

**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 documents 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
P103	Publication 103, <i>Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts</i>



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.

Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts

For Use in Preparing 2019 Returns

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IMPORTANT CHANGES

Use this publication in preparing your 2019 tax return. There are no substantive differences between the 2018 and 2019 versions of this publication.

1. INTRODUCTION

Gains and losses from sales or other dispositions of capital assets are reportable for both Wisconsin and federal income tax purposes. However, differences exist in the manner in which Wisconsin and federal law treat such income and loss.

This publication explains the differences between Wisconsin and federal law in reporting capital gains and losses on Wisconsin and federal income tax returns. It does not, however, explain all of the details concerning how capital gain and loss are classified and computed under federal income tax law. For further information on federal law, see Internal Revenue Service [Publication 544, Sales and Other Dispositions of Assets](#).

The amount of capital gain and loss to include in Wisconsin taxable income is figured on [Schedule WD, Capital Gains and Losses](#), or [Schedule 2WD](#) for estates and trusts. You can get Schedule WD or Schedule 2WD from any Department of Revenue office or our website at revenue.wi.gov.

NOTE: The examples in this publication refer only to the Form 1. Although the differences in reporting capital gain income and loss are most likely to affect taxpayers filing Form 1, they can also affect Form 1NPR filers. A Form 1NPR filer would make the required adjustments when completing column B of Form 1NPR.

2. DEFINITIONS**A. Short-Term and Long-Term Capital Gains and Losses**

Gains or losses resulting from sales or other dispositions of capital assets are classified as either "short-term" or "long-term." If a capital asset is owned for more than one year, gain or loss resulting from its disposition is "long-term" gain or loss. Gain or loss from an asset held for one year or less is considered "short-term."

B. Capital Loss Carryover

Annual limitations apply as to the amount of net capital loss which may be deducted against other income in any one taxable year. The entire amount of capital loss determined for a taxable year may not always be fully deductible in such year. The amount of loss exceeding the annual limitation is treated as a "carryover" loss which may be deducted in subsequent years. Losses may be carried forward for an unlimited time, until completely used.

3. DIFFERENCES BETWEEN FEDERAL AND WISCONSIN TREATMENT AND HOW TO REPORT

Even though federal adjusted gross income is used as the starting point for computing Wisconsin taxable income, the amounts of capital gain or loss includible in Wisconsin and federal income may differ for a particular taxable year. Differences can occur both in the year a gain or loss is realized and in carryover years. A difference results in 2019 because a deduction for 30% of the net capital gain from assets held more than one year is allowable when computing Wisconsin taxable income (60% of net capital gain on farm assets). Another difference results in 2019 because of the \$500 limit on the Wisconsin deduction for capital losses.

When an individual's capital gain or loss for Wisconsin differs from the amount includible in federal income, certain adjustments must be made to federal adjusted gross income, the starting point in computing Wisconsin taxable income.

As A through M on pages 4 through 9 illustrate, adjustments to account for differences between the Wisconsin and federal capital gain or loss are to be made in one of five ways, depending on the reason such difference exists. The five methods are:

- By completing Schedule I before federal income is entered on line 1 of Form 1.
- By completing Schedule WD, or Schedule 2WD for estates and trusts, to compute the amount of capital gain or loss to be included in Wisconsin taxable income. Any adjustment computed on Schedule WD is reflected on line 3 or 10 of Form 1 or, for Schedule 2WD, line 4 or 9 of Schedule A, Form 2.
- By making additions to or subtractions from federal income on lines 3, 4, 10, and 11 of Form 1. These additions and subtractions are called "modifications."
- By completing Schedule T to determine the required adjustment on line 4 or 11 of Form 1 and the required adjustment to use in completing Schedule WD.
- By redoing the federal return based on the election chosen for Wisconsin. This recomputed or "pro forma" return is used as the basis for computing Wisconsin taxable income and should be attached to the Wisconsin return when filed. In lieu of a "pro forma" return, the adjustment may be made on Schedule I.

These and other differences, along with how to report these differences, are discussed in greater detail in the following paragraphs.

A. Net Capital Gain from Assets Held More than One Year

Federal treatment: Capital gains are generally fully taxable for federal purposes.

Wisconsin treatment: Wisconsin law generally allows a deduction for 30% of the net capital gain from assets held more than one year. The deduction is 60% of net long-term capital gain from farm assets.

How to report: Complete Schedule WD or Schedule 2WD.

Note Schedule WD does not have to be completed if the only capital gain or loss is a capital gain distribution from a mutual fund or real estate investment trust. A subtraction for 30% of the capital gain distribution may be claimed on line 10 of Form 1.

B. Net Capital Loss Offset Against Other Income

Federal treatment: Capital losses are allowed in full against capital gains. If the losses are more than the gains, up to \$3,000 of the excess loss is allowed as a deduction against other income. Capital losses in excess of the amount of the allowable loss may be carried over and used in later years.

Wisconsin treatment: Capital losses are allowed in full against capital gains. If the losses are more than the gains, up to \$500 of the excess loss is allowed as a deduction against other income. Capital losses in excess of the amount of the allowable loss may be carried over and used in later years.

How to report: Complete Schedule WD or Schedule 2WD.

Note: As a result of the difference in the amount of excess loss allowable as a deduction for 2019, a larger capital loss carryover may be available for Wisconsin than for federal purposes in later years.

C. Capital Gain or Loss Affected By Different Wisconsin and Federal Elections

Federal treatment: Certain elections are allowed regarding the federal tax treatment of some items. For example, gain on an installment sale is generally reported as payments are received, but an election is available to report the entire gain in the year of sale.

Wisconsin treatment: You may choose a different federal election for Wisconsin and federal tax purposes.

How to report: Either of the following two methods may be used to claim a different election for Wisconsin and federal tax purposes:

- Prepare a pro forma federal return based on the election chosen for Wisconsin. This pro forma return is to be attached to the Form 1 or 1NPR instead of the actual return filed for federal tax purposes.
- Make the election using [Schedule I, Adjustments to Convert 2019 Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin](#).
- For estates and trusts, make the election by enclosing a schedule with your Form 2. State the nature of the adjustment and a complete explanation. Enter the total amount on line 1 of Schedule B, Form 2.

Example: You sold real estate in Iowa while an Iowa resident. You reported the gain under the installment method for federal income tax purposes. Subsequently, you became a Wisconsin resident. For Wisconsin purposes, it is assumed that a nonresident individual who sells property located outside Wisconsin elects to report the entire gain in the year of sale, when none of the gain would have been taxable to Wisconsin. Any gain from this installment sale is not taxable for Wisconsin.

If you use the first method, you would prepare a pro forma federal return which doesn't report any installment sale income on federal Schedule D. Therefore, your federal adjusted gross income would not need to be adjusted on Schedule I. For estates and trusts, you would enclose a schedule explaining the adjustment and enter the total amount on line 1 of Schedule B, Form 2.

Example: Within certain limits, sec. 179 of the federal Internal Revenue Code (IRC) allows an individual who places depreciable property in service to expense the cost of that property. As long as the sec. 179 requirements are met, you may elect to claim a different amount of sec. 179 expense for Wisconsin than was claimed for federal purposes. For property placed in service in taxable years beginning on or after January 1, 2014, using a different sec. 179 election may result in a different basis when determining gain or loss on a sale or other disposition of the property.

If you use the second method, you would report the difference in sec. 179 expense and depreciation on Schedule I as an adjustment to federal adjusted gross income. For estates and trusts, enclose a schedule explaining the adjustment and enter the total amount on line 1 of Schedule B, Form 2.

Note: See the note in paragraph D.(2) on page 6 if the election chosen resulted in a difference in the federal and Wisconsin basis of depreciated or amortized assets on the last day of your tax year beginning in 2013.

D. Wisconsin and Federal Income Tax Basis of Certain Assets May Differ

Federal treatment: Federal basis is reported according to federal law.

Wisconsin treatment: Because of various differences between Wisconsin and federal law, the Wisconsin basis may not always be the same as the federal basis. As a result, the amount of gain or loss included in income when the asset is disposed of will also differ for Wisconsin and federal purposes.

How to report: These differences would be reported on either Schedule T, *Transitional Adjustments*, or Schedule I, depending on the situation. See below for examples and how to report for each:

- (1) Land acquired by inheritance has been valued differently for Wisconsin inheritance and federal estate tax purposes. (For example, for federal purposes the alternate valuation date is used, but for Wisconsin the value as of the date of death is required to be used.) This applies only to deaths that occurred before January 1, 1992.

How to report: In the year of sale, report the difference in basis in Part I of Schedule T. This amount will carry over to the Schedule WD. For estates and trusts, report the difference in basis on Schedule C of Form 2. This amount will carry over to the Schedule 2WD.

- (2) Business property has been depreciated at different rates for Wisconsin and federal purposes. This applies to property placed in service in taxable years beginning on or after January 1, 2014. See the note below for the treatment of depreciated or amortized property placed in service in taxable years beginning before January 1, 2014.

Note: This difference in basis does not apply to depreciated or amortized property that was owned on the last day of your tax year beginning in 2013 (December 31, 2013, for calendar-year filers) and sold or otherwise disposed of during the 2019 taxable year. As a result of an adjustment over 5 years that is made on Form 1, 1NPR, or 2, the federal basis and the Wisconsin basis of the depreciated or amortized property is the same as on the first day of your taxable year beginning in 2014 (January 1, 2014, for calendar-year filers).

How to report: Differences in depreciation due to difference between federal and Wisconsin basis should be adjusted on Schedule I or Schedule B of Form 2, for estates and trusts.

- (3) A tax-option (S) corporation's pre-1979 federal undistributed taxable income, distributions, and tax losses affect a shareholder's federal basis in the stock, but not the Wisconsin basis, since 1979 was the first year to which the Wisconsin tax-option (S) corporation law applies.

How to report: In the year you sell your tax-option (S) corporation stock, report the difference in basis in Part I of Schedule T. This amount will carry over to the Schedule WD. For estates and trusts, report the difference in basis on Schedule C of Form 2. This will carry over to the Schedule 2WD.

- (4) Beginning with the 1979 taxable year, a shareholder's Wisconsin basis in tax-option (S) corporation stock is adjusted each year. The basis adjustment may not be the same for Wisconsin as for federal purposes or, for 1987 and thereafter, the basis adjustment does not apply if the corporation elected to opt out of Wisconsin tax-option status. See [Publication 102](#), *Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders*, for further information.

How to report: If there is a difference in basis for federal and Wisconsin purposes, in the year you sell the stock, report the difference in basis in Part I of Schedule T. This amount will carry over to the Schedule WD. For estates and trusts, report the difference in basis on Schedule C of Form 2. This will carry over to the Schedule 2WD. If the corporation elected out of Wisconsin tax-option status, all items of income/loss reported by the S corporation must be reversed. Adjustments must be made on Schedule WD or 2WD (see Item G).

- (5) You may defer paying tax on the long-term gain on the sale of an asset if the gain is reinvested in a qualified Wisconsin business. Your Wisconsin basis in the investment must be reduced by the deferred gain.

How to report: In the year you sell the asset, on which the basis was reduced by deferred gain, report the difference in basis in Part I of Schedule T. This amount will carry over to Schedule WD. For estates and trusts, report the difference in basis on Schedule C of Form 2. This amount will carry over to Schedule 2WD. See Items L and M for more information.

Caution: When you sell assets for which the basis has been adjusted in Part I of Schedule T, or Schedule C, Form 2, do not change the basis reported on Schedule WD or 2WD in column (e) of Part I or II. This amount should equal the basis reported on federal Schedule D.

E. Federal Capital Losses Incurred by Wisconsin Nonresident

Federal treatment: Federal capital losses would be reported on the federal return.

Wisconsin treatment: Wisconsin law does not permit the deduction of any capital losses incurred prior to the date Wisconsin residence is established.

How to report: For nonresidents and part-year residents, do not include the losses on Schedule WD or Schedule 2WD.

F. Capital Gain or Loss from Marital Property Interest Exchange Between Surviving Spouse and Distributee

Federal treatment: A personal representative of an estate may, under certain conditions, exchange all or a part of the decedent's interest in marital property between a surviving spouse and a distributee. The exchange may result in a taxable gain or a deductible loss for federal tax purposes.

Wisconsin treatment: Any gain or loss on such an exchange is not taxable or deductible for Wisconsin.

How to report: Any gain or loss from the exchange reported on federal Schedule D should be removed when completing Schedule WD. Any adjustment from Schedule WD will be included on line 3 or line 10 of Form 1.

Note: The exchange results in a different basis in the property for Wisconsin and federal tax purposes. When the property is sold, account for this basis difference on Schedule T.

G. Capital Gain or Loss from Federal S Corporation Not Treated As Wisconsin Tax-Option Corporation

Federal treatment: Capital gain or loss from a federal S corporation is taxable or allowed as a deduction for federal purposes.

Wisconsin treatment: A shareholder of a federal S corporation that elects not to be treated as a Wisconsin tax-option corporation must reverse all items of S corporation income, loss, or deduction included on the federal return and then add his/her pro rata share of any distributions made by the corporation of earnings and profits accumulated during a year in which the corporation was not a tax-option corporation.

How to report: Complete Schedule WD or Schedule 2WD. Do not include on Schedule WD or Schedule 2WD any capital gain or loss distributed by the S corporation. The differences between Wisconsin and federal capital gain or loss will be adjusted in Part IV of Schedule WD or Schedule 2WD which will carry over to Form 1, line 3 or line 10, or Schedule A of Form 2, line 4 or line 9. (Also see Item D.(4))

H. Capital Gain for Lump-Sum Distribution from Retirement Plan or Profit-Sharing Plan

Federal treatment: A taxpayer may elect on federal Form 4972 to compute the tax on the capital gain portion of a lump-sum retirement or profit-sharing plan distribution at a 20% rate.

Wisconsin treatment: This election is not available for Wisconsin. For Wisconsin purposes, the capital gain portion of a lump-sum distribution reported on federal Form 4972 is treated as ordinary income.

How to report: The amount is included as an addition to income on Form 1, line 4, code 03 or Schedule A of Form 2, line 5.

I. Gain on Disposition of Small Business Stock

Federal treatment: An exclusion is allowed for 50%, 75%, or 100% (depending on date of acquisition) of the gain on the disposition of certain small business stock (as defined in the IRC) issued after August 10, 1993, and held for more than five years.

Wisconsin treatment: Gain from the sale or exchange of small business stock acquired before December 31, 2013, is included in gross income. The exclusion, as allowed under the IRC as amended to December 31, 2012, will apply for stock acquired after December 31, 2013, and held for more than five years.

How to report: Report the federal exclusion for the small business stock as an adjustment to federal adjusted gross income on Schedule I or Schedule B of Form 2, for estates and trusts.

J. Capital Loss Carryover Adjustment for Exclusion of Income from Discharge of Indebtedness

Federal treatment: Income from discharge of indebtedness (cancellation of debts) may be excluded from gross income when the debt is cancelled in a bankruptcy case or during insolvency, or when the debt that is cancelled is qualified farm debt or qualified real property business debt. The excluded amount must generally be used to reduce certain tax attributes in the following order: net operating loss and net operating loss carryovers, general business credit carryovers, minimum tax credit, capital loss and capital loss carryovers, basis of property, passive activity loss and credit carryovers, and foreign tax credit carryovers.

Wisconsin treatment: A taxpayer who excludes income from discharge of indebtedness from gross income must use the amount of the Wisconsin net operating loss and net operating loss carryover, Wisconsin carryover credits, and the Wisconsin capital loss and capital loss carryover instead of the federal amounts to reduce tax attributes. As a result, a different amount of capital loss carryover may be available for Wisconsin than for federal purposes.

How to report: Report the Wisconsin capital loss carryover amount on Schedule WD or Schedule 2WD, line 7 or line 16, as appropriate.

K. Gain on Assets Used in Farming and Transferred to Related Person

Federal treatment: Net capital gain from the sale or other disposition of business assets or assets used in farming to a related person is taxable.

Wisconsin treatment: Net capital gain from the sale or other disposition of business assets or assets used in farming to a related person may be deducted when computing Wisconsin taxable income. The deduction only applies to amounts treated as long-term capital gain for federal income tax purposes; it does not apply to gain treated as ordinary income.

The deduction applies to gain on shares in a corporation or trust if, at the time of the sale or disposition, the following standards are met:

- Shareholders of the corporation or beneficiaries of the trust do not exceed 15 in number
- The corporation or trust does not have more than two classes of shares
- All shareholders or beneficiaries, other than any estate, are natural persons

How to report: Report as a subtraction on Form 1, line 11, code 17. See the Form 1 instructions for more details on this subtraction.

L. Qualified Wisconsin Business Gain Deferral

Federal treatment: A long-term capital gain deferral is not allowed.

Wisconsin treatment: Under Wisconsin law, the long-term capital gain realized on the sale of an asset may be deferred if the person, within 180 days, invests the gain in a "qualified Wisconsin business." See Schedule CG for further information.

How to report: Complete Schedule CG and Schedule WD. Do not include the deferred gain on the Schedule WD. (Also see Item D.(5))

M. Qualified Wisconsin Business Exclusion

Federal treatment: A long-term capital gain exclusion is not allowed on the sale of an investment in a qualified Wisconsin business.

Wisconsin treatment: Long-term capital gain on the sale of an investment in a qualified Wisconsin business held for at least five uninterrupted years may qualify to be excluded from Wisconsin income. The business must have been a qualified Wisconsin business for the year of the investment and for at least two of the four subsequent years.

How to report: Complete Schedule QI and line 15a of Schedule WD. Also complete Schedule T if the basis of the investment was reduced because gain was previously deferred from the sale of an asset (see Item L). See Schedule QI for further information. (Also see Item D.(5))

4. HOW SPOUSES SHOULD REPORT CARRYOVER LOSSES ON A 2019 RETURN**A. Spouses File Joint Return**

If you are married and filing a joint return, you and your spouse must combine your capital loss carryovers. On a joint 2019 Wisconsin return, your yearly capital loss deduction limit is \$500.

Example: As the result of losses incurred prior to their marriage in 2019, a married couple has the following long-term capital loss carryovers to 2019:

Wife's loss carryover to 2019	\$200
Husband's loss carryover to 2019	\$800

The couple has no capital gain or loss transactions in 2019. On a joint 2019 Wisconsin return the separate loss carryovers of each spouse are combined. A total carryover loss of \$1,000 (\$200 plus \$800) is available. The deduction allowable in computing this couple's 2019 Wisconsin taxable income is \$500.

B. Spouses File Separate Returns

If you are married and filing a separate return, your yearly capital loss deduction is limited to \$500. If (1) you and your spouse are filing separate returns for 2019 but filed a joint return for the year in which the capital loss was incurred, or (2) you are a widow(er) and your spouse died before the beginning of your 2019 tax year, you can only deduct the portion of the capital loss carryover that belongs to you. For a capital loss carryover incurred during a year before the Wisconsin marital property law applies to you, title to the property must be used to determine what portion of the loss is yours. For a capital loss carryover incurred during a year to which the marital property law applies, the classification of the property must be used to determine what portion of the loss is yours.

5. ADDITIONAL INFORMATION

If you have additional questions or need copies of tax forms, you may visit any Department of Revenue office or:

Visit our website . . . revenue.wi.gov

Email . . . DORIncome@wisconsin.gov

Write . . . Mail Stop 5-77
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Applicable Laws and Rules

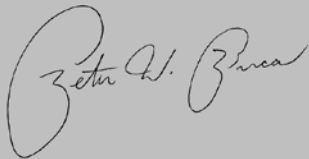
This document provides statements or interpretations of the following laws and regulations in effect as of January 30, 2020: Subchapter P of ch. 1, sub. A, title 26 of the Internal Revenue Code (IRC), 26 U.S.C. § 61, 26 U.S.C. § 108, 26 U.S.C. § 179, 26 U.S.C. § 402, 26 U.S.C. § 453, and 26 U.S.C. § 2032 of the IRC, and Chapter 71, Wis. Stats.

Laws enacted and in effect after January 30, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to January 30, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

Certification Statement

As the Secretary of the Wisconsin Department of Revenue (DOR), I have reviewed this guidance document or proposed guidance document and I certify that it complies with secs. 227.10 and 227.11, Wis. Stats.. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

DEPARTMENT OF REVENUE



Peter Barca

Secretary of Revenue