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Income Tax Withholding for Nonresident Members of Pass-Through Entities (General Fund Taxes -- Individual and Corporate Income Taxes)

Bill Agency

[LFB 2007-09 Budget Summary: Page 156, #6]

CURRENT LAW

As provided under 2005 Act 25, pass-through entities [including partnerships, limited liability companies (LLCs), tax-option corporations (S Corporations), and estates or trusts treated as pass-through entities for federal income tax purposes] are generally required to withhold income or franchise tax on behalf of their nonresident shareholders, partners, members, or beneficiaries (referred to below as "nonresidents"). However, withholding is not required if the nonresident is exempt from income taxation or is a joint venture not treated as a partnership under federal law. Current law also provides an exemption from the withholding requirement for a nonresident who has no other source of Wisconsin income and whose share of income from the pass-through entity is less than $1,000.

GOVERNOR

Modify the pass-through entity withholding requirements to make certain clarifications and technical corrections and to provide an additional exemption from the requirements.

As noted, current law provides an exemption from the withholding requirement for a nonresident who has no other source of Wisconsin income and whose share of income from the pass-through entity is less than $1,000. The bill would eliminate the requirement under this exemption that the nonresident have no other source of Wisconsin income, as the pass-through entity would not necessarily know whether the nonresident had another source of Wisconsin income. The bill would also provide a new exemption for a nonresident who presents an affidavit, in the form and manner prescribed by the Department of Revenue (DOR), whereby the nonresident agrees to be subject to the personal jurisdiction of the Department, the Tax Appeals

Commission, and the courts of Wisconsin for the purpose of determining and collecting Wisconsin income and franchise taxes, estimated payments, and any related interest and penalties.

The bill would also make a number of technical corrections to the pass-through withholding requirements and would clarify certain current provisions related to interest and penalties.

The administration estimates that these provisions, which would apply retroactively to taxable years beginning on or after January 1, 2006, would have a minimal fiscal effect.

MODIFICATION

Insert language to clarify the dollar amount to which late payment interest would apply in the following situations: (a) a pass-through entity files a late pass-through withholding return; and (b) a pass-through entity fails to file a pass-through withholding return, but the nonresident owner files a return and pays the tax due.

> **Explanation:** The statutory changes proposed by the Governor are intended, in part, to clarify certain current provisions on interest and penalties related to withholding from nonresident members of pass-through entities. However, as drafted, the provisions would not provide the full clarification intended. The modification would insert the provisions needed to do so.

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