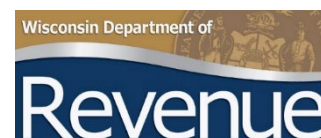


# Wisconsin Tax Bulletin

October 2023 Number 223



If you would like to receive notification when a new *Wisconsin Tax Bulletin* is available, [subscribe to the mailing list](#) for sales and use tax or tax professionals.

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## New Tax Laws

### A. Individual and Fiduciary Income Taxes

#### 1. Internal Revenue Code References Updated for 2023 for Individuals, Estates, and Trusts

([2023 Wis. Act 36](#), repeal and recreate sec. 71.01(6)(k), (L), and (m), and create sec. 71.01(6)(n), effective for taxable years beginning after December 31, 2022)

For taxable years beginning after December 31, 2022, for individuals and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2022, with certain exceptions.

- a. Amendments to the federal Internal Revenue Code enacted after December 31, 2022, **do not apply** for Wisconsin.
- b. The following Public Laws (P.L.) enacted after December 31, 2020, and before January 1, 2023, **do not apply** for Wisconsin:
  - The following sections of [P.L. 117-2](#):
    - Section 5003 relating to additional restaurant revitalization grant funds
    - Section 9041 relating to the excess business loss limitation extension for noncorporate taxpayers to December 31, 2026
    - Section 9673 relating to restaurant revitalization grants not being included in gross income and deductions allowed
    - Section 9675 relating to the exclusion from income for most student loans discharged after December 31, 2020, and before January 1, 2026
    - Section 9708 relating to the expanded definition of "covered employee" for publicly held corporations deducting excessive employee remuneration
  - Section 307 of Division P of [P.L. 117-103](#) relating to the extension of treating a plan as a highly deductible health plan if it fails to have a deductible for telehealth and other remote care services
  - Section 13903(b) of [P.L. 117-169](#) relating to the extension of the excess business loss limitation for noncorporate taxpayers through December 31, 2028
  - Section 4151 of Division FF of [P.L. 117-328](#) relating to the extension of treating a plan as a highly deductible health plan if it fails to have a deductible for telehealth and other remote care services

**Note:** Additional federal public laws enacted before January 1, 2023, do not apply for Wisconsin purposes. See sec. 71.01(6)(n)2., Wis. Stats.

- c. The provisions of federal public laws that directly or indirectly affect the adopted Internal Revenue Code provisions apply for Wisconsin purposes at the same time as for federal purposes, except that the following provisions first apply for taxable years beginning after December 31, 2022:
- The following sections of [P.L. 117-2](#):
    - Section 5001 relating to the addition of certain nonprofit entities and internet publishing organizations to the list of eligible entities to receive a paycheck protection program loan
    - Section 5002 relating to additional appropriations for targeted economic injury disaster loan advances
    - Section 5005 relating to additional appropriations for shuttered venue operator grants and a reduction in the amount of a paycheck protection program loans received
    - Section 9623 relating to allowing a married individual who files as married filing separate and lives apart from their spouse for the last 6 months of the year or has a divorce or separation instrument with the other spouse by the end of the tax year to claim the earned income credit
    - Section 9624 relating to permanently raising the investment income limit to \$10,000, and allowing adjustments for inflation in subsequent years for purposes of claiming the earned income credit
    - Section 9672 relating to targeted economic injury disaster loan advances received under sec. 331 of Division N of P.L. 116-260 not being included in gross income, allowing deductions, not reducing tax attributes, and allowing basis increases. For partnerships and S corporations, any amounts forgiven are treated as tax-exempt for purposes of sec. 705 and 1366, IRC.
  - Section 2 of [P.L. 117-6](#) relating to the extension of paycheck protection program loan funding to June 30, 2021
  - The following sections of Division H of [P.L. 117-58](#):
    - Section 80401 relating to the addition of qualified broadband projects to the list of exempt facility bonds
    - Section 80402 relating to the addition of qualified carbon dioxide capture facilities to the list of exempt facility bonds
    - Section 80601 relating to including certain contributions received by a regulated public utility which provides water or sewerage disposal services in the definition of a "contribution to the capital of the taxpayer" for purposes of excluding the contribution from gross income of a corporation

## 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes

([2023 Wis. Act 36](#), repeal and recreate sec. 71.01(6)(k), (L), and (m), effective for taxable years beginning before January 1, 2023)

Certain changes to the Internal Revenue Code made by the following federal laws enacted in 2020 and 2021 apply for Wisconsin purposes at the same time as for federal purposes:

- The following sections of [P.L. 117-2](#):

- Section 9671 relating to the repeal of the election to allocate interest on a worldwide basis
- Section 9701 relating to the temporary delay in the designation of multi-employer pension plans as endangered, critical, or critical and declining status
- Section 9702 relating to the temporary extension for 5-year funding improvement and rehabilitation periods for multi-employer pension plans in critical and endangered status for 2020 or 2021
- Section 9703 relating to the adoption of standard accounting rules for pensions
- Section 9704 relating to providing special rules for multi-employer pension plans in endangered or critical status that receive financial assistance
- Section 9705 relating to the extension of the 15-year amortization for single employer pension plan shortfalls
- Section 9706 relating to the extension of the pension funding stabilization percentages for single employer plans
- Section 9707 relating to the modification of rules for minimum funding standards for community newspaper pension plans
- The following sections of [P.L. 117-58](#):
  - Section 80501 relating to the treatment of multiple declarations of federally declared disasters as a separate incident period and allowing a 60-day extension for each incident period
  - Section 80504 relating to the addition of "significant fires" to the list of reasons certain deadlines may be postponed
  - Section 80602 relating to the extension of the decrease in the applicable minimum percentage and the increase in the applicable maximum percentage through 2034 for purposes of the segment rate stabilization for minimum funding standards for single-employer defined benefit pension plans

### 3. Clarification That Certain Federal Laws Enacted Do Not Apply Simultaneously for Wisconsin Purposes

([2023 Wis. Act 36](#), repeal and recreate sec. 71.01(6)(k), (L), and (m), effective for various taxable years)

The provisions of federal public laws that directly or indirectly affect the adopted Internal Revenue Code provisions apply for Wisconsin purposes at the same time as for federal purposes, except that the following changes first apply for taxable years beginning after December 31, 2010:

- Section 1201 of [P.L. 108-173](#) relating to health savings accounts
- Section 307 of [P.L. 109-432](#) relating to the exclusion from gross income of a one-time distribution from individual retirement accounts to fund health savings accounts

The provisions of federal public laws that directly or indirectly affect the adopted Internal Revenue Code provisions apply for Wisconsin purposes at the same time as for federal purposes, except that the following changes first apply for taxable years beginning after December 31, 2018:

- Section 13113 of [P.L. 103-66](#) relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years

- Section 1241 of Division B of [P.L. 111-5](#) relating to allowing a 75% exclusion for small business stock acquired between January 17, 2009 and December 31, 2009
- Section 2011 of [P.L. 111-240](#) relating to allowing a 100% exclusion for gain on the sale of small business stock acquired after September 27, 2010 and before January 1, 2011 and held for more than 5 years. A 75% exclusion applies for stock acquired after February 17, 2009, and on or before September 27, 2010
- Section 753 of [P.L. 111-312](#) relating to the extension of the small business stock exclusion to empowerment zones through 2011
- Section 324 of [P.L. 112-240](#) relating to the extension of the 100% small business stock exclusion through 2013

#### 4. Exclusion of Gain on Small Business Stock

([2023 Wis. Act 36](#), renumber and amend sec. 71.98(5) and create 71.98(5)(b), effective for taxable years beginning after December 31, 2018)

For taxable years beginning after December 31, 2018, section 1202 of the Internal Revenue Code in effect for federal purposes applies for Wisconsin.

- 100% of the gain on small business stock acquired after September 27, 2010, may be excluded from Wisconsin income
- Applies for taxable years beginning on or after January 1, 2019
- [Amended returns](#) may be filed to claim the exclusion for taxable years 2019-2022

#### 5. Health Savings Accounts

([2023 Wis. Act 35](#), amend sec. 71.98(1), effective for taxable years beginning after December 31, 2021)

For taxable years beginning after December 31, 2021, section 223(c) of the Internal Revenue Code in effect for federal purposes applies for Wisconsin.

The Act adopts the extension for treating a health plan as a highly deductible health plan even if it fails to have a deductible for telehealth and other remote care services. It applies for months beginning after March 31, 2022, and before January 1, 2023, and for plan years beginning on or before December 31, 2021, or after December 31, 2022, and before January 1, 2025.

**Note:** The adoption of this subsection of the Internal Revenue Code applies retroactively to taxable years beginning on or after January 1, 2022, for Wisconsin. If you filed your 2022 Wisconsin individual income tax return and reported related income modifications on Wisconsin Schedule I because your high deductible health plan failed to qualify for Wisconsin due to the provision for telehealth and other remote care services, you may file an amended return.

## B. Corporation Franchise or Income Taxes

### 1. Internal Revenue Code References Updated for 2023 for Corporations, Nonprofit Organizations, Regulated Entities, Tax-Option (S) Corporations, and Insurance Companies

([2023 Wis. Act 36](#), amend sec. 71.26(2)(b)11.c., .d., and e., and 12.c., d., and e., and 13.a., d., and e., and repeal and recreate secs. 71.22(4)(k), (L), and (m), and 71.22(4m)(k), (L), and (m), and 71.34(1g)(k), (L), and (m), and 71.42(2)(k), (L), and (m), and create secs. 71.22(4)(n), 71.22(4m)(n), 71.26(2)(b)15., 71.34(1g)(n), and 71.42(2)(n), effective for taxable years beginning after December 31, 2022)

Certain provisions of federal laws that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes for taxable years that begin after December 31, 2022.

See Item A.1.

### 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes

([2023 Wis. Act 36](#), amend sec. 71.26(2)(b)11.c., d., and e., and 12.c., d., and e., and 13.a., 13.d., and 13.e., and repeal and recreate secs. 71.22(4)(k), (L), and (m), and 71.22(4m)(k), (L), and (m), and 71.34(1g)(k), (L), and (m), and 71.42(2)(k), (L), and (m), and create secs. 71.22(4)(n), 71.22(4m)(n), 71.26(2)(b)15., 71.34(1g)(n), and 71.42(2)(n), effective for taxable years beginning after December 31, 2022)

Certain changes to the Internal Revenue Code made by federal laws enacted in 2020 and 2021 apply for Wisconsin purposes at the same time as for federal purposes.

See Item A.2.

### 3. Clarification That Certain Federal Laws Enacted Do Not Apply Simultaneously for Wisconsin Purposes

([2023 Wis. Act 36](#), amend sec. 71.26(2)(b)11.c., d., and e., and 71.26(2)(b)12.c., d., and e., and 71.26(2)(b)13.a., d., and e., and repeal and recreate sec. 71.22(4)(k), (L), and (m), and 71.22(4m)(k), (L), and (m), and 71.34(1g)(k), (L), and (m), and 71.42(2)(k), (L), and (m), and create secs. 71.22(4)(n), 71.22(4m)(n), 71.26(2)(b)15., 71.34(1g)(n), and 71.42(2)(n), effective for various taxable years)

Provisions of federal public laws that directly or indirectly affect the adopted Internal Revenue Code provisions apply for Wisconsin purposes at the same time as for federal purposes, except certain provisions first apply for taxable years beginning after December 31, 2010.

See Item A.3.

## General Updates and Reminders

### DORi – Virtual Assistant

**DORi** is the department's virtual assistant ("chatbot") and is available to provide automated responses to general questions about [My Tax Account \(MTA\)](#) navigation and usage.

To interact with **DORi**, click the cow icon at the top of any MTA page.



For best results, use short phrases and ask one question at a time. **DORi** does not always reply accurately to highly complex questions and phrases because it is not human. **DORi** also does not provide account-specific assistance. Do not enter personal information.

**DORi** is an evolving program. Use the "**DORi** 's answer doesn't make sense" link to help improve future automated responses.

### Fall Tax Update Seminars and Webinars

Registration is open for the 2023 Wisconsin Tax Update Seminars and Webinars.

These events are free and include:

- Tax law changes, updates, and reminders
- Tax processing, forms, and e-file updates
- Department initiatives
- My Tax Account updates

The department is holding two in-person seminars and two virtual webinars this year. All presentations are scheduled from 9:00 a.m. – 11:30 a.m. Dates and locations are below.

Date	Location
November 9, 2023	University of Wisconsin - Stevens Point, Dreyfus University Center - Laird Room
November 28, 2023	The Ingleside Hotel in Pewaukee
November 30, 2023	Webinar
December 8, 2023	Webinar

Visit the department's [Wisconsin Tax Update Seminars and Webinars page](#) for details and to register.

### My Tax Account Webinars

The department will provide Annual Filer Refresher webinars in 2024 on January 11, 16, 18, and 23 (the same information is provided in each webinar).

The Annual Filer Refresher webinar covers a variety of topics, including:

- Filing and paying sales and use tax (Form ST-12)

- Filing and paying withholding tax (Forms WT-6 and WT-7)
- Submitting wage statements and information returns (Forms W-2s, 1099-Rs, 1099-MISCs & 1099-NECs)
- Printing seller's permits and business tax registration certificates
- Updating profile information (bank and contact information)
- Requesting extensions to file

The department also offers a My Tax Account webinar for new users on the second Tuesday of every odd numbered month. The next new user webinar is scheduled for November 14, 2023, 9:30 am - 10:30 am (CST). The webinar covers topics including My Tax Account's two-step login process, filing and paying sales & use tax, and filing and paying withholding tax.

Visit the department's [Training](#) web page for more information and registration availability.

## Submitting Questions to the Department

The department strives to provide excellent customer service by responding to questions in a timely manner with a high level of professionalism and quality.

### *General Questions*

The department encourages taxpayers and practitioners to use our [Submit a Question](#) web page to electronically route questions to the appropriate department staff. To expedite the handling of your question, choose the subject in the dropdown list that best fits your question.

Taxpayers and practitioners can also visit the department's [Contact Us](#) web page to find contact information for various work areas in the department. This web page provides phone numbers, office hours and locations, and links to other informational web pages related to specific topics.

### *Request for Private Letter Rulings*

Taxpayers or their authorized representative may request a department ruling on the tax treatment of a specific set of facts through a Private Letter Ruling (PLR). A PLR is a written statement of the department's interpretation and application of Wisconsin tax laws to a specific set of facts. A PLR does not bind the taxpayer and may be published if the department decides to do so. More information about a PLR can be found in [Publication 111](#), *How to Get a Private Letter Ruling*.

## The Department Cannot Accept Direct Debit Payments from Financial Institutions Outside the United States

There are many ways to make a payment in [My Tax Account \(MTA\)](#). However, the department cannot accept a request to make an electronic payment (direct debit) if the bank account used is funded by a financial institution located outside of the United States. Other arrangements must be made to submit the payment.

MTA offers the following payment methods in addition to direct debit:

- Credit Card, PayPal, Apple Pay, etc. – You are directed to an external website to set up the payment with the Wisconsin Department of Revenue's third-party payment processor. Our third-party payment processor charges a \$1.00 transaction fee for all credit card, Apple Pay, and PayPal transactions plus an additional 2.25% processing fee. The department does not receive any portion of these fees.



- Payment Voucher - You create a payment voucher to print and mail along with your check to the department.

EFT (ACH Credit) is a payment option that is not available in MTA, but it can be set up through your financial institution. See the department's [Electronic Funds Transfer Payment Instructions for Financial Institutions](#) web page for more information.

For more payment information, visit the department's [Make a Payment](#) web page.

## Income and Franchise Tax Updates and Reminders

### Wisconsin Identity Protection PIN

The Wisconsin Identity Protection PIN prevents fraudsters from using an individual's personal information to file a return and receive a Wisconsin tax refund.

Individuals must register for [My Tax Account \(MTA\)](#) if they want a Wisconsin Identity Protection PIN. After registration is complete and a PIN is received, taxpayers:

- Have comfort in knowing no one else can file a tax return with their information.
- Can quickly and easily renew and retrieve their PIN each year.

Participation in the Wisconsin Identity Protection PIN program is voluntary. However, once an individual is assigned a PIN, the individual must provide a PIN on all future returns unless registration is cancelled. The PIN expires annually on December 31, and individuals receive an email in January with instructions to retrieve their new PIN via MTA.

Visit the [WI Identity Protection PIN](#) common questions on the department's website.

### New Farmland Preservation Credit Filing Requirement for Schedule FC

Taxpayers with farmland under a farmland preservation agreement entered into prior to July 1, 2009, may claim the farmland preservation credit using [Schedule FC, Farmland Preservation Credit](#).

Beginning with taxable year 2023, taxpayers must provide the five-digit agreement number(s) located on their farmland preservation agreement(s) issued by the Department of Agriculture, Trade, and Consumer Protection (DATCP) in order to claim the farmland preservation credit using Schedule FC.

If a transfer occurred and/or there is a transfer agreement, taxpayers must provide the first five-digits from the transfer agreement or the five-digit number from the original agreement and include a copy of the transfer agreement with the required attachments.

For more information, contact DATCP by calling (608) 224-4621, (608) 224-4611, or by emailing DATCP at [DATCPWorkingLands@wisconsin.gov](mailto:DATCPWorkingLands@wisconsin.gov).

### Veterans and Surviving Spouses Property Tax Credit: Recertification for Current Year

The veterans and surviving spouses property tax credit is available to eligible veterans and unremarried surviving spouses and is equal to the amount of property taxes paid during the year on their principal dwelling in Wisconsin. A veteran or unremarried surviving spouse must be certified by the Wisconsin

Department of Veterans Affairs (WDVA) to be eligible for the credit. If the certification for eligibility ended in 2022, the veteran or surviving spouse must request recertification from WDVA using a method listed below or contact their [County Veterans Service Officer](#).

Call: (800) 947-8387

Mail: Wisconsin Department of Veterans Affairs  
Attn: Veterans Property Tax Credit  
2135 Rimrock Road  
PO Box 7843  
Madison, WI 53707-7843

Eligibility end dates are stated on the certificate received from WDVA or can be verified by contacting WDVA at the phone number listed above. Confirm you are eligible prior to filing your 2023 Wisconsin income tax return to prevent delays in processing the return. Certification must be included with the Wisconsin return in the first year the credit is claimed.

See the [Veterans and Surviving Spouses Property Tax Credit](#) common questions for more information.

### **Reminder: Qualified Wisconsin Business Registration for Capital Gain Exclusion and Deferral**

For Wisconsin income tax purposes, an individual may:

- Defer a long-term capital gain if the gain is reinvested in a "qualified Wisconsin business" within 180 days after the sale of the asset that generated the gain.
- Exclude certain long-term capital gains from the sale of an investment in a "qualified Wisconsin business." The exclusion applies if the business was a qualified Wisconsin business for the year of the investment and for at least two of the four subsequent years, the investment was made after December 31, 2010, and the investment was held for at least five uninterrupted years.

#### *Registration Requirements*

For investors to be eligible for these tax benefits, the business must register electronically with the department by the close of each calendar year to be considered a "qualified Wisconsin business" for that year. The registration deadline for 2023 is January 2, 2024.

**Exception:** A business that started operations in Wisconsin in 2023 must complete the 2024 registration application (available after January 2, 2024, and before January 3, 2025) and answer yes to the question "Did the business start operations in Wisconsin last year?"

A business may register as a qualified Wisconsin business if **all** the following apply as of the tax year ending immediately before the date of registration:

- The business has at least two full-time employees.
- The amount of payroll compensation paid by the business in Wisconsin is at least 50 percent of all payroll compensation paid by the business.
- The value of real and tangible personal property owned or rented and used by the business in Wisconsin is at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

For more information, see:

- [Registration of Qualified Wisconsin Businesses](#) common questions
- [Qualified Wisconsin Business Capital Gain Exclusion](#) common questions
- [Fact Sheet 1102-2, Deferral and Exclusion of Long-Term Capital Gains for Investments in Qualified Wisconsin Businesses](#) on the department's website.

## Withholding Tax Updates and Reminders

### Withholding Tax Update Available

The [2023 Withholding Tax Update](#) has been posted to the department's website. Topics covered include:

- Withholding Tax Rates
- Withholding and Filing Requirements of Payments for Agricultural Labor (e.g., H-2A Workers)
- Retirement and Pension Payments Exempt from Income Tax Withholding
- Filing Requirements of Form 1099-R with Wisconsin Withholding
- Withholding and Filing Requirements of Third-Party Sick Pay
- Notice to Employers Using a Payroll Service Provider
- The Combined Federal/State Filing Program Is Not an Approved Filing Option for Information Returns with Wisconsin Withholding
- Truncated Taxpayer Identification Numbers on Forms W-2 and 1099
- Withholding Deposit Reports (Form WT-6) and Annual Reconciliation (Form WT-7)
- Electronic Filing Mandate – Forms WT-6 and WT-7
- Form WT-7 – Filing an Amended Annual Reconciliation
- Form WT-7 – Reporting by Financial Institutions and Insurance Agencies
- Filing Wage Statements and Information Returns
- Filing Extensions – Form WT-7, Wage Statements, and Information Returns
- Transportation Fringe Benefits for 2023 and 2024
- Single-Member LLCs – Are You Registered Correctly?
- Employees Claiming More than 10 Exemptions or Complete Exemption from Withholding (Form WT-4)
- Withholding Lock-In Letters
- Reporting Nonresident Entertainer Withholding on Income/Franchise Tax Returns
- My Tax Account New User Webinars
- My Tax Account Annual Refresher Webinars
- Withholding Tax Webinars for Employers
- Withholding Tax Electronic Mailing List

- [Employer's Responsibility for Unclaimed Property](#)
- [Questions or Comments](#)
- [Quick Links](#)

## Reminder: Pass-Through Withholding Exemption Requests (Form PW-2)

A nonresident of Wisconsin who is an owner (partner, member, shareholder, or beneficiary) of a pass-through entity may request an exemption from Wisconsin's pass-through withholding tax by filing [Form PW-2, Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Pass-Through Withholding Exemption Affidavit](#).

Form PW-2 must be (1) filed electronically through [My Tax Account](#), unless a [waiver](#) is approved by the department, and (2) filed by the due date. The due date to file Form PW-2 depends on the type of pass-through entity for which the owner is requesting the exemption.

Type of Pass-Through Entity	Due Date to File Form PW-2
Tax-Option (S) Corporation	Last day of the 1 <sup>st</sup> month following the close of the pass-through entity's taxable year.
Partnership	
Limited Liability Company Treated as a Tax-Option (S) Corporation or Partnership	
Estate	Last day of the 2 <sup>nd</sup> month following the close of the pass-through entity's taxable year.
Trust	

**Note:** If the due date falls on a weekend or holiday, the due date becomes the business day immediately following the weekend or holiday.

### Examples:

- For a 2023 calendar-year tax-option (S) corporation, Form PW-2 is due by January 31, 2024.
- For a partnership with a fiscal year from October 1, 2023, to September 30, 2024, Form PW-2 is due by October 31, 2024.
- For a 2023 calendar-year trust, Form PW-2 is due by February 29, 2024.
- For an estate with a fiscal year from October 1, 2023, to September 30, 2024, Form PW-2 is due by December 2, 2024.

**Caution:** An owner's exemption request must be approved by the department to be valid. After the nonresident owner files Form PW-2 with the department, the department notifies the nonresident owner whether or not the withholding exemption is approved within approximately 30 days. The department mails the approved withholding exemption letter or the denial letter to the nonresident owner. The department's determination may not be appealed. The nonresident owner is responsible for notifying the pass-through entity when an exemption is approved, and a pass-through entity is required to withhold until it receives the approved Form PW-2 from the owner.

## Sales and Use Tax Updates and Reminders

### Milwaukee City and County Taxes

Effective January 1, 2024:

- City of Milwaukee imposes a new 2% sales and use tax
- Milwaukee County sales and use tax increases from 0.5% to 0.9%

Sellers registered to collect Wisconsin sales and use tax must also collect the city and county tax if making taxable sales to these locations, regardless of whether the seller is located in the city or county. See [Tax Rates](#) common questions on the department's website. We are updating our forms, guidance, and systems to reflect the new tax rates.

The department created a new [Fact Sheet 2414](#), *Milwaukee Sales and Use Tax*, to describe these taxes, how to report the taxes, and transitional provisions that apply. Changes to the tax forms, instructions, publications, web pages, administrative rules, and department computer systems are in progress to reflect the new tax rates in Milwaukee.

### Transitional Provisions for New and Increased Milwaukee Sales and Use Taxes

The following transitional provisions apply for purposes of the new 2% city of Milwaukee sales and use tax and the 0.4% increase to the Milwaukee County sales and use tax rate, effective January 1, 2024:

- **Tangible Personal Property, Certain Coins and Stamps, and Digital Goods**

Sales of tangible personal property, certain coins and stamps, and digital goods, except leases, rentals, and licenses, are subject to the new and increased Milwaukee sales and use taxes if possession of the property or digital good is transferred from the seller or the seller's agent to the purchaser or purchaser's agent on or after January 1, 2024.

**Example:** On December 15, 2023, Individual purchases a computer from Electronics Store located within the city and county of Milwaukee. The computer is not available for pickup until January 10, 2024. Since possession of the computer transfers to Individual on January 10, 2024, the transaction is subject to the 2% city of Milwaukee and 0.9% Milwaukee County taxes.

- **Services and Leases, Rentals, and Licenses**

Sales of taxable services and leases, rentals, or licenses of taxable products are subject to the new and increased Milwaukee sales and use taxes if the billing period starts on or after January 1, 2024. Bills issued before January 1, 2024, should not include the new and increased Milwaukee sales and use taxes, even if the service is not performed or the product is not leased, rented, or licensed until on or after January 1, 2024.

**Example:** On December 20, 2023, Photography Studio sends a billing statement to a client located within the city and county of Milwaukee for a six-month photography package, starting on January 5, 2024. Since the billing period begins on December 20, 2023, the new 2% city of Milwaukee sales and use tax and increased Milwaukee County sales and use tax is not applicable. Instead, the 0.5% Milwaukee County tax rate applies to the total sales price of the photography service package.

- **Construction Materials**

Sales of building materials to contractors involved in the construction, alteration, repair, or improvement of real property for others are exempt from the new and increased Milwaukee sales and use taxes if both of the following conditions are met:

- The materials are affixed and become a permanent part of the property, **and**
- The contractor's charge is fixed and not based on the actual costs incurred. This condition applies if the irrevocable contract is signed before January 1, 2024, OR if the contractor won a bid and irrevocably submitted a bond or other performance guaranty before January 1, 2024. Change orders on or after January 1, 2024, that merely substitute one type of fixture for another type of fixture without changing the contract price do not cause the materials to be subject to the new and increased city and county Milwaukee sales and use taxes.

**Note:** If the above conditions are met, contractors may utilize [Form S-207-CT](#), *Construction Contract Entered Into Before the Effective Date of County or City Tax*, to buy building materials without the increased Milwaukee County sales and use tax and new city of Milwaukee sales and use tax.

**Example 1 – No Change Orders:** On October 20, 2023, Contractor bids on and is awarded a real property construction contract to build a new building under a fixed price contract within the city and county of Milwaukee. The contractor's work is scheduled to be performed between December 1, 2023 through June 30, 2024. Since the contractor won the bid and submitted a performance guaranty before January 1, 2024, materials purchased for and incorporated into the project are not subject to the new and increased Milwaukee taxes, even though some work occurs after January 1, 2024.

**Example 2 – Change Order for Additional Materials After Effective Date:** On December 15, 2023, Contractor bids on and is awarded a real property construction contract to renovate an existing building within the city and county of Milwaukee under a fixed price contract. Work begins on January 5, 2024, and is scheduled to be completed by August 15, 2024. On March 1, 2024, the Client requests an upgrade involving additional materials. Since the upgrade/materials were not part of the original contract and the change order occurred after January 1, 2024, materials for the new upgrade purchased on or after March 1, 2024, would be subject to the new and increased city and county of Milwaukee sales and use taxes.

**Example 3 – Change Order for Existing Materials After Effective Date:** On November 15, 2023, Contractor bids on and is awarded a real property construction contract to renovate an existing building under a fixed price contract within the city and county of Milwaukee. The contractor's work is scheduled to be performed between December 1, 2023 through March 31, 2024. A change order is issued on January 1, 2024, that results in an adjustment to the cost of existing building materials already included in the original contract scope of work. Even though the original contract was entered into before January 1, 2024, the entire purchase price of the existing building materials affected by the change order is subject to the new and increased Milwaukee sales and use taxes.

## **Motor Vehicle Dealers' Measure of Use Tax Increases to \$197**

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a fixed dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2024, the amount subject to use tax is increased from \$191 to \$197 per plate per month. To calculate use tax, \$197 is multiplied by the appropriate use tax rate (5%, 5.5%, 5.9%, 7%, 7.5% or 7.9%) to arrive at the use tax due per plate per month.

## *Why is the rate increasing?*

Wisconsin law (sec. [77.53\(1m\)](#), Wis. Stats.) requires the department to annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12-month period ending June 30. Since the index for the period July 2022 through June 2023 increased 3%, the amount subject to use tax on dealer motor vehicle plates increases \$6 per plate per month starting January 1, 2024.

For more information, see:

- [Publication 202](#), *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs*
- [Use Tax on Motor Vehicle Dealer Plates](#) common questions

## **Determining the Jurisdiction and Tax Rate**

Effective January 1, 2024, retailers and purchasers may no longer use a 5-digit zip code without a street address to determine the proper jurisdiction and tax rate for a transaction. Five-digit zip codes without a street address are insufficient because they often include multiple jurisdictions.

The [Wisconsin State and Local Sales Tax Rate Look-Up](#) has been updated to use street address information to determine the proper jurisdiction and tax rate that applies to a transaction. Users must enter either a street address and 5-digit zip code or 9-digit zip code to determine the proper jurisdiction and state, county, and city sales and use tax rates.

In addition, the look-up now determines if the street address and 5-digit zip code are located in a premier resort area or local exposition district. **Note:** Not all sellers are subject to Premier Resort Area Tax or Local Exposition Taxes. See [Publication 403](#), *Premier Resort Area Tax*, and [Publication 410](#), *Local Exposition Taxes*, for additional information.

## **Reminder: Increase in Retailer's Discount Deduction**

For taxes payable on or after October 1, 2023, the retailer's discount on the total sales tax amount increased from 0.5 percent to 0.75 percent, and the limit of a retailer's discount that may be deducted on a sales and use tax return increased from \$1,000 to \$8,000. See [Wisconsin Tax Bulletin 222](#) (July 2023) for additional information.

## **New Fact Sheet 2113: Sales of Used Motor Vehicles, Boats, Snowmobiles, Etc.**

A new fact sheet explaining the Wisconsin sales and use tax treatment of sales of used motor vehicles, boats, snowmobiles, recreational vehicles as defined in sec. [340.01\(48r\)](#), Wis. Stats., trailers, semitrailers, all-terrain vehicles, utility terrain vehicles, off-highway motorcycles, and aircraft has been posted to the department's website. [Fact Sheet 2113](#), *Sales and Use Tax on Sales of Used Motor Vehicles, Boats, Snowmobiles, RVs, Trailers, Semitrailers, ATVs, UTVs, Off-Highway Motorcycles, and Aircraft*, explains who a retailer is, retailer's responsibilities, when county and city taxes apply, and treatment of sales to nonresidents.

## Excise Tax Updates and Reminders

### Motor Fuel Tax Refund Claims Can Be Filed Online

Wisconsin law provides that motor vehicle fuel is not subject to the motor vehicle fuel tax when it is used for off-road purposes in mobile machinery and equipment.

Farmers, construction companies, and logging operations often have off-road usage of motor vehicle fuel in non-licensed mobile machinery and equipment. Waste management, ready-mix, liquid waste (e.g., septic service), and utility companies have licensed vehicles with power take-off (PTO) units that share the same fuel supply tank used to power the vehicle. These companies can receive a refund of the motor vehicle fuel tax paid on fuel placed into the vehicles and used by PTO units. For additional information on eligibility for a motor vehicle fuel tax refund, see [Motor Vehicle Fuel Tax](#) common questions on the department's website.

Motor Fuel Tax Refund Claims (Form MF-001) may be filed online through [My Tax Account \(MTA\)](#). MTA is free, simple, secure, and available 24 hours a day, seven days a week.

If you need assistance filing your motor fuel tax refund claim online using MTA, email [ExciseTaxpayerAssistance@wisconsin.gov](mailto:ExciseTaxpayerAssistance@wisconsin.gov) or call (608) 266-6701.

## Enforcement Report

### Custer Man Pleads No Contest to Submitting False Tax Documents

Elton James Schenk, 47, of Custer, recently plead no contest to a misdemeanor charge of knowingly submitting false tax documents in Brown County Circuit Court. Schenk had been charged with one felony count of filing a false or fraudulent state income tax return for tax year 2016 following an investigation by the Wisconsin Department of Revenue, Office of Criminal Investigation.

According to the criminal complaint, Schenk filed fraudulent Wisconsin income tax returns by reporting net losses from non-existent businesses to offset taxable income. The tax loss to the State of Wisconsin was \$6,884.

Under Wisconsin law, filing a false or fraudulent income tax return is a felony. Schenk faced a maximum penalty of six years in prison and/or \$10,000 in fines. As part of a deal reached with prosecutors, Schenk agreed to plead no contest to a reduced charge of submitting false tax documents and pay restitution to the State of Wisconsin for the 2016 tax loss.

The Wisconsin Department of Revenue, Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes.

To report tax fraud, go to [www.revenue.wi.gov](http://www.revenue.wi.gov) and click the "Report tax fraud" link under Quick Links.



### **Dane County Man Charged with Filing a False Sales/Use Tax Report or Return**

David M. Gerber, 66, of Stoughton, Wisconsin was recently charged in Dane County Circuit Court with a misdemeanor count of filing a false Wisconsin sales/use report or return.

According to the criminal complaint, Gerber purchased a 1958 Chevrolet Apache 3100 step-side pickup truck from a seller in California via an online auction website. Gerber completed a Wisconsin Title & License Plate Application, commonly referred to as a Form MV-1, and reported the sale price of the truck as \$3,800. The online auction records and financial records showed the sale price of the truck was actually \$38,000. By understating the sale price of the vehicle, Gerber evaded \$1,710 in Wisconsin sales/use tax (5%). Additionally, by not reporting the 0.5% county sales/use tax on the Form MV-1, Gerber evaded another \$190 of tax due.

The complaint noted that investigators were able to acquire documents completed by the seller of the vehicle that also showed a selling price of \$3,800, which they believed indicated the buyer and seller conspired to understate the sale price of the truck. Investigators interviewed Gerber who denied intentionally understating the sale price, claiming a simple mistake was made. The following day, Gerber called the investigator and admitted to not being honest during the prior conversation and admitted to intentionally understating the sale price of the vehicle to pay less tax.

Under Wisconsin law, filing a false sales/use tax report or return is a misdemeanor. If convicted Gerber faces a maximum penalty of not more than one year in jail and/or \$1,000 in fines. Gerber is being prosecuted by the Dane County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Office of Criminal Investigation.

The Wisconsin Department of Revenue Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes.

To report tax fraud, go to [www.revenue.wi.gov](http://www.revenue.wi.gov) and click the "Report tax fraud" link under Quick Links.

### **Monroe County Man Enters into a Diversion Agreement on Tax Fraud Charges**

Keith S. Burch, 55, formerly of Warrens, recently entered into a diversion agreement with prosecutors from the Monroe County District Attorney's Office. Burch faced three felony counts of filing a false or fraudulent state income tax return for tax years 2016 through 2018 following a joint investigation by the Wisconsin Department of Justice, Division of Criminal Investigation, and the Department of Revenue's Office of Criminal Investigation.

According to the criminal complaint, Burch failed to report self-employment income earned from Burch's private investigations business. The complaint alleged Burch filed tax returns that understated Burch's income by more than \$226,000, thereby evading over \$13,000 in Wisconsin income tax.

A five-year diversion agreement required Burch plead no contest or guilty to two of the three felony counts. The third count was dismissed. Burch must comply with the terms of the agreement or face sentencing on the two remaining counts that carry a maximum penalty of up to 12 years in prison and/or \$20,000 in fines. If Burch complies with the agreement, both counts will be dismissed at the end of the five-year period.

As part of other terms of the agreement Burch agreed to not violate any criminal or criminal traffic laws, file monthly reports with the Monroe County Justice Department certifying compliance with the terms of the agreement, pay a monthly diversion agreement fee, and meet every three months with a diversion program administrator. Additionally, Burch must timely file all applicable Wisconsin tax returns and pay any Wisconsin state tax, interest, penalties, or costs by the due date of a return or notice from the State of Wisconsin, unless certain specified conditions exist.

The Wisconsin Department of Revenue Office of Criminal Investigation investigates individuals and businesses suspected of committing tax crimes and seeks criminal prosecution for those crimes.

To report tax fraud, go to [www.revenue.wi.gov](http://www.revenue.wi.gov) and click the "Report tax fraud" link under Quick Links.

## Report on Litigation

*Summarized below are recent significant Wisconsin Tax Appeals Commission (The Commission) and Wisconsin Court decisions.*

### Pass-Through Withholding Tax and Individual Income Tax

#### Sale of Licenses for Use of Computer Software

*Kuta Software, LLC, and Michael Kuta (Petitioners) v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 28, 2023).*

At issue in this case is if the sale of licenses for the use of computer software is considered the sale of intangible property, and the income from such sales to customers in Wisconsin is subject to Wisconsin's pass-through withholding tax and individual income tax.

#### Facts

- Michael Kuta is a nonresident of Wisconsin and the sole owner of Kuta Software, LLC (LLC).
- The LLC is organized and existing under the laws of Maryland.
- The LLC is in the business of developing educational software to assist schools and teachers when teaching math.
- For tax years 2012 through 2018, the Petitioners:
  - Sold licenses to use the software, and some customers were in Wisconsin.
  - Only advertised online.
  - Did not have a physical presence in any state other than Maryland.
  - Did not have any persons, property, or equipment in Wisconsin.
  - Did not own or lease any real estate or tangible personal property in Wisconsin.
  - Did not have any salespersons or representatives that visited Wisconsin.
  - Did not have any activity in Wisconsin other than:
    - The solicitation of orders which were rejected or approved and filled outside of Wisconsin.
    - The licensing and delivery of software to Wisconsin customers.
    - Providing customer support from Maryland through email, phone, or fax.
    - Providing a limited warranty for the software.
- Customers had three ways to purchase the licenses:
  - Through the Petitioners' website.
  - By phone.
  - By submitting an order form or purchase order to Maryland by email, fax, or mail.

- After customers purchased a license, they could obtain the software through:
  - Online download.
  - Mail delivery from Maryland of a compact disk.
- For tax years 2012 through 2015:
  - The LLC was a disregarded entity and Michael Kuta reported the income on their federal Form 1040, Schedule C.
  - The department issued Notices of Estimated Tax Amount Due – Individual Income Tax.
- For tax years 2016 through 2018:
  - The LLC elected to be taxed as an S-corporation and filed federal Form 1120-S.
  - The department issued Notices of Amount Due – Pass-Through Withholding.
- Petitioners appealed all the notices.

Below is a summary of the issues for these appeals:

1. **Issue:** For purposes of Wisconsin's pass-through withholding tax and individual income tax, is the sale of licenses for the use of computer software considered the sale of intangible or tangible property?

The department argues that the Petitioners are selling intangible property. The department asserts that the Legislature intended computer software to be intangible property because of the placement of secs. [71.04\(7\)\(df\)](#) and [71.25\(9\)\(df\)](#), Wis. Stats.

The Petitioners argue that they are selling tangible property. The Petitioners reference Internal Revenue Service (IRS) Treas. Reg. sec. [1.861-18](#) and sec. [77.51\(20\)](#), Wis. Stats., for definitions.

2. **Issue:** Are the Petitioners subject to Wisconsin's pass-through withholding tax and individual income tax because of the income generated from these sales to customers in Wisconsin?

The department argues that the Petitioners are subject to Wisconsin's pass-through withholding tax and individual income tax because these sales constitute "doing business" and "business transacted" in Wisconsin which establishes nexus in Wisconsin.

The Petitioners argue that they do not have nexus in Wisconsin and are not subject to Wisconsin's pass-through withholding tax or individual income tax because these sales do not constitute "doing business" or "business transacted" in Wisconsin.

3. **Issue:** Does Public Law 86-272 prohibit Wisconsin from taxing the Petitioners?

The department argues that Public Law 86-272 does not prohibit Wisconsin from taxing the Petitioners because Public Law 86-272 is limited to the sales of tangible property.

The Petitioners argue that Public Law 86-272 prohibits Wisconsin from taxing the Petitioners.

The Wisconsin Tax Appeals Commission denied the Petitioners' appeals and concluded:

1. State law governs what is considered intangible or tangible property. The definition of tangible property in the sales tax statutes under sec. [77.51\(20\)](#), Wis. Stats., does not apply to income tax and pass-through withholding tax under ch. [71](#), Wis. Stats. The sale of licenses for the use of computer software constitute the sale of intangible property under sec. [71.01\(5p\)](#) and [71.22\(3h\)](#), Wis. Stats.
2. The Petitioners' gross receipts from sales of the rights to copy, install, and use computer software under copyright license agreements are "gross receipts from the use of computer software" as that language is used in secs. [71.04\(7\)\(df\)](#) and [71.25\(9\)\(df\)](#), Wis. Stats.

3. The Petitioners' sales to Wisconsin customers constitute "doing business" and "business transacted" in Wisconsin. Therefore, Michael Kuta is subject to Wisconsin's individual income tax for the years in which Kuta Software was a disregarded entity, and the LLC is subject to Wisconsin's pass-through withholding tax for the years that it was a pass-through entity.
4. Public Law 86-272 does not apply to the facts of the Petitioners' appeals because:
  - a. The Petitioners' sale of licenses to use computer software is not the sale of tangible property. P.L. 86-272 only applies to sales of tangible personal property.
  - b. The Petitioners' sale of licenses to use computer software is not the only activity of the Petitioners in Wisconsin. The Petitioners also provide customer support to its Wisconsin customers.

The Petitioners did not appeal. The decision is final.

### Sales and Use Tax

#### Taxability of Inspection Services - Diagnostic Fleet Management Service

*Verizon Connect NWF, Inc. v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 2, 2023)

The issue in this case is whether fleet management services which gather, analyze, and translate data and generate reports from vehicle on-board diagnostic systems to an online platform available to customer are taxable inspection services under sec. [77.52\(2\)\(a\)10](#), Wis. Stats.

Verizon Connect NWF, Inc. ("Verizon") provides fleet management services to commercial vehicle customers. Through devices installed in customer vehicles, Verizon collects diagnostic data from onboard diagnostic systems and uses that data to analyze vehicle performance and location. Customers access a dashboard on Verizon's online platform displaying a summary of this data. Customers pay a monthly charge for the fleet management services.

The Wisconsin Department of Revenue audited Verizon for tax years 2014-2017 and assessed sales tax on Verizon's monthly fleet management service charges, concluding these services are taxable as "inspections" under sec. [77.52\(2\)\(a\)\(10\)](#), Wis. Stats. Verizon appealed, and argued the services were not inspections and instead were nontaxable data processing.

The Wisconsin Tax Appeals Commission concluded Verizon's fleet management services in its entirety, constituted a taxable inspection service. The key conclusions of the case include the following:

- Onboard diagnostic systems continuously monitor vehicles, but that data is not readable without Verizon's installation of additional hardware to retrieve the information.
- The receipt of the final reported information is the primary purpose customers pay for the services.
- Through conducting in-depth analysis of diagnostic codes and generating comprehensive reports for customers, Verizon is hired to complete a thorough translation and analysis of the diagnostic codes and that entire process constitutes an inspection.
- Verizon's services go beyond merely processing raw data and instead take on functions resembling those of a modern vehicle technician or mechanic. Verizon's services perform the same diagnostic functions as a mechanic in a modern garage, whether the individual or the computer instructs the vehicle owner to take certain actions.
- The *Janesville Data Center* case which centered on primarily intangible transactions, does not apply given that Verizon is providing taxable inspection services on tangible property.

It is unknown at the time of publication whether the taxpayer will appeal this decision to the Circuit Court.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations enacted as of October 31, 2023: chs. 71, 73, 77, 78, and 340, [Wis. Stats.](#), and chs. Tax 1, 2, 4, and 11, [Wis. Adm. Code](#). Laws enacted and in effect after this date, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to this date that is contrary to the information in this document is superseded by this document, according to sec. 73.16(2)(a), Wis. Stats.

## Public Comments

The public may [submit comments on guidance documents](#) at any time.