

# **Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2010**

**(Including Information for Aliens)**

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### IMPORTANT CHANGE

- Five new business credits are available for 2010 – the jobs tax credit, postsecondary education credit, water consumption credit, woody biomass harvesting and processing credit, and food processing plant and food warehouse investment credit. See page 22.
- The Minnesota/Wisconsin reciprocity agreement ended on January 1, 2010. References to Minnesota/Wisconsin reciprocity have been deleted. See page 4.

## I. INTRODUCTION

This publication provides information about the Wisconsin income tax treatment of individuals who are part-year residents or nonresidents of Wisconsin. It is intended to supplement the instructions for Form 1NPR, which is the Wisconsin income tax return for nonresidents and part-year residents of Wisconsin.

### CAUTION

The information in this publication reflects the position of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature effective on November 15, 2010. Laws effective after that date, administrative rules, and court decisions may change the interpretations in this publication.

## II. DEFINITIONS

**Full-year resident** – A full-year resident is an individual who is domiciled in Wisconsin for the entire taxable year.

**Nonresident** - A nonresident is an individual who is not domiciled in Wisconsin for any part of the taxable year.

**Part-year resident** - A part-year resident is an individual who is domiciled in Wisconsin for part of the taxable year.

**Domicile** - Your domicile is your true, fixed, and permanent home where you intend to remain permanently and indefinitely and to which, whenever absent, you intend to return. It is often referred to as “legal residence.” You can be physically present or residing in

one state but maintain a domicile in another. You can have only one domicile at any time.

Your domicile, once established, is never changed unless all three of the following occur or exist:

- You specifically intend to abandon your old domicile and take actions consistent with such intent, and
- You intend to acquire a new domicile and take actions consistent with such intent, and
- You are physically present in the new domicile.

Your domicile does not change if:

- You leave your state of domicile for a brief rest or vacation, or
- You leave your state of domicile to complete a particular transaction, perform a particular contract, or fulfill a particular engagement, but you intend to return to your state of domicile whether or not you complete the transaction, contract, or engagement.

*Example 1:* You are a resident of Texas. In 2010, you worked in Wisconsin for three months after which you returned to Texas. You did not take any steps to abandon your Texas residence (domicile). You are a nonresident of Wisconsin for 2010.

*Example 2:* You graduated from high school in Minnesota where you lived with your parents. In August of 2010, you moved to Wisconsin to attend the University of Wisconsin. You do not plan to remain in Wisconsin after you complete your course of study at the university. You do not take any steps to abandon your Minnesota residence or to acquire a new residence in Wisconsin. You are a nonresident of Wisconsin for 2010.

*Example 3:* You are a resident of Wisconsin. In September of 2010 you enlisted in the U.S. Army and were stationed in Missouri for the remainder of 2010. You do not take any steps to abandon your Wisconsin residence or to acquire a new residence in Missouri. You are a full-year resident of Wisconsin for 2010.

**Note:** If you are a member of the armed services of the United States who enters service from Wisconsin, you retain the status of a resident of Wisconsin throughout your entire military service unless you take specific steps to abandon your Wisconsin residence and acquire

a new residence in another state. If you are a member of the armed services of the United States who entered service from another state and are living in Wisconsin solely because of military orders, you are not considered to be a resident of Wisconsin.

*Example 4:* You were a resident of California. In July of 2010, your employer transfers you to Wisconsin. You sell your home in California and move with your spouse and children to Wisconsin. You change your voter registration, auto registration, driver license, mailing address and insurance records to Wisconsin as you intend to remain permanently in Wisconsin. Your children will be attending Wisconsin schools. You are a part-year resident of Wisconsin for 2010.

### III. FILING REQUIREMENTS

#### A. Who Must File a Wisconsin Income Tax Return?

If you are a nonresident or part-year resident of Wisconsin and your gross income (or the combined gross income of you and your spouse) is \$2,000 or more for 2010, you must file a 2010 Wisconsin income tax return.

**Exception** – Even if gross income is less than \$2,000, you must file a Wisconsin income tax return if:

- You can be claimed as a dependent on another person's income tax return (for example, on your parent's return) and you had gross income of more than \$950 which included at least \$301 of unearned (nonwage) income. Unearned income includes only unearned income which is reportable to Wisconsin.
- You owe a Wisconsin penalty on an Individual Retirement Account (IRA), annuity, or other retirement plan, Coverdell education savings account, or on a medical savings account.
- You are subject to the Wisconsin alternative minimum tax.

“Gross income” means all income (before deducting expenses) reportable to Wisconsin that is received in the form of money, property, or services. It doesn't include items that are exempt from Wisconsin income tax, such as U.S. government interest.

Gross income is determined before deducting expenses. For example, gross income includes:

- Total gross receipts from a business or profession without reduction for the cost of goods sold, expenses, or any other amounts.
- Gross rent received from rental properties without reduction for expenses or any other amounts.
- Gross selling price from the sale of securities, property, or other assets without reduction for the cost of the assets, expenses of sale, or any other amounts.
- Gross amount received from an annuity, retirement plan, or profit-sharing plan without reduction for the employee's contribution to the annuity or plan.
- A partner's or shareholder's proportionate share of the gross receipts of the partnership or tax-option (S) corporation, before deducting returns and allowances or any other business expenses.

*Example 1:* You are a full-year resident of Illinois and own rental property in Wisconsin. During 2010 you received gross rent from the Wisconsin property of \$6,000 and incurred rental expenses of \$7,000, resulting in a net rental loss of \$1,000. You are required to file a 2010 Wisconsin income tax return because your gross income reportable to Wisconsin (\$6,000) was at least \$2,000.

*Example 2:* You are a part-year resident of Wisconsin for 2010. Your wages from working in Wisconsin during 2010 were \$1,200. You also sold land while you were a Wisconsin resident at a profit of \$200. Your cost of the land was \$600 and you sold it for \$800. You are required to file a 2010 Wisconsin income tax return because your gross income reportable to Wisconsin is \$2,000 (\$1,200 from wages plus the \$800 selling price of the land).

#### B. What Income Does Wisconsin Tax?

**Nonresidents** - Wisconsin taxes only your income from Wisconsin sources.

**Part-year residents** - During the time you are a Wisconsin resident, Wisconsin taxes your income from all sources. During the time you aren't a Wis-

consin resident, Wisconsin taxes only your income from Wisconsin sources.

Income from Wisconsin sources includes:

- Wages, salaries, commissions, and other income for personal services performed in Wisconsin (see Exceptions in Part IV.A on page 4).
- Rents and royalties from tangible property located in Wisconsin, such as land, buildings, and machinery.
- Gains or losses from sales or other dispositions of tangible property located in Wisconsin, such as land, buildings, and machinery.
- Profits or losses from businesses, professions, and farm operations conducted in Wisconsin, including sole proprietorships, partnerships, limited liability companies (LLCs), and tax-option (S) corporations. This includes interest and dividend income attributable to Wisconsin which is passed through from a tax-option (S) corporation.
- Income from the Wisconsin state lottery, a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer, or Wisconsin pari-mutuel wager winnings and purses. This includes all income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally purchased in Wisconsin.
- Winnings from a casino or bingo hall located in Wisconsin and operated by a Native American tribe or band.
- Income derived from a covenant not to compete to the extent the covenant was based on a Wisconsin-based activity.

*Example 1:* You are a resident of Iowa and commute daily to your job in Wisconsin. Wages you earn in Wisconsin are income from Wisconsin sources which are taxable by Wisconsin.

*Example 2:* You are a resident of Florida and own rental property located in Wisconsin. Income from the rental or sale of the property is income from Wisconsin sources which is taxable by Wisconsin.

*Example 3:* You are a resident of Illinois and a partner (either a general or limited partner) of a partnership that does business only in Wisconsin. Your share of the partnership income is income from Wisconsin sources which is taxable by Wisconsin.

*Example 4:* You are a resident of Nebraska and the beneficiary of an estate or trust which receives rent from property located in Wisconsin. Your share of the estate or trust income attributable to the Wisconsin rental property is income from Wisconsin sources which is taxable by Wisconsin.

### C. Which Form To File

If you are a nonresident or part-year resident of Wisconsin in 2010, you must file your income tax return on Wisconsin Form 1NPR (individual income tax return for nonresidents and part-year residents).

If you are married and one spouse is either a nonresident or part-year resident of Wisconsin in 2010 and the other spouse is a full-year resident of Wisconsin, the form to use depends on your filing status.

- If you file a joint Wisconsin income tax return, you must file Form 1NPR.
- If you file separate income tax returns, the nonresident or part-year resident spouse must file Form 1NPR; the full-year resident spouse must file Form 1 (individual income tax return for full-year residents).

**Exception** – You do not have to file a Wisconsin income tax return if your only income or loss from Wisconsin sources consists of income or loss from one of the following:

- A partnership that has filed Form 1CNP on your behalf, or
- A tax-option (S) corporation that has filed Form 1CNS on your behalf.

**Note:** Individuals who abandon their Wisconsin domicile during the year must complete and file a “Legal Residence (Domicile) Questionnaire” with

their Form 1NPR. The questionnaire is on page 47 of the Form 1NPR instructions.

## IV. INCOME, DEDUCTIONS, AND CREDITS

### A. Wages, Salaries, Tips, and Other Employee Compensation

**Part-Year Residents of Wisconsin** - During the time an individual is a resident of Wisconsin, all income received from personal services (for example, wages, salaries, tips, and other employee compensation) is taxable by Wisconsin, regardless of where the income is earned.

During the time an individual is not a resident of Wisconsin, income received from personal services is taxable by Wisconsin only if the personal services were performed in Wisconsin (see Exceptions below).

*Example:* You were a resident of Wisconsin employed at a business located in Iowa. On October 1, 2010, you moved to Iowa and became a resident of Iowa. Income earned in Iowa and received during the part of the year in which you were a Wisconsin resident is taxable by Wisconsin.

**Nonresident of Wisconsin** - Income from personal services is taxable by Wisconsin only if the personal services are performed in Wisconsin (see Exceptions below).

*Example:* You were a resident of Florida for the entire year. However, you spent four months during 2010 at a cottage you own in northern Wisconsin. During your summer stay in Wisconsin, you worked part-time at a local gift shop. The income you earned from this part-time job is taxable by Wisconsin.

#### Exceptions –

»» *Reciprocity for Residents of Illinois, Indiana, Kentucky, and Michigan.*

Wisconsin has reciprocity agreements with four states: Illinois, Indiana, Kentucky, and Michigan. As a result of these agreements,

- (1) Wisconsin generally will not tax the personal service income (for example, salaries, wages, commissions, and fees earned by an employee) of individuals who are residents of these states and who are employed in Wisconsin, and
- (2) Illinois, Indiana, Kentucky, and Michigan generally will not tax the personal service income of individuals who are residents of Wisconsin and who are employed in these states.

Publication 121, *Reciprocity*, provides additional information on this subject. See page 30 for information on how to get this publication.

#### »» *Military Personnel Stationed in Wisconsin*

Wisconsin does not tax the military pay of a member of the U.S. armed services who is a resident of another state but stationed in Wisconsin on military orders.

This exception applies only to military pay. It does not apply to other Wisconsin source income, such as income from (1) civilian employment in Wisconsin, including income from civilian employment with the U.S. armed services, (2) a business conducted in Wisconsin, (3) property located in Wisconsin, (4) Wisconsin lottery or pari-mutuel wager winnings or purses, and (5) winnings from a casino or bingo hall located in Wisconsin and operated by a Native American tribe or band.

Publication 104, *Wisconsin Taxation of Military Personnel*, provides additional information on this subject. See page 30 for information on how to get this publication.

#### »» *Income of Military Spouse*

Income from services performed in Wisconsin (wages) by a nonresident spouse of a servicemember is not taxable to Wisconsin if the spouse is in Wisconsin solely to be with the servicemember serving in Wisconsin under military orders. These wages are taxable only to the nonresident spouse's state of legal residence.

**Note** If you qualify as a nonresident spouse of a servicemember and are in Wisconsin solely to be with the servicemember serving in Wisconsin under military orders, you may elect to not have Wisconsin income tax withheld from your Wisconsin wages. To claim an exemption from withholding, complete Form W-221, *Nonresident Military Spouse Withholding Exemption*, and submit it to your employer.

»» *Members of the Reserves or National Guard*

Wisconsin does not tax the military pay received from the federal government by a member of the Reserves or National Guard who served on active duty. The military pay must be received after being called into active federal service under 10 USC 12302(a) or 10 USC 12304 or into special state service authorized by the federal Department of Defense under 32 USC 502(f), and paid for a period of time during which the person was on active duty. The exclusion does not apply to pay that members of the Reserves or National Guard receive for their weekend and two-week annual training. It also does not apply to a person who is serving on active duty or full-time duty in the active guard reserve (AGR) program.

»» *Nonresident Railroad Employees, Motor Carrier Transportation Employees, Air Carrier Employees, and Interstate Waterway Workers*

Federal law restricts the taxation of nonresident railroad, motor carrier, air carrier and interstate waterway employees who perform duties in more than one state.

*Railroad and Motor Carrier Transportation Employees* - Wages earned in Wisconsin while not a resident of Wisconsin by an **employee** of (1) an interstate railroad, (2) a motor carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission, or (3) a motor private carrier are not subject to Wisconsin income tax if such employee performs duties in two or more states.

*Airline Employees* - Wages earned in Wisconsin while not a resident of Wisconsin by an employee of an air carrier are subject to Wis-

consin income tax if the employee earns more than 50% of the compensation paid by the air carrier in Wisconsin. An employee is deemed to have earned 50% of his or her compensation in Wisconsin if his or her scheduled flight time in Wisconsin is more than 50% of his or her total scheduled flight time in the calendar year while so employed.

In the case of wages paid by an airline to an employee on authorized leave or other authorized absence from regular duties to perform services on behalf of the employee's airline union in Wisconsin, during the period in which the employee is not a resident of Wisconsin, such wages are taxable to Wisconsin only if the employee's scheduled flight time in Wisconsin would have been more than 50% of the employee's total scheduled flight time for the calendar year had the employee been engaged full time in the performance of regularly assigned duties on the carrier's aircraft.

*Interstate Waterway Workers* - Wages paid to a licensed pilot or other worker on a vessel operating on the navigable waters of more than one state are subject to the income tax laws only of the state in which the individual resides. Therefore, such wages paid to a nonresident of Wisconsin are not subject to Wisconsin income tax.

In the case of a part-year resident of Wisconsin, during the period in which the employee is a resident of Wisconsin, all such wages are subject to Wisconsin income tax. During the period in which the employee is not a resident of Wisconsin, the wages are not subject to Wisconsin income tax.

**Nonqualified Deferred Compensation Plans** - Distributions received from a nonqualified deferred compensation plan are treated as follows:

- If received while the individual is a Wisconsin resident, the distribution is taxable by Wisconsin.
- If received while the individual is not a resident of Wisconsin, the distribution is taxable by Wisconsin if the payment is attributable to per-

sonal services performed in Wisconsin. (See Exception below.)

*Example:* You retired on March 1, 2010, after 30 years of service for ABC Corporation in Wisconsin. On April 1 you became a Florida resident. In May you received a lump-sum distribution of \$200,000 from ABC Corporation's nonqualified deferred compensation plan. The \$200,000 payment is taxable by Wisconsin because the entire payment is attributable to personal services performed in Wisconsin. (For purposes of this example, it is assumed that the Exception below does not apply.)

**Exception** – Federal law preempts taxation of certain distributions received from a nonqualified deferred compensation plan by an individual who is not a resident of Wisconsin. Nonqualified deferred compensation plan distributions received by an individual who is not a resident of Wisconsin are exempt from Wisconsin income tax in the following two cases:

- (1) When the distribution is paid out in annuity form over the life expectancy of the individual or for a period of not less than 10 years; or
- (2) When the distribution is paid in either an annuity or lump sum from arrangements known commonly as "mirror" plans.

A mirror plan is a nonqualified retirement plan maintained by an employer solely for the purpose of providing benefits in excess of certain limits on contributions and benefits contained in the Internal Revenue Code (IRC) which apply to qualified retirement plans. The benefits provided under a mirror plan are those benefits that would have been provided under the terms of a qualified retirement plan, but for the application of the following limits on contributions and benefits:

- (1) Code section 401(a)(17): limits the amount of annual compensation that may be taken into account under a qualified retirement plan for purposes of computing benefits and contributions.
- (2) Code section 401(k): limits the amount of elective deferrals that may be made by a highly compensated employee to a qualified cash or deferred arrangement.

- (3) Code section 401(m): limits the amounts of employer matching contributions and after-tax employee contributions that may be made to a 401(k) plan on behalf of highly compensated employees.
- (4) Code section 402(g): limits the annual amount of elective deferrals that may be made to a 401(k) plan (or a similar arrangement).
- (5) Code section 403(b): limits the amount of annual contributions that may be made to a tax-sheltered annuity maintained by certain tax-exempt entities and organizations.
- (6) Code section 408(k): limits the amount of elective deferrals that may be made by a highly compensated employee to a simplified employee pension (maintained by smaller employers).
- (7) Code section 415: limits the amount of annual benefits that may be paid from a defined benefit plan and limits the amount of annual contributions that can be made to a defined contribution plan.

**Note:** Contact your employer if you have a question as to whether a distribution is from a nonqualified deferred compensation plan.

**Allocating Personal Service Income to Wisconsin** - The Form W-2 which you receive from your employer may show the amount of Wisconsin wages (generally Box 16 of the 2010 Form W-2).

If your Form W-2 doesn't show your Wisconsin wages and you are unable to determine the specific amount, an allocation may be made on the basis of time. The following formula may generally be used to allocate wages for any portion of the year during which you were not a resident of Wisconsin:



Days on which personal services were performed in Wisconsin <hr style="width: 100%;"/> Total days of personal service for which compensation is received during the year	x	Total wages from this employer	=	Amount allocated to Wisconsin
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For the portion of the year during which you were a Wisconsin resident, all wages (earned both in and outside Wisconsin) must be allocated to Wisconsin.

*Example:* You were employed in Colorado and were a resident of that state. Your employer required you to spend 15 days during 2010 at the company's main office in Wisconsin. Your annual salary was \$40,000 which was compensation for 260 days. The amount of wages allocable to Wisconsin is \$2,307.69, computed as follows:

$$\frac{15}{260} \times \$40,000 = \$2,307.69$$

**Stock Options -**

***Resident of Wisconsin When Income is Recognized:*** If an individual is a resident of Wisconsin (that is, domiciled in Wisconsin) at the time income from an employer-provided stock option is required to be recognized for federal tax purposes, the same amount that is taxable for federal tax purposes is also taxable by Wisconsin, regardless of whether the stock option was attributable to personal services performed in Wisconsin or outside Wisconsin.

***Not a Resident of Wisconsin When Income is Recognized:*** If an individual is not a resident of Wisconsin (that is, is not domiciled in Wisconsin) at the time income from an employer-provided stock option is required to be recognized for federal tax purposes, the income is taxable by Wisconsin only to the extent it is attributable to personal services performed in Wisconsin.

The amount of income related to the stock option which is taxable for federal purposes must be allocated to reflect only the portion of the income which is attributable to personal services performed in Wisconsin. Depending on the facts and circumstances, one method of allocation that may produce a fair and equitable result is an allocation on the basis of time worked in and outside Wisconsin.

Under this method, if personal services are performed both in and outside Wisconsin, the portion taxable by Wisconsin in the case of a nonresident is the income recognized for federal tax purposes multiplied by the ratio of the days worked in Wisconsin during the employment contract period granting the option over the total days worked under the contract.

If recognition of the income on an employer-provided stock option occurs when the stock purchased under the option is sold and the individual is not a resident of Wisconsin, the amount to be included in Wisconsin gross income will be the lesser of the gain recognized on the sale of the stock or the amount which would have been recognized at the exercise of the option, multiplied by the ratio of the days worked in Wisconsin under the employment contract granting the option over the total days worked under the contract.

*Example 1:* An employee is granted a nonqualified stock option to purchase 1,000 shares of the company's stock for \$10 per share as part of a five-year contract, with the ability to exercise the option anytime after five years have passed. For the first two years of the five-year contract, the employee worked in Wisconsin. The employee was then transferred to Ohio where he became a resident and worked the remaining three years of the contract. In 2010, while an Ohio resident, the employee exercised the option and purchased the stock for \$10,000. At the time of exercise, the stock had a fair market value of \$20 a share or \$20,000.

For federal tax purposes, the employee must recognize ordinary income of \$10,000 (\$20,000 fair market value of stock less \$10,000 paid for the stock) for 2010. The portion of the income from the nonqualified stock option which is attributable to personal services performed in Wisconsin and taxable by Wisconsin for 2010 is \$4,000, determined as follows:

$$\frac{2 \text{ (years worked in Wisconsin)}}{5 \text{ (total years under employment contract)}} \times \$10,000 = \$4,000$$

*Example 2:* In 2003 an employee was granted an incentive stock option to purchase 1,000 shares of the

company's stock for \$6 per share as part of a five-year contract, with the ability to exercise the option anytime after five years. The individual worked in Wisconsin for the five-year contract period and exercised the option in 2008. The fair market value of the stock at the time the option was exercised was \$12 per share. Because this option qualified as an incentive stock option, the employee was not required to report income from the exercise of the option on either his 2008 federal or Wisconsin income tax return.

The employee subsequently retired and moved to Florida in 2010. While a Florida resident, the individual sold the 1,000 shares of stock for \$15,000. He reports the \$9,000 gain (\$15,000 selling price less \$6,000 cost) on the sale of the stock as a long-term capital gain on Schedule D of federal Form 1040.

Because all personal services were performed in Wisconsin during the five-year employment contract period, the amount taxable by Wisconsin is \$6,000 (the lesser of the gain recognized on the sale of the stock or the amount that would have been recognized at the exercise of the option).

Because under federal law the taxable amount is treated as a long-term capital gain, the \$6,000 which is taxable by Wisconsin is also treated as a long-term capital gain for Wisconsin. The \$6,000 long-term capital gain will be netted with other capital gains and losses and be subject to the Wisconsin exclusion for 30% of net long-term capital gain.

**Alternative Minimum Tax:** An adjustment to federal alternative minimum taxable income is required for incentive stock options. This same adjustment (less 20%) is required for Wisconsin alternative minimum tax purposes. For a nonresident of Wisconsin, the adjustment applies only to the extent the adjustment amount is attributable to personal services performed in Wisconsin.

**Nonresident Members of Professional Athletic Teams -** A nonresident professional athlete is taxed on income derived from the performance of personal services in Wisconsin. When compensation is received for services performed both in and outside

Wisconsin, the amount reportable to Wisconsin is determined by using the following formula:

$$\frac{\text{Wisconsin duty days}}{\text{Total duty days}} \times \text{Total compensation} = \text{Amount reportable to Wisconsin}$$

Total compensation includes salaries, wages, bonuses, and any other compensation received during the year.

For additional information on duty days and what is included in total compensation, see Wisconsin Administrative Code sec. Tax 2.31 or contact the Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708-8906 or call (608) 266-2772.

**B. Scholarships and Fellowships**

For federal tax purposes, a candidate for a degree may exclude from income the portion of a scholarship or fellowship grant spent for (1) tuition or fees required to enroll in, or to attend, an educational institution and (2) fees, books, supplies, and equipment required for the courses at the educational institution. Any remaining portion must be included in federal taxable income. In addition, any part of a scholarship or fellowship, including any tuition reduction, that represents payment for services is taxable. This includes amounts received for teaching and research.

For Wisconsin tax purposes, only the portion of a scholarship or fellowship which represents payment for services performed in Wisconsin is taxable by Wisconsin when received by an individual who is not a resident of Wisconsin. Scholarships and fellowships received while an individual is a resident of Wisconsin are taxable by Wisconsin in the same manner as for federal tax purposes.

**C. Business Income**

An individual who is not a resident of Wisconsin who operates a sole proprietorship business partly within and partly outside Wisconsin must assign a portion of the business income (from federal Schedule C, C-EZ, or F) to Wisconsin using either the apportionment method or separate accounting.

Under separate accounting, the individual must keep separate records of the income and expenses for the Wisconsin business. Individuals engaged in a nonunitary business must use separate accounting. A nonunitary business is one in which the operations in Wisconsin aren't dependent upon or contributory to the operations outside Wisconsin. A unitary business may use separate accounting only with the approval of the department. To obtain approval, send a written request to the Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708.

Under the apportionment method, the individual must assign a portion of the net business income, as shown on federal Schedule C, C-EZ, or F, to Wisconsin according to a formula. Individuals are required to report a portion of their net business income to Wisconsin using the apportionment method if their Wisconsin operations are part of a unitary business. A unitary business is one which operates as a unit and cannot be segregated into independently operating divisions or branches. For more details on how to identify a unitary business, see Wisconsin Administrative Code sec. Tax 2.62.

If you use the apportionment method, you must complete Form 4A-1 or 4A-2. See the instructions for those forms for details.

For further information, see the frequently asked questions (FAQs) on the department's web site at [www.revenue.wi.gov](http://www.revenue.wi.gov).

#### **D. Capital Gains and Losses and Sales of Business Assets**

**Nonresidents of Wisconsin** - Capital gains and losses from Wisconsin sources are includable in Wisconsin income.

**Part-Year Residents of Wisconsin** - A part-year resident of Wisconsin must include in Wisconsin income:

- all capital gain and loss received while a Wisconsin resident, and
- capital gain and loss received from Wisconsin sources during the period in which the individual is not a resident of Wisconsin.

Capital gain or loss from Wisconsin sources includes gain or loss from the sale of land, buildings, and machinery located in Wisconsin, and the individual's share of capital gain and loss from an estate or trust, partnership, or tax-option (S) corporation which has been reported on Wisconsin Schedule 2K-1, 3K-1, or 5K-1. It also includes gain from the sale of stock acquired under an incentive stock option or employee stock purchase plan to the extent attributable to personal services performed in Wisconsin (see Stock Options on page 7). It doesn't include losses from business bad debts and worthless securities, and gains or losses from sales of stocks (except gain on stock acquired under an incentive stock option or employee stock purchase plan as explained above) while a nonresident.

*Example 1:* While a nonresident of Wisconsin, you sell 100 shares of ABC Corporation stock and land located in Wisconsin. Your gain on the sale of stock is \$5,000, and your gain on the sale of land is \$2,500. Only the \$2,500 gain on the sale of land located in Wisconsin is includable in Wisconsin income.

*Example 2:* You became a Wisconsin resident in August of 2010. In September of 2010, you sell 100 shares of DEF Corporation stock and real estate located in Arkansas. Your gain from the sale of stock is \$1,500 and your gain from the sale of Arkansas real estate is \$3,000. Both the \$1,500 gain from the sale of stock and the \$3,000 gain from the sale of real estate are includable in Wisconsin income.

*Example 3:* During 2009, while a nonresident of Wisconsin, you sold stock of GHI Corporation at a loss of \$15,000. Because of the capital loss limitations, you could deduct only \$3,000 of the loss on your 2009 federal income tax return. The remaining \$12,000 loss is carried forward to 2010. You become a Wisconsin resident in 2010. No portion of the capital loss carryforward may be deducted on your Wisconsin income tax return for 2010 or any future year.

**Sale of Your Main Home** – For federal tax purposes, you may be able to exclude from income up to \$250,000 (\$500,000 if married filing a joint return) of gain on the sale of your main home. Any gain on the sale of your main home which is ex-

cluded from income for federal tax purposes is also excluded for Wisconsin.

**Note:** For a definition of “main home” and additional information on the exclusion of gain on the sale of your home, obtain federal Publication 523, *Selling Your Home*. This publication is available from the federal Internal Revenue Service (IRS).

Gain on the sale of a home located in Wisconsin which does not qualify for the exclusion is includable in Wisconsin income, regardless of whether you are a resident or nonresident of Wisconsin at the time of sale. Gain on the sale of a home located outside Wisconsin which does not qualify for the exclusion is includable in Wisconsin income only if you were a Wisconsin resident at the time of the sale.

**Exception** – You may reduce your taxable gain if any portion of the gain is attributable to a deferred gain from the sale of a former home located outside Wisconsin and (a) the sale or exchange of the former home occurred before the 1975 taxable year, or (b) the sale or exchange of the former home occurred in taxable year 1975 or thereafter and you were not a Wisconsin resident at the time of the sale or exchange. Reduce any taxable gain by the amount of deferred gain on the home located outside Wisconsin.

A loss on the sale of your home is not deductible. If your employer reimburses you for a loss on the sale of your Wisconsin home and you receive the reimbursement while you are not a resident of Wisconsin, the reimbursement is not includable in Wisconsin income.

### Installment Sales

*Reporting Taxable Gain From an Installment Sale of Property by Individuals Who Move Into Wisconsin* - The gain portion of each installment payment received after an individual establishes Wisconsin residency is includable in Wisconsin income as follows:

- The gain is *includable* in Wisconsin income for sales of -

- a. Tangible property (for example, land, buildings, machinery) located in Wisconsin.
  - b. Tangible property located outside Wisconsin if the sale occurred in the 1975 taxable year or later and the seller was a Wisconsin resident on the date of sale.
  - c. Intangible property (for example, stocks, bonds) if the seller was a Wisconsin resident on the date of sale.
- The gain is *not includable* in Wisconsin income for sales of -
    - a. Tangible property located outside Wisconsin if the sale occurred prior to 1975 or if the seller was a nonresident on the date of sale of the tangible property.
    - b. Intangible property if the seller was a nonresident on the date of sale.

The interest portions of installment payments received by Wisconsin residents are taxable by Wisconsin, regardless of when the sale took place and whether the individual was a resident or nonresident at the time of sale.

*Reporting Taxable Gain From an Installment Sale of Property by Individuals Who Abandon Their Wisconsin Domicile* - The gain portion of each installment payment received after an individual's Wisconsin residence is terminated is includable in Wisconsin income as follows:

- The gain is *includable* in Wisconsin income for sales of tangible property (for example, land, buildings, machinery) located in Wisconsin.
- The gain is *not includable* in Wisconsin income for sales of -
  - a. Tangible property located outside Wisconsin.
  - b. Intangible property, regardless of where the property is located.

The interest income portion of installment payments received by an individual after terminating his or her Wisconsin residency (that is, while not a resident of Wisconsin) is not taxable by Wisconsin.

**Sale of an Installment Obligation** - Gain or loss on the sale of an installment obligation by a nonresident is includable in Wisconsin income if the installment obligation resulted from the sale of tangible property located in Wisconsin.

Gain or loss on the sale of an installment obligation by a nonresident is not includable in Wisconsin income if the installment obligation resulted from the sale of intangible property or from the sale of tangible property located outside Wisconsin.

*Example:* In 2008, a nonresident of Wisconsin sold real estate located in Wisconsin for \$140,000. The adjusted basis of the property was \$70,000 which resulted in a gross profit percentage of 50%. The individual received \$40,000 as a down payment and an installment note for \$100,000. The gross profit of \$20,000 ( $\$40,000 \times 50\%$ ) was included in 2008 Wisconsin income. An additional \$50,000 was paid off in 2009 of which \$25,000 ( $\$50,000 \times 50\%$ ) was included in 2009 Wisconsin income. The installment obligation is sold for \$55,000 in May of 2010. The gain on the sale of the installment obligation includable in Wisconsin income for 2010 is computed as follows:

Selling price of installment obligation	\$55,000
Basis:	
Unpaid balance	\$50,000
Less profit due (50% x \$50,000)	25,000
Basis	25,000
Gain on sale of installment obligation includable in Wisconsin income	\$ 30,000

**Involuntarily Converted Property and Like-Kind Exchanges** - Federal law allows for postponement of recognition of gain on an involuntary conversion or like-kind exchange of property when replacement property is purchased or received within a specified period of time.

Wisconsin follows these federal provisions. Thus the recognition of gain realized from the involuntary conversion or like-kind exchange of property located in Wisconsin may be postponed when the recognition of gain may be postponed for federal tax purposes. This applies whether the replacement

or exchanged property is located within or outside Wisconsin.

*Example:* On June 30, 2009, you received \$10,000 for involuntarily converted property located in Wisconsin. Your basis in the property was \$7,500. You became a resident of Illinois on September 15, 2009, and purchased replacement property in Illinois on April 1, 2010, for \$11,000. Recognition of the \$2,500 gain ( $\$10,000$  less \$7,500 cost basis) may be postponed for Wisconsin income tax purposes.

The gain from an involuntary conversion or like-kind exchange of property located outside Wisconsin and converted or exchanged while an individual was not a resident of Wisconsin is not includable in Wisconsin income if the gain was postponed for federal income tax purposes.

*Example:* You were a resident of Ohio and owned rental property in Ohio which was condemned for public use. Your adjusted basis in the property was \$25,000 and you received a condemnation award of \$45,000. You realized a gain of \$20,000 from the condemnation.

You elected to postpone paying tax on the gain and timely purchased a replacement property (also in Ohio) for \$47,000. Your basis in the new property for federal income tax purposes is \$27,000 ( $\$47,000$  cost minus \$20,000 gain postponed).

Subsequent to the involuntary conversion, you become a Wisconsin resident. Several years later, while still a Wisconsin resident, you sell the Ohio rental property for \$65,000. For federal income tax purposes, you compute a gain of \$38,000 ( $\$65,000$  selling price minus \$27,000 adjusted basis). The portion of the gain (\$20,000) attributable to the involuntary conversion which occurred before you became a Wisconsin resident may be excluded from Wisconsin income. Your gain for Wisconsin income tax purposes is \$18,000.

**Gain or Loss on Sale of Assets Acquired Before Becoming a Wisconsin Resident** - The Wisconsin basis of assets acquired before an individual becomes a Wisconsin resident is the same as the federal basis. Thus, gain or loss on the sale of such

assets is the same for Wisconsin and federal tax purposes.

*Example:* You purchased stock for \$5,000 while a nonresident of Wisconsin. You later became a Wisconsin resident. On the date you became a Wisconsin resident, the fair market value of the stock was \$7,000. In 2010, you sold the stock for \$9,000. The gain for both federal and Wisconsin tax purposes is \$4,000 (\$9,000 selling price less \$5,000 original cost).

**Exception** – The Wisconsin basis and the federal basis of assets may differ in those cases where the federal basis was adjusted due to deferred gain from the sale or exchange of property located outside Wisconsin (see Sale of Your Main Home on page 9 and Involuntarily Converted Property and Like-Kind Exchanges on page 11).

**Note:** See Publication 102, *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders*, for information on the basis of stock in a tax-option (S) corporation. See page 30 for information on how to get this publication.

**Sale of a Partnership Interest by a Nonresident** - Gain or loss on the sale of a partnership interest by an individual who is not a resident of Wisconsin is not taxable income or a deductible loss for Wisconsin purposes. Both a general partnership interest and a limited partnership interest in a partnership are considered to be intangible personal property. In general, income or loss received by an individual who is not a Wisconsin resident from the sale of intangible assets is not taxable or deductible for Wisconsin.

*Example:* Taxpayer X, an Illinois resident, was a general partner in ABC Partnership and a limited partner in DEF Partnership. Both partnerships operated solely in Wisconsin. In 2010, Taxpayer X sold his partnership interests in both partnerships.

Under terms of the agreement for the sale of his interest in ABC Partnership, Taxpayer X received payment for a specified percentage of the value of the partnership's outstanding receivables plus an amount for selling his interest in the other partnership assets. Although DEF Partnership held inventory items which had substantially appreciated

in value, no part of the selling price was specifically allocated to these items in the sale agreement.

For federal purposes, Taxpayer X must treat the sale of his interest in each of the partnerships as the sale of two separate assets as provided in sec. 751 of the IRC. ABC Partnership's receivables and DEF Partnership inventory items are sec. 751 property that, upon sale, are treated as ordinary gain or loss for federal purposes. Taxpayer X's interest in each partnership's non-sec. 751 property, upon sale, is treated as a capital gain or loss for federal purposes.

Neither Taxpayer X's ordinary gain or loss on the sale of the sec. 751 property nor his capital gain or loss on the sale of the non-sec. 751 property of ABC or DEF Partnership is taxable income or a deductible loss for Wisconsin purposes. Because Taxpayer X is a nonresident and his partnership interests are intangible personal property, his sales of his interests in ABC and DEF Partnerships are not reportable for Wisconsin income tax purposes.

However, if the partnership sells partnership assets located in Wisconsin, the nonresident partner's distributive share of the gain or loss realized on the sale is taxable income or a deductible loss for Wisconsin purposes.

*Example:* Taxpayer Y, a Texas resident, is a general partner in GHI Partnership and a limited partner in JKL Partnership. Both partnerships have been operating solely in Wisconsin. In 2010, both partnerships sold all of the partnership assets located in Wisconsin, including land, buildings, office equipment, and goodwill.

Taxpayer Y's distributive share of the gains or losses realized by GHI and JKL Partnerships, other than on the sale of their goodwill, is taxable income or a deductible loss for Wisconsin purposes. A partnership that sells its assets passes through any gain or loss realized on the sale to its partners.

Because the property was located in Wisconsin, Taxpayer Y's distributive share of GHI Partnership's and JKL Partnership's gains or losses on the sale of tangible property is taxable or deductible by Wisconsin.

Taxpayer Y's share of the gain or loss from the sale of each partnership's goodwill is not taxable income or a deductible loss for Wisconsin purposes. Because the goodwill is intangible property, Taxpayer Y's share of the gain or loss from its sale is not taxable by Wisconsin.

## E. IRA Distributions, Pensions, and Annuities

**Distributions Received While a Wisconsin Resident** - Except as provided below, IRA (individual retirement arrangement) distributions and payments (distributions) from retirement plans, life insurance annuity contracts, profit-sharing plans, stock bonus plans, and employee-savings plans received while a Wisconsin resident are taxable by Wisconsin, regardless of whether the distribution may be attributable to personal services performed outside Wisconsin.

*Example:* You retired from your job in Ohio on September 1, 2010. On October 1, 2010, you became a resident of Wisconsin. In November, you received a lump-sum distribution of \$60,000 from your former Ohio employer's noncontributory retirement plan. The \$60,000 is taxable by Wisconsin.

**Exception** – The following payments are not taxable by Wisconsin:

- Retirement benefits from the U.S. Railroad Retirement Board
- Payments from a U.S. Government civilian employee retirement system, the Wisconsin State Teachers retirement system, or various Milwaukee city or county retirement systems if the payments are made on the account of a person who was a member of such retirement system as of December 31, 1963 or who was retired from such system as of December 31, 1963.
- Retirement benefits from the U.S. military retirement system.
- Retirement benefits from the U.S. government that relate to service with the Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the Public Health Service.

**Distributions Received While a Nonresident of Wisconsin** - Distributions received by an individual

who is not a resident of Wisconsin from a qualified retirement plan or qualified deferred compensation plan are not taxable by Wisconsin, regardless of whether the distribution may be attributable to personal services performed in Wisconsin.

A "qualified retirement plan" or "qualified deferred compensation plan" includes income from:

- a qualified trust under sec. 401(a) of the IRC which forms part of a stock bonus, pension, or profit-sharing plan and which is exempt from taxation under sec. 501(a), IRC.
- a simplified employee pension (SEP) under sec. 408(k), IRC.
- an annuity plan under sec. 403(a), IRC.
- an annuity contract under sec. 403(b), IRC (employees of a public school or tax-exempt organization).
- an IRA under sec. 7701(a)(37), IRC.
- a deferred compensation plan of state and local governments and tax-exempt organizations under sec. 457, IRC.
- a government plan under sec. 414(d), IRC.
- a trust described in sec. 501(c)(18), IRC.

*Example:* You retired from your job in Wisconsin on March 1, 2010, and became a Florida resident on March 15, 2010. On April 1, 2010, you began receiving monthly payments from your former employer's qualified retirement plan. Amounts received while you are a Florida resident are not taxable by Wisconsin.

See page 5 for information on the Wisconsin tax treatment of amounts received from nonqualified deferred compensation plans.

**Penalties on Retirement Plans, Coverdell Education Savings Accounts, and Medical Savings Accounts** - If you are subject to the federal penalty tax on a qualified retirement plan (including an IRA), a Coverdell education savings account, or a medical savings account, you may be subject to a Wisconsin penalty. The Wisconsin penalty is equal to 33% of the federal penalty tax and applies if the action which caused you to owe the federal penalty tax occurred while you were a Wisconsin resident.

*Example:* You became a Wisconsin resident in July of 2010. In August 2010, you received a distribution of \$10,000 from your former employer's qualified retirement plan. For federal tax purposes you are subject to the 10% tax on early distributions. Because you were a Wisconsin resident when you received the early distribution, you are also subject to the Wisconsin penalty. (**Note:** Receipt of the \$10,000 is the action which caused you to owe the federal penalty tax.)

An individual is not subject to the Wisconsin penalty on retirement plans, education savings accounts, or medical savings accounts if the action which caused the individual to owe the federal penalty tax occurred while the individual was not a resident of Wisconsin.

**F. Losses**

**Net Operating Losses** - A net operating loss (NOL) incurred while an individual is not a resident of Wisconsin cannot be used to offset Wisconsin taxable income unless the NOL is attributable to Wisconsin business income and deductions.

For additional information and worksheets to compute a Wisconsin NOL, obtain Publication 120, *Net Operating Losses for Individuals, Estates, and Trusts*. See page 30 for information on how to get this publication.

**Passive Losses** - Passive activity losses incurred while an individual is not a resident of Wisconsin and which are not allocable to Wisconsin may not be carried forward and deducted on a Wisconsin income tax return for a year in which the individual is a Wisconsin resident.

*Example:* You were a Minnesota resident. You are a partner in Partnership D which conducts business solely in Minnesota. You determine that you must treat the partnership interest as a passive activity. Your unallowed passive activity losses which may be carried forward to 2010 for federal tax purpose are \$12,000.

On January 1, 2010, you became a Wisconsin resident.

On your 2010 federal income tax return, you report passive activity income of \$20,000 from Partnership D. For federal tax purposes, you are allowed to deduct the \$12,000 of unallowed passive activity losses which were carried forward to 2010.

You must report \$20,000 of income from Partnership D on your 2010 Wisconsin income tax return. You are not allowed to deduct the pre-2010 passive activity losses which were carried forward to 2010.

Passive activity losses incurred while an individual is a Wisconsin resident may be carried forward and deducted on a Wisconsin income tax return for a year in which the individual is not a resident of Wisconsin. The losses are deductible even though income from the passive activity may no longer be taxable by Wisconsin. The passive activity losses are allowed as a deduction on the Wisconsin income tax return for the same year in which they are allowed as a deduction on the federal income tax return.

*Example:* For 2009, you were a full-year resident of Wisconsin. You became a partner in two partnerships: Partnership A which conducts business solely in Illinois and Partnership B which conducts business solely in Wisconsin. You determine that you must treat the partnership interests as passive activities. Your unallowed passive activity losses which may be carried forward to 2010 for federal and Wisconsin tax purposes are as follows:

Partnership A (Illinois)	\$6,200
Partnership B (Wisconsin)	\$8,000

On January 1, 2010, you became an Illinois resident.

For 2010, you report passive activity income of \$2,000 from Partnership A and \$30,000 from Partnership B. For federal tax purposes, you are allowed to deduct all of the unallowed passive activity losses which were carried forward to 2010.

The amount of income and loss from passive activities which you report on your 2010 Wisconsin income tax return is as follows:

*Partnership A:* Income from Partnership A, which does business solely in Illinois, is not taxable by Wisconsin. You are allowed to deduct \$6,200 of



previously unallowed passive activity loss which was incurred while you were a Wisconsin resident.

*Partnership B:* The income (\$30,000) from Partnership B, which does business solely in Wisconsin, is taxable by Wisconsin. You are allowed to deduct the \$8,000 of previously unallowed passive activity loss which was carried forward to 2010.

## G. Gambling Winnings

**Part-year Resident of Wisconsin** - For the period of time during which an individual is a resident of Wisconsin, all gambling winnings are taxable by Wisconsin. For the period of time during which an individual is not a resident of Wisconsin, only gambling winnings specified below are taxable by Wisconsin.

**Nonresident of Wisconsin** - An individual who is not a resident of Wisconsin is subject to Wisconsin income tax on (1) winnings from the Wisconsin Lottery, (2) winnings from a multijurisdictional lottery (for example, Powerball) if the multijurisdictional lottery ticket was purchased from a Wisconsin retailer, (3) winnings from pari-mutuel wagering paid by a Wisconsin racetrack, and (4) winnings from a casino or bingo hall located in Wisconsin and operated by a Native American tribe or band. This includes all income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally purchased in Wisconsin.

**Withholding on Gambling Winnings** - Wisconsin income tax is withheld on lottery winnings of \$2,000 or more and pari-mutuel wager winnings over \$1,000. The amount withheld is claimed as a credit on the individual's Wisconsin income tax return for the year. Even if you are not required to file a Wisconsin income tax return (for example, you are a nonresident and your gross income is under \$2,000), you must file a Wisconsin return (Form INPR) to claim a refund of Wisconsin tax withheld from gambling winnings.

## H. Unemployment Compensation and Supplemental Unemployment Benefits

**Nonresident of Wisconsin** - Unemployment compensation received by an individual who is not a resident of Wisconsin is not taxable by Wisconsin, regardless of whether the payments relate to personal services performed in Wisconsin or another state.

Supplemental unemployment benefits paid by a Wisconsin employer under a company plan to an individual who is not a resident of Wisconsin are not subject to Wisconsin income tax.

**Part-year Resident of Wisconsin** - Unemployment compensation received while a resident of Wisconsin is subject to Wisconsin income tax, regardless of whether the payments relate to personal services performed in Wisconsin or another state. However, the taxable amount depends on filing status and income level. A worksheet is included in the Form INPR instructions for use in determining the amount of taxable unemployment compensation.

Supplemental unemployment benefits paid under a company plan and received while a resident of Wisconsin are subject to Wisconsin income tax. Unemployment compensation and supplemental unemployment benefits received while an individual is not a resident of Wisconsin are not subject to Wisconsin income tax.

## I. Moving Expense

Federal law allows a deduction for certain moving expenses if the move is closely related to the start of work and a distance test and time test are met. (For information on moving expenses allowable on the federal return, obtain federal Publication 521, *Moving Expenses*, which is available from the federal IRS.)

Moving expenses which are deductible under federal law, and are incurred to move into Wisconsin by an individual who is establishing Wisconsin residence are deductible on the Wisconsin income tax return. Moving expenses incurred to move from Wisconsin by an individual who is abandoning Wisconsin residence or incurred by a nonresident to move between two locations are not deductible.

*Example 1:* You are a nonresident of Wisconsin during 2010. You file a 2010 Wisconsin Form 1NPR to report the gain on the sale of property located in Wisconsin. You claim a deduction on your federal return for expenses which were incurred for a move from Minnesota to California. The moving expenses may not be deducted on Form 1NPR for Wisconsin.

*Example 2:* You are a resident of Wisconsin from January 1 through August 31, 2010. On September 1, 2010, you became a resident of Illinois. You file a 2010 Wisconsin Form 1NPR to report income earned through August of 2010. You claim a deduction on your federal return for expenses which were incurred for the move from Wisconsin to Illinois. The moving expenses may not be deducted on Form 1NPR for Wisconsin.

*Example 3:* You were a resident of Tennessee from January 1 through May 31, 2010. On June 1, 2010, you became a resident of Wisconsin. You file a 2010 Wisconsin Form 1NPR to report income received after June 1, 2010. You claim a deduction on your federal return for expenses which were incurred for the move from Tennessee to Wisconsin. The moving expenses may be deducted on Form 1NPR for Wisconsin.

## J. Standard Deduction

Most individuals are allowed to claim a standard deduction on Wisconsin Form 1NPR (see Exception below).

The standard deduction is based on your *federal* adjusted gross income using the Standard Deduction Table in the Form 1NPR instructions.

The standard deduction is limited for persons who have nonwage income and can be claimed as a dependent on another person's income tax return. Such persons must complete the Standard Deduction Worksheet for Dependents included in the Form 1NPR instructions.

**Exception** – You may not claim a Wisconsin standard deduction for any year in which:

- You are a nonresident alien or dual-status alien (see Part VI, Aliens, on page 26).

- You file a short period income tax return (return for a taxable year consisting of a period of less than 12 months).
- You exclude income from sources within U.S. possessions (Guam, American Samoa, or the Northern Mariana Islands) under sec. 931 of the IRC.

**Amended Returns** - If, after filing Form 1NPR, you file an amended federal return, you must also file an amended Wisconsin return if the changes or corrections to your federal return also affect your Wisconsin net tax, credits, or carryover amounts. Thus, you generally must file an amended Wisconsin Form 1NPR if you make any changes to your federal return that affect your federal adjusted gross income.

Information on filing an amended Form 1NPR is included in the Form 1NPR instructions.

*Example:* You were a nonresident of Wisconsin for 2009. You filed a 2009 Form 1NPR to report the sale of rental property located in Wisconsin. You subsequently amended your 2009 federal income tax return because you forgot to report a \$10,000 gain realized on the sale of 500 shares of stock in ABC Corporation. Even though the gain on the sale of the stock is not taxable by Wisconsin, you must amend your 2009 Wisconsin Form 1NPR if the amount of your Wisconsin standard deduction changes because of the change to your federal adjusted gross income.

## K. Deduction for Exemptions

Most individuals are allowed to claim a personal exemption deduction of \$700 (see Exception on page 17). A personal exemption deduction of \$700 may also be claimed for a spouse if married filing a joint return.

An exemption of \$700 may be claimed for each person who qualifies as the individual's dependent for federal income tax purposes.

If an individual (or his/her spouse if married filing a joint return) was age 65 or older on December 31, 2010, an additional exemption of \$250 may be claimed. If married filing a joint return and both spouses were age 65 or older on December 31,

2010, an additional exemption of \$250 may be claimed for each spouse.

**Exception** – A personal exemption deduction may not be claimed by a person who can be claimed as a dependent on someone else's return.

## L. Credits

Various credits are available on Wisconsin Form 1NPR. See page 23 of this publication for a chart showing which credits are available to part-year residents and nonresidents of Wisconsin.

Following are brief explanations of the Wisconsin credits. For additional information on claiming these credits, see the Form 1NPR instructions.

### 1. Wisconsin Itemized Deduction Credit

*Who May Claim the Credit* - The Wisconsin itemized deduction credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* - For federal tax purposes, deductions which are itemized on federal Schedule A are allowed as a subtraction from federal adjusted gross income. Wisconsin does not allow a similar subtraction for itemized deductions. Instead, Wisconsin allows a credit against tax equal to 5% of the amount by which certain federal itemized deductions exceed the Wisconsin standard deduction.

The Wisconsin itemized deduction credit is computed on Schedule 1 of Form 1NPR. Certain amounts are taken from federal Schedule A and used to complete Schedule 1. Other amounts from federal Schedule A are not used to complete Schedule 1 (for example, taxes, casualty and theft losses unless the casualty loss is directly related to a federally-declared disaster, interest paid on a second home located outside Wisconsin, miscellaneous deductions, etc.).

### 2. School Property Tax Credit

*Who May Claim the Credit* – The school property tax credit is available to full-year residents

and part-year residents of Wisconsin. It is not available to nonresidents of Wisconsin. However, if a joint return is being filed and one spouse is a full-year or part-year Wisconsin resident and the other spouse is a nonresident, the school property tax credit may be claimed on that joint return.

*Computing the Credit* – The credit is based on rent or property taxes paid for living quarters used as a principal home. Rent or property taxes paid for property not used as a principal home may not be used in computing the credit.

*Example:* You owned a home in Indiana and lived there from January through April of 2010 (four months). On May 1, 2010, you became a Wisconsin resident. You rented an apartment in Wisconsin for the remainder of 2010. You were unable to sell your home in Indiana. In December of 2010, you paid \$1,200 of property taxes on the Indiana home. You may claim the school property tax credit based on the amount of rent paid for May through December of 2010 and on \$400 of property taxes paid on your home for the period during which you occupied the home ( $4/12 \times \$1,200 = \$400$ ).

Tables are provided in the Form 1NPR instructions for determining the credit amount.

### 3. Armed Forces Member Credit

*Who May Claim the Credit* – The armed forces member credit is available only to full-year residents of Wisconsin. It is not available to nonresidents of Wisconsin or part-year residents.

If one spouse is a full-year Wisconsin resident and the other spouse is a nonresident or part-year resident of Wisconsin, the full-year resident may claim the credit on Form 1NPR when a joint return is filed.

*Computing the Credit* – The armed forces member credit is equal to the amount of military pay from the federal government for services performed while stationed outside the United States, up to a maximum credit of \$300.

See the Form 1NPR instructions for further information.

#### 4. Married Couple Credit

*Who May Claim the Credit* - The married couple credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

The credit may be claimed only on a joint return, and both spouses must have earned income taxable by Wisconsin.

*Example:* You and your spouse became Wisconsin residents in June of 2010. You were both employed in Kansas prior to becoming Wisconsin residents. After the move, you continued working but your spouse retired. You may not claim the married couple credit as your spouse does not have earned income taxable by Wisconsin.

*Computing the Credit* - The married couple credit is computed on Schedule 2 of Form 1NPR.

#### 5. Earned Income Credit

*Who May Claim the Credit* - The Wisconsin earned income credit is available only to full-year residents of Wisconsin. It is not available to nonresidents of Wisconsin or part-year residents.

If one spouse is a full-year Wisconsin resident and the other spouse is a nonresident or part-year resident of Wisconsin, the full-year resident may claim the credit on Form 1NPR if a joint return is filed.

*Computing the Credit* - The Wisconsin earned income credit is equal to a certain percentage of the federal earned income credit. The percentage is based on the number of qualifying children. Additional information on this credit is included in the Form 1NPR instructions.

#### 6. Farmland Preservation Credit

*Who May Claim the Credit* - Farmland preservation credit is available only to full-year

residents of Wisconsin. It is not available to nonresidents of Wisconsin or part-year residents.

If one spouse is a full-year Wisconsin resident and the other spouse is a nonresident or part-year resident of Wisconsin, the full-year resident may claim the credit on Form 1NPR if a joint return is filed.

For additional information on this credit, obtain Schedule FC or FC-A and its instructions or Publication 503, *Wisconsin Farmland Preservation Credit*. See page 29 for information on how to get Schedules FC and FC-A and this publication.

#### 7. Credit for Net Income Tax Paid to Another State

*Who May Claim the Credit* - Only full-year or part-year residents of Wisconsin may claim a credit for net income tax paid to another state. A nonresident of Wisconsin may not claim the credit, except in those cases where the credit is based on taxes paid by a tax-option (S) corporation, partnership, or limited liability company treated as a partnership on income earned while the person was a Wisconsin resident.

*Computing the Credit* - The credit may be allowed if you paid net income tax to another state (or the District of Columbia) on income earned while you were a Wisconsin resident. The income that was taxed by the other state must also be taxed by Wisconsin. The credit is limited to the amount of your Wisconsin net tax.

The credit is allowed only for net income tax paid to the other state. You may not claim credit for other taxes paid, such as city tax, county tax, foreign tax, severance tax, education tax, building tax, etc.

*Example:* You became a Wisconsin resident in September of 2010. Prior to becoming a Wisconsin resident, you lived and worked in Idaho. After you became a Wisconsin resident your only income was from employment in Wisconsin. You filed a 2010 Idaho income tax return

which shows that you paid Idaho income tax of \$1,400 on the income earned and received while you were an Idaho resident. You may not claim a credit on your 2010 Wisconsin Form 1NPR for the tax paid to Idaho. The income that was taxable by Idaho is not taxable by Wisconsin.

If only part of the income taxed by the other state is taxed by Wisconsin (for example, capital gain on assets held more than one year is taxed 100% for Illinois but only 70% for Wisconsin), your credit for net tax paid to other states is limited. The following formula is used to figure the amount of credit.

$$\frac{\text{Income taxable by both Wisconsin and other state}}{\text{Total income taxable by other state}} \times \text{Total net income tax paid to other state} = \text{Amount of credit allowable against Wisconsin tax}$$

Additional information on credit for net tax paid to another state can be found in the Schedule OS instructions and in Publication 125, *Credit for Tax Paid to Another State*. See page 30 for information on how to get this schedule and publication.

### 8. Homestead Credit

*Who May Claim the Credit* - Homestead credit is available only to full-year residents of Wisconsin. It is not available to nonresidents of Wisconsin or part-year residents.

If one spouse is a full-year Wisconsin resident and the other spouse is a nonresident or part-year resident of Wisconsin, the full-year resident may claim the credit on Form 1NPR if a joint return is filed.

Full-year residents of Wisconsin with household income under \$24,680 for 2010 should obtain a copy of Schedule H, the homestead credit claim form, to see if they qualify for the credit. See page 30 for information on how to get Schedule H.

### 9. Development Zones Credits

*Who May Claim the Credits* - Development zones credits are available to full-year residents, nonresidents, and part-year residents of Wisconsin.

The credits are available to persons doing business in Wisconsin development zones who have been certified by the Department of Commerce.

For additional information on these credits, obtain Schedule DC, *Wisconsin Development Zones Credits*. See page 30 for information on how to get Schedule DC.

### 10. Historic Rehabilitation Credits

*Who May Claim the Credits* - The historic rehabilitation credits are available to full-year residents, nonresidents, and part-year residents of Wisconsin.

The credits are available for preserving or rehabilitating historic property located in Wisconsin. Projects must be certified or approved through the State Historical Society of Wisconsin.

For additional information on these credits, obtain Schedule HR, *Wisconsin Historic Rehabilitation Credits*. See page 30 for information on how to get Schedule HR.

### 11. Repayment Credit

*Who May Claim the Credit* - The credit for repayment of income previously taxed is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* - If you repaid during the taxable year an amount that you included in Wisconsin income in an earlier year because at that time you thought you had an unrestricted right to it, you may be able to claim a credit based on the amount repaid. To qualify for the credit, the amount repaid must be over \$3,000 and cannot have been subtracted in computing Wisconsin adjusted gross income or used in

computing the Wisconsin itemized deduction credit.

Use the following steps to compute your credit:

- a) Refigure your tax from the earlier year without including in income the amount you repaid in 2010.
- b) Subtract the tax in (a) from the tax shown on your return for the earlier year. The difference is the amount of your credit.

## 12. Manufacturer's Sales Tax Credit

*Who May Claim the Credit* - The manufacturer's sales tax credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin who are engaged in manufacturing in Wisconsin.

However, no new credit may be computed. Only unused credits carried over from prior years may be claimed.

For additional information obtain Schedule MS, *Manufacturer's Sales Tax Credit*. See page 30 for information on how to get Schedule MS.

## 13. Working Families Tax Credit

*Who May Claim the Credit* - The working families tax credit is available only to full-year residents of Wisconsin. It is not available to nonresidents of Wisconsin or part-year residents. It is also not available to persons who can be claimed as a dependent on another person's (for example, parent's) income tax return.

If one spouse is a full-year Wisconsin resident and the other spouse is a nonresident or part-year resident of Wisconsin, the full-year resident may claim the credit on Form INPR if a joint return is filed.

*Computing the Credit* - For married persons filing a joint return, the credit is equal to the net tax liability for persons with Wisconsin income of \$18,000 or less. The credit is phased out over the next \$1,000 of income and is no longer available to married persons with Wisconsin income of \$19,000 or more.

## 14. Technology Zone Credit

*Who May Claim the Credit* - The technology zone credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

The credit is available to a business that is located in a technology zone and that is certified by the Department of Commerce. For additional information on this credit, obtain Schedule TC, *Technology Zone Credit*.

## 15. Dairy and Livestock Farm Investment Credit

*Who May Claim the Credit* - The dairy and livestock farm investment credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* - The credit is equal to 10% of the amount the claimant paid in the taxable year for dairy or livestock farm modernization or expansion related to the operation of the claimant's dairy or livestock farm in Wisconsin. For additional information on this credit, obtain Schedule DI, *Wisconsin Dairy and Livestock Farm Investment Credit*.

## 16. Venture Capital Credits

*Who May Claim the Credit* - There are two venture capital credits, the angel investment credit and the early stage seed investment credit. Both credits are available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* - The angel investment credit is equal to 25% of a bona fide angel investment made directly in a qualified new business venture that is certified by the Department of Commerce.

The early stage seed investment credit is equal to 25% of the initial investment paid in the taxable year to a fund manager that the fund manager invests in a business that is certified by the Department of Commerce. For additional

information on these credits, obtain Schedule VC, *Wisconsin Venture Capital Credits*.

### **17. Veterans and Surviving Spouses Property Tax Credit**

*Who May Claim the Credit* – The veterans and surviving spouses property tax credit is available to full-year residents and part-year residents of Wisconsin.

The credit is available to surviving spouses of certain veterans who died while on active duty or to certain veterans (or their surviving spouses) who have a service-connected disability rating of 100% or a 100% disability rating based on individual unemployability.

*Computing the Credit* – The credit is equal to the amount paid by the eligible veteran or surviving spouse for property taxes on his or her principal dwelling in Wisconsin.

### **18. Internet Equipment Credit**

*Who May Claim the Credit* – The credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* – The credit is based on the sales and use tax exemption on the purchase of Internet equipment used in the broadband market as certified by the Department of Commerce. For additional information on this credit, obtain Schedule IE, *Wisconsin Internet Equipment Credit*.

### **19. Enterprise Zone Jobs Credit**

*Who May Claim the Credit* – The credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* – The Department of Commerce certifies a business for the amount of credit. For additional information on this credit, obtain Schedule EC, *Enterprise Zone Jobs Credit*.

### **20. Dairy Manufacturing Facility Investment Credit**

*Who May Claim the Credit* – The credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin. The claimant must be certified by the Department of Commerce for the tax benefits.

*Computing the Credit* – The credit is based on the cost of constructing, improving, or acquiring buildings or facilities, or acquiring equipment, related to the claimant's dairy manufacturing operation. Patrons of dairy cooperatives may be allowed a credit. For additional information on this credit, obtain Schedule DM, *Dairy Manufacturing Facility Investment Credit*.

### **21. Health Sharing Risk-Sharing Plan Assessments Credit**

*Who May Claim the Credit* – The health insurance risk-sharing plan assessments credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin. The credit may be claimed only by a partner of a partnership, member of a limited liability company, or shareholder of a tax-option corporation who is a partner, member, or shareholder of an entity that is an insurer.

*Computing the Credit* – The amount of credit will be provided to partners, members, and shareholders by the entity on Schedule 3K-1 or 5K-1.

### **22. Film Production Company Investment Credit**

*Who May Claim the Credit* – The film production company investment credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* – The amount of credit must be certified by the Department of Commerce. For additional information on this credit, obtain Schedule FP, *Film Production Credits*.

### **23. Film Production Services Credit**

*Who May Claim the Credit* – The film production services credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* – The amount of credit must be certified by the Department of Commerce. For additional information on this credit, obtain Schedule FP, *Film Production Credits*.

### **24. Manufacturing Investment Credit**

*Who May Claim the Credit* – The manufacturing investment credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin. The credit is available to persons who had more than \$25,000 of unused manufacturer's sales tax credit as of January 1, 2006.

*Computing the Credit* – The manufacturing investment credit is equal to the unused manufacturer's sales tax credit amortized over 15 taxable years. Taxpayers must be certified by the Department of Commerce. For additional information, obtain Schedule MI, *Manufacturing Investment Credit*.

### **25. Ethanol and Biodiesel Fuel Pump Credit**

*Who May Claim the Credit* – The ethanol and biodiesel fuel pump credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* – The credit is equal to 25 percent (but no more than \$5,000 per station) of the amount paid in the taxable year to install or retrofit pumps located in Wisconsin that dispense motor vehicle fuel consisting of at least 85 percent ethanol or a least 20 percent biodiesel fuel. For additional information on this credit, obtain Schedule EB, *Ethanol and Biodiesel Fuel Pump Credit*.

### **26. Economic Development Tax Credit**

*Who May Claim the Credit* – The economic development tax credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin. Claimants must be certified by the Wisconsin Department of Commerce.

*Computing the Credit* - The credit is equal to the amount authorized by the Department of Commerce. The credit is available for a job creation project, capital investment project, employee training project, or a project related to persons with corporate headquarters in Wisconsin. For additional information on this credit, obtain Schedule ED, *Economic Development Tax Credit*.

### **27. Meat Processing Facility Investment Credit**

*Who May Claim the Credit* – The meat processing facility investment credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin. Claimants must be certified by the Wisconsin Department of Commerce.

*Computing the Credit* - The credit is equal to 10 percent of the amount paid in the taxable year for meat processing modernization or expansion related to the claimant's meat processing operation in Wisconsin. The aggregate amount of credits that a claimant may claim is \$200,000. Credits must be allocated by the Department of Commerce. For additional information on this credit, obtain Schedule MP, *Meat Processing Facility Investment Credit*.

### **28. Jobs Tax Credit**

*Who May Claim the Credit* – The jobs tax credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin. Claimants must be certified by the Wisconsin Department of Commerce.

*Computing the Credit* – The credit is equal to up to 10% of wages paid to an eligible employee and the amount of costs incurred to undertake certain training activities, as determined by the Department of Commerce. For



additional information on this credit, obtain Schedule JT, *Wisconsin Jobs Tax Credit*.

### 29. Postsecondary Education Credit

*Who May Claim the Credit* – The postsecondary education credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin. The claimant must be a corporation, sole proprietor, partner, member of a limited liability company (LLC), or a shareholder of a tax-option corporation.

*Computing the Credit* – The credit is equal to either 25 percent or 30 percent of the amount paid for tuition for a Wisconsin resident to attend a college or university in Wisconsin. For additional information on this credit, obtain Schedule PE, *Postsecondary Education Credit*.

### 30. Water Consumption Credit

*Who May Claim the Credit* – The water consumption credit is available to an industrial customer of a municipal water utility that is located in a federal renewal community zone in Wisconsin. The credit may be passed through to full-year residents, nonresidents, and part-year residents who are partners of a partnership, members of a limited liability company (LLC), or shareholders of tax-option corporations.

*Computing the Credit* – The credit is equal to 50 percent of the amount by which the water usage costs for the taxable year exceed the water usage costs for the 2009 taxable year. For additional information on this credit, obtain Schedule WC, *Water Consumption Credit*.

### 31. Food Processing Plant and Food Warehouse Investment Credit

*Who May Claim the Credit* – The food processing plant and food warehouse investment credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* – The credit is based on ten percent of the amount paid in the taxable year for food processing or food warehousing modernization or expansion. The amount of the credit is allocated by the Department of Commerce. For additional information on this credit, obtain Schedule FW, *Food Processing Plant and Food Warehouse Investment Credit*.

### 32. Woody Biomass Harvesting and Processing Credit

*Who May Claim the Credit* – The woody biomass and harvesting and processing credit is available to full-year residents, nonresidents, and part-year residents of Wisconsin.

*Computing the Credit* – The credit is based on ten percent of the amount paid in the taxable year for equipment that is used primarily to harvest or process woody biomass that is used as fuel or as a component of fuel. The amount of the credit is allocated by the Department of Commerce. For additional information on this credit, obtain Schedule WB, *Woody Biomass Harvesting and Processing Credit*.

## Wisconsin Credits - Who May Claim

Credit	Credit May be Claimed By:		For Additional Information See Part:
	Part-Year Resident	Nonresident	
1. Itemized Deduction	Yes	Yes	L.1 on page 16 - Non-resident aliens also see Part VI.F.
2. School Property Tax	Yes	No	L.2 on page 17
3. Armed Forces Member	No	No	L.3 on page 17
4. Married Couple	Yes	Yes	L.4 on page 18
5. Earned Income	No	No	L.5 on page 18

## Wisconsin Credits - Who May Claim

Credit	Credit May be Claimed By:		For Additional Information See Part:
	Part-Year Resident	Nonresident	
6. Farmland Preservation	No	No	L.6 on page 18
7. Net Income Tax Paid to Another State	Yes	No	L.7 on page 18
8. Homestead	No	No	L.8 on page 19
9. Development Zones	Yes	Yes	L.9 on page 19
10. Historic Rehabilitation	Yes	Yes	L.10 on page 19
11. Repayment of Income Previously Taxed	Yes	Yes	L.11 on page 19
12. Manufacturer's Sales Tax	Yes	Yes	L.12 on page 20
13. Working Families Tax	No	No	L.13 on page 20
14. Technology Zone	Yes	Yes	L.14 on page 20
15. Dairy and Livestock Farm Investment Credit	Yes	Yes	L.15 on page 20
16. Venture Capital Credits	Yes	Yes	L.16 on page 20
17. Veterans and Surviving Spouses Property Tax Credit	Yes	No	L.17 on page 21
18. Internet Equipment Credit	Yes	Yes	L.18 on page 21
19. Enterprise Zone Jobs Credit	Yes	Yes	L.19 on page 21
20. Dairy Manufacturing Facility Investment Credit	Yes	Yes	L.20 on page 21
21. Health Sharing Risk-Sharing Plan Assessments	Yes	Yes	L.21 on page 21
22. Film Production Company Investment	Yes	Yes	L.22 on page 21
23. Film Production Services	Yes	Yes	L.23 on page 22
24. Manufacturing Investment	Yes	Yes	L.24 on page 22
25. Ethanol and Biodiesel Fuel Pump	Yes	Yes	L.25 on page 22
26. Economic Development	Yes	Yes	L.26 on page 22
27. Meat Processing Facility Investment	Yes	Yes	L.27 on page 22
28. Jobs Tax Credit	Yes	Yes	L.28 on page 22
29. Postsecondary Education	Yes	Yes	L.29 on page 23
30. Water Consumption	Yes	Yes	L.30 on page 23
31. Food Processing and Food Warehouse Investment	Yes	Yes	L.31 on page 23
32. Woody Biomass Harvesting and Processing	Yes	Yes	L.32 on page 23

Note: All of the above credits may be claimed by full-year residents of Wisconsin.

### M. Recycling Surcharge

The recycling surcharge applies to individuals who:

- Have trade or business activities in Wisconsin (including income as a statutory employee), *and*

- Have \$4,000,000 or more of gross receipts from trade or business activities for federal income tax purposes.

The recycling surcharge is computed as follows:

- If engaged solely in a nonfarm trade or business or in both a farm and nonfarm trade or business, the recycling surcharge is the greater of \$25 or the amount computed by multiplying the net nonfarm business income, as allocated or apportioned to Wisconsin, by 0.2% (.002), but not more than \$9,800.
- If engaged solely in farming with more than \$4,000,000 of gross receipts from farming for federal income tax purposes, the recycling surcharge is \$25.

*Example 1:* Taxpayer A was a Wisconsin resident from January through May of 2010 and an Illinois resident for the rest of 2010. He owns a computer software development business that has offices in Wisconsin and Illinois. Gross receipts from the business were more than \$4,000,000 for 2010. Taxpayer A reports \$1,500,000 of net business income on his 2010 federal Form 1040. Of this amount, \$1,000,000 is attributable to the Wisconsin operations and \$500,000 is attributable to the Illinois operations. For the period from January through May, the Illinois income was \$200,000.

Taxpayer A must file a 2010 Wisconsin Form 1NPR because he was a part-year resident of Wisconsin and he derived more than \$2,000 of gross income allocable to Wisconsin. For Wisconsin income tax purposes, he reports \$1,200,000 of business income (\$1,000,000 from Wisconsin operations and \$200,000 from Illinois operations during the time that he was a Wisconsin resident).

Taxpayer A is subject to a recycling surcharge of \$2,400 ( $\$1,200,000 \times .002$ ). The surcharge applies because he is required to file a Wisconsin income tax return and he is doing business in Wisconsin. The recycling surcharge is based on net business income allocable to Wisconsin.

*Example 2:* Taxpayer B, a Minnesota resident, owns a business that operates in both Minnesota and Wisconsin. The business has gross receipts of more than \$4,000,000 for federal income tax purposes. Taxpayer B reports \$650,000 of net business income on his 2010 federal Form 1040. Of this amount, \$129,000 is allocable to Wisconsin and is reported on his 2010 Wisconsin Form 1NPR.

Taxpayer B is subject to a recycling surcharge of \$258 ( $\$129,000 \times .002$ ).

Individuals subject to the surcharge must enclose Schedule RS with their Wisconsin income tax return.

Additional information on the recycling surcharge can be found in Publication 400, *Wisconsin's Recycling Surcharge*. See page 30 for information on how to get this publication.

## N. Withholding From Pass-Through Entities

A pass-through entity that has Wisconsin income for the taxable year that is allocable to a nonresident partner, member, shareholder, or beneficiary is required to pay a withholding tax on the amount of pass-through income. A pass-through entity is a partnership, limited liability company treated as a partnership, a tax-option (S) corporation, an estate, or a trust that is treated as a pass-through entity for federal income tax purposes.

If you are a partner, member, shareholder, or beneficiary of a pass-through entity that withheld Wisconsin income tax, you will receive information as to the amount of tax withheld on the Schedule 2K-1, 3K-1, or 5K-1 that you received from the entity. Include the amount of tax withheld for you on line 68 of Form 1NPR. Enclose a copy of the Schedule 2K-1, 3K-1, or 5K-1 with your Form 1NPR.

## V. ESTIMATED TAX PAYMENT REQUIREMENTS

Tax (including the Wisconsin alternative minimum tax and the recycling surcharge) is required to be paid on income as it is earned or constructively received. Withholding tax and estimated tax are the two methods used to make those required tax payments.

Generally, if you work for wages, you have tax withheld from your wages to prepay any tax which will be computed on your income tax return for the year. If you have income from which tax is not withheld (for example, interest, dividends, pension or annuity income, gain from the sale of property, etc.), you must pay estimated tax to prepay any tax which will be computed on your income tax return for the year.

Generally, you must make estimated tax payments if you expect to owe, after subtracting your withholding and credits, at least \$200 in tax when filing your return. However, you do not have to make estimated tax payments if you expect your withholding to be at least:

- 90% of the tax (including alternative minimum tax and recycling surcharge) that will be shown on your income tax return, or
- 100% of the tax (including alternative minimum tax and recycling surcharge) shown on your Wisconsin income tax return for the preceding taxable year.

Full-year residents, part-year residents, and nonresidents are subject to the estimated tax requirement.

Form 1-ES, *Wisconsin Estimated Tax Voucher* must be submitted with your estimated tax payment. A personalized copy of Form 1-ES is available from our web site at [www.revenue.wi.gov](http://www.revenue.wi.gov) or from any Wisconsin Department of Revenue office.

If you do not make required estimated tax payments, you may be charged interest on the underpayment. Wisconsin Schedule U, *Underpayment of Estimated Tax by Individuals and Fiduciaries* is used to determine if you owe interest for underpayment of estimated tax and, if you do, to figure the amount of interest you owe.

## VI. ALIENS

The information in Parts I through V of this publication generally applies for both U.S. citizens and aliens. However, certain provisions that affect aliens are discussed below.

### A. Federal Resident Status

For tax purposes, an alien is an individual who is not a U.S. citizen. Aliens are classified for federal tax purposes as nonresident aliens or resident aliens.

An alien must first determine whether he or she is a resident alien or nonresident alien before completing the federal income tax return for the year. Determining the correct status is important.

**Resident Alien** - You are a resident alien of the United States for federal tax purposes if you meet

either the green card test or the substantial presence test during the calendar year.

**Nonresident Alien** - You are a nonresident alien of the United States for federal tax purposes if you do not meet either the green card or the substantial presence test during the calendar year or if one of the federal exceptions applies.

An alien whose status changes during the tax year from nonresident alien to resident alien, or vice versa, has a dual-status for that year. This usually occurs for the year you arrive in or depart from the United States.

To determine whether you are a resident alien or nonresident alien, see the instructions for federal Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*, or federal Publication 519, *U.S. Tax Guide for Aliens*. These forms and publications are available from the federal IRS.

### B. Wisconsin Resident Status

If you are a nonresident alien for federal tax purposes for the entire taxable year, you are considered a nonresident of Wisconsin. If you are a resident alien for federal tax purposes for all or part of the taxable year, you may be a full-year resident, nonresident, or part-year resident of Wisconsin.

- If you are a lawful permanent resident of the United States and you intend to remain permanently and indefinitely in Wisconsin, you are considered a Wisconsin resident. You are a lawful permanent resident of the United States at any time if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the federal government has issued you an alien registration card, also known as a “green card.”
- If you have not been granted immigrant status by the federal government, you are considered a nonresident of Wisconsin. **Exception** – If you are a refugee or have been granted asylum and you intend to remain permanently and indefi-

nately in Wisconsin, you are considered a Wisconsin resident.

*Example:* A foreign student in this country with an “F” visa under the Immigration and Nationality Act may be classified for federal tax purposes as a nonresident alien or as a resident alien. Regardless of the student’s alien status, the student maintains his or her residence in his or her homeland. The student is considered a nonresident of Wisconsin. A student with an “F” visa cannot become a resident of Wisconsin.

### C. Who Must File a Wisconsin Income Tax Return?

If you are a full-year resident of Wisconsin, you must file your Wisconsin income tax return on Form 1, 1A, or WI-Z. See the Form 1 or the Form 1A and WI-Z instructions for information on filing requirements. Generally, if you are a nonresident or part-year resident of Wisconsin and your gross income (or the combined gross income of you and your spouse) is \$2,000 or more for 2010, you must file a 2010 Wisconsin income tax return on Form 1NPR. See Part III, Filing Requirements, on page 2 for further information.

For purposes of determining whether you must file a 2010 Wisconsin income tax return, **gross income does not include items exempt from Wisconsin income tax.** For example, gross income does not include income which, under a treaty between the United States and a foreign country, is exempt from tax.

*Example 1:* You are a nonresident alien who is temporarily in the United States primarily to study at a university in Wisconsin. All of your income is exempt from tax because of a tax treaty between the United States and your country of residence. You do not have to file a Wisconsin income tax return because your gross income (\$0) is under \$2,000.

*Example 2:* You and your spouse are nonresident aliens temporarily in the United States primarily to study at a university in Wisconsin. During 2010, you earned \$6,500 as a teaching assistant of which \$5,000 is exempt because of a tax treaty between the United States and your country of residence. Your spouse is employed and earned \$3,200 in 2010, none of which is exempt. You and your

spouse must each file a Wisconsin income tax return because your combined gross income is \$4,700 (\$6,500 minus \$5,000 plus \$3,200).

*Example 3:* You are a nonresident alien temporarily living in Wisconsin. During 2010, you received wages of \$1,800 and interest income of \$600 from a savings account at a Wisconsin bank. Your income is not exempt under a tax treaty. You are not required to file a Wisconsin income tax return for 2010 as your gross income (\$1,800) is less than \$2,000. Interest income received by a nonresident of Wisconsin is not income from Wisconsin sources and is not included in gross income (see Part III.B on page 2).

### D. Filing Status

The filing status that may be chosen for Wisconsin tax purposes is limited for certain nonresident aliens. Following are brief descriptions of each Wisconsin filing status and the limitations that apply to nonresident aliens for 2010.

»» **Single** You are considered single if, on December 31, 2010:

- You were never married, or
- You were legally separated under a **final** decree of divorce or separate maintenance, or
- You were widowed before January 1, 2010, and did not remarry in 2010.

For federal tax purposes, certain nonresident aliens who are married and have a child and who do not live with their spouses may file as single if they meet certain tests. This applies to a married resident of Canada, Mexico, Japan, or the Republic of Korea or to a U.S. national (see the instructions for federal Form 1040NR for further information). This does not apply for Wisconsin. You cannot consider yourself single if you were married but lived apart from your spouse.

»» **Married filing joint return** If you are filing your federal return as a resident alien, you and your spouse may file a joint return if:

- You were married as of December 31, 2010, or
- Your spouse died in 2010 and you did not remarry in 2010, or
- Your spouse died in 2011 before filing a 2010 return.

A husband and wife may file a joint return even if only one had income or if they did not live together all year. Both spouses must sign the return, and both are responsible for any tax due on the return. This means that if one spouse does not pay the tax due, the other may have to.

You may not file a joint return if either you or your spouse were a nonresident alien at any time during the tax year. You and your spouse must each file a separate return.

**Exception** – For federal income tax purposes, you may elect to be taxed as a U.S. resident for the whole year if either of the following applies to you:

- You were a nonresident alien on the last day of the tax year, and your spouse was a U.S. citizen or resident alien on the last day of the tax year.
- You were a nonresident alien at the beginning of the tax year, but you were a resident alien on the last day of the tax year and your spouse was a U.S. citizen or resident alien on the last day of the tax year. This also applies if both you and your spouse were nonresident aliens at the beginning of the tax year and both were resident aliens at the end of the tax year.

If you make this election, your worldwide income for the whole year must be reported as your federal income on federal Form 1040, 1040A, or 1040EZ. (See federal Publication 519, *U. S. Tax Guide for Aliens*, for information on making this election and the signed statement that you must attach to your federal return.)

If you make this election for federal purposes, you may file a joint return for Wisconsin. En-

close a copy of the required federal statement with Form INPR. (**Note:** Even though electing to be treated as a U.S. resident, the nonresident alien spouse is still considered a nonresident of Wisconsin.)

»» **Married filing separate return** If you were married and were a nonresident alien at any time during the tax year (including a dual-status alien), you must use the “married filing separate return” filing status for Wisconsin. This does not apply to nonresident aliens who make the federal election to be taxed as U.S. residents (see the Exception under “Married filing joint return” on this page).

»» **Head of household** If you qualify to file your federal income tax return using the head of household filing status, you also qualify to use the head of household filing status for Wisconsin.

An individual who is a nonresident alien at any time during the tax year may not use the head of household filing status for federal or Wisconsin tax purposes.

**Exception** – If you are a nonresident alien and your federal filing status is qualifying widow(er) with dependent child, use the head of household filing status for Wisconsin.

## E. Tax Treaties

The United States (U.S.) has income tax treaties (conventions) with a number of foreign countries. Under these treaties, residents of foreign countries may be exempt from U.S. income taxes on certain items of income they receive from sources within the United States. These exemptions vary depending on the country and the specific item of income.

Income that is exempt under a tax treaty for federal income tax purposes is also exempt for Wisconsin tax purposes. The starting point for determining Wisconsin taxable income is federal adjusted gross income. Income that is exempt under a tax treaty is not included in federal adjusted gross income and, therefore, is also not included in Wisconsin taxable income.

For further information on tax treaties, obtain federal Publication 901, *U.S. Tax Treaties*, which is available from the federal IRS.

## F. Completing Form 1NPR When You Are a Nonresident Alien or Have a Dual Status

**Persons who file federal Form 1040NR or 1040NR-EZ** The Wisconsin Form 1NPR instructions refer to lines on the federal Form 1040, 1040A, or 1040EZ. They do not refer to lines on the federal Form 1040NR or 1040NR-EZ.

When completing Wisconsin Form 1NPR, nonresident aliens should enter the amounts from page 1 of Form 1040NR (lines 3 through 10 of Form 1040NR-EZ) on the corresponding lines in the “Federal column” of Form 1NPR. If there is no corresponding line on Form 1NPR for an income or adjustment item, include the income item as “other income” (line 15 of Form 1NPR) and the adjustment item as “other adjustments” (line 30 of Form 1NPR).

**Note:** The amount reported on line 22 of Form 1040NR (income exempt by a treaty) or line 6 of Form 1040NR-EZ should not be carried over to Form 1NPR.

*Example:* You are filing federal Form 1040NR. The amount of your wages from line 8 of Form 1040NR is entered in the “Federal column” on line 1, wages, salaries, tips, etc., of Form 1NPR. You have reported an amount as scholarship and fellowship grants on line 12 of federal Form 1040NR. Because there is no corresponding line on Form 1NPR for scholarship and fellowship grants, the amount should be entered as “other income” in the “Federal column” on line 15 of Form 1NPR.

**Note:** See Part IV.B on page 8 for information on the Wisconsin taxation of scholarships and fellowships.

**Social Security Number** - Certain aliens are not eligible to get a social security number. In this case, the federal IRS will issue the alien an Individual Taxpayer Identification Number (ITIN). If you are an alien who has been issued an ITIN by the IRS, fill in your ITIN wherever your social security number is requested on your Wisconsin return.

**Standard Deduction** - An individual who is a nonresident alien at any time during the year is not allowed a Wisconsin standard deduction. This includes all nonresident aliens and dual-status aliens who file their federal return on Form 1040NR or Form 1040NR-EZ and all dual-status aliens who file their federal return on Form 1040. It does not include nonresident aliens and dual-status aliens who made the federal election to be taxed as a U.S. resident (see the Exception under “Filing Status, married filing joint return” on page 27).

**Note:** For federal tax purposes, nonresident aliens who are residents of India who are students or business apprentices may be able to claim a federal standard deduction due to a tax treaty provision. This does not apply for Wisconsin. A nonresident alien is not allowed a Wisconsin standard deduction.

**Deduction for Exemptions** - In addition to the personal exemption deduction of \$700 for the individual and his or her spouse if married filing a joint return (see Part IV.K on page 16), an exemption deduction of \$700 may be claimed for each person who qualifies as the individual’s dependent for federal income tax purposes.

Generally, nonresident aliens may not claim an exemption for dependents on their federal return. However, a resident of Mexico, Canada, or a U.S. national may claim an exemption for a dependent using the same rules as U.S. citizens. A resident of Japan or the Republic of Korea or a student or business apprentice from India may claim an exemption for dependents if they meet certain conditions. See federal Form 1040NR instructions for information on claiming exemptions for dependents for federal tax purposes.

If such nonresident aliens are allowed to claim an exemption for a dependent on their federal income tax return, a \$700 exemption deduction for that dependent is also allowed for Wisconsin.

**Wisconsin Itemized Deduction Credit** - Nonresident aliens who itemize deductions on Schedule A of Form 1040NR may claim the Wisconsin itemized deduction credit. Certain amounts that are allowable as federal itemized deductions are allowed in the computation of the Wisconsin itemized

deduction credit. However, the line references on Schedule 1 of Form 1NPR refer to lines on Schedule A of Form 1040 and not to Schedule A of Form 1040NR.

Nonresident aliens should enter the amount of their gifts to U.S. charities from Schedule A of Form 1040NR on line 3 of Schedule 1 of Form 1NPR. State and local income taxes, casualty and theft losses, and miscellaneous deductions are not used in the computation of the Wisconsin itemized deduction credit. (**Exception** Casualty losses may be claimed for the itemized deduction credit if such losses are directly related to a federally-declared disaster.)

## VII. ADDITIONAL INFORMATION

### A. IRS Adjustments and Amended Returns

If your federal income tax return is adjusted by the IRS and such adjustments affect your Wisconsin income, the amount of a Wisconsin credit, Wisconsin tax payable, a Wisconsin net operating loss carryforward, or a Wisconsin capital loss carryforward, you must report such adjustments to the department within 90 days after they become final. A copy of the final federal audit report must be submitted to the Department of Revenue by either:

- (1) Including it with an amended return that reflects the federal adjustments, or
- (2) Mailing the copy to: Wisconsin Department of Revenue, Audit Bureau, P.O. Box 8906, Madison, WI 53708-8906.

If you file an amended return with the IRS or another state and the changes affect your Wisconsin income, the amount of a Wisconsin credit, Wisconsin tax payable, a Wisconsin net operating loss

carryforward, or a Wisconsin capital loss carryforward, you must file an amended Wisconsin return with the Department of Revenue within 90 days.

If you filed your original return on Wisconsin Form 1NPR, you file an amended return by completing another Form 1NPR and checking the amended return box. See the Special Instructions in the Form 1NPR instruction booklet for further information.

If you filed your original return on Wisconsin Form 1, 1A, or WI-Z, file an amended return by completing Form 1X for the year you wish to amend. Form 1X is available at any Department of Revenue office.

### B. Wisconsin Forms and Publications

If you have questions about the Wisconsin tax treatment of part-year residents and nonresidents of Wisconsin, contact any Wisconsin Department of Revenue office or write or call: Customer Service Bureau, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949 (telephone: (608) 266-2772). You may also e-mail your questions to: [income@revenue.wi.gov](mailto:income@revenue.wi.gov).

If you need Wisconsin forms or publications, call (608) 266-1961 or you may download them from our Internet web site at [www.revenue.wi.gov](http://www.revenue.wi.gov). Forms and publications are also available at any Department of Revenue office.

### C. Federal Forms and Publications

If you need copies of federal forms and publications, they are available by calling the IRS toll-free at 1-800-829-3676 or from the IRS web site at [www.irs.gov](http://www.irs.gov).