State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-4527/1
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2023 ASSEMBLY BILL 658

November 9, 2023 - Introduced by Representatives KATSMA, BORN, DALLMAN, EDMING, KURTZ, MURSAU, NEDWESKI, NOVAK, O'CONNOR, PENTERMAN, PLUMER, SCHUTT, STEFFEN, WICHGERS and JACOBSON, cosponsored by Senators MARKLEIN, BALLWEG, PFAFF and TOMCZYK. Referred to Committee on Ways and Means.

AN ACT ***to repeal*** 565.32 (3) (a) 2. c.; ***to renumber and amend*** 71.05 (6) (b) 25.; ***to amend*** 71.05 (25m) (c), 71.26 (3) (vm) 2., 71.34 (1k) (p) 2., 71.45 (2) (a) 21. b., 71.64 (6) (b), 71.775 (3) (a) 2. and 565.30 (3) (a) 1.; and ***to create*** 71.05 (6) (b) 25. a. and b., 77.54 (71) and 565.30 (3) (a) 3. of the statutes; **relating to:** a sales tax exemption for road-building equipment; increasing the income tax withholding threshold for nonresidents; modifying the certification requirement for a qualified opportunity fund; prohibiting certain lottery games; and extending the capital gains exclusion to family members who inherit certain farms organized as a partnership or limited liability company.

Analysis by the Legislative Reference Bureau

This bill makes the following changes to current law provisions administered by the Department of Revenue:

Road-building equipment

The bill creates a sales and use tax exemption for the sale of portable machinery and equipment used primarily to crush, mill, produce, or pulverize asphalt, concrete, gravel, rock, or aggregate base for road or commercial surface lot construction or resurfacing.

Withholding thresholds

Under current law, generally, every employer must, at the time of paying an employee, withhold from the employee's wages attributable to this state an amount determined pursuant to the withholding tables prepared by the Department of Revenue in order to pay for state and federal taxes and other obligations and benefits. However, an employer is not required to withhold amounts from an employee who is not a resident of this state if the total amount of the annual wages attributable to this state paid by the employer to that employee is less than $1,500. In addition, a pass-through entity, such as a partnership or limited liability company, is not required to withhold amounts paid to a partner, member, shareholder, or beneficiary if the total annual wages attributable to this state paid to that partner, member, shareholder, or beneficiary is less than $1,000.

The bill increases the withholding thresholds for nonresident employees so that no withholding is required for nonresident employees if the total amount of annual wages attributable to this state is less than $2,000.

Qualified opportunity funds

Current law allows a taxpayer, for state tax purposes, to claim a capital gains exclusion equal to the gain excluded from federal gross income in the taxable year for an investment held in a Wisconsin qualified opportunity fund for a specified minimum period, typically five to seven years. A "Wisconsin qualified opportunity fund" is a fund that holds at least 90 percent of its assets in qualified opportunity zone property in this state, as determined under federal law. Current state law requires a Wisconsin qualified opportunity fund to certify to its investors and DOR that the fund qualifies as a WQOF no later than January 31 following the close of the fund's taxable year. Under the bill, the certification must be made to investors and DOR no later than the due date, including extensions, of the fund's corresponding income or franchise tax return. The bill also requires a WQOF to make the certification in the form and manner prescribed by DOR.

Lottery games

Under current law, the administrator of the Lottery Division of DOR determines the particular features of and procedures for each lottery game offered. Current law requires that the features and procedures be in written form and accessible to the public and include the name and theme of the game, the price of the lottery tickets, the frequency of drawings, and the prize structure, including the number and value of the prizes. The bill eliminates the requirement for estimating the amounts of prizes and the odds of a particular lottery ticket or lottery share winning each prize when the prize or odds are dependent on the number of participants in the game or drawing.

Under current law, a person who holds a winning lottery ticket or lottery share may claim a prize within 180 days after the drawing or other selection in which the prize is won. A person who holds a winning ticket or share for an instant game or scratch-off game may claim a prize within 180 days after the game's end date, as determined by the administrator. Under the bill, the administrator may determine a shorter period for which to claim a winning lottery ticket or lottery share in a multijurisdictional lottery secondary or subsequent chance drawing or game.

Farm assets

Current law provides a capital gains income tax exclusion for assets used in farming that are held more than one year and sold or transferred to persons who are related to the seller. Under current law, "assets used in farming" includes shares in a corporation or trust engaged in farming, if it has no more than 15 shareholders or beneficiaries, it has no more than two classes of shares, and all its shareholders or beneficiaries are natural persons. Under the bill, "assets used in farming" also includes ownership interest in a partnership or limited liability company, if the partnership or limited liability company has 15 or fewer partners or members and all partners or members are natural persons.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (6) (b) 25. of the statutes is renumbered 71.05 (6) (b) 25. (intro.) and amended to read:

71.05 **(6)** (b) 25. (intro.) All gains that are not excluded from taxation under subd. 9., on business assets or on assets used in farming, ~~including shares in a corporation or trust that meets the standards under s. 182.001 (1),~~ or both, held more than one year, that are sold or otherwise disposed of to persons who are related to the seller or transferor by blood, marriage or adoption within the 3rd degree of kinship as determined under s. 990.001 (16), as computed under the Internal Revenue Code, not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason. <u>For purposes of this subdivision, "assets used in farming" includes any of the following:</u>

SECTION 2. 71.05 (6) (b) 25. a. and b. of the statutes are created to read:

71.05 **(6)** (b) 25. a. Shares in a corporation or beneficial interest in a trust that meets the standards under s. 182.001 (1).

b. Ownership interest in a partnership or limited liability company treated as a partnership under this chapter, if the partnership or limited liability company has 15 or fewer partners or members and all partners or members are natural persons.

SECTION 3. 71.05 (25m) (c) of the statutes is amended to read:

71.05 **(25m)** (c) ~~No later than January 31 of the year following the close of the fund's taxable year~~ In the form and manner prescribed by the department, a fund shall annually certify to each investor and the department that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year. A fund shall make the annual certifications under this paragraph no later than the due date, including extensions, of the fund's corresponding income or franchise tax return under this chapter.

SECTION 4. 71.26 (3) (vm) 2. of the statutes is amended to read:

71.26 **(3)** (vm) 2. ~~No later than January 31 of the year following the close of the fund's taxable year~~ In the form and manner prescribed by the department, a fund shall annually certify to each investor and the department that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year. A fund shall make the annual certifications under this subdivision no later than the due date, including extensions, of the fund's corresponding income or franchise tax return under this chapter.

SECTION 5. 71.34 (1k) (p) 2. of the statutes is amended to read:

71.34 **(1k)** (p) 2. ~~No later than January 31 of the year following the close of the fund's taxable year~~ In the form and manner prescribed by the department, a fund shall annually certify to each investor and the department of revenue that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year. A fund shall make the annual certifications under this subdivision no later than the due date, including extensions, of the fund's corresponding income or franchise tax return under this chapter.

SECTION 6. 71.45 (2) (a) 21. b. of the statutes is amended to read:

71.45 **(2)** (a) 21. b. ~~No later than January 31 of the year following the close of the fund's taxable year~~ In the form and manner prescribed by the department, a fund shall annually certify to each investor and the department that it qualifies as a Wisconsin qualified opportunity fund for the fund's taxable year. A fund shall make the annual certifications under this subd. 21. b. no later than the due date, including extensions, of the fund's corresponding income or franchise tax return under this chapter.

SECTION 7. 71.64 (6) (b) of the statutes is amended to read:

71.64 **(6)** (b) No amount shall be withheld from the wages paid to a nonresident employee for services performed in this state if the employer reasonably estimates that during that calendar year the employee will earn less than ~~$1,500~~ $2,000; but whenever it appears that the employee will earn more than ~~$1,500~~ $2,000 in this state during the calendar year, the employer shall withhold, from wages paid thereafter, such additional amounts as the employer reasonably estimates will be required to offset the amounts not withheld from previous payments.

SECTION 8. 71.775 (3) (a) 2. of the statutes is amended to read:

71.775 **(3)** (a) 2. The partner's, member's, shareholder's, or beneficiary's share of income from the pass-through entity that is attributable to this state is less than ~~$1,000~~ $2,000.

SECTION 9. 77.54 (71) of the statutes is created to read:

77.54 **(71)** The sales price from the sale of and the storage, use, or other consumption of portable machinery and equipment, including accessories, attachments, parts, and supplies for such machinery and equipment, used primarily to crush, mill, produce, or pulverize asphalt, concrete, gravel, rock, or aggregate base for road or commercial surface lot construction or resurfacing.

SECTION 10. 565.30 (3) (a) 1. of the statutes is amended to read:

565.30 **(3)** (a) 1. Except as provided in ~~subd.~~ subds. 2. and 3., the holder of a winning lottery ticket or lottery share may claim a prize within 180 days after the drawing or other selection in which the prize is won.

SECTION 11. 565.30 (3) (a) 3. of the statutes is created to read:

565.30 **(3)** (a) 3. As determined by the administrator, multijurisdictional lottery secondary or subsequent chance drawings or games may have a shorter claim period for holders of a winning lottery ticket or lottery share, which shall be prescribed in the features and procedures for the secondary or subsequent chance drawing or game.

SECTION 12. 565.32 (3) (a) 2. c. of the statutes is repealed.

SECTION 13. Initial applicability.

(1) The treatment of ss. 71.05 (25m) (c), 71.26 (3) (vm) 2., 71.34 (1k) (p) 2., 71.45 (2) (a) 21. b., 71.64 (6) (b), and 71.775 (3) (a) 2., the renumbering and amendment of s. 71.05 (6) (b) 25., and the creation of s. 71.05 (6) (b) 25. a. and b. first apply to taxable years beginning on January 1, 2024.

SECTION 14. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of s. 77.54 (71) takes effect on the first day of the 3rd month beginning after publication.

(END)