

State of Wisconsin



2017 Senate Bill 883

Date of enactment: **December 14, 2018**
Date of publication*: **December 15, 2018**

2017 WISCONSIN ACT 368

AN ACT *to repeal* 20.395 (2) (fq); *to renumber and amend* 71.07 (7) (b) and 71.365 (1); *to amend* 71.05 (6) (a) 14., 71.07 (7) (c), 71.36 (1), 73.03 (71) and 77.51 (13g) (intro.); *to create* 71.05 (10) (dm), 71.07 (7) (b) 3., 71.21 (6), 71.365 (1) (b), 71.365 (4m), 71.775 (3) (a) 4., 73.03 (71) (d), 77.51 (13gm), 84.54 and 86.51 of the statutes; and *to affect* 2017 Wisconsin Act 59, section 9145 (4w); **relating to:** state and local highway projects; expenditure of transportation moneys received from the federal government; determining a reduction in individual income tax rates; and election of pass-through entities to be taxed at the entity level.

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

SECTION 1. 20.395 (2) (fq) of the statutes is repealed.

SECTION 2. 71.05 (6) (a) 14. of the statutes is amended to read:

71.05 (6) (a) 14. Any amount received as a proportionate share of the earnings and profits of a corporation that is an S corporation for federal income tax purposes if those earnings and profits accumulated during a year for which the shareholders have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent not included in federal adjusted gross income for the current year. This subdivision does not apply to earnings and profits accumulated during a year for which a tax-option corporation has made an election under s. 71.365 (4m) (a) to be taxed at the entity level.

SECTION 3. 71.05 (10) (dm) of the statutes is created to read:

71.05 (10) (dm) Any item of income, loss, or deduction passed through from an entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed at the entity level.

SECTION 4. 71.07 (7) (b) of the statutes, as affected by 2017 Wisconsin Act 59, is renumbered 71.07 (7) (b) 1. and amended to read:

71.07 (7) (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a resident individual, estate or trust pays a net income tax to another state, that resident individual, estate or trust may credit the net tax paid to that other state on that income against the net income tax otherwise payable to ~~the~~ this state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes of this ~~paragraph~~ subdivision, amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed.

2. Income and franchise taxes paid to another state by a tax-option corporation, partnership, or limited liability company that is treated as a partnership may be claimed

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

as a credit under this paragraph by that corporation's shareholders, that partnership's partners, or that limited liability company's members who are residents of this state and who otherwise qualify under this paragraph, unless the tax-option corporation, partnership, or limited liability company has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

SECTION 5. 71.07 (7) (b) 3. of the statutes is created to read:

71.07 (7) (b) 3. Subject to the conditions and limitations in pars. (c) and (d), if a tax-option corporation, partnership, or limited liability company makes an election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation, partnership, or limited liability company may credit the net income or franchise tax paid by the entity to another state on that income and the net income tax on that income paid by the entity on behalf of its shareholders, partners, and members that are residents of this state on a composite return filed with the other state against the net income or franchise tax otherwise payable to this state on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes and is otherwise attributable to amounts that would be reportable to this state by shareholders, partners, or members of the tax-option corporation, partnership, or limited liability company that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a) was not made. The credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes of this subdivision, amounts declared and paid under the income tax law of another state are considered a net income tax paid to that other state only in the year in which the income tax return for that state was required to be filed.

SECTION 6. 71.07 (7) (c) of the statutes, as created by 2017 Wisconsin Act 59, is amended to read:

71.07 (7) (c) The credit total credits under par. (b) 1. and 2. may not exceed an amount determined by multiplying the taxpayer's net Wisconsin income tax by a ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the taxpayer's Wisconsin adjusted gross income. The credit under par. (b) 3. may not exceed an amount determined by multiplying the income subject to tax in the other state that is also subject to tax in Wisconsin by 7.9 percent.

SECTION 7. 71.21 (6) of the statutes is created to read:

71.21 (6) (a) If persons who, on the day on which an election under this paragraph is made, hold more than 50 percent of the capital and profits of a partnership consent, a partnership that is a partnership for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to be taxed at the entity level at a rate of 7.9 percent of net income

reportable to this state as described in par. (d) 1. for that taxable year.

(b) It is the intent of the election under par. (a) that partners of a partnership may not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the partnership. It is also the intent that the partnership shall pay tax on items that would otherwise be taxed if this election was not made.

(c) If persons who, on the day on which the election under this paragraph is made, hold more than 50 percent of the capital and profits of a partnership that has elected to be taxed at the entity level under par. (a) consent, a partnership that is a partnership for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to revoke for that taxable year its election under par. (a).

(d) If an election is made under par. (a), all of the following apply:

1. The net income of the partnership is computed under subs. (1) to (5) and the situs of income shall be determined as if the election under par. (a) was not made.

2. The partnership may not claim the loss under s. 71.05 (8).

3. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter may not be claimed by the partnership.

4. A partner's adjusted basis of the partner's interest in the partnership is determined as if the election under par. (a) was not made.

5. The provisions of ss. 71.09 and 71.84 relating to estimated payments and underpayment interest shall apply to the partnership.

6. If the partnership fails to pay the amount owed to the department with respect to income as a result of the election under par. (a), the department may collect the amount from the partners based on their proportionate share of such income.

(e) The department may promulgate rules to implement this subsection.

SECTION 8. 71.36 (1) of the statutes is amended to read:

71.36 (1) It is the intent of this section that shareholders of tax-option corporations include in their Wisconsin adjusted gross income their proportionate share of the corporation's tax-option items unless the corporation elects under s. 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to be taxed at the entity level.

SECTION 9. 71.365 (1) of the statutes is renumbered 71.365 (1) (a) and amended to read:

71.365 (1) (a) For purposes of this chapter, the adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation shall be determined in the manner prescribed by the internal revenue code for a

shareholder of an S corporation, except that the nature and amount of items affecting that basis shall be determined under this chapter. This ~~subsection~~ paragraph does not apply to 1978 and earlier taxable years of corporations which were S corporations for federal income tax purposes or to taxable years of corporations for which an election has been made under sub. (4) (a).

SECTION 10. 71.365 (1) (b) of the statutes is created to read:

71.365 (1) (b) The adjusted basis of a shareholder in the stock and indebtedness of a tax-option corporation that has made an election under sub. (4m) (a) is determined as if the election was not made.

SECTION 11. 71.365 (4m) of the statutes is created to read:

71.365 (4m) TAX-OPTION CORPORATION ELECTION TO PAY FRANCHISE OR INCOME TAX AT THE ENTITY LEVEL. (a) If persons who hold more than 50 percent of the shares on the day on which an election under this paragraph is made consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to be taxed at the entity level at a rate of 7.9 percent of net income reportable to this state as described in par. (d) 1. for that taxable year.

(b) It is the intent of the election under par. (a) that shareholders of a tax-option corporation may not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the tax-option corporation. It is also the intent that the tax-option corporation shall pay tax on items that would otherwise be taxed if this election was not made.

(c) If persons who, on the day on which the election under this paragraph is made, hold more than 50 percent of the shares of a corporation that has elected to be taxed at the entity level under par. (a) consent, a corporation that is an S corporation for federal income tax purposes may elect, on or before the due date or extended due date of its return under this chapter, to revoke for that taxable year its election under par. (a).

(d) If an election is made under par. (a), all of the following apply:

1. The net income of the tax-option corporation is computed under s. 71.34 (1k) and the situs of income shall be determined as if the election was not made.

2. Except as provided in s. 71.07 (7) (b) 3., the tax credits under this chapter may not be claimed by the tax-option corporation.

3. The tax-option corporation may not claim losses under ss. 71.05 (8) and 71.26 (4).

4. The provisions of ss. 71.29 and 71.84 relating to estimated payments and underpayment interest shall apply to the tax-option corporation for the taxable year beginning in 2019 and later years.

5. If the tax-option corporation fails to pay the amount owed to the department with respect to income as

a result of the election under par. (a), the department may collect such amount from the shareholders based on their proportionate share of such income.

(e) The department may promulgate rules to implement this subsection.

SECTION 12. 71.775 (3) (a) 4. of the statutes is created to read:

71.775 (3) (a) 4. The pass-through entity has elected under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed at the entity level.

SECTION 13. 73.03 (71) of the statutes is amended to read:

73.03 (71) (a) To determine the amount of additional revenue ~~that reported to~~ the department ~~collected~~ from the taxes imposed under subch. III of ch. 77 as a result of ~~any federal law to expand~~ the United States Supreme Court decision that expands the state's authority to require out-of-state retailers to collect and remit the taxes imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the ~~first 12 months following the date on which the department begins collecting the additional revenue as a result of a change in federal law~~ period beginning on October 1, 2018, and ending on September 30, 2019.

(b) After the department makes the determination under par. (a), the department shall determine how much the individual income tax rates under s. 71.06 may be reduced ~~in the following~~ for the taxable year ending on December 31, 2019, in order to decrease individual income tax revenue by the amount determined under par. (a). For purposes of this paragraph, ~~the department shall calculate the tax rate reductions~~ shall be calculated in proportion to the share of gross tax attributable to each of the tax brackets under s. 71.06 in effect during the most recently completed taxable year.

(c) ~~The department~~ No later than October 20, 2019, ~~the secretary of revenue~~ the secretary of revenue shall certify ~~and report~~ the determinations made under pars. (a) and (b) to the secretary of the department of administration, ~~to the governor, and to the legislature~~ the joint committee on finance, and the legislative audit bureau and specify with that certification ~~and report~~ that the new tax rates take effect ~~in for~~ the taxable year ~~following the taxable year in which the department makes the certification under this paragraph~~ ending on December 31, 2019, subject to par. (d).

SECTION 14. 73.03 (71) (d) of the statutes is created to read:

73.03 (71) (d) The legislative audit bureau shall review the determinations reported under par. (c) and report its findings to the joint legislative audit committee and the joint committee on finance no later than November 1, 2019. If the legislative audit bureau's review of the determinations reported under par. (c) results in a different calculation of the tax rates than that made under par. (b), the joint committee on finance shall determine which tax rates to apply to the taxable year ending on December

31, 2019, and report its determination to the governor, the secretary of administration, and the secretary of revenue no later than November 10, 2019.

SECTION 15. 77.51 (13g) (intro.) of the statutes is amended to read:

77.51 (13g) (intro.) Except as provided in ~~sub.~~ subs. (13gm) and (13h), “retailer engaged in business in this state”, for purposes of the use tax, includes any of the following:

SECTION 16. 77.51 (13gm) of the statutes is created to read:

77.51 (13gm) (a) “Retailer engaged in business in this state” does not include a retailer who has no activities as described in sub. (13g), except for activities described in sub. (13g) (c), unless the retailer meets either of the following criteria in the previous year or current year:

1. The retailer’s annual gross sales into this state exceed \$100,000.

2. The retailer’s annual number of separate sales transactions into this state is 200 or more.

(b) If an out-of-state retailer’s annual gross sales into this state exceed \$100,000 in the previous year or the retailer’s annual number of separate sales transactions into this state is 200 or more in the previous year, the retailer shall register with the department and collect the taxes administered under s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 for the entire current year.

(c) If an out-of-state retailer’s annual gross sales into this state are \$100,000 or less in the previous year and the retailer’s annual number of separate sales transactions into this state is less than 200 in the previous year, the retailer is not required to register with the department and collect the taxes administered under s. 77.52 or 77.53 on sales sourced to this state under s. 77.522 until the retailer’s sales or transactions meet the criteria in par. (a) 1. or 2. for the current year, at which time the retailer shall register with the department and collect the tax for the remainder of the current year.

(d) All of the following apply for purposes of this subsection:

1. “Year” means the retailer’s taxable year for federal income tax purposes.

2. The annual amounts described in this subsection include both taxable and nontaxable sales.

3. Each required periodic payment of a lease or license is a separate sales transaction.

4. Deposits made in advance of a sale are not sales transactions.

5. An out-of-state retailer’s annual amounts include all sales into this state by the retailer on behalf of other persons and all sales into this state by another person on the retailer’s behalf.

SECTION 17. 84.54 of the statutes is created to read:

84.54 Minimum federal expenditures for projects receiving federal funding. (1) Except as provided in

sub. (2), for all of the following projects on which the department expends federal moneys, the department shall expend federal moneys on not less than 70 percent of the aggregate project components eligible for federal funding each fiscal year:

(a) Southeast Wisconsin freeway megaprojects.

(b) Major highway development projects.

(c) State highway rehabilitation projects with a total cost of less than \$10 million.

(2) If the department determines that it cannot meet the requirements under sub. (1) or that it can make more effective and efficient use of federal moneys than the use required under sub. (1), the department may submit a proposed alternate funding plan to the joint committee on finance. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department’s submittal that the committee has scheduled a meeting for the purpose of reviewing the proposed plan, the department may expend moneys as proposed in the plan. If, within 14 working days after the date of the submittal, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed plan, the department may expend moneys as proposed in the plan only upon approval of the committee. The department may continue with any projects subject to the funding requirement under sub. (1) while the committee conducts its review, including any hearings conducted by the committee.

SECTION 18. 86.51 of the statutes is created to read:

86.51 Requirements for local projects. (1) In this section:

(a) “Local bridge” means a bridge that is not on the state trunk highway system or on marked routes of the state trunk highway system designated as connecting highways.

(b) “Local roads” means streets under the authority of cities or villages, county trunk highways, or town roads.

(c) “Political subdivision” means a county, city, village, or town.

(d) “Project” means the development, construction, repair, or improvement of a local road or a local bridge.

(2) If the department disburses aid to a political subdivision for a project, the department shall notify the political subdivision whether the aid includes federal moneys and which project components must be paid for with federal moneys, if any.

(3) For any project meeting all of the following criteria, the department may not require a political subdivision to comply with any portion of the department’s facilities development manual other than design standards:

(a) The project proposal is reviewed and approved by a professional engineer or by the highway commissioner for the county in which the project will be located.

(b) The project is conducted by a political subdivision with no expenditure of federal money.

(4) Any local project funded in whole or in part with state funds under the surface transportation urban program, the surface transportation rural program, or the local bridge program shall be let through competitive bidding and by contract to the lowest responsible bidder as provided in s. 84.06 (2).

SECTION 19. 2017 Wisconsin Act 59, section 9145 (4w) is repealed.

SECTION 20. Nonstatutory provisions.

(1) **INDIVIDUAL INCOME TAX RATES.** The secretary of administration shall exclude from the calculation under s. 16.518 (2) all additional revenue deposited in the general fund in the 2018–19 fiscal year that is attributable to an increase in the sales and use taxes reported under s. 73.03 (71), as determined by the department of revenue.

SECTION 21. Initial applicability.

(1) **PASS-THROUGH ENTITIES.** The treatment of ss. 71.05 (6) (a) 14. and (10) (dm), 71.07 (7) (c), 71.21 (6), 71.36 (1), 71.365 (4m), and 71.775 (3) (a) 4., the renum-

bering and amendment of ss. 71.07 (7) (b) and 71.365 (1), and the creation of ss. 71.07 (7) (b) 3. and 71.365 (1) (b) first apply to taxable years beginning on January 1, 2019, except that the treatment of ss. 71.05 (6) (a) 14. and (10) (dm), 71.07 (7) (c), 71.21 (6), 71.36 (1), 71.365 (4m), and 71.775 (3) (a) 4., the renumbering and amendment of ss. 71.07 (7) (b) and 71.365 (1), and the creation of ss. 71.07 (7) (b) 3. and 71.365 (1) (b) first apply to taxable years beginning on January 1, 2018, for tax-option corporations.

(2) **REQUIREMENTS FOR HIGHWAY PROJECTS.** The treatment of ss. 84.54 and 86.51 first applies to projects let and aid disbursed on the effective date of this subsection.

SECTION 22. Effective dates. This act takes effect on the day after publication, except as follows:

(1) **HIGHWAY FUNDING TRANSFERS.** The treatment of s. 20.395 (2) (fq) and SECTION 19 of this act take effect on July 1, 2019.

(2) **REQUIREMENTS FOR HIGHWAY PROJECTS.** The treatment of ss. 84.54 and 86.51 and SECTION 21 (2) of this act take effect on July 1, 2019.