



Wisconsin Department of Revenue

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New Tax Laws

Income/Franchise Due Date Changes Conform with Federal Deadlines

(2017 [Wis. Act 2](#), repeals 71.775(4)(a)1. and 71.775(4)(a)2.; renumbers and amends 71.775(4)(a)(intro.); amends 71.20(1), 71.24(1), 71.24(1m), 71.24(9)(a), 71.29(8)(a), 71.44(1)(a), 71.44(1m), 71.44(4)(b), 71.84(2)(a) and 71.84(2)(c); and creates 71.775(4)(fm)3., affecting 77.59, effective March 11, 2017).

On Thursday, March 9, Governor Scott Walker signed 2017 Wisconsin Act 2 which aligns Wisconsin due dates with federal due dates for corporate and partnership income and franchise tax returns, as well as estimated tax payments. The charts that follow show the due dates for 2016 tax returns and 2017 estimated tax payments affected by the Act.

2016 Wisconsin Tax Return Due Dates	
Form	Due Date ⁴
Form 2: Estates and Trusts Unextended Due Date ¹ Extended Due Date	April 18, 2017 October 2, 2017
Form 3: Partnership Unextended Due Date ¹ Extended Due Date ¹	April 18, 2017 ⁵ September 15, 2017
Form 4/6: Corporation Unextended Due Date Extended Due Date ²	April 18, 2017 November 15, 2017
Form 4/6: Corporation (fiscal year end 6/30) Unextended Due Date Extended Due Date ²	September 15, 2017 May 15, 2018
Form 4/6: Corporation (fiscal year) Unextended Due Date Extended Due Date ²	15th day of 4th month 15th day of 11th month
Form 4T: Exempt Corporation Unextended Due Date ¹ Extended Due Date ¹	May 15, 2017 December 15, 2017
Form 4T: Exempt Fiduciary Unextended Due Date ¹ Extended Due Date	April 18, 2017 October 16, 2017
Form PW-1: Filed by Partnerships Unextended Due Date Extended Due Date ³	April 18, 2017 ⁵ October 16, 2017

Corporate and Partnership Tax Return and Estimated Tax Due Dates, continued from page 1

2017 Corporate Estimated Tax Due Dates⁴	
Calendar or Fiscal Year Beginning on or After January 1, 2017, <u>Exception:</u> Fiscal Year Beginning in April 2017	Fiscal Year Beginning in April 2017
April 18, 2017 (15th day of the 4th month)	June 15, 2017
June 15, 2017 (15th day of the 6th month)	September 15, 2017
September 15, 2017 (15th day of the 9th month)	December 15, 2017
December 15, 2017 (15th day of the 12th month)	March 15, 2018

- ¹ For fiscal filers, substitute the 15th day of the appropriate month.
- ² Corporations have an automatic seven-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.
- ³ The Wisconsin statutes provide an automatic seven-month extension.
- ⁴ If the due date falls on a holiday or weekend, the due date is the next business day.
- ⁵ The Act changes the due date to March 15, however since the Act was signed close to the due date, the department will accept as timely 2016 returns and payments filed and paid by the due date under prior law (April 18, 2017).

Income/Franchise Due Date Changes Affect Sales and Use Tax Claims for Refund

(2017 [Wis. Act 2](#), repeals 71.775(4)(a)1. and 71.775(4)(a)2.; renumbers and amends 71.775(4)(a)(intro.); amends 71.20(1), 71.24(1), 71.24(1m), 71.24(9)(a), 71.29(8)(a), 71.44(1)(a), 71.44(1m), 71.44(4)(b), 71.84(2)(a) and 71.84(2)(c); and creates 71.775(4)(fm)3., affecting 77.59, effective March 11, 2017).

The changes in Wisconsin corporate and partnership income and franchise tax return due dates affect due dates for sales and use tax claims for refund because the statute of limitations are based on the unextended due date of corresponding income or franchise tax return. A buyer generally has four years from the unextended due date of the buyer's franchise or income tax return to file a claim for refund of sales and use taxes.

Exception: Due dates for corporations (filing Form 4 or Form 6) with a fiscal year end June 30, did not change.

Income/Franchise Tax

Electronic Filing Requirement for Wisconsin Composite Income Tax Returns

For tax years beginning on or after January 1, 2017, Form 1CNP, *Composite Wisconsin Individual Income Tax Return*, and Form 1CNS, *Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders*, are no longer accepted if filed on paper. These forms must be filed electronically (e.g., [My Tax Account](#) or Modernized e-File (MeF)).

Apportionment for Partnerships and Partners

A partnership engaged in a unitary business both in and outside Wisconsin is a "multistate partnership". A multi-state partnership will generally use [Form A-1](#), *Wisconsin Apportionment Data for Single Factor Formulas*, or [Form A-2](#), *Wisconsin Apportionment Data for Multiple Factor Formulas*, to determine the portion of income attributable to Wisconsin.

The information the partnership provides to a partner on [Schedule 3K-1](#), *Partner's Share of Income, Deductions, Credits, etc.*, to report their share of income depends on the type of partner:

- A. **Individual:** A partner that is a nonresident individual reports his or her share of the partnership income after apportionment. The partnership reports this "Wis. source amount" in column (e) on Schedule 3K-1.
- B. **C-Corporation:** A partner that is a C-Corporation reports its share of income, before apportionment, from the partnership. The partnership reports this amount in column (d), "Amount under Wis. law", of Schedule 3K-1. The partnership must also report the corporation's share of the partnership's apportionment factors in Part IV of Schedule 3K-1, *Partner's Share of Apportionment Factors*. The corporation combines the amounts from Part IV with its own apportionment factors on its Form A-1 or Form A-2.
- C. **Partnership or Tax-Option (S) Corporation:** A partner that is a partnership or tax-option (S) corporation reports its share of income, before apportionment, from the partnership. The partnership reports this amount in column (d), "Amount under Wis. law", of Schedule 3K-1. The partnership must also report the partner's share of the partnership's apportionment factors in Part IV of Schedule 3K-1, *Partner's Share of Apportionment Factors*. The partnership or tax-option (S) corporation partner combines the amounts from Part IV with its own apportionment factors on its Form A-1 or Form A-2.

Example: Partnership Z is a unitary partnership consisting of four partners:

- Individual A is a 30% partner and a resident of Illinois.
- Individual B is a 10% partner and a resident of Wisconsin.
- Partnership C is a 20% partner.
- C-Corporation D is a 40% partner.

Partnership Z has \$100,000 of federal ordinary business income, no Wisconsin adjustments, and sales of tangible personal property as follows:

Wisconsin Sales (has nexus)	\$5,000,000
Illinois Sales (has nexus)	<u>\$4,000,000</u>
Total Partnership Sales	\$9,000,000

Partnership Z's Wisconsin apportionment percentage is 55.5556% ($\$5,000,000 \div \$9,000,000$).

Ordinary business income (loss) on line 1 of each partner's 3K-1 is as follows:

	(b) Federal Amount	(c) Adjustment	(d) Amount under Wis. law	(e) Wis. source amount (see instructions)
Individual A	\$30,000	\$0.00	\$30,000	\$16,668 ¹
Individual B	\$10,000	\$0.00	\$10,000 ²	N/A
Individual C	\$20,000	\$0.00	\$20,000 ³	N/A
Individual D	\$40,000	\$0.00	\$40,000 ⁴	N/A

1. Individual A's Wisconsin sourced income is \$16,668 ($\$100,000 \times 30\% \times 55.5556\%$). No information is entered in Part IV of Schedule 3K-1. Individual A includes \$16,668 of Wisconsin income on Form 1NPR, line 11.
2. Individual B's income of \$10,000 is not apportioned because resident individuals conducting business within and outside Wisconsin are taxed on their worldwide income. All the income is included on Form 1.
3. Partnership C's income of \$20,000 ($\$100,000 \times 20\%$) is passed-through to its partners. If Partnership C is required to apportion its income for its nonresident partners, the computation on Form A-1 or Form A-2 would include sales from Partnership Z as follows:

- Wisconsin sales of \$1,000,000 ($\$5,000,000 \times 20\%$).
- Total company sales of \$1,800,000 ($\$9,000,000 \times 20\%$).

Partnership Z issues Schedule 3K-1 to Partnership C and includes C's share of Partnership Z's apportionment factors in Part IV of the Schedule 3K-1.

4. Corporation D's income of \$40,000 ($\$100,000 \times 40\%$) is reported on Wisconsin Form 4 or 6. The computation on Form A-1 or Form A-2 would include sales from Partnership Z as follows:
- Wisconsin sales of \$2,000,000 ($\$5,000,000 \times 40\%$).
 - Total company sales of \$3,600,000 ($\$9,000,000 \times 40\%$).

Partnership Z issues Schedule 3K-1 to Corporation D and includes D's share of Partnership Z's apportionment factors in Part IV of the Schedule 3K-1.

Assume Corporation D has \$125,000 of income not related to Partnership Z and has the following sales of tangible personal property:

Wisconsin Sales (has nexus)	\$ 8,000,000
Illinois Sales (has nexus)	<u>\$ 2,000,000</u>
Total Corporate Sales	\$10,000,000

Corporation D would compute its apportionment as follows:

	Wisconsin	Total Company
Corporation D Sales	\$ 8,000,000	\$10,000,000
Sales from Partnership Z	<u>\$ 2,000,000</u>	<u>\$ 3,600,000</u>
Total Sales for Apportionment	\$10,000,000	\$13,600,000

Corporation D's Apportionment Percentage is 73.5294% ($\$10,000,000 \div \$13,600,000$).

Corporate D's Net Income	\$ 125,000
Income from Partnership Z	<u>\$ 40,000</u>
Corp. D's Net Income Before Apportionment	\$ 165,000 ¹
Apportionment Percentage	<u>73.5294%</u>
Wisconsin net apportioned income	\$ 121,324 ²

¹ If Corporation D is a tax-option (S) corporation, this amount is reported in column (d) of Schedule 5K-1 for its resident shareholders.

² If Corporation D is a tax-option (S) corporation, this amount is reported in column (e) of Schedule 5K-1 for its nonresident shareholders.

General

Completing and Submitting Form A-222, Power of Attorney

A power of attorney (POA) is a representative authorized to perform certain acts on behalf of the taxpayer and to receive and inspect certain tax information. Please complete all of the following items on [Form A-222, Power of Attorney](#), prior to mailing or faxing it to the department:

- Taxpayer's name
- *One* of the following for the taxpayer:
 - Social Security Number
 - Federal Employer Identification Number
 - Wisconsin Tax Account Number
 - Individual Taxpayer Identification Number (ITIN)
- Taxpayer's complete address
- Taxpayer's telephone number
- POA's name
- POA's telephone number
- If the "Attorney in fact" box is checked in Part 5, the POA's complete address
- Tax types covered
- Periods covered. This must be a defined period with a *beginning* and an *end*. For example, "2011 to 2014" or "FYE 2011 to FYE 2014".
- Taxpayer's signature

If any of the items above are incomplete, the department may ask you to obtain the additional information and/or submit a new form.

Please fax or mail the Form A-222 to the auditor or agent identified on the letter or notice sent to the taxpayer from the department.

Sales/Use and Excise Tax

Kewaunee County, Tax Effective April 1, 2017

Beginning April 1, 2017, the county sales and use tax will be in effect in Kewaunee County. This brings the number of counties that have adopted the 0.5% county tax to 64.

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

Sales or Use Tax on Vehicles Purchased Outside Wisconsin

A motor vehicle purchased out of state and titled and registered in Wisconsin is subject to Wisconsin sales or use tax, in the same manner as a vehicle purchased in Wisconsin (unless an exemption applies).

However, if a vehicle purchased in another state, the District of Columbia, or the Commonwealth of Puerto Rico is subject to sales tax in that jurisdiction, a credit against Wisconsin sales or use tax due is allowed for sales tax paid to that jurisdiction, up to the amount of Wisconsin tax due (sec. 77.53(16), Wis. Stats.). The exemption may be claimed by noting the Tax Paid to Another State exemption on the Department of Transportation registration form (Form MV-1) and providing proof of payment of the tax. This provision does not apply to tax paid to a foreign country or to territories organized by congress (e.g., Guam).

If the amount of tax paid to the other jurisdiction is less than the amount of Wisconsin tax due, the difference must be paid as Wisconsin tax. However, there is no refund or credit allowed for tax paid to the other jurisdiction in excess of Wisconsin tax due.

The Department of Transportation is required to collect use tax along with titling and registration fees if no exemption applies. Therefore it is important to note any applicable exemption when completing the Form MV-1. In order to obtain a refund of Wisconsin sales or use tax paid in error, you must file a refund claim with the Department of Revenue. The claim must be submitted in writing and should include the following:

- Brief description of the transaction and reason for the refund
- Legible copy of the Form MV-1. Be sure that the VIN is legible.
- Proof of remittance of the tax.

Claims should be mailed to:

Wisconsin Department of Revenue
Mail Stop 5-144
PO Box 8906
Madison, WI 53708-8906

Nonresident Exemption for Boats Berthed in Wisconsin Boundary Waters

Wisconsin use tax is not imposed on the storage, use, or other consumption of a boat in Wisconsin that is owned by a nonresident if all of the following conditions are met:

- The boat is purchased in a state contiguous with Wisconsin (i.e., Illinois, Iowa, Michigan, or Minnesota).
- The boat is purchased by a person domiciled in that contiguous state in which the purchase occurred.
- The boat is berthed in Wisconsin boundary waters adjacent to the state of domicile of the purchaser.
- The boat is purchased in a transaction that is an exempt occasional sale under the laws of the state in which the purchase is made.

This exemption is provided in sec. 77.53(17m), Wis. Stats.

Facts and Question 1: An individual, domiciled in Minnesota, purchases a boat in Minnesota. The individual berths the boat at a marina on the shores of the Mississippi River in Wisconsin. The sale of the boat was exempt from Minnesota sales or use tax as an occasional sale. Is the boat subject to Wisconsin use tax because it is stored, used, or otherwise consumed in Wisconsin?

Answer 1: No. Since all of the following apply, the boat is exempt from Wisconsin use tax under sec. 77.53(17m), Wis. Stats.:

- The boat was purchased in a state contiguous with Wisconsin (i.e., Minnesota) by a person who was domiciled in Minnesota.
- The boat is berthed in Wisconsin boundary waters adjacent to that state (i.e., Mississippi River).
- The sale of the boat was exempt from Minnesota sales and use tax as an occasional sale.

Facts and Question 2: Assume the same facts as in *Facts and Question 1*, except that the boat was purchased in Illinois. Is the boat subject to Wisconsin use tax?

Answer 2: Yes. The exemption from use tax in sec. 77.53(17m), Wis. Stats., does not apply, because the purchaser of the boat is not domiciled in Illinois, the state contiguous to Wisconsin where the boat was purchased.

Facts and Question 3: Assume the same facts as in *Facts and Question 1*, except that the boat was purchased in Minnesota by a resident of New York. Is the boat subject to Wisconsin use tax?

Answer 3: Yes. The exemption from use tax in sec. 77.53(17m), Wis. Stats., does not apply, because the purchaser of the boat is not domiciled in a state contiguous to Wisconsin.

Facts and Question 4: Assume the same facts as in *Facts and Question 1*, except that the boat is berthed at a marina on the shores of Lake Michigan in Wisconsin. Is the boat subject to Wisconsin use tax?

Answer 4: Yes. The exemption from use tax in sec. 77.53(17m), Wis. Stats., does not apply, because the boat is not berthed in Wisconsin boundary waters adjacent to the state of domicile (i.e., Lake Michigan is not adjacent to Minnesota).

Are Moving Services Taxable?

The service of moving tangible personal property from one location to another, by itself, is not a service subject to Wisconsin sales and use tax. However, charges for disassembling, reassembling, and repair services to tangible personal property are taxable.

Disassembly and reassembly charges that are provided with the sale of moving services are part of the sales price of the moving services if (a) the primary objective of the customer is to have the property moved from one location to another, and (b) the disassembly and reassembly charges are not separate and optional charges to the customer.

The following examples illustrate the tax treatment of moving services:

Example 1: Contractor is hired by Roofing Company to move a pallet of shingles from the ground to a rooftop. No property is sold and no other service is performed by Contractor to Roofing Company. Contractor is providing a nontaxable service.

Example 2: Moving Company is hired to move Business' office equipment from its current location to a new office location across town. Moving Company moves file cabinets, copiers, printers, desks, chairs, and boxed office supplies. Moving Company charges Business for the amount of time and mileage it takes it to move the furniture across town. Moving Company is providing a nontaxable moving service and its charge to Business is not subject to Wisconsin sales and use tax.

Example 3: Moving Company is hired to move Business' office equipment from its current location to a new office location across town. Moving Company moves bookcases, desks, and other office furniture. Moving Company will, for a separate and optional fee, disassemble the furniture at the old location and reassemble the furniture at the new location to protect the furniture from damages. Business pays the additional fee for the additional care of its furniture. The charge for the moving services is not subject to sales tax. However, the separate and optional charge for disassembling and reassembling the furniture is subject to Wisconsin sales and use tax as a service to tangible personal property (i.e., the furniture).

Example 4: Same as *Example 3*, except that the charge for disassembly and assembly of furniture is not an optional fee. Moving Company's contract provides that Moving Company's employee will determine whether the furniture needs to be disassembled in order to effectively move the property. The employees disassemble the bookcase and desk and reassemble them after the move. Moving Company's invoice to Business shows a separate charge for the disassembly and reassembly of the bookcase and desk. Since the service of disassembling and reassembling the furniture was not an optional service, it is not a separate sale from the moving service. The primary purpose of the transaction is to move the furniture; therefore, the entire invoice (including the mandatory charge for the disassembly and reassembly services) is not taxable.

Example 5: Appliance Store sells a refrigerator to Customer. Customer may choose to pay an additional fee for delivery and installation (remove packaging, hookup water lines, etc.). The sale takes place when Customer receives the installed refrigerator; therefore, the total amount of the sale, including delivery and installation, is subject to sales tax.

How Is Fuel Taxed for Motorboats?

The motor vehicle fuel (excise) tax and sales and use tax on fuel used for operating motorboats in Wisconsin is dependent on the type of motorboat and the type of fuel.

Recreational Motorboat

Recreational motorboat means a motorboat used predominantly for the entertainment, amusement or recreation of the owner of the motorboat, whether or not it is used in a trade or business.

Fuel Type	Motor Vehicle Fuel Tax?	Sales and Use Tax?
Gasoline	Subject to Tax	Not Subject to Tax
Undyed Diesel Fuel	Subject to Tax	Not Subject to Tax
Dyed Diesel Fuel	Cannot be used in recreational motorboats	

Commercial Motorboat

A commercial motorboat is a motorboat predominantly used for business and otherwise not considered recreational (e.g., a charter fishing motorboat).

Fuel Type	Motor Vehicle Fuel Tax?	Sales and Use Tax?
Gasoline	Not Subject to Tax ¹	Subject to Tax ²
Undyed Diesel Fuel	Not Subject to Tax ¹	Subject to Tax ²
Dyed Diesel Fuel	Not Subject to Tax	Subject to Tax ²

¹ If fuel purchases for a commercial motorboat include the motor vehicle fuel tax (e.g., gasoline or undyed diesel), the owner of the motorboat can apply for a refund of the motor vehicle fuel tax. To claim a refund, the taxpayer must file Form [MF-001](#), *Fuel Tax Refund Claim*.

² **Exception** The following motorboats are exempt from sales and use tax on fuel purchases:

- Commercial vessels and barges of 50-ton burden or over, primarily engaged in interstate or foreign commerce or commercial fishing.
- Motorboats that have an owner and/or operator(s) holding a sport trolling license and are regularly employed in carrying persons for hire for sport fishing in and upon Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor and the Fox River from its mouth up to the dam at De Pere, any river or stream tributary of Lake Michigan or Green Bay from its mouth upstream to the first dam or lake, or any other river or stream tributary of Lake Michigan or Green Bay that is designated by the department.

Note

- Marinas in Wisconsin that sell motor fuel to boaters cannot offer for sale to owners of recreational motorboats fuel that does not include motor vehicle fuel tax (untaxed diesel fuel (dyed diesel) or untaxed gasoline). Dyed diesel fuel can be sold to owners of commercial motorboats.
- Federal law exempts from the motor vehicle fuel tax the use of diesel fuel in both recreational and commercial motorboats. Therefore, for federal purposes, both recreational and commercial motorboats may apply for a refund of motor vehicle fuel tax paid when undyed diesel is purchased.

For additional information see [Publication 307](#), *Motor Vehicle Fuel Tax Information*.

No Sales Tax on the Sale of Prescription Drugs

There has been no change in Wisconsin's sales and use tax exemption for prescription drugs.

Some Wisconsin residents have been receiving letters from insurance companies or pharmacies indicating that sales of prescription drugs will now be subject to sales tax. Although residents in other states may be affected by this change, Wisconsin residents are not affected.

Sales of drugs for the treatment of a human being are exempt from Wisconsin sales tax when the drugs are (a) prescribed by a person authorized to prescribe the drugs, and (b) dispensed on a prescription filled by a registered pharmacist in accordance with law. It does not matter if the drugs are purchased in a pharmacy or sent to the customer by mail. Co-payments for exempt drugs are also exempt from tax.

The sale of over-the-counter drugs (i.e., drugs that are not sold by prescription) continue to be subject to sales tax.



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:

Income and Franchise Tax

Computing the Manufacturing & Agriculture Credit in an Interest Charge–Domestic International Sales Corporation (IC-DISC)
W1648003 (p. 13)

✱ **W1648003** ✱

August 19, 2016

Type Tax: Income and Franchise Tax

Issue: Computing the Manufacturing & Agriculture Credit in an Interest Charge–Domestic International Sales Corporation (IC-DISC)

Statutes: Sections [71.26\(3\)\(t\)](#), [71.28\(5n\)](#), [71.30\(2\)](#), and [71.30\(5\)](#) Wis. Stats. (2013-14 updated through 2015 Wis. Act 392)

Re: How are commission expenses paid to, and dividend income received from, an Interest Charge-Domestic International Sales Corporation (IC-DISC) treated when computing the Wisconsin manufacturing and agriculture credit.

Dear Taxpayer:

We received your request for a private letter ruling dated April 11, 2016 in regards to accounting for commission expenses paid to, and dividend income received from, an IC-DISC when computing the Wisconsin manufacturing and agriculture credit for Company A. Although the request didn't specify the tax year(s), based on the Power of Attorney form included with the request, we will assume it is for taxable years 2013 through 2016.

BACKGROUND:

Company A, a Wisconsin tax-option (S) corporation, manufactures and sells products to customers within and without Wisconsin. Approximately XX% of the products are manufactured in Wisconsin on property assessed as manufacturing under [sec. 70.995, Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392). The remaining YY% are manufactured entirely outside Wisconsin.

During 20XX, Company A created a C-corporation organized under Wisconsin law which elected to be treated as an IC-DISC for federal tax purposes pursuant to [Internal Revenue Code \(IRC\) §992](#). The IC-DISC currently meets all federal requirements in order to operate as an IC-DISC. Company A pays a commission expense to the IC-DISC on qualified exports, and deducts the commission expense when computing ordinary income on the federal Form 1120-S. The IC-DISC distributes dividends back to Company A equal to the amount of commission expense paid. For federal purposes, Company A reports the dividend income and commission expense on Form 1120-S and the IC-DISC reports no taxable income. For Wisconsin purposes, the net income of the IC-DISC is combined and reported on Company A's Wisconsin corporate tax return - Form 5S.

QUESTION PRESENTED:

How should Company A treat the commission expense paid to, and dividend income received from, the IC-DISC when computing the Wisconsin manufacturing and agriculture credit?

ANSWER:

Assuming the IC-DISC is a paper corporation (as described in [WTB 70, page 22](#)), Company A's computation of qualified production activities income for purposes of computing the manufacturing and agriculture credit should not include the commission expenses paid to, nor the dividend income received from, the IC-DISC.

ANALYSIS:***Treatment of IC-DISC income:***

Wisconsin does not follow the federal treatment related to IC-DISC's.

- [Section 71.26\(3\)\(t\), Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides that the income of a corporation shall be computed under the internal revenue code, except sections 991 to 994, 995 as amended by section 802 of P.L. 98-369, and section 999 as amended by section 802 of P.L. 98-369 (relating to domestic international sales corporations) are excluded.

Wisconsin requires the combination of income in certain instances, provided the combined reporting provisions of [sec. 71.255, Wis. Stats.](#), are not applicable:

- [Section 71.30\(2\), Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

Allocation of gross income, deductions, credits between 2 or more businesses. In any case of 2 or more organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, whether or not affiliated, and whether or not unitary) owned or controlled directly or indirectly by the same interests, the secretary or his or her delegate may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if he or she determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades or businesses. The authority granted under this subsection is in addition to, and not a limitation of or dependent on, the provisions of ss. [71.05 \(6\) \(a\) 24.](#) and [\(b\) 45., 71.26 \(2\) \(a\) 7.](#) and [8., 71.34 \(1k\) \(j\) and \(k\), 71.45 \(2\) \(a\) 16.](#) and [17.,](#) and [71.80 \(23\).](#)

- [Section 71.30\(5\), Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

Disc income combining. In the case of a parent corporation, its DISC or affiliate, the net income of a DISC derived from business transacted with its parent shall be combined with the income of the parent corporation and the net income of a DISC derived from business transacted with the parent's affiliated corporation shall be combined with the net income of the affiliated corporation to determine the amount of income subject to taxation under this chapter for the DISC, the parent corporation or the affiliate of the parent corporation as separate taxable entities. The net income of the parent corporation shall not include dividends received from the DISC paid from income previously combined for taxation under this subsection. "DISC" (domestic international sales corporation) has the meaning specified in section [992](#) of the internal revenue code as amended to December 31, 1979. For purposes of this subsection, a corporation is affiliated if at least 50% of its total combined voting stock is owned directly or indirectly by its parent corporation.

[Wisconsin Tax Bulletin 51, pages 4-5](#), relating to the decision in *Wisconsin Department of Revenue vs. Kohler Company, et al.*, (Circuit Court of Sheboygan County, January 20, 1987), and [Wisconsin Tax Bulletin 70, page 22](#), describe Wisconsin's treatment of IC-DISC's. If the IC-DISC is considered a paper corporation (it meets the minimum federal IC-DISC requirements but has no actual operations), the income is allocated to the entity that earned it. However, if the IC-DISC is not a paper corporation (it meets the minimum federal requirements but has activity sufficient so that it has business operations), the income is taxed to the IC-DISC like any other Wisconsin corporation.

Assuming the IC-DISC created by Company A is a paper corporation, the net income earned by the IC-DISC is combined and reported on Company A's Wisconsin Form 5S, as provided by sec. 71.30(2), Wis. Stats. (2013-14 updated through 2015 Wis. Act 392).

Manufacturing and Agriculture Credit:

In order to claim the manufacturing and agriculture credit, a corporation must have eligible qualified production activities income for the taxable year ([sec. 71.28\(5n\), Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392)).

- [Section 71.28\(5n\)\(a\)8., Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

"Qualified production activities income" means the amount of the claimant's production gross receipts for the taxable year that exceeds the sum of the cost of goods sold that are allocable to such receipts, the direct costs that are allocable to such receipts, and the indirect costs multiplied by the production gross receipts factor. "Qualified production activities income" does not include any of the following:

- a. Income from film production.
- b. Income from producing, transmitting, or distributing electricity, natural gas, or potable water.
- c. Income from constructing real property.
- d. Income from engineering or architectural services performed with respect to constructing real property.
- e. Income from the sale of food and beverages prepared by the claimant at a retail establishment.
- f. Income from the lease, rental, license, sale, exchange, or other disposition of land.

- [Section 71.28\(5n\)\(a\)6., Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

"Production gross receipts" means gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property.

- [Section 71.28\(5n\)\(a\)9.a., Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

"Qualified production property" means tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under s. 70.995.

- [Section 71.28\(5n\)\(a\)3., Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

"Direct costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are deductible as business expenses under the Internal Revenue Code and identified as direct costs in the claimant's managerial or cost accounting records.

- [Section 71.28\(5n\)\(a\)4., Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

"Indirect costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are deductible as business expenses under the Internal Revenue Code, other than cost of goods sold and direct costs, and identified as indirect costs in the claimant's managerial or cost accounting records.

Company A generates production gross receipts from the sale of products that it manufactures in whole or in part on property assessed as manufacturing in Wisconsin. For purposes of computing Company A's qualified production activities income, the following applies:

- Production gross receipts does not include the dividend income received from the IC-DISC as such income is not from the lease, rental, license, sale, exchange, or other disposition of tangible personal property.
- Production gross receipts does not include receipts from the sale of property manufactured entirely outside Wisconsin. In addition, the cost of goods sold and direct costs associated with such receipts are not included in the credit computation.
- Production gross receipts includes the sale of property manufactured in part in Wisconsin on property assessed as manufacturing property under [sec. 70.995, Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392). In such instances, multiplying qualified production activities income by the manufacturing property factor under [sec. 71.28\(5n\)\(a\)5., Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), excludes income derived from manufacturing activities outside Wisconsin from eligible qualified production activities income.
- [Section 71.28\(5n\)\(a\)5.a., Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

"Manufacturing property factor" means a fraction, the numerator of which is the average value of the claimant's real and personal property assessed under s. [70.995](#), owned or rented and used in this state by the claimant during the taxable year to manufacture qualified production property, and the denominator of which is the average value of all the claimant's real and personal property owned or rented during the taxable year and used by the claimant to manufacture qualified production property.
- Cost of goods sold, direct costs, and indirect costs do not include the commission expense paid to the IC-DISC by Company A because such expense is disregarded from the computation of Company A's taxable income under [sec. 71.26\(3t\), Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), which provides that the federal treatment related to IC-DISCs does not apply for Wisconsin.
- Cost of goods sold and direct costs associated with production gross receipts are included in the computation of qualified production activities income.
- All indirect costs of Company A are also included in the computation of qualified production activities income.

Because Company A is a tax-option (S) corporation, it may not claim the credit. However the eligibility for, and the amount of, the credit are based on Company A's qualified production activities income as described above. The shareholders of Company A may claim the credit in proportion to their ownership interests.

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- [Section 71.28\(5n\)\(c\), Wis. Stats.](#) (2013-14 updated through 2015 Wis. Act 392), provides:

Limitations. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their share of the income described under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.



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

Laundry Services – long-term care support service provider <i>Healthcare Services Group, Inc.</i>	18
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SALES AND USE TAX

Laundry Services – long-term care support service provider. *Healthcare Services Group, Inc. vs. Wisconsin Department of Revenue* (Waukesha County Circuit Court, February 9, 2017).

This is a judicial review of the Wisconsin Tax Appeals Commission's decision dated July 27, 2016. See [Wisconsin Tax Bulletin 195](#) (October 2016), page 13, for a summary of the Wisconsin Tax Appeals Commission's decision.

The issue in this case is whether Healthcare Services Group, Inc. (HSG) is providing a taxable laundry service or providing workers who, among other things, clean laundry at the facilities.

Wisconsin taxes certain enumerated services, as provided in sec. 77.52(2)(a)6., Wis. Stats., and among those taxed services are "laundry, dry cleaning, pressing, and dyeing services," with exceptions for raw materials/good destined for sale, cloth diapers, and use of self-service machines by consumers. The department offered three definitions of laundry and laundries that were relevant to the decision, which HSG neither contested nor countered. Instead, HSG argued whether the facts of its business plan fit within the accepted definition.

The Court stated that the reality of HSG's services fall within the definition of laundry. Though HSG's employees do more than just laundry, they nonetheless perform laundry services. HSG itself separates out billing for the laundry services it performs from other housekeeping services. Merely doing more than just laundry does not change the reality that HSG performs laundry services; by way of analogy, if a business engaged in both self-service and full-service laundry services, the business could not reasonably assert that its full-service laundry business is not subject to taxation simply because the self-service part of the business is not.

HSG attempted to analogize its case to *Manpower, Inc. vs. Wisconsin Department of Revenue* (WTAC, August 12, 2009), in which the Commission held that temporary placed workers performing tasks otherwise taxable cannot be taxed. The Court determined that HSG's business model is readily distinguishable from that of Manpower. Manpower is a temporary help company pursuant to sec. 108.02(24m), Wis. Stats., which HSG is not. Further, HSG's model of hiring employees to clean client laundry for the duration of a contract is readily distinguishable from a temporary help company that places workers with a company for a short period of time to alleviate temporary staffing needs. The service HSG ultimately provides is the cleaning of laundry, not the provision of temporary help.

The Circuit Court affirmed the Wisconsin Tax Appeals Commission's decision and concluded that HSG ultimately provides laundry services to its clients, and thus falls within sec. 77.52(2)(a)6, Wis. Stats.

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