



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

March 11, 2008

MEMORANDUM

To: Senator Plale

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

Subject: Technical Memorandum to **2007 SB 556** (LRB-4091/1) 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 me.

MEMORANDUM

March 5, 2008

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Michael Oakleaf
Department of Revenue

SUBJECT: Technical Memorandum on SB 556 – Transferability and Residency Requirements under the Film Tax Credits

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

1) Effect of Transfers on Taxable Income

Subsections (5f)(e)6. and (5h)(e)6. of the bill provide that “Any consideration paid for a transfer of credit amounts under subd. 1 shall not be deducted from income, and any consideration received from the transfer shall not be included as income.” To accomplish this intent, addition and subtraction modifications should be created in ss. 71.05, 71.21, 71.26, 71.34, 71.45, and 77.92 to add or subtract such amounts from federal income when determining Wisconsin income.

Subsections (5f)(e)6. and (5h)(e)6. also provide that “the transferor may not subtract any amount of credit previously added back to income under ss. 71.05(6)(a)15., 71.26(2)(a), 71.45(2)(a)10., or 77.92(4).” These subsections should also include citations to ss. 71.21(4) and 71.34(1)(g) since they also provide for addback of the credits under (5f) and (5h).

2) Application Process and Fee

Under the bill, the transferor and transferee must each pay the Department of Revenue a fee of 1% of the transferred credits or \$500, whichever is less. The bill also provides that the transferor shall pay to the Department of Commerce a fee of 2% of the transferred credits or \$5,000, whichever is less.

However, neither the transferor nor transferee is required to contact the Department of Commerce in order to accomplish the transfer. The Department of Commerce is not notified of the transfer until after the Department of Revenue has certified it and the transferor and transferee report it on their respective tax returns. The Department of Revenue will not know if the taxpayer has paid the appropriate fee to the Department of Commerce in order to certify the transfer.

If it is the intent that the Department of Commerce receives a fee, the transferor should be required to apply to the Department of Commerce as a precondition to applying to the Department of Revenue.

3) *Applicability Date*

There is no initial applicability date for the provisions related to the transfer of credits. Is it the intent to have the transfer provisions effective day after enactment? It would be best to have the transfer provisions effective for taxable years beginning on or after January 1, 2009, in order to allow time for the department to develop the required transfer form.

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

cc: Sen. Plale