



**WISCONSIN TOWNS
ASSOCIATION**

Empowering Town Officials

W7686 County Road MMM
Shawano, WI 54166
715-526-3157
wtowns@wisctowns.com
www.wisctowns.com

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.



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.

**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.

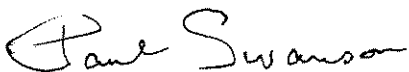
Currently, I am starting my tenth year as the coordinator of the Richard Dilley Tax Center. This VITA site completes over 3000 tax returns each year for seniors and low and moderate income taxpayers. All of the work is done by IRS certified volunteers.

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



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 company name.

THE ALEXANDER COMPANY, INC.

Joseph M. Alexander
President



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,

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



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THE ALEXANDER COMPANY, INC.

Joseph M. Alexander
President

TO: Members, Senate Committee on Financial Institutions and Revenue
FROM: Tim Lundquist, Wisconsin Association of Health Plans
RE: Senate Bill 2
DATE: January 21, 2021

The Wisconsin Association of Health Plans requests Wisconsin lawmakers repeal, as a part of any Internal Revenue Code Updates, the 2017 Wisconsin Act 231 state application of the federal 2017 unrelated business income tax (UBIT) on tax exempt organizations that provide employee parking and transportation benefits.

In December 2019 Congress passed and President Donald Trump signed, a full federal repeal of the UBIT retroactive to December 2017.

It our understanding that although the federal law that Wisconsin adopted was repealed retroactive to 2017, the Wisconsin Legislature must act to remove the state UBIT from Wisconsin Statutes. Like the federal action, we encourage the state UBIT repeal be retroactive to 2017.

As a reminder, the state tax impacts all tax-exempt organizations and charities that provide parking or a transportation benefit to their employees. The benefit could include: paid mass transit passes; paid parking spaces; or free parking in a lot or ramp owned by the entity, such as a church, school or hospital, if more than 50 percent of the spaces are used by employees.

If you have any questions, please do not hesitate to contact me at 608-255-0921.



2801 Fish Hatchery Road | Madison, WI 53713 | (608) 270-9950 | (800) 589-3211 | FAX (608) 270-9960 | www.wirestaurant.org

Testimony

January 21, 2021

TO: Senate Committee on Financial Institutions and Revenue
Senator Dale Kooyenga, Chair

FR: Kristine Hillmer, President and CEO

RE: Testimony on Senate Bill 2

Thank you Mr. Chairman and members of the Senate Committee on Financial Institutions and Revenue for hearing our testimony today.

The Wisconsin Restaurant Association represents over 7,000 restaurant locations statewide. Our organization represents all segments of the restaurant and hospitality industry; our membership includes food establishments of all types and sizes, such as seasonal drive-ins, supper clubs, diners, locally owned franchisees, fine-dining and hotels/resorts. Over 75 percent of our membership are independent restaurants. Regardless of ownership type, all restaurants are the cornerstones of their neighborhoods and communities. Restaurants not only provide great food, drink and hospitality, they support schools, teams, charities and churches with fundraising and donations. They provide meeting places to celebrate, mourn and organize, or just provide a safe, tasty meal for a busy family.

I am sure you all know the toll the COVID-19 pandemic has taken on the entire hospitality and tourism industry. The vast majority of restaurants have seen steep declines in their sales, steep increases in price for supplies and services and in some places, severe restrictions on their ability to be open and safely serve customers. It seems like every time we turn on the news or read publications, public health officials across the country are scapegoating restaurants and other public facing businesses as places to avoid, or even worse, close in order to protect the public.

When the CARES Act was passed, many businesses hoped the Paycheck Protection Program would be the lifeline to help them survive the pandemic. While it was not a good fit for all restaurants, it was and continues to be an option that helps keep employees on the payroll and a few bills paid. For some it is the only thing that has kept them open. As we unpacked all of the elements of the PPP, it was quickly determined that at the both state and federal level, that unless corrective legislation was taken, businesses who utilized the PPP would not be able to then deduct PPP paid expenses on state and federal income taxes. On the federal level, the legislative intent was that utilizing the PPP would not then be a tax burden on businesses. At the federal level, this issue with the relief package that passed in December. Here in Wisconsin, based on language that was in Act 185, we thought this problem was already solved back in April when the Act went into effect. We were alarmed when we saw the Department of Revenue guidance document that was issued just this past Friday stating this is not the case.

Last April, as the Assembly and Senate developed what ultimately became Act 185, many business groups, including the WRA, brought our concerns about this unintended tax liability to the legislature. You all agreed that the use of PPP funds should not then create a tax burden on those businesses who utilized it,

especially as they were already withstanding substantial losses in revenue. While we are not sure why and how the Department has determined that Act 185 did not go far enough to address this issue, the fact is that we must correct it. It is imperative that we make sure that this is fixed. Otherwise, many small businesses will not be able to pay their state income taxes and we will see many business closures.

We have heard concerns from legislators that this will create a more than \$450 million hole in the revenue budget. We strongly argue these taxes would have never been collected in the first place and it is not necessary to fill a hole that would never have existed if the PPP program had not been enacted. Pre-pandemic, the expenses we are talking about would have been expensed and therefore no tax would be collected on the income it was expensed against and the state would have never counted on this tax revenue. This is not a hole in the budget – this is “found” money that will unfairly increase taxes on small businesses that are barely hanging on. This unexpected and unfair tax may very well put many already at risk businesses on the brink, over the tipping point towards bankruptcy. The PPP was developed as a lifeline to keep employees off unemployment insurance and for basic bills to be paid to prevent defaults on mortgages and leases. It was never meant to create a tax burden that will shutter businesses.

We strongly urge that this committee entertain an amendment that implements the legislative intent of Act 185. The US Congress was able to do this in December. Since this is not a loss in revenue for the State of Wisconsin – we ask that you do the same.

Thank you for the opportunity to speak and I will entertain any questions you may have.



Testimony of the Wisconsin Bankers Association

**Mike Semmann, Executive Vice President/Chief Operations Officer, WBA
John Cronin, Assistant Director – Government Relations, WBA**

Senate Committee on Financial Institutions and Revenue

SB 2

January 21, 2021

Chairman Kooyenga and members of the Senate Committee on Financial Institutions and Revenue,

Thank you for holding a hearing today on 2021 Senate Bill 2 and taking the testimony of the Wisconsin Bankers Association (WBA) under consideration.

Founded in 1892, WBA is the state's largest financial industry trade association, representing 212 commercial banks and savings institutions, their branches, and over 21,000 employees. The Association represents banks of all sizes in Wisconsin, noting that 97 percent of banks in the state are WBA members.

In April 2020, the Wisconsin Legislature made an important decision to adopt provisions of the CARES Act that did not tax PPP loans as ordinary business income. The change had a beneficial impact on Wisconsin businesses by providing confidence and certainty, but more importantly, it allowed employees to continue to receive income that would have been lost due to the impacts of the shutdown.

Today, WBA is pleased Sen. Marklein and Rep. Wittke have brought this legislation forward to update the Department of Revenue's (DOR) administration of Wisconsin's tax code. SB 2 also adopts more Paycheck Protection Program (PPP) provisions of the federal CARES Act that were not included in 2019 Act 185.

In addition to helping individuals and communities, sustained business success is beneficial to the Wisconsin economy, state government, and ultimately to WBA's members. The various tax updates coupled with the PPP components will help Wisconsin businesses and therefore WBA supports the passage of SB 2.

The COVID-19 pandemic has created particularly challenging situations and has necessitated an all-hands-on-deck response from both the public and private sectors. A bright spot in the federal government's action was the creation of PPP in the CARES Act to help businesses ride out the economic upheaval caused by the pandemic. Banks in Wisconsin played a critical role in the execution of this program on the economic front lines helping customers obtain PPP loans. Wisconsin banks helped facilitate nearly 90,000 loans to businesses worth over \$9.9 billion.

Wisconsin banks have seen firsthand the challenges the COVID-19 pandemic has posed for main street. While the economic outlook is positive, a full recovery will take months or even into next year, and businesses still need additional tools to remain open and keep people employed. SB 2 helps accomplish this by incorporating Sections 2301 and 2302 of the CARES Act. Section 2301 allows employers taking PPP loans to take a payroll tax credit on qualifying wages paid to certain employees during a period of decreased business activity due to shutdowns or significantly reduced revenues. Section 2302 allows employers to defer payment of their Social Security and payroll taxes from March 27, 2020 to December 31, 2020. PPP recipients whose loans were forgiven were originally barred from deferring payroll taxes,

(over)

but this prohibition was reversed upon passage of the PPP Flexibility Act in June. WBA supports these provisions because of the positive implications they have for Wisconsin businesses.

Amendment to Senate Bill 2

Wisconsin businesses and taxpayers do face a time-sensitive item that the DOR addressed in a January 15, 2021 opinion. As such, WBA requests the Committee adopt an amendment to SB 2 that further reconciles PPP loan taxability at the state level with the tax treatment at the federal level.

Under the CARES Act, if businesses met certain criteria and used PPP loans for appropriate payroll and non-payroll expenses, those loans would be forgiven. Moreover, the Act provides for the portion of the loan that qualified for forgiveness to be excluded from gross income for tax purposes.

Last year, the IRS issued guidance stating business expenses accrued using PPP funding were not deductible on 2020 taxes. Congress overturned this interpretation through passage of the most recent COVID-relief bill, the Consolidated Appropriations Act (CAA). However, the DOR stated that Wisconsin must follow the IRS' overturned and outdated guidance or changes state statutes, thereby leaving Wisconsin businesses with state tax liability they likely were not expecting. These businesses have had to withstand the worst of the economic fallout associated with COVID-19 and should not be punished at the state level for their perseverance.

The banking industry recommends the best option for small businesses is to amend SB 2 to conform with sections 276(a) and 278(a) of Division N of Public Law 116-260 to allow the deductibility of ordinary business expenses.

In the absence of allowing full deductibility, WBA suggests a combination of changes that would help small businesses so they would not face unexpected liabilities to the state causing further harm to their employees.

WBA asks the committee to consider an amendment to SB 2 that takes into consideration that most Wisconsin businesses took out PPP loans of \$150,000 or less and the federal government has created new accommodations for the forgiveness of these loans. Further, the amendment could allow deduction of ordinary businesses expenses such that the state would not issue a tax refund or that net operating losses would not increase as a result.

Action by the committee now could prevent thousands of small businesses from having to file extensions or amend tax filings in the future.

WBA asks for this change on behalf of bank customers throughout Wisconsin as this amendment will not directly benefit the banking industry, and respectfully requests the Legislature amend SB 2 to align PPP loan deduction state income tax treatment with that at the federal level.

Thank you for your consideration.



Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Testimony on SB 2 by Peter Barca, Secretary of the Department of Revenue
Taxpayer Enhancement Package
January 21, 2021

Chairman Kooyenga, Vice Chair Feyen, Ranking Member Ringhand, and members of the Senate Committee on Financial Institutions and Revenue, thank you for allowing me to testify on SB 2, which includes various changes to Wisconsin tax laws. We have called this omnibus bill the "Taxpayer Enhancement Package."

The bill contains various tax law changes that encompass clarifications, corrections, simplifications and modernizations of our tax laws. The proposals were the result of numerous meetings with staff, strategic planning discussions with our division leaders, as well as meetings with external stakeholder groups. In all cases, our department engaged with stakeholders and legislators to arrive at solutions that would benefit the groups, our department and the taxpayers of the state.

For example, early in my time as Secretary of Revenue, 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 investments. 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.

As I mentioned last year, we challenged our staff at DOR to think creatively to identify solutions that would simplify administration in order to make the tax and compliance process more effective and efficient.

I will highlight a few additional key proposal items in SB 2.

- Allows taxpayers more time to amend their Wisconsin 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 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

In addition to these changes, the DOR is also seeking to bring Wisconsin's tax laws up to date and is seeking that we adopt Internal Revenue Code (IRC) changes, with few exceptions up to December 31, 2020. SSA 1 currently contains IRC updates thru December 2020 which includes IRC changes from the latest federal legislation, the Consolidated Appropriations act, which was enacted on December 27, 2020. There was a drafting error, and therefore Amendment 1 to SSA 1 is necessary to effectuate the intent of the author. Please note we have removed two of the IRC updates because of objections to the fiscal impact.

Page 2

We have provided a summary chart of the IRC updates of those IRCs with fiscal impacts. Both from the federal acts that pre-date the CAA, and one specifically for the CAA IRC provisions.

With the support of Senator Marklein and Chairman Kooyenga and, the bill's sponsors, along with the sponsors in the other chamber, we are seeking to incorporate these changes into Wisconsin tax law.

In closing, SB 2 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 Senator Marklein and Chairman Kooyenga and Ranking Member Ringhand in the Senate and Rep. Wittke, Chairman Macco, and Rep. McGuire and Rep. Ohnstad for leading this package in the Assembly, as well as the Governor and his staff for their consultation.

We are grateful to your efforts on this package last year, which enjoyed unanimous bipartisan support in committee in both chambers.

Thank you again for hearing SB 2. At this time, I would be happy to offer myself and my staff for questions.

Short Summary of SB 2 and AB 2

Taxpayer Enhancement Package Proposals

- DPI Consumer Price Index (CPI) Calculation** *No fiscal impact* **Section 88**
Eliminates unnecessary automatic statutory calculation. Changes to per request by DPI.
- Uniform Due Dates for Ad Valorem Companies** *No fiscal impact* **Sections 95, 96,98**
Brings railroad due dates in line to other utility company deadlines.
- ERP Early Distribution** *No fiscal impact* **Sections 117-119**
Allows a community who failed to timely file required Expenditure Restraint Program Worksheet to receive subsequent qualified payments early.
- Consumer Price Index Timing** *No fiscal impact* **Sections 4, 123-124**
Adjusts the timing of the consumer price index average to use the 12 months ending August 31.
- More time to amend IRS filing changes** *No fiscal impact* **Sections 84-86**
Also allows all taxpayers 180 days to amend their Wisconsin tax returns after an IRS audit
- Certificate of Exempt Status Simplification and Expansion** *No fiscal impact* **Section 114**
Fully adopts IRC 501(c)3 requirements for tax exempt status for sales and use tax purposes.
- 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. *No fiscal impact*
- Transfers of Historic Rehabilitation Tax Credit** *No fiscal impact* **Sections 36, 62, 81**
Allows for the sale of entire 5 years of HRT credits in one transaction, while retaining the 5 year claiming limitation.
- Homestead Credit Clarification – Earned Income** *Increase cost: \$140,000* **Sections 82, 83, 125**
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."
- Sales and Use Tax on Property Transferred with Certain Services** **Sections 112-113**
Allows certain taxable service providers to purchase items without tax, regardless of whether the sale to the customer is taxable or not. *No fiscal impact*
- Disability Income Subtraction** *No fiscal impact* **Section 26,27**
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.
- Medical Care Insurance for Self Employed Persons** *Increased cost: \$9.5M* **Sections 28-33**
Allows self-employed persons to deduct health insurance premiums from all income, not just self-employed income.

Short Summary of SB 2 and AB 2

Application of Shared Rev Deductions *No fiscal impact* **Sections 1-2, 5-7, 10, 13, 120-22, 125**

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 *No fiscal impact* **Sections 91-94, 126**

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 *Revenue increase: \$31,000 of GPR-earned* **Sections 11, 12, 126**

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

BOR Training Requirements *No fiscal impact* **Sections 9, 126**

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

Assessor Certification Fee Increase *No fiscal impact* **Sections 89, 90, 126**

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

Nexus for Remote Sellers *Minimal fiscal impact* **Section 104-111**

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

LAB Access to Sales Tax Information *No fiscal impact* **Section 116**

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

Refund Interest Rate *Revenue increase: \$25,000* **Sections 97, 99-103, 125**

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

IRC Updates *Increased cost:* **Sections 14-22, 35, 37-61, 63-80**

Retirement Income Exclusion *Increased cost: \$200K* **Sections 23-25, 34, 35, 87, 122**

Make the retirement income exclusion optional instead of mandatory. This will allow retirees to make the election that is most beneficial for obtaining a homestead credit.

Leasing property owned by a church *No fiscal impact* **Sections 8, 125**

Allows property that is owned and operated by a church or religious institution to remain exempt from tax, when leased to an educational association or institution that is also exempt from taxation.

UW-Hospitals and Clinics Authority sales tax provision *No fiscal impact* **Section 115, 125**

Provides a sales and use tax exemption for tangible personal property sold to a construction contractor who transfers the property to UW-Hospitals as part of constructing a facility for UW-H. Similar exemptions exist for local governments, technical college district, or UW institutions.

Summary of IRC updates – AB 2/SB 2

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. Senate Bill 2 conforms Wisconsin to the IRC as of 12/31/2019 (with certain exceptions) for taxable years beginning after December 31, 2020. The following laws have been passed by Congress between 12/31/2017 and 12/31/2019 that affect the IRC:

- 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, FY22	Fiscal Impact, FY23
Public Law 115-123	41113	Removes 6-month prohibition on making elective and employee contributions to a plan after receipt of a hardship distribution.	\$0.6M	\$0.6M
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.	-\$0.9M	-\$0.9M
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	-\$0.6M
Public Law 116-94	Div. O, Section 302	Expand 529 education savings accounts to cover costs associated with registered apprenticeships and up to \$10K of qualified student loan repayments.	-\$0.1M	-\$0.1M
Public Law 116-94	Div. Q, Section 302	Repeal the increase in unrelated business taxable income for certain fringe benefits relating to transportation, parking, use of athletic facilities, etc..	-\$0.9M	-\$0.9M
Total Impact			-\$1.9M	-\$1.9M

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.

Summary of IRC updates in Consolidated Appropriations Act

SB 2 and AB 2

The Consolidated Appropriations Act (CAA), enacted on December 27, 2020 makes several changes to tax year 2020. Below are the Internal Revenue Code (IRC) updates for the Consolidated Appropriations Act that have a revenue impact in the next biennium.

Fed. Act §	Comments	Fiscal impact	
		2021	2022
202	Section 13204(b) of P.L. 115-97, relating to the effective date for the ADS recovery period which shortened residential rental property from 40 years to 30 years, is revised to include the following: For any residential rental property which was placed in service before January 1, 2018, held by an electing real property trade or business that elects out of the interest deduction limitation under section 163(j)(7)(B) of the IRC, and to which subparagraph (A), (B), (C), (D), or (E) of section 168(g)(1) of the IRC did not apply prior to such date, the amendments to the ADS recovery period applies to taxable years beginning after December 31, 2017.	-6	-4.9
214	(a) and (b) For plan years ending in 2020 and 2021, a plan that includes a health FSA or dependent care flexible spending arrangement shall not fail to be treated as a cafeteria plan under the IRC because such plan or arrangement permits participants to carry over any unused benefits or contributions remaining in the FSA from such plan year to the plan year ending in 2021 and 2022, respectively. (and other FSA changes)	0	.2
101	The medical expense deduction floor for itemized deductions is 7.5% of adjusted gross income.	0	-5.1
103	The exclusion from income for qualified state or local tax benefits and qualified payments provided to members of qualified volunteer emergency response organizations is permanently extended.	0	-0.6
106(a)	The exemption for interest costs required to be capitalized for beer, wine, and distilled spirits is permanent.	-0.1	-0.1
120	The exclusion for certain employer payments, included principal and interest, of student loans is extended to December 31, 2025.	-1.9	-3.5
205(a)	(a) The minimum rate of interest for purposes of the cash value accumulation test is modified by substituting the annual effective rate of 4 percent with the lesser of the annual effective rate of 4 percent or the insurance interest rate in effect at the time the contract is issued. (other changes) (d) Adds definitions of insurance interest rate, section 7702 valuation interest rate, section 7702 applicable federal interest rate, and adjustment year, and adds a transition rule.	min	-0.1
213	The limitation on charitable contribution deductions for individuals who itemize and corporations is extended through 2021. For individuals, the 50% of AGI limitation is suspended. For corporations, the 10% limitation is increased to 25% of taxable income. The limitation on deductions for contributions of food inventory is increased from 15% to 25%.	-3.6	-13.5
302	(a) The early withdrawal penalty for retirements plans does not apply for distributions made for up to \$100,000. The withdrawal would be taxed over 3 years. If the amount withdrawn is recontributed within 3 years, the amount is treated as a rollover contribution. Loans from qualified retirement plans may be made, up to \$100,000, and the due date for repaying the loan is delayed for 1 year. (other changes to early withdrawal)	-0.3	-0.2
304(a)	Qualified charitable contributions are allowed by corporations to the extent that the aggregate of such contributions does not exceed the excess of 100% of the taxpayer's taxable income over the amount of all other charitable contributions and by treating charitable contributions other than qualified disaster relief contributions as contributions allowed under section 170(b)(2) of the IRC. The limitation of 25% for corporations shall be applied first to qualified contributions without regard to any qualified disaster relief contributions and then separately to such qualified disaster relief contribution. The contributions must be made beginning on January 1, 2020, and ending on the date which is 60 days after the date of the enactment of this Act, and is made for relief efforts in one or more qualified disaster areas.	-0.7	min
304(b)	Increases the amount of the personal casualty loss allowed due to qualified disasters. The standard deduction is increased by the amount of the net disaster loss. For purposes of AMT, the standard deduction provision does not include the increase due to the net disaster loss.	-0.4	-0.2

Summary of IRC updates in Consolidated Appropriations Act

SB 2 and AB 2

277	Students receiving emergency financial aid grants issued under secs. 3504 and 18004 of the CARES Act and other grants issued in response to a qualifying emergency, as defined in sec. 3502 of the CARES Act, do not include the grant in the individual's gross income. The amount of qualified tuition and related expenses is not reduced by these grants for purposes of the American Opportunity and Lifetime Learning credits. The portion of the grant which represents payment for teaching, research, or other services required as a condition for receiving the grant is included in income.	-0.1	-0.1
285	In the case of an employer maintaining a plan which has made a qualified future transfer from a pension plan to a health benefit or life insurance account, such employer may, not later than December 31, 2021, elect to terminate the transfer period with respect to such transfer effective as of any taxable year specified by the taxpayer that begins after the date of such election.	0.3	0.3
Total		-12.8	-27.8

The rest of the provisions we are seeking to update in the CAA have no fiscal impact on Wisconsin and include extensions of existing credits, and technical corrections.

Each of the provisions is outlined in a separate chart available upon request from the Clerk.

Summary of PPP treatment

<u>PPP Loans</u>	<u>Federal</u>	<u>Wisconsin</u>
Round 1 (2020)	Income not taxable (<i>CARES</i>) Expenses deductible (<i>CAA</i>)	Income not taxable (<i>Act 185</i>) Expenses NOT deductible
Round 2 (2021)	Income not taxable (<i>CAA</i>) Expenses deductible (<i>CAA</i>)	Income is taxable (<i>not adopted</i>) Expenses deductible

Taxpayer Enhancement Package Proposals

A series of clarifications, corrections, modernizations and changes to simplify the administration of our tax law, to enhance the taxpayer experience and/or customer service with the Wisconsin Department of Revenue (DOR).

Simplify Administration

DPI Consumer Price Index (CPI) Calculation

Section 88

No fiscal impact

Wisconsin law currently requires the DOR to provide a yearly Consumer Price Index (CPI) calculation to the Department of Public Instruction. DPI previously used CPI for calculation of school revenue limit. The revenue limits have recently been determined in the budget bills (\$X per pupil for 2018-19, for example). The CPI calculation has not been applied to school revenue limits since the 2014-15 school year. DOR is seeking to change the code to make delivery of a CPI calculation to DPI upon request, instead of yearly. This is also an efficiency, as staff will no longer be tasked with sending a letter that provides information that is not necessary.

Uniform Due Dates for Ad Valorem Companies

Sections 95, 96, 98

No fiscal impact

Wisconsin law currently has a different due date for filing annual reports for railroad companies (April 15) than other ad valorem companies (i.e., conservation and regulation company, air carrier, or pipeline companies filing by May 1st). The change seeks to allow due dates to be uniform, so that all companies file on the same date- May 1st.

Additionally, Wisconsin law requires DOR to assess ad valorem companies on September 15th of each year, except that DOR is required to assess railroad companies by August 1st. The change seeks to adopt the September 15 date for all ad valorem companies.

ERP Early Distribution

Sections 117-119

No fiscal impact

Allows DOR to assist a community who failed to timely file their required Expenditure Restraint Program (ERP) Worksheet. The assistance will come in the form of an early payment, but solely in the event the community timely files their next ERP worksheet and qualifies for ERP in the following year. This early payment will enable the community to apply half of the funds to the budget year where the ERP payment was missed, and the other half to the following year. This will allow the community to soften the brunt of losing the ERP payment.

Consumer Price Index Timing

Sections 4, 123, 124

No fiscal impact

The Wisconsin law requires DOR to certify the appropriate percentage change in the consumer price index (CPI) that is to be used as the inflation factor by November 1 for the Expenditure Restraint Program.

DOR is seeking to change that date to October 1 in order to provide this measure sooner to municipalities which will allow them to construct their budgets earlier with greater accuracy.

Additionally, the change adjusts the inflation factor to be based on the 12 months ending in August 31, instead of September 30. To conform, DOR also seeks to make the change towards a CPI ending with August 31 under the levy limit's joint fire department exception.

More time to amend WI returns after IRS / Other State Audits

Sections 84-86

No fiscal impact

The proposed change allows taxpayers 180 days to amend their Wisconsin tax returns after an IRS audit (recommended by Multistate Tax Commission and other national tax groups). Many other states are also adopting the new 180-day standard. Wisconsin law currently provides 90 days to amend. Ensures partnerships and/or partners file amended WI returns after an IRS assessment at the partnership level.

Certificate of Exempt Status Simplification and Expansion

Section 114

No fiscal impact

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 IRS stating that they qualify as exempt under section 501(c)(3) of the IRC. The proposal also provides that the exemption applies to churches and religious organizations that are not required to obtain a determination letter from the IRS but meet the requirements of IRC 501(c)3.

Elimination of Timing Restriction for Payments to Towns from Counties

Section 3

No fiscal impact

There are two sections of Wisconsin law that are in conflict. The first is a section that makes it unlawful for a county treasurer to make payments to a town treasurer from the 3rd Monday in March until 10 days after the annual town meeting, except upon the written order of the town board. The second is the mandate that lottery and gaming credit payments be distributed to municipalities by April 15 annually. In order to avoid the conflict, DOR seeks to remove the prohibition of payments, as we have been notified it is causing conflicts, and otherwise serves no useful purpose.

Clarifications

Transfers of Historic Rehabilitation Tax Credit

Sections 36, 62, 81

No fiscal impact

Amend Wisconsin law to allow for the sale of HRT credits in one transaction, while at the same time clarifying that the HRT credits retain the limitation set by the federal government that HRT credits can only be *claimed* over a 5-year period, 20% per year for 5 years.

Homestead Credit Clarification – Earned Income

Sections 82-83, 125

Increased cost: \$140,000

This proposed change 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.

Sales and Use Tax on Property Transferred with Certain Services

Sections 112, 113

No fiscal impact

This proposed change is not a change to current practice, but rather, a clarification to avoid misinterpretations of sales tax law as applied to the certain services impacted. The 4 certain services impacted (services where sales taxes to the consumer are applicable) are 1) printing; 2) photography; 3) landscaping; and 4) services to tangible personal property. There was a court case that interpreted "subject to tax" when an exemption was applied to the sale of printing services that could possibly create confusion. The department would like to clarify that persons providing these services may purchase their materials without tax, **even when their sales are not taxable** (e.g., sale is to a tax-exempt entity). Because this is already done in practice, there is no fiscal impact.

Disability Income Subtraction

Sections 26-27

No fiscal impact

The proposal seeks to replace the citation to the 1983 version of the IRC with the actual language from the 1983 IRC. This version of the IRC is not easily found online, which is why we seek to adopt the full language into Wisconsin law. The federal government converted their disability income subtraction into a disability credit in 1984.

Modernizations

Internal Revenue Code Updates

Sections 14-22, 37-61, 63-80

Increased cost: \$1.9M FY

Adopts several changes in IRC. Wisconsin generally conforms to the Internal Revenue Code (IRC). 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 seven laws passed by Congress that amend the IRC since 12/31/2017. We are seeking adoption of hundreds of provisions-most of which have no fiscal impact. The items with fiscal impacts are outlined in the "Summary of IRC updates."

Retirement Income Exclusion

Sections 23-25, 34, 35, 87, 125

Increased cost: \$200K

This provision assists retired persons who are claiming their homestead credit. The proposal seeks to make the retirement income exclusion optional, so that retirees can take the exclusion, or not, depending on what is more beneficial. This was proposed by our VITA volunteers that operate free tax-assistance centers for the low income and elderly.

Under current law, the claimant does not have a choice whether or not to take the retirement income exclusion on their Wisconsin income tax return. In our proposed bill, a retired person may claim a higher homestead credit amount by NOT excluding their retirement income on their Wisconsin income tax return.

For example, under our proposal, a single retired taxpayer, with \$10,000 in retirement income, \$7,000 in medical insurance costs, and \$4,000 in property taxes would receive a higher homestead credit amount.

- a. See example below:

	Current Law	Proposed change
Wisconsin Tax Return		
Federal Adjusted Gross Income	\$10,000	\$10,000
Retirement Income Exclusion	-\$10,000	0
Medical Care Insurance Subtraction	\$0*	-\$7,000
Wisconsin Adjusted Gross Income	\$0	\$3,000
Homestead Return		
Wisconsin Adjusted Gross Income	\$0	\$3,000
Add: Retirement Income excluded from WI income	\$10,000**	\$0
Household Income	\$10,000	\$3,000
Homestead Credit (based on \$4,000 property taxes)	\$1,036	\$1,168

* Not able to subtract medical care costs if retirement income is excluded.

** For Homestead purposes, your excluded retirement income must be added back to determine your household income.

Household income includes all taxable and certain nontaxable income, less a deduction of \$500 for each qualifying dependent. If household income is \$24,680 or more, no credit is available. The maximum credit allowed is \$1,168. Homestead credit is based on the relationship of household income to the amount of property taxes and rent.

Medical Care Insurance for Self Employed Persons

Sections 28-33

Increased cost: \$9.5M

Currently, self-employed persons are only able to deduct their health insurance premiums from income generated by self-employment. The change would allow self-employed persons to deduct their health insurance premiums from all sources of income received. The self-employed are the only category not able to deduct the full amount of their health insurance premiums, as even the non-employed are able to deduct their health insurance premiums from all their sources of income received.

Application of Shared Revenue Deductions

Sections 1-2, 5-7, 10, 13, 120-22, 125

No fiscal impact

Current law allows deductions from Shared Revenue payments to counties and municipalities for the following items:

- Levy limit penalties
- Milwaukee county child welfare intercept
- Unpaid manufacturing assessment fees
- Department of Health Services medical transport deduction
- Milwaukee county basketball stadium
- Department of Administration mass transit grant
- TID annual report late filing fees

Under current law, certain penalties can only be deducted from certain pieces of shared revenue. In result, the state pays local governments shared revenue when they actually owe the state, only in a different/separate shared revenue account. The proposed change will allow any of the deductions to be applied against the total shared revenue to be paid. This would ensure county and municipal aid, utility aid, and expenditure restraint program aids are not distributed to local governments with current state debts. It will also reduce confusion for local governments.

Omitted Property

Sections 91-94, 126

No fiscal impact

2015 Wisconsin Act 317 amended the chargeback law (opposite of omitted property). DOR now approves all chargeback requests (unless in a positive tax incremental district), and the threshold for filing chargebacks with DOR was lowered to \$250 per property. This proposal seeks to conform the omitted property process to the changes made for chargebacks. Currently, taxing jurisdictions are negatively impacted, as they are responsible for their portion of successful chargebacks, but not easily reimbursed when there is an omitted property. Under the proposal, the omitted process is simplified to match the chargeback process. In result, taxing jurisdictions are treated uniformly – funds are removed proportionally if there is a chargeback, and funds are provided proportionally when there is an omitted property.

BOA filing fee

Sections 11, 12, 126

Revenue increase: \$31,000 of GPR-earned

DOR conducts assessments and handles appeals for manufacturing property. The proposal seeks to increase the filing fee for an appeal for a manufacturing property from \$45 to \$200. The filing fee has never been increased. The cost to DOR for processing the appeals is substantially more than the filing fee. It is important to note that the law grants manufacturing properties a reprieve for subsequent filing fees if the prior appeal is pending.

BOR Training Requirements

Sections 9, 126

No fiscal impact

The proposal updates state law to require all members of a local Board of Review (BOR) complete training every year. Training material is currently available online. Additionally, at least one member must attend an in-person training every year that is approved by DOR. Current law requires one member to attend training every other year. In light of the important decisions that are being made by the BOR it is important that they have up-to-date information about property assessment law, assessment standards, appeals processes, etc. Annual training will assist BOR's with the decisions they make, which impact all the taxpayers in their jurisdictions.

Assessor Certification Fee Increase

Sections 89, 90, 126

No fiscal impact

The current fee for an assessor certification is \$20. The certification is valid for a 5-year period. However, the exam vendor charges DOR \$50 for each person taking a certification exam. The update will allow for the exam fee to reflect actual cost to administer the exams. We have included a cap on the fee of up to \$75 (for the same 5-year certification). Re-certification fees will also be capped at up to \$75.

Nexus for Remote Sellers

Sections 104-111

Minimal fiscal impact

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. The DOR would like to follow suit, as auditing of companies with small taxable sales amounts may not be worth the resources expended.

LAB Access to Sales Tax Information

Section 116

No fiscal impact

2019 WI Act 10 (Marketplace bill) gave the Legislative Audit Bureau (LAB) certain responsibilities with respect to certifying sales tax data. The proposal seeks to clarify in the law that LAB may have access to sales tax data so they may perform the duties assigned by the legislature.

Corrections

Refund Interest Rate

Sections 97, 99-103, 125

Revenue increase: \$25,000

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, which was left at 9%. We are assuming this was inadvertent and are proposing to change all refund rates to 3% for uniformity.

Additions

Leasing property owned by a church *No fiscal impact*

Sections 8, 125

Allows property that is owned and operated by a church or religious institution to remain exempt from property tax, when leased to an educational association or institution that is also exempt from property taxation, regardless of how the church uses the leasehold income. Current law only allows the church to spend the leasehold proceeds on maintenance or construction debt retirement of the leased property.

Current law allows a property tax exemption when leasing a part of a property owned and operated by a nonprofit organization licensed under Chapter 50, as residential housing, regardless of how the lessor uses the leasehold income.

UW-Hospitals and Clinics Authority sales tax provision *No fiscal impact*

Section 115, 125

Provides a sales and use tax exemption for tangible personal property sold to a construction contractor who transfers the property to UW-Hospitals as part of constructing a facility for UW-H. Similar exemptions exist for local governments, technical college district, or UW institutions.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

January 21, 2021

Senate Committee on Financial Institutions & Revenue Testimony on Senate Bill 1

Good Morning!

Thank you Chair Kooyenga and committee members for hearing Senate Bill 1 (SB 1) that makes modifications to the tax treatment of tax-option corporations (S corporations) that elect to pay tax at the entity level.

Under current law, S corporations, partnerships, and limited liability companies (LLCs) are collectively referred to as pass-through entities (PTEs). 2017 Wisconsin Act 368 (Act 368) made changes to the tax treatment for PTEs that elect to be taxed at the entity level. Under Act 368, businesses may elect to be taxed at the entity level for taxable years beginning in 2018 for S corporations and for taxable years beginning in 2019 for all other PTEs. The different dates for when the changes would take effect was intentional in the legislation. However, there were some differences in tax treatment that were not intended. **SB 1 seeks to align the tax treatment for all PTEs that make the election to be taxed at the entity level.**

The Wisconsin Institute of Certified Public Accountants (WICPA) worked with the Wisconsin Department of Revenue (DOR) to ensure similar treatment for S corporations and partnerships that make the election to be taxed at the entity level. There are three main issues addressed by the bill: 1) capital gains exclusion; 2) excess capital loss deduction 3) interest for underpayment of estimated taxes.

Regarding the capital gains exclusion, the bill allows these corporations to exclude from tax 30 percent of the gains realized from the sale of assets held more than one year and the sale of all assets acquired from a decedent and 60 percent of the gains realized from the sale of farm assets held more than one year and the sale of all farm assets acquired from a decedent.

After netting capital gains and capital losses, a S corporation may use up to \$500 of the net loss to offset income. A loss in excess of \$500 may be carried forward to the next taxable year in which the corporation makes the election to pay tax at the entity level.

The remaining provision creates an exception from the requirement to pay interest on the underpayment of estimated taxes for corporations whose Wisconsin net income is less than \$250,000, and provides that these corporations, when making quarterly estimated tax payments,

compute the amount due using the standards applicable to taxpayers with net income of less than \$250,000, regardless of the corporation's actual net income.

This bill is supported by the WICPA.

Thank you again for hearing SB 1, and your timely action on this proposal.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

January 21, 2021

**Senate Committee on Financial Institutions & Revenue
Testimony on Senate Bill 2**

Good Morning!

Thank you Chair Kooyenga and committee members for hearing Senate Bill 2 (SB 2) that makes various changes to the laws administered and enforced by the Department of Revenue (DOR).

Last session, Rep. Wittke and I introduced 2019 SB 720 at the request of the Department of Revenue (DOR). SB 2 is a redraft of Senate Substitute Amendment 1 to SB 720, which passed this committee last session by a unanimous 9-0 vote, JFC approved the bill on a 14-0 vote, and the full Senate advanced the bill to the Assembly on a 33-0 vote.

SB 2 makes several technical corrections and minor policy changes that are intended to be revenue neutral or have minimal fiscal impacts. This bill 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 to present 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. SB 2 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.

A substitute amendment has been introduced for your consideration, which adds some of the updates to the IRC that were adopted by Congress this past December as part of the Consolidated Appropriations Act (CAA) for 2021.

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 SB 2, and your timely action on this proposal.



Senate Committee on Financial Institutions and Revenue
Testimony provided by Clark Brenner
RE: Support for Senate Bill 2
January 21, 2021

Dear Chairman Kooyenga and members of the committee:

Thank you for your time and attention today. I am Clark Brenner and in my role at UW Health, I work directly with contractors we hire to complete building projects of various size and scope in existing facilities and in new facilities. I am appearing before you today because SB2 includes a provision for UW Hospitals and Clinics Authority (d/b/a UW Health) that applies the sales and use tax exemption directly to building materials used in our facilities. We view this amendment to state statute as tremendously helpful and cost effective. It would significantly reduce the administrative burden we currently face and would allow us to direct precious resources to patient care instead of paperwork for construction projects.

Allow me to explain. Under current law, UW Health is able to purchase materials used in construction without tax but as you can imagine, our health system is not in the construction business and purchasing every aspect of a building project falls outside our scope of expertise. Therefore, we have worked with our contractors to develop an alternative purchasing process that allows us to avoid paying taxes unnecessarily but presents an administrative challenge each time we use it. It also adds about ½ percent in construction costs and it limits the number of contractors we can hire because of the challenges of maintaining the tax accounting process.

I have provided a visual explanation of current and future state in the two flow charts included with my written testimony. You will see the flow chart on the left is complicated and labor intensive, illustrating the need for a separate purchase order for every purchase made. In contrast, the flow chart on the right illustrates the process under SB2 where we would simply provide our tax ID information to our contractor who would be able to purchase building materials on behalf of UW Health directly and without tax. This would remove the administrative burden placed on our contractor and our staff and reduce costs passed along to our health system. It would also allow UW Health to consider additional contractors who might not be equipped to establish and maintain the necessary administrative "work around" that is currently required. Finally, SB2 would level the playing field for UW Health by treating our not-for-profit health system the same as other not-for-profit entities in Wisconsin.

We are grateful to Sen. Marklein, Sen. Kooyenga and Sen. Kapenga, who are leading this effort to extend the benefits of similar bipartisan legislation passed in 2015 and 2017 to UW Health. Furthermore, stand-alone legislation passed the Assembly with overwhelming support last session and received unanimous support in the Senate Committee on Agriculture, Revenue and Financial Institutions before session ended abruptly. At that time, we thanked the staff at the Department of Revenue who recognized the proposal would have no fiscal effect on Wisconsin and once again, we'd like to thank the department for acknowledging that fact holds true for this provision of SB2.

We hope you see fit to support SB2. Thank you again for your interest in my comments and I'd be happy to take questions at this time.



WISCONSIN MANUFACTURERS & COMMERCE

To: Senate Committee on Financial Institutions and Revenue

From: Corydon Fish, Director of Tax

Date: January 21, 2021

Re: **Testimony Requesting Amendment to 2021 Senate Bill 2 to Protect
Businesses from Surprise Taxation on PPP Loans**

Thank you Chair Kooyenga and members of the Senate Committee on Financial Institutions and Revenue for taking the time to hear Wisconsin Manufacturers and Commerce's (WMC) testimony. WMC applauds the authors of this legislation for working collaboratively with the Wisconsin Department of Revenue (DOR) to find areas of agreement to update Wisconsin's tax administration. However, there is a new—time sensitive—tax administration issue DOR brought to light last Friday, January 15th; the taxability of certain Paycheck Protection Program (PPP) loans. WMC encourages the committee to amend SB 2 to address this deeply concerning issue.

WMC is the state chamber of commerce, manufacturers association, and the largest general business association in Wisconsin. We were founded over 100 years ago, and are proud to represent approximately 4,000 member companies of all sizes, and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business. One way the legislature can help Wisconsin become more competitive is to overturn DOR's interpretation of law regarding the taxability of certain PPP monies as laid out in "Guidance Document Number 100241" entitled "Important Information About Effects of New Federal Law on 2020 Wisconsin Tax Returns."

At the beginning of the COVID-19 pandemic, Congress worked in a bi-partisan and cooperative manner to pass the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which prevented the business community from suffering the very worst of the economic damage that could have been caused by the pandemic. One of the most effective portions of the CARES Act was the PPP, which included a promise to small business owners that if they used the loans for appropriate payroll and non-payroll expenses, the loans would be forgiven. The CARES Act stated that the portion of the PPP loan that qualified for loan forgiveness "shall be excluded from gross income" for tax purposes.

Despite this language, the Internal Revenue Service (IRS) issued Revenue Ruling 2020-27, stating that expenses funded through a PPP loan are not deductible for 2020 if "the taxpayer reasonably expects to receive forgiveness of the covered loan on the basis of the expenses it paid or accrued during the covered period, even if the taxpayer has not submitted an application for forgiveness of the covered loan by the end of such taxable year." The effect of this ruling transformed tax-free loan forgiveness into taxable income. Congress subsequently amended the

law in its latest round of stimulus to overturn the IRS's erroneous interpretation of both the text enacted by and intent of Congress.

DOR is following the IRS's erroneous (and now defunct) interpretation in their new guidance. DOR's interpretation has real world effects for thousands of Wisconsin small businesses teetering on the brink of bankruptcy, because of government actions that forced them to close down or alter their business practices during the pandemic, who could see a surprise and potentially insurmountable tax increase on forgivable loan payments that were meant to *help* them weather this storm. The legislature should act in a bipartisan manner to amend the Wisconsin statutes to conform with sections 276(a) and 278(a) of Division N of Public Law 116-260 to make proceeds of PPP loans deductible for state income tax purposes.

Further, in order to more easily facilitate taxpayers seeking resolution of DOR policy choices such as this, this committee should amend SB 2 to clarify that taxpayers can challenge DOR rules and regulations (both promulgated and unpromulgated) under Wis. Stat. § 227.40 without first going through the Tax Appeals Commission. Some courts have dismissed challenges to DOR regulations arguing that an appeal must go through the Tax Appeals Commission prior to coming to circuit court despite the fact that the text of Wis. Stat. § 227.40 does not contain any such requirement. WMC believes this interpretation is erroneous, but certain courts have effectively stymied taxpayer challenges through this interpretation. Clarifying that no such prerequisite exists would help taxpayers to resolve disagreements over DOR's interpretations of the tax code, such as this one, without rushing to the legislature to seek emergency resolution.

WMC respectfully urges the Senate Committee on Financial Institutions and Revenue to protect struggling main street businesses from surprise taxation on PPP loans. Thank you again Chair Kooyenga and committee members for the opportunity to submit this testimony today.