



Wisconsin Department of Revenue

TAX BULLETIN

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Wisconsin Withholding Tables Revised Effective April 1, 2014

Wisconsin withholding tables and alternate methods of withholding (A and B) have been revised for payroll periods beginning on or after April 1, 2014. The withholding tables are found in the back of Publication W-166, Wisconsin Withholding Tax Guide. Publication W-166 is available on the department's [website](#). Employers should implement the revised withholding tables or alternate methods no later than April 1, 2014.

New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. On pages 11 to 16 is an index and brief descriptions of the major individual and fiduciary income tax, corporation franchise or income tax, withholding tax, excise tax, and other provisions. These provisions are contained in 2013 Acts 54, 62, 65, 106, and 116.

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.



Protecting You... With Identity Verification

The Wisconsin Department of Revenue (DOR) recognizes that identity theft and tax refund fraud are two of the top cybercrimes targeting individuals today. At DOR, one of our top priorities is to protect your identity and ensure your information is not used by someone else to claim a tax refund. That is why we are implementing an extra tool called an Identity Verification quiz.

This tool requires some taxpayers to take an identity quiz or to send in documents proving their identity before we can complete processing of their state tax refunds. If you are selected to take this quiz, you will receive a letter in the mail. The letter will ask you to take an online or phone quiz consisting of four multiple choice questions. We encourage you to take the quiz immediately upon receiving the letter so that your refund is not delayed. If you are unable to take the quiz online or by phone, you may call our customer service representatives at (608) 264-4598 for assistance.

We are focused on preventing identity theft and protecting taxpayers. Identity verification is just one more tool we are using to serve you. For more information, see: http://www.revenue.wi.gov/individuals/id_verification.html.

Online Access to the 2013 Form 1099-G

Taxpayers have online access to their 2013 Form 1099-G (Certain Government Payments). The majority of Wisconsin taxpayers have elected to receive an email that their Form 1099-G is available online. Those that have not elected email notification continue to receive paper copies.

Taxpayers are advised to access their Form 1099-G online, print a copy and give the form to their tax preparer to assist in the preparation of their tax return.

Please note that, for protection of taxpayers' identities, the address is not shown on the online printable form, but the address is shown on the Form 1099-G that the department gives to the Internal Revenue Service.

Taxpayers can access Form 1099-G information online for years 2010 through 2013.

Online access to the printable Form 1099-G is available at: <http://www.revenue.wi.gov/eserv/Form1099G/>.

Free Tax Help Available

VITA/ TCE Sites and Hours

Wisconsin Department of Revenue is pleased to support the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs to help Wisconsin families file their individual income taxes.

Families that have a household income of less than \$50,000 can receive support and assistance from knowledgeable, trained volunteers at one of the over 250 site locations throughout the state. To find the nearest site, visit the IRS homepage at <http://www.irs.gov/> and type in the keyword, "VITA" or visit the AARP Tax-Aide program [locator](#).

Site locations and hours of operations vary. For additional information, dial 211 or call the Wisconsin Department of Revenue at 608-266-2772.

Taxpayer Assistance Sites and Hours

Taxpayer assistance is offered daily from 7:45 a.m. to 4:30 p.m., Monday through Friday, through our statewide office locations. The exception is our Wausau location, which has limited office hours. Taxpayers can call or visit a department office and speak with a staff member about their return. Individuals can file, amend, or make corrections to their individual tax returns as needed.

<i>Offices Providing Daily Taxpayer Assistance (unless otherwise noted)</i>				
Location	Address	Telephone No.	Fax No.	Hours
Madison Head-quarters Map	2135 Rimrock Road 53713	(608) 266-2772	(608) 267-0834	7:45 a.m. to 4:30 p.m.
Milwaukee Map	819 N Sixth St, Rm 408 53203-1606	(414) 227-4000	(414) 227-4405	7:45 a.m. to 4:30 p.m.
Appleton Map	265 W Northland Ave 54911-2016	(920) 832-2727	(920) 832-2909	7:45 a.m. to 4:30 p.m.
Eau Claire Map	718 W Clairemont Ave 54701-4558	(715) 836-2811	(715) 836-6691	7:45 a.m. to 4:30 p.m.
Green Bay Map	200 N Jefferson St, Rm 140 54301-5189	(920) 448-5179	(920) 448-5206	7:45 a.m. to 4:30 p.m.
Wausau Map	730 N Third St 54403-4700	(715) 842-8665	(715) 848-1033	7:45 a. m. to 1:00 p.m. Monday Only

New Business Seminars

The Wisconsin Department of Revenue (DOR) is announcing the opportunity for local chambers and economic development organizations to host free "New Business Seminars" throughout Wisconsin in 2014. The New Business Seminars will help welcome new business owners into the community and ensure that businesses have a basic understanding of Wisconsin's tax regulations. New Business Seminars will also offer an opportunity for new businesses to get acquainted with the local economic development groups.

At the New Business Seminars, DOR tax specialists will make presentations about key tax topics, including:

- Business tax registration
- Withholding tax information
- Sales and use tax information
- Other business taxes
- Electronic filing made easy through *My Tax Account*
- Business tax incentives

The New Business Seminars help emphasize that Wisconsin is Open for Business, and DOR is joining in these efforts by working to improve our customer service and enhance the ability for businesses to interact with state government. The input of job providers is critical to these efforts.

Organizations that are interested in hosting a New Business Seminar in their area may contact DOR at speak-dor@revenue.wi.gov.

***My Tax Account* Webinars for New Users**

The Wisconsin Department of Revenue will host a bi-monthly training webinar for new *My Tax Account* users on the second Tuesday of the even-numbered months, from 9:30 to 11:30 a.m. The dates for the 2014 webinars are:

- February 11, 2014
- April 8, 2014
- June 10, 2014
- August 12, 2014
- October 14, 2014
- December 9, 2014

This program will cover the same material in each bi-monthly webinar. The goal is to provide new users with pertinent information to effectively use and navigate *My Tax Account*. The department will regularly reach out by email to new *My Tax Account* registrants and offer this educational opportunity.

In these webinars, new users can learn how to effectively use and navigate *My Tax Account*. Information provided will include:

- Registering for *My Tax Account*
- Logging into *My Tax Account*
- Updating profile information
- Updating business information
- Ceasing accounts
- Filing a Withholding Deposit Report Form WT-6
- Filing an Annual Reconciliation Form WT-7
- Filing W-2s
- Filing a Sales and Use Tax Return Form ST-12
- Requesting an extension

Watch for information soon on the department's [training page](#) on how to register for these upcoming webinars.

Application To Register Qualified Wisconsin Businesses Debuts

On January 2, 2014, the Department of Revenue (DOR) debuted an online application for businesses to register as a "qualified Wisconsin business." An investor in a "qualified Wisconsin business" may be eligible for deferral and exclusion of certain long-term capital gains (see Fact Sheet 1102-2 for additional information concerning the deferral and exclusion).

A business may register with the DOR as a "qualified Wisconsin business" for 2014 if, in the business's taxable year ending immediately before the date of registration, both of the following apply:

1. The business has at least two full-time employees and the amount of payroll compensation paid by the business in Wisconsin is equal to at least 50 percent of the amount of all payroll compensation paid by the business, and
2. The value of real and tangible personal property owned or rented and used by the business in Wisconsin is equal to at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

The application provides an immediate confirmation of registration. Registered businesses will be placed by the DOR on an Internet listing of qualified Wisconsin businesses.

Note: A business must register during each calendar year for which it desires registration. For example, registration for 2014 must be completed by December 31, 2014.

Application for Business Tax Registration Updated

Form [BTR-101](#), Application for Wisconsin Business Tax Registration, and [instructions](#) have been updated for recent changes in sales and use tax filing frequencies. In addition, the following information has been added:

- A link to the online application
- Permit descriptions
- Box for the Department of Financial Institutions number
- Box for Qualified Subchapter S Subsidiaries (QSub) and owner information
- Box for owner information of Limited Liability Company (LLC) classified as a disregarded entity
- Updated instructions for how to register LLC and QSub disregarded entities

Avoid These Common Errors on Your Combined Return

The following is a list of common errors to avoid when filing your combined return. Avoiding these errors will ensure your return is quickly processed by the department.

Things you should do:

1. Attach the following commonly missed items to your return:
 - All combined returns must have a copy of the complete federal return for each member of the combined group. If there are more corporations in the Wisconsin combined group than there are in the federal consolidated return, you must also attach the federal return for the non-consolidated corporations.
 - Supporting schedules for Schedules V & W that show the additions and subtractions from income for each member of the combined group. Do not group line items or report all of the information on one line.
 - Form 4A-1 or 4A-2, or an acceptable substitute, must be submitted for each member of the combined group. Make sure to report the correct information on each line item description. Do not group line items or report all of the information on one line.

- Credit certifications must be attached to return for credits that require certification for eligibility.
 - A member's Schedule 2K-1 or Schedule 3K-1 if the member had tax withheld on its portion of income from a pass-through entity or if the member is claiming credits from the pass-through entity. The amount of tax withheld and paid by the pass through entity should be reported on the member's Form 4M, Line U. It is also helpful to enter the FEIN of the pass-through entity on Line U to expedite the processing of the return.
2. Add credits to income on Schedule V as required. Most refundable and nonrefundable credits must be added to income in the year in which the taxpayer is first eligible to compute the credit. See [Wisconsin Tax Bulletin 178](#) for specific details.
 3. Add to income the amount of state taxes, including state franchise taxes, that are value-added taxes, single business taxes or taxes on or measured by all or a portion of net income, gross income, gross receipts or capital stock that are deducted on the federal return. Note: Foreign taxes are deductible in Wisconsin unless the income on which the tax is based is not included in Wisconsin taxable income.
 4. Add to income the amount of interest on U.S. government obligations that was excluded from federal taxable income. Interest on U.S. government obligations should not be excluded from Wisconsin income.
 5. Use net business losses (NBLs) in the proper order. It is important to report the proper type of loss on the proper line of the return (Part II of the 4M). A member must use losses to offset income in the following order:
 - a. For 100% Wisconsin combined groups only: sharing of current year unitary losses.
 - b. Its own pre-2009 NBL carryforward to offset its own Wisconsin net income from separate entity items.
 - c. Its own pre-2009 NBL carryforward to offset its share of the Wisconsin combined group's Wisconsin income.
 - d. Its own post-2009 shareable NBL carryforward to offset its share of the Wisconsin combined group's Wisconsin income.
 - e. Its share of post-2009 shareable NBL carryforward from other combined group members to offset its share of the Wisconsin combined group's Wisconsin income.
 - f. Its share of shareable pre-2009 NBL carryforward from other combined group members up to the allowable 5% amount to offset its share of the Wisconsin combined group's Wisconsin income.

Note: If you are claiming NBLs from a company that merged into one of the members, attach a note to the return providing merger information. NBLs are tracked on a per member basis regardless of whether the NBLs are shareable or not.

6. Have the Designated Agent make all of the estimated payments and return payments. If a different member makes a payment (or has a carryover payment from a separately filed prior year's return), that member's Form 4M should have a check mark (✓) on line T. In addition, that member should fill in Part IV of Form 4M.

Things you should not do:

7. Do not submit a Form 4M for a corporation that does not exist. Form 4M's that are created to show the elimination transactions of the combined group are not necessary and will interfere with processing the return. However, intercompany sales should be eliminated on the Form 4A-1 for each company to show the proper amount of sales used to calculate the apportionment percentage for each member.
8. Do not submit a sub-consolidated Form 4M for a group of corporations. Each separate corporation (member) must have its own Form 4M.

9. Do not deduct federal fuel taxes that were required to be included in federal taxable income as a result of claiming the federal fuel tax credit. The amount included in federal taxable income is the same amount that should be included in Wisconsin taxable income.
10. Do not forget the Economic Development Surcharge. If one member of the combined group has nexus with Wisconsin, all members of the combined group are considered to have nexus with Wisconsin for purposes of the economic development surcharge. The surcharge is imposed on every member that has \$4 million or more of worldwide gross receipts and it is computed based on a member's portion of the combined income. If a member has over \$4 million of gross receipts, but does not have any combined income, a minimum \$25 surcharge still applies. See [Publication 400](#), *Wisconsin's Economic Development Surcharge* for more details.

Wisconsin Built-In Gain Recognition Period

The tax on built-in gains is a corporate level tax on tax-option (S) corporations that dispose of assets that appreciated in value during the years when the corporation was a C corporation. The general recognition period for computing the built-in gain is a 10 year period beginning on the first day in which the corporation is an S corporation or acquires C corporation assets; however, special recognition periods applied for taxable years 2009 through 2013 as indicated in the table below:

	Wisconsin Recognition Period	Federal Recognition Period
2009	7	7
2010	7	7
2011	5	5
2012	10	5
2013	10	5

Question and Answer - Net Business Losses for Closed Taxable Years

(Corporation Franchise and Income Tax)

Question: A corporation submitted late filed 2002 through 2005 Wisconsin franchise/income tax returns. (A late filed, or closed year return, is a corporate franchise or income tax return that is filed more than four years beyond the original, unextended due date). Taxable years 2002 and 2003 have net business losses (NBL's) reported and taxable years 2004 and 2005 have income reported. [Wisconsin Tax Bulletin \(WTB\) 178](#) provides that taxpayers may recompute an NBL from a closed year and use it in an open year to offset their tax liability. Can the taxpayer use the 2002 and 2003 NBL's to offset the 2004 and 2005 income?

Answer: No. WTB 178 allows taxpayers to go back to prior years to recompute their income/loss for purposes of computing an NBL carryforward that can be used in an open year. Since the 2004 and 2005 tax years are not open years, and the taxpayer did not choose to use the NBL in an open year, the taxpayer cannot choose to use the NBL on a late filed return to offset the tax liability for that year. Note that the taxpayer does not lose the benefit of the NBL from the 2002 and 2003 years if they are used in an open year by 2017 and 2018 (the 15-year carryforward period for the NBL).

When are Tips and Gratuities Subject to Sales Tax?

The sales price of food and beverages that are served by a restaurant is generally subject to Wisconsin sales or use tax. The taxable sales price of the food and beverages includes charges by the seller for any services necessary to complete the sale. Therefore, if a mandatory tip or gratuity is added to the bill, the mandatory tip or gratuity is also subject to the tax. If the tip or gratuity is discretionary, the tip or gratuity is not subject to tax.

The difference between mandatory and discretionary tips and gratuities is explained below.

Mandatory Tips or Gratuities (Taxable)

A flat amount or flat percentage, whether designated as a tip, gratuity, or service charge, that the seller makes as a mandatory addition to the price of its taxable product or services, is subject to tax. It does not matter if the seller subsequently pays over the amount or flat percentage in whole or in part to employees.

Discretionary Tips or Gratuities (Nontaxable)

A tip or gratuity which is either a) given directly to an employee in cash, or b) added by a customer to a bill and turned over in full (less any withholding) to the employee, is exempt if the following two conditions are met:

1. The amount of the tip or gratuity is wholly in the discretion or judgment of the customer, and
2. The customer has not made an arrangement with the seller regarding the amount or the percentage of the tip or gratuity.

Example 1: Customer orders food at Restaurant and receives a bill for the food. Restaurant does not add a mandatory gratuity to the bill, and Customer is under no obligation to leave a tip or gratuity for the server. Customer leaves cash on the table as a tip for the server. Since the tip is wholly at the discretion of Customer and an arrangement regarding the tip has not been made with Restaurant (seller), the tip is not subject to sales tax.

Example 2: Customer orders food at Restaurant and receives a bill for the food. An 18% gratuity is added by Restaurant to the bill. Since the gratuity is a mandatory addition to the bill, the gratuity is subject to sales tax as part of Restaurant's sales price of the food and beverages sold.

Example 3: Customer brings a party of six to Restaurant and is informed that a \$50 charge will be added to Customer's bill to cover service fees and gratuities. Since the \$50 service and gratuity fee is a mandatory addition to the bill, the service and gratuity fee is subject to sales tax as part of Restaurant's sales price of the food and beverages sold.

Sales of Take and Bake Pizza

The department was recently asked to provide guidance as to whether the sale of take and bake pizzas are subject to Wisconsin sales tax. In general, sales of food and food ingredients are not taxable, however sales of the following food and food ingredients are taxable:

- candy
- soft drinks
- dietary supplements
- prepared food

Sales of take and bake pizzas made by a retailer are subject to Wisconsin sales tax because the pizzas are prepared food. Prepared food includes two or more food ingredients mixed or combined by a retailer for sale as a single item.

Exceptions: Sales of the following take and bake pizzas made by a retailer may not be considered prepared food and therefore may not be taxable (see the flowchart in Appendix I of Publication [220](#), *Grocers* for more information):

1. Pizzas sold unheated by volume or weight.
2. Pizzas, no part of which was previously heated by the retailer, that are sold unheated, contain meat, fish, egg, or poultry in raw form, and that require cooking by the consumer, as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its food code to prevent food borne illnesses.

The full definition of "prepared food" is found in sec. [77.51\(10m\)](#), Wis. Stats. (2011-12) and is described further in sec. [Tax 11.51\(4\)](#), Wis. Adm. Code (August 2012 Register).

Sales and Use Tax Report Available

The latest issue of the [*Sales and Use Tax Report*](#) became available on the Department of Revenue's website in December. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information. Listed below are the articles in the December 2013 *Sales and Use Tax Report* (Issue 3-13).

- Hanging Holiday Lights
- Increase in Sales and Use Tax Filing Frequency Thresholds
- Change in Taxes Included in Taxable Sales Price
- Snow Removal Services

Withholding Tax Update Available

The 2013 [*Withholding Tax Update*](#) was posted to the department's website in December. Articles in the update are listed below.

- Withholding Tax Rates (**Note:** New withholding tables are effective April 1, 2014. See article on page 1.)
- Filing Frequency Changes
- Electronic Filing Reminder
- Change to Wage and Information Return Reporting
- Deposit Report (WT-6) Filing and Payment Options
- Annual Reconciliation (WT-7) Filing and Payment Options
- Filing Wage Statements and Information Returns
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- Amended Annual Reconciliation (WT-7)
- New Hire Reporting Requirement
- Employee Claiming Exemption
- Quick Links
- Withholding Lock-In Letters Issued
- Tips or Gratuities
- Reciprocity Agreements
- Retirement and Pension Payments
- Financial Institutions and Insurance Agencies
- Withholding Tax Electronic Mailing List
- Where to Direct Questions.



Don't Get Stuck With "Successor Liability"

A purchaser of a business should be aware of "successor liability," under which they become responsible for any unpaid sales and use tax of the seller. To avoid successor liability, the purchaser may hold a sufficient amount of the purchase price in escrow until the Department of Revenue issues a "clearance certificate." A clearance certificate ensures the seller has filed all sales and use tax returns and paid all sales and use taxes due.

DOR's website has a list of [common questions](#) and answers concerning successor liability and clearance certificates. Additional information is also available by calling (608) 327-0475.

Using Electronic Records in Audits

The Department of Revenue (DOR) can utilize a taxpayer's electronic records to conduct a more efficient audit for both the taxpayer and auditor. For over thirty years, DOR has been using taxpayers' electronic records in conducting statistical samples for field audits.

Electronic records can also be used in audits that don't involve statistical samples. Generally, when a taxpayer is under audit and has electronic records, the taxpayer must provide those electronic records to the auditor if requested.

The benefits of providing electronic records are:

- increased efficiency in reviewing records
- fewer overall document requests
- less data entry from the paper records into an electronic spreadsheet or other electronic format
- reduced cost, time and effort for the taxpayer to retrieve the documents, especially if they are stored off-site
- opportunity for minimizing on-site visits by auditor

The IRS has published a list of Frequently Asked Questions (FAQs) about providing electronic records, which is available at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Use-of-Electronic-Accounting-Software-Records;-Frequently-Asked-Questions-and-Answers>. The guidance provided in these FAQs applies to Wisconsin audits as well.

Additionally, last year DOR issued a publication about using electronic records in statistical sampling. Publication 516, *Statistical Sampling*, is available at <http://www.revenue.wi.gov/pubs/pb516.pdf>.

DOR has authority to request records from taxpayers, and the statutes provide for a penalty when a taxpayer does not provide the records requested (secs. 71.74(2), 73.03(9), 77.59(2), 71.80(9m), and 77.61(19), Wis. Stats. (2011-12)). Wisconsin Administrative Code Sections Tax 2.85 and 11.90 provide rules to administer these penalties. These rules note that "records" can include electronic records.

If an auditor requests electronic records and the taxpayer feels the request is an unnecessary cost or burden, the taxpayer should discuss with the auditor and the auditor's supervisor.

All DOR staff are trained to insure that taxpayer records are kept confidential. Access to this information is limited by statute (secs. 71.78 and 77.51(5), Wis. Stats. (2011-12)). All DOR computers are guarded by firewalls, passwords, and procedures to keep data secure. If data is provided on CD, flash drive, or other media, it will be returned to the taxpayer or will be subject to confidential disposal procedures. More detailed information about security procedures can be provided upon request.

Following are some examples of how electronic records can make audits easier for both the taxpayer and auditor:

Example 1: A sales and use tax audit of Retailer is being performed. Retailer sells both taxable and nontaxable products. The accounting software used by Retailer allows for a sales tax code to be associated with each product sold. If the sales tax code is "Tax," the sales tax rate is applied to the product sale price on the sales invoice. If the auditor looked at paper records, a block of invoices such as one-month-per-year or one-week-per-year would be reviewed as a sample. By using the taxpayer's electronic records, the auditor can focus on the tax codes and determine if the product has been coded incorrectly. If Retailer has coded a nontaxable product as "Tax," the actual amount overcharged (refundable amount) can be calculated efficiently without reviewing invoices.

Example 2: A sales and use tax audit of Retailer is being performed. Sixty-five percent of the purchases made by Retailer are inventory. Another 25% are charged to other clearly non-taxable accounts. The accounting software used by Retailer can generate a purchase register for the potentially taxable purchases (10% of the purchases). The purchase register generated by the accounting software has a searchable pdf format which indicates the account to which the purchase was charged or assigned in the accounting system. The auditor can use this data to produce a listing of invoices from the accounts that may be taxable. By using the taxpayer's electronic records, the auditor can focus on the purchases that are most likely taxable without having to review almost 90% of the purchase records.

Example 3: A corporate income/franchise tax audit of Manufacturer is being performed. The auditor is required to prepare a four-year comparative balance sheet and income statement for the audit workpapers. Manufacturer can provide a balance sheet and income statement for each year, but not on a four-year comparative basis. If the auditor obtains the taxpayer's electronic records, data mining could be used to produce the comparative analyses from the information provided, which would eliminate the need to key the information.

Index and Descriptions of New Tax Laws

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A. Individual and Fiduciary Income Taxes

1. **Exception to Underpayment Interest Revised** (2013 Act 54, amend sec. 71.09(11)(a), effective November 9, 2013).

An exception to underpayment interest applies to individuals, estates, trusts, and partnerships if the tax shown on the return or, if no return is filed, the tax, minus amounts withheld, is less than \$500 (previously \$200). This provision applies on November 9, 2013, regardless of the tax period.

2. **Manufacturing and Agriculture Credit Computation Clarified** (2013 Act 54, renumber sec. 71.07(5n)(a)1. to 71.07(5n)(a)1.a. and create sec. 71.07(5n)(a)1.b. and c., effective for taxable years beginning on or after January 1, 2013).

See Item B.1.

3. **Supplement to the Federal Historic Rehabilitation Credit Revised** (2013 Act 62, repeal sec. 71.07(9m)(a)1. and 2., renumber sec. 71.10(4)(dm) to 71.10(4)(fm), renumber sec. 71.07(9m)(a)(intro.) to 71.07(9m)(a)1m. and 71.07(9m)(c) to 71.07(9m)(c)(intro.) and amend as renumbered, amend secs. 71.07(9m)(g)2. and 71.08(1)(intro.), and create secs. 71.07(9m)(a)2m. and 3., (c)2., and (h), 238.17, and nonstatutory provisions, effective for taxable years beginning on or after January 1, 2014).

See Item B.2. In addition, the computation order is revised to allow the credit to offset alternative minimum tax.

4. **Health Insurance Risk-Sharing Plan Assessments Credit Extended** (2013 Act 116, amend sec. 71.07(5g)(b), (c)1., and (d)2., effective for taxable years beginning on or after January 1, 2014 and before January 1, 2015).

See Item B.3.

Note: The health insurance risk-sharing plan assessments credit is not available to estates and trusts.

B. Corporation Franchise or Income Taxes

1. **Manufacturing and Agriculture Credit Computation Clarified** (2013 Act 54, renumber sec. 71.28(5n)(a)1. to 71.28(5n)(a)1.a. and create sec. 71.28(5n)(a)1.b. and c., effective for taxable years beginning on or after January 1, 2013).

For purposes of determining the agriculture property factor of the manufacturing and agriculture credit:

- Property owned by the claimant is valued at its original cost and property rented by the claimant is valued at an amount equal to the annual rental paid by the claimant, less any annual rental received by the claimant from sub-rentals, multiplied by 8.
- The average value of property is determined by averaging the values at the beginning and ending of the taxable year, except that the Secretary of Revenue may require the averaging of monthly values during the taxable year, if such averaging is reasonably required to properly reflect the average value of the claimant's property.

2. **Supplement to the Federal Historic Rehabilitation Credit Revised** (2013 Act 62, repeal secs. 71.28(6)(a)1. and 2. and 71.47(6)(a)1. and 2., renumber secs. 71.28(6)(a)(intro.) to 71.28(6)(a)1m., 71.28(6)(c) to 71.28(6)(c)(intro.), 71.47(6)(a)(intro.) to 71.47(6)(a)1m., and 71.47(6)(c) to 71.47(6)(c)(intro.) and amend as renumbered, amend secs. 71.28(6)(g)2. and 71.47(6)(g)2., and create secs. 71.28(6)(a)2m. and 3., (c)2., and (h), 71.47(6)(a)2m. and 3., (c)2., and (h), 238.17, and nonstatutory provisions, effective for taxable years beginning on or after January 1, 2014).

Credit Computation

The credit is equal to 20 percent of:

1. The costs of qualified rehabilitation expenditures, as defined in section 47(c)(2) of the Internal Revenue Code, for certified historic structures on property located in Wisconsin, if the cost of the person's qualified rehabilitation expenditures is at least \$50,000 and the rehabilitated property is placed in service after December 31, 2013.
2. The costs of qualified rehabilitation expenditures, as defined in section 47(c)(2) of the Internal Revenue Code, for qualified rehabilitated buildings, as defined in section 47(c)(1) of the Internal Revenue Code, on property located in Wisconsin, if the cost of the person's qualified rehabilitation expenditures is at least \$50,000 and the rehabilitated property is placed in service after December 31, 2013, and regardless of whether the rehabilitated property is used for multiple or revenue-producing purposes.

No credit may be claimed under 2. above for property listed as a contributing building in the State Register of Historic Places or the National Register of Historic Places or for nonhistoric, nonresidential property converted into housing if the property has been previously used for housing.

Credit Certification

No person may claim the credit without first being certified by the Wisconsin Economic Development Corporation (WEDC) and including a copy of the certification with their return. WEDC may certify a person to claim the credit if WEDC determines that the person is conducting an eligible activity. For certification purposes, the claimant shall provide to WEDC all of the following:

- Evidence that the rehabilitation was recommended by the State Historic Preservation Officer for approval by the Secretary of the Interior under 36 CFR 67.6 before the physical work of construction, or destruction in preparation for construction, began and that the rehabilitation was approved by the State Historic Preservation Officer.
- Evidence that the taxpayer obtained written certification from the State Historic Preservation Officer that:
 1. The property is listed on the National Register of Historic Places in Wisconsin or the State Register of Historic Places, or is determined by the State Historical Society to be eligible for listing on the National Register of Historic Places in Wisconsin or the State Register of Historic Places, or is located in

a historic district that is listed in the National Register of Historic Places in Wisconsin or the State Register of Historic Places and is certified by the State Historic Preservation Officer as being of historic significance to the district, or is an outbuilding of an otherwise eligible property certified by the State Historic Preservation Officer as contributing to the historic significance of the property.

2. The proposed preservation or rehabilitation plan complies with standards promulgated under sec. 44.02 (24), Wis. Stats., and the completed preservation or rehabilitation substantially complies with the proposed plan.
3. The costs are not incurred to acquire any building or interest in a building or to enlarge an existing building.
4. The costs were not incurred before the State Historical Society approved the proposed preservation or rehabilitation plan.

WEDC shall notify the Department of Revenue (DOR) no later than January 15 of each year the name, address, and tax identification number of each person certified to claim the credit and the amount of credit certified. WEDC shall notify DOR of any revoked certification no later than 2 months after the revocation date.

Credit Transfer

Any person, including a nonprofit entity described in section 501(c)(3) of the Internal Revenue Code, may sell or otherwise transfer the credit, in whole or in part, to another person who is subject to the taxes imposed under sec. 71.02, 71.08, 71.23, or 71.43, Wis. Stats., if the person notifies DOR of the transfer, and submits with the notification a copy of the transfer documents, and DOR certifies ownership of the credit with each transfer.

If DOR adjusts or disallows, in whole or in part, a credit that has been transferred, only the person who originally transferred the credit to another person is liable to repay the adjusted or disallowed amount.

Joint Finance Committee Review of Credit

No later than March 1, 2015, WEDC, in conjunction with DOR and the State Historical Society, shall submit to the Joint Committee on Finance a report indicating the total number and amount of the credit certified as of the date of the report. No later than June 30, 2017, DOR, in conjunction with the State Historical Society, shall submit to the Joint Committee on Finance a report describing the economic impact of the credit and shall make a recommendation to the Committee as to whether the credit should continue. If DOR, in conjunction with the State Historical Society, determines that the cost of the credit to the state is greater than the investments made in order to claim the credit, DOR shall recommend in the report that the credit be discontinued for taxable years beginning after December 31, 2017. The report shall also specify the number and type of claimants who have claimed the credit and the commercial purposes for which the rehabilitated properties are used. Within 14 working days after the submittal date of the report, the co-chairpersons of the Committee shall notify DOR and the State Historical Society that the Committee has scheduled a meeting for the purpose of reviewing the recommendation. The recommendation may be implemented only upon approval of the Committee.

3. **Health Insurance Risk-Sharing Plan Assessments Credit Extended** (2013 Act 116, amend secs. 71.28(5g)(b), (c)1., and (d)2. and 71.47(5g)(b), (c)1., and (d)2., effective for taxable years beginning on or after January 1, 2014 and before January 1, 2015).

Under prior law, the health insurance risk-sharing plan assessments credit could not be claimed for taxable years beginning on or after January 1, 2014. This provision extends the credit to taxable years beginning on or after January 1, 2014, and before January 1, 2015.

The credit percentage for 2014 is equal to \$1,250,000 divided by the aggregate risk-sharing plan assessment, but cannot be higher than 100 percent.

C. Excise Taxes

Definition of "Bulk Plant" Updated (2013 Act 54, amend secs. 78.005(3) and 78.09(6) and (7), effective November 9, 2013).

"Bulk plant" means a motor vehicle fuel storage facility, other than a terminal, that is primarily used to redistribute motor vehicle fuel by transporting it in vehicles.

The import of motor vehicle fuel from a bulk plant located outside Wisconsin is subject to tax. The export of motor vehicle fuel by a wholesale distributor out of a bulk plant to a destination outside of Wisconsin is exempt from tax.

Under prior law, the definition of "bulk plant" and the provisions for the taxation of the import and export of motor vehicle fuel from a bulk plant had limits on the capacity of the vehicle transporting the fuel (4,200 gallons) and the distance between the destination of the import or export and the Wisconsin border (25 miles).

D. General Alcohol Beverages Provisions

1. **Civil Action Against an Underage Person in Violation of Alcohol Beverages Provisions** (2013 Act 65, create sec. 125.07(4)(f), effective for violations occurring on or after December 14, 2013).

If an underage person engages in conduct that violates the alcohol beverages provisions of sec. 125.07(a), Wis. Stats., on the premises of a licensee, the licensee may bring a civil action against the underage person. If judgment is entered in favor of the licensee, the court shall award to the licensee damages in the amount of \$1,000 and the costs of the action. A licensee may bring an action under this provision regardless of whether the underage person has been convicted of, or received a citation for, the violation, but the licensee has the burden of proving, by a preponderance of the evidence, that the underage person's conduct was in violation.

If the underage person is less than 18 years of age and is not an emancipated minor, the licensee may bring the civil action against the underage person's parent, as defined in sec. 46.56, Wis. Stats.

A licensee may not bring a civil action under this provision unless the licensee has first provided notice to the underage person or the underage person's parent, as applicable, of the licensee's intent to bring the action. The notice shall be mailed to the last-known address of the underage person or underage person's parent, as applicable, at least 15 days prior to filing the action and shall include a demand for the relief described above. The department may, by rule, prescribe a form for this notice.

A licensee may not bring a civil action under this provision if the licensee has been convicted of, or received a citation for or been charged with, a violation of the restrictions concerning underage persons under sec. 125.07(1) or (3), Wis. Stats., related to the same incident, occurrence, or conduct giving rise to the underage person's violation, unless the licensee is entitled to a defense under sec. 125.07(6), Wis. Stats. A licensee that asserts a defense under sec. 125.07(6), Wis. Stats., has the burden of proving the defense by a preponderance of the evidence.

A licensee may not bring a civil action under this provision unless the licensee or the licensee's employee reports to law enforcement the conduct suspected to be in violation at or near the time that the conduct occurs or is first discovered.

2. **Exception to Alcohol Beverages Violations of Underage Persons Created** (2013 Act 65, create sec. 125.07(3)(a)15. and (4)(bg), effective December 14, 2013).

Current alcohol beverage law generally prohibits underage persons (under 21 years of age) from being on alcohol beverage licensed premises, unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age. Current law also prohibits underage persons from attempting to procure alcohol beverages from an alcohol beverage retail licensee.

This provision provides an additional exception for an underage person employed by or assisting a law enforcement agency in carrying out enforcement activities to determine compliance with, or investigate potential violations of, the provisions of sec. 125.07, Wis. Stats., concerning underage and intoxicated persons.

3. **Consumption of Fermented Malt Beverages on Commercial Quadricycles** (2013 Act 106, amend sec. 125.09(1) and create secs. 125.02(4m) and 125.10(5), effective January 1, 2014).

No owner, lessee, or person in charge of a public place may permit the consumption of alcohol beverages on the premises of the public place, unless the person has an appropriate retail license or permit. This provision provides an exception for the consumption of fermented malt beverages on commercial quadricycles except in municipalities that have adopted ordinances described below.

"Commercial quadricycle" means a vehicle with fully operative pedals for propulsion entirely by human power, that has 4 wheels and is operated in a manner similar to a bicycle, that is equipped with at least 12 seats for passengers, that is designed to be occupied by a driver and by passengers providing pedal power to the drive train of the vehicle, that is used for commercial purposes, and that is operated by the vehicle owner or an employee of the owner.

A municipality may, by an ordinance enacted on or after January 1, 2014, prohibit the consumption of fermented malt beverages by passengers on a commercial quadricycle within the municipality.

A municipal ordinance enacted before January 1, 2014, regulating the possession or consumption of open containers of alcohol beverages in public places may not prohibit the possession or consumption of alcohol beverages by passengers on a commercial quadricycle. An ordinance that is inconsistent with this provision may not be enforced.

E. Other

Capital Stock Transfer Reporting Requirement Eliminated (2013 Act 54, repeal sec. 71.69, effective November 9, 2013).

This provision eliminates the requirement for a corporation doing business in Wisconsin to file with the department, on or before March 15, a statement of transfers of its capital stock made by or to residents of Wisconsin during the preceding calendar year.



Report on Litigation

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

The following decisions are included:

Sales and Use Tax	
Estoppel	
<i>King's Enterprises of Wausau, Inc.</i>	17
Officer liability	
<i>Elijah M. Rashaed</i>	17
Service charges	
<i>NEJA Group, LLC</i>	18

SALES AND USE TAX

Estoppel. *King's Enterprises of Wausau, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, October 17, 2013).

This is an appeal of a January 16, 2013 order of the Circuit Court for Dane County affirming a May 11, 2012 decision of the Wisconsin Tax Appeals Commission.

See *Wisconsin Tax Bulletin* 177 (October 2012), page 7, and *Wisconsin Tax Bulletin* 179 (April 2013), page 9, for summaries of the Wisconsin Tax Appeals Commission and Dane County Circuit Court decisions.

The sole issue on appeal is whether the Commission's factual findings regarding estoppel were supported by substantial evidence in the record. The taxpayer contends that the Department of Revenue (DOR) is equitably estopped from collecting back taxes based on advice from the department that such sales were exempt from tax.

The Commission determined that the testimony was not of sufficient weight to clearly and convincingly prove that any DOR or Department of Transportation (DOT) official had actually provided mistaken advice because: (1) the witnesses' memory of events was not clear or precise; (2) their testimony conflicted as to whether it was a DOR or DOT employee who first brought up the MV-11 form; (3) there was no corroboration or substantiation of their testimony; and (4) it was inherently improbable that multiple state employees from two different agencies would have erroneously advised King's Enterprises not to collect any sales taxes from its nonresident customers.

The Court of Appeals found that there was substantial evidence in the record to support the factual findings underlying the Commission's decision that the testimony by King's Enterprises was insufficient to clearly and convincingly prove estoppel and therefore affirmed the Commission's decision.

The taxpayer has not appealed this decision.

Officer liability. *Elijah M. Rashaed vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, December 27, 2013).

This is an appeal of a November 14, 2012 order of the Circuit Court for Dane County affirming a July 13, 2011 Wisconsin Tax Appeals Commission decision.

See *Wisconsin Tax Bulletin* 173 (October 2011), page 9, and *Wisconsin Tax Bulletin* 178 (January 2013), page 8, for summaries of the Wisconsin Tax Appeals Commission and Dane County Circuit Court decisions.


The taxpayer was held personally liable for sales taxes from the years 1998 through 2000 owned by one or more businesses. The parties agree that there is generally a four-year statute of limitations for imposing liability for a sales tax deficiency, regardless of willfulness. However, under sec. 77.60(9), Wis. Stats., there is no limitations period when the department seeks to impose personal liability on persons who willfully fail to pay, account for, or collect a tax they were required to pay, account for, or collect.

The taxpayer challenged sec. 77.60(9), Wis. Stats., on equal protection grounds, arguing that the absence of a limitations period, when compared with the general four-year limitations period applicable to liability under sec. 77.59(3), Wis. Stats., lacks a rational basis.

Based on case law and on the nature of an equal protection challenge, the Court of Appeals thought the real question was not whether an unlimited statute of limitations is inherently irrational, but rather whether there is a rational basis for the Legislature to apply a statute of limitations to one class but not the other.

The Court of Appeals rejected the taxpayer's equal protection challenge to sec. 77.60(9), Wis. Stats., and affirmed the Circuit Court's order upholding the Commission's decision that the taxpayer is personally liable under sec. 77.60(9), Wis. Stats., for the taxes at issue.

At the time of publication it is not known whether the taxpayer will appeal this decision.

 **Service charges.** *NEJA Group, LLC vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 13, 2014).

The issue in this case is whether sales tax is due on the service charges included in the total sales price charged to customers for tickets to Alpine Valley events purchased through Ticketmaster.

The taxpayer operated the Alpine Valley Music Theater in East Troy, Wisconsin, and promoted live shows at that venue. It contracted with Ticketmaster to sell tickets to its shows.

The taxpayer did not pay sales tax on the amount of the service charges ("customer convenience charge" and the per-order "handling fee") included in the total sales price charged to the customer for tickets to Alpine Valley events purchased through Ticketmaster. The department issued a sales and use tax assessment to the taxpayer for years 2001 through 2004 in the amount of \$489,219.70.

The Commission concluded (1) the taxpayer has not met its burden of proving the department's sales and use tax assessment was incorrect, (2) the taxpayer was a retailer providing the taxable service of selling admissions to the Alpine Valley concert events at issue through its agent, Ticketmaster, (3) the customer convenience charge and handling fee included in the total sales price charged by Ticketmaster to an Alpine Valley customer were taxable as part of the taxpayer's gross receipts from its sales of admissions, and (4) the taxpayer is liable for sales tax on 100% of the gross receipts from the sale of its admissions to Alpine Valley, regardless of the separate revenue sharing agreement it had with Ticketmaster.

Section 77.52(2), Wis. Stats. (2001-02), imposes sales tax on the gross receipts of admissions. Gross receipts are defined in sec. 77.51(4), Wis. Stats. (2001-02), and sec. Tax 11.32(1) and (2), Wis. Adm. Code (July 2003 Register). They do not limit taxability to admission price, but to the gross receipts from the sale of admissions which specifically includes handling and service charges.

At the time of publication it is not known whether the taxpayer will appeal this decision.



Private Letter Rulings

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

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

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

The following private letter ruling is included:

Sales and Use Tax

Telecommunications message services
W1347003 (p. 19)

✱ **W1347003** ✱

August 19, 2013

Type Tax: Sales and Use Tax

Issue: Telecommunications message services

Statute: Section [77.52\(2\)\(a\)5m](#), Wis. Stats. (2011-12)

Administrative Code: Section [Tax 11.66\(2\)\(d\)2](#), Wis. Adm. Code (November 2010 Register)

This letter responds to your request for a private letter ruling postmarked April 29, 2013.

Facts (as provided in your letter):

Company A offers customer contact services to clients, including taking customer sales order information, marketing, and selling to consumers on behalf of its clients. Company A manages these customer interactions and results through a fully-integrated, cloud-based contact center utilizing its proprietary Platform technology. Clients are billed for these services based on use; subject in some cases to a monthly minimum fee. There is no charge for the Platform as it is merely a tool to facilitate the workload and communicate results between the remote-based Independent Agents ("Agents") and Company A.

In order to provide the calling and marketing services, Company A contracts with Agents to facilitate customer interactions. The Agents are individuals working from a remote location (usually an Agent's residence) and use their own personal computer, personal Internet connection, and personal telephone line. The Agents log on remotely to the Platform and handle a variety of call types on behalf of Company A's clients, such as selling client products to consumers, conducting marketing and telemarketing activities, and handling customer service calls. To become an Agent, applicants must pass Company A's rigorous screening requirements. During the application process, Company A screens prospective Agents for successful sales experience and also tests their skill levels for various programs. Only those

who pass the skill-based certifications can qualify to become Company A Agents. Many of Company A's client programs have specialized and intensive skill certification requirements, such as programs where Agents handle services calls for financial services clients (such as First Notice of Loss transactions), insurance sales, emergency roadside assistance calls, or health care related programs where Agents must demonstrate that they have completed HIPAA compliance certifications. In the case of Licensed Insurance, such Agents are required to demonstrate that they have obtained appropriate licensures in any states in which such sales are offered. The Agents must also be technologically proficient in order to successfully manage their workload via the Company A Platform.

The Agents access the Platform to answer incoming calls or place outbound calls to customers. Agents receive assignments based on performance tracked by the Platform (a.k.a. Results-Based Routing). Calls are routed based on attributes that will improve call results such as average handle time, sales conversion rates, and first call resolution. Thus, an Agent possessing these attributes will receive similar calls based on a success rate. These attributes are tracked in the Platform.

Agents will also attempt to sell third-party vendor products on calls with client's existing and potential customers. These additional sales are generally referred to as "up-sells." Once the initial sales or marketing call is complete, Agents assist with sales based on agreements Company A has with third-party vendors to offer additional products to the potential customer. In cases where Agents successfully complete "up-sells," Company A receives a commission for the sale and a portion of this commission is passed on to the related client.

In many instances, Agents conduct marketing activities on behalf of the client. Agents often handle outbound lead generation to gather in-depth information to further qualify sales leads, and identify new opportunities with existing customers. Agents help clients by delivering new offers to existing customers and creating new opportunities with potential customers. Agents proactively pitch new offers, custom-tailored products and services, and also conduct satisfaction surveys that help clients to better understand their customers and target offers. Agents will also follow up with lost customers with new offers as they become available.

Question:

Are the services performed by Company A Agents, as described in *Facts* above, taxable as a telecommunications message service when, in addition to taking orders, Agents perform various marketing, telemarketing, customer service, and information gathering from both customer-initiated inbound calls and Agent-initiated outbound calls?

Answer:

The answer, below, is limited to whether the services at issue are taxable as telecommunications message services. If other products or services are provided, such products and services may be subject to tax.

When Company A Agents are hired to perform the service of answering phone calls, taking messages, and transmitting such messages to the purchaser of the services or at the purchaser's direction, Company A Agents are performing a taxable telecommunication message service. For example, when Company A is hired to provide roadside assistance consisting of receiving and recording a message that assistance is needed, then notifying the customer, local authorities, service station, or another party, a taxable telecommunications message service is generally being provided.

The sending of electronic notifications or reminders (for example, emails, text messages) are also taxable telecommunications message services.

Telemarketing, customer service, and information gathering services are not services subject to Wisconsin sales or use taxes. Therefore, when Company A Agents are hired to perform telecommunications message services in addition to performing various marketing, telemarketing, customer service, and information gathering from both customer-initiated inbound calls and Agent-initiated outbound calls, the telecommunications message services are an incidental element of the nontaxable services provided.

If a separate and optional charge is made for telecommunications message services, such charge is subject to tax. The charge is separate and optional if the purchaser is not required to purchase one service in order to receive the other and the price is less if only one of the services is purchased.

Example: Customer purchases telemarketing, customer service, information gathering, and telephone answering services for \$300 per month. For an additional \$75 per month, Customer may receive an electronic notification service that consists of sending emails and text message notifications at the direction of Customer. Customer is not required to purchase the electronic notification service in order to receive the other services for \$300 per month. The electronic notification service (i.e., \$75 per month) is separate and optional from the other services purchased and is a taxable telecommunications message service.

Section 77.52(2)(a)5m., Wis. Stats. (2011-12), imposes Wisconsin sales tax on the following:

"The sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including services that are taxable under subd. 5. or services that are incidental, as defined in s. 77.51 (5), to another service that is not taxable under this subchapter and sold to the purchaser of the incidental service."

Section Tax 11.66(2)(d)2., Wis. Adm. Code (November 2010 Register), provides that "[s]ecurity monitoring services that consist of recording a telecommunications message and notifying the customer or local authorities of the message" are taxable telecommunications message services.