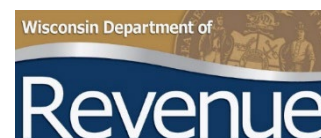


Wisconsin Tax Bulletin

July 2023 Number 222



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New Tax Laws

A. Individual and Fiduciary Income Taxes

1. Manufacturing and Agricultural Credit: Personal Property Tax Repeal

([2023 Wis. Act 12](#), repeal sec. 71.07(5n)(a)5.d., amend sec. 71.07(5n)(a)5.a., (a)9.(intro.), (a)9.a., and (d)2., and create secs. 70.995(5n) and 71.07(5n)(a)9.c., effective for taxable years beginning after December 31, 2023)

See Item B.1.

2. Veterans and Surviving Spouses Property Tax Credit: Personal Property Taxes Reference Removed

([2023 Wis. Act 12](#), amend sec. 71.07(6e)(a)5., effective for taxable years beginning after December 31, 2023)

Under the Act, beginning with the property tax assessments as of January 1, 2024, no items of personal property are subject to the property tax. The Act removes reference to personal property taxes from the definition of "Property taxes" eligible for the credit.

3. School Property Tax Credit: Personal Property Taxes Reference Removed

([2023 Wis. Act 12](#), amend sec. 71.07(9)(a)3., effective for taxable years beginning after December 31, 2023)

Under the Act, beginning with the property tax assessments as of January 1, 2024, no items of personal property are subject to the property tax. The Act removes reference to personal property taxes from the definition of "Property taxes" eligible for the credit.

4. Homestead Credit: Personal Property Taxes References Removed

([2023 Wis. Act 12](#), amend sec. 71.52(7), effective for taxable years beginning after December 31, 2023)

Under the Act, beginning with the property tax assessments as of January 1, 2024, no items of personal property are subject to the property tax. The Act removes references to personal property taxes from the definition of "Property taxes accrued" as it relates to the credit.

5. Financial Institution Commercial Loan Exemption

([2023 Wis. Act 19](#), create sec. 71.05(1)(i), effective for taxable years beginning after December 31, 2022)

See Item B.2.

6. Individual Income Tax Rate Decrease

([2023 Wis. Act 19](#), amend sec. 71.06(1q)(a) and (b), (2)(i)1. and 2., and (2)(j)1. and 2., effective for taxable years beginning after December 2022)

The individual income tax rate for the first tax bracket is reduced from 3.54 percent to 3.50 percent. The first bracket applies to taxable income as follows:

- Fiduciaries, single individuals, and heads of households – On the first \$13,810 of taxable income
- Married persons filing joint returns – On the first \$18,420 of taxable income
- Married persons filing separately – On the first \$9,210 of taxable income

The individual income tax rate for the second tax bracket is reduced from 4.65 percent to 4.40 percent. The second bracket applies to taxable income as follows:

- Fiduciaries, single individuals, and heads of households – On all taxable income exceeding \$13,810 but not exceeding \$27,630
- Married persons filing joint returns – On all taxable income exceeding \$18,420 but not exceeding \$36,840
- Married persons filing separately – On all taxable income exceeding \$9,210 but not exceeding \$18,420

Note: The tax brackets may be adjusted for inflation each year. The amounts shown above reflect the tax brackets for the 2023 taxable year.

7. Research Credit: Refundable Portion Increased to 25 Percent

([2023 Wis. Act 19](#), amend sec. 71.07(4k)(e)2. a. and b., and create sec. 71.07(4k)(e)2.ad., effective for taxable years beginning after December 31, 2023)

See Item B.3.

8. Disclosure to Wisconsin Economic Development Corporation

([2023 Wis. Act 19](#), amend sec. 71.78(4)(m) and (5), effective on or after October 1, 2023)

See Item B.5.

B. Corporation Franchise or Income Taxes

1. Manufacturing and Agricultural Credit: Personal Property Tax Repeal

([2023 Wis. Act 12](#), repeal sec. 71.28(5n)(a)5.d., amend sec. 71.28(5n)(a)5.a., (a)9.(intro.), (a)9.a., and (d)2., and create secs. 70.995(5n) and 71.28(5n)(a)9.c., effective for property tax assessments as of January 1, 2024)

The Act repeals personal property taxes in Wisconsin. The Act also makes changes to the manufacturing credit to limit any effect on the ability of taxpayers who only have personal property assessed as manufacturing property to claim the manufacturing credit.

Classifying Personal Property as Manufacturing Property

A person wishing to classify their establishment as manufacturing must file an application no later than July 1 of the taxable year for which the person wishes to claim the credit. The department must make a determination and provide written notice by December 31 of the year in which the application is filed. A determination on the classification may be appealed to the State Board of Assessors.

Any establishment classified as manufacturing prior to January 1, 2024, is presumed to be engaged in manufacturing and does not need to submit an application.

The department may investigate and revoke a classification.

Manufacturing Property Factor

The Act amends the definition of "manufacturing property factor." Previous Wisconsin law used the average value of the claimant's real and personal property assessed under sec. [70.995](#), Wis. Stats., for the numerator and denominator of the factor. Real and personal property assessed under sec. 70.995, Wis. Stats., has been replaced with the term "land and depreciable property" for both the numerator and denominator.

Qualified Production Property

For the manufacturing credit, a business must have gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property. The Act expanded the definition of "qualified production property" to include tangible personal property manufactured in whole or in part by the claimant with an establishment located in Wisconsin and classified as manufacturing under sec. [70.995\(5n\)](#), Wis. Stats.

For taxpayers that have real property assessed as manufacturing property under sec. 70.995, Wis. Stats., the Act clarifies that "qualified production property" is tangible personal property manufactured on property located in this state and assessed as manufacturing property or approved to be classified as manufacturing real property under sec. 70.995, Wis. Stats., even if it is not eligible to be listed on the manufacturing property assessment roll until January 1 of the following year.

Eligible Qualified Production Activities Income

If the claimant's entire qualified production activities income results from the sale of tangible personal property that was manufactured, produced, grown, or extracted entirely in Wisconsin by

the claimant, it is not necessary to multiply the qualified production activities income by the manufacturing or agricultural property factor.

2. Financial Institution Commercial Loan Exemption

([2023 Wis. Act 19](#), create sec. 71.26(1)(i), effective for taxable years beginning after December 31, 2022)

Revised
10-06-23

Income from a **corporation** or tax-option (S) corporation that is a financial institution, as defined in sec. [69.30\(1\)\(b\)](#), Wis. Stats., including interest, fees, and penalties, is exempt from Wisconsin income **and franchise** tax under subchs. [I](#) and [IV](#) of ch. [71](#), Wis. Stats.

In order to qualify for the exemption, the income must be derived from a commercial loan of five million dollars or less. The commercial loan proceeds must be provided to a person residing or located in Wisconsin and used primarily for a business or agricultural purpose.

3. Research Credit: Refundable Portion Increased to 25 Percent

([2023 Wis. Act 19](#), amend secs. 71.28(4)(k)1.b. and 71.47(4)(k)1.b., and create secs. 71.28(4)(k)1.c. and 71.47(4)(k)1.c., effective for taxable years beginning after December 31, 2023)

The amount of the claim not used to offset the tax due, not to exceed 25 percent of the allowable amount of the claim, is a refundable credit. The remaining amount not used may be carried forward for 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

Refundable portion of the research credit:

- 10 percent for taxable years beginning after December 31, 2017, and before January 1, 2021
- 15 percent for taxable years beginning after December 31, 2020, and before January 1, 2024
- 25 percent for taxable years beginning after December 31, 2023

4. Apportionment of Apportionable Income of Interstate Brokers-Dealers, Investment Advisers, Investment Companies, and Underwriters

([2023 Wis. Act 19](#), amend sec. Tax 2.495(4)(d)1., Wis. Adm. Code, and create sec. Tax 2.495(4)(d)3., Wis. Adm. Code, effective for taxable years beginning on January 1, 2022)

A brokerage house, investment adviser, investment company, or underwriter that is engaged in business both in and outside this state must apportion its apportionable income according to sec. [Tax 2.495](#), Wis. Adm. Code. The Act creates a new rule to provide that in certain instances the department cannot order or permit the substitution of net gains for gross receipts in the receipts factor if the use of gross receipts results in substantial distortion of the taxpayer's receipts factor.

Specifically, the department cannot substitute net gains if any taxpayer who, before January 1, 2023, elected to source its sales of trading assets using the customer billing address method defined in sec. [Tax 2.495\(4\)\(d\)1m.](#), Wis. Adm. Code, if the taxpayer has not revoked that election, and who, for any taxable year beginning after December 31, 2021, determines its receipts factor under sec. [Tax 2.495\(4\)](#), Wis. Adm. Code, by using the average of the receipts factor determined

by using (a) gross receipts, net of commissions, and (b) net gain, net of commissions, from sales of trading assets for the taxable year, with all other components of the receipts factor under sec. Tax 2.495(4), Wis. Adm. Code, remaining the same. Any such taxpayer may compute its receipts factor under this new rule using that averaging method. The department cannot require any taxpayer who elected before January 1, 2023, to use the customer billing address method for sourcing sales of trading assets, if the taxpayer has not revoked that election, to use any other method of determining its receipts factor under sec. Tax 2.495(4), Wis. Adm. Code.

5. Disclosure to Wisconsin Economic Development Corporation

([2023 Wis. Act 19](#), amend sec. 71.78(4)(m) and (5), effective on or after October 1, 2023)

The Wisconsin Economic Development Corporations (WEDC) authority to examine tax returns was expanded to the extent necessary to administer tax benefit programs, including review of tax benefit applications, compliance with tax benefit certifications, and the confirmation of the amount of tax benefits used. The WEDC was also given authority to receive copies of returns and claims for the same purposes.

C. Sales and Use Taxes

1. Milwaukee City and County Taxes

([2023 Wis. Act 12](#), amend ch. 77, subch. V title, and amend and create various provisions in ch. 77, subch. V, effective June 22, 2023)

Authorizes the city of Milwaukee to impose a 2-percent sales and use tax by ordinance if approved by a two-thirds majority vote of all members elect of the common council. A certified copy of the ordinance must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the tax. The city must repeal the city tax after the city retirement system is first fully funded or 30 years after the effective date, whichever is earlier.

Authorizes Milwaukee County to impose an additional 0.4-percent sales and use tax by ordinance if approved by a two-thirds majority vote of all members elect of the county board. A certified copy of the ordinance must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the tax. The county must repeal the additional county tax after the county retirement system is fully funded or 30 years after the effective date, whichever is earlier.

Each tax must be effective on January 1, April 1, July 1, or October 1. **Note:** The department will provide additional communication about the effective date of the tax upon receipt of a certified copy of the ordinance from the city of Milwaukee or Milwaukee County.

2. Real Property Construction Activities and Classification of Property

([2023 Wis. Act 12](#), amend sec. 77.51(12t), effective June 22, 2023)

The act amends the definition of real property construction activities to mean activities that occur at a site where tangible personal property or items or goods under sec. [77.52\(1\)\(b\)](#) or [\(d\)](#), Wis. Stats., that are applied or adapted to the use or purchase to which real property is devoted are permanently affixed to that real property. Real property construction activities do not include affixing property that is subject to tax under sec. [77.52\(1\)\(c\)](#), Wis. Stats., to real property or affixing to real property tangible personal property that remains tangible personal property after it is affixed.

Additionally, the department may promulgate rules to determine whether tangible personal property that is affixed to real property is a real property construction activity. If the classification of property or activity is not identified by rule, the department's determination shall be based on the following criteria:

- Actual physical annexation to the real property
- Application or adaptation to the use or purpose to which the real property is devoted
- An intention on the part of the person making the annexation to make a permanent accession to the real property

3. Sales and Use Tax Exemption Created for Data Center Equipment and Materials

([2023 Wis. Act 19](#), create sec. 77.54(70), effective October 1, 2023)

A sales and use tax exemption is created for the sale of:

- Tangible personal property, regardless of whether it is affixed to or incorporated into real property, and property under sec. [77.52 \(1\)\(c\)](#), Wis. Stats., used exclusively for the development, construction, renovation, expansion, replacement, repair, or operation of a qualified data center and used solely at the qualified data center
- Tangible personal property or property under sec. 77.52(1)(c), Wis. Stats., used in the development, construction, renovation, expansion, replacement, or repair of a water cooling or conservation systems used exclusively to cool or conserve water for one or more qualified data centers
- Tangible personal property or property under sec. 77.52(1)(c), Wis. Stats., sold to a construction contractor that, in fulfillment of a real property construction activity, transfers the property to a qualified data center, if the property becomes a component of the qualified data center

A qualified data center is defined in sec. 238.40(1)(b), Wis. Stats., to mean one or more buildings owned, leased, or operated by the same business entity or its affiliate. Additionally, the buildings must be used to centralize the processing, storage, management, retrieval, communication, or dissemination of data and information and create a minimum qualified investment in the state.

The Wisconsin Economic Development Corporation (WEDC) is responsible for certifying a qualified data center for purposes of the exemption and also contracting with that business entity. The department will provide additional information about claiming the exemption when a qualified data center is certified by WEDC.

4. Increase in the Retailer's Discount

([2023 Wis. Act 19](#), amend sec. 77.61(4)(c), Wis. Stats., effective for taxes payable on or after October 1, 2023)

For reporting and collecting taxes and the accounting connected with it, a retailer may deduct a portion of the paid sales tax reported on a timely sales and use tax return. This is known as the retailer's discount. The Act increases the discount on the total sales tax amount from 0.5 percent to 0.75 percent and increases the limit of a retailer's discount that may be deducted on a sales and use tax return from \$1,000 to \$8,000.

The retailer's discount is computed on the total sales tax as follows:

- \$0 to \$10; the discount is equal to total sales tax
- \$10 to \$1,333; the discount is \$10
- Greater than \$1,333; the discount is the total sales tax amount times .0075 but cannot exceed \$8,000 per reporting period

D. Excise Taxes

1. Increase in the Cigarette Tax Stamp Discount

([2023 Wis. Act 19](#), amend sec. 139.32(5), effective for cigarette tax stamps purchased on or after October 1, 2023)

The discount on cigarette tax stamps purchased by cigarette manufacturers, bonded direct marketers, and distributors is increased from 0.8 percent to 1.25 percent.

Income and Franchise Tax Updates and Reminders

Individual Income Taxpayers: Send Payments to Box 3028

All individual income tax payments made with a check **must** be sent to the following address: Wisconsin Department of Revenue, PO Box 3028, Milwaukee, WI 53201-3028. Taxpayers submitting a check to the department should include a payment voucher or notice with the check.

Previously the department received payments using PO Box 93208. Payments sent to PO Box 93208 were forwarded to the correct PO Box 3028. The forwarding service has expired. Payments sent to PO Box 93208 will be returned and may cause the taxpayer to submit a late payment which may result in interest and penalties.

The department's [Make a Payment](#) web page provides instructions and links for online payment options, which remains a more efficient and secure way for taxpayers to make timely payments.

Reminder: Due Date for Partnerships and Tax-Option (S) Corporations Making the Entity-Level Tax Election

An election for partnerships and tax-option (S) corporations to pay tax at the entity level must be made each tax year by the extended due date of the entity's income or franchise tax return.

The extended due date of a 2022 [Form 3](#), *Wisconsin Partnership Return*, for a calendar-year partnership is September 15, 2023, and the extended due date of a 2022 [Form 5S](#), *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*, for a calendar-year tax-option (S) corporation is October 16, 2023.

For additional information on making the entity-level tax election, see the following:

- Article titled *Election to Pay Tax at Entity Level for Tax-Option (S) Corporations and Partnerships*, on pages 2 and 3 of [Wisconsin Tax Bulletin 204](#) (January 2019)
- [Pass-Through Entity-Level Tax: Partnerships](#) common questions

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- [Pass-Through Entity-Level Tax: Tax-Option \(S\) Corporation](#) common questions

The following table shows 2021 filing statistics for the entity-level tax election:

2021 Tax Year (Statistics as of July 15, 2023)

Tax-Option (S) Corporations (Form 5S) Filing Stats	
Tax-Option (S) Corporation returns filed	86,789
Tax-Option (S) Corporation entity-level tax elections filed	6,048
Percent of entity-level tax elections filed	6.97%

Partnership (Form 3) Filing Stats	
Partnership returns filed	85,382
Partnership entity-level tax elections filed	3,009
Percent of entity-level tax elections filed	3.52%

Pass-Through Entity Filing Stats - TOTAL	
Pass-Through entity returns filed	172,171
Entity-level tax elections filed	9,057
Percent of entity-level tax elections filed	5.26%

Most Commonly Used Wisconsin Franchise and Income Tax Credits

Wisconsin tax law provides a wide variety of franchise and income tax credits. For an extensive list and additional information, see article titled *Reporting Certain Franchise/Income Tax Credits As Income*, on pages 3 and 4 of [Wisconsin Tax Bulletin 205](#) (April 2019), and the [Interactive Incentive Finder](#).

Below are statistics of the most commonly used credits by corporations for tax year 2020 and individuals for tax year 2021.

Commonly Used Corporate Franchise/Income Tax Credits, Tax Year 2020 (Statistics as of May 4, 2023)				
Corporate Tax Credit	Number of Claimants Using Credit	Amount of Credit Used	Credit Available	Credit Carried Forward
Manufacturing credit	464	\$123,242,508	\$248,226,532	\$124,984,024
Enterprise zone jobs credit	13	\$48,716,467	Refundable	
State historic rehabilitation credit	21	\$46,112,263	\$53,832,385	\$7,720,122
Nonrefundable research expense credit	454	\$44,666,993	\$608,708,136	\$564,041,143
Refundable research expense credit	549	\$10,134,603	Refundable	
Business development credit	33	\$8,800,945	Refundable	
Research facility credit	6	\$3,558,980	\$9,484,552	\$5,925,572
Economic development credit	12	\$2,142,679	\$22,638,793	\$20,496,114

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Commonly Used Individual Franchise/Income Tax Credits, Tax Year 2021 (Statistics as of February 16, 2023)				
Individual Income Tax Credits	Number of Claimants Using Credit	Amount of Credit Used	Credit Available	Credit Carried Forward
Taxes paid to other states credit	81,789	\$459,295,412	\$474,843,648	No carryforward
School property tax credit	1,798,031	\$443,664,380	\$511,925,346	No carryforward
Itemized deduction credit	618,669	\$305,496,454	\$601,769,830	No carryforward
Manufacturing credit	6,036	\$306,135,683	\$573,336,660	\$267,200,977
Married couple credit	618,952	\$258,920,052	\$262,919,821	No carryforward
Earned income credit	198,816	\$76,532,468	Refundable	
Homestead credit	102,516	\$50,027,234	Refundable	
Veterans and surviving spouses property tax credit	12,935	\$43,528,470	Refundable	
Nonrefundable research expense credit	3,761	\$25,283,059	\$66,286,464	\$41,003,405
Agriculture credit	5,283	\$19,794,022	\$81,694,582	\$61,900,560

Reminder: Composite Returns, Form 1CNP or 1CNS

A partnership or tax-option (S) corporation with income or loss from business transacted, services performed, or property located in Wisconsin may file a Wisconsin individual income tax return on behalf of their eligible nonresident individual partners or shareholders using [Form 1CNP](#), *Composite Wisconsin Individual Income Tax Return for Nonresident Partners*, or [Form 1CNS](#), *Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders*. **Note:** If filing a composite return, a separately filed [Form PW-1](#), *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, may also be required.

A Nonresident Individual Partner or Shareholder Filing an Original Form 1NPR May Not Be Included on a Composite Return, Form 1CNP or 1CNS

For additional information on a nonresident partner's or shareholder's eligibility to be included on Form 1CNP or 1CNS, see the [Form 1CNP instructions](#) or [Form 1CNS instructions](#).

Reporting Income or Loss for a Limited Liability Company or Grantor Trust Treated as a Disregarded Entity on a Composite Return, Form 1CNP or 1CNS

If a nonresident partner or shareholder is a limited liability company (LLC) or grantor trust treated as a disregarded entity, the owner of the LLC or grantor of the grantor trust is deemed to be the partner or shareholder for purposes of filing Form 1CNP or 1CNS.

When reporting a nonresident partner's or shareholder's allocated portion of income or loss on Schedule 2 of Form 1CNP or 1CNS, the same social security number (SSN) cannot be reported more than once in Column (B). All income or loss reportable by the individual and the disregarded entity (i.e., shown on separate Schedules 3K-1s or 2K-1s) must be combined when reporting the amounts on Schedule 2 of Form 1CNP or 1CNS.

Example:

Facts:

- Tax-Option (S) Corporation ABC has three equal shareholders:
 1. Nonresident Individual D
 2. Nonresident Individual E
 3. Nonresident Grantor Trust F (treated as a disregarded entity)
- Individual D is the grantor of Grantor Trust F
- Tax-Option (S) Corporation ABC's Wisconsin net income for 2022 is \$30,000

Form 1CNS Reporting Requirement:

If all of the shareholders file on Form 1CNS, ABC should report the following on Form 1CNS, Schedule 2, Columns (A), (B), (C), and (D1):

Column (A) Name and Address	Column (B) SSN	Column (C) Pro Rata Share (%)	Column (D1) Shareholder's Share of WI Net Income (Loss)
D's name and address	D's SSN	66.67% (Total ownership of D and F)	\$20,000 (Total WI net income of D and F)
E's name and address	E's SSN	33.33%	\$10,000

For additional information on filing Form 1CNP or 1CNS, see the [Form 1CNP instructions](#), [Form 1CNS instructions](#), or [Composite Returns](#) common questions.

Withholding Tax Updates and Reminders

Worker Classification: Employee or Independent Contractor

Every person who pays an individual for work must classify the individual as either an employee or independent contractor. The correct classification is important because it impacts the payer's requirements for:

- Federal unemployment insurance, income tax withholding, and information return reporting under chs. [23](#), [24](#), and [61](#), Internal Revenue Code, administered by the Internal Revenue Service (IRS)
- Wisconsin unemployment insurance under ch. [108](#), Wis. Stats., administered by the Wisconsin Department of Workforce Development (DWD)
- Wisconsin income tax withholding and information return reporting under ch. [71](#), Wis. Stats., administered by the Wisconsin Department of Revenue (DOR)

Both the [IRS website](#) and the [DWD website](#) provide guidance to help payers determine if a worker is an employee or an independent contractor, and DOR generally follows the IRS guidance.

The IRS, DWD, and DOR have authority to audit a payer's records to ensure compliance with these laws. If an audit by the IRS or DWD determines that an employee was misclassified, the payer must ensure that it is complying with the laws administered by DOR. Failure to comply with Wisconsin's income tax withholding and information return reporting requirements under ch. [71](#), Wis. Stats., may result in an audit by DOR and liability for the following:

- *A penalty equal to the amount of the tax, plus interest and penalties on that tax* - A person required to withhold any tax under ch. [71](#), Wis. Stats., who intentionally fails to withhold such tax shall be liable to a penalty equal to the amount of the tax, plus interest and penalties on that tax (sec. [71.83\(1\)\(b\)2.](#), Wis. Stats.).
- *\$25,000 fine* - Any employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects who willfully provides false information to DOR, or who willfully and with intent to evade any withholding requirement, misclassifies or attempts to misclassify an individual who is an employee of the employer as a nonemployee shall be fined \$25,000 for each violation (sec. [71.65\(6\)](#), Wis. Stats.).
- *\$10 penalty* - If a person fails to file a wage statement (e.g., Form W-2) required under sec. [71.71](#) or [71.715](#), Wis. Stats., by the prescribed due date, including any extension, or files an incorrect or incomplete return, that person may be subject to a penalty of \$10 for each violation (sec. [71.83\(1\)\(a\)1m.](#), Wis. Stats.).
- *\$50 or \$150 late filing fee* - Any person who is required to file a withholding report (e.g., Form WT-7) and deposit withholding taxes that fails to do so timely and DOR shows that the taxpayer's action or inaction was due to the taxpayer's willful neglect and not to reasonable cause, shall be subject to a \$50 late fee, except for corporations taxed under subch. [IV](#) or insurance companies taxed under subch. [VII](#) of ch. [71](#), Wis. Stats., the late fee is \$150 (sec. [71.83\(3\)\(a\)](#), Wis. Stats.).
- *25 percent penalty* - Any person who is required to file a deposit report (Form WT-6) or a withholding report (Form WT-7) and files an incomplete or incorrect report, or fails to properly withhold or fails to properly deposit or pay over withheld funds, upon a showing by the department that the taxpayer's action or inaction was due to the taxpayer's willful neglect and not to reasonable cause may be subject to a penalty of 25 percent of the amount not reported or not withheld (sec. [71.83\(1\)\(a\)3.](#), Wis. Stats.).
- *1.5 percent interest per month* - Delinquent withholding deposits or payments shall bear interest at the rate of 1.5 percent per month. **Note:** During a period in which an extension is granted, interest accrues at the rate of 1 percent per month (sec. [71.82\(2\)\(d\)](#), Wis. Stats.).
- *Disallowed wage expense deduction* - If an employer fails to file wage statements (e.g. Form W-2), DOR may assess as an addition to taxable income the amount of deductions taken in arriving at federal adjusted gross income or federal taxable income by natural persons and fiduciaries for wages (sec. [71.74\(4\)](#), Wis. Stats.).
- *\$10,000 fine and/or 9 month prison sentence* - Any person who willfully fails or refuses to make required withholding deposits or payments or willfully renders a false or fraudulent wage statement (e.g. Form W-2) or report (e.g. Form WT-6 or Form WT-7) shall be guilty of a misdemeanor and may be fined not more than \$10,000 or imprisoned for not to exceed 9 months or both, together with the cost of prosecution (sec. [71.83\(2\)\(a\)1.](#), Wis. Stats.).

For more information about Wisconsin income tax withholding and information return reporting requirements, see [Publication W-166](#), *Withholding Tax Guide*, and [Publication 117](#), *Guide to Wisconsin Wage Statements and Information Returns*.

Sales and Use Tax Updates and Reminders

Administrative Rules Relating to Marketplace Providers and Sellers Effective July 1, 2023

Changes to the following sales and use tax Wisconsin Administrative Code sections were published in the [Administrative Register 810B](#) and are effective July 1, 2023:

- Section [Tax 11.55](#), Wis. Adm. Code, is renamed from "Agents, consignees, lienors, and brokers" to "Repossessions and sales of property to enforce liens." In addition, sec. Tax 11.55(1) and (2), Wis. Adm. Code, relating to disclosed and undisclosed principals are repealed. Persons selling products and services on behalf of others are retailers and must collect tax regardless of whether the person they are selling on behalf of is disclosed to the purchaser. These agents, consignors, and brokers are often "marketplace providers" under the provisions created in [2019 Wisconsin Act 10](#), effective January 1, 2020.
- Section [Tax 11.555](#), Wis. Adm. Code, is created and titled "Marketplace providers and sellers" and explains the various requirements by all types of sellers that facilitate sales of taxable products and services on behalf of other sellers. The rule includes information about:
 - The marketplace provider's requirement to notify the seller they are collecting and remitting the tax.
 - Who can be audited and held liable for the tax.
 - Requests for waiver from marketplace provider responsibilities.
 - The department may regard the marketplace seller as a retailer in certain situations.
 - Marketplace provisions apply to both online and physical marketplaces (e.g., stores).
 - Reporting and recordkeeping requirements, such as filing returns, exemption certificates, bad debt deduction, and nexus provisions.
 - A marketplace provider is required to collect and remit tax on taxable sales it facilitates on behalf of a nonprofit organization, even if the nonprofit organization would qualify for the occasional sales exemption had it made its own direct sales to consumers.
- Section [Tax 11.88\(6\)](#), Wis. Adm. Code, "Consignment sales," is repealed and recreated to explain that a recreational vehicle dealer that advertises and sells a recreational vehicle on behalf of another person is a marketplace provider and required to collect and remit the tax.

Excise Tax Updates and Reminders

Vapor Products Subject to Excise Tax

Definition: According to sec. [139.75\(14\)](#), Wis. Stats., "'Vapor product' means a noncombustible product that produces vapor or aerosol for inhalation from the application of a heating element to a liquid or other substance that is depleted as the product is used, regardless of whether the liquid or other substance contains nicotine."

Tax Rate: According to sec. [139.76\(1m\)](#), Wis. Stats., "An excise tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of vapor products by any person engaged as a distributor of them at the rate of 5 cents per

milliliter of the liquid or other substance based on the volume as listed by the manufacturer and at a proportionate rate for any other quantity or fractional part thereof. The tax attaches at the time the vapor products are received by the distributor in this state. The tax shall be passed on to the ultimate consumer of the vapor products. All vapor products received in this state for sale or distribution within this state, except those actually sold as provided in sub. [\(2\)](#), shall be subject to such tax."

Vapor products are taxable if the liquid or other substance functions as part of a vapor product or is sold with a vapor product as one packaged item. Examples of vapor products subject to the Wisconsin vapor products tax include disposable e-cigarettes, cartridges, and pods. These products are often referred to as "closed systems," the e-cigarette or pod is disposed of once the liquid or other substance is depleted.

Note: Vapor products are taxable even if the liquid or other substance does not contain nicotine. The source of the liquid or other substance does not change taxability. For example, Cannabidiol (CBD) products that fit the statutory definition of "vapor product" are taxable.

The tax does not apply to equipment and devices that are not sold with a liquid or other substance. The tax also does not apply to liquids that are not packaged and sold with equipment that is in whole or in part a vapor product. For example, e-liquids sold in bottles for refilling the tank of an open system are not subject to the Wisconsin vapor products tax.

For additional information, visit [Fact Sheet 3501](#), *Vapor Products Tax*, and the department's [Vapor Products Tax](#) common questions.

Unclaimed Property Updates and Reminders

Holder Reporting Reminder: Attempt to Locate Owners

Under sec. [177.0501\(1\)](#), Wis. Stats., unclaimed property holders are required to make a good faith effort to locate owners of abandoned property. Holders must send notification letters to owners of properties valued at \$50 or more. Letters must include the information required under sec. [177.0502](#), Wis. Stats., and must be sent between July and September.

See Part 3 in [Publication 82](#), *Unclaimed Property Holder Report Guide*, for additional information on the holder reporting process, and Appendix 3 for a sample letter.

Holder Reporting Reminder: Failure to Timely Report and Deliver Property

Holders that fail to report and deliver unclaimed property annually by the November 1 deadline may be subject to the following penalties:

- Late filing fee: \$150 for failure to file a timely report – sec. [177.1204\(1\)\(a\)](#), Wis. Stats.
- Failure to pay or deliver property: 15 percent of the value of the property that is not timely paid or delivered by November 1 of each year, unless an extension has been granted by the department – sec. [177.1204\(2\)\(a\)](#), Wis. Stats.
- Failure to file and pay after written request: \$100 per day for failure to file a report and deliver the property after a written request by the department – sec. [177.1204\(1\)\(b\)](#) and [\(2\)\(b\)](#), Wis. Stats.

Additional penalties may be imposed on persons who file a false or fraudulent report with intent to defeat or evade the unclaimed property laws.

Enforcement Report

Deferred Judgement Agreement for Iowa County Man Charged with Tax Fraud

On May 12, 2023, Jeffrey E. Hirsch, 56, of Mineral Point (formerly of Rewey), Wisconsin entered into a deferred judgement agreement with Iowa County prosecutors. Hirsch had been charged with six felony counts of filing a false or fraudulent Wisconsin income tax return for the years 2016 through 2021.

According to the criminal complaint, Hirsch was employed as a driver for a gas company and delivered liquid propane to customers. Hirsch stole liquid propane from the gas company and delivered the fuel to customers, including Hirsch's own residence and rental property. Hirsch then accepted payment for the fuel. Instead of arranging payment to the gas company directly, Hirsch advised some customers to pay Hirsch directly by cash or check.

The criminal complaint stated Hirsch failed to report income received from the sale of the stolen propane on Hirsch's Wisconsin income tax returns. Hirsch filed tax returns that understated total income by more than \$269,000. The Wisconsin income tax evaded for 2016 through 2021 was calculated to be \$16,966.

Under Wisconsin law, filing a false or fraudulent income tax return is a felony. Hirsch faced a maximum penalty of 36 years in prison and \$60,000 in fines. As part of the agreement Hirsch must pay full restitution of \$20,413 to the Wisconsin Department of Revenue. Additionally, Hirsch must avoid all conduct prohibited by Wisconsin law, have no contact with the gas company Hirsch stole from (including employees and customers), and must not be revoked from any term of supervision ordered in the corresponding theft convictions in Iowa County Case Number 21-CF-123.

Hirsch was prosecuted by the Iowa County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Office of Criminal Investigation.

The Wisconsin Department of Revenue, Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes.

To report tax fraud, go to www.revenue.wi.gov and click the "Report tax fraud" link under Quick Links.

Monroe County Man Charged with Tax Crimes

Kenneth Donais, 57, of Sparta, Wisconsin was charged on May 17, 2023, in Monroe County Circuit Court with three misdemeanor counts of failing to file Wisconsin income tax returns for tax years 2019 through 2021.

According to the criminal complaint, Donais has a history of not filing Wisconsin income tax returns despite having a requirement to do so. Full-year Wisconsin residents with income above a certain threshold are required to file Wisconsin income tax returns. Donais earned non-employee compensation between \$133,735 and \$157,384 in 2019-2021. Donais worked as a contractor for a company that built post frame steel buildings.

The complaint also states that the Wisconsin Department of Revenue devoted significant staff hours trying to get Donais to file tax returns. Unfortunately, those efforts were unsuccessful and eventually income tax estimates were issued and Donais owed a large debt to the department. According to the complaint, the department typically uses civil processes to try to get compliance from non-filers before undertaking criminal investigations. In this case, Donais never filed any returns and collection efforts were difficult because financial institutions were used only to cash checks instead of making deposits.

Under Wisconsin law, failure to file an income tax return is a misdemeanor. If convicted on all counts, Donais faces a maximum penalty of up to 27-months imprisonment and/or \$30,000 in fines. The Monroe County District Attorney's Office is prosecuting this case following the investigation by the Wisconsin Department of Revenue's Office of Criminal Investigation.

The Wisconsin Department of Revenue Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes.

To report tax fraud, go to www.revenue.wi.gov and click the "Report tax fraud" link under Quick Links.

Deferred Judgement Agreement for Sauk County Woman Charged with Theft and Misconduct in Public Office

Brittany L. Syvrud, of Rock Springs, the former treasurer for the Town of Excelsior, entered into a deferred judgement agreement with Juneau County prosecutors in early June. Syvrud had been charged in Sauk County Circuit Court with a felony count of theft from a business setting and a felony count of misconduct in public office following an investigation into Syvrud's tax affairs. The case was transferred from Sauk County to Juneau County due to a potential conflict of interest within the Sauk County District Attorney's Office.

According to the criminal complaint, Syvrud worked as the Town of Excelsior Treasurer and was responsible for processing property tax payments. Syvrud deposited property tax payments into a personal checking account totaling over \$8,000 and manipulated Town records to cover up the theft. Syvrud manipulated the records so that the individual taxpayers were not harmed, only the Town was victimized.

Syvrud admitted stealing the checks due to Syvrud's perceived financial need and resigned as Town of Excelsior Treasurer.

The deferred judgement agreement stipulated that Syvrud would plead to a misdemeanor theft charge and recommend the court defer judgment on that count for twelve months. The felony count of misconduct in public office was dismissed. Syvrud agreed not to engage in any criminal behavior during the deferment period and must continue to adhere to the conditions of the current bond. If Syvrud complies with the terms and conditions set forth in the agreement, the theft charge will be dismissed at the conclusion of the deferment period. If Syvrud violates the terms of the agreement, Syvrud may be sentenced on the theft charge.

The investigation was conducted by Department of Revenue Office of Criminal Investigation special agents.

The Wisconsin Department of Revenue Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes.

To report tax fraud, go to www.revenue.wi.gov and click the "Report tax fraud" link under Quick Links.

Report on Litigation

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

Individual Income Tax

Exemption from Penalty on Early Withdrawal from a Retirement Account

Scott Cech v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 5, 2023).

The issue in this case is the applicability of the first-time homebuyer exception to the penalty on an early withdrawal from a 401(k) retirement account.

In 2017, the taxpayer took an early distribution from their 401(k) plan. The majority of the funds from the distribution were used for the taxpayer's first home purchase. On their 2017 federal and Wisconsin individual income tax returns, the gross amount of the distribution was included in taxable income. However, no early withdrawal penalty was reported on either the federal or Wisconsin tax return for that year.

An early withdrawal from a qualified retirement plan, received before the taxpayer reaches 59 ½ years of age, is usually subject to a federal additional tax and Wisconsin penalty. The federal tax is typically 10 percent of the taxable amount of the distribution and the Wisconsin penalty is 33 percent of the federal tax. The Internal Revenue Code (IRC) provides specific exceptions to when the federal additional tax applies and Wisconsin follows those laws in determining the Wisconsin penalty.

The department issued an assessment on October 27, 2021, for Wisconsin's early withdrawal penalty on the distribution. The taxpayer filed a timely petition for redetermination with the department objecting to the assessment, which was denied by the department by notice dated June 3, 2022. The taxpayer timely filed a petition for review with the Wisconsin Tax Appeals Commission (TAC) appealing the department's denial.

In the appeal to the department and the TAC, the taxpayer appeared to argue that the distribution should be entirely exempt from the penalty due to being used for the purchase of a first home. Section 72(t)(2)(F), IRC, allows an exception to the early withdrawal penalty for distributions, up to \$10,000, from an individual retirement plan that are used for the purchase of a first home. While the IRC creates and allows taxpayers to be involved in various types of retirement plans, some of the penalty exceptions only apply to specific plans. The primary question in this case is whether a 401(k) plan falls within the definition of "individual retirement plan."

Ultimately, the TAC ruled that the taxpayer did not meet the first-time homebuyer's exception to the early distribution penalty, upholding the department's assessment. In the TAC's decision, it specifically referenced a guide provided on the Internal Revenue Service's website, [Retirement Topics - Exceptions to Tax on Early Distributions](#).

The taxpayer did not appeal this decision.

Sales and Use Tax

Indirect Materials Purchased for Resale to Federal Government

Oshkosh Corporation v. Wisconsin Department of Revenue (Dane County Circuit Court, June 29, 2023).

This is a judicial review of the Wisconsin Tax Appeals Commission (TAC) decision dated October 14, 2022. For a summary of that decision, see [Wisconsin Tax Bulletin 219](#) (October 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 TAC concluded that 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.

The Circuit Court affirmed the TAC's Final Ruling and Order.

The department will not appeal this decision.

Trailers Sold to Nonresidents

William Becker vs. Wisconsin Department of Revenue (Court of Appeals, District I, July 25, 2023). This is an appeal of an order of the Circuit Court for La Crosse County that reversed a decision of the Wisconsin Tax Appeal Commission ("the Commission").

See [Wisconsin Tax Bulletin 212](#) (February 2021), pages 28 and 29, [Wisconsin Tax Bulletin 218](#) (July 2022), page 15, for summaries of the Wisconsin Tax Appeals and La Crosse County Circuit Court decisions.

The issue in this case is whether the trailers sold by the taxpayer, including single axle, tandem axle, and gooseneck trailers, are "truck bodies." Wisconsin imposes sales tax on the sale of tangible personal property. However, sec. [77.54\(5\)\(a\)\(4\)](#), Wis. Stats., provides an exemption for "truck bodies" and motor vehicles sold to nonresidents whose use of the truck or vehicle for which the truck bodies were made is limited to removal for out-of-state use. "Truck bodies" is not defined in the Wisconsin Statutes.

The Commission determined the trailers sold by the taxpayer are not "truck bodies." The circuit court reversed the Commission decision. However, the Court of Appeals reversed the circuit court's order, concluding:

- The trailers sold by the taxpayer are not "truck bodies" based on the plain language of the statute.
- The trailers sold by the taxpayer are not entitled to a sales tax exemption under *DOR v. Trudell* (1981). That decision considered whether semitrailers as "commonly understood" fall within the meaning of "truck bodies."
- Section [Tax 11.83\(4\)\(a\)](#), Wis. Adm. Code, does not support the taxpayer's argument.
- Current definitions of "semitrailer" and "trailer" in ch. [340](#), Wis. Stats., do not apply to ch. [77](#), Wis. Stats.
- Dictionary definitions of "semitrailer" were not included in the sales tax exemption and were not relied on in *Trudell*.

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

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of July 27, 2023: chs. 70, 71, 77, 78, 108, 139, 177, 238, and 340, [Wis. Stats.](#), and chs. Tax 1, 2, 9, and 11, [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.