

2007 DRAFTING REQUEST

Bill

Received: **11/15/2006**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-7597**

By/Representing: **Easton**

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

Drafter: **mshovers**

May Contact:

Addl. Drafters:

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

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Easton, BB0160 -

Topic:

Require nonresidents, part-year residents to add back certain deduction amounts; domestic production, unlawful discrimination awards

Instructions:

See Attached

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>
/?	mshovers 11/16/2006	kfollett 11/17/2006		_____			State
/1			rschlue 11/17/2006	_____	sbasford 11/17/2006		State
/2	mshovers 01/22/2007	kfollett 01/23/2007	nmatzke 01/23/2007	_____	mbarman 01/23/2007		

FE Sent For:

<END>

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/? mshovers

11/16/06
11/17/06

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Limit Deductions for Non-residents on Non-taxable Activities and Fees
- Tracking Code: BB0160
- SBO team: Tax and Local Government
- SBO analyst: Easton
 - Phone: 6-7597
 - Email: Darren.easton@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Low

**Legislative Proposal Summary
Wisconsin Department of Revenue
IS & E Division**

August 18, 2006

**TITLE: LIMIT DEDUCTION FOR DOMESTIC PRODUCTION ACTIVITIES AND EXPENSES
RELATED TO UNLAWFUL DISCRIMINATION AWARDS FOR NONRESIDENTS**

DESCRIPTION OF CURRENT LAW AND PROBLEM

2005 Wisconsin Act 25 adopted most of the provisions of federal Public Law 108-357 for Wisconsin. Two provisions that were adopted were sec. 102 and sec. 703.

Section 102 of P.L. 108-357 provides a deduction equal to a specified percent of the lesser of the taxpayer's (1) qualified production activities income or (2) taxable income, or in the case of individuals, adjusted gross income for the taxable year. In general, "qualified production activities income" is equal to domestic production gross receipts reduced by the costs of goods sold and other allocable expenses. The deduction is generally 3% for taxable years beginning in 2005 and 2006, 6% for taxable years beginning in 2007, 2008, and 2009, and 9% for taxable years beginning after 2009.

Section 703 of P.L. 108-357 allows an above-the-line deduction for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination, a claim against the U.S. Government, or a claim made under section 1862(b)(3)(A) of the Social Security Act, but only up to the amount included in gross income from such claim.

The problem occurs with persons who are nonresidents or part-year residents of Wisconsin. Wisconsin adjusted gross income is federal adjusted gross income with the modifications prescribed in sec. 71.05(6) to (12), (19), and (20). Section 71.05(6)(a)12 generally provides additional modifications for nonresidents and part-year residents. Because there is no additional modification related to the deduction for qualified production activities or for the attorney fees and court costs deduction, a nonresident of Wisconsin may claim these deductions even though the related income from production activities or the nondiscrimination claim may not be taxable to Wisconsin.

Example: The taxpayer is a Minnesota resident. He is required to file a Wisconsin income tax return as he sold property located in Wisconsin. The Wisconsin taxable gain on the sale of the property is \$60,000 (\$150,000 gain less 60% capital gain exclusion). The taxpayer owns and operates a manufacturing business in Minnesota. The business income is not taxable by Wisconsin. For federal tax purposes, the taxpayer claims a \$50,000 deduction for qualified production activities related to the business. Under current law, the taxpayer can claim the \$50,000 deduction for qualified production activities for Wisconsin even though the business income that produced the deduction is not taxable by Wisconsin. The Wisconsin taxable income is therefore reduced to \$10,000.

RECOMMENDATION FOR ACTION

Amend sec. 71.05(6)(a)12 to provide an addition for:

- The deduction allowed under sec. 199 of the Internal Revenue Code relating to income attributable to domestic production activities if the individual is a nonresident or part-year resident of this state and the domestic production activities income is not attributable to a trade or business taxable by this state.

If the individual is a nonresident or part-year resident of this state and a portion of the deduction allowed under sec. 199 of the Internal Revenue Code is attributable to a trade or business taxable by this state, the addition is the amount deducted for federal income tax purposes that is in excess of that amount multiplied by a fraction the numerator of which is the individual's net earnings from the trade or business taxable by this state and the denominator of which is the individual's total net earnings from the trade or business to which the sec. 199 deduction applies.

- The deduction for attorney fees and court costs involving unlawful discrimination claims if the individual is a nonresident or part-year resident of this state and the judgment or settlement resulting from such claim is not taxable by this state.

ADMINISTRATIVE IMPACT

This proposal would provide a workable solution to the problem.

FAIRNESS/TAX EQUITY

Fairness results when a taxpayer is allowed a deduction only if the related amount is included in Wisconsin income.

IMPACT ON ECONOMIC DEVELOPMENT

This proposal would increase efficiency of the department by clarifying the treatment of nonresident and part-year resident individuals who claim the above deductions.

FISCAL EFFECT

Unknown, but will increase revenues.

DRAFTING INSTRUCTIONS

See Recommendation for Action.

EFFECTIVE DATE AND/OR INITIAL APPLICATION

Taxable years beginning on or after January 1, 2006.

INTERESTED/AFFECTED PARTIES

Nonresidents and part-year residents who qualify for the above deductions.

DOR CONTACT PERSON

Diane Hardt, 266-6798
Dhardt@dor.state.wi.us

PREPARED BY Marcy Stock
November 28, 2005

E:marcy/legislative proposal-domestic production activities



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0791/2

MES. *kjf*

RMNR

DOA:.....Easton, BB0160 - Require nonresidents, part-year residents to add back certain amounts of income; domestic production, unlawful discrimination awards

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

do not give

1 AN ACT ...; relating to: requiring that nonresidents and part-year residents add
2 back to their income certain amounts of income that are deductible under
3 federal law.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, Wisconsin requires that certain types of income received by an individual, which are deductible under federal law when the individual calculates his or her federal adjusted gross income (AGI), must be added back to federal AGI when an individual calculates his or her Wisconsin AGI.

In calculating Wisconsin AGI, this bill requires that nonresidents and part-year residents add back to federal AGI certain items that are deductible under federal law. The items that must be added back are income attributable to domestic production activities, to the extent that the income is not taxable by this state, and attorney fees and court costs involving unlawful discrimination claims, if the judgment or settlement resulting from the claims is not taxable by this state.

X

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 21. of the statutes is created to read:

2 71.05 (6) (a) 21. Any amount deducted as income attributable to domestic
3 production activities under section 199 of the Internal Revenue Code if the
4 individual claiming the deduction is a nonresident or part-year resident of this state
5 and if the domestic production activities income is not attributable to a trade or
6 business that is taxable by this state.

7 **SECTION 2.** 71.05 (6) (a) 22. of the statutes is created to read:

8 71.05 (6) (a) 22. If an individual is a nonresident or part-year resident of this
9 state and a portion of the amount the individual deducted as income attributable to
10 domestic production activities under section 199 of the Internal Revenue Code is
11 attributable to a trade or business that is taxable by this state, the amount deducted
12 under section 199 for federal income tax purposes that exceeds the portion of the
13 deduction related to a trade or business that is taxable by this state, multiplied by
14 a fraction, the numerator of which is the individual's net earnings from the trade or
15 business that is taxable by this state and the denominator of which is the individual's
16 total net earnings from the trade or business to which the deduction under section
17 199 of the Internal Revenue Code applies.

18 **SECTION 3.** 71.05 (6) (a) 23. of the statutes is created to read:

19 71.05 (6) (a) 23. Any amount deducted by an individual under section 62 (a) (19)
20 of the Internal Revenue Code related to attorney fees or court costs, involving an
21 unlawful discrimination claim, if the individual is a nonresident or part-year

1 resident of this state and if the judgment or settlement resulting from the claim is
2 not taxable by this state.

3 **SECTION 9341. Initial applicability; revenue.**

4 (1) ADDITIONS TO FEDERAL ADJUSTED GROSS INCOME; NONRESIDENTS, PART-YEAR
5 RESIDENTS. The treatment of section 71.05 (6) (a) 21., 22., and 23. of the statutes first
6 applies to taxable years beginning on January 1 of the year in which this subsection
7 takes effect, except that if this subsection takes effect after July 31 the treatment of
8 section 71.05 (6) (a) 21., 22., and 23. of the statutes first applies to taxable years
9 beginning on January 1 of the year following the year in which this subsection takes
10 effect.

11

(END)

Shovers, Marc

From: Easton, Darren - DOA
Sent: Thursday, January 18, 2007 2:16 PM
To: Shovers, Marc
Subject: FW: LRB 0791-1 leg-domestic production.doc

Attachments: LRB 079-1 leg-domestic production.doc

Hello Marc,

I have started to get DOR's comments on some of the drafts. I'll be forwarding them as I get them.

Call me if you need to.

Darren
6-7597

From: Timmons, Anthony [<mailto:anthony.timmons@dor.state.wi.us>]
Sent: Wednesday, January 17, 2007 4:44 PM
To: Easton, Darren - DOA
Cc: Gates-Hendrix, Sherrie L - DOR; Brennan, Audra D - DOR
Subject: LRB 079-1 leg-domestic production.doc



LRB 079-1
g-domestic product.

Department of Revenue LRB Draft Comments
LRB 079/1

1. Bill and/or LRB Number: LRB-0791/1 Limit deduction for domestic production activities

2. Type of Taxes Affected:
Individual Income

3. Description of the Bill:

This bill requires that nonresidents and part-year residents add back to federal adjusted gross income certain amounts deductible under federal law. This includes amounts attributable to the domestic production activities deduction to the extent that the income on which the deduction is based is not taxable by this state, and attorney fees and court costs involving unlawful discrimination claims, if the judgment or settlement resulting from the claims is not taxable by this state.

4. Statutory language problems, if any: Yes No

(If yes, describe problems and indicate suggested corrective language. Example of problem: The bill language is unclear, does not fully accomplish the desired result, or has undesirable side effects.)

The analysis refers to adding back "income attributable to domestic production activities." It is not income that is being added back. It is the domestic production activities deduction that is added back.

Section 71.05(6)(a)22 provides an addition for "the amount deducted under section 199 for federal income tax purposes that exceeds the portion of the deduction related to a trade or business that is taxable by this state, multiplied by ..." This would mean that the excess is prorated whereas it should be the entire federal deduction that is prorated. This should be changed as follows: "the amount deducted under section 199 for federal income tax purposes ~~that exceeds the portion of the deduction related to a trade or business that is taxable by this state~~ and in excess of that amount, multiplied . . ." This will allow the federal deduction to be prorated rather than the excess.

5. Effective date problems, if any, including transitional problems: Yes No

(If yes, describe problem and suggested effective date or transitional language needed.)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-07911

MES:kjl

Handwritten initials and signature

DOA:.....Easton, BB0160 - Require nonresidents, part-year residents to add back certain ^{deductible} amounts of income domestic production, unlawful discrimination awards

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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11 (END)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0791/2

MES:kjf:nwn

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