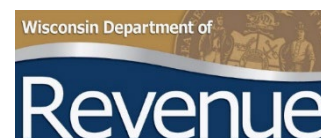


Wisconsin Tax Bulletin

July 2020 Number 210



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General Updates and Reminders

The Department is Providing In-Person Appointments at Select Office Locations

The department's offices are currently closed to walk-in customers, but we are offering limited in-person appointments in our Appleton, Eau Claire, Madison, Milwaukee, and Wausau offices.

As a result of the current pandemic, the department is asking customers to first use our online services or call us rather than visiting us in person. A [list of frequently-used online services](#) is available on our website.

If you cannot find the information you need on our website and still need to schedule an appointment at one of our offices, please call us at (608)-266-2772 for assistance.

Customers and staff are required to wear face masks in our buildings.

Filing an Appeal with the Wisconsin Department of Revenue

If a taxpayer disagrees with adjustments made by the department, they have the right to appeal. An appeal must be filed within 60 days of receiving a notice. Taxpayers may appeal changes to a tax return or credit claimed, late filing fees, negligence penalty, and underpayment interest. Appeals are not accepted for regular and delinquent interest, returned payment charges, refunds applied to other debts, retailer's discounts, or collection fees.

When submitting an appeal, taxpayers must clearly explain why they do not agree with the notice and attach all documents supporting the appeal. Include the tax account number, letter ID, and the tax period from the notice.

Appeals for business taxes, individual income tax, fiduciary income tax, homestead credit, occasional consumer use tax, and miscellaneous motor fuel tax can be filed online through [My Tax Account](#). An appeal may also be made by mail or fax to:

Wisconsin Department of Revenue
PO Box 8903
Madison, WI 53708-8903
Fax: (608) 224-5758

The department may contact the taxpayer by mail, email, or phone to request additional information. After a final decision on the appeal is made, the department will send the taxpayer a letter. If the taxpayer disagrees with the department's appeal determination, the taxpayer may appeal to the Tax Appeals Commission.

For more information, see [Publication 506](#), *Taxpayers' Appeal Rights of Audit Adjustments*.

Filing an Appeal with the Wisconsin Tax Appeals Commission

If a taxpayer disagrees with the department's appeal determination, the taxpayer may appeal to the Wisconsin Tax Appeals Commission (TAC). The TAC considers appeals on taxes and credits administered under Chapters 71 and 77 of the Wisconsin Statutes. This includes, but is not limited to, income, franchise, gift, homestead credit, farmland preservation credit, withholding, sales and use, and excise tax matters.

The appeal must summarize the facts involved and contain a statement of the applicable tax laws. The Wisconsin Department of Revenue should be the party named as the respondent in the appeal. An original plus four copies of the appeal must be filed with the TAC. You must mail your appeal to:

Wisconsin Tax Appeals Commission
5005 University Avenue
Suite 110
Madison, WI 53705

The appeal should not be sent to the department or the Resolution Unit. A \$25 filing fee must be submitted with each appeal, except those for earned income credit, homestead credit, and farmland preservation credit.

Late appeals are not permitted. An appeal is timely filed with the TAC if:

- Physically received by the TAC within 60 days after the taxpayer receives the department's decision, or

- Mailed to the TAC by certified mail in a properly addressed envelope and prepaid postage within 60 days after the taxpayer receives the department's decision

For additional information on appealing to the TAC, see [Publication 507](#), *How to Appeal to the Tax Appeals Commission*.

Income and Franchise Tax Updates and Reminders

Taxability of Unemployment Compensation

The amount of unemployment compensation you receive may be taxable for Wisconsin purposes if your adjusted gross income, not including any amount of social security benefits received or taxable refunds, credits, or offsets, exceeds a certain amount. The amount of unemployment compensation which is taxable for Wisconsin is equal to the lesser of the following:

- One-half of the amount of excess unemployment compensation over the base amount, or
- The amount of unemployment compensation received during the year

Use the unemployment compensation worksheet provided in the Form 1 or 1NPR instructions to compute the amount of unemployment compensation taxable for Wisconsin purposes. For more information, see [unemployment compensation common questions](#) on the department's website.

New Fact Sheet: Veterans and Surviving Spouses Property Tax Credit

A new fact sheet for the veterans and surviving spouses property tax credit regarding verification of eligibility and extension of time to claim the credit has been posted to the department's website. [Fact Sheet 1122, Veterans and Surviving Spouses Property Tax Credit, Verification of Eligibility - Extension of Time to Claim Credit](#), explains how to request an extension of time to claim the veterans and surviving spouses property tax credit when awaiting an eligibility determination from Wisconsin Department of Veterans Affairs.

Reminder: Due Date for Partnerships and Tax-Option (S) Corporations Making the Entity-Level Tax Election

An election for partnerships and tax-option (S) corporations to pay tax at the entity level must be made each tax year by the extended due date of the entity's income or franchise tax return.

The extended due date of a 2019 Form 3, *Wisconsin Partnership Return*, for a calendar-year partnership is September 15, 2020, and the extended due date of a 2019 Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise Income Tax Return* for a calendar-year tax-option (S) corporation is October 15, 2020.

For additional information on making the entity-level tax election, see the article titled *Election to Pay Tax at Entity Level for Tax-Option (S) Corporations and Partnerships*, on pages 2 and 3 of [Wisconsin Tax Bulletin 204](#) (January 2019).

Withholding Tax Updates and Reminders

New Electronic Filing Option for Form PW-2

A nonresident of Wisconsin who is an owner of a pass-through entity (partner of a partnership, shareholder of a tax-option (S) corporation, or beneficiary of an estate or trust) may request an exemption from pass-through withholding by filing Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Pass-Through Withholding Exemption Affidavit*.

Beginning January 1, 2022, all owners will be required to file Form PW-2 electronically and may not fax or mail Form PW-2, unless a waiver is obtained from the department. The new electronic filing option is available through [My Tax Account](#), the department's online filing system.

For more information regarding pass-through withholding and Form PW-2, see the following resources:

- [Pass-Through Withholding Common Questions](#)
- [Form PW-2](#) and [Form PW-2 Instructions](#)
- [Fact Sheet 1117](#)

Sales and Use Tax Updates and Reminders

Internet Access and Related 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.

Installation charges that are required for the customer to receive the internet access service from that internet service provider are included in the sales price of the internet access service. Since internet access services are no longer taxable, the installation charges are no longer taxable. However, the internet service provider is the consumer of the materials used in the installation and required to pay Wisconsin sales or use tax on the purchase of those materials.

The tax treatment of the following sales and services have not changed:

Modem Rentals

- If the customer is required to purchase the modem from the internet service provider to obtain internet access services, the modem is incidental to the internet access services. The charge to the customer for the modem is not taxable, but the internet service provider is required to pay sales or use tax on the purchase of the modem.
- If the modem is provided for a separate and optional fee (i.e., the customer can get a modem from another party and get internet access without paying the internet service provider for the modem), the charge to the customer for the modem is taxable. The internet service provider may purchase the modem without tax for resale.

Email Services

- If charges for email services are separate and optional from internet access services, the services are taxable as a telecommunications message service as provided in sec. 77.52(2)(a)5m., Wis. Stats.

Third-Party Installation of Data Cabling

- Installation underground: installation is a real property improvement for both a residential and commercial customer. Charges from the third party to the internet service provider are not taxable. The third party is the consumer of the materials used in the real property improvement and required to pay sales or use tax on the purchase of the materials.
- Installation up to outlet point (i.e., plate on wall containing jack) at a residence: the tax treatment is the same as installation underground.
- Installation up to the outlet point (i.e., plate on wall containing jack) for a commercial customer: the third party is installing tangible personal property and the charge to the internet service provider is taxable. The internet service provider cannot purchase the installation service from the third party without tax for resale since the internet service provider's charge for the installation to the customer is incidental to the internet access services.
- Installation from the outlet point to the equipment (e.g., modem), for both a residential and commercial customer: the tax treatment is the same as installation up to the outlet point for a commercial customer.

Additional information can be found in Appendix A in [Publication 207](#), *Contractors*.

Use Nine-Digit Zip Code for Online Purchases

In order to ensure that you are charged the correct Wisconsin county sales tax rate on your online purchases, include your nine-digit zip code in your delivery address. The nine-digit zip code (Zip +4) does not cross county borders. If you are unsure of your nine-digit zip code, use the [United States Postal Service's lookup tool](#).

Example: Zip code 54915 is used for three different counties: Calumet, Outagamie, and Winnebago. However, including the nine-digit zip code in the delivery address ensures the correct county sales tax is charged on purchases delivered to Calumet and Outagamie counties, and no county sales tax is charged on purchases delivered to Winnebago County.

Baseball Stadium Tax Collected in Error

Effective April 1, 2020, sellers can no longer collect the 0.1 percent baseball stadium district tax. Baseball stadium tax collected in error must be returned to the buyers from whom the tax was collected. If the seller cannot locate the buyers, the seller must submit the tax to the department.

If the seller does not submit the tax to the buyers or the department, the seller may be subject to a penalty of 25 percent of the amount not submitted or, in the case of fraud, a penalty equal to the amount not submitted (sec. 77.59(5m), Wis. Stats.).

Local Exposition District Room Tax Increase Effective January 1, 2021

The Wisconsin Center District approved a resolution to increase the local exposition district basic room tax from 2.5 percent to 3 percent, beginning January 1, 2021.

The basic room tax is imposed on persons selling lodging in Milwaukee County for a continuous period of less than one month. A sale of lodging takes place at the location where the lodging is furnished to a customer.

The following local exposition district taxes and rates in Milwaukee County continue:

- Additional room tax – 7 percent (City of Milwaukee only)
- Food and beverage tax – 0.5 percent
- Rental car tax – 3 percent

For the purposes of local exposition taxes, "Milwaukee County" includes a city or village wholly or partially in Milwaukee County.

[Publication 410](#), *Local Exposition Taxes*, will be revised to reflect this change.

Municipal Room Tax – Homeowners Should Contact Lodging Marketplace

Marketplace providers that facilitate lodging sales on behalf of sellers are required to collect municipal room tax in Wisconsin. Room taxes are administered by each municipality that imposes the tax.

Homeowners should contact their lodging marketplace if they notice that the lodging marketplace is not collecting room tax, collecting the wrong room tax rate, or collecting for the wrong municipality.

Reporting Cancelled Sales

Many businesses had sales cancelled recently due to the COVID-19 pandemic. If a business previously reported and paid Wisconsin sales or use tax on these transactions, the appropriate way to report a cancelled sale is to amend the Form ST-12, *Wisconsin Sales and Use Tax Return*, for the period that the sale was previously reported. The amended return should include documentation substantiating the amendment (e.g., a ledger showing refunds paid to customers).

Note: Businesses using My Tax Account can select the period where the sale was previously reported and then *File or amend a return* under the *I want to...* heading.

Use Tax Owed on Vehicles Purchased in Another State and Used in Wisconsin

Wisconsin use tax is imposed on the storage, use, or other consumption of tangible personal property, along with the use or consumption of taxable services from any retailer in Wisconsin (sec. 77.53(1), Wis. Stats.), unless an exemption applies. A business that purchases a vehicle in another state and then makes a taxable use of the vehicle in Wisconsin is required to remit Wisconsin use tax on the purchase price of the vehicle at the time the vehicle is first stored, used, or consumed in Wisconsin.

If sales and use tax was properly paid to the other state and/or local unit of government on the purchase price or a portion of the purchase price of the vehicle, a credit is allowed against (but not in excess of) the total Wisconsin state and county use taxes owed on the same vehicle (sec. 77.53(16), Wis. Stats.).

Example: Hardware Store has business locations in Minnesota and Wisconsin. Hardware Store purchased a delivery vehicle in Minnesota and properly paid Minnesota tax on a portion of the purchase price based on miles the vehicle is driven in Minnesota. The delivery vehicle is registered in Minnesota and when not in use, it is stored in Minnesota. The delivery vehicle is used to deliver Hardware Store's products from its Minnesota business locations to its Wisconsin business locations on a regular basis.

Hardware Store owes Wisconsin state use tax, along with any applicable county tax, on the original purchase price of the vehicle at the time the vehicle is first used in Wisconsin. Hardware Store is allowed a credit for the portion of Minnesota tax that was properly paid against Wisconsin use tax due.

In addition, any service or repair performed on the delivery vehicle that takes place in Minnesota is subject to Wisconsin use tax at the time the vehicle is first used in Wisconsin. Wisconsin use tax is imposed on the purchase price of the taxable service or repair. Hardware Store is allowed a credit for Minnesota tax properly paid against Wisconsin use tax due.

For examples on computing the credit for taxes paid to another state when that state does not impose sales tax on repair labor, see the article titled [Credit for Taxes Paid to Other States - Tax on Repair Labor](#) on the department's website.

Recreational Vehicles and Campers

Family camping trips are a great Wisconsin tradition. Wisconsinites, and our friends from neighboring states, have many destinations to choose from in Wisconsin, such as private campgrounds, state and county parks, or privately-owned property. There are also many camper options to choose from, including pop-up campers and recreational vehicles (RVs).

For Wisconsin sales and use tax purposes, an RV is defined as a vehicle that is designed to be towed upon a highway by a motor vehicle that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation, that has walls of rigid construction, and that does not exceed 45 feet in length as provided in sec. 340.01(48r), Wis. Stats. Although a motor home (i.e., self-propelled RV) is a motor vehicle and does not meet the definition of an RV, the tax treatment is the same (sec. Tax 11.83(1)(b), Wis. Adm. Code).

Sales of motor homes, RVs, camping trailers, and truck campers are subject to Wisconsin sales and use tax. Retailers are required to collect and remit the 5 percent state sales or use tax if the customer takes possession in Wisconsin, unless an exemption applies. The county tax is based on the type of item sold.

- If the sale is of a motor home or RV, county tax is based on where the motor home or RV is customarily kept by the purchaser.
- If the sale is of a camping trailer (pop-up camper, tent camper) or truck camper (slide-in truck camper), county tax is based on where the purchaser takes possession of the trailer or camper.

If a nonresident purchases an RV and takes possession in Wisconsin, the retailer is required to collect and remit county tax based on where the RV is customarily kept in Wisconsin. If the RV is customarily kept outside Wisconsin, the retailer is only required to collect the 5 percent Wisconsin state tax.

Sales of motor vehicles (i.e., motor homes) to nonresidents are exempt from tax if the use in Wisconsin is limited to removing the motor vehicle from Wisconsin as provided in sec. 77.54(5)(a)4., Wis. Stats. This exemption does not apply to sales of RVs to nonresidents.

The following articles on the department's website provide additional information:

- [Reporting Sales Tax on Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles, Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft](#)
- [Non-Motorized Campers Purchased by Nonresidents of Wisconsin](#)

Reminder: Rentals of Multipurpose Facilities are Taxable

The rental of a multipurpose facility is taxable when the rental fee provides access to or use of the facility for amusement, athletic, entertainment, or recreational purposes as provided in sec. 77.52(2)(a)2., Wis. Stats. Such rentals include a large hall, banquet room, or barn that is rented for special events like a wedding reception, birthday party, family reunion, holiday party, or similar gathering.

Separate, optional fees for certain services and/or property from the rental of a multipurpose facility are also taxable. Examples include:

- Rental of tangible personal property, such as chairs, chair covers, tables, table linens, and other furniture or audio/visual equipment
- Sale of decorations, disposable napkins, and dinnerware
- Sale of alcoholic beverages, such as beer, liquor, and wine
- Bartender services
- Prepared food and catering

For more information, see [Fact Sheet 2107](#), *Rentals of Multipurpose Facilities*.

Reports on Litigation

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

Individual Income Tax

Veterans and Surviving Spouses Property Tax Credit – Statute of Limitations

Kristian L. and Justina R. Harnage vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 27, 2020).

The issue in this case is whether an eligible veteran may file amended returns for the veterans and surviving spouses property tax credit which are past the statute of limitations of the time for filing an amended return.

Kristian Harnage submitted a Veteran's Application for Increased Compensation Based on Unemployability to the United States Department of Veterans Affairs (VA) in 2012, beginning a process to be declared disabled due to service-connected disabilities. On September 18, 2018, the taxpayer received a letter from the VA determining he was totally and permanently disabled due to his service-connected disabilities as of July 1, 2012. The taxpayer filed amended 2012 and 2013 Wisconsin income tax returns on November 5, 2018, claiming the Veterans and Surviving Spouses Property Tax Credit.

The last day for filing the 2012 and 2013 Wisconsin tax returns to make a valid claim was April 18, 2017, and April 18, 2018, respectively. The department issued a notice on November 28, 2018, denying the 2012 and 2013 refund claims on the amended returns, because they were filed more than four years after the original due date.

The taxpayer filed a timely petition for redetermination with the department, which was denied by the department by notice dated March 13, 2019. The taxpayer filed a timely petition for review with the Commission.

The Commission concluded that the taxpayer's claims for the Veterans and Surviving Spouses Property Tax Credit were untimely under secs. 71.07(6e)(c)1. and 71.75(2), Wis. Stats. The department noted that the taxpayer could have timely filed amended returns while awaiting VA action and further asked the department not to act on any claims for refund until the VA issued a final decision on appeal.

Excise Tax on Vapor Products

Vapor Products Definition

Nancy Bartlett, Richard Bowers, Jr. and Ted Keneklis vs. Tony Evers, Joel Brennan, Craig Thompson, Peter Barca, and the Wisconsin Department of Revenue (Supreme Court of Wisconsin, July 10, 2020).

The issue in this case is whether the Governor of the State of Wisconsin exceeded his constitutional authority in his partial veto of the definition of "vapor products" in 2019 Wisconsin Act 9. The partial veto is as follows:

139.75(14) of the statutes is created to read: 139.75(14) "Vapor product" means a noncombustible product that produces vapor or aerosol for inhalation from the application of a heating element to a liquid or other substance that is depleted as the product is used, regardless of whether the liquid or other substance contains nicotine.

The court concluded that this veto is unconstitutional because the partial veto changed the definition of vapor products to effectively impose a tax on liquid sold separately from a vaping device. The effect of this decision is that the vapor products tax does not apply to liquids that are not packaged and sold with equipment that is in whole or in part a vapor product. The tax rate on vapor products (5 cents per milliliter) has not changed.

Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes and Administrative Rules enacted as of July 31, 2020: Chapters 66, 71, 73, 77, and 139, Wis. Stats., and chs. Tax 1, 2, and 11, Wis. Adm. Code.

Laws enacted and in effect after July 31, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to July 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.

Public Comments

The public may [submit comments on guidance documents](#) at any time.