

**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
100237	One-Time Field Audit Reduction of Sales Tax – Common Questions

State of Wisconsin
Department of Revenue

One-Time Field Audit Reduction of Sales Tax

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 the audit relief provided in 2019 Wis. Act 10?
2. Does the reduction apply to additional state, county, and stadium sales tax imposed in the audit?
3. Are the annual gross sales determined by audit or as reported by the taxpayer on their tax returns?
4. Does the reduction apply if the annual gross sales for any year included in the audit determination are \$5 million or greater?
5. What is included in annual gross sales?
6. Is annual gross sales computed using the gross sales of the owner and all disregarded entities?
7. Can a person claim a refund on an amount previously assessed in a field audit for which the 10%, one-time reduction was applied?
8. Does the one-time reduction apply if it is determined during the audit that the taxpayer has not filed required Local Exposition or Premier Resort Area tax returns (Forms EX-012 or PRA-102)?
9. If a short taxable year is one of the years under audit, are gross sales from the short period used to determine if gross sales are less than \$5 million?
10. Does the one-time reduction apply if it is determined during the audit that the taxpayer should have been registered and filing for periods prior to the date the taxpayer began filing sales tax returns?
11. Does the one-time reduction apply if the taxpayer has been provided a Proposed Notice of Amount Due prior to October 1, 2019?
12. Can a taxpayer chose to forgo the one-time reduction and use it in a future audit?
13. Can the one-time reduction create or increase a refund of tax in a particular audit year?

1. What is the audit relief provided in 2019 Wis. Act 10?

2019 Wis. Act 10, creates a one-time reduction from the total tax due in a field audit determination and first applies to written notices of audit determinations made on or after October 1, 2019. The one-time reduction is equal to 10% of the additional sales tax imposed under sec. 77.52, Wis. Stats., for each year of the audit period, if the annual gross sales of the person being audited are less than \$5 million for each year of the audit period and, at the time that the department sends notification of examination under sec. 77.59(2), Wis. Stats., the department has received all returns required under Ch. 77, Wis. Stats., from the person being audited for the entire audit period. Each person eligible for a one-time reduction is entitled to only one such reduction.

2. Does the reduction apply to additional state, county, and stadium sales tax imposed in the audit?

The one-time reduction only applies to the additional 5% state sales tax imposed under sec. 77.52, Wis. Stats. The one-time reduction does not apply to additional county and stadium sales taxes imposed under sec. 77.71, Wis. Stats.

3. Are the annual gross sales determined by audit or as reported by the taxpayer on their tax returns?

The \$5 million gross sales amount is determined by audit, not as reported.

4. Does the reduction apply if the annual gross sales for any year included in the audit determination are \$5 million or greater?

The one-time reduction is determined separately for each year of the audit period. Therefore, if the taxpayer's gross sales are \$5 million or more in one year, the taxpayer can still receive a reduction in the other years if gross sales in those year are less than \$5 million.

5. What is included in annual gross sales?

Gross sales includes all sales of any kind and includes amounts reported on Form 1120 Line 1a, Form 1120S Line 1a, Form 1065 Line 1a, and Schedule C Line 1; plus sales that may be included in other areas of the income tax return (e.g., other income, rental income, Form 4797).

Examples of revenue that are part of gross sales (not all inclusive):

- Gross sales of tangible personal property
- Gross sales of computer software
- Gross sales of capital assets
- Gross sales of services
- Gross sales of admissions to amusement devices

6. Is annual gross sales computed using the gross sales of the owner and all disregarded entities?

Yes. Gross sales of the owner and all disregarded entities are included when determining if gross sales are less than \$5 million, regardless of whether the disregarded entities have Wisconsin sales tax nexus. A single-owner entity that is disregarded as a separate entity under Ch. 71, Wis. Stats., is also disregarded as a separate entity for sales and use tax purposes, as provided in sec. 77.61(19m)(a), Wis. Stats. Although the owner can elect under sec. 77.58(3), Wis. Stats., to file separate returns for all disregarded entities, gross sales from the owner and all disregarded entities are included in determining if gross sales are less than \$5 million.

Note: If the owner elects to file separate returns for its disregarded entities and does not file a return for one or more of its disregarded entities, an audit assessment to the owner would not qualify for the one-time reduction because, at the time the department sent notification of examination, all returns under Ch. 77, Wis. Stats., were not filed.

7. Can a person claim a refund on an amount previously assessed in a field audit for which the 10%, one-time reduction was applied?

Yes. A person may file a claim a refund for items that were adjusted in a field audit assessment, as provided in sec. 77.59(4)(b), Wis. Stats. However, since 90% of the tax was paid to the department, the refund is only 90% of the tax paid on the transaction.

8. Does the one-time reduction apply if it is determined during the audit that the taxpayer has not filed required Local Exposition or Premier Resort Area tax returns (Forms EX-012 or PRA-102)?

No. The one-time reduction is only allowed if the department has received all returns required under Ch. 77, Wis. Stats., for the entire audit period at the time that the department sends the notification of examination. Local exposition taxes (excluding local exposition room taxes) and premier resort area taxes are imposed under Chapter 77, Wis. Stats., and these returns must be filed for the one-time reduction to apply. In addition, the one-time reduction would not apply if the taxpayer has not filed returns for the state rental vehicle fee or limousine fee (Form RV-012), and dry cleaning fees (Form DRY-012), since these taxes are also imposed under Chapter 77, Wis. Stats.

9. If a short taxable year is one of the years under audit, are gross sales from the short period used to determine if gross sales are less than \$5 million?

Yes. The gross sales from a short taxable year are used in determining if the taxpayer's gross sales are less than \$5 million.

10. Does the one-time reduction apply if it is determined during the audit that the taxpayer should have been registered and filing for periods prior to the date the taxpayer began filing sales tax returns?

No. If the audit is expanded to include periods prior to the date the taxpayer began filing sales and use tax returns, the one-time reduction does not apply since the taxpayer did not file all returns required for the entire audit period.

11. Does the one-time reduction apply if the taxpayer has been provided a Proposed Notice of Amount Due prior to October 1, 2019?

Yes. As long as the final audit determination (Notice of Amount Due) is dated October 1, 2019 or later, the one-time reduction may apply.

12. Can a taxpayer chose to forgo the one-time reduction and use it in a future audit?

No. The department will provide the one-time reduction to the first eligible audit determination on or after October 1, 2019.

13. Can the one-time reduction create or increase a refund of tax in a particular audit year?

No. The law provides a one-time reduction from the total tax due for each year in a written notice of a field audit determination (i.e., audit notice). If any year in the audit period has a refund of tax in the audit notice, there is no one-time reduction allowed because there is no

tax due for that year in the audit notice. If the total tax due for a year in the audit notice is less than 10% of the additional state sales tax assessed for that year, the reduction is limited to the total tax due in the audit notice for that year.

Example 1: Upon field audit, Taxpayer's audit notice in Year 1 of a four-year audit period has \$2,500 of additional state sales tax and a use tax overpayment of \$4,000. The audit notice for that year shows a refund of \$1,500 of total tax. Since there is no tax due in that audit year, the one-time reduction does not apply in that year.

Example 2: Upon field audit, Taxpayer's audit notice for Year 1 of a four-year audit period has \$10,000 of additional state sales tax and a use tax overpayment of \$9,500. Since the total tax due in the audit notice for Year 1 is \$500, Taxpayer is allowed a one-time reduction of \$500 in that year. Although 10% of the additional state sales tax is \$1,000, the reduction is limited to the \$500 total tax due in the audit notice for that year. Taxpayer cannot apply the unused one-time reduction of \$500 to other years of the audit period.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 16, 2019: Subchapter III of Ch. 77, Wis. Stats.

Laws enacted and in effect after December 16, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 16, 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:

MS 5-77

WISCONSIN DEPARTMENT OF REVENUE

Return Services Unit

PO Box 8949

Madison, WI 53708-8949

Phone: (608) 266-2772

Email additional questions to DORCopyRequests@wisconsin.gov

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