

Instructions for 2019 Schedule A-08: Wisconsin Apportionment Percentage for Broadcasters

Purpose of Schedule A-08

Interstate broadcasters required to use apportionment must use the factor prescribed in secs. [71.04\(7\)\(dh\)4.](#), [\(dj\)2.](#), and [\(g\)](#); and [71.25\(9\)\(dh\)4.](#), [\(9\)\(dj\)2m.](#), and [\(g\)](#), Wis. Stats.

Only include amounts that are includable in the sales factor. Also, for lines 2b, 2c, 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 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 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-by-Line Instructions

■ **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 6. Total Gross Receipts from Use of Computer Software** – Enter the total amount of gross receipts from the use of computer software regardless of the where used.

■ **Line 7a. Broadcaster's Gross Receipts from Services, Excluding Advertising, Provided to a Purchaser Who Received the Benefit of the Service in Wisconsin** – 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 delivered directly or indirectly to customers in Wisconsin.

- The service is purchased by 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 7b. Broadcaster's Gross Receipts from Advertising Services Provided to a Purchaser Where the Advertiser's Commercial Domicile is in Wisconsin** – Enter gross receipts received from advertising if the advertiser's commercial domicile is in Wisconsin.

"Broadcaster" means a television or radio station licensed by the federal communications commission, a television or radio broadcast network, a cable television network, or a television distribution company.

"Broadcaster" does not include a cable service provider, a direct broadcast satellite system, or an Internet content distributor.

"Commercial domicile" means the location from which a trade or business is principally managed and directed, based on any factors the department determines are appropriate, including the location where the greatest number of employees of the trade or business work, have their office or base of operations, or from which the employees are directed or controlled.

■ **Line 8. Total Gross Receipts from Services Excluding Advertising** – Enter the total gross receipts derived everywhere from services excluding the amount from advertising.

■ **Line 9. Sales, Leases, Rental, or Licensing of Real Property** – For the Wisconsin column, enter the gross receipts from the sale, lease, rental, or license of real property owned by the taxpayer if the real property is located in Wisconsin. Include gross receipts from the sublease of real property if the real property is located in Wisconsin.

For the Total Company column, enter the gross receipts from the sale, lease, rental, or license of all real property owned by the taxpayer, regardless of location.

■ **Line 10. Sale of Intangible Property** – For the Wisconsin column, enter gross receipts from the sale of, license of, or allowing the use of intangible property in Wisconsin. To determine the purchaser's or licensee's use of intangible property in Wisconsin, factors that may be considered include the number of licensed sites in each state, the volume of property manufactured, produced, or sold pursuant to the arrangement at locations in Wisconsin, or other data that reflects the relative usage of the intangible property in Wisconsin. If the purchaser's or licensee's billing address or commercial domicile is in Wisconsin, that billing address or commercial domicile may not conclusively determine that the transaction is in Wisconsin except in cases where the location of use of the intangible property cannot be determined. If the location of use of the intangible property cannot be determined, the gross receipts from the sale of, license of, or other receipts from allowing use of intangible property are in Wisconsin if the purchaser's or licensee's commercial domicile is in Wisconsin. If the state of the purchaser's or licensee's commercial domicile cannot be determined, the gross receipts from the sale of, license of, or allowing use of intangible property are in Wisconsin if the purchaser or licensee is billed for the purchase, license, or use of the intangible property at a location in Wisconsin,

For the Total Company column, enter gross receipts from the sale of, lease of, or allowing the use of intangible property everywhere.

■ **Line 11a. Gross Royalties and Other Gross Receipts From Other Than Broadcasting** – For the Wisconsin column, a broadcaster's gross royalties and other gross receipts received for the use or license of intangible property from other than broadcasting are sales in Wisconsin if the purchaser or licensee uses the intangible property in the operation of a trade or business at a location in Wisconsin, the purchaser or licensee is billed for the purchase or license of the use of the intangible property at a location in Wisconsin, or the purchaser or licensee of the use of the intangible property has its commercial domicile in Wisconsin.

For the Total Company column, include a broadcaster's gross royalties and other gross receipts received for the use or license of intangible property from other than broadcasting from everywhere.

■ **Line 11b. Gross Royalties and Other Gross Receipts From Broadcasting** – A broadcaster's gross royalties and other gross receipts received for the use or license of intangible property are sales in Wisconsin only if the commercial domicile of the purchaser or licensee is in Wisconsin and the purchaser or licensee has a direct connection or relationship with the broadcaster pursuant to a contract under which the royalties or receipts are derived.

A broadcaster who is a member of a combined group does not apply the gross royalties and receipts of the members who are not broadcasters.

For the Total Company column, include a broadcaster's total gross royalties and other gross receipts received for the use or license of intangible property from broadcasting everywhere.

■ **Line 12. Other Apportionable Gross Receipts Not Identified** – Enter any other apportionable gross receipts that were not identified above.

■ **Line 15a. Domestic Gross Receipts** – Enter the amount of domestic (U.S. sourced) gross receipts from advertising, royalties, and other gross receipts for the use or license of intangible property.

■ **Line 15b. Total Gross Receipts** – Enter the total amount of gross receipts (from everywhere) from advertising, royalties, and other gross receipts for the use or license of intangible property.

■ **Line 19. Apportionment Percentage** (separate return filers and pass-through entities) – Divide line 18a by 18b and multiply 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 complete lines 20 through 25 to compute the “modified sales factor” that will determine their Wisconsin share of combined unitary income.

■ **Line 20. 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 18.

Report the excluded amount of intercompany sales on line 20. If you already excluded these intercompany sales from the amounts you entered on lines 1 through 18, do not enter any amounts on line 20.

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 ($= \$10,000 \times (40\% + 60\%)$) 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 ($= \$10,000 \times (25\% + 50\%)$) 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 ($= \$20,000 \times 20\%$) from its sales factor denominator and, if applicable, from its numerator. Similarly, T must subtract an amount of \$16,000 ($= \$20,000 \times 80\%$) from its sales factor denominator and, if applicable, from its numerator.

■ **Line 21. 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 21. However, if you already excluded these sales from the amounts you entered on lines 1 through 18, do not enter any amounts on line 21.

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 24. 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 24. If you already included these receipts in the amounts you entered on lines 1 through 18, do not enter any amounts on line 24.

Under sec. Tax 2.61(7)(d), Wisconsin Administrative Code, special sourcing rules apply to amounts reported on line 24. 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: Sections 71.04(7)(dh)4., (dj)2., and (g); and 71.25(9)(dh)4., (9)(dj)2m., and (g), Wis. Stats.