

**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
100187	Pass-Through Entity-Level Tax - Tax-Option (S) Corporation Shareholder Reporting - Common Questions

State of Wisconsin
Department of Revenue

Pass-Through Entity-Level Tax: Tax-Option (S) Corporation Shareholder Reporting Questions

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.

Effective for taxable years beginning on or after January 1, 2018

1. How will making the election impact a shareholder's adjusted basis in their stock and indebtedness of the tax-option (S) corporation?
2. Can shareholders use the Wisconsin manufacturing and agriculture credit from an electing tax-option (S) corporation to offset their Wisconsin individual income tax liability for the same taxable year?
3. If a tax-option (S) corporation elects to pay tax at the entity level, can an individual Wisconsin resident shareholder claim a credit for taxes paid to another state on the income from the electing tax-option (S) corporation?
4. If a tax-option (S) corporation elects to pay tax at the entity level, are individual shareholders required to file a Wisconsin individual income tax return if they have no income reportable to Wisconsin?
5. Are shareholders of an electing tax-option (S) corporation required to attach their Schedule 5K-1 to their Wisconsin individual income tax returns?
6. If a nonresident of Wisconsin is a shareholder of two tax-option (S) corporations and only one makes the election to pay tax at the entity level, can the nonresident shareholder participate in the Wisconsin composite return, Form 1CNS, of the non-electing tax-option (S) corporation?
7. What items reported on a Schedule 5K-1 from an electing tax-option (S) corporation can a shareholder claim on his or her income tax return?
8. What items reported on a Schedule 5K-1 from an electing tax-option (S) corporation are not allowed to be claimed by a shareholder on their income tax return?
9. Can a greater than 2-percent shareholder claim the self-employed health insurance deduction for health insurance premiums paid by an electing tax-option (S) corporation on behalf of the

shareholder?

10. If the election is made, how should a shareholder filing a Wisconsin tax return remove their proportionate share of the electing tax-option (S) corporation's income that is taxed at the entity level?
11. Can the removal of an electing tax-option (S) corporation's income from the shareholder's individual income tax return create a Wisconsin net operating loss (NOL) if the shareholder does not have a federal NOL?
12. When an individual shareholder is determining household income for purposes of claiming the homestead credit, must the individual shareholder include income from a tax-option (S) corporation making the entity-level election?

1. How will making the election impact a shareholder's adjusted basis in their stock and indebtedness of the tax-option (S) corporation?

The adjusted basis of a shareholder in the stock and indebtedness of an electing tax-option (S) corporation is determined as if the election was not made as provided in sec. 71.365(1)(b), Wis. Stats.

2. Can shareholders use the Wisconsin manufacturing and agriculture credit from an electing tax-option (S) corporation to offset their Wisconsin individual income tax liability for the same taxable year?

No, a shareholder may only use the manufacturing and agriculture credit to offset his or her tax liability resulting from his or her prorated share of the tax-option (S) corporation's income as provided in sec. 71.07(5n)(c)3., Wis. Stats. Since a shareholder of an electing tax-option (S) corporation does not have income and resulting tax from the tax-option (S) corporation in the year of the election, the shareholder cannot use the credit to offset their income tax liability from other sources of income. The shareholder may carry forward the credit for 15 years and use the credit to offset tax liability resulting from the shareholder's prorated share of taxable income from the tax-option (S) corporation for a year in which the election is not made.

3. If a tax-option (S) corporation elects to pay tax at the entity level, can an individual Wisconsin resident shareholder claim a credit for taxes paid to another state on the income from the electing tax-option (S) corporation?

No, an individual resident shareholder may not claim a credit for taxes he or she paid to another state against Wisconsin income taxes paid by the entity.

4. If a tax-option (S) corporation elects to pay tax at the entity level, are individual shareholders required to file a Wisconsin individual income tax return if they have no income reportable to Wisconsin?

No, individual shareholders of an electing tax-option (S) corporation that do not have any income reportable to Wisconsin are not required to file a Wisconsin individual income tax return. However, shareholders must timely file a Wisconsin income tax return to claim credits or refunds.

5. Are shareholders of an electing tax-option (S) corporation required to attach their Schedule 5K-1 to their Wisconsin individual income tax returns?

Yes, the instructions for Wisconsin Form 1 and Form 1NPR require individuals to attach a copy of the Schedule 5K-1, regardless of whether the election is made. **Note:** Certain credits may be passed through to shareholders, in which case the processing of a shareholder's tax return may be delayed if the Schedule 5K-1 is not included with the return.

6. If a nonresident of Wisconsin is a shareholder of two tax-option (S) corporations and only one makes the election to pay tax at the entity level, can the nonresident shareholder participate in the Wisconsin composite return, Form 1CNS, of the non-electing tax-option (S) corporation?

The shareholder may participate in the Wisconsin composite return if its only source of Wisconsin income is from the non-electing tax-option (S) corporation, the shareholder is not filing a separate Wisconsin income tax return for the same taxable year, and otherwise qualifies to participate in the composite return as provided in the [Form 1CNS instructions](#).

7. What items reported on a Schedule 5K-1 from an electing tax-option (S) corporation can a shareholder claim on his or her income tax return?

A shareholder may claim credits passed through from the electing tax-option (S) corporation reported on Schedule 5K-1 lines 13a through h.

Caution:

- Shareholders may not use the taxes paid by the electing tax-option (S) corporation, including taxes paid on the shareholder's behalf on a composite return, to compute a credit for tax paid to another state. In addition, a resident shareholder may not claim credit for taxes he or she paid to another state on income taxed at the entity level in Wisconsin.
- Shareholders may not claim the manufacturing and agriculture credit passed through from an electing tax-option (S) corporation in the year of the election. See common question #2 above.
- Nonresident 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.

8. What items reported on a Schedule 5K-1 from an electing tax-option (S) corporation are not allowed to be claimed by a shareholder on their income tax return?

All items reported on Schedule 5K-1 other than the items mentioned in common question #7 above.

9. Can a greater than 2-percent shareholder claim the self-employed health insurance deduction for health insurance premiums paid by an electing tax-option (S) corporation on behalf of the shareholder?

Yes, a greater than 2-percent shareholder may claim the self-employed health insurance deduction regardless of whether the tax-option (S) corporation makes the election to pay tax at the entity level.

10. If the election is made, how should a shareholder filing a Wisconsin tax return remove their proportionate share of the electing tax-option (S) corporation's income that is taxed at the entity level?

The shareholder must report their federal adjusted gross income, using the Internal Revenue Code in effect under Wisconsin law, on their Wisconsin income tax return. The shareholder may subtract from federal adjusted gross income the amount of income reported by the tax-option (S) corporation that is included in the federal adjusted gross income.

Example:

Facts

- Shareholder A was a Wisconsin resident for the entire year in 2018
- Shareholder A owns 100 percent of Tax-Option (S) Corporation

- Shareholder A's only sources of income are \$15,000 of wages and \$100,000 of federal net ordinary business income from the tax-option (S) corporation
- Tax-Option (S) Corporation makes an election under sec. 71.365(4m)(a), Wis. Stats., to pay tax at the entity level for 2018
- Tax-Option (S) Corporation's \$100,000 of federal net ordinary business income for 2018 has the following Wisconsin differences:
 - \$5,000 of Wisconsin manufacturing credit computed in 2017, and
 - \$10,000 of additional Wisconsin depreciation expense.

How shareholder A must report income and expense items from the electing tax-option (S) corporation's Schedule 5K-1

- Shareholder A must:
 - File Form 1, *Income Tax Return*, because Shareholder A was a full-year Wisconsin resident,
 - Use Schedule I, *Adjustments to Convert Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin*, to reduce Form 1, Line 1, *Federal adjusted gross income*, by \$10,000 to reflect the difference in depreciation between federal and Wisconsin,
 - Report a \$5,000 addition using code 17 on Form 1, Line 4, *other additions*, to report the addback of the 2017 Wisconsin manufacturing credit, and
 - Report a \$95,000 subtraction using code 51 on Form 1, Line 11, *other subtractions*, to report the reduction of Wisconsin income taxed at the entity level of the tax-option (S) corporation.

Computation of the \$95,000 subtraction for Wisconsin income reported by the tax-option (S) corporation

Description	Amount
Shareholder A's federal adjusted gross income (\$15,000 wages + \$100,000 federal net income from the tax-option (S) corporation)	\$115,000
Less: (\$15,000) from wages	(\$15,000)
Federal adjusted gross income from the tax-option (S) corporation	\$100,000
Less (\$10,000) Schedule I depreciation difference	(\$10,000)
Add: \$5,000 Wisconsin manufacturing credit addback	\$5,000
Subtraction for Wisconsin income reported by the tax-option (S) corporation	\$95,000

11. Can the removal of an electing tax-option (S) corporation's income from the shareholder's individual income tax return create a Wisconsin net operating loss (NOL) if the shareholder does not have a federal NOL?

No, pursuant to secs. 71.01(3) and (14), 71.34(3), and 71.36(1m)(c), Wis. Stats., an individual must have a federal NOL in order to have a Wisconsin NOL. The only exceptions are:

- If a taxpayer is a part-year or nonresident of Wisconsin and a portion of the federal adjusted gross income does not have situs in Wisconsin, or
- If a tax-option (S) corporation shareholder's allowable deduction for his or her pro rata share of the corporation's losses results in a loss on the shareholder's Wisconsin income tax return, the loss generally will be treated in the same manner as other Wisconsin NOLs. However, unlike other Wisconsin NOLs, Wisconsin tax-option (S) corporation losses may be claimed even if the shareholder has no federal NOL.

Note: Wisconsin Publication 120, *Net Operating Losses for Individuals, Estates, and Trusts*, provides more information regarding NOL.

12. **When an individual shareholder is determining household income for purposes of claiming the homestead credit, must the individual shareholder include income from a tax-option (S) corporation making the entity-level election?**

No, pursuant to secs. 71.365(4m)(b) and 71.52(6), Wis. Stats., income from an electing tax-option (S) corporation is not included in the individual shareholder's Wisconsin adjusted gross income or household income.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 11, 2020: Sections 71.01, 71.03, 71.07, 71.21, 71.28, 71.36, 71.365, 71.52 and 71.775, Wis. Stats., sec. Tax 2.08, Wis. Adm. Code, and 26 U.S. Code § 162.

Laws enacted and in effect after February 11, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 11, 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:

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