State of Wisconsin
2005 - 2006 LEGISLATURE

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MES:wlj:ch

SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 140

September 26, 2005 – Offered by JOINT COMMITTEE ON FINANCE.

AN ACT ***to renumber and amend*** 71.83 (1) (a) 6.; and ***to create*** 71.83 (1) (a) 6. a. and 71.83 (1) (a) 6. b. of the statutes; **relating to:** eliminating a penalty for certain early withdrawals from an individual retirement account.

Analysis by the Legislative Reference Bureau

Under current federal law, an individual who receives a distribution from his or her individual retirement account (IRA) before reaching the age of 59 and one–half is subject to a 10 percent nondeductible excise tax, or penalty tax, unless certain exceptions apply. Under current state law, an individual who is subject to such a federal tax, or penalty, is also liable for a state penalty tax equal to 33 percent of the federal penalty unless the income received is exempt from taxation.

Under this substitute amendment, an individual who receives a distribution from his or her IRA before reaching the age of 59 and one–half and is subject to the 10 percent federal penalty tax is not liable for the additional 33 percent state penalty tax if the individual uses the proceeds from the distribution to purchase long–term care insurance, but only to the extent that the proceeds of the distribution do not exceed the amount paid by the taxpayer during the taxable year to purchase the long–term care insurance policy. If the amount of the distribution exceeds the amount paid by the taxpayer to purchase the policy, the taxpayer is liable for the penalty on the amount of the excess distribution.

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

SECTION 1. 71.83 (1) (a) 6. of the statutes is renumbered 71.83 (1) (a) 6. (intro.) and amended to read:

71.83 **(1)** (a) 6. 'Retirement plans.' (intro.) ~~Any~~ The penalties provided under this subdivision shall be assessed, levied, and collected in the same manner as income or franchise taxes. Any natural person who is liable for a penalty for federal income tax purposes under section 72 (m) (5), (q), (t) and (v), 4973, 4974, 4975 or 4980A of the ~~internal revenue code~~ Internal Revenue Code is liable for ~~33%~~ 33 percent of the federal penalty unless ~~the income received is exempt from taxation under s. 71.05 (1) (a). The penalties provided under this subdivision shall be assessed, levied and collected in the same manner as income or franchise taxes.~~ one of the following applies:

SECTION 2. 71.83 (1) (a) 6. a. of the statutes is created to read:

71.83 **(1)** (a) 6. a. The income received is exempt from taxation under s. 71.05 (1) (a).

SECTION 3. 71.83 (1) (a) 6. b. of the statutes is created to read:

71.83 **(1)** (a) 6. b. The proceeds of the distribution to which the penalty under section 72 (t) of the Internal Revenue Code applies are from an individual retirement account described under section 408 (a) or (b) of the Internal Revenue Code and are used to purchase a long–term care insurance policy, as that term is defined in s. 71.05 (6) (b) 26. a., but only to the extent that the proceeds of the distribution do not exceed the amount paid by the taxpayer during the taxable year to purchase the policy. If the amount of the distribution exceeds the amount paid by the taxpayer during the taxable year to purchase the policy, the taxpayer shall be liable for the penalty imposed under this subdivision on the amount of the excess distribution.

SECTION 4. Initial applicability.

(1) This act first applies to a distribution from an individual retirement account that is received in a taxable year beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, this act first applies to a distribution from an individual retirement account that is received in a taxable year beginning on January 1 of the year following the year in which this subsection takes effect.

(END)