



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

March 17, 2009

MEMORANDUM

To: Representative Shilling

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

Subject: Technical Memorandum to **2009 AB 92** (LRB-1706/1) 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

February 18, 2009

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

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on AB 92 (LRB 1706/1) – Regulation of Historic Buildings; Historic Rehabilitation Credits; Certification and Promotion of Downtowns; Highway Projects; Rulemaking Authority and Appropriations

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

Transferability of tax credits

The author may wish to consider whether to include exceptions in the language regarding selling or conveying the property in s. 71.07(9m)(h), 71.28(6)(h), and 71.47(6)(h). It is unclear what would happen in cases when there is transfer involving a disregarded entity or a transfer to a revocable or irrevocable trust.

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 Michael Oakleaf at 261-5173 or via email at Michael.oakleaf@revenue.wi.gov.

cc: Rep. Shilling