

**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
100219	Wisconsin Job Creation Deduction - Common Questions

State of Wisconsin
Department of Revenue

Wisconsin Job Creation Deduction

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.

Effective for taxable years beginning after December 31, 2010 and before January 1, 2015

1. What is the job creation deduction?
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as an FTE employee?

16. How does an unpaid leave of absence affect the number of FTE employees?
17. My business is located near the border of Wisconsin and I hired an employee who is resident of another state. Does the employee qualify as an FTE employee?
18. A construction company needs heavy machinery operating services for a nine month project. At the beginning of the tax year, the company receives a union operator from the local union pool. The operator is added to the company's payroll and is required to work 60 hours a week for 37 weeks until the project ends. Does the employee qualify as an FTE employee?
19. A salaried employee is required to work at least 2,080 hours per year, including paid leave and holidays. The employee is a traveling account manager for seasonal sport equipment. During the tax year, the employee worked 60 hours a week for 26 weeks, 24 hours a week for 24 weeks, and used 80 hours of paid leave. Is this employee considered to be working in a regular, nonseasonal job?
20. Do overtime hours count toward the 2,080 hours per year?
21. Our accounting firm requires that our employees work 36 hours a week during the summer months and 40 hours per week during the remainder of the year. The employees are paid for working 40 hours per week, even though they only worked 36 hours per week during the summer. Does an employee of our firm meet the definition of an FTE employee?
22. Is an employer who changes an employee from a part-time position to a full-time position eligible for the job creation deduction for that employee?
23. A farmer increases his or her workforce. The farmer is not required to file Quarterly Wage Reports with the Department of Workforce Development. Is the farmer eligible for the job creation deduction?
24. Are all employees included on the Quarterly Wage Report considered FTE employees when calculating the average employee count? Is the calculation as simple as comparing the prior year average employee counts on the Quarterly Wage Reports to the current year reports?
25. Does "required to work 2,080 hours" mean that the employer needs something in writing or is the employer's expectation enough to claim the deduction?
26. A trucking company increases their staff by hiring additional truck drivers that are paid based on the number of miles driven during the year. Do the additional truck drivers qualify for the job creation deduction? How is a FTE employee determined when the employees are paid on a per mile basis?
27. When is a tax-option (S) corporation with a fiscal year ending on September 30, 2011 eligible to claim the job creation deduction?
28. I am required to file Quarterly Wage Reports for unemployment compensation purposes and also must use this information in computing the average employee count for the job creation deduction. Which periods are covered by the Quarterly Wage Reports?
29. The definition of full-time equivalent employee for the job creation deduction is very different than any other definition of full-time employee that I've seen. Why is that?
30. How should this deduction be treated/reported for basis and WI AAA purposes?

1. **What is the job creation deduction?**

The Wisconsin job creation deduction is effective for taxable years beginning on or after January 1, 2011 and before January 1, 2015. It provides that a taxpayer may subtract from federal income an amount based on the increase in the number of full-time equivalent employees. See Sections 71.05(6)(b)47m, 71.26(1)(h), and 71.45(1)(c), Wis. Stats. (2011-12).

The deduction is computed by multiplying the increase in the number of full-time equivalent (FTE) employees employed by the taxpayer in Wisconsin during the taxable year by \$4,000 for a business with gross receipts of \$5,000,000 or less in the taxable year or \$2,000 for a business with gross receipts greater than \$5,000,000 in the taxable year.

The number of FTE employees employed by the taxpayer in Wisconsin during the taxable year and during the preceding taxable year is determined by computing the average of the number of employees listed on the taxpayer's quarterly unemployment insurance wage reports (Quarterly Wage Report) less the number of employees who do not meet the FTE definition (or other information as required by the department) for each taxable year.

The increase in the number of FTE employees employed by the taxpayer in Wisconsin during the taxable year is determined by subtracting the average number of FTE employees employed by the taxpayer in Wisconsin during the immediately preceding taxable year from the average number of FTE employees employed by the taxpayer in Wisconsin during the taxable year for which the deduction is claimed.

See Wis. Admin Code Tax 3.05, (August 2014 Register), for clarification of certain terms as they apply to the job creation deduction.

2. **What are the definitions of "full-time equivalent employee", "employee" and "related entity"?**

"Full-time equivalent (FTE) employee" means an employee who is a resident of this state, is employed in a regular, nonseasonal job, and who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays (Tax 3.05(2)(c)).

"Employee" means any officer of a corporation or any individual who has the status of an employee or any individual who performs services for remuneration for any person. See sec. 3121(d) of the Internal Revenue Code.

"Related entity" is a related person under section 267 or 1563 of the Internal Revenue Code (IRC). For relationships that involve ownership of stock, assets, or net profits, the constructive ownership rules of section 318(a) of the IRC apply. A "related entity" also includes certain real estate investment trusts (REITs) if they are not "qualified REITs." (Tax 3.05(2)(f)).

3. **How do I determine the increase in the number of full-time equivalent (FTE) employees employed in Wisconsin?**

Step 1. If you are required to file Quarterly Wage Reports, determine the number of employees reported on the wage reports for each quarter, (for the current and prior taxable year) that were FTE employees according to the definition above. Do NOT include any FTE employees that worked for a related entity (defined above).

Step 2. Compute the average number of FTE employees by dividing the number of FTE employees computed in step 1 by the number of Quarterly Wage Reports filed. Do this for both the current and prior taxable years.

Step 3. Subtract the number of average FTE employees computed in step 2 for the prior taxable year from the average FTE employees computed in step 2 for the current taxable year.

If you are not required to file a Quarterly Wage Report, determine the number of employees employed at the end of each the quarter that were FTE employees according to the definition above. Do NOT include any FTE employees that worked for a related entity (defined above).

Example:

For Taxpayer A's taxable year beginning January 1, 2014 and ending December 31, 2014, Taxpayer A begins with the number of employees employed in Wisconsin that are listed on the Quarterly Wage Reports required to be filed January 31, 2014, April 30, 2014, July 31, 2014, and October 31, 2014. Taxpayer A then identifies which of the employees listed on the Quarterly Wage Reports qualify as "full-time equivalent (FTE) employees."

UC Report Filing Due Date	Total Employees Reported	FTE Employees Identified
01/31/2014	43	22
04/30/2014	58	36
07/31/2014	57	39
10/31/2014	71	63
TOTAL	229	160

The total number of FTE employees is then divided by the number of reporting periods (4 in this example). The result in this example is 40 (160 / 4). This is the number of FTE employees that were employed in Wisconsin during the 2014 taxable year. (This number is entered on line 1 of Schedule JC.)

The same computation must be made for the 2013 taxable year. (The result is entered on line 2 of Schedule JC).

4. On what form is the job creation deduction claimed?

Using these instructions, the job creation deduction is calculated on the Wisconsin Schedule JC. This amount is subtracted from income on the Form 4, Schedule W, line 15; Form 4T, line 2; Form 5S, Schedule 5K, line 1(c); Form 6, Part II, line 4o; Form 3, Schedule 3K, line 1(c); Form 1, line 11; Form 1NPR, line 15, column B; and Form 2, Schedule A, line 11.

5. May a new business claim the job creation deduction?

Yes, a new business may claim the job creation deduction.

6. One company acquires another company and retains their workforce. May a job creation deduction be claimed for these acquired employees?

Generally, no. The job creation deduction is not allowed in situations where one company acquires another company and retains their workforce. The number of FTE employees employed in this state does not include any employee who worked for a related person or

related entity of the taxpayer or member of the same commonly controlled group as the taxpayer at any time during the 12 months prior to the due date of the Quarterly Wage Report from which the number is derived.

7. Can an owner or family member be an FTE employee?

Owner and family member status are not used to determine an FTE employee. See [definition](#) above. Depending on a business' ownership structure, an owner may or may not qualify as an "employee." For example, in general, a partner in a partnership does not qualify as an employee for federal employment tax purposes, but other ownership structures may qualify. Every owner and family member's position should be reviewed to ensure that it meets every aspect of the FTE employee definition before a deduction is claimed.

8. Does the definition of an FTE employee, include a related persons or related entities provision?

No, the definition of an FTE employee does not specifically address related persons or related entities. However, the number of FTE employees employed in this state does not include any employee who worked for a related person or related entity of the taxpayer or member of the same commonly controlled group as the taxpayer at any time during the 12 months prior to the due date of the Quarterly Wage Report from which the number is derived. Each FTE employee must be reviewed and excluded as appropriate from the number of FTE employees if they worked for a related person or related entity.

9. Does a worker hired through a professional employer organization qualify as an FTE employee?

In general, an employee of a professional employer organization or professional employer group who is performing services for a client is considered an employee solely of the client for purposes of the job creation deduction. The employee must also meet all other qualifications of a FTE employee.

10. An employee is required to work 1,950 hours per year (37.5 hours per week) rather than 2,080 hours. Does the employee qualify as an FTE employee?

No. The employee does not meet the [definition](#) of an FTE employee. This definition states in part that an FTE employee means an employee who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays. Since the employee is required to work only 1,950 hours per year, the employee does not meet the definition and may not be used to calculate the job creation deduction.

11. Do ten part-time employees required to work 1,040 hours per year count as five FTE employees?

No. The part-time employees do not meet the [definition](#) of an FTE employee. The definition states in part that an FTE employee means an employee who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays. Since each employee is required to work only 1,040 hours per year, the employees do not meet the definition and may not be used to calculate the job creation deduction.

12. Does a job sharing position qualify as an FTE employee?

Generally, no. In job sharing, two or more employees typically perform a job that would normally be performed by one full-time employee; each employee would not be required to work at least 2,080 hours per year. An FTE employee means an employee who, as a condition

of employment, is required to work at least 2,080 hours per year, including paid leave and holidays.

13. Do three seasonal employees working full-time for four months of the year qualify as one FTE employee?

No. An FTE means an employee who is employed in a regular, non-seasonal job. Since the employees are seasonal employees, they do not qualify.

14. A newly hired employee is expected to work 2,080 hours per year. Does the employee qualify as an FTE employee?

No. Expectations of time worked are not used to determine an FTE employee. The employee must be required to work 2,080 hours per year as a condition of employment.

15. An employee is required to work 1,664 hours per year (32 hours per week). Due to other staff shortages, the employee actually worked 2,080 hours in the year. Does the employee qualify as an FTE employee?

No. Actual work time is not used to determine an FTE employee. The employee must be required to work 2,080 hours per year as a condition of employment.

16. How does an unpaid leave of absence affect the number of FTE employees?

Unpaid leave of absences are not directly used to compute the number of FTE employees, but may affect the computation indirectly. The number of FTE employees employed in Wisconsin is determined by computing the average employee count from the taxpayer's Quarterly Wage Reports filed with the Department of Workforce Development. Each of the employees reported on the report should be reviewed to determine whether that employee meets the full definition of a "full-time equivalent employee." To meet the definition, the employee must be a resident of this state, employed in a regular, nonseasonal job, and who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays.

17. My business is located near the border of Wisconsin and I hired an employee who is resident of another state. Does the employee qualify as an FTE employee?

No. An FTE employee for purposes of the job creation deduction must be a resident of Wisconsin.

18. A construction company needs heavy machinery operating services for a nine month project. At the beginning of the tax year, the company receives a union operator from the local union pool. The operator is added to the company's payroll and is required to work 60 hours a week for 37 weeks until the project ends. Does the employee qualify as an FTE employee?

No. Only employees meeting the definition of an FTE employee may be included. This is a seasonal job, and the employee may not be used to claim the job creation deduction.

19. A salaried employee is required to work at least 2,080 hours per year, including paid leave and holidays. The employee is a traveling account manager for seasonal sport equipment. During the tax year, the employee worked 60 hours a week for 26 weeks, 24 hours a week for 24 weeks, and used 80 hours of paid leave. Is this employee considered to be working in a regular, nonseasonal job?

Yes. The employee is working in a regular, nonseasonal job, and as a condition of employment is required to work at least 2,080 hours per year, including paid leave and holidays. The employee would qualify as an FTE employee if the employee is a resident of Wisconsin.

20. Do overtime hours count toward the 2,080 hours per year?

Overtime hours are not specifically included nor excluded in the definition. The employee must, as a condition of employment, be required to work at least 2,080 hours per year, including paid leave and holidays.

21. **Our accounting firm requires that our employees work 36 hours a week during the summer months and 40 hours per week during the remainder of the year. The employees are paid for working 40 hours per week, even though they only worked 36 hours per week during the summer. Does an employee of our firm meet the definition of an FTE employee?**

Yes. An FTE employee is an employee who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays. Because the employees are considered FTE employees and required to work at least 2,080 hours per year (the four hours per week not worked in the summer is considered paid leave and not counted against the 2,080 hours worked for the year), the employer may count these employees for the job creation deduction.

22. **Is an employer who changes an employee from a part-time position to a full-time position eligible for the job creation deduction for that employee?**

Yes, if the employer's total number of FTE employees increased. The job creation deduction is based on the increase in the number of FTE employees employed in Wisconsin during the taxable year over the number of FTE employees employed in Wisconsin during the preceding taxable year. The employee would be reported as a FTE employee in the Quarterly Wage Report for the period in which the employee's status changed to meet the definition of an FTE employee.

23. **A farmer increases his or her workforce. The farmer is not required to file Quarterly Wage Reports with the Department of Workforce Development. Is the farmer eligible for the job creation deduction?**

Yes, if the farmer's total number of FTE employees increased. For a taxable year during which a taxpayer is not required to file Quarterly Wage Reports, the average employee count is computed by adding the number of FTE employees employed on January 31, April 30, July 31, and October 31 within the taxable year and divide that total number by 4.

24. **Are all employees included on the Quarterly Wage Report considered full-time equivalent employees when calculating the average employee count? Is the calculation as simple as comparing the prior year average employee counts on the Quarterly Wage Reports to the current year reports?**

The information on the Quarterly Wage Report includes full-time, part-time, and seasonal employees. An FTE employee means an employee who is a resident of Wisconsin and is employed in a regular, nonseasonal job, who is required to work at least 2,080 hours per year, including paid leave and holidays. Therefore, an FTE employee count for purposes of the job creation deduction is not necessarily the total of all employees on the Quarterly Wage Report; the employer must only include employees who meet the full definition of an FTE employee.

25. **Does "required to work 2,080 hours" mean that the employer needs something in writing or is the employer's expectation enough to claim the deduction?**

Employer expectations are not used to determine the number of FTE employees; the employee must be required as a condition of employment to work at least 2,080 hours per year, including paid leave and holidays. The statute and related administrative code do not provide for specific records to be retained. However, taxpayers must keep accurate records to verify

items of income, deductions, and credits claimed on their tax returns. Upon audit, it could reasonably be expected that the taxpayer verify with contemporaneous documentation, such as the Quarterly Wage Reports and the taxpayer's identification of which employee is an FTE employee.

26. A trucking company increases their staff by hiring additional truck drivers that are paid based on the number of miles driven during the year. Do the additional truck drivers qualify for the job creation deduction? How is a FTE employee determined when the employees are paid on a per mile basis?

Regardless of how an employee is paid, the employer must determine which employees meet the definition of FTE employee as defined earlier. The employer may need to consult with their payroll department in order to make the determination. If a truck driver is hired and classified as an FTE employee, they would be considered an eligible FTE employee for purposes of the job creation deduction, regardless if they are paid on an hourly or per mile basis.

27. When is a tax-option (S) corporation with a fiscal year ending on September 30, 2012 eligible to claim the job creation deduction?

The eligibility to claim the job creation deduction is based on the entity that created the jobs and is only available for taxable years beginning on or after January 1, 2012. A tax-option (S) corporation cannot claim the deduction, but the eligibility for and the amount of the deduction is determined by the increase in the number of full-time equivalent employees employed by the tax-option (S) corporation. Because the tax-option (S) corporation is the entity creating the jobs, the eligibility is based on the tax-option (S) corporation's taxable year. The tax-option (S) corporation's 2011 taxable year begins on October 1, 2011 so it would not be able to compute a job creation deduction until its fiscal year beginning October 1, 2012.

28. I am required to file Quarterly Wage Reports for unemployment compensation purposes and also must use this information in computing the average employee count for the job creation deduction. Which periods are covered by the Quarterly Wage Reports?

Report Due Date	Dates Report Covers
1/31	10/1 through 12/31
4/30	1/1 through 3/31
7/31	4/1 through 6/30
10/31	7/1 through 9/30

29. The definition of full-time equivalent employee for the job creation deduction is very different than any other definition of full-time employee that I've seen. Why is that?

The definition of full-time equivalent employee for the job creation deduction is consistent with other Wisconsin tax credits, such as the enterprise zone, development zone and enterprise zone jobs credits. The department used this same definition in the administrative rule for the jobs creation deduction.

30. How should this deduction be treated/reported for basis and WI AAA purposes?

Wisconsin accumulated adjustment account:

The job creation deduction will be included in the Wisconsin Form 5S, Schedule 5M, line 2(a) amount.

Example:

Corporation A is an S-corporation and has the following income and expense items:

Income/Expense	Federal	Wisconsin
Gross Receipts	100,000	100,000
Depreciation Expense	5,000	7,000
Job creation deduction		4,000

Corporation A reports the following amounts on its Wisconsin Form 5S, Schedule 5K (Shareholders' Pro rata Share Items):

	Column (b) Federal amount	Column (c) Adjustments	Column (d) Wisconsin amount
Line 1 Ordinary income	95,000	(6,000)	89,000

A reconciliation schedule is attached showing that the line 1, column (c), amount of \$6,000 is comprised of a depreciation adjustment of \$2,000 and a job creation deduction of \$4,000.

The Wisconsin ordinary income amount of \$89,000 from line 1, column (c), flows to the Schedule 5M, line 2(a) amount.

Stock basis:

The job creation deduction is a component of Wisconsin ordinary income. (See the example above where the ordinary income of Corporation A, an S-corporation, is \$89,000, calculated as gross receipts of \$100,000 less Wisconsin depreciation expense of \$7,000 less job creation deduction of \$4,000.) In general, a shareholder's stock basis is calculated as initial investment plus loans from the owner to the S-corporation plus income passed through from the S-corporation minus distributions to the shareholder. Therefore, the shareholder's pro rata portion of the job creation deduction will be included as a component of the shareholder's income that is added to the existing stock basis.

Partnership basis:

The job creation deduction is a component of Wisconsin ordinary income. In general, a partner's basis is calculated as initial investment plus income passed through from the partnership minus distributions to the partner. Therefore, the partner's pro rata portion of the job creation deduction is included as a component of the partner's income that is added to the existing basis.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 20, 2019: Sections 71.05, 71.26 and 71.45, Wis. Stats. (2011-2012), and sec. Tax 3.05, Wis. Adm. Code.

Laws enacted and in effect after December 20, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 20, 2019, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

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