

(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.

**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, WI 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.

**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.

(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) **DEDUCTION FOR DEPENDENTS.** (a) Under s. 71.52 (5), Stats., a deduction of \$250 is allowed for each of the claimant's dependents, as defined in section 152 of the internal revenue code, who have the same principal abode as the claimant for more than 6 months during the calendar year to which a claim for homestead credit relates. A claimant may multiply the number of dependents with the same principal abode for more than 6 months by \$250, and subtract the result from the total of the income items, to arrive at household income.

*Example:* A claimant and the claimant's spouse claim 3 dependents on their 1989 federal income tax return, and all 3 dependents have the same principal abode as the claimant for the entire year. Household income items include Wisconsin adjusted gross income of \$7,500, depreciation of \$1,500, an IRA contribution of \$1,000, and unemployment compensation of \$500. Total household income is \$9,750, consisting of the total of the income items listed ( $\$7,500 + \$1,500 + \$1,000 + \$500 = \$10,500$ ) minus the dependent deduction of \$750 ( $\$250 \times 3$  dependents).

(b) A dependent is considered to have the same principal abode as the claimant during temporary absences from the claimant's homestead for reasons such as school attendance, illness, vacations, business commitments, or military service.

(c) In the following situations, a dependent who does not have the same principal abode as the claimant for more than 6 months during the calendar year to which a claim for homestead credit relates is nonetheless considered to have the same principal abode for more than 6 months if during that year:

1. The dependent is born or dies, and the dependent has the same principal abode as the claimant during the entire time the dependent is alive during that year.

2. The dependent is adopted by the claimant, is placed with the claimant for adoption, or becomes the stepchild of the claimant, and the dependent has the same principal abode as the claimant from that time to the end of that calendar year.

(4) **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 s. 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.
- 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 s. 1034 of the internal revenue code or a nonrecognized gain from an involuntary conversion under s. 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 employe pension plans, or "SEP's."

g. Contributions to Keogh plans.

h. Net operating loss carryforwards.

i. Capital loss carryforwards.

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

1. Amounts described in sub. (4) (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.

(6) **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.

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

**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 71.52 (5), 1987 Stats., was amended by 1989 Wis. Acts 31 and 100, effective for 1989 claims filed in calendar year 1990. Under the statute in effect immediately prior to enactment of 1989 Wis. Acts 31 and 100, the deduction for dependents described in sub. (3) did not apply.

3) Section 71.09 (7) (a) 6, 1985 Stats., was amended by 1987 Wis. 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. (4) and (5). Section 71.09 (7) (a) 6, Stats., as amended was renumbered s. 71.52 (6), Stats., by 1987 Wis. Act 312.

a) Under the statute in effect immediately prior to the enactment of 1987 Wis. Act 27, income as described in sub. (4) (b) also included:

1. Foster care payments.

2. Community options program, or "COP" payments.

b) Under the statute in effect immediately prior to the enactment of 1987 Wis. Act 27, income as described in sub. (4) (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.

## Tax 14

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 Wis. Act 27, sub. (5) (b) did not apply.

4) Section 71.042(1), 1985 Stats., was renumbered s. 71.042(2) and amended by 1987 Wis. 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. (4) (b) 23. Section 71.042 (2), Stats., as amended was renumbered s. 71.36(1m), Stats., by 1987 Wis. 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. (4) (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; renum. (3) to (6) to be (4) to (7) and am. (5) (a) 1., cr. (3), Register, August, 1990, No. 416, eff. 9-1-90.

**Tax 14.04 Property taxes accrued.** (ss. 71.52 (3) and (7) and 71.54 (2) (a) and (c) 2, 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 under ch. 70, Stats., on a homestead owned by a claimant or a member of the claimant's household, less the tax credit for general property tax relief, if any, afforded in respect of the property by s. 79.10, Stats. With respect to sub. (3) (e), "property taxes accrued" means the property taxes accrued levied on the former homestead owned by the claimant.

(3) **QUALIFYING PROPERTY TAXES.** (a) Property taxes shall be levied on a homestead or former 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 or former 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 or former homestead are delinquent for years prior to the year to which a claim relates does not disqualify the claimant.

(c) "Property taxes accrued" includes personal property taxes assessed on a homestead or former homestead that is constructed on leased land or assessed on a mobile home owned by the claimant. "Property Register, June, 1991, No. 426