

**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.

<b>Document Number</b>	<b>Document Title</b>
<b>100015</b>	Transfer of Supplement to the Federal Historic Rehabilitation Credit - Common Questions

State of Wisconsin  
Department of Revenue

## Transfer of Supplement to the Federal Historic Rehabilitation Credit

**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. For taxable years beginning on or after January 1, 2018, the federal Tax Cuts and Jobs Act requires the federal historic rehabilitation credit to be claimed ratably over a five-year period. Does Wisconsin require the same for the supplement to the federal historic rehabilitation credit?
2. Is a purchaser of a supplement to the federal historic rehabilitation credit restricted to using the credit ratably over a five-year period?
3. What is Schedule HR-5, Wisconsin Supplement to the Federal Historic Rehabilitation Tax Credit – Five-Year Credit Claim, used for?
4. What is the timeframe for certifying a transfer?
5. Does the department impose any fees associated with the transfer of a credit?
6. What are the federal and Wisconsin tax consequences for the transferor of transferring a credit?
7. May only a portion of a credit be transferred?
8. Is there any restriction on who a credit may be transferred to?
9. I have entered into a certification agreement with the Wisconsin Economic Development Corporation (WEDC), which certifies eligibility for a credit of up to \$100,000. May a credit based on the amount certified by WEDC be transferred?
10. What, if any, notification is required when a transfer is completed?
11. May a credit be transferred more than once?
12. May a 2018 credit be transferred in 2019 or a later year?
13. If a transferred credit is later adjusted or disallowed, will the transferee be liable for repayment?
14. A \$50,000 credit is purchased for \$43,000. How much credit is the purchaser entitled to claim?

15. What are the federal and Wisconsin tax consequences for the transferee of claiming a credit that has been acquired by transfer?
16. If a 2018 credit is purchased in 2019 or later, may the purchaser's 2018 return be amended to claim the credit?
17. If the historic tax credit purchase/sale agreement is entered into during 2018, the Notice of Certification letter from the Department of Revenue is issued in 2019, and the purchase of the credit occurs in 2019 when consideration is paid, can the credit be used by the purchaser in 2018?
18. If a purchased credit is not claimed in full in the year of purchase, may it be carried forward?
19. May a Form HR-T be submitted designating a partnership, tax-option (S) corporation, or limited liability company (LLC) classified as a partnership or tax-option (S) corporation as the transferor?
20. The Wisconsin Economic Development Corporation (WEDC) certified Company A for the supplement to the federal historic rehabilitation tax credit. Prior to rehabilitation work beginning, Company A sold the property to Company B. Company B performed and paid for the qualified rehabilitation work. Company A computes the supplement to the federal historic rehabilitation tax credit on Schedule HR and assigns the credit to Company B, who then files Form HR-T to transfer the credit to Company C.
21. Is there a limit on the amount of supplement to the federal historic tax credits that may be awarded and claimed?

**1. For taxable years beginning on or after January 1, 2018, the federal Tax Cuts and Jobs Act requires the federal historic rehabilitation credit to be claimed ratably over a five-year period. Does Wisconsin require the same for the supplement to the federal historic rehabilitation credit?**

Yes. Sections 71.07(9m)(cm), 71.28(6)(cm), and 71.47(6)(cm), Wis. Stats., provide that the Wisconsin supplement to the federal historic rehabilitation credit shall be claimed at the same time as for federal purposes.

Exception: A transitional rule allows the full credit to be claimed for qualified rehabilitation expenditures incurred on a building that is owned or leased at all times on or after January 1, 2018 if the taxpayer selected the 24- or 60-month period measuring period by June 20, 2018. As a result, only one-fifth of the credit may be claimed and transferred each year unless the transition rule applies. However, if a claimant wants to transfer the entire credit prior to claiming the credit on each tax return, the claimant must claim the entire credit by submitting Schedule HR-5, *Wisconsin Supplement to the Federal Historic Rehabilitation Tax Credit – Five-Year Credit Claim*. Upon receipt and approval of Schedule HR-5 and Schedule HR-T, *Transfer of Supplement to the Federal Historic Rehabilitation Credit*, the department will issue a Notice of Certification letter indicating the total amount of credit transferred and the total amount eligible to be used by the transferee for each taxable year.

**2. Is a purchaser of a supplement to the federal historic rehabilitation credit restricted to using the credit ratably over a five-year period?**

The purchaser may use the amount of historic tax credit listed on the Notice of Certification for each taxable year.

For example, a transferee purchases \$500,000 of historic tax credits in 2019 from a claimant that is required to claim the credit ratably over a five-year period. Upon approval of the transfer, the department issues a Notice of Certification listing the amount of credits that may be used by the transferor each year as follows: \$100,000 for tax year 2019, \$100,000 for tax year 2020, \$100,000 for tax year 2021, \$100,000 for tax year 2022, and \$100,000 for tax year 2023. For the 2019 tax year, the transferee may use up to \$100,000 of tax credits because the one-fifth limitation was already applied to the total amount of credits transferred.

**3. What is Schedule HR-5, *Wisconsin Supplement to the Federal Historic Rehabilitation Tax Credit – Five-Year Credit Claim*, used for?**

For historic tax credits required to be claimed ratably over a five-year period, Schedule HR-5 is used by a claimant that wants to transfer all five years of historic tax credit at the same time. This eliminates the need for the transferor to file a Schedule HR with each tax return for the next five years. The transferor should submit Schedule HR-5 along with Form HR-T when requesting transfer of the credit.

**4. What is the timeframe for certifying a transfer?**

Allow *at least 30 days* for the transfer request to be processed.

**5. Does the department impose any fees associated with the transfer of a credit?**

No. The department does not have authority to impose such fees.

**6. What are the federal and Wisconsin tax consequences for the transferor of transferring a credit?**

The transferor is required to recognize a capital gain on the sale of the credit equal to the difference between the basis of the tax credit, which is zero unless the transferor previously purchased the tax credit for consideration, and the fair market value of consideration received for the credit. The character of the capital gain as either short-term or long-term is determined based on the amount of time between the date the seller made the qualifying expenditure and the date the credit is transferred. If the time period is more than one year, it is a long-term capital gain; if the time period is one year or less, it is a short-term capital gain.

**7. May only a portion of a credit be transferred?**

Yes. A credit may be transferred in whole or in part.

**8. Is there any restriction on who a credit may be transferred to?**

Yes. A credit must be transferred to a person who is subject to income or franchise tax under s. 71.02, 71.08, 71.23, or 71.43, Wis. Stats. This includes an individual, estate, trust, regular "C" corporation, tax-option (S) corporation, limited liability company treated as a corporation, or domestic insurance company.

A partnership, other than a publicly traded partnership treated as a corporation, is not subject to Wisconsin income or franchise tax and therefore cannot be transferred a credit. However, a credit can be transferred directly to a partner if the partner is otherwise subject to Wisconsin income or franchise tax.

**9. I have entered into a certification agreement with the Wisconsin Economic Development Corporation (WEDC), which certifies eligibility for a credit of up to \$100,000. May a credit based on the amount certified by WEDC be transferred?**

No. Only a credit based on qualifying expenditures or a completed project may be transferred. The transferor must designate on the transfer application (Form HR-T) whether the credit to be transferred is based on expenditures as the expenditures are paid or when the rehabilitation project is completed.

10. **What, if any, notification is required when a transfer is completed?**

Instructions on how to report the credit on the tax returns is given to both the transferor and transferee on the Notice of Certification.

11. **May a credit be transferred more than once?**

Yes. There is no limitation on the number of times a credit may be transferred.

12. **May a 2018 credit be transferred in 2019 or a later year?**

Yes. However, a transfer must take place within the 15-year credit carry-forward period. For example, a calendar year taxpayer must transfer a 2018 credit by December 31, 2033.

**Note:** A calendar year 2018 credit that is transferred in 2033 must be used by the transferee in 2033. Any portion not used in 2033 will be lost.

13. **If a transferred credit is later adjusted or disallowed, will the transferee be liable for repayment?**

No. Only the person who originally transfers a credit to another person is liable to repay an adjusted or disallowed amount of credit. The transferee may continue to utilize the credit as if the adjustment or disallowance did not take place.

14. **A \$50,000 credit is purchased for \$43,000. How much credit is the purchaser entitled to claim?**

The full amount of credit, \$50,000, may be claimed by the purchaser.

15. **What are the federal and Wisconsin tax consequences for the transferee of claiming a credit that has been acquired by transfer?**

The transferee will recognize federal and Wisconsin capital gain income when the credit is used to offset a Wisconsin income tax liability. The capital gain recognized is equal to the difference between the purchaser's basis in the tax credit, which is the fair market value of consideration paid for the tax credit and any transaction costs incurred to acquire the tax credit, and the amount of Wisconsin income tax liability satisfied by use of the tax credit. The character of the capital gain as either short-term or long-term is determined based on the amount of time between the date the purchaser acquired the tax credit and the date the credit is used to offset the purchaser's Wisconsin income tax liability. If the time period is more than one year, it is a long-term capital gain; if the time period is one year or less, it is a short-term capital gain.

16. **If a 2018 credit is purchased in 2019 or later, may the purchaser's 2018 return be amended to claim the credit?**

No. The credit is first available to be claimed by the purchaser for the taxable year in which it is purchased.

17. **If the historic tax credit purchase/sale agreement is entered into during 2018, the Notice of Certification letter from the Department of Revenue is issued in 2019, and the purchase of the credit occurs in 2019 when consideration is paid, can the credit be used by the purchaser in 2018?**

No. The purchase of the credit is not considered to take place until the consideration is paid. As such, the purchaser doesn't have a right to use the credits until the time the purchase is complete, which is during 2019.

**18. If a purchased credit is not claimed in full in the year of purchase, may it be carried forward?**

The credit may be carried forward for 15 years from the taxable year for which it is **computed**. For example, a 2017 credit purchased in 2019 may be carried forward for 13 years and a 2017 credit purchased in 2032 may not be carried forward.

**19. May a Form HR-T be submitted designating a partnership, tax-option (S) corporation, or limited liability company (LLC) classified as a partnership or tax-option (S) corporation as the transferor?**

No. A partnership, tax-option (S) corporation, or LLC classified as a partnership or tax-option (S) corporation may not claim a credit, but must determine the amount of credit that may be claimed by each partner, shareholder, or member. To reflect the Wisconsin income tax treatment of the transaction, a separate Form HR-T must be completed for each partner, shareholder, or member eligible to claim a credit.

Part A of each Form HR-T should identify the partner, shareholder, or member as the transferor; line 4 of Part D should identify the partnership, tax-option (S) corporation, or LLC as the pass-through entity and the partner's, shareholder's, or member's share of the credit. The partner, shareholder, or member should check the certification box in Part E and sign Form HR-T.

**20. The Wisconsin Economic Development Corporation (WEDC) certified Company A for the supplement to the federal historic rehabilitation tax credit. Prior to rehabilitation work beginning, Company A sold the property to Company B. Company B performed and paid for the qualified rehabilitation work. Company A computes the supplement to the federal historic rehabilitation tax credit on Schedule HR and assigns the credit to Company B, who then files Form HR-T to transfer the credit to Company C.**

**Is Company A allowed to compute the credit on Schedule HR?**

No. Company A did not perform the qualified rehabilitation work, so it may not compute the credit.

**Is Company B allowed to compute the credit on Schedule HR?**

No. WEDC did not certify Company B, so it is not eligible to compute the credit. If Company B was certified by WEDC, it could compute the credit because Company B performed and paid for the qualified rehabilitation work. Company B should have contacted WEDC to obtain a new certification agreement.

**Is Company A allowed to assign the credit to Company B?**

No. Tax credits are not assignable.

**21. Is there a limit on the amount of supplement to the federal historic tax credits that may be awarded and claimed?**

Yes. Beginning July 1, 2018, the Wisconsin Economic Development Corporation may not certify a person to claim more than a total of \$3.5 million in supplement to the federal historic rehabilitation tax credits for all projects undertaken on the same parcel.

## Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes in effect as of August 29, 2019:

Sections 71.07(9m)(cm), 71.28(6)(cm), and 71.47(6)(cm), Wis. Stats.

Laws enacted and in effect after August 29, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to August 29, 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:

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