

# Wisconsin Tax Bulletin

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## New Tax Laws

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## **A. Individual Income Tax**

### **1. Investment Defined for Capital Gains Income Tax Deferral or Exclusion**

([2017 Wis. Act 17](#), amend sec. 71.05(25)(a)2.; and create sec. 71.05(25)(a)1m. and (26)(a)2m., effective June 23, 2017)

For purposes of claiming a capital gain income tax deferral or exclusion based on investments in a qualified Wisconsin business, "investment" means amounts paid to acquire stock or other ownership interest in a partnership, corporation, tax-option (S) corporation, or limited liability company treated as a partnership or corporation.

In addition, the Act clarifies that a qualifying gain from the sale of an investment in a qualified Wisconsin business may not exceed the fair market value (FMV) of the investment on the date sold, less the FMV of the investment on the date acquired.

## **B. Corporation Franchise and Income Tax**

### **1. Replace Obsolete Reference to Internal Revenue Code for Active Foreign Business Income**

([2017 Wis. Act 17](#), renumber sec. 71.255(2)(c) to sec. 71.255(2)(c)1. and amend as renumbered; and create sec. 71.255(2)(c)2. and 3., effective June 23, 2017)

In 2011, sec. 861(c)(1)(B) of the Internal Revenue Code (IRC), defining foreign business income, was repealed without replacement. However, Wisconsin's treatment of active foreign business income did not change. The Act adds the language repealed in sec. 861(c)(1)(B), IRC, to Wisconsin statutes as follows: "'active foreign business income' means gross income derived from sources outside the United States, as determined in subchapter N of the Internal Revenue Code, including income of a subsidiary corporation, and attributable to the active conduct of a trade or business in a foreign country or in a U.S. possession."

In addition, the Act clarifies the definition of a corporate subsidiary as follows: "...a corporation is considered a subsidiary if the parent corporation owns, directly or indirectly, stock with at least 50 percent of the total voting power of the corporation and the stock has a value equal to at least 50 percent of the total value of the stock of the corporation."

### **2. Agreements Signed by Designated Agents of Combined Groups**

([2017 Wis. Act 17](#), amend sec. 71.255(7)(b)7., effective for documents first executed on January 1, 2017)

A designated agent of a combined group may validly sign a waiver, agreement, power of attorney, and other documents regarding the combined report filed under sec. 71.255(2)(a), Wis. Stats.

## 3. Requirement to File Information Returns to Claim Deductions Extended to Tax-Option (S) Corporations

([2017 Wis. Act 17](#), renumber sec. 71.34(1k)(h) to 71.34(1k)(h)(intro) and amend as renumbered; and create sec. 71.34(1k)(h)1. and 2., effective for taxable years beginning on January 1, 2017)

Under current law, C-corporations, partnerships, and individuals are required to file certain information returns to claim deductions for payments of wages, salaries, commissions, bonuses, and rent. The Act extends the requirement to tax-option (S) corporations.

## C. Sales and Use Tax

### 1. Administration for Ending County Tax

([2017 Wis. Act 17](#), amend secs. 77.70 and 77.76(3), effective June 23, 2017)

The department may not issue any assessments or act on any claims for refund or adjustment after the end of the calendar quarter that is four years after the year in which a county tax ends. The termination of a county tax must be the last day of a calendar year (December 31).

The Act allows the department to seek reimbursement from the county for overpayments of county taxes, including interest, that the department refunds in a reporting period and that exceed the amount of county sales and use taxes reported to or assessed by the department in that same or later reporting period.

### 2. Exemption for Medical Records

([2017 Wis. Act 17](#), create sec. 77.54(64), effective June 23, 2017)

A sales and use tax exemption is created for patient health care records (medical records) that are sold to a patient or to a person authorized by the patient to receive the medical records.

Prior to the exemption, sales of paper copies of medical records sold to the patient or to a person authorized by the patient to receive the medical records were not taxable as a result of the decision by the Wisconsin Tax Appeals Commission in *Cannon & Dunphy, S.C. vs. Wisconsin Department of Revenue* (August 15, 2015). Therefore, the tax treatment of medical records has not changed as a result of this exemption.

Sales of medical records transmitted electronically continue to be nontaxable.

### 3. Hotels, Motels, and Other Lodging Providers Deemed Consumers

([2017 Wis. Act 17](#), create secs. 77.51(13)(fm) and 77.52(2m)(am), effective June 23, 2017)

The Act clarifies that telecommunications, ancillary, Internet access and cable TV services sold to persons selling transient lodging services are subject to tax. Lodging service providers are deemed to be the consumers of such services used in providing lodging services, even if the service provider charges its customer separately for such services.

Therefore:

- Charges by a lodging provider for these services are not taxable.
- The lodging provider's purchase of these services is subject to tax.

See [Publication 219](#), *Hotels, Motels, and Other Lodging Providers*, Parts III.D. and IV.A.2.

## ***D. Alcohol and Tobacco Regulations***

### **1. Unaccompanied Underage Persons at Large Music Festival Events**

([2017 Wis. Act 7](#), amend sec. 125.07(3)(a)3., effective May 26, 2017.)

An underage person is a person who has not attained the legal drinking age of 21. Under Wisconsin law, an "unaccompanied underage person", an underage person who is not accompanied by a parent, guardian, or spouse who has attained the legal drinking age, may not enter or remain on a premises licensed to sell alcohol beverages, unless certain exceptions apply.

The Act creates an exception to allow unaccompanied underage persons on an alcohol licensed premises of a music festival venue during an event with a projected attendance of at least 2,500 persons.

### **2. Definition of Restaurant Corrected**

([2017 Wis. Act 17](#), renumber sec. 125.02(18) to 125.02(18)(intro) and amend as renumbered; amend sec. 125.29(6); and create sec. 125.02(18)(a) to (h), effective June 23, 2017)

Restaurant licensing and inspection activities were transferred from the Department of Health Services to the Department of Agriculture Trade and Consumer Protection ([2015 Wis. Act 55](#)). The definition of "restaurant" for alcohol beverage licensing was inadvertently revised. The Act modifies the Chapter 125 definition of restaurant related to the regulation and licensing of alcohol beverage premises, removing the requirement that "the predominant activity" in the building room or place was the preparation, service or sale of meals to transients or the general public.

The Act provides that places where meals are prepared, sold or served to the general public may qualify for an alcohol beverage license as a restaurant, even if that is not the predominant activity at that room or place.

### **3. Online Posting of Alcohol and Tobacco Permittees**

([2017 Wis. Act 17](#), amend secs. 139.38(6) and 139.82(6); and create sec. 139.11(4)(a)2., effective June 23, 2017)

Current law requires licensed retailers of intoxicating liquor, fermented malt beverages, and cigarette and tobacco products to purchase their inventory from permitted persons (e.g., manufacturers, distributors). Current law allows the department to publish on its website a list of intoxicating liquor permit holders from which retailers may purchase their inventory.

The Act requires the department to publish on its website lists of permitted persons from which licensed retailers may purchase fermented malt beverages and cigarette and tobacco products. The lists of permit holders can be found on the department's website on the "Reports" page at: <https://www.revenue.wi.gov/Pages/Report/Home.aspx>

## **E. Other**

### **1. Amounts Withheld From Lottery Prizes to Pay Debts of Prize Winner**

([2017 Wis. Act 17](#), amend sec. 565.30(5), effective September 1, 2017)

Under current law, the department may use lottery prizes equal to or greater than \$1,000 to offset delinquent state taxes, court-ordered child support, and other debts owed to the state by the prize winner. This Act changes the threshold from \$1,000 to \$600.

### **2. Local Exposition Food and Beverage Tax Clarifications**

([2017 Wis. Act 17](#), amend sec. 77.98(3) and (4)(a), effective June 23, 2017)

The Act:

- a. Removes unnecessary language;
- b. Clarifies which types of retailers qualify for the future exemption that was created in [2015 Wis. Act 60](#); and
- c. Updates an outdated reference.

Currently, a 0.5% local exposition food and beverage tax applies to sales of candy, soft drinks, and prepared food sold in Milwaukee County. The tax also applies to alcoholic beverages sold for consumption on the seller's premises.

When the district's bonds and debt are retired, the food and beverage tax will no longer apply to sales by a person primarily engaged, as determined by the department, in the retail trade as a food and beverage store, as classified under sector 44-45, subsector 445, of the North American Industry Classification System, 2017 edition, published by the U.S. Office of Management and Budget.

An article titled "Sales and Use Tax Exemption Created For Materials, Supplies, Equipment, and Landscaping Services Used To Build Sports and Entertainment Arena Facilities," which describes the future exemption created by [2015 Wis. Act 60](#), was published in [Wisconsin Tax Bulletin #190](#) (August 2015).

### **3. Interest on Unclaimed U.S. Savings Bonds**

([2017 Wis. Act 17](#), amend sec. 177.24(3)(a); and create sec. 177.24(3)(c), effective June 23, 2017)

The department is no longer required to pay interest on the proceeds from the redemption of unclaimed U.S. Savings Bonds. Under prior law, the department was required to pay interest on unclaimed property, including U.S. Savings Bonds, if the property was interest bearing to the owner at the time the holder delivered the property to the department. The department is unable to redeem savings bonds until the bond has reached final maturity, at which point the federal interest has stopped accruing.

### 4. Police and Fire Protection Fee - Clarification of Department of Revenue's Authority

([2017 Wis. Act 17](#), renumber and amend sec. 196.025(6)(d); consolidate, renumber, and amend sec. 196.025(6)(d)(intro.) and 1.; amend sec. 196.025(6)(b)1., 2., and (c)2.; and create sec. 196.025(6)(cm), effective June 23, 2017)

The Department of Revenue administers the police and fire protection fee on behalf of the Public Service Commission (PSC). The fee was created by [2009 Wis. Act 28](#). The department collects a \$0.75 fee from telecommunications providers on each communications service connection with an assigned telephone number and a \$0.38 fee from retailers on each retail transaction for pre-paid cell phone plans.

The Act provides communications providers and retailers with appeal rights. The Act also gives the department statutory authority to collect both fees, require communications providers and retailers to register and file returns with the department, and determine compliance in audit. This authority is currently provided by sec. PSC 172, Wis. Adm. Code.

Since the law is consistent with the PSC rule, there is no change in the application or administration of the police and fire protection fee.

## Income/Franchise Tax

### Combined Returns – Entities Excluded from Combined Groups

A corporation must be included in a combined group if all of the following are true:

1. The corporation is in a [commonly controlled group](#),
2. The corporation is engaged in a [unitary business](#) with other corporations in the commonly controlled group, and
3. The corporation is not excluded from the combined group under the [water's edge rules](#).

Certain corporations are not included in combined groups, even if they meet the requirements above. The following corporations cannot be included in combined groups and must file separate tax returns:

- Tax-option (S) corporations
- Foreign insurers (those not organized under Wisconsin laws) and insurers engaged exclusively in life insurance business
- Other tax exempt corporations that have no unrelated business taxable income
- Corporations that are Real Estate Investment Trusts (REITs), Regulated Investment Companies (RICs), Real Estate Mortgage Investment Conduits (REMICs), and Financial Asset Securitization Investment Trusts (FASITs)



## Military Pay Income Subtraction

A subtraction from Wisconsin income is available for certain military pay that meets all of the following:

1. Received from the federal government,
2. Received after being called into active federal service or into special state service authorized by the federal Department of Defense, and
3. Paid for the time during which you were on active duty.

This subtraction only applies to Reserve or National Guard members called into active federal service under 10 USC 12302(a) or 10 USC 12304 or special state service under 32 USC 502(f).

**Note:** The subtraction does not apply to pay that members of the Reserves and National Guard receive for their weekend or two-week annual training. It also does not apply to a member of a reserve component of the U.S. armed forces, who is serving on active duty or full-time duty in the active guard reserve (AGR) program under 32 USC 502(f).

A copy of the military orders may be requested by the department to verify the subtraction taken. The military orders must clearly specify that the individual was called into active federal or state service under one of the codes listed above and must not have been in the AGR program.

For more information for active military personnel, see [Fact Sheet 1118](#), *Income Tax Information for Active Military Personnel*.

## Adjustments Made to Your Return During Processing

The department often makes adjustments to tax returns during processing. If adjustments affect your tax liability or refund, you will receive a Notice of Change, Notice of Amount Due, or Notice of Refund. In any case, it is important that you review the notice to determine whether the adjustments are correct. If you do not appeal the notice by the 60-day deadline, the adjustments are final and may not be reconsidered at a later date.

**Note:** Any adjustments that relate to regular and delinquent interest or returned payment charges may not be appealed.

If you have questions about a notice, please contact our customer service representatives.

Individuals call (608) 266-2486 or email [DORIncome@wisconsin.gov](mailto:DORIncome@wisconsin.gov).

Businesses call (608) 266-2776 or email [DORBusinessTax@wisconsin.gov](mailto:DORBusinessTax@wisconsin.gov).



## Mandatory Five-Year Basis Modification

The 2016 Wisconsin income/franchise tax return is the third return on which the required five-year basis modification must be reported, assuming the taxpayer has not had any short taxable years.

Starting with the first taxable year beginning after December 31, 2013, and for each of the next four taxable years, an adjustment to federal adjusted gross income must be made on the Wisconsin income/franchise tax return that is equal to 20 percent of the difference between the combined federal adjusted basis of all depreciated or amortized assets also being depreciated or amortized for Wisconsin and the combined Wisconsin adjusted basis of those assets as of the last day of the taxable year beginning in 2013.

The basis modification is reported on the following lines of the Wisconsin tax returns:

- Form 1, Lines 4 or 11
- Form 1NPR, Schedule M, Lines 18 or 43
- Form 2, Schedule A, Lines 5 or 11
- Form 3, Schedule 3K, Part III, Lines 4 or 11
- Form 4, Schedule 4V, Line 6 or Schedule 4W, Line 9
- Form 5S, Schedule 5K, Page 6, Lines 4 or 14
- Form 6, Part II, Line 2f or 4i

For taxable years beginning on or after January 1, 2014, depreciation and amortization on assets subject to the five-year basis modification described above is computed under the federal Internal Revenue Code in effect on January 1, 2014 using the same federal and Wisconsin adjusted basis.

**Note:** For property placed in service in taxable years beginning on or after January 1, 2014, the federal and Wisconsin adjusted basis for computing depreciation and amortization may be different because federal bonus depreciation has not been adopted under Wisconsin law.

For more information about the five-year basis modification for differences in federal and Wisconsin adjusted basis of depreciated or amortized assets, see the [common questions](#) on the department's website.

## Withholding Tax

### Hiring a Nonresident Entertainer? You May Be Required to Withhold Wisconsin Income Tax

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

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

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

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

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

For more information about nonresident entertainer withholding, see:

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

## Forms W-2 and 1099 Filing Requirements

Wage statements (Forms W-2) and certain information returns (Forms W-2G, 1099-MISC, 1099-R) must be filed each year. Generally these forms are filed by January 31 with the Form WT-7, *Annual Reconciliation*. Filing requirements are provided in [Publication 117](#), *Guide to Wisconsin Wage Statements and Information Returns*.

Failure to file wage statements and information returns by the required due date, including any extension, or filing an incorrect or incomplete return, will result in a penalty of \$10 for each statement or return.

If you filed 50 or more wage statements or 50 or more information returns for tax year 2016, you were required to file electronically. Failure to file such wage statements or information returns electronically will result in a penalty of \$10 for each statement or return filed by paper.

A written appeal must be received within 60 days of the notification of the penalty. For the appeal to be considered, missing wage statements and information returns must be submitted.

## Pass-Through Withholding for Nonresident Real Estate Investment Trust Partners

A partnership must withhold and pay tax on Wisconsin sourced income that passes through to nonresident partners.

A real estate investment trust (REIT) is not exempt from Wisconsin income or franchise tax. Therefore a partnership must withhold tax for Wisconsin sourced income passed-through to a nonresident REIT partner. A REIT is a nonresident if:

- The REIT is taxed as a trust and is a nonresident trust under sec. 71.14 (1) to (3m), Wis. Stats., or
- The REIT is taxed as a corporation and is commercially domiciled outside Wisconsin.

Pass-through withholding is required if a nonresident REIT's share of taxable Wisconsin income from a partnership is \$1,000 or more.

## Sales/Use Tax

### New Look for Sales and Use Tax Articles Web Page

The sales and use tax articles web page has been redesigned to be more user friendly. The articles are now grouped by topic. Each topic header can be expanded to show the articles linked beneath it. When new articles are posted, the introduction on the web page will indicate which topics contain new articles, and each recently added or updated article will be flagged as **New**. Check it out at [Sales and Use Tax Articles](#).

### Sales and Use Tax Training for Grocers

The Wisconsin Department of Revenue has developed a web page that provides sales and use tax information and training for grocers and convenience stores. The web page includes links to sales and use tax reference materials, along with a four-part series of training videos discussing the following:

- Resources and Sales by Grocers
- Sales of Candy, Soft Drinks, & Dietary Supplements
- Sales of Prepared Foods
- Preparing for an Audit

The information is available on the Wisconsin Department of Revenue's [Sales and Use Tax Training Videos for Grocers](#) web page.

### Statistical Sampling in Sales and Use Tax Audits – Defining Sample Population

The department continues to improve its statistical sampling program to promote efficiency and accuracy, as reported in *Wisconsin Tax Bulletin 196* (January 2017). An important part of statistical sampling is defining the sample population. This includes pre-screening, considering possible refund items, and evaluating alternative review methods.

#### **Pre-Screening**

The auditor and computer audit specialist (CAS) pre-screen the data to identify transactions that may be excluded from the sample population. For example, they might identify certain accounts or vendors that are unlikely to have taxable sales; or transactions that did not take place in Wisconsin. This generally results in a smaller sample size, less time needed to examine the source documentation, and a shorter audit.

Communication between the auditor, CAS, and taxpayer during the pre-screening process will likely result in a more efficient sample that can shorten the duration of the audit.

#### **Considering Possible Refund Items**

While the auditor and CAS will try to limit the sample population as much as possible, the taxpayer may request to include certain types of transactions because items could be taxed in error. The auditor and CAS will work with the taxpayer to include the transactions in the audit as appropriate. Options include:

- keeping the transactions in the sample population
- using a separate sampling class, or
- 100% review

It is important for the auditor, CAS, and taxpayer to discuss possible refund items as early in the process as possible. If a refund claim is filed late in the audit, the auditor may not be able to include the refund claim in the audit. Instead, the taxpayer would need to appeal the audit determination.

### ***Alternatives to Statistical Sampling***

The auditor and CAS will consider alternate review methods. Generally, the statistical sample is the group of transactions for which the auditor will review source documentation. However, some types of transactions can be more efficiently reviewed by looking at other supporting detail. This may include utilities with an exempt percentage, intercompany transactions, or allocated or ratio-computed exemptions.

For example, the auditor notes that thousands of charges appear in the Stores account. The taxpayer did a detailed study five years ago of the Stores disbursements and is self-assessing use tax based on the results of the study. Instead of including the invoices from the Stores account in the statistical sample, the auditor decides to examine several months of Stores disbursements to determine if the percentages in the study need to be updated.

Transactions examined using an alternative method are typically excluded from the sample population.

The most efficient audits are those where the auditor, CAS, and taxpayer have a continuing dialog throughout the sample selection process.

For more information about statistical sampling, see [Publication 516](#), *Statistical Sampling*.

### **Nonprofit Organizations that Hold a Seller's Permit Must Collect Tax**

A nonprofit organization is required to charge Wisconsin sales tax unless an exemption, such as the occasional sale exemption for nonprofit organizations, applies. If a nonprofit organization makes sales of taxable products or services, the organization is required to obtain a seller's permit and collect and remit sales tax on those sales.

A nonprofit organization's sales are exempt occasional sales if **all** of the following standards are met:

- Its sales of otherwise taxable products occur on 75 days or less in a calendar year OR are \$50,000 or less in a calendar year;
- Entertainment is not involved at an event for which admission is charged. "Entertainment" is not involved if the total amount paid for ALL entertainment is \$10,000 or less; **and**
- The nonprofit organization does not have and is not required to have a seller's permit.

If the nonprofit organization holds a seller's permit, but its sales would otherwise qualify as exempt occasional sales, the organization is still required to collect and remit Wisconsin sales tax on all of its sales of taxable products and services, unless another exemption applies.

**Note:** If a nonprofit organization obtains a seller's permit solely for an admission event in which entertainment is involved, and the nonprofit organization **does not request inactivation of the seller's permit after the event**, the organization does not qualify for the occasional sale exemption on its sales of taxable products and services after the event, regardless of the number of days and dollar amount of its sales. The nonprofit organization must request inactivation of the seller's permit in order for the occasional sale exemption to apply to such sales.

For additional information about the occasional sale exemption for nonprofit organizations, see the following:

- [Publication 206](#), *Sales Tax Exemptions for Nonprofit Organizations*
- [Fact Sheet 2106](#), *Occasional Sale Exemption for Nonprofit Organizations*

## Are Disaster Relief Payments Taxable?

When a natural disaster occurs, it can lead to financial losses for individuals. The Federal Emergency Management Agency (FEMA) and the American Red Cross (ARC) provide funds to disaster victims in need. Information about how Wisconsin sales and use tax applies to purchases using such disaster relief payments is provided in the article titled "[Disaster Relief Payments](#)."

## Motor Vehicle Dealers' Measure of Use Tax Increased to \$157 Effective January 1, 2018

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

**Effective January 1, 2018, the amount subject to use tax is increased from \$154 to \$157 per plate per month.** To calculate use tax, \$157 is multiplied by the appropriate use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.

*Why will the rate increase?*

Under Wisconsin law, the Department of Revenue must annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12-month period ending June 30. The percentage change for the period July 2016 to June 2017 was 1.6% ( $\$154 \times (244.955/241.018)$ , rounded to the nearest whole dollar).

## Other

### **My Tax Account – New Look Coming This Fall**

This fall, users of *My Tax Account* will see changes to the department's online tax account management platform. The department will implement a new responsive web design, making it more mobile-friendly, intuitive, and easier to use.

**Note:** *My Tax Account* access and tax filing process will generally remain the same. Watch for changes in September.

### **Protect Your Tax Records**

#### ***Maintain an electronic backup***

Keep a backup of all your tax records and store them in a location separate from where the original tax records are located. Examples of tax records include accounting records, invoices, bank statements, cancelled checks, Forms W-2, Forms 1099, and other tax forms.

#### ***Photograph your assets***

Taking photos or videos of your assets will help prove the existence and condition of your assets prior to loss from damage or theft. Maintain a backup of your photos or videos in a location separate from the original photos and videos.