Instructions for 2019 Schedule A-06: Wisconsin Receipts Factor for Interstate Brokers-Dealers, Investment Advisors, Investment Companies, and Underwriters

Purpose of Schedule A-06

Interstate broker-dealers, investment advisors, investment companies, and underwriters required to use apportionment must use the factor prescribed in sec. Tax 2.495, Wis. Stats.

Line-by-Line Instructions

■ **Line 1. Gross Brokerage Commissions –** For the Wisconsin column, include gross brokerage commissions earned if the billing address of the customer is in Wisconsin.

For the Total Company column, include gross brokerage commissions earned everywhere.

■ **Line 2. Gross Margin Interest Earned –** For the Wisconsin column, include total margin interest earned on behalf of brokerage accounts owned by customers if the billing address of the customer is in Wisconsin.

For the Total Company column, include the total margin interest earned on behalf of brokerage accounts owned by customers everywhere.

■ **Line 3. Gross Account Maintenance Fees –** For the Wisconsin column, enter account maintenance fees received on behalf of brokerage accounts owned by customers if the billing address of the customer is in Wisconsin.

For the Total Company column, enter account maintenance fees received on behalf of brokerage accounts owned by customers everywhere.

■ **Line 4. Gross Receipts, Net of Commissions, from Sales of Trading Assets –** Gross receipts from sales of trading assets (net of commissions) are sourced based on either the taxpayer's commercial domicile or the customer's billing address. Check the box on line 4 to indicate the method you are electing to use. Once the election is made, it must be used for all future taxable years unless the department approves a change in method.

If the election is made to source trading assets net of commissions based on commercial domicile: For the Wisconsin column, include gross receipts, net of commissions, from sales of trading assets, if the day-to-day decisions regarding the trading assets occur at a location in Wisconsin. If the day-to-day decisions regarding the trading assets occur at locations both in and outside Wisconsin, the assets are considered located at the location where the trading policies and guidelines are established. It is rebuttably presumed that the location where the trading policies and guidelines are established is at the taxpayer's commercial domicile.

For the Total Company column, include gross receipts, net of commissions, from sales of all trading assets.

“Commercial domicile" means the location from which a trade or business is principally managed and directed. If the taxpayer is organized under the laws of a foreign country, the commonwealth of Puerto Rico, or any territory or possession of the United States, “commercial domicile" shall be deemed for the purposes of this section to be the state of the United States or the District of Columbia from which the taxpayer's trade or business in the United States is principally managed and directed. It shall be rebuttably presumed that the location from which a trade or business is principally managed and directed is the state of the United States or the District of Columbia at which the greatest number of the taxpayer's employees work, have their office or base of operations, or are directed or controlled, as of the last day of the taxable year.

If the election is made to source trading assets net of commissions based on the customers billing address: For the Wisconsin column, include gross receipts, net of commissions, from sales of trading assets if the customer's billing address is in Wisconsin. Once made, the election cannot be revoked without prior consent from the department. If a request to change an election has been approved by the department, the change becomes effective with the first taxable year ending on or after approval by the department.

For the Total Company column, include gross receipts, net of commissions, from sales of all trading assets.

■ **Line 5. Gross Receipts Received on Investment Contracts –** For the Wisconsin column, include gross payments received on investment contracts issued by the taxpayer and held by customers if the billing address of the customer is in Wisconsin. "Investment contract" includes any bonds, shares, coupons, certificates of membership, or other obligations or agreements issued by the taxpayer to return to the holders or owners money or anything of value at some future date.

For the Total Company column, include all gross payments received on investment contracts issued by the taxpayer and held by customers, regardless of billing address.

■ **Line 6. Gross Receipts from Underwriting Services –** The Wisconsin column of the receipts factor includes gross receipts, including gross commissions, gross management fees, or gross underwriting fees, earned in performing underwriting activities on behalf of the issuer of the securities if either of the following applies:

- The issuer of the securities is not engaged in a trade or business, and the issuer's billing address is in Wisconsin.
- The issuer of the securities is engaged in a trade or business, the issuer of the securities maintains a regular place of business in Wisconsin, and the securities relate to that person's business in Wisconsin. If the securities relate to that person's regular place of business in more than one state, the receipts from the performance of the service are included in the numerator of the receipts factor according to the portion of the service received in Wisconsin. If the regular place of business to which the securities relate cannot be determined, the service is received in Wisconsin if the issuer of the securities, in the regular course of the issuer's business, ordered the service from an office in Wisconsin. If the ordering office cannot be determined, the service is received in Wisconsin if the issuer's billing address is in Wisconsin.

The Total Company column includes gross receipts, including gross commissions, gross management fees, or gross underwriting fees, earned in performing underwriting activities on behalf of the issuer of the securities.

■ **Line 7. Other Gross Receipts –** The Wisconsin column and Total Company column includes other gross receipts or net gains such as: gross receipts from the lease of real property; gross receipts from the lease of tangible personal property; gross interest and other fees from loans secured by real property; gross interest and other fees from loans secured by tangible personal property; gross interest and other fees from loans not secured by real or tangible personal property; net gains from the sale of loans; gross receipts from credit card receivables; net gains from the sale of credit card receivables; credit card issuer's reimbursement fees; gross receipts from merchant discount; loan servicing fees; gross receipts from travelers checks, cashiers checks, certified checks, and money orders; gross receipts from automated teller machines; gross receipts from safety deposit boxes; gross receipts from maintaining accounts; gross receipts from electronic funds transfer; gross receipts from cash management services; gross receipts from international trade services; gross receipts from data processing services, document imaging services, and microfilming services; gross receipts from research services; gross receipts from trust services; gross receipts from investment banking services; gross receipts from security brokerage services; gross receipts from other services; gross receipts from computer software; gross royalties and other gross receipts from intangibles; gross receipts from services provided to regulated investment companies; and other sales. For additional detail, see sec. Tax 2.94(4), Wis. Adm. Code.

■ **Line 8. 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 sec. 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 sec. 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 secs. 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 10. Apportionment Percentage** (separate return filers and pass-through entities) – Divide Wisconsin column, line 9, by Total Company column, line 9, 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, 4, 4T, 5S, or 6) for how to report and use this percentage.

Conversion to Modified Sales Factor (combined return filers only)

■ **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 8.

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 8, 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 sec. 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, 2019, 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 2019, 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 2019, 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, 2019, 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 2019, 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 6, Part II, 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 8, do not enter any amounts on line 12.

See the instructions to Form N, *Wisconsin Nonapportionable, Separately Accounted, 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 Form 6, Part I, line 33, 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 8, do not enter any amounts on line 15.

Under sec. 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, 2018, 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, 2019, 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 2018, 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 2018.

In 2019, 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 2019. Z must include its $100 gain on the sale to Q (= $700 - $600) in combined unitary income for 2019. 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.

Additional Information and Assistance

Web Resources

The Department of Revenue's web page, available at revenue.wi.gov, has a number of resources to provide additional information and assistance, including:

- Related forms and their instructions
- Common questions
- Publications on specific tax topics
- The *Wisconsin Tax Bulletin*
- A home page specifically for combined reporting topics
- Links to the Wisconsin Statutes and Administrative Code

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: DORFranchise@wisconsin.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 3-107, PO Box 8906, Madison, WI 53708-8906

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of November 1, 2019: Chapter 71 Wis. Stats., and Chapter Tax 2, Wis. Adm. Code