

Chapter Tax 14

HOMESTEAD CREDIT

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Tax 14.01 Administrative provisions. (s. 71.09 (7), Stats.) (1) PURPOSE. This rule describes the Wisconsin homestead credit and administrative provisions related thereto.

(2) THE WISCONSIN HOMESTEAD CREDIT. (a) 1. Section 71.09 (7), Stats., provides relief to persons who own or rent their Wisconsin homestead, through a system of income tax credits, refunds, and appropriations from the general fund. A qualifying person may claim Wisconsin property tax accrued or rent constituting property tax accrued or both on the person's homestead as a credit against Wisconsin income tax otherwise due. If the credit exceeds the claimant's Wisconsin income tax otherwise due or if no income tax is due, the amount not offset against Wisconsin income tax is paid to the claimant.

2. The relief shall be referred to as a "credit" whether actually provided in the form of a credit, refund or appropriation.

(b) The amount of the homestead credit is described in s. 71.09 (7) (g), (gn), (go), (gp) and (gz), Stats., and may be determined from tables prepared by the department of revenue. The credit cannot be larger than:

1. \$800 for the calendar year 1979 and thereafter.
2. \$640 for the calendar years 1977 and 1978.
3. \$428 for the calendar years 1975 and 1976.

(c) If an approved homestead credit claim by a qualified person is more than zero but less than \$10, the amount of credit paid or credited shall be \$10.

(d) Wisconsin homestead credit claims shall be on a calendar year basis.

(3) TIME WITHIN WHICH ORIGINAL AND AMENDED CLAIMS SHALL BE FILED.

(a) An original homestead credit claim shall be filed with the department of revenue on or before December 31 of the year following the year for which the claim is filed, or the claim shall be disallowed.

(b) A person who has filed a timely original claim may file an amended claim with the department of revenue within 4 years of December 31 of the year following the year for which the claim was filed.

(4) HOW TO FILE. (a) A homestead credit claim shall be filed on Schedule H, titled "Wisconsin Homestead Credit Claim", and filed with the Wisconsin department of revenue at the location described in the instructions to Schedule H.

(b) If a person or the person's spouse files a Wisconsin income tax return and claims a homestead credit thereon, Schedule H shall be attached to the income tax return. If such income tax return has been previously filed, a duplicate copy of the income tax return shall be filed with Schedule H and the words "duplicate" written on the top of the first page of the return and "income tax return previously filed" written on the top of Schedule H.

(c) If neither the person claiming the credit nor such person's spouse is required to file a Wisconsin income tax return for the year to which the claim relates, Schedule H may be filed without attaching it to a return.

(5) **PROOF OF CLAIM.** (a) Section 71.09 (7) (j), Stats., provides that "Every claimant under this subsection shall supply to the department, in support of his claim, reasonable proof of age, rent paid, property taxes accrued, changes of homestead, household membership, household income, size and nature of property claimed as the homestead and the statement that the property taxes accrued used for purposes of this section have been or will be paid by him and that there are not delinquent property taxes on the homestead."

(b) Reasonable proof for purposes of a claim for homestead credit submitted on Schedule H shall include:

1. Completion of all information requested on the form;

2. A copy of the real estate tax bill, or if not available, a substitute for the bill containing equivalent information to that appearing on the original tax bill, if property taxes accrued are claimed. If the claimant presents the claim in person and wishes to retain the original tax bill but is unable to provide a copy, inspection of the original tax bill by any authorized representative of the department of revenue shall satisfy this requirement. In this event, information shall be entered on the face of Schedule H by the department's representative indicating that the tax bill has been examined and the tax verified, followed by the representative's signature;

3. A properly completed Certification of Rent Paid, if rent constituting property taxes accrued is claimed;

4. The signature of the claimant and, if married, the claimant's spouse. If a claimant or the claimant's spouse is unable to sign a claim, an "X" or other mark made by the claimant with the assistance of another person who signs the claim as a witness to the validity of the signature shall be acceptable. A legally authorized representative such as a guardian or attorney-in-fact may sign a homestead credit claim in lieu of the claimant. Although a personal representative, executor or administrator of an estate is authorized to sign on behalf of a deceased person, homestead credit claims submitted on behalf of a claimant who is deceased at the time of filing will be denied pursuant to s. 71.09 (7) (b), Stats.

(6) **INCORRECT CLAIMS.** The department of revenue has 4 years from December 31 of the year following the year to which a homestead credit claim relates to give notice of an incorrect claim. Incorrect claims may be corrected by adjusting the credit allowed, by assessment as income taxes are assessed or by refund, as appropriate.

(7) **INTEREST AND PENALTIES ON INCORRECT CLAIMS.** (a) *Excessive claims.* Excessive homestead credit claims, not the result of neglect or fraudulent intent, that have been paid or credited shall be subject to interest at the same 9% per annum rate as is assessed on additional assessments of income tax under s. 71.09 (5) (a), Stats. Such interest shall be imposed from the date on which the excessive amount was paid or credited, but not earlier than from April 15 of the year following the year to which the claim relates, to the date on which such amount when subsequently assessed will become delinquent if unpaid. If unpaid by the due date shown on the notice of adjustment to the homestead credit claim, the amount due shall be subject to delinquent interest at the rate provided by s. 71.13 (1) (a), Stats. For example, in the case of a 1977 homestead credit claim filed in 1978, if a claimant received a refund of homestead credit on March 1, 1978, the refund is subsequently determined to be excessive by \$100 and the claimant is assessed for such amount on March 12, 1979 and the due date for payment of the assessment is April 13, 1979, interest at 9% per annum will be imposed from April 15, 1978 to April 13, 1979. If the refund had been made on October 13, 1978, interest at the rate of 9% per annum would be imposed from that date to April 13, 1979. In the event the assessment is not paid by April 13, 1979, delinquent interest at the rate of 1.5% per month applies from that date to the date of payment.

(b) *Understated claims.* Under s. 71.09 (7) (c), Stats., no interest shall be paid by the department on any homestead credit, including any additional credit, refund or payment allowed as the result of the review of a homestead credit claim or an amended claim.

(c) *Excessive claims due to negligence.* Section 71.09 (7) (1), Stats., provides in part "In any case in which it is determined that a claim is or was excessive and was negligently prepared 10 per cent of the corrected claim shall be disallowed and if the claim has been paid, or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at 1.5% per month from the date of payment until refunded or paid."

(d) *Excessive claims due to fraudulent intent.* Section 71.09 (7) (1), Stats., provides "In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income taxes are assessed and such assessment shall bear interest from the date of payment or credit of the claim, until refunded or paid, at the rate of 1.5% per month. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim or supplied information upon which such excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor . . ."

(e) The interest rates referred to in pars. (a), (c) and (d) became effective on November 1, 1975. Assessments for periods beginning prior to that date shall bear normal and delinquent interest at 6% and 12% per annum, respectively, until November 1, 1975 and at the newer rates thereafter.

(8) **DISAGREEMENT WITH DEPARTMENT DETERMINATIONS.** (a) Under s. 71.09 (7) (k), Stats., a person aggrieved by a notice of determination by the department of revenue resulting from an audit of a claim may "within 30 days after receipt thereof, petition the department for redetermination thereof. The department shall make a redetermination of such petition within 6 months after it is filed and notify the claimant thereof. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive."

(b) Under s. 71.09 (7) (n), Stats., a person aggrieved by the redetermination referred to in par. (a) may appeal such redetermination to the tax appeals commission within 30 days, as provided under s. 73.01 (5), Stats. However, s. 71.09 (7) (n), Stats., also provides that the following are final when determined or redetermined by the department of revenue:

1. Denial of a claim based upon the late filing of a homestead credit claim, and

2. Denial or correction of a claim based upon a determination or redetermination of the arms-length value of "rent constituting property taxes accrued".

(c) The filing fee required by s. 73.01 (5) (a), Stats., does not apply to appeals under s. 71.09 (7) (n), Stats., of department of revenue redeterminations.

(9) **OFFSET OF CLAIM AGAINST DELINQUENT ACCOUNTS.** Section 71.09 (7) (e) provides "The amount of any claim otherwise payable under this subsection may be applied by the department of revenue against any liability outstanding on the books of the department against claimant, or against any other individual who was a member of his household in the year to which the claim relates."

Note: Blank forms for filing a homestead credit claim, certificates of rent paid and instructions for claiming the credit may be obtained at any department of revenue office throughout the state or by writing to the Wisconsin Department of Revenue, Post Office Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

Tax 14.02 Qualification for credit. (s. 71.09 (7) (a) 1, 2, 3, 4 and 5; (b); (f); (g); (gn); (go); (gp); (p); (q); (r); (s) and (t); Stats.) (1) **PURPOSE.** This rule clarifies the requirements to qualify for the Wisconsin homestead credit for the calendar year 1975 and thereafter.

(2) **DEFINITIONS.** (a) Under s. 71.09 (7) (a), Stats.:

1. "Claimant" means a person who has filed a claim under this subsection . . ."

2. "Homestead" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. ("Owned" includes a vendee in possession under a land contract and of one or more joint tenants or tenants in common.) It does not include personal property such as furniture, furnishings or appliances, but a mobile home may be a homestead." See rule Tax 14.04 (10), for homesteads which are part of a unit larger than 1 acre.

Register, February, 1980, No. 290

(b) 1. In the definition of homestead, "dwelling" means the principal dwelling of a qualified claimant.

2. "Household" means a claimant and an individual related to the claimant as husband or wife residing in the same homestead as the claimant.

3. "Domicile" has the same meaning for Wisconsin homestead credit purposes as for Wisconsin individual income tax.

4. "General Relief" is a basic assistance program provided by a county or municipality, under ch. 49, Stats., to an eligible individual in need of relief who is not covered by any other federal or state assistance program. "Relief" is defined in s. 49.01 (1), Stats. as "services, commodities or money as are reasonable and necessary under the circumstances to provide food, housing, clothing, fuel, light, water, medicine, medical, dental, and surgical treatment (including hospital care), optometrical services, nursing, transportation, and funeral expenses, and includes wages for work relief."

a. General relief is administered by a municipality or county. The municipality or county determines the amount and method of payment, raises necessary funds and determines guidelines for payments.

b. General relief does not include assistance programs subsidized by state or federal funds, such as old age assistance, blind aid, disabled aid, social security, state supplemental payments, supplemental security income, federal food stamps and Title XX benefits.

(3) GENERAL QUALIFICATIONS FOR CREDIT. To qualify for the Wisconsin homestead credit a claimant shall have owned or rented a homestead in Wisconsin which the claimant occupied during the calendar year to which the claim relates and shall be:

(a) A natural person, alive at the time of filing the homestead credit claim.

(b) Domiciled in Wisconsin during the entire calendar year to which the homestead credit relates.

(c) 18 years of age on or before December 31 of the calendar year to which the homestead credit relates.

(4) DISQUALIFYING CONDITIONS. A claimant shall not qualify for the homestead credit if the claimant:

(a) Is claimed as a dependent for federal income tax purposes by another person during the year for which the homestead credit claim is made, unless the person is 62 years of age or older as of December 31 of such year. However, a claimant shall not be disqualified if the claimant:

1. Is incorrectly claimed as a dependent on a federal income tax return;

2. Qualifies to be claimed as a dependent on a federal income tax return but is not claimed; or

3. Is properly claimed as a dependent on a federal income tax return but on a later amended federal income tax return is not so claimed.

(b) Is a member of a household having household income in excess of:

1. \$7,500 in the calendar years 1975 and 1976.
 2. \$9,300 in the calendar years 1977 and 1978. However, if a claimant, spouse or dependent of the claimant is 65 years of age or older at any time during the year to which a 1977 or 1978 claim relates, total household income shall not be in excess of \$9,900 (See Tax 14.03 (4)).
 3. \$14,000 in the calendar year 1979 and thereafter.
- (c) Receives general relief from municipalities or counties at the time of filing the claim. (See sub. (2) (b) 4 of this rule for the definition of general relief.)
- (d) 1. For calendar years 1975 through 1978, receives aid for dependent children, including foster children, under s. 49.19, Stats., at the time of filing the claim. However, for claims relating to the calendar year 1978 the claimant shall qualify for the homestead credit if the aid is for foster children under s. 49.19 (10) (a), Stats., or is received as a relative, other than a parent, for the benefit of any dependent children residing in the homestead of the claimant, if the assistance does not include aid to meet the needs of the claimant or the claimant's spouse or children.
2. For the calendar year 1979 and thereafter, under s. 71.09 (7) (p), Stats., receipt of general relief or aid for dependent children does not disqualify a claimant, but causes property tax accrued or rent constituting property tax accrued to be reduced by one-twelfth for each month or portion of a month such aid is received, as described in rules Tax 14.04 and 14.05.
- (e) For claims relating to the calendar year 1977 and thereafter, resides in a nursing home and receives federal Title XIX medical assistance under s. 49.45, Stats., at the time of filing the homestead credit claim.
- (f) For claims relating to the calendar year 1977 and thereafter, resides for the entire year to which the claim relates in housing exempt from taxation under ch. 70, except housing for which payments in lieu of taxes are made under s. 66.40 (22), Stats. However, the claimant shall qualify for the homestead credit for any portion of the year exempt housing did not constitute the claimant's homestead.
- (g) Received title to the claimant's homestead primarily for the purpose of receiving homestead credit benefits.
- (h) Qualified for and claimed the farmland preservation credit for the same year to which a homestead credit claim relates. However, if a person who has claimed a farmland preservation credit withdraws such claim on or before December 31 of the year following the year to which the homestead credit claim relates, the person shall not be disqualified from receiving a homestead credit because of the filing of the farmland preservation credit claim. Withdrawal of the farmland preservation credit claim shall be in writing and should be mailed to the Department of Revenue, Technical Services Section, P.O. Box 8906, Madison, Wisconsin 53708. To be timely filed, a homestead credit claim filed after the withdrawn farmland preservation credit shall be filed by its normal due date. For example, a 1979 homestead credit claim filed after withdrawal of a 1979 farmland preservation claim must be filed on or before December 31, 1980.

(5) TWO MEMBERS OF A HOUSEHOLD MEETING QUALIFICATIONS. (a) *One homestead.* 1. Only one member of a household existing at the end of a calendar year may claim a homestead credit for that year. Thus, if a husband and wife reside in one homestead at the end of a calendar year and both qualify for the homestead credit, only one of them may claim the credit.

2. Section 71.09 (7) (a) 5, Stats., provides: "When 2 individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue and the secretary's decision shall be final."

3. Requests for such determination shall be addressed to the Wisconsin Department of Revenue, Technical Services Section, P.O. Box 8906, Madison, Wisconsin 53708.

(b) *Separate homesteads.* 1. If a husband and wife do not live together but reside in separate homesteads at the end of a calendar year to which a homestead credit claim relates, 2 households exist at the end of the year. For example, one spouse may permanently reside in a nursing home while the other spouse continues to maintain and occupy a homestead the 2 owned or rented for many years. In this situation, each spouse may claim a homestead credit for the year, if otherwise qualified, based on the income and property tax accrued or rent constituting property tax accrued of their respective households and combined households as described in subd. 2.

2. As an example, assume the following factual situation: a husband and wife reside in their jointly owned homestead from January 1, 1978 to July 31, 1978, when the wife moves permanently to a nursing home not exempt from the property tax. The husband pays all of the property tax for the year 1978, amounting to \$600. Rent paid by the wife for occupancy only at the nursing home for the period August 1 through December 31, 1978 is \$500. The husband's income is \$2,500 from January 1 through July 31, and \$2,000 for the remainder of the year. The wife's income is \$1,500 from January 1 through July 31, and \$1,000 for the balance of the year. Both husband and wife are otherwise qualified for the homestead credit. Household income, property tax accrued and rent constituting property tax accrued applicable to each claimant for the year 1978 are computed as follows:

<u>Household Income</u>	<u>Husband</u>	<u>Wife</u>
(H) January 1 - July 31	\$2,500	\$2,500
(W) January 1 - July 31	1,500	1,500
(H) August 1 - December 31	2,000	--
(W) August 1 - December 31	--	1,000
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Total Household Income	<u>\$6,000</u>	<u>\$5,000</u>

Property Tax Accrued

	<u>Husband</u>	<u>Wife</u>
(H) January 1 - July 31 (7/12 x \$600 x 1/2)	\$ 175	\$ 175
(W) January 1 - July 31 (7/12 x \$600 x 1/2)	\$ 175	\$ 175
(H) August 1 - Dec. 31 (5/12 x \$600 x 1/2)	125	--
(W) August 1 - Dec. 31	(see below)	--
	<hr/>	<hr/>
Total Tax	\$ 475	\$ 350

Rent Constituting Property Tax Accrued

(H) 25% of wife's share of property tax paid by hus- band for the period August 1 through Dec. 31 (5/12 x \$600 x 1/2) x 25%	\$ 31.25	
(W) 25% of rent paid for oc- cupancy only (25% x \$500)		\$ 125
	<hr/>	<hr/>
Total Allowable Tax and Rent	<u>\$506.25</u>	<u>\$ 475</u>

The income and taxes for the time the claimants were members of the same household are reported on both claims. The husband may claim 25% on the wife's share of property tax for the period she did not reside in the jointly owned home, since he paid the tax (see Tax 14.04 (6) (b)).

(6) MORE THAN ONE HOUSEHOLD IN A HOMESTEAD. One claimant from each household is entitled to claim homestead credit whether the household is the sole occupant of a homestead or whether several households share the homestead.

(7) MARRIAGE, SEPARATION OR DIVORCE DURING A CLAIM YEAR. (a) A new household is established when marriage occurs during a year. Either the husband or wife shall qualify for a homestead credit for the year of marriage but not both. The spouse filing a claim shall be entitled to property tax accrued or rent constituting property tax accrued for the homestead of the claimant for the portion of the year prior to marriage plus the total of such amounts for the joint homestead after marriage. Household income shall include the claimant's income for the entire year and the claimant's spouse's income after marriage. For example, assume X marries Y on September 1, and they decide that X is to be the claimant. Prior to marriage, X pays rent of \$125 per month and Y, \$175 per month, all for occupancy only. They pay \$250 a month for their apartment after marriage. X's income during the year is \$2,000 prior to marriage and \$1,000 after. Y's income for the year is \$5,000 prior to marriage and is \$2,500 thereafter. In this situation, household income reportable by X is \$5,500 (i.e., X's income for the entire year (\$3,000) plus Y's income after marriage (\$2,500)). Rent constituting property tax accrued which may be claimed by X is \$500 (i.e., 25% of the sum of X's rent of \$125 per month for 8 months (\$1,000) and 4 months rent at \$250

per month after marriage (\$1,000), totalling \$2,000 for the year). Since Y is not the claimant, Y's rent of \$175 per month and income of \$5,000 for the first 8 months are not considered in computing the homestead credit claim.

(b) If a husband and wife are divorced or separated during a year, have not remarried by year-end and occupy separate homesteads in Wisconsin at December 31 of that year, each may claim a homestead credit for the year, if otherwise qualified. In this event, each spouse shall be entitled to the total property tax accrued or rent constituting property tax accrued on the joint homestead for the portion of the year they maintained a common homestead in Wisconsin plus such amounts for the portion of the calendar year the spouse was not married or was separated. The claimant's income for the entire year plus the claimant's spouse's income while they were members of the same household shall be included on each claim. For example, assume X and Z were married, lived together through May 31, and paid rent of \$200 per month to that date. On June 1 they both moved and thereafter X paid \$150 per month rent and Z paid rent of \$175 per month, all for occupancy only. X's income for the year was \$2,000 through May 31 and \$3,000 thereafter; Z earned \$1,000 through May 31 and \$2,500 after that date. In this situation, household income and rent constituting property tax accrued for each claim is computed as follows:

	<u>X</u>	<u>Z</u>
Income:		
(X) Jan. 1-May 31	\$2,000	\$2,000
(Z) Jan. 1-May 31	1,000	1,000
(X) June 1-Dec. 31	3,000	--
(Z) June 1-Dec. 31	--	2,500
	<u>\$6,000</u>	<u>\$5,500</u>
Rent:		
(X) & (Z) Jan. 1-May 31	\$1,000	\$1,000
(X) June 1-Dec. 31	1,050	--
(Z) June 1-Dec. 31	--	1,225
	<u>\$2,050</u>	<u>\$2,225</u>
Rent Constituting Property Tax Accrued (25% of Rent)	<u>\$ 512.50</u>	<u>\$ 556.25</u>

The income and rent for the time the claimants shared a common homestead are reported on both claims.

(c) If a claimant is separated and divorced from one spouse and remarried to another during a year to which a homestead credit claim relates, property tax accrued or rent constituting property tax accrued shall include the total amount of rent or property tax applicable to each homestead the claimant occupied throughout the year. The claimant shall include property tax accrued or rent constituting property tax accrued applicable to each homestead occupied by the claimant alone, as well as, each household during the year. The claimant shall include in household income all of the claimant's income during the entire year and any income of a spouse during the period the spouse was a member of

claimant's household and resided with the claimant in the same household. Income of a spouse during a period in which the claimant and the spouse occupy separate homesteads shall not be considered as household income of the claimant. For example, assume X and Z decide, after many years of marriage, to separate on March 31. X and Z occupy separate homesteads during the period April 1 to November 1. On May 1, X and Z are divorced. On November 1 of the same year, X marries Y and X and Y share the same homestead for the rest of the year. Z does not remarry during the year. Each individual earns income during the year as follows:

	<u>X</u>	<u>Y</u>	<u>Z</u>
Jan. 1-March 31	\$1,000	\$ 750	\$ 500
April 1-Oct. 31	3,000	2,000	1,500
Nov. 1-Dec. 31	<u>1,000</u>	<u>250</u>	<u>1,000</u>
	<u>\$5,000</u>	<u>\$3,000</u>	<u>\$3,000</u>

Rent paid for occupancy only is:

	<u>X</u>	<u>Y</u>	<u>Z</u>	<u>X+Z</u>	<u>X+Y</u>
January 1-March 31	--	\$300	--	\$450	--
April 1-October 31	\$875	\$700	\$700	--	--
November 1-December 31	--	--	\$200	--	\$250

Since X and Y are one household at the end of the year, only one may file a claim for homestead credit. Z is also entitled to file a homestead credit claim for the year. Household income and rent constituting property tax accrued are computed as follows:

<u>Income</u>		<u>X</u>		<u>Y</u>		<u>Z</u>
January 1-March 31	(X)	\$1,000	(Y)	\$ 750	(Z)	\$ 500
January 1-March 31	(Z)	500	(X)	1,000	(X)	1,000
April 1-October 31	(X)	3,000	(Y)	2,000	(Z)	1,500
November 1-Dec. 31	(X)	1,000	(Y)	250	(Z)	1,000
November 1-Dec. 31	(Y)	<u>250</u>	(X)	<u>1,000</u>		
		<u>\$5,750</u>		<u>\$4,000</u>		<u>\$4,000</u>
 <u>Rent</u>						
January 1-March 31	(X+Z)	\$ 450	(Y)	\$ 300	(X+Z)	\$ 450
April 1-October 31	(X)	875	(Y)	700	(Z)	700
November 1-Dec. 31	(X+Y)	<u>250</u>	(X+Y)	<u>250</u>	(Z)	<u>200</u>
		<u>\$1,575</u>		<u>\$1,250</u>		<u>\$1,350</u>

Rent constituting property tax accrued (25% of rent) =

<u>X</u>	<u>Y</u>	<u>Z</u>
<u>\$393.75</u>	<u>\$312.50</u>	<u>\$337.50</u>

(8) DECEASED CLAIMANT. (a) Section 71.09 (7) (b), Stats., provides that "The right to file a claim under this subsection shall be personal to the claimant and shall not survive his death . . . When a claimant dies after having filed a timely claim the amount thereof shall be disbursed to another member of the household as determined by the secretary of revenue. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within 2 years of the filing of the claim, the amount of the claim shall escheat to the state."

(b) A homestead credit claim completed and signed but not filed until after a claimant's death shall not be allowed.

(9) **MEMBER OF ARMED FORCES.** A member of the United States armed forces who retains a Wisconsin domicile and maintains a Wisconsin homestead shall be qualified for the Wisconsin homestead credit even though such member does not occupy the homestead during the year to which the claim relates or at the time of filing the claim. Household income shall include the income of the household, including the armed forces member.

(10) **TEMPORARY ABSENCE FROM HOMESTEAD.** A person who is temporarily absent from a homestead and who did not establish a homestead elsewhere shall be considered to reside in such homestead for the period of the temporary absence. For example, if a person is in a hospital at the end of a calendar year and if it can reasonably be assumed that the absence is temporary, the person shall be considered a member of the homestead from which the person is temporarily absent. A person seasonally employed away from the homestead shall be similarly treated. The household income of such persons is described in sub. (5) of rule Tax 14.03.

(11) **CITIZENS OF OTHER COUNTRIES.** A citizen of a country other than the United States shall not be eligible for the Wisconsin homestead credit unless the person is in a permanent immigrant status. For example, a citizen of another country in the United States for educational purposes and required to leave the United States when the educational program is completed, shall not be eligible for the homestead credit.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

Tax 14.03 Household income. (s. 71.09 (7) (a) 1 and 3, Stats.) (1) **PURPOSE.** This rule clarifies the meaning of "household income" and "income" includable in household income in connection with homestead credit claims for the calendar year 1975 and thereafter.

(2) **DEFINITIONS.** (a) Section 71.09 (7) (a) 3, Stats., defines "household income" as "all income received by all persons of a household in a calendar year while members of such household". However, see sub. (4) of this rule for persons age 65 or over and sub. (2) (b) 2 of rule Tax 14.02 for the definition of a household.

(b) In s. 71.09 (7) (a) 1, Stats., "income" means "Wisconsin adjusted gross income" as defined in s. 71.02 (2) (e), Stats., for the calendar year to which the homestead claim relates plus all other items of income for the year, whether or not included in "Wisconsin adjusted gross income", including receipt of:

1. Alimony.
2. Support money, including support for dependents under Chapter 52, Wis. Stats.
3. Cash public assistance and relief, including:
 - a. Aid to families with dependent children.
 - b. Reimbursement for amounts originally paid for by the recipient, but for the calendar year 1978 and thereafter income does not include reimbursements for services under federal Title XX.
 - c. Payments by the Wisconsin department of health and social services under s. 48.48 (12), Stats., to adoptive parents of children having physical, mental or emotional problems.

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d. Veteran administration payments for reimbursement of services purchased by the recipient.

e. Federal H.U.D. payments for housing.

4. The gross amount of a pension or annuity, including any amounts withheld by the payor, nontaxable recoveries of cost, or disability income exclusions from taxable income. For example, assume a claimant was entitled to \$3,000 pension during a year but receives only \$2,800 after \$200 was withheld by the payor for payment towards health insurance of the claimant and that \$1,000 of the \$3,000 is a return of the claimant's contribution. Gross pension includable in household income in this situation shall be \$3,000. Pensions and annuities also include:

a. Railroad retirement benefits.

b. Veterans disability pensions.

5. All payments received for the benefit of a claimant or the claimant's spouse under the federal social security act, including:

a. Lump sum death benefits.

b. Medicare premiums deducted from social security benefits received by all members of a household.

c. Supplemental security income (S.S.I.) benefits received by persons over 65 years of age, or blind or disabled.

6. Compensation and other cash benefits received from the United States for past or present service in the armed forces.

7. Payments made to surviving widows or parents of war veterans by the United States, but not including insurance proceeds received by beneficiaries of National Service Life Insurance.

8. Proceeds from a personal endowment insurance policy or annuity contract purchased by the recipient.

9. The gross amount of "loss of time" insurance proceeds.

10. Nontaxable interest received from the federal government or any of its instrumentalities.

11. Scholarship and fellowship gifts, grants or income.

12. Unemployment compensation, including railroad unemployment compensation.

13. Worker's compensation.

14. The annual exclusion from Wisconsin adjusted gross income provided by s. 71.01 (3) (e), Stats., for federal civil service retirement annuities.

15. Net income or loss from sources outside Wisconsin includable in Wisconsin adjusted gross income. Examples of income received by Wisconsin residents not includable in Wisconsin adjusted gross income are the gain from an installment sale made by a Wisconsin resident prior to January 1, 1975 of property located outside Wisconsin but which gain is received after January 1, 1975 and the gain from a sale made after January 1, 1975 of property located outside Wisconsin by a nonresident but

which gain is received after the seller becomes a resident (see rule Tax 2.30).

(3) **EXCLUSIONS FROM HOUSEHOLD INCOME.** Household income shall not include:

(a) For the year 1978 and thereafter, cash reimbursements received under Title XX of the federal social security act.

(b) Gifts from natural persons.

(c) Surplus food or other relief in kind provided by a governmental agency, including food stamps, and payments directly to a supplier of medical care, tuition, food and clothing.

(d) Insurance proceeds received for the recipient's disability or loss of limb and proceeds from life insurance or annuity contracts received by a beneficiary.

(e) Wisconsin homestead credit received.

(f) Social security payments received on behalf of a claimant's children or the children of the claimant's household.

(4) **HOUSEHOLD INCOME OF PERSONS AGED 65 OR OVER.** For claims relating to the calendar years 1977 and 1978, household income shall be reduced by \$600 if the claimant, spouse or any dependent of the claimant allowable under s. 71.09 (6p), Stats., is 65 years of age or older prior to the close of the year to which the claim relates.

(5) **TEMPORARY ABSENCE FROM HOMESTEAD.** Income received while temporarily absent from a homestead shall be included in household income. For example, the net income from rental of a homestead during a planned temporary absence or earnings from seasonal employment away from the homestead are includable in household income. (See also Tax 14.02 (10)).

(6) **MARRIAGE, SEPARATION OR DIVORCE DURING A CLAIM YEAR.** (a) Household income of a claimant married during a year shall include the claimant's income for the portion of the calendar year prior to marriage and the total income of the household for the remainder of the year after marriage.

(b) Household income of a claimant divorced or permanently separated during a year shall include the claimant's income for the entire year and the claimant's spouse's income while the 2 persons occupied a common homestead. If the income of the claimant's spouse during the period of the year they occupied a common homestead cannot be exactly determined, a reasonable estimate of such income may be made and shall be clearly indicated as an estimate on the homestead credit claim.

(c) If a claimant is both divorced and remarried during a year to which a claim relates, household income shall include the claimant's income for the entire year and the income of each spouse during the period the spouse resided with claimant in the same homestead as a member of claimant's household.

(d) Comprehensive examples of the computation of household income in each of the situations described in pars. (a), (b) and (c) are given in sub. (7) of rule Tax 14.02.

(7) TREATMENT OF NET OPERATING LOSS CARRYFORWARD. (a) Under s. 71.05(1)(d), Stats., a Wisconsin net operating loss from a prior year may be subtracted from net income in an amount not in excess of the Wisconsin taxable income computed before the net operating loss deduction. Any unused net operating loss may be carried forward to consecutive succeeding years for a period not to exceed 5 years subsequent to the loss year. A net operating loss shall be applied in the same manner for Wisconsin homestead credit purposes.

(b) *Example.* Assume the net operating loss carryforward and Wisconsin adjusted gross income of a husband and wife are as follows:

	<u>Husband</u>	<u>Wife</u>
Wisconsin adjusted gross income before net operating loss	\$2,000	\$5,000
Net operating loss carryforward	<u>(5,000)</u>	<u> </u>
Wisconsin total income	<u>\$ 0</u>	<u>\$5,000</u>

In this situation household income for homestead credit purposes shall be computed as follows:

Wisconsin total income (husband)	\$ 0
Wisconsin total income (wife)	5,000
Social security benefits received	<u>4,000</u>
Total household income	<u>\$9,000</u>

The husband's Wisconsin total income is zero after applying the loss carryforward, not a negative \$3,000.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

Tax 14.04 Property taxes accrued (s. 71.09(7)(a)8, Stats.) (1) **PURPOSE.** This rule clarifies the meaning of "property taxes accrued" as the term applies to homestead credit claims for the calendar year 1975 and thereafter.

(2) **DEFINITION.** Section 71.09(7)(a)8 defines "property taxes accrued" as "property taxes (exclusive of special assessments, delinquent interest and charges for service) levied on a claimant's homestead--- under ch. 70, less the tax credit, if any, afforded in respect to such property by s. 79.10(3)." The credit under s. 79.10(3) is for general property tax relief provided by the state of Wisconsin to localities. 71.09(7)(a)8 amended by ch. 34, February 1979 to delete reference to 79.25(5).

(3) **QUALIFYING PROPERTY TAX.** (a) Property tax shall be levied on a homestead to qualify as "property tax accrued". Such tax is levied when the tax roll is delivered to the local treasurer with the warrant for collection, usually on or shortly after December 15 of each year.

(b) The property tax on a homestead for the year to which a claim relates need not be paid prior to filing a homestead credit claim. However, if such tax is delinquent at the time of filing the claim and the claimant does not intend to pay the tax, the property tax shall not be accruable and, therefore, shall not be considered in computing the homestead credit. The fact that the property taxes on a claimant's homestead are delinquent for years prior to the year to which a claim relates shall not disqualify the claimant.

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(c) A vendee (buyer of the homestead) in possession of a homestead under a land contract shall be entitled to the property tax accrued on the homestead.

(4) LIMITATION OF AMOUNT. (a) The maximum amount which may be claimed as "property tax accrued" is: 1. For the calendar year 1979 and thereafter: \$1,000.

2. For the calendar years 1977 and 1978: \$800.

3. For the calendar years 1975 and 1976: \$535.

(b) For the calendar year 1979 and thereafter, under s. 71.09 (7) (p), Stats., property tax accrued shall be reduced by one-twelfth for each month or portion of a month of such year for which the claimant received general relief equal to or in excess of \$400, or received aid for dependent children under s. 49.19, Stats. However, property tax accrued is not reduced if the aid is for foster children under s. 49.19 (10) (a), Stats., or is received as a relative, other than a parent, for the benefit of any dependent children residing in the homestead of the claimant, if the assistance does not include aid to meet the needs of the claimant or the claimant's spouse or children.

(5) HOMESTEAD OWNED BY ONE PERSON OR ONE HOUSEHOLD. A qualified person who owns and resides in a Wisconsin homestead may claim the property tax accrued on such homestead. If the tax is paid by another person not a member of the owner's household, the owner-occupant nevertheless shall be entitled to the property tax accrued for homestead credit purposes. For example, if a parent and adult son or daughter occupy a homestead owned by the parent, the parent may claim the property tax accrued on the homestead even though the son or daughter paid the tax. The payment by the son or daughter shall be considered a gift to the parent, unless another intent is established.

(6) OWNERSHIP OF HOMESTEAD BY MORE THAN ONE PERSON. (a) Section 71.09 (7) (a) 8, Stats., provides that "if a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common and one or more such persons or entities is not a member of claimant's household, 'property taxes accrued' is that part of property taxes levied on such homestead (reduced by the tax credit under ss. 79.10 (3) and 79.25 (5)) as reflects the ownership percentage of the claimant and the claimant's household".

(b) If a qualified claimant residing in a jointly owned homestead pays the homestead property tax for an owner not residing in the homestead, the claimant shall be entitled to both the claimant's appropriate share of property tax accrued" as described in par. (a) and "rent constituting property tax accrued" equal to 25% of the homestead property tax paid for each absent owner. On the other hand, if such a claimant pays the property tax for another owner who also resides in the homestead but who is not a member of the claimant's household, both such owners are entitled to property tax accrued on the basis of ownership percentage as described in par. (a).

(c) Examples of allowable property tax accrued in various situations follow:

1. Assume A, B and C own a homestead throughout 1977 and qualify for the homestead credit. A and B are married and each owns one-third of the homestead, while C owns the remaining one-third. A and B oc-

cupy the homestead (C does not) and pay all property taxes, which equal \$900 after credits for the year. Either A or B may claim the homestead credit and may claim two-thirds of the net property tax as "property tax accrued" and 25% of C's share of the net tax as "rent constituting property taxes accrued". The amount eligible for homestead credit equals \$600 ($\frac{2}{3}$ of \$900) plus \$75 (25% of \$300) for a total of \$675. If C had also occupied the homestead in 1977, A and B would have been entitled to property tax accrued of \$600 and C to \$300 even though A and B paid all the tax.

2. If a mother and adult son each own one-half of a homestead occupied solely by the mother and if the son pays all of the property tax on the homestead for 1978, the mother shall be entitled to one-half of the property tax accrued.

3. If a brother and sister own 75% and 25%, respectively, of a homestead they both occupy throughout 1978 and if the brother pays all the property tax on the homestead, each shall be entitled to property tax accrued based on their ownership percentage.

(7) SALE OF HOMESTEAD. (a) Section 71.09(7) (a) 8, Stats., provides "If a homestead is sold during the calendar year of the levy the 'property taxes accrued' for the seller and buyer shall be the amount of the tax levy prorated to each in the closing agreement pertaining to the sale of the homestead or, if not so provided for in the closing agreement, the tax levy shall be prorated between seller and buyer in proportion to months of their respective ownership, provided that the seller and buyer occupy the homestead during the periods of their respective ownership."

(b) The tax proration shown on a closing agreement or computed on the basis of ownership shall be further adjusted, if necessary, for homestead credit purposes to consider in the year of sale and purchase only the property tax accrued during the period the seller and buyer each maintained a homestead on the property. Thus, property tax shall be prorated on the basis of when the seller moved from the homestead or established a homestead elsewhere and when the buyer established a homestead on the property after moving from another homestead. For example, if ownership of a homestead is transferred on July 1, the prorated tax for 6 months on the closing statement is \$600, the seller moves from that homestead to a new homestead on May 31 and the buyer does not move into the homestead until August 1, the portion of prorated tax allowable to the seller is only \$500 (the tax from January 1 to May 31) rather than \$600 shown on the closing statement. The buyer is entitled to only 5/12ths of the tax for the homestead, rather than $\frac{1}{2}$ of such tax.

(8) HOUSEHOLD OCCUPYING MORE THAN ONE HOMESTEAD IN A YEAR. Section 71.09(7) (a) 8, Stats., provides "If a household owns and occupies 2 or more homesteads in the same calendar year 'property taxes accrued' shall be the sum of the prorated taxes attributable to the household for each of such homesteads. If the household owns and occupies the homestead for part of the calendar year and rents a homestead for part of the calendar year, it may include both the proration of taxes on the homestead owned and 'rent constituting property taxes accrued' with respect to the months the homestead is rented, in computing the amount of the claim under pars. (g), (gn) and (go)." Thus, if a household owns and occupies a homestead in Wisconsin from January 1, 1978 to September 30, 1978 and then establishes a homestead in a rented dwelling for the remainder of the calendar year, property tax accrued shall be the pro-

rated portion of property tax attributable to the 9 months the household resided in the owned homestead and rent constituting property tax accrued shall be 25% of the rent paid for occupancy during the remainder of the year. Assuming the annual property tax of the owned homestead equaled \$800 and rent paid for occupancy for the last 3 months of the year totaled \$600, the tax and rent allowable for homestead credit purposes equals \$750, consisting of \$600 (9/12 of \$800) plus \$150 (25% of \$600).

(9) **HOUSEHOLD OCCUPYING MORE THAN ONE DWELLING AT THE SAME TIME.** As defined in sub. (2) (a) 2 and (2) (b) 1 of rule Tax 14.02, "homestead" means the principal dwelling in which a household resides. Therefore, property tax accrued or rent constituting property tax accrued shall not be allowed on 2 dwellings occupied concurrently by a household, such as a household occupying both a permanent house in the city and a summer cottage in the country during the same time period or a person residing temporarily in a nursing home while maintaining a homestead elsewhere. Only the tax or rent pertaining to the principal dwelling is allowable for homestead credit purposes.

(10) **PROPERTY TAX PAID ON A LARGER UNIT.** (a) Section 71.09 (7) (a) 8, Stats., provides "If a homestead is an integral part of a larger unit such as a farm, or a multipurpose or multidwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the homestead is of the total value, except that the claimant may use the total property taxes accrued for the larger unit, but not exceeding 120 acres of land, except as the limitations of par. (h) apply." The limitation under par. (h) refers to the maximum dollar limit of property tax accrued described in sub. (4) of this rule.

(b) Qualifying land of a larger unit shall be limited to land which is adjacent to the homestead property, forming one contiguous unit. A secondary parcel of land which is not adjacent to the homestead property shall not qualify, unless it is necessary to the use of the homestead as a home. However, a secondary parcel of land separated from the homestead property by such things as a street, river or utility right-of-way shall be considered to be adjacent. As an example, assume a farmer owns 3 parcels of land, 60, 40 and 20 acres in size, the homestead is located on the 60 acre parcel and the 60 and 20 acre parcels have a common border, while the 40 acre parcel is separated from the others by a neighboring farm. In this situation, qualifying land includes both the 60 acre homestead parcel and the 20 acre parcel, because it is adjacent to the homestead parcel. The 40 acre parcel does not qualify since it is not adjacent to the homestead parcel and is not necessary to the use of the homestead as a home. However, if the 3 parcels and the neighboring farm were so situated that a driveway must cross the 40 acre parcel, as well as a portion of the neighboring farm, to reach the homestead or if a substantial portion of farm buildings necessary to the operation of the farm were on the 40 acre parcel, then that parcel would qualify since it would be necessary to the use of the homestead as a farm home. If the 3 parcels were situated so that the 60 acre parcel bordered on the 20 acre parcel which in turn bordered on the 40 acre parcel, the taxes on all 3 parcels would qualify, since they form one contiguous unit.

(c) A qualified claimant owning and occupying a homestead in a larger unit such as a farm or multipurpose or multidwelling building shall be entitled to "property tax accrued" on the larger unit but not exceeding the maximum tax described in sub. (4) of this rule and not exceeding

the tax on the maximum permissible acreage described in par. (a). Thus, a claimant owning a 2-story dwelling and residing in the lower story while renting the upper to others may claim property tax accrued on the entire building, subject to the maximum described in sub. (4). Similarly, a claimant conducting a business from the claimant's homestead may claim property tax accrued on the entire homestead, subject to the maximum limitation described in sub. (4), even though a part of the dwelling is used exclusively for the business.

(d) "Property tax accrued" for a claimant residing in a cooperative apartment building shall equal the portion of the real property tax on the entire building represented by the claimant's ownership percentage in the capital equity of the cooperative or in the real estate, as the case may be, but limited to the maximum amount shown in sub. (4) of this rule. For example, assume a claimant has a 1/5 equity in a cooperative which owns an 8-unit apartment building in which the claimant resides in one unit. If otherwise qualified, the claimant may claim 1/5 of the property tax accrued on the building, subject to the maximum in sub. (4). If the apartment building were owned directly by the members of the cooperative and the claimant held a 1/5 interest in the building, the claimant would be entitled to 1/5 of the property tax accrued regardless of the claimant's equity in the cooperative. If the land upon which the apartment is located is not owned by the claimant, "rent constituting property tax accrued" may be claimed for rent paid by the claimant for use of the land as a homestead. For example, if the cooperative apartment referred to in the prior example were built on leased land, the tax on the building would be assessed as personal property tax and the owner of the land would charge the cooperative rent for the land. In addition to a 1/5 share of the personal property tax, the claimant also would be allowed 25% of the claimant's 1/5 share of the rent of the land (see sub. (11) of this rule).

(11) OTHER ASSESSMENTS OR PAYMENTS DEEMED TO BE PROPERTY TAX ACCRUED. (a) *Homestead on leased land.* Personal property tax assessed on a homestead constructed on leased land is deemed to be "property tax accrued". Such property includes a mobile home used as a homestead.

(b) *Mobile home parking fees and space rent.* Mobile home parking fees assessed under s. 66.058 (3) (c), Stats., are "property taxes accrued" under s. 71.09 (7) (a) 8, Stats. Also, 25% of gross rent paid to a landlord for parking a mobile home may be claimed as "rent constituting property taxes accrued". Any charges for utilities, services, furniture and furnishings or personal appliances shall not be included in such gross rent.

(c) *Property tax assessed on property subject to a life estate.* A property tax assessment on property subject to a life estate may only be claimed as "property tax accrued" for purposes of homestead credit by a person in possession of the life estate interest. The life estate must be in writing and incorporated in the warranty deed or other legal documentation and the person having the life estate interest must have paid the tax. For example, assume a widow and her son reside in the same homestead. Prior to the year of the claim, the widow transferred the property to her son by quit-claim deed but retained a life estate in the property; she also pays the tax, but the tax bill comes in her son's name. If otherwise qualified, the widow may file a claim for homestead credit and base that claim on the entire amount of the tax. The son may not claim home-

stead credit based upon any portion of the property taxes accrued on the homestead even though he resides in the property and is otherwise qualified.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

Tax 14.05 Rent constituting property taxes accrued. (s. 71.09 (7) (a) 6, Stats.) (1) **PURPOSE.** This rule clarifies the term "Rent constituting property taxes accrued" in connection with homestead credit claims for the calendar year 1975 and thereafter.

(2) **DEFINITIONS.** (a) 1. Section 71.09 (7) (a) 6, Stats., defines "Rent constituting property taxes accrued" as meaning "25% of the gross rent actually paid in cash or its equivalent . . . by a claimant and his household solely for the right of occupancy of their Wisconsin homestead in such calendar year, and which rent constitutes the basis, in the succeeding calendar year of a claim for relief under this section by such claimant."

2. The "equivalent of cash" shall be the market value of property transferred in lieu of cash and shall not include the value of services performed.

For example, assume that a resident of an apartment building entered into an agreement with the owner to do some painting in the building. In exchange for this, the regular monthly rent of \$150 was reduced to \$50 per month for 3 months. Of the \$300 reduction in rent, \$100 constituted the cost of the paint which the resident bought, and \$200 constituted the value of the labor. Allowable rent for the year would be \$1,600, consisting of the amount actually paid ($\$150 \times 9$ months plus $\$50 \times 3$ months = \$1,500) plus the market value of the paint (\$100). The value of the labor, \$200, may not be used in determining rent.

3. Indirect payments of rent, such as amounts paid on behalf of a person directly to a nursing home by a governmental agency under a medical assistance program, shall not be considered to be rent paid by the person.

4. Property tax paid in lieu of rent by a tenant shall be considered a rental payment.

(b) 1. Under s. 71.09 (7) (a) 7 gross rent means "rental paid at arms-length, solely for the right of occupancy of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as a part of the rental agreement, whether expressly set out in the rental agreement or not".

2. Charges for services referred to in subd. 1 include the cost of nursing care or maid service.

(3) **LIMITATION OF AMOUNT.** (a) The maximum amount which may be claimed as rent constituting property taxes accrued is:

1. For the calendar year 1979 and thereafter: \$1,000.
2. For the calendar years 1977 and 1978: \$800.
3. For the calendar years 1975 and 1976: \$535.

(b) For the calendar year 1979 and thereafter, under s. 71.09 (7) (p), Stats., rent constituting property tax accrued shall be reduced by one-twelfth for each month or portion of a month of such year for which the

claimant received general relief equal to or in excess of \$400, or received aid for dependent children under s. 49.19, Stats. However, rent constituting property tax accrued is not reduced if the aid is for foster children under s. 49.19 (10) (a), Stats., or is received as a relative, other than a parent, for the benefit of any dependent children residing in the homestead of the claimant, if the assistance does not include aid to meet the needs of the claimant or the claimant's spouse or children.

(4) **CERTIFICATION OF RENT PAID.** (a) Wisconsin department of revenue form I-017, Certification of Rent Paid, shall be completed by the claimant and the landlord and submitted by the claimant with Schedule H, Wisconsin Homestead Credit Claim.

(b) If a claimant rented more than one homestead during a year, a separate certification of rent paid shall be completed for each homestead and submitted by the claimant with Schedule H.

(c) Landlords shall reasonably determine the amount of rent constituting the value of utilities, services, furniture, furnishings and other items provided the claimant in addition to occupancy rights and subtract such amounts from total rent indicated on the certification of rent paid, to determine rent paid for occupancy.

(d) Section 71.09 (7) (u), Stats., provides that a landlord is prohibited from charging a fee for completing the certification of rent paid.

(e) If a claimant is unable to obtain a certification of rent paid from a landlord, rent receipts or cancelled checks substantiating amounts paid shall be acceptable evidence of gross rent paid. The claimant shall attach a statement to the homestead credit claim giving the name and address of the landlord, the address of the homestead for which credit is claimed, an explanation of the inability of the claimant to obtain a rent certification, and a description of the utilities, services and furnishings provided by the landlord. In the absence of more accurate data, the amount of gross rent allocable to utilities and furnishings, if entirely provided by the landlord, shall be: utilities (including heat)—15%, furnishings—10%. For example, if a claimant rented a furnished apartment for \$200 per month for the entire year and the landlord provided all the utilities, rent paid for occupancy only for the year would be \$1,800 (\$2,400 total rent less 15%, \$360, for utilities, and less 10%, \$240, for furnishings). If the landlord does not provide all utilities or all furnishings, these percentages shall be reduced accordingly. In this event, an explanation of the percentages used shall be attached to the homestead credit claim.

(5) **NON-ARMSLENGTH RENTAL.** Section 71.09 (7) (m), Stats., provides "In any case in which a homestead is rented by a person from another person under circumstances deemed by the department of revenue to be not at arms-length, it may, with the aid of its property tax division (currently named division of state and local finance), determine rent constituting property taxes accrued as at arms-length, and, for purposes of this section, such determination shall be final." For example, assume a claimant files a claim with a rent certification showing rent paid for occupancy only of \$3,600, or \$300 per month. Investigation by the department of revenue discloses the rent is too high for the locality and dwelling involved, and the landlord is financially dependent on others for support and is related to the claimant. The property tax division of the department of revenue is requested to and does determine that the fair rental value of the claimant's homestead for the year of the claim was

\$150 per month, or \$1,800 for the year. No utilities, furnishings or other items were furnished by the landlord. Allowable rent constituting property taxes accrued therefore would be \$450 (25% of \$1,800).

(6) **EXEMPT HOUSING.** (a) *Calendar year 1978 and thereafter.* 1. Section 71.09 (7) (t), Stats., as amended on May 18, 1978, provides in part that "No claim for credit under this section may be allowed to any claimant who: 1. Resided for the entire calendar year to which the claim relates in housing which was exempt from taxation under ch. 70, except housing for which payments in lieu of taxes are made under s. 66.40 (22). If the claimant lived in housing which was subject to taxation under ch. 70 for any part of the calendar year to which the claim relates, the property taxes accrued or rent constituting property taxes accrued, or both, shall be based on the period during which such housing constituted the claimant's homestead . . ." For example, assume a claimant lived in a rented apartment for 6 months of 1978 and then moved permanently to a tax-exempt nursing home. The claimant may file a claim based on rent constituting property taxes accrued for the first 6 months of 1978. The rent paid for the last 6 months may not be used in computing the homestead credit.

2. Payments in lieu of taxes under s. 66.40 (22), Stats., are made by most homes that are licensed with the state of Wisconsin as "housing authorities".

3. Section 66.40 (22), Stats., reads as follows: "TAX EXEMPTION AND PAYMENTS IN LIEU OF TAXES. The property of an authority is declared to be public property used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes of the state or any state public body; provided, however, that the city in which a project or projects are located may fix a sum to be paid annually in lieu of such taxes by the authority for the services, improvements or facilities furnished to such project or projects by such city, but in no event shall such sum exceed the amount that would be levied as the annual tax of such city upon such project or projects."

(b) *Calendar year 1977.* 1. The Statutes applicable to 1977 homestead credit claims filed in 1978 were amended on May 18, 1978 as set out in par. (a) above. Section 71.09 (7) (t), Stats., as originally written, effective with 1977 claims filed in 1978, provided that "No claim for credit under this section may be allowed to any claimant who at the time of filing the claim: 1. Resides in housing which is exempt from taxation under ch. 70, except housing for which payments in lieu of taxes are made under s. 66.40 (22)." The determining factor under this provision was whether or not the claimant resided in tax-exempt housing at the time of filing the claim, rather than during the year to which the claim related. Therefore, if a person resided in taxable housing for all of 1977 but moved to tax-exempt housing on January 1, 1978, no claim could be filed. Conversely, if a person resided in tax-exempt housing for all of 1977 but moved to taxable housing on January 1, 1978, that person would be eligible to file a 1977 claim, based on rent constituting property taxes accrued at the tax-exempt housing.

2. Because of the amendment to Section 71.09 (7) (t), Stats., effective on May 18, 1978 and set out in par. (a) above, a claimant became eligible for homestead credit benefits for 1977 whether or not he or she resided in tax-exempt housing at the time of filing the claim. However, if the claimant filed under this amendment, a claim could not be based on tax-

exempt housing, except housing for which payments in lieu of taxes are made under s. 66.40 (22), Stats.

3. Claimants filing homestead credit claims after May 17, 1978 but before January 1, 1979 could elect to come under the provisions of the amended statute or the provisions of the law prior to amendment.

(c) *1976 and prior calendar years.* For 1976 and prior calendar years persons having a homestead in property exempt from tax under ch. 70 were eligible to claim a homestead credit for rent constituting property taxes accrued.

(d) Examples of other types of exempted housing include:

1. Federal low income housing under the H.U.D. program;
2. Student dormitories owned by nonprofit educational institutions;
3. Housing units of religious organizations; and,
4. Charitable, nonprofit nursing homes.

(7) **JOINT OCCUPANTS OF RENTAL UNITS.** (a) A claimant sharing a rental homestead with one or more joint occupants not members of the claimant's household shall be entitled to claim rent paid for occupancy of the homestead as "rent constituting property tax accrued". However, the total claims of the joint occupants for rent paid for occupancy shall not exceed 100% of such rent paid to the landlord, as shown on the rent certification. The amount of rent paid for occupancy shall be proportionate to the contribution of the claimant or the claimant's household to the cost of shared living expenses, such as rent, food, utilities and supplies, as follows:

<u>Portion of rent and other living expenses paid</u>	<u>Allowable occupancy rent</u>
All	All
1% to 99%	1% to 99%
None	None

The following example illustrates how to compute each person's rent paid for occupancy in a shared expense situation. In the example, "rent" means rent paid for occupancy only for the homestead, as shown on the rent certification.

Living Expenses	<u>Total</u>	<u>X</u>	<u>Y</u>	<u>Z</u>
Rent	\$1,800	\$1,800	\$ --	\$ --
Food	900	--	450	450
Utilities	300	--	150	150
Total	<u>\$3,000</u>	<u>\$1,800</u>	<u>\$ 600</u>	<u>\$ 600</u>
% of Total	<u>100%</u>	<u>60%</u>	<u>20%</u>	<u>20%</u>

Since X paid 60% of the shared living expenses, his share of rent paid for occupancy only would be \$1,080 (60% of \$1,800). Likewise, rent paid for occupancy only would be \$360 for both Y and Z (20% of \$1,800). Total rent paid for occupancy only for all 3 claimants is \$1,800 as shown on the rent certification obtained by X (\$1,080 + \$360 + \$360 = \$1,800).

(b) Landlords shall complete the certification of rent paid for only those tenants paying rent to the landlord and shall include on such certi-

fication only the information required thereon without considering any separate arrangements of the tenants.

(c) If a claimant described in par. (a) is entitled to more or less rent paid for occupancy than is shown on the certification of rent paid completed by the landlord for the claimant, the claimant shall in addition to such certification attach a schedule to the homestead credit claim showing the computation of claimed rent paid for occupancy and identifying the other occupants of the homestead with whom rent and living expenses were shared during the year to which the claim relates by giving the name, current address at the time of filing the claim (if known) and social security number (if known).

(8) RENT PAID FOR LARGER UNITS. The portion of s. 71.09 (7) (a) 8, Stats., pertaining to property taxes accrued on a larger unit such as a farm or multipurpose or multidwelling building shall also apply to rent constituting property taxes accrued on larger units (see Tax 14.04 (10)). For example, assuming that a claimant were renting an entire duplex, living in one unit and subleasing the other unit to another person, the claimant need not prorate the rent between his or her living unit and the unit being rented out, but may claim the rent paid for the entire duplex up to the maximum allowable as described in sub. (3) of this rule.

(9) SHARECROPPERS. (a) "Rent constituting property taxes accrued" of a person sharing the costs or proceeds or both from the operations of a farm with the owner of the farm property in consideration for the use of the homestead, utilities, furniture, furnishings, machinery, equipment or land equals 25% of the owner's share of the net proceeds applicable to occupancy of the homestead. For example, assume the following: A sharecropper resides on and operates a 120 acre dairy farm. The landlord and the sharecropper share equally the cost of seed and feed (\$10,000), the gross receipts from crop sales (\$5,000), and the gross milk receipts (\$20,000). The landlord furnishes the land, buildings and machinery, for which annual allowable depreciation is \$3,000. The homestead is furnished, and the landlord pays for the utilities. The annual rental value of the furnishings and utilities is \$1,500. In this situation, rent paid for occupancy of the homestead equals the owner's share of the proceeds less the value of the non-occupancy items furnished by the landlord, as follows:

Landlord's share of crop receipts	\$ 2,500	
Landlord's share of milk receipts	<u>10,000</u>	\$12,500
Less items furnished by landlord:		
Landlord's share of seed & feed	\$ 5,000	
Depreciation of buildings (not including the dwelling) and machinery	3,000	
Furnishings and utilities	<u>1,500</u>	\$ 9,500
Rent paid for occupancy		\$ 3,000
Rent constituting property tax accrued (25%)		<u>\$ 750</u>

(b) The portion of the rent applicable to occupancy of the homestead shall not include the rental value of land not a part of the homestead nor any land in excess of allowable acreage for "larger units". If the total acres rented include or exceed such land, the total rent paid for occupancy shall be prorated on the basis of the ratio of the number of acres comprising the homestead or the allowable acreage for "larger units" to total acres rented. For example, if a total of 160 acres were sharecropped in the above example, allowable rent paid for occupancy would be \$2,250 (120/160 times \$3,000).

(10) **MOBILE HOMES.** Section 71.09 (7) (a) 7, Stats., provides that "gross rent" includes "the space rental paid to a landlord for parking of a mobile home, exclusive of any charges for utilities, services, furniture and furnishings or personal appliances furnished by the landlord as a part of the space rental. 25% of such annual gross rental plus the monthly parking permit fees paid during the year shall be the annual 'property taxes accrued'."

(11) **LOW INCOME HOUSING.** (a) If subsidy payments are received from a governmental agency and applied toward rental of a homestead and if the application of such payments is not specified under the terms of an agreement with the paying agency, gross rental shall include both the subsidy payment and the balance of the rental paid by the tenant. In this event, the portion of the rent paid for occupancy eligible for the homestead credit may be computed using the following formula: (Gross rental less utilities and furnishings \div Gross rental) \times Rent paid by the tenant = Rent paid for occupancy. For example, assume a total of \$1,800 rent is paid by or for a claimant in a year. The value of furnishings and utilities provided is \$100 and \$200 respectively. The tenant pays \$600 of the rent, a government agency the \$1,200 balance. Qualifying rent paid for occupancy equals \$500, computed as follows: \$1,500 (gross rent of \$1,800 less utilities and furnishings of \$300) \div Gross rent of \$1,800 = 83 & 1/3%; 83 & 1/3% times gross rent paid by the tenant of \$600 = \$500.

(b) If the conditions are the same as in par. (a) but the formula specified in that paragraph is not used, the portion of the tenant's payment, excluding the subsidy, allocable to utilities and furnishings shall be the sum of subdvs. 1 and 2. 1. *Utilities.* 15%, if all utilities, including heat, are provided. If all utilities are not provided, a reasonable percentage which reflects the landlord's prorated costs for utilities shall be used, but not more than 15%.

2. *Furnishings.* 10%, if the homestead is completely furnished by the landlord. If the furnishings are not entirely provided by the landlord, a reasonable percentage but not more than 10%.

3. *Example:* If the landlord provides all the utilities and furnishings in the example cited in par. (a), but their value is unknown, rent paid for occupancy only by the claimant would be \$450, computed as follows: Total rent paid by the claimant (\$600) less utilities (15% of \$600 = \$90), less furnishings (10% of \$600 = \$60) = \$450.

(c) If an agreement with the agency paying the subsidy specifies how the subsidy is to be applied, such agreement shall be controlling in the determination of the tenant's rental paid for occupancy.

(12) RETIREMENT AND NURSING HOMES. (a) Any one of the following methods may be used by residents of retirement or nursing homes to determine the amount of rent paid for occupancy:

1. A standard rate of \$15 per week but not more than the actual rent paid.
2. The percentage of building occupancy costs method (See Note 1 at the end of this rule).
3. The per resident cost of furnished items and services method (See Note 2 at the end of this rule).
4. Any other appropriate method, subject to prior approval by the department of revenue.

(b) If a fixed charge is made upon admission to a retirement or nursing home entitling a person to occupancy for the balance of the person's life and additional monthly charges are solely for current maintenance and services, only the initial charge for occupancy shall be "rent constituting property taxes accrued". The terms of the agreement between the occupant and the nursing home shall establish the year (s) in which the rent paid for occupancy shall be deemed to be paid. If the rent paid is refundable in part should the occupant leave the home or if the rental payment is held in a trust by the home for the occupant, the initial payment shall not be deemed to be paid entirely in one year but shall be prorated.

History: Cr. Register, February, 1980, No. 290, eff. 3-1-80.

Note 1. Percentage of Building Occupancy Costs Method. Under this method, the ratio that building costs of the retirement or nursing home related to occupancy for a year bears to gross income received in that year, both directly from the resident and indirectly from governmental aid, is determined. This ratio is applied to the resident's total direct payments during the year for which the claim is made, yielding the portion of such payments applicable to occupancy. However, for the calendar year 1977 and thereafter, a resident is not eligible for the homestead credit if receiving medical assistance under s. 49.45, Stats., at the time of filing the claim.

The above ratio shall be determined from the most recent cost and income data available at the time the homestead credit claim is filed, preferably using data from the same year for which the homestead credit is claimed.

Building occupancy costs shall be limited to property taxes on real estate occupied, interest paid on the purchase of such real estate, the portion of lease or rental expense for real estate occupied, depreciation on real estate occupied and upkeep and repair costs on such buildings.

The following format may be utilized to compute the amount of rent paid for occupancy (the form is filled in as an example of how to compute the percentage):

Computation of Percentage of Building
Occupancy Costs

1. Building Occupancy Expenses	
a. Property taxes (real estate)	<u>\$88,175</u>
b. Interest (real estate only)	<u>93,137</u>
c. Lease or rent expenses (real estate only)	<u>12,086</u>
d. Depreciation (building only)	<u>42,604</u>
e. Building upkeep and repairs	<u>74,064</u>
 Total Building Occupancy Expenses	 \$ <u>259,976</u>
 2. Gross Income From Residents	 <u>1,216,736</u>
 3. Line 1 divided by line 2 equals the Percentage Rate	 <u>21.4%</u>

The Percentage Rate determined above will be multiplied by the amount entered on line 3c of the Certification of Rent Paid form prepared for each resident.

The amount so determined is to be entered on line 5 of that form as rent paid for occupancy only. Assuming a claimant's total direct payments during the year were \$9,000, rent paid for occupancy only would be \$1,926 ($\$9,000 \times 21.4\%$).

Note 2. Per Resident Cost of Furnished Items and Services Method. Under this method a retirement or nursing home may determine the average cost of furnished items and services provided to each resident. This amount is then subtracted from total direct payments by a resident in a year to determine the amount paid for occupancy. The following format shows how this computation is to be made.

Using data from the financial statement showing the results of operations for the most recently completed operating year, the retirement or nursing home lists all expenses in column A and the portion applicable to furnished items and services in column B. Some expenses such as administrative costs, wages or salaries paid to nurses and attendants, utility expenses and food, relate entirely to furnished items or services, and the full amount should be shown in column B. Other items which may relate to furnished items, services and occupancy, such as repairs, taxes and depreciation, shall be prorated on an equitable basis.

The total of the amounts listed in column B is divided by the average number of residents during the year represented by the data, yielding the average cost per resident for that year. The average number of residents may be determined by averaging the number on hand at the end of each month of the year, or the beginning and end of the year or other method yielding an accurate result.

If a resident is receiving medical assistance under s. 49.45, Stats., the average cost of furnishings and services shall be prorated on the basis of the percent that direct payments by the resident bears to total direct and indirect payments made by or for the resident. However, for the calendar year 1977 and thereafter, such resident is not eligible for the homestead credit if receiving such assistance at the time of filing the homestead credit claim.

The average cost (prorated if necessary) of furnished items and services is entered on line 4d of the Certification of Rent Paid form. This amount is subtracted from the total direct payments by the resident shown on line 3c to determine the amount of rent paid for occupancy only.

The format shown below is filled in as an example of how to compute the per resident cost of furnished items and services. Assuming a claimant's total direct payments during the year were \$9,000.00, rent paid for occupancy only would be \$1,730.33 ($\$9,000.00 - \$7,230.67$).

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Computation of the Per Resident Cost
of Furnished Items and Services

	COLUMN A	COLUMN B
	Total Expenses	Expenses Relating To Furnished Items and Services Only
1. Depreciation	\$ 31,046	\$ --
2. Taxes on business and business property	11,186	--
3. Rent on business property	--	--
4. Repairs	9,445	--
5. Salaries and wages	369,286	368,492
6. Insurance	15,438	15,438
7. Legal and Professional fees	8,922	8,922
8. Interest on business indebtedness	19,862	--
9. Other business expenses (specify):		
a. Utilities	11,857	11,857
b. Unassigned retirement	10,866	10,866
c. Food	38,378	38,378
d. Supplies	39,715	39,715
e. Other fringe benefits	74,663	74,663
f. Other expenses	21,679	--
g.		
10. TOTAL EXPENSES	\$682,343	\$568,331
11. Average Number of Occupants During the Year		78.6
12. Average Cost of Furnished Items and Services Provided to Each Resident (Divide line 10, Column B by line 11)		\$ 7,230.67