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June 23, 2021

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Substitute Amendment 1 to Senate Bill 189/Assembly Substitute Amendment 1 to Assembly Bill 191: Exemption of Personal Property From Taxation.

Senate Bill (SB) 189 was introduced on March 10, 2021, and referred to the Senate Committee on Financial Institutions and Revenue. Senate Substitute Amendment 1 (SSA) was introduced on June 21, 2021. Assembly Bill (AB) 191 was introduced on March 23, 2021, and referred to Assembly Committee on Ways and Means. Assembly Substitute Amendment 1 (ASA 1) was introduced on June 18, 2021.

SUMMARY OF SUBSITUTE AMENDMENTS

Personal Property Tax Exemption. Beginning with the property tax assessments as of January 1, 2022, exempt all business and manufacturing personal property from property taxation. Specify that a taxing jurisdiction may include the most recent valuation of this personal property that is located in the taxing jurisdiction for purposes of complying with debt limitations applicable to the jurisdiction.

Assessment of Certain Property as Real Property. Specify that beginning with the property tax assessments as of January 1, 2022, the following property would be specifically assessed as real property and remain subject to the property tax: (a) manufactured and mobile homes, not otherwise exempt from taxation; (b) buildings, improvements and fixtures on leased lands; (c) buildings, improvements, and fixtures on exempt lands; (d) buildings, improvements, and fixtures on forest croplands, (e) buildings, improvements, and fixtures on managed forest lands; and (f) improvements made by any person on land within the state that is owned by the United States government. Modify taxation of managed forest land statutes to reference that that taxes would be allowed to be levied on managed forest land for any buildings, improvements, and fixtures taxed as real property rather than personal property.

Provide that if the buildings, improvements, and fixtures, but not the underlying land, are leased to a person other than the landowner or if the buildings, improvements, and fixtures are owned by a person other than the landowner, the assessor may create a separate tax parcel for the buildings, improvements, and fixtures and assess the buildings, improvements, and fixtures as real property to the lessee or owner of the buildings, improvements, and fixtures. Allow that the assessor may also create a tax parcel for buildings, improvements, and fixtures on exempt lands, buildings, improvements, and fixtures on forest croplands, and buildings, improvements, and fixtures on managed forest lands and assess the buildings, improvements, and fixtures as real property to the lessee or owner of the buildings, improvements, and fixtures. Under current law, these improvements may be taxed as real or personal property

Recalculation of TIF District Base Values. Specify that upon receiving a written application from the city clerk, in a form prescribed by the Department of Revenue (DOR), the Department would be required to recalculate the base value of a tax incremental financing (TIF) district affected the substitute amendment to remove the value of the personal property. Require that any request received before October 31 would effective in the year following the year in which the request is made. Any request received after October 31would be effective in the second year following the year in which the request is made.

Repeal of Statutory References to Personal Property Tax. Repeal the following statutory sections related to the personal property tax: (a) mobile or manufactured homes on land that is not owned by owner of the mobile or manufactured home, or not set upon a foundation or connected to utilities (would be taxed as real property as indicated above); (b) the determination of assessment of saw logs or timber in transit on or before the tenth day of January in each year; (c) how saw logs or timber removed from public lands are to be assessed; (d) the ownership of certain property (telegraph, telephone poles and posts, railroad ties, lumber and all other manufactured forest products, when those in charge, or in possession of, are not the owner); (e) liability rights to the person in charge of, or in possession of personal property who is someone other than the owner; (f) the liability to the owner when personal property is assessed to another and related statutory references; (g) personal property under partnership or estates in the hands of a personal representative; (h) cases in which two or more personal representatives or trustees of an estate who are not residents of the state but represent a decedent who is domiciled in this state; (i) duties of assessors' entry of parcels on tax rolls; (j) to the placement and aggregation of personal property on the assessment roll by the assessor; (k) the valuation of personal property; (l) legislative intent regarding personal property as a property class on the assessment rolls; (m) the taxpayer oath regarding determination of the amount and value of personal property tax on the tax rolls; (n) penalties for false statements regarding personal property on assessments, including the savings clause and related statutory references; (o) requirement for the name and address of owners of all personal property on the tax rolls; (p) the payment dates for personal property taxes; (q) requirement that all personal property taxes that become delinquent be paid with interest and penalties from the preceding February 1; (r) priority application of the installment payment of taxes in the event of insufficient payment of personal property taxes; (s) the retention of interest and penalties on delinquent personal property taxes by the taxation district; (t) civil actions to collect delinquent personal property taxes, interest, and penalties and related cross references; and (u) the deduction from personal property taxes under Chapter 76 for any domestic insurer for any license fee imposed on the insurer

Reference 2019 personal property statutes for the following purposes: (a) for the definition of a person harvesting forest products from public lands under Chapter 26 in order to maintain the exemption from the notification requirements to the county clerk for raw forest products harvested on public lands that is used for fuel wood, home consumption, or for the clearing of land for agricultural use; and (b) the current law extension of rights and remedies for taxes assessed or paid on personal property that is also referenced relative to income taxes levied against the income of beneficiaries as liens on a trust estate or interest from which the income tax is derived.

Deletion of Statutory Cross References to Personal Property Tax. Delete the following current law cross references to personal property tax relating to: (a) the reference to the Wisconsin Property Tax Assessment manual; (b) the owner of property on property tax rolls in receiving notifications under the public inland waterway statutes; (c) the definition of TIF district project costs in reference to the sale or lease of personal property by the municipal government for consideration that is less than the cost of the property to the municipality, and to the definition of taxable property under town, city, village, and environmental remediation TIF districts; (d) the definition of assessed under property tax statutes; (e) the treatment of personal property omitted from tax rolls; (f) the local clerk's duties to examine and correct personal property tax rolls; (g) the listing of personal property on the tax rolls; (h) the collection of personal property taxes by cities that can implement optional property tax payment schedules under current law; (i) the correction of tax rolls regarding personal property tax; (j) DOR's role in assessing personal property assessed as commercial property; (k) the assessment of personal property as manufacturing property; (l) the definition of "error in the tax roll" under the property tax collection statutes; (m) the preparation of property tax bills by local clerks; (n) to delinquencies of personal property taxes; (o) priority application of taxes in the event insufficient payment of personal property taxes; (p) the annual January 31 due date for receipt of personal property taxes for installment payments, and the collection of personal property taxes by the county after July 31, of each year; (q) the February settlement of personal property taxes among certain taxation districts and the March settlement of taxes between the counties and the state; (r) the chargebacks of personal property taxes among taxing jurisdictions; (s) agreements by first class cities to pay delinquent state, county, metropolitan sewerage district, and technical college districts personal property taxes, interest, and penalties; (t) references to the date personal property tax payments due that is included in the optional payments schedules of general property taxes; (u) civil actions for collection of the delinquent dog license taxes being collected in the same manner as the collection of delinquent personal property taxes; and (v) cross references to the list of property exempt from the execution of judgements.

FISCAL EFFECT

In the past, when large components of the personal property tax were exempted from that tax, the state created an aid payment to local taxing jurisdictions to hold them harmless from the loss in taxable value on which to levy property taxes. In the absence of such a payment, property taxes would shift from the payers of the personal property tax to the owners of the types of property that remain subject to the tax. Unlike existing aid payments for exempt property, SSA 1/ASA 1 would not create an aid payment under Chapter 79 of the statutes, a method by which the DOR is to calculate the aid payments, or a date by which the Department is to make the payments.

However, the 2021-23 biennial budget bill, as amended by the Joint Finance Committee, would create a sum certain GPR appropriation funded at $0 from which to make state aid payments to hold taxing jurisdictions harmless for the reduction in tax revenue resulting from the elimination of the personal property taxing the 2021-22 legislative session. The budget bill would also appropriate $202,350,000 GPR to the Joint Finance Committee's supplemental appropriation in 2022-23, for the purpose of transferring these funds to the newly-created sum certain to make these payments. Further, the bill directs the Department of Administration to submit a request to the Joint Finance Committee under s. 13.10 for the transfer of these funds to the new sum certain appropriation, in order to make payments to local taxing jurisdictions. If the Committee transfers the funds, it would establish the base level funding in the appropriation for the 2023-25 biennium at $202,350,000. Nonetheless, the method for calculating the payments to each taxing jurisdiction or the annual timing of the payments beyond the biennium would not be outlined under the amendments.

If SSA 1/ASA 1 were enacted, it would trigger the DOA request and the potential transfer of the funds by the Committee to the newly-created sum certain appropriation to make payments to local governments. Total payments would be estimated at $202,350,000 in 2022-23 from the newly-created appropriation. This estimate is based on expected personal property tax collections in 2020(21). Because SSA 1/ASA 1 would designate a portion of personal property as real property, local taxing jurisdictions would continue to collect taxes on that real property, which would in turn reduce the amount of the aid payments required to hold taxing jurisdictions harmless for the repeal of the personal property tax.

Under SSA 1/ASA 1, personal property would be exempted from property taxation, which would result in a decrease in total statewide equalized values. Under current law, the state makes a GPR payment to the conservation fund equal to a rate of 0.1697 mills multiplied by the statewide value of all taxable property from a sum sufficient appropriation. As a result, exempting personal property would reduce the statewide value of taxable property, which, in turn, would reduce the GPR transfer to the conservation fund. In 2022-23, $114,052,900 is expected to be transferred to the conservation fund. A repeal of the personal property tax would reduce this sum sufficient appropriation by $1,573,100 to $112,479,800.

Further, the value increment of most TIF districts would decrease as a result of loss in taxable value associated with exempting personal property from property taxation. The substitute amendment would require DOR to adjust the base value of the district down to reflect the loss in taxable value associated with the exemption of personal property. Existing TIF districts would receive an aid payment equal to this loss in value. However, districts that form after any exemption of personal property from taxation is effective would not receive an aid payment.

Following the *Union Pacific Railroad Company v. Wisconsin Department of Revenue* (2019) decision, any repeal of the personal property tax could also result in personal property owned by railroads no longer being taxable. As a result, deposits to the transportation fund would be affected by any repeal of the personal property tax. At this time, it is unknown how much of the property tax paid by railroads is paid on personal property. In 2020-21, total railroad tax revenues were $43,579,000. In 2021-22 and 2022-23, these revenues are currently estimated at $44,124,200 and $44,675,700. Under the Joint Finance version of the 2021-23 biennial budget, the transportation fund is estimated to have a June 30, 2023, balance of $21,806,200.

Finally, while the substitute amendments would provide DOR no additional funding under the bill, DOR indicates that it would cost the Department $20,500 annually in additional costs. In addition, the Department would have one-time costs of $1,391,000 associated with having to redetermine TIF district bases for districts that currently have taxable personal property, update its computer programs, and revise its forms. DOR indicates that the Department cannot absorb these costs within their existing budget.

Prepared by: Al Runde