

**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>100165</b>	Manufacturing and Agriculture Credit - Manufacturing Questions - Common Questions

State of Wisconsin  
Department of Revenue

## Manufacturing and Agriculture Credit - F. Manufacturing Questions

**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. A manufacturer generates income from the sale and installation of cabinets. What standard should be used to determine whether the cabinets should be treated as real property (sales and use tax laws, property tax laws, common law, etc...)?
2. A manufacturer generates income from the following activities: sales of machinery and equipment, installation of that machinery and equipment, and maintenance/service contracts related to the machinery and equipment. Would all income of the manufacturer be considered qualified production activities income?
3. How are the production gross receipts, and the numerator and denominator of the manufacturing property factor computed for a taxpayer that manufactures property entirely in Wisconsin?
4. How are the production gross receipts, and the numerator and denominator of the manufacturing property factor computed for a taxpayer that manufactures property partly in Wisconsin and another state?
5. How do related party sales between combined group members affect the computation of the manufacturing credit?
6. If a company contracts with a service provider to manufacture its products, who qualifies to claim the manufacturing credit?
7. Is property that is exempt from property taxes included in the numerator of the manufacturing property factor for purposes of computing the manufacturing and agriculture credit?

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1. **A manufacturer generates income from the sale and installation of cabinets. What standard should be used to determine whether the cabinets should be treated as real property (sales and use tax laws, property tax laws, common law, etc...)?**

The appropriate statute to use when determining whether property should be treated as real property is sec. 70.03, Wis. Stats., which provides that: "Real property", "real estate" and "land", when used in chs. 70 to 76, 78 and 79, include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto, except that for the purpose of time-share property, as defined in sec. 707.02 (32), real

property does not include recurrent exclusive use and occupancy on a periodic basis or other rights, including, but not limited to, membership rights, vacation services and club memberships.

2. **A manufacturer generates income from the following activities: sales of machinery and equipment, installation of that machinery and equipment, and maintenance/service contracts related to the machinery and equipment. Would all income of the manufacturer be considered qualified production activities income?**

No. The non-includable items listed in secs. 71.07(5n)(a)8. and 71.28(5n)(a)8., Wis. Stats., is not an all-inclusive list. In order to compute the manufacturing and agriculture credit, the claimant must produce gross receipts from the lease, rental, license, sale, exchange, or other disposition of tangible personal property that is manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under sec. 70.995, Wis. Stats. While the receipts from the sale of machinery and equipment produced by the manufacturer qualify as production gross receipts, the installation and service charges do not qualify as production gross receipts because they do not fall within the definition of qualified production property. The receipts from the installation and service charges are not tangible personal property, and while they may be associated with tangible personal property that is assessed as manufacturing, there is no provision in the Wisconsin Statutes that allows for income effectively connected with qualified production property to qualify for the manufacturing and agriculture credit.

3. **How are the production gross receipts, and the numerator and denominator of the manufacturing property factor computed for a taxpayer that manufactures property entirely in Wisconsin?**

Example: A taxpayer manufactures products in Minnesota and Wisconsin entirely separate from each other, and the products never transfer between states.

*Production gross receipts* only include receipts from sales of products manufactured in Wisconsin.

The *numerator of the manufacturing property factor* includes Wisconsin real and personal property that was used to manufacture qualified production property.

The *denominator of the manufacturing property factor* includes Wisconsin real and personal property that was used to manufacture qualified production property

The manufacturing property factor does not include any of the Minnesota property because qualified production property was not produced in Minnesota.

4. **How are the production gross receipts, and the numerator and denominator of the manufacturing property factor computed for a taxpayer that manufactures property partly in Wisconsin and another state?**

Example: A taxpayer begins manufacturing qualified production property in Illinois and finishes the manufacturing at its plant in Wisconsin.

*Production gross receipts* include sales of all products manufactured in Wisconsin, in whole or in part, even though part of the product is manufactured in Illinois.

The *numerator of the manufacturing property factor* includes Wisconsin real and personal property that was used to manufacture qualified production property.

The *denominator of the manufacturing property factor* includes both the Illinois and Wisconsin real and personal property that were used to manufacture qualified production property.

The manufacturing property denominator includes the Illinois property because the product was manufactured, in part, in Wisconsin, so it is considered qualified production property.

**5. How do related party sales between combined group members affect the computation of the manufacturing credit?**

When a combined group member sells goods to another combined group member of the same group, and the goods are ultimately sold to a third party, both members of the group take a portion of the sale into their numerators and denominators of the sales factor. Section Tax 2.61(Z)(d), Wis. Admin. Code, provides details and an example of an intercompany transaction.

Example of Effect on Manufacturing Credit Computation:

Combined Group AB consists of Wisconsin Corporation Members A and B, and files on a calendar year basis. Member B has nexus with Minnesota. On August 1, 2018, Member A sells batteries with a cost of \$100,000 that it manufactured in Wisconsin on property assessed as manufacturing, to Member B for \$130,000, based on arm's length pricing. On March 15, 2019, Member B sells the batteries to Company C, an unrelated third party located in Minnesota for \$150,000. The sales by Members A and B are subject to combination. In 2018, Member A did not recognize gain on the sale to Member B because the gain was deferred under the provision of sec. 71.255(4)(g) and (6)(b), Wis. Stats. Because the gain was not recognized in 2018, Member A cannot include the \$130,000 sale in its apportionment factors. In 2019 when the batteries are resold by Member B, Member A includes the \$30,000 gain (\$130,000 - \$100,000) in combined unitary income and \$130,000 in the modified sales factor denominator. Member B includes the \$20,000 gain (\$150,000 - \$130,000) from the sale to Company C in combined unitary income and in the modified sales factor denominator. Members A and B do not include an amount in the numerator because both of their sales have a situs in Minnesota based on Member B having nexus in Minnesota.

For purposes of computing the manufacturing credit:

- Member A is eligible to compute the credit because it manufactured the batteries in Wisconsin on property assessed as manufacturing. The production gross receipts are based on the sale of the batteries to Member B, and are recognized when Member B resells the batteries to the unrelated third party. In 2019, Member A recognizes production gross receipts of \$130,000 based on the arm's length price paid by Member B for the batteries. Member A's cost of goods sold is \$100,000.
- Member B is not eligible to compute the manufacturing credit because they did not manufacture the batteries in Wisconsin on property assessed as manufacturing.
- Company C is not eligible to compute the manufacturing credit because they did not manufacture the batteries in Wisconsin on property assessed as manufacturing.

**6. If a company contracts with a service provider to manufacture its products, who qualifies to claim the manufacturing credit?**

In order to compute the manufacturing credit, a claimant must generate gross receipts from the sale, lease, rental, license, exchange, or other disposition of tangible personal property that is manufactured in whole or in part by the claimant on property assessed as

manufacturing property under sec. 70.995, Wis. Stats. The example below illustrates who may compute the credit.

Facts:

- Company A purchases raw materials and ships them to Company B, a service provider, to manufacture the raw materials into a product.
- After manufacturing is completed, Company B returns the products to Company A.
- Company A sells the manufactured products to consumers.

Who may compute the manufacturing credit?

- Company A is not eligible to compute the credit because the product sold was not "manufactured in whole or in part by the claimant."
- Company B is not eligible to compute the credit because Company B did not derive income from the sale of tangible personal property; it derived income solely from the performance of services.
- If Company A contracted with Company B to manufacture only a portion of the product, and Company A completed the remaining manufacturing at its facility located in Wisconsin on property assessed as manufacturing, Company A is eligible to compute the credit. Company A's production gross receipts include the entire gross receipts received from its consumer for the sale of the qualified production property. Company A's cost of goods sold include the amount paid to Company B for the manufacturing services. Company A must multiply its qualified production activities income by the manufacturing property factor to determine the amount of income eligible for computing the credit.

**7. Is property that is exempt from property taxes included in the numerator of the manufacturing property factor for purposes of computing the manufacturing and agriculture credit?**

Yes. The manufacturing property factor under secs. 71.07(5n)(a)5.a. and 71.28(5n)(a)5.a., Wis. Stats., is defined as a fraction, the numerator of which is the average value of the claimant's real and personal property **assessed** under sec. 70.995, Wis. Stats., owned or rented and used in this state by the claimant during the taxable year to manufacture qualified production property, and the denominator of which is the average value of all the claimant's real and personal property owned or rented during the taxable year and used by the claimant to manufacture qualified production property. Real and personal property **assessed** under sec. 70.995, Wis. Stats., means property that has been **classified** as manufacturing property under sec. 70.995, Wis. Stats., regardless of whether or not a property tax exemption applies. As a result, inventory and any other real and personal property of a business that is classified as manufacturing in Wisconsin under sec. 70.995, Wis. Stats., is included in the numerator of the manufacturing property factor.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of December 27, 2019: Sections 70.03, 70.995, 71.07, 71.255, 71.28 and 707.02, Wis. Stats., and sec. Tax 2.61, Wis. Adm. Code.

Laws enacted and in effect after December 27, 2019, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to December 27, 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 Number: 100165

December 27, 2016

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and Agriculture  
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