

# Instructions for 2010 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 pass-through entity's withholding tax liability 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 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

For tax-option (S) corporations, the filing deadline for the Form PW-1 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 for the PW-1 is the **15th day of the 4th month** following the close of the entity's taxable year. Wisconsin statutes provides for an automatic 7 month extension to file the Form PW-1. If tax is due, interest will be assessed on the tax due during the extension period.

The return must cover the same period as the pass-through entity's Wisconsin income or franchise tax return. File a 2010 Form PW-1 for calendar year 2010 or for a fiscal year that begins in 2010.

## Methods of Filing and Payment

You must file Form PW-1 electronically. If withholding tax is due, the payment must also be made electronically. There are two options available: 1) Federal/State E-Filing Program, and 2) Wisconsin e-file.

Both options allow direct debit payment with the filing of the return. Both options also allow you to make the payment separate from filing the return if you are registered for My Tax Account. 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](http://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](http://www.revenue.wi.gov/eserv/corp/index.html).

**Wisconsin e-file.** Wisconsin e-file is offered by the Department at no cost and is available 24 hours a day, seven days a week. To use Wisconsin e-file, go to the Department's pass-through entity withholding page at

[www.revenue.wi.gov/eserv/pw/index.html](http://www.revenue.wi.gov/eserv/pw/index.html). From this page, click the link for “Wisconsin e-file.” A software application will then guide you through the fields of Form PW-1 that must be entered. **Adobe Acrobat Reader 9** is required to use Wisconsin e-file. You can download **Adobe Acrobat Reader 9** [here](#) for free. If you are reporting the withholding for more than 200 nonresidents, it is recommended you use the Federal/State E-Filing Program.

**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 and pay by non-electronic means. 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, Item B) are not required to obtain a waiver.

To receive a waiver, fill out the form [here](#) or 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, PO Box 8949, Madison, WI 53708-8949. If approved, 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](http://www.revenue.wi.gov)
- Request it online at [www.revenue.wi.gov](http://www.revenue.wi.gov)
- Call (608) 266-1961
- 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 Item B.

#### Instructions for Part 1 Through Item B

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

■ **Item A. 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

■ **Item B. 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 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 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 4A-1. To the resulting amount, add any nonapportionable income sourced to Wisconsin.

**After completing Part 1 through Item B, 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 30% of the nonresident's portion of Wisconsin-sourced, long-term capital gains otherwise reportable in column E. On farm assets held more than one year and on all farm assets acquired from a decedent, the capital gain exclusion remains at 60% of the capital gain as computed under the Internal Revenue Code, not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason.

**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, Item B, 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, Item B, 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 entered in Part 1, Item B, times the nonresident's profit/loss sharing percentage (except as described in Exception 2 below), minus the non-

resident 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, Item B, 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          | 7.75%            |
| 1CNS          | 7.75%            |
| 1CNP          | 7.75%            |
| 2             | 7.75%            |
| 4T (T)        | 7.75%            |
| 3             | 7.9%             |
| 5S            | 7.9%             |
| 4             | 7.9%             |
| 4T (C)        | 7.9%             |

■ **Column G: 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 H: Net Withholding Due** – Subtract the total of column G from column F.

■ **Line 13: Total Withholding This Page** – Add the amounts in column H on each page of Part 2.

■ **Line 14: Additional Pages Included** – Enter the number of additional pages included, if any, and the total from line 13 of each subsequent page.

■ **Line 15: Total Withholding Tax Computed** – Add lines 13 and 14. Enter total on Part 1, line 1.

If you needed additional pages for Part 2, complete line 15 on the first page only.

**Instructions for Part 1, Lines 1 Through 11**

■ **Line 1: Total Withholding Tax Computed** – Enter total withholding tax computed from Part 2, line 15.

■ **Line 2: Estimated Quarterly Withholding Tax Payments** – Enter estimated tax payments made by the pass-through entity, including My Tax Account payments, minus any "quick refund" applied for on Form 4466W, *Corporation or Pass-Through Entity Application for Quick Refund of Overpayment of Estimated Tax*.

A pass-through entity must have made estimated withholding tax payments if the total of its withholding tax for its taxable year beginning in 2010 is \$500 or more. Required installments are based on the smaller of (1) 90% of 2010 Wisconsin net tax, (2) 100% of 2009 Wisconsin net

tax, provided the 2009 return covered an entire 12-month period, or (3) 90% of the 2010 Wisconsin net tax figured by annualizing income.

■ **Line 3: Tax Withheld by Lower-Tier Entities**

– This line 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 line 3, the “upper-tier” pass-through entity enters the total amount of withholding tax already withheld on its behalf by the “lower-tier” pass-through entity.

■ **Line 4: Tax Withheld by WT-11 Filers –**

Nonresident entertainers are generally required to file a surety bond or cash deposit with the Wisconsin Department of Revenue equal to 6% of the contract price at least seven days prior to a performance in Wisconsin if the total contract price for the performance exceeds \$3,200. Use Form WT-11 to file the bond or cash deposit.

An employer is required to withhold from a nonresident entertainer’s payment if the entertainer meets this requirement but does not file a sufficient surety bond or cash deposit with the Department.

A pass-through entity may elect to allocate to its nonresident shareholders amounts it has deposited or had withheld by an employer, but only to the extent the income subject to the deposit or withholding is allocated to those shareholders. Enter the amount of withholding from Forms WT-11, line c, that you wish to allocate to nonresident shareholders.

■ **Line 5: AMENDED RETURN ONLY** – If you have already filed a Form PW-1 for the taxable year and are filing an amended Form PW-1, you must check the space provided at the top of the

form. Then, enter the amount of withholding tax paid with the original Form PW-1.

■ **Line 7: Underpayment Interest Due** – Enter underpayment interest due, if any, from Form PW-U, line 17. Check the designated space if you computed underpayment interest using the annualized income installment method on Form PW-U, Part III.

■ **Line 8: Other Interest and Penalty Due** – Enter any interest, penalty, and late fee due from Form PW-U, line 26. Interest, penalties, and fees apply if the pass-through entity files Form PW-1 later than the unextended due date of its income or franchise tax return or files after the extended due date.

A \$50 late filing fee applies for returns filed after the extension date.

■ **Line 9: Amount Due** – If the total of lines 1, 7, and 8 is greater than line 6, enter amount owed. Make your payment electronically. If the pass-through entity has obtained a waiver, as explained on page 3, **attach the check with a paper clip to the front of Form PW-1.**

■ **Line 10: Overpayment** – If line 6 is greater than the total of lines 1, 7, and 8, enter amount of overpayment.

■ **Line 11: Amount Credited to 2011 Estimated Withholding Taxes** – Enter the amount of any overpayment from line 10 that is to be credited to the pass-through entity’s 2011 estimated withholding tax. The balance of any overpayment will be refunded. An overpayment shown on a pass-through entity’s final return will be refunded to the pass-through entity that made the payments.

**Instructions for Part 1A**

■ **Additional Information Required for Tiered Entities** – Fill in this portion if any amounts were entered in Part 1, line 3, for tax withheld by lower-tier entities. Enter the name and FEIN of each lower-tier entity which you are claiming withheld the tax on your behalf.

**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.”

**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](http://www.revenue.wi.gov), click the link for “FAQs,” and click on the “Businesses” link. Or, you may access it directly at [www.revenue.wi.gov/faqs/ise/pass.html](http://www.revenue.wi.gov/faqs/ise/pass.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 below:

| For Questions Regarding  | Appropriate Contacts   |
|--|--|
| <ul style="list-style-type: none"> <li>• Getting started with Online E-Filing</li> <li>• Computation of withholding</li> <li>• Information to be entered into Form PW-1</li> <li>• Electronic payment options and waivers</li> <li>• Name and address changes</li> </ul> | <ul style="list-style-type: none"> <li>• E-mail: <a href="mailto:sales10@revenue.wi.gov">sales10@revenue.wi.gov</a></li> <li>• Phone: (608) 261-6261<br/>(Telephone help is also available using TTY equipment. Call the Wisconsin Telecommunications Relay System at 711 or, if no answer, (800) 947-3529. These numbers are to be used only when calling with TTY equipment.)</li> <li>• Write: Customer Service and Education Bureau, Wisconsin Department of Revenue, PO Box 8949, Madison, WI 53708-8949</li> </ul> |
| <ul style="list-style-type: none"> <li>• Problems encountered while using Online E-Filing</li> <li>• Creating an XML file for E-File Transmission</li> </ul>   | <ul style="list-style-type: none"> <li>• E-mail: <a href="mailto:dorhelpd@revenue.wi.gov">dorhelpd@revenue.wi.gov</a></li> <li>• Phone: (608) 266-8653</li> </ul>  |