

Wisconsin Tax Bulletin

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Income/Franchise Tax Updates and Reminders

College Savings Account Withdrawals

The treatment of amounts withdrawn from a qualified tuition program has changed between 2017 and 2018 as described below.

2017 Treatment

Wisconsin follows the federal treatment of amounts withdrawn in 2017 from a qualified tuition program. Amounts withdrawn in 2017 and used to pay for qualified higher education expenses are not included in federal or Wisconsin income. Under sec. 529(e)(3) of the Internal Revenue Code (IRC), qualified higher education expenses include tuition, fees, books, supplies, and equipment for the enrollment or attendance of a designated beneficiary at an eligible education institution.

For 2017, an eligible educational institution does not include an elementary or secondary public, private, or religious school. Any amounts withdrawn in 2017 from a qualified tuition program for these expenses, for which a subtraction was claimed from Wisconsin income in a previous year, are nonqualified expenses that must be added to Wisconsin income. However, these amounts may be claimed for the private school tuition subtraction if used to pay for tuition for your dependent child to attend an elementary or secondary private school.

2018 Treatment

Wisconsin adopted section 11032 of Public Law 115-97 (the federal Tax Cuts and Jobs Act of 2017) which allows the use of funds withdrawn from a college savings account to be used for tuition at an elementary or secondary public, private, or religious school. Amounts withdrawn in 2018 and used to pay for qualified higher education expenses are not included in federal or Wisconsin income. Qualified higher education expenses include expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school; however, these amounts may not exceed \$10,000.

Note: Amounts withdrawn in 2018 from a qualified tuition program and used to pay for tuition to send your dependent child to a private school may not be claimed for the private school tuition subtraction (sec. 71.05(6)(b)49.k., Wis. Stats.).

Disability Severance Payments Received by Certain Veterans

Recently, the Internal Revenue Service issued guidance ([IR-2018-148](#)) urging certain veterans who received disability severance payments after January 17, 1991, and included that payment as income to file federal Form 1040X, *Amended U.S. Individual Income Tax Return*, to claim a credit or refund of the overpayment attributable to the disability severance payment. Certain veterans who received a one-time lump-sum disability severance payment when they separated from their military service will receive a letter from the Department of Defense (DoD) with information explaining how to claim federal tax refunds they are entitled to. Veterans have one year from the date of the DoD letter to claim the federal tax refunds if the refund claim period is beyond the normal three-year federal statute of limitations. The additional time to claim a federal tax refund is granted by federal Public Law 114-292.

The additional time to claim a refund does **not** apply to Wisconsin tax returns. However, Wisconsin follows sec. 104(a)(4), IRC, for purposes of determining whether disability severance payments are included in income. As a result, veterans may claim a Wisconsin tax refund if they included nontaxable disability severance payments in their Wisconsin income. An amended Wisconsin return must be filed within four

years of the unextended due date of the Wisconsin return for the tax year in which the payments were included in income.

Reporting Responsibility for Internal Revenue Service Audit Adjustments and the Impact on Your Wisconsin Net Operating or Business Losses

Reporting Requirements as a Result of an IRS Audit Adjustment

If the Internal Revenue Service (IRS) makes adjustments that affect Wisconsin income, deductions, or credits, the taxpayer must report the changes or corrections to the department within 90 days after the final determination from the IRS. Taxpayers should amend their Wisconsin income tax return to report any changes or corrections resulting from IRS adjustments. If the income tax return is a combined return, the amended return must be electronically filed.

If the taxpayer does not report to the department within the 90-day period, the department has four years from the date of discovery of the IRS adjustments to assess or refund the taxpayer. On a regular basis, the IRS provides information to the department about adjustments made to federal income tax returns that affect Wisconsin income, deductions, and credits.

Note: Penalties and interest may apply in addition to tax due as a result of IRS adjustments affecting Wisconsin income, deductions, or credits.

Amending Net Operating or Business Losses as a Result of an IRS Audit Adjustment

Section 71.80(25), Wis. Stats., as created by [2017 Wis. Act 59](#), provides that net operating or business losses may not be used to offset income unless the loss was computed on a return filed within four years of the unextended due date of the original loss year. However, if the IRS adjusts a taxpayer's income or loss and that adjustment affects the Wisconsin net operating or business loss for a taxable year otherwise closed under this four year statute of limitations, the taxpayer may file an amended Wisconsin return within 90 days of the final determination date to make the adjustments.

Example: The IRS adjusts a taxpayer's federal net operating loss for tax year 2010 and issues the final determination on July 15, 2018. The IRS adjustment affects the Wisconsin net operating or business loss. The taxpayer must report the adjustments to the department by October 13, 2018 (90 days from the final determination date).

Form 6 Filing Tips and Reminders

- Form 6, *Wisconsin Combined Corporation Franchise or Income Tax Return*, must be filed electronically. If you encounter errors or other difficulties submitting your return electronically, please contact your software provider. Do not file your return on paper. A list of vendors offering approved electronic filing software and services to meet your electronic filing obligation is available on the department's 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 seven months after the unextended due date or 30 days after the federal extended due date. This does not constitute undue hardship for the purpose of an electronic filing waiver request.

- Obtain an Employer Federal Identification Number (EFIN) from the Internal Revenue Service for each member prior to filing your return.
- If you receive a letter regarding a missing or invalid prior year return, corrective action may need to be completed before the department can process any other return filed.
- Schedule CF, *Carryforward of Unused Credits*, must be included with Form 6 for each member that has unused nonrefundable credits to be carried forward to future years. You must submit a new Schedule CF each year until the carryforward is eliminated or until the 15-year carryforward period expires, whichever is earlier.

Manufacturing & Agriculture Credit - Intercompany Sales

Combined Groups

Each member of a combined group must compute their eligible manufacturing and agriculture credit separately on Schedule MA-A or MA-M. When a combined group member sells goods to another combined group member of the same group, the intercompany sale is excluded from the member's computation of qualified production activities income until the goods are sold to an unrelated third party and the income is recognized in the combined unitary income of the group.

See [Common Question F.5](#), on the department's website for an example:

Disregarded Entities and Qualified Subchapter S Subsidiaries

Sales between an owner and its disregarded entities (or between disregarded entities of the same owner), including sales between a tax-option (S) corporation and its qualified subchapter S subsidiaries are eliminated when computing the manufacturing and agriculture credit. Production gross receipts used in the computation of the manufacturing and agriculture credit are the eligible amounts reported as gross receipts on the owner's federal income tax return.

Example: Tax-option (S) corporation has a wholly owned limited liability company that is disregarded as a separate entity (DE) and a qualified subchapter S subsidiary (QSSS) engaged solely in manufacturing operations in Wisconsin.

- The DE has gross sales of \$250,000 (\$50,000 are intercompany sales) and the QSSS has gross sales of \$125,000 (\$25,000 are intercompany sales), which are solely derived from the sale of tangible personal property produced on property assessed as manufacturing property in Wisconsin
- Tax-option (S) Corporation reports \$300,000 gross receipts on federal Form 1120-S, line 1c. The intercompany sales of \$50,000 from the DE and \$25,000 from the QSSS are eliminated.
- The eligible production gross receipts for the manufacturing credit are \$300,000 (\$250,000-\$50,000+\$125,000-\$25,000), the amount reported as gross receipts on the federal tax return

Pass-Through Withholding Requirement for Part-Year Wisconsin Residents

A pass-through entity that has Wisconsin income for the taxable year that is allocable to a nonresident partner, member, shareholder, or beneficiary must withhold tax from the Wisconsin income distributable to each nonresident partner, member, shareholder, or beneficiary.

A pass-through entity must also withhold tax from the Wisconsin income distributable to a part-year resident for the part of the year in which the partner, member, shareholder, or beneficiary is a nonresident of Wisconsin. A part-year resident is both a resident and nonresident of Wisconsin for each part of the year depending on when the individual changes their domicile.

For more details on pass-through withholding filing requirements, see article "Pass-Through Withholding Filing Requirements" on page 7 of [Wisconsin Tax Bulletin 195](#) (October 2016).

Sales/Use Tax Updates and Reminders

Wisconsin Sales Tax Holiday: August 1 - 5, 2018

Sales of the following are exempt from Wisconsin sales and use tax from August 1-5, 2018:

- Clothing - sales price of each item must be \$75 or less
- Computer purchased by a consumer for their personal use - sales price of each computer must be \$750 or less
- School computer supplies purchased by the consumer for their personal use - sales price of each item must be \$250 or less
- School supplies - sales price of each item must be \$75 or less

Purchaser's Refund of Tax Paid in Error

All retailers are required to participate and may not charge tax to purchasers on exempt items during the sales tax holiday. If a retailer charges tax on an exempt item, the purchaser should request a refund of the sales tax directly from the retailer. Or, if the sales tax totals \$50 or more from all retailers, the purchaser may file a buyer's claim for refund directly with the department at <https://tap.revenue.wi.gov/Buyer>.

[Wisconsin's Sales Tax Holiday information](#) is available on the department's website.

Remote Sellers - Wayfair Decision

Beginning October 1, 2018, Wisconsin will require out-of-state sellers with no physical presence in Wisconsin (remote sellers) to collect and remit Wisconsin sales or use tax on sales of taxable products and services in Wisconsin.

New standards for administering Wisconsin sales tax laws on remote sellers will be developed by rule. The rule will be consistent with the U.S. Supreme Court's decision in [South Dakota v. Wayfair, Inc.](#), which approved a small seller exception for sellers who do not have annual sales of products and services into the state of (1) more than \$100,000, or (2) 200 or more separate transactions. Any small seller exception adopted will not apply to sellers with a physical presence in Wisconsin.

[Wayfair information](#) is available on the department's website.

Reminder - Sister Bay Premier Resort Area Tax Effective July 1, 2018

The Village of Sister Bay in Door County adopted the 0.5% premier resort area tax, effective July 1, 2018.

A seller (1) classified under one of the Standard Industrial Classification numbers noted in [Publication 403, Premier Resort Area Tax](#), and (2) making sales of taxable products and services that take place in the Village of Sister Bay, must remit premier resort area tax on such sales.

If you are a seller who meets both of the conditions above, you must register with the department. To register, send your legal name, address, and 15-digit sales tax number by one of the following:

- Email: DORRegistration@wisconsin.gov
- Fax: (608) 327-0235, or
- Mail: Wisconsin Department of Revenue
Attn: Registration Unit
PO Box 8902
Madison, WI 53708-8902

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

Sales and Use Tax Exemption - Electronics and Information Technology Manufacturing Zone Facilities

Section 77.54(65), Wis. Stats., effective September 20, 2017, provides a sales and use tax exemption for the sale of and the storage, use, or other consumption of building materials, supplies, equipment, and landscaping services used to construct or develop a facility in an electronics and information technology manufacturing zone. In order for the exemption to apply, the following criteria must be met:

1. The purchases are building materials, supplies, equipment, or landscaping services
2. The items are sold to or stored, used, or consumed by owners, lessees, contractors, subcontractors, or builders
3. The items are acquired solely for, or used solely in, the construction or development of a facility designated as an "electronics and information technology manufacturing zone" under sec. 238.396(1m), Wis. Stats. The capital expenditures for the construction or development of the facility must be eligible to be claimed as an income tax credit under sec. 71.07(3wm)(bm) or sec. 71.28(3wm)(bm), Wis. Stats., as certified by Wisconsin Economic Development Corporation (WEDC).

If property is purchased without tax under this exemption and is subsequently used in a taxable manner (e.g., moved to a different job site, used other than for the construction or development of a qualifying facility), use tax is due based upon the original purchase price of the property.

Example 1: Contractor purchases a crane for use on a construction project for a qualifying facility located in an electronics and information technology manufacturing zone. The contractor provides its vendor with a fully completed exemption certificate (described below). Upon completion of the project, Contractor uses the crane at a different project site. Contractor owes use tax on the original purchase price of the crane at the time the crane is used outside the electronics and information technology manufacturing zone.

Example 2: Contractor rents a crane for use on a construction project for a qualifying facility located in an electronics and information technology manufacturing zone. Contractor makes no use of the crane other than at the project. Contractor may provide its vendor with a fully completed exemption certificate (described below), since the crane was rented solely for, and used solely in, the construction or development of a facility in an electronics and information technology manufacturing zone.

Example 3: Contractor rents a portable toilet for use at its construction site for a qualifying facility located in an electronics and information technology manufacturing zone. Contractor may provide its vendor with a fully completed exemption certificate (described below), since the portable toilet was rented solely for,

and used solely in, the construction or development of a facility in an electronics and information technology manufacturing zone.

Example 4: Subcontractor purchases tools, pencils, clipboards, and other supplies for use only on a construction project for a qualifying facility located in an electronics and information technology manufacturing zone. At the completion of the project, the tools and supplies are completely consumed or used up. Subcontractor may purchase the tools, pencils, clipboards, and other supplies without tax by providing its vendor with a fully completed exemption certificate (described below).

Exemption Certificates – Claiming the Exemption

An owner, lessee, contractor, subcontractor, or builder who makes purchases that qualify for this exemption, must provide a fully completed Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*, to the seller. The owner, lessee, contractor, subcontractor, or builder should check "other purchases exempted by law" on the certificate and enter "exempt under sec. 77.54(65), Wis. Stats."

Note: A purchaser who provides the seller an exemption certificate claiming an item will be used in this exempt manner, then uses it in a taxable manner, is liable for use tax on its purchase price of such items.

Sales of Tangible Personal Property and Landscaping Services

A contractor or subcontractor must charge sales tax on its sales of tangible personal property sold to the owner or prime contractor, unless it receives a fully completed exemption certificate (described above). The contractor may purchase without tax, for resale, the items physically transferred to the owner or prime contractor as tangible personal property or landscaping services.

Real Property Construction Activities

Real property improvements are not taxable, and the owner or prime contractor is not required to give the contractor or subcontractor an exemption certificate. However, the contractor or subcontractor performing the real property construction activities may purchase building materials without tax that are used in a qualifying electronics and information technology manufacturing zone if the criteria, above, are met. The contractor should provide its supplier with a fully completed exemption certificate (described above).

The contractor is required to maintain records that substantiate its purchases qualify for the exemption. The contractor should keep records to show:

- What items were purchased exempt (see 1 above);
- Items were purchased solely for or used solely in the construction or development of a qualifying facility (see 3 above);
- Location of the facility that is in an electronics and information technology manufacturing zone (see 3 above);
- Capital expenditures for the construction or development of such facilities are eligible to be claimed as a credit under the required statutes, as certified by WEDC (see 3 above).

The contractor may request that the qualifying facility help to substantiate that the property or service the contractor is purchasing qualifies for exemption under sec. 77.54(65), Wis. Stats. Contractors working on qualifying projects should provide subcontractors with necessary information so that the subcontractor can substantiate its use of this exemption.

Exemption for Building Materials That Become Part of Facility Owned by Local Government or Qualifying Exempt Entity

Section 77.54(9m), Wis. Stats., effective for contracts entered into January 1, 2016, or thereafter, provides an exemption from sales and use tax exemption for property sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the property to a qualifying exempt entity, if the property becomes part of a facility in Wisconsin that is owned by the qualifying exempt entity. In order for the exemption to apply, the following criteria must be met:

1. The construction must be for a **qualifying exempt entity**;
2. The property must become **part of a facility** in Wisconsin that is owned by the exempt entity; and
3. The property must be **transferred to** the qualifying exempt entity.

What Is a Qualifying Exempt Entity?

For purposes of this exemption, a qualifying exempt entity includes:

- Any county, city, village or town within Wisconsin
- Any public school district within Wisconsin
- A county-city hospital established under sec. 66.0927, Wis. Stats.
- A sewerage commission organized under sec. 281.43(4), Wis. Stats.
- A metropolitan sewerage district organized under secs. 200.01 to 200.15 or 200.21 to 200.65, Wis. Stats.
- Any joint local water authority created under sec. 66.0823, Wis. Stats.
- Any nonprofit organization that holds a Wisconsin Certificate of Exempt Status (CES) number*
- A non-Wisconsin nonprofit organization if it is organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations), and no part of its net income inures to the benefit of any private stockholder, shareholder, member, or corporation

Note: A qualifying non-Wisconsin nonprofit organization is not required to obtain a Wisconsin CES number to be a qualifying exempt entity.

- Retroactively for contracts entered into on September 1, 2017, and thereafter, a qualifying exempt entity will include holding companies which are all of the following:
 - Described under sec. 501(c)(2), IRC;
 - Exempt from federal income tax under sec. 501(a), IRC; and
 - Organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.

- For contracts entered into on July 1, 2018, and thereafter, a qualifying exempt entity will include:
 - Technical colleges, any institution as defined in sec. 36.05(9), Wis. Stats., or campus as defined in sec. 36.05(6m), Wis. Stats., in the University of Wisconsin System, and the University of Wisconsin-Extension
 - A state veterans organization. "State veterans organization" means the Wisconsin state organization or department of a national veterans organization incorporated by an act of congress.

Additionally, a contractor's purchase of building materials used in a construction activity for any federally recognized American Indian tribe or band within Wisconsin is also exempt from sales and use tax if the construction activity occurs on the tribal reservation and the construction project will benefit the Tribe. This tax treatment is not part of the exemption described above and also applies prior to the effective date of the exemption.

* **Caution:** Not all nonprofit organizations that are exempt from federal income taxes are qualifying exempt entities for purposes of this exemption. Many fraternal, social, and civic organizations **are not qualifying** entities (e.g., chambers of commerce, professional organizations, labor organizations). A contractor should request the Wisconsin nonprofit organization's CES number and retain this number in its records to verify that the organization is a qualifying exempt entity.

This exemption also **does not apply** to facilities constructed for the following entities, even if the entity holds a Wisconsin CES number:

- A non-Wisconsin county, city, village or town
- A non-Wisconsin public school district
- A public college, university or technical college (regardless of whether Wisconsin or non-Wisconsin for contracts entered into prior to July 1, 2018)
- A state governmental unit (regardless of whether Wisconsin or non-Wisconsin)
- A federal governmental unit
- A Wisconsin nonprofit organization that does not hold a Wisconsin CES number
- Individual Native American Tribe members

What Is a "Facility?"

The exemption applies to property that becomes part of a "facility" located in Wisconsin that is owned by a qualifying exempt entity.

"Facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility.

"Facility" does NOT include a highway, street, road, or anything not specifically listed above.

Can a Subcontractor "Transfer" the Property to the Exempt Entity?

A subcontractor's purchase of property qualifies for exemption if the property becomes part of a facility located in Wisconsin owned by a qualifying exempt entity. Although the subcontractor is providing a real property construction activity under contract with the general contractor, the property is ultimately transferred to a qualifying exempt entity upon completion of the contract between the general contractor and the qualifying exempt entity.

How to Claim the Exemption

A contractor who makes purchases that qualify for this exemption, must provide a fully completed exemption certificate to the seller. The contractor should check "other purchases exempted by law" on the certificate and enter "exempt under sec. 77.54(9m), Wis. Stats."

Note: A contractor who provides the seller an exemption certificate claiming an item will be used in this exempt manner, then uses it in a taxable manner, is liable for use tax on its purchase price of such items.

Documentation to Maintain

Retailers - The seller is not liable for Wisconsin sales tax on its sales of taxable products if, within 90 days of the sale, it receives a fully completed exemption certificate from the contractor indicating the contractor is using the items in an exempt manner. Sellers are required to maintain adequate records, including exemption certificates obtained from contractors, to identify that the sale is exempt.

Contractors & Subcontractors - This exemption is for the purchase of building materials used in real property construction; therefore, the customer or general contractor purchasing real property construction services from the contractor or subcontractor does not provide an exemption certificate. Real property construction activities are nontaxable which means no exemption is necessary. However, the contractor or subcontractor will need to obtain information to maintain in their records to show that its purchases of building materials qualified for the exemption provided in sec. 77.54(9m), Wis. Stats.

Contractors - The contractor is required to maintain records to verify that the exemption applies when the real property construction activity is performed on a facility owned by the qualifying exempt entity. This may be done by obtaining a nonprofit organization's CES number and maintaining contracts and invoices showing the work was for this qualifying exempt entity.

[Form S-227](#), *Contractor Statement of Building Materials Purchased*, is available to assist in documenting the necessary information, but contractors are not required to use this form.

Important: A contractor should request the Wisconsin nonprofit organization's CES number and retain this number in its records to verify that the organization is a qualifying exempt entity. Property used in a real property contract with a Wisconsin nonprofit organization that does not hold a Wisconsin CES number does not qualify for this exemption.

Although a qualifying non-Wisconsin nonprofit organization is not required to obtain a Wisconsin CES number to be a qualifying exempt entity, the contractor must be able to verify that the entity is organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations), and no part of its net income inures to the benefit of any private stockholder, shareholder, member, or corporation. For example, the non-Wisconsin qualifying organization may provide the contractor with a copy of its IRS 501(c)2 or 501(c)3 exempt status determination letter.

Caution: Nonprofit organizations that the IRS exempts under another section of its code (e.g., 501(c)6, 501(c)7) **are not** qualifying exempt entities for purposes of this exemption. In addition, a Wisconsin state governmental unit that holds a CES number is not a qualifying exempt entity for purposes of this exemption.

For qualifying exempt entities that are not required to hold a CES number (e.g., a Wisconsin municipality, the University of Wisconsin System), the contractor may retain the contract and invoices that indicate the work was performed for the qualifying exempt entity.

State veterans organizations will not be issued a Wisconsin Certificate of Exempt Status number. The contractor must document that its contract is with a qualifying state veterans organization.

Subcontractors - The same treatment applies to subcontractors as it does to contractors in the paragraphs above (i.e., subcontractor provides exemption certificate to vendor, maintain documentation). However, a subcontractor may not have a contract indicating the real property construction activity is for the qualifying exempt entity. A subcontractor will need to ensure it can identify the Wisconsin location, on a bill of sale or invoice to the general contractor, where it performed the real property construction activity, and verify that the property became part of a facility in Wisconsin owned by a qualifying exempt entity.

[Form S-227](#), *Contractor Statement of Building Materials Purchased*, is available to assist in documenting the necessary information, but contractors are not required to use this form.

Transitional Provisions

This law first applies to contracts entered into on January 1, 2016,* and thereafter. The exemption does not apply if the contractor purchases property after January 1, 2016,* for a contract that was entered into prior to January 1, 2016.*

The date the contract was entered into between the contractor and a qualifying exempt entity is used in determining whether the exemption applies. A change order to a contract amends the original contract, but does not nullify the original contract or change the date that the contract was entered into. Therefore, if a contract between the contractor and the exempt entity was irrevocably entered into prior to January 1, 2016,* the exemption does not apply to property purchased to fulfill the contract. If the contract was not irrevocable and the original contract is cancelled and a new contract is entered into on January 1, 2016,* or thereafter, the property used to fulfill the new contract may qualify for exemption.

* The "contract entered into" date is different for contracts with certain exempt qualifying entities. These entities and "contract entered into" dates are as follows:

- For contracts entered into on September 1, 2017, and thereafter, a qualifying exempt entity will include 501(c)2 holding companies
- For contracts entered into on July 1, 2018, and thereafter, a qualifying exempt entity will include:
 - Technical colleges, the University of Wisconsin System, and the University of Wisconsin-Extension
 - A state veterans organization

Summertime Services and Events May Be Taxable

Wisconsin's warm summer weather means that many seasonal sellers are back in business. Business owners need to determine whether their services are subject to sales tax. See the following examples of taxable services and links to additional information.

- **Lawn mowing and landscaping services** - Mowing lawns, watering lawns, aerating lawns, raking leaves, planting, spraying and fertilizing, and shrub and tree services are taxable services. Landscape design, planning, and counseling services are also taxable.

See the article titled "Spring is Here!" in [Sales and Use Tax Report 1-15](#) (March 2015) and [Publication 210](#), *Sales and Use Tax Treatment of Landscaping*.

- **Swimming pool maintenance** - Cleaning, repairing, and performing other services to swimming pools are taxable service.

See the article titled "[Swimming Pool Cleaning and Maintenance Services Are Taxable](#)."

- **Admissions to concerts, sporting events, and waterparks** - The sale of admissions to amusement, athletic, entertainment, or recreational events or facilities is taxable.

See [s. Tax 11.65](#), Wis. Adm. Code. (August 2012 Register).

- **Rentals of facilities for wedding receptions, picnics, and parties** - The rental of a multipurpose facility is subject to tax if the multipurpose facility is used for an amusement, athletic, entertainment, or recreational purpose.

See [FS 2107](#), *Rentals of Multipurpose Facilities*.

- **Boat launching, docking, storage** - Docking or providing storage space, including winter or summer storage, for boats is taxable.

See the Q&A on page 12 of [Wisconsin Tax Bulletin 194](#) (July 2016) and the tax release titled "Boat Launching Fees" on page 31 of [Wisconsin Tax Bulletin 110](#) (July 1998).

New Publication for Hunting Preserves and Gun Clubs

A new publication is available on the Department of Revenue's website, [Publication 244](#), *Hunting Preserves and Gun Clubs*. The publication explains the sales and use tax treatment of sales and purchases by hunting preserves and gun clubs.

Nonresident Boats Registered with the U.S. Coast Guard May Be Subject to Tax

Nonresidents of Wisconsin who own a documented vessel that is used, stored or in other ways consumed in Wisconsin waters may owe use tax on the vessel. Documented vessels are large recreational watercrafts owned by U.S. citizens that are registered with the U.S. Coast Guard. Documented vessels must be registered in Wisconsin with the Department of Natural Resources (DNR), unless the vessel is registered in another state and is used on Wisconsin waters for less than 60 consecutive days. See the [DNR Handbook of Wisconsin Boating Laws and Responsibilities](#).

If the documented vessel is required to be registered with the Wisconsin DNR, Wisconsin sales or use tax must be paid. When registering the vessel in Wisconsin, the registrant should bring a copy of the receipt showing any tax that was paid to the seller, as well as proof of payment. Sales tax paid to another state on the vessel may be claimed as a credit to reduce the tax payable if the tax was first due and paid to the other state. A county tax or similar tax paid in the other state may also be claimed as a credit. Credit for the taxes paid to another state will only be allowed at registration if the registrant provides proof of sales or use tax paid to the other state.

An exemption exists for nonresidents with vessels (boats) berthed in Wisconsin boundary waters. Wisconsin use tax is not imposed on the storage, use, or other consumption of a boat in Wisconsin that is owned by a nonresident if all of the following conditions are met:

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

This exemption is provided in sec. 77.53(17m), Wis. Stats. For a list of questions and answers regarding the sales tax exemption see the article titled "Nonresident Exemption for Boats Berthed in Wisconsin Boundary Waters," on page 9 of [Wisconsin Tax Bulletin 197](#) (April 2017).

Motor Vehicle Dealer's Measure of Use Tax Increases to \$162 Effective January 1, 2019

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

Effective January 1, 2019, the amount subject to use tax is increased from \$157 to \$162 per plate per month. To calculate use tax, \$162 is multiplied by the appropriate use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.

Under Wisconsin law, the department must annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12-month period ending June 30. Because the index changed 2.9% from July 2017 to June 2018, the measure of use tax is adjusted to \$162 as of January 1, 2019 ($\$157 \times (251.989/244.955)$, rounded to the nearest dollar).

Excise Tax Updates and Reminders

Cigarette and Tobacco Products Uniformity Project – Returns and Filing Option Changes January 2019

Wisconsin cigarette and tobacco products tax returns, schedules, and filing options are changing in January 2019. Cigarette and tobacco products tax returns for periods beginning on or after January 1, 2019, must be filed using approved XML format or using *My Tax Account*, the department's online filing system. Forms will no longer be filed using Adobe Livecycle. Details of these changes are on the [Cigarette and Tobacco e-file web page](#).

This project is a cooperative effort with other states to adopt uniform tax forms that will assist taxpayers in complying with various state reporting and tax collection requirements. The uniform forms were developed with the assistance of industry representatives by the Federation of Tax Administrators' (FTA) Tobacco Uniformity Project. For more information regarding this nationwide project, visit the [FTA's website](#).

Project updates are posted on the department's website and communicated through our electronic mailing list. Sign up for the electronic [mailing list](#) and choose: (List name: Cigarette and Tobacco Products Distributor Uniformity Project).

Training will be available this fall to assist with the change. Check the department's [training web page](#) for updates.

If you have questions about the uniformity project, please contact the Excise Tax Unit at DORWIUniformCigTobForms@wisconsin.gov.

Other Updates and Reminders

Department of Revenue Launches "My Case Manager" for Field Audits

The Wisconsin Department of Revenue launched "My Case Manager" through its MTA (My Tax Account) online tax management system on July 9. My Case Manager is a feature that allows taxpayers to see certain information about a field audit, including stages, requests, resources, and history. My Case Manager's goal is to increase transparency of the audit process, reduce the number of days that it takes

to complete an audit and to increase communication with taxpayers. Businesses under field audit by the department have this tool available since July 9. This includes audits which began before that date.

Benefits and Features of My Case Manager:

- Watch the audit progress through stages
- See interim due dates, next tasks, outstanding items, and estimated completion date
- View timeline of stages completed
- Links to online resources about the audit process and Wisconsin tax law
- Quick links to contact information for the auditor and their supervisor

How to access My Case Manager:

- Go to [My Tax Account](http://tap.revenue.wi.gov) (tap.revenue.wi.gov)
- Select "Using My Case Manager" under the Business Users Help section

More information is available on the department's [website](#).

Report on Litigation

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

Sales and Use Tax

Taxable Services - Processing Tangible Personal Property. *Tetra Tech EC, Inc. and Lower Fox River Remediation LLC vs. Wisconsin Department of Revenue* (Wisconsin Supreme Court, June 26, 2018).

See [Wisconsin Tax Bulletin 187](#) (January 2015), page 9, [Wisconsin Tax Bulletin 190](#) (August 2015), page 9, and [Wisconsin Tax Bulletin 196](#) (January 2017), page 21, for summaries of the Wisconsin Tax Appeals Commission, Brown County Circuit Court, and Court of Appeals decisions, respectively.

The issue in this case is whether the "processing" of river sediments into waste sludge, reusable sand, and water provided to Tetra Tech EC, Inc. ("Tetra Tech") and Lower Fox River Remediation LLC ("LLC") by Stuyvesant Dredging, Inc. ("SDI"), is subject to Wisconsin sales tax under sec. 77.52(2)(a) 11., Wis. Stats. (2007-08). Tetra Tech and LLC argued the statutory term "processing" is not expansive enough to cover the separation of river sediment into its component parts.

The Wisconsin Tax Appeals Commission determined that SDI's activity of separating dredged material into its constituent parts constituted "processing" of tangible personal property under sec. 77.52(2)(a)11., Wis. Stats., and thus is a service subject to Wisconsin's retail sales and use tax.

Tetra Tech and LLC filed a petition for judicial review of the Wisconsin Tax Appeals decision. The Circuit Court affirmed the Commission's decision, relying on the same definition of "processing" the Commission had used. The Court of Appeals, using a dictionary definition of "processing" similar to the one used by the Circuit Court and Commission, affirmed.

The Wisconsin Supreme Court affirmed and concluded that "processing" encompasses the performance of a mechanical or chemical operation on tangible personal property, a task that can be completed without transforming the property into a new product, or adding anything to it that was not there already. However, it also cautioned its opinion should not be interpreted as an attempt to define "processing," "fabricating," "producing," "printing," or "imprinting" adding, "With respect to 'processing,' we conclude the term is at least as broad as we have described."

The Supreme Court also "decided to end our practice of deferring to administrative agencies' conclusions of law. However, pursuant to Wis. Stats. §227.57(10), we will give 'due weight' to the experience, technical competence, and specialized knowledge of an administrative agency as we consider its arguments."

Laundry Services – Long-Term Care Support Service Provider. *Healthcare Services Group, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District III, July 17, 2018).

On February 9, 2017, the Circuit Court affirmed the Wisconsin Tax Appeals Commission's July 27, 2016, decision. See [Wisconsin Tax Bulletin 195](#) (October 2016), page 13, and [Wisconsin Tax Bulletin 197](#) (April 2017), page 18, for summaries of the Circuit Court and Commission decisions.

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

The Court of Appeals affirmed the Wisconsin Tax Appeals Commission's decision. The Court stated that "[t]he undisputed facts of the case plainly show that, in exchange for a fee, HSG washes its clients' soiled clothes and linens." The Court ruled that HSG clearly provides laundry services to its clients within the meaning of sec. 77.52(2)(a)6, Wis. Stats.

It is unknown at the time of publication whether the taxpayer will appeal this decision to the Wisconsin Supreme Court.

Industrial Waste Treatment Facility Exemption - Fuel and Electricity Consumed by Air Makeup Unit. *PMFC Holding, LLC vs. Wisconsin Department of Revenue* (Dane County Circuit Court, July 17, 2018).

This is a judicial review of the Wisconsin Tax Appeals Commission's decision dated January 29, 2018. See [Wisconsin Tax Bulletin 201](#) (April, 2018), page 46, for a summary of the Wisconsin Tax Appeals Commission's decision.

The issue in this case is whether the exemption for industrial waste treatment facilities applies to the PMFC Holding, LLC's purchase of fuel and electricity consumed in air makeup units.

The Circuit Court, in an oral decision, affirmed the Wisconsin Tax Appeals Commission decision that the air makeup units qualify as components of the industrial waste treatment facility. The fuel and electricity consumed by the air makeup units, therefore, qualified for the exemption.

It is unknown at the time of publication whether the department will appeal this decision to the Court of Appeals.