



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

January 23, 2020

Assembly Committee on Ways and Means Testimony on Assembly Bill 754

Good Morning!

Thank you Chair Macco and committee members for hearing Assembly Bill 754 (AB 754) that makes various changes to the laws administered and enforced by the Department of Revenue (DOR).

Rep. Wittke and I introduced AB 754 at the request of the Department of Revenue (DOR). This bill makes several technical corrections and minor policy changes that are intended to be revenue neutral or have minimal fiscal impacts.

AB 754 is intended to streamline the processes for both taxpayers and state government. One example is intended to simplify the process for a Wisconsin nonprofit organization to apply for a Certificate of Exempt Status (CES) number, which allows the nonprofit to make all purchases exempt from tax. Under the proposal, in order to obtain a CES, a non-profit organization will only need demonstrate their determination letter from the Internal Revenue Service (IRS) stating that they qualify as exempt under section 501(c)(3) of the Internal Revenue Code (IRC).

In 2018, Wisconsin adopted changes in state law as a result of the U.S. Supreme Court decision in *South Dakota v. Wayfair*. The *Wayfair* decision established a 200 transaction or \$100,000 threshold for sales tax nexus. Many states are realizing that having two standards for collecting tax for out-of-state online retailers is complex and could inhibit compliance and are moving to the sole \$100,000 threshold. AB 754 removes the 200 transaction component for sales tax nexus.

Another provision seeks to clarify eligibility for the homestead credit by adding the IRC definition of "earned income", and creating a definition of "primary income from farming" in order to clarify which farming losses do not have to be added to household income. This will assist certain farmers, so they can successfully claim a homestead credit.

The bill also includes minor policy changes such as the refund interest rate. In 2015, the legislature changed the interest rate paid by DOR on refunds from 9% to 3%. It appears most parts of the law were included except for Chapter 76 – Taxation of Public Utilities and Insurers, which was left at 9%. This would align the refund interest rate for utilities, air carriers and railroads with the refund rate DOR pays to other taxpayers.

Since this bill was introduced, we have heard some concerns from taxpayers with various provisions in the bill. We will be reviewing the concerns that have been raised and intend to draft an amendment prior to this bill being scheduled for an executive session.

Following my testimony, you will hear from DOR Secretary Peter Barca, who will discuss each of the provisions in greater detail.

Thank you again for hearing AB 754, and your timely action on this proposal.



Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Testimony on AB 754 by Peter Barca, Secretary of the Department of Revenue
Taxpayer Enhancement Package
January 23, 2020

Chairman Macco, Ranking Member Reimer, Members of the Assembly Committee on Ways and Means:

Thank you for allowing me to testify in favor of AB 754, which includes various changes to Wisconsin tax laws. We have called this omnibus bill the “Taxpayer Enhancement Package.”

Early in my time as Secretary of Revenue, I met with groups who were interested in proposing changes that make tax laws more user friendly. For example, we met a developer who was running into difficulty with the sale of historic tax credits. We worked with staff to find a way to make changes to allow this important development tool to continue to function in communities that needed these developments. Additionally, we met with our Volunteer Income Tax Assistance (VITA) program coordinators who made the suggestion to assist retirees with obtaining a more robust homestead credit, by making the retirement exclusion optional. While this item is not currently in this bill, the suggestion served as the genesis for requesting DOR staff and stakeholders to bring forward ideas that would make positive changes in tax administration.

Another example of collaboration was the item which removes a section of the state tax code which forbids payments from counties to municipalities during the very time when counties are making payments to municipalities for lottery credit. The Wisconsin Counties Association suggested this item, and we agreed with them that there was no reason for such a prohibition and are today recommending its removal.

As part of our strategic planning our senior leadership team challenged staff to think creatively and identify statutory changes that would help the constituencies that we serve at DOR by bringing clarity and increasing compliance. We have staff that are constantly in contact with tax practitioners and have had requests for clarifications over time. We sought to modernize in some cases, clarify, or simplify administration in order to make the tax and compliance process more effective and efficient.

The Secretary’s office waded through hundreds of proposals brought by staff and stakeholders over the first few months. Additionally, we solicited stakeholder input, and made changes according to the feedback we received with the goal of gaining support for the individual proposals. We also met with leaders of this committee of both parties to work together. Our goal was to bring forward proposals we believed would enjoy bi-partisan support.

I would like to thank the sponsors of the bill, Rep. Wittke and Rep. Ohnstad, and Chairman Macco and all of their staff for all of their hard work bringing these items before you today.

I will highlight a few of the key proposal items in AB 754.

- Simplifies the audit process for pass-through entities
- Allows tax payers more time to amend their WI taxes after an IRS or other state’s audit (As recommended by the Multistate Tax Commission)

- Streamline the process for receiving a certificate of exemption for Not for Profit entities.
- Simplifies the shared revenue payments to local taxing jurisdictions
- Increases training requirements for those that make determinations on property tax assessments
- Grants access to sales tax information to Legislative Audit Bureau access

I would also like to take this opportunity to discuss an item that is currently not included in this bill but we are seeking to add the item in with a substitute amendment. We would like to include updates to the Internal Revenue Code (IRC). The state of Wisconsin generally follows the IRC, with some exceptions. The current Wisconsin tax code follows the December 2017 version of the IRC. There have been seven laws that have been passed by Congress and enacted since then that we are recommending be incorporated into Wisconsin tax law in order to avoid tax payer confusion. There is a chart that itemizes all of the updates that we are seeking be incorporated. The overwhelming majority of them are technical corrections, but there are eight provisions that are substantive and have fiscal impacts in Wisconsin.

With the support of Rep. Wittke, the bill's sponsor, along with the other sponsors and Chairman Macco, we are seeking to incorporate these changes into Wisconsin tax law.

In closing, AB 754 is a collection of taxpayer enhancements and common-sense changes that are an asset to the citizens of Wisconsin and the governments that serve them. We are honored at the bi-partisan support this package has received and are grateful to lead author Rep. Wittke, Chairman Macco, and Rep. Ohnstad for leading this package in the Assembly, and Chairman Marklein and Senators Kooyenga and Smith in the Senate, as well as the Governor and his staff for their consultation.

Thank you again for hearing AB 754. At this time, I would be happy to offer myself and my staff for questions.

Elimination of Timing Restriction for Payments to Towns from Counties **Section 3**

Allows counties to be in compliance with law when distributing lottery property tax credit to towns.

Disability Income Subtraction **Sections 20**

Adopts language from the 1983 version of the IRC related to the disability incomes subtraction. Our current code references the 1983 which is difficult to find.

Homestead Credit Clarification – Earned Income **Sections 25, 26, 80**

Clarifies eligibility by creating a definition of “earned income” using IRC, and clarifies which farming losses do not have to be added to household income by creating a definition of “primary income from farming”

Simplification of Pass through Entity Audits **Sections 27-33, 37-43, 47**

Simplifies audits for partnerships and S corporations by providing an option for audits and correspondence to be made with only the entity, rather than issuing bills or correspondence to each partner/shareholder.

More time to amend IRS filing changes **Sections 34, 35**

Also allows all taxpayers 180 days to amend their Wisconsin tax returns after an IRS audit (recommended by Multistate Tax Commission and other national tax groups).

Transfers of Historic Rehabilitation Tax Credit **Sections 21, 23-24**

Allows for the sale of entire 5 years of HRT credits in one transaction, while retaining the 5 year claiming limitation.

Sales and Use Tax on Property Transferred with Certain Services **Section 68, 69**

Allows sales taxable service providers to purchase items without tax, regardless of whether the customer is tax exempt or not.

Certificate of Exempt Status Simplification and Expansion **Section 70**

Fully adopts IRC requirements for tax exempt status for sales and use tax purposes.

Nexus for Remote Sellers **Section 60-67**

Eliminates 200 transaction threshold for sales tax nexus. Leaves sales tax nexus at \$100K sales.

LAB Access to Sales Tax Information **Section 71**

Allows LAB access to sales tax information. Necessary due to marketplace responsibilities.

Situs of Income Derived in Wisconsin By Nonresidents **Sections 13-19, 22, 36, 80**

Brings WI up to par with all other states that impose an individual income tax by requiring that business income derived in WI by a nonresident is taxable in Wisconsin based on a ratio of where sales occur amongst the states, not where the nonresident is physically located.

Summary of AB 754

Taxpayer Enhancement Package Proposals

These proposals were recommended by the Department of Revenue to make tax laws easier to understand and follow for taxpayers, practitioners, and local governments in Wisconsin.

DPI Revenue Limit Calculation

Section ~~44~~ 44

Eliminates unnecessary automatic statutory calculation. Changes to per request by DPI.

Application of Shared Revenue Deductions

Sections 1, 2, 5, 6, 7, 9, 12, 75-77, 80

Allows DOR to remove all shared revenue deductions from the main shared revenue payments, regardless of order. Removes restrictions on deductions based on type of payments.

Omitted Property

Sections 48-51, 81

Requires that municipalities share revenue from omitted taxes with other taxing jurisdictions using the same guidelines as collecting refunded taxes from other taxing jurisdictions under the chargeback process.

BOA filing fee

Sections 10, 11, 81

Increases fee for manufacturing appeals to the department to \$200 from \$45.

Uniform Due Dates for Ad Valorem Companies

Sections 52, 53

Brings railroad due dates in line to other utility company deadlines.

Refund Interest Rate

Sections 54-59

Corrects interest refund rate paid to utilities, air carriers, RR, others to 3% from 9% to align refund rate DOR pays to others.

BOR Training Requirements

Section 8, 81

Requires that all members of a board of review must complete training every year (at least on-line), and at least one member must attend in-person training.

Assessor Certification Fee Increase

Sections 45, 46

Increases assessor certification fee to align with DOR costs to administer program up to \$75.

ERP Early Distribution

Sections 72-74

Allows a community who failed to timely file required Expenditure Restraint Program Worksheet to receive subsequent qualified payments early.

Consumer Price Index Timing

Section 4, 78, 79

Adjusts the timing of the consumer price index average to use the 12 months ending August 31.

Summary of IRC updates

Wisconsin generally conforms to the federal tax code. Wisconsin regularly adopts changes made to the IRC. Conforming to the IRC eliminates the complexity for taxpayers that results when Wisconsin law is not consistent with federal law. Wisconsin is currently following the IRC (with certain exceptions) as of 12/31/2017. There have been laws passed by Congress that amend the IRC since 12/31/2017:

- Public Law 115-123 – Bipartisan Budget Act of 2018 enacted February 9, 2018
- Public Law 115-141 – Consolidated Appropriations Act enacted March 23, 2018
- Public Law 116-25 – Taxpayer First Act enacted July 1, 2019
- Public Law 116-91 – FUTURE Act enacted December 19, 2019
- Public Law 116-92 – National Defense Authorization Act for Fiscal Year 2020 enacted December 20, 2019
- Public Law 116-94 – Further Consolidated Appropriations Act, 2020 enacted December 20, 2019
- Public Law 116-98 – Virginia Beach Strong Act December 20, 2019

Provisions from the foregoing public laws that have a fiscal impact for Wisconsin.

Public Law	Fed. Act §	Comments	Fiscal impact
Public Law 115-123	41115	A provision certifying each population census tract in Puerto Rico as a qualified opportunity zone. This affects Wisconsin, in that investments in opportunity zones are held by Wisconsin residents.	-\$0.7M
Public Law 115-123	41116	A provision to allow those in the armed forces to qualify to take foreign earned income exclusions, foreign housing exclusion, and foreign housing deduction.	-\$0.6M
Public Law 115-123	41113	Removes 6-month prohibition on making elective and employee contributions to a plan after receipt of a hardship distribution.	\$0.2M
Public Law 116-94	202(a)	Allows up to \$100K distribution, without penalty, from a retirement plan made after a qualified disaster, up to 180 days after December 20, 2019. Must be repaid within 3 years.	-\$0.2M
Public Law 116-94	204(a)	The deduction for charitable contributions for qualified disaster relief is increased up to the taxpayers taxable income (corporate), or contribution base (individuals).*	-\$1.7M
Public Law 116-94	204(b)	Increase the amount of casualty loss that can be claimed due to qualified disasters.	-\$0.2M
Public Law 116-94	302	Expand 529 education savings accounts to cover costs associated with registered apprenticeships and up to \$10K of qualified student loan repayments.	-\$0.1M
Public Law 116-94	204(c)	For purposes of computing the earned income credit and child tax credit, the taxpayer may elect to use earned income from the preceding year. This applies to victims whose principal place of abode was in a qualified disaster zone or area for any taxable year which includes any portion of the incident period of the qualified disaster for a qualified disaster zone or any taxable year which includes any portion of the period the individual is located in a qualified disaster area.*	-\$0.9M
Total Impact			-\$6M

*It's important to note that the negative revenue impact in Section 204(a) is reduced to 0 (no impact) in year 2, and the change in Section 204(c) gets reduced to 0 (no impact) in year 3.

The rest of the provisions we are seeking to update have no fiscal impact on Wisconsin- and include extensions of existing credits, technical corrections, and corrections of spelling errors from prior bills. Each of the provisions is outlined in a separate chart available upon request from the Clerk.



To: Assembly Committee on Ways and Means
From: Curt Witynski, J.D., Deputy Executive Director, League of Wisconsin Municipalities
Kyle Christianson, Director of Government Affairs, Wisconsin Counties Association
Date: January 23, 2020
Re: **AB 754, Various changes to the laws administered and enforced by the Department of Revenue**

The League of Wisconsin Municipalities and the Wisconsin Counties Association generally support AB 754, making changes to laws administered by the Department of Revenue, many of which impact local governments. We appreciate that the Department reached out to our associations and sought feedback on the proposed changes in this bill early in the process.

We also appreciate that the Department listened to our concerns and added a few items at our request, including changing the date of determining the inflation factor for the Expenditure Restraint Program to better align with the local budgeting process and changes to inconsistent statutory mandates on local governments.

The technical changes made by AB 574 make sense and are good public policy. We urge you to recommend passage of the bill. Thanks for considering our comments.



**WISCONSIN TOWNS
ASSOCIATION**

Empowering Town Officials

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MEMO TO: Assembly Committee on Ways and Means
FROM: Mike Koles, WTA Executive Director
DATE: 1/23/20
RE: AB 754 DOR Technical Changes

The Wisconsin Towns Association is supportive of the technical changes in AB 754 that impact laws implemented by the Department of Revenue, many of which affect town government both directly and indirectly. We laud the collaborative approach used by Department leaders to bring together and listen to the diverse interests impacted by this legislation. Said approach led to changes we requested to be made, thus making the bill stronger and better for our 1248 towns.

This legislation is common sense public policy and we respectfully request that you support moving forward with this effort.

Thanks in advance for your consideration.

**Richard Dilley Tax Center
2206 S Park Street
Madison, WI 53713**

Representative John Macco
Chairman, Ways and Means Committee

Chairman Macco,

I have been volunteering for the past twenty-three years with the AARP Foundation Tax-Aide program and the Volunteer Income Tax Assistance program (VITA). Both programs are run in conjunction with the IRS and the Wisconsin Department of Revenue.

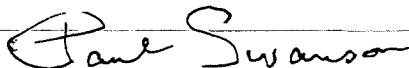
Currently, I am starting my tenth year as the coordinator of the Richard Dilley Tax Center. This VITA site completes over 3000 tax returns each year for seniors and low and moderate income taxpayers. All of the work is done by IRS certified volunteers.

What we have been witnessing over the past few years is that the Retirement Income Exclusion is more apt to penalize taxpayers than to help them. In the Wisconsin return, the Retirement Income Exclusion subtraction must be taken before the subtraction for health insurance expense. On the Homestead Credit return, the RIE is then added back to calculate Household Income. Without the RIE being subtracted, then added back, the Homestead Credit could be increased by as much as \$200. For these taxpayers, the amount is significant.

We are asking that your committee consider legislation so that the RIE is not required to be subtracted prior to the health insurance subtraction.

Attached is an example showing how the current law can have a detrimental effect on the Homestead Credit

Thank You for your consideration.



Paul Swanson
Site Coordinator
Richard Dilley Tax Center



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The technical changes made by AB 574 make sense and are good public policy. We urge you to recommend passage of the bill. Thanks for considering our comments.



January 22, 2020

Wisconsin State Legislators
P.O. Box 7882
Madison, WI 53707-7882

Re: Assembly Bill 754 – Technical Correction to the WI Historic Tax Credit

Dear Members of the Legislature:

Please accept this letter as an endorsement of Assembly Bill 754; specifically relating to the technical correction to the Wisconsin Historic Tax Credit.

I am writing to you on behalf of Bear Real Estate Group and the various affiliated companies within the organization. Our firm continues to utilize the program to rehabilitate blighted property, create jobs and generate significant local and national investment into Southeast Wisconsin. In addition to the positive impact within South-Eastern Wisconsin, the program continues to facilitate tens of millions of investment dollars throughout the balance of the state that simply would not occur absent the Wisconsin State Historic Tax Credit program.

After detailed review, we firmly believe the technical corrections proposed have no adverse impacts on the state budget, rather it shall provide needed corrections to facilitate future investment by increasing accessibility to additional lenders and investors. I'm happy to further discuss any questions or concerns related to the positive impact we believe this bill will have for Wisconsin residents.

Sincerely,

A handwritten signature in black ink, appearing to read "S.R. Mills", is written over a horizontal line.

S.R. Mills
CEO
Bear Real Estate Group
smills@BearREG.com



January 22, 2020

TO: Members of the Wisconsin Legislature

RE: Assembly Bill 754 Technical Correction to WI Historic Tax Credit

I am writing today to express strong support for the technical correction to the Wisconsin State Historic Tax Credit. This correction has no fiscal impact and simply clarifies ambiguities raised by investors and lenders.

The Wisconsin credit program had generated more than \$100 Million dollars in new investment in our state since the legislature enhanced the program several years ago. These investments have benefited Wisconsin communities large and small and will continue to do so for years to come.

On behalf of the community of developers, lenders, investors and so many others that value the economic development spurred by this program, please accept our thanks for the clarification contained in AB 754.

Respectfully,

A handwritten signature in black ink, appearing to read "Joseph M. Alexander", written over the printed name and title below.

THE ALEXANDER COMPANY, INC.

Joseph M. Alexander

President