



# Wisconsin Department of Revenue

## **TAX BULLETIN**

January 2016  
Number 192

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## New Tax Laws

1. **Excise Tax on Pear Cider Decreased** (2015 Act 55, amend sec. 139.01(2m), effective January 1, 2016).

### *Definition of "Cider" Revised*

For purposes of the beverage tax imposed on intoxicating liquor, Act 55 expanded the definition of "cider" to include any alcoholic beverage obtained from the alcoholic fermentation of the juice of pears and that contains not less than 0.5% alcohol by volume and not more than 7.0% alcohol by volume. "Cider" includes, but is not limited to, flavored, sparkling and carbonated cider.

The law change imposes the sec. 139.03(2n) tax on cider containing the specified alcohol by volume (1.71 cents/liter) on pear cider, as well as apple cider.

Prior to January 1, 2016, pear cider containing not less than 0.5% alcohol by volume and not more than 7.0% alcohol by volume is subject to the beverage tax imposed on wine (6.605 cents/liter).

The tax imposed on cider containing greater than 7.0% alcohol by volume (11.89 cents/liter) is not affected by this change.

2. **Temporary Alcohol Beverage Retail and Operator's Licenses** (2015 Act 62, renumber and amend sec. 125.51(10), amend secs. 125.17(4)(b), 125.26(6), 125.51(3)(f), and 125.68(4)(c)1., and create secs. 125.02(3u), 125.07(3)(a)12m., 125.32(3m)(j), 125.51(10)(b), and 125.68(4)(c)6., effective October 23, 2015.)

### *Eligibility for a Temporary Class "B" or "Class B" License*

Act 62 adds a chamber of commerce as an organization to whom a municipality may issue a temporary Class "B" or "Class B" license.

“Chamber of commerce” means a local chamber of commerce organized under ch. 181, Wis. Stats., or a similar civic or trade organization organized under ch. 181, Wis. Stats., to promote economic growth and opportunity within a local geographical area.

Under prior law, a licensee was generally required to hold a Class "B" license in order to receive a "Class B" license. Act 62 creates an exception to this requirement for temporary "Class B" licenses.

### *Temporary "Class B" Licenses for Single-Day, Multiple-Location Events*

Under prior law, a municipality was prohibited from issuing more than two temporary “Class B” (wine only) licenses to the same organization (bona fide club, fair association, agricultural society, churches, lodges, societies, and veteran's posts) during a 12-month period. There was no limit on the number of temporary Class "B"(beer) licenses that may be issued to the same organization.

Act 62 creates an exception to the limit on the number of temporary “Class B” licenses that a municipality may issue to an organization. A municipality may issue one organization up to 20 temporary “Class B” licenses for a single-day, multiple-location event, on a specific date and time if an admission fee is charged for participation in the event, and no additional fee is charged for service of alcohol at the event. There is no limit on the number of temporary Class "B" licenses issued for a single-day, multiple-location event, on a specific date and time if an admission fee is charged for participation in the event.

Qualified organizations are still limited to two temporary "Class B" licenses in any 12-month period. However, licenses issued for a single day, multiple location event count as one license towards this two license limit. A municipality may issue temporary "Class B" licenses for a total of up to two events during the immediately preceding 12-month period.

No person may serve wine after 9:00 p.m. on premises for which a temporary “Class B” license is issued in connection with a single-day, multiple-location event that meets the criteria described above.

### ***Fee for a Temporary “Class B” License***

Under prior law, a municipality was required to charge a fee of \$10 per temporary “Class B” license. The fee for a temporary Class "B" license is determined by the municipality, but may not exceed \$10. Act 62 authorizes a municipality to charge a fee for a temporary "Class B" license in any amount up to \$10.

### ***Exception to Alcohol Beverages Violations of Underage Persons***

Current alcohol beverage law generally prohibits underage persons (under 21 years of age) from being on alcohol beverage licensed premises, unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age. Municipalities issuing temporary Class "B" licenses are authorized to allow the licensee to permit underage persons to be on premises covered by a Class "B" license.

Act 62 provides an additional exception for an underage person who enters and remains on premises covered by a temporary “Class B” license for a single-day, multiple-location event, if all of the following apply:

- The municipal governing body issuing the license, or an official or body authorized by the municipal governing body, authorizes the licensee to permit underage persons to be on the licensed premises for the purpose of acting as designated drivers.
- The licensee permits, on the licensed premises, unaccompanied underage persons to be present only for the purpose of acting as designated drivers and the licensee provides a means of identification, such as a wrist band, to identify these underage persons as designated drivers.
- The underage person is present on the licensed premises to act as a designated driver and displays the means of identification provided by the licensee.

### ***Exception to prohibition on Issuing a Class "B" License for Premises Where Other Business is Conducted***

Act 62 authorizes a municipality to issue a temporary Class "B" license for premises where other business is conducted, if the temporary Class "B" license is for a single-day, multiple location event on a specific date and time for which an admission fee is charged for participation in the event, and no additional fee is charged for service of alcohol at the event.

3. **Tax Relief for Out-of-State Disaster Relief Responders** (2015 Wis. Act 84, renumber sec. 71.23 (3), renumber and amend secs. 71.67(6), 77.52(7) and 77.53(9)(b); amend 71.03 (2) (a) 2., 77.52 (12) and 323.12 (title); and create secs. 71.04 (7) (f) 17., 71.05 (1) (g), 71.23 (3) (bm), 71.25 (9) (f) 17., 71.25 (16), 71.26 (2) (a) 12., 71.64 (6) (c), 71.67 (6) (b), 77.52 (7) (b), 77.53 (9) (b), 77.53 (19) and 323.12 (5) of the statutes; various effective dates\*).

[Wisconsin Act 84](#) provides qualifying out-of-state employers and out-of-state employees an exemption from certain registration and tax reporting requirements, if the qualifying employer or employee is in Wisconsin solely to perform disaster relief work in connection with a state of emergency declared by the governor.

An "out-of-state business" is a business that is not organized under Wisconsin laws and, except for performing qualified disaster relief work during a disaster period, was not doing business in Wisconsin during the three taxable years immediately preceding the disaster period or the taxable year in which the declared state of emergency occurs. See *Definitions*, below.

An "out-of-state employee" is an individual who does not work in Wisconsin, except for performing qualified disaster relief work, and who, immediately prior to the disaster relief period, was not performing services that required the filing of a Wisconsin tax return. See *Definitions*, below.

Under the Act, an eligible business or employee is exempt from the following registration requirements:

- The requirement to register/obtain a business tax registration certificate.
- The requirement to register/obtain a Wisconsin seller's permit or withholding tax permit.
- The requirement to register/obtain a use tax registration certificate.

Under the Act, an eligible business or employee is exempt from Wisconsin use tax on taxable products and services purchased outside of the state and brought into Wisconsin for disaster relief work.

**CAUTION:** Although the out-of-state business is not required to obtain a business tax registration certificate, Wisconsin seller's permit, or use tax certificate, the out-of-state business is responsible for Wisconsin sales or use tax on taxable sales and purchases in Wisconsin.

Under the Act, the following provisions apply to an eligible business or employee for income, franchise, and withholding tax purposes:

- For individuals and fiduciaries, income from disaster relief work of an out-of-state business and an out-of-state employee is exempt from Wisconsin income tax.
- Every nonresident person and every person who changes domicile into or out of this state during the taxable year shall file a return if the person is unmarried and has gross income of \$2,000 or more, or if the person is married and the combined gross income of the person and his or her spouse is \$2,000 or more, except that a return is not required to be filed if all the income is for work performed during a declared state of emergency and is exempt from tax.
- For purposes of apportioning business income of nonresident individuals and nonresident estates and trusts to Wisconsin, gross receipts from sales of property or services as part of performing disaster relief work are not included in the sales factor.
- A subtraction is provided when determining the "net income" of a corporation for the income of an out-of-state business from disaster relief work.
- Except as provided in sec. 71.255(5), Wis. Stats., which relates to a member's share of business income of a combined group, an out-of-state business may do business in this state without subjecting itself to the imposition of the income or franchise tax if its only activity in this state is disaster relief work.
- For purposes of the apportionment of any income, the disaster relief work of an out-of-state business shall not increase the amount of income apportioned to this state. Any property brought temporarily into this state by an out-of-state business in connection with performing disaster relief work is not considered property located in this state. Compensation paid to out-of-state employees who are performing disaster relief work is not considered compensation paid in this state. Gross receipts from the sale of property or services as part of performing any disaster relief work are not considered gross receipts from sales received in this state.
- No amount shall be withheld from wages paid to an out-of-state employee for disaster relief work. An out-of-state business whose only payments to employees are to out-of-state employees for disaster relief work is not required to obtain a business tax registration certificate.

Any out-of-state business and the employer of any out-of-state employee, that wants to claim exemption under the Act, must notify the Department of Revenue within 90 days after the last day of a disaster period in the manner prescribed by the department. The business or employee must also provide DOR with the business or employee's:

- Legal name and business name, if any.
- State of domicile or residence.
- Principal address.

- Federal tax identification number.
- Date of entry to the state for the purpose of performing disaster relief work.
- Contact information.

The department is developing a publication that will explain this new tax law, including notification requirements, how to remit sales or use tax on its taxable sales, etc.

### Definitions

“Declared state of emergency” means a state of emergency declared by the governor under sec. 323.10, Wis. Stats.

“Disaster period” means the time that begins 10 days before a declared state of emergency and ends 60 days after the declared state of emergency ends.

“Disaster relief work” means work, including repairing, renovating, installing, building, or performing other services or activities, relating to infrastructure in this state that has been damaged, impaired, or destroyed in connection with a declared state of emergency.

“Doing business in this state” has the meaning in sec. 71.22(1r), Wis. Stats., except that members of a combined group, as defined in sec. 71.255(1)(a), Wis. Stats., are not considered to be doing business Wisconsin based solely on another member of the combined group doing business in Wisconsin. A business is doing business Wisconsin, for purposes of ch. 77, if it performs disaster relief work in Wisconsin.

“Infrastructure” means property and equipment owned or used by a telecommunications provider or cable operator or that is used for communications networks, including telecommunications, broadband, and multichannel video networks; electric generation, transmission, and distribution systems; gas distribution systems; water pipelines; and any related support facilities that service multiple customers or citizens, including buildings, offices, lines, poles, pipes, structures, equipment, and other real or personal property.

“Out-of-state business” means a sole proprietorship, partnership, limited liability company, joint venture, corporation, or other organization or enterprise, whether operated for profit or not for profit, that is not organized under the laws of Wisconsin and that, except for disaster relief work during a disaster period, was not doing business in Wisconsin during the three taxable years immediately preceding the disaster period or the current taxable year in which the declared state of emergency occurs.

“Out-of-state employee” means an individual who does not work in this state, except for disaster relief work during a disaster period, and who immediately prior to that declared state of emergency was not a resident of Wisconsin, was not doing business in Wisconsin that required a tax return to be filed in Wisconsin, and was not performing services in Wisconsin that required a Wisconsin tax return to be filed.

“Taxable year” has the meaning in sec. 71.01 (12), Wis. Stats.

\* The Act takes effect of November 13, 2015, except that the provisions of the Act that exempt eligible businesses and employees from paying the use tax or registering with DOR as a seller take effect on February 1, 2016. The treatment of provisions of the Act within chapter 71 of the statutes first apply to taxable years beginning on January 1, 2015.

4. **Football Stadium Tax Distribution Changes** (2015 Wis. Act 114, amend sec. 77.76(3p) and create sec. 77.76(5), effective December 2, 2015).

The football stadium district tax ended on September 30, 2015. The Department of Revenue (DOR) is directed to make distributions of excess football stadium district sales tax revenue to Brown County and the municipalities within Brown County. The new law provides:

- (1) The Green Bay/Brown County Football Stadium District ("District"), having previously made all certifications to the DOR required under sec. 229.825(3), Wis. Stats., must return, to the DOR, all football stadium taxes paid to it for taxes imposed by or collected for the District from April 1, 2015 through September 30, 2015, except for taxes reported to the DOR prior to April 1, 2015 and that the DOR paid to the District.
- (2) The DOR must distribute the football stadium district taxes imposed by or collected for the District between April 1, 2015 through September 30, 2015, excluding taxes reported prior to April 1, 2015 that the DOR paid to the District, no later than December 31, 2015, as follows:
  - a. 25% to Brown County
  - b. 75% to the cities, villages, and towns in Brown County in proportion to the population of each such city, village, and town in the county compared to the county's entire population, using the population determined under sec. 16.96, Wis. Stats.

**Note:** Distributions were made to Brown County and its municipalities on December 21, 2015. See the press release on DOR's website.

- (3) Annually, beginning in 2016, the DOR must distribute any additional taxes collected for the District after September 30, 2015, including interest, penalties, and amounts due as a result of an audit determination, on October 1, 2016, and on October 1 of each year thereafter, as specified in (2).
- (4) Amounts paid by DOR as interest on refunds of football stadium district tax reduces the amounts payable under (2) and (3).

Under prior law, the DOR paid all football district stadium taxes solely to the District.

5. **Sales and Use Tax Exemption for Certain Property Sold to Construction Contractors** (2015 Act 126, create sec. 77.54(9m), first applies to contracts entered into on January 1, 2016).

A sales and use tax exemption is created for the sale of building materials sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to a county, city, village, town, school district, county-city hospital, sewerage commission, metropolitan sewerage district, joint local water authority, or eligible nonprofit organization, and the building materials become a component of a facility located in Wisconsin that is owned by that entity.

For additional information about this exemption, see the article on page 19 of this publication.

## What's New This Tax Season

Below are some of the changes that may impact your 2015 Wisconsin income tax return:

### Individuals:

- **Amended returns:** Form 1X, *Amended Return*, is eliminated for 2015. An amended income tax return for 2015 generally must be filed on the same form that was originally filed. See the article on page 9 for more information.
- **New schedule to file with amended returns:** Schedule AR, *Explanation of Amended Return*, must be filed with a 2015 amended return. The schedule is used to explain changes made on an amended Form 1, 1A, WI-Z, or 1NPR.
- **College savings account:** Numerous changes are made to the subtraction for contributions to a college savings account (see page 10 for related article). The changes are reflected in Schedule CS, *College Savings Accounts*, which must be filed to claim the subtraction.
- **Tuition:** The subtraction for tuition and fees is \$6,943 (up \$3 from 2014). The phase-out amounts are adjusted for inflation. The subtraction is entirely phased-out for persons with federal adjusted gross income of \$63,000 if single or head of household; \$104,990 if married filing a joint return; and \$52,500 if married filing a separate return.
- **Standard deduction for dependents:** The minimum standard deduction for dependents is increased from \$1,000 to \$1,050.
- **Charitable donations:** Donations may no longer be designated on the return for the Packers Football Stadium or for the Firefighters Memorial.
- **Educator expenses:** If a deduction for up to \$250 of educator expenses is allowed on the federal return, the deduction also applies for Wisconsin.
- **ATV corridors:** The subtraction for ATV corridor payments to landowners is no longer available.
- **Exempt interest:** Interest received from bonds issued by a sponsoring municipality borrowing to assist a local exposition district created under subch. II of ch. 229 is exempt from Wisconsin income tax.

### Businesses:

- **Schedule R – Wisconsin Research Credits.** The computation of the research credits was simplified as detailed on page 10 of [Wisconsin Tax Bulletin #189](#). The credits for increasing research expenses, activities related to internal combustion engines, and certain energy efficient products, were consolidated to Schedule R. Claimants file a separate Schedule R to claim each credit.
- **Schedule MA-A – Wisconsin Agricultural Credit.** Questions about eligibility to claim the credit were added to the beginning of the schedule.
- **Schedule MA-M – Wisconsin Manufacturing Credit.** Questions about manufacturing assessment account numbers and eligibility were added to the beginning of the schedule.
- **Form 3 – Wisconsin Partnership Return.** Changed to landscape format to allow accurate scanning of data. Additions and subtractions schedule added to provide detail of amounts entered in column c of Schedule 3K.
- **Schedule 3K-1 – Partner's Share of Income, Deductions, Credits, etc.** Changed to landscape format to allow accurate scanning of data. Additions and subtractions schedule added to provide detail of amounts entered in column c of Schedule 3K-1.
- **Form 5S – Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return.** Changed to landscape format to allow accurate scanning of data. Additions and subtractions schedule added to provide detail of amounts entered in column c of Schedule 5K.

- **Schedule 5K-1** – *Tax-Option (S) Corporation Shareholder's Share of Income, Deductions, Credits, etc.* Changed to landscape format to allow accurate scanning of data. Additions and subtractions schedule added to provide detail of amounts entered in column c of Schedule 5K-1.

**Eliminated form and schedules:**

- **Form 1X** – *Amended Return* (refer to *2015 Amended Returns* article in this issue).
- **Schedule R-1** – *Increased Wisconsin Research Credits for Activities Related to Internal Combustion Engines* (merged into Schedule R).
- **Schedule R-2** – *Increased Wisconsin Research Credits for Activities Related to Certain Energy Efficient Products* (merged into Schedule R).
- **Schedule HI** – *Health Insurance Risk-Sharing Plan Assessments Credit* (credit expired).
- **Schedule JC** – *Job Creation Deduction* (credit expired).
- **Schedule RB** – *Relocated Business Credit or Deduction* (credit expired).
- **Schedule WB** – *Woody Biomass Harvesting and Processing Credit* (credit expired).

**PIN Pilot to Prevent Refund Fraud**

In January 2016, DOR is implementing a PIN (Personal Identification Number) process for preventing refund fraud. Persons with Wisconsin income tax or homestead credit accounts who were identified by the IRS as being affected by the transcript breach and others identified as identity theft victims or potential victims are included in the pilot.

The process is different than the IRS PIN process. When a Wisconsin return or homestead credit claim is filed for the identified person, a letter is mailed that contains a Personal Identification Number. The PIN is alpha-numeric and consists of eight characters. The PIN is used one time solely for verifying the person's identity through an online application on DOR's website (similar to taking an online identity quiz); a mobile app; or by calling Customer Service. Taxpayer identifying information (letter ID, last four numbers of the SSN or ITIN and refund amount claimed on return) is required before entering the PIN. Once the PIN is verified, the taxpayer's return goes through normal processing.

In some cases, where DOR does not have confidence in the address on the return filed, a letter will be mailed asking that the person send in documents to verify their ID before their return can continue processing, rather than sending the PIN.

A general letter explaining the PIN process will go out to affected taxpayers in January telling them to expect a PIN from DOR after filing a return. No immediate action is required from this informational letter.

**Staying on Top of Scams and Fraud**

As the 2016 tax filing season is upon us, so are ongoing problems with tax fraud and tax scams.

The most current information on fraud and tax scams is available online at:

- [www.irs.gov](http://www.irs.gov) – Internal Revenue Service
- <http://datcp.wi.gov> - Wisconsin Division of Agriculture, Trade and Consumer Protection

Use the search box and enter "fraud" or "scams".



## Access 2015 Form 1099-G Online

Taxpayers have online access to their 2015 Form 1099-G (Certain Government Payments). The majority of Wisconsin taxpayers have elected to receive an email that their 1099-G is available online. Those that have not elected email notification continue to receive paper copies.

Taxpayers are advised to access their 1099-G online, print a copy and give the form to their tax preparer with the rest of their tax documents. This information is used in the preparation of the federal return.

Please note that, for security purposes, the taxpayer's address is not shown on the online printable form, but is on the 1099-G that goes to the Internal Revenue Service.

Taxpayers can access 1099-G information online for years 2010 through 2015 at: [revenue.wi.gov/es-erv/Form1099G/](http://revenue.wi.gov/es-erv/Form1099G/).

## 2015 Amended Return Eliminated

Wisconsin Form 1X, *Amended Return*, is eliminated for 2015. Instead, an amended income tax return for 2015 generally must be filed on the same form that was originally filed, that is, Form 1, Form WI-Z, Form 1A, or Form 1NPR. For example, if you filed a 2015 income tax return on Form 1, you would file an amended return on a 2015 Form 1.

To amend a 2015 return:

- Check the amended return space at the top of the form.
- Complete the form using the correct amounts. See the instructions for the form you are using.
- Complete Schedule AR, *Explanation of Amended Return*. Schedule AR is new for 2015 and must be enclosed with the amended return.
- Sign and date the amended return (both spouses must sign if a joint return).

Schedule AR must be submitted with all 2015 amended returns. This includes an amended 2015 Form 1NPR. An amended Form 1NPR for a year prior to 2015 only requires an attached explanation of the changes on the amended return.

Form 1X will still be available to file an amended return for years prior to 2015. An amended return must generally be filed within 4 years of the unextended due date of the original return.

## DOR No Longer Providing Copies of Federal Income Tax Returns

The Department of Revenue (DOR) is no longer providing copies of federal income tax returns when Wisconsin income tax return copies are requested. Copies or transcripts of federal income tax returns should be requested from the [Internal Revenue Service](http://www.irs.gov) (IRS).

Most federal returns received by DOR cannot be printed in a useable format. A federal return viewer that previously enabled DOR to print federal income tax returns is no longer supported by the IRS.

## College Savings Account Changes

The Wisconsin Schedule CS, College Savings Accounts, has been revised for 2015 to reflect changes in Wisconsin law. The Wisconsin college savings programs are Edvest and Tomorrow's Scholar.

Schedule CS must be completed by individuals who contributed to a college savings account or who made certain withdrawals from the account. A separate Schedule CS must be completed for each beneficiary. For example, a parent has two children and contributes to the account of each child. The parent must file two Schedules CS, one for each child.

Changes to the 2015 Schedule CS include the following.

- The maximum amount that may be subtracted for contributions to an account is \$3,100 per beneficiary (\$1,550 in the case of divorced parents).
- *Rollovers to another state's qualified tuition program* – The portion of the amount rolled over that was previously claimed as a subtraction must be included in the account owner's Wisconsin income.
- *Withdrawals within 365 days of deposit* – Using a first-in, first-out method, the amount withdrawn for any reason from a college savings account must be included in the Wisconsin income of the account owner if the amount withdrawn was contributed to the account within 365 days of the day on which the amount was withdrawn. The addition to income applies to the extent the amount withdrawn was previously claimed as a subtraction from income.
- *Carryovers of excess contributions* – Beginning with 2014 contributions, excess contributions may be carried over and deducted in future years. Any carryovers of excess contributions are reduced by an amount equal to the amount of a withdrawal from an account that was not used for qualified higher education expenses to the extent that the withdrawn amount exceeds the amount that is added to income.
- *Rollovers from another state* – For rollovers after April 15, 2015, a subtraction is allowed for any principal amount rolled over from another state's qualified tuition program. Amounts eligible for the subtraction in excess of the annual limits may be carried forward to future taxable years.
- *Distributions not used for qualified higher education expenses* – For taxable years beginning on or after January 1, 2015, the addition to income for distributions not used for qualified higher education expenses applies only to amounts for which a subtraction was previously claimed.

For further information, see the 2015 Schedule CS and instructions.

## Forms 3, 5S, and Schedules 3K-1, 5K-1 Orientation Change

The department changed the orientation of Forms 3, 5S and Schedules 3K-1, 5K-1 to landscape for the 2015 filing season to allow for scanning and capturing of data. This change was necessary to ensure that paper returns are processed as accurately as electronic returns are. There are no plans for the department to change the orientation of these forms back to portrait. Practitioners and taxpayers may want to consider keeping or providing electronic copies of tax returns to avoid additional printing costs as a result of this change.

The department requires partnership or corporate returns to be filed electronically. The department's website provides a [list](#) of software vendors who support corporation and partnership e-file and e-pay. Also, to e-pay, you can use the department's [My Tax Account](#). If the requirement to e-file or e-pay causes an undue hardship, an [Electronic Filing or Electronic Payment Waiver Request](#) may be submitted.

## Differences in Wisconsin and Federal Internal Revenue Code Provisions

The federal Protecting Americans from Tax Hikes Act of 2015 (Division Q of P.L. 114-113) was signed by the President on December 18, 2015. This Act retroactively extended a number of federal tax provisions that had expired for 2015. The extension of these provisions does not apply for Wisconsin and results in a difference in the federal and Wisconsin tax treatment of these provisions.

Individuals must file Wisconsin Schedule I, Adjustments to *Convert 2015 Federal Adjusted Gross Income and Itemized Deductions To The Amounts Allowable for Wisconsin*, to adjust for these differences. Following is a partial list of some of the common provisions that were extended that will affect individuals.

- Increase in the excludable amount of transit passes and commuter fringe benefits
- Gain on the sale of certain small business stock
- Discharge of indebtedness on principal residence
- Special 50 percent bonus depreciation
- Expensing of film or television production costs
- Recovery period for leasehold improvements and qualified restaurant and retail improvement property
- Depreciation of race horses
- Charitable deductions for S corporation shareholders
- Deduction for tuition and fees
- IRA distribution transferred for charitable purposes
- Enhanced charitable deduction for contributions of food inventory
- Certain mortgage insurance premiums treated as residence interest
- Donation of conservation property

A complete list of differences and the tax treatment can be found on Schedule I which is available on the department's website at <https://www.revenue.wi.gov/html/taxind15.html>.

## Second Year of Basis Adjustment for Depreciated or Amortized Assets

Did you have assets that were being depreciated or amortized for tax years beginning prior to January 1, 2014, and there was a difference in the federal adjusted basis and the Wisconsin adjusted basis of the assets? If yes, an adjustment had to be made to account for the difference in basis.

Starting with the first taxable year beginning after December 31, 2013, and for each of the next 4 taxable years, a person must either add or subtract 20 percent of the difference between the combined federal adjusted basis and the combined Wisconsin adjusted basis of all depreciated or amortized assets as of the last day of the taxable year beginning in 2013 that are being depreciated or amortized for both federal and Wisconsin purposes.

If the combined Wisconsin adjusted basis is *greater* than the combined federal adjusted basis, the adjustment is a subtraction from income. If the combined Wisconsin adjusted basis is less than the combined federal adjusted basis, the adjustment is an addition to income.

2015 is the second year of the basis adjustment. The adjustment for 2015 is the same amount that was allowed for 2014.

As a result of these adjustments, the Wisconsin adjusted basis of the assets is deemed to be same as the federal adjusted basis of the assets as if the first day of the taxable year beginning in 2014.

Assets purchased in tax years beginning after 2013 may have a different depreciable basis for Wisconsin because federal bonus depreciation was not adopted by Wisconsin. Additionally, taxpayers who make different section 179 expense elections for federal and Wisconsin purposes will have different depreciable bases in their assets.

For more information, see the department's Common Questions at <https://www.revenue.wi.gov/faqs/ise/assets.html>.

## Federal Deduction for Educator Expenses Applies for Wisconsin

Division Q of federal Public Law 114-113 was enacted on December 18, 2015. This law permanently extended the federal deduction for educator expenses. An eligible educator may deduct up to \$250 of qualified expenses paid during the year for ordinary expenses paid in connection with books, supplies, equipment and other materials used in the classroom.

For taxable years beginning in 2015 and thereafter, the educator expense deduction will also apply for Wisconsin. The deduction may be claimed by educators who file the 2015 Wisconsin Form 1 (Form 1NPR for nonresidents and part-year residents). The deduction is not available on Form 1A or WI-Z.

Because the starting point for Form 1 is federal adjusted gross income, the federal deduction for educator expenses will automatically carry over to the Wisconsin Form 1. No additional adjustment is required on Form 1.

Educators who file Wisconsin Form 1NPR should claim the deduction on line 17 of 2015 Form 1NPR.

## Depreciation Differences for 2015

The federal Protecting Americans from Tax Hikes Act of 2015 (Division Q of P.L. 114-113) was signed by the President on December 18, 2015. This Act retroactively extended a number of federal tax provision that had expired for 2015. The extension of these provisions generally does not apply for Wisconsin for 2015.

Included in the Act were extensions of a number of provisions relating to depreciation. For example:

- 50% special (bonus) depreciation to certain property placed in service in 2015
- 15-year recovery period for leasehold improvement property and restaurant property
- 50% depreciation deduction for cellulosic fuel ethanol plant property
- treatment of race horses as 3-year property
- accelerated depreciation for Indian reservation property
- 7-year cost recovery for motorsports racing track facilities

Wisconsin law provides that depreciation is determined under the provisions of the Internal Revenue Code in effect on January 1, 2014. Therefore, the depreciation provisions in the Protecting Americans from Tax Hikes Act do not apply for computing depreciation for Wisconsin. These depreciation differences apply to all entities including individuals, corporations, partnerships, estates and trusts.

The difference in the federal and Wisconsin depreciation is adjusted as follows:

*Individuals:* Individuals use Schedule I, *Adjustments to Convert 2015 Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin*, to adjust for the difference in depreciation. Schedule I must be attached to the Wisconsin Form 1 or 1NPR.

*Corporations not filing as part of a combined group:* Use Schedule 4V, *Wisconsin Additions to Federal Income*, line 6 to adjust for the difference in depreciation. Schedule 4V must be attached to Wisconsin Form 4, *Wisconsin Non-Combined Corporation Franchise or Income Tax Return*.

*Corporations filing as part of a combined group:* Use Form 6, *Wisconsin Combined Corporation Franchise or Income Tax Return*, Part II, line 2f to adjust for the difference in depreciation.

*Partnerships:* Use Form 3, *Wisconsin Partnership Return*, Schedule 3K, line 1, column c to adjust for the difference in depreciation.

*Tax-Option (S) Corporations:* Use Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*, Schedule 5K, line 1, column c to adjust for the difference in depreciation.

*Estates and Trusts:* Estates and trusts use Form 2, Schedule B, *Adjustments to Convert 2015 Federal Taxable Income to the Amount Allowable for Wisconsin*, to adjust for the difference in depreciation.

## Section 179 Expense

The federal Protecting Americans from Tax Hikes Act of 2015 (Division Q of P.L. 114-113) was signed by the President on December 18, 2015. This Act retroactively extended a number of federal tax provisions that had expired for 2015. Included in this Act were the following provisions relating to sec. 179 expensing:

- Extends sec. 179 expensing limitation and phase-out amounts (\$500,000 and \$2 million) to property placed in service in 2015
- Extends expensing for computer software and qualified real property to property placed in service in 2015
- Extends the election to expense mine safety equipment to property placed in service during 2015
- Extends the energy efficient commercial buildings deduction to property placed in service in 2015

The extension of these sec. 179 provisions also applies for Wisconsin tax purposes for taxable years beginning in 2015. Wisconsin law (sec. 71.98(4), Wis. Stats.) provides that for taxable years beginning after December 31, 2013, the Internal Revenue Code (IRC) related to expensing of depreciable business assets under secs. 179 and 179A-179E means the IRC in effect for the year in which property is placed in service. Thus any federal law changes related to expensing under these code provisions automatically applies for Wisconsin for taxable years beginning in 2015.

***Withholding Tax Update Available***

The [2015 Withholding Tax Update](#) was posted to the department's website in December. Topics covered include:

- Withholding Tax Rates
- Filing Frequency Changes
- Filing Wage and Information Returns
- Filing and Payment Options
- Wage and Information Return Requirements
- Data Exchange Program
- Extensions
- Filing an Amended Reconciliation
- Financial Institution and Insurance Agency Reporting
- Tips or Gratuities
- Nonresident Entertainer Withholding
- New Hire Reporting Requirement
- Withholding Calculator
- Employees Claiming Exemption From Withholding
- Withholding Lock-in Letters
- Reciprocity Agreements
- Retirement and Pension Payments Exempt From Income Tax Withholding
- *My Tax Account* Webinars
- *My Tax Account* Email Address Update
- Withholding Tax Electronic Mailing List

## Taxable Sales May Include Bartering

Bartering is the exchange of goods or services. An exchange may involve products, services, real property, or intangibles. Barter sales and sales and use tax may apply to such transactions.

If you barter taxable products or taxable services for a service, real property, or intangible, the amount subject to tax (sales price) is measured by the amount of the consideration received, in money or otherwise, for the service, real property or intangible.

If the products or services you barter are not taxable, you should report the sales price from the transaction on line 1 of your sales tax return and then deduct the nontaxable sales price on line 3 of your sales tax return.

If you barter tangible personal property for tangible personal property in the same transaction, your taxable sales price may be reduced for a trade-in.

Example 1 – Tangible personal property traded for other tangible personal property

Example 2 – Tangible personal property bartered for nontaxable service and payment

Example 3 – Tangible personal property bartered for taxable service

Example 4 – Tangible personal property bartered for real property

Example 5 – Taxable service bartered for nontaxable service

Example 6 – Taxable service bartered for real property

Example 7 – Nontaxable service bartered for taxable service and payment

**Example 1 – *Tangible personal property traded for other tangible personal property:*** A bicycle shop sells a bike retailing at \$400 to a cyclist. In the same transaction, the bike shop allows the cyclist to trade-in a bike trailer. The bike shop allows the cyclist a credit of \$150 for the bike trailer. The bicycle shop reports taxable sales of \$250 on its sale tax return.

**Example 2 – *Tangible personal property bartered for nontaxable service and payment:*** An interior designer exchanges \$500 of products (mirrors and artwork) for nontaxable dance lessons with an established price of \$400 and a payment of \$100. The interior designer reports the \$500 sale on its sales tax return. If the dance school holds a seller's permit, it would also report the \$500 sale and then deduct \$500 for its nontaxable sale on its sales tax return.

**Example 3 – *Tangible personal property bartered for taxable services:*** A building material supplier exchanges lumber for taxable landscaping services with an established price of \$750. Both the building material supplier and landscaping company report taxable sales of \$750 on their sales tax return.

**Example 4 – *Tangible personal property bartered for real property:*** A building material supplier provides building materials to an individual in exchange for a one-acre lot and building. The building materials supplier reports the taxable sale of building materials on its sales tax return equal to the value of the lot and building received. The sale of land and house by the individual is a nontaxable sale of real property.

**Example 5 – *Taxable service bartered for nontaxable service:*** A lodging provider exchanges taxable lodging services for radio advertising with an established price of \$200. Both the lodging provider and advertising company report sales of \$200 on their sales and use tax returns. The advertising company may deduct \$200 for its nontaxable sale of radio advertising on its sales and use tax return.

**Example 6 – *Taxable service bartered for real property:*** A landscaping company provides taxable landscaping services to a concrete paving company in exchange for the installation of a concrete patio with an established price of \$700. The landscaping company reports taxable sales of \$700 on its sales tax return. If the concrete paving company holds a seller's permit, it would also report the \$700 sale and then deduct \$700 for its nontaxable sale on its sales tax return.

**Example 7 – *Nontaxable service bartered for taxable service and payment:*** A bookkeeper provides its client \$150 of nontaxable bookkeeping services in exchange for \$80 of taxable clothing alteration services and a payment of

\$70. The client reports sales of \$80 for clothing alteration services on its sales tax return. If the bookkeeper holds a seller's permit, the bookkeeper would report the \$150 sale and then deduct \$150 for its nontaxable bookkeeping services on its sales tax return.

For more information, see:

- "[Barters and Exchanges](#)," *Sales and Use Tax Report* (September 2010)
- "[Trade-ins](#)," *Wisconsin Tax Bulletin* #124 (April 2001)

## Catering Services Are Taxable

### Sales by Caterers

Caterers sell and serve meals and drinks on premises designated by a purchaser. Charges by a caterer to prepare, serve, and deliver the following taxable products are subject to Wisconsin sales and use tax:

- Prepared food <sup>1</sup>
- Candy
- Soft drinks
- Dietary supplements
- Alcoholic beverages

Most sales by a caterer are prepared food. A caterer may charge a customer a price per plate, meal, or type of service, or a lump sum. The method used to charge the customer does not affect the tax treatment of the caterer's sales.<sup>2</sup>

**Example 1:** Caterer is hired to provide meals and beverages to 250 guests at a wedding dinner for \$18 per plate. Caterer prepares and serves the meals and beverages to guests on or in plates, bowls or glasses. The entire \$4,500 charge by Caterer is subject to Wisconsin sales tax. The food and beverages are prepared food because plates, bowls, and glasses (i.e., utensils) are provided with the sale of the food and beverages. The charge is taxable regardless of who owns the plates, bowls, and glasses for serving.

**Example 2:** Same as *Example 1*, except meals are provided self-serve, buffet style. The charge by Caterer for preparing food and beverages for 250 guests is \$3,000. The entire \$3,000 charge by Caterer is subject to Wisconsin sales tax. The food and beverages are prepared food since plates, bowls, and glasses necessary to receive the food and beverages are available to the purchaser's guests.

**Example 3:** Caterer is hired to provide lunch to Company's employees participating in a golf outing for \$500. Under the agreement between Caterer and Company, Caterer provides each golfer a "to go" box that contains a sandwich, bag of potato chips, cookie, and a napkin. The \$500 charge by Caterer to Company is subject to Wisconsin sales tax. The lunches are prepared food because Caterer physically gives a napkin to the purchaser (i.e., Company's employees) with the "to go" box. **Note:** Even if the napkin was not given, the lunches are prepared food since two or more food ingredients are combined and sold by Caterer as a single item.

**Example 4:** Cake Decorator is hired to prepare, cut, and serve wedding cake for 200 guests for a fee of \$350. The \$350 charge by Cake Decorator is subject to Wisconsin sales tax. The wedding cake is prepared food because plates are provided with the wedding cake. The charge is taxable regardless of who owns the plates for serving.

<sup>1</sup> Information on prepared food is provided in Part II.D. and Appendix I of [Publication 220](#), *Grocers*, and in Part III.A.3. of [Publication 236](#), *Restaurants and Bars*.

<sup>2</sup> More information is provided in Part III.C. of [Publication 220](#), *Grocers*.



**Example 5:** Same as *Example 4*, except Cake Decorator prepares and delivers the wedding cake but does not serve it to the purchaser's guests. Cake Decorator charges the purchaser \$200 for the wedding cake and delivery. The purchaser has a separate agreement with the wedding venue to have the venue's employees cut and serve the wedding cake on plates. The \$200 charge by Cake Decorator is not subject to Wisconsin sales tax. The wedding cake is not prepared food since the cake is a bakery item **and** utensils are not provided or made available to the purchaser at the time of sale.

### Purchases by Caterers

*Food and Food Ingredients, Including Beverages* - Purchases of certain food and food ingredients (e.g., potato chips, meats, soup mixes) and beverages (e.g., milk) by a caterer are exempt from tax. The caterer is not required to provide the supplier an exemption certificate when purchasing these items.<sup>3</sup>

*Items For Resale* – Purchases of certain food and food ingredients (e.g., candy, potato salad that is prepared food) and beverages (e.g., soft drinks, beer) that a caterer resells may be purchased without tax. The caterer is required to provide the supplier with a fully completed exemption certificate, claiming resale.<sup>3</sup>

*Preparation and Serving Equipment* –

- Purchases of non-disposable items (e.g., silverware, tablecloths, pots) used by a caterer to prepare, transport, and serve meals are subject to Wisconsin sales and use tax.<sup>4</sup>
- Certain packaging and shipping materials used by a caterer to transfer merchandise to its customer are exempt from Wisconsin sales and use tax. In addition, packaging and shipping materials used by a caterer in packing, packaging, or shipping meat or meat products are exempt, regardless of whether these items are used to transfer merchandise to customers. For example, a caterer's purchase of "to go" boxes are exempt, since they are used to transfer merchandise to customers. For additional examples, see Part IV.D. of [Publication 220, Grocers](#).
- Purchases of disposable items (e.g., tablecloths, napkins, straws) by caterers which are provided to customers with the required purchase of taxable products (i.e., alcoholic beverages, prepared food) are not subject to Wisconsin sales or use tax. The caterer is reselling the disposable items, even if the caterer does not separately charge the customer for the disposable items. The caterer is required to provide the supplier with a fully completed exemption certificate, claiming resale.<sup>4</sup>

### Photography Services – Where Does the Sale Take Place?

Wisconsin sales tax applies to a commercial photographer or videographer's sales of photographs and photographic services, including videography services and charges for taking, reproducing and selling photographs and videos. Sales of photographs and videos transferred to the customer electronically (e.g., emailed to customer, customer downloads from photographer's website) are also taxable.

The taxable sales price includes charges for the photography service, photographs, and delivery charges. The tax rate is based on where the sale takes place:

- The sale of photographs and videos takes place where the customer takes possession of the products, regardless of where the photograph or video was actually taken.
- The sale of photographic services takes place where the customer makes first use of the service (i.e., where the customer receives the photographic images).

<sup>3</sup> More information on taxable and exempt food and food ingredients is provided in Part III.A.1. of [Publication 220, Grocers](#).

<sup>4</sup> More information on purchases by caterers is provided in Part III.C.2. of [Publication 220, Grocers](#).

**Example 1:** A couple residing in La Crosse County, Wisconsin hires a photographer to take photographs and video of their wedding. The wedding takes place in Cozumel, Mexico. The couple picks up the photographs and video from the photographer's studio in Vernon County, Wisconsin.

*The photographer's sale of the photographs and video is subject to sales tax based on the tax rate in Vernon County (5.5%), the location where the couple receives the photographs and video.*

**Example 2:** Same as *Example 1*, except the photographer mails the photographs, as well as the video, to the couple's home address.

*The photographer's sale of the photographs and video are subject to sales tax based on the tax rate in La Crosse County (5.5%), the location where the couple receives the photographs and video.*

**Example 3:** Same as *Example 1*, except the photographer emails digital copies of the pictures, as well as a digital copy of the video to the couple. The couple receives the digital products at their home in La Crosse, Wisconsin.

*The photographer's sale of the digital photographs and video is subject to sales tax based on the tax rate in La Crosse County (5.5%), the location where the couple receives the digital products.*

**Example 4:** A company located in Dane County, Wisconsin, hires a videographer to take video footage of the company's annual convention in New York City. The company provides the videographer with a hard drive on which the footage will be recorded. The videographer delivers the hard drive with the video footage on it to the company's business location in Dane County.

*The videographer's sale of photographic services is subject to sales tax based on the tax rate in Dane County (5.5%), the location where the company makes first use of the photographic services.*

## Online Marketplace Sellers Are Liable for Wisconsin Tax on Third-Party Sales

An online marketplace seller that sells taxable products owned by a third-party seller on its website may be liable for Wisconsin sales or use tax on its Wisconsin sales.

Retailers engaged in business in Wisconsin are liable for Wisconsin sales or use tax on sales that take place in Wisconsin. This includes sales made by a retailer on behalf of a third-party seller as provided in sec. 77.51(13)(c), Wis. Stats., unless the retailer can show that tax has been remitted on the transaction by the third-party seller.

**Exception:** Effective July 14, 2015, the definition of "retailer" was amended to allow an online marketplace to make sales of tangible personal property and items under sec. 77.52(1)(b), Wis. Stats., on behalf of third-party sellers, without becoming liable for the tax on such sales if the online marketplace or one of its affiliates operates a distribution facility. However, this exception does not apply to an online marketplace or its affiliates if any sales are made in which a customer takes possession of taxable products at a location (i.e., storefront) operated by the marketplace or one of its affiliates (sec. 71.51(13b)(b)4., Wis. Stats.) See the [July 2015 Special Edition](#) of the *Wisconsin Sales and Use Tax Report* for additional information regarding this new law.

The third-party seller may also be liable for the tax, but this does not relieve the online marketplace seller of its liability to remit the tax. When more than one party is liable for the tax, the liability for the tax is extinguished for both parties when either party remits the tax to the department.

For additional information about the third-party seller's liability, see the article titled "[Sellers Using Distribution Facilities in Wisconsin Are Liable for Wisconsin Tax on Their Sales.](#)"

## New Sales and Use Tax Exemption Effective January 1, 2016 - Building Materials That Become Part of a Local Government or Qualifying Nonprofit Facility

Section [77.54\(9m\)](#), Wis. Stats. (2013-14), as created by [2015 Wis. Act 126](#), provides an exemption from sales and use tax exemption for property sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the property to a qualifying exempt entity, if the property becomes part of a facility in Wisconsin that is owned by the qualifying exempt entity. In order for the exemption to apply, the following criteria must be met:

1. The construction must be for a *qualifying exempt entity*;
2. The property must become *part of a facility* in Wisconsin that is owned by the exempt entity; and
3. The property must be *transferred to* the qualifying exempt entity.

### 1. What is a Qualifying Exempt Entity?

For purposes of this exemption, a qualifying exempt entity includes:

- Any county, city, village or town within Wisconsin
- Any public school district within Wisconsin
- A county-city hospital established under sec. [66.0927](#), Wis. Stats.
- A sewerage commission organized under sec. [281.43 \(4\)](#), Wis. Stats.
- A metropolitan sewerage district organized under ss. [200.01](#) to [200.15](#) or [200.21](#) to [200.65](#), Wis. Stats.
- Any joint local water authority created under sec. [66.0823](#), Wis. Stats.
- Any nonprofit organization that holds a Wisconsin Certificate of Exempt Status (CES) number\*
- A non-Wisconsin nonprofit organization if it is organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations), and no part of its net income inures to the benefit of any private stockholder, shareholder, member, or corporation.

*Note: A qualifying non-Wisconsin nonprofit organization is not required to obtain a Wisconsin CES number to be a qualifying exempt entity.*

Additionally, a contractor's purchase of building materials used in a construction activity for any federally recognized American Indian tribe or band within Wisconsin is also exempt from sales and use tax if the construction activity occurs on the tribal reservation and the construction project will benefit the Tribe.

**\*CAUTION:** Not all nonprofit organizations that are exempt from federal income and franchise taxes are qualifying exempt entities for purposes of this exemption. Many fraternal, social, and civic organizations **are not qualifying** entities (e.g., Chambers of Commerce, volunteer fire departments, professional organizations, labor organizations). A contractor should request the Wisconsin nonprofit organization's CES number and retain this number in its records to verify that the organization is a qualifying exempt entity.

This exemption also **does not apply** to facilities constructed for the following entities, even if the entity holds a Wisconsin CES number:

- A non-Wisconsin county, city, village or town
- A non-Wisconsin public school district
- A public college, university or technical college (regardless of whether Wisconsin or non-Wisconsin)
- A state governmental unit (regardless of whether Wisconsin or non-Wisconsin)
- A federal governmental unit
- A Wisconsin nonprofit organization that does not hold a Wisconsin CES number
- Individual Native American Tribe members

## 2. What is a "Facility?"

The exemption applies to property that becomes part of a "facility" located in Wisconsin that is owned by a qualifying exempt entity. "Facility" means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and waste water treatment facility, but does not include a highway, street, or road.

## 3. Can a Subcontractor "Transfer" the Property to the Exempt Entity?

A subcontractor's purchase of property qualifies for exemption if the property becomes part of a facility located in Wisconsin owned by a qualifying exempt entity. Although the subcontractor is providing a real property construction activity under contract with the general contractor, the property is ultimately transferred to a qualifying exempt entity upon completion of the contract between the general contractor and the qualifying exempt entity.

### How to Claim the Exemption

A contractor who makes purchases that qualify for this exemption, must provide a fully completed exemption certificate to the seller. The contractor should check "other purchases exempted by law" on the certificate and enter "exempt under sec. 77.54(9m), Wis. Stats."

**Note:** A contractor who provides the seller an exemption certificate claiming an item will be used in this exempt manner, then uses it in a taxable manner, is liable for use tax on its purchase price of such items.

### Documentation to Maintain

*Retailers* – The seller is not liable for Wisconsin sales tax on its sales of taxable products if, within 90 days of the sale, it receives a fully completed exemption certificate from the contractor indicating the contractor is using the items in an exempt manner. Sellers are required to maintain adequate records, including exemption certificates obtained from contractors, to identify that the sale is exempt.

*Contractors* – The contractor is required maintain records to verify that the exemption applies when the real property construction activity is performed on a facility owned by the qualifying exempt entity. This may be done by obtaining a nonprofit organization's CES number and maintaining contracts and invoices showing the work was for this qualifying exempt entity.

**IMPORTANT:** A contractor should request the Wisconsin nonprofit organization's CES number and retain this number in its records to verify that the organization is a qualifying exempt entity. Property used in a real property contract with a Wisconsin nonprofit organization that does not hold a Wisconsin CES number does not qualify for this exemption.

Although a qualifying *non-Wisconsin* nonprofit organization is not required to obtain a Wisconsin CES number to be a qualifying exempt entity, the contractor must be able to verify that the entity is organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations), and no part of its net income inures to the benefit of any private stockholder, shareholder, member, or corporation. For example, the non-Wisconsin qualifying organization may provide the contractor with a copy of its IRS 501(c)3 exempt status determination letter.

**CAUTION:** Nonprofit organizations that the IRS exempts under another section of its code (e.g., 501(c)6, 501(c)7) **are not** qualifying exempt entities for purposes of this exemption. In addition, a Wisconsin state governmental unit that holds a CES number is not a qualifying exempt entity for purposes of this exemption.

For qualifying exempt entities that are not required to hold a CES number (e.g., a Wisconsin municipality), the contractor may retain the contract and invoices that indicate the work was performed for the qualifying exempt entity.

*Subcontractors* – The same treatment applies to subcontractors as it does to contractors in the paragraphs above (i.e., provide exemption certificate to seller, maintain documentation). However, a subcontractor may not have a contract indicating the real property construction activity is for the qualifying exempt entity. A subcontractor will need to ensure it can identify the Wisconsin location, on a bill of sale or invoice to the general contractor, where it performed the real property construction activity and verify that the property became part of a facility in Wisconsin owned by a qualifying exempt entity.

### **Transitional Provisions**

This law first applies to contracts entered into on January 1, 2016 and thereafter. The exemption does not apply if the contractor purchases property after January 1, 2016 for a contract that was entered into prior to January 1, 2016.

The date the contract was entered into between the contractor and a qualifying exempt entity is used in determining whether the exemption applies. A change order to a contract amends the original contract, but does not nullify the original contract or change the date that the contract was entered into. Therefore, if a contract between the contractor and the exempt entity was irrevocably entered into prior to January 1, 2016, the exemption does not apply to property purchased to fulfill the contract. If the contract was not irrevocable and the original contract is cancelled and a new contract is entered into on January 1, 2016 or thereafter, the property used to fulfill the new contract may qualify for exemption.

### **Tax Seminars – Wisconsin/Minnesota Sales and Use Tax Basics**

The Wisconsin and Minnesota Departments of Revenue will present a series of free sales and use tax seminars in March and April 2016. The seminars will provide an overview of Minnesota and Wisconsin sales and use tax laws for companies that do business in both states. They are designed for business owners, bookkeepers, purchasing agents and accountants who need a working knowledge of each state's laws and how to meet their obligations. Topics covered will include:

- Who needs to register for sales and use taxes in Minnesota, Wisconsin or both states
- What cities, counties and other jurisdictions in each state have local taxes
- What's taxable in each state
- Exceptions to the general taxation rules and exemptions
- How and when to use or accept an exemption certificate

Seminar dates, times, and locations, as well as registration information, is available on the Wisconsin Department of Revenue's [Sales and Use Tax Training web page](#).



## Report on Litigation


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

The following decisions are included:

### Sales and Use Tax

Refunded tax not returned to buyer <i>Smith-Bisonette, Inc.</i> .....	22
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## SALES AND USE TAX

 **Refunded tax not returned to buyer.** *Smith-Bisonette, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 17, 2015).

The issue in this case is whether the operator of a racetrack was entitled to keep the funds refunded to him by the Department of Revenue.

Initially the operator remitted sales tax on driver admissions that were used to pay prize money. The drivers were charged a flat \$25 fee to which no tax was expressly added. The taxable sales were calculated by subtracting out sales taxes from the gross sales. The gross sales (i.e., each \$25.00 driver admission) consisted of a taxable sales price plus the actual sales tax.

The operator filed a claim for refund of the taxes paid which were attributable to the driver admissions used to pay prize money. The department refunded the amount of the sales tax erroneously paid with the direction to pass the funds on to the drivers, who allegedly paid the tax to the operator.

Per sec. 77.59(5m), Wis. Stats., if a seller files a claim for refund of sales or use tax that the seller collected from buyers, the seller shall return the tax and related interest to the buyers from whom the taxes were collected, or to the department if the seller cannot locate the buyers. Failure to do so results in a penalty of 25% of the amount not submitted or, in the case of fraud, a penalty equal to the amount not submitted.

The operator did not refund the tax to the drivers. Therefore, the department issued a notice to the operator which represented the tax refund, along with interest and penalty.

The Commission concluded the operator was not entitled to keep funds refunded by the department and that the operator was obligated to pass the refunded tax and related interest back to the drivers. Therefore the department's assessment was upheld.

The taxpayer did not appeal this decision.