



Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect the position of the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the answers in a tax release.)

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INDIVIDUAL INCOME TAX

1 Computation of Wisconsin Taxable Income from Gambling Winnings

This tax release supersedes the tax release published in *Wisconsin Tax Bulletin* 171 (April 2011), page 11, [Computation of Wisconsin Taxable Income from Gambling Winnings](#).

Background: This tax release explains Wisconsin's income tax treatment of gambling winnings, and demonstrates how a nonprofessional gambler computes his or her taxable gambling winnings for Wisconsin purposes.

A taxpayer is a "professional gambler" if his or her gambling activity is a trade or business for purposes of deducting ordinary and necessary expenses under section 162(a) of the Internal Revenue Code. All other taxpayers with gambling activity are considered nonprofessional gamblers.

If a taxpayer is not a professional gambler, he or she determines the taxable amount for each gambling session. If the taxpayer has a losing session, the net loss from that session is not deductible for Wisconsin income tax purposes.

A “gambling session” is a period of continual play with only a short break in play (for example, a restroom break, beverage break, table/machine change, game change, etc.).

For taxpayers that are Wisconsin residents, gambling income has a situs in Wisconsin regardless of where the gambling activity takes place. For taxpayers that are nonresidents, gambling income has a situs in Wisconsin if the net winnings are derived from any of the following:

- A casino or bingo hall located in Wisconsin and operated by a Native American tribe or band
- Pari-mutuel wagering paid by a Wisconsin racetrack
- The Wisconsin Lottery
- A multijurisdictional lottery if the ticket was purchased from a Wisconsin retailer

The taxpayer must be able to prove the amounts deducted in arriving at the "net winnings" from a gambling session. The proof could be detailed original statements from a casino showing the taxpayer's betting activities, or it could be the taxpayer's own detailed records showing all bets (including the amount bet, amount won, date, location, race, etc.) if the records were prepared at the time the betting took place.

A casino or other payer is required to issue the taxpayer a Form W-2G reporting certain gambling winnings. Even if a W-2G is not issued, all gambling winnings, regardless of amount, must be considered when determining gain or loss from a gambling session.

If a taxpayer has records to substantiate his or her gambling activities, the net winnings could be different than the amount reported on the W-2G that he or she received from the casino. However, if the taxpayer has no records to prove the amount spent on the gambling session, the taxpayer must include the gross winnings (all W-2G amounts plus any winning amounts not reported on a W-2G) in income.

For a professional gambler, the total gross winnings for the year are reported on Schedule C as gross receipts, and the total amount wagered for the year is a Schedule C expense. The amount wagered that is included as an expense cannot be more than the gross winnings.

The following examples illustrate how taxable gambling winnings are computed for federal and Wisconsin purposes for a nonprofessional gambler:

Example 1:

X, a resident of Wisconsin, is a nonprofessional gambler. X plays slot machines at a casino located in Wisconsin on June 1st from 9:00 am to 1:00 pm. During that time, X bet \$1,900 and won \$3,000, which included a \$2,000 jackpot for which X was given a Form W-2G.

If X has records to substantiate the losses during this gambling session, X has net gambling income of \$1,100 (\$3,000 - \$1,900). This amount must be reported as other income on line 21 of federal Form 1040. The amount will then carry over to the Wisconsin Form 1.

If X does not have records to substantiate the losses during this gambling session, X must include the \$3,000 of winnings as other income on line 21 of federal Form 1040. The \$3,000 amount will then carry over to the Wisconsin Form 1.

Example 2:

Assume X from Example 1 returns to the same Wisconsin casino on the evening of June 1st and plays slots from 8:00 p.m. to 11:00 p.m. During that time, X bets \$700 and loses it all.

None of this loss is deductible for Wisconsin purposes and it cannot be used to reduce the winnings from earlier in the day.

Example 3:

Y, a resident of Wisconsin, is a nonprofessional gambler. Y goes to a casino and starts playing on a slot machine. Y bets a total of \$100. Y cashes out of that machine, receives a voucher for \$50 and immediately puts the voucher in a second machine and starts playing. Y cashes out of the second machine, receives a voucher for \$120 and immediately puts the voucher in a third machine and starts playing. Y cashes out of the third machine, receives a voucher for \$80 and immediately puts the voucher in a fourth machine and starts playing. Y cashes out of the fourth machine, receives a voucher for \$130, redeems the voucher for cash and leaves the casino. Y has net gambling income of \$30 from his gambling session. This amount must be included in federal and Wisconsin income.

Example 4:

Z, a resident of Wisconsin, is a nonprofessional gambler. Z goes to a casino and starts playing on a slot machine. Z bets a total of \$100. Z cashes out of that machine, receives a voucher for \$50 and immediately puts the voucher in a second machine and starts playing. Z cashes out of the second machine, receives a voucher for \$120, redeems the voucher for cash

and sits down at a blackjack table. Z exchanges \$100 in cash for \$100 in chips. Z plays for some time, leaves the table, redeems all of his chips for \$150 in cash and leaves the casino. Z has net gambling income of \$70 (\$20 + \$50) from his gambling session. This amount must be included in federal and Wisconsin income.

Example 5:

Assume the same facts as Example 4, except Z redeems all of his chips for \$25 in cash. Z has a net gambling loss of \$55 (\$20 - \$75) from his gambling session. This loss is not deductible for Wisconsin purposes and it cannot be used to reduce the net winnings from any other gambling session.

Example 6:

Assume the same facts as Example 4, except Z plays at three different blackjack tables and takes his chips with him each time. Z leaves the last table, redeems all of his chips for \$150 in cash and leaves the casino. Z has net gambling income of \$70 (\$20 + \$50) from his gambling session. This amount must be included in federal and Wisconsin income.

Example 7:

B, a resident of Wisconsin, is a nonprofessional gambler. B goes to a casino and starts playing on a slot machine. B bets a total of \$100. B cashes out of that machine, receives a voucher for \$50 and immediately puts the voucher in a second machine and starts playing. B cashes out of the second machine, receives a voucher for \$120, and leaves the gaming area for more than a half hour (i.e., eats lunch, goes for a walk, sees a show). B has ended his gambling session and has net gambling income of \$20 for that session. This amount must be included in federal and Wisconsin income.

Example 8:

C, a resident of Wisconsin, is a nonprofessional gambler. C goes to a casino and starts playing on a slot machine. C bets a total of \$100. C cashes out of that machine, receives a voucher for \$50 and immediately puts the voucher in a second machine and starts playing. C cashes out of the second machine, receives a voucher for \$120, redeems the voucher for cash, and sits down at a blackjack table. C exchanges \$100 in cash for \$100 in chips. C plays for some time, leaves the table with \$110 in chips and leaves the gaming area for more than a half hour (i.e., eats lunch, goes for a walk, sees a show). C has ended his gambling session and has net gambling income of \$30 (\$20 + \$10) from that session. This amount must be included in federal and Wisconsin income.

Example 9:

D, a resident of Wisconsin, is a nonprofessional gambler. D goes to a casino and starts playing on a slot machine. D bets a total of \$100. D cashes out of that machine, receives a voucher for \$50, redeems the voucher for cash and sits down at a blackjack table and exchanges \$50 in cash for \$50 in chips. D leaves the blackjack table and redeems all of his chips for \$150 in cash. D goes to a slot machine and bets \$60 losing all of it. D leaves the casino. D has a net gambling loss of \$10 (-\$50 + \$100 - \$60) from his gambling session. None of this loss is deductible for Wisconsin purposes and it cannot be used to reduce the net winnings from any other gambling session.

Example 10:

Assume the same facts as Example 9, except D leaves the gaming area for more than a half hour (i.e., eats lunch, goes for a walk, sees a show) after leaving the blackjack table and before returning to the slot machine. D has two gambling sessions. For the first, D has net gambling income of \$50. This amount must be included in federal and Wisconsin income. For the second session, D has a net gambling loss of \$60. None of this loss is deductible for Wisconsin purposes and it cannot be used to reduce the net winnings from any other gambling session.

SALES AND USE TAX

2 Prosthetic Devices – Eyeglasses and Contact Lenses – and their Accessories and Supplies

Statutes: Sections [77.51\(1f\)\(intro.\) and \(e\)](#), [\(3pj\)](#), and [\(11m\)](#), [77.52\(1\)\(a\)](#), [\(20\)\(a\) and \(b\)](#), and [77.54\(14\)](#), [\(22b\)](#), and [\(52\)](#), Wis. Stats. (2009-10)

Wis. Adm. Code: Section [Tax 11.08\(4\)\(c\)](#), Wis. Adm. Code (November 2010 Register) and sec. [Tax 11.45\(3\)\(b\)](#), Wis. Adm. Code (May 2010 Register)

Question 1:

Do the following items meet the definition of "prosthetic device" and qualify for exemption from Wisconsin sales and use taxes under sec. 77.54(22b), Wis. Stats. (2009-10), if they are used for a human being?

1. Corrective sunglasses
2. Non-corrective sunglasses
3. Corrective contact lenses
4. Non-corrective contact lenses (i.e., contact lenses just worn to change the color of a person's eyes)
5. Corrective reading glasses

Answer 1:

Corrective sunglasses, corrective contact lenses, and corrective reading glasses meet the definition of "prosthetic device" and are exempt from Wisconsin sales and use taxes. **Note:** Corrective reading glasses are a prosthetic device and are exempt even if they are not sold under a prescription.

Non-corrective sunglasses and non-corrective contact lenses do not meet the definition of "prosthetic device" because they are not a replacement, supportive, or corrective device and therefore do not qualify for this exemption.

Analysis 1:

Corrective sunglasses, corrective contact lenses, and corrective reading glasses

Products meeting the definition of "prosthetic device" and which are used for a human being are exempt from Wisconsin sales and use taxes as provided in sec. 77.54(22b), Wis. Stats. (2009-10).

As provided in sec. 77.51(11m), Wis. Stats. (2009-10), "prosthetic device" means "...a device, including the repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body."

Section Tax 11.08(4)(c), Wis. Adm. Code (November 2010 Register), and sec. Tax 11.45(3)(b)5., Wis. Adm. Code (May 2010 Register), include eyeglasses and contact lenses among the examples of exempt prosthetic devices.

Therefore, corrective eyeglasses, corrective contact lenses, and corrective reading glasses qualify for this exemption because they correct a physical deformity or malfunction in the eyes.

Non-corrective sunglasses and non-corrective contact lenses

Non-corrective sunglasses and non-corrective contact lenses do not meet the definition of prosthetic device and therefore do not qualify for this exemption. Sales of non-corrective sunglasses and non-corrective contact lenses are subject to Wisconsin sales and use taxes under sec. 77.52(1)(a), Wis. Stats. (2009-10), as sales of tangible personal property.

Question 2:

Do the following items qualify for exemption from Wisconsin sales and use taxes under sec. 77.54(22b), Wis. Stats. (2009-10), as accessories for prosthetic devices (i.e., corrective eyeglasses or corrective contact lenses) if they are used for a human being?

1. Neck Cords
2. Sunglasses designed to be worn over corrective eyeglasses
3. Repair parts and tools specifically for eyeglasses (i.e., nose pads, screws, eyeglass screwdriver, and repair kits)
4. Eyeglass cases
5. Contact lens cases
6. Contact lens solution
7. Eyeglass lens cleaning solution
8. Non-disposable cleaning cloths
9. Disposable cleaning cloths
10. Contact lens travel kits (including solution and contact lens case)

Answer 2:

Neck cords, sunglasses designed to be worn over eyeglasses, repair parts and tools specifically for eyeglasses, cases for corrective eyeglasses, and non-disposable cleaning cloths purchased for corrective eyeglasses are exempt from Wisconsin sales and use taxes as accessories for prosthetic devices. Contact lens cases purchased for corrective contact lenses are also exempt from Wisconsin sales and use taxes as accessories for a prosthetic device.

Contact lens solution, eyeglass lens cleaning solution, and disposable cleaning cloths are taxable because they are supplies and therefore do not qualify for this exemption.

Contact lens travel kits that include contact lens solution and contact lens cases are taxable if the seller's purchase price and sales price of the contact lens solution and other taxable products included in the kit is greater than 50% of the seller's total purchase price or sales price of all the products in the kit. If the seller's combined purchase price or sales price of the contact lens solution and other taxable products included in the contact lens travel kit are no greater than 50% of the seller's total purchase price or sales price of all the products in the kit, the entire sales price of the kit is exempt from Wisconsin sales and use taxes.

Analysis 2:

Neck cords, sunglasses designed to be worn over eyeglasses, repair parts and tools specifically for eyeglasses, cases for corrective eyeglasses, non-disposable cleaning cloths, and contact lens cases

Section 77.54(22b), Wis. Stats. (2009-10), provides, in part, an exemption from Wisconsin sales and use tax for "...prosthetic devices, and accessories for such...devices, if the...devices are used for a human being." Neck cords, sunglasses designed to be worn over eyeglasses, repair parts and tools specifically for eyeglasses, eyeglass cases, contact lens cases, and non-disposable cleaning cloths are accessories and qualify for this exemption if purchased for corrective eyeglasses, corrective sunglasses, corrective reading glasses, or corrective contact lenses.

Note: If neck cords, repair parts and tools, eyeglass cases, and non-disposable cleaning cloths are purchased for non-corrective sunglasses, the exemption in sec. 77.54(22b), Wis. Stats. (2009-10), does not apply. Additionally, contact lens cases purchased for non-corrective contact lenses do not qualify for this exemption. Accessories for non-corrective sunglasses and non-corrective contact lenses do not qualify for exemption because they are not accessories for prosthetic devices.

Contact lens solution, eyeglass lens cleaning solution, and disposable cleaning cloths

Section 77.54(22b), Wis. Stats. (2009-10), provides, in part, an exemption from Wisconsin sales and use tax for prosthetic devices and accessories for such devices, if the devices are used for a human being. Contact lens solutions, eyeglass lens cleaning solutions, and disposable cleaning cloths are supplies, rather than accessories for prosthetic devices, and therefore do not qualify for the exemption.

In addition, although the contact lens solution meets the definition of "drug" as provided in sec. 77.51(3pj), Wis. Stats. (2009-10), it does not qualify for any of the exemptions provided in sec. 77.54(14), Wis. Stats. (2009-10).

Therefore, the contact lens solution, eyeglass lens cleaning solution, and disposable cleaning cloths are subject to Wisconsin sales and use taxes.

Contact lens travel kit

Contact lens travel kits contain both taxable (contact lens solution) and nontaxable (contact lens case, travel case) products that are distinct and identifiable and sold for one non-itemized price. Therefore, the sale of the kit is a bundled transaction as defined in sec. 77.51(1f), Wis. Stats. (2009-10), unless it meets one of the exceptions provided in sec. 77.51(1f)(a) through (e), Wis. Stats. (2009-10).

Sales of contact lens travel kits do not meet the exception provided in sec. 77.51(1f)(a), Wis. Stats. (2009-10), because the price does not vary and is not negotiable based on the items selected by the purchaser.

Sales of the kits do not meet the exceptions provided in sec. 77.51(1f)(b) and (c), Wis. Stats. (2009-10), because there are no services included with the sale of the kit.

Sales of the kits do not meet the exception provided in sec. 77.51(1f)(d), Wis. Stats. (2009-10), because the transaction includes, among other things, drugs or medical supplies.

Section 77.51(1f)(e), Wis. Stats. (2009-10), may apply to the sale of the kits since the kits contain a drug (i.e., the contact lens solution). Therefore, if the seller's purchase price or sales price of the taxable tangible personal property (i.e., the contact lens solution) is no greater than 50% of the seller's total purchase price or sales price of all the products in the transaction (i.e., kit), the transaction is not a bundled transaction and is exempt from Wisconsin sales and use tax as provided in sec. 77.54(52), Wis. Stats. (2009-10).

However, if the seller's purchase price or sales price of the taxable tangible personal property included in the transaction (i.e., the contact lens solution) is greater than 50% of the seller's total purchase price or sales price of all the products in the transaction (i.e., kit), the sale of the kit is a bundled transaction, and the entire selling price of the kit is subject to Wisconsin sales tax as provided in sec. 77.52(20), Wis. Stats. (2009-10).

Note: If the contact lens travel kit is purchased for non-corrective contact lenses, the entire sales price of the kit is taxable. There is no bundled transaction because all the items in the kit are taxable. The contact lens case and travel case would not qualify for exemption under sec. 77.54(22b), Wis. Stats. (2009-10), because although they are accessories, they are not accessories for a prosthetic device.