



Legislative Fiscal Bureau

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February 1, 2022

TO: Members
Joint Committee on Finance

FROM: Bob Lang

SUBJECT: Assembly Bill 717/Senate Bill 690: Income and Franchise Tax Treatment for Restaurant Revitalization Grants

Assembly Bill (AB) 717 would adopt federal tax treatment for state tax purposes for grants received under the restaurant revitalization program. AB 717 was introduced on November 17, 2021, and referred to the Assembly Committee on Ways and Means. Assembly Amendment 1 to AB 717 (AA 1) was introduced November 29, 2021. That Committee recommended passage of AB 717, as amended by AA 1, by a vote of 12-0 on December 8, 2021. The Assembly passed the bill as amended on January 20, 2022.

Senate Bill (SB) 690 is an identical companion bill that was introduced on November 11, 2021, and referred to the Senate Committee on Financial Institutions and Revenue. An identical Senate Amendment 1 to SB 690 (SA 1) was introduced January 10, 2022. That Committee recommended passage of SB 690, as amended by SA 1, by a vote of 5-0 on January 14, 2021.

CURRENT LAW

On March 11, 2021, President Biden signed into law P.L. 117-2, the American Rescue Plan Act of 2021 (ARPA). Section 5003 of ARPA provided \$28.6 billion in federal fiscal year 2021 for the restaurant revitalization grant program, including \$5.0 billion for eligible entities with gross receipts during 2019 of no more than \$500,000. Grants were equal to the pandemic-related revenue loss of an eligible entity, up to \$10 million per eligible entity, with no more than \$5 million for each physical location. Any grant amounts that exceed the actual gross receipts of an eligible entity in 2020 must be returned.

Eligible entities included most businesses in which the public or patrons assemble for the primary purpose of being served food or drink. Such entities located within an airport terminal were considered eligible. However, state- and municipal-owned businesses and entities that own or operate more than 20 locations, regardless of whether they do business under the same name, were not eligible. Based on data from the federal Small Business Administration (SBA), \$377.5 million

in grants were provided to 2,091 applicants located in Wisconsin before the program expired in June, 2021. Grants were generally awarded to eligible entities in the order in which applications were received.

Grant proceeds could be used for the following expenses incurred as a direct result of, or during, the COVID-19 pandemic during the covered period: (a) payroll costs; (b) payments of principal or interest on any mortgage obligation (not including prepayments of principal); (c) rent payments, (not including prepayment of rent); (d) utilities; (e) maintenance expenses, including construction to accommodate outdoor seating and walls, floors, deck surfaces, furniture, fixtures, and equipment; (f) supplies, including protective equipment and cleaning materials; (g) food and beverage expenses that were within the scope of the normal business practice of the eligible entity before the covered period; (h) covered supplier costs; (i) operational expenses; (j) paid sick leave; and (k) any other expenses determined to be essential to maintaining the eligible entity. In general, under current SBA guidance, the covered period began February 15, 2020, and will end March 11, 2023.

Eligible recipients were required to certify in their application for a grant that: (a) the uncertainty of current economic conditions makes the grant request necessary to support the ongoing operations; and (b) they have not applied for or received a federal shuttered venue grant.

ARPA also provided that restaurant revitalization grant proceeds were excluded from gross income for federal income tax purposes and that otherwise deductible expenses paid directly or indirectly with such grants would be deductible. Further, ARPA provided that distributions to owners of partnerships and tax-option (S) corporations of such excluded amounts are treated as tax exempt income. ARPA directed the Secretary of the Treasury to prescribe rules for determining a partner's distributive share for purposes of determining a partner's or shareholder's basis in the ownership interest of a partnership or S corporation.

SUMMARY OF BILLS, AS AMENDED

The bills would conform state tax treatment of restaurant revitalization grants to the federal tax treatment, retroactive to taxable years beginning after December 31, 2020, such that: (a) grant proceeds would be excluded from gross income for purposes of state income and franchise taxes; and (b) otherwise deductible expenses paid directly or indirectly with such grants would be deductible. AA 1 and SA 1 are identical technical amendments referencing specific sections of ARPA, rather than ARPA more generally, and also clarify via references to specific sections of the Internal Revenue Code that distributions to owners of partnerships and S corporations of excluded amounts are treated as tax exempt income.

FISCAL EFFECT

The Department of Revenue (DOR) prepared identical fiscal notes for each bill. If enacted, it is estimated that the bills would decrease state tax revenues by \$15.6 million in 2021-22, \$7.5 million in 2022-23, and \$4.1 million in 2023-24.

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