



# Limited Liability Companies (LLCs)

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**IMPORTANT NOTICE**

On April 15, 2022, Wisconsin Governor Tony Evers signed [2021 Wisconsin Act 258](#). The Act makes several revisions to ch. 183, Wis. Stats., *Wisconsin Uniform Limited Liability Company Law*. As a result, the Wisconsin Department of Financial Institutions has updated their [filings and fees schedule](#) and added new and updated forms to their limited liability company (LLC) [forms page](#).

**1. INTRODUCTION**

This publication provides information about the Wisconsin tax treatment of limited liability companies (LLCs).

Effective January 1, 1994, Wisconsin law authorizes the organization and operation of limited liability companies in Wisconsin. Prior to 1994, Wisconsin law did not specifically address the treatment of LLCs. However, LLCs doing business in Wisconsin before 1994 would be treated in the same manner as for federal income tax purposes.

An LLC is a business entity that possesses both corporate characteristics and characteristics associated with a partnership. Limited liability companies possess the corporate attribute of limited liability for LLC owners or members and the potential for treatment as a pass-through entity for federal and state income tax purposes. Federal law is controlling in the determination of whether an LLC is treated as a corporation or a partnership for Wisconsin franchise and income tax purposes. For taxable years beginning on or after January 1, 1997, an LLC that is disregarded as a separate entity for federal income tax purposes is disregarded as a separate entity for Wisconsin franchise or income tax purposes.

For more information on the formation and registration of an LLC in Wisconsin, see ch. 183, Wis. Stats., *Wisconsin Uniform Limited Liability Company Law*, and visit the Wisconsin Department of Financial Institutions [website](#).

**2. CLASSIFICATION OF AN LLC FOR WISCONSIN FRANCHISE AND INCOME TAX PURPOSES****A. How Is an LLC Operating in Wisconsin Treated for Wisconsin Franchise and Income Tax Purposes?**

An LLC that is treated as a partnership under the Internal Revenue Code (IRC) is treated as a partnership for Wisconsin purposes. [sec. [71.195](#), Wis. Stats.] An LLC that is treated as a corporation under the IRC is treated as a corporation for Wisconsin purposes. [sec. [71.22\(1k\)](#), Wis. Stats.] For taxable years beginning on or after January 1, 1997, an LLC that is disregarded as a separate entity under sec. [7701](#), IRC, is disregarded as a separate entity for Wisconsin franchise and income tax purposes, and its owner is subject to the tax on or measured by its net income. [secs. [71.02\(1\)](#), [71.20\(1\)](#), and [71.22\(1k\)](#), Wis. Stats.]

For taxable years beginning on or after December 31, 2022, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2022, with numerous exceptions. For a list of exceptions, see "Conformity with Internal Revenue Code and Exceptions" in the [instructions](#) for Form 4, Wisconsin Non-Combined Corporation Franchise or Income Tax Return.

**B. How Is an LLC Classified Under the Internal Revenue Code?**

The Internal Revenue Service issued "check-the-box" entity classification regulations under sec. [7701](#), IRC, that are effective for federal purposes on January 1, 1997. These regulations generally allow LLCs with two or more members to choose to be taxed as a partnership or corporation. Limited liability companies that have a single owner may choose to be recognized or disregarded as an entity separate from their owner. [Treas. Reg. secs. [301.7701-1](#), [301.7701-2](#), and [301.7701-3](#).]

### 3. WISCONSIN TAX TREATMENT OF LLCs

#### A. Franchise and Income Tax

(1) What tax form does an LLC use to file a franchise or income tax return?

**If a partnership:** An LLC classified as a partnership reports its income on federal Form 1065, *U.S. Return of Partnership Income*, and Wisconsin [Form 3](#), *Wisconsin Partnership Return*. [sec. [71.20\(1\)](#), Wis. Stats.]

**If a corporation:** An LLC classified as a corporation files federal Form 1120, *U.S. Corporation Income Tax Return*, and Wisconsin Form [4](#) or [6](#), *Wisconsin Corporation Franchise or Income Tax Return*. If the LLC has elected to be a tax-option (S) corporation, it files federal Form 1120S, *U.S. Income Tax Return for an S Corporation*, and Wisconsin [Form 5S](#), *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*. [secs. [71.22\(1k\)](#) and [71.24\(1\)](#), Wis. Stats.]

**If disregarded as a separate entity:** An LLC disregarded as a separate entity includes its income, losses, and deductions on its owner’s return.

(2) What is the treatment of Wisconsin tax credits for an LLC?

**If a partnership:** Members of an LLC classified as a partnership may compute the same credits that are available to partners of partnerships.

**If a corporation:** An LLC treated as a corporation may compute the same tax credits as a regular (C) corporation, unless the LLC has elected to be treated as a tax-option (S) corporation.

**If a tax-option (S) corporation:** Shareholders of an LLC classified as a tax-option (S) corporation may compute the same credits that are available to shareholders of a tax-option (S) corporation.

**If disregarded as a separate entity:** The LLC’s owner may claim any tax credits based on the LLC’s activities for which the owner would otherwise be eligible.

See the chart that follows.

AVAILABILITY OF TAX CREDITS			
Tax Credit	If LLC is a Partnership or a Disregarded LLC Owned by a Partnership <sup>1</sup>	If LLC is a C Corporation	If a Disregarded LLC Owned by an Individual (e.g. Sole Proprietorship)
Angel investment credit	Yes. Calculated by LLC and passed through to members who are individuals.	No. Not available to LLC.	Yes. Claimed by individual.
Business development credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Community rehabilitation program credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Development zones credits	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.

**AVAILABILITY OF TAX CREDITS**

<b>Tax Credit</b>	<b>If LLC is a Partnership or a Disregarded LLC Owned by a Partnership<sup>1</sup></b>	<b>If LLC is a C Corporation</b>	<b>If a Disregarded LLC Owned by an Individual (e.g. Sole Proprietorship)</b>
Early stage seed investment credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Economic development tax credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Electronics and information technology manufacturing zone credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Employee college savings account contribution credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	No. Not available to sole proprietorships.
Enterprise zone jobs credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Farmland preservation credit	Yes. Members may claim credit based on share of LLC's taxes.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Low-income housing credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Manufacturing and agriculture credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Manufacturing investment credit	Yes. Credit no longer available to be computed. Carryforward of credit may still be claimed by members.	Yes. Credit no longer available to be computed. Carryforward of credit may still be claimed by LLC.	Yes. Credit no longer available to be computed. Carryforward of credit may still be claimed by individual.
Research expense credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.
Supplement to federal historic rehabilitation tax credit	Yes. Calculated by LLC and passed through to members.	Yes. Claimed by LLC.	Yes. Claimed by individual.

<sup>1</sup> The same credit availability would also apply to a tax-option (S) corporation, or a disregarded entity owned by a tax-option (S) corporation.

(3) What are the Wisconsin franchise or income tax consequences of forming an LLC?

Wisconsin follows the IRC with respect to the tax consequences of forming an LLC. To the extent allowable under the IRC, contributions to an LLC are tax free to both the LLC and the member. In general, the member's basis in the LLC will equal the basis in the property contributed.

(4) What are the Wisconsin franchise or income tax consequences of converting to or merging into an LLC?

Wisconsin follows the IRC with respect to the tax consequences of a partnership or corporation that converts to an LLC. [sec. [71.80\(21\)](#), Wis. Stats.] If a business entity that converts to an LLC is required to notify the Internal Revenue Service (IRS) of the conversion, a copy of the notification must be provided to the Wisconsin Department of Revenue (department).

For Wisconsin income tax purposes, the merger of a partnership, corporation, or LLC into another form of business entity is treated in the same manner as for federal income tax purposes. [sec. [71.80\(22\)](#), Wis. Stats.] If the IRS must be notified of the transaction, a copy of the statement furnished to the IRS must be provided to the department.

## B. Economic Development Surcharge

**If a partnership:** For taxable years beginning on or after January 1, 2013, the economic development surcharge no longer applies to partnerships or an LLC classified as a partnership.

**If a corporation:** An LLC classified as a corporation calculates the economic development surcharge on Wisconsin Form [4](#), [5S](#), or [6](#), as appropriate. [secs. [71.22\(1k\)](#) and [77.93\(1\)](#), Wis. Stats.]

An LLC that elects to be treated as a tax-option (S) corporation calculates the economic development surcharge on Wisconsin [Form 5S](#). If the economic development surcharge is delinquent, its members are jointly and severally liable. [sec. [77.93\(1\)](#), Wis. Stats.]

**If disregarded as a separate entity:** For taxable years beginning on or after January 1, 2013, individuals are not subject to the economic development surcharge.

**Note:** The economic development surcharge applies to certain LLCs that have at least \$4 million of gross receipts for the taxable year. [[subch. VII](#) (ch. 77), Wis. Stats.]

## C. Withholding Tax

For withholding tax purposes, LLCs with two or more members are treated in the same manner as other business entities. The LLC, if an employer, is required to withhold, deposit, and furnish reports of Wisconsin income taxes withheld as are other employers. [secs. [71.63\(3\)](#), [71.65\(1\)\(a\)](#), and [71.71](#), Wis. Stats.]

If an existing entity becomes an LLC and the IRS does not require the LLC to obtain a new federal employer identification number, the LLC may not be required to obtain a new Wisconsin employer identification number. If the IRS requires the LLC to obtain a new federal employer identification number, the LLC must obtain a new Wisconsin employer identification number.

In general, if a member of an LLC performs services for the LLC and the IRS does not treat the member as an employee, the LLC is not required to withhold Wisconsin income taxes from payments made to the member for services performed.

A member, employee, or other responsible person who is under a duty to withhold and deposit taxes for an LLC may be held personally liable for the LLC's Wisconsin income taxes withheld or required to be withheld. [sec. [71.83\(1\)\(b\)2](#), Wis. Stats.]

For wages paid on or after January 1, 2009, a disregarded entity is considered an "employer" for purposes of federal withholding taxes. Wisconsin follows this treatment. For wages paid on or after January 1, 2009, a single-owner entity that is disregarded as a separate entity under sec. [7701](#), IRC, is an "employer" for Wisconsin withholding tax purposes. As an "employer," a disregarded entity must obtain a Wisconsin employer

identification number. To obtain a Wisconsin employer identification number, the entity must register online at [My Tax Account](#) or complete a [Form BTR-101, Application for Business Tax Registration](#).

#### D. Sales and Use Tax

For sales and use tax purposes, LLCs with two or more members and single-member LLCs that elect to be taxed as corporations for income and franchise tax purposes are treated in the same manner as other business entities. The LLC, as a retailer or consumer, is required to register, report, and pay Wisconsin sales and use taxes as are other retailers or consumers. [secs. [77.52\(7\)](#) and [77.53\(9\)](#) and [\(9m\)](#), Wis. Stats.]

If an existing entity becomes an LLC, the entity must notify the department of the change. Notification may be made by filing [Form BTR-101, Application for Wisconsin Business Tax Registration](#), for the new entity or by contacting one of the department's customer service representatives at (608) 266-2776 or at [DORSalesandUse@wisconsin.gov](mailto:DORSalesandUse@wisconsin.gov). This is the case whether or not the IRS requires the LLC to obtain a new federal employer identification number. When contacting the department, be sure to include the following information:

- Tax account number (include the business name and address if you have more than one location),
- Federal employer identification number (FEIN),
- Effective date of change, and
- Explanation of change.

Generally, an existing partnership or corporation that becomes an LLC will not be subject to sales or use tax on the transfer of its assets to the LLC, provided there is no change in the ownership interests of its members. A business entity that converts to another business entity is subject to the sales and use tax provisions applicable to liquidations, reorganizations, and business entity formations. [sec. [77.61\(15\)](#), Wis. Stats.]

A member, employee, or other responsible person who is under a duty to collect and remit sales and use taxes for an LLC may be held personally liable for the LLC's Wisconsin sales and use taxes. [sec. [77.60\(9\)](#), Wis. Stats.]

**Example:** An LLC has five members. Member A has the authority and responsibility to make the Wisconsin sales and use tax payments to the department. The other four members are not responsible for paying the sales and use taxes. Member A is a responsible person and may be held personally liable for the LLC's Wisconsin sales and use taxes.

A single-owner LLC that is disregarded as a separate entity (i.e., the single-owner entity and its owner are treated as a single entity) for Wisconsin income and franchise tax purposes ch. [71](#), Wis. Stats., is also disregarded as a separate entity for purposes of Wisconsin sales and use taxes.

For purposes of reporting and collecting Wisconsin sales and use taxes, the owner of a disregarded entity has the option to (1) include the information from the disregarded entity on the owner's return, or (2) file a separate electronic sales and use tax return for the disregarded entity. If an owner that owns more than one disregarded entity elects to file a separate return for one of its disregarded entities, the owner is required to file separate returns for all of its disregarded entities. Such returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.

For additional information about the sales and use tax treatment of disregarded entities, see the Common Question titled "Disregarded Entities (Sales and Use and Withholding Taxes)" on the department's website at [revenue.wi.gov/Pages/FAQS/ise-disregent.aspx](http://revenue.wi.gov/Pages/FAQS/ise-disregent.aspx).

## E. Excise Taxes (Beverage, Fuel, Cigarette, and Tobacco)

For excise tax purposes, LLCs are treated in the same manner as other business entities. The LLC is required to register, pay, and furnish reports of Wisconsin excise taxes as are others. [chs. [78](#), and [139](#), Wis. Stats.]

A member, employee, or other responsible person who is under a duty to pay motor vehicle fuel, alternate fuel, or aviation fuel taxes for the LLC may be held personally liable for the LLC's Wisconsin excise taxes required to be paid. [sec. [78.70\(6\)](#), Wis. Stats.]

If an LLC is disregarded as a separate entity for Wisconsin franchise or income tax purposes, its owner is subject to any excise taxes based on the LLC's activities. [chs. [78](#), and [139](#), Wis. Stats.]

## F. Withholding Requirement for LLCs Having Nonresident Members

In general, an LLC that is classified as a partnership or tax-option (S) corporation is required to withhold income or franchise tax on the income allocable to nonresident members.

A nonresident member includes an individual who is not domiciled in Wisconsin, an estate or a trust that is a nonresident under sec. [71.14\(1\)](#) to (3m), Wis. Stats., and a partnership, LLC, or corporation whose commercial domicile is outside Wisconsin. The withholding rate for members who are individuals, estates, and trusts is the highest rate for a single individual under sec. [71.06](#), Wis. Stats. The withholding rate for members that are partnerships, LLCs, or corporations is 7.9%.

**Exceptions:** Withholding is not required on behalf of the following nonresident members:

- A member that is exempt from Wisconsin income or franchise taxation. The LLC may rely on a written statement from a member explaining why the member is exempt from Wisconsin tax.
- A member whose share of income from the LLC attributable to Wisconsin is less than \$2,000.
- A member that files an affidavit with the department. To be eligible for this exemption, the nonresident owners of the LLC must file [Form PW-2, Wisconsin Nonresident Partner, Member, Shareholder or Beneficiary Pass-Through Withholding Exemption Affidavit](#), and the department must approve the exemption. The member must present the approval letter to the LLC, and the LLC must maintain this copy in its records to substantiate the withholding exemption. See the [Form PW-2 instructions](#) for further details.
- A shareholder that has been granted a continuous exemption from the department. On a case-by-case basis, the department will be issuing a "continuous" exemption, which relieves a nonresident of the requirement to file Form PW-2 in future years. As a nonresident may not apply for a "continuous" exemption, there is no change in how Form PW-2 is filed. Exemptions will be issued using criteria similar to that used to approve Form PW-2. The exemption will be reviewed annually to ensure the nonresident is paying estimated tax and filing returns as required. Noncompliance by the nonresident will result in revocation of the exemption.

The LLC uses [Form PW-1, Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income](#), to pay the withholding and to report any nonresident members who have filed Form PW-2 affidavits. For LLCs classified as partnerships, Form PW-1 is due by the 15th day of the 3rd month following the close of the LLC's taxable year. For LLCs classified as tax-option (S) corporations, Form PW-1 is due by the 15th day of the 3rd month following the close of the LLC's taxable year. Generally, Form PW-1 must be filed electronically and the corresponding withholding payments must be made electronically. See the [Form PW-1 instructions](#) for details of the filing procedures. Additionally, nonresident members having a Wisconsin filing requirement must file the appropriate Wisconsin income or franchise tax return, regardless of the amount of withholding from the LLC.



A pass-through entity is required to pay quarterly estimated withholding tax on a nonresident member's share of income attributable to Wisconsin. The pass-through entity must make quarterly payments of withholding tax on or before the 15th day of the 3rd, 6th, 9th, and 12th month of the taxable year.

#### 4. TAX TREATMENT OF MEMBERS OF LLCs CLASSIFIED AS PARTNERSHIPS

LLC members are treated as follows for Wisconsin franchise and income tax purposes.

##### A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts

All LLC income or loss of full-year Wisconsin residents is includable in the computation of Wisconsin taxable income, regardless of the situs of the LLC or the nature of the income from the LLC, such as business income, service income, or professional income, unless otherwise exempt (such as U.S. government interest). [secs. [71.02\(1\)](#) and [71.04\(1\)\(a\)](#), Wis. Stats.]

**Example:** An LLC is engaged in business in and outside Wisconsin. Member A, a full-year Wisconsin resident, has a 10% interest in the LLC. The LLC has ordinary income of \$100,000, of which \$60,000 is attributable to business conducted in Wisconsin. Member A is subject to Wisconsin income tax on \$10,000 of LLC income [10% x \$100,000].

The gain or loss from the disposition of an LLC interest is also includable in Wisconsin net income for a full-year Wisconsin resident. [sec. [71.04\(1\)\(a\)](#), Wis. Stats.]

##### B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts

A nonresident individual, estate, or trust member's portion of the LLC income or loss which is attributable to a business located in Wisconsin, services performed in Wisconsin, or real or tangible personal property located in Wisconsin is includable in the computation of Wisconsin taxable income. Business income is taxable whether or not the individual member conducts business in Wisconsin. However, LLC income derived from personal services, including professional services, is taxable to a nonresident member only if that nonresident member personally performs services in Wisconsin. The amount of personal service income attributable to the nonresident member's services performed in Wisconsin is taxable. [secs. [71.02\(1\)](#) and [71.04\(1\)\(a\)](#), Wis. Stats.]

**Example 1:** A nonresident of Wisconsin who is an individual has a 30% interest in an LLC that is engaged in business in and outside Wisconsin. The LLC has ordinary income of \$150,000, of which \$60,000 is attributable to its business activities in Wisconsin. The nonresident member is subject to Wisconsin income tax on \$18,000 of LLC income [30% x \$60,000].

**Example 2:** A nonresident of Wisconsin who is an individual has a 5% interest in an engineering firm that is organized as an LLC and operates in and outside Wisconsin. The LLC receives income solely from the performance of engineering services. The nonresident member does not personally perform any engineering services in Wisconsin. The nonresident member's share of LLC income is not taxable by Wisconsin.

Since an LLC interest is intangible personal property, any gain or loss realized on the disposition of an LLC interest is not includable in Wisconsin taxable income of a nonresident individual, estate, or trust. Gain or loss from the sale of intangible personal property follows the residence of these nonresidents. [sec. [71.04\(1\)\(a\)](#), Wis. Stats.]

**Caution:** The portion of gain or loss from the sale of interest in an LLC taxed as a partnership related to sec. 751, IRC, tangible personal or real property located in Wisconsin (e.g., receivables or inventory) is treated as ordinary gain or loss and may be taxable to Wisconsin.

An LLC that has two or more nonresident members whose only Wisconsin taxable income is their shares of LLC income or loss may file a composite Wisconsin individual income tax return on behalf of those qualifying members. The LLC files this return on [Form 1CNP](#), *Composite Wisconsin Individual Income Tax Return for Nonresident Partners*.

### C. LLC Members Who Are Part-Year Wisconsin Resident Individuals

An individual who is a part-year resident of Wisconsin must report to Wisconsin:

- **While a resident:** All LLC income or loss, regardless of where it is earned or incurred, while a resident of Wisconsin. The gain or loss from the disposition of an LLC interest while a Wisconsin resident is includable in Wisconsin net income. [sec. [71.04\(1\)\(a\)](#), Wis. Stats.]
- **While a nonresident:** All LLC income or loss that is attributable to a business located in Wisconsin, services the individual personally performed in Wisconsin, or real or tangible personal property located in Wisconsin, while a nonresident of Wisconsin. The disposition of an LLC interest while a nonresident of Wisconsin is treated in the same manner as for nonresidents. Since a member's interest in an LLC is considered intangible personal property, any gain or loss realized on the disposition of an LLC interest while a nonresident is not includable in Wisconsin taxable income. Gain or loss from the sale of intangible personal property follows the residence of nonresidents. [secs. [71.02\(1\)](#) and [71.04\(2\)](#) and [\(3\)](#), Wis. Stats.]

**Caution:** The portion of gain or loss from the sale of interest in an LLC taxed as a partnership related to sec. 751, IRC, tangible personal or real property located in Wisconsin (e.g., receivables or inventory) is treated as ordinary gain or loss and may be taxable to Wisconsin.

**Example:** Member A has a 25% interest in an LLC that is engaged in business in and outside Wisconsin. For its taxable year beginning January 1, 2018, the LLC has ordinary income of \$50,000, of which \$40,000 is attributable to business activities in Wisconsin. Member A was a Wisconsin resident for 90 days during the LLC's taxable year. Member A is subject to Wisconsin income tax on \$10,616 of LLC income, which is calculated as follows:

For the period of residence:		
25% x 90/365 x \$50,000	=	\$ 3,082
For the period of nonresidence:		
25% x 275/365 x \$40,000	=	<u>7,534</u>
Total		\$ <u>10,616</u>

### D. LLC Members That Are Corporations

Corporations doing business in Wisconsin are subject to Wisconsin franchise or income tax. In this publication, the terms "doing business," "engaged in business," and "nexus," refer to the degree of activity necessary before a state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the corporation.

The Wisconsin tax treatment of a corporation that is a member of an LLC depends on where the corporation and the LLC are doing business.

"Doing business" in Wisconsin includes owning, directly or indirectly, a general or limited partnership interest in a partnership or an interest in a limited liability company treated as a partnership that does business in Wisconsin.

A multistate corporation that is a member of an LLC treated as a partnership for federal tax purposes must include its share of the numerator and denominator of the LLC's apportionment factors in the numerator and denominator of its apportionment factors.

**Note:** Income from an LLC may be nontaxable under the principles of the U.S. Supreme Court decision in *Allied-Signal v. Director, Div. of Taxation*, 504 U.S. 768 (1992), if the investment is passive and does not serve an operational function. In this case, the corporation would not include its share of the LLC's apportionment factors in the numerator and denominator of its apportionment factors.

(1) Corporate Member Engaged in Business Wholly Within Wisconsin

If a corporation that is engaged in business only in Wisconsin is a member of an LLC, the corporation's share of the LLC's net income or loss is included in its Wisconsin net income or loss. For a corporation engaged in business wholly within Wisconsin, all income is subject to Wisconsin franchise or income tax. [sec. [71.25\(4\)](#), Wis. Stats.]

**Example 1:** A corporation that is engaged in business only in Wisconsin acquires a 40% interest in an LLC that is engaged in business only in Wisconsin. The LLC has \$250,000 of net income. The corporation must include its \$100,000 share of the LLC's net income in its Wisconsin net income [40% X \$250,000].

(2) Corporate Member Engaged in Business in and Outside Wisconsin

If a corporation that is engaged in business in and outside Wisconsin is a member of an LLC, the corporation's share of the LLC's net income or loss generally is included in its apportionable income or loss. [sec. [71.25\(5\)\(a\)14](#), Wis. Stats.]

In computing the corporation's apportionment factors, the corporation must combine its share of the LLC's apportionment data with its own apportionment data to determine the income apportionable to Wisconsin. [secs. [71.25\(9\)\(e\)8](#), [71.25\(15\)](#), and [71.45\(6\)](#), Wis. Stats.]

**Example 1:** A corporation that is engaged in business in and outside Wisconsin acquires a 60% interest in an LLC that is engaged in business in Wisconsin. The corporation must determine its Wisconsin net income under the apportionment method. The LLC has \$300,000 of business income. Sixty percent, or \$180,000, of the LLC's business income is included in the corporation's apportionable income or loss. Sixty percent of the LLC's Wisconsin sales is included in the numerator of the corporation's sales factor and 60% of the LLC's total sales is included in the denominator of the corporation's sales factor.

**Note:** For purposes of determining throwback sales in the numerator of the corporation's sales factor, the corporation's gross sales are combined with its share of the LLC's gross sales. Sales to states in which either the corporation or the LLC have nexus are not included in the numerator as throwback sales at 100%.

**Example 2:** A corporation that has been engaged in business only in Wisconsin acquires a 55% interest in an LLC that is engaged in business in and outside Wisconsin. Therefore, the corporation is engaged in business in the states where the LLC is engaged in business. The corporation must determine its Wisconsin net income under the apportionment method. Fifty-five percent of the LLC's business income or loss is included in the corporation's apportionable income or loss. Fifty-five percent of the LLC's Wisconsin sales is included in the numerator of the corporation's sales factor, and 55% of the LLC's total sales is included in the denominator of the corporation's sales factor.

**Note:** For purposes of determining throwback sales in the numerator of the corporation's sales factor, the corporation's gross sales are combined with its share of the LLC's gross sales. Sales to states in which neither the corporation nor the LLC have nexus are included in the numerator as throwback sales at 100%.

### (3) Corporate Member Not Engaged in Business in Wisconsin

If a corporation that has not been engaged in business in Wisconsin acquires an interest in an LLC that is engaged in business in Wisconsin, the corporation is subject to Wisconsin franchise or income taxation. The corporate member is engaged in business in Wisconsin as a result of holding an interest in the LLC.

The corporation's share of the LLC's net income or loss is includable in its apportionable income. [secs. [71.22\(1r\)](#) and [71.25\(5\)\(a\)14](#), Wis. Stats.] The corporation must combine its share of the LLC's apportionment data with its own apportionment data to determine the income apportionable to Wisconsin. [secs. [71.25\(9\)\(e\)8](#), [71.25\(15\)](#), and [71.45\(6\)](#), Wis. Stats.]

**Example:** A corporation that has not been engaged in business in Wisconsin acquires a 50% interest in an LLC that is engaged in business in Wisconsin. Therefore, the corporation is engaged in business in Wisconsin and is subject to Wisconsin franchise or income tax. The corporation must determine its Wisconsin net income under the apportionment method. Fifty percent of the LLC's business income or loss is included in the corporation's apportionable income or loss. Fifty percent of the LLC's Wisconsin sales is included in the numerator of the corporation's sales factor, and 50% of the LLC's total sales is included in the denominator of the corporation's sales factor. In addition, since the corporation has nexus with Wisconsin, any Wisconsin destination sales made by the corporation are included in the numerator of its sales factor.

**Note:** For purposes of determining throwback sales in the numerator of the corporation's sales factor, the corporation's gross sales are combined with its share of the LLC's gross sales. Sales to states in which neither the corporation nor the LLC have nexus are included in the numerator as throwback sales at 100%.

## E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships)

A partnership, including an LLC classified as a partnership, that is a member of an LLC doing business in Wisconsin is required to file a Wisconsin partnership return. The LLC member is considered to have income from business transacted in Wisconsin. Since the LLC member is itself a partnership, the member must include its share of the LLC's apportionment data with its own apportionment data to determine the income apportionable to Wisconsin.

Partners of a partnership (that is itself a member of an LLC) are treated in the same manner as partners in other partnerships that are doing business in Wisconsin. For example, full-year Wisconsin resident individual partners are subject to Wisconsin income tax on their distributive shares of the partnership's entire income, including its share of LLC income. Nonresident individual partners are subject to Wisconsin income tax on their distributive shares of the partnership's income, including its share of LLC income, derived from business transacted in Wisconsin.

**Example:** Partnership A, which has not been engaged in business in Wisconsin, acquires a 40% interest in an LLC that is engaged in business in Wisconsin. Individuals throughout the United States are limited partners in Partnership A. Partnership A must file a Wisconsin partnership return because its 40% share of the LLC's income is income from Wisconsin sources. The nonresident partners must file Wisconsin income tax returns. They are subject to Wisconsin income tax on their distributive shares of Partnership A's share of the LLC income.

## 5. TAX TREATMENT OF MEMBERS OF LLCs CLASSIFIED AS CORPORATIONS

Limited liability company members are taxed as explained below. If an LLC meets the requirements and elects to be treated as a tax-option (S) corporation, its members report their pro rata shares of the entity's items of income, loss, and deduction as explained in the Wisconsin [Form 5S instructions](#).

**A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts**

Full-year residents are subject to Wisconsin income tax on distributions of income received from an LLC, regardless of where it is located. If a Wisconsin resident disposes of an LLC interest, any gain or loss is includable in Wisconsin taxable income. [secs. [71.02\(1\)](#) and [71.04\(1\)\(a\)](#), Wis. Stats.]

**B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts**

Nonresidents who are individuals, estates, or trusts are not subject to Wisconsin income tax on distributions of LLC income. Gain or loss realized on the disposition of an LLC interest is not includable in Wisconsin taxable income. [secs. [71.02\(1\)](#) and [71.04\(1\)\(a\)](#), Wis. Stats.]

**C. LLC Members Who Are Part-Year Wisconsin Resident Individuals**

Part-year residents are taxed on distributions of LLC income received while a resident of Wisconsin. Gain or loss realized on the disposition of an LLC interest while a Wisconsin resident is includable in Wisconsin taxable income. [secs. [71.02](#) and [71.04\(2\)](#) and [\(3\)](#), Wis. Stats.]

Distributions of LLC income received by an individual while a nonresident of Wisconsin are not taxable by Wisconsin. Any gain or loss realized by an individual on the disposition of an LLC interest while a nonresident is not includable in Wisconsin taxable income.

**Caution:** The portion of gain or loss from the sale of interest in an LLC taxed as a partnership related to sec. 751, IRC, tangible personal or real property located in Wisconsin (e.g., receivables or inventory) is treated as ordinary gain or loss and may be taxable to Wisconsin.

**D. LLC Members That Are Corporations**

A corporation whose entire business income is attributable to Wisconsin is subject to Wisconsin franchise or income tax on income distributions received from an LLC, regardless of where the LLC is located. Gain or loss on the disposition of an LLC interest is includable in Wisconsin net income. [secs. [71.25\(4\)](#) and [71.26\(2\)](#), Wis. Stats.]

A multistate corporation includes income distributions and gain or loss on dispositions of an LLC interest in apportionable income if there is a unitary relationship between the corporation and the LLC, or if the LLC is not an affiliate or subsidiary and the LLC interest is part of the corporation's unitary investment activity and serves an operational function. [secs. [71.25\(5\)\(a\)](#) and [71.26\(2\)](#), Wis. Stats.]

**E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships)**

Distributions from an LLC are treated in the same manner as dividend income. Gain or loss on the disposition of an LLC interest is treated as income or loss from intangibles.

**6. TAX TREATMENT OF MEMBERS OF LLCs DISREGARDED AS SEPARATE ENTITIES**

If an LLC is disregarded as a separate entity, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner. The owner is subject to Wisconsin tax on or measured by the LLC's income.

**A. LLC Members Who Are Full-Year Wisconsin Resident Individuals, Estates, and Trusts**

Full-year residents treat the LLC income or loss as if it were from a sole proprietorship. They report the income or loss on federal Schedule C and include it in their Wisconsin adjusted gross income, regardless of where the LLC is located or the nature of its income. [sec. [71.02\(1\)](#), Wis. Stats.]

**B. LLC Members Who Are Nonresident Individuals, Estates, and Trusts**

Nonresidents who are individuals, estates, or trusts treat the LLC income or loss as if it were from a sole proprietorship. They report the income or loss on federal Schedule C and include it in their Wisconsin taxable income to the extent that it is attributable to a business located in Wisconsin, services performed in Wisconsin, or real or tangible personal property located in Wisconsin. [secs. [71.02\(1\)](#) and [71.04\(1\)\(a\)](#), Wis. Stats.]

**C. LLC Members Who Are Part-Year Wisconsin Resident Individuals**

Part-year residents treat the LLC income or loss as if it were from a sole proprietorship. They report the income or loss on federal Schedule C and include in their Wisconsin taxable income the following amounts:

- **While a resident:** All LLC income or loss, regardless of where it is earned or incurred, while a resident of Wisconsin. [secs. [71.02\(1\)](#) and [71.04\(1\)](#) and [\(2\)](#), Wis. Stats.]
- **While a nonresident:** All LLC income or loss that is attributable to a business located in Wisconsin, services performed in Wisconsin, or real or tangible personal property located in Wisconsin. [secs. [71.02\(1\)](#) and [71.04\(1\)](#) and [\(2\)](#), Wis. Stats.]

**D. LLC Members That Are Corporations**

A corporation treats the LLC income or loss as if it were from a division of the corporation. If either the corporation or the LLC is engaged in business in Wisconsin, the corporation has nexus with Wisconsin and must file Wisconsin corporation franchise or income tax returns.

If the corporation and the LLC are engaged in business only in Wisconsin, the corporation is subject to Wisconsin franchise or income tax on its entire net income, including the income from the LLC. [secs. [71.22\(1k\)](#), [71.25\(4\)](#), and [71.26\(2\)](#), Wis. Stats.]

If either the corporation or the LLC is engaged in business in and outside Wisconsin, the corporation includes the LLC's income or loss in its apportionable income or loss. The corporation computes its apportionment factors by combining the LLC's apportionment data with its apportionment data. [secs. [71.22\(1k\)](#) and [\(1r\)](#), [71.25\(5\)\(a\)](#) and [\(15\)](#), [71.26\(2\)](#), and [71.45\(6\)](#), Wis. Stats.]

If a corporation that has not been engaged in business in Wisconsin organizes a solely owned LLC that does business in Wisconsin, the corporation must file Wisconsin franchise or income tax returns. The corporation includes the LLC's income or loss in its apportionable income or loss. The corporation computes its apportionment factors by combining the LLC's apportionment data with its apportionment data. [secs. [71.22\(1k\)](#) and [\(1r\)](#), [71.25\(5\)\(a\)](#) and [\(15\)](#), [71.26\(2\)](#), and [71.45\(6\)](#), Wis. Stats.]

**E. LLC Members That Are Partnerships (Including LLCs Classified as Partnerships)**

A partnership treats the LLC income or loss as if it were from a branch of the partnership. If either the partnership or the LLC has income from Wisconsin sources, the partnership must file a Wisconsin partnership return.

The partnership combines the LLC's items of income, loss, and deduction with its items of income, loss, and deduction. If either the partnership or the LLC is engaged in business in and outside Wisconsin, the partnership combines the LLC's apportionment data with its apportionment data. [sec. [71.20\(1\)](#), Wis. Stats.]

## 7. ADDITIONAL INFORMATION OR FORMS

If, after reading this publication, you have any questions about Wisconsin's treatment of LLCs, or need copies of tax forms, you may call or visit any Wisconsin Department of Revenue office:

**Email . . .** [DORFranchise@wisconsin.gov](mailto:DORFranchise@wisconsin.gov)

**FAX . . .** (608) 267-0834

**Call . . .** (608) 266-2772

(Telephone help is also available using TTY equipment. Call the Wisconsin Telecommunications Relay System at 711 or, if no answer, (800) 947-3529. These numbers are to be used only when calling with TTY equipment.)

**Write . . .** Mail Stop 3-107, Audit Bureau  
Wisconsin Department of Revenue  
PO Box 8906  
Madison, WI 53708-8906

If you need forms, you may:

- Download forms from the department's Internet website at [revenue.wi.gov](http://revenue.wi.gov)
- Call (608) 266-1961
- Call or visit any [Wisconsin Department of Revenue office](#)

### Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of April 25, 2024: chs. 71, 77, 78, 139, and 183, [Wis. Stats.](#), and 26 U.S. Code § [7701](#).

Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this publication. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, pursuant to sec. [73.16\(2\)\(a\)](#), Wis. Stats.