 15 years to offset future tax liabilities.

Table 4: Corporate Headquarters -- Per-Job Tax Credits

Tier	Job Wage Range	Tax Credit
1	Full-time jobs paying from 150% to 200% of the federal minimum wage.	Up to $4,000 per job.
2	Full-time jobs paying from 200% to 250% of the federal minimum wage.	Up to $6,000 per job.
3	Full-time jobs paying from 250% to 500% of the federal minimum wage.	Up to $8,000 per job.
4	Full-time jobs paying 500% or more of the federal minimum wage	Up to $10,000 per job.

WEDC is required to reserve $5 million in economic development tax credits for projects in rural areas, and $5 million for projects involving small businesses, through June 30, 2014. In allocating credits to projects in rural areas and to small businesses, WEDC is required to consider the relative employment impact of the project on the area. "Rural area" is defined as a city, village, or town with a population of 6,000 or less in a county having a population density of less than 150 persons per square mile. "Small businesses" means businesses with fewer than 100 employees, including employees of any subsidiary or corporation that is part of the same commonly controlled group of corporations, as defined for combined reporting.

In cases where an extraordinary opportunity for job creation or retention exists, the CEO of WEDC may approve allocating tax credits in excess of $3 million. Factors that must be considered in determining whether to approve a tax credit allocation in excess of $3 million include: (1) the scale or urgency of the project; (2) the nature or quality of the jobs addressed by the project; (3) the degree of existing or potential distress addressed by the project, such as whether the overall well-being of the community is at stake; or (4) the project's potential for substantially impacting a community or the state.

Additional tax credits can be awarded to a project if the Corporation determines that: (1) the business conducts at least one eligible activity in an area designated by WEDC as economically distressed; (2) the business conducts at least one eligible activity that benefits, creates, retains, or significantly upgrades full-time jobs or, that trains, or that re-educates, members of a targeted group (generally, public assistance recipients and other economically disadvantaged individuals). Tax credit allocations to businesses in economically distressed areas may be increased by up to 50% above the maximum amount of tax credits that otherwise could be claimed, and businesses may qualify for up to $500 in additional tax credits for each member of a targeted group that is the basis of an economic development tax credit.

In order to claim an economic development tax credit, a business is required to submit an application, along with supporting documentation, to WEDC for certification for and allocation of credits. WEDC is required to consider one or more of the following factors in determining whether to certify a business and allocate tax credits: (1) whether the project might not occur without the allocation of tax credits; (2) the extent to which the project will be financed with other sources of public funds; (3) whether the project will displace workers in the state; (4) the extent to which the project will contribute to economic growth in the state; (5) the extent to which the project will retain or increase employment in Wisconsin; (6) whether the project will be located in an economically distressed area; (7) whether the project will be located in a rural area; (8) the extent to which the project will increase the geographical diversity of available tax credits throughout the state; (9) the financial soundness of the business; (10) the ability of the business to utilize the non-refundable tax credits [allocations limited to 125% of applicant's projected three-year tax liability]; and (11) any previous financial assistance that the business received from the Department of Commerce or WEDC.

After conducting an investigation and determining that the person is conducting or intends to conduct at least one eligible activity, WEDC may certify a person as eligible for tax benefits. WEDC is required to provide a copy of the certification to the person and the Department of Revenue. The business is required to enter into a contract with WEDC prior to certification or verification of tax credits. The contract must include provisions that detail: (1) a description of each eligible activity being conducted or proposed by the business; (2) whether any of the activities will occur in a distressed area; (3) whether any of the activities will benefit members of a targeted group; (4) a compliance schedule that includes a sequence of anticipated actions to be taken, or goals to be achieved by the business before receiving tax benefits; (5) the reporting requirements to which the business must comply; (6) if feasible, a determination of the tax benefits the business will be authorized to claim, if the contract terms are fulfilled; and (7) penalties for noncompliance with contract provisions.

A certified business must file with WEDC an annual project report that includes:

1. The status of the project, including: (a) the number of full-time jobs created, retained, or significantly upgraded; (b) the number of employees in full-time jobs who are trained, and documentation of eligible training expenses; (c) the total amount invested, and documentation of eligible investments; and (d) other supporting information relating to the tax credits to be claimed by the certified business.

2. Documentation of whether the certified business met the minimum benchmarks and outcomes identified in the contract with WEDC.

WEDC is required to verify the tax credits that will be claimed, and may request additional information from the certified business to support the tax credit claims. Only tax credits that are verified by WEDC can be claimed by the business. If a business' total credit allocation is not earned by the business during the contract period, unearned credit amounts are added to total unallocated credits, and can be used for other eligible projects.

The Corporation is required to revoke the certification of a taxpayer for: (1) supplying false or misleading information to obtain certification; (2) supplying false or misleading information to obtain tax benefits; (3) leaving the state to conduct substantially the same business outside the state; or (4) ceasing operations in the state and not renewing operation of the business, or a similar business, within 12 months.

Post-Secondary Education Tax Credit. A post-secondary education tax credit is provided under the state individual income and corporate income/franchise taxes equal to 25% of the tuition that the claimant pays or incurs for an individual to participate in an education program of a qualified post-secondary institution, if the individual is enrolled in a course of instruction and eligible for a grant from the federal Pell Grant program. The credit percentage is increased to 30% if the course of instruction relates to a projected worker shortage in the state, as determined by the local workforce development boards established under federal law.

The credit must be claimed for the tax year in which the individual graduates from a course of instruction for the total amount of tax credits for all tax years in which the claimant paid or incurred eligible tuition for the individual. Unused credits can be carried forward up to 15 years to offset future tax liabilities. A credit cannot be claimed for the tuition of a nonresident. To receive a tax credit, the claimant must certify to DOR that the claimant will not be reimbursed for any amount of tuition for which a credit was claimed, and the claimant cannot claim a credit for any tuition amounts that were excluded under state or federal qualified tuition or educational assistance programs.

A claimant cannot claim a tax credit for any tuition amounts that are paid or incurred for a family member, or for a family member of a managing employee, unless: (1) the family member is employed an average of at least 20 hours per week as an employee of the claimant, or the claimant's business, during the one-year period prior to commencing participation in the education program; and (2) the family member is enrolled in a course of instruction that is substantially related to the claimant's business.

A "qualified post-secondary institution" means: (1) a University of Wisconsin System institution, a technical college system institution, or a regionally accredited four-year, nonprofit college or university having its regional headquarters and principal place of business in Wisconsin; and (2) a school approved by the Educational Approval Board, if the delivery of education occurs in Wisconsin.

Manufacturing Investment Tax Credit. For tax years beginning before January 1, 2006, a credit against taxes due could be claimed for the amount of sales and use tax paid for fuel and electricity consumed in manufacturing in Wisconsin (manufacturer's sales tax credit). The manufacturer's sales tax credit was replaced with a sales tax exemption and manufacturing investment credit by 2003 Wisconsin Act 99.

Taxpayers having more than $25,000 of unused manufacturers' sales tax credits can claim a manufacturing investment credit for tax years beginning after December 31, 2007. The credit is equal to the taxpayer's unused manufacturer's sales tax credits, and the credit must be amortized over 15 years, starting with tax years beginning after December 31, 2007. The amortized amount may be offset against the taxpayer's income or franchise tax, and unused amounts may be carried forward up to 15 years to offset future tax liabilities.

To qualify for the credit, a business must have been certified by the Department of Commerce. To be certified, a business must have met one of the following conditions: (1) the business retained 100% of its full-time jobs in Wisconsin from December 23, 2003, through either December 31, 2006, or December 31, 2007; (2) the business' average annual investment in Wisconsin from January 1, 2003, through either December 31, 2006, or December 31, 2007, was equal to no less than 2% of the total book value of the business' depreciable assets in facilities that were based in Wisconsin; or (3) the business' average annual investment in Wisconsin from January 1, 2003, through either December 31, 2006, or December 31, 2007, was no less than $5 million.

Applicants for tax credits were required to file an application with Commerce by September 30, 2008, and Commerce certified taxpayers for the credit. Taxpayers could claim the credit for tax years beginning on or after January 1, 2008.

Manufacturer's Sales Tax Credit Carry-forwards. As noted, the manufacturer's sales tax credit was eliminated in 2003, and was replaced by a sales tax exemption for fuel and electricity used in manufacturing. The manufacturing investment credit was created to allow corporations with unused manufacturer's sales tax credit carryforwards in excess of $25,000 to amortize the unused credit amounts over 15 years. Taxpayers having $25,000 or less of unused manufacturer's sales tax credits can continue to carry forward unused credit amounts to offset tax liabilities. (The manufacturing sales tax credit can be carried forward up to 20 years.) For tax years 2006 and 2007, taxpayers having $25,000 or less in unused manufacturer's sales tax credits were allowed to use up to 50% of unused credit carryforwards to offset tax liabilities. There is no limit on the amount of carryforwards that may be used in subsequent tax years.

Dairy and Livestock Farm Investment Credit. The dairy investment tax credit was created by 2003 Wisconsin Act 135. The credit was renamed and expanded under 2005 Wisconsin Act 25 to include amounts paid for non-dairy livestock farm modernization or expansion.

A tax credit may be claimed, for tax years that begin after December 31, 2003, and before January 1, 2017, equal to 10% of the amount paid by the claimant during the tax year for dairy farm modernization or expansion related to the operation of the claimant's dairy farm.

Dairy farm modernization or expansion is defined as the construction, improvement, or acquisition of specified buildings or facilities, or the acquisition of specified equipment for dairy animal housing, confinement, animal feeding, milk production, or waste management, if used exclusively related to dairy animals, and if acquired and placed in service in the state during tax years that begin after December 31, 2003, and before January 1, 2017.

For tax years that begin after December 31, 2005, and before January 1, 2017, a tax credit can be claimed equal to 10% of the amount paid by the claimant during the tax year for livestock farm modernization or expansion related to the operation of the claimant's livestock farm.

"Livestock modernization and expansion" is defined as the construction, improvement, or acquisition of specified buildings or facilities, or the acquisition of specified equipment, for livestock housing, confinement, feeding, or waste management, if used exclusively related to livestock and if acquired and placed in service in the state during tax years that begin after December 31, 2005, and before January 1, 2017. "Livestock" means cattle, not including dairy animals (eligible under the dairy credit); swine; poultry, including farm-raised pheasants, but not including other farm-raised game birds or ratites; fish that are raised in aquaculture facilities; sheep; and goats.

For both credits "used exclusively" means used to the exclusion of all other uses except for use not exceeding 5% of total use.

The aggregate amount of dairy and livestock modernization tax credits that may be claimed by a taxpayer is $75,000 ($50,000 for eligible expenditures made before June 2010). The credits cannot be claimed for any amounts also claimed as business expense deductions. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities.

"Dairy farm modernization or expansion does not include the purchase of: (1) equipment used for raising crops for sale; and (2) vehicles licensed for highway use, snowmobiles, and all-terrain vehicles.

"Milk production" does not include activities such as transporting, pasteurizing, or homogenizing milk, or making butter, cheese, ice cream, or other dairy products.

Supplement to the Federal Historic Rehabilitation Tax Credit. An individual or corporation may claim a credit against state individual income or corporate income/franchise taxes for up to 5% of qualified rehabilitation expenditures for certified historic structures. A certified historic structure is defined as a building that is listed in the National Register of Historic Places, or that is determined to be historic and will be listed in the National Register. The building must be used for the production of income, such as commercial, industrial, or residential rental purposes. "Qualified rehabilitation expenditures" are amounts incurred that must be capitalized and added to the basis of the building rather than being deducted. Qualified expenditures do not include any amount being depreciated under an accelerated method, the cost of acquiring the building itself, or any expense for enlargement of an existing building. Expenses capitalized or properly chargeable to a capital account are those that are properly includable in calculating the basis of real property, such as architectural, engineering, and site survey fees, and construction period interest and taxes that are treated by the taxpayer as chargeable to a capital account. Also included are legal and development fees, insurance premiums, and construction costs.

Qualified rehabilitation expenditures are eligible for the credit only if incurred in connection with substantial rehabilitation of property located in the state, if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989. The test of substantial rehabilitation generally is met if the qualified expenditures during a two-year period (60 months for phased rehabilitation) exceed the greater of $5,000, or the adjusted basis of the building. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities.

For shareholders of a tax-option corporation, the credit may be allocated in proportion to the ownership interest of each shareholder. Credits computed by a partnership or LLC may be claimed in proportion to the ownership interests of the partners or members, or allocated to partners or members as provided in a written agreement among the partners or members that was entered into no later than the last day of the tax year of the partnership or LLC, for which the credit was claimed. Any partner or member who claims the credit under these provisions is required to attach a copy of the agreement, if applicable, to the tax return on which the credit was claimed. A person claiming the credit as provided under these provisions is solely responsible for any tax liability arising from a dispute with DOR related to claiming the credit.

In order to claim the tax credit, a claimant must include, with the return, evidence that the rehabilitation was recommended by the state historic preservation officer for approval by the U.S. Secretary of the Interior before the physical work of construction, or destruction in preparation for construction, began, and that the Secretary of the Interior approved the rehabilitation. The credit must be claimed at the same time as the federal credit is claimed.

A person who elects to base the credit on amounts claimed for expenditures as the expenditures are paid, rather than when the rehabilitation work is completed, is required to file an election form with DOR. DOR may adjust or disallow the credit amount claimed within four years after the date that the State Historical Society notifies the Department that the expenditures for which the credit was claimed do not comply with the standards for certification promulgated by the Historical Society.

Ethanol and Biodiesel Fuel Pump Credit. The ethanol and biodiesel fuel pump tax credit is equal to 25% of the amount paid in a tax year to install or retrofit pumps located in Wisconsin that: (1) dispense motor vehicle fuel marketed as gasoline and 85% ethanol or a higher percentage; (2) dispense motor vehicle fuel marketed as diesel fuel and 20% biodiesel fuel; or (3) mix fuels from separate storage tanks and allow the end user to choose the percentage of gasoline replacement renewable fuel, or diesel replacement renewable fuel in the motor fuel dispensed. The tax credit can be claimed for tax years beginning after December 31, 2007, and before January 1, 2018. The maximum tax credit for a tax year cannot exceed $5,000 for each service station that claims a credit for an installed or retrofitted pump. Unused credit amounts may be carried forward up to 15 years.

"Motor vehicle fuel" means gasoline or diesel fuel. "Biodiesel fuel" means a fuel that is comprised of compounds derived from vegetable oils or animal fats. "Diesel replacement renewable fuel" includes biodiesel and any other fuel derived from a renewable resource that meets all of the applicable requirements of the American Society for Testing and Materials (ASTM) for that fuel, and that the Department of Safety and Professional Services (DSPS) designates by rule as gasoline replacement renewable fuel. "Gasoline replacement renewable fuel" includes ethanol and other fuel derived from a renewable resource that meets all of the applicable requirements of the ASTM for that fuel, and DSPS designates by rule as gasoline replacement fuel.

DSPS is required to establish standards to adequately prevent, in the distribution of fuel to an end user, the inadvertent distribution of fuel containing a higher percentage of renewable fuel than the maximum percentage established by the federal Environmental Protection Agency for use in conventionally-fueled engines.

Water Consumption Tax Credit. The water consumption tax credit is provided under the state individual income and corporate income/franchise taxes, for tax years beginning after December 31, 2009, and before January 1, 2020. The credit equals 50% of the difference between the claimant's water usage costs for the tax year, and the claimant's 2009 water usage costs. The maximum credit that can be claimed for a tax year is $300,000, and unused credit amounts can be carried forward up to 15 years to offset future tax liabilities.

In order to claim the credit, a claimant must be an industrial customer of a municipal water utility located in a federal renewal community in Wisconsin, and whose average annual water consumption from that utility for a 24-month period exceeds 1 million Ccf. "Ccf" means 100 cubic feet. Areas of the City of Milwaukee are designated as a federal renewal community.

Health Insurance Risk-Sharing Plan (HIRSP) Assessments Credit. A tax credit for health insurance risk-sharing plan assessments is provided under the state individual income, corporate income/franchise taxes, and the state insurance premiums tax. HIRSP offers health insurance coverage to individuals with adverse medical histories and others who cannot obtain affordable health care coverage from the private sector. There are three sources of funding used to support HIRSP: (1) premiums paid by participants; (2) assessments on health insurance companies doing business in Wisconsin; and (3) a pro rata reduction in the billed charges of health care providers.

The HIRSP tax credit is equal to a percentage of the amount of HIRSP assessments paid by an insurer in the calendar year in which the claimant's tax year begins. DOR, in consultation with the Office of the Commissioner of Insurance (OCI), is required to determine the credit percentage for each tax year so that the amount of income, franchise, and premiums tax credits awarded to all insurers is as close as practicable to $5 million in each state fiscal year. The percentage is equal to $5 million (the annual total credit amount limit) divided by the aggregate HIRSP annual assessment. Unused tax credits can be carried forward up to 15 years.

Internet Equipment Credit. Provisions of 2005 Wisconsin Act 479 created a sales tax exemption and related corporate and individual income and franchise tax credit for certain internet equipment used in the broadband market to provide internet availability in areas of the state where there was no service provider. The Department of Commerce was required to certify businesses as eligible for the sales tax exemption and for related income and franchise tax credits, and to determine the maximum amount of tax credits and exemptions that a business could claim. Commerce could only allocate tax credits and exemptions to a business if the allocation was likely to increase the availability of broadband internet service in areas of the state that were not served, or were served by one broadband internet service provider.

A sales tax exemption was provided for the gross receipts from the sale of and the storage, use, or other consumption of internet equipment used in the broadband market. To receive the exemption, the purchaser was required to certify to Commerce that the business would, by June, 2009, make an investment that was reasonably calculated to increase broadband internet availability in the state. Every business that received the exemption was required, within 60 days after the end of the year in which the investment was made, to file a report describing the investment.

Businesses were permitted to claim a tax credit against state individual and corporate income/franchise tax liability up to the amount of the sales tax exemption for each of two tax years. The credit could be claimed in the first tax year following the tax year in which the business claimed the exemption. The amount of tax credits allocated to each business for each year the business could claim the tax credits had to equal the amount of sales tax exemptions allocated to that business. The credit is not refundable, but unused credit amounts may be carried forward up to 15 years to offset future tax liabilities. The total amount of internet equipment sales tax exemptions and internet equipment income and franchise tax credits that could be allocated to all eligible businesses was limited to $7.5 million.

The internet equipment sales tax exemption took effect on July 1, 2007. Consequently, the income and franchise tax credit could first be claimed in tax years beginning on or after August 1, 2007. All of the $7.5 million has been allocated to nine certified businesses. The sales tax exemption expired on July 1, 2009.

Community Development Finance Credit. A corporation that contributes an amount to the Wisconsin Housing and Economic Development Authority and, in the same year, purchases common stock or partnership interests of the Community Development Finance Company in an amount no greater than the contribution may claim a tax credit. The credit is equal to 75% of the purchase price of the stock or partnership interests. However, the credit cannot exceed 75% of the contribution to the Community Development Finance Authority. Unused credits can be carried forward 15 years.

Electronic Medical Records Credit. The electronic medical records tax credit equals 50% of the amount paid by a health care provider in a tax year for information technology hardware or software that is used to maintain medical records in an electronic form. Tax credits not entirely used to offset income and franchise taxes can be carried forward up to 15 years to offset future tax liabilities. The maximum total amount of electronic medical records tax credits that can be claimed in a tax year is $10 million.

DOR is required to certify health care providers as eligible for the electronic medical records tax credit, and to allocate the credit to claimants. Health care providers must apply to DOR for certification and allocation and include the following information in the application: (1) the provider's license or certification number; (2) the amounts paid for hardware and software used to maintain electronic medical records; (3) a description of the hardware and software, including the federal certification number; (4) an explanation of how the hardware and software is used to maintain electronic medical records; and (5) any other information, as determined by the Department, necessary to certify a health care provider, or allocate the tax credit. Applications must be submitted between January 1 of the calendar year following the year in which the investment on which the tax credit is based is made, and January 31, of the subsequent calendar year.

Based on the information submitted, DOR certifies health care providers as eligible for the credit, and notifies the provider of its credit allocation. The Department determines the amount of credit that the applicant may claim as follows:

1. If 50% of the total aggregate amounts paid by claimants for information hardware and software used to maintain electronic medical records does not exceed the $10 million annual maximum total credit limit, the credit equals 50% of the amount the applicant paid during the calendar year for health information technology certified software, and hardware used to run and access certified software.

2. Otherwise, the portion of the $10 annual total limit on credits that is allocated to each claimant is the claimant's proportionate share of the total aggregate amount paid by all claimants in the calendar year for certified health information technology software, and hardware used to run and access certified software. For example, a claimant that paid 5% of the total aggregate amount for certified health information technology software and hardware would be allocated a credit of $500,000 (.05 x $10 million).

"Health care provider" is defined broadly to include nurses, physicians, dentists, chiropractors, occupational therapists, and many other specified providers, as well as a partnership of providers, a corporation or LLC of providers that offer health care services, an operational cooperative sickness care plan that directly provides services through salaried employees at its own facility, a hospice, a rural medical center, an inpatient health care facility, and a community-based residential facility.

Community Rehabilitation Program Credit. The community rehabilitation program tax credit equals 5% of the amount the claimant pays in a tax year to a community rehabilitation program to perform work for the claimant's business, pursuant to a contract. The maximum tax credit that can be claimed is $25,000 for each community rehabilitation program that the claimant enters into a contract with, and unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. In order to claim a credit, the claimant is required to submit with the return, a form that verifies that the claimant has entered into a contract with a community rehabilitation program, and that the program has received payment for work provided by the program.

"Community rehabilitation program" is defined as a nonprofit entity, county, municipality, or federal agency that directly provides, or facilitates the provision of, vocational rehabilitation services to individuals who have disabilities to maximize the employment opportunities, including career advancement, of such individuals.

Biodiesel Fuel Production Tax Credit. The biodiesel fuel production tax credit is equal to 10 cents per gallon for biodiesel fuel produced by biodiesel fuel producers located in Wisconsin that produce at least 2.5 million gallons of biodiesel fuel per year. The maximum credit that can be claimed is $1 million. The credit is not refundable, but unused credits may be carried forward for 15 years.

As with the fuel pump credit, "biodiesel fuel" means a fuel that is comprised of compounds derived from vegetable oils or animal fats.

The credit is in effect for tax years beginning after December 31, 2011, and before January 1, 2015.

Relocated Business Exclusion and Tax Credit. 2011 Wisconsin Act 3, provides an exclusion from the claimant's profit from a trade or business under the individual income tax, or a credit against the claimant's corporate income/franchise tax liability for a business that locates to this state from another state or country, and begins doing business in Wisconsin. The credit equals the amount of tax liability after applying all other allowable credits, deductions and exclusions. The credit can be claimed for two consecutive tax years, beginning with the tax year in which the claimant relocates to Wisconsin. A person cannot claim the exclusion or credit if that person has done business in the state during any of the two tax years preceding the tax year for which the person would otherwise be eligible for the tax credit.

"Doing business in this state" includes, with the exception of activities excluded by federal PL 86-272 (described in the section on "Federal Restrictions on State Taxation of Corporations"): issuing credit, debit or travel and entertainment cards to customers in this state; regularly selling products or services of any kind or nature to customers in this state that receive the product or service in this state; regularly soliciting business from potential customers in this state; regularly performing services outside this state for which the benefits are received in this state; regularly engaging in transactions with customers in this state that involve intangible property and result in receipts flowing to the taxpayer from within this state; holding loans secured by real or tangible personal property located in this state; owning directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership; and owning, directly or indirectly, an interest in an LLC that does business in this state, regardless of the percentage of ownership, if the LLC is treated as a partnership for federal income tax purposes. For the purposes of the exclusion and credit, doing business in Wisconsin for any portion of a tax year is considered doing business in the state for the entire tax year.

"Locates to this state" means moving either 51% of the business' workforce payroll, or at least $200,000 of wages, as defined in the IRC, to Wisconsin during the first tax year to which the exclusion or tax credit is related. Actions that may indicate that a business has relocated to Wisconsin from another state or country include the following: (1) registering with DOR for a business tax registration certificate; and/or (2) registering with the Department of Financial Institutions to do business in Wisconsin. The determination of whether 51% or more of the workforce payroll of a business has moved to Wisconsin during a tax year is made using a fraction, the numerator of which is the total amount of wages paid by the business during the tax year to the employees of the business who are residents of Wisconsin, and the denominator of which is the total amount of wages paid by the business during the tax year to all employees of the business. The determination of whether at least $200,000 of wages paid to the workforce of a business has moved to this state during a tax year is made using the total amount of wages paid by the business during the tax year to employees of the business who are residents of Wisconsin.

Veteran Employment Tax Credit. The veteran employment tax credit is provided for hiring disabled veterans to work in full-time and part-time jobs at the claimant's business in Wisconsin. For full-time jobs, the credit is equal to $4,000 in the tax year in which the disabled veteran is hired, and $2,000 in each of the following three tax years. For part-time jobs, the credit amounts are $2,000 and $1,000, respectively. The amount of the credit for hiring part-time workers is prorated, based on the hours worked by the disabled veteran relative to a full-year work schedule of 2,080 hours.

The credit can only be claimed for hiring a disabled veteran who has received unemployment compensation benefits for at least one week prior to being hired, was receiving benefits at the time he or she was hired, and was eligible to receive unemployment benefits at the time they were paid. In addition, a credit cannot be claimed in any tax year in which the disabled veteran voluntarily or involuntarily leaves his or her employment with the claimant.

"Veteran" means a person who is verified by the Department of Veteran Affairs to have served on active duty under honorable conditions in the U.S. armed forces, in forces incorporated as part of the U.S. armed forces, in the national guard, or in a reserve component of the U.S. armed forces. "Disabled veteran" means a veteran who is verified by the Department of Veteran Affairs to have a service-connected disability rating of at least 50% under federal law.

"Full-time job" means a regular, non-seasonal full-time position in which an individual is required to work at least 2,080 hours per year, including paid leave and holidays. "Part-time job" means a similar position requiring fewer than 2,080 hours per year.

Kenosha, Janesville and Beloit Development Opportunity Zones. Under provisions of 2009 Wisconsin Act 28, and 2011 Wisconsin Act 37, Commerce designated an area in the City of Kenosha, and WEDC designated an area in the City of Janesville and an area in the City of Beloit as development opportunity zones that exist for five years. Any business that locates and conducts activity in the zones is eligible to claim the development zone environmental remediation and jobs tax credit, and the development zone capital investment tax credit. The maximum amount of tax credits that can be claimed by businesses in each zone is $5.0 million. In order to claim tax credits, a business that conducts economic activity in one of the zones must submit a project plan to WEDC, and comply with other statutory provisions governing development opportunity zones. WEDC can extend the zones an additional five years, and provide an additional $5.0 million in tax credits, if it supports economic development in the city.

Development Zones Credit. The development zones tax credit is based on amounts spent on environmental remediation and the number of full-time jobs created or retained.

Environmental Remediation Component. A credit against income taxes due can be claimed for 50% of the amount expended for specified environmental remediation in a zone. "Environmental remediation" is defined as: (1) removal or containment of environmental pollution; (2) restoration of soil or groundwater that is affected by environmental pollution in a brownfield; or (3) investigation, unless the investigation determines that remediation is required and remediation is not undertaken. The removal, containment, or restoration work, other than planning and investigating, must begin after the site where the work is being done is designated a zone, and after the claimant is certified for tax benefits. A "brownfield" is an industrial or commercial facility the expansion or redevelopment of which is complicated by environmental contamination.

Full-Time Jobs Component. A credit against income taxes can be claimed for up to the following amounts for job creation or retention: (1) up to $8,000 for each full-time job created in a zone and filled by a member of a targeted group; (2) up to $8,000 for each full-time job retained in an enterprise development zone (excluding jobs for which the former jobs tax credit was claimed) if WEDC determines that the person made a significant capital investment to retain the full-time job; and (3) up to $6,000 for each full-time job created or retained filled by a Wisconsin resident who is not a member of a targeted group. The definition of targeted group members is the same as that used for purposes of economic development tax credits (public assistance recipients and other economically disadvantaged persons). Amounts claimed for W-2 program participants must be reduced by W-2 wage subsidies that the employer receives for those jobs. At least one-third of jobs tax credits claimed must be based on jobs created and filled by targeted group members. In addition, except for businesses that only claim tax credits for environmental remediation, 25% of all tax credits must be based on creating or retaining full-time jobs.

Unused credits can be carried forward up to 15 years to offset future tax liabilities.

Development Zone Capital Investment Credit. The development zone capital investment tax credit equals 3% of the following:

1. The purchase price of depreciable, tangible personal property. The property must have been purchased after the claimant was certified as eligible for tax benefits, and the personal property has to have at least 50% of its use in the claimant's business location in the zone. If the property is mobile, the base of operations for at least 50% of its use must be in the zone.

2. The amount expended to acquire, construct, rehabilitate, remodel, or repair real property in the zone. Such expenses are eligible for the credit if the claimant began the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the place where the property is located was designated a zone, or if the completed project is placed in service after the claimant is certified for tax benefits. A credit cannot be claimed for expenses for preliminary activities such as planning, designing, securing financing, research, developing specifications, or stabilizing the property to prevent deterioration.

A claimant can also claim a tax credit for amounts expended to acquire real property, if the property was not previously owned and the claimant acquired the property after the place where the property was located was designated a zone, or if the completed project was placed in service after the clamant was certified as eligible for tax benefits.

In calculating the capital investment credit for purchases of real property, a claimant is required to reduce the amount expended to acquire the property by a percentage equal to the percentage of the area of the real property that is not used for the purposes for which the claimant is certified as eligible for tax benefits. Similarly, the amount expended for other purposes must be reduced by the amount expended on the part of the property not used for purposes for which the claimant is certified.

Unused credits can be carried forward up to 15 years to offset future tax liabilities. Claimants are required to include with their tax return: (1) WEDC verification that the claimant is eligible for tax credit; and (2) a statement from WEDC verifying the purchase price and eligibility of the investment.

Refundable Corporate Income Tax Credits

Enterprise Zone Tax Credits. The enterprise zone program provides refundable tax credits that can be claimed, under the state individual income and corporate income/franchise taxes, for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. WEDC is responsible for designating enterprise zones, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to the enterprise zone program.

Jobs Tax Credit. The enterprise zones jobs tax credit is provided to businesses that are certified by the WEDC. The enterprise zones jobs tax credit is calculated as follows:

1. Determine the lesser of: (a) the number of full-time employees that are employed in an enterprise zone whose annual wages are greater

than $20,000 in a tier I county or municipality, or greater than $30,000 in a tier II county or municipality in the tax year, minus the number of full-time employees that were employed in the enterprise zone in the base year whose annual wages exceeded those thresholds; or (b) the number of full-time employees in the state whose annual wages exceed those thresholds in the tax year, minus the number of full-time employees in the state in the base year whose annual wages exceeded those thresholds. ("Base year" is the year prior to the year in which the enterprise zone was created.)

2. Determine the claimant's average zone payroll (excluding wage amounts that are over $100,000) by dividing total wages for full-time employees in the zone whose annual wages are greater than $20,000 in a tier I county or municipality, or greater than $30,000 in a tier II county or municipality, and who the claimant employed in an enterprise zone for the tax year, by the number of employees whose annual wages exceed those thresholds, and who the claimant employed in the enterprise zone in the tax year.

3. For employees in a tier I county or municipality subtract $20,000 from the average wage determined under "2," and for employees in a tier II county or municipality subtract $30,000 from the average wage determined under "2."

4. Multiply the amount determined under "3" (average wage in excess of $20,000 a year in a tier I county or municipality, or in excess of $30,000 a year in a tier II county or municipality) by the number determined under "1" (net number of new employees hired in the zone).

5. Multiply the amount determined under "4" by a percentage determined by WEDC, not to exceed 7%.

Job Retention Tax Credit. An additional refundable tax credit can be claimed for an amount equal to the percentage, up to 7%, as determined by WEDC, of the claimant's zone payroll (excluding wage amounts that are over $100,000) paid in the tax year to full-time employees who were employed in the enterprise zone in the tax year and whose annual wages were greater than $20,000 in a tier I county or municipality, or greater than $30,000 in a tier II county or municipality, not including the wages paid to employees that are used to claim the enterprise zone jobs credit. The total number of employees has to equal or be greater than the number of employees in the base year. Credit claims are limited to five consecutive years.

Training Component. A supplemental, refundable credit may be claimed that is equal to the amount paid in the tax year to upgrade or improve the job-related skills of any of the claimant's full-time employees, to train any of the claimant's full-time employees on the job-related use of new technologies, or to provide job-related training to any full-time employee whose employment with the claimant represents the employee's first full-time job. The training must be provided to employees who work in the enterprise zone. Eligible training costs include: (1) cost of the trainer; (2) cost of the training materials; (3) wages of the trainee in a classroom setting; and (4) either the cost of the trainer or wages of the trainee in an on-the-job or job shadowing setting. Eligible training costs do not include travel expenses, food, and lodging.

Significant Capital Expenditures. A refundable tax credit is provided equal to an amount determined by WEDC, but not exceeding 10% of the claimant's significant capital expenditures in the enterprise zone. A significant capital expenditure is a capital investment in an enterprise zone beyond the certified business' normal capital expenditures that is necessary to achieve a specific purpose agreed to by WEDC.

Purchases from Wisconsin Suppliers. A refundable credit may be claimed of up to 1% of the amount the claimant paid in the tax year to purchase goods or services from Wisconsin venders, as determined by WEDC. A claimant cannot claim the credit for expenditures also used to claim the enterprise zone significant capital expenditures tax credit.

Positions that are created as a result of enterprise zone tax credits must be maintained at least five years after the WEDC certification date.

As noted, the credits are refundable. Therefore, if the amount of credit exceeds the claimant's income or franchise tax liability, the state issues a check to the claimant for the difference.

Enterprise Zone Designation and Certification. WEDC is authorized to designate up to 20 areas in the state as enterprise zones. The Corporation is required to designate as enterprise zones, at least three areas comprised of political subdivisions with populations under 5,000, and two areas with populations between 5,000 and 30,000. A zone designation cannot last more than 12 years. Through October, 2012, 14 zones had been designated, one of which is in a community with a population between 5,000 and 30,000.

In determining whether to designate an area as an enterprise zone, WEDC is required to consider: (1) specified indicators of the area's economic need, such as data regarding household income, average wages, and job losses; and (2) the effect of designation on other initiatives and programs to promote economic and community development in the area, including job creation and job training, and creating high-paying jobs. WEDC also considers; (1) whether the project might not occur without the allocation of tax credits; (2) the extent to which the project will increase employment in the state; (3) the extent to which the project will increase economic growth in the state; (4) the extent to which the project will increase the geographic diversity of the available tax credits throughout the state; (5) the financial soundness of the business; and (6) any previous financial assistance the business has received from Commerce/WEDC.

Eligible businesses that conduct operations in an enterprise zone that are certified by WEDC can claim the refundable enterprise zone tax credits. The business must enter into a contract with WEDC, which includes penalties for noncompliance, prior to WEDC certification or verification. The Corporation may certify for tax benefits any of the following:

1. A business that begins operations in an enterprise zone.

2. A business that relocates to an enterprise zone from outside the state, if the business offers compensation and benefits to its employees working in the zone for the same type of work that are at least as favorable as those offered outside the zone.

3. A business that expands its operations in an enterprise zone, and increases its personnel by at least 10%, and enters into an agreement with WEDC to claim tax benefits only for years during which the business maintains the increased level of personnel. The business must offer compensation and benefits for the same type of work to its employees working in the enterprise zone that are at least as favorable as those offered to its employees working in Wisconsin, but outside the zone.

4. A business that expands its operations in an enterprise zone and that makes a capital investment in property located in the enterprise zone if the following apply: (a) the value of capital investment is equal to at least 10% of the business' gross revenues from business in the state in the preceding tax year; (b) the business enters into an agreement with WEDC to claim tax benefits only for years during which the business maintains the capital investment; and (c) the business offers compensation and benefits

for the same type of work to its employees in the zone that are at least as favorable as those offered to employees working in Wisconsin, but outside the zone.

5. A business that retains jobs in an enterprise zone, but only if the business makes a significant capital investment in property located in the zone, and at least one of the following applies: (a) the business was an original equipment manufacturer with a significant supply chain in Wisconsin; or (b) more than 500 full-time employees were employed by the business in the enterprise zone.

6. A business that is located in an enterprise zone that purchases tangible personal property, items, property, goods, or services from Wisconsin vendors.

The following types of businesses are ineligible for enterprise zone tax credits: (1) payday loan and loan title companies; (2) telemarketing; (3) pawn shops; (4) media outlets, such as newspapers and radio stations [unless the job creation is significant]; (5) businesses in the tourism industry [unless the job creation is significant]; (6) retail; (7); farms; (8) primary care medical facilities; and (9) financial institutions.

WEDC must notify DOR when it certifies a business to receive tax benefits and when it revokes a certification. The Corporation is required to revoke a firm's certification if the business: (1) supplies false or misleading information to obtain tax benefits; (2) leaves the enterprise zone to conduct substantially the same business outside the zone; or (3) ceases operations in the zone, and does not renew operation of the business or a similar business in the zone within 12 months.

WEDC is required to determine the maximum amount of tax credits that a certified business can claim and notify DOR of the amount. WEDC is also required to verify information submitted to it that is related to the enterprise zone expenses and tax credits.

Prior to filing for tax credits, claimants are required to file with WEDC an annual project report that includes: the status of the certified business project, including the number of jobs created; the number of employees in full-time jobs who are trained (if applicable), and documentation of eligible training costs; the total amount of capital investments, including documentation; and other supporting information relating to tax credits that are claimed by the certified business. Claimants are required to include, with their tax returns, a copy of the certification for tax benefits and verification of expenses from WEDC.

Businesses may not claim enterprise zone tax credits to the extent the basis for the credit is the basis for another tax credit claimed by the business. WEDC may require a business to repay any tax benefits the business claims for a year in which the business failed to maintain employment or capital investment levels required by the certification agreement.

In general, "full-time employee" means an individual who is employed in a regular, nonseasonal job and who is required to work at least 2,080 hours per year, including paid leave and holidays. WEDC can specify, by rule, circumstances under which it can grant exceptions to that requirement. However, under no circumstances, would a full-time employee mean an individual who was required to work less than 37.5 hours per week.

"State payroll" means the amount of payroll apportioned to this state under the income and franchise tax apportionment rules for multi-state businesses that were in effect prior to the implementation of single sales apportionment in 2008. "Zone payroll" is defined as wages paid to full-time employees for services performed in the enterprise zone. "Zone payroll" does not include the amount of compensation paid to any individual that exceeds $100,000.

"Tier I" and "tier II" counties and municipalities are designated as such by WEDC. In making the designations, WEDC considers the most current data available for the area using the following indicators: (1) unemployment rate; (2) percentage of families with incomes below the poverty line; (3) median family income; (4) median per capita income; and (5) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff. To the extent possible, the Corporation must give preference in designating areas to those with the greatest economic need.

"Original equipment manufacturer with a significant supply chain in the state" means a company in Wisconsin whose production processes include materials or components purchased from other, unrelated companies in Wisconsin, and that has a supply chain in the state that is designated by WEDC as significant. In designating supply chains, WEDC may consider the following factors: (1) the number of employees throughout the supply chain; (2) the number of suppliers in the supply chain; (3) the total cost of the components purchased from the supply chain; and (4) the number of units purchased from the chain.

Jobs Tax Credit. A refundable tax credit can be claimed under the state individual income and corporate income and franchise taxes, for 10% of the eligible wages paid to an eligible employee and/or the amount of costs incurred to undertake training activities in a tax year, as determined by WEDC. Specifically, WEDC can award tax benefits equal to the lesser of 10% of the wages paid to an employee or $10,000, if the employee earned wages in the year for which the tax credit is claimed equal to one of the following: (1) at least $20,000 in a tier I county or municipality; or (2) at least $30,000 in a tier II county or municipality. WEDC can also award tax credits in an amount determined by the Corporation for costs incurred to undertake training activities in a tier I or tier II county or municipality that: (1) improve the job-related skills of any eligible employee; (2) train any eligible employee on the use of job-related new technologies; or (3) provide job-related training to any eligible employee whose employment represents the employee's first full-time job. Eligible training costs include: (1) cost of the trainer; (2) cost of the training materials; (3) wages of the trainee in a classroom setting; and (4) either the cost of the trainer or wages of the trainee in an on-the-job or job shadowing setting. Eligible training costs do not include travel expenses, food and lodging.

In order to claim the credit, a claimant must be certified by WEDC. The Corporation may certify a claimant to receive tax credits for up to 10 years if: (1) the person is operating, or intends to operate a business in this state; and (2) the person applies and enters into a contract with WEDC, prior to certification or verification of tax credits, that includes penalties for noncompliance. A person that is certified can only receive tax credits for each year that the following apply: (1) the person increases net employment in the business; (2) the person pays the eligible employee the required wages for a tier I ($20,000) or tier II ($30,000) county or municipality and/or provides the required training to an employee in a tier I or tier II county or municipality. A business is required to maintain for five years any positions for which credits are claimed, and may be required to repay any tax credits claimed for a year in which the claimant fails to maintain employment at a level required under the contract with the Corporation.

In awarding jobs tax credits, WEDC gives special consideration to manufacturing businesses, and preference to the areas with the greatest economic need. WEDC also considers: (1) whether the project might not occur without the allocation of tax credits; (2) the extent to which the project will increase employment in the state; (3) the extent to which the project will increase economic growth in the state; (4) the extent to which the project will increase the geographic diversity of the available tax credits throughout the state; (5) the financial soundness of the business; and (6) any previous financial assistance the business has received from Commerce/ WEDC.

As with the enterprise zone program, certain types of businesses (payday lenders, telemarketers, etc.) are ineligible for jobs tax credits.

The maximum amount of tax credits that WEDC can allocate in a calendar year is $10 million. In addition, the total amount of credits that can be claimed for tax years beginning on or after January 1, 2010, and ending on June 30, 2013, is limited to $14.5 million. WEDC is also authorized to reallocate angel investment and early stage seed investment tax credits that are unused in any calendar year to persons eligible for the jobs tax credit, subject to 14-day passive review by the Joint Committee on Finance. These reallocated amounts are not subject to the $10 million annual and $14.5 million 2010 to 2013, limits on jobs tax credit claims.

WEDC must notify DOR when it certifies a business to receive tax benefits and when it revokes a certification. The Corporation is required to revoke a firm's certification if the business: (1) supplies false or misleading information to obtain tax benefits; (2) relocates the project for which credits are awarded to another state within five years of the award; (3) fails to comply with the terms of the contract; or (4) makes a material adverse change in the project. WEDC is required to determine the maximum amount of tax credits that a certified business can claim and notify DOR of the amount. The Corporation must also verify information submitted to it that is related to expenses and tax credits.

"Eligible businesses" are any organizations or enterprises operated for profit. "Full-time employee" means an individual who is employed in a "full-time job." "Full-time job" is defined as described above, but with the additional requirement that the employee receives pay that is equal to at least 150% of the federal minimum wage and benefits that are not required by state law. A "full-time job" does not include initial training before an employment position begins.

"Tier I" and "tier II" counties and municipalities are designated as such by WEDC. In making the designations, WEDC considers the following indicators: (1) unemployment rate; (2) percentage of families with incomes below the poverty line; (3) median family income; (4) median per capita income; and (5) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff. These are the same factors that must be considered in designating "tier I" and "tier II" areas under the enterprise zone program.

Dairy Manufacturing Facility Credit. The refundable dairy manufacturing facility investment tax credit is equal to 10% of the amount paid in a tax year by a claimant for modernization or expansion related to the claimant's dairy manufacturing operation. The credit can also be claimed for eligible investments made by dairy cooperatives. As noted, the credit is refundable. If the allowable credit claim exceeds the tax due, the amount not used to offset the tax is paid to the claimant.

The total amount of tax credits that can be claimed is limited to $700,000 annually for cooperative members, and $700,000 annually for other entities. The maximum aggregate amount of tax credits that a claimant can claim is $200,000 per facility. A credit cannot be claimed for expenses that were deducted as trade or business expenses.

"Dairy manufacturing modernization or expansion" is defined as constructing, improving, or acquiring specified buildings or facilities, or acquiring specified equipment, for dairy manufacturing, if used exclusively for dairy manufacturing, and if acquired and placed in service in Wisconsin during tax years that begin after December 31, 2006, and before January 1, 2015, or, in the case of cooperatives, if acquired and placed in service in Wisconsin during tax years that begin after December 31, 2008, and before January 1, 2017.

If two or more persons own or operate a dairy manufacturing operation, each person can claim the credit in proportion to his or her ownership interest, subject to the aggregate total credit limit of $200,000. Members of a dairy cooperative may claim the credit in proportion to the amount of milk that each member delivers to the dairy cooperative, as determined by the cooperative.

The Department of Agriculture, Trade and Consumer Protection (DATCP) is required to certify claimants and allocate credits, subject to the statewide limit on the total amount that can be claimed ($700,000 for cooperatives, and $700,000 for other eligible entities). A person who intends to claim a dairy manufacturing facility investment tax credit must apply to DATCP for certification and allocation of the credit.

DATCP must certify eligible claimants and allocate credits in a manner that most likely promotes economic development. In determining the allocation of tax credits, the Department is required to consider the following factors: (1) the jobs created by the project; (2) the salaries, wages, and other employee benefits of the jobs created by the project; (3) the impact of the project on the dairy industry in Wisconsin; (4) the extent to which the area served by the project is economically distressed; (5) the amount of new, eligible capital investment in the project; (6) the impact of the project on business in Wisconsin; and (7) any previous assistance from DATCP.

DATCP may prorate some or all of the credit allocations in order to broaden the potential for promoting economic development. DATCP is required to notify each applicant of the outcome of the application, and the Department of Revenue of every taxpayer that is certified for tax credits. Dairy manufacturing facility investment tax credit claims must include: (1) a copy of the certification for tax credits; (2) the employer's tax identification number; and (3) the North American Industry Classification System code (NAICS) for the certified applicant. A credit claim from a certified member of a dairy cooperative must include a determination from the cooperative specifying the amount of the credit the member may claim, based on the amount of milk the member delivered the cooperative.

"Dairy manufacturing" means processing milk into dairy products, or processing dairy products for sale commercially. "Used exclusively" means used to the exclusion of all other uses, except for use not exceeding 5% of total use.

"Dairy product" means a value-added, saleable product resulting from processing milk or another dairy product, and includes: beverage milk products; soft milk products such as yogurt, ice cream, and cottage cheese; cheese; butter; non-fat dried milk; whole milk powder; dried whey; whey protein concentrate or isolates; casein; and dairy waste that can be used to produce energy, fuel, and industrial products. "Milk" includes milk from cows, sheep, or goats.

"Eligible capital investment" includes all expenses incurred in the acquisition, construction, or improvement of buildings or facilities, and the purchase price of depreciable personal property or equipment. "Dairy cooperative" means a business organized under state laws governing cooperatives and cooperative associations for the purpose of obtaining or processing milk.

Meat Processing Facility Investment Tax Credit. A refundable tax credit may be claimed, equal to 10% of the amount the claimant paid in the tax year for meat processing modernization or expansion related to a meat processing operation. If the allowable credit claim exceeds the tax due, the amount not used to offset the tax is paid to the claimant.

The tax credit can be claimed for tax years beginning after December 31, 2008 and before January 1, 2017. The maximum aggregate amount of meat processing facility investment tax credits that can be claimed by a claimant is $200,000, and a credit cannot be claimed for expenses that were deducted as trade or business expenses. The total amount of tax credits that can be claimed is $700,000 per year.

"Meat processing modernization or expansion" is defined as constructing, improving, or acquiring specified buildings or facilities, or acquiring specified equipment, for meat processing, if used exclusively for meat processing, and if acquired and placed in service in this state during taxable years that begin after December 31, 2008, and before January 1, 2017.

If two or more persons own or operate a meat processing operation, each person claims the meat processing facility investment tax credit in proportion to his or her ownership interest, subject to the aggregate total credit limit of $200,000.

DATCP is required to certify claimants and allocate credits, subject to the statewide limit on the total amount that can be claimed ($700,000 for eligible entities). A taxpayer who intends to claim a meat processing facility investment tax credit must apply to DATCP for certification and allocation of the credit.

DATCP will certify eligible claimants and allocate credits in manner that most likely promotes economic development. In determining the allocation of tax credits DATCP must consider the following factors: (1) the jobs created by the project; (2) the salaries, wages, and other employee benefits of the jobs created by the project; (3) the impact of the project on the meat processing industry in Wisconsin; (4) the extent to which the area served by the project is economically distressed; (5) the amount of new, eligible capital investment in the project; (6) the impact of the project on business in Wisconsin; and (7) any previous assistance from DATCP.

DATCP may prorate some or all credit allocations in order to broaden the potential for promoting economic development. The Department is required to notify each applicant of the outcome of the application, and the Department of Revenue of every taxpayer that is certified for tax credits. Meat processing facility investment tax credit claims must include: (1) a copy of the certification for tax credits; (2) the employer's tax identification number; and (3) the NAICS code for the certified applicant.

"Eligible capital investment" and "used exclusively" are defined the same as for the dairy manufacturing facility credit. "Meat products" do not include sandwiches, spreads, appetizers, soups, salads, dinners, pizzas, pastas, or any other product that uses meat in any manner other than as the predominant ingredient. Meat products also do not include products that are processed through custom or mobile processing, or slaughtering.

Food Processing Plant and Food Warehouse Investment Tax Credit. The food processing plant and food warehouse investment tax credit is equal to 10% of the amount paid in the tax year by the claimant for food processing or food warehousing modernization or expansion. The credit can be claimed for tax years beginning after December 31, 2009, and before January 1, 2017.

"Food processing plant or food warehouse modernization or expansion" means constructing, improving, or acquiring specified buildings or facilities, or acquiring specified equipment, for food processing or food warehousing, if used exclusively for food processing or food warehousing, and if acquired and placed in service in the state during tax years that begin after December 31, 2009, and before January 1, 2017.

The maximum aggregate amount of tax credits that can be claimed by a taxpayer is $200,000, and a credit cannot be claimed for expenses that were deducted as trade or business expenses. If two or more persons own and operate a food processing plant or food warehouse, each person can claim a tax credit in proportion to his or her ownership interest, except that the aggregate amount of credits claimed by all the persons who own and operate the food processing operation cannot exceed the $200,000 aggregate tax credit limit. If the allowable credit claim exceeds the taxes otherwise due on the claimant's income, the amount of credit claim that is not used to offset tax due is paid to the claimant. The total amount of tax credits that can be claimed is limited to $1,200,000 for fiscal year 2010-11, and $700,000 for subsequent fiscal years.

A taxpayer must submit an application to DATCP that includes a listing of the expenses that are eligible for the tax credit. DATCP is required to certify taxpayers and verify tax credit claims based on the information submitted. Once the Department certifies a taxpayer as eligible for the tax credit, it determines the amount of credits that a taxpayer can claim, and allocates those credits to the taxpayer. In determining the allocation of tax credits, DATCP is required to consider the following factors: (1) the jobs credited by the project; (2) the salaries, wages, and other employee benefits of the jobs created by the project; (3) the impact of the project on the food processing and food warehousing industry in Wisconsin; (4) the extent to which the area served by the project is economically distressed; (5) the amount of new, eligible capital investment in the project; (6) the impact of the project ton business in Wisconsin; and (7) any previous assistance from DATCP.

DATCP is required to inform DOR of every taxpayer that is certified, and of the amount of credits allocated to the taxpayer. In order to claim a tax credit, a claimant must submit to DOR a copy of the DATCP certification of the claimant's eligibility and tax credit allocation.

"Food processing plant" is defined as any place where food processing is conducted. However, it does not include establishments subject to the state retail food establishment law, or state lodging and food protection permits. In addition, state licensed dairy plants and meat establishments are excluded. The definition of "food warehouse" does not include certain facilities specified under state law, including: (1) a grain or raw agricultural commodity storage warehouse; (2) a retail food establishment, restaurant or other similar establishment; (3) a licensed dairy-plant or meat establishment warehouse; (4) a licensed milk distributor warehouse; or (5) consumer owned or operated facilities.

A "claimant" for the credits may include either the operator of a food processing or food warehousing operation, or an owner of a building or facility in which the operation occurs. "Eligible capital investment" and "used exclusively" are defined as under the credits for dairy manufacturing and meat processing facilities.

Woody Biomass Harvesting and Processing Tax Credit. The refundable woody biomass harvesting and processing tax credit is equal to 10% of the amount the claimant pays in the tax year for equipment that is used primarily to harvest or process woody biomass, that is used for fuel or as a component of fuel. The credit can be claimed for tax years beginning after December 31, 2009, and before January 1, 2016.

The maximum aggregate amount of tax credits that can be claimed by a taxpayer is $100,000, and a credit cannot be claimed for expenses that are deducted as trade or business expenses. If two or more persons own and operate a woody biomass harvesting or processing operation, each person can claim a tax credit in proportion to his or her ownership interest, except that the aggregate amount of credits claimed by all the persons who own and operate the woody biomass processing operation cannot exceed the $100,000 aggregate tax credit limit. If the allowable credit claim exceeds the taxes otherwise due on the claimant's income, the amount of credit claim that is not used to offset tax due is paid to the claimant. The total amount of tax credits that can be claimed by all taxpayers is limited to $900,000 for each state fiscal year.

DATCP is required to certify taxpayers as eligible for the woody biomass harvesting and processing tax credit. Once DATCP certifies a taxpayer as eligible for the tax credit, it determines the amount of credits that a taxpayer can claim, and allocates those credits to the taxpayer. In determining the allocation of credits DATCP must consider all of the following: (1) the jobs created by the project; (2) the salaries, wages, and other employee benefits of the jobs created by the project; (3) the amount of new, eligible capital investment in the project.

The Department is required to allocate $450,000 of the total annual credit allocation to businesses that, individually, have no more than $5 million in gross receipts from business in Wisconsin for the tax year in which the credit was claimed. DATCP must inform DOR of every taxpayer that is certified, and of the amount of credits allocated to the taxpayer.

"Woody biomass" means trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest or woodland or on agricultural land. "Eligible capital investment" includes all expenses incurred in purchasing equipment that is used primarily to harvest or process woody biomass for use as fuel or as a component of fuel, but does not include business expenses claimed as a deduction under the IRC. “Used primarily” means used to the exclusion of all other uses, except for use not exceeding 25% of total use.

Film Production Tax Credits. Provisions of 2005 Wisconsin Act 483 created both a film production services tax credit, and a film production investment tax credit under the state individual income and corporate income/franchise taxes. The credits were amended in 2009 Act 28.

Film Production Services Tax Credit. An eligible taxpayer can claim a refundable tax credit for:

1. An amount equal to 25% of salaries, wages, and/or labor-related contract payments to all individuals, including actors, who are Wisconsin residents that work on an accredited production in Wisconsin. The salaries and wages of individuals with compensation from the production in excess of $250,000 are excluded from the credit. The total amount of credits that may be claimed in a tax year may not exceed an amount equal to the first $20,000 of salary, wages, or labor-related contract payments paid to each worker on which the credit is based.

2. An amount equal to 25% of non-labor production expenses incurred in Wisconsin to produce an accredited production. A credit may only be claimed for the purchase of tangible personal property or items, property, or goods that are sourced to Wisconsin.

The following expenses are not eligible: (1) marketing and distribution; (2) alcoholic beverages or tobacco; (3) gifts to cast and crew members and expenses related to cast and crew parties; (4) per diems paid to non-Wisconsin residents; (5) bank and transaction fees; (6) legal fees, such as for development, marketing, or business set-up, (7) expenditures for forfeitures, fees, expenses, and costs associated with a violation of federal or state law, or local ordinances; and (8) losses and damages.

At least 35% of the project's total budget has to be spent in Wisconsin.

Film Production Company Investment Tax Credit. An eligible claimant can claim as a refundable credit an amount that equals 15% of the following that the claimant paid in the tax year to establish or operate a film production company in Wisconsin:

1. The purchase price of depreciable, tangible personal property and items, property, and goods, if the sale of such property and goods is sourced to Wisconsin. The claimant must purchase the tangible personal property after December 31, 2008, and at least 50% of the property's use must be in the claimant's business as a film production company.

2. The amount expended to construct, rehabilitate, remodel, or repair real property. A claimant can claim the credit if the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, began after December 31, 2008, and if the completed project is placed in service after December 31, 2008. A claimant can also claim the credit for an amount expended to acquire real property, if the property is not previously owned property, and if the property is acquired after December 31, 2008, and the completed project is placed in service after December 31, 2008. "Physical work" does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing property to prevent deterioration.

The maximum amount of film production tax credits that can be claimed in a fiscal year is $500,000. As noted, the film production tax credits are refundable.

A potential claimant is required to apply to the Department of Tourism to accredit a production as eligible, determine the eligible amount of production expenditures, including resident salary and wages and sales and use taxes, and certify film production company expenses for the purpose of claiming the film production tax credits. The application must include a fee equal to the lesser of 2% of the claimant's budgeted production expenditures or $500. A separate application must be submitted for each accredited production and production company.

In determining whether to accredit a production or to approve expenditures Tourism must consider if: (1) the production would not occur and/or the production company would not be established in Wisconsin without the film production tax credits; (2) the production and/or production company would enhance economic development in the state; (3) the production and/or production company would enhance the film, video, or electric game industry in the state; and (4) the production would not hurt the reputation of the state of Wisconsin.

Potential claimants of film production services tax credits are required to submit: (1) a list and description of the production expenditures incurred during the year; (2) a list of the salaries and wages that were paid and the corresponding services; (3) attestation that the employees who received the salary or wages met the state residency requirement at the time wages were paid; (4) verification that the aggregate salary and wages in the cost of production exceed the required $50,000 or $100,000 threshold for accredited productions; (5) verification that 35% of the total budget for the accredited production is spent in Wisconsin; (6) verification that the credits claimed for non-labor production expenses are sourced to the state; (7) documentation evidencing that receipt of the credit is a major factor in the applicant's decision to operate an accredited production in the state; and (8) any subsequent clarification requested by the Department.

Based on this information, Tourism determines: (1) the production expenditures incurred during the tax year; (2) the salary or wages that were paid during the tax year by the claimant to employees who rendered services in the state to produce an accredited production, and who were residents of Wisconsin; and (3) any proration of credit to broaden the potential for economic development or to comply with the annual maximum $500,000 limit on total credits. Claimants of film production company investment tax credits must include a list of expenses, a description of how the expenses will relate to establishing a film production company in the state, and documentation that the expenses will comply with statutory definitions and limits.

Tourism staff reviews applications for accreditation and determination and certification of eligible expenses. After review, Tourism will either approve or deny the application. If approved, the applicant will receive an offer letter that details the terms and conditions for receiving tax credits. Tourism must notify DOR of accredited productions and the amount of production and/or production company investment expenditures.

Tourism may revoke any accreditation of a production if the supporting information is found to be inaccurate or significantly misleading. The Department may increase eligible expenditures based on a claimant's submission of adequate written justification for the increase. Tourism may decrease eligible expenditures if it determines that the information on which the amount of eligible expenses was based is inaccurate or significantly misleading. The Department must notify the claimant and DOR of any increase or decrease in approved expenditures.

Claims for film production tax credits filed with tax returns must include: (1) a copy of the eligible expenditure determination or certification; (2) the state employer tax identification number of the claimant; and (3) the NAICS code of the claimant.

At the completion of a project, and before the release of any tax credits is approved, a final project report must be sent to Tourism. The final report must document that the estimated eligible expenditures included in the claimant's proposed budget and application documents and that were approved by Tourism, were incurred by the claimant to produce the accredited production, or establish or operate a film production company. The final report must include documentation of: (1) eligible salaries, wages, and labor-related contract payments; (2) eligible production expenditures; or (3) eligible film production company expenses. The final report must also include a statement signed by the director or principal officer of the production or production company attesting to the accuracy of the expenditures listed in the final report and that are available for inspection by Tourism.

"Production expenditures" means any expenditures that were incurred in Wisconsin and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditures as determined by the Department of Tourism. "Production expenditures" do not include salaries, wages, or labor-related contract payments.

"Accredited production" means a film, video, broadcast advertisement, or television production, for which the aggregate salary and wages included in the cost of production for the period ending 12 months after the principal filming or taping began exceeds $50,000. "Accredited production" also means an electronic game, for which the aggregate salary and wages included in the cost of the production for the period ending 36 months after the month in which the principal programming, filming, or taping of the production begins exceeded $100,000. An "accredited production" would not include any of the following, regardless of production costs: (1)

news, current events, or public programming or a program that includes weather or market reports; (2) a talk show; (3) a production with respect to a questionnaire or contest; (4) a sports event or sports activity; (5) a gala presentation or awards show; (6) a finished production that solicits funds; (7) a sexually explicit production; or (8) a production produced primarily for industrial, corporate, or institutional purposes.

Public programming of a civic or governmental function is not eligible to be approved as an accredited production. A travel promotion that addresses a sports event or activity is eligible to be an accredited production. However, a sports event or sports activity that is exclusively competitive in nature cannot be approved as an accredited production.

A "film production company" is an entity that exclusively creates accredited productions.

"Previously owned property" means real property that the claimant or a related person owned during the two years prior to doing business in Wisconsin as a film production company, and for which the claimant may not deduct a loss from the sale of property to, or an exchange of property with, the related person under IRC provisions. In addition, the definition applies to property that would otherwise be excluded due to the reference to the IRC provision excluding individuals who own less than 50% of the outstanding stock of certain entities.

Beginning Farmer and Farm Asset Owner Tax Credits. 2009 Act 28 created a refundable beginning farmer tax credit and a refundable farm asset owner tax credit, for tax years beginning after December 31, 2010. The beginning farmer tax credit equals the amount paid by the farmer to enroll in a financial management program in the year to which the claim relates. The credit can be claimed on one-time basis, and the maximum credit is $500. The farm asset owner tax credit equals 15% of the amount received by an established farmer for leasing agricultural assets to a beginning farmer in the year to which the claim relates. The credit can only be claimed for the first three years of any lease of the established farmer's assets to a beginning farmer.

Farmland Preservation Tax Credit. Owners of eligible farmland (including corporate owners) can receive a refundable tax credit under the farmland preservation program. To be eligible, the claimant must own at least 35 acres of state farmland, and that land must have produced: (1) at least $6,000 in gross farm profits during the year for which the credit is claimed; or (2) at least $18,000 during the year for which the credit is claimed and the preceding two years.

2009 Act 28 repealed the previous farmland preservation tax credit, which was based on the claimant's property taxes and income, and replaced it with a refundable per-acre credit. Beginning in tax year 2010, the per-acre farmland preservation credit is calculated by multiplying the claimant's qualifying acres by one of the following amounts:

1. $10, if the qualifying acres are located in a farmland preservation zoning district and are also subject to a farmland preservation agreement that is entered into after June 30, 2009;

2. $7.50, if the qualifying acres are located in a farmland preservation zoning district but are not subject to a farmland preservation agreement that is entered into after June 30, 2009; or

3. $5, if the qualifying acres are subject to a farmland preservation agreement that is entered into after June 30, 2009, but are not located in a farmland preservation zoning district.