

*STATE OF WISCONSIN*  
*REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS*  
*2009 ASSEMBLY BILL 75*

[Introduced by Joint Committee on Finance by request of Governor Jim Doyle.]

2009 Assembly Bill 75 is the 2009-11 Executive Budget Bill ("bill") prepared by the Governor and introduced by the Joint Committee on Finance at the request of the Governor. The bill contains a number of provisions which affect existing statutes or create new statutes relating to the exemption of property or persons from state or local taxes. This report addresses those provisions.

**General Nature and Fiscal Effect of Tax Exemption Provisions in 2009 Assembly Bill 75**

**Capital Gains Exclusion**

Current law provides an individual income tax exclusion of 60% of long-term capital gains. The bill would decrease the exclusion from 60% to 40%. This provision would first apply to taxable years beginning on January 1, 2009, except that if the bill's effective date is after August 31, 2009, the provision would first apply to taxable years beginning on January 1, 2010.

At the time of introduction, the Legislative Fiscal Bureau (LFB) estimated that the fiscal effect of this provision would be to increase individual income tax revenue by \$85,100,000 in 2009-10 and \$95,500,000 in 2010-11. As of May 27, 2009, the LFB reduced these estimates to \$75,400,000 in 2009-10 and \$83,400,000 in 2010-11.

**Domestic Production Activities**

For individual income and corporate income and franchise tax, current law refers to the Internal Revenue Code (IRC) in a manner that provides a deduction for domestic production activities income. The bill would eliminate the deduction for domestic production activities for purposes of state income taxes. This provision would take effect for taxable years beginning on or after January 1, 2009.

At the time of introduction, the LFB estimated that the fiscal effect of this provision would be to increase individual income and corporate income and franchise tax revenue by \$38,200,000 in 2009-10 and \$33,500,000 in 2010-11. On May 11, 2009, the LFB re-estimated the fiscal effect to be \$27,300,000 in 2009-10 and \$27,600,000 in 2010-11.

**Sales and Use Tax on Towing and Hauling of Motor Vehicles**

Under current law, sales and use tax statutes refer to the "towing" of vehicles. Generally, in practice, sales and use tax is paid on both the towing of vehicles and the "hauling" of vehicles on a flatbed truck. The bill would clarify that the both towing and hauling of motor vehicles are subject to the sales and use tax.

The LFB estimates that the fiscal effect of this provision would be to preserve sales tax revenue of \$2.4 million in 2009-10 and \$2.5 million in 2010-11.

### **Oil Company Profits Tax**

Generally, 2009 Assembly Bill 75 would impose, for the privilege of doing business in the state, a tax on each motor fuel supplier's annual gross receipts (the bill refers to this tax as a tax on profits, however, as proposed, the tax would be imposed on a supplier's gross receipts). The tax rates would increase from 0% to 3% based on increases in each supplier's total gross receipts. The bill would exclude the following amounts from the definition of gross receipts:

- State or federal excise taxes, or petroleum inspection fees, collected from the purchaser.
- Sales of motor vehicle fuel if the fuel is biodiesel fuel or ethanol blended with gasoline to create fuel consisting of at least 85% ethanol (E85).
- Sales for all current gasoline and diesel fuel uses that are exempt from the state motor vehicle fuel excise tax, some of which include fuel sold for use in mass transit, trains, and aircraft, for most non-highway uses, and for use as a heating oil.

Initially, the LFB estimated the tax would result in revenue of \$100,324,900 in 2009-10 and \$171,490,300 in 2010-11. Based on macroeconomic changes and a modification of the proposed effective date, the LFB re-estimated the fiscal effect to be \$103,684,300 in 2009-10 and \$156,403,300 in 2010-11.

### **Capital Gain Reinvestment in New Business Ventures**

The bill would permit taxpayers to subtract a long-term capital gain from federal adjusted gross income if the taxpayer reinvests all of the proceeds from the gain in a qualified new business venture within 180 days of the sale generating the gain. The subtraction of long-term capital gains would be limited to gains up to \$10 million per taxpayer and would apply to individuals and individual partners or members of partnerships, LLCs or limited liability partnerships and individual shareholders of tax-option corporations. The Department of Commerce would be required certify qualified new business ventures subject to certain limitations.

Since the deferral would first apply for tax years beginning after December 31, 2010, the administration estimates no fiscal effect of the 2009-11 biennium. The administration estimates a reduction in individual income tax collections of \$14 million annually in the 2011-13 biennium.

### **Internal Revenue Code Update**

With certain exceptions, the bill updates statutory references to the federal Internal Revenue Code (IRC) to include changes enacted in 2007 and through December 31, 2008. The administration estimates these changes would reduce state individual income and corporate income and franchise tax collections by \$40,560,000 in 2009-10 and \$ 5,490,000 in 2010-11.

### **Sales and Use Tax Exemption for Youth Sports**

Generally, current law imposes sales and use tax on the sale of admissions to amusement, athletic, entertainment, or recreational events. 2009 Assembly Bill 75 proposes a sales and use tax exemption for admissions sold by nonprofit organizations to participate in any sports activity in which more than 50% of the participants are age 19 or younger.

According to the LFB, the fiscal effect of this provision would be minimal.

### **Sales and Use Tax Exemptions for Biotechnology and Manufacturing Research**

For persons engaged primarily in manufacturing or biotechnology in the state, the bill would create sales and use tax exemptions for purchases of the following items:

- Machinery and equipment used exclusively and directly in qualified research.
- Tangible personal property that is consumed, destroyed, or loses its identity while being used exclusively and directly in qualified research.

Under 2009 Assembly Bill 75, this proposal would take effect January 1, 2012. It is estimated that this proposal would reduce sales and use tax revenue by \$5 million in 2011-12 and \$10 million in 2012-13 and annually, thereafter.

### **Property Tax Exemptions for Research Machinery and Equipment**

2009 Assembly Bill 75 would create a property tax exemption for machinery and equipment, including attachments, parts, and accessories, used by persons who are engaged primarily in manufacturing or biotechnology in this state, provided the machinery and equipment are used exclusively and directly in qualified research. The bill also specifies modifications to state aid payments in connection with the property tax exemption.

Based on the effective date of the provision, the Governor estimates no fiscal effect until the 2013-15 biennium.

### **Personal Property Tax Exemption for Research Property**

2009 Assembly Bill 75 would create a personal property tax exemption for tangible personal property used by persons who are engaged primarily in manufacturing or biotechnology in this state, if the tangible personal property is consumed or destroyed or loses its identity while being used exclusively and directly in qualified research. The bill also specifies modifications to state aid payments in connection with the property tax exemption.

Based on the effective date of the provision, the Governor estimates no fiscal effect until the 2013-15 biennium.

*Sales and Use Tax Exemption for Native American Purchasers*

Under the bill, purchases made by any federally recognized American Indian tribe or band in this state would be exempt from sales and use taxation. The LFB estimates the fiscal effect of this provision to be minimal.

*Modifications to Premier Resort Area Tax*

Under current law, a political subdivision may declare itself to be a premier resort area if at least 40% of the equalized value of its taxable property is used by retailers within certain tourism-related standard industrial classifications. Additionally, certain municipalities may declare themselves to be premier resort areas regardless of the 40% threshold. As a premier resort area, the political subdivision may impose a 0.5% sales tax on certain tourism-related retailers. Proceeds from the tax must be used for infrastructure expenses within the premier resort area.

Under 2009 Assembly Bill 75, any municipality that enacted an ordinance imposing a 0.5% premier resort area tax that became effective prior to January 1, 2000, may amend the ordinance to increase the tax rate to 1.0%. This provision would affect the Village of Lake Delton and the City of Wisconsin Dells. According to the LFB, "a 1.0% tax rate on the current tax base would result in an estimated \$1,837,800 annually in additional revenue for the Village of Lake Delton and \$649,500 annually for the City of Wisconsin Dells."

Additionally, for any premier resort area, the bill would add the following Standard Industrial Classifications to the list of businesses subject to the premier resort area tax:

5251 -- Hardware stores.

5411 -- Grocery stores.

5531 -- Auto and home supply stores.

5731 -- Radio, television, and consumer electronics stores.

5734 -- Computer and computer software stores.

5735 -- Record and prerecorded tape stores.

7215 -- Coin-operated laundries and dry cleaning.

7832 -- Motion picture theaters, except drive-in.

7841 -- Video tape rental.

7933 -- Bowling centers.

Also, the bill expands the definition of infrastructure expenses for which premier resort area tax proceeds may be used to include exposition center facilities that are used primarily for conventions, expositions, trade shows, musical or dramatic events, or other events involving educational, cultural, recreational, sporting, or commercial activities.

**Regional Transit Authorities**

Generally, 2009 Assembly Bill 75 prescribes or authorizes the creation of certain regional transit authorities. As a component of the proposal, the bill creates a general property tax exemption for all property owned by transit authorities. The bill also exempts sales to transit authorities and an authority's income from taxation.

**Wisconsin Quality Home Care Authority**

2009 Assembly Bill 75 proposes the creation of the Wisconsin Quality Home Care Authority. Generally, the authority would conduct activities related to the provision of home care services in the state. As a component of this proposal, the bill creates a general property tax exemption for all property owned by the Wisconsin Quality Home Care Authority, provided that use of the property is primarily related to the purposes of the authority. The bill also exempts sales to the authority and the authority's income from taxation.

**Sales Tax Definition of Manufacturing**

2009 Assembly Bill 75 modifies certain sales and use tax exemptions for tangible personal property or services consumed in the process of manufacturing to reflect current administrative rules and collection practices. The LFB estimates the fiscal effect of this provision to be minimal.

**Legality Involved**

Generally, there are no questions of legality involved in the provisions of the bill described in this report. However, a constitutional concern may exist with regard to the provisions of the bill relating to the oil company profits tax. Generally, the concern relates to the constitutionality of the "anti-pass-through" portion of the oil company profits tax. [See Legislative Fiscal Bureau (LFB) Budget Paper #752, May 19, 2009.]

**Public Policy Involved**

The bill is good public policy.

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