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March 11, 2024

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 1089/Senate Bill 1021: Interest Rates on Taxes and on Overpayments

Assembly Bill 1089 (AB 1089) and Senate Bill 1021 (SB 1021) make modifications to the interest rates imposed on various taxes and fees, and on overpayments of such taxes and fees.

AB 1089 was introduced on February 13, 2024, and was referred to the Assembly Committee on State Affairs. That Committee recommended the bill for passage on February 14, 2024, by a vote of 9 to 4. AB 1089 passed the Assembly on February 22, 2024, by a vote of 62 to 35, and was immediately messaged to the Senate.

SB 1021 was introduced on February 13, 2024, and was referred to the Senate Committee on Universities and Revenue.

AB 1089 and SB 1021 are herein referred to as "the bill".

SUMMARY OF THE BILL

The following provisions would first apply to assessments issued and refunds paid on December 31, 2024.

Interest Rates on Nondelinquent Taxes/Fees and Overpayments. Under current law, with some exceptions, tax and fee amounts owed to the Department of Revenue (DOR), including amounts resulting from appeals, judgements, audits, adjustments, and reassessments, that have not been withheld or paid generally accrue normal (nondelinquent) interest at a rate of 12% per year. Amounts owed by DOR to taxpayers are subject to interest of 3% per year, which generally accrues from the due date of the return if DOR does not certify the overpayment for refund within 90 days of the tax filing deadline or the day the return was filed, whichever is later. Amounts deposited with DOR while an assessment is contested that are later refunded also accrue interest of 3% per year from the date of deposit. The bill would reduce the rates of normal interest that generally apply for nondelinquent tax and fee amounts owed to DOR from 12% to 6% per year. The interest rates on amounts owed by DOR to taxpayers would be increased from 3% to 6% per year.

These provisions of the bill generally apply for the following taxes and fees: (a) the individual income and corporate income/franchise tax; (b) the withholding tax; (c) the sales and use tax, including county and municipal taxes; (d) taxes paid by utilities and insurers; (e) excise taxes on alcohol beverages, cigarettes, tobacco, and vapor products; (f) excise taxes on motor vehicle fuel, aviation fuel, and alternative fuel; (g) the economic development surcharge; (h) the real estate transfer fee; (i) the dry cleaning fee; (j) local exposition district food and beverage and rental car taxes; (k) premier resort area sales taxes; and (l) the state rental vehicle fee.

Income and Franchise Taxes. Current law allows individuals to request an extension of time to file their individual income tax return. Likewise, DOR generally allows an automatic extension of seven months for the filing of income tax returns by corporations (including insurance companies subject to the franchise tax) and withholding tax returns filed by pass-through entities. During this extension period, tax amounts owed that have not been withheld or paid generally accrue normal interest at a rate of 12% per year. The bill would decrease the rate at which normal interest accrues during the extension period from 12% to 6% per year.

Income and franchise taxes, including withholding taxes, generally become delinquent if not paid by the due date, or the extended due date if an extension is granted. Once delinquent, such taxes are subject to 18% interest per year. Current law allows DOR to reduce the interest rate imposed on delinquent taxes from 18% to 12% per year in instances where the DOR Secretary has determined that such reduction is fair and equitable. The bill would specify that if the DOR Secretary determines that reducing the interest rate on delinquent taxes is fair and equitable, the reduced rate would be 6% per year, rather than 12%.

Under current law, individuals (including estates, trusts, and partnerships) and corporations (including insurance companies subject to the franchise tax) that make estimated tax payments during the tax year generally owe interest if they underpaid their estimated tax payments during the tax year. Similar provisions apply to pass-through entities that underpay their estimated withholding payments (for those that are required to make estimated withholding payments). Underpayment interest accrues at a rate of 12% per year for the period of the underpayment. The bill would reduce this interest rate to 6% per year.

In addition, under current law, if corporations and pass-through entities do not pay at least 90% of their tax liability by the unextended due date of their return, the difference between 90% of the tax liability and the estimated taxes paid accrues interest of 18% per year (rather than 12%), even before the filing due date. This provision also applies to interest accruing on withholding taxes imposed on nonresident members of pass-through entities. The bill would delete this 90% provision, and would therefore reduce the 18% and 12% interest rates to 6% per year on all tax underpayments until the extended filing date, at which point any unpaid tax liability would become delinquent.

Under current law, if any person who is liable for any tax administered by DOR neglects or refuses to pay that tax within 10 days after that tax becomes delinquent, the Department may collect that tax and the expenses of the levy by levy upon, and sale of, any property belonging to that person or any property on which there is a perfected lien, in the case of delinquent income and franchise taxes. When DOR sells the property, the purchaser must pay the Department as established in the conditions of the sale. If the purchaser does not pay DOR by the prescribed date, the unpaid portion of the purchase price is subject to interest of 12% per year from the date of sale, or DOR may declare the sale void and sell the property again. In instances where DOR wrongfully levies upon property, the Dane County Circuit Court may order the return of the property, if possible, or grant a judgment for the amount of money obtained by levy (or by the sale of such property by DOR). Interest is owed by DOR on the judgment amount, to the individual wrongfully levied upon, at a rate of 12% per year from the date DOR receives the money wrongfully levied upon to the date of payment of the judgement, or from the date of sale to the date of payment. These 12% interest rates would decrease to 6% under the bill.

Sales and Use Taxes. Under current law, taxes refunded as a result of a field audit accrue interest at a rate of 3% per year from the due date of the sales tax return to the date on which the refund is certified on the refund rolls. The bill would create a provision specifically relating to taxes refunded as a result of a field audit, and would increase the interest rate from 3% per year to 6% per year. The bill would change the starting date of the accrual period from the due date of the sales tax return to the unextended due date of the taxpayer's income or franchise tax return or, if filing of an income or franchise tax return is not required, from the 15th day of the 4th month after the close of the calendar (or fiscal) year. This treatment would be consistent with the interest accrual period on unpaid taxes determined as a result of a field audit under current law.

Utility Taxes. Under current law, if an ad valorem utility taxpayer disagrees with the amount of tax assessed upon it by DOR, it may appeal to the Dane County Circuit Court. Any unpaid tax liability ultimately determined by the Circuit Court accrues interest of 12% per year from the original due date of the tax to the date the appeal became final, and accrues interest of 1.5% per month (18% annually) thereafter until paid. The bill would decrease the 12% interest rate to 6%.

With regard to DOR actions to recover taxes and interest owed by ad valorem utility taxpayers in the form of a lien on the property of the company, current law requires a judgement to be entered, fixing the amount of taxes and interest owed and enforcing the lien. The judgement accrues interest at a rate of 10% per year from the date of entry until final payment. The bill would decrease the rate from 10% to 6%.

Metalliferous Mining Taxes. Current law allows, upon written request, persons subject to the metalliferous mining tax to file, on or before June 15, a net proceeds tax return and to pay that tax based upon estimated tax liability. However, any tax liability not paid by June 15 is subject to normal interest at a rate of 1% per month (12% per year) from June 15 to the date of payment, as determined by a final report that taxpayers must file by September 15. If the additional tax liability exceeds 10% of the previous year's tax liability, the additional liability is treated as delinquent and is subject to interest at a rate of 1.5% per month (18% per year) until paid, along with a 4% penalty. The bill would reduce the rate of normal interest from 1% to 0.5% per month (from 12% per year to 6% per year).

Charges for Examination of Municipality Records. Under current law, DOR has the authority to collect annually, from any town, city, village, county, and other public officers, information regarding the assessment of property, and any other information that may be necessary in the work of the Department. All public officers are required to properly complete and promptly return to DOR all prescribed forms. In the event that a public officer does not return such information requested by DOR, the Department may examine city, village, town, or county records to obtain the information. DOR may impose a charge on the city, village, town, or county for the expenses incurred in the completion of the examination by transmitting a statement of the expenses incurred to the clerk of the town, city, village, or county. If DOR does not receive payment within 60 days of the clerk's receipt of the statement, interest at a rate of 10% per year is imposed upon the charge from the date the statement was certified by DOR to the date of payment. The bill would decrease this rate from 10% to 6%.

Petroleum Inspection Fee. Under current law, a petroleum inspection fee is imposed at a rate of 2¢ per gallon on all petroleum products that are received by a supplier for sale in this state or for sale for export to this state. However, anyone who purchases general aviation fuel from a supplier is eligible for an allowance of 2¢ for each gallon of general aviation fuel purchased in excess of 1,000,000 gallons per month. To receive the allowance, the purchaser must submit a claim form to DOR, which the Department will either allow or deny. DOR must pay allowed claims to the purchaser within 90 days of the date the claim was filed, otherwise interest begins to accrue at a rate of 3% per year. If a purchaser negligently files an incorrect claim, or files a fraudulent claim, the purchaser must refund any amount to which they are not entitled and pay a 25% penalty (50% for fraudulent claims) on the amount of the allowance. Interest accrues on the refund and penalty amounts at a rate of 12% per year, from the date the penalty is imposed. The bill decreases the rate of interest on amounts owed to DOR from 12% to 6% per year. The bill would increase interest that accrues on claim amounts owed by DOR from 3% to 6%.

FISCAL EFFECT

Based on DOR's fiscal estimate of the bill and additional information obtained from the Department, it is estimated that the annual fiscal effect of the bill would: (a) reduce general fund revenues by $80.5 million; (b) reduce transportation fund revenues by $0.2 million, primarily associated with the changes related to the motor vehicle fuel tax and the state rental car fee; and (c) reduce dry cleaning and recycling fund revenues by a minimal amount. Given the bill's initial applicability date, it is estimated that general fund taxes would be reduced by $41.5 million in 2024-25 and $80.5 in 2025-26. Likewise, it is estimated that transportation fund revenues would be reduced by $0.1 million in 2024-25 and $0.2 million in 2025-26.

Prepared by: Sydney Emmerich