

# Wisconsin Tax Bulletin



February 2021 Number 212

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## New Tax Laws

### A. Individual and Fiduciary Income Taxes

#### 1. Internal Revenue Code References Updated for 2021 for Individuals, Estates, and Trusts

([2021 Wis. Act 1](#), repeal sec. 71.01(6)(c), (d), (e), (f), (g), (h), and (i), amend sec. 71.01(6)(L)1., and create sec. 71.01(6)(m), effective for taxable years beginning after December 31, 2020)

For taxable years beginning after December 31, 2020, for individuals and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2020, with certain exceptions.

- a. Amendments to the federal Internal Revenue Code enacted after December 31, 2020, **do not apply** for Wisconsin.
- b. The following Public Laws (P.L.) enacted after December 31, 2017, and before January 1, 2021, **do not apply** for Wisconsin:
  - The following sections of P.L. 115-123:
    - Section 40304 relating to the 3-year recovery period for race horses
    - Section 40305 relating to the 7-year recovery period for motorsports entertainment complexes
    - Section 40306 relating to accelerated depreciation for business property on an Indian reservation
    - Section 40412 relating to the special allowance for second generation biofuel plant property
  - Section 101(c) of Division T of P.L. 115-141 relating to a qualified payment received by a patron from a specified agricultural or horticultural cooperative for qualified production activities income

- The following sections of Division U of P.L. 115-141:
  - Section 101(d) relating to bonus depreciation
  - Section 101(e) relating to alternative minimum tax adjustments for qualified Indian reservation property
  - Section 102 relating to qualified production activities income
  - Sections 201, 202, 203, 204, 205, 206, and 207 relating to partnership audit rules
  - Section 301 relating to regulatory requirements for partnership returns
  - Section 302 relating to the definition of qualified small power production facilities
  - Section 401(a)(47) relating to exempt facility bonds
  - Section 401(a)(195) relating to tax-exempt enterprise zone facility bonds
  - Section 401(b)(13) relating to the special allowance for qualified disaster assistance property
  - Section 401(b)(17) relating to reducing the dividends received deduction where portfolio stock is debt financed
  - Section 401(b)(22) relating to exemption from tax on corporations, certain trusts, etc.
  - Section 401(b)(30) relating to requirements of domestic international sales corporations
  - Section 401(d)(1)(D)(v) relating to dividends received by corporations
  - Section 401(d)(1)(D)(vi) relating to rules applied to deductions for dividends received
  - Section 401(d)(1)(D)(xiii) relating to the foreign tax credit
  - Section 401(d)(1)(D)(xvii)(II) relating to dividends received by corporations
- The following sections of Division Q of P.L. 116-94:
  - Section 104 relating to the qualified tuition and related expense deduction
  - Section 114 relating to the 3-year recovery period for race horses
  - Section 115 relating to the 7-year recovery period for motorsports entertainment complexes
  - Section 116 relating to accelerated depreciation for business property on an Indian reservation
  - Section 130 relating to the special allowance for second generation biofuel plant property
  - Section 145 relating to controlled foreign corporations
- The following sections of P.L. 116-136
  - Section 2304 relating to the excess business loss limitation
  - Section 2306 relating to business interest expenses
- The following sections of Division EE of P.L. 116-260:
  - Section 111 relating to controlled foreign corporations
  - Section 114 relating to discharge of qualified principal residence indebtedness
  - Section 115 relating to the 7-year recovery period for motorsports entertainment complexes

- Section 116 relating to expensing rules for certain productions
- Section 118(a) and (d) relating to empowerment zone designations and terminations
- Section 133 relating to mortgage insurance premiums treated as qualified residence interest
- Section 137 relating to the 3-year recovery period for race horses
- Section 138 relating to accelerated depreciation for business property on an Indian reservation
- Section 210 relating to the 50% limitation on meal expenses

**Note:** Additional federal public laws enacted before January 1, 2018, do not apply for Wisconsin purposes. See sec. 71.01(6)(m)2., Wis. Stats.

- c. The provisions of federal public laws that directly or indirectly affect the Internal Revenue Code apply for Wisconsin purposes at the same time as for federal purposes, except that the following changes first apply for taxable years beginning after December 31, 2020:
- The following sections of P.L. 115-123:
    - Section 20101 relating to the definition of “California wildfire disaster zone”
    - Section 20102 relating to qualified wildfire retirement distributions
    - Section 20104(a) relating to qualified wildfire charitable contributions
    - Section 20104(b) relating to qualified wildfire personal casualty losses
    - Section 20104(c) relating to the earned income credit for purposes of qualified wildfires
    - Section 20201 relating to major disasters as a result of the Disaster Tax Relief and Airport and Airway Extension Act of 2017
    - Section 40201 relating to discharge of qualified principal residence indebtedness
    - Section 40202 relating to mortgage insurance premiums treated as qualified residence interest
    - Section 40203 relating to the qualified tuition and related expense deduction
    - Section 40308 relating to special expensing rules for certain productions
    - Section 40309 relating to income attributable to domestic production activities in Puerto Rico
    - Section 40311 relating to empowerment zone tax incentives
    - Section 40414 relating to the special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy for qualified electric utilities
    - Section 41101 relating to references to amendments or repeals to sections or other provisions for purposes of the Internal Revenue Code of 1986
    - Section 41107 relating to the deduction for attorney fees or court costs
    - Section 41114 relating to retirement plan distributions as a result of a hardship of the employee
    - Section 41115 relating to Puerto Rico low-income community qualified opportunity zones

- Section 41116 relating to individuals serving in a combat zone for purposes of having a tax home in a foreign country
- Section 101(a) and (h) of Division U of P.L. 115-141 relating to the earned income credit phaseout married couples filing a joint return and special effective date rules
- Section 101(b) of Division U of P.L. 115-141 relating to the transit/vanpooling base-year rule
- Section 1203 of P.L. 116-25 relating to a limitation for requests for equitable relief from joint liability
- Section 1122 of P.L. 116-92 relating to acts considered unlawful for purposes of the definition of unlawful discrimination
- Section 301 of Division O of P.L. 116-94 relating to the exclusion for qualified state and local benefits and qualified reimbursement payments for members of qualified volunteer emergency response organizations
- The following sections of Division Q of P.L. 116-94:
  - Section 101 relating to discharge of qualified principal residence indebtedness
  - Section 102 relating to mortgage insurance premiums treated as qualified residence interest
  - Section 103 relating to the reduction in the medical expense deduction floor for itemized deductions
  - Section 117 relating to special expensing rules for certain productions
  - Section 118 relating to empowerment zone tax incentives
  - Section 132 relating to the special rule for sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy for qualified electric utilities
  - Section 201 relating to definitions for purposes of qualified disasters
  - Section 202(a), (b), and (c) relating to withdrawals from qualified retirement plans for purposes of qualified disasters
  - Section 204(a) relating to qualified charitable contributions for purposes of qualified disasters
  - Section 204(b) relating to personal casualty losses due to qualified disasters
  - Section 204(c) relating to the earned income credit for purposes of qualified disasters
  - Section 301 relating to the definition of income used to determine the tax-exempt status of a mutual or cooperative telephone or electric company
  - Section 302 relating to unrelated business taxable income
- Section 2 of P.L. 116-98 relating to cash contributions for the relief of the families of the dead or wounded victims of the mass shooting in Virginia Beach, VA
- The following sections of Division EE of P.L. 116-260:
  - Section 301 relating to definitions for purposes of qualified disasters
  - Section 302 relating to withdrawals from qualified retirement plans for purposes of qualified disasters

- Section 304(a) relating to qualified charitable contributions for purposes of qualified disasters
- Section 304(b) relating to personal casualty losses due to qualified disasters

### 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes

([2021 Wis. Act 1](#), amend sec. 71.01(6)(k)3., (L)1. and 3. and create sec. 71.01(6)(j)3.m. and n. and (7g), effective for taxable years beginning before January 1, 2021)

Certain changes to the Internal Revenue Code made by the following federal laws enacted in 2018, 2019, and 2020 apply for Wisconsin purposes at the same time as for federal purposes:

- The following sections of P.L. 115-123:
  - Section 40307 relating to the election to expense mine safety equipment
  - Section 40413 relating to the energy efficient commercial building deduction
  - Section 41113 relating to contributions to a qualified retirement plan after receiving hardship distributions from a qualified retirement plan
- The following sections of Division U of P.L. 115-141:
  - Section 101(m) relating to ownership for purposes of control of a partnership
  - Section 101(n) relating to real estate investment trust income tests
  - Section 101(o) relating to the treatment of multiple distributions during a taxable year from an ABL account
  - Section 101(p) relating to disposition of investment in United States real property
  - Section 101(q) relating to qualified foreign pension funds
  - Section 104(a) relating to the definition of inconsistent estate basis for purposes of the penalty
  - Section 109 relating to the definition of a shareholder for utilities in Alaska and Hawaii for purposes of the exclusion from the 85 percent test
  - Section 401(a)(54) relating to the energy efficient commercial buildings deduction
  - Section 401(b)(15)(A), (B), and (C) relating to the election to expense certain depreciable business assets
  - Section 401(b)(19) relating to minimum vesting standards for qualified retirement plans
  - Section 401(b)(20) relating to limitations on benefits and contributions under qualified retirement plans
  - Section 401(b)(23) relating to Coverdell education savings accounts
  - Section 401(b)(26) relating to limitations on percentage depletion in the case of oil and gas wells
  - Section 401(b)(27) relating to charitable remainder trusts
  - Section 401(b)(28) relating to the definition of real estate investment trusts

- The following sections of Division M of P.L. 116-94:
  - Section 102 relating to providing additional funding for the 1974 UWMA Pension Plan and treating the plan as if it were in critical status
  - Section 104 relating to the age (59 ½) a distribution from a qualified pension or deferred compensation plan is allowed
- The following sections of Division O of P.L. 116-94:
  - Section 102 relating to increasing the cap for the automatic enrollment safe harbor after the first plan year for certain retirement plans
  - Section 103 relating to safe harbor notice requirements, the requirement to allow employees to make or change an election, and plan amendments for certain retirement plans
  - Section 106 relating to treating stipends and non-tuition fellowship payments as compensation and as basis for IRA contributions
  - Section 107 relating to repealing the prohibition on contributions to a traditional IRA by an individual who has attained age 70 ½
  - Section 108 relating to the distribution of plan loans through credit cards or other similar arrangements for certain retirement plans
  - Section 109 relating to direct trustee-to-trustee transfers or other employer-sponsored retirement plans or IRA of lifetime income investments or distributions of a lifetime income investment
  - Section 110 relating to the termination of an annuity plan (section 403(b)) custodial account
  - Section 111 relating to annuity plans maintained by church-controlled organizations
  - Section 113 relating to qualified retirement plan withdrawals for qualified births or adoptions
  - Section 114 relating to increasing the minimum distribution age from 70 ½ to 72 for qualified retirement plans
  - Section 115 relating to the interest rate calculation and amortization period for qualified pension plans for community newspaper plan sponsors
  - Section 116 relating to the treatment of tax-exempt difficulty of care payments for home healthcare workers for purposes of contributions to defined contribution plans and IRAs
  - Section 201 relating to the adoption date by business for qualified retirement plans
  - Section 204 relating to the selection of lifetime income providers for fiduciaries for purposes of guaranteed retirement income contracts
  - Section 205 relating to nondiscrimination rules with respect to closed qualified retirement plans
  - Section 206 relating to calculating Pension Benefit Guaranty Corporation and cooperative and small-employer charity premiums
  - Section 302 relating to the definition of qualified higher education expenses for qualified tuition programs
  - Section 401 relating to the required minimum distribution rules with respect to defined contribution plans and IRA balances upon death of the account owner
  - Section 601 relating to providing for a remedial plan amendment period until the 2022 or 2024 plan year for qualified retirement plans

- Section 1302 of Division P of P.L. 116-94 relating to virtual pharmacy benefit management programs for purposes of group health plans
- The following sections of Division Q of P.L. 116-94:
  - Section 131 relating to the energy efficient commercial building deduction
  - Section 202(d) relating to qualified disaster provisions
  - Section 205 relating to extensions due to a qualified disaster
- The following sections of Division EE of P.L. 116-260:
  - Section 202 relating to the effective date for the ADS recovery period for residential rental property
  - Section 208 relating to the age (59 ½) for which a distribution may be made for a qualified trust plan
  - Section 209 relating to the number of active participants covered by a qualified trust plan for purposes of a partial termination
  - Section 211 relating to the earned income credit
  - Section 214 relating to health or dependent care flexible spending arrangements
- The following sections of Division N of P.L. 116-260:
  - Sections 276(a) and (b) and 278(a) relating to the tax treatment of income and expenses relating to the original and subsequent paycheck protection programs
  - Section 277 relating to the tax treatment of emergency financial aid grants for students
  - Section 278(b) relating to the tax treatment of income and expenses relating to grants under sec. 1110 of the CARES Act, Emergency Economic Injury Disaster Loan (EIDL) grants, and targeted EIDL advances from the federal government
  - Section 278(c) relating to the tax treatment of income and expenses relating to federal subsidies received under section 1112 of the CARES Act
  - Section 278(d) relating to the tax treatment of income and expenses relating to federal grants received by shuttered venue operators
  - Section 280 relating to distribution rules for coronavirus-related distributions from a money purchase pension plan
  - Section 285 relating to the election to terminate the transfer period for purposes of a qualified future transfer from a pension plan to a health benefit or life insurance account

### 3. Clarification That Certain Federal Laws Enacted Do Not Apply Simultaneously for Wisconsin Purposes

([2021 Wis. Act 1](#), amend sec. 71.01(6)(L)4., effective for taxable years beginning after December 31, 2017)

The provisions of federal public laws that directly or indirectly affect the Internal Revenue Code apply for Wisconsin purposes at the same time as for federal purposes, except that the following changes first apply for taxable years beginning after December 31, 2017:

- Public Law 115-63 relating to hurricanes Harvey, Irma, and Maria disaster area provisions
- The following sections of P.L. 115-97:



- Section 11026 relating to treating the Sinai Peninsula of Egypt as if it were a combat zone
- Section 11027 relating to the reduction in the medical expense deduction floor for itemized deductions
- Section 11028 relating to 2016 qualified disasters
- Section 13207 relating to the deduction of replanting costs for citrus plants lost or damaged due to casualty
- Section 13306 relating to fines and penalties paid or incurred to or at the direction of a governmental or specific nongovernmental regulatory entity for the violation or potential violation of any law
- Section 13307 relating to the deduction for settlements or payments related to sexual harassment or sexual abuse
- Section 13308 relating to the deduction for lobbying expenses
- Section 13311 relating to the deduction for members of Congress for living expenses while away from their home states or Congressional districts
- Section 13312 relating to contributions to capital of a corporation
- Section 13501 relating to gain or loss on the sale of a partnership interest
- Section 13705 relating to the substantiation exception in the case of contributions reported by the donor
- Section 13821 relating to assigning certain payments to settlement trusts without recognizing gross income from the payments
- Section 13823 relating to investments in a qualified opportunity fund

## 4. Retirement Income Subtraction

[\(2021 Wis. Act 1](#), repeal sec. 71.05(1)(ae), amend secs. 71.05(1)(am) and (an) and 71.83(1)(a)6., and create sec. 71.05(6)(b)54., effective for taxable years beginning after December 31, 2020)

Under prior law, a retirement income exclusion of up to \$5,000 may be allowed if a taxpayer (or the taxpayer's spouse) is 65 years of age or older as of the close of the taxpayer's taxable year and their federal adjusted gross income is less than \$15,000 (\$30,000 if married filing a joint return or the sum of both spouses' income is \$30,000 if married filing a separate return). The exclusion must be claimed which reduces the amount of Wisconsin taxable income allowed to offset the medical care insurance subtraction.

Under this Act, the mandatory exclusion is repealed and replaced with an optional retirement income subtraction. If the taxpayer does not take the retirement income subtraction, their Wisconsin taxable income is greater, which may allow them to claim a greater medical care insurance subtraction.

## 5. Disability Income Exclusion

[\(2021 Wis. Act 1](#), renumber sec. 71.05(6)(b)4. to 71.05(6)(b)4.(intro.) and amend as renumbered, create sec. 71.05(6)(b)4.a., b., and c., effective February 20, 2021)

A taxpayer may claim the disability income exclusion if they are retired on permanent and total disability, have included the disability income in federal adjusted gross income, and meet all of the following tests:

- You did not reach mandatory retirement age before January 1, 2020
- You were under age 65 on December 31, 2020
- You were permanently and totally disabled on one of the following dates:
  - The date you retired
  - January 1, 1976, or January 1, 1977, if you retired before January 1, 1977, on disability or under circumstances which entitled you to retire on disability
- If you were married at the end of 2020, you must file a joint return
- You did not in any year prior to 1984 choose to treat your disability income as a pension instead of taking the exclusion
- Your federal adjusted gross income is less than \$20,200 (\$25,400 if married and both spouses are eligible)

Under prior law, the Wisconsin statutes referenced a provision of the Internal Revenue Code as it existed prior to its repeal in 1983 to determine eligibility for claiming the disability income exclusion. This Act replaces the reference to the 1983 Internal Revenue Code with the actual language from the code as it existed in 1983.

## 6. Medical Care Insurance Subtraction for Self-Employed Individuals

([2021 Wis. Act 1](#), repeal sec. 71.05(6)(b)17., 18., 20., 36., 37., 39., 40., and 41., amend secs. 71.05(6)(b)19.c. and d. and 71.07(5)(a)15., and create sec. 71.05(6)(b)19.cm. and dm., effective for taxable years beginning after December 31, 2020)

Under prior law, a self-employed individual's medical care insurance subtraction for Wisconsin was limited to their net earnings from self-employment. Under this Act, a self-employed individual's subtraction for medical care insurance is no longer limited to their net earnings from self-employment but is limited to their Wisconsin income before considering the subtraction for medical care insurance.

## 7. Homestead Credit

([2021 Wis. Act 1](#), amend sec. 71.55(10) and create sec. 71.52(1g), effective for claims filed for taxable years beginning after December 31, 2020)

### **Earned income**

[2017 Wis. Act 59](#) revised the eligibility for the homestead credit to include that a claimant or the claimant's spouse, if married, must be age 62 or over, the claimant must be disabled, or the claimant must have earned income for the year to which the claim relates. A definition of earned income was not provided in Act 59. This Act defines earned income for purposes of claiming the homestead credit, as wages, salaries, tips, other employee compensation, and net earnings from self-employment

### **Disqualified loss exception for farmers**

[2017 Wis. Act 59](#) required individuals to add disqualified losses to their household income when claiming the homestead credit, but provided an exception for farmers whose primary income was from farming and the farming generated less than \$250,000 in gross receipts from the operation of the farm premises in the year to which the claim relates. This Act clarifies that a claimant's primary

income is from farming if the claimant's gross income from farming is greater than 50 percent of the claimant's total gross income from all sources for the year to which the claim relates. It also defines gross income as the total gross receipts without reduction for cost of goods sold, expenses, or any other amounts.

### 8. Coronavirus Relief Fund and Wisconsin Economic Development Corporation (WEDC) Grant Income Exclusion

([2021 Wis. Act 1](#), create sec. 71.05(1)(h) and (hn), effective for taxable years beginning after December 31, 2018, for coronavirus relief fund income and taxable years beginning after December 31, 2019, and before January 1, 2022, for WEDC grant income)

Income received from the State of Wisconsin with money received from the coronavirus relief fund under 42 USC 801 is exempt from Wisconsin income tax if the income is used for any of the following purposes:

- Broadband expansion
- Privately owned movie theater grants
- A nonprofit grant program
- A tourism grants program
- A cultural organization grant program
- Music and performance venue grants
- Lodging industry grants
- Low-income home energy assistance
- A rental assistance program
- Supplemental child care grants
- A food insecurity initiative
- A farm support program
- Grants to small businesses
- Ethanol industry assistance
- Wisconsin Eye

Grants received from WEDC during and related to the COVID-19 pandemic under the ethnic minority emergency grant program are exempt from Wisconsin income tax.

Expenses paid directly or indirectly with these funds that are otherwise deductible for Wisconsin income tax purposes remain deductible even though receipt of the funds are not taxable for Wisconsin income tax purposes.

### 9. Reporting Internal Revenue Service Adjustments to Wisconsin

([2021 Wis. Act 1](#), renumber sec. 71.76 to sec. 71.76(1) and amend as renumbered; and create sec. 71.76(2), effective February 20, 2021)

The Act increases the amount of time to report Internal Revenue Service (IRS) adjustments to the department from 90 days to 180 days.

The Act also clarifies that if a partnership is audited by the IRS using the new centralized partnership audit rules under the Bipartisan Budget Act of 2015, both the partnership and its partners must file amended Wisconsin income/franchise tax returns for the "reviewed year(s)" as defined in sec. 6225 of the Internal Revenue Code.

## B. Corporation Franchise or Income Taxes

### 1. Internal Revenue Code References Updated for 2021 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies

([2021 Wis. Act 1](#), repeal secs. 71.22(4)(c), (d), (e), (f), (g), (h), and (i) and (4m)(c), (d), (e), (f), (g), (h), and (i), 71.26(2)(b)3., 4., 5., 6., 7., 8., and 9., 71.34(1g)(c), (d), (e), (f), (g), (h), and (i), and 71.42(2)(c), (d), (e), (f), (g), (h), and (i), amend secs. 71.22(4)(L)1. and (4m)(L)1., 71.26(2)(b)12.a., 71.34(1g)(L)1., and 71.42(2)(L)1., and create secs. 71.22(4)(m) and (4m)(m), 71.26(2)(b)13., 71.34(1g)(m), and 71.42(2)(m), effective for taxable years beginning after December 31, 2020)

Certain provisions of federal laws that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes for taxable years that begin after December 31, 2020. See Item A.1.

### 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes

([2021 Wis. Act 1](#), amend secs. 71.22(4)(k)3. and (L)3. and (4m)(k)3. and (L)3., 71.26(2)(b)10.d., 11.d., and 12.d., 71.34(1g)(k)3., (L)3., and 71.42(2)(k)3., (L)3. and create secs. 71.22(4)(j)3.m. and n., (4m)(j)3.m. and n., and (5g), 71.26(2)(b)14., 71.34(1g)(j)3.m. and n. and (1u), and 71.42(2)(j)3. m. and n. and (2p), effective for taxable years beginning before January 1, 2021)

See Item A.2.

### 3. Clarification That Certain Federal Laws Enacted Do Not Apply Simultaneously for Wisconsin Purposes

([2021 Wis. Act 1](#), amend secs. 71.22(4)(L)4. and (4m)(L)4., 71.26(2)(b)12.e., 71.34(1g)(L)4., and 71.42(2)(L)5., effective for taxable years beginning after December 31, 2017)

See Item A.3.

### 4. Modifications to Tax Treatment of Tax-Option (S) Corporations that Elect to Pay Tax at the Entity Level

([2021 Wis. Act 2](#), renumber sec. 71.365(4m)(d)1. to sec. 71.365(4m)(d)1.(intro.) and amend as renumbered; amend sec. 71.29(7)(b) and (10)(a), and create secs. 71.29(10)(d) and 71.365(4m)(d)1.a. and b., effective for taxable years beginning after December 31, 2019)

The following apply to tax-option (S) corporations that elect to pay tax at the entity level under sec. [71.365\(4m\)\(a\)](#), Wis. Stats.:

- Capital Gain Exclusion
  - For taxable years beginning on or after January 1, 2018, and before January 1, 2020, an electing tax-option (S) corporation may not claim the Wisconsin 30-percent or 60-percent long-term capital gain exclusion under sec. [71.05\(6\)\(b\)9.](#) or [9m.](#), Wis. Stats.
  - For taxable years beginning after December 31, 2019, an electing tax-option (S) corporation may claim the Wisconsin 30-percent or 60-percent long-term capital gain exclusion under sec. [71.05\(6\)\(b\)9.](#) or [9m.](#), Wis. Stats.
- Capital Loss Deduction Limitations
  - For taxable years beginning on or after January 1, 2018, and before January 1, 2020, an electing tax-option (S) corporation is subject to the \$3,000 federal capital loss limitation.
  - For taxable years beginning after December 31, 2019, an electing tax-option (S) corporation is subject to the \$500 Wisconsin capital loss limitation.
- Underpayment Interest
  - For taxable years beginning on or after January 1, 2018, and before January 1, 2019, underpayment interest does not apply to an electing tax-option (S) corporation. See sec. [71.365\(4m\)\(d\)4.](#), Wis. Stats.
  - For taxable years beginning on or after January 1, 2019, and before January 1, 2020, an electing tax-option (S) corporation is exempt from underpayment interest if:
    - The electing tax-option (S) corporation had zero income or franchise tax liability in the prior year, and
    - The electing tax-option (S) corporation's Wisconsin net income is less than \$250,000 in the current taxable year.

**Note:** If the tax-option (S) corporation's Wisconsin net income is \$250,000 or greater for taxable year 2019, the tax-option (S) corporation must make estimated tax payments pursuant to [sec. 71.29\(10\)](#), Wis. Stats.

- For taxable years beginning on or after January 1, 2020, an electing tax-option (S) corporation is exempt from underpayment interest if it had zero income or franchise tax liability in the prior year, regardless of the amount of its Wisconsin net income in the current taxable year.

For more information, see Wisconsin Form U, Schedule 5S-ET, and related [instructions](#).

## 5. Coronavirus Relief Fund and WEDC Grant Income Exclusion

([2021 Wis. Act 1](#), renumber sec. 71.26(3)(ag) to 71.26(3)(ag)(intro.) and amend as renumbered and create sec. 71.26(3)(ag)2. and 3., 71.34(1k)(af) and (ah), and 71.45(1)(d) and (dm) and (2)(a)22. and 23., effective for taxable years beginning after December 31, 2018, for coronavirus relief fund income and taxable years beginning after December 31, 2019, and before January 1, 2022, for WEDC grant income)

See Item A.8.

## 6. Supplement to Federal Historic Rehabilitation Credit

([2021 Wis. Act 1](#), amend secs. 71.07(9m)(h), 71.28(6)(h), 71.47(6)(h), Wis. Stats., effective February 19, 2021)

Under Wisconsin law, a claimant of supplement to federal historic rehabilitation credit must claim the credit ratably over a five-year period. This Act allows a claimant, for purposes of selling or transferring the credit, to file a single claim for more than one taxable year on a form prescribed by the department ([Schedule HR-5](#)) to compute all years of the credit. The transferee may first use the credit to offset tax in the taxable year of the transferor in which the transfer occurs and may use the credit only to offset tax in taxable years otherwise allowed to be claimed and carried forward by the original claimant.

## C. Sales and Use Taxes

### 1. Expand List of Qualifying Exempt Entities for Building Materials Exemption

([2021 Wis. Act 1](#), amend sec. 77.54(9m), first applies to contracts entered into on February 20, 2021)

The building materials exemption for contracts with certain exempt entities is expanded to include the University of Wisconsin Hospitals and Clinics Authority.

[Section 77.54\(9m\)](#), Wis. Stats., provides a sales and use tax exemption for the sale of building materials sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to qualifying exempt entities, if the building materials become part of a facility in Wisconsin owned by the exempt entity. Refer to Part 3.H. in [Publication 207, Contractors](#), for more information about this exemption.

### 2. Property Transferred with Certain Services

([2021 Wis. Act 1](#), amend sec. 77.52(2m)(b) and 77.54(6)(am)2., effective February 20, 2021)

Effective February 20, 2021, persons providing the following services can purchase without tax for resale, items that are transferred to the customer in conjunction with the service, regardless of whether the sale of the service is taxable or exempt:

- Photographic
- Landscaping
- Printing, fabricating, and processing
- Services to tangible personal property

Previously, persons selling these taxable services could purchase without tax for resale, items that were transferred to the customer in conjunction with the taxable service. However, if the sale of the service to the customer was exempt from tax, the person providing the service was required to pay sales or use tax on their purchases of the items that were transferred to the customer.

### 3. Exemption for Nonprofit Organizations

([2021 Wis. Act 1](#), amend sec. 77.54(9a)(f), effective February 20, 2021)

2021 Wis. Act 1 provides that organizations with a 501(c)(3) determination letter from the Internal Revenue Service (IRS) may make purchases exempt from Wisconsin sales and use tax. These organizations are described under section 501(c)(3) of the Internal Revenue Code (IRC) and are exempt from federal income tax. Prior Wisconsin law was similar to the Internal Revenue Code but did not include all types of organizations described under 501(c)(3).

The Act also provides that churches and religious organizations meeting the requirements of section 501(c)(3) of the IRC are allowed to make purchases exempt from Wisconsin sales and use tax, even if they do not have an IRS 501(c)(3) determination letter.

As a result of this law change:

- The department is reviewing previously issued Certificate of Exempt Status (CES) numbers. Organizations may receive a letter requesting additional information to determine whether they qualify.
- Qualifying organizations will be issued a new 15-digit CES number beginning with 008. Six-digit CES numbers will be discontinued.

**Note:** Retailers may continue to accept a 6-digit CES number from nonprofit organizations claiming exemption. The department will notify retailers when the review is complete and identify a date when nonprofit organizations may no longer provide a 6-digit CES number to make purchases exempt from tax.

## 4. Remote Sellers: Economic Nexus

([2021 Wis. Act 1](#), repeal secs. 77.51 (13gm)(a)1. and 2., 77.51(13gm)(d)1., and 77.51(13gm) (d)3. and 4., renumber and amend sec 77.51(13gm)(a)(intro.), and amend secs. 77.51(13gm)(b), 77.51(13gm)(c), 77.51(13gm)(d)2., 77.51(13gm)(d)5., effective February 20, 2021)

Under prior law, an out-of-state retailer whose only activities in Wisconsin were making remote sales into Wisconsin (remote seller) had to register and collect Wisconsin sales and use taxes if it had 200 or more separate sales transactions into Wisconsin or exceeded \$100,000 in gross sales into Wisconsin in the remote seller's previous or current taxable year for federal income tax purposes.

The Act eliminates the 200-transaction threshold for determining whether a remote seller has economic nexus in Wisconsin and is required to register and collect Wisconsin sales and use taxes. The Act also requires a remote seller to use a calendar year to determine their activity for the previous or current year. As a result of the Act, a remote seller is only required to register and collect tax if its gross sales into Wisconsin exceed \$100,000 in the previous or current calendar year.

## General Updates and Reminders

### Tax Practitioner Questions and Answers

Every year, the Wisconsin Department of Revenue presents tax updates for tax practitioners across the state. [Tax practitioner questions and answers](#) from these fall presentations are posted on the department's website.

### Benefits to Filing Your Wisconsin Tax Form Electronically

Electronic filing offers many benefits not found with paper filing:

- Faster refunds using direct deposit
- Accuracy; software does calculations for you

- Acknowledgement so you know your tax returns have been filed
- Reduces costs for the department, saving you tax dollars
- Secure transfer of your 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 the due date of your return) without having to mail a paper check

There are several ways to electronically file your returns:

- [Wisconsin e-file](#)
- [My Tax Account](#): May be used for all forms listed in the next article, except for Form 3, Form 5S, and Form 6
- Approved Third-Party Software:
  - [Corporation and Partnership Tax](#)
  - [Fiduciary Income Tax](#)
  - [Individual Income Tax](#)
  - [Sales Tax](#)
  - [Withholding Tax](#)
- XML File Transmission:
  - [Sales Tax XML File Transmission](#)
  - [Withholding Tax XML File Transmission](#)
- TeleFile:
  - [Sales Tax TeleFile](#)
  - [Withholding Tax TeleFile](#)
- [ACH Credit](#) (WT-6 only): Available through your financial institution
- [Credit Card](#) (WT-6 only): ACI Payments, Inc.; 1-800-272-9829; use code 5800

## **Certain Wisconsin Tax Forms Must Be Filed Electronically**

The following returns must be filed electronically, unless a waiver has been granted:

- Form 3, *Wisconsin Partnership Return*
- Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*
- Form 6, *Wisconsin Combined Corporation Franchise or Income Tax Return*
- Form 1CNS, *Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders*
- Form 1CNP, *Composite Wisconsin Individual Income Tax Return for Nonresident Partners*
- Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*
- Form WT-6, *Withholding Tax Deposit Report*
- Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld*



- Form ST-12, *Wisconsin Sales and Use Tax Return*

See the links in the previous article for ways to electronically file your returns.

**Note:** Taxpayers requesting an electronic filing waiver must use [Form EFT-102](#), *Electronic Filing or Electronic Payment Waiver Request*. Form EFT-102 should be emailed to [DORWaiverRequest@wisconsin.gov](mailto:DORWaiverRequest@wisconsin.gov), faxed to (608) 267-1030, or addressed to Mandate Waiver Request, Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8949, Madison WI 53708-8949.

## Sales Tax Returns and Withholding Reports Required for Each Reporting Period

Every person that holds a seller's permit, use tax certificate, or consumer use tax certificate must file a return for each reporting period, even if no tax is due for that period.

Every person with an active withholding account must file an electronic deposit report even if no tax is withheld during the period covered.

If you no longer have a filing requirement (e.g., no taxable sales or no employees), you should inactivate your sales or withholding tax account. You may do this through My Tax Account or contact a customer service representative at (608) 266-2776. If your business has closed, see the department's [Closing a Business](#) page for steps to follow.

## Technology Enhancements to Help Track Your Audit – Virtually!

We know that more and more people are working and communicating virtually. The department has two ways in which taxpayers, or their representatives, can virtually follow the progress of an audit and securely communicate with the department.

My Case Manager is our virtual platform linked with a taxpayer's My Tax Account that allows a taxpayer, or their approved representative, to interact with the department and follow the progress of their audit. This tool is not new, but we have enhanced it to benefit even more users:

- Added an alternative sign in option for non-registered My Tax Account users. This allows taxpayers, such as individuals who may not normally have a My Tax Account, the ability to see where their audit is, what documentation we may be waiting on, and helpful resources for them to review.

**Note:** Non-registered taxpayers who wish to use My Case Manager will need to get specific information from their auditor to help them log in.

- Created an option for registered users to securely message their auditor through the system, allowing transmission of attachments that may normally be too large to email.
- Added more publications and fact sheets to our resources library.
- Updated the requests tab to indicate what information or documentation requests have been made, the status of the request, and the due dates for the course of the audit.

For more information, see [My Case Manager common questions](#) on the department's website.

In December, the department updated its file sharing site which allows both department employees and taxpayers to securely share files. Important updates to note:

- Users of the department's file share at that time should have received an email instructing them to create a new user account and password.

- Existing users will be unable to access any prior folders until they create a new account.
- Issues have been found with some internet browsers; please use Internet Explorer to access the site.

For more information regarding all electronic correspondence options, please see [Fact Sheet 5100, Electronically Transmitting Confidential Taxpayer Information](#).

As always, the security of every taxpayer's information is our top priority, but now more than ever your personal health is also on our minds. Our electronic correspondence options are secure ways to submit documentation as an alternative to mailing or exchanging records in person. Ask your auditor for the option that will work best for your audit – we're here to help.

## Income and Franchise Tax Updates and Reminders

### What's New This Tax Season?

Below are some of the changes that may impact your 2020 Wisconsin tax returns:

- **Individual income tax rates reduced:** The tax rates for the first and second tax bracket are reduced from 4% to 3.54% and 5.21% to 4.65%, respectively. Rate reductions are built into the tax tables in the [Form 1 and Form 1NPR instructions](#).
- **Schedules AD and SB:** [Schedule AD](#), *Form 1 – Additions to Income*, and [Schedule SB](#), *Form 1 – Subtractions from Income*, are new for tax year 2020. These schedules are filed with [Form 1](#), *Wisconsin Income Tax*, when claiming addition and subtraction modifications to Wisconsin income. Previously, these modifications were claimed on lines 2 through 4 and 6 through 11 of Form 1. The Form 1 has been modified to remove these lines.
- **Tuition expense subtraction:** The Wisconsin subtraction for tuition and fees is decreased to \$6,972 per student. The subtraction is phased-out for persons with federal adjusted gross income between \$56,620 and \$67,940 if single or head of household; \$90,600 and \$113,240 if married filing a joint return; and \$45,300 and \$56,620 if married filing a separate return.
- **College savings account contributions:** The Wisconsin subtraction for contributions to a college savings account is increased from \$3,280 to \$3,340 (\$1,670 if married filing separately or a divorced parent).
- **Internal Revenue Code provisions in the federal CARES Act adopted:** The federal CARES Act ([Public Law 116-136](#)) was enacted on March 27, 2020. Wisconsin adopted multiple provisions from this act in [2019 Wis. Act 185](#). See the article, *Internal Revenue Code Provisions Adopted*, on page 2 of [Wisconsin Tax Bulletin 209](#) for more information.
- **Internal Revenue Code provisions in the federal Consolidated Appropriations Act adopted:** The federal Consolidated Appropriations Act, 2021 ([Public Law 116-260](#)) was enacted on December 27, 2020. Wisconsin adopted multiple provisions from this Act in [2021 Wis. Act 1](#). The following describes certain sections of the federal law that were adopted. See the article beginning on page 2 for a list of provisions from P.L. 116-260 that were not adopted.
  - **Earned income tax credit:** Wisconsin adopted section 211 of division EE of Public Law 116-260, allowing taxpayers to elect to use their 2019 earned income to compute their 2020 federal and Wisconsin earned income tax credits.

- **Paycheck protection program loans:** Wisconsin adopted sections 276(a) and (b) and 278(a) of Division N of Public Law 116-260, regarding the tax treatment of income and expenses relating to the original and subsequent Paycheck Protection Programs (PPP). Taxpayers may exclude from income the forgiveness of debt on PPP loan proceeds and deduct expenses paid with PPP loan proceeds that are otherwise deductible.
- **Other Federal Grants, Loans, and Subsidies:** Wisconsin adopted section 278(b), (c), and (d) of Division N of Public Law 116-260, regarding the tax treatment of income and expenses relating to certain federal grants, loans, and subsidies. Taxpayers may exclude from income the following federal grants, forgivable loans, and subsidies, and deduct expenses paid with the funds if the expenses are otherwise deductible:
  - Section 278(b) - Emergency grants of economic injury disaster loans (EIDL) and targeted EIDL advances
  - Section 278(c) - Subsidy for certain loan payments
  - Section 278(d) - Grants for shuttered venue operators
- **Emergency financial aid grants for students:** Wisconsin adopted section 277 of Public Law 116-260 which provides an exclusion from income for emergency financial aid grants for students issued under sections 3504 and 18004 of the CARES Act and other grants issued in response to a qualifying emergency.
- **State Grant Programs During the COVID-19 Pandemic:** The following income is exempt from Wisconsin income and franchise tax:
  - Income received from the state of Wisconsin for certain programs with moneys received from the coronavirus relief fund authorized under 42 USC 801. See the list of programs in the article under New Tax Laws above titled "Coronavirus Relief Fund and Wisconsin Economic Development Corporation (WEDC) Grant Income Exclusion."
  - Income received in the form of a grant issued by the Wisconsin Economic Development Corporation during and related to the COVID-19 pandemic under the ethnic minority emergency grant program.

Income from these programs is included in federal income pursuant to sec. 61 of the Internal Revenue Code, unless an exception applies. For Wisconsin, this income should be excluded from federal adjusted gross income by making a subtraction modification on the appropriate tax form. Expenses paid for with these programs and deducted in the computation of federal adjusted gross income are not required to be added back on the Wisconsin return.

See article A.8. under New Tax Laws titled "Coronavirus Relief Fund and Wisconsin Economic Development Corporation (WEDC) Grant Income Exclusion" for more information.

- **Modifications to tax treatment of tax-option (S) corporations that elect to pay tax at the entity level:** For taxable years beginning after December 31, 2019, the following apply to tax-option (S) corporations making the entity-level tax election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats:
  - The Wisconsin 30-percent or 60-percent long-term capital gain exclusion under sec. [71.05\(6\)\(b\)9.](#) or [9m.](#), Wis. Stats.
  - A capital loss deduction limitation of \$500.
  - An exemption from underpayment interest if the tax-option (S) corporation had zero income or franchise tax liability in the prior year, regardless of the amount of its Wisconsin net income in the current taxable year.

For more information, see Wisconsin Form U, Schedule 5S-ET, and related [instructions](#).

## Unemployment Compensation

The amount of unemployment compensation you receive may be taxable for Wisconsin purposes if your adjusted gross income, not including any amount of social security benefits received or taxable refunds, credits, or offsets, exceeds a certain amount. The amount of unemployment compensation which is taxable for Wisconsin is equal to the lesser of the following:

- One-half of the amount of excess unemployment compensation over the base amount
- The amount of unemployment compensation received during the year

To figure the amount of unemployment compensation taxable for Wisconsin purposes, complete the worksheet in the [Schedule SB instructions](#) for Form 1 or the [Form 1NPR instructions](#). For additional information, see [unemployment common questions](#) on the department's website.

## Identity Theft Involving Unemployment Benefits on Form 1099-G

When identity thieves use stolen personal information to file fraudulent claims for unemployment compensation, the victims receive a Form 1099-G from the state agency but do not receive any payments. The Internal Revenue Service wrote a [news article](#) urging these victims to contact their appropriate state agency for a corrected form.

If you receive Form 1099-G from the Wisconsin Department of Workforce Development (DWD) for unemployment benefits that you did not receive, report the fraud immediately using the methods on DWD's website: [Report Unemployment Fraud](#). After reporting the fraud, follow the instructions under [If You're a Victim of Identity Theft](#).

If you have questions, use one of the [DWD contact options](#) listed on their website.

## Identity Verification Program

The department will continue its Identity Verification program for the upcoming individual income tax filing season. If we select your return, the department will send you a letter asking you to do one of the following:

- Take an identity quiz,
- Enter a department issued Personal Identification Number (PIN), or
- Submit identity documents.

Identity verification is the first step in processing your return. Some returns require additional steps which may take up to 12 weeks to complete.

For more information on identity verification and what the department is doing to protect taxpayers, visit the [identity verification web page](#) on the department's website.

## Wisconsin Homestead Credit Reminders for 2021

### A. Law changes

Laws enacted in [2017 Wis. Act 59](#) affect the eligibility requirements and computation of benefits for homestead credit.

Effective for claims filed in 2018 and thereafter, in order to qualify for homestead credit a claimant must meet one of the following conditions:

- The claimant or the claimant's spouse, if married, must be 62 years of age or older at the end of the claim year
- The claimant or the claimant's spouse, if married and residing in the same household, must have positive earned income during the claim year
- The claimant or the claimant's spouse, if married and residing in the same household, must be disabled in the year to which the claim relates

Effective for taxable years beginning after December 31, 2017, all disqualified losses must be added back to household income. "Disqualified losses" means the sum of the following amounts, exclusive of net gains from the sale or exchange of capital or business assets, and exclusive of net profits:

- Net loss from sole proprietorships
- Net capital loss
- Net loss from sales of business property, excluding loss from involuntary conversions
- Net loss from rental real estate, royalties, partnerships, tax-option (S) corporations, trusts, estates, and real estate mortgage conduits
- Net farm loss

**Exception:** The addition to household income does not apply to a claimant who is a farmer, whose primary income is from farming, and whose farming generates less than \$250,000 in gross receipts from the operation of the farm premises in the year to which the claim relates.

### B. Avoid errors on homestead credit claims

To avoid unnecessary adjustments or delays in receiving a homestead credit, the department offers the following suggestions:

- If the department contacts you by mail about your homestead credit claim, a complete reply is required before the department will allow any homestead credit. Homestead credit claims are denied after enough time passes that the department can reasonably conclude a reply will not be received. If you need an extension, request one using the contact information on the letter.
- Credit is only allowed for properly verified rent. When filing a homestead credit claim, submit verification of all the rent claimed, including a copy of each signed rent certificate.

**Caution:** If your landlord will not sign your rent certificate, submit copies of the cancelled checks, bank money orders, or bank statements confirming electronic fund transfers (EFT). Any alterations (whiteouts, redactions, erasures, initialed changes, etc.) void documents verifying the rent claimed.

- When a person rents a homestead with other adults, credit is allowed in proportion to their contributions to the shared living expenses.

**Caution:** If a complete shared living expense schedule is not provided, the claimant will be allowed credit for rent paid in proportion to the total adult occupants of the homestead (*Example:* if there are four adult occupants, the claimant would receive credit for one-fourth of the verified rent).

- All social security benefits received in the year must be included in household income. This includes:
  - Retirement and survivorship payments
  - Federal supplemental security income (SSI)

**Caution:** Federal SSI benefits are not listed on Form 1099-SSA

- State supplemental security income (SSI), supplemental security income – exceptional needs (SSIE), social security disability (SSD), and caretaker supplement (CTS) payments

**Caution:** State SSI benefits are not listed on statements received from the Social Security Administration (SSA)

Social Security payments received as representative payee for one's minor child are not included in household income.

- "Disqualified losses" must be added back to household income. Complete Schedule 4 of the Schedule H to determine the disqualified loss addback.
  - When determining the disqualified loss addback, only include activities or capital transactions which resulted in a loss. Do not include profitable activities or capital gains on Schedule 4.
  - Include all depreciation associated with activities that resulted in a loss on line 12 of Schedule 4 (Schedule H) if these amounts were reported on lines 11g through 11i of Schedule H and are included on lines 2 through 10 of Schedule 4 (Schedule H). Do not include depreciation associated with activities that generated a profit.
- All depreciation, depletion, amortization, and Section 179 expenses used in calculating Wisconsin income must be added back to household income. This addback includes the following amounts:
  - The portion of car and truck expenses considered depreciation when claiming the standard mileage rate
  - All depreciation, depletion, amortization, and Section 179 expenses passed to the claimant by a partnership, subchapter S corporation, LLC, or other pass-through business
  - The amount of depreciation found on the following forms and schedules:
    - Wisconsin Schedule I
    - Federal Schedules C, E, and F
    - Federal Form 4562

## Federal Form 4562 Federal Economic Impact Payments

Federal economic impact payments (stimulus payments) received as a result of Public Law 116-136 (Coronavirus Aid, Relief, and Economic Security Act) and Public Law 116-260 (Consolidated Appropriations Act, 2021) are not taxable for federal or Wisconsin income tax purposes. In addition, these amounts are not included in household income for homestead credit purposes.

## COVID-19 Relief Grants Reported on Forms 1099-G as Taxable Income

During calendar year 2020, various state of Wisconsin agencies and the Wisconsin Economic Development Corporation issued COVID-19 relief grants to qualifying recipients. Some of Wisconsin's COVID-19 relief grants are listed below:

- [Wisconsin Farm Support Program](#)
- [We're All In Small Business Grant Program – Phases 1, 2 & 3](#)
- [Cultural Organization Grant Program](#)
- [Out-of-School Support Grant Program](#)
- [Movie Theater Grant Program](#)
- [Lodging Property Grant Program](#)
- [Live Music and Entertainment Venue Grant Program](#)

Wisconsin agencies and the Wisconsin Economic Development Corporation report these grants to the Internal Revenue Service on Form 1099-G. If you received more than one grant, you may receive more than one Form 1099-G. For example, multiple grants from a Wisconsin agency can be listed on one Form 1099-G, or each grant can be sent on a separate Form 1099-G. Additionally, if you received grants from two separate agencies, you will likely receive a separate Form 1099-G from each agency. You must report the appropriate amounts from all Forms 1099-G that you receive on your federal income tax returns. Some of these grants may be excluded from Wisconsin taxable income. See article A.8. under New Tax Laws titled "Coronavirus Relief Fund and Wisconsin Economic Development Corporation (WEDC) Grant Income Exclusion" for more information.

The Wisconsin Department of Revenue will mail one Form 1099-G to each recipient with a list of all grants, regardless of the number of grants. **Note:** The Wisconsin Department of Revenue allows individuals (not businesses) to [view their Form 1099-G online](#). However, the online tool only shows individual income tax refunds; it does not show taxable grants.

For more information about government payments reported on Form 1099-G, see the [1099-G common questions](#) on the department's website.

## **Manufacturing and Agriculture Credit: Loans, Grants, and Expenses Related to Coronavirus Relief**

When computing qualified production activities income for the manufacturing or agriculture credit on Schedules MA-M or MA-A, the following tax treatment applies.

Production gross receipts do not include:

- Forgiveness of original Paycheck Protection Program (PPP) loan proceeds
- Forgiveness of subsequent PPP loan proceeds
- Emergency grants of economic injury disaster loans (EIDL) and targeted EIDL advances
- Any other government grant or loan program

Cost of goods sold, direct expenses, and indirect expenses include expenses deductible under the Internal Revenue Code, including those paid with the following funds:

- Original, forgivable Paycheck Protection Program (PPP) loan proceeds
- Subsequent forgivable PPP loan proceeds
- Emergency grants of economic injury disaster loans (EIDL) and targeted EIDL advances
- Subsidies for certain loan payments

- Any grant issued by a state agency or the Wisconsin Economic Development Corporation related to the COVID-19 pandemic

## Reminder: Electing Small Business Trusts Must Complete Schedule ESBT

Electing Small Business Trusts (ESBT) that hold stock in one or more tax-option (S) corporations must be treated as a separate trust pursuant to sec. [641\(c\)\(1\)\(A\)](#), IRC. Therefore, an ESBT that has Wisconsin-sourced income from a tax-option (S) corporation must calculate tax on the portion of tax-option (S) corporation income separately.

A trust treated as an ESBT must complete [Schedule ESBT](#), *Computation of Wisconsin Taxable Income for Electing Small Business Trusts*, and enclose it with [Form 2](#), *Wisconsin Fiduciary Income Tax for Estates and Trusts*.

For details on completing Schedule ESBT, see the [Schedule ESBT Instructions](#) on the department's website.

## Reporting Wisconsin Lottery Winnings by Out-of-State Corporations

All income that is realized from the sale, purchase and subsequent resale, or redemption of lottery prizes, is allocated to and taxable to Wisconsin if the winning tickets were originally purchased in Wisconsin. This is true even if the corporation is not domiciled in Wisconsin, has no taxable sales to Wisconsin, and does not apportion any income to Wisconsin. The lottery winnings are considered nonapportionable income and must be specifically allocated to Wisconsin pursuant to sec. [71.25\(5\)\(b\)](#), Wis. Stats.

The corporation reports the taxable lottery winnings on [Form N](#), *Wisconsin Nonapportionable, Separately Accounted, and Separately Apportioned Income*, line 5. This ensures that the winnings are reported after apportionable income and are specifically allocated to Wisconsin.

## New Form WQOF, Wisconsin Qualified Opportunity Fund Certificate

[2019 Wisconsin Act 136](#) created a capital gain exclusion for certain taxpayers that invest in a Wisconsin qualified opportunity fund. "Wisconsin qualified opportunity fund" means a qualified opportunity fund, as defined in section 1400Z-2(d)(1) of the Internal Revenue Code, that holds at least 90 percent of its assets in Wisconsin qualified opportunity zone property, as measured on the last day of the first 6-month period of the fund's taxable year and the last day of the fund's taxable year.

The Act requires a fund to annually certify to the department and each investor that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year. In order to meet the certification requirements, Form WQOF, *Wisconsin Qualified Opportunity Fund Certificate*, must be filed with the department and a copy provided to each investor no later than January 31 of the year following the close of the fund's taxable year.

Form WQOF must be filed electronically using DocuSign. To begin filing, use this link: [2020 Form WQOF](#). After you complete Form WQOF, you will receive a confirmation email which means the department has received your certificate. You may view, download, print, and save the completed Form WQOF by clicking on the link in your email. Provide a copy to each of your investors.

For more information, see the 2020 [Form WQOF Instructions](#) and Wisconsin [Fact Sheet 1121](#), *Capital Gain Exclusion – Investment in a Wisconsin Qualified Opportunity Fund*.



## Tax Return Donations

Wisconsin law allows taxpayers to make donations to the following organizations on the 2020 Wisconsin individual income tax return. The organizations are the same as on the 2019 Wisconsin individual income tax return.

Donations made by taxpayers on returns filed between July 2019 through June 2020 (primarily on 2019 returns):

Fund	Donation Amount	Use of Donations
Endangered Resources Fund	\$267,654	Protect and manage native plant and animal species, natural communities, and other natural features
Cancer Research Fund	\$154,146	Donations divided equally between the Medical College of Wisconsin, Inc., and University of Wisconsin Carbone Cancer Center for cancer research projects
Veterans Trust Fund	\$80,964	Used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents
Multiple Sclerosis Fund	\$60,732	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	\$91,405	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	\$176,999	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	\$110,825	Used by the American Red Cross for Wisconsin disaster relief
Special Olympics Wisconsin Fund	\$88,605	Forwarded to Special Olympics Wisconsin, Inc

## Withholding Tax Updates and Reminders

### **Withholding Tax Update Available**

The [2020 Withholding Tax Update](#) has been posted to the department's website. Topics covered include:

- Withholding Tax Rates
- What's New?

- COVID-19 Pandemic, Nexus, Telecommuting Employees, and Employer Withholding Tax
- New Form 1099-NEC and Redesign of Form 1099-MISC
- Truncated Taxpayer Identification Numbers on Forms W-2 and 1099
- New Electronic Filing Option for the Redesigned Form PW-2
- Withholding Deposit Reports (Form WT-6) and Annual Reconciliation (Form WT-7)
- Electronic Filing Mandate – Forms WT-6 and WT-7
- Form WT-7 – Filing an Amended Annual Reconciliation
- Form WT-7 – Reporting by Financial Institutions and Insurance Agencies
- Filing Wage Statements and Information Returns
  - Verify that the Information You File Is Accurate
  - When and Where to File
  - Penalties for Filing Late or Failing to File Electronically
  - Reporting Requirements
- Filing Extensions – Form WT-7, Wage Statements, and Information Returns
- Transportation Fringe Benefits
- Single-Member LLCs – Are You Registered Correctly?
- Employees Claiming More than 10 Exemptions or Complete Exemption from Withholding (Form WT-4)
- Redesigned Federal Form W-4
- Withholding Lock-In Letters
- Election Workers Exempt from Income Tax Withholding
- Retirement and Pension Payments Exempt from Income Tax Withholding
- Reporting Nonresident Entertainer Withholding on Income/Franchise Tax Returns
- My Tax Account Webinars
- Withholding Tax Electronic Mailing List
- Employer's Responsibility for Unclaimed Property

### **Using My Tax Account to Submit Wage Statements & Information Returns (including the new 1099-NEC)**

My Tax Account allows businesses to enter information and submit Forms W-2 and 1099 to the department at any time during the year. The application makes it easy to submit information returns omitted from previous submissions. It also allows taxpayers to submit Forms W-2 or 1099 even if they don't have an active withholding account.

### **PDF Versions of W2s No Longer Accepted**

As a reminder, we no longer accept any PDF versions of W2s. This includes PDF files created by third party software providers as well as PDFs created at the Social Security website. EFW2 .txt files are still accepted.

## Sales and Use Tax Updates and Reminders

### Reminder: Local Exposition Basic Room Tax Rate Increases

Effective January 1, 2021, the 2.5% local exposition basic room tax rate increased to 3%. The sale of lodging is subject to the local exposition room tax in Milwaukee County when furnished for a continuous period of less than one month. The following local exposition district taxes and rates continue:

- 7% additional room tax (City of Milwaukee only)
- 0.5% food and beverage tax
- 3% rental car tax

For more information, see [Local Exposition Taxes](#) on the department's website.

### Sales Tax Implications of Refinancing a Vehicle and Removing a Party from the Title

When two parties come together to purchase and finance a motor vehicle with both parties on the loan and title, there may be significant sales tax implications to consider before refinancing the vehicle when one of the parties will be removed from the loan and title. The examples below assume the vehicle is not transferred to a child, spouse, parent, father-in-law, mother-in-law, daughter-in-law or son-in-law of the transferor.

**Example 1:** Party A and Party B purchase a motor vehicle and title it jointly. The vehicle was originally purchased with a joint loan of \$10,000 and sales tax was paid on the \$10,000 sales price of the vehicle. A year later, Party A and Party B decide to refinance and remove Party B from the title and loan. Party B does not receive any payment for his ownership interest in the vehicle. The outstanding balance of the loan was \$6,000. Party A becomes the sole owner of the vehicle. Does Party A owe tax and on what amount?

**Answer 1:** Yes, Party A assumed \$3,000 of Party B's debt in exchange for Party B's 50% ownership interest in the vehicle. Party A owes tax on the \$3,000 purchase price, since that is the amount of consideration given to Party B for the vehicle.

**Example 2:** Party A and Party B purchase a motor vehicle and title it jointly. The vehicle was originally purchased with a joint loan of \$10,000 and sales tax was paid on the \$10,000 sales price of the vehicle. A year later, Party A agrees to buy Party B's ownership interest in the vehicle for \$1,000. Party A refinances the \$6,000 balance of the loan to remove Party B from the title and loan. Party A becomes the sole owner of the vehicle. Does Party A owe tax and on what amount?

**Answer 2:** Yes, Party A makes a payment to Party B of \$1,000 for Party B's interest in the vehicle and assumes \$3,000 of Party B's debt. Party A owes tax on the \$4,000 purchase price, since that is the amount of consideration given to Party B for the vehicle.

The answers above do not change regardless of whether the title shows the owners as "Party A and Party B" or "Party A or Party B."

## Adding UV Lights and Humidifiers to HVAC Systems

In order to combat the COVID-19 pandemic, many businesses and homes are adding ultraviolet (UV) lights and humidifiers to HVAC systems. The tax treatment of the installation and repair of the UV light or humidifier depends on whether the item is real property or tangible personal property.

The installation of a furnace in a residential building, or a commercial building that serves the real estate or building function (e.g., furnace is used to heat the building), is a nontaxable real property improvement. A UV light or humidifier permanently installed in the ductwork in a residential building, or in a commercial building that serves a building function, is also a nontaxable real property improvement. The person making the real property improvement is the consumer of and liable for Wisconsin sales or use tax on their purchase of materials (e.g., furnace, UV light, humidifier).

The installation of a furnace, UV light, or humidifier that serves a business process function (e.g., farming, manufacturing) is tangible personal property and the charge for materials and labor to install it is taxable, unless an exemption applies. The person installing tangible personal property can purchase the furnace, UV light, humidifier, and other materials that are physically transferred to the customer without tax for resale.

The charge for materials and labor to repair a furnace or humidifier in both a residential and commercial building is taxable. Both furnaces and humidifiers are deemed to be tangible personal property for purposes of repair or other services ([sec. 77.52\(2\)\(ag\)](#), Wis. Stats.). Wisconsin imposes tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance to all items of tangible personal property ([sec. 77.52\(2\)\(a\)10.](#), Wis. Stats.), unless an exemption applies. The person making the repair can purchase materials physically transferred to the customer without tax for resale.

The repair of a UV light follows the tax treatment of the installation of the UV light. Therefore, if the installation of the UV light is a nontaxable real property improvement, the repair to the UV light is also a nontaxable service to real property. If the installation of the UV light is tangible personal property, the repair to the UV light is also a taxable repair to tangible personal property.

## Report on Litigation

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

### Sales and Use Tax

#### Trailers Sold to Nonresidents

*William Becker vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 4, 2021).

The issue in this case is whether the types of trailers sold by the taxpayer are "truck bodies" as referenced in [sec. 77.54\(5\)\(a\)4](#), Wis. Stats. This statute provides a sales tax exemption for motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such motor vehicles or trucks for which the truck bodies were made in this state other than in the removal of such motor vehicles or trucks from this state. "Truck bodies" is not defined in the Wisconsin Statutes.

Section Tax 11.83(4), Wis. Adm. Code, provides that for purposes of this exemption "truck bodies" include semi-trailers. In addition, the Wisconsin Supreme Court has also stated in a 1981 decision (*DOR v. Trudell Trailer Sales, Inc.*) that "truck bodies" includes semitrailers, but only those semi-trailers that are designed to be connected to a tractor-truck.

In this case, the taxpayer acknowledged that the types of trailers it sold were designed to be used in conjunction with pickup trucks or automobiles. The trailer-type vehicles sold by the taxpayer include single axle, tandem axle, and gooseneck.

The taxpayer argued that its trailer sales to nonresidents were sales of exempt truck bodies, focusing on the statement in *Trudell* that "truck body" includes a semitrailer.

As noted by the Commission, however, that language in the *Trudell* decision must be considered in the full context of that case, and in particular, the *Trudell* court explained that a semitrailer is a truck body only when joined with a tractor-truck. The Commission explained that a tractor-truck serves little or no purpose without a semitrailer to carry cargo. Therefore, when a tractor-truck is joined with a semitrailer, the semitrailer is the truck body. Both of those two elements are required to make the other a functional whole and "[no] basis exists for the distinguishing that type of truck body from one with a self-contained motor."

Therefore, the Commission reasoned, it does not logically follow that all trailers designed to haul cargo, regardless of power unit, must also be exempt truck bodies. While it may be that trailers of the type sold by the taxpayer serve little or no purpose without a "power unit," the same cannot be said of the intended power units. Automobiles do not require "truck bodies" to serve a purpose, and pickup trucks include self-contained truck bodies as well as motors, and are often used without trailers.

The taxpayer also asked the Commission to apply the definition of "semitrailer" found in sec. 340.01(57), Wis. Stats, to the sales tax exemption; the definition is broad enough to include the types of trailers sold by the taxpayer. The Commission held that the legislature expressly limited the application of the definition in sec. 340.01(57), Wis. Stats., to specific chapters which did not include Chapter 77.

The Commission concluded: (1) the Wisconsin Supreme Court decision in *Trudell* limits the "trucks and truck bodies" exemption to those combinations of power unit vehicles and trailers that, if not combined together, serve little to no purpose and (2) the trailer type vehicles sold by Becker have no "trucks for which the truck bodies were made" and, therefore, fail to fall within the plain language of the sec. 77.54(5)(a)(4), Wis. Stats., exemption.

The taxpayer has appealed this decision.

### Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes and Administrative Rules enacted as of February 22, 2021: Chapters 66, 71, 73, 77, and 139, Wis. Stats., and chs. Tax 1, 2, and 11, Wis. Adm. Code.

Laws enacted and in effect after February 22, 2021, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 22, 2021, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

### Public Comments

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