



## Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect the position of the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the answers in a tax release.)

The following tax release is included:

### Withholding Tax

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## WITHHOLDING TAX

### 1 What Constitutes “Public Speaking” for Nonresident Entertainers

**Statutes:** Sections 71.01(2) and 71.80(15), Wis. Stats. (2005-06)

**Background:** This tax release is intended to clarify the circumstances under which “public speaking services” are subject to the nonresident entertainer prepayment provisions under sec. 71.80(15), Wis. Stats. (2005-06).

Section 71.80(15), Wis. Stats. (2005-06), requires nonresident “entertainers” to file a surety bond or cash deposit if the total contract price for a performance in Wisconsin exceeds \$3,200. This bond or deposit must be filed to guarantee payment of Wisconsin taxes and any penalties and interest.

See Publication 508, “Wisconsin Tax Requirements Relating to Nonresident Entertainers,” for additional information and guidelines concerning the prepayment provisions.

**Public speaking services** are one of the activities specifically included in the definition of “entertainer” under sec. 71.01(2), Wis. Stats. (2005-06). A “nonresident entertainer” is a nonresident person who, for consideration, furnishes amusement, entertainment, or *public speaking services*, or performs in one or more sporting events in the state of Wisconsin. A nonresident includes a foreign corporation, partnership, or other entity not regularly engaged in business in Wisconsin that derives income from any of these activities or from these services performed by a nonresident person.

For purposes of administering sec. 71.01(2), Wis. Stats. (2005-06), “public speaking services” are defined as “the act or process of making speeches, presentations, and/or other verbal communications to an audience.” Factors such as the topic of the engagement or the make-up of the audience are not relevant. Nor does the event need to be open to the public. A nonresident who is paid for a speech or presentation given to an audience located in Wisconsin is considered to be performing *public speaking services* and is subject to the nonresident entertainer requirements for Wisconsin tax purposes under sec. 71.80(15), Wis. Stats. (2005-06), provided the nonresident entertainer was paid more than \$3,200.

**Note:** If the amount received for public speaking is \$3,200 or less or if the speaker is a Wisconsin resident, the prepayment provisions under sec. 71.80(15), Wis. Stats. (2005-06), do not apply. However, the income from the speaking services is still taxable for Wisconsin income tax purposes.

**Facts and Question 1:** A Wisconsin company pays a nonresident consultant \$5,000 to conduct a work-related training seminar for its employees only. Is this public speaking?

**Answer 1:** Yes. The seminar constitutes public speaking. It does not matter that the training seminar is for employees only. The important factor is that the seminar is conducted in Wisconsin, to an audience, by a nonresident.

**Facts and Question 2:** A Wisconsin university pays a nonresident speaker an honorarium to give a commencement address. The event is open to the public but is attended primarily by graduates and their families. The honorarium is over \$3,200. Is this public speaking?

**Answer 2:** Yes. The commencement address constitutes public speaking. It does not matter that the primary attendees are the graduates and their families.

**Facts and Question 3:** A private university pays a nonresident person \$5,000, in two equal installments, to present academic class lectures to tuition-paying students. Is this public speaking?

**Answer 3:** Yes. This constitutes public speaking. It does not matter that the class lectures were not open to the public.

**Note:** At the time the \$3,200 threshold is met, the amount of surety bond or cash deposit, or the amount to be withheld by the employer, is based on the accumulative total contract price with that employer for the year, not just the amount in excess of \$3,200. For additional information and guidelines concerning the prepayment provisions, refer to Publication 508.