

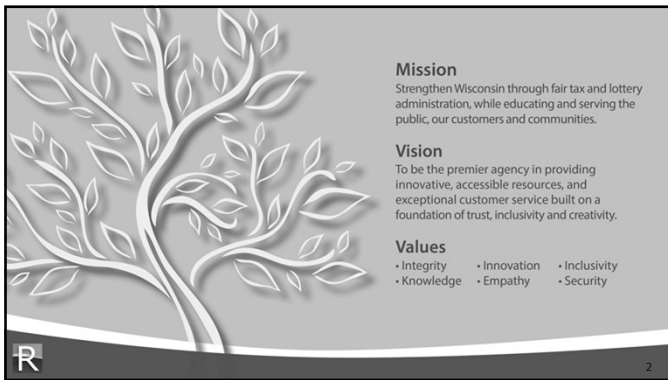
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Wisconsin Tax Update

WI Dept of Revenue | Division of Income, Sales, and Excise Tax
Fall 2022

Updated 11-10-2022

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Mission
Strengthen Wisconsin through fair tax and lottery administration, while educating and serving the public, our customers and communities.

Vision
To be the premier agency in providing innovative, accessible resources, and exceptional customer service built on a foundation of trust, inclusivity and creativity.

Values

- Integrity
- Innovation
- Inclusivity
- Knowledge
- Empathy
- Security

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Topics

- ▷ Income/Franchise Tax Update
- ▷ Sales/Use Tax Update
- ▷ Unclaimed Property Update
- ▷ Processing, Procedures, and Projects
- ▷ My Tax Account (MTA) Updates
- ▷ Performance Metrics

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Income/Franchise Tax Update

- ▷ Internal Revenue Code Update
- ▷ Wisconsin Income/Franchise Tax Law Changes
- ▷ Pass-Through Entity Auditing – 2021 Wis. Act 262
- ▷ Litigation
- ▷ Other Updates & Reminders
- ▷ Form Updates

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Internal Revenue Code Update

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Internal Revenue Code (IRC) Update

- Tax Year 2022
- ▷ Wisconsin follows the IRC as of December 31, 2020, with certain exceptions
 - ▷ Wisconsin computes depreciation and amortization using IRC in effect on January 1, 2014, with certain exceptions
 - ▷ Wisconsin has not adopted federal bonus depreciation provisions
 - ▷ Wisconsin follows changes to IRC section 179 expensing

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IRC Update

- ▷ Federal laws that have passed since December 31, 2020, that Wisconsin has not adopted:
 - Public Law 117-2 – American Rescue Plan Act of 2021
 - Public Law 117-6 – PPP Extension Act of 2021
 - Public Law 117-44 – Surface Transportation Extension Act of 2021
 - Public Law 117-52 – Further Surface Transportation Extension Act of 2021
 - Public Law 117-58 – Infrastructure Investment and Jobs Act
 - Public Law 117-103 – Consolidated Appropriations Act, 2022
 - Public Law 117-167 – Supreme Court Security Funding Act of 2022
 - Public Law 117-169 – Inflation Reduction Act of 2022

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IRC Update

- Tax Year 2022
- ▷ Medical expense itemized deduction floor is 7.5% of AGI (same as federal).
 - ▷ Federal charitable contributions are considered normal itemized deductions on Schedule A. There is no longer a below-the-line deduction on Form 1040. Same applies for Wisconsin's itemized deduction credit.
 - ▷ Federal itemized deduction limitations for charitable contributions apply for Wisconsin.

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IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
 - Earned income credit (EIC)
 - Raised investment income limit to \$10,000 beginning in 2021 (adjusted annually)
 - Wisconsin investment income limit is \$3,800 for 2022
 - Allows certain married individuals to claim EIC
 - Files separate from spouse, and
 - Lives apart from spouse for last 6 months of year, or
 - Has divorce or separation agreement by end of the tax year

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IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
 - Excess business loss limitation under IRC 461(l) applies through December 31, 2026
 - Limitation is further extended through December 31, 2028 (Public Law 117-169 Inflation Reduction Act of 2022)
 - Wisconsin never adopted the limitation

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IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
 - Student loan forgiveness
 - Certain student loans discharged under sec. 108(f)(5), IRC, in tax years 2021 through 2025 are not included in FAGI
 - Wisconsin follows the old sec. 108(f)(5), IRC (as of 12/31/20), which excludes student loan discharges on account of death or total and permanent disability
 - Wisconsin allows exclusion under sec. 108(f)(1) for individuals who work for a certain period of time in certain professions (e.g., Public Service Loan Forgiveness program)

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IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
 - Repeal election to allocate interest, etc., on a worldwide basis, which was set to begin in 2021
 - Repeal of election does not apply for Wisconsin

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IRC Update – Not Adopted

▷ Public Law 117-2 (American Rescue Plan Act)

○ Deduction Limitation for Highly-Paid Employees

Federal—A publicly-held corporation may not deduct more than \$1,000,000 of compensation paid to any covered employee for the performance of services as provided in IRC sec. 162(m). The definition of a covered employee is expanded to include the principal executive officer and principal financial officer. (Public Law 115-97). For taxable years beginning after December 31, 2026, the definition of a covered employee is expanded to include an employee that is among the 5 highest compensated employees for the taxable year. (Public Law 117-2).

Wisconsin— The changes to the definition of “covered employee” by Public Law 115-97 and 117-2 do not apply for Wisconsin

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IRC Update – Not Adopted

▷ Federal provisions not adopted by Wisconsin

○ Public Law 117-58 – Infrastructure Investment and Jobs Act

▪ Extensions

• Treats multiple declarations of federally declared disasters as a separate incident period allowing for a 60-day extension for each incident period. Previously, if a subsequent federally declared disaster occurred during a current disaster period, the extension would extend 60 days beyond the first day of the incident period for the subsequent disaster.

• Added “significant fires” to the list of reasons certain deadlines may be extended.

▪ Certain contributions received from any person by a regulated public utility which provides water or sewerage disposal services is included in the definition of a “contribution to the capital of the taxpayer” for purposes of excluding the contribution from gross income of a corporation.

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IRC Update – Not Adopted

▷ Federal provisions not adopted by Wisconsin

○ Public Law 117-58 – Infrastructure Investment and Jobs Act

▪ The interest from the following bonds is exempt from federal income tax

- Qualified broadband projects exempt facility bonds
- Qualified carbon dioxide capture exempt facility bonds

○ Public Law 117-103 – Consolidated Appropriations Act, 2022

▪ Extension applies for treating a plan as a high deductible health plan even if it fails to have a deductible for telehealth and other remote care services, effective for months beginning after March 31, 2022, and before January 1, 2023. For Wisconsin, a deduction from gross income for contributions made may not be allowed.

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IRC Update – Not Adopted

- ▷ Federal provisions not adopted by Wisconsin
 - Public Law 117-169 – Inflation Reduction Act of 2022
 - The amount of the federal aviation fuel credit is included in gross income, effective for fuel sold or used after December 31, 2022.
 - Energy efficient commercial buildings deduction – In the case of a real estate investment trust corporation, for purposes of computing the earnings and profits, the deduction is allowed in the year the property is placed in service as opposed to over a period of 5 taxable years.
 - Certain taxpayers (not tax-exempt entities) are allowed a one-time transfer of certain tax credits. Any payments received in exchange for the transfer of credits are excluded from income, and any amounts paid to obtain a transferred credit cannot be deducted from income, effective for taxable years beginning after December 31, 2022.
 - Federal excise tax on stock buy-backs and federal corporate alternative minimum tax do not apply to Wisconsin.

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Wisconsin Income/Franchise Tax Law Changes

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Restaurant Revitalization Grants Exclusion

- ▷ 2021 Wisconsin Act 156
- ▷ Income received in the form of a grant from the restaurant revitalization fund under sec. 5003 of P.L. 117-2 (ARPA) is exempt from Wisconsin income and franchise tax
- ▷ Expenses paid directly or indirectly with the grant money remain deductible
- ▷ Effective for taxable years beginning **after December 31, 2020**

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New Additional Child and Dependent Care Tax Credit

2021 Wis. Act 58

- ▷ Effective for tax year 2022
- ▷ Subtraction no longer available
- ▷ Credit allowed equal to 50% of the federal child and dependent care tax credit under IRC 21
- ▷ Not available to nonresidents or part-year residents
- ▷ If married, must file a joint return unless considered not married

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Capital Loss Deduction

2021 Wisconsin Act 157

- ▷ Capital loss deduction increased from \$500/year to \$3,000/year (\$1,500 for married persons filing separately)
- ▷ Applies to individuals and partnerships and tax-option (S) corporations making the entity-level tax election
- ▷ Effective for taxable years beginning **after December 31, 2022**

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2021 Wisconsin Act 258

- ▷ 2021 Wisconsin Act 258 became effective on April 17, 2022.
- ▷ Various changes for partnerships, corporations, and limited liability companies were made in chs. 178, 179, 180, 181, and 183, Wis. Stats.
- ▷ The following income/franchise tax laws were revised to provide that the new provisions in the Act are treated for state tax purposes in the same manner as they are treated for federal tax purposes:
 - Section 71.80(21), Wis. Stats., *Business Entity Conversion*
 - Section 71.80(21m), Wis. Stats., *Business Entity Interest Exchange*
 - Section 71.80(22), Wis. Stats., *Business Entity Merger*
 - Section 71.80(22m), Wis. Stats., *Business Entity Domestication*

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2021 Wisconsin Act 258 (cont.)

- ▷ The Act provides that the changes in the Act applicable to liquidations, reorganizations, and business entity formations follow the general sales and use tax provisions relating to liquidations, reorganizations, and formations (sec. 77.61(15), Wis. Stats.)
- ▷ Income, franchise, sales, and use tax liabilities from a DOR assessment may be claimed against a dissolved limited liability partnership, limited partnership, or limited liability company (secs. 178.0807, 179.0806, and 183.0704, Wis. Stats.),

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Pass-Through Entity Auditing 2021 Wis. Act 262

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2021 Wisconsin Act 262

- ▷ Effective April 17, 2022
- ▷ The Act includes the following provisions:
 - Pass-through definitions
 - Pass-through entity audits
 - Pass-through entity appeals
 - Pass-through entity elections
 - Pass-through entity representative
 - Confidentiality
 - Internal Revenue Service partnership audit adjustments
 - Other

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Pass-Through Definitions

- ▷ "Pass-through entity" means a partnership, a limited liability company, a tax-option (S) corporation, an estate, or a trust that is treated as a pass-through entity for federal income tax purposes.
- ▷ "Pass-through item" means an item of income, gain, loss, deduction, credit, or any other item that originates with a pass-through entity and is required to be reported by one or more pass-through members.
- ▷ "Pass-through member" means a person who is a partner in a partnership, member of a limited liability company, shareholder in a tax-option (S) corporation, beneficiary of an estate or a trust, or any other person whose tax liability under ch. 71, Wis. Stats., is determined in whole or in part by taking into account the person's share of pass-through items, directly or indirectly, from a pass-through entity.

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Pass-Through Entity Audits

- ▷ Audit provisions provided under sec. 71.745, Wis. Stats.
- ▷ The department may assess and collect additional tax from a pass-through entity (PTE) on income otherwise reportable by its pass-through members. Tax rates for entity-level audit assessments are as follows:
 - 7.65% for income otherwise reportable by **direct** owners that are individuals, estates, and trusts
 - 7.9% for income otherwise reportable by all other **direct** owners (e.g., corporations and partnerships)

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Pass-Through Entity Audits (cont.)

- ▷ The department may issue a refund to a PTE.
 - Refunds only issued to PTE for overpayment of tax from payments made by PTE.
 - Overpayment of tax from payments not made by PTE must be claimed by pass-through members (PTMs) on an amended return for each reviewed year.
 - PTMs may claim their proportionate share of overpayment within one year after the date the determination of the overpayment becomes final or within four years of the unextended due date of the PTMs' return as provided in sec. 71.75, Wis. Stats., whichever is later.

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Pass-Through Entity Audits (cont.)

- ▷ The department may assess or adjust a credit under sec. 71.07, 71.28, or 71.47, Wis. Stats.
 - Assessment to reduce or recover a credit may be issued to PTE if PTE previously computed the credit and reported the credit to its PTMs.
 - Many WI credits are added to income. The Act provides that an assessment may be reduced by the tax effect from removing the credit from income, if the income modification occurs in a taxable year under review in the audit. Income modification may not be claimed by the PTMs.

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Pass-Through Entity Audits (cont.)

- ▷ The department may assess or adjust a credit under sec. 71.07, 71.28, or 71.47, Wis. Stats. (cont.)
 - Adjustment to increase a credit may offset additional tax assessed to PTE.
 - Excess credit not used to offset additional tax may not be claimed by or refunded to the PTE.
 - PTMs may file an amended return for each reviewed year to claim their proportionate share of excess credit.
 - Claims may be made within one year from the date the determination becomes final or within four years of the unextended due date of the PTMs' return as provided in sec. 71.75, Wis. Stats., whichever is later.

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Pass-Through Entity Audits (cont.)

- ▷ Statute of limitations, interest, and penalties under secs. 71.77, 71.82, and 71.83, Wis. Stats., apply to determinations made at the PTE level without regard to the action or inaction of PTMs.

Example: If a partner does not file a return (no statute of limitations), the entity-level assessment must be made within 4 years from the unextended due date of the partnership's return.
- ▷ Audit provisions under sec. 71.745, Wis. Stats., do **NOT** apply to partnerships and tax-option (S) corporations making the entity-level tax election under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats.

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Pass-Through Entity Appeals

- ▷ Under sec. 71.745(6)(b), Wis. Stats., PTE may, within 60 days after receipt of determination, petition the department for redetermination.
- ▷ The department shall make a redetermination on the petition within 6 months after the date on which the petition is filed.
- ▷ If no timely petition for redetermination is filed with the department, the department's determination is final and conclusive.

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Pass-Through Entity Appeals (cont.)

- ▷ PTE may, within 60 days after receipt of redetermination, appeal the redetermination to the Wisconsin Tax Appeals Commission (TAC) as provided in sec. 71.88(2), Wis. Stats.
- ▷ If no timely petition is filed with the TAC, the department's redetermination is final and conclusive.

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Pass-Through Entity Elections

- ▷ PTE may elect, under sec. 71.745(8), Wis. Stats., to reduce an audit assessment at the entity level if all the following apply:
 - Election made within 60 days after the entity-level determination becomes final.
 - PTE reports to the department and its PTMs the adjustments for each PTMs' proportionate share of pass-through items for each taxable year.
 - PTMs report and pay within 60 days of the election any resulting tax due from the adjustments to the pass-through items.

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Pass-Through Entity Elections (cont.)

- ▷ PTE may elect, under sec. 71.745(9), Wis. Stats., to have the department assess each of the PTMs if all the following apply:
 - PTE has 25 or fewer PTMs for all years under review.
 - PTE does not have a PTM that is a PTE for any year under review.
 - Election made within 60 days after the entity-level determination becomes final.
- ▷ If election is made, sec. 71.77(7)(c), Wis. Stats., provides the department may assess the PTMs within one year from the date of the election.
- ▷ Election does not relieve pass-through entity representative's powers and duties for extension agreements, appeals, and requirement to provide the department with sufficient information to identify each PTM and the capital, profit, and loss interest of each PTM.

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Pass-Through Entity Representative

- ▷ Under sec. 71.80(26)(a), Wis. Stats., each PTE must designate a PTM or other person with substantial presence in the United States as the pass-through entity representative (PTR).
- ▷ PTR may be different than federal representative.
- ▷ If PTE did not designate a PTR, the department will send a written request for a PTR.
- ▷ If PTE does not designate a PTR within 60 days of the department's request, the department may designate a PTR and notify, in writing, the PTE.
 - PTE may at any time provide a written statement to the department designating a new PTR.

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Pass-Through Entity Representative (cont.)

- ▷ 2022 Form 2 (fiduciary, estates, trusts), Form 3 (partnerships), and Form 5S (tax-option (S) corporations) have been updated to include a section for the PTE to designate a PTR.
 - More detail provided in Form Updates section of presentation.
- ▷ PTE may also designate a PTR by submitting a Form PT-R, *Pass-Through Entity Representative*, or a separate statement, that includes all the information requested on Form PT-R, signed by an authorized agent of the PTE.
- ▷ **The department will treat the most recently appointed PTR as the sole active PTR under sec. 71.80(26), Wis. Stats.**

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Pass-Through Entity Representative (cont.)

- ▷ Form PT-R or a written statement designating a PTR are sent to:
 - DORAuditPassThrough@wisconsin.gov, or
 - M5 6-81
Wisconsin Department of Revenue
Pass-Through Audit Unit
PO Box 8906
Madison, WI 53708-8906

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Pass-Through Entity Representative (cont.)

- ▷ PTR powers and duties as provided under sec. 71.80(26)(b), Wis. Stats.
 - Act as the sole authority on behalf of the PTE and its PTMs with respect to an entity-level audit determination under sec. 71.745, Wis. Stats.
 - File appeals of notices of PTE adjustments.
 - Enter into extension agreements with the department on behalf of the PTE for purposes of extending the periods of limitation for issuing assessments and claiming refunds.
 - Enter into settlement agreements and bind PTMs to adjustments relating to pass-through items.
 - Receive notices of PTE adjustments.

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Pass-Through Entity Representative (cont.)

- ▷ PTR powers and duties as provided under sec. 71.80(26)(b), Wis. Stats. (cont.)
 - Provide the department sufficient information to identify each PTM and the capital, profit, and loss interest of each PTM.
 - Notify all PTMs of their share of corrections and adjustments made to pass-through items within 60 days after an entity-level audit determination becomes final or after receipt of notice of approval for a partnership to pay tax on behalf of the partners after being issued a final audit determination at the partnership level from the Internal Revenue Service (IRS partnership adjustment treatment explained later).
- ▷ **PTR may delegate powers and duties in sec. 71.80(26)(b), Wis. Stats., to an authorized agent of the PTE (e.g., Power of Attorney (POA)), as provided under sec. 71.80(26)(c), Wis. Stats.**

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Pass-Through Entity Representative (cont.)

▷ PTR powers and duties vs. POA authority for audit determinations at the entity level under sec. 71.745, Wis. Stats.

Authority for Pass-Through Entity Audit Determination	Power of Attorney	Pass-through Entity Representative
Enter into an agreement to extend the limitation period to make an audit determination	No	Yes
Enter into settlement agreements and bind pass-through members to adjustments in audit determination	No	Yes
File an appeal of the audit determination	No	Yes
Elect to reduce an audit assessment under sec. 71.745(8), Wis. Stats.	No	Yes
Elect to have an audit assessment assessed to the pass-through members under sec. 71.745(9), Wis. Stats.	No	Yes

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Confidentiality

▷ As provided under sec. 71.78(11), Wis. Stats., if the department audits a PTE for income or franchise taxes of its PTMs, including when an election to pay tax at the entity level is made under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats., the department may disclose the following:

- **To a PTM:** PTE is under audit or was audited, if the disclosure is necessary to explain any amounts assessed or refunded to the PTM or to obtain information necessary to determine the proper amount of adjustment to make at the PTE level.
- **To a PTE:** Identities of one or more of its PTMs who have failed to report pass-through items originating with the entity on their Wisconsin returns, if the disclosure is necessary to explain any amounts assessed or refunded to the PTM or to obtain information about a PTM's return in order to determine the proper amount of adjustment to make at the PTE level.

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IRS Partnership Audit Adjustments

▷ If a partnership receives an IRS audit adjustment at partnership level, partnership may request to amend Wisconsin partnership returns and pay tax on behalf of PTMs. Request must be made within 60 days after final determination by the IRS.

- If department approves the request, partnership must amend the Wisconsin partnership returns for each reviewed year, as defined under section 6225 of the IRC, to report such changes within 180 days from the date the department approves the request. Partnership must pay tax at the highest tax rate computed under sec. 71.745(2)(a), Wis. Stats., as follows:
 - 7.65% for income otherwise reportable by direct owners that are individuals, estates, and trusts
 - 7.9% for income otherwise reportable by all other direct owners (e.g., corporations and partnerships)

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IRS Partnership Audit Adjustments (cont.)

- ▷ If department denies the request, partnership and its PTMs must file amended Wisconsin returns for each reviewed year, as defined under section 6225 of the IRC, to report such changes within 180 days from the date the department denies the request.

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Other

- ▷ Adjustments to pass-through items made in a PTE audit determination are attributable to each PTM in a manner, and for the taxable year, that is consistent with the treatment of the pass-through items as if a determination was not made at the entity level. For example, a PTM may increase basis in partnership interest by the PTM's proportionate share of additional income determined in the partnership audit assessment.
- ▷ If the department determines that a tax liability exists and that the liability may be owed by more than one PTM of a PTE, the department may assess any PTM of the PTE for their allocated portion of additional tax otherwise due.

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Other (cont.)

- ▷ If any PTE required to file a return under ch. 71, Wis. Stats., files an incomplete or incorrect return, the department, upon a showing by the department under sec. 73.16(4), Wis. Stats., may assess the PTE an amount equal to 25 percent of the amount of the tax assessed under sec. 71.745, Wis. Stats. The amount shall be assessed, levied, and collected in the same manner as additional normal income or franchise taxes.

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Resources

- ▷ Pass-Through Entity Level Audits Under 2021 Wis. Act 262 common questions
 - <https://www.revenue.wi.gov/Pages/FAQS/ise-pte-audit.aspx>
- ▷ Partnerships common questions numbers 3 and 4
 - <https://www.revenue.wi.gov/Pages/FAQS/ise-pship.aspx>
- ▷ Form PT-R, *Pass-Through Entity Representative*
 - <https://www.revenue.wi.gov/dorforms/ptrf.pdf>
- ▷ Form PT-R instructions
 - <https://www.revenue.wi.gov/dorforms/i-ptr.pdf>

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Income/Franchise Tax Litigation

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Litigation – Gambling Losses

- ▷ *Julie Chier v. Wisconsin Department of Revenue*: Wisconsin Tax Appeals Commission, March 22, 2022
- ▷ Claimed to be a professional gambler
- ▷ Taxpayer records:
 - Separate bank accounts not kept
 - Activities were not tracked on computer spreadsheet or similar document
 - Contemporaneous notes were not kept
 - No business plan
 - Gambling not carried on in a business-like manner
 - Utilized player's cards and casino gaming records to substantiate portion of winnings

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Litigation – Gambling Losses

- ▷ IRS notice stated taxpayer did not qualify as professional gambler
- ▷ Tax Appeals Commission concluded:
 - Disallowed status as professional gambler (disallowed business loss on Schedule C)
 - Allowed gambling losses under the session method of reporting that were substantiated in part with casino records
- ▷ Session winnings are reported as other income on Form 1040
- ▷ Session losses are reported as misc. itemized deductions on Schedule A
- ▷ Note: Wisconsin law does not allow gambling losses for itemized deduction credit

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Litigation: Apportionable Income – Environmental Credit Sales

- ▷ *American Honda Motor Co., Inc.*: Wisconsin Tax Appeals Commission, November 29, 2021
- ▷ American Honda earns and resells environmental credits from producing vehicles that exceed emission standards
- ▷ American Honda has nexus with Wisconsin and files a Wisconsin combined return
- ▷ American Honda reported the credit sales as non-apportionable Wisconsin income because the business activities related to the credit took place in California
- ▷ The Commission agreed with the department's position that the credit sales are apportionable income because they represent unitary and operational income integral to Honda's business and were not mere investments
- ▷ American Honda has appealed

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Litigation: Manufacturing Credit

- ▷ *The Graphic Edge, Inc.*: Wisconsin Tax Appeals Commission, December 20, 2021
- ▷ Graphic Edge is a printing company located in Wisconsin and was classified for property tax purposes as a manufacturer by the Department of Revenue
- ▷ Graphic Edge computed the manufacturing credit by including depreciation recapture and Form 4797 gain on the sale of business equipment in production gross receipts but did not allocate any expenses as direct and indirect costs
- ▷ The department removed depreciation recapture and Form 4797 gain from production gross receipts
- ▷ The Commission agreed with the department because the printing equipment that was sold was not manufactured by Graphic Edge
- ▷ Graphic Edge did not further appeal

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Litigation: Nexus - Foreign Corporation Selling Travel Services

- ▷ *ASAP Cruises, Inc.*: Wisconsin Tax Appeals Commission, May 23, 2022
- ▷ ASAP is a Florida corporation that sells travel services to individuals and businesses across the U.S. via independent travel consultants
- ▷ ASAP receives income from the sale of travel services by independent travel consultants and in turn pays them a commission
- ▷ ASAP was a party to around 100 independent travel consultant agreements with individuals and businesses located in Wisconsin
- ▷ ASAP did not file Wisconsin income or franchise tax returns, so the department issued estimated assessments

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Litigation: Nexus - Foreign Corporation Selling Travel Services

- ▷ ASAP argued:
 - Nexus protection under Public Law 86-272 because they were selling tangible software
 - They were not engaged in business in Wisconsin because they were selling software services (SaaS) and solicitation of WI customers was conducted remotely and electronically from Florida
- ▷ The Commission concluded ASAP was engaged in business in Wisconsin through its sales of travel services to Wisconsin customers through their independent travel consultants
- ▷ ASAP appealed to Dane County Circuit Court

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Litigation: Pass-Through Withholding Tax – S-Corporation Without Physical Presence

- ▷ *MacKinney Systems, Inc.*: Wisconsin Tax Appeals Commission, March 16, 2022
- ▷ MacKinney is a Missouri tax-option (S) corporation without a physical presence in Wisconsin
- ▷ All shareholders are nonresidents of Wisconsin
- ▷ MacKinney delivers prewritten software to customers via download and provides technical support and maintenance services from Missouri
- ▷ MacKinney received over \$100,000 per year from customers in Wisconsin but did not file/pay income or franchise tax returns or pass-through withholding taxes

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Litigation: Pass-Through Withholding Tax – S-Corporation Without Physical Presence

- ▷ The department issued a pass-through withholding assessment, which was appealed to the Commission
- ▷ The Commission sustained the assessment and concluded that MacKinney met the definition of doing business in Wisconsin under sec. 71.22(1r), Wis. Stats., because some of the customers received the product and services in Wisconsin
- ▷ The Commission also noted that withholding tax is different from income or franchise tax – withholding tax is required even if the nonresidents do not have an income tax filing requirement in Wisconsin

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Litigation: Pass-Through Withholding

- ▷ *RADS Partnership, Via Cresta, L.P., Laughing Cow, LP, Finger Living Trust, and Westmar LTD (Petitioners) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, July 26, 2022*
- ▷ All Petitioners are pass-through entities, except Finger Living Trust
- ▷ Petitioners did not file withholding returns in 2013
- ▷ Petitioners claimed they did not have to file withholding returns because they had losses from prior years
- ▷ Petitioners did not timely file returns for years in which losses were incurred

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Litigation: Pass-Through Withholding

- ▷ *RADS Partnership, Via Cresta, L.P., Laughing Cow, LP, Finger Living Trust, and Westmar LTD (Petitioners) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, July 26, 2022*
- ▷ Commission concluded:
 - Pass-through entities are required to file a timely pass-through withholding form in each year where there is "Wisconsin income" (i.e., not allowed to use prior years' losses)
 - Adding the word "taxable" to "income" under sec. 71.775(2)(a) and (3)(a)2., Wis. Stats., changes the meaning of the statute
 - Pass-through entities must use WI Form PW-1 as the pass-through withholding form
- ▷ Petitioners appealed the decision

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**Other
Income/Franchise Tax
Updates & Reminders**

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Other Updates and Reminders

- ▷ College savings account subtraction
 - \$3,560 (\$1,780 if married filing separately)
 - 2021 amount was \$3,380
- ▷ Wisconsin tuition and fees subtraction
 - Subtraction – increased from \$6,973 to \$6,976
 - Includes fees for course related books if paid to institution as condition of enrollment or attendance
 - Phase-out
 - Single or head of household - \$60,380 to \$72,460
 - Married filing joint - \$96,600 to \$120,760
 - Married filing separate - \$48,300 to \$60,380

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Other Updates and Reminders

- ▷ Mileage rates - 2022
 - 58.5 cents per mile for business miles (62.5 cents for the last six months)
 - 18 cents per mile for medical or moving purposes (22 cents for the last six months)
 - 14 cents per mile in service of charitable organizations
- ▷ Educator expense deduction
 - Wisconsin follows increased federal deduction amount
 - Increased to \$300 for 2022, up from \$250 for 2021

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Active Duty Military Pay Subtraction

- 2021 Wis. Act 58
- ▷ Created sec. 71.05(6)(b)56., Wis. Stats., effective for tax year 2021
- ▷ Basic, special, or incentive pay income received from federal government under 37 USC chapters 3 and 5 while the individual is on active duty in the U.S. Armed Forces
- ▷ For 2022 tax year:
 - Subtraction allowed for military pay received **for** active duty
 - Subtraction not allowed for inactive duty training (drill pay)
- ▷ Publication 128, *Wisconsin Tax Information for Military Personnel and Veterans*

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Credit for Tax Paid to Another State

- ▷ Credit for tax paid to reciprocal states
 - Wisconsin has income tax reciprocity with Illinois, Indiana, Kentucky, and Michigan
 - Reciprocity generally only applies to income earned as an employee (wages)
 - Wisconsin resident may not claim a credit for tax paid to another state on the Wisconsin return if the income reportable on the other state's tax return is subject to reciprocity
 - If Wisconsin resident earns income in reciprocal state and income tax is withheld for the other state, resident must file an income tax return with that state to obtain a refund of the withheld tax

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Schedule RT – Related Party Expenses

- ▷ Taxpayers must disclose on Schedule RT if the total deduction for all related party payments reduce Wisconsin taxable income, after apportionment, by \$100,000 or more:
 - Interest Expenses
 - Rent Expenses
 - Management Fees
 - Intangible Expenses
- ▷ Due on or before the extended due date of the return

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Schedule RT – Related Party Expenses

- ▷ If the Department discovers that related party expenses were not disclosed timely on Schedule RT, the expense deduction may be disallowed (sec. 71.80(23)(b), Wis. Stats.)
- ▷ Schedule RT is not required for transactions between members of a combined group of corporations that file a combined return and eliminate the intercompany transactions in the computation of combined unitary income.

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Reorganizations

- ▷ Taxpayers must have the same taxable year for federal and Wisconsin purposes (e.g., if a short-period return must be filed for federal purposes, a short-period return must also be filed for WI purposes).
- ▷ A reorganization may result in a continuation of the old entity. For example:
 - A merger of two or more partnerships that meets the requirements in sec. 708(b)(2)(A), of the Internal Revenue Code (IRC).
 - A tax-option (S) corporation's change in identity, form, or place of organization under sec. 368(a)(1)(F), IRC.
- ▷ Continuation may impact the resulting entity's estimated tax payments and underpayment interest (check boxes added to Partnership and S corp forms).

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Entity-Level Tax Elections

- ▷ 2017 Wisconsin Act 368 created an election for partnerships and tax-option (S) corporations to pay tax at the entity level on behalf of their pass-through members.
- ▷ **Reminder:** The election or subsequent revocation of the election under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats., **must** be made by the extended due date of the entity's income or franchise tax return.
 - Calendar year partnership extended due date: 9/15
 - Calendar year tax-option (S) corporation extended due date: 10/15

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Entity-Level Tax Elections – Filing Stats

Tax-Option (S) Corporations (Form 5S)	2019	2020	2021
Returns filed	81,517	80,602	76,437
Entity-level tax elections filed	2,992	4,076	5,281
Percent of entity-level tax elections filed	3.67%	5.06%	6.91%

Partnerships (Form 3)	2019	2020	2021
Returns filed	79,885	80,432	79,366
Entity-level tax elections filed	1,495	2,010	2,654
Percent of entity-level tax elections filed	1.87%	2.50%	3.34%

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Qualified Wisconsin Business (QWIB) – Income Exclusion / Deferral

- ▷ Capital Gain Exclusion / Deferral
 - Long-term capital gain from investments made after December 31, 2010, in a qualified Wisconsin business and held for at least five uninterrupted years are excluded from Wisconsin income
 - Exclusion does not apply to any portion of gain due to amount of gain deferred at time of investment
 - See Schedule QI, *Sale of Investment in a Qualified Wisconsin Business*

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Qualified Wisconsin Business (QWIB) Registration

- ▷ A business may register as a QWIB if, in the business's tax year ending immediately before the date of registration:
 - The business has at least 2 full-time employees,
 - The amount of payroll compensation paid by the business in WI is at least 50% of all payroll compensation paid by the business, and
 - The value of real and tangible personal property owned or rented and used by the business in WI is at least 50% of the value of all real and tangible personal property owned or rented and used by the business.
- ▷ Business must register each year it desires to be a QWIB (sec. 73.03(69), Wis. Stats.)
 - Registration for 2022 must be completed by January 2, 2023.

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QWIB Registration (cont.)

- ▷ Registration for 2022 must be completed by January 2, 2023.
- ▷ To register your business with the department, use the department's online application here:
 - https://tap.revenue.wi.gov/QualBus/_/
- ▷ A list of QWIBs can be found on the department's website here:
 - <https://www.revenue.wi.gov/Pages/Report/qualified-businesses.aspx>

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Qualified Opportunity Fund (QOF)

- ▷ Certain taxpayers who invest in a QOF may qualify for federal tax benefits:
 - Defer paying tax on capital gains by investing the gains in a QOF
 - Reduce the taxable amount of the deferred capital gains by
 - 10% if QOF investment is made prior to Jan. 1, 2022, and is held for at least 5 years
 - 15% if QOF investment is made prior to Jan. 1, 2020, and is held for at least 7 years
 - Exclude all gains from the sale of a QOF investment by holding the QOF investment for at least 10 years.
- ▷ See sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code (IRC)
- ▷ WI follows the federal tax benefits

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WI Qualified Opportunity Fund (WQOF)

- ▷ A WQOF means a QOF that holds at least 90% of its assets in WI qualified opportunity zone property
- ▷ For taxable years beginning on or after January 1, 2020, a WQOF is required to file WI Form WQOF with the department and provide a copy to each investor by January 31 of the year following the close of the WQOF's taxable year.
- ▷ In addition to the federal QOF tax benefits, certain taxpayers who defer paying tax on their capital gains by investing in a WQOF may qualify for a WI subtraction or basis modification

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WQOF (cont.)

- ▷ The WI subtraction or basis modification is
 - 10% of the deferred capital gain if
 - The WQOF investment was held for at least 5 years and
 - The taxpayer qualifies for the 10% federal QOF exclusion
 - 15% of the deferred capital gain if
 - The WQOF investment was held for at least 7 years and
 - The taxpayer qualifies for the 15% federal QOF exclusion
- ▷ **Note:** Any failure by a WQOF may result in the WI subtraction or basis modification being denied for investors

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WQOF (cont.)

- Resources:
- ▷ Common Questions:
<https://www.revenue.wi.gov/Pages/FAQS/ise-qualified-zones.aspx>
 - ▷ Fact Sheet 1121:
<https://www.revenue.wi.gov/DOR%20Publications/1121opportunityzone.pdf>
 - ▷ 2022 Form WQOF instructions:
<https://www.revenue.wi.gov/TaxForms2022/2022-FormWQOF-inst.pdf>
 - ▷ Sections 71.05(25m), 71.26(3)(vm), 71.34(1k)(p), and 71.45(2)(a)21., Wis. Stats.

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Form Updates

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Form Changes

- ▷ Form 1, *Wisconsin Resident Income Tax Return*
 - Added new lines
 - Line 1 – Federal adjusted gross income (FAGI) from Form 1040, line 11
 - Line 2 – Adjustments to FAGI from Schedule I, line 3
 - Line 14 – Additional child and dependent care tax credit (nonrefundable)
 - Rearranged lines
 - Moved UPI line up before "AMOUNT YOU OWE" as UPI is included in the total

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Form Changes

- ▷ Form 1NPR, *Nonresident and Part-Year Resident Income Tax Return*
 - Added new line 40 for additional child and dependent care tax credit (nonrefundable)
 - Moved UPI line up before "AMOUNT YOU OWE" as UPI is included in the total
 - Moved all additions and subtractions to Schedule M
- ▷ Schedule AR, *Explanation of Amended Return*
 - Added check boxes for amending for a pass-through entity audit
 - Created separate instructions for each amendment reason
- ▷ Schedule CS, *College Savings Accounts*
 - Combined Parts I and II to correctly apply subtraction limitation to both instances of when you contribute to an account you own and to an account owned by someone else for the same beneficiary
 - Eligible carryover is now Part II

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Form Changes

- ▷ Schedule OS instructions, *Credit for Net Tax Paid to Another State*
 - Added instructions to clarify whether to compute the credit in Part II or Part III of the form when the individual is a member of a pass-through entity that pays tax at the entity level in another state, but does not elect to pay tax at the entity level in WI.

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Form Changes

- ▷ Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trust*
 - Simplified the layout for computing an amount due.
 - Changed line 23 from **BALANCE DUE** to **AMOUNT UNDERPAID** and created line 25, **AMOUNT DUE**.

23	If line 19 is less than line 11d, subtract line 19 from line 11d AMOUNT UNDERPAID	23	_____	.00
24	Underpayment interest. Fill in exception code - See Schedule U _____	24	_____	.00
25	Add lines 23 and 24. This is the AMOUNT DUE	25	_____	.00

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Form Changes

- ▷ Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trust*
 - Updated the "Mail your return to:" section on page 4 to separate out the mailing address for returns with a "tax due" or a "refund or no tax due".

Mail your return to: Wisconsin Department of Revenue
If tax due.....PO Box 8918, Madison WI 53708-8918
If refund or no tax due.....PO Box 8965, Madison WI 53708-8965

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Form Changes

- ▷ Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trust*
 - ▷ Form 3, *Wisconsin Partnership Return*
 - ▷ Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise Income Tax Return*
- Section added to designate a pass-through entity representative

Pass-Through Entity Representative

Representative's last name		Representative's first name	
Email address		Phone number ()	
Mailing address		Apt. no.	
City	State	Zip code	

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Form Changes

- ▷ Form 3, *Wisconsin Partnership Return*
 - ▷ Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise Income Tax Return*
- Added a check box, Item M (Form 3) and Item A9 (Form 5S), for taxpayers to indicate the entity reorganized during the tax year and what type of reorganization (e.g., sec. 708(b)(2)(A) or 368(a)(1)(F), of the Internal Revenue Code).

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Power of Attorney (POA)

- ▷ Instructions updated to state that separate POA forms must be completed when:
 - Multiple individuals named in Part 3B, **and**

Part 3B - Individual

Individual's last name		Individual's first name	
Email address		Phone number	
Mailing address		APT no.	
City	State	Zip code	

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Power of Attorney (POA)

- Each individual has been granted different authority in Part 4

Part 4 - Full or Limited Authority (check one)

I grant full authority to the representative(s) - The representative(s) named above has full authority to perform any act with respect to matters before the department that the taxpayer(s) can and may perform, including receiving confidential Wisconsin tax information. **Note:** If granting full authority, do not check any boxes below.

I grant limited authority to the representative(s) - (check only items below for which you are granting authority) The representative(s) named above has authority to perform any act, with respect to the items checked below, that the taxpayer(s) can and may perform, including the authority to receive confidential Wisconsin tax information.

Authority	Period(s) (optional)	Authority	Period(s) (optional)
<input type="checkbox"/> Income or Franchise Taxes	_____	<input type="checkbox"/> Employer Withholding Taxes	_____
<input type="checkbox"/> Sales and Use Taxes	_____	<input type="checkbox"/> Pass-Through Withholding Taxes	_____
<input type="checkbox"/> Estate Taxes	_____	<input type="checkbox"/> Non-tax Debt	_____
<input type="checkbox"/> Property Taxes	_____	<input type="checkbox"/> Other (specify below)	_____

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Form 1098-F New Requirements

- ▷ The Tax Cuts and Jobs Act of 2017 (sec. 13306 of P.L. 115-97) requires certain government entities (e.g., WI DOR) to file Form 1098-F if:
 - The government entity is a party involved in a suit or agreement with respect to a violation of any law over which the government entity has authority,
 - The suit or agreement becomes binding on or after January 1, 2022, and
 - The aggregate amount involved in all court orders and agreements is \$50,000 or more
- ▷ Due Date
 - File with IRS by Feb. 28 (Mar. 31 if filed electronically) following calendar year in which suit or agreement becomes binding
 - Provide a copy to payor by Jan. 31 following calendar year in which suit or agreement becomes binding

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Form 1098-F New Requirements (cont.)

- Example:
- ▷ WI DOR issues a notice of amount due (NOAD) to a corporation because of a violation of tax law:

○ Tax	\$40,000
○ Interest	10,000
○ Penalties	5,000
○ Total	\$55,000
 - ▷ If NOAD becomes binding on October 10, 2022, DOR must:
 - File Form 1098-F with IRS by Feb. 28, 2023 (Mar. 31 if electronically)
 - Provide a copy to the corporation by Jan. 31, 2023
 - ▷ Form 1098-F will show \$55,000 in box 1 and \$5,000 in box 2

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Sales and Use Tax Update

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Nonprofit Occasional Sale Exemption

- ▷ 2021 Wis. Act 167
 - Entertainment standard for the nonprofit occasional sale exemption increased from \$10,000 to \$50,000
 - If a nonprofit organization charges an admission for an event, the nonprofit organization may qualify for the occasional sales exemption (if all other standards are met), if the total amount that all entertainers are paid is \$50,000 or less
 - Applies to entertainment admission events occurring on and after June 1, 2022

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Publication 240 Updates

- ▷ Publication 240, *Digital Goods* was updated November 2021
- ▷ Major changes:
 - Clarified treatment of pre-recorded webinars
 - Clarified "other news or information products"
 - Clarified examples of taxable and nontaxable digital goods
 - Updated bundled transaction example

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Pre-Recorded Webinars

- ▷ Sales of pre-recorded webinars are taxable specified digital goods if they are not provided incidentally with an education service
- ▷ Reminder: Pre-recorded webinars are provided incidentally with an education service if one of the following occurs:
 - The participant is evaluated by an instructor
 - The participants are connected to other participants and presenters via internet or other networks, allowing the participants to provide, receive, and discuss information together by live interaction, contemporaneous with the presentation
 - The pre-recorded webinar is certified by a branch of government for the participant to receive continuing education credits to obtain or remain in good standing with their government-issued license

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"Other News or Information Products"

- ▷ "Additional digital goods" means all of the following, if they are transferred electronically:
 1. Greeting cards.
 2. Finished artwork.
 3. Periodicals.
 4. Video or electronic games.
 5. Newspapers or **other news or information products**.
- ▷ Section 77.51(1a)(a), Wis. Stats.

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"Other News or Information Products"

- ▷ Prior Publication 240 had the following examples of taxable and nontaxable digital goods:
 - Taxable - Access to a website that provides real time information of commodity or stock prices.
 - Taxable - Access to a website that provides a listing of current job opportunities
 - Nontaxable - Access to an on-line database of information that allows the user to perform searches of the database and view and/or download the information retrieved as a result of the search

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"Other News or Information Products"

- ▷ Clarify that "other news or information products" are products that disseminate news or information, both current and historical
- ▷ Updated Publication 240 has the following examples of taxable additional digital goods:
 - Access to an online database or website of current or historical information that allows the user to view and/or download the information.
 - Listing of job opportunities
 - Construction plans and construction plan information
 - Price or valuation information
 - Personal information, such as address, age, or phone numbers

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"Other News or Information Products"

- ▷ Examples of taxable additional digital goods (cont.):
 - Information alerts sent by email
 - Newsletters transferred electronically
 - Online news services
 - Instructional guides

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Temporary Events

- ▷ DOR is continuing education campaign for event operators
- ▷ New listserv for Temporary Event Operators – see "E-News" page on our website
- ▷ Operators must report certain information about event within 10 days of event close
- ▷ Most sellers are required to have seller's permit UNLESS exemption applies
- ▷ Redesigned Wisconsin Temporary Event Report (S-240); no longer accepting old format / spreadsheets
- ▷ New S-240 is a fillable PDF. If operator has numerous events, can update and save PDF form as needed (e.g., update event details, add or delete vendors).

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Temporary Events - S-240 Revised

Form **S-240** Wisconsin Temporary Event Report L.
(Completed and submitted by the Event Operator) Page 1 of 1

Part A: Event Operator Information

Event Operator Name (if not sole proprietor) EIN (Business)

Event Operator Name (Last) Event Operator Name (First) Event Operator Name (Middle Initial)

Mailing Address Email Address

City State Zip Contact Phone Number

Part B: Temporary Event Information

Event Start Date Event End Date Number of Vendors

Temporary Event Name Minimum Vendor Booth Fee

Street Address Customer Admission Fee

City State Zip County

I declare that the information on this form is true and correct to the best of my knowledge and belief, and that I'm authorized to sign this form.

Signature Date

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Temporary Events - S-240 Revised

Part C: Vendor Information

If the vendor does not have a Wisconsin seller permit number and claims their sales are tax exempt, enter the exemption code number provided by the vendor.

- 1 - Exempt sales only or display only
- 2 - Multi-level marketing company pays sales tax
- 3 - Nonprofit occasional sales exemption
- 4 - Exempt occasional sales

Wisconsin Seller's Permit Number (15 digits starting with 456)	SSN (last 4 digits)	FEDIN (last 4 digits)	Exemption Code
456--			
Legal Business Name (if not sole proprietor)		Doing Business As (DBA) Name (if applicable)	
Vendor/Contact Name (Last)		Vendor/Contact Name (First)	Vendor Phone Number
Mailing Address		Email Address	
City	State	Zip	Multi-Level Marketing Company (if claiming Code 2 above)

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Utilities Providing Outdoor Lighting

- ▷ Customer-owned lighting
 - Utilities that provide electricity to customers who own their own lighting equipment are selling electricity (taxable unless an exemption applies, or the utility has received a fully completed exemption certificate from its customer)
- ▷ Utility-owned lighting
 - Utilities that provide lighting equipment and electricity are selling a nontaxable outdoor lighting service (not a taxable equipment rental since customer generally does not have control of lighting equipment)
- ▷ More details in the October 2022 *Wisconsin Tax Bulletin*

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Non-Fungible Tokens

- ▷ Non-fungible token (NFT) is a unique digital identifier that is recorded in blockchain
- ▷ Used to certify authenticity and ownership of a particular product
- ▷ Sale of an NFT may be taxable if underlying product or service is taxable in Wisconsin
- ▷ For example, if the NFT entitles the purchaser to receive a digital audio work, prepared food, artwork, or an admission to athletic or entertainment event, the NFT is taxable

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Successor Liability

- ▷ A purchaser of a business is called a successor
- ▷ A successor is liable for any unpaid sales and use taxes (but not penalties or interest) of the business they are purchasing
- ▷ To avoid successor liability, a successor must withhold enough of the purchase price to cover any taxes due
- ▷ Successor liability may not be avoided by agreements or contracts between the seller and purchaser

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Successor Liability – Prior to the Sale

- ▷ Determine how much to withhold from the purchase price.
 - Ask the seller if there are any outstanding sales/use tax liabilities or if there are unfiled sales and use tax returns
 - Ask the department for information about the seller. The department may provide:
 - Summary of sales and use tax returns, including missing and/or estimated periods
 - Summary of outstanding sales and use tax liabilities

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Successor Liability – Prior to the Sale

- ▷ The request to the department must be in writing and include the following:
 - Seller's business name
 - Seller's address
 - Seller's federal employer identification number (FEIN) or Wisconsin Tax Account Number (WTAN)
 - Purchaser's business name
 - Purchaser's address

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Successor Liability – Prior to the Sale

- ▷ The request to the department must also include one of the following:
 - An offer to purchase, copy of purchase agreements, or letter of intent to purchase or sell the business. This must be signed by both the seller and purchaser.
 - A letter signed by the seller that acknowledges the purchaser or potential purchaser
- ▷ A copy of the requested information will be provided to both the seller and the purchaser

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Successor Liability – After the Sale

- ▷ After the sale is complete, the purchaser should request a clearance certificate from the department
- ▷ A clearance certificate protects the purchaser from incurring successor liability by ensuring that the seller has filed all sales and use tax returns and paid all sales and use taxes due. Note: A clearance certificate is only for sales and use tax.
- ▷ The request must be made in writing, either by mail, email, or fax
- ▷ The department must act within 90 days of receiving the request by issuing the clearance certificate or issuing a notice of potential successor liability

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Successor Liability – After the Sale

- ▷ A request for a clearance certificate should include the following:
 - Legal name of seller
 - Business name of the seller
 - Seller's tax account number, if known
 - Seller's current mailing address
 - Name of the purchaser
 - Purchaser's tax account number
 - Purchaser's mailing address
 - Date of sale
 - Sale price
- ▷ See common questions on [Successor Liability and Clearance Certificates](#)

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Disregarded Entity's Business Assets

- ▷ A single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes under Ch. 71, Wis. Stats., is disregarded as a separate entity for sales and use tax
- ▷ Transactions between the owner and its disregarded entity are disregarded for sales and use tax purposes (i.e., not a "sale" transaction)
- ▷ Caution: A sale of an interest in a disregarded entity may be treated as the sale of business assets and subject to tax, unless an exemption applies. See Fact Sheet 2110, *Occasional Sales of Business Assets*.

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Marketplace Providers

- ▷ October 1, 2018 – Wisconsin began collection on out-of-state retailers with no physical presence in Wisconsin, unless they meet small seller exception
- ▷ January 1, 2020 – Wisconsin law clarified to provide that "marketplace providers" are also retailers and responsible for collecting and remitting taxes to DOR. Law also provides that marketplace sellers may not be audited and held liable for transactions facilitated through marketplace provider (certain exceptions apply).
- ▷ Marketplace providers may request a waiver from the marketplace provisions in the law (DOR has granted 4 waivers to date for unique situations – 3 waivers have been denied).

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Premier Resort Area Tax (PRAT)

- ▷ Village of Ephraim in Door County adopted 0.5% PRAT
- ▷ Effective January 1, 2022
- ▷ Imposed on certain sellers making taxable sales sourced to a premier resort area
- ▷ Reported in My Tax Account on premier resort area tax return
- ▷ Resources:
 - Premier Resort Area Tax Common Questions
 - Fact Sheet 2500

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Licensed/Common Carrier Exemption

- ▷ Section [77.54\(5\)\(b\)](#), Wis. Stats. exempts sales of motor trucks, truck tractors, road tractors, buses, trailers, and semitrailers from sales and use tax
- ▷ Also applies to accessories, attachments, parts, supplies and materials assigned to such vehicles and trailers
- ▷ Must be sold to common or contract carrier who uses the items *exclusively* as a common or contract carrier:
 - Hauls goods of others for hire or
 - Transports passengers as defined in sec. [71.38](#)

Caution: Holding an LC or MC number does not by itself fulfill the requirements of this exemption. The equipment must be used exclusively to haul goods of others for hire or to transport passengers.

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Motor Vehicle Dealer Plates

- ▷ WI licensed motor vehicle dealers may pay use tax on a fixed \$ amount per plate per month for motor vehicles used by the dealership and also held for sale in the regular course of business
- ▷ Effective Jan 2023 amount subject to use tax increases to **\$191** per plate per month (increased from \$175 for 2022)
- ▷ Amount subject to tax is adjusted annually per sec. [77.53\(1m\)](#), Wis. Stats.

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Litigation

- ▷ *Citation Partners, Inc.*: Court of Appeals, November 23, 2021
 - Issue - Is the total amount paid for an aircraft lease taxable or is the portion attributable to aircraft maintenance and engine maintenance excluded from tax?
 - Tax Appeals Commission (TAC) ruled the cost of maintenance services and repair parts is expense of lessor which is included in the "sales price" of the leases.
 - Circuit Court overturned TAC decision
 - Court of Appeals reversed the Circuit Court decision stating tax cannot be avoided by dividing up lease price into categories or affixing labels
 - Wisconsin Supreme Court is reviewing

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Litigation

- ▷ *Brown County vs Brown County Taxpayer's Association*: WI Supreme Court, March 4, 2022
 - Issue - Whether sales and use tax enacted by Brown County directly reduces the property tax levy as required by sec. 77.70, Wis. Stats., if proceeds fund new capital projects that together exceed levy limits but could be funded through borrowing.
 - Circuit Court concluded sec. 77.70 is an enabling statute whose purpose is to directly reduce the property tax levy, not a restriction on how sales and use tax is to be spent
 - Wisconsin Supreme Court affirmed the Circuit Court decision stating the County's ordinance directly reduces the levy by funding projects that would otherwise have been paid for through additional debt obligations.

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Litigation

- ▷ *SPA Indoor Speedway, LLC*: WTAC, January 24, 2022
 - Issue - Is taxpayer renting go-carts or selling a taxable admission?
 - Customers enter without charge. Only customers who rent or lease a go-cart are charged. The speedway is only available to rented go-carts.
 - The Commission concluded:
 - SPA offers a speedway racing experience to its customers, which is a taxable admission.
 - SPA's provision of go-carts is incidental to SPA's business, and therefore, no part of the charge for the admission may be deemed a rental of tangible personal goods.
 - SPA is the end user of the go-carts it purchases. SPA purchases of go-carts, go-cart parts, and go-cart repairs and maintenance are taxable.
 - Taxpayer did not appeal this decision.

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Litigation

- ▷ *William Becker*: La Crosse County Circuit Court, June 27, 2022
 - Issue - Are trailers "truck bodies" for purposes of sales tax exemption under sec. 77.54(5)(a)(4), Wis. Stats.
 - Taxpayer sold single-axle, tandem-axle, and gooseneck trailers designed to be used with a motor vehicle (car or pickup truck)
 - WTAC ruled trailers did not qualify for the exemption:
 - *Trudell* decision limits "trucks and truck bodies" exemption to combinations of power unit vehicles and trailers that if not combined serve little or no purpose
 - Trailer type vehicles sold by Becker have no trucks for which the truck bodies were made
 - Circuit Court found trailers sold are "truck bodies" and qualify for the exemption
 - DOR has appealed this decision

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Litigation

- ▷ *Green Cab of Wisconsin, Inc.*: WTAC, March 10, 2022
 - Issue - Are lease of taxicabs subject to 5% state rental vehicle fee under sec. 77.995(2), Wis. Stats.
 - Commission concluded:
 - Taxicabs are Type 1 motor vehicles
 - Taxpayer's primary business is rental of driverless vehicle to independent contractor, licensed taxi drivers
 - Rental of driverless vehicles licensed as a taxicab to a driver holding a valid taxicab driver's permit is subject to the state rental vehicle fee
 - Taxpayer has appealed.

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Litigation

- ▷ *Oshkosh Corporation*: WTAC, October 10, 2022
 - Issue – Whether indirect materials (office equipment and supplies) used in fulfilling contracts with the federal government were purchased by the taxpayer for resale if only the title to, but not possession of, the indirect materials passes to the federal government.
 - Commission concluded:
 - "Sale" in sec. 77.51(14), Wis. Stats., includes the transfer of ownership of, title to, possession of, or enjoyment of tangible personal property
 - Title transfer alone is sufficient to constitute a sale
 - DOR is deciding whether to appeal decision

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Unclaimed Property Update

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Unclaimed Property

- ▷ Unclaimed property is generally a financial asset that belongs to someone else that hasn't had owner activity for a specified time period and the holder cannot contact the owner of the property
- ▷ Examples include uncashed payroll checks, loan collateral, deposits, credit balances, refunds, etc.
- ▷ Reports are due November 1 each year for property that met the dormancy period in the previous fiscal year
- ▷ Holder report guide (Publication 82) and webinars are available on our website if you have questions

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Unclaimed Property

- ▷ 2021 Wis. Act 87
- ▷ Effective November 7, 2021
- ▷ Substantial revision to update and modernize Chapter 177 to model after the Revised Uniform Unclaimed Property Act
- ▷ Key provisions:
 - Creates a voluntary disclosure program
 - Adopts confidentiality provisions for unclaimed property records
 - Eliminates interest and revises penalties for holders who fail to report or deliver property
 - Provides appeal rights to holders
 - Clarifies the business-to-business exemption

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Unclaimed Property - VDA

- ▷ Applications must be submitted by February 28, 2023
- ▷ Application is online on the unclaimed property homepage
- ▷ Under the agreement, late fees and penalties will not be assessed to property reported under the program
- ▷ Eligibility:
 - You have unclaimed property to report from any of the five most recent reporting periods
 - You have not been audited for unclaimed property since 7/1/2016, or received notice of an upcoming audit
 - You do not have a balance on your unclaimed property holder account

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Unclaimed Property - VDA

- ▷ Terms of the agreement:
 - Attempt to contact owners of the property within 30 days of execution of the agreement. Notification letters must be sent to owners of properties worth \$50 or more.
 - Within 120 days of entering into the agreement, electronically file a report and deliver property for at least the five previous reporting periods. A reporting period is July 1 through June 30.
 - Continue to report and deliver all unclaimed property for at least four future annual reporting periods.
- ▷ 283 agreements completed as of mid October; over 10,900 started

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Unclaimed Property – Holder Changes

- ▷ Holders are required to provide the social security number or taxpayer identification number on holder reports, if known or readily available
- ▷ Holder notices sent to apparent owners must contain specific facts and statements that are provided in the law
- ▷ Holder reimbursements may be set off against debts of state agencies or municipalities
- ▷ Late filed reports have a \$150 penalty
- ▷ Interest is eliminated. Payments made after the due date are assessed a penalty equal to 15% of the value of the property.

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Processing, Procedures, and Projects

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Filing Season Opening / Due Date

- ▷ Individual income tax due date is April 18, 2023
- ▷ The IRS has not yet announced the opening dates for Modernized eFile
- ▷ Many 2022 Wisconsin draft forms have been posted to our website

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2021 Filing Season Statistics

Tax Type	Returns Filed	eFile Rate
Corporation Franchise (4, 4H 5S, 6)	43,830	88.2%
Fiduciary (2, 4T, Schedule CC)	61,552	75.1%
Individual Income (1, 1NPR, Schedule H, H-EZ and X-NOL)	3,286,892	90.7%
Pass-Through (1CNS/1CNP, 3, 5S, PW-1)	202,845	96.3%
Sales (ST-12)	956,904	97.2%
Withholding (WT-6, WT-7)	488,441	97.8%

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2022 Filing Season Tips – Income/Franchise Tax

- ▷ Be sure to include all forms, schedules and attachments with return
 - Software providers are required to allow attachments to e-filed returns
- ▷ Verify estimated payments and credit carryforward prior to filing
- ▷ Review adjustment notices from prior year to ensure you are using the most updated information

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2022 Filing Season Tips – Individual Income Tax

- ▷ Include Schedule U, *Underpayment of Estimated Tax*, on individual income tax return if income earned unevenly throughout the year AND has underpayment interest
 - Example: Taxpayer took a large distribution from a retirement account in November and did not have withholding. DOR will assume income is earned evenly throughout year for purposes of computing underpayment, UNLESS Schedule U is filed.
- ▷ Check FEINs on W-2s to ensure they are accurate. FEINs autofill in software from year to year, but businesses (employers) may change FEIN.
- ▷ Verify certificate of compliance number entered for farmland preservation claims & don't include dashes in number

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2022 Filing Season Tips – Individual Income Tax

- ▷ Omit nontaxable wages from married couple credit calculation (e.g., military pay subtraction)
- ▷ Returns claiming credits passed through from a partnership or S-Corp may be held if partnership or S-Corp has not yet filed
- ▷ Make sure appropriate documentation for contributions or adjustments from pass-through entities (SB lines 43-49) are included with return submission

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TY2022 – Communicating Electronically

- ▷ New for 2022: For those who file electronically, DOR is requesting an e-mail address for both prime & spouse, along with consent to contact taxpayer via e-mail. The reason is to reduce paper mailing costs and to more efficiently communicate with taxpayer.
- ▷ This is in addition to the request for an email address to consent to receiving Form 1099-G electronically from DOR.

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2022 Filing Season Tips – Pass-Through Entities

- ▷ Attach credit schedules when filing electronically (e.g., attach Schedule FC/FC-A, Farmland Preservation Credit, to the Form 2, Fiduciary Income Tax for Estates and Trusts)
- ▷ Form 2 for periods longer than 12 months are not accepted
- ▷ Forms 1CNP/CNS, Composite Partner/Shareholder Individual Income Tax Returns: Do not duplicate SSNs on Schedule 2

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2022 – Filing Season Tips - Manufacturing & Ag Credit

- ▷ Schedule MA-M: If box C or D is checked, enter qualifying parcel number
- ▷ Schedule MA-A & MA-M: Direct costs allocable to production gross receipts (line 3) should never be negative

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Make a Payment Page Expansion

- ▷ Rolled out [Make a Payment page](#) last year for individuals
- ▷ Expanding next year to include other major tax types, including corporation franchise tax, partnership, sales, withholding, pass-through withholding and fiduciary
- ▷ Page includes all appropriate payment methods by tax type AND links to the vouchers for those tax types
- ▷ Quick Pay button takes user DIRECTLY to MTA screen for making unregistered payments for individual income tax, fiduciary income tax, occasional consumer use tax, and non-tax debt; will be rebranding this slightly



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Make a Payment Page - Currently



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Payments & Software Providers

- ▷ Requiring software vendors to provide links to Make a Payment page in their software AND on the return summary page
- ▷ Software used by tax professionals for individual income tax filing will continue to provide payment vouchers
- ▷ For most tax types (EXCEPT individual income tax), vouchers will be produced from our website instead of your software
- ▷ DOR is trying to increase number of payments made electronically due to substantial processing delays with check processor

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Credit Card Processor

- ▷ DOR is switching to a new credit card vendor
- ▷ Credit card payments will be much easier under new system
- ▷ Look/feel of credit card screens will be much closer to existing DOR branding from MTA/DOR website
- ▷ Fees will be reduced slightly as well

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Sample Screens - Credit Card Payments

The following amounts will be sent back to the agency.

Item	Description	Unit Price	Quantity	Amount
Commission Fee	Commission Fee	\$1.00	1	\$1.00
Withhold Fee	Withhold Fee	\$100.00	1	\$100.00
Total				\$101.00

Transaction Summary

Commission Fee	\$1.00
Withhold Fee	\$100.00
TOTAL	\$101.00

Need Help?
Select Payment Method and Continue to proceed with payment.

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Sample Screens - Credit Card Payments

Payment Type
Credit/Debit Card

Customer Information

Address: John Doe, 123 Main St, Madison, WI 53703
 Phone Number: 6082627772
 Country: United States
 Email Address: D.Doe@revenue.wisconsin.gov

Transaction Summary

Commission Fee	\$1.00
Withhold Fee	\$100.00
Service Fee	\$2.27
TOTAL	\$103.27

Need Help?
You have selected to pay by credit card. Complete Customer Billing Information and enter Credit Card Information.

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Filing Tips – Sales & Withholding

- ▷ Include county sales tax, if applicable
- ▷ 1099s with withholding must be filed to DOR by January 31st! Combined fed-state cannot be used in this case
- ▷ \$10 penalty issued for failing to file W-2s/1099s, filing late, or failing to file electronically if 10 or more filed on paper

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Customer Service: Upcoming Projects

- ▷ Chatbot (virtual assistant)
 - Coming in 2023
 - Another method for customers to find answers
- ▷ Small business outreach
 - <https://www.revenue.wi.gov/Pages/Businesses/Seminars-home.aspx>
 - Seeking organizations to host seminars and webinars covering:

▪ Business tax registration	▪ My Tax Account
▪ Withholding tax	▪ Compliance tips
▪ Sales and use tax	▪ Resources for business owners: webpages, contact information, etc.
▪ Other business taxes	

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New Audit Web Page

Audits and Credit Reviews

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Audit Web Page

- ▷ <https://www.revenue.wi.gov/Pages/ISE/audit.aspx>
- ▷ Links to frequently referenced topics
 - Tax program web pages
 - Common Questions
 - Publications
 - My Tax Account
 - My Case Manager

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Audit Web Page

- ▷ Audit-specific forms
 - Sales and use tax - Sample customer/vendor contact letters
- ▷ Instructions for communicating and transferring files electronically with auditor
 - Using My Case Manager
 - Using Secure File Transfer
 - Using DocuSign

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My Tax Account (MTA) Updates

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MTA: Personal Users

- ▷ Encourage clients to register for My Tax Account (MTA) as personal users
 - Benefits: electronic notice delivery, make/view/cancel estimated payments, check refund status, and more
 - No third-party access yet - when it goes live, your client must have MTA to be able to grant you access, and you must have a valid POA on file with us
 - Email Form A-222 to DORPOA@wisconsin.gov or fax to 608-267-1030
- ▷ WI Identity Protection (IP) PIN
 - Ensures someone cannot file a WI return in your client's name
 - Enrollment is optional and completed via MTA
 - Once enrolled, must list PIN on all future returns (2021 and forward)
 - Different from IRS IP PIN

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MTA: Replacing WI e-file

- ▷ Gradually removing functionality from WI e-file and adding it to MTA
 - WI e-file is outdated and difficult to support
- ▷ Personal users who meet specific requirements can file 2022 Form 1 in registered MTA
 - Focusing on single and head of household (not married) and relatively simple returns this year
- ▷ Homestead credit filers may no longer file electronically using WI e-file; certain claimants may use unregistered MTA to file 2022 Schedule H electronically

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MTA: My Case Manager

- ▷ My Case Manager is available to help you and your clients make the audit process smoother. You can:
 - Follow the progress of the audit
 - Review requests and deadlines
 - Send secure messages back & forth with the auditor
 - Send documents securely (up to 30 MB)
 - Locate the supervisor's contact information
- ▷ Resources:
 - [Publication 701, My Case Manager User Guide](#)
 - [My Case Manager Common Questions](#)

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MTA: Manufacturing Property Assessment

- ▷ Electronic filing of Manufacturing Property Assessment Returns (M-Forms) will be through MTA in 2023
 - The former e-filing system was the Manufacturing Assessment System (MAS)
 - Most manufacturing returns are e-filed
 - A paper filing option will be limited
- ▷ M-Forms will be live in MTA in mid-January
- ▷ Historical filings will still be available for review in MAS

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MTA: Utility Annual Filing

- ▷ Annual utility reports moving into MTA for the 2023 filing season
 - Municipal Light Heat and Power
 - Private Light Heat and Power
 - Rural Electric Cooperative
 - Carline
 - Air Carrier
 - Railroad
 - Pipeline (Gas and Oil)
 - Conservation and Regulation
 - Association of Municipal Electrics
- ▷ Will be available mid-January

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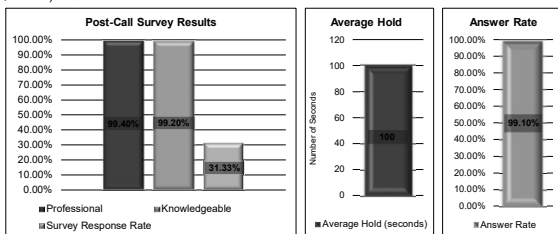
Statistics

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FY22 IS&E Division Phone Statistics

▷ 659,687 calls answered



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Contact Us

- ▷ Practitioner email address and phone number
 - Do not share with your clients
 - DORTaxPractitioners@wisconsin.gov
 - (608) 261-5199

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Presenters

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Thanks!
Any questions?



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