

**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 documents 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.

<b>Document Number</b>	<b>Document Title</b>
<b>P400</b>	Publication 400, <i>Wisconsin's Economic Development Surcharge</i>



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.](#)

# Wisconsin's Economic Development Surcharge

**For use by taxpayers engaged in a trade or  
business that have a taxable year beginning on  
or after January 1, 2019**

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## 1. INTRODUCTION

This publication provides information about Wisconsin's economic development surcharge. It explains who is subject to the surcharge, when it is due, on what form it is reported, how it is computed, and other aspects of the economic development surcharge.

## 2. BACKGROUND

For taxable years beginning on or after January 1, 2000, and before January 1, 2013, the economic development surcharge applied to businesses that had \$4,000,000 or more of gross receipts.

For taxable years beginning on or after January 1, 2013, the economic development surcharge applies to corporations, insurers, and exempt organizations taxable as corporations that have \$4,000,000 or more of gross receipts. The minimum economic development surcharge is \$25 and the maximum is \$9,800.

**Note:** In the examples that follow, the amount of the economic development surcharge has been rounded to the nearest whole dollar for purposes of simplicity. The Wisconsin Statutes do not require rounding the economic development surcharge to the nearest whole dollar amount.

## 3. INDIVIDUALS, ESTATES, AND TRUSTS

For taxable years beginning on or after January 1, 2013, individuals, estates, and trusts are not subject to the Wisconsin economic development surcharge.

## 4. PARTNERSHIPS

For taxable years beginning on or after January 1, 2013, partnerships and limited liability companies are not subject to the Wisconsin economic development surcharge.

## 5. REGULAR (C) CORPORATIONS

### A. Definitions

**Corporation** — A "corporation" includes a limited liability company (LLC) that is treated as a corporation under the Internal Revenue Code.

**Gross Tax Liability** — For a separate corporation, "gross tax liability" is the amount from Form 4, line 18. For a corporation that is a member of a combined group, "gross tax liability" is the amount from Form 6, Part III, line 9.

**Gross Receipts From All Activities** — For corporations other than those listed in Sections 6 and 7, "gross receipts from all activities" of corporations means the sum of the following items:

- Gross receipts or sales reportable on federal Form 1120, U.S. Corporation Income Tax Return, line 1c.
- Gross dividends reportable on federal Form 1120, line 4.
- Gross interest income reportable on federal Form 1120, line 5.
- Gross rents reportable on federal Form 1120, line 6.
- Gross royalties reportable on federal Form 1120, line 7.
- The gross sales price from the disposition of capital assets and business assets includable in computing the net gain or loss on federal Form 1120, lines 8 and 9.

- Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

**Nexus** — "Nexus" refers to the degree of activity necessary before a state has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. **For combined groups, if at least one member of the group has nexus, all members of the combined group have nexus.**

## B. Who Is Subject to the Economic Development Surcharge?

The economic development surcharge applies to all corporations that must file a Wisconsin franchise or income tax return, Form 4 or 6, except —

- Corporations organized under Wisconsin law that do not have any business activities in Wisconsin,
- Corporations that have less than \$4,000,000 of gross receipts from all activities, or
- Corporations not organized under Wisconsin law that do not have nexus with Wisconsin; however, if the corporation is a member of a combined group and one member of that group has nexus in Wisconsin, all members of the combined group have nexus in Wisconsin and all members of that combined group are subject to the economic development surcharge.

**Example 1:** Corporation A, which is incorporated in Wisconsin, is engaged in business only in Wisconsin. It has \$5,100,000 of gross receipts from all activities.

Corporation A is subject to the economic development surcharge because it is required to file a Wisconsin franchise or income tax return, it is doing business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 2:** Corporation B, which is incorporated in Wisconsin, sells tangible personal property. During the taxable year its activity in Wisconsin does not exceed the solicitation of orders by its salespersons in the state, which orders are approved outside the state and are filled by delivery from a point outside the state. Since Corporation B is organized under Wisconsin law, its activity in Wisconsin is not protected by Public Law 86-272.

(Under Public Law 86-272, a state may not impose its income tax or franchise tax measured by net income on a business that is incorporated in another state and sells tangible personal property if the only activity of that business in the state is the solicitation of orders by its salespersons or representatives, which orders are sent outside the state for approval or rejection and are filled by delivery from a point outside the state.)

Corporation B is required to file a Wisconsin franchise or income tax return and pay Wisconsin franchise or income tax on the income attributable to Wisconsin. It has \$4,500,000 of gross receipts from all activities.

Corporation B is subject to the economic development surcharge because it is required to file a Wisconsin franchise or income tax return, it is engaged in business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 3:** Corporation C, which is incorporated outside Wisconsin, transacts business in and outside Wisconsin during the current taxable year. It has \$5,000,000 of gross receipts from all activities.

Corporation C is subject to the economic development surcharge because it is required to file a Wisconsin franchise or income tax return, it has business activity in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 4:** Corporation D, which is incorporated in Wisconsin, derives its income only from interest, dividends, and sales of intangible assets. It has \$5,000,000 of gross receipts from all activities.

Corporation D is subject to the economic development surcharge because it must file a Wisconsin franchise or income tax return, it is considered to be doing business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

**Example 5:** Combined Group YZ consists of Member Y and Member Z. Both members are incorporated outside of Wisconsin. Member Y transacts business in and outside Wisconsin during the current taxable year, and has gross receipts of \$5,000,000 from all activities. Member Z has no business activity in Wisconsin during the current year, and has gross receipts of \$6,000,000 from all activities.

If at least one member of a combined group is conducting unitary business in Wisconsin, all corporations in the group are considered to be doing business in Wisconsin. Since Member Y is doing business in Wisconsin, Member Z is also considered to be doing business in Wisconsin. The \$4,000,000 gross receipts threshold must be determined separately for each corporation in the combined group. Member Y and Member Z each have gross receipts of \$4,000,000 or more. Therefore, both members are subject to the economic development surcharge.

### C. Who Is Not Subject to the Economic Development Surcharge?

- Corporations that are not required to file a Wisconsin franchise or income tax return.
- Corporations organized under Wisconsin law that have no business activities in Wisconsin.
- Corporations not organized under Wisconsin law that do not have nexus with Wisconsin; however, if a corporation is a member of a combined group and at least one member of the combined group has nexus with Wisconsin, all members of the combined group have nexus and are subject to the economic development surcharge.
- Corporations that have less than \$4,000,000 of gross receipts from all activities.
- Nuclear decommissioning trust funds.

**Example 1:** Corporation A, incorporated in Wisconsin, has no business activity in or outside Wisconsin during the current taxable year. It files a declaration of inactivity, Wisconsin Form 4H, with the Department of Revenue.

Corporation A is not subject to the economic development surcharge because it is not required to file a Wisconsin franchise or income tax return. Wisconsin Form 4H is not considered a franchise or income tax return.

**Example 2:** Corporation B, incorporated in Wisconsin, has no business activity in or outside Wisconsin during the current taxable year. Corporation B files a Wisconsin franchise or income tax return reporting no activity in or outside Wisconsin.

Corporation B is not subject to the economic development surcharge. Although Corporation B files a franchise or income tax return to indicate that it has no activity, the return is treated as a declaration of inactivity.

**Example 3:** Corporation C, a credit union incorporated in Wisconsin, does not act as a depository for state or local government funds. It files a declaration of exempt status, Wisconsin Form CU, with the Department of Revenue.

Corporation C is not subject to the economic development surcharge because it is not required to file a Wisconsin franchise or income tax return.

**Example 4:** Corporation D is owned and controlled by Native Americans who are enrolled members of the same tribe. Corporation D is located on the tribal reservation of its shareholders. It is not engaged in business off the reservation. Therefore, Corporation D is not required to file a Wisconsin franchise or income tax return.

Corporation D is not subject to the economic development surcharge because it is not required to file a Wisconsin franchise or income tax return.

**Example 5:** Corporation E, incorporated in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, Corporation E does transact business outside Wisconsin. Corporation E is required to file a Wisconsin franchise or income tax return because it is organized under Wisconsin law, but it has no Wisconsin franchise or income tax liability.

Corporation E is not subject to the economic development surcharge because it is not engaged in business in Wisconsin.

**Example 6:** Corporation F, which is incorporated outside Wisconsin but licensed to do business in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, it transacts business outside Wisconsin. Corporation F is required to file a Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin, but it has no Wisconsin franchise or income tax liability because it does not have nexus with Wisconsin.

Corporation F is not subject to the economic development surcharge since it is not engaged in business in Wisconsin.

**Example 7:** Corporation G is incorporated outside Wisconsin but licensed to do business in Wisconsin. It sells tangible personal property. During the current taxable year its activity in Wisconsin does not exceed the solicitation of orders, which are approved outside the state and are filled by delivery from a point outside the state. Corporation G is required to file a Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin. However, it has no Wisconsin franchise or income tax liability.

Corporation G's Wisconsin activity is protected by Public Law 86-272, which provides that a state may not impose its income tax or franchise tax measured by net income on a business that is incorporated in another state and sells tangible personal property if the only activity of that business in the state is the solicitation of orders by its salespersons or representatives, which are sent outside the state for approval or rejection and are filled by delivery from a point outside the state.

Corporation G is not subject to the economic development surcharge because its activity in Wisconsin is insufficient to create Wisconsin nexus.

**Example 8:** Corporation H, which is incorporated in Wisconsin, has \$3,000,000 of gross receipts, consisting of \$2,000,000 of gross sales and \$1,000,000 of gross interest and dividend income for the current taxable year. Corporation H is required to file a Wisconsin franchise or income tax return because it is doing business in Wisconsin.

Corporation H is not subject to the economic development surcharge because it has less than \$4,000,000 of gross receipts from all activities.

**Example 9:** Combined Group XYZ consists of Member X, Member Y, and Member Z. All members are incorporated outside Wisconsin. Members X and Y transact business in and outside Wisconsin during the current taxable year. Members X and Y have gross receipts from all activities of \$5,000,000 and \$3,000,000, respectively. Member Z has no business activity in Wisconsin during the current year, and has gross receipts from all activities of \$2,000,000.

If at least one member of a combined group is conducting unitary business in Wisconsin, all corporations in the group are considered to be doing business in Wisconsin. Since Members X and Y are doing business in Wisconsin, Member Z is also considered to be doing business in Wisconsin. The \$4,000,000 gross receipts threshold must be determined separately for each corporation in the combined group. Member X has gross receipts of \$4,000,000 or more; Members Y and Z have gross receipts of less than \$4,000,000. Therefore, only Member X is subject to the economic development surcharge.

#### D. On What Form Is the Economic Development Surcharge Reported?

Separate corporations report the economic development surcharge on Form 4, line 21. Each member of a combined group reports its economic development surcharge on Form 6, Part III, line 11; the combined group reports the total of its members' economic development surcharges on Form 6, page 1, line 15.

#### E. How Is the Economic Development Surcharge Computed?

The economic development surcharge is the greater of:

- \$25, or
- The amount computed by multiplying the corporation's "gross tax liability" from its Form 4 or Form 6 by 3% (0.03), but not more than \$9,800.

The following examples illustrate the computation of the economic development surcharge.

**Example 1:** Corporation A, a corporation doing business only in Wisconsin, reports gross receipts from all activities of \$6,000,000 and a gross tax liability of zero.

Corporation A is subject to an economic development surcharge of \$25. Although it computes an economic development surcharge of zero ( $\$0 \times .03$ ), the minimum surcharge of \$25 applies.

**Example 2:** Corporation B, a corporation operating a farm in Wisconsin, reports gross receipts from all activities of \$4,400,000 and a gross tax liability of \$20,000.

Corporation B is subject to an economic development surcharge of \$600 ( $\$20,000 \times .03$ ).

**Example 3:** Corporation C, a corporation doing business only in Wisconsin, reports gross receipts from all activities of \$5,000,000 and a gross tax liability of \$500,000.

Corporation C is subject to an economic development surcharge of \$9,800. Although Corporation C computes an economic development surcharge of \$15,000 ( $\$500,000 \times .03$ ), the maximum surcharge of \$9,800 applies.

**Example 4:** Corporation D, a corporation doing business in and outside Wisconsin, files Wisconsin Form 4 and determines its income attributable to Wisconsin under the separate accounting method. Corporation D has \$4,500,000 of gross receipts from all activities but reports a \$10,000 net loss from its Wisconsin activities. Its gross tax liability is zero.

Corporation D is subject to an economic development surcharge of \$25. Although Corporation D computes an economic development surcharge of zero ( $\$0 \times .03$ ), the minimum surcharge of \$25 applies.

**Example 5:** Corporation E, a corporation doing business in and outside Wisconsin, computes its Wisconsin income using the apportionment method. It reports \$5,600,000 of gross receipts from all activities and a gross tax liability of \$30,000.



Corporation E is subject to an economic development surcharge of \$900 ( $\$30,000 \times .03$ ).

**Note:** Corporation E may not multiply its gross tax liability by its apportionment percentage to determine its economic development surcharge. The gross tax on which is the basis for the economic development surcharge, has already been computed using Corporation E's income apportioned to Wisconsin.

**Example 6:** Corporation F, a corporation doing business in and outside Wisconsin, figures the amount of Wisconsin income using the apportionment method. Corporation F reports \$24,700,000 of gross receipts from all activities and a gross tax liability of \$600,000.

Corporation F is subject to an economic development surcharge of \$9,800. Although Corporation F computes an economic development surcharge of \$18,000 ( $\$600,000 \times .03$ ), the maximum surcharge of \$9,800 applies.

**Example 7:** Corporation G, a corporation doing business only in Wisconsin, reports \$7,000,000 of gross receipts from all activities and a gross tax liability of \$50,000. It computes a research credit of \$65,000 and claims \$50,000 of the available credit. Therefore, Corporation G's net tax liability is zero.

Corporation G is subject to an economic development surcharge of \$1,500 ( $\$50,000 \times .03$ ).

**Note:** Certain nonrefundable credits available for use in offsetting gross tax liability in the current year or future years may not be used to offset the economic development surcharge. Corporation G may not offset its unused research credit against the economic development surcharge.

**Example 8:** Corporation H, a corporation engaged in farming in Wisconsin, reports \$4,700,000 of gross receipts from all activities and a gross tax liability of \$100,000. Corporation H computes a farmland preservation credit of \$3,000 and claims the \$3,000 credit.

Corporation H is subject to an economic development surcharge of \$3,000 ( $\$100,000 \times .03$ ). Although the credit does not affect the computation of the economic development surcharge, the total credit of \$3,000 may be used to offset Corporation H's net tax and surcharge due, and the balance will be refunded.

**Example 9:** Corporation I, incorporated outside Wisconsin, has no business activity in Wisconsin other than as a limited partner in a partnership that is doing business in Wisconsin. Corporation I's distributive share of gross receipts from all activities was \$5,200,000 and it reports a gross tax liability of \$15,000.

Corporation I is subject to an economic development surcharge of \$450 ( $\$15,000 \times .03$ ).

**Note:** Corporation I is subject to an economic development surcharge based on its distributive share of partnership income.

**Example 10:** Corporation J, which is doing business only in Wisconsin, reports a \$75,000 net loss on its prior year Wisconsin franchise or income tax return. For the current taxable year, Corporation J reports \$4,800,000 of gross receipts from all activities and net income of \$65,000, and claims a net business loss offset of \$65,000. Therefore, its current year gross tax liability is zero.

Corporation J is subject to an economic development surcharge of \$25. Although Corporation J computes an economic development surcharge of zero ( $\$0 \times .03$ ), the minimum surcharge of \$25 applies.

**Example 11:** Combined Group VWXYZ consists of Member V, Member W, Member X, Member Y, and Member Z. The following gross receipts from all activities and gross tax liabilities are reported:

Member	Gross Receipts	Gross Tax
V	\$ 7,000,000	\$ 350,000
W	\$ 6,000,000	\$ 270,000
X	\$ 5,000,000	\$ 0
Y	\$ 3,000,000	\$ 200,000
Z	\$ 2,000,000	\$ 0

The gross receipts from all activities of Members V, W, and X are \$4,000,000 or more, therefore, the economic development surcharge must be calculated for each of these members. Since 3% of Member V's gross tax is \$10,500 ( $\$350,000 \times 0.03$ ) and is greater than the maximum economic development surcharge of \$9,800, Member V's economic development surcharge is \$9,800. Member W's economic development surcharge is \$8,100 ( $\$270,000 \times 0.03$ ). Since 3% of Member X's gross tax is \$0 (zero), Member X's economic development surcharge is the minimum economic development surcharge of \$25. Members Y and Z are not subject to an economic development surcharge because their gross receipts are less than \$4,000,000. The combined group's total economic development surcharge is \$17,925 ( $\$9,800 + \$8,100 + \$25 + \$0 + \$0$ ).

**Note:** For combined group filers, the economic development surcharge is computed separately for each member.

## 6. TAX-OPTION (S) CORPORATIONS

### A. Definitions

**Gross Receipts From All Activities** — "Gross receipts from all activities" of tax-option (S) corporations means the sum of the following items reportable by S corporations:

- Gross receipts or sales reportable on federal Form 1120-S, U.S. Income Tax Return for an S Corporation, line 1c.
- Gross rents includable in computing the income from real estate and other rental activities reportable on federal Form 1120-S, Schedule K, lines 2 and 3a.
- Gross interest income reportable on federal Form 1120-S, Schedule K, line 4.
- Gross dividends reportable on federal Form 1120-S, Schedule K, line 5a.
- Gross royalties reportable on federal Form 1120-S, Schedule K, line 6.
- The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on federal Form 1120-S, line 4, and on federal Form 1120-S, Schedule K, lines 7, 8a, 9, and 17d.
- Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

**Wisconsin Net Income** — "Wisconsin net income" is that portion of the amount reported on Wisconsin Form 5S, Schedule 5K, line 19, column d, which is attributable to Wisconsin.

**Note:** For purposes of the economic development surcharge, a tax-option (S) corporation is not required to include in its Wisconsin net income the add-back required under sec. 71.30(6), Wis. Stats., for the balance of gain on installment obligations. Under sec. 71.30(6), Wis. Stats., a tax-option (S) corporation entitled to use the installment method of accounting must take the unreported balance of gain on all installment obligations into income in the

taxable year of their distribution, transfer, or acquisition by another person or for the final taxable year for which it filed or is required to file a Wisconsin return, whichever year occurs first.

## B. Who Is Subject to the Economic Development Surcharge?

The economic development surcharge applies to all corporations treated as S corporations under subchapter S of the Internal Revenue Code that have not elected out of tax-option corporation status for Wisconsin purposes under sec. 71.365(4)(a), Wis. Stats., and are required to file a Wisconsin franchise or income tax return, Form 5S, except:

- Corporations organized under Wisconsin law that do not have any business activities in Wisconsin,
- Corporations that have less than \$4,000,000 of gross receipts from all activities, or
- Corporations not organized under Wisconsin law that do not have nexus with Wisconsin. "Nexus" refers to the degree of activity necessary before a state has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer.

**Example:** Corporation A, a tax-option (S) corporation incorporated outside Wisconsin but licensed to do business in Wisconsin, has business activity in Wisconsin during the current taxable year. It has \$7,500,000 of gross receipts from all activities.

Corporation A is subject to the economic development surcharge because it is required to file a Wisconsin franchise or income tax return, it is doing business in Wisconsin, and it has at least \$4,000,000 of gross receipts from all activities.

## C. Who Is Not Subject to the Economic Development Surcharge?

- Corporations treated as S corporations under subchapter S of the Internal Revenue Code that have not elected out of tax-option corporation status for Wisconsin purposes under sec. 71.365(4)(a), Wis. Stats., and are not required to file a Wisconsin franchise or income tax return.
- Tax-option (S) corporations organized under Wisconsin law that have no business activities in Wisconsin.
- Tax-option (S) corporations not organized under Wisconsin law that do not have nexus with Wisconsin.
- Tax-option (S) corporations that have less than \$4,000,000 of gross receipts from all activities.

**Example 1:** Corporation A, a tax-option (S) corporation incorporated in Wisconsin, has no business activity in or outside Wisconsin during the current taxable year. It files a declaration of inactivity, Wisconsin Form 4H, with the Department of Revenue.

Corporation A is not subject to the economic development surcharge because it is not required to file a Wisconsin franchise or income tax return. Wisconsin Form 4H is not considered a franchise or income tax return.

**Example 2:** Assume the same facts as in Example 1, except that Corporation A files a Wisconsin franchise or income tax return, Form 5S, reporting no activity in or outside Wisconsin.

Corporation A is not subject to the economic development surcharge. Although Corporation A files a franchise or income tax return to indicate that it has no activity, the return is considered a declaration of inactivity.

**Example 3:** Corporation B, an S corporation incorporated outside Wisconsin, is not licensed to do business in Wisconsin and has no business activity in Wisconsin during the current taxable year. However, it has several shareholders who are Wisconsin residents.

Corporation B is not subject to the economic development surcharge because it is not required to file a Wisconsin franchise or income tax return.

**Example 4:** Corporation C, a tax-option (S) corporation incorporated in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, Corporation C does transact business outside Wisconsin. Corporation C is required to file a Wisconsin franchise or income tax return because it is organized under Wisconsin law, but it has no Wisconsin franchise or income tax liability.

Corporation C is not subject to the economic development surcharge since it is not engaged in business in Wisconsin.

**Example 5:** Corporation D, a tax-option (S) corporation which is incorporated outside Wisconsin but licensed to do business in Wisconsin, has no business activity in Wisconsin during the current taxable year. However, it transacts business outside Wisconsin. Corporation D is required to file a Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin, but it has no Wisconsin franchise or income tax liability because it does not have nexus with Wisconsin.

Corporation D is not subject to the economic development surcharge because it is not engaged in business in Wisconsin.

**Example 6:** Corporation E, a tax-option (S) corporation which is incorporated outside Wisconsin, has \$3,500,000 of total receipts, consisting of \$3,000,000 of gross sales and \$500,000 of gross rents. Corporation E is required to file a Wisconsin franchise or income tax return because it is doing business in Wisconsin.

Corporation E is not subject to the economic development surcharge because it has less than \$4,000,000 of gross receipts from all activities.

#### D. On What Form Is the Economic Development Surcharge Reported?

Tax-option (S) corporations report the economic development surcharge on Wisconsin Form 5S, line 8.

#### E. How Is the Economic Development Surcharge Computed?

The economic development surcharge is the greater of:

- \$25, or
- the amount computed by multiplying the tax-option (S) corporation's Wisconsin net income, as allocated or apportioned to Wisconsin, by 0.2% (0.002), but not more than \$9,800.

The following examples illustrate the computation of the economic development surcharge.

**Example 1:** Tax-option (S) Corporation A, which has \$4,500,000 of gross receipts from all activities and operates solely in Wisconsin, has the following income, loss, and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business loss (line 1)	\$ (30,000)
Net rental real estate income (line 2)	2,000
Interest income (line 4)	3,000
Investment interest expense (line 12b)	<u>(2,000)</u>
Loss (line 19)	\$ <u><u>(27,000)</u></u>

Corporation A is subject to an economic development surcharge of \$25. Although it computes an economic development surcharge of zero ( $\$0 \times .002$ ), the minimum surcharge of \$25 applies.

**Example 2:** Tax-option (S) Corporation B, a corporation operating a farm in Wisconsin, reports \$4,200,000 of gross receipts from all activities and the following income, loss, and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business income (line 1)	\$ 30,000
Other net rental income (line 3)	3,000
Interest income (line 4)	7,000
Net long-term capital loss (line 8)	(5,000)
Net section 1231 gain (line 9)	15,000
Section 179 deduction (line 11)	(10,000)
Contributions (line 12a)	(4,000)
Other deductions (line 12d)	<u>(1,000)</u>
Income (line 19)	\$ <u>35,000</u>

Corporation B is subject to an economic development surcharge of \$70 ( $\$35,000 \times .002$ ).

**Example 3:** Tax-option (S) Corporation C is incorporated outside Wisconsin and is doing business in and outside Wisconsin. Corporation C reports \$5,200,000 of gross receipts from all activities and the following Wisconsin income, loss, and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business income (line 1)	\$ 500,000
Net rental real estate income (line 2)	10,000
Interest income (line 4)	100,000
Contributions (line 12a)	(40,000)
Investment interest expense (line 12b)	<u>(100,000)</u>
Income (line 19)	\$ <u>470,000</u>

Corporation C's Wisconsin apportionment percentage computed on Wisconsin Form A-01 is 70%.

Corporation C is subject to an economic development surcharge of \$658 ( $[\$470,000 \times 70\%] \times .002$ ).

**Example 4:** Tax-option (S) Corporation D is incorporated in Wisconsin and has business activities in and outside Wisconsin. Corporation D reports the following Wisconsin income, loss, and deduction items, as computed under Wisconsin law, on Wisconsin Form 5S, Schedule 5K, column d:

Ordinary business income (line 1)	\$ 5,400,000
Net rental real estate income (line 2)	300,000
Ordinary dividends (line 5)	200,000
Contributions (line 12a)	(50,000)
Investment interest expense (line 12b)	<u>(100,000)</u>
Income (line 19)	\$ <u>5,750,000</u>

Corporation D's Wisconsin apportionment percentage computed on Wisconsin Form A-01 is 90%.

Corporation D is subject to an economic development surcharge of \$9,800. Although Corporation D computes an economic development surcharge of \$10,350 ( $[\$5,750,000 \times 90\%] \times .002$ ), the maximum surcharge of \$9,800 applies.

**Example 5:** Tax-option (S) Corporation E is engaged in business in and outside Wisconsin. All of its shareholders are residents of Wisconsin and report their pro rata shares of all income (loss) from the tax-option (S) corporation on their Wisconsin individual income tax returns. For the current taxable year, Corporation E has \$4,000,000 of gross receipts from all activities and Wisconsin net income of \$1,000,000. Corporation E's Wisconsin apportionment percentage is 70%.

Corporation E is subject to an economic development surcharge of \$1,400 ( $[\$1,000,000 \times 70\%] \times .002$ ). Even though all of its shareholders are residents of Wisconsin, Corporation E applies its apportionment percentage to its income (loss) for purposes of computing the economic development surcharge.

**Example 6:** Tax-option (S) Corporation F is engaged in business in and outside Wisconsin. Corporation F reports \$4,200,000 of gross receipts from all activities and \$100,000 of ordinary business income for federal purposes on Wisconsin Form 5S, Schedule 5K, line 1, column b. Due to differences in computing depreciation, Corporation F reports ordinary business income under Wisconsin law of \$109,000 on Wisconsin Form 5S, Schedule 5K, line 1, column d. Corporation F's Wisconsin apportionment percentage computed on Wisconsin Form A-01 is 40%.

Corporation F is subject to an economic development surcharge of \$87 ( $[\$109,000 \times 40\%] \times .002$ ).

**Example 7:** Tax-option (S) Corporation G is doing business only in Wisconsin. For the current taxable year, Corporation G has \$4,100,000 of gross receipts from all activities and Wisconsin net income of \$400,000, comprised of \$375,000 of ordinary business income and \$25,000 of interest income from United States government obligations. It pays a Wisconsin franchise tax measured by its U.S. government interest of \$1,975 ( $\$25,000 \times 7.9\%$ ).

Corporation G is subject to an economic development surcharge of \$800 ( $\$400,000 \times .002$ ).

**Example 8:** During its final year of operations, tax option (S) Corporation H has \$4,800,000 gross receipts from all activities, earns \$100,000 of ordinary income, and realizes a \$250,000 gain on the installment sale of its assets. The corporation does not receive any installment payments during the taxable year; therefore, it does not recognize any portion of the gain as income for federal income tax purposes. The corporation liquidates and distributes the installment obligation to its sole shareholder. For federal income tax purposes, the corporation reports net income of \$100,000, its ordinary income. For Wisconsin franchise tax purposes, the corporation reports \$350,000 of net income ( $\$100,000$  ordinary income +  $\$250,000$  gain on sale of assets).

Corporation H is subject to an economic development surcharge of \$200 ( $\$100,000 \times .002$ ).

## 7. INSURANCE COMPANIES

### A. Definitions

**Gross Tax Liability** — For an insurance company filing separately, "gross tax liability" is the amount from Form 4, line 18. For an insurance company that is a member of a combined group, "gross tax liability" is the amount from Form 6, Part III, line 9.

**Gross Receipts From All Activities** — "Gross receipts from all activities" of insurance companies means the sum of the following items reportable by insurance companies:

- Gross premiums earned reportable on federal Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return, Schedule A, lines 1 and 8.
- Gross dividends reportable on federal Form 1120-PC, Schedule A, line 2, or Schedule B, line 2, if applicable.

- Gross interest income reportable on federal Form 1120-PC, Schedule A, line 3a, or Schedule B, line 1a, if applicable.
- Gross rents reportable on federal Form 1120-PC, Schedule A, line 4, or Schedule B, line 3, if applicable.
- Gross royalties reportable on federal Form 1120-PC, Schedule A, line 5, or Schedule B, line 4, if applicable.
- The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on federal Form 1120-PC, Schedule A, lines 6 and 7, or Schedule B, lines 5 and 7, if applicable.
- Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

**Nexus** — "Nexus" refers to the degree of activity necessary before a state has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer. **For combined groups, if at least one member of the group has nexus, all members of the combined group have nexus.**

#### **B. Who Is Subject to the Economic Development Surcharge?**

The economic development surcharge applies to every insurance company that is required to file a Wisconsin franchise or income tax return, has business activity in Wisconsin, and has at least \$4,000,000 of gross receipts from all activities. The economic development surcharge also applies to any insurance company that has at least \$4,000,000 in gross receipts and is a member of a combined group where at least one member has nexus.

#### **C. Who Is Not Subject to the Economic Development Surcharge?**

- Insurance companies that are not required to file a Wisconsin franchise or income tax return.
- Insurance companies that are not engaged in business in Wisconsin and do not have nexus; however, if the insurance company is a member of a combined group and at least one member of the combined group has nexus in Wisconsin, all members of the group have nexus in Wisconsin and are subject to the economic development surcharge.
- Insurance companies that have less than \$4,000,000 of gross receipts from all activities.

#### **D. On What Form Is the Economic Development Surcharge Reported?**

An insurance company filing as a separate entity reports the economic development surcharge on Form 4, line 21. An insurance company that is a member of a combined group reports its economic development surcharge on Form 6, Part III, line 11; the combined group reports the total of its members' economic development surcharges on Form 6, Page 1, line 15.

#### **E. How Is the Economic Development Surcharge Computed?**

The economic development surcharge is the greater of:

- \$25, or
- the amount computed by multiplying the insurance company's "gross tax liability" by 3% (0.03) but not more than \$ 9,800.

An insurance company's gross tax generally is limited to the lesser of 7.9% of Wisconsin net income or 2% of gross Wisconsin premiums. The economic development surcharge applies to the gross tax reported, regardless of how the tax is computed.



For combined group filers, the economic development surcharge is computed separately for each member. The total economic development surcharge for a combined group is the total of its members' economic development surcharges.

The following example illustrates the computation of the economic development surcharge.

**Example:** Insurance Company A incorporated in Wisconsin and offering several types of insurance, has Wisconsin net income from nonlife insurance activities of \$1,250,000. It has gross premiums of \$4,900,000. Its gross tax is \$98,000 (the lesser of  $\$1,250,000 \times 7.9\% = \$98,750$  or  $\$4,900,000 \times 2\% = \$98,000$ ).

Insurance Company A's economic development surcharge is \$2,940 ( $\$98,000 \times .03$ ).

## 8. EXEMPT ORGANIZATIONS

### A. Definitions

#### *Exempt Organizations Taxable as Corporations*

The following definitions apply to exempt organizations taxable as corporations:

**Gross Tax Liability** — "Gross tax liability" is the tax, before deducting any credits, from Wisconsin Form 4T, line 11.

**Gross Receipts From All Activities** — "Gross receipts from all activities" of exempt organizations taxable as corporations means the sum of the following items reportable by those entities:

- Gross receipts or sales reportable on federal Form 990-T, Exempt Organization Business Income Tax Return, line 1a.
- The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on federal Form 990-T, lines 4a and 4b.
- Gross receipts passed through from partnerships and S corporations includable in computing income on federal Form 990-T, line 5.
- Gross rents includable in computing rent income on federal Form 990-T, line 6.
- Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on federal Form 990-T, line 7.
- Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on federal Form 990-T, line 8.
- Gross investment income includable in computing investment income on federal Form 990-T, line 9.
- Gross exploited exempt activity income includable in computing that item of income on federal Form 990-T, line 10.
- Gross advertising income includable in computing advertising income on federal Form 990-T, line 11.
- All other gross receipts that are included in gross income for Wisconsin franchise or income tax purposes.

### B. Who Is Subject to the Economic Development Surcharge?

The economic development surcharge applies to every exempt organization taxable as a corporation that is required to file a Wisconsin franchise or income tax return, Form 4T, with certain exceptions that are described in Part 8. C.



**Example:** Taxpayer A, an exempt organization taxable as a corporation, files a Wisconsin Form 4T because it has more than \$1,000 of gross income (gross receipts minus the cost of goods sold) from an unrelated trade or business. It has \$4,500,000 of gross receipts from all unrelated trade or business activities. It carries over a net operating loss from the previous year which reduces its net income to zero.

Taxpayer A is subject to the economic development surcharge for the current taxable year because it is required to file Form 4T and has at least \$4,000,000 of gross receipts from all activities.

### C. Who Is Not Subject to the Economic Development Surcharge?

- Exempt organizations that are not required to file a Wisconsin franchise or income tax return, Form 4T.
- Exempt organizations taxable as corporations that have less than \$4,000,000 of gross receipts from all activities.
- Exempt organizations taxable as estates or trusts.

**Example 1:** Taxpayer A, an exempt organization taxable as a corporation, filed a prior year Wisconsin Form 4T because it had more than \$1,000 of gross income (gross receipts minus the cost of goods sold) from an unrelated trade or business. On that prior year return it reported a net loss from its unrelated trade or business. For the current taxable year, Taxpayer A does not have any income from an unrelated trade or business. However, it files a current year Wisconsin Form 4T to report its net operating loss carryover.

Taxpayer A is not subject to the economic development surcharge for the current taxable year because it is not required to file Wisconsin Form 4T.

**Example 2:** Taxpayer B, an exempt organization taxable as a corporation, has \$3,750,000 of gross receipts from all unrelated trade or business activities and \$2,000 of gross income (gross receipts minus the cost of goods sold) from an unrelated trade or business. Since it has at least \$1,000 of gross income from an unrelated trade or business, Taxpayer B must file Wisconsin Form 4T.

Taxpayer B is not subject to the economic development surcharge because it has less than \$4,000,000 of gross receipts from all activities.

### D. On What Form Is the Economic Development Surcharge Reported?

Exempt organizations report the economic development surcharge on Wisconsin Form 4T, line 25.

### E. How Is the Economic Development Surcharge Computed?

#### ***Exempt Organizations Taxable as Corporations***

The economic development surcharge is the greater of:

- \$25, or
- the amount computed by multiplying the exempt corporation's gross tax liability from Form 4T, line 11, by 3% (0.03), but not more than \$9,800.

The following examples illustrate the computation of the economic development surcharge.

**Example 1:** Corporation A, an exempt organization taxable as a corporation, has \$5,000,000 of gross receipts from all unrelated trade or business activities and reports gross tax of zero on Wisconsin Form 4T, line 11.

Corporation A is subject to an economic development surcharge of \$25, the minimum surcharge.

**Example 2:** Corporation B, an exempt organization taxable as a corporation, reports \$4,050,000 of gross receipts from all activities and gross tax of \$1,000 on Wisconsin Form 4T, line 11.

Corporation B is subject to an economic development surcharge of \$30 ( $\$1,000 \times .03$ ).

**Example 3:** Corporation C, an exempt organization taxable as a corporation, reports \$24,100,000 of gross receipts from all activities and gross tax of \$400,000 on Wisconsin Form 4T, line 11.

Corporation C is subject to an economic development surcharge of \$9,800. Although it computes an economic development surcharge of \$12,000 ( $\$400,000 \times .03$ ), the maximum surcharge of \$9,800 applies.

**Example 4:** Corporation D, an exempt organization taxable as a corporation, is engaged solely in farming. It reports \$4,700,000 of gross receipts from all activities and gross tax of \$2,000 on Wisconsin Form 4T, line 11.

Corporation D is subject to an economic development surcharge of \$60 ( $\$2,000 \times .03$ ).

## 9. ALL TAXPAYERS

### A. Deductibility

#### (1) Federal Income Tax Purposes

For federal income tax purposes, the Internal Revenue Service has indicated that the economic development surcharge is a state tax within the meaning of sec. 164(a) of the Internal Revenue Code. Therefore, it may be deducted as provided under sec. 164.

#### (2) State Franchise or Income Tax Purposes

The Wisconsin treatment of the economic development surcharge is shown in the next column.

Deductibility of Economic Development Surcharge	
Entity	Wisconsin Treatment
C corporations (except RICs, REMICs, REITs, and FASITs)	Not deductible — add back to federal taxable income on Form 4, Schedule 4V, or Form 6, Part II, line 2.
Exempt corporations	Deductible in computing Wisconsin unrelated business taxable income on Form 4T.
Insurance companies	Not deductible — add back to federal taxable income on Form 4, Schedule 4V, or Form 6, Part II, line 2.
RICs, REMICs, REITs, and FASITs	Deductible in computing Wisconsin net income.
Tax-option (S) corporations	Not deductible — add back to federal income (generally on Form 5S, Schedule 5K, line 1, column c) if deductible in computing federal income.

### B. Computation on Short-Period Returns

For short-period returns (returns for taxable years of less than 12 months), the economic development surcharge is computed in the same manner as for taxable years of 12 months. The minimum surcharge is \$25 and the maximum surcharge is \$9,800, regardless of the length of the taxable year.

**Example 1:** Corporation A, which has been reporting its income on the basis of a fiscal year ending on September 30, liquidates on June 30, 2020. It reports \$4,250,000 of gross receipts from all activities and a gross tax liability of \$30,000 on its 2019 Wisconsin franchise or income tax return, for the period beginning October 1, 2019, and ending June 30, 2020.

Corporation A is subject to an economic development surcharge of \$900 ( $\$30,000 \times .03$ ).

**Example 2:** Corporation B, which reports its income on the basis of a calendar year, is required to file two short period returns for 2019 as a result of a change in ownership of its capital stock. It reports \$4,100,000 of gross receipts from all activities and a gross tax liability of \$60,000 on its 2019 Wisconsin franchise or income tax return, for the period beginning January 1, 2019, and ending May 15, 2019. It reports \$5,300,000 of gross receipts from all activities and a gross tax liability of \$300,000, for the period beginning May 16, 2019, and ending December 31, 2019.

Corporation B is subject to an economic development surcharge of \$1,800 ( $\$60,000 \times .03$ ) for the taxable year beginning January 1, 2019 and ending May 15, 2019.

Corporation B is subject to an economic development surcharge of \$9,000 ( $\$300,000 \times .03$ ) for the taxable year beginning May 16, 2019 and ending December 31, 2019.

**Note:** Each short period is considered to be a taxable year. The maximum economic development surcharge is \$9,800 for each taxable period.

**Example 3:** Tax-option (S) corporation C changes its accounting period from a fiscal year ending on July 31 to a calendar year in 2019. Its Wisconsin net income is \$15,000,000 for the fiscal year beginning August 1, 2018 and ending July 31, 2019. Its Wisconsin net income is \$10,000,000 for the short taxable year beginning August 1, 2019 and ending December 31, 2019.

Tax-option (S) corporation C is subject to an economic development surcharge of \$9,800 for its taxable year beginning August 1, 2018 and ending July 31, 2019. Although it computes an economic development surcharge of \$30,000 ( $\$15,000,000 \times .002$ ), the maximum surcharge of \$9,800 applies.

It is also subject to an economic development surcharge of \$9,800 for the short taxable year beginning August 1, 2019 and ending December 31, 2019. Although it computes an economic development surcharge of \$20,000 ( $\$10,000,000 \times .002$ ), the maximum surcharge of \$9,800 applies to the short taxable period.

### C. Due Date of the Economic Development Surcharge

The economic development surcharge is due on the unextended due date of the taxpayer's Wisconsin franchise or income tax return. An extension for filing the return does not extend the time to pay the economic development surcharge. Interest will be charged on the economic development surcharge not paid by the original due date.

Taxpayers can avoid interest charges during the extension period by paying the surcharge owed by the unextended due date.

During the extension period, 12% annual interest generally applies to the unpaid economic development surcharge. However, for corporations having tax and surcharge of \$500 or more, 12% annual interest applies only to 10% of the tax and surcharge shown on the return. Interest of 18% per year applies to the remainder of the unpaid tax and surcharge.

## D. Quarterly Estimated Payments

### (1) Who Is Required to Make Estimated Economic Development Surcharge Payments?

All taxpayers subject to the economic development surcharge, as explained in Parts 3 through 8, may be required to make quarterly estimated economic development surcharge payments if the sum of their Wisconsin franchise or income tax due (tax minus credits) and economic development surcharge is \$500 or more.

### (2) When Must the Estimated Economic Development Surcharge Payments Be Made?

Estimated economic development surcharge payments are due the 15th day of the 4th, 6th, 9th, and 12th months of the taxable year, except that for tax years beginning in April, the first payment is due June 15.

### (3) How Are Estimated Economic Development Surcharge Payments Computed?

Estimated economic development surcharge payments generally must be based on the smaller of —

- 90% of the tax and surcharge shown on the current return,
- 100% of the tax and surcharge shown on the prior return, provided the prior return was a taxable period of 12 months and the taxpayer filed a return for the prior taxable year, or
- 90% of the tax and surcharge computed by annualizing the income for the months in the taxable year ending before the installment's due date.

**Exception:** Corporations having Wisconsin net income of \$250,000 or more cannot base their estimated payments on 100% of their prior year tax and surcharge.

**Example 1:** Taxpayer A, a calendar-year corporation, begins operations in Wisconsin on April 1, 2019. Taxpayer A's 2019 Wisconsin return reports \$4,000 of franchise tax and \$220 of economic development surcharge. Taxpayer A must have made estimated tax and surcharge payments of \$3,798  $([\$4,000 + \$220] \times 90\%)$  to avoid an interest charge. One-half of the amount, or \$1,899, is due June 15, 2019, and \$950 is payable for each of the installments due September 15 and December 15, 2019.

### (4) Are Interest or Penalties Imposed for Failure to Make Estimated Economic Development Surcharge Payments?

If required estimated economic development surcharge payments are not made or are underpaid, 12% annual interest generally applies to the amount of the underpayment for the period of the underpayment.

## E. Interest and Penalties

Many of the interest and penalty provisions in Chapter 71, Wis. Stats., that apply to Wisconsin franchise and income taxes also apply to the economic development surcharge.

If a taxpayer that is subject to the economic development surcharge does not report the economic development surcharge on its Wisconsin franchise or income tax return, as appropriate, or files an incorrect return due to negligence or fraud, interest and penalties may be assessed against the taxpayer.

The interest rate on a delinquent economic development surcharge is 18% per year. Civil penalties may be as much as 100% of the amount of economic development surcharge not reported. Criminal penalties for filing a false return include a fine of up to \$10,000.

## F. Administrative Provisions

The administrative provisions that apply for Wisconsin franchise and income tax purposes, including those relating to audits and assessments, claims for refund, statutes of limitations, Internal Revenue Service adjustments, confidentiality, appeals, collections, and setoffs for debts owed other state agencies, also apply to the economic development surcharge.

## G. Internal Revenue Service Adjustments and Amended Returns

If a taxpayer's federal tax return is adjusted and the adjustments affect Wisconsin income or the economic development surcharge payable, the taxpayer must report the adjustments to the Department of Revenue by filing an amended Wisconsin franchise or income tax return, as applicable, within 90 days after the adjustments become final.

If a taxpayer files a federal amended return and the changes affect Wisconsin income or the economic development surcharge payable, the taxpayer must file an amended Wisconsin franchise or income tax return, as applicable, with the Department of Revenue within 90 days after filing the amended federal return.

Send an amended Wisconsin franchise or income tax return to the address provided in the amended return instructions for that form.

## 10. ADDITIONAL INFORMATION AND FORMS

If, after reading this publication, you have any questions about Wisconsin's economic development surcharge, you may:

<b>Email . . .</b>	<a href="mailto:DORIncome@wisconsin.gov">DORIncome@wisconsin.gov</a>
<b>FAX . . .</b>	(608) 267-1030
<b>Call . . .</b>	(608) 266-2772
<b>Write . . .</b>	Mail Stop 5-77 Customer Service Bureau Wisconsin Department of Revenue Mail Stop 5-77 PO Box 8949, Madison, WI 53708-8949

If you need forms, you may:

- Download them from the Department's Internet website at:  
<https://www.revenue.wi.gov/Pages/HTML/formpub.aspx>
- Call (608) 266-1961
- Call or visit any Wisconsin Department of Revenue office

**Applicable Laws and Rules**

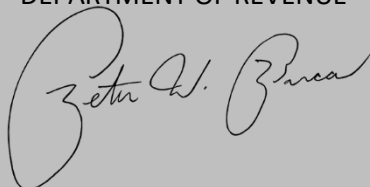
This document provides statements or interpretations of the following laws and regulations in effect as of December 31, 2019: Chapters 71 and 77, Wis. Stats, and Chapters Tax 1, 2, 3, and 11 Wis. Adm. Code.

Laws enacted and in effect after December 31, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 31, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

**Certification Statement**

As the Secretary of the Wisconsin Department of Revenue (DOR), I have reviewed this guidance document or proposed guidance document and I certify that it complies with secs. 227.10 and 227.11, Wis. Stats. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

DEPARTMENT OF REVENUE



Peter Barca

Secretary of Revenue