

**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.

<b>Document Number</b>	<b>Document Title</b>
<b>100097</b>	Apportionment and Nexus - Common Questions

State of Wisconsin  
Department of Revenue

## Apportionment and Nexus

**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. What is apportionment?
2. Who must use apportionment?
3. What is nexus?
4. What is a unitary business?
5. What is nonapportionable income?
6. What is the apportionment percentage?
7. Who must use separate accounting?

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### 1. **What is apportionment?**

Under the apportionment method, a corporation or combined group shows all income and deductions for the company as a whole and then assigns a part to Wisconsin according to a formula that determines Wisconsin net income.

### 2. **Who must use apportionment?**

A corporation or a combined group engaged in business in and outside Wisconsin is required to report a portion of its total company net income to Wisconsin using the apportionment method if its Wisconsin operations are a part of a unitary business, unless the department gives permission to use separate accounting (see question 7 below).

To use the apportionment method, a corporation or a combined group must have business activity sufficient to create nexus in Wisconsin and at least one other state or foreign country.

### 3. **What is nexus?**

"Nexus" means that a corporation's business activity is of such a degree that the state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income. Under Public Law 86-272, a state can't impose an income tax or franchise tax based on net income on a corporation selling tangible personal property if the corporation's only activity in the state is the solicitation of orders, which orders are approved outside the state and are filled by delivery from a point outside the state.

Entities may request a nexus determination from the department by submitting the [nexus questionnaire](#).

#### 4. **What is a unitary business?**

A unitary business is one that operates as a unit and can't be segregated into independently operating divisions or branches. The operations are integrated, and each division or branch is dependent upon or contributory to the operation of the business as a whole. It isn't necessary that each division or branch operating in Wisconsin contribute to the activities of all divisions or branches outside Wisconsin.

#### 5. **What is nonapportionable income?**

Nonapportionable income is that income which is allocable directly to a particular state. It includes income or loss derived from the sale of nonbusiness real or tangible personal property or from rentals and royalties from nonbusiness real or tangible personal property. This income is assigned to the state where the property is located.

All income realized from the sale of or purchase and subsequent sale or redemption of lottery prizes (if the winning tickets were originally bought in Wisconsin) is allocable to Wisconsin.

Intangible income of a personal holding company is apportionable unless it qualifies as nonapportionable income under the same standard that applies to other corporations.

Total nonapportionable income (loss) is removed from total company net income before the apportionment percentage is applied. The Wisconsin nonapportionable income (loss) is then combined with the Wisconsin apportionable income to arrive at Wisconsin net income.

#### 6. **What is the apportionment percentage?**

For most unitary, multistate businesses (except direct air carriers, interstate air freight forwarders affiliated with a direct air carrier, motor carriers, railroads, pipeline companies, financial institutions, brokers-dealers, investment advisers, investment companies, underwriters, and telecommunications companies whose incomes are apportioned by special rules of the department), the apportionment percentage is determined by a formula.

The apportionment formula is composed of the sales factor, which is generally the sales attributable to Wisconsin divided by total sales. For insurance companies, the apportionment formula is composed of the premiums factor.

##### **Premium Factor for Insurance Companies:**

The premiums factor for insurance companies is determined by dividing the sum of direct premiums written for insurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in Wisconsin, and assumed premiums written for reinsurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in Wisconsin, by the sum of direct premiums written for insurance on all property and risks, other than life insurance, wherever located, and assumed premiums written for reinsurance on all property and risks, other than life insurance, wherever located.

##### **Multistate Electric and Gas Utilities:**

The income of multistate electric and gas utilities is apportioned in the same manner as other corporations.

**Special Circumstances:**

If both the numerator and the denominator of the sales factor are zero, none of the taxpayer's apportionable net income is attributed to Wisconsin. If the numerator of the sales factor is a negative number and the denominator of the sales factor is a positive number, a negative number, or zero, none of the taxpayer's apportionable net income is attributed to Wisconsin. If the numerator of the sales factor is a positive number and the denominator of the sales factor is zero or a negative number, all of the taxpayer's apportionable income is attributed to Wisconsin.

**Financial Organizations:**

The income of a financial organization is apportioned using a sales factor as determined in s. Tax 2.49, Wis. Adm. Code.

**Exceptions**

The net income of railroads, car line companies, pipeline companies, air carriers, interstate air freight forwarders affiliated with a direct air carrier, and telecommunications companies will continue to be apportioned pursuant to rules of the Department of Revenue.

**7. Who must use separate accounting?**

A corporation engaged in a nonunitary business in and outside Wisconsin is required to determine the amount of income attributable to Wisconsin by separate accounting. A nonunitary business is one in which the operations in Wisconsin aren't dependent upon or contributory to the operations outside Wisconsin.

A unitary business may use separate accounting only with the approval of the department. An application for such approval must set forth, in detail, the reasons why separate accounting will more clearly reflect the corporation's Wisconsin net income. It should be mailed to the Wisconsin Department of Revenue, Mail Stop 3-107, PO Box 8906, Madison, WI 53708-8906 before the end of the taxable year for which the use of separate accounting is desired.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 13, 2019: Sections 71.23, 71.25, 71.255, 71.30, 71.43 and 71.45, Wis. Stats., and secs. Tax 2.39, 2.395, 2.46, 2.465, 2.47, 2.475, 2.48, 2.49, 2.495, 2.50, 2.502, 2.60, 2.61, 2.62, 2.64 and 2.82, Wis. Adm. Code.

Laws enacted and in effect after December 13, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 13, 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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