

Wisconsin Tax Bulletin

January 2020 Number 208



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New Income and Franchise Tax Law

Repeal Obsolete Refundable Tax Credits

([2019 Wis. Act 54](#), repeal secs. 20.835(2)(bd), (be), (bL), (bm), (bn), (bp), and (en), 20.855(4)(co), 41.155, 71.07(3p), (3r), (3rn), (5f), (5h), and (8r), 71.10(7e)(c)2., 71.28(3p), (3r), (3rn), (5f), (5h), and (8r), 71.47(3p), (3r), (3rn), (5f), (5h), and (8r), 93.53, 93.535, 93.54, and 93.545 and renumber sec. 71.10(7e)(c)1., effective November 24, 2019; and repeal secs. 20.835(2)(bc), 71.07(3rm), 71.28(3rm), 71.47(3rm), and 93.547 and amend secs. 71.05(6)(a)15. and (b)47.b., 71.08(1)(intro.), 71.10(4)(i), 71.21(4)(a), 71.26(2)(a)4., 71.30(3)(f), 71.34(1k)(g), 71.45(2)(a)10., and 71.49(1)(f), effective July 1, 2020)

The following refundable credits are obsolete and repealed:

Repealed Credit	Repealed Statutes Related to Credit
Dairy manufacturing facility investment credit	Sections 71.07(3p), 71.28(3p), and 71.47(3p), Wis. Stats.
Meat processing facility investment credit	Sections 71.07(3r), 71.28(3r), and 71.47(3r), Wis. Stats.
Woody biomass harvesting and processing credit	Sections 71.07(3rm), 71.28(3rm), and 71.47(3rm), Wis. Stats.
Food processing plant and food warehouse investment credit	Sections 71.07(3rn), 71.28(3rn), and 71.47(3rn), Wis. Stats.
Film production services credit	Sections 71.07(5f), 71.28(5f), and 71.47(5f), Wis. Stats.
Film production company investment credit	Sections 71.07(5h), 71.28(5h), and 71.47(5h), Wis. Stats.
Beginning farmer and farm asset owner tax credit	Sections 71.07(8r), 71.28(8r), and 71.47(8r), Wis. Stats.

New Sales and Use Tax Law

Baseball Stadium Sales Tax Ends March 31, 2020

([2019 Wis. Act 28](#), amend secs. 77.707(1) and 229.68(intro.) and create sec. 77.76 (6), effective November 22, 2019)

The Act provides retailers and consumers certainty that the 0.1% baseball stadium sales and use tax ends in 2020. The local professional baseball park district board plans to make certification to the department in March 2020 for the tax to end March 31, 2020.

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Beginning April 1, 2020, retailers cannot collect baseball stadium tax. The following sales and use tax rates apply to taxable sales and taxable purchases in the five Wisconsin counties in the "baseball stadium district:"

Wisconsin County	Sales and Use Tax Rate
Milwaukee	5.5% (includes 0.5% county tax)
Ozaukee	5.5% (includes 0.5% county tax)
Washington	5.5% (includes 0.5% county tax)
Racine	5.0%
Waukesha	5.0%

The following publications provide additional information:

- Transitional provisions which apply to the baseball stadium tax are found in Part 18.E. of [Publication 201](#), *Wisconsin Sales and Use Tax Information*.
- [Publication 229](#), *Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales*, provides information on collecting the 5.0% state tax and the combined 5.5% state and county sales and use tax.

General Updates and Reminders

Reminder: Wisconsin Tax Forms Accepted Via Electronic Submission Only

Wisconsin requires certain returns to be filed electronically. For a list of returns required to be electronically filed, see the article titled *Wisconsin Tax Forms Accepted Via Electronic Submission Only*, on pages 2 and 3 of [Wisconsin Tax Bulletin 207](#) (November 2019).

For taxable years beginning on or after January 1, 2020, the following tax returns must be submitted to the department electronically using My Tax Account, Telefile, or third-party software:

- Form WT-6, *Withholding Tax Deposit Report*. **Note:** Annual withholding filers do not need to file Form WT-6.
- Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld*.
- Form ST-12, *Sales and Use Tax Return*. **Exception:** Annual sales and use tax filers may submit a paper version of Form ST-12.

Guidance Document Procedures

As a result of [2017 Wis. Act 369](#), the department implemented new procedures to formally adopt guidance documents. The following procedures are used by the department's Income, Sales, and Excise Tax Division:

- Proposed guidance documents are certified by the Secretary of Revenue. The certification statement is generally located at the bottom of each guidance document.

- After certification, the documents are published in the [LRB's Administrative Register](#). Each document is also published on the department's [website](#) in a location based on the type of document. For example:
 - Common Questions at <https://www.revenue.wi.gov/Pages/FAQS/home.aspx>,
 - Publications at <https://www.revenue.wi.gov/Pages/HTML/taxpubs.aspx>, and
 - *Wisconsin Tax Bulletins* at <https://www.revenue.wi.gov/Pages/ISE/wtb-Home.aspx>.
- Note:** Proposed guidance documents are not published on a centralized web page on the department's website.
- During the 21-day public comment period, proposed guidance documents include the following disclaimer at the beginning of the document: "This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats."
- Note:** Public comments can be submitted at <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.
- If there are no changes as a result of public comments, the disclaimer is removed and the document is adopted as a guidance document by the department.

Income and Franchise Tax Updates and Reminders

What's New This Tax Season?

Below are some of the changes that may impact your 2019 Wisconsin tax returns:

1. *Individuals, Estates, and Trusts*

- **Tax rates reduced:** The tax rates for the first and second tax bracket are reduced from 4% to 3.86% and 5.84% to 5.04%, respectively. Rate reductions are built into the tax tables in the Forms 1 and 1NPR Instructions.
- **Business moving expenses:** The deduction on your federal return for moving expenses incurred to move a Wisconsin business to a location outside Wisconsin or the United States must be added back to Wisconsin income. Use code 23 to report this addition to Wisconsin income on Line 4 of Form 1.
- **Modification for partnership entity-level tax election:** Partnerships may elect under sec. 71.21(6)(a), Wis. Stats., to pay tax on income at the entity level at a rate of 7.9 percent. If the election is made, Box 3 under Part C of the partners' Schedule 3K-1, *Partner's Share of Income, Deductions, Credits, etc.*, is checked. Partners do not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the electing partnership. Use modification code 58 to report partnership adjustments on Line 11 of Form 1.

For additional information, see [Schedule 3K-1 Instructions](#).

Note: The modification to report tax-option (S) corporation adjustments due to the election to pay tax at the entity level is code 57 on Line 11 of Form 1.

- **Tuition:** The Wisconsin subtraction for tuition and fees remains at \$6,974. The subtraction is phased-out for persons with federal adjusted gross income between \$55,650 and \$66,780 if single

or head of household; \$89,040 and \$111,300 if married filing a joint return; and \$44,520 and \$55,650 if married filing a separate return.

- **College savings account:** The Wisconsin subtraction for contributions to a college savings account is increased from \$3,200 to \$3,280 (\$1,640 if married filing separately).
- **Alternative minimum tax:** The Wisconsin alternative minimum tax is eliminated for taxable years beginning in 2019.
- **Technology zone credit:** The technology zone credit is only allowed as a carryforward for taxable years beginning in 2019. No new credits may be claimed.
- **Super research and development credit:** The super research and development credit is no longer allowed for taxable years beginning in 2019. This credit was removed from Schedule CR, *Other Credits*.
- **Tax-exempt bonds:** Interest received on bonds or notes issued by the Wisconsin Health and Educational Facilities Authority under sec. 231.03(5), Wis. Stats., is exempt from Wisconsin income tax if the bonds or notes are issued in an amount totaling \$35,000,000 or less, and to the extent interest income received is not otherwise exempt from Wisconsin taxation.

2. Businesses

- **Partnership entity-level tax election:** Partnerships may elect under sec. 71.21(6)(a), Wis. Stats., to pay tax on income at the entity level at a rate of 7.9 percent. If a partnership makes the election to pay tax at the entity level, the partnership must check box "I" on page 1 of Form 3 and submit a completed Schedule 3-ET, *Entity-Level Tax Computation*, with Form 3. For additional information detailing the entity-level tax election, see Common Questions on the department's website at revenue.wi.gov/Pages/FAQS/ise-passthroughpartnr.aspx and [Schedule 3-ET Instructions](#).
- **New apportionment schedules:** Forms A-1, *Wisconsin Apportionment Data for Single Factor Formulas*, and A-2, *Wisconsin Apportionment Data for Multiple Factor Formulas*, are eliminated and replaced with Schedules A-01 through A-11. Each apportionment method has its own schedule as listed below:

Schedule	Description
A-01	Single Sales Factor Apportionment Data for Nonspecialized Industries
A-02	Apportionment Percentage for Interstate Financial Institutions
A-03	Apportionment Percentage for Interstate Motor Carriers
A-04	Apportionment Percentage for Interstate Telecommunications Companies
A-05	Premiums Factor for Insurance Companies
A-06	Receipts Factor for Interstate Brokers-Dealers, Investment Advisers, Investment Companies, and Underwriters
A-07	Apportionment Percentage for Interstate Air Carriers
A-08	Apportionment Percentage for Broadcasters
A-09	Apportionment Percentage for Interstate Railroads
A-10	Apportionment Percentage for Interstate Pipeline Companies
A-11	Apportionment Percentage for Interstate Air Freight Forwarders Affiliated with a Direct Air Carrier

- **Technology zone credit:** The technology zone credit is only allowed as a carryforward for taxable years beginning in 2019. No new credits may be claimed.
- **Super research and development credit:** The super research and development credit is no longer allowed for taxable years beginning in 2019. This credit has been removed from Schedule CR, *Other Credits*.
- **Business moving expenses:** Moving expenses, as defined in sec. 71.01(8j), Wis. Stats., paid or incurred during the taxable year to move the taxpayer's Wisconsin business operation, in whole or in part, to a location outside Wisconsin or to move the taxpayer's business operations outside the United States may not be deducted as provided under the Internal Revenue Code.

Fewer Taxpayers Receive Form 1099-G

The Internal Revenue Service requires government agencies to report certain payments made during the year that may be taxable income for the recipient. If a taxpayer claimed a refund or overpayment credit on his or her 2018 Wisconsin income tax return and also claimed state income tax payments as an itemized deduction on his or her 2018 federal income tax return, the department must report on 2019 federal Form 1099-G, *Certain Government Payments*, any refund or overpayment credit issued to the taxpayer during 2019.

For taxable years beginning after December 31, 2017, the federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97) significantly increased the federal standard deduction. As a result, more individuals are claiming the federal standard deduction instead of federal itemized deductions and will not receive a Form 1099-G from the department. If the department issued you Form 1099-G, you may view it on the department's [website](#). You must provide your last name, social security number (SSN)/individual tax identification number (ITIN), and zip code.

Internal Revenue Code Updates

[Schedule I](#), *Adjustments to Convert 2019 Federal Adjusted Gross Income and Itemized Deductions To The Amounts Allowable for Wisconsin*, is used to report certain income and deduction items that are different for Wisconsin and federal purposes.

A revised version of the 2019 Schedule I was published on the department's website on January 22, 2020, and the Schedule I instructions were revised to include Wisconsin and federal differences as a result of the following Public Laws:

Public Law	Title	Date Enacted
116-91	FUTURE Act	December 19, 2019
116-92	National Defense Authorization Act for Fiscal Year 2020	December 20, 2019
116-94	Further Consolidated Appropriations Act, 2020	December 20, 2019
116-98	Virginia Beach Strong Act	December 20, 2019

Reminder: The department published a [chart](#) detailing the federal provisions from the federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97) that apply and do not apply for Wisconsin tax purposes for taxable years beginning after December 31, 2017.

College Tuition Program Addition Modification

For federal purposes, the definition of qualified higher education expenses was changed for college tuition programs as a result of federal Public Law (P.L.) 116-94, Division O, sec. 302. The updated definition includes amounts paid as principal or interest on a qualified student loan for the designated beneficiary or the designated beneficiary's sibling (up to \$10,000) and costs associated with registered apprenticeship programs.

Wisconsin follows the federal Internal Revenue Code as amended to December 31, 2017 (sec. 71.07(6)(L), Wis. Stats.) and has not adopted sec. 302 of P.L. 116-94. Therefore, any amounts withdrawn from a college tuition program and used to pay for qualified student loans or registered apprenticeship programs must be added to Wisconsin income if this amount was previously subtracted from Wisconsin income (sec. 71.05(6)(a)26., Wis. Stats.).

Unrelated Business Taxable Income For Qualified Transportation Fringe Benefits

Income received by a tax-exempt entity from an activity that is not related to the entity's regular activity may be considered unrelated business taxable income (UBTI). Under federal Public Law (P.L.) 115-97, sec. 13703, a tax-exempt entity is required to include certain qualified transportation fringe benefits in the tax-exempt entity's UBTI. This federal provision was repealed under P.L. 116-94, Division Q, sec. 302. Wisconsin follows the federal UBTI provision under P.L. 115-97; however, Wisconsin has not adopted the repeal of the provision under P.L. 116-94. Therefore, certain qualified transportation fringe benefits identified in P.L. 115-97 must be included in a tax-exempt entity's UBTI for Wisconsin purposes.

Filing Form W-RA, Required Attachments for Electronic Filing

The purpose of Form W-RA is to submit attachments for an *electronically-filed* return or homestead credit claim. To prevent delays in processing a return requiring attachments, submit all required attachments electronically using [Form W-RA online](#) or mail the attachments with Form W-RA the same day the *electronically-filed* return is submitted.

Common reasons for using Form W-RA are to submit:

- Proof of income and an originally-signed rent certificate or property tax bill with an *electronically-filed* homestead credit claim.
- A copy of a federal income tax return and related wage statements with an *electronically-filed* Form 1, *Wisconsin Individual Income Tax Return*, if the information was not originally provided with the electronic Form 1 submission (i.e., electronically filing Form 1 using Wisconsin e-file).

Form W-RA is often incorrectly filed with the department. Do not include Form W-RA with a *paper-filed* return or homestead credit claim. Documents mailed with Form W-RA are loaded into the department's computer system as attachments and are not recognized as a filed return.

Wisconsin Sourced Income of Multi-Tiered Partnership Electing to Pay Tax at Entity Level

A partnership that makes the election to pay tax at the entity level for Wisconsin under sec. 71.21(6)(a), Wis. Stats., must determine income, loss and deductions attributable to Wisconsin pursuant to sec. 71.04, 71.14, 71.25, 71.362, or 71.45, Wis. Stats., as if the election was not made.

If the electing partnership is part of a multi-tiered entity structure (i.e., another partnership owns a percentage of the capital and profits of the electing partnership), the electing partnership must look through all the tiers of the multi-tiered entity to determine income, loss and deductions attributable to Wisconsin. For additional detail, see example 2 under *Column (c)* of the [Schedule 3-ET Instructions](#).

Identity Verification Program

The department will continue 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 your return is selected, you will receive a letter asking you to do one of the following:

- **Take an identity quiz.** The quiz consists of four multiple choice questions. You can take the quiz online or by calling the department's customer service representatives at (608) 266-2772. Your Wisconsin state tax refund amount is required to complete the quiz.
- **Enter your Personal Identification Number (PIN) issued by the department.** The department will mail you a PIN after receiving your Wisconsin income tax return or homestead credit claim. You can enter the PIN online or by calling the department's customer service representatives at (608) 266-2772. Your Wisconsin state tax refund amount is required to complete the PIN process.
- **Submit identity documents.** Provide one document that has your full name and photograph and one document that has your full name and complete address. You will receive a letter listing the types of acceptable documents which can be submitted online, by mail, or in person. Office locations and business hours are available on the department's website.

Identity verification is the first step in processing your return. Some returns require additional review, 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 the department's website at revenue.wi.gov and select the ID Verification button on the homepage.

Tax Return Donations

Wisconsin law allows taxpayers to make donations to the following organizations on the 2019 Wisconsin individual income tax return. The organizations are the same as on the 2018 Wisconsin individual income tax return.

Donations made by taxpayers on returns filed between July 2018 through June 2019 (primarily on 2018 returns):

Fund	Donation Amount	Use of Donations
Endangered Resources Fund	\$273,159	Protect and manage native plant and animal species, natural communities, and other natural features
Cancer Research Fund	\$143,357	Donations divided equally between the Medical College of Wisconsin, Inc., and University of Wisconsin Carbone Cancer Center for cancer research projects
Veterans Trust Fund	\$92,910	Used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents

Multiple Sclerosis Fund	\$60,997	Forwarded to the National Multiple Sclerosis Society for distribution to Wisconsin entities that operate health-related programs for people in Wisconsin with multiple sclerosis
Military Family Relief Fund	\$104,620	Used by the Wisconsin Department of Military Affairs to provide financial aid to eligible immediate family members of Wisconsin residents on active duty in the U.S. armed forces or National Guard
Second Harvest/Feed America Fund	\$127,286	Donations 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	\$102,533	Used by the American Red Cross for Wisconsin disaster relief
Special Olympics Wisconsin Fund	\$86,172	Forwarded to Special Olympics Wisconsin, Inc

Withholding Tax Updates and Reminders

Using My Tax Account to Submit Wage Statements and Information Returns

My Tax Account allows a business to complete and submit Forms W-2 and 1099 at any time during the year. The application makes it easy to submit information returns previously omitted and provides a user-friendly option for businesses that don't have active withholding accounts but have a need to submit Forms W-2 or 1099.

Form W-2 in Portable Document Format (PDF) No Longer Accepted

The department no longer accepts PDF versions of Form W-2. This includes PDF files created by third-party software providers and PDFs created at the Social Security website. EFW2 files are still accepted.

Entity-Level Tax Election and Pass-Through Withholding

Pursuant to sec. 71.775(3)(a)4., Wis. Stats., when a partnership or a tax-option (S) corporation makes an election under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats., to pay tax at the entity level, it is exempt from pass-through withholding tax. If an electing entity made pass-through withholding estimated payments prior to its entity-level tax election, it has the following options regarding those payments:

- Receive a refund of the pass-through withholding payments by filing a Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, entering \$0 withholding tax computed in Part 2 of Form PW-1.

Note: An electing entity that uses this option may NOT report any pass-through withholding to its owners (i.e., partners or shareholders) on Schedule 3K-1 or 5K-1.

- Without filing Form PW-1, submit a written request to move pass-through withholding payments to the entity-level franchise or income tax account. Submit written requests to the department at dorincomepte@wisconsin.gov.

Note: An electing entity that uses this option may NOT report any pass-through withholding to its owners on Schedule 3K-1 or 5K-1.

- File Form PW-1, report and pay withholding tax on each owner's share of Wisconsin income, and issue a Schedule 3K-1 or 5K-1 to each owner reflecting the pass-through withholding tax paid on Form PW-1.

Note: An electing entity that uses this option must ensure that the pass-through withholding reported on Schedules 3K-1 or 5K-1 equal the pass-through withholding reported on Form PW-1.

Owners may receive a credit for pass-through withholding by reporting it on the appropriate line of their respective Wisconsin tax return. **Caution:** Owners should report pass-through withholding as Wisconsin tax withheld and NOT as an estimated tax payment.

If an owner is a pass-through entity (i.e., partnership, tax-option (S) corporation, estate, or trust), it must determine whether pass-through withholding from the electing entity may be claimed on its franchise or income tax return (i.e., Form 2, Form 3, or Form 5S) or pass-through withholding return (i.e., Form PW-1). **Caution:** The owner may NOT report pass-through withholding on both the franchise or income tax return and the pass-through withholding return.

Truncated Taxpayer Identification Numbers on Forms W-2 and 1099

As a safeguard against identity theft, the Internal Revenue Service (IRS) allows payers to truncate a payee's taxpayer identification number (SSN, FEIN, or ITIN) on the copy of Form W-2 or 1099 that the payer gives to the payee. For tax year 2019, these provisions apply to Form 1099 but do not apply to Form W-2. These provisions will apply to Forms W-2 that are required to be filed after December 31, 2020. The department follows the IRS treatment.

Caution:

- Payers may not truncate the *payee's* social security number on any forms filed with the department, IRS, or Social Security Administration.
- Payers may not truncate *their own* identification number on any forms given to the payee or filed with the department, IRS, or Social Security Administration.

For more information:

- [Wisconsin Tax Bulletin 201](#) (April 2018), page 17, article titled *Truncated Payee Social Security Number*
- Federal 2019 [General Instructions for Certain Information Returns](#)
- [Federal Register, Vol. 84, No. 128](#)

Department Urges Payroll Departments and Tax Preparation Businesses to Report Scams

Scams targeting tax practitioners, payroll professionals, and employers are a continuing problem. Cybercriminals are actively seeking data about taxpayers to file fraudulent state and federal tax returns.

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These scams can include phishing emails attempting to steal wage statements from an employer or takeover of a tax practitioner's filing system. You can learn more about these scams at: [irs.gov/newsroom/tax-scams-consumer-alerts](https://www.irs.gov/newsroom/tax-scams-consumer-alerts).

If your organization's data was compromised, 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 who will work 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 directions for sharing PII.

Sales and Use Tax Updates and Reminders

Local Tax Rate Changes for 2020

- **Outagamie County Adopts County Tax – Effective January 1, 2020.** See [Wisconsin Tax Bulletin 206](#) (July 2019) for more information.
- **Menominee County Adopts County Tax – Effective April 1, 2020.** Retailers will be notified of the change through My Tax Account or a physical letter. Only four counties don't impose the 0.5% county tax (Manitowoc, Racine, Waukesha, and Winnebago).
- **Baseball Stadium District Tax (0.1%) Ends – Last Day is March 31, 2020.** Effective April 1, 2020, the following sales and use tax rates apply:

Wisconsin County	Sales and Use Tax Rate
Milwaukee	5.5% (includes 0.5% county tax)
Ozaukee	5.5% (includes 0.5% county tax)
Washington	5.5% (includes 0.5% county tax)
Racine	5.0%
Waukesha	5.0%

Transitional provisions for purchases and sales sourced to these counties are provided in Publication 201, *Wisconsin Sales and Use Tax Information*. Local tax rate changes are posted on the [Tax Rate](#) web page.

Tax Seminars - Wisconsin/Minnesota Sales and Use Tax Basics

The Wisconsin and Minnesota Departments of Revenue will present a series of free sales and use tax seminars in the spring of 2020. 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 will include:

- Who needs to register for sales and use taxes in Minnesota, Wisconsin, or both states
- What cities, counties, and other jurisdictions in each state have local taxes
- What's taxable in each state
- Exceptions to the general taxation rules and exemptions
- How and when to use or accept an exemption certificate

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

Reminder: Marketplace Providers and Sellers

Beginning January 1, 2020, Wisconsin requires marketplace providers to collect and remit Wisconsin sales or use tax on the entire amount charged to the purchaser for all sales of taxable products and services in Wisconsin that the marketplace provider facilitates on behalf of a marketplace seller (secs. 77.52(3m)(a) and 77.523(1), Wis. Stats.).

A marketplace seller is not required to be registered for Wisconsin sales or use tax if all Wisconsin sales are facilitated by a marketplace provider. However, the marketplace seller is required to collect and remit tax on taxable sales that are not made through a marketplace provider. Marketplace sellers may request inactivation of their Wisconsin sales and use tax account or a less frequent filing frequency.

Information for [Marketplace Providers and Sellers](#) is available on the department's website and includes:

- Common questions for marketplace providers and sellers
- Sales and use tax registration information
- Waiver application, [Form S-102](#), for marketplace providers
- Other taxes a marketplace provider may be required to collect

Reminder: Internet Access Services

Beginning July 1, 2020, charges for internet access services are no longer subject to Wisconsin sales and use tax. However, taxable products and services purchased over the internet continue to be subject to Wisconsin sales or use tax on and after July 1, 2020.

See the article titled, [Internet Access Services – Bundled Services](#), published in *Wisconsin Tax Bulletin* 207 (November 2019).

Excise Tax Updates and Reminders

Update: Motor Vehicle Fuel Suppliers Administrative Allowance

The administrative allowance under sec. 78.12(4)(a), Wis. Stats., licensed fuel suppliers may deduct when remitting the motor vehicle fuel tax on gasoline is reduced from 1.35 percent to 0.675 percent of the number of gallons of gasoline received for the taxable period, pursuant to [2019 Wis. Act 9](#), effective January 1, 2020. The new rate first applies to the January 2020 Form MF-002, which is due at the end of February.

Reports on Litigation

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

Corporation Franchise and Income Tax

Allocation and Apportionment - Sales Factor - Licensing Software to Original Equipment Manufacturers (OEMs).

Microsoft Corporation vs. Wisconsin Department of Revenue (Court of Appeals, District IV, October 31, 2019).

This is an appeal of an August 13, 2018 Dane County Circuit Court order affirming an August 10, 2017 decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin 199* (October 2017), pages 33 and 34, and *Wisconsin Tax Bulletin 203* (October 2018), page 13, for summaries of the Wisconsin Tax Appeals Commission and Dane County Circuit Court decisions.

The issue in this case is whether royalties paid to Microsoft by OEMs located outside of Wisconsin may be treated as Wisconsin sales in Microsoft's sales factor of the apportionment formula to the extent that the Wisconsin based end-users of Microsoft software installed by the OEMs are considered licensees of Microsoft.

The Court of Appeals held that the Wisconsin based end-users of the Microsoft software (sublicensees) in computers sold by OEMs were not licensees of Microsoft. Section 71.25(9)(df), Wis. Stats., only applies to direct licensees. The Court also noted that the sublicenses were between the OEMs and end-users. There was no direct license between Microsoft and the end-users because the end-users did not purchase anything from Microsoft. Microsoft's gross receipts did not depend on the use of software by end-users because the amount paid to Microsoft by the OEMs for the software licenses was not tied to the actual sale of computers. The OEMs were required to pay royalties to Microsoft even when the OEMs did not sell the computers containing the software and the royalties paid by the OEMs to Microsoft were not tied to the price the OEMs charged the end-users. In addition, the Court held that the OEMs did not act as agents of Microsoft; rather they were acting on their own behalf because Microsoft did not control to whom the OEMs sold the computers. The OEMs determined the components to include in the computers, the OEMs received the sales proceeds from the computers, and Microsoft did not provide product support to end-users of its software. It required the OEMs to provide support.

The department did not appeal this decision.

Sales and Use Tax

Sales Price of Aircraft Lease

Citation Partners, LLC v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 4, 2019)

The issue in this case is whether the full lease payment is the sales price subject to tax, as defined in sec. 77.51(15b), Wis. Stats., or portions that represent nontaxable expenditures incurred by the lessor can be excluded from the taxable sales price.

The taxpayer owns an aircraft it leases to others pursuant to an Aircraft Dry Lease. The Dry Lease does not include financial terms of the lease. Those terms are included in a Side Agreement. During the period at issue, there are two forms of Side Agreements. One Side Agreement dated January 1, 2014 and one dated January 1, 2015.

The Side Agreement dated January 1, 2014, lists a flight hour charge and a separately identified engine maintenance charge.

On July 1, 2014, 2013 Wis. Act 185 became effective. The Act created a sales and use tax exemption for sales of aircraft parts and excluded the sale of aircraft maintenance services from sales tax.

The Side Agreement dated January 1, 2015, changed the invoicing of the engine maintenance charge to separately identify 1) engine maintenance, and 2) aircraft maintenance parts and service.

Prior to November 1, 2014, the taxpayer collected sales tax from the lessees on the portion of their lease payments that was attributable to the aircraft maintenance and engine maintenance costs and parts. Beginning November 1, 2014, the taxpayer stopped collecting sales tax from lessees on this portion of the lease payment.

The taxpayer also filed a claim for refund with the department for the period July 1, 2014 to October 31, 2014, to recover sales tax collected and remitted on the aircraft maintenance and engine maintenance costs and parts. The department issued the refund, which the taxpayer returned to its lessees in the form of a credit memo. The department later conducted a field audit, which assessed sales tax on the portion of the taxpayer's lease receipts attributable to the aircraft maintenance and engine maintenance and parts costs.

The Dry Lease limits aircraft repairs. Any repair over \$5,000 must be handled by the taxpayer. Charges in the lease for aircraft maintenance and engine maintenance and parts are meant to cover the costs the taxpayer incurs repairing and maintaining the aircraft. They are billed based on flight hours that each lessee uses the aircraft.

The Commission stated that the sales price of the leases includes the full amount charged and paid to the taxpayer by its lessees. In addition, the Commission stated that while 2013 Wis. Act 185, may apply to the taxpayer's purchase of aircraft maintenance services and repair parts, it does not apply to any portion of the lease payments to the taxpayer from its lessees. The taxpayer is not selling repair parts or performing exempt services, so 2013 Wis. Act 185 does not apply. Sales price is the total consideration received without any reduction for expenses of the seller. The cost of maintenance services and repair parts is an expense of the lessor, which is not to be deducted from the "sales price" of the leases.

The Commission further stated that although the sale of repair and maintenance parts and services for aircraft is now generally exempt under 2013 Wis. Act 185, the expenditures for those repair and maintenance parts and services are not separately exempt when incorporated into the lease payments of a subsequent lease of the entire aircraft. The ability to itemize a seller's expenses does not remove those costs from the sale price of the lease. Itemization also does not convert the taxpayer into a seller of exempt repair parts or a seller of exempt maintenance services.

The Commission concluded that sales tax applies to the full lease payment.

The taxpayer has appealed the decision to the Dodge County Circuit Court.

Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes and Administrative Rules in effect as of January 31, 2020: Chapters 71, 73, 77, 78, and 177, Wis. Stats.

Laws enacted and in effect after January 31, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to January 31, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

Certification Statement

As the Secretary of the Wisconsin Department of Revenue (DOR), I have reviewed this guidance document or proposed guidance document and I certify that it complies with secs. 227.10 and 227.11, Wis. Stats. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

DEPARTMENT OF REVENUE



Peter Barca
Secretary of Revenue