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**Revenue**

# **TAX BULLETIN**

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## **In This Issue**

<b>New Tax Laws</b> .....	2
<b>My Tax Account</b>	
<i>My Tax Account</i> - Two-Step Authentication Coming in June .....	10
<b>Income/Franchise Tax</b>	
Amended Return Eliminated for 2015 .....	11
Completing Schedule I .....	11
Medical Care Insurance Subtraction .....	11
Are Foreign Taxes Paid or Accrued Deductible? .....	12
Manufacturing and Agriculture Credit - Business Income Limitation for Individuals and Fiduciaries ..	12
Sales Factor .....	13
<b>Withholding Tax</b>	
Nonresident Entertainer Withholding Due Dates .....	15
Reporting of Pass-Through Withholding .....	15
<b>Sales/Use Tax</b>	
Sales of Boats and Personal Watercraft in Wisconsin .....	18
Building Materials Exemption Q&A .....	18
Garage Sales, Flea Markets, Rummage Sales and Swap Meets .....	18
Permanent Extension of the Federal Internet Tax Freedom Act (ITFA) - What You Should Know .....	19
Taxis Leased to Drivers are Subject to Sales Tax .....	20
<b>Excise Tax</b>	
New Cigarette Tax Stamps .....	22
<b>Report on Litigation</b> .....	23

**Index - New Tax Laws**

	Page
<b>Individual and Fiduciary Income Tax</b>	
1. Internal Revenue Code references updated for individuals, estates, and trusts	<a href="#">3</a>
2. Depreciable assets, adjustment for returns filed for a fractional part of the year	<a href="#">3</a>
3. ABLE accounts revised	<a href="#">3</a>
4. Changes to uniform partnership law	<a href="#">4</a>
5. Economic substance	<a href="#">4</a>
<b>Corporation Franchise and Income Tax</b>	
1. Internal Revenue Code references updated for corporations, nonprofit organizations, regulated entities, tax option (S) corporations, and insurance companies	<a href="#">4</a>
2. Depreciable assets, adjustment for returns filed for a fractional part of the year	<a href="#">5</a>
3. Economic substance	<a href="#">5</a>
<b>Withholding Tax</b>	
1. Exemption from withholding for real estate activities	<a href="#">5</a>
<b>Sales and Use Tax</b>	
1. Increase standards for occasional sale exemption for nonprofit organizations	<a href="#">5</a>
2. Change in taxes included in sales price - federal excise tax on heavy trucks and trailers	<a href="#">6</a>
3. Clarification of exemption for certain printers	<a href="#">6</a>
4. Exemption for music sold for use in jukeboxes	<a href="#">6</a>
5. One-payment leases of motor vehicles, trailers, semitrailers, and aircraft - Change in where the sale takes place	<a href="#">7</a>
6. Simplified procedures for the merger and conversion of partnerships	<a href="#">7</a>
7. Statute of limitations for sales and use tax	<a href="#">7</a>
8. Tax must be paid on purchases of off-highway motorcycles	<a href="#">8</a>
9. Technical correction - when sale occurs for sales tax purposes	<a href="#">8</a>
<b>Excise Tax</b>	
1. "Person" defined for certain excise taxes	<a href="#">8</a>
2. Clarify "person" for purposes of obtaining a retail liquor license	<a href="#">8</a>
<b>Other</b>	
1. Adjustment to list of persons qualified to examine returns for specific purposes	<a href="#">8</a>
2. Escheatment of United States savings bonds	<a href="#">9</a>
3. Obsolete references deleted	<a href="#">9</a>
4. Penalty for failure to produce records revised	<a href="#">10</a>

## New Tax Laws

### Individual and Fiduciary Income Tax

1. **Internal Revenue Code references updated for individuals, estates, and trusts** ([2015 Act 216](#), create sec. 71.01(6)(j)3.g. and h., effective for taxable years beginning on or after January 1, 2014).

Certain provisions of federal laws enacted in 2015 that affect the Wisconsin definition of the Internal Revenue Code are adopted for Wisconsin income tax purposes. For taxable years that begin on or after January 1, 2014, the following provisions of federal law enacted in 2015 apply for Wisconsin income tax.

- Public Law 114-14 – Excludes from gross income amounts paid (1) by the Bureau of Justice Assistance of the Department of Justice as a public safety officer survivor's benefit or a public safety officer disability benefit, or (2) under a state program that provides compensation for surviving dependents of a public safety officer who has died as the direct and proximate result of a personal injury sustained in the line of duty – effective May 22, 2015.
- Public Law 114-26 – Allows federal law enforcement officers, fire fighters and air traffic controllers to make penalty-free withdrawals from governmental plans after age 50 – effective for distributions after December 31, 2015.

2. **Depreciable assets, adjustment for returns filed for a fractional part of the year** ([2015 Act 216](#), renumber sec. 71.05(6)(b)50. to 71.05(6)(b)50.a. and amend as renumbered and create sec. 71.05(6)(b)50.b., effective March 3, 2016).

Current Wisconsin law provides that starting with the first taxable year beginning after December 31, 2013, and for each of the next 4 taxable years, a modification is allowed for 20 percent of the amount determined by subtracting the combined federal adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are also being depreciated or amortized for Wisconsin from the combined Wisconsin adjusted basis of those assets on the same day.

This Act provides that if any taxable year for which the above modification applies is a fractional year (part of a year), the difference between the modification allowed for the fractional year and the modification allowed for the 12-month taxable year shall be a modification for the first taxable year beginning after the 5-year amortization period.

3. **ABLE accounts revised** ([2015 Act 312](#), repeal and recreate sec. 16.643, amend secs. 71.05(6)(a)27. and 28. and (b)52. and 71.07(5)(a)9, and create sec. 71.98(7), effective for taxable years beginning on or after January 1, 2016).

The authority to create ABLE (Achieving a Better Life Experience) accounts in Wisconsin is repealed. Wisconsin has adopted the provision of federal law that allows ABLE accounts (tax-preferred savings accounts for disabled individuals) to be established in any State, not just in the State of residence of the disabled individual.

A Wisconsin subtraction from federal adjusted gross income is allowed for the amount deposited in the taxable year by an account owner or any other person into an ABLE account. The maximum amount of annual contributions that may be made to an account for a particular beneficiary is the federal gift tax exclusion amount for the year (\$14,000 for 2016). This subtraction does not apply to rollovers or transfers to the account.

To the extent not included in federal adjusted gross income, an addition to income is required for any amount withdrawn from a qualified ABLE account for any reason other than the payment of qualified disability expenses for the account beneficiary.

Upon termination of an account, an addition to income is required for any amount in the account that is returned to an account owner's estate.

Unreimbursed medical expenses claimed as federal itemized deductions are not allowed in computing the Wisconsin itemized deduction credit to the extent the funds used to pay the expenses were withdrawn from an ABLE account.

4. **Changes to uniform partnership law** ([2015 Act 295](#), *repeal* 73.14, 179.76 (5) (bm), 179.76 (5m), 179.77 (5) (bm), 179.77 (5r), 180.1161 (5) (bm), 181.1105 (1m), 181.1161 (5) (bm), 182.01 (7), 183.1204 (1) (cm) and 183.1207 (5) (bm); *renumber* 179.10; *renumber and amend* 179.04 (1) (b) and 179.82 (4); *amend* 13.69 (1), 70.21 (2), 71.80 (21), 71.80 (22), 73.03 (58) (a) and (b), 77.21 (1e), 77.25 (6), 77.25 (6d), 77.25 (6m), 77.61 (15), 108.02 (20r), 179.065 (2), 179.70 (2) and (3), 180.0121 (1) (a) 4., 180.0121 (2), 180.0501 (2), 180.1100 (2) and (3), 180.1507 (2), 181.0121 (1) (a) 4., 181.0121 (2), 181.0501 (2), 181.1100 (2) and (3), 181.1507 (2), 182.01 (3) (intro.), 183.0105 (1) (b), 183.0109 (1) (a) 5., 183.0109 (2), 183.1200 (2) and (3), 244.49 (9), 766.01 (9) (d) and 815.18 (13) (e); *repeal and recreate* chapter 178; and *create* 71.80 (21m), 71.80 (22m), 73.03 (58) (c) and (d), 77.25 (6q), 77.25 (6t) and 179.10 (2), effective July 1, 2016).

Various changes were made to Wisconsin's uniform partnership law. Chapter 178 – *Uniform Partnership Act*, of the Wisconsin Statutes was repealed and recreated as Chapter 178 – *Uniform Partnership Law*. The updated version of Chapter 178 is available at: <http://docs.legis.wisconsin.gov/2015/related/acts/295>

The following sections of Wisconsin Statute Chapter 178 – *Uniform Partnership Law*, as referenced in Wisconsin Statute Chapter 71 – *Income and Franchise Taxes for State and Local Revenues*, were revised:

- Partner's liability under [sec. 178.0306, Wis. Stats.](#)
  - Business entity conversion under [secs. 178.1141 to 178.1145, Wis. Stats.](#)
  - Business entity interest exchange under [secs. 178.1131 to 178.1135, Wis. Stats.](#)
  - Business entity merger under [secs. 178.1121 to 178.1125, Wis. Stats.](#)
  - Business entity domestication under [secs. 178.1151 to 178.1155, Wis. Stats.](#)
5. **Economic substance** ([2015 Act 218](#), *repeal* secs. 71.10(1m)(b)1. and 2., 71.30(2m)(b)1. and 2., and 71.80(1m)(b)1. and 2., and *renumber* secs. 71.10(1m)(b)(intro.) to 71.10(1m)(b), 71.30(2m)(b)(intro.) to 71.30(2m)(b), and 71.80(1m)(b)(intro.) to 71.80(1m)(b) and *amend* as renumbered, effective for taxable years beginning on or after January 1, 2016).

A transaction has economic substance only if the transaction is treated as having economic substance as determined under section 7701(o) of the Internal Revenue Code, except that the tax effect shall be determined using federal, state, local, or foreign taxes, rather than only the federal income tax effect.

## Corporation Franchise and Income Tax

1. **Internal Revenue Code references updated for corporations, nonprofit organizations, regulated entities, tax option (S) corporations, and insurance companies** ([2015 Act 216](#), *create* secs. 71.22(4)(j)3.g. and h., 71.22(4m)(j)3.g. and h., 71.34(1g)(j)3.g. and h., and 71.42(2)(j)3.g. and h., *amend* secs. 71.26(2)(b)10.d., effective for taxable years beginning on or after January 1, 2014).

Certain provisions of federal laws enacted in 2015 that affect the Wisconsin definition of the Internal Revenue Code are adopted for Wisconsin income tax purposes. For taxable years that begin on or after January 1, 2014, the following provisions of federal law enacted in 2015 apply for Wisconsin income tax.

- Public Law 114-14 – Excludes from gross income amounts paid (1) by the Bureau of Justice Assistance of the Department of Justice as a public safety officer survivor's benefit or a public safety officer disability benefit, or (2) under a state program that provides compensation for surviving dependents of a public safety officer who has died as the direct and proximate result of a personal injury sustained in the line of duty – effective May 22, 2015.

- Public Law 114-26 – Allows federal law enforcement officers, fire fighters and air traffic controllers to make penalty-free withdrawals from governmental plans after age 50 – effective for distributions after December 31, 2015.

2. **Depreciable assets, adjustment for returns filed for a fractional part of the year** ([2015 Act 216](#), *renumber* secs. 71.26(3)(ym) to 71.26(3)(ym)1., 71.34(1k)(n) to 71.34(1k)(n)1., and 71.45(2)(a)19. to 71.45(2)(a)19.a.; and *amend as renumbered*; and *create* sec. 71.26(3)(ym)2., 71.34(1k)(n)2., and 71.45(2)(a)19.b., effective March 3, 2016).

Current Wisconsin law provides that starting with the first taxable year beginning after December 31, 2013, and for each of the next 4 taxable years, a modification is allowed for 20 percent of the amount determined by subtracting the combined federal adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are also being depreciated or amortized for Wisconsin from the combined Wisconsin adjusted basis of those assets on the same day.

This Act provides that if any taxable year for which the above modification applies is a fractional year, the difference between the modification allowed for the fractional year and the modification allowed for the 12-month taxable year shall be a modification for the first taxable year following the last of the 5 prior tax year modifications.

3. **Economic substance** ([2015 Act 218](#), repeal secs. 71.10(1m)(b)1. and 2., 71.30(2m)(b)1. and 2., and 71.80(1m)(b)1. and 2., and renumber secs. 71.10(1m)(b)(intro.) to 71.10(1m)(b), 71.30(2m)(b)(intro.) to 71.30(2m)(b), and 71.80(1m)(b)(intro.) to 71.80(1m)(b) and amend as renumbered, effective for taxable years beginning on or after January 1, 2016).

A transaction has economic substance only if the transaction is treated as having economic substance as determined under section 7701(o) of the Internal Revenue Code, except that the tax effect shall be determined using federal, state, local, or foreign taxes, rather than only the federal income tax effect.

## Withholding Tax

1. **Exemption from withholding for real estate activities** ([2015 Act 258](#), amend sec. 71.63(2) and create sec. 452.38, effective July 1, 2016).

The definition of "employee" is revised to clarify that the term "employee" does not include a real estate broker or salesperson who is excluded as an employee under sec. 452.38, Wis. Stats. Under sec. 452.38, a person is not considered an employee of a firm if all of the following apply:

- (a) A written agreement has been entered into with the firm that provides that the licensee shall not be treated as an employee for federal and state tax purposes, and
- (b) Seventy-five percent or more of the compensation related to sales or other output, as measured on a calendar year basis, paid to the licensee pursuant to the written agreement is directly related to the brokerage services performed by the licensee on behalf of the firm.

## Sales and Use Tax

1. **Increase standards for occasional sale exemption for nonprofit organizations** ([2015 Act 364](#), amends sec. 77.54(7m), first applies to sales made in 2017).

Certain standards, including an entertainment standard, a receipts standard, and a number of days of sales standard, must be met for a nonprofit organization's sales to qualify as exempt occasional sales. Beginning with sales made in 2017, these standard have been increased.

- The standard to determine whether entertainment is involved at an event will be increased from \$500 to \$10,000.
- The standard relating to a nonprofit organization's receipts will be increased from \$25,000 to \$50,000.
- The standard relating to the number of days on which sales of taxable products can occur will be increased from 20 days to 75 days.

For additional information about the standards that must be met for a nonprofit organization's sales to qualify as exempt occasional sales, see [Publication 206](#), *Sales Tax Exemption for Nonprofit Organizations*. This publication is currently being revised to reflect the law change.

2. **Change in taxes included in sales price - federal excise tax on heavy trucks and trailers** ([2015 Wis. Act 361](#), amends sec. 77.51(12m)(a)2. and (15b)(a)2., and creates sec. 77.51(12m)(b)3s. and (15b)(b)3s., effective retroactively to September 1, 2014).

The definitions of "sales price" and "purchase price" were amended and takes effect retroactively on September 1, 2014, pursuant to 2015 Wisconsin Act 361. As a result, the federal excise tax imposed on the first retail sale of heavy trucks and trailers under s. 4051 of the Internal Revenue Code *is not included* in the retailer's taxable sales price, if the retailer separately states the federal excise tax on the invoice, bill of sale, or similar document that it gives to the purchaser.

*Prior to September 1, 2014, this tax was also not included in the retailer's taxable sales price.*

**Note:** [Sales and Use Tax Report 3-14](#) (September 2014) correctly stated that this federal excise tax is included in the retailer's taxable sales price effective September 1, 2014. However, since this law change takes effect retroactively to September 1, 2014, you may have an overpayment of sales tax. Information about filing a claim for refund of overpaid sales tax is provided in [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*.

If you receive a refund of sales tax and interest for tax that you collected from a buyer, you must return the tax and interest to the buyer or to the Wisconsin Department of Revenue within 90 days after the refund. [Sales and Use Tax Report 3-14](#), and [Publication 216](#) are available on our website at [revenue.wi.gov](http://revenue.wi.gov).

3. **Clarification of exemption for certain printers** ([2015 Act 216](#), amends sec. 77.54(61)(intro), effective March 3, 2016).

Section 77.54(61)(intro) is amended to clarify that the exemption applies to sales made to, as well as the storage, use, or other consumption by, certain printers of the property indicated in sec. 77.54(61)(a) and (b), Wis. Stats.

4. **Exemption for music sold in jukeboxes** ([2015 Act 251](#), create sec. 77.54(63), effective June 1, 2016).

Effective June 1, 2016, sec. 77.54(63), Wis. Stats., provides an exemption from sales and use taxes for music sold in a tangible form to a person in the business of providing a taxable service through a jukebox if the music is used exclusively for the jukebox. For purposes of this exemption, music sold in a tangible form is a separate sale from the jukebox through which the music is played if the sales price of such property is separately indicated from the sales price of the jukebox on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

Existing law, [sec. 77.54\(50\)](#), Wis. Stats., provides an exemption from sales and use taxes for specified digital goods and additional digital goods if the tangible form of the product is exempt. Therefore, music sold as a digital good that is transferred electronically to a person in the business of providing a taxable service through a jukebox will also be exempt if the music is used exclusively for the jukebox. For purposes of this exemption, music sold as a digital good is a separate sale from the jukebox through which the music is played if the sales price of such digital good is separately indicated from the sales price of the jukebox on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

5. **One-payment leases of motor vehicles, trailers, semitrailers, and aircraft - change in where the sale takes place** ([2015 Act 216](#), amends secs. 77.65(2)(g) and 77.71(2) and (4), and creates secs. 77.71(5) and 77.73(2m), effective March 3, 2016).

Effective March 3, 2016, the location where a one-payment lease of a motor vehicle, trailer, semitrailer, or aircraft takes place is where the customer receives the motor vehicle, trailer, semitrailer, or aircraft. This is generally the lessor or dealer's location. The lease takes place where the customer receives the vehicle for purposes of determining Wisconsin state, as well as county and stadium, sales and use taxes.

Prior to March 3, 2016, the location where a one-payment lease of a motor vehicle, trailer, semitrailer, or aircraft takes place was, in some cases, different for Wisconsin state tax and Wisconsin county and/or stadium tax purposes. While the state sales tax was based on the location where the lease took place, the county and stadium taxes were based on the location where the motor vehicle, trailer, semitrailer, or aircraft was customarily kept.

See the article titled "[One-Payment Leases of Automobiles, Effective March 3, 2016 – Where Does the Sale Take Place?](#)" for additional information.

6. **Simplified procedures for the merger and conversion of partnerships** ([2015 Act 295](#), amend sec. 77.61(15), effective July 1, 2016).

The procedures for partnerships to convert or merge into any other form of business entity were simplified.

For sales and use tax purposes, a business entity that converts to another business entity under sec. 178.1141, Wis. Stats., shall be subject to the sales and use tax provisions applicable to liquidations, reorganizations, and business entity formations.

7. **Statute of limitations for sales and use tax** ([2015 Act 216](#), amends secs. 77.59(3), 77.59(4)(a) and 77.59(4)(b), effective for claims for refund filed on or after March 3, 2016).

The following changes have been made to provide clarity and consistency for the statute of limitations for sales and use tax refund claims and assessments:

- Amends the statute of limitations for sales and use tax refunds to the due date of the person's Wisconsin income or franchise tax return that corresponds to the year in which *the transaction occurred*. This change makes the refund statute of limitation consistent with when the department can make a sales and use tax assessment.

Under prior law, the statute of limitations for refund claims was based on the due date of the person's Wisconsin income or franchise tax for the year in which *the tax was paid*.

- Clarify that a claim for refund that is based on and filed within two years of a sales and use tax audit determination can only include items that were adjusted in the audit determination. This change makes sales and use tax refund claims consistent with income and franchise tax refund claims in that only items adjusted in an audit can be included in a refund claim.

The prior law did not specify which items could be included in a refund claim that is based on an audit determination.

- Clarify that assessments may be made within four years after the dissolution of a corporation or within four years of the date any sales and use tax return was filed, regardless of whether the taxpayer is exempt from filing income or franchise tax returns.

8. **Tax must be paid on purchases of off-highway motorcycles** ([2015 Act 170](#), amends secs. 77.51(13s); 77.61(1) (a), (1)(b), and (1)(c); and 77.73(2), effective October 1, 2016).

The sales and use tax statutes were amended to apply to off-highway motorcycles in the same manner as they apply to motor vehicles, boats, snowmobiles, recreational vehicles, as defined in sec. 340.01(48r), Wis. Stats., trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, and aircraft. For example, no off-highway motorcycle may be registered in Wisconsin without sales or use tax being paid on the off-road motorcycle.

9. **Technical correction - when sale occurs for sales tax purposes** ([2015 Act 191](#), amends sec. 77.585(8)(a), effective March 2, 2016).

Effective March 2, 2016, sec. 77.585(8)(a), Wis. Stats., is amended to remove an incorrect reference to sec. 77.585(1), Wis. Stats., and to clarify that, for the purposes of s. 77.585(8)(a), Wis. Stats., a common carrier or the U.S. postal service must be considered the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

### Excise Tax

1. **"Person" defined for certain excise taxes** ([2015 Act 216](#), create secs. 78.005(13d), 78.39(5f), 78.55(5p) 78.64(4), 139.01(5p), 139.30(8p), 139.75(5p), and 168.01(25), effective March 3, 2016).

A definition of "person" is provided for purposes of certain excise taxes.

"Person" includes any individual, sole proprietorship, partnership, limited liability company, corporation, or association. A single-owner entity that is disregarded as a separate entity under ch. 71 is disregarded as a separate entity for purposes of these taxes.

The affected taxes are: motor vehicle fuel tax, alternate fuels tax, general aviation fuel tax, petroleum product inspection fee, beverage taxes, cigarette taxes, and tobacco products tax.

2. **Clarify "person" for purposes of obtaining a retail liquor license** ([2015 Act 216](#), amend secs. 73.03(50)(d), 77.52(7), and 77.61(11), effective March 3, 2016).

In order to obtain a retail alcohol beverage license, the law requires a person to show proof that the person holds a seller's permit for sales and use tax purposes. In the case of a single-member entity that is disregarded for income tax purposes (the disregarded entity's activities are reflected on its owner's income tax return), the owner may elect to have the seller's permit issued to the owner or the disregarded entity (e.g., LLC).

These changes clarify that, in the case of a single-owner entity that is a disregarded entity for income tax purposes, (1) the requirement to hold a seller's permit is satisfied if the seller's permit is in the name of the owner or the disregarded entity, and (2) if the owner elects to file a separate return for each of its disregarded entities, the same election must be made for all of the owner's disregarded entities that have taxable sales.

### Other

1. **Adjustments to list of persons qualified to examine returns for specific purposes** ([2015 Act 216](#), amend sec. 71.78(4)(o) and create 71.78(4)(t), effective March 3, 2016).

Section 71.78(4) provides that subject to certain rules, any returns or claims or any schedules, exhibits, writings or audit reports pertaining to the returns or claims shall be open to examination by certain specified persons and the contents may be divulged for use as specified. This Act made two changes to the list of specified persons.

- Paragraph (o) was amended to read: A licensing department or the Supreme Court, if the Supreme Court agrees, for the purpose of denial, nonrenewal, discontinuation and revocation of a license based on tax



delinquency under s. 73.0301. (This Act removed a reference to an unemployment insurance contribution delinquency under s. 108.227).

- Paragraph (t) was created to allow examination: For purposes of obtaining the outstanding liability secured by a tax warrant, any person, or authorized agent of any person, who provides satisfactory evidence to the department, as determined by the department, that the person has a material interest, or intends to obtain a material interest, in a property that is subject to a tax warrant filed by the department under s. 71.91(5).

**2. Escheatment of United States savings bonds** ([2015 Act 309](#), amending sec. 177.22 (1) and 177.23 (1); and **creating** secs. 177.01 (14m), 177.135, 177.18 (1g), 177.225, 177.23 (2) (am) and 177.255 of the statutes; effective as of April 1, 2016).

Effective as of April 1, 2016, the Secretary of the Department of Revenue, as administrator of the state's unclaimed property program, is authorized to bring an action in circuit court for a judgment that United States savings bonds, including those bonds in possession of the administrator and those that have been lost, stolen, or destroyed, are abandoned and for an order transferring ownership (escheatment) of such bonds to the State of Wisconsin.

To qualify for escheatment:

- The bond must be subject to the custody of the State of Wisconsin as unclaimed property under sec. 177.03, Wis. Stats.
- The bond must be presumed abandoned under sec. 177.135, Wis. Stats., for at least one year, and
- At least one year has elapsed since the administrator published the notice required under sec. 177.18(1g), Wis. Stats. (i.e., published the name and last-known address of the person appearing to be the owner of the savings bond).

A United States savings bond cannot be considered abandoned for purposes of escheatment any earlier than at least 5 years and one day since the bond stopped accruing interest.

The administrator must file an application with the U.S. Treasury for payment of the bonds within 3 years after the entry of a judgment for escheatment.

The owner of a savings bond may file a claim for the bond prior to its escheatment. Once the bond has escheated to the state, the owner may file a claim for the bond proceeds, less expenses under sec. 177.23 (2), Wis. Stats., that are attributable to the bond.

Absent a court order transferring ownership of the bonds to the state, the U.S. Treasury will not pay to the state the proceeds of those savings bonds that have matured and are otherwise considered to be abandoned property under the state's unclaimed property program. Under prior law, the administrator did not have authority to pursue an action in circuit court for the escheatment of United States savings bonds to the state.

**3. Obsolete references deleted** ([2015 Act 216](#), amend secs. 71.04(4)(intro.) and (8)(c), 71.13(2)(a)3. and (b), 71.17(3)(intro.), 71.25(6)(intro.) and (10)(c), 71.26(3)(f), 71.78(1) and (2), 73.01(4)(a) and (5)(a), 74.23(1)(a)2., 74.25(1)(a)2. and 3., 74.30(1)(b) and (c), 76.01, 76.02(2), 76.04(1), 76.07(1) and (2), 76.13(1), 78.80(3), 139.11(4)(a) and (b), 139.38(6), 139.82(6), and 227.03(1) and repeals sec. 76.02(7), subch. V of ch. 76, effective March 3, 2016).

Obsolete references to the transitional adjustment fee, gift tax, woodland tax, and the license fees imposed on sleeping car companies and express companies are removed.

4. **Penalty for failure to produce records revised** ([2015 Act 218](#), renumber 71.80(9m)(a) and (b) to 71.80(9m)(a) 1. and 2., renumber sec. 71.80(9m)(intro.) to 71.80(9m)(a)(intro.) and amend as renumbered, and renumber and amend sec. 77.61(19), first applies to an audit commenced, or a summons issued, on March 3, 2016).

A person who fails to produce records or documents, as provided in secs. 71.74(2) or [77.59\(2\)](#), Wis. Stats., that support amounts or other information required to be shown on a tax return required under chapter 71 or [sec. 77.58](#), Wis. Stats., may be subject to penalties, as determined by the Department of Revenue. This amendment provides that penalties may not be imposed until the department has issued a summons seeking the records and documents, as provided in [sec. 73.03\(9\)](#), Wis. Stats., and the taxpayer has failed to comply in good faith with the summons.

### ***My Tax Account - Two-Step Authentication Coming in June***

The Department of Revenue continues its efforts to enhance security by further protecting taxpayer data. We are adding another security level within *My Tax Account*. Beginning in mid-June, the first time a user logs into *My Tax Account*, a department-issued security code must be entered. The user will be prompted electronically to provide an email and/or cell phone number (for text). DOR will send the security code immediately via email or text (based on user choice) for entry into the *My Tax Account* application.

A user can choose to "remember this computer," and subsequent entry will not be required. However, a new security code will be required each time if:

- The user logs in with a computer that had never logged into the account before
- The user has switched Internet browsers
- Cookies were deleted from the computer

This security method is used routinely by banks and credit card companies.

## Amended Return Eliminated for 2015

Wisconsin Form 1X, *Amended Return*, is eliminated for 2015. Instead, an amended income tax return for 2015 must be filed on the same form that was originally filed, that is, Form 1, Form WI-Z, Form 1A, or Form 1NPR. For example, if you filed a 2015 income tax return on Form 1, you would file an amended return on a 2015 Form 1.

Schedule AR, *Explanation of Amended Return*, must be submitted with all 2015 amended returns. For more information, see [Wisconsin Tax Bulletin 192](#), 2015 Amended Return Eliminated.

**For tax years prior to 2015**, Form 1X will still be available to file an amended return.

## Completing Schedule I

The Wisconsin income tax return is generally based on the federal Internal Revenue Code (IRC). However, the Wisconsin Statutes provide a definition of the IRC (sec. 71.01(6), Wis. Stats., for individuals). Using the Wisconsin definition of the IRC, there are provisions of the federal IRC that do not apply for Wisconsin.

Any differences between the federal IRC and the Wisconsin definition of the IRC are adjusted using Wisconsin Schedule I, *Adjustments to Convert Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin*. Each year the Schedule I instructions include a list of the federal provisions that do not apply for Wisconsin. Persons affected by any of these provisions must complete Schedule I.

When completing Schedule I, all items on a federal return affected by the difference in the federal and Wisconsin IRC must be adjusted. The effect is that the entire federal return is adjusted for Wisconsin.

*Example 1:* Wisconsin does not follow the federal special first-year depreciation allowance. Schedule I must be completed to adjust for the difference in depreciation allowed for federal and Wisconsin tax purposes. For a self-employed person, the adjustment for depreciation could also affect the subtraction for one-half of self-employment tax. In the first year of the depreciation difference, the self-employment income would be increased and the subtraction for one-half of self-employment tax may increase. However, in the second year when the Wisconsin depreciation may be more than the amount allowed for federal purposes, the self-employment income would decrease and the subtraction for one-half of self-employment tax may decrease. Schedule I would need to be filed until the property is fully depreciated or is sold or otherwise disposed of.

*Example 2:* The taxpayer has a Schedule I adjustment that either increases or decreases the federal income. If the taxpayer claimed a federal student loan interest deduction, the allowable student loan interest deduction must also be adjusted on Schedule I based on the revised federal income on Schedule I. The Schedule I adjustment could result in either an increase, decrease, or no change to the student loan interest deduction.

## Medical Care Insurance Subtraction

A subtraction is allowed on the Wisconsin income tax return (Form 1, 1A, or 1NPR) for all or a portion of the amount you paid during the taxable year for medical care insurance. You must have actually paid the insurance premiums.

For example, you received a Form W-2 that reports in Box 12 with Code DD, the cost of employer-sponsored health coverage. The amount identified with Code DD is an amount paid by the employer. You may not include this amount as an amount you paid when determining the Wisconsin subtraction for medical care insurance.

The Wisconsin subtraction is affected when medical care insurance is purchased through a Health Insurance Marketplace (also known as an Exchange) and you are eligible for the federal premium tax credit. You may be eligible for an advance payment of the premium tax credit. The advance payment would have been paid to the insurance company to help cover the monthly premium.

The Wisconsin subtraction is not allowed for any portion of the insurance premium for which the federal premium tax credit is allowed. The Wisconsin subtraction for medical care insurance is determined on worksheets included in the tax form instructions.

If the advance premium tax credit was used to reduce the insurance premium, the amount to enter on line 1 of the worksheet is the amount you actually paid for the insurance after the premium was reduced by the credit. The worksheets provide for any adjustment to the premium tax credit. If you were required to repay all or a portion of the premium tax credit when you file your federal income tax return, the repayment amount will increase the amount of medical care insurance premium paid on the worksheet. If you are allowed an additional premium tax credit when you file your federal return, that amount will decrease the amount of medical care insurance paid.

### Are Foreign Taxes Paid or Accrued Deductible?

Foreign taxes paid or accrued by a corporation are often deducted in arriving at book income on a financial income statement. For federal income tax purposes, a corporation may claim a foreign tax credit against its tax liability or deduct the foreign taxes paid or accrued in the computation of its federal taxable income. If the federal credit is claimed, then no deduction is allowed in the computation of federal taxable income. Foreign taxes deducted are reversed on Federal Schedule M-1.

For Wisconsin income and franchise tax purposes, a subtraction for foreign taxes paid or accrued is provided under sec. 71.26(3)(f), Wis. Stats. (2013-14), if the following conditions are met:

- the foreign taxes are not deducted in the computation of federal taxable income, and
- the income on which the tax is based is taxable to Wisconsin

The Wisconsin subtraction is made on Form 6, Part II, line 4g or Schedule 4W, line 4 for single-entity returns.

**Caution:** Common errors occur in the computation of the Wisconsin dividends received deduction under sec. 71.26(3)(j), Wis. Stats. (2013-14). The amount of dividends received and eligible for the deduction must be reduced by the foreign taxes paid on the dividends and claimed as a deduction elsewhere on the return. The reduction is made on Form 6Y, line 3 (Form 4Y, line 3 for single entity returns).

### Manufacturing and Agriculture Credit - Business Income Limitation for Individuals and Fiduciaries

The manufacturing and agriculture credit (M&A credit) may only be used by individuals and fiduciaries to offset the Wisconsin income tax resulting from the business operations that were used to compute the credit. The limitation for individuals and fiduciaries is computed on Part II of Schedule MA-M and MA-A.

The following tips may help in determining the business income limitation:

- If the amount of M&A credit cannot be fully used in the current taxable year because the business income limitation applies, the amount of unused credit is carried forward to the next taxable year, subject to the 15 year credit carryforward limitation, and may be used for that taxable year, subject to the business income limitation for that year.

**Example** - An M&A credit of \$10,000 is computed; however, due to the business income limitation, only \$4,000 of the credit can be used to offset income tax. The remaining \$6,000 is carried forward to the following taxable year on line 19 of Schedule MA-M or MA-A, and may offset tax for that year subject to the business income limitation.

- An individual that has more than one Schedule MA-M or more than one Schedule MA-A should only complete the business income limitation in Part II on one of the schedule.

- An individual that has more than one Schedule MA-M or more than one Schedule MA-A should only include credits passed through from other entities (line 17) on one of the schedules and should only complete the business income limitation in Part II on one of the schedules.

## Sales Factor

Taxpayers engaged in business in and outside Wisconsin generally determine the amount of income attributable to Wisconsin by multiplying the total income earned everywhere by the sales factor ratio, which consists of sales in Wisconsin (numerator) divided by total sales everywhere (denominator). The sales factor is computed in Part I of [Form A-1 Wisconsin Apportionment Data for Single Factor Formulas](#).

Note: The following businesses use special apportionment factors that differ from the general sales factor computed in Part I of [Form A-1 Wisconsin Apportionment Data for Single Factor Formulas](#): direct air carriers, motor carriers, financial organizations, telecommunications companies, pipeline companies, public utilities, railroads, car line companies, and professional sports clubs.

### Items included in sales factor:

The following items are considered sales for purposes of determining the sales factor. This is not a complete list.

- Gross receipts from the sale of inventory.
- Gross receipts from the operation of farms, mines and quarries.
- Gross receipts from the sale of scrap or by-products.
- Gross commissions.
- Gross receipts from personal and other services.
- Gross rents from real property or tangible personal property.
- Interest on trade accounts and trade notes receivable.
- A partner's share of the partnership's gross receipts or a member's share of the limited liability company's gross receipts.
- Gross management fees.
- Gross royalties from income-producing activities.
- Gross franchise fees from income-producing activities.

### Items excluded from the sales factor:

The following items are not considered sales for purposes of determining the sales factor. This is not a complete list.

- Gross receipts and gain or loss from the sale of tangible business assets, except gross receipts from the sale of inventory; gross receipts from the operation of farms, mines, and quarries; and gross receipts from the sale of scrap or by-products.
- Gross receipts and gain or loss from the sale of nonbusiness real or tangible personal property.
- Gross rents and rental income or loss from real property or tangible personal property if that real property or tangible personal property is not used in the production of business income.
- Royalties from nonbusiness real property or nonbusiness tangible personal property.
- Proceeds and gain or loss from the redemption of securities.

- Interest and dividends, except interest on trade accounts and trade notes receivable.
- Gross receipts and gain or loss from the sale of intangible assets, except gross receipts from the sale of inventory.
- Dividends deductible by corporations in determining net income.
- Gross receipts and gain or loss from the sale of securities.
- Proceeds and gain or loss from the sale of receivables.
- Refunds, rebates and recoveries of amounts previously expended or deducted.
- Other items not includable in apportionable income.
- Foreign exchange gain or loss.
- Royalties and income from passive investments in patents, copyrights, trademarks, trade names, plans, specifications, blueprints, processes, techniques, formulas, designs, layouts, patterns, drawings, manuals, and technical know-how.
- Pari-mutuel wager winnings or purses.
- Gross receipts from sales of property or services as part of performing disaster relief work.

## Nonresident Entertainer Withholding Due Dates

If you hire a person or business from another state to furnish amusement, entertainment, or public speaking services in Wisconsin for an upcoming festival, conference, or other event, you may be considered the nonresident entertainer's [employer](#) for purposes of Wisconsin withholding. Nonresident entertainer withholding is reported separately from regular employee withholding.

**Nonresident entertainer requirement** - A nonresident entertainer must file a surety bond or cash deposit equal to 6% of the accumulative total contract price if the performance or performances in Wisconsin exceed \$7,000. The bond or deposit must be filed with the Wisconsin Department of Revenue at least seven days before the performance.

**Employer requirement** - If the nonresident entertainer does not file a bond or deposit and the total contract price for the Wisconsin performance exceeds \$7,000, the employer is required to withhold payment from the entertainer in an amount for which the bond or deposit should have been filed. The employer must submit the amount withheld to the Wisconsin Department of Revenue within five days after the nonresident entertainer's performance. Amounts not remitted within five days are subject to interest and penalties.

**Lower rate request** - The nonresident entertainer may request a rate less than 6% of the total contract price, on the basis that the ordinary and necessary deductible expenses in performing the services required by the contract would merit a lower rate. A signed and dated statement along with information explained in [Appendix A](#) of [Publication 508](#), *Nonresident Entertainers*, must be delivered to the department at least 30 days prior to the performance date.

The department will either (1) notify the nonresident entertainer and the employer of the lower rate, or (2) notify the nonresident entertainer that a lower rate is not permitted.

For more information related to nonresident entertainer withholding, see:

- [Nonresident Entertainer](#) Common Questions
- [Publication 508](#), *Wisconsin Tax Requirements Relating to Nonresident Entertainers*

## Reporting of Pass-Through Withholding

A pass-through entity must withhold tax on Wisconsin income of nonresident partners, members, shareholders or beneficiaries if the nonresident's share of income is \$1,000 or more. Pass-through entities subject to withholding include entities required to file the following Wisconsin tax forms:

- Form 2, Wisconsin Fiduciary Income Tax for Estates or Trusts
- Form 3, Partnership Return
- Form 5S, Tax-Option (S) Corporation Franchise or Income Tax Return

Exception: Entities that are disregarded as separate entities that are not required file a tax return separate from their owners are not required to withhold tax on income that passes through to their nonresident owner.

Pass-through withholding is paid in quarterly installments and reported annually on Wisconsin Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*. The pass-through entity notifies its nonresident partners, members, shareholders, or beneficiaries of the tax withheld on their behalf on Form 2K-1, 3K-1 or 5K-1. The nonresident partners, members, shareholders, or beneficiaries can claim a credit on their Wisconsin tax returns for the taxes withheld on their behalf.

See [Wisconsin Tax Bulletin 144, pages 23 and 24](#), for more information on pass-through computations, exemptions, due dates, etc.

**Example:** Partnership XYZ has Wisconsin ordinary income of \$10,000 and no other income or deductions for calendar year 2015. It has three partners.

- Partner X, a Wisconsin resident individual with 50% interest.
- Partner Y, a nonresident individual with 30% interest.
- Partner Z, a nonresident corporation with 20% interest.

On January 3, 2016, Partner Y provided the partnership with a properly completed and department approved Form PW-2, *Wisconsin Nonresident Withholding Exemption Affidavit*.

On Form PW-1 and Partner Z's Schedule 3K-1, line 15, Partnership XYZ should report pass-through withholding of \$158 ( $\$10,000 \times 20\% \times 7.9\%$ ). No pass-through withholding is owed for Partner X because Partner X is a Wisconsin resident. No pass-through withholding is owed for Partner Y because Partnership XYZ timely received Form PW-2 from Partner Y.

### Common Pass-Through Withholding Errors

1. *Withholding tax reported on Schedule 2K-1, 3K-1, or 5K-1 exceeds withholding tax reported and paid on Form PW-1.*

**Example:** A Limited Liability Company (LLC) reported ordinary income of \$20,000 on its 2014 federal and Wisconsin partnership returns. It computed a 50% Wisconsin apportionment percentage on Form A-1. The LLC has two nonresident members: Member R with a 60% interest and Member S with a 40% interest. LLC:

- Paid \$300 in estimated payments for 2014
- Paid \$26 with its 2014 Form PW-1
- Reported \$326 of pass-through withholding on its 2014 Form PW-1
- Reported \$459 of Wisconsin tax withheld on Partner R's 2014 Schedule 3K-1, line 15p
- Reported \$306 of Wisconsin tax withheld on Partner S's 2014 Schedule 3K-1, line 15p

LLC owes \$765 pass-through withholding ( $\$20,000 \text{ income} \times 50\% \text{ apportionment} \times 7.65\% \text{ individual income tax rate}$ ). Since LLC paid \$326 as reported on its 2014 Form PW-1, the LLC owes an additional \$439 ( $\$765 - \$326$ ) pass-through withholding. LLC should file an amended PW-1 to report the correct amount of tax.

2. *Failure to file or failure to file correct Form PW-1.*

**Example:** A Wisconsin trust has one beneficiary, an individual resident of Florida. The trust's only income in 2013 is \$15,000 of net rental income from real estate located in Wisconsin. The trust issues a 2013 Schedule 2K-1 to the beneficiary showing \$1,147.50 in Wisconsin tax withheld on line 15q.

The beneficiary reports the income from the trust on Wisconsin Form 1NPR and claims a credit for withholding of \$1,147.50 against her Wisconsin income tax resulting in a net refund.

The trust did not file 2013 Form PW-1. The department requests the trust to file 2013 Form PW-1. The trust submits Form PW-1 indicating no tax was withheld and an amended Schedule 2K-1 showing \$0 tax withheld on line 15q.

The trust owes \$1,147.50 of withholding taxes ( $\$15,000 \times 7.65\% \text{ individual income tax rate}$ ) plus applicable interest and penalties for failure to file or filing an incorrect Form PW-1.



3. *Shareholder, member, partner, or beneficiary fails to report Wisconsin income.*

**Example:** A Wisconsin tax-option (S) corporation with business activity only in Wisconsin has four nonresident individual shareholders (M, N, O and P). Each shareholder has a 25% interest in the corporation. The corporation reports the following income on its 2012 Wisconsin Form 5S, Schedule K.

- \$24,000 ordinary business income
- \$9,000 interest income
- \$2,000 dividend income
- \$5,000 short-term capital gain

No pass-through withholding was reported on any of the shareholder's Schedule 5K-1, line 13p.

The corporation does not file 2012 Form PW-1 until requested by the department. The corporation responds that no pass-through withholding is owed because all four shareholders have (1) filed a Wisconsin income tax return for 2012, (2) reported the proper amount of income, and (3) paid the proper amount of taxes owed. The corporation claims it is only liable for late filing fees, interest and penalties for failure to file Form PW-1 (see Wisconsin Tax Bulletin 144, page 24).

The department determines that the shareholders have reported Wisconsin income from the corporation for 2012 as follows:

<u>2012 Income</u> <u>As Reported</u>	<u>S corporation</u>	<u>M</u>	<u>N</u>	<u>O</u>	<u>P</u>	<u>Total</u>
Ordinary income	\$24,000	\$6,000	\$6,000	\$6,000	No	\$18,000
Interest income	\$9,000	\$2,250			Return	\$2,250
Dividend income	\$2,000	\$500			Filed	\$500
Short-term capital gain	\$5,000	\$1,250				\$1,250
	<u>\$40,000</u>					<u>\$22,000</u>

Since \$18,000 of income was underreported to Wisconsin (\$40,000 - \$22,000), the department will assess the corporation \$1,395 of pass-through withholding (\$18,000 x 7.75% individual income tax rate for 2012) of pass-through withholding tax, plus interest and penalties for failure to file 2012 Form PW-1.

For more information, see:

- Pass-Through Entity Withholding [Common Questions](#)
- Pass-Through Withholding and Composite Return [Fact Sheet 1117](#)

## Sales of Boats and Personal Watercraft in Wisconsin

**Q** When is tax due on the sale of a watercraft sold by a retailer?

**A** A Wisconsin retailer is required to collect state sales tax when the customer takes possession of the watercraft in Wisconsin. The retailer is required to collect county and stadium sales tax based on the where the watercraft will be customarily kept in Wisconsin.

**Q** What if the retailer does not collect tax on the sale of the watercraft (for example, purchase is made through an out-of-state retailer)?

**A** The purchaser should pay use tax based on where the watercraft will be customarily kept in Wisconsin. Payment must be made when registering the watercraft with the Department of Natural Resources (DNR). If no registration is required for the watercraft, the use tax can be reported on the purchaser's individual income tax return or by completing a Form UT-5.

**Q** What if the sale of the watercraft is made by a private party?

**A** Payment must be made by the purchaser when registering the watercraft with the Department of Natural Resources (DNR). If no registration is required for the watercraft, the use tax can be reported on the purchaser's individual income tax return or by completing a Form UT-5.

**Note** - The Department of Revenue receives information from the DNR and may contact the seller or purchaser for sales price confirmation.

## Building Materials Exemption Q&A

**Q** Is a construction contractor's purchase of building materials exempt from sales or use tax if the materials are used in a real property construction activity for the University of Wisconsin or other state agencies?

**A** No. Although an exemption exists for building materials used in certain real property construction activities for local Wisconsin governmental units, the exemption does not apply to building materials used for construction activities for state or federal governmental units.

See the article titled "New Sales and Use Tax Exemption Effective January 1, 2016 - Building Materials That Become Part of a Local Government or Qualifying Nonprofit Facility," beginning on page 19 of [Wisconsin Tax Bulletin #192](#) (January 2016) for additional information.

## Garage Sales, Flea Markets, Rummage Sales and Swap Meets

If you sell personal household items such as housewares, dishes and clothing, your sales are not subject to sales or use tax if:

1. Your sales are less than \$1,000 for the calendar year or are isolated and sporadic, and
2. You do not hold, and are not required to hold, a seller's permit at the time of the sales.

You must hold a seller's permit if you are engaged in business in Wisconsin. For example, if you make taxable sales as part of conducting a trade or business, you must hold a seller's permit and pay tax on all of your taxable sales, including sales of business assets (e.g., office equipment or warehouse shelving).

### When are your sales taxable?

If you regularly sell new or used items at rummage sales, flea markets, or swap meets, you are engaged in business (or a part-time business). You must have a Wisconsin seller's permit and pay sales tax on your sales.

**Example 1** – An individual who sells new or used items at flea markets on the first weekend of every month has sales from a business or part-time business. The individual must register for a Wisconsin seller's permit and pay tax on such sales.

**Example 2** – An individual holds an annual garage sale the third weekend of May and makes sales of used household goods totaling \$2,300. The individual does not hold a Wisconsin seller's permit and makes no other sales. The individual's sales are isolated and sporadic (one weekend per year) and the individual does not hold a seller's permit and is not required to hold a seller's permit. The individual's sales are not taxable.

For more examples see [Publication 228](#), *Temporary Events*, pages 9 – 11.

## Permanent Extension of the Federal Internet Tax Freedom Act (ITFA) - What You Should Know

### 1. What is the Internet Tax Freedom Act (ITFA)?

The ITFA is federal legislation banning states and local governments from imposing sales tax on Internet access. The ITFA was set to expire on October 1, 2016 but the ban was made permanent on February 24, 2016.

### 2. Is Internet access taxable in Wisconsin?

Yes, sales of Internet access services are subject to Wisconsin sales or use tax when the customer's place of primary use is in Wisconsin.\* However, the permanent extension of ITFA includes a provision that bans grandfathered states, such as Wisconsin, from taxing Internet access services after June 30, 2020. Therefore, charges for Internet access services in Wisconsin will not be taxable as of July 1, 2020.

\*[Section 77.522\(4\)\(a\)9](#), Wis. Stats. (2013-14), defines "place of primary use" to mean the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" means a street address within the licensed service area of the home service provider.

### 3. Are purchases made over the Internet taxable in Wisconsin?

Yes, Wisconsin sales or use tax applies to taxable products and services purchased over the Internet and shipped to a location in Wisconsin. The permanent ban on state and local taxation of Internet access charges does not affect the taxability of items bought over the Internet. Taxable products and services purchased over the Internet will continue to be subject to Wisconsin sales or use tax on and after July 1, 2020.

If a buyer does not pay tax to the seller on the purchase of a taxable product, the buyer must pay use tax to the Wisconsin Department of Revenue if the product is used, stored, or consumed in Wisconsin. For example, if you buy clothing or appliances from a seller located outside Wisconsin, and the seller does not charge you tax, you are liable for the payment of use tax. Businesses may report this use tax on their Wisconsin *Sales and Use Tax Return* or on [Form UT-5](#). Individuals may report their use tax on their individual income tax return or on [Form UT-5](#).

## Taxis Leased to Drivers are Subject to Sales Tax

A taxicab company may hire drivers as employees or independent contractors. If a taxicab company leases its taxis to its drivers, the lease receipts are subject to Wisconsin sales or use tax. The lease receipts may also be subject to county and stadium taxes.

The lease receipts are subject to tax regardless of how they are determined:

- Periodic fee (e.g., daily, weekly, monthly)
- Percentage of income (e.g., 35% of each fare collected)
- Mileage basis (e.g., \$0.50 per mile driven)
- Combination of methods or some other basis

### *Example 1: Taxicab Company Employs Drivers*

Taxicab Company hires drivers to drive its taxis. Drivers are paid on a commission basis at 25% of the fares collected by customers. If a driver does not make commissions equal to \$10 per hour, Taxicab Company will compensate the driver for the difference.

#### Tax Treatment

- The amount that Taxicab Company receives from the fares is not subject to sales tax.
- Taxicab Company must pay sales or use tax on its purchase of the taxis that it uses in providing its taxi service.

### *Example 2: Taxicab Company Leases Taxis to Independent Contractors for Weekly Fee*

Taxicab Company leases its taxis to independent contractors (i.e., taxi drivers). Taxi drivers pay Taxicab Company a weekly fee of \$200 for use of a taxi for 8 hours each day, 6 days per week. Taxicab Company makes no other use of its taxis than to lease them to its independent contractor drivers.

#### Tax Treatment

- The weekly lease fee that Taxicab Company receives from the drivers is subject to Wisconsin state sales tax, as well as county and stadium district taxes if applicable.
- Taxicab Company may purchase its taxis without tax, for resale, since the only use that Taxicab Company makes of the taxis is to rent them to others for a fee.

### *Example 3: Taxicab Company Leases Taxis to Independent Contractors Based on Miles Driven*

Taxicab Company leases its taxis to independent contractors (i.e., taxi drivers). Taxi drivers pay Taxicab Company \$0.50 per mile for miles driven during each 8 hour shift. Taxicab Company makes no other use of its taxis than to lease them to its independent contractor drivers.

#### Tax Treatment

- The \$0.50 per-mile lease fee that Taxicab Company receives from the drivers is subject to Wisconsin state sales tax, as well as county and stadium district taxes if applicable.
- Taxicab Company may purchase its taxis without tax, for resale, since the only use that Taxicab Company makes of the taxis is to rent them to others for a fee.

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***Example 4: Taxicab Company Leases Taxis to Independent Contractors Based on Percentage of Income Generated***

Taxicab Company leases its taxis to independent contractors (i.e., taxi drivers). Taxi drivers pay Taxicab Company 35% of all fares that the driver receives while driving Taxicab Company's taxi. Taxicab Company makes no other use of its taxis than to lease them to its independent contractor drivers.

Tax Treatment

- The weekly lease fee that Taxicab Company receives from the drivers is subject to Wisconsin state sales tax, as well as county and stadium district taxes if applicable.

Taxicab Company may purchase its taxis without tax, for resale, since the only use that Taxicab Company makes of the taxis is to rent them to others for a fee.

## New Cigarette Tax Stamps

The Wisconsin Department of Revenue is working with a new cigarette tax stamp vendor. The prior tax stamp vendor ceased operations in June of 2015. Cigarette distributors began applying the new tax stamps to cigarette packs in January of 2016. You may still see the old stamps on packs of cigarettes until the supply is depleted.

Each pack of cigarettes legally sold in Wisconsin must display either the Wisconsin tax stamp or the Wisconsin tribal tax stamp. Samples of the new stamps are displayed below. Information concerning the sale of cigarette packs displaying alternate tax stamps or no tax stamp may be directed to the Department's Alcohol & Tobacco Enforcement Unit Special Agent in Charge, Tyler Quam at: [tyler.quam@revenue.wi.gov](mailto:tyler.quam@revenue.wi.gov) or by phone at (715) 842-2343.





## 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> .....	23
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## SALES AND USE TAX

**Lodging - Internet lodging provider.** *Orbitz, LLC vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, February 11, 2016). This is an appeal of a December 11, 2014 order of the Circuit Court for Dane County affirming the May 14, 2014 Wisconsin Tax Appeals Commission decision.

See *Wisconsin Tax Bulletin* 185, page 5, and *Wisconsin Tax Bulletin* 187, page 9, for summaries of the Wisconsin Tax Appeals Commission and Dane County Circuit Court decisions.

The primary issue in this case is whether Orbitz's activities were taxable under sec. 77.52(2)(a)1., Wis. Stats. 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 Court of Appeals concluded the Commission reasonably interpreted the statute as not imposing a sales tax on Orbitz. The Court also concluded that the Commission's interpretation is not contrary to the clear meaning of the statute and that there is not another, more reasonable interpretation of the statutory language.

The department did not appeal this decision.