

**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>100121</b>	Disregarded Entities (Sales and Use and Withholding Taxes) - Common Questions

State of Wisconsin  
Department of Revenue

# Disregarded Entities (Sales and Use and Withholding Taxes)

**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. Is a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes under Chapter 71 of the Wisconsin Statutes ("disregarded entity") also disregarded for Wisconsin sales and use tax purposes?
2. How does the law affect transactions between the owner and the disregarded entity?
3. What sections of the sales and use statutes apply?
4. Does the owner or the disregarded entity report the sales of the disregarded entity?
5. Are there any transitional provisions that apply for purchases prior to July 1, 2009?
  - **Example 1:** *Construction Company's Purchasing Entity*
  - **Example 2:** *Transportation Company*
  - **Example 3:** *Leasing Company*
  - **Example 4:** *Disregarded Entity's Business Assets Transferred to Owner*
  - **Example 5:** *Disregarded Entity's Business Assets Transferred to Unrelated Company*
6. How does the law treat disregarded entities for withholding tax purposes?
7. How do I register my business?
8. What should I do if my business is not properly registered or if I change my business structure, relating to disregarded entities?
9. Since an owner and its disregarded entity are considered a single entity for Wisconsin sales and use tax purposes, if a disregarded entity has nexus in Wisconsin, does the fact that the disregarded entity has nexus in Wisconsin create nexus for its owner and the owner's other disregarded entities?

10. When a Department of Revenue notice is mailed, to whom does the notice apply?

1. **Is a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes under Chapter 71 of the Wisconsin Statutes ("disregarded entity") also disregarded for Wisconsin sales and use tax purposes?**

Yes. A single-owner entity that is disregarded as a separate entity (i.e., the single-owner entity and its owner are treated as a single entity) for Wisconsin income and franchise tax purposes under Chapter 71 of the Wisconsin Statutes is also disregarded as a separate entity for purposes of Wisconsin sales and use taxes.

Prior to July 1, 2009, a single-owner entity that was disregarded as a separate entity for Wisconsin income and franchise tax purposes was treated as an entity separate from its owner for Wisconsin sales and use tax purposes, except for reporting purposes.

2. **How does the law affect transactions between the owner and the disregarded entity?**

The owner and the disregarded entity are treated as a single entity for Wisconsin sales and use tax purposes. There cannot be transactions between the owner and the disregarded entity, because they are treated as a single entity.

3. **What sections of the sales and use tax statutes apply?**

Sections 77.51(10) and 77.61(19m)(a), Wis. Stats., make the sales and use tax treatment of disregarded entities consistent with the tax treatment for income and franchise tax purposes. Transitional provisions are also provided in sec. 77.61(19m)(b) and (c), Wis. Stats.

An option to file separate returns is provided in sec. 77.58(3)(a), Wis. Stats.

4. **Does the owner or the disregarded entity report the sales of the disregarded entity?**

The owner reports the sales of the disregarded entity on the owner's sales and use tax return.

The owner, however, may elect to file a separate electronic return for its disregarded entity. If the owner owns more than one disregarded entity and chooses to file a separate return for one of its disregarded entities, the owner must file separate returns for all of its disregarded entities.

**Note:** Even though an owner elects to file separate returns for each of its disregarded entities, the disregarded entities are part of the owner's entity (i.e., single entity consisting of the owner and all of its disregarded entities) for liability and collection purposes.

Prior to September 1, 2009, the owner was required to include the disregarded entity's information on the owner's return.

5. **Are there any transitional provisions that apply for purchases prior to July 1, 2009?**

The law includes the following transitional provisions to ensure that, solely due to this law change, the owner of a single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes will not incur a use tax liability on purchases made prior to the effective date of the law change or on real property contracts entered into prior to the effective date of the law change:

- A single-owner entity that was disregarded as a separate entity for Wisconsin income and franchise tax purposes on July 1, 2009 shall be treated for Wisconsin sales and use tax purposes as an entity separate from its owner for the sale, lease, license, or rental of and the storage, use, or other consumption of tangible personal property purchased by the single-owner entity or its owner prior to July 1, 2009.

- o A single-owner entity that was disregarded as a separate entity for Wisconsin income and franchise tax purposes on July 1, 2009 shall be treated for Wisconsin sales and use tax purposes as an entity separate from its owner for purchases of building materials, if the materials are affixed and made a structural part of real estate, and the amount payable to the contractor was fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to July 1, 2009, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before July 1, 2009.

**EXAMPLE 1 - Construction Company's Purchasing Entity:** Contractor is the single owner of a disregarded entity (LLC). LLC purchases and sells materials to Exempt Entity, a federal governmental unit. Exempt Entity hires Contractor to install the materials that it purchases from LLC. The materials become a part of real property when installed.

*Contract Entered Into Prior to July 1, 2009* - LLC may purchase the materials without tax for resale. LLC's sale of the materials to Exempt Entity is not taxable. Contractor's charge for installing the materials is not taxable.

*Transitional Provisions* - Same as "*Contract Entered Into Prior to July 1, 2009*" if the amount payable to Contractor and LLC is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to July 1, 2009 or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before July 1, 2009.

*Contracts Entered Into July 1, 2009 and Thereafter* - Contractor and LLC are treated as a single entity for Wisconsin sales and use tax purposes; therefore, the purchase by LLC of materials that are used by Contractor in a real property construction activity are subject to tax. A person who performs a real property construction activity is the consumer of the materials that it uses and is liable for Wisconsin sales or use taxes on the purchase of such materials.

**EXAMPLE 2 - Transportation Company:** Retailer is the single owner of a disregarded entity (LLC). LLC is a contract transportation entity that hauls Retailer's goods for hire. LLC purchased a semitrailer which it uses exclusively to transport Retailer's goods.

*Semitrailer Purchased Prior to July 1, 2009* - LLC's purchase of the semitrailer is exempt from tax under the common and contract carrier exemption. LLC's purchase of parts and service to the semitrailer are also exempt from tax. LLC's charge to Retailer for transporting its goods is not taxable (i.e., transportation services are not taxable).

*Transitional Provisions* - Same as "*Semitrailer Purchased Prior to July 1, 2009*" for transactions relating to the semitrailer (and any other property) that was purchased prior to July 1, 2009, including parts and service purchased after July 1, 2009 for the semitrailer.

*Semitrailers Purchased July 1, 2009 or Thereafter* - Retailer and LLC are treated as a single entity for Wisconsin sales and use tax purposes; therefore, LLC's purchase of the semitrailer does not qualify for the common and contract carrier exemption, since it is not hauling goods for others for hire. LLC's purchase of parts and service for the semitrailer are taxable.

**EXAMPLE 3 - Leasing Company:** Company is the single owner of a disregarded entity (LLC). LLC's only business activity is to lease its aircraft to Company and others.

*Aircraft Purchased Prior to July 1, 2009* - LLC may purchase the aircraft without tax for resale. LLC's purchase of parts and service to the aircraft are also exempt from tax. LLC's charges to Company and others for leasing its aircraft are taxable.

*Transitional Provisions* - Same as "*Aircraft Purchased Prior to July 1, 2009*" for transactions relating to the aircraft that was purchased prior to July 1, 2009, including parts and service purchased after July 1, 2009 for the aircraft.

*Aircraft Purchased July 1, 2009 or Thereafter* - Company and LLC are treated as a single entity for Wisconsin sales and use tax purposes; therefore, LLC's purchase of the aircraft does not qualify for resale, since LLC is not solely leasing the aircraft to others. LLC's purchase of parts and service for the aircraft are taxable.

**Note:** Effective July 1, 2014, the sale of parts used to modify or repair aircraft became exempt from Wisconsin sales and use taxes. This exemption does not apply to supplies for aircraft. See the article titled "[New Sales and Use Tax Exemptions for Aircraft](#)."

**EXAMPLE 4 - Disregarded Entity's Business Assets Transferred to Owner:** Company is the single owner of a disregarded entity (LLC). LLC purchased assets (e.g., office equipment, furniture) for use in LLC's business activities. At a later date, Company purchased one-half of LLC's business assets.

*Business Assets Purchased by LLC Prior to July 1, 2009* - LLC's purchase of the business assets was subject to tax. LLC's sale of the business assets to Company is subject to tax, because Company and LLC are treated as separate entities for Wisconsin sales and use tax purposes for transactions involving assets that were purchased prior to July 1, 2009.

*Transitional Provisions (Business Assets Purchased Prior to July 1, 2009 and Sold July 1, 2009 or Thereafter)* - Same as "*Business Assets Purchased by LLC Prior to July 1, 2009*."

*Business Assets Purchased by LLC July 1, 2009 or Thereafter* - Company and LLC are treated as a single entity for Wisconsin sales and use tax purposes. LLC's (i.e., Company's) purchase of the business assets is subject to tax. Although LLC can transfer business assets to Company, this transfer is not considered a sale of business assets from LLC to Company, because they are treated as a single entity.

**EXAMPLE 5 - Disregarded Entity's Business Assets Transferred to Unrelated Company:** Company A is the single owner of a disregarded entity (LLC). LLC purchased assets (e.g., office equipment, furniture) for use in LLC's business activities. At a later date, Company B, an unrelated entity, purchased 100% of Company A's interest in LLC. LLC then sells one-half of its business assets to Company B.

*Business Assets Purchased by LLC Prior to July 1, 2009* - LLC's purchase of the business assets was subject to tax. LLC's sale of the business assets to Company B is subject to tax.

*Transitional Provisions (Business Assets Purchased Prior to July 1, 2009 and Sold July 1, 2009 or Thereafter)* - Same as "*Business Assets Purchased by LLC Prior to July 1, 2009*."

*Business Assets Purchased and Sold by LLC July 1, 2009 or Thereafter* - Company A and LLC are treated as a single entity for Wisconsin sales and use tax purposes. LLC's (i.e., Company A's) purchase of the business assets is subject to tax. Since Company B is now the single-member owner of LLC, Company B and LLC are considered to be a single entity. Although LLC can transfer business assets to Company B, this transfer is not considered a sale of business assets from LLC to Company B, because they are treated as a single entity.

#### 6. **How does the law treat disregarded entities for withholding tax purposes?**

A disregarded entity is automatically considered an "employer" for purposes of federal withholding taxes. Wisconsin follows this treatment (sec. 71.63(3)(c), Wis. Stats.). Thus, a single-owner entity that is disregarded as a separate entity under IRC sec. 7701 is an "employer" for Wisconsin withholding tax purposes. As an "employer," a disregarded entity must obtain a Wisconsin employer identification number. To obtain a Wisconsin employer identification number, the entity must register online or file Form BTR-101, Application for Business Tax Registration.

#### 7. **How do I register my business?**

You can register online using the Department of Revenue's online Business Tax Registration, which provides registration and filing options for disregarded entities, or on paper using Form BTR-101, Application for Business Tax Registration. If you are registering one or more disregarded entities, please include a cover letter explaining your business structure with your Form BTR-101 or you may call (608) 266-2776 for assistance in registering your business.

#### 8. **What should I do if my business is not properly registered or if I change my business structure, relating to disregarded entities?**

Owners of disregarded entities that hold or are required to hold a seller's permit should contact one of the Department of Revenue's customer service representatives at (608) 266-2776 or by email DORBusinessTax@wisconsin.gov if any of the following apply:

- o The owner and one or more disregarded entity have the same business location. (Seller's permits issued to a disregarded entity that has the same business location as its owner must be inactivated.)
- o The owner elects to file a separate electronic sales and use tax return for the disregarded entity.
- o The owner and/or one or more of its disregarded entities are currently improperly registered (e.g., have different 15-digit account identification numbers).

If you contact the department, be sure to include the following information:

- √ Tax account number (Include the business name and address if you have more than one location)
- √ Federal employer identification number (FEIN)
- √ Effective date of change
- √ Explanation of change.

#### 9. **Since an owner and its disregarded entity are considered a single entity for Wisconsin sales and use tax purposes, if a disregarded entity has nexus in Wisconsin, does the fact that the disregarded entity has nexus in Wisconsin create nexus for its owner and the owner's other disregarded entities?**

While the disregarded entity and its owner are treated as a single entity, Wisconsin will not impute the nexus status of the owner or disregarded entity upon the other solely because of the application of sec. 77.61(19m)(a), Wis. Stats.

#### 10. **When a Department of Revenue notice is mailed, to whom does the notice apply?**

A Department of Revenue notice to either the owner or a disregarded entity is a notice to BOTH. Therefore, both the owner and the disregarded entity are liable for any amounts due on the notice.

## Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 19, 2020: Sections 71.10, 71.21, 71.30, 71.52, 73.03, 77.51, 77.52, 77.58, 77.61 and 77.63, Wis. Stats., and secs. Tax 2.82, 11.002 and 11.01, Wis. Adm. Code, and 26 U.S. Code § 7701, and 26 CFR § 301.7701-2.

Laws enacted and in effect after February 19, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 19, 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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