

Wisconsin Tax Bulletin

April 2023 - Number 221



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General Updates and Reminders

Nexus Audits for Out-of-State Businesses

Along with administering Wisconsin's [Voluntary Disclosure](#) program, the department regularly contacts out-of-state businesses to determine if they have nexus and are required to file Wisconsin tax returns.

The first step in a nexus audit is to mail a [Nexus Questionnaire](#) requesting a response within 30 days. If a reply is not received by the date requested, a second request is mailed requesting response within 30 days.

If a response to the second questionnaire is not received, estimated assessments may be sent; or the case may be referred for a more detailed audit of the business's books and records. In either case, the goal is to engage with the business to establish the facts necessary to determine if the business has (or had) Wisconsin nexus.

When a response to the questionnaire is received, the department may do one of the following:

- Send a letter requesting the business file returns, if it appears the business has (or had) nexus. If returns are not filed by a specified date, estimated assessments may be sent.
- Send a letter stating that the business does not have a filing requirement based on the information provided and the case is closed.
- Send a letter requesting additional information to make a nexus determination.

The Nexus Questionnaire, Part C, was recently updated to add information to help businesses determine the amount of sales in Wisconsin that must be entered in the questionnaire.

Unclaimed Property Holder Reports May be Subject to Penalties

The unclaimed property voluntary disclosure program created by [2021 Wis. Act 87](#) ended February 28, 2023. As a result, holders that fail to report and deliver unclaimed property annually by the November 1 deadline may be subject to the following penalties:

- *Late filing fee*: \$150 for failure to file a timely report – sec. [177.1204\(1\)\(a\)](#), Wis. Stats.
- *Failure to pay or deliver property*: 15 percent of the value of the property that is not timely paid or delivered by November 1 of each year, unless an extension has been granted by the department – sec. [177.1204\(2\)\(a\)](#), Wis. Stats.
- *Failure to file and pay after written request*: \$100 per day for failure to file a report and deliver the property after a written request by the department – sec. [177.1204\(1\)\(b\)](#) and [\(2\)\(b\)](#), Wis. Stats.

Additional penalties may be imposed on persons who file a false or fraudulent report with intent to defeat or evade the unclaimed property laws.

Request Extensions for Unclaimed Property Holder Reports Through My Tax Account

Holders of unclaimed property may request a 60-day extension to file their annual report and remit unclaimed property by submitting a request through [My Tax Account](#). Holders may only request the extension during September or October prior to the November 1 annual deadline.

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Holders who have questions or need assistance requesting an extension may contact the Unclaimed Property Unit by phone: (608) 264-4594 or email: DORUnclaimedProperty@wisconsin.gov.

Income and Franchise Tax Updates and Reminders

Due Dates for Wisconsin Tax Returns on Extension and Estimated Tax Payments

Although most 2022 Wisconsin tax return unextended filing due dates have passed as of the date of this bulletin, taxpayers may file their 2022 Wisconsin tax return under an extension without incurring late filing fees and certain penalties. See [Publication 401](#), *Extensions of Time to File*, for information on extensions to file Wisconsin tax returns.

Caution: An extension of time to file does not extend the time to pay a balance due on a Wisconsin tax return. If tax is due, interest will be assessed on the tax due during the extension period.

Note: The dates in the chart below reflect extension due dates for a calendar year-end taxpayer unless otherwise noted. For taxpayers with a fiscal year-end, please see the specific form's corresponding instructions for due date information.

2022 Wisconsin Tax Return Extension Due Dates	
Form	Extension Due Date
Form 1: Individual Income Tax Return	October 16, 2023
Form 1NPR: Nonresident and Part-Year Resident Individual Income Tax Return	October 16, 2023
Schedule H/H-EZ: Homestead Credit Claim	April 15, 2027
Form 2: Fiduciary Income Tax Return for Estates and Trusts	October 02, 2023
Form 3: Partnership Return	September 15, 2023
Form 1CNP: Composite Individual Income Tax Return for Nonresident Partners	October 16, 2023
Form 4/6: Non-Combined/Combined Corporation Franchise or Income Tax Return (12/31 year-end)	November 15, 2023
Form 4/6: Non-Combined/Combined Corporation Franchise or Income Tax Return (6/30 year-end for taxable years beginning before January 1, 2026)	May 15, 2024
Form 4/6: Non-Combined/Combined Corporation Franchise or Income Tax Return (other than 6/30 or 12/31 year-end)	15 th day of 11 th month
Form 4T: Exempt Corporation Franchise or Income Tax Return	December 15, 2023

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2022 Wisconsin Tax Return Extension Due Dates	
Form	Extension Due Date
Form 4T: Exempt Employee's Trust, IRA, MSA Fiduciary Income Tax Return for Estates and Trusts	October 16, 2023
Form 4T: Exempt Non-Employee's Trust, IRA, MSA Fiduciary Income Tax Return for Estates and Trusts	December 15, 2023
Form 5S: Tax-Option (S) Corporation Franchise or Income Tax Return	October 16, 2023
Form 1CNS: Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders	October 16, 2023
Form PW-1: Partnerships – Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income	October 16, 2023
Form PW-1: Tax-Option (S) Corporation – Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income	October 16, 2023
Form PW-1: Estates and Trusts – Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income	November 15, 2023

Note: The dates in the chart below reflect estimated tax payment installment due dates for 2023 calendar year-end taxpayers unless otherwise noted. For taxpayers with a fiscal year-end, please see the specific form's corresponding instructions for due date information.

2023 Wisconsin Estimated Tax Installment Due Dates	
Form	Installment Due Dates
Form 1-ES: Estimated Income Tax Voucher	April 18, 2023 June 15, 2023 September 15, 2023 January 16, 2024
Form 3-ES: Partnership Estimated Tax Voucher	April 18, 2023 June 15, 2023 September 15, 2023 January 16, 2024
Form Corp-ES: Corporation Estimated Tax Voucher	April 18, 2023 June 15, 2023 September 15, 2023 December 15, 2023

2023 Wisconsin Estimated Tax Installment Due Dates	
Form	Installment Due Dates
Form Corp-ES: Corporation Estimated Tax Voucher (tax year beginning in April)	June 15, 2023 September 15, 2023 December 15, 2023 March 15, 2024
Form PW-ES: Pass-Through Entity Withholding Estimated Tax Voucher	March 15, 2023 June 15, 2023 September 15, 2023 December 15, 2023

Sales and Use Tax Updates and Reminders

Marketplace Providers and Marketplace Sellers

A marketplace provider engaged in business in Wisconsin must collect and remit Wisconsin sales or use tax on all taxable sales facilitated on behalf of a marketplace seller unless a waiver has been granted by the department. A marketplace provider must collect and remit tax regardless of whether the marketplace seller is required to be registered with the department.

Who is a marketplace seller?

A [marketplace seller](#) sells products through a physical or electronic marketplace operated by a marketplace provider.

Who is a marketplace provider?

A [marketplace provider](#) facilitates retail sales on behalf of another seller by listing or advertising for sale, in any manner, the seller's taxable products or services, and, who directly or indirectly, processes the payment from the purchaser. A marketplace provider may or may not receive compensation or other consideration in exchange for its services. For examples of marketplace providers, see [Wisconsin Tax Bulletin 209](#) (April 2020).

When is a marketplace provider engaged in business in Wisconsin?

A marketplace provider with a physical presence in Wisconsin, such as a business location, an employee, or a representative, is generally considered to be engaged in business in Wisconsin (sec. [77.51\(13g\)](#), Wis. Stats.).

A marketplace provider without a physical presence in Wisconsin is engaged in business in Wisconsin if its annual gross sales into Wisconsin, which includes taxable and nontaxable sales and sales facilitated on behalf of others, exceeds \$100,000 in the previous or current calendar year.

The following apply to marketplace providers:

- The marketplace provider is liable for tax on the entire sales price charged to the purchaser, including any amount charged by the marketplace provider for facilitating the sale, as provided in sec. [77.52\(3m\)\(a\)](#), Wis. Stats.

- The marketplace provider must notify each marketplace seller that it is collecting and remitting Wisconsin sales or use tax on sales facilitated on behalf of the marketplace seller.
- The marketplace provider must obtain and maintain each exemption certificate from a purchaser claiming an exemption for a sale facilitated on behalf of the marketplace seller.
- The marketplace provider that paid tax to the department on a sale facilitated on behalf of a marketplace seller may claim a bad debt deduction if either the marketplace provider or seller is eligible to claim a deduction under section 166 of the Internal Revenue Code for the sales transaction.
- The marketplace provider may be audited and held liable for the tax, unless it can demonstrate that the error is due to insufficient or incorrect information provided by the marketplace seller.

Waiver

A marketplace provider that facilitates sales on behalf of marketplace sellers operating under a shared hotel, motel, or restaurant brand name with the marketplace provider, as well as other types of marketplace providers, may submit an application ([Form S-102](#)) to the department to request a waiver from collecting and remitting tax on sales facilitated on behalf of marketplace sellers.

The department may grant the waiver if it is satisfied that the tax due is collected and remitted by the marketplace sellers and if there is evidence that the marketplace sellers have a history of reliably collecting and remitting tax to the department or there is other evidence that the marketplace sellers will reliably collect and remit tax to the department.

Tax Types

Marketplace providers are required to collect the following taxes (if applicable):

- State and County Sales Taxes – [Wisconsin's Sales Tax Rate Chart](#)
- Premier Resort Area Taxes – [Publication 403](#)
- Local Exposition Taxes – [Publication 410](#)
- State Rental Vehicle Fee – [Publication 202](#)
- Municipal Room Taxes – [Municipal Room Taxes](#)

For more information, see the department's web page titled [Marketplace Providers and Sellers](#).

Webinars for Temporary Event Organizers and Vendors

The department is offering webinars for event organizers. The webinars explain reporting obligations and how to complete [Form S-240](#), *Wisconsin Temporary Event Report*. In 2022, the department redesigned Form S-240 and retired the alternative reporting spreadsheet. Event organizers are encouraged to take advantage of the webinar to learn about the new form. Vendors are welcome to attend as well.

Please register on the department's [Training](#) web page and join the live webinar on Wednesday, May 10, at 2:00 p.m. In addition to discussing event reporting, department staff will be on hand to answer questions via chat during the webinar.

If you are unable to attend the live webinar, you may view a [prior recorded version](#) on our website.

Note: All organizers of temporary events must report details about the event, including all participating vendors, to the department within ten days after the conclusion of the event. Temporary events include:

<ul style="list-style-type: none">• Craft shows• Flea markets• Farmer's markets• Gun shows• Coin shows• Swap meets	<ul style="list-style-type: none">• Roadside stands• Fairs• Carnivals• Art festivals• Fundraising events• Trade shows
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Temporary event organizers must use Form S-240 to report event and vendor information.

Enforcement Report

The Wisconsin Department of Revenue Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes. Summarized below are recent developments from the department's investigations.

Dane County CPA Charged with Intentionally Failing to Pay Sales Tax, Failing to File an Income Tax Return, and Making False Statements

Kathleen Villard, CPA, of Madison, Wisconsin was charged on February 6, 2023, with one felony count of intentionally failing to pay sales tax, one misdemeanor count of failing to file a Wisconsin income tax return, and one misdemeanor count of knowingly making false statements to the Wisconsin Department of Revenue.

According to the criminal complaint, Villard is a Certified Public Accountant and was a member of the Ki Shop LLC. Villard filed four late sales tax returns in 2019 and failed to remit \$2,908.50 in sales tax due. Villard also failed to file the required 2018 and 2019 income/franchise tax returns for the partnership, and in doing so, did not report gross receipts of over \$52,000.

When speaking with Wisconsin Department of Revenue agents, Villard stated, "I was not a member of the Ki Shop" and "actually you cannot verify if I was a member or not from the Articles, and I was not." Villard continued, "I didn't have signing authority on the accounts at all" and "I did not have signing authority on the checking account." Multiple LLC documents show Villard was a member of the LLC and an authorized signer on the LLC bank account. Further, Villard signed the bank account agreement form stating Villard was a member, secretary, and custodian of records for the company. Records also show Villard issued all checks that were written from the LLC bank account.

The Wisconsin Accounting Examining Board maintains rules of conduct that state a CPA should perform all professional responsibilities with the highest sense of integrity and not knowingly misrepresent facts. When a CPA violates these duties, the board may investigate discreditable acts and may seek to suspend or revoke the CPA's license.

If convicted on all counts, Villard faces a maximum penalty of up to five years in prison and/or \$30,000 in fines.

Villard is being prosecuted by the Dane County District Attorney's Office following an investigation by the Wisconsin Department of Revenue Office of Criminal Investigation.

Dane County Former Senior Center Director Charged with Tax Fraud

Amanda M. Meade, 41, of Palmyra, Wisconsin was charged on February 21, 2023, in Dane County Circuit Court with six felony counts of filing a false or fraudulent Wisconsin income tax return for the years 2016 through 2021.

According to the criminal complaint, Meade failed to report income embezzled from the Sugar River Senior Center in Belleville, Wisconsin on Meade's Wisconsin income tax returns.

The complaint alleges that Meade accomplished the theft by paying themselves extra payroll checks and using the senior center's credit card for personal purchases. Meade is alleged to have spent the money on trips to Ireland, Hawaii, and Boston, and on Amazon purchases, home mortgage payments, and fast food.

The complaint alleges that Meade filed tax returns that understated Meade's total income by more than \$117,000. The Wisconsin income tax evaded for 2016 through 2021 is alleged to be \$8,081.

Under Wisconsin law, filing a false or fraudulent income tax return is a felony. If convicted on all counts, Meade could face up to 36 years in prison and \$60,000 in fines, or both.

Meade is being prosecuted by the Dane County District Attorney's Office following an investigation by the Belleville Police Department, the Wisconsin Department of Justice's Division of Criminal Investigation, and the Wisconsin Department of Revenue's Office of Criminal Investigation.

Milwaukee County Landscaping Company Embezzler Sentenced to Prison for Filing False Income Tax Returns

On March 17, 2023, Robin K. Nissen, 57, of Oak Creek, Wisconsin was sentenced to three years prison and six years extended supervision for filing false or fraudulent Wisconsin income tax returns. Nissen was also required to pay restitution of \$42,816 to the Wisconsin Department of Revenue.

In March 2022, Nissen was sentenced for embezzling money from Nissen's former employer, a landscaping company in Milwaukee County.

Nissen was the part-time secretary for the landscaping company for approximately eight years and was in charge of payroll and billing. From approximately 2015 until 2018, Nissen would create fictitious payments to businesses on the computer business ledger. Nissen would print a check in Nissen's name, while the business ledger would contain a false entry for who the check was payable to. These checks were printed at the employer's location.

During that time, Nissen fraudulently wrote over \$600,000 worth of checks to themselves and deposited them into Nissen's personal account. This was all done without the consent of the employer.

The Wisconsin Department of Revenue's investigation further revealed that Nissen failed to accurately report income while filing Nissen's Wisconsin taxes. For tax years 2015 and 2018, Nissen failed to report the embezzlement income and thereby evaded more than \$14,000 in Wisconsin income tax by understating the gross income. In doing so, Nissen rendered false or fraudulent income tax returns with the intent to defeat or evade any assessment required by Wisconsin income tax law.

Nissen was prosecuted by the Milwaukee County District Attorney's Office following an investigation by the City of Milwaukee Police Department and the Wisconsin Department of Revenue's Office of Criminal Investigation.

Monroe County Private Investigator Charged with Tax Fraud

Keith S. Burch, of Warrens, Wisconsin was recently charged in Monroe County Circuit Court with three felony counts of filing a false or fraudulent Wisconsin income tax return for tax years 2016 through 2018.

According to the criminal complaint, Burch failed to report self-employment income earned from a private investigations business. The business was named Midwest Investigations prior to 2014 and then changed to Coulee Investigations. The complaint alleges that Burch filed tax returns that understated business income by more than \$226,000, thereby evading over \$13,000 in Wisconsin income tax.

The complaint states that the unreported business receipts came from a single payer, a divorcee that Burch took on as a client. The victim developed romantic feelings for Burch and in addition to the approximately \$226,000 in cash and checks, the victim also purchased Burch a handgun, a crossbow, paid Burch's rent and cellphone bills, and bought Burch a variety of gift cards.

Under Wisconsin law, filing a false or fraudulent income tax return is a felony. If convicted on all counts, Burch faces a maximum penalty of up to 18 years in prison and/or \$30,000 in fines. Burch is being prosecuted by the Monroe County District Attorney's Office following an investigation by the Wisconsin Department of Justice, Division of Criminal Investigation, and the Wisconsin Department of Revenue's Office of Criminal Investigation.

Sauk County Town Treasurer Charged with Theft and Misconduct in Public Office

Brittany L. Syvrud, 36, of Rock Springs, Wisconsin was recently charged in Sauk County Circuit Court with one felony count of theft from a business setting and one felony count of misconduct in public office. The charges followed an investigation into Syvrud's tax affairs.

According to the criminal complaint, Syvrud worked as the Town of Excelsior treasurer and was responsible for processing property tax payments. Syvrud deposited property tax payments into a personal checking account totaling over \$8,000 and manipulated town records to cover up the theft. Syvrud manipulated the records in such a way so that the town was victimized and the individual taxpayers whose checks were taken were not harmed.

Syvrud was interviewed and after some initial resistance, admitted to stealing the checks due to a perceived financial need. Syvrud later resigned as Town of Excelsior treasurer.

If convicted on both counts, Syvrud faces a maximum penalty of up to nine and a half years in prison and/or \$20,000 in fines. Syvrud is being prosecuted by a special prosecutor from the Juneau County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Office of Criminal Investigation.

Winnebago County Resident Sentenced for Elder Abuse and Tax Fraud

Terry Lynn Culver, 64, of Oshkosh, Wisconsin was sentenced on March 28, 2023, by Winnebago County Circuit Court Judge Daniel Bissett for financial elder abuse and income tax fraud. Culver was convicted by a jury on October 13, 2022, of eight class H felonies in relation to the theft of over \$426,000 from a 92-year-old resident of a nursing home.

According to the criminal complaint, Culver acted as power of attorney for the victim. After the victim moved into a nursing home, Culver removed over \$426,000 from the victim's bank accounts and spent the money on home improvements and vehicles and at bars, restaurants, and casinos. The complaint also alleges that Culver filed false and fraudulent tax returns with the Wisconsin Department of Revenue for five years.

Culver was ordered to pay \$9,211 in restitution to the Wisconsin Department of Revenue and \$258,997.44 to the victim's estate. To help pay restitution, Judge Bissett granted the State's petition to seize Culver's home.

Culver was sentenced to three years of incarceration in prison, followed by six years of supervision.

Culver was prosecuted by the Wisconsin Department of Justice, Attorney General's Office following an investigation by the Wisconsin Department of Justice's Division of Criminal Investigation and the Wisconsin Department of Revenue's Office of Criminal Investigation.

Report on Litigation

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

Corporation Franchise and Income Tax

Intercompany Transactions – Valid Business Purpose and Economic Substance

Skechers USA, Inc. v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 24, 2023).

In a recent corporate franchise tax case, the Wisconsin Tax Appeals Commission determined it was proper for the Wisconsin Department of Revenue to disallow deductions for royalties and other expenses paid to an affiliate. The Commission agreed with the department's identification of a series of intercompany transactions between the parent corporation, Skechers USA, Inc. (Skechers), and the subsidiary corporation, Skechers USA, Inc. II (SKII) as sham transactions which lacked a valid business purpose, other than avoiding taxes, and lacked economic substance.

In 1999, Skechers restructured from a tax-option (S) corporation to a C-corporation and formed a subsidiary. The parent transferred \$18 million and intellectual property in exchange for the subsidiary stock. The corporations then entered into two intercompany agreements, a Licensing Agreement, and a Management Services Agreement. During the audit period, 2000-2003, Skechers claimed a deduction for royalties and interest paid to SKII for the use of intellectual property. These deductions reduced the Wisconsin taxable income, so the department asked for information explaining how the royalty payment and intercompany interest had been determined. This information was not provided, and the deductions were disallowed.

Section [71.30\(2\)](#), Wis. Stats., gives the department authority to distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among organizations, trades, or businesses, when necessary to prevent evasion of taxes or clearly to reflect the income. However, Wisconsin statutes and regulations do not provide additional relevant guidance in interpreting sec. 71.30(2), Wis. Stats. So, the Commission reviewed a previous case with a similar fact pattern, [Hormel Foods Corp. v. Wisconsin Dept. of Revenue, \(WTAC March 29, 2010\)](#).

Both parties agreed the *Hormel* decision provided a valid test applicable to this case. Consequently, Skechers was required to prove the transactions in question had both (1) a business purpose and (2) economic substance. However, Skechers claimed the department was not correctly applying the *Hormel* decision. The Commission noted the *Hormel* case looked at facts and circumstances outside the audit period when establishing a business purpose and economic substance. Skechers argued that in this case; however, the department was ignoring the substantial growth experienced by SKII from 2003 to 2019 (a

period of time outside the audit period). Skechers claimed the growth demonstrated the reason for SKII's existence with a viable business purpose. The Commission summarized the issue; "the parties agree with many of the facts in this case. Where they differ is in how those facts are reviewed and applied to determine whether Petitioner had a valid business purpose for the transaction other than tax avoidance and whether those transactions had any economic substance."

The Commission rejected Skechers' application of the *Hormel* case commenting, "*Ironically, Petitioner's assertion that "[a] thorough review of the relevant facts reflects that SKII was a "viable business" engaged in "substantive business activity" at the moment it was formed" is part of the reasoning for the Commission's determination there was no valid business purpose other than tax avoidance in the creation of SKII. Even Petitioner's Chief Operating Officer acknowledged ... the formation of SKII merely documented the way the company was currently operating - and would continue to operate. This begs the question - if nothing changed in Petitioner's operations, aside from continuing to grow its markets, expand its brand and increase its sales - why create SKII? Tellingly, the reasons presented by Petitioner through its evidence and testimony were all generated after SKII was created. The reasons presented by Skechers before the creation of SKII all addressed tax savings - and only tax savings." The Wisconsin Tax Appeal Commission also found the Chief Financial Officer's testimony, "that he had not met with the tax planners", was not credible in light of the other evidence. Additionally, Skechers incorrectly framed the department's position, stating "The department's position is that Skechers was not entitled to the claimed tax deductions because the decision to form SKII in 1999 lacked a valid business purpose and was without economic substance...[emphasis added] The department's decision was based upon the transactions between Skechers and Skechers II."*

The Commission broke down the fact analysis into three parts: (1) Was there a valid business purpose for creating SKII? (2) Was there a valid business purpose in the transfer of domestic intellectual property to SKII and the licensing of intellectual property back to Skechers? (3) Did the transfer of domestic intellectual property to SKII and the licensing of intellectual property back to Skechers have economic substance?

Was there a valid business purpose for creating SKII?

The restructuring plan originated from a proposal to lower net income in "separate entity" states (such as Wisconsin). Skechers was not able to produce support for creating the subsidiary, other than tax avoidance and conceding "nothing changed before and after the creation of SKII and the transactions under review in this case."

The Commission concluded the documentation and testimony identified no (a) business problem or need or (b) benefit to be obtained (other than tax avoidance) for creating SKII or the transactions at issue. Additionally, all of the documentation focused entirely on tax savings.

Was there a valid business purpose in the transfer of domestic intellectual property to SKII and the licensing of the intellectual property back to Skechers?

Skechers claimed forming SKII helped protect the existing intellectual property by placing all of those responsible for creating and protecting intellectual property into SKII. However, since the Chief Executive Officer (CEO) and chief decisionmaker for the affiliated group assisted in identifying and protecting intellectual property, that claim could not be appreciated until the CEO leaves this position.

The Commission concluded based on the facts stated above and pursuant to the *Hormel* decision, Skechers failed to prove by clear and satisfactory evidence there was a valid subjective business purpose for the transfer of the domestic rights to Skechers' intellectual property, and the license back, other than obtaining the tax savings.

Did the transfer of domestic intellectual property to SKII and the licensing of the intellectual property back to Skechers have economic substance?

The department argued the licensing transactions created no meaningful economic pretax change and, in accordance with the state tax minimization plan, Skechers claimed \$495 million of deductions just for moving money from one entity to another without the potential for profit or risk of loss.

Skechers "points to the fact that as the business continued to grow, the number of SKII employees increased from 128 in 2003 to 303 [in] 2019, that its 3rd party licensing revenue grew proportionally with its employee count, that it incurred substantial expenses to generate that licensing revenue and that due to the exponential growth of its business all SKII employees needed to move to [a] new larger office space."

The Commission, in concluding that Skechers failed to prove the transactions in question had economic substance, noted (1) a viable business entity was already in existence prior to the reorganization paperwork and (2) again Skechers missed the focus of the appeal, which is whether the two actual transactions, (the transfer of Intellectual Property to SKII and the licensing of it back to Skechers) had economic substance.

The Petitioners have appealed to the Dane County Circuit Court.

Pass-Through Withholding Tax

Pass-Through Entities Required to File Pass-Through Withholding Return and Submit Withheld Tax Each Year There Is Wisconsin Income

RADS Partnership, Via Cresta, L.P., Laughing Cow, LP, Westmar LTD, and Finger Living Trust (Petitioners) v. Wisconsin Department of Revenue (Dane County Circuit Court, February 20, 2023).

This is a judicial review of the Wisconsin Tax Appeals Commission's decision dated July 25, 2022. See [Wisconsin Tax Bulletin 219](#) (October 2022), pages 16-18, for a summary of the Commission's decision.

The issues are whether the Petitioners, who are pass-through entities, are liable for pass-through withholding tax under sec. [71.775](#), Wis. Stats., and whether the trust Petitioner is liable for fiduciary income tax based on income the Petitioners received during tax year 2013.

Because the department was not properly served and the Circuit Court therefore lacks jurisdiction, the Circuit Court dismissed the petition for review.

The Petitioners have appealed to the Wisconsin Court of Appeals.

Sales and Use Tax

Sales of Tickets to Sporting and Entertainment Events

StubHub Inc v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 28, 2023).

The primary issue in this case is whether sales tax is due for secondary ticket sales to sporting and entertainment events, and if so, whether StubHub was responsible to collect and forward sales tax to the department.

StubHub operated an online marketplace where businesses and individuals sold tickets to sporting events, concerts, theater, and other live entertainment services. StubHub participated in other business activities to promote its online marketplace for the purchase and sale of tickets.

Buyers made one payment to StubHub which consisted of the ticket price set by the ticketholder and the fees charged to the buyer by StubHub. StubHub next paid itself the fees due it from the ticketholder and the buyer and then sent the remaining monies paid by the buyer to the ticketholder.

StubHub charged ticket buyers and ticketholders a fee based on a percentage of the ticket price, as well as a logistics fee. In 2013, StubHub began charging logistic fees on a per ticket basis, rather than a per order basis.

For the period reviewed, StubHub had in place a FanProtect Guarantee for both buyers and ticketholders. FanProtect Guarantee promised buyers valid, timely tickets. If this didn't occur StubHub promised to find suitable replacement tickets or issue a full refund. Buyers were not permitted to contact the ticketholder, the ticketholder could adjust the ticket price before the ticket sold, and the ticketholder would receive payment for tickets sold and delivered.

The department claimed StubHub owed sales or use tax on the full purchase price of all tickets sold by StubHub to events in Wisconsin during the audit period.

StubHub argued it was neither a retailer nor a seller under Wisconsin law. StubHub characterized its role as "entirely passive in the sales process via its online marketplace."

However, the Wisconsin Tax Appeals Commission found StubHub's role in the sales is not entirely passive as StubHub determines the final price of tickets by adding its own fees on a per transaction basis, has agents involved in physically mailing tickets as well as proprietary software that can issue new QR codes for electronic tickets sold on the online marketplace. The Commission found that the FanProtect Guarantee was not a guarantee that would be offered by a passive marketplace.

StubHub argued that that the plain language of sec. [77.51\(14\)\(m\)](#), Wis. Stats., does not apply to StubHub. The department disagreed. The Commission found that StubHub's books and records showed the transactions created for the transferee and transferor, and the creation of the transaction in StubHub's marketplace constituted a sale under Wisconsin law. The Commission further found that StubHub is transferring both the enjoyment of admissions as well as possession of the tickets which represent the right to admissions. The Commission points out that under case law a ticket for admission *is* an admission.

The Commission also found that the decision in *Orbitz* supported taxation of the transactions at issue, since the statute in *Orbitz* distinguished between sale and furnishing of lodging, while the statute making admissions subject to sales tax does not distinguish between sale and furnishing of admissions.

The Commission noted that due to StubHub's complete control over the ultimate purchase price paid by the ticket buyer, as well as StubHub's control over the receipt and accounting of payment by the ticket buyer, it considers StubHub to be liable for collecting and remitting sales tax like vending machine operators who were liable for Wisconsin sales tax.

The Commission states that although the tickets were sold online, the sale at retail of admissions to venues located in Wisconsin constitutes a retail sale in Wisconsin.

The Commission concluded:

- StubHub was a retailer providing the service of selling taxable admissions at retail in Wisconsin to amusement, athletic, entertainment and/or recreational events.

- StubHub was liable in the alternative with the ticketholders listing tickets on StubHub's online marketplace for the sales tax due on the sale of admissions to the events.
- StubHub had the necessary nexus with Wisconsin to be subject to the Wisconsin sales tax statutes.
- The department's imposition of penalty was not supported by the facts, law, and department publications in place at the time of the transactions at issue.

StubHub has appealed this decision to Dane County Circuit Court.

Sales Price of Aircraft Leases

Citations Partners LLC v. Wisconsin Department of Revenue (Wisconsin Supreme Court, March 1, 2023). On 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 Court's August 20, 2020, ruling to the contrary.

See [Wisconsin Tax Bulletin 216](#) (January 2022), page 25, [Wisconsin Tax Bulletin 211](#) (November 2020), page 12, and [Wisconsin Tax Bulletin 208](#) (January 2020), page 13, for summaries of these 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 the lease payment attributed to aircraft maintenance and engine maintenance are statutorily exempt from tax.

In 2013, Wisconsin Act 185 expanded an existing sales tax exemption to include the sale of aircraft parts and maintenance. The taxpayer stopped collecting tax on the portion of the lessees' payments attributed to aircraft repairs and engine maintenance. The department notified the taxpayer that sales tax was due on those amounts. The taxpayer appealed.

The Wisconsin Tax Appeals Commission held that sales tax applies to the full lease payment. 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 expenses of the seller and the cost of maintenance services and repair parts is an expense of the seller that is not to be deducted from the sales price of leases.

The Circuit Court reversed the Commission's decision on the grounds that an agency relationship existed between the taxpayer and lessees. Thus, the taxpayer was entitled to a sales tax exemption since those payments would be tax-free if they were made directly by the lessees to the vendors.

The Court of Appeals reversed the Circuit Court's decision. The Court of Appeals found the existence of an agency relationship was irrelevant. Instead, it held the payments were not exempt from sales tax under the plain language of the statutes which apply sales tax to "the total amount paid on an aircraft lease," without "any deduction for the portions of a lease attributed to aircraft maintenance or engine maintenance, which are the costs and expenses of running an aircraft leasing business."

The Wisconsin Supreme Court concluded that the exemption did not apply, since the taxpayer does not sell to its lessees "parts used to modify or repair aircraft" or "repair, service, . . . or maintenance of any aircraft." It leases its aircraft to the lessees. When the taxpayer buys aircraft repairs or engine maintenance directly, those transactions are tax exempt, but when those costs are passed along to its customers as part of the total amount of consideration in a lease, that transaction is taxable. The full amount of the lease payment was subject to sales tax.

The Wisconsin Supreme Court also found that the lease documents showed there was no agency relationship between the taxpayer and its lessees. The lessees did not have the right to control Citation Partners' conduct. Rather, Citation Partners, as owner of the aircraft, was in charge of all repairs and maintenance, and the lessees did not control how it fulfilled that responsibility.

The Wisconsin Supreme Court affirmed the Court of Appeals' decision.

Lease of Taxicabs – State Rental Vehicle Fee

Green Cab of Madison, Inc. v. Wisconsin Department of Revenue (Circuit Court of Dane County, February 14, 2023). See [Wisconsin Tax Bulletin 217](#) (April 2022), page 18, for a summary of the Wisconsin Tax Appeals Commission decision.

The primary issue in this case was whether Green Cab's activities were taxable under sec. [77.995\(2\)](#), Wis. Stats. This statute imposes a 5% state rental vehicle fee on rentals by establishments primarily engaged in short-term rental of vehicles without drivers for 30 days or less. It also applies to the rental of limousines. A driver's charge to customers for taxicab services does not constitute a taxable sale under sec. [77.995](#), Wis. Stats., because it is not the rental of a vehicle without a driver. The statute also excludes taxicabs from the definition of limousine, so a driver's charge to a customer renting a minivan used as a taxi would not constitute a taxable sale.

The Wisconsin Tax Appeals Commission determined that Green Cab's activities of primarily renting driverless vehicles for less than 30 days to independent contractor licensed taxi drivers for use in taxicab services constituted a short-term term rental under sec. [77.995\(2\)](#), Wis. Stats. It found the rentals to be subject to Wisconsin's state rental vehicle fee.

Despite Green Cab's assertion that its business provided taxicab services, not the short-term rental of vehicles without drivers, the Circuit Court affirmed the Commission's decision. Considering both the income Green Cab generated from renting its taxicabs to drivers and its overall business activities, the Circuit Court agreed with the Commission's finding that Green Cab's primary business was the short-term rental of vehicles without drivers. It also disregarded Green Cab's argument that the exclusion of limousines from the definition of taxicabs meant that limousines, not taxicabs were subject to the tax. The Circuit Court found sec. [77.995\(2\)](#), Wis. Stats. to be unambiguous, noting "Had the Legislature wanted to exclude rental of taxicab cars to taxicab drivers, it knew how to do so. That it included no such exemption while including other exclusions and exemptions in the same statute shows an intentional choice not to broadly exclude rental of vehicles used as taxicabs from all application of this statute."

The time period for Green Cab to have appealed the Circuit Court's decision has passed; Green Cab has not filed an appeal and the decision is now final.

Unclaimed Property

Nexus – Abandoned Proceeds from Official Checks

Delaware v. Pennsylvania and Wisconsin, et al. (United States Supreme Court, February 28, 2023).

The issue is whether abandoned proceeds from official checks are sent to the unclaimed property agency of the State in which the owning corporation is incorporated, or the State in which the property was purchased.

MoneyGram Payment Systems, Inc. (MoneyGram), is a global provider of money transfer services incorporated in Delaware. MoneyGram issued "Retail Money Orders," "Agent Check Money Orders,"

"Agent Checks," and "Tellers Checks," which are known by the generic term of "official checks." Purchasers of official checks prepay the face value of the instrument, plus any fees. MoneyGram then holds the proceeds until the intended payee presents the instrument for payment.

MoneyGram had been sending abandoned official checks to Delaware. Delaware maintained that because MoneyGram was incorporated in Delaware, Delaware was entitled to these checks under common-law rules of unclaimed property. In 2014, a group of other States, including Wisconsin and Pennsylvania, argued that Delaware was not entitled to these checks because a federal law, the Disposition of Abandoned Money Orders and Traveler's Checks Act (FDA), required that abandoned proceeds of official checks should go to the State where the products were purchased because official checks were similar to money orders.

Because this was a dispute between States, the Supreme Court decided the issue. The Supreme Court agreed that the abandoned official checks were governed by the FDA because they were sufficiently similar to money orders and therefore fell within the "other similar written instrument" category of the FDA. The court found that the official checks were similar to money orders in function and operation, and that they, like money orders, were not treated fairly under the Court's common-law rules. Under common-law rules, abandoned property belongs to the corporation's state of incorporation.

Because the Court found the instruments to fall under the FDA, the FDA's rules apply, and abandoned official checks must be reported to and given to the unclaimed property agency of the State where the products were purchased. This means that official checks purchased in Wisconsin will now be reported to and provided to the State of Wisconsin, which should make it easier to reunite these abandoned checks with their owners.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of April 28, 2023: chs. 71, 73, 77, and 177, [Wis. Stats.](#), and chs. Tax 1, 2, 3, 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.