

Wisconsin Tax Bulletin

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New Tax Laws

Individual and/or Fiduciary Income Taxes

1. Determining Reduction in Individual Income Tax Rates

([2017 Wis. Act 368](#), amend sec. 73.03(71) and create sec. 73.03(71)(d), effective December 16, 2018)

The amount of additional sales and use tax reported by remote sellers as a result of the United States Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, from October 1, 2018, through September 30, 2019, will be used to reduce individual income tax rates for the taxable year ending on December 31, 2019.

No later than October 20, 2019, the Secretary of Revenue must certify and report the amount of additional sales and use tax revenue and the reduction of individual income tax rates under sec. 71.06, Wis. Stats., to the Secretary of the Department of Administration, Governor, Joint Committee on Finance (JCF), and Legislative Audit Bureau (LAB).

The LAB must review the determinations reported and report its findings to the Joint Legislative Audit Committee and JCF no later than November 1, 2019. If the LAB's review results in a different calculation of the tax rates, the JCF must determine which tax rates to apply to the taxable year ending on December 31, 2019, and report its determination to the Governor, Secretary of Administration, and Secretary of Revenue no later than November 10, 2019.

Corporation Franchise and Income Taxes

1. Election to Pay Tax at Entity Level for Tax-Option (S) Corporations and Partnerships

([2017 Wis. Act 368](#), renumber and amend secs. 71.07(7)(b) and 71.365(1), amend secs. 71.05(6)(a)14., 71.07(7)(c), and 71.36(1), and create secs. 71.05(10)(dm), 71.07(7)(b)3., 71.21(6), 71.365(1)(b) and (4m), and 71.775(3)(a)4., effective for tax-option (S) corporations for taxable years beginning on or after January 1, 2018, and effective for partnerships for taxable years beginning on or after January 1, 2019)

Tax-option (S) corporations

A new election to pay tax at the entity level is available for tax-option (S) corporations and limited liability companies (LLCs) treated as tax-option (S) corporations for taxable years beginning on or after January 1, 2018.

If the election is made, shareholders of a tax-option (S) corporation may not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the tax-option (S) corporation. The tax-option (S) corporation must pay tax on items that would otherwise be taxed if this election was not made.

The election must be made by shareholders who hold an aggregate of more than 50 percent of the shares of a tax-option (S) corporation on the day of the election. The election may be revoked if the revocation is made by shareholders who hold an aggregate of more than 50 percent of the shares of a tax-option (S) corporation on the day of the revocation.

The election or revocation must be made on or before the due date or extended due date of the entity's return for each taxable year.

If an election is made, all of the following apply:

- Tax-option (S) corporation must pay tax at a rate of 7.9 percent of net income reportable to Wisconsin.
- Tax-option (S) corporation net income is computed under sec. 71.34(1k), Wis. Stats., and the situs of income must be determined as if the election was not made.
- Except for the credit for other state taxes paid under sec. 71.07(7)(b)3., Wis. Stats., tax credits under ch. 71, Wis. Stats., may not be claimed by the tax-option (S) corporation.
- Tax-option (S) corporation may not claim losses under secs. 71.05(8) and 71.26(4), Wis. Stats.
- Estimated payments and underpayment interest under secs. 71.29 and 71.84, Wis. Stats., apply to the tax-option (S) corporation for the taxable year beginning in 2019 and later years.
- If the tax-option (S) corporation fails to pay the tax as a result of the election, the department may collect such amount from the shareholders based on their proportionate share of such income.
- Nonresident shareholder's share of income from the tax-option (S) corporation attributable to Wisconsin is not included in determining the pass-through withholding tax imposed under sec. 71.775(2), Wis. Stats.
- Adjusted basis of a shareholder in the stock and indebtedness of the tax-option (S) corporation is determined as if the election was not made.

For additional information on the new election available for tax-option (S) corporations, see *Election to Pay Tax at Entity Level for Tax-Option (S) Corporations*, on page 10 of this bulletin.

Partnerships

A new election to pay tax at the entity level will be available for partnerships and LLCs treated as partnerships for taxable years beginning on or after January 1, 2019.

If the election is made, the partners of a partnership may not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the partnership. The partnership must pay tax on items that would otherwise be taxed if this election was not made.

The election must be made by partners who hold an aggregate of more than 50 percent of the capital and profits of a partnership on the day of the election. The election may be revoked if the revocation is made by partners who hold an aggregate of more than 50 percent of the capital and profits of a partnership on the day of the revocation.

The election or revocation must be made on or before the due date or extended due date of the entity's return for each taxable year.

If an election is made, all of the following apply:

- Partnership must pay tax at a rate of 7.9 percent of net income reportable to Wisconsin.
- Partnership net income is computed under sec. 71.21(1) through (5), Wis. Stats., and the situs of income must be determined as if the election was not made.

- Except for the credit for other state taxes paid under sec. 71.07(7)(b)3., Wis. Stats., tax credits under ch. 71, Wis. Stats., may not be claimed by the partnership.
- Partnership may not claim the loss under sec. 71.05(8), Wis. Stats.
- Estimated payments and underpayment interest under secs. 71.29 and 71.84, Wis. Stats., apply to the partnership.
- If the partnership fails to pay the tax as a result of the election, the department may collect such amount from the partners based on their proportionate share of such income.
- Nonresident partner's share of income from the partnership that is attributable to Wisconsin is not included in determining the pass-through withholding tax imposed under sec. 71.775(2), Wis. Stats.
- Adjusted basis of a partner's interest in the partnership is determined as if the election was not made.

2. Credit for Taxes Paid to Other States for Tax-Option (S) Corporations and Partnerships Electing to Pay Entity-Level Tax

([2017 Wis. Act 368](#), renumber and amend sec. 71.07(7)(b), amend sec. 71.07(7)(c), and create sec. 71.07(7)(b)3., effective December 16, 2018)

Income and franchise taxes paid to another state by a tax-option (S) corporation, partnership, or limited liability company (LLC) that is treated as a tax-option (S) corporation or partnership may be claimed as a credit by that corporation's shareholders, partnership's partners, or LLC's members who are Wisconsin residents and who otherwise qualify to claim the credit pursuant to sec. 71.07(7)(b), Wis. Stats., unless the tax-option (S) corporation, partnership, or LLC has made an election to pay tax at the entity level under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats.

If a tax-option (S) corporation, partnership, or LLC makes an election to pay tax at the entity level, that tax-option (S) corporation, partnership, or LLC may credit the net income or franchise tax paid by the entity to another state on that income and the net income tax on that income paid by the entity on behalf of its shareholders, partners, and members that are residents of this state on a composite return filed with the other state against the net income or franchise tax otherwise payable to this state on income of the same year.

The credit is not allowed unless:

- Income taxed by the other state is also income for Wisconsin tax purposes and is otherwise attributable to amounts that would be reportable to Wisconsin by **resident** shareholders, partners, or members of the tax-option (S) corporation, partnership, or LLC if the election to pay tax at the entity level was not made, and
- Claimed within four years of the unextended due date of the tax return as provided in sec. 71.75(2), Wis. Stats.

The credit may not exceed an amount determined by multiplying the income subject to tax in the other state that is also subject to tax in Wisconsin by 7.9 percent.

Note: Amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed.

3. Expansion of Enterprise Zones for the Enterprise Zone Credit

([2017 Wis. Act 369](#), repeal sec. 238.399(3)(e), amend sec. 238.399(3)(a) and (6)(f), and create sec. 238.399(3)(am), effective December 16, 2018)

The Wisconsin Economic Development Corporation (WEDC) may designate any number of enterprise zones in this state.

Before WEDC designates a new enterprise zone, WEDC must notify the Joint Committee on Finance (JCF) in writing of the WEDC's intention to designate a new enterprise zone. The notice must describe the new zone and the purposes for which WEDC proposes to designate the new zone.

If, within 14 working days after the date of the WEDC's notice, the JCF co-chairpersons do not notify WEDC that the committee has scheduled a meeting to review WEDC's proposal, WEDC may designate the new enterprise zone as proposed in WEDC's notice. If, within 14 working days after the date of the WEDC's notice, the JCF co-chairpersons notify the corporation that the committee has scheduled a meeting to review WEDC's proposal, WEDC may designate the new enterprise zone only upon approval of the committee.

Sales and Use Tax

1. Remote Sellers - *Wayfair* Decision

([2017 Wis. Act 368](#), amend secs. 73.03(71) and 77.51(13g)(intro), and create secs. 73.03(71)(d) and 77.51(13gm), effective December 16, 2018)

The definition of "retailer engaged in business in this state" was amended to exclude an out-of-state retailer whose only activities in Wisconsin are making sales into Wisconsin, unless the retailer meets either of the following criteria in the previous or current year:

- The retailer's annual gross sales into this state exceed \$100,000.
- The retailer's annual number of separate sales transactions into this state is 200 or more.

For purposes of determining if a retailer meets or exceeds the gross sales or number of separate sales transaction criteria, all of the following apply:

- "Year" means the retailer's taxable year for federal income tax purposes.
- Annual amounts of gross sales and separate sales transactions include both taxable and nontaxable sales.
- Each required periodic payment of a lease or license is a separate sales transaction.
- Deposits made in advance of a sale are not sales transactions.
- An out-of-state retailer's annual amounts include all sales into Wisconsin by the retailer on behalf of other persons and all sales into Wisconsin by another person on the retailer's behalf.

An out-of-state retailer that meets or exceeds either the gross sales or number of transactions criteria in the previous year is required to register for a seller's permit or use tax certificate with the department and collect Wisconsin sales or use tax on taxable sales made in Wisconsin for the entire current year. If an out-of-state retailer does not meet or exceed the sales or transaction criteria in the previous year, the retailer is not required to register and collect tax until either the sales or transaction criteria is met

in the current year, at which time the retailer must register with the department and collect the tax, beginning with its next transaction, for the remainder of the current year and the following year.

Caution: A retailer that has an active permit is required to collect and remit tax on all taxable sales made in Wisconsin regardless of whether the retailer is required to have an active permit.

The amount of additional sales and use tax revenue reported by remote sellers as a result of the United States Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, from October 1, 2018 through September 30, 2019, will be used to reduce individual income tax rates for the taxable year ending on December 31, 2019. For additional information, see *Determining Reduction in Individual Income Tax Rates*, on page 2 of this bulletin.

Important Note: Prior to this law change, out-of-state retailers that had no activities in Wisconsin other than making sales were required to collect and remit Wisconsin sales or use tax on sales of taxable products and services in Wisconsin on and after October 1, 2018, unless the retailer qualified for the small seller exception. The small seller exception was provided by rule and was consistent with the gross sales and separate sales transaction criteria in this law.

For additional information on out-of-state retailers (remote sellers), see *Remote Sellers – Wayfair Decision*, on page 19 of this bulletin.

General Updates and Reminders

New Application to Request Copies of Previously Filed Tax Returns or Forms W-2

The department has a new My Tax Account application for requesting copies of previously filed tax returns and Forms W-2. This application is secure, mobile friendly and replaces the paper Form P-521, *Request for Copy of Tax Returns*. The search fee remains \$5.00 for each year or period requested (\$6.00 if requesting certified copies). All requested documents are sent by mail.

If a taxpayer does not have access to a computer, he or she can call Customer Service at (608) 266-2486, and a representative will enter the request on his or her behalf.

For more information, visit the [Wisconsin Department of Revenue](#) website.

Tax Practitioner Questions and Answers

Every year, the Wisconsin Department of Revenue presents tax updates for tax practitioners across the state. Tax practitioner questions and answers from these fall presentations are posted on the department's [website](#).

Identity Verification Program

The department is continuing its Identity Verification program for the upcoming filing season. This program has kept tax dollars out of the hands of identity thieves and in the pockets of Wisconsin taxpayers. If we select a return for identity verification, we send a letter asking the recipient to do one of the following:

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

- **Enter department issued Personal Identification Number (PIN).** We will mail a PIN after we receive a Wisconsin income tax return or homestead credit claim. The PIN is entered online or by calling our customer service representatives at (608) 266-2772. The Wisconsin state tax refund amount is required to complete the PIN process.
- **Submit identity documents.** Provide one document that has the full name and photograph and one document that has the full name and complete address. We include with our letter a listing of 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 a 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](#) and select the ID Verification button on the homepage.

Tax Return Donations for 2018

Wisconsin law allows the following organizations on the Wisconsin individual income tax return for taxpayers to make donations. This article summarizes the amounts donated by taxpayers for the period July 2017 through June 2018 (primarily on 2017 returns) and how the donations are used. These organizations remain on the 2018 Wisconsin individual income tax returns.

- ***Endangered Resources Fund***

Donations of \$255,707 are used to protect and manage native plant and animal species, natural communities, and other natural features.

- ***Cancer Research Fund***

Donations of \$156,183 are divided equally between the Medical College of Wisconsin, Inc., and University of Wisconsin Carbone Cancer Center for cancer research projects.

- ***Veterans Trust Fund***

Donations of \$90,323 are used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents.

- ***Multiple Sclerosis Fund***

Donations of \$66,298 are forwarded to the National Multiple Sclerosis Society for distribution to entities located in Wisconsin that operate health-related programs for people in Wisconsin with multiple sclerosis.

- ***Military Family Relief Fund***

Donations of \$97,725 are used by the Wisconsin Department of Military Affairs to provide financial aid to eligible members of the immediate family of members of the U.S. armed forces or of the National Guard who are residents of Wisconsin serving on active duty.

- ***Second Harvest/Feed America Fund***

Donations of \$144,452 are divided as follows: 65% to Feeding America Eastern Wisconsin (located in Milwaukee); 20% to Second Harvest Foodbank of Southern Wisconsin (located in Madison); and 15% to Feed My People (located in Eau Claire). The food banks provide food to food pantries, meal programs, shelters, and soup kitchens throughout the state.

- **Red Cross Wisconsin Disaster Relief Fund**

Donations of \$110,718 are used by the American Red Cross for Wisconsin disaster relief.

- **Special Olympics Wisconsin Fund**

Donations of \$89,879 are forwarded to Special Olympics Wisconsin, Inc.

Income and Franchise Tax Updates and Reminders

What's New This Tax Season

Below are some of the changes that may impact your 2018 Wisconsin tax returns:

1. *Individuals, Estates, and Trusts*

- **Internal Revenue Code updates:** See the [chart](#) on the department's website for federal provisions from the federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97) that apply and do not apply for Wisconsin purposes for taxable years beginning on or after January 1, 2018.
- **Charitable distributions from an individual retirement account (IRA):** An individual 70 ½ and older may exclude from gross income certain charitable distributions from IRAs.
- **Modification for tax-option (S) corporation entity-level tax election:** Tax-option (S) corporations may elect under sec. 71.365(4m)(a), Wis. Stats., to pay tax on income at the entity level at a rate of 7.9 percent. If the election is made, shareholders of a tax-option (S) corporation do not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the electing tax-option (S) corporation. Use subtraction modification code 51 to report tax-option (S) corporation adjustments on Line 11 of Form 1.

For additional information, see *Election to Pay Tax at Entity Level for Tax-Option (S) Corporations*, on page 10 of this bulletin.

- **Tuition:** The Wisconsin subtraction for tuition and fees is increased from \$6,958 to \$6,974. The subtraction is phased-out for persons with federal adjusted gross income between \$54,190 and \$65,030 if single or head of household; \$86,700 and \$108,380 if married filing a joint return; between \$43,350 and \$54,190 if married filing a separate return.
- **College savings account:** The amount of the Wisconsin subtraction for contributions to a college savings account is increased from \$3,140 to \$3,200 (\$1,600 if married filing separately).
- **Eligible expenses for college savings account:** The list of expenses allowed for establishing a college savings account is expanded to include tuition expenses in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, as described in sec. 11032 of P.L. 115-97, related to qualified tuition programs under sec. 529, IRC.
- **Private school tuition subtraction limitation:** No private school tuition subtraction may be claimed for an amount paid for tuition expenses if the source of the payment is an amount withdrawn from a college savings account, as described in sec. 224.50, Wis. Stats.
- **Alternative minimum tax:** The exemption amounts are: \$70,300 for single or head of household, \$109,400 for married filing jointly, \$54,700 for married filing separately, and \$24,600 for an estate or trust. The exemption phase-out amount is \$1,000,000 for married filing jointly, \$500,000 for married filing separately, single, or head of household, and \$81,900 for an estate or trust

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

- **Homestead credit:** For claims filed for taxable years 2018 and after, disqualified losses must be added to Wisconsin adjusted gross income in computing household income. However, the addition does not apply to a claimant who is a farmer, whose primary income is from farming, and whose farming generates less than \$250,000 in gross receipts from the operation of the farm premises. Schedule H, *Homestead Credit Claim*, has been updated to reflect the new law.
- **Research credit:** The amount of current year's research credit claimed and not used to offset tax is a refundable credit, not to exceed 10% of the allowable amount of the claim. The remaining amount not refunded or used to offset tax may be carried forward for 15 years.
- **Employee college savings account contribution credit:** A new nonrefundable credit, employee college savings account contribution credit, is available. The credit may be claimed by individuals who are partners of a partnership, members of a limited liability company, or shareholders of a tax-option (S) corporation that contributes to its employees' college savings accounts.

The maximum amount of the credit per employee that an employer may compute is \$200 for tax year 2018.

Use Schedule ES, *Employee College Saving Account Contribution Credit*, to compute and/or claim the credit.
- **Tax-exempt bonds:** Interest received on bonds or notes issued by an entity described under, or an entity, whose bonds are issued under, secs. 66.1201, 66.1333, or 66.1335, Wis. Stats., are exempt from Wisconsin income tax.

2. *Businesses*

- **Internal Revenue Code updates:** See the [chart](#) on the department's website for federal provisions from the federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97) that apply and do not apply for Wisconsin purposes for taxable years beginning on or after January 1, 2018.
- **Tax-option (S) corporation entity-level tax election:** Tax-option (S) corporations may elect under sec. 71.365(4m)(a), Wis. Stats., to pay tax on income at the entity level at a rate of 7.9 percent. For additional information, see *Election to Pay Tax at Entity Level for Tax-Option (S) Corporations*, on page 10 of this bulletin.
- **Dividend received deduction:** The federal deduction in sec. 245A, IRC, as created by the federal Public Law 115-97, for foreign source portion of dividends received by domestic corporations from specified 10 percent owned foreign corporations, does not apply for Wisconsin.
- **Supplement to federal historic rehabilitation credit:** The maximum amount the Wisconsin Economic Development Corporation may certify per claimant for all projects undertaken on the same parcel is \$3.5 million. This is effective July 1, 2018.

In addition, the federal Tax Cuts and Jobs Act made changes to the Wisconsin supplement to the federal historic rehabilitation tax credit because Wisconsin's credit must be claimed at the same time as the federal credit. As a result, for qualified rehabilitation expenditures paid or incurred after December 31, 2017, the following applies for Wisconsin:

- Credit for qualified rehabilitated buildings constructed before 1936 is eliminated.
- Supplement to the federal rehabilitation tax credit must be claimed ratably over a five-year period beginning with the year the building is placed in service; however, there is a transitional rule that allows the full credit to be claimed for qualified rehabilitation expenditures incurred on a building that is owned or leased at all times on or after January 1, 2018, during the taxpayer elected 24- or 60-month period.

- Sellers of the supplement to the federal historic tax credit may only claim 20% of the credit per year for five years, and as a result, they may only sell or transfer the amount eligible to be claimed each year.
- Purchasers of the supplement to the federal historic tax credit are not required to claim the purchased amount of credit over a five-year period.
- **Research credit:** The amount of current year's research credit claimed and not used to offset tax is a refundable credit, not to exceed 10% of the allowable amount of the claim. The remaining amount not refunded or used to offset tax may be carried forward for 15 years.
- **Low-income housing credit:** A nonrefundable low-income housing credit is available to claimants through certification by the Wisconsin Housing and Economic Development Authority. Use Schedule LI, *Wisconsin Low-Income Housing Tax Credit*, to claim the credit.
- **Employee college savings account contribution credit:** A new nonrefundable credit, employee college savings account contribution credit, is available. The credit may be claimed by a C corporation that is an employer or partner of a partnership, member of a limited liability company, or shareholder of a tax-option (S) corporation that is an employer that contributes to an employee's college savings account.

The maximum amount of the credit that can be computed per employee is 25 percent of the amount the employee's employer contributed to the employee's college savings account. The contribution amount may not exceed 25 percent of the maximum amount that an individual contributor may deduct as a contribution into a college savings account under sec. 71.05(6)(b)32.a., Wis. Stats.

The maximum amount of the credit per employee that an employer may compute is \$200 for tax year 2018.

Use Schedule ES, *Employee College Saving Account Contribution Credit*, to compute and/or claim the credit.

- **New amended return schedule:** Schedule AR, *Explanation of Amended Return*, must be filed with a 2018 amended return. The schedule is used to explain changes made on an amended Form 1CNS, 1CNP, 3, 4, 4T, 5S, 6, or PW-1.

Election to Pay Tax at Entity Level for Tax-Option (S) Corporations

On Friday, December 14, Governor Scott Walker signed [2017 Wis. Act 368](#). The law allows tax-option (S) corporations to elect to be taxed at the entity level for taxable years beginning January 1, 2018.

As a result of the new law, the following apply to the 2018 tax-option (S) corporation Wisconsin tax returns:

- A checkbox is added to Form 5S, Part A, #7 to make the election to be taxed at the entity level.
- A checkbox is added to Schedule 5K-1, Part B, #3 to designate that the entity made the election to be taxed at the entity level.
- The entity-level tax is reported on Form 5S, Page 1, Line 7, and computed on new Schedule 5S-ET.
- Schedule 5S-ET is under development. Tax-option (S) corporations making the election may not file 2018 Form 5S until after Schedule 5S-ET is finalized and programmed (estimate July 19, 2019). In general, shareholders must wait to file their individual income tax returns until they receive notification from the corporation as to whether the election is made (e.g., Schedule 5K-1).

- Notice will be given through our Tax Professional, MeF Business e-File Developer, and MeF Individual e-File Developer email subscriber lists when the draft Schedule 5S-ET is posted on our website and the department begins accepting returns making the election. If you would like to receive notification, [subscribe](#) to the Tax Professional, MeF Business e-Filer Developer, or MeF Individual e-File Developer electronic mailing list.
- Underpayment interest does not apply to the additional tax due as a result of making the election for tax year 2018, however, tax-option (S) corporations that make the election must pay the tax due by the unextended due of the return to avoid regular interest charges.

Tax-option (S) corporations that do not make this new election may file their 2018 Form 5S as soon as the department begins processing tax returns in January.

Common questions for the new entity-level tax election are available on the department's [website](#) under "Pass-Through Entity-Level Tax".

Homestead Credit Disqualified Losses

For 2018 homestead credit claims filed in 2019, the amount of disqualified losses must be added to Wisconsin adjusted gross income in computing household income. "Disqualified losses" means the sum of the following amounts, exclusive of net gains from the sale or exchange of capital or business assets and exclusive of net profits:

- Net loss from sole proprietorships
- Net capital loss
- Net loss from sales of business property, excluding loss from involuntary conversions
- Net loss from rental real estate, royalties, partnerships, tax-option (S) corporations, trusts, estates, and real estate mortgage investment conduits
- Net farm loss

Exception: The addition to adjusted gross income does not apply to a claimant who is a farmer, whose primary income is from farming, and whose farming generates less than \$250,000 in gross receipts from the operation of the farm premises in the year to which the claim relates.

"Farmer" means any person engaged in farming.

"Farming" means the operation of farm premises owned or rented by the operator.

"Farm premises" means areas used for operations, but does not include other areas, greenhouses or similar structures unless used principally for the production of food and farm plants.

Operation of farm premises includes:

- Planting and cultivating of the soil
- Raising and harvesting of agricultural, horticultural or arboricultural crops
- Raising, breeding, tending, training and management of livestock, bees, poultry, fur-bearing animals, wildlife or aquatic life, or their products
- Processing, drying, packing, packaging, freezing, grading, storing, delivering to storage, to market or to a carrier for transportation to market, distributing directly to consumers or marketing any of the above-named commodities, substantially all of which have been planted or produced thereon

- Clearing of such premises and the salvaging of timber and management and use of wood lots thereon, but not including logging, lumbering or wood cutting operations unless conducted as an accessory to other farming operations
- Managing, conserving, improving and maintaining of such premises or the tools, equipment and improvements thereon and the exchange of labor, services or the exchange of use of equipment with other farmers in pursuing such activities

The operation of farm machinery in performing farming services for other farmers for a consideration, other than exchange of labor, may be deemed farming if the operation does not exceed 30 days during any calendar year and the person derives their principal income from farming.

For additional information on disqualified losses and the exception which applies to farmers, see the 2018 [Schedule H Instructions](#).

Adjustment Notices with No Change in Tax Liability

Occasionally the department makes changes to an income or franchise tax return that does not result in a refund or amount due. This is primarily the result of net business losses or net operating losses reducing taxable income to zero, or tax credits reducing the tax liability to zero. Except for adjustments made to certain credits, notices that do not result in a refund or an amount due may not be appealed.

Section 71.88(1), Wis. Stats., provides that a taxpayer may appeal the following:

- Notice of Amount Due
- Notice of Refund
- Notice of Refund Denial
- Adjustments made to credits claimed under sec. 71.07, 71.28 or 71.47, or subch. VIII or IX, Wis. Stats.

Exception: Section 71.365(6), Wis. Stats., gives tax-option (S) corporations the authority to appeal any notice of determination by the department of any tax-option item. Therefore, a tax-option (S) corporation can appeal notices that adjust credits or do not change tax liability.

How to Request an Income or Franchise Tax Protective Claim

A protective claim is a request to preserve a taxpayer's right to claim a refund based on the conclusion of a future event(s) that cannot be determined within the time period for which a claim for refund must be properly filed with the department. In general, a taxpayer must file a claim for refund with the department within four years of the unextended due date of the original tax return.

A protective claim is often related to current litigation or expected changes in the tax law or other legislation and regulations. The claim does not have to state a particular dollar amount or demand an immediate refund.

Filing a protective claim

- Request the protective claim within four years of the unextended due date of the original tax return.
- Establish a protective claim by electronically filing an amended return for **each** taxable year of the claim and attach Schedule AR, *Explanation of Amended Return*, to **each** amended return with the "protective clam" box checked, code 12.

- Provide the taxpayer's name, address, and social security number, individual taxpayer identification number, or federal employer identification number, and the taxpayer's signature and date on the amended return.
- Provide an explanation of the future event(s) impacting the claim on Schedule AR.

The department will review the protective claim request and may send the taxpayer an extension agreement request, if necessary.

Filing Tips for Estates and Trusts

Wisconsin Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trusts*, is the income tax return filed with the department to report Wisconsin income earned in a taxable year for an estate or trust.

1. Tips for filing Wisconsin Form 2

- An estate or trust must file Form 2 for any taxable year the estate or trust has \$600 or more of gross income from Wisconsin sources.
- Form 2 may be electronically filed on the [department's website](#).
- Form 2 must include a copy of the federal Form 1041.
- Estates filing Form 2 must include both the decedent's social security number (SSN) and the estate's federal employer identification number (FEIN).
- Grantor trusts that file using an FEIN (and not the SSN of the grantor), including Qualified Subchapter S Trusts, must file an informational Form 2 and provide the SSN of the grantor that is reporting the income.
- Electing Small Business Trusts (ESBT) that hold stock in one or more tax-option (S) corporations must be treated as a separate trust pursuant to sec. 641(c)(1)(A), IRC. Therefore, an ESBT that has Wisconsin sourced income from a tax-option (S) corporation must calculate tax on the portion of tax-option (S) corporation income separately. Losses reported by the trust not related to the tax-option (S) corporation portion cannot reduce ESBT income. ESBT income is taxed at a rate of 7.65 percent.
- ESBT that has Wisconsin sourced income or losses from a tax-option (S) corporation must include a copy of the Schedule 5K-1, *Tax-Option (S) Corporation Shareholder's Share of Income, Deductions, Credits, etc.*, from the tax-option (S) corporation, or the federal Schedule K-1 if the tax-option (S) corporation is not required to file a Wisconsin income tax return.
- Deduction for taxes on federal Form 1041 is not allowed for Wisconsin. Resident estates and trusts must make an adjustment on Schedule A of Form 2. Nonresident estates and trusts must make an adjustment on Schedule NR, *Computation of Wisconsin Taxable Income for Part-Year and Non-Resident Estates and Trusts*.
- Do not include Schedule CC, *Request for a Closing Certificate for Fiduciaries*, with Form 2. Schedule CC must be filed separately.

2. Other tips for estates, trusts, beneficiaries and personal representatives

- If an estate or trust distributes \$1,000 or more of Wisconsin sourced income to a nonresident beneficiary, the entity is required to collect and remit pass-through withholding for the nonresident beneficiary, unless an exception applies. Pass-through withholding is reported on Wisconsin Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*.

For more tips on pass-through withholding, see *Tips for Properly Reporting Pass-Through Withholding*, on page 6 of [Wisconsin Tax Bulletin 203](#) (October 2018).

- Withholding that an estate or trust receives on Forms 1099-R, W-2, and W2-G cannot be passed to the beneficiaries.
- Capital loss cannot be distributed to beneficiaries until the final return of the estate or trust. A capital gain cannot be distributed unless stated in the will or trust agreement, or until the final return.
- Estate or trust must pass all income and losses to the beneficiaries on the final return of the estate or trust.
- Income distributed to a beneficiary from an estate or trust is sourced to Wisconsin as if the beneficiary of an estate or trust received the income without the intervention of the estate or trust.
- Fiduciary fees paid to a personal representative of an estate are taxable to the personal representative, if paid for services performed by the personal representative to the estate.

For additional information, see the related common questions for Estates and Fiduciaries on the [department's website](#).

State and Municipal Bond Interest

Generally, interest from state and municipal bonds is subject to Wisconsin income tax. When state and municipal bond interest is exempt from federal tax, but taxable for Wisconsin, adjustments must be made on the Wisconsin return. An addition modification is made for taxable state and municipal interest on line 2 of Form 1 or included in the total taxable interest on line 2, column B, of Form 1NPR. For estates and trusts, an addition modification is made on line 2 of Form 2 (from Schedule A or NR).

Note: Interest from certain state and municipal bonds is exempt from both federal and Wisconsin income tax. For more information about specific state and municipal bonds which are exempt from federal and Wisconsin income tax, see the [instructions](#) for Wisconsin Form 1 and sec. [Tax 3.095](#), Wis. Admin. Code.

Tax Treatment of an Involuntary Conversion of Condemned Property for Individuals

The Internal Revenue Service (IRS) provides that "an involuntary conversion occurs when your property is destroyed, stolen, condemned, or disposed of under the threat of condemnation and you receive other property or money in payment, such as insurance or a condemnation award. Involuntary conversions are also called involuntary exchanges."

Federal tax treatment

Income or loss from an involuntary conversion is computed by subtracting the adjusted basis in the condemned property from the amount of money or value of new property received. In general, the income or loss is reported in the year the money or new property is received. However, gain from an involuntary conversion may be postponed if:

1. The owner of condemned property receives similar property in exchange. The basis of the new property is the same as the basis of the condemned property, or
2. The owner of condemned property receives money or unlike property in exchange and buys similar property within the replacement period pursuant to sec. 1033, IRC. The replacement property must cost at least as much as the amount of gain computed from the involuntary conversion and the basis of the property is computed by subtracting the postponed gain from the cost of the property.

Wisconsin tax treatment

Wisconsin follows the federal provisions for involuntary conversions; however, the amount of income or loss may be different if the taxpayer's adjusted basis in the condemned property is different for federal and Wisconsin purposes. Additionally, if a taxpayer qualifies for a federal election to postpone a gain, the taxpayer can make a different election for Wisconsin purposes than for federal purposes. If the taxpayer makes a different election for Wisconsin purposes, the taxpayer must use one of the following methods to report the difference:

1. Prepare a pro forma federal return based on the election chosen for Wisconsin. This pro forma return must be attached to the Wisconsin Form 1 or Form 1NPR instead of the actual return filed for federal purposes.
2. Make the election adjustment on Wisconsin [Schedule I](#), *Adjustments to Convert 2017 Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin*.

Revised Form A-816, Nexus Questionnaire

The department updated [Form A-816](#), *Nexus Questionnaire*, used to determine whether a business's activities are sufficient to create nexus in Wisconsin and require the filing of business tax returns.

The updates include adding clarity to questions and additional questions relating to the number of Wisconsin customers, including the number of sales transactions and total gross receipts from Wisconsin customers.

If you have questions about the questionnaire, contact the department's Nexus Unit at DORNexusUnit@wisconsin.gov.

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

Returns filed electronically without all required schedules are rejected. The department does not process credits passed through on 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.

Wisconsin Tax Forms Accepted Via Electronic Submission Only

The following forms must be filed electronically:

- Form 6, *Wisconsin Combined Corporation Franchise or Income Tax Return*
- 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*

Form 6 must be filed electronically using approved third-party software. The department rejects returns that are filed on a form year incompatible with the period reported or filed on paper. A list of [approved software vendors](#) can be found on the department's website.

Notes:

- Use the correct year's form for the tax period reported. File short-period returns when the Modernized eFile (MeF) Fed/State program has been updated to include the correct tax year. Wisconsin law provides corporations with an automatic extension of seven months after the unextended due date or 30 days after the federal extended due date.
- Filers of federal return types not supported in XML (1120-C, 1120-L, 1120-PC, 1120-REIT, and 1120-RIC), must e-file the Form 6. Filers should work with their software providers to create a Wisconsin "State Only", or unlinked return, which can be filed through the Modernized e-File (MeF) system. This allows their federal return to be attached as a PDF document.
- Forms PW-1 and 1CNP 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 for more than 200 nonresidents, it is recommended that you use a third-party software program. The entire form must be electronically filed, including Part 2 of Form PW-1 and Schedule 2 of Forms 1CNP and 1CNS. The department does not accept an electronic PDF or Excel attachment of Part 2 or Schedule 2. In addition, the department rejects returns that are filed on paper.

Withholding Tax Updates and Reminders

Withholding Tax Update Available

The [November 2018 Withholding Tax Update](#) has been posted to the department's website. Topics covered include:

- What's New?
- Current Withholding Tax Rates Continue for 2019
- E-filing Reminder
- Filing Frequency Changes
- Nonresident Entertainer Withholding - Reporting Changes
- Reporting by Financial Institutions
- Verify Client Information
- Reporting Requirements
- Employers and Preparers: Beware of W-2 Email Scam
- Transportation Fringe Benefits
- Electronic Filing Options
- Extensions
- Amended Annual Reconciliation (WT-7)
- Single-Member LLCs - Are You Registered Correctly?
- Quick Links
- Employees Claiming Exemption from Withholding (Form W-4 and WT-4)
- Retirement and Pension Payments Exempt from Income Tax Withholding

- My Tax Account Webinars
- Withholding Tax Electronic Mailing List
- Where to Direct Questions

Withholding Tax Rates

The current withholding tax rates will continue for 2019. These rates are available in [Publication W-166](#), *Wisconsin Employer's Withholding Tax Guide*, for payroll periods beginning on or after April 1, 2014.

Reminders

- 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.
- All W-2s and information returns required to be filed with the department are due January 31.
- A 30-day extension is available upon request for filing W-2s and 1099s with the department.
- The department may not issue a refund to an employed individual before March 1, unless the individual and individual's employer have filed all required returns and forms.

New Application to Submit Information Returns

The department created a new My Tax Account application that allows businesses to key in and submit Forms W-2 and 1099 information at any time during the year. Previously, businesses could only submit these forms in My Tax Account while completing Form WT-7. The application makes it easier to submit information returns omitted from previous submissions. It also provides a user friendly option for those that don't have active withholding accounts, but have a need to submit Form W-2s or 1099s.

Nonresident Entertainer Withholding - Reporting Changes in 2019

A nonresident entertainer who receives more than \$7,000 for the performance of amusement, entertainment, or public speaking services, or performs in sporting events in Wisconsin, must file a surety bond or cash deposit with the department at least seven days prior to the performance in Wisconsin. The amount of the bond or deposit is generally 6% of the total contract price.

If a bond or deposit is not filed by the nonresident entertainer, the person who contracts for the performance of the services by the nonresident entertainer, or the person who has receipt, custody, or control of the proceeds of the event, must withhold 6% of the amount paid to the entertainer and remit it to the department within five days after the performance. Withholding amounts not remitted within five days after the performance are subject to delinquent interest, and may also be subject to a negligence penalty.

What's changing?

Beginning in 2019, the nonresident entertainer withholding report (Form WT-11) is tax-year specific and allows a person to report withholding for multiple nonresident entertainers. In addition, nonresident entertainers may submit a request for a lower withholding rate using the new Form WT-12.

Starting in January, the updated Form WT-11 and new Form WT-12 may be filed using My Tax Account, the department's online filing and payment system.

Reminder: New Reporting Requirements for Employer Withholding

Beginning January 1, 2019, employers filing quarterly, monthly, or semi-monthly cannot electronically submit Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld*, until all Withholding Tax Deposit Reports (Form WT-6) are filed. The filer receives a rejection or error message if either the total withholding tax reported on Form WT-7 is more than the total withholding tax reported on Forms WT-6 filed or one or more Forms WT-6 have not been filed. Forms WT-6 can be in pending status with a future payment date. This new requirement reduces the number of penalties imposed on Forms WT-7 for amounts due and reduces appeals.

Example 1: An employer files withholding deposits monthly. Form WT-7, whether filed by the employer or payroll service provider, cannot be filed electronically until after the December Form WT-6 has been filed.

Example 2: An employer filed all monthly Forms WT-6. However, when entering information for Form WT-7 and Forms W-2, the employer identifies the June Form WT-6 filed was understated by \$100. Before filing Form WT-7, Form WT-6 must be filed for the June period to report the additional \$100.

Note: Quarterly, monthly, and semi-monthly filers must file an electronic Form WT-6 for each required reporting period even if no tax is withheld for the period.

Department Urges Payroll Departments and Tax Preparation Businesses to Report Scams

Scams targeting tax practitioners, payroll professionals and employers are a continuing problem in Wisconsin and nationwide. Cybercriminals are actively seeking accurate data about taxpayers 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 [tax scams and consumer alerts](#) on the IRS website.

If your organization experienced a data compromise, you can notify all state taxing agencies simultaneously by contacting the Federation of Tax Administrators (FTA). Send an email to StateAlert@taxadmin.org, including:

- Organization's name
- Federal employer identification number (FEIN)
- Brief description of the breach incident
- Contact information of the individual working with the state taxing agencies

Do not include personally identifiable information (PII) for impacted employees or customers in your email. The FTA will contact your organization's representative with recommended next steps including specific directions for sharing PII.

Sales and Use Tax Updates and Reminders

Remote Sellers - *Wayfair* Decision

Out-of-state retailers without a physical presence in Wisconsin (remote sellers) are required to collect and remit Wisconsin sales or use tax on sales of taxable products and services in Wisconsin on and after October 1, 2018. A remote seller that has no activities in Wisconsin other than making sales into Wisconsin is not required to register and collect Wisconsin sales or use tax if it qualifies for the small seller exception. In addition, a remote seller is not required to register if it only makes nontaxable sales in Wisconsin, even if the remote seller does not qualify for the small seller exception. The small seller exception is provided by rule and applies to remote sellers that have \$100,000 or less in annual gross sales and less than 200 separate sales transactions in Wisconsin in both the previous year and current year.

Effective December 16, 2018, Wisconsin sales and use tax statutes were amended to provide the small seller exception by law, consistent with the United States Supreme Court's decision in *South Dakota v. Wayfair, Inc.* and the rule. See *Remote Sellers – Wayfair Decision*, new tax law article on page 5 of this bulletin.

Wisconsin continues to update its guidance for remote sellers. Additional information includes a remote seller referral form (see next paragraph), links to the new law and the Emergency Rule, answers to additional common questions, and registration and collection dates for remote sellers.

[Remote Seller Referral Form](#) – The department created a referral form that can be used by anyone to identify remote sellers that should be collecting Wisconsin sales or use tax. This form can be submitted electronically or by mail and the referrer may remain anonymous. Referrers are required to provide detailed information about the business (i.e., business name, address, website), an explanation how it was determined that the remote seller should be registered and collecting Wisconsin sales or use tax, and proof that the business being referred is not collecting tax on sales in Wisconsin (e.g., receipts, invoices, images of web pages).

Information is available on the department's web page for [Remote Sellers - Wayfair Decision](#).

Tax Seminars - Wisconsin/Minnesota Sales and Use Tax Basics

The Wisconsin and Minnesota Departments of Revenue are presenting a series of free sales and use tax seminars in March, April, and May 2019. The seminars 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 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
- How and when to use or accept an exemption certificate

Seminar dates, times, and locations, as well as registration information, is available on the department's website at [Sales and Use Tax Training web page](#).

Premier Resort Area Tax - Which Sellers Must Report

Certain types of retailers must report premier resort area taxes on taxable sales that take place in a premier resort area. Premier resort area taxes are reported on [Form PRA-012](#), *Premier Resort Area Tax Return*, which may be electronically filed through the department's electronic filing system, [My Tax Account](#). Generally, a sale takes place in a premier resort area if the purchaser receives the product or makes first use of a service at a location within the premier resort area. For a listing of the types of retailers that must report premier resort area tax, see [Publication 403](#), *Premier Resort Area Tax*.

Current premier resort areas include:

- City of Bayfield
- City of Eagle River
- City of Rhinelander
- City of Wisconsin Dells
- Village of Lake Delton
- Village of Sister Bay
- Village of Stockholm

Retailers operating outside a premier resort area may be required to report

A seller that is required to collect Wisconsin sales and use taxes is required to collect premier resort area taxes if classified under one of the industry codes in Publication 403, regardless of whether the seller is engaged in business in the premier resort area. The premier resort area tax is administered in the same manner as county and stadium taxes (sec. 77.9941(4), Wis. Stats.).

Remote sellers

Beginning October 1, 2018, all remote sellers (out-of-state retailers with no physical presence or activity in Wisconsin) must begin collecting Wisconsin sales or use tax. Remote sellers classified under one of the industry codes listed in Publication 403, must also report premier resort area tax if the seller makes taxable sales in a premier resort area.

Exceptions

- Small seller exception - An out-of-state seller with no physical presence or activities in Wisconsin who qualifies for the small seller exception is not required to collect the premier resort area tax. See [Remote Seller Common Question](#) (Question #3) for information on the small seller exception.
- *Orbitz* decision – An online travel company serving as an intermediary between travelers and hotels, as described in *Orbitz, LLC vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 14, 2014), was not furnishing rooms or lodging to transients and, therefore, was not subject to Wisconsin sales tax on the consideration received for its services. This court decision still applies. However, an online travel company providing services as described in the *Orbitz* decision that meets the definition of "lodging marketplace," must obtain a lodging marketplace license and collect and remit tax on short-term *residential* lodging that it facilitates, unless an exception applies.

Lodging marketplace law

Beginning September 23, 2017, a lodging marketplace that provides a platform through which an unaffiliated third party offers a short-term *residential* rental and collects the consideration for the rental from the occupant, must register with the Wisconsin Department of Revenue for a lodging marketplace license. After obtaining a Wisconsin lodging marketplace license, the lodging marketplace must register for a Wisconsin seller's permit and collect applicable taxes, including premier resort area taxes. For the specific requirements, see [Lodging Marketplace License](#) on our website.

Going forward

The requirement that certain retailers outside a premier resort area must collect premier resort area tax even if they are not engaged in business in Wisconsin was communicated in Publication 403 beginning March 2012.

While the Premier Resort Area Tax Common Questions were similarly revised, a note within the common questions stated the tax was only imposed on certain retailers "operating within" the premier resort areas. This reference was removed October 4, 2018. Therefore, retailers that are not engaged in business in a premier resort area who failed to properly report premier resort area tax must begin reporting the tax by February 1, 2019.

Maple Syrup - Sales and Use Tax Treatment

Production of maple syrup

The period between winter and spring, with freezing nights and above-freezing days, is what anyone with a sugar bush looks forward to all year.

Did you know that Wisconsin produces the fourth most gallons of maple syrup among U.S. States? Did you also know that, since July 1, 1978, purchases of equipment used in the production of maple syrup qualify for exemption from Wisconsin sales and use taxes?

A seller of equipment used for the production of maple syrup must charge sales tax on sales of such equipment in Wisconsin unless, no later than 90 days after the sale, it receives a fully completed Wisconsin Sales and Use Tax Exemption Certificate ([Form S-211](#)), an electronic exemption certificate ([S-211E](#)), or a Streamlined Sales and Use Tax Exemption Certificate – Wisconsin version ([Form S-211-SST](#)).

Retail sales of maple syrup

Sales of maple syrup are exempt from Wisconsin sales tax.

All "[food and food ingredients](#)" except "[candy](#)", "[dietary supplements](#)", "[prepared food](#)", and "[soft drinks](#)" are exempt from Wisconsin sales and use tax. [Publication 220](#), *Grocers*, lists "syrup" under "Exempt Food and Food Ingredients and Beverages."

Cigarette and Tobacco Updates and Reminders

Tax Forms and Filing Method Changes Effective January 2019

Starting with the January 2019 filing period, Wisconsin cigarette and tobacco products tax returns must be electronically filed using one of the following methods:

- My Tax Account, the department's e-filing system
 - [My Tax Account](#)
 - [Training Video](#)
- XML transmission file (either developed by the filer or a third-party)
 - [XML Developer's page](#)
 - [Wisconsin XML User Guide](#)

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Changes to the tax returns were made for two reasons: 1) the previous software that supported the department's e-file system (Adobe LiveCycle) is no longer supported, and 2) the department incorporated uniform changes suggested by the industry and adopted by the Federation of Tax Administrators. While the changes are significant, many people will find the department's new e-filing system (My Tax Account) easy to use. Additional information about this project, including answers to common questions, is available on the [2019 Cigarette and Tobacco Products Returns/Uniformity Common Questions](#) page.

Additional assistance

If you have questions about the new tax forms or the e-file method, contact the Excise Tax Unit at DORExciseTaxpayerAssistance@wisconsin.gov or call (608) 266-6701.

If you are unable to file your January 2019 return by the February 15th deadline using one of the new e-filing methods, contact the Excise Tax Unit to request an extension. There is no extension to pay any amount due.