

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100119	Disclosure of Reportable Transactions - Taxpayer Requirements - Common Questions

State of Wisconsin
Department of Revenue

Disclosure of Reportable Transactions - Taxpayer Requirements

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

1. What am I required to disclose to Wisconsin?
2. What form do I use to disclose a reportable transaction to Wisconsin?
3. What if I'm not required to file a Wisconsin income or franchise tax return?
4. For corporations, how should a member of a consolidated group make the disclosure?
5. When do I have to make the disclosure to Wisconsin?
6. Where do I send my Wisconsin disclosure statements?
7. What penalties apply to taxpayers if they fail to follow these requirements?
8. If a reportable transaction was not a listed transaction when I entered into it but the IRS later identified it as a listed transaction, is it still considered a listed transaction?
9. Are there other consequences for failing to follow these requirements?

1. **What am I required to disclose to Wisconsin?**

You are required to disclose transactions that are classified as "reportable transactions" for federal income tax purposes. A reportable transaction is one that the IRS requires to be separately disclosed because it has a higher potential to be a tax avoidance transaction. Reportable transactions are required to be disclosed on various forms, including Form 8886, Reportable Transaction Disclosure Statement. The instructions to Form 8886, Reportable Transaction Disclosure Statement. The instructions to Form 8886 (available at irs.gov) provide a specific explanation of what transactions must be disclosed on the form. In general, these transactions include:

- **Listed transactions**, which the IRS has specifically identified as tax avoidance transactions. Examples include "Sale-in Lease-out" and "Loss Importation" transactions, but there are many others. A complete listing of these transactions is available on the IRS website at: irs.gov/Businesses/Corporations/Abusive-Tax-Shelters-and-Transactions

under the heading for "Abusive Tax Shelters."

- **Confidential transactions**, which include transactions offered under conditions of confidentiality and for which you paid an advisor a minimum fee.
- **Transactions with contractual protection**, which are transactions for which the fees depend on whether the intended tax benefits from the transaction are sustained.
- **Loss transactions** which exceed certain thresholds.
- **Transactions of interest**, which are those the IRS identifies as having the potential to become listed transactions but does not have enough information to make the determination.

2. **What form do I use to disclose a reportable transaction to Wisconsin?**

All you need is a copy of the federal form you submitted with your federal tax return.

3. **What if I'm not required to file a Wisconsin income or franchise tax return?**

You are not required to disclose reportable transactions to Wisconsin. The requirement only applies to taxpayers otherwise required to file a Wisconsin income or franchise tax return.

4. **For corporations, how should a member of a consolidated group make the disclosure?**

A member of a consolidated group is required to submit a copy of the federal form to Wisconsin only for reportable transactions that affect the Wisconsin tax liability of the member on a deconsolidated basis.

5. **When do I have to make the disclosure to Wisconsin?**

A copy of the federal form must be filed with the department no later than 60 days after the due date to file the form for federal income tax purposes.

6. **Where do I send my Wisconsin disclosure statements?**

If the federal disclosure form is required to be filed with your federal income tax return, please submit a copy of the federal form with the filing of your Wisconsin income or franchise tax return.

If the federal disclosure form is not submitted with your federal income tax return, send the Wisconsin disclosures to:

Wisconsin Department of Revenue
Tax Shelters Program
PO Box 8958
Madison, WI 53708-8958

7. **What penalties apply to taxpayers if they fail to follow these requirements?**

Penalties may apply for failure to disclose a reportable transaction to Wisconsin even if there is no understatement of tax. These penalties are as follows:

- For failure to disclose a listed transaction, \$30,000.
- For failure to disclose a reportable transaction that is not a listed transaction, \$15,000 or 10% of the tax benefit obtained from the transaction, whichever is less.

If there is an understatement of Wisconsin tax attributable to any reportable transaction entered into on or after January 1, 2001 (or entered before that date and affecting a taxable year beginning on or after that date), the following penalties may apply:

- 20% of the understatement if the reportable transaction is disclosed.
- 30% of the understatement if the reportable transaction is not disclosed.

8. If a reportable transaction was not a listed transaction when I entered into it but the IRS later identified it as a listed transaction, is it still considered a listed transaction?

Yes. For purposes of these requirements and the associated penalties, Wisconsin would treat the transaction as a listed transaction

9. Are there other consequences for failing to follow these requirements?

If you fail to disclose a reportable transaction as required, the statute of limitations may be extended with respect to that transaction, as follows:

- For an undisclosed reportable transaction that is not a listed transaction, the statute of limitations is extended to 6 years beyond the filing date of the Wisconsin return for the year the transaction occurred.
- For an undisclosed listed transaction discovered by the department more than 6 years beyond the filing date of the Wisconsin return for the year the transaction occurred, the statute of limitations is extended to 4 years after the date the department discovers the undisclosed transaction.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 17, 2019: Sections 71.24 and 71.81, Wis. Stats., and sec. Tax 2.67, Wis. Adm. Code, and 26 U.S. Code §§ 6011, 6111 and 6707A.

Laws enacted and in effect after December 17, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 17, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

WISCONSIN DEPARTMENT OF REVENUE
Tax Shelters Program
PO Box 8958
Madison, WI 53708-8958

Phone: (608) 266-2772

Fax: (608) 267-0834

Email additional questions to DORFranchise@wisconsin.gov

Guidance Document Certification: <https://www.revenue.wi.gov/Pages/Certification-Statement.aspx>

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