

**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
100252	2019 Wisconsin Tax Update Questions and Answers - Common Questions

State of Wisconsin
Department of Revenue

2019 Wisconsin Tax Update Questions and Answers

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.

SECTIONS:

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Miscellaneous - Income/Franchise Tax

1. **If a taxpayer held bonds from the Wisconsin Health and Educational Facilities Authority prior to enactment of 2019 Wis. Act 9, is the interest received during 2019 exempt from Wisconsin tax?**

Yes.

2. **On a taxpayer's federal return, the farm optional method is used to claim the earned income credit. Is this earned income considered earned income for purposes of qualifying for the homestead credit for Wisconsin?**

No.

3. **Can a return be e-filed if a Form W-2 was not provided by the employer and the taxpayer is submitting paystubs as a substitute?**

Yes. The paystubs may be submitted as an attachment to the return.

4. **When completing Schedule OS, *Credit for Net Tax Paid to Another State*, where do I enter interest income in Part I?**

If the type of income is not listed on lines 1-9 of 2019 Schedule OS, enter the income amount on line 10 with a description of the income.

5. What is the 2020 subtraction amount for college savings accounts?

The 2020 subtraction amount is \$3,340, or \$1,670 for married persons filing separate or a divorced parent.

6. If a refund of insurance premiums is received, does this refund need to be added to Wisconsin income if a medical care insurance subtraction was taken in a prior year for the amount of premiums paid which is being refunded?

No. There is no provision in Wisconsin law which requires an addition to Wisconsin income for insurance premiums refunded which were previously taken as a medical care insurance subtraction.

7. When must a copy of Schedule 2K-1, 3K-1, or 5K-1 be submitted with a return?

A copy of Schedule 2K-1, 3K-1, or 5K-1 must be submitted when:

- Claiming a credit reported on Schedule 2K-1, 3K-1, or 5K-1
- Making an adjustment reported on Schedule 2K-1, 3K-1, or 5K-1
- Claiming withholding reported on Schedule 2K-1, 3K-1, or 5K-1

8. If I received the Identity Verification letter and failed to respond in 60 days, what should I do?

After 60 days, you can still submit the documentation requested. If identity is verified, withholding and estimated taxes will be refunded, if applicable. Any other refundable credits, including Homestead Credit and Earned Income Credit, will not be refunded.

9. Will the Wisconsin Department of Revenue appeal the decision in *Wisconsin Department of Revenue vs. Microsoft Corporation*, (Wisconsin Court of Appeals, District IV, October 31, 2019)?

No.

10. If no exemption is allowed on federal Forms 1040NR or 1040NR-EZ, how is the exemption claimed on the Wisconsin return?

A nonresident of Wisconsin is allowed an exemption for themselves and their spouse, as provided under sec. 71.05 (23) (b) 1., Wis. Stats. Additional exemptions may be allowed for each dependent claimed on the federal return (sec. 71.05 (23) (b) 2., Wis. Stats.). These are the dependents listed on line 7 of the 2018 [Form 1040NR](#).

11. Why are taxpayers getting adjustment notices when the department does not match all estimated/extension payments made by the taxpayer?

Payments must be made in the correct account type and period. If a taxpayer receives an adjustment notice and you think a payment is missing, contact the department as it is possible that a payment was applied incorrectly. To look up the amount of estimated tax payments made during the year, use our [estimated tax lookup](#) tool.

12. Is the amount of the last estimated tax payment needed when using the estimated tax lookup tool?

To use the estimated tax lookup tool, a taxpayer will need one of the following:

- The amount of one of the last three estimated tax payments made
- The amount of Wisconsin income from the most recently filed tax return

Veterans and Surviving Spouses Property Tax Credit

1. **If a taxpayer is certified retroactively for the veterans and surviving spouses property tax credit, can they claim the credit on prior year returns?**

A credit may be claimed on prior year returns if the return is open under the statute of limitations. This date is generally 4 years from the unextended due date of the return.

2. **If a property tax payment doesn't post to a county's website until early January, what is the date used for purposes of the credits which are based on property taxes paid during the year?**

The date used for property taxes paid is the date paid to the municipality, not the date posted to the county's website. If the payment date is not listed on their website, the department may contact the taxpayer to verify the date on which the property taxes were paid.

3. **If 2018 and 2019 property taxes are paid during 2019, what amount of property taxes are allowed for purposes of claiming the veterans and surviving spouses property tax credit?**

The total property taxes paid for 2018 and 2019 are allowed on a 2019 claim.

4. **If a taxpayer moves to an assisted living facility and still owns their home, for which they only lived in part of the year, what amount may they claim for the veterans and surviving spouses property tax credit?**

The taxpayer may only claim the portion of property taxes paid during the year for the time they owned in and lived in their home.

Partnerships and Tax-Option (S) Corporations – Entity Level Tax Election

1. **Will partnerships be subject to underpayment interest in 2019?**

Yes, unless an exception under sec. 71.09(11), Wis. Stats., applies.

2. **Will a shareholder get credit for pass-through withholding paid by the tax-option (S) corporation if the entity is making the election to pay tax at the entity level?**

Pursuant to sec. 71.775(3)(a)4., Wis. Stats., a tax-option (S) corporation that makes an election to pay tax at the entity-level under sec. 71.365(4m)(a), Wis. Stats., is exempt from pass-through withholding. However, an electing tax-option (S) corporation can voluntarily report and pay withholding tax. In order for a shareholder of an electing tax-option (S) corporation to receive a credit for pass-through withholding, the electing tax-option (S) corporation must:

- File Form PW-1 and pay the shareholder's withholding tax
- Issue a Schedule 5K-1 showing the shareholder's withholding tax that was paid by the tax-option (S) corporation on Form PW-1

Note: Shareholders may not claim Wisconsin withholding passed through from an electing tax-option (S) corporation, if the corporation claimed a refund of the pass-through withholding

or submitted a written request to apply the pass-through withholding against the tax liability at the entity level.

3. What form is used to make the election to pay tax at the entity level?

The entity should file Form 3, for partnerships, or Form 5S, for tax-option (S) corporations, and check the box which indicates they wish to pay tax at the entity level.

4. Has the Internal Revenue Service issued a decision on whether state taxes paid by an entity electing to be taxed at the entity level will be allowed as a deduction on the entity's federal return?

No.

5. In prior years, I was able to use a generic state code of '99' to claim credit for tax paid to other states on the Form 5S. The electronic return rejects now. What should I enter as the state code for other states?

To claim credit for tax paid to other states, enter the postal abbreviation of the state in the space provided (e.g., CA, NY).

Fiduciaries

1. How is the situs of income determined for fiduciaries?

ESTATES: During the time the estate is a Wisconsin resident, all income is sourced to Wisconsin. During the time the estate is not a Wisconsin resident, income is sourced to Wisconsin pursuant to sec. 71.04, Wis. Stats.

TRUSTS: During the time a trust, or portion of a trust, is a Wisconsin resident, all income of the trust, or portion of the trust, is sourced to Wisconsin. During the time a trust, or portion of a trust, is not a Wisconsin resident, income is sourced to Wisconsin pursuant to sec. 71.04, Wis. Stats. For additional information on determining the residency of a trust, see estates, trusts, and fiduciaries common question number 10 on the department's [website](#).

2. Is Form 2, Wisconsin Fiduciary Income Tax for Estates or Trusts, still available to file through third-party software?

Yes. Form 2 has been removed from Wisconsin e-file, but may still be available to file through third-party software.

3. Is Schedule CC available on Wisconsin e-file?

Yes.

4. Will the decision in North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust (18-457), 588 U.S. ____ (2019) apply for Wisconsin purposes?

No. Wisconsin's statutes for a trust are different than North Carolina's and the ruling in the case of North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust (18-457), 588 U.S. ____ (2019), does not apply for Wisconsin purposes.

Sales and Use Tax – Miscellaneous

1. **A custom cabinet maker pays sales tax on raw materials (such as wood) when the materials are purchased. The cabinet maker installs and sells the cabinets at an office building and charges the customer sales tax. In some situations, the cabinet maker hires a third-party to do the installation for the cabinet maker. How does the cabinet maker keep track of the raw materials that he paid tax on that he needs to charge sales tax on upon installation?**

The custom cabinet maker may claim a refund of taxes paid on the raw materials. The refund is claimed by either requesting it from his/her vendor, filing a buyer's claim for refund directly with the department (electronically using [My Tax Account](#) or paper [Form BCR](#)), or claiming a deduction on his/her sales and use tax return for the period in which the cabinets are sold to the customer. See [Publication 216, Filing Claims for Refund of Sales or Use Tax](#), for additional information.

The department does not prescribe the method of tracking or recordkeeping that the custom cabinet maker must maintain to prove the exemption. Upon request by the department, the contractor must be able to show that tax was paid on each transaction for which the claim for refund is made, as well as any records to show that the materials purchased were used in the exempt manner.

2. **Same scenario as question #1 above, except the custom cabinet maker imports materials from another state and pays use tax to Wisconsin. Does the custom cabinet maker need to pay use tax if he/she is charging sales tax on the finished product?**

The custom cabinet maker may claim a refund of use taxes paid on the raw materials. The refund is claimed by either filing an amended sales and use tax return for the period in which the use tax was paid, or claiming a deduction on the sales and use tax return for the period in which the cabinets are sold to the customer. See [Publication 216, Filing Claims for Refund of Sales or Use Tax](#), for additional information.

3. **Does the 10% one-time sales tax reduction in a field audit apply to an ongoing audit which was finalized on or after October 1, 2019?**

Yes. See [2019 Wisconsin Act 10](#).

4. **Is there a list of services provided by a contractor that are/are not subject to sales and use tax?**

Yes. A chart (Appendix A) is provided in [Publication 207, Sales and Use Tax Information for Contractors](#), that gives examples of whether installation and repair services to certain property are taxable.

5. **For gift baskets offered in a raffle, who is required to pay sales tax and what items are subject to sales tax?**

Sales of raffle tickets are not subject to Wisconsin sales or use tax. Organizers of raffles must pay tax on purchases of items given away as raffle prizes, unless an exemption applies (e.g., organizer holds a CES number).

See [Publication 201, Wisconsin Sales and Use Tax Information](#), for additional information of what is taxable and items that are exempt.

6. **What is an "on-demand seminar"?**

Wisconsin law does not define "on-demand seminar." For purposes of *State Bar of Wisconsin*

vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 20, 2019), on-demand seminars were seminars that were available to be viewed over the internet and were replays of the previously recorded live seminars. Attendees could not download or save the on-demand seminars onto their own computers, nor could the attendees share or transfer the video to a third party.

7. What date does the 0.5% county tax begin in Outagamie county?

January 1, 2020.

Marketplace Providers

1. What is the definition of a marketplace provider?

Marketplace provider, as defined in sec. 77.51(7i), Wis. Stats., means any person who facilitates a retail sale by a seller by listing or advertising for sale by the seller, in any manner, tangible personal property, or items, property, or goods under sec. 77.52(1)(b), (c), or (d), Wis. Stats., or a service specified under sec. 77.52(2)(a), Wis. Stats., and, who directly or indirectly, through agreements or arrangements with third parties, processes the payment from the purchaser for the retail sale, regardless of whether the person receives compensation or other consideration in exchange for the services provided by the person.

2. If a taxpayer rents out their home(s) through a marketplace provider, should the marketplace provider collect the sales and use tax?

Yes. 2019 Wis. Act 10 reverses the effect of the decision in *Orbitz, LLC vs. Wisconsin Department of Revenue*, (Wisconsin Court of Appeals, District IV, February 11, 2016) and requires marketplace providers that sell lodging services to collect and remit sales or use tax on the entire amount charged to a purchaser, including any amount charged by the marketplace provider for facilitating the sale.

3. Is a marketplace seller liable for the tax on sales facilitated by a marketplace provider?

A marketplace seller is not liable for Wisconsin sales or use tax for sales in Wisconsin that are facilitated by a marketplace provider, unless (1) the marketplace provider has been granted a waiver from collecting and remitting by the department, or (2) the marketplace provider can demonstrate that any error in collecting and remitting the tax is due to insufficient or incorrect information provided by the marketplace seller.

4. Will a marketplace seller be notified if a marketplace provider is granted a waiver from collecting and remitting the tax?

A marketplace seller will be notified by the marketplace provider and/or the department that the marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department. The notification will identify the marketplace provider that has been granted the waiver and it will indicate that the marketplace seller is liable for the tax on the entire sales price charged to the purchaser for taxable products and services in Wisconsin through that marketplace provider.

5. If a marketplace provider is granted a waiver from collecting and remitting the tax, is the marketplace seller required to collect and remit?

If a marketplace provider has been granted a waiver from collecting and remitting Wisconsin sales or use tax by the department, the marketplace seller is required to collect and remit the tax on the entire sales price charged to the purchaser for taxable sales made in Wisconsin

through that marketplace provider.

Withholding Tax

1. Does Form WT-6, Withholding Tax Deposit Report, need to be filed before Form WT-7, Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages?

Yes. The deposit reports (Forms WT-6) must be filed before submitting Form WT-7.

2. Will Wisconsin support federal Form 1099-NEC, Nonemployee compensation, which will be implemented in tax year 2020?

Yes, the department plans to accept 2020 Form 1099-NEC electronically. Further communication will be provided when this form can be submitted electronically to the department.

3. If no Wisconsin withholding is reported on a Form W-2 or 1099, should these amounts be included on Form WT-7?

Include on Form WT-7, the following amounts:

- All W-2s reportable to Wisconsin
- Only 1099s and W-2Gs with Wisconsin withholding

4. Where do you mail Form WT-4?

For new hire reporting, Form WT-4 should be mailed to: Wisconsin Department of Workforce Development, New Hire Reporting, PO Box 14431, Madison WI 53708-0431.

If Form WT-4 is required to be mailed to the Wisconsin Department of Revenue, mail to: Wisconsin Department of Revenue, Audit Bureau, PO Box 8906, Madison WI 53708.

5. Is Form W-4 included in new hire reporting?

For specific information regarding new hire reporting, visit the [Wisconsin Department of Workforce Development](#).

6. Can a permanent exemption from withholding be claimed on Form PW-2?

No, a nonresident may not apply for a permanent or "continuous" exemption from pass-through withholding. However, on a case-by-case basis, the department may issue a continuous exemption after reviewing a nonresident's Form PW-2 request. See the [common questions](#) on the department's website for more information.

7. Is TeleFile available for filing returns?

Yes. TeleFile is available for filing and paying sales and use tax returns, *Withholding Tax Deposit Reports* (Form WT-6), and *Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages* (Form WT-7).

8. If a third-party withholds Wisconsin tax from wages on behalf of the employer, and the employer also withholds Wisconsin tax from other payments, how should this be reported on Forms WT-6 and WT-7?

The employer has two options.

- Separate Forms WT-6 and separate Forms WT-7

The third-party and employer could file separate withholding tax deposit reports (Forms WT-6) and separate annual reconciliation returns (Forms WT-7). The third-party would file a Form WT-6 and Form WT-7 for the wages and the employer would file a Form WT-6 and Form WT-7 for the other withholding payments.

- o Combined Forms WT-6 and a combined Form WT-7

The third-party or the employer could file combined withholding tax deposit reports (Forms WT-6) and a combined annual reconciliation return (Form WT-7). The third-party and employer would need to communicate who would file the Forms WT-6 and Form WT-7. For either option, the employer's federal employer identification number (FEIN) and/or Wisconsin tax account number (WTN) should be used on all the withholding tax deposit reports (Forms WT-6), annual reconciliation returns (Forms WT-7), and corresponding Forms W-2, 1099, etc. **Exception:** When a third-party payer of sick pay makes payments directly to the payee and withholds Wisconsin income tax from those payments per the payee's request, the third party payor must report and remit the income tax withheld from sick pay under the third party payor's FEIN/WTN, not the employer's.

Power of Attorney

1. **Will the department accept the old Power of Attorney (POA) form which is generated by our tax preparation software?**

Yes.

2. **Will the department allow full authority to a representative when completing Form A-222, Power of Attorney?**

Yes. A new checkbox has been added to Form A-222 which grants full authority for the department to discuss with the representative any matter before the department related to a taxpayer.

3. **Since the new POA form only has room for two representatives, does a second POA form need to be completed?**

No. If a taxpayer needs to enter more than two representatives, attach additional pages listing those representatives.

4. **Is Form A-222 a durable POA form?**

No, the authorization ends if the taxpayer becomes incapacitated.

5. **Is Form A-222 required to request the department send estimated payment vouchers to a taxpayer?**

Form A-222 is not required if the vouchers are sent to the taxpayer.

Unclaimed Property

1. **When the unclaimed property prompt is rolled out in spring of 2020, and a third-party individual answers "no" to indicate the business had no unclaimed property for the year, is there a second chance to change the answer to "yes"?**

The timing and details of a future unclaimed property question in My Tax Account have not been finalized.

2. If an unclaimed property holder report is filed late, is there a late filing fee?

No. However, interest may be assessed for late filed reports and payments.

General

1. Is a My Tax Account (MTA) username specific to an individual or a business?

An MTA username is specific to an individual.

2. Is it acceptable to mask the social security number on the check sent to the department if the voucher includes a full social security number?

Yes

3. If a taxpayer files electronically, may they still send in a paper check to the department?

Yes

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 12, 2020: Chapters 71, 73, 77, 139, and 177, Wis. Stats.

Laws enacted and in effect after February 12, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 12, 2020, 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:

MS 5-77

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Email additional questions to DORCopyRequests@wisconsin.gov

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