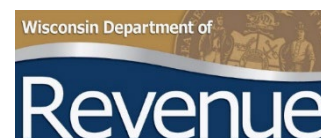


# Wisconsin Tax Bulletin

January 2024 Number 224



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## In This Issue

<b>New Tax Laws</b> .....	<b>2</b>
Automated Sales Suppression Devices and Phantomware .....	2
Confidentiality Provisions .....	2
Farmland Preservation – Tax Credit Rate Increase, Expansion of Tax Credit Eligibility, and Reduced Minimum Term for Farmland Preservation Agreements .....	2
Sales and Use Tax Exemptions for Local Professional Baseball Park District .....	3
Changes to Cigarette, Tobacco and Vapor Products Tax Related Criminal Penalties .....	3
Alcohol Beverage Regulatory Changes .....	4
Electronic Vaping Devices Regulation .....	4
<b>General Updates and Reminders</b> .....	<b>5</b>
Continuous Recruitment for Auditors and Agents .....	5
Business Annual Filing Requirements .....	6
Reporting Identity Theft and Breaches .....	6
<b>Income and Franchise Tax Updates and Reminders</b> .....	<b>7</b>
What's New This Tax Season? .....	7
Individual Income Tax Forms and Instructions .....	9
Individual Income Tax Reminders .....	9
Exclusion of Gain on Small Business Stock .....	10
Pass-Through Entities Requirement to File Schedules 2K-1, 3K-1, and 5K-1.....	11
Wisconsin Requirements to Disclose Reportable Transactions .....	11
Changes to Electronic Filing Method for Schedule CC, <i>Request for a Closing Certificate for     Fiduciaries</i> .....	12
Tax Return Donations .....	12
<b>Sales and Use Tax Updates and Reminders</b> .....	<b>13</b>
Reminder – Effective January 1, 2024, Milwaukee Sales and Use Tax Rate Changes.....	13
Reporting Milwaukee County Tax for Transitional Provisions .....	13
Contractors May Owe County Use Tax .....	14
Sales Tax Treatment of Credit Card "Swipe" Fees .....	15
<b>Report on Litigation</b> .....	<b>16</b>
Income Tax .....	16
Shareholder Distributions or Loans from Tax-Option (S) Corporation .....	16
Corporation Franchise and Income Tax .....	17
Pre-2009 Net Business Loss – Not Shareable with a New Combined Group .....	17

## New Tax Laws

### Automated Sales Suppression Devices and Phantomware

([2023 Wis. Act 73](#), create sec. 71.83(6), effective December 8, 2023)

The Act provides that any person who creates, designs, manufactures, sells, purchases, leases, installs, updates, repairs, services, transfers, uses, or possesses in Wisconsin or accesses from Wisconsin phantomware or an automated sales suppression device, unless for a legitimate purpose, is guilty of a Class D felony.

"Phantomware" means a programming option embedded in the operating system of an electronic cash register, or hardwired into an electronic cash register, that can be used to create a virtual 2nd electronic cash register or eliminate or manipulate transaction records that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register.

"Automated sales suppression device" means a software program, including programs accessed through the Internet or by any other means, that falsifies the electronic records, including transaction data and transaction reports, of electronic cash registers and other point-of-sale systems.

### Confidentiality Provisions

([2023 Wis. Act 73](#), amend secs. 71.78(1), (4)(b), (5), and (6), 72.06, 77.61(5)(b)2., (c), and (d), 78.80(3), 139.11(4)(a)(intro.), 139.38(6), and 139.82(6), and create secs. 71.78(1g) and (4)(v), and 77.61(5)(am) and (b)15., effective December 8, 2023)

The Act clarifies that employees of the department of revenue may, in connection with the employee's official duties for an audit, collection, inspection, or investigation, disclose information derived from a tax return or claim to the extent necessary to obtain information for the enforcement of Wisconsin tax laws.

In addition, the attorney general and department of justice employees may, in connection with their official duties, re-disclose information obtained from the department of revenue to a law enforcement investigator participating in a department of justice investigation of suspected criminal conduct. The information re-disclosed to a law enforcement investigator shall be strictly limited for the purpose of obtaining information necessary for a department of justice investigation. Authorized re-disclosure does not include providing copies of returns and claims and related schedules, exhibits, writings or audit reports.

Finally, a federal grand jury or grand jury of Wisconsin may examine and receive copies of any tax returns or claims on file with the department if the department receives a grand jury subpoena.

### Farmland Preservation – Tax Credit Rate Increase, Expansion of Tax Credit Eligibility, and Reduced Minimum Term for Farmland Preservation Agreements

([2023 Wis. Act 42](#), amend secs. 71.613(2)(a), (b), and (c), and 91.62(1)(a), and create secs. 71.613(1)(h)4., 71.613(2)(am), (bm), (cm), and (d), various effective dates)

For taxable years beginning in 2023, the Act increases the farmland preservation tax credit rate that eligible landowners may receive for qualifying acres as follows:

- Rate per acre increases from \$10 to \$12.50 for qualifying acres located in a farmland preservation zoning district and are subject to a farmland preservation agreement entered into after July 1, 2009

- Rate per acre increases from \$7.50 to \$10 for qualifying acres located in a farmland preservation zoning district but are not subject to a farmland preservation agreement
- Rate per acre increases from \$5 to \$10 for qualifying acres that are not located in a farmland preservation zoning district, but are subject to a farmland preservation agreement entered into after July 1, 2009

For taxable years beginning in 2023, the Act expands eligibility of the farmland preservation tax credit, at a rate of \$10 per acre, for qualifying acres located in a farmland preservation area and are covered by an agricultural conservation easement purchased under sec. [93.73](#), Wis. Stats.

Effective December 8, 2023, the Act decreases the minimum term of a farmland preservation agreement from 15 years to 10 years.

## Sales and Use Tax Exemptions for Local Professional Baseball Park District

([2023 Wis. Act 40](#), amend sec. 77.54(41), and create sec. 77.54(9a)(gm), effective December 7, 2023)

The Act creates a sales and use tax exemption for sales of tangible personal property and taxable services sold to a local professional baseball park district under subch. [III](#) of ch. 229, Wis. Stats.

The Act also expands the exemption in sec. [77.54\(41\)](#), Wis. Stats., for building materials, supplies, and equipment for professional sports and entertainment home stadiums that are exempt from property taxes under sec. [70.11\(36\)](#), Wis. Stats., to include such property acquired solely for or used solely in the improvement, repair, or maintenance of the stadiums. Previously, the exemption for building materials, supplies, and equipment only applied if it was acquired solely for or used solely in the construction, renovation, or development of the stadiums.

## Changes to Cigarette, Tobacco and Vapor Products Tax Related Criminal Penalties

([2023 Wis. Act 73](#), amend secs. 139.44(2), (8)(a), (8)(b), and (8)(c), and 946.82(4), and create sec. 139.44(2m), (8)(am), and (8)(d), effective December 8, 2023)

### Cigarette, Tobacco or Vapor Products Tax Evasion

The following penalties are applicable to any person who evades or attempts to evade, or who aids or abets the evasion or attempted evasion of a cigarette, tobacco or vapor products tax:

Class A misdemeanor	\$2,500 or less in tax evaded
Class I felony	\$2,501 to \$5,000 in tax evaded
Class H felony	\$5,001 to \$10,000 in tax evaded
Class G felony	\$10,001 to \$100,000 in tax evaded
Class F felony	More than \$100,000 in tax evaded

### Possession of Untaxed Cigarettes

Possession of untaxed cigarettes carries the following penalties:

Up to a \$200 fine, or imprisoned for up to 6 months, or both	200 or less untaxed cigarettes
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Up to a \$1,000 fine, or imprisoned for up to one year, or both	More than 201 to 3,000 untaxed cigarettes
Class I felony	3,001 to 5,000 untaxed cigarettes
Class H felony	5,001 to 10,000 untaxed cigarettes
Class F felony	More than 10,000 untaxed cigarettes

## Excise Tax Evasion is Racketeering

The Act amends the definition of racketeering in sec. [946.82\(4\)](#), Wis. Stats., to include excise tax evasion.

## Alcohol Beverage Regulatory Changes

([2023 Wis. Act 73](#), ch.125 Wis. Stats., effective May 1, 2024)

### Change in the Definition of Fermented Malt Beverages

The Act amends the definition of fermented malt beverages under sec. [125.02\(6\)](#), Wis. Stats., effective May 1, 2024, to conform with the federal definition of fermented malt beverages. The new definition allows products that do not contain barley malt and hops (e.g., uses only fermented sugar) that are recognized as beer by the U.S. Treasury under 27 CFR part 25 to be considered a fermented malt beverage for Wisconsin tax and regulatory purposes. As a result, any product that is a "fermented malt beverage" under the new definition will be subject to the fermented malt beverage tax imposed under sec. [139.02](#), Wis. Stats., starting May 1, 2024.

### Creation of Division of Alcohol Beverages

The Act creates a Division of Alcohol Beverages in the Wisconsin Department of Revenue responsible for regulatory compliance, permitting, industry education, and outreach. The Division of Income, Sales and Excise Tax will continue to administer and enforce tax provisions under ch. [139](#), Wis. Stats., including tax return processing and auditing.

### New Alcohol Beverage Regulations

Further, the Act creates new regulatory laws including:

- Allows alcohol beverage producers to enter into production agreements (contract, alternating proprietorship, and licensing).
- Allows alcohol beverage producers to obtain full-service retail privileges with increased production capacity.
- Removes permit limits for liquor wholesalers, manufacturers, and rectifiers.

The department is in the process of implementing the new Division of Alcohol Beverages. For more information as it becomes available, [subscribe to the mailing list](#) for alcohol beverage news.

## Electronic Vaping Devices Regulation

([2023 Wis. Act 73](#), create secs. 134.65(1a) and 995.15, effective December 8, 2023)

([2023 Wis. Act 73](#), renumber and amend sec. 134.65(1) and (1m), amend secs. 134.65(title), (1r), (4),(5m), (8), and 134.66(1)(g), and create sec. (1g), (1m)(a)1. And 2., (1m)(b), (2m), (3m), effective May 1, 2024)

## Electronic Vaping Device Licensure and Definition Creation

The Act creates definitions of "cigarette," "electronic vaping device," "tobacco products," and "vending machine" for purposes of licensing businesses that sell these products to consumers. The creation of these definitions does not have an impact on the tax treatment, imposition, or tax calculation of these products under ch. [139](#), Wis. Stats.

Further, the Act requires businesses that sell any of the defined products to obtain a retail license issued by the municipality in which the business operates. **Note:** Prior law required sellers of cigarette and tobacco products to hold a municipal retail license. This Act requires sellers of electronic vaping devices to hold a municipal retail license starting March 6, 2024.

The Act also prescribes qualifications for persons seeking a municipal license, creates record retention and inspection requirements for businesses, creates license reporting requirements for municipalities, and amends penalties associated with noncompliance of the law.

## Electronic Vaping Device Product Directory

No later than July 1, 2025, and on an annual basis after, all manufacturers of electronic vaping devices must certify to the department that they will comply with Wisconsin law and that their product has either been approved by the U.S. FDA or remains under review. Only electronic vaping devices that are approved by the department and listed on the online registry may be sold in Wisconsin. The department must make the directory available online and penalties for noncompliance with this section will apply at the time the directory is published.

## General Updates and Reminders

### Continuous Recruitment for Auditors and Agents

The department continuously recruits for Revenue Auditor 1 and Revenue Agent positions. This continuous recruitment allows job seekers to apply at any time during the application period. The department collects applications at least monthly and eligible candidates are interviewed. The starting dates for new employees occur several times per year.

See what employees have to say about working at the department: [DOR Video Center \(wi.gov\)](#)

### Revenue Auditor 1

Revenue Auditor 1 positions fill a variety of roles statewide and specialize in full-scope or limited-scope audits to determine the correct tax liability for taxpayers within a specific tax area: individual, fiduciary, pass-through (partnership, tax-option (S) corporation, estate, and trust), and corporate income or franchise taxes; alcohol beverage, cigarette, tobacco and vapor products, and motor fuel excise taxes; sales and use taxes; nexus; and income reconstruction. To learn more about specific auditor positions, review the Position Summaries on the department's website at [DOR Auditor Opportunities \(wi.gov\)](#).

Starting salary is \$57,054 per year at the time of this publication. Pay progressions of \$3,120 per year after the first year and \$3,120 per year after the second year are awarded in addition to progressions as audit experience grows.

## Revenue Agent

Revenue Agent positions provide quality customer service by answering tax questions, resolving delinquent tax debt, and processing tax returns. These positions do not require a degree and provide individuals opportunity for growth and professional advancement at the department.

Starting salary is \$49,775 per year at the time of this publication. For individuals fluent in Spanish, bilingual positions pay an additional \$2,080 - \$4,160 per year. Pay progression of \$2,496 per year after the first year is awarded in addition to progressions as agent experience grows.

## Working for the State

The state offers a competitive benefits package that includes 3 weeks of annual vacation, sick leave, health and dental benefits, and participation in the Wisconsin Retirement System. Further, as an employee of the state, you may qualify for the Public Service Loan Forgiveness Program. For more information on state benefits visit [Benefits at a Glance.pdf \(wi.gov\)](#).

## Wisc.jobs

All career opportunities at the department are listed on [wisc.jobs](#), the official State of Wisconsin Government job site. Job seekers may search career opportunities either by agency (Dept. of Revenue) or by job category and can request email notification of future opportunities. For additional information about wisc.jobs, review [Frequently Asked Questions](#). You may follow wisc.jobs on X (formerly known as twitter) @wisc.jobs.

## Business Annual Filing Requirements

Active Wisconsin seller's permit holders are required to file a Wisconsin sales and use tax return to report tax at least annually. The due date for annual filers is January 31. Even if you had no sales in 2023, a zero return must be filed. For fiscal filers, annual returns are due the last day of the month following the fiscal year end.

If you are required to withhold Wisconsin tax from employee wages, you must file an annual reconciliation (Form WT-7) with matching wage statements (Forms W-2) and/or information returns (Forms 1099). The due date for these returns is January 31. Late filing of withholding reports may delay payee refund requests. Wisconsin law does not allow an income tax refund to be paid until after March 1, unless the withholding claimed on the income tax return matches the withholding reported by the employer.

If your business is closed or inactive, please report it through [My Tax Account](#), call (608) 266-2776, or email [DORBusinessTax@wisconsin.gov](mailto:DORBusinessTax@wisconsin.gov). Inactivating your sales or withholding accounts may eliminate future requests to file from the department.

## Reporting Identity Theft and Breaches

The Federal Trade Commission received 5.2 million reports of fraud in 2022. Of those reports, 22% (or 1.1 million) were for identity theft. If your identity is stolen, it is important to notify the Wisconsin Department of Revenue.

The department has a new form for reporting tax-related identity theft. Victims should mail their completed Identity Theft Declaration ([Form ID-100](#)) to the department's Office of Criminal Investigation. The department does not accept this form through email because it is not a secure way to transmit confidential information.



If your organization experienced a data compromise involving payroll or tax information, you should notify the department by emailing [DORIDTheft@wisconsin.gov](mailto:DORIDTheft@wisconsin.gov). Your email should include:

- Organization's name
- Federal employer identification number (FEIN)
- Brief description of the breach incident
- Contact information for the individual who will work with the department

Do not include personally identifiable information (e.g., social security number, driver's license number, financial account number, etc.) for impacted employees or customers in your email.

You can find contact information for other state taxing agencies on the [Federation of Tax Administrators' website](#).

See [Identity Verification](#) common questions on the department's website for more information.

## Income and Franchise Tax Updates and Reminders

### What's New This Tax Season?

Below are some of the changes that may impact 2023 Wisconsin tax returns:

#### 1. *Individuals, Estates, and Trusts*

- **Wisconsin's free electronic filing:** [WisTax](#) replaces Wisconsin e-file as the department's free software to file your Wisconsin individual income tax return and homestead credit claim for tax year 2023. Wisconsin e-file was discontinued as of December 31, 2023.

WisTax provides free electronic filing for eligible taxpayers to file [Form 1, Income Tax Return](#), beginning with tax year 2023 and standalone [Schedule H, Homestead Credit Claim](#), beginning with tax year 2022.

Not all taxpayers qualify to use WisTax. See [WisTax Common Questions](#) for qualifications and more information.

Taxpayers who do not qualify for free electronic filing using WisTax are encouraged to go to a [tax professional](#) or use [third-party software](#).

- **Tax rates reduced:** The tax rate for the first tax bracket is reduced from 3.54% to 3.50%. The tax rate for the second tax bracket is reduced from 4.65% to 4.40%. Rate reductions are built into the tax tables in the instructions for Forms 1 and 1NPR.
- **Capital loss limitation:** The maximum deduction for a net capital loss is increased from \$500 to \$3,000 for most taxpayers. If you are married and file a separate return, the maximum deduction is \$1,500.
- **Form 1NPR:** Changes to [Form 1NPR, Nonresident & Part-Year Resident Wisconsin Income Tax](#), and [Schedule M, Additions to and Subtraction from Income](#), have been made in an effort to simplify and clarify reporting.

See the [instructions](#) for Form 1NPR and Schedule M for more information.

- **Internal Revenue Code update:** For taxable years beginning after December 31, 2022, Wisconsin follows the federal Internal Revenue Code as amended to December 31, 2022, with certain exceptions, for income and franchise tax purposes. See *Conformity with Internal Revenue Code and Exceptions* section on page 10 of the [2023 Form 3 instructions](#) for more details, or read explanations of common differences in the [2023 Schedule I instructions](#). Also see *New Tax Law* articles in [Wisconsin Tax Bulletin 223](#), page 2.
- **Schedule FC:** Five-digit farmland preservation agreement number(s) are required on [Schedule FC](#), *Farmland Preservation Credit*. See the article *New Farmland Preservation Credit Filing Requirement for Schedule FC* in [Wisconsin Tax Bulletin 223](#), page 9.
- **Farmland preservation credit:** Increased credit rates and new credit eligibility for claims made using [Schedule FC-A](#), *Farmland Preservation Credit*. See the article *Farmland Preservation – Tax Credit Rate Increase, Expansion of Tax Credit Eligibility, and Reduced Minimum Term for Farmland Preservation Agreements* earlier in this Tax Bulletin.
- **Tuition:** The Wisconsin subtraction for tuition and fees is decreased from \$6,976 to \$6,974.
- **College savings account contributions:** The Wisconsin subtraction for contributions to a college savings account is increased from \$3,560 to \$3,860 (\$1,930 if married filing separately or a divorced parent).

## 2. Businesses

- **Internal Revenue Code update:** For taxable years beginning after December 31, 2022, Wisconsin follows the federal Internal Revenue Code as amended to December 31, 2022, with certain exceptions, for income and franchise tax purposes. See *Conformity with Internal Revenue Code and Exceptions* section on page 10 of the [2023 Form 3 instructions](#) for more details, or read explanations of common differences in the [2023 Schedule I instructions](#). Also see *New Tax Law* articles in [Wisconsin Tax Bulletin 223](#), page 2.
- **Schedule FC:** Five-digit farmland preservation agreement number(s) are required on [Schedule FC](#), *Farmland Preservation Credit*. See the article *New Farmland Preservation Credit Filing Requirement for Schedule FC* in [Wisconsin Tax Bulletin 223](#), page 9.
- **Farmland preservation credit:** Increased credit rates and new credit eligibility for claims made using [Schedule FC-A](#), *Farmland Preservation Credit*. See the article *Farmland Preservation – Tax Credit Rate Increase, Expansion of Tax Credit Eligibility, and Reduced Minimum Term for Farmland Preservation Agreements* earlier in this Tax Bulletin.
- **Capital loss limitation:** The maximum deduction for a net capital loss is increased from \$500 to \$3,000.
- **Financial institution commercial loan exemption:** 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.

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.



## Individual Income Tax Forms and Instructions

The department encourages taxpayers to electronically file their individual income tax return. Benefits include:

- Faster refunds using direct deposit
- Accuracy – tax preparation software does the calculations
- Provides a confirmation that tax returns have been filed
- Secure transfer of personal information
- If you owe, you can choose direct debit/withdrawal from your financial institution and choose the date you want to pay (up to April 15) without worrying about mailing a paper check by the due date

Options for electronic filing:

- [Go to a tax practitioner](#) or visit a [Volunteer Income Tax Assistance or Tax Counseling for the Elderly](#) site
- Use [third-party software](#)
- Use Wisconsin's free electronic filing system, [WisTax](#). See [WisTax Common Questions](#) for qualifications and more information.
- Use Wisconsin's free electronic filing through [My Tax Account](#) (requires registration with a username and password). See [Using My Tax Account for Personal Use](#) common questions for qualifications and more information.

If filing on paper, view and print Wisconsin individual income tax forms and instructions from the department's [2023 Individual Income Tax Forms](#) web page.

Paper forms and instructions may also be available at your local library or contact the department at (608) 266-2486 or [DORFormsRequests@wisconsin.gov](mailto:DORFormsRequests@wisconsin.gov).

## Individual Income Tax Reminders

### Extensions

Extensions available under federal law may be used for Wisconsin purposes, even if you do not need an extension to file your federal return or have already filed your federal return. To obtain a 6-month extension to file your Wisconsin individual income tax return, attach one of the following items to your Wisconsin return when you file it:

- A copy of federal Form 4868 with only Part I completed
- A statement indicating which federal extension provision you are using for Wisconsin

If you plan to file your return using one of the federal 6-month extension provisions, you must file your Wisconsin return by October 15, 2024, for it to be considered timely. Returns filed after October 15, 2024, are assessed a \$50 late filing fee.

An extension of time to file is not an extension of time to pay. Interest accrues on any unpaid taxes starting April 15, 2024. Submit your payment as a 2023 estimated payment using one of the options listed on the [Make a Payment](#) page.

Additional information about extensions is on page four of the [Form 1 instructions](#).

## Adjustments

If the department adjusts your tax return, a notice is mailed explaining the changes made. You must file an appeal within 60 days if you disagree with the changes, or the changes become final. For faster processing, [submit appeals](#) using the department's website and attach any relevant documents to show why you believe the changes are incorrect. Refer to your notice for additional options to submit your appeal.

## Processing Time

Most individual income tax returns are processed within 12 weeks. The department is required to hold refunds from individual income tax returns until March 1 if the employers have not submitted their Forms W-2 to the department. The department may send a letter requesting additional information to process your return; timely response to such letters ensures your return will be processed efficiently and accurately. The department is not providing copies of 2023 Forms W-2 or 1099 until March 1 or later for taxpayers who request copies of their forms. See [Requesting Copies of Tax Records](#) common questions for more information.

Amended returns filed between January 1 and May 31 may take additional time to process due to the high volume of original returns the department processes during this time.

## Get Ready for Tax Season

Several resources are available on the department's website to help you get ready to file individual income tax returns.

- Use the [Form 1099-G lookup](#) to view your Form 1099-G issued by the department (if any) reporting your state refund from last year. The lookup tool does not show Forms 1099-G issued for unemployment compensation. Contact the payer of your unemployment compensation for a copy of your Form 1099-G from unemployment. For Wisconsin unemployment, visit the Department of Workforce Development (DWD)'s website at <https://dwd.wisconsin.gov/uiben/1099.htm> or call (608) 266-2999.
- Use the [estimated payment lookup](#) to view your estimated payments and overpayments carried over from last year's return. Payments are displayed as "pending" until the return is filed.
- Review the list of [Common Questions](#) pages to find answers to your questions. Also view our [publications](#), [fact sheets](#), and [tax form instructions](#). If you do not find the answers you need, [contact us](#) for assistance.
- [Where's My Refund](#) provides real-time, accurate refund status information. **Note:** Statuses for amended returns and appeals are not available in Where's My Refund.

## Exclusion of Gain on Small Business Stock

Section 1202 of the Internal Revenue Code (IRC) provides for a federal income exclusion on certain capital gains from the sale of qualified small business stock held for more than 5 years.

- 50% exclusion for stock acquired after August 10, 1993, and on or before February 17, 2009
- 75% exclusion for stock acquired after February 17, 2009, and on or before September 27, 2010
- 100% exclusion for stock acquired after September 27, 2010

The federal exclusions also apply for Wisconsin purposes for taxable years beginning after December 31, 2018, according to [2023 Wis. Act 36](#). Prior Wisconsin law only authorized a 50% exclusion for gains from

the sale of qualified small business stock acquired on or after January 1, 2014. As a result, taxpayers may amend their 2019-2022 Wisconsin tax returns (within the time prescribed by law) to claim the federal exclusions previously not authorized under Wisconsin law.

## Pass-Through Entities Requirement to File Schedules 2K-1, 3K-1, and 5K-1

A pass-through entity (trust, estate, partnership, or tax-option (S) corporation) is required to provide a schedule to each owner (beneficiary, partner, shareholder, or member) whose share of income and other items from the entity affect the owner's Wisconsin tax liability. The pass-through entity must provide the schedule by the due date, including extensions, of its income or franchise tax return.

Trusts and estates use [Schedule 2K-1](#), *Beneficiary's Share of Income, Deductions, etc.*, partnerships use [Schedule 3K-1](#), *Partner's Share of Income, Deductions, Credits, etc.*, and tax-option (S) corporations use [Schedule 5K-1](#), *Tax-Option (S) Corporation Shareholder's Share of Income, Deductions, Credits, etc.*

**Caution:** Failure to file the schedule by the due date may result in a \$50 penalty for each violation as provided in sec. [71.83\(1\)\(a\)10](#), Wis. Stats.

## Wisconsin Requirements to Disclose Reportable Transactions

Wisconsin defines "reportable" and "listed" transactions in the same manner as for federal purposes.

A "reportable transaction" is one described in federal Treasury Regulation sec. 1.6011-4. For federal income tax purposes, reportable transactions are those that must be disclosed on federal Form 8886, *Reportable Transaction Disclosure Statement*.

A "listed transaction" means the Internal Revenue Service (IRS) has identified the transaction as a tax avoidance transaction. The IRS has identified listed transactions in several notices and Internal Revenue Bulletins and maintains an updated list of these transactions on its website at [www.irs.gov/corporations](http://www.irs.gov/corporations), in the section for "Abusive Tax Shelters."

If you are, or were, required to file Form 8886 with the IRS for any taxable year beginning on or after January 1, 2001, you are required to submit a copy to the Wisconsin Department of Revenue. The requirement also applies to transactions required to be disclosed to the IRS before January 1, 2001, but which affected Wisconsin tax liability for a later taxable year.

### Disclosure Statement May be Filed as Part of Wisconsin Return

- If you file Form 8886 with your federal income tax return, include a copy of it with your timely electronically filed Wisconsin income or franchise tax return
- If you were required to file Form 8886 separate from your federal income tax return, you must mail a copy of Form 8886 to the department within 60 days of the date required to file the form with the federal Department of the Treasury:

Wisconsin Department of Revenue  
Tax Shelters Program  
PO Box 8906  
Madison, WI 53708-8906

For more information, see the resources below:

- [Wisconsin Requirements to Disclose Reportable Transactions](#)
- [Disclosure of Reportable Transactions – Taxpayer Requirements](#) common questions
- [Disclosure of Reportable Transactions – Material Advisor Requirements](#) common questions

## Changes to Electronic Filing Method for Schedule CC, Request for a Closing Certificate for Fiduciaries

[Schedule CC](#) is used to request a Closing Certificate required by a Wisconsin Probate Court to close an estate or trust. Prior to issuing the Closing Certificate, the department must verify that all income was reported from assets within the estate or trust, whether subject to probate or not, and that taxes have been paid on that income.

Schedule CC may be submitted electronically through the department's My Tax Account ([MTA](#)) system. Taxpayers do not have to be a registered MTA user or pay a fee to submit a Schedule CC.

The following electronic filing methods for Schedule CC are no longer available:

- WI e-file (the department's prior electronic filing method)
- Third-party software

**Caution:** Do NOT file Schedule CC as an attachment to Wisconsin Form W-RA, *Required Attachments for Electronic Filing*, or Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trusts*. Schedule CC must be filed separately.

## Tax Return Donations

Wisconsin law allows taxpayers to make donations to certain organizations provided on the Wisconsin individual income tax return. The organizations for 2023 are the same as on the 2022 Wisconsin individual income tax return.

Donations made by taxpayers on returns filed between July 2022 through June 2023 (primarily on 2022 returns):

Fund	Donation Amount	Use of Donations
Endangered Resources Fund	\$265,757	Protect and manage native plant and animal species, natural communities, and other natural features
Cancer Research Fund	\$142,441	Donations divided equally between the Medical College of Wisconsin, Inc., and University of Wisconsin Carbone Cancer Center for cancer research projects
Veterans Trust Fund	\$88,626	Used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents
Multiple Sclerosis Fund	\$57,907	Forwarded to the National Multiple Sclerosis Society for distribution to Wisconsin entities that operate health-related programs for people in Wisconsin with multiple sclerosis
Military Family Relief Fund	\$97,075	Used by the Wisconsin Department of Military Affairs to provide financial aid to eligible immediate family members of Wisconsin residents on active duty in the U.S. Armed Forces or National Guard

Second Harvest/Feed America Fund	\$171,396	Donations divided as follows: 65% to Feeding America Eastern Wisconsin (located in Milwaukee); 20% to Second Harvest Foodbank of Southern Wisconsin (located in Madison); and 15% to Feed My People (located in Eau Claire). The food banks provide food to food pantries, meal programs, shelters, and soup kitchens throughout the state
Red Cross Wisconsin Disaster Relief Fund	\$105,214	Used by the American Red Cross for Wisconsin disaster relief
Special Olympics Wisconsin Fund	\$83,171	Forwarded to Special Olympics Wisconsin, Inc.

## Sales and Use Tax Updates and Reminders

### Reminder – Effective January 1, 2024, Milwaukee Sales and Use Tax Rate Changes

The new rates first apply to taxable purchases and sales made on January 1, 2024. For more information, see [Wisconsin Tax Bulletin 223](#) and [Fact Sheet 2414](#), *Milwaukee Sales and Use Taxes*.

All retailers registered to collect Wisconsin sales and use tax must also collect the Milwaukee County tax if making taxable sales to locations in Milwaukee County and the city of Milwaukee tax if making sales to locations in the city of Milwaukee, regardless of where the seller is located.

Retailers may use our [Wisconsin State and Local Sales Tax Rate Lookup](#) tool to determine the tax rate applicable to a specific street address or a 9-digit zip code. Alternatively, retailers and software programmers may use our [Wisconsin Rate and Boundary Database Files](#) to program their software to determine the proper tax rate applicable to a specific street address or 9-digit zip code.

In addition to the rate lookup and rate and boundary files, a list of 9-digit zip codes located in the city of Milwaukee is available to help determine if a transaction takes place in the city of Milwaukee and may be subject to the 2% city tax. See [City of Milwaukee Sales and Use Taxes](#) common questions, number 2.

**Note:** A 5-digit zip code without a street address is insufficient to determine if a transaction takes place in the city of Milwaukee because 5-digit zip codes often cover multiple jurisdictions within and outside the city of Milwaukee (e.g., zip code 53209 covers the cities of Glendale, Brown Deer, and Milwaukee).

### Reporting Milwaukee County Tax for Transitional Provisions

This article supplements the article titled, *Transitional Provisions for New and Additional Milwaukee Sales and Use Taxes*, published in [Wisconsin Tax Bulletin 223](#) (October 2023).

#### Retailers

Retailers that sell building materials to contractors and receive [Form S-207-CT](#), *Construction Contract Entered Into Before the Effective Date of a New or Additional County or City Tax*, from the contractor must perform a special computation to report the amount of Milwaukee County sales subject to sales tax on their Wisconsin sales and use tax return. The sales and use tax return calculates 0.9% sales tax for Milwaukee County for periods starting after January 1, 2024, even if the retailer is only required to collect 0.5% Milwaukee County sales tax on sales of building materials for such sales.

# Wisconsin Tax Bulletin 224 – January 2024

The following example illustrates how to compute Milwaukee County taxable sales after 2023 on the sales and use tax return without the 0.4% additional Milwaukee County tax:

**Example:** Supplier receives Form S-207-CT from its customer. Supplier sells \$25,000 worth of building materials to customer. The \$25,000 sales of materials to that customer are not subject to the 0.4% additional Milwaukee County tax and Supplier charges 0.5% Milwaukee County sales tax. To properly report the sale of the materials at the 0.5% Milwaukee County tax rate on its sales and use tax return, the following computation is needed:

Sales subject to 0.5% Milwaukee County tax	\$25,000
0.5% tax rate	0.005
Milwaukee County tax (\$25,000 x .005)	\$125
<hr/>	
Measure of Milwaukee County sales tax (\$125 ÷ .009)*	\$13,888.89
*\$13,888.89 is the amount to report in <a href="#">My Tax Account</a> (MTA) on Schedule CT for Milwaukee County sales subject to county tax, or on <a href="#">Form ST-12</a> , <i>Sales and Use Tax Return</i> , Line 10a for Milwaukee County taxable sales after 2023	

## Contractors

Contractors that have paid the 0.9% Milwaukee County tax on purchases of building materials that qualify for the transitional provisions explained in the article mentioned above and also provided in sec. [77.77\(3\)](#), Wis. Stats., can do one of the following to receive a refund of the 0.4% additional Milwaukee County tax:

- Provide a completed Form S-207-CT to its supplier and request a refund of the additional 0.4% tax paid.
- If the amount of tax is at least \$50, file a claim for refund with the department. A buyer's claim for refund can be filed electronic using MTA or on paper by completing both [Form S-220](#), *Form BCR, Buyer's Claim for Refund of Wisconsin State, County and Stadium Sales Taxes*, and [Form S-220a](#), *Schedule P, Attachment to Form BCR, Buyer's Claim for Refund of Wisconsin State, County and Stadium Sales Taxes*. See [Sales and Use Tax](#) common questions, number 6, for additional information.

## Contractors May Owe County Use Tax

Contractors engaged in real property construction activities owe county use tax on their purchase price of materials that become a component part of real property in a county that has adopted the county tax. However, the contractor is allowed a credit against the county use tax due if the contractor was required to pay a county sales or use tax in a county and the contractor then uses the materials in a real property construction activity in a different county that has also adopted the county sales and use tax.

**Example 1:** Contractor purchases lumber in Waukesha County, a nontaxable county, and is charged 5% state sales tax. Contractor uses the lumber in a real property construction activity in Washington County, a taxable county. Contractor owes 0.5% Washington County use tax on the purchase price of the lumber.

**Example 2:** Contractor purchases lumber in Dane County, a taxable county, and is charged 5.5% sales tax. Contractor uses the lumber in a real property construction activity in Jefferson County, a taxable county. Contractor paid the county sales tax in Dane County of 0.5% and is allowed a credit against the 0.5% Jefferson County use tax due. Therefore, Contractor does not owe any Jefferson County use tax.



# Wisconsin Tax Bulletin 224 – January 2024

Milwaukee County sales and use tax rate is 0.9%, effective January 1, 2024, and is the only county that has adopted the county tax that does not have a rate of 0.5%. Therefore, contractors engaged in real property construction activities in Milwaukee County may have to remit the additional 0.4% Milwaukee County use tax on their purchase of materials used in the real property construction activity if they already paid another county's sales or use tax.

**Example 3:** Contractor purchases lumber for \$5,000 in Dane County, a taxable county, and is charged 5.5% sales tax of \$275. Contractor uses the lumber in a real property construction activity in Milwaukee County, a taxable county with a rate of 0.9%. Contractor paid the county sales tax in Dane County of 0.5% and is allowed a credit against the 0.9% Milwaukee County use tax due. Therefore, Contractor owes an additional 0.4% Milwaukee County use tax.

To remit the additional 0.4% Milwaukee County use tax on the sales and use tax return ([My Tax Account](#) (MTA), [Form ST-12](#), *Wisconsin Sales and Use Tax Return*, or [Form UT-5](#), *Consumer Use Tax Return*), a special computation is required. The facts from Example 3 above are used to determine the additional Milwaukee County use tax for the lumber as follows:

Purchases subject to the additional 0.4% Milwaukee County tax	\$5,000
0.4% tax rate	0.004
Additional Milwaukee County use tax (\$5,000 x .004) due	\$20
Measure of Milwaukee County use tax (\$20 ÷ .009)*	\$2,222.22
*\$2,222.22 is the amount to report in MTA on Schedule CT, for Milwaukee County purchases subject to county tax, on Form ST-12, Line 19a for Milwaukee County taxable purchases after 2023, or on Form UT-5, Line 3a for Purchases after 2023 subject to 0.9% Milwaukee County use tax	

## Sales Tax Treatment of Credit Card "Swipe" Fees

A retailer may charge a "swipe" fee to a customer using certain credit cards for payment.

A "swipe fee" is included in the sales price, as defined in sec. [77.51\(15b\)](#), Wis. Stats. Therefore, if the product or service being sold is taxable and the retailer chooses to charge a "swipe" fee, sales or use tax applies to the total amount charged by the retailer for the product or service, which includes the amount charged for the "swipe" fee.

**Example:** Individual purchases a new television for \$599 at Retailer's store. Individual pays using a credit card. Retailer charges Individual a 3% "swipe" fee on the \$599 selling price. Retailer's taxable receipts from the sale of the television are computed as follows:

Selling price of television	\$599.00
"Swipe" fee charged by Retailer (\$599.00 X .03)	<u>17.97</u>
Taxable receipts	<u>\$616.97</u>

If the credit card is used to pay for both taxable and nontaxable products or services, the retailer may allocate the "swipe" fee between the taxable and nontaxable purchases. In this case, the sales tax applies to the total amount charged for the taxable products or services, which includes the "swipe" fee charged on the taxable products or services.

**Example:** Individual goes to Grocery Store and purchases exempt food items in the amount of \$65 and taxable items in the amount of \$28. Individual pays using credit card. Grocery Store charges Individual a

3% "swipe" fee on the \$93 (\$65 + \$28) total selling price. Grocery Store's taxable receipts are determined as follows:

Selling price of taxable items	\$28.00
"Swipe" fee on taxable items charged by Retailer (\$28.00 X .03)	<u>.84</u>
Taxable receipts	<u>\$28.84</u>

## Report on Litigation

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

### Income Tax

#### Shareholder Distributions or Loans from Tax-Option (S) Corporation

*Toccata Gaming International, LLC, (Petitioner) v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 25, 2023).*

At issue in this case is if the transfer of funds from a tax-option (S) corporation to a shareholder is considered a distribution or a loan.

#### *Facts*

- Toccata Gaming International, LLC, (Toccata) creates software for amusement machines and manufactures cabinets for its amusement machines.
- For taxable years 2016 through 2019 (the audit years):
  - Toccata elected to be taxed as an S-corporation, and Todd Stimac (Stimac) was the sole owner and shareholder.
  - Toccata transferred funds to Stimac and characterized the transferred funds as loans (i.e., demand notes). At the end of each year, each loan was rolled over into a new loan as shown below:

Date	Amount
December 31, 2016	\$494,310
December 31, 2017	\$743,204
December 31, 2018	\$1,144,490
December 31, 2019	\$1,375,115

- The loans were executed by Toccata and Stimac after Stimac incurred personal expenses that were unrelated to the business of Toccata and expenses related to Toccata that were non-deductible.
- None of the loans included a repayment schedule or provided a set maturity date, but Toccata contends that it maintained a memo account off its balance sheet for accrued interest on the loans.
- Stimac made a series of 23 deposits to Toccata accounts with the total being \$216,665.53, but Stimac did not make any repayment of the loans' principal or interest.

- Toccata never took any action to collect principal or interest from Stimac, and Toccata did not record or report interest income from any of the loans.
- The only collateral offered by Stimac was Toccata stock, and Stimac lacked the liquid assets to repay the loans but held real property assets purportedly in excess of the loan amounts.
- During 2017, 2018, and 2019, Stimac's reported adjusted gross income (AGI) was less than the loan amount. During 2016, Stimac's reported AGI was several thousand dollars higher than the loan.
- Stimac's ability to repay the loan was based on Toccata's income, and Toccata reported losses.
- Stimac was only able to start making payments on the loans after the audit years, once Toccata began to recover.
- On January 20, 2022, the department issued an audit notice for the years 2016 through 2019 and treated the transfer of funds from Toccata to Stimac as shareholder distributions.
- Toccata appealed the department's audit notice.

The Wisconsin Tax Appeals Commission considered several federal tax court cases and focused on the following criteria from *Kelly v. Commissioner of Internal Revenue*, T.C. Memo 2021-76 (2021) to determine whether the transfer of funds should be treated as distributions or loans:

1. Whether the promise to repay is evidenced by a note or other instrument that evidences indebtedness.
2. Whether interest was charged or paid.
3. Whether a fixed schedule for repayment and a fixed maturity date were established.
4. Whether collateral was given to secure payment.
5. Whether repayments were made.
6. What the source of any payments was.
7. Whether the borrower had a reasonable prospect of repaying the loan and whether the lender had sufficient funds to advance the loan.
8. Whether the parties conducted themselves as if the transaction was a loan.

The Wisconsin Tax Appeals Commission denied Toccata's appeal and concluded there is insufficient evidence to support Toccata's claim that the financial distributions at issue, from Toccata to its sole shareholder, were based on a bona fide debtor-creditor relationship. The department properly characterized those distributions as shareholder distributions.

The taxpayer has not appealed this decision.

### Corporation Franchise and Income Tax

#### Pre-2009 Net Business Loss – Not Shareable with a New Combined Group

*Lincare Holdings, Inc v. Department of Revenue* (Wisconsin Tax Appeals Commission, December 15, 2023)

The Commission resolved this case under summary judgment. In a combined group field audit of the petitioner, Lincare Holdings, Inc., the department disallowed the income offset from net business losses (NBLs) shared by two combined group members. Lincare had purchased both corporations from the same parent company in 2016. These two acquired corporations had accumulated pre-2009 NBLs, which the department did not allow to be shared with other members of the new Lincare combined group.

The issue to be resolved by the Commission was *whether pre-2009 net business losses incurred by entities that were members of a combined reporting group beginning in 2009 can be shared with members of a new combined group when the incurring entities leave the former combined group and join a new combined group.*

The department argued that the statutory language of sec. [71.255\(6\)\(bm\)3.](#), Wis. Stats., prohibits the sharing of pre-2009 NBLs by a corporation that leaves one combined group and joins another combined group.

The petitioner argued that pre-2009 NBLs may be shared with a new combined group, on the following grounds: 1) sec. [71.26\(4\)\(b\)](#), Wis. Stats., allows pre-2009 NBLs to be shared with all other members of its group, as long as it has already used its NBLs and any shareable NBLs to offset its own income.

2) Lincare argued that sec. [71.255\(6\)\(bm\)3.](#), Wis. Stats., upon which the Department relied, and the accompanying regulation sec. [Tax 2.61\(9\)\(e\)](#), Wis. Adm. Code, only apply to post-2008 NBLs.

The commission found in favor of the Department. "The plain language of the statute is 'if the corporation may no longer be included in the combined group..., the corporation's pre-2009 net business loss carryforward shall be available only to that corporation.'" Likewise, the plain language of sec. [Tax 2.61\(9\)\(e\)](#), Wis. Adm. Code, does not differentiate between pre-2009 and post-2008 NBL carryforwards. The Commission determined that the rule as written applies to both pre-2009 and post-2008 NBL carryforwards. That rule provides that a departing group member may not share that member's "remaining net business loss carryforward" with any other combined groups with two exceptions not relevant here.

The Commission also held that "[Lincare's] argument ignores the addition of subsection (dm) to Wis. Admin. Code § [Tax 2.61\(9\)](#) in August of 2010 and fails. Taken to its logical conclusion, Petitioner's argument would result in the conclusion that Wis. Admin. Code § [Tax 2.61\(9\)\(e\)](#) cannot apply to any NBLs, since it was effective prior to any statutory section allowing sharing of losses within combined groups. Absurd results are to be avoided, and the Commission does not find the argument of Petitioner persuasive."

The Commission concluded that Lincare is not entitled to use pre-2009 carried forward net business losses incurred by members of its combined group, which incurred those pre-2009 losses prior to joining the combined group, and previously belonged to a different combined reporting group, pursuant to sec. [71.255\(6\)\(bm\)2.](#), Wis. Stats., and sec. [Tax 2.61\(9\)\(e\)](#), Wis. Adm. Code. Lincare did not meet its burden of proving that the Department's assessment was incorrect.

Lincare has not timely appealed, and this decision is final.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of January 31, 2024: chs. 69, 71, 72, 77, 78, 91, 93, 125, 134, 139, 229, 946, and 995, [Wis. Stats.](#), and chs. Tax 1, 2, 3, 7, 8, 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.