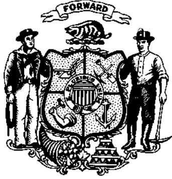

Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 27, 2009 Joint Committee on Finance Paper #362

Internal Revenue Code Update (General Fund Taxes -- Income and Franchise Taxes)

[LFB 2009-11 Budget Summary: Page 260, #12]

CURRENT LAW

State individual income tax and corporate and franchise tax provisions are generally referenced to definitions under federal law. Changes to federal law take effect for state purposes only after action by the Legislature. Generally, the Legislature reviews the previous year's federal law changes each year to update state references to the Internal Revenue Code (IRC). Under current law, state tax references generally refer to the IRC in effect as of December 31, 2006.

GOVERNOR

Update statutory references to the federal Internal Revenue Code under the state individual income and corporate income and franchise taxes to include changes to the IRC enacted in 2007 and through December, 2008, with certain exceptions. Because state tax references generally refer to the IRC in effect at the end of 2006, federal provisions enacted under the Tax Increase Prevention Act of 2005, the Pension Protection Act of 2006, and the Tax Relief and Health Care Act of 2006 are not currently referenced in state statutes, but are recommended for incorporation in this proposal. Not all federal provisions adopted in 2007 and 2008 are included in the proposal. These include, with some exceptions, provisions related to accelerated depreciation, depletion, and expensing, as well as provisions that are unique to the federal tax code. With the proposed changes, state tax references would generally refer to the IRC in effect as of December 31, 2008.

The proposed changes would take effect at the same time for state tax purposes as for federal tax purposes, and the administration estimates that the provisions would reduce state income and franchise tax revenues by $40,560,000 in 2009-10 and $5,490,000 in 2010-11.

It should be noted that the IRC update would also affect taxes for tax years beginning before January 1, 2009, in some instances. DOR indicates that the fiscal effect of many of these provisions is expected to be minimal, but has included the impact of those items with measurable effects in the estimates for the 2009-11 biennium, reflecting the filing of amended returns. Other provisions would be phased in or delayed to future tax years, thereby postponing their effect outside the 2009-11 biennium. DOR indicates that the proposal would reduce revenues by an estimated $2,430,000 in 2011-12 and $8,700,000 in 2012-13.

DISCUSSION POINTS

1. State references to federal law generally provide greater simplicity for taxpayers in preparing returns and reduce the administrative burden and cost for both taxpayers and DOR in assuring compliance with tax laws. The IRC references are used to determine which items of income are subject to taxation prior to specific state modifications. The state uses separate tax rates and brackets and separate provisions regarding standard deductions, itemized deductions, and tax credits.

2. The proposed IRC update in AB 75 addresses federal laws enacted in 2007 and in 2008. The Department of Revenue has prepared a document reviewing these federal laws and provisions that the state could consider as part of an IRC update. The Department's review, which is included as Attachment 1 to this paper, includes DOR's recommendations about which federal provisions the state should adopt and which ones the state should not conform to. The estimated fiscal effect under the bill is based on the Department's recommendations except that, as noted, the estimates in the bill do not include projected costs associated with prior tax years.

3. While the bill's provisions would generally update state tax references to the IRC to federal law changes through December, 2008, certain federal provisions would not be adopted for state tax purposes. The federal provisions specifically excluded from the IRC update under the bill are described on pages 25 through 34 of Attachment 1.

4. Most of the fiscal effect resulting from the proposed update is due to provisions included in the federal Worker, Retiree, and Employer Recovery Act and the Emergency Economic Stabilization Act. For calendar year 2009, the former act would waive the minimum distribution amount from tax-deferred retirement savings accounts. Otherwise, a 50% federal penalty is imposed on individuals failing to take a minimum distribution. The administration proposes to suspend the state's penalty, which equals 33% of the federal penalty, for the same calendar year period. If the Legislature does not adopt this provision, then Wisconsin taxpayers who take advantage of the federal waiver and do not take the minimum distribution from their tax-deferred savings accounts would incur a state penalty, but no federal penalty. The state penalty would be imposed at a rate of

16.5% (33% of 50%) of the minimum distribution, otherwise required for federal tax purposes. This provision accounts for more than one-half of the total fiscal effect (-$18.1 million in 2009-10 and -$6.1 million in 2010-11). By adopting this provision but not the other provisions recommended in the bill, state revenues would be $21.9 million higher ($22.5 million in 2009-10 and -$0.6 million in 2010-11) than the amounts estimated for AB 75. (Alternative 2)

5. Updating state tax statutes to reference changes made by the Emergency Economic Stabilization Act of 2008 (EESA) would decrease revenues by an estimated $11.6 million in 2009-11 (-$14.1 million in 2009-10 and +$2.5 million in 2010-11). The largest revenue reduction associated with the Act relates to the temporary suspension of limitations on qualified charitable contributions. Federal law limits charitable contributions to no more than 50% of a taxpayer's adjusted gross income. EESA suspends this limitation for certain contributions made to Midwestern disaster relief efforts. Federalizing this provision for purposes of the state itemized deduction credit would reduce state revenues by $4.2 million over the biennium (-$4.7 million in 2009-10 and +$0.5 million in 2010-11). A second EESA provision in federal law allows tax-free distributions from IRAs for charitable purposes by two years through December 31, 2009. Federalizing this provision would reduce state revenues by $3.0 million (-$2.6 million in 2009-10 and -$0.4 million in 2010-11). A reduction of $3.2 million is related to the earned income tax credit (EITC).

6. The fiscal effects of two items in the IRC update, as recommended by the Governor, are recorded incorrectly. The items relate to the earned income tax credit. Because the credit is reflected in the chapter 20 schedule as an appropriation, the fiscal effects of these items should be reflected as expenditures, rather than as revenues. These items relate to including combat pay as earned income for purposes of calculating the tax credit and allowing individuals whose principal residence was in the Midwestern disaster area to calculate their credits for the year that includes the disaster date using their earned income of the preceding year. These items are addressed in greater detail under the issue paper for the EITC. As a result, the revenue reduction associated with the IRC update should be reduced by $3.5 million (-$3.4 million in 2009-10 and -$0.1 million in 2010-11).

7. The administration has requested a technical amendment to the bill to address three problems. These problems relate to omitted references in AB 75 section 1533, incorrect references included in AB 75 section 1534, and several provisions that should not be listed as exceptions to P.L. 110-343 in AB 75 sections 1532, 1533, and 1534. The Department of Revenue has indicated that the necessary changes to the bill are technical and would result in no change or a minimal change to the fiscal effect of the IRC update. The Department's memorandum describing these changes is included as Attachment 2 to this paper.

8. The Joint Committee on Finance introduced AB 75, at the request of the Governor, on February 17, 2009, which was the same day that President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law. Consequently, it was not possible for AB 75 to reference federal tax law provisions included in ARRA. Several of these provisions are noteworthy and would have a significant effect if included in the IRC update:

- temporarily allow computer equipment as a qualified higher education expense for

qualified tuition programs;

- increase the 2009 exemption levels under the alternative minimum tax;

- increase the monthly exclusion for employer-provided transit and vanpool benefits;

- increase the exclusion for gains of certain small business stock from 50% to 75%;

- allow taxpayers to defer income from the cancellation of certain indebtedness;

- exclude up to $2,400 of unemployment compensation benefits received in 2009 from gross income;

- exclude corporations that have had certain ownership changes from loss limitation provisions; and

- shorten the holding period of assets subject to built-in gains from ten years to seven years in tax years 2009 and 2010.

9. Including the preceding ARRA provisions in the update would reduce state revenues by an estimated $97.3 million in the 2009-11 biennium. Almost 70% of the fiscal effect is associated with one provision. The provision that would allow a taxpayer to defer income from the cancellation of indebtedness as a result of a repurchase of a debt instrument by the taxpayer would reduce 2009-11 state revenues by an estimated $66.9 million. Two provisions relate to a capital gain exclusion for small business stock and an exclusion for unemployment compensation. Because Wisconsin already offers preferential tax treatment for these sources of income, the Committee may want to exclude these provisions from the IRC update. Omitting these two provisions would result in a state revenue reduction estimated at $70.8 million. None of the ARRA provisions have been recommended for inclusion in AB 75 by the administration. A memorandum from the Department of Revenue describing the ARRA provisions and their fiscal effect is included as Attachment 3 to this paper.

ALTERNATIVES

1. Approve the Governor's recommendation and the requested technical amendment, but reduce the estimated revenue reduction by $3,490,000 ($3,400,000 in 2009-10 and $90,000 in 2010-11) to reflect IRC changes related to the earned income tax credit, which is treated as an appropriation (expenditure) in the chapter 20 schedule. [The effect of the IRC changes on EITC expenditures will be reflected in a separate paper.]

ALT 1	Change to Bill Revenue
GPR	$3,490,000

2. Modify the Governor's recommendation by retaining references in the bill and incorporating references in the requested technical amendment to P.L. 110-458 (the Worker, Retiree, and Employer Recovery Act of 2008) but deleting all other provisions. Increase estimated revenues by $21,870,000 for the biennium (+$22,480,000 in 2009-10 and -$610,000 in 2010-11). This alternative would adopt the waiver of the state penalty on individuals who do not make required minimum distributions from certain retirement accounts, but would not adopt other federal law changes.

ALT 2	**Change to Bill** Revenue
GPR	$21,870,000

3. Approve the Governor's recommendation and the requested technical amendment, but reduce the estimated revenue reduction by $3,490,000 ($3,400,000 in 2009-10 and $90,000 in 2010-11) to reflect IRC changes related to the earned income tax credit. In addition, update statutory references to the federal Internal Revenue Code under the state individual income and corporate income and franchise taxes to include changes to the IRC enacted under the American Recovery and Reinvestment Act of 2009, except for the capital gain exclusion for small business stock and the unemployment exclusion. Decrease estimated revenues by $48,840,000 in 2009-10 and $18,510,000 in 2010-11.

ALT 3	**Change to Bill** Revenue
GPR	- $67,350,000

4. Delete provision.

ALT 4	**Change to Bill** Revenue
GPR	$46,050,000

Prepared by: Rick Olin
Attachments

ATTACHMENT 1

Wisconsin Department of Revenue
Division of Research and Policy
February 20, 2009

INTERNAL REVENUE CODE UPDATE
LAWS ENACTED SINCE DECEMBER, 2006

A. INTRODUCTION

Wisconsin's individual income and corporate income and franchise tax base closely conforms to the tax base for federal tax purposes. Conformity is achieved through references in Chapter 71 of the Wisconsin Statutes to the federal Internal Revenue Code (IRC). To maintain conformity, these references must be updated to adopt changes made since the most recent update for federal IRC changes since 2006. The last update, however, did not include provisions of Public Law 109-432, the Tax Relief and Health Care Act of 2006 (TRHCA) due to the late timing of its passage. This Act should be adopted for state purposes, with certain noted exceptions.

Congress enacted the following bills in 2007 that affect the IRC:

- Public Law 110-28 – U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (includes Small Business and Work Opportunity Act of 2007 – SBWOA)
- Public Law 110-140 – Energy Independence and Security Act of 2007 (EISA)
- Public Law 110-141 – Victims of events at Virginia Polytechnic Institute and State University (VPISU)
- Public Law 110-142 – Mortgage Forgiveness Debt Relief Act of 2007 (MFDRA)
- Public Law 110-166 – Tax Increase Prevention Act of 2007 (TIPA)
- Public Law 110-172 – Tax Technical Corrections Act of 2007 (TTCA)

Congress enacted the following bills in 2008:

- Public Law 110-185 – Economic Stimulus Act of 2008 (ESA)
- Public Law 110-234 – Food, Conservation and Energy Act of 2008 (FCEA)
- Public Law 110-245 – Heroes Earnings Assistance and Relief Act of 2008 (HEARTA)
- Public Law 110-289, the Housing Assistance Tax Act (HATA)
- Public Law 110-317 – Hubbard Act of 2008
- Public Law 110-343 – Emergency Economic Stabilization Act of 2008
- Public Law 110-351 – Fostering Connections to Success and Increasing Adoptions Act of 2008
- Public Law 110-458 – Worker, Retiree, and Employer Recovery Act of 2008

In addition, Wisconsin did not enact several provisions of the Tax Increase Prevention Act (TIPRA) of 2005 and the Pension Protection Act (PPA) of 2006. These provisions had a delayed enactment date but should be considered for adoption at this time.

Sections B and C describe the provisions that are recommended for adoption. In addition to these provisions, the technical corrections in TTCA are recommended for adoption to the extent the original provision was adopted. These provisions take effect as if included in the original legislation to which the amendments relate. These corrections serve to clarify the intention and administration of the original law changes.

Provisions that relate to federal credits, federal tax computations, federal bonds, federal administrative provisions, and federally-mandated studies do not apply for Wisconsin tax purposes. With a few noted exceptions, provisions related to accelerated depreciation, depletion and expensing are not recommended for adoption. Because ESA relates only to a federal surtax and to expensing, none of its provision are recommended for adoption. Provisions in HEARTA related to the Gulf Opportunity Zone that were not previously adopted are not recommended for adoption.

Other provisions that should not be adopted are described in Section D.

Adopting this law at the same time it applies for federal purposes, with the exceptions identified above, would reduce state revenues by an estimated $40.7 million in FY10, $5.5 million in FY11 and $2.3 million in FY12. The fiscal estimate assumes enactment to first affect tax year 2009 but includes the effect of amended returns for prior tax years. Table 1 shows the estimated fiscal impacts of provisions with non-minimal impact on Wisconsin tax revenues.

TABLE 1
FISCAL EFFECT OF ADOPTING FEDERAL TAX PROVISIONS ENACTED SINCE DECEMBER 2006
($ millions)

	Effective Date	FY10	FY11	FY12
Pension Protection Act (2006)				
Make higher IRA contributions permanent	8/17/2006	0	0.00	(4.36)
Tax Increase Prevention and Reconciliation Act (2005)				
Eliminate Income Limit on IRA conversions	12/31/2009	0	(0.93)	(2.21)
Tax Relief and Health Care Act (2006)				
Mortgage premium insurance	12/31/2006-12/21/2007	(0.60)	0.00	0.00
Small Business & Work Opportunity Act (2007)				
Passive investment income excludes capital gain from stocks	5/25/2007	(0.09)	(0.07)	(0.08)
Tax Increase Prevention Act (2007)				
Increase 2007 Alternative Minimum Tax Exemption	1/1/07 - 12/31/07	(0.64)	0.00	0.00
Mortgage Forgiveness of Debt Relief Act				
Cancellation of debt excluded from income	1/1/07-1/1/10	(3.99)	(0.34)	-
Mortgage premium insurance	12/31/07-1/1/11	(1.47)	(0.85)	(0.33)
Income Exclusion for volunteer EMT	1/1/08-1/1/11	(1.24)	(0.54)	-
		(6.70)	(1.74)	(0.33)
Food Conservation and Energy Act (2008)				
Enhanced Conservation Contributions	12/31/2007	(0.41)	(0.24)	-
Endangered Species Deduction	12/31/2008	(0.11)	(0.14)	(0.17)
		(0.52)	(0.39)	(0.17)
Heroes Earnings Assistance and Relief Act (2008)				
Combat Pay included for EITC	12/31/2007	(0.24)	(0.09)	-
Limit Farm Losses	12/31/2009	0.26	0.52	0.56
		0.02	0.43	0.56
Housing Assistance Act (2008)				
Limit capital gain exclusion on principal residence	12/31/2008	0.14	0.77	0.73
Emergency Economic Stabilization Act (2008)				
Extend Exclusion for Discharge of Mortgage Debt	1/1/10-12/31/12	(0.14)	(0.89)	(0.75)
Increase 2008 Alternative Minimum Tax Exemption	1/1/08-12/31/08	(1.20)		
Deduction for Teacher Expenses	1/1/08-12/31/09	(1.37)	(0.34)	
Tax-Free IRA Distributions for Charity	1/1/08-12/31/09	(2.66)	(0.38)	(0.15)
NonQualified Deferred Compensation from Tax Indifferent Parties	1/1/09	4.10	4.10	4.00
Midwestern Disaster Relief				
Partial expensing for certain demolition and clean-up costs	DD-12/31/10	minimal	minimal	minimal
Extension for expensing for environmental remediation costs	DD-12/31/10	minimal	minimal	minimal
Temporary income exclusion temporary lodging	DD-6 months after DD	(0.77)	minimal	minimal
Penalty-free withdrawals from retirement plans	DD-12/31/09	(1.39)	minimal	minimal
Recontributions of withdrawals for home purchases cancelled due to qualified storm damage	6 months before DD	minimal	minimal	mimal
Temporary suspension of limitations on qualified charitable contributions	DD-12/31/08	(4.70)	0.54	0.42
Special look-back rules for determining earned income	TY 2008	(3.16)	0.00	0.00
Increase in standard mileage rate for charitable use of a vehicle	DD-12/31/09	(0.32)	minimal	minimal
Exclude mileage reimbursements to charitable volunteers	DD-12/31/09	minimal	minimal	minimal
Exclusions of certain cancellations of indebtedness	DD-12/31/09	(0.20)	minimal	minimal
Extend replacement period for nonrecognition of gain for property	10/3/08	(2.28)	(0.49)	0.00
		(14.09)	2.54	3.52
Worker, Retiree, and Employer Rcovery Act (2008)				
Waiver of minimum distributions from IRAs	1/1/09-12/31/09	(18.08)	(6.10)	(0.09)
TOTAL		(40.56)	(5.49)	(2.43)

B. INDIVIDUAL INCOME TAX

1. Including Combat Pay as Earned Income for Purposes of Earned Income Credit.

Federal Law Change: A taxpayer may choose to treat combat zone compensation that is otherwise excluded from gross income under IRC Sec. 112 as earned income for purposes of the earned income credit. This was scheduled to expire on December 31, 2006 (Under the 2006 Gulf Opportunity Zone Act). TRHCA extends the treatment through December 31, 2007. HEARTA makes permanent the treatment of combat pay such that it can be included as earned income for purposes of claiming the earned income credit.

Effective Date: For taxable years after December 31, 2006

Fiscal Effect: -$240,000 in FY10, -$90,000 in FY11.

2. Archer Medical Savings Accounts

Federal Law Change: Current law allows tax deductible contributions to Archer Medical Savings Accounts through 2005. These accounts are available to employees covered under an employer-sponsored high deductible plan of a small employer and self employed individuals covered under a high deductible plan. After 2005, contributions to existing accounts can be made, but no new accounts can be created.

TRHCA allows the creation of new Archer Medical Savings Accounts through December 31, 2007.

Effective Date: January 1, 2007.

Fiscal Effect: Minimal.

3. Deductions Allowed for Whistleblowers.

Federal Law Change: TRHCA provides an above-the line deduction for attorney's fees and costs paid an individual in connection with any award for providing information regarding the violation of tax laws; the deduction may not exceed the amount includible in the taxpayer's gross income on account of such award.

Effective Date: Enactment.

Fiscal Effect: Minimal

4. Nonrecognition of Gain Provisions Relating to Sales of Property due to Conflicts of Interest Extended to Judicial Officers

Federal Law Change: Current law allows executive branch federal employees to defer recognition of gain on property sold due to conflict of interest requirements; employees who are required to sell property may postpone the recognition of gain by investing in an approved replacement property within 60 days. The basis of the replacement property is reduced by the unrecognized gain.

TRHCA extends these provisions to judicial officers, including justices serving on the U.S. Supreme Court, U.S. courts of appeals, and district courts.

Effective Date: Upon enactment.

Fiscal Effect: Minimal.

5. **Mortgage Insurance Premiums Treated as Deductible Interest**

Federal Law Change: Current law allows an itemized deduction for interest paid on a principal residence and second homes. Under TRHCA, premiums paid on mortgage insurance in connection with debt for a qualified residence are treated as interest on the home and are thus deductible. The deduction is phased out for taxpayers with AGI over $110,000.

Effective Date: For amounts paid or accrued after December 31, 2006 and before December 21, 2007.

Fiscal Effect: -$604,000 in FY10.

6. **Exclusion of Gain from Conservation Sale**

Federal Law Change: TRHCA allows a 25% exclusion from income of long-term capital gain from the conservation sale of a qualifying mineral or geothermal interest. The sale must be made to an eligible entity that acquired the property for conservation purposes.

Effective Date: Upon enactment.

Fiscal Effect: Minimal.

7. **Allow Married Partners to Elect not to be Treated as a Partnership**

Federal Law Change: SBWOA allows a married couple who are the sole partners in a joint venture and who each materially participate in the trade or business to elect to not be treated as a partnership. As a result, the partnership would not be required to file a partnership return or Schedule K-1. Instead, both husband and wife would report their respective share of the income from the business as sole proprietor's income (Schedule C of the 1040). Income subject to self employment tax for each spouse includes their respective share of income. The provision aims to ensure that when a married couple jointly owns and participates in a small business, each get credit for paying social security and Medicare taxes.

Effective Date: Taxable years beginning after December 31, 2006.

Fiscal effect: Minimal.

8. Subchapter S Provisions – Treatment of Bank Director Shares

Federal Law Change: S-corporations may have no more than 100 shareholders and may only have one outstanding class of stock, i.e., all shares confer identical rights to distribution and liquidation proceeds. However, national banking laws require that a director of a national bank own stock in the bank; some banks enter into agreement with the director under which the bank will reacquire the stock if the director ceases to hold the office at the price paid by the director.

Under SBWOA, the restricted bank director stock is not taken into account in the provisions of S-corporation outstanding stock requirements; the director is not treated as a shareholder by reason of the stock and the stock is disregarded in allocating income and loss among the shareholders.

Effective Date: Tax years beginning after December 31, 2006

Fiscal effect: Minimal.

9. Subchapter S Provisions – Treatment of Sale of Interest in Qualified Subchapter S Subsidiary

Federal Law Change: If an S-corporation owns all the stock of a corporation, it may elect to treat the subsidiary as a qualified subchapter S subsidiary (QSub); the QSub is disregarded as a separate entity for tax purposes and its income, deductions, credits and losses are treated as items of the S-corporation.

If an S-corporation sells more than 20% of the stock of its subsidiary to an unrelated party, the subsidiary is no longer a QSub. The subsidiary is considered a new corporation and acquires all its assets from the S-corporation in exchange for stock.

Under prior law, the transfer of all the assets to the subsidiary is treated as a taxable sale. Under SBWOA, the S-corporation would have to recognize the gain only from the sale of the stock to the unrelated party and not from the transfer of assets.

Effective Date: Tax years beginning after December 31, 2006.

Fiscal effect: Minimal.

10. Income Exclusion for Hokie Spirit Memorial Fund

Federal Law Change: In the wake of the shootings at Virginia Polytechnic Institute and State University, a victims' fund was established. VPISU provides that amounts received from the fund are not taxable.

Effective Date: Upon enactment (December 19, 2007)

Fiscal Effect: Minimal

11. Income Exclusion for Debt Discharge Related to Primary Residence

Federal Law Change: In a foreclosure proceeding or write-down of principal on a mortgage, the forgiven debt is considered taxable income. However, MFDRA excludes debt forgiven on a principal residence before the end of 2009 from taxable income. EESA extends this treatment for three years, through 2012. It does not extend the relief to home equity loans.

Effective date: The act first takes effect for any debt forgiveness associated with a home foreclosure as of January 1, 2007.

Fiscal Effect:

MFDRA: -$4 million in FY10, -$343,000 FY11
EESA: -$140,000 in FY 10, -$890,000 in FY 11.

12. Mortgage Insurance Premiums Treated as Deductible Interest

Federal Law Change: Current law allows an itemized deduction for interest paid on a principal residence and second homes. Under the Tax Relief and Health Care Act (TRHCA) of 2006, premiums paid on mortgage insurance in connection with debt for a qualified residence are treated as interest on the home and are thus deductible for tax year 2007. The deduction is phased out for taxpayers with AGI over $110,000. MFDRA extends the deduction through tax year 2010.

Effective Date: For amounts paid or accrued after December 21, 2007 and before January 1, 2011.

Fiscal Effect: -$1.5 million in FY10, -$850,000 in FY11 and -$330,000 in FY12

13. Cooperative Housing Pass-Through Treatment

Federal Law Change: Under prior federal law, a housing cooperative qualified for pass through treatment if at least 80% of its income was derived from residents. The pass through treatment allows owners of cooperative housing to be treated as other homeowners for purposes of tax deductions for property taxes and mortgage interest. The 80% limitation places a limit on the amount of commercial income a cooperative housing corporation can earn. However, given the rapid increase in commercial rents, many co-ops with street level commercial space were at risk of losing the pass through treatment. MFDRA creates two alternative tests for cooperatives to qualify as a cooperative housing corporation and hence for pass through treatment. These tests are 1) at least 80% of total square footage of the property is used or available for use by the tenant shareholders for residential purposes, or 2) at least 90% of expenditures made by the cooperative are for acquisition, management or maintenance of the property for the benefit of the tenant shareholders.

Effective Date: Tax years ending after December 20, 2007 (date of enactment)

Fiscal Effect: Minimal

14. Volunteer Firefighters and Emergency Medical Responders (EMT) – Income Exclusion

Federal Law Change: Under MFDRA, volunteer firefighters and EMT personnel may exclude from income up to $30 per month in reimbursements provided by state and local government for expenses incurred in performing the volunteer service. Any expenses excluded are not allowed as a charitable deduction

Effective Date: Taxable years beginning after January 1, 2008 and before January 1, 2011

Fiscal Effect: -$1.2 million FY10, -$542,000 FY11

15. Capital Gain Exclusion on Sale of Principal Residence by Surviving Spouse

Federal Law Change: Under federal law, up to $250,000 in gain from a qualifying sale of a principal residence may be excluded from income for single filers; the exclusion is $500,000 for married joint filers. Under MFDRA, the $500,000 exclusion for joint filers applies to a surviving unmarried spouse who meets use and ownership conditions and who sells the residence no later than two years after the death of the spouse.

Effective Date: First applies to sales after December 31, 2007.

Fiscal Effect: Minimal.

16. Increase Alternative Minimum Tax Exemptions for 2007

Federal Law Change: TIPA increased the exemption amounts for the alternative minimum tax for tax year 2007. The exemptions increased from $33,750 to $44,350 for single filers, from $45,000 to $66,250 for married joint filers, from $22,500 to $33,125 for married filing separately and from $33,750 to $44,350 for heads of household.

Effective Date: For tax years beginning after December 31, 2006 and before January 1, 2008.

Fiscal Effect: -$639,000 FY10 (assumes amended returns for tax year 2007)

17. Eliminates the $100,000 AGI Ceiling for IRA Conversions

Federal Law Change: Prior to Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), taxpayers could convert traditional IRAs to Roth IRAs only if their income did not exceed $100,000. Current federal law prohibits taxpayers whose income exceeds $160,000 from contributing to a Roth IRA.

TIPRA eliminated the $100,000 AGI ceiling for converting a traditional IRA to a Roth IRA for tax years after 2009; this, in effect eliminates the income ceiling for Roth IRA contributions insofar as a taxpayer who is prohibited from contributing to a Roth IRA can

first contribute to a traditional IRA and then convert the traditional IRA to a Roth IRA. The revenue loss associated with this provision is estimated to be $842,000 in FY09 and will continue to grow over time as people take advantage of the tax savings associated with Roth IRAs; however, it is assumed that these revenue effects occur whether or not Wisconsin adopts the provision.

Failure to adopt this provision would result in state penalties imposed on certain Wisconsin taxpayers who convert a traditional IRA to a Roth IRA. In particular, taxpayers whose income exceeds $100,000 who convert a traditional IRA to a Roth IRA would be subject to an excess contribution penalty for each year they hold the Roth IRA. In addition, taxpayers under the age of 59 ½ would face an early distribution penalty at the time of conversion of the traditional IRA.

Adoption of the provision would remove any penalty for taxpayers who take advantage of the federal law provision that allows the conversion from a traditional IRA to a Roth.

Effective Date: Taxable year beginning after December 31, 2009.

Fiscal Effect: -$930,000 in FY11, -$2.2 million in FY12.

18. Extend higher IRA Contributions and Other Retirement Arrangements.

Federal Law Change: The Pension Protection Act of 2006 (PPA) made permanent the changes to IRAs and other retirement provisions introduced in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Changes made in EGTRRA were sunsetted at the end of 2010.

As a result, for tax year 2011 and thereafter:

- the maximum contribution to a traditional or Roth IRA would be $5,000 ($6,000 for individuals over 50). Failure to adopt the PPA would mean the maximum IRA contribution for Wisconsin would revert to pre-EGTRRA limit of $2,000.
- limits on elective deferrals would be $15,000 for 401(k) and 457 plan deferrals and $10,000 for SIMPLE plan contributions. Failure to adopt PPA would mean these limits revert to pre-EGTRRA limits of $7,500 and $6,000 respectively for Wisconsin.

In addition, failure to adopt PPA would mean that Wisconsin could no longer allow contributions to Roth 401(k) and 403(b) plans.

Taxpayers who conform to federal law and contribute more than $2,000 to an IRA would be subject to a state penalty for excess contributions. Taxpayers who contribute more than $7,500 to a 401(k) or 457 plan and taxpayers who contribute more than $6,000 to a SIMPLE plan would also be subject to an excess contribution penalty.

Effective Date: August 17, 2006.

Fiscal Effect: No effect until FY12: -$4.4 million FY12, -$8.7 million FY13.

19. Enhanced Deduction for Conservation Property

Federal Law Change: FCEA extends the enhanced deductions allowed for charitable contributions for conservation purposes. Most charitable contributions of capital gain appreciated property are limited to either 20% or 30% of the taxpayer's adjusted taxable income (10% for corporations). Under a prior law, charitable contributions of conservation easements made in 2006 and 2007 could be deducted up to 50% of the taxpayer's adjusted taxable income and up to 100% if the taxpayer is a qualified individual or corporate farmer or rancher and if the contributed property remains available for agricultural or livestock production.

FCEA extends these enhanced deduction limits through December 31, 2009.

Effective Date: For contributions made after December 31, 2007

Fiscal Effect: -$400,000 in FY10, -243,000 in FY11

20. Farm Deduction for Endangered Species

Federal Law Change: Federal law allows a deduction for qualifying soil and water conservation expenditures for farmers up to 25% of their gross farming income. FCEA adds expenditures made for qualifying endangered species recovery made after December 31, 2008 to the expenditures that qualify for the deduction. [The 25% limit applies to the total amount spent on soil and conservation expenditures and endangered species recovery expenditures.]

Effective Date: December 31, 2008

Fiscal Effect: -$111,000 in FY10, -$140,000 in FY11, -$170,000 in FY12

21. Timber Real Estate Investment Trusts

Federal Law Change: FCEA creates a timber real estate investment trust (REIT) in which more than 50% of its total assets consists of real property held in connection with producing timber. FCEA also makes it easier for taxpayers involved in timber activities to elect REIT status by allowing mineral royalty income and capital gains recognized on the cutting of timber to meet the REIT income tests. These tests require that 95% of the REIT's income be from passive sources and 75% be from real estate related activities. FCEA also allows timber REITs to hold a higher percentage of securities of taxable REIT subsidiaries. Other REITS may hold no more than 20% of its assets in securities of taxable REIT subsidiaries; a timber REIT may hold up to 25% of its assets in these subsidaries.

Effective Date: May 22, 2008

Fiscal Effect: minimal

22. Nonrecognition of Exchange of Water Rights

Federal Law Change: Federal law provides that there is no recognition of gain or loss for the exchange when business or investment property is exchanged solely for other business or investment property of a like kind. This does not apply to any exchange of stocks or securities. FCEA provides a non recognition of a gain or loss for the exchange of certain mutual ditch, reservoir or irrigation company stock. These companies are often used to manage joint water distribution rights; thus, stocks in these companies actually represent water rights that may be recognized as real property.

Effective Date: May 22, 2008

Fiscal Effect: Minimal

23. Kansas Disaster Relief Area

Federal Law Change: In response to a tornado in Kansas, FCEA allows certain exceptions for individuals and businesses in the affected disaster area. 1) It allows individuals to take up to $100,000 in distributions from retirement plans without penalty. 2) It also extends the replacement period for converted property from two to five years for property in the disaster area. It is not recommended that Wisconsin adopt the provision that allows casualty losses, employee moving or temporary housing expenses, depreciation and other repair expenses to be carried back for five years.

Effective Date: 1) Distributions on or after May 4, 2007 and before January 1, 2009
2) Property involuntary converted on or after May 4, 2007

Fiscal Effect: Minimal.

24. Differential Military Pay Treated as Wages.

Federal Law Change: HEARTA requires that differential military pay, i.e., the difference in the civilian salary and the military salary, paid by an employer are treated as wages for withholding and several retirement plan purposes.

Effective Date: For payments made after December 31, 2008.

Fiscal Effect: Minimal

25. Penalty-Free IRA Withdrawals and Roth IRA Contribution Limits for Military

Federal Law Change: HEARTA makes permanent the provision that allows national guardsmen or reservists to make penalty-free withdrawal from IRAs or elective deferrals such as 401(k) plan if they are called to active duty for a period in excess of 179 days. This provision was set to expire December 31, 2007.

HEARTA also provides an exception to the contribution limits to Roth IRAs such that individuals who receive a military death gratuity may contribute the amount of the

payment to a Roth IRA without regard to the annual contribution limit and the income phase-out that otherwise apply to Roth IRAs.

HEARTA also allows reservists called to active military duty to withdraw from their health flexible spending without penalty.

Effective Date: December 31, 2007 for IRA withdrawals;
Roth Contributions: first applies with respect to deaths occurring on or after June 17, 2008 (also applies to gratuities for deaths occurring before June 17, 2008 but only if the contribution to a Roth IRA is made no later than one year after June 1, 2008).
Flexible Spending Accounts: Distributions made after June 17, 2008

Fiscal Effect: Minimal

26. Tax Exempt Military Benefits for State Bonus Payments

Federal Law Change: HEARTA provides that any state or local bonus payments made to members of the U.S. military or their dependents are excluded from gross income, but only if the payment was made by reason of the member's service in a combat zone.

Effective Date: Applies first to payments made before, on or after June 17, 2008

Fiscal Effect: Minimal

27. Limit Farm Loss

Federal Law Change: FCEA law limits the amount of farming losses that a taxpayer receiving certain subsidies may use to offset non-farming business income. The limits on farm losses are the greater of $300,000 ($150,000 for married filers filing separately) or the net farm income the taxpayer has received over the last five years. Losses that are limited in a particular year may be carried forward to subsequent years. This provision only applies to taxpayers who are not C corporations and who receive any direct or counter-cyclical payments under Title I of the *Food, Conservation, and Energy Act of 2008*, or Commodity Credit Corporation loans.

Effective Date: Tax years beginning after December 31, 2009.

Fiscal Effect: +$260,000 in FY10, +$520,000 in FY11, +$560,000 in FY12.

28. REITs Income and Asset Tests

Federal Law Change: REITs must meet certain income tests in order to remain qualified as a REIT and be subject to favorable tax treatment on the distribution of dividends. These tests require that 95% of the REIT's income be from passive sources and 75% be from real estate related activities. REITs are also subject to an asset test whereby at least 75% of the value of a REIT's assets must be in real estate assets, cash and cash items.

HATA makes the following changes to the income and asset tests:

- Foreign currency gain is excluded from the computation of qualifying income for purposes of the 75% income test or the 95% income test.

- Under current law, income from clearly-identified hedging transactions are excluded from the computation of the 95% income test. HATA extends the exclusion to the 75% income test as well.

- Clarifies the rule that if a REIT has met the asset tests as of the close of any quarter it will not fail them solely because of a discrepancy due to variations caused by changes in the foreign currency exchange rate used to value a foreign asset.

REITs are subject to tax of 100% of net income derived from prohibited transactions. These are sales of property by the REIT that is stock in trade or inventory. Safe harbor rules allow a limited amount of these types of transactions if the property is held for the required holding period and if they are limited to a certain percentage of the REIT's assets:

- HATA shortens the minimum holding period under the prohibited transactions tax safe harbors of 857(b)(6)(C) and (D) from four years to two years.

- Instead of the present alternative limit of 10% of the aggregate bases of all the assets of the REIT, the limit under HATA is either 10% of such aggregate basis or 10% of the aggregate fair market value of the REIT's assets.

  A REIT may not own more than 10% of the vote or value of a single entity. An exemption is for ownership of a taxable REIT subsidiary that is taxed as a corporation, provided that securities of the taxable subsidiary do not represent a certain share of the REIT's assets and provided that the subsidiary does not engage in the operation of a lodging or health care facility. The subsidiary is permitted to rent hotel, motels and lodging facilities from its parent REIT and hire an independent contractor to operate such facilities.

- HATA increases the percentage of the value of REIT assets that can be held in securities of a taxable REIT subsidiary to 25% from the present 20%.

- HATA expands the taxable REIT subsidiary exception for hotel, motel, and other transient facilities so that it also applies to health care facilities. Thus, a taxable REIT subsidiary is permitted to rent a health care facility from its parent REIT and hire an

independent contractor to operate such a facility; the rents paid to the parent REIT are qualifying rental income for purposes of the 75% and 95% income tests.

Effective Date Taxable years beginning after enactment.*:*

Fiscal Effect: Minimal

29. Capital Gain Exclusion for Primary Residence

Federal Law Change: Under current law, up to $250,000 ($500,000 for married joint filers) of gain realized on the sale of a principal residence are excluded from income provided the taxpayer owned and used the residence as a primary residence for at least two of the five years ending on the sale. HATA tightens these provisions such that for sales beginning in 2009, the gain from the sale of the principal residence allocated to periods of nonqualified use is not excluded from gross income. Thus, if a person sells a home that was used for a period as a vacation home or rental property prior to its use as a primary resident, the gain associated with the period in nonqualified use will not be excluded from income. However, any nonqualified use after its use as primary residence is not considered nonqualified.

Effective Date: For sales and exchanges after December 31, 2008

Fiscal Effect: $140,000 in FY10, $773,000 in FY11, and $730,000 in FY12

30. Repeal Limitation on Funeral Trusts

Federal Law Change: A funeral trust is an arrangement under which an individual purchases funeral services or property necessary to provide such services for himself or for another individual from a funeral home prior to death and funds the purchase via contributions. For 2008, contributions generally cannot exceed $9,000. The Hubbard Act repeals the limitation on contributions to funeral trusts in tax years beginning after August 28, 2008. The contributions must be held, invested and reinvested by the trust solely to make payments for such services or property upon the individual's or the other trust beneficiaries' death.

Effective Date: August 28, 2008

Fiscal Effect: Minimal

31. Transportation Fringe Benefit to Bicycle Commuters (Sec. 211 of Division B)

Federal Law Change: Under EESA, employees can exclude certain employer-provided transportation fringe benefits from income, such as transit passes and van pooling. This treatment is extended to employer-provided transportation fringe benefits paid to employees who commute by bicycle. The maximum exclusion is $20 per month.

Fiscal Effect: Minimal

32. Extension of Increased Alternative Minimum Tax Exemption Amount (Sec.102 of Division C)

Federal Law Change: For taxable years beginning in 2008, EESA increases the alternative minimum tax exemption amount to $69,950 for married persons filing a joint return and $46,200 for single persons. Without the patch, 2008 exemption levels would have reverted to $45,000 for married persons and $33,750 for single filers.

Fiscal Effect: -$1.2 million in FY10

33. Deduction for Certain Expenses of Elementary and Secondary School Teachers (Sec. 203 of Division 3)

Federal Law Change: EESA extends by two years the deduction for up to $250 of expenses paid or incurred by an educator through 2009.

The recommendation is to adopt for tax year 2009 only

Fiscal Effect: -$1.4 million in FY10, -$340,000 in FY11

34. Tax-Free Distributions from IRAs for Charitable Purposes (Sec. 205 of Division C)

Federal Law Change: EESA extends the provision in federal law allowing tax-free distributions from IRAs for charitable purposes by two years through December 31, 2009.

Fiscal Effect: -$2.66 million in FY10, -$380,000 in FY11

35. Amounts Received in Connection with the Exxon Valdez Litigation (Sec. 504 of Division C)

Federal Law Change: Under EESA, any qualified taxpayer who receives qualified settlement income in connection with the Exxon Valdez litigation may, before the end of the taxable year in which the settlement is received contribute the lesser of $100,000 or the amount of the settlement income, to an eligible retirement plan. The amount of the contribution is not included in taxable income. However, if the amount is contributed to a Roth IRA, such amount shall be included in taxable income. Alternatively, recipients of such payments may use three-year income averaging in reporting such amounts.

Fiscal Effect: minimal

36. Nonqualified Deferred Compensation from Certain Tax Indifferent Parties (Sec. 801 of Title VIII)

Federal Law Change: Current law allows the deferral of paying tax on compensation until the compensation is paid. This deferral is made possible by rules that require the corporation paying the deferred compensation to defer the deduction related to the compensation until it is paid. When individuals are paid by off-shore entities, they can defer the taxation of the compensation but there is no corresponding deferral of the deduction.

Under EESA, nonqualified deferred compensation plans maintained by foreign corporations will generally become taxable. The tax can also apply to partnerships with foreign partners. The provision is meant to tighten the loophole associated with "carried interest" arrangements by allowing deferral of income under more narrow circumstances.

Fiscal Effect: + $4.1 million in FY10, +$4.1 million in FY11

37. Casualty Losses Not Included in AMT Income

Federal Law Change: Under EESA, taxpayers may include as part of their standard deduction losses associated with federally-declared disasters. These losses are not included in the computation of AMT for federal purposes.

Fiscal Effect: Unknown but not expected to be significant.

Temporary Tax Relief for Areas Damaged by 2008 Midwestern Severe Storms, Tornados, and Flooding (Sec. 702 of Title VII – Disaster Relief)

Certain tax benefits for the Gulf Opportunity Zone and from the Katrina Tax Relief Act of 2005 apply for the Midwestern Disaster Area affected by storms in the summer of 2008. Midwestern disaster area includes Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska and Wisconsin. While many of the provisions are limited to a period around the 2008 disaster date, it is assumed that 90 percent of filers will file amended tax year 2008 returns as a result of these provisions; thus the FY10 effect reflects these amended returns. Except where noted, these provisions affect individual income tax filers.

38. Expensing for Certain Demolition and Clean-Up Costs (Sec. 702 of Division C)

Federal Law Change: Under current law, the cost of debris removal is generally capitalized, i.e., added to the basis of the property. EESA permits a 50% deduction for a "qualified Disaster Recovery Assistance clean-up cost" paid or incurred during the period beginning on the applicable disaster date and ending on December 31, 2010. A "qualified Disaster Recovery Assistance clean-up cost" is an amount paid or incurred for the removal of debris from, or the demolition of structures on, real property located in the Midwestern disaster area to the extent that the amount would otherwise be capitalized. In order to qualify, the property must be held for use in a trade or business, for the production of income, or as inventory.

Effective for amounts paid or incurred after the applicable disaster date through December 31, 2010.

Fiscal Effect: Minimal

39. Extension of Expensing for Environmental Remediation Costs (Sec. 702 of Division C)

Federal Law Change: Expenditures paid or incurred before January 1, 2008 related to qualified environmental remediation expenditures can be deducted from income rather than capitalized. EESA extends this treatment for expenditures paid or incurred before January 1, 2011 for qualified environmental remediation expenditures in connection with a qualified contaminated site located in the Midwestern disaster area. In order to be treated as a qualified contaminated site, the release (or threat of release) or disposal of a hazardous substance at the site must be attributable to the applicable storms. In addition, expenditures paid or incurred for the clean-up of petroleum products in the Midwestern disaster area may qualify for the deduction.

Effective Date: Effective for expenses paid or incurred after the applicable disaster date and before January 1, 2011.

Fiscal Effect: Minimal

40. Temporary Income Exclusion for Temporary Lodging

Federal Law Change: Under EESA**,** individuals displaced by the Midwestern storms who receive lodging from their employer may exclude the value of this lodging up to $600 per month for any month lodging provided. This exclusion is limited to six months from the disaster date.

Fiscal Effect: -$770,000 in FY10, minimal FY11.

41. Penalty Free Withdrawals from Retirement Plans

Federal Law Change: Under current law, an early withdrawal from retirement plans is subject to a 10 % penalty and is included in taxable income in the year of the withdrawal. EESA creates an exception to the penalty for individuals whose principal residence on the disaster date in the Midwestern disaster area and who has sustained an economic loss as a result of the storms. Income attributable to these withdrawals may be included in income over three years. Such distributions are limited to $100,000.

Effective Date: Applies to distributions made after the disaster date and before January 1, 2010.

Fiscal Effect: -$1.39 million in FY10, minimal in FY11.

42. Recontributions of Retirement Withdrawals for Home Purchases Affected by Midwestern Storms

Federal Law Change: Under EESA, individuals who had withdrawn monies from a retirement plan six months prior to the disaster date in order to purchase or construct a principal residence in the Midwestern disaster area may recontribute to the retirement plan without penalty if the recontribution is made between the date of the disaster and March 3, 2009.

Fiscal Effect: Minimal.

43. Temporary Suspension of Charitable Contributions Related to Midwestern Storm Relief

Federal Law Change: Under current law, charitable contributions are limited in two ways. First, charitable contributions may not exceed 50 % of an individual's adjusted gross income (AGI). Second, total itemized deductions (of which charitable contributions are one) are phased out for filers over a certain AGI. In 2007, filers with income over $156,400 are subject to the limitation on overall itemized deductions.

EESA suspends these limits for contributions made for Midwestern disaster relief efforts made between the disaster date and December 31, 2008.

Fiscal Effect: -$4.7 million in FY10, +$540,000 in FY11, +$420,000 in FY12.

44. Special Look Back Rules for Earned Income Credit

Federal Law Change: EESA allows individuals whose principal residence was in the Midwestern disaster area to calculate their earned income tax credit for tax year that includes the disaster date (i.e. tax year 2008) but using their earned income of the preceding tax year.

Fiscal Effect: -$3.16 million in FY10.

45. Increase Standard Mileage Rate for Charitable Work in Disaster Areas

Federal Law Change: EESA raises the standard mileage rate for use of vehicles in charity work related to the Midwestern disaster relief to 70% of the standard business mileage rate for the period beginning on the disaster date through December 31, 2008.

Fiscal Effect: -$320,000 in FY10.

46. Mileage Reimbursement Excluded from Income

Federal Law Change: Under EESA, volunteers who are reimbursed for costs of using their automobiles to provide Midwestern disaster relief may exclude these costs from gross income up to an amount not to exceed the standard mileage rate prescribed for business use.

Applies to services contributed from the disaster date through December 31, 2008.

Fiscal Effect: Minimal

47. Exclusion for Cancellation of Indebtedness

Federal Law Change: Under EESA, individuals whose principal residence was in the Midwestern disaster area may exclude from gross income any discharged debt on or after the disaster date and before January 1, 2010. The exclusion applies only to debt that is incurred for a non-business or trade purpose and only to the extent the debt is secured by property located in the Midwestern disaster area.

Fiscal Effect: -$200,000 FY10, minimal FY11.

48. Extend Replacement Period for Nonrecognition of Gain

Federal Law Change: Under current law, individuals who own property that is damaged and who receive other property or payment, such as insurance or a condemnation award, do not have to report any gain if the property is replaced within two years. EESA extends the replacement period for property in the Midwestern disaster area that is damaged by storms from two to five years before gain must be recognized.

Effective upon enactment, December 3, 2008.

Fiscal Effect: -$2.28 million in FY10, -$490,000 in FY11.

49. Clarification of Dependents

Federal Law Change: The Fostering Connection to Success and Increasing Adoption Act clarifies the tax exemption for dependents to require that an individual (1) be younger than the taxpayer claiming the individual as a qualifying child; and (2) not have filed a joint return (other than only for a refund claim) with the individual's spouse for the taxable year in question

Effective upon enactment (October 7, 2008)

Fiscal Effect: minimal.

50. Waiver of Required Minimum Distributions from IRAs and Similar Retirement Accounts

Federal Law Change: Under current law, individuals who reach the age of 70 ½ are required to make minimum distributions (RMDs) from any tax-deferred retirement savings accounts (401(k), 403(b), etc). Failure to make these RMDs results in a 50% federal excise tax as penalty; Wisconsin imposes a penalty for failure to make these RMDs equal to 33% of the federal penalty. In recognition of the downturn in the economy and the effect it has had on retirement savings accounts, WRERA waives the minimum distribution requirement for calendar year 2009 from individual retirement plans and employer-provided qualified retirement plans that are defined contribution plans. The next required distribution would be for calendar year 2010.

Failure to adopt this provision would result in the 33% Wisconsin penalty for taxpayers who take advantage of the federal law. The Wisconsin penalty will, in most cases, far outweigh the federal tax benefit of the provision, thus prompting most Wisconsin taxpayers to ignore the waiver provision and to make the RMD in calendar year 2009. Of concern is that many Wisconsin taxpayers may not realize the state tax implication of not making the RMD until after calendar year 2009. As a result, they may choose to not make the RMD in 2009 only to find they are subject to a very large state penalty.

Effective Date: Calendar years beginning after December 31, 2008; sunsets on December 31, 2009

Fiscal Effect: -$176,000 in FY09, -$17.9 million in FY10, -$6.1 million in FY11.

51. Rollovers by Non Spouse Beneficiaries of Retirement Plan Distributions

Federal Law Change: Before the PPA of 2006, the ability to roll over a decedent's interest in certain qualified plans (403(b), available to certain employees of public schools and non-profit organizations, or 457 plans, available to state and local government employees) was limited to surviving spouses. Under PPA, rollovers of distributions could be extended to non-spouse beneficiaries for distributions after December 31, 2006. WRERA clarifies that the plans must permit non-spouse rollovers from these plans to other eligible retirement plans. (Prior to WRERA, it was unclear whether PPA meant that it was voluntary on the part of the plan to allow the rollover or on the part of the beneficiary).

Effective Date: For tax plans beginning after December 31, 2009

Fiscal Effect: Minimal

52. Rollover of Amounts Received in Airline Bankruptcy to Roth IRAs

*Federal Law Change***:** Under WRERA, airline workers whose defined benefit pension plan was terminated or frozen due to bankruptcy (between September 11, 2007 and January 1, 2007) are allowed to rollover bankruptcy payments intended to replace lost retirement income to a Roth IRA.

Effective Date: Enactment

Fiscal Effect: Minimal.

53. State/Local Health Insurance Reimbursements

*Federal Law Change***:** Under current law, amounts received by a government employee from a state or local government accident or health plan are not taxable if the amounts are reimbursements for medical care expenses of the taxpayer, the taxpayer's spouse or dependents. Prior to WRERA, the IRS ruled in 2006 that these amounts would be includible in income if the plan permits amounts to be paid as medical benefits to a designated beneficiary who was other than a spouse or dependent of the employee.

Under WRERA, reimbursements under a state and local government plan for medical care expenses would continue to be excludible from income even if the plan provides for reimbursements of medical care expenses incurred by a deceased plan participant's non-spouse/non-dependent beneficiary.

Effective Date: Enactment

Fiscal Effect: Minimal

C. CORPORATE INCOME AND FRANCHISE TAX

1. Extension of Parity Limits for Mental Health Benefits.

Federal Law Change: The Mental Health Parity Act of 1996 contains rules regarding parity of mental health benefits with medical and surgical benefits. Plans that offer mental health benefits are not allowed to impose annual or lifetime dollar limits on mental health benefits that are not also imposed on medical and surgical benefits. Plans are not required to offer mental health benefits. The provision was set to expire on December 31, 2006 (under the 2006 Employee Retirement Preservation Act).

TRHCA extends the parity provision through December 31, 2007. Under EESA, the mental health parity requirements have been made permanent. In addition, the financial requirements and treatment limitations for mental health and treatment for substance abuse are required to be in parity with medical and surgical benefits in case of a group health plan that offer both benefits.

Effective Date: January 1, 2007; changes made in EESA effective for group health plan years beginning after October 3, 2009

Fiscal Effect: -$298,000 in FY 10, -$556,000 in FY 11.

Note this fiscal effect will occur irrespective of the Wisconsin adoption of the EESA provisions. Thus, it is not included in the fiscal effects in Table 1.

2. Superfund Settlement Funds Exempt.

Federal Law Change: Escrow funds established after May 17, 2006 and before January 1, 2011 for hazardous waste sites under agreement with the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) are exempt so long as the funds are controlled by a government agency. TRHCA makes this provision permanent.

Effective Date: Enactment (effective January 1, 2012)

Fiscal Effect: Minimal.

3. Treatment of Sale or Exchange of Self-Created Musical Works

Federal Law Change: Taxpayers may elect to treat the sale or exchange of self created musical work as a capital asset (taxed at 15%) rather than ordinary income (that can be taxed as high as 35%). Prior to TRHCA, this treatment applied only to sales and exchanges in taxable years beginning after May 17, 2006 and before January 1, 2011.

TRHCA makes permanent these provisions.

Effective Date: Enactment (effective January 1, 2011).

Fiscal Effect: Minimal.

4. Unrelated Business Income for Charitable Remainder Trust

Federal Law Change: A charitable remainder trust is a trust that is required to pay, at least annually, a fixed dollar amount of at least 5% of the initial value of the trust to a noncharity for the life of an individual or for a period of 20 years or less, with the remainder passing to the charity. Under prior law, the tax exemption of a charitable remainder trust was taken away for any year in which the trust had any unrelated business income. TRHCA replaces this treatment with a 100% excise tax on the unrelated business income of such a trust. Thus, for Wisconsin tax purposes, the exemption for a charitable remainder trust would be retained even in years that it had unrelated business income.

Effective Date: Taxable years beginning after December 31, 2006.

Fiscal Effect: Minimal

5. **Active Business Test**

Federal Law: TRHCA makes permanent a provision related to the rules governing when a corporation's distribution of property to a controlled corporation is tax-free. In general, such a distribution is tax-free if both the distributing corporation and the controlled group are actively engaged in a business that has been conducted for at least five years. The rules provide that the active business test is determined by reference to the relevant affiliated group. Thus, for the distributing corporation, the relevant affiliated group consists of the distributing corporation and all affiliates; similar rules apply for the controlled group. Prior to this rule change, the determination of the active business test was based only at the parent corporation level.

Effective Date: For distributions made after May 17, 2006

Fiscal Effect: Minimal

6. **Subchapter S Provisions – Exclude Capital Gain from Passive Investment Income**

Federal Law Change: An S-corporation's election to be treated as an S-corporation may be terminated if the S-corporation has gross receipts for three consecutive taxable years of which 25 percent are passive investment income.

Under prior law, passive investment income includes income from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities. SBWOA eliminates gains from sales or exchanges of stock or securities as an item of passive investment income for this purpose.

Effective Date: Taxable years beginning after May 25, 2007.

Fiscal effect: -$89,000 FY10, -$73,000 FY11, -$73,000 FY12.

7. **Subchapter S Provisions – Allow Interest Deduction for Electing Small Business Trusts (ESBTs)**

Federal Law Change: Only limited types of trusts are eligible to be S-corporation shareholders. One such trust is an ESBT; to qualify as an ESBT, all of the trust's beneficiaries must be individuals or estates, and interest in the trust may not be acquired by purchase (must be acquired by gift or bequest). Stock in an S-corporation held by an ESBT is taxed at the highest individual income tax level (35% for federal, 6.75% for state). The trust itself, rather than the beneficiaries, is taxed on the S portion of the ESBT. The taxable income attributable to the S portion includes only items of income, loss or deduction attributable to the trust as an S-corp shareholder, gain or loss for its disposition of S stock and any state or local income taxes attributable to the S stock.

Under SBWOA, interest paid or accrued in order to acquire S stock is deductible in computing taxable income of the S portion of the ESBT.

Effective Date: Taxable years beginning after December 31, 2006

Fiscal effect: Minimal.

8. **Limitations on Deduction for "Golden Parachutes"** (Sec. 302)

Federal Law Change: Current law allows a deduction for reasonable compensation of employees as an ordinary and necessary expense but imposes a $1 million limit on deductions for compensation paid to corporate executives. The deduction limit is reduced by any excess golden parachute payments made to executives of the company; these refer to compensation paid to a covered executive due to a change in the ownership or effective control of the corporation.

EESA lowers the deduction limits for executive compensation from $1 million to $500,000 paid by entities participating in the Troubled Assets Relief Program (TARP) contained in EESA. The deduction limit is reduced by parachute payments. EESA further expands the definition of parachute payments to include certain excess severance payments made due to involuntary termination of the employee or in case of bankruptcy or liquidation.

Effective for tax years ending after October 3, 2008.

Fiscal Effect: Unknown, but likely will result in a revenue gain.

9. **Publicly Traded Partnership Income Treatment of Alternative Fuels** (Sec. 116 and 208 of Division B)

Federal Law Change: Under current law, a publicly traded partnership (PTP) is treated as a corporation for federal income tax purposes unless 90% of its gross income is qualifying income. Qualifying income includes interest, dividends, real property rents, gains from the disposition of real property, income and gains derived from the exploration, development, mining or production, processing, refining, transportation or the marketing of any mineral or natural resource. Under EESA, qualifying income for purposes of the PTP rules has been expanded to include income and gains derived from the marketing of industrial source carbon dioxide or the transportation or storage of certain alternative fuels.

Effective for tax years ending after October 3, 2008.

Fiscal Effect: Minimal

10. **Rules for Defined Benefits Plan**

Federal Law Change: The Pension Protection Act (PPA) of 2006 strengthened the funding rules for single- and multi-employer defined benefit plans to ensure the retirement plans would be adequately funded. However, under current economic conditions, many business cannot meet the new funding requirements. WRERA eases many of these rules imposed under PPA. These changes are not tax policy items, and hence do not require Wisconsin to adopt the provisions; nevertheless, they do have revenue implications to the extent that they lower contributions to retirement plans in the near term and thus raise corporate profits through FY13.

Fiscal Effect: It is estimated that the modifications to the funding rule included in WRERA will result in an increase in Wisconsin revenues by $800,000 in FY10, $1.2 million in FY11 and $236,000 in FY12. By FY15, these provisions will result in a decrease of $770,000 in state revenues. These impacts are not included in the table since they will occur irrespective of the Wisconsin adoption of WRERA.

D. PROVISIONS NOT RECOMMENDED FOR ADOPTION

1. Deduction for Educator Expenses.

Federal Law Change: For tax years through 2005, current law allows a maximum $250 above line deduction for expenses paid by educators for books, supplies, computer equipment and other materials used for educational purposes. TRHCA extends the deduction through December 31, 2007.

Effective Date: January 1, 2007

Fiscal Effect: -$527,000 in FY10.

2. Energy Efficiency Commercial Buildings Property Deduction.

Federal Law Change: TRHCA extends a deduction for costs from depreciable energy-efficient commercial building property certified pursuant to a plan to reduce overall energy and power costs and placed in service after December 31, 2008 and prior to January 1, 2009. The maximum is $1.80 per square foot and the basis of the property must be reduced.

Effective Date: For property placed in service after December 31, 2007, and before January 1, 2009.

Fiscal Effect: -$363,000 in FY 10.

3. Wage Limitation for Qualified Production Activity Income.

Federal Law Change: Current law allows a deduction equal to a portion of a taxpayer's qualified production activities income. The amount of the deduction is limited to 50% of the wages paid by the taxpayer.

Under TRHCA, taxpayers are allowed to treat Puerto Rico as part of the United States in calculating its domestic production gross receipts and activities income if all of the taxpayer's gross receipts from sources within Puerto Rico are taxable for federal income tax purposes. The provision also allows taxpayers to take wages paid to residents of Puerto Rico into account for purposes of calculating the 50% wage limitation.

Effective Date: Tax years beginning after December 31, 2005 and before January 1, 2008.

Fiscal Effect: -$336,000 FY 10.

4. Exclusion of Gain on Sale of a Principal Residence by a Member of the Intelligence Community.

Federal Law Change: Under current law, a taxpayer may exclude up to $250,000 ($500,000 for joint filers) of gain realized on the sale of a principal residence if the taxpayer owned and used the residence as a principal residence for at least two of the five years ending on the sale. Under TRHCA, certain employees of the intelligence community may elect to suspend the running of the five-year test period during any period in which they are serving on extended duty.

Effective Date: Sales after enactment and before January 1, 2011.

Fiscal Effect: Minimal.

5. Modifies treatment of below-market loans for continuing care facilities.

Federal Law Change: Under current law, lenders who provide below-market interest loans must report as taxable income an imputed interest payment. An exception is provided for loans made after December 31, 2005 and before January 1, 2010 made to a continuing care facility by lenders who are at least 65 years old.

TRHCA makes this provision permanent. Wisconsin did not adopt the original provision.

Effective Date: Upon enactment (effective January 1, 2010).

Fiscal Effect: Minimal.

6. Health Savings Account

Federal Law Change: TRHCA makes the following changes to Health Savings Accounts (HSAs). Wisconsin has not adopted federal treatment of HSAs.

a. Allow rollovers from health flexible spending arrangements (FSAs) and health reimbursement accounts (HRAs) into HSAs. This is designed to assist individuals in transferring from another type of health plan to a high deductible plan.

   Effective Date: Enactment through December 31, 2011

b. Modifies the limit on the annual deductible contribution made to an HSA so that the maximum deductible contribution is not limited to the annual deductible under the insurance plan. Under the provision, the maximum annual contribution would be $2,850 for single and $5,650 for family coverage in 2007.

   Effective Date: January 1, 2007

c. Index the maximum contribution amounts to consumer price index.

   Effective Date: January 1, 2008

d. Allow full contribution to an HSA for part-year enrollees, such that a person who first becomes eligible in the last month of the tax year is treated as eligible for all months.

   Effective Date: January 1, 2007

e. Allow a one-time rollover from an IRA to an HSA. The amount that can be distributed from the IRA and contributed to the HSA is limited to the otherwise maximum deductible HSA contribution.

Effective Date: January 1, 2007

Fiscal Effect: -$883,000 in FY10. By FY2015, these provisions would result in an annual revenue loss of $1.35 million.

7. Enhanced Deduction for Charitable Contributions of Scientific Property Used for Research.

Federal Law Change: Under current law, corporate charitable contributions of scientific property used for research and contributions of computer technology and equipment made through December 31, 2005 are allowed an enhanced deduction equal to the lesser of 1) the basis plus one half of the fair market value in excess of the basis or 2) two times the basis. Wisconsin has not adopted this provision.

TRHCA extends the enhanced deduction for contributions made through December 31, 2007.

Effective Date: Tax years after December 31, 2005.

Fiscal Effect: Minimal.

8. Subchapter S Provisions – Treatment of Banks Changing from Reserve Method of Accounting

Federal Law Change: Only banks are allowed to use the reserve method of accounting for bad debts. Under this method, a bank makes a determination of the percentage of loans it predicts will eventually go uncollected. It includes this amount in its bad debt reserve that offsets its accounts receivable amount. If a bank switches from this accounting method, modifications to taxable income must be made to avoid duplications or omissions. A bank using this method of accounting may not elect to be an S-corporation.

Under prior law, if a bank switches accounting methods and elects to be an S-corporation in the same year, adjustments to income are considered in the taxes of both the entity and its shareholders.

Under SBWOA, if a bank switches accounting methods and elects to be an S-corporation in the same year, the bank may choose to take all the adjustments to income in the last

taxable year it was a C-corporation; therefore the adjustments will only be subject to corporate taxation.

Effective Date: Tax years beginning after December 31, 2006

Fiscal effect: -$289,000 in FY10, -$265,000 in FY11, -$188,000 in FY12

9. Capital Gain Exclusion for Peace Corps & Intelligence Community

Federal Law Change: Under HEARTA individuals can elect to suspend the five-year ownership and use period required for the exclusion of gain on the sale of a principal residence during the time that they or their spouse is serving outside the United States in the Peace Corp. HEARTA also makes permanent a similar provision for members of the intelligence community stationed outside the United States.

Effective Date: Tax Years after December 31, 2007 (Peace Corps provision);
Applies to sales after June 17, 2009 (intelligence community)

Fiscal Effect: Minimal

10. Extension of Research Credits; Increase Credit Rates

Federal Law Change: Prior to TRHCA, the federal research credit terminated after December 31, 2005; TRHCA extends the federal research credit through December 31, 2007. The extension of the federal research credit does not affect Wisconsin. However, Wisconsin provides a research credit based on "qualified research expenses" as defined for federal purposes. The credit is based on the increase in research expenditures relative to a base period. The Wisconsin credit rate is 25% (50% for certain types of research) of the federal rate.

The federal research credit allows an alternative incremental credit. Wisconsin has adopted a similar alternative incremental credit based on federal rates. TRHCA increases the rates used to calculate the alternative incremental credit.

TRHCA also creates a third simplified alternative to the credit computation. Wisconsin could also provide this alternative, prorated to the same extent, i.e., 25% (50% for certain types of research), as the regular credit. It is estimated that most credit claimants would maximize their credit under either the regular credit or the alternative incremental credit under the increased rates and would not benefit from a prorated simplified alternative. However, some may choose the new simplified alternative for ease of computation.

Effective Date: Tax years ending after December 31, 2006. Special transitional rules apply to fiscal year 2007 taxpayers in the computation under the alternative.

For Wisconsin, it is proposed that the changes first apply to taxable years beginning on January 1, 2008.

Fiscal Effect: -$6.4 million in FY10 and -$2.6 million thereafter.

11. Elimination of Earnings and Profits Attributable to Pre-1983 years

Federal Law Change: For certain S-corporations, reducing accumulated earnings and profits by pre-1983 S-corporation earnings and profits reduces the amount of distributions that would be considered taxable.

Under prior law, a corporation that was an S-corporation in its first taxable year after 1996 could reduce its accumulated earnings and profits by its pre-1983 earnings and profits if was an S corporation prior to 1983. If the entity was not an S-corporation in its first taxable year after 1996, the distributions paid out of the pre-1983 accumulated earnings and profits were taxed as dividends.

SBWOA extends this provision to an S-corporation that was not an S-corporation for its first taxable year beginning after 1996. Thus, all S-corporations may wipe out their pre-1983 accumulated S-corporation earnings and profits.

This relief is intended to ensure that an S-corporation's accumulated E&P is solely attributable to tax years for which the taxpayer was not treated as an S-corporation.

Since Wisconsin did not recognize S-corporation status until federalizing in 1987, it did not adopt the prior law change regarding pre-1983 S-corporation earnings and profits. Likewise, the current SBWOA provision is not recommended.

Effective Date: Upon enactment.

Fiscal Effect: Minimal.

12. Treatment of Gains or Losses from Sale of Stock of Fannie Mae and Freddie Mac (Sec. 301)

Federal Law Change: EESA authorizes a limited treatment of gains or losses from the sale or exchange of "applicable preferred stock" as ordinary income or loss. Absent EESA, generally, the law provides that the sale or exchange of indebtedness by a financial institution is not a capital asset transaction and gains or losses receive ordinary recognition treatment. Fannie Mae and Freddie Mac preferred stock is not treated as evidence of indebtedness for federal tax purposes and receive capital gain or loss treatment. Without this change, financial institutions would not be able to treat Fannie Mae and Freddie Mac preferred stock losses as ordinary losses.

Effective for tax years ending after December 31, 2007.

Fiscal Effect: -$8.2 million in FY10, -$766,000 in FY11

13. **Limitation of Deduction for Income Attributable to Domestic Production of Oil, Gas, or Primary Products Thereof** (Sec. 401 of Division B)

    Federal Law Change The domestic production activities deduction is capped at 6% for all eligible taxpayers but is scheduled to increase to 9% after 2009. Under EESA, the cap will remain at 6% after 2009 for oil-related qualified production activities income. This includes income from the production, refining, processing, and transportation or distribution of oil or gas, or any primary production of oil and gas.

    Effective for tax years beginning after December 31, 2008.

    Fiscal Effect: $934,000 in FY 10, $787,000 in FY 11.

14. **Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property** (Sec. 307 of Division C)

    Federal Law Change: EESA extends the rule allowing S corporation shareholders to take into account their pro-rata share of charitable deductions even if such deductions would exceed such shareholder's adjusted basis in the S corporation through December 31, 2009. The provision was set to expire after December 31, 2007.

    Effective for tax years beginning after December 31, 2007.

    Fiscal Effect: -$131,000 in FY 10, -$20,000 in FY 11.

15. **Enhanced Charitable Deductions for Qualified Computer Contributions** (Sec. 321 of Division C)

    Federal Law Change: Through calendar year 2007,a corporation is entitled to an increased deduction for a charitable contribution of computer equipment to an elementary or secondary school or public library. The amount of the deduction equals the lesser of 1) the taxpayer's basis in the donated property plus one-half of the item's appreciation, or 2) two times the donated item's basis. The amount of appreciation is the amount of gain that would be realized if the donated item sold at fair market value. The contribution must be made within three years of the property's acquisition. EESA extends by two years the enhanced deduction for contributions of computers to apply to contributions made before January 1, 2010.

    Note: Wisconsin did not adopt the provision in prior years.

    Effective for contributions made during taxable years beginning after December 31, 2007 and ending December 31, 2009.

    Fiscal Effect: -$553,000 in FY 10, -$37,000 in FY 11.

16. Enhanced Charitable Deductions for Contributions of Food Inventory (Sec. 323 of Division C)

Federal Law Change: Corporate and non-corporate taxpayers could claim an enhanced deduction for contributions of food inventory similar to the enhanced deduction for computers (see item 15 above) for donations made before January 1, 2008. EESA extends the enhanced deduction by two years for contributions made before January 1, 2010. For non-corporate taxpayers, the deduction is limited to 10% of the taxpayer's net income from the trade or business making the donation. In the case of a qualified farmer or rancher, the limitation on charitable contributions are suspended for contributions made before January 1, 2009.

Effective for contributions made after December 31, 2007 and ending December 31, 2009.

Fiscal Effect: -$228,000 in FY 10, -$19,000 in FY 11.

17. Extension of Enhanced Charitable Deduction for Contributions of Book Inventory

Federal Law Change: EESA extends by two years the enhanced charitable deduction for contributions of book inventory to public schools (similar to the deduction described in item 15) for contributions made before January 1, 2010.

Effective for contributions made after December 31, 2007 and ending December 31, 2009.

Fiscal Effect: Minimal

18. Subpart F Exceptions for Active Financing Income (Sec. 303 of Division C)

Federal Law Change: Foreign-based income of a controlled foreign corporation (CFC) is generally subject to tax, regardless of whether the income is distributed to shareholders. One of the categories of foreign-based income is foreign personal holding company income (FPHCI). FPHCI generally includes passive income such as dividends, interest, rents, royalties and annuities. Under current law, income derived in the active conduct of banking or finance or in an insurance business is temporarily excepted from subpart F income. This temporary exception was set to expire December 31, 2008.

EESA extends the provision by one year to the end of 2009. [Note this temporary exception has been extended six times since 1997]

Effective after December 31, 2008 and before January 1, 2010.

Fiscal Effect: -$5.3 million in FY 10, -$1.3 million in FY 11.

19. Look-Through Rule for Related Controlled Foreign Corporation Payments (Sec. 304 of Division C).

Federal Law Change: Foreign-based income of a controlled foreign corporation (CFC) is generally subject to tax, regardless of whether the income is distributed to shareholders. One of the categories of foreign-based income is foreign personal holding company income (FPHCI). FPHCI generally includes dividends, interest, rents, royalties and annuities. However under a temporary look-through provision, dividends, interest, rent and royalties received by a CFC from a related CFC is not subject to tax. The look-through rule only applies to payments that are not attributable to subpart F income or income connected with the conduct of a U.S. trade or business. This provision was set to expire December 31, 2008. This rule allows U.S. companies to move non-subpart F income from one CFC to another without triggering a U.S. tax.

EESA extends this provision by one year through December 31, 2009.

Effective for tax years beginning after December 31, 2008 and before January 1, 2010.

Fiscal Effect: -$819,000 in FY 10, -$194,000 in FY 11.

20. Tax Treatment of Certain Payments to Controlling Exempt Organizations (Sec. 306 of Division C)

Federal Law Change: Under current law, a tax-exempt organization is taxed on its unrelated business taxable income (UBTI). An unrelated trade or business is a trade or business that is regularly carried on by the exempt organization, but that is not substantially related to the performance of its exempt activities. Generally, rent, interest, royalties and annuities are excluded from the UBTI of tax exempt organizations; however, such income that is received from a taxable subsidiary of the exempt organization is included in the UBTI of the parent organization.

Through December 31, 2007, UBTI excludes these types of payments made by a controlled entity if the payments are less than the fair market value. If the payments are greater than the fair market value, only the excess of the payment over the fair market value is included in the UBTI. EESA extends these rules for one year through December 31, 2009.

Effective for payments received after December 31, 2007 and through December 31, 2009.

Fiscal Effect: -$71,000 in FY 10, minimal in FY 11.

21. Deductions Related to Film and Television Productions Costs (Sec. 502 of Division C)

Federal Law Change: EESA expands the definition of wages for purposes of the domestic production activities deduction to include compensation for services performed in the United States by actors, production personnel, directors, and producers. A qualified film includes any copyrights, trademarks, or other intangibles with respect to such film. The methods and means of distributing a qualified film does not affect the availability of the domestic production activity deduction.

Effective for tax years beginning after December 31, 2007.

Fiscal Effect: -$61,000 in FY 10, -$56,000 in FY 11.

22. Tax Incentives for Investment in the District of Columbia (Division C, Sec. 322)

Federal Law Change: Under current law, parts of the District of Columbia are treated as an empowerment zone (the "DC Zone"). The designation of the area as the DC Zone was scheduled to end on December 31, 2007. Under EESA, the District of Columbia enterprise zone provisions are extended for two years to apply in 2008 and 2009. The adopting provision allows an exclusion from income for qualified capital gain from the sale or exchange of a DC Zone asset held for more than five years. These assets include DC Zone business stock, DC Zone partnership interests and DC Zone business property.

Effective after December 31, 2007 and before January 1, 2010.

Fiscal Effect: Minimal

23. Provisions Related to Film and Television Productions Costs (Sec. 502 of Division C)

Federal Law Change: EESA extends the election to treat the cost of any qualified film or television production as an expense to qualified film and television productions commencing before January 1, 2010. Expensing is limited to $15 million of the aggregate cost of any qualified film or television production.

Effective for qualified productions commencing after December 31, 2007.

Fiscal Effect: -$637,000 in FY10, revenue gain of $125,000 in FY 11.

24. Deduction Allowable with Respect to Income Attributable to Domestic Production Activities in Puerto Rico (Sec. 312 of Division C)

Federal Law Change: Under 2006 THRCA, for purposes of determining the domestic production activities deduction, the term "United States" includes the Commonwealth of Puerto Rico for tax years beginning after December 31, 2005 through December 31, 2007. EESA extends this treatment of income from Puerto Rico through 2009.

The THRCA provision has not been recommended for adoption.

Effective for tax years beginning after December 31, 2007 and ending December 31, 2009.

Fiscal Effect: Minimal

25. Tax deferral extended for qualified electric utilities (Sec. 109(a) of Division B).

Federal Law Change: A special gain recognition rule applies to sales or dispositions of qualifying electric transmission property that are made to implement a federal or state electric restructuring policy. A taxpayer can elect to recognize qualified gain from a qualifying electric transmission transaction over an eight-year period to the extent that the

amount realized from the sale is used to purchase exempt utility property within the applicable period. Under EESA, deferral treatment for sales or other dispositions of electric transmission property to independent transmission companies has been extended two years to transactions occurring before January 1, 2010, for sales or dispositions by qualified electric utilities.

Effective for transactions December 31, 2007 and before January 1, 2010.

Current law does not apply to Wisconsin, as the original provision was not adopted.

26. **Energy Efficient Commercial Buildings Deduction** (Sec. 303 of Division B)

Federal Law Change: EESA extends the deduction for the cost of energy efficient commercial buildings to apply to property placed in service before January 1, 2014. The maximum deduction is $1.80 per square feet and the basis of the property must be reduced.

This provision as it relates to tax year 2008 (part of TRHCA) was not recommended for adoption.

Effective October 3, 2008 and before December 31, 2013.

Fiscal Effect: -$415,000 in FY 10, -$316,000 in FY11.

27. **Deduction for Qualified Tuition and Related Expenses** (Sec. 202 of Division C)

Federal Law Change: EESA extends by two years the deduction for the higher education tuition expenses. Wisconsin provides its own deduction for higher education expenses and thus has not conformed to the federal provision in the past.

It is recommended that the deduction for tax year 2008 not be adopted.

Fiscal Effect: $.83 million in FY10.

Prepared by: Rebecca Boldt

ATTACHMENT 2

DEPARTMENT OF REVENUE
PROPOSAL TO CHANGE OR CORRECT
2009-2011 BIENNIAL BUDGET BILL

TOPIC: Update of the Internal Revenue Code

BUDGET VERSION:
(original budget, amended version?)

Original budget – AB 75

PROBLEM DESCRIPTION:

1. Incorrect references included in Section 1534.
2. Some references omitted from Section 1533
3. Several provisions should not be listed as exceptions to P.L. 110-343 in Sections 1532, 1533, and 1534.

PROPOSED CHANGE AND ITS EFFECT:

- **Section 1532 – page 785**

  Line 4 – Delete "s" from the second word sections at the end of the line

  Line 5 – After 301 delete "and 302"

  Line 5 – After 109, delete "116,"

  Line 5 – After 201, delete "208,"

  Line 7 – After 505, delete "512,"

- **Section 1532 – page 786**

  Line 13 – Delete "s" from the second word sections at the end of the line

  Line 14 – After 301 delete "and 302"

Line 14 – After 109, delete “116,”

Line 14 – After 201, delete “208,”

Line 16 – After 505, delete “512,”

- **Section 1532 – page 787**

  Line 3 – Delete “s” from the first word sections

  Line 3 – After 301 delete “and 302”

  Line 3 – After 109, delete “116,”

  Line 3 – After 201, delete “208,”

  Line 5 – After 505, delete “512,”

  Line 13 – Delete “s” from the first word sections

  Line 13 – After 301 delete “and 302”

  Line 14 – After 109, delete “116,”

  Line 14 – After 201, delete “208,”

  Line 15 – After 505, delete “512,”

- **Section 1533 – page 788**

  Line 16 – Delete “s” from the first word sections

  Line 16 – After 301 delete “and 302”

  Line 16 – After 109, delete “116,”

  Line 16 – After 201, delete “208,”

  Line 19 – After 505, delete “512,”

- **Section 1533 – page 789**

Line 23 – After 110-172, delete the period and insert “P.L. 110-234, excluding sections 15344 and 15345(a) (1) to (3) and (6) of P.L. 110-234, P.L. 110-245, excluding sections 110 and 113 of P.L. 110-245, P.L. 110-289, excluding sections 3081 and 3082 of P.L. 110-289, P.L. 110-317, P.L. 110-343, excluding section 301 of division A, sections 109, 201, 209, 210, 210, 303, 306, 308, and 401 of division B of P.L. 110-343, and sections 202, 203 as it relates to taxable years beginning in 2008, 303, 304, 305, 306, 307, 311, 312, 315, 317, 318, 321, 322, 323, 324, 502, 505, 702(a) (1)(A) as it relates to section 1400N (k) of the Internal Revenue Code, 702 (d) (6), 707, 708, 710, and 711 of division C of P.L. 110-343, P.L. 110-351, and P.L. 110-458.”

- **Section 1533 – page 790**

  Line 5 – Delete “s” from the word sections

  Line 5 – After 301 delete “and 302”

  Line 6 – After 109, delete “116,”

  Line 6 – After 201, delete “208,”

  Line 9 – Delete “512,”

  Line 12 – After made by and before 110-234 insert “ P.L.”

  Line 15 – Delete “s” from the first word sections

  Line 15 – After 301 delete “and 302”

  Line 15 – After 109, delete “116,”

  Line 15 – After 201, delete “208,”

  Line 18 – After 505, delete “512,”

- **Section 1534 – page 791**

  Line 16 – After 110-234, delete “P.L. 110-245, excluding”

  Line 17 – Delete “s” from the second word sections

  Line 17 – After 301 delete “and 302”

Line 18 – After 109, delete “116,”

Line 18 – After 201, delete “208,”

Line 20 – After 505, delete “512,”

- **Section 1534 – page 792**

  Lines 11 through 13 – Delete all of lines 11 and 12 and through “512,” of line 13.

- **Section 1534 – page 793**

  Line 4 – Delete “s” from the word sections

  Line 4 – After 301 delete “and 302”

  Line 5 – After 109, delete “116,”

  Line 5 – After 201, delete “208,”

  Line 7 – After 505, delete “512,”

- **Section 1606 – page 834**

  Line 10 – Delete “s” from the word “sections” at the end of the line

  Line 10 – After 301 delete “and 302”

  Line 11 – After 109, delete “116,”

  Line 11 – After 201, delete “208,”

  Line 12 – After 505, delete “512,”

- **Section 1606 – page 835**

  Line 21 – Delete “s” from the word “sections”

  Line 21 – After 301 delete “and 302”

Line 21 – After 109, delete “116,”

Line 21 – After 201, delete “208,”

Line 23 – After 505, delete “512,”

- **Section 1606 – page 836**

Line 10 – Delete “s” from the first word “sections”

Line 10 – After 301 delete “and 302”

Line 10 – After 109, delete “116,”

Line 11 – After 201, delete “208,”

Line 12 – After 505, delete “512,”

Line 20 – Delete “s” from the first word “sections”

Line 21 – After 301 delete “and 302”

Line 21 – After 109, delete “116,”

Line 21 – After 201, delete “208,”

Line 23 – After 505, delete “512,”

- **Section 1607 – page 837**

Line 24 – Delete “s” from the first word “sections”

Line 24 – After 301 delete “and 302”

Line 25 – After 109, delete “116,”

Line 25 – After 201, delete “208,”

Page 838 Line 2 – After 505, delete “512,”

- **Section 1607 – page 839**

Line 8 – After 110-172, delete the period and insert “P.L. 110-234, excluding sections 15344 and 15345(a) (1) to (3) and (6) of P.L. 110-234, P.L. 110-245, excluding sections

110 and 113 of P.L. 110-245, P.L. 110-289, excluding sections 3081 and 3082 of P.L. 110-289, P.L. 110-317, P.L. 110-343, excluding section 301 of division A, sections 109, 201, 209, 210, 210, 303, 306, 308, and 401 of division B of P.L. 110-343, and sections 202, 203 as it relates to taxable years beginning in 2008, 303, 304, 305, 306, 307, 311, 312, 315, 317, 318, 321, 322, 323, 324, 502, 505, 702(a) (1)(A) as it relates to section 1400N (k) of the Internal Revenue Code, 702 (d) (6), 707, 708, 710, and 711 of division C of P.L. 110-343, P.L. 110-351, and P.L. 110-458."

- **Section 1607 – page 839**

  Line 15 – Delete "s" from the word "sections"

  Line 15 – After 301 delete "and 302"

  Line 16 – After 109, delete "116,"

  Line 16 – After 201, delete "208,"

  Line 19 – Delete "512,"

  Line 22 – After made by and before 110-234 insert "P.L."

  Line 25 – Delete "s" from the first "sections"

  Line 25 – After 301 delete "and 302"

  Line 25 – After 109, delete "116,"

  Line 25 – After 201, delete "208,"

  Page 840 Line 3 – After 505, delete "512,"

- **Section 1608 – page 841**

  Line 2 – Delete "s" from the first "sections"

  Line 2 – After 301 delete "and 302"

  Line 2 – After 109, delete "116,"

  Line 3 – After 201, delete "208,"

  Line 4 – After 505, delete "512,"

- **Section 1608 – page 842**

  Line 13 – Delete “s” from the word sections

  Line 13 – After 301 delete “and 302”

  Line 13 – After 109, delete “116,”

  Line 14 – After 201, delete “208,”

  Line 15 – After 505, delete “512,”

- **Section 1615 – page 858**

  Line 3 – Delete “s” from the word “sections” at the end of the line

  Line 4 – After 301 delete “and 302”

  Line 4 – After 109, delete “116,”

  Line 4 – After 201, delete “208,”

  Line 6 – After 505, delete “512,”

- **Section 1615 – page 859**

  Line 13 – Delete “s” from the word “sections”

  Line 13 – After 301 delete “and 302”

  Line 13 – After 109, delete “116,”

  Line 13 – After 201, delete “208,”

  Line 15 – After 505, delete “512,”

- **Section 1615 – page 860**

  Line 2 – Insert “P.L. 110−343, excluding section 301 of division A, sections 109, 201, 209, 210, 303, 306, 308, and 401 of division B, and sections 202, 203, 303, 304, 305, 306, 307, 311, 312, 315, 317, 318, 321, 322, 323, 324, 502, 505, 702 (a) (1) (A) as it

relates to section 1400N (k) of the Internal Revenue Code, 702 (d) (6), 707, 708, 710, and 711 of division C of P.L. 110–343, and P.L. 110–458,"

Line 8 – Delete "s" from the first word "sections"

Line 8 – After 301 delete "and 302"

Line 8 – After 109, delete "116,"

Line 9 – After 201, delete "208,"

Line 10 – After 505, delete "512,"

- **Section 1616 – page 861**

  Line 11 – Delete "s" from the word "sections"

  Line 11 – After 301 delete "and 302"

  Line 11 – After 109, delete "116,"

  Line 11 – After 201, delete "208,"

  Line 14 – After 505, delete "512,"

- **Section 1616 – page 862**

  Line 18 – After 110-172, delete the period and insert "P.L. 110-234, excluding sections 15344 and 15345(a) (1) to (3) and (6) of P.L. 110-234, P.L. 110-245, excluding sections 110 and 113 of P.L. 110-245, P.L. 110-289, excluding sections 3081 and 3082 of P.L. 110-289, P.L. 110-317, P.L. 110-343, excluding section 301 of division A, sections 109, 201, 209, 210, 210, 303, 306, 308, and 401 of division B of P.L. 110-343, and sections 202, 203 as it relates to taxable years beginning in 2008, 303, 304, 305, 306, 307, 311, 312, 315, 317, 318, 321, 322, 323, 324, 502, 505, 702(a) (1)(A) as it relates to section 1400N (k) of the Internal Revenue Code, 702 (d) (6), 707, 708, 710, and 711 of division C of P.L. 110-343, P.L. 110-351, and P.L. 110-458."

- **Section 1616 – page 862**

  Line 24 – Insert reference to P.L. 110-317

  Line 25 – Delete "s" from the word sections

  Line 25 – After 301 delete "and 302"

Line 25 – After 109, delete “116,”

Page 863 Line 1 – After 201, delete “208,”

Line 3 – Delete “512,”

Line 6 – After made by and before 110-234 insert P.L.

Line 9 – Delete “s” from the word “sections”

Line 9 – After 301 delete “and 302”

Line 10 – After 109, delete “116,”

Line 10 – After 201, delete “208,”

Line 12 – After 505, delete “512,”

- **Section 1617 – page 864**

  Line 11 – Delete “s” from the word “sections”

  Line 11 – After 301 delete “and 302”

  Line 11 – After 109, delete “116,”

  Line 12 – After 201, delete “208,”

  Line 13 – After 505, delete “512,”

- **Section 1617 – page 865**

  Line 20 – Delete “s” from the word “sections”

  Line 20 – After 301 delete “and 302”

  Line 21 – After 109, delete “116,”

  Line 21 – After 201, delete “208,”

  Line 23 – After 505, delete “512,”

- **Section 1632 – page 902**

  Line 6 – Delete "s" from the word "sections"

  Line 6 – After 301 delete "and 302"

  Line 6 – After 109, delete "116,"

  Line 6 – After 201, delete "208,"

  Line 8 – After 505, delete "512,"

- **Section 1632 – page 903**

  Line 15 – Delete "s" from the word "sections"

  Line 15 – After 301 delete "and 302"

  Line 15 – After 109, delete "116,"

  Line 15 – After 201, delete "208,"

  Line 17 – After 505, delete "512,"

- **Section 1632 – page 904**

  Line 17 – Delete "s" from the word "sections"

  Line 17 – After 301 delete "and 302"

  Line 17 – After 109, delete "116,"

  Line 17 – After 201, delete "208,"

  Line 19 – After 505, delete "512,"

  Page 906 Line 1 – Delete "s" from the word "sections"

  Line 1 – After 301 delete "and 302"

  Line 1 – After 109, delete "116,"

  Line 2 – After 201, delete "208,"

Line 3 – After 505, delete “512,”

Page 907 Line 6 - Delete “s” from the word “sections”

Line 6 – After 301 delete “and 302”

Line 7 – After 109, delete “116,”

Line 7 – After 201, delete “208,”

Line 9 – After 505, delete “512,”

- **Section 1633 – page 910**

  Line 14 – Delete “s” from the first word sections

  Line 14 – After 301 delete “and 302”

  Line 14 – After 109, delete “116,”

  Line 14 – After 201, delete “208,”

  Line 17 – After 505, delete “512,”

- **Section 1633 – page 911**

  Line 21 – After 110-172, delete the period and insert “P.L. 110-234, excluding sections 15344 and 15345(a) (1) to (3) and (6) of P.L. 110-234, P.L. 110-245, excluding sections 110 and 113 of P.L. 110-245, P.L. 110-289, excluding sections 3081 and 3082 of P.L. 110-289, P.L. 110-317, P.L. 110-343, excluding section 301 of division A, sections 109, 201, 209, 210, 210, 303, 306, 308, and 401 of division B of P.L. 110-343, and sections 202, 203 as it relates to taxable years beginning in 2008, 303, 304, 305, 306, 307, 311, 312, 315, 317, 318, 321, 322, 323, 324, 502, 505, 702(a) (1)(A) as it relates to section 1400N (k) of the Internal Revenue Code, 702 (d) (6), 707, 708, 710, and 711 of division C of P.L. 110-343, P.L. 110-351, and P.L. 110-458.”

  Page 912 Line 14 – Insert slew of neglected public law section references

  Page 913 Line 16 – Insert slew of neglected public law references

  Page 914 Line 12 – Insert slew of neglected public law section references

  Page 915 Line 14 – Insert slew of neglected public law references

- **Section 1633 – page 915**

  Line 21 – Delete “s” from the word “sections”

  Line 21 – After 301 delete “and 302”

  Line 22 – After 109, delete “116,”

  Line 22 – After 201, delete “208,”

  Line 24 – Delete “512,”

  Page 916 Line 2 – After made by and before 110-234 insert P.L.

  Line 5 – Delete “s” from the first word sections

  Line 5 – After 301 delete “and 302”

  Line 6 – After 109, delete “116,”

  Line 6 – After 201, delete “208,”

  Line 9 – After 505, delete “512,”

- **Section 1634 – page 917**

  Line 8 – Delete “s” from the word “sections”

  Line 8 – After 301 delete “and 302”

  Line 8 – After 109, delete “116,”

  Line 9 – After 201, delete “208,”

  Line 10 – After 505, delete “512,”

- **Section 1634 – page 918**

  Line 17 – Correct the hashed up “ections”

  Line 17 – After 301 delete “and 302”

  Line 18 – After 109, delete “116,”

Line 18 – After 201, delete "208,"

Line 20 – After 505, delete "512,"

Page 919 Line 17 – Delete "P.L. 110-289, excluding"

Line 18 – Delete "P.L. 110-343, excluding"

Line 18 – Delete "s" from the word "sections"

Line 18 – After 301 delete "and 302"

Line 19 – After 109, delete "116,"

Line 19 – After 201, delete "208,"

Line 21 – After 505, delete "512,"

- **Section 1634 – page 921**

Line 2 – Delete "s" from the word "sections"

Line 2-3 – After 301 delete "and 302"

Line 3 – After 109, delete "116,"

Line 3 – After 201, delete "208,"

Line 5 – After 505, delete "512,"

Page 922 Line 7 - Delete "s" from the word "sections"

Line 7 – After 301 delete "and 302"

Line 8 – After 109, delete "116,"

Line 8 – After 201, delete "208,"

Line 10 – After 505, delete "512,"

Page 923 Line 16 - Delete "s" from the word "sections"

Line 16 – After 301 delete "and 302"

Line 17 – After 109, delete “116,”

Line 17 – After 201, delete “208,”

Line 19 – After 505, delete “512,”

- **Section 1685 – page 956**

  Line 19 – Delete “s” from the word “sections”

  Line 20 – After 301 delete “and 302”

  Line 20 – After 109, delete “116,”

  Line 20 – After 201, delete “208,”

  Line 22 – After 505, delete “512,”

- **Section 1685 – page 957**

  Line 23 – Delete last “and”

  Line 25 – Delete “and as amended by”

  Page 958 Line 5 – Delete “s” from word “sections”

  Line 6 – After 301 delete “and 302”

  Line 6 – After 109, delete “116,”

  Line 6 – After 201, delete “208,”

  Line 8 – After 505, delete “512,”

- **Section 1685 – page 958**

  Line 21 – Insert neglected division A section

  Page 959 Line 6 – Delete “s” from the word “sections”

  Line 6 – After 301 delete “and 302”

  Line 7 – After 109, delete “116,”

Line 7 – After 201, delete "208,"

Line 8 – After 505, delete "512,"

- **Section 1686 – page 960**

  Line 8 – Delete "s" from the first word "sections"

  Line 8 – After 301 delete "and 302"

  Line 8 – After 109, delete "116,"

  Line 8 – After 201, delete "208,"

  Line 11 – After 505, delete "512,"

- **Section 1686 – page 961**

  Line 16 – After 110-172, delete the period and insert "P.L. 110-234, excluding sections 15344 and 15345(a) (1) to (3) and (6) of P.L. 110-234, P.L. 110-245, excluding sections 110 and 113 of P.L. 110-245, P.L. 110-289, excluding sections 3081 and 3082 of P.L. 110-289, P.L. 110-317, P.L. 110-343, excluding section 301 of division A, sections 109, 201, 209, 210, 210, 303, 306, 308, and 401 of division B of P.L. 110-343, and sections 202, 203 as it relates to taxable years beginning in 2008, 303, 304, 305, 306, 307, 311, 312, 315, 317, 318, 321, 322, 323, 324, 502, 505, 702(a) (1)(A) as it relates to section 1400N (k) of the Internal Revenue Code, 702 (d) (6), 707, 708, 710, and 711 of division C of P.L. 110-343, P.L. 110-351, and P.L. 110-458."

- **Section 1686 – page 962**

  Line 1 – Delete "s" from the word sections

  Line 1 – After 301 delete "and 302"

  Line 1 – After 109, delete "116,"

  Line 1 – After 201, delete "208,"

  Line 4 – Delete "512,"

  Line 7 – After made by and before 110-234 insert P.L.

  Line 10 – Delete "s" from the first word sections

Line 10 – After 301 delete “and 302”

Line 11 – After 109, delete “116,”

Line 11 – After 201, delete “208,”

Line 13 – After 505, delete “512,”

- **Section 1687 – page 963**

  Line 11 – Delete “s” from the word “sections”

  Line 11 – After 301 delete “and 302”

  Line 12 – After 109, delete “116,”

  Line 12 – After 201, delete “208,”

  Line 14 – After 505, delete “512,”

- **Section 1687 – page 964**

  Line 22 – Delete “s” from the word “sections”

  Line 22 – After 301 delete “and 302”

  Line 22 – After 109, delete “116,”

  Line 23 – After 201, delete “208,”

  Line 24 – After 505, delete “512,”

- **Section 1697 – page 981**

  Line 1 – Delete “s” from the word “sections”

  Line 1 – After 301 delete “and 302”

  Line 2 – After 109, delete “116,”

  Line 2 – After 201, delete “208,”

Line 3 – After 505, delete “512,”

- **Section 1697 – page 982**

  Line 9 – Delete “s” from the word “sections”

  Line 10 – After 301 delete “and 302”

  Line 10 – After 109, delete “116,”

  Line 10 – After 201, delete “208,”

  Line 12 – After 505, delete “512,”

- **Section 1697 – page 982**

  Line 25 – Delete “s” from the word “sections”

  Line 25 – After 301 delete “and 302”

  Line 25 – After 109, delete “116,”

  Page 983 Line 1 – After 201, delete “208,”

  Line 2 – After 505, delete “512,”

  Line 10 – Delete “s” from the first word sections

  Line 11 – After 301 delete “and 302”

  Line 11 – After 109, delete “116,”

  Line 11 – After 201, delete “208,”

  Line 13 – After 505, delete “512,”

- **Section 1698 – page 984**

  Line 12 – Delete “s” from the word “sections”

  Line 12 – After 301 delete “and 302”

  Line 13 – After 109, delete “116,”

Line 13 – After 201, delete "208,"

Line 15 – After 505, delete "512,"

- **Section 1698 – page 985**

Line 18 – Delete "and"

Line 19 – After 110-172, delete the period and insert "P.L. 110-234, excluding sections 15344 and 15345(a) (1) to (3) and (6) of P.L. 110-234, P.L. 110-245, excluding sections 110 and 113 of P.L. 110-245, P.L. 110-289, excluding sections 3081 and 3082 of P.L. 110-289, P.L. 110-317, P.L. 110-343, excluding section 301 of division A, sections 109, 201, 209, 210, 210, 303, 306, 308, and 401 of division B of P.L. 110-343, and sections 202, 203 as it relates to taxable years beginning in 2008, 303, 304, 305, 306, 307, 311, 312, 315, 317, 318, 321, 322, 323, 324, 502, 505, 702(a) (1)(A) as it relates to section 1400N (k) of the Internal Revenue Code, 702 (d) (6), 707, 708, 710, and 711 of division C of P.L. 110-343, P.L. 110-351, and P.L. 110-458."

- **Section 1698 – page 986**

Line 3 – Delete "s" from the word "sections"

Line 3 – After 301 delete "and 302"

Line 3 – After 109, delete "116,"

Line 3 – After 201, delete "208,"

Line 6 – Delete "512,"

Line 9 – After made by and before 110-234 insert P.L.

Line 12 – Insert neglected division A section

- **Section 1699 – page 987**

Line 12 – Delete "s" from the word "sections"

Line 12 – After 301 delete "and 302"

Line 12 – After 109, delete "116,"

Line 13 – After 201, delete "208,"

Line 14 – After 505, delete “512,”

- **Section 1699 – page 988**

  Line 21 – Delete “s” from the word “sections”

  Line 21 – After 301 delete “and 302”

  Line 21 – After 109, delete “116,”

  Line 21 – After 201, delete “208,”

  Line 23 – After 505, delete “512,”

ANALYST: Marcy Stock
Axel Candelaria
Rebecca Boldt

DIVISION: Income, Sales, and Excise Tax
Research and Policy

DATE: April 23, 2009

Corrections Needed Format.doc

ATTACHMENT 3

Wisconsin Department of Revenue
Division of Research and Policy
May 19, 2009

FISCAL IMPLICATIONS OF THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5) contains several provisions that would affect Wisconsin revenue collections to the extent that Wisconsin conforms to federal law.

In general, provisions that relate to federal credits, federal tax computations and federal bonds, do not apply for Wisconsin tax purposes. In addition, provisions that relate to depreciation, expensing and loss carry-backs should not be adopted to ensure consistency in the current Wisconsin treatment.

Section A describes the effect of provisions related to individual income tax; section B describes corporate income and franchise provisions. Section C describes provisions that should not be adopted to the extent that Wisconsin law is distinct from federal law.

A. INDIVIDUAL INCOME TAX PROVISIONS

1. **Temporarily Allow Computer Equipment as a Qualified Higher Education Expense for Qualified Tuition Programs (Sec 1005 of the Conference Agreement, Sect 529 of the IRC)**

   Current Law: Distributions from state-sponsored college savings accounts, e.g., EdVest accounts are not taxable to the extent that the distributions are used for qualified higher education expenses, including tuition, fees and books.

   Law Change: ARRA expands the definition of qualified higher education expenses for taxable years 2009 and 2010 to include expenses for computer technology and equipment.

   Fiscal Effect: Minimal

2. **2009 Patch for Alternative Minimum Tax (Secs. 1011 and 1012 of the Conference Agreement, Secs. 26 and 55 of the IRC)**

   Current Law: For tax years beginning after 2008, the exemption amounts for the AMT are $45,000 for married joint filers, $33,750 for single filers and $22,500 for married separate filers.

   Law Change: ARRA increases the 2009 exemption levels to $70,590 for married joint filers, $$46,700 for single filers and $35,475 for married separate filers.

Effective Date: Tax years beginning after December 31, 2008.

Fiscal Effect: -$2.4 million in FY10

3. Fringe Benefits for Transportation Expenses (Sec. 1151 of the CA, Sec. 132 of the IRC)

Current Law: Qualified transportation fringe benefits provided by an employer are excluded from the employee's gross income. Qualified transportation expenses include parking, transit passes, van pool benefits, and bicycle commuting reimbursements. Up to $230 per month of employer-provided parking is excludable from income while $120 per month of employer-provided transit and van pool benefits are excluded.

Law Change: ARRA increases the monthly exclusion for employer provided transit and vanpool benefits to the same level as the exclusion for employer-provided parking, i.e., increases from $120 per month to $230 per month.

Effective Date: Date of enactment (February 17, 2009); does not apply to tax years beginning after December 31, 2010.

Fiscal Effect: - $.84 mil in FY10, -$.35 mil in FY11, minimal in FY12

B. CORPORATE INCOME AND FRANCHISE TAX PROVISIONS

1. Treatment of Certain Ownership Changes and Loss Limitations – Manufacturing (Sec. 1262 of CA, Sec. 382 of IRC)

Current Law: Section 382 limits the extent to which a "loss corporation" that experiences an ownership change may offset taxable income in any post-change taxable year by net operating losses, certain built-in losses and deductions attributable to the pre-change period. In general the amount of income in any post change year that may be offset by such losses is determined by multiplying the value of the loss corporation immediately before the ownership change by the long-term tax-exempt interest rate.

Law Change: Under ARRA, the Section 382 loss limitations shall not apply in the case of an ownership change that occurs pursuant to a restructuring plan which is required under a loan agreement or commitment for a line of credit entered into with the Department of Treasury under the Emergency Economic Stabilization Act of 2008 and is intended to result in improved capitalization and capacity with respect to the manufacturing workforce of, and suppliers to, the taxpayer.

Effective Date: Applies to ownership changes occurring after February 17, 2009 (date of enactment).

Fiscal Effect: Minimal revenue loss through FY12; - $.23 million in FY13, -$.43 million in FY14, -$.48 million in FY15.

2. Temporary Reduction in Recognition Period for S Corporations Built In Gains (Sec 1251 of CA, Sec 1374 of IRC)

Current Law: A corporate level tax, at the highest marginal rate applicable to corporations (currently 35%) is imposed on an S corporation's gain that arose prior to the conversion of the C corporation to an S Corporation and is recognized by the S corporation during the recognition period, i.e., the first ten taxable years that the S election is in effect. Thus, any asset that is sold during the recognition period that has built-in gain is subject to the built-in gain tax.

Law Change: For any taxable year 2009 and 2010, ARRA temporarily shortens the holding period of assets subject to the built-in gains tax from ten years to seven years. Thus if an asset is sold in tax year 2009 and 2010 and it has been seven years after the S election has taken effect, no tax is imposed on the built-in gain.

Fiscal Effect: -$.2 million in FY10, -$.15 million in FY11, -$.07 million in FY12, minimal revenue loss thereafter.

3. Deferral of Certain Income from the Discharge of Indebtedness (Sec. 1231 of CA, Sec. 108 of IRC)

Current Law: The amount of debt that is discharged is generally taxable. The amount of discharge generally is equal to the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy the debt. These rules generally apply to the exchange of an old obligation for a new obligation. By repurchasing their debt securities for cash, companies may be able to retire their existing indebtedness at less than the original face value and reduce the related interest costs.

Law Change: ARRA allows a taxpayer to defer income from the cancellation of indebtedness as a result of a repurchase of a debt instrument by the taxpayer. The provision applies only to repurchases of debt for cash that occur after December 31, 2008 and before January 1, 2011. Under the provision, the taxpayer is required to include in income an amount equal to 25% of the deferred amount in each of the four taxable years beginning in the year following the year of the repurchase. Debt instrument is defined broadly to include bonds, debentures, notes, certificates or any other instrument or contractual arrangement constituting indebtedness.

Effective Date: Effective for discharges in taxable years beginning after December 31, 2008.

Fiscal Effect: -$48.8 million in FY10, -$18.1 million in FY11, -$3.7 million in FY12,-$.54 million in FY13, +$6 million in FY14, +$12.4 million in FY15.

C. PROVISIONS NOT TO BE ADOPTED

1. Capital Gain Exclusion for Small Business Stock (Sec. 1241 of CA, Sec. 1202 of IRC)

Current Law: Current federal law provides a 50% exclusion for capital gains of certain small business stock held for at least five years. Wisconsin does not currently conform to this treatment but provides a 100% exclusion for capital gains from qualified small business stock issued after January 1, 1986.

Law Change: ARRA increases the federal exclusion from 50% to 75% for gains of certain small business stock. Conformity to ARRA would result in greater taxation of small business gains than under current Wisconsin law.

Effective Date: Effective for stock issued after date of enactment and before January 1, 2011.

Fiscal Effect: +1.1 million FY14, +$2.3 million in FY15 and +$1.5 million in FY16.

2. Unemployment Exclusion (Sec. 1007 of the CA, Sec. 85 of the IRC)

Current Law: Federal law requires that all unemployment compensation be included in gross income. Wisconsin law currently departs from federal treatment by allowing a subtraction for a portion of unemployment compensation when income falls below certain amounts.

Law Change: ARRA excludes up to $2,400 of unemployment compensation benefits received in 2009 from gross income.

Effective Date: Tax years beginning after December 31, 2008

Fiscal Effect: -$30.4 million in FY10, +$3.9 million in FY11.

Prepared by Rebecca Boldt