

## Purpose of Schedule

A trust that makes the election to be an electing small business trust (ESBT) and has Wisconsin sourced income from one or more tax-option (S) corporations must use Schedule ESBT to compute the Wisconsin tax on the Wisconsin sourced income from the tax-option (S) corporation(s).

**Note:** If the trust is an ESBT, check the appropriate box on page 1 of the trust's Form 2, *Wisconsin fiduciary income tax for estates or trusts*, under the information section indicating the trust is an electing small business trust.

## Result of Making the Election

Electing small business trusts must separate the income from tax-option (S) corporations and treat it as a separate trust from other trust income. The net income for the tax-option (S) corporation portion is determined under federal law, as modified by Wisconsin addition and subtraction items as provided on Schedule A of Form 2 and Schedule 2M. The separate trust is taxed on its Wisconsin taxable income at the highest rate for fiduciaries (7.65%).

The ESBT must include with Form 2 a copy of the Schedule 5K-1 from the tax-option (S) corporation (or the Schedule K-1 from the federal S corporation if the tax-option (S) corporation was not required to file a Wisconsin tax return) that includes the name and federal employer identification number (FEIN) of the tax-option (S) corporation.

**Caution:** If the ESBT receives a Schedule 5K-1 with box 3 in Part B checked, indicating the tax-option (S) corporation made the entity-level tax election according to sec. 71.365(4m)(a), Wis. Stats., the following reporting requirements apply:

- All items of income, gain, loss, or deduction from the electing tax-option (S) corporation must be removed from the ESBT's Wisconsin income or loss.
- The ESBT may not claim a credit for taxes paid to another state on income taxed on the electing tax-option (S) corporation's Wisconsin tax return. In addition, a resident ESBT may not claim a credit for taxes paid to another state on income taxed at the tax-option (S) corporation's entity level in Wisconsin.
- The manufacturing and agriculture credit can only be used to offset tax liability for the tax imposed on a shareholder's prorated share of a tax-option corporation's income, as provided in sec. 71.07(5n)(c)3., Wis. Stats. Since a shareholder of an electing tax-option (S) corporation does not have income and resulting tax from the tax-option (S) corporation in the year of the election, the shareholder (ESBT) cannot use the credit to offset income tax liability from other sources of income. The ESBT may carry forward the credit for 15 years and use the credit to offset tax liability resulting from the ESBT's prorated share of taxable income from the tax-option (S) corporation for a year in which the election is not made.
- The ESBT may not claim Wisconsin pass-through withholding from a tax-option (S) corporation if the corporation elected to be taxed at the entity level and claimed a refund of the pass-through withholding or submitted a written request to apply the pass-through withholding against the tax liability at the entity level.

## When and Where to File

Include Schedule ESBT with the trust's Form 2, *Wisconsin fiduciary income tax for estates or trusts*.

## Part I Computation of Wisconsin ESBT Income

### Column (a) – Federal ESBT Amount

Fill in the amounts from the tax-option (S) corporation portion of the trust that are taxable for federal purposes.

The federal ESBT amount is the trust's share of the amount from Wisconsin Schedule 5K-1, column (b), and should agree with the amount for that item reported on the trust's Federal Schedule K-1 (Form 1120S).

### Column (b) – Wisconsin ESBT Amount

Fill in amounts from the tax-option (S) corporation portion of the trust that are taxable to Wisconsin. According to sec. 71.125(2), Wis. Stats., an ESBT's income is computed under sec. 641 of the Internal Revenue Code, as modified by sec. 71.05(6) to (12), (19) and (20), Wis. Stats. For information about the addition and subtraction modifications, see Schedule A on page 4 of Form 2 and Schedule 2M.

*Residents* – In general, the amounts entered in column (b), should agree with the amounts from Wisconsin Schedule 5K-1, Part III, column (d). If the trust received a federal Schedule K-1 (Form 1120S) from a tax-option (S) corporation that is a resident asset of Wisconsin according to sec. 71.14(3m)(a), Wis. Stats., but did not issue the trust a Wisconsin Schedule 5K-1, the trust must include in column (b) the amounts from the federal Schedule K-1 (Form 1120S) adjusted for Wisconsin.

*Nonresidents or part-year residents* – In general, the amounts entered in column (b), should agree with the amounts from Wisconsin Schedule 5K-1, Part III, column (e). If the trust received a federal Schedule K-1 (Form 1120S) from a tax-option (S) corporation that is a resident asset of Wisconsin according to sec. 71.14(3m)(a), Wis. Stats., but did not issue the trust a Wisconsin Schedule 5K-1, the trust must include in column (b) the amounts from the federal Schedule K-1 (Form 1120S) adjusted for Wisconsin.

If the ESBT is a shareholder of a tax-option (S) corporation making the entity-level tax election according to sec. 71.365(4m)(a), Wis. Stats., see the **Caution** under *Result of Making the Election* earlier in these instructions.

### Column (c) – Non-Wisconsin ESBT Amount

*Residents* – Leave column (c) blank. This also applies to a nonresident or part-year resident trust with a tax-option (S) corporation portion of the trust that is a resident asset of Wisconsin according to sec. 71.14(3m)(a), Wis. Stats.

*Nonresidents or part-year residents* – Fill in amounts from the tax-option (S) corporation portion of the trust that are not from Wisconsin sources. In general, the amounts entered in column (c), should agree with the difference between Wisconsin Schedule 5K-1, Part III, columns (d) and (e).

If the trust has ownership in multiple tax-option (S) corporations, the trust must include in column (c) the amounts received on a federal Schedule K-1 (Form 1120S) from a tax-option (S) corporation that did not have Wisconsin sourced income and is not a resident asset of the trust according to sec. 71.14(3m)(a), Wis. Stats.

#### **Line 4b – Net long-term capital gain (loss):**

The Wisconsin 30-percent and/or 60-percent long-term capital gain exclusion applies for the ESBT's net long-term capital gains.

#### **Line 8 – Other income:**

Submit a supplemental statement with Schedule ESBT identifying each additional item of income and enter the total income from the supplemental statement on line 8.

#### **Line 15 – Qualified business income deduction:**

Wisconsin did not adopt section 199A of the Internal Revenue Code, as created in the federal Tax Cuts and Jobs Act of 2017, which provides a taxpayer, other than a corporation, a federal deduction of up to 20 percent of qualified business income. Any federal qualified business income deduction claimed according to sec. 199A, IRC, is not allowed for Wisconsin.

#### **Line 16 – Other deductions:**

Submit a supplemental statement with Schedule ESBT identifying each additional deduction item and enter the total deduction amount from the supplemental statement on line 16.

#### **Line 17 – Net operating loss deduction:**

If the tax-option (S) corporation portion of the trust is claiming a Wisconsin net operating loss deduction, include a schedule similar to Wisconsin Schedule NOL1, *Wisconsin Net Operating Loss Deduction*, reflecting the computation of the Wisconsin net operating loss deduction.

### **Part II Computation of Wisconsin Tax**

#### **Line 20 – Total Wisconsin ESBT income (from line 19, column b):**

If line 18, column (b) is greater than line 9, column b, enter 0 (zero) on line 20.

#### **Line 22 – Wisconsin ESBT credits:**

Credits from the tax-option (S) corporation portion of the trust may only be used to offset tax imposed on the tax-option (S) corporation portion of the trust. **Note:** Wisconsin income tax withheld and passed through from the tax-option (S) corporation portion of the trust is included on line 12 of Form 2 and not on line 22 of Schedule ESBT.

If the ESBT is a shareholder of a tax-option (S) corporation making the entity-level tax election according to sec. 71.365(4m)(a), Wis. Stats., see the **Caution** under *Result of Making the Election* earlier in these instructions.

### **Nonrefundable Credits**

Report the nonrefundable credits related to the tax-option (S) corporation portion of the trust from line 34 of Schedule CR, *Other Credits*, on line 22 of Schedule ESBT.

### **Refundable Credits**

Report the refundable credits related to the tax-option (S) corporation portion of the trust from line 40 of Schedule CR on line 15 of Form 2.

### **Credit Carryforward**

Include a schedule similar to Wisconsin Schedule CF, *Carryforward of Unused Credits*, reflecting the carryforward of unused credits of the tax-option (S) corporation portion of the trust.

## **Part III Source of Tax-Option (S) Corporation ESBT Income**

Provide the legal name and FEIN of each tax-option (S) corporation included on the Schedule ESBT. If the ESBT holds shares in more than three tax-option (S) corporations, attach a schedule listing the legal name and FEIN of each tax-option (S) corporation included on the Schedule ESBT.

## **Additional Information and Assistance**

### **Contact Information**

- o Email your questions to [DOREstateandFiduciary@wisconsin.gov](mailto:DOREstateandFiduciary@wisconsin.gov)
- o Call (608) 266-2772
- o Call or visit any Department of Revenue office listed on the department's website at <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 15, 2022: ch. 71, Wis. Stats.