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Wisconsin Pass-Through Entity-Level Tax: Partnerships

<https://www.revenue.wi.gov/Pages/FAQS/ise-passthroughpartnr.aspx> (visited 7/29/23)

General Election Questions

1. What is the purpose of the election?

To allow a partnership or limited liability company treated as a partnership to pay tax on items that would otherwise be reported by the partners. For any year in which an election is made, partners do not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the partnership.

2. How does a partnership make the election?

The partnership must check Box I in the return information section of 2022 [Form 3, Wisconsin Partnership Return](#). The partnership must have consent from partners who hold an aggregate of more than 50 percent of the capital and profits of a partnership on the day of the election, according to sec. [71.21\(6\)\(a\)](#), Wis. Stats.

3. When must the election be made?

The election must be made annually on or before the extended due date of the Wisconsin Form 3. The election is made on the day the Form 3 is filed.

4. How does an electing partnership receive an extension of time for filing the Wisconsin Form 3 return if the partnership is not requesting a federal extension?

Wisconsin allows two different types of extensions: Wisconsin-only extensions and federal extensions.

Wisconsin-only extensions

Wisconsin law provides for an extension of up to six months. To claim this extension, check Box B on Form 3 when filing the return and enter the extended due date.

Federal extensions

Any extension allowed by the Internal Revenue Service (IRS) automatically extends the Wisconsin due date to the federal extended due date, regardless of when the federal return is filed. To claim a federal extension for your Wisconsin Form 3 return, complete steps A and B below:

- A. Check Box B on Form 3 and enter the extended due date.
- B. Include a copy of the federal extension form or statement with the Form 3 when it is filed. Do not include a copy prior to filing the Form 3.

Caution: An extension for filing Form 3 doesn't extend the time to pay the franchise or income tax. Interest will be charged on the tax not paid by the 15th day of the 3rd month following the close of the taxable year. A partnership can avoid interest charges during the extension period by paying the tax due by that date. A payment can be made electronically or by submitting a check with Wisconsin [Form 3 ES](#), *Wisconsin Partnership Estimated Tax Voucher*. For information on submitting a payment, visit the department's [Make a Payment](#) web page under "Make a Payment - Corporations, Partnerships, & Pass-Through Withholding."

If Form 3 is filed late, without an extension, the partnership may be subject to penalties and interest.

For more information about extensions of time to file, see Wisconsin [Publication 401](#), *Extension of Time to File*, or the instructions for Wisconsin Form 3.

5. Can a partnership file an amended return to claim the election to pay tax at the entity level if the partnership already filed a Wisconsin Form 3 return without making the election?

Yes, a partnership may file an amended return to claim the election on or before the extended due date of the Wisconsin Form 3. The partnership must have consent from partners who hold an aggregate of more than 50 percent of the capital and profits of a partnership on the day the amended return is filed to make the election.

6. Can the election be revoked?

Yes, the election may be revoked by filing an amended Form 3 on or before the extended due date. Partners who hold an aggregate of more than 50 percent of the capital and profits of the partnership must consent to the revocation.

7. How does the electing partnership notify the partners that the election has been made?

The partnership notifies its partners by checking Box 3 under Part II, Item C of each partner's 2022 [Schedule 3K-1](#), *Partner's Share of Income, Deductions, Credits, etc.*

8. When making the election, will there be any signatures required to show consent of the partners?

No, the department does not require any additional signatures to show consent of the partners. Upon request from the department, the electing partnership must prove it received consent from partners who hold an aggregate of more than 50 percent of the capital and profits of the partnership on the day of the election.

9. Can a partnership with a short tax year make the election?

Yes, the election must be made before the extended due date of the partnership's short-period Wisconsin Form 3. Be sure to use the correct year's tax return when filing. If the tax returns are not yet available, wait until the returns become available (typically November 1) and file under extension. If the current year's tax return will not be available in time, contact the department's Customer Service Bureau at (608) 266-2772 or DORAuditPassThrough@wisconsin.gov.

Determining Income and Computing Tax

1. How does an electing partnership determine the situs of income?

The situs of income for an electing partnership is determined as if the election under sec. [71.21\(6\)\(a\)](#), Wis. Stats., was not made. Therefore, an electing partnership must determine income attributable to Wisconsin according to sec. [71.04](#), [71.14](#), [71.25](#), [71.362](#), or [71.45](#) Wis. Stats., depending on the type of partner.

Example 1 - Determining Wisconsin Sourced Income in a Single-Tiered Structure:

Facts

- Partners A and B each have 50-percent ownership interest in Partnership
- Partner A was a Wisconsin resident for the entire year in 2022
- Partner B was a nonresident of Wisconsin for the entire year in 2022
- In 2022, 25 percent of the partnership's income is earned in Wisconsin and 75 percent is earned in other states
- Partnership has \$100,000 of net ordinary business income in 2022 from the sale of tangible personal property
- Partnership makes an election under sec. 71.21(6)(a), Wis. Stats., to pay tax at the entity level for 2022

Computation of income attributable to Wisconsin	
	Partner A (res)
Portion of business income from partnership	\$50,000
Wisconsin apportionment % (situs of income)	100%
Partnership's Wisconsin source income	\$50,000

The electing partnership's Wisconsin income is **\$62,500** (\$50,000 + \$12,500).

Example 2 - Determining Wisconsin Sourced Income in a Multi-Tiered Structure:

Note: For multi-tiered entity tax calculations, the electing partnership must include a supplemental schedule with [Form 3](#), *Wisconsin Partnership Return*, showing how the tax is being computed.

Facts

- Partnership A operates a unitary business in California, New Jersey, and Wisconsin.

- Partnership A has three partners:
 - Partnership B is a 50% partner
 - Individual C is a 25% partner and a resident of New Jersey
 - Individual D is a 25% partner and a resident of Wisconsin

- Partnership A has \$20,000,000 of federal ordinary business income, no Wisconsin adjustments, and sales of tangible personal property as follows:

California sales (has nexus)	\$15,000,000	30%
New Jersey sales (has nexus)	\$7,500,000	15%
Wisconsin sales (has nexus)	\$27,500,000	55%
Sales to other states	\$0	
Total sales	\$50,000,000	

- Partnership A elects to pay tax at the entity-level under sec. 71.21(6)(a), Wis. Stats.

- Partnership B has four partners
 - Corporation E is a 40% partner
 - Corporation F is a 35% partner
 - Individual G is a 15% partner and a resident of Wisconsin
 - Individual H is a 10% partner and a resident of Minnesota

- Partnership B has no additional business activity other than its interest in Partnership A.
- All income and expense amounts of Partnerships A and B are allocated to each partner on a pro-rata basis based on ownership percentage.
- Corporations E and F both conduct business in Wisconsin and New York. The Wisconsin apportionment percentages for these corporations are as follows, after combining their share of the partnership's apportionment data with their own apportionment data:
 - Corporation E 30%
 - Corporation F 40%

Taxable Income: If Partnership A makes the election, it will owe tax on \$12,400,000 of Wisconsin taxable income. See the computations in Tables 1 and 2 below.

Organizational Structure:

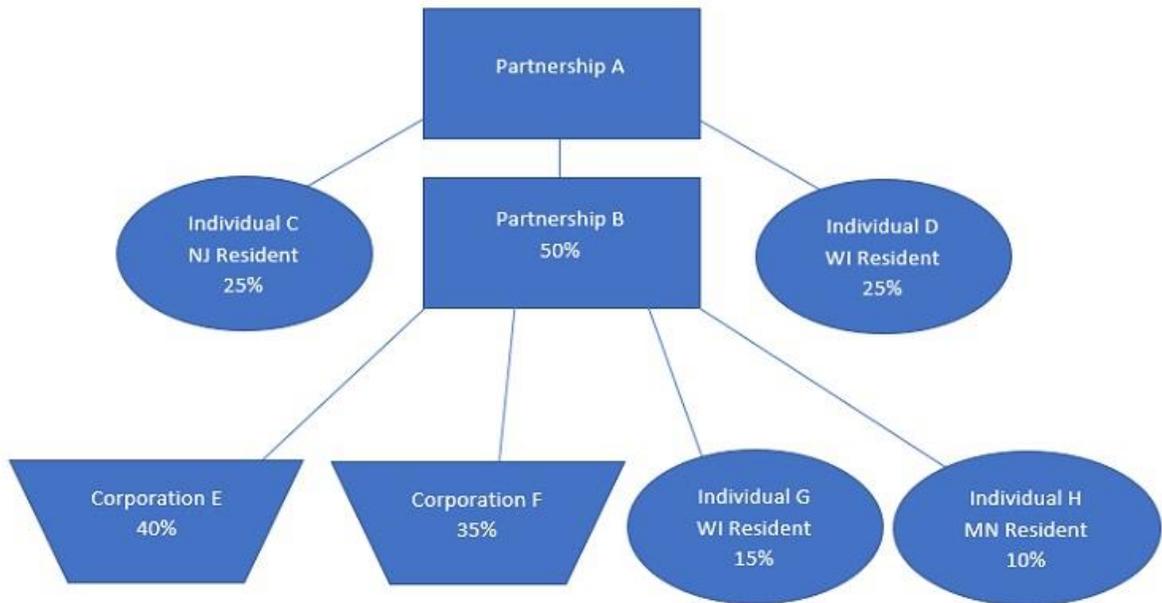


Table 1: Partnership A's Computation of Income Attributable to Wisconsin

	Partnership B	Individual C NJ Resident
Ownership % in Partnership A	50%	25%

Table 1: Partnership A's Computation of Income Attributable to Wisconsin

	Partnership B	Individual NJ Resident
Business income	\$10,000,000	\$5,000,000
WI apportionment	N/A	55%
WI taxable income	\$4,650,000 (see Table 2)	\$2,750,000

Table 2: Partnership B's Partners' Computation of Income Attributable to Wisconsin

	Corporation E	Corporation F	Individual WI Resident
Ownership % in Partnership B	40%	35%	15%
Business income	\$4,000,000	\$3,500,000	\$1,500,000
WI apportionment	30%	40%	N/A
WI taxable income	\$1,200,000	\$1,400,000	\$1,500,000

2. What is the entity-level tax rate?

The net income reportable to Wisconsin is taxed at 7.9% as provided in sec. [71.21\(6\)\(a\)](#), Wis. Stats., and is computed on [Schedule 3-ET, Entity-Level Tax Computation](#).

3. Are long-term capital gains taxed at a different rate?

No, there is no separate tax rate for long-term capital gains.

4. Can an electing partnership claim the 30-percent or 60-percent long-term capital gain exclusion for Wisconsin?

Yes, an electing partnership may claim the Wisconsin 30-percent or 60-percent long-term capital gain exclusion for the portion of long-term capital gain allocable to partners that would have been allowed the deduction if the entity-level tax election had not been made. For example, the long-term capital gain allocable to corporate partners would not be allowed the Wisconsin 30-percent or 60-percent long-term capital gain deduction at the entity level.

According to sec. [71.21\(6\)\(d\)1.](#), Wis. Stats., an electing partnership computes net income as provided in secs. 71.21(1) to (5), Wis. Stats. According to sec. [71.21\(1\)](#), Wis. Stats., net income of a partnership is computed in the same

manner and on the same basis as provided for computation of the income of persons other than corporations. Therefore, the partnership may claim the 30-percent and 60-percent long-term capital gain deductions under secs. [71.05\(6\)\(b\)9.](#) and [9m.](#), Wis. Stats.

According to sec. [71.21\(6\)\(b\)](#), Wis. Stats., it is the intent of the election that the partnership shall pay tax on items that would otherwise be taxed if the election was not made.

5. Is an electing partnership eligible to claim an exclusion of long-term capital gains from the sale of an investment in a qualified Wisconsin business or Wisconsin qualified opportunity fund?

No, according to secs. [71.05\(25\)\(a\)1.](#), and [\(25m\)\(a\)1.](#), Wis. Stats., a claimant must be an individual.

6. Can an electing partnership register to be a qualified Wisconsin business?

Yes, an electing partnership may register to be a qualified Wisconsin business if they otherwise qualify. See [Registration of Qualified Wisconsin Businesses](#) common questions on the department's website.

7. Can an electing partnership claim a deduction for charitable contributions?

No, an electing partnership may not deduct charitable contributions except for charitable contributions that would otherwise be allowed as a deduction for a fiduciary as provided in sec. [642](#), Internal Revenue Code (IRC).

According to sec. [71.21\(6\)\(d\)1.](#), Wis. Stats., an electing partnership computes net income as provided in secs. 71.21(1) to (5), Wis. Stats. According to sec. [71.21\(1\)](#), Wis. Stats., net income of a partnership is computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations. Section [71.01\(9\)](#), Wis. Stats., defines person as a natural person or fiduciary.

8. Can an electing partnership pass through charitable contributions to its partners?

No, an electing partnership may not pass through charitable contributions to its partners.

According to secs. [71.21\(6\)\(d\)1.](#), [71.21\(1\)](#), [71.01\(9\)](#), Wis. Stats., and sec. [642](#), IRC, charitable contributions are included in an electing partnership's net income, and therefore may not pass through to the partners.

9. Is an electing partnership subject to passive activity loss limitations?

Yes, an electing partnership is subject to passive activity loss limitations as provided in sec. [469](#), IRC.

According to sec. [71.21\(6\)\(d\)1.](#), Wis. Stats., an electing partnership computes net income as provided in secs. 71.21(1) to (5), Wis. Stats. According to

sec. [71.21\(1\)](#), Wis. Stats., net income of a partnership is computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations. Section [71.01\(9\)](#), Wis. Stats., defines person as a natural person or fiduciary. According to sec. [469\(a\)\(1\) and \(2\)](#), IRC, passive activity loss limitations apply to any individual estate, or trust.

10. How does the electing partnership determine the characterization of passive income or loss?

The electing partnership must determine the characterization of passive income or loss as if the election under sec. [71.21\(6\)\(a\)](#), Wis. Stats., was not made. Therefore, an electing partnership must determine how each partner would characterize the income or loss as if the election was not made. Passive losses may not be passed through to the partners; however, suspended losses may be carried forward by the electing partnership to be used to offset income in a subsequent year in which the election is made.

The electing partnership must complete a pro forma federal Form 8582, *Passive Activity Loss Limitations*, for Wisconsin in order to determine the allowable passive activity losses it may claim.

According to sec. [71.21\(6\)\(d\)1.](#), Wis. Stats., an electing partnership computes net income as provided in secs. 71.21(1) to (5), Wis. Stats. According to sec. [71.21\(1\)](#), Wis. Stats., net income of a partnership is computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations. Section [71.01\(9\)](#), Wis. Stats., defines person as a natural person or fiduciary. According to sec. [71.21\(6\)\(b\)](#), Wis. Stats., it is the intent that an electing partnership must pay tax on items that would otherwise be taxed if the election was not made.

11. What is the capital loss limitation for an electing partnership?

For taxable years beginning on or after January 1, 2019, and before January 1, 2023, an electing partnership is subject to a \$500 capital loss limitation.

For taxable years beginning on or after January 1, 2023, an electing partnership is subject to a \$3,000 capital loss limitation.

Capital losses may not be passed through to the partners; however, suspended losses may be carried forward by the electing partnership to be used to offset income in a subsequent year in which the election is made, to the extent allowed under Wisconsin law.

According to sec. [71.21\(6\)\(d\)1.](#), Wis. Stats., an electing partnership computes net income as provided in secs. 71.21(1) to (5), Wis. Stats. According to sec. [71.21\(1\)](#), Wis. Stats., net income of a partnership is computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations. Section [71.01\(9\)](#), Wis. Stats., defines person as a natural person or fiduciary.

12. Is an electing partnership subject to federal section 179 expense limitations?

Yes, an electing partnership is subject to federal section 179 expense limitations as provided in sec. [71.98](#), Wis. Stats. The limit is applied at the entity level.

13. Is an electing partnership allowed the federal special depreciation allowance or "bonus depreciation" under sec. 168(k), Internal Revenue Code (IRC)?

No, according to secs. [71.01\(6\)\(m\)](#) and [71.98](#), Wis. Stats., an electing partnership may not claim the federal special depreciation allowance provided in sec. 168(k), IRC.

14. How will depreciation that results from a partnership's election under sec. 754, IRC, be treated if the partnership makes an election to be taxed at the entity level?

The adjustment to partnership income as a result of a section [754](#), IRC, election is included in the electing partnership's calculation of Wisconsin income when determining tax at the entity level. This includes the election applied under both secs. [734\(b\)](#) and [743\(b\)](#), IRC.

The partnership includes the depreciation in the calculation of its Wisconsin income according to secs. [71.01\(6\)\(m\)](#) and [71.98](#), Wis. Stats., regardless if the entity-level tax election is made.

15. Can an electing partnership carry forward suspended capital and passive activity losses?

Yes, an electing partnership may carry forward suspended capital and passive activity losses. When the election is made, such losses may not pass through to partners; they are suspended until such time that the partnership may use them to offset income in a subsequent year in which the election is made.

16. Can an electing partnership carry back or carry forward net operating losses?

No, according to sec. [71.21\(6\)\(d\)2.](#), Wis. Stats., an electing partnership may not claim net operating losses under sec. [71.05\(8\)](#), Wis. Stats.

17. Can an electing partnership pass through net operating or business losses to its partners?

No, partners of an electing partnership may not include in their Wisconsin adjusted gross income their proportionate share of items of income, gain, loss, or deduction of the partnership, according to sec. [71.21\(6\)\(b\)](#), Wis. Stats.

18. Can an electing partnership claim credits to offset taxable income at the entity level?

According to sec. [71.21\(6\)\(d\)3.](#), Wis. Stats., an electing partnership may only claim a credit for other state taxes paid as provided under sec. [71.07\(7\)\(b\)3.](#), Wis. Stats.

19. Can an electing partnership pass through credits to its partners?

Yes, an electing partnership may pass through credits to its partners, except for the credit for taxes paid to other states by the partnership as provided in sec. [71.07\(7\)\(b\)2.](#), Wis. Stats.

20. How is the manufacturing and agriculture (M&A) credit included in Wisconsin income if a partnership makes an election to pay tax at the entity level in the year the M&A credit is computed and does not make the election to pay tax at the entity level in the following year?

The M&A credit must be added to the partnership's income for the year following the year in which the credit was computed as provided in sec. [71.21\(4\)\(b\)](#), Wis. Stats., regardless of whether the partnership makes the election to pay tax at the entity level.

21. How does an electing partnership compute the credit for taxes paid to another state?

An electing partnership must use [Schedule ET-OS, Credit for Net Tax Paid to Another State](#), to compute the allowable credit for taxes paid to another state. See Schedule ET-OS instructions for additional information.

22. Can an electing partnership claim a credit for taxes paid to another state if the taxes paid to the other state are paid by a partner on an individual income tax return?

No, in order for an electing partnership to receive credit for taxes paid to another state, the partnership must pay the taxes owed to the other state on a partnership income or franchise tax return, or pay tax to the other state on a composite return filed on behalf of its partners as provided in sec. [71.07\(7\)\(b\)3.](#), Wis. Stats.

23. Is withholding tax paid by an electing partnership in another state (e.g., Illinois) on behalf of its members considered a "composite return" for purposes of the Wisconsin entity-level credit for taxes paid to another state?

A partnership may claim a credit for withholding taxes paid to another state on behalf of a Wisconsin resident partner as provided in sec. [71.07\(7\)\(b\)3.](#), Wis. Stats., if all of the following apply:

- The law in the other state provides that the Wisconsin resident is not required to file an individual income tax return because the individual's net income tax liability is considered paid in full as a result of the withholding tax paid by the entity on the Wisconsin partner's income attributable to the other state.
- The Wisconsin resident does not file an individual income tax return in the other state. **Caution:** Although the individual is not required to file an Illinois income tax return, the individual may file such return with Illinois.
- The income taxed by the other state is attributable to amounts that would be reportable to Wisconsin if the entity-level tax election was not made.
- The partnership pays the liability shown on the other state's withholding tax return. Amounts paid to the other state are considered paid to that

other state only in the year in which the withholding tax return for that state was required to be filed.

- The partnership includes a copy of the other state's withholding tax return to its Wisconsin Form 3.
- The credit is claimed within four years of the unextended due date of the entity's return.

For example, Illinois law provides that a nonresident of Illinois who has had Illinois income tax withheld by a partnership is not required to file an Illinois individual income tax return if the nonresident's income tax liability is paid in full after taking into account the withholding.

24. Can a partnership making the election to pay tax at the entity level exclude income at the entity level if the income is attributable to a tax-exempt partner?

No, according to sec. [71.21\(6\)\(d\)1](#), Wis. Stats., an electing partnership computes net income as provided in secs. 71.21(1) to (5), Wis. Stats. According to sec. [71.21\(1\)](#), Wis. Stats., net income of a partnership is computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations. Section [71.01\(9\)](#), Wis. Stats., defines person as a natural person or fiduciary.

25. For Wisconsin purposes, how will the partnership entity-level tax election affect the deductible amount of a partner's interest expense related to a debt-financed acquisition of a partnership?

The interest paid by the partner is an expense incurred by the partner; it is not an expense of the partnership. The deductibility of the interest expense on the partner's Wisconsin income tax return is determined under the Internal Revenue Code (IRC) in effect for Wisconsin. The partner may deduct the interest expense to the extent allowable under Internal Revenue Service treas. reg. sec. [1.163-8T](#), and secs. [163\(d\)](#) and [469](#), IRC, in effect for Wisconsin, regardless of whether the partnership makes an election under sec. [71.21\(6\)\(a\)](#), Wis. Stats., to pay tax at the entity level.

26. For Wisconsin purposes, how will the partnership entity-level tax election affect the deductible amount of a partner's unreimbursed partnership expenses (UPE) reported on federal Schedule E, page 2?

The UPE paid by the partner is an expense incurred by the partner; it is not an expense of the partnership. The deductibility of the UPE expense on the partner's Wisconsin income tax return is determined under the IRC in effect for Wisconsin. The partner may deduct the UPE to the extent allowable under the IRC in effect for Wisconsin, regardless of whether the partnership makes an election under sec. [71.21\(6\)\(a\)](#), Wis. Stats., to pay tax at the entity level.

27. Is an electing partnership subject to Wisconsin franchise tax on federal, state, and municipal government interest that would otherwise be taxable to a partner that is a tax-option (S) corporation?

Yes, according to sec. [71.21\(6\)\(b\)](#), Wis. Stats., an electing partnership must pay tax on items that would otherwise be taxed if the election was not made. Therefore, if one of the partners is a corporation that would otherwise be subject to a franchise tax on the federal, state, and municipal government interest, the electing partnership must pay tax on this income.

28. How are guaranteed payments treated when calculating the partnership's Wisconsin taxable income?

According to sec. [71.21\(6\)\(b\)](#), Wis. Stats., the partnership shall pay tax on items that would otherwise be taxed if the election was not made. Accordingly, to the extent a partner would otherwise include the guaranteed payments in Wisconsin taxable income, the electing partnership must include the guaranteed payments in Wisconsin taxable income.

29. Can an electing partnership deduct from partnership income the health insurance premiums allowed as a deduction from a partner's income as self-employed health insurance according to sec. 162(I), IRC?

No, the deductibility of self-employed health insurance as provided in sec. [162\(I\)](#), IRC, is only allowed on the partner's Wisconsin income tax return to the extent allowable under the IRC in effect for Wisconsin, regardless of whether the partnership makes an election under sec. [71.21\(6\)\(a\)](#), Wis. Stats., to pay tax at the entity level.

30. Can an electing partnership deduct from partnership income retirement contributions paid by the partnership on behalf of a partner (i.e., the partnership reduces the amount of a partner's cash distributions to make retirement contributions)?

No, the deduction for retirement plan contributions as provided in sec. [404\(a\)\(8\)](#), of the Internal Revenue Code (IRC), is only allowed on the partner's Wisconsin income tax return to the extent allowable under the IRC in effect for Wisconsin, regardless of whether the partnership makes an election under sec. [71.21\(6\)\(a\)](#), Wis. Stats., to pay tax at the entity level.

31. Can an electing partnership deduct from partnership income the federal one-half of self-employment tax deduction provided in sec. 164(f), IRC?

No, the federal deduction for one-half of self-employment taxes resulting from a partnership's federal taxable income as provided in sec. [164\(f\)](#), IRC, may not be claimed by the partnership. However, the partner is allowed the deduction for Wisconsin purposes to the extent allowable under the IRC in effect for Wisconsin.

32. If a partner of an electing partnership had a suspended loss from a prior year due to basis limitations, may the electing partnership use the partner's suspended loss to reduce its Wisconsin taxable income in the current year?

No, an electing partnership may not use a partner's suspended loss from prior years when computing Wisconsin taxable income. Suspended loss due to a basis limitation occurs when a partner is disallowed business loss passed-through from a partnership because the partner does not have enough tax basis in the entity.

Note: According to sec. 71.21(6)(d)4., Wis. Stats., a partner's adjusted basis of the partner's interest in an electing partnership is determined as if the election was not made. Therefore, a partner with prior year suspended losses due to basis limitations may be able to deduct a portion of the suspended losses in a year the partner's basis in the partnership increases, regardless if the partnership makes the entity-level tax election.

Payments and Transferability Questions

1. **Can the partnership get credit for estimated tax payments made by its partners, or vice versa depending on whether an election is made?**

No, payments must be made separately by the partners and their partnership. The department will not transfer payments between an account of a partner and an account of a partnership. Partners and partnerships must file their respective Wisconsin income tax returns to receive a refund of their overpayments.

2. **Can an electing partnership transfer payments from the entity's pass-through withholding account (Form PW-ES payments) to the entity-level tax account (Form 3-ES payments)?**

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

3. **Can an electing partnership transfer payments from the entity-level income tax account (Form 3-ES payments) to the entity's pass-through withholding account (Form PW-ES payments)?**

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

4. **Is an electing partnership required to make quarterly estimated tax payments?**

Yes, estimated tax payment requirements and underpayment interest under secs. [71.09](#) and [71.84](#), Wis. Stats., apply.

For information on submitting a payment, visit the department's [Make a Payment](#) web page under "Make a Payment - Corporations, Partnerships, & Pass-Through Withholding."

Important:

- Make sure to identify the correct tax year when submitting a payment so that the payment is applied to the correct tax year's liability (e.g., use 2023 [Form 3-ES](#), *Wisconsin Partnership Estimated Tax Voucher* to make an estimated tax payment for the 2023 tax year liability).
- If paying through [My Tax Account](#), use "estimated payment" as the payment type.

5. How does a partnership make a payment if there is an amount due with the return?

For information on submitting a payment, visit the department's [Make a Payment](#) web page under "Make a Payment - Corporations, Partnerships, & Pass-Through Withholding."

Note: If making a return payment at the time of filing, submit your payment using one of the online options provided on our [Make a Payment](#) web page or submit your payment with your mailed return.

6. How does a partnership make a payment for an amount due on an amended return?

For information on submitting a payment, visit the department's [Make a Payment](#) web page under "Make a Payment - Corporations, Partnerships, & Pass-Through Withholding."

7. In the first year a partnership makes an election to pay tax at the entity level, is the partnership subject to underpayment interest on late estimated tax payments even if the prior year Wisconsin tax liability for the partnership was zero?

If the preceding taxable year was 12 months, the partnership had no Wisconsin tax liability in that year, and the partnership was a resident of Wisconsin for all of that year, then the electing partnership will not owe underpayment interest according to sec. [71.09\(11\)\(b\)](#), Wis. Stats.

According to sec. [71.21\(6\)\(d\)5.](#), Wis. Stats., the provisions of secs. [71.09](#) and [71.84](#), Wis. Stats., relating to estimated payments and underpayment interest shall apply to an electing partnership.

8. If an electing partnership does not pay the full amount of taxes due by the 15th day of the 3rd month following the close of the partnership's taxable year, what interest rate will apply?

The interest rate may be 12 percent or 18 percent as provided in secs. [71.82](#) and [71.84](#), Wis. Stats.

9. Is an electing partnership required to make pass-through withholding tax payments for nonresident partners?

No, according to sec. [71.775\(3\)\(a\)4.](#), Wis. Stats., an electing partnership is not required to make pass-through withholding tax payments for nonresident partners.

10. If an electing partnership made withholding tax payments for a nonresident partner, how does the withholding get refunded?

There are two primary methods for claiming a refund of pass-through withholding paid by a partnership:

- The electing partnership may file a [Form PW-1](#), *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, reflecting \$0 withholding tax computed in Part 2 of Form PW-1, **OR**
- The partners may file their respective Wisconsin income tax return and claim the withholding on their return.

11. Does the entity-level tax election change how a partnership reports its nonresident entertainer withholding paid by another person on its behalf?

No, the electing partnership may report the nonresident entertainer withholding paid by another person on its behalf using one of the two methods below, regardless of whether the partnership makes an election under sec. [71.21\(6\)\(a\)](#), Wis. Stats.

- As withholding on Line 5 of [Form 3](#), or
- As a [Form WT-11](#) withholding payment made on the entity's behalf on Line 4 of Form PW-1

Filing Schedule 3K-1 Questions

1. If the election is made, are Schedules 3K-1 required to be issued to the partners?

Yes, an electing partnership must provide each partner with a [Schedule 3K-1](#), *Partner's Share of Income, Deductions, Credits, etc.*, and include a supplemental statement detailing the items of income, gain, loss, and deduction that are included on the partnership's [Schedule 3-ET](#), *Form 3 Entity-Level Tax Computation*.

Amounts should be reported on Schedule 3K-1 in the same manner as if an election were not made.

Exceptions:

- An electing partnership may not pass through a credit for taxes paid to other states and partners may not use taxes paid by the partnership to compute a credit for taxes paid to other states.

- An electing partnership may not pass through Wisconsin withholding if the partnership claimed a refund of the pass-through withholding or submitted a written request to apply the pass-through withholding against the tax liability at the entity level.
- An electing partnership must provide a supplemental statement with each partner's Schedule 3K-1 detailing the items of income, gain, loss, deduction, and tax paid as a result of the election that are included on the electing partnership's Schedule 3-ET.

If Box 3 in Part II, Item C of the Schedule 3K-1 is checked (i.e., the election is made), the partners should not report the income, gain, loss, and deductions on their Wisconsin income tax return.

See the [Schedule 3K-1 instructions](#) for more information.

2. If the partnership is a member of a multi-tier pass-through entity structure and any of the lower-tiered entities made an election to pay tax at the entity level, how does the partnership complete Schedule 3K-1?

- If the member partnership is also making the election to pay tax at the entity level, the member partnership must check Boxes 3 and 4 in Part II, Item C of Schedule 3K-1 and provide each partner with a Schedule 3K-1 as explained in question 1 above.
- If the member partnership is **not** making the election to pay tax at the entity level, the member partnership must check Box 4 in Part II, Item C of Schedule 3K-1 and provide a supplemental statement with each partner's Schedule 3K-1 detailing the items of income, gain, loss, and deduction that have been taxed by a lower-tier entity.

Partner Reporting Questions

1. How will making the election impact a partner's adjusted basis in the interest of an electing partnership?

The adjusted basis of a partner's interest in an electing partnership is determined as if the election was not made as provided in sec. [71.21\(6\)\(d\)4.](#), Wis. Stats.

2. Can partners use the Wisconsin manufacturing and agriculture credit from an electing partnership to offset their Wisconsin individual income tax liability for the same taxable year?

No, a partner may only use the manufacturing and agriculture credit to offset a partner's tax liability resulting from the partner's prorated share of the partnership's income as provided in sec. [71.07\(5n\)\(c\)3.](#), Wis. Stats. Since a partner of an electing partnership does not have income and resulting tax from

the partnership in the year of the election, the partner cannot use the credit to offset income tax liability from other sources of income. The partner may carry forward the credit for 15 years and use the credit to offset tax liability resulting from the partner's prorated share of taxable income from the partnership for a year in which the election is not made.

3. **If a partnership makes the entity-level tax election, can an individual Wisconsin resident partner claim a credit for taxes paid to another state on the income from the electing partnership?**

No, an individual resident partner may not claim a credit for taxes they paid to another state against Wisconsin income taxes paid by the entity.

4. **How is the Wisconsin credit for taxes paid to other states (TPOS) calculated if a lower-tier entity makes the entity-level tax election but the upper-tier entity does not make the entity-level tax election?**

See example below.

Facts:

- Partnership A operates a unitary business in Wisconsin and State ZZ
- Partnership A has two equal partners:
 1. Individual B – Wisconsin resident
 2. Partnership Y – Equally owned by individuals C and D who are residents of Wisconsin
- Partnership A elects to pay tax at the partnership level in Wisconsin and State ZZ
- Partnership Y operates a unitary business in Wisconsin and State ZZ
- Partnership Y elects to pay tax at the entity level in State ZZ but not in Wisconsin

Calculation of Wisconsin TPOS Credit:

- Partnership A (lower-tier entity making entity-level tax election in Wisconsin and State ZZ): Calculate TPOS credit using [Schedule ET-OS, Credit for Net Tax Paid to Another State](#), based on Partnership A's income taxable to Wisconsin and State ZZ.
- Individual partner B (partner of Partnership A): There is no TPOS credit for taxable income from Partnership A because Partnership A made the entity-level tax election in Wisconsin; therefore, Partnership A's income is not taxable to partner B in Wisconsin.
- Partnership partner Y (partner of Partnership A and making entity-level tax election in State ZZ but **not** in Wisconsin): Report tax paid to State ZZ on Schedule 3K-1, line 15i. See [Form 3 instructions](#) for Schedule 3K, line 15i.
- Individual partners C and D (partners of Partnership Y): Calculate the TPOS credit using Parts III and IV of [Schedule OS, Credit for Net Tax Paid to Another State](#), based on each partners' share of net tax paid by Partnership Y and Partnership Y's income taxable to Wisconsin and State ZZ.

Caution: Individual partners C and D do not complete Schedule OS, lines 25-29 of Part III, to report tax paid by Partnership Y to State ZZ on the partners' behalf if **all** the following apply:

1. Partnership Y paid tax at the entity level in State ZZ,
2. Partnership Y did NOT elect to pay tax at the entity level in Wisconsin under sec. 71.21(6), Wis. Stats., and
3. Partners C and D received a **refundable** credit on their State ZZ individual income tax return for the full amount of their share of tax paid by Partnership Y at the entity level in State ZZ.

Instead, complete Schedule OS, lines 1-24 of Parts I, II, and III, and lines 30-41 of Part IV. Do NOT reduce the net tax on Schedule OS, line 22, by individual partner C's and D's credit claimed in State ZZ for tax paid by Partnership Y in State ZZ.

See [Schedule OS instructions](#) for more information.

5. **How is the Wisconsin credit for taxes paid to other states (TPOS) calculated if a partnership does not have nexus in Wisconsin, does not file a Wisconsin income/franchise tax return, and makes an election to pay tax at the entity-level in another state?**

The individual Wisconsin resident partner must calculate the TPOS credit using Parts III and IV of [Schedule OS](#), *Credit for Net Tax Paid to Another State*.

Caution: Do not complete Schedule OS, lines 25-29 of Part III, to report tax paid by a partnership to another state on the partner's behalf if **all** the following apply:

- The partnership paid tax at the entity level in another state,
- The partnership did NOT elect to pay tax at the entity level in Wisconsin under sec. 71.21(6), Wis. Stats., and
- The taxpayer received a **refundable** credit on their individual income tax return in the other state for the full amount of their share of tax paid at the entity level in the other state.

Instead, complete Schedule OS, lines 1-24 of Parts I, II, and III, and lines 30-41 of Part IV. Do NOT reduce the net tax on Schedule OS, line 22, by the credit claimed in the other state for tax paid by the entity in the other state.

See [Schedule OS instructions](#) for more information.

6. **If a partnership makes the entity-level tax election, can an individual partner claim the federal deduction for one-half of self-employment taxes resulting from the electing partnership's federal taxable income as provided in sec. 164(f), of the Internal Revenue Code (IRC), on their Wisconsin income tax return?**

An individual partner is allowed the federal deduction for one-half of self-employment taxes resulting from an electing partnership's federal taxable income to the extent allowable under the IRC in effect for Wisconsin.

7. **If a partnership makes the entity-level tax election, can an individual partner claim the federal deduction for self-employed health insurance premiums as provided in sec. 162(I), IRC, on their Wisconsin income tax return?**

An individual partner is allowed the federal deduction for self-employed health insurance premiums to the extent allowable under the IRC in effect for Wisconsin.

8. **If a partnership makes the entity-level tax election, can a partner claim a depreciation deduction as a result of a section 754, IRC, election made by the electing partnership?**

No, the adjustment to partnership income as a result of a section [754](#), IRC, election is included in the electing partnership's calculation of Wisconsin income when determining tax at the entity level. This includes the election applied under both secs. [734\(b\)](#) and [743\(b\)](#), IRC.

The partnership includes the depreciation in the calculation of its Wisconsin income according to secs. [71.01\(6\)\(m\)](#) and [71.98](#), Wis. Stats., regardless if the entity-level tax election is made.

9. **If a partnership makes the entity-level tax election, are the individual partners required to file a Wisconsin individual income tax return if they have no income reportable to Wisconsin?**

No, individual partners of an electing partnership that do not have any income reportable to Wisconsin are not required to file a Wisconsin individual tax return. However, partners must timely file a Wisconsin income tax return to claim credits or refunds.

10. **If a partnership makes the entity-level tax election, are estate or trust partners required to file a Wisconsin Form 2, *Wisconsin Fiduciary Income Tax for Estates or Trusts*, if they have no income reportable to Wisconsin?**

Yes, according to sec. [71.13](#), Wis. Stats., "annual returns of income of an estate or a trust shall be made to the department by the fiduciary thereof at or before the time such income is required to be reported to the internal revenue service under the internal revenue code."

11. **Are partners of an electing partnership required to include their Schedule 3K-1 with their Wisconsin individual income tax returns?**

Yes, individuals are required to include a copy of the [Schedule 3K-1, Partner's Share of Income, Deductions, Credits, etc.](#), regardless of whether the election is made. **Note:** The processing of a partner's tax return may be delayed if the Schedule 3K-1 is not included with the return.

12. If a nonresident of Wisconsin is a partner of two partnerships and only one makes the entity-level tax election, can the nonresident partner participate in the Wisconsin composite return, Form 1CNP, of the non-electing partnership?

The partner may participate in the Wisconsin composite return if its only source of Wisconsin income is from the non-electing partnership, the partner is not filing a separate Wisconsin income tax return for the same taxable year, and otherwise qualifies to participate in the composite return as provided in the [Form 1CNP instructions](#).

13. What items reported on a Schedule 3K-1 from an electing partnership can be claimed on a partner's income tax return?

A partner may claim credits passed through from the electing partnership reported on Schedule 3K-1 lines 15a through h.

Schedule 3K-1 Credit Exceptions

- Partners may not use the taxes paid by the electing partnership, including taxes paid on the partner's behalf on a composite return, to compute a credit for tax paid to another state. In addition, a resident partner may not claim credit for taxes they paid to another state on income taxed at the entity level in Wisconsin.
- Partners may not claim the manufacturing and agriculture credit passed through from an electing partnership in the year of the election. See common question #2 above.
- Nonresident partners may not claim Wisconsin withholding passed through from an electing partnership, if the partnership claimed a refund of the pass-through withholding or submitted a written request to apply the pass-through withholding against the tax liability at the entity level.

14. What items reported on a Schedule 3K-1 from an electing partnership may not be reported on a partner's income tax return?

All items reported on Schedule 3K-1 other than the items mentioned in common question #13 in this document.

15. If a partnership makes the entity-level tax election, how should a partner filing a Wisconsin tax return remove the proportionate share of the electing partnership's income that is taxed at the entity level?

The partner must report their federal adjusted gross income, using the Internal Revenue Code (IRC) in effect under Wisconsin law, on the partner's Wisconsin income tax return. The partner may add or subtract from federal adjusted gross income the amount of loss or income reported by the electing partnership that is included in the federal adjusted gross income.

Example:

Facts

- Partner A was a Wisconsin resident for the entire year in 2022
- Partner A owns 50 percent of Partnership

- Partner A's only sources of income for 2022 are \$15,000 of wages and \$100,000 of federal ordinary business income from the partnership
- Partnership makes an election under sec. 71.21(6)(a), Wis. Stats., to pay tax at the entity level for 2022
- Partnership's \$100,000 of federal ordinary business income for 2022 has the following Wisconsin differences:
 1. \$5,000 of Wisconsin tax paid by the partnership with its 2021 Form 3 deducted on the 2022 federal Form 1065
 2. \$10,000 of additional Wisconsin depreciation expense because of a different depreciable basis of an asset determined under the IRC in effect for Wisconsin purposes.

How partner A must report income and expense items from the electing partnership's Schedule 3K-1

- Partner A must:
 1. File [Form 1](#), *Wisconsin Income Tax*, because Partner A was a full-year Wisconsin resident,
 2. Use [Schedule I](#), *Adjustments to Convert Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin*, to reduce federal adjusted gross income by \$10,000 of additional depreciation.
 3. Use [Schedule AD](#), *Form 1 - Additions to Income*, Line 30, to report the addition modification of \$5,000 relating to the tax paid to Wisconsin with the 2021 Form 3 and deducted on the 2022 federal Form 1065, and
 4. Use [Schedule SB](#), *Form 1 - Subtractions from Income*, Line 48 to report a \$95,000 subtraction modification for Wisconsin income taxed at the entity level of the partnership.

Computation of the \$95,000 subtraction for Wisconsin income reported by the partnership

Description
Federal ordinary business income from the partnership
Schedule I depreciation difference
Schedule AD (line 30) - addition modification relating to tax paid to Wisconsin and deducted on federal
Schedule SB (line 48) - subtraction modification for Wisconsin income reported by the partnership

16. **Can the removal of an electing partnership's income from the partner's individual income tax return create a Wisconsin net operating loss (NOL) if the partner does not have a federal NOL?**

No, according to secs. [71.01\(3\)](#) and [\(14\)](#), Wis. Stats., an individual must have a federal NOL in order to have a Wisconsin NOL. The only exceptions are:

- If a taxpayer is a part-year or nonresident of Wisconsin and a portion of the federal adjusted gross income does not have situs in Wisconsin, or
- If a tax-option (S) corporation shareholder's allowable deduction for their pro rata share of the corporation's losses results in a loss on the shareholder's Wisconsin income tax return, the loss generally will be treated in the same manner as other Wisconsin NOLs. However, unlike other Wisconsin NOLs, Wisconsin tax-option (S) corporation losses may be claimed even if the shareholder has no federal NOL.

Note: Wisconsin [Publication 120](#), *Net Operating Losses for Individuals, Estates, and Trusts*, provides more information regarding NOL.

17. When an individual partner is determining household income for purposes of claiming the homestead credit, must the individual partner include income from a partnership making the entity-level tax election?

No, according to secs. [71.21\(6\)\(b\)](#) and [71.52\(6\)](#), Wis. Stats., income from an electing partnership is not included in the individual partner's Wisconsin adjusted gross income or household income.

18. When an individual partner is determining earned income for purposes of claiming the Wisconsin earned income credit, must the individual partner remove the items of income, gain, loss, or deduction received from the electing partnership?

No, according to sec. [71.07\(9e\)\(aj\)](#), Wis. Stats., the Wisconsin earned income credit is based on the federal earned income credit under the IRC in effect for Wisconsin purposes.