



# Wisconsin Department of Revenue

## TAX BULLETIN

January 2015  
Number 187

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### What's New This Tax Season

Below are some of the changes that may impact the 2014 Wisconsin income tax return:

#### Individuals:

- **Income tax rate reduction:** The tax rate for the lowest tax bracket is reduced from 4.4% to 4.0%. All taxpayers will benefit from this rate reduction which is built into the tax table.
- **Filing status for same-sex couples:** Lawfully married same-sex couples must file their individual income tax returns as married filing jointly, married filing separately or, if qualified, as head of household. [Common questions](#) concerning income tax filing for same-sex couples are available on the department's website.
- **Child and dependent care expenses:** The maximum subtraction is increased to \$3,000 for one qualifying person or \$6,000 for more than one qualifying person.
- **Private school tuition:** A subtraction is available for tuition paid to send a dependent child to a private school. The maximum subtraction is \$4,000 for an elementary pupil and \$10,000 for a secondary pupil. [Schedule PS, Private School Tuition](#), must be filed to claim the subtraction. See article on page 3 for more information.

- **College savings accounts:** Numerous changes are made to the subtraction for contributions to a college savings account (see page 4 for related article). For example, the subtraction is now indexed for inflation and contributions for 2014 can now be made up through April 15, 2015. These and other changes are reflected in [Schedule CS](#), *College Savings Accounts*, which must be filed to claim the subtraction.
- **Net operating loss carryback:** Individuals who incur a net operating loss in taxable years beginning in 2014 may carry back the NOL two years and forward up to 20 years to offset their tax liability. The carry back is optional and must be claimed using Form X-NOL, *Carryback of Wisconsin Net Operating Loss (NOL)*.

#### Businesses:

- **New Corporate Tax Return:** [Form 6](#), *Wisconsin Combined Corporation Franchise or Income Tax Return*, is used by all corporations who are members of a combined group.
- **New schedule for carrying forward certain unused credits:** [Schedule CF](#), *Carryforward of Unused Credits*, must be used to report a credit computed for an earlier year if there is an amount of unused credit to be carried forward to 2014 and future years.
- **New schedule for reporting disregarded entities:** [Schedule DE](#), *Disregarded Entity Schedule*, is to be used by a taxpayer if during 2014 they were the owner of an entity that is disregarded for income tax purposes.
- **Manufacturing and agriculture credit:** Changes are made to the manufacturing and agriculture credit. These changes are reflected in [Schedule MA-A](#), *Wisconsin Agricultural Credit*, and [Schedule MA-M](#), *Wisconsin Manufacturing Credit*, which replace Schedule MA.
- **Bonus depreciation and section 179 expense:** The depreciation provisions extended as a result of the Tax Increase Prevention Act of 2014 **do not apply** when computing depreciation for Wisconsin. However, Wisconsin does follow the federal limits for section 179 expensing.
- **Basis modification:** Starting with the first taxable year beginning after December 31, 2013, and for each of the next 4 taxable years, a person must either add or subtract 20 percent of the difference between the combined federal adjusted basis and the combined Wisconsin adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are being depreciated or amortized for both federal and Wisconsin purposes.

## Depreciation and Section 179 Expense for 2014 Wisconsin Tax Returns

The federal Tax Increase Prevention Act of 2014 was signed by the President on December 19, 2014. This Act retroactively extended for one year a number of federal tax provisions that had expired for 2014, including provisions relating to depreciation and Section 179 expense. The department subsequently published guidance concerning [depreciation](#) and [Section 179 expense](#) for 2014 Wisconsin tax returns.

The Wisconsin Legislature is currently in session. Any legislative change to the Wisconsin treatment of depreciation or Section 179 expense, as well as any other Wisconsin tax law changes, will be summarized in the *Wisconsin Tax Bulletin*.

## 2014 Tax Practitioner Questions & Answers

In October and November, the Department of Revenue provided a series of Wisconsin tax updates for the 2014 filing season. Tax practitioners from around the state attended, bringing with them questions covering a wide variety of topics. Many of these [questions](#), along with the department's answers, have been posted online for viewing at your convenience.

## Basis of Asset Adjustment Reporting for Partnerships

Starting with the first taxable year beginning after December 31, 2013, and for each of the next 4 taxable years, a person must either add or subtract 20 percent of the difference between the combined federal adjusted basis and the combined Wisconsin adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are being depreciated or amortized for both federal and Wisconsin purposes.

How should a partnership report the basis modification on the Wisconsin partnership return? The Wisconsin Statutes require the basis of asset modification to be made on an entity basis, not by activity. A taxpayer is required to compute the basis modification based on the difference between the federal and Wisconsin basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013. The basis of asset modification must be reported in column c of Schedules 3K and 3K-1. In most cases it can be reported on line 1 or line 2 as an adjustment to ordinary business income or loss or net rental real estate income or loss. However, the basis modification may instead be reported on line 11 (other income or loss) or line 13d (other deductions).

More questions and answers concerning the depreciation and basis modification are available from the [2014 tax practitioner questions and answers](#) that have been posted to our website.

## Form 6 Short Period Returns

For taxable years beginning on or after January 1, 2014, corporations filing as part of a combined group are required to use [Form 6](#), *Wisconsin Combined Corporation Franchise or Income Tax Return*. With the Form 6 currently not readily available for electronic filing, what should taxpayers do if they must file a short period return for tax year 2014? Taxpayers may file a paper Form 6 while the software companies continue their programming efforts, or taxpayers can wait until the Form 6 is available in electronic format. In either case, the short period tax return must be filed on or before the due date, or extended due date, of the return to avoid late filing fees. Wisconsin law provides that any extension allowed by the IRS for filing the federal return automatically extends the Wisconsin due date to 30 days after the federal extended due date. If you aren't requesting a federal extension, Wisconsin law provides an automatic extension of 7 months or until the original due date of the corporation's corresponding federal return, whichever is later. However, an extension for filing the return doesn't extend the time to pay the franchise or income tax. Interest will be charged on the tax not paid by the 15th day of the 3rd month following the close of the taxable year. You can avoid interest charges during the extension period by paying the tax due by that date.

## Private School Tuition

Schedule PS, *Private School Tuition*, is new for 2014. Schedule PS is used to claim a subtraction for tuition paid for your dependent child to attend a private school. The subtraction is the lesser of the amount paid for tuition or \$4,000 for an elementary pupil (grades kindergarten to 8) and \$10,000 for a secondary pupil (grades 9 to 12).

For purposes of the subtraction, tuition paid for a child enrolled in pre-kindergarten (3K or 4K) does not qualify.

The child for whom you paid the private school tuition must be your dependent. For example, you paid \$4,000 to send your child to a private school. However, you are divorced and your ex-spouse claims the child as a dependent on his or her tax return. Neither you nor your ex-spouse can claim the subtraction for the \$4,000 paid for private school tuition.

Any expenses or fees paid for home schooling do not qualify for the subtraction. An amount paid to a charter school does not qualify as charter schools are public schools. An amount paid under the Private School Choice Program would qualify for the subtraction *only* for the amount of tuition paid by the parent that is in excess of any voucher amount.

Full-year residents, part-year residents, and nonresidents of Wisconsin may qualify for the credit. The private school does not have to be located in Wisconsin. However, the private school must meet certain requirements to be considered an "eligible institution." These requirements are listed in the instructions for Schedule PS.

A copy of Schedule PS must be attached to your Wisconsin Form 1 or 1NPR.

### **Changes to College Savings Accounts for 2014**

Schedule CS, *College Savings Accounts*, is new for 2014. This schedule must be filed by each contributor to an Edvest or Tomorrow's Scholar college savings account. The schedule is required because of the changes that were made to the treatment of Wisconsin college savings accounts.

The Wisconsin subtraction from income for contributions to an Edvest or Tomorrow's Scholar college savings account is increased for 2014. The subtraction is equal to the lesser of the amount contributed to the account for 2014 or \$3,050 (\$1,520 if married filing separate or a divorced parent). Beginning in 2014 and thereafter, the maximum subtraction amounts are to be adjusted each year based on changes in the Consumer Price Index. (Note: For 2015, the maximum subtraction will be \$3,100 (\$1,550 if married filing separate or a divorced parent).)

The Wisconsin subtraction for contributions to an Edvest or Tomorrow's Scholar account applies only to amounts paid into the account for the year. The subtraction does not apply to amounts that are rolled over into an account during the year.

The contribution date for a specific year is extended to April 15 of the following year for contributions to an Edvest or Tomorrow's Scholar college savings account. For example, 2014 contributions must be made during 2014 or by April 15, 2015. If you make a contribution in 2015 that you intend to subtract as a 2014 contribution, be sure to keep records showing for which year the contribution applies. A contribution made by April 15, 2015, may be claimed as a subtraction on your 2014 or 2015 tax return, but not on returns for both years.

The owner of the college savings account may authorize any individual to contribute to the account for the benefit of the beneficiary. In prior years, the owner could only authorize the parent, grandparent, great grandparent, aunt, or uncle of the beneficiary to contribute to the account.

The excess of the amount contributed to the college savings account over the amount allowed as a subtraction may be carried forward to future years and claimed as a subtraction subject to the yearly limitations. This applies only to amounts contributed for 2014 and thereafter.

For distributions from a college savings account received on or after June 1, 2014, the owner of the account may have to include an amount in income if the distribution was not used for qualified higher education expenses. The amount to be added to income is limited to the amount contributed to the account for 2014. Also, if the distribution is rolled over to another state's qualified program, the amount of the distribution that was previously claimed as a subtraction from income by the owner or other contributors to the account must be added to the owner's Wisconsin income. These additions to income do not apply if the owner of the account received the distributions while a nonresident of Wisconsin. Distributions not used for qualified higher education expenses and distributions rolled over to another state's qualified program are also to be reported on Schedule CS.

### **Online Access to the 2014 Form 1099-G**

Taxpayers have online access to their 2014 Form 1099-G (Certain Government Payments). The majority of Wisconsin taxpayers have elected to receive an email that their 1099-G is available online. Those that have not elected email notification continue to receive paper copies.

Taxpayers are advised to access their 1099-G online, print a copy and give the form to their tax preparer with the rest of their tax documents. This information is used in the preparation of the federal return.

Please note that, for security purposes, the taxpayer's address is not shown on the online printable form, but is on the 1099-G that goes to the Internal Revenue Service.

Taxpayers can access 1099-G information online for years 2011 through 2014.

The taxpayer can go online and print a 1099-G at: [revenue.wi.gov/eserv/Form1099G/](http://revenue.wi.gov/eserv/Form1099G/).

## ID Verification

The Department of Revenue (DOR) is again using Identity Verification to protect taxpayers from attempts by fraudsters to steal a taxpayer's identity and tax refund. In fiscal year 2014, ID Verification and other DOR initiatives saved \$49.6 million by preventing fraud and reducing or denying inaccurate refund claims.

- If asked to verify your identity, you will be asked to take a quiz consisting of four multiple choice questions with answers that help us verify your identity.
- You can take the quiz online or by interactive telephone.
- Tax return filers who are unable to take the quiz online or by phone can call our customer service representatives at (608) 264-4598, Monday through Friday from 7:45 a.m. to 4:30 p.m. for assistance.

## Department of Revenue Mobile APP

Download the Department of Revenue mobile app and you will have at your fingertips many of the department's resources, including:

- Look Up Your Refund – check the status of your state tax refund
- Look Up Your Estimated Payments – see your estimated payments information
- Free Tax Help (VITA) – get information about free tax help through the VITA/TCE programs
- Latest Videos – Watch our Tax 101 series, how to e-file, and other
- News Updates – Read our recent press releases and helpful articles
- Contact Us – find out how to contact us when you need help
- Twitter – See our Twitter feed for our latest quick updates and helpful tips

## Question and Answer

*Caution: The answers in this article reflect the position of the Wisconsin Department of Revenue of laws enacted by the Wisconsin Legislature as of the date of this Bulletin. They may be subject to change based on laws enacted after that date, new administrative rules, and court decisions.*

### (Individual/Franchise tax credits)

**Q** A number of nonrefundable credits were eliminated for 2014 (for example, the dairy and livestock farm investment credit). What happens to the unused credits? Can I still claim them?

**A** If certain nonrefundable credits are not entirely applied against tax for the year in which they are computed, the unused credit may be carried forward up to 15 years (5 years for the super research and development credit). Use Schedule CF to record the amount of credit used in a year and the amount that may be carried forward and offset against tax in a future year.

**Q** I sold my farm in 2014. I qualify for the farmland preservation credit and have previously claimed it on Schedule FC-A. I was responsible for the property taxes up to the day of sale. I paid property taxes at time of closing to be held in escrow for payment by the new owner once a property bill has been sent to the new owner by the municipality. Can I use Schedule FC-A to claim the credit in 2014?

**A** No. You must have paid to or be legally responsible for paying to the taxing authority the 2014 property taxes levied against the parcels sold, as well as have met all other requirements. The entity who owns the land when the tax bills are produced is generally the person authorized to pay the taxes to the municipality. Please provide documentation with your return if there was an error on the property tax bill.

**Q** Are the manufacturing and agricultural credits included in income in the year following the year of computation even though the credit is not used and is carried forward?

**A** Yes. The credit computed must be included in income in the year following the year in which it is computed, regardless of whether or not the taxpayer uses the credit.

**Q** Are amounts received for Crop Revenue Coverage (CRC) insurance included on line 1 of Schedule MA-A (production gross receipts)?

**A** No. Income that results from insurance or other services is not qualified production activities income. Even if the amounts received under a contract for insurance or services is contingent on the sales price of the crops, the amounts received are not income derived from the sale of the tangible personal property.

### DATCP Reminder: Claiming the Farmland Preservation Credits

The Department of Agriculture, Trade and Consumer Protection (DATCP) recently posted a [video tutorial](#) to their website about claiming the farmland preservation credit. The video addresses some of the common questions that are received by DATCP.

### Taxpayer Assistance Sites and Hours

Taxpayer assistance is offered daily from 7:45 a.m. to 4:30 p.m., Monday through Friday, through our statewide office locations. The exception is our Wausau location, which has limited office hours. Taxpayers can call or visit a department office and speak with a staff member about their return. Individuals can file, amend, or make corrections to their individual tax returns as needed.

<i>Offices Providing Daily Taxpayer Assistance (unless otherwise noted)</i>				
Location	Address	Telephone No.	Fax No.	Hours
Madison Headquarters   <a href="#">Map</a>	2135 Rimrock Road 53713	(608) 266-2486	(608) 267-0834	7:45 a.m. to 4:30 p.m.
Milwaukee   <a href="#">Map</a>	819 N Sixth St, Rm 408 53203-1606	(414) 227-4000	(414) 227-4405	7:45 a.m. to 4:30 p.m.

Appleton   <a href="#">Map</a>	265 W Northland Ave 54911-2016	(920) 832-2727	(920) 832-2909	7:45 a.m. to 4:30 p.m.
Eau Claire   <a href="#">Map</a>	718 W Clairemont Ave 54701-4558	(715) 836-2811	(715) 836-6691	7:45 a.m. to 4:30 p.m.
Green Bay   <a href="#">Map</a>	200 N Jefferson St, Rm 140 54301-5189	(920) 448-5179	(920) 448-5206	7:45 a.m. to 4:30 p.m.
Wausau   <a href="#">Map</a>	730 N Third St 54403-4700	(715) 842-8665	(715) 848-1033	7:45 a. m. to 1:00 p.m. Monday Only

## Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will present a series of free sales and use tax seminars in April 2015. The seminars will provide an overview of Minnesota and Wisconsin sales and use tax laws for companies that do business in both states. They are designed for business owners, bookkeepers, purchasing agents, and accountants who need a working knowledge of each state's laws and how to meet their obligations. Topics covered will include:

- who needs to register for sales and use taxes in Minnesota, Wisconsin, or both states;
- what cities, counties, and other jurisdictions in each state have local taxes;
- what's taxable in each state;
- exceptions to the general taxation rules and exemptions; and
- how and when to use or accept an exemption certificate.

Seminar dates, times, and locations, as well as registration information, is available on the Wisconsin Department of Revenue's [training web page](#).

## Sales and Use Tax Report Available

The latest issue of the [Sales and Use Tax Report](#) became available on the Department of Revenue's website in December. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information. Listed below are the articles in the December 2014 *Sales and Use Tax Report* (Issue 4-14).

- New Publications
- Exemption Certificate Revised
- Motor Vehicle Protection Plans
- Common and Contract Carrier – Tax Release Updated
- Sellers at Temporary Events – Wisconsin Sales Are Taxable Through the End of the Year
- *My Tax Account* Webinar Refresher for Annual Filing

***Withholding Tax Update Available***

The 2014 [Withholding Tax Update](#) was posted to the department's website in November. Articles in the update are listed below.

- Withholding Tax Rates
- Filing Frequency Changes
- Filing Wage and Information Returns
- W-2 Preparation Guidance for Employers
- Electronic Filing Reminder
- Deposit Report (WT-6) Filing and Payment Options
- Annual Reconciliation (WT-7) Filing & Payment Options
- Wage and Information Return Requirements
- Extensions
- Amended Annual Reconciliation (WT-7)
- Tips or Gratuities Received From Customers
- Form WT-4B Eliminated
- Quick Links
- Nonresident Entertainer Change
- New Hire Reporting Requirement
- Employee Claiming Exemption
- Withholding Lock-in Letters
- Reciprocity Agreements
- Retirement & Pension Payments
- Financial Institutions and Insurance Agencies
- *My Tax Account* Webinars
- *My Tax Account* Email Address Update
- Withholding Tax Electronic Mailing List
- Where to Direct Questions





## Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions.

The following decisions are included:

Sales and Use Tax	
Lodging - Internet lodging provider <i>Orbitz, LLC</i> .....	9
Taxable service - processing tangible personal property <i>Tetra Tech EC, Inc., and Lower Fox River Remediation LLC</i> .....	9

### SALES AND USE TAX

**Lodging - Internet lodging provider.** *Orbitz, LLC vs. Wisconsin Department of Revenue* (Dane County Circuit Court, December 11, 2014). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated May 14, 2014. See *Wisconsin Tax Bulletin* 185, page 5, for a summary of the Commission's decision.

At issue is the Commission's interpretation of sec. 77.52(2)(a)1., Wis. Stats. (2011-12) and conclusion that Orbitz's activities are not among the taxable services listed in this statute.

This statute imposes tax on the service of furnishing rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public.

The Circuit Court found that, in light of the actual services provided by Orbitz, the statute's language does not unambiguously allow this imposition. The Circuit Court found that since the Commission's interpretation and application are reasonable and a more reasonable interpretation has not been demonstrated, the Commission's conclusions will not be disturbed.

The department has appealed this decision to the Court of Appeals.

**Taxable services - processing tangible personal property.** *Tetra Tech EC, Inc., and Lower Fox River Remediation LLC. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 30, 2014).

The issue in this case is whether certain services provided to Tetra Tech EC, Inc. ("Tetra Tech") and Lower Fox River Remediation LLC ("LLC") by Stuyvesant Dredging, Inc. ("SDI") are subject to Wisconsin sales and use tax.

On November 13, 2007, the U.S. Environmental Protection Agency issued an order directing certain paper companies operating in Wisconsin to implement remedial action at the Lower Fox River and Green Bay Superfund site. The paper companies were directed to submit work plans and progress reports and to hire a contractor. The contractor they hired was Tetra Tech, a Delaware corporation. Tetra Tech engaged subcontractors to perform certain tasks related to clean up. One subcontractor was SDI, whose activities are at issue in this case.

SDI was tasked with separating the sand out of the polluted sediment it received and preparing it to be reused in addition to dewatering the remaining polluted sediment. The parties agree that the sediment dredged from the Fox River

during the period under review, that was the subject of SDI's services, is tangible personal property as defined in sec. 77.51(20), Wis. Stats.

The Commission pointed to the dictionary definition of "processing," which is to put through the steps of a prescribed procedure or to prepare, treat, or convert by subjecting to a special process. The Commission concluded SDI's activities fall within that definition and what SDI does to the sediment sent to it by Tetra Tech is "processing" of tangible personal property under the meaning of sec. 77.52(2)(a)11, Wis. Stats. Therefore, the services provided by SDI are subject to sales and use tax in Wisconsin.

At the time of publication it is not known whether the taxpayers will appeal this decision.



## Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter rulings are included:

### Corporation Franchise and Income Tax

Biodiesel fuel production credit  
W1443003 (p. 11 )

### General Alcohol Beverages Provisions

Brewpub permits and activities of brewpubs  
W1501004 (p. 12)

## \* W1443003 \*

**August 4, 2014**

**Type Tax:** Corporation Franchise and Income Tax

**Issue:** Biodiesel fuel production credit

**Statutes:** Sections [71.01\(12\)](#), [71.07\(3h\)](#), [71.22\(10\)](#), [71.28\(3h\)](#), and [71.47\(3h\)](#), Wis. Stats. (2011-12)

**Administrative Code:** Section Tax 1.06, Wis. Adm. Code (August 2013 Register)

This letter responds to your request for a private letter ruling dated May 2, 2014.

### Background:

Company A follows a 52-53 week tax year, with its taxable year ending on the Saturday closest to December 31st each year. For the 2014 tax year, Company A's 52-53 week taxable year will begin on December 29, 2013 and end on January 3, 2015.

### Question presented:

Is Company A eligible to compute the Wisconsin biodiesel fuel production credit for its 2014 taxable year beginning December 29, 2013 and ending January 3, 2015?

**Answer and analysis:**

No, Company A may not compute the biodiesel fuel production credit for its 2014 taxable year beginning December 29, 2013 and ending January 3, 2015.

The biodiesel fuel production credit is provided in secs. 71.07(3h), 71.28(3h), and 71.47(3h), Wis. Stats. (2011-12). The credit is available for taxable years beginning after December 31, 2011, and before January 1, 2014, for a claimant who produces at least 2,500,000 gallons of biodiesel fuel in Wisconsin during the taxable year.

Sections 71.01(12) and 71.22(10), Wis. Stats., provide that "taxable year" means the taxable period upon the basis of which the taxable income of the taxpayer is computed for federal income tax purposes. The taxable year of a taxpayer who keeps his or her accounting records on the basis of a 52-53 week period ends on the last day of the month closest to the end of the 52-53 week period.

Sections 71.01(12) and 71.22(10), Wis. Stats., reference the taxable year that the taxpayer uses for federal income tax purposes, and Internal Revenue Code (IRC) §441(f) provides that a taxpayer may elect to use a tax period consisting of 52-53 weeks. Specifically, IRC §441(f)(2)(A) provides that the effective date or the applicability of any provision which is expressed in terms of taxable years beginning, including, or ending on a specific date that is the first or last day of a month, shall be treated as beginning on the first day of the calendar month beginning closest to the first day of the taxable year, or as ending with the last day of the calendar month closest to the last day of the taxable year. Wisconsin follows IRC §441(f) as provided in secs. 71.01(6)(i), 71.22(4)(i), 71.34(1g)(i), and 71.42(2)(i), Wis. Stats., so the federal treatment applies for Wisconsin tax purposes.

Further guidance on the application of effective dates for 52-53 taxable years, as referenced in secs. 71.01(12) and 71.22(10), Wis. Stats., is provided in Treas. Reg. §1.441-2(c). It provides that for purposes of determining the effective date or the applicability of any provision of the internal revenue laws that is expressed in terms of taxable years beginning, including, or ending with reference to the first or last day of a specified calendar month, a 52-53 week taxable year is deemed to begin on the first day of the calendar month nearest to the first day of the 52-53 week taxable year, and is deemed to end or close on the last day of the calendar month nearest to the last day of the 52-53 week taxable year. Under sec. Tax 1.06, Wis. Adm. Code (August 2013 Register), Wisconsin follows the provisions of United States Treasury Regulations to the extent that a provision of the IRC has application in the determination of Wisconsin taxable income, net income, income or franchise tax, or minimum tax. Because the determination of Wisconsin net income includes nonrefundable tax credits, including the biodiesel fuel production credit, the Treasury Regulations apply to the determination of a 52-53 taxable year.

The following example from Treas. Reg. §1.441-2(c)(2) provides an illustration of the beginning date for a 52-53 week taxable year:

*Example 1.* Assume that an income tax provision is applicable for taxable years beginning on or after January 1, 2001. For that purpose, a 52-53 week taxable year beginning on any day within the period December 26, 2000 to January 4, 2001, inclusive, is treated as beginning on January 1, 2001.

Company A's 52-53 week taxable year beginning December 29, 2013 is deemed to begin on January 1, 2014 for purposes of determining the eligibility to compute the Wisconsin biodiesel fuel production credit. Since the biodiesel fuel production credit is not available for taxable years beginning after December 31, 2013, Company A is not eligible to compute the credit for its taxable year beginning December 29, 2013 and ending January 3, 2015.

\* **W1501004** \*

**October 6, 2014**

**Type Tax:** General Alcohol Beverages Provisions

**Issue:** Brewpub permits and activities of brewpubs

**Statutes:** Sections [125.02\(2\)](#) and [\(2t\)](#), [125.295](#), and [139.01\(2\)](#), Wis. Stats. (2011-12)

**Administrative Code:** Section Tax 7.23(1)(a) and (f), Wis. Adm. Code (July 2012 Register)

This letter responds to your request for a private letter ruling dated May 21, 2014.

**Facts, as provided in your letter:**

Company B is a Wisconsin limited liability company with a brewpub premises located in Wisconsin.

In order to meet increased demand for its product, Company B is preparing to subcontract a portion of its brewing operations to a third-party brewer by entering into contract brewing arrangements. Company B holds a brewpub permit, restaurant license and Class "B" license for the premises. Company B proposes to subcontract a portion of its brewing needs to a third party brewer or lease additional space and equipment on the premises of a third-party brewer.

**Rulings requested:**

1. Does Wisconsin law permit a brewpub licensed under sec. 125.295, Wis. Stats. (2011-12), to treat beer that is brewed for it under a contract brewing arrangement with a brewery licensed under sec. 125.29, Wis. Stats., as having been produced on the brewpub's premises?
2. Does Wisconsin law permit a brewpub to apply for and be granted a license under sec. 125.295, Wis. Stats., which includes within its "premises" a third-party brewer's facilities that are utilized and controlled under an alternating proprietorship arrangement?

Note: The Department of Revenue (the department) issues brewpub permits to eligible applicants meeting specific conditions, pursuant to sec. 125.295(1), Wis. Stats. Local municipal governments issue retail licenses for the retail sale of fermented malt beverages, pursuant to sec. 125.26(1), Wis. Stats.

**Answers:**

1. **No.** Pursuant to sec. 125.02(2t), Wis. Stats., 'brewpub premises' means any premises covered by a permit issued under sec. 125.295. Section 125.295(1), Wis. Stats., provides "[t]he department shall issue brewpub permits to eligible applicants authorizing all of the following: (a) [t]he manufacture of fermented malt beverages on the brewpub premises if **the entire manufacturing process occurs on these premises...**" (Emphasis added). The premises must include the brewpub's restaurant. Sec. 125.295(2)(a)3.

Section 125.295(1)(a) through (h), Wis. Stats., authorizes the following specific activities to be conducted by the permitted brewpub:

- (a) the manufacture of fermented malt beverages on the brewpub premises if the entire manufacturing process occurs on these premises and not more than 10,000 barrels of fermented malt beverages are manufactured in a calendar year by the permittee's brewpub group,
- (b) the bottling of fermented malt beverages that have been manufactured on the brewpub premises,
- (c) the packaging in refillable containers of fermented malt beverages that have been manufactured on the brewpub premises,
- (d) the possession and storage of any fermented malt beverages on the brewpub premises,
- (e) the transportation of fermented malt beverages that have been manufactured on the brewpub premises between these premises and any other brewpub premises or Class "B" premises of the brewpub group,
- (f) the sale at wholesale, shipment, transportation, and delivery, in original unopened packages or containers, to wholesalers, from the brewpub premises, of fermented malt beverages that have been manufactured on these premises or on other premises of the brewpub, subject to sec. 125.34(3) and(4),

- (g) the sale at wholesale, shipment, transportation, and delivery, in original unopened packages or containers, to retailers, from the brewpub premises, of fermented malt beverages that have been manufactured on these premises or on other brewpub premises of the brewpub..., and
- (h) the sale of alcohol beverages at retail on the brewpub premises in accordance with the terms of any retail license specified in subs. (2)(a)4. and (3)(b) and (c).

Brewpub and brewer licenses are mutually exclusive. Sections 125.02(2), and 139.01(2), Wis. Stats. defines a "brewer" as "any person who manufactures fermented malt beverages for sale or transportation, except that "brewer" does not include a permittee under s. 125.295 [a brewpub]." Section 125.29(5), Wis. Stats., provides "[n]o person holding a brewpub permit under s. 125.295 may register as a brewer under this section." Also, Section Tax 7.23(1)(a) and (f), Wis. Adm. Code (July 2012 Register), specifies that the entity who contracts with an agent to manufacture fermented malt beverages is brewing beer:

- (a) "Brewer" has the meaning given in ss. 125.02 (2) and 139.01 (2), Stats., and includes a recipe-brewer.
- (f) "Recipe-brewer" means a person who contracts with an agent to directly manufacture fermented malt beverages for sale or transportation by that person.

Therefore, the proposed contract brewing arrangement does not meet the requirement that the brewpub's manufacturing of the brewpub's fermented malt beverage occur on the brewpub's premises.

2. **No.** Pursuant to sec. 125.295(2)(a)2., Wis. Stats., an applicant is eligible for a brewpub permit **only** if the applicant's entire process for manufacturing fermented malt beverages occurs on premises covered by a brewpub permit (Emphasis added). Additionally, an applicant must operate a restaurant on premises for which the permit is issued (Sec. 125.295(2)(a)3., Wis. Stats.) Company B proposes to subcontract a portion of its brewing needs to a third-party brewer or to lease space and equipment on the premises of a third-party brewer according to an alternating proprietorship arrangement. Therefore, the brewpub permit applicant's entire fermented malt beverage manufacturing process would not occur on premises covered by the brewpub permit.