

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB107)

Received: 7/9/2013 Received By: jkreye
Wanted: As time permits Same as LRB:
For: Garey Bies (608) 266-5350 By/Representing: cory
May Contact: Drafter: jkreye
Subject: Tax, Business - miscellaneous Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Bies@legis.wisconsin.gov
Carbon copy (CC) to: joseph.kreye@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Entertainer's surety bond; DOR technical change

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 7/9/2013	jdyer 7/10/2013	jfrantze 7/10/2013	_____			
/1	jkreye 7/12/2013			_____	sbasford 7/10/2013	sbasford 7/10/2013	
/2		jdyer 7/12/2013	phenry 7/12/2013	_____	roose 7/12/2013	roose 7/12/2013	

FE Sent For:

*Not
needed*

<END>

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/?	jkreye 7/9/2013	jdyer 7/10/2013	jfrantze 7/10/2013	_____			
/1		27/12 jld	7/12 ph	_____	sbasford 7/10/2013	sbasford 7/10/2013	

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<END>

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/?	jkreye	1	7/10 jw	6/17/13			

FE Sent For:

<END>

Kreye, Joseph

From: Bruce, Cory
Sent: Tuesday, July 09, 2013 11:52 AM
To: Kreye, Joseph
Subject: FW: Surety Bond / Withholding for Out-of-State Entertainers

Quick follow up...since there hasn't been a hearing on the bill yet, does it make sense to do this another way than offer an amendment? Do we do a substitute instead? As always, I appreciate your wisdom and guidance on these issues. ☺

From: Bruce, Cory
Sent: Tuesday, July 09, 2013 11:45 AM
To: Kreye, Joseph
Subject: FW: Surety Bond / Withholding for Out-of-State Entertainers

Hi Joe,
Another one for you! You drafted AB 107 for us. Since then, DOR came to us with an issue they're hoping we can address in our bill. (See below). We're going to have a hearing on this August 6th. Can you draft an amendment for us to address DOR's issue. They provide drafting instructions in the email as well.

Thanks,
Cory

From: Wagner, Michael W - DOR [<mailto:MichaelW.Wagner@revenue.wi.gov>]
Sent: Wednesday, April 17, 2013 4:56 PM
To: Bruce, Cory
Subject: Surety Bond / Withholding for Out-of-State Entertainers

Cory,

Per our phone conversation, travel expenses are currently considered part of the contract price used to determine the amount of a surety bond or withholding for an out-of-state entertainer. This presents two problems for the person paying the out-of-state entertainer:

1. Travel expenses are often unknown at the time of the contract, so the person paying the entertainer must estimate the value. Only after the travel occurs are true travel expenses known.
2. Travel expense reimbursement is not taxable, yet it is used as a factor to pay withholding taxes or issue the surety bond.

This issue could easily be addressed by excluding payments for reimbursement of travel expenses from the total contract price used to determine the withholding or bond value.

Since this issue rarely is looked into by the Legislature, considering this in the context of AB 107 may be worthwhile.

If you are interested in pursuing this, suggested drafting instructions follow. This would NOT affect the fiscal note that we issued for the bill (which indicated a very minimal effect).

Please let me know if you would like to discuss this further or if you or your constituents have any questions.

Regards,

Mike Wagner
Legislative Advisor, Dept. of Revenue
(608) 266-7817

DRAFTING INSTRUCTIONS

- Create sec. 71.80(15) (b) ^{2.} ~~1.~~, Wis. Stats., - ^{For purposes of this case report,} ~~The total contract price in par. (b) may be reduced by travel~~ ^{under subd. 1.} expenses or advance payments of travel expenses made pursuant to an accountable plan under ^{1.5. w/ Econ.} regulation §1.62-2 ~~of the internal revenue code.~~ Travel expenses means ^{2.} ~~payments made to, or on behalf of, an entertainer for actual transportation, lodging and meals directly related to the entertainer's performance in Wisconsin.~~ ^{marked} ~~Wisconsin.~~
- Amend sec. 71.64(4), Wis. Stats. - **Withholding from payments made to entertainers.** For purposes of this section, all payments, except as provided in sec. 71.80(15)(b) ~~1.~~, made to entertainers and entertainment corporations are presumed subject to withholding unless the recipient provides to the person making the payment a written statement, on a form prescribed by the department, certifying that the payment is exempt under sub. (6)(b) or s. 71.05(2).

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ASA TO

Keep

50090/11

in 7-9-13
due over 7-16

2013 ASSEMBLY BILL 107

March 26, 2013 - Introduced by Representatives BIES, BERCEAU, BEWLEY, CZAJA, OHNSTAD, SPIROS and STRACHOTA. Referred to Committee on Consumer Protection.

4

1 AN ACT to amend 71.80 (15) (b) of the statutes; relating to: an entertainer's
2 surety bond.

Analysis by the Legislative Reference Bureau

Under current law, generally, if an entertainer enters into a contract to perform in this state and the total amount paid to the entertainer under all such contracts is more than \$3,200 in the taxable year, the entertainer must file a bond with the Department of Revenue (DOR) as a guarantee that the entertainer will pay all taxes related to the entertainer's performance in this state. The bond amount is 6 percent of the total contract price.

Under this bill, an entertainer must file a bond with DOR if the total amount paid to the entertainer under all contracts to perform in this state is more than \$7,000 in the taxable year.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Amend 1-3

3 Fix component

4

5

SECTION 1. 71.80 (15) (b) of the statutes is amended to read:

71.80 (15) (b) All entertainers, except entertainers who work for an entertainment corporation, and entertainment corporations not otherwise employed

renumbered 71.80(b) 1, and (15)

ASSEMBLY BILL 107

SECTION 1

1 or regularly engaged in business in this state shall file a surety bond with the
 2 department of revenue at least 7 days before a performance. That bond shall be
 3 payable to the department to guarantee payment of income, franchise, sales and use
 4 taxes, income taxes withheld under subch. X, penalties and interest. The amount of
 5 the bond shall be 6% of either the total contract price on all contracts that exceed
 6 ~~\$3,200~~ \$7,000 or, if the total contract price is not readily determinable and the
 7 department's estimate of the total remuneration to be received by the entertainer or
 8 entertainment corporation exceeds ~~\$3,200~~ \$7,000, 6% of the department's estimate.
 9 Amounts previously earned in this state by an entertainer or entertainment
 10 corporation during the same calendar year for which no bond or cash deposit has
 11 been filed under this paragraph or for which no amounts have been withheld under
 12 s. 71.64 (5) shall be added together to determine the total contract price. The
 13 department shall approve the form and content of the bond. The bond shall remain
 14 in force until the liability under the bond is released by the department.

SECTION 2. Initial applicability.

(1) This act first applies to taxable years beginning on January 1, 2013.

(END)

✓
 Lument
 2-14

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0090/?ins
JK:.....

Insert 1 - 3

1 **SECTION 1.** 71.64 (4)^X of the statutes is amended to read:

2 71.64 (4) WITHHOLDING FROM PAYMENTS MADE TO ENTERTAINERS. For purposes of
3 this section, all payments made to entertainers and entertainment corporations,
4 except payments made as provided under s. 71.80 (15) (b) 2.[✓] are presumed subject
5 to withholding unless the recipient provides to the person making the payment a
6 written statement, on a form prescribed by the department, certifying that the
7 payment is exempt under sub. (6) (b) or s. 71.05 (2).

History: 1987 a. 312; 1989 a. 31; 1997 a. 27, 41; 1999 a. 9; 2011 a. 131.

Insert 2 - 14

8 **SECTION 2.** 71.80 (15) (b) 2.[✓] of the statutes is created to read:

9 71.80 (15) (b) 2. The total contract price under subd. 1.[✓] may be reduced by travel
10 expenses, or advance payments of travel expenses, made pursuant to an accountable
11 plan under U.S. Treasury Regulation 1.62-2. For purposes of this[✓] subdivision,
12 "travel expenses"[✓] means amounts paid to, or on behalf of, an entertainer for actual
13 transportation, lodging, and meals that are directly related to the entertainer's
14 performance in this state.[✓]

(end ins 2-14)

Kreye, Joseph

From: Bruce, Cory
Sent: Thursday, July 11, 2013 9:03 AM
To: Kreye, Joseph
Subject: FW: LRB 13s0090 Topic: Entertainer's surety bond; DOR technical change

Joe,
I shared the substitute with DOR and they were concerned with the effective date. They'd like it changed to January 2014. Can you make that change to the sub since I haven't turned in the stripes? Or do we have to do an amendment to the sub?

Cory

From: Wagner, Michael W - DOR [<mailto:MichaelW.Wagner@revenue.wi.gov>]
Sent: Wednesday, July 10, 2013 6:39 PM
To: Bruce, Cory
Subject: FW: LRB 13s0090 Topic: Entertainer's surety bond; DOR technical change

Cory,

The statutory parts of the bill look good.

The effective date is problematic. The bill would create retroactive treatment to apply to contracts/withholding that go back to January of this year. Withholding is not based on taxable years but rather at the time of payment. It would make a lot more sense to have the effective date on January 1, 2014, especially since we're so far into the year.

Thanks again for addressing DOR's concerns in the substitute amendment.

-Mike

From: Rep.Bies [<mailto:Rep.Bies@legis.wisconsin.gov>]
Sent: Wednesday, July 10, 2013 9:13 AM
To: Wagner, Michael W - DOR
Subject: FW: LRB 13s0090 Topic: Entertainer's surety bond; DOR technical change

Mike – We already got back the substitute amendment for the surety bond. Let me know if this looks alright.

Cory

From: LRB.Legal
Sent: Wednesday, July 10, 2013 8:36 AM
To: Rep.Bies
Subject: LRB 13s0090 Topic: Entertainer's surety bond; DOR technical change

The attached proposal has been jacketed for introduction.

A copy has also been sent to: joseph.kreye@legis.wisconsin.gov



13s0090_1.pdf

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RMR

**ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 107**

in 7-12-13
Today

✓

Regen

1 AN ACT *to renumber and amend* 71.80 (15) (b); *to amend* 71.64 (4); and *to*
2 *create* 71.80 (15) (b) 2. of the statutes; **relating to:** an entertainer's surety
3 bond.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 71.64 (4) of the statutes is amended to read:

5 71.64 (4) WITHHOLDING FROM PAYMENTS MADE TO ENTERTAINERS. For purposes of
6 this section, all payments made to entertainers and entertainment corporations,
7 except payments made as provided under s. 71.80 (15) (b) 2., are presumed subject
8 to withholding unless the recipient provides to the person making the payment a
9 written statement, on a form prescribed by the department, certifying that the
10 payment is exempt under sub. (6) (b) or s. 71.05 (2).

11 SECTION 2. 71.80 (15) (b) of the statutes is renumbered 71.80 (15) (b) 1. and
12 amended to read:

1 71.80 (15) (b) 1. All entertainers, except entertainers who work for an
2 entertainment corporation, and entertainment corporations not otherwise employed
3 or regularly engaged in business in this state shall file a surety bond with the
4 department of revenue at least 7 days before a performance. That bond shall be
5 payable to the department to guarantee payment of income, franchise, sales and use
6 taxes, income taxes withheld under subch. X, penalties and interest. The amount of
7 the bond shall be 6% of either the total contract price on all contracts that exceed
8 ~~\$3,200~~ \$7,000 or, if the total contract price is not readily determinable and the
9 department's estimate of the total remuneration to be received by the entertainer or
10 entertainment corporation exceeds ~~\$3,200~~ \$7,000, 6% of the department's estimate.
11 Amounts previously earned in this state by an entertainer or entertainment
12 corporation during the same calendar year for which no bond or cash deposit has
13 been filed under this paragraph or for which no amounts have been withheld under
14 s. 71.64 (5) shall be added together to determine the total contract price. The
15 department shall approve the form and content of the bond. The bond shall remain
16 in force until the liability under the bond is released by the department.

17 **SECTION 3.** 71.80 (15) (b) 2. of the statutes is created to read:

18 71.80 (15) (b) 2. The total contract price under subd. 1. may be reduced by travel
19 expenses, or advance payments of travel expenses, made pursuant to an accountable
20 plan under U.S. Treasury Regulation 1.62-2. For purposes of this subdivision,
21 "travel expenses" means amounts paid to, or on behalf of, an entertainer for actual
22 transportation, lodging, and meals that are directly related to the entertainer's
23 performance in this state.

24 **SECTION 4. Initial applicability.**

1
2

(1) This act first applies to taxable years beginning on January 1, 2013.

(END)

✓ 2014