



Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Testimony on AB 2 by Peter Barca, Secretary of the Department of Revenue
Taxpayer Enhancement Package
January 21, 2021

Chairman Macco, Vice Chair Wittke, Ranking Member McGuire, and members of the Assembly Ways and Means Committee, thank you for allowing me to testify on AB 2, which includes various changes to Wisconsin tax laws. We have called this omnibus bill the "Taxpayer Enhancement Package."

The bill contains various tax law changes that encompass clarifications, corrections, simplifications and modernizations of our tax laws. The proposals were the result of numerous meetings with staff, strategic planning discussions with our division leaders, as well as meetings with external stakeholder groups. In all cases, our department engaged with stakeholders and legislators to arrive at solutions that would benefit the groups, our department and the taxpayers of the state.

For example, early in my time as Secretary of Revenue, we met a developer who was running into difficulty with the sale of historic tax credits. We worked with staff to find a way to make changes to allow this important development tool to continue to function in communities that needed these investments. Additionally, we met with our Volunteer Income Tax Assistance (VITA) program coordinators who made the suggestion to assist retirees with obtaining a more robust homestead credit, by making the retirement exclusion optional.

As I mentioned last year, we challenged our staff at DOR to think creatively to identify solutions that would simplify administration in order to make the tax and compliance process more effective and efficient.

I will highlight a few additional key proposal items in AB 2.

- Allows taxpayers more time to amend their Wisconsin taxes after an IRS or other state's audit (As recommended by the Multistate Tax Commission)
- Streamline the process for receiving a certificate of exemption for Not for Profit entities.
- Simplifies shared revenue payments to local taxing jurisdictions
- Increases training requirements for those that make determinations on property tax assessments
- Grants access to sales tax information to Legislative Audit Bureau

In addition to these changes, the DOR is also seeking to bring Wisconsin's tax laws up to date and is seeking that we adopt Internal Revenue Code (IRC) changes, with few exceptions up to December 31, 2020. AB 2 currently contains IRC updates thru December 2019. We have provided a summary chart of those IRC updates that have fiscal impacts. There is a separate bill which contains IRC updates from the latest federal legislation that was enacted on December 27, 2020, the Consolidated Appropriations Act, which makes adjustments to tax year 2020 that we are also hoping to adopt in time for tax season.

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We have also provided a summary chart titled, "CAA IRC updates" which lists those changes that have a fiscal impact on the state. Please note that we have removed two of those items because of objections to the fiscal impact.

With the support of Vice Chair Wittke and Chairman Macco and, the bill's sponsors, along with the sponsors in the other chamber, we are seeking to incorporate these changes into Wisconsin tax law.

In closing, AB 2 is a collection of taxpayer enhancements and common-sense changes that are an asset to the citizens of Wisconsin and the governments that serve them. We are honored at the bi-partisan support this package has received and are grateful to lead author Chairman Marklein and Chairman Kooyenga and Ranking Member Ringhand in the Senate and Rep. Wittke, Chairman Macco, and Rep. McGuire and Rep. Ohnstad for leading this package in the Assembly, as well as the Governor and his staff for their consultation.

We are grateful to your efforts on this package last year, which enjoyed unanimous bipartisan support in committee in both chambers.

Thank you again for hearing AB 2. At this time, I would be happy to offer myself and my staff for questions.

Short Summary of SB 2 and AB 2

Taxpayer Enhancement Package Proposals

- DPI Consumer Price Index (CPI) Calculation** *No fiscal impact* **Section 88**
Eliminates unnecessary automatic statutory calculation. Changes to per request by DPI.
- Uniform Due Dates for Ad Valorem Companies** *No fiscal impact* **Sections 95, 96,98**
Brings railroad due dates in line to other utility company deadlines.
- ERP Early Distribution** *No fiscal impact* **Sections 117-119**
Allows a community who failed to timely file required Expenditure Restraint Program Worksheet to receive subsequent qualified payments early.
- Consumer Price Index Timing** *No fiscal impact* **Sections 4, 123-124**
Adjusts the timing of the consumer price index average to use the 12 months ending August 31.
- More time to amend IRS filing changes** *No fiscal impact* **Sections 84-86**
Also allows all taxpayers 180 days to amend their Wisconsin tax returns after an IRS audit
- Certificate of Exempt Status Simplification and Expansion** *No fiscal impact* **Section 114**
Fully adopts IRC 501(c)3 requirements for tax exempt status for sales and use tax purposes.
- Elimination of Timing Restriction for Payments to Towns from Counties** **Section 3**
Allows counties to be in compliance with law when distributing lottery property tax credit to towns. *No fiscal impact*
- Transfers of Historic Rehabilitation Tax Credit** *No fiscal impact* **Sections 36, 62, 81**
Allows for the sale of entire 5 years of HRT credits in one transaction, while retaining the 5 year claiming limitation.
- Homestead Credit Clarification – Earned Income** *Increase cost: \$140,000* **Sections 82, 83, 125**
Clarifies eligibility by creating a definition of “earned income” using IRC, and clarifies which farming losses do not have to be added to household income by creating a definition of “primary income from farming.”
- Sales and Use Tax on Property Transferred with Certain Services** **Sections 112-113**
Allows certain taxable service providers to purchase items without tax, regardless of whether the sale to the customer is taxable or not. *No fiscal impact*
- Disability Income Subtraction** *No fiscal impact* **Section 26,27**
Adopts language from the 1983 version of the IRC related to the disability incomes subtraction. Our current code references the 1983 which is difficult to find.
- Medical Care Insurance for Self Employed Persons** *Increased cost: \$9.5M* **Sections 28-33**
Allows self-employed persons to deduct health insurance premiums from all income, not just self-employed income.

Short Summary of SB 2 and AB 2

Application of Shared Rev Deductions *No fiscal impact* **Sections 1-2, 5-7, 10, 13, 120-22, 125**

Allows DOR to remove all shared revenue deductions from the main shared revenue payments, regardless of order. Removes restrictions on deductions based on type of payments.

Omitted Property *No fiscal impact* **Sections 91-94, 126**

Requires that municipalities share revenue from omitted taxes with other taxing jurisdictions using the same guidelines as collecting refunded taxes from other taxing jurisdictions under the chargeback process.

BOA filing fee *Revenue increase: \$31,000 of GPR-earned* **Sections 11, 12, 126**

Increases fee for manufacturing appeals to the department to \$200 from \$45.

BOR Training Requirements *No fiscal impact* **Sections 9, 126**

Requires that all members of a board of review must complete training every year (at least electronically), and at least one member must attend in-person training.

Assessor Certification Fee Increase *No fiscal impact* **Sections 89, 90, 126**

Increases assessor certification fee to align with DOR costs to administer program up to \$75.

Nexus for Remote Sellers *Minimal fiscal impact* **Section 104-111**

Eliminates 200 transaction threshold for sales tax nexus. Leaves sales tax nexus at \$100K sales.

LAB Access to Sales Tax Information *No fiscal impact* **Section 116**

Allows LAB access to sales tax information. Necessary due to marketplace responsibilities.

Refund Interest Rate *Revenue increase: \$25,000* **Sections 97, 99-103, 125**

Corrects interest refund rate paid to utilities, air carriers, RR, others to 3% from 9% to align refund rate DOR pays to others.

IRC Updates *Increased cost:* **Sections 14-22, 35, 37-61, 63-80**

Retirement Income Exclusion *Increased cost: \$200K* **Sections 23-25, 34, 35, 87, 122**

Make the retirement income exclusion optional instead of mandatory. This will allow retirees to make the election that is most beneficial for obtaining a homestead credit.

Leasing property owned by a church *No fiscal impact* **Sections 8, 125**

Allows property that is owned and operated by a church or religious institution to remain exempt from tax, when leased to an educational association or institution that is also exempt from taxation.

UW-Hospitals and Clinics Authority sales tax provision *No fiscal impact* **Section 115, 125**

Provides a sales and use tax exemption for tangible personal property sold to a construction contractor who transfers the property to UW-Hospitals as part of constructing a facility for UW-H. Similar exemptions exist for local governments, technical college district, or UW institutions.

Summary of IRC updates – AB 2/SB 2

Wisconsin generally conforms to the federal tax code. Wisconsin regularly adopts changes made to the IRC. Conforming to the IRC eliminates the complexity for taxpayers that results when Wisconsin law is not consistent with federal law. Wisconsin is currently following the IRC (with certain exceptions) as of 12/31/2017. Senate Bill 2 conforms Wisconsin to the IRC as of 12/31/2019 (with certain exceptions) for taxable years beginning after December 31, 2020. The following laws have been passed by Congress between 12/31/2017 and 12/31/2019 that affect the IRC:

- Public Law 115-123 – Bipartisan Budget Act of 2018 enacted February 9, 2018
- Public Law 115-141 – Consolidated Appropriations Act enacted March 23, 2018
- Public Law 116-25 – Taxpayer First Act enacted July 1, 2019
- Public Law 116-91 – FUTURE Act enacted December 19, 2019
- Public Law 116-92 – National Defense Authorization Act for Fiscal Year 2020 enacted December 20, 2019
- Public Law 116-94 – Further Consolidated Appropriations Act, 2020 enacted December 20, 2019
- Public Law 116-98 – Virginia Beach Strong Act December 20, 2019

Provisions from the foregoing public laws that have a fiscal impact for Wisconsin.

Public Law	Fed. Act §	Comments	Fiscal impact, FY22	Fiscal Impact, FY23
Public Law 115-123	41113	Removes 6-month prohibition on making elective and employee contributions to a plan after receipt of a hardship distribution.	\$0.6M	\$0.6M
Public Law 115-123	41115	A provision certifying each population census tract in Puerto Rico as a qualified opportunity zone. This affects Wisconsin, in that investments in opportunity zones are held by Wisconsin residents.	-\$0.9M	-\$0.9M
Public Law 115-123	41116	A provision to allow those in the armed forces to qualify to take foreign earned income exclusions, foreign housing exclusion, and foreign housing deduction.	-\$0.6M	-\$0.6M
Public Law 116-94	Div. O, Section 302	Expand 529 education savings accounts to cover costs associated with registered apprenticeships and up to \$10K of qualified student loan repayments.	-\$0.1M	-\$0.1M
Public Law 116-94	Div. Q, Section 302	Repeal the increase in unrelated business taxable income for certain fringe benefits relating to transportation, parking, use of athletic facilities, etc..	-\$0.9M	-\$0.9M
Total Impact			-\$1.9M	-\$1.9M

The rest of the provisions we are seeking to update have no fiscal impact on Wisconsin- and include extensions of existing credits, technical corrections, and corrections of spelling errors from prior bills. Each of the provisions is outlined in a separate chart available upon request from the Clerk.

Summary of IRC updates in Consolidated Appropriations Act

SB 2 and AB 2

The Consolidated Appropriations Act (CAA), enacted on December 27, 2020 makes several changes to tax year 2020. Below are the Internal Revenue Code (IRC) updates for the Consolidated Appropriations Act that have a revenue impact in the next biennium.

Fed. Act §	Comments	Fiscal impact	
		2021	2022
202	Section 13204(b) of P.L. 115-97, relating to the effective date for the ADS recovery period which shortened residential rental property from 40 years to 30 years, is revised to include the following: For any residential rental property which was placed in service before January 1, 2018, held by an electing real property trade or business that elects out of the interest deduction limitation under section 163(j)(7)(B) of the IRC, and to which subparagraph (A), (B), (C), (D), or (E) of section 168(g)(1) of the IRC did not apply prior to such date, the amendments to the ADS recovery period applies to taxable years beginning after December 31, 2017.	-6	-4.9
214	(a) and (b) For plan years ending in 2020 and 2021, a plan that includes a health FSA or dependent care flexible spending arrangement shall not fail to be treated as a cafeteria plan under the IRC because such plan or arrangement permits participants to carry over any unused benefits or contributions remaining in the FSA from such plan year to the plan year ending in 2021 and 2022, respectively. (and other FSA changes)	0	.2
101	The medical expense deduction floor for itemized deductions is 7.5% of adjusted gross income.	0	-5.1
103	The exclusion from income for qualified state or local tax benefits and qualified payments provided to members of qualified volunteer emergency response organizations is permanently extended.	0	-0.6
106(a)	The exemption for interest costs required to be capitalized for beer, wine, and distilled spirits is permanent.	-0.1	-0.1
120	The exclusion for certain employer payments, included principal and interest, of student loans is extended to December 31, 2025.	-1.9	-3.5
205(a)	(a) The minimum rate of interest for purposes of the cash value accumulation test is modified by substituting the annual effective rate of 4 percent with the lesser of the annual effective rate of 4 percent or the insurance interest rate in effect at the time the contract is issued. (other changes) (d) Adds definitions of insurance interest rate, section 7702 valuation interest rate, section 7702 applicable federal interest rate, and adjustment year, and adds a transition rule.	min	-0.1
213	The limitation on charitable contribution deductions for individuals who itemize and corporations is extended through 2021. For individuals, the 50% of AGI limitation is suspended. For corporations, the 10% limitation is increased to 25% of taxable income. The limitation on deductions for contributions of food inventory is increased from 15% to 25%.	-3.6	-13.5
302	(a) The early withdrawal penalty for retirements plans does not apply for distributions made for up to \$100,000. The withdrawal would be taxed over 3 years. If the amount withdrawn is recontributed within 3 years, the amount is treated as a rollover contribution. Loans from qualified retirement plans may be made, up to \$100,000, and the due date for repaying the loan is delayed for 1 year. (other changes to early withdrawal)	-0.3	-0.2
304(a)	Qualified charitable contributions are allowed by corporations to the extent that the aggregate of such contributions does not exceed the excess of 100% of the taxpayer's taxable income over the amount of all other charitable contributions and by treating charitable contributions other than qualified disaster relief contributions as contributions allowed under section 170(b)(2) of the IRC. The limitation of 25% for corporations shall be applied first to qualified contributions without regard to any qualified disaster relief contributions and then separately to such qualified disaster relief contribution. The contributions must be made beginning on January 1, 2020, and ending on the date which is 60 days after the date of the enactment of this Act, and is made for relief efforts in one or more qualified disaster areas.	-0.7	min
304(b)	Increases the amount of the personal casualty loss allowed due to qualified disasters. The standard deduction is increased by the amount of the net disaster loss. For purposes of AMT, the standard deduction provision does not include the increase due to the net disaster loss.	-0.4	-0.2

Summary of IRC updates in Consolidated Appropriations Act

SB 2 and AB 2

277	Students receiving emergency financial aid grants issued under secs. 3504 and 18004 of the CARES Act and other grants issued in response to a qualifying emergency, as defined in sec. 3502 of the CARES Act, do not include the grant in the individual's gross income. The amount of qualified tuition and related expenses is not reduced by these grants for purposes of the American Opportunity and Lifetime Learning credits. The portion of the grant which represents payment for teaching, research, or other services required as a condition for receiving the grant is included in income.	-0.1	-0.1
285	In the case of an employer maintaining a plan which has made a qualified future transfer from a pension plan to a health benefit or life insurance account, such employer may, not later than December 31, 2021, elect to terminate the transfer period with respect to such transfer effective as of any taxable year specified by the taxpayer that begins after the date of such election.	0.3	0.3
Total		-12.8	-27.8

The rest of the provisions we are seeking to update in the CAA have no fiscal impact on Wisconsin and include extensions of existing credits, and technical corrections.

Each of the provisions is outlined in a separate chart available upon request from the Clerk.

Summary of PPP treatment

PPP Loans	Federal	Wisconsin
Round 1 (2020)	Income not taxable (<i>CARES</i>) Expenses deductible (<i>CAA</i>)	Income not taxable (<i>Act 185</i>) Expenses NOT deductible
Round 2 (2021)	Income not taxable (<i>CAA</i>) Expenses deductible (<i>CAA</i>)	Income is taxable (<i>not adopted</i>) Expenses deductible



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

January 21, 2021 Assembly Committee on Ways & Means Testimony on Assembly Bill 2

Good Morning!

Thank you Chair Macco and committee members for hearing Senate Bill 2 (SB 2) that makes various changes to the laws administered and enforced by the Department of Revenue (DOR).

Last session, Rep. Wittke and I introduced 2019 SB 720/AB 754 at the request of the Department of Revenue (DOR). AB 2 is a redraft of 2019 Senate Substitute Amendment 1 to SB 720, which passed this committee last session by a unanimous 12-0 vote, JFC approved the bill on a 14-0 vote, and the full Assembly adopted Assembly Amendment 2 to SB 720, then concurred as amended on a voice vote.

AB 2 makes several technical corrections and minor policy changes that are intended to be revenue neutral or have minimal fiscal impacts. This bill is intended to streamline the processes for both taxpayers and state government. One example is intended to simplify the process for a Wisconsin nonprofit organization to apply for a Certificate of Exempt Status (CES) number, which allows the nonprofit to make all purchases exempt from tax. Under the proposal, in order to obtain a CES, a non-profit organization will only need to present their determination letter from the Internal Revenue Service (IRS) stating that they qualify as exempt under section 501(c)(3) of the Internal Revenue Code (IRC).

In 2018, Wisconsin adopted changes in state law as a result of the U.S. Supreme Court decision in *South Dakota v. Wayfair*. The *Wayfair* decision established a 200 transaction or \$100,000 threshold for sales tax nexus. Many states are realizing that having two standards for collecting tax for out-of-state online retailers is complex and could inhibit compliance and are moving to the sole \$100,000 threshold. AB 2 removes the 200 transaction component for sales tax nexus.

Another provision seeks to clarify eligibility for the homestead credit by adding the IRC definition of "earned income", and creating a definition of "primary income from farming" in order to clarify which farming losses do not have to be added to household income. This will assist certain farmers, so they can successfully claim a homestead credit.

The bill also includes minor policy changes such as the refund interest rate. In 2015, the legislature changed the interest rate paid by DOR on refunds from 9% to 3%. It appears most parts of the law were included except for Chapter 76 – Taxation of Public Utilities and Insurers, which was left at

9%. This would align the refund interest rate for utilities, air carriers and railroads with the refund rate DOR pays to other taxpayers.

Following Rep. Wittke's testimony, you will hear from DOR Secretary Peter Barca, who will discuss the provisions in greater detail.

Thank you again for hearing AB 2, and your timely action on this proposal.

**Assembly Committee on Ways and Means
Testimony provided by Clark Brenner
RE: Support for Assembly Bill 2
January 21, 2021**

Dear Chairman Macco and members of the committee:

Thank you for your time and attention today. I am Clark Brenner and in my role at UW Health, I work directly with contractors we hire to complete building projects of various size and scope in existing facilities and in new facilities. I am appearing before you today because Assembly Bill 2 (AB2) includes a provision for UW Hospitals and Clinics Authority (d/b/a UW Health) that applies the sales and use tax exemption directly to building materials used in our facilities. We view this amendment to state statute as tremendously helpful and cost effective. It would significantly reduce the administrative burden we currently face and would allow us to direct precious resources to patient care instead of paperwork for construction projects.

Allow me to explain. Under current law, UW Health is able to purchase materials used in construction without tax but as you can imagine, our health system is not in the construction business and purchasing every aspect of a building project falls outside our scope of expertise. Therefore, we have worked with our contractors to develop an alternative purchasing process that allows us to avoid paying taxes unnecessarily but presents an administrative challenge each time we use it. It also adds about ½ percent in construction costs and it limits the number of contractors we can hire because of the challenges of maintaining the tax accounting process.

I have provided a visual explanation of current and future state in the two flow charts included with my written testimony. You will see the flow chart on the left is complicated and labor intensive, illustrating the need for a separate purchase order for every purchase made. In contrast, the flow chart on the right illustrates the process under AB2 where we would simply provide our tax ID information to our contractor who would be able to purchase building materials on behalf of UW Health directly and without tax. This would remove the administrative burden placed on our contractor and our staff and reduce costs passed along to our health system. It would also allow UW Health to consider additional contractors who might not be equipped to establish and maintain the necessary administrative “work around” that is currently required. Finally, AB2 would level the playing field for UW Health by treating our not-for-profit health system the same as other not-for-profit entities in Wisconsin.

We are grateful to Rep. Wittke, Rep. Macco, Rep. Katsma and Rep. Zimmerman, who are leading this effort to extend the benefits of similar bipartisan legislation passed in 2015 and 2017 to UW Health. Furthermore, stand-alone legislation passed the Assembly with overwhelming support last session and received unanimous support in the Senate Committee on Agriculture, Revenue and Financial Institutions before session ended abruptly. At that time, we thanked the staff at the Department of Revenue who recognized the proposal would have no fiscal effect on Wisconsin and once again, we’d like to thank the department for acknowledging that fact holds true for this provision of AB2.

We hope you see fit to support AB2. Thank you again for your interest in my comments and I’d be happy to take questions at this time.



Testimony of the Wisconsin Bankers Association
Mike Semmann, Executive Vice President/Chief Operations Officer, WBA
John Cronin, Assistant Director - Government Relations, WBA

Assembly Committee on Ways and Means
AB 2
January 21, 2021

Chairman Macco and members of the Assembly Committee on Ways and Means,

Thank you for holding a hearing today on 2021 Assembly Bill 2 and taking the testimony of the Wisconsin Bankers Association (WBA) under consideration.

Founded in 1892, WBA is the state's largest financial industry trade association, representing 212 commercial banks and savings institutions, their branches, and over 21,000 employees. The Association represents banks of all sizes in Wisconsin, noting that 97 percent of banks in the state are WBA members.

In April 2020, the Wisconsin Legislature made an important decision to adopt provisions of the CARES Act that did not tax PPP loans as ordinary business income. The change had a beneficial impact on Wisconsin businesses by providing confidence and certainty, but more importantly, it allowed employees to continue to receive income that would have been lost due to the impacts of the shutdown.

Today, WBA is pleased Rep. Wittke and Sen. Marklein have brought this legislation forward to update the Department of Revenue's (DOR) administration of Wisconsin's tax code. AB 2 also adopts more Paycheck Protection Program (PPP) provisions of the federal CARES Act that were not included in 2019 Act 185.

In addition to helping individuals and communities, sustained business success is beneficial to the Wisconsin economy, state government, and ultimately to WBA's members. The various tax updates coupled with the PPP components will help Wisconsin businesses and therefore WBA supports the passage of AB 2.

The COVID-19 pandemic has created particularly challenging situations and has necessitated an all-hands-on-deck response from both the public and private sectors. A bright spot in the federal government's action was the creation of PPP in the CARES Act to help businesses ride out the economic upheaval caused by the pandemic. Banks in Wisconsin played a critical role in the execution of this program on the economic front lines helping customers obtain PPP loans. Wisconsin banks helped facilitate nearly 90,000 loans to businesses worth over \$9.9 billion.

Wisconsin banks have seen firsthand the challenges the COVID-19 pandemic has posed for main street. While the economic outlook is positive, a full recovery will take months or even into next year, and businesses still need additional tools to remain open and keep people employed. AB 2 helps accomplish this by incorporating Sections 2301 and 2302 of the CARES Act. Section 2301 allows employers taking PPP loans to take a payroll tax credit on qualifying wages paid to certain employees during a period of decreased business activity due to shutdowns or significantly reduced revenues. Section 2302 allows employers to defer payment of their Social Security and payroll taxes from March 27, 2020 to December 31, 2020. PPP recipients whose loans were forgiven were originally barred from deferring payroll taxes,

(over)

but this prohibition was reversed upon passage of the PPP Flexibility Act in June. WBA supports these provisions because of the positive implications they have for Wisconsin businesses.

Amendment to Assembly Bill 2

Wisconsin businesses and taxpayers do face a time-sensitive item that the DOR addressed in a January 15, 2021 opinion. As such, WBA requests the Committee adopt an amendment to AB 2 that further reconciles PPP loan taxability at the state level with the tax treatment at the federal level.

Under the CARES Act, if businesses met certain criteria and used PPP loans for appropriate payroll and non-payroll expenses, those loans would be forgiven. Moreover, the Act provides for the portion of the loan that qualified for forgiveness to be excluded from gross income for tax purposes.

Last year, the IRS issued guidance stating business expenses accrued using PPP funding were not deductible on 2020 taxes. Congress overturned this interpretation through passage of the most recent COVID-relief bill, the Consolidated Appropriations Act (CAA). However, the DOR stated that Wisconsin must follow the IRS' overturned and outdated guidance or changes state statutes, thereby leaving Wisconsin businesses with state tax liability they likely were not expecting. These businesses have had to withstand the worst of the economic fallout associated with COVID-19 and should not be punished at the state level for their perseverance.

The banking industry recommends the best option for small businesses is to amend AB 2 to conform with sections 276(a) and 278(a) of Division N of Public Law 116-260 to allow the deductibility of ordinary business expenses.

In the absence of allowing full deductibility, WBA suggests a combination of changes that would help small businesses so they would not face unexpected liabilities to the state causing further harm to their employees.

WBA asks the committee to consider an amendment to AB 2 that takes into consideration that most Wisconsin businesses took out PPP loans of \$150,000 or less and the federal government has created new accommodations for the forgiveness of these loans. Further, the amendment could allow deduction of ordinary businesses expenses such that the state would not issue a tax refund or that net operating losses would not increase as a result.

Action by the committee now could prevent thousands of small businesses from having to file extensions or amend tax filings in the future.

WBA asks for this change on behalf of bank customers throughout Wisconsin as this amendment will not directly benefit the banking industry, and respectfully requests the Legislature amend AB 2 to align PPP loan deduction state income tax treatment with that at the federal level.

Thank you for your consideration.



WISCONSIN MANUFACTURERS & COMMERCE

To: Assembly Committee on Ways and Means

From: Corydon Fish, Director of Tax

Date: January 21, 2021

Re: **Testimony Requesting Amendment to 2021 Assembly Bill 2 to Protect Businesses from Surprise Taxation on PPP Loans**

Thank you Chair Macco and members of the Assembly Committee on Ways and Means for taking the time to hear Wisconsin Manufacturers and Commerce's (WMC) testimony. WMC applauds the authors of this legislation for working collaboratively with the Wisconsin Department of Revenue (DOR) to find areas of agreement to update Wisconsin's tax administration. However, there is a new—time sensitive—tax administration issue DOR brought to light last Friday, January 15th; the taxability of certain Paycheck Protection Program (PPP) loans. WMC encourages the committee to amend AB 2 to address this deeply concerning issue.

WMC is the state chamber of commerce, manufacturers association, and the largest general business association in Wisconsin. We were founded over 100 years ago, and are proud to represent approximately 4,000 member companies of all sizes, and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business. One way the legislature can help Wisconsin become more competitive is to overturn DOR's interpretation of law regarding the taxability of certain PPP monies as laid out in "Guidance Document Number 100241" entitled "Important Information About Effects of New Federal Law on 2020 Wisconsin Tax Returns."

At the beginning of the COVID-19 pandemic, Congress worked in a bi-partisan and cooperative manner to pass the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which prevented the business community from suffering the very worst of the economic damage that could have been caused by the pandemic. One of the most effective portions of the CARES Act was the PPP, which included a promise to small business owners that if they used the loans for appropriate payroll and non-payroll expenses, the loans would be forgiven. The CARES Act stated that the portion of the PPP loan that qualified for loan forgiveness "shall be excluded from gross income" for tax purposes.

Despite this language, the Internal Revenue Service (IRS) issued Revenue Ruling 2020-27, stating that expenses funded through a PPP loan are not deductible for 2020 if "the taxpayer reasonably expects to receive forgiveness of the covered loan on the basis of the expenses it paid or accrued during the covered period, even if the taxpayer has not submitted an application for forgiveness of the covered loan by the end of such taxable year." The effect of this ruling transformed tax-free loan forgiveness into taxable income. Congress subsequently amended the

law in its latest round of stimulus to overturn the IRS's erroneous interpretation of both the text enacted by and intent of Congress.

DOR is following the IRS's erroneous (and now defunct) interpretation in their new guidance. DOR's interpretation has real world effects for thousands of Wisconsin small businesses teetering on the brink of bankruptcy, because of government actions that forced them to close down or alter their business practices during the pandemic, who could see a surprise and potentially insurmountable tax increase on forgivable loan payments that were meant to *help* them weather this storm. The legislature should act in a bipartisan manner to amend the Wisconsin statutes to conform with sections 276(a) and 278(a) of Division N of Public Law 116-260 to make proceeds of PPP loans deductible for state income tax purposes.

Further, in order to more easily facilitate taxpayers seeking resolution of DOR policy choices such as this, this committee should amend AB 2 to clarify that taxpayers can challenge DOR rules and regulations (both promulgated and unpromulgated) under Wis. Stat. § 227.40 without first going through the Tax Appeals Commission. Some courts have dismissed challenges to DOR regulations arguing that an appeal must go through the Tax Appeals Commission prior to coming to circuit court despite the fact that the text of Wis. Stat. § 227.40 does not contain any such requirement. WMC believes this interpretation is erroneous, but certain courts have effectively stymied taxpayer challenges through this interpretation. Clarifying that no such prerequisite exists would help taxpayers to resolve disagreements over DOR's interpretations of the tax code, such as this one, without rushing to the legislature to seek emergency resolution.

WMC respectfully urges the Assembly Committee on Ways and Means to protect struggling main street businesses from surprise taxation on PPP loans. Thank you again Chair Macco and committee members for the opportunity to submit this testimony today.



**WISCONSIN TOWNS
ASSOCIATION**

Empowering Town Officials

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MEMO TO: Assembly Committee on Ways and Means
FROM: Mike Koles, WTA Executive Director
DATE: 1/23/20
RE: AB 754 DOR Technical Changes

The Wisconsin Towns Association is supportive of the technical changes in AB 754 that impact laws implemented by the Department of Revenue, many of which affect town government both directly and indirectly. We laud the collaborative approach used by Department leaders to bring together and listen to the diverse interests impacted by this legislation. Said approach led to changes we requested to be made, thus making the bill stronger and better for our 1248 towns.

This legislation is common sense public policy and we respectfully request that you support moving forward with this effort.

Thanks in advance for your consideration.



ASSESSOR'S OFFICE

Steve Miner
Assessment Commissioner

Peter Bronek
Chief Assessor

**City of Milwaukee Testimony on AB 2/SB 2
January 21, 2021
Assembly Committee on Ways and Means**

The City of Milwaukee is opposed to Section 8 of AB 2/SB 2 because it broadens the law to allow a church (or religious organization) to remain exempt when it leases its property to a tax exempt educational institution regardless of how the church uses the leasehold income. Current law only allows that income to be used specifically for the maintenance of the building or for debt retirement.

The legislative archive suggests this was likely done to ensure that tax exempt organizations would not become real estate investors--owning exempt property and then using rental income to acquire more property and thus, competing in the private marketplace with for-profit business or individuals who are required to pay taxes.

We are generally opposed to any expansion of property tax exemptions because it further erodes the tax base. As stated in the Wisconsin Property Assessment manual, "the more exceptions allowed, the more inequitable becomes the apportionment of the tax burden. The continuous removal of real property from taxation thus imposes a particular hardship upon local government and the citizen taxpayer." Obviously, when one entity does not pay taxes, the tax burden is shifted to all other property taxpayers and any expansion places an additional burden on homeowners who are already bearing more than their fair share.

The City recently undertook a review of all tax exempt properties to ensure that current operations complied with the law. Through that process it was discovered that many properties were generating income and deemed taxable. Under the bill, the City of Milwaukee would lose an additional \$6,743,400 in its tax base which would result in \$175,105 lost property tax revenue, year after year. Also, the annual \$175,105 would represent a minimum amount lost as the City is aware that additional churches have leased or intend to lease their vacant buildings to schools.

There is a larger issue at play here that must be addressed. As reported by DOR in 2019, the total estimated value of exempt property in Wisconsin was approximately \$31,129,349,000 in 2018. Of this amount, the "religious" category was \$10,795,668,000 or approximately 34.68% of all exempt value. The report goes on to say that if exempt **private** property had been placed on the tax roll in 2017-2018, the statewide average net property tax rate would have declined by 8.77%. For cities, the average reduction in tax rate would have been approximately 12.47%.

There is a disproportionate amount of property tax exemptions in Milwaukee relative to the rest of the State—it is estimated that as much as 1/3 of City land is tax exempt. Tax rates would not be as high if fewer property tax exemptions were allowed. According to the Institute for Wisconsin's Future, "there is no one silver bullet that repairs the entire system, but one aspect of the tax system that contributes to these problems is the substantial number of properties that are taxed below their value or not taxed at all." "...it is crucial that Wisconsin reform the way that exemptions are adopted. The list of tax exemptions grows every year."

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Member International Association of Assessing Officers and the National Tax Association



In the last five years, the Assessor's Office has had to grant new property tax exemptions to approximately 275 parcels. For 2019 alone, the additional value lost due to these newly granted exemptions amounted to \$60,567,377. This equates to approximately \$1,578,870 **in additional** lost property tax revenue for the 2019 tax year. Of course, for each year those properties remain exempt, the loss in revenue continues.

The solution here is really quite simple. It is not to expand the property tax exemption. Rather, the solution is for the religious institution to follow current law and modify their leases to only charge the school for the cost of maintaining the building or for debt retirement or to file a claim of unlawful taxation against the City. Many other schools operated by religious organizations were assessed and taxed for not being compliant with current law and those religious organizations drafted revised leases, applying leasehold income to maintenance of their leased spaces. Those property owners have had the status of their properties returned to exempt after taking the necessary steps to qualify.

The City of Milwaukee respectfully requests that you oppose Section 8 of AB 2/SB 2 because there are already too many property tax exemptions and further expansion is an erosion of the tax base and leads to a shift in the property tax burden to other taxpayers in the City of Milwaukee many of whom already have difficulty paying their bills. We ask that you remove this section of the bill.

Thank you for your consideration.

For questions or additional information, please contact:
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Testimony

January 21, 2021

TO: Assembly Committee on Ways and Means
Representative John Macco, Chair

FR: Kristine Hillmer, President and CEO

RE: Testimony on Assembly Bill 2

Thank you Mr. Chairman and members of the Assembly Committee on Ways and Means for hearing our testimony today.

The Wisconsin Restaurant Association represents over 7,000 restaurant locations statewide. Our organization represents all segments of the restaurant and hospitality industry; our membership includes food establishments of all types and sizes, such as seasonal drive-ins, supper clubs, diners, locally owned franchisees, fine-dining and hotels/resorts. Over 75 percent of our membership are independent restaurants. Regardless of ownership type, all restaurants are the cornerstones of their neighborhoods and communities. Restaurants not only provide great food, drink and hospitality, they support schools, teams, charities and churches with fundraising and donations. They provide meeting places to celebrate, mourn and organize, or just provide a safe, tasty meal for a busy family.

I am sure you all know the toll the COVID-19 pandemic has taken on the entire hospitality and tourism industry. The vast majority of restaurants have seen steep declines in their sales, steep increases in price for supplies and services and in some places, severe restrictions on their ability to be open and safely serve customers. It seems like every time we turn on the news or read publications, public health officials across the country are scapegoating restaurants and other public facing businesses as places to avoid, or even worse, close in order to protect the public.

When the CARES Act was passed, many businesses hoped the Paycheck Protection Program would be the lifeline to help them survive the pandemic. While it was not a good fit for all restaurants, it was and continues to be an option that helps keep employees on the payroll and a few bills paid. For some it is the only thing that has kept them open. As we unpacked all of the elements of the PPP, it was quickly determined that at the both state and federal level, that unless corrective legislation was taken, businesses who utilized the PPP would not be able to then deduct PPP paid expenses on state and federal income taxes. On the federal level, the legislative intent was that utilizing the PPP would not then be a tax burden on businesses. At the federal level, this issue was fixed with the relief package that passed in December. Here in Wisconsin, based on language that was in Act 185, we thought this problem was already solved back in April when the Act went into effect. We were alarmed when we saw the Department of Revenue guidance document that was issued just this past Friday stating this is not the case.

Last April, as the Assembly and Senate developed what ultimately became Act 185, many business groups, including the WRA, brought our concerns about this unintended tax liability to the legislature. You all agreed that the use of PPP funds should not then create a tax burden on those businesses who utilized it,

especially as they were already withstanding substantial losses in revenue. While we are not sure why and how the Department has determined that Act 185 did not go far enough to address this issue, the fact is that we must correct it. It is imperative that we make sure that this is fixed. Otherwise, many small businesses will not be able to pay their state income taxes and we will see many business closures.

We have heard concerns from legislators that this will create a more than \$450 million hole in the revenue budget. We strongly argue these taxes would have never been collected in the first place and it is not necessary to fill a hole that would never have existed if the PPP program had not been enacted. Pre-pandemic, the expenses we are talking about would have been expensed and therefore no tax would be collected on the income it was expensed against and the state would have never counted on this tax revenue. This is not a hole in the budget – this is “found” money that will unfairly increase taxes on small businesses that are barely hanging on. This unexpected and unfair tax may very well put many already at risk businesses on the brink, over the tipping point towards bankruptcy. The PPP was developed as a lifeline to keep employees off unemployment insurance and for basic bills to be paid to prevent defaults on mortgages and leases. It was never meant to create a tax burden that will shutter businesses.

We strongly urge that this committee entertain an amendment that implements the legislative intent of Act 185. The US Congress was able to do this in December. Since this is not a loss in revenue for the State of Wisconsin – we ask that you do the same.

Thank you for the opportunity to speak and I will entertain any questions you may have.

Testimony on AB 2/SB 2
January 21, 2021
Assembly Committee on Ways and Means

The Archdiocese of Milwaukee supports Section 8 of AB 2/SB 2 because it creates Section 70.11(4)(b)3, which applies to the tax-exempt property of a church or religious organization that is leased to a non-profit educational association and used for educational purposes. In summary, Section 8 gives effect to the long-standing law and legislative intent that school buildings owned and used by non-profit entities will remain exempt from property taxation.

Important Preliminary Points:

- First, Section 8 was drafted in consultation with the Department of Revenue to construct the amendment in a way that is narrow and tailored to fix a very specific and narrow problem.
- Second, Section 8 is the exact same language that was included in SB 720 at the end of last session.
- Third, Section 8 fixes a problem that has just recently unfolded. Section 8 ensures that tax-exempt school property will remain tax-exempt in the future; it does not create a property tax exemption or cause a large class of otherwise taxable property to be removed from the tax rolls. If this isn't fixed now, many schools will be assessed taxes where they have not been assessed taxes historically.

Background:

It has long been the case that property owned and used by churches or religious organizations and used for educational purposes has been exempt from property taxation under Section 70.11(4). Under general property tax exemption law, when a non-profit entity leases its property to another non-profit entity, that property will remain exempt only if the lessor uses the rental income for maintenance of the leased property, construction debt retirement of the leased property, or both. Unfortunately, "maintenance" expenses has been very narrowly defined. For example, if a church were to use the rental proceeds to pay for all of the school properties' utilities, the school's exempt status would be jeopardized.

Historically, churches have owned and operated the schools, and there were no leases in place. That is not true any longer. Why? This change in operation occurred because, in order to minimize escalating school costs and to improve the quality and consistency of education afforded all students, churches and religious organizations are now leasing the school properties to non-profit educational associations who, in turn, use the properties to operate schools previously operated by the church or religious organization. The results of this model are showing it to be very effective.

However, here is where the problem arises -- the church and religious association lessors oftentimes must use the rental income for expenses beyond "qualified" maintenance expenses, such as for critical school related expenses or other church related programs. Under those circumstances, because of the leasehold income restriction under Wis. Stat. Section 70.11, school facilities that have historically been exempt from taxation will become taxable unless this Bill is enacted. And, unless this Bill is enacted, the taxation of these facilities will not only result in

increased costs to students and their families, but will also frustrate long-standing legislative intent that non-profit schools should be exempt from property taxation when they are used for educational purposes.

Section 8 is the Solution:

There is a very simple and narrow solution to keep the status quo on these non-profit educational institutions. That is to amend section 70.11(4)(b) by adding new subsection 3:

1. Property has to be owned by a non-profit church or religious organization;
2. Property has to be leased to a non-profit educational organization; and
3. If those two conditions are met, the church or religious organization can use the rental income for maintenance of its property or for any other mission-related activity.

This solution does not meaningfully impact the state's tax base as non-profit schools have traditionally been treated as exempt and appears to have only recently been subject to tax by one municipality in the State.

The Archdiocese of Milwaukee respectfully requests that you support Section 8 of AB 2/SB 2 because it gives effect to the long-standing law and legislative intent that school buildings owned and used by non-profit entities will remain exempt from property taxation.

Thank you for your consideration.

TO: Members, Assembly Committee on Ways and Means
FROM: Tim Lundquist, Wisconsin Association of Health Plans
RE: Assembly Bill 2
DATE: January 21, 2021

The Wisconsin Association of Health Plans requests Wisconsin lawmakers repeal, as a part of any Internal Revenue Code Updates, the 2017 Wisconsin Act 231 state application of the federal 2017 unrelated business income tax (UBIT) on tax exempt organizations that provide employee parking and transportation benefits.

In December 2019 Congress passed and President Donald Trump signed, a full federal repeal of the UBIT retroactive to December 2017.

It our understanding that although the federal law that Wisconsin adopted was repealed retroactive to 2017, the Wisconsin Legislature must act to remove the state UBIT from Wisconsin Statutes. Like the federal action, we encourage the state UBIT repeal be retroactive to 2017.

As a reminder, the state tax impacts all tax-exempt organizations and charities that provide parking or a transportation benefit to their employees. The benefit could include: paid mass transit passes; paid parking spaces; or free parking in a lot or ramp owned by the entity, such as a church, school or hospital, if more than 50 percent of the spaces are used by employees.

If you have any questions, please do not hesitate to contact me at 608-255-0921.