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3

**Gov Agency:** General Fund Taxes—Tax Administration

**Recommendations:**

**Paper No. Items for Which No Issue Paper Were Prepared**

**Comments:** This <sup>all</sup> seem okay to me.

Prepared by: Julie

# GENERAL FUND TAXES

## Tax Administration

### LFB Summary Items for Which No Issue Paper Has Been Prepared

<u>Item #</u>	<u>Title</u>
1	Minnesota-Wisconsin Income Tax Reciprocity Payments
2	Illinois-Wisconsin Income Tax Reciprocity Payments
3	Illinois-Wisconsin Income Tax Reciprocity Study
4	Interest on Overpayment of Taxes

### LFB Summary Items for Introduction as Separate Legislation

<u>Item #</u>	<u>Title</u>
6	Compromising Nondelinquent Taxes
7	Tax Appeals Commission -- Summary Proceedings
8	Tax Appeals Commission -- Penalty for Frivolous or Groundless Appeals
9	Tax Appeals Commission -- Hearing Locations

GENERAL FUND TAXES

Omnibus Tax Package

Motion:

Move to approve the Governor's recommendations contained in Fiscal Bureau Papers #100 through #131 with the following modifications:

1. LFB Paper #100. Alternative 2. Retain the current state income tax treatment of social security benefits.
2. LFB Paper #101. Alternative 2. Modify the Governor's recommendation by continuing to index the individual income tax brackets in tax years 2000 and 2001.
3. LFB Paper #102. Alternative 8. Allow DOR to adjust the individual income tax filing thresholds to reflect the gross income level at which no taxpayer would have a state tax liability.
4. LFB Paper #106. Approve the Governor's recommendation to eliminate miscellaneous itemized deductions from the calculation of the itemized deduction credit with modifications to: (a) continue to allow professional dues and union dues to be included in calculating the credit; and (b) specify that the amount claimed as a federal miscellaneous itemized deduction for repayment of income that was taxed in a prior year may be subtracted from federal AGI.
5. LFB Paper #108. Alternative 1. Modify the current individual income tax indexing provisions by: (a) eliminating the maximum income amounts for the standard deduction from the statutes; and (b) specifying that the tax brackets and standard deduction be indexed based on the 1998 amounts. These changes would allow the standard deduction to be calculated accurately for taxpayers in the phase-out range for the deduction and would incorporate the federal indexing method into state law.
6. LFB Paper #109. Modification. Increase projected income tax collections by \$62 million in 1999-00 and reduce estimated collections by \$62 million in 2000-01 to account for anticipated withholding table adjustments.
7. LFB Paper #110. Alternative A1. Reestimate funding for the current law homestead credit at \$75,700,000 in 1999-00 and \$73,300,000 in 2000-01. Reduce funding by \$3,300,000 in 1999-00 and \$3,700,000 in 2000-01 from the amounts provided in the bill to reflect this reestimate.
8. LFB Paper #110. Alternative B1. Adopt the Governor's recommendation to increase

the maximum income for the homestead credit from \$19,154 to \$20,290 beginning with credit claims filed in 2000 for property taxes accrued during the previous year. Decrease funding from the amount provided in the bill by \$100,000 in 1999-00 and \$800,000 in 2000-01 to reflect a reestimate of the cost of the expansion.

9. LFB Paper #111. Modify the Governor's recommendation to phase-in the corporate income tax single-sales apportionment formula over three years, beginning with tax year 2001 by increasing the sales factor each year and decreasing the payroll and property factors equally. Increase the sales factor as follows: tax year 2001 - 63%; tax year 2002 - 85%; and tax year 2003 - 100%. In addition, do not apply the single-sales apportionment formula to public utilities, telecommunications, transportation and pipeline companies.

10. Modify current corporate income and franchise tax provisions as follows:

a. Define "doing business in this state" to mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. A corporation that directly or indirectly owns a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership, or that directly or indirectly owns an interest in a limited liability company that does business in the state, regardless of the percentage of ownership, would be doing business in this state in a corporate capacity, subject to constitutional limitations.

b. Provide that the corporate income and franchise tax would be imposed on corporations that derive income from sources within the state or from activities attributable to the state.

c. Provide that income, gain or loss that is defined as apportionable under Wisconsin law would be apportionable, subject to constitutional limitations, rather than being presumed apportionable.

d. Provide that a general or limited partner's share of the numerator and the denominator of the partnership's apportionment factors would be included in the numerator and the denominator of the general or limited partner's apportionment factors and for a limited liability company treated as a partnership a member's share of the numerator and the denominator of the limited liability company's apportionment factors would be included in the numerator and the denominator of the member's apportionment factors.

e. Provide that these provisions would first apply to tax years beginning on or after January 1, 1999.

11. LFB Paper #112. Alternative 5. Eliminate the corporate income tax combined reporting provisions.

12. LFB Paper #113. Alternative 2. Eliminate the Governor's proposal regarding nexus for corporate income tax purposes.

13. LFB Paper #114. Alternative 2. Modify the Governor's recommendation to specify that development zone credits could only be used to offset income from the claimant's business activities in the development or enterprise development zone.

14. LFB Paper #115. Alternatives 2a and b. Delete the Governor's recommendations regarding the development zones program and, instead:

a. Increase the maximum amount of tax credits that can be claimed under the development zones program by \$5 million, from \$33.155 million to \$38.155 million.

b. Authorize Commerce to create an additional 15 enterprise development zones. The total number of zones authorized would be 79 (up to 100 could be designated with Joint Committee on Finance approval).

15. LFB Paper #116. Alternative 2. Adopt the provisions requested by the Department of Revenue to update state tax references to the federal Internal Revenue Code (IRC) in effect as of December 31, 1998. Modify current lottery provisions to allow prize winners to make a designation of whether to receive the prize as a lump sum or as an annuity within 60 days after winning. In addition, allow individuals who won prior to October 21, 1998, and currently receive the prize as an annuity, to designate a lump sum payment for the remaining portion of the prize, if the option is exercised prior to December 31, 2000.

16. LFB Paper #120. Modification. Reestimate funding for cigarette tax refunds under current law at \$9,520,000 in 1999-00 and \$9,320,000 in 2000-01. Compared to the bill, the revised estimates decrease funding for the refunds by \$880,000 in 1999-00 and \$1,580,000 in 2000-01.

a. LFB Paper #121, Alternative 3b. Delete the Governor's recommendation regarding the cigarette tax refund percentage. Instead, specify a maximum refund rate of 70% and require DOR to refund a percentage of the taxes at a rate determined in individual agreements with the tribes. In addition, authorize the Secretary of DOR to enter into agreements that would specify the refund rate (at or below the 70% maximum) for taxes on sales to non-tribal members. The statutes would continue to specify that such agreements would provide for the refunding of 100% of cigarette taxes imposed on sales to tribal members.

17. LFB Paper #122, Alternative 4d. Approve the Governor's recommendation regarding the tobacco products tax with a modification to provide that the refund rate would be a maximum of 70% and authorize the Secretary of DOR to enter into agreements that would specify the refund rate at or below the maximum.

18. LFB Paper #123, Alternative 4. Maintain current law regarding the taxation of time-share properties.

19. LFB Paper #124. Alternative 3. Maintain current law regarding car line taxes.

20. LFB Paper #130. Increase the late filing fee for delinquent sales and use tax returns from \$10 to \$20, rather than to \$30.

21. LFB Paper #131. Alternative 5. Approve the Governor's recommendation regarding funding for collections of delinquent taxes. In addition, delete \$10,833,300 PR and 174.0 PR positions annually and provide \$13,053,100 GPR in 1999-00, \$11,203,300 GPR in 2000-01 and 184.0 GPR positions. Provide that delinquent tax collection fees be placed in the general fund as GPR-Earned. In addition, (a) provide \$50,000 GPR in 1999-00 and \$209,600 GPR in 2000-01 for the Department to purchase predictive dialer technology; (b) provide \$468,600 GPR in 2000-01 in 1999-00 and \$499,700 GPR in 2000-01 and 10.0 revenue agent positions each year; (c) provide \$20,000 GPR in 2000-01 and charge delinquent taxpayers for costs incurred for court actions that are related to collection of delinquent taxes; and (d) provide \$10,000 GPR in 2000-01 and authorize the Department to charge a \$20 fee for installment agreements with delinquent taxpayers.

22. Decrease the amount of local exposition district tax collections retained by DOR for administration of the tax from 3% to 1.75%, effective on the first day of the first month beginning after publication of the bill.

23. Provide that, for a telecommunications company subject to a transitional adjustment fee for 1999 and 2000 under 1995 Act 351, if the calculation of the fee results in a negative number, a portion of the amount could be used as a credit against the ad valorem tax assessment if the "total Wisconsin gross revenues" of the company under 76.38, 1993 statutes is less than \$10.0 million. Provide that the credit would be limited to 60% of the negative number calculated for the first year of the transition period under Act 351 and 40% of the negative number calculated for the second year of the transition period. Specify that these provisions would be retroactive to include taxes for the first year of the transition period under Act 351 and would sunset at the end of the transition period.

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Note:

*Individual Income Tax.* The individual income tax provisions recommended by the Governor, along with the modifications outlined above, would reduce taxes by an estimated \$317,900,000 in 2000-01 compared to current law. Compared to the estimates used in the bill, this would be an additional revenue loss of \$51,800,000.

*Homestead Credit.* Compared to the bill, funding for the homestead credit would decrease by \$3,400,000 GPR in 1999-00 and \$4,500,000 GPR in 2000-01.

*Corporate Income Tax.* The modification regarding single-sales apportionment would decrease corporate income tax revenues by an estimated \$12,500,000 in 2000-01 compared to current law. Compared to the estimates used in the bill, revenues would increase by \$24,600,000 in 1999-00 and \$37,500,000 in 2000-01. Once the new provisions are fully phased-in, the estimated cost is at least \$80 million annually. The fiscal effect of the provision regarding out-of-state partnerships and LLCs is estimated to be an increase in tax collections of \$7,500,000 in 1999-00

and \$5,000,000 in 2000-01. The higher figure in the first year includes one-time revenues of \$2,500,000 from reconciling estimated and final tax payments. Eliminating the proposed combined reporting requirement would reduce revenues by \$23,100,000 in 1999-00 and \$47,000,000 in 2000-01, compared to the estimates used in the bill. Eliminating the nexus provision would have no fiscal effect, because the bill did not include an estimate for this provision.

*Other Tax Provisions.* The IRC update is estimated to increase tax revenues by \$15,915,000 in 1999-00 and \$6,155,000 in 2000-01. As noted, the revised estimate of cigarette tax refunds would decrease funding by \$880,000 GPR in 1999-00 and \$1,580,000 GPR in 2000-01. The other modifications regarding refunds of cigarette and tobacco products taxes would increase expenditures by \$2,708,500 GPR in 1999-00 and \$3,250,000 GPR in 2000-01. The time-share modifications would decrease revenues by \$1,200,000 in 1999-00 and \$1,440,000 in 2000-01. The telecommunications tax provision would reduce revenues by an estimated \$870,000 in 1999-00.

*Tax Administration.* The modification regarding the sales tax late filing fee would decrease revenues by an estimated \$565,000 in 1999-00 and \$700,000 in 2000-01. The delinquent tax changes would decrease PR funding by \$21,666,600 in the biennium and increase GPR funding by \$25,514,300. In addition, 174.0 PR positions would be deleted and 184.0 GPR positions would be created. General fund revenues would increase by an estimated \$33,565,300 in the biennium. The reduction in DOR's administrative fee would decrease program revenue available to the Department by an estimated \$111,700 in 1999-00 and \$134,000 in 2000-01.

[Change to Bill: -\$21,060,500 GPR-REV, \$24,620,800 GPR-Earned, -\$245,700 PR-REV, \$21,112,800 GPR, -\$21,666,600 PR, 184.0 GPR positions and -174.0 PR positions]

MO#			
1	BURKE	Y	N A
	DECKER	Y	N A
	JAUCH	Y	N A
	MOORE	Y	N A
	SHIBILSKI	Y	N A
	PLACHE	Y	N A
	COWLES	Y	N A
	PANZER	Y	N A
2	GARD	Y	N A
	PORTER	Y	N A
	KAUFERT	Y	N A
	ALBERS	Y	N A
	DUFF	Y	N A
	WARD	Y	N A
	HUBER	Y	N A
	RILEY	Y	N A
	AYE	13	NO 3 ABS

**GENERAL FUND TAXES -- INDIVIDUAL AND CORPORATE INCOME TAXES**

**Proposal to Increase the Property Tax/Rent Credit and Homestead Credit  
[Papers #103 and #110]**

Motion:

Move to eliminate the income tax modifications recommended by the Governor in tax year 2000 and thereafter. Instead, increase the property tax/rent credit (PTRC) and homestead credit as follows:

**Property Tax/Rent Credit**

Modify the PTRC to provide a "three-tier" credit structure. Maintain the current \$2,000 maximum amount of property taxes or rent constituting property taxes that may be claimed for the credit. Vary the credit percentage based on Wisconsin adjusted gross income (AGI) as shown in the chart below. Specify that the credit percentage and maximum credit would be reduced based on the taxpayer's level of income within the phase-down range for taxpayers with income between tier 1 and tier 2 and between tier 2 and tier 3.

<u>Income Limits*</u>	<u>Tax Year 2000</u>		<u>Tax Year 2001 and Thereafter</u>	
	<u>Credit Percentage</u>	<u>Maximum Credit</u>	<u>Credit Percentage</u>	<u>Maximum Credit</u>
<b>1st Tier</b> \$0 to \$60,000 if Married-Joint \$0 to \$45,000 if Single	20.5%	\$410	22.5%	\$450
<b>2nd Tier</b> \$70,000 to \$140,000 if Married-Joint \$55,000 to \$105,000 if Single	13.0%	260	13.0%	260
<b>3rd Tier</b> \$150,000 and Over if Married-Joint \$115,000 and Over if Single	10.0%	200	10.0%	200

\*The income limits for married taxpayers filing separately would equal one-half of the married-joint amounts.

**Homestead Credit**

Increase the maximum income under the homestead credit to \$25,000 beginning in tax year

2000 and reduce the percentage used in phasing out the credit to 8.5%.

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Note:

This motion would eliminate the income tax provisions recommended by the Governor and, instead, increase the PTRC and homestead credit.

*PTRC.* As described above, the PTRC would be modified to provide a "three-tier" credit. In 2001, married taxpayers filing a joint return with AGI below \$60,000 would be eligible for a PTRC equal to 22.5% of property taxes or rent up to a maximum credit of \$450. The credit percentage would be reduced from 22.5% to 13.0% for taxpayers with income between \$60,000 and \$70,000 (for example, a married-joint taxpayer with \$65,000 in income, which is the mid-point of the phase-down range, would be eligible for a credit equal to 17.75% of property taxes or rent to a maximum credit of \$355). For married-joint taxpayers with income between \$70,000 and \$140,000, the credit percentage would equal 13.0% of property taxes or rent to a maximum credit of \$260. The credit percentage would be reduced from 13.0% to 10.0% for married taxpayers with income between \$140,000 and \$150,000 (a taxpayer with \$145,000 in income would be eligible for a PTRC equal to 11.5% of property taxes or rent up to a maximum credit of \$230). Finally, the credit would equal the current law 10.0% up to a maximum credit of \$200 for all married-joint taxpayers with income above \$150,000. The PTRC would be calculated similarly for single and married-separate taxpayers using different income limits.

*Homestead Credit.* The Governor's recommended homestead credit expansion would be retained in tax year 1999 under the motion. The additional expansion would take effect in tax year 2000. As under current law, property taxes claimed for the credit could not exceed \$1,450 and the maximum credit would be \$1,160. Claimants with household income above \$8,000 would receive a credit increase under the proposal and households with income between \$19,154 and \$25,000 could be eligible for a credit. Claimants with income of \$8,000 or less would not receive an increased credit.

*Fiscal Effect.* Table 1 shows the combined cost of the PTRC alternative and the homestead credit proposal for tax year 2000 and 2001 (in 2000 dollars) compared to current law.

TABLE 1

Estimated Cost of PTRC and Homestead Credit Proposals  
(In Millions of Tax Year 2000 Dollars)

	<u>2000</u>	<u>2001</u>
PTRC	\$198.5	\$231.5
Homestead	<u>25.2</u>	<u>25.2</u>
Total	\$223.7	\$256.7

Compared to the bill, this motion would increase general fund revenues by \$67.6 million and increase the cost of the homestead by \$19.9 million in 2000-01.

[Change to Bill: \$67,600,000 GPR-REV and \$19,900,000 GPR]

MO#			
BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE 8 NO 8 ABS

GENERAL FUND TAXES

Voluntary Agreements with Out-of-State Direct Marketers

Motion:

Move to authorize the Department of Revenue to enter into voluntary agreements with out-of-state direct marketers for collection of Wisconsin sales and use tax from Wisconsin customers at a rate to include the general state sales tax rate plus the optional general county sales tax rate.

Specify that direct marketers who voluntarily agree to collect Wisconsin sales and use taxes may retain 5% of the first \$1 million of such taxes in a calendar year and 6% of any additional amounts collected in the remainder of the same year. Specify that these provisions would not apply to an out-of-state retailer that has nexus with the state of Wisconsin for sales tax purposes.

Authorize DOR to promulgate administrative rules as needed to promote this option with Direct Marketing Association members and to negotiate payment schedules and audit follow-up as necessary.

Provide that all taxes collected through such voluntary agreements be deposited in the general fund. Specify that 1/11 of the funds generated in a fiscal year be appropriated to the Department of Health and Family Services (DHFS) in the subsequent fiscal year to be distributed to counties on a per capita basis in the form of block grants to fund services for children and families. Require the Department of Revenue (DOR) to certify at the close of each fiscal year the amount to be appropriated to DHFS for the block grants for the following fiscal year. Specify that these provisions would take effect on the first day of the second month beginning after publication of the bill.

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Note:

Under current law, if an out-of-state seller has adequate nexus (business connection) with the state, the state can require the seller to collect the Wisconsin sales and use tax on sales to its Wisconsin customers. Any out-of-state seller that is not required to collect sales and use tax from sales to Wisconsin customers may voluntarily obtain a business tax registration certificate from DOR and thereby be authorized and required to collect the 5% tax. Current law provides a retailers' discount of the greater of \$10 or 0.5% of sales and use tax payable per reporting period to cover

administrative costs associated with collecting and remitting the tax.

The motion would authorize a larger retailers' discount (5% of the first \$1 million of taxes collected per year and 6% of additional amounts) for out-of-state direct marketers who voluntarily collect Wisconsin taxes on sales to Wisconsin customers. The motion would also authorize DOR to negotiate payment schedules and audits with such out-of-state direct marketers and to promote the voluntary sales and use tax collection agreements with members of the Direct Marketing Association. These provisions would not apply to an out-of-state retailer that has nexus with the state of Wisconsin for sales tax purposes.

Based on such tax collections through voluntary agreements in Florida and Idaho, it is estimated that the motion would generate increased Wisconsin sales and use tax collections of \$2.8 million in 1999-00 and \$5.5 million in 2000-01. The share to be distributed by DHFS to counties in the form of block grants is projected at \$250,000 in 2000-01 (the actual amount would be determined from collections during 1999-00) and \$500,000 in 2001-02 and thereafter. These estimates are based on the following assumptions: (a) per capita annual sales to Wisconsin residents through direct marketers, on which use tax would be voluntarily collected, of \$20 (roughly the average of per capita sales in Florida and Idaho); (b) the proposal would be effective October 1, 1999; and (c) collections during the first year would be based on six months only (January, 2000, through June, 2000), in order to allow time for agreements to be enacted.

It should be noted that the provisions in the motion are not identical to the systems being used in either Florida or Idaho. In addition, the estimates from these states are based on agreements that are already in place, rather than being in the start-up phase of implementing voluntary agreements, such as would be the case in Wisconsin. In light of these differences and the lack of precise data for Wisconsin, the estimated fiscal effect of the motion must be considered to be speculative.

[Change to Bill: \$8,300,000 GPR-REV and \$250,000 GPR]

MO#			
2	BURKE	<input checked="" type="radio"/>	N A
	DECKER	<input checked="" type="radio"/>	N A
	JAUCH	<input checked="" type="radio"/>	N A
	MOORE	<input checked="" type="radio"/>	N A
	SHIBILSKI	<input checked="" type="radio"/>	N A
	PLACHE	<input checked="" type="radio"/>	N A
	COWLES	<input checked="" type="radio"/>	N A
	PANZER	<input checked="" type="radio"/>	N A
	GARD	<input checked="" type="radio"/>	N A
	PORTER	<input checked="" type="radio"/>	N A
	KAUFERT	<input checked="" type="radio"/>	N A
	ALBERS	<input checked="" type="radio"/>	N A
	DUFF	<input checked="" type="radio"/>	N A
	WARD	<input checked="" type="radio"/>	N A
1	HUBER	<input checked="" type="radio"/>	N A
	RILEY	<input checked="" type="radio"/>	N A

AYE 16 NO 0 ABS \_\_\_\_\_

GENERAL FUND TAXES

Refunds of Cigarette Taxes on Sales to Native Americans

Motion:

Move to eliminate the current provisions under which the state refunds 70% of cigarette taxes on cigarettes sold by Native American retailers to non-tribal members and 100% of cigarette taxes on sales by Native American retailers to tribal members. Instead, require the Department of Revenue (DOR) to refund 100% of the cigarette tax on sales by Native American retailers to tribal members, if the purchaser of the cigarettes presents an exemption certificate issued by DOR to the retailer indicating that the purchaser is a member of the same tribe as the retailer.

Provide a penalty on delinquent payment of use taxes on purchases of unstamped cigarettes of \$100 for each 200 cigarettes.

In addition, specify that the penalties for unlawfully possessing in excess of 400 cigarettes without properly affixed tax stamps are as follows:

- a. If the number of cigarettes does not exceed 6,000, a fine of \$100 to \$500 or imprisonment for not more than 6 months or both;
- b. If the number of cigarettes exceeds 6,000 but does not exceed 36,000, a fine of \$250 to \$1,500 or imprisonment for not more than one year or both; and
- c. If the number of cigarettes exceeds 36,000, a fine of \$500 to \$15,000 or imprisonment for not more than two years or both

Specify that these provisions would take effect on January 1, 2000.

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Note:

Federal law prohibits states from imposing a cigarette tax on sales from Native American retailers to tribal members. Under current state law, DOR refunds 70% (50% under the bill) of cigarette taxes on sales by Native American retailers to non-tribal members and 100% on sales to tribal members on reservations. The 100% refund is based on estimated per capita consumption of cigarettes by tribal members. In exchange for the refunds, ten of the 11 tribes in Wisconsin have agreed to sell only stamped (taxed) cigarettes. The other tribe sells untaxed cigarettes to tribal

members and taxed cigarettes to non-tribal members. The state only provides a refund of 70% of taxes paid on sales to non-tribal members.

The current 70% refunds to non-tribal members are estimated to cost \$8,568,000 in 1999-00 and \$8,388,000 in 2000-01. The 100% refunds to tribal members are estimated to cost \$952,000 in 1999-00 and \$932,000 in 2000-01.

This motion would eliminate the current refund provisions and, instead, allow a 100% refund for sales by Native American retailers to tribal members, if the purchaser of the cigarettes presents an exemption certificate indicating that the purchaser is a member of the same tribe as the retailer.

Current law imposes a use tax on the use of cigarettes in this state by a person who has not paid the tax on such cigarettes that are not exempt from such tax. A penalty of \$25 for each 200 cigarettes is imposed if the taxes are not paid within 15 days. This motion would increase the penalty to \$100 for each 200 cigarettes.

Current law imposes the following penalties for unlawfully possessing in excess of 400 cigarettes without properly affixed tax stamps:

- a. If the number of cigarettes does not exceed 6,000, a fine of not more than \$200 or imprisonment for more than 6 months or both;
- b. If the number of cigarettes exceeds 6,000 but does not exceed 36,000, a fine of a not more than \$1,000 or imprisonment for not more than one year or both; and
- c. If the number of cigarettes exceeds 36,000, a fine not more than \$10,000 or imprisonment for not more than two years or both.

The motion would increase the penalties as described above.

The fiscal effect of this motion depends upon how the tribes would react to the state repealing the current refund provisions. If the tribes continue to sell taxed cigarettes to nontribal members, state expenditures for the 70% refunds would be lower by \$4,284,000 GPR in 1999-00 and \$8,388,000 GPR in 2000-01. However, if the tribes chose to sell unstamped cigarettes, enforcement difficulties that occurred prior to the current refund arrangement could recur. This could result in reductions in the 30% share of taxes that the state now collects on sales to non-tribal members. Under current law, the 30% state share is estimated at \$3.7 million annually, which would be the maximum amount of the loss in general fund revenues if the tribes chose to stop selling taxed cigarettes. However, as it not certain that the tribes would stop selling stamped cigarettes, the potential loss in revenue from the 30% state share of sales to non-tribal members is not included in the estimate.

[Change to Bill: -\$12,672,000 GPR]

Motion #1177

Pa

MO#	BURKE	DECKER	JAUCH	MOORE	SHIBILSKI	PLACHE	COWLES	PANZER	GARD	PORTER	KAUFERT	ALBERS	DUFF	WARD	HUBER	RILEY	AYE	NO	ABS
	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			

AYE 3 NO 13 ABS

GENERAL FUND TAXES -- INDIVIDUAL AND CORPORATE INCOME TAXES

Higher Education Tuition Deduction

Motion:

Move to extend the higher education tuition deduction to Wisconsin residents attending any institution of higher education in Minnesota, beginning with expenses paid in tax year 1999.

Note:

Beginning with the 1998 tax year, an individual income tax deduction is provided for each taxpayer or dependent of a taxpayer for higher education tuition expenses. Allowable tuition expenses include tuition paid to attend any university, college, technical college or school approved by the Educational Approval Board that is located in Wisconsin or to attend a public vocational school or public institution of higher education in Minnesota under the Minnesota-Wisconsin tuition reciprocity agreement.

The deduction is limited to \$3,000 per student for each tax year. It is available to all single and head-of-household taxpayers who have federal adjusted gross income (AGI) of \$50,000 or less; the amount of the deduction phases out as income increases until eliminated when federal AGI exceeds \$60,000. For married taxpayers filing joint returns, the deduction begins to phase out when federal AGI exceeds \$80,000 until eliminated when income exceeds \$100,000. Finally, the deduction for married-separate taxpayers phases out when federal AGI exceeds \$40,000 until eliminated when income exceeds \$50,000.

This motion would extend the deduction to Wisconsin residents attending private educational institutions in Minnesota, which is estimated to reduce general fund revenues by \$100,000 annually.

[Change to Bill: -\$200,000 GPR-RF]

Motion #1160

MO#	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
	BURKE	DECKER	JAUCH	MOORE	SHIBILSKI	PLACHE	COWLES	PANZER	GARD	PORTER	KAUFERT	ALBERS	DUFF	WARD	HUBER	RILEY	AVE	NO	ABS

8 NO 8 ABS







GENERAL FUND TAXES

Wisconsin Fair Dealership Law

Motion:

Move to create the following provisions related to the governance of relationships between wholesalers and suppliers of intoxicating liquor:

**Administrative Provisions**

1. Require the administrator of the Division of Hearings and Appeals (Division) in the Department of Administration (DOA) to assign a hearing examiner to preside over any hearing of a contested case that is required to be conducted by the Department of Revenue (DOR) with respect to relationships between wholesalers and suppliers of intoxicating liquor.

2. Require DOR to notify the Division of every pending hearing to which the administrator of the Division is required to assign a hearing examiner after DOR is notified that a hearing on the matter is required.

3. Authorize the administrator of the Division to set the fees to be charged for any services rendered to DOR by a hearing examiner under (1) above. Specify that the fee shall cover the total cost of the services less any costs covered by: (a) the DOA appropriation for Hearings and Appeals operations; and (b) those costs recovered through fees charged for such purposes by DOR to holders of wholesalers' permits [see (5) below].

4. Require DOR to pay all costs of the services of a hearing examiner assigned as in (1) above, including costs of support services, according to the fees set under (3) above.

5. Authorize DOR to establish, by rule, a procedure to collect annually from holders of wholesaler's permits funds necessary to reimburse DOR for charges paid to the Division for the services of a hearing examiner, including support services.

**Relationships Between Wholesalers and Suppliers of Intoxicating Liquor**

Specify that the Legislature finds the following:

The Legislature finds that the 3-tier system for distributing intoxicating liquor has existed in Wisconsin for over 60 years and continues to be necessary to promote the public health, safety and welfare; that the 3-tier system was established, among other reasons, to prevent suppliers

from controlling pricing and distribution in a manner that harms the interests of the citizens of Wisconsin; that a stable and healthy middle tier of the 3-tier system, the wholesaler, is integral to the 3-tier system because the middle tier prevents supplier control of pricing and distribution and provides an efficient and effective means for tax collection; that significant consolidation of market power has occurred at the supplier level; that the number of intoxicating liquor wholesalers in Wisconsin has significantly declined over the past two decades increasing the risk of supplier control of pricing and distribution; and that this legislation is necessary to promote and maintain a stable and healthy middle tier. The Legislature further finds that relationships between intoxicating liquor wholesalers and suppliers have been subject to state regulation since the enactment of the 21<sup>st</sup> Amendment to the U.S. Constitution and that the parties to those relationships expect changes to state legislation regarding those relationships.

### ***Applicability***

Provide that the following apply with respect to relationships between wholesalers and suppliers of intoxicating liquor:

1. These provisions apply to all relationships, regardless of when they were entered into, except that the provisions do not apply to a relationship in which the volume of the business done by a wholesaler with a supplier, including a supplier's affiliates, does not exceed five percent of the wholesaler's total business volume;
2. The effect of these provisions may not be varied by contract or agreement. Any contract or agreement purporting to do so is void and unenforceable to that extent only.
3. Provisions of a relationship that prevent a wholesaler, through choice of law or forum provisions, from bringing an action or filing a notice of contest in this state under these provisions are void and unenforceable to that extent only.

### ***Definitions***

Specify the following definitions with respect to wholesaler - supplier relationships:

1. "Altered product" means an existing product altered by age, by alcohol content, blend mixture, flavor or in some other way and principally identified by a trademark, trade name, logotype or other commercial symbol used to identify an existing product.
2. "Existing product" means intoxicating liquor that is distributed in the United States before or on the effective date of these provisions.
3. "Good cause" means: (a) failure by a wholesaler to comply substantially with essential and reasonable requirements imposed upon the wholesaler by the supplier, or sought to be imposed by the supplier, which requirements are not discriminatory as compared with requirements imposed on other similarly situated wholesalers either by their terms or in the manner of their enforcement; or (b) bad faith by the wholesaler in carrying out the terms of the relationship.

4. "Geographic area" means that area where a wholesaler is both authorized to sell intoxicating liquor pursuant to a relationship and has in fact sold intoxicating liquor.

5. "Goodwill" includes use of a trademark, trade name, logotype or other commercial symbol, and use of a variation of a trademark, trade name, logotype, advertisement or other commercial symbol.

6. "Intoxicating liquors" means all ardent, spirituous, distilled liquors, liquids or compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing 0.5% or more of alcohol by volume, which are beverages, but does not include "fermented malt beverages" and "wines."

7. "New product" means intoxicating liquor that is not an altered product and that is distributed in the United States after the effective date of these provisions.

8. "Relationship" means a contract or agreement, either express or implied, whether oral or written, between a supplier and a wholesaler that grants the wholesaler the right to purchase intoxicating liquor from the supplier for resale in this state.

9. "Supplier" means any person, other than a wholesaler, who sells intoxicating liquor to a wholesaler.

10. "Transferee" means a person who acquires any asset or activity of a supplier's business and who uses the goodwill associated with the supplier's goods.

### *Alteration of Relationship*

Specify that a supplier may not do any of the following:

1. Terminate, cancel, fail to renew or substantially alter a relationship without good cause. The supplier bears the burden of proving good cause and that the alteration is not substantial.

2. Substantially change the competitive circumstances of a wholesaler's business without good cause. The supplier bears the burden of proving good cause and that the change is not substantial.

3. Appoint more than one wholesaler to resell an existing product in a geographic area in which there was only one wholesaler reselling that existing product in that geographic area in the 12 months preceding the effective date of these provisions.

4. Refuse to sell an altered product or a new product to a wholesaler who has entered into a relationship with the supplier, except in the case of a supplier who has relationships with more than one wholesaler in the same geographic area, as described below.

Specify that a supplier who has relationships with more than one wholesaler in the same geographic area shall offer an altered product only to a wholesaler who previously resold the existing product principally identified by the same trademark, trade name, logotype or other commercial symbol used to identify the altered product.

Specify that a change in the ownership or management of a wholesaler or of a wholesaler's business is not good cause if the changed ownership or management meets the supplier's reasonable and material qualifications for wholesaler applicants in effect at the time of the change.

### ***Notice of Termination or Change in Relationship***

With certain exceptions described below, require a supplier to provide a wholesaler at least 90 days' prior written notice of termination, cancellation, nonrenewal, substantial alteration in the relationship or substantial change in the competitive circumstances of the wholesaler's business. Specify that: (a) the notice shall be given by certified mail or personal service to the wholesaler and to the Secretary of the Department of Revenue; (b) the notice shall state all of the supplier's reasons for terminating, canceling, not renewing or substantially altering the relationship, or substantially changing the competitive circumstances of the wholesaler's business; (c) the wholesaler shall have 60 days after receiving the notice in which to correct any claimed deficiency; and (d) if the wholesaler corrects the deficiency within 60 days after receiving the notice, the notice shall be void.

Provide that if the reason for the deficiency is nonpayment of sums owed, the wholesaler shall have only 10 days to correct the deficiency.

Specify that no notice is required under for the termination, cancellation, nonrenewal or substantial change of a relationship caused by an assignment for the benefit of creditors or bankruptcy.

Provide that, within the time period for remedying any claimed deficiency, the wholesaler may file a written request with the Division of Hearings and Appeals for a hearing and serve the supplier and the Secretary of DOR by certified mail or in person, with a notice of the contested action. Specify that the service of notice stays any action proposed by the supplier in the notice of termination or change in relationship as described above. However, if a motion is made by the supplier to allow the action to proceed, then the Division shall conduct a hearing limited to whether or not to let the action go forward within 20 days.

Require the Division to conduct a contested case hearing on the matter within 180 days after the filing of a notice of contest and to determine whether the supplier has met the requirements for altering a relationship and providing notice of termination or change in a relationship. Specify that if the Division determines, after a hearing, that the supplier has failed to comply with these provisions, the relationship between the supplier and the wholesaler is still in effect, and the failure of the supplier to comply with the terms of the relationship is grounds for revocation, nonrenewal or failure to grant, by DOR, of that supplier's out-of-state shipper's permit.

In addition, provide that if the Division determines that a transferee has failed to comply with these provisions, the transferee shall comply with the terms of the relationship between the supplier and the wholesaler or DOR will have grounds for revocation, non-renewal, or failure to grant the transferee's out-of-state shippers permit.

Provide that, if the wholesaler prevails, it shall be awarded its actual costs incurred in the hearing, including reasonable attorney fees. Specify that the losing party at the hearing must pay to the Division the costs of the hearing as determined under the administrative provisions described above.

Specify that any person aggrieved by a decision of the Division may seek judicial review, under the provisions in the statutes on administrative procedure and review, in the circuit court in the county in which the wholesaler's premises is located.

### ***Additional Provisions***

Specify that a transferee of a supplier's business shall comply with the requirements for altering a relationship with a wholesaler and providing notice of termination or change in a relationship.

Provide that a wholesaler may bring an action to enjoin any violation of the provisions on the relationship between wholesalers and suppliers of intoxicating liquors described above to compel compliance with those provisions, and in the same action may recover damages, together with costs including reasonable actual attorney fees, notwithstanding the statutes on costs upon counterclaims and cross complaints. Specify that these provisions do not limit any other right or remedy provided by law that may be available to the wholesaler.

Specify that if any of the provisions on the relationship between wholesalers and suppliers of intoxicating liquors (as described above) or the application of such provisions to a relationship is held invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application and to this end these provisions are severable.

### **Effective Date**

Provide that these provisions would take effect on the day after publication of the bill.

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Note:

Chapter 135 of the statutes, enacted in 1973 as the Wisconsin Fair Dealership Act (WFDA), governs dealership practices in the state, providing dealers with rights and remedies in addition to those existing by contract or common law. A dealer is defined as a person who is a grantee of a

dealership situated in this state. A "dealership" includes the following components: (a) an oral or written contract or agreement between two or more persons to sell or distribute goods or services or to use certain items such as a trade name and trademark; and (b) a community of interest in the business of offering, selling or distributing goods or services at wholesale, retail, by lease, agreement or otherwise. A "grantor" is a person who grants a dealership. A "community of interest" is a continuing financial interest between the grantor and the grantee in either the operation of the dealership business or the marketing of such goods or services.

WFDA specifies that no grantor of a dealership may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. "Good cause" means failure by a dealer to comply substantially with reasonable and nondiscriminatory requirements imposed by the grantor or bad faith by the dealer in carrying out the terms of the dealership. The burden of proving good cause is on the grantor.

WFDA provides the following procedures to be used in relation to a notice of termination or change in a dealership: (a) a grantor is required to provide a dealer at least 90 days prior written notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances; (b) the notice must state the reasons for the action and provide a dealer with 60 days to correct the deficiency; (c) if the deficiency is corrected within 60 days, the notice becomes void; (d) the notice provisions do not apply if the reason for the action is the occurrence of an assignment for the benefit of creditors or bankruptcy; and (e) if the reason for the action is nonpayment of sums due under the dealership, the dealer shall have 10 days after written notice to remedy the default. If a dealer believes that a grantor has violated the provisions of WFDA, the dealer is authorized to bring an action against that grantor in any court of competent jurisdiction.

This motion would create similar and expanded provisions for the governance of intoxicating liquor dealerships and the relationship between suppliers and wholesalers of intoxicating liquor (excluding beer and wine). The motion would apply to all relationships between suppliers and wholesalers, except a relationship in which the volume of the business done by a wholesaler with a supplier (including a supplier's affiliates) does not exceed five percent of the wholesaler's total business volume. In addition to relationships covered under WFDA, the motion would apply to the following: (a) a relationship entered into prior to the enactment of the legislation; (b) a relationship not covered by WFDA because it existed prior to WFDA and has not been reaffirmed or renewed since coverage by WFDA was provided in April, 1974; or (c) a relationship that is not covered by WFDA because the relationship does not constitute a "community of interest" as required to be considered a dealership under the provisions of WFDA (however, WFDA does not define the standards by which to determine a "community of interest").

The motion would create an administrative review structure that calls for a hearing examiner in the Division of Hearings and Appeals of DOA to be assigned and preside over a hearing of a contested case involving the relationship between a supplier and a wholesaler. The motion also creates a funding mechanism for the administrative review structure in the form of fees to holders of wholesale permits and cost recovery from the losing party at a hearing.

As described above, WFDA specifies that no grantor of a dealership may terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. This motion would expand these standards by applying them to the relationship, rather than the competitive circumstances of a dealership agreement. In addition, this motion would specify that a supplier may not substantially change the competitive circumstances of a wholesaler's business without good cause, which differs from the WFDA standard of not changing the competitive circumstances of a dealership agreement without good cause.

This motion would add provisions that would prohibit a supplier from: (a) supplying more than one wholesaler with an existing product for resale in a geographic area in which there was only one wholesaler selling that product in the 12 months preceding the effective date of these provisions; and (b) refusing to sell an altered product or new product to a wholesaler with whom the supplier has a relationship. The motion would specify the conditions under which a supplier with relationships with more than one wholesaler in a geographic area could offer an altered product only to the wholesaler who previously resold the existing product related to the altered product.

With respect to the notice of termination or alteration in relationships, this motion would expand on the procedure of notice and cure provided by WFDA, specifying an administrative review procedure and providing that the review procedure would stay the action proposed by the supplier. The motion specifies that if a motion made by the supplier to allow the action to proceed, then the Division shall conduct a hearing limited to whether or not to let the action go forward within 20 days (under WFDA, court action would be needed to prohibit the supplier's proposed action from taking effect). In addition, the motion would specify that if the Division found that a supplier or its transferee failed to comply with the terms of a relationship with a wholesaler, the failure to comply is grounds for revocation, nonrenewal or failure to grant (by DOR) the supplier's out-of-state shippers permit.

MO#			
	BURKE	(Y)	N A
2	DECKER	(Y)	N A
	JAUCH	Y	(N) A
	MOORE	(Y)	N A
	SHIBILSKI	(Y)	N A
	PLACHE	(Y)	N A
	COWLES	Y	(N) A
	PANZER	Y	(N) A
	GARD	(Y)	N A
	PORTER	Y	(N) A
	KAUFERT	Y	(N) A
	ALBERS	Y	(N) A
	DUFF	(Y)	N A
	WARD	Y	(N) A
	HUBER	(Y)	N A
	RILEY	Y	(N) A

AYE 8 NO 8 ABS

GENERAL FUND TAXES

Use Tax on Boats Berthed in State Boundary Waters

Motion:

Move to modify the use tax exemption for boats purchased as exempt occasional sales in other states and berthed in the boundary waters of this state to allow the exemption for boats purchased anywhere outside Wisconsin rather than just for boats purchased in states that are contiguous to Wisconsin. Specify that these provisions would take effect on the first day of the second month beginning after publication.

Note:

Under current law, the use tax is imposed on items purchased in other states and used in Wisconsin if the item would be taxable if purchased in this state. However, an exemption is provided for boats that are berthed in Wisconsin boundary waters if: (a) the boat was purchased by an individual domiciled in a contiguous state; (b) the purchase was made in the contiguous state in which the individual is domiciled; and (c) the purchase was an exempt occasional sale under the laws of the other state. This motion would modify item (b) to allow the exemption for a boat purchased anywhere outside this state, rather than only for boats purchased in contiguous states. There would be a minimal revenue loss.

MO#	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
BURKE																	
DECKER																	
JAUCH																	
MOORE																	
SHIBILSKI																	
PLACHE																	
COWLES																	
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KAUFERT																	
ALBERS																	
DUFF																	
WARD																	
HUBER																	
RILEY																	
										AYE	NO	ABS					

GENERAL FUND TAXES -- INDIVIDUAL AND CORPORATE INCOME TAXES

Taxation of Trusts

Motion:

Move to modify current law as it relates to the taxation of inter vivos trusts as follows: (a) modify current law so that Wisconsin would be able to tax trusts created by persons who were Wisconsin residents at the time the trust becomes irrevocable, whether the trust is administered in Wisconsin or in another state; and (b) prohibit Wisconsin from taxing the trusts of nonresidents that are administered in Wisconsin. Specify that this provision would take effect with tax year 2000.

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Note:

Under current law, Wisconsin taxes the undistributed income and gains of certain trusts, as determined by statute. A trust created at death (a testamentary trust) by a decedent who was a resident of Wisconsin at the time of death is taxable to Wisconsin regardless of where the trust is administered. On the other hand, Wisconsin taxes trusts created by a living person (an inter vivos trust) if the trust is administered in Wisconsin. For inter vivos trusts, Wisconsin taxes trusts created by nonresidents that are administered in Wisconsin and does not tax trusts established by Wisconsin residents that are administered in other states.

The motion would modify current law as it relates to the taxation of inter vivos trusts in two ways. First, current law would be modified so that Wisconsin would be able to tax trusts created by persons who were Wisconsin residents at the time the trust becomes irrevocable, whether the trust is administered in Wisconsin or in another state. Second, Wisconsin would not be able to tax the trusts of nonresidents that are administered in Wisconsin.

Based on information from various financial institutions that administer trusts in Wisconsin, it is estimated that approximately 1% of existing irrevocable trusts are attributable to nonresidents. This would result in a revenue loss of approximately \$300,000 annually in the initial years of

implementation of this proposal.

This revenue loss could be offset in future years by additional tax revenues from the taxation of inter vivos trusts of Wisconsin residents that are administered in other states. The state of Minnesota made a law change that was similar to this proposal on January 1, 1996. Staff at the Minnesota Department of Revenue indicated that the amount of tax revenue has remained unchanged since the law change. However, it is not known whether the lack of revenue loss was the result of additional tax revenues from the trusts of Minnesota residents that are administered in other states or for other reasons, such as increased capital gain realizations that have occurred in recent years.

One additional point should be made regarding this proposal and the taxation of trusts of Wisconsin residents that are administered in other states. A state's ability to tax the undistributed income of a trust created by a state resident that is administered in another state has been subject to litigation in recent years, especially in situations where the assets of the trust and the beneficiaries are also located outside of the state. Since this issue may continue to be litigated in the future, the potential for revenue growth from enabling Wisconsin to tax the trusts of Wisconsin residents that are administered outside of the state is uncertain.

[Change to Bill: -\$300,000 GPR-REV]

MO# _____			
BURKE	Y	N	A
DECKER	Y	N	A
JAUCH	Y	N	A
MOORE	Y	N	A
SHIBILSKI	Y	N	A
PLACHE	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A
GARD	Y	N	A
PORTER	Y	N	A
KAUFERT	Y	N	A
ALBERS	Y	N	A
DUFF	Y	N	A
WARD	Y	N	A
HUBER	Y	N	A
RILEY	Y	N	A

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_

GENERAL FUND TAXES

"Class B" Liquor Licenses and Coliseum Suites

Motion:

Move to provide that a "Class B" license for retail sales of intoxicating liquor authorizes a coliseum or a business servicing a coliseum suite as a concessionaire to furnish a coliseum suite holder with a selection of intoxicating liquor in a coliseum suite that is not part of the "Class B" premises. Define a "coliseum" as a multipurpose facility designated principally for sports events, with a capacity of 18,000 or more. Specify that the conditions that apply to the furnishing of intoxicated liquor to a hotel guest in a guest room that is not part of the "Class B" premises would apply in the case of a coliseum and a coliseum suite, with the following exceptions: (a) provide that a coliseum suite could be locked in lieu of providing a locked storage place to store the liquor within the suite; (b) exclude a coliseum from the requirement for hotels that a key be provided (to a hotel guest) to the locked storage place and that a liquor price list be prominently displayed; and (c) specify that a coliseum suite holder may pay for the liquor in accordance with the terms of the agreement with the owner of the coliseum suite.

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Note:

A "Class B" license for retail sales of intoxicating liquor generally authorizes the retail sale of liquor for consumption on the premises, where sold by the glass and not in the original package or container (with the exception of wine, which may be sold in the original package or container to be consumed off the premises where sold). A municipality may also elect to allow the sale of any intoxicating liquor in its original package for off-premise consumption. "Premises" is defined as the area described in a license or permit.

Current law also specifies that a "Class B" license authorizes a person operating a hotel to furnish a registered guest aged 21 years or older with a selection of liquor in the original packages or containers in a guest's room that is not part of the "Class B" premises (depending on the description of the premises in the license application, a hotel guest's room may or may not be part of the premises). The liquor must be stored in a place that can be locked. In the case of a hotel guest, the guest is provided with a key to the locked storage place upon request. Notwithstanding statutory closing hours for premises with a "Class B" license, there are no restrictions on when a guest may pay for the liquor if the payment is made in conjunction with checking out of the hotel.

With the exceptions noted above, this motion would extend similar provisions to a "Class B" liquor license held by a person operating a coliseum (or a business as a concessionaire servicing a coliseum suite).

MO# \_\_\_\_\_

BURKE	(Y)	N	A
DECKER	(Y)	N	A
JAUCH	(Y)	N	A
MOORE	(Y)	N	A
SHIBILSKI	(Y)	N	A
PLACHE	(Y)	N	A
COWLES	(Y)	N	A
PANZER	(Y)	N	A
GARD	(Y)	N	A
PORTER	(Y)	N	A
KAUFERT	(Y)	N	A
ALBERS	(Y)	(N)	A
DUFF	(Y)	N	A
WARD	(Y)	N	A
HUBER	(Y)	N	A
RILEY	(Y)	N	A

AYE \_\_\_\_\_ NO \_\_\_\_\_ ABS \_\_\_\_\_

GENERAL FUND TAXES

Repeal of Cigarette Multiple Retailer Permit

Motion:

Move to eliminate the cigarette multiple retailer permit. Remove all references to the permit in Wisconsin statutes.

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Note:

Chapter 139 of the statutes specifies that a permit must be obtained from the Department of Revenue (DOR) for the following: (a) to manufacture cigarettes in this state; (b) to sell cigarettes in this state as a distributor, jobber, vending machine operator or multiple retailer; and (c) to operate a warehouse to store cigarettes in this state for another person. Section 139.30 (8) defines a "multiple retailer" as a person who acquires stamped cigarettes from manufacturers or permittees, stores them and sells them to consumers through ten or more retail outlets which he or she owns and operates within or without the state. A multiple retailer that also holds a permit as a distributor has the option to acquire unstamped cigarettes from manufacturers and to affix the tax stamps themselves. Multiple retailers are required to keep records and file reports of all purchases and disposition of cigarettes, as are manufacturers, distributors, jobbers and vending machine operators.

Chapter 100 of the statutes, which addresses marketing and trade practices, specifies minimum markups that apply to the sale of cigarettes. The statutes require cigarette wholesalers to mark up the price of cigarettes by 3% of the cost of the merchandise to the wholesaler, in the absence of proof of a lesser cost of doing business, when selling to a retailer. The "cost to the wholesaler," on which the markup is determined, is based on the invoice cost of the merchandise to the wholesaler, adjusted as follows: (a) certain trade discounts are to be deducted from the wholesaler costs; and (b) excise taxes previously imposed are to be included in the wholesaler costs. In a similar manner, retailers are required to mark up the price of cigarettes to the consumer by 6% of the cost to the retailer, excluding specified discounts and including excise taxes.

Chapter 100 defines multiple retailers as wholesalers. A sale at wholesale between wholesalers is exempt from the wholesaler mark-up requirement. Therefore, distributors may sell cigarettes to multiple retailers and any other wholesaler without charging the minimum 3% wholesaler markup. Section 100.30 (2)(f) requires that, in cases in which a merchant acts as both a

wholesaler and a retailer, the merchant must add both the wholesaler and retailer markups to the retail sales price. However, unlike the wholesaler markup from a distributor to an individual retail store, which is applied after deducting certain trade discounts, the statutes specify that the wholesaler markup for a multiple retailer is to be determined disregarding any manufacturer's discounts and any discounts related to cigarette tax stamp payments.

This motion would eliminate the cigarette multiple retailer permit and all statutory references to it. The individual retail stores currently operating under a multiple retailer permit would no longer be able to purchase cigarettes without paying a 3% wholesaler markup.

MO#			
BURKE	(Y)	N	A
DECKER	Y	(N)	A
JAUCH	(Y)	N	A
MOORE	(Y)	N	A
SHIBILSKI	(Y)	N	A
PLACHE	Y	(N)	A
COWLES	Y	(N)	A
PANZER	Y	(N)	A
GARD	Y	(N)	A
PORTER	(Y)	N	A
KAUFERT	(Y)	N	A
ALBERS	(Y)	N	A
DUFF	Y	(N)	A
WARD	Y	(N)	A
HUBER	(Y)	N	A
RILEY	(Y)	N	A

AYE 9 NO 7 ABS \_\_\_\_\_

## GENERAL FUND TAXES

### Sales Tax Exemption for Food and Related Items Provided to Restaurant Employees at Work

#### Motion:

Move to create a sales tax exemption for certain food and related items provided by restaurants to: (a) employees for whom the restaurant is required to withhold amounts for federal income tax purposes; and (b) persons who have an ownership interest in the restaurant and actively participate in the day-to-day operation of the restaurant.

Specify that, for the purposes of the exemption, "actively participates" means performs services for the restaurant (including selling, accounting, managing and consulting) for more than 500 hours in a taxable year for which the person receives compensation. "Actively participates" does not include services performed only in the capacity of an investor, including the following: (a) studying and reviewing financial statements or reports on the operation of the business; (b) preparing or compiling summaries or analyses of the finances of the business for the investor's own use; and (c) monitoring the finances or operations of the activity in a non-managerial capacity.

Provide that the following items, which are specifically excluded from the sales tax exemption for food and beverages, would be exempt from the sales tax when provided under the conditions described above:

- Medicine, tonics, vitamins and medicinal preparations in any form;
- Fermented malt beverages and intoxicating liquors;
- Soda water, beverages, bases, concentrates and powders intended to be reconstituted by consumers to produce soft drinks;
- Fruit drinks and ades not defined as fruit juices (such as lemonade and orangeade);
- Meals, food, food products and beverages sold for direct consumption on the premises (except for sales at hospitals, retirement homes, day care centers and similar facilities identified in the statutes); and
- Sales of the following items for off-premise consumption: (a) meals and sandwiches (heated or not); (b) heated food or heated beverages; (c) soda fountain items such as sundaes, milk shakes, malts, ice cream cones and sodas; and (d) candy, chewing gum, lozenges, popcorn

and confections.

In addition, provide that paper and similar disposable products used by the employe or owner in consumption of food, food products and beverages would be exempt from the sales tax.

Specify that the exemption for the items described above applies only to items consumed (or used in consumption) by employes and owners while they are performing services for which the restaurant compensates them. Items consumed before or after a work shift are not included in this exemption.

Specify that the provisions would be effective on the first day of the second month beginning after publication of the bill.

Note:

Current law provides an exemption from the general sales tax for sales of food, food products and beverages for human consumption. When a restaurant purchases such exempt items and subsequently provides them at no charge to employees at work, there is no sales tax liability. However the general food and beverage exemption specifically excludes certain items, as described above. Under current law, a restaurant owner is liable for the sales tax on: (a) the excluded items when they are provided to restaurant employes and owners at no charge at work; and (b) disposable products transferred with free food and beverages (napkins, straws and cups). However, a restaurant's purchases of the same items are exempt from the sales tax when they are to be resold to customers. The Department of Revenue requires that restaurants determine the value of such items and remit the associated sales tax.

This motion would provide a sales tax exemption for the currently taxable items described above when provided by a restaurant at no charge during work. Because the current provision is difficult to enforce, it is estimated that the exemption would have a minimal fiscal impact on sales tax collections.

MO#	BURKE	DECKER	JAUCH	MOORE	SHIBILSKI	PLACHE	COWLES	PANZER	GARD	PORTER	KAUFERT	ALBERS	DUFF	WARD	HUBER	RILEY	AYE	NO	ABS
	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N			
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			

GENERAL FUND TAXES -- INDIVIDUAL AND  
CORPORATE INCOME AND FRANCHISE TAXES

Foreign Study Tax Credit

Motion:

Move to provide, for tax years beginning on or after January 1, 2000, a tax credit of \$1,000 under the individual and corporate income and franchise taxes for eligible expenses incurred by a business to sponsor an eligible student to attend a post-secondary educational institution in a foreign country. Include as eligible expenses transportation costs, room and board, books, tuition and other expenses related to attending school in a foreign country. Require a business to pay a minimum of \$3,000 of such expenses to claim the tax credit. Define an eligible student as a full-time undergraduate student enrolled in a Wisconsin public post-secondary institution who would be eligible for a grant under the Wisconsin Higher Education Grant (WHEG) program.

Provide the credit to corporations, sole proprietors, partners, tax-option corporation shareholders and limited liability company (LLC) members. Require a partnership, tax-option corporation or LLC to compute the amount of credit that each of its partners, shareholders or members may claim and provide that information to them. Authorize partners, members of limited liability companies and shareholders of tax-option corporations to claim the credit in proportion to their ownership interest. Provide that unused credit amounts could be carried forward up to 15 years to offset future tax liabilities.

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Note:

Wisconsin provides its own corporate income tax credits for certain business expenditures. State corporate income tax credits include the manufacturing sales tax credit for fuel and electricity, research and research facilities credits, farmland preservation credit, farmland tax relief credit, community development finance credit and development zones credit. The state development zone tax credit can be claimed by eligible taxpayers that conduct business operations in development and enterprise development zones.

This motion would provide a \$1,000 state tax credit for certain expenses incurred by a corporation to sponsor an eligible student to attend school in a foreign country. The motion would have a minimal fiscal effect.

MO# \_\_\_\_\_

2	BURKE	Y	N	A
	DECKER	Y	N	A
	JAUCH	Y	N	A
	MOORE	Y	N	A
1	SHIBILSKI	Y	N	A
	PLACHE	Y	N	A
	COWLES	Y	N	A
	PANZER	Y	N	A
	GARD	Y	N	A
	PORTER	Y	N	A
	KAUFERT	Y	N	A
	ALBERS	Y	N	A
	DUFF	Y	N	A
	WARD	Y	N	A
	HUBER	Y	N	A
	RILEY	Y	N	A

AYE 7 NO 9 ABS \_\_\_\_\_

GENERAL FUND TAXES -- INDIVIDUAL AND CORPORATE INCOME TAXES

Taxation of U.S. Government Agency Securities

Motion:

Move to exempt all long-term capital gains realized on mutual fund investments in U.S. Government agency securities from the individual income tax beginning in tax year 2000.

Note:

Under current law, a capital gains exclusion is provided for 60% of the capital gains from the sale of assets held at least one year. Gains realized on the sale of business assets to a family member are completely exempt from taxation. Assets held for less than one year are fully taxable as ordinary income.

As required under federal law, Wisconsin fully exempts income that mutual funds earn from direct investments in securities or obligations of the U.S. government, such as Treasury bonds, Treasury notes and Treasury bills. However this federal requirement does not apply to U.S. Government agency securities, such as bonds issued by the government national mortgage association (GNMA); Wisconsin only exempts 60% of income earned from these agency securities if held for more than one year. This motion would fully exempt income from mutual funds invested in U.S. agency securities, which is estimated to reduce general fund revenues by \$500,000 annually beginning in 2000-01.

[Change to Bill: -\$500,000 GPR-REV]

Motion #1368

	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
MO#	BURKE	DECKER	JAUCH	MOORE	SHIBILSKI	PLACHE	COWLES	PANZER		GARD	PORTER	KAUFERT	ALBERS	DUFF	WARD	HUBER	RILEY

AYE 4 NO 12 ABS



GENERAL FUND TAXES

Sales Tax Exemption for all Electricity Used in Farming

Motion:

Move to extend the current law sales tax exemption for electricity sold from November through April for use in farming to include electricity sold for use in farming at any time of the year. Provide that the exemption would become effective on May 1, 2000.

Note:

Under current law, a sales tax exemption for electricity used in farming (including but not limited to agriculture, dairy farming, floriculture and horticulture) is available for six months of the year. This motion would exempt from the sales tax all sales of electricity for use in farming regardless of the month in which the electricity was sold. It is estimated that this motion would result in reductions in general fund revenues of \$700,000 in 1999-00 and \$2,200,000 in 2000-01. Because the county and stadium district sales taxes are "piggy-backed" on the state sales tax, it is anticipated that such revenues would decrease by \$200,000 for the biennium.

[Change to Bill: -\$2,900,000 GPR-REV]

MO#	BURKE	DECKER	JAUCH	MOORE	SHIBILSKI	PLACHE	COWLES	PANZER	GARD	PORTER	KAUFERT	ALBERS	DUFF	WARD	HUBER	RILEY	AYE	NO	ABS
	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	<del>N</del>	N	N	<del>N</del>	N	N	N	<del>N</del>	<del>N</del>			
	Y	Y	Y	Y	Y	Y	Y	Y	<del>Y</del>	<del>Y</del>	Y	<del>Y</del>	<del>Y</del>	<del>Y</del>	Y	Y			

AYE 5 NO 11 ABS

WRAP-UP MOTION AND ADOPTION OF THE SUBSTITUTE AMENDMENT

Motion:

Move to adopt a substitute amendment incorporating all the Committee's changes to Assembly Bill 133. Direct the Legislative Fiscal Bureau to have the substitute drafted. Provide that the Fiscal Bureau may, in the process of having the substitute drafted, incorporate any necessary technical corrections in funding, statutory language or cross references required to reconcile the various actions of the Committee and correctly reflect the Committee's intent.

In addition, direct the Fiscal Bureau to adjust interest earnings for 1999-01 and place any GPR amounts, in excess of a net general fund balance of \$5.0 million, into the property tax relief fund.

Further, move to recommend the bill for passage as amended.

MO#				
1	BURKE	Y	N	A
	DECKER	Y	N	A
	JAUCH	Y	N	A
	MOORE	Y	N	A
	SHIBILSKI	Y	N	A
	PLACHE	Y	N	A
	COWLES	Y	N	A
	PANZER	Y	N	A
2	GARD	Y	N	A
	PORTER	Y	N	A
	KAUFERT	Y	N	A
	ALBERS	Y	N	A
	DUFF	Y	N	A
	WARD	Y	N	A
	HUBER	Y	N	A
	RILEY	Y	N	A

AYE 14 NO 2 ABS \_\_\_\_\_