

**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
100104	Income Includable in a Combined Report - Common Questions

State of Wisconsin
Department of Revenue

B - Income Includable in a Combined Report

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. When do I have to include foreign sourced income in a combined report?
2. When do I have to include income of a foreign corporation in a combined report?
3. How do I know if income is U.S. sourced or foreign sourced?
4. Are intercompany transactions between members of the combined group eliminated for purposes of determining the combined group's income?

1. **When do I have to include foreign sourced income in a combined report?**

The answer depends on whether the corporation earning the income is a domestic corporation (i.e. incorporated in the U.S.) or a foreign corporation.

- o **For foreign corporations:** Do not include foreign source income (or loss) of a foreign corporation in a combined report. You must also exclude the expenses associated with the foreign source income (or loss).
- o **For domestic corporations:** In general, you must include foreign source income (or loss) of a domestic corporation if it is taxable under the Internal Revenue Code as modified for Wisconsin purposes. However, if 80% or more of the domestic corporation's worldwide income is active foreign business income as described in question A6, you should not include foreign source income (or loss) or the expenses associated with that income (or loss).

Any income excluded from a combined report but which is still taxable under the Internal Revenue Code as modified for Wisconsin purposes must be reported to Wisconsin on a separate entity basis if the corporation has nexus in Wisconsin.

Also, the Department of Revenue has authority to require this income to be included in the combined report in cases where excluding it would result in an avoidance or evasion of tax (sec. 71.255(2)(f), Wis. Stats.).

2. **When do I have to include income of a foreign corporation in a combined report?**

It depends on whether the foreign corporation meets the water's edge test described in question A6. If a foreign corporation meets the water's edge test (in other words, if 80% or more of its income is active foreign business income), it can be considered to be on the "foreign side of water's edge."

- **If on foreign side of water's edge:** None of the foreign corporation's income (or loss) is includable in the combined report. You must also exclude expenses associated with this income (or loss).
- **If on U.S. side of water's edge:** Include the foreign corporation's income (or loss) in the combined report, along with the associated expenses. However, only include this income (or loss) and associated expenses to the extent they are U.S. sourced.

Any income excluded from a combined report but which is still taxable under the Internal Revenue Code as modified for Wisconsin purposes must be reported to Wisconsin on a separate entity basis if the corporation has nexus in Wisconsin.

Also, the Department of Revenue has authority to require this income to be included in the combined report in cases where excluding it would result in an avoidance or evasion of tax (sec. 71.255(2)(f), Wis. Stats.).

3. **How do I know if income is U.S. sourced or foreign sourced?**

The combined reporting statute uses sections 861 through 865 of the Internal Revenue Code to distinguish U.S. sourced income from foreign sourced income.

4. **Are intercompany transactions between members of the combined group eliminated for purposes of determining the combined group's income?**

In general, yes. Since the incomes of the corporations are combined before apportionment, intercompany transactions generally "wash out" in the same manner they would in a federal consolidated return.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of May 8, 2020: Sections 71.24, 71.255, 71.26 and 71.30, Wis. Stats., and sec. Tax 2.82, Wis. Adm. Code.

Laws enacted and in effect after May 8, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to May 8, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

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