



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER  
CHIEF

February 15, 2008

## MEMORANDUM

**To:** Senator Breske

**From:** Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

**Subject:** Technical Memorandum to **2007 SB 404** (LRB-3467/3) by **DOR**

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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 me.

## MEMORANDUM

January 25, 2008

**TO:** Joseph Kreye  
Legislative Reference Bureau

**FROM:** Rebecca Boldt  
Department of Revenue

**SUBJECT:** Technical Memorandum on SB 404 – Illegal Aliens –Penalty for Hiring

The Department has the following technical concerns with the above referenced bill:

Because the \$10,000 penalty for hiring an illegal alien is located in sec. 560, it appears that it is the Department of Commerce (Commerce) that administers the penalty. If this is the case, Commerce should be required to notify the Department of Revenue of persons or entities subject to the penalty so that tax credits can be disallowed. If it is the author's intent that the Department of Revenue should administer the penalty, the provision should be located in Chapter 71 or Chapter 73.

In the case of an individual who is a sole proprietor (e.g., farmer or small business owner) who is subject to the penalty, is it the author's intent that all credits in ch. 71 that are available to the individual be disallowed or that only those directly related to the farm or business be denied? For example, are credits such as the itemized deduction credit, school property tax credit, married couple credit, earned income credit, credit for tax paid to another state, and homestead credit, disallowed in addition to credits directly related to the farm or business, such as development zone credit, technology zone credit, dairy investment credit, farmland tax relief credit, or farmland preservation credit? This should be clarified.

In sec. 560.29(2)(a), the bill provides that if a company hires an illegal alien, it is ineligible for various tax exemptions, credits, public contracts, grants, and loans for a period of seven years beginning with the year in which the company is subject to penalties and sanctions under federal law for hiring an illegal alien. If a company becomes subject to federal penalties and sanctions effective in the middle of the year, for example, on July 15<sup>th</sup>, when does the seven-year period begin? The bill language could be interpreted to mean the seven-year period begins either on July 15<sup>th</sup> or on January 1<sup>st</sup> of that year. It is recommended that the seven-year period begin on the date the company is subject to penalties and sanctions under federal law.

After the seven-year period expires, a company may wish to amend Wisconsin income or franchise tax returns that were filed during the Seven-year period in order claim the credits they were unable to claim at the time they filed those returns. Is it the author's intent to allow taxpayers to amend their tax returns after the Seven-year period to claim the credits they were unable to claim when they first filed the returns? If not, the following language is recommended for proposed sec. 560.29(2)a)1.:

**1. Receive any tax exemption under ch. 70 or any tax credit under ch. 71 that is applicable to a taxable year that begins within seven years of the date the company is subject to penalties and sanctions under federal law for hiring an illegal alien, regardless of the date the company applies for such exemption or credit.**

As drafted, the bill would be effective the day after publication. Is it meant to apply to companies that became subject to federal penalties and sanctions prior to date of enactment but are still within the seven-year period? Or does it only apply to companies that are subject to federal penalties and sanctions or that receive a notice that an employee has provided a false or incorrect social security after the date of enactment? This should be clarified.

If you have any questions regarding this technical memorandum, please contact Michael Oakleaf at 261-5173 or via email at Michael.Oakleaf@revenue.wi.us.

cc: Se. Breske