REPORT
STATE OF WISCONSIN
JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS
2023 ASSEMBLY BILL 43 / 2023 SENATE BILL 70

[Introduced by Joint Committee on Finance, by request of the Governor]

This report relates to 2023 Assembly Bill 43 and its companion 2023 Senate Bill 70 (each companion may be referred to individually as the "bill"), concerning state finances and appropriations, constituting the executive budget bill.

GENERAL NATURE AND FISCAL EFFECT OF TAX EXEMPTION PROVISIONS IN THE BILL

Marijuana Legalization

Current law prohibits a person from manufacturing, distributing, delivering, or possessing marijuana. The bill changes state law to allow the recreational use of marijuana and to impose an excise tax of 10 percent of the sales price on each retail sale of marijuana.[1]

Additionally, current law imposes a sales and use tax on retail sales of tangible personal property. The tax is not collected on sales of illegal goods; however, sales of recreational marijuana are subject to sales and use tax under the bill.

The bill also requires the Department of Revenue (DOR) to create and maintain a medical marijuana registry program whereby an individual may obtain a registry identification card and a tax exemption certificate. The individual must be a qualifying patient, and they must have a written certification from their physician. Under the bill, any retail purchase of marijuana by the individual is exempt from the 10 percent excise tax, and the imposition of sales and use tax, while the tax exemption certificate is valid.

The bill defines a "qualifying patient" as a person who has been diagnosed by a physician as having or undergoing a debilitating medical condition or treatment, but not including a person under the age of 18 years. The bill defines a "debilitating medical condition or treatment" as any of the following: (a) cancer, glaucoma, acquired immunodeficiency syndrome, inflammatory bowel disease (including ulcerative colitis or Crohn's disease), a hepatitis C virus infection, Alzheimer's disease, amyotrophic lateral sclerosis, nail patella syndrome, Ehlers-Danlos Syndrome, post-traumatic stress disorder, or the treatment of these conditions; (b) a positive test for the presence of HIV, antigen or non-antigenic products of HIV, or an antibody to HIV, or the treatment of these conditions; and (c) a chronic or debilitating disease or medical condition, or the treatment of such a disease or condition, that causes cachexia, severe pain, severe nausea, seizures, including those characteristic of epilepsy, or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

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[1] 2023 Spill Draft LRB-0405/P3 (marijuana legalization).

The Administration has indicated that it does not estimate a fiscal effect associated with the taxation of retail sales of recreational marijuana until 2024-25. In that year, and annually thereafter, the Administration estimates such taxation would generate revenue of $32.7 million (with $22.5 million from the 10 percent excise tax, and $10.2 million from the sales and use tax) from retails sales of recreational marijuana in the state. The state would forgo certain additional revenue as a result of tax-exempt sales of medical marijuana to registrants who have obtained a tax exemption certificate, as described above, to the extent the sales otherwise would have been sales of taxable recreational marijuana. The amount of additional revenue from taxation of these potential additional sales in the absence of the tax exemption is indeterminate.

Wisconsin Housing and Economic Development Authority (WHEDA) Headquarters

Current law imposes a tax on all general property in this state, unless an exemption applies, as specified in the statutes. The bill creates an exemption for land and buildings owned by WHEDA and used as its corporate headquarters, including associated parking facilities. The exemption would first apply to assessments as of January 1, 2023.[2]

In the most recent property tax year, the corporate headquarters was assessed at a value of $18.8 million and had a net tax bill of $372,642. The bill would result in tax levies being shifted to other properties within the taxing jurisdictions in which corporate headquarters, at 908 East Main Street in Madison, is located.

Gender-Neutral References

The bill makes applicable to married persons of the same sex all provisions under current law that apply to married persons of different sexes.[3] There are no fiscal effects resulting from the application of gender-neutral references to any tax exemption related provisions.

Exemption for Energy Systems

Current law imposes a sales and use tax on retail sales of tangible personal property and electricity; however an exemption from the tax is provided for certain products sourced from wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, that are capable of producing at least 200 watts of alternating current or 600 British thermal units per day; and the exemption also applies to sales of certain electricity or energy produced by such products.

This bill expands the exemption to apply to solar power systems, wind energy systems, and waste energy systems, as specified in the bill. This includes electrical or heat energy. Also, it includes tangible personal property sold with the system that is used primarily to store or facilitate the storage of the electrical or heat energy produced by the system. Under the bill systems must be capable of continuously producing required output, and energy production must be directly from sun, wind, or gas generated as specified above.[4]

The Administration estimates that these modifications under the bill would decrease state tax revenues by $1.7 million in 2023-24 and $2.5 million in 2024-25 and annually thereafter.

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[2] 2023 Spill Draft LRB-0723/P3 (WHEDA headquarters).
[3] 2023 Spill Draft LRB-0776/P1 (gender-neutral references).
[4] 2023 Spill Draft LRB-0820/P1 (exemption for energy systems).

Prairie and Wetland Counseling

Current law imposes a sales and use tax on retail sales of landscaping and lawn maintenance services. The bill excludes from taxable landscaping services the planning and counseling services for the restoration, reclamation, or revitalization of prairie, savanna, or wetlands if provided for a separate and optional fee distinct from other services. The provision would take effect on the first day of the third month beginning after publication.[5]

The Administration estimates that the exemption would reduce state tax revenues by $400,000 in 2023-24 and $600,000 in 2024-25 and annually thereafter.

Exemption for Diapers and Feminine Hygiene Products

Current law imposes a sales and use tax on retail sales of tangible personal property. The bill creates an exemption applicable to sales of diapers and feminine hygiene products.[6]

The Administration estimates the exemption would reduce state tax revenues by $13.7 million in 2023-24 and $19.1 million in 2024-25 and annually thereafter.

Repeal of Exemption for Farm-Raised Deer

Current law includes an exemption from the sales and use tax for sales of farm-raised deer to a person operating a hunting preserve or game farm. The bill repeals the exemption.[7]

The Administration estimates would increase state tax revenues by $90,000 in 2023-24 and $120,000 in 2024-25.

Retirement Income Subtraction

Current law imposes a tax on all net income earned in this state, unless an exemption applies. There is an exemption for up to $5,000 of payments or distributions received from qualified retirement plans or certain other retirement accounts, as specified in the statute. The individual claiming the exemption must be at least 65 years old and have federal adjusted gross income under $15,000, or under $30,000 if married. The bill increases the exemption to up to $5,500 of payments or distributions, and it expands the income eligibility to under $30,000 for individuals, or $60,000 if married. The changes would apply beginning in tax year 2023.[8]

The bill's modifications to the exemption would reduce individual income tax collections by $8.1 million annually, beginning in 2023-24, according to Legislative Fiscal Bureau (LFB) estimates.

Disability Income Subtraction

Current law generally imposes a tax on all net income earned in this state. Individuals may exclude up to $100 per week (or $5,200 per year) for certain disability payments, as specified in the statute. For married joint filers, the exclusion applies per disabled spouse. The exclusion begins to phase out, on a dollar-for-dollar basis, after the federal adjusted gross income (AGI) exceeds $15,000. It is eliminated for those with AGI above $20,200 for individuals, or $25,400 for married joint filers if both spouses are disabled.

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[5] 2023 Spill Draft LRB-0821/P1 (prairie and wetlands counseling).
[6] 2023 Spill Draft LRB-0996/P2 (diapers and feminine hygiene products).
[7] 2023 Spill Draft LRB-1001/P1 (farm-raised deer).
[8] 2023 Spill Draft LRB-1234/P2 (retirement income subtraction).

The bill increases the exemption to up to $5,500 per year (per disabled spouse if a married joint-filer) of such payments or distributions. And it expands the income eligibility to those with AGI less than: (a) $30,000 for single and head-of-household filers; (b) $60,000 for married-joint filers; or (c) if a married-separate filer, $60,000 of total income combined for both spouses. The phase-out is eliminated, so that above those thresholds there is no exclusion.[9]

The bill's modifications to the exemption would reduce individual income tax collections by an estimated $260,000 annually, according to LFB estimates.

Internal Revenue Code (IRC) Update

Tax Cuts and Jobs Act of 2017 (TCJA)-Related Provisions

The bill updates state-law references to the federal IRC under the individual income and corporate income and franchise taxes to adopt certain TCJA provisions, as amended by subsequent federal legislation, for taxable years beginning after December 31, 2022. The bill adopts the following TCJA items: (a) loss limitation for taxpayers other than corporations; (b) accounting rules for accrual method taxpayers; (c) limitation on the deduction for business interest; (d) limitation on the deduction for entertainment, amusement, and recreation expenses; (e) limitation on the deduction of FDIC premiums; and (f) modification of the limitation on the deduction for highly paid individuals. [10]

TCJA Provision as Amended and Fiscal Effect (Millions)	2023-24	2024-25
Loss limitation for taxpayers other than corporations	$51.3	$48.0
Accounting rules for accrual method taxpayers	3.6	3.3
Limitation on the deduction for business interest	109.6	123.2
Limitation on the deduction for entertainment, amusement, and recreation	14.1	15.0
Limitation on the deduction of FDIC premiums	5.9	6.1
Modification of the limitation on the deduction for highly paid individuals	3.5	3.6
TOTAL	$188.0	$199.2

According to the Administration, and as shown in the table above, the state's adoption of these provisions would increase state income and franchise tax revenues by $188 million in 2023-24 and $199.2 million in 2024-25.

Federal Legislation Enacted in 2021-2022

The bill also updates state-law references to the IRC under the individual income and corporate income and franchise taxes to conform to the provisions included in the following federal legislation enacted in 2021 and 2022:

- American Rescue Plan Act of 2021.
- Paycheck Protection Program Extension Act of 2021.
- Surface Transportation Extension Act of 2021.
- Further Transportation Extension Act of 2021.

[9] 2023 Spill Draft LRB-1235/P2 (disability income subtraction).
[10] 2023 Spill Draft LRB-1244/P2 (IRC update).

- Infrastructure Investment and Jobs Act.
- Consolidated Appropriations Act of 2022.
- Supreme Court Security Funding Act of 2022.
- Inflation Reduction Act of 2022.

According to the Administration, the state's adoption of these provisions would reduce state income and franchise tax revenues by $400,000 in 2023-24; however, it would increase state revenues by $1.4 million in 2024-25.

Net Operating Loss Carryback

Current law allows an individual to carry back a net operating loss to the two prior taxable years in order to reduce the amount of income subject to state income tax in those years. The bill repeals this exemption, beginning in taxable years after December 31, 2022.[11]

This provision would increase individual income tax collections by $2.9 million in 2023-24 and by $1.5 million in 2024-25, according to estimates. However, the LFB indicates that over time the revenue gain from the elimination of loss carrybacks would be offset by the revenue loss due to larger amounts of loss carry forwards.

Limitation on Capital Gains Exclusion

Current law allows individuals, when computing their income for state tax purposes, to subtract 30 percent of the net capital gains realized from the sale of certain assets, or 60 percent for certain farm assets. Under this bill, an individual may not make the 30 percent subtraction for AGI exceeding $400,000 for a single individual or head of household filer; $533,000 for a married couple who files jointly; or $266,500 for a married individual who files separately. The bill creates an exception for individuals whose AGI, after subtracting 30 percent of net capital gains from nonfarm assets, is below the threshold amount. These individuals may make an alternate subtraction as specified in the bill. The limitation on capital gains exclusions under the bill applies to taxable years beginning after December 31, 2022.[12]

The capital gains exclusion limitation would increase income tax collections by $185.2 million in 2023-24, and $154.2 million in 2024-25 and annually thereafter, according to LFB estimates.

First-Time Homebuyer Account Deduction

The bill creates a tax-advantage first-time home buyer savings account. The bill authorizes the holder of the account, when calculating income for state tax purposes, to subtract deposits made into the account during the year, as well as interest and gains that are redeposited into the account. Up to $5,000 of deposits may be subtracted per account, per year, for individuals, or up to $10,000 for married couples filing a joint return. Over all taxable years, the account holder may not subtract more than $50,000 of deposits into any account for each beneficiary.

With limited exceptions, the bill provides that if an amount is withdrawn from the account for any reason other than paying the home purchase down payment and closing costs incurred by a beneficiary designated by the account holder, then the account holder is subject to a 10 percent

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[11] 2023 Spill Draft LRB-1322/P1 (net operating loss carryback).
[12] 2023 Spill Draft LRB-1323/P1 (limitation on capital gains exclusion).

penalty tax on the withdrawal and must include the amount of the withdrawal in income for state tax purposes. The bill provides that the account beneficiary must be a Wisconsin resident who has not owned a single-family residence during the 36 months prior to the purchase. The bill's provisions relating to the first-time homebuyer account deduction apply to taxable years beginning after December 31, 2022.[13]

The Administration estimates the provisions relating to the first-time homebuyer account deduction would reduce estimated individual income tax collections by a minimal amount in 2023-24; $4.8 million in 2024-25; $6.6 million in 2025-26; and $7.5 million in 2026-27 and annually thereafter.

Dividends Received Deduction Limitation

Current law allows corporations to deduct dividends received from related corporations when calculating income for state tax purposes, in certain cases, as specified in the statutes. Current law also allows businesses to carry forward net business losses to future taxable years to offset income in those years. The bill provides that the deduction for dividends received may not be taken into account when determining whether a corporation has a net business loss that may be carried forward, beginning in taxable years after December 31, 2022.[14]

This provision would increase corporate income and franchise tax revenues by $3.2 million annually, beginning in 2023-24, according to LFB estimates.

Private School Tuition Deduction

Current law allows individuals, when computing their income for state tax purposes, to subtract a portion of the tuition paid during the year to send a child who is a dependent of the individual to private school. The maximum deduction is $4,000 for an elementary school pupil and $10,000 for a secondary school pupil. The bill provides that individuals only may claim the deduction for private school tuition with AGI below $100,000 for single individuals and heads of household; $150,000 for married couples filing jointly; and $75,000 for married individuals filing separately.[15]

The bill's limitation on the tuition deduction would increase individual income tax collections by an estimated $6.5 million in 2023-24, and annually thereafter, according to LFB estimates.

Exemption for Gun Safety Items

Current law imposes a sales and use tax on retail sales of tangible personal property. The bill creates an exemption applicable to sales of gun safes, trigger locks, and gun barrel locks. The provision would take effect on the first day of the third month beginning after publication.[16]

The Administration estimates that this exemption would reduce state tax revenues by $230,000 in 2023-24 and $310,000 in 2024-25 and annually thereafter.

[13] 2023 Spill Draft LRB-1516/P1 (first-time homebuyer account deduction).
[14] 2023 Spill Draft LRB-1523/P1 (dividends received deduction limitation).
[15] 2023 Spill Draft LRB-1547/P1 (private school tuition deduction).
[16] 2023 Spill Draft LRB-1611/P2 (exemption for gun safety items).

Exemption for Breastfeeding Equipment

Current law imposes a sales and use tax on retail sales of tangible personal property. The bill creates an exemption applicable to the sales price from the sale of and the storage, use, or other consumption of breast pumps, breast pump kits, and breast pump storage and collection supplies.[17] The Administration estimates that the exemption for breastfeeding equipment and supplies would reduce state tax revenues by $510,000 in 2023-24 and $680,000 in 2024-25 and annually thereafter.

Cranberry Research Station

Current law imposes a tax on all general property in this state, unless an exemption applies, as specified in the statutes. The bill creates an exemption for all property, not exceeding 50 acres of land, owned or leased by a tax-exempt entity that is used primarily for research and educational activities associated with commercial cranberry production. The exemption would first apply to tax assessments as of January 1, 2024.[18]

This exemption would apply to the Wisconsin Cranberry Research Station, owned by the Wisconsin Cranberry Research and Education Foundation and located in the Town of Manchester in Jackson County. The exemption would result in the tax currently levied on this property being shifted to other properties within the taxing jurisdictions in which the Research Station is located.

Personal Property Tax Repeal

Under current law, machinery, tools, and patterns, not including those used in manufacturing, are exempt from the personal property tax. This exemption became effective beginning with property tax assessments as of January 1, 2018. Beginning in 2019, the state pays each taxing jurisdiction annually an amount equal to the taxes that were levied on such items of personal property based on assessments as of January 1, 2017. Also, certain public utilities, including railroad companies, generally are subject to an ad valorem tax on the market value of their real and personal property, based on the statewide average property tax rate, in lieu of local property taxes or assessments. Railroad utility tax revenue is deposited in the transportation fund.

Beginning with property tax assessments as of January 1, 2024, the bill expands the exemption from the personal property tax to apply to all items defined as "personal property" under the statutes, including steam and other vessels, furniture, and equipment (other than items redefined as real property under the bill, and heat, power, and light property subject to local assessment). Beginning in 2025, the bill requires the state to pay each taxing jurisdiction annually an amount equal to the taxes that were levied on such items of personal property based on assessments as of January 1, 2023. Beginning in 2026, each taxing jurisdiction will receive a payment to compensate it for its loss in personal property revenue equal to the payment it received in the previous year; however, the bill requires that this amount must be increased by the annual percentage change in the consumer price index.[19]

The bill also provides that for assessments after January 1, 2024, the personal property of a railroad company is exempt from state ad valorem tax, and from local assessment and taxation,

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[17] 2023 Spill Draft LRB-1625/P3 (breastfeeding equipment).
[18] 2023 Spill Draft LRB-1645/P1 (cranberry research station).
[19] 2023 Spill Draft LRB-1739/P3 (personal property tax repeal).

to comply with the federal Railroad Revitalization and Regulatory Reform Act; and on December 30, 2024, DOA must transfer $9 million from the general fund to the transportation fund to account for the exemption. On December 30, 2025, and each December 30 thereafter, DOA must transfer from the general fund to the transportation fund an amount equal to the amount transferred in the previous year increased by 1.25%.

It is estimated that the bill's provisions relating to the repeal of the personal property tax, as described above, would have an overall fiscal effect of $212,895,800 in the upcoming fiscal biennium, comprised as follows:

- The bill will result in payments of $202.4 million to taxing jurisdictions, equal to taxes levied on personal property exempted under the bill based on assessments as of January 1, 2023; and similar payments, with adjustments as described above, in future years.
- The bill will result in a transfer of $9 million from the general fund to the transportation fund, on December 30, 2024, and similar transfers, with adjustments as described above, on December 30 in future years.
- DOR estimates there will be a cost of $1,495,800 to implement and administer the expanded exemption from personal property tax under the bill. This includes ongoing funding of $20,600 per year for trainings and reviews, and the remaining balance would represent onetime costs of updating DOR computer systems and applications.

Professional Baseball District

Current law creates a professional baseball park district in each county with a population of at least 600,000 and all counties that are contiguous to that county. Current law also provides a property tax exemption applicable to sports and entertainment home stadiums and any functionally related or auxiliary facilities, as specified in the statutes. And current law provides a sales and use tax exemption for sales, storage, use, or other consumption of building materials, supplies and equipment for the construction, renovation or development of any property that is a sports and entertainment home stadium exempt from the property tax.

The bill expands the exemption from property taxation applicable to sports and entertainment home stadiums to include any other property constituting a baseball park development built or used by a professional athletic team, beginning with tax assessments as of January 1, 2024. Also, the bill expands the sales and use tax exemption for construction, renovation or development of a tax-exempt sports and entertainment home stadium to include improvement, repair, and maintenance of such facilities and structures. Finally, the bill creates a sales and use tax exemption applicable to tangible personal property and taxable services sold to a local professional baseball park district, in addition to making other changes to relating professional baseball park districts.[20]

For purposes of the property tax exemption described above, the bill defines a "baseball park development" as property, other than baseball park facilities, tangible or intangible, operated by a professional baseball team on real estate leased or subleased from a district that is part of the operations of the professional baseball team for any legally permissible use, including retail facilities, hospitality facilities, commercial and residential facilities, health care facilities, and any other functionally related or auxiliary facilities or structures.

[20] 2023 Spill Draft LRB-1940/P7 (professional baseball district).

The expansion of the current property tax exemption to include property constituting a baseball park development, as described above, would result in the tax currently levied on that property being shifted to other properties within the taxing jurisdictions in which it is located.

With respect to the sales and use tax exemption for construction, renovation or development of a tax-exempt sports and entertainment home stadium, the Administration estimates that the expansion of the exemption to include improvement, repair, and maintenance would have a minimal effect on general fund tax collections. Also, the Administration estimates that the creation of a sales and use tax exemption for sales to a local professional baseball park district would have a minimal effect on general fund tax collections.

LEGALITY INVOLVED

There are no questions of legality involving the tax exemption related provisions in the bill.

PUBLIC POLICY INVOLVED

The Joint Survey Committee on Tax Exemptions finds the following tax exemption related provisions are appropriate public policy: **Cranberry research station property tax exemption** and **Personal Property Tax Repeal**, on a vote of Ayes, 9; Noes, 0.

The Joint Survey Committee on Tax Exemptions finds the following tax exemption related provisions are appropriate public policy: **Marijuana legalization, WHEDA headquarters, Gender-neutral statutory references, Energy systems, Prairie & wetland counseling services, Diapers and feminine hygiene products, Farm-raised deer, Retirement income exclusion, Disability income exclusion, Internal Revenue Code Update, Net operating loss carryback repeal, Capital gains exclusion limitation, First-time homebuyer account tax deduction, Dividends received deduction limitation, Exemption for gun safety items, Exemption for breastfeeding equipment,** and **Baseball park district**, on a vote of Ayes, 5; Noes, 4.

06/27/23 **JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS**