

# Wisconsin Tax Bulletin

October 2017 Number 199



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## New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual and fiduciary income tax, corporation franchise and income tax, sales and use tax, excise tax, and other provisions. These provisions are contained in [2017 Wis. Act 58](#) and [2017 Wis. Act 59](#) (the 2017-2019 State Budget Bill).

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.

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## A. Individual and/or Fiduciary Income Taxes

### 1. Internal Revenue Code References Updated for 2017 for Individuals, Estates, and Trusts

([2017 Wis. Act 59](#), repeal sec. 71.01(6)(b) and create sec. 71.01(6)(k), effective for taxable years beginning on or after January 1, 2017)

For taxable years beginning on or after January 1, 2017, for individuals and fiduciaries, except fiduciaries of nuclear decommissioning trust or reserve funds, "Internal Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2016, with certain exceptions.

- a. Amendments to the federal Internal Revenue Code enacted after December 31, 2016 **do not apply** for Wisconsin.
- b. The following Public Laws (P.L.) **do not apply** for Wisconsin:
  - Public Laws listed in sec. 71.01(6)(j)2., Wis. Stats.
  - Public Law 114-7 relating to contributions for relief of slain New York Police Detectives
  - Section 1101 of P.L. 114-74 relating to partnership rules
  - Section 305 of Division P of P.L. 114-113 relating to domestic production activities
  - The following sections of Division Q of P.L. 114-113:
    - Section 112 relating to charitable distributions from IRAs
    - Section 123 relating to cost recovery period for qualified leasehold improvements, restaurant property, and retail improvement property
    - Section 125 relating to regulated investment companies (RICs)
    - Section 126 relating to gain on small business stock
    - Section 127 relating to an S corporation that converts to a C corporation
    - Section 128 relating to subpart F income
    - Section 143 relating to bonus depreciation
    - Section 144 relating to the extension of look-through treatment for payments of dividends, interest, and rents and royalties between related controlled foreign corporations
    - Section 151 relating to the extension of the exclusion from income for discharge of indebtedness on a qualified principal residence

- Section 152 relating to treatment of qualified mortgage insurance premiums as interest
  - Section 153 relating to the above-the-line deduction for tuition and related expenses for higher education
  - Section 165 relating to the three-year recovery period for race horses
  - Section 166 relating to the seven-year recovery period for motorsports entertainment complexes
  - Section 167 relating to accelerated depreciation for business property on an Indian reservation
  - Section 169 relating to special expensing rules for film, television, and live theater productions
  - Section 170 relating to the eligibility of domestic gross receipts from Puerto Rico for the domestic production activities deduction
  - Section 171 relating to tax benefits for certain businesses and employers operating in empowerment zones
  - Section 189 relating to bonus depreciation for cellulosic biofuel facilities
  - Section 191 relating to the election to recognize gain from qualifying electric transmission transactions over an eight-year period
  - Section 307 relating to allowing certain airline employees to contribute amounts received in a bankruptcy to an Individual Retirement Account (IRA)
  - Section 326 relating to dividends received from RICs and Real Estate Investment Trusts (REITs)
  - Section 411 relating to corrections and clarification of partnership audit rules enacted in P.L. 114-74
- c. The provisions of federal public laws that directly or indirectly affect the Internal Revenue Code apply for Wisconsin purposes at the same time as for federal purposes, except that the following changes first apply for taxable years beginning after December 31, 2016:
- Section 15303 of P.L. 110-246 relating to the deduction for endangered species recovery expenditures
  - Section 4007(b) of P.L. 114-41 relating to a disabled veteran's eligibility for a health savings account
  - Section 1102 of P.L. 114-74 relating to family partnership rules and income-producing capital in a partnership
  - The following sections of Division Q of P.L. 114-113:
    - Section 105 relating to the commuter benefit monthly exclusion amount for transit passes and van pool benefits
    - Section 111 relating to the charitable deduction for contributions of real property for conservation purposes
    - Section 113 relating to the enhanced deduction for charitable contributions of food
    - Section 114 relating to tax treatment of payments by a controlled corporation to an exempt organization

- Section 115 relating to the treatment of a shareholder's basis in the stock of an S corporation that is reduced by the shareholder's pro rata share of the adjusted basis of property contributed by the S corporation for charitable purposes
- Section 133 relating to the treatment of RICs as qualified investment entities not subject to withholding
- Section 301 relating to exempting payments from certain work-learning service programs that are operated by a work college
- Section 302 relating to eligible education expenses and distributions from sec. 529 accounts
- Section 304 relating to an exclusion of monetary awards for wrongly-incarcerated individuals
- Section 305 relating to an exclusion from income of benefits paid directly to a taxpayer by an accident or health plan of a public retirement system
- Section 308 relating to the exception to the 10% penalty on retirement account withdrawals for public safety officers
- Section 311 relating to a spin-off involving a REIT to qualify as tax-free
- Sections 313 – 321 relating to REITs
- Section 322 relating to withholding under the Foreign Investment in Real Property Tax Act and the amount of stock that a shareholder may have in a publicly traded corporation before having the stock treated as U.S. real property upon disposition
- Section 323 relating to a withholding exemption for real property interest held by a foreign pension fund
- Section 325 relating to the "cleansing rule" for REITs and RICs
- Section 331 relating to the charitable deduction for up to 50% of a taxpayer's contribution base made to an agricultural research organization
- Section 343 relating to the exclusion from income and basis adjustment for certain clean power grants received under the federal Energy Policy Act of 2005
- Section 344 relating to the valuation method for early termination of certain charitable remainder unitrusts
- Section 345 relating to the related-party loss rules and the disallowance of a deduction for a loss on the sale or exchange of property to certain related parties or controlled partnerships

## 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes

([2017 Wis. Act 59](#), amend sec. 71.01(6)(j)1. and create secs. 71.01(6)(j)3.i., j., k., and L., effective for taxable years beginning before January 1, 2017)

Certain changes to the Internal Revenue Code made by the following federal laws enacted in 2015 and 2016 apply for Wisconsin purposes at the same time as for federal purposes:

- Section 2004 of P.L. 114-41 relating to reporting basis of property acquired from a decedent
- Sections 503 and 504 of P.L. 114-74 relating to mortality tables and funding stabilization rules for defined benefit pension plans

- Public Law 114-239 relating to an exclusion from income for the value of any medal or prize money received from the U.S. Olympic Committee on account of competition in the Olympic Games or Paralympic Games
- The following sections of Division Q of P.L. 114-113:
  - Section 103 relating to permanent extension of the earned income credit for those with three or more children
  - Section 104 relating to extension of the deduction for educator expenses and inflation adjustment
  - Sections 124 and 168 relating to small business and mine safety equipment sec. 179 expensing
  - Sections 184 and 185 relating to extending the federal fuel credits through 2016
  - Section 190 relating to extension of expensing of energy efficiency improvements to lighting, cooling, ventilation, and hot water systems through 2016
  - Section 204 relating to prohibiting individuals from claiming the earned income tax credit by amending or filing an original return for any prior year in which the individual did not have a valid social security number
  - Section 303 relating to allowing ABLE accounts to be established in any state
  - Section 306 relating to a rollover from an employer-sponsored retirement plan to a SIMPLE IRA
  - Section 336 relating to church defined benefit plans
  - Section 341 relating to updating energy efficiency standards for purposes of sec. 179D

### 3. Sourcing of Services

([2017 Wis. Act 59](#), amend sec. 71.04(7)(dh)2.b. and c. and 3., effective for taxable years beginning on or after January 1, 2017)

See Item B.3.

### 4. Broadcaster's Gross Receipts

([2017 Wis. Act 59](#), amend sec. 71.04(7)(dj)1.(intro.) and a., and create secs. 71.01(1as), 71.07(7)(dh)4., (dj)2., and (g), various effective dates)

See Item B.4.

### 5. Net Operating Loss Statute of Limitations

([2017 Wis. Act 59](#), amend sec. 71.05(8)(b)1. and create sec. 71.80(25), effective for losses claimed on or after September 23, 2017)

A net operating loss may not be used to offset Wisconsin income unless the incurred loss was computed on a return that was filed within four years of the unextended due date for filing the original return for the taxable year in which the loss was incurred.

A carry-back of a loss may not be used to offset Wisconsin income unless the loss is claimed within four years of the unextended due date for filing the original return for the taxable year to which the loss is carried back.



## 6. Charitable Distributions from an Individual Retirement Account

([2017 Wis. Act 59](#), create sec. 71.98(8), effective for taxable years beginning on or after January 1, 2018)

Section 408(d)(8), IRC, relating to a tax-free qualified charitable distribution from an individual retirement account directly to a charitable organization, applies for Wisconsin purposes.

## 7. Adoption Expense Subtraction Revised

([2017 Wis. Act 59](#), amend sec. 71.05(6)(b)22., effective for taxable years beginning on or after January 1, 2017)

The subtraction applies for court costs or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered by a court of any state, or upon registration of a foreign adoption under sec. 48.97(2), Wis. Stats., during the taxable year.

## 8. Olympic Medal and Prize Payment Subtraction

([2017 Wis. Act 59](#), create sec. 71.05(6)(b)53., effective for taxable years beginning on or after January 1, 2016)

To the extent included in federal adjusted gross income, a subtraction is provided for the value of the medals won by an individual in the Olympic, Paralympic, or Special Olympics competition, and the amount of any payments received from the U.S. Olympic Committee or from the Special Olympics Board of Directors.

## 9. Statutory References for College Savings Accounts and Tuition Units Revised

([2017 Wis. Act 59](#), amend sec. 71.05(6)(a)26.(intro.) and c., (b)23., 28.h., 31., 32.(intro.), 32m., and 33.(intro.), effective September 23, 2017)

The references to secs. 16.64 and 16.641, Wis. Stats., that refer to the Department of Administration are revised to refer to secs. 224.48 and 224.50, Wis. Stats., to the Department of Financial Institutions.

## 10. Statutory Reference for Tuition Subtraction Revised

([2017 Wis. Act 59](#), amend sec. 71.05(6)(b)28.(intro.), effective September 23, 2017)

For purposes of the subtraction for tuition expenses and mandatory student fees, the tuition must have been paid for the student to attend certain universities, colleges, technical colleges or schools approved by the Educational Approval Board.

The reference to the Educational Approval Board (sec. 38.50, Wis. Stats.) is deleted and replaced with a reference to the Department of Safety and Professional Services (sec. 440.52, Wis. Stats.)

## 11. Statutory Reference for Postsecondary Education Credit Revised

([2017 Wis. Act 59](#), amend sec. 71.07(5r)(a)2. and 6.b., effective September 23, 2017)

The reference to the Educational Approval Board (sec. 38.50, Wis. Stats.) is deleted and replaced with a reference to the Department of Safety and Professional Services (sec. 440.52, Wis. Stats.)

**Note:** The postsecondary education credit may not be claimed for taxable years beginning after December 31, 2013.

## 12. Standard Deduction for Itemized Deduction Credit

([2017 Wis. Act 59](#), amend sec. 71.07(5)(b), effective for taxable years beginning on or after January 1, 2017)

Prior law provided that the standard deduction be limited by the ratio of Wisconsin adjusted gross income to federal adjusted gross income when computing the itemized deduction credit for nonresidents and part-year residents on Form 1NPR. This limitation is removed and the full amount of standard deduction based on federal adjusted gross income is subtracted from the total allowable itemized deductions.

## 13. Qualified Production Activities Income for Manufacturing and Agriculture Credit

([2017 Wis. Act 59](#), create sec. 71.07(5n)(d)3., effective for taxable years beginning on or after January 1, 2017)

The amount of the eligible qualified production activities income that may be claimed in computing the manufacturing and agriculture credit is reduced by the amount of the qualified production activities income taxed by another state upon which a credit for taxes paid to the other state under sec. 71.07(7), Wis. Stats., is claimed.

## 14. Credit for Tax Paid to Other States

([2017 Wis. Act 59](#), renumber sec. 71.07(7)(a) to 71.07(a)(intro.) and amend as renumbered, amend sec. 71.07(7)(b), and create sec. 71.07(7)(a)1. and (c) and (d), effective for taxable years beginning on January 1, 2017)

"Net Wisconsin income tax" means the gross Wisconsin income tax less all nonrefundable credits that may be claimed by that taxpayer, except the credit for taxes paid to other states.

The credit may not exceed an amount determined by multiplying the taxpayer's net Wisconsin income tax by a ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the taxpayer's Wisconsin adjusted gross income. The credit is equal to the smaller of the tax paid to the other state or the amount calculated above.

The limitation does not apply to income that is taxed by one of the four states that border Wisconsin (Minnesota, Illinois, Iowa, and Michigan.)

## 15. Alternative Minimum Tax Eliminated

([2017 Wis. Act 59](#), amend secs. 71.07(2dy)(b) and (d)2., (3q)(b)(intro.) and (d)2., (3s)(b), (3t)(b), (4k)(b)4.a., 5.a., and 6.a., (5b)(b)1., (5d)(b)(intro.), (5n)(b)(intro.), (9m)(a)2m., and 3. and (h), and (9r)(a), 71.09(1)(b), (2), and (11)(b), 71.10(4)(f), 71.28(6)(h), 71.47(6)(h), 71.613(2)(intro.), and 73.03(71)(b) and (c) and create sec. 71.08(5), effective for taxable years beginning on or after January 1, 2019)

The alternative minimum tax is eliminated for taxable years beginning on or after January 1, 2019.

## 16. Repayment of Supplement to Federal Historic Rehabilitation Credit

([2017 Wis. Act 59](#), create sec 71.07(9m)(i), various effective dates)

See Item B.7.

## 17. Research Credit – 10% Refundable

([2017 Wis. Act 59](#), renumber sec. 71.07 (4k)(e) to 71.07(4k)(e)1. and amend as renumbered, amend sec. 71.10(4)(fr) and (i), and create sec. 71.07(4k)(e)2., effective for taxable years beginning on or after January 1, 2018)

See Item B.8.

## 18. Homestead Credit Limited

([2017 Wis. Act 59](#), amend sec. 71.52(6), and create secs. 71.52(1d), (1e), and (1m), 71.54(1)(g)4., 5., 6., and 7, and 71.55(10), various effective dates)

This Act makes various changes to the homestead credit for 2017 claims filed in 2018 and thereafter and for taxable years beginning on or after January 1, 2018.

### **If the claimant or spouse, if married, is 62 or over or disabled**

To be eligible to claim the homestead credit, the claimant or the claimant's spouse, if married, must be age 62 or over or the claimant must be disabled. If the claimant is not age 62 or over or disabled, see "If the claimant and spouse, if married, are under age 62 and not disabled" that follows.

With regard to a claimant who is disabled, the claimant must provide with the claim proof that his or her disability is in effect for the taxable year to which the claim relates. Proof of disability may be demonstrated by any of the following:

- A statement from the Veteran's Administration certifying that the claimant is receiving a disability benefit due to 100 percent disability.
- A document, or copy of a document, from the Social Security Administration stating the date the disability began.
- A statement from a physician stating the beginning date of the disability and whether the disability is permanent or temporary. "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the Wisconsin medical examining board and holding a license granted by the medical examining board.

"Disabled" means an individual who is unable to engage in any substantial gainful employment by reason of a medically determinable physical or mental impairment which has lasted or is reasonably expected to last for a continuous period of not less than 12 months.

### **If the claimant and spouse, if married, are under age 62 and not disabled**

No credit is allowed if the claimant had no earned income in the taxable year to which the claim relates.

## All claimants

For taxable years beginning on or after January 1, 2018, the amount of disqualified losses must be included in household income. "Disqualified losses" means the sum of the following amounts, exclusive of net gains from the sale or exchange of capital or business assets and exclusive of net profits:

- Net loss from sole proprietorships
- Net capital loss
- Net loss from sales of business property, excluding loss from involuntary conversions
- Net loss from rental real estate, royalties, partnerships, tax-option (S) corporations, trusts, estates, and real estate mortgage investment conduits
- Net farm loss

**Exception:** The addition to income does not apply to a claimant who is a farmer and whose primary income is from farming, and the farming generates less than \$250,000 in gross receipts from the operation of the farm premises in the year to which the claim relates.

"Farmer" means any person engaged in farming.

"Farming" means the operation of farm premises owned or rented by the operator.

"Farm premises" means areas used for operations, but does not include other areas, greenhouses or similar structures unless used principally for the production of food and farm plants.

Operation of farm premises includes:

- Planting and cultivating of the soil
- Raising and harvesting of agricultural, horticultural or arboricultural crops
- Raising, breeding, tending, training and management of livestock, bees, poultry, fur-bearing animals, wildlife or aquatic life, or their products
- Processing, drying, packing, packaging, freezing, grading, storing, delivering to storage, to market or to a carrier for transportation to market, distributing directly to consumers or marketing any of the above-named commodities, substantially all of which have been planted or produced thereon
- Clearing of such premises and the salvaging of timber and management and use of wood lots thereon, but not including logging, lumbering or wood cutting operations unless conducted as an accessory to other farming operations
- Managing, conserving, improving and maintaining of such premises or the tools, equipment and improvements thereon and the exchange of labor, services or the exchange of use of equipment with other farmers in pursuing such activities

The operation for not to exceed 30 days during any calendar year, by any person deriving the person's principal income from farming, of farm machinery in performing farming services for other farmers for a consideration other than exchange of labor is deemed farming. Operation of such premises is deemed to include also any other activities commonly considered to be farming whether conducted on or off such premises by the farm operator.

## 19. Enterprise Zone Jobs Credit Expanded

([2017 Wis. Act 58](#), create sec. 71.07(3w)(bm)5., effective September 20, 2017)

See Item B.12.

## 20. Electronics and Information Technology Manufacturing Zone Credit

([2017 Wis. Act 58](#), amend secs. 71.05(6)(a)15., 71.08(1)(intro.), and 71.10(4)(i), and create sec. 71.07(3wm), effective September 20, 2017)

([2017 Wis. Act 59](#), renumber sec. 71.07(3wm)(c)1. and 2. to 71.07(3wm)(c), and 71.07(3wm)(d)1. and 2. to 71.07(3wm)(d), and amend as renumbered, and renumber sec. 71.07(3wm)(a)6. to 71.07(3wm)(a)4., 71.07(3wm)(a)7. to 71.07(3wm)(a)5., and 71.07(3wm)(a)8. to 71.07(3wm)(a)6., and amend sec. 71.07(3wm)(bm), effective September 23, 2017)

See Item B.13.

## 21. No Interest Paid on Certain Refundable Credits Administered By the Wisconsin Economic Development Corporation (WEDC)

([2017 Wis. Act 59](#), renumber sec. 71.07(3w)(c)1. to 71.07(3w)(c)1.a. and 71.07(3y)(d)2. to 71.07(3y)(d)2.a. and amend as renumbered, and amend sec. 71.07(3q)(d)2., effective for refunds paid on or after September 23, 2017)

See Item B.14.

## 22. Reallocation of Early Stage Seed and Angel Investment Credits Removed

([2017 Wis. Act 59](#), amend sec. 71.07(5b)(d)3. and (5d)(d)1., effective September 23, 2017)

The Wisconsin Economic Development Corporation cannot reallocate the early stage seed investment and angel investment credits in any calendar year that are unused in that calendar year.

## 23. Certain Refundable Wisconsin Economic Development Credits Included in Income

([2017 Wis. Act 59](#), create sec. 71.26(3)(cf), for taxable years beginning on or after January 1, 2017)

Section 118(a), IRC is modified so that the amount of income and franchise tax credits listed below that are not included in federal taxable income are included in federal taxable income for Wisconsin purposes:

- Jobs tax credit
- Enterprise zone jobs credit
- Electronics and information technology manufacturing zone credit
- Business development credit

## 24. Revoked Wisconsin Economic Development Credits

([2017 Wis. Act 59](#), create sec. 71.77(2n), effective September 23, 2017)

When a taxable year is otherwise closed to assessment, the department may make an assessment to recover a tax credit within one year of receiving notice of revocation from the Wisconsin Economic Development Corporation.

## 25. Tax-Exempt Bonds

([2017 Wis. Act 59](#), create sec. 71.05(1)(c)13., effective for taxable years beginning on January 1, 2018)

Interest received on bonds or notes issued by an entity described under, or an entity, whose bonds are issued under, secs. 66.1201, 66.1333, or 66.1335, Wis. Stats., are exempt from Wisconsin income tax.

## 26. Qualified Wisconsin Business Registration

([2017 Wis. Act 59](#), amend sec. 73.03(69)(b)1., effective September 23, 2017)

For purposes of registering as a qualified Wisconsin business, an employee of a professional employer organization or a professional employer group who is performing services for a client is considered an employee solely of the client.

## ***B. Corporation Franchise and Income Taxes***

### 1. Internal Revenue Code References Updated for 2017 for Corporations, Nonprofit Organizations, Regulated Entities Tax-Option (S) Corporations, and Insurance Companies

([2017 Wis. Act 59](#), repeal secs. 71.22(4)(b) and (4m)(b), 71.26(2)(b)2., 71.34(1g)(b), and 71.42(2)(b), and create secs. 71.22(4)(j)3.i., j., k., and L. and (k), and (4m)(j)3.i., j., k., L. and (k), 71.26(2)(b)11., 71.34(1g)(j)3.i., j., k., L., and (k), and 71.42(2)(j)3.i., j., k., L., and (k), effective for taxable years beginning on or after January 1, 2017)

Certain provisions of federal laws that affect the definition of the Internal Revenue Code are adopted for Wisconsin income and franchise tax purposes for taxable years that begin on or after January 1, 2017. See Item A.1.

### 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes

([2017 Wis. Act 59](#), amend secs. 71.22(4)(j)1., and (4m)(j)1., 71.26(2)(b)10a. and d., 71.34(1g)(j)1., and 71.42(2)(j)1., and create secs. 71.22(4)(j)3.i., j., k., and L., and (4m)(j)3.i., j., k., and L., 71.34(1g)(j)3.i., j., k., and L., and 71.42(2)(j)3.i., j., k., and L., effective for taxable years beginning before January 1, 2017)

See Item A.2.

## 3. Sourcing of Services

([2017 Wis. Act 59](#), amend sec. 71.25(9)(dh)2.b., c., and 3., effective for taxable years beginning on or after January 1, 2017)

For purposes of the sales factor, gross receipts from services are in Wisconsin if the purchaser of the service received the benefit of the service in Wisconsin. Two of the provisions relating to when the benefit of the service is received in Wisconsin are revised.

The benefit of the service is received in Wisconsin if:

- The service relates to tangible personal property that is delivered directly or indirectly to customers in Wisconsin.
- The service is purchased by an individual who is physically present in this state at the time that the service is received.

## 4. Broadcaster's Gross Receipts

([2017 Wis. Act 59](#), renumber sec. 71.25(9)(dj)(intro.) to 71.25(9)(dj)1.(intro.), and 71.25(9)(dj)1. to 71.25(9)(dj)1.a. and amend as renumbered, renumber sec. 71.25(9)(dj)2. to 71.25(9)(dj)1.b. and 71.25(9)(dj)3. to 71.25(9)(dj)1.c., and create secs. 71.22(1e), 71.25(9)(dh)4., 71.25(9)(dj)2m., and 71.25(9)(g), various effective dates)

### **Effective September 23, 2017**

"Broadcaster" means a television or radio station licensed by the federal communications commission, a television or radio broadcast network, a cable television network, or a television distribution company. "Broadcaster" does not include a cable service provider, a direct broadcast satellite system, or an Internet content distributor.

### **For taxable years beginning after December 31, 2018**

A broadcaster's gross receipts from advertising are in this state only if the advertiser's commercial domicile is in this state. With regard to a broadcaster who is a member of a combined group, the above does not apply to the gross receipts of the members who are not broadcasters.

A broadcaster's gross royalties and other gross receipts received for the use or license of intangible property are sales in this state only if the commercial domicile of the purchaser or licensee is in Wisconsin and the purchaser or licensee has a direct connection or relationship with the broadcaster pursuant to a contract under which the royalties or receipts are derived. With regard to a broadcaster who is a member of a combined group, the above does not apply to the gross royalties and receipts of the members who are not broadcasters.

The amount of a broadcaster's gross receipts from advertising and the use or license of intangible property shall be adjusted as follows:

- a. Determine the amount of the numerator of the sales factor for a broadcaster as provided in the paragraphs above.
- b. Multiply .01 by the total amount of the domestic gross receipts of the broadcaster from advertising and royalties and other gross receipts for the use or license of intangible property.
- c. Determine the numerator of the sales factor for a broadcaster by substituting the amount

determined under paragraph b for the total amount determined under paragraph a.

- d. Except as provided in paragraph e, if the amount of the numerator determined under paragraph c is more than the amount determined under paragraph a, substitute the amount of total gross receipts determined under paragraph b for the total amount of gross receipts determined under paragraph a. For purposes of this paragraph, the amount of the numerator for a broadcaster is the amount determined under paragraph c.
- e. If the amount of the numerator computed under paragraph c is more than 140% of the amount determined under paragraph a, adjust the total amount of the gross receipts under paragraph a so that the amount of the numerator for a broadcaster is 140% of the numerator otherwise determined under paragraph a.

## 5. Net Business Loss Statute of Limitations

([2017 Wis. Act 59](#), amend secs. 71.26(4)(a) and 71.45(4)(a), effective for losses claimed on or after September 23, 2017)

A net business loss may not be used to offset Wisconsin income unless the incurred loss was computed on a return that was filed within four years of the unextended due date for filing the original return for the taxable year in which the loss was incurred.

## 6. Statutory Reference for Postsecondary Education Credit Revised

([2017 Wis. Act 59](#), amend secs. 71.28(5r)(a)2. and 6.b., and 71.47(5r)(a)2. and 6.b., effective September 23, 2017)

See Item A.11.

## 7. Repayment of Supplement to Federal Historic Rehabilitation Credit

([2017 Wis. Act 59](#), create secs. 71.28(6)(i), 71.47(6)(i), and 238.17(3), various effective dates)

Effective September 23, 2017, if the same qualified rehabilitation expenditures are used to claim the federal rehabilitation tax credit and Wisconsin supplement to the federal historic rehabilitation tax credit, and the federal credit is required to be repaid, the Wisconsin credit must also be repaid.

The Wisconsin Economic Development Corporation (WEDC) may not certify a taxpayer for the credit unless the taxpayer is subject to tax under Chapter 71 of the Wisconsin Statutes; however, WEDC may certify a nonprofit entity under 501(c)(3) of the Internal Revenue Code (IRC) if the nonprofit intends to sell or transfer the credit. In addition, WEDC may certify a nonprofit entity not described under IRC 501(c)(3) if a proposal for certification is submitted to the Joint Committee on Finance for approval.

Beginning July 1, 2018, WEDC may not certify more than \$500,000 in tax credits per claimant for all projects occurring on the same parcel of land.

## 8. Research Credit – 10% Refundable

([2017 Wis. Act 59](#), amend secs. 71.30(3)(c) and (f), and 71.49(1)(c) and (f), and create secs. 71.28(4)(k) and 71.47(4)(k), effective for taxable years beginning on or after January 1, 2018)

The amount of the claim not used to offset the tax due, not to exceed 10% of the allowable amount of the claim, is a refundable credit. The remaining amount not used may be carried forward for 15 taxable



years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

## 9. Certain Refundable Tax Credits Intended to Become Part of Working Capital

([2017 Wis. Act 59](#), create sec. 238.28, effective September 23, 2017)

It is the legislature's intent that the following credits become a permanent part of the working capital structure of business claiming the credits:

- Jobs tax credit
- Enterprise zone jobs credit
- Electronics and information technology manufacturing zone credit
- Business development credit

## 10. Business Development Credit Amended

([2017 Wis. Act 59](#), amend sec. 71.26(2)(a)4., effective September 23, 2017)

The amount of credit computed and not passed through by a partnership, limited liability company, or tax-option (S) corporation is included in income.

## 11. Maximum Amount of Business Development Credit Increased

([2017 Wis. Act 59](#), amend sec. 238.308(4)(b), effective September 23, 2017)

The Wisconsin Economic Development Corporation may allocate up to \$22 million in tax benefits each year (previously \$17 million). Unused allocations may be carried forward and awarded in the next year.

## 12. Enterprise Zone Jobs Credit Expanded

([2017 Wis. Act 58](#), create sec. 71.28(3w)(bm)5., effective September 20, 2017)

An additional credit is allowed if a claimant has retained the minimum number of full-time employees and maintained average zone payroll for the taxable year equal to or greater than the base year. The amount of the credit is a percentage, as determined by WEDC, of the claimant's zone payroll paid in the 12 months prior to the certification date to the claimant's full-time employees in the enterprise zone. The full-time employee's annual wages must be greater than the amount determined by multiplying 2,080 by 150% of the federal minimum wage in a tier I county or municipality or greater than \$30,000 in a tier II county or municipality. The maximum amount claimed by a claimant for a taxable year shall not exceed \$2,000,000 and may not be claimed for more than five consecutive taxable years.

## 13. Electronics and Information Technology Manufacturing Zone Credit

([2017 Wis. Act 58](#), amend secs. 71.21(4)(a), 71.26(2)(a)4., 71.30(3)(f), and 71.34(1k)(g), and create sec. 71.28(3wm), effective September 20, 2017)

([2017 Wis. Act 59](#), renumber sec. 71.28(3wm)(c)1. and 2. to 71.28(3wm)(c), and 71.28(3wm)(d)1. and 2. to 71.28(3wm)(d), and amend as renumbered, and renumber sec. 71.28(3wm)(a)6. to 71.28(3wm)(a)4., 71.28(3wm)(a)7. to 71.28(3wm)(a)5., and 71.28(3wm)(a)8. to 71.28(3wm)(a)6., and amend sec. 71.28(3wm)(bm), effective September 23, 2017)

A new refundable credit, electronics and information technology manufacturing zone credit, is available. A claimant may claim as a credit an amount calculated as follows:

- a. Determine the zone payroll for the taxable year for full-time employees employed by the claimant.
- b. Multiply the amount determined above by 17%.

An additional credit may be allowed for up to 15% of the claimants significant capital expenditures in the zone in the taxable year.

"Zone payroll" is defined as the amount of state payroll that is attributable to wages paid by the claimant to full-time employees for services that are performed in a zone designated under sec. 238.396 (1m), Wis. Stats., or that are performed outside the zone, but within the state, and for the benefit of the operations within the zone. Zone payroll does not include the amount of wages paid to any full-time employees that exceeds \$100,000.

"Full-time employee" means an individual who is employed in a job for which the annual pay is at least \$30,000 and who is offered retirement, health, and other benefits that are equivalent to retirement, health, and other benefits offered to an individual who is required to work at least 2,080 hours per year.

In order to claim either of these credits, the person must be certified by WEDC. A copy of this certification for tax benefits must be included with the claimant's Wisconsin income tax return. The amount of the credit computed must be added to the claimant's income in the year the credit is computed. No interest is paid on any refunds.

Partnerships, limited liability companies, and tax-option (S) corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts described above. A partnership, limited liability company, or tax-option (S) corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option (S) corporations may claim the credit in proportion to their ownership interests.

The department has full power to administer the credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes imposed. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest and penalties apply to this credit.

The credit must be claimed within four years of the unextended due date on which the tax return was due.

### 14. No Interest Paid on Certain Refundable Credits Administered By the Wisconsin Economic Development Corporation (WEDC)

[\(2017 Wis. Act 59](#), amend secs. 71.28(3q)(d)2., (3w)(c), (3y)(d)2., and 71.47(3q)(d)2., (3w)(c)1., (3y)(d)2., and create 71.28(3wm), effective for refunds paid on or after September 23, 2017)

No interest is paid on overpayments of the following credits:

- Jobs tax credit
- Enterprise zone jobs credit
- Electronics and information technology manufacturing zone credit
- Business development credit

## 15. Reallocation of Early Stage Seed Credit Removed

([2017 Wis. Act 59](#), amend secs. 71.28(5b)(d)3. and 71.47(5b)(d)3., effective September 23, 2017)

See Item A.22.

### C. Sales and Use Tax

#### 1. Sales and Use Tax Exemption Created for Materials, Supplies, Equipment, and Landscaping Services Used to Build a Facility in an Electronics and Information Technology Manufacturing Zone

([2017 Wis. Act 58](#), create sec. 77.54(65), effective September 20, 2017)

A sales and use tax exemption is created for the sale of building materials, supplies, equipment, and landscaping services to; and the storage, use, or other consumption of the same property and services by; owners, lessees, contractors, subcontractors, or builders if that property or service is acquired solely for, or used solely in, the construction or development of a facility in an electronics and information technology manufacturing zone.

In order for the exemption to apply, the zone must be designated as an electronics and information technology manufacturing zone under sec. 238.396(1m), Wis. Stats. An additional requirement is that the capital expenditures for the construction or development of such facilities must be eligible to be claimed as a credit under sec. 71.07(3wm)(bm) or sec. 71.28(3wm)(bm), Wis. Stats., as certified by Wisconsin Economic Development Corporation.

#### 2. County Tax Revenues Exception

([2017 Wis. Act 58](#), amend sec. 77.70 and create sec. 66.0621(3m), effective September 20, 2017)

County sales and use taxes may only be used for the purpose of directly reducing the property tax levy.

**Exception:** A county in which an electronics and information technology manufacturing zone under sec. 238.396(1m), Wis. Stats., exists may issue bonds whose principal and interest are paid only through the county sales and use tax revenues. The county may not repeal or obstruct the collection of the tax until all payments of principal and interest have been made or are provided for.

#### 3. Effective Date Postponed for Private Label Credit Card Company Bad Debt Deductions

([2017 Wis. Act 59](#), amend sec. 6(1) of 2013 Wis. Act 229 so that the treatment takes effect retroactively to July 1, 2017, and first applies to bad debts resulting from sales completed on July 1, 2018)

[2013 Wis. Act 229](#) included provisions to allow a seller to claim a deduction on its sales and use tax return for the amount of any bad debt that the lender writes off as uncollectible in the lender's books and records. To claim the deduction for the lender's bad debt, the bad debt must be eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the lender is required to file a federal income tax return. A seller would also be allowed to compute the bad debt deduction using an estimate, if the department approves the method for computing the estimate.

The following changes were made in 2017 Wis. Act 59:

- The effective date of the bad debt provisions in 2013 Wis. Act 229 has been postponed to July 1, 2078.
- The bad debt provisions only apply to bad debts resulting from sales completed on July 1, 2078 and thereafter.

For sales completed prior to July 1, 2078, a seller is not allowed to claim a bad debt deduction for amounts that the lender writes off as uncollectible in its books and records.

## 4. Occasional Sales Exemption Expanded

([2017 Wis. Act 59](#), renumber sec. 77.51(9)(a) to 71.51(9)(a)1. and create sec. 77.51(9)(a)2., first applies to sales beginning January 1, 2018)

Current law exempts the occasional sale of taxable products and services from sales and use tax. "Occasional sales" are isolated and sporadic sales of taxable products and services where the infrequency, in relation to the other circumstances, support the inference that the seller is not pursuing a vocation, occupation, or business or partial vocation or occupation or part-time business as a vendor of taxable products or services (sec. 77.51(9), Wis. Stats.)

Beginning with sales made in 2018, the statutory definition of "occasional sales" presumes a seller is not pursuing a full- or part-time vocation, occupation, or business as a vendor of taxable products or taxable services if the seller's total taxable sales are less than \$2,000 during a calendar year.

Prior to January 1, 2018, the threshold provided by rule is \$1,000. If a seller holds or is required to hold a seller's permit, its sales do not qualify as exempt occasional sales (with an exception for persons who hold a seller's permit solely for bingo sales).

## 5. Internet Access Services No Longer Taxable As of July 1, 2020

([2017 Wis. Act 59](#), repeal secs. 77.52(2)(a)5.a. and 77.522(4)(h), effective July 1, 2020)

Charges for Internet access services are no longer subject to sales and use tax, beginning July 1, 2020.

For sales that occur prior to July 1, 2020, charges for Internet access services continue to be subject to sales and use tax when the customer's place of primary use is in Wisconsin. "Place of primary use" is defined in sec. 77.522(4)(a)9., Wis. Stats., to mean the residential street address or the primary business street address of the customer. For mobile telecommunications services, "place of primary use" means a street address within the licensed service area of the home service provider.

**CAUTION:** Taxable products and services purchased over the Internet continue to be subject to Wisconsin sales or use tax on and after July 1, 2020.

## 6. Exemptions for Beekeeping

([2017 Wis. Act 59](#), amend secs. 77.51(13)(o), and 77.54(3)(a), (3m)(intro.) and (L), (30)(a)3. and 5., and (33), and create secs. 77.51(1bm) and 77.54(3m)(hm), effective December 1, 2017)

The definition of "farming" is amended to include beekeeping.

"Beekeeping" means the business of moving, raising, producing, and other management of bees or bee products, regardless of the number of hives of bees managed.

Previously, "farming" was defined by rule to include raising of bees and producing honey products by a beekeeper of 50 or more hives.

## 7. Exemption for Farm-Raised Fish

([2017 Wis. Act 59](#), amend sec. 77.52(13) and create sec. 77.54(66), effective September 23, 2017)

Effective September 23, 2017, sales of farm-raised fish sold to either of the following are exempt from sales and use taxes:

- A fish farm that is registered with the Department of Agriculture, Trade and Consumer Protection (DATCP) under sec. 95.60(3m), Wis. Stats., or
- A person who holds a valid permit under sec. 29.736, Wis. Stats., for the stocking of fish.

"Farm-raised fish" is defined in sec. 95.001(1)(ah), Wis. Stats., to mean any fish egg that is present on a fish farm or any fish that is reared on a fish farm.

"Fish farm" is defined in sec. 95.001(1)(aj), Wis. Stats., to mean a facility at which a person hatches fish eggs or rears fish for the purpose of introduction into the waters of the state, human or animal consumption, permitting fishing, use as bait or fertilizer or any other purpose specified by the department by rule or for sale to another person to rear for one of those purposes.

## 8. Exemption for Prepared Food

([2017 Wis. Act 59](#), create sec. 77.54(20n)(d), effective September 23, 2017)

A sales and use tax exemption is created for sales of certain prepared food that is manufactured and sold by the same retailer at a different location from where the prepared food is manufactured. The exemption applies to prepared food that (1) is sold by the retailer in a frozen state without eating utensils (i.e., plates, bowls, knives, forks, spoons, glasses, cups, napkins, straws), or (2) consists of more than 50% yogurt.

The prepared food cannot be candy, a soft drink, or a dietary supplement to qualify for this exemption. In addition, the prepared food must be manufactured by the retailer at a building assessed as manufacturing property under sec. 70.995, Wis. Stats., or would be assessed as manufacturing if located outside Wisconsin. This exemption does not apply if the retailer makes any retail sales of prepared food at the building where the prepared food is manufactured.

## 9. Exemption for Video and Electronic Games Sold to Amusement Device Operators

([2017 Wis. Act 59](#), create sec. 77.54(65)(a)1. and (b), effective December 1, 2017)

Effective December 1, 2017, an exemption from sales and use tax is created for a video or electronic game sold in a tangible form to a person who provides a taxable service through an amusement device if the video or electronic game is used exclusively for the amusement device.

Current law, sec. 77.54(50), Wis. Stats., provides an exemption for sales and use taxes for specified digital goods and additional digital goods if the tangible form of the product is exempt. Therefore, a video or electronic game sold as a digital good that is transferred electronically to a person in the

business of providing a taxable service through an amusement device will also be exempt if the video or electronic game is used exclusively for the amusement device.

For purposes of this exemption, the video or electronic game is a separate sale from the amusement device through which the game is played if the sales price of the video or electronic game is separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

## 10. Exemption for Prizes from Amusement Devices

([2017 Wis. Act 59](#), create sec. 77.54(65)(a)2. and (b), effective December 1, 2017)

Effective December 1, 2017, a sales and use tax exemption is created for tangible personal property sold to a person who provides a taxable service through an amusement device if the property is used exclusively as a prize awarded or transferred through the use of the amusement device.

For sales prior to December 1, 2017, the amusement device operator may purchase prizes awarded to customers through the use of amusement devices without tax for resale.

**CAUTION:** The amusement device operator is the consumer of tangible personal property that is used to play the amusement devices but not awarded as a prize through the use of the amusement device. Therefore, the amusement device operator is required to pay Wisconsin sales or use tax on its purchase of such property (e.g., paper tickets dispensed from the amusement device and redeemed for prizes, tokens used to play the amusement device). This property is not included in this exemption and cannot be purchased without tax before or after December 1, 2017.

## 11. Exemption for Tournament and League Entry Fees Used As Prize Money

([2017 Wis. Act 59](#), create sec. 77.54(65)(a)3., effective December 1, 2017)

Effective December 1, 2017, a sales and use tax exemption is created for admission fees paid by participants to enter a tournament or league if the fees are advertised and set aside as prize money.

Currently, by rule, taxable receipts for tournament or league entry fees (i.e., admissions) may be reduced by the amount advertised and set aside for prize money. Therefore, the tax treatment is not changed as a result of this exemption.

## 12. Exemption Expanded for Construction Contracts

([2017 Wis. Act 59](#), renumber sec. 77.54(60)(a) to 77.54(60)(d)(intro.) and 77.54(60)(c) to 77.54(60)(c)(intro.) and amend as renumbered, amend secs. 77.51(2), 77.52(2)(a)10., (2m)(b), and 77.54(60)(b), and create secs. 77.51(12t) and 77.54(60)(bm), (c)2., (d)2., and 3., first applies to contracts entered into or extended, modified, or renewed on December 1, 2017)

The lump sum contract exemption for contractors has been expanded to include sales and purchases by subcontractors. Sales of products sold by contractors and subcontractors as part of a real property construction contract, which now includes time and materials contracts, are exempt from tax if the taxable products are less than 10% of the total contract price. The contractor or subcontractor is the consumer of the materials and must pay sales or use tax on its purchase of materials used. (See Exception, below.)

"Construction contract" means a contract to perform real property construction activities and to provide products.

"Prime contractor" means a contractor who enters into a construction contract with an owner or lessee of real property, except for leased property under sec. 77.52(1)(c), Wis. Stats., to perform real property construction activities on the real property.

"Subcontractor" means a contractor who enters into a construction contract with a prime contractor or another subcontractor.

**Exception:** If the construction contract is entered into with an entity that is exempt from tax under sec. 77.54(9a), Wis. Stats., the contractor may purchase without tax for resale the taxable products sold by the contractor as part of the construction contract with the exempt entity that are not consumed by the contractor in real property construction activities. The contractor is still the consumer of all taxable products used by the contractor in real property construction activities.

For contracts entered into prior to October 1, 2013, if the taxable products accounted for 10 percent or less of the total contract amount in a contract for real property construction activities AND no separate charge was made in any document provided to the customer for the taxable products, the tax was based on contractor's cost of the taxable products. If a separate charge was made in any document provided to the customer, including a contract, contract addendum, appendix, or payment request, for any of the taxable products or services, the separate charge was subject to tax.

For contracts entered into October 1, 2013 through November 30, 2017, the contractor is the consumer of the taxable products provided in a lump sum contract if the total sales price of the taxable products is less than 10 percent of the total sales price of the contract, regardless of whether the contractor separately itemizes the charges for taxable products in a schedule of values or similar document that is provided to its customer.

### 13. Expand List of Qualifying Exempt Entities for Building Materials Exemption

([2017 Wis. Act 59](#), amend sec. 77.54(9m), first applies to contracts entered into on July 1, 2018)

The building materials exemption for contracts with certain exempt entities is expanded to include technical colleges, any institution or campus in the University of Wisconsin System, and the University of Wisconsin-Extension as qualifying exempt entities.

Section 77.54(9m), Wis. Stats., provides a sales and use tax exemption for the sale of building materials sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the building materials to qualifying exempt entities, if the building materials become part of a facility in WI owned by the exempt entity. Refer to [Wisconsin Tax Bulletin 192](#) – January 2016, pages 19-21 for more information about this exemption.

For contracts entered into on July 1, 2018 and thereafter, a qualifying exempt entity will include:

- A technical college district
- The Board of Regents of the University of Wisconsin System
- An institution, as defined in sec. 36.05(9), Wis. Stats.
- A college campus, as defined in sec. 36.05(6m), Wis. Stats.
- The University of Wisconsin-Extension

Previously, this exemption did not apply to a public college, university or technical college, even if the entity held a Wisconsin Certificate of Exempt Status (CES) number.

## 14. Short-Term Lodging Marketplaces

([2017 Wis. Act 59](#), amend sec. 66.0615(1m)(a) and create sec. 66.0615(1)(bs), (de), (df), (di), (dk), and (5), effective September 23, 2017)

A lodging marketplace is required to register with the Department of Revenue for a license to collect taxes imposed by the state related to a short-term rental and to collect room taxes imposed by a municipality. After a lodging marketplace applies for and receives the license, it must do all of the following:

- Collect sales and use taxes from the occupant and forward to the Department of Revenue  
**Note:** The marketplace must also register with the department for a seller's permit
- Collect room taxes from the occupant and forward to municipality  
**Note:** The marketplace may need to register with the municipality for a permit
- Notify the owner that taxes have been collected

"Lodging marketplace" means an entity that provides a platform through which an unaffiliated 3<sup>rd</sup> party offers to rent a short-term rental to an occupant and collects the consideration for the rental from the occupant.

"Occupant" means a person who rents a short-term rental through a lodging marketplace.

"Short-term rental" means a residential dwelling that is offered for rent for a fee and for fewer than 29 consecutive days.

"Residential dwelling" means any building, structure, or part of the building or structure, that is used or intended to be used as a home, residence, or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others.

## 15. Off-Highway Motorcycles

([2017 Wis. Act 59](#), amend secs. 77.51(13)(am), 77.53(17), and (18), 77.54(7)(b)(intro), and 77.78, effective September 23, 2017)

The sales and use tax statutes were previously amended in [2015 Wis. Act 170](#) to apply to off-highway motorcycles in the same manner as they apply to similar registered vehicles. Some provisions were overlooked and are now amended for consistency.

- The definition of a retailer is amended to include persons who sell off-highway motorcycles.
- The exception from the occasional sales exemption is amended to include off-highway motorcycles and to allow nonresidents to claim the exemption for temporary use in or with a move to Wisconsin.

## 16. Exemption for Public Service Commission Surcharges Amended

([2017 Wis. Act 59](#), amend sec. 77.54(37), effective September 23, 2017)

The sales and use tax exemption for the surcharge established by the Public Service Commission under sec. 256.35(3m)(f), Wis. Stats., for customers of wireless providers is eliminated. This surcharge



was repealed in the Act, so the exemption is no longer needed. Revenues collected for countywide systems under sec. 256.35(3), Wis. Stats., continue to be exempt from sales and use taxes.

## 17. Statistical Sampling

([2017 Wis. Act 59](#), amend sec. 77.59(2) and create sec. 77.59(2g), effective March 1, 2018)

The department is required to promulgate rules to establish criteria for using statistical sampling methods during sales and use tax field audits. The criteria will specify all of the following:

- That any person with less than \$10,000,000 in annual sales during any year at issue during a field audit may choose to have the audit conducted using statistical sampling
- The number of transactions necessary to qualify for statistical sampling
- The maximum sample size

## D. Withholding

### 1. Filing Wage Statements and Information Returns

([2017 Wis. Act 59](#), amend secs. 71.65(2)(b), 71.70(1) and (2), and 71.72 and create sec. 71.715, effective for payments made on or after January 1, 2017)

An employer or other person required to file wage or information returns with the Department of Revenue must file such returns on or by January 31 following the year in which the following payments are made:

- Payments for all wages, as defined in ch. 71, subch. X, Wis. Stats., including wages not subject to withholding
- Payments for services performed in Wisconsin by an individual that are excluded from the definition of wages, in the amount of \$600 or more (under prior law due February 28)
- Payments by corporations to individuals for rents and royalties (under prior law due March 15)
- Payments by persons other than corporations deducting rents or royalties who pay royalties of \$600 or more to a resident of Wisconsin (under prior law due February 28)
- Payments by persons other than corporations deducting rents or royalties who pay rent of \$600 or more to an individual for property having a situs in Wisconsin (under prior law due February 28).

### 2. Extension Period for Filing Information Returns

([2017 Wis. Act 59](#), consolidate and renumber secs. 71.65(5)(a)(intro.), 1. and 2. to 71.65(5)(a) and 71.73(2)(intro), (a), (b), and (c) to 71.73(2), and amend as renumbered, effective for an extension applied for on or after September 23, 2017)

If a person applies for an extension and shows good cause why an extension should be granted, the department may grant a 30-day extension for filing a rent and royalty statement or statement of nonwage payment under ch. 71, subch. XI, Wis. Stats. Under prior law, a 60-day extension was available.

## 3. Electronic Filing of Wage Statements and Information Returns – Threshold Lowered

([2017 Wis. Act 59](#), amend sec. 71.80(20), effective for a statement or return required to be filed in 2018)

If a person is required to file 10 or more wage statements or 10 or more of any one type of information return with the department, the person must file the statements or the returns electronically, effective January 1, 2018. The prior electronic filing threshold was 50 or more statements or returns.

## 4. No Refund Issued to Employed Individual Before March 1 if Required Information Not Received

([2017 Wis. Act 59](#), create sec. 71.75(7m), effective September 23, 2017)

The department is prohibited from issuing a refund to an employed individual before March 1, unless both the individual and the individual's employer have filed all required returns and forms with the department for the taxable year for which the individual claims a refund.

## E. Excise Tax

### 1. Increase the Cigarette Tax Stamp Discount

([2017 Wis. Act 59](#), amend sec. 139.32(5), effective December 1, 2017)

The discount on cigarette tax stamp purchases by cigarette manufacturers, bonded direct marketers, and distributors is increased from 0.7% to 0.8%, effective December 1, 2017.

## F. Other

### 1. Notices to Disregarded Entities

([2017 Wis. Act 58](#), amend sec. 183.0304(1) and create sec. 73.0306, effective September 20, 2017)

If a single-owner entity is disregarded as a separate entity from its owner for federal income tax purposes under sec. 7701, IRC, it is also disregarded for Wisconsin income/franchise and sales/use tax purposes. The Act provides that a notice from the Department of Revenue to the owner or to the disregarded entity is considered a notice sent to both. Both are liable for any amounts due as specified in the notice. This treatment applies to all laws administered by the department.

### 2. Inconsistent Estate Basis Reporting Penalty

([2017 Wis. Act 59](#), create sec. 71.83(1)(cf), effective September 23, 2017)

If any portion of an underpayment of tax required to be shown on a Wisconsin return is the result of an inconsistent estate basis reporting, an amount equal to 20 percent of that portion of the underpayment must be added to the tax. Inconsistent estate basis reporting occurs if the property basis claimed on a Wisconsin return exceeds the property basis determined under sec. 1014(f), IRC, which provides that the basis must be consistent with the federal estate tax return.

The department must assess, levy, and collect the penalty in the same manner as it assesses, levies, and collects taxes.

### 3. Repeal Ambulatory Surgical Center Assessment

([2017 Wis. Act 59](#), repeal sec.146.98, effective September 23, 2017)

The department is no longer authorized to collect an assessment on the gross patient revenues of ambulatory surgical centers (ASCs) located in Wisconsin consistent with federal regulation of health care provider taxes. The department transferred 99.5% of the assessment to the medical assistance trust fund where it was used to generate additional federal matching funds for medical assistance.

## Income/Franchise Tax

### Due Date Change for Form PW-2 Filed By Partnerships and LLCs Taxed As Partnerships

Partnerships must file Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit*, with the department by the last day of the first month following the close of the partnership's taxable year. For a calendar year partnership, Form PW-2 is due January 31.

Previously, the due date was the last day of the second month following the close of the partnership's taxable year.

### Registration of Qualified Wisconsin Business for Wisconsin's Capital Gain Exclusion and Deferral Programs

#### ***Registration must occur each year***

A business must register in each year for which it desires to be a qualified Wisconsin business. Registration for 2017 must be completed by January 2, 2018.

A business may register as a qualified Wisconsin business if, in the business's tax year ending immediately before the date of registration, all of the following apply:

- The business has at least 2 full-time employees
- The amount of payroll compensation paid by the business in Wisconsin is at least 50% of all payroll compensation paid by the business
- The value of real and tangible personal property owned or rented and used by the business in Wisconsin is at least 50% of the value of all real and tangible personal property owned or rented and used by the business

For more information on registering to be a qualified Wisconsin business, refer to the [Common Questions](#) on the department's website.

#### ***Benefits of registering***

For Wisconsin income tax purposes, an individual may defer a long-term capital gain if the gain is reinvested in a qualified Wisconsin business. An individual may also exclude certain long-term capital gains from the sale of an investment in a qualified Wisconsin business. The exclusion applies if the business was a qualified Wisconsin business for the year of the investment and for at least two of the four subsequent years, the investment was made after December 31, 2010, and the investment was held for at least five uninterrupted years.

## Withholding

### **New Electronic Filing Requirement for Filing Wage Statements and Information Returns**

[2017 Wisconsin Act 59](#) provides that if an employer or other payer is required to file 10 or more wage statements or 10 or more of any one type of information return with the department, the employer or payer must file the statements or returns electronically. This provision first applies to a statement or return required to be filed in 2018.

For information on Wisconsin wage statement and information return requirements, including electronic filing options, see the following publications at [revenue.wi.gov](http://revenue.wi.gov):

- [Publication 117](#), *Guide to Wisconsin Wage Statements and Information Returns*
- [Publication 172](#), *Annual W-2, 1099-R, 1099-MISC & W-2G Electronic Reporting*

### **New Due Date for Filing Information Returns**

All wage statements and information returns required to be filed with the department by employers and other payers are due to the department by January 31 following the year in which the payments are made. This includes rent and royalty payments and nonwage payments made in 2017 as described in Wisconsin [Publication 117](#), *Guide to Wisconsin Wage Statements and Information Returns*.

### **Extension Period for Filing Information Returns**

If a person applies for an extension and shows good cause why an extension should be granted, the department may grant a 30-day extension for filing a rent and royalty statement or statement of nonwage payment under Ch. 71, Subchapter XI. Under prior law a 60-day extension was available.

## Sales/Use Tax

### **Brown and Calumet County Tax Adopted**

Beginning January 1, 2018, the 0.5% county sales and use tax is in effect in Brown County.

Beginning April 1, 2018, the 0.5% county sales and use tax is in effect in Calumet County. This brings the number of counties that have adopted the county tax to 66.

Information about which sales and purchases are subject to the county tax and transitional provisions that apply to Brown County and Calumet County sales can be found in Wisconsin [Publication 201](#), *Sales and Use Tax Information*.

### **Online Marketplace Seller Voluntary Disclosure Initiative**

Wisconsin participated in the Multistate Tax Commission's (MTC) [multi-state voluntary disclosure initiative program](#). Although applications could only be submitted to the MTC for this program from August 17, 2017 through October 17, 2017, qualifying persons may also participate in Wisconsin's voluntary disclosure program after October 17, 2017.

The program is open to persons who sell products through an online marketplace seller. To qualify for the program, all of the following requirements must be met:

- The person must sell tangible personal property and/or items under sec. 77.52(1)(b), Wis. Stats., or services related to such tangible personal property and/or items, through an online marketplace provider and have nexus in Wisconsin solely due to having inventory stored in a third-party warehouse or fulfillment center located in Wisconsin.
- The person must file returns and begin collecting sales and use taxes by December 1, 2017.
- Wisconsin sales/use tax returns must be filed and tax and interest paid back to January 1, 2015.
- Wisconsin income/franchise tax returns must be filed and tax and interest paid back to the first day of the fiscal year that includes January 1, 2015.

Additional information about the [Wisconsin Voluntary Disclosure Program](#) is available on the department's website.

### **Massage Therapy Services – New Fact Sheet**

A new fact sheet for persons providing massage therapy services has been posted to the department's website. [Massage Therapy Services \(Fact Sheet 2109\)](#), explains the taxability of sales and purchases made by massage therapists.

### **Purchases from Online Military Exchange Stores Are Exempt**

The Department of Defense announced that beginning on Veterans Day, November 11, 2017, honorably discharged veterans of the military are able to shop online at military exchanges. The military exchanges are operated by the federal government and their sales are exempt from Wisconsin sales or use tax. The purchaser is not liable for use tax on purchases of products from the federal government.

## Other

### ***My Tax Account – Update***

On September 11, 2017, the department changed its online tax account management platform. *My Tax Account* has a new responsive web design making it mobile-friendly, more intuitive, and easier to use. Although *My Tax Account* has a new appearance, account access and the tax filing process generally remains the same. We encourage users to log into their *My Tax Account* ahead of their filing deadline to familiarize themselves with the updated look.

Annual sales and use and withholding tax filers should consider attending one of our *My Tax Account* webinars in January. Information is available on our training page. *My Tax Account* videos on our website have also been updated for the new appearance and features.

### ***My Tax Account - Reactivation Requests***

Taxpayers may request to reactivate most business tax accounts through *My Tax Account*. Contact the department's customer service at (608) 266-2776, 7:45am-4:30pm CST M-F, for the following exceptions:

- Filing frequency change as part of reactivation
- Reactivating only some business locations with a Sellers Permit
- Change in ownership type (i.e., sole proprietorship to limited liability company)

## Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions.

### Excise Tax

**Motor fuel tax - urban mass transportation of passengers.** *Wisconsin Coach Lines, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 21, 2017).

The issue is whether Wisconsin Coach Lines, Inc. (WCL) is entitled to the diesel fuel exemption provided in sec. 78.01, Wis. Stats., for the urban mass transportation of passengers.

WCL's southeastern Wisconsin services involve the transportation by bus of passengers from Waukesha County to Milwaukee County, between various locations in Milwaukee County, from Milwaukee County to Racine County, from Racine County to Kenosha County, and from Kenosha County to Chicago area airports. The route is also run in reverse order. Passengers can purchase tickets for all or any part of the route.

WCL claimed the tax exemption for tax paid on diesel fuel used in providing the southeastern Wisconsin services for the urban mass transportation of passengers. WCL did not claim the exemption for tax paid on diesel fuel used in the transportation from the southern border of Racine County to Kenosha County or Kenosha County to Chicago, or the respective return transports. Upon audit, the Wisconsin Department of Revenue assessed tax on the fuel previously claimed as exempt and disallowed a motor fuel tax refund claim filed directly with the department.

An exemption exists for diesel fuel sold to a common motor carrier used in the operation of a motor vehicle for the urban mass transportation of passengers. Both parties agreed that WCL meets the definition of "common motor carrier" and that WCL meets the passenger capacity requirement to operate in the urban mass transportation of passengers. The dispute involves the application of the geographic requirements of the definition of "urban mass transportation of passengers" in sec. 71.38, Wis. Stats. The definition requires that the transportation must take place "within a county having a population of 500,000 or more or within such county and the counties contiguous thereto."

WCL argued that its transportation services fit squarely within the definition of "urban mass transportation of passengers." The department contended that the exemption did not apply, because the statute requires the transport of passengers to occur *entirely within* the geographic areas identified in the statute.

The Commission concluded that sec. 78.38, Wis. Stats., which WCL relied on in claiming the fuel tax exemption for transporting passengers in Milwaukee, Waukesha, and Racine counties is clear and precise. "Urban mass transportation of passengers" includes the transportation of passengers when such transportation "takes place...within a county having a population of 500,000 or more or within such county and the counties contiguous thereto..." WCL is entitled to the exemption it claimed under the clear language of the statute.

The department did not appeal this decision.



**Occupational tax imposed upon the selling of intoxicating liquor.** *Arty's, LLC vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 19, 2016, affirmed by the Circuit Court of Waupaca County, April 12, 2017).

The issue is the actual volume of a product containing alcohol that is subject to Wisconsin's occupational tax imposed on selling intoxicating liquor provided in sec. 139.03(2m), Wis. Stats.

Arty's is a permitted Wisconsin rectifier of intoxicating liquor. The rectifier purchases distilled spirits, mixing them with soda, water and flavoring ingredients to produce and bottle pre-mixed cocktails. Arty's contends that the liquor tax on each bottle could be collected only on the volume of distilled spirits in each bottle (1.2 ounces), rather than the full volume contained in each bottle (7 ounces). The department's position is that the entire amount of Arty's premixed alcohol beverage is subject to tax.

Section 139.03(2m), Wis. Stats., imposes an occupational tax of 85.86 cents per liter on "intoxicating liquor," defined in sec. 139.01(3), Wis. Stats., to include "...all ardent, spirituous, distilled or vinous liquors, liquids, or compounds, whether medicated proprietary, patented, or not, and by whatever name called, containing one-half of one percent or more alcohol by volume, which are fit for beverage purposes, but does not include fermented malt beverages..."

The Tax Appeals Commission (TAC) found that because the final product contained in the bottles sold by Arty's is an intoxicating liquor, the full volume of the bottle is subject to the liquor tax. The Circuit Court agreed with the decision of the TAC and affirmed its findings.

The taxpayer has appealed this decision.

### **Corporation Franchise and Income Tax**

**Allocation and apportionment – sales factor – licensing software to original equipment manufacturers (OEMs).** *Microsoft Corporation vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 10, 2017).

The issue is whether the royalties paid by OEMs located outside of Wisconsin to Microsoft are treated as Wisconsin sales for purposes of Microsoft's Wisconsin sales factor.

Microsoft develops, licenses, manufactures, and distributes computer software, and provides related services. Microsoft entered into licensing agreements with OEMs to install Microsoft products on computers that the OEMs resell, with the OEMs determining the computer configuration, software, and price. The OEMs assemble computer systems for sale to retailers and end users such as Dell and Hewlett Packard.

Microsoft entered into license agreements with the OEMs that grant them the authority to make a copy of Microsoft's software to preinstall on its computers, make a copy of the software to create recovery media for backup purposes, and distribute software that has been preinstalled on customer computers. Microsoft receives royalties from the OEMs based on one of two methods – per system basis and per copy basis. Under the per system basis, payments are calculated based on the number of computers the OEM assembles, regardless if Microsoft software is ever loaded on the computer. Under the per copy basis, Microsoft receives payments based on the number of software copies made, regardless if the computers are sold.

Once the OEMs assembled the computers, they are sold to end-users or retailers such as Best Buy. The OEMs are responsible for servicing and warranting the computers they sell. Microsoft's business

operations dealing with OEMs is primarily located in Redmond, Washington and Reno, Nevada. Microsoft does not have a significant physical presence in Wisconsin.

Pursuant to sec. 71.25(9)(df), Wis. Stats. (2007-08), the department issued an assessment to Microsoft for taxable years June 30, 2006 through June 30, 2009, to include OEM royalty payments in Wisconsin gross receipts when the end-user uses the software in Wisconsin. The department argued that royalty payments from the OEMs are considered in Wisconsin if the purchaser or licensee uses the software at a location in the state.

Microsoft argued that sec. 71.25(9)(df), Wis. Stats. (2007-08), does not apply because Microsoft's gross receipts from the royalty income are not from the use of computer software in Wisconsin since the royalties are generated from out-of-state OEMs.

The Tax Appeals Commission concluded that sec. 71.25(9)(df), Wis. Stats. (2007-08), does not apply to Microsoft because the royalties are from OEMs who do not use the software in Wisconsin. The OEMs are Microsoft's customers; the end users are not customers of Microsoft because they do not purchase software and licenses from them. The department erred when it looked past the OEMs to sub-licensees as the end users of the software. The Commission found that sec. 71.25(9)(d), Wis. Stats. (2007-08), applies and that the sales are Wisconsin sales if the income-producing activity is performed in the state. Microsoft licenses the software to the OEMs, which are all located outside Wisconsin, so none of the royalty payments from the OEMs are Wisconsin sales. In addition, Microsoft does not sell computers to the end-user, the OEMs do, so the OEM sales to customers in Wisconsin are not considered gross receipts of Microsoft. The Commission concluded by stating that Microsoft's receipts are not measured by the sales of its customers or its customers' customers.

The department has appealed this decision.