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# HOWARD MARKLEIN

STATE REPRESENTATIVE • 51<sup>ST</sup> ASSEMBLY DISTRICT

## Senator Howard Marklein Testimony in Support of Senate Bill 440

Good morning Senators, and thank you for allowing me to testify in favor of Senate Bill 440. This bill is brought forward on behalf of DOR as an update and clean up to several sections of statutes related to revenue.

I wanted to highlight one aspect of the bill in particular that relates to property assessment. Currently the Secretary of the Department of Revenue has the ability to completely revoke the license of an unethical property assessor. Unfortunately there are no other options, short of revocation, should problems arise in dealing with assessors. This bill seeks to offer more tools for dealing with underperforming assessors. The vast majority of our property assessors perform well and for those that do not, options should be available.

Under this bill the Secretary can suspend an assessor's license for a period of time and order that assessor to undergo action to correct mistakes in order to avoid full revocation. You will hear today that the Wisconsin Association of Assessing Officers are in support of this measure. Representative Kerkman and Senator Olsen have been working on this issue as well, and have authored a piece of legislation very similar to this language.

Thank you again for allowing me the opportunity to testify in support of this bill.



*Scott Walker*  
Governor

*Richard G. Chandler*  
Secretary of Revenue

December 15, 2015

## **DOR Testimony in Support of Senate Bill 440 – DOR Technical Bill**

Chairman Marklein and members of the Committee, thank you for hearing Senate Bill 440 today, DOR's technical bill this session. DOR traditionally has at least one large bill of corrections and minor policy and administrative changes each session, and SB 440 is this session's version.

I have provided a handout to the Committee members of the individual provisions in a more concise/non-tax language version about what is contained in the bill. At the conclusion of my testimony, I am happy to discuss any of the provisions in more depth. I will focus on some of the key highlights that will have some of the more noticeable impacts on taxpayers. Also, please note, DOR structured the bill this session with Senator Marklein and Representative Novak to only contain items with no fiscal effect or a minimal effect since the bill is being considered a bit later in the session than its counterparts have been in the past.

SB 440 makes several positive administrative changes related to property assessment. None of these changes affects control of the assessing process that the municipalities possess. The Wisconsin League of Municipalities has registered in support of this legislation on the state's lobbying website. The Wisconsin Association of Assessing Officers is also supportive and will be testifying on this bill as well.

Under current law, the Secretary of the Department of Revenue has the authority to revoke the license of an underperforming or unethical assessor. This discipline level is severe and serves merely as the ultimate punishment available, while statutes allow for no lesser level of discipline or positive intervention steps, such as directing an underperforming assessor to engage in training to bring his or her skills up to an acceptable level. This bill allows for a lesser punishment, suspension, in addition to the current revocation ability and also allows for the Secretary to order an underperforming assessor, assessment personnel, or expert appraiser to take corrective action in order to avoid suspension or revocation.

The bill also removes a current loophole in the renewal process for assessor licensing. Under current law, assessors must attend 4 of the most recent 5 DOR annual assessor meetings in order to renew their licenses. Attendance at a meeting can either be in-person or online, anytime at the assessor's convenience. However, a small group of assessors choose not to meet this requirement and exploit a loophole by taking the assessor licensing exam, which is meant for new assessors; not those renewing a license. This bill removes this loophole and maintains and reinforces the standard to attend four of the most recent five DOR assessor meetings.

The goal of the assessment changes is not to add any burden to high-performing assessors throughout the state. In fact, high-performing assessors will not see any impact as a result of these changes. However, those underperforming will be expected to meet established standards that they should have been meeting already. There will be no related expense to local government.

Speaking of real property, the bill removes two annoyances related to home ownership. The first, is allowing DOR to disclose the amount of a tax lien on property to persons with a material interest or intention to obtain a material interest in property subject to a tax warrant. In other words, this affects would-be homebuyers at closing. On closing day, when the homebuyer is at the mortgage office and attempting to close on a property, if the property has a tax lien, those involved in the purchase must go through the burdensome power of attorney process with the current owner in order to find out the amount of the tax lien to satisfy in order for the sale to take place. This has the effect of turning closing day into the day that started delays. This bill will allow DOR to provide the tax lien amount to those involved in the purchase, which removes potential delays from closing and also ensures delinquent DOR tax bills are paid. The other annoyance has to do with Transfers on Death Deeds, which are essentially just documents that a home owner files with the local Register of Deeds to designate the new owner of the property at time of the owner's death. Current law requires the homeowner to file a real estate transfer return with DOR, even though no real estate transfer fee is due and the new owner still has to file a return when the actual conveyance occurs. This is an unnecessary paperwork demand that no longer has a valid purpose and should be repealed.

The excise changes, covering motor vehicle fuel, the petroleum inspection fee, tobacco products, cigarettes, and alcohol beverages are purely technical. DOR's administration of current law does not change at all, and no entity's tax liability is affected. What the bill does do is define the oft used but never defined word of "person" as it relates to excise taxes. The other change clarifies that either the owner or disregarded entity may hold a seller's permit and be eligible for a municipal retail license to sell alcohol beverages. While DOR already administers the law consistent with the related provisions in this bill, we strive to make administration of the law consistent with statutes, which makes the administration clear to taxpayers.

The bill also makes minor policy changes by picking up references to the Internal Revenue Code; neither of which has a fiscal estimate and the purpose of picking them up serves to reduce taxpayer confusion. Also, longstanding administration of the state's sales tax statute of limitations related to refunds will be reaffirmed and codified, which reflect no change to any current taxpayer, since DOR will still pay refunds to those we are required to under current administration as well as not to provide refunds to those ineligible under longstanding current practice.

Finally, the bill removes references to defunct tax law, including references to the woodland tax credit, sleeping car and express companies, the gift tax, elections related to disregarded entity withholding, and the transitional adjustment fee imposed on telecommunications companies. Removing these references has no fiscal effect since those programs or taxes have generally not been in effect for at least a decade, or close to 40 years for some others. Removing references today does not preclude this or future legislatures from restoring these credits or programs. Instead, their reference repeal just removes unnecessary language in the tax code that only serves to confuse taxpayers by describing programs and taxes that are in defunct due to the passage of time or acts of Congress.

And with that, I am happy to answer any questions that you may have.

**Define "Person" in Excise Statutes**

*Explanation:* The excise statutes refer extensively to the term "person." However, "person" is undefined, which creates uncertain and potential vulnerabilities related to tax administration. This change is non-substantial (technical only).

**Clarify Seller's Permit Requirement for Municipal Alcohol Beverage Retail Licenses**

*Explanation:* Current law requires businesses to hold a valid seller's permit from DOR in order to obtain a municipal retail alcohol license. In the case of a disregarded entity, statutes do not specify whether the owner or disregarded entity must hold the seller's permit. The bill clarifies that if either the owner or disregarded entity holds a valid seller's permit, the requirement is satisfied.

**Assessor Access to Utility Information**

*Explanation:* Utility tax returns in Chapter 76 are confidential; however, a few exceptions exist. Chapter 76 does not contain an explicit allowance for DOR to share basic information about the property with the local assessor, including whether the local assessor should be assessing the property instead of DOR.

**Repeal Defunct Transitional Adjustment Fee**

*Explanation:* The transitional adjustment fee was a transitional tax on telephone companies in 1999 and 2000 when the tax on telephone companies changed from a tax on gross revenues to an ad valorem property tax. This fee has not applied in over 15 years, is unnecessary, and should be repealed.

**Remove Outdated References to the Gift Tax**

*Explanation:* Wisconsin last had a gift tax in 1991. The references to the gift tax in statutes are no longer necessary.

**Repeal Vestigial References to the Woodland Tax Credit**

*Explanation:* 2013 Wisconsin Act 54 removed nearly all references to the long-defunct Woodland Tax Credit. Act 54 unfortunately did not include the references to the credit contained in the tax settlement statutes.

**Remove Dated References to Sleeping Car and Express Companies**

*Explanation:* The last tax rolls prepared for the long-terminated express companies and sleeping car companies were in 1969 and 1971, respectively. The statutory references to the related ad valorem taxes have been long-unnecessary.

**Repeal Transfer Upon Death (TOD) Deed Filing Requirement**

*Explanation:* TOD deeds are exempt from the real estate transfer fee; however, statutes require property owners to file a return anyway. This return is unnecessary.

**Allow Limited Disclosure of Tax Warrant Information**

*Explanation:* Title companies, banks, and others involved in the sale of a delinquent taxpayer's real estate may contact DOR on the day a sale is to close regarding the outstanding amount the delinquent taxpayer owes to DOR in order to satisfy the related lien. This provision would remove the requirement for the delinquent taxpayer to provide a power of attorney in order for DOR to provide this information



if DOR is satisfied that the person has a material interest or intends to obtain a material interest in the property subject to a tax warrant.

#### **Correct "One-Payment Lease" Use Tax Flaw**

*Explanation:* Wisconsin is non-compliant with the Streamlined Sales and Use Tax Agreement (SSUTA) in terms of use tax applicability for lump sum (one-payment) leases of vehicles related to the imposition of county and stadium taxes on this specific type of vehicle leases. This provision is highly esoteric but necessary to bring DOR back into compliance with SSUTA.

#### **Assessor Improvement**

*Explanation:* Current law allows the Secretary of Revenue to revoke an assessor's license. However, current statutes do not provide the Secretary the ability to impose a less severe penalty or from ordering an underperforming assessor to engage in training to improve performance. This provision would enable the Secretary to provide a less severe penalty and require training in addition to having the authority to revoke licensure.

#### **Assessor Annual Training Requirement Loophole Elimination**

*Explanation:* Current law requires assessors to attend the annual DOR training in four of the past five years or take the original assessor certification exam to maintain their assessor's license. Some assessors routinely skip relevant training and continue to just take the original certification exam to keep their license. This change would remove the exam option and just retain the requirement to attend four of the past five annual DOR training sessions.

#### **DOR Assessor Training Deadlines**

*Explanation:* Current law requires DOR-employed assessors to obtain licensure within 100 days. This provision would instead change that requirement to coincide with the employee's probationary employment period.

#### **IRC Updates**

*Explanation:* Congress recently passed two changes to the Internal Revenue Code that Wisconsin could pick up without a fiscal effect that would provide simplification for Wisconsin taxpayers (both are in effect for Wisconsin under current federal law):

- **P.L. 114-14** – provides an income exclusion for amounts paid by the federal Department of Justice for survivor's or disability benefits for injuries sustained in the line of duty.
- **P.L. 114-26** – allows federal law enforcement officers, firefighters, and air traffic controllers to make penalty-free withdrawals from governmental retirement plans after age 50, effective for distributions occurring after December 31, 2015.

#### **Remove Unnecessary Disclosure Language from 2013 Wisconsin Act 36**

*Explanation:* Licensed occupations face revocation, suspension, denial, nonrenewal, or discontinuation of their professional licenses if they have a delinquent unemployment insurance account with DWD as a result of 2013 Wisconsin Act 36. However, this act allowed DWD or the Supreme Court to examine DOR tax information as part of the unemployment insurance delinquency review. DOR tax information does not contain unemployment insurance information, so this access is unnecessary.

### **Correct Printers Sales Tax Exemption Error**

*Explanation:* 2013 Wisconsin Act 32 (the 2013-2015 biennial budget) created a new sales/use tax exemption for a printer's purchase of computers used for printing activities as well as idled real tangible personal property located on the printer's facility. However, the final budget draft had a drafting error that exempted the sales *of* printers of their computers and idled machines and not the sales *to* printers. Printers do not sell computers or machinery; they sell products created by these items. DOR administers the law consistent with the budget's intent; not the drafting error. However, the statute needs correction.

### **Sales Tax Statute of Limitations Corrections**

*Explanation:* The current statutes of limitations related to sales tax need clean-up to provide consistency and clarity. Refunds and assessments have a disparity between the date a transaction occurred versus when the tax was paid. DOR has nonacquiesced to the Tax Appeals Commission's February 28, 2014 decision in *Telephone and Data Systems, Inc.* due to the contradiction between the TAC's decision and DOR's longstanding administration of refunds for other tax items not included in an audit. Finally, an unclear grammar choice related to dissolved corporations and late-filed returns could provide the appearance that the statute only applies to exempt entities.

### **Short-Year Amortization Assistance**

*Explanation:* Taxpayers are currently required to amortize equipment placed into service prior to January 1, 2014 over a 5-year schedule (20% each year). However, if taxpayers have a short fiscal year (less than 12 months) for a year, the taxpayer misses out on realizing part of the year's amortization. This provision would allow taxpayers with a partial calendar year fiscal year to be able to fully amortize their property, the same as any other business with 5 full calendar fiscal years.

### **Federalization – Disregarded Entities Withholding**

*Explanation:* Wisconsin statutes reference federal law that expired on January 1, 2009 that allowed a single-owner entity that is a disregarded entity to have an election as to whom was the "employer" –the disregarded entity or the parent. This change would again match federal law by clarifying that the disregarded entity is the employer.

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