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**Testimony on SB 389**  
**Senate Committee on Universities and Revenue**  
**Wednesday, August 23<sup>rd</sup>, 2023**

Thank you Senator Hutton and Senate Universities and Revenue Committee members for allowing me to submit testimony in support of Senate Bill 389 (SB 389).

Senator Marklein and I worked together on this legislation, which updates state tax references to the Internal Revenue Code (IRC), and provides additional clarity to tax-preparers and taxpayers.

State references to federal law provide greater simplicity for taxpayers in preparing returns and reduce the administrative burden and cost for both taxpayers and Department of Revenue (DOR) in assuring compliance with tax laws. The IRC references are used to determine which items of income are subject to taxation prior to specific state modifications.

This highly technical bill has been drafted in consultation with DOR and Legislative Fiscal Bureau (LFB). Under current law, state tax references generally refer to the code in effect on December 31, 2020.

SB 389 updates many IRC references in response to a variety of federal legislation enacted during 2021 and 2022.

In conversations with DOR and other stakeholders, we have identified several items in the legislation that we will be updating and consolidating. We will be offering an amendment to SB 389 to address those identified areas.

Thank you again for allowing me to provide testimony in support of SB 389. Please feel free to reach out to my office with any questions or concerns.



*Tony Evers*  
Governor

*Peter W. Barca*  
Secretary of Revenue

**Information Only Testimony on Senate Bill 389**  
**August 23, 2023**  
**Peter Barca, Secretary of the Department of Revenue**

Good morning, Chairman Hutton, Ranking Member Larson, and members of the Senate Committee on Universities and Revenue.

I appreciate the opportunity to provide written testimony for information only on Senate Bill, a bill to bring Wisconsin up to date with Internal Revenue Code (IRC) changes.

The bill largely mirrors the IRC proposal that went into the Governor's budget with a few main differences.

- The current version does not include the provision allowing taxpayers with forgiven student loans under the more recent forgiveness plans to have those amounts excluded from income tax. Under this proposal, those forgiven student loan amounts will have to be added as income when filing Wisconsin tax returns.
- This version includes a provision that had previously not been adopted, regarding the sale of small business stock. This version adopts this provision prospectively.
- This version does not adopt a definition for "covered employee" which limits the deductions for highly compensated employees. There was a related definition change in the Tax Cuts and Jobs Act that was also not adopted.
- The provisions regarding the high deductible insurance are being removed and passed separately.

While the majority of the IRCs are highly technical and nuanced, federal conformity is important to Wisconsin taxpayers. Federal conformity allows them to avoid recalculating their income for purposes of Wisconsin income tax.

The last IRC updates we passed in Wisconsin was in 2021 WI Act 1, which was enacted in February of 2021. Since then, Congress has passed a number of other tax law changes.

We greatly appreciate the support of the bill sponsors, Senator Maklein in the Senate and Representative Katsma in the Assembly. We especially appreciate their support with the drafting corrections that are needed. We have provided drafting corrections to ensure we are adopting the provisions intended. We would also like to thank the WICPAs for working closely with the department and their support of this important bill.

We have kindly asked that this bill pass as soon as possible, as our staff is hard at work putting together the forms and instructions for the 2023 tax year. We are hoping to get it enacted before the end of September or shortly thereafter.

Again, I appreciate this opportunity and as always, I will make myself and my staff available for any questions.

## TAXATION SECTION

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**To: Senate Committee on Universities and Revenue**  
**Date: August 23, 2023**  
**Re: Support of SB 389 – Relating to: Adopting changes to federal Internal Revenue Code for state tax purposes**

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This Memorandum provides a background discussion of Wisconsin's adoption of Code section 1202. Wisconsin adopted section 1202 of the Internal Revenue Code in 2013. That Code section allows an exclusion for gain on certain small business stock. Section 1202 originally provided that 50% of the gain was excluded.

At various points in time, Section 1202 was amended to provide a 100% exclusion for stock acquired at certain times. For example, in 2010, the statute was amended to provide a 100% gain for stock acquired in 2010 and 2022. The statute was further amended several times. It would basically say that the 100% applied to stock acquired during certain years.

Over time, Congress continued to add new years. So, for example, it might be amended as of the end of 2012 to say that stock acquired in 2010, 2011, 2012 and 2013 gets the 100% exclusion. As of the date it was amended to – stock acquired after those time periods, like say after December 31, 2013 – would revert back to the 50% exclusion. The current version of section 1202 provides for the full 100% exclusion for stock acquired in 2010 and thereafter.

In Wisconsin, the Internal Revenue Code is not adopted in whole. Instead, Wisconsin adopts the Code as it exists on certain dates. The Wisconsin statute adopting 1202 was created to read that for stock acquired after December 31, 2013, the exemption would apply as Code section 1202 amended to December 31, 2012.

As section 1202 was amended to December 31, 2012, the 100% exclusion was not applied to stock acquired after December 31, 2013. Instead, at that time, section 1202 had been amended to only allow the 100% exclusion for certain stock acquired beginning in 2010 through the end of 2013. Accordingly, the Code in effect as of December 31, 2012 reverted to 50% for stock acquired after December 31, 2013. While section 1202 was ultimately changed by Congress to allow for a 100% exclusion for stock acquired after December 31, 2013, this did not occur until sometime after December 31, 2012.

Admittedly, the Wisconsin statute is confusing and the legislature may have thought that the exclusion as of December 31, 2012 was that stock being currently acquired would be subject to the 100% exclusion. However, Code section 1202 was being amended on an ad hoc basis from year to year to provide for the 100% exclusion only for certain time periods. Section 1202 is entitled "Partial Exclusion for gain from certain small business stock," and the amendments to it to make it a full exclusion were relatively clear that the 100% exclusion was being applied on a limited basis. Had Wisconsin wanted to apply to stock issuances after the latest extension of the 100% exclusion, the statute would have read as "amended from time to time."



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