



## Legislative Fiscal Bureau

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January 21, 2011

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Substitute Amendment 1 to January 2011 Special Session Assembly Bill 3:  
Individual Income and Corporate Income and Franchise Taxes -- Income Exclusion  
and Tax Credit for Relocated Businesses

Assembly Substitute Amendment 1 to January Special Session Assembly Bill 3 would provide a business income exclusion under the individual income tax and a tax credit under the corporate income/franchise tax for a business that relocated to Wisconsin from another state or country.

Specifically, ASA 1 to SS AB 3 would provide an exclusion from income under the individual income tax for the profit or loss from a trade or business as reported on federal income tax return schedule C (profit or loss from business) and F (profit or loss from farming) or their equivalents, plus ordinary gain or loss on the sale of business assets. The amount of the exclusion could not be less than \$0. Partners and members of limited liability companies (LLCs) would exclude the partner's or member's distributive share of taxable income of the partnership or LLC, items of income and gain, and guaranteed payments to partners, as determined under the Internal Revenue Code (IRC), and include adjustments to reflect differences between Wisconsin law and the IRC. Tax-option corporation (S corporation) shareholders would exclude the shareholder's distributive share of the entity's net income or loss, as determined under state law, plus interest income from municipal, state, and federal obligations. The exclusion amounts would be apportioned to Wisconsin if necessary. Corporations, including insurance companies could claim a credit against income/franchise taxes equal to the amount of the claimant's tax liability after applying all other allowable credits, deductions, and exclusions.

As noted, to be eligible for an exclusion or credit, the taxpayer would be required to locate a business to the state from another state or country, and begin doing business in Wisconsin. The exclusion or credit could be claimed for two consecutive tax years, starting with the year in which

the taxpayer located in Wisconsin, for tax years beginning on or after January 1, 2011. A person could not claim an exclusion or credit if that person had done business in Wisconsin any time during the two tax years preceding the year for which the taxpayer would claim the exclusion or credit.

The Department of Revenue (DOR) would have full power to administer the exclusion or credit and could take any action, conduct any proceeding, and proceed as authorized under state income and franchise tax laws. State tax laws related to timely claims, assessments, refunds, appeals, collection, interest and penalties would apply to the exclusion and deduction. DOR would also be required to promulgate rules to administer the exclusion and deduction.

"Locates to this state" would mean moving either 51% of the business' workforce payroll, or at least \$200,000 of wages, as defined under the IRC, to Wisconsin during the first tax year to which an exclusion or tax credit related.

The substitute amendment includes a nonstatutory provision specifying that the general fund statutory reserve requirement (\$65 million in 2010-11, and the 2011-13 biennium) does not apply to the action of the Legislature in enacting the substitute amendment.

Based on information compiled by DOR from the tax returns of newly filing corporations, and for corporations that move to Wisconsin (from the National Establishment Time Series database, compiled by Walls & Associates and Dunn and Bradstreet), the relocation exclusion and tax credit would reduce state individual income and corporate income and franchise tax revenues by an estimated \$500,000 in 2011-12, and annually thereafter.

Please contact me if you have further questions.

Prepared by: Ron Shanovich