

Wisconsin Tax Bulletin

April 2020 Number 209



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New Health Emergency Law

Taxpayers May Request Extensions and Waivers During the COVID-19 Health Emergency

([2019 Wis. Act 185](#), create sec. 323.265, and nonstatutory provision in sec. 105(14) of the Act, effective April 16, 2020)

State's General Fund and Transportation Fund Taxes

The Act allows the Secretary of Revenue to waive, on a case-by-case basis, any penalty or interest that accrues during the period covered by the public health emergency declared on March 12, 2020, by executive order 72, if the date required by law for the remittance of tax is during the period covered by the public health emergency. The secretary may waive interest and penalties if he determines that the person's failure is due to the effects of the COVID-19 pandemic. This waiver applies to a tax that goes to the state's general fund or transportation fund.

Other Taxes and Fees

The Act also allows the department to extend any deadline that falls within the period covered by the public health emergency declared on March 12, 2020, by executive order 72, to the end of the public health emergency plus 30 days. If the department grants an extension, the department may not charge any interest or penalties that would otherwise be due with respect to the extended deadline. This extension does not apply to property tax or any tax that goes into the state's general fund or transportation fund.

For additional details, see the articles titled [Taxpayers May Request Extensions and Waivers During the COVID-19 Public Health Emergency](#) and [COVID-19 Request for Relief - Questions and Answers](#) on the department's website.

New Income and Franchise Tax Laws

Internal Revenue Code Provisions Adopted

([2019 Wis. Act 185](#), amend secs. 71.01(6)(L)3., 71.22(4)(L)3. and (4m)(L)3., 71.26(2)(b)12.d., 71.34(1g)(L)3., 71.42(2)(L)3., and 71.98(3), effective for taxable years beginning on or after January 1, 2018)

The following provisions of the federal CARES Act (Division A of Public Law 116-136) that affect the federal Internal Revenue Code are adopted for the definition of the Internal Revenue Code used for Wisconsin income and franchise tax purposes for taxable years that begin on or after January 1, 2018. These provisions apply for Wisconsin purposes at the same time as for federal purposes:

- Section 1106 – relating to the exclusion from income for the cancellation of small business loans
- Section 2202 – relating to the waiver of penalties for early withdrawals from qualified retirement plans
- Section 2203 – relating to the temporary waiver of required minimum distribution rules for certain retirement plans and accounts
- Section 2204 – relating to an above-the-line deduction for up to \$300 of charitable cash contributions
- Section 2205 – relating to increased limitations on charitable contribution deductions

- Section 2206 – relating to an exclusion from income for payments an employer makes for an employee's student loans
- Section 2307 – relating to the classification of qualified improvement property for depreciation purposes
- Section 3608 – relating to the extension of time to make minimum required contributions to single-employer defined benefit pension plans
- Section 3609 – relating to eligibility of a cooperative and small employer charity pension plan
- Section 3701 – relating to eligibility of high deductible health plans for purposes of health savings accounts
- Section 3702 – relating to qualified distributions from health savings accounts and Archer medical savings accounts

Note: The classification of qualified improvement property applies retroactively to taxable years beginning on or after January 1, 2018. As a result, if persons amend their federal income tax return, they must amend their Wisconsin tax returns to recompute depreciation on the qualified improvement property. However, persons cannot claim bonus depreciation for Wisconsin.

Capital Gain Exclusion – Investment in Wisconsin Qualified Opportunity Fund

([2019 Wis. Act 136](#), amend secs. 71.01(13) and 71.05(8)(b)1., and create secs. 71.05(25m), 71.26(3)(vm), 71.34(1k)(p), 71.45(2)(a)21., and 71.83(1)(e), effective for taxable years beginning on or after January 1, 2020)

An exclusion from income or basis adjustment may be made for an investment in a Wisconsin qualified opportunity fund that invests in a Wisconsin qualified opportunity zone.

Definitions

"Wisconsin qualified opportunity fund" means a qualified opportunity fund, as defined in sec. 1400Z-2(d)(1), of the Internal Revenue Code (IRC), that holds at least 90 percent of its assets in Wisconsin qualified opportunity zone property, as measured on the last day of the first six-month period of the fund's taxable year and the last day of the fund's taxable year.

"Wisconsin qualified opportunity zone" means a population census tract located in Wisconsin that is designated as a qualified opportunity zone under sec. 1400Z-1, IRC.

"Wisconsin qualified opportunity zone property" means qualified opportunity zone property, as defined in sec. 1400Z-2(d)(2), IRC, except that qualified opportunity zone business property, as defined in secs. 1400Z-2 (d)(2)(D) and (3)(A)(i), IRC, must be located in a Wisconsin qualified opportunity zone.

Penalties

If a Wisconsin qualified opportunity fund is liable for a penalty under sec. 1400Z-2(f), IRC, for failure to hold 90 percent of the assets in a qualified opportunity zone property, the fund is liable for a Wisconsin penalty equal to 33 percent of the federal penalty.

Certification

A Wisconsin qualified opportunity fund must annually certify to each investor and the department that it is a qualified fund for the fund's taxable year. This must be completed by January 31 following the end of the fund's taxable year.

Capital Gain Exclusion

Individuals, Tax-Option (S) Corporations, and Insurance Companies:

- For taxable years beginning on or after January 1, 2020, individuals, including individual partners and members of a partnership, limited liability company, or limited liability partnership, may subtract from federal adjusted gross income (individuals and tax-option (S) corporations) or federal taxable income (insurance companies) the following amounts:
 - 10% of the deferred gains from investment in a Wisconsin qualified opportunity fund if held for at least five years.
 - 15% of the deferred gains from investment in a Wisconsin qualified opportunity fund if held for at least seven years.
- The subtraction from income does not apply to capital gains excluded or deferred under the qualified Wisconsin business program described in sec. 71.05(25) and (26), Wis. Stats.
- An individual partner, member, or shareholder may not claim the Wisconsin subtractions above if the partnership or tax-option (S) corporation makes the election to pay tax at the entity level.
- An individual may claim the 30% long-term capital gain exclusion in addition to the Wisconsin subtractions above.

Capital Gain Basis Adjustment

Corporations (Excluding Tax-Option (S) Corporations):

- For taxable years beginning on or after January 1, 2020, the basis increase allowed to a corporation under federal law for its investment in a Wisconsin qualified opportunity fund is increased by the following:
 - 10% of the deferred gains from investment in a Wisconsin qualified opportunity fund if held for at least five years.
 - 15% of the deferred gains from investment in a Wisconsin qualified opportunity fund if held for at least seven years.

See [Fact Sheet 1121](#), *Capital Gain Exclusion - Investment in a Wisconsin Qualified Opportunity Fund*, for additional information.

Manufacturing and Agriculture Credit – Crop Insurance Proceeds Considered Production Gross Receipts

([2019 Wis. Act 167](#), renumber and amend secs. 71.07(5n)(a)6. and 71.28(5n)(a)6., and create secs. 71.07(5n)(a)6.a. and b., and 71.28(5n)(a)6.a. and b., effective for taxable years beginning on or after January 1, 2019)

The Act adds crop insurance proceeds to the definition of production gross receipts for taxable years beginning on or after January 1, 2019.

Production gross receipts means:

- **Taxable years beginning on or after January 1, 2019 –**

The sum of gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property, and insurance proceeds received as a result of the destruction of, or

damage to, crops to the extent the proceeds are included in federal adjusted gross income for the taxable year.

- **Taxable years beginning before January 1, 2019 –**

Gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property.

New Sales and Use Tax Law

Exemption for Tangible Personal Property Temporarily Stored in Wisconsin

([2019 Wis. Act 181](#), create sec. 77.54(69), effective June 1, 2020)

An exemption from sales and use tax is created for the sale of tangible personal property that is stored in Wisconsin for not more than 120 days, if the property, including property that is altered by converting, fabricating, manufacturing, printing, processing, or shaping before its use outside Wisconsin, is to be used:

- in fulfillment of a real property construction activity that occurs solely outside Wisconsin at a nonprofit organization, public school district, or business district where business tax incentives have been granted, and
- by a person engaged in an activity classified as construction under sector 23 of the North American Industry Classification System, 2017 edition, published by the federal office of management and budget.

The exemption does not apply to tangible personal property that is stored in Wisconsin, leaves Wisconsin, and is subsequently returned to Wisconsin.

General Updates and Reminders

COVID-19 Health Emergency

During this unprecedented time, the department is working vigorously to help individuals and businesses.

For the latest tax updates regarding the COVID-19 health emergency, including due dates, extensions and waivers, visit the department's [COVID-19 Information and Announcements](#) web page.

Video Gambling Machines

The department's auditors and Alcohol and Tobacco Enforcement agents (A&T) are working together to ensure compliance with Wisconsin laws as they apply to video gambling machines. Auditors routinely verify whether the correct amounts of Wisconsin income, franchise, sales and use taxes are reported and remitted on income and sales price from the operation of such machines. Auditors may request assistance from A&T agents for determining the sales price from admissions to video gambling machines and whether violations of Wisconsin video gambling laws have occurred.

Video Gambling Law Violations

The operation of video gambling machines is a violation of Wisconsin law. The department has sole authority to investigate video gambling violations on the premises of persons holding "Class B" liquor and wine licenses and/or Class "B" fermented malt beverage licenses (Class B premises) with five or

fewer video gambling machines.* The presence of five or fewer video gambling machines on Class B premises is a violation subject to civil forfeiture. Penalties include seizure of the machines and/or money in the machines, and a \$500 fine per machine.

If video gambling machines are located on non-Class B premises (such as gas stations, laundromats, etc.), the violations are more severe. Penalties may include fines up to \$10,000, seizure of the machines, revocation of alcohol licenses, discontinuation as a lottery retailer, and closure of the business as a nuisance. District attorneys may prosecute all gambling violations, even though local law enforcement may not investigate the violations occurring on Class B premises.

A gambling machine is a contrivance which, for a consideration, affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine. A "gambling machine" does not include any of the following:

- A device used in conducting a bingo occasion or raffle event under ch. 563, Wis. Stats., used in conducting a lottery under ch. 565, Wis. Stats., or used in conducting a race under ch. 562, Wis. Stats.
- Any amusement device if it rewards the player exclusively with one or more non-redeemable free replays for achieving certain scores and does not change the ratio or record the number of the free replays so awarded.
- An amusement device involving skill, if it rewards the player exclusively with merchandise contained within the amusement device itself and limited to prizes, toys and novelties, each having a wholesale value not more than seven times the cost charged to play the amusement device once or \$5, whichever is less.
- "Skill" means, within an opportunity provided for all players fairly to obtain prizes or rewards of merchandise, a player's precision, dexterity or ability to use his or her knowledge which enables him or her to obtain more frequent rewards or prizes than does another less precise, dexterous or knowledgeable player.

*Cities, towns, and villages have the authority to prohibit by ordinance all forms of gambling and seize anything devised solely for gambling or used for gambling. Local law enforcement investigates and enforces these local ordinances.

Income and Franchise Taxes

The gross income from gambling machines must be reported with other income from an operator's business. An operator is entitled to deductions from income for ordinary and necessary business expenses related to the gambling machines in the same manner as other business expenses (for example, pay outs, lease payments, depreciation, supplies, etc.). Income and expenses are reported on the operator's federal and Wisconsin income or franchise tax returns.

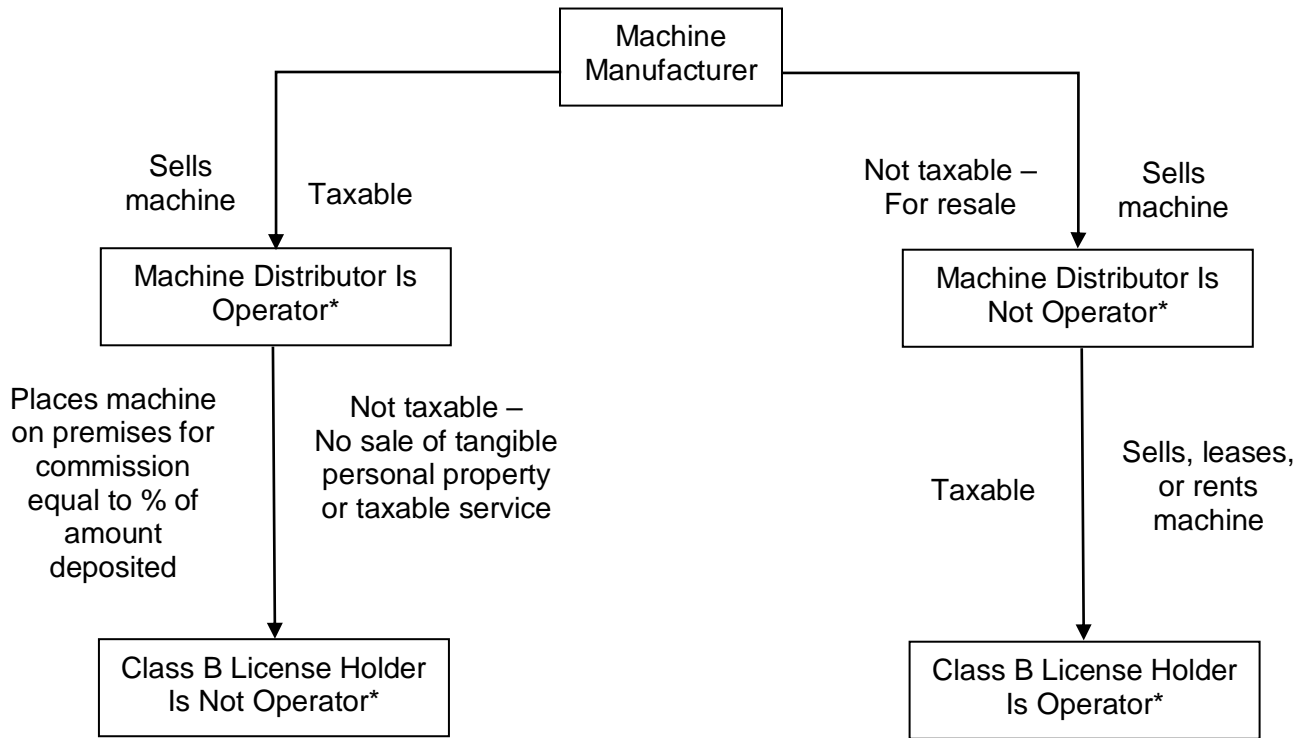
Wisconsin Sales and Use Taxes

The sales price from providing access to or use of video gambling machines in Wisconsin are subject to Wisconsin sales tax. The person responsible for reporting and remitting the sales tax to the department is the "operator" of the machine. The machine operator is subject to Wisconsin sales or use tax on its purchase, lease, or rental of the machine.

The machine operator may not purchase, lease, or rent the machine without tax for resale because the machine operator is using the machine to provide amusement, recreation, or entertainment.

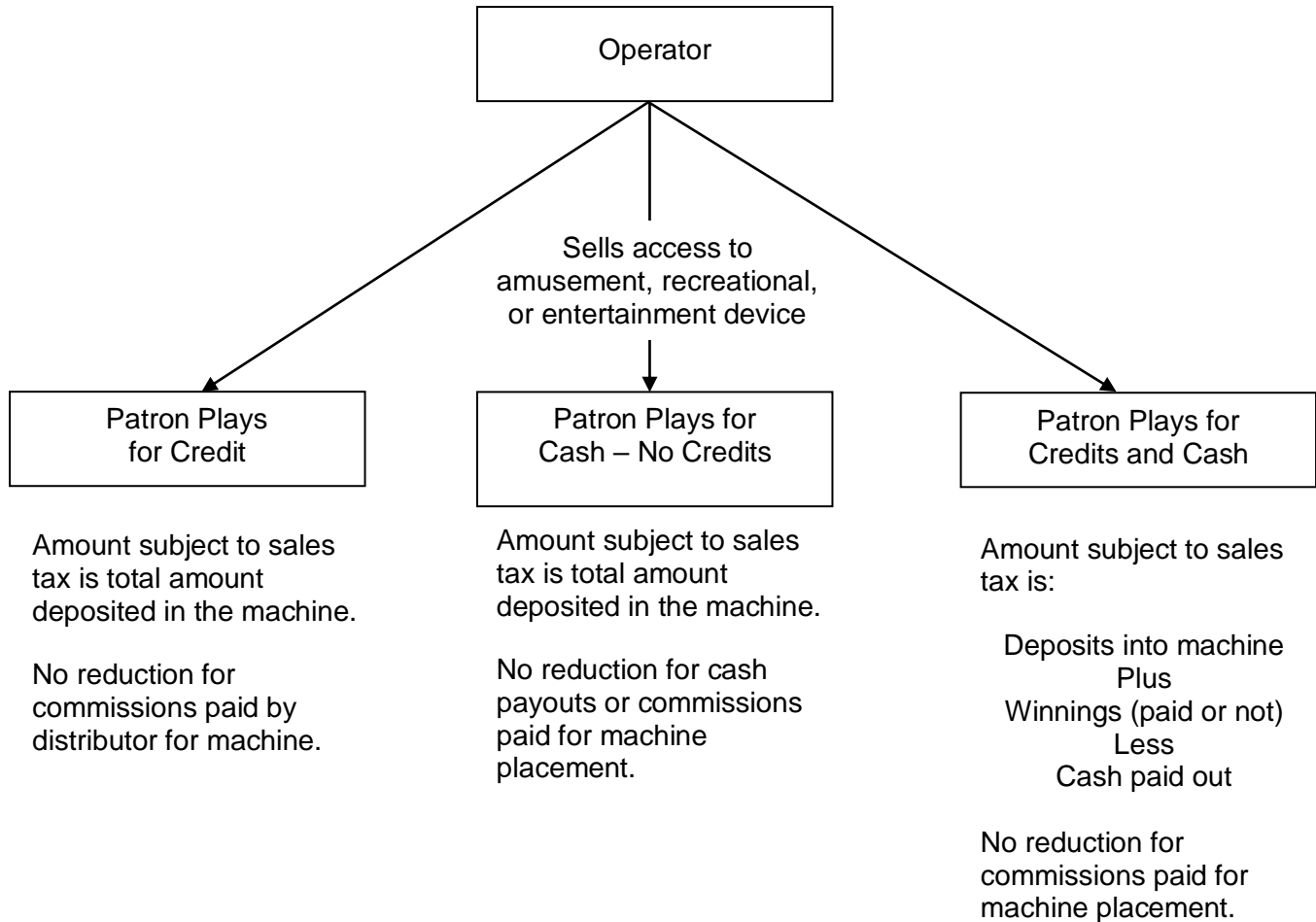
The following flowcharts illustrate the sales and use tax treatment.

Sale, Lease, or Rental of Gambling Machine



* "Operator" means the person who owns property sold through the machine, has access to the machine for stock or restocking or for removing the gross receipts, or who, in general, has control over the machine and its contents.

Sales Price from Furnishing Access to Gambling Machines



Recordkeeping

Records must be kept to verify Wisconsin income or franchise taxes and sales and use taxes reported and remitted. These records include all the following (this list is not all-inclusive):

- Original tickets, tapes, or similar documents produced by the machine that shows the money deposited into the machine, credits issued and used, and pay outs.
- Collection report for each establishment that shows the establishment's name, type of machines, and number of machines on the premises. This report should show the following for **each machine** at the establishment: credit value stated in dollars, starting credits-in, ending credits-in, net credits-in, starting credits-out, ending credits-out, net credits-out (pay outs), taxable sales, sales tax amount, net profit before sharing/allocation, and establishment's share of the net profit. A copy of this collection report should be given by the operator to the establishment to keep in its records.
- Recipient name and address for each pay out.
- Copies of completed federal Form W-2G, *Certain Gambling Winnings*, if federal law requires reporting the pay out to the recipient, including the taxpayer identification number (TIN) of the recipient.
- Copies of completed federal Form 1099-MISC, *Miscellaneous Income*, if federal law requires the reporting of the rent paid to the recipient, including recipient's TIN.

- Records of commissions paid by distributors for placement of machines at any establishment, including the name and address of the payor and payee, amount paid, and date of payment, and a copy of any federal Form 1099 as required by federal law.
- Sales invoices or lease agreements for machines, maintenance, supplies, and any other expenses.
- Machine inventory reports by year: This report should show machine name, machine number, location of machine (inventory, scraped for parts, premise location).

If proper records are not maintained, gross receipts and income subject to tax may be determined by the department through income reconstruction methods and income tax deductions may be disallowed for lack of substantiation. If an operator files an incorrect income or franchise tax and sales or use tax returns due to negligence or fraud, penalties and interest may be assessed, and the operator's seller's permit may be revoked. The interest rate on delinquent taxes is 18% per year. Civil penalties can be as much as 100% of the amount of tax not reported on the return. Criminal penalties for failing to file or filing a false return include a fine up to \$10,000 and imprisonment.

For questions, contact the department's Customer Service Bureau at:

Franchise or Income Taxes

Mail Stop 5-77
 Wisconsin Department of Revenue
 P.O. Box 8906
 (608) 266-2772
DORIncome@Wisconsin.gov

Sales and Use and Withholding Taxes

Mail Stop 5-77
 Wisconsin Department of Revenue
 P.O. Box 8902
 (608) 266-2776
DORBusinessTax@Wisconsin.gov

Income and Franchise Tax Updates and Reminders

New Interactive Vouchers for Estimated Tax and Return Payments

The department created interactive payment vouchers to minimize errors. Taxpayers who mail any of the payments listed in the table below should use the interactive voucher.

The department prefers that taxpayers make payments electronically even if electronic payment is not required under sec. Tax 1.12, Wis. Adm. Code. Payments can be made online on the [My Tax Account](#) website.

Forms and Links		Type of Payment	Type of Taxpayer(s)
2019 Form 3-EPV	Instructions	Original or Amended Return	Partnerships
2019 Form C-EPV	Instructions	Original or Amended Return	Corporations
2020 Form 1-ES	Instructions	Estimated Tax	Individuals, Estates, and Trusts
2020 Form 3-ES	Instructions	Estimated Tax	Partnerships
2020 Form PW-ES	Instructions	Estimated Tax	Pass-Through Withholding
2020 Form Corp-ES	Instructions	Estimated Tax	Corporations

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Example - Creating an Individual's 2020 Estimated Payment Voucher

1. Go to the department's [2020 Individual Income Tax Forms](#) webpage.
2. Click on the "[Interactive Voucher](#)" link in the description column for Form 1-ES.

2020 Individual Income Tax Forms

Note: For fill-in forms to work properly with the bank, you must have free Adobe Reader software on your computer. Most fill-in forms will work with Adobe Reader Version 7; however, some forms require Adobe Reader Version 9 or higher to print properly. To obtain free Adobe Reader software, please visit [Adobe's website](#).

If you have questions about our fill-in forms, [please refer to our instructions](#). This option **will not electronically** file your form.

Need to file your tax return? See the [2019 income tax forms](#).

Form ▶	Status ▶	Date Posted ▶	Name/Description ▶
Form 1-ES Instructions	FINAL	January 16	Estimated Income Tax Voucher Instructions, Interactive Voucher
Form HR-T	FINAL	February 06	Transfer of Supplement to Federal Historic Rehabilitation Credit
Form HR-T Instructions	FINAL	February 07	Transfer of Supplement to the Federal Historic Rehabilitation Credit Instructions

3. Enter your information in the appropriate fields.

Form 1-ES Wisconsin Estimated Income Tax Interactive Voucher

* Indicates a required field.

Taxpayer	Spouse
*Last Name Example ABC	Last Name
*First Name Example DEF	First Name
*Taxpayer SSN/ITIN	Spouse SSN/ITIN

Address	
*Street Example Street	*City Example City
*State/Province WI	*ZIP Code 12345
*Telephone Number 123-456-7890	

Fiscal Year Filers

Check here if you are a fiscal year filer (**Only fill in the month/year if your tax year does not end on December 31**)

Enter year ending
12/2020

Check this box if you have a new address, and you did not provide it on a prior payment voucher

*Check the box below which applies to you

Trust (Enter FEIN as your social security number)

Estate (Enter decedent's social security number)

Individual

Joint

*Amount of Payment
\$1,000.00

Print Voucher Clear

4. Click the "Print Voucher" button to create your personalized voucher.

2020	WISCONSIN ESTIMATED INCOME TAX VOUCHER			Calendar year due dates:	Fiscal year filers:												
Form	File only if submitting payment. Make your check payable to and mail your voucher to:		Wisconsin Department of Revenue PO Box 930208 Milwaukee WI 53293-0208	Apr 15, 2020 Sep 15, 2020	Enter year ending (month and year) 12/2020												
1-ES				Jun 15, 2020 Jan 15, 2021													
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Your legal last name EXAMPLE ABC</td> <td style="width: 33%;">Your legal first name and initial EXAMPLE DEF</td> <td style="width: 33%;">Your social security number 123-45-6789</td> </tr> <tr> <td>Spouse's legal last name</td> <td>Spouse's legal first name and initial</td> <td>Spouse's social security number</td> </tr> <tr> <td colspan="2">Home address (number and street or rural route) EXAMPLE STREET</td> <td>Telephone number (123) 456-7890</td> </tr> <tr> <td>City or post office EXAMPLE CITY</td> <td>State WI</td> <td>Zip code 12345</td> </tr> </table>			Your legal last name EXAMPLE ABC	Your legal first name and initial EXAMPLE DEF	Your social security number 123-45-6789	Spouse's legal last name	Spouse's legal first name and initial	Spouse's social security number	Home address (number and street or rural route) EXAMPLE STREET		Telephone number (123) 456-7890	City or post office EXAMPLE CITY	State WI	Zip code 12345	<input type="checkbox"/> Check box if address is corrected and new address was not provided on a prior payment voucher. Check the box below which applies to you. <input type="checkbox"/> Trust (Enter FEIN as "your social security number") <input type="checkbox"/> Estate (Enter decedent's social security number) <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Joint		
Your legal last name EXAMPLE ABC	Your legal first name and initial EXAMPLE DEF	Your social security number 123-45-6789															
Spouse's legal last name	Spouse's legal first name and initial	Spouse's social security number															
Home address (number and street or rural route) EXAMPLE STREET		Telephone number (123) 456-7890															
City or post office EXAMPLE CITY	State WI	Zip code 12345															
Please do not staple your payment to this voucher. D-101 (R. 7-18)			Amount of Payment \$ <u> </u> 1,000 . <u>00</u>														

2080164013123456789999999990202006101980000100000

5. Review the voucher for accuracy.
6. Mail your payment with the voucher to the appropriate address.

If you have questions about the department's interactive voucher, call (608) 266-2486 or email DORIncome@wisconsin.gov.

File a Short-Period Partnership Tax Return on the Correct Year Form

Short-period partnership tax returns are often necessary when a partnership changes its structure or accounting period. All partnership tax returns, including short-period returns, must be filed on the appropriate form prescribed by the department for the taxable year (sec. Tax 2.08(1), Wis. Adm. Code). For example, a short-period partnership tax return for the period beginning January 1, 2019, and ending March 15, 2019, must be filed on a 2019 Form 3, *Wisconsin Partnership Return*.

If the correct form is not available by the unextended due date for filing a return for a short-period taxable year, a partnership may request up to a six-month extension of time to file. Any extension allowed by the Internal Revenue Service (IRS) for filing the federal return automatically extends the Wisconsin due date (sec. 71.20(3), Wis. Stats., and IRS Treas. Reg. sec. 1.6081-1).

Note: To receive the Wisconsin extension, include with the partnership's Wisconsin tax return a completed copy of the appropriate federal extension form or a statement explaining which federal extension provision is being used. There is no requirement that the partnership submit the request to the IRS.

Apportionment – Allocating Partnership Sales to Corporate Partners Who are Members of a Combined Group

A partnership engaged in a unitary business both in and outside Wisconsin is a "multistate partnership". To determine the portion of income attributable to Wisconsin, a multistate partnership will generally use Schedule A-01, *Wisconsin Single Sales Factor Apportionment Data for Nonspecialized Industries*, unless one of the industry specific Schedules A-02 through A-11 apply. For additional information on computing apportionment for partnerships and partners, see [Wisconsin Tax Bulletin 197](#) (April 2017).

A multistate partnership must provide each corporate partner a Schedule 3K-1, *Partner's Share of Income, Deductions, Credits, etc.*, and complete Part IV, *Partner's Share of Apportionment Factors*. Part IV of Schedule 3K-1 must include the corporate partner's distributive share of both Wisconsin gross sales and total company gross sales.

Corporations, including members of combined groups, add their distributive share of the partnership's gross sales (from Schedule 3K-1, Part IV) to their own gross sales and report the amounts on their own apportionment schedule (e.g., Schedule A-01). The following example illustrates the computation and reporting for corporate partners that are members of a combined group (secs. 71.20(1m) and 71.255(5)(a)6, Wis. Stats., and sec. Tax 2.61(7)e, Wis. Adm. Code):

Example

Facts:

- Multistate Partnership XYZ operates a unitary business in California and Wisconsin and is unitary with one or more members of Combined Group ABC.
- Partnership XYZ has three corporate partners that are all members of Combined Group ABC:
 - Corporation A is a 50% partner
 - Corporation B is a 35% partner
 - Corporation C is a 15% partner
- Partnership XYZ is a wholesaler of tangible personal property and has Wisconsin sales of \$200,000 and total company sales of \$800,000.
- Partnership XYZ's partnership agreement requires Section 179 deductions be allocated evenly between all partners regardless of ownership percentage.
- Partnership XYZ has the following income and expense items on federal Form 1065, Schedule K:
 - Line 1, Ordinary business income \$100,000
 - Line 5, Interest income \$ 10,000
 - Line 12, Section 179 deduction \$ 60,000
- Combined Group ABC manufactures and sells tangible personal property. All members use Schedule A-01 to compute their apportionment formula. The members have the following sales:
 - Corporation A has Wisconsin sales of \$100,000 and total sales of \$500,000
 - Corporation B has Wisconsin sales of \$200,000 and total sales of \$600,000
 - Corporation C has Wisconsin sales of \$300,000 and total sales of \$700,000

Partnership computation of Wisconsin sales and total sales reported in columns (b) and (c), Part IV of Schedule 3K-1 for corporate partners that are members of a combined group

Table 1: Partnership XYZ's Allocation of Income and Expense Items from Form 1065, Schedule K:

	Corporation A	Corporation B	Corporation C	Total
Ownership % in Partnership XYZ	50%	35%	15%	100%
Ordinary business income	\$50,000	\$35,000	\$15,000	\$100,000
Interest income	\$5,000	\$3,500	\$1,500	\$10,000
Section 179 deduction*	(\$20,000)	(\$20,000)	(\$20,000)	(\$60,000)
Total share of Partnership XYZ's income	\$35,000	\$18,500	(\$3,500)	\$50,000

* Partnership XYZ's partnership agreement requires Section 179 deductions be allocated evenly between all partners regardless of ownership percentage.

Table 2: Computation of Partnership XYZ's Percent of Sales Allocated to Each Partner Based on the Partner's Share of XYZ's Income:

	Corporation A	Corporation B	Corporation C	Total
Partner's share of XYZ's income from Table 1	\$35,000	\$18,500	(\$3,500)	\$50,000
Partnership XYZ's total income from Table 1	\$50,000	\$50,000	\$50,000	NA
Partner's percentage of XYZ's income	70%	37%	-7%	100%

Table 3: Computation of Partnership XYZ's Wisconsin Sales to Report in Column (b), Part IV of Schedule 3K-1:

	Corporation A	Corporation B	Corporation C	Total
Partnership XYZ's Wisconsin sales	\$200,000	\$200,000	\$200,000	NA
Partner's allocation percentage from Table 2	70%	37%	-7%	100%
Partner's share of XYZ's Wisconsin sales	\$140,000	\$74,000	(\$14,000)	\$200,000

Table 4: Computation of Partnership XYZ's Total Sales to Report in Column (c), Part IV of Schedule 3K-1:

	Corporation A	Corporation B	Corporation C	Total
Partnership XYZ's total sales	\$800,000	\$800,000	\$800,000	NA
Partner's allocation percentage from Table 2	70%	37%	-7%	100%
Partner's share of XYZ's total sales	\$560,000	\$296,000	(\$56,000)	\$800,000

Determining Wisconsin apportionment percentage of a corporation that is member of a combined group and a partner in a multistate partnership

Table 5: Computation of Corporate Partner's Wisconsin Apportionment to Report on Schedule A-01 and Form 6, Part III, Lines 1a and 1b:

	Corporation A	Corporation B	Corporation C
Corporation's total Wisconsin sales (Corporation's own sales + share of partnership sales from Table 3)	\$240,000	\$274,000	\$286,000
Corporation's total company sales (Corporation's own sales + share of partnership sales from Table 4)	\$1,060,000	\$896,000	\$644,000

Withholding Tax Updates and Reminders

Nonemployee Compensation – New Federal Form 1099-NEC and Redesign of Form 1099-MISC

The Internal Revenue Service (IRS) has created [Form 1099-NEC](#) and redesigned [Form 1099-MISC](#). Beginning with tax year 2020, businesses use Form 1099-NEC instead of Form 1099-MISC to report to the IRS amounts paid for services performed by someone who is not an employee of the business (nonemployee compensation). For more information, see the [Form 1099-NEC and Form 1099-MISC instructions](#).

For tax year 2020, businesses may submit Form 1099-MISC or Form 1099-NEC to the department. Electronic filing options for Form 1099-NEC will be available in January 2021.

Prior to January 2021, the following filing options are available for 2020 nonemployee compensation:

- Log into [My Tax Account](#), select "Enter W-2/1099 Information", and use Form 1099-MISC to report the 2020 nonemployee compensation.
- Mail Form 1099-NEC to:
Wisconsin Department of Revenue
PO Box 8920
Madison, WI 53708-8920

Caution: Form 1099-NEC is an information return and subject to Wisconsin's electronic filing mandate under sec. 71.80(20), Wis. Stats. Taxpayers who file ten or more of any one type of information return (Forms 1099-MISC, 1099-R, W-2G, 1099-NEC, etc.) are required to file electronically and may NOT mail Form 1099-NEC to the department.

All wage statements and information returns, including Form 1099-NEC, must be filed with the department by January 31 each year.

The Form 1099-NEC electronic filing options listed below will be available in January 2021.

- Key 1099s in My Tax Account when filing annual reconciliation (WT-7) or at any time by selecting "Enter W-2/1099 Information".
- Transfer an IRS formatted file to the department. Details are available on the department's [website](#).
- Transmit your 1099s via XML using department approved software.

To receive notifications regarding implementation of Form 1099-NEC, [subscribe](#) to the Tax Professional, Withholding Tax, or Withholding Tax e-File Developer electronic mailing list on the department's website.

Sales and Use Tax Updates and Reminders

Sales and Donations of Personal Protective Equipment

Due to the outbreak of COVID-19 throughout the country, manufacturing companies are reprioritizing to focus on manufacturing personal protective equipment (PPE) or donating or selling their inventory to assist in overcoming the shortages facing healthcare workers. The tax treatment for selling or donating these items is described below.

Selling PPE:

The sale of face shields, goggles, gloves, masks, hand sanitizer, and other protective equipment and supplies are taxable, unless an exemption applies. Such items can be sold without tax to certain nonprofit organizations that hold a Wisconsin Certificate of Exempt Status (CES) number, the federal government, and Wisconsin governmental units. An exempt organization purchasing PPE must provide the seller with a fully completed exemption certificate ([Form S-211](#) or [S-211E](#)) or its CES number, which must be recorded on the seller's billing document. In lieu of an exemption certificate or CES number, the federal government and Wisconsin governmental units may provide the seller with a completed purchase order or similar document clearly identifying the governmental unit as the purchaser.

Additional information on exempt entities and the documentation a seller must obtain is provided in Part 11.D. of [Publication 201](#), *Wisconsin Sales and Use Tax Information*.

Donating PPE:

If a business donates face shields, goggles, gloves, masks, hand sanitizer, and other protective equipment purchased without tax (e.g., inventory bought without tax for resale), use tax is due on the purchase price of the PPE when donated. The donation of the PPE is considered use of the property.

Exception: No use tax is due if the PPE is donated to an exempt organization listed in sec. 77.54(9a), Wis. Stats. To claim the use tax exemption, the person donating the property must establish and document that it is donating the property to a qualifying organization. Documentation may include a statement from the organization receiving the donation that shows the organization is exempt under sec. 77.54(9a), Wis. Stats. (e.g., copy of Certificate of Exempt Status).

If a business donates PPE purchased with Wisconsin sales or use tax, no additional use tax is due. The donating business may NOT claim a refund for the sales or use tax paid on the purchase of the donated PPE.

If a company purchases PPE specifically to donate to an exempt or nonexempt organization, the company is liable for sales or use tax on the purchase of the PPE that is being donated.

For questions or assistance, contact the department's Customer Service Bureau at (608) 266-2776 or DORSalesandUse@wisconsin.gov.

Reminder: Local Tax Rate Changes for 2020

- **Menominee County Tax – Effective April 1, 2020.** The combined state and county sales and use tax rate in Menominee County is 5.5%. For transitional provisions, see page 101 of [Publication 201](#), *Wisconsin Sales and Use Tax Information*.
- **Baseball Stadium District Tax (0.1%) – Ended March 31, 2020.** For additional information, see the article title [Transitional Provisions for End of Baseball Stadium Tax](#) on the department's website.

Effective April 1, 2020, the following sales and use tax rates apply in the stadium district counties:

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

Local tax rate changes are posted on the department's [Tax Rate](#) web page.

Examples of Marketplace Providers

Beginning January 1, 2020, a marketplace provider must collect and remit Wisconsin sales tax for all taxable sales it facilitates on behalf of a marketplace seller. A marketplace provider is any person who facilitates a retail sale by a seller by listing or advertising the seller's products for sale and, directly or indirectly, processes the payment from the purchaser (sec. 77.51(7i), Wis. Stats).

The department has received numerous questions regarding the marketplace provider law. Below are some scenarios with answers describing who is responsible for collecting and remitting Wisconsin sales tax.

Food Delivery Services

Food delivery service companies provide consumers the option to order food for delivery from a variety of restaurants. Sales of food and beverages sold by restaurants, coffee shops, diners, and taverns are generally taxable in Wisconsin as prepared food and/or soft drinks (sec. 77.54(20n)(a), Wis. Stats.).

The following examples explain whether food delivery service companies are marketplace providers responsible for collecting and remitting Wisconsin sales tax.

Example 1: Restaurant contracts with Food Delivery Service. Food Delivery Service advertises Restaurant's menu on its website. Customer uses Food Delivery Service's website to purchase prepared food from Restaurant. Customer orders a \$12 meal. A \$3 delivery fee is added to the order for a \$15 total charge. Food Delivery Service accepts the order and transmits it to Restaurant. Customer uses a credit card to pay for the order on Food Delivery Service's website. Food Delivery Service pays drivers to make deliveries. Driver accepts the delivery job from Food Delivery Service and picks the food up from Restaurant. Driver delivers the food to Customer in Wisconsin. On a weekly basis, Food Delivery Service pays Restaurant for all orders delivered, less the delivery charge and a 10% commission, which are retained by Food Delivery Service.

Food Delivery Service is a marketplace provider because it facilitated the sale by listing items for sale by the seller (Restaurant) and processing the payment from the purchaser (Customer). Food Delivery Service must collect and remit Wisconsin sales tax on the total \$15 sales price for the prepared food. Restaurant is not liable for sales tax on this sale, even if Food Delivery Service does not collect and remit the tax.

Example 2: Same facts as Example 1, except Customer drives to Restaurant to pick up the prepared food, rather than have it delivered. Food Delivery Service does not charge the Customer the \$3 delivery fee.

Food Delivery Service is a marketplace provider because it facilitated the sale by listing items for sale by Restaurant and processed the payment from Customer. Food Delivery Service must collect and remit Wisconsin sales tax on its \$12 charge to Customer. Restaurant is not liable for sales tax on this sale, even if Food Delivery Service does not collect and remit the tax.

Example 3: Same facts as Example 2, except Customer pays Restaurant directly upon pickup. The charge for food is \$12. Restaurant pays Food Delivery Service a 5% commission based on the sale made through Food Delivery Service's website.

Food Delivery Service is not a marketplace provider because it does not process the payment from Customer. Restaurant is responsible for collecting and remitting the sales tax on the \$12 sale of the prepared food.

Example 4: Restaurant receives a large delivery order from Customer. Restaurant advertises on their website that Delivery Service delivers the food. Customer is charged for the prepared food (\$100), a delivery fee (\$10) and a surcharge (\$5). Customer pays using a credit card through Restaurant's website. Restaurant contacts Delivery Service to pick up the food and deliver it to Customer. Restaurant pays Delivery Service the \$10 delivery fee paid by Customer.

Delivery Service is not a marketplace provider because it did not list or advertise the products for sale, nor process the payment. Restaurant is responsible for collecting and remitting the sales tax on the prepared food, delivery fee and surcharge (\$115) that was paid by Customer.

Example 5: Restaurant contracts with Delivery Service to have Delivery Service deliver Restaurant's food for a fee. Delivery Service advertises on its website that it delivers food for Restaurant. When Customer clicks on the Restaurant's logo on Delivery Service's website, they are directed to Restaurant's website for

menu options, ordering, and payment. Once the order is placed and payment is made by credit card, Delivery Service has a driver pick up the food from Restaurant and deliver it to Customer.

Delivery Service is not a marketplace provider because it does not list or advertise items for sale, nor process the payment. When Customer is directed to Restaurant's website, Restaurant is making the retail sale. Restaurant is responsible for collecting and remitting sales tax on the sale of prepared food, including any delivery fees or additional charges necessary to complete the sale.

Example 6: Delivery Service and Restaurant do not have a contract for the sale and delivery of food. Delivery Service uses publicly available information to show the Restaurant's menu on its website. Customer requests an order on Delivery Service's website. Delivery Service orders and picks up food at Restaurant. Delivery Service pays for the food using cash or a credit card in the name of Delivery Service, and delivers the food to Customer. Delivery Service charges Customer for the food, a delivery fee, and a convenience fee.

Delivery Service is not a marketplace provider because it is not making a sale on behalf of a marketplace seller. Instead, Delivery Service is buying prepared food from Restaurant and reselling the food to Customer. Delivery Service may provide Restaurant with a fully completed exemption certificate ([Form S-211](#) or [Form S-211E](#)) claiming resale to buy the prepared food without sales tax. Delivery Service's sale to Customer is subject to Wisconsin sales tax. Delivery Service is required to collect and remit Wisconsin sales tax on the sales price, including the delivery fee and convenience fee.

Physical Locations

A marketplace provider may include a person that operates a physical location without an e-commerce website (e.g., broker, dealer, or consignor). A marketplace provider is any person who facilitates a retail sale by a seller if the person advertises or lists the seller's products for sale and processes the payment from the purchaser for the retail sale.

For example, an antique store with a physical location may be a marketplace provider if the owner of the antique store makes sales of antiques that are owned by other sellers and processes payments for such sales. The antique store is responsible for collecting and remitting Wisconsin sales tax on the sales price of tangible personal property sold on behalf of the marketplace sellers (antique owners).

Franchisors

A franchisor may operate a website where customers purchase items from franchisees under the shared brand name. The franchisor lists the products or services, takes orders, and processes payments. The franchisor sends the orders to the appropriate franchisee for fulfillment. In these situations, the franchisor is a marketplace provider facilitating sales on behalf of the franchisees.

Example 1: Pizza Franchisor is a national chain with several independently-owned franchises in Wisconsin. Customer goes to Pizza Franchisor's website to view the menu and place an order. Customer orders a large pizza (prepared food) on Pizza Franchisor's website and pays for it via credit card. Pizza Franchisor accepts the order and payment, and sends the order to the franchisee to prepare the pizza. Customer may either pick up the pizza at that location or have it delivered by the franchisee.

Pizza Franchisor is a marketplace provider required to collect and remit the Wisconsin sales tax on the entire sales price for the pizza, including any delivery fee or electronic order surcharge.

Example 2: Same facts as *Example 1*, except the customer chooses to pick up the order and pay at the franchisee location. Pizza Franchisor is not a marketplace provider because it did not process the payment. The franchisee is the retailer responsible for collecting and remitting sales tax on the pizza sale.

Example 3: Hotel Franchisor is a national chain with several franchises in Wisconsin. Customers go to the Hotel Franchisor's website to purchase lodging. Hotel Franchisor lists all hotels under its brand name on the website. Customer selects a hotel and reserves a room from Hotel Franchisor's website. Customer has several room rate options, including a prepaid rate. If customers select the prepaid rate, Hotel Franchisor accepts the reservation, processes the payment via credit card, and sends the reservation and payment to the selected hotel franchisee.

Hotel Franchisor is a marketplace provider required to collect and remit sales tax on the sales price of the taxable lodging.

Example 4: Same facts as *Example 3*, except Customer chooses a rate that allows her to pay upon check-out at the hotel.

Hotel Franchisor is not a marketplace provider because it did not process the payment. The franchisee that furnishes the lodging and accepts payment is the retailer responsible for the sales tax on the lodging sale.

Marketplace Provider Waiver

A marketplace provider may submit an application ([Form S-102](#)) to the department requesting a waiver from collecting and remitting Wisconsin sales or use tax if its only activities are facilitating sales of products or services on behalf of marketplace sellers that are operating under a hotel, motel, or restaurant brand name shared with the marketplace provider. The waiver may be granted if the department is satisfied that the marketplace seller will collect and remit tax on the entire amount charged to the purchaser. For more information, see [Marketplace Provider and Seller Common Questions](#) on the department's website.

Cannabidiol and Hemp Products – Sales and Use Tax Treatment

From cosmetics to food and beverages, the market for cannabidiol (CBD) and hemp products has increased dramatically in recent years. The department continues to receive questions regarding the taxability of these types of products.

Sales of tangible personal property are subject to Wisconsin sales and use tax (sec. 77.52(1)(a), Wis. Stats.), unless an exemption applies. The following CBD and hemp products, or products containing CBD or hemp, are tangible personal property and taxable if sold in Wisconsin (this list is not all-inclusive):

- CBD dried hemp flowers
- CBD oil concentrates
- CBD capsules
- Cosmetics
- Essential oils
- Hair products
- Hemp extract drops
- Hemp balms
- Industrial hemp
- Skin products

Some CBD or hemp products may be exempt from Wisconsin sales and use tax. Wisconsin exempts sales of food and food ingredients from sales and use tax (sec. 77.54(20n)(a), Wis. Stats.), unless the item sold is candy, a soft drink, a dietary supplement, or prepared food. If CBD or hemp is infused into another product, the tax treatment depends on the taxability of the infused product sold at retail.

Example 1: Manufacturer infuses CBD oil into strawberry jelly. Manufacturer sells the jelly to Grocer and Grocer sells the jelly to its customers. Grocer's retail sale of the strawberry jelly is exempt from Wisconsin sales and use tax because the jelly is an exempt food and food ingredient.

Example 2: Drink Manufacturer makes and bottles hemp-infused, sweetened tea. Drink Manufacturer sells the tea to Distributor, Distributor sells the bottled tea to Grocer, and Grocer sells the tea to its customers. The tea meets the definition of a soft drink (sec. 77.51(17w), Wis. Stats.) because it is a beverage that contains a sweetener and does not contain milk or milk products. Grocer's retail sales of the hemp-infused, sweetened tea are subject to Wisconsin sales and use tax.

Sales of over-the-counter drugs are taxable in Wisconsin. Wisconsin provides a sales and use tax exemption for drugs (sec. 77.54(14), Wis. Stats.). For the exemption to apply, the CBD or hemp product must be a drug (sec. 77.51(3pj), Wis. Stats.) that is prescribed for the treatment of a human being by a person authorized to prescribe drugs, and dispensed on a prescription filled by a registered pharmacist in accordance with law.

Note: The exemption for drugs in sec. 77.54(14), Wis. Stats., may apply based on who furnishes or purchases the drug. See sec. Tax 11.09, Wis. Adm. Code, for more information.

Out-of-State Businesses Providing Services in Wisconsin May Owe Use Tax

Out-of-state businesses that bring taxable products into Wisconsin to perform services may owe Wisconsin use tax on the products purchased. Wisconsin use tax is due on the purchase price of property that is stored, used, or consumed in Wisconsin. A credit is allowed for sales or use taxes properly due and paid to another state and/or local unit of government against (but not in excess of) the total Wisconsin state and county use taxes imposed on the same items, property or goods (sec. 77.53(16), Wis. Stats.). The following are some examples of service providers who may owe use tax:

Example 1: An out-of-state entertainment company holds several monster truck shows in Wisconsin. In 2019 the company purchases parts to build the monster trucks in a state with no sales or use tax. They transport the finished monster trucks to Wisconsin to use in shows in 2019. The entertainment company owes Wisconsin use tax on the original purchase price of the parts used to build the monster trucks used for the shows in Wisconsin.

Example 2: A for-profit, out-of-state event promoter holds a 5K run/walk event in Dane County. Admissions to amusement, athletic, entertainment or recreational events are taxable in Wisconsin under sec. 77.52(2)(a)2.a., Wis. Stats. As part of the price for the taxable event admission, participants receive a free shirt and a medal. The course has various stations where color materials are thrown or blown onto participants. The event promoter properly paid a combined 4.5% state and local sales tax in another state on its purchase of the shirts, medals, color materials, and other equipment and supplies used in Wisconsin. Although the event promoter owes 5.5% Wisconsin use tax on the original purchase price of the shirts, medals, materials, equipment, and supplies, the event promoter is allowed a credit for the combined 4.5% state and local sales tax that was properly due and paid to the other state against the combined Wisconsin state and Dane County use tax imposed on the same purchase.

Example 3: An out-of-state contractor performs services in Eau Claire, Wisconsin with equipment and tools that were purchased in another state. The contractor properly paid a combined 6% state and local sales tax on its purchase of the equipment and tools in the other state. Since the combined state and local sales taxes paid to the other state are greater than the combined Wisconsin state and Eau Claire County use taxes imposed (5.5%), the contractor does not owe additional Wisconsin use tax on the equipment and tools used in Wisconsin.

See the Tax Release titled, "[Credit for Sales and Use Taxes Paid to Other States and Their Local Units of Government](#)" published in *Wisconsin Tax Bulletin* 157 (July 2008) for additional information regarding credit for taxes paid to other states.

Contractor's Purchases of Certain Solar Products Are Exempt

A product whose power source is direct radiant energy received from the sun (solar energy) is exempt from Wisconsin sales and use tax if that product produces at least 200 watts of alternating current or 600 British thermal units per day (sec. 77.54(56), Wis. Stats.). This exemption does not apply to an uninterruptible power source that is designed primarily for computers. A "product" means tangible personal property that converts direct radiant energy received from the sun into alternating current or heat.

A contractor may purchase solar energy "products" exempt from sales and use tax, including photovoltaic cells, modules, arrays (including the tracking equipment that maintains optimal orientation to the sun), solar thermal collectors, and inverters used to transform direct current produced from a solar generator into alternating current, and the hardware required for installation of these products.

The exemption also includes the wiring necessary to connect the solar panels together, such as the cable, conduit, disconnect and overcurrent device installed between the cells, modules, or arrays and the inverter. However, wiring, except wiring necessary to connect the panels together and to the inverter, does not qualify for the exemption.

Exempt solar products do not include the concrete foundations (including concrete pylons) on which a solar array is installed, tanks that store hot water heated by the solar collector, batteries used to store electricity produced by photovoltaic cells, and wiring that does not connect the panels together and to the inverter. If these items are installed in a real property construction activity, the contractor is the consumer of these items and must pay Wisconsin sales or use tax on their purchase. If these items remain tangible personal property after installation, the contractor may purchase the items without tax for resale.

For additional information, see sec. Tax 11.10, Wis. Adm. Code, Part 4.G. in [Publication 200](#), *Electrical Contractors*, and Part 3.F. in [Publication 207](#), *Contractors*.

Disabled Veterans Vehicle Purchases Are Taxable

The Department of Veterans Affairs recently sent letters to disabled veterans about various veteran benefits, including state or local property or vehicle tax relief. Some states impose a property or vehicle tax on the sale or purchase of a motor vehicle with an exemption for veterans however, Wisconsin law does not provide for a sales and use tax exemption specific to a vehicle sale to or purchase by a disabled veteran.

Wisconsin does provide several income tax benefits and a property tax credit for veterans. Information about the various Wisconsin benefits can be found on the [Wisconsin Department of Veterans Affairs](#) website.

Boats, Jet Skis, and Trailers – Sales and Use Tax Treatment

As the temperatures continue to climb, our much-anticipated boating season is quickly approaching. Although Minnesota is considered the Land of 10,000 Lakes, Wisconsin has more than 15,000 lakes to explore on a boat or jet ski.

Sales of new and used boats and jet skis, along with trailers to transport the boat or jet ski, are subject to Wisconsin sales and use taxes. Leases and rentals of boats and jet skis are also taxable. Retailers are required to collect and remit sales and use tax on such sales, leases, and rentals when the purchaser takes possession of the watercraft in Wisconsin. County tax also applies as follows, if the county imposes a tax:

- *Sale or multiple payment lease/rental of watercraft* – County tax is due where the watercraft is customarily kept by the purchaser.
- *One-payment lease/rental of watercraft* – County tax is due where the purchaser takes possession of the boat or jet ski.
- *Sale of a trailer* – County tax is due where the purchaser takes possession of the trailer.
- *Sale of watercraft and trailer for a single price* – The sales price must be reasonably allocated between the watercraft and the trailer so the county tax can be properly computed. County tax is due separately on the watercraft and trailer as described above.

If a seller does not collect sales or use taxes on the sale of a new or used watercraft or trailer, the purchaser owes the tax at the time of registration. If registration is not required, the purchaser must report and remit use tax directly to the department. Individuals report and remit use tax on their Wisconsin income tax return (e.g., Form 1), while businesses generally report use tax on their sales and use tax return (e.g., Form ST-12).

For additional information, see the following articles on the department's website:

- [Watercraft, Such as Boats and Jet Skis](#)
- [Boats and Trailers: Determining Which County and Stadium Taxes Apply](#)
- [Reporting Sales Tax on Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles, Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft](#)
- [Nonresident Exemption for Boats Berthed in Wisconsin Boundary Waters](#)

Excise Tax Updates and Reminders

New XML Schema for Electronically-Filed Wisconsin Motor Fuel Tax Returns

Effective October 1, 2020, persons that file their returns using XML transmission (not those who file using My Tax Account) must use the new format (schema) for filing returns. The updated schema conforms with the Federation of Tax Administrator's approved uniform schema. As part of the update, all XML filers are required to complete a testing program that will ensure proper filing. This update affects the following XML filers that file motor fuel tax returns under a "540" account with the department:

- Restricted Supplier
- Supplier
- Biodiesel and Ethanol Producer
- Transporter
- Terminal Operator
- Petroleum Products Shipper

What should I do?

1. Review the [MFETV4.0 schema package](#), documentation, and examples posted on the department's website.
2. Submit test files. The department will post the required testing program on our website. All XML filers are required to complete the tests to gain XML filing approval. Without the approval, returns will be rejected after the transition to V4.0.

What if I have questions?

Contact the department's Developer Relations at DORDeveloperRelations@Wisconsin.gov.

Reports on Litigation

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

Corporation Franchise and Income Tax

Dividends Received Deduction

Deere & Company vs. Wisconsin Department of Revenue (Dane County Circuit Court, March 9, 2020).

This is a judicial review of the Tax Appeal Commission's decision dated August 21, 2019. See [Wisconsin Tax Bulletin 207](#) (November 2019), pages 12 and 13, for a summary of the Wisconsin Tax Appeals Commission's decision.

The issue is whether Deere & Company is allowed to claim the dividends received deduction under sec. 71.26(3)(j), Wis. Stats., for distributions it received and included in income from a foreign limited partnership that made the election to be treated as a corporation for federal income tax purposes.

The Circuit Court affirmed the Wisconsin Tax Appeals Commission decision that when John Deere Holding, LLC 1 S.C.S. made the election to be treated as a corporation for federal income tax purposes, its partnership interests were considered exchanged for stock for tax purposes. Therefore, it meets the definition of a corporation under sec. 71.22(1k), Wis. Stats. Since Deere & Company included the distributions from John Deere Holding, LLC 1 S.C.S. in its income and all the other requirements of the dividends received deduction in sec. 71.26(3)(j), Wis. Stats., were met, the Circuit Court concluded that Deere & Company may claim the dividends received deduction.

The department is appealing this decision.

Sales and Use Tax

County Sales and Use Tax Ordinance

Brown County vs. Brown County Taxpayers Association (Brown County Circuit Court, March 24, 2020).

The issue in this case is whether the sales and use tax ordinance creating a 0.5% sales and use tax on sales and purchases in Brown County is valid.

Under sec. 77.70, Wis. Stats., any county desiring to impose county sales and use taxes under subch. V of ch. 77, Wis. Stats., may do so by the adoption of an ordinance, stating its purpose and referring to that subchapter. The rate of the tax imposed under sec. 77.70, Wis. Stats., is 0.5 percent of the sales price or purchase price. Except as provided in sec. 66.0621(3m), Wis. Stats., the county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in subchapter V.

There is no dispute as to Brown County's authority to impose the ordinance. The dispute is whether the ordinance is imposed "only" for the purpose of "directly reducing" the property tax levy.

The County argued the ordinance is valid under the plain language of sec. 77.70, Wis. Stats.

The ordinance mandates the 0.5% sales and use tax shall be utilized only to reduce the property tax levy by funding [nine] specific capital projects. Further the ordinance mandates the sales and use tax shall not be utilized to fund any operating expenses other than lease payments associated with the specific capital projects. The ordinance also contains a mill rate freeze which the County argued provides an additional safeguard against violating sec. 77.70, Wis. Stats.

The Brown County Taxpayers Association argued the ordinance is void because the property tax levy did not decrease by the amount of sales and use tax raised.

In a 1998 Wisconsin Attorney General Opinion interpreting sec. 77.70, Wis. Stats., the Attorney General found "...funds received from a county sales and use tax under 77.70 may be budgeted by the county board to reduce the amount of the countywide property tax levy or to defray the cost of any budget item which can be funded by a countywide property tax."

The Court acknowledged that the Taxpayer Association's position of the dollar-for-dollar offset is an acceptable interpretation of sec. 77.70, Wis. Stats., but held it is not the only lawful interpretation. The Court further explained that if sec. 77.70, Wis. Stats., were to only require a dollar-for-dollar reduction of a county's property tax levy, the Wisconsin Legislature would have said so in the statute, and it would have spelled out the process for Wisconsin counties to follow.

The Court also noted that the Wisconsin Legislature placed a specific revenue spending limitation on two tax districts, the Lambeau Field Tax and the Miller Park Stadium Tax, but that it did not place such restrictions on counties.

Section 77.70, Wis. Stats., the Court concluded, is an enabling statute whose *purpose* is to directly reduce the property tax levy, not a restriction on how sales and use tax revenue is to be spent.

The Court agreed with the "presumptively correct" opinion of the Attorney General. By including, as sources of revenue, both estimated sales and use tax revenue in its 2018 adopted budget, and actual sales and use tax revenue in its 2019 proposed budget the County fulfilled the "purpose" of sec. 77.70, Wis. Stats., which was to directly reduce its property tax levy. The County directly reduced its property tax levy by paying for projects which were fundable by its property tax levy.

The Court ruled the ordinance complies with sec. 77.70, Wis. Stats. The County's motion for summary judgement was granted and the Association's motion for summary judgement was denied.

The Association filed a motion for reconsideration of this decision, which is currently pending.

Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes and Administrative Rules enacted as of April 30, 2020: Chapters 66, 71, 73, 77, 78, 125, 139, 323, 340, 562, 563, 565, and 945, Wis. Stats., and chs. Tax 1, 2, and 11, Wis. Adm. Code.

Laws enacted and in effect after April 30, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to April 30, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

Public Comments

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

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