



## Legislative Fiscal Bureau

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February 10, 2014

TO: Members  
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Adopted Amendments to January 2014 Special Session Assembly Bill 1

On February 6, 2014, the Assembly Committee on Jobs, Economy, and Mining held an executive session on January 2014, Special Session Assembly Bill 1, which would make a number of changes regarding state taxes and property tax relief. The committee adopted Assembly Amendments 2, 3, and 4, and recommended the bill, as amended, for passage by a vote of 9 to 6. This memorandum describes each of the three amendments adopted by the committee.

### **Assembly Amendment 2**

Assembly Amendment 2 would extend net business loss carryforwards from 15 to 20 years, for all corporations under the state corporate income/franchise tax, for tax years beginning on or after January 1, 2014. Also, the amendment would modify current law to specify that any federal changes to Internal Revenue Code (IRC) provisions related to depletion would be automatically adopted for state individual income and corporate income/franchise tax purposes, in the year in which they were effective.

Under current law, net business losses can be carried forward up to 20 years under the individual income tax, and pre-2009 net business losses of combined groups can also be carried forward up to 20 years under the corporate income/franchise tax. Net business losses that are not pre-2009 losses can be carried forward up to 15 years, under the corporate income/franchise tax. Net business losses cannot be carried back under the corporate income/franchise tax. The amendment would allow all net business losses to be carried forward up to 20 years under the state corporate income/franchise tax. Extending net business loss carryforwards to 20 years would have a minimal fiscal effect. A Department of Revenue review of corporate income/franchise tax returns showed that only a small number of corporations had net business loss carryforwards that were older than 15 years.

Under current law, state depletion provisions are referenced to the IRC in effect on January 1, 2014. The amendment would modify the current law provision to automatically adopt federal depletion provisions for state income and franchise tax when they are effective under federal law.

This provision would have no fiscal effect, unless Congress enacted changes to IRC depletion provisions.

### **Assembly Amendment 3**

Under SS AB 1(section 41), the definition of income for the homestead tax credit would be amended to require the add-back of net operating loss carry-backs. This would treat net operating loss carry-backs the same way that net operating loss carry-forwards are treated under current law. As drafted, the change under the bill would first apply to tax year 2014. However, this would allow loss carry-backs from this year and 2015 to be used to offset income for homestead tax credit purposes of amended tax returns for either 2012 or 2013.

Our office asked the Department of Revenue if this is what they intended. The Department indicated that this was not their intent and that they intended the bill provision to ensure that operating loss carry-backs would not be allowed to offset income for homestead tax credit purposes in any year. Assembly Amendment 3 modifies the bill so that the proposed change would first apply retroactively to tax year 2012, which is what the Department of Revenue intended.

### **Assembly Amendment 4**

Assembly Amendment 4 would allow construction contractors performing services for certain governmental and non-profit entities to purchase construction supplies for such projects tax-free.

Wisconsin imposes a general sales and use tax at a rate of five percent on the sales price of taxable goods and services sold or used in this state, with certain exceptions. Current law provides a general exemption from the state sales and use tax for purchases made by certain governmental and non-profit entities, including the entities listed below:

- a. this state or any agency thereof, the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority;
- b. any county, city, village, town, or school district in this state;
- c. a county-city hospital;
- d. a sewerage commission or a metropolitan sewerage district;
- e. a joint local water authority; and
- f. any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the

prevention of cruelty to children or animals (except hospital service insurance corporations), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation.

AA 4 would extend the exemption from the state sales and use tax to include sales to a construction contractor who makes purchases of tangible personal property and, in fulfillment of a real property construction activity, transfers that property to an exempt entity described in "a" through "f" above, provided that the property were to become a component of a facility in Wisconsin that is owned by that exempt entity. For purposes of this exemption, a "facility" would mean any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, or water supply system. "Facility" would not include a highway, street, or road. The proposed exemption would take effect on the day after publication of SS AB 1, and would first apply to contracts entered into on July 1, 2015. The amendment should be modified to also include an effective date of July 1, 2015. Otherwise, the new tax exemption would appear in the statutes for more than one year before it first applies.

In general, construction contractors must pay sales and use taxes on their purchases of taxable goods and services under current law. However, if an entity exempt from the tax purchases property on behalf of the construction contractor, transfers those items to the contractor, and the items become a component of a real property construction in Wisconsin that is owned by the exempt entity, no sales and use tax is collected from the construction contractor under current law. Surveys of construction contractors indicate that many, but not all, local units of government and not-for-profit organizations purchase tax-exempt property to be used by contractors. The Department of Administration's Division of Facilities Development, however, indicates that the state does not purchase taxable property on behalf of state contractors. Based on data from the U.S. Census Bureau, state expenditure reports, growth estimates from IHS Global Insight, Inc., and construction contractor surveys, it is estimated that the amendment would reduce state sales and use tax revenues by \$20 million, annually, beginning in 2015-16. It should be noted that the estimated reduction in state tax revenue could vary from year to year depending on the number of construction projects authorized and entered into by the tax-exempt entities.

The amendment would also extend the exemption from the tax to sales of property to an organization that is exempt from federal income taxation under Section 501 (c) (3) of the IRC that purchases property that would be used in, or were to become a component of, a facility in Wisconsin that is owned by the state or a state authority (described under "a" above). For purposes of this exemption, "facility" would have the same meaning as provided in the proposed exemption for construction contractors. It is unclear what entities or transactions this exemption would affect, and the author intends to introduce an amendment to AA 4 to delete this provision.

BL/sas