

**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
WTB207	Wisconsin Tax Bulletin 207 - November 2019

Wisconsin Tax Bulletin

November 2019 Number 207



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.](#)

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General Updates and Reminders

Wisconsin Tax Forms Accepted Via Electronic Submission Only

The following returns must be electronically filed for taxable years beginning on or after January 1, 2019:

Form Name	Electronic Filing Options
Form 3 , <i>Wisconsin Partnership Return</i>	<ul style="list-style-type: none"> Federal/State E-Filing Program https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx
Form 5S , <i>Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return</i>	<ul style="list-style-type: none"> Federal/State E-Filing Program https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx
Form 6 , <i>Wisconsin Combined Corporation Franchise or Income Tax Return</i>	<ul style="list-style-type: none"> Federal/State E-Filing Program https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx
Form 1CNS , <i>Composite Wisconsin Individual Income Tax Return for Nonresident Tax-Option (S) Corporation Shareholders</i>	<ul style="list-style-type: none"> Federal/State E-Filing Program https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx My Tax Account https://tap.revenue.wi.gov/mta/
Form 1CNP , <i>Composite Wisconsin Individual Income Tax Return for Nonresident Partners</i>	<ul style="list-style-type: none"> Federal/State E-Filing Program https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx My Tax Account https://tap.revenue.wi.gov/mta/
Form PW-1 , <i>Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income</i>	<ul style="list-style-type: none"> Federal/State E-Filing Program https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx My Tax Account https://tap.revenue.wi.gov/mta/
Withholding Tax Deposit Report (WT-6)	<ul style="list-style-type: none"> My Tax Account https://tap.revenue.wi.gov/mta/ Telefile https://www.revenue.wi.gov/Pages/FAQS/ise-whtelefile.aspx E-File Transmission https://www.revenue.wi.gov/Pages/OnlineServices/wt-6-home.aspx ACH Credit – through your financial institution https://www.revenue.wi.gov/Pages/OnlineServices/eft2.aspx Credit Card – through Official Payments 1-800-272-9829; use code 5800 https://www.revenue.wi.gov/Pages/FAQS/crcard.aspx

Employers Annual Reconciliation of Wisconsin Income Tax Withheld (WT-7)	<ul style="list-style-type: none">• My Tax Account https://tap.revenue.wi.gov/mta/ /• Telefile https://www.revenue.wi.gov/Pages/FAQS/ise-whtelefile.aspx• E-File Transmission https://www.revenue.wi.gov/Pages/OnlineServices/wt-7-home.aspx
Form ST-12 , <i>Wisconsin Sales and Use Tax Return</i>	<ul style="list-style-type: none">• My Tax Account https://tap.revenue.wi.gov/mta/ /• File Transmission https://www.revenue.wi.gov/Pages/FAQS/pcs-s-trans.aspx• Sales Telefile https://www.revenue.wi.gov/Pages/OnlineServices/e-sales.aspx

Revised Form A-222, Power of Attorney

[Form A-222](#), *Power of Attorney*, has been redesigned to improve functionality for both practitioners and the department. Some of the changes include:

- Taxpayers may grant full authority to a representative, without limits, on the type of tax or periods
- When granting limited authority, the period(s) column does not require an entry
- The form may be used to add and revoke a representative
- A signature stamp or electronic signature of the taxpayer(s) is now acceptable
- The option to send notices and other written communications to the representative or taxpayer is removed and replaced with the following:
 - Automatically generated notices are sent only to the taxpayer
 - Other notices and letters may be sent to the taxpayer or the representative
- The form may be provided to the department even if not working with a department employee
- The [instructions](#) have been updated to include the changes made

Income and Franchise Tax Updates and Reminders

Individual and Fiduciary Income Tax Rates Reduced

As provided by [2019 Wis. Act 10](#), the individual income tax rates for the first and second tax brackets under sec. 71.06, Wis. Stats., are reduced for taxable year 2019 based on estimated amounts of additional sales and use tax revenue reported to the department from out-of-state retailers and marketplace providers.

For 2019, the individual income tax rate for the first tax bracket is reduced from 4.00 percent to 3.86 percent, and the individual income tax rate for the second tax bracket is reduced from 5.21 percent to 5.04 percent.

A similar determination will take place for the 2020 individual income tax rates. The 2020 rates will be determined no later than November 10, 2020.

See article, *Additional Individual and Fiduciary Income Tax Rate Decrease*, on page 3 of [Wisconsin Tax Bulletin 206](#) (July 2019), for additional information concerning the rate reductions for 2019 and 2020.

Administrative Rule Updated to Clarify Nexus for Wisconsin Income and Franchise Tax Purposes

Effective November 1, 2019, sec. [Tax 2.82](#), Wis. Adm. Code (October 2019 Register, 766B), is updated to clarify the level of activity and/or the types of activities that, when performed in Wisconsin by an out-of-state business, establishes nexus in Wisconsin for income and franchise tax purposes.

Nexus from Certain Activities

The administrative rule provides a definition of "regular" or "regularly" for determining whether certain activities create nexus.

"Regular" and "regularly" mean 15 or more days of activity. Fifteen days of activity means one person for 15 days or 15 persons for one day, or any combination of persons and days that results in at least 15 person-days of activity. Days of activity include any day, or portion thereof, upon which business activity took place. Days of activity do not include travel days, holidays, or weekends, unless business activities were conducted on those days.

Nexus from Ownership of Tangible Personal Property

The administrative rule clarifies that a business has nexus in Wisconsin if the business has ownership of tangible personal property in Wisconsin, including inventory held by a distributor, consignee, or other non-employee representative, whether or not used to fill orders for the owner's account, but not including personal property for use in an employee's or representative's home, residential office or automobile that is solely limited to conducting the activities protected by Public Law 86-272.

Property Taxes Claimed in Computing Tax Credit(s)

Depending on the tax credit claimed, the amount of property taxes allowed in computing the credit is either based on property taxes paid during the taxable year or property taxes accrued (payment not required) during the taxable year. The chart below shows which property taxes are allowed for the credit listed.

Tax Credit	Property Taxes Paid	Property Taxes Accrued
School Property Tax Credit (Forms 1 & 1NPR)	X	
Homestead Credit (Schedule H)		X
Veterans and Surviving Spouses Property Tax Credit (Forms 1 & 1NPR)	X	
Farmland Preservation Credit (Schedule FC)		X

Medicaid Waiver Payments Are Earned Income

As a result of the decision in *Feigh v. Commissioner*, 152 T.C. No. 15 (2019), Medicaid waiver payments excluded from federal adjusted gross income are considered earned income for purposes of figuring the earned income credit. If an individual excluded these amounts from earned income in prior years, an amended Wisconsin return may be filed within four years of the unextended due date of the tax return to correct the earned income credit. For example, an amended 2015 Wisconsin income tax return must be filed by April 15, 2020.

Registration of Qualified Wisconsin Business for Capital Gain Exclusion and Deferral

Registration Must Occur Each Year

A business must register with the department on or before the close of the calendar year for which the business desires registration. Registration for 2019 must be completed by January 2, 2020. **Exception:** A business that desires registration for the calendar year in which it begins doing business in Wisconsin must register with the department during the following calendar year.

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

- 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 on registering to be a qualified Wisconsin business, refer to the [Common Questions](#) on the department's website.

Benefits of Registering

For Wisconsin income tax purposes, an individual may:

- Defer a long-term capital gain if the gain is reinvested in a qualified Wisconsin business.
- 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.

Form 2 No Longer Supported Through Wisconsin E-File

Wisconsin e-file is no longer available for electronically filing Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trusts*. However, you may electronically file Form 2 using modernized e-file software. Please visit the department's website for a list of available [e-file software products](#).

Transfers of Wisconsin's Supplement to the Federal Historic Rehabilitation Tax Credit - Notice of Certification Letter Revised and Schedule HR-5 Created

Changes made by the federal Tax Cuts and Jobs Act (Public Law 115-97) require the Wisconsin supplement to the federal historic rehabilitation tax credit to be claimed ratably over a five-year period beginning with the year the building is placed in service, unless the transition rule applies.

The transition rule allows the full credit to be claimed for qualified rehabilitation expenditures incurred on a building owned or leased at all times on or after January 1, 2018, if the taxpayer selects the 24 or 60-month measuring period by June 20, 2018.

As a result of the law change, claimants may only transfer the amount of the credit claimed on the claimant's tax return for each year (i.e., one-fifth of the credit each year unless the transition rule applies). However, [Schedule HR-5](#), *Wisconsin Supplement to the Federal Historic Rehabilitation Tax Credit – Five-Year Credit Claim*, allows a transferor to claim all five years of the historic tax credit on one form (separate from the tax return) for the purpose of selling or transferring the credit. Schedule HR-5 eliminates the need for the transferor to claim one-fifth of the credit on Schedule HR of each tax return for five years. The claimant must submit [Form HR-T](#), *Transfer of Supplement to the Federal Historic Rehabilitation Credit*, along with Schedule HR-5 to request to transfer the credit.

Upon receipt and approval of Schedule HR-5 and Form HR-T, the department will issue a Notice of Certification letter indicating the total amount of credit transferred and the total amount eligible to be used by the transferee for each taxable year.

Controlled Group Election for Combined Reporting – 10-Year Election Expiring

The designated agent of a commonly controlled group of corporations may make an election to include every corporation in the combined group without determining if each corporation is a unitary business. Once made, the election is binding for a total of 10 taxable years. For taxpayers who made the controlled group election when Wisconsin implemented combined reporting in 2009, the 10-year controlled group election expires at the end of 2018 and will need to be renewed as explained below.

How to Make Election

The designated agent of the combined group makes the election by checking the box on line D6 on the first page of Form 6. Once the election has been made, the box should not be checked in subsequent tax years.

When to Make Election

The designated agent must make the election on or before the extended due date of the Wisconsin Form 6.

What to Include

The first year the election is made, the designated agent must include a statement with the return that includes the following:

- A listing of every corporation in the combined group,
- A statement that each member agrees to be bound by the election, and
- A statement that the election will apply to any member that subsequently joins the group.

Length of Election

The election is binding on all members of the combined group for the year the election is made and for the next nine taxable years. Any members that join the group are also bound by the election; however, a member is not bound by the election upon departure from the group. After the 10-year election expires, the designated agent may renew the election for another 10 years by checking the box on line D6 on the first page of Form 6. The requirements for making the renewal are the same as making the initial election described earlier.

Limitations

The controlled group election does not influence the commonly controlled group test or the water's edge test. If the designated agent makes the controlled group election, all of the corporations will forgo the unitary business test, but all the corporations must still meet the requirements of the commonly controlled group and water's edge test as explained in [sec. Tax 2.61\(3\) and \(4\), Wis. Adm. Code](#).

Finally, the department may not disregard the tax effect or disallow the election for any year the election applies.

Withholding Tax Updates and Reminders

Withholding Tax Update Available

The [November 2019 Withholding Tax Update](#) has been posted to the department's website. Topics covered include:

- What's New?
- Withholding Tax Rates
- Reminders
- Form WT-7 - Filing an Extension
- Form WT-7 - Filing an Amended Annual Reconciliation
- Verify Client Information
- Filing Wage and Information Returns
- Transportation Fringe Benefits

- 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
- Retirement and Pension Payments Exempt from Income Tax Withholding
- Reporting Nonresident Entertainer Withholding on Income/Franchise Tax Returns
- Reporting by Financial Institutions and Insurance Agencies
- My Tax Account Webinars
- Withholding Tax Electronic Mailing List
- Employer's Responsibility for Unclaimed Property
- Quick Links
- Questions or Comments

Withholding Tax Rates

The current withholding tax rates will continue for 2019 and 2020. These rates are available in Wisconsin [Publication W-166](#), *Withholding Tax Guide*, for payroll periods beginning on or after April 1, 2014.

Changes to Federal Form W-4 and Wisconsin Form WT-4

The Internal Revenue Service (IRS) has redesigned Form W-4 for the year 2020. As explained in the [DRAFT](#) posted on the IRS website, federal allowances have been removed. Prior to this change, an employee could use Form W-4 for Wisconsin purposes if the employee's federal allowances equaled his or her Wisconsin exemptions. Since federal allowances have been removed, the redesigned Form W-4 cannot be used for Wisconsin purposes. The following applies for Wisconsin withholding tax purposes beginning in 2020:

- All newly hired employees must provide [Form WT-4](#) to their employer.
- Existing employees that change the number of their Wisconsin withholding exemptions must provide Form WT-4 to their employer.
- Existing employees are not required to provide Form WT-4 to their employer (unless the employer requests it) if the employee wishes to maintain the same number of Wisconsin withholding exemptions used in 2019.

Filing Reminders for Form PW-1, Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income

During the period of time an owner (partner, member, shareholder, or beneficiary) is considered a nonresident of Wisconsin, a pass-through entity (partnership, tax-option (S) corporation, estate, or trust) is required to withhold income or franchise tax on Wisconsin income that is allocable to that owner, unless an exemption applies.

The pass-through entity must electronically file Form PW-1 to report its withholding tax liability for the taxable year. Two electronic filing options are available.

- Federal/State E-Filing Program, and
- Wisconsin My Tax Account

To file through the Federal/State E-Filing Program, you will need approved vendor software. A list of approved vendors is on the department's website at: <https://www.revenue.wi.gov/Pages/OnlineServices/corp-partnership-third-party-vendors.aspx>.

To file through My Tax Account, go to the department's website at: <https://tap.revenue.wi.gov/mta/>. The department offers electronic filing through My Tax Account at no cost and is available 24 hours a day, seven days a week.

Caution: Form PW-1 should not be filed as an attachment to the pass-through entity's franchise or income tax return (Form 3, Form 5S, or Form 2) as these are two different returns that should be filed separately.

Filing Tips for the Redesigned Form PW-2, Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Pass-Through Withholding Exemption Affidavit

The Wisconsin Department of Revenue has redesigned the Form PW-2 for nonresidents requesting an exemption from pass-through withholding. The [redesigned Form PW-2](#) is available on the department's website.

Redesign Highlights

- Nonresident owners may submit multiple exemption requests with one form.
- The form may be filed before estimated payments are due for the year of the request.

Guidelines for Completing and Filing the Redesigned Form PW-2

- Form PW-2 must be completed and filed by the nonresident owner.
- A pass-through entity cannot file Form PW-2 on behalf of a nonresident owner.
- If the nonresident owner's Wisconsin source income from the pass-through entity is less than \$1,000, do not file Form PW-2 because the pass-through entity is already exempt from withholding on the nonresident owner's behalf.
- On the top right corner of Form PW-2, the year shows "20__". In the space provided, you must enter the year for which the nonresident owner is requesting the exemption. For example, a nonresident owner requesting an exemption for calendar year 2019 must complete the "20__" by entering "19" in the space provided.
- Provide all of the information requested on Form PW-2.
- If you use a fax to submit Form PW-2, use the cover sheet on the last page of the Form PW-2 instructions.
- For taxable years preceding the exemption request, ensure all required Wisconsin tax returns have been filed for both the pass-through entity and the nonresident owner.
- File Form PW-2 on or before the due date provided in the instructions.

Sales and Use Tax Updates and Reminders

Reminder: Outagamie County Tax Effective January 1, 2020

Beginning January 1, 2020, the county sales and use tax will be in effect in Calumet County. This brings the number of counties that have adopted the county tax to 67.

Information about which sales and purchases are subject to the county sales or use tax and transitional provisions that apply to Outagamie County sales can be found in [Publication 201](#), *Wisconsin Sales and Use Tax Information*.

Guidance for Marketplace Providers and Sellers

Effective January 1, 2020, provisions provided in [2019 Wis. Act 10](#), clarify that a marketplace provider is required to collect and remit Wisconsin sales or use tax on the entire amount charged to a purchaser for all sales of taxable products and services in Wisconsin that the marketplace provider facilitates on behalf of a marketplace seller, as provided in secs. 77.52(3m)(a) and 77.523(1), Wis. Stats.

The Act also reverses the effect of the decision in *Orbitz, LLC vs. Wisconsin Department of Revenue*, (Wisconsin Court of Appeals, District IV, February 11, 2016), by requiring marketplace providers that facilitate sales of lodging services to collect and remit tax on the entire amount charged to the purchaser.

Note: For sales made prior to January 1, 2020, both the marketplace and third-party seller may be liable on taxable sales. See [article](#) for additional information.

The department has created a web page that provides information for [Marketplace Providers and Sellers](#), including answers to common questions for both marketplace providers and sellers, links to the law, and registration information.

Internet Access Services – Bundled Services

Beginning July 1, 2020, charges for internet access services are no longer subject to Wisconsin sales and use tax.

Retailers often bundle internet access services with other taxable products, such as telecommunications services and cable television services. For sales that occur on or after July 1, 2020, if a retailer sells internet access services and taxable products for one nonitemized price, and the taxable products are greater than 10 percent of the retailer's total purchase price or sales price of all bundled products, the sale is a bundled transaction (sec. 77.51(1f)(d), Wis. Stats.). The entire sales price of a bundled transaction is subject to Wisconsin sales or use tax, as provided in sec. 77.52(20)(a), Wis. Stats.

If the retailer can identify, by reasonable and verifiable standards from its books and records, the portion of the sales price in a bundled transaction that is attributable to products that are not subject to tax (e.g., internet access services on or after July 1, 2020), the retailer may, at its option, not charge tax on the nontaxable portion of the transaction (sec. 77.52(20)(b), Wis. Stats.).

If the retailer itemizes the sales price attributable to the internet access service and other taxable products provided on the invoice or other billing statement, the transaction is not a bundled transaction. In this case, the retailer would not charge tax on the separately stated sales price for the internet access service on or

after July 1, 2020. The retailer would charge tax on the sales price of the taxable products that are itemized, both before and after July 1, 2020.

Caution: Taxable products and services purchased over the internet continue to be subject to Wisconsin sales or use tax on and after July 1, 2020.

Excise Tax Updates and Reminders

Vapor Products Tax Effective October 1, 2019

An excise tax on vapor products is created by 2019 Wis. Act 9. A vapor product is a noncombustible product that produces vapor or aerosol for inhalation from the application of a heating element, regardless of whether the liquid or other substance contains nicotine (sec. 139.75(14), Wis. Stats.). Equipment and devices not *containing* the liquid or other substance are not subject to the tax.

The tax is imposed on vapor products at the rate of 5 cents per milliliter of the liquid or other substance based on the volume listed by the manufacturer and at a proportionate rate for any other quantity or fractional part thereof (sec. 139.75(1m), Wis. Stats.). The tax applies to vapor products received by distributors in Wisconsin on or after October 1, 2019, and the filing deadline for the first tax return is November 15, 2019.

Are You Liable for Vapor Products Tax?

Those required to pay the tax include:

- **Distributors** that sell and ship untaxed vapor products to retailers in Wisconsin.
- **Retailers** that sell and ship untaxed vapor products to consumers in Wisconsin.
- **Manufacturers** that produce vapor products in Wisconsin for sale in Wisconsin.
- **Consumers** who purchase vapor products from somebody who has not paid a vapor products excise tax on the product. These individuals must pay a use tax and file Form TT-104S, *Wisconsin Combined Tobacco and Vapor Products Use Taxes Return*. The form is available by searching the form number on the department's [website](#).

You must pay the tax to DOR when the vapor product is untaxed and received in Wisconsin.

Are You Required to Hold a Distributor Permit?

Tobacco products distributor permit-holders are already authorized vapor product distributors and need not apply for another permit.

Those without a distributor permit, including manufacturers, distributors or [subjobbers](#) of vapor products in Wisconsin, and Wisconsin retailers that purchase untaxed vapor products, must apply for a distributor permit using Form CTP-129, *Cigarette-Tobacco/Vapor Products Permits Application*. The form is available by searching the form number on the department's [website](#) (sec. 139.79(1), Wis. Stats.).

A retailer can verify whether its distributors are permit holders by going to the [Cigarette and Tobacco/Vapor Products Permit Listing](#). Retailers who purchase all vapor products from permitted distributors are not required to hold a permit or report vapor products tax since they are purchasing taxed vapor products.

Additional vapor products excise tax resources:

- [Vapor Products Tax common questions](#)
- [Fact Sheet 3501](#), *Vapor Products Tax*
- [Tobacco and Vapor Products Tax Forms and Instructions](#)

You may also contact the department's Excise Tax Unit by phone at (608)-266-6701 or by email at DORExciseTaxpayerAssistance@wisconsin.gov.

Motor Vehicle Fuel Retailer Refunds Filing Deadline

All excise tax refund claims by motor vehicle fuel retailers must be filed by December 31, 2019. Claims filed on January 1, 2020, or thereafter, will **not** be accepted. **Note:** Section 78.20, Wis. Stats., is repealed by 2019 Wis. Act 9, effective January 1, 2020.

- Claims filed on paper must be postmarked by December 31, 2019, and received by the department by January 6, 2020.
- Claims filed electronically through My Tax Account must be received by the department by 11:59pm on December 31, 2019.

For questions or concerns, contact the department's Excise Tax Unit by phone at 608-266-6701 or by email at DORExciseTaxpayerAssistance@wisconsin.gov.

Reminder: Motor Vehicle Fuel Suppliers Administrative Allowance

The administrative allowance under sec. 78.12(4)(a), Wis. Stats., that licensed fuel suppliers may deduct when remitting the motor vehicle fuel tax on gasoline, is reduced from 1.35 percent to 0.675 percent of the number of gallons of gasoline received for the taxable period, pursuant to [2019 Wis. Act 9](#), effective for tax due on or after January 1, 2020.

Note: The new rate first applies to the December 2019 Form MF-002 (transactions occurring in December 2019), since the allowance for this period is determined when the tax is due on January 15, 2020.

Report on Litigation

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

Corporation Franchise and Income Tax

Dividends Received Deduction

Deere & Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 21, 2019).

The issue is whether Deere & Company is allowed to claim the dividends received deduction under sec. 71.26(3)(j), Wis. Stats., for distributions it received and included in income from a foreign limited partnership that made the election to be treated as a corporation for federal income tax purposes.

Deere & Company manufactures and markets agricultural equipment, consumer and commercial lawn equipment, engines, and drive trains used in heavy equipment.

Deere & Company owned the sole membership interest in John Deere Holding, LLC, which was treated as a disregarded entity for federal and Wisconsin income and franchise tax purposes. The two created John Deere Holding, LLC 1 S.C.S., a société en commandite simple, which is a form of limited partnership created under the laws of Luxembourg, that elected to be treated as a corporation for federal income tax purposes. Through the partnership agreement, John Deere Holding, LLC 1 S.C.S. issued partnership interests to John Deere Holding, LLC and Deere & Company. Deere & Company and John Deere Holdings, LLC received cash distributions from John Deere Holdings, LLC 1 S.C.S. Deere & Company included the distributions in income and claimed a dividends received deduction under sec. 71.26(3)(j), Wis. Stats. Because John Deere Holding, LLC was a disregarded entity, Deere & Company was treated as owning 100 percent of the partnership interests in the limited partnership.

The department issued an assessment to Deere & Company for taxable years ending October 31, 2013 through October 31, 2015 to disallow the dividends received deduction because the amounts are not dividends received from a corporation with respect to its common stock; rather, they are distributions received from a partnership with respect to its capital interest.

The Tax Appeals Commission concluded that when John Deere Holding, LLC 1 S.C.S. made the election to be treated as a corporation for federal income tax purposes, its partnership interests were considered exchanged for stock for tax purposes. In addition, because there was no indication that more than one class of stock was created, the stock is considered common stock. As part of its reasoning, the Commission cited the department's guidance in Publication 119, *Limited Liability Companies (LLCs)*, that treats a member's interest in an LLC classified as a corporation as though it is stock. The Commission also noted that a Limited Liability Partnership (LLP) is not dissimilar in any relevant aspect to an LLC, so an interest in a LLP that elects to be treated as a corporation for federal income tax purposes must also be treated as though it is stock. Since Deere & Company included the distributions from John Deere Holding, LLC 1 S.C.S. in its income and all the other requirements of the dividends received deduction in sec. 71.26(3)(j), Wis. Stats., were met, the Commission concluded that Deere & Company may claim the dividends received deduction.

The department has appealed this decision.

Sales and Use Tax

On-Demand Seminars

State Bar of Wisconsin vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 20, 2019).

At issue in this case is the State Bar's sales of on-demand seminars. The parties agree that on-demand seminars are digital audiovisual works and, therefore, are specified digital goods, which are generally taxable.

The Commission determined that the on-demand seminars would not be taxable, if the true objective of the purchasers of the continuing legal education (CLE) seminars is to buy a nontaxable educational service with the specified digital good being incidental to that true objective. The Commission stated it is clear that lawyers, as the purchasers, are buying the overall CLE, not just a digital good in the form of a streamed video.

The Commission further stated that the purchaser is not merely obtaining something which has some educational content, but he or she is receiving the educational service that accomplishes the accrual of credit, legal competence, and the ability to maintain good standing with the Supreme Court and Board of Bar Examiners. Legitimate earned credit as determined by a branch of state government is a strong indicator that there is an educational service being provided and that obtaining the service is the true objective of the purchaser. In addition, as part of the overall educational service provided, the lawyer is guaranteed the right to have contact with, and ask questions of, the CLE seminar presenter via email interaction.

The Commission ruled, under the true objective test, that the sale of the on-demand seminars is the sale of a nontaxable educational service with the digital good being incidental to the performed service.

The department did not appeal this decision.

Applicable Laws and Rules

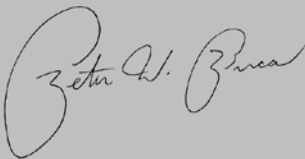
This document provides statements or interpretations of the following provisions of Wisconsin Statutes and Administrative Rules in effect as of November 1, 2019: Chapters 71, 73, 77, 78, 139, and 177, Wis. Stats., and ch. Tax 2, Wis. Adm. Code.

Laws enacted and in effect after November 1, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to November 1, 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