

Wisconsin Tax Bulletin

October 2018 Number 203



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General Updates and Reminders

New Department Web Page for Public Comments on Proposed Guidance

The Wisconsin Department of Revenue is seeking more input from taxpayers on published guidance. The department created a new [web page](#), *Proposed Guidance Open for Public Comment*, to post proposed guidance documents. Comments can be submitted to the department through the new web page.

If you want to receive email notifications when a new proposed guidance document is available for comment, [subscribe](#) to the 'Published Guidance' electronic mailing list.

Income/Franchise Tax Updates and Reminders

Elimination of Forms 1A and WI-Z

The Internal Revenue Service (IRS) is eliminating Forms 1040A and 1040EZ for tax year 2018. Wisconsin is eliminating Forms 1A and WI-Z for tax year 2018 and beyond to correspond with the federal form change. Most taxpayers will see no difference in preparing their Wisconsin tax returns, as approximately 85% of Wisconsin taxpayers file their income tax returns electronically using Wisconsin e-file or other approved software vendors.

In 2019, Wisconsin residents will file their 2018 individual income tax return using Form 1. Wisconsin nonresidents and part-year residents continue to file using Form 1NPR.

The IRS is also redesigning Form 1040. See <https://www.irs.gov/pub/irs-dft/f1040--dft.pdf> for details.

Tax Treatment of Employer Reimbursements for Moving Expenses

The federal Tax Cuts and Jobs Act (TCJA) of 2017 created sec. 132(g)(2) of the Internal Revenue Code (IRC), which changed the tax treatment of qualified moving expense reimbursements. Wisconsin adopted this change.

For federal and Wisconsin income tax purposes, employer reimbursements for qualified moving expenses are taxable for the years 2018 through 2025. An exception is available for members of the Armed Forces of the United States on active duty who move pursuant to a military order and incident to a permanent change of station.

Prior to the TCJA, employer reimbursements of qualified moving expenses were generally excluded from an employee's gross income, making the reimbursements exempt from income tax.

On September 21, 2018, the Internal Revenue Service (IRS) issued [Notice 2018-75](#), providing additional guidance regarding the following two situations:

- An employer pays a third-party moving service provider after December 31, 2017, for moving services provided to an individual prior to January 1, 2018.
- An employer reimburses an individual after December 31, 2017, for expenses incurred in connection with a move by the individual prior to January 1, 2018.

In both situations, the employer's reimbursements or payments are not taxable to the employee if all of the following conditions are met:

- The employee's move occurred prior to January 1, 2018
- The employee's move was work related
- The employee's moving expenses were paid directly by the individual prior to January 1, 2018, and are deductible pursuant to sec. 217, IRC
- The employee did not claim a deduction for these expenses
- The moving expenses otherwise satisfy the requirements of sec. 132(g)(1), IRC

Form 6 Filing Periods

The designated agent of a combined group of corporations is responsible for determining and reporting the correct tax period on Form 6, *Wisconsin Combined Corporation Franchise or Income Tax Return*. The designated agent cannot have a different taxable year than the combined group. The taxable year of the combined group is determined as follows:

- If two or more members of the combined group file a federal consolidated return, the combined group's taxable year must be the same as the federal consolidated group.
- If the combined group does not file a federal consolidated return, the combined group's taxable year must be the taxable year of the designated agent.
- If a separate federal corporation income tax return is made for a fractional part of a year, the corporation must file a separate Wisconsin income or franchise tax return for that fractional year.
- If the taxable year of a member differs from the combined group, the designated agent must include the net income or loss and apportionment factors on Form 6 using one of the following methods:
 - Prepare an income statement for the months included in the group's taxable year on Form 6, or
 - Use the net income or loss from the member's taxable year that ends during the group's taxable year.

If a member joins or leaves a combined group, the designated agent must include that member's income or loss and apportionment factors in the combined return for the portion of the taxable year the member was part of the combined group. The member's short period should be identified on Form 6, Part VI, Line 2.

Revised
11/12/18

Example: Wisconsin combined group KLM files a federal consolidated return on a calendar year basis. Member K owns 100% of the stock of Member L. At 11:59 p.m. on March 31, 2018, Member K sold all of its stock in Member L to John Smith. The income and apportionment factors of Member L for the period January 1, 2018 through March 31, 2018 is included on KLM's 2018 Wisconsin Form 6. The income and apportionment factors of Member L for the period April 1, 2018, through December 31, 2018, are reported on Member L's separate Wisconsin corporation franchise/income tax return for the year (2018 Form 4).

For additional information, refer to the following:

- [Form 6 instructions](#)
- [Section 71.255\(8\), Wis. Stats.](#)
- [Section Tax 2.65\(2\)\(a\), Wis. Adm. Code](#)
- [Section Tax 2.67\(3\), Wis. Adm. Code](#)

Wisconsin State Legislators' Per Diem Expenses

Wisconsin state legislators are allowed a subtraction from Wisconsin income for the amount of per diem reimbursement included as wages on federal Form 1040. This subtraction is limited to Wisconsin legislators in the Senate and Assembly with a residence of 50 miles or less from the state capital. The subtraction is not available for other elected positions. For more information, see page 26 of the 2017 Form 1 instructions.

Tips for Filing Schedule CC, Request for a Closing Certificate for Fiduciaries

Wisconsin Schedule CC is filed with the department to request a closing certificate when a Wisconsin probate court requires it to close a proceeding for an estate or trust.

Tips for filing Schedule CC

- Do not include Schedule CC with Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trusts*. Schedule CC must be filed separately.
- Schedule CC may be electronically filed on the department's website at:
<https://www.revenue.wi.gov/Pages/WI-efile/home.aspx>.
- If filing Schedule CC on paper:
 - Use the most current version of Schedule CC available, regardless of the year the decedent died.
 - Send all attachments with Schedule CC. Do not send Wisconsin Form WR-A, *Required Attachments for Electronic Filing*. Form WR-A is only used to submit attachments to Schedule CC after you have electronically filed Schedule CC.
- Provide all of the requested information and documents identified in the [Schedule CC Instructions](#).
- Report the gross value of assets in the estate or trust on Schedule CC. For example, report the fair market value of a home at the date of death without reducing the value by the home's mortgage or a home equity line of credit.
- Estates must provide a copy of the county probate court inventory. The amounts reported on Schedule CC for probate assets must match the amounts from the county probate court inventory.
- Estates must include both the decedent's social security number (SSN) and the estate's federal employer identification number (FEIN) on page 1 of Schedule CC.
- Complete the third party designee section on page 2 of the Schedule CC to allow the department to provide the closing certificate's status to someone other than the personal representative or trustee.
- If you have questions on filing Schedule CC and must contact the department, have the decedent's SSN or the estate's Wisconsin tax account number ready.

Reasons the department may not send a Closing Certificate

- The certificate is not required by the Wisconsin probate court.
- One or more required returns have not been filed for the decedent, estate, or trust.
- The decedent, estate or trust has a balance due on one or more Wisconsin tax accounts.
- The estate or trust is insolvent. However, the department may send a letter indicating we do not object to the release of the personal representative or trustee of the estate or trust being closed under sec. 71.13(3), Wis. Stats.

Registration of Qualified Wisconsin Business for Capital Gain Exclusion and Deferral

Registration must occur each year

A business must register with the department on or before the close of the calendar year for which the business desires registration. Registration for 2018 must be completed by January 2, 2019. **Exception:** A business that desires registration for the calendar year in which it begins doing business in Wisconsin must register with the department during the following calendar year.

A business may register as a qualified Wisconsin business if, in the business's tax year ending immediately before the date of registration, all of the following apply:

- The business has at least two full-time employees.
- The amount of payroll compensation paid by the business in Wisconsin is at least 50% of all payroll compensation paid by the business.
- The value of real and tangible personal property owned or rented and used by the business in Wisconsin is at least 50% of the value of all real and tangible personal property owned or rented and used by the business.

For more information on registering to be a qualified Wisconsin business, refer to the [Common Questions](#) on the department's website.

Benefits of registering

For Wisconsin income tax purposes, an individual may:

- Defer a long-term capital gain if the gain is reinvested in a qualified Wisconsin business.
- Exclude certain long-term capital gains from the sale of an investment in a qualified Wisconsin business. The exclusion applies if the business was a qualified Wisconsin business for the year of the investment and for at least two of the four subsequent years, the investment was made after December 31, 2010, and the investment was held for at least five uninterrupted years.

Withholding Tax Updates and Reminders

New Reporting Requirement for Employer Withholding

Beginning January 1, 2019, employers filing quarterly, monthly, or semi-monthly cannot submit Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld*, electronically until all Withholding Tax Deposit Reports (Form WT-6) have been filed. The filer will get a rejection or error message if either the total withholding tax reported on Form WT-7 is more than the total withholding tax reported on Forms WT-6 filed or one or more Forms WT-6 have not been filed. Forms WT-6 can be in pending status with a future payment date. This new requirement should reduce the number of penalties imposed on Forms WT-7 for amounts due and reduce appeals.

Example 1: An employer files withholding deposits monthly. The WT-7, whether filed by the employer or payroll service provider, cannot be filed until after the December WT-6 has been filed.

Example 2: An employer filed all monthly Forms WT-6. However, when entering information for Form WT-7 and Forms W-2, the employer identifies the June Form WT-6 filed was understated by \$100. Before filing Form WT-7, Form WT-6 should be filed for the June period to report the additional \$100.

Note: Quarterly, monthly, and semi-monthly filers must file an electronic Form WT-6 for each required reporting period even if no tax is withheld for the period.

Election Worker Exemption from Withholding Tax

Compensation paid to an election worker for services performed in national, state, county, and municipal elections is not subject to federal or state income tax withholding. However, the compensation paid for such services is subject to income tax. The election worker includes the compensation as wages on his or her income tax return. Employers must report payments of \$600 or more to election workers on Form W-2.

An election worker may ask the employer to withhold income tax by giving the employer a fully completed federal Form W-4, *Employee's Withholding Allowance Certificate*. An employee claiming the same number of exemptions for both federal and state purposes is not required to file a Wisconsin Form WT-4, *Employee's Wisconsin Withholding Exemption Certificate*.

See [Election Workers: Reporting and Withholding](#) for more information on federal reporting requirements.

Nonresident Entertainer Withholding - Reporting Changes in 2019

A nonresident, including a non-Wisconsin entity not regularly engaged in business in Wisconsin, who receives more than \$7,000 for the performance of amusement, entertainment, or public speaking services, or performs in sporting events in Wisconsin, must file a surety bond or cash deposit with the department at least seven days prior to the performance in Wisconsin. The amount of the bond or deposit is generally 6% of the total contract price.

If a bond or deposit is not filed by the nonresident entertainer, the person who contracts for the performance of the services by the nonresident entertainer, or the person who has receipt, custody, or control of the proceeds of the event, must withhold 6% of the amount paid to the entertainer and remit it to the department within five days after the performance.

Beginning in 2019, the nonresident entertainer withholding report (Form WT-11) is tax-year specific and allows a person to report withholding for multiple nonresident entertainers. In addition, nonresident entertainers may submit a request for a lower withholding rate using the new Form WT-12.

Starting in January, the updated Form WT-11 and new Form WT-12 may be filed using *My Tax Account*, the department's online filing and payment system. These forms will be available on the department's website in mid-December for viewing and printing.

Tips for Properly Reporting Pass-Through Withholding

A pass-through entity is required to withhold income or franchise tax on Wisconsin sourced income that is allocable to the entity's nonresident partners, members, shareholders, or beneficiaries, unless an exception applies. If the total withholding tax for the entity's tax year is \$500 or more, the entity must make quarterly estimated withholding tax payments. At the end of the year, the entity must file Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, to compute the entity's actual withholding tax liability for the tax year.

Tips to avoid processing delays and potential interest and penalties

- Do not include Form PW-1 with the pass-through entity's franchise or income tax return (i.e., Form 2, 3, or 5S). Form PW-1 must be filed separately.
- Form PW-1, including Part 2, must be filed electronically.

- When completing Form PW-1, the actual withholding tax liability for the tax year must be computed and reported on Line 1. If the entity only completes Form PW-1, Line 2, to report the estimated withholding tax payments for the tax year, there may be an underpayment of withholding.
- When reporting pass-through withholding amounts to the entity's nonresident partners, members, shareholders, or beneficiaries on Wisconsin Schedule 2K-1, 3K-1, or 5K-1, do not use the estimated withholding tax payments made by the entity. The actual withholding tax liability computed on Form PW-1, Line 1, must be used by the entity to report pass-through withholding.

For more information on pass-through withholding requirements, see [Form PW-1 Instructions](#) on the department's website.

Sales/Use Tax Updates and Reminders

Reminder for Remote Sellers - *Wayfair* Decision

Beginning October 1, 2018, Wisconsin requires out-of-state sellers with no physical presence in Wisconsin (remote sellers) to collect and remit Wisconsin sales or use tax on sales of taxable products and services in Wisconsin, unless they meet the small seller exception described below.

New standards for administering Wisconsin sales tax laws on remote sellers have been developed by rule, consistent with the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.* The rule provides that a remote seller with no activities in Wisconsin, other than making sales into Wisconsin, is not required to register and collect Wisconsin sales or use tax if it qualifies for the small seller exception. The small seller exception applies to remote sellers that have annual gross sales of products and services of \$100,000 or less and less than 200 separate sales transactions in Wisconsin in both the previous year and current year. The small seller exception does not apply to sellers with a physical presence in Wisconsin.

Information is available on the department's web page for [Remote Sellers - Wayfair Decision](#).

New - Customize Your Wisconsin Sales and Use Tax Exemption Certificate!

The department has a new electronic sales and use tax exemption certificate you can customize for your specific needs! Check it out at:

<https://www.revenue.wi.gov/Pages/SalesAndUse/ExemptionCertificate.aspx>

The online tool allows you to complete all of the required seller and purchaser information, select only the exemption(s) you are claiming, and create a one-page PDF document (Form S-211E) that can be saved to your computer and delivered to your seller electronically. The exemption certificate allows you to select for a single purchase or continuous purchases from the seller.

From the "exemptions" tab of the online tool, you can scroll through all exemptions available for Wisconsin sales and use tax that require an exemption certificate, or you may use a keyword search to quickly find the exemption you are claiming. Exemptions provide a reference to Wisconsin law and certain exemptions provide links to additional information about the exemption.

Note: A seller that receives a fully completed exemption certificate within 90 days of a sale is relieved of its sales or use tax liability on the sale. By providing a seller with an exemption certificate, the purchaser is responsible for any sales or use tax due if the exemption claimed is not valid or no longer applies to the item(s) purchased.

The traditional Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*, is still available on our website and has been updated.

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 October and November 2018. The seminars 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 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 department's [Sales and Use Tax Training web page](#).

Alcohol Beverage Updates and Reminders

Fact Sheets for Alcohol Beverage Regulation and Enforcement

The department has prepared a series of fact sheets of previously published guidance on regulation of alcohol beverages in a condensed, plain language format. The [Alcohol Beverage fact sheets](#) are posted to an [Alcohol Beverage page](#) on the department's website.

Tax Releases

"Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes.

Caution: Tax releases reflect the position of the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the answers in a tax release.

Sales and Use Tax

Sales Tax Exemption for Qualified Research When the Research Is Funded

Statutes: Section [77.54\(57d\)\(b\)](#), Wis. Stats. (2015-16)

Wis. Adm. Code: Section [Tax 11.20\(2\)](#), Wis. Adm. Code (August 2014 Register)

Introduction: This tax release explains the sales and use tax exemption for qualified research when the research is funded.

Background: [Section 77.54\(57d\)\(b\)](#), Wis. Stats. (2015-16), provides an exemption from Wisconsin sales and use tax for the following:

The sales price from the sale of and the storage, use, or other consumption of machinery and equipment, including attachments, parts, and accessories, and other tangible personal property or items or property under s. 77.52(1)(b) or (c) that are sold to any of the following and that are consumed or destroyed or lose their identities while being used exclusively and directly in qualified research:

1. A person engaged in manufacturing in this state at a building assessed under s. 70.995.
2. A person engaged primarily in biotechnology in this state.
3. A combined group member who is conducting qualified research for another combined group member and that other combined group member is a person described under subd. 1. or 2.

"Qualified research" is defined in [sec. 77.54\(57d\)\(a\)4](#), Wis. Stats. (2015-16), to mean "qualified research as defined under section 41(d)(1) of the Internal Revenue Code, except that it includes qualified research that is funded by a member of a combined group for another member of a combined group."

Tax Treatment:

For the sales and use tax exemption for machinery and equipment, including attachments, parts, and accessories, and other tangible personal property used exclusively and directly in certain qualified research, "qualified research" has the meaning provided under sec. 41(d)(1), IRC.

Section 41(d)(1)(B)(ii), IRC, provides that qualified research must be undertaken for the purpose of discovering information which is intended to be useful in the development of a new or improved business component of the taxpayer. Whether research meets the definition of "qualified research" is a determination made separately for each business component per sec. 41(d)(2)(A), IRC. Therefore, when determining whether the sales and use tax exemption applies, each business component is reviewed to determine whether qualified research has occurred.

Section 41(d)(1)(C), IRC, provides that "qualified research" does not include any activity described in paragraph (4). Subparagraph (4)(H) specifically excludes the following from "qualified research":

Any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

The sales and use tax exemption provides that the research can be funded and still be qualified research only if it is funded by a member of a combined group and the member is one of the following:

- A person engaged in manufacturing in Wisconsin at a building assessed under sec. 70.995, Wis. Stats.,
or
- A person engaged primarily in biotechnology in Wisconsin.

Therefore, machinery and equipment used for research where all or a portion of the research is funded by someone other than a member of a combined group, as described above, is not used exclusively in qualified research and does not qualify for the sales and use tax exemption.

Property Used in Qualified Research and Later Used in Other Activities

Statutes: Sections [77.53\(1b\)](#), [77.53\(12\)](#), [77.54\(57d\)\(b\)](#) and [77.57](#), Wis. Stats. (2015-16)

Wis. Adm. Code: Section [Tax 11.20\(2\)](#), Wis. Adm. Code (August 2014 Register)

Introduction: This tax release explains the sales and use tax exemption for qualified research when property used in qualified research is later used in other activities.

Background:

[Section 77.53\(1b\)](#), Wis. Stats. (2015-16), provides:

The storage, use, or other consumption in this state of tangible personal property or items, property, or goods under s. 77.52(1)(b), (c), or (d), and the use or other consumption in this state of a taxable service, purchased from any retailer is subject to the tax imposed in this section unless an exemption in this subchapter applies.

[Section 77.53\(12\)](#), Wis. Stats. (2015-16), provides:

If a purchaser who gives a certificate makes any storage or use of the property, or items, property, or goods under s. 77.52(1)(b), (c), or (d), or service other than retention, demonstration, or display while holding it for sale in the regular course of operations as a seller, the storage or use is taxable as of the time the property, or items, property, or goods under s. 77.52(1)(b), (c), or (d), or service is first so stored or used.

[Section 77.54\(57d\)\(b\)](#), Wis. Stats. (2015-16), provides an exemption from Wisconsin sales and use tax for the following:

The sales price from the sale of and the storage, use, or other consumption of machinery and equipment, including attachments, parts, and accessories, and other tangible personal property or items or property under s. 77.52(1)(b) or (c) that are sold to any of the following and that are consumed or destroyed or lose their identities while being used exclusively and directly in qualified research:

1. A person engaged in manufacturing in this state at a building assessed under s. 70.995.
2. A person engaged primarily in biotechnology in this state.
3. A combined group member who is conducting qualified research for another combined group member and that other combined group member is a person described under subd. 1. or 2.

[Section 77.57](#), Wis. Stats. (2015-16), provides:

If a purchaser certifies in writing to a seller that the tangible personal property or items, property, or goods under s. 77.52(1)(b), (c), or (d) purchased will be used in a manner or for a purpose entitling the seller to regard the sales price from the sale as exempted by this subchapter from the computation of the amount of the sales tax and uses the property or items, property, or goods under s. 77.52(1)(b), (c), or (d) in some other manner or for some other purpose, the purchaser is liable for payment of the sales tax. The tax shall be measured by the sales price of the property or items, property, or goods under s. 77.52(1)(b), (c), or (d) to the purchaser.

Tax Treatment:

Property Used in Qualified Research and Later Used in Another Exempt Manner

Property (such as machinery and equipment) purchased for exempt use in qualified research, as described in sec. 77.54(57d)(b), Wis. Stats., and later used in another exempt manner in Wisconsin is not subject to Wisconsin sales and use tax (i.e., the property was never used in a taxable manner).

Example: Company purchases equipment exempt from tax because it will be used exclusively and directly in qualified research. Two years later, Company begins using the equipment exclusively and directly in manufacturing. No Wisconsin sales and use tax is due, since the equipment was not used in a taxable manner.

Property Used in Qualified Research and Later Used in a Taxable Manner

Property (such as machinery and equipment) purchased for exempt use in qualified research, as described in sec. 77.54(57d)(b), Wis. Stats., and later used in a taxable manner in Wisconsin is subject to Wisconsin sales and use tax. When a taxable use is made of the property, sales and use tax is owed on the original purchase price of the property.

Example: Company purchases equipment exempt from tax for use exclusively and directly in qualified research. Two years later, Company begins using the equipment in funded/unqualified research. At the time that Company begins using the equipment in funded research, Company owes Wisconsin use tax on its purchase price of the equipment.

Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The "W" is for "Wisconsin"; the first four digits are the year and week the ruling becomes available for publication (generally 80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue."

Sales and Use Tax

Prepaid Cards for Phone Service

Ruling Number: W1841003

August 14, 2018

Facts as Provided by You

Company provides prepaid wireless communications and other services in Wisconsin and other states. These services include wireless voice services, Internet access service, text messaging, games,

applications, ringtones and a variety of other electronically delivered services. In addition, Company sells equipment including smartphones, telephone handsets, chargers, accessories, and insurance and warranty plans for such equipment.

Company recently changed the manner in which it sells its mobile prepaid wireless products and services. Under its new model, customers purchase stored value cards and electronic pins (collectively, cards), representing prepaid credits. The cards may then be used to purchase specific products or services from Company. Cards are sold either directly to customers at a Company owned store, online, or through a third-party retailer.

In addition to purchasing products and services using their online account, customers are able to view their available balance and their transaction history through their online account.

Once a customer selects and purchases goods or services, Company will calculate the amount of taxes and fees applicable to such goods or services selected by the customer. Following selection and payment, customers will be able to access a summary of charges to their account. The summary will contain charges for goods or services and separately stated charges for the applicable taxes.

Ruling Requested by You

Question 1: Is the sale of a card by Company or another third-party retailer subject to Wisconsin sales tax?

Answer 1: No. A card can be used to purchase prepaid wireless calling services, in addition to a variety of other goods and services. Therefore, the sale of a card by Company or a third-party retailer is not subject to Wisconsin sales tax. The card represents an intangible right. This tax treatment is consistent with the tax treatment provided in sec. Tax 11.28(2)(c), Wis. Adm. Code (August 2019 Register).

Note: The facts provided in the request state that a card can be used to purchase other products and services and is not limited to purchasing prepaid wireless calling services. If the card can only be used to purchase prepaid wireless calling services, this answer may be different.

Question 2: Is Company liable for the collection and remittance of Wisconsin sales tax and other applicable fees when a customer redeems the card for taxable products and services?

Answer 2: Yes. At the time a card is redeemed for taxable property or services, Company is liable for the collection and remittance of Wisconsin sales or use tax and any other applicable fees.

Wisconsin sales tax is imposed on sales of tangible personal property (e.g., smartphones, accessories), as provided in sec. 77.52(1)(a), Wis. Stats. (2015-16), along with a variety of taxable services, including prepaid wireless calling services under sec. 77.52(2)(a)5.am., Wis. Stats. Therefore, Company is liable for the collection and remittance of Wisconsin sales tax and any other applicable fees on its retail sales of taxable property and services in Wisconsin.

Note: Communications providers and other retailers that sell prepaid wireless telecommunications plans are subject to a police and fire protection fee of \$0.38 on each retail transaction for prepaid wireless telecommunications plans. Based on this new model of using cards, Company is liable for the collection and remittance of the \$0.38 police and fire protection fee on each retail transaction where a card is redeemed for a prepaid wireless telecommunications plan. (Section 196.025(6), Wis. Stats.) However, certain retail transactions are not subject to the \$0.38 police and fire protection fee, even though the card is used in the transaction. Examples of transactions that are not subject to the \$0.38 police and fire protection fee include sales of handset accessories (e.g., batteries, chargers, phone covers) and ringtones.

Report on Litigation

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

Corporation Franchise and Income Tax

Allocation and apportionment - sales factor - licensing software to original equipment manufacturers (OEMs)

Microsoft Corporation vs. Wisconsin Department of Revenue (Dane County Circuit Court, August 13, 2018).

This is a judicial review of the Tax Appeal Commission's decision dated August 10, 2017. See [Wisconsin Tax Bulletin 199](#) (October 2017), pages 33 and 34, for a summary of the Wisconsin Tax Appeals Commission's decision.

The issue in this case is whether royalties paid by OEMs located outside of Wisconsin to Microsoft are treated as Wisconsin sales in Microsoft's sales factor of the apportionment formula.

The Circuit Court affirmed the Wisconsin Tax Appeals Commission decision that sec. 71.25(9)(df), Wis. Stats. (2007-08), does not apply to Microsoft because the royalties are from original equipment manufacturers (OEMs) who do not use the software in Wisconsin. The Court found that Microsoft sells software licenses, not software, to OEMs. The OEMs control the loading, pricing, and sales of the software, and provide repair and warranty services for issues with the software. Thus, the OEMs are Microsoft's customers; the end users are not customers of Microsoft because they do not purchase software and licenses from them.

The department has appealed this decision to the Court of Appeals.

Beverage Tax

Occupational tax imposed upon selling intoxicating liquor

Arty's, LLC vs. Wisconsin Department of Revenue (Wisconsin Court of Appeals, September 13, 2018). See [Wisconsin Tax Bulletin 199](#) (October 2017), page 33, for summary of the Wisconsin Tax Appeals Commission and Waupaca County Circuit Court decisions.

Arty's mixes intoxicating liquor with soda, water and flavorings to produce seven-ounce bottles of "premixed cocktails." The issues in this case are when does tax liability occur and how much of the contents of each bottle of intoxicating liquor is subject to the occupational tax under sec. 139.03(2m), Wis. Stats. (2011-012). Arty's argued it incurred tax liability when it purchased intoxicating liquor in bulk from a liquor manufacturer and that taxes are calculated only on the intoxicating liquor portion of each bottle.

The department contends that Arty's incurs tax liability when Arty's sells the bottles of pre-mixed cocktails to liquor wholesalers and that taxes are calculated based on the entire contents of each bottle.

Finally, Arty's argued that the tax statutes violate the constitutional guarantee of equal protection because sellers of intoxicating liquor pay higher occupational tax rates than sellers of wine or beer containing the same or higher alcohol contents, without a rational basis. The department argued that the existing tax

imposition is rational because it provides for ease of administration by taxing all intoxicating liquor sales without the need to analyze ingredients in each individual product sold in Wisconsin.

The Court of Appeals agreed with the department that Arty's failed to demonstrate that there is no rational basis for the statutes, concluding that the department presented sufficient evidence of a rational basis for the simplicity of the current taxation scheme.

It was not known at the time of publication whether this decision would be appealed.