

Example 2: Company B provides towing services. Company B does not provide repair services. Company B is contacted by Individual X who indicates that her motor vehicle will not start. Company B tows the motor vehicle to Company C, a service station, who will repair Individual X's motor vehicle. Company B charges Individual X \$30 for the towing services provided.

a. *Prior to May 1, 1993*

The \$30 towing charge is subject to Wisconsin sales or use tax because it is related to the repair of a motor vehicle.

b. *May 1, 1993 and Thereafter*

The towing charge is subject to Wisconsin sales or use tax.

Example 3: Company D, a towing company, has contracted with a Wisconsin county to tow vehicles abandoned or damaged on the county highways. The county contacts Company D and indicates that a vehicle has been abandoned on a highway. Company D tows the vehicle to its location until the owner is located and picks up the motor vehicle. The motor vehicle does not require repair. The owner of the motor vehicle pays Company D \$40 for the towing services provided.

a. *Prior to May 1, 1993*

The \$40 towing charge is not subject to Wisconsin sales or use tax because the towing is not related to the repair, service, or maintenance of a motor vehicle.

b. *May 1, 1993 and Thereafter*

The \$40 towing charge is subject to Wisconsin sales or use tax.

Example 4: Company E, a towing company, has contracted with a Wisconsin city to remove motor vehicles from "no parking" zones. Company E tows the motor vehicle to the city garage. Company E bills the city on a monthly basis for the towing services it provides. The owner of the motor vehicle pays a \$50 fine to the city and is allowed to claim his or her vehicle.

a. *Prior to May 1, 1993*

The city does not resell the towing service to the owners of towed motor vehicles. The city is the consumer of the towing service. However, the towing charge by Company E to the city is not subject to Wisconsin sales or use tax because it is a sale to a Wisconsin governmental unit. Sales to Wisconsin governmental units are exempt from Wisconsin sales or use tax under sec. 77.54(9a)(b), Wis. Stats. (1991-92).

b. *May 1, 1993 and Thereafter*

Same answer as given in Example 4, part a.

Example 5: Company F operates a service station. Company F is contacted by an insurance company to tow a damaged motor vehicle to Company F's service station and repair the motor vehicle. Company F charges the insurance company \$45 for the towing service provided.

a. *Prior to May 1, 1993*

The \$45 towing charge is subject to Wisconsin sales or use tax because it is related to the repair of a motor vehicle.

b. *May 1, 1993 and Thereafter*

The \$45 towing charge is subject to Wisconsin sales or use tax.

Example 6: Company G is a towing service provider. Company G is contacted by an insurance company to tow a damaged motor vehicle to a salvage yard for disposal. Company G charges the insurance company \$45 for the towing service provided.

a. *Prior to May 1, 1993*

The \$45 towing charge is not subject to Wisconsin sales or use tax because it is not related to the repair, service, or maintenance of a motor vehicle.

b. *May 1, 1993 and Thereafter*

The \$45 towing charge is subject to Wisconsin sales or use tax.

Example 7: Company H operates a service station. Company H is contacted by Common Carrier Y to tow Y's truck, which is used exclusively and directly in common carriage for hire, to the service station and repair the truck. Company H charges Common Carrier Y \$100 for towing service provided.

a. *Prior to May 1, 1993*

The \$100 towing charge is not subject to Wisconsin sales or use tax because at the time the truck is towed, if sold, it would have been exempt from Wisconsin sales or use tax under sec. 77.54(5)(b), Wis. Stats. (1991-92). Section 77.54(5)(b), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for motor trucks sold to common or contract carriers who use the trucks exclusively as common or contract carriers. Company H should obtain a properly completed exemption certificate from Common Carrier Y, in order to exempt the sale.

b. *May 1, 1993 and Thereafter*

Same answer as given in Example 7, part a.

Example 8: Company I provides towing service. Company I is contacted by Individual V, a nonresident of Wisconsin, to tow her damaged motor vehicle to a salvage yard for disposal. Company I charges Individual V \$30 to tow the motor vehicle.

a. *Prior to May 1, 1993*

The \$30 towing charge is not subject to Wisconsin sales or use tax because it is not related to the repair, service, or maintenance of a motor vehicle.

b. *May 1, 1993 and Thereafter*

The \$30 towing charge is subject to Wisconsin sales or use tax. Although the motor vehicle at the time of towing is exempt from Wisconsin tax if sold for immediate removal from Wisconsin, sec. 77.52(2)(a)10, Wis. Stats. (1991-92) specifically excludes from exemption, towing of motor vehicles exempt from sales and use tax under sec. 77.54(5)(a), Wis. Stats. (1991-92).

Example 9: Company J provides towing services. Company J does not provide repair services. Company J is contacted by Individual U who indicates that his motor vehicle will not start. Company J tows the motor vehicle to Company K, a service station, who will repair Individual U's motor vehicle. Company J charges Company K \$30 for the towing services provided. Company K charges Individual U \$40 for the towing service provided.

a. *Prior to May 1, 1993*

The \$40 towing charge by Company K to Individual U is subject to Wisconsin sales or use tax because it is related to the repair of a motor vehicle. The \$30 charge for towing by Company J to Company K is not subject to Wisconsin sales or use tax, provided Company K gives Company J a properly completed resale certificate.

b. *May 1, 1993 and Thereafter*

The \$40 towing charge by Company K to Individual U is subject to Wisconsin sales or use tax. The \$30 charge for towing by Company J to Company K is not subject to Wisconsin sales or use tax, provided Company K gives Company J a properly completed resale certificate.

TEMPORARY RECYCLING SURCHARGE

6 Application of the Temporary Recycling Surcharge to Partnerships

Statutes: Sections 77.92(4) and (5), 77.93(3) and (5), and 77.94(1)(b) and (c), Wis. Stats. (1991-92)

Note: The temporary recycling surcharge applies for taxable years ending after April 1, 1991, and ending before April 1, 1999. This tax release supersedes the instructions to the 1991 Form 3S, Wisconsin Partnership Temporary Surcharge, and the information with respect to partnerships in Part IV of the December 1991 edition of Publication 400, *Wisconsin's Temporary Surcharge*. Except where indicated below, the tax release applies for taxable years ending after April 1, 1991.

Definitions

In this tax release, the following definitions apply:

Farming — "Farming" is the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees, other than trees bearing fruit or nuts, are not treated as an agricultural or horticultural commodity. Raising or harvesting Christmas trees is not considered farming.

Gross Receipts — For taxable years beginning on or after January 1, 1992, "gross receipts" are the total receipts or sales from all trade or business activities, *except farming*, reportable for federal income tax purposes, before deducting returns and allowances or any other business expenses. Gross receipts include:

- gross receipts or sales reportable on 1992 federal Form 1065, U.S. Partnership Return of Income, line 1a,
- gross receipts (except farm receipts) passed through from other partnerships and fiduciaries and includable in computing the amount on federal Form 1065, line 4,
- the gross sales price from the sale or disposition of business assets (except farm assets) includable in computing the net gain or loss on federal Form 1065, line 6, and
- other gross receipts includable in computing other income or loss on federal Form 1065, line 7.

For taxable years beginning before January 1, 1992, "gross receipts" are the total receipts or sales from

all trade or business activities, *including farming*, reportable for federal income tax purposes, before deducting returns and allowances or any other business expenses. Gross receipts include:

- gross receipts or sales reportable on 1991 federal Form 1065, U.S. Partnership Return of Income, line 1a,
- gross receipts (including farm receipts) passed through from other partnerships and fiduciaries and includable in computing the amount on federal Form 1065, line 4,
- gross receipts from farming includable in computing the net farm profit or loss on federal Form 1065, line 5,
- the gross sales price from the sale or disposition of business assets (including farm assets) includable in computing the net gain or loss on federal Form 1065, line 6, and
- other gross receipts includable in computing other income or loss on federal Form 1065, line 7.

Net Business Income — *For taxable years beginning on or after January 1, 1992*, “net business income” is the ordinary income or loss from all trade or business activities, *except farming*, reportable for Wisconsin income tax purposes. Generally, this is the amount reportable on 1992 Wisconsin Form 3, Wisconsin Partnership Return, Schedule 3K, line 1, column d, but excluding ordinary income or losses from farming. This is the ordinary income or loss from trade or business activities computed on 1992 federal Form 1065, U.S. Partnership Return of Income, line 22, as adjusted for certain differences between federal and Wisconsin

law, but *before application of apportionment or separate accounting*.

For taxable years beginning before January 1, 1992, “net business income” is the ordinary income or loss from all trade or business activities, *including farming*, reportable for Wisconsin income tax purposes. Generally, this is the amount reportable on 1991 Wisconsin Form 3, Wisconsin Partnership Return, Schedule 3K, line 1, column d, including ordinary income or losses from farming. This is the ordinary income or loss from trade or business activities computed on 1991 federal Form 1065, U.S. Partnership Return of Income, line 22, as adjusted for certain differences between federal and Wisconsin law, but *before application of apportionment or separate accounting*.

Net Farm Profit — “Net farm profit” is all farm income less all farm expenses for federal income tax purposes. It includes:

- net farm profit or loss from federal Schedule F, Profit or Loss From Farming, reported on 1992 federal Form 1065, U.S. Partnership Return of Income, line 5, and
- ordinary gain or loss on the disposition of farm assets from federal Form 4797, Sales of Business Property, reported on 1992 federal Form 1065, line 6.

Trade or Business — “Trade or business” has the meaning given in section 162 of the Internal Revenue Code. A trade or business is an activity regularly carried on by the partnership with the intention of making a profit.

Questions and Answers

Question 1: Which partnerships are subject to the temporary recycling surcharge?

Answer 1: The temporary recycling surcharge applies to every partnership that must file a Wisconsin partnership return, Form 3, and whose receipts or profits from trade or business activities exceed certain minimums, as described below:

- Partnerships which are not engaged in farming and have at least \$1,000 of gross receipts from trade or business activities for federal income tax purposes.
- Partnerships which are engaged solely in farming and have at least \$1,000 of net farm profit for federal income tax purposes.
- *For taxable years beginning on or after January 1, 1992*, partnerships which are engaged in farming and other trade or business activities and have at least \$1,000 of gross receipts from all nonfarm trade or business activities for federal income tax purposes *or* at least \$1,000 of net farm profit.
- *For taxable years beginning before January 1, 1992*, partnerships which are engaged in farming and other trade or business activities and have at least \$1,000 of gross receipts from all trade or business activities, including farming, for federal income tax purposes *or* at least \$1,000 of net farm profit.

The following examples illustrate partnerships that are subject to the temporary recycling surcharge.

A. Partnerships Engaged in Business Other Than Farming

Example 1: Partnership A, which is not engaged in farming, reports the following amounts on its 1992 federal Form 1065:

Gross receipts or sales (line 1a)	\$ 1,000
Less returns and allowances (line 1b)	100

Partnership A is subject to the temporary recycling surcharge because its gross receipts are at least \$1,000 before any reduction for returns and allowances.

Example 2: Partnership B, which is not engaged in farming, reports the following amounts on its 1992 federal Form 1065:

Gross receipts or sales (line 1a)	\$ 900
Ordinary income from other partnerships (line 4) *	100,000

* Gross receipts from the trade or business activities of the other partnerships are \$500,000.

Partnership B is subject to the temporary recycling surcharge because its gross receipts of \$500,900 (\$900 + \$500,000) are at least \$1,000.

Example 3: Partnership C, which was organized for investment purposes only, is engaged in the rental of real estate. During 1992, Partnership C sells the property and reports the following amount on its 1992 federal Form 1065:

Net gain from Form 4797 (line 6) *	\$ 4,000
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* The gross sales price of the assets is \$50,000.

Partnership C reports the following amounts on its 1992 Wisconsin Form 3, Schedule 3K, column d:

Ordinary income from trade or business activities (line 1)	\$ 4,000
Net income from rental real estate activities (line 2)	3,000

Net gain under section 1231 (line 6)	55,000
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Partnership C is subject to a temporary recycling surcharge based on the net gain from the sale of assets reportable as ordinary income on federal Form 4797, Part II, because its gross receipts of \$50,000 are at least \$1,000. (Note: The surcharge does not apply to Partnership C's rental income or section 1231 gain.)

B. Partnerships Engaged Solely in Farming

Example: Partnership A is engaged only in farming. It reports the following amounts on its 1992 federal Form 1065:

Net farm profit (line 5)	\$ 900
Net gain from Form 4797 (line 6)	5,000

Partnership A is subject to the temporary recycling surcharge because its net farm profit for purposes of the surcharge of \$5,900 (\$900 + \$5,000) is at least \$1,000.

C. Partnerships Engaged in Farming and Another Trade or Business

Example 1: Partnership A is engaged in farming, but also has trade or business income from repairing engines. Partnership A reports the following amounts on its 1992 federal Form 1065:

Gross receipts or sales (line 1a)	\$ 1,500
Net farm profit (line 5)	900

Partnership A is subject to a temporary recycling surcharge based on the net business income from its engine repair business because it has at least \$1,000 of gross receipts from that business. Partnership A is not subject to the surcharge on its farming operation since its net farm profit for pur-

poses of the surcharge is less than \$1,000.

Example 2: Partnership B is engaged in farming, but also has trade or business income from selling cleaning supplies. Partnership B reports the following amounts on its 1991 federal Form 1065:

Gross receipts or sales (line 1a)	\$ 500
Net farm profit (line 5) *	900

* Gross receipts from farming are \$2,000.

Partnership B is subject to a temporary recycling surcharge because its total gross receipts of \$2,500 (\$2,000 from its farming operation and \$500 from its other business activity of selling cleaning supplies) are at least \$1,000. (Note: Assuming the same facts for 1992, Partnership B would not be subject to the surcharge.)

Question 2: Which partnerships are not subject to the temporary recycling surcharge?

Answer 2: The temporary recycling surcharge does not apply to:

- Partnerships that are not required to file a Wisconsin partnership return, Form 3. Syndicates, pools, joint ventures, or similar organizations that have elected not to be treated as partnerships under section 761(a) of the Internal Revenue Code and as a result are not required to file a partnership return are not subject to the temporary recycling surcharge.
- Partnerships which are not engaged in farming and have less than \$1,000 of gross receipts from all trade or business activities for federal income tax purposes.

- Partnerships which are engaged solely in farming and have less than \$1,000 of net farm profit for federal income tax purposes.
- For taxable years beginning on or after January 1, 1992, partnerships which are engaged in both farming and other trade or business activities and have less than \$1,000 of gross receipts from all nonfarm trade or business activities for federal income tax purposes *and* less than \$1,000 of net farm profit for federal income tax purposes.
- For taxable years beginning before January 1, 1992, partnerships which are engaged in both farming and other trade or business activities and have less than \$1,000 of gross receipts from all trade or business activities, including farming, for federal income tax purposes *and* less than \$1,000 of net farm profit for federal income tax purposes.

Following are examples of partnerships that are not subject to the temporary recycling surcharge.

A. Partnerships Not Required to File Wisconsin Form 3

Example 1: Partnership A does not do any business in Wisconsin, perform personal or professional services in Wisconsin, or receive income from real or tangible personal property in Wisconsin. Partnership A has three partners who are Wisconsin residents.

Partnership A is not subject to the temporary recycling surcharge because it is not required to file a Wisconsin partnership return, Form 3.

Example 2: Assume the same facts as in Example 1, except that the department requests Partnership A to file Wisconsin Form 3 to verify the

income of the three partners who are residents of Wisconsin.

Partnership A is not subject to the temporary recycling surcharge because the partnership is filing Wisconsin Form 3 only to verify the income of the Wisconsin resident partners.

Example 3: Partnership B, which was organized for investment purposes only and is not a dealer or trader in securities, derives income from interest, dividends, and capital gains on the disposition of securities. Partnership B elects under IRC sec. 761(a) not to be treated as a partnership for federal income tax purposes because it was organized for investment purposes only and not for the active conduct of a trade or business. Partnership B makes a similar election for Wisconsin purposes on its 1992 Wisconsin Form 3. Therefore, it does not file federal Form 1065 or Wisconsin Form 3 for any subsequent years.

Partnership B is not subject to the temporary recycling surcharge because it is not required to file a Wisconsin partnership return.

Example 4: Partnership C is at least 51% owned and controlled by American Indians who are enrolled members of the same tribe. The partnership is engaged in business only on the tribal reservation of its partners. Partnership C does not file a 1992 Wisconsin partnership return since it has no business activities in Wisconsin off the reservation.

Partnership C is not subject to the temporary recycling surcharge because it is not required to file a Wisconsin partnership return.

B. Partnerships Engaged in Business Other Than Farming

Example 1: Partnership A, which was organized for investment purposes

only and is not a dealer or trader in securities, reports no income, losses, or deductions on its 1992 federal Form 1065, lines 1 through 22. Partnership A reports the following amounts on its 1992 Wisconsin Form 3, Schedule 3K, column d:

Interest income (line 4a)	\$	1,000
Dividend income (line 4b)		2,000
Net long-term capital gain (line 4e)		5,000

Partnership A is not subject to the temporary recycling surcharge because it does not have at least \$1,000 of gross receipts from trade or business activities.

Example 2: Partnership B, which was organized for investment purposes only and is not a dealer or trader in real estate, reports no income, losses, or deductions on its 1992 federal Form 1065, lines 1 through 22. Partnership B reports the following amounts on its 1992 Wisconsin Form 3, Schedule 3K, column d:

Net income from rental real estate activities (line 2)	\$	1,000
Interest income (line 4a)		250
Net long-term capital gain (line 4e)		5,000

Partnership B is not subject to the temporary recycling surcharge because it does not have at least \$1,000 of gross receipts from trade or business activities.

C. Partnerships Engaged Solely in Farming

Example: Partnership A is engaged solely in farming. It reports the following amounts on its 1992 federal Form 1065:

Net farm profit (line 5)	\$	1,500
Net gain from Form 4797 (line 6)		(600)