

2022 Wisconsin Schedule 5S-ET Instructions

Purpose of Schedule

An electing tax-option (S) corporation or limited liability company treated as a tax-option (S) corporation uses Schedule 5S-ET to compute the entity level tax on items that would have been reportable by the shareholders, had the election not been made. For the taxable year in which the election is made, shareholders do not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the tax-option (S) corporation.

The election to pay tax at the entity level is made the day Form 5S is filed by checking box seven in Part A of Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*. The electing tax-option (S) corporation must have consent from shareholders who hold an aggregate of more than 50 percent of the shares of the tax-option (S) corporation on the day of the election, according to [section 71.365\(4m\)\(a\)](#), Wis. Stats. The election may be revoked by filing an amended Form 5S on or before the extended due date. Shareholders who hold an aggregate of more than 50 percent of the shares of the tax-option (S) corporation must consent to the revocation.

Result of Making the Election

Income/Gains

- Net income reportable to Wisconsin is taxed to the electing tax-option (S) corporation and is not taxable to the shareholders.
- The net income reportable to Wisconsin is taxed at 7.9%. There is no special capital gains tax rate.
- All income of Wisconsin resident shareholders must be reported by the electing tax-option (S) corporation.
- Income of nonresident shareholders must be reported by the electing tax-option (S) corporation if the income is attributable to Wisconsin.
- Shareholders subtract from their federal adjusted gross income the income reported by the electing tax-option (S) corporation.

Deductions/Losses

- Losses and deductions do not pass through to shareholders.
- Net operating or business losses may not be carried forward and used to offset income reportable by the electing tax-option (S) corporation.
- An electing tax-option (S) corporation may claim the 30-percent and/or 60-percent long-term capital gain exclusion under sec. [71.05\(6\)\(b\)9.](#) or [9m](#), Wis. Stats.
- The maximum capital loss deduction that may be claimed by the electing tax-option (S) corporation is \$500.
- Unused capital losses may be carried forward by the electing tax-option (S) corporation.
- Passive activity loss limitations under section [469](#) of the Internal Revenue Code (IRC) are determined at the electing tax-option (S) corporation level, and the electing tax-option (S) corporation must determine how each shareholder 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 tax-option (S) corporation.
- The charitable contribution deduction is not allowed to the electing tax-option (S) corporation, nor the shareholders.
- The section [179](#) expense deduction limitation and phase-out are applied to the electing tax-option (S) corporation.
- The amount of investment interest expense allowed as a deduction may not exceed the net investment income of the electing tax-option (S) corporation for the taxable year as provided in sec. [163\(d\)](#), IRC.

Tax Credits, Schedule 5K-1 Reporting, and Shareholder's Basis in Stock and Indebtedness

- Tax credits, except the credit for net tax paid by the entity to another state, may not be claimed by the electing tax-option (S) corporation and are passed through to the shareholders.
- The electing tax-option (S) corporation computes the manufacturing and agriculture credit based on its activities and passes it through to the shareholders. The shareholders complete Schedule MA-M or MA-A, but a shareholder may only use the credit to offset tax liability resulting from the shareholder's prorated share of taxable income from the tax-option (S) corporation for a year in which the election is not made.
- The electing tax-option (S) corporation provides Schedule 5K-1 to each shareholder as if the election was not made. Exceptions:
 - The electing tax-option (S) corporation must check box 3 of Part B.
 - The credit for tax paid to another state is not entered on the shareholder's Schedule 5K-1 because the shareholders cannot claim the credit.
 - The credit for pass-through withholding will generally be zero because the electing tax-option (S) corporation is exempt from pass-through withholding. For more information regarding pass-through withholding, see the instructions for Form PW-1.
 - An electing tax-option (S) corporation must provide a supplemental statement with each shareholder's Schedule 5K-1 detailing the items of income, gain, loss, deduction, and tax paid as a result of the election that are included on the electing tax-option (S) corporation's Schedule 5S-ET.
 - If a nonelecting tax-option (S) corporation receives a Schedule 3K-1 from ownership in a partnership that made the entity-level tax election under sec. 71.21(6)(a), Wis. Stats., the nonelecting tax-option (S) corporation must provide a supplemental statement with each shareholder's Schedule 5K-1 detailing the items of income, gain, loss, and deduction that are included on the electing partnership's Schedule 3-ET.
- The adjusted basis of a shareholder in the stock and indebtedness of an electing tax-option (S) corporation 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 5S. The election is made on the day Form 5S is filed. Generally, a tax-option (S) corporation 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 to 30 days after the federal extended due date.
- Wisconsin law also provides an automatic extension of 7 months or until the original due date of the corporation's corresponding federal return, whichever is later.
- If a tax-option (S) corporation would like to make the election and has a short period, the Form 5S's extended due date has not passed, and the Schedule 5S-ET is not available to file Form 5S, contact the department's Customer Service Bureau at (608) 266-2772 or DORAuditPassThrough@wisconsin.gov.

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

Column (b) – Residents: Enter the total amount from all Schedules 5K-1, column (d), for Wisconsin resident shareholders. All income that would have been reportable by Wisconsin resident shareholders, if the election was not made, is taxable to the entity.

Column (c) – Nonresidents: Enter the total amount from all Schedules 5K-1, column (e), for nonresident shareholders.

All Wisconsin-sourced income that would have been reportable by nonresident shareholders, if the election was not made, is taxable to the entity. Income of nonresident individuals, estates, and trusts is sourced to Wisconsin according to secs. [71.04](#) and [71.362](#), Wis. Stats., which provides:

- Tax-option (S) corporation that is engaged in business only in Wisconsin: All items of income, loss or deduction of nonresident individuals, estates, and trusts derived from a tax-option (S) corporation that is not required to use the apportionment method is sourced to Wisconsin.
- Tax-option (S) corporation that is engaged in business both in and outside Wisconsin: All items of income, loss or deduction of nonresident individuals, estates, and trusts derived from a tax-option (S) corporation that is required to use the apportionment method, is sourced to Wisconsin based on the apportionment method described in secs. [71.04\(4\)](#), [\(10\)](#), or [\(11\)](#), Wis. Stats.
- Losses and other items of a tax-option (S) corporation deductible by such nonresident shareholders is limited to their proportionate share of the Wisconsin loss or other item.
- All intangible income of a tax-option (S) corporation passed through to shareholders is business income that follows the situs of the business (i.e. the apportionment method is generally used to determine the source of intangible income for nonresident shareholders).
- All income realized from the sale or purchase and subsequent sale or redemption of lottery prizes are sourced to Wisconsin if the winning tickets were originally purchased in Wisconsin.

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. Include a statement describing adjustments made in column (d).

Except for the modifications listed under sec. [71.365\(4m\)\(d\)](#), Wis. Stats., the net income or loss of the tax-option (S) corporation is computed under sec. [71.34\(1k\)](#), Wis. Stats., which provides, in part:

- The taxable income of an S corporation shall be computed in the same manner as in the case of an individual under section [1363\(b\)](#), IRC.
- The deductions for personal exemptions provided in section [151](#), IRC, are not allowed.
- The deductions for charitable contributions provided in section [170](#), IRC, are not allowed.
- The passive activity loss limitations in section [469](#), IRC, apply.
 - Passive activity loss limitations are determined at the electing tax-option (S) corporation level, and the electing tax-option (S) corporation must determine how each shareholder would characterize each item of income or loss (passive or non-passive) as if the election was not made.
 - The electing tax-option (S) corporation 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 tax-option (S) corporation may claim.
 - Passive losses may not be passed through to the shareholders.
 - Suspended passive losses may be carried forward by the electing tax-option (S) corporation.

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 tax-option (S) corporation level. A maximum \$25,000 of losses from rental real estate activities applies as provided in section [469\(i\)](#), IRC.
- The electing tax-option (S) corporation must determine how each shareholder would characterize each item of income or loss (passive or non-passive) as if the election was not made.

- The electing tax-option (S) corporation 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 tax-option (S) corporation may claim and enter any adjustment necessary in column (d).
- Suspended passive activity losses may be carried forward by the electing tax-option (S) corporation.

Lines 7 through 9 – Gains and losses:

- An electing tax-option (S) corporation may claim the 30-percent and/or 60-percent long-term capital gain exclusion under sec. [71.05\(6\)\(b\)9.](#) or [9m](#), Wis. Stats. Report the exclusion in column (d).
- The maximum capital loss deduction that may be claimed by the electing tax-option (S) corporation is \$500. Column (e), lines 7, 8, or 9 may need to be adjusted so that the total loss deducted by the entity is limited to \$500.
- Capital losses, including suspended capital losses, may not pass through to shareholders.
- Unused capital losses may be carried forward by the electing tax-option (S) corporation. A supplemental schedule may be used to keep track of the capital loss carryforward amounts and included as an attachment when submitting the return.

Example 1:

- A tax-option (S) corporation that is 100% owned by a Wisconsin resident individual makes the election to pay tax at the entity level.
- The shareholder's Wisconsin Schedule 5K-1 shows:

Income/(loss) Item	Amount
Net short-term capital gain (loss)	\$0
Net long-term capital gain (loss)	\$100,000
Net section 1231 gain (loss)	\$0

- The tax-option (S) corporation has a net long-term capital gain of \$100,000 and may claim the 30% long-term capital gain exclusion of \$30,000 ($\$100,000 * 30\%$)
- The electing tax-option (S) corporation's Schedule 5S-ET should show:

Column (a)	Column (b)	Column (c)	Column (d)	Column (e)
Line 7: Net short-term capital gain (loss)				
Line 8: Net long-term capital gain (loss)	\$100,000		(30,000)	\$70,000
Line 9: Net section 1231 gain (loss)				

Example 2:

- A tax-option (S) corporation that is 100% owned by a Wisconsin resident individual makes the election to pay tax at the entity level.
- The shareholder's Wisconsin Schedule 5K-1 shows:

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 aren't any prior year unrecaptured section 1231 losses, and the section 1231 gain is treated as a capital gain (not ordinary income).
- The tax-option (S) corporation has a net capital loss of \$4,000 (\$16,000 - \$15,000 - \$5,000)
- The electing tax-option (S) corporation's Schedule 5S-ET should show:

Column (a)	Column (b)	Column (c)	Column (d)	Column (e)
Line 7: Net short-term capital gain (loss)	(\$15,000)		\$14,500	(\$500)
Line 8: Net long-term capital gain (loss)	(\$5,000)		\$5,000	
Line 9: Net section 1231 gain (loss)	\$16,000		(\$16,000)	

Note The unused capital loss of \$3,500 may be carried forward by the electing tax-option (S) corporation.

Example 3:

- A tax-option (S) corporation that is 100% owned by a Wisconsin resident individual makes the election to pay tax at the entity level.
- The shareholder's Wisconsin Schedule 5K-1 shows:

Income/(loss) 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)
- The tax-option (S) corporation has a net capital loss of \$126,000 (-\$18,000 - \$108,000)
- The electing tax-option (S) corporation's Schedule 5S-ET should show:

Column (a)	Column (b)	Column (c)	Column (d)	Column (e)
Line 7: Net short-term capital gain (loss)	(\$18,000)		\$17,500	(\$500)
Line 8: Net long-term capital gain (loss)	(\$108,000)		\$108,000	
Line 9: Net section 1231 gain (loss)	(\$20,000)			(\$20,000)

Note The unused capital loss of \$125,500 may be carried forward by the electing tax-option (S) corporation.

Line 10 - Other income or loss: If more than three lines are necessary, submit a supplemental statement with Schedule 5S-ET identifying each item of income or loss, and enter the total income or loss from the supplemental statement on line 10a.

Line 11 – Total income or loss: Add lines 1 through 10c for columns (b), (c), (d), and (e).

Specific Line Instructions – Deductions

Line 12 – Section 179 deduction:

The section 179, IRC, deduction limitation and phase-out apply to the electing tax-option (S) corporation.

Line 13 – Investment interest expense

- The amount of investment interest expense allowed as a deduction may not exceed the net investment income of the electing tax-option (S) corporation for the taxable year as provided in section [163\(d\)](#), IRC.
- The electing tax-option (S) corporation 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 tax-option (S) corporation may claim and enter any adjustment necessary in column (d).
- Suspended interest expenses may be carried forward by the electing tax-option (S) corporation.

Line 15 – Other deductions: If more than three lines are necessary, submit a supplemental statement with Schedule 5S-ET identifying each deduction item, and enter the total deductions from the supplemental statement on line 15a.

Line 16 – Total deductions: Add lines 12 through 15c for columns (b), (c), (d), and (e).

Line 17 – Taxable income or loss: Subtract line 16 from line 11.

Line 18 – Entity level gross tax: Multiply line 17 by 7.9% (0.079). If line 17, is less than zero fill in 0. This is the electing tax-option (S) corporation's gross tax.

Line 19 – Credit for net tax paid to another state

- Enter the amount from line 22 of Schedule ET-OS and submit Schedule ET-OS with the electing tax-option (S) corporation's Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*.
- The tax-option (S) corporation may only claim a credit for:
 - Corporate net income or franchise taxes paid to another state on the same income that is taxable to Wisconsin.
 - Individual income tax paid on a composite return on behalf of Wisconsin resident shareholders to another state on the same income that is taxable to Wisconsin.
- The electing tax-option (S) corporation may not pass the credit through to shareholders.
- Shareholders of the electing tax-option (S) corporation may not claim a credit for taxes paid to another state on income of the tax-option (S) corporation, since the shareholders do not pay Wisconsin income tax on the electing tax-option (S) corporation's income.
- See additional limitations in sec. [71.07\(7\)\(b\)3.](#), Wis. Stats.

Line 20 – Net tax: Subtract line 19 from line 18. If line 19 is larger than line 18, fill in 0. This is the electing tax-option (S) corporation's entity-level net tax. Enter the amount from line 20 on Form 5S, page 1, line 7.

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

- [Common questions](#)
- [Forms and instructions](#)
- [Wisconsin Tax Bulletin](#)
- [Wisconsin Statutes and Administrative Code](#)
- [Tax Publications](#)

Contact Information

- Email your question to: DORAuditPassThrough@wisconsin.gov
- Call (608) 266-2772
- Call or visit any Department of Revenue [office location](#)

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of October 7, 2022: sec. [71.365\(4m\)](#), Wis. Stats.