

**STATE OF WISCONSIN**

**REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS**

**1999 ASSEMBLY BILL 133**

[Introduced by Joint Committee on Finance by request of Governor Tommy G. Thompson.]

**General Nature and Fiscal Effect of Tax Exemption Provisions in 1999 Assembly Bill 133**

1999 Assembly Bill 133 is the 1999-2001 Executive Budget Bill ("bill"), proposed by the Governor and introduced by the Joint Committee on Finance at the request of the Governor. The subject of this report is the following six provisions of the bill which relate to tax exemptions:

**1. Taxation of Social Security Benefits**

Under current law, up to 50% of Social Security benefits are taxable for taxpayers with provisional income above \$25,000 if single, \$32,000 if married filing a joint return and \$0 if married filing a separate return. No benefits are taxed for taxpayers below these amounts.

SECTION 1685 of the bill would modify current law to tax up to 85% of Social Security benefits for taxpayers with income above \$34,000 if single and \$44,000 if married filing a joint return, and for all married taxpayers filing separate returns. Taxpayers with incomes below these amounts would be treated as under current law.

The Legislative Fiscal Bureau (LFB) estimates that this provision, in light of other personal income tax modifications proposed in the bill, would increase income tax revenues by \$32.4 million over the 1999-2001 biennium.

**2. Personal Exemptions**

Under current state law, taxpayers receive a \$50 credit against income taxes due for each of the taxpayer's dependents. The taxpayer and taxpayer's spouse are not considered dependents for purposes of the credit. The state also provides a \$25 tax credit for taxpayers who are 65 years of age or older. The senior credit phases out for married taxpayers filing joint returns with Wisconsin adjusted gross income over \$40,000, for single taxpayers with adjusted gross income over \$30,000, and for married taxpayers filing separate returns with adjusted gross income over \$20,000. The bill eliminates the dependent and senior credits and instead provides personal exemptions.

SECTION 1693 of the bill creates personal exemptions to be subtracted from Wisconsin adjusted gross income in calculating Wisconsin taxable income beginning with tax year 2000. Under the bill, a \$600 personal exemption would be provided for each taxpayer, the taxpayer's spouse and for each individual claimed as an exemption under the Internal Revenue Code (IRC) beginning in tax year 2000. The personal exemption amount would be increased to \$700 for tax year 2001, and

thereafter. The bill also provides an additional \$200 exemption in tax year 2000 for each taxpayer who has reached age 65 before the end of the tax year. This additional exemption would be increased to \$250 for tax year 2001, and thereafter. The exemptions would be prorated for nonresident and part-year resident taxpayers based on the ratio of Wisconsin adjusted gross income to federal adjusted gross income.

The LFB estimates the net fiscal effect of this provision to be an increase in revenue of \$2.1 million over the 1999-2001 biennium.

### 3. Tobacco Products Tax

Under current law, the Wisconsin tax on tobacco products is an occupational tax imposed on distributors. "Tobacco products" refers to all tobacco-based products other than cigarettes and includes products such as cigars, snuff and chewing tobacco. For domestic tobacco products sold by distributors, the distributors are required to pay a tax at the rate of 20% of the manufacturer's established list price. However, the statutes provide exceptions to the tobacco products tax for the following: (a) tobacco products sold to, or by post exchanges of the U.S. Armed Forces; (b) tobacco products sold to, or by state-operated veterans hospitals in the state; (c) tobacco products sold to an interstate carrier of passengers for hire to be resold to bonafide passengers of carriers; (d) tobacco products sold for shipment outside the state in interstate commerce; and (e) tobacco products that, under the constitution and laws of the United States, may not be taxed by this state.

The U.S. Constitution and federal law have been interpreted in a manner that exempts sales of tobacco products by distributors to Indian tribes from the tobacco products tax under Wisconsin's current law. According to the Department of Revenue (DOR), in-state distributors of tobacco products typically claim exemptions from the tobacco products tax for sales to Indian tribes.

SECTION 2176-2182 of the bill would change the tobacco products tax from an occupational tax to an excise tax. The tax would continue to be imposed at the distributor level. However, the bill would specify that the tax be passed on to the ultimate consumer of the tobacco products. Because of this change, the bill would also eliminate the current tax exemption for sales of tobacco products that may not be taxed under the U.S. Constitution or federal law. The bill would further specify that all tobacco products received in this state for sale and distribution in this state would be subject to the tax unless they were specifically exempted. Additionally, the bill would provide that a distributor of the tobacco products who failed to file required reports and collect and remit the tax on all tobacco products not specifically exempted would be subject to a fine of not less than \$1,000, nor more than \$5,000, imprisonment for not less than 90 days, nor more than a year, or both. Finally, the bill would also require 50% of the tobacco products tax collection to be refunded to tribes in certain situations and would authorize DOR to enter into agreements with Indian tribes to refund 100% of the tobacco products tax imposed on tobacco products sold on reservations or trust lands to enrolled members of the tribe residing in the tribal reservation.

The LFB estimates the net fiscal effect of this change in the treatment of the tobacco products tax to be an increase in tax collections of \$437,500 over the 1999-2001 biennium.

#### **4. Real Estate Transfer Fee and Sales Tax on Time-Share Property**

Under current law, sales of real estate are subject to a real estate transfer fee which is set at \$3 per thousand dollars of value. A real estate transfer return is filed and the fee is collected at the county level by the Register of Deeds when the deed or other instrument of the conveyance is submitted for recording. Proceeds from the real estate transfer fee are divided between the state and the county in which the fee is collected, with the state receiving 80% and the county retaining 20%. Current statutes on the real estate transfer fee do not specifically refer to time-share property. However, the DOR has interpreted the law as subjecting "fixed time" time-share sales, in which the use of the rooms or lodging is fixed at the time of sale as to the starting day and lodging unit, to the real estate transfer fee. "Flex-time" time-share sales, described below, are not subject to the real estate transfer fee.

Under current law, the furnishing of short-time lodging for continuous periods of less than 30 days is subject to the 5% general sales tax. The statutes specify that the sales tax applies to the furnishing of rooms or lodging through the sale of time-share property if the use of the rooms or lodging is for continuous periods of less than one month and the use of the rooms or lodging is not fixed at the time of the sale as to the starting date or lodging unit. Such time-share properties are frequently referred to a "flex-time" time-shares. Annual maintenance charges associated with flex-time time-shares, which include a share of property taxes, are subject to the sales tax as well.

SECTIONS 1811-1814 of the bill modify the treatment of conveyances of time-share properties with respect to the real estate transfer fee and the sale tax. Under the bill, the transfers of time-share property are exempt from the real estate transfer fee and the requirement to file a real estate transfer return. In addition, the bill subjects all sales of time-share property of continuous periods of less than one month to the sales tax. Charges associated with taxable time-share property would be taxable at the time the charges are incurred, even if those charges were not taxable at the time of the initial sale of the time-share property.

The LFB estimates that the treatment of time-shares by the bill will result in a net increase in state revenues of \$2.64 million over the 1999-2001 biennium.

#### **5. Property Tax Exemption for Computerized Equipment**

Generally, under current law, all property is subject to the property tax unless it is specifically exempt. 1997 Wisconsin Act 237 created a property tax exemption for computers, related equipment and software. The exemption also extended to computers owned by telecommunications companies subject to the state ad valorem tax under ch. 76, Stats. The state ad valorem tax also applies to air carrier, conservation and regulation, pipeline and railroad companies under ch. 76 and to municipal electric companies under ch. 66. However, the property tax exemption for computers under Act 237 did not extend to computers owned by these companies.

SECTION 1654 of the bill creates a property tax exemption for fax machines, copy machines, cash registers and automatic teller machines (ATMs). The exemption would apply to property subject to locally imposed property taxes as well as to public utility properties subject to state-imposed ad valorem taxes under chs. 66 and 76, Stats. This exemption would apply beginning on January 1 of the year following enactment of the bill. In addition, SECTIONS 1807, 1808 and 1810 of the

bill extend the current property tax exemption created in 1997 Wisconsin Act 237 for computers and computer-related equipment to the property of air carrier, conservation and regulation, municipal electric, pipeline and railroad companies that are subject to state-imposed ad valorem taxes. The extension of this exemption would take effect retroactively to January 1, 1999.

The LFB estimates that the property tax exemption for fax machines, copy machines, cash registers and ATMs would decrease local tax collections by \$12.8 million for tax year 2000. In addition, the exemption would reduce state forestry tax collections by \$106,800 in fiscal year 2000-01. Additionally, the extension of the computer exemption to all ad valorem taxpayers would result in a general fund revenue decrease of \$125,000 (GPR) for the 1999-01 biennium and a decrease in the transportation fund ad valorem tax collections of \$150,000 (SEG) for the 1999-01 biennium.

#### **6. Family Care Districts**

SECTION 1082 of the bill authorizes county boards to create a special purpose district, called a family care district, to operate and administer the family care program at the local level. In addition to other numerous powers and duties similar to municipal units of government and being subject to many of the same requirements covering other public entities such as the Open Records Law, Open Meetings Law and similar other requirements, family care districts would also share a number of advantages with governmental entities.

A family care district would be exempt from local property taxation and the state corporate income and franchise taxes similar to the treatment received by municipal governments in the state and current law.

#### **Legality Involved**

There are no questions of legality involved in the six provisions of the bill described in this report.

#### **Public Policy Involved**

The provisions of the bill relating to tax exemptions are good public policy if they are amended by the provisions of Assembly Substitute Amendment 1 to the bill, as offered by the Joint Committee on Finance, and if the bill is amended so as to subject the transfer of all time-share property to uniform treatment by applying the real estate transfer fee to such transfers.