

**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
FS1102-2	Deferral and Exclusion of Long-Term Capital Gains for Investments in Wisconsin Businesses – Fact Sheet



Deferral and Exclusion of Long-Term Capital Gains for Investments in Wisconsin Businesses

Fact Sheet 1102-2

revenue.wi.gov

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.](#)

Deferral of Gain

Section 71.05(26), Wis. Stats., provides a deferral of tax on long-term capital gain that is realized from the sale of assets and reinvested in a "qualified Wisconsin business."

The deferral is only available to individuals, including individual partners or members of a partnership, limited liability company, or limited liability partnership, and individual shareholders of a tax-option corporation.

Certain conditions must be met in order to qualify for the deferral of gain:

- The individual must incur a gain on the sale of a capital asset that is treated as a long-term gain under the Internal Revenue Code (IRC).
- Within 180 days after the sale of the asset that generated the gain, all of the gain must be invested in a "qualified Wisconsin business." Investment means amounts paid to acquire stock or other ownership interest in a partnership, corporation, tax-option corporation, or limited liability company treated as a partnership or corporation.
- After making the investment, the individual must use Wisconsin [Schedule CG, Income Tax Deferral of Long-Term Capital Gain](#), to notify the Department of Revenue that he/she will not declare the gain because it has been reinvested. Schedule CG must be attached to the individual's Wisconsin income tax return for the year of the claim.

The Wisconsin basis of the investment must be reduced by the amount of deferred gain. Thus, the deferred gain will be taxable for Wisconsin when the investment is later sold. This deferred gains is subject to tax when the investment is sold and it cannot be excluded.

Exclusion of Long-Term Capital Gain

For taxable years that begin on or after January 1, 2016, Wisconsin law (sec. 71.05(25), Wis. Stats.) provides for a capital gain exclusion when an investment is held for at least five years in a "qualified Wisconsin business."

The exclusion is only available to individuals, including individual partners or members of a partnership, limited liability company, or limited liability partnership, and individual shareholders of a tax-option corporation.

Caution If you invested in a single member LLC on or after January 1, 2011, the long-term capital gain exclusion for investment in a qualified Wisconsin business may be allowed if the following are met:

- The LLC filed federal Form 8832 or 2553 to elect to be taxed as a C corporation or S corporation on or before January 1, 2011 for federal tax purposes, and the election was approved by the IRS.
- The federal election also applies for Wisconsin tax purposes.

The following requirements must be met to qualify for the exclusion:

- An investment in a "qualified Wisconsin business" must be purchased after December 31, 2010, and held for at least five uninterrupted years. An investment means amounts paid to acquire stock or other ownership interest in a partnership, corporation, tax-option corporation, or a limited liability company treated as a partnership or corporation.
- The business invested in must be a "qualified Wisconsin business" for the year purchased and at least two of the following four years.
- The individual must incur a gain on the sale of the investment that is treated as a long-term capital gain under the IRC. The amount of the qualifying gain may not exceed the fair market value of the investment on the date sold less the fair market value of the investment on the date acquired.

The amount of gain that may be excluded is the amount of gain from the sale of the investment less any gain that was deferred for Wisconsin as described in Part 1. Use [Schedule QI](#), *Sale of Investment in a Qualified Wisconsin Business*, to report the exclusion. Use lines 6 and 7 of Schedule QI to adjust the gain or (loss) on the sale where the investor previously deferred long-term gain that was invested in a qualified Wisconsin business.

"Qualified Wisconsin Business "

Beginning January 1, 2014, a "qualified Wisconsin business" is a business registered with DOR. For 2011, 2012, and 2013, a "qualified Wisconsin business" is a business certified by the Wisconsin Economic Development Corporation.

A business must register with DOR in each calendar year for which it desires registration. However, a business that desires registration for the calendar year in which it first begins doing business in Wisconsin must register during the following calendar year.

A business may register if, in the business's taxable year ending immediately before the date of registration:

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

Note: An employee of a professional employer organization or a professional employer group who is performing services for a client is considered an employee solely of the client for purposes of meeting the first qualification above.

A business must register using DOR's online application. A list of [registered businesses](#) is available on our website.

Note: As required by sec. 73.03(69)(d), Wis. Stats. (2015-16), listed above are businesses that have provided information concerning property, payroll, and number of employees for purposes of registering as a qualified Wisconsin business. This information has not been reviewed for purposes of determining eligibility for the exclusion or deferral under sec. 71.05(25) and (26), Wis. Stats. (2015-16).

Additional Information or Comments

For more information:

- Visit the department's [web page](#) for qualified Wisconsin businesses
- Contact any [Department of Revenue office](#)
- Contact our Customer Service Bureau at (608) 266-2486
- Email your questions or comments to DORIncome@wisconsin.gov

Applicable Laws and Rules

This publication provides statements or interpretations of the following provisions of Wisconsin Statutes and Administrative Rules in effect as of September 25, 2019: Sections 71.05(25) and (26), and 73.03(69)(d), Wis. Stats., and s. Tax 2.986, Wis. Adm. Code.

Laws enacted and in effect after September 25, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to September 25 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

Certification Statement

As the Secretary of the Wisconsin Department of Revenue (DOR), I have reviewed this guidance document or proposed guidance document and I certify that it complies with secs. 227.10 and 227.11, Wis. Stats.. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

DEPARTMENT OF REVENUE



Peter Barca

Secretary of Revenue

Last Updated: September 25, 2019