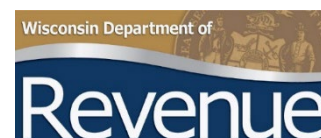


# Wisconsin Tax Bulletin

July 2021 Number 214



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## New Tax Laws

### A. Individual and Fiduciary Income Taxes

#### 1. Individual Income Tax Return Due Date

([2021 Wis. Act 40](#), amend sec. 71.03(6)(a) and (8)(b) and (c), effective May 23, 2021)

Under prior law, individual income tax returns were due on or before April 15 following the close of the taxable year, or, for fiscal year filers, the 15<sup>th</sup> day of the 4<sup>th</sup> month following the close of the fiscal year.

Under this Act, individual income tax returns and payment of taxes are due on the date the corresponding federal income tax return is required to be filed with the Internal Revenue Service, not including extensions.

#### 2. Individual Income Tax Rate Decrease

([2021 Wis. Act 58](#), amend sec. 71.06(1q)(c) and (2)(i)3. and (j)3., effective for taxable years beginning after December 31, 2020)

The individual income tax rate for the third bracket has been decreased from 6.27 percent to 5.3 percent. The decreased rate applies as follows:

- Fiduciaries, single individuals, and heads of households – On all taxable income exceeding \$15,000 but not exceeding \$225,000
- Married persons filing joint returns – On all taxable income exceeding \$20,000 but not exceeding \$300,000
- Married persons filing separately – On all taxable income exceeding \$10,000 but not exceeding \$150,000

#### 3. Reserve or National Guard Members Subtraction

([2021 Wis. Act 58](#), amend sec. 71.05(6)(b)34., effective for taxable years beginning after December 31, 2020)

Under current law, a subtraction is allowed for active duty military pay received from the federal government by members of the Reserves or National Guard after being called into active federal service under 10 USC 12302(a) or 10 USC 12304 or special state service under 32 USC 502(f). Under this Act, Reserve or National Guard members may also subtract active duty pay received after being called into active federal service under 10 USC 12304b.

## 4. U.S. Armed Forces Active Duty Pay Subtraction

([2021 Wis. Act 58](#), create secs. 71.05(6)(b)56. and 71.07(6m)(c)5., effective for taxable years beginning after December 31, 2020)

To the extent included in federal adjusted gross income, a subtraction is provided for any amount of basic, special, or incentive pay income received from the federal government under 37 USC chapters 3 and 5 by an individual who is on active duty in the U.S. Armed Forces, as defined in 26 USC 7701(a)(15). This does not include amounts already taken for the Reserve or National Guard members subtraction.

No new claims for the Armed Forces Member Credit may be made for taxable years beginning after December 31, 2020.

## 5. Additional Child and Dependent Care Tax Credit

([2021 Wis. Act 58](#), amend sec. 71.05(6)(b)43.d. and create sec. 71.07(9g), effective for taxable years beginning after December 31, 2021)

The current subtraction for child and dependent care expenses is no longer available for taxable years beginning after December 31, 2021. Instead, an additional child and dependent care tax credit will be available for taxable years beginning after December 31, 2021. A claimant may claim a credit equal to 50 percent of the federal child and dependent care tax credit claimed by the claimant on their federal income tax return for the taxable year to which the claim relates.

"Claimant" means an individual who is eligible for and claims the federal child and dependent care tax credit for the taxable year to which the claim relates.

"Federal child and dependent care tax credit" means the tax credit under section 21 of the Internal Revenue Code.

The credit must be claimed within 4 years of the unextended due date of the individual income tax return. Nonresidents and part-year residents are not eligible to claim the credit. No credit is allowed for a taxable year covering a period of less than 12 months, except for a taxable year closed by reason of death of the claimant.

If the claimant is married at the end of the taxable year, a joint return must be filed with their spouse. A claimant is not considered married if all of the following apply:

- They file a return separate from their spouse
- Their home is the home of a qualifying person for more than half the year
- They pay more than half the cost of keeping up the home for the year
- They don't live with their spouse for the last 6 months of the year

## 6. AmeriCorps Education Award Exclusion

([2021 Wis. Act 58](#), create sec. 71.05(6)(b)55., effective for taxable years beginning after December 31, 2020)

Under this Act, an individual is allowed an income subtraction for the amount they receive as a national service educational award disbursed under [42 USC 12604](#) during the taxable year. **Note:** This subtraction is not allowed for any amount of the award that is subtracted under sec. [71.05\(6\)\(b\)28.](#), Wis. Stats., or deducted under [26 USC 221](#).

## 7. Research Credit: Refundable Portion Increased to 15%

([2021 Wis. Act. 58](#), amend sec. 71.07(4k)(e)2.a., effective for taxable years beginning on or after January 1, 2021)

See item B.1.

## B. Corporation Franchise or Income Taxes

### 1. Research Credit: Refundable Portion Increased to 15%

([2021 Wis. Act. 58](#), renumber sec. 71.28(4)(k)1. to 71.28(4)(k)1.a. and sec. 71.47(4)(k)1. to 71.47(4)(k)1.a., and amend as renumbered, and create secs. 71.28(4)(k)1.b. and 71.47(4)(k)1.b., effective for taxable years beginning on or after January 1, 2021)

The amount of claim not used to offset the tax due, not to exceed 15% of the allowable amount of the claim, is a refundable credit. The remaining amount not used may be carried forward for 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

Under prior law, the refundable portion of the research credit was 10% for taxable years beginning on or after January 1, 2018, and before January 1, 2021.

### 2. Pass-Through Entities May Elect to Claim Certain Credits at the Entity Level

([2021 Wis. Act 58](#), renumber sec. 71.07(3q)(c)1. to sec. 71.07(3q)(c)1.a., sec. 71.07(3w)(c)2. to sec. 71.07(3w)(c)2.a., sec. 71.07(3y)(c)1. to sec. 71.07(3y)(c)1.a., sec. 71.28(3q)(c)1. to sec. 71.28(3q)(c)1.a., sec. 71.28(3w)(c)2. to sec. 71.28(3w)(c)2.a., sec. 71.28(3y)(c)1. to sec. 71.28(3y)(c)1.a., sec. 71.47(3q)(c)1. to sec. 71.47(3q)(c)1.a., sec. 71.47(3w)(c)2. to sec. 71.47(3w)(c)2.a., sec. 71.47(3y)(c)1. to sec. 71.47(3y)(c)1.a., and amend as renumbered; and create secs. 71.07(3q)(c)1.b., (3w)(c)2.b., (3y)(c)1.b., 71.28(3q)(c)1.b., (3w)(c)2.b., (3y)(c)1.b., and 71.47(3q)(c)1.b., (3w)(c)2.b., (3y)(c)1.b., effective for taxable years beginning after December 31, 2020)

For each taxable year beginning after December 31, 2020, pass-through entities (partnerships, limited liability companies, and tax-option (S) corporations) may elect to claim the jobs tax credit, the enterprise zone jobs tax credit, and/or the business development credit at the entity level if all of the following conditions are met:

- The credit results from a contract entered into with the Wisconsin Economic Development Corporation before December 22, 2017.
- The pass-through entity makes the election on its original return (Form 3 or Form 5S). **Note:** The pass-through entity cannot subsequently make or revoke the election.
- The pass-through entity is not making the entity-level tax election under sec. [71.21\(6\)\(a\)](#), or [71.365\(4m\)\(a\)](#), Wis. Stats., for the same tax year.

**Caution:** If a pass-through entity elects to claim these credits at the entity level, the partners, members, and shareholders cannot claim the credits.

## C. Sales and Use Taxes

### 1. Local Room Tax Changes: Lodging Marketplace License Requirement Expires

([2021 Wis. Act 55](#), repeal sec. 66.0615(1)(bs) and (5); renumber and amend sec. 59.25(3)(e); amend secs. 66.0615(1)(de) and (dk), (1m)(a) and (g), (2)(intro.), (a), (b), and (e), (3), and (4)(a)(intro.) and 66.1014(2)(d)1.; and create secs. 59.25(3)(e)1. and 2., 66.0615(1)(bt) and (bu), (1r), (2m), (4)(a)4. and (d), and 66.1014(1)(c), effective October 1, 2021)

2021 Wis. Act 55 requires counties to furnish annually starting March 15, 2022 the complete county tax roll in the form and manner prescribed by the Department of Revenue (DOR).

Effective October 1, 2021, the Act also makes the following changes to state law relating to the administration of local room tax imposed by municipalities under sec. 66.0615(1m), Wis. Stats.:

- Revises the definition of "short-term rental" to a period fewer than 30 days rather than fewer than 29 days under current law.
- Clarifies that the imposition of room tax occurs on the furnishing *or selling* of accommodations.
- Allows municipalities to (1) conduct a joint room tax audit, (2) provide audit and other information to DOR, and (3) exchange audit information with any municipality taking part in a joint room tax audit.
- Requires audit determinations made by a municipality under sec. 66.0615(2)(a), Wis. Stats., to be provided in writing within 4 years after the due date of the return unless no return is filed.
- Requires DOR to create a website by October 1, 2021, containing the mailing address and room tax rate for each municipality that imposes a room tax.
- Requires every municipality subject to sec. 66.0615(1m)(dm), Wis. Stats., to certify and report on or before May 1, 2022, on a form created and provided by DOR, the amount of room tax retained by the municipality in each of the following fiscal years: 2010, 2011, 2012, 2013, and 2014.

Effective October 1, 2021, the Act also makes the following changes to state law relating to the administration of local room taxes by marketplace providers:

- Eliminates the definition of "lodging marketplace" and the requirement to obtain a lodging marketplace license.
- Requires a marketplace provider that facilitates sales on behalf of others to collect room tax imposed by a municipality under sec. 66.0615(1m), Wis. Stats., and forward the tax to the municipality on a quarterly basis, along with a form prepared by DOR. The marketplace provider may report the tax more frequently by written agreement between the marketplace provider and municipality.
- Requires the marketplace provider to continue to notify the marketplace seller that the marketplace provider has collected and forwarded the municipal room tax.
- Requires municipalities to provide by ordinance for the confidentiality of information obtained from returns filed by marketplace providers.

- Provides a penalty for a marketplace provider's failure to file a room tax return or pay the tax as required.
- Prohibits a municipality collecting a room tax from the marketplace seller if the municipality collects the tax from the marketplace provider.

## 2. Exemption for Dried or Partially Dried Fruit

([2021 Wis. Act 58](#), renumber sec. 77.51(1)(fm) to 77.51(1fm)(intro.) and amend as renumbered, and create sec. 77.51(1fm)(a) and (b), effective October 1, 2021)

Effective October 1, 2021, the definition of candy is amended to exclude a preparation that:

- The predominant ingredient is dried or partially dried fruit along with one or more sweeteners.
- May also contain other additives including oils, natural flavorings, fiber, or preservatives.
- Does not include chocolate, nuts, yogurt, or a confectionary coating or glazing on the dried or partially dried fruit.

For purposes of this exclusion, “dried or partially dried fruit” does not include fruit that has been ground, crushed, grated, flaked, pureed, or jellied.

Under current law, candy is taxable because it is excluded from the exemption for food and food ingredients in [sec. 77.54\(20n\)\(a\)](#), Wis. Stats.. The effect of this law change is dried or partially dried fruit is no longer taxable as candy if it qualifies for the exclusion.

## D. Excise Taxes

### 1. Motor Vehicle Fuel Suppliers Administrative Allowance

([2021 Wis. Act 58](#), create sec. 78.12(4)(a)5., effective October 1, 2021)

The administrative allowance under sec. [78.12\(4\)\(a\)](#), Wis. Stats., licensed fuel suppliers may deduct when remitting the motor vehicle fuel tax on gasoline is increased from 0.675 percent to 1.35 percent of the number of gallons of gasoline received for the taxable period. The new rate first applies to transactions reported on the October 2021 Form MF-002, which is due on November 30, 2021.

## General Updates and Reminders

### DOR Still Offering Self-Service and Contact-Free Options

DOR offices are open to the public for walk-in assistance. However, we offer and encourage customers to use our self-service and contact-free options to receive assistance.

DOR previously provided a [list of quick links](#) for customers to find online assistance without the need for an in-person visit. In addition to our online services, we also offer the following contact-free resources:

- Assistance by phone and email
  - Business Tax: 608-266-2776, [DORBusinessTax@wisconsin.gov](mailto:DORBusinessTax@wisconsin.gov)

- Income Tax: 608-266-2486, [DORIncome@wisconsin.gov](mailto:DORIncome@wisconsin.gov)
- Collections: 608-266-7879, [DORCompliance@wisconsin.gov](mailto:DORCompliance@wisconsin.gov)
- See our [Contact Us](#) page for a more complete list
- Secure drop boxes for payments, returns, letter responses, etc., available at the following DOR offices:
  - Appleton
  - Eau Claire
  - Green Bay
  - Madison
  - Milwaukee (available in the lobby between 7:45 a.m. and 4:30 p.m., Monday through Friday)

Our call center is open from 7:45 a.m. to 4:30 p.m., Monday through Friday. Visit our [Office Locations](#) page for office addresses and hours.

## **Businesses: Don't Forget to Turn Over Uncashed Payroll Checks**

Payroll checks that remain uncashed by the employee for more than one year after becoming payable are presumed abandoned and are required to be turned over to the department. They are reported on a holder report due by November 1 each year. See Part 4 in [Publication 82](#), *Unclaimed Property Holder Report Guide*, for additional information on the holder reporting process.

## **Unclaimed Property Holder Reporting Reminder**

Under [sec. 177.17\(5\)](#), Wis. Stats., unclaimed property holders are required to make a good faith effort to locate owners of abandoned property. Holders must send notification letters to owners of properties valued at \$50 or more. Letters should be sent between July and September to provide sufficient time for a response from the owner for purposes of determining whether the property must be reported to the department by November 1.

See Part 4 in [Publication 82](#), *Unclaimed Property Holder Report Guide*, for additional information on the holder reporting process and Appendix 3 for a sample letter.

## **Requesting Copies of Tax Records**

The department has updated the common questions for [Requesting Copies of Tax Records](#).

**Caution:** Significant changes have been made to common question number five relating to identity verification information required when making a request for confidential taxpayer information.

## **Temporary Event Operator Reporting Requirement**

As Wisconsin emerges from the pandemic, business is returning in the form of swap meets, flea markets, craft fairs, farmers' markets, trade shows, conventions, consumer shows, fairs, festivals, carnivals and fund raisers. In Wisconsin, these activities are classified as temporary events and have special reporting requirements.

Event operators (organizers) of these temporary events are required by law to report to the Wisconsin Department of Revenue within ten days of the close of the event information about the event and each

seller. If an event operator fails to report by the due date, a \$200 penalty for the first occurrence and \$500 for each subsequent failure may be assessed.

The event operator can gather seller information by requiring each seller to complete [Form S-240, Wisconsin Temporary Event Operator and Seller Information](#). An event operator may submit copies of Form S-240 received from each seller or add the information gathered to an Excel spreadsheet ([Form S-240a](#)). Either method may be submitted electronically via our [secure portal](#).

For more information, search for [Temporary Events](#) on the department's website, [www.revenue.wi.gov](http://www.revenue.wi.gov). The page has answers to frequently asked questions and links to forms, publications, and tax returns. The [Event Operators](#) page includes information about filing event reports electronically.

Questions about the responsibilities of operators or vendors at temporary events may also be referred to [DORTempEvents@wisconsin.gov](mailto:DORTempEvents@wisconsin.gov) or (608) 266-2776.

### Income and Franchise Tax Updates and Reminders

#### New Fact Sheet: Nonresident Seasonal Workers – Filing Wisconsin Income Tax Returns

A new fact sheet for nonresident seasonal workers has been posted to the department's website. [Fact Sheet 1123, Nonresident Seasonal Workers – Filing Wisconsin Income Tax Returns](#), provides information about Wisconsin income tax filing requirements for nonresident employees who provide seasonal services in Wisconsin.

#### Making a Different Federal Election for Wisconsin

Various elections are available under the federal Internal Revenue Code (IRC). When an election is available under the IRC in effect for Wisconsin income and franchise tax purposes, a taxpayer may choose a different federal election for Wisconsin than what the taxpayer chooses for federal income tax purposes. **Exception:** A taxpayer must use the same method of accounting used for federal income tax purposes if that method is authorized under the IRC in effect for Wisconsin.

One of the more common elections under the IRC involves federal tax credits. Some federal tax credits require a reduction in deductible expenses when the expenses are used to compute the credit. Other federal tax credits allow an election to take a reduced credit or no credit at all rather than reducing the amount of deductible expenses. If the IRC in effect for Wisconsin tax purposes authorizes an election not to claim a federal credit, a taxpayer may elect not to claim the federal credit for Wisconsin tax purposes.

For example, the amount of wages used to compute the federal work opportunity credit may not be deducted as an expense on the taxpayer's federal return. Since Wisconsin follows [sec. 51](#) of the IRC, the wages may not be deducted for Wisconsin purposes. However, the taxpayer may elect under section 51(j) of the IRC to forgo claiming the federal credit. Since this is a federal election authorized under the IRC in effect for Wisconsin, a taxpayer may claim the federal credit on their federal income tax return but elect not to claim the federal credit for Wisconsin tax purposes and deduct the expenses instead. The result is a different federal adjusted gross income for Wisconsin tax purposes. For individuals, the difference in federal adjusted gross income may be shown by submitting a federal "pro-forma" return with your Wisconsin return or by making an adjustment on [Schedule I](#) of the individual income tax return. For nonindividuals, the difference in income is reported as follows:



- [Form 2](#), Schedule B
- [Form 3](#), appropriate line in Column (c) of Form 3, Schedule 3K, Part II and on line 13 or 14 of Form 3, Schedule 3K, Part III
- Form 4, [Schedule 4W](#), line 11 or line 12
- [Form 5S](#), appropriate line in Column (c) of Form 5S, Schedule 5K – Shareholder's Pro Rata Share Items, and on line 18 or 19 of Form 5S, Schedule 5K – Shareholder's Pro Rata Share of Additions and Subtractions
- [Form 6](#), Part II, line 4k or 4l

Examples of other federal credits in which a different election may be made:

- Employee retention credit
- Research expense credit
- Credit for portion of employer social security taxes paid with respect to employee cash tips
- Employer credit for paid family and medical leave
- Empowerment zone employment credit
- Small employer pension plan startup costs credit

## **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 2020 Form 3, *Wisconsin Partnership Return*, for a calendar-year partnership is September 15, 2021, and the extended due date of a 2020 Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise Income Tax Return*, for a calendar-year tax-option (S) corporation is October 15, 2021.

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).

## **Changing Designated Agents**

A member of a combined group that is appointed as the designated agent remains the designated agent of that group for all future years unless:

- The designated agent leaves the combined group, in which case the corporation which files the first combined return after the designated agent leaves is the new designated agent and should be identified as such on page one of Form 6.
- The combined group or portion of the combined group is acquired by another combined group, in which case the corporation which files the first combined return after the date of acquisition is the new designated agent and should be identified as such on page one of Form 6.
- The designated agent ceases to exist, in which case the designated agent shall notify the department in writing that another member of the combined group will act as designated agent.

- The designated agent submits a written request to the department for another combined group member to act as designated agent and the department grants the request.

Please refer to [sec. Tax 2.65\(2\), Wis. Adm. Code](#) for additional guidance.

## Withholding Tax Updates and Reminders

### Worker Classification: Employee or Independent Contractor

Every person who pays an individual for work must classify the individual as either an employee or independent contractor. The correct classification is important because it impacts the payer's requirements for:

- Federal unemployment insurance, income tax withholding, and information return reporting under chs. [23](#), [24](#), and [61](#), Internal Revenue Code, administered by the Internal Revenue Service (IRS)
- Wisconsin unemployment insurance under [ch. 108](#), Wis. Stats., administered by the Wisconsin Department of Workforce Development (DWD)
- Wisconsin income tax withholding and information return reporting under [ch. 71](#), Wis. Stats., administered by the Wisconsin Department of Revenue (DOR)

Both the [IRS website](#) and the [DWD website](#) provide guidance to help payers determine if a worker is an employee or an independent contractor, and DOR generally follows the IRS guidance.

The IRS, DWD, and DOR have authority to audit a payer's records to ensure compliance with these laws. If an audit by the IRS or DWD determines that an employee was misclassified, the payer must ensure that it is complying with the laws administered by DOR. Failure to comply with Wisconsin's income tax withholding and information return reporting requirements under [ch. 71](#), Wis. Stats., may result in an audit by DOR and the payer may be liable for the following fees, penalties, interest, and tax:

- *A penalty equal to the amount of the tax, plus interest and penalties on that tax* - A person required to withhold any tax under [ch. 71](#), Wis. Stats., who intentionally fails to withhold such tax shall be liable to a penalty equal to the amount of the tax, plus interest and penalties on that tax ([sec. 71.83\(1\)\(b\)2.](#), Wis. Stats.).
- *\$25,000 fine* - Any employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects who willfully provides false information to DOR, or who willfully and with intent to evade any withholding requirement, misclassifies or attempts to misclassify an individual who is an employee of the employer as a nonemployee shall be fined \$25,000 for each violation ([sec. 71.65\(6\)](#), Wis. Stats.).
- *\$10 penalty* - If a person fails to file a wage statement (e.g. Form W-2) required under [sec. 71.71](#) or [71.715](#), Wis. Stats., by the prescribed due date, including any extension, or files an incorrect or incomplete return, that person may be subject to a penalty of \$10 for each violation ([sec. 71.83\(1\)\(a\)1m.](#), Wis. Stats.).
- *\$50 or \$150 late filing fee* - Any person who is required to file a withholding report (e.g. Form WT-7) and deposit withholding taxes that fails to do so timely and DOR shows that the taxpayer's action or inaction was due to the taxpayer's willful neglect and not to reasonable cause, shall be subject to a \$50 late fee, except for corporations taxed under subch. [IV](#) or insurance companies taxed under subch. [VII](#) of [ch. 71](#), Wis. Stats., the late fee is \$150 ([sec. 71.83\(3\)\(a\)](#), Wis. Stats.).

- **25 percent penalty** - Any person who is required to file a deposit report (Form WT-6) or a withholding report (Form WT-7) and files an incomplete or incorrect report, or fails to properly withhold or fails to properly deposit or pay over withheld funds, upon a showing by the department that the taxpayer's action or inaction was due to the taxpayer's willful neglect and not to reasonable cause may be subject to a penalty of 25 percent of the amount not reported or not withheld ([sec. 71.83\(1\)\(a\)3.](#), Wis. Stats.).
- **1.5 percent interest per month** - Delinquent withholding deposits or payments shall bear interest at the rate of 1.5 percent per month. **Note:** During a period in which an extension is granted, interest accrues at the rate of 1 percent per month ([sec. 71.82\(2\)\(d\)](#), Wis. Stats.).
- **Disallowed wage expense deduction** - If an employer fails to file wage statement (e.g. Form W-2), DOR may assess as an addition to taxable income the amount of deductions taken in arriving at federal adjusted gross income or federal taxable income by natural persons and fiduciaries for wages ([sec. 71.74\(4\)](#), Wis. Stats.).
- **\$10,000 fine and/or 9 month prison sentence** - Any person who willfully fails or refuses to make required withholding deposits or payments or willfully renders a false or fraudulent wage statement (e.g. Form W-2) or report (e.g. Form WT-6 or Form WT-7) shall be guilty of a misdemeanor and may be fined not more than \$10,000 or imprisoned for not to exceed 9 months or both, together with the cost of prosecution ([sec. 71.83\(2\)\(a\)1.](#), Wis. Stats.).

For more information about Wisconsin income tax withholding and information return reporting requirements, see [Publication W-166](#), *Withholding Tax Guide*, and [Publication 117](#), *Guide to Wisconsin Wage Statements and Information Returns*.

### Electronic Filing Requirement for Form PW-2

Starting January 1, 2022, all nonresident owners that wish to file a Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder or Beneficiary Pass-Through Withholding Exemption Affidavit*, will be required to file electronically and may not fax or mail Form PW-2 unless a waiver is obtained from the department.

The electronic filing option is available through [My Tax Account](#), the department's online filing system.

Note: Form PW-2 must be approved by the department for the exemption affidavit to be valid. Nonresident partners, members, shareholders or beneficiaries should only provide an approved exemption affidavit to their pass-through entity from which they receive income.

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

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

## Sales and Use Tax Updates and Reminders

### Motor Vehicle Dealers' Measure of Use Tax Increased to \$175

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a fixed dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2022, the amount subject to use tax is increased from \$166 to \$175 per plate per month. To calculate use tax, \$175 is multiplied by the appropriate use tax rate (5% or 5.5%) to arrive at the use tax due per plate per month.

*Why is the rate increasing?*

Under [Wisconsin law](#), the Department of Revenue must annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12-month period ending June 30. Since the index for the period July 2020 to June 2021 increased 5.4%, the amount subject to use tax on dealers' motor vehicle plates increases \$9 starting January 1, 2022.

## Emergency Broadband Benefit Program

The Emergency Broadband Benefit (EBB) Program is a [Federal Communications Commission \(FCC\) program](#) that provides a discount on monthly broadband bills for households struggling to afford internet service. Eligible households can receive the following one-month service discounts:

- Up to a \$50 discount towards broadband service and associated equipment
- Up to a \$75 discount if the household is on qualifying Tribal lands

In addition to the one-time broadband discount, each household is eligible to receive a one-time discount of up to \$100 to purchase a laptop, tablet, or desktop computer (household must pay more than \$10 but less than \$50 for the device).

Participating service providers receive the discounts directly from the EBB program.

## Wisconsin Sales and Use Tax Treatment

The portion paid/reimbursed directly to the participating service provider from the EBB program is treated as a sale to the federal government and that portion of the sale is not taxable. If the customer is required to pay an additional amount for taxable products or services, that additional amount is subject to Wisconsin sales or use tax.

**Example 1:** Customer pays \$55 per month for broadband internet from a participating service provider. After applying the \$50 discount the participating service provider receives under the EBB program, the customer is billed \$5. Since the charge for internet access service is not taxable in Wisconsin, the \$5 charge to the customer is not taxable.

**Example 2:** Same as *Example 1*, except the monthly charge to the customer consists of a separately itemized internet service and an associated equipment charge. The \$55 per month charge consists of separately itemized charges of \$45 and \$10 for internet service and associated equipment respectively. The EBB program discount applies to broadband service as well as equipment associated with broadband service. After applying of the EBB subsidy, the customer is charged \$5 for the broadband service and \$0 for the associated equipment. The \$5 charge for broadband service is not taxable. The equipment charge is also not subject to Wisconsin sales and use tax since the \$50 subsidy is paid directly from the EBB program to the service provider.

**Example 3:** Customer purchases a bundled prepaid wireless plan for \$40 per month that includes voice, text and data. The service provider generally charges tax on the entire \$40 monthly charge as a wireless telecommunications service. The EBB program discount can be applied to the cost of bundled services that include broadband, voice, texting and/or associated equipment. After applying the EBB program discount, the customer pays \$0. No Wisconsin sales and use tax is due on this transaction.

**Example 4:** Same as *Example 4*, except the service provider charges \$60 per month for the bundled prepaid wireless plan. After applying the EBB program discount, the customer pays \$10. The \$10 charge by the service provider to the customer is taxable.

**Example 5:** Customer purchases a tablet for \$120 from a participating service provider. After applying the EBB program discount of \$100, service provider charges the customer \$20. The \$100 EBB program discount is not taxable. The \$20 charge to the customer is subject to sales or use tax since the tablet is a taxable product in Wisconsin.

## Building Materials Exemption Article Updated

The article titled [Exemption for Building Materials That Become Part of Facility Owned by Local Government or Qualifying Exempt Entity](#) has been updated. This article explains how Wisconsin sales and use tax applies to purchases of building materials that are used to fulfill a real property construction activity for certain facilities owned by qualifying exempt entities.

The article reflects the recent law changes ([2021 Wis. Act 1](#)) that expanded the list of qualifying exempt entities to include the University of Wisconsin Hospitals and Clinics Authority and [amended the exemption for nonprofit organizations](#). The new tax law articles are in [Wisconsin Tax Bulletin 212](#) (February 2021).

## Bingo Sales

Wisconsin imposes sales tax on the sale, rental or use of regular bingo cards, extra regular cards, special bingo cards and the sale of bingo supplies to players. Organizations that sell bingo cards and supplies must obtain a [seller's permit](#) from the Wisconsin Department of Revenue and remit sales tax on the sales and use tax return (Form ST-12). The amount of sales subject to sales tax may be reduced by the amount of prize money advertised and set aside for winners ([sec. 77.54\(65m\)\(a\)3.](#), Wis. Stats.).

**Example:** Nonprofit Organization conducts a bingo game at which 500 bingo cards are sold for \$1 per card. The organization announces prior to the start of the bingo game that the prize awarded for that game will be \$300. The total sales subject to Wisconsin sales tax are \$200 (\$500 total sales less \$300 advertised and set aside for the winner).

**Note:** A nonprofit organization that is required to hold a seller's permit to conduct bingo games may still qualify for the occasional sale exemption on other taxable sales. See [Fact Sheet 2106](#), *Occasional Sale Exemption for Nonprofit Organizations*, for more information.

[Division of Gaming's Office of Charitable Gaming](#) - The Wisconsin Division of Gaming under the Wisconsin Department of Administration is responsible for the licensing and regulation of bingo conducted by charitable organizations. All organizations that are conducting bingo games in which participants are required to make a purchase in order to play must be licensed by the Wisconsin Division of Gaming and pay Bingo License Fees. In addition, each licensed organization must file [bingo occasion reports](#) twice a year to report occupational tax on the gross receipts derived from bingo during the previous six months.

The Wisconsin Division of Gaming may require an organization to provide their Wisconsin seller's permit number with their license application or bingo occasion report to ensure the organization is registered to collect and remit Wisconsin sales tax.

## Reminder: Leases and Rentals of Boats, Jet Skis, and Pontoons are Taxable

Summer is a great time to lather up the sunscreen and create some waves on one of the many lakes in Wisconsin. Even if you don't own your own wave making machine, watercraft dealers and other businesses on the lake offer options to lease or rent on a daily, weekly, or monthly basis.

Leases and rentals of watercraft, such as boats, jet skis, and pontoons, are subject to Wisconsin's 5% state sales tax. County tax also applies (where applicable) to rentals of watercraft, but which county tax

depends on whether it is a one-payment or multiple-payment lease or rental. For a one-payment lease or rental, the county tax is based on the location where the purchaser takes possession of the watercraft. For a multiple-payment lease or rental, county tax is based on where the watercraft is customarily kept by the purchaser.

For more information, see the article titled [Sales of Watercraft, Such as Boats and Jet Skis](#).

## Excise Tax Updates and Reminders

### PACT Act Registration and Reporting for Sellers of ENDS

On December 27, 2020, Congress amended the Prevent All Cigarette Trafficking (PACT) Act to apply to Electronic Nicotine Delivery Systems (ENDS). The 2020 PACT Act amendment, the "Preventing Online Sales of E-Cigarettes to Children Act," modifies the original definition of "cigarette" in the PACT Act to include ENDS. The term "ENDS" includes *all* vaping products, liquids, components, and accessories, whether they contain nicotine or not. The amended PACT Act prohibits the use of the United States Postal Service to deliver ENDS directly to consumers.

PACT Act registration and reporting requirements now apply to these two categories of persons (in addition to sellers of cigarettes and smokeless tobacco):

1. Persons who sell, transfer, or ship for profit ENDS in "interstate commerce," whereby such ENDS are "shipped into" a State, locality, or Indian country of an Indian tribe taxing the sale or use of ENDS or who advertise or offer ENDS for such sale: and
2. Delivery sellers, with respect to delivery sales into a specific State and places.

In addition to registering with and reporting to the federal government, any company shipping ENDS products directly to Wisconsin consumers must obtain a WI tobacco / vapor products distributor permit. The permit application can be found here: [CTP-129: Cigarette-Tobacco/Vapor Products Permits Application](#). The application and all attachments must be **mailed** to the Wisconsin Department of Revenue.

The PACT Act report should be electronically filed with the Form TT-100. Filing instructions and the link to transfer your file can be found here: [Cigarette / Tobacco Reports](#)

## Enforcement Report

### Jefferson Resident Sentenced for Tax Fraud

Convicted felon Adam K. Kuehn of Jefferson was charged in Waukesha County on August 20, 2020 with filing a false income tax return and with filing a fraudulent claim for credit.

The criminal complaint alleges Kuehn used the business employer identification number of a restaurant located in Kewaskum to create fictitious W-2s.

Kuehn then electronically filed a false 2015 Wisconsin individual income tax return using a fictitious W-2 in an attempt to fraudulently obtain a tax refund and earned income tax credit from the Wisconsin Department of Revenue.

On May 4, 2021, Kuehn was sentenced to 12 months jail and ordered to pay restitution of \$3,164 to the Wisconsin Department of Revenue.

These charges are the result of an investigation and referral by special agents from the Wisconsin Department of Revenue's Office of Criminal Investigation.

### **Kaukauna Woman Sentenced for Income Tax Fraud**

Lynn Krueger was sentenced on May 14, 2021, by Outagamie County Circuit Court Judge Carrie Schneider for income tax fraud. The 55-year-old Kaukauna woman was convicted on March 30, 2021 of theft in a business setting and income tax fraud after a plea agreement was reached.

According to the criminal complaint, Krueger was the power of attorney for her mother's accounts. During her time as the power of attorney, Krueger stopped paying the monthly fees for her mother's assisted living facility while withdrawing over \$140,000 from her mother's accounts between 2016 and 2019 for purchases that were not for the benefit of her mother.

The complaint further states that Krueger had unreported income of \$26,732 for the 2017 tax year and \$51,607 for the 2018 tax year. The unpaid state income tax on these amounts is \$3,598.

Krueger received 6 months in jail, 250 hours of community service, 5 years of probation and was ordered to pay restitution to both the victim and the Wisconsin Department of Revenue.

Krueger was prosecuted by the Outagamie County District Attorney's Office following an investigation by the Kaukauna Police Department and Wisconsin Department of Revenue, Office of Criminal Investigation.

### **Milwaukee County Woman Pleads Guilty to Theft, Business Identity Theft, Filing False Income Tax Returns; Sentenced to Two Years in Prison**

Stephanie Lacher (formerly Roeglin) pled guilty in Milwaukee County Circuit Court earlier this year to five felony counts of filing fraudulent Wisconsin income tax returns, one felony count of theft in a business setting, and one felony count of business identity theft.

According to the criminal complaint, Lacher was employed as director of payroll for a home health care company in Glendale, Wisconsin. In this position, Lacher created a fake employee using her ex-spouse's social security number and her employer's federal employer identification number.

Lacher had the paycheck for this fake employee directly deposited in her personal bank account. She also stole from her employer by paying herself additional money as part of her regular paycheck.

Lacher's schemes began in 2013 and continued until 2017 when her ex-spouse discovered he was assessed taxes for a job at the home health care company that her ex-spouse never worked. From 2013 to 2017, Lacher embezzled \$476,540 from her employer. Because she did not pay state income taxes on the additional money she received, she owes back taxes, interest and penalties to the Wisconsin Department of Revenue.

Milwaukee County Circuit Judge Joseph R. Wall sentenced Lacher on April 15, 2021, to two years in prison followed by eight years extended supervision. Lacher's prison time for the filing of fraudulent income tax

return charges will be served concurrently with the theft in a business setting and business identity theft charges.

Charges in this case resulted from an investigation by special agents from DOR's Office of Criminal Investigation.

### **Racine County Man Charged with Filing False Tax Returns, Theft, Forgery, Identity Theft, Misconduct in Public Office**

On May 5, 2021 James F. Svoboda III was charged in Racine County with six felony counts of filing a false income tax return, seven felony counts of theft, four felony counts of forgery, one felony count of business identity theft, one felony count of misconduct in public office, and one misdemeanor count of theft.

According to the criminal complaint, from 2013 to 2019 Svoboda was employed as the parks manager for Village of Caledonia and Village of Mount Pleasant, during which time he embezzled \$335,912. The complaint further alleges that from 2013 to 2019, he oversaw all revenue functions for the parks, cemetery, vendors and suppliers. It was in this capacity that Svoboda was able to steal money from individuals using park and cemetery services and, ultimately, have the money deposited into his bank account.

Further, he used work accounts to have unauthorized work done on his private vehicles. He also used the village's account at a local retailer to purchase supplies to build a four-season room on his home. Additionally, he used the embezzled money for personal gifts, gambling, and vacations.

Svoboda did not claim any of the embezzled money from the Village of Caledonia and the Village of Mount Pleasant on his personal income tax returns from 2013 to 2019. This was done with the intent to evade paying taxes on the embezzled income and obtain a refund from the Wisconsin Department of Revenue (DOR), which he was not entitled to.

These charges are the result of an investigation and referral of charges by the Mount Pleasant Police Department and special agents from the Wisconsin Department of Revenue, Office of Criminal Investigation. Svoboda faces up to 110 years in prison, a \$230,000 fine, or both, if convicted.

#### **Applicable Laws and Rules**

This document provides statements or interpretations of the following laws and regulations enacted as of July 29, 2021: Chapters 66, 71, 73, 77, 78, 139, and 177, [Wis. Stats.](#), and chs. Tax 1, 2, 4, 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.