Instructions for 2010 Form 4A-1: Wisconsin Apportionment Data for Single Factor Formulas

Purpose of Form 4A-1

Corporations, partnerships, tax-option (S) corporations and nonresident estates, trusts, and individuals that are engaged in a unitary business both in and outside Wisconsin generally use Form 4A-1 to compute the factors that will determine their Wisconsin share of income from the unitary business.

However, taxpayers in certain specialized industries cannot use Form 4A-1 because the Wisconsin Administrative Code requires them to apportion their income using more than one factor. These taxpayers must use Form 4A-2, *Wisconsin Apportionment Data for Multiple Factor Formulas*. Taxpayers that use Form 4A-2 include direct air carriers, motor carriers, railroads and sleeping car companies, pipeline companies, and telecommunications companies.

Taxpayers that use separate accounting also cannot use Form 4A-1. See the instructions for Form 4C for more information on separate accounting.

A taxpayer must complete only the part of Form 4A-1 that applies to them. The parts are as follows:

Part I. Sales Factor – This part is for taxpayers required to use the general single sales factor formula.

Part II. Receipts Factor – This part is for financial institutions required to use the receipts factor under s. Tax 2.49, Wisconsin Administrative Code.

Part III. Receipts Factor – This part is for other financial organizations required to use the receipts factor under s. Tax 2.495, Wisconsin Administrative Code.

Part IV. Premiums Factor – This part is for insurance companies required to use the premiums factor.

Special Instructions for Combined Groups

Each corporation in a combined group must complete Form 4A-1, if applicable, to report the apportionment data for its own activities. The combined group then carries forward the amounts from each member's Form 4A-1 (or Form 4A-2, if applicable) to Form 4A, *Wisconsin Apportionment Data for Combined Groups*, to determine the combined group's Wisconsin share of combined unitary income.

However, as a substitute for preparing multiple Forms 4A-1, a combined group may choose to prepare a columnar spreadsheet with the rows representing the appropriate lines of Form 4A-1 and each column representing a company in the combined group.

Specific Instructions for Each Part

These instructions are presented in the order the parts appear on Form 4A-1:

Part I: Sales Factor

For all of the amounts in Part I, only include amounts that are includable in the sales factor. Also, for lines 2b, c, and 3, you will need to compute the amount of throwback sales. The next two sections explain the sales factor and throwback sales. The line-by-line instructions for Part I follow the explanation of throwback sales.

Sales Factor in General

Items Includable in Sales Factor. For purposes of the sales factor, sales include, but aren't limited to, the following items related to the production of apportionable income:

- Gross receipts from the sale of inventory.
- Gross receipts from the operation of farms, mines, and quarries.
- Gross receipts from the sale of scrap or by-products.
- Gross commissions.
- Gross receipts from personal and other services.
- Gross rents from real property or tangible personal property.
- Interest on trade accounts and trade notes receivable.
- A member's share of a limited liability company's gross receipts or a partner's share of a partnership's gross receipts.
- Gross management fees.
- Gross royalties from income producing activities.

- Gross franchise fees from income producing activities.

"Gross receipts" means gross sales less returns and allowances, plus service charges, freight, carrying charges, or time-price differential charges incidental to the sales. Federal and state excise taxes, including sales and use taxes, are included as part of the receipts if the taxes are passed on to the buyer or included as part of the selling price.

Items Not Includable in Sales Factor. Do not include any of the following items in the sales factor:

- Gross receipts and gain or loss from the sale of tangible business assets, except receipts from the sale of inventory, scrap, or by-products or from the operation of a farm, mine, or quarry.
- Gross receipts and gain or loss from the sale of nonbusiness real or tangible personal property.
- Gross rents and rental income or loss from real property or tangible personal property if that real property or tangible personal property isn't used in the production of business income.
- Royalties from nonbusiness real property or nonbusiness tangible personal property.
- Proceeds and gain or loss from the redemption of securities.
- Interest, except interest on trade accounts and trade notes receivable, and dividends.
- Gross receipts and gain or loss from the sale of intangible assets, except inventory.
- Dividends deductible in determining net income.
- Gross receipts and gain or loss from the sale of securities.
- Proceeds and gain or loss from the sale of receivables.
- Refunds, rebates, and recoveries of amounts previously expended or deducted.
- Foreign exchange gain or loss.
- Royalties and income from passive investments in patents, copyrights, trademarks, trade names, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, and technical know-how.
- Pari-mutuel wager winnings and purses.
- Other items not includable in apportionable income.

Throwback Sales

A "throwback sale" is a taxpayer's sale of tangible personal property destined for a state where the taxpayer has no nexus. If a sale is a throwback sale, it is included in the numerator of the sales factor as a Wisconsin sale.

For purposes of determining throwback sales, a "state" is any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any United States territory or possession. A foreign country isn't a "state."

Nexus in General. To determine if a taxpayer has nexus in another state for purposes of computing throwback sales, you would generally use the same rules that are used to determine if a similarly situated taxpayer would be subject to Wisconsin franchise or income tax if it made the sale to Wisconsin from another state. However, if the Wisconsin Statutes provide a specific exemption from nexus, such as in sec. 71.23(3), Wis. Stats., do not apply that Wisconsin statutory exemption when you determine if there is nexus in the destination state.

A taxpayer engaged in the business of selling tangible personal property does not have nexus in any state where it is protected from taxation under federal Public Law 86-272 (P.L. 86-272). See s. Tax 2.82, Wisconsin Administrative Code, for more details of P.L. 86-272 and a description of what constitutes nexus for Wisconsin franchise or income tax purposes. Also see s. Tax 2.39(6)(b), Wisconsin Administrative Code, for more information about the relationship between nexus and throwback sales.

Nexus and Throwback Sales for Combined Groups. In a combined group, nexus is determined for the unitary business as a whole. Therefore, a combined group member's sales destined outside Wisconsin cannot be "thrown back" to Wisconsin if **any** member of the combined group has nexus relating to the unitary business in the destination state. The example below illustrates:

Example:

Corporation B has an office and inventory in Wisconsin, but when considered as a separate entity, it does not have any property or nexus-creating activity outside Wisconsin. However, Corporation B is in Combined Group BC, which consists of Corporations B and C. Corporation C has an office and retail store in Illinois, which are part of the same unitary business as B's Wisconsin office and inventory.

Assume that B sells a widget to a customer located in Illinois and ships it by common carrier to the customer's Illinois address. Corporation B should not include that sale in its sales factor numerator as a throwback sale. Since C has nexus in Illinois that relates to Combined Group BC's unitary business, B is also deemed to have nexus in Illinois.

See ss. Tax 2.61(7), and 2.82(5), Wisconsin Administrative Code, for further details of how nexus and throwback sales are determined for combined groups.

Line-by-Line Instructions for Part I

■ **Lines 1a and 1b. Tangible Personal Property Destined for Wisconsin –** Enter the amounts of Wisconsin destination sales. Gross receipts from the sales of tangible personal property, except sales to the federal government, are Wisconsin sales if the property is delivered or shipped to a purchaser in Wisconsin.

Wisconsin sales include sales of tangible personal property that are picked up by the purchaser, or the purchaser's agent, at the seller's out-of-state business location and immediately transported to the purchaser's Wisconsin business location.

Wisconsin sales do not generally include sales of tangible personal property picked up by the purchaser, or the purchaser's agent, at the seller's Wisconsin business location if the property is immediately transported to the purchaser's out-of-state business location. However, if the seller doesn't have nexus with the state where the purchaser's business is located, the sales are "thrown back" to Wisconsin.

■ **Line 2a. Sales to Federal Government in Wisconsin –** Enter the amount of sales of tangible personal property delivered to the federal government, including its agencies and instrumentalities, in Wisconsin if the property is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin. Sales to federal government locations in Wisconsin, which are shipped from an office, store, warehouse, factory, or other place of storage outside Wisconsin, aren't Wisconsin sales.

■ **Line 2b. Throwback Sales to Federal Government –** Enter the amount of sales of tangible personal property delivered to the federal government, including its agencies and instrumentalities, outside Wisconsin if the property is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin and the seller doesn't have nexus in the destination state.

■ **Line 2c. Throwback Sales –** Enter the amount of sales, other than sales to the federal government, that are "thrown back" to Wisconsin. These are sales of tangible personal property shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin to a state in which the seller doesn't have nexus.

■ **Line 3. Double Throwback Sales –** Enter the amount of "double throwback" sales. These are sales of tangible personal property, other than sales to the federal government, which were made by an office in Wisconsin but not shipped or delivered from Wisconsin, **if** the taxpayer doesn't have nexus in either the destination state or the state from which the property is shipped or delivered.

■ **Line 5. Receipts from Use of Computer Software –** Enter the amount of gross receipts from the use of computer software that the purchaser or licensee uses at a location in Wisconsin. Computer software is used in Wisconsin if the purchaser or licensee uses the software in the regular course of business operations in Wisconsin, for personal use in Wisconsin, or if the purchaser or licensee is an individual whose domicile is in Wisconsin.

If the purchaser or licensee uses the computer software in more than one state, the gross receipts are divided among those states having jurisdiction to impose an income tax on the taxpayer in proportion to the use of the computer software in those states. To determine computer software use in Wisconsin, the Department may consider the number of users in each state where the software is used, the number of site licenses or workstations in Wisconsin, and any other factors that reflect the use of computer software in Wisconsin.

■ **Line 7. Receipts from Services –** Enter the amount of gross receipts from services if the purchaser of the service received the benefit of the service in Wisconsin. The benefit of the service is received in Wisconsin if any of the following applies:

- The service relates to real property that is located in Wisconsin.
- The service relates to tangible personal property that is located in Wisconsin at the time that the service is received or tangible personal property that is delivered directly or indirectly to customers in Wisconsin.
- The service is provided to an individual who is physically present in Wisconsin at the time that the service is received.
- The service is provided to a person engaged in a trade or business in Wisconsin and relates to that person's business in Wisconsin.

If the purchaser of a service receives the benefit of the service in more than one state, the gross receipts from the service are included in the numerator of the sales factor according to the portion of the service received in Wisconsin.

■ **Line 9. Other Apportionable Gross Receipts –** For both Wisconsin and the total company, enter the amount of other gross receipts of apportionable income that are includable in the sales factor. These gross receipts may include:

- Leases, rentals, or licensing of tangible personal property, including moving property.
- Sales, leases, rentals, or licensing of real property.
- Sales of intangible property.
- Royalties, licensing or allowing the use of intangible property.

In general, these gross receipts are in Wisconsin in proportion to the purchaser's use of or benefit from the property in Wisconsin. See s. Tax 2.39(6)(c), (d), (h), and (i), Wisconsin Administrative Code, for further details on how to determine the amount of these other apportionable gross receipts in Wisconsin.

■ **Line 11. Intercompany Sales** *(Combined Group Members Only)* **–** Any sales made between members of the same combined group ("intercompany sales"), either directly or through interests in a pass-through entity, must be excluded from the amounts you entered on lines 1 through 9.

Report the excluded amount of intercompany sales on line 11. If you already excluded these intercompany sales from the amounts you entered on lines 1 through 9, do not enter any amounts on line 11.

Following are additional details about intercompany transactions that involve pass-through entities. For additional information, refer to s. Tax 2.61(7)(e), Wisconsin Administrative Code.

Sales to Pass-Through Entities Owned by Combined Group Members. If a combined group member makes a sale to a pass-through entity which is more than 50 percent owned, directly or indirectly, by members of the combined group, the member must eliminate an amount equal to the gross receipts of the sale multiplied by the sum of all combined group members' interests in the pass-through entity as of the date of the sale. The examples below illustrate:

Example 1: Combined Group LM consists of Member L and Member M. L owns a 40% interest in Partnership P. M owns a 60% interest in Partnership P. On March 1, 2010, L sells a widget to Partnership P for $10,000, and this sale is includable in Group LM's combined unitary income. In its computation of apportionment factors for 2010, L must subtract an amount of $10,000 (= $10,000 x (40% + 60%)) from its sales factor denominator and, if applicable, from its numerator.

Example 2: Assume the same facts as Example 1, except that Member L owns a 25% interest and M owns a 50% interest in Partnership P. In its computation of apportionment factors for 2010, L must subtract an amount of $7,500 (= $10,000 x (25% + 50%)) from its sales factor denominator and, if applicable, from its numerator.

Sales by Pass-Through Entities Owned by Combined Group Members. If a pass-through entity makes a sale to a combined group member and more than 50 percent of the pass-through entity is directly or indirectly owned by members of the combined group, each member with an interest in the pass-through entity must subtract from its sales factor numerator and denominator any amount that would otherwise be included attributable to the sale. The example below illustrates:

Example: Combined Group ST consists of Member S and Member T. S owns a 20% interest in Partnership R. T owns an 80% interest in Partnership R. On October 1, 2010, Partnership R sells a widget to S for $20,000, and this sale is includable in Group ST's combined unitary income. In its computation of apportionment factors for 2010, S must subtract an amount of $4,000 (= $20,000 x 20%) from its sales factor denominator and, if applicable, from its numerator. Similarly, T must subtract an amount of $16,000 (= $20,000 x 80%) from its sales factor denominator and, if applicable, from its numerator.

■ **Line 12. Sales Excluded from Combined Unitary Income** *(Combined Group Members Only)* – If you reported an amount on Form 4, line 6 for separately apportioned income, you must exclude the sales attributable to that amount from the numerator and denominator of the sales factor, as applicable. Report the excluded amount of these sales on line 12. However, if you already excluded these sales from the amounts you entered on lines 1 through 9, do not enter any amounts on line 12.

See the instructions to Form 4N, *Wisconsin Nonapportionable and Separately Apportioned Income*, for further details on how to report and apportion separately apportioned income.

■ **Line 15. Sales Previously Deferred** *(Combined Group Members Only)* **–**

If a combined group member made a sale to another member of the combined group in a prior taxable year and gain or loss on the transaction was deferred under the provisions of sec. 71.255(4)(g), Wis. Stats., the selling member must include the gross receipts from the sale in its sales factor in the year the gain or loss is recognized, to the extent those gross receipts are otherwise includable in the sales factor.

NOTE: Section 71.255(4)(g), Wis. Stats., provides that the intercompany deferral provisions of Treas. Reg. §1.1502-13 apply to a combined group similarly to how they apply to a consolidated group for federal purposes. See the instructions to line 17 of Form 4R, *Federal Taxable Income Reconciliation for Wisconsin Combined Groups*, for details.

Report the gross receipts corresponding to any income recognized under sec. 71.255(4)(g), Wis. Stats., on line 15. If you already included these receipts in the amounts you entered on lines 1 through 9, do not enter any amounts on line 15.

Under s. Tax 2.61(7)(d), Wisconsin Administrative Code, special sourcing rules apply to amounts reported on line 15. If a combined group member sells an item or service to another combined group member and the purchaser subsequently resells it to a third party outside of the group, the situs of both sales is determined based on the situs of the sale from the purchasing member to the third party. Also, the purchasing member must exclude from its apportionment factors the amount the selling member already included attributable to that same item or service. The example below illustrates:

Example:

Combined Group YZ consists of Member Y and Member Z. Group YZ is on a calendar year. On December 30, 2009, Y sells a widget with a cost of $400 to Z, for $600. Y ships the widget to Z's warehouse in Wisconsin. On January 30, 2010, Z resells the widget to Q, an unrelated third party, for $700. Z ships the widget to Q's headquarters in Illinois. Assume both the sale by Y and the sale by Z are includable in combined unitary income, and assume that Z has nexus in Illinois.

In 2009, Y did not recognize any gain on the sale to Z because the gain was deferred under the provisions of sec. 71.255(4)(g), Wis. Stats. Since the gain on the sale was not recognized, Y cannot include the $600 sale in its apportionment factors for 2009.

In 2010, Y must include its $200 of gain on the sale to Z (= $600 - $400) in combined unitary income. Y must also include the sale amount of $600 in its sales factor denominator for 2010. Z must include its $100 gain on the sale to Q (= $700 - $600) in combined unitary income for 2010. However, since $600 of Z's sales price has already been included in Y's sales factor, Z may only include the remaining $100 of the sale amount in its sales factor denominator. Neither Y nor Z include these amounts in their sales factor numerators since both sales are deemed to have a situs in Illinois where Group YZ has nexus.

■ **Line 17. Apportionment Percentage** *(Separate Filers Only)* **–** Divide line 10, column a, by line 10, column b, and multiply that amount by 100. ***Fill all spaces to the right of the decimal point.*** Round to the nearest ten-thousandth of a percent (for example, 12.3456%). See the instructions of the tax form you are filing (Form 1NPR, 2, 3, 3S, 4, 4T, or 5S) for how to report and use this percentage.

Parts II and III: Receipts Factor

Receipts Factor in General

Financial institutions required to use apportionment must use the receipts factor prescribed in s. Tax 2.49, Wisconsin Administrative Code. Brokers-dealers, investment advisers, investment companies, and underwriters required to use apportionment must use the receipts factor prescribed in s. Tax 2.495, Wisconsin Administrative Code.

Under both ss. Tax 2.49 and 2.495, interest, dividends, gross receipts or net gains from sales of securities held for investment purposes, and other income from investment assets, may not be included in the receipts factor.

Instructions for Part II

Lines 1 through 30 of Part II list, in order, the items includable in the receipts factor under s. Tax 2.49, Wisconsin Administrative Code. For each line, refer to s. Tax 2.49 for an explanation of what must be included on each line and how to determine the Wisconsin amount.

Report throwback sales on line 30. For an explanation of throwback sales and how they apply to members of a combined group, see the section *Throwback Sales*, which is presented before the line-by-line instructions for Part I.

Lines 32 through 37 are for combined group members only. For lines 32, 33, and 36, the instructions are the same as for lines 11, 12, and 15 of Part I, except that where the Part I instructions refer to lines 1 through 9, the applicable lines for Part II are lines 1 through 30.

Instructions for Part III

Lines 1 through 8 of Part III list, in order, the items includable in the receipts factor under s. Tax 2.495, Wisconsin Administrative Code. Refer to s. Tax 2.495 for an explanation of what must be included on each line and how to determine the Wisconsin amount.

Report throwback sales on line 8. For an explanation of throwback sales and how they apply to members of a combined group, see the section *Throwback Sales*, which is presented before the line-by-line instructions for Part I.

Lines 10 through 15 are for combined group members only. For lines 10, 11, and 14, the instructions are the same as for lines 11, 12, and 15 of Part I, except that where the Part I instructions refer to lines 1 through 9, the applicable lines for Part III are lines 1 through 8.

Part IV: Premiums Factor

■ **Line 1. Direct Premiums –** In column a, enter the direct premiums written on all property and risks other than life insurance, where the subject of insurance was resident, located, or to be performed in Wisconsin. In column b, enter the total direct premiums on all property and risks other than life insurance, wherever located during the taxable year.

■ **Line 2. Assumed Premiums –** In column a, enter the assumed premiums from domestic insurance companies written for reinsurance on property and risks other than life insurance, where the subject of insurance was resident, located, or to be performed in Wisconsin. In column b, enter the assumed premiums from domestic insurance companies written for reinsurance on property and risks other than life insurance, wherever located during the taxable year.

■ **Lines 4 through 7. Adjustments for Combined Group Members Only –** For lines 4 and 5, the instructions are the same as for lines 11 and 12 of Part I, except that where the Part I instructions refer to lines 1 through 9, the applicable lines for Part IV are lines 1 and 2.

Additional Information and Assistance

Web Resources. The Department of Revenue has a web page dedicated to combined reporting issues, including:

- Frequently asked questions
- Training materials
- Links to Administrative Code sections that relate to combined reporting
- Articles

Access the combined reporting web page at: http://www.revenue.wi.gov/combrept/index.html

For questions that do not relate to combined reporting, the web page also has a library of frequently asked questions on general business tax topics, available at:http://www.revenue.wi.gov/faqs/index.html

Contact Information. If you cannot find the answer to your question in the resources available on the Department of Revenue's web page, contact the Department using any of the following methods:

- E-mail your question to corp@revenue.wi.gov
- Call (608) 266-2772
  (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.)
- Send a fax to (608) 267-0834
- Write to the Audit Bureau, Wisconsin Department of Revenue, Mail Stop 5-144, PO Box 8906, Madison, WI 53708-8906