STATE OF WISCONSIN

REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS

2011 ASSEMBLY BILL 40

[Introduced by the Joint Committee on Finance at the request of Governor Scott Walker.]

2011 Assembly Bill 40 is the 2011-13 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 that affect existing statutes or create new statutes relating to the exemption of property or persons from state or local taxes. This report address those provisions.

General Nature and Fiscal Effect of Tax Exemption Provisions in 2011 Assembly Bill 40

Deferral for Capital Gains Reinvested in Qualified Wisconsin Businesses

For taxable years beginning after December 31, 2010, Assembly Bill 40 would authorize the deferral of long-term capital gains if the gains are reinvested in qualified Wisconsin businesses within 180 days of the sale of the asset generating the gain. Under the bill, upon qualified reinvestment of the gains and subject to certain limitations, a claimant would be authorized to subtract the amount of the gain from federal adjusted gross income for purposes of calculating their Wisconsin adjusted gross income. The basis of the investment in the qualified Wisconsin business would be calculated by subtracting the reinvested capital gain from the investment. The Wisconsin Economic Development Corporation would be responsible for the certification of qualified Wisconsin businesses for purposes of the capital gain deferral.

The Legislative Fiscal Bureau (LFB) estimates that the fiscal effect of this provision would be to decrease revenues by $16,100,000 in 2011-12 and $20,200,000 in 2012-13.

Capital Gains Exclusion for Wisconsin Capital Assets

For taxable years beginning after December 31, 2015, Assembly Bill 40 would authorize the subtraction of certain qualified capital gains from federal adjusted gross income for purposes of calculating Wisconsin adjusted gross income. Generally, capital gains would be qualified for exclusion from taxation under this provision if the capital assets relate to a Wisconsin business, as certified by the Wisconsin Economic Development Corporation; are purchased after December 31, 2010; are held for at least five years; and are long-term gains under the Internal Revenue Code (IRC). The provision specifies that a qualifying gain under the exclusion provision may not include an amount for which a claimant claimed a subtraction as a reinvestment in a qualified new business venture.

Due to the provision's delayed applicability, the LFB notes no fiscal effect for the 2011-13 biennium. Subject to substantial variation, the Department of Revenue (DOR) indicates the exclusion would reduce individual income tax collections by $79,000,000 when fully implemented. The LFB also indicates that certain modifications may be required in order to achieve the Governor's stated intent regarding the relationship between this provision and the deferral of capital gains described above.

Exclusion for Interest on Wisconsin Health and Educational Facilities Authority (WHEFA)-Issued Debt

The bill would provide an income tax exclusion for interest income received on bonds or notes issued by WHEFA. Generally, in order to qualify for the exclusion, WHEFA bonds or notes must be issued to a person who is eligible to receive tax-exempt bonds or notes from another issuer for the same purpose as the bonds or notes issued by WHEFA. The LFB indicates that the administration estimates the fiscal effect of this provision to result in a minimal loss of state tax revenues.

IRC Update

Generally, under the bill, the state's income and franchise tax statutes would continue to reference the IRC in effect as of December 31, 2008. However, the bill would adopt certain changes made to the IRC in 2009 and 2010, including changes related to: long-term care insurance provided in connection with an annuity or life insurance contract; contributions and roll-overs to Roth accounts for participants in government-sponsored deferred compensation plans; partial annuitization of non-qualified annuity contracts; and the treatment of qualified tax credit and Build America bonds.

The LFB indicates that the administration estimates the net fiscal effect of these provisions to be an increase of income and franchise tax revenues by $230,000 in 2011-12 and a decrease of income and franchise tax revenues by $347,000 in 2012-13.

Combined Reporting: Use of Net Business Loss Carry-Forwards Incurred before 2009

Under the bill, combined groups would be authorized to share net business loss carry-forwards incurred by group members before January 1, 2009. Generally, under state law, a net business loss is defined as the excess of business expenses allowed as deductions over the amount of income attributable to the operation of a trade or business in the state. The bill places certain limits on the use of the qualified net business loss carry-forwards by members of a combined group, including a requirement that a corporation must first use the carry-forwards to offset its own income; and that a corporation may use up to 5% of its remaining qualified net business loss carry-forwards to proportionally offset the income of other members of the combined group. If the full 5% could not be used to offset the income of the other members of the combined group, the remainder could be added to the portion of the corporation's loss carry-forward that could be used to offset the income of group members in the subsequent year. These provisions would apply to taxable years beginning after December 31, 2011, and for each of the 20 subsequent tax years.

The LFB indicates these provisions would reduce corporate income and franchise tax revenues by an estimated $9,200,000 in 2011-12 and $37,200,000 in 2012-13.

Sales and Use Tax Exemption for Modular and Manufactured Homes

Under current law, state sales and use tax applies to sales of modular homes and manufactured homes, subject to certain exemptions and treatments dependent on whether a home will become a real property construction or will be sold as tangible personal property.

Assembly Bill 40 would create a state sales and use tax exemption for modular and manufactured homes if a home is destined to become real property in another state.

The LFB indicates that DOR estimates the fiscal effect of this provision would reduce sales and use tax revenue by $195,000 in 2011-12 and by $260,000 in 2012-13.

Sales and Use Tax Exemption for Oil and Fat Converted Into Fuel

The bill creates an exemption from the state sales and use tax for sales of vegetable oil or animal fat that is converted into motor fuel, if the fuel is exempt from the state motor vehicle fuel tax under the exemption for personal renewable fuel. The LFB indicates this exemption is expected to have a minimal fiscal effect.

Tax Treatment of the University of Wisconsin (UW)-Madison Authority

As an element of the proposed creation of a UW-Madison Authority, Assembly Bill 40 provides that the authority would be exempt from state sales and use tax and from state income taxes. Additionally, property owned or leased by the authority would be exempt from property taxes to the extent that the use of the property is primarily related to the purposes of the authority. Property of the authority would be subject to special assessments for local improvements. Generally, these provisions would provide the proposed UW-Madison Authority with the same tax exemptions that are provided to the UW System under current law.

Legality Involved

There are no questions of legality regarding the provisions of the bill described in this report.

Public Policy Involved

The Joint Survey Committee on Tax Exemptions finds that there is good public policy concerning the tax exemptions in Assembly Bill 40.

06/07/11 ***JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS***