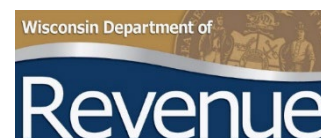


Wisconsin Tax Bulletin

July 2024 Number 226



If you would like to receive notification when a new *Wisconsin Tax Bulletin* is available, [subscribe to the mailing list](#) for sales and use tax or tax professionals.

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New Tax Laws

Remote Retail Sales of Cigars and Pipe Tobacco

([2023 Wis. Act 150](#), renumber sec. 139.75(1) to 139.75(1h); amend secs. 139.75(12), 139.76(1), 139.78(1), and 139.82(1), (2)(a), (6), and (8); and create secs. 139.75(1d), (1p), (5u), (6c), and (6g), 139.76(1p), 139.78(1p), 139.795, and 139.815, effective January 1, 2025)

The Act authorizes remote retail sales of cigars and pipe tobacco to consumers in Wisconsin if the remote retail seller obtains a permit from the department. Remote retail sales of cigars and pipe tobacco are sales to consumers in which the consumer submits the order over the phone, internet, or other means in which

the seller is not in the physical presence of the consumer, and sales delivered to the consumer by common carrier, private delivery service, or other method of remote delivery where the seller is not in the physical presence of the consumer when the consumer obtains possession of the cigars or pipe tobacco. Remote retail sales permittees are required to follow regulatory and recordkeeping provisions that apply to other cigarette, tobacco product, and vapor product permittees under ch. [139](#), Wis. Stats.

Upon obtaining a permit, remote retail sellers must file excise tax returns and pay excise taxes to the department on remote retail sales of cigars and pipe tobacco. The Act imposes an excise tax on cigars and pipe tobacco of 71% of the "actual cost" to the distributor or remote retail seller, not to exceed 50 cents for each cigar. "Actual cost" is defined in sec. [139.75\(1d\)](#), Wis. Stats., to the total price charged by the manufacturer including, fees, duties, federal excise taxes, marketing costs, and transportation costs, and the total price cannot be reduced by the value or cost of discounts.

The Act is effective January 1, 2025. The department will provide further information on its website when the permit application is available. Sign up to receive email updates from the department by subscribing to the Cigarette, Tobacco and Vapor Products [mailing list](#).

General Updates and Reminders

Closing Business Tax Accounts in My Tax Account

The department recently added the ability to allow authorized third-party My Tax Account (MTA) users to request inactivation of most business tax accounts. Before this change, only MTA users with Master or Account Manager access could close business tax accounts within MTA.

To begin in MTA, go to the entity or individual you want to inactivate an account for. Select the link to the account you want to inactivate. Select the Close Account link, fill in the required fields, and submit. You will receive a confirmation of your submission and the business tax account will be inactivated as requested.

Note: This feature is restricted to certain business tax types. Not all tax accounts can be closed via My Tax Account.

Contact the department at DORMyTaxAccountHelp@wisconsin.gov or (608) 266-2776 with any questions.

Income and Franchise Tax Updates and Reminders

Filing W-2 and 1099 Information Returns

The department matches all Forms W-2 wage statements and 1099 information returns filed by employers and payers with amounts reported by the employees and payees on their income tax returns. This matching is done to detect fraud and is more efficient when employers and payers file their wage and information returns electronically. The additional time it takes to process paper-filed returns may delay your employee's or payee's income tax refund.

Wisconsin offers free electronic filing of Forms W-2, 1099, and WT-7 through our My Tax Account (MTA) secure system. More information is described in the department's [File and Pay Withholding Tax](#) training video. **Note:** Wisconsin plans to allow payers to file their 2024 information returns using the new Internal Revenue Service (IRS) XML schema (a.k.a., IRIS). This will allow payers to file the returns with the IRS and Wisconsin using the same format.

Wisconsin scans paper filed documents and has new requirements for submitting wage and information returns on paper. Starting December 1, 2024, if a business is not able to file electronically, the businesses must print and send Copy 1 (for state tax departments) with only one document per page using the approved IRS format. Send the documents in a flat mailer (not folded). More information is available in [Publication 117](#), *Guide to Wisconsin Wage Statements and Information Returns*.

Reminder: Wisconsin requires electronic filing of Forms W-2 and 1099 returns and a penalty is assessed if more than nine paper returns are filed.

Income and Franchise Tax Liability for Temporary Sellers

Individuals and businesses from outside Wisconsin may be required to file Wisconsin income or franchise tax returns and report income earned from doing business in Wisconsin. This includes certain business activities conducted temporarily in Wisconsin. Vendors at temporary events in Wisconsin like fairs, festivals, art shows, flea markets, swap meets and similar events should become familiar with these income and franchise tax filing requirements.

"Nexus" is a term used to describe this filing requirement. It means that a person's business activity is of such a degree that Wisconsin has jurisdiction to impose an income tax or franchise tax measured by net income. Businesses may request a nexus determination from the department by submitting the [nexus questionnaire](#).

Activities that create nexus include:

- Ownership of inventory in Wisconsin whether or not used to fill sales orders, unless limited by Public Law 86-272.
- Operation of mobile stores in Wisconsin, regardless of frequency or whether the salesperson is an employee.
- Regularly having employees or representatives in Wisconsin soliciting orders with authority to approve them.

In addition, the following activities may create nexus, unless the **only** activity in Wisconsin by employees or representatives is soliciting orders for tangible personal property which orders are sent outside Wisconsin for approval or rejection and are filled by delivery from a point outside Wisconsin:

- Regularly selling products or services of any kind or nature to customers in Wisconsin that receive the product or service in Wisconsin.
- Regularly soliciting business from potential customers in Wisconsin.

"Regularly" means 15 or more days of activity. Fifteen days of activity means one person for 15 days or 15 persons for one day, or any combination of persons and days that results in at least 15 person-days of activity. "Days of activity" include any day, or portion thereof, upon which business activity took place. "Days of activity" do not include travel days, holidays, or weekends, unless business activities were conducted on those days.

Wisconsin's regulations regarding income and franchise tax nexus are described in sec. [Tax 2.82](#), Wis. Adm. Code.

Nexus Unit General Contact info:

phone: (608) 266-3969

FAX: (608) 266-5464

email: DORNexusUnit@wisconsin.gov

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

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

The extended due date of a 2023 [Form 3](#), *Wisconsin Partnership Return*, for a calendar-year partnership is September 16, 2024, and the extended due date of a 2023 [Form 5S](#), *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*, for a calendar-year tax-option (S) corporation is October 15, 2024.

For additional information on making the entity-level tax election, see the following:

- Article titled *Election to Pay Tax at Entity Level for Tax-Option (S) Corporations and Partnerships*, on pages 2 and 3 of [Wisconsin Tax Bulletin 204](#) (January 2019)
- [Pass-Through Entity-Level Tax: Partnerships](#) common questions
- [Pass-Through Entity-Level Tax: Tax-Option \(S\) Corporation](#) common questions

The following table shows filing statistics for the entity-level tax election made on 2022 tax returns:

2022 Tax Year	
(Statistics as of July 9, 2024)	

Tax-Option (S) Corporations (Form 5S) Filing Stats	
Tax-Option (S) Corporation returns filed	90,531
Tax-Option (S) Corporation entity-level tax elections filed	7,718
Percent of entity-level tax elections filed	8.53%

Partnership (Form 3) Filing Stats	
Partnership returns filed	87,790
Partnership entity-level tax elections filed	3,745
Percent of entity-level tax elections filed	4.27%

Pass-Through Entity Filing Stats – TOTAL	
Pass-Through entity returns filed	178,321
Entity-level tax elections filed	11,463
Percent of entity-level tax elections filed	6.43%

Reminder: Composite Returns, Form 1CNP or 1CNS

A partnership or tax-option (S) corporation with income or loss from business transacted, services performed, or property located in Wisconsin may file a Wisconsin individual income tax return on behalf of their eligible nonresident individual partners or shareholders using [Form 1CNP](#), *Composite Wisconsin Individual Income Tax Return for Nonresident Partners*, or [Form 1CNS](#), *Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders*. **Note:** A separately filed [Form PW-1](#), *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, may also be required.

A Nonresident Individual Partner or Shareholder Filing an Original Form 1NPR May Not Be Included on a Composite Return, Form 1CNP or 1CNS

For additional information on a nonresident partner's or shareholder's eligibility to be included on Form 1CNP or 1CNS, see the [Form 1CNP instructions](#) or [Form 1CNS instructions](#).

Reporting Income or Loss for a Limited Liability Company or Grantor Trust Treated as a Disregarded Entity on a Composite Return, Form 1CNP or 1CNS

If a nonresident partner or shareholder is a limited liability company (LLC) or grantor trust treated as a disregarded entity (i.e., the entity is not required to file an income tax return separate from its owner), the owner of the LLC or grantor of the grantor trust is deemed to be the partner or shareholder for purposes of filing Form 1CNP or 1CNS.

When reporting a nonresident partner's or shareholder's allocated portion of income or loss on Schedule 2 of Form 1CNP or 1CNS, do not use the FEIN of the disregarded entity to report the income. Rather, use the social security number (SSN) of the nonresident owner or grantor. In addition, all income attributable to the owner or grantor must be reported under the owner or grantor's SSN. Do not report the SSN more than once in Column (B). All income or loss reportable by the nonresident individual and the disregarded entity (i.e., shown on separate Schedules 3K-1 or 5K-1) must be combined when reporting the amounts on Schedule 2 of Form 1CNP or 1CNS.

Example:

Facts:

- Tax-Option (S) Corporation ABC has three equal shareholders:
 1. Nonresident Individual D
 2. Nonresident Individual E
 3. Nonresident Grantor Trust F (treated as a disregarded entity)
- Individual D is the grantor of Grantor Trust F
- Tax-Option (S) Corporation ABC's Wisconsin net income for 2023 is \$30,000

Form 1CNS Reporting Requirement:

If all of the shareholders file on Form 1CNS, ABC should report the following on Form 1CNS, Schedule 2, Columns (A), (B), (C), and (D1):

Column (A) Name and Address	Column (B) SSN	Column (C) Pro Rata Share (%)	Column (D1) Shareholder's Share of WI Net Income (Loss)
D's name and address	D's SSN	66.67% (Total ownership of D and F)	\$20,000 (Total WI net income of D and F)
E's name and address	E's SSN	33.33%	\$10,000

For additional information on filing Form 1CNP or 1CNS, see the [Form 1CNP instructions](#), [Form 1CNS instructions](#), or [Composite Returns](#) common questions.

Most Commonly Used Wisconsin Franchise and Income Tax Credits

Wisconsin tax law provides a wide variety of franchise and income tax credits. For an extensive list and additional information, see article titled *Reporting Certain Franchise/Income Tax Credits As Income*, on pages 3 and 4 of [Wisconsin Tax Bulletin 205](#) (April 2019), and the [Interactive Incentive Finder](#).

Below are statistics of the most commonly used credits by corporations for tax year 2021 and individuals for tax year 2022.

Commonly Used Corporate Franchise/Income Tax Credits, Tax Year 2021 (Statistics as of June 13, 2024)				
Corporate Tax Credit	Number of Claimants Using Credit	Amount of Credit Used	Credit Available	Credit Carried Forward
Manufacturing credit	474	\$125,138,752	\$344,318,896	\$219,180,144
Nonrefundable research expense credit	502	\$63,397,841	\$617,795,315	\$554,397,474
Enterprise zone jobs credit	12	\$53,007,771	Refundable	
State historic rehabilitation credit	18	\$28,449,239	\$31,177,459	\$2,728,220
Refundable research expense credit	620	\$18,055,222	Refundable	
Internal combustion engines research credit	63	\$12,113,692	\$57,991,106	\$45,877,414
Business development credit	34	\$6,656,616	Refundable	
Manufacturing investment credit	15	\$2,786,914	\$50,201,454	\$47,414,540
Economic development credit	8	\$2,710,302	\$21,584,074	\$18,873,772

Commonly Used Individual Franchise/Income Tax Credits, Tax Year 2022 (Statistics as of May 31, 2024)				
Individual Income Tax Credits	Number of Claimants Using Credit	Amount of Credit Used	Credit Available	Credit Carried Forward
School property tax credit	2,055,511	\$451,268,617	\$521,181,806	No carryforward
Taxes paid to other states credit	81,476	\$430,457,635	\$445,763,529	No carryforward
Manufacturing credit	8,541	\$311,989,656	\$619,522,449	\$307,532,793
Itemized deduction credit	618,882	\$274,188,049	\$570,625,899	No carryforward
Married couple credit	633,465	\$259,898,445	\$264,084,216	No carryforward
Earned income credit	190,259	\$79,634,333	Refundable	
Veterans and surviving spouses property tax credit	13,826	\$47,993,464	Refundable	
Homestead credit	93,567	\$45,879,222	Refundable	
Agriculture credit	12,285	\$34,214,094	\$115,292,685	\$81,078,591
Additional child and dependent care credit	98,203	\$27,632,623	\$31,550,158	No carryforward

Withholding Tax Updates and Reminders

Worker Classification: Employee or Independent Contractor

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

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

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

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

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

- *1.5 percent interest per month* - Delinquent withholding deposits or payments shall bear interest at the rate of 1.5 percent per month. **Note:** During a period in which an extension is granted, interest accrues at the rate of 1 percent per month (sec. [71.82\(2\)\(d\)](#), Wis. Stats.).
- *Disallowed wage expense deduction* - If an employer fails to file wage statements (e.g. Form W-2), DOR may assess as an addition to taxable income the amount of deductions taken in arriving at federal adjusted gross income or federal taxable income by natural persons and fiduciaries for wages (sec. [71.74\(4\)](#), Wis. Stats.).
- *\$10,000 fine and/or 9 month prison sentence* - Any person who willfully fails or refuses to make required withholding deposits or payments or willfully renders a false or fraudulent wage statement (e.g. Form W-2) or report (e.g. Form WT-6 or Form WT-7) shall be guilty of a misdemeanor and may be fined not more than \$10,000 or imprisoned for not to exceed 9 months or both, together with the cost of prosecution (sec. [71.83\(2\)\(a\)1.](#), Wis. Stats.).

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

Note: The United States Department of Labor (USDOL) recently published a final rule, [Employee or Independent Contractor Classification Under the Fair Labor Standards Act](#), which revised the USDOL's guidance on how to analyze who is an employee or independent contractor under the Fair Labor Standards Act (FLSA). The final rule became effective as of March 11, 2024.

The USDOL's [Frequently Asked Questions](#) page for the rule specifically notes that the rule does not directly affect any other laws—federal, state, or local—that use different standards for employee classification, such as the Internal Revenue Code or any existing IRS guidance. However, businesses who engage independent contractors should be aware of this new rule. Any businesses that have not already reviewed the new rule may wish to do so at this time to ensure their classification of independent contractors complies with the FLSA.

Any questions about FLSA rules should be directed to the appropriate office at the [USDOL](#) and not to the Wisconsin Department of Revenue.

Sales and Use Tax Updates and Reminders

City and County of Milwaukee Tax Outreach

Effective January 1, 2024, all sales and purchases within the city of Milwaukee are subject to an additional 2.0% tax. In addition, all sales and purchases in Milwaukee County have increased to a rate of 0.9% (previously 0.5%). The department may contact retailers making sales in or into these tax districts to ensure they are collecting and remitting the correct taxes.

The department added a pop-up window to the Wisconsin sales and use tax return in My Tax Account (MTA) to alert filers when tax liabilities may be incorrectly reported or missed entirely on the return. This pop-up window directs the filer to go back and add the correct tax or provide an explanation if there is no tax to report. These returns and explanations are reviewed, and filers are contacted if further follow up is needed. Providing detailed explanations when filing your return may avoid future contact for additional information.

The department may contact a business to amend their sales tax returns when they appear to have a county, city, or other local tax requirement, but do not appear to be properly reporting or paying amounts

due. Businesses that do not properly report sales and use taxes may receive an assessment for underreported or unreported tax plus accrued interest. Notices may be appealed if you do not agree with the assessment. Use MTA to file, amend, or appeal sales and use tax returns and notices.

It is also important that retailers notify the department of every permanent business location in Wisconsin. By law, retailers are required to have a seller's permit for every business location from which they make sales, and must publicly post the seller's permit with that specific location's address. If your business locations are not correct or incomplete, please contact the department's Customer Service Bureau at DORSalesAndUse@wisconsin.gov or (608) 266-2776 to verify, correct, or receive a new copy of your seller's permit. Starting in January 2025, retailers will be able to update their business locations ("site locations") online through MTA.

Additional information about Milwaukee sales and use taxes is available in [Fact Sheet 2414, Milwaukee Sales and Use Taxes](#).

Wisconsin's First Qualified Data Center Has Been Certified by the Wisconsin Economic Development Corporation

The Wisconsin Economic Development Corporation (WEDC) has certified the first qualified data center in Wisconsin. The effective date of the certification is October 1, 2023.

The certification permits contractors and other purchasers to buy tangible personal property identified in sec. [77.54\(70\)](#), Wis. Stats., exempt from Wisconsin sales and use tax. The certification date is effective October 1, 2023; therefore, eligible purchases made on or after October 1, 2023, for the Microsoft qualified data center located in Mount Pleasant qualify for the exemption.

A new fact sheet provides information about the sales and use tax exemption for qualified data centers, [Fact Sheet 2114, Sales and Use Tax Exemption for Qualified Data Centers](#). Also see the department's [Exemption for Qualified Data Centers](#) common questions.

Manitowoc County Tax Begins January 1, 2025

Beginning January 1, 2025, a 0.5% county sales and use tax is imposed on sales and purchases in Manitowoc County. Sixty-nine of 72 counties have adopted the county tax.

Sellers registered to collect Wisconsin sales and use tax must also collect county tax if making sales to Manitowoc County, regardless of whether the seller is located in the county. See [Fact Sheet 2414, Milwaukee Sales and Use Taxes](#), for special county tax rules and transitional provisions.

Direct Pay Permits

Businesses that meet the qualifications provided in sec. [77.52\(17m\)\(b\)](#), Wis. Stats., may apply for a direct pay permit. A direct pay permit allows eligible businesses to purchase certain tangible personal property or taxable services without Wisconsin sales tax. If the tangible personal property or taxable services are stored, used, or consumed in Wisconsin in a taxable manner, the purchaser **must** report use tax on the purchase price of the property or service.

A direct pay permit holder must provide the seller with a copy of its direct pay permit or a fully completed exemption certificate ([Form S-211](#) or [S-211E](#)).

If the direct pay permit holder indicates in writing to the seller that the use of a direct pay permit is continuous, the seller does not need to collect documentation for each subsequent purchase.

A seller must keep the information received from the direct pay permit holder on file as proof of the seller's relief of liability of the tax.

Caution: A direct pay permit **may not** be used for purchases of the following:

- Lodging services
- Admissions to amusement, athletic, entertainment, or recreational events, devices, or facilities.
- Prepaid calling services and intrastate, interstate, and international telecommunications services, except interstate 800 services; ancillary services, and telecommunications message services
- Parking for motor vehicles and aircrafts and docking or storage space for boats
- Cable television services
- Landscaping services and products provided in connection with the purchase of landscaping services
- Motor vehicles, boats, snowmobiles, recreational vehicles as defined in sec. [340.01\(48r\)](#), Wis. Stats., trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, or aircrafts
- Candy, soft drinks, dietary supplements, prepared foods, and alcoholic beverages

Although the listed products may not be purchased without sales or use tax using a direct pay permit, the purchaser may purchase these products without tax if another exemption applies (e.g., resale).

Additional information can be found in:

- [Publication 201](#), *Wisconsin Sales and Use Tax Information*, Part 17.
- Section [Tax 11.13](#), Wis. Adm. Code.

Sales Tax Rate for Sales of Tangible Personal Property

The sales and use tax rate of a transaction is determined by the location of a sale. The location of a sale is also known as where the sale is sourced. For sales of tangible personal property, the location of the sale is generally sourced to where the purchaser receives the property.

Sellers that deliver tangible personal property must use either the street address and 5-digit zip code, or the 9-digit zip code of the delivery location to determine the proper sales and use tax rate that applies to the transaction. Sellers may use the [Wisconsin State and Local Sales Tax Rate Lookup](#) to determine the correct rates that apply to a specific delivery location.

Example 1: A retailer located in Racine County sells product to a customer located in the city of Milwaukee and Milwaukee County. The retailer delivers the product, or arranges to have the product delivered, to the customer's location. Because the customer receives the product at a location in Milwaukee County and the city of Milwaukee, the sale is subject to 5% states sales tax, 0.9% Milwaukee County tax, and 2% city of Milwaukee tax.

Example 2: Same as example 1, except the customer picks up the product at the retailer's location in Racine County. Because the customer receives the product in Racine County, the sale is subject to 5% state tax. Racine County does not impose county tax.

Additional resources:

- [Shipments of Tangible Personal Property – Where Do the Sales Take Place](#)
- [Sales Tax Rates](#) common questions

- Section [77.522](#), Wis. Stats. – Sourcing
- [Special Rules for County and City Tax](#)

Peer-to-Peer Car Sharing Marketplaces

Peer-to-peer car sharing marketplaces connect motor vehicle owners with persons interested in renting a vehicle for a short period of time through the use of its online platform. For purposes of this article, the marketplace does not:

- Own or possess the motor vehicles that are rented,
- Provide drivers for the rented motor vehicles, or
- Have a physical business location in Wisconsin.

Motor vehicle owners set up an account on the car sharing marketplace's platform and choose when their cars are available for sharing. Customers using the platform may search for and select a vehicle to rent and the duration of the rental. The marketplace charges the customer and processes their payment, which usually includes a fee charged by the marketplace in addition to the rental amount set by the vehicle owner. The marketplace pays the vehicle owner the rental amount. The vehicle owners drop off their vehicle at the customer's address or meet the customer at an agreed-upon location to give possession of the vehicle to the customer.

Peer-to-peer car sharing marketplaces, as described above, are marketplace providers. Marketplace providers are retailers that are required to collect and remit the following taxes on taxable sales facilitated on behalf of others, unless the marketplace provider has been granted a waiver:

- Wisconsin state 5% sales and use tax
- Wisconsin county 0.5% (0.9% Milwaukee County) sales and use tax (if applicable)
- City of Milwaukee 2% sales and use tax (if applicable)
- Wisconsin 5% state rental vehicle fee
- Local exposition district 3% rental car tax in Milwaukee County (if applicable)

Premier resort area taxes

Peer-to-peer car sharing marketplaces, as described above, are not required to collect and remit the various premier resort area taxes in Wisconsin if the sellers using their online platform have a Standard Industrial Classification (SIC) code of 7514, *Passenger Car Rental*.

Additional resources:

- [Marketplace Provider](#) common questions
- [Publication 202](#), *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs* (Part 11.C.)
- [Publication 410](#), *Local Exposition Taxes* (Part 8.)
- [Rental Vehicle Fee](#) common questions
- [Publication 403](#), *Premier Resort Area Tax*

Federal Clean Vehicle Tax Credit Does Not Reduce Sales Price

Starting in 2024, clean vehicle dealers and sellers may register with the Internal Revenue Service (IRS) to obtain advance payments of the federal clean vehicle tax credit to apply against a consumer's purchase price of a qualifying vehicle. Previously, purchasers had to claim the credit on their federal income tax return.

The amount of the federal tax credit does not reduce the sales price or purchase price of the vehicle that is subject to sales and use tax. As such, dealers that obtain the advance credit from the IRS may not reduce the amount subject to sales tax on the sale to the consumer.

Example: Dealer sells vehicle for \$20,000. Dealer confirms through the IRS online portal that the vehicle qualifies for a federal clean vehicle tax credit of \$3,750, which will be given to Dealer by the federal government. Customer pays Dealer \$16,250 (\$20,000 less \$3,750 credit) for the vehicle. The taxable sales price of the vehicle is \$20,000.

Unclaimed Property Updates and Reminders

Unclaimed Property Voluntary Disclosure Program is Open

The unclaimed property voluntary disclosure program is open, and applications can be submitted at any time. The program became permanent through [2023 Wis. Act 138](#) and allows the department to enter into voluntary disclosure agreements to waive penalties for holders that voluntarily disclose and report unclaimed property.

How to Apply

1. Go to the department's [unclaimed property homepage](#).
2. Under the Holder Reporting & Resources section, select the Voluntary Disclosure Application link.
3. Complete and submit the Unclaimed Property Voluntary Disclosure 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 MTA.

For additional information about eligibility and requirements, see the article on page 3 of [Wisconsin Tax Bulletin 216](#) (January 2022).

Holder Reporting Reminder: Failure to Timely Report and Deliver Property

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.

Holder Reporting Reminder: Attempt to Locate Owners

Under sec. [177.0501\(1\)](#), Wis. Stats., unclaimed property holders are required to make a good faith effort to locate owners of abandoned property. Holders must send notification letters to owners of properties valued at \$50 or more. Letters must include the information required under sec. [177.0502](#), Wis. Stats., and must be sent between July and September.

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

Report on Litigation

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

Individual Income Tax

Gambling Losses - Business Expenses Limited to Gambling Winnings

Daniel and Debra Scheider v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 15, 2024).

The issue in this case is whether or not business expenses related to gambling activities are allowed to be deducted in excess of the gambling winnings associated with those gambling activities.

The taxpayers created a partnership, Slot Jokers, for the sole purpose of professional gambling and that was the only activity engaged in by the partnership.

For the 2018 tax year, Slot Jokers reported betting losses of \$44,657 and other business expenses of \$40,706 for a total of \$85,363 in deductions from the partnership's income. Slot Jokers reported an ordinary business loss of \$40,706. The taxpayers reported the loss from Slot Jokers reducing other wage and retirement income reported on their federal and Wisconsin individual income tax returns.

The department issued an assessment on July 10, 2019, denying the ordinary business losses from Slot Jokers reported by the taxpayers on their individual income tax return. The department took the position that sec. 165(d), of the Internal Revenue Code (IRC), as amended by sec. 11050 of Public Law 115-97 (Tax Cuts and Jobs Act of 2017), no longer allows business expenses of professional gamblers to be deducted in excess of gambling winnings.

The taxpayers timely filed a petition for review with the Wisconsin Tax Appeals Commission (TAC) appealing the department's denial. The taxpayers argued that sec. 165(d), IRC, does not apply to a business partnership.

The TAC concluded that although the taxpayers' professional gambling activities operated through a business partnership, sec. 165(d), IRC, as amended by sec. 11050 of Public Law 115-97 (Tax Cuts and Jobs Act of 2017), still applies and does not allow business expenses of professional gamblers to be deducted in excess of gambling winnings.

The taxpayers have appealed this decision.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of July 31, 2024: chs. 71, 77, 108, 139, 177, and 340, [Wis. Stats.](#), and chs. Tax 1, 2, 3, 9, 10, and 11, [Wis. Adm. Code](#). Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

Public Comments

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