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MEMORANDUM

DATE January 24, 2018

SUBJECT Technical memorandum to **2017 AB 869** (LRB-5136/1) by DOR

TO Representative Summerfield

FROM Joseph Kreye, Legal Services Manager, (608) 266-2263
Michael Gallagher, Senior Legislative Attorney, (608) 267-7511

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

January 23, 2018

TO: Joseph Kreye
Michael Gallagher
Legislative Reference Bureau

FROM: Robert Schmidt
Michael Oakleaf
Department of Revenue

SUBJECT: Technical Memorandum on AB 869 (LRB 5136/1), Low-income Housing Tax Credit

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

- Proposed section 71.07(8b)(b) provides the credit may be claimed against the taxes imposed under s. 71.02. If the credit would be effective for taxable years beginning in 2018, the author may wish that the credit also be able to be claimed against the alternative minimum tax imposed under s. 71.08.
- Under current law, there are reporting requirements for credits that are allocated by entities other than the Department, for the allocating agency to notify the Department to whom credits are allocated and/or revoked and the amounts of those credits and revocations. The bill could be amended to include such a requirement as follows:

Create s. 234.45(3)(e):

(e) No later than the end of the first month following each quarter, the WHEDA shall provide all of the following to the department of revenue:

1. The identity of each person certified for tax credits under this chapter and, for each person, the amount certified.
 2. The identity of each person for whom the WHEDA revoked a certification for tax credits and, for each person, the amount revoked.
 3. Any other information the department of revenue and the WHEDA agree is necessary to accurately track certification, verification, and usage of tax credits under this chapter.
- The Department has the authority under current law s. 71.77(2n) to issue an assessment within one year of notification of revocation of a credit by WEDC. The bill could be amended to include a similar authority for the credit created under the bill if revoked by WHEDA.
 - All other current law income and franchise tax credits require the claimant to include the credit in income or reduce the basis of the property by the amount of the credit computed. In order to provide consistency in the treatment of tax credits, the bill should be amended to include the credit computed in income as follows:

Amend s. 71.05(6)(a)15. to read:

Except as provided under s. 71.07 (3p) (c) 5., the amount of the credits computed under s. 71.07 (2dm), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (3wm), (3y), (4k), (4n), (5e), (5f), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), (8b), and (8r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

Amend s. 71.21(4)(a) to read:

The amount of the credits computed by a partnership under s. 71.07 (2dm), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (3wm), (3y), (4k), (4n), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), (8b), and (8r) and passed through to partners shall be added to the partnership's income.

Amend s. 71.26(2)(a)4. to read:

Plus the amount of the credit computed under s. 71.28 (1dm), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (3wm), (3y), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), (8b), (8r), and (9s) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

Amend s. 71.34(1k)(g) to read:

An addition shall be made for credits computed by a tax-option corporation under s. 71.28 (1dm), (1dx), (1dy), (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (3wm), (3y), (4), (5), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), (8b), and (8r) and passed through to shareholders.

Amend s. 71.45(2)(a)10. to read:

By adding to federal taxable income the amount of credit computed under s. 71.47 (1dm) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (3y), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6n), (8b), (8r), and (9s) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

- Taxpayer confidentiality provisions under s. 71.78 do not provide the Department with the ability to share credit information with WHEDA for purposes of determining the amount of credits used or outstanding credit carry forwards, which could be necessary in the event that a credit needs to be recaptured. A provision similar to 71.78(4)(m), which allows sharing limited tax information with the Wisconsin Economic Development Corporation, could be added to allow sharing with WHEDA.

cc: Re. Summerfield