

Wisconsin Tax Bulletin



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General Updates and Reminders

Virtual Currency Guidance for Income/Franchise, Withholding, and Sales Taxes

More and more individuals and businesses are investing in or using virtual currency. Virtual currency, such as digital currency and cryptocurrency, is a digital representation of value that functions as a unit of account, a store of value, and a medium of exchange. The following guidance is provided to inform or remind taxpayers of the tax treatment.

Income, Franchise, and Withholding

Wisconsin follows the Internal Revenue Service for the tax treatment of transactions involving virtual currency. Virtual currency is intangible property that is treated for tax purposes similar to other types of intangible property, and taxpayers must report income, gains, expenses, and losses as required under the Internal Revenue Code.

Acquiring, receiving, selling, sending, or exchanging virtual currency may result in a taxable event. Taxpayers are required to keep records for all virtual currency transactions to correctly report their basis, gains/losses and income/expenses. Taxpayers who do not properly report virtual currency transactions on their tax returns may be audited and held liable for the tax, penalties, and interest.

General tax principles that apply to intangible property transactions apply to transactions using virtual currency. A few common scenarios are:

- A payment made using virtual currency is subject to information reporting to the same extent as any other payment made with intangible property, such as:
 - Wages paid to employees using virtual currency are taxable to the employee, must be reported by the employer on a Form W-2, and are subject to federal/Wisconsin income tax withholding and payroll taxes.
 - Payments for service provided by an independent contractor using virtual currency are taxable to the independent contractor, and self-employment tax rules generally apply. The payer may be required to issue Form 1099-MISC or Form 1099-NEC.
- The sale, exchange, or other disposition of virtual currency may result in ordinary or capital gains or losses.
 - If virtual currency is a capital asset, the gain is taxable as ordinary or capital gains depending on how long the property is held.
 - Exchanging virtual currency for other property, goods, or services, including other currency, is a reportable event and may be taxable. Nonrecognition of gain under the like-kind exchange rules in section 1031 of the Internal Revenue Code do not apply to virtual currency.
- A business that receives virtual currency for the sale of goods/services must report gross sales revenue valued at the virtual currency's exchange price at the time of sale.

Please refer to the [IRS website](#) for additional guidance.

Sales and Use

The sales price from the sale of virtual currency is not taxable because the virtual currency represents an intangible right. When virtual currency is redeemed for a taxable product, the transaction is completed and the retailer's sales or use tax liability accrues at that time. The tax is computed on the value of the consideration received by the seller, measured in U.S. dollars as of the date and time that the virtual currency is received.

Income and Franchise Tax Updates and Reminders

Effect of Federal Premium Tax Credit on the Medical Care Insurance Subtraction

An individual may claim a medical care insurance subtraction on their Wisconsin return under sec. 71.05(6)(b) [19](#), [35](#), or [38](#), Wis. Stats. The amount of the Wisconsin subtraction must be reduced by the amount of insurance paid with the federal premium assistance credit under section 36B of the Internal Revenue Code. The federal American Rescue Plan Act of 2021 ([Public Law 117-2](#)) provides that any amount of excess advance premium tax credit received over the amount of premium tax credit allowed does not need to be repaid on the federal income tax return. As a result, the amount of the medical care insurance subtraction should not be increased by any amount reported on line 2 of federal Schedule 2 (Form 1040). The department updated the Form 1NPR, Schedule M, and Schedule SB instructions on April 15 with the guidance below.

If the taxpayer has already filed their return to claim the amount of premium assistance credit paid on line 2 of federal Schedule 2 (Form 1040) and that amount was used to increase the amount of the medical care insurance subtraction, the taxpayer must file an amended 2020 Wisconsin income tax return to report the reduced amount of medical care insurance subtraction as a result of not having to repay any excess advance premium tax credit.

If the taxpayer has not yet filed their 2020 Wisconsin income tax return, they should not enter an amount on the following lines when figuring the amount of medical care insurance subtraction allowed:

- Form 1NPR instructions - Line 6 of the Medical Care Insurance Worksheet
- Schedule M instructions - Line 4 of the Medical Care Insurance Worksheet
- Schedule SB instructions - Line 7 of the Medical Care Insurance – Worksheet 1 or Line 4 of the Medical Care Insurance – Worksheet 2

Unemployment Compensation Federal Law Change

The federal American Rescue Plan Act of 2021 ([Public Law 117-2](#)), signed into law on March 11, 2021, allows an exclusion of up to \$10,200 of unemployment compensation (UC) on the 2020 federal income tax return. This federal law does not apply for Wisconsin tax purposes.

- If you already filed your 2020 Wisconsin income tax return and are amending your federal return solely to exclude UC (or if the IRS adjusts your return for you), do **NOT** amend your 2020 Wisconsin return because there is no change to the amount of taxable income or tax due to Wisconsin.
- If you have not filed your 2020 Wisconsin return, you must add the amount of UC excluded on your federal return on lines 2h, 2i, or 2j of Wisconsin [Schedule I](#). This schedule determines the federal adjusted gross income using the Internal Revenue Code adopted for Wisconsin.

Wisconsin provides a subtraction from income for UC. After including all of your UC in federal adjusted gross income on your Wisconsin return, determine if you are eligible for the Wisconsin subtraction by completing the worksheet on page 2 of the Wisconsin [2020 Schedule SB instructions](#).

Avoid Common Filing Errors When Making the Entity-Level Tax Election

For taxable years beginning on or after January 1, 2018, tax-option (S) corporations can elect to pay tax at the entity level under sec. [71.365\(4m\)\(a\)](#), Wis. Stats. For taxable years beginning on or after January 1, 2019, partnerships can elect to pay tax at the entity level under sec. [71.21\(6\)\(a\)](#), Wis. Stats.

The department would like to provide some reminders to help taxpayers avoid common filing errors:

Tax-Option (S) Corporations

- Charitable contribution deductions are not allowed.
- For taxable years beginning after December 31, 2019, the Wisconsin long-term capital gains exclusion of 30-percent or 60-percent is allowed.
- For taxable years beginning after December 31, 2019, the Wisconsin capital loss limitation is \$500.
- Self-employed health insurance deductions allowed for a greater than 2-percent shareholder cannot be claimed by an electing tax-option (S) corporation. However, the tax-option (S) corporation is still allowed to deduct health insurance premiums paid on behalf of a greater than 2-percent shareholder as a wage expense.
- When claiming the credit for net tax paid to another state, enclose the [Schedule ET-OS](#), *Credit for Net Tax Paid to Another State*, and attach the other states' return to show the net tax paid.
- For additional information on the election, see [Schedule 5S-ET instructions](#) and [common questions](#).

Partnerships

- Charitable contribution deductions are only allowed if they would otherwise be allowed as a deduction for a fiduciary as provided in sec. [642](#), Internal Revenue Code (IRC).
- One-half self-employment tax deductions are not allowed for an electing partnership. However, the partner is allowed the deduction for Wisconsin purposes to the extent allowable under the IRC in effect for Wisconsin.
- Guaranteed payments are included in the Wisconsin taxable income of an electing partnership, to the extent a partner would otherwise include guaranteed payments in their Wisconsin taxable income.
- Section [754](#) elections (Sections [734\(b\)](#) and [743\(b\)](#), IRC) and related adjustments to partnership income are included in the electing partnership's calculation of Wisconsin income when determining tax at the entity level.
- When claiming the credit for net tax paid to another state, enclose the [Schedule ET-OS](#) and attach the other states' return to show the net tax paid.
- For additional information on the election, see [Schedule 3-ET instructions](#) and [common questions](#).

Update: Reporting Requirement for Certain Items of Income Subject to Wisconsin Estate Tax

Every person that is required to pay to an estate or a beneficiary of a deceased employee or former employee an annuity, bonus, pension or other benefit under a retirement, deferred compensation or profit-sharing plan subject to Wisconsin estate tax under ch. [72](#), Wis. Stats., directly or through a trust or fund created by the employer for such purpose, shall give notice of such obligation to the department within 30 days following the date of payment, or the date of the initial payment if more than one payment is forthcoming, to the estate or any beneficiary of such employee or former employee (sec. [72.34](#), Wis. Stats.) This requirement does not apply to obligations arising from deaths occurring on or after January 1, 2008, because there is no Wisconsin estate tax under ch. 72, Wis. Stats., due to the discontinuation of the federal credit for state death taxes.

A person that is required to report the payment to the department for obligations arising from deaths occurring before January 1, 2008, must submit Form [HT-209](#), *Employee Death Benefit Report*, or a substitute statement that contains all requisite Form HT-209 information. **Note:** The substitute statement may include more than one deceased or former employee, as long as all requisite information for each employee is clearly identified.

Manufacturing and Agriculture Credit – Indirect Costs

The manufacturing and agriculture credit is calculated, in part, by determining the eligible qualified production activities income of the business. Qualified production activities income is production gross receipts minus the sum of the cost of goods sold that are allocable to such receipts, the direct costs that are allocable to such receipts, and the indirect costs of the business multiplied by the production gross receipts factor.

Indirect costs include all ordinary and necessary expenses (not just those allocable to production gross receipts) paid or incurred during the taxable year in carrying on the trade or business that are deductible as business expenses under the Internal Revenue Code (IRC). Indirect costs do not include cost of goods sold nor direct costs, and they must be identified as indirect costs in business's managerial or cost accounting records. Different businesses may account for direct and indirect costs differently. Therefore, the determination of indirect costs relies, in part, on the taxpayer's accounting records.

Examples of indirect costs may include building rent, legal expenses, business insurance, advertising expenses, accounting and administrative salaries, office supplies, certain utilities, and depreciation expenses computed under the IRC in effect for Wisconsin.

In the calculation of qualified production activities income, all expenses categorized as indirect costs must be multiplied by the production gross receipts factor, which is a ratio consisting of production gross receipts (numerator) divided by gross income from all sources except those specifically excluded under the IRC or excluded under Wisconsin law (denominator). If an expense is an indirect cost, it must be included in the computation of qualified production activities income, regardless of whether the indirect cost relates to the eligible manufacturing or agricultural activity or some other activity of the business.

Example:

- CBA Partnership manufactures green and gold widgets on property classified as manufacturing under [sec. 70.995](#), Wis. Stats.
- CBA also sells purple widgets manufactured entirely in Minnesota, which are warehoused in Wisconsin before being shipped to customers
- CBA's books and records show the following:

Gross receipts (green & gold widgets)	\$70,000
Gross receipts (purple widgets)	\$30,000
Cost of goods sold (green & gold widgets)	\$28,000
Cost of goods sold (purple widgets)	\$10,000
Freight in (green & gold widgets)	\$6,000
Freight in (purple widgets)	\$4,500
Freight out (green & gold widgets)	\$3,000
Freight out (purple widgets)	\$2,000
Office salaries	\$4,000*
Warehouse utilities	\$3,000*
Administrative salaries	\$4,000*
Guaranteed payments	\$6,000*
Research expenses	\$3,000*
Office supplies	\$2,000*

*Items treated as indirect costs

Qualified production activities income (QPAI) computation:

1.	Production gross receipts	\$70,000
2.	Cost of goods sold allocable to production gross receipts	\$28,000
3.	Direct costs allocable to production gross receipts	\$9,000
4.	Add lines 2 and 3	\$37,000
5.	Subtract Line 4 from Line 1	\$33,000
6.	Indirect costs	\$22,000
7.	Production gross receipts from Line 1	\$70,000
8.	All gross receipts	\$100,000
9.	Divide Line 7 by Line 8 and multiply by 100	70%
10.	Multiply Line 6 by Line 9	\$15,400
11.	Subtract Line 10 from Line 5 (QPAI)	\$17,600

Sales and Use Tax Updates and Reminders

New Certificate of Exempt Status Numbers

A Certificate of Exempt Status (CES) number is granted to certain organizations that are eligible to make purchases exempt from Wisconsin sales and use tax, and helps retailers identify such organizations.

[2021 Wisconsin Act 1](#), effective February 20, 2021, provides that in order to make purchases exempt from Wisconsin sales tax, organizations that are exempt from federal income tax under sec. 501(c)(3) of the Internal Revenue Code must have a determination letter from the Internal Revenue Service (IRS), except churches and religious organizations that are not required to get a determination letter from the IRS.

As the result of this law change, the department is reviewing CES numbers issued in the past and issuing new 15-digit CES numbers beginning with 008 to qualifying organizations.

Retailers may accept a 6-digit or 15-digit CES number from organizations making purchases exempt from Wisconsin sales and use tax. The department will notify retailers when organizations may no longer use a 6-digit CES number to make exempt purchases.

Wisconsin organizations meeting the requirements of sec. 501(c)(3) of the Internal Revenue Code must continue to provide sellers a CES number when making exempt Wisconsin purchases.

Out-of-state nonprofit organizations meeting the requirements of sec. 501(c)(3) of the Internal Revenue Code must continue to provide sellers a fully completed exemption certificate when making exempt Wisconsin purchases. These organizations do not need a CES number to make purchases exempt from Wisconsin sales and use tax.

Additional resources:

- New Tax Law article on page 14 of [Wisconsin Tax Bulletin 212](#) (February 2021)
- Common Questions - [Nonprofit Organization - Certificate of Exempt Status](#)

Entry Fees for Virtual Runs, Walks, and Races

An article was published on page 8 of [Wisconsin Tax Bulletin 188](#) (April 2015) discussing entry fees for runs, walks, races and other customer participation events being taxable admissions. With the pandemic and technology advancements, more of these types of events are organized online. Entry fees for these events are taxable admissions when the participant is in Wisconsin for the event.

The event organizer is generally responsible for collecting and remitting sales or use tax on entry fees to the virtual event. For certain virtual events, the organizer may utilize a third-party to promote the event and charge participants for the entry fees. If the third-party facilitates the sale of the entry fees on behalf of the organizer, and, directly or indirectly, processes the payment for the entry fees, the third-party is a marketplace provider ([sec. 77.51\(7i\)](#), Wis. Stats.) that is required to collect and remit sales or use tax on the entry fees. See [Marketplace Provider and Seller Common Questions](#) for additional information.

Enforcement Report

Several Sentenced as a Result of IRS Investigation

Office of Criminal Investigation assisted in a joint investigation with IRS

The Department of Revenue's Office of Criminal Investigation (OCI) is involved in an ongoing investigation involving video gambling enforcement. Special agents from OCI's Fraud Unit and Alcohol & Tobacco Enforcement Unit played a critical role in the investigation.

In May 2018, an IRS Criminal Investigation (IRS CI) special agent learned of a scheme to evade income taxes by underreporting income from video gambling machines. Their preliminary investigation revealed a conspiracy to evade taxes between video gambling machine (VGM) vendors and businesses where the VGMs were placed.

In September 2018, IRS CI executed simultaneous search warrants at several locations in south-central Wisconsin. Special agents from both of OCI's units assisted in the search warrants with the seizure of evidence. Alcohol and Tobacco Enforcement Unit agents obtained evidence from the VGMs. A Fraud Unit agent determined the income and sales taxes due based on the underreported income and sales.

To date, five individuals have pleaded guilty as part of this criminal tax investigation. Four have been sentenced. The fifth individual, Colin Albany, is scheduled to be sentenced on May 6. Combined, they have been ordered to pay more than \$3.8 million in restitution.

On July 11, 2019, Dudley Hellenbrand, 67, and Cherie Hellenbrand, 45, both of Middleton, Wisconsin, pled guilty to filing a false 2017 Form 1040 U.S. Individual Income Tax Return with the IRS that underreported their adjusted gross income. The Hellenbrands owned and operated a sports bar/bowling alley, Middleton Sport Bowl (MSB) in Middleton, Wisconsin. The Hellenbrands contracted with a VGM vendor to have VGMs placed at MSB. They each admitted they skimmed the VGM cash receipts and did not report the skimmed receipts on their Wisconsin and federal income tax returns. They agreed that the total tax loss from the skim for both Wisconsin and federal income taxes for the years 2010 to 2017 totaled \$268,852.04. On June 26, 2020, Dudley Hellenbrand and Cherie Hellenbrand were each sentenced to 6 months in federal prison and were ordered to pay restitution of \$350,191.12 to the IRS and the Department of Revenue.

On July 12, 2019, Tom Laugen, 69, of Sun Prairie, Wisconsin, pled guilty to evading his 2015 federal income taxes. Laugen owned and operated Global Vending LLC, a vending company that supplied VGMs to Class B alcohol beverage-licensed taverns, restaurants and bowling alleys. Laugen split the cash profits generated by the VGMs with the tavern owners where the machines were placed. Global typically received 25% of the VGM cash profits; the tavern owners received the remaining 75%. The gross receipts from the VGMs were subject to Wisconsin sales tax. The net income from the VGMs were subject to Wisconsin and federal income taxes.

Laugen admitted he skimmed the VGM cash receipts and did not report the skimmed receipts on his Wisconsin sales tax returns and his Wisconsin and federal income tax returns. The tax loss from the skim for both Wisconsin and federal income taxes and Wisconsin sales taxes for the years 2010 to 2017 totaled \$580,220.56.

On June 19, 2020, Laugen was sentenced to 1 year and 1 day in federal prison for tax evasion. Laugen was ordered to pay \$548,416.43 in restitution to the IRS and Department of Revenue.

On February 19, 2021, Mary Lavine, 65, of Madison, Wisconsin, pled guilty to conspiring to defraud the Internal Revenue Service and to filing a false 2018 corporate income tax return for her business, Bullseye, Inc. After accepting Lavine's guilty plea, Chief U.S. District Judge James D. Peterson sentenced Lavine to 1 year and 1 day in prison and imposed a \$75,000 fine. Lavine was ordered to pay restitution of \$834,769.65 to the IRS and \$1,927,852.56 to the Department of Revenue.

Lavine admitted that Bullseye contracted with bar owners to place VGMs at their bars. Bullseye split the profits generated by the VGMs with the bar owners. Different bar owners had different VGM profit sharing agreements with Bullseye. Lavine admitted that she worked with certain bar owners to skim the cash receipts generated from the VGMs and not report 100% of the cash receipts to the IRS or the Wisconsin Department of Revenue. This underreporting caused Bullseye to evade its own corporate income taxes, as well as the Wisconsin sales taxes and income taxes for Bullseye and its bar owners. Prosecutors presented evidence that for the years 2015 to 2018, Bullseye evaded \$3,028,930 in federal and Wisconsin taxes.

For information on VGMs, including video gambling law violations, income and franchise tax treatment, sales and use tax treatment, and recordkeeping requirements, see Wisconsin Tax Bulletin 209 (April 2020).

The Wisconsin Department of Revenue, Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for the crimes committed. OCI would like to give recognition to IRS Criminal Investigation and the U.S. Attorney's Office in the Western District of Wisconsin for their investigation and prosecution of these cases.

[Report tax fraud on the department's website.](#)

Report 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 (Court of Appeals, District IV, February 25, 2021).

This is an appeal of a March 9, 2020, Dane County Circuit Court order affirming an August 21, 2019 decision of the Wisconsin Tax Appeals Commission. See [Wisconsin Tax Bulletin 207](#) (November 2019), pages 12 and 13, and [Wisconsin Tax Bulletin 209](#) (April 2020), page 22, for summaries of the Wisconsin Tax Appeals Commission and Dane County Circuit Court decisions.

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 Court of Appeals affirmed the Circuit Court decision that Deere & Company may claim the dividends received deduction.

The department did not further appeal this decision.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of April 30, 2021: 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 this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date 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.