

**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
100199	Individual Income Tax Sale of Home - Common Questions

State of Wisconsin
Department of Revenue

Individual Income Tax Sale of Home




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. I sold my principal residence this year. What form do I need to file?
2. If I take the exclusion of capital gain on the sale of my old home this year, can I also take the exclusion again if I sell my new home in the future?
3. I lived in a home as my principal residence for the first 2 of the last 5 years. For the last 3 years, the home was a rental property until I sold it. Can I still exclude the capital gain and, if so, how should I treat the depreciation I took while it was rented?
4. Is the loss on the sale of your home deductible?
5. I have a home office. Can I deduct expenses like mortgage, utilities, etc., but not deduct depreciation so that when I sell this house, the basis won't be affected?
6. Can we move into our rental property, live there as our main home for two years, and sell it without having to pay tax on the capital gain?

1. **I sold my principal residence this year. What form do I need to file?**

If you meet the ownership and use tests, the sale of your home qualifies for exclusion of \$250,000 gain (\$500,000 if married filing a joint return). This exclusion applies if during the 5-year period ending on the date of the sale, you:

- Owned the home for at least 2 years (the ownership test), and
- Lived in the home as your main home for at least 2 years (the use test).

If you owned and lived in the property as your main home for less than 2 years, you may still be able to claim an exclusion in some cases. The maximum amount you can exclude will be reduced. If you are required to report a gain, it is reported on federal  Form 8949, Sales and Other Dispositions of Capital Assets,  Schedule D, Capital Gains and Losses, and Wisconsin  Schedule WD, Capital Gains and Losses.

2. **If I take the exclusion of capital gain on the sale of my old home this year, can I also take the exclusion again if I sell my new home in the future?**

With the exception of the 2-year waiting period, there is no limit on the number of times you can exclude the gain on the sale of your main home as long as you meet the ownership and use tests.

3. I lived in a home as my principal residence for the first 2 of the last 5 years. For the last 3 years, the home was a rental property until I sold it. Can I still exclude the capital gain and, if so, how should I treat the depreciation I took while it was rented?

You may be able to exclude up to \$250,000 of the gain (\$500,000 on a joint return in most cases). However, you cannot exclude the portion of the gain equal to depreciation allowed or allowable for periods after May 6, 1997. For more information refer to federal [Publication 523, Selling Your Home](#).

4. Is the loss on the sale of your home deductible?

The loss on the sale of a personal residence is a nondeductible personal loss.

5. I have a home office. Can I deduct expenses like mortgage, utilities, etc., but not deduct depreciation so that when I sell this house, the basis won't be affected?

If you have qualified business use of your home and enough gross income from that business use to entitle you to a depreciation deduction, you are required to reduce your basis in the home by the amount of depreciation allowed (deducted) or allowable (could have been deducted).


Whether you choose to deduct the depreciation on your current return(s) will not matter. For tax purposes, you will still be treated as if you had taken the allowable deduction, and your basis will have to be reduced. For more information, refer to federal [Publication 946, How to Depreciate Property](#), [Publication 544, Sales and Other Dispositions of Assets](#), and [Publication 587, Business Use of Your Home](#).

Note: For taxpayers using the federal safe harbor method for claiming expenses for business use of a home, the depreciation deduction allowable for the portion of the home for that taxable year is deemed to be zero.

6. Can we move into our rental property, live there as our main home for two years, and sell it without having to pay tax on the capital gain?

You may be able to exclude your gain from the sale of your main home that you have also used for business or to produce rental income if you meet the ownership and use tests, detailed in federal Publication 523.

However, if you were entitled to take depreciation deductions because you used your home for business purposes or as rental property, you cannot exclude the part of your gain equal to any depreciation allowed or allowable as a deduction for periods after May 6, 1997. **Note:** If you can show by adequate records or other evidence that the depreciation deduction allowed (did deduct) was less than the amount allowable (could have deducted), the amount you cannot exclude is the smaller of those two figures.

The gain, exclusion, and depreciation recapture should be reported on federal Form 8949, federal Schedule D, and Wisconsin Schedule WD. Under certain circumstances, the sale must be reported on federal  [Form 4797](#), *Sales of Business Property*.

For additional information on selling your home, refer to federal Publication 523.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of November 1, 2019: Sections 71.01 and 71.03, Wis. Stats., and 26 U.S. Code §§ 121, 165, and 280A.

Laws enacted and in effect after November 1, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to November 1, 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:

MS 5-77

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