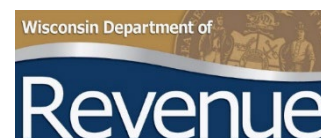


Wisconsin Tax Bulletin

October 2022 - Number 219



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

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General Updates and Reminders

Fall Tax Update Seminars and Webinars

Registration is open for the 2022 Wisconsin Tax Update Seminars and Webinars.

These events are free and include:

- Tax law changes, updates, and reminders
- Tax processing, forms, and e-file updates
- Department initiatives
- Audit updates
- My Tax Account updates

The department is holding two in-person seminars and two virtual webinars this year. All presentations are scheduled from 9:00 a.m. to 11:30 a.m. Dates and locations are below.

Date	Location
November 1, 2022	SentryWorld in Stevens Point
November 10, 2022	Webinar
November 14, 2022	The Ingleside Hotel in Pewaukee
November 30, 2022	Webinar

Visit the [Wisconsin Tax Update Seminars and Webinars](#) web page for details and registration.

My Tax Account Webinars

The department is holding Annual Filer Refresher webinars in 2023 on January 10, 12, 19, and 24 (the same information is provided in each webinar).

The Annual Filer Refresher webinar covers a variety of topics, including:

- Filing and paying withholding tax (Forms WT-6 and WT-7)
- Submitting wage statements and information returns (Forms W-2, 1099-R, 1099-MISC, and 1099-NEC)
- Printing seller's permits and business tax registration certificates
- Updating profile information (bank and contact information)
- Submitting appeals
- Requesting extensions to file

Visit the [Training](#) web page for more information and registration availability.

New Audit Web Page

A new [Audit](#) page is available on the department's website. It contains links to audit information useful to individuals and businesses and their representatives, including:

- Information for each tax type
- Common questions
- Publications
- My Case Manager

Updated Web Pages for Individuals and Businesses

The [Individuals](#) and [Businesses](#) web pages (tabs at the top of the department's [home page](#)) have been redesigned to quickly navigate to additional sources of information.

Individuals can quickly navigate to individual income tax, homestead credit, earned income credit, and withholding tax information and other resources, such as:

- Electronic filing and payment options
- Forms, instructions, publications, common questions, videos, and other resources

Businesses can quickly navigate to income/franchise, withholding, sales/use, excise, and property tax information and other resources, such as:

- Business registration, permits, and licenses
- Electronic filing and payment options
- Forms, instructions, publications, common questions, videos, and other resources

The [Tax Professionals](#) web page will be updated soon.

Lookups for Businesses

The department has several information lookups for businesses.

- [CES Lookup](#) – Verify if a Certificate of Exempt Status number is valid. See *Additional Services, Sales Tax Certificate of Exempt Status Search*.
- [Estimated Tax Lookup](#) – Verify estimated tax payments made for individuals and corporations.
- [My Tax Account](#) – Review notifications, account balances, reprint a seller's permit, file returns, and pay taxes.
- [Sales Tax Lookup](#) – Determine the state and county sales tax rate for a transaction using a 9-digit zip code.
- [Tax Account Lookup](#) – Verify filing frequency for sales and use and withholding tax accounts.
- [Tax Rates](#) – Look up business, excise, and individual tax rates.

Visit the [Online Services](#) web page for comprehensive list of online tools and services.

Unclaimed Property Updates and Reminder

The [Unclaimed Property](#) web page has been updated.

The top of the page has three buttons for quick access to Search and Claim property, Check Claim Status, and Upload Claim Documents.

The following resources have been added to help claimants file claims:

- How to Claim Property
- Relationship Types for Claims and Documentation Needed
- Acceptable Documents
- Tips for Common Claim Scenarios

Holders also have a new quick link button to make a payment.

Reminder: Businesses may apply for relief through Wisconsin's [unclaimed property voluntary disclosure program](#). Applications must be received by February 28, 2023.

Annual Review of Filing Frequencies

Each November, business tax accounts for withholding, sales and use tax, and specialty taxes are reviewed to determine if the taxpayer's filing frequency is within statutory requirements (i.e., monthly, quarterly, or annual filing requirement). Businesses receive a letter in November if their filing frequency changes, and the changes are effective January 1. *Exception:* Fiscal year filers may be notified a few months before the beginning of their fiscal year.

Filers may want to keep their current, more frequent filing frequency. Requests to file more frequently can be made as follows:

- Sales and use tax only: Use the link in My Tax Account titled "Keep Filing Frequency." This temporary link is only available in your sales and use tax account in December each year.
- Email request to DORBusinessTax@wisconsin.gov.
- Withholding tax may be filed/paid more frequently without notifying the department.

For more information and to review current filing frequency thresholds, please visit the [Annual Filing Frequency Scan](#) web page.

Income and Franchise Tax Updates and Reminders

Student Loan Forgiveness

Federal Treatment

For federal income tax purposes, income from the discharge of indebtedness may be excluded from gross income under sec. [108](#) of the Internal Revenue Code (IRC), including certain student loans under sec. 108(f), IRC. Student loans which may be excluded from gross income include:

- Certain student loans discharged after December 31, 2020, and before January 1, 2026.

- Student loans discharged under the public service loan forgiveness (PSLF) program.
- Student loans discharged under the teacher loan forgiveness program.
- Student loans discharged under the National Health Service Corps Loan Repayment program.

Wisconsin Treatment

For Wisconsin income tax purposes, certain student loans discharged may also be excluded from gross income. Wisconsin follows sec. 108(f), IRC, as amended to December 31, 2020. Student loans which may be excluded from gross income for Wisconsin include:

- Student loans discharged on account of death or total and permanent disability.
- Student loans discharged under the public service loan forgiveness (PSLF) program.
- Student loans discharged under the teacher loan forgiveness program.
- Student loans discharged under the National Health Service Corps Loan Repayment program.

However, Wisconsin does not follow the general exclusion under sec. 108(f)(5), IRC, for certain student loans discharged after December 31, 2020, and before January 1, 2026. For additional information on the federal and Wisconsin income tax treatment of student loans discharged, see the [Student Loan Forgiveness](#) common questions on the department's website.

My Tax Account: Why Individual Income Taxpayers Should Use It Too

[My Tax Account \(MTA\)](#) is no longer limited to businesses and taxpayers with collection cases. Individuals who have previously filed a Wisconsin individual income tax return can register.

MTA allows taxpayers to:

- View and print letters sent by the department
- Sign up for electronic mail (see below)
- Check refund status
- Make, view, and cancel estimated tax payments
- Sign up for a Wisconsin Identity Protection PIN (see below)

Taxpayers

Although tax season is a few months away, registering early can save time by providing you immediate access to information needed during tax season. To get access to MTA, you must complete an initial identity verification step, then wait for a Personal Account Registration letter in the mail as a final verification step. The letter contains a unique code you must enter to access your MTA.

Practitioners and Third Parties

Access to clients' individual income tax account information in MTA is not yet available. When implemented, clients must have their own account to grant you access. Encourage clients to review the [Using My Tax Account for Personal Use](#) common questions on the department's website.

Electronic Mail

Taxpayers with MTA access can sign up for electronic mail delivery to access letters as soon as they are issued. Each time the department sends a letter or notice, the taxpayer receives an email encouraging them to log into MTA to view it. Taxpayers do not have to wait for letters to arrive in the mail, and they can view letters previously sent.

Identity Protection PIN

The Wisconsin Identity Protection PIN prevents fraudsters from using an individual's personal information to file a return and receive a Wisconsin tax refund.

Individuals must register for MTA to receive a Wisconsin Identity Protection PIN. After registration is complete and a PIN is received, taxpayers:

- Have certainty their Wisconsin tax accounts are secure and no one else can file a tax return with their information.
- Can quickly and easily renew their PIN each year.

Important Note for Practitioners: Do not register for MTA and sign up for a PIN for your clients. Individuals must sign up for MTA and request a PIN themselves.

Participation in the Wisconsin Identity Protection PIN program is voluntary. However, once an individual is assigned a PIN, the PIN must be listed on all future returns unless cancelled. Visit the [WI Identity Protection PIN](#) common questions on the department's website for more information.

Tax Treatment of Wisconsin Help for Homeowners Program

Under the Wisconsin Help for Homeowners program, individual homeowners who live in a home they own may qualify for financial assistance with housing-related bills such as mortgage payments, property taxes, utilities, and more. This may affect the treatment of certain items reported on their individual income tax return and homestead credit claims.

Income

- Assistance paid on behalf of eligible homeowners from the homeowner assistance fund under the American Rescue Plan Act of 2021 (sec. 3206 of Public Law [117-2](#)) is not included in federal income of the homeowner. Such assistance is excluded from income as a qualified disaster relief payment under sec. [139\(b\)\(4\)](#), IRC. Wisconsin follows this federal treatment.
- Income received by a business for the amount of any assistance paid on behalf of an eligible homeowner is includable in the business's federal and Wisconsin income.

Expenses

- A homeowner may not deduct expenses paid on their behalf on their federal or Wisconsin income tax returns. For example, property taxes or mortgage interest paid on their behalf are not eligible itemized deductions and may not be claimed for purposes of the Wisconsin itemized deduction credit (sec. [71.07\(5\)](#), Wis. Stats.).

School Property Tax Credit

- A homeowner may not claim property taxes paid on their behalf for Wisconsin's school property tax credit. Property taxes must be paid by the claimant in order to be eligible for the credit (sec. [71.07\(9\)\(a\)3.](#), Wis. Stats.).

Homestead Credit

- Amounts received for assistance are not included in household income for purposes of the homestead credit (secs. Tax [14.03\(4\)\(b\)3.e.](#) and [\(5\)\(a\)3.](#), Wis. Adm. Code). Property taxes may be eligible to be claimed for the homestead credit since the credit does not require that the property taxes be paid by the claimant. A claimant is eligible to claim the amount of property taxes levied on their primary home which they owned during the tax year (sec. [71.52\(7\)](#), Wis. Stats.).

For additional information, see the following:

- Wisconsin Help for Homeowners program – [General FAQ](#)
- Federal [Publication 525](#), *Taxable and Nontaxable Income*, page 29

Veterans and Surviving Spouses Property Tax Credit: Recertification for Current Year

The veterans and surviving spouses property tax credit is available to eligible veterans and unremarried surviving spouses and is equal to the amount of property taxes paid during the year on their principal dwelling in Wisconsin. A veteran or unremarried surviving spouse must be certified by the Wisconsin Department of Veterans Affairs (WDVA) to be eligible for the credit. If the certification for eligibility ended in 2021, the veteran or surviving spouse must request recertification from WDVA using a method listed below or contact their [County Veterans Service Officer](#).

Call: (800) 947-8387

Mail: Wisconsin Department of Veterans Affairs
Attn: Veterans Property Tax Credit
2135 Rimrock Road
PO Box 7843
Madison WI 53707-7843

Eligibility end dates are stated on the certificate received from WDVA or can be verified by contacting WDVA at the phone number listed above. Confirm you are eligible prior to filing your 2022 Wisconsin income tax return to prevent delays in processing the return. Certification must be included with the Wisconsin return in the first year the credit is claimed.

When to File Form W-RA

The purpose of [Form W-RA](#), *Required Attachments for Electronic Filing*, is to submit supporting documentation for an electronically-filed return or homestead credit claim and for which the supporting documentation cannot be uploaded and submitted with the return. Examples of supporting documentation include:

- Proof of income, signed rent certificate, or property tax bill for a homestead credit claim.
- Copy of a federal income tax return or wage statements for an income tax return.

Do not submit Form W-RA for:

- Electronically-filed returns and homestead credit claims if the supporting documentation is uploaded and submitted with the return. Tax software vendors often allow many types of electronic documents (e.g., jpeg or pdf) to be submitted with the returns.
- Paper-filed returns and homestead credit claims. Supporting documentation should be enclosed with the mailed return without Form W-RA.

Caution: Submitting Form W-RA with your paper-filed return may cause your return to not get processed. Form W-RA is scanned and loaded into the department's computer system as an attachment and is not recognized as a filed return.

If you cannot submit supporting documentation with your electronically-filed return, you can send the documentation using one of the following methods:

- Upload documents electronically using the WRA Submission in [My Tax Account](#).
- Mail documents with Form W-RA. *Note:* Mail within 48 hours of your electronically-filed return in order to avoid delays in processing of the return.

Pass-Through Entity Representative Powers and Duties v. Power of Attorney

[2021 Wis. Act 262](#) became effective April 17, 2022. The Act provides for audit determinations to be made to a pass-through entity (partnership, a limited liability company, a tax-option (S) corporation, an estate, or a trust).

The Act also created sec. [71.80\(26\)](#), Wis. Stats., requiring all pass-through entities to designate a pass-through entity representative to act as the sole authority on behalf of the pass-through entity and its pass-through members with respect to a pass-through entity audit determination under sec. [71.745](#), Wis. Stats.

A pass-through entity representative has specific authorities with respect to audit determinations under sec. 71.745, Wis. Stats., that are not otherwise authorized for a Power of Attorney. However, a Power of Attorney may be appointed as a pass-through entity representative under sec. 71.80(26), Wis. Stats., or a pass-through entity representative may delegate the powers and duties in sec. [71.80\(26\)\(b\)](#), Wis. Stats., to a Power of Attorney as provided under sec. [71.80\(26\)\(c\)](#), Wis. Stats.

For additional information on the different authorities between a pass-through entity representative and a Power of Attorney, see the [Pass-Through Entity Level Audits Under 2021 Wis. Act 262](#) common questions on the department's website.

Employer Use of Per Diem and Withholding Requirements

Some employers choose to use per diem payments in lieu of reimbursing actual travel expenses for employees. Per diems are an allowance for employee lodging, meals, and incidental expenses when traveling. Per diem rates change annually and are updated on a fiscal year basis starting on October 1. The two methods used to calculate per diem pay are the regular federal per diem method or the high-low method.

Regular Method

The regular federal per diem rate changes based on the location of where the employee is traveling and allows a standard rate for most cities in the continental United States. For the period October 1, 2021, through September 30, 2022, the regular federal per diem method standard rate is \$155 per day (\$96 for lodging and \$59 for meals and incidental expenses). There are specific cities that have higher federal rates. Per diem rates for a specific location are available at the [U.S. General Services Administration Per Diem Rate Search](#) or the [U.S. General Services Administration Per Diem Look-Up Calculator](#).

High-Low Method

The high-low method uses one rate for high-cost locations and a low-cost rate for all other cities who are not considered high-cost within the continental United States. As of October 1, 2021, the per diem rates are \$296 per day for high-cost locations and \$202 per day for low-cost locations. To know if a location is considered high-cost, see [IRS Notice 2021-52](#).

Withholding Requirements

Paying an employee a per diem does not avoid Wisconsin withholding requirements. An employer must report a per diem as employee wages and withhold taxes if any of the following apply:

- No expense report is filed with the employer
- The expense report filed does not include the date, time, place, amount, and business purpose of the expense
- A flat amount is given to the employee and no expense report is required
- The per diem paid is in excess of the allowable standard federal rate

Employers should keep records of all per diem payments and associated expense reports.

For additional information, see Chapter 11 of IRS [Publication 535](#), *Business Expenses*.

Reminder: Qualified Wisconsin Business Registration for Capital Gain Exclusion and Deferral

Registration Requirements

A business must register with the department by the close of each calendar year to be considered a qualified business for that year. The registration deadline for 2022 is January 2, 2023.

Exception: A business that started operations in Wisconsin in 2022 must complete the 2023 registration application (available after January 2, 2023, and before January 3, 2024) and answer yes to the question "Did the business start operations in Wisconsin last year?"

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

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

For more information, refer to [Registration of Qualified Wisconsin Businesses](#) 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 within 180 days after the sale of the asset that generated the gain.
- 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.

For more information, see [Fact Sheet 1102-2, Deferral and Exclusion of Long-Term Capital Gains for Investments in Qualified Wisconsin Businesses](#) and [Qualified Wisconsin Business Capital Gain Exclusion](#) common questions on the department's website.

New Historic Rehabilitation Credit Tools

There are new tools for asking questions regarding Wisconsin's historic rehabilitation credits and for safeguarding sensitive information when requesting a transfer of a supplement to the federal historic rehabilitation credit. A new email address and a secure drop-box have been created for transferring sensitive information during the approval process.

All historic rehabilitation credit questions and initial transfer requests should be sent via email to: DORHistoricCredit@wisconsin.gov.

This email address should be used only to notify the department of the intent to transfer a supplement to the federal historic rehabilitation credit. Once notified, the department will reply with a link (or links) to a secure drop-box where sensitive information can be uploaded.

In some instances, sensitive information may not be shared with all parties involved in the credit transfer. In these instances, separate drop-boxes can be arranged.

Withholding Tax Updates and Reminders

Withholding Tax Webinars for Employers

The department is holding withholding tax webinars on Wednesday, December 14, 2022, 9:00 a.m. and Wednesday, January 11, 2023, 10:00 a.m. (the same information is provided in each webinar). Webinars are recorded and available for playback within a few days after the event.

These webinars cover a variety of topics, including:

- Employer responsibilities and filing frequency information
- How to file withholding and information returns (Forms WT-6, WT-7, W-2, and 1099)
- My Tax Account overview for withholding tax – includes filing tips for My Tax Account
- Tips for avoiding penalties and interest
- Employer requirements for closing accounts

To register for this webinar, visit the [Training](#) web page.

Withholding Tax Update Available

The [2022 Withholding Tax Update](#) has been posted to the department's website. Topics covered include:

- Withholding Tax Rates
- What's New?
 - Form 1099-K – New Federal Filing Thresholds Do Not Change Wisconsin's Filing Requirements
 - Some Taxpayers May Receive Form 1098-F Because of Federal Filing Requirements
- Retirement and Pension Payments Exempt from Income Tax Withholding
- Reminder: Filing Requirements of Form 1099-R with Wisconsin Withholding
- Withholding and Filing Requirements of Third-Party Sick Pay
- Notice to Employers Using a Payroll Service Provider
- The Combined Federal/State Filing Program Is Not an Approved Filing Option for Information Returns with Wisconsin Withholding
- Form 1099-NEC and Form 1099-MISC
- Truncated Taxpayer Identification Numbers on Forms W-2 and 1099
- Withholding Deposit Reports (Form WT-6) and Annual Reconciliation (Form WT-7)
- Electronic Filing Mandate – Forms WT-6 and WT-7
- Form WT-7 – Filing an Amended Annual Reconciliation
- Form WT-7 – Reporting by Financial Institutions and Insurance Agencies
- Filing Wage Statements and Information Returns
- Filing Extensions – Form WT-7, Wage Statements, and Information Returns
- Transportation Fringe Benefits for 2022 and 2023
- Single-Member LLCs – Are You Registered Correctly?
- Employees Claiming More than 10 Exemptions or Complete Exemption from Withholding (Form WT-4)
- Withholding Lock-In Letters
- Reporting Nonresident Entertainer Withholding on Income/Franchise Tax Returns
- My Tax Account New User Webinars
- My Tax Account Refresher Webinars
- Withholding Tax Webinars for Employers
- Withholding Tax Electronic Mailing List
- Employer's Responsibility for Unclaimed Property
- Questions or Comments
- Quick Links

Sales and Use Tax Updates and Reminders

Updated Temporary Event Operator Reporting

Are you the organizer for a craft show, flea market, farmer's market, gun show, coin show, swap meet, roadside stand, fair, carnival, art festival, or fund-raising event?

Organizers or operators of these and similar events must report information about the event to the department within ten days after the event using [Form S-240](#), *Wisconsin Temporary Event Report*.

This form was recently redesigned. Older versions of the form, including the alternative spreadsheet, were discontinued as of June 2022 and are no longer accepted.

Information is available on the [Temporary Event Operators](#) web page and in the revised [Publication 228](#), *Temporary Events*.

To better understand the new reporting process, view a recent webinar or register for a future webinar on the [Training](#) web page.

Motor Vehicle Dealers' Measure of Use Tax Increases to \$191

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a fixed dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2023, the amount subject to use tax is increased from \$175 to \$191 per plate per month. To calculate use tax, \$191 is multiplied by the appropriate use tax rate (5% or 5.5%) to arrive at the use tax due per plate per month.

Why is the rate increasing?

Wisconsin law (sec. [77.53\(1m\)](#), Wis. Stats.) requires the department to annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12-month period ending June 30. Since the index for the period July 2021 through June 2022 increased 9.1%, the amount subject to use tax on dealer's motor vehicle plates increases \$16 starting January 1, 2023.

See [Publication 202](#), *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs*, for more information about dealer's use tax responsibilities for motor vehicles.

Reminder: Retailers Making Sales to Exempt Organizations

Effective July 1, 2022, retailers may no longer accept a 6-digit CES number. Only the 15-digit CES numbers beginning with the prefix 008 are acceptable from qualifying exempt organizations.

This change only applies to sales to qualifying exempt organizations. Sales to other customers, such as farmers and manufacturers, are not qualifying exempt organizations and are not issued CES numbers to be entered on their exemption certificates.

For more information, see the article titled *Retailers May Not Accept 6-Digit CES Numbers After June 30, 2022*, on page 14 of [Wisconsin Tax Bulletin 216](#) (January 2022).

Out-of-State Contractors Providing Services in Wisconsin May Owe Use Tax

An out-of-state contractor may owe Wisconsin use tax on materials, tools, equipment, and supplies used in providing construction, installation, repair, or other services. Wisconsin use tax is due on the purchase price of property stored, used, or consumed in Wisconsin. A credit is allowed for sales or use taxes properly due and paid to another state and/or local unit of government against (but not in excess of) the total Wisconsin state and county use taxes imposed on the same items, property or goods (sec. [77.53\(16\)](#), Wis. Stats.). Examples of contractors who may owe use tax include:

Example 1: An out-of-state masonry contractor is hired to perform services in Vernon County. The contractor rents a jack hammer from a vendor in a state with no sales or use tax for use in services performed in Wisconsin. The masonry contractor owes Wisconsin use tax on the rental price of the jack hammer used in the services performed in Wisconsin.

Example 2: An out-of-state contractor performs services in Eau Claire, Wisconsin with equipment and tools that were purchased in another state. The contractor properly paid a combined 6% state and local sales tax on its purchase of the equipment and tools in the other state. Since the combined state and local sales taxes paid to the other state are greater than the combined Wisconsin state and Eau Claire County use taxes imposed (5.5%), the contractor does not owe additional Wisconsin use tax on the equipment and tools used in Wisconsin (i.e., the credit equals the amount of Wisconsin use tax due).

Example 3: An out-of-state contractor purchases materials without tax in another state and later brings the materials into Wisconsin to be used in a real property construction activity. Wisconsin use tax is due on the original purchase price of the materials brought into Wisconsin and consumed in the real property construction activity.

[Publication 207](#), *Sales and Use Tax Information for Contractors*, contains additional information to help contractors determine when Wisconsin sales or uses taxes apply.

Wisconsin Use Tax May Be Due When Property Returned to Wisconsin After Repair

Wisconsin use tax may be due when tangible personal property is repaired outside Wisconsin and returned to Wisconsin after the repair. A repair to tangible personal property is a taxable service. Wisconsin use tax is due on the purchase price of tangible personal property and taxable services that are stored, used, or consumed in Wisconsin, unless an exemption applies.

Note: A credit is allowed for sales or use taxes properly due and paid to another state and/or local unit of government against (but not in excess of) the total Wisconsin state and county use taxes imposed on the same items, property or goods (sec. [77.53\(16\)](#), Wis. Stats.).

The following are some examples of tangible personal property shipped out of state for repair that may be subject to Wisconsin sales or use tax:

Example 1: A Wisconsin individual who resides in Outagamie County, mails a broken laptop to Texas for repair in Texas. After the laptop is repaired, the computer repair company mails the repaired laptop back to the Wisconsin individual. The Texas computer repair company did not charge sales tax on the repair work. The repair of the broken laptop is a taxable service to tangible personal property and the Wisconsin individual is liable for Wisconsin use tax on the entire purchase price of the repair work, including services, parts, markups, and delivery charges.

Example 2: Same as Example 1, except the Texas computer company charged 6.25% sales tax on the laptop repair and the tax is properly paid to Texas. Wisconsin use tax of 5.5% (5% state use tax and 0.5% Outagamie County use tax) is due on the purchase price of the repair work; however, a credit for the Texas sales tax properly due and paid is allowed against the Wisconsin use tax owed. No additional Wisconsin use tax is due.

Example 3: A restaurant located in Wisconsin uses headsets for their drive-thru service. The restaurant sends a broken headset to Kentucky for repair. The repaired headset is mailed back to the restaurant located in Wisconsin. The repair company did not charge sales tax. The repair of the broken headset is a taxable service to tangible personal property and the restaurant is liable for Wisconsin use tax on the entire purchase price of the repair work, including services, parts, markups, and delivery charges.

Non-Fungible Tokens

A non-fungible token (NFT) is a unique digital identifier that is recorded in blockchain. NFTs are used to certify authenticity and ownership of a particular product and cannot be copied or substituted.

The sale or purchase of a NFT may be taxable if the underlying product, good, or service is taxable in Wisconsin.

Example 1: NFT entitles the purchaser to download music or movies. The sale of the NFT is a taxable specified digital good.

Example 2: NFT entitles the purchaser an admission to a sporting event. The sale of the NFT is a taxable admission.

Example 3: NFT entitles the purchaser to a tangible piece of artwork. The sale of the NFT is taxable tangible personal property.

Hanging Holiday Decorations

The service of hanging holiday decorations that are owned by your customer is a taxable service (sec. [77.52\(2\)\(a\)10.](#), Wis. Stats.).

When a company owns holiday decorations and they set up, maintain, and take down the decorations (i.e., company does not operate the decorations) the company is renting the holiday decorations to its customer. The charge for the rental of the decorations is taxable. If the company makes no use of the holiday decorations other than to rent to its customer, it may purchase them without tax for resale.

Utilities Providing Outdoor Lighting

Many Wisconsin utility companies provide outdoor lighting for businesses and homeowners. This may include parking lot lighting, street lighting, yard lighting, or dusk-to-dawn lighting. The sales tax treatment of outdoor lighting depends primarily on who owns the lighting equipment.

Customer-Owned Lighting

Utilities that provide electricity to customers who own their lighting and related equipment are selling electricity. Charges for electricity are taxable unless an exemption applies (e.g., electricity sold for residential use during the months of November through April), or the customer provides the utility with a fully completed exemption certificate.

Utility-Owned Lighting

Sales by Utility

Utilities that provide lighting equipment and electricity to customers are selling a nontaxable outdoor lighting service when the utility owns and controls the lighting equipment. Charges by the utility to the customer are not subject to tax. It is common in these service agreements that the customer does not have the right to move, repair, or maintain the lighting equipment. It is also common for the utility to have the right to remove the equipment if the customer does not pay their bill or if the customer terminates the agreement.

Purchases by Utility

Utilities are liable for sales or use tax on their purchases of tangible personal property they use in providing the nontaxable lighting service, unless an exemption applies (e.g., governmental unit). Examples of purchases that may be subject to tax include light fixtures, poles, and electricity. The following are exceptions for fuel and electricity related purchases:

- 1) A utility that purchases electricity from a third-party does not owe use tax on its purchase of electricity for "residential use" during the months of November through April (sec. [77.54\(30\)\(a\)2.](#), Wis. Stats.). "Residential use" for purposes of the exemption is for use in a structure or portion of a structure which is a person's permanent residence (sec. [77.54\(30\)\(d\)](#), Wis. Stats.). The purchaser of the electricity does not need to be the homeowner to qualify for the exemption.
- 2) A utility that produces its own electricity does not owe use tax on its purchase of fuel used to produce electricity provided with the nontaxable lighting service. The fuel is exempt if it is consumed in manufacturing as provided in sec. [77.54\(30\)\(a\)6.](#), Wis. Stats.

Prior Periods

Customer Refunds

Wisconsin utility companies are reviewing their records to determine if sales tax was charged on nontaxable lighting services. After their review, utilities will refund any overpayment of tax and applicable interest to their customers. Refunds will generally be issued for the periods open for claiming refunds under the sales tax statute of limitations in sec. [77.59\(4\)\(a\)](#), Wis. Stats. Customers **do not** need to request refunds from their utilities or from the department.

However, customers who paid use tax on nontaxable lighting services, whether self-assessed or assessed in an audit, should file a claim for refund with the department. See [Publication 216](#), *Filing Claims for Refund of Sales or Use Tax*, for additional information.

Utility's Use Tax on Property Used in Providing Nontaxable Lighting Services

As described above, the utility is liable for sales or use tax on its purchases of tangible personal property it uses in providing a nontaxable lighting service, unless an exemption applies (e.g., governmental unit). However, if the utility charged tax in error on the nontaxable lighting service, the department will not hold the utility liable for use tax on such purchases that occurred prior to November 1, 2022. Additionally, no refunds will be allowed if the utility paid sales or use tax on those purchases prior to November 1, 2022.

Excise Tax Updates and Reminders

Updated Excise Tax Web Pages, New Publications Available

Visit the recently updated [Motor Fuel](#), [Cigarette, Tobacco, and Vapor Products](#), and [Alcohol Beverage](#) web pages. Each page is redesigned to easily find information.

New [Alcohol Beverage Fact Sheets](#) are available on the department's website. Each fact sheet is based on previous articles published in the quarterly [DOR on Tap](#), the alcohol industry update.

[Publication 309](#), *Retail Alcohol Beverage Guide for Municipalities*, was updated and posted in August.

[Subscribe to the mailing list](#) for Alcohol Beverage News to receive information on alcohol beverage topics.

Motor Fuel Tax Refund Claims Can Be Filed Online

Wisconsin law (sec. [78.75](#), Wis. Stats.) provides that motor fuel excise tax may be refunded if it is used for off-road purposes in non-licensed vehicles and mobile equipment. Refund claims must be filed within one year of the date fuel is purchased and must cover at least 100 gallons. For additional information about motor vehicle fuel tax refunds, see the [Motor Vehicle Fuel Tax](#) common questions on the department's website.

Motor Fuel Tax Refund Claims (Form MF-001) can be filed online through [My Tax Account \(MTA\)](#). My Tax Account is free, simple, secure, and available 24 hours a day, seven days a week. Claims filed online may take less time to process and approve than claims filed on paper.

If you need assistance getting your refund claim filed online using MTA, reach out to ExciseTaxpayerAssistance@wisconsin.gov or call (608) 266-6701.

Report on Litigation

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

Pass-Through Withholding Tax

Pass-Through Entities are Required to File a Pass-Through Withholding Return and Submit Withheld Tax in Each Year Where There is Wisconsin Income

RADS Partnership, Via Cresta, L.P., Laughing Cow, LP, Westmar LTD, and Finger Living Trust (Petitioners) v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 25, 2022).

The issues are whether the Petitioners, who are pass-through entities, are liable for pass-through withholding tax under sec. [71.775](#), Wis. Stats., and whether the trust Petitioner is liable for fiduciary income tax based on income the Petitioners received during tax year 2013.

Facts

- Watermark Wisconsin Investors LP ("Watermark") was a California limited partnership, with its principal offices in California. Watermark invested in Watermark Montclair Wisconsin Hotels LLC ("Montclair"). Montclair invested in real estate in Wisconsin. Montclair owned the real estate from 2006 through 2013, until it ceased operations in 2013. Montclair and Watermark were both "pass-through entities" as that term is defined in sec. [71.775\(1\)\(b\)](#), Wis. Stats. (2013-14).
- For tax years 2006 through 2012:
 - The Petitioners incurred losses from their share of pass-through items from Watermark.
 - The Petitioners did not file any Wisconsin income tax returns.
 - The Petitioners did not file any Wisconsin pass-through withholding tax returns.
 - The Petitioners did not pay any Wisconsin pass-through withholding tax.
- For tax year 2013 (audit period):
 - Each Petitioner had net income over \$1,000 from their share of pass-through items from Watermark.
 - Each Petitioner was a limited partner in Watermark.
 - Each Petitioner except Finger Living Trust was a "pass-through entity" as that term is defined in sec. [71.775\(1\)\(b\)](#), Wis. Stats. (2013-14).
 - All of the Petitioners' partners were "nonresidents" as that term is defined in sec. [71.775\(1\)\(a\)](#), Wis. Stats., (2013-14).
 - At the request of the department's auditor:
 - Laughing Cow filed a 2013 Wisconsin Form 3 on or about September 17, 2018.
 - RADS filed a 2013 Wisconsin Form 3 on or about August 28, 2018.
 - Westmar filed a 2013 Wisconsin Form 3 on or about August 31, 2018.
 - Via Cresta did not file a 2013 Wisconsin Form 3.
 - Finger Living Trust did not file a 2013 Wisconsin Form 2 (fiduciary income tax return) or pay any income tax.
 - Watermark did not pay any pass-through withholding tax on behalf of any of the Petitioners for tax year 2013.
 - None of the Petitioners filed a 2013 Wisconsin pass-through withholding tax return.
 - None of the Petitioners paid any amount of Wisconsin pass-through withholding tax for tax year 2013.
 - For tax year 2013, the department issued pass-through withholding assessments to all Petitioners except for Finger Living Trust.
 - All Petitioners appealed their pass-through withholding assessments.
 - For tax year 2013, the department issued a fiduciary income tax assessment to Finger Living Trust.
 - Finger Living Trust appealed its fiduciary income tax assessment.

The pass-through Petitioners made three arguments why they were not required to file a 2013 Form PW-1 or pay pass-through withholding tax:

1. The Petitioners argued that the pass-through withholding filing requirement under sec. [71.775\(4\)\(a\)](#), Wis. Stats., does not apply to them because they interpret "income" under secs. [71.775\(2\)\(a\)](#) and [\(3\)\(a\)2.](#), Wis. Stats., to mean "taxable income". Since the losses from the prior years would effectively make the Wisconsin income for 2013 zero, the Petitioners argued that they did not have taxable income and are not required to file a 2013 Form PW-1.
2. The Petitioners argued that no specific form need be submitted by a taxpayer, as sec. [71.775\(4\)\(a\)](#), Wis. Stats., requires that each pass-through entity having Wisconsin income for the taxable year, shall file "an annual return" but does not specify what return is required.
3. Section [71.80\(25\)\(a\)](#), Wis. Stats., provides:

No offset of Wisconsin income may be made under s. 71.05 (8) (b) 1., 71.26 (4) (a), or 71.45 (4) (a) unless the incurred loss was computed on a return that was filed within 4 years of the unextended due date for filing the original return for the taxable year in which the loss was incurred.

Petitioner Finger Living Trust argued that sec. 71.80(25)(a), Wis. Stats., does not require the loss to be computed on a Wisconsin return and does not require the returns to be filed by the taxpayer claiming the losses. Petitioner Finger Living Trust claimed its losses were computed on federal returns.

The Wisconsin Tax Appeals Commission denied the Petitioners' appeals and affirmed the department's assessments, concluding:

1. Adding the word "taxable" to "income" under secs. [71.775\(2\)\(a\)](#) and [\(3\)\(a\)2.](#), Wis. Stats., changes the meaning of the statute, and this reading of secs. 71.775(2)(a) and (3)(a)2., Wis. Stats., is rejected by the Commission.
2. Pass-through entities are required by statute to file a timely pass-through withholding form, and submit the appropriate amount of withheld tax, in each year where there is Wisconsin income. The Petitioners are required to file Form PW-1 for tax year 2013.
3. The Commission rejected the Petitioners' reading of sec. [71.80\(25\)\(a\)](#), Wis. Stats., as unreasonable and unworkable for the purpose of determining and verifying losses being claimed against Wisconsin income. The Petitioners' arguments about losses having been computed on federal returns fail. The failure of the trust to submit any Wisconsin returns by April 15, 2018, in order to fall within four years of the unextended due date of the last year of the period, 2013, results in the trust not being able to offset losses generated during those years.
4. Watermark was required to file Form PW-1 and pay pass-through withholding tax on behalf of the Petitioners. When Watermark failed to do these things, the Petitioners were not relieved of their obligation to properly file their Wisconsin tax returns.

The taxpayer has appealed this decision to the Circuit Court.

Sales and Use Tax

Indirect Materials Purchased for Resale to Federal Government

Oshkosh Corporation v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 14, 2022).

The issue in this case is whether indirect materials such as office equipment and supplies purchased and used by the taxpayer in fulfillment of their contract with the federal government were purchased for resale to the federal government and therefore exempt from Wisconsin sales and use tax under sec. [77.51\(14\)](#), Wis. Stats.

The taxpayer argues the title to these materials is transferred to the federal government under the terms of contracts between the taxpayer and the federal government, and therefore the materials are purchased without tax for resale to the federal government. The department argues the taxpayer cannot avoid tax liability for such indirect materials and costs when they are purchased by the taxpayer for the taxpayer's use and they are never physically transferred to the federal government.

The Wisconsin Tax Appeals Commission concluded:

1. Under sec. 77.51(14), Wis. Stats., the term sale "includes any of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property." Title transfer alone in this matter is sufficient to constitute a sale.
2. Petitioner is entitled to a refund of Wisconsin sales and use tax paid on indirect materials the titles for which were transferred to the federal government during the refund period.

It is not known whether the department will appeal this decision.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of October 28, 2022: chs. 71, 77, and 78 [Wis. Stats.](#), and chs. Tax 1, 2, 3, 4, 11, and 14 [Wis. Adm. Code](#). Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

Public Comments

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