

Fiscal Estimate - 2015 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 15s0245/1	Introduction Number SSA1-SB503	
Description Sales and use tax exemption for products sold in connection with real property construction activities; factors that determine whether a transaction has economic substance for income and franchise tax purposes; the imposition of penalties on a taxpayer for failing to produce records and documents; and participation by the Department of Revenue in the Multistate Tax Commission Audit Program		
Fiscal Effect		
State:		
<input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input checked="" type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs		
Local:		
<input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input checked="" type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory		
5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts		
Fund Sources Affected Affected Ch. 20 Appropriations		
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS		
Agency/Prepared By	Authorized Signature	Date
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Fiscal Estimate Narratives

DOR 1/29/2016

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Assumptions Used in Arriving at Fiscal Estimate

The bill makes several changes to state tax law and the Department of Revenue's (DOR) administration of tax laws. The changes are described below.

FAILURE TO PRODUCE RECORDS

Under current law, DOR may impose certain penalties if a taxpayer fails to produce records and documents requested by DOR to substantiate information required to be shown on a tax return. This bill provides that those penalties may not be imposed until after DOR has issued a summons seeking the records and documents, and the taxpayer has failed to comply with the summons.

The penalty is primarily used as a tool to incentivize compliance with records request rather than as a revenue generator. As such, the limitation on DOR's ability to assess the penalty is likely to reduce penalty collections by a minimal amount annually.

ECONOMIC SUBSTANCE

Under current Wisconsin law, a transaction is defined as having economic substance only if the taxpayer shows that the transaction changes the taxpayer's economic position in a meaningful way, apart from federal, state, local, and foreign tax effects, and the taxpayer has a substantial nontax purpose for entering into the transaction and that the transaction is a reasonable means of accomplishing the substantial nontax purpose. A transaction has a substantial nontax purpose if it has substantial potential for profit, disregarding any tax effects.

Under the bill, current state economic substance provisions would be repealed. Instead, the state would adopt, by reference to Section 7701(o) of the Internal Revenue Code, federal economic substance provisions modified to take into account federal, state, local, and foreign taxes, rather than only the federal income tax effect. There is no fiscal effect associated with this provision.

LUMP SUM CONTRACTS

Under current law, there is a sales and use tax exemption for property, items, and services sold by a contractor as part of a lump sum contract for real property construction activities if the total sales price attributable to the taxable products is less than 10% of the total contract price.

The bill expands the exemption for lump sum contracts to apply to all construction contracts involving real property construction activities if the total sales prices of the taxable products is less than 10% of the total contract price.

The bill also provides that if the prime (general) contractor qualifies for the exemption, the exemption also applies (flows through) to all subcontracts entered into with respect to the real property construction activities.

Based on information from the 2007 Economic Census, DOR estimates retail trade by specialty contractors in Wisconsin to be \$44.3 million for FY16. Assuming a 50% markup on purchases, DOR estimates sales tax revenue would decrease by about \$1.1 million ($\$44.3 \text{ million} * 50\% * 5\%$).

Local (county and baseball district) sales taxes were 7.2% of state sales tax revenues in FY15. Assuming this percentage does not change, local sales taxes will decrease by about \$79,000 ($\$1.1 \text{ million} * 7.2\%$) per year.

MTC AUDIT AUTHORITY

Under current law, DOR is authorized to enter into a contract to participate in the Multi-State Tax Commission (MTC) audit program. Under the bill, that authority would be repealed.

The provisions of the bill related to removing the authority for DOR to participate in MTC audits would reduce income and franchise tax revenue by an estimated net \$750,000 in FY17 and \$1.25 million annually beginning in FY18.

SUMMARY

The provisions of the bill described above reduce revenue by an estimated \$1.1 million in FY16, \$1.85 million in FY17, and \$2.35 million annually beginning in FY18.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2015 Session

Detailed Estimate of Annual Fiscal Effect

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I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:	Annualized Fiscal Impact on funds from:	
	Increased Costs	Decreased Costs

A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$	\$

B. State Costs by Source of Funds		
GPR		
FED		
PRO/PRS		
SEG/SEG-S		

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, ets.)		
	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	\$	\$

NET ANNUALIZED FISCAL IMPACT		
	<u>State</u>	<u>Local</u>
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUE	\$See Text	\$

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