Wisconsin Department of Revenue

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What's New This Tax Season

Discussed below are some changes, updates, and reminders which may affect the filing of your 2016 Wisconsin income tax return:

***Individuals*:**

New tax laws for 2016: see *Wisconsin Tax Bulletin 193*.

College savings accounts: The maximum amount of the subtraction has stayed the same for 2016 ($3,100 or $1,550 if married filing separate).

Tuition and fees subtraction: The maximum amount of subtraction allowed per student for 2016 is $6,943. Each year the subtraction phase out limit is increased by a percentage change in the U.S consumer price index. For taxable year 2016, the subtraction is phased out for persons with federal adjusted gross income between:

- $52,600 and $63,120 if filing single or head of household
- $84,160 and $105,200 if married filing joint
- $42,080 and $52,600 if married filing separate

Standard deduction for married persons: The standard deduction for married persons has been increased for the 2016 tax year for the following filing statuses:

- $19,010 for married filing joint
- $9,030 for married filing separate

Medical care insurance subtraction: Don't subtract the portion of the insurance premium:

- equal to the federal premium tax credit allowed
- paid by the employer-sponsored health insurance plan unless included in taxable wages
- paid through the employer's fringe benefit cafeteria plan or flexible spending account
- identified on Form W-2 in Box 12 with Code DD
- paid through a health plan if the employer applies the value of unused sick leave to the cost of medical care insurance and there is no option to receive cash
- if an election was made to pay with tax-free distributions from a retirement plan made directly to the insurance provider

Note See *Wisconsin Tax Bulletin 194* for additional information.

Schedule QI, *Sale of Investment in a Qualified Wisconsin Business*: For taxable years beginning after December 31, 2015, a claimant may exclude a portion of the long-term capital gain from the sale of an investment in a qualified Wisconsin business. A qualified Wisconsin business means a business that was certified by the Wisconsin Economic Development Corporation (WEDC) for years 2011-2013. For years 2014 and thereafter, the business must have registered with the Department of Revenue and be listed on our website. The business must have been a qualified Wisconsin business for the year of the investment and for at least 2 of the 4 subsequent years.

The investment must be made after December 31, 2010 and held for at least five uninterrupted years. The exclusion does not apply to any portion of the gain due to an amount of gain that was deferred at the time of the investment. Schedule QI should be used to claim the capital gain exclusion for 2016. For more information, see the Schedule QI instructions.

Caution: The list of qualified Wisconsin businesses referred to above shows businesses that have provided information concerning property, payroll, and number of employees for purposes of registering as a qualified Wisconsin business. The list has not been reviewed for purposes of determining eligibility for the exclusion.

***Businesses*:**

New tax laws for 2016: see *Wisconsin Tax Bulletin 193*

Forms 3 and 5S, Schedules 3K-1 and 5K-1: These forms have returned to portrait orientation.

Jobs tax credit and economic development credits: The Jobs Tax Credit (Schedule JT) and Economic Development Credit (Schedule ED) may not be computed for taxable years beginning in 2016, unless subject to a contract with the Wisconsin Economic Development Corporation (WEDC) before that date. These credits have been replaced by the business development credit.

Schedule BD, Business Development Credit: A new credit this year, the business development credit, is being administered by the Wisconsin Economic Development Corporation (WEDC). The credit is effective for taxable years beginning after December 31, 2015, and is based on wages, training costs, and personal property investment. In order to claim this credit, the person must first be certified by WEDC and then file Schedule BD. See Fact Sheet 1120 for more information.

Manufacturing and agriculture credit: The percentage of the claimant's eligible qualified production activities income that is allowed to be claimed for taxable years beginning after December 31, 2015 is 7.5 percent. **Note** The credit computed for the 2015 tax year must be included in income on your 2016 Wisconsin income tax return.

***Individuals and Businesses*:**

Schedule CR, *Other Credits*: A column was added to the Schedule CR to differentiate between the amount of the credit available to be used for 2016 and the amount of credit actually used for 2016. Any nonrefundable credits carried forward from prior years or computed in the current year should be entered in column A of the schedule. The amount which is used to offset tax liability on your 2016 tax return should be entered in column B of the schedule.

Schedule FC-A, *Farmland Preservation Credit*: Certificate of Compliance (CoC) number requirement on Schedule FC-A, see *Wisconsin Tax Bulletin 195*.

New in *My Tax Account* – Information Returns

What is changing?

New for the 2016 period, *My Tax Account* allows you to enter Forms 1099-MISC and 1099-R (in addition to Form W-2) when you file the annual reconciliation (Form WT-7).

What do you need to do?

Forms W-2, 1099-R, and 1099-MISC must be filed with the Wisconsin Department of Revenue whether or not Wisconsin tax is withheld. If your business must file more than 50 W-2s or 1099s, they must be submitted electronically.

The due date for filing 2016 wage statements and information returns is January 31, 2017.

Differences in Wisconsin and Federal IRC Provisions

For taxable years beginning in 2016, Wisconsin follows the federal Internal Revenue Code as amended to December 31, 2013, with certain exceptions. Federal laws enacted after December 31, 2013, do not apply for Wisconsin unless specifically adopted by the Wisconsin Legislature. This results in differences between how some items are treated for federal and Wisconsin tax purposes.

Individuals must file Wisconsin Schedule I, *Adjustments to Convert 2016 Federal Adjusted Gross Income and Itemized Deductions To The Amounts Allowable For Wisconsin*, to adjust for these differences. Following is a partial list of some of the common provisions where the federal and Wisconsin treatment is different.

- Deduction for tuition and fees
- Special 50 per cent bonus depreciation
- Discharge of indebtedness on principal residence
- Certain mortgage insurance premiums treated as residence interest
- Domestic production activities deduction
- Qualified tuition programs
- Charitable deductions for S corporation shareholders
- Increase in the excludable amount of transit passes and commuter fringe benefits
- Gain on the sale of certain small business stock
- Expensing of film or television production costs
- Recovery period for leasehold improvements and qualified restaurant and retail improvement property
- Depreciation of race horses
- IRA distribution transferred for charitable purposes
- Enhanced charitable deduction for contributions of food inventory
- Donation of conservation property

A complete list of differences and the tax treatment can be found on Schedule I which is available on the department's website at revenue.wi.gov/Pages/Form/2016-TaxIndividual.aspx.

New Requirement for Amending Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trusts*

If you are filing an amended fiduciary income tax return, you must enclose Schedule AR, *Explanation of Amended Return*, to explain why the amended return was necessary and what changes were made. In addition, place a checkmark in the designated area on Form 2 to identify it is an amended return, as shown below.

Check if applicable ☐ Initial return ☐ Final return ☑ Amended return ☐ Address or name change

Enclose Schedule AR and all supporting documentation with your amended Form 2. Do not enclose your original return and schedules.

2016 Tax Practitioner Questions and Answers

Every year, the Wisconsin Department of Revenue has tax update seminars with practitioners throughout the state. The 2016 tax practitioner questions and answers are posted on the department's website.

Access 2016 Form 1099-G Online

Taxpayers have online access to their 2016 Form 1099-G. The majority of State of Wisconsin taxpayers have elected to receive an email that their 1099-G is available online. Those that have not agreed to receive electronic notifications continue to receive paper copies. All paper copies will be sent out before the end of January.

Taxpayers are advised to access their 1099-G online, print a copy and give the form to their tax preparer with the rest of their tax documents as this information is required with their federal return. Taxpayers can access 1099-G information online for years 2013 through 2016. The taxpayer can go online and print a 1099-G copy at: Form 1099-G - Certain Government Payments.

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

Avoid Return and Refund Delays, Verify Taxpayer Information

When completing returns for your clients, confirm that the pre-populated information in your tax software is current. This will prevent mail or refund checks from being sent to an old address and returned back to the department. Verifying the taxpayer's information will also prevent return processing and refund delays due to information mismatching within the Wisconsin Department of Revenue's computer system.

Individual Income Tax Return and Payment Due Dates for 2016

The 2016 individual income tax returns are due April 18, 2017. However, a six-month extension for individual income tax returns is available under federal law and may be used for Wisconsin purposes. To obtain the six-month extension to file your Wisconsin income tax return, attach one of the following items to your 2016 Wisconsin return when it is filed:

- A copy of federal Form 4868 with only Part I completed
- A statement indicating which federal extension provision you are using for Wisconsin

If you plan to file your return using the federal six-month extension provision, you must file your Wisconsin return by October 16, 2017. Returns filed after October 16, 2017, will be assessed a $50 late filing fee.

Note: An extension of time to file your Wisconsin income tax return is not an extension of time to pay tax due on your return. Even if you have an extension, you will owe interest on any tax not paid by April 18, 2017. Interest is charged at a rate of 12% per year (1% per month) during the extension period and 18% per year (1.5% per month) after the extension period. If you expect to owe additional tax, you can avoid interest by paying the tax you will owe by April 18, 2017. You may submit this payment online as a 2016 estimated payment, by mail with a 2016 Form 1-ES (*Estimated Income Tax Voucher*), or in person at any of our offices.

You can find additional information about extensions on pages 4 and 5 of the Form 1 instructions.

2016 Corporation and Partnership Tax Return and Estimated Tax Payment Due Dates

The article on page 5 of *Wisconsin Tax Bulletin 194* indicated that Wisconsin had not adopted the new federal due dates for corporation and partnership tax return and estimated tax payment due dates. The legislature has introduced Senate Bill 2 that will conform the corporation and partnership tax return due dates, and partially conform the estimated tax payment due dates, to the federal due dates. This is anticipated to be effective for taxable years beginning on or after January 1, 2016.

Additional information will be provided as soon as possible on the department's website and Listserv email notification system if and when the bill is signed by the Governor and becomes law. To sign up to receive informational email messages from the department, click the following link: revenue.wi.gov/Pages/HTML/lists.aspx

Trust Tax Return Due Dates for 2016

Calendar year 2016 trust returns are due April 18, 2017. Fiscal year trust returns are due the 15th day of the 4th month after the close of the taxable year.

Congress passed Public Law 114-41 which changes the extended due date of trust returns to 5 1/2 months, effective for taxable years beginning after December 31, 2015.

For trust returns, Wisconsin follows the same extended tax return due dates as the Internal Revenue Service. This treatment is provided in sec. 71.13(1), Wis. Stats. (2015-16).

Staying on Top of Scams and Fraud

As the 2017 tax filing season is upon us, so are ongoing problems with tax fraud and tax scams.

The most current information on fraud and tax scams is available online at:

- https://www.irs.gov/ – Internal Revenue Service
- https://datcp.wi.gov/Pages/Homepage.aspx - Wisconsin Division of Agriculture, Trade and Consumer Protection

Use the search box and enter "fraud" or "scams".

Identity Verification Program

The Wisconsin Department of Revenue (DOR) will continue its Identity Verification program for the upcoming filing season. This program keeps tax dollars out of the hands of identity thieves and in the pockets of Wisconsin taxpayers. If we select your return, the department will send you a letter asking you to do one of the following:

- **Take an identity quiz.** The quiz consists of four multiple choice questions. You can take the quiz online or by calling our customer service representatives at (608) 266-2772. NEW Your Wisconsin state tax refund amount is required to complete the quiz.

- **Enter your DOR issued Personal Identification Number (PIN).** The department will mail you a PIN after we receive your Wisconsin income tax return or homestead credit claim. You can enter the PIN online or by calling our customer service representatives at (608) 266-2772. Your Wisconsin state tax refund amount is required to complete the PIN process.

- **Submit identity documents.** Provide one document that has your full name and photograph and one document that has your full name and complete address. You will receive a letter listing the types of acceptable documents which can be submitted online, by mail, or in person. Office locations and business hours are available on the department's website.

Identity verification is the first step in processing your return. Some returns require additional steps which may take up to 12 weeks to complete.

For more information on identify verification and what the department is doing to protect taxpayers, visit our website at revenue.wi.gov and select the ID Verification button on the homepage.

The Department of Revenue is No Longer Providing Copies of Federal Returns

The Department of Revenue is no longer providing copies of federal income tax returns when Wisconsin income tax return copies are requested. Copies or transcripts of federal income tax returns should be requested from the Internal Revenue Service (IRS).

Most federal returns received by the department cannot be printed in a useable format. A federal return viewer that previously enabled the department to print federal income tax returns is no longer supported by the IRS.

Filing Schedule FC-A with a Certificate of Compliance Number from a Pass-Through Entity

In order to claim the farmland preservation credit using Schedule FC-A for taxable years beginning after December 31, 2015, you will need to provide the 7-digit Certificate of Compliance (CoC) number(s) located on the Certificate(s) of Compliance with Soil & Water Conservation Standards issued by the county where the farmland is located.

If you are claiming the farmland preservation credit on farmland owned by a pass-through entity, you will need to request the CoC number from the pass-through entity in order to claim the credit on Schedule FC-A.

Deducting Passive Activity Losses

The department has received numerous questions relating to the deduction for passive activity losses. Some questions are:

- How are passive activity losses affected by a Wisconsin Schedule I adjustment?
- Does federal Form 8582, *Passive Activity Loss Limitations*, only need to be recomputed when there is a Schedule I adjustment?
- Are the limited federal and Wisconsin passive activity losses the same when there is no Schedule I adjustment?
- How do you report passive activity losses on Form 1 or Form 1NPR?

In order to clarify the treatment of passive activity losses, the department has developed Common Questions on this subject. Further information and examples can be found at https://www.revenue.wi.gov/Pages/faqs/ise-passive.aspx.

Earned Income Tax Credit Pre-Refund Review

Each tax season, the Department of Revenue conducts a pre-refund review of selected returns where the Wisconsin Earned Income Tax Credit (EITC) is claimed. The following questions and answers provide additional information about this process.

Why Does the Department Conduct a Pre-Refund Review?

The department conducts a pre-refund review of the Wisconsin EITC for several reasons:

- To educate Wisconsin EITC filers about the eligibility criteria for the EITC.
- To attain the department's goal of issuing Wisconsin EITC refunds as quickly and efficiently as possible while maintaining or improving voluntary compliance for the benefit of all taxpayers.
- To correct invalid or incorrect claims filed, ensuring that the correct amount of Wisconsin EITC is issued to all claimants. (For the 2015 tax year, there were approximately 269,000 Wisconsin EITC claims filed. Credits of more than $17 million were claimed incorrectly.)

How are Returns Selected for Review?

Based on more than 25 years of experience administering the EITC, the department selects only those returns on which errors may be likely. However, being selected for review does not necessarily mean that something is wrong with the credit claimed. The following are common errors that have required adjustment:

Qualifying child

1) *Child did not live with you for more than 6 months of the year or child is not related to you through marriage (unless child has been placed with you through the courts or an authorized placement agency) – A qualifying child must meet the relationship, age, and residency test to qualify.*

2) *More than one individual is claiming the same child – A qualifying child may not be claimed on more than one return.*

Residency

1) *Part-year residents and nonresidents are claiming the Wisconsin EITC – Only full-year Wisconsin residents are eligible.*

2) *You became a permanent resident during 2016 – You are considered a part-year resident of Wisconsin and do not qualify for Wisconsin purposes.*

Filing status

1) *Filing as head of household or single when married – If you are married and do not qualify to file as head of household, you must file as married filing jointly or married filing separately.*

2) *Filing as married filing separately – The EITC may not be claimed if you are filing as married filing separately.*

Earned income

1) *Improper earned income claimed –*

   a) To be eligible for the EITC, you must have earned income. Income incorrectly reported as wages, such as pension/annuity income, cannot be used to figure the EITC. **Exception** If you are receiving disability retirement income and haven't reached the minimum retirement age, this income is considered earned income.

   b) In order to have income from self-employment, you must conduct a trade or business on a regular basis. Income from other sources that is not considered earned income must not be used for purposes of figuring the earned income credit. For more information, see federal Publication 525, *Taxable and Nontaxable Income* and federal Publication 535, *Not-for-Profit Activities.*

   c) You must be able to prove the amount of self-employment income and expenses claimed on your Wisconsin income tax return.

2) *Not deducting expenses related to self-employment income – If you are self-employed, you are required to report all income and deduct all expenses.*

Investment income

1) *Investment income is over $3,400* – Investment income may not be over $3,400. This includes income from interest, dividends, net capital gain, royalties, rental property, and other passive activities.

What Information May Be Requested During a Pre-Refund Review? Why Does the Department Need This Information?

Birth Certificates – This information establishes the relationship of the child to the claimant and verifies the biological mother and/or biological father of the child. Depending on your relationship to the child being claimed, the following birth certificates will be requested:

- Son/daughter: Child's birth certificate
- Niece/nephew: Child's, biological parent's, and your birth certificate
- Grandchild: Child's and biological parent's birth certificate

Note: Original birth certificates are required. State law prohibits you from making photocopies of original birth certificates or other vital records. If you do not wish to send original birth certificates in the mail, you may take them to one of our office locations.

Social security card – The social security card is required to determine that the child has a valid social security number and is authorized to work in the United States.

Biological parent information – Information such as the biological parents' names, last known addresses, social security numbers, and number of overnights the child spent in your home will be requested to verify where the child resided during the year.

Court documents – These documents are used to aid in substantiating where the child resided for the year, when the child was placed by an authorized agency, and what dates the child lived with a related non-parent. Some examples of court documents requested are as follows:

- Divorce decree or separation agreement
- Physical placement court records
- Kinship care papers
- Foster care placement papers
- Custody court records

School/daycare records – The residency test requires that the child actually live with the claimant. School/daycare records establish the dates the child was enrolled and the home address of the child while enrolled. If the child is over age 19, a school transcript showing the above information as well as the number of credits/classes the child completed during the tax year verifies residency.

Doctor records – If a child is not old enough to attend school and is not in daycare, a letter from your doctor indicating the date the child started receiving care and the person responsible for bringing the child to the doctor appointments will be requested.

Lease/rental agreement, housing assistance agreement, and notarized landlord statement - These documents verify all of the residents of the household during the tax year. These documents also confirm the amount of rent paid during the tax year.

Earned income documentation – Proof of your earned income may be requested, such as copies of wage statements and documentation of your self-employment income and expenses (for example, receipts and copies of your bank statements).

The above list is not meant to be all-inclusive. Unique situations may require the reviewer to ask for other verification.

All of the information requested is necessary to complete the pre-refund review of the EITC claimed. Providing only part of the information results in additional delays in issuing a refund, as another request for the missing information will be made. If no reply or insufficient documentation is received, this may result in an adjustment to or denial of the EITC claimed. If you are unable to send in all the information requested by the deadline shown on the letter, you may call or write to request an extension.

What You Need to Know to Claim the Manufacturing Credit

In order to claim the manufacturing credit for income/franchise tax purposes, you must have qualified production activities income derived from the sale of tangible personal property that was produced on property assessed as manufacturing for property tax purposes under sec. 70.995, Wis. Stats. (2015-16). Property tax classifications are performed by the department's Manufacturing & Utility Bureau. For the income/franchise tax credit, you may be eligible to claim a credit in the year you are approved to be classified as manufacturing on the property tax assessment roll.

2016 Tax Returns

In order to compute the manufacturing credit on your 2016 income/franchise tax return, an application must have been submitted by March 1, 2016 and approved by December 31, 2016. If you did not submit your application by March 1, 2016, you are not eligible to compute a manufacturing credit for 2016.

2017 Tax Returns

Make sure to submit your application by March 1, 2017 in order to be eligible to compute the manufacturing credit on your 2017 income/franchise tax return. **Note** Applications are only needed to seek determinations on new property; do not submit an application for property that was classified as manufacturing on the prior year's assessment roll.

You may submit an application to have your property assessed as manufacturing for 2017 using either of the following:

- If you are a new business, complete Form PA-780 and send to the address listed on the bottom of the form, or
- If you have been previously assessed as a manufacturer, you must annually file using Form PA-750 R, Form PA-750 P, and/or Form PA-750 L, available on our website in January of 2017.

Understanding the Wisconsin Credit Hierarchy

Wisconsin has a variety of nonrefundable and refundable tax credits that may be available to corporations, insurance companies, fiduciaries, and individuals. The credits must be claimed within 4 years of the unextended due date of the tax return. If a nonrefundable credit is not entirely offset against Wisconsin income or franchise taxes due for the current taxable year, the law generally provides that the balance may be carried forward for 15 years, unless otherwise noted in this article. If a carryforward is available, Schedule CF, *Carryforward of Unused Credits*, must be attached to the return to record the amount of credit used in a year and the amount that may be carried forward and offset against tax in a future year. None of the nonrefundable credits may be offset against the economic development surcharge.

Various options are available when determining the amount of credit to be used each year. Except for the manufacturing sales tax credit, which must be used as determined on Schedule MS, *Wisconsin Manufacturer's Sales Tax Credit Carryforward Allowable*, you may choose whether to use all, a portion, or none of a nonrefundable credit.

For example, you have a $2,000 dairy and livestock farm investment credit carryforward and a $4,000 angel investment credit available for 2016. The amount of tax shown on the return is $2,000. You may choose to use (1) all of the $2,000 dairy and livestock farm investment credit carryforward and none of the angel investment credit or (2) none of the dairy and livestock farm investment credit carryforward and $2,000 of the angel investment credit.

Refundable credits may be claimed after nonrefundable credits. However, if two or more nonrefundable credits are used, they must be applied against gross tax in the order listed below:

Corporate and Insurance Companies	
1. Manufacturing sales tax credit carryforward (20-year carryforward period)	14. Ethanol and biodiesel fuel pump credit carryforward
2. Manufacturing investment credit	15. Community development finance credit carryforward
3. Dairy and livestock farm investment credit carryforward	16. Development opportunity zone investment credit carryforward
4. Community rehabilitation program credit	17. Development opportunity zone or agricultural or airport development zone capital investment credit
5. Research expense credits	18. Development zones credit
6. Postsecondary education credit carryforward	19. Economic development tax credit
7. Water consumption credit carryforward	20. Technology zone credit
8. Biodiesel fuel production credit carryforward	21. Early stage seed investment credit
9. Research facilities credit carryforward	22. Supplement to federal historic rehabilitation tax credit
10. Super research and development credit carryforward (5-year carryforward period)	23. Electronic medical records credit carryforward
11. Health insurance risk sharing plan assessments credit carryforward	24. Film production investment credit carryforward
12. Manufacturing and agriculture credit (not available to insurance companies)	25. Film production services credit carryforward
13. Veteran employment credit carryforward	26. Internet equipment credit carryforward

Individuals and Fiduciaries	
1. Postsecondary education credit carryforward	15. Manufacturing sales tax credit carryforward (20-year carryforward period)
2. Water consumption credit carryforward	16. Manufacturing investment credit
3. Biodiesel fuel production credit carryforward	17. Dairy and livestock farm investment credit carryforward
4. Health insurance risk-sharing plan assessments credit carryforward	18. Ethanol and biodiesel fuel pump credit carryforward
5. Veteran employment credit carryforward	19. Development opportunity zone investment credit carryforward
6. Film production company investment credit carryforward	20. Technology zone investment credit carryforward
7. Community rehabilitation program credit	21. Development zones credit
8. Research facilities credit carryforward	22. Capital investment credit
9. Supplement to federal historic rehabilitation credit	23. Economic development tax credit
10. Manufacturing credit	24. Early stage seed investment credit
11. Agriculture credit	25. Angel investment credit (individuals only)
12. State historic rehabilitation credit (individuals only)	26. Electronic medical records credit carryforward
13. Research credit	27. Internet equipment credit carryforward
14. Film production services credit carryforward	

Penalty for Failure to File a Complete or Correct Schedule 2K-1, 3K-1, or 5K-1

Trusts, fiduciaries, partnerships, and tax-option (S) corporations are required to give Wisconsin Schedules 2K-1, 3K-1 or 5K-1 to their beneficiaries, partners, or shareholders and to the department as part of the filing of the entity's tax return. If an entity fails to provide a schedule or provides an incomplete or incorrect schedule, the entity may be subject to a $50 penalty for each schedule. This penalty is in addition to any late filing fee that may be imposed for the entity's late-filed Wisconsin Form 2, 3, or 5S. However, the department shall waive the penalty if the person shows the department that a violation resulted from a reasonable cause and not from willful neglect.

Examples of when the $50 penalty may apply:

1) Trust has two beneficiaries, one is a Wisconsin resident and the other is a Florida resident. Trust files a timely Wisconsin Form 2 with two Schedules 2K-1 attached to the return. Trust received income from a partnership that consisted of $1,000 of ordinary business income and $100,000 of net rental real estate income, all of which was derived in Wisconsin. The trust has no expenses of its own and distributes the entire $101,000 to its beneficiaries. The Schedules 2K-1 report the $1,000 of ordinary business income, but do not report the $100,000 of net rental real estate income. Trust may be subject to a $100 penalty ($50 x 2 violations) for issuing incomplete or incorrect Schedules 2K-1.

2) Corporation is owned by three shareholders. Corporation timely files Wisconsin Form 5S and provides each of its shareholders with a Schedule 5K-1. However, Corporation does not provide timely Schedules 5K-1 to the department. Corporation may be subject to a $150 penalty ($50 x 3 violations) for not timely filing Schedules 5K-1 with the department.

Withholding Tax

Withholding Tax Update Available

The December 2016 *Withholding Tax Update* has been posted to the department's website. Articles include:

- What's New
- Current Withholding Tax Rates Continue for 2017
- Reporting by Financial Institutions and Insurance Agencies
- Wage and Information Return Reporting Requirements
- Data Exchange Program
- Filing Frequency Changes
- Single-Member LLCs - Are You Registered Correctly?
- Electronic Filing Reminder
- Filing and Payment Options
- Extensions
- Amended Annual Reconciliation (WT-7)
- Election Worker Exemption from Income Tax Withholding
- W-2 Preparation Guidance for Employers
- Tips or Gratuities Received From Customers
- New Hire Reporting Requirement
- Employees Claiming Exemption From Withholding
- Withholding Lock-in Letters
- Reciprocity Agreements
- Retirement and Pension Payments Exempt from Income Tax Withholding
- *My Tax Account* Webinars
- Withholding Tax Electronic Mailing List
- Where to Direct Questions

Sales/Use Tax

New Tax Rates for 2017

The following local taxes have been adopted for 2017:

- Effective January 1, 2017 – Sheboygan County Tax
- Effective January 1, 2017 – City of Rhinelander Premier Resort Area Tax
- Effective April 1, 2017 – Kewaunee County Tax

See *Wisconsin Tax Bulletin* 195 for more information.

New Occasional Sale Standards for Nonprofit Organizations

Beginning January 1, 2017, the standards for determining whether a nonprofit organization's sales qualify for the occasional sales exemption have changed.

Standard 1 **-** A nonprofit organization's sales of normally taxable products and services are exempt from sales tax if either of the following applies:

- The sales occur on **75 days** or less for the year, or
- If the receipts from such sales are **$50,000** or less for the year.

Under prior law, these amounts were 25 days and $25,000. **Note:** Even if Standard 1 is met, the sales are still taxable at an admission event where "entertainment" is provided, unless Standard 2 is met.

Standard 2 **-** A nonprofit organization's sales of normally taxable admissions to an event involving entertainment, including its event sales of normally taxable products and services, are exempt from sales tax if the payment for entertainment does not exceed **$10,000**. Under prior law, this amount was $500.

"Entertainment," for the purposes of this exemption, means entertainment provided at an admission event by all persons or groups who are paid in the aggregate more than $10,000 per event by all persons for performing, or as reimbursement of expenses or for prize money.

Regardless of whether the standards above are met, the occasional sale exemption does not apply:

- To bingo receipts
- If the nonprofit organization holds or is required to hold a seller's permit

For additional information regarding this exemption, see:

- Fact Sheet 2106, *Occasional Sale Exemption for Nonprofit Organizations*
- Publication 206, *Sales Tax Exemptions for Nonprofit Organizations*`

Snowplowing Services Are Not Taxable

Snowplowing or sanding and salting roads, sidewalks, or parking lots are not services that are subject to sales tax. The service provider is the consumer of any property (e.g., salt, sand) used in providing such services and is liable for sales or use tax on its purchase of such property.

Example 1: A person contracts with Company to have their driveway and parking lot plowed and sanded during the winter months. Company charges the person by the hour. No part of the charge by Company is subject to sales tax. Company must pay Wisconsin sales or use tax on its purchase of the sand used in providing the service.

Example 2: A person contracts with Company to have their driveway and parking lot plowed and salted during the winter months. Company charges the person based on the amount of salt used. No part of the charge by Company is subject to sales tax. Company must pay Wisconsin sales or use tax on its purchase of the salt used in providing the service.

VW Court Settlement – Sales and Use Tax Treatment

Volkswagen (VW) has reached settlements with federal and California regulators in which VW has agreed to provide cash payments to owners of certain VW and Audi diesel vehicles. The following tax treatment information will be helpful to owners affected by this settlement.

Selling Car Back to VW – If an owner chooses the buyback option, the owner is selling his or her vehicle to the manufacturer.

- The owner's sale of the vehicle to VW is not subject to sales tax.
- No refund of the tax paid on the original sale/purchase of the vehicle may be claimed by VW, the dealer, or the owner.
- If an owner uses the money received from VW to purchase another vehicle from a dealer, no deduction from the dealer's sales price is allowed for a trade-in allowance, because the vehicle is not traded in to the dealer. In other words, the full purchase price of the new vehicle is subject to tax.

Keeping the Car and Receiving Cash and Emissions Modification – There are no sales tax implications to the owner, because no sale is taking place.

Questions about the settlement compensation, should be directed to the attorneys who negotiated the agreement or to the Federal Trade Commission:

- Class counsel can be reached at info@vwclasscounsel.com or 1-800-948-2181.
- The Federal Trade Commission's online resource is available at https://www.consumer.ftc.gov/blog/vw-owners-get-facts.

Proper Documentation Needed for Exempt Cash Sales

In order for a seller to be relieved of its sales tax liability on a taxable sale, the seller must obtain a fully completed exemption certificate from the customer within 90 days of the sale. Therefore, the seller's records for sales of taxable products and services that are not taxed must include identifying customer information, along with a properly completed exemption certificate. This is true for cash sales, as well as noncash sales. A seller is not relieved of its sales tax liability on exempt cash sales that cannot be supported with customer information and a corresponding exemption certificate.

Total Period Sales Must Be Reported on Your Sales Tax Return

Line 1 of Form ST-12, *Wisconsin Sales and Use Tax Return*, requires a taxpayer to enter the total amount of all sales made during the period, regardless of whether the sales are taxable or exempt. Nontaxable or exempt sales are removed on lines 2 through 5 of the sales tax return.

During an audit, taxpayers are often requested to reconcile any differences in gross sales reported between their sales tax return and their income/franchise tax return. Unreconciled differences may lead to audit adjustments.

Make sure to report total sales on the sales tax return and reconcile any differences between the sales tax return and income/franchise tax return to avoid unnecessary delays or adjustments during an audit.

Statistical Sampling in Sales and Use Tax Audits

Wisconsin law authorizes the Wisconsin Department of Revenue to determine a taxpayer's correct sales and use tax liability during an audit by sampling records or data. The use of sampling, instead of reviewing all records, saves time and resources for both the taxpayer and the department. Sampling means selecting representative items from a total population of items, examining those selected items, and drawing a conclusion about the entire population based on the examination of the selected items. A sample conducted by the department may be statistical or non-statistical. This article provides information about statistical sampling.

What is statistical sampling?

In a statistical sample, the sample is randomly selected and probability theory is used to evaluate the sample results. This provides some benefits not associated with non-statistical sampling including: eliminating bias by ensuring that all items in a population have an equal chance to be selected for review and providing the ability to estimate the sample size and calculate the estimated amount of error (or uncertainty) associated with the sample. In addition, statistical sampling is approved and recommended by the American Institute of Certified Public Accountants (AICPA).

When is statistical sampling appropriate?

The auditor and computer audit specialist (CAS) assigned to the audit will determine if a statistical sample is appropriate considering: sampling method used in a prior audit; volume of records; availability of records maintained in an electronic-readable format; and type of software used for recording sales and purchases. In most cases, if a prior audit included a statistical sample, the current audit will include a statistical sample. In all cases, the auditor and CAS will work with the taxpayer to determine the most efficient method to conduct the audit.

Why use statistical sampling?

In the past five years, the department's use of statistical sampling has more than doubled. This is due in part to increased use of electronic records and data by taxpayers. This has benefited both the taxpayer and the department since the use of statistical sampling is generally more accurate and efficient than non-statistical sampling methods.

In an effort to become even more efficient, the department asked a nationally recognized sampling expert to review its statistical sampling program. The sampling expert determined the department has an excellent statistical sampling program that uses sound and reliable statistical sampling techniques that produce accurate samples. This includes the use of stratified random sampling which produces smaller sample sizes than pure random sampling. While this is great news, the sampling expert recommended a few changes to improve overall efficiency. These changes have been implemented along with data analytics and sampling software into an improved statistical sampling program.

How will the department improve efficiency and maintain accuracy?

With the implementation of the improved statistical sampling program, the department expects to reduce sample sizes while maintaining accuracy. This is possible by increasing the number of sampled strata in an audit and decreasing the minimum number of items selected in each stratum.

Sample sizes can be further reduced by taking time at the beginning of the audit to verify data completeness and to analyze data that will be used to produce the sample. The auditor and CAS will work with the taxpayer to ensure the data used to produce the sample includes only items that are relevant in a sales and use tax audit. This process, which includes a thorough analysis of accounts, vendors, and customers, refines the sample population and is critical to producing the minimum necessary sample size while maintaining accuracy.

The department will also request taxpayers to produce all source documents for items selected in a sample at one time. Source documents in electronic form are preferred. These combined changes will reduce the time it takes to complete an audit for both the taxpayer and the department.

Additional option to increase efficiency

Generally, the larger the sample, the more precise the sample. If the taxpayer believes the sample is too large with the changes described above, the taxpayer may enter a binding agreement with the department for a sample selection outside of the department's standards. The agreement binds the taxpayer and the department to accept a less precise sample to reduce sample size and expedite the audit. Please contact the assigned CAS or your auditor for more information.

For more information about statistical sampling, see Publication 516, *Statistical Sampling*.

Common and Contract Carrier Exemption – LC, IC, and MC Numbers

A motor truck, truck tractor, road tractor, bus, trailer, or semitrailer sold to a common or contract carrier is exempt from Wisconsin sales and use tax if the carrier uses the vehicle exclusively in common or contract carriage. (Section 77.54(5)(b), Wis. Stats. (2015-16)) The exemption also applies to accessories, attachments, supplies, parts, and services for such vehicles and equipment.

Under Department of Transportation rules, an LC, IC, or MC number issued by the appropriate federal or state agency is required to operate as a common or contract carrier. However, merely having an LC, IC, or MC number does not fulfill the requirements of the sales and use tax exemption. In order to qualify for the exemption, the vehicle or equipment must be used exclusively in common or contract carriage. For example, a truck that is used by a company to transport its own property is not used exclusively in common or contract carriage and does not qualify for exemption.

Additional information about the common and contract carrier exemption is provided in the tax release titled "Common and Contract Carrier Exemption," which was published in *Wisconsin Tax Bulletin* 186.

New Sales and Use Tax Form; Contractor Statement of Building Materials Purchased

A construction contractor may purchase building materials exempt from sales and use tax if the building materials:

1) are used in fulfillment of real property construction activity,
2) are transferred to a qualifying entity, and
3) become part of a qualifying facility located in Wisconsin that is owned by the entity.

Form S-227, *Contractor Statement of Building Materials Purchased*, was developed to help contractors document these purchases.

A qualifying entity is a Wisconsin county, city, village, town, school district, county-city hospital, sewerage commission, metropolitan sewerage district, joint local water authority, or qualifying nonprofit organization.

A qualifying facility is an athletic park, athletic field, building, parking garage, parking lot, shelter, storm sewer, water supply system, sewerage and waste water treatment facility.

Highways, streets and roads are not qualifying facilities, even if located within a facility.

This exemption went into effect for contracts entered into on or after January 1, 2016. For more information, see *Wisconsin Tax Bulletin 192*, pages 19-21.

Contractor Materials Used Outside Wisconsin Q&A

Q If a contractor uses materials in a real property construction activity outside Wisconsin, does the contractor still owe Wisconsin sales or use tax on its purchase of materials?

A Yes, if the materials were purchased, stored, used, or consumed in Wisconsin, the contractor is liable for Wisconsin sales or use tax on its purchase price of the materials. A contractor is the consumer of all materials that are used in real property activities. The contractor is required to pay Wisconsin sales and use tax on its purchases of materials that are stored, used, or consumed in Wisconsin, even if the materials are used in real property construction activities outside of Wisconsin.

Filing A Buyer's Claim for Refund of Sales Tax

A buyer who overpaid sales tax to a seller may request a refund of the overpaid tax from the seller. If the tax is greater than $50 (with certain exceptions), the buyer may file a claim for refund directly from the Department of Revenue (a) electronically using *My Tax Account*, or (b) by filing a Form S-220, *Buyer's Claim for Refund of Wisconsin State, County, and Stadium Sales Taxes* (also known as Form BCR), with Form S-220a, (also known as Schedule P).

Helpful tips to expedite the processing of your claim:

- Include a Schedule P for each seller to whom sales tax was paid in error. Each Schedule P should be properly completed, with the seller having completed and signed section 2 of the schedule, and the list of purchases on the reverse side is completed with all information. A spreadsheet may be used to list the purchases, but all of the requested information must be included for each purchase.
- Legible copies of invoices or billing statements showing the amount of sales tax paid to the seller must be included, along with proof of your payment.
- The correct seller identity must be provided, including the seller's correct business name and federal employer identification number (FEIN) or Wisconsin tax account number (WTN), if known.

Additional information is available in the Common Questions for Sales and Use Tax, Answer 6.

Tax Seminars - Wisconsin/Minnesota Sales and Use Tax Basics

The Wisconsin and Minnesota Departments of Revenue will present a series of free sales and use tax seminars in March and April 2017. The seminars will provide an overview of Minnesota and Wisconsin sales and use tax laws for companies that do business in both states. They are designed for business owners, bookkeepers, purchasing agents and accountants who need a working knowledge of each state's laws and how to meet their obligations. Topics covered will include:

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

Seminar dates, times, and locations, as well as registration information, is available on the Wisconsin Department of Revenue's Sales and Use Tax Training web page.

Other

Update to Publication 111 on Private Letter Ruling Requests

Publication 111, *How to Get a Private Letter Ruling From the Wisconsin Department of Revenue*, was recently updated. A clarification was made to the list of general areas where the department ordinarily will not rule. These are areas in which a ruling will not be issued unless there are unique and compelling reasons that justify its issuance. The language used in the list has been changed to make clear that the department ordinarily will not rule on a request of any issue that is in the process of an audit.

Do-It-Yourself, Claim Your Unclaimed Property Q&A

Q Do I Need To Hire an Heir Finder or Locator to Claim My Unclaimed Property?

A No. You can search for unclaimed property and also file a claim on the department's website at the Unclaimed Property page. Please see the department's unclaimed property common questions page for additional information.

Previously Mailed Letters Now Available Online

The Wisconsin Department of Revenue has a new process through our website that will allow taxpayers, power of attorneys, and third-party preparers to print or view copies of most letters the department previously mailed to the taxpayer.

What if you call customer service and discover you or your client does not have a letter we previously mailed?

1. Request the letter ID from customer service.
2. Go to our website, revenue.wi.gov, click on the "Individuals" tab, and under the "Online Services" section click "Print/View Letter".
3. You will need to provide all of the following information:
    a. The first and last name of the taxpayer,
    b. The taxpayer's ID type and number (generally an SSN), and
    c. The letter ID provided by customer service.
4. If all the required information matches with our system, you will be able to click on the letter ID link to print or view the letter.

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

Officer Liability. *Richard Heckel and Robert Heckel II vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 4, 2016).

The issue is whether Richard and Robert Heckel (the Heckels) are personally liable for sales tax collected by businesses they owned and operated, which were not remitted to the Department of Revenue.

The Heckels owned 100% of the stock of three businesses. Although the businesses had been successful for nearly two decades, beginning in 2007, the Heckels fell into default shortly after expanding. The Heckels' loan relationship with the bank was guided by a succession of forbearance agreements. Through these agreements, the bank provided very short-term loans designed to keep the businesses going. Rather than foreclosing, the bank extended credit weekly to keep the businesses in operation. The Heckels initially believed that the arrangement with the bank would ensure that timely payments would be made to the bank and for Wisconsin sales tax.

In conjunction with the forbearance agreements, the bank required that all inflows be deposited into an account which the bank could sweep completely dry. This agreement allowed the bank to take all inflows, including the sales taxes collected on sales, to satisfy the bank's loan to the owners. The tax funds were comingled in the deposits to the cash collateral account, and the bank took all of it for its own. The bank required the Heckels to hire a consultant. Credible evidence showed that the bank and consultant were the primary decision-makers as to the approved lists of payables. In 2008, the Heckels questioned the exclusion of the taxes from the lists but did sign off on them. They (erroneously) believed they had no choice but to go along with what the Bank directed. Going against the Bank may have resulted in an earlier demise of the business, but the owners' duty was to pay the tax.

The businesses closed as the bankruptcy progressed. In the bankruptcy, the department filed a notice of claim for its March - June sales tax due from the Heckels. Although the department filed a notice of claim for the March - June taxes, when the bankruptcy settled, the department was paid only for its post-petition taxes (July-October). The bankruptcy did not discharge these unpaid tax claims. Had the Heckels wanted to object to the bankruptcy settlement, they could have done so, but they did not file an objection with the court.

In officer liability cases, the department must first show the presence of three elements for an officer to be held liable for unpaid sales tax: the individual must have authority to pay, he or she must have had a duty to pay, and there must have been an intentional breach of that duty. The trial focused primarily on the first element, authority to pay. If indeed the Heckels had authority to pay the taxes, then they had a duty to pay the taxes. The fact other creditors were paid while taxes were owed to the department would be strong evidence of an intentional breach of that duty. The Heckels dispute the general assumption that business owners and executive officers have the authority and duty to pay taxes.

The Heckels point to their unsuccessful attempt to pay the sales taxes in July 2008 as evidence to negate the third prong, intentional breach of duty to pay the taxes. While they did attempt to make a payment in July 2008, the department did not actually get paid. After the bank swept the Heckels' account clean to put toward its own loans, the checks to the department bounced.

The ill-fated timing of the sweep, however, does not negate the fact that, as of the date on which the checks were written, the sales taxes for the various periods were already delinquent.

The Commission concluded that the Heckels had authority and duty to pay the sale tax, and that the Heckels breached that duty by making payments to creditors other than the department. The Commission ruled that the Heckels are responsible persons under the law and are liable for the payment of unpaid sales tax for the periods at issue.

When a taxpayer collects sales taxes, that money is not theirs to use. It is to be held in trust until remitted to the state. The taxpayer cannot use that money to keep the business going or for any other noble purpose. Even if paying the taxes over to the department brings hardship and leaves little hope of paying other creditors, the taxpayer still has no legal alternative. From the outset, the Heckels should not have agreed to deposit the sales taxes into the cash collateral account which the Bank swept. That money was not theirs to bargain away.

Taxable services – processing tangible personal property. *Tetra Tech EC, Inc., and Lower Fox River Remediation LLC. vs. Wisconsin Department of Revenue* (Court of Appeals, December 28, 2016). This is a judicial review of the Wisconsin Tax Appeals Commission decision dated December 30, 2014, which was affirmed by the Brown County Circuit Court on August 20, 2015. See *Wisconsin Tax Bulletin 187*, page 9, and *Wisconsin Tax Bulletin 190*, page 9, for summaries of the Wisconsin Tax Appeals Commission and Brown County Circuit Court's decisions.

The issue in this case is whether Stuyvesant Dredging, Inc.'s ("SDI") services of separating material dredged from the Fox River into separate components (i.e., sand, water, PCB-contaminated silt) performed for Tetra Tech EC, Inc. ("Tetra Tech") and Lower Fox River Remediation LLC ("LLC") is processing of tangible personal property and subject to Wisconsin sales tax. The taxpayers argued that this service could not be taxable as "processing," because the statute did not specifically use the word "separating." The taxpayers also argued that, by failing to include sec. 77.52(2)(a)11., Wis. Stats., in its notices of determination, the department violated the requirement in sec. 77.59(3), Wis. Stats., that the "determination of the tax liability of a person" "shall be in writing."

The Court held that the Commission's interpretation of "processing" was reasonable and, therefore, the services provided by SDI are subject to Wisconsin sales and use tax. The Court stated that taxpayers could not avoid tax by claiming that the Legislature had to be more specific than "processing." The Court stated that if there was not room for interpretation any time a taxable service was described using words not explicitly found in sec. 77.52(2)(a), Wis. Stats., it would allow a taxpayer to avoid Wisconsin's sales and use tax and that would be equal to "tax avoidance by dictionary."

The Court also agreed with the Commission that sec. 77.59(3), Wis. Stats., only requires the notice of determination to "be in writing" and to "specify whether the determination is an office audit determination or a field audit determination." It does not preclude the department from raising an alternative legal basis for taxation simply because it was not first asserted in the department's written notices. Additionally, the Court noted that a taxpayer is allowed to raise new issues before the Commission even after filing petitions, and forbidding the department to do the same would be inappropriate.

The taxpayers have appealed this decision.