



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5333/1
MES/JK/KRP:all

2017 SENATE BILL 764

February 1, 2018 - Introduced by Senators MARKLEIN, CRAIG, KAPENGA, STROEBEL and NASS, cosponsored by Representatives KOOYENGA, MACCO, KATZMA, WEATHERSTON, TITTL, STEFFEN, SPIROS, SANFELIPPO, ROHRKASTE, NEYLON, KULP, BALLWEG and ZIMMERMAN. Referred to Committee on Revenue, Financial Institutions and Rural Issues.

1 **AN ACT** *to repeal* 71.26 (3) (q); *to amend* 71.05 (6) (b) 49. a., 71.98 (3), 77.54 (9m)
2 and 224.50 (2) (a); and *to create* 71.05 (6) (b) 49. k., 71.98 (9), 71.98 (10) and
3 77.54 (9a) (fc) of the statutes; **relating to:** updating references to the Internal
4 Revenue Code relating to certain individual income tax provisions, limiting the
5 income tax deduction for certain tuition payments, clarifying the duties of the
6 College Savings Program Board, a sales and use tax exemption for title holding
7 entities for certain tax-exempt charitable organizations, and computing
8 depletion for income and franchise tax purposes.

Analysis by the Legislative Reference Bureau

Generally, for taxable years beginning after December 31, 2017, this bill adopts, for state income and franchise tax purposes, certain provisions of the Internal Revenue Code that apply to individuals and were adopted as part of the federal Tax Cuts and Jobs Act that was enacted in December 2017.

The provisions in this bill relate to the following provisions of the federal act:

1. The recharacterization of individual retirement accounts as Roth IRAs, and vice versa. Under the federal changes, recharacterization may not be used to unwind a conversion of a traditional IRA to a Roth IRA.

SENATE BILL 764

2. Retirement plan offsets. Under the federal act, the period during which retirement plan loan offsets may be rolled over into another retirement plan on a tax-free basis is extended.

3. The deductibility of travel expenses incurred by a member of Congress. For taxable years beginning after December 21, 2017, the federal act prohibits a member of Congress from deducting living expenses paid or incurred while away from home as an ordinary and necessary expense.

4. The discharge of certain student loan indebtedness. Under federal law, the forgiveness of student loans is not considered taxable income if the student works for a specified period in certain professions for certain employers. The federal act extends this exclusion to student loan discharges resulting from the student's death or permanent and total disability. Under federal law, this provision sunsets and does not apply to taxable years beginning after December 31, 2025.

5. Allowing certain distributions from a qualified tuition program, commonly known as a 529 account, to be used for tuition expenses to enroll in or attend an elementary or secondary public, private, or religious school. Currently, this state's 529 college savings program allows distributions to be used only for qualified higher education expenses as defined under federal law.

Also under the bill, the current law subtract modification for certain amounts paid by an individual for tuition expenses for his or her dependent pupil to attend an eligible elementary or secondary school may not be claimed if the source of the payment is a 529 account.

Under current law, for purposes of computing depletion for income and franchise tax purposes, the Internal Revenue Code means the federal Internal Revenue Code in effect for the year in which the property subject to depletion is placed in service. This bill modifies current law to clarify that it applies to the property subject to depletion regardless of when the property is placed in service.

The bill also creates a sales and use tax exemption for property, items, and services purchased by an entity that is tax-exempt under the Internal Revenue Code and that is organized for the exclusive purpose of holding title to property, collecting income from that property, and turning over the entire amount of that income, less expenses, to an entity that is also exempt from state sales and use taxes under an exemption that applies to certain charitable organizations. This provision takes effect retroactively to September 1, 2017.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* 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:

1 **SECTION 1.** 71.05 (6) (b) 49. a. of the statutes is amended to read:

SENATE BILL 764

1 71.05 (6) (b) 49. a. Subject to the definitions provided in subd. 49. b. to g. and
2 the limitations specified in subd. 49. h. to j. for taxable years beginning after
3 December 31, 2013, and subject to the limitation in subd. 49. k. for taxable years
4 beginning after December 31, 2017, tuition expenses that are paid by a claimant for
5 tuition for a pupil to attend an eligible institution.

6 **SECTION 2.** 71.05 (6) (b) 49. k. of the statutes is created to read:

7 71.05 (6) (b) 49. k. For taxable years beginning after December 31, 2017, no
8 modification may be claimed under this subdivision for an amount paid for tuition
9 expenses, as described under this subdivision, if the source of the payment is an
10 amount withdrawn from a college savings account, as described in s. 224.50, as that
11 section is affected by s. 71.98 (9).

12 **SECTION 3.** 71.26 (3) (q) of the statutes is repealed.

13 **SECTION 4.** 71.98 (3) of the statutes is amended to read:

14 71.98 (3) DEPRECIATION, DEPLETION, AND AMORTIZATION. For taxable years
15 beginning after December 31, 2013, and for purposes of computing depreciation and
16 amortization, the Internal Revenue Code means the federal Internal Revenue Code
17 in effect on January 1, 2014. For taxable years beginning after December 31, 2013,
18 and for purposes of computing depletion, the Internal Revenue ~~code~~ Code means the
19 federal Internal Revenue ~~code~~ Code in effect for the year in which the property is
20 placed in service, regardless of when the property is placed in service.

21 **SECTION 5.** 71.98 (9) of the statutes is created to read:

22 71.98 (9) SECTION 529 ACCOUNTS. For taxable years beginning after December
23 31, 2017, section 11032 of P.L. 115-97, related to qualified tuition programs under
24 26 USC 529.

25 **SECTION 6.** 71.98 (10) of the statutes is created to read:

SENATE BILL 764**SECTION 6**

1 71.98 **(10)** TAX CUTS AND JOBS ACT OF 2017. (a) For taxable years beginning after
2 December 31, 2017, with regard to P.L. 115-97:

3 1. Section 13611, related to recharacterization of individual retirement
4 accounts.

5 2. Section 13613, related to retirement plan loan offsets.

6 3. Section 11031, related to the discharge of certain student loan indebtedness.

7 (b) For taxable years beginning after December 21, 2017, with regard to P.L.
8 115-97, section 13311, related to allowable deductions for living expenses incurred
9 by members of Congress.

10 **SECTION 7.** 77.54 (9a) (fc) of the statutes is created to read:

11 77.54 **(9a)** (fc) An entity described under section 501 (c) (2) of the Internal
12 Revenue Code that is exempt from federal income tax under section 501 (a) of the
13 Internal Revenue Code and that is organized for the exclusive purpose of holding title
14 to property, collecting income from that property, and turning over the entire amount
15 of that income, less expenses, to an entity described under par. (f).

16 **SECTION 8.** 77.54 (9m) of the statutes is amended to read:

17 77.54 **(9m)** The sales price from the sale of and the storage, use, or other
18 consumption of tangible personal property, or items or property under s. 77.52 (1) (b)
19 or (c), sold to a construction contractor ~~who~~ that, in fulfillment of a real property
20 construction activity, transfers the tangible personal property, or items or property
21 under s. 77.52 (1) (b) or (c), to an entity described under sub. (9a) (b), (c), (d), (em),
22 ~~or~~ (f), or (fc), if such tangible personal property, or items or property, becomes a
23 component of a facility in this state that is owned by the entity. In this subsection,
24 “facility” means any building, shelter, parking lot, parking garage, athletic field,

SENATE BILL 764

1 athletic park, storm sewer, water supply system, or sewerage and waste water
2 treatment facility, but does not include a highway, street, or road.

3 **SECTION 9.** 224.50 (2) (a) of the statutes, as affected by 2017 Wisconsin Act 59,
4 is amended to read:

5 224.50 (2) (a) Except as provided in s. 224.51, establish and administer a
6 college savings program that allows an individual, trust, legal guardian, or entity
7 described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover
8 tuition, fees, and the costs of room and board, books, supplies, and equipment
9 required for the enrollment or attendance of a beneficiary at an eligible educational
10 institution, as defined under 26 USC 529, and to cover tuition expenses in connection
11 with enrollment or attendance at an elementary or secondary public, private, or
12 religious school, as described in section 11032 of P.L. 115-97, related to qualified
13 tuition programs under 26 USC 529.

14 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
15 except as follows:

16 (1) SALES AND USE TAX EXEMPTION FOR TITLE HOLDING ENTITIES. The treatment of
17 section 77.54 (9a) (fc) and (9m) of the statutes takes effect retroactively to September
18 1, 2017.

19 (END)