

Wisconsin TAX BULLETIN

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Electronic Filing Mandate Letters to Businesses

As part of the Wisconsin Department of Revenue's (DOR's) efforts to become more efficient, DOR will be mailing e-file mandate letters to sales and use tax accounts and withholding tax accounts that continue to file paper returns and make paper payments. The Wisconsin Administrative Code provides that DOR may require any sales and use tax return (ST-12), any withholding tax return (WT-7 and PW-1), and W2s/1099s of 250 or more (the Governor's 2009-2011 Budget Bill reduces this threshold from 250 to 50) to be filed by electronic means. The Wisconsin Administrative Code also provides that DOR may require electronic funds transfer when the aggregate amount due in the prior calendar year was \$10,000 or more for sales and use tax accounts, when the required deposits in the prior calendar year were \$10,000 or more for withholding tax accounts, and for any amount due for pass-through entities required to make withholding payments. There are provisions to request a waiver if the requirement to electronically file or pay by electronic funds transfer causes an undue hardship to the business. See the article titled "My Tax Account Debuts for Business Taxpayers" on page 4 to find an easy and secure way to e-file returns and make e-payments. [↗](#)

Combined Reporting Implementation Update

For taxable years beginning on or after January 1, 2009, corporations that are commonly controlled and engaged in a unitary business are generally required to compute their Wisconsin income using combined reporting. This law change was enacted in 2009 Act 2, which was enacted February 19, 2009.

As explained in *Wisconsin Tax Bulletin* 160 (March 2009), the department has set up a web page to serve as a centralized source of information about combined reporting and how it will be administered. That web page is www.revenue.wi.gov/combrep/index.html. To access this page from the department's home page (www.revenue.wi.gov), click on "Businesses" and then click on "Combined Reporting."

The department is building a collection of frequently asked questions (FAQs) and answers about combined reporting. The available FAQs are on the combined reporting web page and will be updated on a continuing basis as implementation continues. The available FAQs as of the publication date of this *Wisconsin Tax Bulletin* are included on pages 17 to 24.

For any questions about combined reporting that are not yet answered in the FAQ collection on the web page, the department has set up a dedicated e-mail address. Send e-mail questions concerning combined reporting to dorcombinedreporting@revenue.wi.gov. [↗](#)

New Field Audit Process

A field audit can consume a great deal of time and resources for both the department and the taxpayer. Therefore, reducing the amount of time and resources expended on an audit is a benefit to both the department and the taxpayer.

Based on feedback from taxpayers and practitioners, the department's field audit process will be reengineered to improve audit efficiency and completion times. Procedures used by the Internal Revenue Service were reviewed for guidance. Specifically, the Mutual Commitment Date Process used by the Small Business/Self-Employed Division (SBSE) and the Joint Audit Planning Process used by the Large and Mid-Size Business Division (LMSB) were reviewed.

The new department field audit process is called the Mutual Commitment Date Process, but it is not the same process that is used by the SBSE. However, the new department process does include components of the processes used by both the SBSE and LMSB. This new process was designed to achieve the following objectives:

1. Provide a consistent approach to the audit planning process.

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New Field Audit Process

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- Promote better communication between the department and the taxpayer during the audit process.
- Establish accountability for the auditor and the taxpayer during the audit process.

The cornerstone of the Mutual Commitment Date Process is the taxpayer and auditor mutually agreeing to the establishment of three time periods relating to the conduct of the audit. These time periods are as follows:

- The number of days a taxpayer has to respond to written information requests.
- The deadline for the taxpayer to submit a claim for refund applying to the audit period.
- The deadline for the auditor to provide a Notice of Proposed Audit Report to the taxpayer based on the taxpayer and auditor jointly working together on the audit, or the Mutual Commitment Date.

The department will begin using the Mutual Commitment Date Process with audits starting on or after July 1, 2009. For an audit in progress on July 1, 2009, the auditor, supervisor, and taxpayer may implement the Mutual Commitment Date Process for the audit depending on what stage the audit is in.

The department hopes that by following the policies and procedures of this new Mutual Commitment Date Process, there will be a more cooperative effort between the auditor and the taxpayer resulting in a more efficient and timely completion of the audit. [↗](#)

Additional Guidance for Pass-Through Entities on Related Entity Expenses

Under Wisconsin law, taxpayers are required to “add back” certain expenses paid, accrued, or incurred to a related entity. These expenses may then be deducted for Wisconsin purposes if certain conditions are met. One of these conditions is that the expense be disclosed on Wisconsin Schedule RT if the total expenses paid, accrued, or incurred to all related entities are more than \$100,000. For purposes of applying this \$100,000 threshold, the taxpayer may multiply the expense amount by its Wisconsin apportionment percentage, if applicable.

For taxable years beginning on or after January 1, 2008, the expenses which must be added back are interest and rent expenses paid, accrued, or incurred to a related entity. See the summary in *Wisconsin Tax Bulletin 157* (July 2008), beginning on page 13, for details.

For taxable years beginning on or after January 1, 2009, the expenses which must be added back are interest expenses, rent expenses, intangible expenses, and management fees paid, accrued, or incurred to a related entity. See the summary in *Wisconsin Tax Bulletin 160* (March 2009), page 12, for details.

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Additional Guidance for Pass-Through Entities on Related Entity Expenses

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Although the addback and disclosure requirements apply to taxpayers of all types, this article focuses on answering three frequently asked questions about how these requirements apply to pass-through entities and their members.

When are pass-through entities and their members considered to be “related entities”?

Wisconsin uses the loss disallowance rules provided in section 267 of the Internal Revenue Code (IRC) to determine if a taxpayer is a “related entity.” Section 267(b), IRC, lists relationships which are considered to be “related entities” for Wisconsin purposes. Section 267(e)(6) incorporates section 707(b), IRC, relating to partnerships. Under these sections, Wisconsin would determine that:

- A tax-option (S) corporation and its shareholder are “related entities” if the shareholder owns, directly or indirectly, more than 50 percent in value of the S corporation’s outstanding stock.
- A partnership and its partner are “related entities” if the partner owns, directly or indirectly, more than 50 percent of the capital interest or profits interest in the partnership.
- For relationships that involve estates and trusts, the relationship tests in section 267(b), IRC, apply in determining whether a trust or estate and its fiduciary, beneficiary, grantor, or executor are “related entities.”

How do pass-through entities report the addbacks?

A tax-option (S) corporation, partnership, or trust that has expenses subject to the addback requirement must make a Wisconsin addition modification for those expenses. If the expenses meet the criteria given in Schedule RT, Part II, the pass-through entity may make a subtraction modification for the qualifying amount. These modifications must be reported as follows (line references are to 2008 forms):

S Corporations – On Form 5S, Schedule 5K (and the respective Schedules 5K-1), report these modifications in two places:

- Column c of lines 1 through 12d, according to the type of pass-through item to which the expense relates (if the entire amount of expense is deductible, the addition and subtraction

modifications would cancel out and result in \$0 net adjustment), and

- Column d of lines 18a through 18d.

Partnerships – On Form 3, Schedule 3K (and the respective Schedules 3K-1), report these modifications in two places:

- Column c of lines 1 through 13d, according to the type of pass-through item to which the expense relates (if the entire amount of expense is deductible, the addition and subtraction modifications would cancel out and result in \$0 net adjustment), and
- Column d of lines 21a through 21d.

Trusts – On Form 2, Schedule A, report the addition modifications on line 5 and the subtraction modifications on line 11. On the Schedules 2K-1 (where applicable), report these modifications in two places:

- Column c of lines 1 through 13, according to the type of income to which the expense relates (if the entire amount of expense is deductible, the addition and subtraction modifications would cancel out and result in \$0 net adjustment), and
- Column d of lines 14a through 14d.

How do members of pass-through entities report the addbacks from the Schedules 5K-1, 3K-1, and 2K-1?

Resident individuals report the addition modifications on Form 1, line 4, and the subtraction modifications for the allowable deductions on Form 1, line 11. If the modifications come from a tax-option (S) corporation, use code 51 for both the line 4 amount and the line 11 amount. If the modifications come from a partnership or LLC treated as a partnership, estate, or trust, use code 52 for both the line 4 amount and the line 11 amount.

Nonresident individuals include the addition and subtraction modifications in the Wisconsin amount they report on Form 1NPR, line 15. These individuals must also submit an explanation of all addition and subtraction modifications included on that line.

Corporations report the addition modifications on Schedule V, lines 3 and 4, and the subtraction modifications for the allowable deductions on Schedule W, lines 2 and 3.

Pass-through entities report these modifications as described above. [↗](#)

My Tax Account Debuts for Business Taxpayers

On February 2, 2009, the Department of Revenue (DOR) debuted *My Tax Account* on-line functionality for business taxpayers. *My Tax Account* allows business taxpayers and their representatives to electronically file returns for and pay sales and use tax, premier resort area tax, local exposition center tax, rental vehicle fee, and withholding tax, as well as view information about those accounts and initiate requests. DOR will be retiring several older on-line filing options later in 2009, so it is important for taxpayers and practitioners to register for and begin to use *My Tax Account*.

Usage of *My Tax Account* has been brisk, with 13,225 taxpayers registered for access to one or more tax accounts as of April 1, 2009. These taxpayers have initiated 18,703 returns and 13,650 payments through *My Tax Account*.

Information for Business Owners

To begin using *My Tax Account*, each business owner/officer or designated employee will need his or her own individual Wisconsin User ID (WAMS ID). Once a WAMS ID is obtained, the business owner/officer or designated employee may enter the business information and the business tax accounts at the *My Tax Account* web site.

After a business tax account has been added, click on the appropriate account number and select *File a Return*. To complete the return filing process, enter contact information, click the *Next* button, enter your password and select *I Agree*. Payment options will be offered after the return is filed.

Information for Practitioners

Each practitioner using *My Tax Account* will also need his or her own individual WAMS ID. Once a WAMS ID is obtained, practitioners that own or work for an accounting firm should log into *My Tax Account* and complete the Customer Access Request using the firm's information. Independent preparers organized as sole proprietors should use their own individual information.


After successfully completing the Customer Access Request within *My Tax Account*, practitioners may request access to client accounts by logging back into *My Tax Account* and selecting *Add 3rd Party Account Access for SIP User* or *Add 3rd Party Account Access*.

Please note that practitioners will only be able to request access to business tax accounts that have already been entered in *My Tax Account*.

My Tax Account Shortcuts & Tips

- To obtain a WAMS ID, see Self-Registration at <https://on.wisconsin.gov>.
- If you already have a WAMS ID associated with your e-mail address, but you don't remember your User ID and password, go to the Account Recovery link at <https://on.wisconsin.gov/WAMS/home>.
- *My Tax Account* may be accessed at <https://tap.revenue.wi.gov>.
- A business owner that successfully completes the Customer Access Request, but doesn't see a business tax account(s) after logging into *My Tax Account*, may select *Add Access to an Account* to add a business tax account.
- An owner of multiple businesses will need multiple WAMS IDs for registration purposes (one for each business). Each WAMS ID requires a unique e-mail address.
- See the Registration Quick Start link at www.revenue.wi.gov for step-by-step registration instructions.
- If you are planning to start using *My Tax Account* for your next return filing, you should initiate the registration process a few days before the due date of the return so that you have sufficient time to feel comfortable working through the steps of this new process.

Reminders

- No new registrations are being accepted for DOR's previous sales tax on-line option, Sales Internet Process (SIP), which will be taken out of service after **June 5, 2009**. (The XML bulk file transmission process for sales tax returns and sales tax TeleFile will remain available.)
- The EFT Payment and Registration System will not be available after **December 31, 2009**, and no new registrations will be accepted after **May 15, 2009**, for the tax types covered by *My Tax Account*. 

Do Not Send Partnership Return Information by Magnetic Media

Effective January 1, 2009, the Department of Revenue no longer accepts partnership Schedules K-1 and 3K-1 on magnetic media (e.g., compact disks, etc.). If you have sent these documents by magnetic media in the past, you should now send them electronically through the department's web site.

No PIN or password is required to submit your file through our 128-bit encrypted SSL file transmission site. Follow these simple instructions:

1. Go to www.revenue.wi.gov/eserv/w-2.html.
2. Click on the link "Ready to Transfer EFW2."
3. Select "K-1s and 3K-1s in PDF" from the drop-down menu.

4. Click on "Browse" and find the appropriate file on your computer.
5. When the "Choose File" box appears, find your file and double click on it.
6. Verify the correct file in the location next to the "Browse" button and click on "Transfer" to submit your file.

A receipt number will be displayed for your records.

If you have any questions, contact the Department of Revenue by e-mail at W2Data@revenue.wi.gov or call (608) 267-3327. [☞](#)



Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of April 1, 2009, and at each step where action occurred during the period from January 1, 2009, through April 1, 2009.

The listing includes rule numbers and names, and whether a rule is amended (A), repealed and recreated (R&R), or a new rule (NR).

Emergency Rules Adopted and in Effect

- 8.03 Wine collectors – NR
- 8.05 Small winery cooperative wholesalers – NR

Pending Submission to Legislative Council Rules Clearinghouse

- 1.12 Electronic funds transfer – A
- 2.03 Corporation returns – A
- 2.04 Information returns and wage statements – A
- 2.08 Returns of persons other than corporations – A
- 4.001 Motor vehicle, alternate fuels, and general aviation fuel tax return and refund claim forms – NR

- 7.001 Fermented malt beverage tax return and refund claim forms – NR
- 8.001 Intoxicating liquor report, tax return, and refund claim forms – NR
- 9.001 Cigarette and tobacco products report, tax return, and refund claim forms – NR
- 11.01 Sales and use tax, local exposition tax, and premier resort area tax return forms – A

Pending Submission for Legislative Committee Review

- 8.03 Wine collectors – NR
- 8.05 Small winery cooperative wholesalers – NR

To order up-to-date administrative rules of the Department of Revenue (DOR), you can contact the Document Sales and Distribution Section of the Wisconsin Department of Administration to obtain the Tax section of the Wisconsin Administrative Code. Additional information is available at www.legis.state.wi.us/rsb/codinfo.html.

Information concerning administrative rules of DOR, as well as other state agencies, is also available at <https://apps.dhfs.state.wi.us/admrules/public/Home>. At this web site you can search for rules, view the status of current rulemaking, view documents associated with rulemaking, submit and view comments on rules, and subscribe to receive notification of rulemaking. [☞](#)

Negligence Penalties May Be Imposed in Field Audits

The Field Audit Section of the Wisconsin Department of Revenue has the authority to impose various civil penalties during the field audit of a taxpayer's franchise, income, withholding, or sales and use tax returns.

The objective of the department is to administer the imposition of negligence penalties in a fair and consistent manner. Following are some of the factors considered by the department in determining whether negligence penalties should or should not be imposed. In addition, statistics are provided indicating the percentage of field audit actions in the past four years that included negligence penalties.

Factors considered by the department in determining whether negligence penalties should or should not be imposed include:

- Taxpayer's awareness of the taxable status of the items adjusted.

- Certainty or uncertainty of the taxable status of the items adjusted.
- Availability to the taxpayer of any written material on the taxable status of the items adjusted.
- Prior audit history and prior penalty imposition.
- Adequacy of the records and taxpayer's efforts to establish adequate records.
- Consistency and pattern of errors.
- Any other information that relates to whether or not there was good cause for underreporting.

Field audit negligence penalties imposed:

Fiscal Year Ending June 30...	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Number of Negligence Penalties	418	475	387	421
Number of Actions	1949	1865	1639	1726
Percentage	21.4%	25.5%	23.6%	24.4%



Take Advantage of the Speakers Bureau

Are you planning a meeting, workshop, conference, or training program? The Department of Revenue's Speakers Bureau provides speakers who can provide information on a variety of topics to business, community, and educational organizations.

Additional information concerning the Speakers Bureau may be found in Wisconsin Publication 700, which is available at www.revenue.wi.gov/pubs/pb700.pdf. [☞](#)

Reminder: Look-Up of Estimated Tax Payments

Every year, the Department of Revenue (DOR) adjusts the estimated tax payments claimed on thousands of tax returns. In an effort to minimize this type of adjustment, DOR developed an application that allows individuals, corporations, partnerships, trusts, estates, and practitioners to verify available estimated tax payments when completing a tax return.

The estimated tax application is available at <https://ww2.revenue.wi.gov/PaymentInquiry/application>. Information on how the application works may be found at www.revenue.wi.gov/faqs/pes/estpay.html. [☞](#)

Updated Publications

Since the last issue of the *Wisconsin Tax Bulletin*, the following publications of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue have been revised:

- 102 Wisconsin Treatment of Tax-Option (S) Corporations and Their Shareholders (3/09)
- 114 Your Wisconsin Taxpayer Bill of Rights (3/09)
- 119 Limited Liability Companies (3/09)
- 123 Business Tax Credits for 2008 (4/09)
- 219 Hotels, Motels and Other Lodging Providers: How Do Wisconsin Sales and Use Taxes Affect Your Operations? (3/09)
- 400 Wisconsin's Recycling Surcharge (3/09)

All of the IS&E Division's publications may be downloaded or ordered online at www.revenue.wi.gov/html/taxpubs.html. There are over 70 publications available, covering a wide range of topics. [☞](#)



Enforcement Report

Husband Follows Wife to Jail for Tax Fraud

A Waukesha man, Elfatih Ibrahim, 43, was sentenced in February 2009 in Dane County Circuit Court to serve one year in the county jail for stealing \$138,000 in sales tax money and filing a fraudulent income tax return for 2005. He was also placed on probation for five years and ordered to make restitution to the state. Ibrahim pleaded guilty on October 31, 2008. His wife, Soha Shanaa, received a one-year jail sentence in Waukesha County in April 2008 after pleading guilty to filing fraudulent income tax returns and public assistance fraud as part of the same scheme.

According to a criminal complaint filed on February 1, 2008, Ibrahim and his wife operated the Midtown Shell gas station at 641 N. Hawley Road in Milwaukee. The complaint alleged that Ibrahim filed fraudulent sales tax returns and skimmed sales tax money collected from the sales of cigarettes and groceries between 2002 and 2006.

The complaint further alleged that the couple also evaded \$10,802 in state income taxes for 2004 and 2005 by filing fraudulent income tax returns and underreporting income from their business operation. The couple reported making \$28,207 and \$37,197, respectively, while the Wisconsin Department of Revenue determined that their actual income was \$89,880 and \$113,302 in these two years.

The couple also illegally received \$15,595 in medical assistance benefits from Waukesha County between January 2003 and April 2006, based on their underreported earnings.

During these years the couple owned a \$46,000 Lexus, made accelerated payments of \$3,000 per month on their \$335,000 Waukesha home, and sent monthly checks of \$3,500 to Soha Shanaa's parents, according to the complaint. The couple also used money from their business account to pay for personal expenses including payments for credit cards, home utilities, loan repayments, and other personal expenses totaling \$72,118 in 2004 and \$60,231 in 2005.

The case was prosecuted by the State Attorney General's Office after an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

Arizona Woman Pleads Guilty to Homestead Credit Fraud Scheme

An Arizona woman formerly from Milwaukee pleaded no contest in February 2009 in Dane County Circuit Court to three felony counts of filing fraudulent claims for credit and two felony counts of identity theft.

According to the criminal complaint filed in November 2008, Susanna Terrell, 39, filed 139 fraudulent Wisconsin homestead credit claims between 2006 and 2008. She attempted to obtain homestead credit refunds of \$133,000 by using the identities of over 90 people without their knowledge. The homestead credit is a refundable tax credit for Wisconsin renters and property owners. Terrell received a two-year prison sentence for a conviction in Milwaukee County in 2000 for a similar crime.

According to the complaint, Terrell began filing fraudulent homestead credit claims in 2006 because she had maxed out several credit cards, had unpaid bills, and had a gambling addiction. Terrell admitted to spending up to \$200 a day on lottery tickets. She confessed to the scheme in June 2008, when agents from Wisconsin executed a search warrant at her home in El Mirage, Arizona, a Phoenix suburb.

The case was investigated by agents of the Wisconsin Department of Revenue and the US Postal Inspection Service after the Department of Revenue noticed a large number of refund checks that were mailed to Wisconsin addresses had been cashed in Arizona.

Terrell told investigators that she obtained identifying information of individuals through her employment at ACE Cash Express and Circle K Convenience stores and also from the Maricopa County Arizona web site. She said that she used the Wisconsin Circuit Court System (CCAP) web site to search for eviction cases to find landlord names and addresses to use on the fraudulent homestead credit claims. Shortly after filing the fraudulent claims, Terrell would file change of address requests with the Post Office in order to have the homestead credit checks forwarded to a mailbox under her control. The complaint alleges that Terrell filed 139 false homestead credit claims using 92 different names and cashed \$79,896 of the \$133,292 she attempted to obtain.

Terrell could face up to 30 years in prison, \$50,000 in fines, or both.

Neillsville Man Sentenced on Theft and Tax Fraud Charges

Richard H. Harrison, Jr., 33, entered no contest pleas in March 2009 in Clark County Circuit Court to one felony count of theft by a contractor and one felony count of filing a fraudulent Wisconsin income tax return. As part of a plea agreement, related charges were dismissed but read into the record for sentencing.

According to the complaint, Harrison received funds from a woman who hired him to tear down her fire damaged home and erect the shell of a new home. The complaint stated that Harrison did not perform all of the work and diverted the funds he received from the woman to his personal gain.

The tax complaint stated that Harrison failed to report all the receipts from this transaction, resulting in his income being understated by \$49,813. As a result, Harrison evaded Wisconsin income tax of \$2,907.

Judge James Mason withheld sentence and placed Harrison on probation for six years for the theft charge and three years on the tax charge to run concurrently. As a condition of probation, he was ordered to spend 343 days in jail and given credit for time served. He was also ordered to pay restitution of \$52,302.14, file an amended 2006 Wisconsin income tax return reflecting all the unreported income, and pay all taxes and penalties due. [✎](#)
