

# Wisconsin Tax Bulletin

January 2022 - Number 216



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## New Unclaimed Property Laws

### Overhaul to Unclaimed Property Laws

([2021 Wis. Act 87](#), effective November 7, 2021)

The Act updates Chapter 177 to conform to many of the provisions in the Revised Uniform Unclaimed Property Act of 2016, adopted by The National Conference of Commissioners of Uniform State Law. The Act also creates a 13-month voluntary disclosure program.

Wisconsin's unclaimed property laws have mostly been unchanged since 1983. The Act creates a much-needed update to the laws. Unclaimed property is generally any financial asset belonging to an individual, business owner, or government that hasn't had owner activity for a period of time (time period varies by law according to property type) and the holder is unable to contact the owner. Common examples include uncashed payroll checks, refunds, checks, life insurance policies, money orders, and safe deposit box contents. The holder must report and remit the property to the department who acts as a custodian.

The program works to unite citizens of lost or abandoned property. The department provides a searchable database of property and owners and advertises online and in newspapers. The department also has an auto-matching program to compare unclaimed property information to tax records and automatically pays the owner if the value of the property is \$2,000 or less. Matched owners of properties valued at more than \$2,000 receive a letter to submit a claim.

The following is a summary of the major changes created by the Act. A separate article is provided below for the voluntary disclosure program.

#### Confidentiality

Confidentiality provisions for holders and claimants were added similar to those currently in place with tax records.

#### Interest and Penalties

The Act requires the department to pay simple interest on claims of \$100 or more, even if the property was not interest-bearing prior to delivery to the department.

The Act also eliminates interest and revises penalties for holders that do not timely report and deliver property. A holder who fails to timely file a report is subject to a penalty of \$150 and a penalty of \$100 for each day a report is not filed by the time prescribed in a written request by the department. Penalties for not timely paying or delivering property are equal to 15% of the value of the property reported and an additional \$100 per day the property is not paid or delivered by the time prescribed in a written request by the department. The Act also creates penalty provisions for fraud and failure to perform other duties required (e.g., due diligence).

#### Holder Appeal Rights and Obligations

The Act clarifies the authority to examine holder records and provides audit appeal provisions for holders similar to the provisions for Wisconsin tax audits.

The Act clarifies the requirement for holders providing notice to owners before turning the property over to the department, known as performing due diligence. It also describes the information a holder must provide in the notice.

The Act also requires holders to report tax ID numbers, if known, so that owners can be better identified for returning the property.

## Department Authorities

The Act authorizes the department to use any tax records to identify owners of unclaimed property, collect amounts paid to a wrongful owner, and set off state and municipal debts certified to the department for collection.

## Other Provisions

The Act also provides the following miscellaneous provisions:

- Clarifies/expands the business-to-business exemption
- Clarifies a claimant's requirement to substantiate or prove their claim
- Decreases the abandonment period for money orders from 7 years to 5 years
- Decreases the abandonment period for certain insurance policies from 5 years to 3 years
- Clarifies that virtual currency is property subject to unclaimed property laws, but is only reported and delivered to the department if the holder can convert to U.S. currency prior to delivery to the department
- Expands what constitutes an owner's interest in property
- Reduces the maximum fee a locator service may charge from 20% to 10% of the actual value of the property recovered and extends the valid agreement from 12 months to 24 months

## Voluntary Disclosure Program for Unclaimed Property

([2021 Wis. Act 87](#), create sec. 177.1505, voluntary disclosure program, effective from **February 1, 2022, through February 28, 2023**)

The Act allows the department to enter into voluntary disclosure agreements to waive penalties for holders that voluntarily disclose and report unclaimed property.

## Eligibility

You are eligible if all the following apply:

- You have unclaimed property to report from any of the five most recent reporting periods.
- You have not been audited for unclaimed property since July 1, 2016, or received a notice of an upcoming audit.
- You do not have a balance due on your unclaimed property holder account.

## Agreement Requirements

Under the agreement, you must agree to the following:

- Attempt to contact owners of the property within 30 days of execution of the agreement. Notification letters must be sent to owners of properties worth \$50 or more. See Appendix 3 of the [Holder Report Guide](#) for a sample notification letter.

- Within 120 days of entering into the agreement, electronically file a report and deliver property for at least the five previous reporting periods. A reporting period is July 1 through June 30. Refer to the [Holder Report Guide](#) for assistance completing your report.
- Continue to report and deliver all unclaimed property for at least four future annual reporting periods.
- Waive appeal rights for periods under the agreement.

## How to Apply

1. Go to the department's [unclaimed property homepage](#).
2. Under the Holders section, select the Voluntary Disclosure Agreement Application link.
3. Complete and submit the Voluntary Disclosure Agreement application.

You will receive a confirmation number upon submission. The department will mail an executed agreement upon approval unless the applicant has previously opted to receive electronic mail in My Tax Account (MTA).

## Voluntary Disclosure Agreement Holder Report Filing Requirements

- All property must be reported on a 2020 holder report so that the department can identify the report was filed as part of the voluntary disclosure agreement
- Include all details known about the property owner
- Electronically file the report
- Make the payment when the report is filed

## Questions

Unclaimed property specialists are available to help:

- Online live chat on our [unclaimed property homepage](#)
- Email at [DORWIHolderReports@wisconsin.gov](mailto:DORWIHolderReports@wisconsin.gov)
- Phone at (608) 264-4594

## General Updates and Reminders

### New Online Payment Page

The department has a new [Make a Payment](#) web page that consolidates existing payment information from across the department's website. The page is for individuals looking to make a payment or find payment related information. It features:

- Collapsing menus to make information easy to view and access
- Simplified explanations of estimated payments, payment plans, payment options, and much more
- Options for automatic withdrawal "Quick Pay" and My Tax Account payments

The page is linked in the "Quick Links" section on the department's homepage, or you can view the new web page at <https://www.revenue.wi.gov/pay>.

## Have The Department Send Your Mail Electronically

My Tax Account (MTA) allows you to receive most notices and letters electronically from the department. You must be registered in MTA to request e-delivery. The department plans to expand this option and make it more available for individual income tax filers in the future.

E-delivery provides quick and secure communication and saves the department mailing costs. Notices and letters are also conveniently stored in MTA for easy access.

To request e-delivery, log in to MTA and under the Settings tab, select "Electronic". Make sure "Electronic" is selected for all your accounts to ensure full electronic delivery.

## Income and Franchise Tax Updates and Reminders

### What's New This Tax Season?

Below are some of the changes that may impact 2021 Wisconsin income/franchise tax returns:

#### 1. *Individuals, Estates, and Trusts*

- **Internal Revenue Code update:** For taxable years beginning after December 31, 2020, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2020, with certain exceptions, for income and franchise tax purposes. For details, see the "New Tax Laws" articles beginning on page 2 of [Wisconsin Tax Bulletin 212](#). Also, see the article titled "New Difference Between Federal and Wisconsin Law" provided later in this document.
- **Tax rates reduced:** The tax rate for the third tax bracket is reduced from 6.27% to 5.3%. Rate reductions are built into the tax tables in the instructions for Forms 1 and 1NPR.
- **Retirement income subtraction:** The retirement income exclusion of up to \$5,000 (\$10,000 if married filing joint and both spouses qualify) is no longer a mandatory exclusion from Wisconsin income. The subtraction is now optional which may allow a taxpayer to claim a greater medical care insurance subtraction.
- **Medical care insurance subtraction for self-employed individuals:** A self-employed individual's medical care insurance subtraction is no longer limited to net earnings from self-employment. It is now limited to Wisconsin income before considering the subtraction for medical care insurance, which may increase the amount of the subtraction allowed.
- **Homestead credit:** A definition of "earned income" is added for purposes of qualifying for the homestead credit. "Earned income" means wages, salaries, tips, other employee compensation, and net earnings from self-employment.

The meaning of primary income from farming is clarified for purposes of the disqualified loss addback exception for farmers. A claimant's primary income is from farming if the claimant's gross income from farming is greater than 50 percent of the claimant's total gross income from all sources for the year to which the claim relates. Previously, primary income from farming only applied to net income of the claimant.

- **Reserve or National Guard members subtraction:** Reserve and National Guard members may now qualify for the subtraction if they are called into active federal service under 10 USC 12304b. Previously, only members called into active federal service under 10 USC 12302(a) or 10 USC 12304, or special state service under 32 USC 502(f) qualified for the subtraction.

- **U.S Armed Forces active duty pay subtraction:** A new subtraction is available for the amount of basic, special, and incentive pay 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 sec. [7701\(a\)\(15\)](#), IRC. This does not include amounts already taken for the Reserve or National Guard members subtraction. As a result of the new subtraction, the Armed Forces Member credit is no longer available. For additional information, see the Line 19 instructions on page 8 of the [Schedule SB instructions](#).

The department is working on an emergency administrative [rule](#) to define the term "active duty." In addition, a fact sheet is being created to provide guidance about members of the U.S. Armed Forces eligible for the subtraction and eligible pay. When complete, the fact sheet will be posted [here](#).

- **AmeriCorps education award subtraction:** A new subtraction is available for the amount an individual receives as a national service educational award disbursed under 42 USC 12604 during the taxable year. The subtraction is not allowed for any amount of the award that is used to pay tuition and subtracted under sec. [71.05\(6\)\(b\)28.](#), Wis. Stats., or used to pay student loan interest and deducted under sec. [221](#), IRC.
- **Tuition:** The Wisconsin subtraction for tuition and fees is increased to \$6,973. The subtraction is phased-out for persons with federal adjusted gross income between \$57,370 and \$68,840 if single. The other limitations, based on filing status, can be found in the department's [College Tuition](#) common questions.
- **College savings account contributions:** The Wisconsin subtraction for contributions to a college savings account increased from \$3,340 to \$3,380 (\$1,690 if married filing separately or a divorced parent).
- **Dependent care assistance programs:** Wisconsin generally follows the federal treatment of dependent care assistance programs (DCAP) under sec. [129](#), IRC, and Wisconsin adopted the temporary special rules for health and dependent care flexible spending arrangements created by sec. 214 of Division EE of the Consolidated Appropriations Act, 2021 ([Public Law 116-260](#)). However, Wisconsin did not adopt the changes made by sec. 9632 of the American Rescue Plan Act of 2021 ([Public Law 117-2](#)).

For taxable year 2021, sec. 9632 of Public Law 117-2 increases the amount of dependent care benefits that can be excluded from an employee's taxable wages from \$5,000 to \$10,500. For a married individual filing separately, the exclusion increased from \$2,500 to \$5,250. Since Wisconsin has not adopted this federal provision, an employee's Wisconsin taxable wages (box 16 of Form W-2) may be greater than federal taxable wages (box 1 of Form W-2).

If an employee's Wisconsin taxable wages are different from federal taxable wages, the employee must use Wisconsin [Schedule I](#) to report the difference.

- **Refundable portion of research credit:** For taxable years beginning on or after January 1, 2021, the amount of research credit claim not used to offset tax due and not to exceed 15% of the allowable amount of the claim, is a refundable credit. Any remaining amount of the claim not used may be carried forward for 15 taxable years to the extent not offset by 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.

- **Coronavirus relief fund grants:** During 2021, the department administered the following grants: the Wisconsin Tomorrow Lodging Grant, the Wisconsin Farm Support Program, the Wisconsin Tomorrow Small Business Recovery Grant, and the We're All In For Wisconsin Restaurant Grants.

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For more information, see the article titled "2021 State Grant Programs Funded By The Coronavirus Relief Fund That Are Excluded From Wisconsin Income" provided later in this document.

## 2. *Businesses*

- **Internal Revenue Code update:** For taxable years beginning after December 31, 2020, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2020, with certain exceptions, for income and franchise tax purposes. For details, see the "New Tax Laws" articles beginning on page 2 of [Wisconsin Tax Bulletin 212](#). Also, see the article titled "New Difference Between Federal and Wisconsin Law" provided later in this document.
- **Refundable portion of research credit:** For taxable years beginning on or after January 1, 2021, the amount of research credit claim not used to offset tax due and not to exceed 15% of the allowable amount of the claim, is a refundable credit. Any remaining amount of the claim 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.

- **Pass-through entities may elect to claim certain credits at the entity level:** For each taxable year beginning on or after January 1, 2021, pass-through entities (partnerships, tax-option (S) corporations, and limited liability companies taxed as a partnership or tax-option (S) corporation) may elect to claim the jobs tax credit ([Schedule JT](#)), the enterprise zone jobs tax credit ([Schedule EC](#)), and/or the business development credit ([Schedule BD](#)) 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.

## 2021 State Grant Programs Funded By The Coronavirus Relief Fund That Are Excluded From Wisconsin Income

Wisconsin law provides an exclusion from income for grants issued to businesses with money Wisconsin received from the federal coronavirus relief fund. See secs. [71.05\(1\)\(h\)](#), [71.26\(3\)\(aq\)2.](#), [71.34\(1k\)\(af\)](#), [71.45\(1\)\(d\)](#), and [71.45\(2\)\(a\)22.](#), Wis. Stats.

The following grants qualify for the exclusion from Wisconsin income:

- [Beyond the Classroom Grant](#)
- [Cultural Organization Grant Program](#)
- [Destination Marketing Organizations Grant Program](#)
- [Event Venue Assistance Grant](#)
- [Keep Wisconsin Warm/Cool Fund](#)

- [Live Event Small Business Assistance Grant](#)
- [Live Music and Entertainment Venue Grant Program](#)
- [Lodging Property Grant Program](#)
- [Main Street Bounceback Grant](#)
- [Minor League Sports Teams Assistance Grant](#)
- [Movie Theater Assistance Grant](#)
- [Movie Theater Grant Program](#)
- [Out-of-School Support Grant Program](#)
- [Pandemic Response Nonprofit Grant Program](#)
- [Summer Camp Assistance Grant](#)
- [We're All In For Wisconsin Restaurants Grant](#)
- [We're All In Small Business Grant - Phase 1](#)
- [We're All In Small Business Grant - Phase 2](#)
- [We're All Innovating Contest](#)
- [Wisconsin Home Energy and Assistance Program \(WHEAP\)](#)
- [Wisconsin Rental Assistance Program \(WRAP\)](#)
- [Wisconsin Tomorrow Lodging Grant](#)
- [Wisconsin Tomorrow Small Business Recovery Grant](#)
- [Wisconsin Farm Support Grant](#)

**Note:** Other business grant programs may qualify for this exclusion from Wisconsin income. Contact the administrator of the grant program if you are unsure whether the grant your business received was funded with money Wisconsin received from the federal coronavirus relief fund.

## How to report the income exclusion

Income from these programs is included in federal gross income according to sec. 61 of the Internal Revenue Code, unless an exception applies. For Wisconsin, this income may be excluded by making a subtraction modification on the applicable 2021 Wisconsin income/franchise tax return as follows, and using "Wisconsin COVID-19 Program Funds" as a description:

- Form 1, Schedule SB, Line 50
- Form 1NPR, Schedule M, Line 29
- Form 2
  - Nondistributable portion - Schedule 2M, Part II, Line 27
  - Distribution portion - Schedule A, Line 11, Column 1
- Form 3
  - Schedule 3K, Part II, Column C as appropriate
  - Schedule 3K, Part III, Line 15

- Form 4, Schedule 4W, Line 14
- Form 4T, Part 2, Line 7
- Form 5S
  - Schedule 5K, Part II, Column C as appropriate
  - Schedule 5K, Part IV, Line 18
- Form 6, Part II, Line 4n, using Code 12

## Additional grant information

Expenses paid with grants from these programs and deducted in the computation of federal adjusted gross income are not required to be added back on the Wisconsin return.

Grants issued by the federal government do not qualify for this exclusion from Wisconsin income.

**Caution:** An individual who received a cash grant must include the grant in household income when computing their homestead credit.

## Rental Assistance Programs

Wisconsin has a variety of rental assistance programs that are administered by the state of Wisconsin, local governments, and local community organizations. In general, these programs pay to a landlord a portion of a tenant's outstanding rent if the tenant is unable to pay their rent. The tax treatment of rental assistance payments are as follows:

### Income Tax

**Landlord** – Rental assistance payments received by the landlord are included in the landlord's gross income for federal and Wisconsin tax purposes.

*Exception:* A subtraction is allowed for Wisconsin if the rental assistance program is funded with money Wisconsin received from the federal coronavirus relief fund (sec. [71.05\(1\)\(h\)](#), Wis. Stats.). Contact the administrator of the grant program if you are unsure whether the grant your business received was funded with money Wisconsin received from the federal coronavirus relief fund.

The [Wisconsin Rental Assistance Program \(WRAP\)](#) was funded with federal coronavirus relief funds and is eligible for the Wisconsin subtraction from income. This program has ended.

The [WI Emergency Rental Assistance Program \(WERA\)](#) is administered by the Wisconsin Department of Administration and is funded by the federal emergency rental assistance. These federal funds are not from the coronavirus relief fund; therefore, the program funds are not eligible for the Wisconsin subtraction.

**Tenant** – Rental assistance is generally excluded from federal and Wisconsin income under the [general welfare exclusion](#), which excludes from income governmental payments from a public welfare fund based upon the recipient's need.

### Homestead Credit

**Landlord** – The landlord should not include the rental assistance payments on line 4a, 4b, or 4c of the rent certificate. The payment is not rent paid by the tenant.

## Tenant –

- Rental assistance payments are not rent paid by the tenant
- Rental assistance payments are generally not included in household income under sec. Tax [14.03\(4\)\(b\)3.e.](#) and [\(5\)\(a\)3.](#), Wis. Adm. Code, because the tenant is not receiving "cash" public assistance.

## Wisconsin Identity Protection PIN

The Wisconsin Department of Revenue is pleased to announce the Wisconsin Identity Protection PIN program. Individuals may request a PIN to prevent fraudsters from using their personal information to file a return and receive a Wisconsin tax refund.

Individuals must register for My Tax Account to receive the Wisconsin Identity Protection PIN. After registration is complete and a PIN is received, individuals:

- Will have comfort in knowing no one else can file a tax return with their information
- Can quickly and easily renew their PIN each year

**Caution:** Practitioners **cannot** register for My Tax Account and sign up for the PIN on their clients' behalf. Individual or personal users must sign up for My Tax Account themselves so that they have Master access to their own accounts.

**Note:** The Wisconsin Identity Protection PIN is different from our existing Identity Verification PIN. Review the information below to understand the difference between the two PIN programs.

## Wisconsin Identity Protection PIN

- Participation in the Wisconsin Identity Protection PIN program is voluntary
- Taxpayers sign up for Wisconsin Identity Protection PINs prior to filing their returns
- The Wisconsin Identity Protection PIN must be entered on the return when it's filed

Visit our website for more information about the Wisconsin Identity Protection PIN:

<https://www.revenue.wi.gov/Pages/FAQS/IP-PIN.aspx>.

## Identity Verification PIN

- The Identity Verification PIN is a unique code that the department issues to some taxpayers after they file their returns
- Participation in this program is not voluntary; we analyze returns when we receive them and determine who should be issued an Identity Verification PIN
- We use this Identity Verification PIN to confirm the return we received was submitted by the taxpayer listed on the return and not by someone using the taxpayer's identity to file a false return

Visit our website for more information about identity verification:

<https://www.revenue.wi.gov/Pages/FAQS/ise-idverification.aspx>.

## New Difference Between Federal and Wisconsin Law

Section 80401 of the Infrastructure Investment and Jobs Act ([Public Law 117-58](#)) adds interest from qualified broadband projects exempt facility bonds as exempt from federal income tax under secs. [103](#) and [142](#), IRC. Wisconsin has not adopted this federal provision. The interest from qualified broadband projects exempt facility bonds is included in Wisconsin income and required to be added back on Wisconsin [Schedule I](#). See the [Schedule I Instructions](#) for a comprehensive list of differences for tax year 2021.

## Using Form C and Form N to Report Wisconsin Income

### Form C, Wisconsin Allocation and Separate Accounting Data

- *Purpose:* Form C reports the amount of Wisconsin income or loss using the separate accounting method as provided in sec. Tax [2.41](#), Wis. Adm. Code.
- *Who must file:* A corporation, partnership, tax-option (S) corporation, and nonresident estate, trust, or individual engaged in business in and outside Wisconsin that is required or approved to use the separate accounting method must submit Form C with their Wisconsin income or franchise tax return. **Note:** A taxpayer engaged in a [unitary business](#) cannot use separate accounting unless the department [approves](#). A taxpayer engaged in a [nonunitary business](#) must determine its Wisconsin income or loss using separate allocation and accounting.
- *Must also file Form N:* A taxpayer that uses Form C to determine their Wisconsin income or loss using separate accounting must also file Form N because the income or loss from Form C, line 16 is entered on Form N, line 6.

### Form N, Wisconsin Nonapportionable, Separately Accounted, and Separately Apportioned Income

- *Purpose:* Form N reports the amount of Wisconsin income or loss from nonapportionable income or income that is separately apportioned. It also includes amounts reported on Form C using the separate accounting method.
- *Who must file:* A corporation, partnership, tax-option (S) corporation, and nonresident estate, trust, or individual engaged in business in and outside Wisconsin reporting income or loss that is nonapportionable, separately accounted, and/or separately apportioned must submit Form N with their Wisconsin income or franchise tax return.
- *Reporting amounts from Form C:* Income or loss using the separate accounting method is reported on Form C. These amounts cannot be reported on lines 1 through 5 of Form N. Only the amount from Form C, line 16 is entered on Form N, line 6.

## Individual Income Tax Forms and Instructions

The department is no longer printing and distributing Forms 1 and 1NPR individual income tax booklets that include forms and instructions. With 91% of individual income tax returns electronically filed, it is no longer economical for the department to distribute these forms and instructions.

*Exception:* The department is printing and distributing the homestead credit booklet that includes the forms, instructions, and rent certificate.

The 2021 individual income tax forms and instructions are available to view and print from our website at [revenue.wi.gov/Pages/Form/2021Individual.aspx](https://revenue.wi.gov/Pages/Form/2021Individual.aspx). For those who do not have internet access or the ability to print forms, paper forms and instructions are available upon request by contacting our customer service department by phone at (608) 266-2486 or email at [DORFormsRequests@wisconsin.gov](mailto:DORFormsRequests@wisconsin.gov).

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Remember to sign up for our [electronic mailing list](#) to receive important communications and the latest changes from the department.

## Tax Return Donations

Wisconsin law allows taxpayers to make donations to the following organizations on the 2021 Wisconsin individual income tax return. The organizations are the same as on the 2020 Wisconsin individual income tax return.

Donations made by taxpayers on returns filed between July 2020 through June 2021 (primarily on 2020 returns):

Fund	Donation Amount	Use of Donations
Endangered Resources Fund	\$351,046	Protect and manage native plant and animal species, natural communities, and other natural features
Cancer Research Fund	\$195,178	Donations divided equally between the Medical College of Wisconsin, Inc., and University of Wisconsin Carbone Cancer Center for cancer research projects
Veterans Trust Fund	\$118,050	Used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents
Multiple Sclerosis Fund	\$85,024	Forwarded to the National Multiple Sclerosis Society for distribution to Wisconsin entities that operate health-related programs for people in Wisconsin with multiple sclerosis
Military Family Relief Fund	\$133,129	Used by the Wisconsin Department of Military Affairs to provide financial aid to eligible immediate family members of Wisconsin residents on active duty in the U.S. Armed Forces or National Guard
Second Harvest/Feed America Fund	\$300,369	Donations divided as follows: 65% to Feeding America Eastern Wisconsin (located in Milwaukee); 20% to Second Harvest Foodbank of Southern Wisconsin (located in Madison); and 15% to Feed My People (located in Eau Claire). The food banks provide food to food pantries, meal programs, shelters, and soup kitchens throughout the state
Red Cross Wisconsin Disaster Relief Fund	\$144,881	Used by the American Red Cross for Wisconsin disaster relief
Special Olympics Wisconsin Fund	\$121,151	Forwarded to Special Olympics Wisconsin, Inc.

## Withholding Tax Updates and Reminders

### Reminder: Wisconsin Withholding Tables Revised January 1, 2022

Wisconsin withholding tables and alternate methods of withholding have been revised for payroll periods beginning on or after January 1, 2022. The withholding tables and alternate method are found in Wisconsin [Publication W-166](#), *Withholding Tax Guide Effective for Withholding Periods Beginning on or After January 1, 2022*. Employers should have implemented the revised withholding tables or alternate method no later than January 1, 2022.

For more information, see the article titled *Withholding Tables Revised Starting January 1, 2022*, on page 7 of [Wisconsin Tax Bulletin 215](#) (November 2021).

### Reminder: Filing Requirements of Form 1099-R with Wisconsin Withholding

For tax year 2021, all Forms 1099-R with Wisconsin withholding must be filed directly with the department by January 31, 2022. If you file 10 or more Forms 1099-R, you must file electronically using one of the filing options in [Publication 117](#), *Guide to Wisconsin Wage Statements and Information Returns*. **Note:** The [combined federal/state filing program](#), under sec. [Tax 2.04\(7\)](#), Wis. Adm. Code, is not an acceptable filing option for Forms 1099-R with Wisconsin withholding.

A person (i.e., the "employer") who fails to file Form 1099-R by the due date is subject to a \$10 penalty for each violation, and the failure of the employer may result in the payee's Wisconsin income tax refund being delayed.

#### Example for Calendar Year 2021:

- Individual A receives retirement distributions from Company B.
- At the request of Individual A, Company B withholds Wisconsin income tax from the distributions.
- The taxable amount of Individual A's distributions is \$50,000, and the amount of Wisconsin income tax withheld is \$3,000.
- On February 1, 2022, Individual A files Form 1 showing:

Description	Amount
Net tax	\$1,942
WI tax withheld	(\$3,000)
Tax due or (refund)	(\$1,058)

- Company B files Form 1099-R with the department in April of 2022.

Because Company B filed Form 1099-R after the due date, Company B is subject to the \$10 penalty and Individual A's refund of \$1,058 will be delayed until at least March 1.

For more information about filing wage statements (e.g., Form W-2) and information returns (e.g., Form 1099-R), see [Publication 117](#).

## Sales and Use Tax Updates and Reminders

### Retailers May Not Accept 6-Digit CES Numbers After June 30, 2022

The department issued new 15-digit Certificate of Exempt Status (CES) numbers to qualifying organizations to use in making purchases exempt from Wisconsin sales and use tax.

#### Retailers

Starting July 1, 2022, retailers may no longer accept a 6-digit CES number from purchasers seeking relief from sales and use tax. Retailers should only accept 15-digit CES numbers beginning with 008. Retailers are not required to update documentation containing 6-digit CES numbers for prior sales transactions, but they should obtain either of the following for sales occurring on and after July 1, 2022:

- The qualifying organization's 15-digit CES number and record it on the bill of sale, or
- A fully completed exemption certificate (Form [S-211E](#) or [S-211](#)) from the qualifying organization containing the organization's 15-digit CES number

#### Purchasers

Qualifying organizations must provide their 15-digit CES number to retailers to make purchases exempt from tax beginning July 1, 2022. If your qualifying organization does not have a 15-digit CES number, your organization may apply for a CES number using [Form S-103](#). See sec. [77.54\(9a\)](#), Wis. Stats., for a complete listing of qualifying organizations.

**Note:** Qualifying out-of-state nonprofit organizations do not need a CES number to make purchases exempt from tax. If an out-of-state organization qualifies to make exempt purchases and does not hold a CES number, it must provide the seller with a fully completed exemption certificate (Form [S-211E](#) or [S-211](#)) indicating it meets the requirements of sec. 501(c)(3) of the Internal Revenue Code.

#### Resources:

- Exemption for Nonprofit Organizations - [Wisconsin Tax Bulletin 212](#), Page 14
- [Nonprofit Organizations and Government Units - Certificate of Exempt Status](#) common questions

### Reminder: Village of Ephraim Premier Resort Area Tax Effective January 1, 2022

The Village of Ephraim in Door County began imposing a 0.5% premier resort area tax on January 1, 2022. See [Wisconsin Tax Bulletin 215](#) (November 2021) for more information.

### Premier Resort Area Tax – Which Sellers Must Report

This article is an update to the article published in [Wisconsin Tax Bulletin 204](#).

Certain types of retailers must report premier resort area taxes on taxable sales that take place in a premier resort area. Generally, a sale takes place in a premier resort area if the purchaser receives the product or makes first use of a service at a location within the premier resort area. Premier resort area taxes are reported on a premier resort area tax return which may be filed through the department's electronic filing system, [My Tax Account](#). For a listing of the types of retailers that must report premier resort area tax, see [Premier Resort Area Tax](#) common questions.

Current premier resort areas include:

Cities	Villages
Bayfield	Ephraim
Eagle River	Lake Delton
Rhineland	Sister Bay
Wisconsin Dells	Stockholm

## What retailers operating outside a premier resort area may be required to report

A seller that is required to collect Wisconsin sales and use taxes is required to collect premier resort area taxes if classified under one of the industry codes in [Premier Resort Area Tax](#) common question #4, regardless of whether the seller is engaged in business in the premier resort area. The premier resort area tax is administered in the same manner as county taxes (sec. [77.9941\(4\)](#), Wis. Stats.).

### Remote sellers

All remote sellers (out-of-state retailers with no physical presence or activity in Wisconsin) must collect Wisconsin sales or use tax. Remote sellers classified under one of the industry codes listed in [Premier Resort Area Tax](#) common question #4, must also report premier resort area tax if the seller makes taxable sales in a premier resort area. See *Small seller exception for remote sellers* below.

### Marketplace providers

A marketplace provider is any person who facilitates a retail sale by listing or advertising taxable product on behalf of the seller and, directly or indirectly, processes the payment from the purchaser (sec. [77.51\(7i\)](#), Wis. Stats.).

A marketplace provider must collect and remit Wisconsin sales or use tax on the entire sales price charged to the purchaser for taxable products and services that it facilitates on behalf of a marketplace seller.

In addition to remitting state tax and any applicable county tax, marketplace providers must remit premier resort area tax on sales facilitated on behalf of a seller that is classified under one of the Standard Industrial Classification (SIC) codes listed in [Premier Resort Area Tax](#) common question #4, if the sales take place in a premier resort area. See *Small seller exception for remote sellers* below.

### Lodging marketplace license

The requirement to hold a lodging marketplace license was repealed effective October 1, 2021.

### Small seller exception for remote sellers

- The small seller exception is provided for remote sellers (out-of-state retailers with no physical presence or activity in Wisconsin) that have \$100,000 or less in annual gross sales into Wisconsin in both the previous and current year. A remote seller that qualifies for the small seller exception is not required to register for and collect any Wisconsin state, county, or premier resort area tax.
  - *Marketplace sellers* - In determining if a marketplace seller that is a remote seller qualifies for the small seller exception, the annual gross sales amounts include sales into Wisconsin made by the marketplace seller, as well as sales made on its behalf by a marketplace provider.

- *Marketplace providers* - In determining if a marketplace provider that is a remote seller qualifies for the small seller exception, the annual gross sales amount and number of transactions include sales into Wisconsin made by the marketplace on its own behalf or on behalf of other sellers.

## Resources

- [Publication 403](#), *Premier Resort Area Tax*
- [Marketplace Provider and Seller](#) common questions
- [Remote Seller](#) common questions

## Updated Temporary Event Operator Forms

We recently updated the form used to report event and seller information for easier filing. [Form S-240](#), *Wisconsin Temporary Event Operator and Seller Information*, is now a fillable PDF form. In addition, the Excel template (Form S-240a) used by event operators to transmit event and seller information electronically has been updated with the latest links and information. Please download your choice today for upcoming events.

State law requires temporary event operators (organizers) to report event and seller information to the department within ten days of the event. 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. The form should be filled out completely or seller participation in the event should be denied.

An event operator may submit copies of the form completed by each seller or add the information gathered to an Excel spreadsheet (Form S-240a). Either method may be submitted electronically via our [secure portal](#). Event operators should include the complete 15-digit Wisconsin seller's permit number 456-xxxxxxxx-xx and only the last 4-digits of the social security number (SSN) or federal employer identification number (FEIN) for each seller. Make sure to include all event information inside the file if transmitting the Excel spreadsheet.

We continue to enhance the program. For the latest information, visit our [Temporary Events](#) page on the department's website at [www.revenue.wi.gov](http://www.revenue.wi.gov). This page has answers to frequently asked questions and links to forms, publications, and tax returns.

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

## Updated Fact Sheet 2111 – Fuel and Electricity Consumed in Manufacturing

An example under Fuel and Electricity Consumed in Manufacturing (page 2) in [Fact Sheet 2111](#) appears to limit the exemption to only fuel and electricity used in operating a boiler if the steam produced from the boiler is used primarily in the step-by-step production process. The example has been updated to indicate that fuel and electricity is exempt when used in:

- Operating a boiler that manufactures steam at a manufacturing facility, regardless of whether the steam from the boiler is used primarily to heat the facility or in the step-by-step production process

Fuel and electricity consumed in manufacturing steam that is used at a manufacturing facility in further manufacturing or in heating the facility, or both, is exempt from Wisconsin sales and use tax under sec. [77.54\(30\)\(a\)6.](#), Wis. Stats.

## Updated Publication 240, *Digital Goods*

[Publication 240](#), *Digital Goods*, has been updated as of November 2021. Important changes include:

- Part 9.B.(5): Clarifies "other news or information products" are products that disseminate news or information and revises the examples to clarify that charges to an online database or website of information that allows a user to perform searches of the database and view and/or download the information is a taxable sale of a news or information product
- Part 11: Removes examples that contradict the updated guidance in Part 9.B.(5) and clarifies that a sale may not be taxable even though a digital good is transferred to the customer
- Part 12: Updates the list of taxable products in the *Example*, consistent with changes to "other news or information products"

## Snowplowing Services Are Not Taxable

- Snowplowing or sanding and salting roads, sidewalks, or parking lots are not services that are subject to sales tax. The service provider is the consumer of any property (e.g., salt, sand) used in providing such services and is liable for sales or use tax on its purchase of such property.
- **Example 1:** A person contracts with Company to have their driveway and parking lot plowed and sanded during the winter months. Company charges the person by the hour. No part of the charge by Company is subject to sales tax. Company must pay Wisconsin sales or use tax on its purchase of the sand used in providing the service.
- **Example 2:** A person contracts with Company to have their driveway and parking lot plowed and salted during the winter months. Company charges the person based on the amount of salt used. No part of the charge by Company is subject to sales tax. Company must pay Wisconsin sales or use tax on its purchase of the salt used in providing the service.

## Excise Tax Updates and Reminders

### Updated Publication 303, *Alcohol Beverage Tax Information*

[Publication 303](#), *Alcohol Beverage Tax Information*, has been updated as of December 2021. Important changes include:

- Effective January 1, 2022 the Wisconsin Fermented Malt Beverage Wholesaler permit fee increased to \$2,000 per year. This change affects permits issued after and renewals that occur on or after January 1, 2022.
- The publication is reformatted to single-column format for easier viewing on computer screens.

### Updated Publication 307, *Motor Vehicle Fuel Tax Information*

[Publication 307](#), *Motor Vehicle Fuel Tax Information*, has been updated as of December 2021. Important changes include:

- **Publication Reorganization.** Sections of the publication have been reorganized to group similar topics and remove duplicate information.
- **Allowances.** Effective for returns or claims filed on or after January 1, 2020, the:

- Administrative allowance that licensed fuel suppliers may deduct when remitting motor vehicle fuel taxes on gasoline is reduced from 1.35 percent to 0.675 percent of gallons of gasoline received for the taxable period.
- 0.5 percent refund of fuel tax paid on gasoline received into service station operator's storage tanks to cover shrinkage and evaporation losses is eliminated. See page 12 of Publication 307.
- **Bulk Plant.** The definition of bulk plant is added. See page 4 of Publication 307.
- **Exemption Certificates.** Exemption certificates used to claim motor vehicle fuel tax exemptions on gasoline or diesel fuel are valid for three years unless cancelled by the department or the person claiming the exemption. See page 11 of Publication 307.
- **Common Motor Carrier.** The definition of common motor carrier is added. In 2014, the definition was amended to:
  - Eliminate the requirement that passenger transport be "between fixed end points or over a regular route upon the public highways or property over regular or irregular routes."
  - Exclude a commuter carpool or van pool with a passenger-carrying capacity of eight passengers, including the driver. See page 4 of Publication 307.

### Private Letter Rulings

*"Private letter rulings" are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.*

*The ruling number is interpreted as follows: The "W" is for "Wisconsin"; the first four digits are the year and week the ruling becomes available for publication (generally 80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.*

*Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue."*

### Sales and Use Tax

#### Online Learning Plans and Internet Advertising Revenue

**Ruling Number: W2201001**

**October 13, 2021**

#### Facts as Provided By Taxpayer

- The Company historically earned revenue from internet advertising and several years ago developed and began operating an online learning platform ("the Platform"). The Platform is a virtual learning environment serving the education needs of students who purchase the Company's learning plans.
- The Company pays independent contractors for ad-hoc assignments including writing articles for the Company's website. The Company posts ad-hoc assignment opportunities at the Company's website and at freelance work sites. The Company becomes the owner of all content submitted by freelance contributors.

- The Company has not engaged in "affiliate marketing" programs, also known as "click through" marketing, in which a seller compensates a 3rd party referrer based on sales consummated the seller's website from leads referred to the website by the 3rd party.

## The Platform and Learning Plans

### General Rules:

- The Platform is a virtual learning environment where students can learn from thousands of academic on-demand digital courses. The on-demand digital courses are streaming video lessons which teach academic subjects, professional topics, and vocational licensure preparation courses.
- Each digital course is accompanied by a written transcript of the audio of the video. The digital courses are generally copyright-protected articles of property.
- All learning plans are subject to acceptance of the Company's terms of service, which applies to access to all content at the Platform.
- Students may access the Platform and digital courses from their PC web-browser or via the student's mobile device. The digital courses are not downloadable; however, the mobile device version of the Platform provides temporary caching of the digital course for several days, to enable uninterrupted access to the course at times when the student's internet access has been interrupted. When the student's mobile device regains internet access, the Platform will confirm the student's subscriber status and update the student's course progress on the Company's servers.
- Students who access the Platform from their mobile device must first download the Company's mobile app to their device. The Company's mobile app enables and controls time-limited caching of mobile version files for temporary offline viewing and use of interactive quizzes. The mobile app is available for download at no charge from the Apple and Android stores and is subject to the mobile app's end user license agreement. Temporarily cached files "time-out" on the mobile app after five days.
- Permanent possession of mobile-version file downloads is not possible.
- Each subscription plan includes access to live, online tutors. A student exercises a tutoring request by asking an academic question in natural language at the Platform. The student will have access to a live tutor to answer the question.
- Parents can obtain a free parent account which enables the parent to link their child's learning plan to monitor their child's progress and receive regular email updates.

### Learning Plans:

- **Product A - College-courses for credit, with assessments, online tutors, and online advisors:** Product A is intended for college and college-bound students. The digital courses for Product A include interactive chapter quizzes which assess the student's understanding of the instruction provided. Product A includes two online, proctored exams per month for the Platform's courses which are recommended for transferable credit. The student's grades for courses recommended for transferable credit are based on a combination of graded homework assignments, quizzes, plus a proctored final exam. The student must answer a certain percent of the course questions correctly to achieve a passing grade. The homework assignments are graded by online tutors who interact with the student to explain their grading, and the student receives advice from online guidance counselors who advise the student with choosing a college and choosing the student's course selections at the Platform. Product A includes a certain number of live tutoring interactions per subscription period. The Company retains copies of student's learning transcripts indefinitely, which the student can arrange to have submitted to a learning institution. The learning institution may grant course credit to the student at its own discretion.

- **Product B; College-Courses for Credit, with Assessments, Online Tutors and Online Advisors (Sponsored Students):** Product B is a program ("the Program") offered by the Company to enterprises and other organizations who sponsor their employee ("sponsored student") to earn a college degree from a partnering college. The Sponsored student must be accepted into the Program. Upon acceptance into the Program, the sponsored student receives access to the features of the Platform described in Product A, and under the guidance of an assigned live "success coach", commences the course of study designated for the partnering college to ultimately achieve a college degree. Product B includes a certain number of live tutoring interactions per month. The Company bills the fee for the Program directly to the enterprise. The Company also offers the Program to municipalities, who sponsor municipal employees, and philanthropic organizations, who sponsor individuals in their pursuit of a college degree.
- **Product C; Courses with Assessments and Access to Live Tutor:** Product C provides access to the digital courses which include interactive chapter quizzes to assess the student's understanding of the instruction provided. Product C enables the student to enroll in the courses and thereby earn a certificate of completion for each course the student passes with a certain percent or better on the course quizzes. Students can retake the quizzes multiple times until successfully passing the course. Product C provides a dashboard which shows all the courses passed and failed, from which the student can download a copy of a certificate of completion earned. The Platform retains a permanent record of the student's certificates of completion, which a student can request at any time, even if the student is no longer a paid subscriber. Product C also allows the student to download a PDF copy of the quiz questions and a transcript for any course in which the student is enrolled. Product C includes a certain number of tutoring interactions per month.
- **Product D; Teacher Plan:** The Company offers a teacher plan, which contains all the features of Product C, plus additional capabilities which enable a teacher to integrate the Platform's digital courses into their curriculum. Teachers can provide their students access to digital courses at no additional charge; and can remotely assign courses and lessons, as well as display the courses in their classroom. The teacher can, if desired, customize the digital lessons by inserting slides with the teacher's own text material into the digital lessons. The teacher also receives additional web-based resources such as lesson plans, automated-grading of the student's quizzes, student-progress tracking, and access to group-learning activities for their classroom. Additionally, the teacher plan allows the teacher to enroll in any class offered by the Platform, which offers courses to help teachers pass and maintain their professional certifications. The teacher plan provides access to live online instructors. Learning institutions may subscribe to teacher-plans on behalf of the institution's teachers or the subscription may be purchased by a teacher as an individual.
- **Product E; Courses with Access to Live Tutor:** Product E provides access to the Platform's learning courses. Product E does not include quizzes, and as such, the student is not assessed on having passed a course. Product E includes a certain number of live tutoring interactions per month.
- **Product F; "Tutor Access" Plan:** The tutor access plan provides a certain number of live tutoring interactions per period. The tutor access plan does not provide access to entire digital courses but does provide, when available in relation to the student's question, access to brief video lessons and interactive questions to help the student practice the lesson. Additional live tutor-interactions are available.

### **Internet Advertising Revenue:**

The Company earns revenue from internet advertising under two revenue models:

- The Company earns revenue under a pay-per-click model by creating web-content for an advertising campaign. The Company is the owner of the content, which the Company hosts at a Company-owned website. When an individual finds the content via an internet search, the individual will be presented at

the Company's website with a short series of click-through, qualifying questions. Persons who click the questions are redirected on their final click to the advertiser's proprietary website.

- The company also earns internet advertising revenue by fulfilling "insertion orders.". For this model of advertising, the Company designs content, of which the Company is the owner, to attract the desired demographic to a Company-owned website, where the Company hosts the qualifying questions and then instantaneously forwards the person's information. For this model of advertising, the Company's landing page shows a list of advertisers on the left side of the web page, for which the advertiser who has placed the Insertion Order will be listed at the top. The Company does not retain or re-use the information submitted by individuals in response to advertising content.

## **Ruling Requested By Taxpayer**

**Question 1:** Are Learning Plans A, B, C, D, E, and F subject to tax?

**Answer 1:** Learning Plans A, B, and F are educational services that are not subject to Wisconsin sales or use tax. Learning Plans C, D, and E are each subject to tax as a bundled transaction if the taxable products and services are 10% or more of Company's sales price or purchase price.

### **Analysis 1:**

*Learning plans A, B, and F above are educational services.*

The on-demand digital courses (i.e., streaming video lessons) are taxable specified digital goods as they are digital audiovisual works, as defined in sec. [77.51\(3pa\)](#), Wis. Stats. Specified digital goods are taxable as provided in sec. [77.52\(1\)\(d\)](#), Wis. Stats. However, an on-demand digital course is not taxable if it is transferred to the purchaser incidentally with an educational service.

Learning Plans A and B

The digital goods are transferred incidentally with the educational service since at least one of the following occurs:

- The participant is evaluated by an instructor or tutor.
- The participants are connected to online tutors to explain their grading while assessing homework assignments.

Learning plan F:

The student does not gain access to the entire offering of digital courses. The primary objective is the nontaxable tutoring interactions. The brief video lessons and interactive questions are transferred incidentally with the tutoring services.

*Learning plans C, D, and E are bundled transactions if the taxable products and services are 10% or more of Company's sales price or purchase price.*

Learning plan C:

- Taxable products (access to digital audio works, digital audiovisual works, digital books, prewritten computer software (online quiz))
- Nontaxable products (historical record of course completion, transcript, PDF copy of quiz questions, up to ten live tutoring sessions)

Learning plan D:

- Taxable products (access to digital audio works, digital audiovisual works, digital books, prewritten computer software (online quizzes, customizable lesson slides by the teacher-subscriber))
- Nontaxable products (historical record of course completion, transcript, PDF copy of quiz questions, up to ten live tutoring sessions, student progress tracking, access to group learning activities)

Learning plan E:

- Taxable products (access to digital audio works, digital audiovisual works, digital books)
- Nontaxable products (up to 5 live tutoring sessions)

Learning Plans C, D, and E provide the customer access to both taxable and nontaxable products or services for one non-itemized price. If the sales or purchase price of the taxable products and services is greater than 10% of the total sales or purchase price of the all the products and services, the sale is a bundled transaction as defined in sec. [77.51\(1f\)](#), Wis. Stats.

The entire sales price of a bundled transaction is subject to Wisconsin sales tax under sec. [77.52\(20\)\(a\)](#), Wis. Stats. However, if you can determine, by reasonable and verifiable standards using your books and records, the portion of the sales price that is attributable to nontaxable products, you have the option to collect and remit Wisconsin sales tax only on the portion of the sales price attributable to the taxable products as provided in sec. [77.52\(20\)\(b\)](#), Wis. Stats. If the sales or purchase price of the taxable products and services is 10% or less of the total sales or purchaser price of all the products and services, the sale is not taxable as provided in sec. [77.54\(51\)](#), Wis. Stats.

For more information, see the article titled [Sales Tax Treatment of Educational Products, Goods, and Services](#) and [Publication 240, Digital Goods](#).

**Question 2:** Is the Company's revenue from fulfillment of insertion orders subject to sales tax?

**Answer 2:** The online marketing services you are providing relating to internet advertising management are not services that are subject to Wisconsin sales and use tax.

## Report on Litigation

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

### Corporation Franchise and Income Tax

#### Apportionable Income – Environmental Credit Sales

*American Honda Motor Co., Inc. v. Wisconsin Department of Revenue, (Wisconsin Tax Appeals Commission, November 29, 2021)*

The issue is whether the sale of environmental credits is apportionable or non-apportionable income for corporate income and franchise tax purposes.

American Honda Motor Co., Inc. (American Honda) is a California corporation that buys Honda brand automobiles, trucks, motorcycles, ATVs, equipment, parts, and accessories exclusively from related parties and resells them throughout the United States (US).

American Honda is registered to do business in Wisconsin and files a combined return with other combined group members involved in the manufacturing and distribution of fuel-efficient and low-polluting vehicles.

American Honda earns environmental credits (Credits) from a regulatory mileage and emission reduction credit program. The program allows automakers producing vehicles exceeding the minimum standards to earn and sell excess credits. Some of the vehicles generating the Credits went to Wisconsin dealerships where they were sold to Wisconsin residents.

The Product Regulatory Office in Torrance, California administers Honda America's involvement in the program, and through this office, an American Honda executive negotiated the sale of excess Credits. The Credits are intangible assets with a zero-cost basis therefore the gross sales proceeds equal the net capital gain income realized on the sale.

American Honda reported the sales proceeds as non-apportionable income on the fiscal year ending 2015 combined return. The department audited the fiscal year ending 2015 tax return and recharacterized the proceeds to apportionable income. Unable to arrive at a compromise, American Honda timely filed a Petition for Review with the Wisconsin Tax Appeals Commission (TAC).

American Honda maintained the position that the income was not apportionable to Wisconsin because all business activities related to the Credit took place in California. The department maintained the income met the statutory requirements of apportionment. The TAC agreed with the department.

Below is a summary of TAC's analysis of sec. [71.25\(5\)](#), Wis. Stats., *Corporations engaged in business both within and without the state*.

### The Standard for Apportionment Inclusion

Income is apportionable if it is (1) unitary income, (2) operational income, or (3) is other income with a taxable presence in Wisconsin.

- Unitary Income
  - American Honda did not meet the burden required to exclude the sales proceeds from the Wisconsin apportionment formula.
    - Activities unrelated to the group's unitary business produce non-apportionable income.
    - However, the Credits are earned in the regulatory compliance activities related to the automaking, the group's unitary business.
  - The sale of Credits is an on-going activity which requires the cooperation and coordination of company unitary resources. The unitary enterprise generates the Credits, allows for public posting of Credits determined to be not useful, negotiates purchase agreements, reviews the legalities of those agreements, provides executive approvals, and works with regulators to authorize the transfer of the Credits away from the unitary business. Complying properly with federal regulations produces benefits for the entire unitary group. The person who sold the credits was also primarily responsible for dealing with regulatory agencies. American Honda's corporate legal counsel reviewed all purchase agreements, and its executive management approved larger deals. Company equipment, company office space, company time, and company payroll were all used to carry out this sales activity. The regulatory compliance activities are clearly functionally integrated with the vehicle manufacturing for the benefit of the entire enterprise.
  - If the credits were not earned, the group would incur additional expenses in the form of environmental fines.

- Operational
  - The US Supreme Court has concluded that states may apportion income from a capital transaction if the asset is an integral part of the business enterprise rather than an investment function.
  - The Credits are an integral part the combined group's operational function.
    - The Credits were earned through its manufacture and distribution of fuel-efficient and low-polluting vehicles.
    - The sale of the Credits by the compliance division makes the division productive. It does not make the transaction a sale of an isolated unrelated asset.
  - The Credits were not purchased in anticipation of appreciation as an investment is commonly understood, nor were the Credits traded among investors seeking profits from appreciation.
- Taxable Presence in Wisconsin
  - The activity producing the credit does not have its own taxable presence in Wisconsin.
  - American Honda is part of a group controlled by the same parent. The business activity of all group members involves the manufacturing and distribution of vehicles. As such, the income of the group is generally subject to apportionment in Wisconsin under sec. 71.25(5), Wis. Stat.

American Honda has appealed this decision.

## Manufacturing and Agricultural Credit

*The Graphic Edge, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 20, 2021).

The Issue is whether depreciation recapture and the gain from the sale of equipment should be included in the calculation of The Graphic Edge's (Graphic Edge) Manufacturing credit.

Graphic Edge is a privately held commercial printing company started in 1994 and located in Hubertus, WI. They are in a facility that houses a complete prepress department, pressroom, finishing, and die cutting and converting departments.

In 2014, Graphic Edge sold or disposed of two pieces of printing equipment that had been purchased and used in its business. The equipment had been depreciated and was subject to depreciation recapture upon sale or disposition. Graphic Edge further claimed a gain on disposition of business property held more than one year on federal Form 4797, *Sales of Business Property*.

Graphic Edge qualified as a manufacturer for purposes of the Manufacturing and Agricultural Credit and claimed a Manufacturing credit on their 2014 Wisconsin Form 4. On the Schedule MA-M, *Wisconsin Manufacturing Credit*, Graphic Edge claimed production gross receipts, cost of goods sold, zero direct costs, and indirect costs. The line for all gross receipts was left blank.

The department adjusted the Manufacturing credit on a revised Schedule MA-M to zero and issued a Notice of Office Audit Amount Due. The auditor broke out costs to both direct costs and indirect costs and added the depreciation recapture and Form 4797 gain to all gross receipts. Graphic Edge filed a petition for redetermination that included a revised Schedule MA-M. The revised Schedule MA-M included the auditor's revised direct and indirect costs but subtracted the depreciation recapture and Form 4797 gain from all gross receipts and instead offset those gains against cost of goods sold. The petition for redetermination was denied.

The Tax Appeals Commission determined that the depreciation recapture and Form 4797 gain are not includable in production gross receipts. Production gross receipts are gross receipts from the lease, rental, sale, exchange, or other disposition of qualified production property which must be manufactured in whole or in part by the claimant. The sold printing equipment was not manufactured by Graphic Edge.

The Tax Appeals Commission determined that depreciation recapture and Form 4797 gain are not includable in cost of goods sold. First, they are income items generated by the sale of assets and are not costs. Second, the Manufacturing credit requires cost of goods sold be allocable to production gross receipts. The gain from the sale of the printing equipment was not a production gross receipt. Therefore, even if these items of income could be construed as "costs," they are not "allocable to production gross receipts" and cannot be included in these costs for the purpose of calculating the Manufacturing credit.

The department properly disallowed the inclusion of the depreciation recapture and Form 4797 gain in the calculation of the Manufacturing credit.

### Sales and Use Tax

#### Sales Price of Aircraft Leases

*Citation Partners LLC vs. Wisconsin Department of Revenue* (Court of Appeals, District I, November 23, 2021). The Court of Appeals upheld the Wisconsin Tax Appeals Commission's December 4, 2019 decision in this matter, and reversed the Dodge County Circuit's August 20, 2020, ruling to the contrary.

See [Wisconsin Tax Bulletin 211](#) (November 2020), pages 12 and 13, and [Wisconsin Tax Bulletin 208](#) (January 2020), page 13, for summaries of the Circuit Court and Commission decisions.

The issue in this case is whether the total amount paid for an aircraft lease is subject to sales tax, or, if portions of a lease payment attributed to aircraft maintenance and engine maintenance are statutorily exempt from sales tax.

The taxpayer owns an aircraft which it leases to related and unrelated parties. Under the lease agreement, the taxpayer must schedule and pay for all repairs and maintenance, and in turn, the lessees must "reimburse" the taxpayer for their share of those costs.

The taxpayer stopped collecting tax on the portion of the lessees' payments attributed to aircraft and engine maintenance. The taxpayer claimed these amounts were exempt under 2013 Wisconsin Act 185, which provides an exemption for the sale of aircraft parts and the repair and maintenance of aircraft.

The department assessed tax on the portion of the lease payments representing aircraft maintenance and engine maintenance costs.

The Tax Appeals Commission agreed with the department that sales tax applies to the total amount paid on a lease. The Commission found that the lessees' payments to the taxpayer for repairs and maintenance were not "reimbursements." Rather, the taxpayer was responsible for repairs and maintenance.

The Commission stated that while Act 185 may apply to the taxpayer's purchase of aircraft maintenance services and repairs, it does not apply to any portion of the subsequent lease payment to the taxpayer from its lessees. The Commission explained that sales price is the total consideration received without any reduction for such expenses of the seller and the cost of maintenance services and repair parts is an expense of the seller which is not to be deducted from the sales price of leases.

The Circuit Court reversed the Commission's decision and found that the "reimbursements" for engine and aircraft maintenance made to the taxpayer by the lessees were exempt from the sales tax. The court found

that the taxpayer was an agent for its lessees when it purchased repairs, maintenance, and parts for the aircraft, thus, the taxpayer was entitled to a sales tax exemption. In addition, the court stated that the legislative history supported an exemption because the intent was to not tax aircraft repairs, maintenance, and parts sales.

However, the Court of Appeals concluded that the portions of a lease payment for engine and aircraft maintenance are not exempt from sales tax based on the plain language of the statutes. It found that the total amount paid on the lease is subject to tax without deductions for aircraft maintenance or engine maintenance. The court stated sales tax cannot be avoided by dividing up a lease price into categories or affixing labels. It agreed that whether the taxpayer is an agent is irrelevant.

The Court of Appeals reversed the Circuit Court decision and affirmed the Commission's decision.

The taxpayer has asked the Wisconsin Supreme Court to review this decision. The Court has not yet decided whether to accept review.

### Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of January 31, 2022: chs. 66, 71, 73, 77, 78 125, and 139, and 177, [Wis. Stats.](#), and chs. Tax 1, 2, 3, 4, 7, 8, 11, and 14, [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, according to sec. 73.16(2)(a), Wis. Stats.

### Public Comments

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