

Voluntary Disclosure: Additional Taxes or Excessive Credits

I. Background

If a person (which includes individuals, partnerships, corporations, limited liability companies, and fiduciaries) has filed the required Wisconsin tax returns or credit claims, but later realizes additional taxes are due or excessive credits were claimed, what should that person do? If the person waits until errors are discovered in an audit by the Wisconsin Department of Revenue, costly civil and/or criminal penalties may be imposed.

Example: If a sales/use tax audit results in additional taxes being due and there was negligence in filing the return, a penalty equal to 25% of the additional taxes due may be imposed. If there was intent to defeat or evade the taxes, a penalty equal to 50% of the taxes may be imposed.

Don't wait for an audit by the Department of Revenue (department) and risk the possibility of costly penalties. There is a better alternative. Penalties can be avoided by voluntarily disclosing to the department the additional taxes owed or excessive credits claimed on previously filed returns or claims.

The information below explains:

- The **conditions** which must be met to obtain the benefits of voluntary disclosure (see Part II).
- The **benefits** of voluntary disclosure (see Part III).
- How to **obtain** the benefits (see Part IV).
- How to contact the department with **questions** (see Part V).

Unless otherwise indicated, the information applies to Wisconsin income, franchise, sales/use (including state, county, and stadium), withholding, motor vehicle fuel, alternate fuels, general aviation fuel, beer, intoxicating liquor and wine, cigarette (including use and inventory), tobacco products (including use), and local exposition taxes, motor vehicle fuel and intoxicating liquor floor taxes, recycling surcharge, homestead and farmland preservation credits, and petroleum inspection fees. The term "tax" includes "recycling surcharge" and "petroleum inspection fees" unless otherwise indicated.

II. Conditions Which Must Be Met to Obtain Benefits of Voluntary Disclosure

To qualify for the benefits described in Part III, a person must meet **all** of the following four conditions:

1. Has previously filed a Wisconsin tax return or credit claim for the filing period and type of tax or credit being voluntarily disclosed.
2. Has not been informed by the department that an audit or criminal investigation is being conducted or will be conducted, relating to the filing period and type of tax or credit being voluntarily disclosed.

(**Note:** A person is not disqualified from receiving the benefits of voluntary disclosure if:

- An audit was previously conducted, which resulted in a determination (for example, an assessment, a refund, or no change), or
 - They were contacted by the department regarding a filing period or type of tax or credit other than that being voluntarily disclosed, or
 - They received general information, tax forms, or publications from the department.)
3. Has not received a federal audit report from the Internal Revenue Service (IRS) which is final, the changes or corrections on which are required to be reported to the department under sec. 71.76 or 77.96(4), Wis. Stats. (2005-06). (**Note:** This limitation applies only to the changes or corrections made on the federal audit report.)
 4. Does not misrepresent facts at the time the additional taxes or excessive credits are voluntarily disclosed to the department.

III. Benefits of Voluntary Disclosure

A. What Will Not Be Imposed

If all four conditions listed in Part II are met, civil and criminal penalties will **not** be imposed on additional taxes or excessive credits voluntarily disclosed. (**Note:** See the exception in Part III.B.4, relating to retirement plan penalties.)

Examples of penalties that will not be imposed include the following (this listing is not all-inclusive):

- The 25% to 50% negligence penalty for filing an incomplete or incorrect return, credit claim, withholding deposit, or withholding report.
- The 50% to 100% “intent to defeat or evade” penalty.
- Criminal penalties (for example, fines or imprisonment).

Wisconsin statutes pertaining to these penalties include the following. The listing is by tax type and is not all-inclusive.

1. Income and franchise taxes, withholding, recycling surcharge, and homestead and farmland preservation credits: secs. 71.55(6), 71.61(4), 71.67(2), 71.74(8), 71.83(1)(a)2 and 3, 71.83(1)(b)1, 71.83(2), and 77.95, Wis. Stats. (2005-06).
2. Sales, use, and local exposition taxes: secs. 66.0615(1m)(f)2, 77.60(3), (5), and (12), 77.76(1), 77.982(2), and 77.991(2), Wis. Stats. (2005-06).
3. Fuel taxes (including motor vehicle fuel floor taxes) and petroleum inspection fees: secs. 78.22(3) and (6), 78.68(3) and (5), and 168.12(9), Wis. Stats. (2005-06).
4. Beverage taxes (including intoxicating liquor floor taxes): secs. 139.03(2x)(c) and (f), and 139.25(3) and (5), Wis. Stats. (2005-06).
5. Cigarette and tobacco products taxes (including cigarette and tobacco products use taxes and cigarette inventory taxes): secs. 139.315(3) and (6), 139.33, 139.44(12), 139.78, and 139.85(1), Wis. Stats. (2005-06).

B. What Will Be Imposed

If all four conditions listed in Part II are met, only the following **mandatory** charges will be added to the amount owed for additional taxes or the repayment of excessive credits claimed:

1. Interest at 1% per month (see items 2 and 5 below for exceptions for withholding taxes, and for motor vehicle fuel and intoxicating liquor floor

taxes). (for example, secs. 66.0615(1m)(f)2, 71.55(6m), 71.61(3m), 71.67(2), 71.82(1)(a) and (c), 77.60(1), 77.76(1), 77.95, 77.982(2), 77.991(2), 78.68(1), 139.25(1), 139.44(9), 139.85(1), and 168.12(9), Wis. Stats. (2005-06).)

The interest of 1% per month is generally computed from the date the tax was originally due (for example, the unextended due date of the tax return) to the date the tax is paid, assuming the tax is paid before it becomes delinquent. If the department issues a notice of amount due because the additional taxes or excessive credits voluntarily disclosed are not paid at the time of the voluntary disclosure, interest of 1% per month is charged to the due date shown on the notice of amount due. For homestead and farmland preservation credits, interest is charged from the due date of the claim.

Note: If the department issues a notice of amount due because the additional taxes or excessive credits voluntarily disclosed are not paid at the time of the voluntary disclosure, and the amount due is not paid by the due date shown on the notice of amount due, “delinquent” interest of 1.5% per month will be charged from the due date shown on the notice of amount due to the date the amount is paid. (for example, secs. 66.0615(1m)(f)2, 71.55(6m), 71.61(3m), 71.67(2), 71.74(8), 71.82(2), 77.60(2), 77.76(1), 77.95, 77.982(2), 77.991(2), 78.68(2), 139.25(2), 139.44(11), 139.85(1), and 168.12(9), Wis. Stats. (2003-04).) The 6.5% (\$35 minimum) delinquent tax collection fee will also be charged. (Section 73.03(33m), Wis. Stats. (2005-06).)

2. For withholding taxes, interest at 1.5% per month (18% per annum), unless reduced to 1% per month by the department. (Section 71.82(2)(d), Wis. Stats. (2005-06).)
3. For income and franchise taxes and recycling surcharge, the interest for underpayment of estimated tax and estimated recycling surcharge. (Sections 71.84 and 77.947, Wis. Stats. (2005-06).)

Interest for underpayment of estimated tax and recycling surcharge may be waived if certain conditions are met, as provided in sec. 71.09(11), Wis. Stats. (2005-06), with respect to individuals, fiduciaries, partnerships, and limited liability companies; and in sec. 71.29(7), Wis. Stats. (2005-06), with respect to corporations.

4. For individual income taxes, retirement plan penalties (for example, the penalty for an early withdrawal from a retirement plan). The Wisconsin penalty is 33% of the federal penalty. (Section 71.83(1)(a)6, Wis. Stats. (2005-06).)
5. For motor vehicle fuel floor taxes and intoxicating liquor floor taxes, interest at 1.5% per month (18% per annum). (Sections 78.22(5) and 139.03(2x)(e), Wis. Stats. (2005-06).)

IV. How to Obtain Benefits of Voluntary Disclosure

To obtain the benefits of voluntarily disclosing additional taxes owed or excessive credits claimed relating to returns or claims previously filed, as discussed in Part III, a person should do the following:

1. Determine that **all** four conditions in Part II are met.
2. File an amended Wisconsin tax return. Attach a cover letter to the amended return and indicate that the benefits of voluntary disclosure are being requested. For example, the statement may read: "I am voluntarily disclosing additional 2004 Wisconsin income tax, which was not included on my original 2004 income tax return. I meet all of the conditions for obtaining the benefits of voluntary disclosure. Therefore I request that no civil or criminal penalties be imposed, based on this voluntary disclosure."

Exceptions

- To disclose additional fuel taxes, beer or intoxicating liquor and wine taxes, cigarette or tobacco products taxes, or petroleum inspection fees, sub-

mit a letter of explanation to the department or send it by electronic transmittal.

- To disclose additional sales or use taxes relating to purchases where the initial tax was paid to another agency (for example, a vehicle was purchased from a person other than a licensed motor vehicle dealer and the tax was paid to the Department of Transportation), submit a letter of explanation.

Where to mail:

An amended return should be mailed to the address shown on the return or in its instructions.

If no address is provided, or if a letter is submitted instead of an amended return, it should be mailed to the following address:

Wisconsin Department of Revenue
Nexus Unit
Mail Stop 5-144
P.O. Box 8906
Madison, WI 53708-8906

V. Any Questions?

The department may be contacted by:

- Writing to the above address.
- Calling the Madison office at (608) 266-3969.
- E-mailing wivoldis@dor.state.wi.us.

Voluntary Disclosure: Unfiled Returns

I. Background

If a person (which includes individuals, partnerships, corporations, limited liability companies, and fiduciaries) hasn't filed the required Wisconsin tax returns, but now wants to comply with the tax laws, what should that person do? If a person waits until a letter is received from the Wisconsin Department of Revenue, the person could be subject to costly civil and criminal penalties. For example, failure to file a corporation franchise/income tax return with intent to evade the tax may result in a civil penalty (equal to 100% of the tax) and criminal penalties.

Don't wait for a contact from the Department of Revenue. A better alternative is to voluntarily disclose to the Department of Revenue the nonfiling of prior years' returns and request that a settlement agreement be executed. The information below describes the department's policy relating to voluntary disclosure and the procedures for persons to follow.

II. Policy

A person making a voluntary disclosure of past non-compliance with Wisconsin tax laws may be granted a waiver of penalty and/or reduction in the number of periods for which returns are required to be filed. To be considered for such treatment, a person must meet certain requirements, provide a written description of its activities in Wisconsin, and enter into a written settlement agreement with the Department of Revenue.

(Note: This policy applies to income, franchise, sales/use, withholding, motor vehicle fuel, alternate fuel, alcohol, beer, wine, cigarette, and tobacco taxes, except where noted otherwise.)

A. Conditions for Voluntary Disclosure

A disclosure is considered to be voluntary if the person meets all of the following conditions:

1. Submits a written request for voluntary disclosure treatment.
2. Has not filed tax returns for the periods in question.

3. Is not registered during the periods in question for the tax involved, although tax may have been collected from customers or withheld from employees.
4. Has not been contacted within the last six years by the Wisconsin Department of Revenue regarding the tax type about (a) a registration or filing requirement, or (b) an assessment or audit assignment (for example, receipt of a nexus questionnaire concerning business activities in Wisconsin is a contact that constitutes the commencement of an office audit).

Subscribing to the *Wisconsin Tax Bulletin* or having received a written response to a question submitted to the Department of Revenue does not disqualify a person.

Registration for and/or filing returns for a different or related tax type does not disqualify a person (for example, a sales tax registrant may be allowed to settle a withholding tax liability).

B. Settlement Agreements

A written settlement agreement will be executed whenever a penalty is waived or the number of periods for which returns must be filed is reduced pursuant to this policy. Persons may remain anonymous until a settlement agreement is reached. All settlement agreements shall include provisions reserving the Department of Revenue's right to:

1. Audit factual representations made as part of the agreement and to void the agreement where facts are misrepresented. Also, see II.C.2.a. and b. below.
2. Audit the person and/or any returns filed.
3. Void the settlement agreement if not accepted within 60 days by the person. Additional time to accept the agreement may be permitted based on the facts and circumstances of the case.

4. Void the settlement agreement if factual misrepresentations have been made by the person and assess additional tax, penalties, and interest, as appropriate.
5. Void the settlement agreement if the person fails to comply with any of its terms.

C. Filing and Payment Requirements

1. Number of years

- a. A person with nexus in Wisconsin who makes a voluntary disclosure shall generally be requested to:

- i. File returns for the current year and the four preceding years, assuming a liability existed in those years.

For example, if on July 1, 2006, a calendar-year person voluntarily disclosed a sales or use tax liability for 2001 through 2006, quarterly returns for the years 2002 through 2005 and the first two quarters of 2006 will be requested. No return would be requested for 2001.

- ii. Report and remit any tax collected or withheld in years prior to the years for which returns are filed under II.C.1.a.i. above, as if collected or withheld in the earliest period for which a return is filed.

For example, using the same facts in the example in II.C.1.a.i., above, except sales tax was collected in all calendar years beginning with 1999, the measure of the tax collected in 1999, 2000, and 2001 should be added to the measure reported for the first quarter of 2002. A supporting schedule computing the measure for the first quarter of 2002 must be submitted with the return.

- b. A person that discloses a liability for an excise tax under Chapter 78 of the Wisconsin Statutes will be requested to file as in II.C.1.a. above, whether or not the person has nexus.
- c. A person with no nexus for the tax involved that discloses tax collection or withholding in prior years shall be requested to file returns beginning with the earliest year tax was collected or withheld, but not more than four years, as long as all

tax collected or withheld is remitted with the returns as in II.C.1.a. above.

- d. A person with no nexus for the tax involved that discloses no collection or withholding of tax in prior years will not be required to file returns for any prior period for which there is no nexus, unless an excise tax under Chapter 78 is involved. (See II.C.1.b. above.)

2. Misrepresentation of facts

- a. If an **unintentional** misrepresentation of facts is discovered, the person will be requested to file returns for the current year and the six preceding years, assuming a liability existed in those years.
- b. If an **intentional** misrepresentation of facts is discovered, the Department of Revenue may void the agreement and make any assessment it deems necessary.

For example, an audit of the person's records uncovers an internal memo signed by an officer directing the accounting department to represent that the Wisconsin office location was opened two years later than the office was actually opened.

3. Sales/Use and Withholding Tax

All sales/use and withholding tax returns for prior years will be requested to be filed as if on a quarterly filing basis, regardless of any filing frequency established for future periods. Quarterly sales/use and withholding tax returns will also be requested for the current year, if necessary, to bring the person's filing record up to the current period.

4. Time period for filing returns

Returns will be required to be filed within ninety days of signing the settlement agreement. Additional time to file may be permitted based on the facts and circumstances of the case.

D. Interest and Penalties

1. General

- a. If there is no discovery by the Department of Revenue of any misrepresentation of facts by

the person, only mandatory late filing fees, underpayment interest, and delinquent interest will be applied on late-filed returns which have been voluntarily filed.

- b. If there is discovery of an unintentional misrepresentation as in II.C.2.a. above; the late filed returns may be subject to the negligence penalty, if there is evidence to support the negligence penalty.
- c. If there is discovery of an intentional misrepresentation of facts as in II.C.2.b. above, the Department of Revenue may consider the assessment of any additional penalties deemed appropriate, including fraud penalties.

2. Sales/Use and Withholding Tax

a. Late filing fees

If the annual liability is \$300 or less, one late filing fee will be assessed.

If an annual liability exceeding \$300 exists, late filing fees will be assessed for each quarterly return not previously filed in a timely manner.

b. Interest

If the annual liability is \$300 or less, delinquent interest will be computed from the due date for annual returns (for example, January 31 for a calendar-year filer).

If the annual liability exceeds \$300, delinquent interest will be computed from the due dates for the quarterly returns which should have been filed (for example, April 30 for the March quarter, July 31 for the June quarter, October 31 for the September quarter, and January 31 for the December quarter).

III. Procedure – Voluntary Disclosure

A. Where to Send a Request

A person requesting voluntary disclosure treatment should send the request to:

Wisconsin Department of Revenue
Nexus Unit
Mail Stop 5-144
P.O. Box 8906
Madison, WI 53708-8906
(Phone 608-266-3969)

B. What Information to Include in the Request

A person requesting voluntary disclosure treatment must submit a written request to the Department of Revenue for consideration. The request shall include a statement of Wisconsin activities including the following information:

1. Description of activities within Wisconsin for the years involved.
2. A list of property owned or rented within Wisconsin.
3. Person's taxable year end.
4. Date the person began to have taxable activities in Wisconsin.
5. Whether any of the tax involved has been collected or withheld, and the initial date of collection or withholding.
6. Approximate liability (by tax type) for each of the years involved.
7. Whether the person has been contacted by the Department of Revenue regarding this tax liability.
8. Other types of tax returns the person is currently filing with the Department of Revenue.
9. Whether the person is registered with the Wisconsin Department of Financial Institutions (formerly the Secretary of State) to transact business in Wisconsin.

Note: If applying for voluntary disclosure for more than one tax type, each tax type must be specified in the written request. For example, a request for voluntary disclosure for income tax does not cover sales tax.