

STATE OF WISCONSIN  
REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS  
2021 ASSEMBLY BILL 68/SENATE BILL 111

[Introduced by the Joint Committee on Finance at the request of Governor Tony Evers.]

2021 Assembly Bill 68/Senate Bill 111 is the 2021-22 Executive Budget Bill prepared by the Governor and introduced by the Joint Committee on Finance at the request of the Governor. The bill contains a number of provisions that affect existing statutes or create new statutes relating to the exemption of property or persons from state or local taxes. This report addresses those provisions.

## General Nature and Fiscal Effect of Tax Exemption Provisions in the Bill

### Internal Revenue Code Update

The bill updates references to the Internal Revenue Code (IRC) under the individual and corporate income/franchise taxes. For tax years beginning after December 31, 2020, it would adopt the following IRC provisions of the Tax Cuts and Jobs Act of 2017 (TCJA): (a) loss limitation for taxpayers other than corporations; (b) amortization of research and experimental expenditures; (c) accounting rules for accrual method taxpayers; (d) limitation on the deduction for business interest; (e) limitation on the deduction for employee entertainment and meal expenses; (f) limitation on the deduction of Federal Deposit Insurance Corporation (FDIC) premiums; and (g) modification of the limitation on the deduction for highly paid individuals.

The Legislative Fiscal Bureau (LFB) indicates that, overall, individual income and corporate income/franchise taxes would increase by an estimated \$264,200,000 in 2021-22, \$275,900,000 in 2022-23, \$267,900,000 in 2023-24, and \$258,800,000 in 2024-25. The estimated fiscal effect of each provision in the 2021-23 biennium is shown below (in millions of dollars).

<b><u>TCJA Provision</u></b>	<b><u>2021-22</u></b>	<b><u>2022-23</u></b>
Loss limitation for taxpayers other than corporations	\$72.9	\$58.2
Amortization of research and experimental expenditures	\$63.2	\$101.5
Accounting rules for accrual method taxpayers	\$7.9	\$3.5
Limitation on deduction for business interest	\$99.3	\$95.3
Limitation on deduction for entertainment and meals	\$10.0	\$7.8
Limitation on deduction for FDIC premiums	\$6.5	\$6.3
Modification of the limitation for highly paid individuals	\$4.4	\$3.3
<b>TOTAL</b>	<b>\$264.2</b>	<b>\$275.9</b>

## **Limit on Capital Gains Exclusion**

The bill limits the current law exclusion for 30 percent of an individual's net long-term, nonfarm capital gains as follows, beginning in tax year 2021. It would prohibit individuals with federal adjusted gross income (AGI) above the following thresholds from claiming the exclusion: (a) \$400,000 for single and head-of-household filers; (b) \$533,000 for married-joint filers; and (c) \$266,500 for married-separate filers. However, if an individual's federal AGI, less 30 percent of the capital gains otherwise eligible for the aforementioned exclusion, is below the applicable AGI threshold listed above, the individual's exclusion would be reduced by the amount by which their federal AGI exceeds the applicable threshold amount.

The LFB indicates that individual income tax collections would increase by an estimated \$202,100,000 in 2021-22 and \$148,400,000 in 2022-23 and annually thereafter.

## **Medical Care Insurance Subtraction for Self-Employed Individuals**

The bill modifies the current law deduction for medical care insurance premiums paid by self-employed individuals as follows, beginning in tax year 2021. It would direct that the deduction would be limited to the individual's total wages, salary, tips, unearned income, and net trade or business earnings that are taxable in Wisconsin. It would modify the current law proration calculation for nonresidents and part-year residents to provide that the deduction would be reduced according to the percentage of the person's total wages, salary, tips, unearned income, and net trade or business earnings that are subject to Wisconsin tax.

As reported by the LFB, the administration indicates these provisions would reduce individual income tax revenues by an estimated \$9,500,000 annually beginning in 2021-22. However, provisions identical to those described above were included in 2021 Wisconsin Act 1. As a result, this provision, if also adopted in the budget bill, would have no additional impact on state tax revenues.

## **Limit on Private School Tuition Deduction**

The bill would limit the current law deduction for tuition expenses paid for a student to attend an eligible institution, beginning in tax year 2021. It would prohibit individuals with Wisconsin AGI at or above the following thresholds from claiming the deduction: (a) \$100,000 for single and head-of-household filers; (b) \$150,000 for married-joint filers; and (c) \$75,000 for married-separate filers.

The LFB indicates this individual income tax collection would increase by an estimated \$6,400,000 in 2021-22 and \$6,500,000 in 2022-23 and annually thereafter.

## **Limit on Dividends Received Deduction**

The bill would specify that corporations may not use the "dividends received" deduction in computing a net business loss under the state corporate income/franchise tax.

The LFB indicates this provision would increase corporate income/franchise tax revenues by an estimated \$2,900,000 in 2021-22 and \$3,100,000 in 2022-23.

## **First-Time Homebuyer Account Subtraction**

The bill would create a program, administered by the Department of Revenue (DOR), allowing an individual to become an account holder by creating an account, either individually or jointly with his or her spouse, to pay or reimburse the eligible costs of a first-time home buyer. It would require accounts to be created at a financial institution, as defined under the bill. It would specify that eligible costs would include the down payment and allowable closing costs. It would impose other requirements and program-related procedures as specified in the bill.

The LFB indicates this program would reduce individual income tax collections by an estimated \$4,100,000 in 2022-23, \$7,000,000 in 2023-24, and \$7,500,000 in 2024-25.

## **National Guard and Reserve Subtraction**

The bill would modify the current law exclusion under the state individual income tax for amounts received by certain reserve members of the U.S. Armed Forces. It would specify that the exclusion also applies to amounts received by individuals who are called into active federal service under 10 U.S.C. s. 12304b of federal law, relating to preplanned missions in support of the combatant commands. The administration indicates that this provision is intended to apply beginning in tax year 2021, but no such date of initial applicability is specified in the bill.

In addition, beginning in tax year 2021, it would create an exclusion under the state individual income tax for any amount of pay (as defined under current law provisions governing the National Guard and State Defense Force) received from the State of Wisconsin by a member of the Wisconsin National Guard after being called into state active duty (as defined under current law). It would apply the exclusion to amounts paid to the individual for the period of time during which they are on state active duty, to the extent such amounts are not otherwise excluded under current law.

The LFB indicates these provisions would reduce individual income tax revenues by an estimated \$430,000 on an annual basis, beginning in 2021-22.

## **AmeriCorps Awards Subtraction**

The bill would provide that any amount of a national service educational award certified by the Corporation for National and Community Service (which includes the AmeriCorps program) and disbursed under specific provisions of federal law during the taxable year could be excluded from an individual's taxable income, beginning in tax year 2021. It would stipulate that the exclusion would not be allowed for an amount that is subtracted under: (a) the current law deduction for tuition expenses and mandatory student fees; or (b) the federal deduction for student loan interest.

The LFB indicates this provision would reduce individual income tax collections by an estimated \$136,000 on an annual basis, beginning in 2021-22.

## **Exemption for Diapers**

The bill would provide an exemption from the general sales and use tax for sales of diapers, not including adult undergarments for incontinence. The provision would take effect on the first day of the third month beginning after publication of the bill.

As reported by the LFB, the administration indicates this exemption would reduce state tax revenues by an estimated \$7,300,000 in 2021-22 and \$8,800,000 in 2022-23 and annually thereafter.

## **Exemption for Battery Storage**

The bill would expand the current law exemption from the state sales and use tax to include tangible personal property used to store or facilitate the storage of electrical or heat energy produced by a solar, wind, or biogas renewable energy system. The bill modifies current law so the exemption applies to solar, wind, and waste energy systems that produce usable electrical or heat energy, rather than solely to products whose power source is solar, wind, or waste energy. The bill specifies that tax exempt solar power systems, wind energy systems, and waste energy systems would include tangible personal property sold with systems used primarily to store or facilitate the storage of electrical or heat energy produced by the systems. Therefore, the exemption would apply to products producing power from renewable energy sources, as well as products used to store that energy, relative to current law. The provision would take effect on the first day of the third month beginning after publication of the bill.

As reported by the LFB, the administration indicates this exemption would decrease state tax revenues by an estimated \$3,800,000 in 2021-22 and \$4,400,000 in 2022-23 and annually thereafter.

## **Exemption for Sweetened Dried Fruit**

The bill would provide a sales and use tax exemption for sweetened dried fruit. The administration indicates that the intent of the provision is for dried cranberries and similar items to have the same sales tax treatment as other dried fruits.

Under current law, food and food ingredients, except candy, soft drinks, dietary supplements, and prepared food, are exempt from the sales tax. Candy is defined as a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include a preparation that contains flour or that requires refrigeration. The bill would specify that candy would also not include a preparation that has as its predominant ingredient dried or partially dried fruit, along with one or more sweeteners, and which may also contain other additives including oils, natural flavorings, fiber, or preservatives, except as otherwise specified in the bill. The provision would take effect on the first day of the third month beginning after publication of the bill.

As reported by the LFB, the administration indicates this exemption would decrease state tax revenues by an estimated \$400,000 in 2021-22 and \$500,000 in 2022-23 and annually thereafter.

## **Exemption for Prairie/Wetland Services**

The bill would provide a sales and use tax exemption for landscape planning and counseling services that pertain to the restoration, reclamation, or revitalization of prairie, savanna, or wetlands, if such services are provided under a separate and optional fee distinct and identifiable from other taxable services.

Under current law, all services are exempt from the state sales and use tax unless specifically made taxable by statute. State law specifies that the sale of landscaping and lawn maintenance services is taxable. The bill would specify that landscaping and lawn maintenance services do not include planning and counseling services, if the planning and counseling services are provided for a separate and optional fee, as specified in the bill, and if the services are for the restoration, reclamation, or revitalization of prairie, savanna, or wetlands to improve: (a) biodiversity; (b) the quality of land, soils, or water; or (c) other ecosystem functions. The provision would take effect on the first day of the third month following publication of the bill.

As reported by the LFB, the administration indicates this exemption would reduce state tax revenues by an estimated \$200,000 in 2021-22 and \$300,000 in 2022-23 and annually thereafter.

## **Repeal of Clay Pigeon/Game Bird Exemption**

The bill would repeal the exemption from the general sales and use tax for clay pigeons and live game birds sold to licensed bird hunting preserves and for clay pigeons sold to an eligible shooting facility, as defined in the bill. The provision would take effect on the first day of the third month beginning after publication of the bill.

As reported by the LFB, the administration indicates the repeal of this exemption would increase state tax revenues by an estimated \$150,000 in 2021-22 and \$200,000 in 2022-23 and annually thereafter.

## **Repeal of Exemption for Farm-Raised Deer**

The bill would repeal the exemption from the general sales and use tax for farm-raised deer sold to a person who is operating a hunting preserve or game farm in this state. This provision would take effect on the first day of the third month beginning after publication of the bill.

As reported by the LFB, the administration indicates that the repeal of this exemption would increase state tax revenues by \$90,000 in 2021-22 and \$120,000 in 2022-23.

## **Legality Involved**

There are no questions of legality involving the provisions of the bill described in this report.

## **Public Policy Involved**

The Joint Survey Committee on Tax Exemptions unanimously finds the following tax exemption provisions in Assembly Bill 68/Senate Bill 111 are appropriate public policy: the AmeriCorps awards subtraction, the exemption for sweetened dried fruit, and the National Guard and Reserve subtraction.

The Joint Survey Committee on Tax Exemptions finds that the following tax exemption provisions in Assembly Bill 68/Senate Bill 111 are appropriate public policy on a vote of Ayes, 5; Noes, 4: loss limitation for taxpayers other than corporations, amortization of research and experimental expenditures, accounting rules for accrual method taxpayers, limitation on deduction for business interest, limitation on deduction for entertainment and meals, limitation on deduction for FDIC premiums, modification of the limitation for highly paid individuals, limit on capital gains exclusion, medical care insurance subtraction for self-employed individuals, limit on private school tuition deduction, limit on dividends received deduction, first-time homebuyer account subtraction, exemption for diapers, exemption for battery storage, exemption for prairie/wetland services, repeal of clay pigeon/game bird exemption, and repeal of exemption for farm-raised deer.