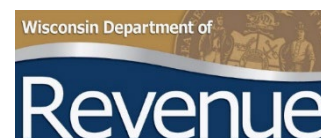


Wisconsin Tax Bulletin

October 2024 Number 227



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General Updates and Reminders

Fall Tax Update Seminars and Webinars

Registration is open for the 2024 Wisconsin Tax Update Seminars and Webinars.

These events are free and include:

- Tax law changes, updates, and reminders
- Tax processing, forms, and e-file updates
- Department initiatives
- My Tax Account updates

The department is holding one in-person seminar and three virtual webinars this year. All presentations are scheduled from 9:00 a.m. – 11:30 a.m. Dates and locations are below.

Date	Location
November 5, 2024	The Ingleside Hotel in Pewaukee (in-person only)
November 15, 2024	Virtual webinar
November 22, 2024	Virtual webinar
December 4, 2024	Virtual webinar

Visit the department's [Wisconsin Tax Update Seminars and Webinars](#) web page for details and registration.

My Tax Account Webinars

We will offer Annual Filer Refresher webinars on January 14, January 15, January 16, and January 21, 2025 (the same information is provided in each webinar).

To register and find more information as it becomes available, visit the department's [Training](#) web page.

The Annual Filer Refresher webinar covers a variety of topics, including:

- Filing and paying sales and use tax (Form ST-12)
- Filing and paying withholding tax (Forms WT-6 and WT-7)
- Submitting wage statements and information returns (Forms W-2, 1099-R, 1099-MISC & 1099-NEC)
- Printing seller's permits and business tax registration certificates
- Updating profile information (bank and contact information)
- Requesting extensions to file

We also offer a My Tax Account webinar for new users the second Tuesday of odd numbered months. The next new user webinar is schedule for November 12, 2024, 9:30 a.m. – 10:30 a.m. (CST). The webinar covers topics including My Tax Account's two-step login process, filing and paying sales & use tax, and filing and paying withholding tax.

Income and Franchise Tax Updates and Reminders

New Publication 600, *Wisconsin Taxation of Gambling Income*

[Publication 600](#) provides information about the Wisconsin Lottery, pari-mutuel wager winnings, and other types of gambling income and losses. It replaces Publication 601, *Wisconsin Taxation of Pari-Mutuel Wager Winnings*, and Fact Sheet 1104, *Gambling Winnings*.

Veteran and Surviving Spouses Property Tax Credit: Recertification for Current Year

The veterans and surviving spouses property tax credit is available to eligible veterans and unremarried surviving spouses and is equal to the amount of property taxes paid during the year on their principal dwelling in Wisconsin. A veteran or unremarried surviving spouse must be certified by the Wisconsin Department of Veterans Affairs (WDVA) to be eligible for the credit. If the certification for eligibility ended in 2023, the veteran or surviving spouse must request recertification from WDVA using a method listed below or by contacting their [County Veterans Service Officer](#).

Call: (800) 947-8387

Mail: Wisconsin Department of Veterans Affairs
Attn: Veterans Property Tax Credit
2135 Rimrock Road
PO Box 7843
Madison, WI 53707-7843

Eligibility end dates are stated on the WDVA certificate or can be verified by contacting WDVA at the phone number listed above. Confirm you are eligible prior to filing your 2024 Wisconsin income tax return to prevent delays in processing the return. The certificate must be included with the Wisconsin return in the first year the credit is claimed.

See the [Veterans and Surviving Spouses Property Tax Credit](#) common questions for more information.

Reminder: Wisconsin Qualified Opportunity Fund Certification Due Date and Filing Method Changes

Annually, a Wisconsin Qualified Opportunity Fund (WQOF) must certify to each investor and the department that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year. [Form WQOF](#), *Wisconsin Qualified Opportunity Fund Certificate*, is the form required to be filed with the department.

Effective for taxable years beginning after December 31, 2023, a WQOF is required to file Form WQOF and provide a copy to each investor by the due date, including extensions, of the fund's corresponding Wisconsin income or franchise tax return. The prior DocuSign filing method has been discontinued. Funds must file Form WQOF by including it with their corresponding Wisconsin income or franchise tax return.

For more information, see Wisconsin [Fact Sheet 1121](#), *Capital Gain Exclusion – Investment in a Wisconsin Qualified Opportunity Fund*, the department's [Qualified Opportunity Zones](#) common questions, the [Form WQOF](#) and [instructions](#).

Reminder: Qualified Wisconsin Business Registration for Capital Gain Exclusion and Deferral

For Wisconsin income tax purposes, an individual may:

- Defer a long-term capital gain if the gain is reinvested in a "qualified Wisconsin business" within 180 days after the sale of the asset that generated the gain.
- Exclude certain long-term capital gains from the sale of an investment in a "qualified Wisconsin business." The exclusion applies if the business was a qualified Wisconsin business for the year of the investment and for at least two of the four subsequent years, the investment was made after December 31, 2010, and the investment was held for at least five uninterrupted years.

Registration Requirements

For investors to be eligible for these tax benefits, the business must register electronically with the department by the close of each calendar year to be considered a "qualified Wisconsin business" for that year. The registration deadline for 2024 is January 2, 2025.

Exception: A business that started operations in Wisconsin in 2024 must complete the 2025 registration application (available after January 2, 2025, and before January 3, 2026) and answer yes to the question "Did the business start operations in Wisconsin last year?"

A business may register as a qualified Wisconsin business if **all** the following apply as of the tax year ending immediately before the date of registration:

- The business has at least two full-time employees.
- The amount of payroll compensation paid by the business in Wisconsin is at least 50 percent of all payroll compensation paid by the business.
- The value of real and tangible personal property owned or rented and used by the business in Wisconsin is at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

For more information, see:

- [Registration of Qualified Wisconsin Businesses](#) common questions
- [Qualified Wisconsin Business Capital Gain Exclusion](#) common questions
- [Fact Sheet 1102-2, Deferral and Exclusion of Long-Term Capital Gains for Investments in Qualified Wisconsin Businesses](#)

Withholding Tax Updates and Reminders

Withholding Tax Update Available

The [2024 Withholding Tax Update](#) has been posted to the department's website. Topics covered include:

- Withholding Tax Rates
- Withholding and Filing Requirements of Payments for Agricultural Labor (e.g., H-2A Workers)
- Retirement and Pension Payments Exempt from Income Tax Withholding
- Filing Requirements of Form 1099-R with Wisconsin Withholding



- Withholding and Filing Requirements of Third-Party Sick Pay
- Notice to Employers Using a Payroll Service Provider
- The Combined Federal/State Filing Program Is Not an Approved Filing Option for Information Returns with Wisconsin Withholding
- Truncated Taxpayer Identification Numbers on Forms W-2 and 1099
- 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
- Filing Extensions – Form WT-7, Wage Statements, and Information Returns
- Transportation Fringe Benefits for 2024 and 2025
- Worker Classification (Employee vs. Contractor)
- Single-Member LLCs – Are You Registered Correctly?
- Employees Claiming More than 10 Exemptions or Complete Exemption from Withholding (Form WT-4)
- Withholding Lock-In Letters
- Reporting Nonresident Entertainer Withholding on Income/Franchise Tax Returns
- My Tax Account New User Webinars
- My Tax Account Annual Refresher Webinars
- Withholding Tax Webinars for Employers
- Withholding Tax Electronic Mailing List
- Employer's Responsibility for Unclaimed Property
- Questions or Comments
- Quick Links

Withholding Tax Webinar for Employers

The department is providing a live Withholding Tax webinar on Thursday, December 12, 2024, at 10:00 a.m. The webinar will be recorded and available for playback within a few days after the event.

These webinars cover a variety of topics, including:

- Employer responsibilities and filing frequency information
- How to file withholding and information returns (Forms WT-6, WT-7, W-2, and 1099)
- My Tax Account overview for withholding tax – includes filing tips for My Tax Account
- Tips for avoiding penalties and interest
- Employer requirements for closing accounts

To register for this webinar, visit the department's [Training](#) web page.

Sales and Use Tax Updates and Reminders

Motor Vehicle Dealers' Measure of Use Tax Increases to \$203

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a fixed dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2025, the amount subject to use tax is increased from \$197 to \$203 per plate per month. To calculate use tax, \$203 is multiplied by the appropriate use tax rate (5%, 5.5%, 5.9%, 7%, 7.5%, or 7.9%) to arrive at the use tax due per plate per month.

Why is the rate increasing?

Wisconsin law, sec. [77.53\(1m\)](#), Wis. Stats., requires the department to annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12-month period ending June 30. Since the index for the period July 2023 through June 2024 increased 3%, the amount subject to use tax on dealer motor vehicle plates increases \$6 per plate per month starting January 1, 2025.

For more information, see:

- [Publication 202](#), *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs*
- [Use Tax on Motor Vehicle Dealer Plates](#) common questions

Baseball Stadium Tax Administration Ending

The 0.1% baseball stadium tax ended March 31, 2020. Purchasers are encouraged to notify the Wisconsin Department of Revenue if they see a retailer continuing to charge an extra 0.1% tax. Retailers that erroneously collect tax must return it to their customers or pay it to the department. Penalties may apply to retailers that keep erroneously collected tax.

Effective January 1, 2025, the department may not issue an assessment or act on any claim for refund of baseball stadium tax. The department will distribute stadium tax funds to the five counties of the former baseball stadium district after December 31, 2024.

New Qualified Data Center Has Been Certified by the Wisconsin Economic Development Corporation

The Wisconsin Economic Development Corporation (WEDC) has certified another qualified data center in Wisconsin, for Epic Hosting, LLC. The effective date of the certification is September 24, 2024.

The certification permits contractors and other purchasers to buy tangible personal property identified in sec. [77.54\(70\)](#), Wis. Stats., exempt from Wisconsin sales and use tax. The certification date is effective September 24, 2024; therefore, eligible purchases made on or after September 24, 2024, for the Epic Hosting, LLC qualified data center located in Verona qualify for the exemption.

See [Fact Sheet 2114](#), *Sales and Use Tax Exemption for Qualified Data Centers* for additional information about what is exempt and how to claim the exemption.

Sales Tax Guidance on Streamlined's Website

Wisconsin has been a full member of the Streamlined Sales and Use Tax Agreement (SSUTA) since 2009. As a member state, Wisconsin works collaboratively with 23 other member states and the business community to simplify and modernize sales and use tax administration. As an aid for businesses, Wisconsin and the other Streamlined member states have provided detailed sales tax guidance and resources on the Streamlined Sales Tax Governing Board Inc.'s ("Streamlined's") website, www.streamlinedsalestax.org.

See Wisconsin's guidance in the following Streamlined resources:

- [Taxability Matrix: Library of Definitions](#): This matrix provides a listing of defined administrative terms, products, and services and indicates whether the member state has adopted the uniform SSUTA definition, whether the item is taxable or exempt, and whether the item is included or excluded from the sales price. Exceptions to the definitions or further explanation of the tax treatment are provided in the comments column.
- [Taxability Matrix: Tax Administration Practices](#): This matrix indicates which administrative practices each member state follows and provides an explanation of the state's practice if it does not follow a listed practice. It includes information about a state's treatment of vouchers, credits, liability relief, power-of-attorney documents, post-transaction issues, voluntary disclosure agreements, classification of medical products, treatment of remote sellers, marketplace providers/sellers, and exemption certificates.

Wisconsin encourages all businesses, whether located in Wisconsin or not, to use these tools provided through the Streamlined Sales Tax Governing Board.

Wisconsin Businesses: Do You Owe Sales Tax in Other States?

Wisconsin businesses selling products or services to customers outside Wisconsin may have sales and use tax obligations in those other states. The Streamlined Sales Tax Governing Board, Inc. has the following resources on its website to help remote sellers determine if they have a sales tax collection responsibility in each state:

- [Remote Seller State Guidance](#) – This chart provides guidance for every state that imposes sales taxes, including thresholds for tax collection responsibilities and links to state guidance.
- [State Contact Information](#) – This chart provides contact information for every state that imposes sales taxes, including sales tax rates and links to register.
- [Marketplace Seller State Guidance](#) – This chart provides information about marketplace facilitator/provider laws in other states, including information about who must register and collect sales taxes on sales facilitated through a marketplace facilitator/provider.

Through Wisconsin's participation in the Streamlined Sales Tax program, Wisconsin businesses may qualify for *free* sales tax calculation and reporting services in other Streamlined member states, including:

- Software integration and calculation of tax due at the time of sale
- Preparation and filing of sales tax returns and submitting payments
- Audit assistance

Visit www.streamlinedsalestax.org to learn more.

Reminder: Manitowoc County Adopts County Tax Effective January 1, 2025

Beginning January 1, 2025, Manitowoc County adopts the 0.5% county sales and use tax. See the new tax law article in [Wisconsin Tax Bulletin 226](#) (July 2024), page 9, for more information. Only three counties have not adopted county tax (Racine, Waukesha, and Winnebago).

Excise Tax Updates and Reminders

Reminder: New Excise Tax Permit Effective January 1, 2025

Any person that makes sales of cigars or pipe tobacco directly to a consumer in Wisconsin using any method where the buyer is not in the immediate presence of the seller (online, telephone, etc.) and the cigars or pipe tobacco are delivered to the consumer, must obtain a remote retail seller permit from the department. Apply for a remote retail seller permit using Form CTV-200, *Application for Cigarette, Tobacco, and Vapor Products Permits*. The application form will be available soon on the department's [Cigarette, Tobacco, and Vapor Products Forms](#) web page.

Remote retail sellers must file excise tax returns (Form TT-100) and pay excise taxes on the cigars and pipe tobacco, as well as file sales and use tax returns (Form ST-12) and pay the applicable state, county, and city sales taxes due on the retail sales in Wisconsin.

Record keeping and regulatory provisions apply to these permittees. For more details, see the new tax law article in [Wisconsin Tax Bulletin 226](#) (July 2024), page 1.

Reminder: Electric Vehicle Charging Tax and Registration

[2023 Wis. Act 121](#) creates a new electric vehicle charging tax and requires certain persons to register for the new tax.

Electric Vehicle Charging Tax

The excise tax is effective January 1, 2025, on a registrant at the rate of 3 cents per kilowatt-hour on the electricity delivered or placed into the battery or other energy storage device of an electric vehicle by:

- A Level 3 charger of an electric vehicle charging station
- A Level 1 or Level 2 charger installed on or after March 22, 2024, of an electric vehicle charging station

The excise tax does not apply to electricity delivered or placed by a charger of an electrical vehicle charging station located at a residence.

Caution: The excise tax applies to the total kilowatt-hours of electricity delivered or placed by an electric vehicle charging station regardless of whether a registered person charges for the electricity and regardless of whether the charging station is available to the public.

Electric Vehicle Charging Station Registration

Prior to delivering or placing, or offering to deliver or place, electricity from an electric vehicle charging station owned, operated, managed, or leased by a person, the person must register with the department. Registration will include, but is not limited to, the operating name of the applicant and location of all the applicant's electric vehicle charging stations.

Registration for the electric vehicle charging tax is available using the department's [Online Business Tax Registration](#).

See the new tax law article in [Wisconsin Tax Bulletin 225](#) (April 2024), page 11, and [Publication 305, Electric Vehicle Charging Tax Information](#), for additional information.

Enforcement Report

Milwaukee County Resident Charged with Tax Fraud and Theft

On September 11, 2024, Rachael M. Griffin of Milwaukee was sentenced to a maximum term of 12 months in jail with 3 years extended supervision and ordered to pay restitution to the Wisconsin Department of Revenue in the amount of \$36,847 for forgery, business identity theft, theft, and filing false State of Wisconsin income tax returns.

For tax years 2016 through 2021, Griffin's Form W-2 was modified to increase amounts of Wisconsin withholding and decrease reportable Wisconsin income. Griffin worked for the federal Defense Accounting and Finance Services. Griffin forged the Forms W-2 online and submitted them electronically to the Wisconsin Department of Revenue.

The fraudulent Forms W-2 resulted in an aggregated theft of \$14,374 of false tax refunds and \$22,473 of evaded tax liability from the Wisconsin Department of Revenue. A 2021 refund of \$2,371 was requested by Griffin but not paid.

These charges are the result of an investigation and referral of charges by investigators from the Wisconsin Department of Revenue, Office of Criminal Investigation, and the Milwaukee County District Attorney's Office.

To report tax fraud, go to www.revenue.wi.gov and click the "Report tax fraud" link under Quick Links.

Tax Releases

"Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect the position of the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the answers in a tax release.)

Sales and Use Tax

"Transport" Natural Gas and Transportation Charges

Statutes:

Sections [77.51\(2m\)](#), [\(12\)](#), [\(12m\)](#), [\(14\)](#), [\(15b\)](#), and [\(20\)](#), [77.52\(1\)\(a\)](#), [77.53\(1\)](#), [77.54\(30\)\(b\)](#), [77.552\(1\)\(a\)1.](#) and [\(b\)2.](#), and [77.585\(8\)\(a\)](#), Wis. Stats.

Wis. Adm. Code:

Section Tax [11.94\(2\)\(a\)](#), Wis. Adm. Code

Introduction:

This tax release supersedes the tax release by the same title that appeared in [Wisconsin Tax Bulletin 65](#) (January 1990), pages 29 to 31.

Background:

Sections 77.52(1)(a) and 77.53(1), Wis. Stats., impose sales and use tax on the sales price or purchase price from the sale of, and the storage, use, or other consumption of tangible personal property, which includes natural gas.

Certain exemptions in sec. 77.54, Wis. Stats., apply to the sale of natural gas, but are not the focus of this tax release.

Sections 77.51(12m) and (15b), Wis. Stats. provide that "purchase price" and "sales price" mean the total amount of consideration received by the seller without any reduction for seller's costs necessary to complete the sale and any delivery charges.

Section 77.51(12)(a), Wis. Stats., provides that "purchase" includes any transfer of title, possession, ownership, enjoyment, or use by: cash or credit transaction, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatever of tangible personal property for a consideration, including any transaction for which a person's books and records show the transaction created, with regard to the transferee, an obligation to pay a certain amount of money or an increase in accounts payable or, with regard to the transferor, a right to receive a certain amount of money or an increase in accounts receivable.

Section 77.51(14), Wis. Stats., provides in part that "sale" includes the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property for use or consumption but not for resale. "Sale" also includes a transaction for which a person's books and records show the transaction created, with regard to the transferee, an obligation to pay a certain amount of money or an increase in accounts payable or, with regard to the transferor, a right to receive a certain amount of money or an increase in accounts receivable. Such transactions are sales regardless of all of the following:

- Whether the transaction is mercantile in nature.
- Whether the seller sells smaller quantities from inventory.
- Whether the seller makes or intends to make a profit on the sale.
- Whether the seller or the buyer receives a benefit the seller or buyer bargained for.
- The percentage of the seller's total sales that the sale represents.
- Any activities other than those described in sec. 77.51(13)(a) to (o), Wis. Stats., in which the seller is engaged.
- Whether the seller sells on the seller's own behalf or on behalf of another person.

Section 77.522(1)(b)2., Wis. Stats., provides in part:

If a purchaser does not receive the product at a seller's business location, the sale is sourced to the location where the purchaser, or the purchaser's designated donee, receives the product.

Section 77.522(1)(a)1., Wis. Stats., provides in part:

"Receive" means taking possession of tangible personal property... "Receive" does not include a shipping company taking possession of tangible personal property ... on a purchaser's behalf.

Section 77.54(30)(b), Wis. Stats., provides:

For purposes of this subsection, electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the billing is mailed.

Section 77.585(8)(a), Wis. Stats. provides in part:

A sale or purchase involving transfer of ownership of tangible personal property, or items or property under s. 77.52 (1) (b) or (c), is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent.

Terms: For purposes of this tax release, the following definitions apply:

- *Producer.* The Producer extracts natural gas from the ground.
- *Marketer/Broker.* The Marketer/Broker purchases or arranges for the purchase of natural gas to be delivered to an End User.
- *Interstate Pipeline.* The Interstate Pipeline operates the pipeline which transports the natural gas between states.
- *Local Utility or LDC (local distribution carrier).* These terms are interchangeable. The Local Utility (LDC) operates the local distribution network which transports natural gas from the Interstate Pipeline to the End User.
- *City gate.* The city gate is the point when the Interstate Pipeline is connected to the Local Utility's pipeline.
- *End User.* The End User is the business consumer of the natural gas.

When does a sale of natural gas occur?

The sale or purchase of natural gas occurs when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. Exception: The sale of natural gas upon which an exemption under sec. 77.54(30), Wis. Stats., applies is considered sold at the time of billing.

Where does a sale of natural gas occur?

The sale or purchase of natural gas occurs where the purchaser, or the purchaser's designated donee, receives the product, except that a shipping company or transport company that takes possession of natural gas is not considered received by the purchaser or purchaser's designated donee.

What amount is subject to tax?

The entire sales price or purchase price of natural gas is subject to tax unless an exemption applies. Sales price and purchase price is the total amount of consideration received by the seller, including delivery charges, and cannot be reduced by any costs of the seller necessary to complete the sale.

The following examples illustrate when natural gas transportation charges are included in the sales price of the natural gas. For purposes of these examples, it is assumed that the natural gas does not qualify for an exemption.

Example 1: LDC purchases natural gas from Producer and resells it to End User. LDC incurs costs for the natural gas and its transportation to the city gate where LDC takes possession of it and subsequently transports it to End User.

Treatment: The entire sales price charged by LDC to End User is subject to tax and cannot be reduced by the costs LDC incurred to purchase and transport the natural gas to End User.

Example 2: End User contracts separately with Producer, Interstate Pipeline, and LDC for the purchase and transportation of natural gas. Producer charges End User for the natural gas. Interstate Pipeline charges End User for transportation of the natural gas. LDC charges End User for metering of the natural gas.

Treatment: (1) Producer's entire sales price of the natural gas to End User is subject to tax. (2) Interstate Pipeline's charge to End User for transportation services is not subject to tax. (3) LDC's charge to End User for metering services is not subject to tax.

Example 3: End User purchases natural gas from Marketer. Marketer arranges with Interstate Pipeline to deliver the natural gas to the city gate. Marketer's invoice to End User includes charges for natural gas and transportation to the city gate. End User separately contracts with LDC to transport the natural gas from the city gate to End User. LDC's invoice to End User includes charges for transportation and metering from the city gate to End User.

Treatment: (1) Marketer's entire sales price is subject to tax and includes the total amount of consideration received by Marketer for the sale and transportation of the natural gas. Marketer's sales price cannot be reduced by any costs necessary to complete the sale, such as the cost of transporting the natural gas to the city gate. (2) LDC's separate charges to End User for transportation and metering services from the city gate to End User are not subject to tax.

Example 4: End User contracts with Marketer to have Marketer arrange the purchase, transportation, and metering of natural gas on End User's behalf. Marketer secures the purchase, transportation, and metering of natural gas from Producer, Interstate Pipeline, and LDC. Marketer is charged by Producer, Interstate Pipeline, and LDC. Marketer invoices and charges End User the combined amounts from Producer, Interstate Pipeline, and LDC.

Treatment: Marketer's entire sales price is subject to tax and includes the total amount of consideration received from End User for the natural gas, transportation, and metering.

Report on Litigation

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

Individual Income Tax

Residency for Earned Income Credit and Homestead Credit

Riziki Iveti v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 21, 2024).

The issue in this case is whether the taxpayer qualified as a full-year resident of Wisconsin for 2021 in order to be eligible for Wisconsin's earned income credit and homestead credit.

Prior to moving to Wisconsin, the taxpayer and the taxpayer's children were residents of a refugee camp in Tanzania. In May 2019, the United States Citizenship and Immigration Services notified the taxpayer that the application for refugee status had been conditionally approved. The U.S. Department of State later sent a welcoming letter and travel packet in November 2020. As part of the refugee application, the taxpayer was assigned to live in Wisconsin. The taxpayer and the taxpayer's children physically arrived in Wisconsin on February 16, 2021.

The taxpayer filed a 2021 Wisconsin individual income tax return on February 11, 2022, using Form 1 (full-year resident) and claimed the earned income and homestead credits. The department issued a Notice of Refund on June 16, 2022, denying the earned income and homestead credits claimed on the basis that the taxpayer was not a full-year resident of Wisconsin for 2021. The taxpayer filed a timely petition for redetermination with the department, which was subsequently denied. A timely petition for review was filed with the Commission in response.

Wisconsin law requires a claimant to have been a resident of Wisconsin for the entire taxable year to be eligible for the earned income credit and homestead credit (secs. [71.07\(9e\)\(c\)](#) and [71.52\(1\)](#), Wis. Stats., respectively). Therefore, the issue before the Commission revolves around when the taxpayer became a resident of Wisconsin. The department's position was that the earliest date the taxpayer could be considered a Wisconsin resident was February 16, 2021, the date of physical arrival. The taxpayer took the position that they should be considered a resident as of the date the welcome letter in the travel packet was created, November 20, 2020.

The Commission cited Wisconsin Supreme Court decision, *Baker v. Dept. of Taxation*, as the controlling precedent, noting that *Baker* emphasizes that:

- "...two things are necessary to create a new domicile, first, an abandonment of the old domicile, and, second, the intention and establishment of a new domicile."
- "Until the old domicile has been actually abandoned and an intended new home has been actually and permanently occupied and established elsewhere, the latter cannot be considered the new domicile."

While the taxpayer clearly intended to abandon their prior domicile in Africa prior to 2021, a new domicile could not be created until they had fully acquired and occupied their new domicile. Given the facts of the case, the Commission determined the earliest the taxpayer could create a domicile in Wisconsin and be considered a resident of the state is the date they first arrived in the state, February 16, 2021. Accordingly, the taxpayer was not a resident of Wisconsin for all of 2021 and the Commission upheld the department's denial of the earned income credit and homestead credit.

The taxpayer did not appeal this decision.

Pass-Through Withholding Tax

Pass-Through Entities Required to File a Pass-Through Withholding Return and Submit Withheld Tax in Each Year There Is Wisconsin Income

RADS Partnership, Via Cresta, L.P., Laughing Cow, LP, Westmar LTD, and Finger Living Trust (Petitioners) v. Wisconsin Department of Revenue (Court of Appeals, District IV, February 29, 2024).

See [Wisconsin Tax Bulletin 219](#) (October 2022), pages 16-18, for a summary of the Wisconsin Tax Appeals Commission's decision.

See [Wisconsin Tax Bulletin 221](#) (April 2023), page 12, for a summary of the Dane County Circuit Court's decision.

See [Wisconsin Tax Bulletin 225](#) (April 2024), page 17, for a summary of the Wisconsin Court of Appeals decision.

The issues in the Commission's decision are whether the Petitioners, who are pass-through entities, are liable for pass-through withholding tax under sec. [71.775](#), Wis. Stats., and whether the trust Petitioner is liable for fiduciary income tax based on income the Petitioners received during tax year 2013. The Commission found in favor of the department on both issues.

The Wisconsin Court of Appeals affirmed the Circuit Court's dismissal of a petition for review because the department was not properly served and the Circuit Court therefore lacked competency. The decision of the Court of Appeals has been recommended for publication.

The petitioners sought review by the Wisconsin Supreme Court. The Wisconsin Supreme Court denied review, so the decision of the Tax Appeals Commission stands.

Sales and Use Tax

Sale/Leaseback of an Aircraft and Computer Software

CMFG Life Insurance Company and CUMIS Insurance Society v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 6, 2024).

The issue in this case is whether the contracts for an aircraft and software created a valid sale/leaseback and are subject to sales tax, or a nontaxable refinancing agreement.

CMFG Life Insurance Company and its subsidiary CUMIS Insurance Society (together referred to as "CMFG") entered into a lease agreement for an aircraft. The lease agreement provided the following (among other provisions):

- CMFG agreed to sell an airplane to PNC Finance and then lease the aircraft back for a set rent, subject to certain terms, limitations, and conditions.
- The leases were net leases obligating CMFG to be responsible for taxes, compliance, use, maintenance, and insurance.
- For federal, state, and local sales and income tax purposes, the transaction contemplated would be treated as a financing arrangement consisting of a loan from PNC Finance to CMFG secured by the Aircraft and other Collateral, and CMFG shall be treated, for federal, state, and local income tax purposes, as the owner of the Aircraft.
- CMFG shall have the option, upon the expiration of the terms, to purchase the Aircraft.

CMFG also entered into a lease agreement for software. The software lease was essentially identical to the aircraft lease.

The department argued the form of the leases is controlling and since the terms of the leases provided for a sales/leaseback, the lease receipts for tangible personal property were subject to Wisconsin sales tax, as provided in sec. [77.52\(1b\)](#), Wis. Stats. CMFG argued the form of the lease should be ignored and the substance of the lease should be determinative and therefore, the leases were financing leases and not subject to Wisconsin sales tax.

The Wisconsin Tax Appeals Commission concluded:

- The lease of the aircraft and software were sale/leasebacks and subject to sales tax under sec. [77.52\(1b\)](#), Wis. Stats. They were not financing agreements.
- The Wisconsin statutory definitions of a lease and sale control over the form of the agreements.
- CMFG cannot make a claim regarding the substance and realities analysis, only the department can make that claim and did not choose to do so.
- Referring to the *Ladish* case, a clause stating the parties' intent for tax purposes cannot bind the department because the department was not a party to the underlying leases.

CMFG has appealed this decision.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of October 31, 2024: chs. 71, 77, 139, and 340, [Wis. Stats.](#), and chs. Tax 1, 2, 3, 9, and 11, [Wis. Adm. Code](#). Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

Public Comments

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