

**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
100118	Disclosure of Reportable Transactions - Material Advisor Requirements - Common Questions

State of Wisconsin
Department of Revenue

Disclosure of Reportable Transactions - Material Advisor Requirements

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. Who is a "material advisor"?
2. What is a material advisor required to disclose to Wisconsin?
3. What form does a material advisor use to disclose a reportable transaction to Wisconsin?
4. When does a material advisor have to make the disclosure to Wisconsin?
5. Where does a material advisor send Wisconsin disclosure statements?
6. What penalties apply to material advisors if they fail to follow these requirements?
7. Are there other consequences that may apply to material advisors relating to abusive tax shelters?

1. **Who is a "material advisor"?**

Any person who provides material aid, assistance or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction and who derives income from these services in an amount that exceeds the following:

- o If the services are provided to an individual, \$50,000. This threshold reduces to \$10,000 if the reportable transaction is a listed transaction.
- o If the services are provided to an entity and not an individual, \$250,000. This threshold reduces to \$25,000 if the reportable transaction is a listed transaction.

2. **What is a material advisor required to disclose to Wisconsin?**

A material advisor is required to disclose to Wisconsin any reportable transaction for which the material advisor provided services to a taxpayer who is required to file a Wisconsin income or franchise tax return.

Additionally, a material advisor must maintain a list identifying the name and taxpayer identification number of each Wisconsin taxpayer for whom the advisor provided services as a material advisor regarding a reportable transaction, and must provide the list at the Wisconsin

Department of Revenue's written request. This list must be maintained for seven years after the date the services were provided.

3. What form does a material advisor use to disclose a reportable transaction to Wisconsin?

The material advisor should submit a copy of the federal form used to disclose the transaction to the IRS. Currently that form is Form 8918, *Material Advisor Disclosure Statement*. There is no specific form required for the list of Wisconsin taxpayers affected by the reportable transaction.

4. When does a material advisor have to make the disclosure to Wisconsin?

The IRS currently requires these disclosures by the last day of the month following the end of the applicable calendar quarter in which the advisor became a material advisor with respect to the reportable transactions or in which the circumstances occur to require an amended disclosure statement. The deadline for sending a copy to Wisconsin is **60 days** after the federal due date for the form.

5. Where does a material advisor send Wisconsin disclosure statements?

Material advisors should send the Wisconsin disclosures to:

Wisconsin Department of Revenue
Tax Shelters Program
PO Box 8958
Madison, WI 53708-8958

6. What penalties apply to material advisors if they fail to follow these requirements?

- o \$100,000 for a material advisor's failure to disclose a listed transaction.
- o \$15,000 for a material advisor's failure to disclose a reportable transaction that is not a listed transaction.
- o \$10,000 for each day the material advisor does not provide the list of affected Wisconsin taxpayers, beginning with the 21st day after receipt of the department's request for the list.

7. Are there other consequences that may apply to material advisors relating to abusive tax shelters?

Any person who organizes or assists in organizing a tax shelter or participates in the sale of any interest in a tax shelter, and who makes a statement that the person knows or has reason to know is false or fraudulent regarding the allowability of tax benefits to be achieved with the tax shelter, is subject to a penalty in an amount of 50% of the person's gross income derived from such act.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 17, 2019: Sections 71.24 and 71.81, Wis. Stats., secs. Tax 2.03 and 2.67, Wis. Adm. Code, and 26 U.S. Code §§ 6111 and 6112.

Laws enacted and in effect after December 17, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 17, 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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Guidance Document Certification: <https://www.revenue.wi.gov/Pages/Certification-Statement.aspx>

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