



2017 SENATE BILL 883

1 **AN ACT** *to repeal* 20.395 (2) (fq); *to renumber and amend* 71.07 (7) (b) and
2 71.365 (1); *to amend* 71.05 (6) (a) 14., 71.07 (7) (c), 71.36 (1), 73.03 (71) and
3 77.51 (13g) (intro.); *to create* 71.05 (10) (dm), 71.07 (7) (b) 3., 71.21 (6), 71.365
4 (1) (b), 71.365 (4m), 71.775 (3) (a) 4., 73.03 (71) (d), 77.51 (13gm), 84.54 and
5 86.51 of the statutes; and *to affect* 2017 Wisconsin Act 59, section 9145 (4w);
6 **relating to:** state and local highway projects; expenditure of transportation
7 moneys received from the federal government; determining a reduction in
8 individual income tax rates; and election of pass-through entities to be taxed
9 at the entity level.

Analysis by the Legislative Reference Bureau

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

10 **SECTION 1.** 20.395 (2) (fq) of the statutes is repealed.

SENATE BILL 883**SECTION 2**

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

2 71.05 **(6)** (a) 14. Any amount received as a proportionate share of the earnings
3 and profits of a corporation that is an S corporation for federal income tax purposes
4 if those earnings and profits accumulated during a year for which the shareholders
5 have elected under s. 71.365 (4) (a) not to be a tax-option corporation, to the extent
6 not included in federal adjusted gross income for the current year. This subdivision
7 does not apply to earnings and profits accumulated during a year for which a
8 tax-option corporation has made an election under s. 71.365 (4m) (a) to be taxed at
9 the entity level.

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

11 71.05 **(10)** (dm) Any item of income, loss, or deduction passed through from an
12 entity that has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a) to be taxed
13 at the entity level.

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

16 71.07 **(7)** (b) 1. Subject to conditions and limitations in pars. (c) and (d), if a
17 resident individual, estate or trust pays a net income tax to another state, that
18 resident individual, estate or trust may credit the net tax paid to that other state on
19 that income against the net income tax otherwise payable to ~~the~~ this state on income
20 of the same year. The credit may not be allowed unless the income taxed by the other
21 state is also considered income for Wisconsin tax purposes. The credit may not be
22 allowed unless claimed within the time provided in s. 71.75 (2), but s. 71.75 (4) does
23 not apply to those credits. For purposes of this ~~paragraph~~ subdivision, amounts
24 declared and paid under the income tax law of another state are considered a net

SENATE BILL 883

1 income tax paid to that other state only in the year in which the income tax return
2 for that state was required to be filed.

3 2. Income and franchise taxes paid to another state by a tax-option corporation,
4 partnership, or limited liability company that is treated as a partnership may be
5 claimed as a credit under this paragraph by that corporation's shareholders, that
6 partnership's partners, or that limited liability company's members who are
7 residents of this state and who otherwise qualify under this paragraph, unless the
8 tax-option corporation, partnership, or limited liability company has made an
9 election under s. 71.21 (6) (a) or 71.365 (4m) (a).

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

11 71.07 (7) (b) 3. Subject to the conditions and limitations in pars. (c) and (d), if
12 a tax-option corporation, partnership, or limited liability company makes an
13 election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation,
14 partnership, or limited liability company may credit the net income or franchise tax
15 paid by the entity to another state on that income and the net income tax on that
16 income paid by the entity on behalf of its shareholders, partners, and members that
17 are residents of this state on a composite return filed with the other state against the
18 net income or franchise tax otherwise payable to this state on income of the same
19 year. The credit may not be allowed unless the income taxed by the other state is also
20 considered income for Wisconsin tax purposes and is otherwise attributable to
21 amounts that would be reportable to this state by shareholders, partners, or
22 members of the tax-option corporation, partnership, or limited liability company
23 that are residents of this state if the election under s. 71.21 (6) (a) or 71.365 (4m) (a)
24 was not made. The credit may not be allowed unless claimed within the time
25 provided in s. 71.75 (2), but s. 71.75 (4) does not apply to those credits. For purposes

SENATE BILL 883**SECTION 5**

1 of this subdivision, amounts declared and paid under the income tax law of another
2 state are considered a net income tax paid to that other state only in the year in which
3 the income tax return for that state was required to be filed.

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

6 71.07 (7) (c) The ~~credit~~ total credits under par. (b) 1. and 2. may not exceed an
7 amount determined by multiplying the taxpayer's net Wisconsin income tax by a
8 ratio derived by dividing the income subject to tax in the other state that is also
9 subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the
10 taxpayer's Wisconsin adjusted gross income. The credit under par. (b) 3. may not
11 exceed an amount determined by multiplying the income subject to tax in the other
12 state that is also subject to tax in Wisconsin by 7.9 percent.

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

14 71.21 (6) (a) If persons who, on the day on which an election under this
15 paragraph is made, hold more than 50 percent of the capital and profits of a
16 partnership consent, a partnership that is a partnership for federal income tax
17 purposes may elect, on or before the due date or extended due date of its return under
18 this chapter, to be taxed at the entity level at a rate of 7.9 percent of net income
19 reportable to this state as described in par. (d) 1. for that taxable year.

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

SENATE BILL 883

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

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

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

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

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

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

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

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

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

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

22 71.36 (1) It is the intent of this section that shareholders of tax-option
23 corporations include in their Wisconsin adjusted gross income their proportionate
24 share of the corporation's tax-option items unless the corporation elects under s.

SENATE BILL 883**SECTION 8**

1 71.365 (4) (a) not to be a tax-option corporation or elects under s. 71.365 (4m) (a) to
2 be taxed at the entity level.

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

5 71.365 (1) (a) For purposes of this chapter, the adjusted basis of a shareholder
6 in the stock and indebtedness of a tax-option corporation shall be determined in the
7 manner prescribed by the internal revenue code for a shareholder of an S
8 corporation, except that the nature and amount of items affecting that basis shall be
9 determined under this chapter. This ~~subsection~~ paragraph does not apply to 1978
10 and earlier taxable years of corporations which were S corporations for federal
11 income tax purposes or to taxable years of corporations for which an election has been
12 made under sub. (4) (a).

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

14 71.365 (1) (b) The adjusted basis of a shareholder in the stock and indebtedness
15 of a tax-option corporation that has made an election under sub. (4m) (a) is
16 determined as if the election was not made.

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

18 71.365 (4m) TAX-OPTION CORPORATION ELECTION TO PAY FRANCHISE OR INCOME TAX
19 AT THE ENTITY LEVEL. (a) If persons who hold more than 50 percent of the shares on
20 the day on which an election under this paragraph is made consent, a corporation
21 that is an S corporation for federal income tax purposes may elect, on or before the
22 due date or extended due date of its return under this chapter, to be taxed at the
23 entity level at a rate of 7.9 percent of net income reportable to this state as described
24 in par. (d) 1. for that taxable year.

SENATE BILL 883

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

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

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

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

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

17 3. The tax-option corporation may not claim losses under ss. 71.05 (8) and
18 71.26 (4).

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

22 5. If the tax-option corporation fails to pay the amount owed to the department
23 with respect to income as a result of the election under par. (a), the department may
24 collect such amount from the shareholders based on their proportionate share of such
25 income.

SENATE BILL 883**SECTION 11**

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

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

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

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

6 73.03 (71) (a) To determine the amount of additional revenue ~~that reported to~~
7 ~~the department collected from the taxes imposed under subch. III of ch. 77 as a result~~
8 ~~of any federal law to expand~~ the United States Supreme Court decision that expands
9 ~~the state's authority to require out-of-state retailers to collect and remit the taxes~~
10 ~~imposed under subch. III of ch. 77 on purchases by Wisconsin residents during the~~
11 ~~first 12 months following the date on which the department begins collecting the~~
12 ~~additional revenue as a result of a change in federal law~~ period beginning on October
13 1, 2018, and ending on September 30, 2019.

14 (b) After the department makes the determination under par. (a), the
15 department shall determine how much the individual income tax rates under s.
16 71.06 may be reduced ~~in the following~~ for the taxable year ending on December 31,
17 2019, in order to decrease individual income tax revenue by the amount determined
18 under par. (a). For purposes of this paragraph, ~~the department shall calculate the~~
19 ~~tax rate reductions~~ shall be calculated in proportion to the share of gross tax
20 attributable to each of the tax brackets under s. 71.06 in effect during the most
21 recently completed taxable year.

22 (c) ~~The department~~ No later than October 20, 2019, the secretary of revenue
23 ~~shall certify and report the determinations made under pars. (a) and (b) to the~~
24 ~~secretary of the department of administration, to the governor, and to the legislature~~
25 the joint committee on finance, and the legislative audit bureau and specify with that

SENATE BILL 883

1 certification and report that the new tax rates take effect ~~in~~ for the taxable year
2 following the taxable year in which the department makes the certification under
3 ~~this paragraph ending on December 31, 2019, subject to par. (d).~~

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

5 73.03 (71) (d) The legislative audit bureau shall review the determinations
6 reported under par. (c) and report its findings to the joint legislative audit committee
7 and the joint committee on finance no later than November 1, 2019. If the legislative
8 audit bureau's review of the determinations reported under par. (c) results in a
9 different calculation of the tax rates than that made under par. (b), the joint
10 committee on finance shall determine which tax rates to apply to the taxable year
11 ending on December 31, 2019, and report its determination to the governor, the
12 secretary of administration, and the secretary of revenue no later than November 10,
13 2019.

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

15 77.51 (13g) (intro.) Except as provided in ~~sub. subs. (13gm) and~~ (13h), "retailer
16 engaged in business in this state", for purposes of the use tax, includes any of the
17 following:

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

19 77.51 (13gm) (a) "Retailer engaged in business in this state" does not include
20 a retailer who has no activities as described in sub. (13g), except for activities
21 described in sub. (13g) (c), unless the retailer meets either of the following criteria
22 in the previous year or current year:

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

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

SENATE BILL 883**SECTION 16**

1 (b) If an out-of-state retailer's annual gross sales into this state exceed
2 \$100,000 in the previous year or the retailer's annual number of separate sales
3 transactions into this state is 200 or more in the previous year, the retailer shall
4 register with the department and collect the taxes administered under s. 77.52 or
5 77.53 on sales sourced to this state under s. 77.522 for the entire current year.

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

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

15 1. "Year" means the retailer's taxable year for federal income tax purposes.

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

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

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

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

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

SENATE BILL 883

1 **84.54 Minimum federal expenditures for projects receiving federal**
2 **funding.** (1) Except as provided in sub. (2), for all of the following projects on which
3 the department expends federal moneys, the department shall expend federal
4 moneys on not less than 70 percent of the aggregate project components eligible for
5 federal funding each fiscal year:

6 (a) Southeast Wisconsin freeway megaprojects.

7 (b) Major highway development projects.

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

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

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

25 **86.51 Requirements for local projects.** (1) In this section:

SENATE BILL 883**SECTION 18**

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

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

6 (c) "Political subdivision" means a county, city, village, or town.

7 (d) "Project" means the development, construction, repair, or improvement of
8 a local road or a local bridge.

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

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

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

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

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

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

24 **SECTION 20. Nonstatutory provisions.**

SENATE BILL 883

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

6 **SECTION 21. Initial applicability.**

7 (1) PASS-THROUGH ENTITIES. The treatment of ss. 71.05 (6) (a) 14. and (10) (dm),
8 71.07 (7) (c), 71.21 (6), 71.36 (1), 71.365 (4m), and 71.775 (3) (a) 4., the renumbering
9 and amendment of ss. 71.07 (7) (b) and 71.365 (1), and the creation of ss. 71.07 (7)
10 (b) 3. and 71.365 (1) (b) first apply to taxable years beginning on January 1, 2019,
11 except that the treatment of ss. 71.05 (6) (a) 14. and (10) (dm), 71.07 (7) (c), 71.21 (6),
12 71.36 (1), 71.365 (4m), and 71.775 (3) (a) 4., the renumbering and amendment of ss.
13 71.07 (7) (b) and 71.365 (1), and the creation of ss. 71.07 (7) (b) 3. and 71.365 (1) (b)
14 first apply to taxable years beginning on January 1, 2018, for tax-option
15 corporations.

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

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

20 (1) HIGHWAY FUNDING TRANSFERS. The treatment of s. 20.395 (2) (fq) and SECTION
21 19 of this act take effect on July 1, 2019.

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

24

(END)