Wisconsin Department of Revenue

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Brown County Football Stadium District Sales Tax Ends September 30, 2015

The 0.5% Brown County football stadium district sales and use tax will no longer apply after September 30, 2015. Retailers and the department may not collect this tax on sales made on or after October 1, 2015.

Effective October 1, 2015, a 5% (rather than 5.5%) sales and use tax rate will apply to taxable sales and taxable purchases made in Brown County. The department is in the process of developing and publishing notifications and guidance for all persons who may be affected by this change.

New Tax Laws

The Wisconsin Legislature has enacted changes to the Wisconsin alcohol beverages laws. Below is a brief description of each provision, including the sections of the statutes affected and the effective date of the provision.

Restrictions on Alcohol Beverage Licensed Painting Studios (2015 Act 8, amend secs. 125.07(3)(a)3., 125.32(3)(c), and 125.68(4)(c)4. and create secs. 125.02(11m) and 125.32(3m)(i), effective April 10, 2015.)

The restrictions concerning the presence of underage persons on, the closing hours of, and the conduct of other business at licensed premises do not apply to painting studios.

"Painting studio" means an establishment that is primarily engaged in the business of providing to customers instruction in the art of painting and that offers customers the opportunity to purchase food and beverages for consumption while they paint.

Taste Samples of Intoxicating Liquor In Addition to Wine on Certain Retail Licensed Premises (2015 Act 10, create secs. 125.51(2)(am) and 125.54(3), effective April 10, 2015.)

Sec. 125.06(13), Wis. Stats., authorizes wine sampling on "Class A" premises. 2015 Act 10 provides that a "Class A" licensee may, between the hours of 11 a.m. and 7 p.m., provide for consumption on the "Class A" premises by customers and visitors who have attained the legal drinking age, taste samples of intoxicating liquor other than wine that have been purchased from a wholesaler, are not in original packages or containers, and do not exceed 0.5 fluid ounces each. Only one such taste sample may be provided per day to any one person.

A representative of a permitted winery or intoxicating liquor manufacturer, rectifier, or out-of-state shipper may assist the "Class A" licensee in dispensing or serving the taste samples. However, a wholesaler or employees or representatives of a wholesaler may not assist or participate in providing the taste samples.

Additional Section 179 Expense for Luxury Automobiles Does Not Apply for Wisconsin

Section 280F of the Internal Revenue Code limits the 2014 Section 179 deduction for luxury automobiles to $3,160. Wisconsin follows this provision, as section 280F has been adopted for Wisconsin.

An additional $8,000 Section 179 deduction for luxury automobiles is provided under section 168(k)(2)(F) of the Internal Revenue Code. The additional deduction applies to taxpayers who qualify for the special 50 percent bonus depreciation. For 2014, the special 50 percent bonus depreciation is provided by federal Public Law 113-295, *Tax Increase Prevention Act of 2014*. Wisconsin has not adopted Public Law 113-295. As a result, the special 50 percent bonus depreciation and additional $8,000 Section 179 deduction for luxury automobiles do not apply for Wisconsin.

Federal Law Relating to the Deduction for Charitable Contributions for Aiding Families of Slain New York Officers Does Not Apply for Wisconsin

Recent federal legislation (Public Law 114-7, enacted April 1, 2015) provides that a taxpayer may treat any cash contribution made between January 1, 2015, and April 15, 2015, for the relief of families of two slain New York City police officers, as if such contribution was made on December 31, 2014, and not in 2015. This applies only to cash contributions to charities to provide assistance to the families of New York Police Department Detectives Wenjian Liu and Rafael Ramos for which a charitable contribution deduction is allowable under the Internal Revenue Code.

Taxpayers who elect to claim the charitable deduction for relief of the slain officers on their 2014 federal return may not claim the same contribution as a deduction on their 2015 federal return.

Under current Wisconsin law, the option to treat such contributions as made on December 31, 2014, does not apply for Wisconsin.

Individuals who file their 2014 Wisconsin income tax return and claim the Wisconsin itemized deduction credit may only include charitable contributions made in 2014 in the computation of the 2014 credit.

Corporations that file a 2014 Wisconsin franchise or income tax return may only include charitable contributions made in 2014 in the computation of net income.

Reminder: Notify DOR Within 90 Days of Receiving an IRS Final Notice

If the Internal Revenue Service (IRS) adjusts your federal franchise or income tax return and the adjustments affect your Wisconsin return, you are required to file an amended Wisconsin franchise or income tax return. If you do not file an amended return with the Wisconsin Department of Revenue (DOR) within 90 days of receipt of an IRS final notice, DOR may make an assessment or refund for the IRS adjustments within four years of discovery (Sec. 71.77(7)(b), Wis. Stats. (2013-14)).

DOR is required to charge interest on the additional tax due from the original due date of the return to the date paid (sec. 71.82, Wis. Stats. (2013-14)). If an amended return is not filed, a 25% negligence penalty may be assessed. Since DOR receives federal audit reports one to two years after the IRS final notice, filing an amended return will minimize the amount of interest due and likely save you the 25% negligence penalty.

How to Notify DOR Within 90 Days:

1. Amend your Wisconsin return and attach a complete copy of the federal adjustment notice, including all calculations and explanations. Do not attach the federal adjustment notice to any other Wisconsin return.
2. If a refund is not being claimed, you may either amend your return as explained above, or send a complete copy of the federal adjustment notice, including all calculations and explanations, to Wisconsin Department of Revenue, Audit Bureau, PO Box 8906, Madison, WI 53708-8906. A federal adjustment notice submitted to DOR within 90 days of receipt of an IRS final notice is considered notifying DOR of the federal adjustments. (s. Tax 2.105(4)(c), Wis. Adm. Code (Register February 2015)).

Amending Individual Returns (Forms 1X and 1NPR)

You can electronically file Form 1X (amended return) or an amended Form 1NPR using the department's Wisconsin e-file application (2009 tax year and later). If filing electronically, a complete copy of the federal adjustment notice and all calculations and explanations should be sent as an attachment to your Wisconsin e-file submission.

You can mail your Form 1X or amended Form 1NPR to:

Wisconsin Department of Revenue
PO Box 8991
Madison WI 53708-8991

Amending Corporate Returns (Forms 4, 5S, and 6)

File your amended corporation franchise and income tax returns electronically by using one of the third party software providers.

If you have an approved electronic filing waiver, you can mail your amended return (put a check mark on the amended return line) to:

Wisconsin Department of Revenue
PO Box 8908
Madison WI 53708-8908

Amending Partnership Returns (Forms 3)

File your amended partnership returns electronically by using one of the third party software providers.

If you have an approved electronic filing waiver, you can mail your amended Form 3 (put a check mark on the amended return line) to:

Wisconsin Department of Revenue
PO Box 8908
Madison WI 53708-8908

Common Questions

DOR has published on its web site some of the more common questions relating to federal audit reports:

Amended Returns

Notice of Amount Due – Federal to State Adjustment

Audits

Making Payments or Unable to Pay

Reminder: Itemized Deduction Limitation Applies to Tax-Option (S) Corporation Shareholders

For Wisconsin purposes, shareholders of a tax-option (S) corporation may treat tax-option items that are deductible federally as itemized deductions in either of the following ways:

- As deductions that may be includable in the Wisconsin itemized deduction credit.
- As modifications that are subtracted from federal adjusted gross income to arrive at Wisconsin adjusted gross income.

When federal itemized deductions are reduced due to federal adjusted gross income limits, the allowable deduction or modification is the amount actually deductible for federal purposes.

For more information concerning tax-option (S) corporation items, see Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders*.

Manufacturing & Agriculture Credit – Income Limitation

For taxable years beginning on or after January 1, 2014, non-corporate claimants of the manufacturing and agriculture credit are required to limit the credit claimed to the tax resulting from the operations that were used to compute the credit. (Corporate claimants have been subject to a credit limitation since the inception of the credit). The limitation also applies to the amount of credit fiduciaries do not distribute to the beneficiaries. Part II of Schedules MA-A and MA-M provide the mechanism for limiting the credit.

Section 71.07(5n)(c), Wis. Stats., provides the limitations of the credit:

1. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their share of the income described under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

2. The credit, including any credits carried over, may be offset only against the amount of the tax imposed upon or measured by the business operations of the claimant on which the credit is computed.

3. For shareholders of a tax-option corporation, the credit may be offset only against the tax imposed on the shareholder's prorated share of the tax-option corporation's income.

4. For partners of a partnership, the credit may be offset only against the tax imposed on the partner's distributive share of partnership income.

5. For members of a limited liability company, the credit may be offset only against the tax imposed on the member's distributive share of the limited liability company's income.

Individuals and pass-through entities are subject to the same business income limitation. The income limitation for pass-through entities under sec. 71.07(5n)(c)3., 4., and 5., Wis. Stats., provides that the credit may be used to offset the tax from the taxpayer's share of the pass-through entity's income. The limitation in 71.07(5n)(c)2., applies to all individuals and fiduciaries. For example, a shareholder of an S corporation is subject to the limitations in sec. 71.07(5n)(c)1., 2., and 3. A partner is subject to the limitations in sec. 71.07(5n)(c)1., 2., and 4.

Completing Part II of Schedule MA-A or MA-M:

Column B: Enter your share of each business's net income or loss reported on the 2014 income tax return on which the credit is computed. This includes any amounts used to compute the credit. For example, a

farmer would include gains from the sale of raised animals on lines 13 and/or 14 of Form 1040 if the income was eligible for the credit computation.

Column C: Enter the tax on all income from one of the following:

- ***Individuals:*** Form 1, line 28 minus married couple credit from line 29 or Form 1NPR, line 54 minus married couple credit from line 55.
- ***Estates and Trusts:*** Form 2, line 10 or Form 4T, line 19.

Column D: Re-compute the tax without including the income, deductions, and expenses from the business operations that were used to compute the credit. For example, a farmer would compute the tax on the non-agricultural income that wasn't used to compute the credit.

Column E: Column C minus Column D is the amount of tax attributable to the qualified manufacturing and agricultural operations.

Examples of Computing Income Limitation:

Example 1: A farmer files a joint Wisconsin income tax return reporting the following income:

- $30,000 of wages not related to farm income (spouse).
- $40,000 net profit on Schedule F (all income and expenses are used to compute the agriculture credit).
- $5,000 gain on sale of raised cows (all gain is used to compute the agriculture credit).
- $10,000 residential real estate rental income.

Part II of Schedule MA-A will consist of the following amounts:

(a) Business	(b) Share of Business's Net Income (Loss)	(c) Tax	(d) Recomputed 2014 Tax Liability	(e) Portion of Tax Attributable to Amount in Column (b) [(c) - (d)]
A	45,000 .00	3,576 .00	927 .00	2,649 .00

- Column (b) includes the $40,000 net farm profit and the $5,000 gain on the sale of raised cows.
- Column (c) is the Wisconsin tax from Form 1, line 28 less the married couple credit.
- Column (d) is the re-computed tax on all income except the farm income used to compute the manufacturing and agriculture credit of $40,000 and the $5,000 gain on the sale of raised cows.
- Column (e) is the tax attributable to the farm operations, and the amount of credit that may be used.

Example 2: A married couple files a joint Wisconsin income tax return reporting the following income:

- $60,000 of wages not related to manufacturing activities (spouse).
- $100,000 of income from a partnership. Of the $100,000, $70,000 is attributable to manufacturing operations that were used to compute the manufacturing and agriculture credit.
- $15,000 of residential real estate rental income.

Part II of Schedule MA-M will consist of the following amounts:

(a) Business	(b) Share of Business's Net Income (Loss)	(c) Tax	(d) Recomputed 2014 Tax Liability	(e) Portion of Tax Attributable to Amount in Column (b) [(c) - (d)]
A	70,000 .00	9,269 .00	5,075 .00	4,194.00

- Column (b) includes the $70,000 partnership net income from manufacturing operations used to compute the credit.
- Column (c) is the Wisconsin tax from Form 1, line 28 less the married couple credit.
- Column (d) is the recomputed tax on all income except the income used to compute the manufacturing credit of $70,000 from the partnership.
- Column (e) is the tax attributable to the manufacturing operations, and the amount of credit that may be used.

Reminder: Submitting Correct Rent Certificate Information

Each year many homestead credit claims require a letter to obtain additional information or are adjusted because of incomplete and inaccurate rent certificate information. As such, you are encouraged to:

- review rent certificates provided by your clients;
- ensure rent certificate information transmitted electronically is complete and accurate; and
- submit the original rent certificate(s) and other required documents with Form W-RA when the Wisconsin e-filing acknowledgement is received.

The department recently published an article concerning some of the more common rent certificate issues this filing season. The time you take to look for these and other issues before a homestead credit claim is filed may end up saving you time in the long run.

Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available on the Department of Revenue's website in March. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information. Listed below are the articles in the March 2015 *Sales and Use Tax Report* (Issue 1-15).

- Motor Vehicle Salvage Pools: How Do Wisconsin Sales and Use Taxes Apply?
- Spring Is Here! – Don't Forget That Lawn Mowing and Other Landscaping Services Are Taxable
- Does Your Business Owe Use Tax? – Use Tax Is the Most Common Audit Adjustment
- New Publications for Dentists and Campgrounds

Sales and Use Tax Guidance

Pages 7 and 8 provide explanations and examples concerning the following topics:

- The services of pet boarding and pet sitting (page 7).
- Horse boarding and other related activities (page 7).
- Entry fees for runs, walks, and races (page 8).

- Masonry and paving contractors (page 8).
- Carpet and upholstery cleaning (page 8).

Pet Boarding is Taxable

The service of boarding pets is subject to Wisconsin sales or use tax. The service provider may purchase without tax, for resale, the food that the service provider gives to the pet when providing a boarding service. The service provider's purchases of tools and equipment used in providing the boarding service are taxable (e.g., portable kennels, leashes, scratching posts, toys). Pet grooming (e.g., washing, brushing, clipping hair or nails) is also taxable.

However, the service of pet sitting that consists of only training, "sitting," or walking the pet is not taxable when the owner (rather than the service provider) provides all food, food dishes, litter boxes, scratching posts, etc. needed or used during the sitting.

Example 1: Customer hires Pet Sitter to check on her dog for two days while she is on a business trip. Pet Sitter will go to Customer's house and let the dog out as needed and fill Customer's food dishes with food provided by Customer. Pet Sitter is providing a nontaxable service when sitting for Customer's dog.

Example 2: Customer hires Pet Sitter to watch her dog for two days while she is on a business trip. Customer brings her dog to Pet Sitter's location. Customer provides the food dishes and food for her dog. Pet Sitter is providing a nontaxable service when sitting for Customer's dog.

Example 3: Customer hires Boarder to watch her dog for two days while she is on a business trip. Customer brings her dog to Boarder's location and Boarder provides food for Customer's dog. Boarder is providing boarding services which are subject to sales tax. Boarder may purchase the food without tax, for resale, that is given to Customer's dog.

Horse Boarding and Other Related Activities

The service of boarding horses is subject to sales tax, including charges for feed.* Taxable services include the boarding of horses used for racing, pleasure riding, or show. The person providing the boarding service may purchase the feed for the horses that are boarded without tax, for resale, by providing the seller of the feed with a fully completed exemption certificate (Form S-211) claiming resale.

Horse training, however, is a nontaxable service. If there are separate and optional charges for the boarding and training, only the charge for boarding is taxable. If the products are not separate and optional from each other, the entire charge for boarding and training is taxable.

The tax treatment of other services that may be provided is as follows:

- Riding lessons are not taxable.
- Hourly horse rental fees are taxable.
- Grooming, including shoeing of horses, is taxable.*
- Medical services and drugs provided to horses by veterinarians are not taxable.
- The sale of horses used for racing, pleasure riding, or show is taxable.
- Hauling horses to and from a stable is not a taxable service, unless the service is provided with a taxable service, such as boarding. A charge for transportation, by itself or when provided with a nontaxable product or service, is not taxable.

*Boarding or grooming services for horses that are used in the business of farming are exempt from tax. In order to claim the exemption, the purchaser must provide the seller with a fully completed exemption certificate (Form S-211) claiming the farming exemption.

Entry Fees for Runs, Walks, and Races are Taxable

Entry fees to runs, walks, races, and other customer participation events (for example, golfing, dancing, card-playing) are subject to sales tax as admissions to amusement, athletic, entertainment, or recreational events. The organizers of these events are responsible for sales tax on the entry fees.

Items that are provided to the participants free of charge (for example, t-shirts, hats, reusable water bottles) are incidental to the admission. Therefore, the event organizer is responsible for paying sales or use tax on its purchase of these items and cannot purchase them without tax for resale.

If the organizer of the event is a nonprofit organization, the entry fees may be exempt from sales tax under the occasional sales exemption. There are certain standards that must be met for this exemption to apply. The standards are explained in Publication 206, *Sales Tax Exemptions for Nonprofit Organizations*.

Masonry and Paving Contractors

When a masonry or paving contractor charges its customer for a real property improvement, its charge is not subject to sales tax. Examples of real property improvements include installing a patio, sidewalk, driveway, street, or parking lot.

A contractor is not permitted to collect sales tax from its customer on the sale of a real property improvement. The contractor must pay sales tax on the materials it uses in making the real property improvement. If the contractor does not pay sales tax on its purchases of such materials, the contractor must pay use tax directly to the Wisconsin Department of Revenue on these purchases.

See Publication 207, *Sales and Use Tax Information for Contractors*, for additional information about how Wisconsin state, county, and stadium sales and use taxes affect contractors.

Spring Cleaning is Here! Carpet and Upholstery Cleaning is Taxable

Cleaning tangible personal property is a taxable service. Since upholstery and rugs are tangible personal property, the charges for cleaning upholstery and rugs are subject to sales tax.

Example: Individual hires Cleaning Company to steam-clean the upholstery on her sofa. Cleaning Company is providing cleaning services to tangible personal property. Cleaning Company's charges are taxable.

Certain items, such as carpeting, are treated as tangible personal property for purposes of cleaning or other services to that property, even if the items are attached to real property. Therefore, charges for carpet cleaning are subject to tax.

Example: Carpet Cleaner is hired by Individual to clean the carpets in Individual's home. Carpet Cleaner is providing cleaning services to carpeting, which is treated as tangible personal property for purposes of cleaning. Carpet Cleaner's charges are taxable.

Note: Routine and repetitive janitorial services are not taxable. For additional information, see the article titled "Janitorial Services" on the department's website.

Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions.

The following decision is included:

Individual Income Tax

Veterans and surviving spouses property tax credit
Robert Laske.....10

INDIVIDUAL INCOME TAX

Veterans and surviving spouses property tax credit. *Robert Laske vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 27, 2015). The issues in this case are:

- whether a taxpayer must own the property on which he or she pays property taxes in order to treat it as a "principal dwelling" for purposes of the veterans and surviving spouses property tax credit ("the credit"); and
- if renting is sufficient, whether the taxpayer in this case rented his residence by virtue of paying expenses, including property taxes.

By notices dated March 29, 2013, and April 26, 2013, the department disallowed the taxpayer's claims for the credit for 2010, 2011, and 2012 for the period of time he did not own the property in which he resided. The taxpayer filed timely petitions for redetermination of the department's notices, which were denied and granted in part by the department by notices dated November 5, 2013. The taxpayer filed a timely petition for review with the Commission on January 6, 2014.

The taxpayer, an eligible veteran, lived in a residence owned by the Patricia A. Dixon Revocable Living Trust. Per the terms of a 2004 trust amendment, if the taxpayer failed to pay certain expenses of the residence, including property taxes, his right to reside in the residence would be terminated. Taxpayer paid all required expenses, including the property taxes paid to the municipality, and continued to live in the residence.

For purposes of the credit, "principal dwelling" has the same meaning as for purposes of the school property tax credit. Section 71.07(9)(a)2., Wis. Stats., defines principal dwelling as "any dwelling, **whether owned or rented**, and the land surrounding it that is reasonably necessary for use of the dwelling as a primary dwelling of the claimant…" [Emphasis added.] Based on its reading and application of this statutory language, the Commission concluded a claimant may either own or rent the property on which the claimant pays property taxes in order to qualify for the credit.

As to whether taxpayer was renting his residence, the Commission looked to dictionary definitions of "rent." *Black's Law Dictionary* (9th Edition) defines rent as "consideration paid, usu. periodically, for the use or occupancy of property (esp. real property)." Common dictionary definitions define rent to mean payment, usually of an amount set by contract, made by a tenant at designated intervals in return for the right to occupy or use another's property. Based on its analysis, the Commission concluded 1) taxpayer's payment of expenses was consideration paid for the use or occupancy of property and 2) taxpayer was renting his residence during the periods at issue.

Because of its determination taxpayer is an eligible veteran and therefore a valid claimant who paid property taxes on his principal dwelling, the Commission concluded taxpayer is entitled to claim the credit for the periods at issue.

The department has not appealed this decision.

Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The "W" is for "Wisconsin"; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue."

The following private letter ruling is included:

Corporation Franchise and Income Tax

Supplement to federal historic rehabilitation credit
W1511005 (p. 10)

❄ W1511005 ❄

December 16, 2014

Type Tax: Corporation Franchise and Income Tax

Issue: Supplement to federal historic rehabilitation credit

Statutes: Sections 71.07(9m), 71.28(6), and 71.47(6), Wis. Stats. (2011-12)

This letter responds to your request for a private letter ruling dated July 24, 2014.

Background:

Company A is a non-profit, non-stock corporation incorporated under the laws of the State of Wisconsin. Company A is planning a redevelopment of its facility located in Wisconsin as a mixed-used facility, together with corporate and administrative offices.

Although regular improvements have been made to the facility, the facility now requires major repairs, improvements, and overall renovation in order to continue to serve the growing populations seeking services. The project contemplates a major renovation and redevelopment of the facility, possibly in connection with a private developer, which will result in a mixed-used facility.

As part of the project's overall financing, Company A desires to qualify for the Wisconsin supplement to the federal historic rehabilitation credit, which provides transferable income tax credits equal to 20 percent of the costs of qualified rehabilitation expenditures incurred in connection with the rehabilitation of certain historic buildings. As a non-profit, non-stock corporation exempt from income taxation under section 501(c)(3) of the Internal Revenue Code, Company A would transfer these tax credits to one or more corporate transferees in exchange for cash. These funds will then be used as an alternative funding source to offset project costs.

Request:

You request a ruling that:

1. Company A's capital expenditures incurred in the redevelopment of the facility will be "qualified rehabilitation expenditures," such that, so long as Company A receives an appropriate certification from the Wisconsin Economic Development Corporation under s. 238.17, Wis. Stats., Company A will be entitled to claim a credit against Wisconsin income tax an amount equal to 20% of those qualified rehabilitation expenditures.

2. If entitled to the credit, Company A will be permitted to sell or otherwise transfer the tax credit to another person, subject to the requirements of s. 71.07(9m)(h), Wis. Stats.

Ruling:

1. Company A will not be barred from claiming its capital expenditures incurred in the redevelopment of the facility from being treated as "qualified rehabilitation expenditures" solely because Company A is an entity exempt from income taxes under IRC section 501(c)(3), and as such, if otherwise qualified, Company A will be entitled to the Wisconsin supplement to federal historic rehabilitation credit based on those expenditures.

2. To the extent Company A will be entitled to a credit, the transfer provisions under s. 71.28(6)(h), Wis. Stats., will apply.

Analysis:

Wisconsin's supplement to federal historic rehabilitation credit is provided in secs. 71.07(9m), 71.28(6), and 71.47(6), Wis. Stats. (2011-12). The credit is available to a claimant based on qualified rehabilitation expenditures, as defined in section 47(c)(2) of the Internal Revenue Code.

Section 47(c)(2) of the Internal Revenue Code provides, in part, the term qualified rehabilitation expenditure means "any amount…for property for which depreciation is allowable under section 168…" As noted in the "Applicable Law and Analysis" portion of your request, this is the key issue as to whether Company A's expenditures are qualified rehabilitation expenditures.

Section 168(b)(3)(A) of the Internal Revenue Code provides nonresidential real property is depreciable using the straight-line method, and the property at issue is nonresidential real property. Also, the property at issue does not fall into any of the categories of property under section 168(f) of the Internal Revenue Code to which section 168 does not apply. Thus, it is the department's position Company A's facility is property for which depreciation is allowable under section 168 and Company A's expenditures are qualified rehabilitation expenditures for purposes of the Wisconsin supplement to federal historic rehabilitation credit.