Instructions for 2021 Form N: Wisconsin Nonapportionable, Separately Accounted, and Separately Apportioned Income

Purpose of Form N

Corporations, partnerships, tax-option (S) corporations, and nonresident estates, trusts, and individuals that are engaged in a unitary or nonunitary business both in and outside Wisconsin use Form N to report nonapportionable income or loss. Combined group members also use Form N to account for income or loss that cannot be included in the combined unitary income.

For purposes of these instructions, the filer of Form N is called the "taxpayer."

Special Instructions for Combined Groups

For combined groups, the items reportable on Form N are called "separate entity items" because they are accounted for on a separate entity basis rather than on a combined basis. In a combined group, each corporation that has separate entity items must complete a separate Form N and file it with the combined return.

If a combined group has a corporation in its commonly controlled group that is not a combined group member, the combined group may choose to report that corporation's separate entity items on a Form N filed with the combined return.

NOTE: Whether a combined group includes a nonmember's separate entity items on a Form N filed with the combined return or the nonmember files a separate return, the nonmember's tax liability will be the same.

Line-by-Line Instructions

These instructions are presented in the order the lines appear on Form N:

Part I: Total Nonapportionable and Separately Apportioned Income

In column b of Part I, the taxpayer computes the total amount that will be removed from apportionable or combined unitary income. In column a of Part I, the Wisconsin amount of nonapportionable income is determined.

■ **Line 1. Rents and Royalties from Nonbusiness Property –** Enter rents and royalties received on nonbusiness real and tangible property in the appropriate column or columns. These are nonapportionable and follow the situs of the property.

■ **Line 2. Expenses Related to Line 1 –** Enter any expenses that are directly or indirectly related to rents and royalties reported on line 1. Since such income is nonapportionable, the related expenses are nonapportionable.

■ **Line 4. Disposal of Nonbusiness Property –** Enter all profits and losses from disposals of nonbusiness real and tangible property in the appropriate column or columns. These profits and losses are nonapportionable and follow the situs of the property.

■ **Line 5. Income from Lottery Prizes –** In both columns, enter all income that is realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin. This income is nonapportionable and must be allocated to Wisconsin.

■ **Line 6. Separate Accounting –** If the taxpayer is using separate accounting, enter the net income allocated to Wisconsin in column a and the total income accounted for under separate accounting in column b. These amounts are from Form C*, Wisconsin Allocation and Separate Accounting Data*.

CAUTION: A unitary business cannot use separate accounting unless it obtains written permission from the Department of Revenue. See the Form C instructions for details.

■ **Line 7. Apportionable Income Excluded from Unitary Combination –** Combined group members use line 7 to remove apportionable income or loss from combined unitary income in cases where the Wisconsin Statutes require it to be apportioned on a separate entity basis. However, you must make sure that you do not remove amounts from combined unitary income that were never included to begin with or that you already removed in preparing Form 6, Part II.

CAUTION: For any amount you report on line 7, make sure that amount is included in Form 6, Part II, line 5 to begin with. Also, if any Wisconsin modifications were applied to this income on Form 6, Part II, the amount you report on line 7 should be the amount after modifications.

As a general rule, do not include capital gain or loss, section 1231 gain or loss, or gain or loss from involuntary conversions on line 7. If these items weren't includable in combined unitary income, they should not have been included in Form 6, Part II, line 5 to begin with. See the Form 6 instructions for details.

Also, if the corporation is not a member of the combined group, do not complete line 7. That corporation's amounts would not have been included in Form 6, Part II, line 5.

Separately apportionable income may be one of two types:

A. Amounts excluded from combined unitary income under the **water's edge rules**, or

B. Amounts excluded from combined unitary income because they are from a **separate unitary business**.

Each of these types of separately apportioned income is described in detail below, with instructions for how to determine the amount on line 7 for each type:

Line 7a. Water's Edge Rules

Water's Edge Rules in General. The water's edge rules are explained in sec. Tax 2.61(4), Wisconsin Administrative Code. In part, the water's edge rules provide that if a combined group member is a domestic (U.S.) corporation that qualifies as an "80/20 corporation," or is a foreign (Non-U.S.) corporation that qualifies to be a combined group member, its foreign source income (and in some cases, certain U.S. source income) is excluded from combined unitary income even if derived from the combined group's unitary business. To the extent this income is derived from the unitary business, the combined group member must apportion it separately.

If the corporation is excluded due to water's edge rules and has no income or apportionment factors that are eligible to be combined, the corporation is not a combined group member and you should not complete line 7a of that corporation's Form N.

Qualifying as an "80/20 Corporation." A corporation is considered to be an "80/20 corporation" if 80 percent or more of its worldwide gross income during the taxable year that would otherwise be includable in the combined return is "active foreign business income," which means gross income that is derived from sources outside the United States, as determined in subchapter N of the Internal Revenue Code, including income of a subsidiary corporation, and attributable to the active conduct of a trade or business in a foreign country or in a U.S. possession. A corporation is considered a subsidiary if the parent corporation owns, directly or indirectly, stock with at least 50 percent of the total voting power of the corporation and the stock has a value equal to at least 50 percent of the total value of the stock of the corporation.

An 80/20 corporation may be either a foreign corporation or a domestic corporation, as long as it meets the active foreign business income test.

For special rules regarding the 80/20 test as it relates to parent-subsidiary chains, disregarded entities, and part-year group members, see sec. Tax 2.61(4)(b), Wisconsin Administrative Code.

The next three sections describe how to determine the amount on line 7a for 80/20 corporations and for foreign corporations that aren't 80/20 corporations.

Line 7a for Domestic 80/20 Corporations. If a domestic corporation is an 80/20 corporation, then its income includable in the combined unitary income is limited to only U.S. source income as provided in sections 861 through 865 of the Internal Revenue Code. Further, that U.S. source income must be of one of the following types to be included in combined unitary income:

1. Interest income or income generated from intangible property, regardless of where payment is made.
2. Income derived from interest or intangible expenses of other combined group members, to the extent not already included in 1. above.
3. Dividends from a real estate investment trust (REIT) that is not a "qualified REIT" under sec. 71.22(9ad), Wis. Stats.
4. Gains or losses derived from the sale or lease of real or personal property located in the United States.

Therefore, if the corporation is a domestic 80/20 corporation, the amount on line 7a may include the following amounts to the extent they are included on Form 6, Part II, line 5 and have not already been removed from combined unitary income:

- Foreign source income, net of expenses directly or indirectly related to that income.
- U.S. source income not described in 1. through 4. above, net of expenses directly or indirectly related to that income.

The water's edge rules for domestic 80/20 corporations, summarized above, are specifically provided in sec. 71.255(2)(d), Wis. Stats., and sec. Tax 2.61(4)(d)2., Wisconsin Administrative Code. In the statute, the term "consolidated foreign operating corporation" is used to describe a domestic 80/20 corporation. The terms "domestic 80/20 corporation" and "consolidated foreign operating corporation" have the same meaning.

Line 7a for Foreign 80/20 Corporations. If a foreign corporation is an 80/20 corporation, then it generally cannot be a member of the combined group and you would not have included its income on Form 6, Part II, line 5 to begin with. However, if a foreign 80/20 corporation elects to be included in a consolidated return for federal purposes, it is treated in the same way as a domestic 80/20 corporation for purposes of the water's edge rules, and you should follow the instructions relating to domestic 80/20 corporations.

Line 7a for Foreign Corporations That Aren't 80/20 Corporations. If a foreign corporation is not an 80/20 corporation, then only its U.S. source income is includable in the combined unitary income.

Section Tax 2.61(4)(c), Wisconsin Administrative Code, provides that for purposes of the water's edge rules, income that is effectively connected with a trade or business in the United States under sections 861 through 865 of the Internal Revenue Code is considered U.S. source income even if otherwise derived from sources outside the United States. In general, this aligns the income includable in combined unitary income, before Wisconsin modifications, with the corporation's federal gross income for U.S. tax purposes.

Since income from sources outside the U.S. (except effectively connected income) is generally already excluded from a foreign corporation's federal gross income, it generally does not need to be accounted for on Form N.

However, if there is foreign source income of a foreign corporation (not counting effectively connected income) included in the amount on Form 6, Part II, line 5, then include that income, net of any expenses directly or indirectly related to that income, on Form N, line 7a so it is removed from combined unitary income.

CAUTION: Do not include on line 7a any income from the combined group's unitary business that is effectively connected with a trade or business in the United States.

7b. Separate Unitary Business

A corporation may also exclude income from combined unitary income because it is attributable to a separate unitary business. The corporation's separate unitary business may be one that the corporation conducts by itself, or it may be one it conducts as part of another combined group.

In either case, to the extent the net income or loss from the separate unitary business is included on Form 6, Part II, line 5 and has not already been removed from combined unitary income, enter it on Form N, line 7b, net of any expenses directly or indirectly related to that income or loss.

Part II: Wisconsin Share of Apportionable Income Excluded from Unitary Combination

Who Must Complete Part II. This part applies to combined group members and corporations that aren't combined group members but are filing Form N with a combined return.

Complete Part II if the corporation has income or loss that was excluded from combined unitary income but has to be apportioned on a separate entity basis. Part II may be required whether or not the corporation had an amount on Part I, line 7.

NOTE: If the apportionment percentage that applies to the separately apportioned income is zero, you do not have to complete Part II if you provide a statement explaining why any amount you reported on line 7 was excluded from combined unitary income.

General Instructions for Lines 10a and 11a. The amounts you include on lines 10a or 11a, or both, as applicable, represent the corporation's total Wisconsin income that you could not include in combined unitary income. The amounts on line 10a and 11a should be the amount after any addition and subtraction modifications necessary so the amount of net income is as determined under Wisconsin law. See the instructions for Form 6, Part II for details of the modifications that may be necessary.

Attach a schedule showing the federal taxable income you started with for that line and the Wisconsin modifications made.

NOTE: Remember to make Wisconsin addition and subtraction modifications when you compute the income or loss to enter on line 10a or line 11a.

If you have any capital gain or loss, section 1231 gain or loss, or gain or loss from involuntary conversions ("capital gain/loss items") that you could not include in the combined group's aggregate amounts in the computation of Form 6, Part I, you must include those items in the amounts you report on lines 10a and 11a, as applicable. You may use the corporation's available capital loss carryover, including both non-sharable and sharable carryover amounts, in that computation.

If the capital gain/loss items reportable on lines 10a and 11a result in a net capital gain before considering your capital loss carryovers **and** the combined group had a suspended net capital loss when it computed Form 6, Part I, complete Form 6CL, *Net Capital Loss Adjustments for Combined Group Members*, so that you can use the corporation's share of the group's current year net capital loss against gains otherwise reportable on lines 10a and 11a. See the Form 6CL instructions for details.

■ **Line 10a. Net Income Excluded from Unitary Combination under Water's Edge Rules –** Enter the corporation's income, net of any expenses directly or indirectly related to that income, that is attributable to the combined group's common unitary business but was excluded from combined unitary income under the water's edge rules. To compute this amount, follow the instructions in *General Instructions for Lines 10a and 11a*, above.

The amount you report on line 10a may or may not have been included in the amount you reported on line 7a.

■ **Line 10b. Applicable Wisconsin Apportionment Percentage –** Complete a separate apportionment schedule, Schedule A-01, A-02, A-03, A-04, A-05, A-06, A-07, A-08, A-09, A-10, or A-11, as applicable, but include only the apportionment factors that relate to the income you reported on line 10a. Compute the amounts on Schedule A-01, A-02, A-03, A-04, A-05, A-06, A-07, A-08, A-09, A-10, or A-11 as if the corporation is not a member of a combined group. For example, you do not generally need to eliminate amounts that relate to transactions between combined group members.

However, when you compute throwback sales for purposes of the sales apportionment factor, your determination of nexus in the destination state will still depend on whether the corporation is a member of the combined group. If so, then the corporation has nexus in all states where the combined group has nexus. If the corporation is not a member of the combined group, it has nexus only in states where the corporation itself has nexus under the standards set forth in sec. Tax 2.82, Wisconsin Administrative Code.

See sec. Tax 2.61(4)(h), Wisconsin Administrative Code, for more details on how to determine apportionment and nexus for income excluded from combined unitary income under the water's edge rules. Also see the instructions for Schedules A-01, A-02, A-03, A-04, A-05, A-06, A-07, A-08, A-09, A-10, or A-11 for more information about throwback sales and nexus for combined group members in general.

■ **Line 11a. Net Income Attributable to a Separate Unitary Business –** Enter the corporation's income, net of any expenses directly or indirectly related to that income, that is from a unitary business separate from the combined group's common unitary business, except if the corporation is in more than one combined group, do not include income from that other group's unitary business. Also do not include any amounts already included in column a of line 6 (income allocated to Wisconsin under separate accounting).

NOTE: If the corporation's other unitary business is part of another combined group, report that other unitary business on the other combined group's combined return, not on Form N.

If there is more than one other unitary business you need to report on line 11a, use a separate schedule to complete lines 11a and 11b separately for each unitary business and enter the total on line 11c.

To compute the amount to enter on line 11a, follow the instructions in *General Instructions for Lines 10a and 11a*, above. The amount you report on line 11a may or may not have been included in the amount you reported on line 7b.

■ **Line 11b. Applicable Wisconsin Apportionment Percentage –** If the separate unitary business is conducted wholly within Wisconsin, enter "100.0000%" on line 11b. If the separate unitary business is conducted both within and outside Wisconsin, compute the apportionment percentage by completing a separate apportionment schedule, Schedule A-01, A-02, A-03, A-04, A-05, A-06, A-07, A-08, A-09, A-10, or A-11, as applicable, but include only the apportionment factors that relate to the income you reported on line 11a. Compute the amounts on Schedule A-01, A-02, A-03, A-04, A-05, A-06, A-07, A-08, A-09, A-10, or A-11 as if the corporation is not a member of a combined group. For example, you do not generally need to eliminate amounts that relate to transactions between combined group members.

See the instructions for Schedules A-01, A-02, A-03, A-04, A-05, A-06, A-07, A-08, A-09, A-10, or A-11 for more information about throwback sales and nexus for combined group members.

Part III: Wisconsin Amount of Nonapportionable and Separately Apportioned Income

All Form N filers must complete Part III. For lines 12, 13, and 14, enter the amounts and totals as shown on the form.

■ **Line 14. Total –** Corporations that are combined group members should enter the amount from line 14 on Form 6, line 4, and Form 6, Part III, line 4.

Corporations that file Form 4 on a separate entity basis should enter the amount from line 14 directly onto Form 4, line 10.

For taxpayers that file Form 3, 4T, or 5S, the amount on line 14 is total nonapportionable income allocated to Wisconsin.

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
Department of Revenue Common Questions
General Business 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 15, 2021: Chapter 71 Wis. Stats., and Chapter Tax 2, Wis. Adm. Code