

WISCONSIN TAX UPDATE

**Presented by
WISCONSIN DEPARTMENT OF REVENUE
Fall 2019**

This presentation is an informal explanation and is not a guidance document as defined in sec. 227.01(3m)(a), Wis. Stats.

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Topics

- Income/franchise tax law changes, updates, and reminders
 - Individual income tax
 - Pass-through entities
 - Corporations
 - Withholding
 - Sales and use tax
 - Vapor products tax
- Power of Attorney form redesign
- Guidance document requirements
- Filing tips, updates, and reminders
- Performance metrics

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Income/Franchise

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Law Changes – Income/Franchise

- **Business Moving Expenses – 2019 WI Act 7**
 - Effective for 2019
 - Amount paid to move Wisconsin business out of Wisconsin, in whole or in part, added back to income
 - Disallowed business moving expenses include:
 - Vehicle rentals
 - Storage rentals
 - Moving company expenses
 - Employee wages
 - Meals, lodging, and fuel, including employee reimbursements
 - Mileage

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Law Changes – Income/Franchise

- **Disallowed business moving expenses cont'd:**
 - Lease cancellation fees
 - Loss on sale of property
 - Brokerage commissions or fees
 - Consulting fees and surveys
 - Architecture, design, and remodeling expenses
 - Legal services
 - Utility fees

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Law Changes – Income/Franchise

- **Individual Income Tax Rate Decrease – 2019 WI Act 9**
 - Effective for 2019
 - Second tax bracket rate decrease from 5.84% to 5.21%
 - Single, HOH, and Fiduciaries
 - Taxable income - \$7,501-\$15,000
 - MFJ
 - Taxable income - \$10,001-\$20,000
 - MFS
 - Taxable income - \$5,001-\$10,000

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Law Changes – Income/Franchise

• Additional Individual Income Tax Rate Decrease – 2019 WI Act 10

- Rate reductions to first and second tax brackets
- Two rate reductions: 2019 and 2020. Rate in effect in 2020 will continue thereafter.
- Rate reductions based on additional estimated sales and use tax revenue from out-of-state retailers and marketplace providers as a result of U.S. Supreme Court decision in *South Dakota v. Wayfair Inc.* and 2019 WI Act 10

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Law Changes – Income/Franchise

• Additional Income Tax Rate Decrease (cont.)

- Department determines rate reduction no later than October 20 of 2019 and 2020
- Review by Legislative Audit Bureau by November 10 of 2019 and 2020
- No change to withholding tables

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Law Changes – Income/Franchise

• Tax-Exempt Bonds – 2019 WI Act 9

- Wisconsin Health and Education Facilities Authority
- Interest on bonds and notes issued for \$35 million or less

• WI Alternative Minimum Tax

- No longer applies for 2019 and later years (2017 WI Act 59)
- Multiple line changes to Form 1 and 1NPR to remove references

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IRC Reminder - Depreciation/Amortization

- Wisconsin computes depreciation and amortization using IRC in effect on January 1, 2014 (with certain exceptions)
- Wisconsin has not adopted federal bonus depreciation provisions

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IRC Reminder - Section 179 Expense

• Wisconsin follows federal changes to Section 179 expensing

- Section 179 expense limitation
 - Increased in 2018 from \$500,000 to \$1,000,000
- Expense limit phase-out
 - Increased in 2018 from \$2 million to \$2.5 million

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IRC Reminder - FTCJA Provisions Not Adopted

- Business interest expense limitation
- Changes to meals and entertainment expense limitation
- Net operating loss deduction limited to 80% of taxable income
- 20% deduction for domestic qualified business income for noncorporate taxpayers
- Limitation on business losses for noncorporate taxpayers

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Staudenmaier – Limitation on Itemized Deductions

- *L. William Staudenmaier v. Wisconsin Department of Revenue*, WTAC No. 17-I-022 (issued January 22, 2019)
- Charitable contributions limited by department (IRC section 68)
- Taxpayer argument
 - No limitation due to Colton case
 - Computation of FAGI
 - US government interest income
 - Social security income
 - State tax refunds

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Staudenmaier – Limitation on Itemized Deductions

- Commission decision
 - WI definition of "federal internal revenue code" includes IRC section 68 limitation
 - Taxpayer subject to federal limitation
 - WTAC upheld department's assessment
 - Taxpayer did not appeal the decision

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Lawton – Research Credit Carry-Forward

- *The C. A. Lawton Co. vs. Wisconsin Department of Revenue*, WTAC No. 17-I-234 (issued February 1, 2019)
- Issue
 - When must the WI research credit be computed and reported to the department for any unused amount to be carried forward?
- DOR's Position
 - In order for a research credit to be carried forward, the underlying "claim therefor" must be filed within 4 years of the unextended due date of the tax return for the tax year in which the qualified research expense is incurred.
- WTAC - partial summary judgement – not concluded

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Example – DOR Position

- A corporation incurred research expenses during calendar year 2010 and qualified for a WI research credit.
- The unextended due date for the 2010 WI Form 4 is March 15, 2011.
- The corporation must have filed its 2010 Form 4 and reported the WI research credit by March 15, 2015 in order for any unused credit to be carried forward.

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Deere & Co. – Dividends Received Deduction

- *Deere & Company v. Department of Revenue*, WTAC No. 18-I-135, (issued August 21, 2019)
- Taxpayer owned interest in foreign limited partnership
- Taxpayer elected to treat LP as a corporation for federal income tax purposes
- Taxpayer received distributions from LP and claimed dividends received deduction for federal and WI
- WTAC upheld taxpayer's deduction
- DOR appealed the decision

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Section Tax 2.82 – Nexus Rule

- "Usual or frequent" replaced with "regular"
- "Regular and regularly" defined as 15 or more days of activity
- Calculation: 1 person for 15 days or 15 persons for 1 day, or any combination thereof
- Clarification that owning tangible property in Wisconsin creates nexus
- Effective date: TBD

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Homestead Credit Disability Qualification

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Homestead Credit Disability Qualification

- Beginning with the 2017 tax year, a claimant, or in some cases the claimant's spouse, must meet one of the following qualifications to claim the homestead credit:
 - Must be 62 or older by the end of the claim year
 - Must be disabled
 - Must have earned income

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Homestead Credit Disability Qualification

• Disability qualification

- "Disabled" means an individual who is unable to engage in any substantial gainful employment by reason of a medically determinable physical or mental impairment which has lasted or is reasonably expected to last for a continuous period of not less than 12 months.
 - Similar definition to that used for Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) qualifications.

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Homestead Credit Disability Qualification

• Disability qualification (cont.)

- If the claimant is not disabled, but married to a disabled spouse, the spouse must be part of the household
- Proof of disability is required each year and must be sent in with Schedule H or H-EZ (submit Form W-RA, if electronically filed)

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Homestead Credit Disability Qualification

• Disability qualification (cont.)

- The Schedule H instructions list the acceptable forms of proof
 - Document from Social Security Administration
 - Showing date SSA disability benefit began
 - Statement from the Veteran's Administration
 - Showing claimant receiving VA benefit due to 100% disability
 - Statement from physician
 - Stating date disability began
 - Stating whether disability is temporary or permanent

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Veterans and Surviving Spouses Property Tax Credit

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Veterans and Surviving Spouses Property Tax Credit

- **Property taxes**

- Based on when property taxes are paid to municipality, not when accrued
- Payments for mobile home taxes are based on when paid to municipality
- Department may verify via county website for date of payment to municipality

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Veterans and Surviving Spouses Property Tax Credit

- **Property taxes**

- Various credits provide for different treatment

	Property Taxes Paid	Property Taxes Accrued
Tax Credit		
School Property Tax Credit	X	
Homestead Credit (Schedule H)		X
Veterans and Surviving Spouses Property Tax Credit	X	
Farmland Preservation Credit (Schedule FC)		X

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Individuals and Fiduciaries 2019 Form Changes

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Form 1 & 1NPR

- Updated federal line references
- Added reference to the new federal Form 1040-SR
- Alternative Minimum Tax (AMT) lines removed; no longer applies
- Consolidated nonrefundable credits on one line

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Form 1 & 1NPR

- Added code 23 for business moving expense addback on line 4
- Added 2 new codes for lines 4 & 11 for the pass-through entity level taxation items
 - Code 57 is for tax-option (S) corporations
 - Code 58 is for partnerships

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Schedule M (Form 1NPR) - *Additions to and Subtractions from Income*

- Line 1 removed; referenced federal AGI
- Additions are totaled and reported on Form 1NPR, line 15
- Subtractions are totaled and reported on Form 1NPR, line 29, column B

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Schedule CR, *Other Credits*

- Removed lines / references related to AMT
- Removed super research and development credit carryforward line
- Removed reference to Schedule TC, *Wisconsin Technology Zone Credit*
- Added total lines for column A

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Form 2, *Fiduciary Return*

- Description changes
 - "Number of Beneficiaries" is now "Schedules 2-K1 issued"
 - "Number of Nonresident Beneficiaries" is now "Schedules 2-K1 issued to nonresidents"
- Added a check box for when lower-tier, pass-through entities make an election to pay tax

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Form 2, *Fiduciary Return*

- Line 6 expanded
 - Line 6a: tax on income from line 5
 - Line 6b: ESBT tax from line 21 of Schedule ESBT
 - Line 6c: gross tax
- Removed lines for changes to Schedule CR and AMT

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New Schedule ESBT

- Computation of Wisconsin Taxable Income for Electing Small Business Trusts
- Instructions for computations were previously in Form 2 instructions; developed schedule to make computations and reporting clearer

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Schedule ESBT

Schedule ESBT		Computation of Wisconsin Taxable Income For Electing Small Business Trusts		2019
Wisconsin Department of Revenue Notice of Form		Enclose with your Wisconsin Form 2		Send to Federal (104)
Part I Computation of Wisconsin ESBT Income		(a) Federal ESBT Amount	(b) Wisconsin ESBT Amount	(c) Non-Wisconsin ESBT Amount
1. Interest income.....	1		1	
2. Dividends.....	2		2	
3. Business income or (loss).....	3		3	
4. Capital gain or (loss) (From Schedule 210).....	4		4	
5. Rents, royalties, partnerships, estates and trusts, etc.	5		5	
6. Farm income or (loss).....	6		6	
7. Ordinary gain or (loss) (From 4787).....	7		7	
8. Other income (attach schedule).....	8		8	
9. Total income (add lines 1 through 8).....	9		9	

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Pass-Through Entity Level Tax (ELT) Election

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What is the ELT election?

- It allows a tax-option (S) corporation or partnership to pay tax on items that would otherwise be reported by the owner(s)
- Tax-option (S) corporations
 - Taxable years beginning on or after January 1, 2018
 - Must have consent from shareholders who hold an aggregate of more than 50% of the shares on the day of election
- Partnerships
 - Taxable years beginning on or after January 1, 2019
 - Must have consent from partners who hold an aggregate of more than 50% of the capital and profits on the day of election

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What is the purpose of the election?

- To provide a federal tax benefit
 - The Federal Tax Cuts and Jobs Act limits how much an individual can deduct for state and local taxes (SALT)
 - Practitioners and taxpayers are taking a position that these taxes are deductible as business expenses if paid by an entity, and therefore are not subject to the limitation for individuals
- The State of Wisconsin does **NOT** determine if SALT paid by a pass-through entity are allowed as a deduction on the entity's federal return

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When must the election be made?

- The election must be made each year by the extended due date of the entity's franchise or income tax return (Form 5S or Form 3)
- If an entity wants to revoke an election, the revocation must be made by the extended due date of the Form 5S or Form 3

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How does an electing entity determine if income is taxable to WI?

- It is the intent of the law that electing entities shall pay tax on items that would otherwise be taxed if the election was not made
- Determine the situs of income as if election was not made

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How are capital gains and losses treated?

- Long-term capital gain exclusion (30%/60% for farmers in WI)
 - Allowed for partnerships
 - Not allowed for tax-option (S) corporations
- Net capital loss – deduction limitations
 - Partnerships are limited to \$500
 - Tax-option (S) corporations are limited to \$3,000

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Credit for Taxes Paid to Other States

- Other state taxes paid by an electing entity are available as a TPOS credit only against the entity's WI taxes due
- The owners may not use taxes paid by the electing entity to compute a credit for TPOS
- Therefore, an electing entity should not report a credit for TPOS on the owners' Schedules 5K-1 or 3K-1

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Pass-Through Withholding

- An electing entity is exempt from withholding tax on income that is otherwise reportable by nonresident owners
 - Entity can request to have pass-through withholding payments applied to its entity-level tax, or
 - Request a refund of overpayments by filing a Form PW-1 reflecting \$0 withholding tax due
- The total withholding entered on Schedules 5K-1 and 3K-1 must equal the withholding tax on Form PW-1

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Pass-Through Entity 2019 Form Changes

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Form 3, Partnership Return

- Added check box for partnership to make entity-level tax election
- Added check box to indicate when lower-tier entities make an election to pay tax
- Also added check boxes to Schedule 3K-1

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Form 3, Partnership Return

- Added lines 1-11 on page 1 to reflect tax, payments, interest, penalties, amount due, etc.
- Line 1 is entity-level tax computed on Schedule 3-ET; this new schedule is very similar to Schedule 5S-ET
- Line 11 allows overpayment to be applied to 2020

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Form 3

- ☐ If the partnership is the sole owner of any disregarded entities. Prepare and submit Schedule DE with this return.
☐ If the partnership is electing to pay tax at the entity level pursuant to s. 71.21(5)(a), Wis. Stats.
☐ If a lower-tier entity made an election to pay tax at the entity level pursuant to s. 71.21(5)(a), Wis. Stats., (see instructions)

Part 1 ENTER NEGATIVE NUMBERS LIKE THIS → -1000 NOT LIKE THIS → (1000) NO COMMAS; NO CENTS

1	Partnership entity-level tax (Schedule 3-ET, line 21)	1	
2	Amended Return Only – amount previously refunded	2	
3	Interest, penalty, and late fee due (see instructions)	3	
4	Add lines 1 through 3	4	
5	Wisconsin tax withheld	5	
6	Estimated tax payments less refund from Form 4466W	6	
7	Amended Return Only – amount previously paid	7	
8	Add lines 5 through 7	8	
9	Amount due. If line 4 is larger than line 8, enter amount owed	9	
10	Overpayment. If line 8 is larger than line 4, enter amount overpaid	10	
11	Enter amount of line 10 you want credited to 2020 estimated tax	11	

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Schedule 3-ET

Schedule 3-ET		Entity-Level Tax Computation		2019	
Wisconsin Department of Revenue		File with Wisconsin Form 3		Identifying Number	
Name				Withholding Number	
ENTER NEGATIVE NUMBERS LIKE THIS: -1000 NOT LIKE THIS: (1000)		NO COMMAS; NO CENTS			
Distributive Share Items		(i) Residents	(ii) Nonresidents	(iii) Entity-Level Adjustments	(iv) Total (columns b+c+d)
Income:					
1	Ordinary business income (less)	1			1
2	Net rental real estate income (less)	2			2
3	Other net rental income (less)	3			3
4	Guaranteed payments	4			4
5	Interest income	5			5
6	Ordinary dividends	6			6
7	Royalties	7			7
8	Net short-term capital gain (less)	8			8
9	Net long-term capital gain (less)	9			9
10	Net section 1231 gain (less)	10			10

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Forms 3-ES / 3-EPV

- Form 3-ES is a voucher to make an estimated tax payment
- Form 3-EPV is a voucher to make an electronic payment with a return that has been filed (form will be available soon)

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Form 5S, *Tax-Option (S) Corporation Return*

- Added a check box to indicate when lower-tier entities make an election to pay tax
 - Change also made on Schedule 5-K1
- Removed columns (c) and (d) from lines 15a – 15f of Schedule K, as AMT is no longer applicable
- Several changes to line text (also applies to Schedules 5S-ET and ET-OS)

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Forms 1-CNP/1-CNS, *Composite Nonresident Income Tax Returns*

- Must be electronically filed.
- Bar codes (used for scanning) removed and watermark added to PDF form on website
- Removed lines 3 & 4 on Schedule 1 and column H on Schedule 2 to reflect elimination of AMT

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Schedule HR-5

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Schedule HR-5

- **Federal historic rehabilitation tax credit**
 - Claimed over 5-year period as a result of federal Tax Cuts and Jobs Act
 - Transitional rule for projects starting before June 20, 2018
 - Sale of WI credit comes with greater risk

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Schedule HR-5

- **New Schedule HR-5**
 - Used to claim all 5 years for purposes of selling or transferring the credit
 - Submitted with Form HR-T to DOR Technical Services
 - Attached in taxpayer's account
 - Notice of Certification given to seller

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Corporate 2019 Form Changes

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Forms 4 & 6

- Added check boxes related to income from real estate mortgage investment conduit (REMIC)
 - Form 4, line 15
 - Form 6, page 1, line 11, and page 8, line 8
- Ensures that REMICs can't use net business loss carryforward to offset excess inclusion income

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Apportionment Schedules

- Ten different apportionment formulas/methods were computed on Forms A-1 and A-2
- Form A-1 previously had 4 parts (4 pages)
 - Part 1, Single Sales Apportionment, was most common
- Form A-2 previously had 6 parts (7 pages)
 - Not very common; software companies didn't want to support

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Apportionment Schedules

- Reasons for change:
 - Returns were filed with taxpayer errors or missing info
 - Processing returns was inefficient
 - Law change effective for tax year 2019 adds a new apportionment method for broadcasters

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Apportionment Schedules

- Forms A-1 & A-2 are eliminated for tax year 2019
- Schedules A-01 through A-11 are created
- Each apportionment method is on its own schedule
 - Many lines remain unchanged
- Schedules are numbered according to projected frequency of use
- Software companies will be asked to support Schedules A-01 through A-06 for tax year 2019

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Apportionment Schedules – NEW

TY2018	TY2019	Description
A-1, Part I	A-01	Single Sales Factor Apportionment Data for Non-specialized Industries
A-1, Part II	A-02	Apportionment Percentage for Interstate Financial Institutions
A-2, Part I-C	A-03	Apportionment Percentage for Interstate Motor Carriers
A-2, Part I-F	A-04	Apportionment Percentage for Interstate Telecommunications Companies
A-1, Part IV	A-05	Premiums Factor for Insurance Companies
A-1, Part III	A-06	Receipts Factor for Interstate Brokers/Dealers, Investment Advisers, Investment Companies, and Underwriters
A-2, Part I-A	A-07	Apportionment Percentage for Interstate Air Carriers
NEW for TY19	A-08	Apportionment Percentage for Broadcasters
A-2, Part I-D	A-09	Apportionment Percentage for Interstate Railroads
A-2, Part I-E	A-10	Apportionment Percentage for Interstate Pipeline Companies
A-2, Part I-B	A-11	Apportionment Percentage for Interstate Air Freight Forwarders Affiliated with a Direct Air Carrier

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Withholding Form Changes

Federal Form W-4

- The Internal Revenue Service is in the process of redesigning Form W-4 for the year 2020
- DRAFT – <https://www.irs.gov/pub/irs-dft/fw4--dft.pdf>
- The number of federal withholding allowances have been removed from the DRAFT Form W-4

Federal Form W-4

- Prior to these changes, an employee could use Form W-4 for WI purposes if the employee's federal allowances equaled his or her WI exemptions
- The redesigned Form W-4 cannot be used for WI purposes

Wisconsin Form WT-4

- An employee will be required to provide Wisconsin Form WT-4 to his or her employer, regardless of what is claimed on the redesigned federal Form W-4
- The department has updated Form WT-4 to reflect these changes

Form PW-1, *Pass-Through Withholding*

- **Background:**
 - A pass-through entity is required to withhold tax on WI income allocable to a nonresident owner, unless an exemption applies
 - An owner of a pass-through entity can file Form PW-2 to request an exemption

Form PW-1, *Pass-Through Withholding*

- Added Lines A-E on page 1 to reflect when a pass-through entity has made an election to pay tax at the entity level

A. Income or franchise tax form number filed (or to be filed) by the pass-through entity for this period (check one):	A	56	3	2
B. Election to pay tax at the entity level (see instructions)	B			
C. Total pass-through income under Wisconsin law (see instructions)	C			.00
D. Amount included in item C that was taxed by a lower-tier entity (see instructions)	D			.00
E. Subtract item D from item C. If the result is less than 0, fill in 0.	E			

- Bar codes removed; watermark added directing taxpayer to "File Electronically"

Redesigned Form PW-2

- Form PW-2 is used by a nonresident owner to request DOR approval for an exemption from withholding
- Form changes include:
 - Allow nonresident owner to submit one Form PW-2 for multiple pass-through entities
 - Nonresident owner may submit Form PW-2 before estimated payments are due for the year of the request
- Redesigned form is available at:
<https://www.revenue.wi.gov/TaxForms2017through2019/2019-FormPW-2.pdf>

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Sales and Use Tax

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Sales and Use Tax Update

- **Tax Rate Changes**
 - 0.5% county tax begins in Outagamie County
 - January 1, 2020
 - 0.1% baseball stadium tax could end (AB73/SB67)
 - in Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties, awaiting legislation

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One-Time Sales Tax Reduction in Field Audit

- 2019 WI Act 10
- Effective with final determinations made on or after October 1, 2019
- One-time reduction of additional sales tax (not use tax) discovered during a field audit
- Reduction is 10% of state sales tax (not county or stadium taxes)

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One-Time Sales Tax Reduction in Field Audit

- 10% reduction only allowed for years in the audit period in which the gross sales are less than \$5 million
- Upon notice of field audit, the taxpayer must have filed all returns required under Ch. 77, Wis. Stats., for the entire audit period (includes local expo tax, premier resort area tax, and state rental vehicle fee returns)
- Reduction not allowed in subsequent field audits

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Marketplace Providers and Sellers

2019 Wis. Act 10 – Effective January 1, 2020

- Marketplace provider is required to collect and remit tax on all sales of taxable products and services.
- Reverses the effect of the *Orbitz* decision.
 - Marketplace providers that facilitate sales of lodging services are required to collect and remit tax on the entire amount charged to a purchaser.

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Marketplace Providers and Sellers

2019 Wis. Act 10 – Effective January 1, 2020 (cont.)

- Marketplace provider is:
 - Required to notify sellers that it is collecting and remitting the tax.
 - Required to maintain exemption certificates.
 - Only the marketplace provider can be audited and held liable for the tax, unless:
 - The marketplace provider can demonstrate the error is due to insufficient or incorrect information provided by the marketplace seller.
- NOTE: For sales made prior to January 1, 2020, both the marketplace and third-party seller may be liable on taxable sales.

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Marketplace Provider Q & A

- Q: Does a marketplace provider file separate sales tax returns for each marketplace seller?
- A: No. A marketplace provider reports its sales, and the sales made on behalf of all of its marketplace sellers, on its own sales tax return.

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Marketplace Provider Q & A

- Q: If a marketplace provider charges additional fees for facilitating a sale, what amount is subject to tax?
- A: A marketplace provider is required to collect and remit Wisconsin sales and use tax on the entire amount charged to a purchaser, including any amount charged by the marketplace provider for facilitating the sale, as provided in sec. 77.52(3m)(a), Wis. Stats.

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Marketplace Provider Q & A

- Q: Can a marketplace provider request a waiver from collecting and remitting tax?
 - A: Yes, the department may grant a waiver to a marketplace provider that facilitates sales on behalf of hotels, motels, or restaurants that share the same brand name with the marketplace provider. The application for waiver, Form S-102, is available at revenue.wi.gov
- Note: The department may grant waivers to other types of marketplace providers, as provided in sec. 77.52(3m)(c), Wis. Stats., if there is evidence that the marketplace seller will reliably collect and remit the tax to the department.

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Marketplace Provider Q & A

- Q: Can a marketplace provider that is a remote seller qualify for the small seller exception in sec. 77.51(13gm), Wis. Stats.?
- A: Yes. In determining if a marketplace provider qualifies for the small seller exception, the annual gross sales amount and number of transactions include sales into Wisconsin made by the marketplace on its own behalf or on behalf of other sellers.

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Marketplace Seller Q & A

- Q: Is a marketplace seller required to register if all sales are made through a marketplace provider?
- A: A marketplace seller is not required to register for Wisconsin sales or use tax if all of the marketplace seller's taxable sales in Wisconsin are facilitated by a marketplace provider. However, the marketplace seller is required to register for and collect Wisconsin sales or use tax on its taxable sales in Wisconsin that are not made through a marketplace provider.

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Marketplace Seller Q & A

- Q: How does a marketplace seller report its sales if it makes Wisconsin sales on its own and through a marketplace provider?
- Answer: The marketplace seller reports all of its sales, including sales facilitated on its behalf by a marketplace provider, on Line 1, "Total Sales," of the marketplace seller's Wisconsin Sales and Use Tax Return (Form ST-12). The marketplace seller then takes a subtraction on Line 5, "Other," for the sales amounts that are made through the marketplace provider.

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Marketplace Seller Q & A

- Q: If a marketplace provider is granted a waiver from collecting and remitting the tax, is the marketplace seller required to collect and remit?
- A: If a marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department, the marketplace seller is required to collect and remit the tax on the entire sales price charged to the purchaser for taxable sales made in Wisconsin through that marketplace provider.

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Effect on Wisconsin Purchasers

- Q: What is the effect on Wisconsin purchasers?
- A: The law has not changed with regards to purchasers. Purchasers owe use tax on the storage, use, or consumption of taxable products and services in Wisconsin, unless they can show an invoice from the seller with Wisconsin taxes properly collected and paid. As a result of 2019 Wis. Act 10, purchasers in Wisconsin may see an increased number of invoices from marketplace providers showing charges for Wisconsin sales and use tax.

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Marketplace Providers and Sellers

See the department's website for resources for marketplace providers and sellers, including additional answers to common questions.

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Wayfair Update

- Identified the largest (top 1,000) retailers in the nation
- Verified whether they were already registered and in compliance
- If not registered, sent letter informing them of filing requirements and inquiring about their status under *Wayfair*
- Following up directly as needed

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Wayfair & Alcohol Beverages

- Received records for shipments of alcohol beverages into Wisconsin
- Verified whether out-of-state shippers held appropriate Excise and Sales/Use tax permits
- If not, sent letters educating them on their obligation to hold permits and register

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Painting and Staining Contractors

- Discovered that subcontractors were not charging sales tax to a general contractor when hired to paint or stain unattached trim and baseboards for a building
- Sent educational letter outlining the issues
- Published article in the April 2019 Wisconsin Tax Bulletin to explain the tax treatment
- Sent a follow-up, self-audit letter in July

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Wisconsin Court Cases

- **Zimmer US, Inc.**
 - Issue – Are tools used to insert a prosthetic device exempt from sales and use tax under sec. 77.54(22b), Wis. Stats.?
 - TAC stated the tools are physically and functionally separate from the prosthetic device; are not accessories to the prosthetic device
 - The tools fall within the definition of durable medical equipment, but are not used in a person's home. Therefore, the tools are not exempt
 - Taxpayer did not appeal the decision

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Wisconsin Court Cases

- **State Bar of Wisconsin**
 - Issue - On-demand seminars
 - Tax Appeal Commission ruled the sale of on-demand seminars which accomplishes accrual of Supreme Court-approved continuing legal education credits, legal competence, and the ability to maintain good standing with his or her law license, as the sale of a service, with the digital good being incidental to the performance of the service.

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Vapor Products Tax

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Vapor Products Tax

- Effective October 1, 2019 (first return due November 15, 2019)
- Excise tax imposed on the sale of vapor products at the rate of 5 cents per milliliter of the liquid or other substance based on volume listed by manufacturer (sec. 139.75, Wis. Stats.)
- No inventory floor tax

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Vapor Products Tax

- "Vapor product" is a noncombustible product that produces vapor or aerosol for inhalation from the application of a heating element, regardless of whether the liquid or substance contains nicotine
- Equipment and devices not containing the liquid or other substance are not subject to the tax

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Vapor Products Tax

- Those required to pay the tax and hold a distributor permit (Form CTP-129) include:
 - Distributors that sell and ship untaxed vapor products to retailers in WI
 - Retailers that sell and ship untaxed vapor products to consumers in WI
 - Manufacturers that produce vapor products in WI for sale in WI
- Consumers who purchase untaxed vapor products are required to pay the tax

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Vapor Products Tax

- Tax is due when the untaxed vapor product is received in WI
- Tobacco products distributor permit-holders do not need to apply for another permit

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Vapor Products Tax

- Additional resources:**
 - DOR's vapor products Common Question web page
 - Fact Sheet 3501, *Vapor Products Tax*
 - Tobacco and Vapor Products Tax Forms and Instructions
- Contact DOR's Excise Tax Unit:**
 - Email: DORExciseTaxpayerAssistance@wisconsin.gov
 - Phone: 608-266-6701

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Power of Attorney Form Redesign

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Power of Attorney Form Redesign

- Add and revoke representative
- Easy check box to grant full authority
- Electronic or stamped signature accepted
- Notices
 - Automatically generated notices to taxpayer only
 - Other notices and letter to taxpayer or POA

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Power of Attorney Form Redesign

Part 1 – Taxpayer Information

Taxpayer's last name or business name		Taxpayer's first name		ID number
Spouse's last name		Spouse's first name		Spouse's ID number
Current address				Daytime telephone number ()
City	State	Zip code	Email address (optional)	

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Power of Attorney Form Redesign

Part 2 – Representative(s)

If an individual(s) name is provided, authority is limited to that individual(s). If a business name is provided without specifying an individual, authority is granted to employees of the business.

Check only one (see instructions):

☐ Add - appoints a new or additional representative ☐ Revoke - ends the representative named below

Business legal name		Telephone number ()
Individual's last name	Individual's first name	Telephone number ()
Individual's last name	Individual's first name	Telephone number ()
Mailing address		Fax number ()
City	State	Zip code
Email address		

If revoking a representative, skip Part 3 and sign and date the form.

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Power of Attorney Form Redesign

Part 3 – Authority Granted

☐ I grant full authority to the representative(s) - The representative(s) named above has full authority to perform any act with respect to matters before the department that the taxpayer(s) can and may perform, including receiving confidential Wisconsin tax information. **Note:** If granting full authority, do not check any boxes on the next page.

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Power of Attorney Form Redesign

Part 3 – Authority Granted (continued)

☐ I grant limited authority to the representative(s) - (check only items below for which you are granting authority.) The representative(s) named above has authority to perform any act, with respect to the items checked below, that the taxpayer(s) can and may perform, including the authority to receive confidential Wisconsin tax information.

Limited Authority	Period(s) (optional)	Limited Authority	Period(s) (optional)
<input type="checkbox"/> Income or Franchise Taxes	_____	<input type="checkbox"/> Employer Withholding Taxes	_____
<input type="checkbox"/> Sales and Use Taxes	_____	<input type="checkbox"/> Pass-Through Withholding Taxes	_____
<input type="checkbox"/> Excise Taxes	_____	<input type="checkbox"/> Non-tax Debt	_____
<input type="checkbox"/> Property Taxes	_____	<input type="checkbox"/> Other (describe below)	_____

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Power of Attorney Form Redesign

Part 4 – Signature of Taxpayer(s)

I understand that the execution of this Power of Attorney does not relieve me of personal responsibility for correctly and timely reporting and paying taxes, or from the penalties, fees, or interest for failure to do so, all as provided for under Wisconsin tax law. I understand a photocopy, faxed copy, and/or electronic copy of this form has the same authority as the signed original.

If signed by a corporate officer, general partner, managing member, or fiduciary on behalf of the taxpayer, I certify that I have the authority to execute this Power of Attorney on behalf of the taxpayer.

Signature	Title	Date
Signature	Title	Date

Note: All notices that are automatically generated by the department's computer system will be sent only to the taxpayer. If the representative needs copies of these notices, the representative must request a copy each time a notice is issued if it cannot be accessed in My Tax Account as an approved third party.

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Guidance Documents

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Guidance Documents – 2017 Act 369

- New Requirement
 - All guidance documents created on or after March 21, 2019, must go through the adoption process
- Adoption Process
 - A guidance document must be submitted to the Legislative Reference Bureau (LRB) to be published in their register for presentation to the public for a 21-day comment period

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Guidance Documents – 2017 Act 369

- Guidance documents issued by the department prior to March 21, 2019, that do not go through the adoption process are rescinded
- Guidance document examples:
 - Common Questions
 - Publications
 - Wisconsin Tax Bulletins

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Guidance Documents – 2017 Act 369

- Certification by Secretary of Revenue
 - Every guidance document submitted for adoption must have a statement from the Secretary that the document complies with the law

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Guidance Documents – 2017 Act 369

- Citation Requirement
 - Beginning August 30, 2019, state agencies are required to identify the applicable federal or state law or administrative code provision that supports any statement or interpretation of law that the agency makes in any publication including forms, pamphlets, and other informational materials

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Filing Tips

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Disregarded Entities

- **Income/franchise tax** - A single-owner entity that is disregarded as a separate entity under IRC 7701 is a disregarded entity for Wisconsin
 - The owner should submit Schedule DE with their income/franchise tax return
- **Withholding tax** – A single-owner entity that is disregarded as a separate entity under IRC 7701 is not a disregarded entity for Wisconsin (i.e., the entity is the employer)

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Disregarded Entities

- **Excise tax** - A single-owner entity that is disregarded as a separate entity for Wisconsin income/franchise tax purposes is a disregarded entity for Wisconsin
- **Sales/use tax** - A single-owner entity that is disregarded as a separate entity for Wisconsin income/franchise tax purposes is a disregarded entity for Wisconsin

Sec. 77.63(1)(m)(a), Wis. Stats.

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Disregarded Entities

- **Sales tax returns may be filed in one of two ways:**
 - The owner includes all of its disregarded entities' information on owner's sales/use tax return, **or**
 - The owner may elect to file separate sales/use tax returns for each of its disregarded entities

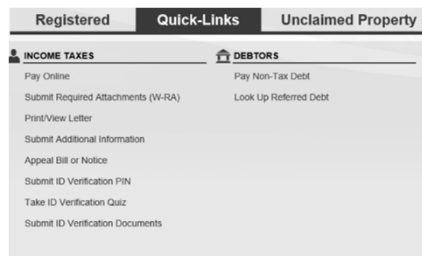
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Filing Tips – Individual Income Tax

- If documents requested by the department are submitted online, allow up to 3 weeks for review
 - As long as client has a confirmation number, we have the documents
- File appeals online
- Taxpayers can print/view most letters online

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Filing Tips – Individual Income Tax



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Filing Tips – Individual Income Tax

- Estimated and extension payments may be verified online:
<https://www.revenue.wi.gov/Pages/Apps/TaxPaymentInquiry.aspx>
- If pass-through withholding is reported on Schedule 3K-1 or 5K-1, report this as withholding on IIT return (not as estimated payments)

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Filing Tips – Individual Income Tax

- Use correct payment type and period. If payment type or period is incorrect, it can be corrected by submitting a written request (email)
 - Use 2020 Form 1-ES for 2020 estimated payments
 - Use 2020 Form 1-ES for 2020 extension payments if paying by check, or select "Extension payment" type if using My Tax Account
 - Use 2020 Form EPV voucher for 2020 return payments
- Be sure vouchers provided to clients contain complete information, including scanline

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Filing Tips – Individual Income Tax

- Do not use partial Social Security numbers on returns, schedules, or vouchers submitted to DOR
- Do not file Form 804, *Claim for Decedent's Wisconsin Income Tax Refund*, until the refund check is received

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Filing Tips – Individual Income Tax

- Form 1NPR filers completing Schedule U:
 - If no Wisconsin return was filed in prior year, do not complete line 7 (prior year tax)
 - Use value from line 4 on line 8

PART I Required Annual Payment – All filers must complete this part	
1. Fil in your 2019 net tax from Form 1, line 33; Form 1NPR, line 50; or Form 2, line 14)	1
2. Other credits (see instructions)	2
3. Subtract line 2 from line 1. If zero or less, do not complete or file this form	3
4. Multiply line 3 by 90% (.90)	4
5. Wisconsin tax withheld for 2019	5
6. Subtract line 5 from line 4. If less than \$500, do not complete or file this form	6
7. Fil in your prior year (2018) tax (see instructions)	7
8. Required annual payment. Fil in the smaller of line 4 or line 7 (see instructions)	8

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Filing Tips – Schedule OS

- Include complete copy of other state return
 - .pdf copy of e-filed return is sufficient
 - Cannot process without copy of other state's return

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Filing Tips – Credit Schedules

- Submit the proper credit schedule and/or Schedule CF for EACH credit claimed on the CR
- If submitting supporting schedules, include name(s) of credit schedule on supporting schedules
- Fill in amounts on credit schedules, do not write "See statement"
- Attach credit verification forms or Schedules 2K-1, 3K-1, or 5K-1 to support credit being claimed

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Filing Tips – Corporate Franchise

- Form 6 returns must include all members and designated agent
- Use correct year return for tax period. We will not accept current year returns on prior year forms.
- Do not send checks without payment voucher or Form Corp-ES

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Filing Tips – Sales & Withholding

- Once an account is ceased, the filing requirement is ceased as well
 - Do not file "zero" returns for closed accounts
- If amending Form WT-7:
 - Send corrected Forms W-2/1099 that have changed withholding amounts
 - Do not send Forms W-2/1099 if withholding did not change

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My Tax Account Updates

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MTA

- Email confirmations
 - MTA users can now choose to receive a confirmation email after submitting returns and payments
- Automated username inactivation
 - MTA will inactivate a username if it has not been accessed in the past 18 months. User will need to call Customer Service to re-activate

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MTA

- **Submit Information Returns in MTA**
 - Key in Form W-2/1099 information at any time during the year in My Tax Account
 - Log in to My Tax Account and select "Enter Form W-2/1099 Information"

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MTA

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MTA - Helpful Hints

- Submit all Forms WT-6 for 2019 prior to submitting Form WT-7
- Request more frequent filing than required by statute by selecting the appropriate link under "I Want To"
- May not request less frequent filing
- Remember to update profile information when there are changes (i.e., cell provider, cell number, email address)
- DOR will annually ask you to review profile and update

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Unclaimed Property

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Unclaimed Property

- **Holder Reports**
 - Make sure business clients are reporting unclaimed property if required
 - Includes uncashed payroll checks, accounts payable checks, loan collateral, deposits, credit balances, refunds, etc.
 - Reports are due November 1st each year for prior fiscal year (July 1 – June 30)

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Unclaimed Property

- **Holder Reports**
 - Provide complete and accurate owner information on holder report
 - Holder reports must be submitted electronically (My Tax Account upload or third-party software)
 - Once report and payment are submitted, there is no additional work required
- See Publication 82, *Holder Report Guide*, for more information

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Unclaimed Property

- **Holder Payments**
 - If you pay online when submitting holder report, do not submit a second standalone payment; will result in two payments
 - Add confirmation number or FEIN of holder if sending paper check

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My Tax Account

- **Unclaimed Property Reminder**
 - My Tax Account users will be presented with a prompt, asking if they have unclaimed property to report
 - Plan is to roll out in spring 2020
 - Only the first user to log in to business account is prompted
 - First user could be third party

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Processing

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TY2018 Filing Statistics

Tax Type	Returns Filed	Efile Rate
Corporation Franchise Tax (4, 4H, 5, 6)	44,832	80.6%
Fiduciary (2, 4T, Schedule CC)	63,783	68.2%
Individual Income (1, 1A, 1NPR, WI-Z, Schedule H, H-EZ, & X-NOL)	3,160,478	86.9%
Pass-Through (1CNS/1CNP, 3, 5S, PW-1)	190,693	89.6%
Sales (ST-12)	894,786	94.7%
Withholding (WT-6, WT-7)	338,326	94.2%

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Filing Season Opening

- The IRS has already announced the opening dates for Modernized eFile
 - January 7th, 2020, for Business Type Returns
 - January 21st, 2020, for Individual Income Tax Returns
- Most 2019 Wisconsin forms have been posted to our website

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E-File Mandates - 2019

- E-filing is required for Forms 1CNS, 1CNP, and PW-1 for TY2019 (all available in My Tax Account)
- E-filing is also required for Form 6, *Combined Franchise/Income Tax Return* (since form introduction in 2014)
- DOR will reject paper filed returns for these form types

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E-File Mandates - 2019

- Forms 3 & 5S must be filed electronically
 - Letters are being sent to TY2018 paper filers
 - Waivers will be considered for TY2019

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E-File Mandates - 2019

- E-File Mandate for Sales (Form ST-12) & Withholding (Forms WT-6 and WT-7) returns will be implemented in 2020 for quarterly, monthly, semi-monthly, and early monthly filers (everyone EXCEPT annual)
 - Warning letters will be sent to impacted taxpayers
 - Paper returns will be rejected after warning letters are issued
 - My Tax Account is a free filing option

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E-File Updates

- Form 2 will no longer be available for filing through Wisconsin eFile
- Software testing is now required for XML filing of Forms W-2, 1099, WT-6 and WT-7
 - Testing is not required for EFW2 uploads

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Software Vendor Update

- New message for software vendors when their software hasn't been approved OR isn't ready for release:

"We are working to get forms ready for filing in Wisconsin. Please check again later."
- Messages provided were misleading for tax year 2018

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Required Forms – IIT Vendors

Form 1	Form 1NPR	Standalone H
Form 1-ES Form EPV (Voucher) Schedule AR Schedule BD Schedule CF Schedule CR Schedule CS Schedule DC Schedule DE Schedule EC Schedule ED Schedule HR Schedule JT Schedule MA-A Schedule MA-M Schedule PS Schedule R Schedule VC Schedule WD BinaryAttachment	Form 1-ES Form EPV (Voucher) Schedule AR Schedule BD Schedule CF Schedule CR Schedule CS Schedule DC Schedule DE Schedule EC Schedule ED Schedule HR Schedule JT Schedule MA-A Schedule MA-M Schedule PS Schedule R Schedule VC Schedule WD BinaryAttachment	Homestead Notes Property Tax Bill Rent Certificate Schedule AR BinaryAttachment

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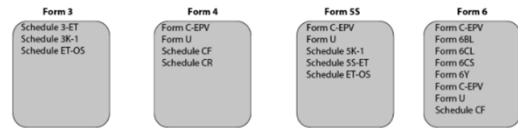
Software Vendor Update

- Binary attachment requirement
 - Vendors must support a standalone .pdf attachment (binary attachment in this context means .pdf)
 - Primarily an issue for DIY software

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Required Forms – Business Vendors

Form N
Schedules A-01, A-02, A-03, A-04, A-05, A-06, AR, BD, BC, DE, EC, ED, HR, JT, MA-A, MA-M, R, and VC
Binary Attachment



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Required Forms – Fiduciary Vendors

Form 2
Form 1-ES
Form EP-V
Schedule 2K-1
Schedule 2M
Schedule AR
Schedule BD
Schedule CF
Schedule CR
Schedule DC
Schedule DE
Schedule EC
Schedule ED
Schedule ESBT
Schedule HR
Schedule JT
Schedule MA-A
Schedule MA-M
Schedule NR
Schedule R
Schedule VC
Schedule WDZ
Binary Attachment

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Form WT-11 Update

- Form WT-11, *Non-Resident Entertainer Withholding Report*, is available in My Tax Account
- 519 of 1,243 Forms WT-11 have been filed via My Tax Account as of 9/18/2019
- Taxpayers must file on DOR prescribed forms
- E-file mandate likely in future

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5S Election Update

- Law enacted 12/14/2018 allowing tax-option (S) corporations to elect to be taxed at the entity level for tax year 2018 and thereafter
- New 2018 forms posted in January 2019 and available for filing/processing starting July 2019
- As of 9/18/2019, 1,337 Form 5S returns have made the election, out of 82,781 filed

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Withholding Update

- "Missing Information Returns" letter updated to provide better information on what is missing or incomplete
- Current process automatically sends letter when counts reported on Form WT-7 do not match Forms W-2 or 1099 submitted
- \$10 penalty per information return is assessed if Forms W-2 or 1099 not received

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Withholding Update

- DOR is required to hold returns for individual income taxpayers until March 1st if their employer hasn't submitted either the Form WT-7 or Forms W-2

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Information Returns – 2018 vs 2019

	2018	2019
January only	5.88 million	6.21 million
February only	0.61 million	.60 million
January – September	7.08 million	7.38 million
eFile Rate	94.5%	96.5%

- In 2018, e-file threshold changed from 50 to 10 and changed due date to January 31 for ALL Forms W-2 & 1099.

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Information Returns

- Intuit (QuickBooks)
 - Desktop product (and partner product Tax 1099)
 - E-filed Forms 1099 contain Wisconsin Taxpayer ID
 - Printed Forms 1099 contain Wisconsin Taxpayer ID
 - Online product
 - E-filed Forms 1099 contain Wisconsin Taxpayer ID
 - Printed Forms 1099 do not contain Wisconsin Taxpayer ID
 - May be subject to penalty if mailing more than ten printed Forms 1099
 - Online users may request reimbursement of penalty from Intuit

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Performance Metrics

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DOR Initiatives

- Fraud Prevention - ID Verification

	FY19	FY18	FY17	FY16
Returns Evaluated	3,087,501	3,075,709	3,058,791	3,061,766
Quizzes Required	2,591	5,088	8,674	31,259
PINs Required	49,919	75,053	47,453	12,055
ID Docs Required	7,725	9,518	8,251	14,566
Total ID Verification Actions Required	60,235	89,659	64,378	57,880
% of Returns Evaluated Requiring ID Verification	1.95%	2.92%	2.10%	1.89%
Refunds Denied for Failure to Verify ID	23,481	19,202	20,298	21,698
Refunds Reinstated on Appeal	2,495	2,302	2,754	8,112

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Fraud Prevention

- Bad Refunds Stopped - Historical

	Fraud Detection With Analytics	Processing Fraud - OCI	Processing Fraud - Tax Ops	Earned Income Credit	Homestead Credit	Total for Specific Initiatives
FY19	\$8,595,686	\$5,970,625	\$6,020,804	\$20,436,036	\$14,358,603	\$55,381,754
FY18	\$7,052,669	\$5,869,413	\$5,628,995	\$17,943,046	\$14,862,551	\$51,356,674
FY17	\$9,300,745	\$6,059,255	\$8,044,070	\$20,115,117	\$16,046,799	\$59,566,026
FY16	\$11,149,599	\$8,092,817	\$6,849,591	\$19,946,592	\$17,004,928	\$63,043,527
FY15	\$11,050,119	\$7,335,531	\$6,889,513	\$16,682,990	\$15,828,093	\$57,786,246
FY14	\$3,550,473	\$4,904,089	\$8,195,222	\$17,710,656	\$15,299,425	\$49,659,865
FY13		\$3,434,613		\$14,257,838	\$12,480,794	\$30,173,245
FY12		\$1,702,300		\$9,341,511	\$14,694,458	\$25,738,269
FY11		\$3,324,200		\$13,510,224	\$12,219,984	\$29,054,408

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Performance Metrics

FY19 - Post Audit Survey Results

Auditor was professional	93.92%
Auditor was knowledgeable	89.23%
I understood the notices I received	92.01%
The timeline and process were clearly explained	84.51%

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Performance Metrics

Total Customer Call Center Contacts	
Customer Service	358,893
Tax Operations	30,585
Audit	35,863
Compliance	294,276
Total	719,617

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Performance Metrics

FY18 - Call Centers

Bureau	Inbound Answer Rate	Average Hold H:MM:SS
Customer Service	97.49%	0:01:34
Tax Operations	99.32%	0:00:14
Audit	98.76%	0:00:13
Compliance	99.76%	0:00:17
Total	98.54%	0:00:55
Goal	97.80%	0:01:30

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Performance Metrics

Call Center Surveys		
	Professional	Knowledgeable
Customer Service	98.88%	98.85%
Compliance	98.62%	99.15%
Tax Operations	98.91%	98.51%
Audit	98.61%	97.93%

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This document provides statements or interpretations of the following laws and regulations in effect as of October 1, 2019:

Chapters 71, 73, 77, 139, and 177, Wis. Stats.

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DOR Resources

• Practitioner Assistance

- Email
dortaxpractitioners@wisconsin.gov
- Phone
608-261-5199

****Do Not Share This Information****

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Questions?

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DOR Resources

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