

**2019 DRAFTING REQUEST**

**Bill**

For: **Legislative Fiscal Bureau** Drafter: **mshovers**  
 By: **Sean** Secondary Drafters: **elunder**  
 Date: **4/10/2020** **jkreye**  
 Same as LRB: May Contact:

Submit via email: **YES**  
 Requester's email: **Sean.Moran@legis.wisconsin.gov**  
 Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**  
**Erika.Lunder@legis.wisconsin.gov**  
**marc.shovers@legis.wisconsin.gov**  
**cathlene.hanaman@legis.wisconsin.gov**  
**Becky.hannah@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Adopt for Wisconsin purposes tax elements of federal Covid-19 legislation

**Instructions:**

See attached. Draft 8 items from pages 4-7 of 4/6/20 LFB memo regarding tax elements of P.L. 116-127 and P.L. 116-136 that would have to be adopted to apply in WI; sort of a mini-IRC update

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	mshovers 4/10/2020	aernsttr 4/10/2020	lparisi 4/10/2020		State S&L Tax Exempt

FE Sent For: **<END>**

## Parisi, Lori

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**From:** Kreye, Joseph  
**Sent:** Thursday, April 09, 2020 4:49 PM  
**To:** Shovers, Marc; Lunder, Erika  
**Cc:** Hanaman, Cathlene  
**Subject:** FW: Summary of Federal Law Changes Enacted During 2020  
**Attachments:** Summary of Federal Law Changes During 2020 04-01-20.xlsx; Drafting Instructions to adopt certain provisions of the CARES Act P.L. 116-136 for Wisconsin.docx

For your enjoyment

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**From:** Moran, Sean <Sean.Moran@legis.wisconsin.gov>  
**Sent:** Thursday, April 09, 2020 3:28 PM  
**To:** Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>  
**Subject:** FW: Summary of Federal Law Changes Enacted During 2020

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**From:** Weber, Nathaniel R - DOR <Nathaniel.Weber@wisconsin.gov>  
**Sent:** Friday, April 03, 2020 4:04 PM  
**To:** Moran, Sean <Sean.Moran@legis.wisconsin.gov>; Spika, Dan <Dan.Spika@legis.wisconsin.gov>; Gentry, John <John.Gentry@legis.wisconsin.gov>  
**Subject:** RE: Summary of Federal Law Changes Enacted During 2020

In case you are asked, attached are the only drafting instructions needed to adopt the items in the chart identified with "yes" from the CARES act. This will change the qualified improvement property from 39-year to 15-year property (allowing shorter depreciation period and greater depreciation expense) without adopting bonus depreciation on such property.

Have a good weekend and stay safe!

Nate

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**From:** Oakleaf, Michael P - DOR <Michael.Oakleaf@wisconsin.gov>  
**Sent:** Wednesday, April 01, 2020 11:45 AM  
**To:** Moran, Sean - LEGIS <sean.moran@legis.wisconsin.gov>; Weber, Nathaniel R - DOR <Nathaniel.Weber@wisconsin.gov>; Spika, Dan - LEGIS <Dan.Spika@legis.wisconsin.gov>  
**Cc:** DeGarmo, Ann M - DOR <ann.degarmo@wisconsin.gov>; Schmidt, Robert K - DOR <RobertK1.Schmidt@wisconsin.gov>; Adams, Jamie L - DOR <JamieL.Adams@wisconsin.gov>; Petersen, Zachary A - DOR <Zachary.Petersen@wisconsin.gov>; Caruth, Bradley R - DOR <Bradley.Caruth@wisconsin.gov>  
**Subject:** Summary of Federal Law Changes Enacted During 2020

Greetings,

Please find attached the fiscal effects for the provisions that are recommended for adoption from the Families First Coronavirus Act and the CARES Act.

I wanted to highlight the estimate for the CARES Act provision related to the Payroll Protection Program (PPP). The PPP authorizes the Small Business Administration to make \$349 billion in forgivable loans to small businesses. The amount of the forgiven loans is exempt for federal purposes, but we would have to adopt it in order for the forgiven amount to also be exempt for WI purposes.

The exact amount of loans that will be forgiven for Wisconsin businesses is unknown, but our best guess is that exempting the loans would result in approximately \$225 million in foregone revenue across FY 20 – FY 22.

If not for the current emergency, the loans would not have been made or forgiven. Failing to adopt the provision would provide a windfall for the state at the expense of the very businesses that it was intended to help. While we put a relatively large fiscal effect on the provision, we would like to make clear that the revenue had not previously been counted in general fund estimates. I would characterize it not as a loss of revenue if we adopt, but as the avoidance of adding an extra burden onto struggling businesses.

Mike

**Michael Oakleaf**

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Summary of Federal Law Changes Enacted During 2020

Public Law Title Date Enacted  
 116-127 Families First Coronavirus Response Act March 18, 2020  
 116-136 Coronavirus Aid, Relief, and Economic Security Act March 27, 2020

Public Law	Division	Act Section	Code Section	Description of Change	Effective Date	Should WI Adopt for Tax Years Beginning After December 31, 2019?	Should WI Adopt At same time as Federal?	Comments	WI Fiscal Effect (\$M)		
									2020	2021	2022
116-136	A	2203	401(a)(9)	The required minimum distribution rules for certain retirement plans is waived for calendar year 2020.	Calendar years beginning after December 31, 2019	Yes	Yes	Automatically adopted by Wisconsin	-3.4	-4.1	5.9
116-136	A	3608	Non-code provision	For single-employer pension plans, the required minimum contribution due date, for due dates occurring during calendar year 2020, is extended to January 1, 2021.	March 27, 2020	Yes	Yes	Automatically adopted by Wisconsin	12.3	14.2	1.6
116-136	A	3609	4140(1)	A cooperative and small employer charity pension plan is a defined benefit plan if, as of January 1, 2000, was maintained by an employer described in section 501(c)(3) of the IRC, who has been in existence since at least 1938, who conducts medical research directly or indirectly through grant making, and whose primary exempt purpose is to provide services with respect to mothers and children.	Plan years beginning after December 31, 2018	Yes	Yes	Automatically adopted by Wisconsin	-min	-min	-min
116-136	A	1106	Non-code provision	Certain small business loans are forgiven equal to the amount of payroll costs, payment of interest on any covered mortgage obligation, payment on any covered rent obligation, and any covered utility payment. The amount of the loan forgiven is considered canceled debt income and excluded from federal gross income.	March 27, 2020	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. If not adopted, any canceled debt would be included in Wisconsin income.	-11.4	-10.2	-11
116-136	A	2202	Non-code provision	The early withdrawal penalty for retirements plans does not apply for distributions made, up to \$100,000 for coronavirus-related purposes, on or after January 1, 2020. The withdrawal would be taxed over 3 years. If the amount withdrawn is recontributed within 3 years, the amount is treated as a rollover contribution. Loans from qualified retirement plans may be made, up to \$100,000, and the due date for repaying the loan is delayed for 1 year.	Distributions made on or after January 1, 2020, and before December 31, 2020. Loans from retirement plans made during the 100-day period beginning on the date of the enactment of the Act.	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. If not adopted, Wisconsin taxpayers would pay 33% of the 10% federal penalty for coronavirus-related withdrawals. In addition, loan amounts over \$50,000 would qualify as an early withdrawal and be subject to the 33% of the 10% federal penalty.	0.4	-12.1	-2.0
116-136	A	2204	62(a)	Up to \$300 of charitable cash contributions may be deducted in 2020, regardless of whether or not a taxpayer itemizes. The deduction is included in AGI.	Taxable years beginning after December 31, 2019	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. If not adopted, the deduction would be added back to Wisconsin income and the amount of deduction may be allowable for Wisconsin's limited deduction credit.	-0.5	-4.2	0.0
116-136	A	2205	Non-code provision	The limitation on charitable contribution deductions for individuals who itemize and corporations is increased. For individuals, the 50% of AGI limitation is suspended for 2020. For corporations, the 10% limitation is increased to 25% of taxable income. The limitation on deductions for contributions of food inventory is increased from 15% to 25%.	Taxable years ending after December 31, 2019	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. If not adopted, excess itemized deductions would not be allowed for Wisconsin, but may be eligible for a carryover.	-3.2	-25.7	14.4
116-136	A	2206	127(c)(1)	Payments of up to \$5,250 that an employer makes for an employee's student loan, including principal and interest, may be excluded from gross income.	Payments made after the date of the enactment of the Act and before January 1, 2021	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. If not adopted, payments made by employer would be included in employee's wages as a taxable fringe benefit.	-0.6	-2.1	0.0
116-136	A	2307	168	Classifies qualified improvement property as 15-year property instead of having to depreciate those improvements over the 39-year life of the building.	As if included in section 1204 of Public Law 115-97	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. Fixes an error oversight under prior federal law. May result in amended returns for 2018 and 2019.	-min	-min	-min
116-136	A	3701	223(c)(2)	For purposes of HSA, in the case of a plan beginning on or before December 31, 2021, the plan shall not fail to be treated as a high deductible health plan by reason of failing to have a deductible for telehealth and other remote care services.	March 27, 2020	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. If not adopted by Wisconsin, an individual may not take the HSA deduction for contributions to a high deductible health plan that fails to have a deductible for telehealth and other remote care services.	0	-0.4	-0.2
116-136	A	3702	223(c)(2), 220(c)(2)(A), 106	For purposes of distributions from HSAs and Archer MSAs and reimbursements under health flexible spending arrangements and health reimbursement arrangements, amounts paid for menstrual care products shall be treated as paid for medical care.	For distributions, amounts paid after December 31, 2019, and for reimbursements, expenses incurred after December 31, 2019	Yes	Yes	Adoption would keep Wisconsin in conformity with the IRC. If not adopted, distributions for these products will become taxable in Wisconsin.	-0.2	-3.2	-4.2
116-127	G	7001	Non-code provision	An employer is allowed a credit against the OASDI tax or RRTA tax imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages paid by the employer with respect to that calendar quarter, subject to certain limits.	Effective for the period that begins on a date within 15 days of the date of enactment and that ends on December 31, 2020	N/A		Federal payroll tax credit			

Public Law	Division	Act Section	Code Section	Description of Change	Effective Date	Should WI Adopt for Tax Years Beginning After December 31, 2019?	Should WI Adopt At same time as Federal?	Comments	2020	2021	2022
116-127	G	7002	Non-code provision	An eligible self-employed individual is allowed an income tax credit for any taxable year for a qualified sick leave equivalent amount as a result of the Emergency Paid Sick Leave Act.	Effective for days occurring during the period beginning on a date which is during the 15-day period beginning on the date of enactment and ending on December 31, 2020	N/A		Federal credit			
116-127	G	7003	Non-code provision	An employer is allowed a credit against the OASDI tax or RRTA tax imposed on the employer for each calendar quarter in an amount equal to 100 percent of the qualified family leave wages paid by the employer with respect to that calendar quarter, subject to certain limits.	Effective for the period that begins within 15 days of the date of enactment and that ends on December 31, 2020	N/A		Federal payroll tax credit			
116-127	G	7004	Non-code provision	An eligible self-employed individual is allowed an income tax credit for any taxable year for a qualified family leave equivalent amount as a result of the Emergency Family and Medical Leave Expansion Act.	Effective for days occurring during the period beginning on a date which is during the 15-day period beginning on the date of enactment and ending on December 31, 2020	N/A		Federal credit			
116-127	G	7005	Non-code provision	No federal employment taxes will be collected on wages required to be paid to employees by reason of the Emergency Family and Medical Leave Expansion Act to be contributed to the OASDI or railroad retirement programs.	March 18, 2020	N/A		Federal credit/tax			
116-135	A	2201	6428	The amount of the credit allowed by sections 7001 and 7003 of the bill is increased by the amount of tax imposed by section 3111(b), IRC, on qualified sick leave wages or qualified family leave wages.	March 27, 2020	N/A		Federal credit			
116-135	A	2301	Non-code provision	An income tax credit rebate is allowed in the amount of \$1,200 per person and \$500 per dependent, subject to AGI limits based on their 2018 or 2019 federal return.	Wages paid after March 12, 2020, and before January 1, 2021	N/A		Federal credit			
116-135	A	2302	Non-code provision	Provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the coronavirus pandemic.	March 27, 2020	N/A		Federal tax			
116-135	A	2303	172(a)	Employers and self-employed individuals may defer payment of the employer share of the SS tax. Half of the amount deferred is payable by December 31, 2021, with the other half payable by December 31, 2022.	Limitation is effective for taxable years beginning after December 31, 2017, and on December 31, 2017, and on December 31, 2017	N/A		Wisconsin has its own NOL provisions			
116-135	A	2305	53(e)	An NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. Temporarily removes the taxable income limitation to allow an NOL to fully offset income.	Taxable years beginning after December 31, 2017	N/A		Federal credit			
116-135	A	2308	52-4(e)	Accelerates the ability of companies to recover AMT credits, permitting companies to claim a refund now and obtain additional cash flow.	Distilled spirits removed after December 31, 2019	N/A		Federal tax			
116-135	A	3606	Non-code provision	Waves the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the FDA.	March 27, 2020	N/A		Federal credit			
116-135	A	4007	Non-code provision	Allows for an advance of the refundable payroll credit for required paid sick and family leave and provides for an exception to the penalty for failure to make payroll tax deposits in anticipation of the credit.	Beginning after the date of enactment of the Act and ending before January 1, 2021	N/A		Federal tax			
116-135	A	2304	461(f)	The excise tax for transportation by air and use of kerosene in commercial aviation is eliminated beginning after the date of enactment of the Act and before January 1, 2021.	Taxable years beginning after No December 31, 2017	No		Provision not previously adopted by Wisconsin			
116-135	A	2306	163(j)	Modifies the excess business loss limitation to allow the use of excess business losses.	Taxable years beginning after No December 31, 2018	No		Provision not previously adopted by Wisconsin			
				Temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30% limitation to 50% of taxable income for 2019 and 2020.							

**Drafting Instructions to adopt the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into Wisconsin's definition of the Internal Revenue Code**

- 1. Amend secs. 71.01(6)(L)3., 71.22(4)(L)3., 71.22(4m)(L)3., 71.34(1g)(L)3., and 71.42(2)(L)3., Wis. Stats., to read:**

For purposes of this paragraph, "Internal Revenue Code" does not include amendments to the federal Internal Revenue Code enacted after December 31, 2017, except that "Internal Revenue Code" includes sections 1106, 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L. 116-136.

- 2. Amend sec. 71.26(2)(b)12.d., Wis. Stats., to read:**

For purposes of subd. 12. a., "Internal Revenue Code" does not include amendments to the federal Internal Revenue Code enacted after December 31, 2017, except that "Internal Revenue Code" includes sections 1106, 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L. 116-136.

- 3. Amend sec. 71.98(3), Wis. Stats., as follows:**

**(3) DEPRECIATION, DEPLETION, AND AMORTIZATION.** For taxable years beginning after December 31, 2013, and for purposes of computing depreciation and amortization, the Internal Revenue Code means the federal Internal Revenue Code in effect for federal purposes on January 1, 2014, except that sections 13201 (f), 13203, 13204, and 13205 of P.L. 115-97 and section 2307 of Division A of P.L. 116-136 apply at the same time as for federal purposes. For taxable years beginning after December 31, 2013, and for purposes of computing depletion, the Internal Revenue Code means the federal Internal Revenue Code in effect for federal purposes for the year in which the property is placed in service.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-6153/P1  
MES/EKL/JK:cdc&ahe

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT to amend** 71.01 (6) (L) 3., 71.22 (4) (L) 3., 71.22 (4m) (L) 3., 71.26 (2) (b)  
2             12. d., 71.34 (1g) (L) 3., 71.42 (2) (L) 3. and 71.98 (3) of the statutes; **relating**  
3             **to:** adopting for Wisconsin purposes federal tax law changes adopted in  
4             response to the coronavirus outbreak.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

***Internal Revenue Code updates; federal tax law changes, coronavirus***

This bill makes a number of changes to conform Wisconsin's tax law to federal tax law changes enacted in March 2020 in response to the coronavirus outbreak. The bill includes the following changes:

1. Exempts from otherwise applicable penalties certain taxable year 2020 distributions from a retirement account qualified under the Internal Revenue Code, and exempts from income taxation these distributions subject to a number of conditions.

2. Creates additional deductions, for taxable year 2020, for certain individual charitable contributions, and suspends the limitations on certain individual and corporate charitable deductions. The suspension of limitations applies to contributions made in calendar year 2020 only, although certain amounts donated in 2020 may be carried forward to future years.

3. Clarifies that an individual's health insurance plan is still treated as a high deductible plan even if it fails to provide a deductible for telehealth and other remote care services.

4. Conforms state law to federal law regarding the treatment of paycheck protection loans to businesses and employees under the small business administration's loan guarantee program for the period of time from February 15, 2020, through June 30, 2020. A portion of the loans may be forgiven on a tax-free basis under certain conditions.

5. Provides an exclusion from income for certain student loan principal and interest payments made by an employer on behalf of an employee, subject to the same current law cap of \$5,250 in payments for qualified educational expenses made on behalf of an employee by an employer. This provision applies to payments made from March 28, 2020, through December 31, 2020.

6. Corrects a drafting error in the federal Tax Cuts and Jobs Act of 2017 to provide a 15-year recovery period for qualified improvement property.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 71.01 (6) (L) 3. of the statutes is amended to read:

2           71.01 **(6)** (L) 3. For purposes of this paragraph, "Internal Revenue Code" does  
3 not include amendments to the federal Internal Revenue Code enacted after  
4 December 31, 2017, except that "Internal Revenue Code" includes sections 1106,  
5 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
6 116-136.

7           **SECTION 2.** 71.22 (4) (L) 3. of the statutes is amended to read:

8           71.22 **(4)** (L) 3. For purposes of this paragraph, "Internal Revenue Code" does  
9 not include amendments to the federal Internal Revenue Code enacted after  
10 December 31, 2017, except that "Internal Revenue Code" includes sections 1106,  
11 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
12 116-136.

13           **SECTION 3.** 71.22 (4m) (L) 3. of the statutes is amended to read:



1           71.22 **(4m)** (L) 3. For purposes of this paragraph, “Internal Revenue Code” does  
2 not include amendments to the federal Internal Revenue Code enacted after  
3 December 31, 2017, except that “Internal Revenue Code” includes sections 1106,  
4 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
5 116-136.

6           **SECTION 4.** 71.26 (2) (b) 12. d. of the statutes is amended to read:

7           71.26 **(2)** (b) 12. d. For purposes of subd. 12. a., “Internal Revenue Code” does  
8 not include amendments to the federal Internal Revenue Code enacted after  
9 December 31, 2017, except that “Internal Revenue Code” includes sections 1106,  
10 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
11 116-136.

12           **SECTION 5.** 71.34 (1g) (L) 3. of the statutes is amended to read:

13           71.34 **(1g)** (L) 3. For purposes of this paragraph, “Internal Revenue Code” does  
14 not include amendments to the federal Internal Revenue Code enacted after  
15 December 31, 2017, except that “Internal Revenue Code” includes sections 1106,  
16 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
17 116-136.

18           **SECTION 6.** 71.42 (2) (L) 3. of the statutes is amended to read:

19           71.42 **(2)** (L) 3. For purposes of this paragraph, “Internal Revenue Code” does  
20 not include amendments to the federal Internal Revenue Code enacted after  
21 December 31, 2017, except that “Internal Revenue Code” includes sections 1106,  
22 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
23 116-136.

24           **SECTION 7.** 71.98 (3) of the statutes is amended to read:

