

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB903)

Received: **01/17/2006**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Owens (608) 267-7990**

By/Representing: **Rep. Owens**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Adl. Drafters:

Subject: **Tax, Individual - dedct/sbtrct**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Owens@legis.state.wi.us**

Carbon copy (CC:) to: **kirstin.nelson@dor.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Exempt from taxation gas tax reimbursement received by volunteer drivers

Instructions:

See Attached. Based on AB 903 (LRB -3706/1), but address DOR's comments in their tech. memo.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1	mshovers 01/17/2006	lkunkel 01/17/2006	pgreensl 01/17/2006	_____	mbarman 01/17/2006	mbarman 01/17/2006	

FE Sent For:

<END>

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Extra Copies: *please e-mail
to Kirstin B. Nelson
@ DOR ↓
"Kirstin" "kirstin.nelson@dor,
state.wi.us"*

Submit via email: **YES**

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FE Sent For:

<END>

MEMORANDUM

January 10, 2006

TO: Marc Shovers
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on Assembly Bill 903 – Individual Income Tax Deduction for Mileage Reimbursements Received By Volunteer Drivers

The reference to P.L. 109-73 conflicts with the intro for sec. 71.05(6)(b). Section 71.05(6)(b)(intro.) provides for subtractions from FAGI to the extent included in federal adjusted gross income. At the same time, the created sec. 71.05(6)(b)39 conflicts with this as it provides a subtraction “to the extent that the reimbursement received is excluded from income under P.L. 109-73.” This appears to allow a subtraction only if the amount is already excluded from income. This would be a double benefit if Wisconsin adopts the provisions of P.L. 109-73 in the annual update of the Internal Revenue Code (IRC).

It may be better to exclude the language related to P.L. 109-73 from this bill and allow the exclusion by updating the Wisconsin definition of the IRC to allow P.L. 109-73 for Wisconsin purposes. This would allow the exclusion without providing a double benefit.

Section 71.05(6)(b)39 refers to “a deductible charitable contribution under 26 USC 170.” Since charitable contributions are only deductible for federal tax purposes (Wisconsin has the itemized deduction credit – no deduction), it appears that the subtraction is allowed only to the extent the reimbursement is not claimed as an itemized deduction for federal tax purposes. If this is not the intent, clarification is needed.

If you have any questions regarding this technical memorandum, please contact Kirstin Nelson at (608) 261-8984.

cc: Representative Owens

Shovers, Marc

From: Nelson, Kirstin B
Sent: Tuesday, January 17, 2006 3:12 PM
To: Shovers, Marc
Subject: FW: AB 903

Fyi...

From: Nelson, Kirstin B
Sent: Tuesday, January 17, 2006 3:05 PM
To: Owens, Carol
Cc: Gates-Hendrix, Sherrie
Subject: AB 903

Representative Owens,

If you'd like to remove the language that references P.L. 109-73, as we suggest in the memo, this would involve deleting the last lines in Section 1, or the lines following "as defined in s. 29.89(1)". You could then discuss with your drafter the possibility of amending section 71.07(5)(a) to add the following language:

The amount claimed as a deduction for mileage reimbursement for mileage expenses incurred as a volunteer driver to the extent the reimbursed amount is claimed as a deductible charitable contribution under 26 USC 170.

Hope this is helpful.

Kirstin B.L. Nelson
Economist
Division of Research and Policy
Wisconsin Department of Revenue
(608) 261-8984
kirstin.nelson@dor.state.wi.us

3.4-05 Contributions by corporations.

A corporation can take a deduction for charitable contributions that don't exceed 10 percent of its taxable income for the year. For this purpose, taxable income is computed without deductions for charitable contributions or dividends received, or for net operating loss or capital loss carrybacks to the year. (IRC section 170(b)(2); Reg. section 1.170A-11(a))

Carryovers. If contributions in any year exceed the 10 percent limit, the excess can be carried forward for up to five years. (IRC section 170(d)(2))

3.4-06 Contributions disallowed.

The charitable contribution deduction will be denied under a variety of circumstances. For example, a deduction is not allowed for a contribution to a charity that conducts lobbying activities on matters of direct financial interest to the donor's trade or business -- if a principal purpose of the contribution was to avoid federal income tax by getting a charitable deduction for lobbying expenses for which a business expense deduction would be disallowed. (IRC section 170(f)(9)) And, subject to an exception for certain students who live in the taxpayer's home (IRC section 170(g)), contributions made to or for an individual are not deductible unless made to that individual as an agent for a qualified organization.

Contributions to a qualified charity are not deductible if the donor derives an economic benefit from the transfer. Such contributions could include (1) tuition, or required "donation" of excess "tuition" payment, even for parochial school; or (2) payments with regard to an aged person's admission to a home operated by a charitable organization, to the extent allocable to care given, or for the privilege of being admitted.

Contributions made to an organization that once qualified, but has since been disqualified, can still qualify if the donor was not aware of the change in status.

Performing services for charity. A charitable deduction may not be taken for the value of services rendered to charity. (Reg. section 1.170A-1(g)) However, ~~the taxpayer may take a deduction for unreimbursed out-of-pocket expenses necessarily incurred in performing services free for the charity.~~ (IRC section 170(f)(6); Reg. section 1.170A-1(g)) In addition, if the taxpayer uses his car in performing the services, he may deduct the standard **mileage** rate (14 cents a mile for 2004 and 2005) as a contribution. (Rev. Proc. 2003-76, 2003-43 IRB 924; Rev. Proc. 2004-64, 2004-49 IRB 898) Alternatively, the taxpayer may deduct actual, unreimbursed expenses for gas and oil. In either case, tolls and parking fees may be deducted, but not depreciation, insurance, or repairs.

The taxpayer may not take a charitable deduction for travel expenses, including meals and lodging, whether or not reimbursed, while away from home, unless there is no significant element of personal pleasure, recreation, or vacation in the travel. (IRC section 170(j)) If any deduction is allowed, it is limited to the amounts necessarily incurred for meals and lodging while away from home overnight in rendering the services.

Fundraising events. A payment for admission to fundraising events, such as shows,

individual is included on the return of the taxpayer for such taxable year.

(c) HURRICANE KATRINA DISPLACED INDIVIDUAL.—For purposes of this section, the term “Hurricane Katrina displaced individual” means, with respect to any taxpayer for any taxable year, any natural person if—

(1) such person’s principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area,

(2)(A) in the case of such an abode located in the core disaster area, such person is displaced from such abode, or

(B) in the case of such an abode located outside of the core disaster area, such person is displaced from such abode, and

(i) such abode was damaged by Hurricane Katrina, or

(ii) such person was evacuated from such abode by reason of Hurricane Katrina, and

(3) such person is provided housing free of charge by the taxpayer in the principal residence of the taxpayer for a period of 60 consecutive days which ends in such taxable year.

Such term shall not include the spouse or any dependent of the taxpayer.

(d) COMPENSATION FOR HOUSING.—No deduction shall be allowed under this section if the taxpayer receives any rent or other amount (from any source) in connection with the providing of such housing.

SEC. 303. INCREASE IN STANDARD MILEAGE RATE FOR CHARITABLE USE OF VEHICLES.

Notwithstanding section 170(i) of the Internal Revenue Code of 1986, for purposes of computing the deduction under section 170 of such Code for use of a vehicle described in subsection (f)(12)(E)(i) of such section for provision of relief related to Hurricane Katrina during the period beginning on August 25, 2005, and ending on December 31, 2006, the standard mileage rate shall be 70 percent of the standard mileage rate in effect under section 162(a) of such Code at the time of such use. Any increase under this section shall be rounded to the next highest cent.

SEC. 304. MILEAGE REIMBURSEMENTS TO CHARITABLE VOLUNTEERS EXCLUDED FROM GROSS INCOME.

(a) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, gross income of an individual for taxable years ending on or after August 25, 2005, does not include amounts received, from an organization described in section 170(c) of such Code, as reimbursement of operating expenses with respect to use of a passenger automobile for the benefit of such organization in connection with providing relief relating to Hurricane Katrina during the period beginning on August 25, 2005, and ending on December 31, 2006. The preceding sentence shall apply only to the extent that the expenses which are reimbursed would be deductible under chapter 1 of such Code if section 274(d) of such Code were applied—

(1) by using the standard business mileage rate in effect under section 162(a) at the time of such use, and

(2) as if the individual were an employee of an organization not described in section 170(c) of such Code.

Applicability.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

November 9, 2005

TO: Representative John Townsend
Room 22 West, State Capitol

FROM: Rob Reinhardt, Program Supervisor

SUBJECT: Federal Hurricane Katrina Emergency Tax Relief Act

At your request, I am providing information about the provisions of the federal Katrina Emergency Tax Relief Act of 2005 (KETRA), which was recently passed by Congress and signed into law by President Bush as P.L.109-073.

State individual income tax and corporate income and franchise tax provisions are generally referenced to definitions under federal law. Changes to federal law take effect for state tax purposes only after action by the Legislature. The Legislature typically reviews the previous year's federal law changes each year to update state references to the Internal Revenue Code (IRC). The current statutes refer to the federal IRC in effect on December 31, 2004. In general, the federal provisions are used to determine which types of income are subject to tax and which business expenses may be deducted. Separate state provisions apply regarding personal exemptions and deductions under the individual income tax, and tax rates and credits under both the individual income and corporate income and franchise taxes.

Most of the provisions of KETRA are designed to provide tax relief to individuals and businesses located in areas directly affected by Hurricane Katrina, and will likely not affect Wisconsin taxpayers. For example, the Act waives the 10% penalty on early withdrawals from retirement accounts by individuals whose principal residence on August 28, 2005, was located in the hurricane disaster area and who have sustained an economic loss from the hurricane. The Act also creates an employee-retention credit for employers that are located in the core disaster area and were rendered inoperable as a result of the hurricane.

Other provisions of the Act will likely affect Wisconsin taxpayers. For example, KETRA provides tax relief for individuals and businesses that make charitable donations related to the hurricane. The provisions that will likely impact Wisconsin taxpayers are described in more detail below, based on information from the staff of the Congressional Joint Committee on Taxation. In

addition, a comprehensive summary of the Act prepared by Joint Committee on Taxation staff is attached.

Temporary Suspension of Limitations on Charitable Contributions

Applicable Federal Law

General Provisions. In general, an income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in a long-term capital gain. Contributions of other appreciated property generally are deductible at the donor's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

Limits on Contributions by Individual Taxpayers. For individuals, charitable contributions may be claimed as an itemized deduction if the total amount of itemized deductions exceeds the taxpayer's standard deduction. In any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base. The applicable percentage of the contribution base varies depending on the type of donee organization and property contributed. For most individuals, the contribution base is the taxpayer's adjusted gross income (AGI). However, taxpayers who have a net operating loss carryback may not consider the loss carryback in determining the contribution base.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to most types of charitable organizations [known as 50% limit organizations and defined in section 170(b)(1)(A) of the IRC] may not exceed 50% of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations, veterans' organizations, fraternal societies, and nonprofit cemeteries [known as 30% limit organizations and defined in section 170(b)(1)(B) of the IRC] generally may be deducted up to 30% of the taxpayer's contribution base.

Contributions of appreciated capital gain property to 50% limit organizations generally are deductible up to 30% of the taxpayer's contribution base. An individual may elect, however, to bring all these contributions of appreciated capital gain property for a taxable year within the 50% limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to nonoperating private foundations and other 30% limit organizations are deductible up to 20% of the taxpayer's contribution base.

Limits on Contributions by Corporations. For corporations, in any taxable year, charitable contributions are not deductible to the extent the aggregate contributions exceed 10% of the corporation's taxable income computed without regard to net operating loss or capital loss carrybacks.

For purposes of determining whether a corporation's aggregate charitable contributions in a taxable year exceed the applicable percentage limitation, contributions of capital gain property are taken into account after other charitable contributions.

Carryforward of Excess Contributions. Charitable contributions that exceed the applicable percentage limitation may be carried forward for up to five years. The excess amount may be deducted during the succeeding five years until it is used up. Contributions that are carried over are subject to the same percentage limits in the year to which they are carried. For each category of contribution, amounts carried over from prior years may be deducted only after deducting all allowable contributions in that category for the current year.

Overall Limitation on Itemized Deductions Claimed by Individuals. Federal law also provides that the total amount of certain itemized deductions (including charitable contributions) is reduced by 3% of the amount of the taxpayer's AGI in excess of a certain threshold. The otherwise allowable itemized deductions may not be reduced by more than 80%. For 2005, the AGI threshold is \$145,950 (\$72,975 for a married taxpayer filing a joint return). These dollar amounts are adjusted for inflation each year.

The otherwise applicable overall limitation on itemized deductions is reduced by one-third in taxable years beginning in 2006 and 2007, and by two-thirds in taxable years beginning in 2008 and 2009. The overall limitation is repealed for taxable years beginning after December 31, 2009, and reinstated for taxable years beginning after December 31, 2010.

Federal KETRA Provisions

Suspension of Percentage Limitations. Under KETRA, in the case of an individual, the deduction for qualified contributions (as defined below) is allowed up to the amount by which the taxpayer's contribution base exceeds the deduction for other charitable contributions. Contributions in excess of this amount may be carried over and claimed in the five succeeding taxable years, subject to current-law provisions regarding carry-forwards.

In the case of a corporation, the deduction for qualified contributions is allowed up to the amount by which the corporation's taxable income exceeds the deduction for other charitable contributions. Contributions in excess of this amount may be carried over and claimed in the five succeeding taxable years, subject to current provisions regarding carry-forwards.

In applying the current provisions regarding percentage limitations and carry-forwards to determine the deduction for other contributions, qualified contributions will not be not taken into

account (except to the extent qualified contributions are carried over to succeeding taxable years under the rules described above).

Definition of "Qualified Contribution." For purposes of these provisions, "qualified contributions" are cash contributions made during the period beginning on August 28, 2005, and ending on December 31, 2005, to certain charitable organizations (50% limit organizations as defined above). Contributions of noncash property, such as securities, are not qualified contributions. In the case of a corporation, qualified contributions must be for relief efforts related to Hurricane Katrina. Corporate taxpayers must substantiate that the contribution is made for this purpose. A taxpayer must elect to have the contributions treated as qualified contributions.

"Qualified contributions" do not include a contribution if the contribution is for establishment of a new, or maintenance in an existing, segregated fund or account with respect to which the donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to distributions or investments by reason of the donor's status as a donor. For example, a segregated fund or account exists if a donor makes a charitable contribution and the donee separately identifies the donor's contribution on its books by reference to the donor. The donor has advisory privileges with respect to such segregated fund or account if the donor, by written agreement or otherwise, is permitted to provide advice to the donee as to the investment or distribution of amounts from such fund or account.

Limitation on Overall Itemized Deductions. Under KETRA, the charitable contribution deduction up to the amount of qualified contributions (as defined above) paid during the year is not treated as an itemized deduction for purposes of the overall limitation on itemized deductions.

State Law

Wisconsin currently conforms to the pre-KETRA federal provisions regarding charitable contributions by corporations. For individual taxpayers, Wisconsin provides an itemized deduction credit rather than allowing itemized deductions to be claimed in determining taxable income. The itemized deduction credit is calculated by subtracting the state's sliding scale standard deduction from the total of allowable itemized deductions and multiplying that difference by 5%. Allowable itemized deductions generally conform to federal law and include charitable contributions; medical expenses in excess of 7.5% of AGI; and certain interest expenses. No credit is provided if the sum of these itemized deductions is less than the sliding scale standard deduction.

It is estimated that state income and franchise tax collections would be reduced by \$3.5 million in 2006-07 and increased by \$0.1 million if the KETRA provisions described above were adopted for state tax purposes. These estimates assume that the new provisions would be passed in the Spring of 2006 and first affect tax collections in 2006-07.

Additional Exemption for Housing Hurricane Katrina Displaced Individuals

Federal KETRA Provisions

In order to determine federal taxable income, an individual reduces AGI by any personal exemptions and either the standard deduction or itemized deductions. Personal exemptions generally are allowed for the taxpayer, his or her spouse if filing jointly, and any dependents. Personal exemptions are not allowed for purposes of determining a taxpayer's alternative minimum taxable income. For 2005, the amount deductible for each personal exemption is \$3,200. This amount is indexed annually for inflation. The deduction for personal exemptions is phased out for higher-income taxpayers.

KETRA provides an additional exemption of \$500 for each Hurricane Katrina displaced individual of the taxpayer. The taxpayer may claim the additional exemption for no more than four individuals. Thus, the maximum additional exemption amount is \$2,000. The exemption with respect to any Hurricane Katrina displaced individual may only be claimed one time for all taxable years.

A "Hurricane Katrina displaced individual" is a person: (a) whose principal place of abode on August 28, 2005, was in the Hurricane Katrina disaster area; (b) who is displaced from such abode; and (c) who is provided housing free of charge in the taxpayer's principal residence for a period of 60 consecutive days which ends in the taxable year in which the exemption is claimed. Additionally, in the case of a person whose principal place of abode on August 28, 2005, was located outside of the core disaster area, in order to qualify as a displaced individual such person's abode must have been damaged by Hurricane Katrina or such person must have been evacuated from such abode by reason of Hurricane Katrina. A Hurricane Katrina displaced individual may not be the spouse or any dependent of the taxpayer.

In order to claim the additional exemption, the taxpayer must provide the taxpayer identification number of the displaced individual. Additionally, the exemption is not allowed if the taxpayer receives any rent or other amount from any source in connection with the providing of housing for a displaced individual.

The additional exemption is not subject to the income-based phaseouts applicable to personal exemptions, and is allowed as a deduction in computing alternative minimum taxable income.

The provision applies to taxable years beginning in 2005 and 2006.

State Law

Wisconsin does not conform to federal law regarding personal exemptions under the individual income tax. Instead, Wisconsin allows an exemption of \$700 for each individual claimed as an exemption for federal tax purposes. The state personal exemption amount is

increased by \$250, to \$950, for each taxpayer who has reached the age of 65 by the end of the tax year.

However, Wisconsin could adopt the additional \$500 exemption allowed under the federal KETRA provisions for tax years 2005 and 2006. The fiscal effect of this provision is estimated to be a minimal revenue loss.

Increase in Standard Mileage Rate for Charitable Use of Vehicles

Applicable Federal Law

Charitable Mileage Rate. As noted above, an itemized deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization. Unreimbursed out-of-pocket expenditures made incident to providing donated services to a qualified charitable organization (such as out-of-pocket transportation expenses necessarily incurred in performing donated services) may qualify as a charitable contribution. No charitable contribution deduction is allowed for traveling expenses (including expenses for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

In determining the amount treated as a charitable contribution where a taxpayer operates a vehicle in providing donated services to a charity, the taxpayer either may deduct actual out-of-pocket expenditures or, in the case of a passenger automobile, may use the charitable standard mileage rate. The charitable standard mileage rate is set by statute at 14 cents per mile. The taxpayer may also deduct (under either computation method) any parking fees and tolls incurred in rendering the services, but may not deduct any amount incurred for general repair or maintenance expenses, depreciation, insurance, registration fees, and other general transportation-related costs.

Regardless of the computation method used, the taxpayer must keep reliable written records of expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain records of miles driven, time, place (or use), and purpose of the mileage. If the charitable standard mileage rate is not used to determine the deduction, the taxpayer generally must maintain reliable written records of actual expenses incurred.

Business Mileage Rate. In lieu of actual operating expenses, an optional standard mileage rate may be used in computing the deductible costs of business use of an automobile. The business standard mileage rate is determined by the Internal Revenue Service (IRS) and updated periodically. For expenses incurred on or after January 1, 2005, and before September 1, 2005, the business standard mileage rate is 40.5 cents per mile. For expenses incurred on or after September 1, 2005, and before January 1, 2006, the business standard mileage rate is 48.5 cents per mile.

The standard mileage rate for charitable purposes is lower than the standard business rate because the charitable rate covers only the out-of-pocket operating expenses (including gasoline and oil) directly related to the use of the automobile in performing the donated services that a taxpayer may deduct as a charitable contribution. The charitable rate does not include costs that are not deductible as a charitable contribution such as general repair or maintenance expenses, depreciation, insurance, and registration fees. Such costs are, however, included in computing the business standard mileage rate.

Federal KETRA Provisions

KETRA allows a taxpayer who uses a vehicle in providing donated services to charity solely for the provision of relief related to Hurricane Katrina to compute the taxpayer's charitable mileage deduction using a rate (rounded to the next highest cent) equal to 70% of the business mileage rate in effect on the date of the contribution, rather than the charitable standard mileage rate generally in effect (currently 14 cents per mile). Based on the business mileage rates identified above, the higher mileage rate under KETRA is 29 cents per mile for expenses incurred prior to September 1, 2005, and 34 cents per mile for expenses incurred after that date. As an alternative to determining the amount of the deduction using the mileage rate described in the provision, a taxpayer may determine the amount of the deduction using actual out-of-pocket expenditures.

According to staff at the federal Joint Committee on Taxation, it is intended that in addition to the present law substantiation requirements for use of the statutory mileage rate, a taxpayer must substantiate that expenses are incurred in providing relief related to Hurricane Katrina. The present-law statutory rate applies if a taxpayer fails to substantiate that the expenses are incurred for the provision of relief related to Hurricane Katrina, assuming all other present-law requirements are met.

The provision applies for purposes of contributions made during the period beginning on August 25, 2005, and ending on December 31, 2006.

State Law

State law could be modified to conform to the KETRA provisions for purposes of the itemized deduction credit. This would result in a minimal decrease in state individual income tax revenues.

Mileage Reimbursements to Charitable Volunteers Excluded from Gross Income

Volunteer drivers who are reimbursed for mileage expenses have taxable income to the extent the reimbursement exceeds deductible travel expenses outlined above. Employees who are reimbursed for mileage expenses under a qualified arrangement that pays a mileage allowance in lieu of reimbursing actual expenses generally have taxable income to the extent the reimbursement

exceeds the amount of the business standard mileage rate outlined above multiplied by the actual business miles.

Under KETRA, reimbursement by certain organizations (including public charities and private foundations) to a volunteer for the costs of using a passenger automobile in providing donated services to charity solely for the provision of relief related to Hurricane Katrina is excludable from the gross income of the volunteer up to an amount that does not exceed the business standard mileage rate prescribed for business use, provided that recordkeeping requirements applicable to deductible business expenses are satisfied. A volunteer may not claim a deduction or credit with respect to amounts excluded under this provision.

This provision applies for purposes of use of a passenger automobile during the period beginning on August 25, 2005, and ending on December 31, 2006.

Wisconsin generally conforms to federal law regarding which types of income are subject to tax. If this provision were adopted at the state level, it would reduce income tax revenues by a minimal amount.

Charitable Deduction for Contributions of Food Inventories

Applicable Federal Law

Under federal law, a taxpayer's deduction for charitable contributions of inventory generally is limited to the taxpayer's basis (typically, cost) in the inventory, or if less the fair market value of the inventory.

For certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of: (a) basis plus one-half of the item's appreciation; or (b) two times basis. In general, a C corporation's charitable contribution deductions for a year may not exceed 10% of the corporation's taxable income. To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, contributed to specified charitable organizations (except for private nonoperating foundations), and the donee must: (a) use the property consistent with the donee's exempt purpose solely for the care of the ill, the needy, or infants; (b) not transfer the property in exchange for money, other property, or services; and (c) provide the taxpayer a written statement that the donee's use of the property will be consistent with such requirements. In the case of contributed property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days prior to the transfer.

A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreasing the cost of goods sold by the lesser of the fair market value of the property or the donor's basis with respect to the inventory. Accordingly, if the allowable charitable deduction for inventory is the fair market value of the inventory, the donor



State of Wisconsin
2005 - 2006 LEGISLATURE

LRBs0463/?
MES.....

RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2005 ASSEMBLY BILL 903

today

gen

✓+

1 AN ACT ...; **relating to:** creating an individual income tax deduction for certain
2 amounts of mileage reimbursement received by volunteer drivers and adopting
3 federal law as it relates to mileage reimbursement related to Hurricane
4 Katrina.

Analysis by the Legislative Reference Bureau

Generally, if a volunteer driver for a charitable organization is reimbursed for his or her mileage expenses, the volunteer must, under current federal law, claim the amount of the reimbursement as taxable income. Also under current federal law, the volunteer may claim an income tax charitable deduction for his or her mileage expenses at the current statutory mileage rate of 14 cents per mile. In general, Wisconsin conforms to these federal laws.

Under the federal Hurricane Katrina Emergency Tax Relief Act of 2005 (KETRA), the 14 cents per mile rate is increased, for relief related to Hurricane Katrina, to 29 cents per mile for expenses incurred before September 1, 2005, and to 34 cents per mile for expenses incurred after that date. The substitute amendment adopts this portion of the Internal Revenue Code for Wisconsin purposes.

Also under this substitute amendment, a volunteer driver for a charitable organization may deduct from income any amount of mileage reimbursement that

1 July 31 this act first applies to taxable years beginning on January 1 of the year
2 following the year in which this subsection takes effect. ✓

3 (END)