



# Wisconsin Department of Revenue

## **TAX BULLETIN**

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## New Publication for Out-of-State Disaster Relief Workers

A new publication is available on the Department of Revenue's website, [Publication 411](#), *Disaster Relief*. The publication discusses the exemptions available to qualifying out-of-state businesses and out-of-state employees who are in Wisconsin solely to perform disaster relief work in connection with a state of emergency declared by the governor.

## New DOR Email Addresses

Starting August 2, the Department of Revenue (DOR) will join other state agencies in using @wisconsin.gov as our email address. Emails sent to DOR using the old email address @revenue.wi.gov will still route to the appropriate DOR destination while this transition is made. Correspondence from DOR will use the updated addresses starting August 2, however updates to other documents (e.g., tax forms, instructions, publications, common questions, and other website content) will be made as those materials are updated.

If you use My Tax Account or are signed up for DOR electronic mailing lists, your servers, computers, or email software may have security settings that delay or even prevent you from receiving DOR emails. If you have such email filters, you will want to add [@wisconsin.gov](#) in addition to [@revenue.wi.gov](#) as a trusted email address. Contact your computer support area or email provider if you need assistance.

## My Tax Account - Two-Step Authentication User Advice

The Department of Revenue (DOR) started using two-step authentication for My Tax Account (MTA) in early July. MTA users are prompted electronically to provide an email address and/or cell phone number (if text is chosen) to receive a security code for future logins. The next time a user logs into MTA, the user will receive a security code immediately via email or text (based on user choice) to allow entry.

### Advice for MTA Users

**Don't wait until the last minute:** Although you may have until the last day of a month to file your return, it may be beneficial to log into MTA ahead of time. If you have any difficulty with two-step authentication, you will have time to resolve issues before filing and paying taxes.

**Security code emails:** Internal servers and security settings of your business may delay or even prevent you from receiving security emails. If your business has such email filters, you will want to add [MTASupport@wisconsin.gov](mailto:MTASupport@wisconsin.gov) as a trusted email address (*Note: Do not send inquiries to this email address – as this email inbox is not monitored for responses and is used only for electronic delivery of security codes*). Contact your computer support area or email provider for assistance.

**Security code text messages:** In addition to your email address, providing a cell phone number to receive your security code by text gives you an alternative option if your security email is being blocked.

**Logging in after hours:** The MTA helpline is open from 7:45 a.m. – 4:30 p.m. (CST), Monday-Friday. If you are having trouble logging into your account after hours, you will need to wait until the helpline is open to receive assistance.

**Remember my computer:** If you check the box on the login page labeled "Remember my computer," subsequent entry of a security code is not required. Exception: A new security code is required if:

- You log in with a computer that had never logged into the account before
- You switched browsers or the cookies were deleted

Two-step authentication is a security method used routinely by banks and credit card companies. As technology continues to advance, we continue to improve our security features to keep your confidential information safe. The contact information you provide for your security email or text is not used for any other purpose by DOR.

## Protect Yourself from Phone Scams, Phishing Email, and Identity Theft!

We continue to hear from people who are receiving suspicious phone calls and emails from people posing as the Internal Revenue Services (IRS) or the Wisconsin Department of Revenue (DOR). Protect your identity and the identity of others by using these helpful guidelines:

- **DO NOT give out personal or confidential information over the phone**
- **DO NOT reply to any email, open any attachments, or click on any links in an email that looks suspicious**

If you are audited or if you owe taxes, we will notify you by U.S. mail prior to calling you.

We do not call, email, or text to request social security numbers, bank account information, credit card numbers, or passwords to access information for credit cards, banks or other financial accounts. Contact Customer Service at (608) 266-2776 if you are uncertain about a person claiming to be from the Wisconsin Department of Revenue.

Visit our website for more information on how to report [identity theft](#) and other suspicious activity.

## Save the Date for 2016 Wisconsin Tax Update Seminar

The Department of Revenue will sponsor a free, half-day Wisconsin tax update seminar for the upcoming tax filing season. Seminars are offered at various locations throughout the state. We will post a video of a seminar upon completion of the presentations, for those that prefer to view the update at your convenience.

Please save the date and watch for an online training registration at [revenue.wi.gov/training/index.html](http://revenue.wi.gov/training/index.html), available in early September.

### **Wisconsin Update Seminar Schedule (9:00 – 11:30 a.m.)**

**October 26, Wednesday – Milwaukee**

**October 28, Friday – Pewaukee**

**October 31, Monday – Madison**

**November 1, Tuesday – Menasha**

**November 14, Monday – Eau Claire**

**November 15, Tuesday – Stevens Point**

**November 22, Tuesday – Madison**

## Closing a Business

Follow these steps to close your business with the Wisconsin Department of Revenue and prevent future notices and assessments. You must file a return for each period the business was active.

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### Employee Withholding Tax

- File final withholding tax deposits through end date (WT-6)
- Issue wage and withholding information returns to employees (W-2)
- File annual withholding reconciliation (WT-7) and supporting information returns within 30 days of end date
- Close your withholding tax account:
  - Complete the *Request to Close Account in My Tax Account*, or
  - Email [DORBusinessTax@revenue.wi.gov](mailto:DORBusinessTax@revenue.wi.gov), or
  - Call (608) 266-2776
- Visit our [withholding page](#) for filing options

### Sales and Use Tax

- Review [When is a sale of a business or business assets subject to sales tax?](#)
- File final sales and use tax return within 30 days of end date
- Close your sales and use tax account:
  - Complete the *Request to Close Account in My Tax Account*, or
  - Email [DORBusinessTax@revenue.wi.gov](mailto:DORBusinessTax@revenue.wi.gov), or
  - Call (608) 266-2776

### Income or Franchise Tax

- File final income or franchise tax return
  - Check as final, unless filing Schedule C
  - Report gain or loss on sale or liquidation of assets

Partnerships and S corporations - Provide a copy of final Schedule 3K-1 or Schedule 5K-1 to partners or shareholders

### Other Tax Types

- File final returns for any other tax account registered with the department (e.g., excise tax, premier resort area tax, local exposition tax)
- Close your business tax account:
  - Complete the *Request to Close Account in My Tax Account* for each business tax account, or
  - Email [DORBusinessTax@revenue.wi.gov](mailto:DORBusinessTax@revenue.wi.gov), or
  - Call (608) 266-2776

### Review federal responsibilities. See Internal Revenue Service [Closing a Business Checklist](#)

## 2016 Taxable Year Due Dates – Corporations and Partnerships

As of the date of this publication, Wisconsin has NOT adopted federal law (Public Law 114-41) that prescribes new due dates for federal partnership and C corporation income tax returns for taxable years beginning after December 31, 2015. The chart below illustrates current Wisconsin partnership and corporation tax return due dates.

### Wisconsin Tax Return Due Dates

Entity Type	Calendar Year (1/1/16-12/31/16)	Short Year (1/1/16-8/31/16)	Fiscal Year (4/1/16-3/31/17)
<b>Corporation (Form 4, 6):</b>			
Original Due Date <sup>1</sup>	March 15, 2017	December 15, 2016	June 15, 2017
Extended Due Date <sup>2</sup>	October 16, 2017	July 17, 2017	January 15, 2018
<b>Partnership (Form 3):</b>			
Original Due Date <sup>3</sup>	April 17, 2017	November 15, 2016	July 17, 2017
Extended Due Date <sup>4</sup>	September 15, 2017	May 15, 2017	December 15, 2017

<sup>1</sup> Corporation tax returns are due as follows ([Section 71.24\(1\), Wis. Stats.](#)):

- calendar year tax returns are due on or before March 15
- fiscal year tax returns are due on or before the 15th day of the 3rd month following the close of the fiscal year
- short year returns are due on or before the applicable federal due date

<sup>2</sup> Corporations have an automatic 7 month extension, but an extension granted by law or by the IRS extends the time for filing to 30 days after the federal due date ([Section 71.24\(7\), Wis. Stats.](#)).

<sup>3</sup> Partnership returns are due as follows:

- calendar year returns are due on or before April 15 ([Section 71.20\(1\), Wis. Stats.](#))
- fiscal year returns are due on or before the 15th day of the 4th month following the close of the fiscal year ([Section 71.20\(1\), Wis. Stats.](#))
- short year returns are due on or before the applicable federal due date ([Sections 71.19, 71.24\(1\), and 71.03\(6\), Wis. Stats.](#))

<sup>4</sup> An extension granted for filing a federal partnership return extends the due date for filing a Wisconsin partnership return ([Section 71.20\(3\), Wis. Stats.](#)).

## Military Pensions Q&A

**Q** I receive retirement income from Defense Finance and Accounting Service (DFAS). Is this income taxable to Wisconsin?

**A** No. DFAS is a payment agency that pays retirement income to military retirees and their surviving spouses and other family members. Payments from the U.S. military retirement systems are exempt from Wisconsin income tax.

**Q** I included retirement income from DFAS in my federal adjusted gross income. Where do I subtract this income on Wisconsin Form 1?

**A** Retirement income from DFAS which is included in your federal adjusted gross income should be subtracted on Wisconsin Form 1, line 11 as a code 04, *Military and Uniformed Services Retirement Benefits*.

## Nonresidents – Do You Owe Wisconsin Income Tax?

You must file a Wisconsin income tax return if you are a nonresident of Wisconsin and your gross income from Wisconsin sources (or the combined gross income of you and your spouse) is \$2,000 or more for the year.

You must also file a Wisconsin income tax return if your gross income from Wisconsin sources is less than \$2,000 and:

- You can be claimed as a dependent on another person's income tax return and you had gross income of more than \$1,050 which included at least \$351 of unearned (nonwage) income which is reportable to Wisconsin.
- You owe a Wisconsin penalty on
  - An Individual Retirement Account (IRA),
  - Health savings account,
  - Annuity,
  - Retirement plan,
  - Coverdell education savings account, or
  - A medical savings account.
- You are subject to the Wisconsin alternative minimum tax.

### Exceptions:

You do not have to file a Wisconsin income tax return if your only income or loss from Wisconsin sources is from:

- A partnership that has filed Form 1CNP on your behalf,
- A tax-option (S) corporation that has filed Form 1CNS on your behalf, or
- Disaster relief work performed in connection with a state of emergency declared by the governor. This applies to employees as well as to a sole proprietorship that was not doing business in Wisconsin during the three taxable years immediately preceding the disaster period or the taxable year in which the declared state of emergency occurs.

### What is gross income?

Gross income means all income (before deducting expenses) reportable to Wisconsin that is received in the form of money, property, or services. For example, gross income includes:

- Total gross receipts from a business or profession without reduction for the cost of goods sold, expenses, or any other amounts.
- Gross rent received from rental properties without reduction for expenses or any other amounts.
- Gross selling price from the sale of securities, property, or other assets without reduction for the cost of the assets, expenses of sale, or any other amounts.
- Gross amount received from an annuity, retirement plan, or profit-sharing plan without reduction for the employee's contribution to the annuity or plan.
- A partner's or shareholder's share of the gross receipts of the partnership or tax-option (S) corporation, before deducting returns and allowances or any other business expenses.

## What is income from Wisconsin sources?

Income from Wisconsin sources includes:

- Wages, salaries, commissions, and other income for services performed in Wisconsin.
- Rents or royalties from real or tangible property located in Wisconsin, such as land, buildings, and machinery.
- Gains or losses from sales or other dispositions of real or tangible property located in Wisconsin, such as land, buildings, and machinery.
- Profits or losses from businesses, professions, and farm operations conducted in Wisconsin, including sole proprietorships, trusts, partnerships, limited liability companies (LLCs), and tax-option (S) corporations. This includes capital gains and interest and dividend income passed through from a tax-option (S) corporation that is engaged in business in Wisconsin.
- Income from the Wisconsin state lottery, a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer, or Wisconsin pari-mutuel wager winnings and purses. This includes all income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally purchased in Wisconsin.
- Winnings from a casino or bingo hall located in Wisconsin and operated by a Native American tribe or band.
- Income derived from a covenant not to compete to the extent the covenant was based on a Wisconsin-based activity.

## Which form do I file?

You must file on a Wisconsin Form 1NPR (individual income tax return for nonresidents and part-year residents). If you are married and one spouse is a nonresident of Wisconsin and the other spouse is a full-year resident of Wisconsin, the form to use depends on your filing status:

- If you file as married filing joint, you must file Form 1NPR.
- If you file separate income tax returns, the nonresident spouse must file Form 1NPR and the full-year resident spouse must file Form 1.

## Filing Short-Period Income/Franchise Tax Returns

**Q** When a short period income/franchise tax return is required to be filed, but the tax forms/schedules are not yet available on the department's website, how should the return be filed?

**A** The department recommends filing the Wisconsin short period return under extension and waiting until the 2016 forms/schedules are available.

**Example:** A corporation has a short taxable period beginning January 1, 2016 and ending May 31, 2016. The unextended due date of the return is August 15, 2016 but the final version of the tax forms/schedules are generally not available on the department's website until November 2016. Filing under extension extends the due date to March 15, 2017, at which time the final versions of the forms/schedules for 2016 are available.

**Caution:** Do not use 2015 tax year forms and schedules. A letter will be sent asking for the correct year tax return to be filed.

## Medical Care Insurance Subtraction – Certain Premiums Can't Be Included

Wisconsin allows a subtraction from income for the amount paid for medical care insurance. Below are certain limitations that apply when payments are made through employer-sponsored health insurance plans or after retirement. For purposes of the examples below, "taxable wages" means the amount reported on Box 1 of your Form W-2, *Wage and Tax Statement*.

### EMPLOYER-SPONSORED HEALTH INSURANCE PLAN

- Don't subtract medical care insurance premiums paid by an employer-sponsored health insurance plan unless the premiums are included in your taxable wages.

*Example.* You are an employee participating in your employer's health insurance plan. You are required to pay a share of the premium. Your share of the premium is paid by making a pre-tax reduction in your salary through payroll deductions. Because you are an employee whose insurance premiums are paid with money that is never included in your taxable wages, you can't subtract the premiums paid with that money.

- Don't subtract medical care insurance premiums paid through your employer's fringe benefit cafeteria plan or flexible spending account. These premiums would not be included in your taxable wages. Some employer's may identify these amounts as Internal Revenue Code sec. 125 or as a pre-tax deduction.
- Don't subtract medical care insurance identified on your Form W-2 in Box 12 with Code DD. This is insurance that was provided by your employer and cannot be claimed for the Wisconsin subtraction for medical care insurance.

### UNUSED SICK LEAVE USED TO PAY PREMIUMS

Don't subtract medical care insurance premiums paid through a health plan where your employer applies the value of unused sick leave to the cost of your medical care insurance (and you don't have the option to receive cash). The value of this unused sick leave is not included in your income.

### PREMIUMS PAID WITH RETIREMENT PLAN DISTRIBUTION

Don't subtract medical care insurance premiums you elected to pay with tax-free distributions from a retirement plan made directly to the insurance provider as these distributions are not included in your income.

## Manufacturing and Agriculture Credit

Additional manufacturing and agriculture credit common questions have been added to our website: [revenue.wi.gov/faqs/isc/manufagr.html](http://revenue.wi.gov/faqs/isc/manufagr.html).

Summary of the new common questions:

29. Are state taxes a direct or indirect cost?
30. Are charitable donations/contributions a direct or indirect cost?
55. How do related party sales between combined group members affect the computation of the manufacturing credit?
56. If a company contracts with a service provider to manufacture its products, who qualifies to claim the manufacturing credit?

Reminder: Be sure to enter the personal property assessment account number(s) on line A and real property assessment parcel number(s) on line B of Schedule MA-M.

## Wisconsin Economic Development Corporation Certified/Verified Tax Credits

The Wisconsin Economic Development Corporation (WEDC) certifies and verifies the eligibility for various income/franchise tax credits. In order to process the income/franchise tax returns claiming the credits, a copy of WEDC's notice of certification/verification must be included with the tax return. Failing to include the notice will delay processing of the return until the notice is received.

The following income/franchise tax credits are WEDC certified/verified:

- Development Zones Credit (Schedule DC)
- Enterprise Zone Jobs Credit (Schedule EC)
- Economic Development Tax Credit (Schedule ED)
- Supplement to Federal Historic Rehabilitation Credit (Schedule HR)
- Jobs Tax Credit (Schedule JT)
- Technology Zone Credit (Schedule TC)
- Venture Capital Credits (Schedule VC)

## Net Business Losses for Combined Groups – Pre-2009 Net Business Loss Lookback Period

The lookback period for deducting corporate net business losses under [sec. 71.26\(4\)](#), Wis. Stats., was increased from 15 to 20 years by [2013 Wisconsin Act 145](#), effective for taxable years beginning on or after January 1, 2014. The change does not impact the lookback period for computing pre-2009 shareable net business losses. Under [sec. 71.255\(6\)\(bm\)1.](#), Wis. Stats., "pre-2009 net business loss carry-forward" means a corporation's total net Wisconsin business loss carry-forward computed under [sec. 71.26 \(4\)](#) or [71.45 \(4\)](#), Wis. Stats., *as of the beginning of its first taxable year that begins after December 31, 2008*, but not used by the corporation in any taxable year beginning before January 1, 2012. As a result, net business losses from taxable years prior to 1994 are expired and do not become part of the pre-2009 shareable net business loss carryforward under [sec. 71.255\(6\)\(bm\)2.](#), Wis. Stats.

## Form XNOL, Carryback of Wisconsin Net Operating Loss, Q&A

**Q** I have a Wisconsin net operating loss (NOL), but not a federal NOL. Can I carry the NOL forward or back and offset my loss against taxable income of another year?

**A** Depending on whether you are a full-year resident, part-year resident, or nonresident of Wisconsin, you may or may not be allowed to claim a Wisconsin NOL.

### *Full-Year Resident*

In order to claim a Wisconsin NOL, you must have a federal NOL.

### *Part-Year Resident/Nonresident*

A federal NOL, although not computed on the federal income tax return filed with the Internal Revenue Service (IRS), may result for Wisconsin purposes if you are a part-year resident or nonresident of Wisconsin. The federal NOL should be refigured without regard to income which is not taxable to Wisconsin. If this results in a federal NOL, you are entitled to compute a Wisconsin NOL.

"Federal NOL" is your federal net operating loss as computed under the federal Internal Revenue Code in effect for Wisconsin tax purposes.

**Exception:** Losses from tax-option (S) corporations may be claimed even if there is no federal NOL. Wisconsin modifications cannot create an NOL except adjustments from tax-option (S) corporations.

**Q What are Worksheets 1 through 4 and how do I use them?**

**A** Worksheets 1 through 4 are included in Wisconsin Publication 120, *Net Operating Losses for Individuals, Estates, and Trusts*. This publication is available on the department's website at [revenue.wi.gov/pubs/pb120.pdf](http://revenue.wi.gov/pubs/pb120.pdf).

Worksheet 1 is used to compute your Wisconsin NOL. Complete this worksheet in the year you incur a Wisconsin NOL.

Worksheet 2 is used to compute your Wisconsin modified taxable income. "Modified taxable income" is the amount of NOL used in a carryback or carryforward year. If you carried back or carried forward your NOL, figure your modified taxable income for that year.

Worksheet 3 is used to keep track of your Wisconsin NOL. Record on Worksheet 3 the original amount of NOL incurred and the amount of loss used each year. The amount of loss used each year is equal to your Wisconsin modified taxable income as computed on Worksheet 2.

Worksheet 4 is used to figure the allowable deduction for a Wisconsin NOL carryback or carryforward. It is not necessary to use Worksheet 4 if your return for the year was filed on Form 1 and you are carrying back an NOL from that year.

Enclose copies of your NOL worksheets with your tax return for the year you incur the Wisconsin NOL and any other years for which you use an NOL carryback or carryforward.

**Q I am a part-year Wisconsin resident. Should I use the same worksheets as a full-year resident?**

**A** Yes. However, the Wisconsin standard deduction and the personal exemption must be prorated for Worksheets 2 and 4. For more information, see the instructions for these worksheets in Wisconsin Publication 120.

**Q What is Wisconsin Form X-NOL?**

**A** For an NOL incurred for a tax year beginning on or after January 1, 2014, you may carry back the entire NOL to the 1st or 2nd tax year before the loss. Any loss not used in the 2 preceding years can be carried forward until the NOL is used up or you complete the 20-year carryforward period.

Form X-NOL is used by residents, part-year residents, and nonresidents when carrying back a Wisconsin NOL. Use Form X-NOL for each year to which you are claiming a carryback of an NOL. For example, if you incurred an NOL for 2015 that you want to carry back to 2013 and 2014, you must file both a 2013 Form X-NOL and a 2014 Form X-NOL.

**Q Can I carry back a loss incurred prior to January 1, 2014?**

**A** No. A Wisconsin NOL incurred prior to January 1, 2014, can only be carried forward and offset against Wisconsin taxable income for up to 15 years.

**Q Is there any particular order to carry back the loss?**

**A** Yes. If you choose to carry back the loss to the second preceding year, compute the amount of loss allowed for this year first. You may then use any remaining loss in the first preceding year and each succeeding year for up to 20 years from the year you incurred the loss.

If you choose to carry the loss back to only the first preceding year, compute the amount of loss allowed. You may then use any remaining loss for each succeeding year for up to 20 years from the year you incurred the loss.

**Q Federal law does not allow nonbusiness deductions in excess of nonbusiness income in computing the NOL. What is the difference between business and nonbusiness income and deductions?**

**A** Business income and deductions are those that are related to your trade or business or your employment. Non-business income and deductions are those that are unrelated to your trade or business or your employment.

Some examples of business and non-business income and deductions are as follows:

Business income

Salaries and wages

Self-employment income

Business income from tax-option (S) corporations and partnerships

Rental income

Unemployment compensation

Business deductions

Rental losses

Educator expenses

Business losses from tax-option (S) corporations and partnerships

Self-employed health insurance deduction

Nonbusiness income

Dividends

Interest

Alimony

Pensions and annuities

Nonbusiness deductions

Federal standard deduction

IRA deduction

Student loan interest deduction

Alimony paid

See federal Publication 536, Wisconsin Publication 120, and the instructions for federal Form 1045 for more details.

**Q Will I have the same business and nonbusiness income and deductions for federal as for Wisconsin?**

**A** If there are any adjustments made on Wisconsin Schedule I or additions and subtractions on lines 4 and 11 of Wisconsin Form 1, your business and nonbusiness income and deductions will differ from federal purposes. For example, if you had \$600 of interest income for federal purposes, and a subtraction of \$200 for interest from U.S. Government securities on line 7 of Form 1, you would only include \$400 of interest income as nonbusiness income (\$600 less \$200 U.S. Government interest).

**Q What are considered business capital gains?**

**A** Business capital gains include gains from the sale of business assets as reported on federal Form 4797 and those capital gains as reported on Wisconsin Schedule 3K-1 and 5K-1.

## Sheboygan County Adopts County Tax Effective January 1, 2017

**Beginning January 1, 2017**, the county sales and use tax will be in effect in Sheboygan County. This brings the number counties that have adopted the 0.5% county tax to 63.

Information about which sales and purchases are subject to the county sales or use tax and transitional provisions that apply to Sheboygan County sales can be found in Wisconsin [Publication 201](#), *Wisconsin Sales and Use Tax Information*.

## City of Rhinelander Adopts Premier Resort Area Tax Effective January 1, 2017

**Beginning January 1, 2017**, the 0.5% premier resort area tax will be in effect in the City of Rhinelander. The authority to impose this tax is provided in [2015 Wis. Act 55](#).

Sellers who (1) make taxable sales of products or services within the City of Rhinelander and (2) are classified under one of the Standard Industrial Classification numbers noted in the department's Premier Resort Area Tax [Common Question](#), must remit premier resort area tax on such sales.

For more information about the premier resort area tax, see [Publication 403](#), *Premier Resort Area Tax*.

## Boat Docking Q&A

**Q** Are boat docking and boat storage charges subject to sales tax?

**A** Yes. Sales tax applies to providing storage space for boats. The charge for docking a boat is also taxable.

## Building Materials Exemption Q&A

**Q** Should a construction contractor or subcontractor check the box for "single purchase" or "continuous" on the exemption certificate it provides to its vendor when making purchases of exempt building materials that become a component of a facility owned by a qualifying exempt entity?

**A** A contractor may check either box on the exemption certificate.

- When a contractor checks the *continuous box*, the vendor should treat that exemption certificate as applying to every purchase the contractor makes until the contractor indicates it should be revoked. If the contractor is only purchasing from the vendor for one project at a time, the contractor can revoke the exemption certificate at the end of the exempt project and not risk the vendor applying the exemption to other projects where the materials may be taxable.
- When a contractor checks the *single purchase box*, the exemption certificate applies to all purchases under a particular purchase order, even if multiple invoices are issued on that purchase order. When there are multiple purchase orders for a project, an exemption certificate should be submitted for each purchase order.

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.

## Purchases of Taxable Products or Services on Behalf of Charitable Organizations

Certain nonprofit organizations are exempt from Wisconsin sales or use tax on their purchases of taxable products and services. Organizations that qualify for this exemption include those organized and operated exclusively for religious, charitable, scientific or educational purposes. These organizations are typically provided tax exempt status under sec. 501(c)(3) of the Internal Revenue Code.

### How to claim an exemption

In order to claim an exemption from tax on its purchases, a qualifying nonprofit organization located in Wisconsin must apply for a Certificate of Exempt Status (CES) number with the Wisconsin Department of Revenue using Form S-103. The purchaser must provide its CES number to the seller in order to claim the exemption.

A qualifying nonprofit organization located out-of-state is also exempt from tax on its purchases. The qualifying out-of-state organization may use the Wisconsin sales and use tax exemption certificate, Form S-211, to purchase without tax even though it has not been issued a Wisconsin CES number.

### Exemption applies to the organization

This exemption only applies to sales made to the qualifying organization. A sale made to an individual is subject to sales tax, even if the products or services purchased are intended for the exempt organization and the individual is reimbursed by the organization for the purchase.

**Exception:** When an individual makes a purchase on behalf of an exempt organization and the invoice or billing document identifies the organization as the purchaser, the purchase is exempt from Wisconsin sales and use tax provided the individual gives the seller the organization's CES number, or a properly completed exemption certificate (e.g., Form S-211).

If making payment using personal funds, the individual must also provide the seller a written statement from the organization indicating the individual is authorized to make the purchase on behalf of the organization and that the organization will reimburse the individual for the purchase.

The seller must keep the exemption certificate and/or record the CES number on the copy of the invoice the seller keeps.

**Example 1:** An organization holding a CES number orders office supplies. The organization provides the seller a properly completed exemption certificate identifying the organization as the purchaser. The seller issues an invoice identifying the organization as the purchaser. The organization pays using a check drawn on the organization's bank account. The sale of office supplies to the organization is exempt from Wisconsin sales tax.

**Example 2:** An individual purchases office supplies on behalf of a qualifying organization. The individual provides the seller the organization's CES number and a letter from the organization stating the individual is authorized to make the purchase for the organization. The sale is written up in the organization's name. The individual pays for the purchase using his personal credit card and is subsequently reimbursed by the organization for the purchase price. The sale of office supplies to the organization is exempt from Wisconsin sales tax.

**Example 3:** An individual purchases office supplies on behalf of a qualifying nonprofit organization. The invoice is written up in the individual's name. The individual pays for the purchase using his personal credit card and is subsequently reimbursed by the organization for the purchase price. The sale of office supplies is subject to Wisconsin sales tax, as the sale was made to an individual. Neither the organization nor the individual are allowed a refund of sales tax paid.

## Claiming a Refund of Tax Paid on the Federal Excise Tax Imposed on Heavy Trucks and Trailers

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. See the article titled "[Change in Taxes Included in Sales Price – Federal Excise Tax on Heavy Trucks and Trailers.](#)"

Since this law change took effect retroactively to September 1, 2014, it may have resulted in an overpayment of sales tax. A claim for refund for the overpayment of tax may be filed by the seller or buyer, but not by both. The information below provides the general rules for filing a claim for refund.

### Sellers

A seller who paid sales or use taxes in error to the Department of Revenue on the federal excise tax on heavy trucks and trailers may file a claim for refund. A seller choosing to file a claim for refund can amend a previously filed *Sales and Use Tax Return* through one of the following methods:

- File electronically using [My Tax Account](#).
- File on paper using [Form ST-12](#).
- Send a letter to the Department of Revenue, as described in Part IV.A.3. of [Publication 216, Filing Claims for Refund of Sales or Use Tax](#).

A seller is not required to file a claim for refund of the federal excise tax on heavy trucks and trailers and may direct the buyer to request a refund of overpaid tax directly from the Department of Revenue (see "Buyers" below). If a seller is refunded tax and interest by the Department of Revenue for tax collected from a buyer, the seller is required to return the tax and interest to the buyer or to the Department of Revenue within 90 days after the date of the refund.

### Buyers

A buyer may file a claim for refund of use tax the buyer paid in error on the federal excise tax on heavy trucks and trailers.

**Tax Paid to Seller** - If a buyer overpaid tax to a seller and the total tax is at least \$50, the buyer may request a claim for refund of overpaid sales or use tax directly from the Department of Revenue, using one of the following methods:

- If the buyer has filed a buyer's claim for refund in the past – Use [My Tax Account](#).
- If the buyer has not filed a buyer's claim for refund before, file electronically - [Use File a buyer's claim for refund – sales tax](#).
- Use paper [Form S-220, Buyer's Claim for Refund of Wisconsin State, County, and Stadium Sales Taxes](#), (also known as Form BCR). [Form S-220a, Schedule P, Attachment to Buyer's Claim for Refund of Wisconsin State, County, and Stadium Sales Taxes](#), must be completed and attached to Form S-220 for each seller to whom the buyer paid sales or use tax in error.

**Note:** A buyer may file a claim for refund even if the total tax is less than \$50, if the seller has ceased operating business, the buyer is being field audited, or the periods covered in the claim for refund are within the statute of limitations for the buyer but are closed to the seller. See Part III.B.2 in [Publication 216, Filing Claims for Refund of Sales or Use Tax](#), for more information.

**Tax Paid to Department of Revenue** - A buyer claiming a refund of use tax paid directly to the Department of Revenue may amend a previously filed *Sales and Use Tax Return* through one of the following methods:

- File electronically using [My Tax Account](#).
- File on paper using [Form ST-12](#).
- Send a letter to the Department of Revenue, as described in Part IV.B.2. of [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*.

**Tax Paid to Another State Agency** - Buyers claiming a refund of use tax paid to another state agency (e.g., Department of Transportation), must submit their request directly to the Department of Revenue, as described in Part IV.B.3. of [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*.

## **Motor Vehicle Dealers' Measure of Use Tax Increased to \$154 Effective January 1, 2017**

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

The reason for the increase to \$154 per plate is that [sec. 77.53\(1m\)\(a\)](#), Wis. Stats. (2013-14), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30.

This index was 238.638 as of June 30, 2015 and increased to 241.038 as of June 30, 2016. Consequently, since the index changed over this period by over 1.0%, the measure of use tax for dealers' motor vehicle license plates is adjusted upward from \$152 to \$154 as of January 1, 2017 ( $\$152 \times (241.038/238.638) = \$154$ , rounded to the nearest whole dollar).

## **New Sales Tax Publications**

The Department of Revenue has developed three new sales and use tax publications. The new publications are available on the department's website.

1. Funeral Homes – [Publication 246](#) explains how Wisconsin sales and use taxes affect funeral homes.
2. Hospitals and Medical Clinics - [Publication 248](#) explains how Wisconsin sales and use taxes affect hospitals and medical clinics.
3. Disaster Relief – [Publication 411](#) discusses exemptions available to qualifying out-of-state businesses and out-of-state employees who are in Wisconsin solely to perform disaster relief work in connection with a state of emergency declared by the governor.



## Report on Litigation

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

The following decisions are included:

### Individual Income Tax

Wisconsin itemized deduction credit <i>Ervin and Beverly Colton</i> .....	16
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## INDIVIDUAL INCOME TAX

**Wisconsin itemized deduction credit.** *Ervin and Beverly Colton vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 10, 2016). The issue in this case is whether the federal overall limitation on itemized deductions should be taken into account in computing the Wisconsin itemized deduction credit.

During 2013, the taxpayers were full-year residents of and were domiciled in Wisconsin. On their 2013 Wisconsin individual income tax return, the taxpayers claimed an itemized deduction credit (IDC). The itemized deductions used in calculating the IDC consisted of investment interest expense and charitable contributions reflected on Schedule A of the taxpayers' 2013 federal income tax return. In 2013, the taxpayers were subject to the federal alternative minimum tax but not to the Wisconsin alternative minimum tax.

By notice dated September 22, 2014, the department assessed additional income tax against the taxpayers for calendar year 2013. The department's assessment resulted from its reduction of the amount of the taxpayers' itemized deduction for charitable contributions by reason of its application of Internal Revenue Code (IRC) sec. 68, which provides for an overall limitation of itemized deductions for federal income tax purposes based on specified income thresholds. The taxpayers' income for 2013 exceeded the income threshold applicable to their filing status for the purposes of claiming itemized deductions.

The taxpayers timely filed a petition for redetermination of the department's assessment which was granted in part and denied in part by notice dated December 15, 2014. The taxpayers timely filed a petition for review with the Commission on February 9, 2015, appealing the department's partial denial.

The taxpayers made several arguments that the overall limitations on itemized deductions under IRC sec. 68 should not apply in determining the Wisconsin IDC. The arguments include:

- Section 71.07(5) does not claim a specific reference to IRC sec. 68 and the department is wrongly reading the provision into the statute in order to reduce the IDC.
- When IRC sec. 68 was in effect during 1991 through 2009, the department had taken the position that it did not apply for purposes of calculating the IDC and that the 2013 version of IRC sec. 68 reads the same in all material respects.
- Section 55 of the IRC imposes a federal alternative minimum tax (AMT), which may apply to higher-income taxpayers claiming certain tax benefits which reduce their regular tax. The AMT is calculated separately from regular tax, and taxpayers subject to the federal AMT pay the higher of their regular tax or their AMT. Internal Revenue Code sec. 56(b)(1)(F) provides that, when calculating federal AMT income, as opposed to regular income, IRC sec. 68 does not apply. Consequently, an individual paying federal AMT does not apply the IRC sec. 68 overall limitation to his or her itemized deductions in calculating the AMT.

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The Tax Appeals Commission concluded:

- For tax year 2013, the Wisconsin statutory definition of "federal internal revenue code" in Wis. Stat. sec. 71.01(6)(h) included IRC sec. 68.
- To the extent a taxpayer is subject to the IRC sec. 68 overall limitation on itemized deductions for federal income tax purposes, "the amounts allowed as itemized deductions" for purposes of calculating the Wisconsin IDC under Wis. Stat. sec. 71.07(5) are subject to the IRC sec. 68 overall limitation.
- The taxpayers' federal itemized deductions were not subject to the IRC sec. 68 overall limitation because the taxpayers were subject to the federal AMT to which the limitation does not apply. Thus, "the amounts allowed as itemized deductions" for purposes of calculating the taxpayers' Wisconsin IDC are not subject to the limitation.

The department has not appealed 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 ruling is included:

### Sales and Use Tax

Mobile point of sale device  
W1618001 (p. 18)

✱ **W1618001** ✱

**February 11, 2016**

**Type Tax:** Sales and Use Tax

**Issue:** Mobile point of sale device

**Statutes:** Sections [77.52\(1\)\(a\)](#) and [77.52\(2\)\(a\)2.a.](#), Wis. Stats. (2013-14)

Thank you for your letter dated October 5, 2015, requesting a private letter ruling.

### **Facts, as provided by you:**

Company A is one of the largest full service casual dining companies with restaurant locations in most states including Wisconsin. Company A has initiated a pilot program incorporating the use of a mobile point of sale device (herein "Mobile Point of Sale Device" or "Device") that will accommodate tabletop menu, ordering, and payment in some of its Wisconsin locations. The Mobile Point of Sale Device is an Android tablet with a touch screen interface located at each table that provides pictures/detailed descriptions of the menu items and allows customers to place drink, appetizer, and entree orders, and pay their check directly through the Device. The customer has the option to pay their guest check by credit card, debit card, or gift card on the Device. Alternatively, it can be paid through their server/wait staff if preferred.

The Mobile Point of Sale Device also allows restaurants the option to enhance the customer experience by allowing access to premium content located on the Device. This content could include news, sports, access to social media, selecting songs to be played on the restaurant's playlist as well as access to interactive games. Company A will charge separate fees for access to games on the Device, access to current news and social media, and for song selections. The game application software resides within each Device. During the pilot phase, Company A intends to charge only for game fees, and the use of the Device to access news content will be free. The premium content fee will be included as a line item on the customer's food and beverage bill. The vendor ("Vendor") of the Mobile Point of Sale Device has

indicated to Company A that at the average restaurant over 80% of the restaurant customers use the Device for ordering and/or payment at the end of the meal, while only 12-20% of the customers access any premium content located on the Device.

The owner of the Devices charges Company A a monthly service fee for the use of the Devices. Per the agreement between Vendor and Company A will be responsible for the collection of the revenue generated by accessing the premium content and collection/remittance of any applicable state or local taxes imposed on the transactions. Additionally, Vendor may also charge monthly commissions to Company A as a percentage of the game fee and song fee income. Company A will be required to pay to Vendor a portion (or potentially all) of the revenue generated by these premium content fees.

In a possible alternative scenario, Vendor will not charge Company A a monthly service fee for use of the devices, but will instead receive from Company A all of the premium content fees up to a maximum amount, at which time the fees in excess of such amount will be shared with Company A.

The Mobile Point of Sale Device was developed specifically for the restaurant industry. The primary purpose of the Device is to facilitate (1) order placement, (2) order add-ons, (3) checkout/payment, and (4) customer satisfaction surveys. The benefits of the Device to the restaurant industry include increased food and beverage sales, a quicker table turnover, and increased guest loyalty and satisfaction. To achieve these desired results, Company A will provide one Mobile Point of Sale Device at each individual table within each restaurant. The average restaurant will typically contain 50 tables, and on average 50 Mobile Point of Sale Devices would then be used at each establishment.

### **Ruling Requested by You**

**Question 1:** Based on the multifunctional nature of the Mobile Point of Sale Device, and given the primary purpose of order placement and payment, does the Department of Revenue consider income from the Device to constitute receipts from a coin-operated machine or amusement device subject to sales tax pursuant to sec. Tax 11.52(4), Wis. Adm. Code? If not, would the Device be subject to sales tax as a lease of tangible personal property based on the monthly service fees paid by Company A to Vendor under sec. 77.52(1), Wis. Stats.? If so, and Vendor is not registered to collect and remit this tax, can Company A self-accrue use tax on the amount deemed as rental payments to Vendor?

**Answer 1:** Charges by Company A to customers for access to premium content on the Mobile Point of Sale Device are taxable admissions under [sec. 77.52\(2\)\(a\)2.a.](#), Wis. Stats. (2013-14). The law imposes tax on "...the sale of admissions to amusement, athletic, entertainment or recreational events or places ... and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including the sale or furnishing of use of recreational facilities on a periodic basis ..."

In addition, the monthly service fee charged by Vendor to Company A for use of the Mobile Point of Sale Devices is subject to tax as the sale, license, lease or rental of tangible personal property as provided in [sec. 77.52\(1\)\(a\)](#), Wis. Stats. (2013-14). The Mobile Point of Sale Devices used by Company A to allow customers to access the tabletop menu, place orders, make payments and access premium content are used by Company A in its business activities (i.e., Company A may not provide Vendor with an exemption certificate claiming resale). Company A is the consumer of the devices and required to pay tax on fees charged by Vendor. If Vendor does not charge Company A Wisconsin sales or use tax on such fees, Company A is required to remit the use tax directly to the Department of Revenue.

**Question 2:** Are the premium content fees described as commissions paid to Vendor, who retains title to the devices, subject to tax as the rental of or license to use tangible personal property? If so, and Vendor is not registered to collect and remit this tax, can Company A self-accrue use tax on the amount deemed as rental or license payments to Vendor?

**Answer 2:** The payment of commissions by Company A to Vendor based on the charges for the premium content fees are subject to Wisconsin sales or use tax. The commission amount based on premium content fees charged is part of the purchase price of the sale, license, lease or rental of the Mobile Point of Sale Device subject to tax. Company A is

required to remit use tax directly to the Department of Revenue for the amount of commissions paid to Vendor if Vendor does not collect and remit the tax.

**Question 3:** Based on the information provided, would the following fees charged for access to the premium content be subject to sales tax:

- a. Fee for unlimited access to games that are stored on the Device; If so, are such fees properly categorized as a rental or license to use tangible personal property?
- b. Fee for unlimited access to current news events and social media; If so, are such fees properly categorized as either Internet access or a telecommunications service?
- c. Fees for songs that are selected to be played in the restaurant; If so, are such fees properly categorized as a rental or license to use tangible personal property, a digital good or a telecommunications service?

**Answer 3:**

- a. Charges by Company A to customers for unlimited access to games on the Mobile Point of Sale Device are taxable admissions under [sec. 77.52\(2\)\(a\)2.a.](#), Wis. Stats. (2013-14). Since the taxability is determined under [sec. 77.52\(2\)\(a\)2.a.](#), it is not necessary to address whether the unlimited access to games may be a taxable under another section of the statutes.
- b. Charges by Company A to customers for unlimited access to current news events and social media on the Mobile Point of Sale Device are taxable admissions under [sec. 77.52\(2\)\(a\)2.a.](#), Wis. Stats. (2013-14). Since the taxability is determined under [sec. 77.52\(2\)\(a\)2.a.](#), it is not necessary to address whether the unlimited access to current news events and social media may be a taxable under another section of the statutes.
- c. Charges by Company A to customers for access to songs selected to be played in the restaurant on the Mobile Point of Sale Device are taxable admissions under [sec. 77.52\(2\)\(a\)2.a.](#), Wis. Stats. (2013-14). Since the taxability is determined under [sec. 77.52\(2\)\(a\)2.a.](#), it is not necessary to address whether the access to songs selected to be played in the restaurant may be a taxable under another section of the statutes.

**Question 4:** If a single premium content fee is charged for unlimited access to games stored on the Device and unlimited access to current news events and social media, how will Wisconsin view this single charge?

**Answer 4:** Charges by Company A to customers for access to premium content, whether a single item charge or unlimited access charges, on the Mobile Point of Sale Device are taxable.

**Question 5:** If any of the premium content fees are determined to be taxable, does the Department consider Company A use of each Device to include both a license to use the Device and taxable business use, in which case both revenue streams would be subject to tax?

**Answer 5:** The entire charge (i.e., sales price) by Company A to customers for access to premium content on the Mobile Point of Sale Device is subject to tax. In addition to the fees collected by Company A from its customers for access to premium content being taxable, the entire charge by Vendor to Company A for use of the Mobile Point of Sale Devices is also subject to tax.

Your statement of audit in process, statement as to identical issue, statement under penalties of perjury and/or deletion statement, as applicable, have been reviewed and are in proper order. Enclosed is a “deletion copy” of the ruling prepared in accordance with your deletion statement or standard “deletion” procedures, as well as a Notice of Intent to Publish Ruling (“Notice”). Please follow the procedures set forth in the Notice.