

GENERAL FUND TAXES

1. GENERAL FUND TAX CHANGES

Governor: The following table shows the general fund tax changes recommended by the Governor, along with their fiscal effects in the 2021-23 biennium. The table does not include tax law changes that are estimated to have a minimal fiscal effect. The table also does not include changes to refundable tax credits, because they are paid from appropriations rather than recorded as reductions in tax revenues.

The table also includes the estimated fiscal effects of general fund tax law changes under 2021 Acts 1 and 2, which were enacted on February 18, 2021. Both acts addressed general fund tax law changes, including certain provisions recommended by the Governor. Act 1 adopted a number of provisions affecting how the Department of Revenue (DOR) administers state tax laws and modified various general fund tax law provisions. A memorandum providing a detailed description of the Act 1 provisions was sent from the Legislative Fiscal Bureau to members of the Wisconsin Legislature on February 17, 2021, entitled "Assembly Substitute Amendment 3 to Assembly Bill 2." Act 2 modified the treatment of capital gains and quarterly estimated payments as they applied to S corporations and partnerships electing to be taxed at the entity level.

2021-23 General Fund Tax Changes (Millions)

	<u>2021-22</u>	<u>2022-23</u>	<u>2021-23 Biennium</u>
Income and Franchise Taxes			
IRC Update - Tax Cuts and Jobs Act	\$264.200	\$275.900	\$540.100
Limit MAC for Manufacturers	258.900	228.500	487.400
Limit Capital Gains Exclusion	202.100	148.400	350.500
Caregiver Tax Credit	-100.400	-102.500	-202.900
Broker-Dealer Apportionment	37.000	37.000	74.000
Work Opportunity Credit	-27.800	-24.100	-51.900
Child and Dependent Care Credit	-9.800	-9.800	-19.600
Medical Care Insurance for Self-Employed	-9.500	-9.500	-19.000
Limit Private School Tuition Deduction	6.400	6.500	12.900
Low-Income Housing Credit	-1.450	-7.250	-8.700
Repeal NOL Carryback	2.000	4.100	6.100
Limit Dividends Received Deduction	2.900	3.100	6.000
First-Time Homebuyer Account Subtraction	0.000	-4.100	-4.100
Flood Insurance Tax Credit	-0.800	-0.800	-1.600
National Guard and Reserve Subtraction	-0.430	-0.430	-0.860
Americorps Award Subtraction	-0.136	-0.136	-0.272
Federalize College Savings Accounts	-0.100	-0.100	-0.200

	<u>2021-22</u>	<u>2022-23</u>	<u>2021-23 Biennium</u>
General Sales and Use Tax			
Recreational Marijuana Sales Tax	-	\$33.600	\$33.600
Exemption for Diapers	-\$7.300	-8.800	-16.100
Exemption for Battery Storage	-3.800	-4.400	-8.200
Exemption for Sweetened Dried Fruit	-0.400	-0.500	-0.900
Exemption for Prairie/Wetland Services	-0.200	-0.300	-0.500
Repeal Clay Pigeon Game Bird Exemption	0.150	0.200	0.350
Repeal Exemption for Farm Raised Deer	0.090	0.120	0.210
Excise Taxes			
Marijuana Excise Taxes	-	52.880	52.880
Increase Vapor Products Tax	12.700	16.600	29.300
Increase Tax on Little Cigars	<u>2.300</u>	<u>3.000</u>	<u>5.300</u>
Total Tax Changes AB 68/SB 11	\$626.624	\$637.184	\$1,263.808
Total Tax Changes Act 1*	-\$208.075	-\$62.975	-\$271.050
Total Tax Changes Act 2	<u>-0.810</u>	<u>-0.860</u>	<u>-1.670</u>
Total Tax Changes	\$417.739	\$573.349	\$991.088

*Act 1 also included the Governor's recommendation for: (a) medical care insurance for self-employed; and (b) federalize college savings accounts. The estimated tax reductions included under Act 1 have been reduced by these amounts.

Income and Franchise Taxes

1. INTERNAL REVENUE CODE UPDATE

GPR-Tax	\$540,100,000
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Governor: Update references to the Internal Revenue Code (IRC) under the individual and corporate income/franchise taxes. For tax years beginning after December 31, 2020, adopt the following IRC provisions of the Tax Cuts and Jobs Act of 2017 (TCJA): (a) loss limitation for taxpayers other than corporations; (b) amortization of research and experimental expenditures; (c) accounting rules for accrual method taxpayers; (d) limitation on the deduction for business interest; (e) limitation on the deduction for employee entertainment and meal expenses; (f) limitation on the deduction of Federal Deposit Insurance Corporation (FDIC) premiums; and (g) modification of the limitation on the deduction for highly paid individuals. Overall, individual income and corporate income/franchise taxes would increase by an estimated \$264,200,000 in 2021-22, \$275,900,000 in 2022-23, \$267,900,000 in 2023-24, and \$258,800,000 in 2024-25. The estimated fiscal effect of each provision in the 2021-23 biennium is shown below.

**2021-23 Biennium Fiscal Effect
(Millions)**

<u>TCJA Provision</u>	<u>2021-22</u>	<u>2022-23</u>
Loss limitation for taxpayers other than corporations	\$72.9	\$58.2
Amortization of research and experimental expenditures	63.2	101.5
Accounting rules for accrual method taxpayers	7.9	3.5
Limitation on deduction for business interest	99.3	95.3
Limitation on the deduction for entertainment and meal expenses	10.0	7.8
Limitation on deduction for FDIC premiums	6.5	6.3
Modification of the limitation for highly paid individuals	<u>4.4</u>	<u>3.3</u>
 Total	 \$264.2	 \$275.9

[Bill Section: 1401]

2. MANUFACTURING AND AGRICULTURE TAX CREDIT LIMITATION

GPR-Tax \$487,400,000

Governor: Limit the amount of qualified production activities income (QPAI) from manufacturing activities a claimant may use as the basis for claiming the manufacturing and agriculture tax credit (MAC), as described below. The limit would not apply to income derived from agricultural activities.

Under current law, for corporate filers, the MAC is equal to 7.5% multiplied by the lesser of a claimant's: (a) eligible QPAI, as defined under the IRC, derived from manufacturing or agricultural property in Wisconsin; (b) income apportioned to Wisconsin for state corporate income/franchise tax purposes; or (c) income determined as taxable under state combined reporting provisions. For business owners who file under the individual income tax, the credit is equal to 7.5% of the claimant's eligible QPAI, as defined under the IRC, that is derived from manufacturing or agricultural property in Wisconsin. There is no maximum amount of MAC that can be claimed in a tax year. However, the credit may not be used by individual filers to offset taxes on other sources of income. Further, the amount of income on which the MAC is calculated must be reduced by the amount of QPAI that is claimed under the credit for taxes paid to another state.

Pass-through entities, such as partnerships, limited liability companies (LLCs), and tax-option (S) corporations, cannot claim the MAC under current law. Instead, the credit computed by those entities can pass through to the partners, members, or shareholders. Partnerships, LLCs, and S corporations that elect to be taxed at the entity level may not claim the MAC (and neither can their owners).

The bill would limit the amount of QPAI from manufacturing activities a claimant may use to compute the MAC to no more than \$300,000. This provision would effectively provide for a maximum MAC claim of \$22,500 for income derived from manufacturing activities. For example,

a sole proprietor or a C corporation could only claim a total of \$22,500 on their own manufacturing income. According to DOR, a pass-through entity would be able to compute the credit up to a maximum of \$22,500, and pass through that amount in the aggregate to its partners, members, or shareholders. As a result, an individual would be able to claim a maximum of \$22,500 for each pass-through business in which the individual has an ownership interest, such that an individual could potentially claim more than \$22,500 in the aggregate.

The provision would first apply for taxable years beginning after December 31, 2020. The administration estimates that the provision would increase state tax revenues by \$258,900,000 in 2021-22 and \$228,500,000 in 2022-23.

[Bill Sections: 1299, 1300, and 1349 thru 1351]

3. **LIMITATION ON EXCLUSION FOR NONFARM CAPITAL GAINS**

GPR-Tax \$350,500,000

Governor: Limit the current law exclusion for 30% of an individual's net long-term, nonfarm capital gains as follows, beginning in tax year 2021. Prohibit individuals with federal adjusted gross income (AGI) above the following thresholds from claiming the exclusion: (a) \$400,000 for single and head-of-household filers; (b) \$533,000 for married-joint filers; and (c) \$266,500 for married-separate filers. However, if an individual's federal AGI, less 30% of the capital gains otherwise eligible for the aforementioned exclusion, is below the applicable AGI threshold listed above, the individual's exclusion would be reduced by the amount by which their federal AGI exceeds the applicable threshold amount. Increase individual income tax collections by an estimated \$202,100,000 in 2021-22 and \$148,400,000 in 2022-23 and annually thereafter.

Under current law, a capital gains exclusion is provided for 60% of the net capital gain from the sale of farm assets and 30% of the net capital gain from the sale of other assets, provided those assets are held more than one year or are acquired from a decedent. Gains from assets held one year or less are fully taxed. The Governor's recommendation would not limit the net capital gain exclusion from the sale of farm assets.

[The Governor's budget was introduced on February 16, 2021. However, 2021 Act 2 was signed into law on February 18, 2021. Act 2 provides that the current law capital gains exclusion described above also applies to S corporations that elect to pay tax at the entity level (partnerships making the entity-level tax election may also claim this exclusion under current law). It is unclear whether the Governor's proposed limitation on the exclusion would also apply to these S corporations and partnerships. A technical amendment would be necessary to specify that the limitation also applies to S corporations and partnerships electing to pay tax at the entity level.]

[Bill Sections: 1241 thru 1244]

4. **FAMILY CAREGIVER TAX CREDIT**

GPR-Tax - \$202,900,000

Governor: Beginning in tax year 2021, create a nonrefundable individual income tax credit

for 50% of the qualified expenses incurred by a family caregiver to benefit a qualified family member. Specify that a qualified family member would mean an individual who: (a) is 18 years of age or older during the relevant tax year; (b) requires assistance with one or more daily living activities, as certified in writing by a physician (defined as an individual who specializes in family practice, general internal medicine, general pediatrics, obstetrics and gynecology, or psychiatry); and (c) is the claimant's family member (defined as a spouse or an individual related by blood, marriage, or adoption within the 3rd degree of kinship).

Define qualified expenses to mean amounts paid by a claimant in the relevant tax year for items that relate directly to the care or support of a qualified family member, including: (a) the improvement or alteration of the claimant's primary residence to enable or assist the qualified family member to be mobile, safe, or independent; (b) the purchase or lease of equipment to enable or assist the qualified family member to carry out one or more activities of daily living; and (c) the acquisition of goods or services, or support, to assist the claimant in caring for the qualified family member, including employing a home care aide or personal care attendant, adult day care, specialized transportation, legal or financial services, or assistive care technology. However, specify that qualified expenses do not include: (1) general food, clothing, or transportation expenses; (2) ordinary household maintenance or repair expenses that are not directly related to, or necessary for, the care of the qualified family member; or (3) any amount that is paid or reimbursed by insurance or other means.

Specify that the maximum credit that may be claimed in each tax year with regard to a particular qualified family member is \$500 (\$250 for married-separate filers). Provide that, if more than one individual may claim the family caregiver credit for a particular qualified family member, the maximum credit would have to be apportioned among all eligible claimants based on the ratio of their qualified expenses to the total amount of qualified expenses incurred on behalf of that particular qualified family member, as determined by DOR.

Stipulate that no credit would be allowed for married-joint claimants with federal AGI above \$170,000, and that no credit would be allowed for all other filers with federal AGI above \$85,000. Provide that, for married-joint claimants with federal AGI above \$150,000, the credit amount for which they would otherwise be eligible would be reduced by the ratio of the amount by which their federal AGI exceeds \$150,000 divided by \$20,000. Specify that, for all other filers with federal AGI greater than \$75,000, the credit amount for which they would otherwise be eligible would be reduced by the ratio of the amount by which their federal AGI exceeds \$75,000 divided by \$10,000. The resulting credit amount computed would be subject to the \$500 limit (\$250 for married-separate filers).

Specify that no family caregiver tax credit would be allowed unless it were claimed within four years of the unextended due date of the income tax return to which the claim relates. Prohibit nonresidents and part-year residents of Wisconsin from claiming the credit. Direct that no credit would be allowed for a tax year covering a period of less than 12 months, except for a tax year that was closed because of the death of the taxpayer. Specify that current law provisions which apply to the individual income tax relating to DOR's enforcement authority, and to assessments, refunds, appeals, collection, interest, and penalties, would also apply to this credit. Reduce individual income tax collections by an estimated \$100,400,000 in 2021-22 and by \$102,500,000 in 2022-23

and annually thereafter.

[Bill Sections: 1307 and 1316]

5. **BROKER-DEALER APPORTIONMENT**

GPR-Tax	\$74,000,000
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Governor: Modify the administrative code as it pertains to income and franchise taxes as follows. Under current law, interstate broker-dealers, investment companies, investment advisors, and underwriters determine the percentage of their income subject to taxation in Wisconsin based on gross receipts from sales in Wisconsin compared to total company gross receipts. Gross receipts generally include gross earnings on commissions, sales of trading assets, account maintenance fees, margin interest, underwriting services, receipts on investment contracts, and other gross receipts, less certain returns and allowances.

The administration indicates that the current apportionment formula can distort the income attributable to Wisconsin for these companies because asset trading can generate large receipts with low risk and profit margins. For example, hedging an investment by simultaneously selling put and call options for the same stock bears little economic risk, but increases a broker's trading receipts. At high volumes, such receipts attributable to other states can outweigh gross receipts from activities occurring in Wisconsin for purposes of the current apportionment formula, thereby subjecting substantially less income to tax in Wisconsin even when large amounts of profit are generated from activities occurring in this state. For this reason, the administrative code permits DOR to substitute net gains (net of commissions) from the sales of trading assets, for purposes of apportionment, when gross receipts results in a substantial distortion of the receipts factor under current law.

The bill would amend the administrative code to change the receipts factor to include net gains, rather than gross receipts, to apportion income from trading assets by interstate broker-dealers, investment advisors, investment companies, and underwriters. Also, the bill would repeal the administrative code provision permitting DOR to substitute net gains for gross receipts, as this would be superfluous under the bill. The administration indicates that current law/rule has led to tax filers contesting that a distortion exists. Under the bill, only one apportionment method would be permitted, limiting appeals of contested audits by taxpayers.

The administration estimates that changing the apportionment factor to use net gains rather than gross receipts would increase income and franchise tax revenues by \$37,000,000 in 2021-22 and annually thereafter. These provisions would take effect on the first day of the month following the month in which the bill takes effect, and would first apply to taxable years beginning after December 31, 2020.

[Bill Sections: 3482 thru 3485, 9337(10), and 9437(8)]

6. **WORK OPPORTUNITY TAX CREDIT**

GPR-Tax	- \$51,900,000
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Governor: Create a nonrefundable income and franchise tax credit for taxable years beginning after December 31, 2020, called the work opportunity tax credit (WOTC), modeled on

a federal tax credit of the same name, as described below. The administration estimates that the state WOTC would reduce state tax revenues by \$27,800,000 in 2021-22 and \$24,100,000 in 2022-23.

The WOTC is a federal tax credit available to employers for hiring individuals from certain targeted groups who have faced significant barriers to employment, including: (a) recipients of certain aid programs (TANF, SNAP, and SSI); (b) qualified veterans; (c) qualified ex-felons; (d) residents of designated communities (empowerment zones, enterprise communities, and renewal communities); (e) persons having physical or mental disabilities that have been referred for vocational rehabilitation; (f) qualified summer youth employees; (g) long-term family assistance recipients; and (h) qualified long-term unemployment recipients. Currently, the Department of Workforce Development (DWD) is responsible for the administration of the federal WOTC, including the certification process described below, promoting the program to employers, and reporting program data to the U.S. Department of Labor (USDOL). DWD receives grant funding from USDOL to administer the federal program.

Employers may claim the federal WOTC for up to 40% of the wages paid to those employed at least 400 hours and up to 25% for those employed for at least 120 hours, but less than 400. In general, the maximum qualified first-year wages are capped at \$6,000 and no credit is allowed for the second year of employment. Thus, in general, the maximum credit is \$2,400 for those employed 400 hours or more (40% of \$6,000) and \$1,500 for those employed at least 120 hours but less than 400 (25% of \$6,000).

However, the wage limit differs based on the type of targeted group member. For example, for disabled veterans, qualifying wages are capped at \$12,000, and thus the maximum federal credit is \$3,000 (25% of \$12,000) for those employed for at least 120 hours but less than 400 hours and is \$4,800 (40% of \$12,000) for those employed for 400 or more hours. For unemployed disabled veterans, wages are capped at \$24,000, and for unemployed veterans, wages are capped at \$14,000. For long-term family assistance recipients, the WOTC may be earned for the first two years of employment, except that wages are capped at \$10,000, and employers may claim up to 40% for those employed at least 400 hours in the first year (\$4,000 maximum credit) and 50% for those employed at least 400 hours in the second (\$5,000 maximum credit).

The bill would create a similar state tax credit for employers that would have to be claimed at the same time as the federal credit, equal to up to one of the following amounts: (a) 20% of qualified first-year wages, as defined in the federal WOTC, paid during the taxable year to a targeted group member, as defined under the federal WOTC, who has performed at least 400 hours of services for the claimant in this state; (b) 12.5% of the qualified first-year wages paid during the taxable year to a targeted group member who has performed at least 120 hours, but less than 400 hours, of services for the claimant in this state; or (c) 25% of the qualified second-year wages paid during the taxable year to a long-term family assistance recipient (as defined under the federal WOTC) who has performed at least 400 hours of services for the claimant in this state. Claims could not exceed the wage limits discussed above that are set under the federal WOTC. Claimants would not be able to claim the state WOTC for wages paid for services performed outside this state. "Claimant" would mean a person who is an employer of a targeted group member and who files a claim for the work opportunity credit.

Partnerships, LLCs, and S corporations would not be permitted to claim the credit, but the eligibility for, and the amount of, the credit would be based on their payment of the wages. A partnership, LLC, or S corporation would have to compute the amount of credit that each of its partners, members, or shareholders could claim and provide that information to each of them. The partners, members, and shareholders would be able to claim the credit in proportion to their ownership interests.

DOR would be authorized to administer the credit, and take any action, conduct any proceeding, and proceed as authorized under state income and franchise tax laws. State tax provisions related to timely claims, assessments, refunds, appeals, collection, interest, and penalties would apply to the credit.

Under current law, the federal WOTC will sunset after tax year 2025. Under the bill, the state WOTC would also sunset after 2025. The bill would incorporate the following requirements and limitations of the federal WOTC for purposes of the state WOTC.

First, the bill would set the following rules for certifications. An individual could not be treated as a member of a targeted group unless: (a) on or before the day on which that individual begins work for the employer, that employer has received a certification from a designated local agency (such as a state employment security agency) that the individual is a member of a targeted group; or (b) on or before the day the individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and not later than 28 days after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for a certification. "Pre-screening notice" would mean a document which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group. If an individual has been certified by a designated local agency as a member of a targeted group, and that certification is incorrect because it was based on false information provided by the individual, then the certification would have to be revoked. Wages paid by the employer after the date on which notice of revocation is received by the employer could not be treated as qualified wages. If a designated local agency denies a request for certification of membership in a targeted group, the agency would have to provide to the individual making such request a written explanation of the reasons for such denial.

A veteran would be treated as having the required aggregate periods of unemployment for being a qualified veteran, if the veteran is certified by such agency as being in receipt of unemployment compensation under state or federal law for a period of either: (a) not less than six months during the one-year period ending on the hiring date; or (b) not less than four weeks (but less than six months) during the one-year period ending on the hiring date.

Second, remuneration paid by an employer to an employee during any taxable year would be taken into account only if more than one-half of the remuneration paid is for services performed in a trade or business of the employer.

Third, certain individuals would not be eligible. No wages would be taken into account with respect to any individual if, prior to the hiring date, the individual had been employed by the employer at any time. Further, in the case of an individual who has performed at least 120 hours, but less than 400 hours, of service for the employer, the wage limit would be 25% rather than 40%

(as discussed above). No wages would be taken into account with respect to any individual unless such individual has performed at least 120 hours of service for the employer. Further, no wages would be taken into account with respect to an individual who: (a) bears a relationship to the taxpayer, as defined under the IRC (including a child, brother, father, or mother), or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation, or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50% of the capital and profits interests in the entity; (b) if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears a relationship to a grantor, beneficiary, or fiduciary of the estate or trust, as defined under the IRC; (c) is a dependent (as defined under the IRC) of the taxpayer; or, if the taxpayer is a corporation, of an individual described above in "(a);" or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

Finally, in the case of a successor employer, the determination of the amount of the credit with respect to wages paid by the successor employer would be made in the same manner as if such wages were paid by the predecessor employer. No credit would be determined with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services.

[Bill Sections: 1296, 1314, 1348, 1354, 1380, and 1383]

7. INDIVIDUAL INCOME TAX CREDIT FOR CHILD AND DEPENDENT CARE EXPENSES

GPR-Tax - \$19,600,000

Governor: Create a nonrefundable state individual income tax credit for household and dependent care expenses, beginning in tax year 2021. Specify that the credit equals 50% of the amount of the federal household and dependent care expenses tax credit (set forth under the IRC) that a claimant is eligible to claim on the claimant's federal income tax return for the same tax year. Sunset the current law deduction for household and dependent care expenses beginning in tax year 2021. This provision would reduce individual income tax collections by an estimated \$9,800,000 in 2021-22 and 2022-23.

Specify that no state child and dependent care expenses tax credit would be allowed unless it is claimed within four years of the unextended due date of the income tax return to which the claim relates. Prohibit nonresidents and part-year residents of Wisconsin from claiming the credit. Direct that no credit could be allowed for a tax year covering a period of less than 12 months, except for a tax year that was closed because of the death of the taxpayer. Specify that current law provisions which apply to the individual income tax relating to DOR's enforcement authority, and to assessments, refunds, appeals, collection, interest, and penalties, would also apply to this credit. Require couples who are married at the end of a tax year to claim the credit as married-joint filers for that tax year, except permit married persons living apart and treated as single under the IRC to claim the credit as if a single or head-of-household claimant.

[Bill Sections: 1260, 1311, 1313, and 9337(5)]

8. MODIFY THE MEDICAL CARE INSURANCE DEDUCTION FOR SELF-EMPLOYED INDIVIDUALS

GPR-Tax - \$19,000,000

Governor: Modify the current law deduction for medical care insurance premiums paid by self-employed individuals as follows, beginning in tax year 2021. Direct that the deduction would be limited to the individual's total wages, salary, tips, unearned income, and net trade or business earnings that are taxable in Wisconsin. Modify the current law proration calculation for nonresidents and part-year residents to provide that the deduction would be reduced according to the percentage of the person's total wages, salary, tips, unearned income, and net trade or business earnings that are subject to Wisconsin tax. Repeal obsolete statutes related to deductions for medical care insurance that refer to previous tax years. The administration estimates that state adoption of these provisions would reduce individual income tax revenues by \$9,500,000 annually beginning in 2021-22.

Under state law prior to 2021 Act 1, a deduction was provided for medical care insurance premiums paid by self-employed individuals that was limited to an individual's aggregate net earnings from a trade or business that were subject to Wisconsin tax. Nonresidents or part-year residents of Wisconsin were required to reduce the amount of the deduction according to the proportion of their total net earnings from a trade or business which were taxable in Wisconsin.

[The Governor's budget was introduced on February 16, 2021. Provisions identical to those described above were subsequently signed into law under 2021 Act 1 on February 18, 2021. As a result, this provision, if also adopted in the budget bill, would have no additional impact on state tax revenues.]

[Bill Sections: 1245 thru 1251, 1255 thru 1259, and 1297]

9. LIMITATION ON PRIVATE SCHOOL TUITION DEDUCTION

GPR-Tax \$12,900,000

Governor: Limit the current law deduction for tuition expenses paid for a student to attend an eligible institution, beginning in tax year 2021. Prohibit individuals with Wisconsin AGI at or above the following thresholds from claiming the deduction: (a) \$100,000 for single and head-of-household filers; (b) \$150,000 for married-joint filers; and (c) \$75,000 for married-separate filers. Increase individual income tax collections by an estimated \$6,400,000 in 2021-22 and \$6,500,000 in 2022-23 and annually thereafter.

Under current law, an individual may deduct up to \$4,000 per year per pupil enrolled in kindergarten through grade eight, and \$10,000 per year per pupil enrolled in grades nine through twelve. The pupil must be a dependent of the claimant for federal income tax purposes and must be enrolled in kindergarten or grades one through twelve of a private school (as defined in state law) which meets all the criteria for a private school. The deduction is disallowed if the tuition expenses are paid using a distribution from a 529 account. Under current law, the deduction is not limited based on the taxpayer's AGI.

[Bill Sections: 1261 and 1262]

10. LOW-INCOME HOUSING TAX CREDIT

GPR-Tax - \$8,700,000

Governor: Extend the period that the state housing tax credit may be claimed from six to 10 years, and increase from \$42 million to \$100 million the total amount the Wisconsin Housing and Economic Development Authority (WHEDA) may certify to be claimed annually. Further, allow the Authority to waive the current requirement that a development receiving credits under this provision be financed with federal tax-exempt bonds if the Authority determines allowable bonding authority under the federal volume cap will be insufficient to finance developments in any given year.

The effect of the provision would be to: (a) increase the amount of credits awarded each year from \$7 million to \$10 million, increasing the credits available to developments by 43%; and (b) increase the length of time credits are claimable, increasing value of awarded credits by 67%. The administration estimates the provision would decrease state income and franchise tax revenue by \$1,450,000 in 2021-22, \$7,250,000 in 2022-23, \$13,050,000 in 2023-24, and \$18,850,000 in 2024-25, fully phasing in to a decrease of \$58 million in 2031-32. Combined with the \$42 million limit under current law, the credit is estimated to decrease state tax revenues by \$100 million annually beginning in 2031-32. The bill as introduced does not specify the initial applicability of changes to the credit, and could allow prior recipients to claim credits for the additional four-year period. The administration indicates that it intends this provision would first apply to credits awarded after the bill's enactment. A technical amendment would be necessary to accomplish the Governor's intent.

The state housing tax credit is a nonrefundable credit claimable against individual income, corporate income/franchise, and insurance premiums taxes. The state housing tax credit is administered by WHEDA, which awards it as a match to the federal 4% low-income housing tax credit, up to the state credit's \$1.4 million per project limit. The federal 4% low-income housing tax credit provides a federal tax credit equal to 4% of the cost of a project each year for 10 years, generally equal to at least 30% of the present value of construction costs associated with a project, and is available on a noncompetitive basis to all properties that qualify. Properties receiving state and federal housing tax credits must reserve at least 20% of units for households with incomes below 50% of county median income, or 40% of units for households with average incomes below 60% of county median income, for at least 30 years.

[Bill Sections: 1304, 1305, 1352, 1353, 1381, 1382, 1412, 1413, and 2525 thru 2527]

11. REPEAL OPERATING LOSS CARRYBACK

GPR-Tax \$6,100,000

Governor: Repeal current law provisions under the individual income tax that allow net operating losses to be carried back for two tax years as an adjustment to federal AGI, beginning in tax year 2021. Net operating loss carrybacks are not allowed under the state's corporate income/franchise tax, and generally, are not allowed for federal tax purposes. Generally, a net operating loss results when a taxpayer's business deductions exceed the taxpayer's gross income. This provision would not affect current law provisions that allow taxpayers to carry forward net operating losses for up to 20 years. This provision would increase individual income tax collections by an estimated \$2,000,000 in 2021-22, \$4,100,000 in 2022-23, \$2,000,000 in 2023-24, \$500,000

in 2024-25, and a minimal amount thereafter. Over time, the revenue gain due to the elimination of loss carrybacks would be offset by the revenue loss due to larger amounts of loss carry forwards.

[Bill Sections: 1265 thru 1268, 1396, 1397, and 9337(3)]

12. DIVIDENDS RECEIVED DEDUCTION LIMIT

GPR-Tax	\$6,000,000
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Governor: Specify that corporations may not use the dividends received deduction in computing a net business loss under the state corporate income/franchise tax. Under current law, in determining gross income, corporations may deduct from income dividends received from a corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year, at least 70% of the total combined voting stock of the payor corporation. The bill would specify that this deduction may not be used in computing a net business loss (which may be carried forward for use in up to 20 future tax years under current law). It is estimated that this provision would increase corporate income/franchise tax revenues by an estimated \$2,900,000 in 2021-22 and \$3,100,000 in 2022-23.

[Bill Sections: 1319, 1320, 1355, and 9337(2)]

13. FIRST-TIME HOMEBUYER SAVINGS ACCOUNTS

GPR-Tax	- \$4,100,000
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Governor: Create a program, administered by DOR, allowing an individual to become an account holder by creating an account, either individually or jointly with his or her spouse, to pay or reimburse the eligible costs of a first-time home buyer. Require the accounts to be created at any financial institution, defined as any bank, trust company, savings institution, savings bank, savings and loan association, industrial loan association, consumer finance company, credit union, or any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in Wisconsin. Specify that eligible costs would mean the down payment and allowable closing costs, defined as disbursements listed in a settlement statement for the purchase of a single-family residence in Wisconsin by an account owner or beneficiary. Limit the program to individuals who reside in Wisconsin and have not owned or purchased, either individually or jointly, a single-family residence (defined as a residence intended for occupation by a single family unit that is purchased by a beneficiary for use as his or her principal residence) during the 36-month period prior to the month of purchase of a single family residence that is located in Wisconsin.

When an account is created, require the account holder to designate a single account beneficiary who is a first-time home buyer and who may be the account holder. Allow the account holder to change the beneficiary at any time. Allow individuals to jointly own accounts with their spouses. Provide that an individual may be the account holder of more than one account, but prohibit the account holder from having more than one account that designates the same beneficiary. Permit an individual to be the beneficiary of more than one account. Limit account contributions to cash and marketable securities, and allow persons other than account holders to contribute to accounts. However, stipulate that only the account holder may take the subtraction being created under the bill for first-time homebuyer account contributions.

Authorize account holders to withdraw funds from accounts to: (a) pay eligible costs for the benefit of the beneficiary; or (b) to reimburse the beneficiary for eligible costs that the beneficiary incurred and paid. Prohibit account holders from using account funds to pay any expenses incurred by the account holder in administering the account, but permit financial institutions to deduct service fees from accounts. Require account holders each year to submit the following information related to the account to DOR, on forms prepared by the Department, with the account holder's income tax return: (a) a list of account transactions during the tax year, including the account's beginning and ending balances; (b) the 1099 form issued by the financial institution relating to the account; and (c) a list of eligible costs, and other costs, for which account funds were withdrawn during the tax year. Authorize account holders to withdraw and transfer funds to a different financial institution without incurring a withdrawal penalty or affecting the account holder's Wisconsin AGI, provided the transfer occurs immediately and the funds are deposited in a first-time home buyer savings account at that institution. Require account holders to dissolve an account not later than 120 months (10 years) after its creation, and require financial institutions to distribute any proceeds in dissolved accounts to the account holder. Require proceeds to be distributed to the account holder's estate if the account holder dies while funds remain in the account.

Create the following adjustments to federal AGI when calculating Wisconsin AGI under the state individual income tax. Authorize account holders to subtract from federal AGI the amount of any deposits by the account holder into their accounts, as well as any interest, dividend, or other gain accruing in the account if the interest, dividends, or other gain is redeposited into the account. Limit the subtraction for each account holder to \$5,000 of deposits per year, or \$10,000 of deposits per year if the account holder is a married-joint filer, for each account that the account holder creates and to which the account holder makes a deposit (the amount of interest, dividends, or other gains accruing to and subsequently redeposited in the account that may be subtracted from taxable income is not limited). Specify that the subtraction does not apply for any amounts which are transferred to an account at another financial institution as described above. Prohibit an account holder from claiming the subtraction for more than a total of \$50,000 of deposits into any account for each beneficiary. Require account holders to increase their AGI to include any distribution of proceeds from a dissolved account, and require account holders' estates to increase the AGI of the estate to include any distribution to an account holder's estate after the death of an account holder. In addition, require account holders to increase their AGI to reflect any amount withdrawn from an account for any reason other than payment or reimbursement of eligible costs, unless the withdrawal is the result of a transfer to an account at a different financial institution, as described above, or unless the disbursement is pursuant to a filing for bankruptcy protection. Impose a penalty of 10% on any amounts added to AGI under the preceding provisions.

For federal tax purposes, no deduction for contributions is, or would be, allowed, and the interest earnings accruing to accounts would be subject to federal income tax. Since the accounts would be taxable on the "front end," no federal tax would be imposed at the time of withdrawal. Nor would withdrawals trigger a state tax liability, provided the proceeds are used for eligible costs.

Require DOR to prepare and distribute any forms that an account holder would be required to submit and any other forms that the Department believes would be necessary to administer the program and the program's adjustments to income, described above. In addition, require DOR to

prepare and distribute program informational materials to financial institutions and potential home buyers. Finally, require DOR to impose a penalty on withdrawals from accounts that would be additions to income, as described above, and direct the Department to administer the penalty as it assesses, levies, and collects income and franchise taxes.

Specify that the preceding provisions would first apply beginning in tax year 2022. This provision would reduce individual income tax collections by an estimated \$4,100,000 in 2022-23, \$7,000,000 in 2023-24, and \$7,500,000 in 2024-25.

[Bill Sections: 1240, 1264, 1317, 1318, 1400, and 9337(9)]

14. INDIVIDUAL INCOME TAX CREDIT FOR FLOOD INSURANCE PREMIUMS

GPR-Tax - \$1,600,000

Governor: Create a nonrefundable individual income tax credit for flood insurance premiums beginning in tax year 2021. Provide that a claimant may claim a credit equal to 10% of the amount of premiums the claimant paid during the tax year for flood insurance. Define flood insurance as a flood insurance policy that covers the principal dwelling of the claimant. Specify that the credit amount could not exceed \$60 per tax year.

Specify that no flood insurance premiums tax credit would be allowed unless it were claimed within four years of the unextended due date of the income tax return to which the claim relates. Prohibit nonresidents and part-year residents of Wisconsin from claiming the credit. Direct that no credit would be allowed for a tax year covering a period of less than 12 months, except for a tax year that was closed because of the death of the taxpayer. Specify that current law provisions which apply to the individual income tax and relate to DOR's enforcement authority, and to assessments, refunds, appeals, collection, interest, and penalties, would also apply to this credit. This provision would reduce individual income tax collections by an estimated \$800,000 annually, beginning in 2021-22.

[Bill Sections: 1306 and 1315]

15. INDIVIDUAL INCOME TAX EXCLUSIONS FOR CERTAIN ACTIVE DUTY MILITARY INCOME

GPR-Tax - \$860,000

Governor: Modify the current law exclusion under the state individual income tax for amounts received by certain reserve members of the U.S. Armed Forces. Specify that the exclusion also applies to amounts received by individuals who are called into active federal service under 10 USC 12304b of federal law, relating to preplanned missions in support of the combatant commands. The administration indicates that this provision is intended to apply beginning in tax year 2021, but no such date of initial applicability is specified in the bill. [A technical amendment would be necessary to accomplish the administration's intended date of initial applicability.]

In addition, beginning in tax year 2021, create an exclusion under the state individual income tax for any amount of pay (as defined under current law provisions governing the National Guard

and State Defense Force) received from the state of Wisconsin by a member of the Wisconsin National Guard after being called into state active duty (as defined under the preceding provisions of current law). Provide that the exclusion applies to amounts paid to the individual for the period of time during which they are on state active duty, to the extent such amounts are not otherwise excluded under current law. An exclusion is provided under current law for any amount of basic, special, and incentive pay income or compensation (as defined under federal law) received from the federal government by a member of a reserve component of the U.S. Armed Forces, if that member is called into active duty under certain other provisions of federal law or into special state service, as authorized under federal law. The exclusion applies to amounts paid to the reserve member during the period of time in which the member is on active duty.

This provision would reduce individual income tax revenues by an estimated \$430,000 on an annual basis, beginning in 2021-22.

[Bill Sections: 1253 and 1254]

16. CREATION OF INDIVIDUAL INCOME TAX EXCLUSION FOR AMERICORPS AWARDS

GPR-Tax	- \$272,000
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Governor: Provide that any amount of a national service educational award certified by the Corporation for National and Community Service (which includes the AmeriCorps program) and disbursed under specific provisions of federal law during the taxable year could be excluded from an individual's taxable income, beginning in tax year 2021. Stipulate that the exclusion would not be allowed for an amount that is subtracted under: (a) the current law deduction for tuition expenses and mandatory student fees; or (b) the federal deduction for student loan interest. This provision would reduce individual income tax collections by an estimated \$136,000 on an annual basis, beginning in 2021-22.

[Bill Section: 1263]

17. FEDERALIZE PROVISIONS RELATED TO COLLEGE SAVINGS ACCOUNTS AND EXPAND REQUIREMENT TO ADD NON-QUALIFIED EXPENSES BACK TO TAXABLE INCOME

GPR-Tax	- \$200,000
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Governor: Beginning in tax year 2019, specify that sections 221 (e) (1) and 529 of the IRC in effect for federal purposes, relating to qualified tuition programs, are automatically adopted for Wisconsin income tax purposes. The administration estimates that state adoption of these provisions would reduce state tax revenues by \$100,000 annually, beginning in 2021-22.

In addition, modify the current law addition to taxable income of amounts initially contributed to a college savings account that are subsequently not used for qualified higher education expenses. Specify that such an addition must be made regardless of when the initial amount was contributed to the account. Under current law, amounts contributed to a college savings account after December 31, 2013, which incur a federal penalty because they were subsequently not used for qualified higher education expenses, must be added back to taxable

income. This addition only applies to contributions for which a state subtraction was taken, as allowed under current law (and as would remain allowed under the bill). The bill would clarify that, if a federal penalty applies to a college savings account contribution made before January 1, 2014, which was subsequently not used for qualified higher education expenses, any such amount which was initially subtracted must be added back to Wisconsin taxable income.

The bill would provide that the aforementioned sections of the federal IRC relating to qualified tuition programs are automatically adopted for state tax purposes beginning retroactively to tax year 2019. At the time of introduction, it was anticipated that federal provisions would be adopted under the bill to allow college savings account distributions to be used for: (a) eligible apprenticeship program expenses; and (b) up to \$10,000 of principal or interest on qualified student loans of the account's beneficiary, or their sibling.

[State law had not adopted the IRC provisions described above as of February 16, 2021, when the Governor's budget was introduced. However, these provisions were adopted for state tax purposes under 2021 Act 1 on February 18, 2021, resulting in the same annual fiscal effect described above for 2021-22 and 2022-23. As a result, this provision, if adopted in the budget bill, would have no additional impact on state tax revenues.]

[Bill Sections: 1238 and 1402]

18. ADDITION TO TAXABLE INCOME OF ABLE ACCOUNT AMOUNTS RETURNED TO OWNER'S ESTATE

Governor: Provide a statutory modification to stipulate that any amount remaining in a Wisconsin Achieving a Better Life Experience (ABLE) account upon the account's termination that is returned to the account owner's estate would be added back to taxable income. Current law provides identical treatment for any such amounts that remain in the account of a qualified ABLE program of any other state (at present, no Wisconsin ABLE program exists). The provisions of state law that would authorize the creation of an ABLE program in Wisconsin are set forth under separate sections of the bill. [See "Financial Institutions."]

[Bill Section: 1239]

Sales and Use Taxes

1. IMPOSE SALES TAX ON RECREATIONAL MARIJUANA

GPR-Tax	\$33,600,000
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Governor: Impose the state sales and use tax on retail sales of usable marijuana. Retail excise taxes imposed on marijuana, described below under "Excise Taxes," would be included in the sales price subject to the state sales and use tax.

Under current law, sales of marijuana are subject to the sales tax as tangible personal

property. However, taxes generally are not collected and remitted on such sales, as marijuana is an illegal substance. The bill would legalize the sale of marijuana for medical and recreational purposes. As a result, sales tax would be collected by retailers on legal marijuana sales. However, the bill would provide an exemption from the general sales and use tax for sales of medical marijuana, if the purchaser holds a valid tax exemption certificate that indicates they are a member of the medical marijuana registry.

The provision would take effect on the effective date of the bill. However, the administration indicates that it does not estimate a fiscal effect until 2022-23, as it is uncertain how long it will take for marijuana permits to be issued and for legal sales to be made. The administration estimates the sales and use tax on legal sales of recreational marijuana would increase state tax revenues by \$33,600,000 beginning in 2022-23 and annually thereafter.

The legalization of the sale of marijuana and the creation of the medical marijuana registry would be authorized under separate provisions of the bill. [For additional information, see "Marijuana-Related Provisions."]

[Bill Section: 1433]

2. SALES TAX EXEMPTION FOR DIAPERS

GPR-Tax - \$16,100,000

Governor: Provide an exemption from the general sales and use tax for sales of diapers, not including adult undergarments for incontinence. The provision would take effect on the first day of the third month beginning after publication of the bill. The administration estimates that this exemption would reduce state tax revenues by \$7,300,000 in 2021-22 and \$8,800,000 in 2022-23 and annually thereafter.

[Bill Sections: 1424, 1425, 1432, and 9437(6)]

3. SALES TAX EXEMPTION FOR ENERGY SYSTEMS

GPR-Tax - \$8,200,000

Governor: Expand the current law exemption from the state sales and use tax to include tangible personal property used to store or facilitate the storage of electrical or heat energy produced by a solar, wind, or biogas renewable energy system.

Under current law, an exemption from the sales and use tax exists for a product that has as its power source wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day. The exemption also applies to the sale of electricity or energy produced by these products, but does not apply to an uninterruptible power source that is designed primarily for computers.

The bill modifies current law so the exemption applies to solar, wind, and waste energy systems that produce usable electrical or heat energy, rather than solely to products whose power source is solar, wind, or waste energy. The bill specifies that tax exempt solar power systems, wind energy systems, and waste energy systems would include tangible personal property sold with the

systems that is used primarily to store or facilitate the storage of electrical or heat energy produced by the systems. Therefore, the exemption would apply to products producing power from renewable energy sources, as well as products used to store that energy, relative to current law.

The bill would also make the following modifications to the current law exemption:

- a. Specify that, to qualify for the exemption, energy systems must continuously, rather than per day, produce at least 200 watts of alternating current or 600 British thermal units;
- b. Clarify that tax exempt energy produced by the systems includes electrical and heat energy; and
- c. Specify that the production of electrical or heat energy must come directly from sun, wind, or gas generated from anaerobic digestion of animal manure or other agricultural waste.

The provision would take effect on the first day of the third month beginning after publication of the bill. The administration estimates that this exemption would decrease state tax revenues by \$3,800,000 in 2021-22 and \$4,400,000 in 2022-23 and annually thereafter.

[Bill Sections: 1428 thru 1430 and 9437(7)]

4. SALES TAX EXEMPTION FOR SWEETENED DRIED FRUIT

GPR-Tax	- \$900,000
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Governor: Provide a sales and use tax exemption for sweetened dried fruit. The administration indicates that the intent of the provision is for dried cranberries and similar items to have the same sales tax treatment as other dried fruits.

Under current law, food and food ingredients, except candy, soft drinks, dietary supplements, and prepared food, are exempt from the sales tax. Candy is defined as a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include a preparation that contains flour or that requires refrigeration. The bill would specify that candy would also not include a preparation that has as its predominant ingredient dried or partially dried fruit, along with one or more sweeteners, and which may also contain other additives including oils, natural flavorings, fiber, or preservatives. Dried or partially dried fruits prepared with the following would not be exempt from the sales and use tax: (a) chocolate; (b) nuts; (c) yogurt; or (d) a confectionary coating or glazing. Additionally, dried or partially dried fruit would not include fruit that has been ground, crushed, grated, flaked, pureed, or jellied.

The provision would take effect on the first day of the third month beginning after publication of the bill. The administration estimates that this exemption would decrease state tax revenues by \$400,000 in 2021-22 and \$500,000 in 2022-23 and annually thereafter.

[Bill Sections: 1416 thru 1418 and 9437(9)]

5. SALES TAX EXEMPTION FOR PRAIRIE OR WETLAND PLANNING SERVICES

GPR-Tax	- \$500,000
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Governor: Provide a sales and use tax exemption for landscape planning and counseling services that pertain to the restoration, reclamation, or revitalization of prairie, savanna, or wetlands, if such services are provided under a separate and optional fee distinct and identifiable from other taxable services.

Under current law, all services are exempt from the state sales and use tax unless specifically made taxable by statute. State law specifies that the sale of landscaping and lawn maintenance services is taxable, including: (a) landscape planning and counseling; (b) lawn and garden services, such as planting, mowing, spraying, and fertilizing; and (c) shrub and tree services. The bill would specify that landscaping and lawn maintenance services do not include planning and counseling services, if the planning and counseling services are provided for a separate and optional fee from any other services and the services are for the restoration, reclamation, or revitalization of prairie, savanna, or wetlands to improve: (1) biodiversity; (2) the quality of land, soils, or water; or (3) other ecosystem functions.

The bill would define a "separate and optional fee" as a fee charged to receive a distinct and identifiable product if either of the following would apply.

a. The fee is in addition to fees that the seller charges for other distinct and identifiable products sold to the same buyer, the fee is separately set forth on the invoice given by the seller to the buyer, and the seller does not require the buyer to pay the fee if the buyer chooses not to receive the additional distinct and identifiable product for which the fee applies.

b. The seller charges a single amount for multiple distinct and identifiable products and offers the buyer the option of paying a lower amount if the buyer chooses not to receive one or more of the distinct and identifiable products. The separate and optional fee would have to be a single amount the seller charges for the multiple distinct and identifiable products, less the reduced amount the seller charges to the buyer because the buyer chooses not to receive one or more of the products.

The bill would specify that the exemption for qualifying planning and counseling services provided for a separate and optional fee does not apply to tangible personal property physically transferred, or transferred electronically, to the customer in conjunction with those services. [A technical amendment is needed to remove cross-references to services that are unnecessary in accomplishing the intent of this provision.]

The provision would take effect on the first day of the third month following publication of the bill. The administration estimates that this exemption would reduce state tax revenues by \$200,000 in 2021-22 and \$300,000 in 2022-23 and annually thereafter.

[Bill Sections: 1419 thru 1421, 1423, and 9437(5)]

6. REPEAL SALES TAX EXEMPTION FOR CLAY PIGEONS AND GAME BIRDS

GPR-Tax	\$350,000
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Governor: Repeal the exemption from the general sales and use tax for clay pigeons and live game birds sold to licensed bird hunting preserves and for clay pigeons sold to an eligible shooting facility. An eligible shooting facility is one that is: (a) required to collect and remit sales tax on its charges for shooting at the facility; or (b) a nonprofit that charges for shooting at the facility but is otherwise exempt from remitting sales tax on such charges under the current law exemptions for occasional sales or for a nonprofit gun club that provides safety classes to at least 25 individuals annually.

The provision would take effect on the first day of the third month beginning after publication of the bill. The administration estimates the repeal of this exemption would increase state tax revenues by \$150,000 in 2021-22 and \$200,000 in 2022-23 and annually thereafter.

[Bill Sections: 1427 and 9437(2)]

7. REPEAL SALES TAX EXEMPTION FOR FARM-RAISED DEER

GPR-Tax	\$210,000
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Governor: Repeal the exemption from the general sales and use tax for farm-raised deer sold to a person who is operating a hunting preserve or game farm in this state. This provision would take effect on the first day of the third month beginning after publication of the bill. The administration estimates the repeal of this exemption would increase state tax revenues by \$90,000 in 2021-22 and \$120,000 in 2022-23.

[Bill Sections: 1431 and 9437(1)]

Excise Taxes

1. IMPOSE WHOLESALE AND RETAIL EXCISE TAXES ON RECREATIONAL MARIJUANA

GPR-Tax	\$52,880,000
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Governor: Impose an excise tax on marijuana producers at a rate of 15% of the sales price on wholesale sales or transfers in this state of marijuana to marijuana processors. The wholesale excise tax would also apply to a microbusiness that transfers marijuana to a processing operation within the microbusiness. Additionally, impose an excise tax on marijuana retailers at a rate of 10% of the sales price on retail sales of usable marijuana. Specify that the excise tax on retail sales would not apply to sales of usable marijuana to individuals who hold a tax exemption certificate indicating that they are members of the medical marijuana registry.

These provisions would take effect on the effective date of the bill. However, the

administration indicates that it does not estimate a fiscal effect associated with this provision until 2022-23, as it is uncertain how long it will take for marijuana permits to be issued and for legal sales to be made. The administration estimates that the imposition of wholesale and retail excise taxes on marijuana would result in collections of \$65,100,000 and \$67,100,000, respectively, beginning in 2022-23 and annually thereafter (total excise tax collections of \$132,200,000 in 2022-23). The bill would specify that 60% of all moneys received from marijuana excise taxes would be deposited into the newly established Community Reinvestment Fund, and an estimated \$79,320,000 SEG-REV would be deposited into that fund in 2022-23. The administration estimates that the remaining excise taxes deposited in the general fund would increase state tax revenues by \$52,880,000 in 2022-23 and annually thereafter.

Following is a summary of the taxes imposed on recreational marijuana under the bill and the estimated tax amounts to be generated in 2022-23.

	<u>Amount</u>
15% Excise tax on wholesale sales	\$65,100,000
10% Excise tax on retail sales	67,100,000
Sales Tax	<u>33,600,000</u>
Total	\$165,800,000
Deposited to the SEG Community Reinvestment Fund	\$79,320,000
Deposited to the General Fund	<u>86,480,000</u>
Total	\$165,800,000

The legalization of the sale and taxation of marijuana and the creation of the Community Reinvestment Fund would be authorized under separate provisions of the bill. [For additional information, see "Marijuana-Related Provisions."]

[Bill Sections: 610 and 2269]

2. IMPOSE TOBACCO PRODUCTS TAX ON VAPOR PRODUCTS GPR-Tax \$29,300,000

Governor: Impose the tobacco products tax on vapor products at the rate of 71% of the manufacturer's list price to distributors in this state and expand the definition of vapor products subject to tax.

Under current law, vapor products are taxed at a rate of 5¢ per milliliter of the liquid. A taxable vapor product is defined as a noncombustible product that produces vapor or aerosol for inhalation from the application of a heating element to a liquid or other substance that is depleted as the product is used, regardless of whether the liquid or other substance contains nicotine. Under this definition, the tax on vapor products applies to a liquid or other substance that functions as part of a vapor product or is sold with a vapor product as one packaged item. Liquids sold separately from a heating element are not subject to the tax.

The bill would modify the definition of a vapor product to mean a noncombustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means that can be used to produce vapor from a solution or other substance, regardless of the product's shape or size or whether the product contains nicotine. A vapor product would include an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and would include any cartridge or other container of a solution or other substance that is intended to be used with such a device, regardless of whether the solution or other substance contains nicotine. Therefore, in contrast to current law, the tax on vapor products would also apply to liquid sold separately from the above mentioned devices. In addition, since the tax rate would no longer be based on milliliters, the tax would be imposed on devices that are sold without liquid.

A vapor product would not include certain products regulated as a drug or device under federal law, of which it has been determined that the health benefits outweigh the known risks. DOR indicates the intent of this provision is to exempt products approved for smoking cessation by the Food and Drug Administration from the definition of taxable vapor products.

The provision would take effect on the first day of the third month beginning after publication of the bill. The administration estimates imposing the tobacco products tax on vapor products would increase state tax revenues by \$12,700,000 in 2021-22 and \$16,600,000 in 2022-23 and annually thereafter.

[Bill Sections: 2253, 2256, 2258 thru 2260, 2262 thru 2264, 2266, and 9437(3)]

3. IMPOSE CIGARETTE TAX ON LITTLE CIGARS

GPR-Tax	\$5,300,000
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Governor: Change the tobacco products tax imposed on little cigars to be set at the same rate as the excise tax rate currently imposed on cigarettes as follows.

Current law makes no distinction between little cigars and other cigars for purposes of the tobacco products tax. The bill would specifically define cigars and little cigars. A little cigar would mean a cigar that has an integrated cellulose acetate filter and is wrapped in a substance containing tobacco. A cigar would mean a roll, of any size or shape, of tobacco for smoking that is made wholly or in part of tobacco, regardless of whether the tobacco is pure, flavored, adulterated, or mixed with an ingredient if the roll has a wrapper made wholly or in part of tobacco. Little cigars would be enumerated in the definition of tobacco products.

Under current law, an excise tax is imposed on tobacco products, including cigars and little cigars, at the rate of 71% of the manufacturer's established list price to distributors, not to exceed 50¢ per cigar or little cigar. While the tax on cigars would remain taxed at the same rate imposed under current law, the bill would impose a tax on little cigars at a rate of 126 mills per little cigar (\$1.26 per 10), regardless of weight. [A mill equals one-tenth of one cent. Therefore, a rate of 126 mills per little cigar = \$2.52 per pack of 20.] For little cigars, the tax rate would be the same as that levied on cigarettes weighing not more than three pounds per thousand under current law. In addition, the cigar tax limit under current law of 50¢ per cigar or little cigar would no longer apply to the taxation of little cigars under the bill.

The following administrative and enforcement procedures under current law governing the taxation of cigarettes would also apply to the administration and enforcement of the tax on little cigars: (a) the imposition of an inventory tax on little cigars held in inventory for sale or resale; (b) the affixing of stamps to each package of little cigars prior to their first sale in Wisconsin to denote tax paid; (c) discounts for purchasers of tax stamps at 0.8% of the tax paid; and (d) penalties, including imprisonment, for possessing little cigars for which no tax has been paid; (e) the placement of security with DOR, in the amount determined by the Department, if taxes are not paid; (f) the requirement that manufacturers, distributors, and sellers of little cigars obtain a seller's permit; (g) prohibiting the transfer of stamps to another person; (h) refunds for unusable stamps; (i) the option for distributors to claim a bad debt deduction for little cigar taxes written off as uncollectible; (j) the treatment of a little cigar permittee as a preferred creditor of any tax amounts owed by a purchaser of little cigars; (k) record-keeping requirements at each level of the little cigar distribution chain; (l) the treatment as theft, any little cigar tax monies fraudulently withheld, appropriated, or otherwise used; (m) the prohibition of house to house sales of little cigars; (n) the treatment of any sale of little cigars without a permit as a public nuisance; and (o) the restriction of municipalities from adopting any little cigar regulations that are not in strict conformity with state law. The inventory tax in "a" would be calculated by multiplying the number of little cigars and the number of un-affixed stamps held in inventory by the difference between the prior tax rate and the new tax rate.

The provision would take effect on the first day of the third month beginning after publication of the bill. The administration estimates that imposing the cigarette tax on little cigars would increase state tax revenues by \$2,300,000 in 2021-22 and \$3,000,000 in 2022-23 and annually thereafter. As noted, an inventory tax on little cigars would be imposed under the Governor's recommendation. However, the administration did not include any revenues associated with the imposition of the inventory tax. The administration estimated a minimal change in tribal refunds as a result of this provision.

[Bill Sections: 2252, 2254, 2255, 2257, 2260, 2261, 2264, 2265, 2267, 2268, and 9437(3)]

4. DEFINE MANUFACTURER'S LIST PRICE

Governor: Define manufacturer's list price as the total price of tobacco products charged by the manufacturer or other seller to an unrelated distributor. The total price would include all charges by the manufacturer or other seller that are necessary to complete the sale, and could not be reduced by any cost or expense incurred by the manufacturer or other seller, such as fees, delivery, freight, transportation, packaging, handling, marketing, federal excise taxes, and import fees or duties, regardless of whether such cost or expense is separately stated on an invoice. The total price also could not be reduced by the value or cost of discounts or free promotional or sample products. A manufacturer or other seller would be considered related to a distributor if the two parties have significant common purposes and have either substantial common membership or, directly or indirectly, have substantial common direction or control. [A technical amendment is needed to accomplish the Governor's intent that this definition would also apply to vapor products.]

Current law does not specifically define manufacturer's list price for purposes of the tobacco

products tax. The administration indicates an explicit statutory definition is needed to clarify in state law the calculation of the excise taxes on these products. This provision is intended to take effect on the first day of the third month beginning after publication of the bill. [A technical amendment is needed to specify the delayed effective date of this provision.]

[Bill Sections: 2256, 2260, 2262, 2264, and 2266]

Refundable Tax Credits and Other Payments

1. ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE CREDIT REESTIMATE | | | |-----|-----------------| | GPR | - \$423,909,800 | |-----|-----------------|

Governor: Decrease funding by \$211,954,900 annually for the sum sufficient appropriation for refundable electronics and information technology manufacturing (EITM) zone tax credits and estimate \$0 of tax credit claims during the 2021-23 biennium. The EITM zone tax credit program provides a refundable payroll tax credit based upon 17% of the EITM zone payroll of full-time employees employed by the claimant. In addition, if the Wisconsin Economic Development Corporation (WEDC) determines that a certified business makes a significant capital expenditure in the EITM zone, it can certify the business to receive additional tax benefits, in an amount to be determined by WEDC, but not exceeding 15% of the business's capital expenditures in the EITM zone in the taxable year.

The reestimate reflects the administration's review of the jobs, payroll, and capital expenditure targets established under the contract that WEDC entered into with three Wisconsin corporations that are affiliated with Hon Hai Precision Industry Co., Ltd (Foxconn). By letter dated October 12, 2020, WEDC relayed its determination that Foxconn and its affiliated entities were not eligible for EITM zone tax credits both because they did not conform to the scope of the project set out under the contract and because they failed to employ the requisite minimum number of full-time employees by the end of 2019. Based on Foxconn's reported investment and employment levels, the administration believes that WEDC's non-eligibility determinations will likely continue because Foxconn also does not appear to be on track to earn tax credits based on its calendar year 2020 activities. As a result, the administration estimates that no EITM zone tax credits will be earned and claimed during the 2021-23 biennium.

2. EARNED INCOME TAX CREDIT REESTIMATE | | | |-----|--------------| | GPR | \$39,600,000 | |-----|--------------|

Governor: Increase estimated GPR expenditures for the state earned income tax credit (EITC) by \$22,200,000 in 2021-22 and \$17,400,000 in 2022-23. Under current law, the state EITC is paid from two sources: (a) a sum sufficient GPR appropriation; and (b) federal funding from the Temporary Assistance to Needy Families (TANF) program. TANF funding may be used under current law to finance the refundable portion of the state EITC, while GPR is used to finance the

nonrefundable portion. Compared to base GPR funding of \$26,200,000, total GPR funding for the EITC is estimated at \$48,400,000 in 2021-22 and \$43,600,000 in 2022-23. [In its January 26, 2021, report on general fund revenues and expenditures, the Legislative Fiscal Bureau reestimated base GPR funding for this credit from \$26,200,000 to \$45,300,000 for 2020-21.]

3. EXPAND EARNED INCOME TAX CREDIT

GPR	\$101,283,600
PR	<u>47,016,400</u>
Total	\$148,300,000

Governor: Expand the state EITC for eligible claimants with one qualifying child and with two qualifying children, beginning in tax year 2021. Specify that the percentage of the federal EITC that may be claimed as a state credit would be increased to 16% for claimants with one qualifying child and to 25% for claimants with two qualifying children, beginning in tax year 2021.

Under current law, the state EITC is provided as a percentage of the federal EITC that varies based on the claimant's number of qualifying children. The credit percentages are 4% for one qualifying child, 11% for two qualifying children, and 34% for three or more qualifying children. The state EITC is not available to taxpayers without qualifying children.

Increase estimated state GPR expenditures by \$27,283,600 in 2021-22 and by \$74,000,000 in 2022-23. Increase PR expenditures from the TANF program by \$47,016,400 in 2021-22 related to the expanded credit. However, PR expenditures for the EITC would revert back to base level funding of \$69,700,000 in 2022-23. According to the administration, TANF funds would be used to finance other budgetary priorities of the administration in 2022-23.

[Bill Sections: 993, 1308, 1309, and 1403]

4. HOMESTEAD TAX CREDIT REESTIMATE

GPR	- \$10,920,000
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Governor: Decrease estimated expenditures under the homestead tax credit program by \$4,460,000 in 2021-22 and \$6,460,000 in 2022-23. Compared to base funding of \$71,000,000, estimated expenditures would be \$66,540,000 in 2021-22 and \$64,540,000 in 2022-23. Included in the reestimate is an increase each year of \$340,000 under provisions of 2021 Act 1. [In its January 26, 2021, report on revenues and expenditures, the Legislative Fiscal Bureau reestimated base funding for this credit from \$71,000,000 to \$68,000,000 for 2020-21.]

Under current law, the homestead credit is provided as a property tax relief mechanism for lower-income homeowners and renters. The credit is refundable, such that if the amount of the credit exceeds a claimant's tax liability, a check is issued to the claimant for the difference.

5. HOMESTEAD TAX CREDIT EXPANSION

GPR	\$68,900,000
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Governor: Expand the homestead tax credit beginning in tax year 2021 as follows. Increase the income threshold above which no credit is allowed (maximum income level) to \$30,000, and reduce the rate at which the credit phases out (phase-out rate) to 6.655%. In addition, direct that

the following formula factors of the credit are to be indexed for inflation annually beginning in tax year 2023: (a) the income threshold for the maximum credit; (b) the maximum income level to receive the credit; and (c) the maximum allowable property taxes or rent constituting property taxes. Calculate the indexing adjustment in each year as an increase based on the percentage change in the consumer price index (CPI). Calculate the percentage as the change in the 12-month average of the index for the period ending in July of the previous year, relative to the claim, and beginning with the previous August, and the 12-month average of the index for the period August, 2020, through July, 2021. Prohibit the adjustment from occurring unless the percentage is a positive amount. Define the CPI as the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal Department of Labor. Specify that the provisions modifying the credit's maximum income level and phase-out rate first apply to claims filed for taxable years beginning after December 31, 2020. In addition, statutory modifications would be made to clarify the current law provisions under which a claimant cannot claim the credit if the claimant does not have earned income during the calendar year, unless the claimant or the claimant's spouse is disabled or is over the age of 61. This provision would increase estimated state GPR expenditures by \$35,000,000 in 2021-22, \$33,900,000 in 2022-23, \$41,400,000 in 2023-24, and \$47,400,000 in 2024-25. [A technical amendment would be necessary to accomplish the administration's intent concerning the clarification of the earned income requirement under current law (described above), and the effective date of the proposed expansion of the credit.]

Under current law, the maximum income level is \$24,680, and the phase-out rate is 8.785%. The other formula factors of the credit under current law are as follows: (a) the maximum allowable property taxes or rent constituting property taxes is \$1,460; (b) the income threshold for the maximum credit is \$8,060; and (c) the percentage of property taxes reimbursed is 80%. These factors produce a maximum credit of \$1,168. The formula factors were last modified in tax year 2010.

[Bill Sections: 1385 thru 1393 and 9337(8)]

6. ENTERPRISE ZONE TAX CREDIT REESTIMATE

GPR	- \$30,000,000
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Governor: Decrease funding by \$13,000,000 in 2021-22 and by \$17,000,000 in 2022-23 for the sum sufficient appropriation for refundable enterprise zone tax credits to reestimate anticipated claims during the biennium. The reestimate reflects projections of credit claims for major economic development projects for which WEDC has, to date, contracted tax credit awards. With the adjustments, estimated total funding would decrease from base funding of \$81,700,000 to \$68,700,000 in 2021-22 and \$64,700,000 in 2020-21. Businesses that operate in enterprise zones established by WEDC can claim tax credits for jobs created and retained, training costs, capital expenditures, and purchases from Wisconsin vendors.

7. ENTERPRISE ZONE TAX CREDIT LIMIT

Governor: Modify the procedure used for designating zones under the enterprise zone tax credit program to generally conform with the law previous to 2017 Act 369, as described below.

Under current law, WEDC may designate an unlimited number of enterprise zones, with each designation subject to approval by the Joint Committee on Finance under a 14-day passive review process. WEDC must notify the Committee in writing of its intent to designate a new enterprise zone, including a description of the new zone and the purpose for which WEDC proposes to designate the new zone. Further, the Committee must approve a zone before WEDC may designate a new enterprise zone, but WEDC may designate an unlimited number of zones, so long as each zone is so approved by the Committee. The bill would repeal these provisions. Instead, the bill would allow WEDC to designate new zones under the enterprise zone tax credit program without the approval of the Committee, but would specify that no more than 30 zones may be designated in total (the same limit in effect prior to Act 369).

The bill would restore the pre-Act 369 provision that, if WEDC revokes all certifications for tax benefits within a previously designated enterprise zone, WEDC may cancel the designation of that enterprise zone. After canceling the designation of an enterprise zone, WEDC may designate a new enterprise zone subject to the proposed 30-zone limit. According to WEDC, as of the day of introduction of the bill, there were 25 zones open under contract, of which 22 were currently active that may still be verified for additional credits. Specify that these provisions would apply retroactively to zones that have closed prior to the effective date of the bill.

The Governor's recommendation does not include any estimated increased (or decreased) expenditures as a result of this provision.

[Bill Sections: 2561 thru 2565 and 9349(1)]

8. ENTERPRISE ZONE TAX CREDIT BASE YEAR CALCULATION

Governor: Modify the enterprise zone tax credit program so that, for contracts executed after December 31, 2021, the base year for comparing the number of employees and the amount of payroll that may be eligible for the job creation, job retention, and retention of financial services technology business credits would be the 12-month period prior to the date on which the claimant was certified. Under current law, "base year" means the taxable year beginning during the calendar year prior to the calendar year in which the enterprise zone takes effect. For example, if a contract is executed and the zone takes effect in September, 2021, and the awardee has a taxable year beginning in January, the base year would be January, 2020, through January, 2021 (which ends nine months prior to the start of the enterprise zone).

The administration indicates that the change would improve assessment of enterprise zone job creation and retention to better reflect conditions immediately preceding the date the contract was executed. Further, the change would align the enterprise zone base year definition with WEDC's policies and procedures for the business development job creation and job retention tax credit, which specify that the base for comparison is the 12 months immediately prior to certification date of the award.

[Bill Sections: 1272, 1273, 1323, 1324, 1358, and 1359]

9. REFUNDABLE RESEARCH CREDIT

GPR	\$21,200,000
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Governor: Modify the partially refundable research tax credit (including the engine and energy efficiency credits), as computed under current law, to increase the refundable portion from 10% of the credit amount to 20% of the credit amount. Specify that these provisions would first apply to new research credit claims for tax years beginning after December 31, 2020. Estimate increased expenditures for refundable research credit claims of \$10,600,000 annually beginning in 2021-22.

The state provides research credits to businesses equal to a certain percentage of the increase in a business's qualified research expenses, as defined under the IRC, for research conducted in Wisconsin. Under current law, beginning in tax year 2018, up to 10% of the amount of research credit computed may be claimed as a refundable credit. The remaining portion of the credit is nonrefundable.

[Bill Sections: 1295, 1346, 1347, 1378, and 1379]

10. ILLINOIS-WISCONSIN RECIPROCALITY REESTIMATE

GPR	\$20,800,000
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Governor: Increase the estimated payment under the Illinois-Wisconsin individual income tax reciprocity agreement by \$7,800,000 in 2021-22 and \$13,000,000 in 2022-23 to reflect anticipated payments to Illinois in the 2021-23 biennium. Compared to base funding of \$106,700,000, total funding is estimated at \$114,500,000 in 2021-22 and \$119,700,000 in 2022-23.

11. VETERANS PROPERTY TAX CREDIT REESTIMATE

GPR	\$10,900,000
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Governor: Increase funding for the veterans and surviving spouses property tax credit by \$4,800,000 in 2021-22 and \$6,100,000 in 2022-23. Compared to base funding of \$36,000,000, total funding for the credit is estimated at \$40,800,000 in 2021-22 and \$42,100,000 in 2022-23.

Under current law, the credit is equal to 100% of real and personal property taxes paid on a principal dwelling by eligible veterans and surviving spouses. An eligible veteran is a person who: (a) served on active duty in the U.S. armed forces; (b) was a resident of this state at the time of entry into that service or had been a Wisconsin resident for any consecutive five-year period after entry; (c) is a resident of the state for purposes of receiving veterans benefits; and (d) has a service-connected disability of 100% or a 100% disability rating based on individual employability. An eligible unremarried surviving spouse includes persons: (1) who receive federal dependency and indemnity compensation as a result of the deceased spouse's active duty service; (2) whose spouse died while on active duty in the U.S. armed forces, the National Guard, or the U.S. armed forces reserves; or (3) whose deceased spouse had a service-connected disability.

The credit is refundable, such that if the amount of the credit exceeds the claimant's tax liability, the balance is paid to the claimant by check. A claimant cannot claim the credit if they also file a claim for the property tax rent credit (nonrefundable), homestead credit (refundable), or farmland preservation credit (refundable) in the same tax year.

12. VETERANS PROPERTY TAX CREDIT EXPANSION FOR RENTERS

GPR	\$10,000,000
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Governor: Expand the veterans and surviving spouses property tax credit by providing the credit to eligible renters beginning in tax year 2021. An eligible claimant could claim the credit for 100% of their rent constituting property taxes. "Rent constituting property taxes" would have the same definition as under the current law property tax rent credit (generally 25% of rent if heat is not included in rent, or 20% of rent if heat is included). For married-separate filers, each spouse could claim the credit based on 50% of the total rent constituting property taxes paid during the taxable year for the eligible veteran's principal dwelling.

Under current law, a renter may claim the credit if they make property tax payments directly to the municipality (if the landlord does not remit such payments on their behalf). This provision would increase estimated state GPR expenditures by \$4,900,000 in 2021-22 and \$5,100,000 in 2022-23.

[Bill Sections: 1301 thru 1303 and 9337(1)]

13. BUSINESS DEVELOPMENT TAX CREDIT SUM SUFFICIENT REESTIMATE

GPR	-\$3,200,000
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Governor: Reduce funding by \$900,000 in 2021-22 and \$2,300,000 in 2022-23 for the sum sufficient appropriation for business development tax credits to reestimate anticipated claims during the biennium. The reestimate reflects the administration's projections of credit claims for economic development projects for which WEDC has entered into contracts, and is expected to enter into future contracts, to award tax credits. With the adjustments, estimated total funding would decrease from base funding of \$19,100,000 to \$18,200,000 in 2021-22 and \$16,800,000 in 2022-23. Businesses certified by WEDC can earn credits for a portion of wages paid to employees, training costs for employees, personal property investments, real property investments, and wages paid to employees performing corporate headquarters functions in Wisconsin.

14. BUSINESS DEVELOPMENT TAX CREDIT FOR RENEWABLE ENERGY

Governor: Create a new tax credit under the refundable business development tax credit program, administered by WEDC, equal to up to 25% of the claimant's energy efficiency or renewable energy project expenditures on real or personal property located in Wisconsin. Specify that, when making an award, WEDC would have to ensure that the percentage of expenditures taken into account positively correlates to the scale of the project. According to the administration, WEDC would award larger credit percentages for larger projects, up to a maximum of 25%. The credit would first apply to awards made on and after January 1, 2022. The administration did not estimate a fiscal effect associated with this provision.

[Bill Sections: 1292, 1343, 1375, 2558, and 9349(2)]

15. BUSINESS DEVELOPMENT TAX CREDIT MODIFICATIONS

Governor: Modify the business development tax credit program as follows.

Under current law, for the corporate headquarters credit, a business can earn an amount, as determined by WEDC, equal to a percentage of the amount of wages that the business paid to an employee in an eligible position in the taxable year. Eligible positions must be created or retained in connection with the business's location or retention of its corporate headquarters in Wisconsin, and the job duties associated with the eligible position must involve the performance of corporate headquarters functions. The bill would remove the requirement that the job duties associated with eligible employee's positions involve the performance of corporate headquarters functions.

For the job training credit, a business may be certified to receive tax credits for up to 50% of eligible training costs, as determined by WEDC, to undertake activities to enhance an employee's general knowledge, employability, and flexibility in the workplace; develop skills unique to the person's workplace or equipment; or develop skills that will increase the quality of the business' product. The bill would delete the eligible activities for what the job training would have to include and replace them with the following activities: (a) upgrading or improving the job-related skills of an eligible employee; (b) training an eligible employee on the use of job-related new technologies; or (c) providing job-related training to an eligible employee whose employment with the person represents the employee's first full-time job.

The administration did not specify an initial applicability date as to what tax years, or to what WEDC contracts, verifications, or awards, this provision would first apply. As a result, these provisions would take effect on the effective date of the bill. The administration indicates that the changes are intended to more closely align the business development tax credit program with the enterprise zone tax credit program. The administration did not estimate a fiscal effect associated with this provision.

[Bill Sections: 1291, 1342, 1374, 2556, and 2557]

16. WAGE THRESHOLD FOR ENTERPRISE ZONE AND BUSINESS DEVELOPMENT TAX CREDITS

Governor: Modify the wage threshold for the enterprise zone and business development tax credit programs, as described below.

Under current law, WEDC is responsible for awarding tax credits, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to both the business development and enterprise zone tax credit programs. Typically, WEDC will certify a business as eligible via a contract that specifies a maximum amount of tax benefits that may be earned by the business by successfully completing specified goals.

Enterprise Zone Credit - Current Law. The refundable enterprise zone tax credit for job creation can be claimed for up to a percentage of the increase in wages resulting from creating full-time jobs in the zone. Specifically, the credit is an amount equal to a percentage (up to 7%, as

determined by WEDC) multiplied by: (a) the number of the claimant's new full-time employees; and (b) the creditable wage amount. New full-time employees are equal to the number of employees in the zone in the taxable year minus the number of employees in the base year (or, if the difference is smaller, the new employees in the state minus base year employees in the state). The creditable wage amount is the average zone payroll minus the average eligible wage amount. The average zone payroll is the total wages of full-time employees employed in the zone in the taxable year, excluding wages in excess of \$100,000, divided by the number of full-time employees employed in the zone in the taxable year. The average eligible wage amount is currently \$22,620 for Tier 1 and \$30,000 for Tier 2 counties and municipalities. Counties and municipalities are designated as Tier 1 or Tier 2 by WEDC, based on certain economic indicators.

A similar refundable credit for job retention can be claimed for an amount equal to the percentage, up to 7% as determined by WEDC, of the claimant's zone payroll (excluding wage amounts that are over \$100,000) paid in the tax year to full-time employees who were employed in the enterprise zone and whose annual wages were greater than the eligible wage amount (described above).

Business Development Credit - Current Law. The refundable business development tax credit can be claimed for eligible expenses for increased employment, retaining employees, employee training, capital investment, and corporate headquarters location or retention in Wisconsin. Certified businesses can earn a refundable job creation or job retention credit for up to 10% of the amount of wages paid to an eligible employee (full-time job) in a tax year. If the employee is employed in a full-time job at the claimant's business in an "economically distressed area," as determined by WEDC, an additional credit may be awarded for up to 5% of such wages. WEDC uses the same definition for an "economically distressed area" as a "Tier I" county or municipality as under the enterprise zone tax credit program. For purposes of the credit, a full-time job means a regular, non-seasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay equal to at least 150% of the federal minimum wage (\$22,620) and benefits that are not required by state or federal law. Credits cannot be earned for wages over \$100,000 per year.

Governor's Recommendation. The bill would modify the enterprise zone and business development tax credit programs for contracts executed after December 31, 2021, as follows.

a. The required wage amounts would increase under both tax credit programs. For enterprise zones job creation and job retention credits, the bill would increase the wage thresholds from \$22,620 for Tier 1 and \$30,000 for Tier 2 counties and municipalities to \$27,900 and \$37,000, respectively. Similarly, for the business development job creation and job retention credits, a "full-time job" would be defined to mean a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least \$27,900 (rather than \$22,600) and benefits that are not required by federal or state law.

b. For the business development tax credit, WEDC would be able to grant exceptions to the requirement that a full-time job includes at least 2,080 hours of work per year if the annual pay

for the position exceeds \$27,900 (rather than 150% of the minimum wage) and the individual is offered retirement, health, and other benefits that are equivalent to the retirement, health, and other benefits offered to an individual who is required to work at least 2,080 hours per year, as under current law.

c. The bill would increase the maximum wage threshold such that that zone payroll under the job creation and job retention credits for both tax credit programs would include wages paid to any full-time employee up to \$123,000 (rather than \$100,000) as creditable wages.

d. For both tax credits, beginning on January 1, 2023, the wage thresholds and limits described above would be adjusted for inflation each year based on the change for the month of August in the prior year compared to the month of August in the year preceding the prior year of the U.S. CPI for all urban consumers, U.S. city average, as determined by the federal Department of Labor. Further, the bill would specify that each amount so adjusted must be rounded to the nearest multiple of \$10 if the revised amount is not a multiple of \$10, or, if the revised amount is a multiple of \$5, increased to the next higher multiple of \$10. [A technical modification would be needed to accomplish the Governor's intent to adjust the threshold described under "b" for inflation.]

The administration did not estimate a fiscal effect associated with the changes to the enterprise zone and business development tax credit programs described above.

[Bill Sections: 1274 thru 1285, 1288 thru 1290, 1325 thru 1336, 1339 thru 1341, 1360 thru 1369, 1372, 1373, 2551, 2553 thru 2555, 2559, 2560, and 2566]

17. JOBS TAX CREDIT REESTIMATE

GPR	- \$3,125,000
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Governor: Reduce funding by \$1,200,000 in 2021-22 and by \$1,925,000 in 2022-23 for the sum sufficient appropriation for jobs tax credits to reestimate claims during the biennium. The reestimate reflects projections for credit claims for economic development projects for which WEDC has awarded tax credits. With the adjustments, estimated total funding would decrease from base funding of \$2,900,000 to \$1,700,000 in 2021-22 and \$975,000 in 2022-23.

Pursuant to 2015 Act 55, the refundable jobs tax credit was consolidated with the nonrefundable economic development tax credit into the refundable business development tax credit beginning in 2016. The jobs tax credit was sunset after 2015. However, if WEDC allocated tax benefits in a contract to claimants prior to December 31, 2015, or if WEDC had entered into a letter of intent to enter into a contract before that date, claimants may compute and claim the credit for as long as the contract specifies. WEDC has entered into contracts through tax year 2023 for businesses to earn, compute, and claim the credit.

18. REFUNDABLE TAX CREDITS FOR PASS-THROUGH ENTITIES

Governor: Allow partnerships, LLCs, and S corporations to elect to claim the jobs, enterprise zone, and business development tax credits at the entity level for taxable years beginning after December 31, 2021, if the credit results from a contract entered into with WEDC prior to

December 22, 2017. Require that the entity must make this election each taxable year on its original return and the election may not be subsequently made or revoked. Further, specify that, if a partnership, LLC or S corporation elects to claim the credit, then the partners, members, and shareholders could not claim the credit. Likewise, the credit could not be claimed by the partnership, LLC, or S corporation if one or more partners, members, or shareholders have claimed the credit for the same taxable year. Further, specify that partnerships, LLCs, and S corporations cannot claim credits at the entity level if the claim relates to a contract entered into with WEDC after December 22, 2017.

For contracts entered into prior to December 22, 2017, federal law provides an exclusion from federal gross income for corporations that receive certain payments from governments (such as the refundable tax credits identified above). Federal law later repealed the exclusion for contracts entered into after that date under the TCJA. As a result, S corporations that elect to pay tax at the entity level for state income and franchise tax purposes could (but cannot under current state law) qualify for a federal exclusion for credit claims associated with a contract it executed with WEDC prior to December 22, 2017.

When computing income subject to the state entity level tax, current law prohibits partnerships, LLCs, and S corporations from claiming any tax credits, except for the credit for taxes paid to another state. As a result, under current law, any S corporation electing to pay tax at the entity level would be prohibited from claiming the jobs, enterprise zone, and business development tax credits, even if such claims related to a contract with WEDC executed prior to December 22, 2017.

A technical amendment would be needed to conform to the Governor's intent that the changes first apply to taxable years beginning after December 31, 2020 (rather than after December 31, 2021). Further, an amendment would be needed to accomplish the Governor's intent to allow businesses that elect to pay tax at the entity level to claim the above credits.

[Bill Sections: 1270, 1271, 1286, 1287, 1293, 1294, 1321, 1322, 1337, 1338, 1344, 1345, 1356, 1357, 1370, 1371, 1376, and 1377]

19. CIGARETTE AND TOBACCO PRODUCTS TAX REFUNDS REESTIMATE

GPR	- \$1,670,000
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Governor: Decrease funding for cigarette and tobacco products tax refunds by \$673,000 in 2021-22 and \$997,000 in 2022-23 to reflect lower estimates of the sum sufficient appropriation amounts required to reimburse Native American tribes under present law. With these adjustments, estimated total funding in the cigarette and tobacco products tax refunds appropriation would decrease to \$31,027,000 in 2021-22 and to \$30,703,000 in 2022-23. Under current law, for sales that occur on reservations or trust lands, the tribes receive a refund of 100% of the excise tax on cigarettes sold to eligible tribal members and 70% of the tax on sales to non-Native Americans. For tobacco products sold on reservations or trust lands, the tribes receive a refund of 100% of the tax on products sold to eligible tribal members and 50% of the tax on products sold to non-Native Americans. Eligible tribal members must reside on the reservation or trust land of the tribe where the sale took place and be an enrolled member of the tribe.

20. MARIJUANA TAX REFUNDS

GPR	\$6,700,000
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Governor: Allow DOR to enter into an agreement with federally-recognized American Indian tribes in this state: (a) for the administration and enforcement of marijuana excise taxes and regulation; and (b) to provide refunds of the excise taxes imposed on marijuana sold on tribal land by or to enrolled members of the tribe residing on the tribal land. Create a new sum sufficient GPR appropriation to pay refunds to eligible tribes for marijuana excise taxes collected, including interest and penalties, and provide \$6,700,000 in 2022-23 as an estimate of the amounts that would be refunded to the tribes.

The legalization of the sale and taxation of marijuana would be authorized under separate provisions of the bill. [For additional information, see "Marijuana-Related Provisions."]

[Bill Sections: 502 and 2269]

21. OIL PIPELINE TERMINAL TAX DISTRIBUTION RE-ESTIMATE

GPR	\$1,240,700
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Governor: Increase estimated payments by \$524,600 in 2021-22 and \$716,100 in 2022-23. With these increases, oil pipeline terminal tax payments would equal \$6,574,600 in 2021-22 and \$6,766,100 in 2022-23, relative to base level funding of \$6,050,000. The oil pipeline terminal tax distribution provides payments to municipalities where oil pipeline terminal facilities are located. The payment equals a proportionate share of the pipeline company's state tax payment based on the terminal facility's cost as a percentage of the gross book value of the pipeline company in Wisconsin.

22. CLAIM OF RIGHT CREDIT REESTIMATE

GPR	\$24,000
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Governor: Increase funding for the claim of right (repayment) credit by \$12,000 in 2021-22 and 2022-23. Compared to base funding of \$120,000, total funding for the credit is estimated at \$132,000 in 2021-22 and 2022-23.