

Instructions for Form PW-1

General Instructions

Purpose of Form PW-1

Pursuant to sec. 71.775, Wis. Stats., a pass-through entity is required to withhold income or franchise tax on Wisconsin income that is allocable to a nonresident partner, member, shareholder, or beneficiary. Use Form PW-1 to compute the withholding amount due for the taxable year.

Definitions

Nonresident – An individual who is not domiciled in Wisconsin; a partnership, limited liability company, or corporation whose commercial domicile is outside the state; and an estate or trust that is a nonresident under sec. 71.14(1) to (3m), Wis. Stats.

Pass-Through Entity – A partnership, a limited liability company, a tax-option (S) corporation, an estate, or a trust that is treated as a pass-through entity for federal income tax purposes.

Who Must File

Every pass-through entity (as defined above) that does business in Wisconsin or derives income from property located in Wisconsin, and that has one or more nonresident partners, members, shareholders or beneficiaries, must file Form PW-1 except as indicated below.

Exceptions:

The following pass-through entities are not required to file Form PW-1:

- A pass-through entity whose total Wisconsin income for the year, including all separately stated items, is a net loss.
- A joint venture that has elected not to be treated as a partnership under section 761 of the Internal Revenue Code.
- A publicly traded partnership, as defined under section 7704(b) of the Internal Revenue Code, if the entity files with the Department of Revenue an information return that reports the name, address, taxpayer identification number, and any other information requested by the department for each unit holder with more than \$500 Wisconsin taxable income from the entity. For taxable years beginning in 2005, Wisconsin Schedules 3K-1 filed with the Wisconsin Form 3 are sufficient information returns for purposes of this exception.

Period Covered by Return

The return must cover the same period as the pass-through entity's Wisconsin income or franchise tax return. File a 2005 Form PW-1 for calendar year 2005 or for a fiscal year that begins in 2005.

Filing Deadlines

Form PW-1 is due with payment on the unextended due date of the pass-through entity's income or franchise tax return. For tax-option (S) corporations, the filing deadline is the 15th day of the 3rd month following the close of the entity's taxable year. For partnerships, limited liability companies treated as partnerships, trusts, and estates, the filing deadline is the 15th day of the 4th month following the close of the entity's taxable year.

Methods of Filing

Unless a pass-through entity has obtained a waiver from the Wisconsin Department of Revenue (as explained below), **Form PW-1 must be filed electronically and the withholding payment must be made by electronic funds transfer (EFT)**. The department offers a **free** online e-filing program for Form PW-1. This program enables a pass-through entity to file Form PW-1 over the Internet and make an EFT payment **without having to pre-register for EFT**.

Note: The online e-filing program and the web page links described below will be available on February 1, 2006.

Instructions for Online E-Filing

On the Internet, go to www.dor.state.wi.us/eserv/pw/index.html. If you are already in the Department of Revenue web site, go to the "Business" link, and then click the link for pass-through entity withholding under the "Electronic Filing" header. From this page, click the "Form PW-1 Online Filing" link. A software application will then guide you through the fields of Form PW-1 that must be entered.

Based on the information you enter, the software will compute the total amount of withholding due, and will administer the EFT payment transaction. All you need for the EFT payment transaction is a bank account. The software will allow you to print a copy of your filed return.

Instructions for E-file (XML) Transmission

This filing method is available to anyone who can create an XML file. Pass-through entities with a very large number of nonresident owners may prefer this option. An Excel spreadsheet that creates an XML file of Form PW-1 is available on the Department of Revenue web site. To find further instructions and to file using this method, go to www.dor.state.wi.us/eserv/pw/index.html and click the "Form PW-1 E-file (XML) Transmission" link.

Electronic Filing/Electronic Payment Waiver

If electronic filing or electronic payment using either of these methods presents an undue hardship, the pass-through entity may request a waiver from the department to submit a paper return. To receive a waiver, provide a written explanation stating why electronic filing or electronic payment presents an undue hardship. Send the waiver request to:

Secretary's Office
 Wisconsin Department of Revenue
 Mail Stop 3-258
 P.O. Box 8903
 Madison, WI 53708-8903

You will receive the waiver within a few business days. Then, complete Form PW-1, enclose a check for the appropriate amount, and mail to the address shown on the form.

If you need to obtain a form, you may:

- Download it from the Department's Internet web site at www.dor.state.wi.us
- Use your fax telephone to call the Department's Fax-A-Form Retrieval System at (608) 261-6229
- Request it online at www.dor.state.wi.us/html/formsreq.html
- Call (608) 266-1961
- Write to the Forms Request Office, Wisconsin Department of Revenue, Mail Stop 1-151, P.O. Box 8949, Madison, WI 53708-8949
- Call or visit any Department of Revenue office

How to Obtain Assistance

For the best possible service, please choose the appropriate contact carefully:

For customer service questions regarding:

- Getting started with online e-filing
- The computation of withholding
- Information to be entered into Form PW-1
- Electronic payment options and waivers
- Name and address changes

Contact: (608) 261-6261
 sales10@dor.state.wi.us

Or write to:

Customer Service and Education Bureau
 Wisconsin Department of Revenue
 P.O. Box 8949
 Madison, WI 53708-8949

For customer service questions regarding:

- Problems encountered while using online e-filing
- Creating an XML file for e-file transmission

Contact: (608) 266-8653
 dorhelpd@dor.state.wi.us

Withholding Exemptions for Nonresident Partners, Members, Shareholders, or Beneficiaries

Certain nonresident partners, members, shareholders, or beneficiaries may not be subject to withholding. Withholding is not required if one of the following applies:

Nonresident Is Otherwise Not Subject to Income or Franchise Tax

Withholding is not required on behalf of a partner, member, shareholder, or beneficiary who is not otherwise subject to income or franchise tax (e.g., a 501(c)(3) organization with no unrelated business taxable income). To claim this exemption, obtain a written statement from the nonresident which states why the nonresident is exempt. Attach this written statement to the income or franchise tax return (Form 5S, 3, or 2) that the pass-through entity files for the year.

Nonresident's Share of Pass-Through Income Less than \$1,000

Withholding is not required on behalf of a partner, member, shareholder, or beneficiary who has no Wisconsin income other than his or her share of Wisconsin income from the pass-through entity and that share of such income is less than \$1,000.

The pass-through entity may presume that a nonresident partner, member, shareholder, or beneficiary has no Wisconsin income other than the amount passed through the entity. *The nonresident is not required to notify the pass-through entity of other sources of Wisconsin income.*

For purposes of this exemption, the \$1,000 threshold is computed as the Wisconsin taxable income of the pass-through entity reportable to that partner, member, shareholder, or beneficiary for the taxable year, without regard to carryforwards of prior year losses.

Line-by-Line Instructions

Taxable Year – Enter the beginning and ending dates of the pass-through entity's taxable year.

Amended Return – Check the box if you are amending a Form PW-1 that you previously filed for the taxable year you entered.

Part 1: Pass-Through Entity Information

Name, Federal Employer ID Number, Decedent Social Security Number – Enter the pass-through entity's name and federal employer identification number (FEIN). If the pass-through entity is an estate, also enter the decedent's Social Security number.

Address – Enter the pass-through entity's address, including five-digit ZIP code.

Person to Contact and Telephone Number – Enter the name and telephone number of a person whom the department may contact regarding the information reported on Form PW-1.

Income or Franchise Tax Form Number – Check the box corresponding to the income or franchise tax form that the pass-through entity will file for the taxable year.

Tax-option (S) corporations: Check Form 5S

Partnerships and limited liability companies treated as partnerships: Check Form 3

Estates and trusts: Check Form 2

Line 1: Total Pass-Through Income under Wisconsin Law – Enter the total amount of taxable income under Wisconsin law that will pass through the entity, computed as follows:

Step 1: Compute net income that the pass-through entity derives from all income sources that are unitary with the entity's Wisconsin activities. In this computation, include all separately stated items of income, expenses, gains, and losses. If the only nonresident owners of the pass-through entity are *individuals*, you may subtract 60% of the pass-through entity's long-term capital gains from this computation, if such capital gains are sourced to Wisconsin.

If you have not yet computed the pass-through entity's taxable income because you are filing Form 5S, Form 3, or Form 2 under extension, use estimates.

Tax-option (S) corporations: Do not include interest income taxed at the corporate level.

Partnerships, estates, and trusts: Do not subtract income that is sourced outside of Wisconsin for nonresidents that are individuals, estates, or trusts. Examples of income sourced outside of Wisconsin for nonresident individuals, estates, and trusts are gains and losses resulting from sales of stocks, bonds, or other intangibles, and, in general, interest and dividends. This non-Wisconsin income may be subtracted at the partner's or beneficiary's level in Part 2, column E.

Step 2: *For partnerships only.* Subtract guaranteed payments made to partners. Guaranteed payments must be added at the partner's level in Part 2, column E.

Step 3: *For multistate entities only.* Multiply the amount computed through steps 1 and 2 by the Wisconsin apportionment percentage computed at the pass-through entity level. This is the percentage reported on the pass-through entity's Form 4B. To the resulting amount, add any nonapportionable income sourced to Wisconsin.

After completing line 1, complete Part 2 of Form PW-1. See instructions for Part 2 on this same page, beginning with Column A.

Line 2: Total Tax Withheld – Enter the total tax withheld from line 8 of Part 2. *This number should not be below zero. If there is excess withholding, the appropriate nonresident shareholders, partners, members, or beneficiaries will receive a credit or refund directly. See the explanation for Part 2, column H.*

Line 3: Interest Due – Fill in the amount of interest due, if applicable. Interest applies if the pass-through entity files Form PW-1 later than the unextended due date of its income or franchise tax return.

Tax-option (S) corporations: Interest is due if the entity files Form PW-1 later than the 15th day of the 3rd month following the close of the tax-option (S) corporation's taxable year.

Partnerships, limited liability companies treated as partnerships, estates, and trusts: Interest is due if the entity files Form PW-1 later than the 15th day of the 4th month following the close of the partnership's, estate's or trust's taxable year.

To compute the amount of interest due, use the interest computation schedules found on page 6.

Line 4: Total Amount Due – Add lines 2 and 3. Enter total on line 4.

Signature and Date – Sign and date the form. When you are filing this form electronically, the signature you click with the mouse has the same validity as a handwritten signature.

Part 2: Nonresident Shareholder, Partner, Member, or Beneficiary Information

Column A: Nonresident's Name and Address – Enter each nonresident's name and address, as it will appear on the Schedule 5K-1, 3K-1, or 2K-1.

Column B: Nonresident's FEIN or SSN – Enter each nonresident's federal employer identification number or, for nonresident individuals, the Social Security number. For an estate, please enter both the federal employer identification number (if applicable) and the Social Security number of the decedent.

Column C: Tax Form – Select the code for the tax form the nonresident will use to file his, her, or its income or franchise tax return. From the list below, enter the tax form code that corresponds with the type of taxpayer the nonresident is:

Type of Taxpayer the Nonresident Is	Tax Form Code
Individual not included in composite return	1NPR
Individual <i>shareholder</i> in composite return	1CNS
Individual <i>partner</i> in composite return	1CNP
Estate or trust – nonexempt	2
Trust – exempt	4T (T)
Partnership	3
Tax-option (S) corporation	5S
C corporation – nonexempt	4
Corporation – exempt	4T (C)

Column D: Ownership or Profit/Loss Percentage – Enter the percentage that will be used on the Schedule 5K-1, 3K-1, or 2K-1 to determine the amount of income allocable to the nonresident.

Column E: Share of Wisconsin Taxable Income – Enter the total amount of Wisconsin taxable income, including all separately stated income, expenses, gains, and losses, as well as guaranteed payments, that is allocable to each nonresident. For purposes of Form PW-1 withholding, this amount is computed as explained below. **Note:** If you did not subtract 60% of the pass-through entity's Wisconsin-sourced, long-term capital gains in Part 1, line 1, you may subtract 60% of each *individual* nonresident's portion of such long-term capital gains when you compute column E.

Tax-Option (S) Corporations:

The amount in column E will be the amount you entered in Part 1, line 1, multiplied by the percentage you entered in column D.

Partnerships:

Except as provided below, the amount in column E for each line will be the amount you entered in Part 1, line 1, multiplied by the percentage you entered in column D, plus the Wisconsin apportionment percentage multiplied by guaranteed payments made to the nonresident.

Exception 1: For nonresident partners who are individuals, estates, and trusts, the amount in column E will be the amount you entered in Part 1, line 1, minus income sourced outside of Wisconsin, multiplied by the percentage you entered in column D (except as described in Exception 2 below), plus the Wisconsin apportionment percentage multiplied by guaranteed payments made to the nonresident.

Exception 2: If the partnership derives income from providing personal services, the amount entered in column E for an individual partner should equal the income derived from services that the partner personally performed in Wisconsin, including guaranteed payments.

Estates and Trusts:

The amount in column E will be the amount you entered in Part 1, line 1, minus income sourced outside of Wisconsin, times the percentage you entered in column D.

Column F: Gross Withholding – Multiply the amount in column E by the appropriate withholding rate, and enter the result in column F. The online e-filing software will compute this amount automatically. The appropriate withholding rate corresponding to each tax form type (as entered in column C) is shown in the list below:

1NPR	.....	6.75%
1CNS	.....	6.75%
1CNP	.....	6.75%
2	.....	6.75%
4T (T)	.....	6.75%
3	.....	7.9%
5S	.....	7.9%
4	.....	7.9%
4T (C)	.....	7.9%

Column G: Share of Tax Credits and/or Tax Previously Withheld – This is the amount by which the withholding computed in Column F may be reduced. For the year 2005, the amount entered in this column may consist of any of three items for each nonresident:

1. Estimated payments already made by the nonresident
2. Income or franchise tax credits that pass through the entity filing Form PW-1
3. If the entity filing Form PW-1 is a member of another pass-through entity, Wisconsin tax withheld by that other pass-through entity

For each nonresident, enter the sum of the withholding credits from the above items in column G. Each of these withholding credits is explained below:

1. Credit for estimated payments already made by the nonresident:

As a transitional rule, withholding may be reduced by estimated tax payments already made by nonresident shareholders, partners, members, or beneficiaries for the taxable year beginning in 2005, if the entity maintains documentation of the estimated payments credited against withholding for all nonresident partners, members, shareholders, or beneficiaries.

If the entity filing Form PW-1 is on a calendar year, you may include in column G estimated payments made by nonresidents on their share of the pass-through income for the calendar year 2005. If the entity filing Form PW-1 is on a fiscal year, you may include in column G estimated payments made in 2005 by nonresidents on their share of the pass-through income for the entity's fiscal year beginning in 2005.

2. Income or franchise tax credits:

Enter in column G the nonresident's share of any tax credits that pass through to the nonresident, as will be reported on the nonresident's Schedule 5K-1, 3K-1, or 2K-1. If you have not yet computed these credits because you are filing Form 5S, Form 3, or Form 2 under extension, use estimates. **NOTE: Since credits cannot be claimed by nonresidents who file on a composite return (Form 1CNS or Form 1CNP), do not reduce the withholding by any tax credits allocable to these nonresidents.**

3. Credit for tax withheld by another pass-through entity:

If the entity filing Form PW-1 will have Wisconsin tax withheld on its behalf by another pass-through entity of which it is a member, enter in column G the withholding previously paid or due from that other pass-through entity on behalf of the entity filing Form PW-1. The total amount already withheld by that other entity should be claimed in column G and allocated among nonresidents in proportion to their share of Wisconsin taxable income (column E). If this credit exceeds the amount of withholding otherwise due, the nonresident claims the credit when he or she files an income or franchise tax return.

To maintain equality among Wisconsin resident and non-resident shareholders, partners, members, or beneficiaries, the pass-through entity should bill nonresidents for the excess credit amount. The example below provides an illustration:

Example:

ABC partnership is a 50% partner of DEF partnership. DEF has \$100,000 of Wisconsin taxable income. ABC has three partners, A, B, and C. A is a nonresident corporation with a 50% interest in the partnership's profits. B is a nonresident individual with a 25% interest in the partnership's profits. C is a Wisconsin resident individual with a 25% interest in the partnership's profits. Assume that these interests in the partnership profits represent each partner's share of Wisconsin taxable income in Form PW-1, Part 2, column E.

DEF must withhold \$3,950 ($\$100,000 \times 50\% \times 7.9\%$) on behalf of ABC. ABC is required to withhold \$1,975 on behalf of A ($\$50,000 \times 50\% \times 7.9\%$), \$844 on behalf of B ($\$50,000 \times 25\% \times 6.75\%$), and \$0 on behalf of C, since C is a Wisconsin resident.

When ABC files Form PW-1, it may take credit for the tax already withheld by DEF in Part 2, column G. Since the amount withheld by DEF and creditable to ABC exceeds the amount that ABC is required to withhold, ABC must allocate the excess, \$1,131 ($\$3,950 - \$1,975 - \844) in proportion to the nonresidents' shares of Wisconsin taxable income, as follows:

A's portion of excess: $(50\% / 75\%) \times \$1,131 = \754

B's portion of excess: $(25\% / 75\%) \times \$1,131 = \377

The amount entered for A on Form PW-1, Part 2, column G is $\$1,975 + \$754 = \$2,729$

The amount entered for B on Form PW-1, Part 2, column G is $\$844 + \$377 = \$1,221$

A and B will receive excess credit on their income or franchise tax returns in amounts of \$754 and \$377, respectively. ABC should bill A and B for these amounts.

Column H: Net Withholding Due – Subtract column G from column F. **If the result is negative, enter \$0.** The online e-filing software will properly compute this column automatically.

The nonresident shareholders, partners, members, or beneficiaries will receive credit for the entire amount in column G. See *How to Notify Nonresidents of the Amount Withheld* on this same page for details on how to ensure that nonresidents receive the entire amount of credit due.

Line 5: Total Withholding This Page – Add the amounts in column H on each page of Part 2.

Line 6: Additional Pages Included – Enter the number of additional pages included, if any, and the total from line 5 of each subsequent page.

Line 7: Amount Paid with Original Return - If you have already filed a Form PW-1 for the taxable year and are filing an amended Form PW-1, enter the amount of withholding you reported on Part 1, line 2, of your original Form PW-1.

Line 8: Total Income or Franchise Tax Withheld – Add lines 5 and 6, less line 7. *Do not enter a negative amount.* Enter total on Part 1, line 2. Then complete Part 1, lines 3 and 4 (see instructions on page 3).

If you needed additional pages for Part 2, complete lines 6 through 8 on the first page only.

How to Notify Nonresidents of the Amount Withheld

After you have completed Form PW-1, you must notify the pass-through entity's nonresident shareholders, partners, members, or beneficiaries of the amount you withheld on their behalf. Enter the total withholding amount on the Schedule 5K-1, 3K-1, or 2K-1 that you complete for each nonresident. On the applicable schedule, enter this amount on the line designated "Wisconsin tax withheld."

For most pass-through entities, the total amount withheld will be the amount in Part 2, column H. However, see the exception below for pass-through entities that are members of other pass-through entities.

Exception: Pass-through entities that are shareholders, partners, members, or beneficiaries of another pass-through entity must add the nonresident's share of tax withheld by that other pass-through entity to the amount in Part 2, column H. The total tax withheld on behalf of the pass-through entity is shown on the applicable Wisconsin Schedule K-1 received from that other pass-through entity. A nonresident's share of tax withheld by that other pass-through entity is determined by allocating the *total* amount of withholding from that other pass-through entity among nonresidents in proportion to their share of Wisconsin taxable income (column E). **Do not allocate any nonresident withholding to Wisconsin residents.** This is the same computation demonstrated in the example for *Credit for tax withheld by another pass-through entity*. Enter the result of this computation for each nonresident on Schedule 5K-1, 3K-1, or 2K-1 as "Wisconsin tax withheld."

Interest Computation Schedules (for Part 1, line 3)

If the pass-through entity files Form 5S, 3, or 2 under extension:

- 1. Number of days between unextended due date of Form 5S, 3, or 2 and Form PW-1 filing date or extended due date of Form 5S, 3, or 2, whichever is sooner 1. _____
- 2. Divide line 1 by 365 (round to 4 decimal places) Line 1 / 365 = 2. _____
- 3. Multiply line 2 by 12% (round to 4 decimal places) Line 2 x 12% = 3. _____
- 4. Total amount of withholding due (from Form PW-1, Part 1, line 2) 4. _____
- 5. Multiply line 4 by line 3. This is the total interest at 12%. 5. _____

If the pass-through entity files Form PW-1 after the extension date, complete lines 6-9:

- 6. Number of days between extended due date of Form 5S, 3, or 2 and Form PW-1 filing date 6. _____
- 7. Divide line 6 by 365 (round to 4 decimal places) Line 6 / 365 = 7. _____
- 8. Multiply line 7 by 18% (round to 4 decimal places) Line 7 x 18% = 8. _____
- 9. Multiply line 8 by line 4 above. This is the total interest at 18%. 9. _____

10. Interest due. Add lines 5 and 9 above. 10. _____
Enter this amount in Part 1, line 3.

If the pass-through entity does not obtain an extension to file Form 5S, 3, or 2:

- 1. Number of days between unextended due date of Form 5S, 3, or 2 and Form PW-1 filing date 1. _____
- 2. Divide line 1 by 365 (round to 4 decimal places) Line 1 / 365 = 2. _____
- 3. Multiply line 2 by 18% (round to 4 decimal places) Line 2 x 18% = 3. _____
- 4. Total amount of withholding due (from Form PW-1, Part 1, line 2) 4. _____
- 5. Multiply line 4 by line 3. This is the total interest at 18% 5. _____
Enter this amount in Part 1, line 3.