



# How to Get a Private Letter Ruling

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**IMPORTANT CHANGES**

Language has been added to the "ordinarily will not rule" list on page 5, Item F, to make clear that the department ordinarily will not rule on a request of any issue that is in an audit in progress or completed.

**CAUTION**

The information in this publication reflects the positions of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature and in effect as of October 1, 2018. Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this publication. Guidance issued prior to October 1, 2018, is superseded by this publication, pursuant to sec. 73.16(2)(a), Wis. Stats.

*Wisconsin Tax Bulletin* This publication contains references to the *Wisconsin Tax Bulletin*. The *Wisconsin Tax Bulletin* provides current information about Wisconsin tax laws and is published quarterly by the Wisconsin Department of Revenue.

**1. INTRODUCTION**

Taxpayers may obtain a private letter ruling (ruling) from the Wisconsin Department of Revenue. A taxpayer may request the department to rule on the tax consequences of proposed transactions or with respect to completed transactions.

This publication describes the private letter ruling process, including what a ruling is, why a taxpayer may want a ruling, areas in which rulings will and will not be issued, who may request a ruling, the form and contents of a ruling request, how the Wisconsin Department of Revenue handles ruling requests, and the effect of rulings on the requester as well as other taxpayers.

**2. GENERAL INFORMATION ON RULINGS****A. What Is a Ruling?**

A ruling is a written statement that interprets and applies the Wisconsin tax laws to a taxpayer's specific set of facts. A ruling is issued to a taxpayer by the Director of Private Letter Rulings when requested in accordance with the procedures in this publication.

**B. For What Items Are Rulings Issued?**

Rulings are issued with respect to income, franchise, withholding, sales and use, cigarette, tobacco, alcohol beverage, motor vehicle fuel, alternate fuels, and general aviation fuel tax matters. Rulings are also issued regarding homestead and farmland preservation credits, and administrative provisions.

**C. Policy for Issuing Rulings**

It is the policy of the department to answer questions that individuals, corporations, and organizations ask about their status for tax purposes and/or the tax effects of their acts or transactions. The following general practice has been adopted with respect to issuing rulings as to the various types of Wisconsin taxes and other matters:

- Income, franchise, withholding, sales/use, cigarette, tobacco, alcohol beverage, motor vehicle fuel, alternate fuels, and general aviation fuel tax matters. Rulings are issued on prospective transactions and on completed transactions either before or after the return is filed for those transactions.
- Homestead and farmland preservation credit matters. Rulings are issued on prospective transactions and on completed transactions either before or after a claim is filed relating to those transactions.
- Administrative provisions matters. Rulings are issued on issues arising under the Wisconsin Statutes and rules under the Wisconsin Administrative Code that relate primarily to the time, place, manner, and procedure for reporting and paying taxes; assessing and collecting taxes (including interest and penalties); abating, crediting, or refunding overassessments or overpayments of tax; and filing information returns.

#### **D. Limitations on Issuing Rulings**

Although it is the department's general practice to answer taxpayers' inquiries whenever possible, taxpayers do not have an absolute right to a ruling. There are some general and specific areas where the department, as a matter of policy, will not, ordinarily will not, or temporarily will not issue rulings. These areas are listed on pages 4 and 5.

Failure to include a particular matter in a list of areas where the department will not rule, etc., does not automatically mean that the department will rule on that matter. The department may decline to issue a ruling whenever warranted by the facts or circumstances of a particular case.

#### **E. Areas Where the Department Will Not Rule**

The department will not issue rulings in the following general areas:

- (1) A matter involving the interpretation of federal law.
- (2) The results of transactions that lack a bona fide business purpose.
- (3) A matter upon which a court has handed down a decision adverse to the department and the question of litigating further has not yet been resolved.
- (4) A matter involving the state tax consequences of any proposed federal, state, local, or municipal legislation. The department may provide general information in response to any inquiry. Inquiries on legislation or proposed legislation should be directed to:

Wisconsin Department of Revenue  
Office of the Secretary  
P O Box 8933  
Madison WI 53708-8933

- (5) Whether reasonable cause exists under the Wisconsin Statutes.
- (6) Whether a proposed transaction would subject the taxpayer to a civil or criminal penalty.
- (7) A request that does not comply with department requirements for obtaining a ruling (for example, a request that lacks information the department requires).
- (8) On only part of an integrated transaction.

## F. Areas Where the Department Ordinarily Will Not Rule

In addition to the areas where the department will not rule, there are also areas where the department ordinarily will not rule, because of the factual nature of the issues involved or for other reasons. These are areas in which a ruling will not be issued unless there are unique and compelling reasons that justify its issuance.

The department ordinarily will not issue rulings in the following general areas:

- (1) Any matter in which the determination requested is primarily one of fact. For example:
  - Market value of property
  - Unitary business issues
  - Whether the apportionment formula for a business or group of businesses clearly reflects the income attributable to Wisconsin
  - Amount of time a machine is used in an exempt manner
  - The date on which an activity occurs
- (2) The tax effect of any transaction that is to be consummated at some indefinite future time.
- (3) Any matter relating to whether property is held primarily for sale to customers in the ordinary course of a trade or business.
- (4) Any issue in an audit in progress or completed (for example, an issue that has been appealed to the department, the Wisconsin Tax Appeals Commission, or the courts).
- (5) The validity of an exemption certificate that must be taken in "good faith."
- (6) A request with the same or substantially the same facts and issues as those in a previous ruling.

## G. Areas Where the Department Temporarily Will Not Rule

The department may temporarily suspend issuing rulings in certain specific areas under extensive study until it resolves the issue involved through publication of an administrative rule or other form of publication.

## H. Rulings Pending the Adoption of Administrative Rules

The department will consider issuing rulings pending the adoption of administrative rules that interpret the provisions of any act under the following conditions:

- (1) If the ruling request presents an issue on which the answer seems clear by applying the statute to the facts, a ruling will be issued under the usual procedures.
- (2) If the ruling request presents an issue on which the answer seems reasonably certain, but not entirely free from doubt, a ruling will be issued.

However, if the ruling request presents an issue that cannot be readily resolved before administrative rules are issued, a ruling will not be issued.

## 3. HOW TO OBTAIN A RULING

A taxpayer considering a ruling request must know who may request a ruling, where to send the request, and the form and contents of the request. These matters are discussed below.

## A. Who May Request a Ruling?

A ruling request may be made by any taxpayer whose taxes or tax status would be affected by the application of the tax laws to the specific set of facts set out in the request. For example, if a ruling will have tax consequences for both a corporation and its shareholders, either may make the ruling request. On the other hand, business, trade, or industrial associations, or a similar group, may not request a ruling as to the application of the tax laws to members of the group. Such a group may, however, request a ruling as to its own tax status or tax liability.

**Authorized representatives.** An authorized representative may request a ruling on behalf of a taxpayer. The authorized representative must submit a written declaration of authority to represent a taxpayer in connection with a ruling request. This declaration may be made on a Power of Attorney form.

An individual who represents a fulltime employer, or a bona fide officer, administrator, trustee, etc., representing a corporation, trust, estate, association, or organized group, does not have to meet the requirements otherwise set out for authorized representatives.

## B. Where to Send Ruling Request

Ruling requests should be addressed to:

Wisconsin Department of Revenue  
Director of Private Letter Rulings  
Mail Stop 6-40  
P O Box 8933  
Madison WI 53708-8933

Ruling requests may be mailed to that address or hand delivered in Madison to 2135 Rimrock Road.

## C. Form and Contents Required in Ruling Request

The ruling request must be in writing, but otherwise there is no required form. However, certain items are required to be included in the request. The request must contain, or be accompanied by, all of the following:

- (1) Names, addresses, and taxpayer identification numbers of all interested parties. However, the term "all interested parties" does not mean that a list is required of all shareholders of a widely held corporation requesting a ruling, or of all employees where a large number may be involved.
- (2) Business reasons. The request must include a full and precise statement of the business reasons for the transaction.
- (3) Description. Provide a carefully detailed description of the transaction. Material facts contained in supporting documents submitted with the ruling request must be included in the description and may not be merely incorporated by reference. Those facts must be accompanied by an analysis of their bearing on the issue or issues involved, which specifies the provisions that apply.
- (4) Supporting documents. True copies of all contracts, deeds, agreements, or other documents involved must be submitted with the ruling request. Original documents should not be submitted, because they become part of the department's file and will not be returned.
- (5) "Step" transaction. Even though a ruling request deals with only one step of a larger integrated transaction, the facts and circumstances relating to the entire transaction must be contained in the request.

- (6) Statement of relevant authorities. Even though a taxpayer is urging no particular determination of a transaction, the taxpayer's views on the tax results and a statement of relevant authorities (for example, a court decision) in support of those views must be submitted with the request.
- (7) Statement where separate ruling requests are to be made with respect to a single factual situation. When multiple issues are involved in a single factual situation and separate letters requesting rulings are submitted, a statement to this effect must be included in each ruling request. The department in issuing each ruling will state that separate rulings have been issued or requests for rulings are pending.
- (8) Statement of audit in process. State whether the issue is presently being audited by a representative of the department.
- (9) Statement as to identical issue. State whether, to the best of the knowledge of the taxpayer and the taxpayer's representative (if any), the issue or an identical issue is in a return of the taxpayer, a related party within the meaning of sec. 267 of the Internal Revenue Code (IRC), or a member of an affiliated group of which the taxpayer is also a member within the meaning of sec. 1504, IRC. If so, state whether the issue or the identical issue:
  - Has been audited by the department and the statutory period of limitation for filing a petition for redetermination, a petition for review, or a claim for refund has not expired,
  - Is being considered under a petition for redetermination or a petition for review filed in connection with the taxpayer's return for an earlier period, or
  - Is pending in litigation in a case involving the taxpayer or a related taxpayer. The request must also state whether, to the best of the knowledge of the taxpayer and the taxpayer's representative (if any), the identical or a similar issue has been ruled on by the department and, if so, when and with what results.
- (10) Statement under penalties of perjury. Every ruling request must be accompanied by a declaration in the following form: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested ruling are true, correct, and complete."

Even if the request is signed by an authorized representative, the statement under penalties of perjury must be signed by a person on whose behalf the request is being made.

When a corporation is making a ruling request, the declaration must be signed by an officer of the corporation who has personal knowledge of the facts contained in the request and whose duties are not limited to obtaining a ruling from the department.

- (11) Declaration of authority. If the ruling request is made by an authorized representative, a written declaration that the representative is authorized to represent the taxpayer must accompany the request.

#### **D. Optional Material in Ruling Request**

In addition to the information required, the requester may voluntarily include in the request, or submit with it, the following:

- (1) Deletion request. The department is authorized to publish rulings. All rulings and the related background file documents will be available for public inspection to the extent disclosure does not violate confidentiality laws. Certain information contained in the ruling and in the background material will be deleted before the ruling and background material is published or made available for public inspection. Such deletions include the names, addresses, and identifying numbers of the taxpayer to whom the ruling pertains, and of other persons named in the ruling or any background file document.

If information other than names, addresses, and identifying numbers is proposed to be deleted, a deletion statement must be submitted with a ruling request to assist the department in making further deletions. The statement must indicate the deletions proposed by the person requesting the ruling.

The deletion statement must be accompanied by a copy of the request for a ruling and supporting documents on which must be shown, by the use of brackets, the material that the requester believes should be deleted. The statement must also indicate the basis for each proposed deletion.

If the requester decides to ask for additional deletions before the ruling is issued, additional statements may be submitted. The procedures listed above also apply to additional information submitted after the initial request.

- (2) Request for conference. A taxpayer is entitled to one conference as a matter of right with respect to the issues contained in a ruling request. If a conference is desired, this should be indicated in writing when, or soon after, the ruling request is filed.

A taxpayer may state that a conference is requested only if the department proposes to rule other than as requested by the taxpayer.

See "Conference" in Part 4 for additional information relating to a conference.

- (3) Optional summary of controlling facts "two-part" ruling request procedure. A taxpayer seeking a ruling on a prospective transaction may also submit a summary statement of the facts the taxpayer believes should be controlling on the issue involved. Even if such a summary of controlling facts is submitted, a complete statement of facts, documents, and other required data must also be submitted.

If the department agrees with the summary, it will use the summary as the basis for its ruling, and ordinarily only the summary statement will be incorporated in the ruling. The department, however, reserves the right to rule on the basis of a more complete statement of facts that it considers controlling and may seek more information in developing facts and restating them.

The "two-part" request is elective with the taxpayer and is not to be considered a required substitute for other applicable procedures. A taxpayer's rights and responsibilities are the same under either the twopart or the regular procedures. The twopart ruling request procedure will not apply where it is inconsistent with other procedures applicable to specific situations.

- (4) Statement of contrary authorities. Though not required to do so, taxpayers are encouraged to inform the department of, and discuss the implications of, any legislation, court decisions, or administrative rules that the taxpayer determines to be contrary to the tax result sought. If the taxpayer determines that there are no contrary authorities, it would be helpful if a statement to that effect were made in the ruling request. Supplying contrary authorities will facilitate department research of the issues involved and thus lead to earlier action on the ruling request.
- (5) Request to limit retroactive effect of later revocation or modification of ruling. The request may ask the department to exercise its discretion to limit the retroactive effect of a subsequent revocation or modification of a ruling. The request to limit retroactive effect may also be made while the ruling request is pending or after the ruling is issued.
- (6) Request for separate rulings. Where more than one issue is presented in the same ruling request, the department will usually issue a single ruling letter. However, a taxpayer may request a separate ruling on



any of the issues. The department will accordingly issue separate ruling letters unless it determines it is not feasible or is not in the department's best interest to do so.

#### **E. Speeding Up Action on Ruling Request**

While noting that requests are processed in regular order and that consideration of a request for processing ahead of its regular order or by a specified time delays the processing of other matters, the department will still consider requests for expeditious processing if made in writing. Such a request may be made in the ruling request itself or in a separate letter sent with or soon after the ruling request. If made in the ruling request itself, the first page of the letter should contain the following statement at the top of the page:

"Expeditious Handling is Requested. See page ... of this letter."

The request should give a compelling reason why expeditious handling should be granted. The following are not considered sufficient reasons for expediting a ruling:

- The possible effect of a fluctuation in the market price of stocks on a transaction.
- Scheduling a closing date for a transaction or a meeting of the directors or shareholders of a corporation without regard for the time it will take to obtain a ruling.

The department cannot give assurance that any ruling request will be processed by the time requested in a request for expeditious handling.

A request for expeditious handling will not be considered until the ruling request has been found to satisfy the requirements with respect to public disclosure of ruling requests and background file documents. One way to help speed up action on ruling requests is to make the initial request as complete as possible so the department will not have to request additional information.

## **4. DEPARTMENT HANDLING OF RULING REQUEST**

### **A. When Ruling Request Is Received By the Wisconsin Department of Revenue**

When a ruling request is received by the department, an acknowledgement of receipt is usually mailed to the requester. The request is then assigned to a department employee. That employee determines whether the matter involved is one on which the department may properly rule, and whether sufficient information on which a ruling may be based has been furnished in the request.

### **B. What Happens if Ruling Request Is Incomplete?**

If a request for a ruling does not comply with all department requirements, the department will point out the requirements that have not been complied with. If a request lacks essential information, the taxpayer will be advised that if the information is not received within 30 calendar days, the request will be closed.

If the information is received after the request is closed, it will be reopened and treated as a new request as of the date the essential information is received. The request will be processed by the department as though the additional information is an original request for a private letter ruling. Accordingly, the actual issuance of a ruling will be delayed.

### C. Submitting Additional Information

Even if the ruling request complies with department requirements, the department may still require additional information from the taxpayer, or the taxpayer may wish to voluntarily furnish additional information.

How to submit additional information. Additional information will be considered by the department only if submitted in writing. If material facts are given to the department orally, they must be confirmed in writing within 21 calendar days and must be accompanied by a statement under penalties of perjury similar to the one required with the original ruling request. Any lines of reasoning or precedent raised by a taxpayer orally must also be confirmed in writing within the 21 calendar day period.

Extensions of time for confirming oral information. An extension of the 21 calendar day period for confirming in writing oral information furnished to the department will be granted only if a request for an extension shows compelling facts and circumstances for granting the extension, and it is approved by the Director of Private Letter Rulings. A request for an extension should be made before the end of the 21 calendar day period.

The taxpayer or the taxpayer's representative will be advised promptly of the approval or denial of an extension request.

There is no right of appeal from a denial of an extension request.

### D. Conference

The taxpayer is entitled to and may request one conference with respect to the issues contained in the ruling request.

When the conference will be held. The conference will usually be held after the department has had an opportunity to study the case; however, if requested by the taxpayer or its representative, the conference of right may be held at an earlier stage in the consideration of the case than the department would ordinarily designate.

If conferences are being arranged for more than one request for a ruling from the same taxpayer, they will be scheduled so as to cause as little inconvenience as possible.

Where the conference will be held. The conference will usually be held at the Department of Revenue's office in Madison, Wisconsin. The conference will be attended by one or more department representatives.

What occurs at the conference. At the conference the taxpayer will be given a full opportunity to present views on all of the issues that are in question. A department representative will explain the department's tentative decision on the substantive issues and the reasons for that decision.

If the taxpayer requests that the department ruling be given only prospective application, the department will discuss the tentative recommendation concerning that request, and the reasons for the tentative recommendation.

No commitment will be made as to the conclusion the department will finally adopt.

Informal procedure. Conference procedures are informal and no tape, stenographic, or other verbatim recording of a conference may be made.

### E. Requesting Information About Ruling Request

Information about the status of a ruling request may be obtained by calling the person whose name and telephone number is shown on the acknowledgement of receipt of the ruling request.

## F. Where Ruling Is Sent

The ruling will be sent to the taxpayer or, if the taxpayer indicates, it will be sent to the taxpayer's representative. If the ruling is to be sent to the representative instead of to the taxpayer, the written declaration of authority should contain a statement to that effect and designate the mailing address of the representative.

In cases where a taxpayer has more than one representative, copies of the ruling will be sent to no more than two representatives and then only if they are located at different mailing addresses. A specific request must be made if copies are to be sent to two representatives.

## G. Approval of Deletions Before Ruling Is Published

In addition to the ruling, the taxpayer (or the taxpayer's representative, if any) will be sent a "deletion copy" of the ruling and a "Notice of Intent to Publish Ruling."

The deletion copy will show the deletions that will be made before the ruling is published. The Notice of Intent to Publish Ruling will give instructions as to how to request additional deletions or a delay in publication.

## H. Publishing Rulings

The department is authorized to publish private letter rulings. Publication will be in the department's newsletter entitled the "*Wisconsin Tax Bulletin*." In cases where ruling requests are withdrawn, the department may publish its findings as a tax release in the *Wisconsin Tax Bulletin*.

# 5. EFFECT OF RULINGS

## A. When Taxpayer's Return Is Reviewed

Whenever a taxpayer's return is reviewed, the department will ascertain the following:

- Whether any ruling previously issued to the taxpayer has been properly applied,
- Whether the representations upon which the ruling was based reflected an accurate statement of the material facts, and
- Whether the transaction actually was carried out substantially as proposed.

If, in the course of the review, it is found that a ruling should be modified or revoked, the findings and recommendations will be forwarded to the Director of Private Letter Rulings for consideration before further action. Otherwise the ruling is to be applied.

Appropriate coordination with the Director of Private Letter Rulings will be undertaken whenever any department employee proposes to reach a conclusion contrary to a ruling previously issued to the taxpayer.

## B. If Ruling Is Revoked or Modified - Effect On Taxpayer Who Requested The Ruling

Modification or revocation of a ruling may be made by any of the following methods:

- A notice to the taxpayer to whom the ruling was issued
- An enactment of legislation
- A decision of the Wisconsin Tax Appeals Commission or of any court when the decision is binding upon the department,

- The issuance of administrative rules
- The issuance of a tax release or other statement published in the *Wisconsin Tax Bulletin*

Except in rare or unusual circumstances, the revocation or modification of a ruling will not be applied retroactively to the person who requested the ruling if the following five tests are met:

- (1) There has been no misstatement or omission of material facts.
- (2) The facts at the time of the transaction are not materially different from the facts on which the ruling was based.
- (3) There has been no change in the applicable law.
- (4) The transaction occurred after the ruling was issued.
- (5) The taxpayer acted in good faith in reliance upon the ruling and the retroactive revocation would be to the taxpayer's detriment.

If a ruling is issued covering a continuing action or a series of actions, and it is determined that the ruling was in error or no longer in accord with the position of the department, the Director of Private Letter Rulings ordinarily will limit the retroactivity of the revocation or modification. Retroactive application will ordinarily be limited to a date that is not earlier than that on which the ruling is modified or revoked.

To illustrate, if a taxpayer receives a ruling that certain payments are excludable from gross income for Wisconsin income tax purposes, and it is later determined that the ruling is in error or no longer in accord with the position of the department, the Director of Private Letter Rulings ordinarily will restrict the retroactive application of the revocation or modification of the ruling. If a taxpayer is subject to the sales/use tax and in reliance on a ruling did not pass the tax on to customers, the Director of Private Letter Rulings ordinarily will restrict retroactive application of the revocation or modification of the ruling.

A ruling holding that the sale or lease of a particular article is subject to the sales/use tax may not retroactively revoke or modify an earlier ruling holding that the sale or lease of such an article was not taxable, if the taxpayer, in reliance upon the earlier ruling, parted with possession or ownership of the article without passing the tax on to the customer.

For rulings involving completed transactions other than those described above, taxpayers will not be given the protection against retroactive revocation, since they will not have entered into the transactions in reliance on the ruling.

### **C. Effect of Ruling on Other Taxpayers**

A ruling represents the department's interpretation of Wisconsin tax law based on a specific set of facts. Taxpayers other than the taxpayer to whom the ruling is issued may also rely upon the ruling to the same extent as the taxpayer who received the ruling, provided the facts in their cases are the same as those set forth in the ruling.

Except in rare or unusual circumstances, a revocation or modification of a ruling will not apply retroactively if the following four tests are met:

- (1) The facts at the time of the transaction are not materially different from the facts on which the ruling was based.
- (2) There has been no change in the applicable law.

- (3) The transaction occurred after the ruling was issued.
- (4) The taxpayer acted in good faith in reliance upon the ruling and retroactive revocation would be to the taxpayer's detriment.

#### **D. Withdrawal of Ruling Request**

A ruling request may be withdrawn at any time before the ruling is signed. However, even if the ruling request is withdrawn, the department will retain all correspondence and exhibits related to the request.

#### **E. Appeal of Adverse Ruling**

There is no right to appeal an adverse ruling.

#### **F. Taxpayer Not Bound by Ruling**

A ruling represents the department's interpretation of Wisconsin tax laws as applied to a taxpayer's specific set of facts. The recipient of an adverse ruling is free to disregard it. However, a taxpayer who wants to contest the department's position will almost certainly have to initiate a claim for refund or petition for redetermination to do so. Only rarely will department officials fail to apply a department ruling, and a taxpayer's compliance with a ruling will be checked.

## **6. OTHER ACTIONS BY TAXPAYER**

A taxpayer who requests a ruling must take the following actions with respect to the ruling or ruling request.

- If a ruling is received before a tax return has been filed with respect to a transaction that has been consummated and that is relevant to the return being filed, a copy of the ruling **MUST** be attached to the return when it is filed.
- If a request is filed but the ruling is not issued before the applicable return is filed, the taxpayer **MUST** attach a copy of the request to the return.
- If, after the request is filed but before a ruling is issued, the taxpayer knows that an examination of an issue presented in the request has been started by a representative of the department, the taxpayer must notify the Director of Private Letter Rulings of that action.

## **7. QUESTIONS OR ADDITIONAL INFORMATION**

If you have any questions or need additional information concerning how to obtain a private letter ruling, you may contact the department by any of the following methods:

**Telephone:** (608) 261-6819

**Email:** [DORISERechnicalServices@wisconsin.gov](mailto:DORISERechnicalServices@wisconsin.gov)

**Write to:** MS 6-40

Wisconsin Department of Revenue  
Administration Technical Services  
PO Box 8933  
Madison, WI 53708-8933

**Fax:** (608) 267-0834