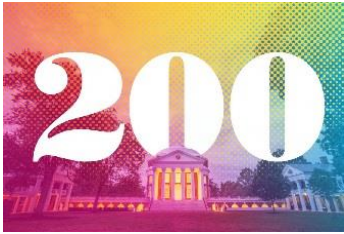


Wisconsin Tax Bulletin

January 2018 Number 200



WELCOME TO THE 200th ISSUE OF THE *WISCONSIN TAX BULLETIN*

The first *Wisconsin Tax Bulletin* was issued in October of 1976. The bulletin was created to communicate information about laws and administrative practices administered by the Income, Sales and Excise Tax Division in the Wisconsin Department of Revenue. Over 41 years later, the Income, Sales and Excise Tax Division in the Department proudly continues this mission.

If you would like to receive notification when a new *Wisconsin Tax Bulletin* is available, [subscribe](#) to the sales and use tax or tax professional electronic mailing list.

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New Alcohol Beverage Laws

Sales of Alcohol Beverages Within Ozaukee County Fairgrounds

([2017 Wisconsin Act 95](#), create secs. 125.26(2x), 125.27(4), 125.51(3)(bx) and 125.51(5)(e), effective December 02, 2017)

Current law provides that alcohol beverage licensees and permittees must specifically describe their licensed/permitted premises. Applicants for retail alcohol beverage licenses or permits must particularly describe the licensed/permitted premises such as the building, room and/or land area under the applicant's control where alcohol beverages will be sold, served, consumed or stored. Sales of alcohol beverages may only be made on the licensed/permitted premises.

Wisconsin Act 95 authorizes a person who holds a Class "B" fermented malt beverages (beer) license/permit or a "Class B" intoxicating liquor license/permit in Ozaukee County to sell alcohol beverages at specific locations within the Ozaukee County fairgrounds for consumption at those locations during special events held at the fairgrounds, the Ozaukee County Board adopts a resolution approving the licensee or permittee.

Prohibition Against Adults Knowingly Permitting or Failing to Take Action to Prevent Illegal Consumption of Alcohol Beverages by Underage Persons

([2017 Wisconsin Act 126](#), amend sec. 125.07(1)(a)3., effective December 10, 2017)

Current law prohibits an adult from knowingly permitting or failing to take action to prevent illegal consumption of alcohol beverages by an underage person on premises owned or controlled by the adult. "Premises" has been interpreted by the courts to mean an area described in a license or permit to sell alcohol beverages. Act 126 revises the statute, making the prohibition applicable on any property owned and occupied by an adult, or occupied by an adult and under the adult's control.

Income/Franchise Tax

Due Dates for Wisconsin Tax Returns and Estimated Tax Payments

Note: The dates in the chart below reflect due dates for a *calendar year end* taxpayer unless otherwise noted. For taxpayers with a *fiscal year end*, please see the specific form's corresponding instructions for due date information.

2017 Wisconsin Tax Return Due Dates	
Form	Due Date Extended Due Date
Form 1: Individual Income Tax Return (Long Form)	April 17, 2018 October 15, 2018
Form 1A/WI-Z: Individual Income Tax Return (Short Form)	April 17, 2018 October 15, 2018
Form 1NPR: Nonresident and Part-Year Resident Individual Income Tax Return	April 17, 2018 October 15, 2018
Schedule H/H-EZ: Homestead Credit Claim	April 17, 2022 N/A
Form 2: Fiduciary Income Tax Return for Estates and Trusts	April 17, 2018 October 01, 2018
Form 3: Partnership Return	March 15, 2018 September 17, 2018
Form 1CNP: Composite Individual Income Tax Return for Nonresident Partners	April 17, 2018 October 15, 2018
Form 4/6: Non-Combined/Combined Corporation Franchise or Income Tax Return (12/31 year-end)	April 17, 2018 November 15, 2018
Form 4/6: Non-Combined/Combined Corporation Franchise or Income Tax Return (6/30 year-end for taxable years beginning before January 1, 2026)	September 17, 2017 May 15, 2018
Form 4/6: Non-Combined/Combined Corporation Franchise or Income Tax Return (other than 6/30 or 12/31 year-end)	15 th day of 4 th month 15 th day of 11 th month
Form 4T: Exempt Corporation Franchise or Income Tax Return	May 15, 2018 December 17, 2018
Form 4T: Exempt Employee's Trust, IRA, MSA Fiduciary Income Tax Return for Estates and Trusts	April 17, 2018 October 15, 2018
Form 4T: Exempt Non-Employee's Trust, IRA, MSA Fiduciary Income Tax Return for Estates and Trusts	May 15, 2018 December 17, 2018
Form 5S: Tax-Option (S) Corporation Franchise or Income Tax Return	March 15, 2018 October 15, 2018
Form 1CNS: Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders	April 17, 2018 October 15, 2018

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2017 Wisconsin Tax Return Due Dates	
Form	Due Date Extended Due Date
Form PW-1: Partnerships – Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income	March 15, 2018 October 15, 2018
Form PW-1: Tax-Option (S) Corporation – Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income	March 15, 2018 October 15, 2018
Form PW-1: Estates and Trusts – Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income	April 17, 2018 November 15, 2018
Form PW-2: Partnerships – Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit	January 31, 2018 N/A
Form PW-2: S-Corporations – Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit	January 31, 2018 N/A
Form PW-2: Estates and Trusts – Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit	February 28, 2018 N/A

Note: The dates in the chart below reflect the first installment due dates for 2018 *calendar year end* taxpayers unless otherwise noted. For taxpayers with a *fiscal year end*, please see the specific form's corresponding instructions for due date information.

2018 Wisconsin Estimated Tax First Installment Due Dates	
Form	Due Date
Form 1-ES: Estimated Income Tax Voucher	April 17, 2018
Form PW-ES: Pass-Through Entity Withholding Estimated Payment Voucher	March 15, 2018
Form Corp-ES: Corporation Estimated Tax Voucher	April 17, 2018
Form Corp-ES: Corporation Estimated Tax Voucher (tax year beginning in April)	June 15, 2018

Revised
2/6/18

What's New This Tax Season

Below are some of the changes that may impact your 2017 Wisconsin tax returns:

Individual:

- **Income tax refunds may not be issued before March 1:** The department will not issue a refund to an employed individual before March 1, unless both the individual and the individual's employer have filed all required returns and forms with the department for the taxable year for which the individual claims a refund.

- **Internal Revenue Code updates:** Schedule I, *Adjustments to Convert 2017 Federal Adjusted Gross Income and Itemized Deductions To The Amounts Allowable for Wisconsin*. The schedule is redesigned and the instructions are reformatted to provide clarity. Many Internal Revenue Code (IRC) differences are eliminated due to IRC adoptions from [2017 Wis. Act 59](#) (Wisconsin State Budget Bill). See [Wisconsin Tax Bulletin 199](#) for details on adopted IRC provisions.
- **Tuition:** The **subtraction** for tuition and fees is increased from \$6,943 to \$6,958. The subtraction is phased-out for persons with federal adjusted gross income between \$53,160 and \$63,790 if single or head of household; \$85,050 and \$106,310 if married filing a joint return; between \$42,530 and \$53,160 if married filing a separate return.
- **College savings account:** The amount of the subtraction for contributions to a college savings account is increased from \$3,100 to \$3,140 (\$1,570 if married filing separately).
- **Adoption expenses:** The subtraction for up to \$5,000 of adoption expenses is expanded to include adoptions where the final order of adoption was entered by a court of any other state or upon registration of a foreign adoption.
- **Olympic medals and prize payments:** Wisconsin adopted the federal exclusion of the value of U.S. Olympic medals for Olympics and Paralympics and prize payments from the U.S. Olympics Committee for taxpayers with federal adjusted gross income (FAGI) less than \$1 million. An additional subtraction is allowed for Wisconsin for those taxpayers with FAGI \$1 million or above for the value of the U.S. Olympic medals for Olympics and Paralympics and prize payments from the U.S. Olympics Committee which were not allowed to be excluded for federal purposes. To the extent included in federal adjusted gross income, an additional subtraction is allowed for Special Olympics medals and prize payments from the Special Olympics Board of Directors, regardless of federal adjusted gross income. These provisions are effective retroactively for taxable years beginning on or after January 1, 2016.
- **Capital gain exclusion – qualified Wisconsin business:**

For purposes of determining capital gains from the sale of an investment in a qualified Wisconsin business

- "Investment" means amounts paid to acquire stock or other ownership interest in a partnership, corporation, tax-option corporation, or limited liability company treated as a partnership or corporation.
- The amount of the qualifying gain may not exceed the fair market value of the investment on the date sold less the fair market value of the investment on the date acquired

For purposes of registering as a qualified Wisconsin business

- An employee of a professional employer organization or professional employer group who is performing services for a client is considered an employee solely of the client for purposes of becoming a qualified Wisconsin business

For more information, see common questions for [registration](#) of a qualified Wisconsin business and [capital gain exclusion](#) from the sale of an investment in a qualified Wisconsin business on the department's website.

- **Net operating loss carry-forward and carry-back:**
 - A loss may not be used unless it is computed within four years of the unextended due date for filing the original return for the year the loss is incurred.
 - No carry-back is allowed unless it is claimed within four years of the unextended due date for filing the original return for the year to which the loss is carried back.
 - This is effective for losses claimed on or after September 23, 2017.

- **Itemized deduction credit:** In prior years, part-year residents and nonresidents prorated the standard deduction by the ratio of Wisconsin adjusted gross income to Federal adjusted gross income when computing the Wisconsin itemized deduction credit. This proration is no longer available.
- **Alternative minimum tax:** Exemption amounts are federalized for 2017. The amounts are: \$54,300 for single or head of household, \$84,500 for married filing jointly, and \$42,250 for married filing separately.

Note: The Wisconsin alternative minimum tax will be eliminated for tax years beginning in 2019.

- **Credit for tax paid to other state:** The credit may not exceed an amount determined by multiplying the taxpayer's net Wisconsin income tax by a ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the taxpayer's Wisconsin adjusted gross income. This limitation does not apply to income that is taxed by Minnesota, Iowa, Illinois, or Michigan. The Schedule OS, *Credit for Net Tax Paid to Another State*, has been updated to reflect the new law.
- **Homestead credit:** Claims filed for tax years 2017 and after, a claimant or a claimant's spouse, if married, must be age 62 or older or the claimant must be disabled to qualify for the homestead credit. For individuals who are under age 62 and not disabled, the claimant must have earned income in order to qualify for the credit. Schedule H, *Homestead Credit Claim*, has been updated to reflect the new law. For more information, see the common questions for [Homestead Credit](#).
- **Schedule GL:** A new schedule to report the gain or loss on the sale of your home must be filed with 2017 Schedule H, to claim the homestead credit, if you sold your home during the tax year.

Business:

- **Employee's income tax refunds may not be issued before March 1:** The department will not issue a refund to an employed individual before March 1, unless both the individual and the individual's employer have filed all required returns and forms with the department for the taxable year for which the individual claims a refund. This includes Form WT-7, the employer's annual reconciliation of Wisconsin income tax withheld.
- **Internal Revenue Code updates:** Many IRC differences are eliminated due to IRC adoptions from [2017 Wis. Act 59](#) (Wisconsin State Budget Bill). See [Wisconsin Tax Bulletin 199](#) for details on adopted IRC provisions.
- **Sourcing of services:** For purposes of determining whether gross receipts from the sale of services are included in the numerator of the apportionment formula for a multi-state business, the benefit of a service is received in Wisconsin if:
 1. The service relates to real property that is located in Wisconsin,
 2. The service relates to tangible personal property that is delivered directly or indirectly to customers in Wisconsin,
 3. The service is purchased by an individual who is physically present in Wisconsin at the time that the service is received, or
 4. The service is provided to a person engaged in a trade or business in Wisconsin and relates to that person's business in Wisconsin.
- **Net business loss carry-forward:**
 - A loss may not be carried forward and deducted unless it is computed and claimed within four years of the unextended due date for filing the original return for the year the loss is incurred.
 - This is effective for loss carry-forwards deducted on or after September 23, 2017.

- **Repayment of supplement to federal historic rehabilitation credit:** Effective September 23, 2017, if a person who claims a Wisconsin supplement to the federal historic rehabilitation credit and is required to repay any amount of the federal credit, the person shall repay to the department a proportionate amount of the Wisconsin credit.
- **Refundable credits certified by the Wisconsin Economic Development Corporation (WEDC):**
 - No interest is paid on refunds resulting from claiming refundable credits certified by WEDC.
 - The department may make an assessment to recover tax credit claims within one year of receiving notice of revocation from WEDC.
 - The following credits are refundable WEDC credits:
 - Jobs tax credit
 - Enterprise zone jobs credit
 - Electronics and information technology manufacturing zone credit
 - Business development credit
- **Manufacturing and agriculture credit:** The amount of eligible qualified production activities income that a claimant may claim must be reduced by the amount of qualified production activities income taxed by another state upon which the credit for net tax paid to another state is claimed.
- **E-file requirement for wage statements and information returns:** An employer or payer required to file 10 or more W-2s or 10 or more of any one type of information return with the department must file such returns electronically. The prior threshold was 50 or more.
- **All wage statements and information returns required to be filed with the department are due January 31:** The prior due dates for filing statements of nonwage payments and rent and royalties with the department were February 28 and March 15.
- **A 30-day extension is available for filing wage statements and information returns:** Under prior law, a 60-day extension period was available for rent and royalty statements and nonwage statements.

Changing an Election to Apply a Refund to Estimated Tax

For individual and fiduciary income tax, notification of a change in election must occur on or before the due date of the final estimated tax installment payment (January 15, 2018, for a calendar-year filer changing an election to apply a refund from a 2016 return to 2017 estimated tax payments).

For corporation franchise and income tax, notification of a change in election must occur on or before the unextended due date of the following year's tax return (April 17, 2018, for a calendar-year filer changing an election to apply a refund from a 2016 return to 2017 estimated tax payments) or before the following year's tax return is filed, whichever is earlier.

How a Change in Election Is Made

Notification of a change in election must be in writing. This includes the filing of an amended return or sending an email, fax, or letter to:

Individuals

DORIncomeAdjUnt@wisconsin.gov

Fax: (608) 264-6884

Wisconsin Department of Revenue
Mail Stop 3-138
PO Box 8903
Madison WI 53708-8903

Corporations

DORFranchise@wisconsin.gov

Fax: (608) 267-0834

Wisconsin Department of Revenue
Mail Stop 3-80
PO Box 8908
Madison WI 53708-8908

Fiduciaries

DORIncomePassThroughComposite@wisconsin.gov

Fax: (608) 264-0248

Wisconsin Department of Revenue
Mail Stop 3-164
PO BOX 8966
Madison WI 53708-8966

General Topical Index Updated Through October 2017

The General Topical Index is a reference tool used to research Wisconsin tax topics. The Index has been updated with references to published guidance through October 31, 2017. The update added hyperlinks to allow quick access to *Wisconsin Tax Bulletins*, Publications, Fact Sheets, Sales Tax Reports, and the Withholding Tax Guide.

The Index is found on the department's website at <https://www.revenue.wi.gov/Pages/ISE/top-cc-Home.aspx>.

Note: Since the General Topical Index and the Wisconsin Tax Bulletin Index provide the same references to *Wisconsin Tax Bulletins*, the Wisconsin Tax Bulletin Index has been replaced by the General Topical Index.

Wisconsin Impact from the Federal Tax Cuts and Jobs Act

For purposes of computing Wisconsin taxable income, Wisconsin law follows the Internal Revenue Code as of December 31, 2016, with certain exceptions. As federal provisions are adopted by Wisconsin's legislature, notification will be provided in the *Wisconsin Tax Bulletin*.

The following provisions in the recent federal tax reform bill (H.R.1) will automatically apply for Wisconsin:

- Increase section 179 expensing to \$1 million with a phase-out range beginning at \$2.5 million and expand definition of qualified property
- Repeal of technical termination of partnerships
- Require Historic Rehabilitation Credits to be claimed over five years

Note: These provisions are identified in the 2017 [Schedule I instructions](#).

Electronic Filing Forms PW-1, 1CNP and 1CNS

The following forms are required to be electronically filed:

- Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*
- Form 1CNP, *Composite Wisconsin Individual Income Tax Return for Nonresident Partners*
- Form 1CNS, *Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders*

These forms may be filed electronically through the department's *My Tax Account* application. *My Tax Account* is offered at no cost and is available 24 hours a day, seven days a week. If you are reporting the withholding or income tax filing for more than 200 nonresidents, it is recommended that you use a 3rd party software program. A list of approved software vendors can be found on the department's website [here](#).

The entire form must be electronically filed, including Part 2 of Form PW-1 and Schedule 2 of Forms 1CNP and 1CNS. An electronic PDF or Excel attachment of Part 2 or Schedule 2 will not be accepted, and the department may reject returns that are filed on paper.

Complete the Property and Payroll Sections of Forms 3, 4, 6 and 5S

If you have property or payroll, fill in the Wisconsin and total company amounts in the following sections of the returns:

Form	Property/Payroll Section
Form 3: Partnership Return	Page 1, Part I, Lines 7 through 10
Form 4: Non-Combined Corporation Franchise or Income Tax Return	Page 2, Lines 39 through 42
Form 6: Combined Corporation Franchise or Income Tax Return	Page 13, Part VI, Lines 9 through 12
Form 5S: Tax-Option (S) Corporation Franchise or Income Tax Return	Page 1, Sections G1 through H2

Pass-Through Entities Must File K-1s with Their Returns

Returns will be rejected without all required schedules. In addition, the department does not process credits passed through on a Schedule 2K-1, 3K-1, or 5K-1 and claimed by a beneficiary, partner, or shareholder until the fiduciary estate or trust, partnership, or tax-option (S) corporation submits the appropriate schedules to the department to confirm the taxpayer's eligibility to claim the credit.

Depreciable Basis of Property for Existing Businesses Filing Their First Wisconsin Tax Return

For existing businesses first filing in Wisconsin after December 31, 2013, the Wisconsin adjusted basis of previously depreciated property is the same as the adjusted basis of that property as computed for federal income tax purposes as of the beginning of the taxable year. The business must depreciate that property under the method used for federal income tax purposes.

Staying on Top of Scams and Fraud

Avoid becoming a victim of identity theft, 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".

Department Urges Payroll Departments and Tax Preparation Businesses to Report Scams

Scams targeting tax practitioners, payroll professionals and employers are a growing problem in Wisconsin and nationwide. Cybercriminals are actively seeking accurate data about taxpayers in order to file fraudulent state and federal income tax returns. These scams can include phishing emails attempting to steal wage statements from an employer or takeover a tax practitioner's filing system. You can learn more about these scams at: [irs.gov/newsroom/tax-scams-consumer-alerts](https://www.irs.gov/newsroom/tax-scams-consumer-alerts).

If your organization experienced a data compromise, the department asks to be informed. Contact us at DORIDTheft@wisconsin.gov to report the data loss and provide contact information. Do not include personally identifiable information for impacted employees or customers in your email.

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. 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.

Correctly Using Form W-RA

Form W-RA, *Required Attachments for Electronic Filing and Instructions*, is used to submit supporting documentation when an electronically filed return claims any of the credits or items specifically listed on the Form W-RA. Many items listed on the income or franchise tax return require documentation along with the completed form or schedule included with the tax return. Only use Form W-RA to submit the required documentation. Form W-RA should **not** be used when submitting a paper tax form or homestead credit claim. Form W-RA should **not** be used when submitting a reply or an appeal to any correspondence from the department. Response to correspondence or an appeal should be mailed to the contact address on the letter or notice.

Form W-RA required attachments may also be submitted electronically, either through software with the electronically filed return or through the department's website. Go to <https://tap.revenue.wi.gov/WRA/>.

Report Accurate and Complete Corporate Wisconsin Modifications

Wisconsin corporate income and franchise tax forms provide over 20 specific lines for taxpayers to report modifications to federal income. Modifications include adjustments for depreciation or depletion calculations, additions for Wisconsin credits computed, or adjustments to certain income or expenses included in the calculation of federal taxable income. See [Schedule 4V - Wisconsin Additions to Federal Income](#) and [Schedule W – Wisconsin Subtractions from Federal Income](#), or Form 6, Part II, for combined filers, for a complete list.

Avoid errors and delays in processing your return, and avoid letters from the department requesting additional information, by following these tips:

Proper location

Report modifications on the proper line. Use the lines for "Other" additions and subtractions only when a specific modification line does not already exist.

Keep it positive

Report both addition and subtraction modifications as positive numbers. For example, report refunded state income taxes which increase federal taxable income as a positive amount on Schedule W, line 13 or Form 6, Part II, Line 4m.

Include schedules

Modifications often require schedules to be included with the return (e.g., credit computed on Schedule MA-M is an addition modification). Make sure to include all required schedules with the return.

Code it correctly

Combined groups use specific codes to identify "Other additions" and "Other subtractions" on Form 6, Part II, Lines 2j and 4m. The correct code should be used to report the modification. If Code 05 is used, include a statement detailing the source and amounts of the modifications. See Form 6 instructions for a list of the specific codes.

Veterans and Surviving Spouses Property Tax Credit – Sale/Purchase of the Property

When a claimant sells or purchases a principal dwelling during the year, the property taxes must be prorated.

- Taxes are only allowed for the period of time the dwelling was the claimant's principal residence.
- The property taxes must be paid during the year of the claim.
- If the prorated tax is provided in the closing agreement, this will be the amount of allowable taxes. If the closing agreement does not prorate the taxes, the tax must be prorated between the seller and buyer in proportion to time of ownership.
- Claimants must attach a copy of the closing agreement so the department can confirm the amount of allowable taxes.
- If property tax bill shows *more than 1 acre of land*, prorate as follows:

Property Tax Bill Shows More Than One Acre and Purchase or Sale of Property			
1	Assessed value of land (from tax bill)	1	_____
2	Number of acres of land	2	_____
3	Divide line 1 by line 2	3	_____
4	Assessed value of principal dwelling	4	_____
5	Add line 3 and line 4	5	_____
6	Total assessed value of all land and improvements (from tax bill)	6	_____
7	Divide line 5 by line 6	7	_____
8	Net property taxes paid	8	_____
9	Multiply line 8 by line 7	9	_____
10	Enter percentage of property taxes allocated to the claimant in the closing agreement (or percentage of months of ownership)	10	_____
11	Multiply line 9 by line 10. This is the amount of allowable property taxes	11	_____

Reminders

- Principal dwelling means any building or portion thereof which is designed for or used for residential purposes.
- The principal dwelling must be located in Wisconsin.
- When there are multiple structures on the property, the property tax allocated to the structures not used for residential purposes does not qualify for the credit.

Allowance for Depletion

Internal Revenue Service Treasury Regulation §1.611-1(a)(1) provides in part, "In the case of [exhaustible natural resources other than standing timber] the allowance for depletion shall be computed upon either the adjusted depletion basis of the property (see section 612, relating to cost depletion) or upon a percentage of gross income from the property (see section 613, relating to percentage depletion), **whichever results in the greater allowance for depletion for any taxable year**. In no case will depletion based upon discovery value be allowed."

Section 71.98(3), as amended by 2013 WI Act 145, provides "For taxable years beginning after December 31, 2013, and for purposes of computing depletion, the Internal Revenue code means the federal Internal Revenue code in effect for the year in which the property is placed in service." This means that a taxpayer must use the computation allowable under the Internal Revenue Code (IRC) in effect **for federal purposes** for the year in which the property is placed in service. As a result of this Act, the following applies for Wisconsin purposes:

- For taxable years beginning before January 1, 2014, only cost depletion is allowable.
- For taxable years beginning after December 31, 2013, assuming there are no changes in federal law, an allowance for depletion using the percentage depletion computation may be used, even if the basis for cost depletion has been exhausted.

At-Risk Limitation on Form 1040, Schedule C

The department has found that some taxpayers are incorrectly marking the box on federal Form 1040 Schedule C, line 32b - "Some of the investment is not at risk." Checking this box may limit the amount of loss you can claim on your return. Investments that are not at risk include nonrecourse loans and items protected against loss by a guarantee (see instructions for federal Form 6198, *At Risk Limitations*, for a complete list).

Make sure you are marking the correct box, line 32a - "All investment is at risk" or line 32b - "Some of the investment is not at risk," to avoid unnecessary review by the department.

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.

Comparison of Private School Tuition Subtraction and Tuition and Fees Deduction

Topic	Private school tuition subtraction	Tuition & fees deduction
Grade levels	Elementary and secondary	Classes at a school which qualifies as a university, college or technical college
Income limitation for those who claim the deduction	None	The subtraction is limited if federal adjusted gross income exceeds certain amounts.
Amount of deduction per student for 2017	Up to \$4,000 for elementary and \$10,000 for secondary school	Up to \$6,958 (may be reduced based upon income level)
Required dependent	Must be the claimant's child	May be the claimant, claimant's spouse, or claimant's child
Required attachments to your Wisconsin return	Schedule PS	None
Does the location of the school have to be in Wisconsin?	No	Generally, the school must be located in Wisconsin. There are a few exceptions, such as schools in Minnesota covered under the Minnesota-Wisconsin tuition reciprocity agreement.

For more information on the private school tuition subtraction, see the department's [common questions](#) at www.revenue.wi.gov.

For more information on the tuition and fees deduction, see the department's [common questions](#) at www.revenue.wi.gov.

Tips to Avoid Getting Your Form 6 Rejected

- Form 6, *Wisconsin Combined Corporation Franchise or Income Tax Return*, must be filed electronically. A list of vendors offering approved electronic filing software and services to meet your electronic filing obligation is available on our website at <https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx>.
- File short-period returns when the tax forms are available to be electronically filed for that year. Typically, annual tax form updates are available for electronic filing by January 31, of the following year.

Note: Wisconsin statutes provide corporations an automatic extension of 7 months after the unextended due date or 30 days after the federal extended due date.
- File your return after you have obtained an employer federal identification number (EFIN) from the Internal Revenue Service.
- If you receive a letter from us regarding a missing or invalid prior year return, perform the corrective action described in the letter before you submit a return for a different year.
- If you encounter errors or other difficulties when submitting your return electronically, please contact your software provider. Do not file your return on paper.

Withholding

Withholding Tax Update Available

The [November 2017 Withholding Tax Update](#) has been posted to the department's website. Topics covered include:

- What's New?
- Current Withholding Tax Rates Continue for 2018
- Reporting by Financial Institutions
- Wage and Information Return Report Requirements
- Data Exchange Program
- Filing Frequency Changes
- Single-Member LLCs - Are You Registered Correctly?
- Electronic Filing Reminder
- Filing Options
- Extensions
- Amended Annual Reconciliation (WT-7)
- Tips or Gratuities Received From Customers
- New Hire Reporting Requirement
- Quick Links
- Employees Claiming Complete Exemption From Withholding (Forms W-4 and WT-4)
- 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

Reciprocity Agreements

Wisconsin has reciprocity agreements with Illinois, Indiana, Kentucky, and Michigan. If you employ residents of these states, you are not required to withhold Wisconsin income taxes from wages paid to employees who provide you a completed Wisconsin [Form W-220, Nonresident Employee's Withholding Reciprocity Declaration](#). For additional information, see [Publication 121, Reciprocity](#).

While Wisconsin does not have a reciprocity agreement with Minnesota, there is a special withholding arrangement for employers of Wisconsin residents working in Minnesota. Wisconsin withholding will not be required when:

- The employee is a legal resident of Wisconsin when the wages are earned in Minnesota, **and**
- The wages earned by the Wisconsin resident subject to Minnesota withholding would also be subject to Wisconsin withholding.

For additional information regarding this special withholding arrangement, visit <https://www.revenue.wi.gov/Pages/taxpro/news-2010-100120.aspx>.

Sales/Use Tax

New Tax Rates for 2018

The following local taxes have been adopted for 2018:

- Effective January 1, 2018 – Brown County Tax
- Effective April 1, 2018 – Calumet County Tax

See [Wisconsin Tax Bulletin #199](#) for more information.

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 2018. 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](#).

Sales of Amusement Devices Are Taxable

Effective December 1, 2017, a video or electronic game (tangible or digital format) sold to a person in the business of selling admissions to amusement devices is exempt from Wisconsin sales and use tax if the video or electronic game is used exclusively for the amusement device.

The sale of the amusement device that holds the video or electronic game is subject to Wisconsin sales or use tax.

"Amusement device" means a single or multiplayer device, machine, or game played for amusement, the outcome of which depends at least in part on the skill, precision, dexterity, or knowledge of the person playing, but not predominantly on the element of chance. "Amusement device" includes a pinball machine, console machine, crane machine, claw machine, redemption game, stacker, arcade game, foosball or soccer table game, miniature racetrack or football machine, target or shooting gallery machine, basketball machine, shuffleboard table, kiddie ride game, Skee-Ball machine, air hockey machine, dart board, pool table, billiard table, or any other similar device, machine, or game. "Amusement device" does not include any device, machine, or game that is illegal to operate within this state.

If a sale includes both the amusement device and the video or electronic game, does the exemption apply to both?

- If the sales invoice for the amusement device separately states the sales price of the video or electronic game and the sales price of the amusement device, the video or electronic game is exempt and the amusement device is taxable.
- If the sales invoice for the amusement device has one price that includes the video or electronic game and the amusement device, the exemption does not apply and the entire charge is taxable.

Example 1: Arcade is in the business of providing taxable admission services through amusement devices. Arcade purchases a pinball machine (i.e., amusement device). The vendor's invoice to Arcade separately states the sales price of the pinball machine from the video game component of the pinball machine. The charge to Arcade for the pinball machine is taxable. The charge for the video game that is used in the pinball machine is exempt from tax because it is separately stated on the invoice.

Example 2: Distributor is in the business of providing taxable admission services through amusement devices. Distributor owns an arcade game console (i.e., amusement device) that is placed in a tavern. Distributor pays the owner of the tavern a commission based on the receipts Distributor receives from customers playing trivia and other arcade games on the console. Distributor purchases a software upgrade (i.e., electronic game) from its vendor that can be played on the console, but does not replace the arcade game console. The charge to Distributor for the software upgrade is exempt.

Example 3: Distributor is in the business of providing taxable admission services through amusement devices. Distributor purchases a video gambling machine that will be placed in a tavern. A commission will be paid to the tavern based on receipts derived from the video gambling machine. Distributor's invoice from its vendor for the video gambling machine separately states the sales price of the video gambling machine from the electronic game that is a component of the video gambling machine. The entire charge for the video gambling machine and the electronic game is taxable, even though the electronic game is separately stated. The video gambling machine is not an amusement device for purposes of this exemption, because the definition of an amusement device excludes any device, machine, or game that is illegal to operate in Wisconsin. The operation of video gambling machines is in violation of Wisconsin law.

For more information, see the new tax law article titled "Exemption for Video and Electronic Games Sold to Amusement Device Operators," published in [Wisconsin Tax Bulletin #199](#) (pages 21-22).

Septic Installer's Article Updated - Taxable Items Less Than 10% of Total Contract Price

The article titled [Septic System Installers – Taxable Items Less Than 10% of Total Contract Price](#) has been updated. This article explains how Wisconsin sales and use tax applies to sales and purchases of property and services by persons installing septic systems where the sale of taxable items by the contractor are less than 10% of the total contract price. The [updated article](#) includes tax treatment for construction contracts pursuant to the expansion of the lump-sum contract exemption in [2017 Wis. Act 59](#).

Fireplace Installation and Repair – Sales and Use Tax Treatment

Installing a Fireplace

A contractor is making a real property improvement when selling an installed fireplace that is intended to become a permanent part of the building. The contractor's charge to the customer is not subject to tax. The contractor is the consumer of the materials used in making the real property improvement and must pay sales or use tax on the fireplace unit, bricks, mortar, and other materials that become part of the fireplace.

Selling a Freestanding Fireplace

A contractor's sale of a freestanding fireplace that does not become a permanent part of the building (e.g., table top unit, entertainment center insert) is the sale of tangible personal property. The contractor's total charge to the customer, including materials and labor, is subject to sales tax. The contractor may purchase the materials without tax, for resale, that it physically transfers to the customer in the sale of tangible personal property.

Repairing a Fireplace

A fireplace is treated as tangible personal property for purposes of service, maintenance, cleaning, or repair to the fireplace, regardless of whether the fireplace was a real property improvement or tangible personal property when installed. The contractor's charge for providing the service is subject to tax. The contractor may purchase the materials without tax, for resale, that it physically transfers to the customer.

Chimney Cleaning

Cleaning the chimney is a nontaxable service to real property. If the chimney cleaner charges a mandatory fee to clean soot that is in the fireplace as a result of the cleaning or other service to the chimney, that fee is part of the chimney cleaning service (i.e., not subject to tax). For example, if the chimney is scrubbed to remove soot, and soot falls down from the chimney into the fireplace, the mandatory charge for cleaning/removing this soot from the fireplace is part of the service of cleaning the chimney (i.e., not subject to tax).

New "Contractor's Sales and Use Tax Resources" Web Page

A new web page for [Contractors' Sales and Use Tax Resources](#) is available on the department's [Training](#) web page. Links to various sales and use tax resources are on this new web page, such as videos, publications, articles and upcoming seminars.

Lump-Sum Contract Exemption vs. Construction Contract Exemption

Some contractors sell both real property improvements (not taxable) and tangible personal property (taxable). An exemption applies for certain contracts entered into October 1, 2013 through November 30, 2017 in which the contractor sells both real property improvements and tangible personal property for one price ("lump-sum contract exemption"). This exemption has been expanded to certain construction contracts first entered into or extended, modified, or renewed on December 1, 2017 ("construction contract exemption"). This article summarizes the tax treatment of the exemption.

Lump-Sum Contract Exemption (applies to contracts entered into on October 1, 2013 through November 30, 2017)

When a contractor sells both a real property improvement and tangible personal property or taxable services in a single contract, the contract is a lump-sum contract if the contractor quotes one price for all of its various charges (labor, services of subcontractors, tangible personal property, items or property under sec. 77.52(1)(b) or (c), Wis. Stats. (2015-16). A lump-sum contract may include a contract for which the contractor itemizes its various charges as a part of a schedule of values or similar document.

The lump-sum contract exemption applies if the contractor's sales price that relates to the taxable products and services are less than 10% of the total contract price. When the lump-sum contract exemption applies:

- The contractor's sale to its customer is not taxable.
- The contractor's purchase of materials and supplies is taxable. (See Exception, below.)

Construction Contract Exemption (first applies to contracts entered into or extended, modified, or renewed on December 1, 2017)

The lump-sum contract exemption for contractors was expanded to include sales and purchases by subcontractors. Sales of products and services sold by "prime contractors" and "subcontractors" as part of a real property construction contract, which includes lump-sum and time and materials contracts, are exempt from tax if the taxable products and services are less than 10% of the total contract price.

The construction contract exemption applies as follows:

For the "Prime Contractor"

If the taxable products and services of the prime contractor's construction contract are less than 10% of the total contract price:

- The prime contractor's sale to its customer is not taxable.
- The prime contractor must pay sales or use tax on its purchase of materials and supplies relating to the taxable products and services. (See Exception, below.)

In order to purchase taxable products and services without tax from the subcontractor, the prime contractor must provide an exemption certificate to the subcontractor.

- The exemption certificate's box for "other sales exempted by law" must be checked as the reason the purchase is exempt.
- The prime contractor should write "sec. 77.54(60), Wis. Stats." in the space provided.
- If no exemption certificate is provided by the "prime contractor" to the subcontractor, the subcontractor must pay tax on its sales of taxable products and services sold to the prime contractor.
- The prime contractor must pay sales or use tax on its purchase of materials and supplies relating to the real property improvements.

For the "Subcontractor"

The construction contract exemption applies if either of the following applies:

- The prime contractor provides the subcontractor with an exemption certificate claiming the exemption under sec. 77.54(60), Wis. Stats., OR
- The taxable products and services of the subcontractor's construction contract (includes time and materials jobs) are less than 10% of the subcontractor's total contract price.

If the construction contract exemption applies to the subcontractor's contract:

- The subcontractor's sale to the prime contractor is not taxable.
- The subcontractor must pay sales or use tax on its purchase of materials and supplies relating to the taxable products and services. (See Exception, below.)
- The subcontractor must pay sales or use tax on its purchase of materials and supplies relating to the real property improvements.

"Construction contract" means a contract to perform real property construction activities and to provide products.

"Prime contractor" means a contractor who enters into a construction contract with an owner or lessee of real property, except for leased property under sec. 77.52(1)(c), Wis. Stats., to perform real property construction activities on the real property.

"Subcontractor" means a contractor who enters into a construction contract with a prime contractor or another subcontractor.

Exception for contracts entered into with entities that are exempt from tax under sec. 77.54(9a), Wis. Stats.: Taxable products and services sold by a contractor as a part of a lump-sum contract or a construction contract with an exempt entity that are not consumed in a real property construction activity may be purchased by the contractor or subcontractor without tax, for resale. However, materials and supplies that are consumed in a real property construction activity under a lump-sum contract or a construction contract with any customer, including an exempt entity, may not be purchased by the contractor or subcontractor without tax.

The article titled [Septic System Installers – Taxable Items Less Than 10% of Total Contract Price](#) explains how Wisconsin sales and use tax applies to sales and purchases of property and services by persons installing septic systems where the sale of taxable items by the contractor are less than 10% of the total contract price.

Are Shipping and Handling Charges Subject to Sales and Use Tax?

When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation and service charges, is subject to the sales or use tax. The tax treatment does not change whether the delivery is made by the seller's vehicle, a common or contract carrier, or the United States Postal Service.

If a shipment contains both taxable and nontaxable property, the seller must make a reasonable allocation of the shipping charges attributable to the taxable and nontaxable property. The portion attributable to the nontaxable property is not subject to tax. If no allocation is made, the entire shipping charge is taxable.

Did You Shop Online For the Holidays? You May Owe Use Tax

You may have purchased an item from an e-commerce or mail-order company that did not charge Wisconsin sales tax. Only companies that are engaged in business in Wisconsin are required to collect tax on their sales shipped to Wisconsin addresses. However, this does not mean that your purchase is exempt from tax.

Use tax is due on purchases of taxable products and services when the seller does not collect the tax and no exemption applies. If you purchase taxable products or services from sellers who do not collect the tax, or if you purchase taxable products or services in another state or a foreign country, you owe Wisconsin

use tax when you store, use, or consume that product or service in Wisconsin. If you do not pay the use tax, you may be assessed interest and penalties in addition to the tax.

Individuals may report use tax due in either of the following ways:

1. On their Wisconsin income tax return (Form 1, 1A, WI-Z, or 1NPR). A line entitled “Sales and use tax due on out-of-state purchases” on Wisconsin income tax returns allows individuals to report their annual use tax liability.
2. On a quarterly [Form UT-5](#), *Wisconsin Consumer Use Tax Return*.

Businesses may report use tax due on their Wisconsin Sales and Use Tax Return (Form ST-12) or by using the Wisconsin Consumer Use Tax Return (Form UT-5).

Further information is available on the department's website under [Common Questions for Use Tax](#).

Electronic Records Requested During Audits

The department often utilizes a taxpayer's electronic records to conduct a more efficient audit for both the taxpayer and the department. Generally, the taxpayer must provide electronic records to the auditor when requested.

Electronic records include data files and information from accounting, enterprise, and Point-of-Sale software applications. Some commonly known examples include QuickBooks, Sage, Oracle, SAP, Micros, and Square.

The Internal Revenue Service has published a list of Frequently Asked Questions (FAQs) about providing electronic records, which is available at <https://www.irs.gov/businesses/small-businesses-self-employed/use-of-electronic-accounting-software-records-frequently-asked-questions-and-answers>. The guidance provided in these FAQs applies to department audits as well.

The department has authority to request records from taxpayers under secs. 71.74(2), 73.03(9), and 77.59(2), Wis. Stats. (2015-16). Wisconsin statutes provide for a penalty when a taxpayer does not provide the records requested (secs. 71.74(2), 73.03(9), 77.59(2), 71.80(9m), and 77.61(19), Wis. Stats. (2015-16)). Rules to administer these penalties are provided in secs. Tax 2.85 and 11.90, Wis. Adm. Code. These rules note that "records" include electronic records.

If complete and accurate records are not maintained, gross receipts, purchases, deductions, and exemptions may be determined by the department through reconstruction or other methods.

Lodging Marketplace License

Under [2017 Wisconsin Act 59](#), a lodging marketplace that offers short-term residential lodging must register with the Wisconsin Department of Revenue for a license to collect sales and use taxes and to collect room taxes imposed by a Wisconsin municipality if the marketplace has nexus with Wisconsin. A lodging marketplace required to register for a license must also register for a Wisconsin seller's permit if it does not have a Wisconsin seller's permit.

“Lodging marketplace” means an entity that provides a platform through which an unaffiliated 3rd party offers to rent a short-term rental to an occupant and collects the consideration for the rental from the occupant.

The [application](#) for a lodging marketplace license is available on our website along with a [listing](#) of licensees. See the lodging marketplace license [common questions](#) for examples.

Occasional Sales of Business Assets - New Fact Sheet

A new fact sheet for occasional sales of business assets has been posted to the department's website. [Fact Sheet 2110](#), *Occasional Sales of Business Assets*, explains the occasional sale exemption for the sale of business assets by businesses who hold a seller's permit.

Other

Access 2017 Form 1099-G Online

Taxpayers have online access to their 2017 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 2014 through 2017. 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.

My Tax Account - Update

What is changing?

On September 11, 2017, the department changed its online tax account management platform. *My Tax Account* has a new responsive web design making it mobile-friendly, more intuitive, and easier to use. Although *My Tax Account* has a new appearance, account access and the tax filing process generally remains the same.

Log into your *My Tax Account* to familiarize yourself with the updated look. We also updated the *My Tax Account* videos on our website to assist you with the new appearance and features.

Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect the position of the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the answers in a tax release.)

Sales and Use Tax

Statute of Limitations When Person Reports Use Tax on a Specialized Return

Statutes: [Sections 77.58\(3\)](#), and [77.59\(3\)](#) and [\(8\)](#), Wis. Stats. (2015-16)

Note: This tax release supersedes the tax release titled “Statute of Limitations When Person Reports Use Tax on Individual Income Tax Return” that appeared in [Wisconsin Tax Bulletin #79](#) (October 1992), page 23.

Background:

Use Tax Liability - [Section 77.58\(3\)\(a\)](#), Wis. Stats. (2015-16), provides that every person who purchases taxable products and/or services that are stored, used, or consumed in Wisconsin, and who has not paid the tax due to a retailer required to collect the tax, must file a return to report the tax.

Specialized Forms - While a person's sales and use tax liability is generally reported on Form ST-12, *Wisconsin Sales and Use Tax Return*, (or the electronic equivalent) certain specialized forms may be used to report use tax. These specialized forms are treated as sales and use tax returns.

A person who does not hold a seller's permit, use tax registration certificate, or consumer use tax registration certificate may report Wisconsin use tax on one of the following specialized forms:

- [Form UT-5](#), *Consumer Use Tax Return*
- That person's individual income tax return (Form 1, 1A, WI-Z, or 1NPR)

Other examples of specialized returns where use tax can be reported are:

- [Form MF-001](#), *Fuel Tax Refund Claim* – Department of Revenue (DOR) form for persons filing refund claims for Wisconsin fuel taxes paid on fuel used in an exempt manner.
- [Form MV-1](#) and Form MV-11 – Department of Transportation (DOT) forms used for occasional and dealer sales of motor vehicles, recreational vehicles as defined in sec. 340.01(48r), Wis. Stats., trailers, and semi-trailers.
- [Form DT 1556](#) – DOT form for occasional and dealer sales of aircraft.
- [Form 9400-193](#) – Department of Natural Resources (DNR) form for occasional and dealer sales of boats.
- [Form 9400-210](#) – A DNR form for occasional and dealer sales of snowmobiles.

- [Form 9400-376](#) – A DNR form for occasional and dealer sales of all-terrain vehicles and utility terrain vehicles.
- [Form 9400-609](#) - A DNR form for occasional and dealer sales of off-highway motorcycles.

Statute of Limitations – for Audit Determination

When a Return Has Been Filed - [Section 77.59\(3\)](#), Wis. Stats. (2015-16), provides that the department may make a determination of a person's sales and use tax liability if the department provides written notice to that person within four years after the due date of that person's income or franchise tax return or, if exempt, within four years of the 15th day of the 4th month of the year following the close of the calendar year or fiscal year.

When a Return Has Not Been Filed - [Section 77.59\(8\)](#), Wis. Stats. (2015-16), provides that if a person fails to file a report or return to report Wisconsin sales or use tax required, the department may determine the proper tax due at any time and without regard to when such failure occurred.

The filing of a specialized use tax return is the filing of a sales and use tax return under sec. 77.59(3), Wis. Stats. However, while the filing of a specialized use tax return triggers the four-year statute of limitations for the tax reported on that return, it does not trigger the four-year statute of limitations for any other sales and/or use tax returns required to be filed under Chapter 77, Wis. Stats.

Example 1: Individual has a Schedule C business (i.e., is a sole proprietor of a business) and has an income tax filing requirement in Wisconsin. The Schedule C business makes sales that are subject to Wisconsin sales tax, and Individual has a quarterly requirement to file Form ST-12, *Wisconsin Sales and Use Tax Return*, or its electronic equivalent.

Individual purchased a motor vehicle and reported use tax on the Form MV-1 filed with the DOT. Individual also reported use tax from Internet purchases on the Form 1 filed with DOR. Individual did not file Form ST-12.

- The department has four years from the due date of Individual's income tax return or four years from the date that the Form MV-1 was filed, whichever is later, to issue a determination of sales or use tax liability for tax for the period covered by that return (i.e., Form MV-1).
- The department has four years from the due date of Individual's income tax return to issue a determination of sales or use tax liability for tax for the period covered by that return (i.e., Form 1).
- The department may at any time determine the proper tax due on Form ST-12 (i.e., there is no statute of limitations for returns that have not been filed).

Example 2: Corporation operates a business in Wisconsin, files Wisconsin franchise tax forms, and has a monthly requirement to file Form ST-12, *Wisconsin Sales and Use Tax Return*, or its electronic equivalent.

Corporation filed a Form MF-001, *Fuel Tax Refund Claim*, for a refund of excise taxes paid on fuel used in its generator and other off-road machinery. Use tax for the fuel was reported on Form MF-001. Corporation did not file Form ST-12.

- The department has four years from the due date of Corporation's franchise tax return or four years from the date that the Form MF-001 was filed, whichever is later, to issue a determination of sales or use tax liability for tax for the period covered by that return (i.e., Form MF-001).
- The department may at any time determine the proper tax due on Form ST-12 (i.e., there is no statute of limitations for returns that have not been filed).

Short-term Leases of Taxis Are Subject to State Rental Vehicle Fee and Local Rental Car Tax

Statutes: Sections [77.51\(7\)](#), [77.52\(1\)\(a\)](#) and [\(1b\)](#), [77.995\(2\)](#), and [77.99](#), Wis. Stats. (2015-16).

Applicable Wisconsin Statutes:

Section [77.995\(2\)](#), Wis. Stats., imposes the 5% state rental vehicle fee:

"There is imposed a fee at the rate of 5 percent of the sales price on the rental, but not for rental and not for rental as a service or repair replacement vehicle of Type 1 automobiles, as defined in s. 340.01 (4) (a); of recreational vehicles, as defined in s. 340.01 (48r); of motor homes, as defined in s. 340.01 (33m); and of camping trailers, as defined in s. 340.01 (6m) by establishments primarily engaged in short-term rental of vehicles without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54 (1), (4), (7) (a), (7m) or (9a). There is also imposed a fee at the rate of 5 percent of the sales price on the rental of limousines."

Section [77.99](#), Wis. Stats., imposes the 3% local exposition rental car tax on certain vehicle rentals in Milwaukee County:

"A local exposition district under subch. II of ch. 229 may impose a tax at the rate of 3 percent of the sales price on the rental, but not for rental and not for rental as a service or repair replacement vehicle, within the district's jurisdiction under s. 229.43, of Type 1 automobiles, as defined in s. 340.01 (4) (a), by establishments primarily engaged in short-term rental of passenger cars without drivers, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54 (1), (4), (7) (a), (7m), (9) or (9a). If the state makes a payment under s. 229.50 (7) to a district's special debt service reserve fund, a majority of the district's authorized board of directors may vote to increase the tax rate under this subchapter to 4 percent. A resolution to adopt the taxes imposed under this section, or an increase in the tax rate, shall be effective on the first January 1, April 1, July 1, or October 1 following the adoption of the resolution or tax increase."

Background: A taxicab company may either hire drivers as employees, or contract with independent drivers and lease its taxicabs to those drivers. The sales price for the lease is subject to Wisconsin sales or use tax, regardless of the method in which the lease price is paid to the taxicab company. The sales price for the lease may also be subject to county and stadium taxes. In *Wisconsin Tax Bulletin 193* (April 2016), the article titled, "[Taxis Leased to Drivers are Subject to Sales Tax](#)," addressed the sales and use tax treatment.

In addition to sales and use tax, a taxicab company's lease or rental may also be subject to the 5% state rental vehicle fee and the 3% local exposition rental car tax (in Milwaukee County). The state rental vehicle fee and local exposition rental car tax are imposed on an establishment whose primary business is the rental or lease of certain vehicles without drivers for 30 days or less. Therefore, when a taxicab company receives more than 50% of its receipts from its short-term rental of vehicles to independent drivers, the company's short-term rental receipts are subject to the state rental vehicle fee (and the local exposition rental car tax if the lease or rental takes place in Milwaukee County), in addition to the sales tax.

Example 1: A taxicab company employs drivers and also offers a taxicab lease option for drivers who choose to work as independent contractors. The majority of the company's receipts are derived from transportation services provided by its employees.

The taxicab company's primary business is transportation services, not the rental or lease of taxicabs without drivers for 30 days or less. Therefore, the taxicab company's receipts are not subject to the state

rental vehicle fee or the local exposition rental car tax. The following taxes apply to the sales price of the taxicab leases:

- 5% Wisconsin state sales tax, and
- County and stadium sales tax, when applicable.

Example 2: A taxicab company owns a fleet of taxicabs that it leases to independent drivers. The taxicab company has no other business operations other than leasing the taxicabs to drivers for periods of 30 days or less.

The taxicab company's primary business is the lease of taxicabs without drivers for 30 days or less. The following taxes and fees apply to the sales price of the taxicab leases:

- 5% Wisconsin state sales tax,
- County and stadium sales tax, when applicable,
- 5% state rental vehicle fee, and
- 3% local exposition rental car tax (if in Milwaukee County).

Example 3: A taxicab company owns a fleet of taxicabs that it leases to independent drivers. The taxicab company only leases its taxicabs to drivers for periods of more than 30 days. The state rental vehicle fee does not apply, since the taxicab company's primary business is not the rental or lease of taxicabs without drivers for 30 days or less. The following taxes apply to the sales price of the taxicab leases:

- 5% Wisconsin state sales tax, and
- County and stadium sales tax based, when applicable.

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.”

Sales and Use Tax

Membership Subscription Fees

Ruling Number: W1736002

June 20, 2017

Facts as Provided

Company A sells membership subscriptions to its robust online legal practice support services (hereinafter the "Membership") for duly licensed attorneys and their staff members who are authorized users (hereinafter the "Members"). Members gain access to the Membership by logging in through a Membership portal at Company A's website with unique Member identification and password credentials. Members do not need to download any software to their local computers or servers to gain access to their Membership. Many of the Membership features reside on a computer server or servers maintained by Company A and Company A hosts such features in the cloud. Memberships consist of two varieties: Business Law and Trust & Estates. The services described below are specialized to each of the varieties. Company A invoices Members a single, nonitemized fee for the Membership.

A. The Services

Both Business Law and Trusts & Estates subscriptions provide Members access to three primary categories of services: education, legal document drafting software tools, and an interactive community to communicate with other Members.

1. Education Resources

The education resources consist of in-person and online continuing legal education (ordinarily known as CLE for attorneys) and business education like marketing and leadership. For both in-person and online CLE courses, licensed attorneys comprise the faculty who author or present the materials. In-person CLE events are typically three to four day conferences with featured speakers, workshops, and panel discussions. Online CLE is an online library of blogs, downloadable articles, hosted articles, and recorded webinars.

2. Document Drafting Tools

Legal document drafting tools are cloud-hosted, delivered through a software-as-a-service (SaaS) platform. Members of the Business Law subscription may draft various transactional documents from Company A templates including without limitation, Operating Agreements, Purchase and Sale Agreements, Lease Agreements, Partnership Formation Agreements and Bylaws. Members of the Trust & Estates subscription may draft estate planning documents from Company A templates including without limitation, Wills, Revocable Living Trusts, Durable Powers of Attorney, Pour-Over Wills, and Approval/Rejecting of Accounting.

Once a member selects a template document, each document draft begins with an "interview." The interview involves the Member selecting the structure, standard terms, and clauses according to the Member's client's needs which will manipulate the document. For instance, if the Member is drafting a Revocable Living Trust, the Member may choose to include substantive provisions regarding the Generation Skipping Tax. Such a selection will alter the navigation of the interview and the structure of the document. Members may select pronouns or other identifiers when referring to the Trustee or Grantor. The selections the Member makes in the interview will populate throughout the document.

Upon completing these selections, the interview will produce a document for the Member to review in a Document Preview screen. Thereafter, the Member may review and further customize the document to his or her requirements before exporting the document as a downloadable Microsoft Word file. Thus, while any given document begins as a template, the final document is customized to each Member's client's needs.

While it is only a small part of the document drafting tool, Members may download and install the Company A ribbon into their word-processor to properly assemble the document they drafted. To download the ribbon, Members must log into the Company A Membership portal, navigate to the support page and click on Downloads. Once the ribbon is downloaded, the user can install it locally or on a network. When the ribbon is installed, it formats the document drafted by using Company A software in the way that the Member has chosen by running macros when the document is opened. Unless the ribbon is installed, the document will not be properly formatted through Microsoft Word.

Company A's employees and contractors update and modify both the Business Law and Trusts & Estate subscriptions document libraries consistent with legal developments, new strategies, and increased flexibility through the addition of options and to correct bugs or other errors. In addition, new documents may be developed that expand the scope of the content sets. Company A's group of subject matter experts and programmers work together to produce the interview questions and document language, and to program the new or revised material. They are assisted by product managers, who help determine priorities and the content support manager who works with Members to determine whether there are problems with the systems that need to be corrected. Currently, nine full time employees are in this group, but Company A has several open positions at this time. Company A also employs contractors from time to time who may perform style editing, programming, and or testing.

The subject matter experts, the product managers and the manager of the programming team all have law degrees. The content support manager and one of the programmers are paralegals. Legal research resources are frequently consulted during the editorial process, and Company A also reaches out regularly to other experts. Ideally, the team spends the vast majority of their working hours producing minor releases and major enhancements. Testing is done at several stages of the enhancement process, and for final testing Company A may request assistance from other Company A employees outside of the Content Team, as well as bring in contractors to assist.

3. Interactive Community

Memberships provide Members with access to network of nearly 5,000 licensed attorneys nationwide. Upon accessing their Memberships through the login portal, Members' landing pages notify them to Community Updates and Upcoming Events. Members utilize one another as resources through online groups and forums through their Memberships. Members post in topical threads on a forum to consult other Members with relevant expertise.

The online groups provide Members with a virus/malware free communication platform where Members can ask questions, discuss important issues and changes within the law, strategize on best practices, learn about upcoming in-person forum events, share articles, documents, and materials, and get help from the Company A Team, if needed. Features of the online community include access to specialized groups (state, topical, general membership, referral, etc.), document sharing, upcoming virtual or in-person events, customized viewing (ability to hide threads), and access to information that has been shared previously (archives).

Company A understands the important contributions that in-person and virtual state and topical forums provide Members. Company A provides marketing, event registration, coaching, and administrative support for all forums. Through Company A's Forum Resource Guide, Company A shares best practices, ideas for organizing and managing a successful forum, and important resources compiled from the experiences of other forums.

Each Company A forum has an online community group. This allows the group to continue their conversations and collegiality outside of their meetings. They use these groups to post questions, discuss ideas, plan and promote upcoming events, and share documents and articles.

B. Governing Documents

The Membership Agreement (the "Agreement") governs Memberships. In addition, the Agreement incorporates the End User License Agreement ("EULA") by reference in paragraph 4. The EULA expressly applies to the document drafting software portion of Memberships.

1. Critical Membership Agreement Provisions

Section 2 of the Agreement, Membership Subscription, expressly makes clear that a Membership is not limited to legal document drafting software: "Member desires to subscribe to, and Company A agrees to provide to Member, the following membership subscription together with all software, content, tools, materials, community forum, and other features of the membership subscription...", all is described on the Company A website located at _____.

Section 4 of the Agreement incorporates the EULA by reference.

2. Critical EULA Provisions

Section 1 grants Members a license to access Memberships, Section 2 sets forth the Membership benefits detailed in Section I.A-C. Section 3 prohibits Members from using the document drafting tools in a fashion similar to legal document producing services like legalzoom.com. Section 4 describes that access to Memberships on Company A maintained servers may be gained through the Membership portal, and that the access is limited to the right to use the Membership. In addition, Section 4 expressly provides that Members may gain access to Memberships through a downloadable version, but that it is not necessary to gain access to Memberships. Section 6 expressly reserves ownership and title to the Membership to Company A; title never passes to Members.

Ruling Requested by You

Question: Is Company A's Membership subscription fee subject to Wisconsin sales or use tax?

Answer 1: The membership subscription is the sale of a bundled transaction and is subject to Wisconsin sales and use tax as provided in sec. 77.52(20)(a), Wis. Stats. (2015-16). The subscription includes both taxable and nontaxable products for one nonitemized price. If Company A can identify, by reasonable and verifiable standards from its books and records, the portion of each subscription's sales price that is attributable to products that are not subject to tax (e.g., live webinars and conferences, Software as a Service, access to online database), Company A has the option to remit sales tax on the portion of the sales price of each membership subscription that represents the taxable products, as provided in sec. 77.52(20)(b), Wis. Stats. (2015-16).

Exception: If Company A's purchase price and sales price of the taxable products (e.g., prerecorded webinars, prewritten computer software, videos, articles and newsletters that are news or other information) are 10% or less than the total purchase price and sales price, then the subscription fee is not subject to Wisconsin sales and use tax; however, Company A is required to pay Wisconsin sales or use tax on its purchase price of the taxable products included in the transaction.

Analysis

The entire sales price of a bundled transaction is subject to tax pursuant to sec. 77.52(20)(a), Wis. Stats. (2015-16). Since the membership subscription includes both taxable and nontaxable products for one nonitemized price, the sale of the membership subscription is a "bundled transaction."

"Product" includes taxable products and services. (Section 77.51(11d), Wis. Stats. (2015-16))

"Bundled transactions" are defined in sec. 77.51(1f), Wis. Stats. (2015-16), in part, as "...the retail sale of 2 or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price." A "bundled transaction" does not include, in part, "...a transaction that includes taxable and nontaxable products, if the seller's purchase price or the sales price of the taxable products is no greater than 10 percent of the seller's total purchase price or sales price of all the bundled products, as determined by the seller using either the seller's purchase price or sales price, but not a combination of both..."

Section 77.52(20)(b), Wis. Stats. (2015-16), provides, in part, "[a]t the retailer's option, if the retailer can identify, by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to products that are not subject to the tax imposed under this subchapter, that portion of the sales price is not taxable under this subchapter..."

When purchasing Company A's Membership subscription, the customer receives three primary products:

1. Education Resources
2. Document Drafting Tools
3. Interactive Community

1. Education Resources

While educational services, by themselves, are not subject to Wisconsin sales tax, sales of certain digital goods in Wisconsin are subject to Wisconsin sales tax. Therefore, the education resources available as part of a membership include both taxable and nontaxable products:

- Nontaxable products include live in-person conferences and live online classes or seminars.
- Taxable products include access to specified digital goods, such as recorded videos of courses, whether downloaded or viewed online and access to additional digital goods, such as newsletters and articles.

Section 77.52(1)(d), Wis. Stats. (2015-16), provides that "[a] tax is imposed on all retailers at the rate of 5 percent of the sales price from the sales, lease, license, or rental of specified digital goods and additional digital goods at retail for the right to use the specified digital goods or additional digital goods on a permanent or less than permanent basis and regardless of whether the purchaser is required to make continued payments for such right."

"Specified digital goods" are defined in sec. 77.51(17x), Wis. Stats. (2015-16), to mean "digital audio works, digital audiovisual works, and digital books."

"Digital audiovisual works" are defined in sec. 77.51(3p), Wis. Stats. (2015-16), to mean "a series of related images that, when shown in succession, impart an impression of motion, along with accompanying sounds, if any, and that are transferred electronically. 'Digital audiovisual works' includes motion pictures, musical videos, news and entertainment programs, and live events, but does not include video greeting cards or video or electronic games."

"Digital audio works" are defined in sec. 77.51(3pa), Wis. Stats. (2015-16), to mean "works that result from the fixation of a series of musical, spoken, or other sounds that are transferred electronically, including prerecorded or live music, prerecorded or live readings of books or other written materials, prerecorded or live speeches, ringtones, or other sound recordings but not including audio greeting cards sent by electronic mail."

"Transferred electronically" is defined in sec. 77.51(21q), Wis. Stats. (2015-16), to mean "accessed or obtained by the purchaser by means other than tangible storage media."

"Additional digital goods" are defined in sec. 77.51(1a)(a), Wis. Stats. (2015-16), to mean, "all of the following if they are transferred electronically:

1. Greeting cards.
2. Finished artwork.
3. Periodicals.
4. Video or electronic games.
5. Newspapers or other news or information products."

"Other news or information products" refers to products that disseminate news. "News" is defined in The American Heritage Dictionary of English Language, fourth edition (2006), as: "Information about recent events or happenings, especially as reported by newspapers, periodicals, radio, or television."

2. Document Drafting Tools

The document drafting tools provided with the membership include access to a nontaxable software as a service platform. After the member enters all the pertinent information and the data is processed, the member is able to download a completed legal document. The completed legal document is transferred electronically to the member and is, therefore, a digital good. However it is not a digital good that is subject to tax, since it does not meet the definition of a "specified digital good" or "additional digital good," as described above. Section 77.52(1)(d), Wis. Stats. (2015-16), only imposes tax on specified digital goods and additional digital goods.

The document drafting tools service also provides members the option to download and install a ribbon into their word-processor. The ribbon meets the definition of prewritten computer software and is subject to Wisconsin sales and use tax.

"Prewritten computer software" is defined in sec. 77.51(10r), Wis. Stats. (2015-16), and provides in part, "computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser..."

"Tangible personal property" is defined in sec. 77.51(20), Wis. Stats. (2015-16), to mean, "personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses, and includes electricity, gas, steam, water, and prewritten computer software."

Section 77.52(1)(a), Wis. Stats. (2015-16) imposes a sales tax on the sale, license, lease, or rental of tangible personal property.

3. Interactive Community

The interactive community service that is provided with the membership allows members to communicate with each other and share documents and materials. These services are taxable telecommunication services, as provided in sec. 77.52(2)(a)5.am, Wis. Stats. (2015-16), or taxable telecommunications messaging services, as provided in sec. 77.52(2)(a)5m, Wis. Stats. (2015-16).

"Telecommunications services" are defined in sec. 77.51(21n), Wis. Stats. (2015-16) and provides, in part, "electronically transmitting, conveying, or routing voice, data, audio, video, or other information or signals to a point or between or among points..."

Section 77.52(2)(a)5.am, Wis. Stats. (2015-16), provides, in part, that the sale of "...intrastate, interstate, and international telecommunications service..." are subject to Wisconsin sales and use tax.

Section 77.52(2)(a)5m, Wis. Stats. (2015-16), provides that the service of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction is a service subject to Wisconsin sales and use tax.

When multiple people in a group can communicate through a communications platform to others in the group, taxable telecommunications services are being provided (i.e., the interfacing allows communications to be electronically transmitted, conveyed, or routed to other members within the group). Additionally, when messages are sent from one member to another (e.g., email, messaging, chatting, a telecommunications message service is being provided, since the platform receives a telecommunications message, records it, and transmits it at the direction of the sender/customer.

As provided in sec. 77.52(20)(b), Wis. Stats. (2015-16), above, if Company A is able to identify, by reasonable and verifiable standards, the portion of each membership subscription that relates to the sale of nontaxable products, Company A may choose to make an allocation of the taxable and

nontaxable portion of a customer's membership subscription fee. However, if Company A chooses not to or is unable to make this allocation, the total sales price of the membership subscription is subject to tax.

Installation of Custom Closet Organizer

Ruling Number: W1738004

June 30, 2017

Facts as Provided

A customer of Company A designs a custom closet solution at Company A's retail location with the help of Company A's employee. The closet solution is customized based on the customer's specifications and tastes and includes all materials necessary to complete installation of the closet. Essential materials include top track, standards, brackets, wall anchors and screws. Upon completion of the design phase, the customer is given the option to select installation by Company A.

Generally, customers have three options for installing the custom closet solution purchased from Company A: self-installation, installation by their own contractor, or engaging Company A for the installation. Customers have chosen Company A to install on average 30 percent of all closet solutions sold over the past three years.

If installation by Company A is selected, Company A's employee helps the customer select an installation date using Company A's website that shows the availability of independent contractors used by Company A. Upon completion of scheduling, the customer is provided a quote for installation based on 25 percent of the sales price of the custom closet. The customer is also given the option of having Company A deliver components of the closet to be installed for an additional delivery fee.

There will be a single swipe of the credit card for both the closet solution and the installation. The products will be charged for at the time of sale and the installation would be charged when the product is installed.

Should the customer choose not to have the closet installed by Company A at this time, the customer may use Company A's website, Company A's phone at their retail locations or Company A's retail location to inquire about installation at any time in the future. By providing the location where the closet was purchased along with the order ID, the customer will receive a call back from Company A to schedule the installation. A quote for the installation is provided to the customer at that time.

Vendor is a brand of organizational products sold by Company A. Specifically, Vendor products are component-based products that can be used individually or paired with other Vendor components and/or components manufactured by third parties to create customized storage solutions based on a customer's needs.

The majority of Vendor components are designed to hang from standards that may be attached to walls, doors or any other structure. Vendor brand standards can be directly attached with screws or hung from a European style top track. Company A sells Vendor standards in lengths of 20, 36, 60, or 84 inches and Vendor top tracks in lengths of 32, 56, or 80 inches. Screws and other hardware required to mount standards and top tracks are also available for sale by Company A.

Company A does not purchase pre-designed or pre-assembled closets from Vendor. All product purchased from Vendor comes pre-packaged and is tagged by Company A for individual sale. While they obviously function best with other Vendor components, Vendor brackets, top tracks, drawers, etc. may be paired with third-party products or used on their own should the customer desire. While third-party

components may be used with Vendor and vice versa, Company A's customers tend to purchase Vendor components based on their superior construction and name recognition.

To enhance sales of Vendor products, Company A offers a free service by which a customer may organize her closet on her own or with the assistance of Company A employees using actual measurements from the customer's home. This involves entering the customer's specifications into a computer terminal at Company A's retail store or online. The customer then selects which Vendor components best suit her needs and where to place them. Upon completion of the process, a complete list of Vendor components selected by the customer is printed, and the individual components are pulled from the shelf or the stock room by the customer and/or Company A employees. The purchase of individual components is reflected on the customer's receipt.

The component-based nature of Vendor, coupled with Company A's return policy, allow the customer to add, modify or remove components at will. The ability of the customer to easily place components for their intended use is vital in that over half of the component layouts designed by customers are self-installed by the customer. For example, a customer can switch between a gliding pant rack, a drawer, or a hanging rod in the same space in just minutes.

For the customer who chooses not to self-install, Company A offers installation services for a fee based on a percentage of the customer's Vendor component purchase price. Company A uses independent contractors to perform the installation and is liable for any issues with performance.

For further clarification, the installation performed by taxpayer is identical to those performed by the customer during self-installations and involves placing each individual component for its intended use. As an example, the installation steps are detailed below of track mounted components as those generally the most common type of installations performed.

1. The installer places and attaches top track in the selected area. The top track is attached to the wall using screws purchased by the customer. The number of screws depends on the length of the top track.
2. The next components placed are standards which are hung from the top track via a notch in the standard. The length and quality of standards were selected by the customer during the design phase and are determined by what the customer wants.
3. The remaining components are placed on standards using brackets. As in the case with all other components, brackets are sold separately. Similar to standards, the number of brackets required depends on the type and quantity of components being placed. As the customer adds, removes or modifies components in the future, brackets can be added or removed in a matter of seconds.
4. The remaining individual components are placed at the customer's discretion. Solid shelving, wire shelving, drawers, and pant racks are placed using brackets. Hanging rods are placed using closet rod holders attached to brackets.

Question: Are Company A's sales of closet solutions, including installation and delivery charges, taxable as the sale of tangible personal property (i.e., subject to tax)?

Answer: The sale of uninstalled closet components is subject to tax as the sale of tangible personal property. Company A may purchase the closet components that it sells uninstalled without tax, for resale.

The sale of an installed closet system (including shelves, racks, brackets, drawers, hooks, standards, and screws) in a residential facility is a real property construction activity. Although some of the components are interchangeable, the closet is permanently affixed to the real estate when the track is screwed into the

real estate. Charges by Company A to its customer for installation (including materials, labor, and delivery) is not subject to tax; however, Company A must pay tax on the purchase of materials consumed in the real property construction, as provided in sec. [77.51\(2\)](#), Wis. Stats. (2015-16), which deems contractors the consumers of those materials.

If the closet system is installed in a commercial building, a determination must be made whether the closet system serves a building function (e.g., coat closet) or a business or process function (e.g., retail sales rack).

- The installation of the closet organizer for use in carrying on a *trade* or *business* (but not in apartment buildings, convalescent homes, or other residential buildings), is considered the installation of tangible personal property and the charge to the customer including materials, delivery, and installation is subject to tax, unless an exemption applies. Company A may purchase the closet component without tax, for resale.
- The installation of the closet organizer that serves a building function is a real property construction activity. The sale of a real property improvement is not taxable to the customer, but Company A must pay tax on its purchase of materials consumed in the real property construction activity.

When a customer picks up the Vendor components at the store and schedules installation, the sale is real property. The sale to the customer is not subject to tax, and Company A is the consumer of the materials used in making the real property improvement and must pay tax on its purchase of such materials.

When the customer picks up the Vendor components at Company A and does not schedule installation, the sale is tangible personal property. The sale to the customer is taxable, and Company A may purchase the Vendor components without tax for resale.

If the customer picks up the Vendor components at Company A's retail location and does not schedule installation, but later chooses to have the property installed as a real property improvement, as described above, Company A must give the customer a refund or credit for the tax previously paid. Company A's purchase of the Vendor components is subject to tax, since Company A is making a real property improvement. Company A may not purchase Vendor components without tax, for resale, that it uses in making a real property improvement, regardless of whether Company A knew at the time that the customer originally purchased the materials that Company A would be installing the materials. When Company A installs materials in a real property construction activity and Company A is an owner or former owner of the materials, Company A is liable for sales or use tax on its purchase of such materials. This tax treatment is consistent with the Wisconsin Court of Appeals October 10, 1983 decision in the case of *Rice Insulation, Inc. v. Wisconsin Department of Revenue* 115 Wis. 2d 513 (CCH 202-285), which held that a subcontractor who sold insulation to an exempt entity without Wisconsin sales tax and who installed the insulation under a contract with a general contractor was the consumer of the insulation used in real property construction activity, and the sale of the insulation to the subcontractor was subject to Wisconsin sales or use tax.