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HIGHLIGHTED TOPICS:



WISCONSIN TAX UPDATE

Find out about the latest updates on Wisconsin case law and legislative and administrative developments that have occurred in the past year



WISCONSIN DEPARTMENT OF REVENUE INCOME, SALES & EXCISE TAX UPDATE

Hear about the new Wisconsin tax laws, changes to 2024 Wisconsin tax returns, updates on DOR administrative and procedural initiatives affecting tax practitioners, and more



FEDERAL TAX UPDATE

Get insights on the hottest legislative, judicial and IRS developments impacting practitioners during the upcoming filing season, including a look at "Taxmageddon"

MONDAY, NOV. 11 & TUESDAY, NOV. 12
BROOKFIELD CONFERENCE CENTER & WICPA CPE LIVESTREAM

MATERIALS AT A GLANCE

The following materials are from the Tuesday morning sessions of the 2024 WICPA Tax Conference held on Monday, Nov. 11 & Tuesday, Nov. 12, including:

- Wisconsin Tax Update
- Wisconsin Department of Revenue Income, Sales & Excise Tax Update
- Ethics in the Digital Age: Ethical Implications of the Use of AI for the Tax Practitioner
- Wisconsin Trust Code Trailer Bill

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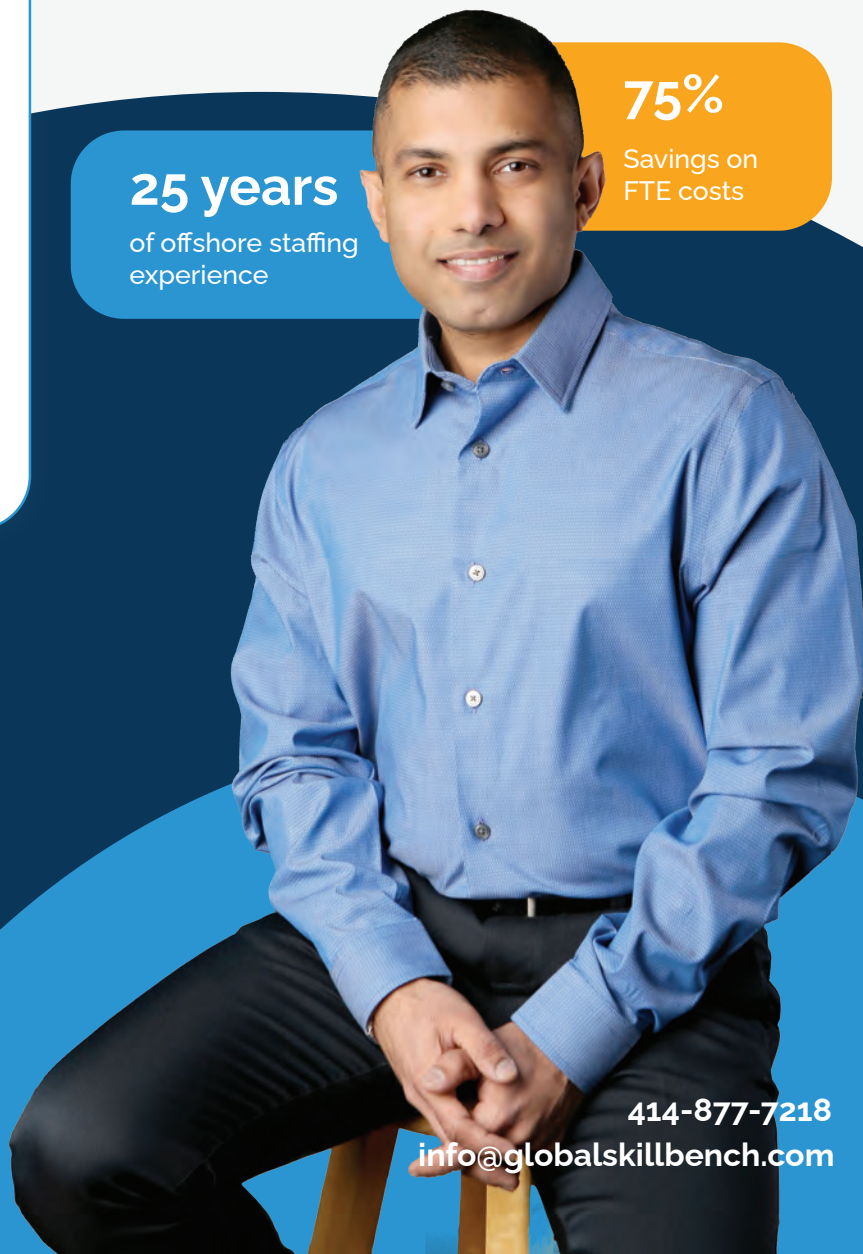
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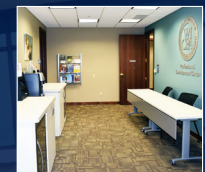
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8:15 – 9:20 a.m.

Wisconsin Tax Update

Kristina Somers, JD, *Shareholder, Reinhart Boerner Van Deuren s.c.*

Wisconsin Tax Update WICPA 2024 Tax Conference November 12, 2024

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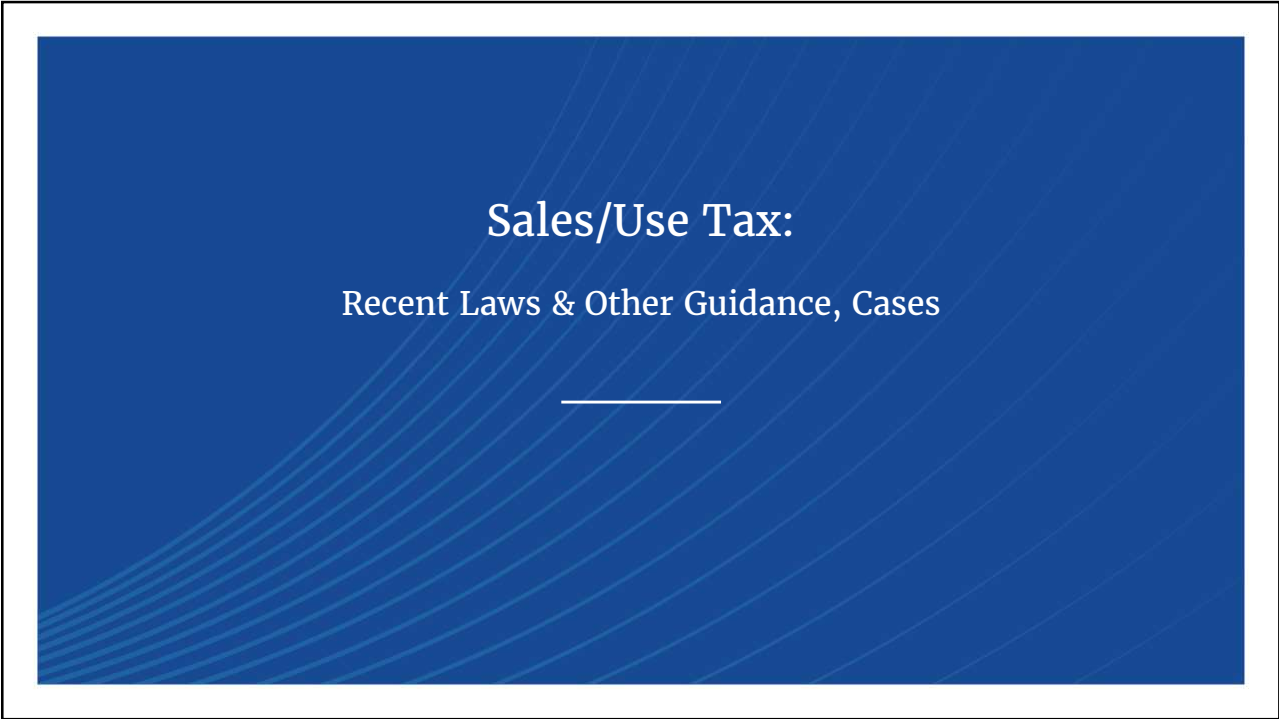
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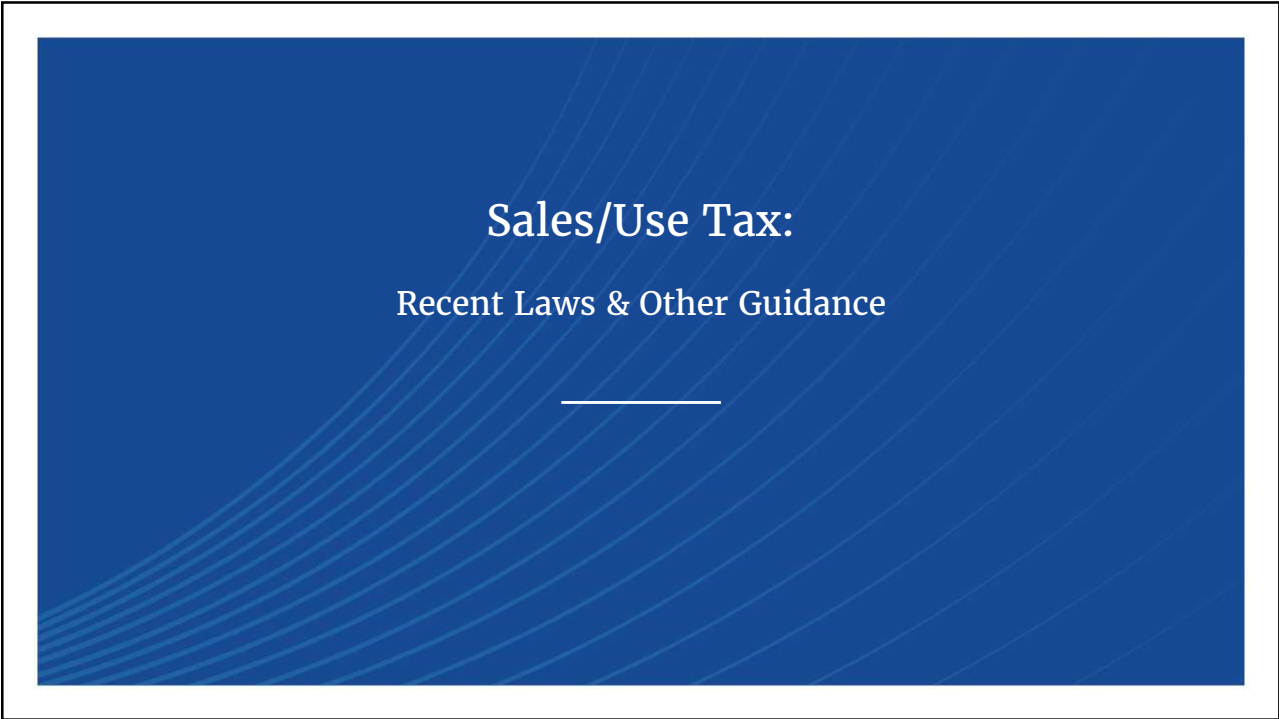
- Sales/Use Tax
- Income/Franchise Tax and Pass-Through Withholding
- Property Taxes, TIF Districts, Transportation Utility Fees
- Unclaimed Property
- Excise Taxes
- Miscellaneous



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Sales/Use Tax:
Recent Laws & Other Guidance, Cases



Sales/Use Tax:
Recent Laws & Other Guidance

Recent Laws: Milwaukee Sales and Use Tax Rate Changes

- Effective January 1, 2024:
 - **City of Milwaukee** imposes a new **2%** sales and use tax
 - **Milwaukee County** sales and use tax increases from 0.5% to **0.9%**
- Sellers registered to collect Wisconsin sales and use tax must also collect the city and county tax if making taxable sales to these locations, regardless of whether the seller is located in the city or county.
- **Retailers:** Retailers that sell building materials to contractors and receive Form S-207-CT, *Construction Contract Entered Into Before the Effective Date of a New or Additional County or City Tax*, from the contractor must perform a special computation to report the amount of Milwaukee County sales subject to sales tax on their Wisconsin sales and use tax return. The sales and use tax return calculates 0.9% sales tax for Milwaukee County for periods starting after January 1, 2024, even if the retailer is only required to collect 0.5% Milwaukee County sales tax on sales of building materials for such sales.

Recent Laws: Milwaukee Sales and Use Tax Rate Changes (cont'd)

- **Contractors:** Contractors that have paid the 0.9% Milwaukee County tax on purchases of building materials that qualify for the transitional provisions explained in the article mentioned above and also provided in Wis. Stat. § 77.77(3) can do one of the following to receive a refund of the 0.4% additional Milwaukee County tax:
 - Provide a completed Form S-207-CT to its supplier and request a refund of the additional 0.4% tax paid.
 - If the amount of tax is at least \$50, file a claim for refund with the Wisconsin Department of Revenue (the "Department"). A buyer's claim for refund can be filed electronic using MTA or on paper by completing both Form S-220, *Form BCR, Buyer's Claim for Refund of Wisconsin State, County and Stadium Sales Taxes*, and Form S-220a, *Schedule P, Attachment to Form BCR, Buyer's Claim for Refund of Wisconsin State, County and Stadium Sales Taxes*.

Recent Laws: Milwaukee Sales and Use Tax Rate Changes (cont'd)

- **Contractors May Owe County Use Tax:** Contractors engaged in real property construction activities owe county use tax on their purchase price of materials that become a component part of real property in a county that has adopted the county tax.
- However, the contractor is allowed a **credit** against the county use tax due if the contractor was required to pay a county sales or use tax in a county and the contractor then uses the materials in a real property construction activity in a different county that has also adopted the county sales and use tax.

Recent Laws: Sales and Use Tax Exemptions for Local Professional Baseball Park District – 2023 Wis. Act. 40

- Amend Wis. Stat. § 77.54(41), and create Wis. Stat. § 77.54(9a)(gm), effective December 7, 2023.
- The Act creates a sales and use tax exemption for sales of tangible personal property and taxable services sold to a local professional baseball park district under subch. III of ch. 229, Wis. Stats.
- The Act also expands the exemption in Wis. Stat. § 77.54(41) -- for building materials, supplies, and equipment for professional sports and entertainment home stadiums that are exempt from property taxes under Wis. Stat. § 70.11(36) -- to include:
 - Property acquired solely for or used solely in the **improvement, repair, or maintenance** of the stadiums.

Previously, the exemption for building materials, supplies, and equipment only applied if it was acquired solely for or used solely in the **construction, renovation, or development** of the stadiums.

Recent Laws: Renaming of the Police and Fire Protection Fee – 2023 Wis. Act 19

- 2023 Wis. Act 19, amend Wis. Stat. § 77.54(55), effective July 1, 2024.
- The Act renames the **police and fire protection fee** to the **911 fee**.
- Forms, instructions, letters, and other published guidance are being updated to reflect the name change.

Recent Laws: Exemption Created for Electricity Used to Charge Electric Vehicles – 2023 Wis. Act 121

- 2023 Wis. Act 121, amend Wis. Stat. §§ 77.52(13) and 77.53(10), and create § 77.54(71), effective **January 1, 2025**.
- The Act creates an exemption from sales and use tax for the sale of electricity delivered or placed by:
 - A Level 3 charger of an electric vehicle charging station, as defined in Wis. Stat. § 77.997(1), Wis. Stats., into the battery or other energy storage device of an electric vehicle
 - A Level 1 or Level 2 charger installed on or after March 22, 2024, of an electric vehicle charging station, as defined in Wis. Stat. § 77.997(1), into the battery or other energy storage device of an electric vehicle
- If the owner, operator, manager, or lessor of an electric vehicle charging station charges for the delivery or placement of the electricity into the battery or other energy storage device of an electric vehicle, such person is not required to obtain an exemption certificate from the purchaser for the sale of electricity to be exempt from sales and use tax.

Recent Laws: Premier Resort Area Tax Money Usage by Certain Municipalities – 2023 Wis. Act 134

- 2023 Wis. Act 134, renumber Wis. Stat. § 66.1113(2)(d) to 66.1113(2)(d)1. and amend as renumbered; and create Wis. Stat. § 66.1113(2)(d)2., effective March 23, 2024.
- Allows the City of Wisconsin Dells and Village of Lake Delton to use the proceeds from the premier resort area tax for: [Public safety expenses](#) and [infrastructure expenses](#) within the premier resort area.
- Prior law: The City of Wisconsin Dells and Village of Lake Delton could only use proceeds from the tax for [infrastructure expenses](#).
- Premier resort areas enacting an ordinance to impose premier resort tax after December 31, 1999, including the villages of Ephraim, Sister Bay, and Stockholm and the cities of Rhinelander, Eagle River, and Bayfield must continue to use proceeds from the tax for [infrastructure expenses](#).

Recent Laws: No Exemption Certificate Required for Insulin – 2023 Wis. Act 138

- 2023 Wis. Act 138, renumber Wis. Stat. § 77.54(14m) to 77.54(14)(en) and amend as renumbered, effective March 23, 2024.
- The Act eliminates the requirement for purchasers to present an exemption certificate to claim the sales and use tax exemption for insulin furnished by a pharmacist to a person for the treatment of diabetes of a human being.
- Under prior law, although insulin dispensed on a physician's prescription was exempt from sales tax, purchasers had to present an exemption certificate to claim the exemption.

Recent Laws: No Exemption Certificate required for Exempt Health Care Records and Farm-Raised Fish – 2023 Wis. Act 138

- 2023 Wis. Act 138, amend Wis. Stat. § 77.52(13) and 77.53(10), effective March 23, 2024.
- The Act eliminates the requirement for sellers to obtain and purchasers to provide an exemption certificate for exempt sales and purchases of **patient health care records** sold to the patient or to a person that the patient authorizes to receive the records (Wis. Stat. § 77.54(64)).
- The Act also eliminates the requirement for sellers to obtain and purchasers to provide an exemption certificate for exempt sales and purchases of **farm-raised fish** sold to a fish farm, as defined in Wis. Stat. § 95.001(1)(aj), that is registered with the Department of Agriculture, Trade and Consumer Protection, or to a person who holds a valid permit under Wis. Stat. § 29.736, for the stocking of fish (Wis. Stat. § 77.54(66)).

Recent Laws: Exemption Created for Real Estate Broker Memberships – 2023 Wis. Act 141

- 2023 Wis. Act 141, amend Wis. Stat. §§ 77.52(13) and 77.53(10), and create § 77.54(71), effective June 1, 2024.
- The Act creates a sales and use tax exemption for the sale of and the storage, use, or other consumption of a **membership sold to a real estate broker** licensed under Wis. Stat. ch. 452, who, pursuant to the broker's membership agreement, offers to compensate and cooperate with other real estate brokers in brokering sales of properties and who obtains access to information about real estate listings and compensation offers from other real estate brokers.
- No exemption certificate required.

Recent Laws: Exemption Created for Certain Road Building Equipment – 2023 Wis. Act 146

- 2023 Wis. Act 146, create Wis. Stat. § 77.54(73), effective June 1, 2024.
- The Act creates a sales and use tax exemption for the sale of and the storage, use, or other consumption of **portable machinery and equipment**, including accessories, attachments, parts, and supplies for such machinery and equipment, used primarily to **crush, mill, produce, or pulverize asphalt, concrete, gravel, rock, or aggregate base** for **road or commercial surface lot construction or resurfacing**.
- To claim the exemption, road builders, commercial surface lot construction, or resurfacing contractors that qualify for the exemption must provide their equipment supplier one of the following fully completed Wisconsin Sales and Use Tax Exemption Certificates for purchases made on or after June 1, 2024:

Recent Laws: Exemption Created for Certain Road Building Equipment – 2023 Wis. Act 146 (cont'd)

- Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*:
 - Check the box for "other exemptions provided by law" and enter "Road Building Equipment."
- S-211E, *Electronic Wisconsin Sales and Use Tax Exemption Certificate*:
 - Check the box for "Construction – Road Building Equipment."

Recent Laws: Exemption created for Precious Metal Bullion – 2023 Wis. Act 149

- 2023 Wis. Act 149, create Wis. Stat. § 77.54(74), effective March 23, 2024. The Act creates a sales and use tax exemption for the sale, use, or other consumption of **precious metal bullion**.
- **"Precious metal bullion"** = coins, bars, rounds, or sheets that contain at least 35% gold, silver, copper, platinum, or palladium and that are marked with weight, purity, and content or that a government authority minted on the basis of weight, purity, and content.
- Does not apply to other tangible personal property that contains, in whole or in part, precious metal bullion, such as jewelry, works of art, scrap metal, or electronics.

Recent Laws: Exemption created for Precious Metal Bullion – 2023 Wis. Act 149 (cont'd)

- To claim the exemption, purchasers should provide its vendors with one of the following fully completed Wisconsin Sales and Use Tax Exemption Certificates for purchases on or after March 23, 2024:
 - Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*:
 - Check the box for "other exemptions provided by law" and enter "Precious Metal Bullion."
 - S-211E, *Electronic Wisconsin Sales and Use Tax Exemption Certificate*:
 - Check the box for "Precious Metal Bullion."

Recent Laws: *Recreational Vehicles and Campers – 2023 Wis. Act 164*

- 2023 Wisconsin Act 164, amend Wis. Stat. § 340.01(48r), effective October 1, 2024.
- The Act amends the definition of a **recreational vehicle** to mean a vehicle that is designed to be towed upon a highway by a motor vehicle, that is equipped and used, or intended to be used, primarily for temporary or recreational human habitation that does not exceed 46 feet in length.
- "Recreational vehicle" includes:
 - *Camping trailer* (defined in Wis. Stat. § 218.10(1c));
 - *Fifth-wheel recreational vehicle* (defined in Wis. Stat. § 218.10(1q));
 - *Park model recreational vehicle* (defined in Wis. Stat. § 218.10(7m)); and
 - *Travel trailer* (defined in Wis. Stat. § 218.10(8v)).

Recent Laws: *Recreational Vehicles and Campers – 2023 Wis. Act 164 (cont'd)*

- The amended definition:
 - Increases the maximum length of a recreational vehicle (RV) from 45 to 46 feet; and
 - Removes the need for walls of rigid construction.
- The Act adds camping trailers, fifth-wheel RVs, park models, and travel trailers, defined above, to the definition of RV.
- RVs are subject to Wisconsin sales and use tax.
- Retailers are required to collect and remit sales tax if the customer takes possession in Wisconsin, unless an exemption applies.

Recent Update: *Racine County – 0.50% Tax*

- Effective April 2025
- Combined state and county rate = 5.50%

Reminder: *Manitowoc County – 0.50% Tax*

- Effective January 1, 2025
- Combined state and county rate = 5.50%

Reminder: *Sales Tax Treatment of Credit Card “Swipe” Fees*

- A retailer may charge a "swipe" fee to a customer using certain credit cards for payment.
- A "swipe fee" is included in the sales price, as defined in Wis. Stat. § 77.51(15b), Wis. Stats.
- If the product or service being sold is taxable and the retailer chooses to charge a "swipe" fee, sales or use tax applies to the total amount charged by the retailer for the product or service, which includes the amount charged for the "swipe" fee.

Sales/Use Tax:

Cases

Cases: CMFG Life Insurance Company and CUMIS Insurance Society v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Aug. 6, 2024)

• **Facts:**

- Sale-leaseback:
 - Airplane – "Aircraft Lease" (with PNC Finance)
 - Software (internally developed) – "Software Lease" (with PNC Finance)
- Cross-motions for summary judgment in 2021.
 - Denied by Commission on March 2, 2022.
- Second motions for summary judgment.

Cases: CMFG Life Insurance Company and CUMIS Insurance Society v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Aug. 6, 2024) (cont'd)

• **Issues:**

- Payments to PNC Finance – under "Aircraft Lease" and "Software Lease" - subject to Wisconsin sales/use tax?
- Wis. Stat. § 77.52(1b): Leases/rentals of tangible personal property and digital goods subject to sales tax.
 - Taxable leases?
 - Refinancing agreements?
- Form v. substance.

Cases: CMFG Life Insurance Company and CUMIS Insurance Society v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Aug. 6, 2024) (cont'd)

• **Holding:**

- Form controls
 - Terms of the Leases "are less than clear."
 - "Petitioners cannot object to taxation imposed on the form of contract they chose."
- Statutory definitions of "lease" and "sale" controlling:
 - No carve-out for sale-leaseback transactions.

Cases: CMFG Life Insurance Company and CUMIS Insurance Society v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Aug. 6, 2024) (cont'd)

• **Holding:**

- "Substance and realities"
 - The "terms of the Contracts are self-contradictory."
 - Clause – "for tax purposes" = refinancing, not sale-leaseback.
 - Does not bind the Department.

Cases: *Scheider v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 15, 2024)*

• **Facts:**

- Tax year 2018
- Partnership – Slot Jokers (placed wagers on slot machines at casinos).
- Daniel and Debra Scheider each 50% owner; professional gamblers.
- 2018:
 - Sales (gambling income) of \$44,657
 - Betting losses of \$44,657; other business expenses totaling \$40,706
 - Partnership reported ordinary loss of \$40,706
 - Daniel and Debra Scheider reported partnership loss on Schedule E (IRS Form 1040)

Cases: *Scheider v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 15, 2024) (cont'd)*

• **Federal Code/Wisconsin Statutes:**

- Tax Cuts and Jobs Act
- IRC § 165(d) – limited gambling losses to extent of winnings (§ 11050 of P.L. 115-97).
 - Expiration – 12/31/2025?
- Wis. Stat. § 71.02 – Imposition of tax, including on distributive share of partnership income.
- Wis. Stat. § 71.01(6)(L)1. – Internal Revenue Code as amended to December 31, 2017.
- Wis. Stat. § 71.01(6)(L)2. – P.L. 115-97 § 11050 not excluded.

Cases: *Scheider v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 15, 2024)* (cont'd)

- **Issue:**

- For Wisconsin income tax purposes, for the 2018 tax year, are Daniel and Debra Scheider's business expenses -- related to gambling activities and in excess of winnings -- deductible?

- **Holding:**

- No, gambling expenses in excess of winnings, for tax year 2018, are not deductible.

Cases: *StubHub v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Feb. 28, 2023)*

- **Facts:**

- StubHub operated an online marketplace where businesses and individuals sold tickets to sporting events, concerts, theater, and other live entertainment services. StubHub participated in other business activities to promote its online marketplace for the purchase and sale of tickets.
- Buyers made one payment to StubHub which consisted of the ticket price set by the ticketholder and the fees charged to the buyer by StubHub. StubHub next paid itself the fees due it from the ticketholder and the buyer and then sent the remaining monies paid by the buyer to the ticketholder.
- StubHub charged ticket buyers and ticketholders a fee based on a percentage of the ticket price, as well as a logistics fee. In 2013, StubHub began charging logistic fees on a per ticket basis, rather than a per order basis.

Cases: *StubHub v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Feb. 28, 2023) (cont'd)*

• Facts:

- For the period reviewed, StubHub had in place a FanProtect Guarantee for both buyers and ticketholders. FanProtect Guarantee promised buyers valid, timely tickets. If this didn't occur StubHub promised to find suitable replacement tickets or issue a full refund. Buyers were not permitted to contact the ticketholder, the ticketholder could adjust the ticket price before the ticket sold, and the ticketholder would receive payment for tickets sold and delivered.
- The Department claimed StubHub owed sales/use tax on the full purchase price of all tickets sold by StubHub to events in Wisconsin during the audit period.
- StubHub argued it was neither a retailer nor a seller under Wisconsin law. StubHub characterized its role as "entirely passive in the sales process via its online marketplace."

Cases: *StubHub v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Feb. 28, 2023) (cont'd)*

• Issue:

- Was StubHub selling tickets or acting as an agent and/or representative of others selling tickets?
- The Department assessed tax and penalties to StubHub.
- StubHub asserted it did not sell tickets and did not serve as an agent or representative of those who did make such sales.

Cases: *StubHub v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, Feb. 28, 2023) (cont'd)*

- **Holding:**

- The Wisconsin Tax Appeals Commission concluded:

"1. . . . StubHub was a retailer providing the service of selling taxable admissions

2. . . . StubHub was liable in the alternative with the ticketholders listing tickets on StubHub's online marketplace for the sales tax . . .

3. . . . StubHub has not met its burden of proving the Department's sales/use tax assessment was incorrect . . .

4. . . . The Department's imposition of penalties in this appeal is not supported by the facts, law, and department publications in place at the time of the transactions at issue."

Cases: *StubHub v. Wisconsin Department of Revenue (Dane County Circuit Court, February 1, 2024)*

- Circuit Court: Reasonable persons could disagree whether terms such as "selling" and "representing sellers" apply to "running an online marketplace" and that statutes using those terms are ambiguous.
- The Court stated, "Sometimes a statute has no plain meaning. A statute is ambiguous if the language reasonably gives rise to different meanings"

Cases: *StubHub v. Wisconsin Department of Revenue (Dane County Circuit Court, February 1, 2024)* (cont'd)

- The Circuit Court concluded the Commission erred by:
 1. Imposing sales tax under Wis. Stat. § 77.52, because reasonable persons could disagree about whether StubHub "sold" tickets.
 2. Interpreting the doctrine of the undisclosed principal to create sales tax liability for StubHub.
 3. Imposing sales tax under Wis. Stat. § 77.51(13)(c) because reasonable persons could disagree about whether StubHub was a "representative" of ticket sellers.
- The Circuit Court determined StubHub satisfied its burden to show it owed no sales tax and set aside the decision of the Wisconsin Tax Appeals Commission.
- Decision appealed by the Department.



Income/Franchise Tax and Pass-Through Withholding:

Recent Laws & Cases

Income/Franchise Tax and Pass-Through Withholding:

Recent Laws

Recent Laws: *Business Development Tax Credit and Enterprise Zone Credit – 2023 Wis. Act 143*

- The Act provides the following revisions to the **business development tax credit**:
 - Allows **eligibility** if a person **creates new jobs** or **retains existing jobs** and makes a capital investment in the state, or if a person **does not decrease net employment** in the person's business in the year preceding the certification.
 - Allows **additional claims** related to investments in **workforce housing** and establishment of **employee childcare programs**, at a level not to exceed 15 percent of the amounts of those investments and subject to disallowance of duplicative claims.
 - The **property investment tax credit** threshold for capital investment is reduced from **\$1 million** to **\$250,000**.
 - Specifies that WEDC must approve or deny an application for the certification of the credit within **90 days** after receiving a person's application.

Recent Laws: Business Development Tax Credit and Enterprise Zone Credit – 2023 Wis. Act 143 (cont'd)

- The Act provides the following revisions to the **enterprise zone development credit**:
 - Creates a new definition of "**full-time job**" to mean a nonseasonal job for which the **annual pay** is more than 2,080 hours multiplied by 150 percent of the federal minimum wage, and for which retirement, health, and or other benefits are offered. Prior law required an employee to actually work 2,080 hours per year.
 - Changed the definition of "zone payroll" to mean amounts attributable to full-time employees "based in" an enterprise zone.
 - Creates a 12-month period "base year" definition for calculation of enterprise zone credits. Prior law calculated credits using the prior taxable year as the base year.
 - Sunsets certain "supplemental claims" to the enterprise zone credit that previously allowed certification of enterprise zone benefits for a qualifying financial services technology business.

Recent Laws: Qualified New Business Venture – 2023 Wis. Act 144

- 2023 Wis. Act 144, repeal Wis. Stat. § 238.15(1)(f)1. and create Wis. Stat. § 238.15(1)(f)1m., effective as of March 23, 2024.
- Criteria *changed* to be certified/recertified by the Wisconsin Economic Development Corporation (WEDC) as a Qualified New Business Venture (QNBV).
- Under prior law, in addition to other criteria, a business must do either of the following to be eligible for certification:
 1. Engage in, or has committed to engage in, innovation in any of the following:
 - Manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology.
 - Processing or assembling certain innovative technology products or other products that are produced using manufacturing methods that are enabled by applying differentiating technology.

Recent Laws: Qualified New Business Venture – 2023 Wis. Act 144 (cont'd)

- Services that are enabled by applying differentiating technology
- 2. Undertakes pre-commercialization activity related to differentiating technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying differentiating technology.
- The Act replaces the *first option* with permissible certification for a business that is engaged in, or has committed to engage in, **innovation**, if the innovation involves the development of a differentiating technology, product, service, or production process.

Recent Laws: Financial Institution Commercial Loan Income Exemption – 2023 Wis. Act 146

- 2023 Wis. Act 146, amend Wis. Stat. §§ 71.05(1)(i) and 71.26(1)(i), and create Wis. Stat. § 71.365(4m)(d)1.bd., various effective dates.
- For taxable years beginning after December 31, 2022, the Act provides an exemption on income derived from a commercial loan of **five million dollars or less** for a **qualifying tax-option (S) corporation** that makes the **election to pay franchise or income tax at the entity level** under Wis. Stat. § 71.365(4m)(a).
- On or after March 23, 2024, the Act provides that in order to qualify for the commercial loan income exemption the **loan proceeds must be used primarily for a business or agricultural purpose in Wisconsin.**

Recent Laws: Wisconsin Qualified Opportunity Fund Certification Due Date and Filing Method Changed – 2023 Wis. Act 146

- 2023 Wis. Act 146, amend Wis. Stat. §§ 71.05(25m)(c), 71.26(3)(vm)2., 71.34(1k)(p)2., and 71.45(2)(a)21.b., effective for taxable years beginning after December 31, 2023.
- Annually, a Wisconsin Qualified Opportunity Fund ("WQOF") must certify to each investor and the Department that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year. Form WQOF, *Wisconsin Qualified Opportunity Fund Certificate*, is the form required to be filed with the Department.
- Prior to the Act, a WQOF was required to file Form WQOF and provide a copy to each investor by **January 31** of the year following the close of the fund's taxable year. The only filing method for Form WQOF was electronically through **DocuSign**.
- As a result of the Act, a WQOF is required to file Form WQOF and provide a copy to each investor by the **due date, including extensions, of the fund's corresponding Wisconsin income or franchise tax return**. The DocuSign filing method has been discontinued. Funds must file Form WQOF by including it **with their corresponding Wisconsin income or franchise tax return**.

Recent Laws: Employee College Savings Account Contribution Credit – 2023 Wis. Act 148

- 2023 Wis. Act 148, amend Wis. Stat. §§ 71.05(6)(a)26.a., 26.b., 26.c., (b)32.a., 32.ae., and 32.am., 71.07 (10)(a)1., (10)(a)3., (10)(b), and (10)(c)2., 71.28(10)(c)2., 71.47(10)(c)2. and 224.50(2)(a), and create Wis. Stat. §§ 71.05(6)(b)32.ap., 71.07(10)(c)3., 71.28(10)(c)3., 71.47(10)(c)3. and 71.98(11), effective for taxable years beginning after December 31, 2023.
- The Act **increases** the maximum employee college savings account contribution credit to = **50 percent** of the amount the employer contributes to an employee's college savings account, not to exceed a maximum credit of \$800 per employee, adjusted for inflation.
- The Act also permits the credit to be **claimed by a sole proprietor** and specifies that credits may be claimed only for **employees whose compensation is reported**, or required to be reported, **on a Form W-2** for federal income tax purposes.

Recent Laws: College Savings Accounts– 2023 Wis. Act 148

- The Act also makes changes to Wisconsin's college savings program.
- The Act allows Wisconsin law to continuously conform to changes in federal law relating to qualified higher education expenses under IRC § 529.
- The Act also clarifies the administration of college savings accounts to require the use of a first-in, first-out accounting method for account withdrawals and restrictions on carry-overs of contributions.
- Additionally, the Act increases the maximum amount of account contributions that may be deducted for each beneficiary to **\$5,000, indexed for inflation**, or \$2,500, indexed for inflation, for a married individual filing a separate return, and repeals the smaller contribution limitation for divorced individuals.

Recent Laws: Child and Dependent Care Credit Expanded – 2023 Wis. Act 101

- 2023 Wis. Act 101, renumber Wis. Stat. § 71.07(9g)(b) to 71.07(9g)(b)1. and amend as renumbered; and create Wis. Stat. § 71.07(9g)(b)2. and (c)5., effective for taxable years beginning after December 31, 2023.
- The additional child and dependent care credit is increased from 50% to 100% of the related federal credit under section 21 of the Internal Revenue Code.
- Additionally, the amount of qualifying expenses that may be used to compute Wisconsin's credit is capped at \$10,000 for one qualifying child and \$20,000 for two or more qualifying children.
- These changes first apply to returns filed for the 2024 tax year.

Recent Laws: *Trusts & Powers of Appointment – 2023 Wis. Act 127*

- The Act makes various changes to Wis. Stat. chs. 30, 101, 342, 700, 701, 702, 814, 851, 854, 856, 859, 865, and 905.
- Changes include:
 - Technical updates to the administration and regulation of trusts in Wisconsin
 - Adopting the Uniform Trust Decanting Act
 - Adopting the Uniform Powers of Appointment Act

Recent Laws: *Married Persons Credit – Definition Updated– 2023 Wis. Act 138*

- 2023 Wis. Act 138, amend Wis. Stat. § 71.07(6)(am)1. and 2.d. and create § 71.07(6)(am)1m., effective March 23, 2024.
- Married persons credit (a.k.a. married couple credit): Referred to definitions in the Internal Revenue Code (IRC) as it existed on December 31, 1985.
- Current federal tax law is the IRC of 1986 as amended for the taxable year at issue.
- The Act replaced the reference to the IRC with the applicable language from the IRC on December 31, 1985, relating to the definitions for earned income and qualified earned income -- for purposes of Wisconsin's married persons credit.
- Computation of the married persons credit -- unchanged.

Recent Laws: Angel Investment Tax Credit – Transferability *Revised– 2023 Wis. Act 145*

- 2023 Wis. Act 145, amend Wis. Stat. § 238.15(3)(e), effective March 23, 2024.
- The Act allows an individual to sell or otherwise transfer an angel investment tax credit.
- Credits eligible for transfer are only **credits first approved** by the Wisconsin Economic Development Corporation ("WEDC") to claim **on or after March 23, 2024**.
- Credits approved by WEDC to be claimed prior to March 23, 2024 are not eligible for transfer.
- The person transferring the credit must notify the WEDC and the Wisconsin Department of Revenue of the transfer and may not sell or otherwise transfer the credit more than once in a 12-month period.

Recent Laws: Credit – Transportation Services for Blind Workers *– 2023 Wis. Act 142*

- 2023 Wis. Act 142, create Wis. Stat. § 71.07(11) and § 71.10(4)(cw), effective for taxable years beginning after December 31, 2023.
- Credit: For the cost of **qualifying transportation services** used by a claimant.
- This credit is first available for returns filed for the **2024 tax year**.
- "Claimant" means a person who is considered blind under section 63(f)(4) of the Internal Revenue Code (IRC).
- "Qualifying transportation services" means transportation services provided between a person's place of residence and place of employment by means of mass transit, paratransit, taxicab, or transportation network company, as defined in Wis. Stat. § 440.40(6).

Recent Laws: Credit – Transportation Services for Blind Workers – 2023 Wis. Act 142 (cont'd)

- The credit is equal to **50 percent** of the qualifying transportation services paid by the claimant during the taxable year with a maximum credit of \$1,500.
- Transportation services paid with monies withdrawn from an ABLÉ account (under section 529A of the IRC) are not allowed if the owner of the account or other person who deposited into the account claimed a subtraction under Wis. Stat. § 71.05(6)(b)52.
- No credit may be allowed for an amount paid for qualifying transportation services if the claimant is reimbursed for the amount paid.

Recent Laws: Credit – Transportation Services for Blind Workers – 2023 Wis. Act 142 (cont'd)

- The credit is **nonrefundable** so it may only offset the tax imposed under Wis. Stat. § 71.02.
- Unused credits **may not be carried forward** and used to offset tax in a subsequent taxable year.
- The credit must be claimed on the tax return for the taxable year in which the transportation services were paid, and must be claimed within four years of the unextended due date of the tax return.

Recent Laws: Sale/Disposition of Farm Assets to Family Member – Expanded Capital Gains Exclusion – 2023 Wis. Act 146

- 2023 Wis. Act 146, renumber Wis. Stat. § 71.05(6)(b)25. to 71.05(6)(b)25. (intro.) and amend as renumbered; and create Wis. Stat. § 71.05(6)(b)25.a. and b., effective for taxable years beginning after December 31, 2023.
- Current law provides a capital gains income tax exclusion for certain assets used in farming that are held more than one year and sold or transferred to persons who are related to the seller.
- For purposes of claiming the capital gains income tax exclusion, the Act expands the definition of "assets used in farming" to include ownership interest in a partnership or limited liability company treated as a partnership, if the partnership or limited liability company has 15 or fewer partners or members and all partners or members are natural persons.

Recent Laws: Anatomical Gift Registration – 2023 Wis. Act 187

- 2023 Wis. Act 187, amend Wis. Stat. § 157.06(20) and create §§ 71.10(5w), 157.06(6)(bm), and 343.175(1x), effective for taxable years beginning after December 31, 2023.
- The Act requires the Department to include a question on the individual income tax return asking if the individual wishes to include their name as a donor of an anatomical gift (i.e., organ donor) on the donor registry maintained by the Wisconsin Department of Transportation ("DOT").
- This question does not have to be answered to file the return.
- DOR will transmit the necessary information to DOT for the individual to be included in the donor registry.
- This question will be added to Wisconsin's individual income tax returns starting with 2024 tax year returns.

Recent Laws: Anatomical Gift Registration – 2023 Wis. Act 187 (cont'd)

- The Act also modified the donor registry law so that declining to authorize inclusion when filing the tax return; applying for or renewing a driver's license or identification card; or applying for a hunting, fishing, or trapping license will not revoke an individual's prior authorization to be included on the donor registry.
- An individual must expressly indicate their intent to have their name removed from the donor registry.

Recent Laws: Withholding Requirement Threshold Increases for Nonresidents – 2023 Wis. Act 146

- 2023 Wis. Act 146, amend Wis. Stat. §§ 71.64(6)(b) and 71.775(3)(a)2., effective for taxable years beginning after December 31, 2023.
- The Act increases the **minimum thresholds** for employers and pass-through entities to **withhold** tax on wages and pass-through income for nonresidents as follows:
 - From \$1,500 to **\$2,000** on wages attributable to Wisconsin
 - From \$1,000 to **\$2,000** on pass-through income attributable to Wisconsin

Recent Laws: Study re: Minnesota Income Tax Reciprocity– 2023 Wis. Act 147

- 2023 Wis. Act 147, amend Wis. Stat. § 71.10(7)(a) and 71.10(7)(c) and create § 71.10(7)(d).
- The Department must, in conjunction with the Minnesota Department of Revenue, conduct a study on the effects of instituting income tax reciprocity between Minnesota and Wisconsin.
- Requires any income tax reciprocity between Wisconsin and Minnesota:
 - Apply to wages, salaries, tips, and commissions received by persons who reside in Wisconsin or Minnesota for at least 183 day during the taxable year and return to their state of residence at least once per month.
 - Not have an expiration or terminate date.
 - Be approved by both the governor and Joint Committee on Finance.

Income/Franchise Tax and Pass-Through Withholding:

Cases

Cases: *Toccata Gaming International, LLC v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 25, 2023)*

• **Facts:**

- Toccata Gaming International, LLC ("Toccata") creates software for amusement machines and manufactures cabinets for its amusement machines.
- For taxable years 2016 through 2019 (the audit years):
 - Toccata elected to be taxed as an S-corporation, and Todd Stimac ("Stimac") was the sole owner and shareholder.
 - Toccata transferred funds to Stimac, which transfers were treated as loans (i.e., demand notes).
 - The loans were executed by Toccata and Stimac after Stimac incurred personal expenses that were unrelated to the business of Toccata and expenses related to Toccata that were nondeductible.

Cases: *Toccata Gaming International, LLC v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 25, 2023) (cont'd)*

• **Facts:**

- The loans did not include a repayment schedule or provide a set maturity date, but Toccata asserted it maintained a memo account off its balance sheet for accrued interest on the loans.
- Stimac made a series of 23 deposits to Toccata accounts with the total being \$216,665.53, but Stimac did not make any repayment of the loans' principal or interest.
- Toccata never took any action to collect principal or interest from Stimac, and Toccata did not record or report interest income from any of the loans.
- The only collateral offered by Stimac was Toccata stock, and Stimac lacked the liquid assets to repay the loans but held real property assets purportedly in excess of the loan amounts.

Cases: *Toccata Gaming International, LLC v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 25, 2023) (cont'd)*

• **Facts:**

- During 2017, 2018, and 2019, Stimac's reported adjusted gross income ("AGI") was less than the loan amount. During 2016, Stimac's reported AGI was several thousand dollars higher than the loan.
- Stimac's ability to repay the loan was based on Toccata's income, and Toccata reported losses.
- Stimac was only able to start making payments on the loans after the audit years, once Toccata began to recover.
- On January 20, 2022, the Department issued an audit notice for the years 2016 through 2019 and treated the transfer of funds from Toccata to Stimac as shareholder distributions.
- Toccata appealed the Department's audit notice.

Cases: *Toccata Gaming International, LLC v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 25, 2023) (cont'd)*

• **Issue:**

- Was the transfer of funds from the tax-option (S) corporation to its shareholder a **distribution** or a **loan**?

• **Holding:**

- The Wisconsin Tax Appeals Commission considered several federal tax court cases and focused on the following criteria from *Kelly v. Commissioner of Internal Revenue*, T.C. Memo 2021-76 (2021) to determine whether the transfer of funds should be treated as distributions or loans:
 1. Whether the promise to repay is evidenced by a note or other instrument that evidences indebtedness.
 2. Whether interest was charged or paid.
 3. Whether a fixed schedule for repayment and a fixed maturity date were established.
 4. Whether collateral was given to secure payment.

Cases: *Toccata Gaming International, LLC v. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 25, 2023) (cont'd)*

• **Holding:**

5. Whether repayments were made.
 6. The source of any payments.
 7. Whether the borrower had a reasonable prospect of repaying the loan and whether the lender had sufficient funds to advance the loan.
 8. Whether the parties conducted themselves as if the transaction was a loan.
- The Wisconsin Tax Appeals Commission concluded there was insufficient evidence to conclude that the financial distributions at issue, from Toccata to its sole shareholder, were based on a bona fide debtor-creditor relationship.
 - The Commission upheld the Department's characterization of the transfers as shareholder distributions.

Cases: *Lincare Holdings, Inc v. Department of Revenue (Wisconsin Tax Appeals Commission, December 15, 2023)*

• **Facts:**

- Summary judgment.
- Combined group field audit of the petitioner, Lincare Holdings, Inc.
- Net business losses (NBLs) shared by two combined group members.
- Lincare had purchased both corporations from the same parent company in 2016.
- These two acquired corporations had accumulated pre-2009 NBLs, which the Department did not allow to be shared with other members of the new Lincare combined group.

Cases: *Lincare Holdings, Inc v. Department of Revenue (Wisconsin Tax Appeals Commission, December 15, 2023)* (cont'd)

• **Issue:**

- Whether **pre-2009 net business losses** incurred by entities that were members of a combined reporting group beginning in 2009 can be shared with members of a **new combined group** when the incurring entities leave the former combined group and join a new combined group?
- The Department argued the statutory language of Wis. Stat. § 71.255(6)(bm)3 prohibited the sharing of pre-2009 NBLs by a corporation that leaves one combined group and joins another combined group.

Cases: *Lincare Holdings, Inc v. Department of Revenue (Wisconsin Tax Appeals Commission, December 15, 2023)* (cont'd)

• **Issue:**

- The petitioner asserted pre-2009 NBLs may be shared with a new combined group, on the following grounds:
 - 1) Wis. Stat. § 71.26(4)(b) allows pre-2009 NBLs to be shared with all other members of its group, as long as it has already used its NBLs and any shareable NBLs to offset its own income.
 - 2) Lincare argued Wis. Stat. § 71.255(6)(bm)3, upon which the Department relied, and the accompanying regulation Wis. Admin. Code § Tax 2.61(9)(e) only apply to post-2008 NBLs.

Cases: *Lincare Holdings, Inc v. Department of Revenue (Wisconsin Tax Appeals Commission, December 15, 2023)* (cont'd)

• **Holding:**

- The Commission found in favor of the Department.
- "The plain language of the statute is 'if the corporation may no longer be included in the combined group..., the corporation's pre-2009 net business loss carryforward shall be available only to that corporation.'"
- The plain language of Wis. Admin. Code § Tax 2.61(9)(e) does not differentiate between pre-2009 and post-2008 NBL carryforwards.
- The Commission determined that the rule as written applies to both pre-2009 and post-2008 NBL carryforwards.
- That rule provides that a departing group member may not share that member's "remaining net business loss carryforward" with any other combined groups with two exceptions not relevant here.

Cases: *Lincare Holdings, Inc v. Department of Revenue (Wisconsin Tax Appeals Commission, December 15, 2023)* (cont'd)

• **Holding:**

- The Commission also held that "[Lincare's] argument ignores the addition of subsection (dm) to Wis. Admin. Code § Tax 2.61(9) in August of 2010 and fails. Taken to its logical conclusion, Petitioner's argument would result in the conclusion that Wis. Admin. Code § Tax 2.61(9)(e) cannot apply to any NBLs, since it was effective prior to any statutory section allowing sharing of losses within combined groups. Absurd results are to be avoided, and the Commission does not find the argument of Petitioner persuasive."

Cases: *Lincare Holdings, Inc v. Department of Revenue (Wisconsin Tax Appeals Commission, December 15, 2023)* (cont'd)

• **Holding:**

- The Commission concluded Lincare could not use pre-2009 carried forward net business losses incurred by members of its combined group, which incurred those pre-2009 losses prior to joining the combined group, and previously belonged to a different combined reporting group, pursuant to Wis. Stat. § 71.255 (6)(bm)2. and Wis. Admin. Code § Tax 2.61(9)(e).
- Decision was not appealed.

Cases: *Riziki Iveti v. Department of Revenue (Wisconsin Tax Appeals Commission, August 21, 2024)*

• **Facts:**

- Ms. Iveti was born in Congo (in 1985) and moved to refugee camp in Tanzania (in 1996).
- Submitted application to be admitted to the United States as a refugee (with her four children).
- Application approved – on May 23, 2019.
- Assigned to live in Wisconsin.
- United States Department of State generated travel packet and welcome letter – on or about **November 20, 2020**.
- Ms. Iveti (and her children) arrived in Wisconsin – on **February 16, 2021**.

Cases: *Riziki Iveti v. Department of Revenue (Wisconsin Tax Appeals Commission, August 21, 2024)* (cont'd)

• **Facts:**

- Ms. Iveti (and her children) have resided continuously in Wisconsin since February 16, 2021.
- **Tax Year 2021:**
 - Wisconsin Form 1 filed (used by full-time residents)
 - Wisconsin Form 1-NPR (used by part-year residents and nonresidents) not filed.
 - **Earned income credit** & **homestead credit** claimed.
 - The Department concluded both credits could not be claimed.
- Subsequent to filing of appeal to the Commission, Ms. Iveti was issued a green card – effective February 16, 2021.

Cases: *Riziki Iveti v. Department of Revenue (Wisconsin Tax Appeals Commission, August 21, 2024)* (cont'd)

• **Issues:**

- Earned Income Credit:
 - Having arrived in Wisconsin on February 16, 2021, was Ms. Iveti eligible for the credit?
- Homestead Credit:
 - Having arrived in Wisconsin on February 16, 2021, was Ms. Iveti eligible for the credit (see Wis. Stat. § 71.52(1))?

Cases: Riziki Iveti v. Department of Revenue (Wisconsin Tax Appeals Commission, August 21, 2024) (cont'd)

• **Holding:**

• Earned Income Credit:

- Not available for "Part-year residents and nonresidents of this state" See Wis. Stat. § 71.07(9e)(c).
- Part-year resident of Wisconsin for 2021 as arrived in the state on February 16, 2021.
- Date travel packet and welcome letter generated (November 2020) not relevant.

• Homestead Credit:

- Not available for person not "domiciled in this state during the entire calendar year" See Wis. Stat. § 71.52(1)).
- Not domiciled in Wisconsin during all of 2021 as arrived in the state on February 16, 2021.

Cases: Michelle Priebe v. Department of Revenue (Wisconsin Tax Appeals Commission, September 10, 2024)

• **Facts:**

• Tax Year 2018:

- Due date (unextended) for filing individual income tax return: **April 15, 2019**
- Amended 2018 Wisconsin income tax return – claiming a refund:
 - Signed August 25, 2023
 - Received by the Department on August 31, 2023

Cases: *Michelle Priebe v. Department of Revenue (Wisconsin Tax Appeals Commission, September 10, 2024) (cont'd)*

• **Issue:**

- Was the amended income tax return timely filed?

• **Statute:**

71.75 Claims for refund.

(1) Except as provided in ss. 49.855, 71.77 (5) and (7) (b) and 71.935, the provisions for refunds and credits provided in this section shall be the only method for the filing and review of claims for refund of income and surtaxes, and no person may bring any action or proceeding for the recovery of such taxes other than as provided in this section.

(2) With respect to income taxes and franchise taxes, except as otherwise provided in subs. (5) and (9) and ss. 71.30 (4) and 71.77 (5) and (7) (b), refunds may be made if the claim therefor is filed within 4 years of the unextended date under this section on which the tax return was due.

Cases: *Michelle Priebe v. Department of Revenue (Wisconsin Tax Appeals Commission, September 10, 2024) (cont'd)*

• **Holding:**

- Limited exceptions not applicable.
- No extension of deadline.
- Amended return must have been filed no later than April 15, 2023.
- Filing not timely.
- No subject matter jurisdiction.

Cases: Wolfgang R. and Terry S. Hemschik v. Department of Revenue (Wisconsin Tax Appeals Commission, October 14, 2024)

• **Facts:**

- Taxpayers = Wisconsin residents
- 2021:
 - Sold condominium in Colorado – capital gain of \$1,300,401
 - Paid **\$56,504 in non-resident income tax** to Colorado
 - Sold property in Arizona – capital gain of \$58,527
 - Paid **\$1,064 in non-resident income tax** to Arizona
 - Filed return in Wisconsin
 - Claimed **\$57,568 credit** – for tax paid to another state (Schedule OS)

Cases: Wolfgang R. and Terry S. Hemschik v. Department of Revenue (Wisconsin Tax Appeals Commission, October 14, 2024) (cont'd)

• **Issue:**

- Could the full amount of taxes paid – \$57,568 – be claimed as a credit where Wisconsin taxes 70% of capital gain income?
- Underpayment interest assessed.

Cases: Wolfgang R. and Terry S. Hemschik v. Department of Revenue
(Wisconsin Tax Appeals Commission, October 14, 2024) (cont'd)

• **Statutes:**

71.07 Credits.

(7) OTHER STATE TAX CREDIT. (a) In this subsection:

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

2. "State" includes the District of Columbia, but does not include the commonwealth of Puerto Rico or the several territories organized by Congress.

(b) 1. Subject to conditions and limitations in pars. (c) and (d), if a resident individual, estate or trust pays a net income tax to another state, that resident individual, estate or trust may credit the net tax paid to that other state on that income against the net income tax otherwise payable to this state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes of this subdivision, amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed. . . .

Cases: Wolfgang R. and Terry S. Hemschik v. Department of Revenue
(Wisconsin Tax Appeals Commission, October 14, 2024) (cont'd)

• **Statutes:**

(c) The total credits under par. (b) 1. and 2. may not exceed an amount determined by multiplying the taxpayer's net Wisconsin income tax by a ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the taxpayer's Wisconsin adjusted gross income. The credit under par. (b) 3. may not exceed an amount determined by multiplying the income subject to tax in the other state that is also subject to tax in Wisconsin by 7.9 percent.

Cases: Wolfgang R. and Terry S. Hemschik v. Department of Revenue
(Wisconsin Tax Appeals Commission, October 14, 2024) (cont'd)

• **Statutes:**

71.05 Income Computation. . . .

(6) MODIFICATIONS AND TRANSITIONAL ADJUSTMENTS. Some of the modifications referred to in s. 71.01(13) and (14) are: . . .

(b) *Subtractions.* From federal adjusted gross income subtract to the extent included in federal taxable or adjusted gross income unless the modification is an item, other than a capital gain deduction under s. 71.36 or interest on U.S. obligations, that is passed through to an individual from a tax-option corporation and would be included in that corporation's income if it were not a tax-option corporation: . . .

9. On assets held more than one year and on all assets acquired from a decedent, 30 percent of the capital gain as computed under the internal revenue code, not including capital gains for which the federal tax treatment is determined under section 406 of P.L. 99-514; not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason; and not including amounts treated as capital gain for federal income tax purposes from the sale or exchange of a lottery prize. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage.

Cases: Wolfgang R. and Terry S. Hemschik v. Department of Revenue
(Wisconsin Tax Appeals Commission, October 14, 2024) (cont'd)

• **Statutes:**

71.01 Definitions. . . .

(13) "Wisconsin adjusted gross income" means federal adjusted gross income, with the modifications prescribed in s. 71.05 (6) to (12), (19), (20), (24), (25), (25m), and (26).

. . .

(16) "Wisconsin taxable income" of natural persons means Wisconsin adjusted gross income less the Wisconsin standard deduction, less the personal exemption described under s. 71.05 (23), with losses, depreciation, recapture of benefits, offsets, depletion, deductions, penalties, expenses and other negative income items determined according to the manner that income is or would be allocated, except that the negative income items on individual or separate returns for net rents and other net returns which are marital property attributable to the investment, rental, licensing or other use of nonmarital property shall be allocated to the owner of the property.

Cases: *Wolfgang R. and Terry S. Hemschik v. Department of Revenue (Wisconsin Tax Appeals Commission, October 14, 2024) (cont'd)*

• **Holding:**

- The credit did not apply to the 30% of the capital gain excluded from Wisconsin income.
 - Colorado: 70% of capital gain of \$1,300,401 – or \$910,281 – treated as income for Wisconsin tax purposes.
 - Arizona : 70% of capital gain of \$58,527 – or \$40,969 – treated as income for Wisconsin tax purposes.

Cases: *Sketchers USA, Inc. vs Wisconsin Department of Revenue (Dane County Circuit Court, April 1, 2024)*

• **Facts/Issue:**

- Application of Wis. Stat. § 71.30(2) -- allocation of gross income, deductions, credits between 2 or more businesses.
- Skechers formed an intellectual property holding entity, transferred its domestic intellectual property to that subsidiary, and then licensed it back, taking a royalty deduction.
- There is no definitive test to determine whether transactions between related entities should be respected or subject to Wis. Stat. § 71.30(2).
- Both parties asserted the decision in *Hormel Foods Corporation v. Wisconsin Department of Revenue*, 2010 WL 1367782, *15 (WTAC Mar. 29, 2010) is applicable.

Cases: *Sketchers USA, Inc. vs Wisconsin Department of Revenue (Dane County Circuit Court, April 1, 2024) (cont'd)*

• **Holding:**

- The Circuit Court disagreed with Skechers' position.
- The Court concluded the *Hormel* decision did not articulate a viable business exception.
- In its application of *Hormel*, the Commission correctly focused on the specific royalty transactions.
- The Court first noted that neither a future Commission nor any court is bound by a decision of a previous Commission. Then the Court considered the proper approach to analyze the "substance and reality" of the transactions at issue, which involves examining the "economic substance, business purpose, and a showing that the transaction was not shaped solely by tax avoidance features."

Cases: *Sketchers USA, Inc. vs Wisconsin Department of Revenue (Dane County Circuit Court, April 1, 2024) (cont'd)*

• **Holding:**

- The Court upheld the Commission's decision, stating the taxpayer failed to prove by clear and satisfactory evidence that a nontax business reason existed for the royalty transactions between the two related entities.
- Under appeal at the Court of Appeals.

Cases: *RADS Partnership et al. v. Wisconsin Department of Revenue (Court of Appeals, District IV, February 29, 2024)*

• **Facts/Issue:**

- The substantive issues are whether the Petitioners, who are pass-through entities, are liable for pass-through withholding tax under Wis. Stat. § 71.775 and whether the trust Petitioner is liable for fiduciary income tax based on income the Petitioners received during tax year 2013.
- The Tax Appeals Commission ruled that the pass-through entities are subject to withholding tax on pass-through income attributable to their nonresidents, even if such nonresidents would not otherwise have taxable income on their Wisconsin tax returns.
- The Dane County Circuit Court dismissed the case because the taxpayers failed to properly serve the Secretary of Revenue.

Cases: *RADS Partnership et al. v. Wisconsin Department of Revenue (Court of Appeals, District IV, February 29, 2024) (cont'd)*

• **Holding:**

- The Court of Appeals affirmed the Circuit Court's dismissal of a petition for review, concluding the Department was not properly served.

Property Taxes, TIF Districts, Transportation Utility Fees:

Recent Laws, Cases, Other Guidance

Property Taxes & TIF Districts:

Recent Laws

Recent Laws: Farmland Preservation – Tax Credit Rate Increase, Expansion of Tax Credit Eligibility, and Reduced Minimum Term for Farmland Preservation Agreements – 2023 Wis. Act 42

- Amend Wis. Stat. §§ 71.613(2)(a), (b), and (c), and 91.62(1)(a), and create § 71.613(1)(h)4., 71.613(2)(am), (bm), (cm), and (d), various effective dates.
- For taxable years beginning after December 31, 2022, the Act **increases** the farmland preservation tax credit rate that eligible landowners may receive for qualifying acres as follows:
 - Rate per acre increases from \$10 to \$12.50 for qualifying acres located in a farmland preservation zoning district and are subject to a farmland preservation agreement entered into after July 1, 2009.
 - Rate per acre increases from \$7.50 to \$10 for qualifying acres located in a farmland preservation zoning district but are not subject to a farmland preservation agreement.
 - Rate per acre increases from \$5 to \$10 for qualifying acres that are not located in a farmland preservation zoning district, but are subject to a farmland preservation agreement entered into after July 1, 2009.

Recent Laws: Farmland Preservation – Tax Credit Rate Increase, Expansion of Tax Credit Eligibility, and Reduced Minimum Term for Farmland Preservation Agreements – 2023 Wis. Act 42 (cont'd)

- For taxable years beginning in 2023, the Act **expands eligibility of** the farmland preservation tax credit, at a rate of \$10 per acre, for qualifying acres located in a farmland preservation area and are covered by an agricultural conservation easement purchased under Wis. Stat. § 93.73.
- Effective December 8, 2023, the Act **decreases** the minimum term of a farmland preservation agreement from 15 years to **10 years**.

Recent Laws: City of Evansville – TID #10 Changes – 2023 Wis. Act 135

- 2023 Wis. Act 135, amend Wis. Stat. § 66.0602(1)(d), 66.0602(3)(dq)1. (intro) and 66.0602(3)(dv); create Wis. Stat. § 66.1105(5)(bu) and 66.1105(6)(g)4., effective March 23, 2024.
- For Tax Incremental District #10 in City of Evansville:
 - Creates exception to 12% equalized value limitation
 - Disallows the lifespan extension for housing improvements

Recent Laws: City of Stevens Point – TID #14 Changes – 2023 Wis. Act 136

- 2023 Wis. Act 136, amend Wis. Stat. § 66.0602(1)(d), 66.0602(3)(dq)1. (intro) and 66.0602(3)(dv); create § 66.1105(6)(g)4. and 66.1105(17)(g), effective March 23, 2024.
- For Tax Incremental District #14 in City of Stevens Point:
 - Creates exception to 12% equalized value limitation (if TID #14 created before October 1, 2024)
 - Disallows the lifespan extension for housing improvements
 - Applies the treatment of TID value increments to levy limits created under 2023 Wis. Act 12 to TID #14

Recent Laws: *City of Antigo– TID #4 Changes – 2023 Wis. Act 137*

- 2023 Wis. Act 137, amend Wis. Stat. § 66.1105(7)(ak)2. and 66.1105(7)(am)4.a.; create § 66.1105(6)(a)21., 66.1105(6)(g)4. and 66.1105(7)(ak)6., effective March 23, 2024.
- For Tax Incremental District #4 in City of Antigo:
 - Extends the lifespan for TID #4 to 32 years
 - Disallows the lifespan extension for housing improvements

Recent Laws: *Telephone Company Tax on Tangible Personal Property – Eliminated– 2023 Wis. Act 140*

- 2023 Wis. Act 140, renumber and amend Wis. Stat. § 76.81; create § 76.81(2), effective March 23, 2024.
- Eliminates tax on tangible personal property of telephone company:
 - Beginning with the assessments as of January 1, 2027

Property Taxes & Transportation Utility Fees:

Cases

Cases: Lowe's Home Centers, LLC v. City of Wauwatosa (2016-CV-5974, Milwaukee County Circuit Court, March 1, 2024)

- **Facts/Issue:**

- Property tax excessive assessment action.
- 2016-2020 tax years.
- Prior 2015 tax year excessive assessment litigation
 - 10-day bench trial (to the court).
 - 2015 assessment held not to be excessive.
- Lowe's: Different valuation analysis from different appraiser.
- Is Lowe's precluded from appealing the 2016-2020 assessments based on the 2015 tax year litigation?

Cases: *Lowe's Home Centers, LLC v. City of Wauwatosa* (2016-CV-5974, Milwaukee County Circuit Court, March 1, 2024) (cont'd)

• **Holding:**

- Issue preclusion did not bar litigation appealing the 2016-2020 assessments.
- Application of issue preclusion would be inconsistent with principles of fundamental fairness.
 - Claims are distinct from prior years.
 - Public policy or individual circumstances would render issue preclusion fundamentally unfair.
 - Separate challenges to separate tax years with new underlying evidence.
 - Wis. Stat. § 74.37(3)(d) allows for taxpayers to challenge assessments.

Cases: *The Medical College of Wisconsin, Inc. v. City of Wauwatosa* (2021-CV-7368, Milwaukee County Circuit Court, July 2, 2024)

• **Facts/Issue:**

- The Medical College of Wisconsin, Inc. ("MCW") = property owner.
- Two properties:
 - Hub for Collaborative Medicine
 - Used by MCW
 - Eye Institute
 - 1st, 2nd, 3rd, 5th, and 6th floors = Leased to Froedtert. Used as ophthalmology clinic and outpatient surgery center, ophthalmology residency program, and for fellowships in eye and vision care.
 - 4th floor = Used by MCW.
- Property tax exempt – as grounds of any incorporated college/university – under Wis. Stat. § 70.11(3)?

Cases: *The Medical College of Wisconsin, Inc. v. City of Wauwatosa* (2021-CV-7368, Milwaukee County Circuit Court, July 2, 2024) (cont'd)

• **Holding:**

- Hub for Collaborative Medicine
 - Exempt
 - On-campus -> no need to look at use.
 - Wis. Stat. § 70.11(3)(a)1 – No "use" requirement.
 - Incorporated *for-profit* colleges or universities could qualify.

Cases: *The Medical College of Wisconsin, Inc. v. City of Wauwatosa* (2021-CV-7368, Milwaukee County Circuit Court, July 2, 2024) (cont'd)

• **Holding:**

- Eye Institute
 - 4th Floor = Exempt
 - 1st, 2nd, 3rd, 5th, and 6th floors = Exemption not established (on summary judgment).
 - Leased space qualifies for exemption if:
 - Lease for educational or charitable purposes
 - Traditional education = primary benefit accrues to indefinite public.
 - Medical students and residents = limited class.
 - Lease income used for charitable purposes.
 - Does not include, e.g., parking or security.

Cases: *Wisconsin Department of Revenue v. Master's Gallery Foods, Inc.* (2024 WI App 21, March 20, 2024)

- **Facts/Issue:**

- Appeal from Circuit Court order reversing a decision of the Wisconsin Tax Appeals Commission (the "Commission").
- The Commission concluded certain equipment located at Master's Gallery's food production facility was exempt from taxation under Wis. Stat. § 70.111(27)(b) (2021-22), which exempted "machinery, tools, and patterns, not including such items used in manufacturing."
- The Commission concluded the statute was not ambiguous and exempted machinery, tools, and patterns so long as they are not used in any way in a manufacturer's production process. Based on its reading of the statute, the Commission determined that some of Master's Gallery's property was exempt.

Cases: *Wisconsin Department of Revenue v. Master's Gallery Foods, Inc.* (2024 WI App 21, March 20, 2024) (cont'd)

- **Facts/Issue:**

- The Circuit Court looked to legislative history, concluding the exemption applies only to machinery, tools, and patterns that are not "manufacturing property" under Wis. Stat. § 70.995(1)(a), assessed by the Department v. local assessors.
- Because the property of Master's Gallery at issue was "manufacturing property" under § 70.995(1)(a), and thus had been assessed by the Department, the Circuit Court concluded none of it was exempt under § 70.111(27).

Cases: Wisconsin Department of Revenue v. Master's Gallery Foods, Inc. (2024 WI App 21, March 20, 2024) (cont'd)

• **Court of Appeals -- Holding:**

- Affirmed the Circuit Court.
- The Commission erred in concluding Wis. Stat. § 70.111(27) is unambiguous -- and can exempt property so long as it is not used in the manufacturing production process.
- Like the Circuit Court, the Court of Appeals concluded "used in manufacturing" in Wis. Stat. § 70.111(27) is ambiguous, but the legislative history surrounding its enactment demonstrates the exemption does not apply to "manufacturing property" assessed by the Department under Wis. Stat. § 70.995 (which is "manufacturing property").
 - Versus locally assessed property.
 - Strict construction (Wis. Stat. § 70.109).
 - Looked to Legislative Fiscal Bureau.

Cases: Wisconsin Department of Revenue v. Master's Gallery Foods, Inc. (2024 WI App 21, March 20, 2024) (cont'd)

• **Court of Appeals -- Holding:**

- Because the Master's Gallery property was assessed by the Department, it did not qualify for the MTP exemption under Wis. Stat. § 70.111(27).
- Dissent (Judge Grogan)
 - Phrase "machinery, tools, and patterns, not including such items used in manufacturing" = unambiguous.
 - Plain meaning = "actually used in manufacturing the product."
 - Enacted law does not say: "owned by and used in" or "all property used in the manufacturing industry" or "all manufacturing property" or "any property that a manufacturer submits to the Department for assessment."

Cases: *Wisconsin Department of Revenue v. Master's Gallery Foods, Inc.* (Wisconsin Supreme Court Oct. 7, 2024)

• **Wisconsin Supreme Court – Action:**

- Petition for review - denied.

Cases: *Pine Haven Christian Home, Inc. v. Village of Oostburg* (2023AP942, June 19, 2024) (unpublished)

• **Facts/Issue:**

- Four duplexes located in the Village of Oostburg.
 - Located near campus providing continuum of care.
 - Purchased by Pine Haven.
- Property tax exemption – "retirement homes for the aged" – Wis. Stat. § 70.11(4d).
- Prior caselaw, *Milwaukee Protestant Home for the Aged v. City of Milwaukee*, 41 Wis. 2d 284, 164 N.W.2d 289 (Wis. 1969).
 - Such property is "what the name implies, homes for retired persons, place[] of congregative living where retirees go to live, expecting to pay the fees charged and to receive the usual incidents of group home living."

Cases: *Pine Haven Christian Home, Inc. v. Village of Oostburg* (2023AP942, June 19, 2024) (unpublished) (cont'd)

• **Circuit Court:**

- Property qualified for exemption.
- *Milwaukee Protestant Home* description was a "narrow and antiquated definition of a retirement home for [the] aged [that] does not take into consideration the current . . . practice of the continuum of care."

Cases: *Pine Haven Christian Home, Inc. v. Village of Oostburg* (2023AP942, June 19, 2024) (unpublished) (cont'd)

• **Court of Appeals:**

- Reversed -- property did not qualify for exemption.
- Wisconsin Legislature did not change the supreme court's definition when it amended Wis. Stat. § 70.11.
- No indication tenants continued to reside in duplexes after Pine Haven's purchase due to the amenities Pine Haven offers/provides to its residents.
- Did not receive "usual incidents of group home living"
- When tenants access/use Pine Haven's nearby facility, they are considered "visitors."

Cases: *Pine Haven Christian Home, Inc. v. Village of Oostburg* (2023AP942, June 19, 2024) (unpublished) (cont'd)

• **Supreme Court:**

- Petition for review filed.
- No decision from the Wisconsin Supreme Court.

Cases: *Rider Hotel, LLC v. City of Milwaukee* (2022AP1141, June 11, 2024) (unpublished)

• **Facts/Issue:**

- Rider Hotel, LLC (“Rider”), owner of the Iron Horse Hotel in Milwaukee (“Property” or “Iron Horse”), appeals from a judgment of the circuit court dismissing its claims for partial property tax refunds under Wis. Stat. § 74.37(3)(d), arguing that the City of Milwaukee’s (“City”) 2017 and 2018 assessments of the Property were excessive in violation of Wis. Stat. § 70.32(1).
- Specifically, Rider argues that the City’s assessments upon which the circuit court relied failed to follow the *Markarian* hierarchy, unlawfully averaged the Property’s historical work-up values to calculate the Property’s fair market value, and failed to account for “multiple significant factors” affecting the Property’s fair market value.

Cases: *Rider Hotel, LLC v. City of Milwaukee* (2022AP1141, June 11, 2024) (unpublished) (cont'd)

- **Holding:**

- The City's assessments were conducted in compliance with the Wisconsin Property Assessment Manual and Wisconsin statutes.
- None of the Circuit Court's factual findings were against the great weight and clear preponderance of the evidence.
- Accordingly, Rider's excessive assessment claims were properly dismissed.

- **Appeal:**

- Petition for review filed with the Wisconsin Supreme Court.
- No decision on the petition yet.

Cases: *Wisconsin Manufacturers and Commerce, Inc. v. Village of Pewaukee* (2024 WI App 23, March 13, 2024)

- **Facts/Issue:**

- Wisconsin Manufacturers and Commerce, Inc. ("WMC") appealed from a judgment entered by the circuit court dismissing its claims against the Village of Pewaukee ("Village") relating to the Village's enactment of a "transportation user fee" ("TUF").
- WMC asserted the Village's TUF is, in reality, an unlawful tax created in an attempt to evade limits on its taxing powers.
- WMC supplemented its brief by referencing *Wisconsin Property Taxpayers, Inc. v. Town of Buchanan*, 2023 WI 58, 408 Wis. 2d 287, 992 N.W.2d 100.
- The Village asserted, among other arguments, that the TUF is not a tax, that it did not need statutory authority to create the TUF, and that *Town of Buchanan* is distinguishable.

Cases: *Wisconsin Manufacturers and Commerce, Inc. v. Village of Pewaukee* (2024 WI App 23, March 13, 2024) (cont'd)

- **Holding:**

- The TUF at issue is a tax rather than a fee – this is clear based on *Town of Buchanan*, 408 Wis. 2d 287.
- “[*Town of Buchanan*] decision directly addressed the legality of a “transportation utility fee” implemented by the Town of Buchanan.
- Like the TUF at issue here, the purpose of Buchanan’s fee was to fund a transportation utility that would be responsible for funding “safe and efficient transportation facilities within the Town.” Id., ¶ 3.

Cases: *Wisconsin Manufacturers and Commerce, Inc. v. Village of Pewaukee* (2024 WI App 23, March 13, 2024) (cont'd)

- **Holding:**

- Also like the Village, the Town of Buchanan sought to fund its utility with a fee imposed on “[e]very developed property within the Town.” Id.
- All residential properties paid the same annual fee, while commercial properties paid a fee based on their size, type of business, and the number of trips they were estimated to take on municipal roads. Id., ¶ 4.
- The supreme court held that the funding mechanism for Buchanan’s transportation utility was a tax. Id., ¶10.
- Thus, we must hold that the TUF at issue here is also a tax.”

- **Appeal:** Petition for review filed with the Wisconsin Supreme Court – denied.

Notice of Claim: *City of Neenah (filed October 10, 2024)*

- **Facts:**

- City ordinance (Ch. 17, Article VIII) – "Transportation Assessment Replacement Fee" ("TARF").
- To "generate revenue that will allow the City to eliminate special assessments for Street Resurfacing, Street Reconstruction and Sidewalk Construction projects."
- Amount of TARF based on property's estimated traffic generated.
- Charged based on the property's impervious surface area – because "there is a correlation between the amount of impervious surface on a property parcel and the traffic generated from that parcel." Thus, we must hold that the TUF at issue here is also a tax." Ordinance § 17-201.

Notice of Claim: *City of Neenah (filed October 10, 2024) (cont'd)*

- **Claim:**

- The TARF is a tax – without statutory authority.
- As a tax, the TARF is non-uniform and violates the Uniformity Clause of the Wisconsin Constitution (Article VIII, § 1).
- State law preempts Neenah's TARF.

Cases: *Veritas Village v. City of Madison* (2022AP1934, December 7, 2023) (unpublished)

- **Facts/Issue:**

- Veritas Village, LLC, owns an apartment building in the City of Madison and it brought an action challenging the City's 2019 assessment of the property as excessive. See Wis. Stat. § 74.37(3)(d).
- In its motion for summary judgment, Veritas abandoned its claim that its property was assessed in excess of its market value, and it conceded that the City's 2019 assessment represented the property's market value as of January 1, 2019.

Cases: *Veritas Village v. City of Madison* (2022AP1934, December 7, 2023) (unpublished) (cont'd)

- **Facts/Issue:**

- However, Veritas also claimed, and continued to argue on appeal, that the market value assessment of its property violates the Uniformity Clause of the Wisconsin Constitution, art. VIII, § 1, because recent sales data demonstrates that the City assessed other apartment properties at values that are lower than their recent sale prices.
- According to Veritas, this data demonstrates that its competitors in the "strata" consisting of apartment buildings were taxed based on approximately 80 percent of market value, and the Uniformity Clause mandates that Veritas receive the same discount.

Cases: *Veritas Village v. City of Madison* (2022AP1934, December 7, 2023) (unpublished) (cont'd)

• **Holding:**

- The Court of Appeals concluded that Veritas did not establish that the City's market value assessment of Veritas' property violated the Uniformity Clause.
- Further, the Court of Appeals concluded that the Circuit Court erred when it granted Veritas' motion for summary judgment and denied the City's cross-motion for summary judgment.
- Court of Appeals: Reversed the Circuit Court and found in favor of the City of Madison.

- **Appeal:** Petition for review filed with the Wisconsin Supreme Court – denied.

**Unclaimed Property:
Recent Laws & Other Guidance**

Recent Laws: *Voluntary Disclosure Program for Unclaimed Property – 2023 Wis. Act 138*

- 2023 Wis. Act 138, amend Wis. Stat. § 177.1505(4), first applies to applications received on June 1, 2024.
- The Act removes the limited timeframe for the Department to enter into a voluntary disclosure agreement to waive penalties for holders that voluntarily disclose and report unclaimed property.
- Therefore, the Act creates a permanent voluntary disclosure program.

Recent Laws: *Unclaimed Property Changes – 2023 Wis. Act 138*

- 2023 Wis. Act 138, amend secs. 177.0202(title) and (1)(intro.), 177.0210(1)(intro.), and 177.0607(4), and create secs. 177.01(7a), (7d)(c)5., (13b)(c)8., (14d)(c)5., and (16)(e), and 177.0607(3)(d), first applies to property reportable on November 7, 2021
- The Act creates a definition for a financial organization loyalty card and excludes the card from unclaimed property.
- A financial organization loyalty card means a card or electronic record that is given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program established by a financial organization for purposes of rewarding a relationship with the sponsoring entity and that may be redeemed for money or otherwise monetized by the issuer or used to obtain goods or services or a discount on goods or services.
- An annual fee or periodic membership fee charged to the cardholder for joining or maintaining membership in any such award, reward, benefit, loyalty, incentive, rebate, or promotional program shall not be considered direct monetary consideration paid for the financial organization loyalty card.

Recent Laws: *Unclaimed Property Changes – 2023 Wis. Act 138 (cont'd)*

- The Act also does the following:
 - Provides a presumption of abandonment for tax-exempt retirement accounts to be the same as tax-deferred retirement accounts.
 - Clarifies published guidance that under Wis. Stat. § 177.0210:
 - The presumption of property is abandoned the later of the date on which the property is otherwise presumed abandoned in the subchapter or the date on which the dormancy period has elapsed following the last indication of interest by the apparent owner in the property. Previously, the statute indicated the presumption was the earlier of the two dates.
 - Provides that interest shall not accrue on claims paid to another state.
 - Clarifies that property received before January 2, 2019, shall accrue interest if that property was interest-bearing to the owner, as reported by the holder at the time of receipt by the administrator.

Recent Laws: *Administrative Rule for Virtual Currency*

- Effective March 1, 2024.
- Wis. Admin. Code Chapter Tax 10 has been created for Unclaimed Property administrative rules.
 - Wis. Admin. Code § Tax 10.01(1): A holder that is required to report and remit virtual currency to the Department shall liquidate the virtual currency within 30 days prior to the November 1 due date of the report.
 - Wis. Admin. Code § Tax 10.01(2): A holder that meets the liquidation requirements and substantially complies with provisions to provide the proper notice to apparent owners is considered to have delivered the virtual currency in good faith and is relieved of liability arising after payment and delivery of the virtual currency to the administrator (the Department).

Excise Taxes:

Recent Laws

Recent Laws: Cigarette, Tobacco and Vapor Products – Changes to Tax Related Criminal Penalties – 2023 Wis. Act 73

- Amend Wis. Stat. §§ 139.44(2), (8)(a), (8)(b), and (8)(c), and 946.82(4), and create Wis. Stat. § 139.44(2m), (8)(am), and (8)(d), effective December 8, 2023.
- **Cigarette, Tobacco or Vapor Products Tax Evasion.** The following penalties are applicable to any person who evades or attempts to evade, or who aids or abets the evasion or attempted evasion of a cigarette, tobacco or vapor products tax:
 - Class A misdemeanor: \$2,500 or less in tax evaded
 - Class I felony: \$2,501 to \$5,000 in tax evaded
 - Class H felony: \$5,001 to \$10,000 in tax evaded
 - Class G felony: \$10,001 to \$100,00 in tax evaded
 - Class F felony: More than \$100,000 in tax evaded
- **Possession of Untaxed Cigarettes.** Possession of untaxed cigarettes carries the following penalties:
 - Up to \$200 fine, or imprisoned for up to 6 months, or both: 200 or less untaxed cigarettes
 - Up to \$1,000 fine, or imprisoned for up to one year, or both: more than 201 to 3,000 untaxed cigarettes
 - Class I felony: 3,001 to 5,000 untaxed cigarettes
 - Class H felony: 5,001 to 10,000 untaxed cigarettes
 - Class F felony: more than 10,000 untaxed cigarettes

Recent Laws: Sale of Cigars and Pipe Tobacco – Remote Sales – Permit & Tax Collection Required – 2023 Wis. Act 150

- Renumber Wis. Stat. § 139.75(1), amend Wis. Stat. §§ 139.75(12), 139.76(1), 139.78(1), 139.82(1), 139.82(2)(a), 139.82(6) and 139.82(8), and create Wis. Stat. § 139.75(1d), 139.75(1p), 139.75(5u), 139.75(6c), 139.75(6g), 139.76(1p), 139.78(1p), 139.795 and 139.815, effective January 1, 2025.
- Permit must be obtained from the Department before engaging in the remote sale of cigars and pipe tobacco to consumers in Wisconsin.
- Sellers must collect and remit Wisconsin's tobacco products excise tax and applicable sales tax on products sold on a monthly (or quarterly) basis to the Department.
- Remote sellers must verify the age of the purchaser.

Recent Laws: Alcohol Beverage Regulatory Changes – 2023 Wis. Act 73 (effective May 1, 2024)

- **Excise Tax Evasion in Racketeering.** The Act amends the definition of racketeering in Wis. Stat. § 946.82(4) -- to include excise tax evasion.
- **Change in the Definition of Fermented Malt Beverages:**
 - The Act amends the definition of fermented malt beverages under Wis. Stat. § 125.02(6), effective May 1, 2024, to conform with the federal definition of fermented malt beverages. The new definition allows products that do not contain barley malt and hops (e.g., uses only fermented sugar) that are recognized as beer by the U.S. Treasury under 27 CFR part 25 to be considered a fermented malt beverage for Wisconsin tax and regulatory purposes.
 - As a result, any product that is a "fermented malt beverage" under the new definition will be subject to the fermented malt beverage tax imposed under Wis. Stat. § 139.02, starting May 1, 2024.

Recent Laws: Alcohol Beverage Regulatory Changes – 2023 Wis. Act 73 (effective May 1, 2024) (cont'd)

- **Creation of Division of Alcohol Beverages:**

- The Act creates a Division of Alcohol Beverages in the Wisconsin Department of Revenue responsible for regulatory compliance, permitting, industry education, and outreach.
- The Division of Income, Sales and Excise Tax will continue to administer and enforce tax provisions under Wis. Stat. ch. 139, including tax return processing and auditing.

Recent Laws: Electronic Vaping Devices Regulation – 2023 Wis. Act 73

Create Wis. Stat. §§ 134.65(1a) and 995.15, effective December 8, 2023

Renumber and amend Wis. Stat. § 134.65(1) and (1m), amend §§ 134.65(title), (1r), (4),(5m), (8), and 134.66(1)(g), and create § (1g), (1m)(a)1. And 2., (1m)(b), (2m), (3m), effective May 1, 2024.

- **Electronic Vaping Device Licensure and Definition Creation**

- The Act creates definitions of "cigarette," "electronic vaping device," "tobacco products," and "vending machine" for purposes of licensing businesses that sell these products to consumers.
- The creation of these definitions does not have an impact on the tax treatment, imposition, or tax calculation of these products under Wis. Stat. ch. 139.

Recent Laws: *Electronic Vaping Devices Regulation – 2023 Wis. Act 73 (cont'd)*

• Electronic Vaping Device Licensure and Definition Creation (cont'd)

- The Act requires businesses that sell any of the defined products to obtain a retail license issued by the municipality in which the business operates.
 - Note: Prior law required sellers of cigarette and tobacco products to hold a municipal retail license.
- The Act requires sellers of electronic vaping devices to hold a municipal retail license starting March 6, 2024.
- The Act also prescribes qualifications for persons seeking a municipal license, creates record retention and inspection requirements for businesses, creates license reporting requirements for municipalities, and amends penalties associated with noncompliance of the law.

Recent Laws: *Electric Vehicle Charging Station Registration and Excise Tax – 2023 Wis. Act 121*

- 2023 Wis. Act 121, amend Wis. Stat. ch. 77 (title) and create subch. XIII of ch. 77, effective January 1, 2025.
- The Act creates a definition of an electric vehicle charging station to mean:

A charging station for electric vehicles containing a Level 3 charger, as defined in Wis. Stat. § 16.9565(1)(c), or containing a Level 1 charger, as defined in Wis. Stat. § 16.9565(1)(a), or a Level 2 charger, as defined in Wis. Stat. § 16.9565(1)(b), installed on or after March 22, 2024.

Recent Laws: *Electric Vehicle Charging Station Registration and Excise Tax – 2023 Wis. Act 121 (cont'd)*

- **Excise Tax**

- Effective January 1, 2025, the Act imposes an excise tax on a registrant at the rate of 3 cents per kilowatt-hour on the electricity delivered or placed by:
 - A Level 3 charger of an electric vehicle charging station into the battery or other energy storage device of an electric vehicle
 - A Level 1 or Level 2 charger installed on or after March 22, 2024, of an electric vehicle charging station into the battery or other energy storage device of an electric vehicle
- The excise tax does not apply to electricity delivered or placed by a charger of an electrical vehicle charging station located at a residence.
- Registration required.

Miscellaneous:

Recent Laws

Recent Laws: Confidentiality Provisions – 2023 Wis. Act 73

- Amend Wis. Stat. §§ 71.78(1), (4)(b), (5), and (6), 72.06, 77.61(5)(b)2., (c), and (d), 78.80(3), 139.11(4)(a)(intro.), 139.38(6), and 139.82(6), and create §§ 71.78(1g) and (4)(v), and 77.61(5)(am) and (b)15., effective December 8, 2023.
- Clarifies that employees of the Department may, in connection with the employee's official duties for an audit, collection, inspection, or investigation, disclose information derived from a tax return or claim to the extent necessary to obtain information for the enforcement of Wisconsin tax laws.
- In addition, the attorney general and Department of Justice employees may, in connection with their official duties, re-disclose information obtained from the department of revenue to a law enforcement investigator participating in a department of justice investigation of suspected criminal conduct.
- Finally, a federal grand jury or grand jury of Wisconsin may examine and receive copies of any tax returns or claims on file with the Department if a grand jury subpoena is received.

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 Income, Sales & Excise Tax Update

Nate Weber, CPA, *Director, Office of Technical Services, Division of
Income, Sales & Excise Tax, Wisconsin Department of Revenue*



Wisconsin Department of Revenue

WI Dept of Revenue | Division of Income, Sales, and Excise Tax
Wisconsin Tax Update – Fall 2024

R. 10/31/2024



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

- ▷ Sales and Use Tax
- ▷ Income and Franchise Tax
- ▷ Excise Taxes & Alcohol Beverage Regulation
- ▷ Other
 - Sales Suppression Devices
 - Unclaimed Property
 - Police and Fire Protection Fee
 - Filing Tips
 - My Tax Account Updates
 - Department Initiatives and Statistics



Sales and Use Tax



Sales and Use Tax Rate Increase

- ▷ Manitowoc County adopts 0.5% sales and use tax
- ▷ Effective January 1, 2025
- ▷ Use tax applies to the purchase price of taxable products, goods, and services that are stored, used or consumed in Manitowoc County
- ▷ Sales tax applies to the sale price of taxable sales in Manitowoc County regardless of the seller's location



Sales and Use Tax Rate Increase

Reminder - Milwaukee Taxes

- ▷ Effective January 1, 2024
 - City of Milwaukee imposes 2% sales and use tax
 - Milwaukee County sales and use tax increases from 0.5% to 0.9%



Sales and Use Tax Rate Increase

- ▷ Transitional provisions and special rules apply to new tax rates
 - See Fact Sheet 2414
- ▷ Out-of-state sellers must also collect state, county, and city of Milwaukee sales taxes if their gross sales in Wisconsin exceed \$100,000 in the current or prior calendar year



Wisconsin State and Local Sales Tax Rate Look-Up

- ▷ Effective January 1, 2024, sellers may no longer use a 5-digit zip code without a street address to determine jurisdiction and tax rate for a transaction.
- ▷ Sellers may use DOR's sales tax rate look-up tool using:
 - Street address and 5-digit zip code, or
 - 9-digit zip code (Zip+4)
 - <https://www.revenue.wi.gov/Pages/Apps/strb.aspx>
- ▷ Sellers and software programmers may use Wisconsin's Rate and Boundary Database file to program Wisconsin sales tax rates into software
 - <https://www.revenue.wi.gov/Pages/SSTP/ratebound.aspx>



Wisconsin Businesses – Sales Tax in Other States

- ▷ Wisconsin businesses that make sales into another state may owe sales tax in the other state.
- ▷ Wisconsin businesses may qualify for free sales tax calculation and reporting services in 23 other states, including:
 - Software integration and calculation of tax due at the time of sale
 - Preparation and filing of sales tax returns and submitting payments
 - Audit assistance
- ▷ Visit www.streamlinedsalestax.org to learn more.
- ▷ Streamlined's website has [state-by-state guidance](#) to help determine if a remote seller has a sales tax collection responsibility in each state.



Real Property Construction Activities

2023 Wis. Act 12

- ▷ Effective June 22, 2023
- ▷ DOR may determine by rule whether tangible personal property that is affixed to real property is a real property construction activity
- ▷ Revisions to chapter Tax 11 of the Wis. Adm. Code are still being drafted



New Exemption – Qualified Data Centers

2023 Wis. Act 19

- ▷ Creates an exemption for qualified data centers in sec. 77.54(70), Wis. Stats.
- ▷ See Fact Sheet 2114
- ▷ Wisconsin Economic Development Corporation (WEDC) may contract with a business to certify a qualified data center for purposes of claiming the sales tax exemption for:
 - Tangible personal property used exclusively for development, construction, renovation, operation, etc., of a qualified data center
 - Tangible personal property used for water cooling or conservation systems exclusively for qualified data centers
 - Tangible personal property sold to a construction contractor and transferred to a qualified data center as a component in real property construction



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New Exemption – Qualified Data Centers

2023 Wis. Act 19

- ▷ The exemption is not available for a data center until it is certified by WEDC
- ▷ No pre-approval required from WDOR to claim the exemption
- ▷ Provide suppliers with a fully completed exemption certificate:
 - **Form S-211:** Check the box for "other exemptions provided by law" and enter "qualified data center [enter name of qualified data center]."
 - **S-211E:** Check the box for "Qualified Data Center – [name of qualified data center]."
- ▷ If the property purchased exempt is later used in a taxable manner, the contractor is liable for use tax on the purchase price of those items.



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New Exemption – Local Professional Baseball Park District

2023 Wis. Act 19

- ▷ Effective December 7, 2023
- ▷ Creates an exemption for sales of tangible personal property and taxable services sold to a local professional baseball park district under subchapter III of ch. 229, Wis. Stats.



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Professional Sports and Entertainment Home Stadiums

2023 Wis. Act 40

- ▷ Effective December 7, 2023
- ▷ Expands the exemption in sec. 77.54(41), Wis. Stats. for building materials, supplies, and equipment for professional sports and entertainment stadiums that are exempt under sec. 70.11(36), Wis. Stats.
 - Includes property acquired solely for or used solely in the improvement, repair, or maintenance of the stadiums.



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Professional Sports and Entertainment Home Stadiums

REMINDER

- ▷ The exemption in sec. 77.54(62m), Wis. Stats., relating to the construction or development of facilities of sports and entertainment arena facilities, including the surrounding 9-acre area, as defined in sec. [229.41 \(11g\)](#) ended on July 31, 2019. This date was one year after the secretary of DOA issued the certification under sec. 229.42(4e)(d), Wis. Stats.
- ▷ Purchases made after July 31, 2019 for constructing facilities in the 9-acre area may be subject to tax.
- ▷ However, the owners of the arena, and their contractors and subcontractors, may make purchases exempt from tax under sec. 77.54(41), Wis. Stats., if the property is acquired solely for use in the construction, improvement, renovation, repair, maintenance, or development of property that is exempt under sec. 70.11(36), Wis. Stats.



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New Exemption – Electricity Used to Charge Electric Vehicles

2023 Wis. Act 121

- ▷ Effective January 1, 2025
- ▷ Creates an exemption for the sale of electricity delivered or placed into the battery or other energy storage device of an electric vehicle by:
 - A Level 3 charger
 - A Level 1 or Level 2 charger installed on or after March 22, 2024
- ▷ An exemption certificate is not required from the purchaser



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Exemption for Insulin Modification

2023 Wis. Act 138

- ▷ Effective March 23, 2024
- ▷ Eliminates the requirement under prior law for purchasers to present an exemption certificate to claim the exemption for insulin furnished by a pharmacist to a person for the treatment of diabetes.



No Exemption Certificate Needed for Exempt Health Care Records and Farm-Raised Fish

2023 Wis. Act 138

- ▷ Effective March 23, 2024
- ▷ Eliminates the requirement for an exemption certificate for sales and purchases of:
 - Patient health care records sold to the patient or to a person that the patient authorizes to receive the records (sec. 77.54(64), Wis. Stats).
 - Farm-raised fish sold to a fish farm that is registered with DATCP or to a person who holds a valid permit for the stocking of fish (sec. 77.54(66), Wis. Stats.).



New Exemption – Precious Metal Bullion

2023 Wis. Act 149

- ▷ Effective March 23, 2024
- ▷ The Act creates a sales and use tax exemption for the sale of and the use or other consumption of precious metal bullion.
- ▷ An exemption certificate is required to claim the exemption.



New Exemption – Precious Metal Bullion

2023 Wis. Act 149

- ▷ To qualify as “precious metal bullion,” a product must meet all of the following:
 - Be in the form of coins, bars, rounds, or sheets;
 - Contains at least 35 percent gold, silver, copper, platinum, or palladium;
 - Cannot be, in whole or in part, other types of property such as jewelry, works of art, scrap metal, or electronics; and
 - Be one of the following:
 - marked with weight, purity, and content; or
 - that a government authority minted on the basis of weight, purity, and content.



New Exemption – Portable Road Building Equipment

2023 Wis. Act 149

- ▷ Effective June 1, 2024
- ▷ The Act creates a sales and use tax exemption for the sale of and the storage, use, or other consumption of portable machinery and equipment, including accessories, attachments, parts, and supplies for such machinery and equipment, used primarily to crush, mill, produce, or pulverize asphalt, concrete, gravel, rock, or aggregate base for road or commercial surface lot construction or resurfacing.
- ▷ *Note:* The exemption for manufacturing machinery and equipment does not apply to portable equipment unless the manufacturing occurs on a "plant" and the land is owned or leased by the manufacturer.
- ▷ An exemption certificate is required to claim the exemption.



New Exemption – Real Estate Broker Memberships

2023 Wis. Act 141

- ▷ Effective June 1, 2024
- ▷ Exemption created for a membership sold to a real estate broker licensed under ch. 452, Wis. Stats., who, pursuant to the broker's membership agreement, offers to compensate and cooperate with other real estate brokers in brokering sales of properties and who obtains access to information about real estate listings and compensation offers from other real estate brokers
- ▷ An exemption certificate is not required to claim the exemption



Recreational Vehicles and Campers

2023 Wisconsin Act 164

- ▷ Effective October 1, 2024
- ▷ The Act amends the definition of a recreation vehicle in sec. 340.01(48r), Wis. Stats., to mean a vehicle that is designed to be towed upon a highway by a motor vehicle that is equipped and used, or intended to be used, primarily or temporary or recreational human habitation that does not exceed 46 feet in length.
- ▷ "Recreational vehicle" includes:
 - a camping trailer, as defined in sec. 218.10(1c), Wis. Stats.,
 - 5th wheel recreational vehicle, as defined in sec. 218.10(1q), Wis. Stats.
 - park model recreational vehicle, as defined in sec. 218.10(7m), Wis. Stats.
 - and travel trailer, as defined in sec. 218.10(8v), Wis. Stats.



Recreational Vehicles and Campers

- ▷ The amended definition
 - increases the maximum length of a recreational trailer (RV) from 45 to 46 feet,
 - removes the need for walls of rigid construction, and
 - adds camping trailers, 5th wheels, park models, and travel trailers as defined above
- ▷ RVs are taxable in Wisconsin.
- ▷ Retailers are required to collect and remit the 5% state sales tax if the customer takes possession in WI unless an exemption applies.
- ▷ County and city tax is based on the type of item sold – see next slide



Recreational Vehicles and Campers

- ▷ If the sales is of an RV, county and city tax is based on where the RV is customarily kept. This is a change from prior law for certain trailers that were not previously considered recreational vehicles.
- ▷ If the sale is of a motor home (motor vehicle), it does not meet the definition of an RV and the tax treatment is the same as a motor vehicle. The county and city tax are based on where customarily kept by the purchaser.
- ▷ If the sale is of a truck camper (slide in truck camper), county and city tax is based on where the purchaser takes possession of the trailer/camper.



Recreational Vehicles and Campers

Sales to Nonresidents

- ▷ If a nonresident purchases an RV and takes possession in WI:
 - 5% state tax is due
 - County and city tax is due if the RV is customarily kept in WI. If the RV is customarily kept outside of WI, the retailer is only required to collect the 5% WI state tax.
- ▷ Sales of motor vehicles to nonresidents are exempt from state, county, and city tax if the use in WI is only to remove the motor vehicle from WI as provided in sec. 77.54(5)(a)4, Wis. Stats. This exemption doesn't apply to RVs sold to nonresidents.
- ▷ See Fact Sheet 2113, *Sales and Use Tax on Sales of used Motor Vehicles, Boats, Snowmobiles, RVs, Trailers, Semitrailers, ATVs, UTVs, Off-Highway Motorcycles, and Aircraft* for additional information about county and city taxes.



Litigation

William Becker: Appealed to Supreme Court, then withdrew, and settled April 15, 2024

- ▷ Issue - Are single-axle, tandem-axle, and gooseneck trailers designed to be towed by a motor vehicle "truck bodies" for purposes of the sales tax exemption for sales to nonresidents under sec. [77.54\(5\)\(a\)\(4\)](#), Wis. Stats.?
- ▷ WTAC ruled trailers were **not** "truck bodies"
- ▷ Circuit Court found trailers were "truck bodies" and qualify for the exemption
- ▷ Court of Appeals found trailers were **not** "truck bodies"
- ▷ Taxpayer appealed to the WI Supreme Court and then withdrew and settled April 15, 2024



Litigation

StubHub: Dane County Circuit Court, February 1, 2024

- ▷ Issue – Was StubHub a retailer selling taxable admissions when it sold a ticketholder's ticket to an event in Wisconsin?
- ▷ WTAC concluded StubHub was a retailer and liable for tax
- ▷ Dane County Circuit set aside the Commission's decision and concluded:
 - Reasonable persons could disagree about whether StubHub "sold" tickets and was a "representative" of ticket sellers.
 - The Commission erred in interpreting the doctrine of undisclosed principal to create sales tax liability for StubHub
- ▷ DOR appealed the decision to the Court of Appeals



Litigation

CMFG Life Insurance Company and CUMIS Insurance Society: Wisconsin Tax Appeals Commission, August 6, 2024

- ▷ Issue – Are the aircraft and software leases subject to sales tax?
- ▷ WTAC concluded the following:
 - A valid sale-leaseback did occur and receipts are subject to tax under sec. 77.52(1b), Wis. Stats.
 - The contracts were not refinancing agreements
 - The Wisconsin statutory definitions of a lease and sale control over the form of the agreements
 - Following the *Ladish* case, a clause stating the parties' intent for tax purposes cannot bind the department because the department was not a party to the underlying leases
- ▷ CMFG has appealed this decision



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Income and Franchise Tax



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Internal Revenue Code (IRC)

Tax Year 2024 Overview

- ▷ Wisconsin follows the IRC as of December 31, 2022, 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 IRC 179 expensing
- ▷ Wisconsin follows IRC 1202 exclusion of 100% of capital gain on sale of small business stock acquired after September 27, 2010 and the same percentage as for federal purposes for any stock purchased on or before that date



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Other Individual Income Tax Updates - Federal

- ▷ New exemptions to IRA penalty for withdrawals on or after January 1, 2024
 - Emergency personal expense distribution (sec. 72(t)(2)(I), IRC)
 - Distribution to domestic abuse victim (sec. 72(t)(2)(K), IRC)
 - Optional for qualified retirement plans to adopt these provisions
 - See [IRS Notice 2024-55](#) for more information
- ▷ Qualified rollovers from 529 plan to Roth IRA starting January 1, 2024
 - 529 plan must have existed for 15 years
 - Cannot exceed amount beneficiary could contribute to a Roth IRA during the year
 - Other requirements and limitations
 - Amount rolled over reduces any carryover available for Wisconsin's CSA subtraction



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Manufacturing and Agriculture Credit

2023 Wis. Act 12

- ▷ Repeals personal property taxes in Wisconsin starting with assessment year 2024 and makes changes to the manufacturing and agriculture credit
- ▷ Qualified Production Property
 - Persons must sell qualified production property to be eligible for the credit
 - Qualified production property includes tangible personal property manufactured in whole or in part by the claimant on property located in Wisconsin and **assessed** as manufacturing property under sec. 70.995, Wis. Stats [Real property]
 - The Act expands the definition of "qualified production property" to include tangible personal property manufactured in whole or in part by the claimant with an establishment located in Wisconsin and **classified** as manufacturing under sec. 70.995(5n), Wis. Stats. [Important for those who don't have real property assessed as manufacturing property]



Manufacturing and Agriculture Credit

- ▷ Classifying Personal Property as Manufacturing Property
 - An application must be filed with DOR no later than July 1 of the taxable year (Form PA-780).
 - DOR must make a determination and provide notice by December 31 of the year in which the application is filed.
 - An establishment classified as manufacturing prior to January 1, 2024, is presumed to be engaged in manufacturing and does not need to submit an application.



Manufacturing and Agriculture Credit

- ▷ Manufacturing Property Factor
 - The Act amended the definition of "manufacturing property factor"
 - Real and personal property assessed under sec. 70.995, Wis. Stats., was replaced with the term "land and depreciable property" for the numerator and denominator.
- ▷ If all qualified production activities income results from sale of tangible personal property that was manufactured, produced, grown, or extracted entirely in Wisconsin, it is not necessary to multiply the qualified production activities income by the property factor.
- ▷ See [Manufacturing and Agriculture Credit](#) common questions for more details.



Commercial Loan Income Exemption

2023 Wis. Acts 19 and 146

- ▷ Effective for taxable years beginning January 1, 2023
- ▷ Income from a corporation or a tax option (S) corporation that is a financial institution, including interest, fees, and penalties, derived from a commercial loan is exempt from Wisconsin corporate and individual income tax
- ▷ The loan must be for five million dollars or less
- ▷ The loan must be provided to a person residing or located in Wisconsin and used primarily for a business or agricultural purpose in Wisconsin
- ▷ See DOR's [Commercial Loan Income Exemption](#) common questions



Refundable Research Credit Increase

2023 Wisconsin Act 19

- ▷ Effective for taxable years beginning on or after January 1, 2024
- ▷ Up to 25% of the research credit computed/claimed for the current year may be refunded, if not used to offset tax due for the year

[Publication 131](#), *Tax Incentives for Conducting Qualified Research in Wisconsin*



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Research Expense Credit Increase

- ▷ Refundable portion of credit:
 - 10% for taxable years beginning after 12/31/17 and before 1/1/21
 - 15% for taxable years beginning after 12/31/20 and before 1/1/24
 - 25% for taxable years beginning after 12/31/23



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Farmland Preservation – Tax Credit Rate Increase

2023 Wis. Act 42 (enacted 12/6/23)

- ▷ Effective for taxable years beginning on or after January 1, 2023
- ▷ Rate per acre increases
 - \$10 to \$12.50 for qualifying acres located in a farmland preservation zoning district and are subject to a farmland preservation agreement entered into after July 1, 2009
 - \$7.50 to \$10 for qualifying acres located in a farmland preservation zoning district but are not subject to a farmland preservation agreement
 - \$5 to \$10 for qualifying acres that are not located in a farmland preservation zoning district, but are subject to a farmland preservation agreement entered into after July 1, 2009
- ▷ Claimed on Schedule FC-A



Additional Child and Dependent Care Credit

2023 Wis. Act 101

- ▷ Credit increased from 50% to 100% of allowable federal credit for **2024 taxable year and forward**
- ▷ For Wisconsin purposes, the maximum qualifying expenses used to compute the federal credit are increased to \$10k for 1 qualifying child and \$20k for 2 or more qualifying children
- ▷ Nontaxable and deductible dependent care assistance benefits (sec. 129, IRC) are not qualifying expenses but do not reduce the maximum expense limit like they do for federal
- ▷ New Schedule WI-2441 to compute the credit



Married Persons Credit

2023 Wis. Act 138

- ▷ Statute originally referred to sections of federal IRC as it existed on December 31, 1985
- ▷ Act incorporated the IRC language directly into the Wisconsin statute
- ▷ No changes to computation or administration of the credit



Qualifying Transportation Services Credit

2023 Wis. Act 142

- ▷ Effective for taxable years 2024 and thereafter
- ▷ Referred to as "blind worker transportation services credit" in the forms and instructions
- ▷ Claimant must meet definition of blind for federal additional standard deduction (sec. 63(f)(4), IRC)
- ▷ Credit is 50% of qualifying expenses, up to \$1,500 credit per qualifying person
- ▷ Qualifying expenses: transportation services between residence and place of employment. Excludes amounts reimbursed or paid from an ABLÉ account if contribution was subtracted from income.



Business Development Tax Credit

2023 Wis. Act 143

- ▷ The Act provides the following revisions to the business development tax credit:
 - Allows eligibility if a person creates new jobs or retains existing jobs and makes a capital investment in Wisconsin, or if a person does not decrease net employment in the year preceding the certification.
 - Allows additional claims related to investments in workforce housing and establishment of employee childcare programs, not to exceed 15 percent of the amounts of those investments and subject to disallowance of duplicative claims.
 - The threshold for capital investments is reduced from \$1 million to \$250,000.
 - Specifies WEDC must approve or deny an application for certification of the credit within 90 days after receiving a person's application.



Enterprise Zone Tax Credit

2023 Wis. Act 143

- ▷ The Act provides the following revisions to the enterprise zone development credit:
 - Creates a new definition of "full-time job" to mean a nonseasonal job for which the annual pay is more than 2,080 hours multiplied by 150 percent of the federal minimum wage, and for which retirement, health, and or other benefits are offered.
 - Changed the definition of "zone payroll" to mean amounts attributable to full-time employees "based in" an enterprise zone.



Enterprise Zone Tax Credit

2023 Wis. Act 143

- ▷ The Act provides the following revisions to the enterprise zone development credit:
 - Creates a 12-month period "base year" definition for calculation of enterprise zone credits.
 - Sunsets certain "supplemental claims" to the enterprise zone credit that previously allowed certification of enterprise zone benefits for a qualifying financial services technology business.



Angel Investment Tax Credit

2023 Wis. Act 144

- ▷ The Act changes the criteria businesses must meet to be certified or recertified by WEDC as a Qualified New Business Venture for purposes of individuals claiming the angel investment tax credit.
- ▷ In addition to other criteria, a business may be eligible for certification if it is engaged in, or has committed to engage in, innovation, if the innovation involves the development of a differentiating technology, product, service, or production process.



Angel Investment Tax Credit

2023 Wis. Act 145

- ▷ The Act allows an individual to sell or otherwise transfer an angel investment tax credit.
- ▷ Credits eligible for transfer are only credits first approved by the Wisconsin Economic Development Corporation (WEDC) to claim on or after March 23, 2024. Credits approved by WEDC to be claimed prior to March 23, 2024, are not eligible for transfer.
- ▷ The person transferring the credit must notify WEDC and the Wisconsin Department of Revenue of the transfer and may not sell or otherwise transfer the credit more than once in a 12-month period.



Capital Gain Exclusion for Sale of Farm Assets to a Family Member

2023 Wis. Act 146

- ▷ Adds sale of qualifying ownership interests in a partnership or LLC to the definition of 'assets used in farming' for purposes of excluding capital gains on the disposition of the assets to certain family members
- ▷ To be a qualifying ownership interest:
 - Entity must have 15 or fewer partners/members
 - Partners/members must all be natural persons
 - Entity must be engaged in the business of farming



Wisconsin Qualified Opportunity Funds

2023 Wis. Act 146

- ▷ *Background:* Annually, a Wisconsin Qualified Opportunity Fund (WQOF) must certify to each investor and to DOR that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year.
- ▷ *Change in Due Date:* A WQOF must file Form WQOF and provide a copy to each investor by the due date, including extensions, of the fund's corresponding Wisconsin income or franchise tax return. Prior to the Act, the due date was January 31 of the year following the close of the WQOF's taxable year.
- ▷ DocuSign filing method has been discontinued
- ▷ Funds must file Form WQOF by including it with their tax return



College Savings Account Contribution Modifications

2023 Wis. Act 148

- ▷ Increased allowable subtraction for contributions to \$5,000 (\$2,500 if married and filing a separate return) for the **2024 taxable year**
- ▷ Removed reduced subtraction for divorced parents of the beneficiary for the 2024 taxable year and forward
- ▷ Requires use of first in, first out (FIFO) accounting method for determining if distributions are subject to addback provisions (no change from current practice)
- ▷ Adopts continuous conformity with sec. 529, IRC



Employee College Savings Account Contribution Credit

2023 Wis. Act 148

- ▷ Effective for taxable years beginning after December 31, 2023
- ▷ The Act increases the maximum employee college savings account contribution credit to be 50% of the amount the employer contributes to an employee's college savings account, not to exceed a maximum credit of \$800 per employee, adjusted for inflation.
- ▷ The Act also permits the credit to be claimed by a sole proprietor.
- ▷ The Act specifies that credits may be claimed only for employees whose compensation is reported, or required to be reported, on a Form W-2 for federal income tax purposes.
- ▷ Employers claim the credit on Schedule ES as part of their Wisconsin income tax return.



Other Individual Income Tax Updates

- ▷ Tuition and fees subtraction
 - Subtraction increased to \$7,333 for qualifying expenses per student for taxable year 2024 (up from \$6,974 in 2023)
 - Subtraction phase out ranges:
 - Single/head of household - \$67,760 to \$81,320
 - Married filing joint - \$108,420 to \$135,530
 - Married filing separate - \$54,210 to \$67,760



Anatomical Gift Registration

2023 Wis. Act 187

- ▷ Allows taxpayers to register for Wisconsin's Organ Donor Registry as part of filing their income tax returns
- ▷ Schedule 3 (Part II) added to Forms 1 and 1NPR



Withholding Threshold for Nonresidents

2023 Wis. Act 146

- ▷ The Act increases the minimum thresholds for employers and pass-through entities to withhold tax on wages and pass-through income for nonresidents as follows:
 - From \$1,500 to \$2,000 on employee wages attributable to Wisconsin
 - From \$1,000 to \$2,000 on pass-through income attributable to Wisconsin
- ▷ See additional information in DOR's *General Withholding Tax Questions and Pass-Through Entity Withholding* common questions.



Income/Franchise Tax Litigation



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Litigation: Shareholder Distributions or Loans from Tax-Option (S) Corporation

***Toccata Gaming International, LLC, (Petitioner) v. Wisconsin Department of Revenue:
Wisconsin Tax Appeals Commission, October 25, 2023***

- ▷ Issue: If transfer of funds from a tax-option (S) corporation to a shareholder is considered a distribution or a loan
- ▷ Tax-option (S) corporation transferred funds to shareholder (sole owner) and characterized funds as loans (i.e., demand notes)
- ▷ Loans were executed after shareholder incurred personal expenses unrelated to the business and expenses related to the business were nondeductible
- ▷ None of the loans included a repayment schedule or set maturity date



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Litigation: Shareholder Distributions or Loans from Tax-Option (S) Corporation

Toccata Gaming International, LLC, (Petitioner) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, October 25, 2023

- ▷ Shareholder did not make any repayment of the loans' principal or interest
- ▷ Corporation never took any action to collect principal or interest from shareholder and did not record or report interest income from any of the loans
- ▷ Shareholder's only collateral was stock in the corporation and shareholder lacked the liquid assets to repay the loans
- ▷ Shareholder's ability to repay the loans was based on the corporation's income and reported losses



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Litigation: Shareholder Distributions or Loans from Tax-Option (S) Corporation

Toccata Gaming International, LLC, (Petitioner) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, October 25, 2023

- ▷ The Commission considered several federal tax court cases and focused on the *Kelly v. Commissioner of Internal Revenue*, T.C. Memo 2021-76 (2021) to determine whether the transfer of funds should be treated as distributions or loans
- ▷ The Commission concluded there was insufficient evidence to support the claim that the financial distributions at issue, from the corporation to its sole shareholder, were based on a bona fide debtor-creditor relationship
- ▷ The taxpayer did not appeal the decision



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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: WI Supreme Court, August 2, 2024

- ▷ 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

- ▷ 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



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Litigation: Pass-Through Withholding

- ▷ Petitioners appealed to the Dane County Circuit Court on February 20, 2023.
- ▷ The Dane County Circuit Court dismissed the appeal because the department was not properly served, and the Circuit Court therefore lacks jurisdiction.
- ▷ Petitioners appealed to the Wisconsin Court of Appeals, and the Court of Appeals affirmed dismissal, concurring with the Circuit Court.
- ▷ The petitioners sought review by the Wisconsin Supreme Court. The Wisconsin Supreme Court denied review, so the decision of the Tax Appeals Commission stands.



Litigation: Gambling Losses - Business Expenses Limited to Gambling Winnings

Daniel & Debra Scheider (Petitioners) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, April 15, 2024

- ▷ Issue: If business expenses related to gambling activities are allowed to be deducted in excess of the gambling winnings associated with those gambling activities
- ▷ Taxpayers created a partnership for the sole purpose of professional gambling and that was the only activity engaged in by the partnership
- ▷ Taxpayers argued that sec. 165(d), IRC, does not apply to a business partnership



Litigation: Gambling Losses - Business Expenses Limited to Gambling Winnings

Daniel & Debra Scheider (Petitioners) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, April 15, 2024

- ▷ The Commission concluded that although the taxpayers' professional gambling activities operated through a business partnership, sec. 165(d), IRC, as amended by sec. 11050 of Public Law 115-97 (Tax Cuts and Jobs Act of 2017), still applies and does not allow business expenses of professional gamblers to be deducted in excess of gambling winnings
- ▷ The taxpayers have appealed the decision



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Litigation: Establishing a Domicile (for Residency) in Wisconsin

Riziki Iveti (Petitioner) v. Wisconsin Department of Revenue: Wisconsin Tax Appeals Commission, August 21, 2024

- ▷ Petitioner filed a 2021 Wisconsin Form 1 (full-year resident) return in 2022 and claimed the earned income credit and homestead credit
- ▷ DOR reviewed return and denied the credits for, among other reasons, not being a full-year resident of Wisconsin for 2021
- ▷ Petitioner and dependents previously resided in a refugee camp in Tanzania while applying for refugee program
- ▷ Various dates were referenced but the two most argued were November 2020, when petitioner was issued a welcome letter and travel packet by U.S. Dept. of State, and February 16, 2021, when petitioner physically arrived in Wisconsin.



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Litigation: Establishing a Domicile (for Residency) in Wisconsin

- ▷ Commission cited WI Supreme Court decision *Baker v. Dept. of Taxation* as being controlling precedent
 - "...two things are necessary to create a new domicile, first, an abandonment of the old domicile, and, second, the intention and establishment of a new domicile."
 - "Until the old domicile has been actually abandoned and an intended new home has been actually and permanently occupied and established elsewhere, the latter cannot be considered the new domicile."
- ▷ Commission ruled:
 - The earliest date petitioner can be considered to have established a domicile in Wisconsin is February 16, 2021, the date petitioner physically arrived in Wisconsin.
 - Petitioner does not meet definition of full-year resident for 2021 and upheld department's denial of the earned income and homestead credits. The taxpayer did not appeal the decision.



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Litigation: Intercompany Transactions need a valid business purpose

Skechers USA, Inc. vs. Wisconsin Department of Revenue: Dane County Circuit Court, April 1, 2024

- ▷ Skechers USA, Inc contributed all its US domestic intellectual property in return for 100% of the shares issued by a newly formed US subsidiary. Immediately after the subsidiary licensed the intellectual property rights back to the parent for a royalty fee. The arrangement generated significant royalty deductions for the parent. The department denied the royalty deductions for the audited years.
- ▷ Sec. 71.30(2), Wis. Stats., *Allocation of gross income, deductions, credits between 2 or more businesses*,
 - Authorizes the Department to adjust income or deductions based on discretionary criteria, such as lack of business purpose or economic substance.
 - Makes the taxpayer responsible for proving business purpose and economic substance.



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Litigation: Intercompany Transactions Must Have a Valid Business Purpose

- ▷ The taxpayer asserted the transaction was exempt from 71.30(2) because the two entities engage in other independent unrelated economic activity are therefore although related, they are each a viable business entity.
- ▷ The Dane County Circuit Court:
 - disagreed with the taxpayer's "viable business entity" assertion,
 - upheld the Tax Appeals Commission's decision that the taxpayer failed to prove by clear and satisfactory evidence that a nontax business reason existed for the royalty transactions.
 - Considered Skecher's conduct to be a "near textbook example of what Wis. Stat. 71.30(2) and the sham transaction doctrine aims to prevent"
- ▷ See [WTB 225, April 2024](#) and [WTB 190, August 2015](#)
- ▷ The taxpayer has appealed to the Court of Appeals.



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Litigation: Pre-2009 NBL – Not Shareable with New Combined Group

Lincare Holdings, Inc v. Department of Revenue: Wisconsin Tax Appeals Commission, December 15, 2023

- ▷ See [WTB 224, January 2024](#)
- ▷ The issue addressed the statutory language of sec. 71.255(6)(bm)3., Wis. Stats., and the accompanying sec. Tax 2.61(9)(e), Wis. Adm. Code as to whether pre-2009 net business losses incurred by entities that were members of a combined reporting group beginning in 2009 can be shared with members of a new combined group when the incurring entities leave the former combined group and join a new combined group.



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Litigation: Pre-2009 NBL – Not Shareable with a new Combined Group

Lincare Holdings, Inc v. Department of Revenue: Wisconsin Tax Appeals Commission, December 15, 2023

- ▷ The commission ruled in favor of the Department.

"The plain language of the statute is 'if the corporation may no longer be included in the combined group..., the corporation's pre-2009 net business loss carryforward shall be available only to that corporation.'"
- ▷ Likewise, the plain language of sec. Tax 2.61(9)(e), Wis. Adm. Code, does not differentiate between pre-2009 and post-2008 NBL carryforwards. The Commission determined that the rule as written applies to both pre-2009 and post-2008 NBL carryforwards.
- ▷ The taxpayer did not timely appeal the decision.



Excise Taxes



Division of Alcohol Beverages

2023 Wis. Act 73

- ▷ The Act created a new Division of Alcohol Beverages within DOR for regulation of alcohol beverages. The Division of Income, Sales and Excise Taxes continues to administer excise taxes under ch. 139, Wis. Stats.
- ▷ Significant overhaul to alcohol beverage regulation, including:
 - New authorization for producers to have up to 3 off-site full-service retail sales locations – May 1, 2024
 - New authorization for contract production, alternating proprietorship, and licensing agreements for all beverage types – May 1, 2024
 - New permit and monthly reporting for fulfillment houses – January 1, 2025
 - New permit and monthly reporting for common carriers – January 1, 2025



Division of Alcohol Beverages

2023 Wis. Act 73

- ▷ Significant overhaul to alcohol beverage regulation, cont'd:
 - New statewide operator's (bartender's) permit – January 1, 2025
 - New permit for no-sale event venues – January 1, 2026
 - New exceptions to allow minimal cross-tier ownership interests between producers, distributors, and retailers – May 1, 2024
 - New requirement for municipalities to report cigarette, tobacco, and electronic vaping device retail licenses to DOR – July 15, 2024 (same as alcohol beverage licenses)
 - DOR must publish municipal retail licenses on website



Fermented Malt Beverage Definition

2023 Wis. Act 73

- ▷ Effective May 1, 2024
- ▷ The Act amends the definition of fermented malt beverages under ch. 125, Wis. Stats., to allow products that do not contain barley malt and hops (e.g., uses only fermented sugar) that are recognized as beer by the U.S. Treasury under 27 CFR Part 25 to be a fermented malt beverage for Wisconsin tax and regulatory purposes.
- ▷ As a result, any product that is a "fermented malt beverage" under the new definition is subject to the fermented malt beverage tax imposed under sec. 139.02, Wis. Stats.



Cigarette, Tobacco, and Vapor Products Penalties

2023 Wis. Act 73

- ▷ Effective December 8, 2023
- ▷ The Act increases the criminal penalties for persons who evade or attempt to evade, or who aids or abets the evasion or attempted evasion of cigarette, tobacco, or vapor product taxes.
- ▷ The Act increases the criminal penalties for persons who possess untaxed cigarettes.
- ▷ The Act provides that excise tax evasion is an illegal racketeering activity.



Online Sales of Cigars and Pipe Tobacco

2023 Wis. Act 150

- ▷ Effective January 1, 2025
- ▷ The Act allows a person to obtain a DOR permit which authorizes remote retail sales of cigars and pipe tobacco to consumers (e.g., sales by phone, mail, or internet)
- ▷ The permitted remote retail seller must pay excise tax on the "actual cost" of the cigars or pipe tobacco, which is the total price charged to the remote retail seller from the manufacturer or other seller. The total price cannot be reduced by discounts or other separately stated charges on the purchase invoice.
- ▷ The permitted remote retail seller must register and collect sales tax on such sales as a condition of their permit.



Electronic Vaping Device Regulation

2023 Wis. Act 73

- ▷ Effective May 6, 2024, sellers of electronic vaping devices must hold a municipal retail license in the municipality in which the business operates.
- ▷ No later than July 1, 2025, all manufacturers of electronic vaping devices must certify to DOR that they will comply with Wisconsin law and that their product has either been approved by the U.S. FDA or remains under review.
- ▷ Only electronic vaping devices that are approved by DOR and listed on the online registry may be sold in Wisconsin. DOR must make the directory available online and penalties for noncompliance with this section will apply at the time the directory is published.



Electric Vehicle Charging Stations

2023 Wis. Act 121

- ▷ Effective January 1, 2025
- ▷ The Act requires an owner, operator, manager, or lessor of an electric vehicle charging station to register with DOR and identify the location of each charging station.
- ▷ No registration is required for an electric vehicle charging station located at a residence where a person resides permanently or temporarily, except for a hotel.
- ▷ The registrant must pay an excise tax equal to **3 cents per kilowatt-hour** of electricity delivered or placed by a Level 3 charger or Level 1 or Level 2 chargers installed on or after March 22, 2024, into the battery or other energy storage device of an electric vehicle.



Electric Vehicle Charging Stations

2023 Wis. Act 121

- ▷ Excise tax is due regardless of:
 - Whether the operator charges the consumer for the electricity
 - Whether the charging station is made available to the public
- ▷ Returns must be filed and taxes paid biannually by July 31 and January 31.
- ▷ **New** [Publication 305](#), *Electric Vehicle Charging Tax Information*, coming soon.



Other



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Confidentiality Provisions

[2023 Wis. Act. 73](#)

- ▷ Clarifies that DOR employees may disclose information derived from a tax return or credit claim to the extent necessary to obtain information for the enforcement of Wisconsin tax laws.

Note: Disclosure of information does not include federal tax information.



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Confidentiality Provisions

2023 Wis. Act. 73

- ▷ Gives authority for the attorney general and DOJ employees to re-disclose information obtained from DOR to a law enforcement investigator participating in a department of justice investigation of suspected criminal conduct.
 - Authorized re-disclosure does not include providing copies of returns, claims, and related schedules, exhibits, writings, or audit reports.
- ▷ Provides that a federal grand jury or grand jury of Wisconsin may examine and receive copies of any tax returns or claims from if DOR receives a grand jury subpoena.



Illegal Sales Suppression Devices

2023 Wis. Act 73

- ▷ Effective December 8, 2023
- ▷ A person is guilty of a Class D felony if they create, design, manufacture, sell, purchase, lease, install, update, repair, service, transfer, use, or possess in Wisconsin or access from Wisconsin phantomware or an automated sales suppression device, unless for a legitimate purpose.



Unclaimed Property Changes

2023 Wis. Act 138

- ▷ The Act removes the limited timeframe for DOR to enter into a voluntary disclosure agreement to waive penalties for holders that voluntarily disclose and report unclaimed property. In other words, the Act creates a permanent voluntary disclosure program.
- ▷ The Act excludes "financial organization loyalty cards" from becoming reportable as unclaimed property.
- ▷ Other technical changes to ch. 177, Wis. Stats.
- ▷ Reminder: Holder reports are due November 1 every year



Renaming of the Police and Fire Protection Fee

2023 Wis. Act 19

- ▷ The Act renames the police and fire protection fee to the 911 fee
- ▷ Forms, instructions, letters, and other published guidance have been updated to reflect the name change



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 2024 must be completed by January 2, 2025.**



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QWIB Registration

- ▷ Registration for 2024 must be completed by January 2, 2025.
- ▷ To register your business with the department, use the department's online application here:
 - 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>



Worker Misclassification

- ▷ Every person who pays an individual for work must classify the individual as either an employee or independent contractor.
- ▷ Classification is important because it impacts the payer's requirements for:
 - Federal unemployment insurance, income tax withholding, and information return reporting.
 - WI unemployment insurance, income tax withholding, and information return reporting



Worker Misclassification

- ▷ Misclassification may result in one or more of the following:
 - A penalty equal to the amount of tax that the payer intentionally failed to withhold.
 - \$25,000 fine for willfully misclassifying a construction worker as a nonemployee.
 - \$10 penalty per incorrect or incomplete Form W-2 or 1099.
 - \$50 or \$150 late filing fee.
 - 25% penalty for negligently failing to withhold or filing incorrectly.
 - 1.5% interest per month for delinquent withholding.
 - Disallowed wage expense deduction for failure to file wage statements.
 - \$10,000 fine and/or 9-month prison sentence for willfully failing or refusing to withhold or willfully rendering a false or fraudulent wage statement or report.
- ▷ For more information, see the article on pages 7-8 of WI Tax Bulletin 226.



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



Pass-Through ELT Election Overview

2022 Tax Year (Statistics as of July 9, 2024)	
Tax-Option (S) Corporations (Form 55) Filing Stats	
Tax-Option (S) Corporation returns filed	90,531
Tax-Option (S) Corporation entity-level tax elections filed	7,718
Percent of entity-level tax elections filed	8.53%
Partnership (Form 3) Filing Stats	
Partnership returns filed	87,790
Partnership entity-level tax elections filed	3,745
Percent of entity-level tax elections filed	4.27%
Pass-Through Entity Filing Stats - TOTAL	
Pass-Through entity returns filed	178,321
Entity-level tax elections filed	11,463
Percent of entity-level tax elections filed	6.43%



Income Tax Form/Processing Updates



Form Changes

- ▷ Forms 1 and 1NPR - Schedule 3 created on page 5
 - Part I – Financial donation details (formerly in the body of Forms 1 and 1NPR)
 - Part II – Organ donation registration
- ▷ Schedule WI-2441 – Schedule created to compute allowable additional child and dependent care credit due to law changes
- ▷ Schedules SB and M, *Subtractions from Income* - Subtractions for reserve/national guard and active duty pay are consolidated to a single line on the respective schedule



Form Changes

- ▷ Schedule I, *Adjustments to Convert Federal Adjusted Gross Income, Itemized Deductions, and Credits to the Amounts Allowable for Wisconsin* - Part III added to account for impact of IRC differences on relevant federal credits (i.e., the earned income credit)
- ▷ Form 1NPR, *Nonresident and Part-Year Resident Income Tax Return* - redesign lines 39 – 45 and related
 - Proration of tax moved from line 45 to 39
 - Proration of itemized deduction credit incorporated into Schedule 1 (lines 10 and 11)
 - Line 43c added to account for proration of school property tax credit



Form Changes

- ▷ Schedule JT, *Jobs Tax Credit* – Eliminated because eligibility to claim the jobs tax credit ended on June 30, 2013, and there are no outstanding contracts for the credit with the Wisconsin Economic Development Corporation
- ▷ Schedule CC, *Request for a Closing Certificate for Fiduciaries* – No longer a year specific schedule. The schedule may be submitted electronically through the department's My Tax Account (MTA) system under "Additional Services". Taxpayers do not have to be a registered MTA user or pay a fee to submit a Schedule CC.
- ▷ Schedule ESBT, *Computation of Wisconsin Taxable Income for Electing Small Business Trusts* – Added line to claim a credit for net tax paid to another state. Credits flowing from a tax-option (S) corporation into an electing small business trust (ESBT) can only offset tax from the ESBT portion of the trust.



Filing Tips



Filing Tips – Pass Through Entities

- ▷ Composite individual income tax returns (Forms 1CNP and 1CNS)*:
 - Cannot have a nonresident shareholder or partner listed more than once on Schedule 2
 - Cannot include a nonresident shareholder or partner that files a Form 1NPR, *Nonresident and Part-Year Resident Income Tax Return*, or has Wisconsin income from other sources.
 - Cannot have a partner included if the partner is another entity; the entity must file their own tax form.
 - *Exception:* if a shareholder or partner is an LLC treated as a disregarded entity or a grantor trust that is not required to file Form 1041 for federal income tax purposes, they can be listed on a composite



*This list of who may or may not be included on a composite return is not all inclusive; visit the [Forms page](#) for complete form instructions

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Filing Tips – Individual Income Tax

- ▷ Estimated payment lookup moved to new platform with stricter lockout rules
 - Lockout counts the number of unsuccessful attempts from the same IP address and will lock the IP address for 24 hours
- ▷ New MeF reject rule: Form 1 and 1NPR will reject if the additional child and dependent care credit is claimed and Schedule WI-2441 is missing
- ▷ Identity verification letters – if taxpayer misses the first letter and receives an adjustment notice, must appeal the adjustment notice with identity documents
- ▷ Veteran's Property Tax Credit: taxes must be paid by 12/31/24 to be claimed on the 2024 return
- ▷ Double-check certifications for credits on Schedule HR and Schedule VC



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Filing Tips – Individual Income Tax

- ▷ Include all credit schedules – if credit claimed on Schedule CR, also include
 - Credit schedule used to compute and claim current year's credit
 - Schedule CF to show any amount of carryover credit available from prior years
- ▷ Wait to distribute K-1s until the entity's return is filed
- ▷ No additions on Schedule SB nor subtractions on Schedule AD
- ▷ When claiming decedent's refund with Form 804, attach a copy of the domiciliary letter if taxpayer is court-appointed personal rep.
 - If not personal rep, claimant must have proof of death (no need to attach to 804 but must keep it in case the department requests it)



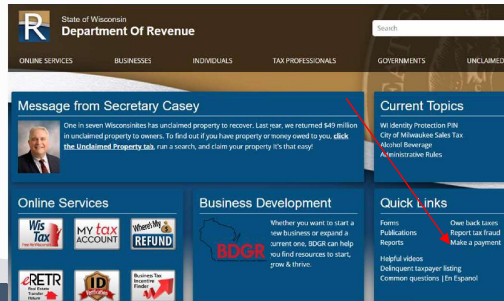
Filing Tips – Sales & Withholding

- ▷ Do not forget to report city and county sales and use tax, if applicable
- ▷ Update seller's permit locations timely to aid in processing
- ▷ 1099s with withholding must be filed by January 31 – combined fed-state cannot be used
- ▷ 1099s without withholding encouraged to be filed by January 31 to assist with fraud prevention and expedite individual income tax return processing
- ▷ \$10 penalty for late or missing W-2s/1099s; penalty also applies if 10 or more filed on paper
- ▷ IRIS Schema formatted files for 1099 submission will be accepted for TY2024



Payments

- ▷ Electronic payment is secure and more reliable
- ▷ If mailing a payment, send with a voucher and do not mask nor white out the tax number on the voucher (especially in the scanline at the bottom)
 - Preferred: use voucher created on DOR website



Make a Payment

Need to make a payment? Select a tax type below to see the available payment options. Electronic payment options and others. There is no fee for paying via direct debit from a checking or savings account. Convenience and processing fees

Make a Payment - Individuals and Fiduciaries

Payments can be made via the methods below. Select an option for instructions.

- Payments can also be made using an [approved software program for individuals](#) or an [approved software program](#).
- If you received a notice (bill) from us and would like to send a check, submit the voucher from the first page of the address on the voucher.
- Individuals should consider registering for [My Tax Account](#), for access to view mail, schedule and cancel estimate and more.

Direct Debit, Credit Card and Other Electronic Payments

Paper Check or Money Order

- If you are making an estimated income tax payment by check, enclose your check with [Form 14](#)
- If you filed your income tax returns electronically, enclose your check with [Form 14 \(Wisconsin E\)](#)

Wisconsin Department of Revenue
PO Box 3028
Milwaukee, WI 53201-3028
Note: If you do not have your voucher, visit our [Payment Vouchers](#) page to create one.



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My Tax Account



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MTA Payment Changes

- ▷ Can direct a payment to a specific letter or audit with no need to specify a tax period
 - Option to choose a period is still available too
- ▷ If paying while logged in to MTA, can apply one payment to multiple accounts and periods
- ▷ Voucher printing for logged-in payments available from the confirmation page
- ▷ Some department originator numbers have changed – important if taxpayer has fraud protection on their bank account
 - Originator numbers are specific to payment type and listed on the bottom of the screen where bank account info is entered
- ▷ Payment confirmation emails for all direct debit payments beginning October 28
- ▷ Can cancel a payment made via unregistered MTA if user saved the **confirmation code**



Third-Party MTA Changes

- ▷ Third-party MTA users can now close business tax accounts in MTA
- ▷ Still no third-party access for individual income tax accounts. Reminder for when this functionality is added:
 - DOR will need a valid Power of Attorney on the taxpayer's account granting authority to access individual income tax information
 - Taxpayer will need their own MTA profile and will need to be the master MTA user of their account



Other MTA Changes

- ▷ Explanation is required if seller's permit locations include counties with county tax but no tax reported in those counties
 - Also required if seller's permit location is within the City of Milwaukee but no city tax was reported
- ▷ As of December 2023, payments for corporation franchise/income tax, partnership tax, and pass-through withholding can be made without logging into MTA (unregistered payments)



MTA Reminders

- ▷ 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)
 - Expires 12/31 each year, new PIN issued in January
- ▷ Protect your account information: regularly review who has access to your accounts in MTA (and encourage clients to do the same)



My Case Manager & Audit Tips

- ▷ My Case Manager is available to help you and your clients make the audit process smoother; resources:
 - [Publication 701, My Case Manager User Guide](#)
 - [My Case Manager Common Questions](#)
 - [Audit Web Page](#)

- ▷ Speeding up audits:
 - Provide IT resources in initial meetings with auditor to identify requested electronic records
 - DOR will improve descriptions of records requested to provide clarity and details
 - Provide requested records to the auditor in a timely manner



Department News, Reminders, and Statistics



Department News and Initiatives

- ▷ DOR participating in the IRS Direct File and Free File Alliance for upcoming season – designed for simpler returns
 - Goal is to connect taxpayers with the right filing option
- ▷ New call center software



You Are A Target! Protect Your Clients; Protect Yourself

- ▷ Accounting firms hold valuable client data and e-filing credentials which make them the target of cybercriminals
- ▷ Spear phishing scams from those posing as clients, tax software or cloud storage providers and the IRS are common
- ▷ Each year Wisconsin firms fall victim to these scams. Stolen data can be misused for years to come.
- ▷ Security guides and other resources are available on the IRS's [Identity Theft Information for Tax Professionals](#) page
- ▷ Be on the lookout for data theft red flags:
 - Increase in rejects because a return was already filed
 - Clients receive IRS or state authentication letters when they haven't yet filed a return
 - Clients receive unexpected refunds, transcripts or notices about IRS online accounts
 - Number of returns e-filed with your EFIN or PTIN exceed the number you submitted
 - You receive responses to emails you did not send
 - Unusual computer activity (e.g., running slower, lockouts, cursor moving)



Data Breach Reporting

- ▷ **IRS Stakeholder Liaison:** liaison will notify IRS Criminal Investigation and others within the agency. For Wisconsin, contact CL.SL.Area.6@irs.gov or 206-946-3703.
- ▷ **States in which you prepare state returns:**
 - Wisconsin: email DORIDTheft@Wisconsin.gov. Include your organization's name, brief description of the incident and contact information for the individual who will be working with DOR. Do not include personally identifiable information (PII) for impacted employees or customers in your email. DOR's fraud team will contact the firm (typically the same day) to discuss next steps.
 - Other states: see the Federation of Tax Administrator's [Report a Data Breach](#) page for contact information
- ▷ **Local law enforcement**
- ▷ **Security experts:** it's important to determine the cause and scope of the breach and to prevent further breaches from occurring
- ▷ **Affected staff and clients:** Wisconsin statutes require most businesses to notify individuals if an unauthorized person has acquired their personal information. To learn more, see the [Wisconsin's Data Breach Notification Law](#) guide.
- ▷ **Insurance company:** check if your insurance policy covers data breach mitigation expenses



Identity Theft Reporting

- ▷ Identity theft reporting form (Form ID-100 Identity Theft Declaration) created in June of 2023
- ▷ Replaces use of DATCP Identity Theft and Non-Consent forms for tax-related ID theft reporting
- ▷ Taxpayers should continue to reach out to DATCP for assistance with credit and consumer issues or education regarding ID theft
- ▷ [Form ID-100](#) is available on DOR's webpage in fillable format but currently must be mailed



ID Verification

	FY24	FY23	FY22	FY21
Returns Evaluated	3,164,804	3,157,506	3,150,305	3,453,483
Quizzes Required	3,463	3,671	4,362	2,352
PINs Required	57,304	52,135	56,373	39,226
ID Docs Required	5,030	4,829	6,870	3,263
ID Docs Reviewed	6,758	6,306	5,764	4,059
Total ID Verification Actions Required	65,797	60,635	67,605	44,841
% of Returns Evaluated Requiring ID Verification	2.08%	1.92%	2.15%	1.30%
Refunds Denied for Failure to Verify ID	26,030	23,896	10,994	6,387



Refunds Denied or Reduced

Refunds Denied or Reduced	Fraud Detection With Analytics	Processing Fraud - OCI	Processing Fraud - Tax Ops	Earned Income Credit	Homestead Credit	Total for Specific Initiatives
FY24	\$12,623,912	\$239,872,447**	\$7,984,540	\$19,487,216	\$16,885,597	\$296,853,712
FY23	\$12,009,837	\$296,182,433*	\$9,126,383	\$21,113,030	\$18,943,325	\$357,375,008
FY22	\$5,705,235	\$10,571,743	\$6,662,514	\$23,387,279	\$23,197,939	\$69,524,710
FY21	\$3,190,632	\$9,878,995	\$4,631,190	\$19,748,512	\$24,148,497	\$61,597,826
FY20	\$5,613,849	\$7,940,577	\$2,656,902	\$8,123,852	\$4,776,598	\$29,111,778
FY19	\$8,595,686	\$5,970,625	\$6,020,804	\$20,436,036	\$14,358,603	\$55,381,754
FY18	\$7,052,669	\$5,869,413	\$5,628,995	\$17,943,046	\$14,862,551	\$51,356,674
FY17	\$9,300,745	\$6,059,255	\$8,044,070	\$20,134,976	\$16,046,799	\$59,585,845
FY16	\$11,149,599	\$8,092,817	\$6,849,591	\$19,946,592	\$17,004,928	\$63,043,527
FY15	\$11,050,119	\$7,335,531	\$6,889,513	\$16,682,990	\$15,828,093	\$57,786,246
FY14	\$3,550,473	\$4,904,089	\$8,195,222	\$17,710,656	\$15,299,425	\$49,659,865
FY13		\$3,434,613		\$14,257,838	\$12,480,794	\$30,173,245
FY12		\$1,702,300		\$9,341,511	\$14,694,458	\$25,738,269
						\$910,334,747

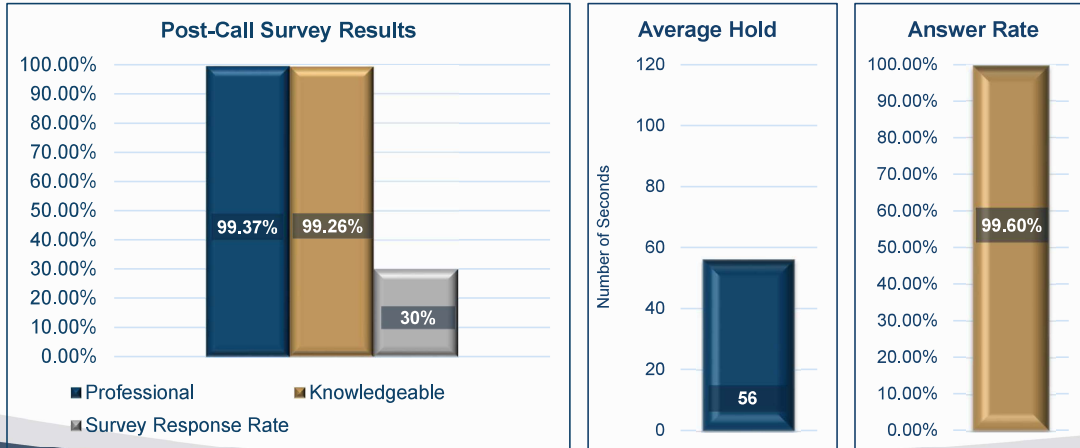
*FY23 OCI figure includes \$279,946,028 from one fraudulent return

**FY24 OCI figure includes \$220,179,828 from three fraudulent returns



FY24 IS&E Division Phone Statistics

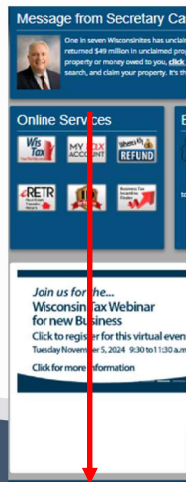
▷ 737,308 calls handled*



*includes outbound calls

Contact Us

- ▷ Visit the "Contact Us" page to find contact information for various areas of DOR
- ▷ Use the "Submit a question" link to email us



Contact Us

- 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
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- Governments
 - By topic
 - Equalization office locations
 - Districts Map
 - Local Governments Services
 - Manufacturing & Utility office locations
 - Districts Map
 - Office of Technical and Assessment Services
- Businesses
 - By topic
 - Office locations
- Tax Professionals
 - By topic
 - Office locations



Submit a Question

- ▷ Subject helps route questions to the appropriate staff to handle

Submit a Question

For questions about responding to an Identity verification letter, see our [Identity Verification page](#).

If you searched our website, tried the [fund inquiry](#) option, and still have questions or comments, send the Wisconsin Department of Revenue (DOR) an email using the form below.

Provide **all** the requested information in the boxes below. Do not include any **confidential** information in the message box. We will use the information to reply to your inquiry.

DOR responds to all questions during **normal business hours**; however, we cannot always respond immediately. For the quickest response, be sure to provide us your correct email address. Also, if you have suggestions to improve our website, use this form to submit your comments to our Webmaster.

* Indicates a required field.

*Name/Business Name *Daytime Telephone Number (between 7:45-4:30)
XXXX-XXXX-XXXX

*Street Address *Email Address

*City, State, Zip *Last 4 of SSN/FEIN

*Subject
Select a subject

*Message

Submit Message Clear

General "Submit a question" link will show all available subjects in dropdown

*Subject

Select a subject

Select a subject

- Alcohol Beverage - Enforcement & Regulation
- Alcohol Beverage - Permits
- Alcohol Beverage - Tax
- Appeals (Income, Sales, Excise)
- Business Tax Registration - Account Changes
- Business Tax Registration - Questions
- Cigarette, Tobacco and Vapor Products - Enforcement
- Cigarette, Tobacco and Vapor Products - Tax
- Collections - Debt Sent to DOR for Collection
- Collections - Agency Collections Program - to refer debt to DOR
- Collections - Delinquent Tax Payments
- Collections - Financial Records Matching
- Comment on Administrative Rules
- Homestead Credit



Submit a Question

- ▷ To see a filtered list of subjects, choose "By topic" from the "Contact Us" page, choose the topic, then select the email link

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Management Contacts

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Homestead Credit

ID Theft

Individual Income

PO Box 59
Madison, WI 53785-0001
PO Box 268
Madison, WI 53790-0001
(608) 266-2486

Email Questions

Additional Information

Local Government Finance

*Subject

Select a subject

Select a subject

- Income Tax - Individuals
- Withholding Taxes - Pass-Through Income



Contact Us

- ▷ Practitioner email address and phone number
 - Do not share with your clients
 - DORTaxPractitioners@wisconsin.gov
 - (608) 261-5199



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Presenter

- ▷ Nate Weber, Director
 - Office of Technical Services
 - Division of Income, Sales, and Excise Tax
- ▷ (608) 266-8025
- ▷ nathaniel.weber@wisconsin.gov



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Thanks!
Any questions?



11 a.m. – 12 p.m.

Ethics in the Digital Age: Ethical Implications of the Use of AI for the Tax Practitioner

Eric G. Pearson, CPA, JD, Partner, Foley & Lardner LLP

Ethics in the Digital Age

2024 WICPA Tax Conference
November 12, 2024

PRESENTED BY ERIC G. PEARSON

FOLEY.COM

Learning Objectives

- Review ABA Rules of Professional Conduct (RPC), AICPA Statements on Standards of Tax Services (SSTS), key Circular 230 provisions, and other ethical standards applicable to tax professionals
- Review key rules relating to the use of technology by tax professionals
- Learn how to navigate ethical dilemmas that have arisen due to the use of social media and other technology tools
- Apply professional ethics standards to cutting-edge scenarios

Tax Ethics Rules for CPAs and Lawyers

- AICPA Code of Professional Conduct

<https://us.aicpa.org/research/standards/codeofconduct>

- ABA Model Rules of Professional Conduct

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/

Select Ethics Rules

	ABA	AICPA Equivalent
Client		
Competence	R. 1.1	0.300.060 Due Care
Scope of Representation and Allocation of Authority	R. 1.2	0.300.070 Scope and Nature of Services
Diligence	R. 1.3	0.300.060 Due Care
Communications	R. 1.4	0.300.060.05 Due Care
Confidentiality of Information	R. 1.6	1.700.001
Conflict of Interest	R. 1.7 to 1.12	0.300.050 Objectivity and Independence
Organization as Client	R. 1.13	0.300.020.02 Responsibilities
Advisor / Counselor	R. 2.1	0.300.050.01 Objectivity

Select Ethics Rules continued

	ABA	AICPA Equivalent
Advocate		
Meritorious Claims & Contentions	R. 3.1	0.300.040.04 Integrity
Expediting Litigation	R. 3.2	0.300.060.05 Due Care
Candor toward the Tribunal	R. 3.3	0.300.040.03 Integrity
Fairness to Opposing Parties and Counsel	R. 3.4	0.300.040.03 Integrity
Truthfulness in Statements	R. 4.1	0.300.040.03 Integrity
Supervisors and Subordinates	R. 5.1 to 5.3	0.200.020.04
Unauthorized Practice	R. 5.5	
Advertising	R. 7.1 to 7.3	1.400.090; 1.600

Other Ethics Rules

- State Bar Associations
- State CPA society*
- State board(s) of accountancy*
- Federal, state and local taxing authorities*
 - IRS Circular 230
 - Taxpayers' Bills of Rights
- Other government agencies and regulators:
 - Securities and Exchange Commission (SEC)*
 - Public Company Accounting Oversight Board (PCAOB)*
 - Government Accountability Office (GAO)*
 - Department of Labor (DOL)*

Potential Consequences of Ethical Failures

- Corporate
 - Reputation risk
 - Shareholder suits
 - Fines and penalties
 - Criminal liability
- Personal
 - Disbarment
 - Loss of CPA license
 - Reputational risk
 - Termination
 - Criminal liability
 - Fines and penalties

Question 1

- You are a tax attorney and CPA, and your firm has started implementing AI to assist with tax research.
- Your client, a small business owner, seeks advice on a complex tax matter on a tight budget.
- You use ChatGPT to assist with your research but don't tell the client.

Answer 1

Unethical

- ABA Rule 1.4. Duty to Communicate: A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished
- ABA Resolution 112, August 2019:
 - A lawyer should obtain approval from the client before using AI, and this consent must be informed. The discussion should include the risks and limitations of the AI tool. In certain circumstances, a lawyer's decision *not* to use AI also may need to be communicated to the client if using AI would benefit the client. Indeed, the lawyer's failure to use AI could implicate ABA Model Rule 1.5, which requires lawyer's fees to be reasonable. Failing to use AI technology that materially reduces the costs of providing legal services arguably could result in a lawyer charging an unreasonable fee to a client.

Question 2

- ChatGPT finished the research in a few seconds.
- The research looks good, but you are unsure of how the information was generated or all the sources it used.
- Do you have a duty to supervise an algorithm?

Answer 2

Yes

- ABA Rule 5.1. Duty to Supervise: A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct...[and] a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.
- In 2012, the ABA amended the title of Model Rule 5.3 from "Responsibilities Regarding Nonlawyer Assistants" to "Responsibilities Regarding Nonlawyer Assistance."
 - the change clarified that the scope of Rule 5.3 encompasses non-lawyers, whether human or not.
- ABA Resolution 112, August 2019:
 - There are some tasks that should not be handled by today's AI technology, and a lawyer must know where to draw the line. At the same time, lawyers should avoid underutilizing AI, which could cause them to serve their clients less efficiently. Ultimately, it's a balancing act. Given that many lawyers are focused on detail and control over their matter, it is easy to see why "the greater danger might very well be underutilization of, rather than overreliance upon, artificial intelligence."

Answer 2 continued

- ABA Rule 1.1. Duty of Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- Comment [8] to Rule 1.1 was modified in 2012 to emphasize that this duty of competency includes a responsibility to understand the technology used in providing that representation:
 - To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (Emphasis added.)
- In Formal Opinion 483 (10/17/18), the ABA Standing Committee on Ethics and Professional Responsibility stated that this duty necessarily requires both an understanding of the basic features of the relevant technology and deployment of that technology in a manner that will reasonably safeguard confidential client information.
- AICPA Rule 1.300.001.01(a): Undertake only those professional services that the member or the member's firm can reasonably expect to be completed with professional competence.

Answer 2 continued

- AICPA Rule 1.300.001.01(b): Exercise due professional care in the performance of professional services.
- ABA Rule 1.3. Diligence: A lawyer shall act with reasonable diligence and promptness in representing a client.
 - ABA Formal Opinion 498: recommends reviewing the platform’s terms of service to ensure use of the platform is consistent with the lawyer’s ethical obligations.
- Circular 230 Section 10.51(a)(13): Sanctionable conduct includes “an extreme departure from standards of ordinary care.”
- Section 6662 Negligence Penalty

Answer 2 continued

- *People v. Zachariah C. Crabill*, 23 PDJ 067 (Nov. 22, 2023)
 - 90-day suspension, with the remainder of his 366-day suspension to be stayed upon completion of a 2-year probation period
- D. Mont. has banned use of AI to draft briefs.
- E.D. Wis. has considered requiring disclosure of the use of AI – both in briefs and in discovery.
 - For now the judges have decided to table creating any rule and are monitoring the situation.

Question 2 follow up question

Is legal research considered the practice of law? What about reviewing a Voluntary Disclosure Agreement (VDA) or other document – that is, things that can be done by machine?

- **ABA Rule 5.5. Unauthorized Practice of Law:** A lawyer who is not admitted to practice in this jurisdiction shall not, except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- ***Lola v. Skadden, Arps, Slate, Meagher & Flom LLP, No. 14-3845 (2d Cir. 2015):*** Distinguishing between tasks performed by machines and tasks performed by lawyers
 - The Second Circuit found that tasks that could otherwise be performed entirely by a machine could not be said to fall under the practice of law. Consequently, *Lola* raises the possibility that machines can reclassify tasks that were traditionally considered the practice of law as now falling outside of the scope of the practice of law.

Question 3

- Sam works remotely as an attorney and CPA and mostly conducts her work over Zoom.
- Sam's husband also works remotely, and their three sons are distance learning and are home all day.
- Because of the limited space in their house, Sam has no choice but to use the family kitchen to conduct her client work.
- Throughout the day, her children and husband come in and out of the kitchen to grab snacks.
- Clients on Zoom can see and hear them, and they can see and hear the clients.
- When they come in the kitchen, Sam makes it a point to not discuss private information with clients; otherwise, her work resumes as usual.

Question 3 continued

Should Sam do anything differently?

- A. Work with her family to designate break times when they are allowed to enter the kitchen
- B. Position her computer so that her family members cannot see clients
- C. Use a headset
- D. Tell her employer she cannot work from home unless the employer pays the construction costs associated with a home renovation to add a private office.

Answer 3

A, B, and C

- ABA Model Rule 1.6. Confidentiality: A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
 - Comment 16 to this Rule further specifies that these reasonable efforts should safeguard against (1) inadvertent or unauthorized disclosure by the attorney or other persons participating in the representation or otherwise subject to the attorney's supervision, and (2) unauthorized access by third parties.
 - Attorneys working from home must consider the above factors and make reasonable efforts to ensure that any unauthorized persons, such as family members or social visitors, do not access confidential documents stored in a home office or overhear confidential communications.

Question 4

- Ariel is a SALT attorney who maintains a blog.
- Ariel recently won an administrative decision against the DOR on a hotly contested use tax refund claim.
- Ariel decides, without asking her client, to write a blog about the decision.
- In the article, Ariel lists the name of her client, the name of the case, the amount of the refund, the docket number, and a brief description of the issues – all matters of public record.
- Because the DOR was so difficult, Ariel mentions that the DOR rejected her client's last settlement offer of 70% of the refund claim.

Question 4 continued

Ariel's article is :

- A. Ethical.
- B. Ethical if she removes the reference to his client's settlement offer.
- C. Ethical so long as she limits it to information found in the administrative decision which is publicly available.
- D. Unethical.

Answer 4

Unethical

- ABA Formal Opinion 18-480 (March 6, 2018)
 - “Lawyers who blog or engage in other public commentary may not reveal information relating to a representation, including information contained in a public record, unless authorized by a provision of the Model Rules.”
- ABA Model Rule 1.6(a)
 - “[A] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).”
 - Comment 2 emphasizes “[a] fundamental principle in the client-lawyer relationship is that in the absence of the client’s informed consent, the lawyer must not reveal information relating to the representation.”
 - Comment 3 clarifies that this rule “applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source.”
- “In other words, the scope of protection afforded by Rule 1.6 is far broader than attorney-client privileged information.”

Answer 4 continued

- “Unless one of the exceptions to Rule 1.6(a) is applicable, a lawyer is prohibited from commenting publicly about any information related to a representation. Even client identity is protected under Model Rule 1.6.”
- The salient point is that when a lawyer participates in public commentary that includes client information, if the lawyer has not secured the client’s informed consent or the disclosure is not otherwise impliedly authorized to carry out the representation, then the lawyer violates Rule 1.6(a).
- Rule 1.6 does not provide an exception for information that is “generally known” or contained in a “public record.” Accordingly, if a lawyer wants to publicly reveal client information, the lawyer must comply with Rule 1.6(a).
- DC Ethics Opinion 370(II)(B)
 - With client consent, lawyer may blog about own cases

Question 5

You have negotiated a settlement to resolve a large and highly contentious audit issue. The IRS prepares a draft closing agreement memorializing the terms of the settlement and asks for your review and signature. While reviewing the draft closing agreement, you notice an incorrect representation of a material fact that has been disclosed to the IRS previously during audit. The misrepresentation is beneficial to taxpayer.

What must you do?

- a) Correct the factual misrepresentation in the draft.
- b) Nothing, the IRS is at fault for its own mistake.

Answer 5

What must you do?

- a) **Correct the factual misrepresentation in the draft.**
- b) Nothing, the IRS is at fault for its own mistake.

ABA Model Rule 4.1 provides that an attorney “shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client...”

Question 6

In a draft settlement agreement, the government has identified an IP licensing arrangement covered by the agreement. However, the government has failed to identify a similar agreement with several other related entities due to a failure to develop facts with respect to those entities. The settlement agreement would close the tax obligations for all of the related entities.

Can you sign the agreement?

- a) Yes, because a lawyer can lie when dealing with others on a client's behalf.
- b) Yes, because a lawyer generally has no affirmative duty to inform an opposing party of relevant facts.
- c) No, because a lawyer is required to be truthful when dealing with others on a client's behalf.
- d) No, because a lawyer must disclose all relevant facts to the opposing party.

Answer 6

b) Yes, because a lawyer generally has no affirmative duty to inform an opposing party of relevant facts.

- Comment on ABA Model Rule 4.1:
 - A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts.
 - A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false.

Question 7

You are a CPA. Your client, NoWhere, Inc., has realized that after operating “under the radar” in Alabama for six years, it needs to start filing tax returns in Alabama. You are preparing and will sign the initial tax return for the current tax year. The initial return asks: “What was the first date the company began doing business in Alabama?” You want to leave the answer blank because you know it would be disadvantageous to your client if you respond that the client began doing business in Alabama six years ago.

Should you sign the return with the omitted answer?

Answer 7

No. You cannot sign the Alabama return.

AICPA SSTS No. 2, Answers to questions on Returns, paragraph 5, provides that a CPA “should not omit an answer merely because it might prove disadvantageous to a taxpayer.”

Question 8

The IRS issues an IDR request that asks for copies of all presentations or other documents addressing an IP restructuring. You are able to locate a copy of a key presentation but are unable to locate the original. The copy includes extensive notes from the VP of Tax that highlight potential exposures and sensitivities associated with the IP restructuring. You conclude that none of the handwritten notes are protected from disclosure by attorney-client privilege or attorney work product.

Question 8 continued

What is an appropriate IDR response?

- a) A response explaining that no copies of any presentations could be located.
- b) A copy of the presentation that removes the handwritten notes but does not identify the removal/redactions.
- c) A copy of the presentation that removes the handwritten notes but identifies the redactions.
- d) An unredacted copy of the presentation.

Answer 8

d) An unredacted copy of the presentation.

ABA Model Rule 3.4 provides in part that a lawyer shall not: Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act.

Comment to Rule 3.4: Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen.

Question 9

Upon review of Company ABC's past tax returns in connection with a forthcoming transaction, you realize that Company ABC took a clearly erroneous position by currently deducting expenses that should have been capitalized, which resulted in an understatement of millions of dollars over the past few returns. You inform the VP of Tax, who brushes you off and decides to maintain the erroneous position on ABC's upcoming return.

What must you do?

Question 9 continued

You inform the VP of Tax, who brushes you off and decides to maintain the erroneous position on ABC's upcoming return. **What must you do?**

- a) File amended returns on behalf ABC to correct the erroneous position.
- b) Inform the CFO about the erroneous position on prior returns and its consequences.
- c) Inform the CFO about the erroneous position on the upcoming return and its consequences.
- d) Both B and C.
- e) Nothing.

Answer 9

- c) **Inform the CFO about the erroneous position on the upcoming return and its consequences.**

Generally no requirement to file an amended return to correct a prior error. *Badaracco v. Commissioner*, 464 U.S. 386 (1984). *But see* Treasury Regulation § 1.451-1(a) (guiding taxpayers to file amended returns).

Circular 230 § 10.21: "A practitioner who . . . knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission . . . [and] of the consequences as provided under the Code and regulations of such noncompliance, error, or omission."

Question 10

Can the Section 7525 privilege be used to prevent disclosure of protected materials to any US federal agency?

Answer 10

b) **No.**

The Section 7525 privilege cannot be used to prevent disclosure to any regulatory body other than the IRS.

Question 11

Penny Procrastinator is swamped with work. Her supervisor calls on a Monday, asking her to review a stock purchase agreement by the end of the week. Penny agrees, even though she knows she does not have enough time. Penny waits until late Sunday night, quickly skims the SPA, and sends her comments. Penny spent about an hour reviewing the SPA, but, had she had more time, she would have spent about 15 hours to fully review the SPA.

Has Penny committed an ethical violation?

Question 11 continued

Has Penny committed an ethical violation?

- a) Yes, because she did not act with reasonable diligence and promptness.
- b) No, because she responded as promised by the end of the week.
- c) No, because she did her best to review the agreement.

Answer 11

- a) Yes, because she did not act with reasonable diligence and promptness.

ABA Model Rule 1.3 (Client-Lawyer Relationship: Diligence): “A lawyer shall act with reasonable diligence and promptness in representing a client.”

Comment 2: “A lawyer’s work load must be controlled so that each matter can be handled competently.”

Comment 3: “Perhaps no professional shortcoming is more widely resented than procrastination. A client’s interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client’s legal position may be destroyed. Even when the client’s interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer’s trustworthiness. A lawyer’s duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer’s client.”

Question 12

Brilliant Co, a global company with a lot of really high-value, important technology, hires an accounting firm, YesMa’am LLP, to design and implement a global reorganization of its IP ownership so as to lower its effective tax rate and repatriate cash. Brilliant Co is nervous about only having one advisor for such an important project. Brilliant sends an RFP to We Can Law Firm to bid on the project in a co-planning type role with YesMa’am. We Can Law Firm is hired, but Brilliant Co decides We Can Law Firm is too expensive and asks YesMa’am to do the bulk of the work on the project, including all factual development and analysis. Brilliant Co asks We Can Law Firm to enter into a Kovel with YesMa’am and asks YesMa’am to include We Can Law Firm on correspondence to obtain Attorney Client Privilege.

Is it appropriate for We Can Law Firm to engage YesMa’am under a Kovel arrangement under these circumstances?

- a) Yes.
- b) No.
- c) Maybe.

Answer 12

b) No.

No Kovel relationship exists because YesMa'am was not engaged to assist Best Law Firm in providing legal advice.

ABA Model Rule 4.1 (Transactions with Persons Other Than Clients: Truthfulness in Statements to Others)

ABA Model Rule 8.4 (Maintaining the Integrity of the Profession: Misconduct)

Question 13

Pollyanna is the tax director of PublicCo. To Pollyanna's surprise, the VP tax invited one of PublicCo's external auditors to a meeting. Pollyanna does not want to be rude, so she distributes a privileged memo to everyone (including the auditor) in the meeting. The memo addresses the strengths and weakness of PublicCo's worthless stock deduction. It also contains an "Attorney Work Product" watermark.

Is the memo work product protected?

- a) Yes.
- b) No.
- c) Maybe.

Answer 13

c) Maybe.

United States v. Textron, 577 F.3d 21 (1st Cir. 2009) (Work product doctrine does not apply to tax accrual work papers because they were not prepared in anticipation of litigation);

United States v. Deloitte LLP, 610 F.3d 219 (D.C. Cir. 2010) (Disclosure to outside auditor does not waive work product protection);

Frank Betz Associates v. Jim Walter Homes, 226 F.R.D. 533 (D.S.C. 2005) (same);

In re Disonics Securities Litigation, 1986 U.S. Dist. LEXIS 24177 (N.D. Cal. 1986) (Disclosure to outside auditor waives work product protection).

Question 14

You are asked to provide an analysis relating to tax consequences of an IP restructuring. Your supervisor represents that a key entity in the restructuring did not own any valuable IP. However, based on your own experience, you recall reviewing a valuation report that assigned significant value to customer lists that were owned by the entity and are concerned that the representation may be inaccurate or incomplete.

Can you rely upon the supervisor's representation when rendering the opinion?

- a) Yes, you can rely upon the representation without further verification.
- b) Yes, but only if you confirm that it is complete and accurate.
- c) No, you cannot rely upon representations.

Answer 14

b) Yes, but only if you confirm that it is complete and accurate.

Circular 230 Section 10.34(d): A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the Internal Revenue Service, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The practitioner may not, however, ignore the implications of information furnished to, or actually known by, the practitioner, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

Question 15

As the head of global tax controversy, you have led the company through a prolonged IRS audit. The VP of Tax advises that he wants to settle the issue so that he can wrap the audit up before his retirement at the end of the calendar year. The chances of winning the issue in litigation are well above 80% but he instructs you to accept the IRS's offer to settle the case at 20% of the tax benefit. You believe that this is the wrong strategy and think that you can get a much better deal by countering to settle the case at 70% of the tax benefit.

Can you pursue your preferred settlement strategy?

- a) Yes, because you have more expertise than the VP of Tax regarding settlement strategy.
- b) Yes, because the VP of Tax is pursuing settlement for personal goals rather than the goals of the company.
- c) No, because a lawyer must defer to the client regarding the objectives of representation.

Answer 15

- c) **No, because a lawyer must defer to the client regarding the objectives of representation.**

ABA Rule 1.2(a): “A lawyer shall abide by a client's decision whether to settle a matter.”

ABA Model Rule 1.13, Comment 3: Ordinarily, a lawyer has no obligation to seek, within the organization's hierarchy, review of an authorized representative's settlement directive merely because the attorney believes the directive reflects poor judgment or otherwise doubts the utility or prudence of the authorized representative's directive.

Question 16

You are a CPA. You are about to sign and file the 1120 tax return for your company. You are advised that certain numbers were not final and reasonable estimates based on the best available information were used to compute the amount of income tax liability reflected on the return.

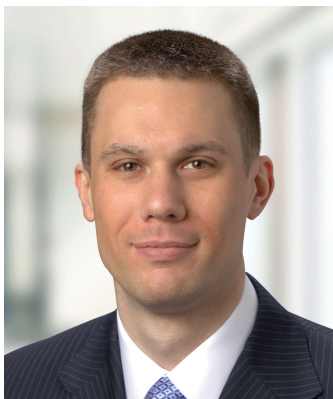
Is it ethical to sign and file a tax return that you know is based in part on an estimate used to compute the amount of tax owed?

- a) No, all numbers must be final.
- b) Yes, because it is not practical to obtain exact data and the estimates are reasonable.
- c) Yes, any estimate is fine.

Answer 16

b) **Yes, because it is not practical to obtain exact data and the estimates are reasonable.**

AICPA SSTS No. 4, Use of Estimates, provides that “[u]nless prohibited by statute or by rule, a [CPA] may use the taxpayer’s estimates in the preparation of a tax return if it is not practical to obtain exact data and if the [CPA] determines that the estimates are reasonable based on the facts and circumstances known to the [CPA]. The taxpayer’s estimates should be presented in a manner that does not imply greater accuracy than exists.”



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11 a.m. – 12 p.m.

Wisconsin Trust Code Trailer Bill

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Prairie Trust



Wisconsin Trust Code Trailer Bill

<https://docs.legis.wisconsin.gov/2023/related/acts/127.pdf>

Presented to: Wisconsin Institute of CPAs
2024 WICPA Tax Conference

Tuesday, November 12, 2024
Brookfield Conference Center, Brookfield WI

Presented by: Victor J. Schultz
President, Prairie Trust
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Legislative Status

- Senate Bill 759 was approved by the Wisconsin Senate and Assembly on 2/13/2024.
- 2023 Wisconsin Act 127 was signed into law by Governor Evers on 3/21/2024.
- The Act was published on 3/22/2024 and became effective 3/23/2024.
- The new law does not include the Uniform Directed Trust Act or the Uniform Fiduciary Income and Principal Act.
- A separate bill (SB667) would have enacted a Domestic Asset Protection statute in Wisconsin. This bill passed both the Senate and Assembly but was vetoed by Governor Evers on 3/29/2024. This remains an important initiative for the WBA Trust section.

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Trailer Bill Contents – Major Changes

- Updates the definition of Qualified Beneficiary.
- Confirms the use of NJSA to modify or terminate a trust.
- Adopts the Uniform Trust Decanting Act; repeals 701.0418.
- Expands the concept of Representation.
- Updates the duty to inform and report; authorizes Silent Trusts.
- Clarifies the limitation period that applies to the debts of a deceased settlor. Establishes procedures on how to handle claims for debts of a deceased settlor.
- Clarifies various Trust Code provisions.
- Adopts the Uniform Powers of Appointment Act; restates Chapter 702.
- Minor changes to the Probate Code and Digital Property law.

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Trust Overview – Basic Estate Planning Documents

1. Wills
2. Marital Property Agreement (if married)
3. Powers of Attorney (Financial and Health Care)
4. Beneficiary Designations
5. Joint Revocable Trust (if married) or Revocable Trust

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Trust Overview – Irrevocable Trusts

1. Estate Settlement / Administrative Trust
2. Marital Trust
3. Credit Shelter Family Trust
4. Special Needs Trust
5. Children Trusts - GST Trusts
6. Charitable Trusts
7. Tax Planning Trusts-GRAT, IDGT, SLATs, BDITs, BDOTs, DAPTs

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Definitions

- Power of Appointment Definitions:
 - General power
 - Broad limited power
 - Nongeneral power
- UTDA definitions:
 - Animal trust
 - Charitable trust
 - Identified charitable organization
 - Record
 - Sign
 - Terms of Trust
- **Qualified Beneficiary**

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Why is the definition of Qualified Beneficiary Important?

1. QB is required to receive notice of Trust. 701.0813(2)
2. QB is entitled to request and receive information about the trust. 701.0813(1)
3. QB is required receive information about changes to a trust. See 701.0108(4); 701.0412-701.0417; 701.0704-701.0706; 701.1307
4. QB is probably an interested party to an NJSA and must sign the NJSA. 701.0111
5. QB can represent interests of contingent successor remainder beneficiaries. 701.0304(2)

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Updated Definition of Qualified Beneficiary – 701.0103(5w), (19v), and (21)

- “Qualified Beneficiary” means a beneficiary who is a “current beneficiary” or a “presumptive remainder beneficiary.”
- “Current Beneficiary” is a distributee or permissible distributee of income or principal or holds a general POA.
- “Presumptive Remainder Beneficiary” is, without considering the existence of a power of appointment, any of the following:
 - A distributee/permissible distributee if interests of any current beneficiary terminated on that date without causing the trust to terminate. (Category 1)
 - A distributee/permissible distributee if trust terminated on that date. (Category 2)
 - If the terms of the trust do not provide for its termination, a distributee/permissible distributee if all current beneficiaries were deceased or no longer exist. (Category 3)

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QB Example 1

- H&W establish trust FBO "Issue per stirpes."
- Issue per stirpes receive mandatory income and discretionary principal.
- Trust terminates 30 years after death of survivor of children and grandchildren.
 - One Child – age 100
 - Two GC – ages 70-75
 - Three GGC – ages 30-40
 - Seven GGGC – teenagers
 - Charity takes if all issue are deceased
- Who are current beneficiaries? [Child]
- Who are Presumptive Remainder Beneficiaries? [GC and GGC; GC – category 1; GGC – category 2]

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QB Example 2

- Living Trust passes to Trust FBO of Child. Trust pays discretionary income and principal to Child only. Trust distributes 1/3 at 30, 1/2 at 40 and balance at 50. Child is 29 years old.
- Child has no issue. If child dies without issue before the trust terminates, Trust will distribute to Child's sibling.
- Who is the current beneficiary? [Child]
- Who is the PRB? [Child; Category 1 does not apply, trust will terminate if the CB dies. Child is the PRB under category 2. Category 3 does not apply.]

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QB Example 3

- Mom establishes trust FBO son. Trust pays discretionary income and principal to son and issue. Son has two children (GC) and one sister (C2). Son has limited POA among his spouse, his GC, C2 and her issue, and spouses of GC and C2. If GC die before son, C2 becomes an additional beneficiary.
- Trust terminates when son dies and pays to Trusts FBO each GC.
- Who are CB? [Son and GC]
- Who are PRB? [Son, GC, and Trusts; ignore POA unless irrevocably exercised; Son and other GC-Category 1; Trusts fbo GC-category 2]

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Modification / Termination of Irrevocable Trusts

Trust Code allows modification or termination if:

1. All beneficiaries consent
2. Unanticipated circumstances
3. Inability to administrator to trust effectively
4. Charitable purpose impracticable
5. Uneconomic
6. Correct mistakes
7. Achieve the settlor's tax objectives
8. Combine or divide trusts

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Modification / Termination of Irrevocable Trusts

How do you modify or terminate an irrevocable trust?

1. Petition the court
2. Non-judicial settlement agreement
3. Decanting

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Non-Judicial Settlement Agreements – 701.0111

- NJSA must be signed by all "interested persons."
 - "A person whose consent would be required in order to achieve a binding settlement." [Usually includes the QBs.]
- Specifically allow:
 - Modification or termination of a trust.
 - Removal and replacement of a trustee.
- 30-day advance notice of NJSA must be given to settlors, trustees, directing parties, and trust protectors. [Recommend NJSA include an effective date provision.]
- Any interested person or other person affected may request court approval.
- Court approval of an NJSA is discretionary, not mandatory.

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Uniform Trust Decanting Act – 701.1301 to 701.1327

- Wisconsin UTDA – New Subchapter XIII; replaces 701.0418 - Trustee power to appoint.
- Decanting involves the distribution of trust assets from a “first trust” to a “second trust.”
- Statute applies if Wisconsin is a place of administration or governing law – 701.1305.
- Decanting Procedure:
 - Trustee must provide advance notice (30 days) of intent to exercise power – 701.1307.
 - Court involvement is discretionary – 701.1309.
 - A second notice of the actual exercise of the power is required after the advance notice period ends or after written consent – 701.1310.

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Uniform Trust Decanting Act (cont.)

- Decanting power may be exercised if trustee has:
 - Expanded distribution discretion – 701.1311.
 - Limited distributive discretion – 701.1312.
 - Second trusts “in aggregate” must benefit beneficiaries of first trust.
- Special rules apply for:
 - Trusts for individuals with disabilities – 701.1313.
 - Trusts with charitable interests – 701.1314.
 - Pet trusts – 701.1323.
 - Changes in trustee compensation - 701.1316.
 - Changes in trustee indemnification - 701.1317.
 - Removal or replacement of authorized fiduciary – 701.1318.

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Decanting Example 1

Mom creates trust FBO Issue. Principal distributions subject to HEMS (“limited distribution discretion”). After last child dies, trust terminates per stirpes and distributes at age 40. 3 children – C1 has power to change trustees.

- C1 wants conservative investments.
- C2 wants aggressive investments.
- C3 is a spendthrift and wants money.

How do you manage this pot?

Solution: Divide pot trust into three separate share trusts.

- Not permitted under the power to appoint (701.0418) under prior law.

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Decanting Example 2

Grandparent creates trust FBO children and grandchildren. Trust pays discretionary income and principal to C and GC. After all C die, trust distributes outright to GC. One GC is disabled and receives government benefits.

Problem: Distribution will disqualify government benefits.

Solution: Decant to trust that will create an individual or community pooled (Wispact or Life Navigators) special needs trust for the GC with a disability.

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Decanting Example 3

Credit Shelter Trust FBO S/S and Issue. Trust pays discretionary income and principal based on HEMS. When S/S dies, trust divides into separate shares for each child and child's issue and remains in trust. Trust holds highly appreciated securities. It is unlikely S/S will have a taxable estate upon death.

Problem: Highly appreciated securities will not receive a step-up in basis when S/S dies.

Possible solutions: Decant to trust that gives a limited power to the S/S to appoint assets to the creditors of the S/S at death. This will create estate tax inclusion for the S/S and allow a step-up in basis. An alternative is an NJSA that modifies the trust to add the limited power to appoint to creditors. An NJSA will require the consent of all beneficiaries. [These solutions may have gift tax consequences.]

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How Does a Trustee Decant?

1. Draft the second trust(s).
2. Send out notice of decanting.
 - At least 30 days in advance.
 - Include copies of the first trust and second trusts.
3. Court approval is discretionary.
4. After notice period expires, must send out notice stating property is being distributed.
5. Certain changes (e.g. Trustee remover provision) must be approved:
 - The remover and QB of second trust must consent; or
 - The court must approve.
6. Settlor of second trust is same person as settlor of the first trust.

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Representation – Subchapter III

- Authorized persons can represent beneficiaries in receiving notices, obtaining information about the trust, and signing agreements (like an NJSA.)
- 701.0302(1) – Powerholder of general POA or broad limited POA may represent all permissible appointees or takers in default, regardless of conflict in interest.
- 701.0302(2) – Powerholder of nongeneral POA may represent permissible appointees and takers in default, if no conflict of interest.
- What is a conflict of interest?
 - If not sure, you can seek court approval. See 701.0111(6)

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Representation – Subchapter III

- 701.0304 – Expansion of concept of “virtual representation” – representation by person with a substantially identical interest.
- 701.0304(2) – Presumptive remainder beneficiary may represent contingent successor remainder beneficiary, if no conflict of interest.
- 701.0306 – Person may be designated in trust instrument to represent any beneficiary, regardless of conflict of interest.
- 701.0308 – Representative must act or decide not to act in “good faith.”
- Query-How does a Representative elect to act?

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Duty to Inform and Report – 701.0813

- 701.0813(2) and (6) – trustee may supply settlor with a copy of trust and may provide information about trust administration to settlor.
- 701.0813(3) – trustee may limit reporting to a specific beneficiary to only information related to the specific bequest.
- 701.0813(7) – “silent trusts” are specifically authorized. The trust instrument may expand, restrict, eliminate, or otherwise vary the right of a beneficiary to be informed about the trust.

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Debts of a Settlor; Creditor Claims -701.0508 and 701.0509

- Applies to revocable trust when the settlor dies.
- Does not apply to an irrevocable trust when a beneficiary dies.
- Some irrevocable trusts allow the trustee to pay the debts and post-death administration expenses of a beneficiary after the beneficiary dies.

In those cases, the trust instrument (and not 701.0508 and 701.0509) controls.

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Debts of a Deceased Settlor - 701.0508

- Creditor claim period for a decedent may be shortened after the settlor of a revocable trust dies by publishing a creditor notice.
- Publication of creditor notice in a probate proceeding will also limit claims against a revocable trust.
- Different limitation periods apply if the creditor is known or unknown.
- Limitation period does not apply to certain debts – tort claims, taxes, funeral expenses, administration expenses, marital property agreement claims.

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Creditor Claim Chart - 701.0508

<u>Period Of Time</u>	<u>Creditors</u>
Later of 30 days of actual notice; or published notice deadline date.	Known creditors who receive actual notice.
4 months from published notice or actual notice.	Unknown creditors; known creditors w/o published notice.
1 year from date of death or deadline in published notice.	Known creditors w/o actual notice.
Legal statute of limitations.	Known and unknown creditors w/o notice; tort claims; taxes; funeral and administration expenses; marital property agreement claims.

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Procedures for Filing Claims-new 701.0509

- New statute parallels Chapter 859.
- Form of claim – 701.0509(2).
- Trustee response to claim – within 30 days, otherwise claim presumed valid.
- Priority of claims listed – 701.0509(8).
- Qualified beneficiaries may be informed of claims – after the claim deadline expires, QB may request list of claims. Trustee shall respond within 5 days. Requester shall respond within 5 days of trustee response if disagree with the trustee.
- Procedures provided for disputed claims.
- Court petitions to be filed within 60 days of trustee's response to initial claim or within 30 days of QB objection.
- Unfiled claims may be paid in reasonable discretion of trustee.

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Claims Example

H dies. Leaves estate to children from first marriage. No marital property agreement. S/S wishes to make marital property claim against Living Trust. Creditor claim notice published in probate.

- Does the trustee also need to publish a creditor claims notice? **[No].**
- When must the S/S file a claim? **[S/S must make claim within 30 days of actual notice or the claims deadline, or if no actual notice, within later of one year of H's death or claims deadline.]**
- How do you file the claim against the Living Trust? **[Claimant to send notice of claim to trustee in a form that complies with 701.0509(2).]**

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Claims Example

- How does a Trustee respond to a claim? [Trustee has 30 days from the date of the claim or the expiration of the claims deadline to respond and object to a claim. If no response is provided, the claim is presumed valid.]
- Do the beneficiaries have a right to object to the claim? [QB can request list of claims after claims deadline. Within five business days of notice of a claim, QB can provide notice to the trustee if the QB objects to the claim.]
- When must a court proceeding be initiated to address a claim? [A petition to address contested claims shall be filed by any interested person within 60 days after the trustee's response or failure to respond to a claim.]

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Miscellaneous Provisions

- 701.0401(5m) – “Dry trusts” are permitted. You can create a trust with the intention to fund the trust later.
- 701.0414(2) – small trust termination amount is \$100,000 adjusted for inflation every five years. Effective 7/1/2024, amount increased to \$132,000.
- 701.0416 – trust may be modified or terminated to achieve settlor's tax objectives.
- 701.0505(1)(a)(2) – Settlor's right to receive reimbursement for income taxes arising from grantor trust treatment does not create creditor rights.

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Miscellaneous Provisions

- 701.0706 – Trustee can be removed if a substantial change in circumstances or removal requested by all QB; removal not inconsistent with material purpose; and a suitable successor trustee is available. [Eliminated “best serves the interests of all the beneficiaries.”]
- 701.0707(2) – Trustee who has been removed must deliver trust property within a reasonable time, subject to right to retain a reasonable reserve for payment of debts, expenses, and taxes.
- 701.0816(29) and (30) – trustee has power to fund SNT or ABLA account.
 - Note: In 2023 Act 267, Wisconsin DFI is authorized to establish a Wisconsin ABLA program, either independently or in collaboration with other states. A final recommendation on how to proceed is required by December 1, 2024.

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Uniform Powers of Appointment Act (UPOAA)

- Updated definitions.
- How to create, revoke or amend a power of appointment (POA) explained.
- How to exercise a POA.
- How to disclaim or release a POA.
- Rights of powerholder’s creditors in appointive property.
- Applies to all POA created before or after March 23, 2024.

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Questions?

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