

Tax Law

by **Carl D. Fortner, Zhu (Julie) Lee,
Timothy L. Voigtman, and Theresa A. Nickels**



Carl D. Fortner is a corporate tax attorney with Foley & Lardner LLP, Milwaukee. He received his undergraduate degree in accounting, with distinction, and his master's degree in taxation from the University of Wisconsin–Madison and his law degree, cum laude, from the University of Wisconsin Law School. Mr. Fortner is also a certified public accountant and has frequently lectured on corporate and income tax topics.



Zhu (Julie) Lee practices tax law with Foley & Lardner LLP, Milwaukee. She received her undergraduate degree in urban and regional planning from Beijing University, People's Republic of China; her master's degree in energy and environmental policy from the University of Delaware; and her law degree, cum laude, from Northwestern University School of Law, where she was an articles editor of the *Northwestern Journal of International Law and Business*.



Timothy L. Voigtman is a tax attorney with Foley & Lardner LLP, Milwaukee. He received his undergraduate degree in accounting from the University of Wisconsin–Madison and his law degree, cum laude, from the University of Wisconsin Law School. Mr. Voigtman is also a certified public accountant.



Theresa A. Nickels is senior counsel with Foley & Lardner LLP, where she is a member of the insurance and reinsurance litigation, business litigation and dispute resolution, and distribution and franchise practices and the insurance and reinsurance industry team. She is also a former member of the firm's National Associates Committee and Recruiting Committee.

This chapter covers in varying detail the principal 2013 court decisions, legislative changes, and administrative developments affecting Wisconsin taxpayers and tax attorneys. Although most 2013 income tax, franchise tax, estate tax, sales and use tax, and property tax developments are discussed, this chapter is not all-inclusive.¹

CASE LAW

Corporate Franchise and Income Tax

Manufacturing Sales Tax Credit. In a joint franchise tax and sales and use tax case, the tax appeals commission held that the taxpayer could offset the assessment of sales and use tax on the purchase of natural gas used in manufacturing with a corresponding franchise tax credit generated by the imposition of the sales and use tax. *Primera Foods Corp. v. Wisconsin Dep't of Revenue*, Nos. 10-I-277, 10-S-278, 2013 WL 1395599 (Wis. Tax App. Comm'n Mar.14, 2013). On a sales and use tax audit, Primera admitted that it had not paid a use tax on the purchase of natural gas used in its manufacturing operation. Primera argued that the payment of the use tax entitled

¹ Textual references to the Wisconsin Statutes are indicated as “chapter xxx” or “section xxx.xx,” without the designation “of the Wisconsin Statutes.” Unless otherwise indicated, in the Statutory Developments section of this chapter, all references to the Wisconsin Statutes are to the 2011–12 Wisconsin Statutes, as affected by acts through 2013 Wisconsin Act 116.

it to a dollar-for-dollar offset on its franchise tax paid for the year pursuant to the Manufacturing Sales Tax Credits under section 71.28(3). The Department of Revenue (DOR) argued that the statute provides a franchise tax credit for any sales or use tax “paid” by the corporation in such taxable year on fuel and electricity consumed in the manufacture of tangible personal property. The Wisconsin Tax Appeals Commission held that the years-later assessment of the use tax can generate a franchise tax credit and that no net tax is due. The tax appeals commission later granted the DOR’s request for a rehearing of the matter, and, in early 2014, reversed its decision. *Primera Foods Corp. v. Wisconsin Dep’t of Revenue*, Nos. 10-I-277, 10-S-278, 2014 WL 1101319 (Wis. Tax App. Comm’n Mar. 7, 2014).

Sales and Use Tax

Substance over Form. The Dane County Circuit Court upheld the tax appeals commission’s assessment against Sullivan Brothers, applying the “substance and realities” test to the sale and installation of construction materials to a nonprofit customer via an affiliated entity. *Sullivan Bros. v. Wisconsin Dep’t of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-693 (Cir. Ct. Dane Cnty. Feb. 22, 2013), *aff’g* [2 Wis.] St. Tax Rep. (CCH) ¶ 401-600 (Tax App. Comm’n Aug. 14, 2012). The court did not provide a written analysis of its reasoning. In 2014, the Wisconsin Court of Appeals affirmed the circuit court. *Sullivan Bros. v. Wisconsin Dep’t of Revenue*, No. 2013AP818 (Wis. Ct. App. Jan. 30, 2014) (unpublished opinion citable for persuasive value per section 809.23(3)(b)).

Wisconsin law has long imposed sales and use tax on tangible personal property used by contractors in real property construction activity. See Wis. Stat. § 77.51(2). Nonprofit entities may avoid indirectly paying for this tax by separately purchasing the material. Here, the taxpayer, Sullivan Brothers, would purchase and install ceiling materials for its customers. For sales to nonprofit entities, Sullivan Brothers would first “sell” materials to Sullivan Supply, which would in turn sell the materials to the nonprofit, for later installation by Sullivan Brothers. Sullivan Brothers and Sullivan Supply are each owned by the same individuals and in the same proportions.

➤ *Comment.* The decision in *Sullivan Brothers* calls into question whether the decision could be used as grounds to attack captive transportation companies, sale-leaseback arrangements, or similar purchase-lease arrangements (in which a special-purpose entity purchases a taxable good and leases it to a related party).

Statute of Limitation. The tax appeals commission held that the statute of limitation bars the refund of erroneous sales and use tax payments previously remitted to the DOR. *Enviro Quip, LLC v. Wisconsin Dep’t of Revenue*, No. 11-S-354, 2013 WL 3185927 (Wis. Tax App. Comm’n June 10, 2013). Section 77.59(4)(a) provides a four-year statute of limitation for sales and use tax matters based off the due date of the applicable income or franchise tax return of the taxpayer or the due date of the income or franchise tax return if the taxpayer was required to file an income or franchise tax return. The taxpayer attempted in 2010 to claim refunds for sales and use taxes submitted to the DOR for the period starting in July 2000 through September 2010. The DOR paid the refund for the period not subject to the statute of limitation (January 2006 and thereafter) but denied a refund for the early periods. The taxpayer argued that the statute of limitation did not apply to “erroneous payments” for which the taxpayer had no sales or use tax liability. The tax appeals commission reasoned that the statute of limitation applies to all payments, whether erroneous or not.

Constitutionality of Responsible Person Statute. The court of appeals upheld the constitutionality of section 77.60(9), the so-called responsible person statute. That section imposes personal liability without a statute of limitation on those who intentionally fail to pay to the DOR sales tax collected from customers. The taxpayer argued that the lack of a statute of limitation violates the Equal Protection Clause because the legislature provided a limitation period for the general imposition of sales and use tax. The court reasoned the legislature had a rational basis to treat responsible persons differently. *Rashaed v. Wisconsin Dep’t of Revenue*, 2014 WI App 7, 352 Wis. 2d 527, 842 N.W.2d 487, *aff’g* [2 Wis.] St. Tax Rep. (CCH) ¶ 401-645 (Cir. Ct. Dane Cnty. Nov. 14, 2012), *aff’g* [2 Wis.] St. Tax Rep. (CCH) ¶ 401-455 (Tax App. Comm’n July 13, 2011).

Equitable Estoppel Not Applicable. Both the Wisconsin Court of Appeals and the Dane County Circuit Court upheld the tax appeals commission’s determination that the doctrine of equitable estoppel did not bar the DOR from assessing tax for years starting in 2004 based on oral advice allegedly made to the taxpayer in the early 1990s. Each court determined the tax appeals commission had substantial evidence to support its findings about the level of advice previously given the taxpayer as to the applicability of sales to out-of-state customers taking delivery of

goods in Wisconsin. *King's Enters. of Wausau, Inc. v. Wisconsin Dep't of Revenue*, No. 2013AP516, 2013 WL 5658694 (Wis. Ct. App. Oct. 17, 2013) (unpublished opinion not citable per section 809.23(3)), *aff'g* [2 Wis.] St. Tax Rep. (CCH) ¶ 401-685 (Cir. Ct. Dane Cnty. Jan. 16, 2013), *aff'g* [2 Wis.] St. Tax Rep. (CCH) ¶ 401-579 (Tax App. Comm'n May 11, 2012).

Taxable Admissions. The Dane County Circuit Court upheld the tax appeals commission's determination that a co-promoter of concerts was responsible for the sales tax on the sale of concert admissions and merchandise. *Cellar Door N. Cent., Inc. v. Wisconsin Dep't of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-736 (Cir. Ct. Dane Cnty. Aug. 26, 2013), *aff'g* No. 08-S-067, 2013 WL 494364 (Wis. Tax App. Comm'n Jan. 22, 2013). Section 77.52(2)(a)2. imposes sales and use tax to the sale of admission to amusement, entertainment, or recreational events. Cellar Door and a theater entered into a co-promotion agreement pursuant to which Cellar Door received a fixed dollar fee, plus one-half the net revenue. The actual ticket revenue was paid from Ticketmaster to Cellar Door, which then presumably paid to the other co-promoter its share. No party submitted sales tax on the ticket sales. Cellar Door argued that its payment was for nontaxable "concert promotion services." The tax appeals commission held that part of the services provided was the sale of tickets, and because Cellar Door was part of the sales process, it could be liable for the unpaid taxes on those sales pursuant to section 77.59(9m). The circuit court found the tax appeals commission's determination supported by substantial evidence.

Manufacturing Sales Tax Credit. For a summary of a recent joint franchise tax and sales and use tax case, see the discussion of *Primera Foods Corp.* in the Corporate Franchise and Income Tax segment of this chapter's Case Law section, *supra*.

Property Tax

Presumption of Correctness; Failure to Consider Income Methodology. In *Zaug Enterprises, Ltd. Partnership v. Village of Sister Bay*, No. 2012AP1656, 2013 WL 599582 (Wis. Ct. App. Feb. 19, 2013) (unpublished opinion citable for persuasive value per section 809.23(3)(b)), the court of appeals reversed the assessment of a hotel. Although the *Wisconsin Property Assessment Manual* requires assessors to "consider" all three valuation approaches—sales comparison, income, and cost—and states that the income approach may be the most reliable for income-producing properties, the assessor relied on only the sales comparison approach and the cost approach and did not consider the income approach based on his personal view that taxpayers do not provide reliable income and expense data. The court of appeals held that the assessor's failure to comply with the *Manual* meant the presumption of correctness of the assessment did not apply. Because the circuit court had rejected the taxpayer's appraisal as unreliable, the court remanded the case to the circuit court for a reassessment under section 74.39.

Presumption of Correctness; Failure to Call Assessor as Witness. In *Kohl's Department Stores, Inc. v. City of Neenah*, No. 2012AP768, 2013 WL 950551 (Wis. Ct. App. Mar. 13, 2013) (unpublished opinion not citable per section 809.23(3)), the court of appeals rejected the taxpayer's argument that the presumption of correctness of the assessment did not apply because the city did not call its assessor to testify at trial, instead relying on a different expert's opinion that the market value was higher than the assessment. The court held the city was not obligated to call its assessor to testify, and in any event his assessment was in the board of review record, which was introduced into evidence without objection. Because the circuit court found the taxpayer's appraisal to be unreliable, the taxpayer failed to overcome the presumption of correctness, and the assessment was upheld.

Presumption of Correctness; Failure to Use Proper Methodology. In *Walgreen Co. v. City of Oshkosh*, No. 10-CV-1391 (Wis. Cir. Ct. Winnebago Cnty. Oct. 7, 2013), *appeal filed*, No. 2013AP2818 (Wis. Ct. App. Dec. 13, 2013), Walgreens challenged the assessments of two of its stores located in the city of Oshkosh. The circuit court found that the assessments (and court-ordered reassessments) should not be given the presumption of correctness because the assessments did not adhere to the principles of the *Wisconsin Property Assessment Manual*. In determining the proper assessments of the property, the court found that the sales comparison approach was the least reliable approach and determined the value of the property using the cost and income approaches. The decision is currently being appealed by the city of Oshkosh.

Mailing Does Not Satisfy "Filing" Requirement. In *Unlimited Services of Wisconsin, Inc. v. Wisconsin Dep't of Revenue*, No. 12-M-067, 2013 WL 215948 (Wis. Tax App. Comm'n Jan. 4, 2013), the tax appeals commission dismissed an objection to a manufacturing assessment as untimely. The taxpayer claimed to have mailed the

objection on the due date. The commission held that, in the absence of a contrary statutory definition, a “filing” deadline requires that the appropriate clerk physically receive the document by that deadline.

Failure by Expert to Appraise Condominium Properties as Separate Tax Parcels. In *Varin/Regal, LLC v. City of Kenosha*, Nos. 2012AP436, 2012AP437, 2013 WL 1629310 (Wis. Ct. App. Apr. 17, 2013) (unpublished opinion not citable per section 809.23(3)), the court of appeals affirmed the dismissal of a taxpayer’s excessive-assessment claim. The taxpayer challenged the assessments of 127 condominium units purchased at a foreclosure action. Under the Wisconsin condominium statute, condominiums are each assigned their own tax parcel numbers and must be separately assessed and taxed. Wis. Stat. § 703.21. In the circuit court proceedings, the taxpayer presented expert appraisal evidence that valued the condominiums on an aggregate basis. The court dismissed the case on the basis that the taxpayer had failed to provide any evidence of the assessed value for any of the 127 individual parcels. The circuit court held that, although appraising the property as a whole was acceptable, the taxpayer needed to take the “next step” of properly apportioning the appraisal among the separate property units. The court of appeals affirmed.

Presumption of Correctness; Issue Preclusion. In *Lands’ End, Inc. v. City of Dodgeville*, No. 2010AP1185, 2013 WL 4836701 (Wis. Ct. App. Sept. 12, 2013) (unpublished opinion citable for persuasive value per section 809.23(3)(b)), the court of appeals reversed the circuit court’s decision that Lands’ End had failed to rebut the presumption of correctness of its assessments. In previous litigation, Lands’ End challenged the city of Dodgeville’s 2006 assessment of the same parcels at issue in this case. In the challenge to the 2006 assessment, the circuit court, in a decision rendered in 2009, concluded that Lands’ End had rebutted the presumption of correctness and adopted Lands’ End’s asserted valuation of the property of \$25 million. In 2008, the city had assessed the Lands’ End property in an amount exceeding \$56 million. After the circuit court’s decision on the 2006 assessment, Lands’ End challenged the 2008 assessment and moved for summary judgment, arguing that the property must be valued at the reduced 2006 level because it was undisputed the property had not materially increased in value between 2006 and 2008. The circuit court denied the motion and held that issue preclusion did not apply because Lands’ End relied on new evidence not considered in the prior action.

The court of appeals reversed. The court of appeals held that the fact that Lands’ End presented new and different evidence at the board of review hearings in 2008 did not preclude it from arguing issue preclusion. At the time of the board of review proceedings on the 2008 assessment, the court had not yet rendered its decision on the 2006 case, so Lands’ End did not know whether it would prevail. When it did prevail, it immediately shifted course and argued issue preclusion based on the 2006 decision. The court of appeals concluded that the assessor’s testimony at the 2008 board of review hearing that the property’s value did not materially increase since 2006 entitled Lands’ End to summary judgment in the 2008 case.

Presumption of Correctness; Manufacturer’s Personal and Real Property Assessments. In *Ashley Furniture Industries, Inc. v. Wisconsin Department of Revenue*, Nos. 09-M-210 to 09-M-227 and 11-M-075 to 11-M-092, 2013 WL 5410704 (Wis. Tax App. Comm’n Sept. 13, 2013), the tax appeals commission affirmed assessments on a manufacturer’s personal and real property on the ground that the taxpayer failed to rebut the presumption of correctness of the assessments. With respect to personal property, the taxpayer relied on its expert’s use of an alternative assessment calculation to that used by the DOR. The taxpayer failed to make any showing that the DOR’s application of its method was faulty or inaccurate and thus failed to rebut the presumption of correctness. In addition, the taxpayer’s expert was unfamiliar with the *Wisconsin Property Assessment Manual*, which the tax appeals commission noted weakened the impact of his testimony. As to the real property assessments, the taxpayer failed to introduce separate values for each of its 17 individual parcels. Instead, the taxpayer presented its own appraisal of the properties in the aggregate, which the commission found was insufficient to refute the actual assessments. In accordance with the *Wisconsin Property Assessment Manual*, the 17 parcels must be assessed individually. Accordingly, the taxpayer’s aggregate valuation evidence did not refute the city’s assessments at issue.

Presumption of Correctness; Manufacturer’s Real Property Assessments. In *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, 351 Wis. 2d 439, 839 N.W.2d 893, the court considered an appeal by Bonstores, the owner of the Mayfair Mall Boston Store located in Wauwatosa, Wisconsin, related to its 2009 and 2010 property tax assessments. For tax year 2009, the city assessed the property at more than \$25 million. Bonstores appealed to the board of review, contending that the property’s fair market value was only \$11 million. The board upheld the city’s assessment, and Bonstores brought a section 74.37 action in the Milwaukee County Circuit Court, arguing that the

2009 and 2010 tax assessments were excessive. The circuit court found that Bonstores failed to overcome the statutory presumption of correctness and that the city had justly and equitably assessed the subject property. Bonstores appealed, contending that the circuit court erred by concluding that Bonstores failed to overcome the presumption and that the circuit court erroneously relied on “other evidence” regarding the property’s valuation.

Before addressing the merits of Bonstores’ appeal, the court of appeals clarified the presumption of correctness it must apply to a municipal assessor’s determination of value. Pursuant to section 70.49(1), a municipal assessor must attach a particular affidavit to the completed assessment roll after the assessor completes the conclusions of assessed values. Thereafter, each assessment is “presumptive evidence that all such properties have been justly and equitably assessed.” Wis. Stat. § 70.49(2). Under section 903.01, once the presumed fact (the assessed value) is established, the burden shifts to the opponent to produce evidence establishing that it is more probable than not that the assessed value is incorrect. The presumption that the city’s assessed value is correct does not disappear simply because contrary evidence exists. If the challenger cannot overcome the presumption in favor of the assessor’s valuation, the inquiry ends, and the court must sustain the assessed valuation.

The court of appeals affirmed the circuit court, holding that Bonstores failed to overcome the presumption of correctness and that the city’s appraisal was just and equitable and represented the market value of the property. Specifically, the court of appeals noted that the circuit court was critical of Bonstores’ expert’s reliance on retail sales of department store goods as a significant factor in determining the value of the real estate, as opposed to other considerations such as location, store size, management capacity, etc. The circuit court had explained that when inquiring into the income-producing capacity of the land, income that is attributable to the land—rather than personal to the owner—is inextricably intertwined with the land and should be included in the land’s assessment. In addition, the court of appeals determined that the price paid for the property in 2006 on the real estate transfer form recorded with the register of deeds, as well as on an appraisal completed at the same time to obtain financing, was relevant for the circuit court to consider in evaluating both whether Bonstores’ expert witness’s opinions were credible and whether Bonstores had produced sufficient evidence to establish that the city’s appraisal of the property was incorrect.

Preclusive Effect of Stipulation. In *Bonstores Realty One, LLC v. City of Wauwatosa*, No. 2013AP736, 2013 WL 5788577 (Wis. Ct. App. Oct. 29, 2013) (unpublished opinion citable for persuasive value per section 809.23(3)(b)), the court of appeals considered the effect of a stipulation the taxpayer entered and whether the stipulation cut off the taxpayer’s ability to challenge its 2011 assessments. The appeal stemmed from similar facts as discussed in *Bonstores Realty One, LLC v. City of Wauwatosa*, 2013 WI App 131, 351 Wis. 2d 439, 839 N.W.2d 893, but in this case the issue was whether the 2011 assessment was determined by the outcome of the trial on the 2009 and 2010 assessments. In connection with the appeal of the 2009 and 2010 assessments, the parties entered a stipulation that noted in relevant part that the assessed valuation for the property for the year 2011 “is the same as the assessed valuation for the years 2010 and 2009,” *Bonstores*, 2013 WL 5788577, ¶ 2, and that Bonstores did not have any additional evidence regarding valuation of the property for 2011.

After the court of appeals affirmed the city’s 2009 and 2010 assessments, Bonstores argued that the stipulation only waived the board of review procedure and a certiorari review of the 2011 assessment, but did not waive a section 74.37 circuit court appeal. The court of appeals disagreed for the following reasons. First, the language of the stipulation could have expressly said that Bonstores was retaining its ability for a section 74.37 circuit court appeal, but it did not. Second, the stipulation referred to section 74.37 twice. Bonstores argued that the references were only in the background information section and therefore were not contractually meaningful, but the court disagreed, noting that it was obliged to consider all provisions of the agreement to avoid an interpretation that renders a portion of the contract meaningless. Further, a circuit court section 74.37 challenge presumes the assessment is correct unless the party challenging the assessment presents significant contrary evidence. Bonstores admitted in the stipulation that it did not have *any* evidence to add to what the assessor considered in making the 2009 and 2010 assessments. Finally, the court rejected Bonstores’ arguments that an oral stipulation at the beginning of the trial on the 2009 assessment superseded the 2011 written stipulation and that equitable estoppel or waiver applied.

Frivolous Objections and Appeal. In *Griswold v. Town of Cross Plains*, Nos. 2012AP26, 2012AP1380, 2013 WL 6008905 (Wis. Ct. App. Nov. 14, 2013) (unpublished opinion not citable per section 809.23(3)), the petitioner filed a complaint challenging the 2010 tax assessment for a parcel of property in the town of Cross Plains. The petitioner had previously challenged the 2008 and 2009 tax assessments for the same parcel of property, both of which were

dismissed on the basis that the taxpayer lacked standing because he did not have an ownership interest in the property. The circuit court similarly dismissed the 2010 tax assessment for the same reason and additionally imposed a sanction that the petitioner was barred from initiating any further legal action against the town of Cross Plains, its board of review, or its counsel concerning any past asserted interest the petitioner had in the property. The court of appeals affirmed the sanction limiting future filings by the petitioner and awarded the town its costs and attorney fees associated with its work on the frivolous appeal.

Scope of Manufacturing Exemption. In *Selkey, LLC v. Wisconsin Department of Revenue*, Nos. 11-M-332, 12-M-175 to 12-M-179, 12-M-219, 13-M-31 to 13-M-35, 2013 WL 6926823 (Wis. Tax App. Comm'n Dec. 5, 2013), the tax appeals commission considered cross-motions for partial summary judgment addressing the standard for the commission to use in determining whether the petitioner's cheesemaking process qualified for a manufacturing exemption under section 77.54(6)(a). The parties disputed the standard the commission should apply in determining whether the petitioner's machines and processing equipment qualified for exemption. Both parties acknowledged that cheese aging is part of the manufacturing process but disagreed regarding how to determine when aging ends and storage begins. The DOR asserted a standard based on the federal labeling regulations, which indicate that each type of cheese must be aged at least a minimum amount of time to qualify to be labeled as a particular type. Once the product has aged that minimum amount of time, the DOR argued, the aging process for the purpose of classification ends, and storage begins. The petitioner argued the standard should be based on the totality of the facts regarding petitioner's activities, including the conditions under which the cheese is kept and the degree of direction and control exercised by the cheese owner in determining when the aging process is complete and the cheese is ready for resale.

The tax appeals commission sided with the petitioner, adopting a standard that evaluates a petitioner's activities over the time the petitioner possesses the cheese to determine whether the cheese is being aged or stored.

Appeal Procedures; Statute of Limitation. In *Riley v. Town of Nasewaupée*, No. 2012AP1509, 2013 WL 791391 (Wis. Ct. App. Mar. 5, 2013) (unpublished opinion not citable per section 809.23(3)), the court of appeals held that the taxpayers' refund claim was barred by the statute of limitation. The property at issue consisted of 42 acres of shoreline property, a substantial portion of which was in wetlands. In 1994, wetlands were mistakenly eliminated from the zoning maps, resulting in an increase in the assessed value of the property. In August 2010, the zoning administrator informed the taxpayers of the error and in September 2010, the town mailed a preliminary notice indicating that the 2010 assessed value of \$841,900 would be reduced for 2011, resulting in a new assessment of \$498,500. The taxpayers waited until November 2011 to file a refund claim for the taxes overpaid for years 1994–2010. The court held that the refund claim relating to the 2010 tax year should have been filed by January 31, 2011, and, as a result, held the taxpayer could not recover the taxes that were overpaid in 2010 (or in earlier years).

STATUTORY DEVELOPMENTS

Individual and Fiduciary Income Tax

Internal Revenue Code References Updated for 2013. Certain provisions of federal laws enacted in prior years that affect the definition of the Internal Revenue Code are adopted for Wisconsin income tax purposes. For taxable years beginning on or after January 1, 2013, among other provisions of federal law, the following apply for Wisconsin tax purposes:

1. The Installment Tax Correction Act of 2000, Pub. L. No. 106-573, 114 Stat. 3061, relating to restoring the installment method of accounting for accrual basis taxpayers;
2. Section 9004 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), relating to the increased tax on distributions from health savings accounts and medical savings accounts not used for qualified medical expenses;
3. Section 9005 of Pub. L. No. 111-148, relating to the \$2,500 limitation for salary reduction for a health flexible spending arrangement;
4. Section 9013 of Pub. L. No. 111-148, relating to increasing the threshold for the itemized medical expense deduction from 7.5% to 10% of the adjusted gross income;

5. Section 1403 of the Health Care and Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, relating to the delay in the limitation on health flexible spending accounts until 2013; and
6. Section 902 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2013), relating to the treatment of the rollover of a retirement plan distribution to a designated Roth retirement account.

2013 Wis. Act 20, §§ 1288–1296 (repealing Wis. Stat. § 71.01(6)(o), renumbering Wis. Stat. § 71.01(6)(p) as Wis. Stat. § 71.01(6)(a), Wis. Stat. § 71.01(6)(q) as Wis. Stat. § 71.01(6)(b), Wis. Stat. § 71.01(6)(r) as Wis. Stat. § 71.01(6)(c), Wis. Stat. § 71.01(6)(s) as Wis. Stat. § 71.01(6)(d), Wis. Stat. § 71.01(6)(t) as Wis. Stat. § 71.01(6)(e), Wis. Stat. § 71.01(6)(u) as 71.01(6)(f), and Wis. Stat. § 71.01(6)(um) as Wis. Stat. § 71.01(6)(g), and creating Wis. Stat. § 71.01(6)(i) (effective for taxable years beginning on or after January 1, 2013).

Medical Care Insurance Subtraction Revised. Effective for taxable years beginning on or after January 1, 2014, for purposes of computing the deduction for medical care insurance, the amount paid by the individual for medical care insurance must be reduced by any premium assistance credit under I.R.C. § 36B. 2013 Wis. Act 20, §§ 1229, 1302–1304 (amending Wis. Stat. § 71.05(6)(b)19.a., 35.a., 38.a., 42.a.).

Income Tax Rates Reduced. Effective for taxable years beginning on or after January 1, 2013, the Wisconsin individual income tax rates are reduced as follows:

1. Prior rate of 4.6%—reduced to 4.4%;
2. Prior rate of 6.15%—reduced to 5.84%;
3. Prior rate of 6.5%—reduced to 6.27%;
4. Prior rate of 6.75%—reduced to 6.27%; and
5. Prior rate of 7.75%—reduced to 7.65%.

These rates also apply to fiduciaries. An electing small business trust is taxed at the highest rate of 7.65%. 2013 Wis. Act 20, §§ 1321–1331, 1350–1352, 1438–1440 (amending Wis. Stat. §§ 71.06(1p)(intro.), (2)(g)(intro.), (h)(intro.), (2e)(a), (b), (2m), (2s)(d), 71.125(1), (2), 71.17(6), 71.64(9)(b)(intro.), 71.67(5)(a), (5m), and creating Wis. Stat. § 71.06(1q), (2)(i), (j), (2e)(c)).

Corporate Franchise and Income Tax

Definition of Internal Revenue Code. The definition of *Internal Revenue Code* has been updated and now generally means the Internal Revenue Code as amended to December 31, 2010 (effective for tax years beginning after December 31, 2012). 2013 Wis. Act 20, § 1353 (creating Wis. Stat. § 71.22(4)(i)). Thus, federal laws enacted after December 31, 2010, generally do not apply. In addition, the list of federal Internal Revenue Code provisions not adopted by Wisconsin continues to grow. Similar definitional and application rules apply for taxation of nonprofit corporations, *see* 2013 Wis. Act 20, § 1363 (creating Wis. Stat. § 71.22(4m)(i)); S (tax-option) corporations, *id.* § 1399 (creating Wis. Stat. § 71.34(1g)(i)); insurance companies, *id.* § 1409 (creating Wis. Stat. § 71.42(2)(i)); and regulated investment companies (RICs), real estate investment trusts (REITs), real estate mortgage investment conduits (REMICs), and financial asset securitization investment trusts (FASITs), *id.* § 1374 (creating Wis. Stat. § 71.26(2)(b)9.).

The definitions of the Internal Revenue Code for tax years beginning in 2010, 2011, and 2012 were retroactively amended for certain changes made to the Internal Revenue Code. 2013 Wis. Act 20, § 1362 (amending and renumbering Wis. Stat. § 71.22(4)(un) as Wis. Stat. § 71.22(4)(h)). Similar rules apply to nonprofit corporations, *id.* § 1372 (amending and renumbering Wis. Stat. § 71.22(4m)(sn) as Wis. Stat. § 71.22(4m)(h)); S (tax-option) corporations, *id.* § 1408 (amending and renumbering Wis. Stat. § 71.34(1g)(un) as Wis. Stat. § 71.34(1g)(h)); insurance companies, *id.* § 1418 (amending and renumbering Wis. Stat. § 71.42(2)(tn) as Wis. Stat. § 71.42(2)(h)); and RICs, REITs, REMICs, and FASITs, *id.* § 1383 (amending and renumbering Wis. Stat. § 71.26(2)(b)23. as Wis. Stat. § 71.26(2)(b)8.).

Wisconsin and Federal Depreciation, Amortization, and Cost Recovery. Wisconsin law attempts to “federalize” depreciation, amortization, and cost recovery. First, effective for tax years beginning on or after January 1, 2014, the definition of the Internal Revenue Code for Wisconsin purposes was updated so that depreciation, depletion, and amortization are computed based on the Internal Revenue Code in effect on January 1, 2014. 2013 Wis. Act 20,

§§ 1383b, 1383d (amending Wis. Stat. § 71.26(3)(q), amending and renumbering Wis. Stat. § 71.26(3)(y)1. as Wis. Stat. § 71.26(3)(y)); *id.* § 1453d (creating Wis. Stat. § 71.98(3)). Second, also effective for tax years beginning on or after January 1, 2014, Wisconsin adopted the Internal Revenue Code prospectively for purposes of I.R.C. § 179 expensing. *Id.* § 1453dm (creating Wis. Stat. § 71.98(4)). Lastly, Wisconsin-federal tax basis differences (with certain limitations) will now be “caught up” over five years (20% per year), starting with the first tax year beginning after December 31, 2013. *Id.* § 1383f (creating Wis. Stat. § 71.26(3)(ym)). These rules also apply to S (tax-option) corporations, *id.* § 1408b (amending Wis. Stat. § 71.34(1k)(intro.)); *id.* § 1408c (creating Wis. Stat. § 71.34(1k)(n)); *id.* § 1408f (amending and renumbering Wis. Stat. § 71.365(1m)(a) as Wis. Stat. § 71.365(1m)), and insurance companies, *id.* §§ 1419d, 1419e (amending Wis. Stat. § 71.45(2)(a)7., 13.); *id.* § 1419f (creating Wis. Stat. § 71.45(2)(a)19.).

Exemptions. Interest income from bonds or notes issued under section 231.03(6) by the Wisconsin Health and Educational Facilities Authority is exempt from Wisconsin income tax but is not exempt from the franchise tax if the bonds or notes are issued for the benefit of a person who is eligible to receive proceeds from another entity for the same purpose if the interest income received from such bonds or notes is tax-exempt. 2013 Wis. Act 20, §§ 1373, 1419 (creating Wis. Stat. §§ 71.26(1m)(L), 71.45(1t)(L)) (eff. Jan 1, 2013).

Credits—Sunset Provisions. Many credits will now sunset.

For tax years beginning on or after January 1, 2013, the veteran employment credit will sunset.

For tax years beginning on or after January 1, 2014, the following credits will sunset:

1. Dairy manufacturing facility investment credit;
2. Meat processing facility investment credit;
3. Food processing plant and warehouse investment credit;
4. Film production services credit;
5. Film production company investment credit;
6. Beginning farmer and farm asset owner credit;
7. Biodiesel fuel production credit;
8. Dairy and livestock farm investment credit;
9. Internet equipment credit;
10. Health insurance risk-sharing plan assessments credit;
11. Electronic medical records credit;
12. Ethanol and biodiesel fuel pump credit;
13. Postsecondary education credit;
14. Water consumption credit;
15. Relocated business credit;
16. Super research and development credit; and
17. Research facilities credit.

Finally, for tax years beginning on or after January 1, 2015, the woody biomass harvesting and processing credit will sunset.

See 2013 Wis. Act 20, §§ 1383j, 1390b–1390u, 1395b–1398f, 1398g–1398L, 1419h, 1426b–1426u, 1431b–1434f, 1434g–1434L (renumbering Wis. Stat. §§ 71.28(3h)(d) as Wis. Stat. § 71.28(3h)(d)1., Wis. Stat. § 71.28(5e)(d) as 71.28(5e)(d)1., Wis. Stat. § 71.28(5g)(d) as 71.28(5g)(d)1., Wis. Stat. § 71.28(5j)(d) as Wis. Stat. § 71.28(5j)(d)1., Wis. Stat. § 71.28(5r)(d) as Wis. Stat. § 71.28(5r)(d)1., Wis. Stat. § 71.28(5rm)(d) as Wis. Stat. § 71.28(5rm)(d)1., Wis. Stat. § 71.28(6n)(d) as Wis. Stat. § 71.28(6n)(d)1., Wis. Stat. § 71.28(8r)(d) as Wis. Stat. § 71.28(8r)(d)1., Wis. Stat. § 71.47(3h)(d) as Wis. Stat. § 71.47(3h)(d)1., Wis. Stat. § 71.47(5e)(d) as Wis. Stat. § 71.47(5e)(d)1., Wis. Stat. § 71.47(5g)(d) as Wis. Stat. § 71.47(5g)(d)1., Wis. Stat. § 71.47(5j)(d) as Wis. Stat. § 71.47(5j)(d)1., Wis. Stat. § 71.47(5r)(d) as Wis. Stat. § 71.47(5r)(d)1., Wis. Stat. § 71.47(5rm)(d) as Wis. Stat. § 71.47(5rm)(d)1., Wis. Stat. § 71.47(6n)(d) as Wis. Stat. § 71.47(6n)(d)1., and Wis. Stat. § 71.47(8r)(d) as Wis. Stat. § 71.47(8r)(d)1., amending Wis. Stat. § 71.28(3h)(b), (3n)(a)2.(intro.), 5.(intro.), 6.b., (b)1., 2., (3p)(a)3.(intro.), (b), (c)5., (3r)(a)3.(intro.), (b), (3rm)(b), (3rm)(a)4.(intro.), (b), (5)(ad)1., 2., 3., (5g)(a), (b), (c)1., (5i)(b), (5j)(b), (5rm)(b)(intro.), (9s)(b), 71.47(3h)(b), (3n)(a)2.(intro.), 5.(intro.), 6.b., (b)1., 2., (3p)(a)3.(intro.), (b), (c)5., (3r)(a)3.(intro.), (b), (3rm)(b),

(3rn)(a)4.(intro.), (b), (5)(ad)1., 2., 3., (5g)(a), (b), (c)1., (5i)(b), (5j)(b), (5rm)(b)(intro.), (9s)(b), and creating Wis. Stat. § 71.28(1)(d), (3h)(d)2., (3n)(g), (3p)(d)4., (3r)(d)3., (3rm)(d)3., (3rn)(d)3., (4m)(d)3., (5)(c), (5e)(d)2., (5f)(d)3., (5g)(d)2., (5h)(d)3., (5j)(d)2., (5r)(d)2., (5rm)(d)2., (6n)(d)2., (8r)(d)2., (9s)(d)3, 71.47(1)(d), (3h)(d)2., (3n)(g), (3p)(d)4., (3r)(d)3., (3rm)(d)3., (3rn)(d)3., (4m)(d)3., (5)(c), (5e)(d)2., (5f)(d)3., (5g)(d)2., (5h)(d)3., (5j)(d)2., (5r)(d)2., (5rm)(d)2., (6n)(d)2., (8r)(d)2., (9s)(d)3.).

Manufacturing and Agriculture Credit. For purposes of determining the agriculture property factor, 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, less any annual rental received by the claimant from sub-rentals, multiplied by 8. The average value of property is determined by averaging the values at the beginning and ending of the taxable year, except that the DOR may require the averaging of monthly values during the taxable year, if such averaging is reasonably required to properly reflect the average value of the claimant's property. 2013 Wis. Act 54, §§ 9, 10, 11 (renumbering Wis. Stat. § 71.28(5n)(a)1. as Wis. Stat. § 71.28(5n)(a)1.a., and creating Wis. Stat. § 71.28(5n)(a)1.b., c.) (effective for taxable years beginning on or after January 1, 2013).

Historic Rehabilitation Credit. The amount of the supplement to federal historic rehabilitation credit is increased from 5% to 10% of the costs of qualified rehabilitation expenditures for tax years beginning after December 31, 2012. 2013 Wis. Act 20, §§ 1398fh, 1434fg, 1398fm, 1398fs, 1434fm, 1434fs (amending and renumbering Wis. Stat. § 71.28(6)(a) as Wis. Stat. §§ 71.28(6)(a)(intro.), and Wis. Stat. § 71.47(6)(a) as Wis. Stat. § 71.47(6)(a)(intro.), and creating Wis. Stat. §§ 71.28(6)(a)1., 2., 71.47(6)(a)1., 2.).

Effective for taxable years beginning on or after January 1, 2014, the credit is increased to 20% if the cost of the person's qualified rehabilitation expenditures is at least \$50,000 and the rehabilitated property is placed in service after December 31, 2013, and, if the property is a qualified rehabilitated building, regardless of whether the rehabilitated property is used for multiple or revenue-producing purposes. 2013 Wis. Act 62, §§ 11, 19 (amending and renumbering Wis. Stat. § 71.28(6)(a)(intro.) as Wis. Stat. § 71.28(6)(a)1m. and amending and renumbering Wis. Stat. § 71.47(6)(a)(intro.) as Wis. Stat. § 71.47(6)(a)1m.); *id.* §§ 13, 21 (creating Wis. Stat. §§ 71.28(6)(a)2m., 71.47(6)(a)2m.); *id.* §§ 12, 20 (repealing Wis. Stat. §§ 71.28(6)(a) 1., 2., 71.47(6)(a) 1., 2.).

However, no credit may be claimed for rehabilitated property listed as a contributing building in the State Register of Historic Places or the National Register of Historic Places or for nonhistoric, nonresidential property converted into housing if the property has been previously used for housing. 2013 Wis. Act 62, §§ 14, 22 (creating Wis. Stat. §§ 71.28(6)(a), 3., 71.47(6)(a), 3.). In addition, the credit must first be certified by the Wisconsin Economic Development Corporation (WEDC), and the taxpayer must include a copy of the certification with the taxpayer's return. *Id.* §§ 15, 23, 26m (amending and renumbering Wis. Stat. § 71.28(6)(c) as Wis. Stat. § 71.28(6)(c)(intro.) and Wis. Stat. § 71.41(6)(c) as Wis. Stat. § 71.47(6)(c)(intro.), and creating Wis. Stat. § 238.17); *id.* §§ 16, 24 (creating Wis. Stat. §§ 71.28(6)(c)2., 71.47(6)(c)2.).

WEDC must provide to the DOR no later than January 15 of each year the name, address, and tax identification number of each person certified to claim the credit and the amount of credit certified. WEDC must also notify the DOR of any revoked certification no later than two months after the revocation date. *Id.* § 26m (creating Wis. Stat. § 238.17).

Any person, including a nonprofit entity described in I.R.C. § 501(c)(3), may sell or otherwise transfer the credit, in whole or in part, to another taxpayer, if the person notifies the DOR of the transfer and submits a copy of the transfer documents, and if the DOR certifies the transfer. If the DOR adjusts or disallows a credit that has been transferred, the person who originally transferred the credit is liable to repay the adjusted or disallowed amount. *Id.* §§ 17, 25 (amending Wis. Stat. §§ 71.28(6)(g)2., 71.47(6)(g)2.); *id.* §§ 18, 26 (creating Wis. Stat. §§ 71.28(6)(h), 71.47(6)(h)).

WEDC must submit a report indicating the total number and amount of the credits it certified, and the DOR must submit a report describing the economic impact of the credit to the Joint Committee on Finance. If the DOR determines that the cost of the credit to the state is greater than the investments made to claim the credit, the DOR "shall recommend" that the credit be discontinued for taxable years beginning after December 31, 2017. Any recommendation may be implemented only upon approval of the committee. *Id.* § 27 (nonstatutory provision).

Development Zones Credit. The definition of a *full-time job* for purposes of the development zones credit was revised to refer to the definition as it relates to WEDC. In addition, the definition of a *member of a targeted group* now includes people who are employed in a trial job or in a trial employment match program. The revisions to both definitions are effective for tax years that begin on or after January 1, 2013. 2013 Wis. Act 20, §§ 1385–1390, 1421–1426 (amending Wis. Stat. §§ 71.28(1dx)(a)4., 5., (b)2., 3., 4., 5., 71.47(1dx)(a)4., 5., (b)2., 3, 4, 5).

Enterprise Zone Jobs Credit. Changes were made to how the enterprise zone jobs credit is calculated for tax years beginning on or after January 1, 2013. 2013 Wis. Act 20, §§ 1391–1395, 1427–1431 (amending Wis. Stat. §§ 71.28(3w)(b)1.a., 1.b., 2., 3. (bm)2., 71.47(3w)(b)1.a., 1.b., 2., 3., (bm)2.).

Research Credit and Research Facilities Credit. The research credit and the research facilities credit are now available to individuals and owners of partnerships, limited liability companies, and S (tax-option) corporations, effective for tax years beginning on or after January 1, 2013. 2013 Wis. Act 20, §§ 1352d, 1352e, 1395am, 1408bg, 1408h, 1431am (amending Wis. Stat. §§ 71.21(3), (4)(a), 71.28(4)(i), 71.34(1k)(g), 71.365(3), 71.47(4)(i)); *id.* §§ 1395ar, 1431as (creating Wis. Stat. §§ 71.28(4)(j), 71.47(4)(j)). (Note that the research facilities credit was repealed for tax years beginning on or after January 1, 2014.)

Health Insurance Risk-Sharing Plan Assessments Credit Extended. The health insurance risk-sharing plan assessments credit is extended for taxable years beginning on or after January 1, 2014, and before January 1, 2015. 2013 Wis. Act 116, §§ 10, 11, 12, 13, 14, 15 (amending Wis. Stat. §§ 71.28(5g)(b), (c)1., and (d)2. and 71.47(5g)(b), (c)1., and (d)2.) (effective for taxable years beginning on or after January 1, 2014, and before January 1, 2015). The 2014 credit percentage is equal to \$1,250,000 divided by the aggregate risk-sharing plan assessment (but cannot be higher than 100%).

Economic Development Surcharge. Effective for taxable years beginning on or after January 1, 2013, the economic development surcharge no longer applies to individuals, estates, trusts, partnerships, and limited liability companies taxed as partnerships. 2013 Wis. Act 20, §§ 1501d, 1501e, 1501f, 1501g, 1501h, 1501i, 1501k, 1501m, 1501r (repealing Wis. Stat. §§ 77.92(1), (4), (4m), and (5), 77.93(2), (3), (5), 77.94(1)(b), and 77.947); *id.* §§ 1501L, 1501n, 1501p, 1501q, 1501s (consolidating, amending, and renumbering Wis. Stat. §§ 77.94(1)(intro.), (a) as Wis. Stat. § 77.94(1), and amending Wis. Stat. §§ 77.94(2)(a)2., (b)(intro.), 1., 77.96(5)).

Reporting of Stock Transfers. Corporations no longer need to report stock transfers made by or to Wisconsin residents. 2013 Wis. Act 54, § 12 (repealing Wis. Stat. § 71.69) (eff. Nov. 9, 2013).

Estate Tax

The Wisconsin estate tax has been repealed, unless federal estate tax law is modified to provide a federal estate tax credit for state death taxes. 2013 Wis. Act 20, § 1453f (creating Wis. Stat. § 72.36) (effective for deaths occurring after December 31, 2012).

Sales and Use Tax

Decrease in Refund Rate and Reliance on Prior Audits. See the Procedure segment of this chapter's Statutory Developments section for a discussion related to a decrease in the interest rate applicable to overpayments and for a discussion related to a new limited right of reliance on prior audits.

Simplified Provisions for Exemption Certificates Received After Sales Tax Paid. A retailer that receives a properly completed exemption certificate after the tax has been paid to the DOR but before the end of the taxable year may claim a deduction for the amount of tax refunded for the period in which the exemption certificate is received. Prior law required the filing of an amended tax return. See 2013 Wis. Act 20, § 1499d (creating Wis. Stat. § 77.585(10)).

Lump-Sum Contracts. A new exemption is created for the storage, use, or consumption of tangible personal property sold by a contractor as part of a lump-sum contract if the total sales price of all such taxable items is less than 10% of the total lump-sum contract. The contractor is considered the consumer of such items and therefore must pay the associated sales or use tax imposed on the contractor's purchase of such items. An exception exempts the contractor to the extent the lump-sum contract is with a tax-exempt purchaser and the items are not used in real

property construction activities. 2013 Wis. Act 20, § 1479 (amending Wis. Stat. § 77.51(11d)); *id.* § 1497 (creating Wis. Stat. § 77.54(60)). These provisions apply to contracts entered into on or after October 1, 2013. *See* 2013 Wis. Act 20, § 9437(10).

Expansion of Qualified Research Exemption. The sales and use tax exemption for qualified research activities has been expanded. The modified exemption continues to cover only machinery and equipment used in research or items consumed in the research. However, eligibility has been expanded to any person (including flow-through entities) that either engages in manufacturing at a facility in Wisconsin assessed for property tax purposes as manufacturing or is engaged primarily in biotechnology in Wisconsin. For the purpose of applying this test, the activity of any member of a combined group may be considered, and activity funded by a member of a combined group may be considered. 2013 Wis. Act 20, §§ 1493, 1494 (repealing Wis. Stat. § 77.54(57)(b)1., 2.); *id.* §§ 1489–1491 (renumbering Wis. Stat. § 77.54(57)(a)1f. as Wis. Stat. § 77.51(1c), Wis. Stat. § 77.54(57)(a)1m. as Wis. Stat. § 77.51(1d), and Wis. Stat. § 77.54(57)(a)4. as Wis. Stat. § 77.51(10m)); *id.* § 1492d (amending Wis. Stat. § 77.54(57)(a)5.); *id.* § 1496 (creating Wis. Stat. § 77.54(57d)); *see also* Wis. Stat. § 71.255(1)(a) (defining *combined group*).

Expansion of Services Resulting in Advertising and Promotional Direct Mail. Services relating to producing, fabricating, processing, printing, or imprinting that result in advertising and promotional direct mail are not taxable. 2013 Wis. Act 20, § 1485 (amending Wis. Stat. § 77.52(2)(a)11.).

Increase in Premier Resort Area Tax. The premier resort area tax applies to the sale of certain goods and services in specified towns that have a density of tourist-related activities. The maximum rate of the tax in the city of Wisconsin Dells and the village of Lake Delton has been increased to a maximum rate of 1.25% from the previous rate of 1%. 2013 Wis. Act 20, § 1503g (renumbering Wis. Stat. § 77.994(3) as Wis. Stat. § 77.994(3)(a)); *id.* § 1503h (creating Wis. Stat. § 77.994(3)(b)).

Disregarded Entities. A single-owner entity that is disregarded for Wisconsin income and franchise tax is now also disregarded for purposes of the local exposition taxes and the state rental car fee. 2013 Wis. Act 20, § 1277 (amending Wis. Stat. § 66.0615(1m)(f)2.); *id.* § 1502 (amending Wis. Stat. § 77.982(2)); *id.* § 1503 (amending Wis. Stat. § 77.991(2)); *id.* § 1504 (amending Wis. Stat. § 77.9951(2)).

New Jurisdiction May Add Premier Resort Area Tax. The village of Stockholm may adopt a premier resort area tax of 0.5% if the village board follows the proper notice and approval process without otherwise qualifying for the tax based on the equalized value of tourist-related property in the village. 2013 Wis. Act 20, § 1277m (amending Wis. Stat. § 66.1113(2)(a)); *id.* § 1277me (creating Wis. Stat. § 66.1113(2)(i)); *id.* § 1277mc (amending Wis. Stat. § 66.1113(2)(b)).

Procedure

Decrease in Interest Paid on Refunds. The interest rate applicable to overpayments (refunds) has been reduced from 9% to 3%. The new rate is effective for refunds *paid* on or after July 2, 2013 without regard to the applicable tax period or when the refund claim was filed or approved. The new rate applies to the refund of income and franchise taxes as well as sales and use taxes. The rate applicable to nondelinquent underpayments (deficiencies) remains 12%. 2013 Wis. Act 20, § 1440e (amending Wis. Stat. § 71.82(1)(b)); *id.* § 1444d (amending Wis. Stat. § 71.90(1)); *id.* § 1500f (amending Wis. Stat. § 77.59(6)(c)), *id.* § 1500j (amending Wis. Stat. § 77.60(1)(a)); *id.* § 1508r (amending Wis. Stat. § 78.68(1)).

Reliance on Prior Audits. On January 1, 2014, a limited right of reliance on a prior audit became effective for taxes administered by the DOR. Taxpayers, including all members of a combined group, cannot be held liable for any tax for an issue related to a prior audit, and the DOR cannot take a position contrary to a prior audit, if all of the following conditions exist:

1. The issue in the current audit is the same as the issue in the prior audit.
2. A DOR employee in the prior audit identified or reviewed the tax issue before completion of the audit, as demonstrated by any schedules, exhibits, audit reports, documents, or other written evidence, and that written evidence shows that the DOR did not adjust the taxpayer's treatment of the issue.

3. The liability asserted by the DOR was not asserted in the prior audit determination.
4. The tax period did not begin after the promulgation of any rule, dissemination of written guidance to the public or to the person who is subject to the audit determination, the effective date of a relevant statute, or the date on which a relevant Wisconsin Tax Appeals Commission or court decision becomes final and conclusive and provides for the liability of the item at issue.

The provision will not apply to any period associated with an audit determination if the taxpayer did not give to the DOR employee adequate and accurate information regarding the tax issue or if the issue was settled in the prior audit determination by a written agreement between the DOR and the taxpayer. 2013 Wis. Act 20, §§ 1464, 1466 (repealing Wis. Stat. § 73.16(1)(a) and creating Wis. Stat. § 73.16(3)).

Appeals to Circuit Court. A taxpayer appealing a decision of the tax appeals commission may now appeal to either the circuit court for Dane County or the circuit court for the county where the taxpayer's commercial domicile is located, where the taxpayer owns other property, or where the taxpayer transacts business in Wisconsin. *Commercial domicile* means the location from which a trade or business is principally managed and directed, based on any factors the DOR determines are appropriate, including the location where the greatest number of employees of the trade or business work, have their office or base of operations, or from which the employees are directed or controlled. Prior law permitted appeal to only the Dane County Circuit Court. 2013 Wis. Act 20, § 1500b (amending Wis. Stat. § 77.59(6)(b)); *see also* Wis. Stat. § 71.01(1b) (defining *commercial domicile*).

Transfer Taxes

Low-Value Exemption. The exemption from real estate transfer fee for low-value property has been increased from \$100 to \$1,000. 2013 Wis. Act 66, § 1 (amending Wis. Stat. § 77.25(13)).

Property Tax

Venue for Review of State Assessments. Section 70.995 has been amended to expand the venue options for circuit court review of tax appeals commission determinations of state assessments. Previously, all petitions for review had to be filed in the circuit court for Dane County, where the state capitol is located. Now petitions also may be filed in the county where the taxpayer's commercial domicile is located, or where the taxpayer owns other property or conducts business. 2013 Wis. Act 20, § 1287j (eff. July 2, 2013).

Optional State Assessment of Commercial Property. Newly created section 70.855 gives commercial property taxpayers and municipalities the option of having commercial property assessed by the DOR, rather than by the municipality, if all of the following conditions are satisfied: (1) the taxpayer and the governing body of the municipality both request state assessment in writing by March 1 of the assessment year, (2) the request specifies the real and personal property to be state assessed, (3) the prior year's assessed value of the commercial property was at least \$24 million, (4) the prior year's assessed value constituted at least nine percent of the total assessed value in the municipality, and (5) the municipality is a fourth-class city (i.e., population under 10,000). When the DOR assesses commercial property, it may request from the taxpayer and the municipality any information it deems necessary for the valuation. If either party fails to provide the requested information, that party is precluded from appealing the DOR's valuation. Appeals are to the tax appeals commission (as opposed to the local board of review). The DOR must complete its valuation by June 1, and the local assessor must use the DOR's valuation on the assessment roll. The DOR charges the municipality for the cost of its valuation services; the municipality passes that charge on to the entire tax base. 2013 Wis. Act 20, § 1287d (creating Wis. Stat. § 70.855) (eff. July 2, 2013).

Expansion of Exemption for Energy Systems. The personal property tax exemption for solar and wind energy systems has been expanded to include biogas or synthetic gas energy systems. 2013 Wis. Act 20, § 1279 (amending Wis. Stat. § 70.111(18)) (eff. July 2, 2013).

Limitation of Exemption for Student Housing. Pursuant to amended section 70.11(3m)(a)(intro.) and newly created section 70.11(3m)(a)4., the exemption applicable to student housing facilities was amended to exclude applicability to "a housing facility owned or used by a university fraternity or sorority, college fraternity or sorority, or high school fraternity or sorority." In addition, a fourth requirement was added to qualify for the student housing facilities exemption, requiring that the facility was "in existence and meets the requirements of this subsection on

July 2, 2013, except that, if the facility is located in a municipally designated landmark, the facility is in existence and meets the requirements of this subsection on September 30, 2014.” See 2013 Wis. Act 20, §§ 1278h, 1278i.

Exemption for Property of a Resale Store Owned by a Nonprofit Organization. Newly created section 70.11(12)(c) creates a property tax exemption for property of a resale store that is owned by a nonprofit organization that qualifies for the income tax exemption under I.R.C. § 501(c)(3), if at least 50% of the revenue generated by the resale store is given to another nonprofit organization located either in the same county where the resale store is located or in a county adjacent to the county where the resale store is located. See 2013 Wis. Act 20, § 1278k.

Billboard Assessments. Sections 70.03 and 70.04 have been amended to clarify that permits and licenses required to place off-premises advertising signs at specific locations are included in personal property assessments, not real property assessments. 2013 Wis. Act 20, §§ 1278e, 1278g (creating Wis. Stat. §§ 70.03(2), 70.04(3)) (eff. July 2, 2013).

Exemption Repealed. The property tax exemption for the Health Insurance Risk-Sharing Plan contained in section 70.11(41m) is repealed as of January 1, 2015. See 2013 Wis. Act 20, § 1278r.

Tax Repealed. The grain storage tax contained in section 70.41 is repealed, starting with taxes due in 2014. See 2013 Wis. Act 20, §§ 1287b, 9337(3L).

Exemption Created for Property Owned by Jewish Community Centers of North America. Pursuant to an amendment to section 70.11(12)(a), a property tax exemption was created for property owned by the “Jewish Community Centers for North America, not exceeding 40 acres for property that is located outside the limit of any incorporated city or village and not exceeding 10 acres for property that is located inside the limit of any incorporated city or village.” See 2013 Wis. Act 20, § 1278j.

ADMINISTRATIVE DEVELOPMENTS

Corporate Franchise and Income Tax

The DOR issued two tax releases in January 2013.

The first release (published in Wisconsin Tax Bulletin No. 178 (Jan. 2013)) superseded an earlier tax release (published in Wisconsin Tax Bulletin No. 139 (July 2004)) titled “Carryforwards of Wisconsin Net Business Losses.” In that earlier release, the DOR took the position that a corporate taxpayer could not go back to a closed year and compute a net business loss if the taxpayer did not previously claim a net business loss, or carry forward a net business loss from a Wisconsin return filed after the statute of limitation expired. The DOR reversed its position, as reflected in answers 2 and 3 of the January 2013 tax release.

The second release (also published in Wisconsin Tax Bulletin No. 178 (Jan. 2013)) sets forth the DOR’s position on the meaning of the “entire taxable year” of a corporation receiving a dividend for the purpose of the Wisconsin “dividends received” deduction (see Wis. Stat. § 71.26(3)(j)). The DOR construes the entire taxable year to mean all days of the receiving corporation’s taxable year up to 11:59:59 p.m. of the last day of the receiving corporation’s taxable year, in the time zone of the recipient corporation’s state of incorporation.

Sales and Use Tax: Taxable Sales

The DOR released Publication No. 516 (July 2013) (Statistical Sampling), addressing the circumstances and manner of applying statistical sampling to audits. See Wis. Tax Bull. No. 181 (Aug. 2013).

