GENERAL FUND TAXES

1. GENERAL FUND TAX CHANGES

Governor: The following table shows the general fund tax changes recommended by the Governor, along with their estimated fiscal effects in the 2017-19 biennium. The table does not include tax law changes that are estimated to have a minimal fiscal effect. The table also does not include changes to refundable tax credits, because they are paid from appropriations rather than recorded as a reduction in tax revenues.

2017-19 General Fund Tax Changes
(In Millions)

	2017-18	2018-19	2017-19 Biennium
Income and Franchise Taxes			
Income Tax Rate Reduction	-$104.38	-$99.08	-$203.45
Limit Working Families Credit to Full-Year Residents	0.20	0.20	0.40
Itemized Deduction Credit for Nonresidents	0.58	0.59	1.17
MAC/Other States Tax Credit Interaction	9.70	9.70	19.40
Employer Wage Reporting	3.00	3.00	6.00
Increase Angel and Early Stage Seed Credit Investment Cap	-3.20	-2.20	-5.40
Limit Historic Rehabilitation Credit	3.00	14.10	17.10
Treatment of Net Operating Losses	1.00	1.00	2.00
Eliminate Payment of Interest on Tax Credits	0.50	0.50	1.00
Internal Revenue Code Update	-0.60	-0.80	-1.40
Garnishment Fee Paid by Debtor	0.01	0.01	0.02
Reporting Requirement for Captive Insurance Companies	1.00	1.00	2.00
Add Auditors	32.00	32.00	64.00
General Sales and Use Tax			
Sales Tax Holiday	-11.00	-11.00	-22.00
Delay Private Label Credit Card Law	10.15	10.44	20.59
Lump Sum Construction Contracts	-1.25	-1.50	-2.75
Frozen Prepared Food	-1.00	-1.00	-2.00
Off-Highway Motorcycles	0.22	0.22	0.43
Occasional Sales Threshold	-0.17	-0.16	-0.33
Total Tax Changes	-$60.24	-$42.99	-$103.22

Income and Franchise Taxes

1. INCOME TAX RATE REDUCTION

GPR-Tax	- $203,454,600

Governor: Beginning with tax year 2017, reduce the marginal tax rates that apply to income that falls within the bottom two income brackets of the state's individual income tax from 4.0% to 3.9% and from 5.84% to 5.74%. In addition, increase the income threshold separating the second and third tax brackets, thereby causing more income to be subject to the proposed 5.74% marginal rate, as opposed to the 6.27% marginal rate. The rate and bracket structures under current law and under the Governor's proposal are shown below:

	Tax Year 2017		
	Single	Married-Joint	Married-Separate
Rates and Estimated Brackets -- Current Law			
4.00%	Less than $11,230	Less than $14,980	Less than $7,490
5.84	11,230 to 22,470	14,980 to 29,960	7,490 to 14,980
6.27	22,470 to 247,350	29,960 to 329,810	14,980 to 164,900
7.65	247,350 and Over	329,810 and Over	164,900 and Over
Governor's Proposed Rates and Estimated Brackets			
3.90%	Less than $11,230	Less than $14,980	Less than $7,490
5.74	11,230 to 28,080	14,980 to 37,450	7,490 to 18,720
6.27	28,080 to 247,350	37,450 to 329,810	18,720 to 164,900
7.65	247,350 and Over	329,810 and Over	164,900 and Over

	Tax Year 2018		
	Single	Married-Joint	Married-Separate
Rates and Estimated Brackets -- Current Law			
4.00%	Less than $11,520	Less than $15,370	Less than $7,680
5.84	11,520 to 23,050	15,370 to 30,730	7,680 to 15,370
6.27	23,050 to 253,760	30,730 to 338,350	15,370 to 169,180
7.65	253,760 and Over	338,350 and Over	169,180 and Over
Governor's Proposed Rates and Estimated Brackets			
3.90%	Less than $11,520	Less than $15,370	Less than $7,680
5.74	11,520 to 28,810	15,370 to 38,420	7,680 to 19,210
6.27	28,810 to 253,760	38,420 to 338,350	19,210 to 169,180
7.65	253,760 and Over	338,350 and Over	169,180 and Over

As under current law, the tax bracket amounts would be indexed each year based on changes in the consumer price index. However, the bill would need to be amended to correctly apply the indexing provisions. These provisions would reduce individual income tax collections by an estimated $104,377,700 in 2017-18 and $99,076,900 in 2018-19.

[Bill Sections: 1025 thru 1035, 1054 thru 1056, 1126, 1129, and 1130]

2. EARNED INCOME TAX CREDIT

GPR	$6,840,000
PR	13,000,000
Total	$19,840,000

Governor: Increase PR funding for the earned income tax credit (EITC) by $13,000,000 in 2018-19 and decrease GPR funding by $2,520,000 in 2017-18 and increase GPR funding by $9,360,000 in 2018-19 to reflect the changes described below.

Current Law Sum Sufficient Reestimate. Decrease the estimated cost of the credit by $1,700,000 in 2017-18 and increase the estimated cost of the credit by $650,000 in 2018-19. Compared to base year funding of $103,600,000, the cost of the credit under current law is reestimated at $101,900,000 in 2017-18 and $104,250,000 in 2018-19.

Credit Percentage for Claimants with One Child. Modify the percentage used to calculate the EITC by increasing the percentage from 4% to 11% for claimants with one child, beginning in tax year 2018. This would increase the cost of the credit by an estimated $20,800,000 in 2018-19. The proposed credit percentage is the same percentage used for claimants with two children.

Credit Calculation for Claimants Who Become Married. Beginning in tax year 2018, authorize claimants who become married in a year to claim the greater of the credit calculated as a married claimant or the credit claimed in the prior year when the claimant was unmarried. In the succeeding two years, authorize the claimant to claim the greater of the credit calculated as a married claimant for that year or the credit claimed in the year prior to the year the claimant became married. The proposed change would increase the cost of the credit by an estimated $1,500,000 in 2018-19. Because the provision would first apply in tax year 2018 and extend for the initial three years of the claimant's marriage, the cost of the provision is estimated to increase to $3,500,000 in 2019-20 and $5,500,000 in 2020-21.

Credit for Noncustodial Parents. Beginning in tax year 2018, create a refundable credit, funded from the current law EITC appropriations, for noncustodial parents, not otherwise eligible for the EITC. Set the credit equal to 7.5% of the amount the individual would be eligible to receive under the federal EITC, if the individual's noncustodial child meets the definition of qualifying child under the federal credit. To be eligible to receive the state credit, specify that the individual claiming the credit must: (a) not claim the state credit authorized under current law; (b) be a full-year resident of Wisconsin; (c) be at least 18 years old at any point during the tax year for which the claim relates; (d) be the parent of at least one child who did not have the same principal place of abode as the claimant; (e) have been required under a court order for at least one-half of the tax year to make child support payments for the noncustodial child for which the claim relates; and (f) have paid in full all amounts of court-ordered child support payments for the noncustodial child. In addition, specify that the court-ordered payments must be verified by the Department of Revenue (DOR) as having been made by the claimant. Authorize the Department of Children and Families (DCF) and county child support agencies to assist DOR in verifying the payment of court-ordered child support payments. Under this provision, the cost of the credit would increase by an estimated $230,000 in 2018-19.

Disqualified Losses. Prohibit any individual from claiming the credit if the individual reports a "disqualified loss" greater than $15,000 in the calculation of his or her Wisconsin adjusted gross income, but exclude any individual from the prohibition if the claimant is a

farmer, the claimant's primary income is from farming, and the claimant's farming generates less than $250,000 in gross receipts from the operation of farm premises. Define disqualified loss as the sum of the following amounts, exclusive of net gains from the sale or exchange of capital or business assets and exclusive of net profits: (a) net loss from sole proprietorships; (b) net capital loss; (c) net loss from sales of business property, excluding loss from involuntary conversions; and (d) net loss from rental real estate, royalties, partnerships, tax-option corporations, trusts, estates, and real estate mortgage investment conduits. Under the bill, this provision would take effect beginning with tax year 2018. However, DOA indicates that it intended the provision to take effect in tax year 2017, and the DOA budget system reports a GPR expenditure reduction of $820,000 in both 2017-18 and 2018-19. Corrective language is needed to accomplish this intent, and without such language, GPR expenditures should be increased by $820,000 in 2017-18.

The state credit is calculated as a percentage of the federal EITC, and is funded with a combination of GPR and PR funding. The program revenue is federal temporary assistance for needy families (TANF) funding transferred from DCF. The GPR portion is provided through a sum sufficient appropriation and covers the balance of the cost of the credit. Under the bill, total funding for the EITC would decrease to $101,080,000 in 2017-18 and increase to $127,960,000 in 2018-19, compared to base funding of $103,600,000. The PR base level funding of $69,700,000 would be unchanged in 2017-18 and increase to $82,700,000 in 2018-19. The estimated GPR sum sufficient portion would decrease from the base level of $33,900,000 to $31,380,000 in 2017-18 and increase to $43,260,000 in 2018-19. Under the bill, the maximum credit for claimants with one child would increase in tax year 2018 from an estimated $139 to $383. The maximum credits for claimants with more than one child would remain unchanged and are estimated for tax year 2018 at $632 for claimants with two children and $2,199 for claimants with more than two children.

[Bill Sections: 920, 1046 thru 1050, 1116 thru 1118, 1125, and 9338(16)]

3. YOUNG ADULT EMPLOYMENT ASSISTANCE TAX CREDIT

GPR	$724,400

Governor: Create a refundable tax credit under the state individual income tax called the young adult employment assistance credit, beginning in tax year 2018, for certain individuals who age out of out-of-home placements under the statutes relating to children in need of protection or services (CHIPS) or juveniles in need of protection or services (JIPS). The credit would be equal to 125% of the federal EITC for claimants with no qualifying children, without regard to the age limits under federal law. [For more information see "Children and Families -- Children and Families."]

[Bill Sections: 481, 1045, 1052, 1053, and 9338(17)]

4. MANUFACTURING AND AGRICULTURE TAX CREDIT AND TAXES PAID TO OTHER STATES TAX CREDIT INTERACTION

GPR-Tax	$19,400,000

Governor: Modify the manufacturing and agriculture tax credit under the individual

income tax by reducing the amount of income on which the credit is calculated by the amount of that same income that is subject to tax in another state, thereby resulting in a Wisconsin credit for the taxes paid to the other state, beginning with tax year 2017. Increase individual income tax collections by an estimated $9,700,000 annually. Under current law, Wisconsin manufacturing and agriculture (qualified production activities) income that is also subject to tax in another state can be used to calculate two separate tax credits -- the manufacturing and agriculture credit and the other state tax credit. This provision would prohibit that treatment by limiting the amount of income used to calculate the manufacturing and agriculture tax credit.

[Bill Sections: 1042 and 9338(8)]

5. ITEMIZED DEDUCTION CREDIT FOR NONRESIDENTS AND PART-YEAR RESIDENTS

GPR-Tax	$1,170,000

Governor: Modify the calculation of the itemized deduction credit (IDC) for nonresidents and part-year residents by specifying that the state sliding scale standard deduction is the deduction amount prior to applying the ratio of Wisconsin adjusted gross income (AGI) to federal AGI, beginning with tax year 2017. Increase individual income tax collections by an estimated $580,000 in 2017-18 and $590,000 in 2018-19. The IDC equals 5% of the difference between certain federal itemized deductions and the claimant's state sliding scale standard deduction. Nonresidents and part-year residents file state tax form NPR and calculate their state standard deduction, gross tax, itemized deduction credit and property tax/rent credit based on their federal AGI. Then, NPR filers multiply their net state tax by a fraction equal to their Wisconsin AGI divided by their federal AGI to determine their actual state tax liability. This provision requires that NPR filers must use the standard deduction prior to the application of the apportionment ratio when they calculate their IDC.

[Bill Sections: 1039 and 9338(12)]

6. FEDERAL ITEMIZED DEDUCTIONS USED TO CALCULATE THE STATE ITEMIZED DEDUCTION TAX CREDIT

Governor: Clarify that the itemized deductions used to calculate the state itemized deduction tax credit be based on federal itemized deductions prior to any modification under the federal alternative minimum tax. Extend the provision beginning in tax year 2017. The state itemized deduction credit is calculated by multiplying 5% by the difference between certain itemized deductions claimed for federal tax purposes and the state sliding scale standard deduction. The provision would not have a measurable effect on individual income tax collections.

[Bill Sections: 1040 and 9338(6)]

7. EXCLUSION FOR INTEREST ON CERTAIN BONDS OR NOTES

Governor: Provide an exclusion from income under the individual income tax for interest income received on bonds or notes issued by city housing authorities, city redevelopment

authorities, and city community development authorities or bonds or notes issued by an entity whose bonds or notes are issued under current law provisions for housing authorities, blight elimination or slum clearance, and housing and community development authorities, beginning in tax year 2017. The Executive Budget Book summary indicates that the provision is intended to exempt interest on bonds issued by the Wisconsin Health and Educational Facilities Authority (WHEFA) for an elderly housing facility. The provision would need to be amended to achieve that intent. Because interest on bonds or notes issued by city housing authorities, city redevelopment authorities, and city community development authorities is currently exempt from taxation under the income tax, the provision, as drafted, would have no fiscal effect.

[Bill Sections: 1014 and 9338(4)]

8. DETERMINATION OF QUALIFIED WISCONSIN BUSINESS UNDER CAPITAL GAINS TREATMENTS

Governor: Modify the current law procedure for determining the number of employees of a qualified Wisconsin business under two capital gains treatments by specifying that an employee of a professional employer organization or group, both as defined under current law, who is performing services for a client is considered an employee solely of the client.

Under current law, income tax on capital gains may be deferred if the gain is reinvested in a qualified Wisconsin business, and a capital gains exclusion may be claimed for the gains from a qualified Wisconsin business, provided other conditions are met. State law requires the Department of Revenue to register qualified Wisconsin businesses if a business requests to be registered and the business meets employment and property requirements specified in state law. Under the employment requirement, the business must have at least two full-time employees and at least half of the payroll compensation of the business must be paid in Wisconsin.

The proposed provision would clarify that employees of professional employer organizations or groups for a client may be considered employees of the client if the client is a qualified Wisconsin business.

State law defines professional employer group as two or more professional employer organizations that are controlled by the same person. State law defines professional employer organization as a person that is engaged in the business of entering into written contracts for the provision of the nontemporary, ongoing employee workforce of a client and providing services under those contracts and that under those contracts has the obligation to pay the employees providing services for those clients from its own accounts, regardless of whether the person uses the term "professional employer organization," "PEO," "staff leasing company," or "administrative employer," or uses any other name, as part of the person's business name or to describe the person's business. "Professional employer organization" does not mean a temporary help agency or a temporary help company.

The provision would take effect upon enactment, and no effect on state tax collections is reported.

[Bill Section: 1162]

9. VETERANS AND SURVIVING SPOUSES PROPERTY TAX CREDIT

GPR	$660,000

Governor: Increase funding by $30,000 in 2017-18 and $630,000 in 2018-19 for the refundable veterans and surviving spouses property tax credit. With these adjustments, base funding of $29,800,000 would be increased to $29,830,000 in 2017-18 and $30,430,000 in 2018-19. The credit is equal to real and personal property taxes paid on a principal dwelling by certain veterans and surviving spouses.

10. LIMIT WORKING FAMILIES TAX CREDIT TO FULL-YEAR RESIDENTS

GPR-Tax	$400,000

Governor: Modify the working families tax credit by specifying that to be eligible to receive the credit both spouses must be full-year residents of Wisconsin, if the married couple is filing jointly. Increase individual income tax collections by an estimated $200,000 annually. The provision would first apply to tax year 2017.

[Bill Sections: 1041 and 9338(5)]

11. REPAYMENT CREDIT

GPR	- $72,000

Governor: Decrease funding by $36,000 annually for the sum sufficient appropriation for the repayment (claim of right) credit. With these adjustments, base funding of $227,000 would be decreased to $191,000 each year. The credit is extended to taxpayers who must repay income on which taxes were paid in a prior year.

12. ILLINOIS-WISCONSIN RECIPROCITY

GPR	$8,513,000

Governor: Increase the estimated payment by $3,446,000 in 2017-18 and $5,067,000 in 2018-19 under the Illinois-Wisconsin individual income tax reciprocity agreement. Compared to the base funding level of $62,600,000, payments are estimated at $66,046,000 in 2017-18 and $67,667,000 in 2018-19.

13. TIMING OF REFUNDS PAID TO INDIVIDUALS

Governor: Prohibit DOR from issuing a refund to an employed individual before March 1, unless both the individual and the individual's employer have filed all required returns and forms with DOR for the taxable year for which the individual claims a refund. According to DOR, this provision would allow the Department additional time to match information returns with tax returns filed by individuals to reduce the potential for fraud if an employer, employee, or both were to submit a false informational return.

[Bill Section: 1139]

14. INTERNAL REVENUE CODE UPDATE

GPR-Tax	- $1,400,000

Governor: Update references to the Internal Revenue Code (IRC) under the individual and corporate income and franchise taxes. For tax years beginning after December 31, 2013, and before January 1, 2017, create provisions adopting selected IRC provisions included in the following public laws that were enacted in 2015 and 2016: (a) P.L. 114-41, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015; (b) P.L. 114-74, the Bipartisan Budget Act of 2015; (c) P.L. 114-113, Division P (the Consolidated Appropriations Act) and Division Q (the Protecting Americans from Tax Hikes Act of 2015); and (d) P.L. 114-239 (the United States Appreciation for Olympians and Paralympians Act of 2016). For tax years beginning after December 31, 2016, create provisions adopting IRC provisions in effect as of December 31, 2016, with exceptions. Specify that the provisions of federal public laws that directly or indirectly affect the IRC apply for state tax purposes at the same time as for federal tax purposes, with exceptions, and specify that the definition of the IRC does not include amendments to the IRC adopted after December 31, 2016. For purposes of the state tax on tax-option corporations, specify that section 1366(f) of the IRC, relating to pass-through of items to shareholders, would be modified by substituting a reference to state tax provisions for federal tax provisions. For purposes of the state tax on insurance companies, specify that section 847 of the IRC, relating to special estimated tax payments, would not apply. Repeal obsolete provisions pertaining to tax years beginning after December 31, 2003, and before January 1, 2005.

Create a penalty equal to 20% of the portion of any underpayment of taxes that is required to be shown on a Wisconsin tax return, if the underpayment is the result of an inconsistent estate basis reporting. For purposes of the penalty, specify that an inconsistent estate basis reporting occurs if the property basis claimed on a Wisconsin tax return exceeds the property basis determined for federal purposes. Require DOR to assess, levy, and collect the penalty in the same manner as it assesses, levies, and collects state income and franchise taxes. This provision would first apply to property for which a federal estate tax return is filed after July 31, 2015.

Reduce individual income and corporate income and franchise taxes by an estimated $600,000 in 2017-18 and $800,000 in 2018-19.

[Bill Sections: 1003 thru 1009, 1058 thru 1071, 1079 thru 1082, 1091 thru 1104, 1153, and 9338(1)]

15. EXPAND ENTERPRISE ZONE TAX CREDIT PROGRAM

Governor: Allow the Wisconsin Economic Development Corporation (WEDC) to designate a new enterprise zone, subject to the current law limit on the number of zones WEDC may designate, if: (a) an enterprise zone designation expires; or (b) WEDC revokes all certifications for tax benefits within a designated enterprise zone and cancels the designation of that zone. Under current law, WEDC may designate not more than 30 enterprise zones. Under the Governor's recommendation, WEDC could redesignate enterprise zones that have expired or that have had tax credit certifications revoked and cancelled rather than having expired zones

reduce the number of zones that WEDC can designate under the statutory limit.

[Bill Sections: 1780 thru 1783]

16. JOBS TAX CREDIT REESTIMATE

GPR	- $5,250,000

Governor: Increase funding by $1,200,000 in 2017-18 and decrease funding by $6,450,000 in 2018-19 for the sum sufficient appropriation for jobs tax credits to reestimate claims during the biennium. The reestimate reflects projections for credit claims for economic development projects for which WEDC has awarded tax credits. With the adjustments, estimated total funding would increase from $14,100,000 annually to $15,300,000 in 2017-18 and decrease to $7,650,000 in 2018-19. The credit equals 10% of the wages paid to an eligible employee and/or the amount of costs incurred to undertake training activities in the year.

Pursuant to 2015 Wisconsin Act 55, the refundable jobs tax credit was consolidated with the nonrefundable economic development tax credit into the refundable business development tax credit beginning in 2016. The jobs tax credit was sunset after 2015. However, if WEDC allocated tax benefits in a contract to claimants prior to December 31, 2015, or if WEDC had entered into a letter of intent to enter into a contract before that date, claimants may compute and claim the credit for as long as the contract specifies. WEDC has entered into contracts through tax year 2023 for businesses to earn, compute, and claim the credit.

17. BUSINESS DEVELOPMENT TAX CREDIT SUM SUFFICIENT REESTIMATE

GPR	$37,750,000

Governor: Increase funding by $20,000,000 in 2017-18 and $17,750,000 in 2018-19 for the sum sufficient appropriation for business development tax credits to reestimate anticipated claims during the biennium. The reestimate reflects projections of credit claims for economic development projects for which WEDC has entered into contracts, and is expected to enter into future contracts, to award tax credits. With the adjustments, estimated total funding would increase from $4,250,000 annually to $24,250,000 in 2017-18 and $22,000,000 in 2018-19. Businesses certified by WEDC can earn credits for a portion of wages paid to employees, training costs for employees, personal property investments, real property investments, and wages paid to employees performing corporate headquarters functions in Wisconsin.

As previously noted, the refundable jobs tax credit and the nonrefundable economic development tax credit were consolidated into the refundable business development tax credit beginning in tax year 2016. Pursuant to 2015 Wisconsin Act 55, WEDC may allocate business development tax credits of $17 million in 2016 and $22 million in 2017 and annually thereafter. Any unused allocation authority during a calendar year may be carried forward for use in future years. In addition, WEDC may reallocate any nonrefundable angel and early stage seed tax credits that are unused in a calendar year to the business development tax credit under a 14-day passive review of the Joint Committee on Finance (JFC). JFC approved such a request from WEDC on June 13, 2016, to reallocate $8 million in angel and early stage seed investment tax credits. The increase of $37.75 million GPR over the base amount during the 2017-19 biennium

reflects estimated increases in state expenditures associated with the phasing in of the new credit, as well as actions by JFC to increase WEDC's allocation authority for 2016.

18. ENTERPRISE ZONE TAX CREDIT SUM SUFFICIENT REESTIMATE

GPR	- $42,700,000

Governor: Decrease funding by $21,000,000 in 2017-18 and $21,700,000 in 2018-19 for the sum sufficient appropriation for refundable enterprise zone tax credits to reestimate anticipated claims during the biennium. The reestimate reflects projections of credit claims for major economic development projects for which WEDC has, to date, contracted tax credit awards. With the adjustments, estimated total funding would decrease from $58,600,000 annually to $37,600,000 in 2017-18 and $36,900,000 in 2018-19. Businesses that operate in enterprise zones established by WEDC can claim tax credits for jobs created and retained, training costs, capital expenditures, and purchases from Wisconsin vendors.

State fiscal year 2011-12 was the first year in which expenditures from the sum sufficient appropriation for refundable enterprise zone tax credits exceeded $100,000. Since that time, estimated expenditures from that appropriation were based upon WEDC's tax credit allocation schedule, which represents the maximum annual amount of activities eligible for tax credits that certified businesses can earn, be verified by WEDC, and claim from DOR. Based on the lower amount of WEDC verifications and claims processed by DOR that have been observed over the past five state fiscal years, as compared to the amount of enterprise zone tax credits that have been allocated by WEDC, the reestimate reflects lower estimated expenditures from the base estimates.

19. LIMIT THE SUPPLEMENT TO THE FEDERAL HISTORIC REHABILITATION TAX CREDIT

GPR-Tax	$17,100,000

Governor: Make the following changes regarding the state supplement to the federal historic rehabilitation tax credit:

Annual Limit. Limit the amount of tax credits that may be certified by WEDC to no more than $10 million, annually, beginning in calendar year 2018. For calendar year 2017, the total amount of tax credits that WEDC could certify would be the greater of $10 million or the amount WEDC certified between January 1, 2017, and the effective date of the bill.

Certification Criteria. Require WEDC to use a competitive process to certify a person to claim the credit based on the following criteria: (a) the eligible activity's potential to create jobs; (b) the economic benefit to the state of certifying the credit relative to the cost to the state of the credit; (c) the projected impact of the eligible activity on the local economy; (d) whether the eligible activity would occur absent the credit; and (e) the number of historic rehabilitation tax credits previously certified in the same county or municipality.

Clawback Provisions. Require that, for four years following receipt of a credit, the original claimant report to WEDC the total number of full-time jobs created by the activity for which the credit was claimed. Require WEDC to report to DOR, at least once each calendar quarter, any

claimant whose activity created fewer full-time jobs than projected. In addition, require WEDC to report to DOR the name, address, and tax identification number of the claimant, and the number of full-time jobs projected and created. WEDC would have to adopt policies and procedures for the administration of the credit, including all of the following: (a) process by which applicants may apply for certification; (b) certification of the tax credit under the competitive process described above; (c) reporting requirements for certified claimants; and (d) process and criteria for revocation of certification.

If the activity for which a person claims the credit creates fewer full-time jobs than projected, the person who claimed the credit would have to repay DOR any amount of the credit claimed, as determined by the Department, in proportion to the number of full-time jobs created compared to the number projected. If a person sold or transferred the credit, the person who initially sold or transferred the credit would be responsible for repaying the credit to DOR.

If a person who claims the credit under state law and under federal law for the same qualified rehabilitation expenditures is required to repay any amount of the federal credit, that person would have to repay a proportionate amount of the state credit that was claimed. Federal repayment requirements are triggered when the rehabilitated property is disposed of or otherwise ceases to be eligible investment property of the claimant within five years.

Fiscal Effect. The administration estimates that these provisions would increase state tax revenues by $3,000,000 in 2017-18, $14,100,000 in 2018-19, $26,700,000 in 2019-20, and $27,700,000 in 2020-21 and annually thereafter. The out-year estimates are expressed in 2018-19 dollars.

Current Law. Under current law, a credit may be claimed for up to 20% of qualified rehabilitation expenditures for certified historic structures and for qualified rehabilitated buildings. The state credits act as supplements to similar federal credits, which result in a total credit of 40% for certified historic structures (buildings that have historic significance) and 30% for qualified rehabilitated buildings (constructed prior to 1936). For both credits, qualified rehabilitation expenditures are eligible if the rehabilitated structure is located in this state and the cost of the expenditure is at least $50,000. Current law does not limit the amount of credits that may be certified or claimed in a year, and the credits are not dependent on any specific number of full-time jobs that may be created as a result of the rehabilitation. However, claimants must be certified by WEDC in order to claim the credits. WEDC has maintained a moratorium on certifying persons for the credit for qualified rehabilitation expenditures on qualified rehabilitated buildings for credit applications received after June 23, 2014.

[Bill Sections: 1051, 1089, 1114, and 1775 thru 1779]

20. REALLOCATE EARLY STAGE BUSINESS INVESTMENT TAX CREDITS

Governor: Permit WEDC to reallocate nonrefundable angel and early stage seed investment tax credits that were unused in the immediately preceding calendar year, rather than credits that are unused in the current calendar year, to the refundable business development tax credit. According to the administration, this provision would allow WEDC to reallocate known

amounts of unused angel and early stage seed investment tax credits, rather than estimated amounts.

Under current law, the angel investment credit is available under the individual income tax and is equal to 25% of a claimant's bona fide angel investment made directly in a qualified new business venture (QNBV). The early stage seed investment credit is available under the individual income tax, corporate income/franchise tax, and insurance premiums tax and is equal to 25% of the claimant's investment with a certified fund manager that the fund manager subsequently invests in a QNBV. Fund managers and QNBVs must be certified by WEDC. The annual limit on the amount of angel and early stage seed investment tax credits that can be verified by WEDC as eligible to receive the credits is $30 million per calendar year. As previously noted, WEDC can request a reallocation of angel and early stage seed investment tax credits that have not been verified to receive credits in that year to increase the credit amounts that can be claimed under the refundable business development tax credit under a 14-day passive review by JFC.

[Bill Section: 1774]

21. INCREASE QNBV INVESTMENT LIMIT

GPR-Tax	- $5,400,000

Governor: Increase the maximum amount of investments that qualify for angel and early stage seed tax credits that a WEDC-certified QNBV could receive, beginning with taxable years starting after December 31, 2016, from $8 million to $12 million. The administration estimates that this provision would reduce state tax revenue by $3,200,000 in 2017-18 and $2,200,000 in 2018-19 and annually thereafter.

[Bill Sections: 1772 and 1773]

22. ELIMINATE INTEREST PAID ON REFUNDABLE CREDITS ADMINISTERED BY WEDC

GPR-Tax	$1,000,000

Governor: Prohibit DOR from paying interest on WEDC-certified jobs, business development, and enterprise zone refundable tax credit claims. Specify that this provision first applies to taxable years beginning on January 1, 2017. The administration estimates that this provision would increase state tax revenues by $500,000 annually, beginning in 2017-18.

[Bill Sections: 1036 thru 1038, 1084 thru 1086, 1109 thru 1111, and 9338(11)]

23. ASSESSMENTS TO RECOVER REVOKED WEDC TAX CREDITS

Governor: Permit DOR to make an assessment to recover all or a part of any tax credit allocated by WEDC that has been claimed by the taxpayer, provided WEDC has revoked the tax credit allocation and provided DOR notice of the revocation within one year of providing notice of the revocation to the taxpayer. This provision would provide an exception to the current law provision that DOR must give notice within four years of the date the taxpayer files an income tax or franchise tax return in order to make an assessment to recover all or part of any tax credit

in any calendar year or corresponding fiscal year. A technical correction would be required to accomplish the Governor's intent.

[Bill Section: 1140]

24. REPORTING REQUIREMENT FOR CAPTIVE INSURANCE COMPANIES

GPR-Tax	$2,000,000

Governor: Require a captive insurance company that is part of a group of corporations engaged in a unitary business to report its income in the group's combined report even if all of its income is exempt from the income/franchise tax. As under current law, the captive insurance company's share of business income of the combined group would be exempt from taxation. The reporting requirement would first apply to taxable years beginning on January 1, 2017.

According to DOR, certain captive insurance companies exist with the primary purpose of tax avoidance and a secondary purpose of insuring against risk. For example, a parent captive insurance company may insure risk of the subsidiary by charging premiums in excess of the amount of risk insured, which would shift otherwise taxable income from the subsidiary company to the exempt parent captive insurance company. DOR believes that the proposed reporting requirement would reduce tax-avoidance activity and generate $1,000,000 annually beginning in 2017-18.

[Bill Sections: 1077, 1078, and 9338(9)]

25. TREATMENT OF NET OPERATING LOSSES

GPR-Tax	$2,000,000

Governor: Modify state income/franchise tax laws governing net operating losses (NOLs). Under current law, an NOL is generally defined as the excess of business expenses allowed as deductions in computing net income over the amount of income attributable to the operation of a trade or business in Wisconsin. If expenses are greater than income, an NOL is generated. Under both the individual income tax and the corporate income/franchise tax, NOLs can be carried forward and used to offset income for 20 years. Under the individual income tax, NOLs can also be carried back to offset losses in the two prior taxable years.

The bill would prohibit an NOL carryforward from being offset against Wisconsin income under the individual income tax and the corporate income/franchise tax unless the incurred loss was computed on a return that was filed within four years of the unextended due date for filing the original return for the taxable year in which the loss was incurred. The same provision would apply to loss carrybacks under the individual income tax. In addition, the bill would clarify that the 20-year period for loss carryforwards would mean the immediately preceding 20 years, and that it would apply to losses incurred (rather than sustained) during that period of time. Finally, the bill would clarify that NOLs incurred by insurance companies could be carried forward only if the insurer was subject to the Wisconsin income and franchise tax in the year when the loss was incurred.

These provisions would first apply to a loss claimed on the effective date of the bill, regardless of the year in which the loss occurred, and the administration estimates that these provisions would increase income/franchise tax revenues by $1,000,000 annually, beginning in 2017-18.

These provisions would generally limit the number of years tax filers may retroactively recompute losses to no more than four years following the unextended due date for the taxable year in which the loss occurred. According to DOR, a concern exists that the Tax Appeals Commission may interpret the current statutes to allow taxpayers to retroactively amend tax returns for the 20 previous years to recompute NOLs and use the loss to offset income in a tax year currently open under the statute of limitations. The administration states that the proposal would treat the recomputation period for NOLs the same as for the recomputation period for tax credits.

[Bill Sections: 1024, 1083, 1108, 1152, and 9338(10)]

26. CLARIFY SOURCING OF SERVICES ON TANGIBLE PERSONAL PROPERTY

Governor: Make the following changes to laws governing the sourcing of business income related to certain services. Under current law, the benefit of a service is determined to be received in Wisconsin if any of the following apply: (a) the service relates to real property that is located in Wisconsin; (b) the service relates to <u>tangible personal property that is located in Wisconsin at the time that the service is received or</u> tangible personal property that is delivered directly or indirectly to customers in the state; (c) the service is <u>provided to</u> an individual who is physically present in Wisconsin at the time that the service is received; or (d) the service is provided to a person engaged in a trade or business in Wisconsin and relates to that person's business in Wisconsin. The Governor recommends deleting the underlined language under "b" and replacing the underlined language under "c" with "purchased by" for purposes of sourcing services under the individual income tax and the corporate income/franchise tax. These provisions would first apply to taxable years beginning on January 1, 2017.

According to DOR, the changes would codify its current administrative practice and are not expected to have a fiscal effect. However, DOR states that, absent the recommended statutory change, current ambiguity in the statutes may result in a significant revenue reduction to the state if the administration were to lose a legal challenge of its current practice for sourcing business income from services performed on tangible personal property. The word "or" under "b" creates the potential for a taxpayer to be taxed under both scenarios if the taxpayer meets one scenario in Wisconsin and the other scenario in another state. If a court were to construe this scenario as an unconstitutional double taxation of the same income, a court may invalidate Wisconsin's taxation of services under both scenarios described under "b."

[Bill Sections: 1012, 1013, 1075, 1076, and 9338(7)]

27. DISREGARDED ENTITY NOTIFICATION

Governor: Clarify that, with regard to a single-owner entity that is disregarded as a separate entity under section 7701 of the IRC, any notice that DOR sends to the owner or to the entity is considered a notice sent to both. Both entities would be liable for any amounts specified in the notice. This provision would apply to all laws administered by DOR. According to DOR, this provision would clarify that the owner of a disregarded entity is liable for both the activities of the disregarded entity and for any delinquent tax collection notification that the Department may send to the disregarded entity, regardless of which specific tax may have generated the notification.

Businesses may establish separate entities from their owners, such as single-member limited liability companies, for liability reasons; so that if the business is sued, the owner would not be liable for the lawsuit. The owner may then elect to disregard these separate entities for the purposes of the business owner's federal and state income or franchise tax return.

[Bill Section: 1161]

Sales and Excise Taxes

1. SALES TAX HOLIDAY IN AUGUST

GPR-Tax	- $22,000,000

Governor: Create an exemption from the state general sales and use tax for certain school supplies purchased during the two-day period beginning the first Saturday in August and ending on the following Sunday (the holiday). The time zone of the seller's location would determine when the holiday begins and ends.

The following products would be eligible for the exemption: (a) clothing, but not clothing accessories or equipment, if the sales price is no more than $75; (b) computers purchased for personal use if the sales price is no more than $750; (c) school computer supplies if the sales price is no more than $250; and (d) school supplies if the sales price of any single item is no more than $75. School art supplies and school instructional materials would not be eligible for the exemption.

For purposes of determining eligibility, any single item having a sales price greater than the eligibility limit would not be entitled to the exemption. Items normally sold as a single unit could not be divided into multiple parts in order to obtain the exemption. Discounts and coupons would apply to the sales price for purposes of determining eligibility, so long as the seller is not reimbursed for the decrease in price (such as via a manufacturer's rebate) and the discount is proportionally applied to all purchased items where the discount is not specific to the purchase of an eligible item.

For purposes of determining the price threshold for eligibility, service fees for delivery

(including shipping, handling, and other service charges) would not be included into the price. However, service fees would be considered part of the sales price for purposes of determining sales tax. If the shipment includes both eligible property and taxable property, then the seller would have to proportionally allocate the service fees to the final price of all items in a shipment by: (a) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or (b) a percentage based on the total weight of the taxable property compared to the total weight of all the property in the shipment. Tax would apply to the service charges allocated to the taxable items. In cases where each individual item in a shipment qualifies as eligible property, then the shipment itself would be considered a sale of eligible property and the price of the service fees would not have to be allocated to the individual items for purposes of sales tax.

An eligible item would qualify for the exemption if: (a) delivered to and paid for by the purchaser during the holiday; or (b) the purchaser orders and pays for the item during the holiday and the seller accepts the order for immediate shipment, even where delivery occurs after the holiday. A seller would be considered to accept an order by taking action to fill the order for immediate shipment. Actions to fill an order include placement of an in-date stamp on a mail order or assignment of an order number to a telephone order. An order would be considered for immediate shipment when the customer does not request delayed shipment and regardless of whether the shipment is delayed for reasons of a backlog of orders or because stock is currently unavailable or on back order.

Layaway sales of eligible items would qualify for the exemption if the buyer selects and the retailer sets aside the product during the holiday or if the final payment is made during the holiday. Eligible items purchased via rain check during the holiday would qualify; however, items purchased after the holiday via a rain check issued during the holiday would not.

For the 60-day period immediately following the holiday, the bill would not permit a seller to give a credit or refund of sales tax from the return of an eligible item unless the purchaser provides proof that the item was not purchased during the holiday. An eligible item purchased during the holiday could be exchanged after the holiday for a similar eligible item without payment of sales tax, even if the item differs in size, color, or another feature. However, sales tax would apply if a credit were issued and used to buy a different item after the tax holiday, whether eligible or not.

The bill would also provide definitions for the terms used above. "Clothing" would mean wearing apparel for humans that is suitable for general use, not including clothing accessories or equipment, sport or recreational equipment, protective equipment, sewing equipment and supplies, sewing materials, costume masks sold separately, patches and emblems sold separately, and belt buckles sold separately. "Clothing accessories or equipment" would mean incidental items worn on a person or in conjunction with clothing, including briefcases, cosmetics, hair notions (such as barrettes, bows, and nets), handbags, handkerchiefs, jewelry, nonprescription sunglasses, umbrellas, wallets, watches, wigs, and hair pieces. "Protective equipment" would mean items for human wear designed to protect against injury or disease or to protect property or other persons from damage or injury, including breathing masks, clean room apparel and equipment, ear and hearing protectors, face shields, hard hats, helmets, paint or dust respirators, protective gloves, safety glasses and goggles, safety belts, tool belts, and welders gloves and

masks.

"School art supply" would mean any of the following items that are commonly used by a student in a course of study for artwork: clay and glazes; acrylic, tempera, and oil paints; paint brushes; sketch and drawing pads; and water colors. "School computer supply" would mean any of the following items that are used commonly by a student in a course of study in which a computer is used: computer storage media, diskettes, and compact discs; handheld electronic schedulers, not including cellular phones; personal digital assistants, not including cellular phones; computer printers; and printer supplies for computers, printer paper, and printer ink.

"School instructional material" would mean any of the following items that are commonly used by a student in a course of study as a reference and to learn the subject being taught: reference books; reference maps and globes; textbooks; and workbooks. "School supply" would mean any of the following items that are commonly used by a student in a course of study: binders; book bags; calculators; cellophane tape; blackboard chalk; compasses; composition books; crayons; erasers; folders; glue, paste, and paste sticks; highlighters; index cards; index card boxes; legal pads; lunch boxes; markers; notebooks; loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; pencil boxes and other school supply boxes; pencil sharpeners; pencils; pens; protractors; rulers; scissors; and writing tablets.

"Sport or recreational equipment" would mean items designed for human use and worn in conjunction with an athletic or recreational activity, including ballet and tap shoes, athletic shoes with cleats or spikes, gloves, goggles, hand and elbow guards, life preservers and vests, mouth guards, roller skates, ice skates, shin guards, shoulder pads, ski boots, waders, and wet suits and fins.

A "rain check" would mean a seller allowing a purchaser to purchase an item at a certain price at a later time because the item was out-of-stock. A "layaway sale" would be defined as a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the sales price over time, and receives the property at the end of the payment period. The seller would be defined as accepting an order for layaway when removing the property from inventory or clearly identifying the property as sold to the purchaser.

The effective date of the provision would be May 1, 2017, unless the date of the bill's publication is after that date, in which case the effective date would be January 1, 2018. The tax holiday would sunset after 2018.

The administration estimates that the sales tax holiday would be held in August of 2017 and 2018, and that state sales tax collections would be reduced by $11,000,000 in 2017-18 and 2018-19. For this to occur for 2017-18, the budget bill would have to be enacted and published no later than May 1, 2017.

The sales tax holiday would also apply to local sales taxes. For additional information, see "Shared Revenue and Tax Relief."

[Bill Sections: 1181, 1183, 1194, and 9438(1)]

2. DELAY THE EFFECTIVE DATE FOR 2013 WISCONSIN ACT 229

GPR-Tax	$20,587,800

Governor: Delay the effective date of 2013 Wisconsin Act 229, from July 1, 2017, to September 1, 2019. This would delay provisions contained in Act 229 which allow a retailer to claim a deduction or a refund of sales taxes related to bad debt of an affiliated lender that extends credit through a private label credit card, dual purpose credit card, or dealer credit program. Delaying the effective date for this provision would increase state sales tax revenue by an estimated $10,151,800 in 2017-18 and by $10,436,000 in 2018-19.

[Bill Sections: 2265 and 9438(2)]

3. SALES TAX TREATMENT OF CONSTRUCTION CONTRACTS FOR REAL PROPERTY CONSTRUCTION ACTIVITIES

GPR-Tax	- $2,750,000

Governor: Expand the sales and use tax exemption for lump sum contracts to apply to all construction contracts and to subcontractors. These changes are estimated to decrease tax revenue by $1,250,000 in 2017-18 and by $1,500,000 in 2018-19.

Under current law, property transferred to the customer in conjunction with the selling, performing, or furnishing of a taxable service to tangible personal property is considered to be a sale of property separate from the sale of that service. The bill would create an exemption for items transferred with construction contracts, as described below.

Under current law, contractors who perform real property construction activities are considered to be the consumers of building materials which they use in altering, repairing, or improving real property. Therefore, a supplier's sales of building materials to contractors who incorporate the materials into real property in performing real property construction activities are subject to the sales and use tax. The tax which a contractor pays on its purchases of materials consumed in real property construction activities increases its cost of the materials and becomes a cost of doing business. A contractor may not add tax to any charges for labor or material, since the sales price received from these activities is not taxable.

On the other hand, a contractor is treated as a retailer on the sale or transfer of tangible personal property to the customer in the installation, repair, or servicing of tangible personal property. The contractor must report these sales on its return and is liable for sales tax based on the sales price charged to the customer unless an exemption applies. The contractor's purchases of taxable property, items, and services (products) are exempt so long as the contractor resells them.

Construction contracts often require a contractor to sell both products, which are taxable, and real property construction activities, which are not taxable. Current law deems a contractor to be the consumer of all products used or sold as part of a lump sum contract for real property construction activities if the total sales price attributable to the taxable products is less than 10 percent of the total contract price. In such cases, the contractor will pay the sales and use tax

imposed on all taxable products used or resold in the construction contract unless an exemption applies. In turn, the contractor's sales price under the construction contract is not subject to sales tax (construction contract exemption).

By contrast, if the total sales price attributable to the taxable products is 10% or more of the total construction contract price, then the contractor is required to charge the applicable sales taxes on the taxable products unless an exemption applies. If the taxable products are separately itemized in the construction contract, the tax is due on the cost shown. If the construction contract states only a lump sum for all products and services, the contractor must charge and collect sales tax on that portion of the construction contract price which is allocated to the taxable sales unless an exemption applies. In either case, the contractor's purchases of taxable products are exempt so long as the contractor resells the products as part of the construction contract.

The bill would replace the definition of "lump sum contract" with the term "construction contract," which would be defined as a contract to perform real property construction activities and to provide products. As a result, the construction contract exemption would apply to all construction contracts and not merely lump sum contracts. For example, a "time and materials" contract would not qualify for the exemption under current law if it does not state a fixed, lump sum price but rather a price defined as hours of labor plus the cost of materials.

The bill would also clarify that similar treatment is provided for both prime contractors and subcontractors in regards to the construction contract exemption. Thus, a subcontractor would be deemed the consumer of all products used or sold as part of a contract for real property construction activities with the prime contractor or another subcontractor if: (a) the total sales price attributable to the taxable products is less than 10 percent of the total contract price; and (b) the products will be sold by the prime contractor as part of a construction contract. In such cases, the subcontractor would pay the sales and use tax imposed on all taxable products used or resold in the construction contract (unless an exemption applies). In turn, the subcontractor's sales price under the construction contract would not be subject to sales tax.

The bill would also define several terms. "Prime contractor" would be defined as a contractor which enters into a construction contract with the owner or lessee of real property to perform real property construction activities. "Subcontractor" would be defined as a contractor who enters into a construction contract with a prime contractor or another subcontractor. As under current law, "real property construction activities" would mean activities that occur at a site where tangible personal property or items or goods that are applied or adapted to the use or purpose to which real property is devoted are affixed to that real property, if the intent of the person is to make a permanent accession to the real property.

Finally, current law provides that a contractor's purchases of taxable products are exempt so long as the contractor resells them to a tax-exempt entity under a construction contract. The bill would provide for similar treatment of prime contractors and subcontractors under a construction contract with a tax-exempt entity such that a subcontractor's purchases of taxable products would be exempt so long as the products are resold to either the prime contractor or to another subcontractor.

The effective date of these provisions would be the first day of the third month beginning after publication of the bill. The changes would first apply to contracts entered into or extended, modified, or renewed after that date.

[Bill Sections: 1172, 1176, 1178, 1179, 1188 thru 1193, 9338(18), and 9438(3)]

4. RETAILER'S SALE OF FOOD PREPARED OFFSITE

GPR-Tax	- $2,000,000

Governor: Create an exemption from the general sales and use tax for prepared food that is sold by a retailer and: (a) manufactured by the retailer in a building assessed as manufacturing property (or would be if it were located in this state); (b) the retailer makes no retail sales of prepared food at this building; (c) the retailer freezes the prepared food prior to its sale; (d) the retailer sells the prepared food in its frozen state; (e) the prepared food is not sold with eating utensils; and (f) the prepared food is not candy, soft drinks, or dietary supplements. As a result, frozen food sold by a retailer would be treated similarly regardless of whether the food was prepared by that retailer offsite (currently taxable as prepared food) or prepared by another person (currently exempt as a food). It is estimated that the change would decrease tax revenue by $1,000,000 annually.

[Bill Section: 1187]

5. CONSISTENT TREATMENT OF OFF-HIGHWAY MOTORCYCLES AS OTHER REGISTERED VEHICLES

GPR-Tax	$430,000

Governor: Conform state law treatment of off-highway motorcycles to the treatment of other registered vehicles in regards to the following. First, sellers of off-highway motorcycles would be included within the definition of retailers that are subject to the sales tax. Second, the bill would exempt from the use tax all off-highway motorcycles purchased outside of Wisconsin by nonresidents which are later brought into and used in Wisconsin or titled or registered in Wisconsin for personal, noncommercial use. Third, the bill would limit the occasional sale exemption for private party sales of off-highway motorcycles to: (a) transfers to certain family members or corporations owned by the transferor or the transferor's spouse; (b) off-highway motorcycles registered or titled in the name of the transferor; and (c) where the transferor is not engaged in the business of selling off-highway motorcycles. Finally, the bill would condition registration of off-highway motorcycles upon filing a report of sales and use tax and payment of applicable county and stadium tax. Under current law, "off-highway motorcycle" means a two-wheeled motor vehicle that is straddled by the operator, that is equipped with handlebars, and that is designed for use off a highway, regardless of whether it is also designed for use on a highway.

These changes would take effect on the day after publication of the bill, and are estimated to increase tax revenue by $215,000 annually.

[Bill Sections: 1177, 1184 thru 1186, and 1198]

6. PENALTY FOR OVERCOLLECTION OF SALES TAX

Governor: Provide a penalty for a seller's overcollection of sales and use tax and failure to return refunded sales tax to the buyer. Current law allows DOR to offset a refund of sales tax collected by a seller with amounts due to DOR. Any remaining sales tax and related interest that is refunded by DOR to a seller for tax collected from a buyer must be returned to the buyer from whom the seller collected the tax (or to DOR if the buyer cannot be located) within 90 days of the refund or offset. If the seller fails to pass the refund or adjustment on to the buyer (or to DOR), then the seller must return the refund or adjustment to DOR and pay a penalty equal to 25% of the amount not returned to the buyer. In the case of fraud, the penalty is 100%.

In cases where a seller continues to erroneously collect sales tax on a product for which DOR has notified the seller in writing two or more times that the product is not taxable, the bill would entitle the seller to a refund or adjustment of tax collected only if the seller returns the tax and related interest to the buyers from whom the seller collected the tax. As a result, the seller would not be able to use the refund to offset amounts owed to DOR. Further, the bill would provide the seller 90 days from the receipt of an adjustment or refund within which to return any refunded tax to the buyer (or to DOR if the buyer cannot be located). If the seller fails to submit the tax and related interest, the seller would also be subject to the penalties provided under current law for other instances when a seller claims an adjustment or refund, but fails to pass on the tax and interest to the buyer.

[Bill Sections: 1175 and 1196]

7. OCCASIONAL SALES TAX EXEMPTION

GPR-Tax	- $332,000

Governor: Codify the threshold for the occasional sales exemption to the sales and use tax and increase the threshold to $2,000 per calendar year.

Current law exempts occasional sales of taxable goods and services from the general sales and use tax. "Occasional sales" include isolated and sporadic sales of goods and services where the infrequency and circumstances of the sale supports the inference that the seller is not pursuing a full- or part-time vocation, occupation, or business. Department of Revenue regulations specify that total calendar-year sales of less than $1,000 by persons not required to hold a seller's permit are exempted as occasional sales. The $1,000 regulatory threshold has not been increased since 1985.

The bill would alter the statutory definition of occasional sales to create a presumption that a seller is not pursuing a full- or part-time vocation, occupation, or business as a vendor of property or services if the seller's total taxable sales are less than $2,000 in a calendar year. The changes would initially apply on January 1, 2018.

According to DOA, the expansion of the exemption is estimated to reduce tax revenues by $169,900 in 2017-18 and by $162,100 in 2018-19. However, because the changes would take effect in 2018, there would be no fiscal effect for sales occurring in calendar year 2017. As a

result, the anticipated impact for 2017-18 should be half the estimated amount.

[Bill Sections: 1173, 1174, and 9338(2)]

8. REESTIMATE CIGARETTE AND TOBACCO PRODUCTS TAX REFUNDS

GPR	- $4,715,700

Governor: Decrease funding for cigarette and tobacco products tax refunds by $1,911,700 in 2017-18 and $2,804,000 in 2018-19 to reflect lower estimates of the sum sufficient appropriation amounts required to reimburse Native American tribes under present law. With these adjustments, estimated total funding in the cigarette and tobacco products tax refunds appropriation would decrease to $34,888,300 in 2017-18 and to $33,996,000 in 2018-19. Under current law, for sales that occur on reservations or trust lands, the tribes receive a refund of 100% of the excise tax on cigarettes sold to Native Americans and 70% of the tax on sales to non-Native Americans. For tobacco products sold on reservations or trust lands, the tribes receive a refund of 100% of the tax on products sold to tribal members and 50% of the tax on products sold to non-Native Americans.

Other Tax Provisions

1. SUNSET NEW CREDITS, SUBTRACTIONS, AND EXEMPTIONS

Governor: Prohibit a new claim for any income or franchise tax credit or subtraction that takes effect after December 31, 2016, and first applies to a taxable year beginning after that date, from being filed more than seven taxable years after the initial applicability date of the credit or subtraction. A credit would mean any tax credit enacted under the individual income tax, the corporate income/franchise tax, and the income/franchise tax on insurance companies. A subtraction would mean any modification, deduction, or exemption enacted under the following statutes: (a) exempt and excludable income, subtractions under modifications and transitional adjustments, standard deduction, or personal exemptions under the individual income tax; (b) exempt and excludable income, exemptions from the income tax, or modifications under the corporate income/franchise tax; or (c) exempt and excludable income or exemption from the income tax under the income/franchise tax on insurance companies.

The bill would also prohibit a person from claiming a sales or excise tax exemption that takes effect after December 31, 2016, after the date that is seven years after the effective date of the exemption, unless DOR determines that the exemption is necessary to comply with the Streamlined Sales and Use Tax Agreement. An exemption would mean any exemption or credit enacted under laws governing: (a) the general sales and use tax; (b) motor vehicle and general aviation fuel taxes; or (c) beverage, controlled substances, and tobacco taxes.

The bill would specify that any enactment that would sunset a credit, subtraction, or exemption as described above would not be a bill that increases the rate of the income tax, franchise tax, or sales and use tax in a way that would require the Legislature to approve the bill by a two-thirds vote of those members present and voting, as required under current law. In August of each year, DOR would have to submit to the Speaker and Minority Leader of the Assembly, the President and Minority Leader of the Senate, and the Chief Clerk of each house of the Legislature, for distribution to the appropriate standing committees, a report that details income and franchise tax credits and subtractions for which no new claims could be filed after the next two calendar years. DOR would also have to submit a report in the same manner that details the sales and use tax, motor vehicle and general aviation fuel tax, or beverage, controlled substances, and tobacco tax exemptions that would expire in the next two calendar years. According to the administration, the seven-year sunset under this provision would apply to the newly-created young adult employment assistance tax credit described above.

[Bill Section: 1167]

2. INTEREST ON OVERPAYMENT OF TAXES

GPR	- $500,000

Governor: Decrease estimated payments from the sum sufficient appropriation by $250,000 annually to reflect payments estimated at $1,000,000 annually. The amounts reflect the interest on taxes refunded to taxpayers due to an overpayment of individual and corporate income and franchise taxes, general sales and use taxes, and manufacturing property taxes.