

Instructions for 2008 Form PW-1

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General Instructions for Form PW-1

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

A “nonresident” is 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.

A “pass-through entity” is 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 Form PW-1

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. However, the following pass-through entities are not required to file Form PW-1:

- A pass-through entity with no nonresident owners or beneficiaries.
- A pass-through entity for which all nonresident owners or beneficiaries are exempt from withholding because each nonresident is exempt from income and franchise taxation or has less than \$1,000 of income allocable from the entity.
- 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 partnership files Schedule 3K-1 for each nonresident partner.

Withholding Exemptions

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 (such as 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. File this written statement with 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 if the nonresident's share of income from the pass-through entity attributable to Wisconsin is less than \$1,000. 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.

Nonresident Files Affidavit to Elect Out of Withholding. Withholding is not required if the nonresident files an affidavit with the Department, in the form and manner prescribed by the Department. To be eligible for this exemption, the nonresident must file Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder or Beneficiary Withholding Exemption Affidavit*. The Department will approve the affidavit as appropriate and return Part 2 of the approved Form PW-2 to the nonresident.

To qualify for the withholding exemption, the nonresident must provide a copy of the Department-approved Form PW-2, Part 2 to the pass-through entity, and the pass-through entity must maintain a copy in its records to substantiate the withholding exemption. See the Form PW-2 instructions for further details.

Filing Deadlines and Period Covered by Return

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.

The return must cover the same period as the pass-through entity's Wisconsin income or franchise tax return. File a 2008 Form PW-1 for calendar year 2008 or for a fiscal year that begins in 2008.

Methods of Filing

You must file Form PW-1 and make the withholding payment electronically. There are three electronic filing methods available: 1) Federal/State E-Filing Program, 2) Online E-Filing, and 3) E-File (XML) Transmission. All three options allow direct debit payment with the filing of the return. All three options also allow you to make the payment separate from filing the return if you are registered for Electronic Funds Transfer (EFT). Each electronic filing method is described below.

Federal/State E-Filing Program. To file through the Federal/State E-Filing Program, you will need approved vendor software. A list of approved vendors is on the Department's web site, at www.revenue.wi.gov/eserv/corp/third.html. Using this software, you can electronically file Form PW-1 as a separate submission or together with other Wisconsin or federal returns. For more on Federal/State E-Filing, see the Department's web site, at www.revenue.wi.gov/eserv/corp/index.html.

Online E-Filing. Online E-Filing is offered by the Department at no cost. To use Online E-Filing, go to the Department's pass-through entity withholding page at www.revenue.wi.gov/eserv/pw/index.html. From this page, click the link for "Online E-Filing." A software application will then guide you through the fields of Form PW-1 that must be entered. If you are reporting the withholding

for more than 200 nonresidents, you cannot use Online E-Filing. To electronically file Form PW-1 for more than 200 nonresidents, use the Federal/State E-Filing Program or E-File (XML) Transmission.

E-File (XML) Transmission. E-File (XML) Transmission is also offered by the Department at no cost. To use E-File Transmission, go to the Department's pass-through entity withholding page at www.revenue.wi.gov/eserv/pw/index.html. From this page, click the link for "E-File Transmission." You will find a link to a Microsoft Excel template that you can use to create an XML file to submit to the Department. Follow the instructions carefully.

Electronic Filing/Electronic Payment Waiver. If electronic filing or electronic payment presents an undue hardship, the pass-through entity may request a waiver from the Department to submit a paper return. Pass-through entities with \$25,000 or less of total Wisconsin income passed through to all partners, members, shareholders, or beneficiaries (as computed in

Form PW-1, Part 1, line 1) are not required to obtain a waiver.

To receive a waiver, provide a written explanation stating why electronic filing or electronic payment presents an undue hardship. Send the waiver request to: Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949. 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.revenue.wi.gov
- Request it online at 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 Department of Revenue office

Specific Instructions for Form PW-1

Line-by-Line Instructions

At the top of page 1, enter the beginning and ending dates of the pass-through entity's taxable year. Check the space provided if you are amending a Form PW-1 that you previously filed for the taxable year you entered. Then, complete Part 1 through line 1.

Instructions for Part 1 Through Line 1

Fill in the pass-through entity's identifying information as indicated.

■ **Income or Franchise Tax Form Number** – Check the space 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 part of its unitary business activities. In this computation, include all separately stated items of income, expense, gain, and loss.

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.

Special instructions for tax-option (S) corporations: Do not include interest income taxed at

the corporate level.

Special instructions for 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 non-resident 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 sourced to Wisconsin 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 non-apportionable income sourced to Wisconsin.

After completing line 1, complete Part 2.

Instructions for Part 2

■ **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, 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	Tax Form Code
Individual not included in composite return	1NPR
Individual <i>shareholder</i> in composite return	1CNS
Individual partner in composite return	1CNP
Estate or trust – nonexempt	2
Trust – exempt	4T (T)
Partnership	3
Tax-option (S) corporation	5S
C corporation – nonexempt	4
C corporation – exempt	4T (C)

■ **Column D: Affidavit Filed** – Indicate whether the nonresident has elected out of withholding by properly filing an affidavit (Form PW-2) with the Department. *Do not check “Yes” unless you have obtained a copy of a Department-approved Form PW-2, Part 2 from the nonresident.* You must maintain the copy in your records to substantiate the withholding exemption. If you check “Yes” in column D, you do not need to complete columns E through H for that 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 each type of entity filing Form PW-1, this amount is computed as explained below. **Note:** For nonresidents who are individuals, you may subtract 60% of the nonresident’s portion of Wisconsin-sourced, long-term capital gains otherwise reportable in column E.

Column E for Tax-Option (S) Corporations. The amount in column E for each nonresident shareholder will be the amount you entered in Part 1, line 1, multiplied by the nonresident’s ownership percentage.

Column E for Partnerships. Except as provided below, the amount in column E for each nonresident partner or member will be the amount you entered in Part 1, line 1, multiplied by the nonresident’s profit/loss sharing percentage, plus any guaranteed payments made to the nonresident (after applying the Wisconsin apportionment percentage to those guaranteed payments).

Exception 1: For nonresident partners or members who are individuals, estates, and trusts, the amount in column E will be the amount you en-

tered in Part 1, line 1, times the nonresident's profit/loss sharing percentage (except as described in Exception 2 below), minus the nonresident partner's or member's share of intangible income sourced outside of Wisconsin (after applying the Wisconsin apportionment percentage to that intangible income), plus guaranteed payments made to the nonresident (after applying the Wisconsin apportionment percentage to those guaranteed payments).

Exception 2: If the stated profit/loss sharing percentage is not representative of the actual income from the partnership allocable to the nonresident partner or member (for example, if the partner's share includes IRC sec. 704(c) allocations), enter the total income from the partnership that will be included in the nonresident's income or franchise tax return.

Column E for Estates and Trusts. The amount in column E for each nonresident beneficiary will be the amount you entered in Part 1, line 1, times the nonresident's ownership percentage, minus the nonresident beneficiary's share of intangible income sourced outside of Wisconsin (after applying the Wisconsin apportionment percentage to that intangible income).

■ **Column F: Gross Withholding** – Multiply the amount in column E by the appropriate withholding rate, and enter the result in column F. The rate corresponding to each tax form type (as entered in column C) is shown in the following table:

Tax Form Code	Withholding Rate
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 G1: Share of Tax Credits** – This is the amount by which the withholding computed in column F may be reduced because of income or franchise tax credits that pass through the entity filing Form PW-1. 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.

Caution: Do not reduce the withholding by any tax credits allocable to nonresidents who file on a Form 1CNS or 1CNP. Tax credits cannot be claimed by nonresidents who file on a composite return.

You generally cannot claim carryforwards of a nonresident's unused prior year tax credits in column G. However, tax-option (S) corporations may enter carryforwards of unused manufacturer's sales tax credit, subject to the limitations described in the instructions for Schedule MS.

■ **Column G2: Tax Withheld by Lower-Tier Entities** – This credit applies to pass-through entities which are members of other pass-through entities. If an "upper-tier" pass-through entity not commercially domiciled in Wisconsin derives Wisconsin income from a "lower-tier" pass-through entity, the lower-tier entity is required to withhold on all Wisconsin income allocable to the upper-tier entity.

Both the lower-tier entity and the upper-tier entity must file Form PW-1, even if the upper-tier entity has no other Wisconsin income. However, the upper-tier entity may reduce the withholding by the amount already withheld on its behalf by the lower-tier entity. In column G2, the upper-tier entity may enter each nonresident member's share of the tax already withheld by the lower-tier entity.

■ **Column H: Net Withholding Due** – Subtract the total of columns G1 and G2 from column F.

■ **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. Enter total on Part 1, line 2. Then complete Part 1, lines 3 and 4.

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

Instructions for Remainder of Part 1

■ **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. To compute the amount of interest due, use the interest computation schedules found on page 8.

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

■ **Additional Information Required for Tiered Entities** – Fill in this portion if any amounts were entered in Part 2, column G2 for tax withheld by lower-tier entities. Enter the name and FEIN of each lower-tier entity for which an amount was entered in Part 2, column G2.

Instructions for Signatures and Information Reporting

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. If the person preparing Form PW-1 is not the taxpayer, the preparer may electronically sign the form on behalf of the taxpayer only if the preparer obtains a signed statement from the taxpayer authorizing the electronic signature.

Notifying 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 each shareholder's, partner's, member's, or beneficiary's share of the amount withheld on Schedule 5K-1, 3K-1, or 2K-1, on the line designated "Wisconsin tax withheld."

The amount to enter on Schedule 5K-1, 3K-1, or 2K-1 is the amount in Part 2, column H, plus any amount in Part 2, column G2.

For Further Assistance

Frequently Asked Questions

The Department of Revenue's web site has a link to frequently asked questions (FAQs) on a number of topics, including pass-through entity withholding. Go to www.revenue.wi.gov and click the link for "FAQs." Or, you may access it directly at www.revenue.wi.gov/faqs/index.html.

Additional Assistance

If you are unable to find the answers to your questions in these instructions or in the frequently asked questions, you may contact the Department of Revenue. For the best possible service, choose the appropriate contact carefully from the table on the next page:

For Questions Regarding	Appropriate Contacts
<ul style="list-style-type: none">• Getting started with Online E-Filing• Computation of withholding• Information to be entered into Form PW-1• Electronic payment options and waivers• Name and address changes	<ul style="list-style-type: none">• E-mail: sales10@revenue.wi.gov• Phone: (608) 261-6261• Write: Customer Service and Education Bureau, Wisconsin Department of Revenue, P.O. Box 8949, Madison, WI 53708-8949
<ul style="list-style-type: none">• Problems encountered while using Online E-Filing• Creating an XML file for E-File Transmission	<ul style="list-style-type: none">• E-mail: dorhelpd@revenue.wi.gov• Phone: (608) 266-8653

Interest Computation Schedules

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	
2 Divide line 1 by 365 (round to 4 decimal places)	
3 Multiply line 2 by 12% (round to 4 decimal places)	
4 Total amount of withholding due (from Form PW-1, Part 1, line 2)	
5 Multiply line 4 by line 3. This is the total interest at 12%.	
<i>If the pass-through entity files Form PW-1 after the extension date, complete lines 6-9:</i>	
6 Number of days between extended due date of Form 5S, 3, or 2 and Form PW-1 filing date	
7 Divide line 6 by 365 (round to 4 decimal places)	
8 Multiply line 7 by 18% (round to 4 decimal places)	
9 Multiply line 8 by line 4 above. This is the total interest at 18%.	
10 Interest due. Add lines 5 and 9 above. Enter this amount in Part 1, line 3.	

If the pass-through entity has not obtained 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	
2 Divide line 1 by 365 (round to 4 decimal places)	
3 Multiply line 2 by 18% (round to 4 decimal places)	
4 Total amount of withholding due (from Form PW-1, Part 1, line 2)	
5 Interest due. Multiply line 4 by line 3. Enter this amount in Part 1, line 3.	