

# **Wisconsin's Recycling Surcharge**

**For All Taxpayers Engaged in a Trade or Business  
(including individuals, partnerships, corporations,  
estates, trusts, and exempt organizations)**

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Use this publication in preparing your 2010 tax return. Clarifications have been added for the calculation of the recycling surcharge for combined groups for tax years beginning after December 31, 2008. In addition, the recycling surcharge for partnerships is now reported on the Form 3 (instead of the Form 3S) for taxable years beginning after December 31, 2009.

## I. INTRODUCTION

This publication provides information about Wisconsin's recycling surcharge. It explains who is subject to the surcharge, when it is due, on what form it is reported, how it is computed, and other aspects of the recycling surcharge.

## II. BACKGROUND

For taxable years beginning on or after January 1, 2000, the recycling surcharge applies to farm and nonfarm businesses that have \$4,000,000 or more of gross receipts. The minimum recycling surcharge is \$25 and the maximum is \$9,800.

A portion of the recycling surcharge payments collected, including interest and penalties, is deposited in Wisconsin's recycling fund. These revenues are used to fund grants to county and municipal governments for implementing recycling programs and other state solid waste reduction programs.

**Note:** In the examples that follow, the amount of the recycling surcharge has been rounded to the nearest whole dollar for purposes of simplicity. The Wisconsin Statutes do not require rounding the recycling surcharge to the nearest whole dollar amount.

### CAUTION

The information in this publication reflects the position of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of December 31, 2010. Laws enacted after this date, new administrative rules, and court decisions may change the interpretations in this publication.

## III. INDIVIDUALS, ESTATES, AND TRUSTS

### A. Definitions

The following definitions apply to individuals, estates, and trusts:

**Farming** — "Farming" is the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees, other than trees bearing fruit or nuts, are not treated as an agricultural or horticultural commodity. Raising or harvesting Christmas trees is not considered farming.

**Gross Receipts** — "Gross receipts" of individuals, estates, trusts, and statutory employees means the total receipts or sales from all trade or business activities and farming reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include the following:

- Gross receipts or sales reportable on federal Schedule C, Profit or Loss From Business, line 1.
- Gross receipts reportable on federal Schedule C-EZ, Net Profit From Business, line 1.
- The gross sales price of assets includable in computing ordinary income or loss on federal Form 4797, Sales of Business Property.
- Gross receipts or sales reportable on federal Schedule F, Profit or Loss From Farming, lines 1, 4, 5a, 6a, 7a, 8a, and 9.

**Net Business Income** — "Net business income" is the net profit (all income less deductible expenses) from a trade or business, except farming, for federal income tax purposes. It includes net income received as a statutory employee and ordinary income or loss reported on federal Form 4797, Sales of Business Property, line 18b. The net business income is reduced by the deduction for one-half of the federal self-employment tax paid on the nonfarm trade or business income, from federal Form 1040, U.S. Individual Income Tax Return, line 27, and the federal self-employed health insurance deduction, from federal Form 1040, line 29.

**Note:** Net income *is not* reduced by the amount of contributions to Keogh retirement plans, simplified employee pension (SEP) plans, or individual retirement arrangements (IRAs).

**Statutory Employee** — A “statutory employee” is an individual who receives a wage statement, Form W-2, that has the “Statutory employee” box checked. Statutory employees report their income and expenses related to that income on federal Schedule C or C-EZ.

**Trade or Business** — A “trade or business” is an activity regularly carried on for a livelihood or with the intention of making a profit. “Trade or business” has the same meaning as for federal self-employment tax purposes. Trade or business income includes:

- Net profit from operating a nonfarm trade or business or practicing a profession as a sole proprietorship, including amounts reportable on federal Schedule C or C-EZ.
- Payments from a partnership to a partner not acting in the capacity of a partner reported on federal Schedule C or C-EZ. This is a transaction in which the partnership and partner are acting primarily as nonrelated parties.
- Other federal self-employment income.

## B. Who Is Subject to the Recycling Surcharge?

The recycling surcharge applies to individuals required to file a Wisconsin income tax return, Form 1 or Form 1NPR, and estates and trusts required to file a Wisconsin income tax return, Form 2, having —

- Wisconsin nonfarm trade or business activities (as defined earlier), or
- income as a statutory employee (as defined earlier) in Wisconsin, or
- farming activities in Wisconsin.

**Exception:** The recycling surcharge doesn’t apply to individuals, estates, and trusts that have less than \$4,000,000 of gross receipts (as defined earlier) for federal income tax purposes.

**Note:** The recycling surcharge applies to each individual, regardless of marital property law and regardless of whether married individuals file joint or separate Wisconsin income tax returns.

**Example 1:** Taxpayer A operates an auto dealership and a trucking business in Wisconsin. For federal income tax purposes, Taxpayer A reports gross receipts of \$2,800,000 from the auto dealership and \$1,900,000 from the trucking business.

Taxpayer A, who has total gross receipts of \$4,700,000, is subject to the recycling surcharge based on the net business income of both businesses, even though each separate business has gross receipts of less than \$4,000,000.

**Example 2:** Taxpayer B operates an appliance business in Wisconsin and reports gross receipts of \$3,800,000 on Schedule C, line 1. Taxpayer B sold a business asset for \$1,000,000 that produced ordinary income of \$300,000, which is reported on federal Form 4797, line 18b.

The recycling surcharge applies because Taxpayer B has at least \$4,000,000 of gross receipts (\$3,800,000 from Schedule C + \$1,000,000 selling price of business asset on Form 4797 = \$4,800,000). When any part of the gain or loss on the sale of a business asset is ordinary income or loss, the selling price of the asset is included in gross receipts.

**Example 3:** Taxpayer C is a Wisconsin real estate dealer who derives \$5,000,000 of gross receipts from sales and rentals of real estate held for sale in the ordinary course of business.

Taxpayer C is engaged in a trade or business and is subject to the recycling surcharge.

**Example 4:** Taxpayer D is a general partner in an investment partnership. Under the partnership agreement, Taxpayer D has no rights, powers, or authority as a general partner. However, subject to the supervision of the partnership’s directors, Taxpayer D manages the partnership’s assets. Taxpayer D’s services are the same as those rendered as an independent contractor for other persons. The partnership agreement provides for an allocation of 10% of the partnership’s daily gross income to Taxpayer D, subject to the annual approval of the partnership’s directors. The payments Taxpayer D receives total \$4,200,000 and are for services performed in the capacity of a person who is not a partner.

Taxpayer D is subject to the recycling surcharge on the 10% daily gross income allocation received from the partnership because Taxpayer D is engaged in a trade or business for federal income tax purposes and has at least \$4,000,000 of gross receipts.

**Example 5:** Taxpayer E, who is engaged only in farming in and outside Wisconsin, has gross receipts of \$3,900,000 reported on federal Schedule F, and \$200,000 of gross receipts from the sale of a farm asset reported on federal Form 4797, line 18b.

The recycling surcharge applies because Taxpayer E has at least \$4,000,000 of gross receipts from farming.

**Example 6:** Taxpayer F operates a commercial printing business and a farm in Wisconsin. Taxpayer F reports gross receipts of \$10,000,000 from the printing business on federal Schedule C and gross receipts from farming of \$900,000 on federal Schedule F.

The recycling surcharge applies because Taxpayer F has at least \$4,000,000 of gross receipts.

### C. Who Is Not Subject to the Recycling Surcharge?

The recycling surcharge does not apply to:

- Individuals who are not required to file a Wisconsin income tax return, Form 1 or 1NPR.
- Estates and trusts that are not required to file a Wisconsin fiduciary income tax return, Form 2.
- Individuals, estates, and trusts that are not engaged in a trade or business or in farming, and that do not have income as statutory employees.
- Individuals, estates, and trusts that have less than \$4,000,000 of gross receipts from a trade or business, farming activities, and services as a statutory employee for federal income tax purposes.
- Individuals, estates, and trusts whose trade or business activities, farming activities, or services as a statutory employee are entirely outside Wisconsin.
- Individuals, estates, and trusts whose income is passed through from a partnership, limited liability company, or tax-option (S) corporation, provided the entity has paid the recycling surcharge due on that income. The recycling surcharge generally is imposed directly on the partnership, limited liability company, or tax-option (S) corporation, as explained in Parts IV, V, and VI.
- Individuals, estates, and trusts whose income from trade or business activities or farming is not subject to Wisconsin income taxation.

**Example 1:** Taxpayer A has income only from wages. Social security tax is withheld from the wages. Taxpayer A is not a statutory employee.

The recycling surcharge does not apply because Taxpayer A is not engaged in a trade or business for recycling surcharge purposes.

**Example 2:** Taxpayer B inherited a farm and holds it for investment purposes. The farm is rented to an individual

who raises crops on the farmland. Taxpayer B does not materially participate in the operation of the farm. Taxpayer B reports rental income from the farm on federal Form 4835, Farm Rental Income and Expenses.

The recycling surcharge does not apply because Taxpayer B is not engaged in a trade or business.

**Example 3:** Taxpayer C, a Wisconsin resident, reports \$5,000,000 of gross receipts and \$750,000 of net business income on the federal Schedule C filed with the Wisconsin income tax return. The business is located in Iowa; it has no activity in Wisconsin. Since Taxpayer C is a Wisconsin resident, the business income is taxable for Wisconsin income tax purposes.

The recycling surcharge does not apply because Taxpayer C is not doing business in Wisconsin.

**Example 4:** Taxpayer D is a general partner in a partnership formed to purchase, develop, and operate a shopping center in Wisconsin. The partnership agreement provides that Taxpayer D must contribute time, managerial abilities, and best efforts to the partnership and in return for these managerial services Taxpayer D will receive a fee of 15% of the gross rentals received by the partnership. Taxpayer D receives \$4,500,000 in management fees. These amounts qualify as guaranteed payments for federal income tax purposes.

Taxpayer D is not subject to the recycling surcharge on the management fees because the guaranteed payments are added to the partnership income and subject to the surcharge at the partnership level.

**Note:** If the recycling surcharge owed by a partnership, limited liability company treated as a partnership, or tax-option (S) corporation is delinquent, its partners, members, or shareholders are jointly and severally liable for the unpaid amount.

### D. On What Form Is the Recycling Surcharge Reported?

Individuals, estates, and trusts should complete Schedule RS, Recycling Surcharge. Individuals report the recycling surcharge on Form 1, line 35, or Form 1NPR, line 61. Estates and trusts report the surcharge on Form 2, line 18.

### E. How Is the Recycling Surcharge Computed?

#### 1. Persons Reporting Trade or Business Income on Federal Schedule C or C-EZ

The recycling surcharge is the greater of —

- \$25, or
- the amount computed by multiplying the net business income, as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge.

**Example 1:** Taxpayer A operates household appliance stores in Wisconsin. The gross receipts are over \$4,000,000. The income Taxpayer A reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Personal interest income (line 8a)	\$ 4,000
Business income (line 12)	200,000
One-half of self-employment tax (line 27)	(9,300)
Self-employed health insurance deduction (line 29)	(4,800)

Taxpayer A is subject to a recycling surcharge of \$372  $(\$200,000 - \$9,300 - \$4,800) \times .002$ . Net business income does not include personal interest income from investments.

**Example 2:** Taxpayer B operates a grocery store chain in Wisconsin. The gross receipts are over \$4,000,000. The income Taxpayer B reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Business income (line 12)	\$ 270,000
Capital gain (line 13)	100,000
One-half of self-employment tax (line 27)	(10,237)

Taxpayer B is subject to a recycling surcharge of \$520  $(\$270,000 - \$10,237) \times .002$ . Net business income does not include the \$100,000 capital gain income from the sale of capital assets.

**Example 3:** Taxpayer C operates a business in Wisconsin that has \$4,000,000 of gross receipts. The income Taxpayer C reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Business income (line 12)	\$ 270,000
Other gains (line 14)	30,000
One-half of self-employment tax (line 27)	(10,237)

Taxpayer C is subject to a recycling surcharge of \$580  $(\$270,000 + \$30,000 - \$10,237) \times .002$ . Net business

income includes the \$30,000 ordinary gain from the sale of business assets.

**Example 4:** Taxpayer D operates an auto dealership and a trucking business in Wisconsin. The income Taxpayer D reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Business income (line 12)	\$ 237,000
One-half of self-employment tax (line 27)	(9,795)

The business income is from two federal Schedules C. The Schedule C for the auto dealership shows gross receipts on line 1 of \$5,000,000 and net profit of \$200,000. The Schedule C for the trucking business shows gross receipts on line 1 of \$900,000 and net profit of \$37,000.

Taxpayer D is subject to a recycling surcharge of \$454  $(\$237,000 - \$9,795) \times .002$ . The surcharge is computed on the total net business income from both businesses, even though one of the businesses has less than \$4,000,000 of gross receipts.

**Example 5:** Taxpayer E operates a health club and a restaurant in Wisconsin. The income Taxpayer E reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Business income (line 12)	\$ 112,000
One-half of self-employment tax (line 27)	(7,913)

The business income is from two federal Schedules C. The Schedule C for the health club shows gross receipts of \$4,500,000 and net profit of \$122,000 and the Schedule C for the restaurant shows a net loss of \$10,000.

Taxpayer E is subject to a recycling surcharge of \$208  $(\$112,000 - \$7,913) \times .002$ . Since Taxpayer E operates more than one business, the net profit from one business may be reduced by losses from another business. The recycling surcharge is not computed separately on each business.

**Note:** Business income may not be reduced by farm losses. See Part III.E.3.

**Example 6:** Taxpayer F is a self-employed boat dealer. Taxpayer F's spouse is a self-employed beauty salon owner. Both businesses are operated in Wisconsin. They file joint federal and Wisconsin returns. The income they report on their Wisconsin Form 1 includes the following amounts from federal Form 1040:

Gross receipts from boat sales and service	\$ 4,100,000
Gross receipts from beauty salon	175,000

Business income (line 12)	\$ 740,000
One-half of self-employment tax (line 27)	18,821

The business income consists of \$700,000 of net profit from Taxpayer F's federal Schedule C and \$40,000 of net profit from the spouse's federal Schedule C. The self-employment tax deduction is comprised of \$15,995, which is one-half of Taxpayer F's federal self-employment tax, and \$2,826, which is one-half of the spouse's federal self-employment tax.

Taxpayer F is subject to a recycling surcharge of \$1,368  $(\$700,000 - \$15,995) \times .002$ .

The spouse does not have a recycling surcharge since the gross receipts from the beauty salon are less than \$4,000,000.

**Example 7:** Taxpayer G and spouse each operate a Wisconsin business and file separate federal Schedules C with their joint Wisconsin Form 1. Taxpayer G has net business income of \$4,920,000 and the spouse reports a net business loss of \$17,000. Each of their businesses has over \$4,000,000 of gross receipts.

Taxpayer G and spouse are subject to a recycling surcharge of \$9,825, computed as follows:

Taxpayer G's surcharge	\$ 9,800
Spouse's surcharge	<u>25</u>
Total recycling surcharge	<u>\$ 9,825</u>

Although Taxpayer G computes a recycling surcharge of \$9,840  $(\$4,920,000 \times .002)$ , the maximum surcharge of \$9,800 applies. The spouse's net loss may not be offset against Taxpayer G's net profit to compute Taxpayer G's recycling surcharge. The spouse is subject to the minimum surcharge of \$25.

**Example 8:** Taxpayer H, a full-year Wisconsin resident, reports \$5,500,000 of gross receipts and \$150,000 of net business income on the federal Form 1040 filed with Wisconsin Form 1. The business consists of retail stores located in Wisconsin and Iowa. Since Taxpayer H is a resident of Wisconsin, all of the income from the business is taxable for Wisconsin income tax purposes.

Taxpayer H is subject to a recycling surcharge of \$300  $(\$150,000 \times .002)$ . Since Taxpayer H is doing business in Wisconsin and the entire net business income is allocable to Wisconsin for income tax purposes, the surcharge is based on the entire \$150,000 of net business income.

**Example 9:** Estate I reports gross receipts of \$4,500,000 and net profit of \$100,000 on the federal Schedule C filed with its Wisconsin Form 2. Estate I distributes

\$50,000 of the income to the sole beneficiary, Individual J.

Estate I is subject to a recycling surcharge of \$200  $(\$100,000 \times .002)$ . Estate I is subject to the recycling surcharge on all income from a trade or business, whether or not the income is distributed.

Individual J is not subject to the recycling surcharge on the distribution from Estate I. The surcharge doesn't apply to distributions made to beneficiaries of income from an estate or trust that conducts a trade or business.

## **2. Persons Reporting Farm Income on Federal Schedule F**

For individuals engaged only in farming activities and who have gross receipts of at least \$4,000,000, the recycling surcharge is the minimum \$25. Net farm profit or loss is excluded from net business income in computing the recycling surcharge.

**Example 1:** Taxpayer A is engaged only in farming in Wisconsin. The income Taxpayer A reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Gross receipts from farming	\$ 4,300,000
Farm income (line 18)	200,000

Since Taxpayer A is engaged solely in farming and net farm profits are excluded from net business income, Taxpayer A is only subject to the minimum recycling surcharge of \$25.

**Example 2:** Taxpayer B, a full-year Wisconsin resident, is engaged in farming in Wisconsin and Illinois. Total gross receipts from farming were \$3,500,000 from the Illinois operations and \$900,000 from the Wisconsin operations. The net farm income Taxpayer B reports on Wisconsin Form 1 consists of a \$150,000 net profit from the Illinois operations and a \$100,000 loss from the Wisconsin operations.

Even though net farm profit or loss is excluded from net business income, Taxpayer B is subject to the minimum recycling surcharge of \$25. The surcharge applies since Taxpayer B is engaged in farming in Wisconsin and has more than \$4,000,000 of gross receipts from farming for federal income tax purposes.

## **3. Persons With a Combination of Business Income, Farm Income, and Other Self-Employment Income**

The recycling surcharge for a person who is engaged in farming and another trade or business is the greater of

\$25 or the amount computed by multiplying the net business income (other than from farming), as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge.

**Example 1:** Taxpayer A operates a farm and department stores in Wisconsin. The gross receipts from the department stores are \$3,000,000 and the gross receipts from farming are \$1,500,000. The income Taxpayer A reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Business income (line 12)	\$ 860,000
Farm income (line 18)	210,000
One-half of self-employment tax (line 27)	(20,950)

Taxpayer A is subject to a recycling surcharge of \$1,686, computed as follows:

Business income	
([ $\$860,000 - \$16,838 \times .002$ ])	\$ 1,686

The income from the department stores is reduced by \$16,838 ( $[\$860,000/\$1,070,000] \times \$20,950$ ) of the deduction for self-employment tax paid.

The net profit from farming is excluded from net business income in computing the recycling surcharge.

**Example 2:** Taxpayer B, a full-year Wisconsin resident, operates a Wisconsin farm and a multistate trucking business. The gross receipts from the trucking business are \$5,500,000 and the gross receipts from farming are \$900,000. The income Taxpayer B reports on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Business income (line 12)	\$ 350,000
Farm loss (line 18)	(43,000)
One-half of self-employment tax (line 27)	(10,733)

Taxpayer B is subject to a recycling surcharge of \$679 ( $[\$350,000 - \$10,733] \times .002$ ) on the net business income from the trucking business. The farm loss cannot be offset against the net profit from a nonfarm business when computing the recycling surcharge. The self-employment tax deduction reduces the business income.

**Example 3:** Taxpayer C operates a farm and a wholesale machinery and equipment business in Wisconsin. The gross receipts from the wholesale machinery and equipment business are \$3,300,000 and the gross receipts from farming are \$1,100,000. The income Taxpayer C reports

on Wisconsin Form 1 includes the following amounts from federal Form 1040:

Business loss (line 12)	\$ (39,000)
Farm income (line 18)	40,000
One-half of self-employment tax (line 27)	71

Taxpayer C is subject to the minimum recycling surcharge of \$25.

#### 4. Part-Year Residents and Nonresidents of Wisconsin

If a part-year resident or nonresident of Wisconsin is engaged in business in and outside Wisconsin, the recycling surcharge is computed as follows:

- The recycling surcharge is the greater of \$25 or the amount computed by multiplying the net business income, as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.
- If engaged solely in farming with at least \$4,000,000 of gross receipts from farming for federal income tax purposes, the recycling surcharge is the minimum \$25.
- If engaged in farming and other trade or business activities, the recycling surcharge is the greater of \$25 or the amount computed by multiplying the net business income (other than from farming), as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

**Note:** Neither the \$25 minimum surcharge nor the \$9,800 maximum surcharge is prorated based on the portion of the individual's net business income attributable to Wisconsin.

The following examples illustrate the computation of the recycling surcharge for part-year residents and nonresidents of Wisconsin.

**Example 1:** Taxpayer A was a Wisconsin resident from January through May and an Illinois resident for the rest of the year. Taxpayer A owns a computer software development business that has offices in Wisconsin and Illinois. Taxpayer A reports \$4,500,000 of gross receipts and \$150,000 of net business income on federal Form 1040. Of this amount, \$100,000 is attributable to the Wisconsin operations and \$50,000 is attributable to the Illinois operations. For the period from January through May, the Illinois income was \$20,000.

Taxpayer A must file a Wisconsin Form 1NPR as a part-year resident of Wisconsin who derived more than

\$2,000 of gross income allocable to Wisconsin. For Wisconsin income tax purposes, Taxpayer A reports \$120,000 of business income (\$100,000 from Wisconsin operations and \$20,000 from Illinois operations during the time that Taxpayer A was a Wisconsin resident).

Taxpayer A is subject to a recycling surcharge of \$240 (\$120,000 x .002). The surcharge applies because Taxpayer A is required to file a Wisconsin income tax return and 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. Taxpayer B reports \$5,100,000 of gross receipts and \$650,000 of net business income on federal Form 1040. Of this amount, \$178,000 is allocable to Wisconsin and is reported on Taxpayer B's Wisconsin Form 1NPR.

Taxpayer B is subject to a recycling surcharge of \$356 (\$178,000 x .002).

## IV. PARTNERSHIPS

### A. Definitions

The following definitions apply to partnerships:

**Farming** — "Farming" is the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees, other than trees bearing fruit or nuts, are not treated as an agricultural or horticultural commodity. Raising or harvesting Christmas trees is not considered farming.

**Gross Receipts** — A partnership uses its "gross receipts" to determine whether the recycling surcharge applies. Gross receipts of partnerships are total receipts or sales from all trade or business activities and farming reportable by partnerships for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Trade or business activities are determined at the partnership level, without regard to the passive activity limitations that may apply to a partner. Gross receipts include, but are not limited to, the sum of the following amounts reportable on federal Form 1065, U.S. Return of Partnership Income, or its accompanying schedules:

- Gross receipts or sales reportable on federal Form 1065, line 1a.

- Gross receipts passed through from other partnerships and fiduciaries.
- The gross sales price from the sale or disposition of business assets.
- Gross receipts from the rental of real or tangible personal property.
- Gross receipts includable in computing other income or loss on federal Form 1065, line 7.
- Gross receipts or sales from federal Schedule F, Profit or Loss From Farming.

**Note:** When determining whether the partnership has at least \$4,000,000 of gross receipts, include interest and dividends from trade or business activities, such as interest and dividends received by partnerships that are dealers or traders in securities. Gross receipts don't include interest and dividends from a partnership's nonbusiness investment activities. *However*, if the partnership has \$4,000,000 or more of gross receipts, include any income or loss from investment activities in the partnership's net business income when figuring the amount of surcharge owed.

**Net Business Income** — A partnership subject to the recycling surcharge uses "net business income" to figure the amount of surcharge owed. Net business income is the amount calculated on Form 3, Schedule 3K, line 22, column d. It is computed by combining all items of income, loss, and deduction, including the following:

- Ordinary business income from Wisconsin Form 3, Schedule 3K, line 1, column d.
- Separately stated items of income, loss, and deduction from Wisconsin Form 3, Schedule 3K, lines 2 through 13d and 20c, column d.
- Taxable state and municipal bond interest.
- Appropriate transitional adjustments, depreciation differences, and basis differences.

**Exception:** For partnerships engaged in both farming and nonfarming activities, subtract net farm profit (loss) from Schedule 3K, line 22, when calculating "net business income."

**Partnership** — A "partnership" includes a limited liability company (LLC) treated as a partnership under the Internal Revenue Code.

**Trade or Business** — A “trade or business” is an activity regularly carried on by the partnership with the intention of making a profit.

**B. Who Is Subject to the Recycling Surcharge?**

The recycling surcharge applies to every partnership that must file a Wisconsin partnership return, Form 3, and does business in Wisconsin, if its receipts or profits from trade or business activities exceed certain minimum amounts, as described below.

The recycling surcharge applies if the partnership —

- has at least \$4,000,000 of gross receipts from trade or business activities for federal income tax purposes, or
- is engaged solely in farming and has more than \$4,000,000 of gross receipts from farming for federal income tax purposes, or
- is engaged in farming and other trade or business activities and has at least \$4,000,000 of total gross receipts from all farm activities and nonfarm trade or business activities for federal income tax purposes.

**Example 1:** Partnership A, which is not engaged in farming, reports the following amounts on its federal Form 1065:

Gross receipts or sales (line 1a)	\$ 4,000,000
Less returns and allowances (line 1b)	100,000

Partnership A is subject to the recycling surcharge because its gross receipts are at least \$4,000,000 before any reduction for returns and allowances.

**Example 2:** Partnership B, which is not engaged in farming, reports the following amounts on its federal Form 1065:

Gross receipts or sales (line 1a)	\$ 900,000
Ordinary income from other partnerships (line 4)*	1,000,000

\*Its proportionate share of gross receipts from the trade or business activities of the other partnerships is \$5,000,000.

Partnership B is subject to the recycling surcharge because its gross receipts (\$900,000 + \$5,000,000 = \$5,900,000) are at least \$4,000,000.

**Example 3:** Partnership C reports gross receipts of \$5,000,000 from the rental of warehouse space. This ac-

tivity is a trade or business for federal income tax purposes. Partnership C is subject to the recycling surcharge because it has at least \$4,000,000 of gross receipts from a trade or business.

**Example 4:** Partnership D reports \$4,500,000 of gross receipts from the rental of machinery and equipment. This activity is a trade or business for federal income tax purposes. Partnership D is subject to the recycling surcharge because it has at least \$4,000,000 of gross receipts from a trade or business.

**Example 5:** Partnership E is engaged only in farming. It reports the following amounts on its federal Form 1065:

Gross receipts from farming	\$ 3,900,000
Sales price of farm assets	200,000

Partnership E is subject to the recycling surcharge because its gross receipts from farming (\$3,900,000 + \$200,000 = \$4,100,000) are at least \$4,000,000.

**Example 6:** Partnership F is engaged in farming, but also has trade or business income from selling electronic equipment. Partnership F reports the following amounts on its federal Form 1065:

Gross receipts or sales of electronic equipment	\$ 3,500,000
Gross receipts from farming	900,000

Partnership F is subject to a recycling surcharge because it has at least \$4,000,000 of gross receipts.

**C. Who Is Not Subject to the Recycling Surcharge?**

The recycling surcharge does not apply to:

- Partnerships that are not required to file a Wisconsin partnership return, Form 3. Syndicates, pools, joint ventures, or similar organizations that have elected not to be treated as partnerships under section 761 (a) of the Internal Revenue Code and, as a result, are not required to file a partnership return are not subject to the recycling surcharge.
- Partnerships that are not engaged in farming and have less than \$4,000,000 of gross receipts from all trade or business activities for federal income tax purposes.
- Partnerships that are engaged solely in farming and have less than \$4,000,000 of gross receipts from farming for federal income tax purposes.

- Partnerships that are engaged in both farming and other trade or business activities and have less than \$4,000,000 of gross receipts from all farm activities and nonfarm trade or business activities for federal income tax purposes.

**Example 1:** Partnership A does not do any business in Wisconsin, perform personal or professional services in Wisconsin, or receive income from real or tangible personal property in Wisconsin. Partnership A has three partners who are Wisconsin residents.

Partnership A is not subject to the recycling surcharge because it is not required to file a Wisconsin partnership return.

**Example 2:** Partnership B does not do any business in Wisconsin, perform personal or professional services in Wisconsin, or receive income from real or tangible personal property in Wisconsin. Partnership B has three partners who are Wisconsin residents. The Department requests Partnership B to file Wisconsin Form 3 to verify the income of the three partners who are Wisconsin residents.

Partnership B is not subject to the recycling surcharge because the partnership is filing Wisconsin Form 3 only to verify the income of the Wisconsin resident partners.

**Example 3:** Partnership C, which was organized for investment purposes only and is not a dealer or trader in securities, derives income from interest, dividends, and capital gains on the disposition of securities. Partnership C elects under IRC sec. 761(a) not to be treated as a partnership for federal income tax purposes because it was organized for investment purposes only and not for the active conduct of a trade or business. Partnership C makes a similar election for Wisconsin purposes on its Wisconsin Form 3. Therefore, it does not file federal Form 1065 or Wisconsin Form 3 for any subsequent years.

Partnership C is not subject to the recycling surcharge because it is not required to file a Wisconsin partnership return.

**Example 4:** Partnership D is engaged solely in farming. It reports the following amounts on federal Form 1065:

Gross receipts from farming	\$ 1,500,000
Sales price of farm assets	200,000

Partnership D is not subject to the recycling surcharge because its gross receipts from farming (\$1,500,000 + \$200,000 = \$1,700,000) are less than \$4,000,000.

## D. On What Form Is the Recycling Surcharge Reported?

Partnerships and limited liability companies treated as partnerships report the recycling surcharge on Wisconsin Form 3, Wisconsin Partnership and Recycling Surcharge Return, Part I, line 5.

## E. How Is the Recycling Surcharge Computed?

### 1. Partnerships Engaged in Business Other Than Farming

The recycling surcharge is the greater of —

- \$25, or
- the amount computed by multiplying the partnership's net business income, as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge for partnerships that are not engaged in farming.

**Example 1:** Partnership A, which reports \$9,600,000 in gross receipts and is doing business only in Wisconsin, reports the following amounts on Wisconsin Form 3, Part II, Schedule 3K, column d:

Ordinary business income (line 1)	\$ 200,000
Net rental real estate income (loss) (line 2)	(5,000)
Guaranteed payments (line 4)	15,000
Interest income (line 5)	11,000
Net short-term capital gain (line 8)	3,000
Net long-term capital gain (line 9)	2,000
Net section 1231 gain (line 10)	1,000
Section 179 deduction (line 12)	6,000
Contributions (line 13a)	5,000
Investment interest expense (line 13b)	3,000
State and municipal bond interest (line 18a, column c) (shown as an addition to income on line 5 above)	1,000

Partnership A's net business income is \$213,000, which is the sum of its ordinary business income and separately stated items of income and gain, minus its separately stated deductions, reported on Form 3, Schedule 3K. Guaranteed payments made to partners who are acting in the capacity of partners are included in Partnership A's net business income.

Partnership A is subject to a recycling surcharge of \$426 (\$213,000 x .002).

**Example 2:** Assume the same facts as in Example 1, except that Partnership A reports a \$20,000 ordinary business loss on Wisconsin Form 3, Schedule 3K, line 1, column d. Partnership A has a net business loss of \$7,000.

Partnership A is subject to a recycling surcharge of \$25. Although Partnership A has a net business loss, the minimum surcharge of \$25 applies.

**Example 3:** Assume the same facts as in Example 1, except that Partnership A reports \$6,000,000 of ordinary business income on federal Form 1065, Schedule K, line 1. Partnership A's net business income is \$6,013,000.

Partnership A is subject to a recycling surcharge of \$9,800. Although Partnership A computes a recycling surcharge of \$12,026 (\$6,013,000 x .002), the maximum surcharge of \$9,800 applies.

**Example 4:** Partnership B, which is doing business only in Wisconsin, reports the following amounts on federal Form 1065:

Total gross receipts	\$ 4,800,000
Gross profit (line 3)	\$ 300,000
Ordinary income from other partnerships (line 4)	100,000
Total deductions (line 21)	<u>(120,000)</u>
Ordinary business income (line 22)	<u>\$ 280,000</u>

Partnership B reports the following amounts on Wisconsin Form 3, Schedule 3K, column d:

Ordinary business income (line 1)	\$ 280,000
Interest income (line 5)	10,000
Other income (line 11)	5,000
Other deductions (line 13d)	1,000

Partnership B's net business income is \$294,000, which is the sum of its ordinary business income and its separately stated items of income, minus its separately stated deductions, reported on Form 3, Schedule 3K. Partnership B's net business income includes its distributive share of trade or business income from another partnership, even though that partnership is also subject to the surcharge on the income.

Partnership B is subject to a recycling surcharge of \$588 (\$294,000 x .002).

## 2. Partnerships Engaged Solely in Farming

For partnerships engaged solely in farming and having at least \$4,000,000 of gross receipts from farming for federal income tax purposes, the minimum recycling surcharge of \$25 applies.

**Example 1:** Partnership A is engaged in dairy farming. Partnership A reports the following amounts on federal Form 1065:

Gross receipts from farming	\$ 4,600,000
Net farm profit (line 5)	\$ 100,000
Net gain from Form 4797 (line 6)	30,000

Partnership A reports the following amounts on Wisconsin Form 3, Schedule 3K, column d:

Ordinary business income (line 1)	\$ 130,000
Interest income (line 5)	1,000

Since Partnership A is engaged solely in farming and net profit from farming is excluded from net business income in computing the recycling surcharge, Partnership A is only subject to the minimum recycling surcharge of \$25.

**Example 2:** Assume the same facts as in Example 1, except that Partnership A operates two separate farms.

Partnership A is subject to the minimum recycling surcharge of \$25, regardless of the number of farms it operates, provided its combined gross receipts from farming are at least \$4,000,000.

## 3. Partnerships Engaged in Farming and Another Trade or Business

The recycling surcharge for a partnership that is engaged in farming and another trade or business is the greater of \$25 or the amount computed by multiplying the partnership's net business income (other than from farming), as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge for partnerships that are engaged in both farming and other trade or business activities.

**Example 1:** Partnership A is engaged in farming and in the business of selling farm implements. Partnership A reports the following amounts on federal Form 1065:

Gross receipts or sales (line 1a)	\$ 4,200,000
Cost of goods sold (line 2)	<u>(2,700,000)</u>
Gross profit (line 3)	\$ 1,500,000
Net farm profit (line 5)	900,000
Net gain from Form 4797 (line 6)*	<u>25,000</u>
Total income (line 8)	\$ 2,425,000
Total deductions (line 21)	<u>(1,425,000)</u>
Ordinary business income (line 22)	<u>\$ 1,000,000</u>

\*The gain is from the sale of nonfarm business assets.

Partnership A reports the following amounts on Wisconsin Form 3, Schedule 3K, column d:

Ordinary business income (line 1)*	\$ 1,000,000
Interest income (line 5)	55,000
Net long-term capital gain (line 9)	44,000
Contributions (line 13a)	33,000
Investment interest expense (line 13b)	21,000
Other deductions (line 13d)	11,000

\*Of this amount, \$900,000 is net farm profit.

Partnership A's net nonfarm business income is \$134,000, which is the sum of its ordinary business income and separately stated items of income and gain, minus its net farm profit and separately stated deductions, reported on Form 3, Schedule 3K. Partnership A is subject to a recycling surcharge of \$268, computed as follows:

Surcharge for all nonfarm trade or business activities (\$134,000 x .002)	\$ 268
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**Example 2:** Partnership B is engaged in farming and in the business of selling grain mill products. Partnership B reports the following amounts on federal Form 1065:

Gross receipts or sales (line 1a)	\$ 5,200,000
Cost of goods sold (line 2)	<u>(4,600,000)</u>
Gross profit (line 3)	\$ 600,000
Net farm profit (line 5)	5,000
Net gain from Form 4797 (line 6)*	<u>10,000</u>
Total income (line 8)	\$ 615,000
Total deductions (line 21)	<u>(613,000)</u>
Ordinary business income (line 22)	<u>\$ 2,000</u>

\*The gain is from the sale of farm assets.

Partnership B reports the following amounts on Wisconsin Form 3, Schedule 3K, column d:

Ordinary business income (line 1)	\$ 2,000
Royalties (line 7)	1,000
Net short-term capital gain (line 8)	10,000
Contributions (line 13a)	500
Other deductions (line 13d)	1,000

Partnership B has a net business loss of \$3,500, which is the sum of its ordinary business income and separately stated items of income and gain, minus its net farm profit and separately stated items of deduction, reported on Form 3, Schedule 3K. Partnership B is subject to a recycling surcharge of \$25, computed as follows:

Surcharge for grain mill products business (minimum recycling surcharge)	\$ 25
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Partnership B is subject to the recycling surcharge on its nonfarm trade or business activities because it has over \$4,000,000 of gross receipts from farming and nonfarm trade or business activities.

**Example 3:** Partnership C is engaged in both farming and mining. It has total gross receipts of \$3,300,000 and net business income of \$25,000 from its mining business and a net farm loss of \$20,000. Its gross receipts from farming are \$900,000.

Partnership C is subject to a recycling surcharge of \$50 (\$25,000 x .002) on the net business income from its mining business. It has at least \$4,000,000 of gross receipts from its mining business and farming activities.

**Note:** Partnership C cannot reduce its net business income from nonfarm trade or business activities by the amount of its net farm loss.

#### 4. *Multistate Partnerships*

If a partnership is engaged in business in and outside Wisconsin, the recycling surcharge is computed as follows:

- If the partnership is not engaged in farming, the surcharge is the greater of \$25 or the amount computed by multiplying the partnership's net business income, as allocated or apportioned to Wisconsin, by 0.2 % (0.002), but not more than \$9,800.
- If the partnership is engaged solely in farming and has \$4,000,000 or more of gross receipts from farming for federal income tax purposes, the surcharge is the minimum recycling surcharge of \$25.

- If the partnership is engaged in farming and other trade or business activities, the surcharge is the greater of \$25 or the amount computed by multiplying the partnership’s net business income (other than from farming), as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

**Note:** Neither the \$25 minimum surcharge nor the \$9,800 maximum surcharge is multiplied by the partnership’s Wisconsin apportionment percentage.

The following examples illustrate the computation of the recycling surcharge for partnerships that are engaged in business in and outside Wisconsin.

**Example 1:** Partnership A, which reports \$5,300,000 of gross receipts, is engaged in business in and outside Wisconsin. Partnership A is not engaged in farming. It reports the following amounts on Wisconsin Form 3, Schedule 3K, column d:

Ordinary business income (line 1)	\$ 400,000
Ordinary dividends (line 6)	10,000
Net long-term capital gain (line 9)	15,000
Other deductions (line 13d)	5,000

Partnership A computes an apportionment percentage of 60% on Wisconsin Form 4A-1, line 17.

Partnership A’s net business income is \$420,000, which is the sum of its ordinary business income and separately stated items of income and gain, minus its separately stated deductions, reported on Form 3, Schedule 3K. Partnership A is subject to a recycling surcharge of \$504 ( $[\$420,000 \times 60\%] \times .002$ ).

**Example 2:** Assume the same facts as in Example 1, except that Partnership A reports a \$100,000 ordinary business loss on Wisconsin Form 3, Schedule 3K, column d.

Partnership A is subject to the minimum recycling surcharge of \$25 since it has a net business loss of \$80,000.

**Note:** The minimum recycling surcharge is not multiplied by Partnership A’s apportionment percentage.

**Example 3:** Assume the same facts as in Example 1, except that Partnership A reports \$9,000,000 of ordinary business income on Wisconsin Form 3, Schedule 3K, column d.

Partnership A is subject to a recycling surcharge of \$9,800. Although Partnership A computes a surcharge of

\$10,824 ( $[\$9,020,000 \times 60\%] \times .002$ ), the maximum recycling surcharge of \$9,800 applies.

**Note:** The maximum recycling surcharge of \$9,800 is not multiplied by Partnership A’s apportionment percentage.

**Example 4:** Partnership B, which reports \$4,100,000 of gross receipts, is engaged solely in farming in and outside Wisconsin. Partnership B reports \$50,000 of net farm profit on federal Form 1065, line 5. Partnership B has no other income or loss. Partnership B computes an apportionment percentage of 30% on Wisconsin Form 4A-1, line 17.

Partnership B is subject to a minimum recycling surcharge of \$25. Net farm profit is excluded from net business income in computing the recycling surcharge.

**Note:** The \$25 recycling surcharge for farming is not multiplied by the apportionment percentage.

## V. REGULAR (C) CORPORATIONS

### A. Definitions

**Corporation** — A “corporation” includes a limited liability company (LLC) that is treated as a corporation under the Internal Revenue Code.

**Gross Tax Liability** — For a separate corporation, “gross tax liability” is the amount from Form 4, line 14c, or Form 5, line 8. For a corporation that is a member of a combined group, “gross tax liability” is the amount from Form 4M, line Q.

**Gross Receipts From All Activities** — For corporations other than those listed in Sections VI and VII, “gross receipts from all activities” of corporations means the sum of the following items:

- Gross receipts or sales reportable on federal Form 1120, U.S. Corporation Income Tax Return, line 1a.
- Gross dividends reportable on federal Form 1120, line 4.
- Gross interest income reportable on federal Form 1120, line 5.
- Gross rents reportable on federal Form 1120, line 6.

- Gross royalties reportable on federal Form 1120, line 7.
- The gross sales price from the disposition of capital assets and business assets includable in computing the net gain or loss on federal Form 1120, lines 8 and 9.
- Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

**Note:** The definition of “gross receipts from all activities” for corporations does not have the same meaning as the definition of “gross receipts” for individuals, estates, trusts, and partnerships.

**Nexus** — “Nexus” refers to the degree of activity necessary before a state has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. For combined groups, if at least one member of the group has nexus, all members of the combined group have nexus.

## B. Who Is Subject to the Recycling Surcharge?

The recycling surcharge applies to all corporations that must file a Wisconsin franchise or income tax return, Form 4 or 5, except —

- corporations organized under Wisconsin law that do not have any business activities in Wisconsin,
- corporations that have less than \$4,000,000 of gross receipts from all activities, or
- corporations not organized under Wisconsin law that do not have nexus with Wisconsin.

**Example 1:** Corporation A, which is incorporated in Wisconsin, is engaged in business only in Wisconsin. It has \$5,100,000 of gross receipts from all activities.

Corporation A is subject to the recycling surcharge because it is required to file a Wisconsin franchise or income tax return, it is doing business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 2:** Corporation B, which is incorporated in Wisconsin, sells tangible personal property. During the taxable year its activity in Wisconsin does not exceed the solicitation of orders by its salespersons in the state, which orders are approved outside the state and are filled

by delivery from a point outside the state. Since Corporation B is organized under Wisconsin law, its activity in Wisconsin is not protected by Public Law 86-272.

(Under Public Law 86-272, a state may not impose its income tax or franchise tax measured by net income on a business that is incorporated in another state and sells tangible personal property if the only activity of that business in the state is the solicitation of orders by its salespersons or representatives, which orders are sent outside the state for approval or rejection and are filled by delivery from a point outside the state.)

Corporation B is required to file a Wisconsin franchise or income tax return and pay Wisconsin franchise or income tax on the income attributable to Wisconsin. It has \$4,500,000 of gross receipts from all activities.

Corporation B is subject to the recycling surcharge because it is required to file a Wisconsin franchise or income tax return, it is engaged in business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 3:** Corporation C, which is incorporated outside Wisconsin, transacts business in and outside Wisconsin during the current taxable year. It has \$5,000,000 of gross receipts from all activities.

Corporation C is subject to the recycling surcharge because it is required to file a Wisconsin franchise or income tax return, it has business activity in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 4:** Corporation D, which is incorporated in Wisconsin, derives its income only from interest, dividends, and sales of intangible assets. It has \$5,000,000 of gross receipts from all activities.

Corporation D is subject to the recycling surcharge because it must file a Wisconsin franchise or income tax return, it is considered to be doing business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 5:** Combined Group YZ consists of Member Y and Member Z. Both members are incorporated outside of Wisconsin. Member Y transacts business in and outside Wisconsin during the current taxable year, and has gross receipts of \$5,000,000 from all activities. Member Z has no business activity in Wisconsin during the current year, and has gross receipts of \$6,000,000 from all activities.

If at least one member of a combined group is conducting unitary business in Wisconsin, all corporations in the group are considered to be doing business in Wisconsin. Since Member Y is doing business in Wisconsin, Member Z is also considered to be doing business in Wisconsin. The \$4,000,000 gross receipts threshold must be determined separately for each corporation in the combined group. Member Y and Member Z each have gross receipts of \$4,000,000 or more. Therefore, both members are subject to the recycling surcharge.

### C. Who Is Not Subject to the Recycling Surcharge?

- Corporations that are not required to file a Wisconsin franchise or income tax return.
- Corporations organized under Wisconsin law that have no business activities in Wisconsin.
- Corporations not organized under Wisconsin law that do not have nexus with Wisconsin.
- Corporations that have less than \$4,000,000 of gross receipts from all activities.
- Nuclear decommissioning trust funds.

**Example 1:** Corporation A, incorporated in Wisconsin, has no business activity in or outside Wisconsin during the current taxable year. It files a declaration of inactivity, Wisconsin Form 4H, with the Department of Revenue.

Corporation A is not subject to the recycling surcharge because it is not required to file a Wisconsin franchise or income tax return. Wisconsin Form 4H is not considered a franchise or income tax return.

**Example 2:** Corporation B, incorporated in Wisconsin, has no business activity in or outside Wisconsin during the current taxable year. Corporation B files a Wisconsin franchise or income tax return reporting no activity in or outside Wisconsin.

Corporation B is not subject to the recycling surcharge. Although Corporation B files a franchise or income tax return to indicate that it has no activity, the return is treated as a declaration of inactivity.

**Example 3:** Corporation C, a credit union incorporated in Wisconsin, does not act as a depository for state or local government funds. It files a declaration of exempt status, Wisconsin Form CU, with the Department of Revenue.

Corporation C is not subject to the recycling surcharge because it is not required to file a Wisconsin franchise or income tax return.

**Example 4:** Corporation D is owned and controlled by Native Americans who are enrolled members of the same tribe. Corporation D is located on the tribal reservation of its shareholders. It is not engaged in business off the reservation. Therefore, Corporation D is not required to file a Wisconsin franchise or income tax return.

Corporation D is not subject to the recycling surcharge because it is not required to file a Wisconsin franchise or income tax return.

**Example 5:** Corporation E, incorporated in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, Corporation E does transact business outside Wisconsin. Corporation E is required to file a Wisconsin franchise or income tax return because it is organized under Wisconsin law, but it has no Wisconsin franchise or income tax liability.

Corporation E is not subject to the recycling surcharge because it is not engaged in business in Wisconsin.

**Example 6:** Corporation F, which is incorporated outside Wisconsin but licensed to do business in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, it transacts business outside Wisconsin. Corporation F is required to file a Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin, but it has no Wisconsin franchise or income tax liability because it does not have nexus with Wisconsin.

Corporation F is not subject to the recycling surcharge since it is not engaged in business in Wisconsin.

**Example 7:** Corporation G is incorporated outside Wisconsin but licensed to do business in Wisconsin. It sells tangible personal property. During the current taxable year its activity in Wisconsin does not exceed the solicitation of orders, which orders are approved outside the state and are filled by delivery from a point outside the state. Corporation G is required to file a Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin. However, it has no Wisconsin franchise or income tax liability.

Corporation G's Wisconsin activity is protected by Public Law 86-272, which provides that a state may not impose its income tax or franchise tax measured by net income on a business that is incorporated in another state and sells tangible personal property if the only activity of that business in the state is the solicitation of orders by

its salespersons or representatives, which orders are sent outside the state for approval or rejection and are filled by delivery from a point outside the state.

Corporation G is not subject to the recycling surcharge because its activity in Wisconsin is insufficient to create Wisconsin nexus.

**Example 8:** Corporation H, which is incorporated in Wisconsin, has \$3,000,000 of gross receipts, consisting of \$2,000,000 of gross sales and \$1,000,000 of gross interest and dividend income for the current taxable year. Corporation H is required to file a Wisconsin franchise or income tax return because it is doing business in Wisconsin.

Corporation H is not subject to the recycling surcharge because it has less than \$4,000,000 of gross receipts from all activities.

**Example 9:** Combined Group XYZ consists of Member X, Member Y, and Member Z. All members are incorporated outside Wisconsin. Members X and Y transact business in and outside Wisconsin during the current taxable year. Members X and Y have gross receipts from all activities of \$5,000,000 and \$3,000,000, respectively. Member Z has no business activity in Wisconsin during the current year, and has gross receipts from all activities of \$2,000,000.

If at least one member of a combined group is conducting unitary business in Wisconsin, all corporations in the group are considered to be doing business in Wisconsin. Since Members X and Y are doing business in Wisconsin, Member Z is also considered to be doing business in Wisconsin. The \$4,000,000 gross receipts threshold must be determined separately for each corporation in the combined group. Member X has gross receipts of \$4,000,000 or more; Members Y and Z have gross receipts of less than \$4,000,000. Therefore, only Member X is subject to the recycling surcharge.

#### D. On What Form Is the Recycling Surcharge Reported?

Separate corporations report the recycling surcharge on Form 4, line 17, or Form 5, line 11. Each member of a combined group reports its recycling surcharge on Form 4M, line S; the combined group reports the total of its members' recycling surcharges on Form 4, line 17.

#### E. How Is the Recycling Surcharge Computed?

The recycling surcharge is the greater of —

- \$25, or
- The amount computed by multiplying the corporation's "gross tax liability" from its Form 4 or Form 5 (separate corporation), or Form 4M (member of a combined group) by 3% (0.03), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge.

**Example 1:** Corporation A, a corporation doing business only in Wisconsin, reports gross receipts from all activities of \$6,000,000 and a gross tax liability of zero on Wisconsin Form 5, line 8.

Corporation A is subject to a recycling surcharge of \$25. Although it computes a recycling surcharge of zero ( $\$0 \times .03$ ), the minimum surcharge of \$25 applies.

**Example 2:** Corporation B, a corporation operating a farm in Wisconsin, reports gross receipts from all activities of \$4,400,000 and a gross tax liability of \$20,000 on Wisconsin Form 5, line 8.

Corporation B is subject to a recycling surcharge of \$600 ( $\$20,000 \times .03$ ).

**Example 3:** Corporation C, a corporation doing business only in Wisconsin, reports gross receipts from all activities of \$5,000,000 and a gross tax liability of \$500,000 on Wisconsin Form 5, line 8.

Corporation C is subject to a recycling surcharge of \$9,800. Although Corporation C computes a recycling surcharge of \$15,000 ( $\$500,000 \times .03$ ), the maximum surcharge of \$9,800 applies.

**Example 4:** Corporation D, a corporation doing business in and outside Wisconsin, files Wisconsin Form 4 and determines its income attributable to Wisconsin under the separate accounting method. Corporation D has \$4,500,000 of gross receipts from all activities but reports a \$10,000 net loss from its Wisconsin activities. Its gross tax liability on Wisconsin Form 4, line 14c, is zero.

Corporation D is subject to a recycling surcharge of \$25. Although Corporation D computes a recycling surcharge of zero ( $\$0 \times .03$ ), the minimum surcharge of \$25 applies.

**Example 5:** Corporation E, a corporation doing business in and outside Wisconsin, computes its Wisconsin income using the apportionment method. It reports \$5,600,000 of gross receipts from all activities and a gross tax liability of \$30,000 on Wisconsin Form 4, line 14c.

Corporation E is subject to a recycling surcharge of \$900 ( $\$30,000 \times .03$ ).

**Note:** Corporation E may not multiply its gross tax liability by its apportionment percentage to determine its recycling surcharge. The gross tax on Form 4, line 14, which is the basis for the recycling surcharge, has already been computed using Corporation E's income apportioned to Wisconsin.

**Example 6:** Corporation F, a corporation doing business in and outside Wisconsin, figures the amount of Wisconsin income using the apportionment method. Corporation F reports \$24,700,000 of gross receipts from all activities and a gross tax liability of \$600,000 on Wisconsin Form 4, line 14c.

Corporation F is subject to a recycling surcharge of \$9,800. Although Corporation F computes a recycling surcharge of \$18,000 ( $\$600,000 \times .03$ ), the maximum surcharge of \$9,800 applies.

**Example 7:** Corporation G, a corporation doing business only in Wisconsin, reports \$7,000,000 of gross receipts from all activities and a gross tax liability of \$50,000 on Wisconsin Form 5, line 8. It computes a research credit of \$65,000 and claims \$50,000 of the available credit on Wisconsin Form 5, line 9. Therefore, Corporation G's net tax liability is zero.

Corporation G is subject to a recycling surcharge of \$1,500 ( $\$50,000 \times .03$ ).

**Note:** Any nonrefundable credits available for use in offsetting gross tax liability in the current year or future years may not be used to offset the recycling surcharge. Corporation G may not offset its unused research credit against the recycling surcharge.

**Example 8:** Corporation H, a corporation engaged in farming in Wisconsin, reports \$4,700,000 of gross receipts from all activities and a gross tax liability of \$100,000 on Wisconsin Form 5, line 8. Corporation H computes a farmland preservation credit of \$3,000 and a farmland tax relief credit of \$600. It claims the \$3,600 of credits on Wisconsin Form 5, line 17.

Corporation H is subject to a recycling surcharge of \$3,000 ( $\$100,000 \times .03$ ). Although the credits do not af-

fect the computation of the recycling surcharge, the total credits of \$3,600 on Wisconsin Form 5, line 17, may be used to offset Corporation H's net tax and surcharge due, and the balance will be refunded.

**Example 9:** Corporation I, incorporated outside Wisconsin, has no business activity in Wisconsin other than as a limited partner in a partnership that is doing business in Wisconsin. Corporation I's distributive share of gross receipts from all activities was \$5,200,000 and it reports a gross tax liability of \$15,000 on Wisconsin Form 4, line 14.

Corporation I is subject to a recycling surcharge of \$450 ( $\$15,000 \times .03$ ).

**Note:** Corporation I is subject to a recycling surcharge based on its distributive share of partnership income, even though the partnership is also subject to the surcharge.

**Example 10:** Corporation J, which is doing business only in Wisconsin, reports a \$75,000 net loss on its prior year Wisconsin Form 5. For the current taxable year, Corporation J reports \$4,800,000 of gross receipts from all activities and net income of \$65,000 on Wisconsin Form 5, line 5, and claims a net business loss offset of \$65,000 on line 6. Therefore, its current year gross tax liability is zero.

Corporation J is subject to a recycling surcharge of \$25. Although Corporation J computes a recycling surcharge of zero ( $\$0 \times .03$ ), the minimum surcharge of \$25 applies.

**Example 11:** Combined Group VWXYZ consists of Member V, Member W, Member X, Member Y, and Member Z. The following gross receipts from all activities and gross tax liabilities are reported:

Member	Gross Receipts	Gross Tax
V	\$7,000,000	\$350,000
W	\$6,000,000	\$270,000
X	\$5,000,000	\$ zero
Y	\$3,000,000	\$200,000
Z	\$2,000,000	\$ zero

The gross receipts from all activities of Members V, W, and X are \$4,000,000 or more, therefore, the recycling surcharge must be calculated for each of these members. Since 3% of Member V's gross tax is \$10,500 ( $\$350,000 \times 0.03$ ) and is greater than the maximum recycling surcharge of \$9,800, Member V's recycling surcharge is \$9,800. Member W's recycling surcharge is \$8,100

(\$270,000 x 0.03). Since 3% of Member X's gross tax is \$0 (zero), Member X's recycling surcharge is the minimum recycling surcharge of \$25. Members Y and Z are not subject to a recycling surcharge because their gross receipts are less than \$4,000,000. The combined group's total recycling surcharge is \$17,925 (\$9,980 + \$8,100 + \$25 + \$0 + \$0).

Note: For combined group filers, the recycling surcharge is computed separately for each member.

## VI. TAX-OPTION (S) CORPORATIONS

### A. Definitions

**Gross Receipts From All Activities** — “Gross receipts from all activities” of tax-option (S) corporations means the sum of the following items reportable by S corporations:

- Gross receipts or sales reportable on federal Form 1120S, U.S. Income Tax Return for an S Corporation, line 1a.
- Gross rents includable in computing the income from real estate and other rental activities reportable on federal Form 1120S, Schedule K, lines 2 and 3a.
- Gross interest income reportable on federal Form 1120S, Schedule K, line 4.
- Gross dividends reportable on federal Form 1120S, Schedule K, line 5a.
- Gross royalties reportable on federal Form 1120S, Schedule K, line 6.
- The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on federal Form 1120S, line 4, and on federal Form 1120S, Schedule K, lines 7, 8a, 9, and 17d.
- Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

**Note:** The definition of “gross receipts from all activities” for tax-option (S) corporations does not have the same meaning as the definition of “gross receipts” for individuals, estates, trusts, and partnerships.

**Wisconsin Net Income** — “Wisconsin net income” is that portion of the amount reported on Wisconsin Form 5S, Schedule 5K, line 19, column d, which is attributable to Wisconsin.

**Note:** For purposes of the recycling surcharge, a tax-option (S) corporation is not required to include in its Wisconsin net income the add-back required under sec. 71.30(6), Wis. Stats., for the balance of gain on installment obligations. Under sec. 71.30(6), Wis. Stats., a tax-option (S) corporation entitled to use the installment method of accounting must take the unreported balance of gain on all installment obligations into income in the taxable year of their distribution, transfer, or acquisition by another person or for the final taxable year for which it filed or is required to file a Wisconsin return, whichever year occurs first.

### B. Who Is Subject to the Recycling Surcharge?

The recycling surcharge applies to all corporations treated as S corporations under subchapter S of the Internal Revenue Code that have not elected out of tax-option corporation status for Wisconsin purposes under sec. 71.365(4)(a), Wis. Stats., and are required to file a Wisconsin franchise or income tax return, Form 5S, except —

- corporations organized under Wisconsin law that do not have any business activities in Wisconsin,
- corporations that have less than \$4,000,000 of gross receipts from all activities, or
- corporations not organized under Wisconsin law that do not have nexus with Wisconsin. “Nexus” refers to the degree of activity necessary before a state has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer.

**Example:** Corporation A, a tax-option (S) corporation incorporated outside Wisconsin but licensed to do business in Wisconsin, has business activity in Wisconsin during the current taxable year. It has \$7,500,000 of gross receipts from all activities.

Corporation A is subject to the recycling surcharge because it is required to file a Wisconsin franchise or income tax return, it is doing business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

### C. Who Is Not Subject to the Recycling Surcharge?

- Corporations treated as S corporations under subchapter S of the Internal Revenue Code that have not elected out of tax-option corporation status for Wisconsin purposes under sec. 71.365(4)(a), Wis. Stats., and are not required to file a Wisconsin franchise or income tax return.
- Tax-option (S) corporations organized under Wisconsin law that have no business activities in Wisconsin.
- Tax-option (S) corporations not organized under Wisconsin law that do not have nexus with Wisconsin.
- Tax-option (S) corporations that have less than \$4,000,000 of gross receipts from all activities.

**Example 1:** Corporation A, a tax-option (S) corporation incorporated in Wisconsin, has no business activity in or outside Wisconsin during the current taxable year. It files a declaration of inactivity, Wisconsin Form 4H, with the Department of Revenue.

Corporation A is not subject to the recycling surcharge because it is not required to file a Wisconsin franchise or income tax return. Wisconsin Form 4H is not considered a franchise or income tax return.

**Example 2:** Assume the same facts as in Example 1, except that Corporation A files a Wisconsin franchise or income tax return, Form 5S, reporting no activity in or outside Wisconsin.

Corporation A is not subject to the recycling surcharge. Although Corporation A files a franchise or income tax return to indicate that it has no activity, the return is considered a declaration of inactivity.

**Example 3:** Corporation B, an S corporation incorporated outside Wisconsin, is not licensed to do business in Wisconsin and has no business activity in Wisconsin during the current taxable year. However, it has several shareholders who are Wisconsin residents.

Corporation B is not subject to the recycling surcharge because it is not required to file a Wisconsin franchise or income tax return.

**Example 4:** Corporation C, a tax-option (S) corporation incorporated in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, Corporation C does transact business outside Wisconsin.

Corporation C is required to file a Wisconsin franchise or income tax return because it is organized under Wisconsin law, but it has no Wisconsin franchise or income tax liability.

Corporation C is not subject to the recycling surcharge since it is not engaged in business in Wisconsin.

**Example 5:** Corporation D, a tax-option (S) corporation which is incorporated outside Wisconsin but licensed to do business in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, it transacts business outside Wisconsin. Corporation D is required to file a Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin, but it has no Wisconsin franchise or income tax liability because it does not have nexus with Wisconsin.

Corporation D is not subject to the recycling surcharge because it is not engaged in business in Wisconsin.

**Example 6:** Corporation E, a tax-option (S) corporation which is incorporated outside Wisconsin, has \$3,500,000 of total receipts, consisting of \$3,000,000 of gross sales and \$500,000 of gross rents. Corporation E is required to file a Wisconsin franchise or income tax return because it is doing business in Wisconsin.

Corporation E is not subject to the recycling surcharge because it has less than \$4,000,000 of gross receipts from all activities.

### D. On What Form Is the Recycling Surcharge Reported?

Tax-option (S) corporations report the recycling surcharge on Wisconsin Form 5S, line 10.

### E. How Is the Recycling Surcharge Computed?

The recycling surcharge is the greater of —

- \$25, or
- the amount computed by multiplying the tax-option (S) corporation's Wisconsin net income, as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge.

**Example 1:** Tax-option (S) Corporation A, which has \$4,500,000 of gross receipts from all activities and operates solely in Wisconsin, has the following income, loss,

and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business loss (line 1)	\$ (30,000)
Net rental real estate income (line 2)	2,000
Interest income (line 4)	3,000
Investment interest expense (line 12b)	<u>(2,000)</u>
Loss (line 19)	<u>\$ (27,000)</u>

Corporation A is subject to a recycling surcharge of \$25. Although it computes a recycling surcharge of zero (\$0 x .002), the minimum surcharge of \$25 applies.

**Example 2:** Tax-option (S) Corporation B, a corporation operating a farm in Wisconsin, reports \$4,200,000 of gross receipts from all activities and the following income, loss, and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business income (line 1)	\$ 30,000
Other net rental income (line 3)	3,000
Interest income (line 4)	7,000
Net long-term capital loss (line 8)	(5,000)
Net section 1231 gain (line 9)	15,000
Section 179 deduction (line 11)	(10,000)
Contributions (line 12a)	(4,000)
Other deductions (line 12d)	<u>(1,000)</u>
Income (line 19)	<u>\$ 35,000</u>

Corporation B is subject to a recycling surcharge of \$70 (\$35,000 x .002).

**Example 3:** Tax-option (S) Corporation C is incorporated outside Wisconsin and is doing business in and outside Wisconsin. Corporation C reports \$5,200,000 of gross receipts from all activities and the following Wisconsin income, loss, and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business income (line 1)	\$ 500,000
Net rental real estate income (line 2)	10,000
Interest income (line 4)	100,000
Contributions (line 12a)	(40,000)
Investment interest expense (line 12b)	<u>(100,000)</u>
Income (line 19)	<u>\$ 470,000</u>

Corporation C's Wisconsin apportionment percentage computed on Wisconsin Form 4A-1 is 70%.

Corporation C is subject to a recycling surcharge of \$658 ([470,000 x 70%] x .002).

**Example 4:** Tax-option (S) Corporation D is incorporated in Wisconsin and has business activities in and

outside Wisconsin. Corporation D reports the following Wisconsin income, loss, and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business income (line 1)	\$ 5,400,000
Net rental real estate income (line 2)	300,000
Ordinary dividends (line 5)	200,000
Contributions (line 12a)	(50,000)
Investment interest expense (line 12b)	<u>(100,000)</u>
Income (line 19)	<u>\$ 5,750,000</u>

Corporation D's Wisconsin apportionment percentage computed on Wisconsin Form 4A-1 is 90%.

Corporation D is subject to a recycling surcharge of \$9,800. Although Corporation D computes a recycling surcharge of \$10,350 ([5,750,000 x 90%] x .002), the maximum surcharge of \$9,800 applies.

**Example 5:** Tax-option (S) Corporation E is engaged in business in and outside Wisconsin. All of its shareholders are residents of Wisconsin and report their pro rata shares of all income (loss) from the tax-option (S) corporation on their Wisconsin individual income tax returns. For the current taxable year, Corporation E has \$4,000,000 of gross receipts from all activities and Wisconsin net income of \$1,000,000. Corporation E's Wisconsin apportionment percentage is 70%.

Corporation E is subject to a recycling surcharge of \$1,400 ([1,000,000 x 70%] x .002). Even though all of its shareholders are residents of Wisconsin, Corporation E applies its apportionment percentage to its income (loss) for purposes of computing the recycling surcharge.

**Example 6:** Tax-option (S) Corporation F is engaged in business in and outside Wisconsin. Corporation F reports \$4,200,000 of gross receipts from all activities and \$100,000 of ordinary business income for federal purposes on Wisconsin Form 5S, Schedule 5K, line 1, column b. Due to differences in computing depreciation, Corporation F reports ordinary business income under Wisconsin law of \$109,000 on Wisconsin Form 5S, Schedule 5K, line 1, column d. Corporation F's Wisconsin apportionment percentage computed on Wisconsin Form 4A-1 is 40%.

Corporation F is subject to a recycling surcharge of \$87 ([109,000 x 40%] x .002).

**Example 7:** Tax-option (S) Corporation G is doing business only in Wisconsin. For the current taxable year, Corporation G has \$4,100,000 of gross receipts from all activities and Wisconsin net income of \$400,000, comprised of \$375,000 of ordinary business income and

\$25,000 of interest income from United States government obligations. It pays a Wisconsin franchise tax measured by its U.S. government interest of \$1,975 (\$25,000 x 7.9%).

Corporation G is subject to a recycling surcharge of \$800 (\$400,000 x .002).

**Example 8:** During its final year of operations, tax-option (S) Corporation H has \$4,800,000 gross receipts from all activities, earns \$100,000 of ordinary income, and realizes a \$250,000 gain on the installment sale of its assets. The corporation does not receive any installment payments during the taxable year; therefore, it does not recognize any portion of the gain as income for federal income tax purposes. The corporation liquidates and distributes the installment obligation to its sole shareholder. For federal income tax purposes, the corporation reports net income of \$100,000, its ordinary income. For Wisconsin franchise tax purposes, the corporation reports \$350,000 of net income (\$100,000 ordinary income + \$250,000 gain on sale of assets).

Corporation H is subject to a recycling surcharge of \$200 (\$100,000 x .002).

## VII. INSURANCE COMPANIES

### A. Definitions

**Gross Tax Liability** — For an insurance company filing separately, “gross tax liability” is the amount from Form 4, line 14c. For an insurance company that is a member of a combined group, “gross tax liability” is the amount from Form 4M, line Q.

**Gross Receipts From All Activities** — “Gross receipts from all activities” of insurance companies means the sum of the following items reportable by insurance companies:

- Gross premiums earned reportable on federal Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return, Schedule A, lines 1 and 8.
- Gross dividends reportable on federal Form 1120-PC, Schedule A, line 2, or Schedule B, line 2, if applicable.
- Gross interest income reportable on federal Form 1120-PC, Schedule A, line 3a, or Schedule B, line 1a, if applicable.
- Gross rents reportable on federal Form 1120-PC, Schedule A, line 4, or Schedule B, line 3, if applicable.
- Gross royalties reportable on federal Form 1120-PC, Schedule A, line 5, or Schedule B, line 4, if applicable.
- The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on federal Form 1120-PC, Schedule A, lines 6 and 7, or Schedule B, lines 5 and 7, if applicable.
- Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

**Note:** The definition of “gross receipts from all activities” for insurance companies does not have the same meaning as the definition of “gross receipts” for individuals, estates, trusts, and partnerships.

**Nexus** — “Nexus” refers to the degree of activity necessary before a state has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. For combined groups, if at least one member of the group has nexus, all members of the combined group have nexus.

### B. Who Is Subject to the Recycling Surcharge?

The recycling surcharge applies to every insurance company that is required to file a Wisconsin franchise or income tax return, has business activity in Wisconsin, and has at least \$4,000,000 of gross receipts from all activities. The recycling surcharge also applies to any insurance company that has at least \$4,000,000 in gross receipts and is a member of a combined group where at least one member has nexus.

### C. Who Is Not Subject to the Recycling Surcharge?

- Insurance companies that are not required to file a Wisconsin franchise or income tax return.
- Insurance companies that are not engaged in business in Wisconsin and do not have nexus.
- Insurance companies that have less than \$4,000,000 of gross receipts from all activities.

#### D. On What Form Is the Recycling Surcharge Reported?

An insurance company filing as a separate entity reports the recycling surcharge on Form 4, line 17. An insurance company that is a member of a combined group reports its recycling surcharge on Form 4M, line S; the combined group reports the total of its members' recycling surcharges on Form 4, line 17.

#### E. How Is the Recycling Surcharge Computed?

The recycling surcharge is the greater of —

- a. \$25, or
- b. the amount computed by multiplying the insurance company's "gross tax liability" from its Form 4 (insurance company filing as a separate entity), or Form 4M (member of a combined group) by 3% (0.03) but not more than \$ 9,800.

An insurance company's gross tax generally is limited to the lesser of 7.9% of Wisconsin net income or 2% of gross Wisconsin premiums. The recycling surcharge applies to the gross tax reported, regardless of how the tax is computed.

For combined group filers, the recycling surcharge is computed separately for each member. The total recycling surcharge for a combined group is the total of its members' recycling surcharges.

The following example illustrates the computation of the recycling surcharge.

**Example:** Insurance Company A incorporated in Wisconsin and offering several types of insurance, has Wisconsin net income from nonlife insurance activities of \$1,250,000. It has gross premiums of \$4,900,000. Its gross tax is \$98,000 (the lesser of  $\$1,250,000 \times 7.9\% = \$98,750$  or  $\$4,900,000 \times 2\% = \$98,000$ ).

Insurance Company A's recycling surcharge is \$2,940 ( $\$98,000 \times .03$ ).

### VIII. EXEMPT ORGANIZATIONS

#### A. Definitions

##### 1. Exempt Organizations Taxable as Corporations

The following definitions apply to exempt organizations taxable as corporations:

**Gross Tax Liability** — "Gross tax liability" is the tax, before deducting any credits, from Wisconsin Form 4T, line 8.

**Gross Receipts From All Activities** — "Gross receipts from all activities" of exempt organizations taxable as corporations means the sum of the following items reportable by those entities:

- Gross receipts or sales reportable on federal Form 990-T, Exempt Organization Business Income Tax Return, line 1a.
- The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on federal Form 990-T, lines 4a and 4b.
- Gross receipts passed through from partnerships and S corporations includable in computing income on federal Form 990-T, line 5.
- Gross rents includable in computing rent income on federal Form 990-T, line 6.
- Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on federal Form 990-T, line 7.
- Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on federal Form 990-T, line 8.
- Gross investment income includable in computing investment income on federal Form 990-T, line 9.
- Gross exploited exempt activity income includable in computing that item of income on federal Form 990-T, line 10.
- Gross advertising income includable in computing advertising income on federal Form 990-T, line 11.
- All other gross receipts that are included in gross income for Wisconsin franchise or income tax purposes.

**Note:** The definition of "gross receipts from all activities" for exempt organizations taxable as corporations does not have the same meaning as the definition of "gross receipts" for exempt organizations taxable as trusts.

## 2. Exempt Organizations Taxable as Trusts

The following definitions apply to exempt organizations taxable as trusts:

**Farming** — “Farming” is the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees, other than trees bearing fruit or nuts, are not treated as an agricultural or horticultural commodity. Raising or harvesting Christmas trees is not considered farming.

**Gross Receipts** — “Gross receipts” of exempt organizations taxable as trusts means the total receipts or sales from all trade or business activities and farming reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include the following:

- Gross receipts or sales reportable on federal Form 990-T, Exempt Organization Business Income Tax Return, line 1a.
- The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on federal Form 990-T, lines 4a and 4b.
- Gross receipts passed through from partnerships and S corporations includable in computing income on federal Form 990-T, line 5.
- Gross rents includable in computing rent income on federal Form 990-T, line 6.
- Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on federal Form 990-T, line 7.
- Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on federal Form 990-T, line 8.
- Gross investment income includable in computing investment income on federal Form 990-T, line 9.
- Gross exploited exempt activity income includable in computing that item of income on federal Form 990-T, line 10.
- Gross advertising income includable in computing advertising income on federal Form 990-T, line 11.

- All other receipts that are included in gross income for Wisconsin income tax purposes.
- Gross receipts or sales as reportable on federal Form 1040, Schedule F, Profit or Loss From Farming, lines 1, 4, 5a, 6a, 7a, 8a, and 9.

**Net Business Income** — “Net business income” is the unrelated trade or business income, except from farming, reported on Wisconsin Form 4T, line 15.

### B. Who Is Subject to the Recycling Surcharge?

The recycling surcharge applies to every exempt organization that is required to file a Wisconsin franchise or income tax return, Form 4T, with certain exceptions that are described in Part VIII. C.

**Example:** Taxpayer A, an exempt organization taxable as a corporation, files a Wisconsin Form 4T because it has more than \$1,000 of gross income (gross receipts minus the cost of goods sold) from an unrelated trade or business. It has \$4,500,000 of gross receipts from all unrelated trade or business activities. It carries over a net operating loss from the previous year which reduces its net income to zero.

Taxpayer A is subject to the recycling surcharge for the current taxable year because it is required to file Form 4T and has at least \$4,000,000 of gross receipts from all activities.

### C. Who Is Not Subject to the Recycling Surcharge?

- Exempt organizations that are not required to file a Wisconsin franchise or income tax return, Form 4T.
- Exempt organizations taxable as corporations that have less than \$4,000,000 of gross receipts from all activities.
- Exempt organizations taxable as trusts that are engaged solely in farming and have less than \$4,000,000 of gross receipts from farming.
- Exempt organizations taxable as trusts that have less than \$4,000,000 of gross receipts from farming and all other trade or business activities.
- Exempt trusts and IRAs whose gross receipts are \$4,000,000 or more but whose entire unrelated business taxable income was passed through from partnerships, provided the partnerships paid any recycling surcharge due on the income.

**Example 1:** Taxpayer A, an exempt organization taxable as a trust, has gross income from an unrelated trade or business of \$500. Taxpayer A is not required to file Wisconsin Form 4T because its gross income from an unrelated trade or business is less than \$1,000.

Taxpayer A is not subject to the recycling surcharge because it is not required to file Wisconsin Form 4T.

**Example 2:** Taxpayer B, an exempt organization taxable as a corporation, filed a prior year Wisconsin Form 4T because it had more than \$1,000 of gross income (gross receipts minus the cost of goods sold) from an unrelated trade or business. On that prior year return it reported a net loss from its unrelated trade or business. For the current taxable year, Taxpayer B does not have any income from an unrelated trade or business. However, it files a current year Wisconsin Form 4T to report its net operating loss carryover.

Taxpayer B is not subject to the recycling surcharge for the current taxable year because it is not required to file Wisconsin Form 4T.

**Example 3:** Taxpayer C, an exempt organization taxable as a corporation, has \$3,750,000 of gross receipts from all unrelated trade or business activities and \$2,000 of gross income (gross receipts minus the cost of goods sold) from an unrelated trade or business. Since it has at least \$1,000 of gross income from an unrelated trade or business, Taxpayer C must file Wisconsin Form 4T.

Taxpayer C is not subject to the recycling surcharge because it has less than \$4,000,000 of gross receipts from all activities.

**Example 4:** Taxpayer D is an exempt organization taxable as a trust. Its only unrelated business activity is farming. Taxpayer D has gross receipts from the unrelated business activity of \$2,000,000. Taxpayer D reports unrelated business taxable income of \$90,000.

Taxpayer D is not subject to the recycling surcharge because its gross receipts from farming are less than \$4,000,000.

**Example 5:** Taxpayer E, an exempt organization taxable as a trust, has \$3,500,000 of gross receipts from farming and other trade or business activities and \$1,500 of gross income (gross receipts minus the cost of goods sold) from an unrelated trade or business. Since it has at least \$1,000 of gross income from an unrelated trade or business, Taxpayer E must file Wisconsin Form 4T.

Taxpayer E is not subject to the recycling surcharge because it has less than \$4,000,000 of gross receipts from its farming and other trade or business activities.

#### D. On What Form Is the Recycling Surcharge Reported?

Exempt organizations report the recycling surcharge on Wisconsin Form 4T, line 22.

#### E. How Is the Recycling Surcharge Computed?

##### 1. Exempt Organizations Taxable as Corporations

The recycling surcharge is the greater of —

- \$25, or
- the amount computed by multiplying the exempt corporation's gross tax liability from Form 4T, line 8, by 3% (0.03), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge.

**Example 1:** Corporation A, an exempt organization taxable as a corporation, has \$5,000,000 of gross receipts from all unrelated trade or business activities and reports gross tax of zero on Wisconsin Form 4T, line 8.

Corporation A is subject to a recycling surcharge of \$25, the minimum surcharge.

**Example 2:** Corporation B, an exempt organization taxable as a corporation, reports \$4,050,000 of gross receipts from all activities and gross tax of \$1,000 on Wisconsin Form 4T, line 8.

Corporation B is subject to a recycling surcharge of \$30 (\$1,000 x .03).

**Example 3:** Corporation C, an exempt organization taxable as a corporation, reports \$24,100,000 of gross receipts from all activities and gross tax of \$400,000 on Wisconsin Form 4T, line 8.

Corporation C is subject to a recycling surcharge of \$9,800. Although it computes a recycling surcharge of \$12,000 (\$400,000 x .03), the maximum surcharge of \$9,800 applies.

**Example 4:** Corporation D, an exempt organization taxable as a corporation, is engaged solely in farming. It reports \$4,700,000 of gross receipts from all activities and gross tax of \$2,000 on Wisconsin Form 4T, line 8.

Corporation D is subject to a recycling surcharge of \$60 (\$2,000 x .03).

**2. Exempt Organizations Taxable as Trusts**

The recycling surcharge is the greater of —

- \$25, or
- the amount computed by multiplying the exempt trust’s unrelated trade or business income allocable to Wisconsin from Form 4T, line 15, by 0.2% (0.002), but not more than \$9,800.

The following examples illustrate the computation of the recycling surcharge.

**Example 1:** Trust A, an exempt organization taxable as a trust, reports \$4,300,000 of gross receipts and Wisconsin unrelated business taxable income of \$5,000 on Wisconsin Form 4T, line 15.

Trust A is subject to a recycling surcharge of \$25. Although it computes a recycling surcharge of \$10 (\$5,000 x .002), the minimum surcharge of \$25 applies.

**Example 2:** Trust B, an exempt organization taxable as a trust, reports \$4,760,000 of gross receipts and Wisconsin unrelated business taxable income of \$20,000 on Wisconsin Form 4T, line 15.

Trust B is subject to a recycling surcharge of \$40 (\$20,000 x .002).

**Example 3:** Trust C, an exempt organization taxable as a trust, reports Wisconsin unrelated business taxable income of \$5,000,000 on Wisconsin Form 4T, line 15.

Trust C is subject to a recycling surcharge of \$9,800. Although it computes a recycling surcharge of \$10,000 (\$5,000,000 x .002), the maximum surcharge of \$9,800 applies.

**Example 4:** Trust D, an exempt organization taxable as a trust, is engaged solely in farming. It reports \$4,100,000 of gross receipts from farming and Wisconsin unrelated business taxable income from farming of \$50,000 on Wisconsin Form 4T, line 15.

Even though Trust D has \$50,000 of unrelated business income from farming, net farm profit is excluded from net business income in computing the recycling surcharge. Trust D is subject to the minimum recycling surcharge of \$25.

**IX. ALL TAXPAYERS**

**A. Deductibility**

**1. Federal Income Tax Purposes**

For federal income tax purposes, the Internal Revenue Service has indicated that the recycling surcharge is a state tax within the meaning of sec. 164(a) of the Internal Revenue Code. Therefore, it may be deducted as provided under sec. 164.

**2. State Franchise or Income Tax Purposes**

The Wisconsin treatment of the recycling surcharge is shown in the next column.

<b>Deductibility of Recycling Surcharge</b>	
<b>Entity</b>	<b>Wisconsin Treatment</b>
C corporations (except RICs, REMICs, REITs, and FASITs)	Not deductible — add back to federal taxable income on Form 4 or 5 on Schedule V.
Exempt corporations	Deductible in computing Wisconsin unrelated business taxable income on Form 4T.
Insurance companies	Not deductible — add back to federal taxable income on Form 4, Schedule V.
RICs, REMICs, REITs, and FASITs	Deductible in computing Wisconsin net income.
Tax-option (S) corporations	Not deductible — add back to federal income (generally on Form 5S, Schedule 5K, line 1, column c) if deductible in computing federal income.
Partnerships (including LLCs treated as partnerships)	Not deductible — add back to federal income (generally on Form 3, Schedule 3K, line 1, column c) if deductible in computing federal income.
Individuals	Not deductible and not includable in the Wisconsin itemized deduction credit.
Estates and trusts	Not deductible — add back to federal taxable income on Form 2, Schedule A.
Exempt estates and trusts	Not deductible — add back to federal unrelated business taxable income on Form 4T, Schedule T1.

## B. Computation on Short-Period Returns

For short-period returns (returns for taxable years of less than 12 months), the recycling surcharge is computed in the same manner as for taxable years of 12 months. The minimum surcharge is \$25 and the maximum surcharge is \$9,800, regardless of the length of the taxable year.

**Example 1:** Taxpayer A, an individual who files returns on a calendar-year basis, begins operating a retail business on April 1, 2010. For 2010, she reports \$5,000,000 of gross receipts on federal Schedule C, line 1, and \$1,000 of net business income.

Taxpayer A is subject to a recycling surcharge of \$25. Although she computes a recycling surcharge of \$2 ( $\$1,000 \times .002$ ), the minimum surcharge of \$25 applies.

**Note:** The minimum recycling surcharge of \$25 is not prorated based on the number of months during the taxable year that the business operated.

**Example 2:** Taxpayer B, an individual who files returns on a calendar-year basis, operates a retail business until his death on October 31, 2010. After his death, his estate continues to operate the business. Gross receipts of \$8,500,000 and net business income of \$250,000 are reported on the federal Form 1040 filed with Taxpayer B's final Wisconsin Form 1 for the period from January 1, 2010, through October 31, 2010. Taxpayer B's estate, which elects to file returns on a calendar-year basis, reports gross receipts of \$4,000,000 and a net loss of \$10,000 on the federal Schedule C filed with its Wisconsin Form 2 for the period from November 1, 2010, through December 31, 2010.

Taxpayer B's final return is subject to a recycling surcharge of \$500 ( $\$250,000 \times .002$ ). Taxpayer B's estate is subject to a recycling surcharge of \$25. Although the estate computes a recycling surcharge of zero ( $\$0 \times .002$ ), the minimum surcharge of \$25 applies.

**Example 3:** Corporation C, which has been reporting its income on the basis of a fiscal year ending on September 30, liquidates on June 30, 2011. It reports \$4,250,000 of gross receipts from all activities and a gross tax liability of \$30,000 on its 2010 Wisconsin Form 4, line 14c, for the period beginning October 1, 2010, and ending June 30, 2011.

Corporation C is subject to a recycling surcharge of \$900 ( $\$30,000 \times .03$ ).

**Example 4:** Corporation D, which reports its income on the basis of a calendar year, is required to file two short-period returns for 2010 as a result of a change in

ownership of its capital stock. It reports \$4,100,000 of gross receipts from all activities and a gross tax liability of \$60,000 on its 2010 Wisconsin Form 4, line 14, for the period beginning January 1, 2010, and ending May 15, 2010. It reports \$5,300,000 of gross receipts from all activities and a gross tax liability of \$300,000 on its 2008 Wisconsin Form 4, line 14c, for the period beginning May 16, 2010, and ending December 31, 2010.

Corporation D is subject to a recycling surcharge of \$1,800 ( $\$60,000 \times .03$ ) for the taxable year beginning January 1, 2010, and ending May 15, 2010.

Corporation D is subject to a recycling surcharge of \$9,000 ( $\$300,000 \times .03$ ) for the taxable year beginning May 16, 2010, and ending December 31, 2010.

**Note:** Each short period is considered to be a taxable year. The maximum recycling surcharge is \$9,800 for each taxable period.

**Example 5:** Tax-option (S) corporation E changes its accounting period from a fiscal year ending on July 31 to a calendar year in 2010. Its Wisconsin net income is \$15,000,000 for the fiscal year beginning August 1, 2009, and ending July 31, 2010. Its Wisconsin net income is \$10,000,000 for the short taxable year beginning August 1, 2010, and ending December 31, 2010.

Tax-option (S) corporation E is subject to a recycling surcharge of \$9,800 for its taxable year beginning August 1, 2009, and ending July 31, 2010. Although it computes a recycling surcharge of \$30,000 ( $\$15,000,000 \times .002$ ), the maximum surcharge of \$9,800 applies.

It is also subject to a recycling surcharge of \$9,800 for the short taxable year beginning August 1, 2010, and ending December 31, 2010. Although it computes a recycling surcharge of \$20,000 ( $\$10,000,000 \times .002$ ), the maximum surcharge of \$9,800 applies to the short taxable period.

## C. Due Date of the Recycling Surcharge

The recycling surcharge is due on the unextended due date of the taxpayer's Wisconsin franchise or income tax return. An extension for filing the return does not extend the time to pay the recycling surcharge. Interest will be charged on the recycling surcharge not paid by the original due date.

Taxpayers can avoid interest charges during the extension period by paying the surcharge owed by the unextended due date.

During the extension period, 12% annual interest generally applies to the unpaid recycling surcharge. However, for corporations having tax and surcharge of \$500 or more, 12% annual interest applies only to 10% of the tax and surcharge shown on the return. Interest of 18% per year applies to the remainder of the unpaid tax and surcharge.

#### D. Quarterly Estimated Payments

##### 1. *Who Is Required to Make Estimated Recycling Surcharge Payments?*

All taxpayers subject to the recycling surcharge, as explained in Parts III through VIII, may be required to make quarterly estimated recycling surcharge payments if they meet the following conditions:

- **Individuals, estates, and trusts (except trusts subject to tax on unrelated business income)** if the sum of their Wisconsin net tax (including the alternative minimum tax) and the recycling surcharge is \$200 or more.
- **Partnerships** that owe at least \$200 of recycling surcharge.
- **Corporations and exempt organizations** if the sum of their Wisconsin franchise or income tax due (tax minus credits) and recycling surcharge is \$500 or more.

##### 2. *When Must the Estimated Recycling Surcharge Payments Be Made?*

Estimated recycling surcharge payments are due as follows:

- **Individuals, estates, trusts (except trusts subject to tax on unrelated business income), and partnerships:** the 15th day of the 4th, 6th, and 9th months of the taxable year and the 15th day of the 1st month following the close of the taxable year.
- **Corporations and exempt organizations:** the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

##### 3. *How Are Estimated Recycling Surcharge Payments Computed?*

Estimated recycling surcharge payments generally must be based on the smaller of —

- 90% of the tax and surcharge shown on the current return,
- 100% of the tax and surcharge shown on the prior return, provided the prior return was a taxable period of 12 months and the taxpayer filed a return for the prior taxable year, or
- 90% of the tax and surcharge computed by annualizing the income for the months in the taxable year ending before the installment's due date.

**Exception:** Corporations having Wisconsin net income of \$250,000 or more cannot base their estimated payments on 100% of their prior year tax and surcharge.

**Example 1:** Taxpayer A, a calendar-year taxpayer, is an individual who is engaged in a nonfarm business. For 2009, Taxpayer A had reported \$6,000 of net income tax and \$0 of recycling surcharge. For 2010, Taxpayer A owes \$5,400 of net income tax and \$220 of recycling surcharge. Taxpayer A must have made quarterly estimated tax and surcharge payments of \$1,265 ( $[\$5,400 + \$220] \times 90\% \times \frac{1}{4}$ ) to avoid an interest charge.

**Example 2:** Taxpayer B, a calendar-year corporation, begins operations in Wisconsin on April 1, 2010. Taxpayer B's 2010 Wisconsin return reports \$4,000 of franchise tax and \$220 of recycling surcharge. Taxpayer B must have made estimated tax and surcharge payments of \$3,798 ( $[\$4,000 + \$220] \times 90\%$ ) to avoid an interest charge. One-half of the amount, or \$1,899, is due June 15, 2010, and \$950 is payable for each of the installments due September 15 and December 15, 2010.

##### 4. *Are Interest or Penalties Imposed for Failure to Make Estimated Recycling Surcharge Payments?*

If required estimated recycling surcharge payments are not made or are underpaid, 12% annual interest generally applies to the amount of the underpayment for the period of the underpayment.

#### E. Interest and Penalties

Many of the interest and penalty provisions in Chapter 71, Wis. Stats., that apply to Wisconsin franchise and income taxes also apply to the recycling surcharge.

If a taxpayer that is subject to the recycling surcharge does not report the recycling surcharge on its Wisconsin franchise or income tax return, as appropriate, or files an incorrect return due to negligence or fraud, interest and penalties may be assessed against the taxpayer.

The interest rate on a delinquent recycling surcharge is 18% per year. Civil penalties may be as much as 100% of the amount of recycling surcharge not reported. Criminal penalties for filing a false return include a fine of up to \$10,000.

#### F. Administrative Provisions

The administrative provisions that apply for Wisconsin franchise and income tax purposes, including those relating to audits and assessments, claims for refund, statutes of limitations, Internal Revenue Service adjustments, confidentiality, appeals, collections, and setoffs for debts owed other state agencies, also apply to the recycling surcharge.

#### G. Internal Revenue Service Adjustments and Amended Returns

If a taxpayer's federal tax return is adjusted and the adjustments affect Wisconsin income or the recycling surcharge payable, the taxpayer must report the adjustments to the Department of Revenue by filing an amended Wisconsin franchise or income tax return, as applicable, within 90 days after the adjustments become final.

If a taxpayer files a federal amended return and the changes affect Wisconsin income or the recycling surcharge payable, the taxpayer must file an amended Wisconsin franchise or income tax return, as applicable, with the Department of Revenue within 90 days after filing the amended federal return.

Send an amended Wisconsin franchise or income tax return to the address provided in the amended return instructions for that form.

### X. ADDITIONAL INFORMATION OR FORMS

If, after reading this publication, you have any questions about Wisconsin's recycling surcharge, you may:

- E-mail your question to [income@revenue.wi.gov](mailto:income@revenue.wi.gov)
- Send a FAX to (608) 267-1030
- Call (608) 266-2772
- Write to the Customer Service Bureau, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949

- Call or visit any Wisconsin Department of Revenue office

If you need forms, you may:

- Download them from the Department's Internet web site at [www.revenue.wi.gov](http://www.revenue.wi.gov)
- Request them on-line at [www.revenue.wi.gov](http://www.revenue.wi.gov)
- Call (608) 266-1961
- Write to the Forms Request Office, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949
- Call or visit any Wisconsin Department of Revenue office