

**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
100188	Pass-Through Entity-Level Tax - Tax-Option (S) Corporation Tax Payments and Transferability - Common Questions

State of Wisconsin
Department of Revenue

Pass-Through Entity-Level Tax: Tax-Option (S) Corporation Tax Payments and Transferability 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.

Effective for taxable years beginning on or after January 1, 2018

1. Can the tax-option (S) corporation get credit for estimated tax payments made by its shareholders, or vice versa depending on whether an election is made?
2. Can an electing tax-option (S) corporation transfer payments from the entity's pass-through withholding account (Form PW-ES payments) to the entity-level tax account (Form Corp-ES payments)?
3. Can an electing tax-option (S) corporation transfer payments from the entity-level tax account (Form Corp-ES payments) to the entity's pass-through withholding account (Form PW-ES payments)?
4. Can overpayment of estimated taxes for the economic development surcharge be applied to the tax-option (S) corporation's tax liability resulting from the entity-level tax election and vice versa?
5. Is an electing tax-option (S) corporation required to pay the entity-level tax by the unextended due date of its return (Form 5S) if the tax-option (S) corporation is filing under an extension?
6. Is an electing tax-option (S) corporation required to make quarterly estimated tax payments?
7. How does a tax-option (S) corporation make a payment if there is an amount due with the return?
8. How does a tax-option (S) corporation make a payment for an amount due on an amended return?
9. In the first year a tax-option (S) corporation makes an election to pay tax at the entity level, is the corporation subject to underpayment interest on late estimated tax payments even if the prior year Wisconsin tax liability for the corporation was zero?
10. If an electing tax-option (S) corporation has a tax liability and does not pay the full amount of taxes due by the original due date of the entity's Wisconsin tax return, what interest rate will apply?

11. Is an electing tax-option (S) corporation required to make pass-through withholding tax payments for nonresident shareholders?
12. If an electing tax-option (S) corporation made withholding tax payments for a nonresident shareholder, how does the withholding get refunded?
13. Does the election to be taxed at the entity level under sec. 71.365(4m)(a), Wis. Stats., change how the tax-option (S) corporation reports its nonresident entertainer withholding paid by another person on its behalf?

1. Can the tax-option (S) corporation get credit for estimated tax payments made by its shareholders, or vice versa depending on whether an election is made?

No, payments must be made separately by the shareholders and their tax-option (S) corporation. The department will not transfer payments between an account of an individual and an account of a corporation. Shareholders and tax-option (S) corporations must file their respective Wisconsin income tax returns to receive a refund of their overpayments.

2. Can an electing tax-option (S) corporation transfer payments from the entity's pass-through withholding account (Form PW-ES payments) to the entity-level tax account (Form Corp-ES payments)?

Yes, the tax-option (S) corporation may submit a written request to move pass-through withholding payments to the entity-level income tax account if the payments were made by the same entity. Written requests may be submitted to dorincomepte@wisconsin.gov.

3. Can an electing tax-option (S) corporation transfer payments from the entity-level tax account (Form Corp-ES payments) to the entity's pass-through withholding account (Form PW-ES payments)?

Yes, the tax-option (S) corporation may submit a written request to move payments from the entity-level tax income tax account to the entity's pass-through withholding account if the payments were made by the same entity. Written requests may be submitted to dorincomepte@wisconsin.gov.

4. Can overpayment of estimated taxes for the economic development surcharge be applied to the tax-option (S) corporation's tax liability resulting from the entity-level tax election and vice versa?

Yes, overpayment of estimated taxes for the economic development surcharge or entity-level tax liability may be used to offset tax liability from either tax.

5. Is an electing tax-option (S) corporation required to pay the entity-level tax by the unextended due date of its return (Form 5S) if the tax-option (S) corporation is filing under an extension?

Yes, an extension of time to file does not extend a deadline to pay an amount due. A tax-option (S) corporation must pay any amount due by the unextended due date to avoid interest charges. A payment can be made by submitting Form Corp-ES with a check, or an electronic payment using [ACH](#) or [My Tax Account](#). See the [instructions](#) for Form Corp-ES for additional information.

Important:

- Make sure to identify the correct tax year when submitting a payment so that the payment is applied to the correct tax year's liability (e.g., use 2019 Form Corp-ES to make a payment for a 2019 tax year liability).
- If paying through My Tax Account, use "return tax payments" as the payment type.

6. Is an electing tax-option (S) corporation required to make quarterly estimated tax payments?

Yes, except for taxable years beginning in 2018, estimated payments and underpayment interest under secs. [71.29](#) and [71.84](#), Wis. Stats., apply. A payment can be made by submitting Form Corp-ES with a check, or an electronic payment using [ACH](#) or [My Tax Account](#). See the [instructions](#) for Form Corp-ES for additional information.

Important:

- o Make sure to identify the correct tax year when submitting a payment so that the payment is applied to the correct tax year's liability (e.g., use 2020 Form Corp-ES to make an estimated tax payment for the 2020 tax year liability).
- o If paying through My Tax Account, use "estimated payment" as the payment type.

7. How does a tax-option (S) corporation make a payment if there is an amount due with the return?

There are four methods an electing tax-option (S) corporation may use to make a return payment:

- i. Electronically: Make the payment through My Tax Account, by selecting "return payment" and **confirm** the payment is for the same year as the year of the tax return (e.g., tax year 2019 must be selected to make a return payment for a 2019 calendar year Form 5S).
 - ii. Electronically: Make the return payment through the corporation's accounting software supported by the Wisconsin Department of Revenue (e.g., ACH payment through QuickBooks).
 - iii. Paper: Mail a check with the Form 5S. Make checks payable and mail to:
- Wisconsin Department of Revenue
PO Box 8908
Madison WI 53708-8908
- iv. Paper: If the Form 5S is filed electronically and the payment is made at a later date, mail a check with the correct year Form C-EPV, *Wisconsin Corporation Electronic Payment Voucher*. Make checks payable and mail to:

Wisconsin Department of Revenue
Box 930208
Milwaukee WI 53293-0208

8. How does a tax-option (S) corporation make a payment for an amount due on an amended return?

There are three methods an electing tax-option (S) corporation may use to make an amended return payment:

- i. Electronically: Make the amended return payment through My Tax Account, by selecting "amended return payment" and confirm the payment is for the same year as the year of the tax return (e.g., tax year 2019 must be selected to make an amended return payment for a 2019 calendar year Form 5S).
- ii. Electronically: Make the return payment through the corporation's accounting software supported by the Wisconsin Department of Revenue (e.g., ACH payment through QuickBooks).
- iii. Paper: Mail a check with the Form 5S. Make checks payable and mail to:

Wisconsin Department of Revenue
PO Box 8908
Madison WI 53708-8908

9. In the first year a tax-option (S) corporation makes an election to pay tax at the entity level, is the corporation subject to underpayment interest on late estimated tax payments even if the prior year Wisconsin tax liability for the corporation was zero?

Pursuant to sec. 71.29, Wis. Stats., if an electing tax-option (S) corporation had zero income or franchise tax liability in the prior year and the corporation's Wisconsin net income is less than \$250,000 in the current taxable year, the corporation is exempt from underpayment interest. If the corporation's Wisconsin net income is \$250,000 or greater in the current taxable year, the corporation must make estimated tax payments pursuant to sec. 71.29(10), Wis. Stats.

10. If an electing tax-option (S) corporation has a tax liability and does not pay the full amount of taxes due by the original due date of the entity's Wisconsin tax return, what interest rate will apply?

The interest rate may be 12 percent or 18 percent as provided in secs. 71.82 and 71.84, Wis. Stats. See Part II of [Form U](#) for more information.

11. Is an electing tax-option (S) corporation required to make pass-through withholding tax payments for nonresident shareholders?

No, pursuant to sec. 71.775(3)(a)4, Wis. Stats., an electing tax-option (S) corporation is not required to make pass-through withholding tax payments for nonresident shareholders.

12. If an electing tax-option (S) corporation made withholding tax payments for a nonresident shareholder, how does the withholding get refunded?

There are two primary methods for claiming a refund of pass-through withholding paid by an electing tax-option (S) corporation:

- i. The electing tax-option (S) corporation may file a Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, reflecting \$0 withholding tax computed in Part 2 of Form PW-1, **OR**
- ii. The shareholder(s) may file their respective Wisconsin income tax return and claim the withholding on their return.

13. Does the election to be taxed at the entity level under sec. 71.365(4m)(a), Wis. Stats., change how the tax-option (S) corporation reports its nonresident entertainer withholding paid by another person on its behalf?

No. The tax-option (S) corporation may report the nonresident entertainer withholding paid by another person on its behalf using one of the two methods below, regardless of whether the corporation makes an election under sec. 71.365(4m)(a), Wis. Stats.

- o As withholding on Line 13 of Form 5S, or
- o As a Form WT-11 withholding payment made on the entity's behalf on Line 4 of Form PW-1

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 10, 2020: Sections 71.20, 71.29, 71.365, 71.775, 71.80, 71.82, 71.84 and 77.96, Wis. Stats., and sec. Tax 1.12, Wis. Adm. Code.

Laws enacted and in effect after February 10, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 10, 2020, 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

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Email additional questions to DORIncome@wisconsin.gov

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