

2020 Wisconsin Schedule 3-ET Instructions

Purpose of Schedule

A partnership or limited liability company treated as a partnership that makes the election to pay tax at the entity level must use Schedule 3-ET to compute the entity-level tax on items that would otherwise be reportable to Wisconsin if the election was not made. For the taxable year in which the election is made, partners do not include in their Wisconsin adjusted gross income their proportionate share of items of income, gain, loss, or deduction of the electing partnership.

The election to pay tax at the entity level must be made each year on or before the extended due date of the Form 3, *Wisconsin Partnership Return*. The election is made the day Form 3 is filed by checking box "I" under the information section at the beginning of Form 3. The electing partnership must have consent from partners who hold an aggregate of more than 50 percent of the capital and profits of the partnership on the day of the election, pursuant to sec. 71.21(6)(a), Wis. Stats. The election may be revoked by filing an amended Form 3 on or before the extended due date of the Form 3. Partners who hold an aggregate of more than 50 percent of the capital and profits of the partnership must consent to the revocation.

Result of Making the Election

Income/Gains/Tax Rate

- **Reporting income and gains**
 - Net income reportable to Wisconsin is taxed to the partnership and is not taxable to the partners.
 - All income of Wisconsin resident partners that are an individual, estate, or trust must be reported by the electing partnership.
 - Income of Wisconsin resident partners that are not an individual, estate, or trust must be reported by the electing partnership if the income is attributable to Wisconsin. See instructions for *Column (c) – Nonresidents* later in these instructions.
 - Income of nonresident partners must be reported by the electing partnership if the income is attributable to Wisconsin. See instructions for *Column (c) – Nonresidents* later in these instructions.
 - To the extent a partner would include guaranteed payments in Wisconsin taxable income had the election not been made, the electing partnership must include the guaranteed payments in Wisconsin taxable income.
 - Partners subtract from their federal adjusted gross income the income reported by the electing partnership that is included on the electing partnership's Schedule 3-ET for determining the entity-level tax.
- **Tax Rate** The net income reportable to Wisconsin is taxed at 7.9 percent. There is no special capital gains tax rate.

Losses/Deductions

- **Reporting losses and deductions** An electing partnership may not pass through any items of loss or deduction to the partners.
- **Net operating or business loss** An electing partnership may not carryforward a net operating or business loss to be used to offset income reportable by the electing partnership.
- **Wisconsin long-term capital gain exclusion** An electing partnership may claim the Wisconsin 30-percent and/or 60-percent long-term capital gain exclusion available for individuals.

- **Net capital loss**
 - The maximum capital loss deduction that may be claimed by the electing partnership is \$500.
 - Unused capital losses may be carried forward by the electing partnership.
- **Passive activity loss**
 - Passive activity loss limitations under sec. 469 of the Internal Revenue Code (IRC) are determined at the electing partnership level, and the electing partnership must determine how each partner would characterize each item of income or loss (passive or non-passive) as if the election was not made.
 - Suspended passive activity losses may be carried forward by the electing partnership.
- **Charitable contribution deduction** Except for charitable contributions that would otherwise be allowed as a deduction for a fiduciary as provided in sec. 642, IRC, the charitable contribution deduction is not allowed to the electing partnership, nor the partners.
- **Federal section 179 deduction** The federal section 179 expense deduction limitation and phase-out apply to the electing partnership.
- **Investment interest expense** The amount of investment interest expense allowed as a deduction may not exceed the net investment income of the electing partnership for the taxable year as provided in sec. 163(d), IRC.
- **Federal section 754 election** The adjustment to partnership income as a result of a section 754 election is included in the electing partnership's calculation of Wisconsin income when determining tax at the entity level. This includes the election applied under both secs. 734(b) and 743(b), IRC.
- **One-half self-employment tax deduction** The federal deduction for one-half of self-employment taxes resulting from a partnership's federal taxable income as provided in sec. 164(f), IRC, may not be claimed by the partnership. However, the partner is allowed the deduction for Wisconsin purposes to the extent allowable under the IRC in effect for Wisconsin.

Tax Credits

- **Reporting credits** Tax credits, except the credit for net tax paid by the entity to another state, may not be claimed by the electing partnership and are passed through to the partners.
- **Manufacturing and agriculture credit** The electing partnership computes the manufacturing and agriculture credit based on its activities and passes it through to the partners. The partners complete Schedule MA-M or MA-A, but a partner may only use the credit to offset tax liability resulting from the partner's prorated share of taxable income from the partnership for a year in which the election is not made.

Schedule 3K-1 Reporting

- **Reporting requirement to partners** The electing partnership must provide a Schedule 3K-1 to each partner as if the election was not made.
- **Exceptions and additional reporting requirements to partners**
 - The electing partnership must check box 3 of Part C.
 - The credit for tax paid to another state is not entered on the partner's Schedule 3K-1 because the partners cannot claim the credit.

- The credit for pass-through withholding will generally be zero because the electing partnership is exempt from pass-through withholding. For more information regarding pass-through withholding, see the instructions for Form PW-1. Note: if the electing partnership claims its estimated pass-through withholding payments on Form 3, the withholding may not be included on the partner's Schedule 3K-1 because the partner cannot also claim the withholding.
- An electing partnership must provide a supplemental statement with each partner's Schedule 3K-1 detailing the items of income, gain, loss, and deduction that are included on the partnership's Schedule 3-ET.
- If a nonelecting partnership receives a Schedule 3K-1 from ownership in another partnership that made the entity-level tax election, the nonelecting partnership must provide a supplemental statement with each partner's Schedule 3K-1 detailing the items of income, gain, loss, and deduction that are included on the electing partnership's Schedule 3-ET.

Partner's Basis in Partnership Interest

The adjusted basis of a partner's interest in an electing partnership is determined as if the election was not made.

When and Where to File

The election to be taxed at the entity level must be made annually on or before the extended due date of the Wisconsin Form 3. The election is made on the day Form 3 is filed. Generally, a partnership must file its franchise or income tax return by the 15th day of the 3rd month following the close of its taxable year, however:

- Any extension allowed by the Internal Revenue Service (IRS) for filing the federal return automatically extends the Wisconsin due date.
- If a partnership would like to make the election and has a short period, the Form 3's extended due date has not passed, and the Schedule 3-ET is not available to file with Form 3, contact the department's Customer Service Bureau at DORAuditPassThrough@wisconsin.gov or (608) 266-2772.

Columns (b), (c), (d), and (e)

Column (b) – Residents (Individuals, Estates and Trusts Only):

The electing partnership must determine situs of income, loss and deductions of resident partners as if the election was not made and report the amounts in column (b).

- For Wisconsin resident partners that are an individual, estate, or trust, include the total amount from the partner's Schedule 3K-1, column (d) in column (b) of the electing partnership's Schedule 3-ET.

Note: Wisconsin resident partners that are **not** an individual, estate, or trust (e.g., corporations or partnerships), the electing partnership must include in column (c) of Schedule 3-ET the amount reported in column (d) of the partner's Schedule 3K-1 that would be sourced to Wisconsin as if the election was not made. Follow the instructions for *Column (c) – Nonresidents* below.

Column (c) – Nonresidents (Including All Partnerships and Corporations):

The electing partnership must determine situs of income, loss and deductions of nonresident partners pursuant to secs. 71.04, 71.14, 71.25, 71.362, or 71.45, Wis. Stats., as if the election was not made and report the amounts in column (c).

- For nonresident partners that are an individual, estate, or trust, include the total amount from the partner's Schedule 3K-1, column (e) in column (c) of the electing partnership's Schedule 3-ET.
- For nonresident partners that are **not** an individual, estate, or trust (e.g., corporations or partnerships), the electing partnership must include in column (c) of the Schedule 3-ET the amount reported in column (d) of the partner's Schedule 3K-1 that would be sourced to Wisconsin as if the election was not made.

Note For multi-tiered entity tax calculations, enclose a supplemental schedule showing how the tax was computed, similar to example 2 later in these instructions.

Example 1 – Determining Wisconsin Sourced Income in a Single-Tiered Structure:

Facts:

- Partners A and B each have 50-percent ownership interest in Partnership
- Partner A was a Wisconsin resident for the entire year in 2020
- Partner B was a nonresident of Wisconsin for the entire year in 2020
- In 2020, 25 percent of the partnership's income is earned in Wisconsin and 75 percent is earned in other states
- Partnership has \$100,000 of net ordinary business income in 2020 from the sale of tangible personal property
- Partnership makes an election under sec. 71.21(6)(a), Wis. Stats., to pay tax at the entity level for 2020

Computation of income attributable to Wisconsin:

| | Partner A (resident) | Partner B (nonresident) |
|---|----------------------|-------------------------|
| Portion of business income from partnership | \$50,000 | \$50,000 |
| Wisconsin apportionment % (situs of income) | 100% | 25% |
| Partnership's Wisconsin source income | \$50,000 | \$12,500 |

The electing partnership's Wisconsin income is **\$62,500** (\$50,000 + \$12,500).

Example 2 – Determining Wisconsin Sourced Income in a Multi-Tiered Structure:

Facts:

- Partnership A operates a unitary business in California, New Jersey, and Wisconsin.
- Partnership A has three partners:
 - Partnership B is a 50% partner
 - Individual C is a 25% partner and a resident of New Jersey
 - Individual D is a 25% partner and a resident of Wisconsin
- Partnership A has \$20,000,000 of federal ordinary business income, no Wisconsin adjustments, and sales of tangible personal property as follows:
 - California sales (has nexus) \$15,000,000 30%
 - New Jersey sales (has nexus) \$7,500,000 15%

- Wisconsin sales (has nexus) \$27,500,000 55%
- Sales to other states \$0
- Total sales \$50,000,000
- Partnership A elects to pay tax at the entity-level under sec. 71.21(6)(a), Wis. Stats.
- Partnership B has four partners
 - Corporation E is a 40% partner
 - Corporation F is a 35% partner
 - Individual G is a 15% partner and a resident of Wisconsin
 - Individual H is a 10% partner and a resident of Minnesota
- Partnership B has no additional entity level activity other than its interest in Partnership A.
- All income and expense amounts of Partnerships A and B are allocated to each partner on a pro-rata basis based on ownership percentage.
- Corporations E and F both conduct business in Wisconsin and New York. The Wisconsin apportionment percentages for these corporations are as follows, after combining their share of the partnership's apportionment data with their own apportionment data:
 - Corporation E 30%
 - Corporation F 40%

Taxable Income: If Partnership A makes the election, it will owe tax on **\$12,400,000** of Wisconsin taxable income. See the computations in Tables 1 and 2 below.

Organizational Structure:

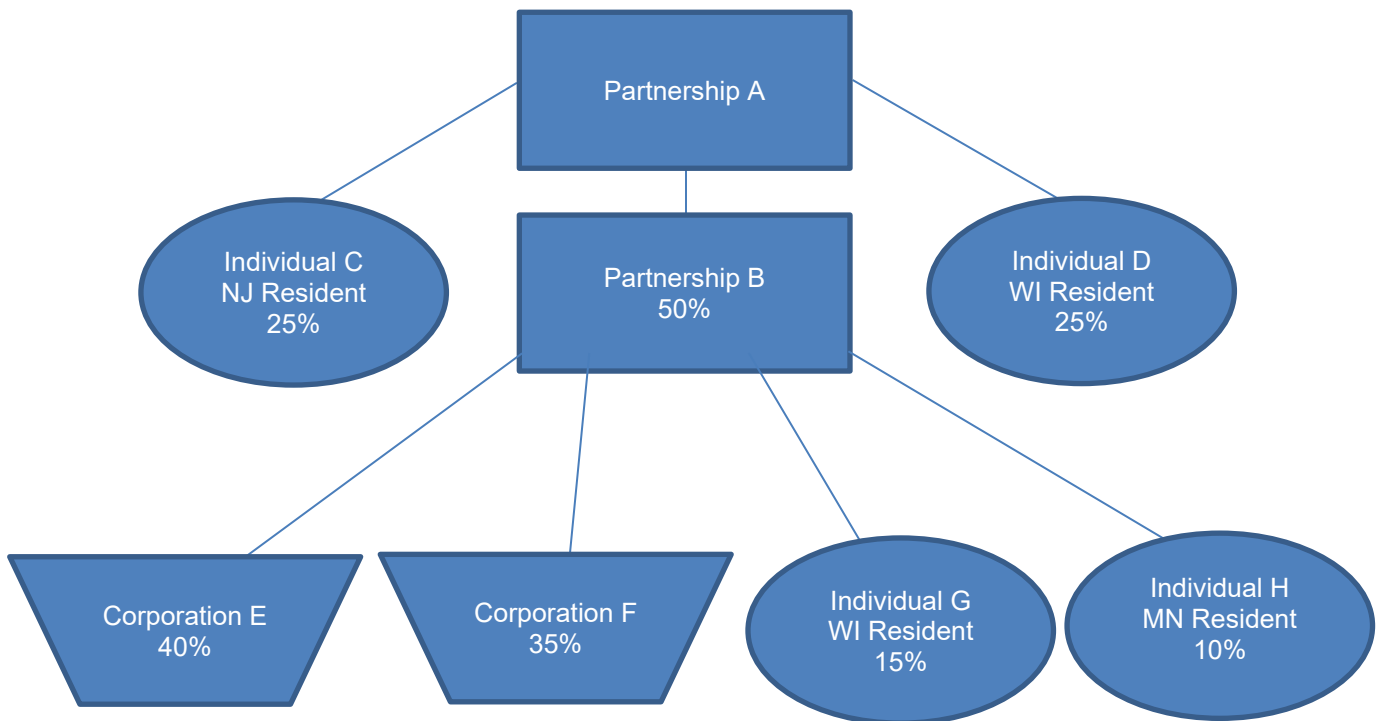


Table 1: Partnership A's Computation of Income Attributable to Wisconsin:

| | Partnership B | Individual C NJ Resident | Individual D WI Resident | Total |
|------------------------------|------------------------------|-----------------------------|-----------------------------|---------------------|
| Ownership % in Partnership A | 50% | 25% | 25% | 100% |
| Business income | \$10,000,000 | \$5,000,000 | \$5,000,000 | \$20,000,000 |
| WI apportionment | N/A | 55% | N/A | |
| WI taxable income | \$4,650,000 (see Table 2) | \$2,750,000 | \$5,000,000 | \$12,400,000 |

Table 2: Partnership B's Partners' Computation of Income Attributable to Wisconsin:

| | Corporation E | Corporation F | Individual G WI Resident | Individual H MN Resident | Total |
|------------------------------|---------------|---------------|-----------------------------|-----------------------------|--------------|
| Ownership % in Partnership B | 40% | 35% | 15% | 10% | 100% |
| Business income | \$4,000,000 | \$3,500,000 | \$1,500,000 | \$1,000,000 | \$10,000,000 |
| WI apportionment | 30% | 40% | N/A | 55% | |
| WI taxable income | \$1,200,000 | \$1,400,000 | \$1,500,000 | \$550,000 | \$4,650,000 |

Column (d) - Entity-Level Adjustments: Enter any amount for which the item of income, gain, loss or deduction must be adjusted to arrive at the amount attributable or taxable to the entity. A positive adjustment will increase the amount and a negative adjustment will decrease it.

The net income or loss of the partnership is computed under sec. 71.21, Wis. Stats., which provides, in part:

- The net income of a partnership shall be computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations.
- The standard deduction shall **not** be allowed in computing the taxable income of a partnership.
- Except for charitable contributions that would otherwise be allowed as a deduction for a fiduciary as provided in sec. 642, IRC, the deductions for charitable contributions provided in sec. 170, IRC, are not allowed.
- The passive activity loss limitations in sec. 469, IRC, apply.
 - Passive activity loss limitations are determined at the electing partnership level, and the electing partnership must determine how each partner would characterize each item of income or loss (passive or non-passive) as if the election was not made.
 - The electing partnership must complete a pro forma federal Form 8582, *Passive Activity Loss Limitations*, for Wisconsin in order to determine the allowable passive activity loss the electing partnership may claim.
 - Passive losses may not be passed through to the partners.
 - Suspended passive losses may be carried forward by the electing partnership.
- For additional information on determining income and adjustments at the entity level for partnerships, see Common Questions on the department's website at: <https://www.revenue.wi.gov/Pages/FAQS/ise-passthrough-tax.aspx>.

Column (e) - Total: For each line, enter the sum of columns (b), (c), and (d).

Specific Line Instructions - Income**Lines 2 & 3 - Net rental real estate and other net rental income or loss:**

- Passive activity loss limitations are determined at the electing partnership level. A maximum \$25,000 of losses from rental real estate activities applies as provided in sec. 469(i), IRC. The electing partnership must determine how each partner would characterize each item of income or loss (passive or non-passive) as if the election was not made.
- The electing partnership must complete a pro forma federal Form 8582, *Passive Activity Loss Limitations*, for Wisconsin in order to determine the allowable passive activity losses the electing partnership may claim, and enter any adjustment necessary in column (d).
- Suspended passive activity losses may be carried forward by the partnership.

Line 4 – Guaranteed payments:

To the extent a partner would otherwise include the guaranteed payments in Wisconsin taxable income, the electing partnership must include the guaranteed payments in Wisconsin taxable income.

Enter guaranteed payments for services performed by partners on line 4a and guaranteed payments for use of partners' capital on line 4b.

For additional information on the treatment of guaranteed payments at the entity level for partnership, see Common Questions 27 through 29 on the department's website at:

<https://www.revenue.wi.gov/Pages/FAQS/ise-passthrough-tax.aspx>.

Lines 8 through 10 – Gains and losses:

- The Wisconsin 30-percent and/or 60-percent long-term capital gain exclusion allowed for individuals may be claimed by the electing partnership at the entity level.
- The maximum capital loss deduction that may be claimed by the electing partnership is \$500.
- Capital losses, including suspended capital losses, may not pass through to partners.
- Unused capital losses may be carried forward by the electing partnership.

Note A supplemental schedule may be used to track capital loss carryforward amounts and included as an attachment when submitting the return.

Example 1:

- Partnership XYZ's Partners A and B each have a 50-percent interest in the partnership.
- Partners A and B are full-year Wisconsin resident individuals.
- Partnership XYZ makes the election to pay tax at the entity level.
- The combined total of Partner A's and B's Wisconsin Schedule 3K-1 from Partnership XYZ includes the following:

| Income/(Loss) Item | Amount |
|------------------------------------|------------|
| Net short-term capital gain (loss) | (\$15,000) |
| Net long-term capital gain (loss) | (\$5,000) |
| Net section 1231 gain (loss) | \$16,000 |

- Assume there are no prior year unrecaptured section 1231 losses, and the section 1231 gain is treated as a capital gain (not ordinary income).
- Partnership XYZ has a net capital loss of \$4,000 (\$16,000 - \$15,000 - \$5,000).
- Partnership XYZ's Schedule 3-ET should show the following:

| Column (a) | Column (b) | Column (c) | Column (d) | Column (e) |
|--|------------|------------|------------|------------|
| Line 8: Net short-term capital gain (loss) | (\$15,000) | | \$14,500 | (\$500) |
| Line 9: Net long-term capital gain (loss) | (\$5,000) | | \$5,000 | |
| Line 10: Net section 1231 gain (loss) | \$16,000 | | (\$16,000) | |

Note: The unused capital loss of \$3,500 may be carried forward by Partnership XYZ.

Example 2:

- Partnership XYZ's Partners A and B each have a 50-percent interest in the partnership.
- Partners A and B are full-year Wisconsin resident individuals.
- Partnership XYZ makes the election to pay tax at the entity level.
- The combined total of Partner A's and B's Wisconsin Schedule 3K-1 from Partnership XYZ includes the following:

| Income Item | Amount |
|------------------------------------|-------------|
| Net short-term capital gain (loss) | (\$18,000) |
| Net long-term capital gain (loss) | (\$108,000) |
| Net section 1231 gain (loss) | (\$20,000) |

- Assume the section 1231 loss is treated as an ordinary loss (not a capital loss)
- Partnership XYZ has a net capital loss of \$126,000 (-\$18,000 - \$108,000).
- Partnership XYZ's Schedule 3-ET should show the following:

| Column (a) | Column (b) | Column (c) | Column (d) | Column (e) |
|--|-------------|------------|------------|------------|
| Line 8: Net short-term capital gain (loss) | (\$18,000) | | \$17,500 | (\$500) |
| Line 9: Net long-term capital gain (loss) | (\$108,000) | | \$108,000 | |
| Line 10: Net section 1231 gain (loss) | (\$20,000) | | | (\$20,000) |

Note: The unused capital loss of \$125,500 may be carried forward by Partnership XYZ.

Line 11 - Other income or loss: If more than three lines are necessary, submit a supplemental statement with Schedule 3-ET identifying each item of income or loss, and enter the total income or loss from the supplemental statement on line 11a.

Line 12 - Total income or loss: Add lines 1 through 11c for columns (b), (c), (d), and (e).

Specific Line Instructions - Deductions

Line 13 - Section 179 deduction: The federal section 179 deduction limitation and phase-out apply to the electing partnership. For 2020, the maximum deduction is \$1,040,000. This limit starts to phase-out when the cost of section 179 property placed in service during the tax year exceeds \$2,590,000.

Line 14 - Investment interest expense:

- The amount of investment interest expense allowed as a deduction may not exceed the net investment income of the electing partnership for the taxable year as provided in sec. 163(d), IRC.
- The electing partnership must complete a pro forma federal Form 4952, *Investment Interest Expense Deduction*, for Wisconsin in order to determine the allowable investment interest expense the electing partnership may claim, and enter any adjustment necessary in column (d).
- Suspended interest expenses may be carried forward by the electing partnership.

Line 15 - Other deductions: If more than three lines are necessary, submit a supplemental statement with Schedule 3-ET identifying each deduction item, and enter the total deductions from the supplemental statement on line 16a.

Line 17 - Total deductions: Add lines 13 through 16c for columns (b), (c), (d), and (e).

Line 18 - Taxable income or loss: Subtract line 17 from line 12.

Line 19 – Entity-level gross tax: Multiply line 18 by 7.9 percent (0.079). If line 18 is less than zero, fill in 0. This is the electing partnership's gross tax.

Line 20 - Credit for net tax paid to another state:

- Enter the amount from line 22 of Schedule ET-OS, *Entity-Level Credit for Net Tax Paid to Another State*, and submit Schedule ET-OS with the electing partnership's Form 3.
- The electing partnership may only claim a credit for:
 - Net income or franchise taxes paid to another state on the same income that is taxable to Wisconsin, and
 - Individual income tax paid on a composite return on behalf of Wisconsin resident partners to another state on the same income that is taxable to Wisconsin.
- The electing partnership may not pass the credit through to partners.
- Partners of the electing partnership may not claim a credit for taxes paid to another state on income of the partnership, since the partners do not pay Wisconsin income tax on the electing partnership income.
- See additional limitations in sec. 71.07(7)(b)3., Wis. Stats.

Line 21 - Net tax: Subtract line 20 from line 19. If line 20 is larger than line 19, fill in 0. This is the electing partnership's entity-level net tax. Enter the amount from line 21 on Form 3, page 1, line 1.

Additional Information, Assistance, and Forms**Web Resources**

- Common questions: Pass-Through Entity-Level Tax - Partnerships: <https://www.revenue.wi.gov/Pages/FAQS/ise-passthroughpartnr.aspx>
- Forms and instructions: <https://www.revenue.wi.gov/Pages/HTML/formpub.aspx>
- The Wisconsin Tax Bulletin: <https://www.revenue.wi.gov/Pages/ISE/wtb-Home.aspx>

- Wisconsin Statutes and Administrative Code:
<https://www.revenue.wi.gov/Pages/HTML/sites.aspx>
- Tax Publications: <https://www.revenue.wi.gov/Pages/HTML/taxpubs.aspx>

Contact Information

- Email your question to: DORAuditPassThrough@wisconsin.gov
- Call (608) 266-2772
- Call or visit any Department of Revenue office:
<https://www.revenue.wi.gov/Pages/FAQS/ise-address.aspx>

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of November 30, 2020: Subchapter III of Ch. 71, Wis. Stats., and sec. 71.98, Wis. Stats.