

Wisconsin Guidance on Pass-Through Entity-Level Tax: Tax-Option (S) Corporation

<https://www.revenue.wi.gov/Pages/FAQS/ise-passthroughtaxscorp.aspx>

(visited 7/29/23)

General Election Questions

1. What is the purpose of the election?

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

2. How does a tax-option (S) corporation make the election?

The tax-option (S) corporation must check box #7 in Part A of Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*. The tax-option (S) corporation must have consent from shareholders who hold an aggregate of more than 50 percent of the shares of a tax-option (S) corporation on the day of the election, according to sec. [71.365\(4m\)\(a\)](#), 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 5S. The election is made on the day the Form 5S is filed.

4. How does an electing tax-option (S) corporation receive an extension of time for filing the Wisconsin Form 5S return if the tax-option (S) corporation 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 an automatic extension of 7 months. To claim this extension, simply check Item B on Form 5S and enter the extended due date.

Federal extensions

Any extension allowed by the Internal Revenue Service (IRS) automatically extends the Wisconsin due date to 30 days after the federal extended due date, regardless of when the federal return is actually filed. To claim a federal extension for your Wisconsin Form 5S return, complete steps A and B below:

- a. Check Item B on Form 5S and enter the extended due date.
- b. Submit a copy of the federal extension form or statement with the Form 5S when it is filed. Do not submit a copy prior to filing the Form 5S.

For more information about extensions of time to file, see Wisconsin Publication 401, *Extension of Time to File*, or the instructions for Wisconsin Form 5S.

5. Can a tax-option (S) corporation file an amended return to claim the election to pay tax at the entity level if the corporation already filed a Wisconsin Form 5S return without making the election?

Yes, a tax-option (S) corporation may file an amended return to claim the election on or before the extended due date of the Wisconsin Form 5S. The tax-option (S) corporation must have consent from shareholders who hold an aggregate of more than 50 percent of the shares of a tax-option (S) corporation 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 5S on or before the extended due date. Shareholders who hold an aggregate of more than 50 percent of the shares of the tax-option (S) corporation must consent to the revocation.

7. How does an electing tax-option (S) corporation notify the shareholders that the election has been made?

The tax-option (S) corporation notifies the shareholders by checking box #3 in Part B of each shareholder's Schedule 5K-1, *Tax-Option (S) Corporation Shareholder's Share of Income, Deductions, Credits, etc.*

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

No, the department does not require any additional signatures to show consent of the shareholders. Upon request from the department, the electing tax-option (S) corporation must prove it received consent from shareholders who hold an aggregate of more than 50 percent of the shares of the tax-option (S) corporation on the day of the election.

9. Can a tax-option (S) corporation with a short tax year make the election?

Yes, a tax-option (S) corporation may make the election for taxable years beginning on or after January 1, 2018. However, the election must be made before the extended due date of the tax-option (S) corporation's short period Wisconsin Form 5S. If a tax-option (S) corporation would like to make the election and has a short period, the Form 5S's extended due date has not passed, and the Schedule 5S-ET is not available to file Form 5S, contact the department's Customer Service Bureau at (608) 266-2772 or DORAuditPassThrough@wisconsin.gov.

10. **If a tax-option (S) corporation is the owner of a qualified subchapter S subsidiary (Qsub), can the parent tax-option (S) corporation make the election to pay tax at the entity level?**

Yes, a tax-option (S) corporation that is the owner of a Qsub may make the election to pay tax at the entity level.

Note: A Qsub does not file an income or franchise tax return separate from its owner, regardless of whether the owner makes the entity-level tax election.

Determining Income and Computing Tax

1. **How does an electing tax-option (S) corporation determine the situs of income?**

The situs of income for an electing tax-option (S) corporation is determined as if the election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats., was not made. Therefore, an electing tax-option (S) corporation must determine income attributable to Wisconsin for each shareholder according to secs. [71.04](#) and [71.362](#), Wis. Stats., and use that method for determining the situs of income to the corporation.

Example:

Facts

- Shareholders A and B each own 50 percent of Tax-Option (S) Corporation
- Shareholder A was a Wisconsin resident for the entire year in 2022
- Shareholder B was a nonresident of Wisconsin for the entire year in 2022
- In 2022, 25 percent of Tax-Option (S) Corporation's income is earned in Wisconsin and 75 percent is earned in other states
- Tax-Option (S) Corporation has \$100,000 of net ordinary business income for 2022
- Tax-Option (S) Corporation makes an election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats., to pay tax at the entity level for 2022

Computation of income attributable to Wisconsin

	Shareholder A (resident)
Portion of business income from the tax-option (S) corporation	\$50,000
Wisconsin apportionment % (situs of income)	100%
Shareholder's Wisconsin income from the tax-option (S) corporation	\$50,000

The electing tax-option (S) corporation's Wisconsin income is \$62,500 (\$50,000 + \$12,500).

2. What is the entity-level tax rate?

The net income reportable to Wisconsin is taxed at 7.9% as provided in sec. [71.365\(4m\)\(a\)](#), Wis. Stats., and is computed on Schedule 5S-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 tax-option (S) corporation claim the 30-percent or 60-percent long-term capital gain exclusion under sec. 71.05(6)(b)9. or 9m., Wis. Stats.?

For taxable years beginning on or after January 1, 2018, and before January 1, 2020, an electing tax-option (S) corporation may not claim the Wisconsin 30-percent or 60-percent long-term capital gain exclusion under sec. [71.05\(6\)\(b\)9.](#) or [9m.](#), Wis. Stats.

For taxable years beginning after December 31, 2019, an electing tax-option (S) corporation may claim the Wisconsin 30-percent or 60-percent long-term capital gain exclusion under sec. [71.05\(6\)\(b\)9.](#) or [9m.](#), Wis. Stats.

The modification under sec. [71.365\(4m\)\(d\)1.b.](#), Wis. Stats., applies to taxable years beginning after December 31, 2019.

5. Can an electing tax-option (S) corporation claim the capital gain exclusion for the sale of an investment in a qualified Wisconsin business?

No, an electing tax-option (S) corporation may not claim the capital gain exclusion for the sale of an investment in a qualified Wisconsin business under sec. [71.05\(25\)](#), Wis. Stats.

Except for the modifications listed under sec. [71.365\(4m\)\(d\)](#), Wis. Stats., the net income of an electing tax-option (S) corporation is computed under sec. [71.34\(1k\)](#), Wis. Stats., which provides that net income or loss of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code (IRC), as defined under sec. [71.34\(1g\)](#), Wis. Stats. The IRC does not provide an exclusion for the sale of an investment in a qualified Wisconsin business. Additionally, according to sec. [71.05\(25\)\(a\)1.](#), Wis. Stats., only an individual may claim a capital gain exclusion from the sale of investment in a qualified Wisconsin business.

6. Can an electing tax-option (S) corporation register to be a qualified Wisconsin business?

Yes, an electing tax-option (S) corporation may register to be a qualified Wisconsin business if they otherwise qualify. [See common questions on the department's website.](#)

7. Can an electing tax-option (S) corporation claim a deduction for charitable contributions?

No, an electing tax-option (S) corporation may not deduct charitable contributions and may not pass through charitable contributions to its shareholders.

Except for the modifications listed under sec. [71.365\(4m\)\(d\)](#), Wis. Stats., the net income of an electing tax-option (S) corporation is computed under sec. [71.34\(1k\)](#), Wis. Stats., which provides that net income or loss of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code (IRC), as defined under sec. [71.34\(1g\)](#), Wis. Stats. According to sec. [1363\(b\)\(2\)](#), IRC, taxable income of a tax-option (S) corporation is computed in the same manner as an individual as provided under the IRC, except that the deductions referred to in sec. [703\(a\)\(2\)](#), IRC, shall not be allowed to the corporation. Section [703\(a\)\(2\)\(C\)](#), IRC, provides that the deduction for charitable contributions provided in sec. [170](#), IRC, are not allowed.

According to sec. [71.34\(1k\)\(b\)](#), Wis. Stats., charitable contributions are included in a tax-option (S) corporation's net income, and therefore may not pass through to the shareholders.

8. Is an electing tax-option (S) corporation subject to passive activity loss limitations?

Yes, an electing tax-option (S) corporation is subject to passive activity loss limitations as provided in sec. [469](#), IRC.

Except for the modifications listed under sec. [71.365\(4m\)\(d\)](#), Wis. Stats., the net income of an electing tax-option (S) corporation is computed under sec. [71.34\(1k\)](#), Wis. Stats. Section [71.34\(1k\)](#), Wis. Stats. provides that net income or loss of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code (IRC), as defined under sec. [71.34\(1g\)](#), Wis. Stats. According to sec. [1363\(b\)](#), IRC, taxable income of a tax-option (S) corporation is computed in the same manner as an individual under the IRC.

9. How does an electing tax-option (S) corporation determine the characterization of passive income or loss?

The electing tax-option (S) corporation must determine the characterization of passive income or loss as if the election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats., was not made. Therefore, an electing tax-option (S) corporation must determine how each shareholder would characterize the income or loss as if the election was not made. Passive losses may not be passed through to the shareholders; however, suspended losses may be carried forward by the electing tax-option (S) corporation to be used to offset income in a subsequent year in which the election is made.

The electing tax-option (S) corporation 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.

Except for the modifications listed under sec. [71.365\(4m\)\(d\)](#), Wis. Stats., the net income of an electing tax-option (S) corporation is computed under

sec. [71.34\(1k\)](#), Wis. Stats. Section [71.34\(1k\)](#), Wis. Stats. provides that net income or loss of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code (IRC), as defined under sec. [71.34\(1g\)](#), Wis. Stats. According to sec. [1363\(b\)](#), IRC, taxable income of a tax-option (S) corporation is computed in the same manner as an individual under the IRC. According to sec. [71.365\(4m\)\(b\)](#), Wis. Stats., it is the intent that an electing tax-option (S) corporation must pay tax on items that would otherwise be taxed if the election was not made.

10. What is the capital loss limitation for an electing tax-option (S) corporation?

For taxable years beginning on or after January 1, 2018, and before January 1, 2020, an electing tax-option (S) corporation is subject to a \$3,000 capital loss limitation.

For taxable years beginning on or after January 1, 2020, and before January 1, 2023, an electing tax-option (S) corporation is subject to a \$500 capital loss limitation.

For taxable years beginning on or after January 1, 2023, an electing tax-option (S) corporation is subject to a \$3,000 capital loss limitation.

Except for the modifications listed under sec. [71.365\(4m\)\(d\)](#), Wis. Stats., the net income of an electing tax-option (S) corporation is computed under sec. [71.34\(1k\)](#), Wis. Stats. Section [71.34\(1k\)](#), Wis. Stats. provides that net income or loss of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code (IRC), as defined under sec. [71.34\(1g\)](#), Wis. Stats. According to sec. [1363\(b\)](#), IRC, taxable income of a tax-option (S) corporation is computed in the same manner as an individual under the IRC.

The modification under sec. [71.365\(4m\)\(d\)1.a.](#), Wis. Stats., limits the capital loss deduction to \$500 for taxable years beginning after December 31, 2019, and before January 1, 2023. The modification under sec. [71.365\(4m\)\(d\)1.am.](#), Wis. Stats., limits the capital loss deduction to \$3,000 for taxable years beginning after December 31, 2022.

11. Is an electing tax-option (S) corporation subject to federal section 179 expense limitations?

Yes, an electing tax-option (S) corporation is subject to federal section 179 expense limitations, as provided in sec. [71.34\(1k\)](#), Wis. Stats. The limit is applied at the entity level.

12. Can an electing tax-option (S) corporation claim the federal special depreciation allowance, bonus depreciation, under sec. 168(k), Internal Revenue Code (IRC)?

No, an electing tax-option (S) corporation may not claim the federal special depreciation allowance provided in sec. [168\(k\)](#), IRC.

Except for the modifications listed under sec. [71.365\(4m\)\(d\)](#), Wis. Stats., the net income of an electing tax-option (S) corporation is computed under sec. [71.34\(1k\)](#), Wis. Stats. Section [71.34\(1k\)](#), Wis. Stats., provides that net

income or loss of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code (IRC), as defined under secs. [71.34\(1g\)](#) and [71.98](#), Wis. Stats. These sections exclude the federal special depreciation allowance provided in sec. 168(k), IRC.

13. Can an electing tax-option (S) corporation carry forward suspended capital and passive activity losses?

Yes, an electing tax-option (S) corporation may carry forward suspended capital and passive activity losses. When an election is made, such losses may not pass through to shareholders; they are suspended until such time that the tax-option (S) corporation may use them to offset income in a subsequent year in which the election is made.

14. Can an electing tax-option (S) corporation carry back or carry forward net business losses?

No, according to sec. [71.365\(4m\)\(d\)3.](#), Wis. Stats., an electing tax-option (S) corporation may not claim net operating or business losses under secs. [71.05\(8\)](#) and [71.26\(4\)](#), Wis. Stats.

15. Can an electing tax-option (S) corporation pass through net business losses to its shareholders?

No, shareholders of an electing tax-option (S) corporation may not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the tax-option (S) corporation, according to sec. [71.365\(4m\)\(b\)](#), Wis. Stats.

16. Can an electing tax-option (S) corporation claim credits to offset taxable income at the entity level?

According to sec. [71.365\(4m\)\(d\)2.](#), Wis. Stats., an electing tax-option (S) corporation may only claim a credit for other state taxes paid under sec. [71.07\(7\)\(b\)3.](#), Wis. Stats.

17. Can an electing tax-option (S) corporation pass through credits to its shareholders?

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

18. How is the manufacturing and agriculture (M&A) credit included in Wisconsin income if a tax-option (S) corporation 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 tax-option (S) corporation's income for the year following the year in which the credit was computed as provided in

sec. [71.26\(2\)\(a\)11.](#), Wis. Stats., regardless of whether the tax-option (S) corporation makes the election to pay tax at the entity level.

19. How does an electing tax-option (S) corporation compute the credit for taxes paid to another state?

An electing tax-option (S) corporation must use Schedule ET-OS to compute the allowable credit for taxes paid to another state. See Schedule ET-OS instructions for additional information.

20. Can an electing tax-option (S) corporation claim a credit for taxes paid to another state if the taxes paid to the other state are paid by a shareholder on an individual income tax return?

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

21. Is withholding tax paid by an electing tax-option (S) corporation 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 tax-option (S) corporation may claim a credit for withholding taxes paid to another state on behalf of a Wisconsin resident shareholder 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 shareholder'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 tax-option (S) corporation 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 tax-option (S) corporation includes a copy of the other state's withholding tax return with its Wisconsin Form 5S.
- 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 tax-option (S) corporation 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.

22. Can a tax-option (S) corporation 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 shareholder (e.g., employee stock ownership plan)?

No, according to sec. [71.365\(4m\)\(d\)](#), Wis. Stats., net income of an electing tax-option (S) corporation is computed under sec. [71.34\(1k\)](#), Wis. Stats., which provides that net income or loss of a tax-option (S) corporation means net income or loss computed under the Internal Revenue Code (IRC), as defined under sec. [71.34\(1g\)](#), Wis. Stats. According to sec. [1363\(b\)](#), IRC, taxable income of a tax-option (S) corporation is computed in the same manner as an individual as provided under the IRC.

23. For Wisconsin purposes, how will the tax-option (S) corporation entity-level tax election affect the deductible amount of a shareholder's interest expense related to a debt-financed acquisition of stock of the electing tax-option (S) corporation?

The interest paid by the shareholder is an expense incurred by the shareholder; it is not an expense of the tax-option (S) corporation. The deductibility of the interest expense on the shareholder's Wisconsin income tax return is determined under the Internal Revenue Code (IRC) in effect for Wisconsin. The shareholder 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 tax-option (S) corporation makes an election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats., to pay tax at the entity level.

24. Where does an electing tax-option (S) corporation report taxable federal, state, and municipal government interest that would have been reported on line 1 of Form 5S if the entity-level tax election was not made?

Taxable federal, state, and municipal government interest is reported on line 1 of Form 5S regardless of whether the tax-option (S) corporation makes an election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats., to pay tax at the entity level. The interest is not included as part of the entity level tax computation on Schedule 5S-ET.

25. Can an electing tax-option (S) corporation claim a deduction for health insurance premiums paid on behalf of a greater than 2-percent shareholder?

An electing tax-option (S) corporation is allowed to deduct health insurance premiums paid on behalf of a greater than 2-percent shareholder as wage expense reportable on the shareholder's Form W-2. The electing tax-option (S) corporation may not also claim the self-employed health insurance deduction allowed on the shareholder's tax return. **Note:** The shareholder may still claim

their self-employed health insurance deduction as if the election to pay tax at the entity level was not made.

26. If a shareholder of an electing tax-option (S) corporation had a suspended loss from a prior year due to basis limitations, can the electing tax-option (S) corporation use the shareholder's suspended loss to reduce its Wisconsin taxable income in the current year?

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

Note: According to sec. 71.365(1)(b), Wis. Stats., a shareholder's adjusted basis of the shareholder's stock in an electing tax-option (S) corporation is determined as if the election was not made. Therefore, a shareholder with prior year suspended losses due to basis limitations may be able to deduct a portion of the suspended losses in a year the shareholder's basis in the stock of the tax-option (S) corporation increases, regardless if the tax-option (S) corporation makes the entity-level tax election.

Payments and Transferability Questions

1. Can the tax-option (S) corporation get credit for estimated tax payments made by its shareholders, or vice versa depending on whether an election is made?

No, payments must be made separately by the shareholders and their tax-option (S) corporation. The department will not transfer payments between an account of an individual and an account of a corporation. Shareholders and tax-option (S) corporations must file their respective Wisconsin income tax returns to receive a refund of their overpayments.

2. Can an electing tax-option (S) corporation transfer payments from the entity's pass-through withholding account (Form PW-ES payments) to the entity-level tax account (Form Corp-ES payments)?

Yes, the tax-option (S) corporation 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 tax-option (S) corporation transfer payments from the entity-level tax account (Form Corp-ES payments) to the entity's pass-through withholding account (Form PW-ES payments)?

Yes, the tax-option (S) corporation may submit a written request to move payments from the entity-level tax income tax account 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. Can overpayment of estimated taxes for the economic development surcharge be applied to the tax-option (S) corporation's tax liability resulting from the entity-level tax election and vice versa?

Yes, overpayment of estimated taxes for the economic development surcharge or entity-level tax liability may be used to offset tax liability from either tax.

5. Is an electing tax-option (S) corporation required to pay the entity-level tax by the unextended due date of its return (Form 5S) if the tax-option (S) corporation is filing under an extension?

Yes, an extension of time to file does not extend a deadline to pay an amount due. A tax-option (S) corporation must pay any amount due by the unextended due date to avoid interest charges. A payment can be made by submitting Form Corp-ES with a check, or an electronic payment using [ACH](#) or [My Tax Account](#). For additional information, see the [instructions](#) for Form Corp-ES or go to www.revenue.wi.gov/pay.

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 2022 Form Corp-ES to make a payment for a 2022 tax year liability).
- If paying through My Tax Account, use "return tax payments" as the payment type.

6. Is an electing tax-option (S) corporation required to make quarterly estimated tax payments?

Yes, except for taxable years beginning in 2018, estimated payments and underpayment interest under secs. [71.29](#) and [71.84](#), Wis. Stats., apply. A payment can be made by submitting Form Corp-ES with a check, or an electronic payment using [ACH](#) or [My Tax Account](#). For additional information, see the [instructions](#) for Form Corp-ES or go to www.revenue.wi.gov/pay.

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 Corp-ES 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.

7. How does a tax-option (S) corporation make a payment if there is an amount due with the return?

There are three methods an electing tax-option (S) corporation may use to make a return payment:

- Electronically: Make the payment through My Tax Account, by selecting "return payment" and **confirm** the payment is for the same year as the year of the tax return (e.g., tax year 2022 must be selected to make a return payment for a 2022 calendar year Form 5S).

- Electronically: Make the return payment through the corporation's accounting software supported by the Wisconsin Department of Revenue (e.g., ACH payment through QuickBooks).

- Paper: Mail a check with the correct year Form C-PV, *Wisconsin Corporation Payment Voucher*. Make checks payable and mail to:

Wisconsin Department of Revenue
Box 3028
Milwaukee WI 53201-3028

For more information, go to www.revenue.wi.gov/pay.

8. How does a tax-option (S) corporation make a payment for an amount due on an amended return?

There are three methods an electing tax-option (S) corporation may use to make an amended return payment:

- Electronically: Make the amended return payment through My Tax Account, by selecting "amended return payment" and confirm the payment is for the same year as the year of the tax return (e.g., tax year 2022 must be selected to make an amended return payment for a 2022 calendar year Form 5S).

- Electronically: Make the return payment through the corporation's accounting software supported by the Wisconsin Department of Revenue (e.g., ACH payment through QuickBooks).

- Paper: Mail a check with the correct year Form C-PV, *Wisconsin Corporation Payment Voucher*. Make checks payable and mail to:

Wisconsin Department of Revenue
Box 3028
Milwaukee WI 53201-3028

For more information, go to www.revenue.wi.gov/pay.

9. In the first year a tax-option (S) corporation makes an election to pay tax at the entity level, is the corporation subject to underpayment interest on late estimated tax payments even if the prior year Wisconsin tax liability for the corporation was zero?

- For taxable year 2018, underpayment interest does not apply to an electing tax-option (S) corporation. See sec. [71.365\(4m\)\(d\)4.](#), Wis. Stats.
- For taxable year 2019, an electing tax-option (S) corporation is exempt from underpayment interest if all of the following conditions are met:
 - The electing tax-option (S) corporation had zero income or franchise tax liability in the 2018 taxable year,
 - The 2018 taxable year was 12 months, and
 - The electing tax-option (S) corporation's 2019 Wisconsin net income is less than \$250,000.

Note: If the tax-option (S) corporation's 2019 Wisconsin net income is \$250,000 or greater, the tax-option (S) corporation must make estimated tax payments according to sec. [71.29\(10\)](#), Wis. Stats.

- For taxable years beginning on or after January 1, 2020, an electing tax-option (S) corporation is exempt from underpayment interest if both of the following conditions are met:
 - The preceding taxable year was 12 months and
 - The tax-option (S) corporation had zero income or franchise tax liability for the preceding taxable year, regardless of the amount of its Wisconsin net income in the current taxable year.

Note: If the tax-option (S) corporation does not meet the two conditions listed above, then the tax-option (S) corporation must make estimated payments according to sec. [71.29\(9\)](#), Wis. Stats.

10. If an electing tax-option (S) corporation has a tax liability and does not pay the full amount of taxes due by the original due date of the entity's Wisconsin tax return, 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. See Part II of [Form U](#) for more information.

11. Is an electing tax-option (S) corporation required to make pass-through withholding tax payments for nonresident shareholders?

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

12. If an electing tax-option (S) corporation made withholding tax payments for a nonresident shareholder, how does the withholding get refunded?

There are two primary methods for claiming a refund of pass-through withholding paid by an electing tax-option (S) corporation:

- The electing tax-option (S) corporation 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 shareholder(s) may file their respective Wisconsin income tax return and claim the withholding on their return.

13. Does the election to be taxed at the entity level under sec. 71.365(4m)(a), Wis. Stats., change how the tax-option (S) corporation reports its nonresident entertainer withholding paid by another person on its behalf?

No. The tax-option (S) corporation may report the nonresident entertainer withholding paid by another person on its behalf using one of the two methods below, regardless of whether the corporation makes an election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats.

- As withholding on Line 13 of Form 5S, or
- As a Form WT-11 withholding payment made on the entity's behalf on Line 4 of Form PW-1

Schedule 5K-1 Questions

1. If the election is made, are Schedules 5K-1 required to be issued to the shareholders?

Yes, an electing tax-option (S) corporation must provide each shareholder with a Schedule 5K-1. Amounts should be reported on Schedule 5K-1 in the same manner as if an election were not made.

Exceptions:

- An electing tax-option (S) corporation may not pass through a credit for taxes paid to other states and shareholders may not use taxes paid by the tax-option (S) corporation to compute a credit for taxes paid to other states.

- An electing tax-option (S) corporation may not pass through Wisconsin withholding if the corporation 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 tax-option (S) corporation must provide a supplemental statement with each shareholder's Schedule 5K-1 detailing the items of income, gain, loss, deduction, and tax paid as a result of the election that are included on the electing tax-option (S) corporation's Schedule 5S-ET.

If box #3 in Part B of Schedule 5K-1 is checked (i.e., the election is made), the shareholders should not report the income, gain, loss, and deductions on their Wisconsin individual tax returns.

See the [Schedule 5K-1 instructions](#) for more information.

2. If the tax-option (S) corporation 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 tax-option (S) corporation complete Schedule 5K-1?

- If the tax-option (S) corporation is also making the election to pay tax at the entity level, the tax-option (S) corporation must check boxes #3 and #4 in Part B of Schedule 5K-1 and provide each shareholder with a Schedule 5K-1 as explained in question 1 above.
- If the tax-option (S) corporation is **not** making the election to pay tax at the entity level, the tax-option (S) corporation must check box #4 in Part B of Schedule 5K-1 and provide a supplemental statement with each shareholder's Schedule 5K-1 detailing the items of income, gain, loss, and deduction that have been taxed by a lower-tier entity.

Shareholder Reporting Questions

1. How will making the election impact a shareholder's adjusted basis in their stock and indebtedness of the tax-option (S) corporation?

The adjusted basis of a shareholder in the stock and indebtedness of an electing tax-option (S) corporation is determined as if the election was not made as provided in sec. [71.365\(1\)\(b\)](#), Wis. Stats.

2. Can shareholders use the Wisconsin manufacturing and agriculture credit from an electing tax-option (S) corporation to offset their Wisconsin individual income tax liability for the same taxable year?

No, a shareholder may only use the manufacturing and agriculture credit to offset their tax liability resulting from their prorated share of the tax-option (S) corporation's income as provided in sec. [71.07\(5n\)\(c\)3.](#), Wis. Stats. Since a shareholder of an electing tax-option (S) corporation does not have income and resulting tax from the tax-option (S) corporation in the year of the election, the shareholder cannot use the credit to offset their income tax liability from other

sources of income. The shareholder may carry forward the credit for 15 years and use the credit to offset tax liability resulting from the shareholder's prorated share of taxable income from the tax-option (S) corporation for a year in which the election is not made.

3. If a tax-option (S) corporation elects to pay tax at the entity level, can an individual Wisconsin resident shareholder claim a credit for taxes paid to another state on the income from the electing tax-option (S) corporation?

No, an individual resident shareholder 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 made the entity-level tax election but the upper-tier entity did not make the entity-level tax election?

See example below.

Facts for Calendar Year 2022:

- Partnership A operates a unitary business in Wisconsin and State ZZ
- Partnership A has two equal partners:
 - Individual B is a resident of Wisconsin
 - Tax-Option (S) Corporation Y is 100% owned by Individual C who is a resident of Wisconsin
- Partnership A elects to pay tax at the partnership level in Wisconsin and State ZZ
- Partnership A's income/franchise tax returns show:

Description	State ZZ Partnership Return	Wisconsin Form 3
Ordinary business income	\$500,000	\$500,000
% of income sourced to the state	20%	100%
Income sourced to the state and taxable at the partnership level	\$100,000	\$500,000
Tax rate	4%	7.9%
Income/franchise tax before credits	\$4,000	\$39,500
TPOS credit for tax paid to State ZZ	N/A	(\$4,000)
Income/franchise tax paid	\$4,000	\$35,500

- Tax-Option (S) Corporation Y operates a unitary business in Wisconsin and State ZZ
- Tax-Option (S) Corporation Y elects to pay tax at the tax-option (S) corporation level in State ZZ but not in Wisconsin.
- Tax-Option (S) Corporation Y's income/franchise tax returns show:

Description	State ZZ S-Corp Return	Wisconsin Form 5S
Ordinary business income from Partnership A	\$250,000	\$250,000
Ordinary business income from its own operations	\$100,000	\$100,000
Total ordinary business income	\$350,000	\$350,000
% of income sourced to the state	20%	100%
Income sourced to the state	\$70,000	\$350,000
Amount of income taxed by lower-tier entity (i.e. Partnership A)	(\$50,000)	(\$250,000)
Remaining taxable income	\$20,000	\$100,000
Tax rate	4%	N/A
Income/franchise tax paid	\$800	N/A

- Individual B and Individual C do not file individual income tax returns in State ZZ because Partnership A and Tax-Option (S) Corporation Y paid the tax.

Calculation of Individual C's Wisconsin TPOS Credit

- First, Individual C must complete Wisconsin [Form 1](#), lines 1 through 18.

1	Federal adjusted gross income from Form 1040, line 11	1	350000.00
2	Adjustments to federal adjusted gross income from Schedule I, line 3 (see page 13)	2	.00
3	Add lines 1 and 2. This is your federal adjusted gross income for Wisconsin purposes	3	350000.00
	Form W-2 wages included in line 3		.00
4	Total additions to income from Schedule AD, line 33. Include Schedule AD (see page 14)	4	.00
5	Add lines 3 and 4	5	350000.00
6	Total subtractions from income from Schedule SB, line 50. Include Schedule SB (see page 14) Enter as a positive number	6	250000.00
7	Subtract line 6 from line 5. This is your Wisconsin income.	7	100000.00
8	Standard deduction. See table on page 35, OR If someone else can claim you (or your spouse) as a dependent, see page 15 and check here	8	1799.00
9	Subtract line 8 from line 7. If line 8 is larger than line 7, fill in 0	9	98201.00
10	Exemptions (Caution: See page 15)		
	a Fill in exemptions allowed	1	x \$700 .. 10a 700.00
	b Check if 65 or older		You + Spouse = x \$250 .. 10b .00
	c Add lines 10a and 10b	10c	700.00
11	Subtract line 10c from line 9. If line 10c is larger than line 9, fill in 0. This is taxable income	11	97501.00
12	Tax (see table on page 37)	12	4863.00
13	Itemized deduction credit. Include Schedule 1, page 4	13	.00
14	Additional child and dependent care tax credit (see page 17)		
	Federal credit		.00 x 50% = 14 .00
15	School property tax credit		
	a Rent paid in 2022 – heat included	.00	} Find credit from table page 19 . 15a .00
	Rent paid in 2022 – heat not included	.00	
	b Property taxes paid on home in 2022	.00	Find credit from table page 20 . 15b .00
16	Working families tax credit (see page 20)	16	.00
17	Married couple credit. Include Schedule 2, page 4	17	.00
18	Nonrefundable credits from line 34 of Schedule CR	18	.00

- o Second, Individual C must complete [Schedule OS](#), Part III.

PART III – Calculation of Credit (Shareholders, Partners, and Members)

State 1

Caution: See Instructions

24	Postal abbreviation for state to which tax was paid	24	ZZ
25	Income taxable to both Wisconsin and other state (see instructions)	25	20000.00
26	Total income taxed by the other state (see instructions)	26	20000.00
27	Divide line 25 by line 26. Carry the decimal to four places and fill in on line 27. If line 26 is less than line 25, enter 1.0000	27	1.0000
28	From the income tax return of the other state, fill in the net tax amount after subtracting all nonrefundable and refundable credits (see instructions)	28	800.00
29	Multiply line 27 by line 28. Round the result to the nearest dollar. If claiming a credit for net tax paid to Minnesota, Iowa, Illinois, or Michigan, skip lines 30 through 34 and fill in the amount from line 29 on line 36	29	800.00

- o Lastly, Individual C must complete Schedule OS, Part IV.

PART IV - Credit Allowed

30	Income taxable to both Wisconsin and other state (see instructions)	30	20000.00	.00
31	Wisconsin income from Form 1, line 7, Form 1NPR, line 30, or Form 2, see instructions	31	100000.00	.00
32	Divide line 30 by line 31. Carry the decimal to four places and fill in on line 32. If line 31 is less than line 30, fill in 1.0000	32	0.2000	
33	Fill in the Wisconsin net income tax from: • Form 1, line 12, less the amounts on lines 13 through 18 • Form 1NPR, line 46, less the amounts on lines 47 through 49 • Form 2, line 6c, less the amount on line 7	33	4863.00	.00
34	Multiply line 32 by line 33. Round the result to the nearest dollar	34	973.00	.00
35	Fill in the amount from line 23	35	0.00	.00
36	Fill in the amount from line 29	36	800.00	.00
37	Add lines 35 and 36	37	800.00	.00
38	Fill in the smaller of line 34 or line 37. If claiming a credit for net tax paid to Minnesota, Iowa, Illinois, or Michigan, fill in the amount from line 37	38	800.00	.00
39	Add the amounts in each column of line 38. Fill in the total here	39		800.00
40	If you have tax paid to more than 2 states, fill in the amount from line 39 of any additional Schedules OS	40		.00
41	Add lines 39 and 40. This is your credit for tax paid to another state (see instructions)	41		800.00

- o Individual C's Wisconsin TPOS credit is \$800.

5. How is the Wisconsin credit for taxes paid to other states (TPOS) calculated if the pass-through entity 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?

See example below.

Facts for Calendar Year 2022:

- o Tax-Option (S) Corporation ABC operates 100% in State ZZ

- ABC does not have nexus in Wisconsin, so ABC does not file a Wisconsin income tax or franchise tax return
- ABC has 10 equal shareholders:
 - 9 shareholders are residents of State ZZ
 - 1 shareholder (Individual B) is a resident of Wisconsin
- ABC elects to pay tax at the entity level in State ZZ

Description	State ZZ S-Corp Return
Ordinary business income	\$1,000,000
% of income sourced to State ZZ	100%
Taxable income	\$1,000,000
Tax rate	4%
Income/franchise tax paid	\$40,000

-
- Individual B's only sources of income:
 - Wages of \$200,000 from working other jobs in Wisconsin
 - Ordinary business income from ABC of \$100,000

Calculation of Individual B's Wisconsin TPOS Credit:

- First, Individual B must complete Wisconsin [Form 1](#), lines 1 through 18

1	Federal adjusted gross income from Form 1040, line 11	1	300000.00
2	Adjustments to federal adjusted gross income from Schedule I, line 3 (see page 13)	2	.00
3	Add lines 1 and 2. This is your federal adjusted gross income for Wisconsin purposes	3	300000.00
	Form W-2 wages included in line 3		200000.00
4	Total additions to income from Schedule AD, line 33. Include Schedule AD (see page 14)	4	.00
5	Add lines 3 and 4	5	300000.00
6	Total subtractions from income from Schedule SB, line 50. Include Schedule SB (see page 14) Enter as a positive number	6	.00
7	Subtract line 6 from line 5. This is your Wisconsin income	7	300000.00
8	Standard deduction. See table on page 35, OR If someone else can claim you (or your spouse) as a dependent, see page 15 and check here	8	.00
9	Subtract line 8 from line 7. If line 8 is larger than line 7, fill in 0	9	300000.00
10	Exemptions (Caution: See page 15)		
	a Fill in exemptions allowed	1	x \$700
		10a	700.00
	b Check if 65 or older		You + Spouse =
			x \$250
		10b	.00
	c Add lines 10a and 10b	10c	700.00
11	Subtract line 10c from line 9. If line 10c is larger than line 9, fill in 0. This is taxable income	11	299300.00
12	Tax (see table on page 37)	12	15987.00
13	Itemized deduction credit. Include Schedule 1, page 4	13	.00
14	Additional child and dependent care tax credit (see page 17)		
	Federal credit		.00 x 50% =
		14	.00
15	School property tax credit		
	a Rent paid in 2022 – heat included	.00	} Find credit from table page 19 .
	Rent paid in 2022 – heat not included	.00	
		15a	.00
	b Property taxes paid on home in 2022	.00	} Find credit from table page 20 .
		15b	.00
16	Working families tax credit (see page 20)	16	.00
17	Married couple credit. Include Schedule 2, page 4	17	.00
18	Nonrefundable credits from line 34 of Schedule CR	18	.00

- o Second, Individual B must complete [Schedule OS](#), Part III

PART III – Calculation of Credit (Shareholders, Partners, and Members)

State 1

Caution: See Instructions

24	Postal abbreviation for state to which tax was paid	24	2	2	
25	Income taxable to both Wisconsin and other state (see instructions)	25	100000	00	.00
26	Total income taxed by the other state (see instructions)	26	100000	00	.00
27	Divide line 25 by line 26. Carry the decimal to four places and fill in on line 27. If line 26 is less than line 25, enter 1.0000	27	1	0	0
28	From the income tax return of the other state, fill in the net tax amount after subtracting all nonrefundable and refundable credits (see instructions)	28	4000	00	.00
29	Multiply line 27 by line 28. Round the result to the nearest dollar. If claiming a credit for net tax paid to Minnesota, Iowa, Illinois, or Michigan, skip lines 30 through 34 and fill in the amount from line 29 on line 36	29	4000	00	.00

- o Lastly, Individual B must complete [Schedule OS](#), Part IV

PART IV - Credit Allowed

30	Income taxable to both Wisconsin and other state (see instructions)	30	100000	00	.00
31	Wisconsin income from Form 1, line 7, Form 1NPR, line 30, or Form 2, see instructions	31	300000	00	.00
32	Divide line 30 by line 31. Carry the decimal to four places and fill in on line 32. If line 31 is less than line 30, fill in 1.0000	32	0	3	3
33	Fill in the Wisconsin net income tax from: • Form 1, line 12, less the amounts on lines 13 through 18 • Form 1NPR, line 46, less the amounts on lines 47 through 49 • Form 2, line 6c, less the amount on line 7	33	15987	00	.00
34	Multiply line 32 by line 33. Round the result to the nearest dollar	34	5328	00	.00
35	Fill in the amount from line 23	35	00	00	.00
36	Fill in the amount from line 29	36	4000	00	.00
37	Add lines 35 and 36	37	4000	00	.00
38	Fill in the smaller of line 34 or line 37. If claiming a credit for net tax paid to Minnesota, Iowa, Illinois, or Michigan, fill in the amount from line 37	38	4000	00	.00
39	Add the amounts in each column of line 38. Fill in the total here	39	4000	00	.00
40	If you have tax paid to more than 2 states, fill in the amount from line 39 of any additional Schedules OS	40	00	00	.00
41	Add lines 39 and 40. This is your credit for tax paid to another state (see instructions)	41	4000	00	.00

- o Individual B's Wisconsin TPOS credit is \$4,000

6. If a tax-option (S) corporation elects to pay tax at the entity level, are individual shareholders required to file a Wisconsin individual income tax return if they have no income reportable to Wisconsin?

No, individual shareholders of an electing tax-option (S) corporation that do not have any income reportable to Wisconsin are not required to file a Wisconsin individual income tax return. However, shareholders must timely file a Wisconsin income tax return to claim credits or refunds.

7. **If a tax-option (S) corporation elects to pay tax at the entity level, are estate or trust shareholders 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."

8. **Are shareholders of an electing tax-option (S) corporation required to include their Schedule 5K-1 with their Wisconsin individual income tax returns?**

Yes, the instructions for Wisconsin Schedule AD, Schedule SB, and Form 1NPR require individuals to include a copy of the Schedule 5K-1. **Note:** Certain credits may be passed through to shareholders, in which case the processing of a shareholder's tax return may be delayed if the Schedule 5K-1 is not included with the return.

9. **If a nonresident of Wisconsin is a shareholder of two tax-option (S) corporations and only one makes the election to pay tax at the entity level, can the nonresident shareholder participate in the Wisconsin composite return, Form 1CNS, of the non-electing tax-option (S) corporation?**

The shareholder may participate in the Wisconsin composite return if its only source of Wisconsin income is from the non-electing tax-option (S) corporation, the shareholder 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 1CNS instructions](#).

10. **What items reported on a Schedule 5K-1 from an electing tax-option (S) corporation can a shareholder claim on their income tax return?**
- A shareholder may claim credits passed through from the electing tax-option (S) corporation reported on Schedule 5K-1 lines 13a through h.

Caution:

- Shareholders may not use the taxes paid by the electing tax-option (S) corporation, including taxes paid on the shareholder's behalf on a composite return, to compute a credit for tax paid to another state. In addition, a resident shareholder may not claim credit for taxes they paid to another state on income taxed at the entity level in Wisconsin.
- Shareholders may not claim the manufacturing and agriculture credit passed through from an electing tax-option (S) corporation in the year of the election. See common question #2 above.

- A shareholder may claim Wisconsin tax withheld passed through from the tax-option (S) corporation reported on Schedule 5K-1, line 13j.

Note: Nonresident shareholders may not claim Wisconsin withholding passed through from an electing tax-option (S) corporation, if the corporation 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.

11. What items reported on a Schedule 5K-1 from an electing tax-option (S) corporation are not allowed to be claimed by a shareholder on their income tax return?

All items reported on Schedule 5K-1 other than the items mentioned in common question #10 above.

12. Can a greater than 2-percent shareholder claim the self-employed health insurance deduction for health insurance premiums paid by an electing tax-option (S) corporation on behalf of the shareholder?

Yes, a greater than 2-percent shareholder may claim the self-employed health insurance deduction regardless of whether the tax-option (S) corporation makes the election to pay tax at the entity level.

13. If the election is made, how should a shareholder filing a Wisconsin tax return remove their proportionate share of the electing tax-option (S) corporation's income that is taxed at the entity level?

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

Example:

Facts: Calendar Year 2022

- Shareholder A was a Wisconsin resident for the entire year
- Shareholder A owns 100 percent of Tax-Option (S) Corporation
- Shareholder A's only sources of income:
 - \$15,000 of wages
 - \$100,000 of federal ordinary business income from the tax-option (S) corporation
- Tax-Option (S) Corporation makes an election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats., to pay tax at the entity level
- Tax-Option (S) Corporation's \$100,000 of federal ordinary business income for 2022 has the following Wisconsin differences:
 - \$5,000 of Wisconsin tax paid by the tax-option (S) corporation with its 2021 Form 5S deducted on the 2022 federal Form 1120-S
 - \$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 shareholder A must report income and expense items from the electing tax-option (S) corporation's Schedule 5K-1

- Shareholder A must:
 - File [Form 1](#) because Shareholder A was a full-year Wisconsin resident
 - Use [Schedule I](#) to reduce federal adjusted gross income by the \$10,000 of additional depreciation
 - Use [Schedule AD](#), line 28, to report the addition modification of \$5,000 related to the tax paid to Wisconsin with the 2021 Form 5S and deducted on the 2022 federal Form 1120-S, and
 - Use [Schedule SB](#), line 46, to report a \$95,000 subtraction modification for Wisconsin income taxed at the entity level of the tax-option (S) corporation.

Computation of the \$95,000 subtraction for Wisconsin income reported by the tax-option (S) corporation

Description
Federal ordinary business income from the tax-option (S) corporation
Schedule I depreciation difference
Schedule AD (line 28) addition modification relating to tax paid to Wisconsin and deducted on federal Form 1120-S
Schedule SB (line 46) – subtraction modification for Wisconsin income reported by the tax-option (S) corporation

14. Can the removal of an electing tax-option (S) corporation's income from the shareholder's individual income tax return create a Wisconsin net operating loss (NOL) if the shareholder does not have a federal NOL?

No, according to secs. [71.01\(3\)](#) and [\(14\)](#), [71.34\(3\)](#), and [71.36\(1m\)\(c\)](#), 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.

15. When an individual shareholder is determining household income for purposes of claiming the homestead credit, must the individual shareholder include income from a tax-option (S) corporation making the entity-level election?

No, according to secs. [71.365\(4m\)\(b\)](#) and [71.52\(6\)](#), Wis. Stats., income from an electing tax-option (S) corporation is not included in the individual shareholder's Wisconsin adjusted gross income or household income.

16. Can the department provide an example of an individual shareholder with passive loss limitations when the entity-level tax election is made under sec. 71.365(4m)(a), Wis. Stats.?

See example below.

Facts for Calendar Year 2022:

- Individual A is a resident of Wisconsin and a shareholder in Tax-Option (S) Corporation Y and Tax-Option (S) Corporation Z
- Y makes an election under sec. [71.365\(4m\)\(a\)](#), Wis. Stats., to pay tax at the entity level
- Z does not make an election to pay tax at the entity level
- Individual A's only sources of income:
 - Wages of \$100,000 from other sources
 - Ordinary business income from Y of \$200,000 (passive activity income)
 - Ordinary business loss from Z of \$500,000 (passive activity loss)

Calculation of Individual A's federal adjusted gross income (FAGI) and passive activity loss limitation

Description	Amount
Wages	\$100,000
Passive activity income from Y	\$200,000
Passive activity loss from Z (limited)	(\$200,000)
FAGI	\$100,000

For federal purposes, Individual A has a suspended passive activity loss of \$300,000 to carry forward to tax year 2023.

Calculation of Individual A's Wisconsin adjusted gross income (WAGI) and passive activity loss limitation

Description	Amount
FAGI	\$100,000
Subtraction modification to remove the amount of income from Y that is included in FAGI	(\$200,000)
WAGI	(\$100,000)

For Wisconsin purposes, Individual A has a suspended passive activity loss of \$300,000 to carry forward to tax year 2023. **Note:** Individual A also has a Wisconsin net operating loss (NOL) of \$100,000 to carry forward to tax year 2023.