

**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
100113	Credit Carryovers After Death of Spouse - Common Questions

State of Wisconsin
Department of Revenue

Credit Carryovers After Death of Spouse

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. My spouse died. Can I claim any of my spouse's carryover credits in future years to offset my tax?

1. **My spouse died. Can I claim any of my spouse's carryover credits in future years to offset my tax?**

Credits do not survive the death of the claimant. Only the taxpayer who was entitled to the credit may claim the credit carryover. If the credit was generated from marital property income, one-half the carryover may be claimed by the surviving spouse.

Example 1. Taxpayer A died in 2019. Taxpayer A's surviving spouse filed a 2019 joint return. Taxpayer A operated a farm and qualified for a manufacturing and agriculture credit of \$20,000 for 2019. The farm income for 2019 (marital property) generated tax of \$2,000. The allowable credit used was \$2,000. The credit carryover to 2020 was \$18,000.

The surviving spouse inherits and continues to operate the farm. Each spouse had a one-half interest in the credit and the carryover. Only \$9,000 of the carryover is available to the surviving spouse for 2020, since only half of the marital property income belonged to her at the time that the credit was generated. Taxpayer A's share of the credit is lost.

Example 2. Taxpayer B operated a farm. The farm real estate was titled in Taxpayer B's name, but income from the operation of the farm was marital property income. A dairy and livestock farm investment credit of \$50,000 was computed on the 2013 Wisconsin tax return. Taxpayer B used \$20,000 of the credit on his joint 2013 through 2018 Wisconsin tax returns, with \$30,000 carried over to 2019. Taxpayer B died in 2019 and did not use any credit on his 2019 tax return. Taxpayer B's son inherited the farm and operates it.

The surviving spouse is entitled to one-half of the credit carryover (\$15,000). Even though the farm was titled in Taxpayer B's name (and whether or not it was B's individual property), the farming operation generated marital income and expenses. Taxpayer B's share of the credit is lost.

Example 3. The facts are the same as Example 2 except Taxpayer B had inherited the farm and it was his individual property. Taxpayer B had issued a unilateral statement providing that the income from the farm was individual income.

Upon the death of Taxpayer B, the surviving spouse is not entitled to any portion of the \$30,000 carryover of the dairy and livestock farm investment credit. The \$30,000 credit carryover is lost.

Example 4. Taxpayer C is married and files a joint return. Taxpayer C used individual property to purchase an interest in a partnership in 2018. A development zones credit was passed through to Taxpayer C from the partnership in 2018 and 2019. The credit was Taxpayer C's individual property. Taxpayer C died in 2019 and the surviving spouse inherited the partnership interest. Taxpayer C's credit carryover to 2020 is \$5,000.

The carryover credit is lost. Even though the spouse succeeded to the partnership interest, the spouse is not entitled to Taxpayer C's carryover. The spouse is a different taxpayer.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of October 21, 2019: Sections 71.07, 71.28 and 71.53, Wis Stats.

Laws enacted and in effect after October 21, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to October 21, 2019, 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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