

# Update to Instructions as a Result of 2021 Wisconsin Act 1

On February 18, 2021, Governor Tony Evers signed 2021 Wisconsin Act 1. The law provides the following changes to the 2020 tax year:

## **Federal Paycheck Protection Programs**

Wisconsin adopted sections 276(a) and (b) and 278(a) of Division N of [Public Law 116-260](#), regarding the tax treatment of income and expenses relating to the original and subsequent Paycheck Protection Programs (PPP). Taxpayers may exclude from income the forgiveness of debt on PPP loan proceeds and deduct expenses paid with PPP loan proceeds that are otherwise deductible.

## **Other Federal Grants, Loans, and Subsidies**

Wisconsin adopted section 278(b), (c), and (d) of Division N of [Public Law 116-260](#), regarding the tax treatment of income and expenses relating to certain federal grants, loans, and subsidies. Taxpayers may exclude from income the following federal grants, forgivable loans, and subsidies, and deduct expenses paid with the funds if the expenses are otherwise deductible:

- Section 278(b) - Emergency grants of economic injury disaster loans (EIDL) and targeted EIDL advances
- Section 278(c) - Subsidy for certain loan payments
- Section 278(d) - Grants for shuttered venue operators

## **Other Federal Provisions Adopted**

For an inclusive list of federal provisions adopted under 2021 Wisconsin Act 1, see the *Provisions of the Internal Revenue Code Adopted* section in the Form 4 instructions.

## **State Grant Programs During the COVID-19 Pandemic**

The following income is exempt from Wisconsin income and franchise tax:

- Income received from the state of Wisconsin with money received from the coronavirus relief fund authorized under [42 USC 801](#) to be used for any of the following purposes:
  - Grants to small businesses
  - A farm support program
  - Broadband expansion
  - Privately owned movie theater grants
  - A nonprofit grant program
  - A tourism grants program
  - A cultural organization grant program
  - Music and performance venue grants
  - Lodging industry grants
  - Low-income home energy assistance
  - A rental assistance program
  - Supplemental child care grants
  - A food insecurity initiative
  - Ethanol industry assistance
  - Wisconsin Eye
- Income received in the form of a grant issued by the Wisconsin Economic Development Corporation during and related to the COVID-19 pandemic under the ethnic minority emergency grant program.

Income from these programs is included in federal income pursuant to sec. [61](#) of the Internal Revenue Code, unless an exception applies. For Wisconsin, this income should be excluded from federal adjusted gross income by making a subtraction modification on Schedule 4W, line 13 using the description "Wisconsin COVID-19 Program Funds."

**Note:** Expenses paid for with these programs and deducted in the computation of federal adjusted gross income are not required to be added back on the Wisconsin return.

# Instructions for 2020 Schedule 4W: Wisconsin Subtractions from Federal Income

## Purpose of Schedule 4W

Corporations complete Schedule 4W to report subtraction modifications that are needed to account for differences between taxable income under Wisconsin law and under federal law. The corporation files Schedule 4W with its Wisconsin Form 4.

## Line-by-Line Instructions

■ **Line 1. Wisconsin Subtraction Modification for Dividends** – Enter the total from line 4 of Schedule 4Y. See the Schedule 4Y instructions for an explanation of dividends that are eligible for the subtraction.

■ **Line 2. Related Entity Expenses** – If the corporation made an addition modification for related entity expenses on Schedule 4V, line 3, this is where you report the amount that qualifies for a deduction. Enter the amount of the expenses from Schedule 4V, line 3, that are deductible using the criteria described in *Conditions for Deducting Related Entity Expenses*, below.

For corporations that are partners, members, or beneficiaries of pass-through entities, also include the amount of allowable related entity expense reported on line 21b of Schedule 3K-1 and on line 14b of Schedule 2K-1, as applicable.

**Conditions for Deducting Related Entity Expenses.** Section 71.80(23)(a)3., Wis. Stats., provides that a related entity expense that was added back on Schedule 4V, line 3, qualifies for a deduction if all of the following conditions are met:

- The primary motivation for the transaction was one or more business purposes other than the avoidance or reduction of state income or franchise taxes;
- The transaction changed the economic position of the taxpayer in a meaningful way apart from tax effects; and
- The expenses were paid, accrued, or incurred using terms that reflect an arm's length relationship.

Factors that may indicate that the expense does not qualify for a deduction include the following:

- There was no actual transfer of funds from the taxpayer to the related entity, or the funds were substantially returned to the taxpayer, either directly or indirectly.
- If the transaction was entered on the advice of a tax advisor, the advisor's fee was determined by reference to the tax savings.
- The related entity does not regularly engage in similar transactions with unrelated parties on terms substantially similar to those of the subject transaction.
- The transaction was not entered into at terms comparable to arm's length as determined by Treas. Reg. 1.482-1(b).
- There was no realistic expectation of profit from the transaction apart from the tax benefits.
- The transaction resulted in improper matching of income and expenses.
- An expense for the transaction was accrued under FIN 48.

The statutes (sec. 71.80(23)(a)1. and 2., Wis. Stats.) provide some additional conditions under which a related entity expense may qualify for a deduction, subject to some important exceptions. Those conditions are:

- If the expense was paid to a related entity that is merely acting as a conduit between the taxpayer and an unrelated entity, or

- If the related entity was subject to a tax measured by net income or receipts and the net income or receipts of the transaction were included in its tax base.

**More Information on Related Entity Expenses.** For more information on the deductibility of related entity expenses, see the Schedule RT instructions. Even if you weren't required to file Schedule RT for the expenses you added back on Schedule 4V, the instructions to Schedule RT provide helpful information regarding deductibility of related entity expenses.

■ **Line 3. Income from Related Entities Whose Expenses Were Disallowed** – If the corporation has income from a related entity which paid, accrued, or incurred expenses to the corporation, and that related entity could not deduct those expenses according to the instructions for line 2, the corporation may subtract the corresponding income from its taxable income.

In order to claim a subtraction on line 3, the corporation must obtain Schedule RT-1 from the related entity and submit Schedule RT-1 with Schedule 4W. See the Schedule RT-1 instructions for further details.

■ **Line 4. Subpart F, Global Intangible Low-Taxed Income (GILTI), and Section 965(a) Income** –

- Enter income from controlled foreign corporations under Subpart F of the Internal Revenue Code as reported on Form 1120, Schedule C, line 16, column (a).
- Do not include Previously Taxed Income (PTI) required to be reported on Form 1120, Reconciliation of Net Income (Loss) per Income Statement of Includible Corporations With Taxable Income per Return. An addition adjustment for PTI should not be netted against a Subpart F income subtraction. Report PTI as an "Other" addition on Schedule 4V, line 10.
- Enter GILTI as reported on Form 1120, Schedule C, line 17, column (a).
- Enter section 965(a) inclusion as reported on Form 1120, Schedule C, line 15, column (a).

■ **Line 5. Foreign Dividend Gross-Up** – Enter foreign dividend gross-up reported on Form 1120, Schedule C, line 18, column (a).

■ **Line 6. Nontaxable Income** – Enter nontaxable income included in computing federal taxable income. Include a schedule with your return showing the payers and amounts of nontaxable income and explaining why that income isn't taxable.

Interest, dividends, and capital gains from the disposition of intangible assets are nontaxable if both of the following are true:

- The operations of the payer are not unitary with those of the payee, and
- The payer and payee are not related as parent company and subsidiary or affiliates and the investment activity from which the income is received is not an integral part of a unitary business.

Income may also be nontaxable under the principles of the U.S. Supreme Court decision in *Allied-Signal v. Director, Div. of Taxation*, 504 U.S. 768 (1992), if the investment is passive and does not serve an operational function.

For corporations subject to the Wisconsin income tax rather than the franchise tax, nontaxable income also includes interest on United States government obligations.

**Franchise tax** applies to:

- All domestic corporations (those organized under Wisconsin law), and
- Foreign corporations (those not organized under Wisconsin law) doing business in Wisconsin or buying or selling lottery prizes if the winning tickets were originally bought in Wisconsin, except where taxation is exempted by statute or barred by federal law.

The tax rate is 7.9%. Income from obligations of the United States government and its instrumentalities is included in income under the franchise tax law.

**Income tax** applies only to foreign corporations which are not subject to the franchise tax and which own property in Wisconsin or whose business in Wisconsin is exclusively in foreign or interstate commerce. The tax rate is 7.9%. Income from obligations of the United States government and its instrumentalities is not included in income under the income tax law.

**CAUTION:** Expenses related to nontaxable income aren't deductible and must be added to federal taxable income on Schedule 4V, line 5.

■ **Line 7. Foreign Taxes** – Enter foreign taxes paid or accrued during the year, but only if the income on which the tax is based is included in Wisconsin taxable income. Do not enter amounts that were deducted from federal taxable income or amounts included on Schedule 4W, line 5.

■ **Line 8. Cost Depletion** – For taxable years beginning on or after January 1, 2014, Wisconsin allows percentage depletion, so an adjustment is generally not required.

■ **Line 9. Basis, Section 179, Depreciation Difference, Amortization of Assets** –

Enter the amount by which the Wisconsin deduction for depreciation or amortization exceeds the federal deduction for depreciation or amortization. Provide a schedule showing the computation details. These differences can happen because of IRC sections not adopted for Wisconsin purposes and electing a different depreciation method under the Internal Revenue Code in effect for Wisconsin purposes. For further information about the differences between federal and Wisconsin basis and depreciation, see the section titled Conformity with Internal Revenue Code and Exceptions in the Form 4 instructions, as applicable.

■ **Line 10. Basis Differences** – Enter the amount by which the Wisconsin basis of assets disposed of exceeds the federal basis. See the instructions for Schedule 4V, line 7, for an example. Provide a schedule showing the computation details.

■ **Line 11. Federal Wage Credits** – Enter wages that aren't deductible in computing federal income because they are being used in computing federal credits based on wages.

■ **Line 12. Federal Research Credit Expenses** – Enter research expenses that aren't deductible in computing federal income because they are being used in computing the federal credit for increasing research activities.

■ **Line 13. Other Subtractions** – Enter any other subtractions from federal income that are not specifically listed in lines 1-12 above, except for the insurance company adjustment, which is reported on line 14.

**CAUTION:** Do not enter subtractions on line 13 that are specifically designated on lines 1 -12 above. For example, if a depreciation adjustment is passed through from a partnership on Schedule 3K-1, enter the amount on Schedule 4W, line 9, not on line 13.

These other subtractions may include:


- Adjustments required as a result of changes made to the Internal Revenue Code which don't apply for Wisconsin. For Wisconsin, the Internal Revenue Code means the federal Internal Revenue Code as amended to December 31, 2017, with exceptions.

• **Amendments made to the Internal Revenue Code after December 31, 2017 Adopted by Wisconsin include:**

- **New** Sections 40307, 40413, and 41113 of P.L. 115-123:
  - Section 40307 relating to extending the election under IRC sec. 179E(g) to expense mine safety equipment to December 31, 2017.
  - Section 40413 relating to extending the energy efficient commercial building deduction to December 31, 2017.
  - Section 41113 relating to the modification to Treasury Regulation sec. 1.401(k)-1(d)(3)(iv)(E) to remove the 6-month prohibition on making elective and employee contributions to a plan after receipt of a hardship distribution.

- Sections 101(m), (n), (o), (p), and (q), 104(a), 109, 401(a) (54) and (b) (15)(A), (B), and (C), 19, 20, 23, 26, 27, and 28 of division U of P.L. 115-141:
  - Section 101(m), which clarifies that control of a partnership means ownership of at least 80 percent of the profits interests and at least 80 percent of the capital interest (ownership interest is not limited to exactly 80 percent ownership).
  - Section 101(n), which treats gain from the sale or disposition of ancillary personal property as gain from the sale or disposition of a real estate asset for purposes of the Real Estate Investment Trust (REIT) income tests. Treats gain from the sale or disposition of certain obligations secured by mortgages on both real property and personal property as gain from the sale or disposition of real property for purposes of the REIT income tests.
  - Section 101(o), which conforms the treatment of multiple distributions during a taxable year from an Achieving a Better Life Experience (ABLE) account in section 529A to the treatment of multiple distributions during a taxable year from a section 529 account.
  - Section 101(p) relating to the disposition of investment in United States real property. Provides for special rules relating to real estate investment trusts.
  - Section 101(q), which clarifies that a qualified foreign pension fund is not treated as a nonresident alien individual or as a foreign corporation. Also provides that an entity whose entire interests are held by a qualified foreign pension fund, is treated as a pension fund. Revises the second prong of the definition of the term "qualified foreign pension fund" to clarify that a government established fund to provide public retirement or pension benefits may qualify, as may a fund established by more than one employer to provide retirement or pension benefits to their employees, such as a multiple-employer or multiemployer plan.
  - Section 104(a), which modifies the definition of inconsistent estate basis so the penalty does not apply when an heir claims a basis that is higher than the final estate tax value by reason of making basis adjustments relating to post-acquisition events.
  - Section 109 relating to non-substantive technical corrections to the language in IRC secs. 1361(c)(2)(B)(vi) and 501(c)(12)(E).
  - Section 401(a)(54) relating to non-substantive technical corrections to the language in IRC sec. 179D(d)(1)(B).
  - Section 401(b)(15)(A) relating to non-substantive technical corrections to IRC sec. 179(e).
  - Section 401(b)(15)(B) relating to non-substantive technical corrections to IRC sec. 179(d)(1)(B)(ii).
  - Section 401(b)(15)(C), which provides that the amendments made in secs. 401(b)(15)(A) and (B) do not apply to property placed in service before March 23, 2018.
  - Section 401(b)(19) relating to non-substantive technical corrections to IRC sec. 411(a)(3)(F)(i).
  - Section 401(b)(20) relating to non-substantive technical corrections to IRC sec. 415(g).
  - Section 401(b)(23) which eliminated the term "as defined in section 170(e)(6)(F)(i)" in IRC sec. 530(b)(3) subparagraph (A)(iii) and added a new paragraph: "(C) COMPUTER TECHNOLOGY OR EQUIPMENT.—The term 'computer technology or equipment' means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to section 596)"
  - Section 401(b)(26), which eliminated subparagraph (H) from IRC sec. 613A(c)(6).
  - Section 401(b)(27), which replaced "limitations under sections 415(c) and (e)" with "limitation under section 415(c)" in IRC sec. 664(g)(3)(E).
  - Section 401(b)(28), which eliminated paragraph (6) from IRC sec. 856(m).
- Sections 102 and 104 of division M, sections 102, 103, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 201, 204, 205, 206, 302, 401, and 601 of division O, section 1302 of division P, and sections 131, 202 (d), and 205 of division Q of P.L. 116-94:
  - Section 102 of division M, which provides for the 1974 United Mine Workers of America Pension Plan to be treated as if it were in critical status and provides additional funding. It also imposes enhanced annual reporting requirements and provides a penalty for failing to file the report.
  - Section 104 of division M, which provides that a trust forming part of a pension plan is not treated as failing to be treated as a qualified trust if a distribution from the plan is allowed at the age of 59 ½. In addition, a deferred compensation plan through a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state, meets the distribution requirements if amounts are paid to participants or beneficiaries who attain the age of 59 ½.

- Section 102 of division O, which increases the 10% cap for automatic enrollment safe harbor after first plan year to 15%.
- Section 103 of division O, which eliminates the safe harbor notice requirements, but maintains the requirement to allow employees to make or change an election at least once per year. Permits amendments to nonelective status at any time before the 30th day before the close of the plan year. After that, amendments are allowed only if it provides a nonelective contribution of at least 4% of compensation for all eligible employees for that plan year, and the plan is amended no later than the last day for distributing excess contributions for the plan year.
- Section 106 of division O, which treats stipends and non-tuition fellowship payments received by graduate and postdoctoral students as compensation and as basis for IRA contributions.
- Section 107 of division O, which repeals the prohibition on contributions to a traditional IRA by an individual who has attained age 70 ½. The amount of qualified charitable distributions from the plan is reduced by an amount equal to the excess of the aggregate amount of deductions allowed to the taxpayer under section 219 (retirement savings) for all taxable years ending on or after the date the taxpayer attains age 70 ½, over the aggregate amount of reductions for all taxable years preceding the current taxable year.
- Section 108 of division O, which prohibits the distribution of plan loans through credit cards or other similar arrangements.
- Section 109 of division O, which permits qualified defined contribution plans, section 403(b) plans, or governmental section 457(b) plans to make a direct trustee-to-trustee transfer or another employer-sponsored retirement plan or IRA of lifetime income investments or distributions of a lifetime income investment in the form of a qualified plan distribution annuity, if a lifetime income investment is no longer authorized to be held as an investment option under the plan.
- Section 110 of division O, which provides that the Treasury will issue guidance under which if an employer terminates a section 403(b) custodial account, the distribution needed to effectuate the plan termination may be the distribution of an individual custodial account in kind to a participant or beneficiary. The individual custodial account will be maintained on a tax-deferred basis as a section 403(b) custodial account until paid out, subject to the section 403(b) rules in effect at the time the individual custodial account is distributed.
- Section 111 of division O, which clarifies that individuals may be covered by plans maintained by church-controlled organizations.
- Section 113 of division O, which provides that no penalty applies for withdrawals from retirement plans for individuals for any qualified birth or adoption.
- Section 114 of division O, which increases the required minimum distribution age from retirement plans from 70 ½ to 72.
- Section 115 of division O, which provides pension funding relief for community newspaper plan sponsors by increasing the interest rate to calculate those funding obligations to 8% and increases the amortization period from 7 years to 30 years.
- Section 116 of division O, which allows home healthcare workers to contribute to a plan or IRA by providing that tax-exempt difficulty of care payments are treated as compensation for purposes of calculating the contribution limits to defined contribution plans and IRAs.
- Section 201 of division O, which permits businesses to treat qualified retirement plans adopted before the due date of the tax return for the taxable year as having been adopted as of the last day of the taxable year.
- Section 204 of division O, which provides certainty for plan sponsors in the selection of lifetime income providers, a fiduciary act under the Employee Retirement Income Security Act. Fiduciaries are afforded an optional safe harbor to satisfy the prudence requirement with respect to the selection of insurers for a guaranteed retirement income contract and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract.
- Section 205 of division O, which modifies the nondiscrimination rules with respect to closed plans to permit existing participants to continue to accrue benefits.
- Section 206 of division O, which establishes individualized rules for calculating Pension Benefit Guarantee Corporation premiums. For Cooperative and Small Employer Charity plans, specifies flat-rate premiums of \$19 per participant, and variable rate premiums of \$9 for each \$1,000 of unfunded vested benefits.

- Section 302 of division O, which expands 529 education savings accounts to cover costs associated with registered apprenticeships and up to \$10,000 of qualified student loan repayments (including those for siblings). The student loan interest deduction is limited to not include any distributions treated as a qualified higher education expense with respect to student loans.
- Section 401 of division O, which modifies the required minimum distribution rules with respect to defined contribution plan and IRA balances upon the death of the account owner. Distributions to individuals other than the surviving spouse of the employee (or IRA owner), disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee (or IRA owner), or child of the employee (or IRA owner) who has not reached the age of majority are generally required to be distributed by the end of the 10th calendar year following the year of the employee or IRA owner's death.
- Section 601 of division O, which provides for a remedial plan amendment period until the 2022 plan year (2024 plan year for sec. 414(d) governmental plans) or a later date if the Treasury provides for any plan amendment required under the Act.
- Section 1302 of division P, which provides that the 15% additional tax does not apply to any party to an arrangement which satisfies the requirements of IRC section 408(h) of the Employee Retirement Income Security Act (ERISA) of 1974. This relates to temporary regulatory flexibility from certain ERISA requirements in order to allow for the use of a virtual pharmacy benefit management program that will lower drug costs for workers and their families.
- Sections 131 of division Q, which extends the energy efficient commercial buildings deduction under IRC sec. 179D to December 31, 2020.
- Section 202(d) of division Q, which provides that as a result of the qualified disaster provisions, any amendment to a qualified retirement plan or annuity contract is treated as being operated in accordance with the terms of the plan during the period that is on or before the last day of the first plan year beginning on or after January 1, 2020, or such later date as the Secretary may prescribe. In the case of a governmental plan, the applicable date is 2 years after January 1, 2020.
- Section 205 of division Q, which provides that any individual with a principal place of abode or any taxpayer with a principal place of business in a disaster area receives an automatic 60-day extension with regard to any tax filing.
- Sections 1106, 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L. [116-136](#):
  - Section 1106 relating to the exclusion from income for the cancellation of small business loans.
  - Section 2202 relating to waiver of penalties for early withdrawals from qualified retirement plans.
  - Section 2203 relating to the temporary waiver of required minimum distribution rules for certain retirement plans and accounts.
  - Section 2204 relating to an above-the-line deduction for up to \$300 of charitable cash contributions.
  - Section 2205 relating to increased limitations on charitable contribution deductions.
  - Section 2206 relating to an exclusion from income for payments an employer makes for an employee's student loans.
  - Section 2307 relating to the classification of qualified improvement property for depreciation purposes. The classification of qualified improvement property applies retroactively to taxable years beginning on or after January 1, 2018. As a result, if persons amend their federal income tax return, they must amend their Wisconsin tax returns to recompute depreciation on the qualified improvement property. However, persons cannot claim bonus depreciation for Wisconsin.
  - Section 3608 relating to the extension of time to make minimum required contributions to single-employer defined benefit pension plans.
  - Section 3609 relating to the eligibility of a cooperative and small employer charity pension plan.
  - Section 3701 relating to the eligibility of high deductible health plans for purposes of health savings accounts.
  - Section 3702 relating to qualified distributions from health savings accounts and Archer medical savings accounts.
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  - Sections 202, 208, 209, 211, and 214 of division EE and sections 276(a) and (b), 277, 278(a), (b), (c), and (d), 280, and 285 of division N of P.L. [116-260](#):
    - Section 202 of division EE, relating to the effective date for the ADS recovery period which shortened the recovery period for residential rental property from 40 years to 30 years under sec. 13204(b) of P.L. 115-97. The recovery period is revised as follows: For any residential rental property which was placed in service before January 1, 2018, held by an electing real property trade or business that elects out of the interest deduction limitation under section 163(j)(7)(B) of the IRC, and to which subparagraph (A),

- (B), (C), (D), or (E) of section 168(g)(1) of the IRC did not apply prior to such date, the amendments to the ADS recovery period applies to taxable years beginning after December 31, 2017.
- Section 208 of division EE, which provides that a qualified trust includes a plan that provides that a distribution may be made from the trust to an employee who has attained age 59 1/2 and is still working at the time of distribution. In the case of a multiemployer plan for certain employees in the building and construction industry who were participants in such plan on or before April 30, 2013, if the trust was in existence before January 1, 1970, and, prior to December 31, 2011, the plan received at least one written determination from the IRS that the trust was a qualified trust, the requirement of attaining age 59 1/2 is reduced to age 55.
  - Section 209 of division EE, which provides a plan shall not be treated as having a partial termination during any plan year beginning on March 13, 2020, and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020.
  - Section 211 of division EE, which provides that if a taxpayer's earned income for 2020 is less than the earned income for the preceding tax year, the taxpayer may elect to use the earned income for the preceding tax year for the taxable year 2020 for purposes of the earned income credit and child tax credit.
  - Section 214 of division EE, which provides for plan years ending in 2020 and 2021, a plan that includes a health FSA or dependent care flexible spending arrangement shall not fail to be treated as a cafeteria plan under the IRC because such plan or arrangement permits participants to carry over any unused benefits or contributions remaining in the FSA from such plan year to the plan year ending in 2021 and 2022, respectively. A plan that includes a health FSA or dependent care FSA shall not fail to be treated as a cafeteria plan under the IRC because: 1. Such plan or arrangement extends the grace period for a plan year ending in 2020 or 2021 to 12 months after the end of such plan year, or 2. Allows an employee who ceases participation in the plan during calendar year 2020 or 2021 to continue to receive reimbursements from unused benefits or contributions through the end of the plan year in which the participation ceased.(d) The age of a qualifying individual for purposes of the dependent care FSA is increased from 13 to 14 for the plan year on or before January 31, 2020, or the subsequent plan year, and the employee has an unused balance in the employee's account for such plan year.(e) For plans years ending in 2021, a plan that includes a health FSA or dependent care FSA shall not fail to be treated as a cafeteria plan under the IRC because such plan or arrangement allows an employee to make an election to modify prospectively the amount of such employee's contribution to any FSA. (f) Any term used in this section which is also used in section 106, 125, or 129 of the IRC, or the regulations or guidance, shall have the same meaning as when used in such section, regulation, or guidance.(g) A plan that includes a health FSA or dependent care FSA shall not fail to be treated as a cafeteria plan under the IRC because such plan or arrangement is amended pursuant to a provision under this section and such amendment is retroactive if 1. Such amendment is adopted not later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective, and 2. The plan or arrangement is operated consistent with the terms of such amendment during the period beginning on the effective date of the amendment and ending on the date the amendment is adopted.
  - Section 276(a) of division N, which provides that for purposes of any debt forgiven under the paycheck protection program, deductions are allowed, tax attributes are not reduced, and basis may be increased. For partnerships and S corporations, any amounts forgiven are treated as tax-exempt income for purposes of sec. 705 and 1366 of the IRC. Any increase in the adjusted basis of a partner's interest equal's the partner's distributive share of deductions resulting from costs giving rise to the forgiveness.
  - Section 276(b) of division N, which provides that for any subsequent paycheck program protection loans, for purposes of any debt forgiven under the paycheck protection program, no forgiveness amount shall be included in the gross income, deductions are allowed, tax attributes are not reduced, and basis may be increased. For partnerships and S corporations, any amounts forgiven are treated as tax-exempt income for purposes of sec. 705 and 1366 of the IRC. Any increase in the adjusted basis of a partner's interest equal's the partner's distributive share of deductions resulting from costs giving rise to the forgiveness.
  - Section 277 of division N, which provides that students receiving emergency financial aid grants issued under secs. 3504 and 18004 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and other grants issued in response to a qualifying emergency, as defined in sec. 3502 of the CARES Act, do not include the grant in the individual's gross income. The amount of qualified tuition and related expenses is not reduced by these grants for purposes of the American Opportunity and Lifetime Learning credits. The portion of the grant which represents payment for teaching, research, or other services required as a condition for receiving the grant is included in income.



- Section 278(a) of division N, which provides that for purposes of any debt forgiven under the paycheck protection program, deductions are allowed, tax attributes are not reduced, and basis may be increased. For partnerships and S corporations, any amounts forgiven are treated as tax-exempt income for purposes of sec. 705 and 1366 of the IRC. Any increase in the adjusted basis of a partner's interest equal's the partner's distributive share of deductions resulting from costs giving rise to the forgiveness.
- Section 278(b) of division N, which provides that Any amount received from the federal government as a grant under sec. 1110 of the CARES Act or funding under sec. 331 of this Act (Emergency Economic Injury Disaster Loan (EIDL) grants and targeted EIDL advances) is not included in gross income. Deductions are allowed, tax attributes are not reduced, and basis may be increased. For partnerships and S corporations, any amounts forgiven are treated as tax-exempt income for purposes of sec. 705 and 1366 of the IRC.
- Section 278(c) of division N, which provides that any federal subsidy received in sec. 1112 of the CARES Act is not included in gross income. Deductions are allowed, tax attributes are not reduced, and basis may be increased. For partnerships and S corporations, any amounts forgiven are treated as tax-exempt income for purposes of sec. 705 and 1366 of the IRC. Any increase in the adjusted basis of a partner's interest equal's the partner's distributive share of deductions resulting from costs giving rise to the forgiveness.
- Section 278(d) of division N, which provides that any federal grant made under sec. 324 of this Act for Shuttered Venue Operators is not included in gross income. Deductions are allowed, tax attributes are not reduced, and basis may be increased. For partnerships and S corporations, any amounts forgiven are treated as tax-exempt income for purposes of sec. 705 and 1366 of the IRC.
- Section 280 of division N, which provides that in the case of a money purchase pension plan, a coronavirus-related distribution which is an in-service withdrawal shall be treated as meeting the distribution rules of section 401(a) of the IRC.
- Section 285 of division N, which provides that in the case of an employer maintaining a plan which has made a qualified future transfer from a pension plan to a health benefit or life insurance account, such employer may, not later than December 31, 2021, elect to terminate the transfer period with respect to such transfer effective as of any taxable year specified by the taxpayer that begins after the date of such election.
- **Provisions of the Internal Revenue Code Not Adopted by Wisconsin include:**
  - Section 13113 of P.L. 103-66, which created sec. 1202 of the IRC effective for small business stock issued after August 10, 1993.
  - Sections 1, 3, 4, and 5 of P.L. 106-519, which repealed foreign sales corporation provisions and replaced with extraterritorial income provisions.
  - Sections 101, 102, and 422 of P.L. 108-357, which repealed the exclusion for extraterritorial income, domestic production activities deduction, and the creation of sec. 965 – incentives to reinvest foreign earnings in the U.S.
  - Sections 1310 and 1351 of P.L. 109-58, which provides for the modification to special rules for nuclear decommissioning costs, repeal of the limitation on contract research expenses paid so small businesses, universities, and federal laboratories.
  - Section 11146 of P.L. 109-59, the tax treatment of state ownership of railroad real estate investment trust.
  - Section 403(q) of P.L. 109-135, which provides incentives to reinvest foreign earnings from controlled foreign corporations in the U.S.
  - Section 513 of P.L.109-222, which repeals foreign sales corporation/extraterritorial income exclusion binding contract relief.
  - Sections 104 and 307 of P.L. 109-432, which increases the rates of the alternative incremental credit and provides a new alternative simplified credit and that gross income does not include an IRA distribution used to fund an HSA.
  - Sections 8233 and 8235 of P.L. 110-28, which created a special rule for banks required to change from the reserve method of accounting in becoming tax-option (S) corporations and the elimination of all earnings and profits attributable to pre-1983 years.
  - Section 11(e) and (g) of P.L. 110-172, which provides clerical amendments to research credits for controlled corporations and common control, and clerical amendments to the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

- Section 301 of P.L. 110-245, which provides for tax responsibilities of expatriation.
- Section 15351 of P.L. 110-246, limits the amount of farm losses that may offset non-farming business income to \$300,000.
- Section 302 of division A, section 401 of division B, and sections 312, 322, 502(c), 707, and 801 of division C of P.L. 110-343, which limits executive compensation for employers participating in troubled assets relief program for the taxable year in which the troubled assets exceed \$300,000,000. Caps the domestic production activities deduction at 6% for oil-related activities. The deduction for income attributable to domestic production activities in Puerto Rico applies to the first 8 taxable years beginning before January 1, 2010. Tax incentives for investment in the District of Columbia includes exclusion for gain on sale of an asset held from more than 5 years. Defines wages for purposes of the domestic production activities deduction. Creates sec. 198A to provide for expensing of disaster expenses for control of hazardous substances. Specifies treatment of nonqualified deferred compensation plans maintained by foreign corporations.
- Sections 1232, 1241, 1251, 1501, and 1502 of division B of P.L. 111-5, which suspends the special rules for original issue discount on high yield obligations issued during the period 9/1/2008 and 12/31/2009. Allows a 75% exclusion for small business stock issued between 1/17/2009 and 12/31/2009. Provides that no built-in-gain tax is imposed on a tax-option (S) Corporation for a taxable year beginning in 2009 and 2010 if the seventh taxable year in the corporation's recognition period preceded such taxable year. Tax-exempt obligations held by financial institutions, in an amount not to exceed 2 percent of the adjusted basis of the financial institution's assets, are not taken into account for determining the portion of the financial institutions interest expense subject to the pro rata interest disallowance rule of sec. 265(b). Modification of the small insurer exception to tax-exempt interest expense allocation rules for financial institutions.
- Sections 211, 212, 213, 214, and 216 of P.L. 111-226, which adopts a matching rule to prevent the separation of foreign taxes from the associated foreign income, denies a foreign tax credit for the disqualified portion of any foreign income tax paid in connection with a covered asset acquisition, provides a separate application of foreign tax credit limitation to items resourced under treaties, limits the amount of foreign taxes deemed paid with respect to sec. 956 inclusions, treats a foreign corporation as a member of an affiliated group for interest allocation and apportionment purposes in more than 50% of gross income is effectively connected income and at least 80% of either the vote or value of all outstanding stock is owned directly or indirectly by members of the affiliated group.
- Sections 2011 and 2122 of P.L. 111-240, which provides a 100% exclusion for the gain on the sale of small business stock acquired after 9/27/2010 and before 1/1/2011, and clarifies the income sourcing rules for guarantee fees.
- Sections 753, 754, and 760 of P.L. 111-312, which excludes 60% of the gain on the sale of small business stock in an empowerment zone business to gain attributable to periods before 1/1/2016, specifies that gross income does not include gain on stock acquired before 1/1/2012 and held for more than 5 years, and excludes the gain on sale of small business stock acquired in 2011.
- Section 1106 of P.L. 112-95, which allows airline employees to contribute airline payment amounts under a bankruptcy claim to a traditional IRA as a rollover contribution.
- Sections 104, 318, 322, 323, 324, 326, 327, and 411 of P.L. 112-240, which makes the alternative minimum tax exemption permanent and indexed for inflation, extends through 2013 the deduction with respect to income attributable to domestic production activities in Puerto Rico, extends the subpart F exception for active financing income, extends the look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company, provides 100% exclusion for gain on small business stock acquired in 2012 and 2013, extends through 2013 the reduction in tax-option (S) Corporation built-in gains tax and clarifies treatment of installment sales, provides a 60% exclusion for gain on small business stock acquired before 2019, and extends through 2013 the rules that allow gain certain sales of electric transmission property to be recognized ratably over 8 taxable years.
- P.L. 114-7, relating to contributions for relief of slain New York Police Detectives.
- Section 1101 of P.L. 114-74 relating to partnership rules.
- Section 305 of division P of P.L. 114-113, relating to the transportation costs of independent refiners.

- Sections 123, 125-128, 143, 144, 151-153, 165-167, 169-171, 189, 191, 307, 326, and 411 of division Q of P.L. 114-113:
  - Section 123, relating to extension of 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements
  - Section 125, relating to the extension of treatment of certain dividends of regulated investment companies.
  - Section 126, relating to the extension of exclusion of 100 percent of gain on certain small business stock.
  - Section 127, relating to the extension of reduction in S-corporation recognition period for built-in gains tax.
  - Section 128, relating to the extension of subpart F exception for active financing income.
  - Section 143, relating to the extension and modification of bonus depreciation.
  - Section 144, relating to the extension of look-thru treatment of payments between related controlled foreign corporations under foreign personal holding company rules.
  - Section 151, relating to the extension and modification of exclusion from gross income of discharge of qualified principal residence indebtedness.
  - Section 152, relating to the extension of mortgage insurance premiums treated as qualified residence interest.
  - Section 153, relating to the extension of above-the-line deduction for qualified tuition and related expenses.
  - Section 165, relating to the extension of classification of certain race horses as 3-year property.
  - Section 166, relating to the extension of 7-year recovery period for motorsports entertainment complexes.
  - Section 167, relating to the extension and modification of accelerated depreciation for business property on an Indian reservation.
  - Section 169, relating to the extension of special expensing rules for certain film and television productions; special expensing for live theatrical productions.
  - Section 170, relating to the extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico.
  - Section 171, relating to the extension and modification of empowerment zone tax incentives.
  - Section 189, relating to the extension of special allowance for second generation biofuel plant property.
  - Section 191, relating to the extension of special rule for sales or dispositions to implement FERC or State electric restructuring policy for qualified electric utilities.
  - Section 307, relating to the technical amendment relating to rollover of certain airline payment amounts.
  - Section 326, relating to the dividends derived from RICs and REITs ineligible for deduction for United States source portion of dividends from certain foreign corporations.
  - Section 411, relating to the partnership audit rules.
- Sections 11011, 11012, 13201 (a) to (e) and (g), 13206, 13221, 13301, 13304 (a), (b), and (d), 13531, 13601, 13801, 14101, 14102, 14103, 14201, 14202, 14211, 14212, 14213, 14214, 14215, 14221, 14222, 14301, 14302, 14304, and 14401 of P.L. 115-97:
  - Section 11011, relating to the 20% deduction for domestic qualified business income.
  - Section 11012, relating to the limitation on losses for taxpayers other than corporations.
  - Section 13201 (a) to (e) and (g), relating to the temporary 100% expensing for certain business assets (bonus depreciation).
  - Section 13206, relating to the amortization of research and experimental expenditures beginning in 2022.
  - Section 13221, relating to special rules for the taxable year of inclusion.
  - Section 13301, relating to the 30% taxable income limitation for the deduction of interest.
  - Section 13304(a), (b), and (d) relating to the limit on the deduction by employers of fringe benefits (meals, entertainment, and transportation).

- Section 13531, relating to the limitation on deductions for FDIC premiums.
  - Section 13601, relating to the modification of the limitation on excessive employee remuneration.
  - Section 13801, relating to the production period for beer, wine, and distilled spirits.
  - Section 14101, relating to the deduction for the foreign-source portion of dividends received by domestic corporations from specified 10% owned foreign corporations.
  - Section 14102, relating to the special rules for sale or transfers involving specified 10% owned foreign corporations.
  - Section 14103, relating to the treatment of deferred foreign income upon transition to a participation exemption system of taxation.
  - Section 14201, relating to the current year global intangible low-taxed income by U.S. shareholders.
  - Section 14202, relating to the deduction for foreign derived intangible income and global intangible low-taxed income.
  - Section 14211, relating to the elimination of the inclusion of foreign base company oil related income.
  - Section 14212, relating to the repeal of the inclusion based on withdrawal of previously excluded subpart F income from qualified investment.
  - Section 14213, relating to the modification of stock attribution rules for determining the status as a controlled foreign corporation.
  - Section 14214, relating to the modification of the definition of a U.S. shareholder.
  - Section 14215, relating to the elimination of the requirement that a corporation must be controlled for 30 days before the subpart F inclusions apply.
  - Section 14221, relating to the limitations on income shifting through intangible property transfers.
  - Section 14222, relating to certain related party amounts paid or accrued in hybrid transactions or with hybrid entities.
  - Section 14301, relating to the repeal of section 902 – indirect foreign tax credits, and determination of the deemed paid credit for subpart F inclusions under sec. 960 on a current year basis.
  - Section 14302, relating to the separate foreign tax credit limitation basket for foreign branch income.
  - Section 14304, relating to the election to increase the percentage of domestic taxable income offset by the overall domestic loss treated as foreign source.
  - Section 14401, relating to the base erosion anti-abuse tax.
- Adjustments required as a result of making different elections for Wisconsin and federal purposes.
  - Separately stated items of expense and adjustments for differences between the federal and Wisconsin treatment of any items of an S corporation that opts out of Wisconsin tax-option status.
  - For credit unions, an adjustment to remove income from non-public deposits from Wisconsin income as described in the instructions to Schedule CU-1.
  - The amount of net income of an out-of-state business from performing disaster relief work. See [Publication 411 – Disaster Relief](#), for more information
  - Entity-Level Tax Election Made by a Partnership – If the corporation is a partner in a partnership that makes the entity level tax election, make an adjustment to remove the items of income, gain, loss, or deduction that were included in federal taxable income before net operating loss and special deductions. If the partnership makes the election, the box on Schedule 3K-1, Part C, box 3 will be checked. Include a copy of the Schedule 3K-1 and all supplemental schedules with your return.



- Income received from the state of Wisconsin with money received from the coronavirus relief fund authorized under 42 USC 801 to be used for any of the following purposes:
  - Grants to small businesses
  - A farm support program
  - Broadband expansion
  - Privately owned movie theater grants
  - A nonprofit grant program
  - A tourism grants program
  - A cultural organization grant program
  - Music and performance venue grants
  - Lodging industry grants
  - Low-income home energy assistance
  - A rental assistance program
  - Supplemental child care grants
  - A food insecurity initiative
  - Ethanol industry assistance
  - Wisconsin Eye

For the description, use "Wisconsin COVID-19 Program Funds."



- Income received in the form of a grant issued by the Wisconsin Economic Development Corporation during and related to the COVID-19 pandemic under the ethnic minority emergency grant program.

For the description, use "Wisconsin COVID-19 Program Funds."

■ **Line 14. Nontaxable Income from Life Insurance Operations** – If the corporation is an insurance company that has both life insurance operations and non-life insurance operations, enter the amount of nontaxable income from life insurance operations as computed on Schedule 4I, line 13. See the Schedule 4I instructions for details.

## Additional Information and Assistance

### **Web Resources.**

The Department of Revenue's web page, available at [revenue.wi.gov](http://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](mailto: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 February 19, 2021: Chapter 71 Wis. Stats., and Chapter Tax 2, Wis. Adm. Code