

8:15 – 9:20 a.m.

# Wisconsin Tax Update

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# Wisconsin Tax Update 2022 WICPA Tax Conference November 4, 2022

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## Overview

- Sales/Use Tax
- Income/Franchise Tax and Pass-Through Withholding
- Property Tax and Real Estate Transfer Fees
- Miscellaneous

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# Sales/Use Tax

Recent Laws, Cases, Other Guidance

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## Brown County Sales/Use Tax Ordinance - Upheld

- *Brown County v. Brown County Taxpayers Association* (Brown Co. Cir. Ct. March 24, 2020).
- Sales and use tax ordinance created 0.5% sales/use tax on sales/purchases in Brown County.
  - Wis. Stat. § 77.70 permits imposition of county sales/use taxes - only for the purpose of directly reducing the property tax levy.

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## Brown County Sales/Use Tax Ordinance - Upheld (cont'd)

- The ordinance mandated the tax be used only to reduce the property tax levy by funding nine specific capital projects.
- The Brown County Taxpayers Association argued the ordinance was void - because the property tax levy did not decrease by the sales/use tax raised.

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## Brown County Sales/Use Tax Ordinance - Upheld (cont'd)

- The Court held that a dollar-for-dollar reduction is a permissible interpretation of Wis. Stat. § 77.70.
  - The statute could also be interpreted to defray the cost of any budget item which can be funded by a countywide property tax.
- Motion for reconsideration.
- Appealed to the Court of Appeals - which certified to the Wisconsin Supreme Court.

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## Brown County Sales/Use Tax Ordinance - Upheld (cont'd)

- Wisconsin Supreme Court affirmed, upholding the ordinance and 0.5% county sales/use tax:
  - Found Wis. Stat. § 77.70 “broadly sets out what the goal of a of a county sales and use tax must be, i.e., direct reduction of the property tax levy.”
  - Leaves “the means to accomplish that purpose up to the county.”

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## Brown County Sales/Use Tax Ordinance - Upheld (cont'd)

- Brown County Finance Director stated:
  - If the County tax remained, property taxes on the median home value in the County would decrease by \$140.20 between 2018 and 2023.
  - If the County instead borrowed money, issuance of general debt obligations would cause taxes on same median property to increase by \$356.48.
  - Saves the median Brown County property owner \$496.68.

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## Trailer Type Vehicles - Do Qualify for Sales/Use Tax Exemption for “Truck Bodies”

- *William Becker v. Wisconsin Department of Revenue* (WTAC Dec. 29, 2020).
- **Wis. Stat. § 77.54. General Exemptions.** There are exempted from the taxes imposed by this subchapter:
  - (5)(a)4. Motor vehicles or **truck bodies** sold to persons who are not residents of this state and who will not use such motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such motor vehicles or trucks from this state.

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## Trailer Type Vehicles - Do Qualify for Sales/Use Tax Exemption for “Truck Bodies” (cont’d)

- **Wis. Admin. Code § Tax 11.83. Motor Vehicles.**
  - (4) PURCHASES BY NONRESIDENTS.
    - (a) The sales price for the sales of motor vehicles or **truck bodies** to nonresidents of Wisconsin, including members of the armed forces, who will not use the vehicles or trucks for which the truck bodies were made in Wisconsin other than their removal from Wisconsin is exempt. Truck bodies include semi-trailers. However, the separate sale of a “slide-in” camper to a nonresident is taxable if the sale is sourced to Wisconsin as provided in § 77.522.
- **Trailer type vehicles sold:**
  - Single Axle
  - Tandem Axle
  - Gooseneck

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## Trailer Type Vehicles - Do Qualify for Sales/Use Tax Exemption for “Truck Bodies” (cont’d)

- Prior case (*Dep’t of Revenue v. Trudell Trailer Sales, Inc.*, 104 Wis. 2d 39, 42, 310 N.W.2d 612 (1981)) held:
  - A semitrailer is built to and does carry the cargo. Without it or some other unit to carry the load, a tractor, which is the power unit, serves little or no purpose. When the two pieces of equipment are joined, the semitrailer is the “truck body,” and it fits that definition and purpose when constructed and sold. No basis exists for distinguishing that type of truck body from one with a self-contained motor.
- All trailers designed to haul cargo ≠ “truck bodies.”
- Must be a symbiotic relationship between (i) trailers sold and (ii) motor vehicles that power their movement.
- Here, automobiles and pickup trucks do not require “truck bodies.”
- **Wisconsin Tax Appeals Commission** concluded: trailers did not qualify for exemption.

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## Trailer Type Vehicles - Do Qualify for Sales/Use Tax Exemption for “Truck Bodies” (cont’d)

- Circuit Court (La Crosse County):
  - Reviewed whether semitrailer definition extends to other trailers that require the support of a motor vehicle to hold cargo.
  - Concluded trailers = exempt “truck bodies”
  - Reversed (decision dated June 27, 2022) the Wisconsin Tax Appeals Commission.
  - Appealed by the Wisconsin Department of Revenue to the Court of Appeals.

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## Lease Payments - Aircraft Maintenance Services / Parts Exemption -> Does Not Apply

- *Citation Partners, LLC v. Wisconsin Department of Revenue*, (WTAC Dec. 4, 2019).
- Citation Partners owns a Cessna Citation aircraft.
- 2013 Wis. Act 185 provided sales tax exemption for:
  - Parts used to modify or repair aircraft.
  - Aircraft maintenance services.

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## Lease Payments - Aircraft Maintenance Services / Parts Exemption -> Does Not Apply (cont'd)

- Wisconsin Tax Appeals Commission found:
  - Lessor was obligated to arrange for and pay all repair and maintenance.
  - Lease payments were not partial reimbursement for repair and maintenance parts or services.
  - Exemption did not apply -> lease payments = fully taxable.

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## Lease Payments - Aircraft Maintenance Services / Parts Exemption -> Does Not Apply (cont'd)

- Wisconsin Tax Appeals Commission did note that lessor's purchases of aircraft maintenance and repair services = exempt.
- Dodge County Circuit Court (Case No. 19-CV-612; August 20, 2020) - reversed in favor of the taxpayer.
  - Citation = agent of lessees.
  - Exemption applied, as it would apply to any direct purchaser of repairs, maintenance, or parts.

## Lease Payments - Aircraft Maintenance Services / Parts Exemption -> Does Not Apply (cont'd)

- Reversed by the Wisconsin Court of Appeals on November 23, 2021 (2020AP1683).
  - Lease payments subject to tax.
  - "Sales tax cannot be avoided by dividing up a lease price into categories or affixing labels."

## Lease Payments - Aircraft Maintenance Services / Parts Exemption -> Does Not Apply (cont'd)

- Plain language of the statute (Wis. Stat. § 77.52(2)(a)10) exempts “the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of any aircraft or aircraft parts . . . .”
- The plain language “does not exempt a lease from sales tax.”
- Exemptions are strictly construed.

## Wisconsin Tax Appeals Commission Website

- Found at ->  
<https://taxappeals.wi.gov/Pages/home.aspx>
- WTAC decisions dating back to 1984.
- Higher court outcomes.
- Common appeal issues.
- Filing appeals.

## Purchases of Go-Karts (and parts and maintenance supplies) - Do Not Qualify as Exempt Purchases for Resale

- *SPA Indoor Speedway, LLC v. Wisconsin Department of Revenue* (WTAC Jan. 24, 2022).
- Indoor racetrack with go-carts.
- SPA does not charge an admission fee to enter its building or racetrack.
- SPA collects rental amounts and sales tax from its customers.
- SPA sought declaratory ruling from the Wisconsin Department of Revenue that no sales tax was due on SPA's purchases of go-carts.

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## Purchases of Go-Karts (and parts and maintenance supplies) - Do Not Qualify as Exempt Purchases for Resale (cont'd)

- WDOR Declaratory Ruling = SPA is the end user of the go-carts (and, therefore, must pay tax on the go-cart purchases).
- Appealed to the Wisconsin Tax Appeals Commission.
  - Question = “whether the central activity being paid for by the customer is the rental of a go-cart or admission for access to the speedway racing experience, for which rental of a go-cart is incidental.”

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## Purchases of Go-Karts (and parts and maintenance supplies) - Do Not Qualify as Exempt Purchases for Resale (cont'd)

- SPA does not offer rentals to customers to take the go-carts offsite.
- SPA offers a racing experience = taxable service.
- The go-carts are incidental to the experience & SPA = end user.
- Label given to the charge: “go-cart rental fee” is not determinative.
- Taxing purchase and rental (even though involving the same items) is not double taxation.

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## Online Learning Plans and Internet Advertising Revenue - Taxable?

- Private Letter Ruling W2201001 (Oct. 13, 2021).
- Taxpayer provided:
  - Online learning platforms
    - Streaming video lessons = Taxable specified digital goods (digital audiovisual works).
      - Not taxable if transferred incidentally with an educational service.
        - ❖ Participant evaluated by an instructor or tutor
        - ❖ Participants connected to online tutor to explain grading while assessing homework assignments

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## Online Learning Plans and Internet Advertising Revenue - Taxable? (cont'd)

- Brief video lessons
  - Primary objective = nontaxable tutoring instructions.
- Taxable and nontaxable products
  - Taxable - Access to digital audio works, digital audiovisual works, digital books, online quizzes and customizable lesson slides by the teacher-subscriber (prewritten computer software).

## Online Learning Plans and Internet Advertising Revenue - Taxable? (cont'd)

- Nontaxable - Historical record of course completion, transcript, PDF copy of quiz questions, live tutoring sessions, student progress tracking, access to group learning activities
- Bundled transaction - if taxable products = 10% or more of sale price:
  - All taxable

## Online Learning Plans and Internet Advertising Revenue - Taxable? (cont'd)

- If can determine, by reasonable and verifiable standards using books and records portion of the sales price attributable to nontaxable products ->
  - Option to collect and remit sales tax on portion of sales price attributable to just taxable products

## Online Learning Plans and Internet Advertising Revenue - Taxable? (cont'd)

- Bundled transaction - if taxable products < 10% of sale price:
  - All nontaxable
- Taxpayer also provided online marketing services related to internet advertising management:
  - Nontaxable

## Nonprofit Organization Occasional Sale Exemption - Entertainment Threshold Increased

- 2021 Wis. Act 167 (effective June 1, 2022).
- Sales by nonprofit organizations are exempt if three standards are met:
  1. Nonprofit organization is not engaged in a trade or business.
    - Sales of otherwise taxable products occur on 75 days or less during calendar year; or
    - Sales of otherwise taxable products are \$50,000 or less per calendar year.

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## Nonprofit Organization Occasional Sale Exemption - Entertainment Threshold Increased (cont'd)

2. Entertainment is not involved at an event for which admissions are charged.
  - Prior law: Entertainment was not involved if the total amount paid to all entertainers was \$10,000 or less (including expense reimbursements).
  - Current law: Entertainment is not involved if the total amount paid to all entertainers is \$50,000 or less (including expense reimbursements).
3. Nonprofit organization does not have, and is not required to have, a seller's permit.

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## Certificate of Exempt Status - Modifications & New Numbers

- Exemption for purchases - Prior law (Wis. Stat. § 77.54(9a)(f)):  
Any corporation, community chest fund, foundation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under s. 613.80 (2), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member or corporation.
- Current law - Modified to include all organizations described under IRC § 501(c)(3).  
Any corporation, community chest, fund, or foundation that is exempt from federal income tax under section 501 (c) (3) of the Internal Revenue Code and has received a determination letter from the internal revenue service. The exemption under this paragraph applies to churches and religious organizations that meet the requirements of section 501 (c) (3) but are not required to apply for and obtain tax-exempt status from the internal revenue service.

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## Certificate of Exempt Status - Modifications & New Numbers (cont'd)

- Organizations must have 501(c)(3) determination letter.
  - Exception for churches and religious organizations
- Wisconsin Department of Revenue issued new 15-digit Certificate of Exempt Status (“CES”) numbers.
  - 6-digit CES numbers no longer acceptable - since July 1, 2022.
  - Record CES:
    - Bill of sale
    - Exemption certificate (Form S-211 or S-211E)

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## Certificate of Exempt Status - Modifications & New Numbers (cont'd)

- Out-of-state entities:
  - Still do not need CES number
- 2021 Wis. Act 1 (effective February 20, 2021).

## Premier Resort Area Tax - Village of Ephraim

- Effective January 1, 2022
- 0.5%

## Economic Nexus - Remote Sellers

- 2021 Wis. Act 1 (effective February 20, 2021).
- Prior Law:
  - Remote seller had to register and collect Wisconsin sales/use taxes if it had **200 or more** separate sales transactions into Wisconsin **OR exceeded \$100,000** in gross sales into Wisconsin in the remote seller's previous or current taxable year for federal income tax purposes.
- Current Law:
  - 200-transaction threshold eliminated.
  - Calendar year must be used to determine activity for the previous or current year.
  - Remote seller is only required to register and collect tax if its **gross sales into Wisconsin exceed \$100,000** in the previous or current **calendar** year.

## Reminder: Pandemic Nexus Relief Expired December 31, 2021

- No nexus for out-of-state businesses if only Wisconsin activity was having an employee work temporarily from the employee's home during the national emergency (COVID-19.)
- Sales/use tax nexus.
- Income/franchise tax nexus.

# Income/Franchise Tax Pass-Through Withholding

## Recent Laws & Cases

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## Income Taxable for Online Sales Platform

- *ASAP Cruises, Inc. v. Wisconsin Department of Revenue* (WTAC May 23, 2022).
- ASAP Cruises provides online platform through which independent travel agents book travel for their customers.
- Tax Years 2012-2017.

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## Income Taxable for Online Sales Platform (cont'd)

- Wisconsin Tax Appeals Commission concluded that:
  - ASAP Cruises sold travel services.
  - ASAP Cruises used the services of Independent Travel Consultants (who were paid commissions).
  - ASAP Cruises was doing business in Wisconsin.
  - Travel services are not tangible personal property.
  - Travel services are not protected by Public Law 86-272.

## Gambling Winnings Taxable

- *Julie Chier v. Wisconsin Department of Revenue* (WTAC March 23, 2022).
- Tax Years 2012-2017.
- Not a professional gambler -> Gambling losses not deductible.
  - No separate bank account.
  - Activity not tracked on computer spreadsheet.
  - No business plan.
  - Gambling activity not conducted in a professional manner.

## Gambling Winnings Taxable (cont'd)

- Wisconsin taxes gambling activity by “session.”
  - Wisconsin Department of Revenue used casino records.
  - Wisconsin Tax Appeals Commission found Taxpayer’s testimony and documentation not credible.
    - Taxpayer testified she never once left the casino with any winnings (i.e., gambled every session down to zero) - and she forgot or chose not to use her player’s card while losing money.
      - Testimony regarding crab leg dinners at the casinos.
    - Notes not contemporaneous with gambling activity?
    - Notes lacked time details as to the beginning and end of sessions.

## Pass-Through Withholding Filings Required - Based on Wisconsin Income

- *RADS Partnership et al. v. Wisconsin Department of Revenue* (WTAC Aug. 16, 2022).
- Watermark Wisconsin LP = California limited partnership with principal offices in California.
  - Invested in Watermark Montclair Wisconsin Hotels LLC - which invested in real estate in Wisconsin.
- Taxpayers (CA/DE limited partnerships, partnership, and trust with principal location in California) = limited partners in Watermark Wisconsin LP.
  - All partners of the partnerships and beneficiaries of the trust = California residents.

## Pass-Through Withholding Filings Required - Based on Wisconsin Income (cont'd)

- Mostly ordinary losses for tax years 2006-2013.
- Income (section 1231 gain) for 2013.
- Wisconsin Department of Revenue assessed:
  - Pass-through withholding tax (plus interest, underpayment interest, penalties, and late filing fees) for the pass-through entities.
  - Fiduciary tax (plus interest, penalties, and late filing fees) for the trust.

## Pass-Through Withholding Filings Required - Based on Wisconsin Income (cont'd)

- Wis. Stat. § 71.775(2)(a):

For the privilege of **doing business in this state** or **deriving income from property located in this state**, a **pass-through entity** that has **Wisconsin income** for the taxable year that is **allocable to a nonresident partner, member, shareholder, or beneficiary** shall pay a **withholding tax**.
- Wis. Stat. § 71.775(1)(b):

“Pass-through entity” means a **partnership**, a limited liability company, a tax-option corporation, an estate, or a **trust** that is treated as a pass-through entity for federal income tax purposes.

## Pass-Through Withholding Filings Required - Based on Wisconsin Income (cont'd)

- Wis. Stat. § 71.775(3):

### (3) EXEMPTIONS

- (a) A nonresident partner's, member's, shareholder's, or beneficiary's share of **income** from the pass-through entity that is attributable to this state shall not be included in determining the withholding under sub. (2) if any of the following applies:

\* \*

- 2. The partner's, member's, shareholder's, or beneficiary's share of **income** from the pass-through entity that is attributable to this state is less than \$1,000.

## Pass-Through Withholding Filings Required - Based on Wisconsin Income (cont'd)

- Wis. Stat. § 71.80(25):

(25) Net operating and business loss carry-forward and carry-back.

- (a) No offset of Wisconsin income may be made under s. 71.05(8)(b)1., 71.26(4)(a), or 71.45(4)(a) unless the incurred loss was computed on a return that was filed within 4 years of the unextended due date for filing the original return for the taxable year in which the loss was incurred.

## Pass-Through Withholding Filings Required - Based on Wisconsin Income (cont'd)

- Wisconsin Tax Appeals Commission concluded:
  - Income triggered pass-through withholding and obligation/trust (fiduciary tax) filing and payment obligation
  - Failure to submit required forms within 4 years of the unextended due date of the 2013 return (April 15, 2018) resulted in obligation to pay pass-through withholding/fiduciary tax.

## Pass-Through Withholding Required - For Software Licensed to Wisconsin Customers

- *MacKinney Systems, Inc. v. Wisconsin Department of Revenue* (WTAC Mar. 16, 2022).
- Taxpayer:
  - Subchapter S corporation
  - Shareholders = Nonresidents of Wisconsin
  - Employees = Residents of Missouri
  - Licensed computer software for use on mainframe computers to business end users (prewritten computer software).



## Pass-Through Withholding Required - For Software Licensed to Wisconsin Customers (cont'd)

- Wis. Stat. § 71.775(2)(a):

For the privilege of **doing business in this state** or **deriving income from property located in this state**, a **pass-through entity** that has **Wisconsin income** for the taxable year that is **allocable to a nonresident partner, member, shareholder, or beneficiary** shall pay a **withholding tax**.

- Wis. Stat. § 71.22(1r):

“Doing business in this state” includes, except as prohibited under P.L. 86-272 . . . regularly selling products or services of any kind or nature to customers in this state that receive the product or service in this state . . .

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## Pass-Through Withholding Required - For Software Licensed to Wisconsin Customers (cont'd)

- Wisconsin Tax Appeals Commission concluded:

- MacKinney = Pass-through entity with nonresidents shareholders.
- Licensed prewritten software and provided technical support, new releases, enhancements, and fixes to the software - received in Wisconsin = “doing business in this state.”
- MacKinney = Subject to pass-through withholding tax.

## Manufacturing Credit Calculation - Depreciation Recapture and 4797 Gain Not Includable

- *The Graphic Edge v. Wisconsin Department of Revenue* (WTAC Dec. 30, 2021).
- Taxpayer = commercial printing company.
- 2014 = manufacturer, including for purposes of the Manufacturing and Agriculture Credit.
- Sold/disposed of two pieces of printing equipment.
  - Subject to depreciation recapture.

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## Manufacturing Credit Calculation - Depreciation Recapture and 4797 Gain Not Includable (cont'd)

- Reported gain on Form 4797.
- Printing equipment had been purchased by Taxpayer and used in its business.
- Taxpayer claimed MAC in the amount of \$4,950.
- Notice of Office Amount Due -> WDOR disallowed MAC.
- Production Gross Receipts - Cost of Goods Sold - Direct Costs - Indirect Costs x production gross receipts factor = Qualified Production Activities Income.

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## Manufacturing Credit Calculation - Depreciation Recapture and 4797 Gain Not Includable (cont'd)

- Printing equipment was not manufactured by the taxpayer  $\neq$  Production Gross Receipts.
- Taxpayer alternatively treated as negative costs.
  - Not Cost of Goods Sold allocable to Production Gross Receipts.
- Not part of Taxpayer's Qualified Production Activities Income.
- No MAC.

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## Credits Includable in Apportionable Income

- *American Honda Motor Co., Inc. v. Wisconsin Department of Revenue* (WTAC Nov. 29, 2021).
- Taxpayer:
  - Distributes Honda products in the United States, including automobiles.
  - Earned credits for (i) fleets that are more fuel efficient than Corporate Average Fuel Economy standards (“CAFE Credits”) and (ii) fleets that are less polluting than applicable EPA Greenhouse Gas Emissions standards (“GHG Credits”).

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## Credits Includable in Apportionable Income (cont'd)

- CAFE Credits and GHG Credits could be:
  - Used to offset performance deficits in the future; or
  - Sold or traded to other automakers that did not meet the applicable CAFE or GHG standards.
- Some of the vehicles generating these CAFE Credits and GHG Credits were sold to dealers in Wisconsin, who in turn sold these vehicles within Wisconsin.
- Credit sale activity was conducted from California.

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## Credits Includable in Apportionable Income (cont'd)

- Issue: Were the Credits includable in Wisconsin apportionable income?
  - Wis. Stat. § 71.25(5) Corporations engaged in business both within and without the state.
    - (a) *Apportionable income*. . . . Income gain or loss from the sources listed in this paragraph is presumed apportionable as **unitary** or **operational income** or other **income that has a taxable presence in this state**.
- \* \* \*
3. Sale of scrap and by-products.
  9. Interest and dividends
  10. Sale of intangible assets if the operations of the company in which the investment was made were unitary with those of the investing company, or if those operations were not unitary but the investment activity from which that gain or loss was derived is an integral party of a unitary business . . . .

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## Credits Includable in Apportionable Income (cont'd)

- Wisconsin Tax Appeals Commission concluded:
  - Credits are not “scrap or by-products.”
  - Credits are not stocks, bonds, securities, corporate investments, dividends or interest.
  - Key = Whether the Credits are “unitary or operational income or other income that has a taxable presence in this state.”
  - Credit sales are conducted from California and none of the participants have sufficient ties to Wisconsin -> Income from Credit sales does not have taxable presence in Wisconsin.

## Credits Includable in Apportionable Income (cont'd)

- Wisconsin Tax Appeals Commission concluded:
  - As to operational v. investment function, key question is whether the asset “is an integral part of an enterprise.”
  - Taxpayer earned the Credits through its manufacture and distribution of fuel-efficient and low-polluting vehicles.
  - Credits are inextricably tied to, that is integral to, the automaking operations.
  - Income from sale of Credits = Operational income -> Apportionable.

## Credits Includable in Apportionable Income (cont'd)

- Wisconsin Tax Appeals Commission concluded:
  - As to unitary analysis, was the Credit income earned from “unrelated business activity” which constitutes a “discrete business enterprise?”
  - In other words, was the Credit income from activities unrelated to the manufacture and distribution of vehicles?
  - Credit income = Unitary income.

## Capital Loss Deduction - Increased

- 2021 Wis. Act 157.
- Current Law:
  - Capital loss deduction - not to exceed \$500/year.
  - Excess can be carried forward.
- New Law (effective for taxable years beginning after December 31, 2022):
  - Capital loss deduction increased to \$3,000/year (\$1,500 for married persons filing separately).
  - Also applies to partnerships and S corporations making the entity-level election.
  - Excess can be carried forward.

## Restaurant Revitalization Fund Grants/Expenses - Income/Franchise Tax Exemption/Deduction

- 2021 Wis. Act 156 (effective for taxable years beginning after December 31, 2020).
- Grants from the restaurant revitalization fund (under Section 5003 of the federal American Rescue Plan Act of 2021, Public Law 117-2):
  - Exempt from Wisconsin income/franchise tax.
- Amounts otherwise deductible that are paid (directly or indirectly) with the grant money:
  - Deductible even though grant money is not taxable.

## P.L. 86-272 - MTC Guidance, California, and Industry Trade Association Legal Action

- Multistate Tax Commission issued guidance on P.L. 86-272.
- California adopted MTC guidance, issuing TAM 2022-01, providing the following activities do not fall within the protections of P.L. 86-272:
  - A business has a website that invites viewers in California to apply for non-sales positions with the business, and enables viewers to fill out and submit an online application as well as upload a cover letter and resume;
  - A business regularly provides post-sale assistance to California customers via either electronic chat or email that customers initiate by clicking on an icon on the business's website;

## P.L. 86-272 - MTC Guidance, California, and Industry Trade Association Legal Action (cont'd)

- A business places Internet “cookies onto the computers or other electronic devices of California customers, which “cookies” gather customer search information that will be used to adjust production schedules and inventory amounts, develop new products, or identify new items to offer for sale;
- A business solicits and receives online applications for its branded credit card via the business’s website from California customers, and the issued card will generate interest income and fees for the business;
- A business remotely fixes or upgrades products previously purchased by California customers by transmitting code or other electronic instructions to those products via the Internet;

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## P.L. 86-272 - MTC Guidance, California, and Industry Trade Association Legal Action (cont'd)

- A business offers and sells extended warranty plans via its website to California customers who purchase the business’s products;
- A business contracts with a marketplace provider that facilitates the sale of the business’s products on the facilitator’s online marketplace, and the marketplace facilitator maintains inventory, including some of the business’s products, at fulfillment centers in various states where the business’s customers are located;
- A business contracts with California customers to stream videos and music to electronic devices for a charge;

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## P.L. 86-272 - MTC Guidance, California, and Industry Trade Association Legal Action (cont'd)

- A business's employee telecommutes on a regular basis from within California, performing business activities that do not solely consist of soliciting orders for tangible personal property or that are otherwise entirely ancillary to such solicitation.
- The American Catalog Mailers Association - filed legal action against the California FTB in San Francisco County Superior Court
  - Arguing TAM 2022-01 and Publication 1050 are invalid as (i) they contradict P.L. 86-272 and the U.S. Constitution and (ii) the FTB did not properly follow the required rulemaking process.
  - Alternatively seeks judicial declaration that guidance prospective.

## Property Tax and Real Estate Transfer Fees

Recent Laws, Cases, Other Guidance

## Action Against Board of Review Re: Excessive Assessment

- *Conway v. Frazer et al.*, 2021AP1788 (Ct. App. Apr. 12, 2022) (unpublished).
- 2020 property tax assessment - set by the Village of Fox Point at \$597,000 and affirmed by the Board of Review (in a 4-2 decision).
  - Found assessor's valuation to be correct, taxpayer did not overcome the presumption of correctness, comparables not sufficiently adjusted, and "some of the comps were not strong enough on either side to rely heavily on them."
- Taxpayer appealed to the Wisconsin Department of Revenue under Wis. Stat. § 70.85.
  - Assessment must be "radically out of proportion . . . ."

## Action Against Board of Review Re: Excessive Assessment (cont'd)

- After informal hearing, the Department of Revenue concluded:

"After review of this information, it is determined the appellant and appellant's representative applied better methodology to the sales comparison approach, having selected **sales with a more comparable location and view**. The comparable sales chosen by the appellant's representative were much more proximate to the subject and two of the comparable sales reflected similar commercial or high density residential/institutional views/location. The comparable sales chosen by the assessor were less proximate to the subject and none of the comparable sales reflected a high density residential/institutional view or location, similar to the subject."
- DOR reduced value to \$487,800.

## Action Against Board of Review Re: Excessive Assessment (cont'd)

- Taxpayer filed a small claims action in circuit - against the four Board of Review members who voted to sustain the assessment.

- Wis. Stat. § 70.502:

Any member of the board of review of any assessment district who shall intentionally fix the value of any property assessed in such district, or shall intentionally agree with any other member of such board to fix the value of any of such property at less or more than the true value thereof prescribed by law for the valuation of the same . . . or shall otherwise intentionally violate or fail to perform any duty imposed upon the member by law relating to the assessment of property for taxation, shall forfeit to the state not less than \$50 nor more than \$250.

- Wis. Stat. § 70.503:

If any assessor . . . Or any member of the board of review of any assessment district is guilty of any violation or omission of duty as specified in ss. 70.501 and 70.502, such persons shall be liable in damages to any person who may sustain loss or injury thereby, to the amount of such loss or injury; and any person sustaining such loss or injury shall be entitled to all of the remedies given by law in actions for damages for tortious or wrongful acts.

## Action Against Board of Review Re: Excessive Assessment (cont'd)

- Defendants filed motion to dismiss.
- The Circuit Court granted the motion:
  - Concluding there was no “reasonable interpretation of the facts under which [Conway could] recover” and that the taxpayer did not “plead any sort of intent to commit any sort of nefarious act.”
  - Noted that in communications the taxpayer presumed good faith on the part of the village officials and Board of Review.
  - Concluding governmental statutory immunity would apply.

## Action Against Board of Review Re: Excessive Assessment (cont'd)

- The Court of Appeals reversed:
  - Concluding “intentional conduct within Wis. Stat. § 70.502 does not require malice or scienter.”
  - Concluding the taxpayer set forth “a plain statement describing that the Board of Review members intentionally sustained an assessment of the Property that was above its true value.”
  - Concluding the taxpayer “sufficiently pleaded a cause of action and the circuit court erred to dismiss the action for failure to state a claim upon which relief may be granted.”
  - Concluding statutory governmental immunity did not apply.
  - Remanding for further proceedings as to the intent of the Defendants.

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## Primary Jurisdiction - Wisconsin Tax Appeals Commission First to Review?

- *Wisconsin Property Tax Consultants, Inc. and Wisconsin Manufacturers and Commerce, Inc. v. Wisconsin Department of Revenue*, 2022 WI 51.
- Wis. Stat. § 70.111(27) - Machinery, tools, and patterns exemption.
  - Wisconsin Department of Revenue (“WDOR”) interpretation.
  - Wisconsin Manufacturers and Commerce filed declaratory judgment action - seeking declaration that the WDOR’s interpretation is invalid.
  - Circuit Court dismissed - based on the primary jurisdiction doctrine - deferring to the Wisconsin Tax Appeals Commission’s expertise.
  - Court of Appeals affirmed.
  - Wisconsin Supreme Court reversed.

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## Late Property Tax Payments - Not Permitted for 2022

- 2022 - No legislation permitting late property tax payments.
- 2021 Wis. Act. 80
  - Payment by October 1, 2021 OR any installment date for which taxes are due after October 1, 2021.
  - Waiver of interest and penalties.
  - Refund claims can be maintained.

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## Property Tax Excessive Assessment Appeal - Trial Court Findings Insufficient

- *Mayfair Mall LLC v. City of Wauwatosa*, 2019AP1232 (Ct. App. May 18, 2021) (unpublished).
- 2013, 2014, and 2015 assessments.
- Trial court held the assessments were not excessive.
- Findings of trial court insufficient
  - Failed to provide and explain its bases for the findings.
  - Court did not make specific findings regarding the basis for the rents considered.
  - Trial court found City's experts to be more credible.
    - Did not explain why they were more credible.

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## Property Tax Excessive Assessment Appeal - Trial Court Findings Insufficient (cont'd)

- Deduction of capital expenditures.
- Court of Appeals reversed.
  - Remanded for further fact finding.
  - No appeal to the Wisconsin Supreme Court.
  - Different trial judge.

## Manufacturing, Tools, and Patterns Personal Property Exemption - Some MTP Owned/Use by Manufacturers May Qualify

- *Masters Gallery Foods, Inc. v. Wisconsin Department of Revenue* (WTAC Jan. 28, 2022).
- Machinery, tools and patterns (“MTP”) exemption (Wis. Stat. § 70.111(27)) does not apply to MTP “used in manufacturing.”
- WDOR interpretation - does not apply to MTP:
  - Owned by a manufacturer.
  - Located at a manufacturing facility.
  - Used in any way by a manufacturer for any purpose, including a non-manufacturing use.

## Manufacturing, Tools, and Patterns Personal Property Exemption - Some MTP Owned/Use by Manufacturers May Qualify (cont'd)

- Taxpayer interpretation: Legislature intended to exempt all MTP owned or used by manufacturers that did not qualify for the manufacturing exemption.
- Wisconsin Tax Appeals Commission decision - middle ground:
  - Manufacturers' MTP exempt if not used directly/indirectly or exclusively/non-exclusively in the manufacturing process.
  - Not every activity a manufacturer engages in is manufacturing: E.g., administrative activities, HR, marketing, and groundskeeping.

## Manufacturing, Tools, and Patterns Personal Property Exemption - Some MTP Owned/Use by Manufacturers May Qualify (cont'd)

- Not exempt MTP includes:
  - Maintenance equipment used in part to repair or maintain production equipment (b/c used indirectly in manufacturing).
- Exempt MTP includes:
  - Forklifts (and similar equipment) used to unload raw materials or take finished product from storage to vehicles for transport (b/c not used in the production process).
  - Lunchroom refrigerators and coffee makers

## Manufacturing, Tools, and Patterns Personal Property Exemption - Some MTP Owned/Use by Manufacturers May Qualify (cont'd)

- Copiers (e.g., in an HR office)
- Snowblowers, yard maintenance equipment, and similar equipment
- Fans which maintain temperature in the first place of storage of the finished goods
- Items used for general cleaning and maintenance of the plant
- Machinery tangentially related to the production process, such as equipment that sanitizes worker clothing, certain thermal imaging cameras (e.g., to detect overheating in the building electrical system), electric generators, and air sanitizing equipment.

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## Manufacturing, Tools, and Patterns Personal Property Exemption - Some MTP Owned/Use by Manufacturers May Qualify

- *Masters Gallery Foods, Inc. v. Wisconsin Department of Revenue* (Sheboygan Co. Cir. Ct. Sept. 21, 2022).
- Reversed Wisconsin Tax Appeals Commission.
- Machinery, tools and patterns exemption (Wis. Stat. § 70.111(27)) does not apply to manufacturers.
- Statute ambiguous?
- Reliance on legislative history
  - 2019 legislation (introduced).

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## Real Estate Transfer Fee Exemption - Not Applicable to Transfer from LLCs to Another LLC

- *Mequon Reserve, LLC v. Wisconsin Department of Revenue* (WTAC October 21, 2021).
- Property owned by five (5) LLCs:
  - Mequon Reserve Kennedy, LLC
  - Mequon Reserve L&P 2, LLC
  - Mequon Reserve County Seat, LLC
  - Mequon Reserve WAH, LLC
  - Mequon Reserve Dakota, LLC

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## Real Estate Transfer Fee Exemption - Not Applicable to Transfers from LLCs to Another LLC (cont'd)

- Property transferred to Mequon Reserve, LLC (via Quit Claim Deed):
  - Land and improvements valued at \$16,077,100.
- Wis. Stat. § 77.25(6m) exemption claimed - stating, “Other (Converting Entity).”
- Conversion - from one business entity to another:
  - Property held as tenants-in-common.
  - Not a business entity.

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## Real Estate Transfer Fee Exemption - Not Applicable to Transfers from LLCs to Another LLC (cont'd)

- Conversion exemption only available for specific conversions (do not include tenancies-in-common)
- No certificate of conversion was filed with the Wisconsin Department of Financial Institutions.
- Statutory conversion process was not followed.
- Grantor LLCs could have merged, but did not.
- Not exempt from the Wisconsin real estate transfer fee.

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## Real Estate Transfer Fee Exemption - Not Applicable to Transfers from LLCs to Another LLC (cont'd)

- Petitioner = Grantee (Mequon Reserve, LLC).
- Real Estate Transfer Fee: Imposed on the grantor, not the grantee.
- Petitioner not the aggrieved party -> lacked standing to challenge the real estate transfer fee assessment.

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## Property Tax Exemption for Municipal Property and Property of Certain Districts - Expanded

- 2021 Wis. Act 151 (effective for property tax assessments as of January 1, 2022).
- Property tax exemption - in Wis. Stat. § 70.11(2) - for:
  - Municipalities
  - Other jurisdictions, such as school districts, metropolitan sewerage districts, certain municipal water districts
  - Expanded to include a “**regional planning commission created under s. 66.0309**”

## Property Tax Exemption for Municipal Property and Property of Certain Districts - Expanded (cont'd)

- Limited to property that the commission owned prior to October 1, 2021.
- Or, if exempt property sold, applies to property purchased if the total size of all property owned by the commission is substantially similar to size of total property owned prior to October 1, 2021.
- Property owned in excess of size restriction = Taxable.

## Sale of Tax Delinquent Property - Distributions of Proceeds

- 2021 Wis. Act 216 (first applies to tax deeds acquired on April 2, 2022).
- Tax delinquent property:
  - County acquires by tax deed and sells.
  - County treasurer notifies former owner that may be entitled to a share of the proceeds of a future sale.
- Prior Law:
  - Former owner had to request payment - within 60 days and in writing.
  - Otherwise would forfeit all claim to the proceeds.
  - If payment requested, county would send to the former owner the proceeds minus (i) delinquent taxes, interest, and penalties and (ii) the greater of (a) \$500 plus 50% of net proceeds after actual costs or (b) 2% of sale price plus actual costs and property taxes.

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## Sale of Tax Delinquent Property - Distributions of Proceeds

- Current Law:
  - Owner not required to request payment.
  - Owner does forfeit rights to net proceeds if the county cannot locate the former owner within 5 years.
  - Proceeds due to former owner = minus actual costs plus delinquent taxes, interest, and penalties plus actual costs and property taxes that would have been owed on the property for the year during which the sale occurs.

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## Tax Incremental District - Town of Gibraltar

- 2021 Wis. Act 233.
- Allows Town of Gibraltar (Door County) to create a Tax Increment District.
  - District must terminated no later than September 30, 2032.
  - Developer's agreement must include a letter of credit guaranteeing repayment of the debt service on the project costs.

## Tax Incremental District No. 3 in City of Wisconsin Dells; Annual TID Reports

- 2021 Wis. Act 142.
- Tax Increment District No. 3 - in City of Wisconsin Dells.
  - Project cost expenditures can be made through January 3, 2031 (prior expenditure period ended May 2020).
  - Termination date = December 31, 2036 (prior mandatory termination date was 2045).

## Tax Incremental District No. 3 in City of Wisconsin Dells; Annual TID Reports (cont'd)

- Annual TID reports:
  - Required by municipalities.
  - Must include the value of new construction in the TID, less the value of improvements removed from the TID.
  - Analysis of the impact on property taxes and levy limits.
  - Changes effective January 1, 2023.

## Tax Incremental District No. 1 in Marathon City - Life / Tax Increment Allocation / Project Cost Expenditure Periods Extended

- 2021 Wis. Act 94.
- Tax Increment District No. 1 - in Marathon City.
  - Extended to 33 years after the district was created.
  - Project cost expenditures can be made through January 3, 2023.

## Miscellaneous

Recent Laws, Cases, Other Guidance

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## Video Gaming Machines - Gambling Machines (“Contraband”) Subject to Seizure

- *JD Prime Games Kiosk, et al. v. Wisconsin Department of Revenue*, 2022 WI App 6.
- June 2017 - Wisconsin Department of Revenue issued removal orders to establishments with machines considered to be gambling machines and therefore “contraband” subject to seizure.
- Circuit Court reversed, finding in favor of JD Prime.
- Court of Appeals reversed, finding in favor of the Wisconsin Department of Revenue.

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## Video Gaming Machines - Gambling Machines (“Contraband”) Subject to Seizure (cont’d)

- Video gaming machines:
  - Traditional slot themed symbols, such as bar, cherries, and sevens.
  - Players wager credits to play; if they win, the credits accumulate and can be redeemed for cash.
  - Have a “preview feature,” which allows patrons to “determine in advance the outcome of any particular game[.]”
    - Can determine if would be a winner before playing the game.

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## Video Gaming Machines - Gambling Machines (“Contraband”) Subject to Seizure (cont’d)

- “Gambling machine” =
  - “a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine.” Wis. Stat. § 945.01(3)(a).
- JD Prime asserted that due to the preview feature, there is no element of chance and therefore not = gambling machine.
  - Players do not need to utilize the preview feature -> outcome determined by chance.

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## Video Gaming Machines - Gambling Machines (“Contraband”) Subject to Seizure (cont’d)

- Players may “voluntarily take a loss” to continue playing.
- JD Prime admitted it obtains revenues.
  - Therefore, players are losing money in the aggregate.
- Unlike pinball machines and Pac Man- specifically excluded from the definition of “gambling machine” - which does not include:

“[a]ny amusement device if it rewards the player exclusively with one or more nonredeemable free replays for achieving certain scores and does not change the ratio or record the number of the free replays so awarded.”  
Wis. Stat. § 945.01(3)(b)2.

## Water Impact Fee - Found To Be Reasonably Related to Service

- *Greywolf Partners, Inc. v. Village of Windsor* (WTAC Aug. 16, 2022).
- Village of Windsor:
  - Issued Water Needs Assessment - to establish water impact fees for new storage tank and well facility.
  - Estimated costs for new well, well house, and storage tank = \$2,835,000.
  - Adopted resolution titled Water Facilities Needs Assessment and Impact Fees (the “Policy”).
  - Under the Policy, the Equivalent Residential User Fee for multifamily/senior family residence = \$3,000.

## Water Impact Fee - Found To Be Reasonably Related to Service (cont'd)

- Greywolf Partners - Assisted Living Facility (the Legacy of DeForest):
  - 22 Community-Based Residential Facility (“CBRF”) units
  - 32 Residential Care Apartment Complex (“RCAC”) units
  - Water impact fee calculation = \$108,000
  - Projects to which fee was applied included: (a) \$2,000,000 reservoir, (b) \$2,000,000 well (well #3), and (c) \$2,000,000 water tower.
    - Two projects predated the Legacy.
    - Third project in progress when the Legacy was being built.

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## Water Impact Fee - Found To Be Reasonably Related to Service (cont'd)

- Wis. Stat. § 66.0628 Fees imposed by a political subdivision:
  - (4)(a) Any person aggrieved by a fee imposed by a political subdivision because the person does not believe that the **fee bears a reasonable relationship to the service for which the fee is imposed** may appeal the reasonableness of the fee to the tax appeals commission . . .
  - (b) With regard to an appeal filed with the tax appeals commission under par. (a), **the political subdivision shall bear the burden of proof** to establish that a reasonable relationship exists between the fee imposed and the services for which the fee is imposed.

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## Water Impact Fee - Found To Be Reasonably Related to Service (cont'd)

- Wisconsin Tax Appeals Commission concluded:
  - Actual water usage (including minimal water use habits of the elderly) not relevant to whether the water impact fee was reasonable - at the time it was imposed.
    - Water impact fee could be the same for a car wash and a yarn store.
  - Municipal water impact fee classification system can be comprised of as many (or as few) classes as desired.
  - Fee of \$108,000 not unreasonable in relation to costs of \$6,000,000.

## Leasing of Taxicabs - Subject to Rental Vehicle Fee

- *Green Cab of Wisconsin, Inc. v. Wisconsin Department of Revenue* (WTAC Mar. 10, 2022).
- Time periods: January 1, 2013 - May 31, 2019.
  - Notice of Field Action and Field Audit Report (1/1/2013-12/31/2016): Additional rental vehicle fees of \$859.26 + interest of \$223.92 = \$1,083.18.
  - Refund requested of \$341,898.65 (rental vehicle fees paid from 1/1/2013-12/31/2016).
  - Refund requested of \$166,053.57 (rental vehicle fees paid from 1/1/2017-5/31/2019).

## Leasing of Taxicabs - Subject to Rental Vehicle Fee (cont'd)

- Wisconsin Rental Vehicle Fee:

Wis. Stat. § 77.995(2) There is **imposed a fee at the rate of 5 percent of the sales price on the rental**, but not for the rental as a service or repair replacement vehicle **of Type 1 automobiles, as defined in s. 340.01(4)(a) . . . by establishments primarily engaged in short-term rental of vehicles without drivers**, for a period of 30 days or less, unless the sale is exempt from the sales tax under s. 77.54(1), (4), (7)(a), (7m) or (9a). There is also imposed a fee at the rate of 5 percent of the sales price on the rental of limousines.

\* \* \*

## Leasing of Taxicabs - Subject to Rental Vehicle Fee (cont'd)

- Wis. Stat. § 340.01(4)(a): Type 1 is a motor vehicle designed and used primarily for carrying persons but which does not come within the definition of a motor bus, motorcycle, moped or motor bicycle.
- Wis. Stat. § 77.995(1)(b): “Limousine” does not include taxicabs, hotel or airport shuttles or buses, buses employed solely in transporting school children or teachers, vehicles owned and operated without charge or remuneration by a business entity for its own purposes, vehicles used in car pools or van pools . . . .”

## Leasing of Taxicabs - Subject to Rental Vehicle Fee (cont'd)

- Taxpayer - Facts:
  - Green Cab leased taxicabs and equipment to drivers - who were limited to providing taxicab services to customers in the general public.
  - Green Cab's drivers = independent contractors (kept taxicab ride fares).
  - No driver had the right to use a particular taxicab.
  - The taxicabs had a uniform Green Cab logo and color scheme that identified the vehicles as being used in Green Cab's taxicab business.

## Leasing of Taxicabs - Subject to Rental Vehicle Fee (cont'd)

- Taxpayer - Facts:
  - Green Cab stored and maintained all taxicabs at its business premises.
  - Green Cab was issued a Taxicab Company License by the City of Madison.
  - Green Cab paid an annual airport taxicab fee of \$4,800 annually as a regulated taxicab company.

## Leasing of Taxicabs - Subject to Rental Vehicle Fee (cont'd)

- Taxpayer - Arguments:
  - Taxicab company.
    - Not in a business primarily engaged in short-term rental of vehicles without drivers, for a period of 30 days or less.
  - Limousines are subject to the 5% rental vehicle fee.
    - Taxicabs are not limousines.
  - Structured its business to obtain advantage for unemployment insurance obligations.
    - Legislature could not have intended for taxicab companies to be subject to the rental vehicle fee.

## Leasing of Taxicabs - Subject to Rental Vehicle Fee (cont'd)

- Wisconsin Tax Appeals Commission - rental vehicle fee applies:
  - Green Cab maintained a fleet of vehicles, which it licensed as taxicabs.
    - Lease Agreement.
  - A business structure which avoids one type of business-related expense (unemployment insurance) should not necessarily escape another (rental vehicle fees).
  - Separate transactions:
    - Lease of driverless Type 1 vehicles to independent contractor taxi drivers.
    - Passenger pays fare to driver for the ride.
  - Legislature could have exempted rental of taxicabs to drivers (but it did not).

## Appeal to the Wisconsin Tax Appeal Commission - Not Timely

- *Angel and Matilde Zumba v. Wisconsin Department of Revenue* (WTAC Mar. 7, 2022).
- **Timing:**
  - Oct. 23, 2020: Wisconsin Department of Revenue issued Notices of Amount Due for 2013, 2014, and 2015
  - Petition for Redetermination filed
  - August 17, 2021: Notice of Action issued (denying the Petition for Redetermination)
  - **August 19, 2021:** Taxpayer received Notice of Action
  - **October 18, 2021:** Expiration of 60-day appeal window
  - **October 22, 2021:** Wisconsin Tax Appeals Commission received Petition for Review by regular USPS mail
- Statutory jurisdictional deadlines cannot be extended.

## Unclaimed Property - Updates & Voluntary Disclosure

- Updates include:
  - Confidentiality
  - Interest and penalties
  - Holder appeal rights and obligations
  - Business-to-business exemption
  - Decreases certain abandonment periods (e.g., money orders from 7 years to 5 years)
- 2021 Wis. Act 87 (effective November 7, 2021).

## Unclaimed Property - Updates & Voluntary Disclosure (cont'd)

- Voluntary Disclosure:
  - Effective through February 28, 2023.
  - Eligible if:
    - Unclaimed property to report from any of the 5 most recent reporting periods.
    - Not audited for unclaimed property since July 1, 2016 or received notice of upcoming audit.
    - No balance due on unclaimed property holder account.

## Unclaimed Property - *MoneyGram* Case

- Before U.S. Supreme Court
- “Official checks” issued by MoneyGram
  - Purchaser pays face value of the check to the selling bank plus fees. Bank sends the funds to MoneyGram. Purchaser gives the check to the payee, who can cash the check at a bank, which will then be reimbursed by MoneyGram.
  - “Money orders” or “similar written instruments”?
    - Escheat to states where instruments purchased.
  - Substance v. labels?



## Unclaimed Property - *MoneyGram* Case (cont'd)

- Or “third party bank checks”?
  - Escheat to state where company is incorporated.
  - MoneyGram = incorporated in Delaware.
- Substance over form?

## Maryland Digital Advertising Tax - Violated Internet Tax Freedom Act and Constitution

- Maryland digital advertising tax
- Circuit Court granted summary judgment for Comcast, finding tax violated:
  - Internet Tax Freedom Act
  - Dormant Commerce Clause of the Constitution
  - First Amendment
- Court found the law clearly targeted out-of-state companies “particularly in the manner in which the tax is calculated, which has nothing to do with even advertising, just gross revenue.”

## Streaming Companies - Not Subject to Tax Under Illinois' Cable and Video Competition Law

- East St. Louis filed lawsuit against video streaming services.
  - Claimed owed fees, up to 5% of gross revenue.
- Court dismissed the action
  - Found only the Illinois attorney general had enforcement authority under the Cable and Video Competition Law of 2007 (requires video and cable service providers to register with the state)
  - East St. Louis also argued claims of trespassing, unjust enrichment and ordinance violations.

## Colorado - Livestreaming Viewer Credits Not Taxable

- Users of live video streaming platforms purchased virtual credits.
- Credits could be redeemed by viewers to make their chats more visible and show support.
- Colorado Department of Revenue concluded credits are not subject to Colorado sales tax. (PLR 22-005; July 22, 2022.)
  - Akin to gift cards.
  - Also not taxable upon redemption - b/c do not provide tangible personal property or services.

## Cincinnati - Remote Worker Tax Constitutional?

- H.B. 197 (passed in 2020) - mandated that work performed from March 2020 to December 31, 2020 would be considered to have occurred at an employee's principal place of work (regardless of the employee's physical location).
- Authority to tax nonresidents based on work performed outside the city?
  - Lower courts said yes (General Assembly had the power to make changes to the local income tax rules).
  - Before the Ohio Supreme Court.

## Cleveland - City Cannot Collect Municipal Income Tax from Nonresident

- H.B. 197 (passed in 2020) - mandated that work performed from March 2020 to December 31, 2020 would be considered to have occurred at an employee's principal place of work (regardless of the employee's physical location).
- Authority to tax nonresidents based on work performed outside the city?
  - Cuyahoga County Court of Common Pleas, in *Morsy v. Dumas*, said no.
  - Unconstitutional as applied - Morsy lived out of state.

# Questions?

## Thank You!

This presentation provides information of a general nature. None of the information contained herein is intended as legal advice or opinion relative to specific matters, facts, situations or issues. Additional facts and information or future developments may affect the subjects addressed in this presentation. You should consult with a lawyer about your particular circumstances before acting on any of this information because it may not be applicable to you or your situation.

9:40 – 10:40 a.m.

# Wisconsin Department of Revenue Update

**Nate Weber, CPA, Director, Wisconsin Department of Revenue**



# Wisconsin Tax Update

WI Dept of Revenue | Division of Income, Sales, and Excise Tax  
Fall 2022

Updated 10-25-2022



## Mission

Strengthen Wisconsin through fair tax and lottery administration, while educating and serving the public, our customers and communities.

## Vision

To be the premier agency in providing innovative, accessible resources, and exceptional customer service built on a foundation of trust, inclusivity and creativity.

## Values

- Integrity
- Innovation
- Inclusivity
- Knowledge
- Empathy
- Security



# Topics

- ▷ Income/Franchise Tax Update
- ▷ Sales/Use Tax Update
- ▷ Unclaimed Property Update
- ▷ Processing, Procedures, and Projects
- ▷ My Tax Account (MTA) Updates
- ▷ Performance Metrics



# Income/Franchise Tax Update

- ▷ Internal Revenue Code Update
- ▷ Wisconsin Income/Franchise Tax Law Changes
- ▷ Pass-Through Entity Auditing – 2021 Wis. Act 262
- ▷ Litigation
- ▷ Other Updates & Reminders
- ▷ Form Updates



# Internal Revenue Code Update



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## Internal Revenue Code (IRC) Update

Tax Year 2022

- ▷ Wisconsin follows the IRC as of December 31, 2020, with certain exceptions
- ▷ Wisconsin computes depreciation and amortization using IRC in effect on January 1, 2014, with certain exceptions
- ▷ Wisconsin has not adopted federal bonus depreciation provisions
- ▷ Wisconsin follows changes to IRC section 179 expensing



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# IRC Update

- ▷ Federal laws that have passed since December 31, 2020, that Wisconsin has not adopted:
  - Public Law 117-2 – American Rescue Plan Act of 2021
  - Public Law 117-6 – PPP Extension Act of 2021
  - Public Law 117-44 – Surface Transportation Extension Act of 2021
  - Public Law 117-52 – Further Surface Transportation Extension Act of 2021
  - Public Law 117-58 – Infrastructure Investment and Jobs Act
  - Public Law 117-103 – Consolidated Appropriations Act, 2022
  - Public Law 117-167 – Supreme Court Security Funding Act of 2022
  - Public Law 117-169 – Inflation Reduction Act of 2022



# IRC Update

## Tax Year 2022

- ▷ Medical expense itemized deduction floor is 7.5% of AGI (same as federal).
- ▷ Federal charitable contributions are considered normal itemized deductions on Schedule A. There is no longer a below-the-line deduction on Form 1040. Same applies for Wisconsin's itemized deduction credit.
- ▷ Federal itemized deduction limitations for charitable contributions apply for Wisconsin.



## IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
  - Earned income credit (EIC)
    - Raised investment income limit to \$10,000 beginning in 2021 (adjusted annually)
      - Wisconsin investment income limit is \$3,800 for 2022
    - Allows certain married individuals to claim EIC
      - Files separate from spouse, and
        - Lives apart from spouse for last 6 months of year, or
        - Has divorce or separation agreement by end of the tax year



## IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
  - Excess business loss limitation under IRC 461(l) applies through December 31, 2026
  - Limitation is further extended through December 31, 2028  
(Public Law 117-169 Inflation Reduction Act of 2022)
  - Wisconsin never adopted the limitation



## IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
  - Student loan forgiveness
    - Certain student loans discharged under sec. 108(f)(5), IRC, in tax years 2021 through 2025 are not included in FAGI
    - Wisconsin follows the old sec. 108(f)(5), IRC (as of 12/31/20), which excludes student loan discharges on account of death or total and permanent disability
    - Wisconsin allows exclusion under sec. 108(f)(1) for individuals who work for a certain period of time in certain professions (e.g., Public Service Loan Forgiveness program)



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## IRC Update – Not Adopted

- ▷ Public Law 117-2 (American Rescue Plan Act)
  - Repeal election to allocate interest, etc., on a worldwide basis, which was set to begin in 2021
  - Repeal of election does not apply for Wisconsin



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## IRC Update – Not Adopted

### ▷ Public Law 117-2 (American Rescue Plan Act)

#### ○ Deduction Limitation for Highly-Paid Employees

**Federal** –A publicly-held corporation may not deduct more than \$1,000,000 of compensation paid to any covered employee for the performance of services as provided in IRC sec. 162(m). The definition of a covered employee is expanded to include the principal executive officer and principal financial officer. (Public Law 115-97). For taxable years beginning after December 31, 2026, the definition of a covered employee is expanded to include an employee that is among the 5 highest compensated employees for the taxable year. (Public Law 117-2).

**Wisconsin** – The changes to the definition of “covered employee” by Public Law 115-97 and 117-2 do not apply for Wisconsin



## IRC Update – Not Adopted

### ▷ Federal provisions not adopted by Wisconsin

#### ○ Public Law 117-58 – Infrastructure Investment and Jobs Act

##### ▪ Extensions

- Treats multiple declarations of federally declared disasters as a separate incident period allowing for a 60-day extension for each incident period. Previously, if a subsequent federally declared disaster occurred during a current disaster period, the extension would extend 60 days beyond the first day of the incident period for the subsequent disaster.
- Added "significant fires" to the list of reasons certain deadlines may be extended.

- Certain contributions received from any person by a regulated public utility which provides water or sewerage disposal services is included in the definition of a "contribution to the capital of the taxpayer" for purposes of excluding the contribution from gross income of a corporation.



## IRC Update – Not Adopted

- ▷ Federal provisions not adopted by Wisconsin
  - Public Law 117-58 – Infrastructure Investment and Jobs Act
    - The interest from the following bonds is exempt from federal income tax
      - Qualified broadband projects exempt facility bonds
      - Qualified carbon dioxide capture exempt facility bonds
  - Public Law 117-103 – Consolidated Appropriations Act, 2022
    - Extension applies for treating a plan as a high deductible health plan even if it fails to have a deductible for telehealth and other remote care services, effective for months beginning after March 31, 2022, and before January 1, 2023. For Wisconsin, a deduction from gross income for contributions made may not be allowed.



## IRC Update – Not Adopted

- ▷ Federal provisions not adopted by Wisconsin
  - Public Law 117-169 – Inflation Reduction Act of 2022
    - The amount of the federal aviation fuel credit is included in gross income, effective for fuel sold or used after December 31, 2022.
    - Energy efficient commercial buildings deduction – In the case of a real estate investment trust corporation, for purposes of computing the earnings and profits, the deduction is allowed in the year the property is placed in service as opposed to over a period of 5 taxable years.
    - Certain taxpayers (not tax-exempt entities) are allowed a one-time transfer of certain tax credits. Any payments received in exchange for the transfer of credits are excluded from income, and any amounts paid to obtain a transferred credit cannot be deducted from income, effective for taxable years beginning after December 31, 2022.
    - Federal excise tax on stock buy-backs and federal corporate alternative minimum tax do not apply to Wisconsin.



# Wisconsin Income/Franchise Tax Law Changes



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## Restaurant Revitalization Grants Exclusion

- ▷ 2021 Wisconsin Act 156
- ▷ Income received in the form of a grant from the restaurant revitalization fund under sec. 5003 of P.L. 117-2 (ARPA) is exempt from Wisconsin income and franchise tax
- ▷ Expenses paid directly or indirectly with the grant money remain deductible
- ▷ Effective for taxable years beginning **after December 31, 2020**



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# New Additional Child and Dependent Care Tax Credit

2021 Wis. Act 58

- ▷ Effective for tax year 2022
- ▷ Subtraction no longer available
- ▷ Credit allowed equal to 50% of the federal child and dependent care tax credit under IRC 21
- ▷ Not available to nonresidents or part-year residents
- ▷ If married, must file a joint return unless considered not married



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# Capital Loss Deduction

2021 Wisconsin Act 157

- ▷ Capital loss deduction increased from \$500/year to \$3,000/year (\$1,500 for married persons filing separately)
- ▷ Applies to individuals and partnerships and tax-option (S) corporations making the entity-level tax election
- ▷ Effective for taxable years beginning **after December 31, 2022**



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## 2021 Wisconsin Act 258

- ▷ 2021 Wisconsin Act 258 became effective on April 17, 2022.
- ▷ Various changes for partnerships, corporations, and limited liability companies were made in chs. 178, 179, 180, 181, and 183, Wis. Stats.
- ▷ The following income/franchise tax laws were revised to provide that the new provisions in the Act are treated for state tax purposes in the same manner as they are treated for federal tax purposes:
  - Section 71.80(21), Wis. Stats., *Business Entity Conversion*
  - Section 71.80(21m), Wis. Stats., *Business Entity Interest Exchange*
  - Section 71.80(22), Wis. Stats., *Business Entity Merger*
  - Section 71.80(22m), Wis. Stats., *Business Entity Domestication*



## 2021 Wisconsin Act 258 (cont.)

- ▷ The Act provides that the changes in the Act applicable to liquidations, reorganizations, and business entity formations follow the general sales and use tax provisions relating to liquidations, reorganizations, and formations (sec. 77.61(15), Wis. Stats.)
- ▷ Income, franchise, sales, and use tax liabilities from a DOR assessment may be claimed against a dissolved limited liability partnership, limited partnership, or limited liability company (secs. 178.0807, 179.0806, and 183.0704, Wis. Stats.),





# Pass-Through Entity Auditing

## 2021 Wis. Act 262



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## 2021 Wisconsin Act 262

- ▷ Effective April 17, 2022
- ▷ The Act includes the following provisions:
  - Pass-through definitions
  - Pass-through entity audits
  - Pass-through entity appeals
  - Pass-through entity elections
  - Pass-through entity representative
  - Confidentiality
  - Internal Revenue Service partnership audit adjustments
  - Other



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## Pass-Through Definitions

- ▷ "Pass-through entity" means a partnership, a limited liability company, a tax-option (S) corporation, an estate, or a trust that is treated as a pass-through entity for federal income tax purposes.
- ▷ "Pass-through item" means an item of income, gain, loss, deduction, credit, or any other item that originates with a pass-through entity and is required to be reported by one or more pass-through members.
- ▷ "Pass-through member" means a person who is a partner in a partnership, member of a limited liability company, shareholder in a tax-option (S) corporation, beneficiary of an estate or a trust, or any other person whose tax liability under ch. 71, Wis. Stats., is determined in whole or in part by taking into account the person's share of pass-through items, directly or indirectly, from a pass-through entity.



## Pass-Through Entity Audits

- ▷ Audit provisions provided under sec. 71.745, Wis. Stats.
- ▷ The department may assess and collect additional tax from a pass-through entity (PTE) on income otherwise reportable by its pass-through members. Tax rates for entity-level audit assessments are as follows:
  - 7.65% for income otherwise reportable by **direct** owners that are individuals, estates, and trusts
  - 7.9% for income otherwise reportable by all other **direct** owners (e.g., corporations and partnerships)



## Pass-Through Entity Audits (cont.)

- ▷ The department may issue a refund to a PTE.
  - Refunds only issued to PTE for overpayment of tax from payments made by PTE.
  - Overpayment of tax from payments not made by PTE must be claimed by pass-through members (PTMs) on an amended return for each reviewed year.
    - PTMs may claim their proportionate share of overpayment within one year after the date the determination of the overpayment becomes final or within four years of the unextended due date of the PTMs' return as provided in sec. 71.75, Wis. Stats., whichever is later.



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## Pass-Through Entity Audits (cont.)

- ▷ The department may assess or adjust a credit under sec. 71.07, 71.28, or 71.47, Wis. Stats.
  - Assessment to reduce or recover a credit may be issued to PTE if PTE previously computed the credit and reported the credit to its PTMs.
    - Many WI credits are added to income. The Act provides that an assessment may be reduced by the tax effect from removing the credit from income, if the income modification occurs in a taxable year under review in the audit. Income modification may not be claimed by the PTMs.



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## Pass-Through Entity Audits (cont.)

- ▷ The department may assess or adjust a credit under sec. 71.07, 71.28, or 71.47, Wis. Stats. (cont.)
  - Adjustment to increase a credit may offset additional tax assessed to PTE.
  - Excess credit not used to offset additional tax may not be claimed by or refunded to the PTE.
    - PTMs may file an amended return for each reviewed year to claim their proportionate share of excess credit.
    - Claims may be made within one year from the date the determination becomes final or within four years of the unextended due date of the PTMs' return as provided in sec. 71.75, Wis. Stats., whichever is later.



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## Pass-Through Entity Audits (cont.)

- ▷ Statute of limitations, interest, and penalties under secs. 71.77, 71.82, and 71.83, Wis. Stats., apply to determinations made at the PTE level without regard to the action or inaction of PTMs.
  - Example:* If a partner does not file a return (no statute of limitations), the entity-level assessment must be made within 4 years from the unextended due date of the partnership's return.
- ▷ Audit provisions under sec. 71.745, Wis. Stats., do **NOT** apply to partnerships and tax-option (S) corporations making the entity-level tax election under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats.



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## Pass-Through Entity Appeals

- ▷ Under sec. 71.745(6)(b), Wis. Stats., PTE may, within 60 days after receipt of determination, petition the department for redetermination.
- ▷ The department shall make a redetermination on the petition within 6 months after the date on which the petition is filed.
- ▷ If no timely petition for redetermination is filed with the department, the department's determination is final and conclusive.



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## Pass-Through Entity Appeals (cont.)

- ▷ PTE may, within 60 days after receipt of redetermination, appeal the redetermination to the Wisconsin Tax Appeals Commission (TAC) as provided in sec. 71.88(2), Wis. Stats.
- ▷ If no timely petition is filed with the TAC, the department's redetermination is final and conclusive.



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## Pass-Through Entity Elections

- ▷ PTE may elect, under sec. 71.745(8), Wis. Stats., to reduce an audit assessment at the entity level if all the following apply:
  - Election made within 60 days after the entity-level determination becomes final.
  - PTE reports to the department and its PTMs the adjustments for each PTMs' proportionate share of pass-through items for each taxable year.
  - PTMs report and pay within 60 days of the election any resulting tax due from the adjustments to the pass-through items.



## Pass-Through Entity Elections (cont.)

- ▷ PTE may elect, under sec. 71.745(9), Wis. Stats., to have the department assess each of the PTMs if all the following apply:
  - PTE has 25 or fewer PTMs for all years under review.
  - PTE does not have a PTM that is a PTE for any year under review.
  - Election made within 60 days after the entity-level determination becomes final.
- ▷ If election is made, sec. 71.77(7)(c), Wis. Stats., provides the department may assess the PTMs within one year from the date of the election.
- ▷ Election does not relieve pass-through entity representative's powers and duties for extension agreements, appeals, and requirement to provide the department with sufficient information to identify each PTM and the capital, profit, and loss interest of each PTM.



## Pass-Through Entity Representative

- ▷ Under sec. 71.80(26)(a), Wis. Stats., each PTE must designate a PTM or other person with substantial presence in the United States as the pass-through entity representative (PTR).
- ▷ PTR may be different than federal representative.
- ▷ If PTE did not designate a PTR, the department will send a written request for a PTR.
- ▷ If PTE does not designate a PTR within 60 days of the department's request, the department may designate a PTR and notify, in writing, the PTE.
  - PTE may at any time provide a written statement to the department designating a new PTR.



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## Pass-Through Entity Representative (cont.)

- ▷ 2022 Form 2 (fiduciary, estates, trusts), Form 3 (partnerships), and Form 5S (tax-option (S) corporations) have been updated to include a section for the PTE to designate a PTR.
  - More detail provided in Form Updates section of presentation.
- ▷ PTE may also designate a PTR by submitting a Form PT-R, *Pass-Through Entity Representative*, or a separate statement, that includes all the information requested on Form PT-R, signed by an authorized agent of the PTE.
- ▷ **The department will treat the most recently appointed PTR as the sole active PTR under sec. 71.80(26), Wis. Stats.**



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## Pass-Through Entity Representative (cont.)

- ▶ Form PT-R or a written statement designating a PTR are sent to:
  - [DORAuditPassThrough@wisconsin.gov](mailto:DORAuditPassThrough@wisconsin.gov), or
  - MS 6-81  
Wisconsin Department of Revenue  
Pass-Through Audit Unit  
PO Box 8906  
Madison, WI 53708-8906



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## Pass-Through Entity Representative (cont.)

- ▶ PTR powers and duties as provided under sec. 71.80(26)(b), Wis. Stats.
  - Act as the sole authority on behalf of the PTE and its PTMs with respect to an entity-level audit determination under sec. 71.745, Wis. Stats.
  - File appeals of notices of PTE adjustments.
  - Enter into extension agreements with the department on behalf of the PTE for purposes of extending the periods of limitation for issuing assessments and claiming refunds.
  - Enter into settlement agreements and bind PTMs to adjustments relating to pass-through items.
  - Receive notices of PTE adjustments.



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## Pass-Through Entity Representative (cont.)

- ▷ PTR powers and duties as provided under sec. 71.80(26)(b), Wis. Stats. (cont.)
  - Provide the department sufficient information to identify each PTM and the capital, profit, and loss interest of each PTM.
  - Notify all PTMs of their share of corrections and adjustments made to pass-through items within 60 days after an entity-level audit determination becomes final or after receipt of notice of approval for a partnership to pay tax on behalf of the partners after being issued a final audit determination at the partnership level from the Internal Revenue Service (IRS partnership adjustment treatment explained later).
- ▷ PTR may delegate powers and duties in sec. 71.80(26)(b), Wis. Stats., to an authorized agent of the PTE (e.g., Power of Attorney (POA)), as provided under sec. 71.80(26)(c), Wis. Stats.



## Pass-Through Entity Representative (cont.)

- ▷ PTR powers and duties vs. POA authority for audit determinations at the entity level under sec. 71.745, Wis. Stats.

Authority for Pass-Through Entity Audit Determination	Power of Attorney	Pass-through Entity Representative
Enter into an agreement to extend the limitation period to make an audit determination	No	Yes
Enter into settlement agreements and bind pass-through members to adjustments in audit determination	No	Yes
File an appeal of the audit determination	No	Yes
Elect to reduce an audit assessment under sec. 71.745(8), Wis. Stats.	No	Yes
Elect to have an audit assessment assessed to the pass-through members under sec. 71.745(9), Wis. Stats.	No	Yes



# Confidentiality

- ▷ As provided under sec. 71.78(11), Wis. Stats., if the department audits a PTE for income or franchise taxes of its PTMs, including when an election to pay tax at the entity level is made under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats., the department may disclose the following:
  - **To a PTM:** PTE is under audit or was audited, if the disclosure is necessary to explain any amounts assessed or refunded to the PTM or to obtain information necessary to determine the proper amount of adjustment to make at the PTE level.
  - **To a PTE:** Identities of one or more of its PTMs who have failed to report pass-through items originating with the entity on their Wisconsin returns, if the disclosure is necessary to explain any amounts assessed or refunded to the PTM or to obtain information about a PTM's return in order to determine the proper amount of adjustment to make at the PTE level.



# IRS Partnership Audit Adjustments

- ▷ If a partnership receives an IRS audit adjustment at partnership level, partnership may request to amend Wisconsin partnership returns and pay tax on behalf of PTMs. Request must be made within 60 days after final determination by the IRS.
  - If department approves the request, partnership must amend the Wisconsin partnership returns for each reviewed year, as defined under section 6225 of the IRC, to report such changes within 180 days from the date the department approves the request. Partnership must pay tax at the highest tax rate computed under sec. 71.745(2)(a), Wis. Stats., as follows:
    - 7.65% for income otherwise reportable by direct owners that are individuals, estates, and trusts
    - 7.9% for income otherwise reportable by all other direct owners (e.g., corporations and partnerships)



## IRS Partnership Audit Adjustments (cont.)

- ▷ If department denies the request, partnership and its PTMs must file amended Wisconsin returns for each reviewed year, as defined under section 6225 of the IRC, to report such changes within 180 days from the date the department denies the request.



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## Other

- ▷ Adjustments to pass-through items made in a PTE audit determination are attributable to each PTM in a manner, and for the taxable year, that is consistent with the treatment of the pass-through items as if a determination was not made at the entity level. For example, a PTM may increase basis in partnership interest by the PTM's proportionate share of additional income determined in the partnership audit assessment.
- ▷ If the department determines that a tax liability exists and that the liability may be owed by more than one PTM of a PTE, the department may assess any PTM of the PTE for their allocated portion of additional tax otherwise due.



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## Other (cont.)

- ▷ If any PTE required to file a return under ch. 71, Wis. Stats., files an incomplete or incorrect return, the department, upon a showing by the department under sec. 73.16(4), Wis. Stats., may assess the PTE an amount equal to 25 percent of the amount of the tax assessed under sec. 71.745, Wis. Stats. The amount shall be assessed, levied, and collected in the same manner as additional normal income or franchise taxes.



## Resources

- ▷ Pass-Through Entity Level Audits Under 2021 Wis. Act 262 common questions
  - <https://www.revenue.wi.gov/Pages/FAQS/ise-pte-audit.aspx>
- ▷ Partnerships common questions numbers 3 and 4
  - <https://www.revenue.wi.gov/Pages/FAQS/ise-pship.aspx>
- ▷ Form PT-R, *Pass-Through Entity Representative*
  - <https://www.revenue.wi.gov/dorforms/ptrf.pdf>
- ▷ Form PT-R instructions
  - <https://www.revenue.wi.gov/dorforms/i-ptr.pdf>



# Income/Franchise Tax Litigation



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## Litigation – Gambling Losses

- ▷ *Julie Chier v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, March 22, 2022*
- ▷ Claimed to be a professional gambler
- ▷ Taxpayer records:
  - Separate bank accounts not kept
  - Activities were not tracked on computer spreadsheet or similar document
  - Contemporaneous notes were not kept
  - No business plan
  - Gambling not carried on in a business-like manner
  - Utilized player's cards and casino gaming records to substantiate portion of winnings



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## Litigation – Gambling Losses

- ▷ IRS notice stated taxpayer did not qualify as professional gambler
- ▷ Tax Appeals Commission concluded:
  - Disallowed status as professional gambler (disallowed business loss on Schedule C)
  - Allowed gambling losses under the session method of reporting that were substantiated in part with casino records
- ▷ Session winnings are reported as other income on Form 1040
- ▷ Session losses are reported as misc. itemized deductions on Schedule A
- ▷ Note: Wisconsin law does not allow gambling losses for itemized deduction credit



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## Litigation: Apportionable Income – Environmental Credit Sales

- ▷ *American Honda Motor Co., Inc.*: Wisconsin Tax Appeals Commission, November 29, 2021
- ▷ American Honda earns and resells environmental credits from producing vehicles that exceed emission standards
- ▷ American Honda has nexus with Wisconsin and files a Wisconsin combined return
- ▷ American Honda reported the credit sales as non-apportionable Wisconsin income because the business activities related to the credit took place in California
- ▷ The Commission agreed with the department's position that the credit sales are apportionable income because they represent unitary and operational income integral to Honda's business and were not mere investments
- ▷ American Honda has appealed



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## Litigation: Manufacturing Credit

- ▷ *The Graphic Edge, Inc.*: Wisconsin Tax Appeals Commission, December 20, 2021
- ▷ Graphic Edge is a printing company located in Wisconsin and was classified for property tax purposes as a manufacturer by the Department of Revenue
- ▷ Graphic Edge computed the manufacturing credit by including depreciation recapture and Form 4797 gain on the sale of business equipment in production gross receipts but did not allocate any expenses as direct and indirect costs
- ▷ The department removed depreciation recapture and Form 4797 gain from production gross receipts
- ▷ The Commission agreed with the department because the printing equipment that was sold was not manufactured by Graphic Edge
- ▷ Graphic Edge did not further appeal



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## Litigation: Nexus - Foreign Corporation Selling Travel Services

- ▷ *ASAP Cruises, Inc.*: Wisconsin Tax Appeals Commission, May 23, 2022
- ▷ ASAP is a Florida corporation that sells travel services to individuals and businesses across the U.S. via independent travel consultants
- ▷ ASAP receives income from the sale of travel services by independent travel consultants and in turn pays them a commission
- ▷ ASAP was a party to around 100 independent travel consultant agreements with individuals and businesses located in Wisconsin
- ▷ ASAP did not file Wisconsin income or franchise tax returns, so the department issued estimated assessments



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## Litigation: Nexus - Foreign Corporation Selling Travel Services

- ▷ ASAP argued:
  - Nexus protection under Public Law 86-272 because they were selling tangible software
  - They were not engaged in business in Wisconsin because they were selling software services (SaaS) and solicitation of WI customers was conducted remotely and electronically from Florida
- ▷ The Commission concluded ASAP was engaged in business in Wisconsin through its sales of travel services to Wisconsin customers through their independent travel consultants
- ▷ ASAP appealed to Dane County Circuit Court



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## Litigation: Pass-Through Withholding Tax – S-Corporation Without Physical Presence

- ▷ *MacKinney Systems, Inc.: Wisconsin Tax Appeals Commission, March 16, 2022*
- ▷ MacKinney is a Missouri tax-option (S) corporation without a physical presence in Wisconsin
- ▷ All shareholders are nonresidents of Wisconsin
- ▷ MacKinney delivers prewritten software to customers via download and provides technical support and maintenance services from Missouri
- ▷ MacKinney received over \$100,000 per year from customers in Wisconsin but did not file/pay income or franchise tax returns or pass-through withholding taxes



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## Litigation: Pass-Through Withholding Tax – S-Corporation Without Physical Presence

- ▷ The department issued a pass-through withholding assessment, which was appealed to the Commission
- ▷ The Commission sustained the assessment and concluded that MacKinney met the definition of doing business in Wisconsin under sec. 71.22(1r), Wis. Stats., because some of the customers received the product and services in Wisconsin
- ▷ The Commission also noted that withholding tax is different from income or franchise tax – withholding tax is required even if the nonresidents do not have an income tax filing requirement in Wisconsin



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## Litigation: Pass-Through Withholding

- ▷ *RADS Partnership, Via Cresta, L.P., Laughing Cow, LP, Finger Living Trust, and Westmar LTD (Petitioners) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, July 26, 2022*
- ▷ All Petitioners are pass-through entities, except Finger Living Trust
- ▷ Petitioners did not file withholding returns in 2013
- ▷ Petitioners claimed they did not have to file withholding returns because they had losses from prior years
- ▷ Petitioners did not timely file returns for years in which losses were incurred



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## Litigation: Pass-Through Withholding

- ▷ *RADS Partnership, Via Cresta, L.P., Laughing Cow, LP, Finger Living Trust, and Westmar LTD (Petitioners) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, July 26, 2022*
- ▷ Commission concluded:
  - Pass-through entities are required to file a timely pass-through withholding form in each year where there is "Wisconsin income" (i.e., not allowed to use prior years' losses)
  - Adding the word "taxable" to "income" under sec. 71.775(2)(a) and (3)(a)2., Wis. Stats., changes the meaning of the statute
  - Pass-through entities must use WI Form PW-1 as the pass-through withholding form
- ▷ Petitioners appealed the decision



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## Other Income/Franchise Tax Updates & Reminders



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## Other Updates and Reminders

- ▷ College savings account subtraction
  - \$3,560 (\$1,780 if married filing separately)
  - 2021 amount was \$3,380
- ▷ Wisconsin tuition and fees subtraction
  - Subtraction – increased from \$6,973 to \$6,976
    - Includes fees for course related books if paid to institution as condition of enrollment or attendance
  - Phase-out
    - Single or head of household - \$60,380 to \$72,460
    - Married filing joint - \$96,600 to \$120,760
    - Married filing separate - \$48,300 to \$60,380



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## Other Updates and Reminders

- ▷ Mileage rates - 2022
  - 58.5 cents per mile for business miles, up from 56 cents for 2021
  - 18 cents per mile for medical or moving purposes, up from 16 cents for 2021
  - 14 cents per mile in service of charitable organizations
- ▷ Educator expense deduction
  - Wisconsin follows increased federal deduction amount
  - Increased to \$300 for 2022, up from \$250 for 2021



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# Active Duty Military Pay Subtraction

2021 Wis. Act 58

- ▷ Created sec. 71.05(6)(b)56., Wis. Stats., effective for tax year 2021
- ▷ Basic, special, or incentive pay income received from federal government under 37 USC chapters 3 and 5 while the individual is on active duty in the U.S. Armed Forces
- ▷ For 2022 tax year:
  - Subtraction allowed for military pay received **for** active duty
  - Subtraction not allowed for inactive duty training (drill pay)
- ▷ Publication 128, *Wisconsin Tax Information for Military Personnel and Veterans*



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# Credit for Tax Paid to Another State

- ▷ Credit for tax paid to reciprocal states
  - Wisconsin has income tax reciprocity with Illinois, Indiana, Kentucky, and Michigan
  - Reciprocity generally only applies to income earned as an employee (wages)
  - Wisconsin resident may not claim a credit for tax paid to another state on the Wisconsin return if the income reportable on the other state's tax return is subject to reciprocity
  - If Wisconsin resident earns income in reciprocal state and income tax is withheld for the other state, resident must file an income tax return with that state to obtain a refund of the withheld tax



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## Schedule RT – Related Party Expenses

- ▷ Taxpayers must disclose on Schedule RT if the total deduction for all related party payments reduce Wisconsin taxable income, after apportionment, by \$100,000 or more:
  - Interest Expenses
  - Rent Expenses
  - Management Fees
  - Intangible Expenses
- ▷ Due on or before the extended due date of the return



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## Schedule RT – Related Party Expenses

- ▷ If the Department discovers that related party expenses were not disclosed timely on Schedule RT, the expense deduction may be disallowed (sec. 71.80(23)(b), Wis. Stats.)
- ▷ Schedule RT is not required for transactions between members of a combined group of corporations that file a combined return and eliminate the intercompany transactions in the computation of combined unitary income.



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## Reorganizations

- ▷ Taxpayers must have the same taxable year for federal and Wisconsin purposes (e.g., if a short-period return must be filed for federal purposes, a short-period return must also be filed for WI purposes).
- ▷ A reorganization may result in a continuation of the old entity. For example:
  - A merger of two or more partnerships that meets the requirements in sec. 708(b)(2)(A), of the Internal Revenue Code (IRC).
  - A tax-option (S) corporation's change in identity, form, or place of organization under sec. 368(a)(1)(F), IRC.
- ▷ Continuation may impact the resulting entity's estimated tax payments and underpayment interest (check boxes added to Partnership and S corp forms).



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## Entity-Level Tax Elections

- ▷ 2017 Wisconsin Act 368 created an election for partnerships and tax-option (S) corporations to pay tax at the entity level on behalf of their pass-through members.
- ▷ **Reminder:** The election or subsequent revocation of the election under sec. 71.21(6)(a) or 71.365(4m)(a), Wis. Stats., **must** be made by the extended due date of the entity's income or franchise tax return.
  - Calendar year partnership extended due date: 9/15
  - Calendar year tax-option (S) corporation extended due date: 10/15



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## Entity-Level Tax Elections – Filing Stats

<b>Tax-Option (S) Corporations (Form 5S)</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Returns filed	81,517	80,602	76,437
Entity-level tax elections filed	2,992	4,076	5,281
Percent of entity-level tax elections filed	3.67%	5.06%	6.91%

<b>Partnerships (Form 3)</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Returns filed	79,885	80,432	79,366
Entity-level tax elections filed	1,495	2,010	2,654
Percent of entity-level tax elections filed	1.87%	2.50%	3.34%



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## Qualified Wisconsin Business (QWIB) – Income Exclusion / Deferral

### ▷ Capital Gain Exclusion / Deferral

- Long-term capital gain from investments made after December 31, 2010, in a qualified Wisconsin business and held for at least five uninterrupted years are excluded from Wisconsin income
- Exclusion does not apply to any portion of gain due to amount of gain deferred at time of investment
- See Schedule QI, *Sale of Investment in a Qualified Wisconsin Business*



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# Qualified Wisconsin Business (QWIB) Registration

- ▷ A business may register as a QWIB if, in the business's tax year ending immediately before the date of registration:
  - The business has at least 2 full-time employees,
  - The amount of payroll compensation paid by the business in WI is at least 50% of all payroll compensation paid by the business, and
  - The value of real and tangible personal property owned or rented and used by the business in WI is at least 50% of the value of all real and tangible personal property owned or rented and used by the business.
- ▷ Business must register each year it desires to be a QWIB (sec. 73.03(69), Wis. Stats.)
  - Registration for 2022 must be completed by January 2, 2023.



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# QWIB Registration (cont.)

- ▷ Registration for 2022 must be completed by January 2, 2023.
- ▷ To register your business with the department, use the department's online application here:
  - [https://tap.revenue.wi.gov/QualBus/\\_/](https://tap.revenue.wi.gov/QualBus/_/)
- ▷ A list of QWIBs can be found on the department's website here:
  - <https://www.revenue.wi.gov/Pages/Report/qualified-businesses.aspx>



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## Qualified Opportunity Fund (QOF)

- ▷ Certain taxpayers who invest in a QOF may qualify for federal tax benefits:
  - Defer paying tax on capital gains by investing the gains in a QOF
  - Reduce the taxable amount of the deferred capital gains by
    - 10% if QOF investment is made prior to Jan. 1, 2022, and is held for at least 5 years
    - 15% if QOF investment is made prior to Jan. 1, 2020, and is held for at least 7 years
  - Exclude all gains from the sale of a QOF investment by holding the QOF investment for at least 10 years.
- ▷ See sections 1400Z-1 and 1400Z-2 of the Internal Revenue Code (IRC)
- ▷ WI follows the federal tax benefits



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## WI Qualified Opportunity Fund (WQOF)

- ▷ A WQOF means a QOF that holds at least 90% of its assets in WI qualified opportunity zone property
- ▷ For taxable years beginning on or after January 1, 2020, a WQOF is required to file WI Form WQOF with the department and provide a copy to each investor by January 31 of the year following the close of the WQOF's taxable year.
- ▷ In addition to the federal QOF tax benefits, certain taxpayers who defer paying tax on their capital gains by investing in a WQOF may qualify for a WI subtraction or basis modification



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## WQOF (cont.)

- ▷ The WI subtraction or basis modification is
  - 10% of the deferred capital gain if
    - The WQOF investment was held for at least 5 years and
    - The taxpayer qualifies for the 10% federal QOF exclusion
  - 15% of the deferred capital gain if
    - The WQOF investment was held for at least 7 years and
    - The taxpayer qualifies for the 15% federal QOF exclusion
- ▷ **Note:** Any failure by a WQOF may result in the WI subtraction or basis modification being denied for investors



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## WQOF (cont.)

### Resources:

- ▷ Common Questions:  
<https://www.revenue.wi.gov/Pages/FAQS/ise-qualified-zones.aspx>
- ▷ Fact Sheet 1121:  
<https://www.revenue.wi.gov/DOR%20Publications/1121opportunityzone.pdf>
- ▷ 2022 Form WQOF instructions:  
<https://www.revenue.wi.gov/TaxForms2022/2022-FormWQOF-inst.pdf>
- ▷ Sections 71.05(25m), 71.26(3)(vm), 71.34(1k)(p), and 71.45(2)(a)21., Wis. Stats.



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# Form Updates



## Form Changes

- ▷ Form 1, *Wisconsin Resident Income Tax Return*
  - Added new lines
    - Line 1 – Federal adjusted gross income (FAGI) from Form 1040, line 11
    - Line 2 – Adjustments to FAGI from Schedule I, line 3
    - Line 14 – Additional child and dependent care tax credit (nonrefundable)
  - Rearranged lines
    - Moved UPI line up before "AMOUNT YOU OWE" as UPI is included in the total



# Form Changes

- ▷ Form 1NPR, *Nonresident and Part-Year Resident Income Tax Return*
  - Added new line 40 for additional child and dependent care tax credit (nonrefundable)
  - Moved UPI line up before "AMOUNT YOU OWE" as UPI is included in the total
  - Moved all additions and subtractions to Schedule M
- ▷ Schedule AR, *Explanation of Amended Return*
  - Added check boxes for amending for a pass-through entity audit
  - Created separate instructions for each amendment reason
- ▷ Schedule CS, *College Savings Accounts*
  - Combined Parts I and II to correctly apply subtraction limitation to both instances of when you contribute to an account you own and to an account owned by someone else for the same beneficiary
  - Eligible carryover is now Part II



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# Form Changes

- ▷ Schedule OS instructions, *Credit for Net Tax Paid to Another State*
  - Added instructions to clarify whether to compute the credit in Part II or Part III of the form when the individual is a member of a pass-through entity that pays tax at the entity level in another state, but does not elect to pay tax at the entity level in WI.



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# Form Changes

▷ Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trust*

○ Simplified the layout for computing an amount due.

- Changed line 23 from **BALANCE DUE** to **AMOUNT UNDERPAID** and created line 25, **AMOUNT DUE**.

23	If line 19 is less than line 11d, subtract line 19 from line 11d <b>AMOUNT UNDERPAID</b> .....	23	_____	.00
24	Underpayment interest. Fill in exception code – See Schedule U _____ .....	24	_____	.00
25	Add lines 23 and 24. This is the <b>AMOUNT DUE</b> .....	25	_____	.00



# Form Changes

▷ Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trust*

○ Updated the "Mail your return to:" section on page 4 to separate out the mailing address for returns with a "tax due" or a "refund or no tax due".

Mail your return to: Wisconsin Department of Revenue  
If tax due .....PO Box 8918, Madison WI 53708-8918  
If refund or no tax due .....PO Box 8965, Madison WI 53708-8965



# Form Changes

- ▷ Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trust*
- ▷ Form 3, *Wisconsin Partnership Return*
- ▷ Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise Income Tax Return*

Section added to designate a pass-through entity representative

## Pass-Through Entity Representative

Representative's last name		Representative's first name	
Email address		Phone number (     )	
Mailing address		Apt. no.	
City		State	Zip code



# Form Changes

- ▷ Form 3, *Wisconsin Partnership Return*
- ▷ Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise Income Tax Return*

Added a check box, Item M (Form 3) and Item A9 (Form 5S), for taxpayers to indicate the entity reorganized during the tax year and what type of reorganization (e.g., sec. 708(b)(2)(A) or 368(a)(1)(F), of the Internal Revenue Code).



# Power of Attorney (POA)

- ▷ Instructions updated to state that separate POA forms must be completed when:
  - Multiple individuals named in Part 3B, **and**

Part 3B – Individual			
Individual's last name		Individual's first name	
Email address			Phone number ( ) -
Mailing address			Apt. no.
City		State	Zip code



# Power of Attorney (POA)

- Each individual has been granted different authority in Part 4

Part 4 – Full or Limited Authority (check one)			
<input type="checkbox"/> <b>I grant full authority to the representative(s)</b> - The representative(s) named above has full authority to perform any act with respect to matters before the department that the taxpayer(s) can and may perform, including receiving confidential Wisconsin tax information. <b>Note:</b> If granting full authority, do not check any boxes below.			
<input type="checkbox"/> <b>I grant limited authority to the representative(s)</b> - (check only items below for which you are granting authority.) The representative(s) named above has authority to perform any act, with respect to the items checked below, that the taxpayer(s) can and may perform, including the authority to receive confidential Wisconsin tax information.			
<b>Authority</b>	<b>Period(s) (optional)</b>	<b>Authority</b>	<b>Period(s) (optional)</b>
<input type="checkbox"/> Income or Franchise Taxes	_____	<input type="checkbox"/> Employer Withholding Taxes	_____
<input type="checkbox"/> Sales and Use Taxes	_____	<input type="checkbox"/> Pass-Through Withholding Taxes	_____
<input type="checkbox"/> Excise Taxes	_____	<input type="checkbox"/> Nontax Debt	_____
<input type="checkbox"/> Property Taxes	_____	<input type="checkbox"/> Other (describe below)	_____
			_____



# Form 1098-F New Requirements

- ▶ The Tax Cuts and Jobs Act of 2017 (sec. 13306 of P.L. 115-97) requires certain government entities (e.g., WI DOR) to file Form 1098-F if:
  - The government entity is a party involved in a suit or agreement with respect to a violation of any law over which the government entity has authority,
  - The suit or agreement becomes binding on or after January 1, 2022, and
  - The aggregate amount involved in all court orders and agreements is \$50,000 or more
- ▶ Due Date
  - File with IRS by Feb. 28 (Mar. 31 if filed electronically) following calendar year in which suit or agreement becomes binding
  - Provide a copy to payor by Jan. 31 following calendar year in which suit or agreement becomes binding



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# Form 1098-F New Requirements (cont.)

Example:

- ▶ WI DOR issues a notice of amount due (NOAD) to a corporation because of a violation of tax law:
  - Tax                   \$40,000
  - Interest            10,000
  - Penalties           5,000
  - Total               \$55,000
- ▶ If NOAD becomes binding on October 10, 2022, DOR must:
  - File Form 1098-F with IRS by Feb. 28, 2023 (Mar. 31 if electronically)
  - Provide a copy to the corporation by Jan. 31, 2023
- ▶ Form 1098-F will show \$55,000 in box 1 and \$5,000 in box 2



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# Sales and Use Tax Update



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## Nonprofit Occasional Sale Exemption

- ▷ 2021 Wis. Act 167
  - Entertainment standard for the nonprofit occasional sale exemption increased from \$10,000 to \$50,000
    - If a nonprofit organization charges an admission for an event, the nonprofit organization may qualify for the occasional sales exemption (if all other standards are met), if the total amount that all entertainers are paid is \$50,000 or less
  - Applies to entertainment admission events occurring on and after June 1, 2022



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## Publication 240 Updates

- ▷ Publication 240, *Digital Goods* was updated November 2021
- ▷ Major changes:
  - Clarified treatment of pre-recorded webinars
  - Clarified "other news or information products"
  - Clarified examples of taxable and nontaxable digital goods
  - Updated bundled transaction example



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## Pre-Recorded Webinars

- ▷ Sales of pre-recorded webinars are taxable specified digital goods if they are not provided incidentally with an education service
- ▷ Reminder: Pre-recorded webinars are provided incidentally with an education service if one of the following occurs:
  - The participant is evaluated by an instructor
  - The participants are connected to other participants and presenters via internet or other networks, allowing the participants to provide, receive, and discuss information together by live interaction, contemporaneous with the presentation
  - The pre-recorded webinar is certified by a branch of government for the participant to receive continuing education credits to obtain or remain in good standing with their government-issued license



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## "Other News or Information Products"

- ▷ "Additional digital goods" means all of the following, if they are transferred electronically:
  1. Greeting cards.
  2. Finished artwork.
  3. Periodicals.
  4. Video or electronic games.
  5. Newspapers or **other news or information products**.
- ▷ [Section 77.51\(1a\)\(a\)](#), Wis. Stats.



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## "Other News or Information Products"

- ▷ Prior Publication 240 had the following examples of taxable and nontaxable digital goods:
  - Taxable - Access to a website that provides real time information of commodity or stock prices.
  - Taxable - Access to a website that provides a listing of current job opportunities
  - Nontaxable - Access to an on-line database of information that allows the user to perform searches of the database and view and/or download the information retrieved as a result of the search



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## "Other News or Information Products"

- ▷ Clarify that "other news or information products" are products that disseminate news or information, both current and historical
- ▷ Updated Publication 240 has the following examples of taxable additional digital goods:
  - Access to an online database or website of current or historical information that allows the user to view and/or download the information.
    - Listing of job opportunities
    - Construction plans and construction plan information
    - Price or valuation information
    - Personal information, such as address, age, or phone numbers



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## "Other News or Information Products"

- ▷ Examples of taxable additional digital goods (cont.):
  - Information alerts sent by email
  - Newsletters transferred electronically
  - Online news services
  - Instructional guides



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# Temporary Events

- ▷ DOR is continuing education campaign for event operators
- ▷ New listserv for Temporary Event Operators – see "E-News" page on our website
- ▷ Operators must report certain information about event within 10 days of event close
- ▷ Most sellers are required to have seller's permit UNLESS exemption applies
- ▷ Redesigned Wisconsin Temporary Event Report (S-240); no longer accepting old format / spreadsheets
- ▷ New S-240 is a fillable PDF. If operator has numerous events, can update and save PDF form as needed (e.g., update event details, add or delete vendors).



# Temporary Events - S-240 Revised

Form <b>S-240</b>	<b>Wisconsin Temporary Event Report</b> <small>(Completed and submitted by the Event Operator)</small>		Page 1 of <input type="text"/>
<b>Part A: Event Operator Information</b>			
Doing Business As (DBA) Name (if applicable)		Wisconsin Tax Number (15 digits starting with 640, 456, or 600)	
Legal Business Name (if not sole proprietor)		Full FEIN (Business)	
Event Operator Name (Last)	Event Operator Name (First)	Full SSN (Individual or Sole proprietor)	
Mailing Address		Email Address	
City	State	Zip	Contact Phone Number
<b>Part B: Temporary Event Information</b>			
Event Start Date <small>M M D D Y Y Y Y</small>	Event End Date <small>M M D D Y Y Y Y</small>	Number of Vendors	
Temporary Event Name		Minimum Vendor Booth Fee	
Street Address		Customer Admission Fee	
City	State <b>WI</b>	Zip	County
<i>I declare that the information on this form is true and correct to the best of my knowledge and belief, and that I'm authorized to sign this form.</i>			
Signature			Date



# Temporary Events - S-240 Revised

## Part C: Vendor Information

If the vendor does not have a Wisconsin seller permit number and claims their sales are tax exempt, enter the exemption code number provided by the vendor.

- 1 - Exempt sales only or display only
- 2 - Multi-level marketing company pays sales tax
- 3 - Nonprofit occasional sales exemption
- 4 - Exempt occasional sales

Wisconsin Seller's Permit Number (15 digits starting with 456) 456- -		SSN (last 4 digits)	FEIN (last 4 digits)	Exemption Code
Legal Business Name (if not sole proprietor)		Doing Business As (DBA) Name (if applicable)		
Vendor/Contact Name (Last)	Vendor/Contact Name (First)	Vendor Phone Number		
Mailing Address		Email Address		
City	State	Zip	Multi-Level Marketing Company (if claiming Code 2 above)	



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# Utilities Providing Outdoor Lighting

- ▷ Customer-owned lighting
  - Utilities that provide electricity to customers who own their own lighting equipment are selling electricity (taxable unless an exemption applies, or the utility has received a fully completed exemption certificate from its customer)
- ▷ Utility-owned lighting
  - Utilities that provide lighting equipment and electricity are selling a nontaxable outdoor lighting service (not a taxable equipment rental since customer generally does not have control of lighting equipment)
- ▷ More details in the October 2022 *Wisconsin Tax Bulletin*



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# Non-Fungible Tokens

- ▷ Non-fungible token (NFT) is a unique digital identifier that is recorded in blockchain
- ▷ Used to certify authenticity and ownership of a particular product
- ▷ Sale of an NFT may be taxable if underlying product or service is taxable in Wisconsin
- ▷ For example, if the NFT entitles the purchaser to receive a digital audio work, prepared food, artwork, or an admission to athletic or entertainment event, the NFT is taxable



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# Successor Liability

- ▷ A purchaser of a business is called a successor
- ▷ A successor is liable for any unpaid sales and use taxes (but not penalties or interest) of the business they are purchasing
- ▷ To avoid successor liability, a successor must withhold enough of the purchase price to cover any taxes due
- ▷ Successor liability may not be avoided by agreements or contracts between the seller and purchaser



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## Successor Liability – Prior to the Sale

- ▷ Determine how much to withhold from the purchase price.
  - Ask the seller if there are any outstanding sales/use tax liabilities or if there are unfiled sales and use tax returns
  - Ask the department for information about the seller. The department may provide:
    - Summary of sales and use tax returns, including missing and/or estimated periods
    - Summary of outstanding sales and use tax liabilities



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## Successor Liability – Prior to the Sale

- ▷ The request to the department must be in writing and include the following:
  - Seller's business name
  - Seller's address
  - Seller's federal employer identification number (FEIN) or Wisconsin Tax Account Number (WTAN)
  - Purchaser's business name
  - Purchaser's address



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## Successor Liability – Prior to the Sale

- ▷ The request to the department must also include one of the following:
  - An offer to purchase, copy of purchase agreements, or letter of intent to purchase or sell the business. This must be signed by both the seller and purchaser.
  - A letter signed by the seller that acknowledges the purchaser or potential purchaser
- ▷ A copy of the requested information will be provided to both the seller and the purchaser



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## Successor Liability – After the Sale

- ▷ After the sale is complete, the purchaser should request a clearance certificate from the department
- ▷ A clearance certificate protects the purchaser from incurring successor liability by ensuring that the seller has filed all sales and use tax returns and paid all sales and use taxes due. Note: A clearance certificate is only for sales and use tax.
- ▷ The request must be made in writing, either by mail, email, or fax
- ▷ The department must act within 90 days of receiving the request by issuing the clearance certificate or issuing a notice of potential successor liability



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## Successor Liability – After the Sale

- ▷ A request for a clearance certificate should include the following:
  - Legal name of seller
  - Business name of the seller
  - Seller's tax account number, if known
  - Seller's current mailing address
  - Name of the purchaser
  - Purchaser's tax account number
  - Purchaser's mailing address
  - Date of sale
  - Sale price
- ▷ See common questions on [Successor Liability and Clearance Certificates](#)



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## Disregarded Entity's Business Assets

- ▷ A single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes under Ch. 71, Wis. Stats., is disregarded as a separate entity for sales and use tax
- ▷ Transactions between the owner and its disregarded entity are disregarded for sales and use tax purposes (i.e., not a "sale" transaction)
- ▷ Caution: A sale of an interest in a disregarded entity may be treated as the sale of business assets and subject to tax, unless an exemption applies. See Fact Sheet 2110, *Occasional Sales of Business Assets*.



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## Marketplace Providers

- ▷ October 1, 2018 – Wisconsin began collection on out-of-state retailers with no physical presence in Wisconsin, unless they meet small seller exception
- ▷ January 1, 2020 – Wisconsin law clarified to provide that "marketplace providers" are also retailers and responsible for collecting and remitting taxes to DOR. Law also provides that marketplace sellers may not be audited and held liable for transactions facilitated through marketplace provider (certain exceptions apply).
- ▷ Marketplace providers may request a waiver from the marketplace provisions in the law (DOR has granted 4 waivers to date for unique situations – 3 waivers have been denied).



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## Premier Resort Area Tax (PRAT)

- ▷ Village of Ephraim in Door County adopted 0.5% PRAT
- ▷ Effective January 1, 2022
- ▷ Imposed on certain sellers making taxable sales sourced to a premier resort area
- ▷ Reported in My Tax Account on premier resort area tax return
- ▷ Resources:
  - Premier Resort Area Tax Common Questions
  - Fact Sheet 2500



108

## Licensed/Common Carrier Exemption

- ▷ Section [77.54\(5\)\(b\)](#), Wis. Stats. exempts sales of motor trucks, truck tractors, road tractors, buses, trailers, and semitrailers from sales and use tax
- ▷ Also applies to accessories, attachments, parts, supplies and materials assigned to such vehicles and trailers
- ▷ Must be sold to common or contract carrier who uses the items *exclusively* as a common or contract carrier:
  - Hauls goods of others for hire or
  - Transports passengers as defined in sec. [71.38](#)

**Caution:** Holding an LC or MC number does not by itself fulfill the requirements of this exemption. The equipment must be used exclusively to haul goods of others for hire or to transport passengers.



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## Motor Vehicle Dealer Plates

- ▷ WI licensed motor vehicle dealers may pay use tax on a fixed \$ amount per plate per month for motor vehicles used by the dealership and also held for sale in the regular course of business
- ▷ Effective Jan 2023 amount subject to use tax increases to **\$191** per plate per month (increased from \$175 for 2022)
- ▷ Amount subject to tax is adjusted annually per sec. [77.53\(1m\)](#), Wis. Stats.



110

## Litigation

- ▷ *Citation Partners, Inc.*: Court of Appeals, November 23, 2021
  - Issue - Is the total amount paid for an aircraft lease taxable or is the portion attributable to aircraft maintenance and engine maintenance excluded from tax?
  - Tax Appeals Commission (TAC) ruled the cost of maintenance services and repair parts is expense of lessor which is included in the "sales price" of the leases.
  - Circuit Court overturned TAC decision
  - Court of Appeals reversed the Circuit Court decision stating tax cannot be avoided by dividing up lease price into categories or affixing labels
  - Wisconsin Supreme Court is reviewing



111

## Litigation

- ▷ *Brown County vs Brown County Taxpayer's Association*: WI Supreme Court, March 4, 2022
  - Issue - Whether sales and use tax enacted by Brown County directly reduces the property tax levy as required by sec. [77.70](#), Wis. Stats., if proceeds fund new capital projects that together exceed levy limits but could be funded through borrowing.
  - Circuit Court concluded sec. 77.70 is an enabling statute whose purpose is to directly reduce the property tax levy, not a restriction on how sales and use tax is to be spent
  - Wisconsin Supreme Court affirmed the Circuit Court decision stating the County's ordinance directly reduces the levy by funding projects that would otherwise have been paid for through additional debt obligations.



112

# Litigation

- ▷ *SPA Indoor Speedway, LLC*: WTAC, January 24, 2022
  - Issue - Is taxpayer renting go-carts or selling a taxable admission?
  - Customers enter without charge. Only customers who rent or lease a go-cart are charged. The speedway is only available to rented go-carts.
  - The Commission concluded:
    - SPA offers a speedway racing experience to its customers, which is a taxable admission.
    - SPA's provision of go-carts is incidental to SPA's business, and therefore, no part of the charge for the admission may be deemed a rental of tangible personal goods.
    - SPA is the end user of the go-carts it purchases. SPA purchases of go-carts, go-cart parts, and go-cart repairs and maintenance are taxable.
  - Taxpayer did not appeal this decision.



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# Litigation

- ▷ *William Becker*: La Crosse County Circuit Court, June 27, 2022
  - Issue - Are trailers "truck bodies" for purposes of sales tax exemption under sec. [77.54\(5\)\(a\)\(4\)](#), Wis. Stats.
  - Taxpayer sold single-axle, tandem-axle, and gooseneck trailers designed to be used with a motor vehicle (car or pickup truck)
  - WTAC ruled trailers did not qualify for the exemption:
    - *Trudell* decision limits "trucks and truck bodies" exemption to combinations of power unit vehicles and trailers that if not combined serve little or no purpose
    - Trailer type vehicles sold by Becker have no trucks for which the truck bodies were made
  - Circuit Court found trailers sold are "truck bodies" and qualify for the exemption
  - DOR has appealed this decision



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## Litigation

- ▷ *Green Cab of Wisconsin, Inc.:* WTAC, March 10, 2022
  - Issue - Are lease of taxicabs subject to 5% state rental vehicle fee under sec. [77.995\(2\)](#), Wis. Stats.
  - Commission concluded:
    - Taxicabs are Type 1 motor vehicles
    - Taxpayer's primary business is rental of driverless vehicle to independent contractor, licensed taxi drivers
    - Rental of driverless vehicles licensed as a taxicab to a driver holding a valid taxicab driver's permit is subject to the state rental vehicle fee
  - Taxpayer has appealed.



115

## Litigation

- ▷ *Oshkosh Corporation:* WTAC, October 10, 2022
  - Issue – Whether indirect materials (office equipment and supplies) used in fulfilling contracts with the federal government were purchased by the taxpayer for resale if only the title to, but not possession of, the indirect materials passes to the federal government.
  - Commission concluded:
    - "Sale" in sec. 77.51(14), Wis. Stats., includes the transfer of ownership of, title to, possession of, or enjoyment of tangible personal property
    - Title transfer alone is sufficient to constitute a sale
  - DOR is deciding whether to appeal decision



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# Unclaimed Property Update

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## Unclaimed Property

- ▷ Unclaimed property is generally a financial asset that belongs to someone else that hasn't had owner activity for a specified time period and the holder cannot contact the owner of the property
- ▷ Examples include uncashed payroll checks, loan collateral, deposits, credit balances, refunds, etc.
- ▷ Reports are due November 1 each year for property that met the dormancy period in the previous fiscal year
- ▷ Holder report guide (Publication 82) and webinars are available on our website if you have questions

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# Unclaimed Property

- ▷ 2021 Wis. Act 87
- ▷ Effective November 7, 2021
- ▷ Substantial revision to update and modernize Chapter 177 to model after the Revised Uniform Unclaimed Property Act
- ▷ Key provisions:
  - Creates a voluntary disclosure program
  - Adopts confidentiality provisions for unclaimed property records
  - Eliminates interest and revises penalties for holders who fail to report or deliver property
  - Provides appeal rights to holders
  - Clarifies the business-to-business exemption



# Unclaimed Property - VDA

- ▷ Applications must be submitted by February 23, 2023
- ▷ Application is online on the unclaimed property homepage
- ▷ Under the agreement, late fees and penalties will not be assessed to property reported under the program
- ▷ Eligibility:
  - You have unclaimed property to report from any of the five most recent reporting periods
  - You have not been audited for unclaimed property since 7/1/2016, or received notice of an upcoming audit
  - You do not have a balance on your unclaimed property holder account



## Unclaimed Property - VDA

- ▷ Terms of the agreement:
  - Attempt to contact owners of the property within 30 days of execution of the agreement. Notification letters must be sent to owners of properties worth \$50 or more.
  - Within 120 days of entering into the agreement, electronically file a report and deliver property for at least the five previous reporting periods. A reporting period is July 1 through June 30.
  - Continue to report and deliver all unclaimed property for at least four future annual reporting periods.
- ▷ 283 agreements completed as of mid October; over 10,900 started



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## Unclaimed Property – Holder Changes

- ▷ Holders are required to provide the social security number or taxpayer identification number on holder reports, if known or readily available
- ▷ Holder notices sent to apparent owners must contain specific facts and statements that are provided in the law
- ▷ Holder reimbursements may be set off against debts of state agencies or municipalities
- ▷ Late filed reports have a \$150 penalty
- ▷ Interest is eliminated. Payments made after the due date are assessed a penalty equal to 15% of the value of the property.



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# Processing, Procedures, and Projects



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## Filing Season Opening / Due Date

- ▷ Individual income tax due date is April 18, 2023
- ▷ The IRS has not yet announced the opening dates for Modernized eFile
- ▷ Many 2022 Wisconsin draft forms have been posted to our website



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## 2021 Filing Season Statistics

Tax Type	Returns Filed	eFile Rate
Corporation Franchise (4, 4H 5S, 6)	43,830	88.2%
Fiduciary (2, 4T, Schedule CC)	61,552	75.1%
Individual Income (1, 1NPR, Schedule H, H-EZ and X-NOL)	3,286,892	<b>90.7%</b>
Pass-Through (1CNS/1CNP, 3, 5S, PW-1)	202,845	96.3%
Sales (ST-12)	956,904	97.2%
Withholding (WT-6, WT-7)	488,441	97.8%



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## 2022 Filing Season Tips – Income/Franchise Tax

- ▷ Be sure to include all forms, schedules and attachments with return
  - Software providers are required to allow attachments to e-filed returns
- ▷ Verify estimated payments and credit carryforward prior to filing
- ▷ Review adjustment notices from prior year to ensure you are using the most updated information



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## 2022 Filing Season Tips – Individual Income Tax

- ▷ Include Schedule U, *Underpayment of Estimated Tax*, on individual income tax return if income earned unevenly throughout the year AND has underpayment interest
  - Example: Taxpayer took a large distribution from a retirement account in November and did not have withholding. DOR will assume income is earned evenly throughout year for purposes of computing underpayment, UNLESS Schedule U is filed.
- ▷ Check FEINs on W-2s to ensure they are accurate. FEINs autofill in software from year to year, but businesses (employers) may change FEIN.
- ▷ Verify certificate of compliance number entered for farmland preservation claims & don't include dashes in number



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## 2022 Filing Season Tips – Individual Income Tax

- ▷ Omit nontaxable wages from married couple credit calculation (e.g., military pay subtraction)
- ▷ Returns claiming credits passed through from a partnership or S-Corp may be held if partnership or S-Corp has not yet filed
- ▷ Make sure appropriate documentation for contributions or adjustments from pass-through entities (SB lines 43-49) are included with return submission



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## TY2022 – Communicating Electronically

- ▷ New for 2022: For those who file electronically, DOR is requesting an e-mail address for both prime & spouse, along with consent to contact taxpayer via e-mail. The reason is to reduce paper mailing costs and to more efficiently communicate with taxpayer.
- ▷ This is in addition to the request for an email address to consent to receiving Form 1099-G electronically from DOR.



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## 2022 Filing Season Tips – Pass-Through Entities

- ▷ Attach credit schedules when filing electronically (e.g., attach Schedule FC/FC-A, *Farmland Preservation Credit*, to the Form 2, *Fiduciary Income Tax for Estates and Trusts*)
- ▷ Form 2 for periods longer than 12 months are not accepted
- ▷ Forms 1CNP/CNS, Composite Partner/Shareholder Individual Income Tax Returns: Do not duplicate SSNs on Schedule 2



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## 2022 – Filing Season Tips - Manufacturing & Ag Credit

- ▷ Schedule MA-M: If box C or D is checked, enter qualifying parcel number
- ▷ Schedule MA-A & MA-M: Direct costs allocable to production gross receipts (line 3) should never be negative



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## Make a Payment Page Expansion

- ▷ Rolled out [Make a Payment page](#) last year for individuals
- ▷ Expanding next year to include other major tax types, including corporation franchise tax, partnership, sales, withholding, pass-through withholding and fiduciary
- ▷ Page includes all appropriate payment methods by tax type AND links to the vouchers for those tax types
- ▷ Quick Pay button takes user DIRECTLY to MTA screen for making unregistered payments for individual income tax, fiduciary income tax, occasional consumer use tax, and non-tax debt; will be rebranding this slightly



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## Make a Payment Page - Currently

Make a Payment

Quick Pay

Make a Payment +

Individuals can make a payment via the methods below. Businesses should make their payments through [My Tax Account](#).

- Automatic Withdrawal +
- Credit or Debit Card +
- Check or Money Order +
- Cash +
- Can't Pay in Full? +
- Estimated Payments and Prepayment of Tax +

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## Payments & Software Providers

- ▷ Requiring software vendors to provide links to [Make a Payment](#) page in their software AND on the return summary page
- ▷ Software used by tax professionals for individual income tax filing will continue to provide payment vouchers
- ▷ For most tax types (EXCEPT individual income tax), vouchers will be produced from our website instead of your software
- ▷ DOR is trying to increase number of payments made electronically due to substantial processing delays with check processor

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# Credit Card Processor

- ▷ DOR is switching to a new credit card vendor
- ▷ Credit card payments will be much easier under new system
- ▷ Look/feel of credit card screens will be much closer to existing DOR branding from MTA/DOR website
- ▷ Fees will be reduced slightly as well



# Sample Screens - Credit Card Payments

Wisconsin Department of Revenue

1 Payment Type 2 Customer Info 3 Payment 4 Submit Payment

### Transaction Detail

The following amounts will be remitted back to the agency.

SKU	Description	Unit Price	Quantity	Amount
Convenience Fee	Convenience Fee	\$1.00	1	\$1.00
WINPAS Fee	WINPAS Fee	\$100.00	1	\$100.00
Total				\$101.00

### Transaction Summary

Convenience Fee	\$1.00
WINPAS Fee	\$100.00
<b>TOTAL</b>	<b>\$101.00</b>

### Need Help?

Select Payment Method and Continue to proceed with payment.

### Payment

Payment Type



## Sample Screens - Credit Card Payments

The screenshot displays the Wisconsin Department of Revenue's online payment interface. The main header is 'Revenue' with the department's logo. The page is divided into several sections:

- Payment Type:** 'Credit/Debit Card' is selected, indicated by a green checkmark.
- Customer Information:** This section is also marked with a green checkmark and includes an 'Edit' button. It contains:
  - Address:** 123 Main St., Madison, WI 53703
  - Phone Number:** 608-...
  - Country:** United States
  - Email Address:** ...@gov.com
- Payment Information:** This section includes fields for 'Credit Card Number \*' and 'Credit Card Type'. A note says 'Complete all required fields [\*]'.
- Transaction Summary:** A table showing fees:

Convenience Fee	\$1.00
WINPAS Fee	\$100.00
Service Fee	\$2.27
<b>TOTAL</b>	<b>\$103.27</b>
- Need Help?:** A message states: 'You have selected to pay by credit card. Complete Customer Billing Information and enter Credit Card Information.'

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## Filing Tips – Sales & Withholding

- ▷ Include county sales tax, if applicable
- ▷ 1099s with withholding must be filed to DOR by January 31<sup>st</sup>! Combined fed-state cannot be used in this case
- ▷ \$10 penalty issued for failing to file W-2s/1099s, filing late, or failing to file electronically if 10 or more filed on paper

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# Customer Service: Upcoming Projects

- ▷ Chatbot (virtual assistant)
  - Coming in 2023
  - Another method for customers to find answers
- ▷ Small business outreach
  - <https://www.revenue.wi.gov/Pages/Businesses/Seminars-home.aspx>
  - Seeking organizations to host seminars and webinars covering:
    - Business tax registration
    - Withholding tax
    - Sales and use tax
    - Other business taxes
    - My Tax Account
    - Compliance tips
    - Resources for business owners: webpages, contact information, etc.



# New Audit Web Page

Audits and Credit Reviews



## Audit Web Page

- ▷ <https://www.revenue.wi.gov/Pages/ISE/audit.aspx>
- ▷ Links to frequently referenced topics
  - Tax program web pages
  - Common Questions
  - Publications
  - My Tax Account
  - My Case Manager



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## Audit Web Page

- ▷ Audit-specific forms
  - Sales and use tax - Sample customer/vendor contact letters
- ▷ Instructions for communicating and transferring files electronically with auditor
  - Using My Case Manager
  - Using Secure File Transfer
  - Using DocuSign



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# My Tax Account (MTA) Updates



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## MTA: Personal Users

- ▷ Encourage clients to register for My Tax Account (MTA) as personal users
  - Benefits: electronic notice delivery, make/view/cancel estimated payments, check refund status, and more
  - No third-party access yet - when it goes live, your client must have MTA to be able to grant you access, and you must have a valid POA on file with us
    - Email Form A-222 to [DORPOA@wisconsin.gov](mailto:DORPOA@wisconsin.gov) or fax to 608-267-1030
- ▷ WI Identity Protection (IP) PIN
  - Ensures someone cannot file a WI return in your client's name
  - Enrollment is optional and completed via MTA
  - Once enrolled, must list PIN on all future returns (2021 and forward)
  - Different from IRS IP PIN



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## MTA: Replacing WI e-file

- ▷ Gradually removing functionality from WI e-file and adding it to MTA
  - WI e-file is outdated and difficult to support
- ▷ Personal users who meet specific requirements can file 2022 Form 1 in registered MTA
  - Focusing on single and head of household (not married) and relatively simple returns this year
- ▷ Homestead credit filers may no longer file electronically using WI e-file; certain claimants may use unregistered MTA to file 2022 Schedule H electronically



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## MTA: My Case Manager

- ▷ My Case Manager is available to help you and your clients make the audit process smoother. You can:
  - Follow the progress of the audit
  - Review requests and deadlines
  - Send secure messages back & forth with the auditor
  - Send documents securely (up to 30 MB)
  - Locate the supervisor's contact information
- ▷ Resources:
  - [Publication 701, My Case Manager User Guide](#)
  - [My Case Manager Common Questions](#)



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## MTA: Manufacturing Property Assessment

- ▷ Electronic filing of Manufacturing Property Assessment Returns (M-Forms) will be through MTA in 2023
  - The former e-filing system was the Manufacturing Assessment System (MAS)
  - Most manufacturing returns are e-filed
  - A paper filing option will be limited
- ▷ M-Forms will be live in MTA in mid-January
- ▷ Historical filings will still be available for review in MAS



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## MTA: Utility Annual Filing

- ▷ Annual utility reports moving into MTA for the 2023 filing season
  - Municipal Light Heat and Power
  - Private Light Heat and Power
  - Rural Electric Cooperative
  - Carline
  - Air Carrier
  - Railroad
  - Pipeline (Gas and Oil)
  - Conservation and Regulation
  - Association of Municipal Electrics
- ▷ Will be available mid-January

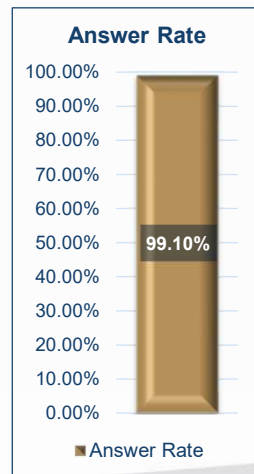
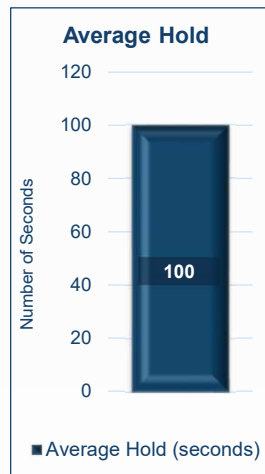
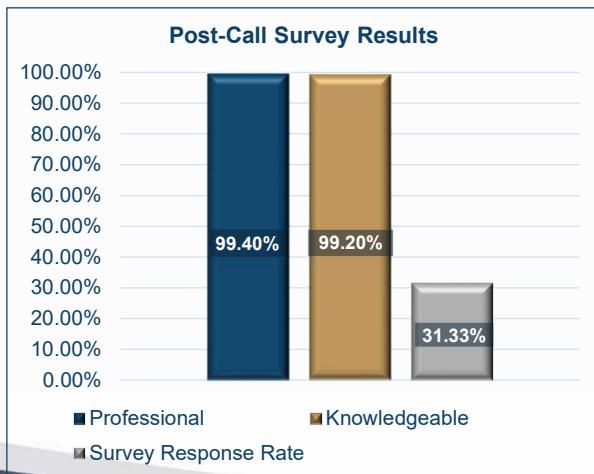


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# Statistics

## FY22 IS&E Division Phone Statistics

▷ 659,687 calls answered





## DOR Initiatives – ID Verification

	FY22	FY21	FY20	FY19
Returns Evaluated	3,150,305	3,010,713	2,875,034	3,087,501
Quizzes Required	4,360	2,029	3,083	2,591
PINs Required	56,373	36,078	36,480	49,919
ID Docs Required	6,870	2,746	4,931	7,725
ID Docs Reviewed	5,760	2,186	6,597	8,959
Total ID Verification Actions Required	67,603	40,853	44,944	60,235
% of Returns Evaluated Requiring ID Verification	2.15%	1.36%	1.55%	1.95%
Refunds Denied for Failure to Verify ID	10,985	2,854	12,198	23,481



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## DOR Initiatives – Bad Refunds Stopped

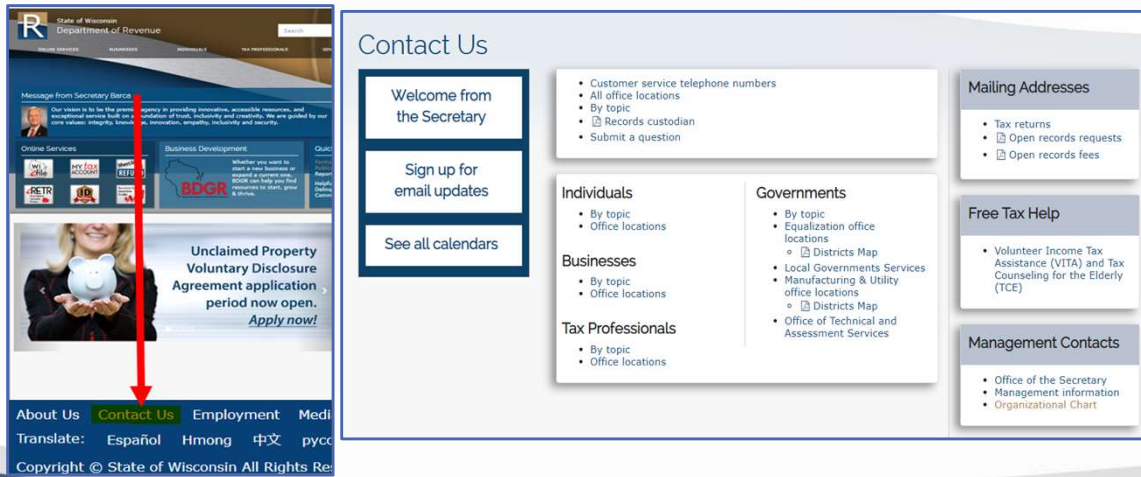
Bad Refunds Adjusted/Stopped	Fraud Detection With Analytics	Processing Fraud - OCI	Processing Fraud - Tax Ops	Earned Income Credit	Homestead Credit	Total for Specific Initiatives
FY22	\$5,705,235	\$10,571,743	\$6,662,514	\$23,387,279	\$23,197,939	<b>\$69,524,710</b>
FY21	\$3,190,632	\$9,878,995	\$4,631,190	\$19,748,512	\$24,148,497	<b>\$61,597,826</b>
FY20	\$5,613,849	\$7,940,577	\$2,656,902	\$8,123,852	\$4,776,598	<b>\$29,111,778</b>
FY19	\$8,595,686	\$5,970,625	\$6,020,804	\$20,436,036	\$14,358,603	<b>\$55,381,754</b>
FY18	\$7,052,669	\$5,869,413	\$5,628,995	\$17,943,046	\$14,862,551	<b>\$51,356,674</b>
FY17	\$9,300,745	\$6,059,255	\$8,044,070	\$20,134,976	\$16,046,799	<b>\$59,585,845</b>
FY16	\$11,149,599	\$8,092,817	\$6,849,591	\$19,946,592	\$17,004,928	<b>\$63,043,527</b>
FY15	\$11,050,119	\$7,335,531	\$6,889,513	\$16,682,990	\$15,828,093	<b>\$57,786,246</b>
FY14	\$3,550,473	\$4,904,089	\$8,195,222	\$17,710,656	\$15,299,425	<b>\$49,659,865</b>
FY13		\$3,434,613		\$14,257,838	\$12,480,794	<b>\$30,173,245</b>
FY12		\$1,702,300		\$9,341,511	\$14,694,458	<b>\$25,738,269</b>
FY11		\$3,324,200		\$13,510,224	\$12,219,984	<b>\$29,054,408</b>
Total						<b>\$582,014,147</b>



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# Contact Us

Use the "Contact Us" page to find contact information for various areas of DOR



The screenshot shows the Wisconsin Department of Revenue website. The 'Contact Us' page is highlighted with a red arrow. The page content includes:

- Welcome from the Secretary**
- Sign up for email updates**
- See all calendars**
- Customer service telephone numbers**
  - All office locations
  - By topic
    - Records custodian
    - Submit a question
- Mailing Addresses**
  - Tax returns
  - Open records requests
  - Open records fees
- Free Tax Help**
  - Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE)
- Management Contacts**
  - Office of the Secretary
  - Management information
  - Organizational Chart
- Individuals**
  - By topic
  - Office locations
- Businesses**
  - By topic
  - Office locations
- Tax Professionals**
  - By topic
  - Office locations
- Governments**
  - By topic
  - Equalization office locations
    - Districts Map
  - Local Governments Services
  - Manufacturing & Utility office locations
    - Districts Map
  - Office of Technical and Assessment Services

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# Contact Us

- ▷ Practitioner email address and phone number
  - Do not share with your clients
  - [DORTaxPractitioners@wisconsin.gov](mailto:DORTaxPractitioners@wisconsin.gov)
  - (608) 264-6886

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# Presenter

- ▷ Nate Weber, Director of Technical Services
  - (608) 266-8025
  - [nathaniel.weber@wisconsin.gov](mailto:nathaniel.weber@wisconsin.gov)



Thanks!  
Any questions?



11 a.m. – 12 p.m.

# International Tax Issues for the General Practitioner

**Robert Misey**, *Chair, International Department, Reinhart Boerner Van  
Deuren s.c*

# International Tax Issues For The General Practitioner

Robert Misey  
Reinhart Boerner Van Deuren s.c.  
rmisey@reinhartlaw.com  
Milwaukee (414) 298-8135

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## Does the Client Export U.S.-Manufactured Goods?

- If so, the client may be able to take advantage of export benefits—IC-DISCs and the deduction for Foreign-Derived Intangible Income (“FDII”)—to reduce their U.S. taxes

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## Introduction to IC-DISC

- Formation of the IC-DISC
  - A single class of stock
  - A minimum par value of \$2,500
  - Elect to be an IC-DISC with a Form 4876-A

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## Introduction to IC-DISC (cont.)

- Taxation of an IC-DISC and its shareholders
  - An IC-DISC is not subject to corporate tax
  - When the IC-DISC pays a dividend, its owners will pay income tax at a 23.8% rate
  - Tax savings to the manufacturing entity's owners vary based on their marginal rate

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## Qualification as Export Property

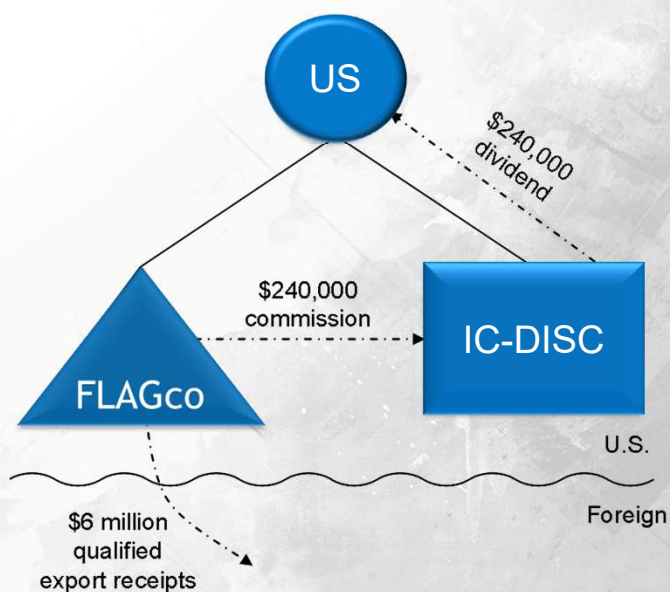
- The property must be manufactured in the U.S. by a person other than the IC-DISC
- The export property must be held primarily for use outside the U.S.
- The property must have a maximum of 50% foreign content

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## 4% of the Qualified Export Receipts

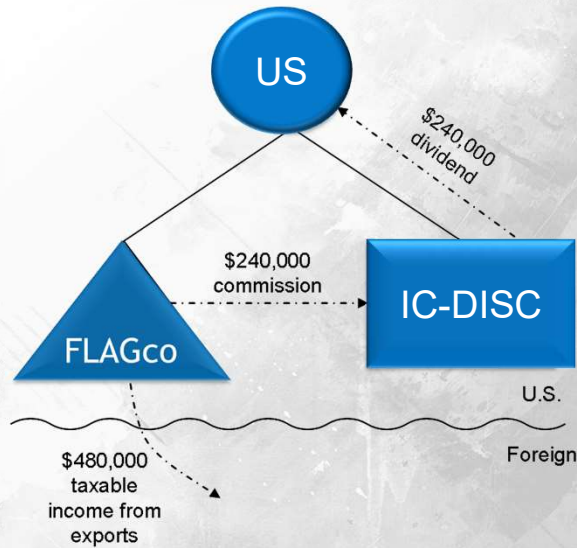


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## 50% of Combined Taxable Income

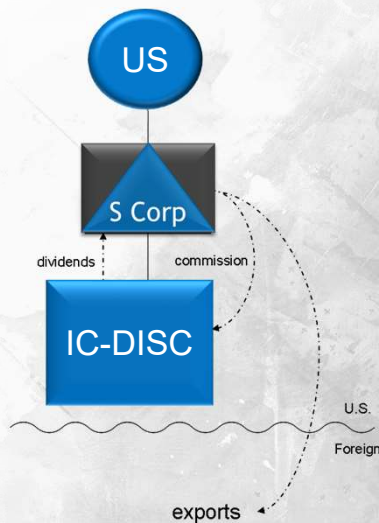


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## Structuring the IC-DISC Subsidiary of a Flow-Through



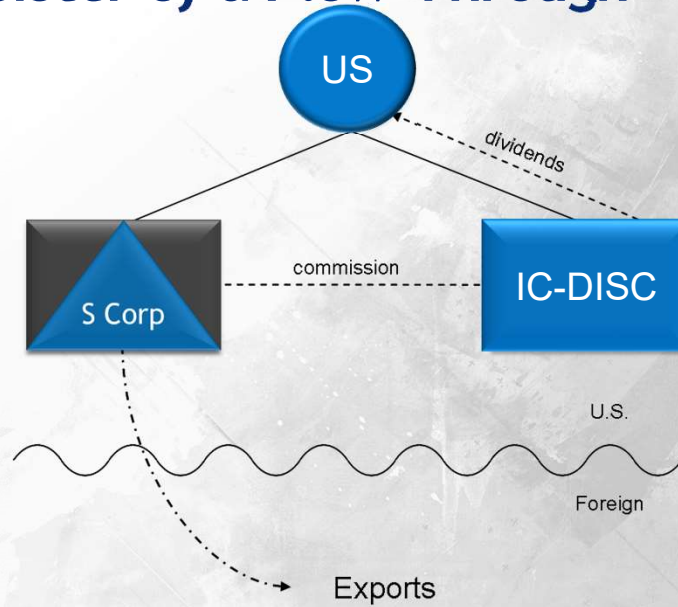
8

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# Structuring the IC-DISC Brother-Sister of a Flow-Through

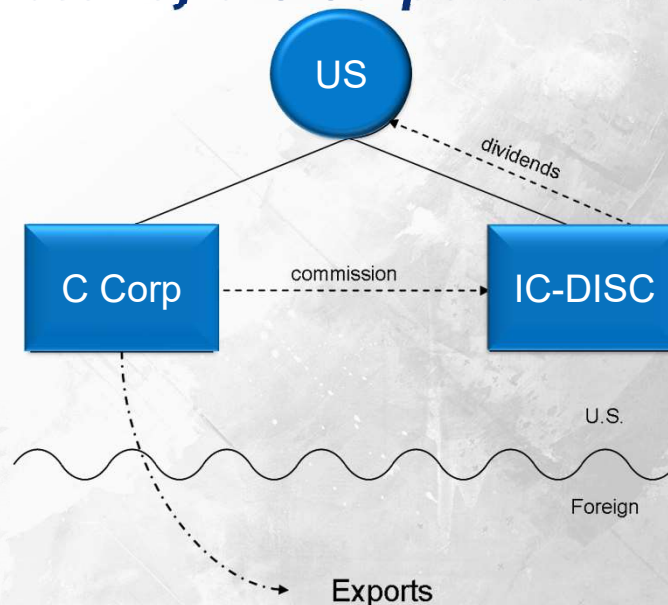


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# Structuring the IC-DISC Brother-Sister of a C Corporation

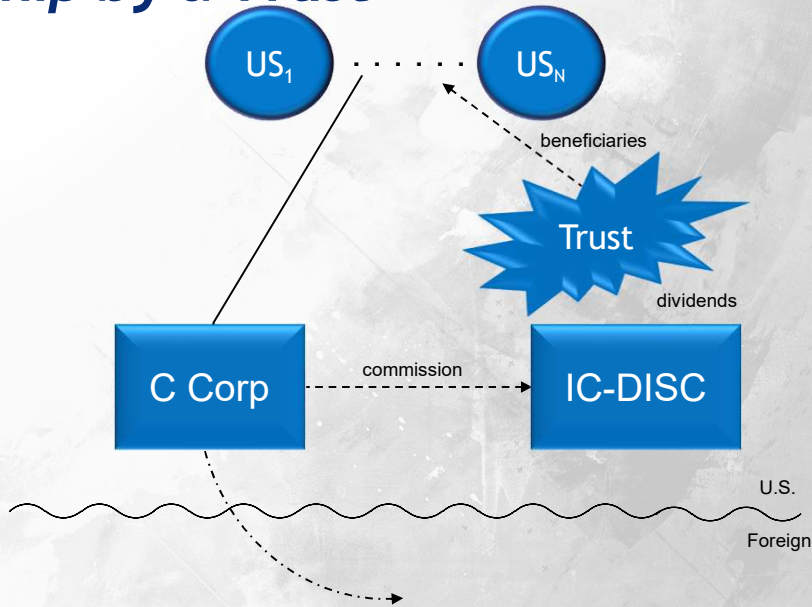


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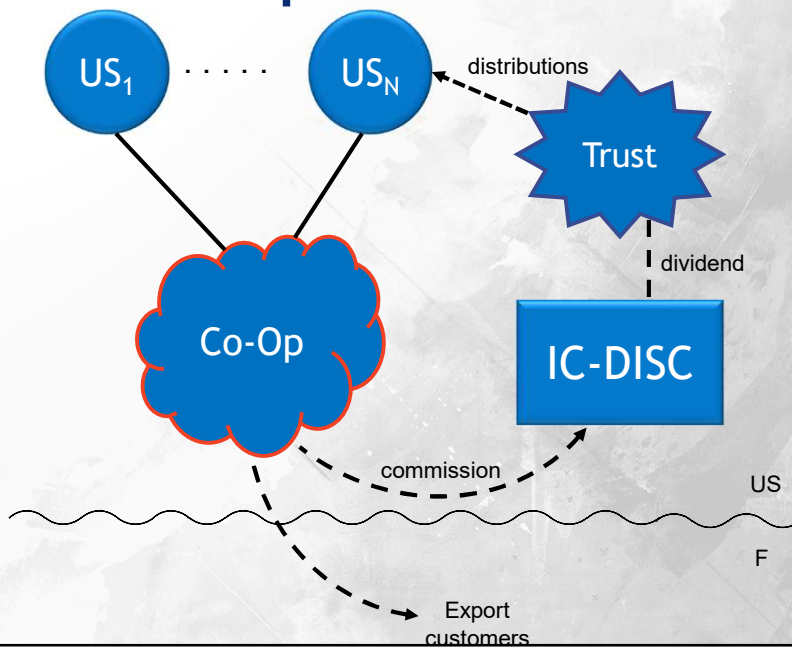
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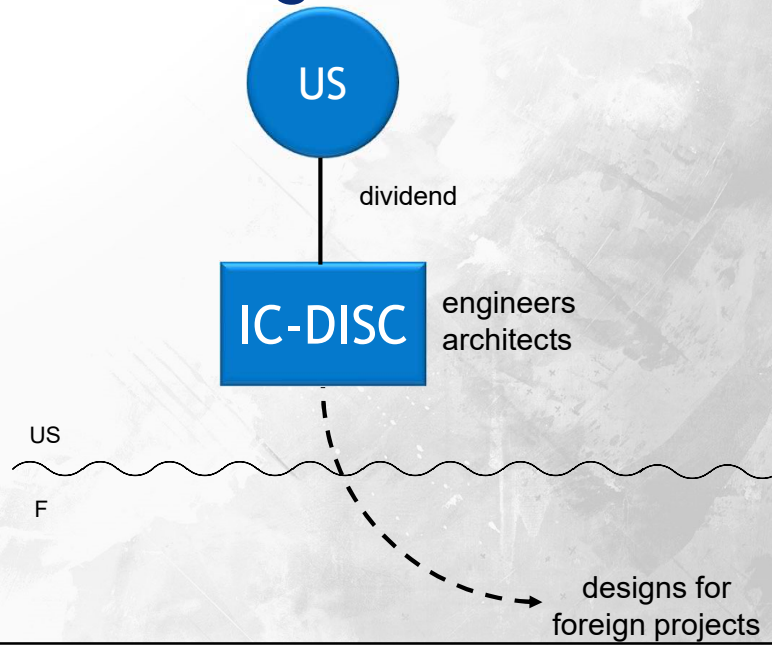
# Structuring the IC-DISC Ownership by a Trust



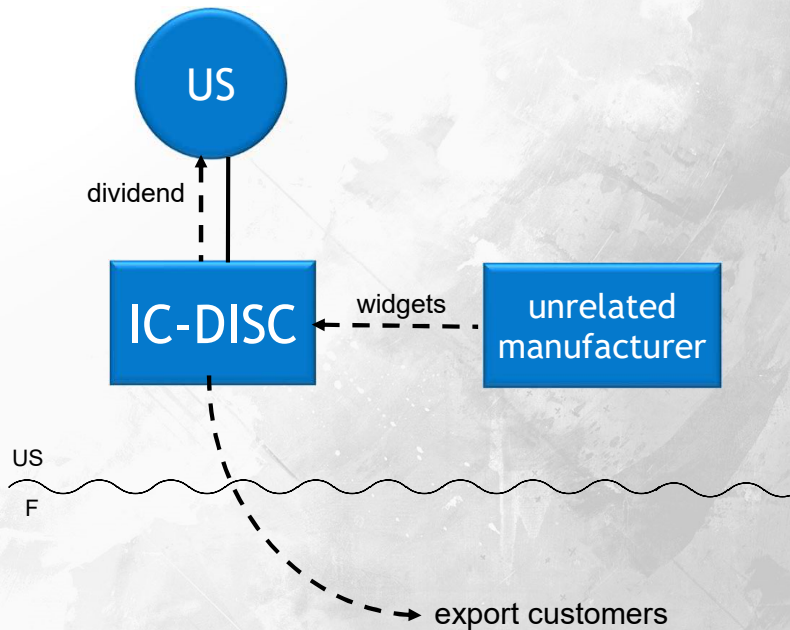
# Trust For a Co-Op's Members



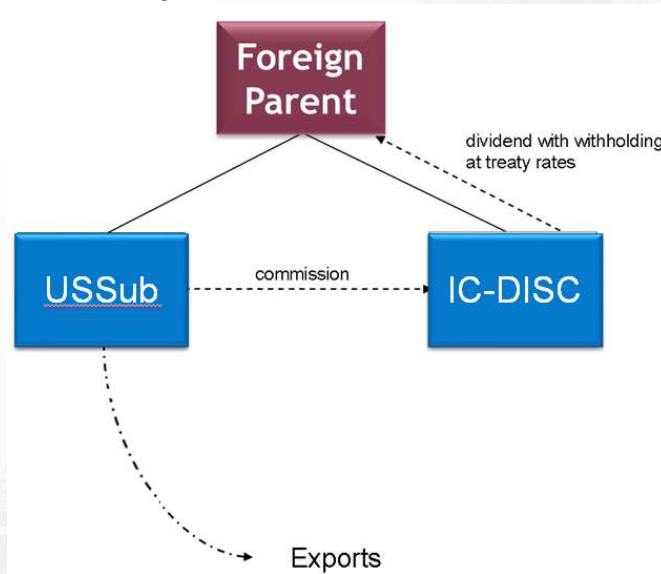
# Architects and Engineers



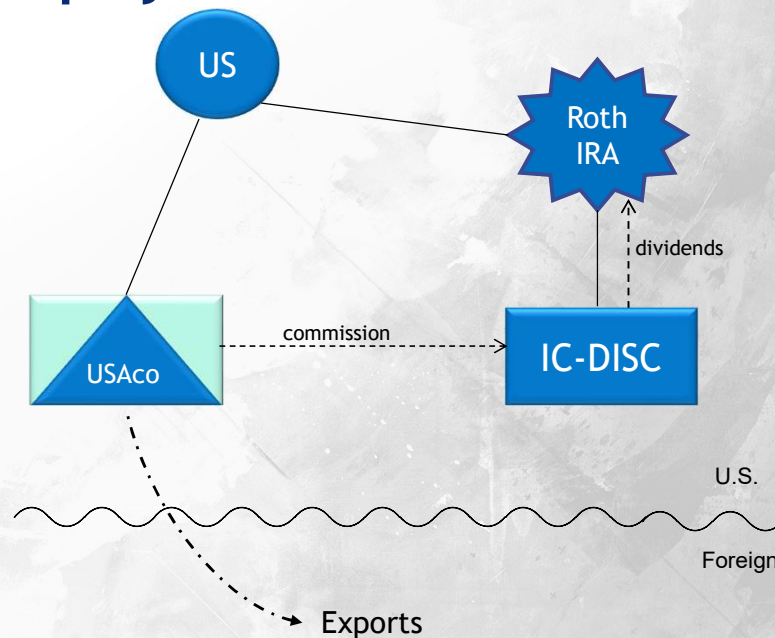
# Pure Distributor



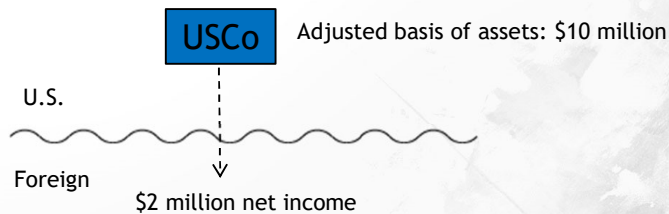
# Inbound Treaty Benefits



# Ownership by a Roth IRA



## 37.5% Deduction for FDII of a C Corporation Only (non-routine return taxed at 13.125%)



$37.5\% \text{ of } (2M - 10\% \text{ of } \$10M) \times (\$2M/\$2M)$   
\$93,750 deduction

Effective rate of 13.125% on exports or foreign services of a C corporation  
beyond a routine 10% return on assets

## Does the Client Own a Foreign Subsidiary that Earns Income, but has Few Depreciable Assets?

- If so, the client may have to plan to avoid paying U.S. tax on what is called Global Intangible Low-Taxed Income

## Introduction to GILTI

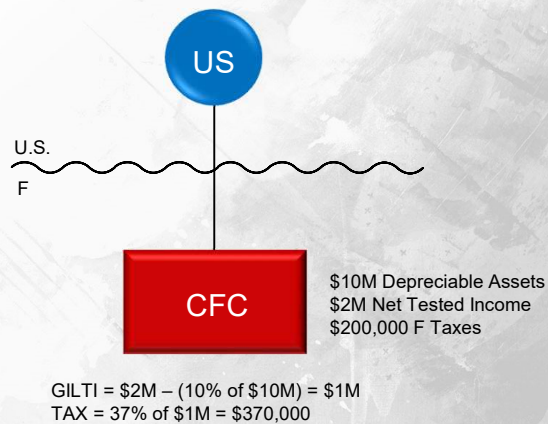
- A U.S. shareholder pays tax on the GILTI of a CFC
- GILTI is the excess of income over 10% of depreciable assets
- Planning Tip #1: Stuff CFC with manufacturing assets that have business purpose to avoid the anti-abuse rules

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## GILTI Applies To U.S. Individuals and They Don't Receive a Foreign Tax Credit

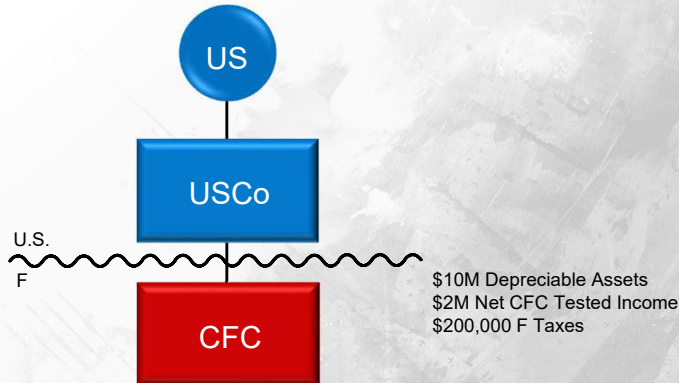


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## Planning Tip #2: Contribute CFC To a C Corporation For (a) 50% deduction and (b) Foreign Tax Credit



$$\text{GILTI} = \$2\text{M} - (10\% \text{ of } \$10\text{M}) = \$1\text{M}$$

## Tax on GILTI and Dividend will be lower than if the U.S. Individual Directly Owned the CFC

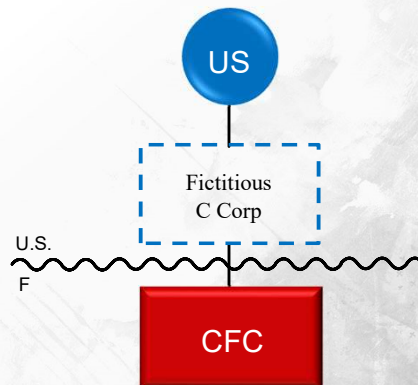
### GILTI Tax

$$\begin{aligned} \text{U.S. Tax} &= 21\% \text{ of } [50\% \text{ of } (\$1\text{M} + \$200,000)] - 80\% \text{ of } (\$200,000 \times \$1\text{M}/\$2\text{M}) \\ &= (21\% \text{ of } \$600,000) - (80\% \text{ of } \$100,000) \\ &= \$126,000 - \$80,000 \\ &= \$36,000 \end{aligned}$$

### GILTI Tax + Individual Tax

$$\begin{aligned} \$36,000 + (23.8\% \text{ of } \$1\text{M}) &< \$370,000 \\ \$274,000 &< \$370,000 \end{aligned}$$

## Planning Tip #3: Section 962 Election



- Same tax impact as if a real C corporation
- Any distributions from CFC are treated as coming from the fictitious C Corp, net of tax previously paid

## Does the Client have Significant Intercompany Transactions?

- If so, how is the client protecting itself from an exposure to a transfer pricing adjustment and/or penalty?



## Determining the Nature and Amount of Reportable Transactions

- Reportable transactions are intercompany transactions
- A transfer price is the price charged for intercompany transactions
- The principles of I.R.C. Section 482 require that intercompany transactions be priced at arm's length
- Although ostensibly a simple concept, the arm's-length standard has spawned hundreds of pages of regulations and case law

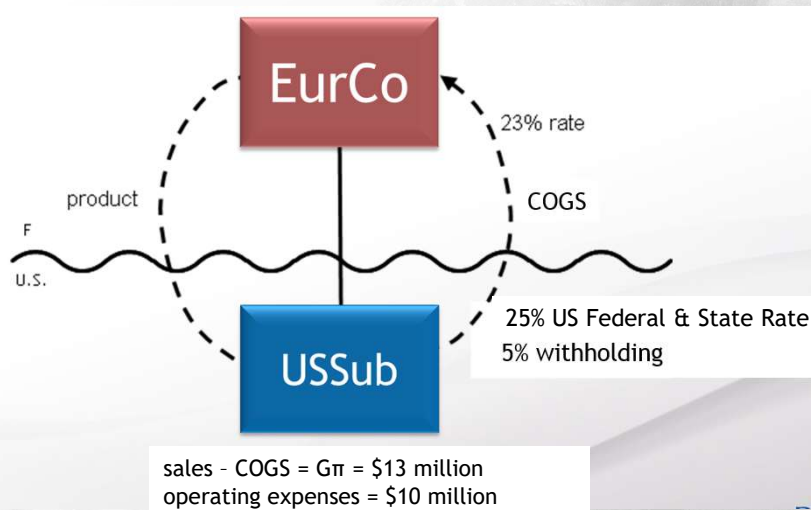
## Determining the Nature and Amount of Reportable Transactions (cont.)

- EurCo sells hockey pucks to USSub for resale in the United States
- Although USSub does not have any manufacturing functions, USSub employs its own administrative and sales staff while using EurCo's unique distribution software
- USSub has payment terms to EurCo of six months
- USSub's average collection period is two months
- If USSub's customers do not pay, USSub enjoys the use of EurCo's collection staff
- **A comparable scenario could occur for a US company with a foreign subsidiary**

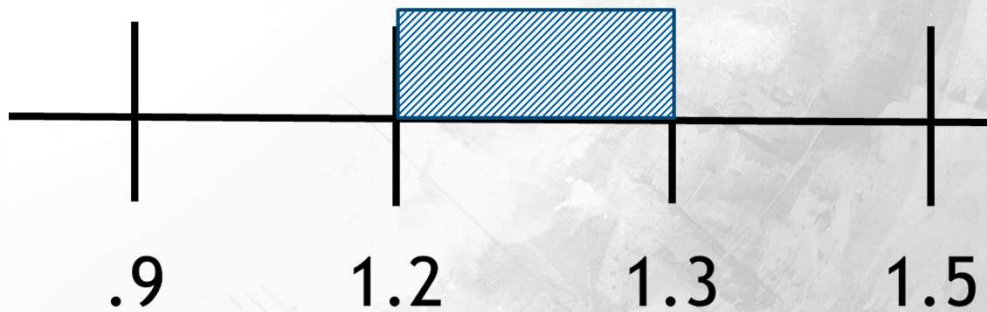
# Determining the Nature and Amount of Reportable Transactions

- Methods specified in the Regulations
  - Comparable uncontrolled price method
  - Resale price method
  - Cost plus method
  - Comparable profits method
  - Profit split methods

# Comparable Profits Method



## The Arm's-Length Range



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## The Transfer Pricing Penalty

- The Transfer Pricing Penalty
- Transfer Pricing Documentation
- Advance Pricing Agreements



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## The Transfer Pricing Penalty (cont.)

- The Transfer Pricing Penalty
- If the IRS determines that
  - i. an intercompany transfer price was less than 50 percent or more than 200 percent of arm's-length price or
  - ii. the transfer pricing adjustment increases taxable income by \$5 million or more, USSub must pay a penalty equal to 20% of the additional tax
- The penalty increases to 40% if
  - i. the intercompany transfer price was less than 25 percent or more than 400 percent of an arm's-length price or
  - ii. the transfer pricing adjustment is \$20 million or more

## The Transfer Pricing Penalty (cont.)

- The Transfer Pricing Documentation
- The documentation must state the reasons for believing the prices are at arm's length and must be in place when the return is filed, but does not have to be provided to the IRS until requested on audit
- The Assistant Commissioner LB&I has ordered International Examiners to either request documentation or explain in writing why the documentation was not requested

## Transfer Pricing Documentation



- Overview
- Organizational Structure
- Controlled Transactions
- Functional Analysis
- Best-Method Analysis
- Economic Analysis

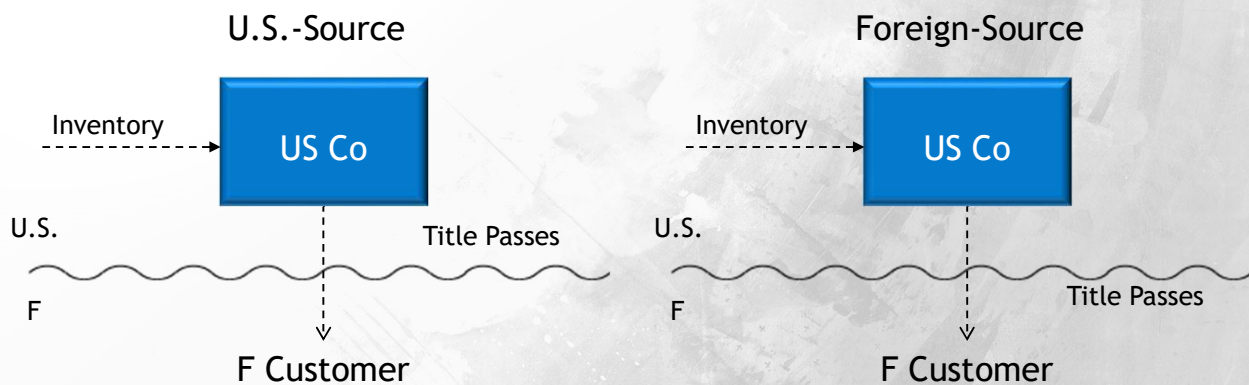
## The Advance Pricing Agreement Program (APA)

- An APA is an agreement between the IRS and USSub
- At the request of USSub, the IRS reviews and agrees to USCo's transfer pricing methodology
- The APA describes the factual nature of the related-party transactions, the appropriate pricing methodology and the expected range of results from applying the methodology to the transaction

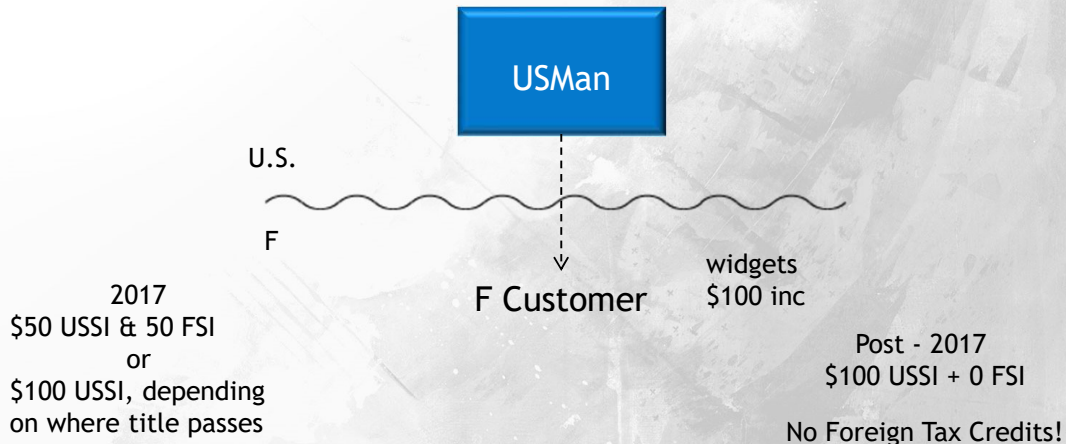
## How is the Client Sourcing its Income?

- The sourcing rules, which are not complex, but often misapplied, impact the limit on the foreign tax credit

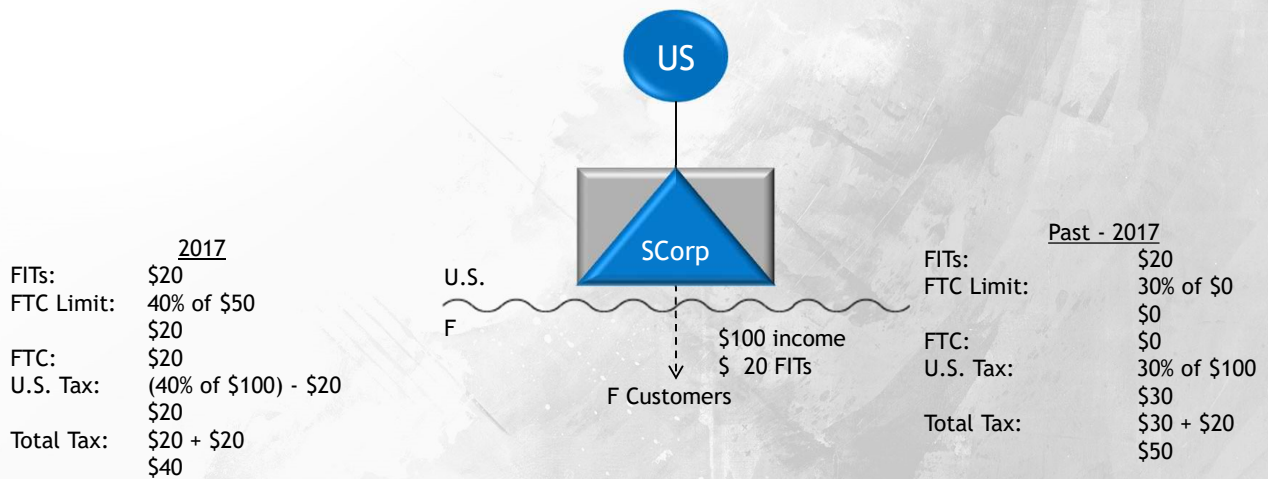
## Source Income from Sales of Purchased Inventory By Where Title Passes on Resale



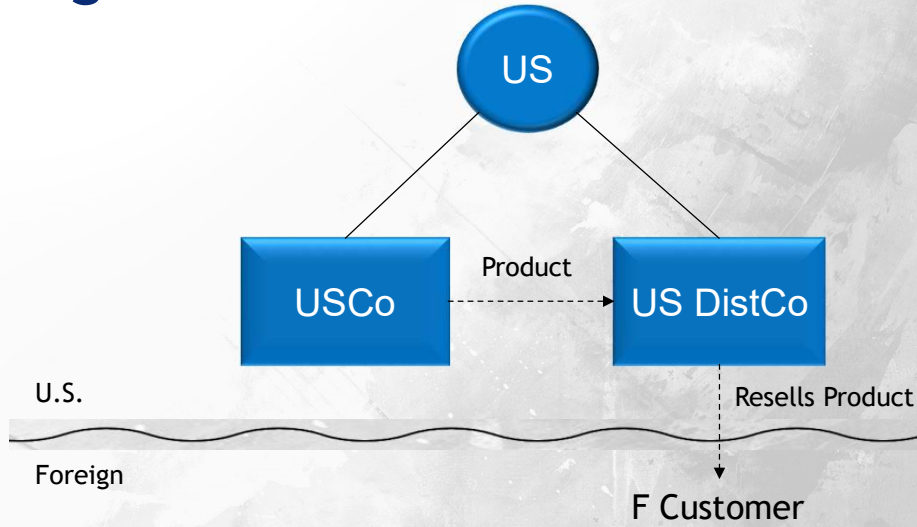
# Source Income from Sales of Manufacturing Income Where Manufactured



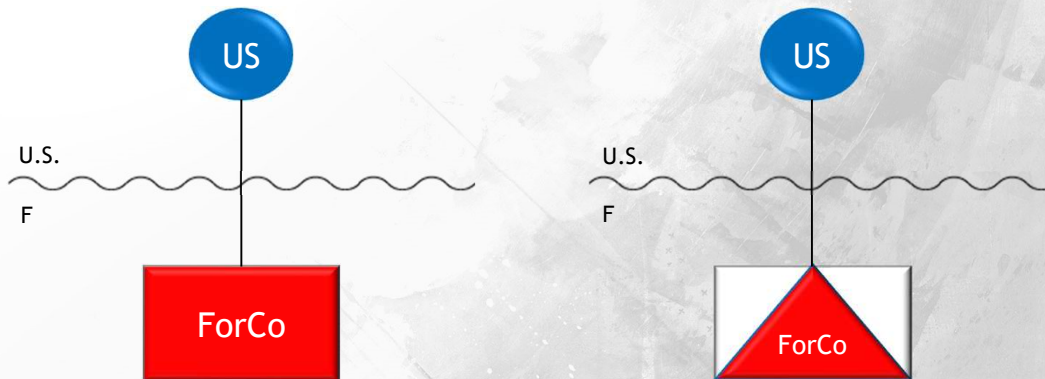
# Higher Tax on U.S. Exporters That Pay Foreign Income Taxes



# Planning For Foreign-Source Income to take Foreign Tax Credits



# Oldie but Goodie: Checking-the-Box





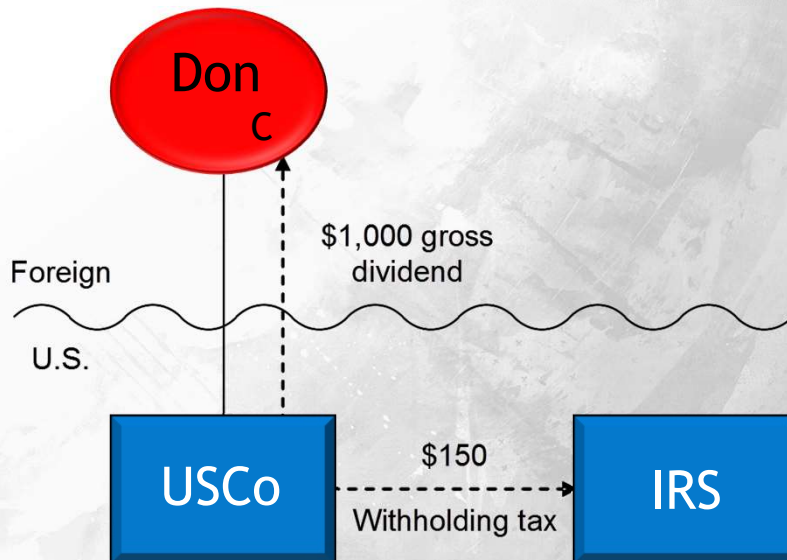
## Withholding on FDAP Payments

- To be subject to withholding, the income must generally be of a type that is
- Fixed, determinable, annual, or periodic (FDAP), and
- Derived from sources within the United States

## Withholding on FDAP Payments

- There are numerous exemptions and special rules
  - Withholding is not required on any U.S.-source income that is effectively connected with the conduct of a U.S. trade or business
  - The withholding exemption for effectively connected income generally does not apply to the personal services income of a foreign person
  - Bank deposit interest is exempt from withholding
  - Treaties often reduce the withholding rate from 30% to a lower amount (Form W-8BEN-E)

## Treaty Reduction



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## Foreign Parents Entitled to Treaty Benefits

1. Publicly-Traded Company
2. Subsidiary of Publicly-Traded Company
3. Stock Ownership/Base Erosion Test
4. Active Trade or Business that is substantial
5. Derivative Benefits

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## Withholding on FDAP Payments (Services)

- A U.S. payor ordinarily may rely on a type of Form W-8 or Form W-9 to determine the country of the payee's residence
  - Withholding is not required for dividends to a payee that has provided a Form W-9 for U.S. status unless the facts and circumstances indicate that the payee is a foreign national
  - Most other non-compensatory payments of FDAP eligible for treaty-based withholding relief should generally be reported on Forms W-8BEN or W-8BEN-E
  - Nonresident alien recipients of ECI should generally file Form W-8ECI
  - Nonresident alien employees or independent contractors should generally file a Form 8233 for compensatory payments eligible for treaty-based withholding relief

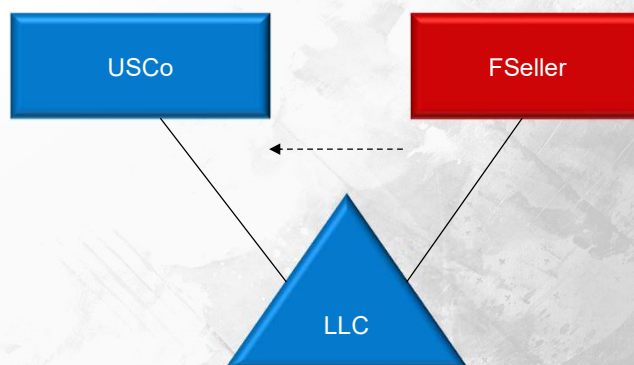
## Is a Foreign Business Considering Expansion to the United States?

- If so, what type of entity should they form?

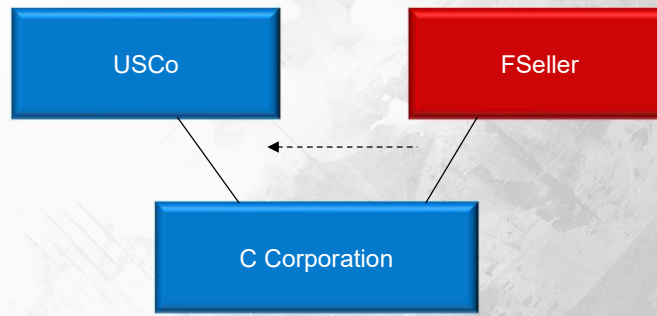
## Choice of U.S. Entity

1. An S corporation cannot have foreign owners
2. C corporations and LLCs have similar taxation of continuing operations
  - a. C corporation - U.S. corporate income tax and withholding tax on dividends
  - b. LLC - U.S. corporate income tax and the branch profits tax

## The Sale of an LLC will Incur Tax on Exit



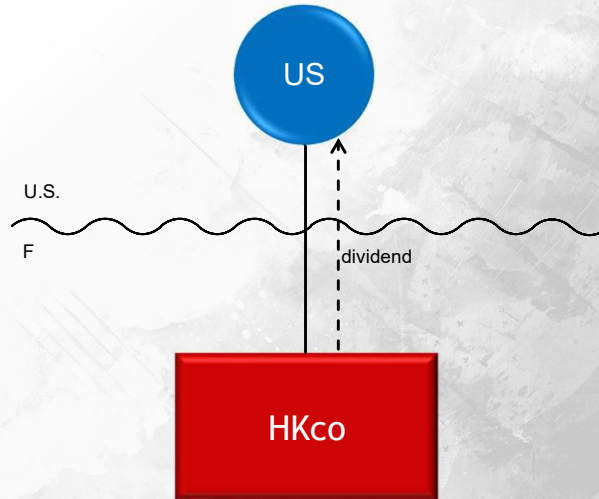
## The Sale of a C Corporation's Shares will not Result in Taxable Income



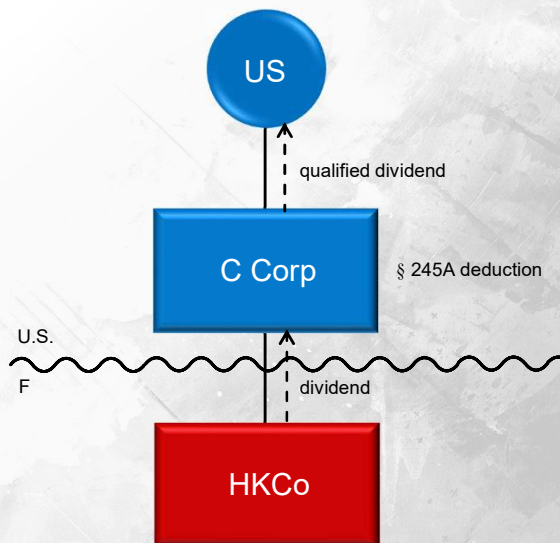
## Does the Client Own a Foreign Corporation in a Non-Treaty Country?

- If so, is the client structured to take dividends that are qualified dividends instead of ordinary income?

# Dividends From Non-Treaty Countries Are Taxed At 37%



# Contribute Non-Treaty Subsidiaries to C Corporations for Qualified Dividend Rates



## Has a Client Failed to File a Foreign Information Return?

- If so, there are several options for offshore disclosure

## Programs for Failure to File Information Returns

1. Streamlined Filing Compliance Procedures
  - a. U.S. Taxpayers Residing in the U.S.
  - b. U.S. Taxpayers Residing Abroad
2. Delinquent FBAR Submission Procedure
3. Delinquent International Information Return Submission Procedures

## About Robert Misey

Robert Misey leads the International Department for the law firm of Reinhart Boerner Van Deuren and is a former trial attorney for the IRS Chief Counsel (International) in Washington, DC. Robert is Chair of the International Tax Committee for the ABA and a member of the bar in California, Wisconsin, and the District of Columbia. He is also the author of the books *A Practical Guide to U.S. Taxation of International Transactions* and *Federal Taxation: Practice and Procedure*.

**Robert can be reached at either 414-298-8135 or  
rmisey@reinhartlaw.com**





11 a.m. – 12 p.m.

# Remote Sellers Tax Update & Physical Presence: Is It Still Relevant?

**Craig Johnson, CPA**, *Executive Director, Streamlined Sales Tax Governing Board Inc.*



# Remote Sales Tax Collection, The *Wayfair* Decision and Streamlined Sales Tax

Craig Johnson, Executive Director  
Streamlined Sales Tax Governing Board




## Brief History – Remote Sales Tax Collection Ability

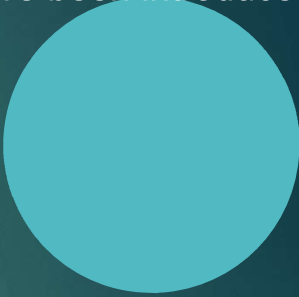
- ▶ *Quill v. North Dakota* (1992)
- ▶ Compliance with varying state/local sales tax laws by multi-state corporations is too complex
- ▶ Local merchants suffer from lack of level playing field
- ▶ Significant losses of tax revenue due to growth in electronic commerce and inability of states/local governments to administer use tax with consumers



## Federal Legislation



## Federal Legislation – The Proposals



Since 2005, the following types of legislative bills have been introduced:

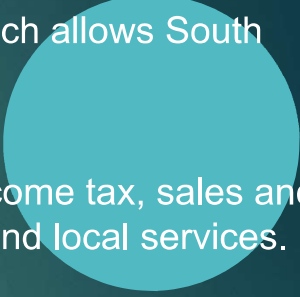
- Main Street Fairness Acts (MSFA)
- Marketplace Equity Act (MEA)
- Marketplace Fairness Acts (MFA)
- Remote Transactions Parity Act (RTPA)
- Online Sales Simplification Act (draft only)
- No Regulation Without Representation Act



# The South Dakota Legislation



## *South Dakota Senate Bill 106*

- 
- Inability to collect sales tax from remote sellers threatens South Dakota's efforts to sustain a broad tax system, which allows South Dakota to keep taxes low.
  - Because South Dakota doesn't have a state income tax, sales and use tax revenue are essential in funding state and local services.
  - The growth of online retail ensures further erosion to SD sales tax base.

## South Dakota Senate Bill 106 Background

- ▶ Remote Sellers must remit South Dakota sales tax if they meet one of two criteria
  - The seller's gross revenue exceeds \$100,000.
  - The sellers made 200 or more separate transactions into South Dakota.
- Any sales tax obligation required by this act cannot be applied to past sales.

The *Wayfair* Decision

## *South Dakota v. Wayfair* – What the Court Held

- ▶ U.S. Supreme Court (June 21, 2018)
  - ▶ Overturned a physical presence requirement for sales/use tax (Bellas Hess (1967) and Quill (1992))
  - ▶ “Economic and virtual presence” test
  - ▶ Only addressed the first prong of Complete Auto’s (1977) four prong test – requires a taxpayer have “substantial nexus with the taxing state”
  - ▶ South Dakota’s \$100,000 in sales or 200 transactions held by the Court to be sufficient because “the seller availed itself of the substantial privilege of carrying on a business in South Dakota”

## *South Dakota v. Wayfair* - Guidance



- ▶ The Court noted three features about South Dakota’s law that appeared to be **designed to prevent discrimination against or undue burdens upon interstate commerce**:
  - ▶ Transactional Safe Harbor;
  - ▶ No retroactive application; and
  - ▶ **Membership in the Streamlined Sales and Use Tax Agreement (SSUTA)**

## South Dakota v. Wayfair - Guidance



- ▶ Specific Items Noted in *Wayfair* Decision Related to Streamlined Sales Tax:
  - ▶ Standardizes taxes to reduce administrative and compliance costs
  - ▶ Single state level administration
  - ▶ Uniform definitions of products and services
  - ▶ Simplified tax rate structures
  - ▶ **Other uniform rules**
    - ▶ Access to sales tax administration software paid for by the state
    - ▶ Sellers who choose to use such software are immune from audit liability

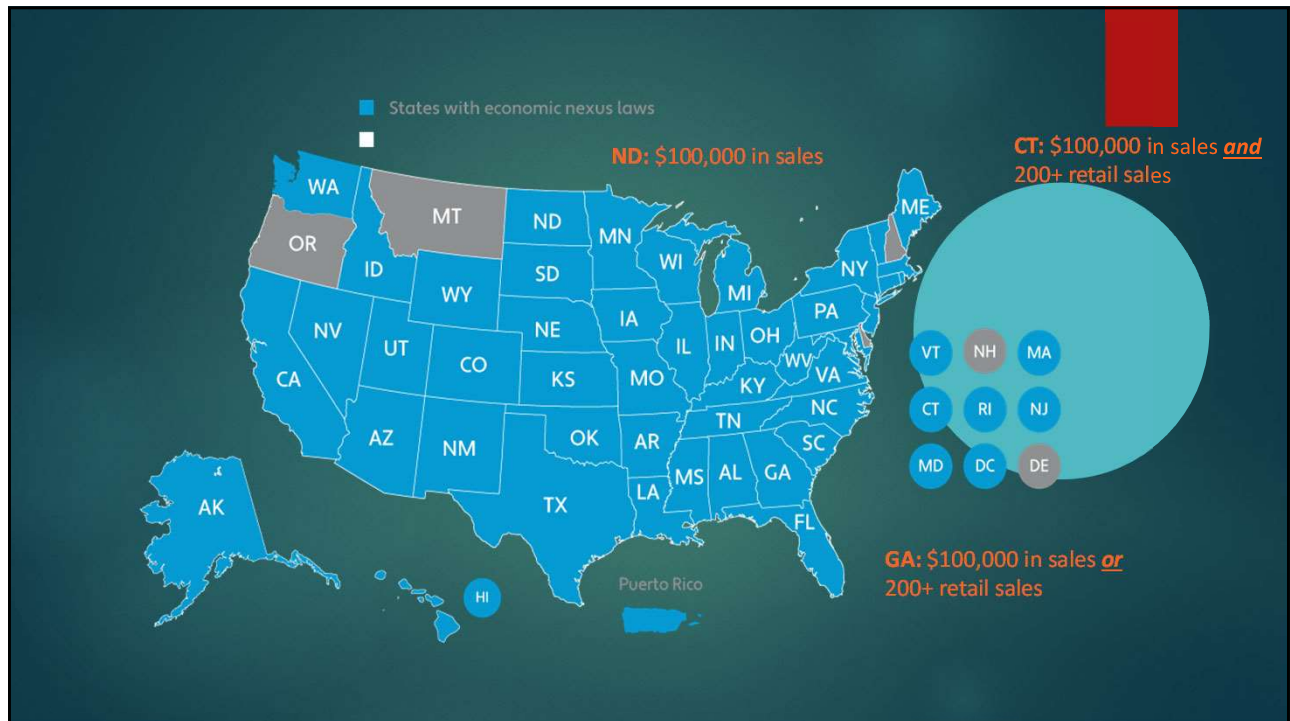
Economic Nexus  
and  
Remote Sellers



# Economic Nexus

It's no longer just location, location, location . . .

- On June 21, 2018, the U.S. Supreme Court ruled in favor of South Dakota, giving states authority to impose sales tax obligations on out-of-state sellers based on their level of economic activity in that state
- All of the 45 states with a state sales tax have now adopted economic nexus
  - ▶ Thresholds vary by state
  - ▶ Calculations vary by state





## Remote Sellers – Questions to Ask

- ▶ Do I ship products into states where I am not registered?
- ▶ Have I exceeded the economic nexus laws and thresholds enacted by a state?
  - ▶ How are the thresholds calculated?
- ▶ Do I need to collect sales tax on these transactions?



Streamlined Sales Tax

## What is Streamlined Sales Tax?



- ▶ Remove Undue Burdens Referred to in *Quill*
- ▶ Effort by State and Local Governments
  - ▶ Simplification
  - ▶ Uniformity
- ▶ Significant input from business community

## Why We Do It – Identifying What Makes the System Burdensome



- Separate state and local tax administration
- Unclear rules on who has the right to tax a transaction
- Too many tax rates within each state and locality
- Different state and local tax bases

## Why We Do It – Identifying What Makes the System Burdensome

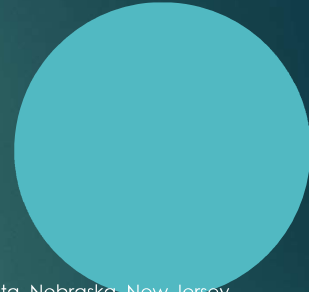
- Separate state definitions – and some locals don't follow their own state definitions
- Retailer held liable for tax when a buyer lies or fails to provide proof of an exempt sale
- Returns different in every state – some locals require separate returns
- Separate registration required in every state – and even some local jurisdictions

## Streamlined's Goals

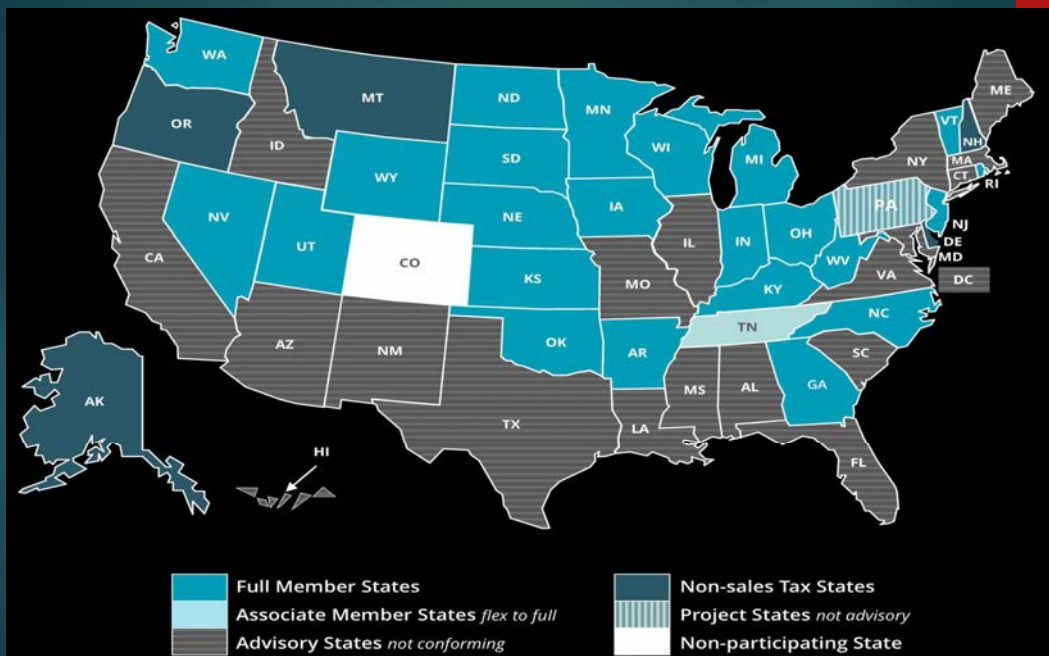
- ▶ Simpler system for administering state and local sales taxes
- ▶ Uniformity
- ▶ Balance state/local sovereignty with simplification and uniformity
- ▶ Use technology to ease the retailer's tax collection and reporting

# Results: Streamlined Sales and Use Tax Agreement (SSUTA)

- ▶ SSUTA effective October 1, 2005
- ▶ Current membership (as of 5/1/2022)
  - ▶ 23 Full members
    - ▶ Arkansas, Georgia, Kansas, Kentucky, Indiana, Iowa, Michigan, Minnesota, Nebraska, New Jersey, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming
  - ▶ 1 Associate member
    - ▶ Tennessee



## STREAMLINED STATE STATUS 10-01-2022



## Key Features of SSUTA



- ▶ State level administration of local sales and use taxes
- ▶ Common state and local tax bases within a state
- ▶ Uniform destination-based sourcing rules for goods and services
- ▶ One-stop central registration system
- ▶ Uniform definitions

## Key Features of SSUTA



- ▶ Uniform simplified electronic return
- ▶ Rate and boundary databases
- ▶ Taxability matrix
- ▶ Simplified exemption administration
- ▶ Liability relief provisions
- ▶ Certified Service Providers (CSPs)

## The “Certified Service Provider” (CSP)



### ▶ Who or what is a CSP?

A third party that allows sellers to outsource its sales tax compliance responsibilities



## The “Certified Service Provider” (CSP)



### ▶ Uses a Certified Automated System (CAS)

- ▶ Determines:
  - ▶ Taxability of transaction
  - ▶ State and local tax rates
  - ▶ Tax due to each jurisdiction

### ▶ Generates and files returns

### ▶ Makes required remittances

### ▶ Meets other requirements set by SSTGB



# The “Certified Service Provider” (CSP)

## ▶ Benefits To Sellers of Using CSPs

- ▶ Sellers who have to collect tax in a Streamlined state solely because they exceed the state's economic nexus requirements may use CSP's at **no cost** in those states
- ▶ Seller makes a single automated payment for all remittances
- ▶ CSP distributes the money to appropriate jurisdictions
- ▶ CSP assumes responsibility for audit(s)

# The “Certified Service Provider” (CSP)

## ▶ Benefits to States

- ▶ Upfront review of tax rules
- ▶ Confidence that proper rates are being charged
- ▶ Timely and electronic filing of returns
- ▶ Ongoing testing of system for accuracy
- ▶ No cost unless tax is collected and remitted by CSP-compensated Seller

# The “Certified Service Provider” (CSP)

## ▶ Operating in Streamlined and Non-Streamlined States

- ▶ CSP only compensated in SST states where seller qualifies as a “CSP-compensated seller”

## ▶ Who is a “CSP-compensated seller”

### ▶ General Requirements:

- ▶ Registered through the SSTRS and
- ▶ The Seller meets all the following criteria during the 12-month period preceding the date of registration with the Streamlined State:
  - ▶ no fixed place of business for more than 30 days in the state
  - ▶ less than \$50,000 of Property in the state
  - ▶ less than \$50,000 of Payroll in the state
  - ▶ less than 25% of its total Property or Payroll in the state
  - ▶ was not required to be registered to qualify as a supplier to the state

Streamlined Website  
And  
Examples of Resources



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[Governing Board Meetings](#)

# States and businesses working together to create simpler, more uniform sales and use tax systems.

Learn more about sales tax registration and reporting requirements for:

[Remote Sellers](#) [Marketplace Sellers](#) [Marketplace Facilitators](#)

Do you qualify for *free* sales tax calculation and reporting services? [Learn more](#)

[Exemption Certificate](#) [Learn more](#) about exemptions

Register to collect and report sales tax in Streamlined States

[Register Now](#) [Log In](#)

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[Home](#) > [For Businesses](#) > [Remote Sellers](#) > Remote Seller State Guidance

## Remote Seller State Guidance

Many states have enacted economic nexus laws that require remote sellers to collect and remit sales tax if they exceed certain thresholds. If you have a physical presence in a state, you are not a Remote Seller and are required to register in that state regardless of the amount of sales.

**Are you a Remote Seller? A Remote Seller is generally a seller that does not have a physical presence in a state but who sells products or services for delivery into that state.**

If you are a remote seller and your sales of products for delivery into a state meet or exceed the threshold for a state, you are required to register to collect and remit sales tax for that state.

Economic nexus laws apply to any business that makes sales into states in which they have no physical presence but meet the state's sales and/or transactions thresholds.

Items to note when reviewing the requirements:

- Many states base their threshold on sales OR transactions, while some states base their threshold on sales AND transactions.
- A state may base its sales threshold on *gross sales, gross revenues, retail sales or taxable sales*. Many states do not distinguish between taxable and non-taxable sales when determining if a threshold is met.

If you know that you will be making sales into a state, you may choose to register to collect and remit that state's sales tax at any time.

**IMPORTANT NOTE:** This is general guidance and is not legal advice. Nothing in this chart overrides an individual state's laws. For specific state guidance, [contact that state](#).

This chart provides you a summary of the Remote Seller thresholds and compliance dates as of November 19, 2021.

### State Registration Guidelines for:

[Remote Sellers](#)

[Marketplace Sellers](#)

[Marketplace Facilitators](#)

Do you qualify for *free* sales tax calculation and reporting services? [Learn more before you register](#)

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Revenue Department Website	Remote Seller Compliance Date	Remote Seller Threshold	State Guidance for Remote Sellers	Notes	Streamlined Member State Information
<a href="#">Alabama</a>	10/1/2018	Sales of TPP of <i>more than</i> \$250,000 in prior calendar year; No transaction threshold  Seller must also engage in or conduct certain other activities in Alabama in addition to having more than \$250,000 in sales.	<a href="#">Remote Seller</a>	<a href="#">Press Release (7/3/2018)</a> <a href="#">AL FAQs</a>	
<a href="#">Alaska</a>	4/1/2020	Statewide gross remote sales <i>meets or exceeds</i> \$100,000 or 200 transactions in the current or previous calendar year	<a href="#">Remote Seller</a>	<a href="#">Marketplace Facilitator</a>	
<a href="#">Arizona</a>	10/1/2019	Annual gross retail sales or income from online sales into Arizona is <i>more than</i> \$200,000 in 2019, \$150,000 in 2020 and \$100,000 in 2021 and thereafter.	<a href="#">Remote Seller</a>	<a href="#">Marketplace Facilitator</a>	
<a href="#">Arkansas</a>	7/1/2019	Sales <i>exceed</i> \$100,000 or 200 transactions during the current or preceding year.	<a href="#">Remote Seller</a>	<a href="#">Marketplace Facilitator</a>	AR
<a href="#">California</a>	4/1/2019	The total combined sales <i>exceed</i> \$500,000 during the preceding or current calendar year	<a href="#">Remote Seller</a>	<a href="#">Marketplace Facilitator</a>	
<a href="#">Colorado</a>	12/1/2018	Taxable sales of <i>more than</i> \$100,000 in past calendar year	<a href="#">Remote Seller</a>	<a href="#">Marketplace Facilitator</a>	
<a href="#">Connecticut</a>	12/1/2018	7/1/2019 Threshold change: \$100,000 or more in gross receipts and 200 or more retail transactions 12/1/2018 Threshold: \$250,000 or more in gross receipts and 200 or more retail transactions	<a href="#">Remote Seller</a>		

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## Marketplace Seller State Guidance

Many states have enacted Marketplace Facilitator/Provider laws that require the Marketplace Facilitator/Provider to remit tax on sales facilitated on behalf of Marketplace Sellers. The Marketplace Seller may also be required to register and file returns for sales and use tax purposes in that state. Review the chart below to help determine a state's registration and reporting requirements for a Marketplace Seller.

**Are you a Marketplace Seller?** A Marketplace Seller is generally a seller who sells products through a physical or electronic marketplace operated by a Marketplace Facilitator/Provider.

A Marketplace Seller may also be a "remote seller." A Remote Seller is generally a seller that does not have a physical presence in a state but who sells products or services for delivery into that state.

A remote seller that sells through a Marketplace Facilitator and also sells products direct to its customers, is required to register to collect and remit sales tax in the state if its sales in that state meet that state's Remote Seller Threshold.

If you have a physical presence in a state, you are not a Remote Seller and are generally required to register in that state regardless of the amount of sales.

If you know that you will be making direct sales into a state, you may choose to register to collect and remit that state's sales tax at any time.

**IMPORTANT NOTE:** This is general guidance and is not legal advice. Nothing in this chart overrides an individual state's laws. For specific state guidance, [contact that state](#).

This chart provides you a summary of Marketplace Seller Registration and Reporting Requirements in the 24 Streamlined Member states and some nonmember states. For specific questions concerning your requirements in a state, [contact that state](#).

**State Registration Guidelines for:**

[Remote Sellers](#)

[Marketplace Sellers](#)

[Marketplace Facilitators](#)

Do you qualify for *free* sales tax calculation and reporting services? [Learn more before you register](#)

State Marketplace Seller Information	Is the Marketplace Facilitator required to collect and remit sales tax?	Is a seller who only sells through a Marketplace required to register and file returns if the Marketplace is required to collect and remit sales tax?	Does a remote seller include sales through a Marketplace Facilitator in the seller's Remote Seller's Threshold calculation?	If a marketplace seller is required to identify their sales through the marketplace separately from direct sales on a state's sales tax return, how are those sales reported?
<a href="#">Alaska</a> <small>(updated 7/3/2021)</small>	Yes	No	Yes	N/A
<a href="#">Arkansas</a> <small>(updated 6/22/2020)</small>	Yes	No, a seller that has physical presence may want to register in order to purchase merchandise for resale without payment of tax.	No	N/A

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## Marketplace Facilitator State Guidance

Many states have enacted Marketplace Facilitator/Provider laws that require the Marketplace Facilitator/Provider to collect and remit sales tax on sales facilitated on behalf of Marketplace Sellers if they exceed certain thresholds. Review the chart below to determine a state's registration and reporting requirements for a Marketplace Facilitator/Provider.

**Are you a Marketplace Facilitator/Provider?** A Marketplace Facilitator/Provider is generally a business or person who owns, operates or otherwise controls a physical or electronic marketplace and facilitates the sale of a third-party Seller's products. The Marketplace Facilitator/Provider either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser and transmits all or part of the payment to the Seller.

States may define a Marketplace Facilitator/Provider more narrowly or more broadly than the general definition above. It is important to review a state's laws and other published guidance for specific state requirements.

A Marketplace Facilitator/Provider may also be a "remote seller." A Remote Seller is generally a seller that does not have a physical presence in a state but who sells products or services for delivery into that state.

If the Marketplace Facilitator/Provider has a physical presence in a state, it is not a Remote Seller and is generally required to register in that state regardless of the amount of sales.

If you are a **Marketplace Seller** making sales through a Marketplace Facilitator/Provider, you may also be required to register and file returns for sales and use tax purposes in that state. See the Marketplace Seller state Guidance for more information.

**IMPORTANT NOTE:** This is general guidance and is not legal advice. Nothing in this chart overrides an individual state's laws. For specific state guidance, [contact that state](#). If you have questions related to this chart, please [contact us](#).

This chart provides you a summary of Marketplace Facilitator/Provider Registration and Reporting Requirements in the 24 Streamlined member states and some nonmember states. For specific questions concerning your requirements in a state, contact that state.

**State Registration Guidelines for:**

[Remote Sellers](#)

[Marketplace Sellers](#)

[Marketplace Facilitators](#)

Do you qualify for **free sales tax calculation and reporting services**? [Learn more before you register](#)

State Marketplace Facilitator Information	Marketplace Facilitator Compliance Date	Is the Marketplace Facilitator required to collect and remit sales tax?	Marketplace Facilitator Threshold	Is a Marketplace Facilitator required to identify sales made on behalf of marketplace sellers separately from its own direct sales on its return?	Does your state allow or require the Marketplace Facilitator file a separate return for any third-party sales it facilitates?	Is the Marketplace Facilitator required to provide certification that it will collect and remit tax on behalf of the marketplace seller?
Alaska <small>(updated 7/13/2021)</small>	4/1/2020	yes	Statewide gross remote sales meets or exceeds \$100,000 or 200 transactions in the current or previous	No	Allow	No

# Taxability Matrix

Reference Number	Food and food products	Taxable	Exempt	Statute/Rule Cite	Comment
40010	Candy	X		77.51(16m), 77.54(20n), 77.54(20r)	
40015	Dried or partially dried fruit that contains one or more <b>sweeteners</b> and may also contain other additives		X	77.51(16n)(b), 77.54(20n), 77.54(20r)	Effective October 1, 2021 (2021 Vils. Act 58), dried or partially dried fruit that contains one or more sweeteners and may also contain other additives is excluded from the definition of candy and exempt.
40020	Dietary Supplements	X		77.51(3n), 77.54(20n), 77.54(20r)	
40030	Food and food ingredients excluding alcoholic beverages and tobacco		X	77.51(3l), 77.54(20n)(a), 77.54(20n)(b), 77.54(20n)(c)	*Exempt all food and food ingredients except candy, dietary supplements, soft drinks, and prepared foods.
40040	Food sold through vending machines				Taxability based on specific food product being sold. Example: Candy would be taxable, but unsweetened bottled water would not be taxable.
40050	Soft Drinks	X		77.51(17w), 77.54(20n), 77.54(20r)	
40060	Bottled Water		X	77.54(20n)	Also assumes not a soft drink.
41000	Prepared Food	X		77.51(10m), 77.54(20n), 77.54(20r)	

# Streamlined Certificate of Exemption

### Streamlined Sales Tax Certificate of Exemption

Do not send this form to the Streamlined Sales Tax Governing Board. Send the completed form to the seller and keep a copy for your records.

This is a multi-state form for use in the states listed. Not all states allow all exemptions listed on this form. The purchaser is responsible for ensuring it is eligible for the exemption in the state it is claiming the tax exemption from. Check with the state for exemption information and requirements. The purchaser is liable for any tax and interest, and possible civil and criminal penalties imposed by the state, if the purchaser is not eligible to claim this exemption.

1.  Check if this certificate is for a single purchase. Enter the related invoice/purchase order # \_\_\_\_\_

2. A. Purchaser's name \_\_\_\_\_

B. Business address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_ Zip code \_\_\_\_\_

C. Name of seller from whom you are purchasing, leasing or renting \_\_\_\_\_

D. Seller's address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Country \_\_\_\_\_ Zip code \_\_\_\_\_

3. Purchaser's type of business. Check the number that best describes your business.

<input type="checkbox"/> 01 Accommodation and food services	<input type="checkbox"/> 08 Real estate	<input type="checkbox"/> 15 Professional services
<input type="checkbox"/> 02 Agriculture, forestry, fishing, hunting	<input type="checkbox"/> 09 Rental and leasing	<input type="checkbox"/> 16 Education and health-care services
<input type="checkbox"/> 03 Construction	<input type="checkbox"/> 10 Retail trade	<input type="checkbox"/> 17 Nonprofit organization
<input type="checkbox"/> 04 Finance and insurance	<input type="checkbox"/> 11 Transportation and warehousing	<input type="checkbox"/> 18 Government
<input type="checkbox"/> 05 Information, publishing and communications	<input type="checkbox"/> 12 Utilities	<input type="checkbox"/> 19 Not a business
<input type="checkbox"/> 06 Manufacturing	<input type="checkbox"/> 13 Wholesale trade	<input type="checkbox"/> 20 Other (explain)
<input type="checkbox"/> 07 Mining	<input type="checkbox"/> 14 Business services	

4. Reason for exemption. Check the letter that identifies the reason for the exemption.

<input type="checkbox"/> A Federal government (Department) *	<input type="checkbox"/> H Agricultural Production *
<input type="checkbox"/> B State or local government (Name) *	<input type="checkbox"/> I Industrial production/manufacturing *
<input type="checkbox"/> C Tribal government (Name) *	<input type="checkbox"/> J Direct pay permit *
<input type="checkbox"/> D Foreign diplomat #	<input type="checkbox"/> K Direct Mail *
<input type="checkbox"/> E Charitable organization *	<input type="checkbox"/> L Other (Explain)
<input type="checkbox"/> F Religious organization *	<input type="checkbox"/> M Educational Organization *
<input type="checkbox"/> G Resale *	

\* see instructions on back (page 2)

5. Identification (ID) number: Enter the ID number as required in the instructions for each state in which you are claiming an exemption. If claiming multiple exemption reasons, enter the letters identifying each reason as listed in Section 4 for each state.

ID number	State/Country	Reason	ID number	State/Country	Reason
AR			NV		
GA			OH		
IA			OK		
IN			RI		
KS			SD		
KY			TN		
MI			UT		
MN			VT		
NC			WA		
ND			WI		
NE			WV		
NJ			WY		

6. I declare that the information on this certificate is correct and complete to the best of my knowledge and belief.

Signature of authorized purchaser \_\_\_\_\_ Print name \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

SSTGB Form F0003 Exemption Certificate (Revised 12/21/2021)

### Streamlined Sales and Use Tax Exemption Certificate Instructions

Sections 1-4 are required information. A signature is not required if in electronic form.

**Section 1:** Check the box for a single purchase and enter the invoice number. If the box is not checked, this certificate is considered a blanket certificate and remains effective until cancelled by the purchaser if purchases are no more than 12 months apart, unless a longer period is allowed by a state.

**Section 2:** Enter the purchaser's and seller's name, street address, city, state, country and zip code.

**Section 3 Type of Business:** Check the number that best describes the purchaser's business or organization. If none of the categories apply, check 20 and provide a brief description.

**Section 4 Reason for Exemption:** Check the letter that identifies the reason for the exemption. If the exemption you are claiming is not listed, check "L Other" and provide a clear and concise explanation of the exemption claimed. Not all states allow all exemptions listed on this form. The purchaser must check with that state for exemption information and requirements.

**Section 5 Identification ID Number:**

**Purchaser's Instructions:**  
Enter the ID number as required in the instructions below for each state in which you are claiming an exemption. Identify the state or if a foreign ID, the country the ID number is from. If multiple exemption reasons are being claimed enter the letters identifying the reasons for exemption as listed in Section 4 for each state.

**ID Numbers for Exemptions other than resale:** You are responsible for ensuring that you are eligible for the exemption in the state you are claiming the tax exemption. Provide the ID number to claim exemption from sales tax that is required by the taxing state. Check with that state to determine your exemption requirements and status.

Foreign diplomats and consular personnel must enter their individual tax identification number shown on their sales tax exemption card issued by the United States Department of State's Office of Foreign Missions.

**ID Numbers for Resale Purchases (Including Drop Shipments):** If you are claiming a purchase is not subject to tax because it is for resale (Exemption Reason G.) and you are:

- Required to be registered in the state you are claiming the tax exemption:** Provide your sales tax ID number issued by that state. If claiming exemption in OH and registration is not required in the state, enter any tax ID number issued by OH. If claiming exemption in MI and registration is not required in the state, enter "Not Required".
- Not registered in the state you are claiming the tax exemption:** Provide your sales tax ID number issued by any state.
- Not required to register for sales tax and you do not have a sales tax identification number from any state:** Enter -Your FEIN.  
-If you do not have a FEIN, enter a different state-issued business ID number.  
-If you do not have any state-issued business ID number or FEIN, enter your state driver's license number.
- A foreign purchaser and you do not have an ID number described in 1, 2 or 3:** The following states will accept the tax ID number (e.g., VAT number) issued by your country: AR, IN, KS, KY, ND, NJ, OK, RI, SD, TN, UT, WA, WY. All other states require an ID number as listed in 1, 2 or 3.

**If you do not have any of the ID numbers listed in 1 thru 4:** You are not required to list an ID number for the following states: NE, OH, SD, WI. Enter "Not Required" and the reason for exemption for that state. All other states require an ID number.

**Seller's Instructions**  
The seller is not required to verify the purchaser's ID number or determine the purchaser's registration requirements. (GA requires the seller verify the purchaser's ID number.) The seller is required to maintain proper records of exempt transactions and provide those records to the state when requested in the form in which it is maintained. These certificates may be provided in paper or electronic format.

The seller is not liable for any tax, interest, or penalty if the purchaser improperly claims an exemption or provides incorrect information on the certificate, provided all the following conditions are met:

- The fully completed exemption certificate is provided to the seller at the time of sale or within 90 days subsequent to the date of sale;
- The seller did not fraudulently fail to collect the tax due; and
- The seller did not solicit customers to unlawfully claim an exemption.

**Note:** A seller may not accept a certificate of exemption for an entity-based exemption on a sale made at a location operated by the seller within the designated state if the state does not allow such an entity-based exemption.

**Drop Shipper Instructions:** The drop shipper may accept an ID number to claim the resale exemption as provided above in the Purchaser's Instructions. The ID number may include an ID number issued by another state. This may result in the same ID number being used for multiple states to claim the resale exemption (e.g., a retailer or marketplace seller may only be required to register for sales tax in one state).

SSTGB Form F0003 Exemption Certificate Page 2 (Revised 12/21/2021)

# Streamlined's Success to Date


- ▶ Over 20,000 active sellers registered through SSTRS (9/30/22)
- ▶ Over 500% Increase in registrations since Wayfair
- ▶ Billions collected by member states



## Streamlined's Goals for 2022 and Beyond



### Streamlined's Goals

- 
- ▶ Educate remote sellers on collection requirements post-*Wayfair*
  - ▶ Assist member states in enacting legislation that complies with Streamlined and accomplishes their goals
  - ▶ Encourage nonmember state participation
  - ▶ Identify additional simplifications/uniformity that may be needed
  - ▶ Develop additional disclosed practices

## Streamlined's Goals

- ▶ Offer education/training to state members related to Streamlined activities/requirements
- ▶ Continue to work with business community in identifying pain points and work to resolve them
- ▶ Develop single filing portal for all member states
- ▶ Develop single rate look-up application for all member states

## Questions

Craig Johnson, Executive Director, Streamlined Sales Tax Governing Board, Inc.  
[craig.johnson@sstgb.org](mailto:craig.johnson@sstgb.org)  
608-634-6160

11 a.m. – 12 p.m.

# Medicare Planning

**Brian Ellenbecker, CFP, EA, CPWA, CIMA, CLTC, *Financial Advisor,***  
*Shakespeare Wealth Management*





# Understanding Medicare

Brian Ellenbecker, CFP®, EA, CIMA®, CPWA®, CLTC®  
Financial Planner  
Shakespeare Wealth Management



## Your mailbox when you turn 64



# Agenda

- Medicare Plan Details
  - Parts
  - Enrollment
  - Costs
  - Supplement Plans
  - Advantage Plans
- Planning Opportunities and Considerations

3

# Parts of Medicare

Provided by Medicare and is the same for everyone:

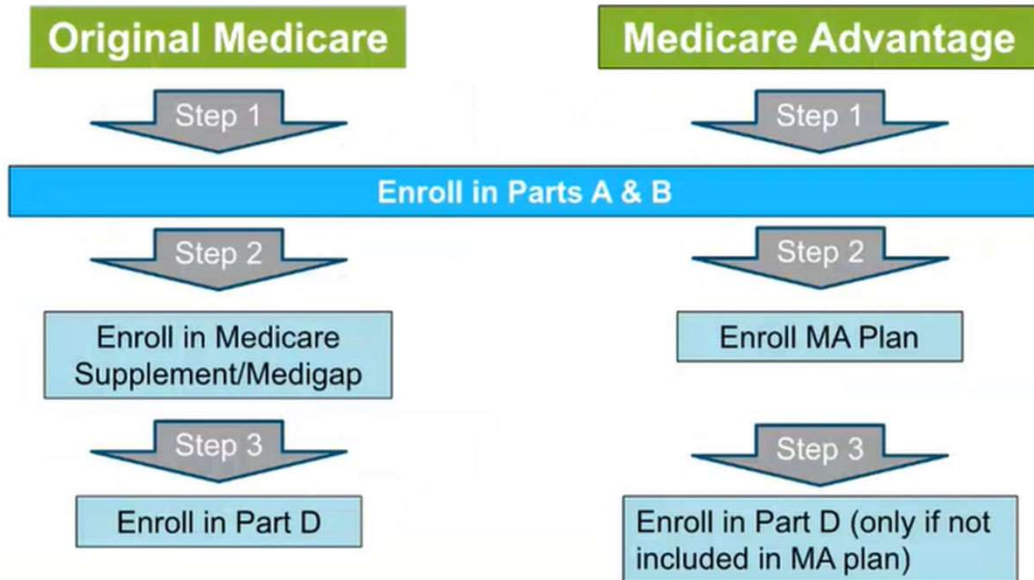
- Part A – Hospital coverage
- Part B – Medical insurance

Administered by private insurer where each person selects a different plan based on their needs

- Part D – Prescription Drug Coverage
- Part C – Medicare Advantage
  - Combines Parts A, B and usually D

4

## Two Options to Receive Medicare



5

ENROLLMENT

6

# Enrolling in Medicare

- Why is this important?
  - Avoid costly mistakes
    - If you don't enroll in a timely manner, you **WILL** pay a premium **penalty for the rest of your life**
    - Avoid **gaps in coverage**.

7

# Key Factors in Determining Enrollment Period

- Age
  - Must be 65 or older in most cases
  - If you collected SS Disability for 2 years, you become eligible at any age
- Social Security Status
  - Have you filed for benefits yet?
- Employment Status
  - Are you covered by employer plan as employee or non-employee spouse?
  - Size of employer
    - Small employer = 19 or less employees
    - Large employer = 20 or more employees

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## Enrollment based on SS Claiming Status

- **If you ARE receiving Social Security when you turn 65:**
  - Medicare Parts A & B are automatic
    - Can decline Part B if you don't want it
    - Cannot decline Part A
  - Coverage starts 1<sup>st</sup> of month you turn 65
  - Part D, Supplement, and/or Advantage are not automatic
    - Must choose private insurer and proactively enroll

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## Enrollment based on SS Claiming Status

- **If you ARE NOT receiving Social Security when you turn 65:**
  - Must sign up through Social Security Administration (SSA) during Medicare enrollment period
    - Initial enrollment period: You **are not covered by a group plan** at 65
    - Special enrollment period: You **are covered by a group plan** at 65
    - General enrollment period: You **missed your initial or special enrollment** period

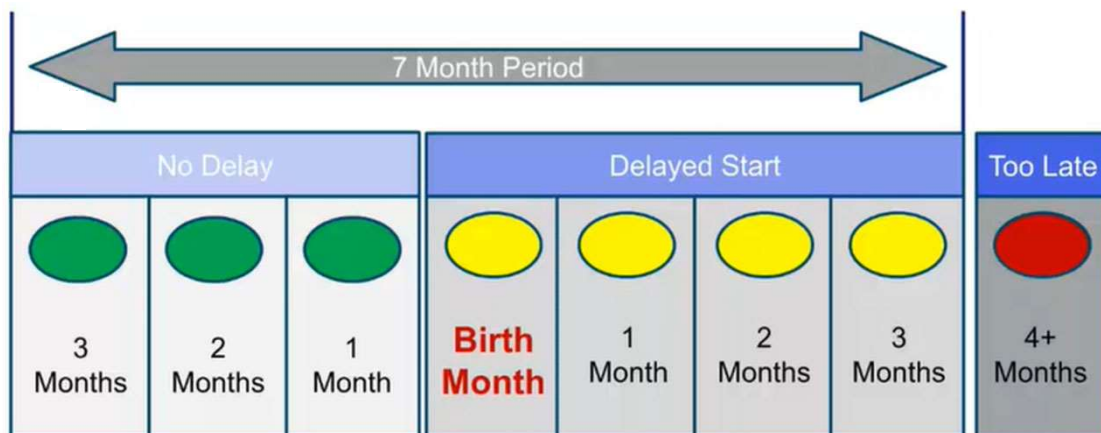
10

# Initial Enrollment Period

- First chance to enroll in Medicare
  - Birth month and 3 months before & after
    - 7 months total
  - You should enroll if you are not covered by an employer plan
    - Parts A & B
    - Choose a Medicare Supplement plan or Medicare Advantage Plan
    - Part D or other prescription drug plan

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# Initial Enrollment Period Timeline



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# Initial Enrollment Period

- Part A
  - Many who turn 65
  - Enroll to avoid penalty if you:
    - Don't have other coverage
    - Have other non-employer coverage (individual policy, COBRA, retiree coverage, etc.)
  - Still working and covered by employer plan:
    - Small employer
      - Must enroll
      - **Medicare is primary** over employer plan
    - Large employer
      - **Medicare is secondary** to employer plan
      - Enroll in A to supplement employer's hospital coverage
      - **Do not enroll** if you have a Health Saving Account (HSA) and want to continue making contributions

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# Initial Enrollment Period

- Part B
  - Enroll to avoid penalty if you:
    - Don't have other coverage
    - Have other non-employer coverage (individual policy, COBRA, retiree coverage, etc.)
  - If you have employer coverage:
    - Small employer
      - Must enroll
      - **Medicare is primary** over employer plan
    - Large employer
      - **Medicare is secondary** to employer plan
      - May enroll in B to supplement employer's hospital coverage

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## Initial Enrollment Period

- Drug coverage options:
  - Part D
    - Signed up for A or B
      - Want drug coverage either now or in the future
    - Can delay coverage without penalty if you have other “**creditable**” drug coverage (employer or private policy)
  - Enroll in Medicare Advantage Plan with drug coverage included
    - Only if going Medicare Advantage route

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## Special Enrollment Period

- **Covered** as a worker or spouse of a current worker by a **large group plan** AND
- Did not previously sign up for Parts B and/or D

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## Special Enrollment Period

- Part B
  - 8-month period starting the month group coverage ends **or**
  - Before coverage ends
- Part D
  - Within 63 days after coverage ends **or**
  - Before coverage ends

Enrolling in the time window avoids a late-enrollment penalty, BUT...

**Enrolling before current coverage ends avoids gaps in coverage.**

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## General Enrollment Period

- Missed initial and special enrollment periods
- January 1 to March 31
  - Coverage starts July 1
- Will likely pay a premium penalty
- Will likely have coverage gaps

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## Signing Up for Parts A & B

- Go to [www.medicare.gov](http://www.medicare.gov) and click on Sign Up / Change Plans

Apply for Medicare Only

- Can apply for Social Security and Medicare together
- Call Social Security Administration at 800-772-1213
  - Enroll over the phone
  - Schedule appointment at local office

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## Sign Up for Supplement, Advantage, and/or Part D

- Work with health insurance agent
- Directly through insurance company
- Through Medicare
  - [www.medicare.gov](http://www.medicare.gov)
  - 1-800-MEDICARE

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## OPEN ENROLLMENT

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## Two “Open Enrollment” Periods

- Medi**care** Open Enrollment
- Medi**gap** Open Enrollment

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# When is Medicare Open Enrollment

- October 15 – December 7 of each year
- Changes to coverage are effective January 1 of the following year
  - e.g., Changes made to plans in fall of 2021 take effect on Jan 1, 2022



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# What Changes Can Be Made During Medicare Open Enrollment

- Make changes to your Medicare Part D prescription drug plan on Medicare Advantage Plan:
  - Join a plan
  - Switch from one plan to another
  - Drop your plan
- Switch from Original Medicare to a Medicare Advantage plan
- Switch from Medicare Advantage plan back to Original Medicare
  - Guaranteed issue on Medicare Supplement plan is usually NOT available
  - See Guaranteed Issue section of the *Wisconsin Guide to Health Insurance for People with Medicare* for reasons you may qualify to change your Supplement plan

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# Medigap Open Enrollment

- Guaranteed issue period
  - Have to sell you a policy regardless of health
  - Cannot adjust premiums
  - Cannot exclude pre-existing conditions
- 6-month period beginning with the month you are both:
  - Age 65 **and**
  - Enrolled in Part B

# Medical Questions

## 5. HEALTH QUESTIONS

- A. Do any of the following apply to you within the past **two years**? .....  Yes  No
- Have you been hospitalized (more than 24 hours) three times or more, or been recommended to have inpatient surgery that hasn't yet been performed?
  - Have you been hospitalized for the treatment of mental or nervous disorders, including alcohol or drug abuse?
  - Have you had or been told by your physician you had a heart attack, congestive heart failure, heart valve disorder, heart rhythm disorder, enlarged heart, coronary artery disease (hardening or narrowing of the artery or arterial blockage), carotid artery disease, stroke, aneurysm, or peripheral vascular disease?
  - Have you had or been told by your physician you had diabetes that requires insulin; liver disease; or broken bones due to osteoporosis?
  - Have you had or received treatment for end-stage renal disease (ESRD), kidney disease, or have you received kidney dialysis?
- B. Do any of the following apply to you within the past **five years**? .....  Yes  No
- Have you had or received treatment or surgery for cancer (except for non-melanoma skin cancer), Hodgkin's disease, melanoma, or leukemia?
  - Have you had, or been recommended to have, any organ transplant other than of the cornea?
- C. Have you been diagnosed with one or more of the following **at any time**? .....  Yes  No
- |   |                      |                        |
|---|----------------------|------------------------|
| • Alzheimer's disease   | • Emphysema          | • Myasthenia gravis    |
| • Amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease) | • Hemophilia         | • Parkinson's disease  |
| • Cerebral palsy  | • Multiple sclerosis | • Rheumatoid arthritis |
| • Cystic fibrosis   | • Muscular dystrophy | • Sickle cell anemia   |
|   |                      | • Systemic lupus       |
- D. Do any of the following statements **currently** describe you? .....  Yes  No
- I am confined to a nursing facility
  - I am hospitalized
  - I am enrolled in a hospice program

**STOP:** If you answered yes to questions A, B, C, or D in this section, you are not eligible for this Medicare supplement plan at this time. If you need assistance answering these health questions, please contact us or speak with your agent.

If you answer YES to any of the questions asked, you are NOT eligible for a Supplement Plan.

The questions asked and conditions asked about can vary from plan to plan.

## MEDICARE COSTS

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## Definitions

- Premium
  - Paid monthly, regardless of use
- Deductible
  - Paid by patient, based on cost of services
- Co-insurance
  - Cost is split between patient and insurance company/Medicare
  - Co-pays, percentage split (e.g. 80/20), etc.

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## Costs of Medicare – Part A

- No monthly premium if an individual or their spouse worked for 40 quarters (10 years)
- No cost to non-working spouse if:
  - **Currently married** to a **spouse who is eligible for Social Security** (age 62) and married for at least one year before applying, or
  - **Divorced** and the **former spouse is eligible for Social Security** (must have been married to ex-spouse for 10 years and not currently married), or
  - **Widowed** (and did not remarry) and they were married for at least nine months before their spouse died.

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## Costs of Medicare – Part A

Insurance Premiums		Benefit Period Deductible	Hospital Co-Insurance Charges		Skilled Nursing Care Co-Insurance Charges	
Work History of you or your spouse	Monthly Premium		Benefit Period	Daily Charge	Benefit Period	Daily Charge
<30 Quarters	\$506 per person	\$1,600 per person	1-60 Days	\$0	0-20 Days	\$0
30-39 Quarters	\$278 per person		61-90 Days	\$400	21-100 Days	\$200
40+ Quarters	\$0 per person		91-150 days (60 lifetime reserve days*)	\$800	101+ Days	100% of cost
			151+ Days	100% of cost		

\*The insured may decide to forgo using their lifetime reserve days during that benefit period, in which case they will be responsible for 100% of the cost.

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## Costs of Medicare – Part B

Modified Adjusted Gross Income* (2022 MAGI determines 2024 premium)		2023 Medicare Part B Premium for New Enrollees
Single	Married Filing Joint	Monthly Premium
\$97,000 or less	\$194,000 or less	\$164.90
\$97,001 - \$123,000	\$194,001 - \$246,000	\$230.80
\$123,001 - \$153,000	\$246,001 - \$306,000	\$329.70
\$153,001 - \$183,000	\$306,001 - \$366,000	\$428.60
\$183,001 - \$500,000	\$366,001 - \$750,000	\$527.50
\$500,001+	\$750,000+	\$560.50

\*MAGI = Adjusted gross income plus tax-exempt interest.

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## Life-Changing Events

- You can appeal IRMAA premium increase if you experience a “life-changing” event
- File form SSA-44 with Social Security Administration
  - Optional but recommended: attach a letter of explanation
- Life changing Events:
  - Marriage
  - Divorce/Annulment
  - Death of Spouse
  - **Work Stoppage**
  - Work Reduction
  - Loss of Income-Producing Property
  - Loss of Pension Income
  - Employer Settlement Payment

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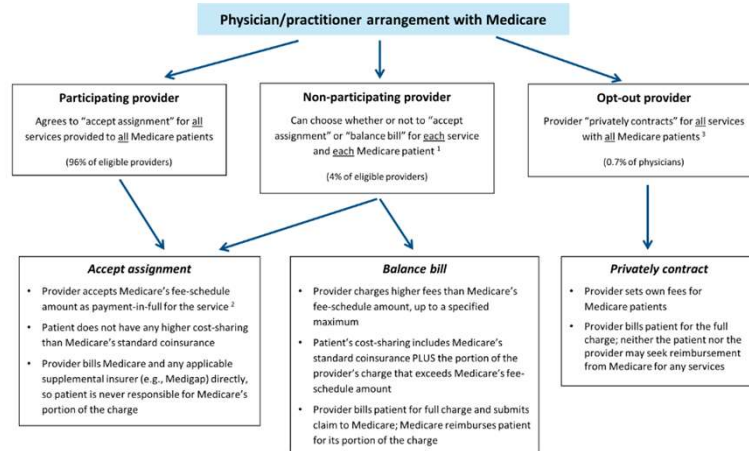
# Costs of Medicare – Part B

Annual Deductible	Medical Co-Insurance Charges	
\$226	Type of Care	Patient Responsibility
	Medical Services	<b>Assigned – 20%</b> Unassigned – 20% + 15% over approved amount
	Out-patient Hospital Care	Co-pay can't exceed Part A deductible
	Out-patient Mental Health	20%
	Annual Wellness	\$0
	Service providers may or may not accept Medicare.	
Service providers that accept Medicare may not accept the Medicare pre-approved cost for service. Under these circumstances, the service provider may charge up to an additional 15% out-of-pocket fee to the insured.		

Note: There is no Part B out-of-pocket maximum!

# Assigned vs. Unassigned Providers

## Physician/Practitioner Billing Options in Traditional Medicare



NOTES: <sup>1</sup>Balance billing is prohibited for some fee-schedule services, such as diagnostic lab services, and those billed by certain practitioners, such as physician assistants. Balance billing is also prohibited for Medicare beneficiaries who have Medicaid coverage. <sup>2</sup>Medicare's fee-schedule rates for non-participating providers are reduced by 5 percent compared to the fee-schedule rates for participating providers. <sup>3</sup>Providers are prohibited from entering into a private contract with a beneficiary who also has Medicaid or who is experiencing an urgent or emergent health care event.



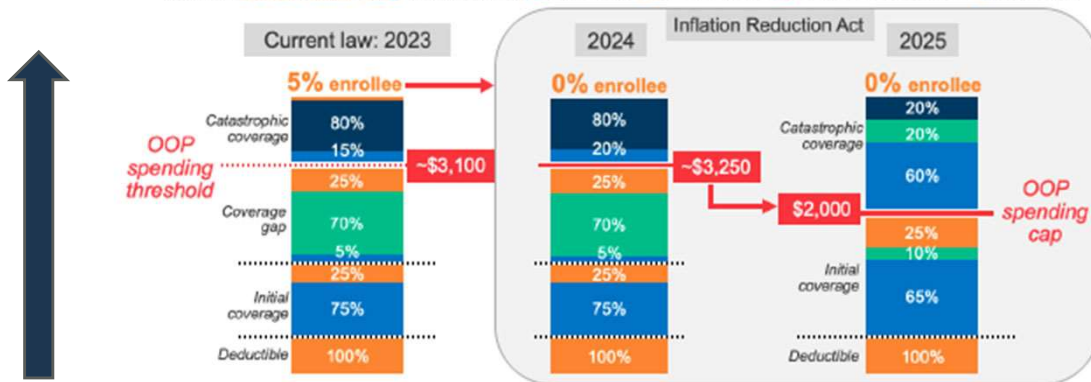
# Part B Premium Penalty

- Penalty
  - 10% for every year that you fail to enroll
  - Penalty is charged to base premium amount (\$164.90 in 2023)
    - If base premium increases, penalty increases
  - Penalty accessed every year going forward

# Changes to Part D – Inflation Reduction Act

## Changes to Medicare Part D for Brand-Name Drug Costs

Share of **brand-name drug** costs paid by: ● Enrollees ● Part D Plans ● Drug manufacturers ● Medicare



NOTE: OOP is out-of-pocket. The out-of-pocket spending threshold will be \$7,400 in 2023 and is projected to be \$7,750 in 2024 and \$8,100 in 2025, including what beneficiaries pay directly out of pocket and the value of the manufacturer discount on brand-name drugs in the coverage gap phase. These amounts translate to out-of-pocket spending of approximately \$3,100, \$3,250, and \$3,400 (based on brand-name drug use only).



# Drug Price Negotiation

## Medicare Drug Price Negotiation Timeline for 2026 & 2027



SOURCE: KFF analysis of section 11001 of the Inflation Reduction Act of 2022.

KFF

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## Costs of Medicare – Part D

- National Base Beneficiary Premium = \$32.74 (only used to calculate IRMAA and penalty)
- Your premium will be higher or lower, depending on coverage purchased
  - 2023 US national average premium\*
    - US weighted average premium = \$43
    - WI weighted average premium = \$47
    - 3% increase vs. 2022
  - IRMAA applies to higher incomes
    - MAGI above \$194,000 married filing jointly or \$97,000 single
    - Income brackets are inflation adjusted

\*Source: The Kaiser Foundation's Medicare Part D: A First Look at Medicare Prescription Drug Plans in 2022

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## Part D Premium

Modified Adjusted Gross Income (2022 MAGI determines 2024 premium)		2023 Medicare Part D Premium
Single	Married Filing Joint	
\$97,000 or less	\$194,000 or less	Your plan premium
\$88,001 - \$123,000	\$194,001 - \$246,000	\$12.20 + your plan premium
\$123,001 - \$153,000	\$246,001 - \$306,000	\$31.50 + your plan premium
\$153,001 - \$183,000	\$306,001 - \$366,000	\$50.70 + your plan premium
\$183,001 - \$500,000	\$366,001 - \$750,000	\$70.00 + your plan premium
\$500,001+	\$750,001+	\$76.40 + your plan premium

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## Part D Deductible & Coinsurance

	Paid by Insured	Threshold
Annual Deductible	\$505	n/a
Initial Coverage Period	25% of drug costs (\$4,660 * .25 = \$1,165)	On the first \$4,660 of drug expenses (not out-of-pocket costs) after deductible
Coverage Gap (aka Donut Hole)	25% of cost of Brand Name or Generic Drugs	Lasts until TrOOP* reaches \$7,400
Catastrophic Coverage – Starts when total true out-of-pocket (TrOOP*) costs reach \$7,400 (\$505 deductible + \$1,165 initial coverage + \$5,730 donut hole)	Greater of: <ul style="list-style-type: none"> <li>• 5% of drug costs <b>OR</b></li> <li>• \$10.35 for brand name or \$4.15 for generic</li> </ul>	On all out-of-pocket costs in excess of \$7,400

\*What the drug plan pays towards drug cost (5%) and dispensing fee (75%) do not count towards TrOOP.

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## Part D Premium Penalty

- 1% penalty for every month you are not enrolled
- Carries over every year
- Increases if base premium increases

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## MEDICARE SUPPLEMENT (MEDIGAP) PLANS

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# Medicare Supplement Plans

- Sold by private insurance companies
- Supplemental coverage for Medicare Parts A & B
- Plans followed federal & state laws to protect you

# Medicare Supplement Plans

Medigap Benefits	A	B	C	D	F*	G*	K	L	M	N
Part A coinsurance and hospital costs up to an additional 365 days after Medicare benefits are used up.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Part B coinsurance or copayment	✓	✓	✓	✓	✓	✓	50%	75%	✓	✓ <sup>^</sup>
Blood (first 3 pints)	✓	✓	✓	✓	✓	✓	50%	75%	✓	✓
Part A hospice care coinsurance or copay	✓	✓	✓	✓	✓	✓	50%	75%	✓	✓
Skilled nursing facility care coinsurance			✓	✓	✓	✓	50%	75%	✓	✓
Part A deductible		✓	✓	✓	✓	✓	50%	75%	50%	✓
Part B deductible**			✓		✓					
Part B excess charges					✓	✓				
Foreign travel emergency (up to plan limits)			80%	80%	80%	80%			80%	80%
Out of Pocket Limit***	N/A	N/A	N/A	N/A	N/A	N/A	\$6,220	\$3,110	N/A	N/A

\* Plans F & G offer high deductible options in some states.

\*\* Plans C & F aren't available to new participants as of January 1, 2020.

\*\*\* For Plans K & L, after you meet your OOP limit and Part B deductible, the plan pays 100%.

<sup>^</sup> Plan N pays 100% of the part B coinsurance, except for \$20 copay for some office visits and \$50 copay for ER visits.

# WPS Medicare Complete – Wisconsin

## Design your plan

### 1. Determine your rate area (see previous page)

- Area 1** See rates on page 7
  **Area 2** See rates on page 8
  **Area 3** See rates on page 9

### 2. Select your plan (choose one)

<input type="checkbox"/> <b>Base plan—highest coverage option</b>	OR	<input type="checkbox"/> <b>Base plan with Medicare Part B copayment or coinsurance rider</b>
Covers your Medicare Part A and Part B copayments and coinsurance—costs you would otherwise pay out of pocket. This plan also offers unlimited preventive benefits.*		After you pay the Medicare Part B deductible, you pay a \$20 copayment for office visits and either up to a \$50 copayment for emergency room visits or the Medicare Part B coinsurance, whichever is less. This plan also offers unlimited preventive benefits.*

\*Base plans include Medicare Part B preventive services with no maximum benefit amounts.

### 3. Choose optional base plan riders

Enhance your plan with optional benefit riders, each at an additional cost.

- Rider 1—Medicare Part A Deductible**—WPS will pay either 100% or 50% of your Medicare Part A deductible of \$1,484 during the first 60 days of hospitalization.
- 100% Medicare Part A Deductible
  OR
  50% Medicare Part A Deductible
- Rider 2—Medicare Part B Deductible** (available for highest base plan option only)—WPS will pay your Medicare Part B deductible of \$203 each calendar year. This rider is only available to applicants who were first eligible for Medicare prior to Jan. 1, 2020.

- Rider 3—Medicare Part B Excess Charges**—If your health care provider does not accept Medicare assignment, WPS will pay the difference between what Medicare approves for payment and the amount charged by the provider. The difference shall be no more than the actual charge or the limiting charge allowed by Medicare, whichever is less.

- Rider 4—Additional Home Health Care**—WPS will pay benefits for an additional 325 home health care visits each calendar year up to a total of 365 visits per year, including those covered by Medicare.

- Rider 5—Foreign Travel Emergency**—WPS will pay 80% of the billed charges for expenses associated with medically necessary emergency medical care you receive outside the U.S. that begins in the first 60 days of a trip after you satisfy a deductible of \$250; lifetime maximum benefit of \$100,000.

### 4. Apply discounts for which you qualify

- 2% Automatic Bank Withdrawal Discount**—Receive a 2% discount when you pay your premium by automatic bank withdrawal each month.
- 7% Household Discount**—Receive a 7% discount when you and another member of your household enroll in a WPS Medicare supplement insurance plan. Household is defined as two or more individuals who reside together in the same dwelling. Dwelling is defined as a single home, condominium unit, or apartment unit within an apartment complex.

# Total Medicare Costs Per Person at Age 65

MAGI Tier	Part B Premium (Base Premium)	Part D Premium <sup>1</sup>	IRMAA	Medigap <sup>2</sup>	Total Annual Cost
1 (Base)	\$1,979	\$564	\$0	\$2,251	\$4,794
2	\$1,979	\$564	\$791	\$2,251	\$5,585
3	\$1,979	\$564	\$1,978	\$2,251	\$6,772
4	\$1,979	\$564	\$3,164	\$2,251	\$7,958
5	\$1,979	\$564	\$4,351	\$2,251	\$9,145
6	\$1,979	\$564	\$4,747	\$2,251	\$9,541

<sup>1</sup> Weighted WI average premium from slide 38.

<sup>2</sup> Plan G equivalent from WPS for 65-year-old WI resident living in Southeastern WI premium area (Area 1).

## Total Medicare Costs Per Person at Age 80

MAGI Tier	Part B Premium (Base Premium)	Part D Premium <sup>1</sup>	IRMAA	Medigap <sup>2</sup>	Total Annual Cost
1 (Base)	\$1,979	\$564	\$0	\$3,911	\$6,454
2	\$1,979	\$564	\$791	\$3,911	\$7,245
3	\$1,979	\$564	\$1,978	\$3,911	\$8,432
4	\$1,979	\$564	\$3,164	\$3,911	\$9,618
5	\$1,979	\$564	\$4,351	\$3,911	\$10,805
6	\$1,979	\$564	\$4,747	\$3,911	\$11,201

<sup>1</sup> Weighted WI average premium from slide 38.

<sup>2</sup> Plan G equivalent from WPS for 80-year-old WI resident living in Southeastern WI premium area (Area 1).

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MEDICARE ADVANTAGE

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## Medicare Advantage Plans

- All-inclusive plans
- Combine Parts A, B, and usually D
- May cover services not covered by Original Medicare (for an extra cost)
  - Vision
  - Dental
  - Alternative care
  - Gym memberships
- Emphasis on wellness and preventative care

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## Enrolling in an Advantage Plan

- Enroll in Parts A & B first
  - Pay Part B premium
- Enroll in MA plan with private insurance company
- MA plan may charge its own premium
- Most include prescription drug coverage
- May not deny enrollment based on health status

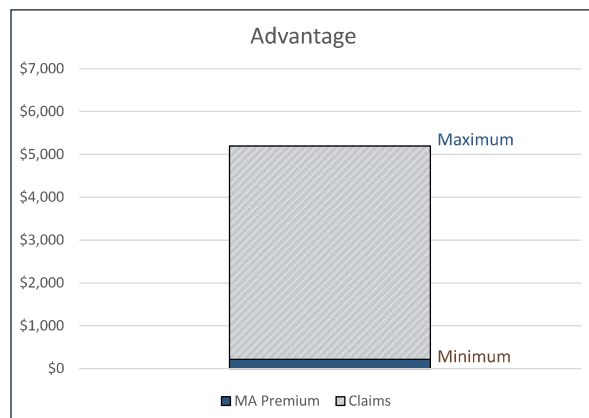
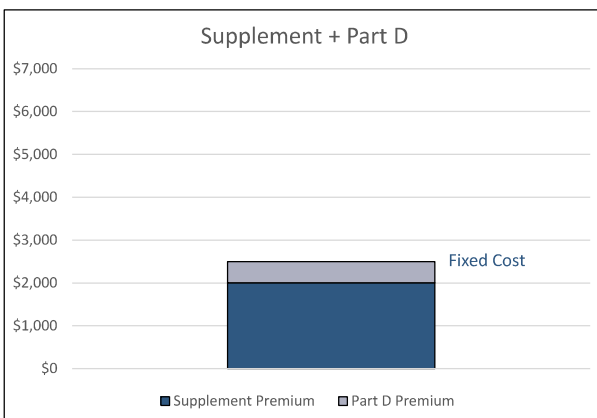
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# Original Medicare vs. Medicare Advantage

Benefit	Original Medicare	Medicare Advantage
Monthly Premium (in addition to Part B)	Yes, for Part D and Medigap	Sometimes
Copays	Rarely	Yes
Annual policy changes	No	Yes
Premium changes annually	Yes	Yes
Prescription Drug Coverage	Must purchase separate plan	Usually included, but plans are available without it
Extra Benefits (dental, vision, etc.)	Varies by plan	Varies by plan, but usually multiple options
Network	Yes	Yes
Guaranteed Issue	Only during first 6 months after Part B enrollment	Yes

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# Example of Annual Costs at Age 65



Medicare Advantage premiums and out of pocket max are based on national averages: <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2022-premiums-out-of-pocket-limits-cost-sharing-supplemental-benefits-prior-authorization-and-star-ratings/>

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# Helpful Resources

- Plan Finders
  - Medicare Supplement, Advantage, and Part D Plan Finder
    - <https://www.medicare.gov/plan-compare/#/?year=2023&lang=en>
- Resources offered by your state insurance department
  - Check with your state's insurance commissioner (website) for additional information
    - <https://www.medicare.gov/talk-to-someone#resources/sids>
  - 2022 Guide to Health Insurance for People with Medicare in Wisconsin
    - <https://oci.wi.gov/Documents/Consumers/PI-002.pdf>

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QUESTIONS?

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