



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

December 20, 2007

MEMORANDUM

To: Representative Shilling

From: Christopher Sundberg, Legislative Attorney, (608) 266-9739
Marc E. Shovers, Sr. Legislative Attorney, (608) 266-0129
Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2007 AB 599** (LRB-1222/4) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact us.

MEMORANDUM

December 19, 2007

TO: Christopher Sundberg
Marc Shovers
Mary Gibson-Glass
Gordon Malaise
Aaron Gary
Joseph Kreye
Jeffery Kuesel
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on Assembly Bill 599: Regulation of Historic Buildings; Historic Rehabilitation Credits; Certification and Promotion of Downtowns; Highway Projects; Rulemaking Authority and Appropriations

The Department has the following concerns related to the bill:

Transferability of tax credits

Section 71.07(9m)(g) provides that a nonresident of Wisconsin who is not required to file a Wisconsin return may enter into an agreement with another person so that the other person may claim the credit. Because the credit only applies to depreciable property (rental or other property used in a trade or business), it is unlikely that the owner of the property would not be required to file a Wisconsin return. A nonresident of Wisconsin is required to file a return if gross income from such property and other Wisconsin sources is \$2,000 or more. Furthermore, any income received from transferring the credit would be taxable. It is unclear why a nonresident would transfer a credit.

The bill provides that a "person who receives a credit" must repay that credit if the property is sold within five years or the property has been altered to the extent that it does not comply with the standards. Since there are no requirements to report transfers of tax credits, it appears that the person who receives the credit is the property owner. Unless the bill sponsor wants to establish a new mechanism whereby all credit transfers are reported, the bill should clarify that the property owner is required to repay any credit that has been disallowed, even though that credit may have been transferred to another person.

Sections 71.28(6)(g) and 71.47(6)(g) provide that a nonresident corporation or insurance company who is not required to file a Wisconsin return may enter into an agreement with another person so that the other person may claim the credit. With respect to a corporation, the term "nonresident" needs to be defined. One possibility is defining a nonresident corporation as a corporation not domiciled in Wisconsin as that term is defined in s. 71.22(1g). Unlike an individual, a corporation that owns property in Wisconsin is required to file a Wisconsin return, regardless of the amount of income earned. As with s. 71.07(9m)(g), the statute should specify who must repay a credit that is disallowed.

Statute of limitations

The bill provides that the credit is to be claimed for the same taxable year in which the claimant would have claimed the credit for federal purposes. Under federal law, the credit is either claimed when the project is complete or as progress is being made, depending on the facts and circumstances. If a taxpayer elects to claim the expenditures as they have been paid rather than when the project is completed, the statutes should provide that the taxpayer must file an election form with the department and agree that notwithstanding s. 71.77, the department may adjust or disallow the credit claimed within four years after the date that the State Historical Society notifies the department that the preservation or rehabilitation is not in compliance with the standards under s. 44.02(24), Stats.

If you have any questions regarding this technical memorandum, please contact Brad Caruth at (608) 261-8984 or bradley.caruth@revenue.wi.gov.

cc: Representative Shilling