

**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
100175	Partnerships - Common Questions

State of Wisconsin
Department of Revenue

Partnerships

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. Are partnerships required to file a Wisconsin partnership return?
2. May a partnership pay tax at the entity level?
3. Where do partnerships file Wisconsin returns?
4. What is the deadline for filing a Wisconsin partnership return?
5. Are extensions available if a partnership can't file a Wisconsin return by the due date?
6. Who is subject to the economic development surcharge?
7. How does a partnership amend a Wisconsin partnership return?
8. If a partnership is filing Form 1065-B, U.S. Return of Income for Electing Large Partnerships, for federal purposes, what form does the partnership file for Wisconsin?
9. What types of permits does a partnership need if starting a new business in Wisconsin, and should the partnership be aware of any special taxes?
10. If a partnership closes its business, should the partnership notify the Wisconsin Department of Revenue?
11. What records should the partnership keep for Wisconsin tax purposes, and how long should the records be kept?

1. **Are partnerships required to file a Wisconsin partnership return?**

A partnership or limited liability company treated as a partnership with income from Wisconsin sources, regardless of the amount, must file a Wisconsin partnership return, Form 3. For example, a partnership must file a return if it has income from any of the following:

- o Business transacted in Wisconsin,
- o Personal or professional services performed in Wisconsin,
- o Real or tangible personal property located in Wisconsin,
- o Wisconsin lottery prizes, including income from the sale of or purchase and subsequent sale or redemption of lottery prizes if the winning tickets were originally bought in Wisconsin, or

- A covenant not to compete, if that covenant was based on a Wisconsin-based activity

Exceptions:

- A syndicate, pool, joint venture, or similar organization that isn't required to file a federal partnership return because it has elected under Internal Revenue Code (IRC) section 761(a) not to be treated as a partnership for federal income tax purposes may make a similar election for Wisconsin purposes. To make the election, include a copy of the federal election statement to the Form 3 filed with the Department of Revenue for the year of election.
- If the Wisconsin election is made, the organization generally won't have to file Form 3 except for the year of election. However, the department may require the organization to file a return so that a partner's Wisconsin tax liability may be computed.
- Publicly traded partnerships treated as corporations under IRC section 7704 must file a Wisconsin corporation franchise or income tax return, Form 4 or 6, instead of Form 3.
- Limited liability companies treated as corporations for federal income tax purposes must file a Wisconsin corporation franchise or income tax return, Form 4, 5S, or 6, instead of Form 3.
- Single member limited liability companies that are disregarded as separate entities under IRC section 7701 are disregarded as separate entities for Wisconsin purposes. The member is required to include the income and expenses of the limited liability company on the member's return.
- Common trust funds are treated as fiduciaries under Wisconsin law and must file Wisconsin Form 2 instead of Form 3.

Note: The Department of Revenue may require a partnership with Wisconsin resident partners to file a Wisconsin partnership return even though it has no Wisconsin business or income so that a Wisconsin resident partner's tax liability may be computed.

2. **May a partnership pay tax at the entity level?**

For taxable years beginning January 1, 2019, provisions in 2017 Wis. Act 368, provide partnerships an election to pay tax at the entity level pursuant to sec. 71.21(6)(a), Wis. Stats. If a partnership makes the election to pay tax at the entity level, the partners may not include any items of income, gain, loss, or deduction on their Wisconsin tax return.

The partnership must check box "I" on page 1 of Form 3 and submit a completed Schedule 3-ET, *Entity-Level Tax Computation*, with Form 3. For additional information detailing the entity-level tax election, see Common Questions on the department's website at revenue.wi.gov/Pages/FAQS/ise-passthroughpartnr.aspx.

3. **Where do partnerships file Wisconsin returns?**

File partnership returns electronically through the Federal/State E-File program. Form 3 is available for electronic filing, along with most other Wisconsin corporation and partnership forms and supporting schedules. With the Federal/State E-File program, a partnership may electronically file Form 3 along with other Wisconsin and federal returns in a single submission. Or, a partnership can use Federal/State E-Filing to file the Wisconsin forms alone.

If a partnership chooses to file partnership returns on paper, the mailing address for Form 3 is given below:

Wisconsin Department of Revenue
PO Box 8908
Madison WI 53708-8908

4. **What is the deadline for filing a Wisconsin partnership return?**

A partnership must file its partnership return, Form 3, by the 15th day of the 3rd month following the close of its taxable year.

If Form 3 is filed late, without an extension, the partnership may be subject to penalties and interest.

A return is considered filed by the due date if it is submitted electronically on or before the due date or if:

- The return is mailed in a properly addressed envelope with the postage duly prepaid,
- The envelope containing the return is postmarked on or before the due date, and
- The return is received by the department within 5 days of the due date

"Mailed" includes delivery by a delivery service designated under section 7502(f) of the Internal Revenue Code.

Returns received in person by a Department of Revenue employee are timely filed only if received on or before the due date.

5. **Are extensions available if a partnership can't file a Wisconsin return by the due date?**

Any extension allowed by the Internal Revenue Service for filing the federal return automatically extends the Wisconsin due date, provided the partnership includes a copy of the federal extension with its Wisconsin return.

If a partnership is not requesting a federal extension, but needs additional time to file a Wisconsin return, the partnership may obtain an extension available to partnerships under federal law. To receive a Wisconsin extension, the partnership must include a completed copy of the appropriate federal extension application form or a statement explaining which federal extension provision is being used.

CAUTION: An extension for filing the return doesn't extend the time to pay the franchise or income tax. Interest will be charged on the tax not paid by the 15th day of the 3rd month following the close of the taxable year. A partnership can avoid interest charges during the extension period by paying the tax due by that date. Submit payment with Wisconsin Form 3 ES, *Wisconsin Partnership Estimated Tax Voucher*.

6. **Who is subject to the economic development surcharge?**

Prior to January 1, 2013, the economic development surcharge applied to every partnership, including a limited liability company treated as a partnership, that meets the following conditions:

- Must file a Wisconsin partnership return, Form 3,
- Derives income from business transacted, property located, or services performed in Wisconsin, and
- Has \$4 million or more of gross receipts for federal income tax purposes

For taxable years beginning on or after January 1, 2013, the economic development surcharge no longer applies to partnerships or limited liability companies treated as partnerships.

7. How does a partnership amend a Wisconsin partnership return?

To file an amended Wisconsin return, use Form 3 and check the "Amended return" option in box C on the front of the return. Include Schedule AR to explain any changes made.

If the income, deductions, credits, or other information provided to any partner on Wisconsin Schedule 3K-1 is incorrect, file an amended Schedule 3K-1 for that partner with the amended Form 3. Also give a copy of the amended Schedule 3K-1 to that partner. Check the "Amended 3K-1" option in box C2 to indicate that it is an amended Schedule 3K-1.

8. If a partnership is filing Form 1065-B, U.S. Return of Income for Electing Large Partnerships, for federal purposes, what form does the partnership file for Wisconsin?

If a partnership is filing federal Form 1065-B, the partnership must also file Form 3 for Wisconsin. However, special instructions apply when completing Form 3:

- a. Before starting Form 3, complete federal Form 1065-B and all supporting schedules
- b. Fill in the name, address, and items A through H at the top of Form 3
- c. On Schedule 3K, Partners' Distributive Share Items, leave lines 1 through 14 and 16a through 20b blank. Fill in any available credits on lines 15a through 15h and include the appropriate schedule
- d. If differences exist between the items of income, loss, and deduction reportable for federal and Wisconsin purposes, include a schedule as requested on line 20c showing the federal amount, adjustment, and amount under Wisconsin law.

As explained in greater detail in the [Form 3 Instructions](#), additions to or subtractions from federal amounts may be required for the following reasons:

- A federal law doesn't apply for Wisconsin purposes
- Different elections are made for federal and Wisconsin purposes
- Wisconsin law prescribes modifications to federal income, such as the following:
 - Computed amounts of development zones credits, technology zone credit and enterprise zone jobs credit are added to federal income
 - Certain state taxes are not deductible in computing net income
 - Most state and local government bond interest is added to federal income
 - U.S. government interest is subtracted from federal income

To calculate the Wisconsin amounts, prepare a "Wisconsin version" of Form 1065-B, substituting the amounts under Wisconsin law for the federal amounts. Enter the amounts from the "Federal version" of Form 1065-B, Schedule K, in the "Federal" column on the supplemental schedule to Form 3 and the amounts from the "Wisconsin version" of Form 1065-B, Schedule K, in the "Wisconsin" column of this schedule. Fill in the difference between the federal and Wisconsin amounts in the "Adjustment" column.

- e. Fill in line 22 on Schedule 3K, Part II of Form 3, columns b and d
 - If a partnership is not required to prepare a "Wisconsin version" of Form 1065-B, compute the income by combining the amounts from federal Form 1065-B, Schedule K, lines 1a, 2, 3, 4a, 4b, 7, and 8. Add or subtract, as appropriate, any other taxable income or loss reported separately on a schedule for line 15. This is the income (loss) to enter in both column b and column d.
 - If a partnership is required to prepare a "Wisconsin version" of Form 1065-B, compute the "Federal" income to enter in column b by combining the amounts from the "Federal version" of Form 1065-B, Schedule K, lines 1a, 2, 3, 4a, 4b, 7, and 8. Add or subtract, as appropriate, any other taxable income or loss reported separately on a schedule for

line 15. Compute the "Wisconsin" income to enter in column d by combining the amounts from the "Wisconsin version" of Form 1065-B, Schedule K, lines 1a, 2, 3, 4a, 4b, 7, and 8. Add or subtract, as appropriate, any other taxable income or loss reported separately on a schedule for line 15. Be sure to add the amount of state and local government bond interest taxable by Wisconsin.

Once a partnership completes Form 3, prepare a Wisconsin Schedule 3K-1, *Partner's Share of Income, Deductions, Credits, etc.*, for each partner, except in the following situations:

- If the partnership operates only in Wisconsin, is not required to prepare a "Wisconsin version" of Form 1065-B, and has no credits, indicate on the partner's federal Schedule K-1 that there are no Wisconsin adjustments or credits.
- If the partnership operates in and outside Wisconsin, is not required to prepare a "Wisconsin version" of Form 1065-B, the partnership has no credits, and the partner is a full-year Wisconsin resident, indicate on the partner's federal Schedule K-1 that there are no Wisconsin adjustments or credits.

When completing the Wisconsin Schedule 3K-1, leave lines 1 through 14 and 16 through 19 blank. Instead, on line 20, for the items included on federal Schedule K-1 (Form 1065-B), *Partner's Share of Income (Loss) From an Electing Large Partnership*, in boxes 1, 2, 3, 4a, 4b, 5, 6, and 9, list the federal amount, adjustment, amount under Wisconsin law, and, for nonresidents and part-year residents, the Wisconsin source amount.

9. What types of permits does a partnership need if starting a new business in Wisconsin, and should the partnership be aware of any special taxes?

Certain partnerships doing business in Wisconsin are required to be registered with the Department of Financial Institutions (DFI). For more information, visit the [DFI website](#) or call (608) 261-7577.

Sales, use, and withholding taxes are common taxes for businesses which require a permit from the Department of Revenue. To obtain more information about these business taxes, contact any [Department of Revenue office](#), call (608) 266-2776, or email us at DORSalesandUse@wisconsin.gov.

If a partnership has a nonresident partner, the partnership must pay a withholding tax on the income allocable to the nonresident partner. The withholding is paid on an annual basis, and is reported on [Form PW-1](#). For more information, see the [common questions](#) for pass-through entity withholding.

For questions about what other permits may be required, or for assistance in obtaining a permit, call the Economic Development Corporation Permit Information Center at (800) 940-7232.

10. If a partnership closes its business, should the partnership notify the Wisconsin Department of Revenue?

If a partnership terminated during the taxable year, check box G on the front of Form 3. Generally, the final return is due on or before the federal due date. If a partnership holds sales, use, or withholding tax permits, contact the Department of Revenue at (608) 266-2776 or email us at DORSalesandUse@wisconsin.gov.

11. What records should a partnership keep for Wisconsin tax purposes, and how long should the records be kept?

A partnership must keep accurate records to verify items of income, deductions, and credits claimed on the partnership return. Following is a listing of some of the tax records that should be maintained:

- **Income:** Keep sales journals, sales invoices, cash register tapes, financial statements, bank statements, contracts, and other documents to verify the income reported on the partnership's returns.
- **Deductions:** Keep purchase journals, purchase invoices, check registers, canceled checks, bank statements, and other documents to verify expenses claimed on the partnership's returns.
- **Apportionment Percentages and Credits:** Keep all supporting workpapers and other documents used in computing the apportionment percentages and credits claimed on the partnership's returns.

Generally, a partnership must keep tax records at least until the statute of limitations expires for the tax return, or each partner's tax return, on which any of those items of income, deductions, apportionment percentages, or credits appear. Usually this is 4 years from the due date of the return or the date filed, whichever is later.

Keep records relating to property owned by the partnership as long as they are needed to figure the basis of the original or replacement property and for 4 years after a partnership return, or each partner's tax return, is filed on which any sales or other dispositions of the property are reported.

Keep copies of tax returns indefinitely.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 25, 2020: Sections 71.01, 71.03, 71.19, 71.20, 71.21, 71.775, 71.74, 71.77, 71.80, 71.82, 71.83, 73.03, 77.93 and 180.0501, Wis. Stats., secs. Tax 2.08 and 2.12, Wis. Adm. Code, and 26 U.S. Code §§ 761, 6072, 7502, 7701 and 7704.

Laws enacted and in effect after February 25, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 25, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2) (a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

WISCONSIN DEPARTMENT OF REVENUE

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Email additional questions to DORIncome@wisconsin.gov

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