

## Chapter Tax 14

## HOMESTEAD CREDIT

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Note: Chapter Tax 14 as it existed on February 28, 1990 was repealed and a new chapter Tax 14 was created effective March 1, 1990.

**Tax 14.01 Administrative provisions.** (ss. 71.51 through 71.55, 71.74 (8) (a), and 71.82 (1) (c) and (2) (a), Stats.) (1) **PURPOSE.** This section describes the Wisconsin homestead credit, defines terms, and sets forth administrative provisions applicable to all sections of ch. Tax 14.

(2) **DEFINITIONS.** In ch. Tax 14 and in ss. 71.51 through 71.55, Stats.:

(a) "Domicile" has the same meaning for Wisconsin homestead credit purposes as for Wisconsin individual income tax purposes. A claimant's domicile is the true, fixed, and permanent home where the claimant intends to remain permanently and indefinitely and to which, whenever absent, the claimant intends to return. It is often referred to as a "legal residence." A claimant may be physically present or residing in one locality and maintain a domicile in another but may have only one domicile at any time.

(b) "Domiciled" means maintained a domicile.

(c) "Dwelling" means the principal dwelling of a qualified household.

(d) "General relief" means a basic assistance program provided by a county under ch. 49, Stats., to an eligible dependent person. General relief is a separate program in itself and does not include other assistance programs, such as social security, supplemental security income, state supplemental payments, federal food stamps, Title XX benefits, community options program payments, aid to families with dependent children, or foster care.

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

(3) **THE WISCONSIN HOMESTEAD CREDIT.** (a) Sections 71.51 through 71.55, Stats., provide credit in the form of an income tax credit or a refund to qualifying persons who own or rent their Wisconsin homestead. A claimant may claim Wisconsin property taxes accrued or rent constituting property taxes accrued or both on the claimant's homestead as a basis for calculating 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 and not applied against any liability under s. 71.55 (1), Stats., is paid to the claimant.

(b) Under s. 71.54 (3), Stats., if an approved homestead credit claim by a qualified claimant is more than zero but less than \$10, the amount of credit paid or credited shall be \$10.

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

(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 on the return, the claimant shall attach Schedule H to the income tax return. If the claimant has previously filed the income tax return, the preferable procedure for filing a homestead credit claim is to file a duplicate copy of the income tax return with Schedule H, to write the words "Duplicate" on the top of the first page of the tax return copy and "Income Tax Return Previously Filed" on the top of Schedule H, and to fill in the date the income tax return was filed in the space provided on Schedule H.

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

(5) TIME WITHIN WHICH ORIGINAL AND AMENDED CLAIMS SHALL BE FILED. (a) Under s. 71.53 (2), Stats., an original homestead credit claim shall be filed with the department on or before December 31 of the year following the year to which the claim relates or the department shall disallow the claim.

(b) Under s. 71.53 (3), Stats., a claimant who files a timely original claim may subsequently file an amended claim with the department. An amended claim shall be filed within 4 years of December 31 of the year following the year to which the claim relates or the department shall disallow the claim.

(6) PROOF OF CLAIM. Under s. 71.55 (7), Stats., for the purpose of determining the correct amount of homestead credit of a claimant, the claimant shall supply to the department the following information:

(a) All information requested on the form;

(b) Proper verification of property taxes accrued as provided in s. Tax 14.04 (4), if the claimant claims property taxes accrued;

(c) Proper verification of rent constituting property taxes accrued as provided in s. Tax 14.05 (4), if the claimant claims rent constituting property taxes accrued;

(d) The signature of the claimant. If a claimant is unable to sign a claim, the claimant may make an "X" or other mark with the assistance of another person who signs the claim as a witness to the validity of the signature. A legally authorized representative such as a guardian or attorney-in-fact may sign a homestead credit claim in lieu of the claimant, but a homestead credit claim filed on behalf of a claimant who is deceased at the time of filing shall be denied as provided in s. Tax 14.02 (11).

(7) INCORRECT CLAIMS. Under s. 71.74 (8) (a), Stats., the department may give notice of an incorrect homestead credit amount within 4 years from December 31 of the year following the year to which a homestead credit claim relates. The department may correct incorrect claims by ad-

justing the credit claimed, by assessment as income taxes are assessed, or by refund, as appropriate.

(8) **INTEREST AND PENALTIES ON INCORRECT CLAIMS.** (a) *Excessive claims.* Excessive homestead credit amounts, not the result of negligence or fraudulent intent, that have been paid or credited shall be subject to interest as provided by s. 71.82 (1) (c), Stats. The interest shall be imposed from the date on which the excessive amount was paid or credited, but not earlier than from December 31 of the year following the year to which the claim relates, to the date on which the amount when subsequently assessed will become delinquent if unpaid. If unpaid by the due date shown on the notice of adjustments to the homestead credit claim, the amount due, including interest, shall be subject to delinquent interest at the rate provided by s. 71.82 (2) (a), Stats.

(b) *Understated claims.* Under s. 71.55 (4), Stats., the department may not pay interest 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.

Note: 1) Blank forms for filing a homestead credit claim, rent certificates, 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.

2) Interest on excessive homestead credit amounts, not the result of negligence or fraudulent intent, is 12% per year for assessments made on or after August 1, 1981. Interest on excessive homestead credit amounts due to negligence or fraudulent intent is 1.5% per month, effective November 1, 1976, as provided by s. 71.82 (2) (c), Stats. Interest on delinquent excessive homestead credit amounts is 1.5% per month, imposed from the date the excessive amount becomes delinquent.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 14.02 Qualification for credit.** (ss. 71.52 (1), (2), and (7), 71.53 (1) (b) and (c) and (2) (d), and 71.58 (1) (b), Stats.) (1) **PURPOSE.** This section clarifies the requirements to qualify for the Wisconsin homestead credit.

(2) **TWO MEMBERS OF A HOUSEHOLD MEETING QUALIFICATIONS.** (a) Under s. 71.53 (1) (c), Stats., 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.

(b) Section 71.52 (1), 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 is. If they are unable to agree, the matter shall be referred to the secretary of revenue and the secretary's decision is final."

(c) Requests for a determination under par. (b) should be addressed to the Wisconsin Department of Revenue, Post Office Box 8906, Madison, Wisconsin 53708.

(3) **MORE THAN ONE HOUSEHOLD IN A HOMESTEAD.** Under s. 71.53 (1) (c), Stats., one claimant from each household may claim a homestead credit whether the household is the sole occupant of a homestead or whether several households share the homestead.

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(4) **HOUSEHOLD OCCUPYING MORE THAN ONE HOMESTEAD IN A YEAR.** Section 71.52 (7), Stats., provides “. . . If a household owns and occupies 2 or more homesteads in the same calendar year, property taxes accrued is the sum of the prorated property taxes accrued 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 . . .” Thus, if a household owns and occupies a homestead in Wisconsin for a portion of the year and then establishes a homestead in a rented dwelling in Wisconsin for the remainder of the calendar year, property taxes accrued shall be the prorated portion of property taxes attributable to the months the household resided in the owned homestead and rent constituting property taxes accrued shall be 25% of the gross rent paid for the remainder of the year, or 20% if heat was included in the cost of the rent.

Note: Example. A household owns and occupies a homestead in Wisconsin from January 1 to September 30, and then establishes a homestead in a rented dwelling in Wisconsin with no heat furnished for the remainder of the calendar year. Assuming the annual property taxes of the owned homestead equaled \$1,200 and gross rent paid for the last 3 months of the year totaled \$900, the taxes and rent allowable for homestead credit purposes equals \$1,125, consisting of \$900 of property taxes accrued (9/12 of \$1,200) plus \$225 of rent constituting property taxes accrued (25% of \$900).

(5) **HOUSEHOLD OCCUPYING MORE THAN ONE DWELLING AT THE SAME TIME.** Under s. 71.52 (2), Stats., “gross rent” is rental paid for the right of occupancy of a homestead, and under s. 71.52 (7), Stats., “property taxes accrued” are property taxes levied on the homestead of a household. Since a homestead is the principal dwelling of a household, gross rent or property taxes accrued on 2 dwellings occupied concurrently by a household are not allowable. The claimant may claim only the rent or taxes pertaining to the principal dwelling.

Note: Examples. Examples of 2 dwellings occupied concurrently include:

1) A claimant maintains a permanent homestead and lives part of the year at a summer cottage which he or she owns.

2) A claimant resides temporarily in a nursing home while maintaining a permanent homestead elsewhere.

(6) **TEMPORARY ABSENCE FROM HOMESTEAD.** A claimant who is temporarily absent from a homestead and who does not establish a homestead elsewhere is considered to reside in the homestead for the period of the temporary absence.

Note: Examples. 1) A person is in the hospital at the end of the calendar year and it is expected that the absence is temporary. The person is considered to reside in the homestead from which the person is temporarily absent.

2) A person seasonally employed away from the homestead is treated similarly as in example 1.

(7) **DOMICILE OF ARMED FORCES MEMBER.** A member of the United States armed forces stationed outside Wisconsin who retains a Wisconsin domicile and maintains a Wisconsin homestead shall be eligible for a homestead credit if otherwise qualified, even though the member does not occupy the homestead during the year to which the claim relates or at the time of filing the claim. The absence from the Wisconsin homestead is considered to be a temporary absence.

(8) **CITIZENS OF OTHER COUNTRIES.** Under s. 71.52 (1), Stats., a citizen of a country other than the United States is not eligible for a homestead credit unless the person is a resident alien for federal tax purposes who does not intend to return to his or her homeland.

*Note: Example.* A citizen of another country is in the United States for educational purposes and is required to leave the United States when the educational program is completed. This person is not eligible for a homestead credit.

(9) **PERSON CLAIMING A FARMLAND PRESERVATION CREDIT.** Under s. 71.58 (1) (b), Stats., a person is not eligible for a homestead credit if the person qualifies for and claims a 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 the claim, the person is no longer ineligible to receive a homestead credit because of the filing of a farmland preservation credit claim. Withdrawal of the farmland preservation credit claim shall be in writing and should be mailed to the Wisconsin Department of Revenue, Post Office Box 8906, Madison, Wisconsin 53708. A homestead credit claim filed after the withdrawal of a farmland preservation credit claim shall be filed by the normal due date for filing a homestead credit claim or the department shall disallow the claim.

*Note: Example.* A 1988 homestead credit claim filed after withdrawal of a 1988 farmland preservation credit claim must be filed on or before December 31, 1989.

(10) **PERSON CLAIMED AS A DEPENDENT.** Under s. 71.53 (2) (d), Stats., a person does not qualify for a homestead credit if the person is claimed as a dependent for federal income tax purposes during the year to which the claim relates, unless the person claiming a homestead credit is 62 years of age or older as of December 31 of the claim year. However, a person is not disqualified if the person:

(a) Is improperly claimed as a dependent on a federal income tax return;

(b) Qualifies to be claimed as a dependent on a federal income tax return but is not claimed; or

(c) 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.

(11) **DECEASED CLAIMANT.** Under s. 71.53 (1) (b), Stats., a claimant must be alive at the time a homestead credit claim is filed. A claim completed and signed but not filed until after a claimant's death shall be denied.

*Note: 1)* The qualification for a homestead credit of a person who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

*2)* The treatment of "rent constituting property taxes accrued," described in sub. (4), for 1987 calendar year claims filed in 1988 and for claims for calendar years prior to 1987 is described in the note at the end of s. Tax 14.05.

*History:* Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 14.03 Household income and income.** (s. 71.52 (5) and (6), Stats.)  
(1) **PURPOSE.** This section clarifies the meaning of "household income" and "income" includable in household income as the terms apply to homestead credit claims.

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(2) **DEFINITIONS.** (a) "Household income" has the meaning specified in s. 71.52 (5), Stats.

(b) "Income" has the meaning specified in s. 71.52 (6), Stats.

(3) **ITEMS INCLUDABLE IN INCOME.** Under s. 71.52 (6), Stats., income includes the sum of:

(a) "Wisconsin adjusted gross income" as defined in s. 71.01 (13), Stats., for the calendar year to which a claim for homestead credit relates.

(b) The following amounts to the extent not included in Wisconsin adjusted gross income, or deducted in determining Wisconsin adjusted gross income:

1. Maintenance payments, not including foster care maintenance and supplemental payments excludable under section 131 of the internal revenue code.

2. Support money, including support for dependents under ch. 49, Stats.

3. Cash public assistance and general relief, including:

a. Aid to families with dependent children, or "AFDC."

b. Reimbursement from a governmental agency for amounts originally paid for by the recipient, not including cash reimbursements for home energy assistance or for services under Title XX of the federal social security act and community options program, or "COP" payments under s. 46.27, Stats.

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.

d. Veterans 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:

a. Railroad retirement benefits.

b. Veterans' disability pensions.

c. Any amounts withheld by the payor.

d. Nontaxable recoveries of cost.

e. Disability income exclusions from taxable income.

**Note: Example. GROSS AMOUNT OF A PENSION.** A claimant was entitled to a \$3,000 pension during the year but received only \$2,800 after \$200 was withheld by the payor for payment of health insurance for the claimant. Of the \$3,000 pension, \$1,000 was a return of the claimant's contribution. The gross pension of \$3,000 must be included in income.

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

a. All federal social security retirement, disability, or survivorship benefits.

- b. Lump sum death benefits.
- c. Medicare premiums deducted from social security benefits received by all members of a household.
- d. Supplemental security income, or "SSI" 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. Workers' compensation.
14. Capital gains not included in Wisconsin adjusted gross income, but not including a gain on the sale of a personal residence deferred under section 1034 of the internal revenue code or a nonrecognized gain from an involuntary conversion under section 1033 of the internal revenue code.
15. A gain on the sale of a personal residence excluded under section 121 of the internal revenue code, which is the once-in-a-lifetime exclusion for a qualifying sale by a person age 55 or older.
16. Dividends not included in Wisconsin adjusted gross income.
17. Income of a nonresident or part-year resident married to a full-year resident of Wisconsin.
18. A housing allowance provided to a member of the clergy.
19. The amount by which a resident manager's rent is reduced.
20. Income of an American Indian which is nontaxable under ch. 71, Stats.
21. Income from sources outside of Wisconsin which is nontaxable under ch. 71, Stats.
22. Nontaxable deferred compensation.
23. The following items deducted in determining Wisconsin adjusted gross income, including items deducted in arriving at partnership and tax-option "S" corporation income or losses reported as a part of Wisconsin adjusted gross income:
  - a. Intangible drilling costs.

- b. Depletion allowances.
- c. Depreciation, including that portion of the standard mileage rate which is determined under the internal revenue code to be depreciation.
- d. Expenses deducted under section 179 of the internal revenue code, regarding the election to expense certain depreciable business assets.
- e. Amortization.
- f. Contributions to individual retirement accounts under section 219 of the internal revenue code, including contributions to individual retirement arrangements, or "IRA's," and simplified employee pension plans, or "SEP's."
- g. Contributions to Keogh plans.
- h. Net operating loss carryforwards.
- i. Capital loss carryforwards.

(4) EXCLUSIONS FROM INCOME. (a) Under s. 71.52 (6), Stats., income does not include:

1. Amounts described in sub. (3) (b) 1, 3,b, 7, and 14 as not being includable in income.
2. Gifts from natural persons.
3. Surplus food or other relief in kind provided by a governmental agency, including food stamps, and payments directly to a supplier of goods or services, such as medical care, food, clothing, and residential energy.
4. Lump sum insurance proceeds received for a recipient's disability or loss of limb and the lump sum proceeds from life insurance received by a beneficiary.
5. Wisconsin homestead credit amounts received.
6. Social security payments received on behalf of a claimant's children or the children of the claimant's household.
7. Pension or annuity payments rolled over from one retirement plan to another.

(b) Amounts added to adjusted gross income under s. 71.52 (6), Stats., in a previous year and subsequently repaid may be subtracted from income for the year during which they are repaid.

(5) MARITAL PROPERTY AGREEMENTS. Under s. 71.52 (6), Stats., a marital property agreement or unilateral statement under ch. 766, Stats., has no effect in computing income for a person whose homestead is not the same as the homestead of that person's spouse.

(6) INCOME WHILE TEMPORARILY ABSENT FROM HOMESTEAD. Income received while temporarily absent from a homestead shall be included in income.

Note: Example. The net income from rental of a homestead during a planned temporary absence or earnings from seasonal employment away from the homestead is includable in income.

Note: 1) Household income of a claimant who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

2) Section 71.09 (7) (a) 6, 1985 Stats., was amended by 1987 Wisconsin Act 27, effective for 1987 claims filed in calendar year 1988. This amendment changed the definition of "income" for homestead credit purposes and is reflected in subs. (3) and (4). Section 71.09 (7) (a) 6, Stats., as amended was renumbered s. 71.52 (6), Stats., by 1987 Wisconsin Act 312.

a) Under the statute in effect immediately prior to enactment of 1987 Wisconsin Act 27, income as described in sub. (3) (b) also included:

1. Foster care payments.
2. Community options program, or "COP" payments.

b) Under the statute in effect immediately prior to enactment of 1987 Wisconsin Act 27, income as described in sub. (3) (b) did not include:

1. Income of a nonresident or part-year resident married to a full-year resident of Wisconsin.
2. A housing allowance provided to a member of the clergy.
3. The amount by which a resident manager's rent is reduced.
4. Nontaxable income of an American Indian.
5. Nontaxable income from sources outside of Wisconsin.
6. Nontaxable deferred compensation.
7. The following items deducted in determining Wisconsin adjusted gross income, including items deducted in arriving at partnership income or losses:
  - a. Expenses deducted under Section 179 of the internal revenue code.
  - b. Amortization.
  - c. Contributions to Keogh plans.
  - d. Net operating loss carryforwards.
  - e. Capital loss carryforwards.

c) Under the statute in effect immediately prior to enactment of 1987 Wisconsin Act 27, sub. (4) (b) did not apply.

3) Section 71.042 (1), 1985 Stats., was renumbered s. 71.042 (2) and amended by 1987 Wisconsin Act 27, effective for a tax-option corporation's 1987 taxable year and shareholder's 1987 or 1988 taxable year, as appropriate to conform the shareholder's treatment of income, loss, or deduction to the tax-option corporation's treatment. This amendment provides that the items of income, loss, and deduction of tax-option corporations retain their character when passed through to shareholders. The effect of this provision on household income is reflected in sub. (3) (b) 23. Section 71.042 (2), Stats., as amended was renumbered s. 71.36 (1m), Stats., by 1987 Wisconsin Act 312. For 1986 and prior year claims filed in 1987 and prior calendar years, or for 1987 claims of shareholders whose tax-option corporation's taxable year ended before July 1, 1987, items in sub. (3) (b) 23 did not have to be included in household income if distributed by a tax-option corporation to a shareholder because such items did not retain their character upon distribution to the shareholder.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 14.04 Property taxes accrued.** (ss. 71.52 (3) and (7), and 71.54 (2) (a), Stats.) (1) **PURPOSE.** This section clarifies the meaning of "property taxes accrued" as the term applies to homestead credit claims.

(2) **DEFINITION.** Under s. 71.52 (7), Stats., "property taxes accrued" means real or personal property taxes or monthly parking permit fees under s. 66.058 (3) (c), Stats., exclusive of special assessments, delinquent interest and charges for service, levied on a homestead owned by a claimant under ch. 70, Stats., less the tax credit for general property tax relief, if any, afforded in respect of the property by s. 79.10, Stats.

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(3) **QUALIFYING PROPERTY TAXES.** (a) Under s. 71.52 (7), Stats., property taxes shall be levied on a homestead to qualify as "property taxes accrued." Property taxes are levied when the tax roll is delivered to the local treasurer for collection, usually on or near December 15 of each year.

(b) The property taxes levied on a homestead for the year to which a claim relates need not be paid prior to filing a homestead credit claim. The fact that the property taxes on a claimant's homestead are delinquent for years prior to the year to which a claim relates does not disqualify the claimant.

(c) Under s. 71.52 (7), Stats., "property taxes accrued" includes personal property taxes assessed on a homestead that is constructed on leased land or assessed on a mobile home owned by the claimant. "Property taxes accrued" also includes mobile home parking permit fees assessed under s. 66.058 (3) (c), Stats., for a mobile home owned by the claimant.

(d) Under s. 71.52 (3), Stats., a buyer of a homestead in possession of the homestead under a land contract shall be entitled to claim the property taxes accrued on the homestead.

(4) **VERIFICATION OF PROPERTY TAXES ACCRUED.** (a) Except as provided in pars. (b) and (c), a claimant who claims property taxes accrued shall submit with the homestead credit claim a copy of the property tax bill, or if not available, a substitute for the tax bill containing equivalent information to that appearing on the original tax bill. If the claimant presents the claim in person to an authorized representative of the department and wishes to retain the original tax bill but is unable to provide a copy, and if the department's representative is unable to produce a copy of the tax bill, an indication that the representative has inspected the tax bill shall satisfy this requirement. In this event, the department's representative shall enter information on the face of Schedule H indicating that the representative has examined the tax bill and verified the tax, followed by the representative's signature.

(b) If a claimant sells a homestead during the year to which a claim for homestead credit relates, proper verification of property taxes accrued shall be a copy of one of the following documents:

1. The closing agreement from the sale of the homestead;
2. The property tax bill for the year prior to the year to which the claim relates; or
3. The property tax bill for the year to which the claim relates.

(c) If a claimant's homestead is a mobile home owned by the claimant on which parking permit fees are assessed under s. 66.058 (3) (c), Stats., proper verification of property taxes accrued shall be a copy of the parking permit fee statement issued by an authorized representative of the municipality in which the mobile home was located, or if the claimant paid rent for the land on which the mobile home was located and also paid parking permit fees to a landlord, a statement of the parking permit fees paid to the landlord, signed by the landlord, such as a Wisconsin department of revenue form I-017, "Rent Certificate."

(5) **EFFECT OF RELIEF AND AIDS.** Under s. 71.54 (2) (a), Stats., property taxes accrued shall be reduced by one-twelfth for each month or portion of a month for which the claimant received either general relief equal to or in excess of \$400, or any amount of aid to families with dependent children under s. 49.19, Stats. However, property taxes accrued need not be reduced if the aid is foster care payments 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.

(6) **MARITAL PROPERTY AGREEMENTS.** Under s. 71.52 (7), Stats., a marital property agreement or unilateral statement under ch. 766, Stats., has no effect in computing property taxes accrued for a person whose homestead is not the same as the homestead of that person's spouse.

(7) **OWNERSHIP OF HOMESTEAD BY ONE PERSON OR ONE HOUSEHOLD.** An otherwise qualified person who owns and resides in a Wisconsin homestead may claim a homestead credit based upon property taxes accrued on the homestead, even if another person pays the property taxes.

(8) **OWNERSHIP OF HOMESTEAD BY MORE THAN ONE PERSON.** (a) Under s. 71.52 (7), Stats., if a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common or is owned as marital property or survivorship marital property and one or more such persons, entities, or owners is not a member of the claimant's household, property taxes accrued is that part of the property taxes accrued levied on the homestead, reduced by the tax credit under s. 79.10, Stats., that reflects the ownership percentage of the claimant and the claimant's household.

(b) If a qualified claimant residing in a co-owned homestead pays the homestead property taxes for a co-owner not residing in the homestead, the claimant shall be entitled to both the claimant's appropriate share of "property taxes accrued" as described in par. (a) and "gross rent" for the homestead property taxes paid on behalf of each absent owner, as provided in s. Tax 14.05 (3) (c). On the other hand, if a qualified claimant residing in a co-owned homestead pays the homestead property taxes for a co-owner who also resides in the homestead but who is not a member of the payor's household, each co-owner may file a claim based upon that part of the property taxes accrued that reflects the ownership percentage of each claimant and his or her household.

**Note: Examples.** 1) A, B, and C own a homestead and qualify for the homestead credit. A and B are married to each other and each owns a one-third interest in the homestead, while C owns the remaining one-third interest. A and B occupy the homestead, C does not. A and B pay all household expenses, including heat. Property taxes, which equal \$1,200 after credits for the year, are paid by A and B. Either A or B may claim the homestead credit and may claim two-thirds of the net property taxes as "property taxes accrued" and C's share of the net taxes as "gross rent." The amount eligible for homestead credit equals \$900, consisting of \$800 property taxes accrued ( $2/3$  of \$1,200) plus \$100 of rent constituting property taxes accrued (25% of \$400). If C had also occupied the homestead, A and B would have been entitled to property taxes accrued of \$800 and C to \$400 even though A and B paid all the taxes.

2) A mother and adult son each own a one-half interest in a homestead occupied solely by the mother. The son pays all of the property taxes on the homestead. The mother is entitled to one-half of the property taxes accrued.

3) A brother and sister own 75% and 25% interests, respectively, in a homestead they both occupy. The brother pays all the property taxes on the homestead. Each is entitled to property taxes accrued based on their ownership percentage.

(9) **SALE OR PURCHASE OF HOMESTEAD.** (a) Under s. 71.52 (7), Stats., if a claimant sells or purchases a homestead during the year to which a claim for homestead credit relates, the property taxes accrued shall be prorated for the time the seller or the buyer both owned and occupied the homestead during the year. The seller may use the closing agreement, the property tax bill for the year prior to the year to which the claim relates, or the property tax bill for the year to which the claim relates as the basis for computing allowable taxes. The purchaser may use only the property tax bill for the year to which the claim relates as the basis for computing allowable taxes.

(b) If a seller moved from the homestead or established a homestead elsewhere before the closing date shown on a closing agreement and the property taxes are prorated thereon to the closing date, the property taxes shall be further prorated for homestead credit purposes to consider in the year of sale only the property taxes accrued during the period the seller maintained a homestead on the property.

*Note: Example.* Ownership of a homestead is transferred on July 1. The prorated taxes for 6 months on the closing agreement are \$600. The seller moves from that homestead to a new homestead on May 31. The portion of prorated taxes allowable to the seller is \$500 (the taxes from January 1 to May 31) rather than the \$600 shown on the closing agreement.

(10) **PROPERTY TAXES ACCRUED ON LAND.** (a) *Not part of a farm.* Under s. 71.52 (3) and (7), Stats., if a homestead is not part of a farm, property taxes accrued for land are limited to the taxes on up to one acre of land which surrounds the homestead dwelling and is reasonably necessary to the use of the dwelling as a home. A parcel of land separated from the homestead parcel by such things as a street, river, or utility right-of-way shall be considered to be a part of the homestead parcel.

(b) *Part of a farm.* Under s. 71.52 (7), Stats., if a homestead is part of a farm, property taxes accrued on up to 120 acres of land which surrounds the homestead dwelling may be claimed. Property taxes accrued for parcels of land which do not surround the homestead parcel shall be allowed if the nonsurrounding parcels are necessary to the use of the homestead parcel as a home.

*Note: Example.* A farmer owns 3 parcels of land, 60, 40, and 20 acres in size. The homestead is located on the 60 acre parcel. The 60 and 20 acre parcels have a common border. 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 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.

(11) **MULTIPURPOSE AND MULTIDWELLING BUILDINGS.** Under s. 71.52 (7), Stats., property taxes accrued on a homestead that is part of a multipurpose or multidwelling building are the taxes on the part occupied as a principal residence, based on a percentage of the total taxes on the multipurpose or multidwelling building, and the amount computed using the same percentage of the taxes on the land surrounding it which otherwise qualifies as described in sub. (10). Property used partly as a homestead and partly for any business purpose, other than farming, for which a deduction is allowed or allowable for income tax purposes is multipurpose property. Property used partly as a homestead and partly as living

quarters rented to others is multidwelling property. A building divided into two units, one of which is the homestead of a claimant and the other of which is the living quarters of a person who does not pay rent is multidwelling property, even though there is no business or rental use.

Note: Examples. 1) A claimant was a homeowner who as a salesperson used one room of the 8-room house exclusively for business activities. Property taxes accrued for the year were \$1,200. The claimant may claim only 7/8ths of the property taxes accrued, or \$1,050, in the computation of allowable homestead credit, since the other 1/8th, or \$150, constitutes business taxes.

2) In example #1, if the room was not used exclusively for business no deductions would be allowable for income tax purposes and the full \$1,200 of property taxes accrued could therefore be claimed in the computation of allowable homestead credit.

3) A claimant owned a duplex, lived in one of the two equal-sized units, and rented out the other unit. Property taxes accrued for the year were \$1,200. Only \$600, representing the tax on the claimant's principal dwelling, may be claimed in the computation of allowable homestead credit.

4) In example #3, if the claimant lived in one unit and the claimant's son or daughter lived in the other unit but was not required to pay rent, the claimant nevertheless may claim only \$600 of the property taxes accrued.

(12) PROPERTY SUBJECT TO A LIFE ESTATE. Property taxes assessed on property subject to a life estate may only be claimed as "property taxes 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.

Note: Example. 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 pays the taxes, 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 property taxes. The son may not claim homestead credit based upon any portion of the property taxes accrued on the homestead even though he resides in the property and is otherwise qualified.

Note: 1) The computation of property taxes accrued of a claimant who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

2) The credit under s. 79.10, Stats., as referred to in sub. (2), is for general property tax relief provided by the state of Wisconsin to localities.

3) The treatment of "gross rent" and "rent constituting property taxes accrued," described in sub. (3), for 1987 calendar year claims filed in 1988 and for claims for calendar years prior to 1987 is described in the note at the end of s. Tax 14.05.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 14.05 Gross rent and rent constituting property taxes accrued.** (ss. 71.52 (2) and (8), 71.53 (2) (e) and (f), 71.54 (2), and 71.55 (2) and (8), Stats.) (1) PURPOSE. This section clarifies the terms "gross rent" and "rent constituting property taxes accrued" as the terms apply to homestead credit claims.

(2) DEFINITIONS. (a) Under s. 71.52 (2), Stats., "gross rent" means "... rental paid at arm's length, solely for the right of occupancy of a homestead. "Gross rent" does not include, whether expressly set out in the rental agreement or not, charges for any medical services; other personal services such as laundry, transportation, counseling, grooming, recreational and therapeutic services; shared living expenses, including but not limited to food, supplies and utilities unless utility payments are included in the gross rent paid to the landlord; and food furnished by the landlord as a part of the rental agreement . . ." In situations where

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charges for food and services are subtracted from amounts paid to a landlord, gross rent is commonly referred to as "rent paid for occupancy."

(b) Under s. 71.52 (8), Stats., "rent constituting property taxes accrued" means ". . . 25%, or 20% if heat is included, of the gross rent actually paid in cash or its equivalent by a claimant and his or her household solely for the right of occupancy of their Wisconsin homestead during the calendar year to which the claim relates if that rent constitutes the basis, in the succeeding calendar year, of a claim for relief under this subchapter by such claimant. . ."

(3) RENT PAYMENTS. (a) Gross rent may be claimed only for the year to which the claim relates, but it may have been paid at any time before the claim is filed.

(b) 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, are not includable in gross rent.

(c) Property taxes accrued on a claimant's homestead which are paid by the claimant on behalf of an owner who does not reside in the homestead shall be considered gross rent.

(d) Personal property taxes or mobile home parking permit fees assessed under s. 66.058 (3) (c), Stats., paid by a claimant for a rented mobile home shall be considered gross rent. In addition, rental paid to a landlord for a mobile home or for land on which a mobile home is located shall be considered gross rent.

(4) VERIFICATION OF RENT CONSTITUTING PROPERTY TAXES ACCRUED. (a) Except as provided in pars. (e) and (f), if a claimant claims rent constituting property taxes accrued the claimant and the landlord shall complete Wisconsin department of revenue form I-017, "Rent Certificate," and the claimant shall submit it with Schedule H. The department is not precluded from requesting additional documentation to verify rent paid in cases it deems appropriate.

(b) If a claimant rents more than one homestead during a year, a separate rent certificate shall be completed for each homestead for which the claimant wishes to claim a homestead credit, and the claimant shall submit all certificates together with a single Schedule H.

(c) Landlords shall determine the reasonable value of food, medical services, and other personal services such as laundry, transportation, counseling, grooming, recreational, and therapeutic services provided to the claimant in addition to occupancy rights and shall subtract those amounts from total rent indicated on the rent certificate, to determine rent paid for occupancy. If heat is included in the cost of the rent, landlords shall fill in the rent paid for occupancy on the line of the rent certificate so designated, or if heat is not included, they shall fill in the rent paid for occupancy on that designated line.

(d) Under s. 71.55 (2), Stats., a landlord is prohibited from charging a fee for completing the rent certificate.

(e) If a claimant is unable to obtain a rent certificate from a landlord, proper rent receipts, money order receipts, cancelled checks, or cancelled share drafts 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 certificate, a list of food, medical services, and other personal services as described in par. (c) provided by the landlord, and a statement as to whether heat was included in the rent paid to the landlord, as evidence of rent constituting property taxes accrued.

(1) Proper verification of rent constituting property taxes accrued for a claimant who pays property taxes on the homestead on behalf of an owner other than the claimant shall be a copy of the property tax bill and a statement from the claimant, indicating that he or she paid the property taxes on behalf of an owner who did not reside in the homestead.

(5) EFFECT OF RELIEF AND AIDS. Under s. 71.54 (2) (a), Stats., rent constituting property taxes accrued shall be reduced by one-twelfth for each month or portion of a month for which the claimant received either general relief equal to or in excess of \$400, or any amount of aid to families with dependent children under s. 49.19, Stats. However, rent constituting property taxes accrued need not be reduced if the aid is foster care payments 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.

(6) MARITAL PROPERTY AGREEMENTS. Under s. 71.52 (8), Stats., a marital property agreement or unilateral statement under ch. 766, Stats., has no effect in computing rent constituting property taxes accrued for a person whose homestead is not the same as the homestead of that person's spouse.

(7) NON-ARM'S LENGTH RENTAL. Section 71.55 (8), 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 arm's length, it may, with the aid of its property tax bureau, determine rent constituting property taxes accrued as at arm's length, and, for purposes of this subchapter, such determination shall be final." The department may determine rent constituting property taxes accrued as at arm's length when the amount claimed is in excess of fair rental value. However, since under s. 71.52 (2), Stats., "gross rent" is limited to rental actually paid, the department may not increase the rent constituting property taxes accrued to arm's length rental if the rent paid was at less than fair rental value.

Note: Example. A claimant files a claim with a rent certificate showing rent paid for occupancy of \$7,200, or \$600 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 bureau 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 \$300 per month, or \$3,600 for the year. No utilities, food, or services were furnished by the landlord. Allowable rent constituting property taxes accrued is \$900 (25% of \$3,600).

(8) EXEMPT HOUSING. (a) Section 71.53 (2) (e), Stats., provides that no claim for homestead credit may be allowed if: "The claimant 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."

Note: Example. A claimant lives in a rented apartment subject to property taxes for part of the year and then moves to a tax-exempt low-income H.U.D. housing development. The claimant may file a claim based on rent constituting property taxes accrued for the part of the year the claimant lived in the apartment. The rent paid for the months the claimant lived in the tax-exempt housing may not be used in computing the homestead credit.

(b) Payments required to be made in lieu of taxes under s. 66.40 (22), Stats., are made by most facilities that are licensed with the state of Wisconsin as "housing authorities." Rent paid to those housing authorities may be used to determine gross rent and rent constituting property taxes accrued. However, other types of exempted housing which make payments in lieu of taxes do not make the payments under s. 66.40 (22), Stats., and therefore rent paid to those types of exempted housing may not be used to determine gross rent and rent constituting property taxes accrued.

(c) 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.

(9) JOINT OCCUPANTS OF RENTAL UNITS. (a) Claimants sharing living expenses for a rented homestead with one or more joint occupants age 18 or older and not members of the claimant's household shall each be entitled to claim a portion of the rent paid for occupancy of the homestead. However, the total claims of the joint occupants for rent paid for occupancy may not exceed 100% of the rent paid to the landlord for occupancy, as shown on the rent certificate. The amount of rent paid for occupancy shall be the ratio which the contribution of the claimant or claimant's household to the cost of shared living expenses, such as rent, food, utilities, and supplies, bears to the total cost of the shared living expenses.

Note: Example. X, Y, and Z are three unrelated joint occupants of a rental unit who share expenses as follows:

| Living Expenses       | X        | Y        | Z      | Total    |
|-----------------------|----------|----------|--------|----------|
| Rent for occupancy    | \$ 3,600 | \$ —     | \$ —   | \$ 3,600 |
| Food                  | —        | 900      | 900    | 1,800    |
| Utilities             | —        | 600      | —      | 600      |
| Total living expenses | \$ 3,600 | \$ 1,500 | \$ 900 | \$ 6,000 |
| % of total            | 60%      | 25%      | 15%    | 100%     |

Since X paid 60% of the shared living expenses, X's share of rent paid for occupancy is \$2,160 (60% of \$3,600). Likewise, rent paid for occupancy is \$900 for Y (25% of \$3,600), and \$540 for Z (15% of \$3,600). Total rent paid for occupancy for all 3 claimants is \$3,600, as shown on the rent for occupancy line.

(b) If a claimant described in par. (a) is entitled to more or less rent paid for occupancy than is shown on the rent certificate completed by the landlord for the claimant, the claimant shall in addition to the certificate attach a statement 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.

(10) RENT PAID FOR LAND. Under s. 71.52 (2), Stats., the portion of s. 71.52 (7), Stats., pertaining to property taxes accrued on land as described in s. Tax 14.04 (10) also applies to gross rent paid for land.

(11) MULTIPURPOSE AND MULTIDWELLING BUILDINGS. Under s. 71.52 (2), Stats., the portion of s. 71.52 (7), Stats., pertaining to property taxes accrued on multipurpose and multidwelling buildings as described in s. Tax 14.04 (11) also applies to gross rent paid for a multipurpose or multidwelling building of which the homestead is a part.

(12) SHARECROPPERS. "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 use of the homestead, land, machinery, or equipment equals 25% of the owner's share of the net proceeds applicable to occupancy of the homestead, or 20% if heat is included in the cost of the rent.

Note: Example. A sharecropper resides on and operates a 120 acre dairy farm. The landlord and the sharecropper share equally the gross receipts from crop sales (\$5,000), the gross milk receipts (\$20,000), and the cost of seed and feed (\$10,000). The landlord furnishes the land, buildings, and machinery, for which annual allowable depreciation is \$3,000. The landlord pays for the heat. In this situation, rent constituting property taxes accrued for the sharecropper equals 20% of the owner's share of the proceeds less the value of the nonoccupancy 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 nonoccupancy items furnished by landlord:                       |               |               |
| Landlord's share of seed and feed                                    | \$ 5,000      |               |
| Depreciation of buildings (not including the dwelling) and machinery | <u>3,000</u>  | <u>8,000</u>  |
| Gross rent   | \$ 4,500      |               |
|  | x 20%         |               |
| Rent constituting property taxes accrued                             |               | <u>\$ 900</u> |

(13) LOW INCOME HOUSING. (a) If a landlord receives subsidy payments from a governmental agency and applies them toward rental of a homestead, and if the application of the payments to food, medical services, and other personal services as described in sub. (2) (a) furnished by the landlord is not specified under the terms of an agreement with the paying agency, the portion of the rent paid for occupancy eligible for the homestead credit may be computed as follows:

1. Subtract the value of food, medical services, and other services furnished from gross rental for the claimant, including subsidy payments.

2. Divide the amount from line 1 above by the gross rental for the claimant, including subsidy payments.

3. Multiply the percentage from line 2 above times the gross rent paid by the claimant.

Note: Example. A total of \$3,600 rent is paid for a claimant for the year, \$1,200 by the claimant and \$2,400 by a governmental agency. The value of food provided is \$300, and no services are provided. Qualifying rent paid for occupancy equals \$1,100, computed as follows: \$3,300 (gross rent less value of food provided) ÷ \$3,600 (gross rental including subsidy payment) x \$1,200 (gross rent paid by claimant).

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

(14) NURSING HOMES AND LONG-TERM CARE FACILITIES. (a) Any one of the following methods may be used by residents of nursing homes or long-term care facilities to determine rent paid for occupancy:

1. A standard rate of \$40 per week but not more than the actual rent paid.
2. The percentage of building occupancy expenses method as computed in the example at the end of this subsection.
3. Any other appropriate method, subject to prior approval by the department.

(b) Under s. 71.53 (2) (f), Stats., a resident living in a nursing home and receiving medical assistance under s. 49.45, Stats., at the time of filing a homestead credit claim is not eligible for the homestead credit.

(c) If a fixed charge is made upon admission to a nursing home or long-term care facility 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 "gross rent." The terms of the agreement between the occupant and the nursing home or long-term care facility shall establish the year or years 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 will not be deemed to be paid entirely in one year but shall be prorated.

Note: Example: Percentage of Building Occupancy Expenses Method. Under this method, the ratio that a nursing home's or a long-term care facility's building occupancy expenses for a year bears to gross income received in that year, both directly from residents and indirectly from governmental aid, is determined. This ratio is applied to a resident's total direct payments for a year for which a homestead credit claim is filed, yielding the portion of the payments constituting rent paid for occupancy.

The above ratio shall be determined from the most recent income and expense data available at the time a rent certificate is prepared, preferably using data from the same year for which the homestead credit is claimed.

The building occupancy expenses claimed shall be limited to the expenses attributable to real estate and furnishings only.

The following format may be used to compute a resident's rent paid for occupancy; the form is filled in as an example of how to compute the percentage:

|   |          |                    |
|---|----------|--------------------|
| 1. Building Occupancy Expenses - Real Estate and Furnishings Only |          |                    |
| a. Property taxes   | \$80,000 |                    |
| b. Interest   | 70,000   |                    |
| c. Lease or rent expenses   | 10,000   |                    |
| d. Depreciation   | 60,000   |                    |
| e. Upkeep and repairs   | 10,000   |                    |
| f. Utilities  | 20,000   |                    |
| g. Total Building Occupancy Expenses                              |          | <u>\$200,000</u>   |
| 2. Gross Income, Including Indirect Payments                      |          | <u>\$1,200,000</u> |
| 3. Line 1.g Divided by Line 2 Equals the Percentage Rate          |          | <u>16.7%</u>       |

The percentage rate determined above is to be multiplied by the total rent collected as entered on the rent certificate prepared for a resident filing a homestead credit claim, and the amount so determined is to be entered on the rent certificate as rent paid for occupancy.

Assuming a resident's total direct payments for the year were \$18,000, rent paid for occupancy would be \$3,006 ( $\$18,000 \times 16.7\%$ ).

Note: 1) The computation of rent constituting property taxes accrued of a claimant who becomes married or divorced during a claim year or occupies a separate dwelling from his or her spouse for any part of a claim year is described in s. Tax 14.06.

2) Section 71.09 (7) (a) 2 and 8, 1986 Stats., which defines "gross rent" and "rent constituting property taxes accrued" was amended by 1987 Wisconsin Act 27, effective for 1987 claims filed in calendar year 1988. This amendment provides that gross rent is exclusive only of charges for food provided by the landlord; that gross rent must be divided equally among all adult occupants of the homestead other than the claimant's spouse, regardless of who paid the rent; that the rent may have been paid at any time prior to filing a homestead credit claim; and that rent constituting property taxes accrued is 25% of gross rent paid, or only 20% if heat is included in the gross rent paid. Section 71.09 (7) (a) 2, Stats., was again amended by 1987 Wisconsin Act 399, effective for 1988 claims filed in calendar year 1989. This amendment provides that gross rent is also exclusive of the value of medical services and other personal services, such as laundry, transportation, counseling, grooming, recreational, and therapeutic services provided by the landlord, and that rent paid for occupancy is to be divided among all adult occupants of a homestead other than a claimant's spouse in the ratio that shared living expenses such as rent, food, utilities, and supplies each one paid bears to the total of the shared living expenses. The 1987 Wisconsin Act 27 amendment with respect to s. 71.09 (7) (a) 8, Stats., and the 1987 Wisconsin Act 399 amendment are reflected in s. Tax 14.05. Section 71.09 (7) (a) 2 and 8, Stats., as amended by 1987 Wisconsin Act 27 was renumbered s. 71.52 (2) and (8), Stats., by 1987 Wisconsin Act 312, and s. 71.09 (7) (a) 2, Stats., as amended by 1987 Wisconsin Act 399 was renumbered s. 71.52 (2), Stats., by 1987 Wisconsin Act 411.

a) For 1987 calendar year claims filed in 1988, the following applied:

1. GROSS RENT: a. Gross rent meant rental paid at arm's length, solely for the right of occupancy of a homestead, exclusive of charges for any food furnished by the landlord as a part of the rental agreement, whether expressly set out in the rental agreement or not.

b. Gross rent was required to be divided equally among all adult occupants of the homestead other than the claimant's spouse, regardless of who paid the rent.

2. LOW INCOME HOUSING: If subsidy payments were received from a governmental agency and applied toward rental of a homestead, and if the application of the payments to food furnished was not specified under the terms of an agreement with the paying agency, the portion of the rent paid for occupancy eligible for the homestead credit was computed using the following formula: gross rental including subsidy payments less the value of food  $\div$  gross rental including subsidy payments  $\times$  gross rent paid by the claimant = rent paid for occupancy.

3. NURSING HOMES AND LONG-TERM CARE FACILITIES: "Gross rent" of a person residing in a nursing home or long-term care facility was the total amount paid by the resident to the facility, less the value of food provided by the facility.

b) Under the statute in effect immediately prior to enactment of 1987 Wisconsin Act 27, the following applied:

1. GROSS RENT AND RENT CONSTITUTING PROPERTY TAXES ACCRUED: a. Rent constituting property taxes accrued meant 25% of gross rent actually paid in cash or its equivalent by a claimant and his or her household solely for the right of occupancy of their Wisconsin homestead.

b. Gross rent meant rental paid at arm's 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 part of the rental agreement, whether expressly set out in the rental agreement or not. Charges for services included the cost of nursing care and maid service.

c. Gross rent was required to have been paid during the year to which the claim related in order to be claimed, and the gross rent was required to have been for the year to which the claim related.

d. Landlords were required to 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 these amounts from total rent indicated on the rent certificate to determine rent paid for occupancy. In the absence of accurate data, the amount of gross rent allocable to utilities was 15% and to furnishings was 10%, if entirely provided by the landlord. If the landlord did not entirely provide all utilities or all furnishings, these percentages were required to be reduced accordingly. An explanation of the percentages used was required to be attached to the homestead credit claim.

Note: Example. A claimant rented a furnished apartment for \$200 per month for the entire year 1986. The landlord provided all utilities and furnishings. Rent paid for occupancy for the year would be \$1,800, consisting of \$2,400 total rent less 15% (\$360) for utilities, and less 10% (\$240) for furnishings.

e. The amount of rent paid for occupancy was the ratio which the contribution of the claimant or claimant's household to the cost of shared living expenses, such as rent, food, utilities, and supplies bore to the total cost of the shared living expenses.

If the claimant was entitled to more or less rent paid for occupancy than was shown on the rent certificate completed by the landlord for the claimant, the claimant was required to attach to the homestead credit claim, in addition to the certificate, a statement 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 related by giving the name, current address at the time of filing the claim, if known, and social security number, if known.

Note: Example. The following illustrates how to compute each person's rent paid for occupancy in a shared expense situation for years prior to 1987, assuming all three occupants are unrelated and paid living expenses as shown below, and X received a rent certificate for the full amount of rent. In the example, "rent" means rent paid for occupancy for the homestead, as shown on the rent certificate.

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

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

2. **SHARECROPPERS:** "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, land, machinery, equipment, utilities, furniture, or furnishings equalled 25% of the owner's share of the net proceeds applicable to occupancy of the homestead, exclusive of charges for utilities, furniture, furnishings, appliances, or services.

3. **LOW INCOME HOUSING:** If subsidy payments were received from a governmental agency and applied toward rental of a homestead, and if the application of the payments to furnished items was not specified under the terms of an agreement with the paying agency, the portion of the rent paid for occupancy eligible for the homestead credit was computed using the following formula: gross rental including subsidy payments, less utilities and furnishings ÷ gross rental including subsidy payments X rent paid by the claimant = rent paid for occupancy. In the absence of accurate data, the portion of the claimant's payment, excluding the subsidy, allocable to utilities and furnishings was the sum of 15% for utilities if all utilities, including heat, were provided, plus 10% for furnishings if the homestead was completely furnished by the landlord. If all utilities were not provided, a reasonable percentage which reflected the landlord's prorata costs for utilities was used, but not more than 15%. If the furnishings were not entirely provided by the landlord, a reasonable percentage, but not more than 10% was used.

Note: Example. A total of \$3,600 rent is paid by or for a claimant in 1986. The value of furnishings and utilities provided is \$200 and \$400, respectively. The claimant pays \$1,200 of the rent and a government agency pays the balance of \$2,400. Qualifying rent paid for occupancy equals \$1,000, computed as follows: \$3,000 (gross rent of \$3,600 less utilities and furnishings of \$600) ÷ gross rent of \$3,600 X gross rent paid by the claimant of \$1,200. If the landlord had provided all the utilities and furnishings but their value was unknown, rent paid for occupancy by the claimant would be \$900, computed as follows: Total rent paid by the claimant (\$1,200) less utilities (15% of \$1,200), less furnishings (10% of \$1,200).

4. **NURSING HOMES AND LONG-TERM CARE FACILITIES:** Any one of the following methods could be used by residents of nursing homes or long-term care facilities to determine rent paid for occupancy:

a. A standard rate of \$15 per week but not more than the actual rent paid.

b. The percentage of building occupancy expenses method. Under this method, the ratio that building costs of the nursing home or long-term care facility related to occupancy for a year bore to gross income received in that year, both directly from the resident and indirectly from governmental aid, was determined. This ratio was applied to the resident's total direct payments for the year for which the claim was made, yielding the portion of the payments applicable to occupancy. However, a resident was not eligible for the homestead credit if receiving medical assistance under s. 49.45, Stats., at the time of filing the claim.

The ratio described in the preceding paragraph was to be determined from the most recent income and expense data available at the time the homestead credit claim was filed, preferably using data from the same year for which the homestead credit was claimed. Building occupancy expenses claimed were limited to property taxes on real estate occupied, interest paid on the purchase of that real estate, the portion of lease or rental expense for real estate occupied, depreciation on real estate occupied, and upkeep and repair costs on the buildings. The following format could 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:

Percentage of Building Occupancy Expenses

|  |               |                   |
|--|---------------|-------------------|
| 1. Building occupancy expenses                         |               |                   |
| a. Property taxes (real estate)                        | \$38,176      |                   |
| b. Interest (real estate only)                         | 93,137        |                   |
| c. Lease or rent expenses (real estate only)           | 12,096        |                   |
| d. Depreciation (building only)                        | 42,504        |                   |
| e. Building upkeep and repairs                         | <u>74,064</u> |                   |
| Total building occupancy expenses                      |               | <u>\$ 259,976</u> |
| 2. Gross income  |               | <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 was multiplied by the amount entered as total rent collected on the rent certificate prepared for each resident filing a claim for homestead credit, and the amount so determined was entered on the rent certificate as rent paid for occupancy. Assuming a claimant's total direct payments during the year were \$9,000, rent paid for occupancy would be \$1,926 (\$9,000 x 21.4%).

c. The per resident cost of furnished items and services method. Under this method a nursing home or long-term care facility could determine the average cost of furnished items and services provided to each resident. This amount was then subtracted from total direct payments by a resident for a year to determine the amount paid for occupancy. 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, rent paid for occupancy would be \$1,769.33 (\$9,000 - \$7,230.67).

Using data from the financial statement showing the results of operations for the most recently completed operating year, the nursing home or long-term care facility would list 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, related entirely to furnished items or services, and the full amount would be shown in column B. Other items which may have related to furnished items, services and occupancy, such as repairs, taxes, and depreciation, had to be prorated on an equitable basis.

The total of the amounts listed in column B was 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 could 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 was receiving medical assistance under s. 49.45, Stats., the average cost of furnishings and services was to be prorated on the basis of the percent that direct payments by the resident bore to total direct and indirect payments made by or for the resident. However, the resident was not eligible for the homestead credit if receiving the assistance at the time of filing the homestead credit claim.

The average cost (prorated if necessary) of furnished items and services was entered on the rent certificate. This amount was subtracted from the total direct payments by the resident to determine the amount of rent paid for occupancy.

## WISCONSIN ADMINISTRATIVE CODE

## 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         | —           |  |  |
| 10. TOTAL EXPENSES .....   | \$ 662,343     | \$ 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 |  |  |

d. Any other appropriate method, subject to prior approval by the department of revenue.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**Tax 14.06 Marriage, separation, or divorce during a claim year.** (ss. 71.52 (5), (7), and (8) and 71.53 (1) (c), Stats.) (1) **PURPOSE.** This section describes the qualifications for a homestead credit and the computation of household income, property taxes accrued, and rent constituting property taxes accrued of a claimant who becomes married or divorced during the year to which a homestead credit claim relates or whose spouse occupies a separate dwelling for any part of a claim year.

(2) **MARRIAGE DURING A CLAIM YEAR.** (a) A new household is established when a marriage occurs during a claim year and the spouses reside together after the marriage. Under s. 71.53 (1) (c), Stats., either the husband or the wife may claim a homestead credit for the year of the marriage but not both.

(b) Under s. 71.52 (5), Stats., when a marriage occurs during a claim year and the spouses reside together after the marriage, household income shall include the claimant's income for the portion of the calendar year prior to the marriage and the total income of the household for the remainder of the year after the marriage.

(c) Under s. 71.52 (7) and (8), Stats., the spouse filing a claim may claim property taxes accrued or rent constituting property taxes accrued for the homestead of the claimant for the portion of the year prior to a marriage plus the total of those amounts for the common homestead after the marriage.

Note: Example. X marries Y on September 1, and they decide that X is to be the claimant. Prior to the marriage, X paid gross rent of \$250 per month and Y paid gross rent of \$350 per month. They paid gross rent of \$600 per month for their jointly occupied apartment after the marriage. Heat was not included at any of the dwellings. X's income was \$4,000 prior to the Register, February, 1990, No. 410

marriage, and X's services and property generated marital property income of \$2,000 after the marriage. Y's income was \$10,000 prior to the marriage, and Y's services and property generated marital property income of \$5,000 after the marriage. In this situation, household income reportable by X is \$11,000, consisting of X's income prior to the marriage (\$4,000) plus the income of both X and Y after the marriage (\$7,000). Rent constituting property taxes accrued which may be claimed by X is \$1,000, 25% of the sum of X's rent of \$250 per month for 8 months (\$2,000) and 4 months rent at \$500 per month after the marriage (\$2,000), totaling \$4,000 for the year. Since Y is not the claimant, Y's rent of \$350 per month and income of \$10,000 for the 8 months prior to the marriage are not considered in computing the homestead credit.

(3) SEPARATION OR DIVORCE DURING A CLAIM YEAR. (a) If a husband and wife occupy separate homesteads for all or part of a claim year and continue to occupy separate homesteads on December 31 of that year, or if a husband and wife become divorced during a claim year and do not remarry each other by December 31 of that year, each may claim a homestead credit for that year if otherwise qualified, since two households exist at the end of the year. When one spouse has permanently moved into a nursing home and the other spouse remains at home, the husband and wife are considered to occupy separate dwellings at the end of the year.

(b) If a husband and wife occupy separate homesteads for part of a claim year but occupy the same homestead on December 31 of that year, only one of the spouses may claim a homestead credit for that year, since only one household exists at the end of the year.

(c) In the event a husband and wife occupy separate dwellings or become divorced during a claim year, household income is determined under s. 71.52 (5), Stats., under Wisconsin income tax law, and under marital property law as provided in ch. 766, Stats., except that marital property law does not apply if one of the spouses is not domiciled in Wisconsin during the period of time they occupy separate dwellings. Household income shall be determined as follows:

1. For the period of time the claimant and the claimant's spouse occupy a common homestead as members of the same household, household income shall include all income of both spouses, even if the "innocent spouse" provisions as provided in s. 71.10 (6) (b) and (6m), Stats., are in effect for income tax purposes. If the claimant cannot exactly determine the income of the claimant's spouse during the portion of the year they occupy a common homestead, the claimant may make a reasonable estimate of the income and shall clearly indicate it as an estimate on the homestead credit claim.

2. For the period of time the claimant and the claimant's spouse occupy separate dwellings prior to the issuance of a divorce decree, household income shall include all of the claimant's income and none of the spouse's income, if the spouse is not domiciled in Wisconsin during that time. If the claimant's spouse remains a Wisconsin domiciliary during the period of time the claimant and the claimant's spouse occupy separate dwellings prior to the issuance of a divorce decree, household income shall include all non-marital property income of the claimant and the claimant's portion of marital property income as provided by marital property law, ch. 766, Stats., and by the "innocent spouse" provisions in s. 71.10 (6) (b) and (6m), Stats. Under marital property law and the "innocent spouse" provisions, the extent to which marital property income during the period of time the spouses occupy separate dwellings is includable in household income depends on whether the claimant and the

claimant's spouse notify each other of the amount and nature of marital property income generated by each, as follows:

a. If both spouses notify each other,  $\frac{1}{2}$  of all marital property income of both spouses is includable.

b. If the claimant notifies the spouse but the spouse does not notify the claimant,  $\frac{1}{2}$  of the marital property income generated by the claimant's services and property and none of the marital property income generated by the spouse's services and property is includable.

c. If the claimant does not notify the spouse but the spouse notifies the claimant, all of the marital property income generated by the claimant's services and property and  $\frac{1}{2}$  of the marital property income generated by the spouse's services and property is includable.

d. If neither spouse notifies the other, all of the marital property income generated by the claimant's services and property and none of the marital property income generated by the spouse's services and property is includable.

3. For the portion of the year after a divorce, household income shall include all income of the claimant only.

(d) In order to be valid, the notification referred to in par. (c) must be made by the spouse whose services or property produced the marital property income, prior to the due date of the Wisconsin income tax return, or if the allowable time for filing the Wisconsin income tax return has been extended, the extended due date.

(e) In the event a husband and wife occupy separate dwellings during all or part of a claim year or become divorced during a claim year, each spouse may claim the total amount of property taxes accrued or rent constituting property taxes accrued on the common Wisconsin homestead for the portion of the year they maintain that homestead plus their own amounts for the portion of the calendar year the spouses occupy separate dwellings or are not married to each other. However, as provided in par. (b), only one of the spouses may claim a homestead credit if they are not divorced or do not occupy separate dwellings on December 31 of that year.

Note: Examples. 1) SEPARATION AT THE END OF A CLAIM YEAR. A husband and wife reside in their jointly owned homestead from January 1 to July 31, when the wife moves permanently to a Wisconsin nursing home that is not exempt from property taxes. The husband pays the heat and all the property taxes of \$1,200 for the year. Rent paid by the wife for occupancy at the nursing home for the period August 1 through December 31 is \$1,000, and the nursing home pays the heat. Each spouse notifies the other of the marital property income generated by their respective services and properties. Income consists of both non-marital property income and marital property income, as follows:

| Income                         | Husband  | Wife     |
|--------------------------------|----------|----------|
| N-M.P.* January 1 - July 31    | \$ 4,000 | \$ 2,400 |
| M.P.** January 1 - July 31     | 1,000    | 600      |
| N-M.P.* August 1 - December 31 | 3,200    | 1,600    |
| M.P.** August 1 - December 31  | 800      | 400      |
| Total Income                   | \$ 9,000 | \$ 5,000 |

\* N-M.P. = non-marital property income

\*\* M.P. = marital property income - in husband's column, income generated by his services and property; in wife's column, income

generated by her services and property

Both husband and wife are otherwise qualified for the homestead credit. Household income, property taxes accrued, and rent constituting property taxes accrued applicable to each claimant for the year are computed as follows:

| Household Income  | Husband's Claim    | Wife's Claim     |
|---|--------------------|------------------|
| (H) N-M.P. January 1 - July 31*   | \$ 4,000           | \$ 4,000         |
| (H) M.P. January 1 - July 31*   | 1,000              | 1,000            |
| (W) N-M.P. January 1 - July 31*   | 2,400              | 2,400            |
| (W) M.P. January 1 - July 31*   | 600                | 600              |
| (H) N-M.P. August 1 - December 31   | 3,200              | 0                |
| (H) M.P. August 1 - December 31   | 400                | 400              |
| (W) N-M.P. August 1 - December 31   | 0                  | 1,600            |
| (W) M.P. August 1 - December 31   | 200                | 200              |
| <b>Total Household Income</b>   | <b>\$ 11,800</b>   | <b>\$ 10,200</b> |
| <b>Property Taxes Accrued</b>   |                    |                  |
| (H) January 1 - July 31*<br>(7/12 x \$1,200 x 1/2)  | \$ 350             | \$ 350           |
| (W) January 1 - July 31*<br>(7/12 x \$1,200 x 1/2)  | 350                | 350              |
| (H) August 1 - December 31<br>(5/12 x \$1,200 x 1/2)  | 250                | —                |
| (W) August 1 - December 31<br>(see below)   | (see below)        | —                |
| <b>Total Taxes</b>  | <b>\$ 950</b>      | <b>\$ 700</b>    |
| <b>Rent Constituting Property Taxes Accrued</b>   |                    |                  |
| (H) 25% of wife's share of property taxes paid by husband for the period August 1 through December 31<br>(5/12 x \$1,200 x 1/2) x 25%** | \$ 62.50           | \$ —             |
| (W) 20% of rent paid for occupancy only (20% x \$1,000)   | —                  | 200              |
| <b>Total Allowable Taxes and Rent</b>   | <b>\$ 1,012.50</b> | <b>\$ 900</b>    |

\* The income and taxes for the time the claimants are members of the same household are reportable on both claims.

\*\* The husband may claim as rent constituting property taxes accrued 25% of the wife's share of property taxes he paid for the period of time she does not reside in the jointly owned home.

2) SEPARATION DURING A CLAIM YEAR BUT NOT ON DECEMBER 31. X and Y are married and live together through April 30. Y moves to another homestead in Wisconsin on May 1 but moves back to X's homestead on November 1 of the same year. Gross rent for the homestead X resides in is \$300 per month all year, and gross rent for Y's homestead for May through October is \$200 per month. Heat is not included at either dwelling. The income X's services and property generate is \$1,000 per month for all twelve months, and the income Y's services and property generate is \$500 per month for all twelve months. All income is marital property income, and X and Y both notify each other of the marital property income generated by their respective services and properties. In this situation, since X and Y are one household at the end of the year, only one may file a claim for homestead credit; household income and rent constituting property taxes accrued for each spouse are computed as follows:

| Household Income              | If X Is Claimant | If Y Is Claimant |
|-------------------------------|------------------|------------------|
| (X) January 1 - April 30*     | \$ 4,000         | \$ 4,000         |
| (Y) January 1 - April 30*     | 2,000            | 2,000            |
| (X) May 1 - October 31        | 3,000            | 3,000            |
| (Y) May 1 - October 31        | 1,500            | 1,500            |
| (X) November 1 - December 31* | 2,000            | 2,000            |
| (Y) November 1 - December 31* | 1,000            | 1,000            |
| <b>Total Household Income</b> | <b>\$ 13,500</b> | <b>\$ 13,500</b> |

## Tax 14

| Rent Constituting Property Taxes Accrued (25% of Rent) | If X Is Claimant | If Y Is Claimant |
|--|------------------|------------------|
| January 1 - April 30*                                  | \$ 300           | \$ 300           |
| May 1 - October 31                                     | 450              | 300              |
| November 1 - December 31*                              | 150              | 150              |
| <b>Total Rent Constituting Property Taxes Accrued</b>  | <b>\$ 900</b>    | <b>\$ 750</b>    |

\* The income and rent for the time the spouses are members of the same household are reportable on either claim.

3) **DIVORCE DURING A CLAIM YEAR.** X and Z are married, live together through May 31, and pay gross rent of \$400 per month to that date. On June 1 they both move to separate Wisconsin homesteads, and thereafter X pays gross rent of \$300 per month and Z pays gross rent of \$400 per month. Heat is not included at any of the dwellings. On November 30, X and Z are divorced. The income X's services and property generate is \$4,000 through May 31 and \$5,000 from June 1 to November 30, and X's income is \$1,000 in December. The income Z's services and property generate is \$2,000 through May 31 and \$3,000 from June 1 to November 30, and Z's income is \$2,000 in December. All income of both spouses through November 30 is marital property income. Each spouse notifies the other of the marital property income generated by their respective services and properties. In this situation, household income and rent constituting property taxes accrued for each claimant are computed as follows:

| Household Income              | X's Claim        | Z's Claim        |
|-------------------------------|------------------|------------------|
| (X) January 1 - May 31*       | \$ 4,000         | \$ 4,000         |
| (Z) January 1 - May 31*       | 2,000            | 2,000            |
| (X) June 1 - November 30      | 2,500            | 2,500            |
| (Z) June 1 - November 30      | 1,500            | 1,500            |
| (X) December 1 - December 31  | 1,000            | —                |
| (Z) December 1 - December 31  | —                | 2,000            |
| <b>Total Household Income</b> | <b>\$ 11,000</b> | <b>\$ 12,000</b> |

  

| Rent Constituting Property Taxes Accrued (25% of Rent) | X's Claim       | Z's Claim       |
|--|-----------------|-----------------|
| (X) & (Z) January 1 - May 31*                          | \$ 500          | \$ 500          |
| (X) June 1 - December 31                               | 525             | —               |
| (Z) June 1 - December 31                               | —               | 700             |
| <b>Total Rent Constituting Property Taxes Accrued</b>  | <b>\$ 1,025</b> | <b>\$ 1,200</b> |

\* The income and rent for the time the claimants are members of the same household are reportable on both claims.

(4) **DIVORCE AND REMARRIAGE DURING A CLAIM YEAR.** (a) If during a claim year a person occupies a separate dwelling from his or her spouse, is subsequently divorced, and is remarried to a different spouse and resides with the spouse after the marriage, a new household is established by the person and the new spouse. Under s. 71.53 (1) (c), Stats., either of the new spouses may claim a homestead credit for the year of the marriage but not both.

(b) In the event that during a claim year a claimant occupies a separate dwelling from one spouse, is divorced from that spouse, and is remarried to a new spouse, household income with respect to the claimant and the former spouse for the portion of the claim year prior to the claimant's remarriage shall be determined as described in sub. (3) (c) and (d). For the portion of the claim year the claimant occupies a common homestead with the new spouse after the remarriage, household income shall include all income of both the claimant and the new spouse.

(c) In the event a claimant occupies a separate dwelling from his or her former spouse, is divorced, and is remarried during a claim year, the Register, February, 1990, No. 410

claimant may claim the total amount of property taxes accrued or rent constituting property taxes accrued on each common homestead for the portion of the year the claimant occupies a common homestead with a spouse, plus the claimant's share of property taxes accrued or rent constituting property taxes accrued for the portion of the calendar year the claimant occupies a separate dwelling from his or her spouse or is not married.

Note: Example. X and Z are married and living together, even though a divorce action is pending. X and Z both move to separate Wisconsin homesteads on March 31 and a divorce is granted on April 30. On November 1 of the same year, X marries Y and they share the same homestead for the rest of the year. Z does not remarry during the year. Each individual or couple pay rent for the entire year, and heat is not included at any dwelling. X and Z notify each other of the marital property income generated by their respective services and properties for January 1 to April 30. Notification between X and Y is immaterial because they do not occupy separate dwellings as husband and wife during the year. Income for each individual and gross rent paid for the year are as follows:

| Income                   | X                | Y               | Z               |
|--------------------------|------------------|-----------------|-----------------|
| January 1 - March 31     | \$ 2,000*        | \$ 1,500        | \$ 1,000*       |
| April 1 - April 30       | 1,000*           | 200             | 400*            |
| May 1 - October 31       | 6,000            | 4,000           | 3,000           |
| November 1 - December 31 | 2,000*           | 500*            | 2,000           |
|                          | <u>\$ 11,000</u> | <u>\$ 6,200</u> | <u>\$ 6,400</u> |

\* In this example, all income of each spouse while married to each other is marital property income, and the income listed in each column is the income generated by that person's services and property.

| Gross Rent Paid          | X     | Y      | Z     | X + Z  | X + Y |
|--------------------------|-------|--------|-------|--------|-------|
| January 1 - March 31     | \$ —  | \$ 600 | \$ —  | \$ 900 | \$ —  |
| April 1 - October 31     | 1,800 | 1,400  | 1,400 | —      | —     |
| November 1 - December 31 | —     | —      | 400   | —      | 500   |

Since X and Y are one household at the end of the year, only one of them 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 taxes accrued are computed as follows:

| Household Income         | If X Is Claimant | If Y Is Claimant | Z's Claim      |
|--------------------------|------------------|------------------|----------------|
| January 1 - March 31     | (X)* \$ 2,000    | (Y) \$ 1,500     | (Z)* \$ 1,000  |
| January 1 - March 31     | (Z)* 1,000       | —                | (X)* 2,000     |
| April 1 - April 30       | (X) 500          | (Y) 200          | (Z) 200        |
| April 1 - April 30       | (Z) 200          | —                | (X) 500        |
| May 1 - October 31       | (X) 6,000        | (Y) 4,000        | (Z) 3,000      |
| November 1 - December 31 | (X)* 2,000       | (Y)* 500         | (Z) 2,000      |
| November 1 - December 31 | (Y)* 500         | (X)* 2,000       | —              |
| Total Household Income   | <u>\$12,200</u>  | <u>\$ 8,200</u>  | <u>\$8,700</u> |

#### Rent Constituting Property Taxes Accrued (2½% of Rent)

|  |                 |               |                 |
|--|-----------------|---------------|-----------------|
| January 1 - March 31                           | (X + Z)* \$ 225 | (Y) \$ 150    | (X + Z)* \$ 225 |
| April 1 - October 31                           | (X) 450         | (Y) 350       | (Z) 350         |
| November 1 - December 31                       | (X + Y)* 125    | (X + Y)* 125  | (Z) 100         |
| Total Rent Constituting Property Taxes Accrued | <u>\$ 800</u>   | <u>\$ 625</u> | <u>\$ 675</u>   |

\* The income and rent for the time the claimants are members of the same household are reportable on each claim filed.

Note: 1) In each of the examples in subs. (2), (3), and (4), the spouses notify each other of the amount and nature of the marital property income generated by their respective services and properties. While it is more common for notification not to occur, each example assumes notification for purposes of illustrating the household income computation, which is far more complex under notification than under non-notification situations. In non-notification situations, the claimant merely includes all of the income generated by his or her services and

property and none of the income generated by the spouse's services and property while they occupy separate dwellings.

2) Throughout ch. Tax 14, it has been assumed that a dissolved marriage was dissolved by a decree of divorce. Under s. 766.01 (7), Stats., the dissolution of a marriage may also be by annulment or decree of invalidity, or by entry of a decree of legal separation or separate maintenance. The computation of household income, property taxes accrued, and rent constituting property taxes accrued is the same under any of these types of dissolutions.

3) Marital property law became effective for Wisconsin tax purposes on January 1, 1986, as a result of 1985 Wisconsin Act 29. For 1985 and prior year claims filed in 1986 and prior calendar years, subs. (3) (c) and (d), and (4) (b), and the examples in subs. (3) and (4) do not apply. For pre-1986 years, household income of a claimant separated from his or her spouse for all or part of a claim year or divorced during a claim year included the claimant's income for the entire year and the claimant's spouse's income for the period of time the two persons were members of the same household. Household income of a claimant divorced and remarried during a pre-1986 claim year included the claimant's income for the entire year and the income of each spouse for the period of time the spouse resided with the claimant as a member of the claimant's household.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.