

**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
100103	Who Must Use Combined Reporting - Common Questions

State of Wisconsin
Department of Revenue

A - Who Must Use Combined Reporting

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 types of entities are required to use combined reporting?
2. Are any industries or specific types of corporations exempt from combined reporting?
3. How does a corporation know if combined reporting applies?
4. What is a "commonly controlled group" of corporations?
5. What is a "unitary business?"
6. What is the "water's edge" test?
7. Will the Wisconsin combined group be the same as the federal consolidated group?
8. How does combined reporting affect insurance companies?
9. If a corporation is not included in a combined report because it doesn't meet the three tests (described in question A3), is it still required to file a Wisconsin return?

1. **What types of entities are required to use combined reporting?**

Only regular "C" corporations are required to use combined reporting. Tax-option (S) corporations and individuals must file separate returns. Income earned by a pass-through entity such as a partnership, limited liability company, estate, or trust is included in a combined report to the extent the income passes through to a corporation.

However, the Department of Revenue has authority to require entities other than "C" corporations to use combined reporting in cases where separately reporting those entities would result in an avoidance or evasion of tax (sec. 71.255(2)(f), Wis. Stats.).

2. **Are any industries or specific types of corporations exempt from combined reporting?**

No, except for corporations that are specifically exempt from Wisconsin income and franchise taxes altogether. For example, tax exempt organizations under sec. 71.26(1), Wis. Stats., or foreign insurers exempt under sec. 71.45(1), Wis. Stats., are not required to include any of

their income in a combined report. For more about how combined reporting affects domestic insurance companies, see question A8.

3. How does a corporation know if combined reporting applies?

The corporation must use combined reporting if three tests are met:

- **Test 1:** The corporation is in a **commonly controlled group** of corporations (see question A4 for details),
- **Test 2:** The corporation and at least one other member of the commonly controlled group are engaged in a **unitary business**, unless the group chooses to skip Test 2 by making a controlled group election (see question A5 for details), and
- **Test 3:** The corporation meets the **"water's edge"** test (see question A6 for details).

4. What is a "commonly controlled group" of corporations?

A corporation may be required to use combined reporting if it is in a "commonly controlled group" of corporations. A "commonly controlled group" is defined in the combined reporting statute (sec. 71.255(1)(c), Wis. Stats.). Under this definition, corporations are in a commonly controlled group if:

- There is common ownership (either directly or indirectly) of stock representing more than 50% of the voting power of each corporation in the group, or
- Stock representing more than 50% of the voting power in each corporation are interests that cannot be separately transferred.

5. What is a "unitary business?"

A "unitary business" is defined in the combined reporting statute (sec. 71.255(1)(n), Wis. Stats.) as a single economic enterprise made up of one or multiple related entities which are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

The statute provides that entities are presumed to be a unitary business if the entities have unity of ownership, operation, and use as indicated by the presence of one or more specific factors. These factors include:

- Centralized management;
- Centralized executive force;
- Centralized purchasing, advertising, or accounting;
- Intercorporate sales or leases;
- Intercorporate services, including administrative, employee benefits, human resources, legal, financial, or cash management services;
- Intercorporate debts;

- Intercorporate use of proprietary materials;
- Interlocking directorates or corporate officers.

However, the statute provides that these factors are not an all-inclusive list.

The statutes also provide in s. 71.255(2m) that a commonly controlled group of corporations can make an election to treat the entire commonly controlled group as if it is in the same unitary business, regardless of whether any of the factors mentioned above exist. The election is binding for ten years.

6. **What is the "water's edge" test?**

Under Wisconsin's combined reporting law, the "water's edge" test determines whether a foreign corporation is includable in a combined report. (A foreign corporation means a corporation incorporated outside the United States). The water's edge test also determines whether any of a domestic corporation's foreign-source income is includable in the combined report.

A corporation meets the water's edge test (and is not required to be included in a combined report) if more than 80% of its worldwide income is "active foreign business income" as defined in s. 71.255(2)(c), Wis. Stats.

"Active foreign business income" is income which is:

- Derived from non-U.S. sources, and
- Attributable to the active conduct of a trade or business by a corporation (or its subsidiary) in a foreign country or possession of the U.S.

For more information on how the water's edge test affects the types of income includable in a combined report, see questions B1 and B2.

7. **Will the Wisconsin combined group be the same as the federal consolidated group?**

The Wisconsin combined group may be larger or smaller than the federal consolidated group. There are three differences between the Wisconsin combined group and federal consolidated group. These differences are:

- The Wisconsin combined group should only include companies that are engaged in the same unitary business, while the federal consolidated group may include companies that are not unitary. This may cause the Wisconsin combined group to be smaller than the federal consolidated group. (An exception to unitary business is if the controlled group election is made. See question A3.)
- The Wisconsin combined group includes companies that are more than 50% commonly controlled, while the federal consolidated group includes only companies that are more than 80% commonly owned or controlled. This may cause the Wisconsin combined group to be larger than the federal consolidated group.

- The Wisconsin combined group includes foreign corporations (unless they meet the "water's edge" test), while the federal consolidated group generally does not include foreign corporations. This may cause the Wisconsin combined group to be larger than the federal consolidated group.

However, in some cases, the Wisconsin combined group and federal consolidated group may be the same group of corporations.

8. How does combined reporting affect insurance companies?

Domestic insurers compute their Wisconsin income or franchise tax liability using the lesser of two computations: 1) 7.9% of Wisconsin net income, or 2) 2% of gross premiums as defined in sec. 76.62, Wis. Stats. A domestic insurer must use combined reporting to determine the amount of Wisconsin net income under computation 1). However, computation 2) is not affected by combined reporting.

Thus, if a domestic insurer's income or franchise tax liability based on 2% of gross premiums is less than its income or franchise tax liability based on Wisconsin net income using combined reporting, the insurer may use the 2% of gross premiums computation.

Foreign insurers exempt from taxation under sec. 71.45(1), Wis. Stats., are not affected by combined reporting.

9. If a corporation is not included in a combined report because it doesn't meet the three tests (described in question A3), is it still required to file a Wisconsin return?

Yes, if it has nexus in Wisconsin. If a corporation is not includable in a combined report, it must still file a Wisconsin return on a separate entity basis if it has nexus in Wisconsin.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 13, 2019: Sections 71.03, 71.20, 71.24, 71.26, 71.255, 71.43, 71.44, 71.45, 71.46, 71.775, 76.62 and 76.63, Wis. Stats., and secs. Tax 2.61, 2.62, 2.63 and 2.82, Wis. Adm. Code.

Laws enacted and in effect after December 13, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 13, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

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