

GENERAL FUND TAXES

1. GENERAL FUND TAX CHANGES

The following table shows the general fund tax changes recommended by the Governor, Joint Committee on Finance, and the Legislature, along with the estimated fiscal effects in the 2009-11 biennium. There were no vetoes that affected general fund tax revenues, so the "Legislature" column also reflects Act 28 as signed by the Governor. The table does not include tax law changes that are estimated to have a minimal fiscal effect, or those that will not take effect until the 2011-13 biennium.

2009-11 General Fund Tax Changes--Biennial Fiscal Effects (Millions)

	<u>Governor</u>	<u>Jt. Finance</u>	<u>Legislature/ Act 28</u>
Income and Franchise Taxes			
Increase Top Income Tax Rate	\$311.76	\$287.32	\$287.32
Reduce Capital Gains Exclusion	180.60	170.20	242.50
Expand EdVest Deduction	0.00	0.00	-0.40
Quarterly Withholding by Pass-Through Entities	38.50	38.50	38.50
Qualified Domestic Production Activities Deduction	71.70	54.90	54.90
Internal Revenue Code Update	-46.05	-24.18	-24.18
Delay 2005 Act 25 Insurance Deduction	0.00	13.80	13.80
Delay 2007 Act 20 Insurance Deduction	0.00	73.80	73.80
Delay Child Care Deduction	0.00	15.90	15.90
Delay Electronic Medical Records Credit	14.50	14.50	14.50
Delay Community Rehabilitation Credit	0.00	6.60	6.60
Delay Biodiesel Fuel Credit	0.00	0.00	2.60
Research and Development Credit	-5.00	-5.00	-5.00
Include 100% of Throwback Sales in Sales Factor	95.20	80.50	80.50
Treatment of Air Carriers	8.00	8.00	0.00
Late Filing Fees/Pass-Through Entity Schedules	0.00	0.90	0.90
Additional Enforcement Efforts	0.00	52.55	52.55
Research Credit Sharing by Combined Groups	0.00	0.00	-6.00
General Sales and Use Tax			
Sales Tax on Affiliated Entities	40.80	40.80	40.80
Sales Tax Nexus Standard	3.00	3.00	3.00
Cap Retailer's Discount	0.00	8.10	10.70
Post Revoked Seller's Permits on Internet	0.00	0.40	0.40
Additional Enforcement Efforts	0.00	17.45	17.45
Delay Exemptions for Alternative Energy	0.00	0.00	2.60
Excise Taxes			
Increase Cigarette Tax	310.40	310.40	308.00
Increase Tobacco Products Tax	<u>33.20</u>	<u>24.80</u>	<u>26.78</u>
Total Tax Changes	\$1,056.61	\$1,193.24	\$1,258.52

Income and Franchise Taxes

1. ADDITIONAL INCOME TAX BRACKET [LFB Paper 355]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	\$311,757,000	- \$24,433,000	\$287,324,000

Governor: Create a fifth income tax bracket and extend a rate of 7.75% to income exceeding the following thresholds in tax year 2009: (a) \$225,000 for fiduciaries, single individuals, and heads of households; (b) \$300,000 for married persons filing joint returns; and (c) \$150,000 for married persons filing separate returns. The rate and bracket structure under current law and under the Governor's proposal are shown below.

				Tax Year 2009		
				Single	Married-Joint	Married-Separate
Rates and Estimated Brackets -- Current Law						
4.60%	Less than \$10,220	Less than \$13,620	Less than \$6,810			
6.15	10,220 to 20,440	13,620 to 27,250	6,810 to 13,620			
6.50	20,440 to 153,280	27,250 to 204,370	13,620 to 102,190			
6.75	153,280 and Over	204,370 and Over	102,190 and Over			
Governor's Proposed Rates and Estimated Brackets						
4.60%	Less than \$10,220	Less than \$13,620	Less than \$6,810			
6.15	10,220 to 20,440	13,620 to 27,250	6,810 to 13,620			
6.50	20,440 to 153,280	27,250 to 204,370	13,620 to 102,190			
6.75	153,280 to 225,000	204,370 to 300,000	102,190 to 150,000			
7.75	225,000 and Over	300,000 and Over	150,000 and Over			

				Tax Year 2010		
				Single	Married-Joint	Married-Separate
Rates and Estimated Brackets -- Current Law						
4.60%	Less than \$9,820	Less than \$13,090	Less than \$6,550			
6.15	9,820 to 19,640	13,090 to 26,190	6,550 to 13,090			
6.50	19,640 to 147,320	26,190 to 196,420	13,090 to 98,210			
6.75	147,320 and Over	196,420 and Over	98,210 and Over			
Governor's Proposed Rates and Estimated Brackets						
4.60%	Less than \$9,820	Less than \$13,090	Less than \$6,550			
6.15	9,820 to 19,640	13,090 to 26,190	6,550 to 13,090			
6.50	19,640 to 147,320	26,190 to 196,420	13,090 to 98,210			
6.75	147,320 to 216,250	196,420 to 288,330	98,210 to 144,160			
7.75	216,250 and Over	288,330 and Over	144,160 and Over			

Beginning in tax year 2010, the thresholds dividing the fourth and fifth brackets would be indexed using the same procedures currently authorized for indexing the existing tax brackets, except that the consumer price index as of August, 2008, as opposed to 1997, would be used as the base index for calculating the new thresholds. The bill would first extend the new bracket in tax year 2009, unless the bill's effective date is after August 31, in which case the new bracket would first apply to taxable years beginning on or after the following January 1.

The administration estimates that these modifications would increase individual income tax collections by \$175,563,000 in 2009-10 and \$136,194,000 in 2010-11. This assumes that the new bracket would first apply in tax year 2009, but that there would be no change in withholding or estimated tax payments until July 1, 2009. Consequently, the revenue increase for 2009-10 exceeds the increase for 2010-11 due to one-time effects from the withholding table change. Interest charges on tax underpayments would be waived if the deficiency is due to the creation of the new bracket.

Joint Finance/Legislature: Approve the Governor's recommendation and decrease estimated revenues by \$12,210,000 in 2009-10 and \$12,223,000 in 2010-11 to reflect reduced income tax collections, as indicated by the current economic forecast. Relative to current law, individual income tax collections would increase by an estimated \$163,353,000 in 2009-10 and \$123,971,000 in 2010-11.

[Act 28 Sections: 1545 thru 1552, 1591, and 9343(20)]

2. INDEXING OF INDIVIDUAL INCOME TAX PROVISIONS [LFB Paper 370]

Joint Finance/Legislature: Modify the indexing provisions for the sliding scale standard deduction and income tax brackets to specify that the annual indexing adjustment could not be a negative number, beginning with the 2012 tax year.

[Act 28 Sections: 1543s, 1551, and 1552]

3. DECREASE CAPITAL GAINS EXCLUSION [LFB PAPER 356]

	Governor (Chg. to Base)	Jt. Finance (Chg. to Gov)	Legislature (Chg. to JFC)	Net Change
GPR-REV	\$180,600,000	-\$10,400,000	\$72,300,000	\$242,500,000

Governor: Decrease from 60% to 40% the percentage of capital gains that is subtracted from federal adjusted gross income for purposes of calculating income subject to the individual income tax. Extend this treatment to taxable years beginning on January 1 of the year the budget bill takes effect, but delay the treatment to the succeeding year if the effective date of the bill is after August 31. The administration estimates that this proposal would increase individual income tax collections by \$85,100,000 in 2009-10 and \$95,500,000 in 2010-11, assuming the

modification would first apply to tax year 2009. The capital gains exclusion applies to income from the sale or disposition of assets held more than one year or acquired from a decedent.

Joint Finance: Approve the Governor's recommendation and decrease the estimated additional revenue associated with this provision by \$4,400,000 in 2009-10 and \$6,000,000 in 2010-11 to reflect changes in economic conditions since the introduction of AB 75 (-\$9,700,000 in 2009-10 and -\$12,100,000 in 2010-11) and the interaction between the proposed change in the capital gains exclusion and the proposed additional income tax bracket (\$5,300,000 in 2009-10 and \$6,100,000 in 2010-11). Relative to current law, individual income tax collections would increase by \$80,700,000 in 2009-10 and \$89,500,000 in 2010-11.

Senate: Modify the provision by eliminating Wisconsin's individual income tax exclusion for long-term capital gains, other than gains on certain assets used in farming. Maintain the current 60% exclusion for income from the sale of capital assets held for more than one year if the asset is farm livestock, farm real property, depreciable farm property, or farm equipment. Extend this treatment to taxable years beginning on January 1 of the year the budget bill takes effect, but delay the treatment to the succeeding year if the effective date of the bill is after August 31. Compared to the Joint Finance provisions, income tax revenues would increase by an estimated \$149,400,000 in 2009-10 and \$166,000,000 in 2010-11. Compared to current law, revenues would increase by an estimated \$230,100,000 in 2009-10 and \$255,500,000 in 2010-11.

Conference Committee/Legislature: Modify the recommendation by the Governor and Joint Finance Committee by decreasing the percentage of capital gains that is subtracted from federal adjusted gross income for purposes of calculating income subject to the individual income tax to 30%, except for gains on certain assets used in farming. Maintain the current 60% exclusion for income from the sale of capital assets held for more than one year if the asset is farm livestock, farm real property, depreciable farm property, or farm equipment. Increase estimated income tax collections by \$34,400,000 in 2009-10 and \$37,900,000 in 2010-11, compared to the Joint Finance provision. Relative to current law, individual income tax collections would increase by \$115,100,000 in 2009-10 and \$127,400,000 in 2010-11.

[Act 28 Sections: 1543, 1543b, and 9343(13)]

4. TAXATION OF CAPITAL GAINS REINVESTED IN NEW BUSINESS VENTURES [LFB Paper 357]

Governor/Legislature: Authorize claimants to subtract from federal adjusted gross income any amount, up to \$10 million, of a long-term capital gain if the claimant: (a) deposits the gain into a segregated account in a financial institution; (b) invests all of the proceeds in the account in a qualified new business venture within 180 days of the sale of the asset generating the gain; and (c) notifies the Department of Revenue (DOR) that the capital gain has been reinvested and, therefore, will not be declared on the claimant's income tax return. The notification would be made on a DOR form accompanying the claimant's income tax return for the year to which the claim relates. Specify that the basis for the investment in the new business

venture would be calculated by subtracting the initial gain from the investment. Prohibit a claimant from using the initial gain to net capital gains and losses as otherwise allowed under current law. (State law limits the amount of capital losses that may be used to offset ordinary income to \$500 annually, with the remainder carried over to future years.) Define "claimant" as an individual; an individual partner or member of a partnership, limited liability company (LLC), or limited liability partnership; or an individual shareholder of a tax-option corporation. Define "long-term capital gain" as the gain realized from the sale of any capital asset held more than one year that is treated as a long-term gain under the Internal Revenue Code (IRC).

Require the Department of Commerce to implement a program to certify qualified new business ventures, and authorize Commerce to certify businesses as such if they are engaged in: (a) developing a new product or business process; or (b) manufacturing, agriculture, or processing or assembling products and conducting research and development. Specify that a business desiring certification must submit an application to Commerce in each taxable year for which certification is desired. Prohibit Commerce from certifying businesses that are engaged in real estate development; insurance; banking; lending; lobbying; political consultation; professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants; wholesale or retail sales; leisure; hospitality; transportation; or construction. Require Commerce to maintain a list of certified businesses, to permit public access to the lists through its Internet Web site, to notify DOR of every certification it issues, and to notify DOR of the dates on which certifications are revoked or expire.

The new tax deferral would first apply for tax years beginning after December 31, 2010, so no fiscal effect is estimated for the 2009-11 biennium. At the time the bill was introduced, the administration estimated that this provision would reduce individual income tax collections by approximately \$14,000,000 annually, relative to current law. However, because the administration also proposed to reduce the capital gains exclusion from 60% to 40%, the effect of this provision, as introduced, is reestimated at \$21,000,000. The Legislature's subsequent reduction of the capital gains exclusion to 30% increases the reduction in individual income tax collections to an estimated \$25,000,000 annually, effective in the 2011-13 biennium.

[Act 28 Sections: 1535, 1544, and 3073]

5. DEDUCTION FOR CERTAIN HEALTH INSURANCE PREMIUMS

GPR-REV \$73,800,000

Joint Finance/Legislature: Postpone the scheduled phase-in of the deduction for health insurance premiums paid by employees whose employer pays some portion of the employee's health insurance costs by freezing the percentage of deductible expenses at 10% for tax years 2009 and 2010. Set the percentage of deductible expenses at 25% for tax year 2011, 45% for tax year 2012, and 100% for tax years 2013 and thereafter. Increase state tax revenues from the individual income tax by an estimated \$20,800,000 in 2009-10 and \$53,000,000 in 2010-11. This deduction for health insurance premiums was enacted as part of 2007 Wisconsin Act 20 and was scheduled to be phased in over a four-year period with the percentage of expenses that could be

deducted increasing from 10% for tax year 2008, to 25% for tax year 2009, to 45% for tax year 2010, and to 100.0% for tax year 2011. This provision would delay the phase-in for two years.

[Act 28 Sections: 1543h thru 1543hs]

6. DEDUCTION FOR CERTAIN MEDICAL CARE INSURANCE PREMIUMS

GPR-REV \$13,800,000

Joint Finance/Legislature: Postpone the scheduled phase-in of the deduction for medical care insurance premiums paid by an individual who does not have an employer and who has no self-employment income by freezing the percentage of deductible expenses at 66.7% for tax years 2009 and 2010. Set the percentage of deductible expenses at 100% for tax years 2011 and thereafter. Increase state tax revenues from the individual income tax by an estimated \$6,600,000 in 2009-10 and \$7,200,000 in 2010-11. This deduction for medical care insurance premiums was enacted as part of 2005 Wisconsin Act 25 and was scheduled to be phased in over a three-year period with the percentage of expenses that could be deducted increasing from 33.4% for tax year 2007, to 66.7% for tax year 2008, and to 100.0% for tax year 2009. This provision would delay the phase-in for two years.

[Act 28 Sections: 1543f and 1543fe]

7. DEDUCTION FOR CERTAIN CHILD AND DEPENDENT CARE EXPENSES

GPR-REV \$15,900,000

Joint Finance/Legislature: Delay the initial applicability of the deduction for certain expenses related to child and dependent care, which may be claimed under the federal credit for child and dependent care expenses, from tax year 2009 to tax year 2011. Postpone the phase-in of the deduction by two years by extending the deduction as follows: (a) for tax year 2011, up to \$750 for one qualified individual and up to \$1,500 for more than one qualified individual; (b) for tax year 2012, up to \$1,500 for one qualified individual and up to \$3,000 for more than one qualified individual; (c) for tax year 2013, up to \$2,250 for one qualified individual and up to \$4,500 for more than one qualified individual; and (d) for tax years 2014 and thereafter, up to \$3,000 for one qualified individual and up to \$6,000 for more than one qualified individual. Increase state tax revenues from the individual income tax by an estimated \$5,700,000 in 2009-10 and \$10,200,000 in 2010-11. The deduction for child and dependent care expenses was enacted as part of 2007 Wisconsin Act 20 and was scheduled to be phased in over a four-year period between tax years 2009 and 2012. This provision would delay the phase-in for two years.

[Act 28 Sections: 1543j thru 1543js]

8. EARNED INCOME TAX CREDIT [LFB Paper 358]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$46,882,300	\$8,607,700	\$55,490,000

Governor: Increase GPR funding for the earned income tax credit (EITC) by \$22,617,200 in 2009-10 (\$4,917,200 to reflect changes in the number of recipients and federal indexing provisions and \$17,700,000 to reflect federal law changes) and by \$24,265,100 in 2010-11 (\$6,065,100 to reflect changes in number of recipients and federal indexing provisions and \$18,200,000 to reflect federal law changes).

The state EITC is calculated as a percentage of the federal EITC, so changes to the federal credit affect expenditures for the state credit. For tax years 2009 and 2010, recent federal changes include creating a new third tier of the credit for families with three or more children and raising the income threshold at which the credit begins to phase out for married couples by \$1,880 (that is, the credit will start to phase-out at \$21,420 instead of \$19,540 for 2009). The credit percentage for the new tier will be set at 45%, as opposed to the previous rate of 40% that will be retained for claimants with only two children, and result in a maximum federal credit of \$5,657, which is \$629 higher than those claimants would have received previously. Because the state's credit is calculated as a percentage of the federal credit, the maximum state credit will increase by an estimated \$270 (from \$2,162 to \$2,432). By increasing the income threshold for married couples, claimants with incomes above the previous threshold (\$19,540 for tax year 2009) will receive higher credits. Also, the credit will phase-out at a higher income level (\$45,295 versus \$43,415 for 2009), thereby extending credits to some married couples not previously eligible.

The state credit is funded with a combination of GPR and PR funding. The program revenue is federal temporary assistance for needy families (TANF) funding transferred from the Department of Children and Families (DCF). The GPR portion is provided through a sum-sufficient appropriation and covers the balance of the cost of the credit. Under the bill, total funding for the EITC would be increased to \$121,317,200 in 2009-10 and \$122,965,100 in 2010-11, compared to base funding of \$98,700,000. However, the PR funding would be unchanged from a base level of \$6,664,200, while the estimated GPR sum sufficient portion would be increased from the base level of \$92,035,800 to \$114,653,000 in 2009-10 and \$116,300,900 in 2010-11. The net increases reflect the administration's estimates of the total cost of funding the EITC in the 2009-11 biennium.

Finally, two EITC provisions are included under the entry entitled "Internal Revenue Code Update" and the administration inadvertently reported their fiscal effects as impacting revenues, rather than expenditures. First, the federal Emergency Economic Stabilization Act allows claimants whose principal residence was in the Midwestern disaster area to calculate their earned income tax credit for the tax year that includes the disaster date using their earned income from the previous year. The administration estimates that adopting this federal

provision would increase GPR expenditures by \$3,160,000 in 2009-10. Second, the federal Heroes Earnings Assistance and Relief Act permits claimants to permanently treat combat zone compensation as earned income for purposes of the EITC, even though it is otherwise excluded from gross income. This treatment was previously permitted for tax years 2004 through 2007. The administration estimates that adopting this federal provision would increase GPR expenditures by \$240,000 in 2009-10 and \$90,000 in 2010-11.

Joint Finance/Legislature: Reestimate total funding for Wisconsin's earned income tax credit at \$127,100,000 in 2009-10 and \$125,790,000 in 2010-11. Increase the program's GPR sum sufficient appropriation by \$5,782,800 in 2009-10 and \$2,824,900 in 2010-11. These increases include \$2,382,800 in 2009-10 and \$2,734,900 in 2010-11 due to provisions in the federal American Recovery and Reinvestment Act, inflation adjustments, and increased levels of participation, and \$3,400,000 in 2009-10 and \$90,000 in 2010-11 due to the reclassification of revenues as expenditures in relation to provisions in the federal Emergency Economic Stabilization Act and Heroes Earnings and Tax Relief Act.

[Act 28 Section: 1250]

9. ADVANCE PAYMENT OF EARNED INCOME TAX CREDITS

GPR	\$200,000
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Senate/Legislature: Authorize individuals who claim the federal earned income tax credit and who receive an advance payment of that credit to request that their employer adjust their paycheck so that they receive an advance payment of their state earned income tax credit. Set the amount of the adjustment as the amount of the advanced payment of the federal credit multiplied by a percentage equal to the percentage used to calculate their state earned income tax credit (the state earned income tax credit is calculated as a percentage of the federal credit). Authorize employers to adjust their withholding payments to DOR to reflect the extension of advanced credits. Direct DOR to prepare forms and instructions to implement this provision. Extend these provisions beginning on January 1 of the year the budget bill takes effect. Delay the treatment to the succeeding year if the effective date of the bill is after August 31.

Employees with qualifying children who expect to qualify for the federal EITC can elect to receive payment of the federal credit in advance with their regular pay by filing a form with their employer. Advance payment is made by the employer, based on tables provided by the Internal Revenue Service, out of the employee's withheld income tax and the social security payroll taxes of the employee and employer that would otherwise be remitted to the federal government. At the end of the year, the advance payments are reported on the employee's W-2 wage statement and entered as a tax due amount on the employee's income tax return. The full credit is then calculated without consideration of the advance payments. If the credit exceeds the advance payments, a refund is provided to the taxpayer. If the advance payments exceed the credit, the claimant must repay the difference. This provision would increase state tax credit expenditures on a one-time basis by an estimated \$200,000 in 2009-10.

[Act 28 Sections: 1584p and 9343(12d)]

10. ITEMIZED DEDUCTION TAX CREDIT

Governor/Legislature: Permit taxpayers to include casualty losses that are directly related to a presidentially declared disaster, as provided under federal law, in the calculation of the state itemized deduction tax credit. The credit equals 5% of the difference between certain itemized deductions, as authorized for federal tax purposes, and the state sliding scale standard deduction. Casualty and theft losses may be deducted for federal individual income tax purposes, but those losses may not be included in calculating the state's itemized deduction credit. This provision would create an exception to that exclusion for casualty losses directly related to a presidentially declared disaster. This provision would first apply to taxable years beginning on January 1, 2009. [DOR estimates that this provision would reduce tax revenues by \$240,000 in 2009-10. However, this revenue loss has not been accounted for in the bill's general fund condition statement.]

[Act 28 Sections: 1572 and 9343(11)]

11. WITHHOLDING PAYMENTS FOR PASS-THROUGH ENTITIES [LFB Paper 359]

GPR-REV \$38,500,000

Governor/Legislature: Modify the current law withholding requirement for pass-through entities so that they would be required to make estimated withholding tax payments for non-resident individuals on a quarterly basis, rather than annually, effective with taxable years beginning on January 1, 2009. Repeal the current law provision relating to withholding tax payments for nonresidents by pass-through entities that requires the entity to make annual payments of withheld tax, and, instead, require pass-through entities to file an annual return, on the same dates that payments are currently required, reporting the entity's withholding tax payments during the entity's taxable year. Require DOR to allow an automatic extension for the annual return of seven months or until the due date of the entity's federal income tax return or return of partnership income, whichever is later, and impose interest at a rate of 12% annually on any payment covered by the extension. Subject entities that do not file an annual report by the extended due date to the civil penalty for taxpayer negligence authorized under current law, in addition to their liability for any unpaid tax, interest, and penalty otherwise assessable. Extend delinquent interest to any amounts where 90% of the withholding tax reported on the entity's annual return is unpaid by the unextended due date. Repeal the related provisions under current law.

Require pass-through entities to make estimated payments of withheld taxes in four installments on, or before, the 15th day of the third, sixth, ninth, and twelfth months of the taxable year. Establish a payment for each quarter equal to 25% of the lesser of 90% of the withholding tax due in the current year or 100% of the withholding tax due in the preceding year, unless the preceding tax year was less than 12 months or the entity did not file a return in the preceding year. As an alternative, authorize entities to calculate their payments based on their annualized income at the following percentages: (a) 22.5% for the first installment; (b) 45.0% for the second installment; (c) 67.5% for the third installment; and (d) 90.0% for the

fourth installment. Under this alternative calculation, "annualized income" would mean the entity's income for the months in the taxable year ending before the installment's due date, annualized under methods prescribed by DOR. In addition, authorize an entity using the annualized income payment alternative to use the apportionment percentage from its prior year tax return, provided the tax return was filed before the due date for the installment for which the income is being annualized and the percentage is greater than zero. Require any entity using the annualized income payment alternative to increase the next installment computed under the standard (25%) payment procedure by the difference between the amount paid under the alternative procedure and the amount that would have been paid under the standard procedure.

Assess interest at the annual rate of 12% on any underpayment of estimated withholding tax for the period of the underpayment. Define "period of the underpayment" as the time period between the installment's due date and the earlier of the unextended due date for the pass-through entity's annual return or the date for the installment payment. Waive interest payments on underpayments if the amount of withholding tax due is under \$500 or if the amount of withholding tax due is less than \$5,000, the pass-through entity had no withholding tax liability for the preceding taxable year, and the preceding taxable year was 12 months. Repeal the current law requirement that: (a) makes the pass-through entity liable for any unpaid tax, interest, and penalty; and (b) waives the pass-through entity's liability for the tax, but makes the pass-through entity liable for any interest and penalty payments on any unpaid withholding tax, if the nonresident taxpayer files a return and pays the tax.

Extend current law income and franchise tax provisions related to refunds, the carry-forward of refunds, prepayments, short-years, overpayments, and exceptions to final installments to the withholding tax for pass-through entities.

For payments due between January 1, 2009, and the bill's effective date, require DOR to consider withholding payments that become due as timely if the payments are made by the installment date following the bill's effective date unless the installment due date is less than 45 days after the bill's effective date. Provide that if that installment date is less than 45 days after the bill's effective date, withholding payments would be considered timely if received by the succeeding installment due date.

Wisconsin income allocable to nonresident shareholders, partners, members, or beneficiaries of pass-through entities is subject to Wisconsin's individual income tax. Pass-through entities are partnerships, LLCs, tax-option corporations, estates, and trusts that are treated as pass-through entities for federal tax purposes. Under current law, such entities must make a single estimated withholding tax payment for those non-resident individuals, no later than the unextended due date of the entity's income or franchise tax return. Wisconsin residents must make quarterly estimated payments on pass-through entity income. This proposal would require quarterly, rather than annual, withholding tax payments by pass-through entities for non-residents. The administration estimates that the provision would increase income tax

collections by \$38,500,000 on a one-time basis in 2009-10.

[Act 28 Sections: 1780 thru 1782, 1784 thru 1795, and 9343(3)]

12. VETERANS AND SURVIVING SPOUSES PROPERTY TAX CREDIT [LFB Paper 360]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$56,000	\$11,944,000	\$12,000,000

Governor: Decrease estimated amounts claimed by \$8,000 in 2009-10 and increase estimated amounts claimed by \$64,000 in 2010-11 for the refundable veterans and surviving spouses property tax credit, which is paid through a sum sufficient appropriation. Total funding for the credit is estimated at \$1,492,000 in 2009-10 and \$1,564,000 for 2010-11. The credit is equal to real and personal property taxes paid on a principal dwelling by certain veterans and surviving spouses.

Joint Finance/Legislature: Increase the sum sufficient appropriation for the veterans and surviving spouses property tax credit by \$5,808,000 in 2009-10 and \$6,136,000 in 2010-11 to reflect the estimated cost of the credit under current law. With these modifications, total funding for the credit would be \$7,300,000 in the first year and \$7,700,000 in the second year. The funding provided in the Governor's bill did not account for an expansion of the credit included in 2007 Act 20.

13. MINNESOTA-WISCONSIN INCOME TAX RECIPROCITY

GPR	\$21,308,000
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Governor/Legislature: Provide increases of \$7,376,000 in 2009-10 and \$13,932,000 in 2010-11 to reflect estimated expenditures under the Minnesota-Wisconsin individual income tax reciprocity agreement. Total funding would be \$81,950,000 in 2009-10 and \$88,506,000 in 2010-11. The most recent payment to Minnesota was \$75,880,000, which was made in December, 2008, for tax year 2007.

14. ILLINOIS-WISCONSIN INCOME TAX RECIPROCITY

GPR	\$11,466,000
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Governor/Legislature: Provide increases of \$4,150,000 in 2009-10 and \$7,316,000 in 2010-11 to reflect the anticipated payments to Illinois under the Illinois-Wisconsin individual income tax reciprocity agreement. Total funding would be \$45,229,000 in 2009-10 and \$48,395,000 in 2010-11. The most recent payment to Illinois was \$42,267,000, which was made in December, 2008, for tax year 2007.

15. INTEREST ON TAX OVERPAYMENTS

GPR	- \$4,000,000
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Governor/Legislature: Decrease the sum sufficient appropriation for interest on tax overpayments by \$2,000,000 annually. With these adjustments, base level funding of \$4,500,000 would decrease to \$2,500,000 annually.

16. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAXES -- DOMESTIC PRODUCTION ACTIVITIES DEDUCTION [LFB Paper 361]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	\$71,700,000	-\$16,800,000	\$54,900,000

Governor: Eliminate state individual income and corporate income and franchise tax references to Internal Revenue Code provisions that provide a deduction for domestic production activities income. As a result, the deduction could not be taken under the state individual and corporate income and franchise taxes. The decoupling from the IRC provision would apply to tax years beginning on or after January 1, 2009. Eliminating the deduction would increase state income and franchise tax revenues by an estimated \$38,200,000 in 2009-10, and \$33,500,000 in 2010-11.

In 2000, Congress enacted an income tax exclusion for extraterritorial income (ETI) and repealed foreign sales corporation (FSC) exclusion provisions. This was a response to a World Trade Organization (WTO) ruling that the FSC provisions were an illegal export subsidy. Wisconsin did not adopt the federal ETI provisions. However, in 2002, the WTO ruled that ETI violated WTO rules and authorized the European Union to impose sanctions on the U.S. In October, 2004, the American Jobs Creation Act was enacted. The Act repealed the ETI provisions (through a scheduled phase-out) and provided a deduction for income attributable to domestic production activities.

Effective for tax years beginning after December 31, 2004, a deduction against gross income is provided for a portion of the income attributable to domestic production activities. The deduction is phased in from 2005 through 2010, and is equal to the lesser of a specified percentage of the business' qualified production activities income or its taxable income. However, the amount of the deduction for any tax year is limited to 50% of the W-2 wages that are properly allocable to domestic production gross receipts. For 2005 and 2006, the deduction equaled 3% of the lesser of: (a) qualified production activities income; or (b) taxable income for the tax year. For 2007 through 2009, the percentage increases to 6%. When the deduction is fully phased-in in 2010, it will equal 9% of the lesser of: (a) qualified production activities income; or (b) taxable income.

"Qualified production activities income" is determined by reducing domestic production gross receipts by the cost of goods sold and other deductions, expenses, or losses directly allocable to such receipts and a ratable amount of indirect expenses. "Domestic production gross

receipts" are the gross receipts of the business that are derived from:

- a. The lease, rental, license, sale, exchange, or other disposition of: (1) qualifying production property (generally, tangible personal property, computer software, and sound recordings) manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part in the United States; (2) any qualified film produced by the business in the U.S.; and (3) electricity, natural gas, or potable water produced by the taxpayer in the U.S.
- b. Construction performed in the U.S.
- c. Engineering or architectural services performed in the U.S. for construction projects located in the U.S.

Joint Finance/Legislature: Adopt the Governor's recommendation but reestimate the fiscal effect to be a revenue increase of \$27,300,000 in 2009-10 and \$27,600,000 in 2010-11. These amounts are lower than the administration's estimates by \$10,900,000 in the first year and \$5,900,000 in the second year.

[Act 28 Sections: 1534, 1541, 1542, 1608, 1617, 1634, 1687, and 1699]

17. INTERNAL REVENUE CODE UPDATE [LFB Paper 362]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	-\$46,050,000	\$21,870,000	-\$24,180,000

Governor: Update statutory references to the federal Internal Revenue Code under the state individual income and corporate income and franchise taxes to include changes to the IRC enacted in 2007 and through December, 2008, with certain exceptions. Under current law, state tax references generally refer to the IRC in effect as of December 31, 2006. However, federal provisions enacted under the Tax Increase Prevention Act of 2005, the Pension Protection Act of 2006, and the Tax Relief and Health Care Act of 2006 are not currently referenced in state statutes but are recommended for incorporation in this proposal. Not all federal provisions adopted in 2007 and 2008 are included in the proposal. These include, with some exceptions, provisions related to accelerated depreciation, depletion, and expensing, as well as provisions that are unique to the federal tax code. With the proposed changes, state tax references would generally refer to the IRC in effect as of December 31, 2008.

The proposed changes would take effect at the same time for state tax purposes as for federal tax purposes, and the administration estimates that the provisions would reduce state income and franchise tax revenues by \$40,560,000 in 2009-10 and \$5,490,000 in 2010-11. Most of the fiscal effect is due to provisions included in the federal Worker, Retiree, and Employer Recovery Act and the Emergency Economic Stabilization Act. For calendar year 2009, the former act would waive the minimum distribution amount from tax-deferred retirement

savings accounts. Otherwise, a 50% federal penalty is imposed on individuals failing to take a minimum distribution. The administration proposes to suspend the state's penalty, which equals 33% of the federal penalty, for the same calendar year period. This provision accounts for more than one-half of the total fiscal effect (-\$18,080,000 in 2009-10 and -\$6,100,000 in 2010-11).

It should be noted that the IRC update would also affect taxes for tax years beginning before January 1, 2009, in some instances. DOR indicates that the fiscal effect of many of these provisions is expected to be minimal, but has included the impact of those items with measurable effects in the estimates for the 2009-11 biennium, reflecting the filing of amended returns. Other provisions would be phased in or delayed to future tax years, thereby postponing their effect outside the 2009-11 biennium. DOR indicates that the proposal would reduce revenues by an estimated \$2,430,000 in 2011-12 and \$8,700,000 in 2012-13.

Joint Finance/Legislature: Modify the Governor's recommendation by deleting all of the recommended IRC update provisions except the waiver of the state penalty on individuals who do not make required minimum distributions from certain retirement accounts. Increase estimated revenues by \$22,480,000 in 2009-10 and decrease estimated revenues by \$610,000 in 2010-11 compared to the Governor's proposal. Compared to current law, revenues would decrease by \$18,080,000 in the first year and \$6,100,000 in the second year.

[Act 28 Sections: 1526 thru 1534, 1600 thru 1617, 1626 thru 1634, 1679 thru 1687, 1691 thru 1699, and 9143(2)]

18. INDIVIDUAL INCOME TAX DEDUCTION FOR COLLEGE SAVINGS ACCOUNT CONTRIBUTIONS

GPR-REV - \$400,000

Senate: Modify current law provisions allowing an individual income tax deduction for contributions to college savings accounts (EdVest) by extending the deduction to contributions made by parents where the beneficiary is their child, but is not their dependent under federal individual income tax provisions. Set the total annual deduction at \$3,000 per beneficiary, claimed by married persons filing jointly or separately or by divorced or legally separated parents of a child. Provide that the total annual deduction, per beneficiary, claimed by a married person filing separately or by a previously married person filing separately may not exceed \$1,500 per claimant, but provide that a former spouse may claim a higher amount if a divorce judgment specifies a different division of the \$3,000 maximum contribution. Extend this treatment to taxable years beginning on January 1 of the year the act takes effect, but delay the treatment to the succeeding year if the effective date of the act is after August 31. It is estimated that this provision would result in a revenue loss of \$400,000 per year.

Conference Committee/Legislature: Modify the Senate provision so that it would first apply to taxable years beginning on January 1, 2010. As a result, the \$800,000 biennial revenue loss attributed to the Senate provision would be reduced by half, to \$400,000.

[Act 28 Sections: 1543c thru 1543cg and 9343(13x)]

19. INDIVIDUAL INCOME TAX CHECK-OFF FOR DONATIONS TO FOOD BANKS

Assembly: Create a tax check-off on the individual income tax form for donations to Second Harvest Food Banks in Wisconsin that are members of Feeding America. Permit every individual who has a tax liability or is entitled to a tax refund to designate on the return any amount of additional payment or any amount of a refund due that taxpayer as a donation to Second Harvest Food Banks in Wisconsin that are members of Feeding America. The administration of the check-off would operate in the same manner as the administration of tax check-offs provided under current law. Create a continuing, program revenue appropriation to distribute amounts designated through the check-off and credit monies designated through the check-off, net of any Department of Revenue administrative expenses, to the appropriation. Require the net amount in the appropriation to be distributed as indicated to Second Harvest food banks in the following municipalities: (a) Milwaukee, 65%; (b) Madison, 20%; and (c) Eau Claire, 15%. These provisions would first apply to taxable years beginning on January 1 of the year in which the act takes effect, except that if the act takes effect after July 31, the provisions would first apply to taxable years beginning on January 1 of the following year.

Senate: Delete provision.

Conference Committee/Legislature: Include Assembly provision.

[Act 28 Sections: 602s, 632i, 1593g, and 9343(6q)]

20. INDIVIDUAL INCOME TAX CHECK-OFF FOR DONATIONS TO MILITARY FAMILY RELIEF FUND

Assembly: Create a tax check-off on individual income tax forms for contributions to a newly-created military family relief fund. Permit every individual who has a tax liability or is entitled to a tax refund to designate on the return any amount of additional payment or any amount of a refund due that taxpayer as a donation to the military family relief fund. The administration of the check-off would operate in the same manner as the administration of tax check-offs provided under current law. Require amounts designated through the check-off, net of any Department of Revenue administrative expenses, to be deposited in the military family relief fund. These provisions would first apply to taxable years beginning on January 1 of the year in which the act takes effect, except that if the act takes effect after July 31, the provisions would first apply to taxable years beginning on January 1 of the following year. A related entry on the military family relief fund is located under the Department of Military Affairs.

Senate: Delete provision.

Conference Committee/Legislature: Include Assembly provision.

[Act 28 Sections: 540s, 602s, 665ss, 668s, 1593e, 2773s, 9136(2c), and 9343(5c)]

**21. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAXES --
THROWBACK SALES [LFB Paper 363]**

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR-REV	\$95,200,000	- \$14,700,000	\$80,500,000

Governor: Require the following sales to be included 100%, rather than 50%, in the sales factor of the apportionment formula:

a. Sales of tangible personal property that is shipped from an office, store or warehouse, factory, or other place of storage in Wisconsin, and delivered to the federal government outside the state, and the taxpayer is not within the jurisdiction, for income tax purposes, of the destination state.

b. Sales of tangible personal property that is shipped from an office, store, warehouse, factory, or other place of storage in Wisconsin to a purchaser, other than the federal government, and the taxpayer is not within the jurisdiction, for income tax purposes, of the destination state.

c. Sales of tangible personal property by an office in Wisconsin to a purchaser in another state, that are not shipped or delivered from Wisconsin if the taxpayer is not within the jurisdiction, for income tax purposes, of either the state from which the property is delivered or shipped, or of the destination state.

The provisions would first apply to tax years beginning on or after January 1, 2009.

DOR would deem as timely paid the estimated tax payments attributable to the difference between a person's tax ability under the revised throwback provisions and the tax liabilities under current law for installments that became due during the period beginning on January 1, 2009, and ending on the bill's effective date, if such estimated tax payments were paid by the next installment due date that follows in sequence following the effective date. However, if the next installment due date that follows in sequence following the bill's effective date was less than 45 days after the effective date, such estimated tax payments, in addition to the payment due less than 45 days after the effective date, would be deemed timely paid if paid by the next subsequent installment due date.

These provisions would increase state income and franchise tax revenues by an estimated \$57,700,000 in 2009-10 and \$37,500,000 in 2010-11.

In general, a single sales factor apportionment formula is used to apportion the income of a multistate corporation to Wisconsin. (The income of certain types of corporations, such as public utilities, is apportioned using different apportionment formulas). The sales factor is the ratio of the total sales of the taxpayer in the state to total sales everywhere. Sales are generally all gross receipts from the course of the taxpayer's regular trade or business operations which produce apportionable business income. For the sales factor, sales of tangible personal property

are generally considered to be in Wisconsin if the property is delivered or shipped to a purchaser within Wisconsin or if the property is shipped from Wisconsin and the taxpayer is not subject to the taxing jurisdiction of the state of destination. The latter type of sales are "throwbacks" and 50% of such sales are included in the apportionment formula. In addition, sales of tangible personal property from an office in the state, but shipped from an out-of-state supplier to an out-of-state customer are considered throwback sales, if the taxpayer is not subject to the taxing jurisdiction of the states in which the supplier or customer are located. Sales to the federal government are only considered to be in Wisconsin if they are shipped from a location within the state and are delivered to the federal government at a location within the state or if they are "throwback" sales. Fifty percent of federal throwback sales are included in the apportionment formula.

Joint Finance/Legislature: Adopt the Governor's recommendation but reestimate the fiscal effect to be a revenue increase of \$44,500,000 in 2009-10 and \$36,000,000 in 2010-11. These amounts are lower than the administration's estimate by \$13,200,000 in the first year and \$1,500,000 in the second year.

[Act 28 Sections: 1537, 1619, 1798, and 9343(21b)(a)]

22. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAXES -- ELECTRONIC MEDICAL RECORDS TAX CREDIT EFFECTIVE DATE DELAY [LFB Paper 364]

GPR-REV	\$14,500,000
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Governor/Legislature: Provide that the electronic medical records tax credit under the state individual income and corporate income and franchise taxes could first be claimed for tax years beginning after December 31, 2011, rather than for tax years beginning after December 31, 2009, as under current law. Also, the credit could be used to offset individual income tax minimum tax liability, to provide comparable treatment to that provided for other tax credits. The delayed effective date would increase state income and franchise tax revenues by an estimated \$4,500,000 in 2009-10 and \$10,000,000 in 2010-11.

The 2007-09 biennial budget act (2007 Wisconsin Act 20) created an electronic medical records tax credit under the individual and corporate income and franchise taxes. The tax credit equals 50% of the amount paid by a health care provider in a tax year for information technology hardware or software that is used to maintain medical records in an electronic form. Tax credits not entirely used to offset income and franchise taxes can be carried forward up to 15 years to offset future tax liabilities. The maximum total amount of electronic medical records tax credits that can be claimed in a tax year is \$10 million, and is allocated to claimants by the Department of Commerce.

Commerce is required to implement a program to certify health care providers as eligible to claim the electronic medical records tax credit. After certifying health care providers as eligible, Commerce is required to allocate tax credits to individual claimants, subject to the annual total credit limit of \$10 million. Commerce must inform DOR of every health care

provider that is certified and of the amount of tax credits allocated to each provider. Commerce must also, in consultation with DOR, promulgate rules to administer the certification and tax credit allocation process.

[Act 28 Sections: 1582, 1662, and 1728]

23. FILM PRODUCTION TAX CREDITS [LFB Paper 251]

	Governor (Chg. to Base)	Jt. Finance /Leg (Chg. to Gov)	Veto (Chg. to Leg)	Net Change
GPR	-\$10,000,000	\$3,000,000	-\$2,000,000	-\$9,000,000

Governor: Sunset the film production services and film production company investment tax credits by disallowing any tax credit claims for tax years beginning after December 31, 2008. Unused film tax credits claimed for tax years beginning before January 1, 2009, could be carried forward to tax years beginning after December 31, 2008. In addition, \$5,000,000 GPR would be deleted annually from the sum sufficient film production services tax credit appropriation used to pay refundable credits, to reflect the sunset of the tax credit. The credits would be replaced by a film project grants program administered by the Department of Commerce. [See "Commerce -- Economic Development"]

Provisions of 2005 Wisconsin Act 483 created both a film production services tax credit and a film production investment tax credit under the state individual income and corporate income and franchise taxes. For the purposes of claiming the tax credits, Commerce is required to: (a) accredit productions; (b) determine the amount of expenditures that are directly used to produce an accredited production; and (c) certify expenses that are related to establishing a film production company in Wisconsin.

Film Production Services Tax Credit. The film production services tax credit consists of three components. An eligible taxpayer can claim as a credit against the individual income and corporate income and franchise taxes any of the following.

a. An amount equal to 25% of the eligible salary or wages paid by a claimant to the claimant's employees, up to a maximum credit of \$25,000 per employee, for services rendered in Wisconsin to produce an accredited production and paid to employees who were residents of Wisconsin at the time they were paid. Unused credit amounts can be carried for up to 15 years to offset future tax liabilities.

b. An amount equal to 25% of production expenses paid by the claimant to produce the accredited production. Amounts not used to offset tax liabilities are refundable.

c. An amount equal to the sales and use taxes paid by the claimant on the purchase of tangible personal property and taxable services that are used directly in producing an accredited production in the state, including all stages of production, from the final script stage

to the distribution of the finished production. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities.

Film Production Company Investment Tax Credit. An eligible claimant can claim as a credit against individual income and corporate income and franchise taxes for the first three years that the claimant does business in the state as a film production company an amount that equals 15% of the following that the claimant paid in the tax year to establish a film production company in Wisconsin:

a. The purchase of depreciable, tangible personal property. The claimant must purchase the tangible personal property after December 31, 2007, and at least 50% of the property's use must be in the claimant's business as a film production company.

b. The amount expended to construct, rehabilitate, remodel, or repair real property. A claimant can claim the credit, if the claimant began the physical work of construction, rehabilitation, remodeling, or repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, and if the completed project is placed in service after December 31, 2007. A claimant can also claim the credit for an amount expended to acquire real property if the property is not previously owned property, and if the claimant acquires the property after December 31, 2007, and if the completed project is placed in service after December 31, 2007.

Unused tax credit amounts can be carried forward up to 15 years to offset future tax liability.

Joint Finance/Legislature: Delete the provisions that would sunset the film production services and film production company investment tax credits and provide a film project grants program with annual funding of \$470,000 GPR. Instead:

a. Repeal the current film production services tax credit and create a new refundable film production services tax credit equal to:

1. 25% of salaries, wages and/or contract payments to all Wisconsin residents, including actors that work on a production in Wisconsin. The salaries and wages of individuals with compensation from the production in excess of \$250,000 would be excluded from the credit. An additional 3% tax credit would be provided for salaries and wages and contract payments to Wisconsin residents living in economically distressed areas.

2. 20% of salaries, wages, and/or contract payments to all nonresidents up to a maximum of \$20,000 per worker. Above-the-line expenses (such as nontechnical crew members standard to the industry, producers, writers, casting directors and actors) and salaries and wages of individuals with compensation from the production in excess of \$250,000 would be excluded.

3. 25% of non-labor production expenses incurred in Wisconsin.

b. At least 35% of the project's total budget would have to be spent in Wisconsin. The amount of credits that could be allocated to a project would be limited to \$10.0 million.

c. The film production company investment tax credit would be modified as follows:

1. An entity would be eligible for the credit if the purpose of the investment was for the making of accredited productions.

2. Existing companies could claim the credit.

3. The credit would be refundable and a sum sufficient appropriation would be created to pay credit claims.

4. The total amount of credits that could be allocated to a project would be \$10.0 million.

d. "Production expenditures" would mean any expenditures that were incurred in Wisconsin and directly used to produce an accredited production, including expenditures for set construction and operation, wardrobes, make-up, clothing accessories, photography, sound recording, sound synchronization, sound mixing, lighting, editing, film processing, film transferring, special effects, visual effects, renting or leasing facilities or equipment, renting or leasing motor vehicles, food, lodging, and any other similar expenditures as determined by the Department of Commerce.

e. "Accredited production" would mean a film, video, broadcast advertisement, or television production, as approved by Commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeded \$100,000 for a production that is 30 minutes or longer or \$50,000 for a production that was less than 30 minutes. "Accredited production" would also mean an electronic game, as approved by Commerce, for which the aggregate salary and wages included in the cost of the production for the period ending 36 months after the month in which the principal programming, filming, or taping of the production begins exceeded \$100,000. An "accredited production" would not include any of the following, regardless of production costs: (a) news, current events, or public programming or a program that includes weather or market reports; (b) a talk show; (c) a production with respect to a questionnaire or contest; (d) a sports event or sports activity; (e) a gala presentation or awards show; (f) a finished production that solicits funds; (g) a production for which the company is required under 18USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program; (h) a production produced primarily for industrial, corporate, or institutional purposes.

f. In order to claim a production services or production company investment tax credit for purchases of products, the products would have to be purchased from a Wisconsin vendor.

g. An application fee equal to 2% of budget requested or \$5,000, whichever amount is

less, would be required to be paid to the Department.

h. Commerce would be required to submit an annual report to the Joint Finance Committee. The report would include the number of entities receiving tax credits, total expenditures associated with the credits made in-state and the location expenditures were made in counties and municipalities, and the total number of individuals employed on the accredited projects. The Department would be required to use financial tracking forms and permits standard to the industry.

i. The total number of production services and production company tax credits that could be claimed during the 2009-11 biennium would be \$1,500,000 in 2009-10 and in 2010-11. There would be no limit beginning in 2011-12.

j. All changes would be effective for tax years beginning after December 31, 2008.

Provide \$1,500,000 GPR annually to reflect restoration of the film production tax credits. [see "Commerce -- Economic Development"]

Veto by Governor [C-7]: Modify the provisions passed by the Legislature as follows:

a. Reduce the annual statewide limit on film production services and film production company investment tax credits to \$500,000 annually. The partial veto reduces annual Chapter 20 expenditure authority for the film production company services tax credit from \$1,500,000 to \$500,000, and the Governor indicates that he is requesting that the Secretary of Administration reestimate annual film tax credit expenditures at this amount. In addition, the veto converts the film production company investment tax credit appropriation from a sum sufficient to an annual appropriation.

b. Delete the film production services tax credit for 20% of salaries, wages, and/or contract payments to nonresidents.

c. Delete the film production services additional tax credit for 3% of salaries, wages, and/or contract payments to Wisconsin residents living in economically distressed areas.

d. Delete the \$10 million limit on the amount of tax credits that could be allocated to a project under the film production services and production company investment tax credits.

e. Eliminate the requirement that the salaries and wages for 12 months included in the cost of production must exceed \$100,000 for a production of 30 minutes or longer for that production to be an "accredited production." As a result, salaries and wages would have to be \$50,000 for all productions, regardless of length.

f. Delete the requirement that Commerce file an annual report to the Joint Committee on Finance that includes information related to the film tax credits.

[Act 28 Sections: 621m, 1579x thru 1580yh, 1580yk thru 1580ym, 1589b, 1591v, 1591w, 1593b, 1659y thru 1660g, 1660i thru 1660k, 1676d, 1676e, 1677b, 1725w thru 1726yg, 1726yj thru

1726yL, and 1740d thru 1741b]

[Act 28 Vetoed Sections: 176 (as it relates to s. 20.835(2)(bL)&(bm)), 621m, 1579x, 1580yj, 1580yk, 1659y, 1660h, 1660i, 1725w, 1726yh, 1726yj, and 3070m]

24. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAXES -- ANGEL AND EARLY STAGE SEED INVESTMENT TAX CREDITS HOLDING PERIODS

Governor/Legislature: Provide that, for calendar years beginning after December 31, 2007, an investment for which the angel investment tax credit was claimed must be held for three years, (rather than the current one year requirement) or the claimant would be required to pay DOR, in a manner prescribed by the Department, the amount of the credit that the claimant received related to the investment. In addition, for calendar years beginning after December 31, 2007, an investment for which the early stage seed investment tax credit was claimed would have to be held for three years, or the claimant would be required to pay DOR, in a manner prescribed by the Department, the amount of the credit that the claimant received related to the investment. These provisions would have a minimal fiscal effect.

Under current law, as affected by 2009 Wisconsin Act 2, The angel investment tax credit is provided under the state individual income tax, and is equal to 25% of the claimant's bona fide angel investment made directly in a qualified new business venture in a tax year. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. The maximum aggregate amount of angel investment tax credits that may be claimed for a tax year is \$5.5 million for tax years before December 31, 2010, and \$18.0 million, plus an additional \$250,000 for tax credits claimed for investments in nanotechnology businesses, for tax years beginning after December 31, 2010. The maximum total amount of tax credits that can be claimed for all tax years is \$47.5 million.

The early stage seed investment credit is provided under the individual income and corporate income and franchise taxes, and the insurance premiums tax, and is equal to 25% of the claimant's investment paid in the tax year to a certified fund manager that the fund manager invests in a qualified business venture certified by Commerce. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities. The maximum aggregate amount of early stage seed investment tax credits that can be claimed for a tax year is \$6.0 million for tax years before December 31, 2010, and \$18.5 million, plus an additional \$250,000 for investments in nanotechnology businesses, for tax years beginning after December 31, 2010.

[Act 28 Sections: 1575, 1579, 1659, and 1725]

25. CORPORATE FRANCHISE TAX -- ETHANOL AND BIODIESEL FUEL PUMP TAX CREDIT ORDER OF COMPUTATION

Governor/Legislature: Modify the order of computation for the ethanol and biodiesel

fuel pump tax credit, under the corporate income and franchise tax, to conform with the order of computation under the individual income and corporate franchise tax on insurance companies. In addition, allow the credit to be used to offset individual income tax minimum tax liability to provide comparable treatment to that for other tax credits. These changes would apply retroactively to tax years beginning after December 31, 2007. These provisions would have a minimal fiscal effect.

2007 Act 20 created an ethanol and biodiesel fuel pump tax credit under the state individual and corporate income taxes, equal to 25% of the amount paid in a tax year to install or retrofit pumps located in Wisconsin that dispense motor fuel consisting of at least 85% ethanol, or at least 20% biodiesel fuel. The tax credit can be claimed for tax years beginning after December 31, 2007, and before January 1, 2018. The maximum tax credit for a tax year cannot exceed \$5,000 for each service station that claims a credit for an installed or retrofitted pump. Unused credit amounts may be carried forward up to 15 years to offset future tax liabilities.

[Act 28 Sections: 1583, 1670, 9343(2)&(14), and 9443(2)]

26. INSURANCE COMPANY CORPORATE FRANCHISE TAX -- ADD-BACK OF TECHNOLOGY ZONES TAX CREDIT

Governor/Legislature: Require that the technology zones tax credit be included in net income calculations for insurance companies subject to the state franchise tax. The provision would retroactively apply to tax years beginning on or after January 1, 2002. This would provide comparable treatment for technology zone tax credits to that required under the state individual income and corporate income and franchise taxes, and to that required for other tax credits. The provision would have a minimal fiscal effect.

The state corporate franchise tax is imposed on most domestic nonlife insurance companies and on the nonlife insurance business of domestic life insurance companies. Under state law, the amount of tax that an insurance company pays under the state franchise tax cannot exceed 2% of gross Wisconsin premiums.

The technology zones tax credit equals the sum of the following: (a) the amount of real and personal property taxes paid during the tax year; (b) 10% of capital investments made, including the purchase price of depreciable, tangible personal property, and the amount expended to acquire, construct, rehabilitate, remodel, or repair real property in a technology zone; and (c) 15% of the amount spent for the first 12 months of wages for each job created in a technology zone. Credits may be used to offset the income or franchise tax liability of the claimant. Credits that are not entirely used to offset income or franchise taxes in the current year can be carried forward up to 15 years to offset future tax liabilities.

[Act 28 Sections: 1702d, 1827, 9343(15), and 9443(10)]

27. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAXES -- MODIFICATIONS TO THE SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION TAX CREDIT [LFB Paper 365]

Governor/Legislature: Modify statutory provisions of the state supplement to the federal historic rehabilitation tax credit as follows:

a. Require that, in order to claim the tax credit, a claimant must include, with the claimant's return, evidence that the rehabilitation was recommended by the state historic preservation officer for approval by the U.S. Secretary of the Interior before the physical work of construction, or destruction in preparation for construction, began, and that the Secretary of the Interior approved the rehabilitation.

b. Require that the credit must be claimed at the same time as the federal credit is claimed.

c. Provide that, for shareholders of a tax-option corporation, the credit may be allocated in proportion to the ownership interest of each shareholder. Credits computed by a partnership or limited liability company could be claimed in proportion to the ownership interests of the partners or members, or allocated to partners or members as provided in a written agreement among the partners or members that was entered into no later than the last day of the taxable year of the partnership or LLC, for which the credit was claimed. For a partnership or LLC that placed property in service after June 29, 2008, and before January 1, 2009, the credit attributable to such property could be allocated, at the election of the partnership or LLC, to partners or members for a taxable year of the partnership or LLC that ended after June 29, 2008, and before January 1, 2010. Any partner or member who claimed the credit under these provisions would be required to attach a copy of the agreement, if applicable, to the tax return on which the credit was claimed. A person claiming the credit as provided under these provisions would be solely responsible for any tax liability arising from a dispute with the Department of Revenue related to claiming the credit.

d. Specify that a person who elected to claim the credit based on claiming amounts for expenditures as the expenditures were paid, rather than when the rehabilitation work was completed, would be required to file an election form with DOR, in a manner prescribed by the Department. DOR would be authorized to adjust or disallow the credit claimed within four years after the date that the state Historical Society notified the Department that the expenditures for which the credit was claimed did not comply with the standards for certification promulgated by the Historical Society by rule.

These provisions would apply to property placed in service on or after June 30, 2008, and are estimated to have a minimal fiscal effect.

Under current law, an individual or corporation may claim a credit against state income or franchise taxes due for up to 5% of qualified rehabilitation expenditures for certified historic structures. A certified historic structure is defined as a building that is listed in the National

Register of Historic Places or that is determined to be historic and will be listed in the National Register. The building must be used for the production of income, such as commercial, industrial, or residential rental purposes. "Qualified rehabilitation expenditures" are amounts incurred that must be capitalized and added to the basis of the building rather than being deducted. Qualified expenditures do not include any amount being depreciated under an accelerated method, the cost of acquiring the building itself, or any expense for enlargement of an existing building. Expenses capitalized or properly chargeable to a capital account are those that are properly includable in calculating the basis of real property, such as architectural, engineering, and site survey fees, and construction period interest and taxes that are treated by the taxpayer as chargeable to a capital account. Also included are legal and development fees, insurance premiums, and construction costs.

Qualified rehabilitation expenditures are eligible for the credit only if incurred in connection with substantial rehabilitation of property located in the state, if the physical work of construction or destruction in preparation for construction begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989. The test of substantial rehabilitation generally is met if the qualified expenditures during a two-year period (60 months for phased rehabilitation) exceed the greater of \$5,000 or the adjusted basis of the building. Unused credit amounts can be carried forward up to 15 years to offset future tax liabilities.

In order to claim a credit, the claimant must include, with the tax return, evidence that the rehabilitation was approved by the U.S. Secretary of the Interior.

Partnerships, LLCs, and S corporations may not claim the credit, but the eligibility for and the amount of the credit are based on each entity's eligible investments. The partnership, LLC, or S corporation must compute the amount of credit that each of its partners, members, or shareholders may claim and provide that information to each of them. Partners, members of LLCs, and shareholders of S corporations claim the credit in proportion to their ownership interest.

[Act 28 Sections: 823, 1585 thru 1588, 1663 thru 1666, 1729 thru 1732, and 9343(17)]

28. ENTERPRISE ZONES TAX CREDIT SUM SUFFICIENT REESTIMATE

GPR	- \$9,510,000
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Governor/Legislature: Delete \$4,875,000 in 2009-10 and \$4,635,000 in 2010-11 from the sum sufficient appropriation for the enterprise zones jobs tax credit to re-estimate tax credit claims during the biennium. The re-estimates reflect projections of program participation based on recent experience. With these adjustments, total funding would be decreased from an adjusted base level of \$6,500,000 to \$1,625,000 in 2009-10 and \$1,865,000 in 2010-11.

29. ENTERPRISE ZONES CAPITAL INVESTMENT TAX CREDIT

Assembly/Legislature: Create a refundable capital investment tax credit equal to up to 10% of the claimant's significant capital expenditures in an enterprise zone as, determined by the Department of Commerce. Commerce would be authorized to certify a business that made a significant capital expenditure in an enterprise zone to receive additional tax benefits in an amount determined by the Department, but not exceeding 10% of the firm's capital expenditures. Commerce would be required to allocate the tax benefits received by a business over the remainder of the life of the enterprise zone. The Department would be required to define "significant capital expenditure" by rule.

[Act 28 Sections: 1571d thru 1571g, 1655m thru 1655r, 1721m thru 1721r, 3121g, and 3121r]

30. SUPER RESEARCH AND DEVELOPMENT TAX CREDIT [LFB | | | |---------|---------------| | GPR-REV | - \$5,000,000 | |---------|---------------| Paper 366]

Governor/Legislature: Create, under the state corporate income and franchise tax, for tax years beginning on or after January 1, 2011, a super research and development tax credit. The credit would equal the amount of qualified research expenses paid or incurred by the corporation in a tax year that exceeded 1.25 times the average annual amount of qualified research expenses paid or incurred in the previous three tax years. Unused credit amounts could be carried forward up to five years to offset future tax liabilities. Current law provisions related to adjustments for acquisitions and dispositions, annualization and proration of tax credits, change of business ownership, DOR administration, and timely credit claims would apply to the super research and development tax credit.

"Qualified research expenses" would be qualified research expenses as defined under the Internal Revenue Code incurred by the claimant for research conducted in Wisconsin for the tax year. (This is the same definition used for the research credit under current law.)

The super research and development tax credit would reduce state corporate income and franchise taxes by an estimated \$5,000,000 in 2010-11 and \$10,000,000 annually in 2011-12 and thereafter.

Under current law, a state research credit is provided under the corporate income and franchise tax equal to 5% of the increase in a corporation's qualified research expenditures in Wisconsin over the base amount. The "base amount" is calculated by multiplying the taxpayer's average annual gross receipts for the preceding four years by a fixed-base percentage. The "fixed-base" percentage is the percentage that the taxpayer's total aggregate qualified research expenditures for a specified period is of the taxpayer's total aggregate gross receipts for those years. The fixed-base percentage cannot exceed 16%. In addition, the base amount cannot be less than 50% of research expenses in the year for which the credit is claimed. Consequently, the state research credit is 5% of the lesser of: (a) the excess of current year research expenses over the base amount; or (b) 50% of current year research expenses.

In addition, a 10% tax credit can be claimed for qualified research expenses (less the base amount) for the following activities:

a. Designing internal combustion engines for vehicles, including expenses related to designing vehicles that are powered by such engines, and improving production processes for such engines and vehicles.

b. Designing and manufacturing energy efficient lighting systems, building automation and control systems, or automotive batteries for use in hybrid-electric vehicles that reduce the demand for natural gas or electricity or improve the efficiency of its use.

The credits apply only to research expenditures paid or incurred in connection with the trade or business of the taxpayer that are research and development costs in an experimental or laboratory sense. In general, qualifying expenses are non-capital, and thus, do not include spending for buildings and equipment. Qualified research expenses are the sum of: (a) in-house expenditures for research, wages and supplies used in research, plus certain amounts paid for research use of laboratories, equipment, computers, or other personal property; and (b) 65% of the amount paid by the taxpayer for qualified research conducted on behalf of the taxpayer. Examples of eligible costs include: (a) the costs incident to the development of an experimental or pilot model, a plant process, a product, a formula, an invention, or similar property; and (b) the cost of improving this type of property. Qualified research is research which is undertaken for the purpose of discovering information which is technological in nature and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer. In addition, substantially all of the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality.

[Act 28 Sections: 1597, 1624, 1635, 1656, 1669, 1690, 1722, and 1734]

31. **INDIVIDUAL AND CORPORATE INCOME TAXES -- JOBS TAX CREDIT** [LFB Paper 367]

Governor: Create a refundable jobs tax credit under the individual income and corporate income and franchise taxes, for tax years beginning after December 31, 2011. In order to claim the credit, a person would have to be certified by the Department of Commerce. Commerce could certify a person, for up to 10 years, if: (a) the person was operating or intended to operate a business in this state; and (b) the person applied and entered into a contract Commerce.

A person that was certified could claim the jobs tax credit if, in each year for which the person claimed the tax credit, the person increased net employment in the person's business and one of the following applied:

a. In a tier I county or municipality, an eligible employee, for whom the person claimed a tax credit, earned at least \$20,000 but not more than \$100,000 in wages, in the year for

which the credit was claimed.

b. In a tier II county or municipality, an eligible employee, for whom the person claimed a tax credit, earned at least \$30,000 but not more than \$100,000 in wages, in the year for which the credit was claimed.

c. In a tier I or tier II county or municipality, the person improved the job-related skills of any eligible employee, trained any eligible employee on the use of job-related new technologies, or provided job-related training to any eligible employee whose employment with the person represented the employee's first full-time job.

The jobs tax credit would equal up to 10% of the wages paid to an eligible employee and/or the amount of costs incurred to undertake training activities in a tax year, as determined by Commerce. Specifically, Commerce could award jobs credits of up to 10% of wages of at least \$20,000 but not more than \$100,000 in a tier I county or municipality, and of at least \$30,000 but not more than \$100,000 in a tier II county or municipality, paid by the person to each eligible employee. Commerce could also award tax credits in an amount determined by rule for costs incurred by the person to undertake training activities. The credit would be refundable. As a result, if the allowable amount of the credit claimed exceeded the tax otherwise due, the amount of the claim not used to offset the tax due would be certified by DOR to the Department of Administration for payment by check, share draft, or other draft drawn from a newly-created GPR appropriation for refund payments. The maximum amount of tax credits that Commerce could allocate in a calendar year would be \$10 million.

Partnerships, LLCs, and tax-option corporations could not claim the credit, but the eligibility for, and the amount of, the credit would be based on their payment of amounts eligible for the credit. A partnership, LLC, or tax-option corporation would be required to compute the amount of credit that each of its partners, members, or shareholders could claim and provide that information to each of them. Partners, members of LLCs, and shareholders of tax-option corporations could claim the credit in proportion to their ownership interests.

A claimant would be required to include a copy of the Commerce certification for tax credits along with the claimant's tax return submitted to DOR. Current law provisions related to change of ownership and timely filing of claims would apply to the jobs tax credit. DOR would have full power to take administrative action, conduct any procedure, and to proceed as authorized under the state income and franchise tax laws.

Commerce would be required to notify DOR when it certified a person to receive tax benefits, and within 30 days of revoking a certification. Commerce would also determine the maximum amount of the tax credits that a certified business could claim and notify DOR of this amount. A claimant could be required to repay any tax credits claimed for a year in which the claimant failed to maintain employment at a level required under the contract with Commerce. Commerce would annually verify the information submitted by the person claiming tax credits.

Commerce would be required to promulgate rules for the implementation and operation

of the jobs tax credit, including rules relating to the following:

a. The definitions of a tier I county or municipality and a tier II county or municipality. The Department could consider all of the following information when establishing the definitions: (1) unemployment rate; (2) percentage of families with incomes below the poverty line established under federal law; (3) median family income; (4) median per capita income; and (5) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff.

b. A schedule of additional tax benefits for which a person who is certified for tax credits, and who incurred costs related to job training may be eligible.

c. Conditions for the revocation of a certification.

d. Conditions for the repayment of tax credits.

Commerce would be authorized to promulgate emergency rules that would remain in effect until July 1, 2010, or the date on which permanent rules took effect, whichever was sooner. The Department would not be required to provide evidence that promulgating these rules as emergency rules was necessary for the preservation of the public peace, health, safety, or welfare and would not be required to provide a finding of emergency. If the Secretary of Administration required Commerce to prepare an economic impact report for the rules required under the provisions of the bill, the Department could submit the proposed rules to the Legislature for review before Commerce completed the economic impact report and before the Department received a copy of DOA approval of the report.

"Business" would mean any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, LLC, or association, but would not include a store or shop in which retail sales was the principal business. "Eligible employee" would be defined as a person employed in a full-time job by a person certified by Commerce

"Full-time job" would be defined as a regular, nonseasonal full-time position in which an individual, as a condition of employment, was required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual received pay that was equal to at least 150% of the federal minimum wage and benefits that were not required by federal or state law. "Full-time job" would not include initial training before an employment position begins.

Since it would first apply to tax years beginning after December 31, 2011, the jobs tax credit would not have a fiscal effect during the 2009-11 biennium. It is estimated that the credit would increase general fund expenditures by \$4,500,000 in 2012-13 and \$10,000,000 annually thereafter.

Under current law, persons may deduct as ordinary and necessary expenses paid or incurred in carrying on a trade or business, a reasonable allowance for salaries and other

compensation for personal services actually rendered. Amounts an employer pays or incurs for training are generally deductible as business expenses. The Business Development in Wisconsin Tax Incentives program was created by 2009 Wisconsin Act 2. The program provides income and franchise tax credits to eligible persons conducting specified types of economic development projects in the state, including job creation and employee training projects. Under the program, Commerce has a total of \$65.29 million in tax credits to allocate to eligible projects.

Assembly: Modify the proposed jobs tax credit as follows:

a. Provide that the credit could be claimed for tax years beginning after December 31, 2009, but that credit claims could not be paid until tax years beginning after December 31, 2011.

b. Limit the total amount of credits that could be claimed for tax years beginning on or after January 1, 2010, and ending on June 30, 2013, to \$14,500,000. As a result, credits could be claimed during the 2009-11 biennium, but could not be paid until the 2011-13 biennium, and the total cost of the credit in the 2011-13 biennium would not increase, but would remain the same as under the provisions recommended by the Governor and approved by the Joint Committee on Finance.

c. Eliminate the \$100,000 cap on eligible wages and, instead, provide that the credit would equal 10% of wages up to \$100,000, in cases where an employee's wages were greater than \$100,000. Wages would still have to exceed \$20,000 in tier I counties and municipalities, and \$30,000 in tier II counties and municipalities.

Senate: Delete the Assembly modifications.

Conference Committee/Legislature: Adopt the first two Assembly provisions, which would:

a. Provide that the proposed jobs credit could be claimed for tax years beginning after December 31, 2009, but credit claims could not be paid until tax years beginning after December 31, 2011; and

b. Limit the total amount of jobs tax credits that could be claimed for tax years beginning on or after January 1, 2010, and ending on June 30, 2013, to \$14,500,000.

In addition, limit the maximum amount of jobs tax credits that could be claimed in a year to \$5,000,000, rather than \$10,000,000 as provided under the Governor's recommendation and the Joint Finance version of the budget.

[Act 28 Sections: 620, 1540d, 1569, 1593b, 1598d, 1625d, 1654, 1677b, 1688d, 1702d, 1720, 1741b, 1873d, 3070, 9110(6)&(7), and 9443(11)]

32. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAXES -- BEGINNING FARMER AND FARM ASSET OWNER TAX CREDITS [LFB Paper 368]

Governor/Legislature: Create a refundable beginning farmer tax credit and a refundable farm asset owner tax credit under the state individual income and corporate income and franchise taxes, including the individual income minimum tax, for tax years beginning after December 31 2010.

The beginning farmer tax credit would equal the amount paid by the beginning farmer to enroll in a financial management program in the year to which the claim related. The credit could be claimed on one-time basis, and the maximum credit that could be claimed would be \$500. If the allowable amount of the claim exceeded the income taxes otherwise due on the beginning farmer's income, the amount of the claim not used as an offset against those taxes would be certified by DOR to DOA for payment to the claimant by check, share draft, or other draft from a newly-created GPR sum-sufficient appropriation.

The farm asset owner tax credit would equal 15% of the lease amount received by an established farmer in the year to which the claim related. The credit could only be claimed for the first three years of any lease of the established farmer's assets to a beginning farmer. If the allowable amount of the credit claim exceeded the income taxes otherwise due on the established farmer's income, the amount of the claim not used as an offset against those taxes would be certified by DOR to DOA for payment to the claimant by check, share draft, or other draft from the sum-sufficient GPR appropriation created for payment of beginning farmer and farm asset owner tax credits (described above).

Partnerships, LLCs, and tax-option corporations could not claim the farm asset owner tax credit, but the eligibility for, and the amount of the credit would be based on the amounts received by the entities. A partnership, LLC, or tax-option corporation would compute the amount of credit that each of its partners, members, or shareholders could claim and provide that information to each of them. Partners, members of LLCs, and shareholders of tax-option corporations could claim the credit in proportion to their ownership interests.

Tax credits would have to be claimed within four years of the due date for the claimant's tax return. Along with an income tax return, a claimant would be required submit to DOR the certificate of eligibility provided to the claimant by the Department of Agriculture, Trade, and Consumer Protection (DATCP). A part-year resident or a nonresident could not claim the credit. The right to file a tax credit claim would be personal to the claimant, and would not survive the claimant's death. However, if a claimant died after having filed a timely credit claim, the credit would be disbursed to the claimant's personal representative, or surviving relative as provided under current law. The right to file a claim could be exercised on behalf of a living claimant by the claimant's legal guardian or attorney-in-fact.

Current law provisions related to change of ownership and timely filing of claims would apply to the beginning farmer and farm asset owner tax credits. DOR would have full power to take administrative action, conduct any procedure, and to proceed as authorized under the state income and franchise tax laws.

In order to claim a tax credit, both a beginning farmer and an established farmer would have to apply to be certified by DATCP, after review of the application. A beginning farmer would be required to include all of the following in an application:

- a. The beginning farmer's name and address.
- b. Information showing that the beginning farmer met the definition of a "beginning farmer".
- c. A business plan that included a current balance sheet and projected balance sheets for three years, cash flow statements, and income statements along with a detailed description of all significant accounting assumptions used in developing the financial projections.
- d. A description of the beginning farmer's education, training, and experience in the type of farming in which the beginning farmer used the leased agricultural assets.
- e. A copy of the beginning farmer's completed federal profit or loss from farming form, schedule F, or other documentation approved by DATCP.
- f. Any other information required by DATCP.

To claim the beginning farmer educational credit, the beginning farmer would be required to include in the application, a description of the financial management program completed and a statement of the amount that the beginning farmer paid the educational institution to enroll in the financial management program. DATCP would provide a beginning farmer with a certificate of eligibility for the educational credit, if the Department had issued a certificate of eligibility for the experienced farmer from whom the beginning farmer leased farm assets, and the information provided regarding the financial management program showed that the beginning farmer had completed the program.

An individual would be a beginning farmer if, at the time the individual submitted an application, all of the following applied: (a) the individual had a net worth of less than \$200,000; (b) the individual had farmed for fewer than 10 years out of the preceding 15 years; (c) the individual had entered into a lease for a term of at least three years with an established farmer for the use of the established farmer's agricultural assets; and (d) the individual used the leased agricultural assets for farming.

An established farmer would be required to include in the application for certification the established farmer's name and address, information showing that the established farmer met the definition of established farmer, a description of the leased agricultural assets and their location, a copy of the lease, and any other information required by DATCP. The Department would provide an established farmer with a certificate of eligibility for the farm asset owner tax credit if all of the following applied: (a) the established farmer's application included the required information; (b) the beginning farmer's application included the required information; and (c) DATCP determined that the business plan submitted and the education, training, or experience described in the beginning farmer's application showed that the beginning farmer

has sufficient resources and education, training, or experience for the type of farming in which the beginning farmer used the leased agricultural assets.

A person would be an established farmer if, at the time the person submitted an application, all of the following applied: (a) the person has engaged in farming for a total of at least 10 years; (b) the person owned agricultural assets; and (c) the person had entered into a lease for a term of at least three years with a beginning farmer for the use of the person's agricultural assets by the beginning farmer.

DATCP would be authorized to approve providers of courses in farm financial management for the purposes of the beginning farmer educational tax credit. The Department could also assist beginning farmers in developing business plans and in the negotiation of leases of farm assets that could enable persons to qualify for tax credits.

"Agricultural asset" would mean machinery, equipment, facilities, or livestock that was used in farming. An "educational institution" would include the Wisconsin Technical College System, the University of Wisconsin-Extension, the University of Wisconsin-Madison, or any other institution that would be approved by DATCP. The definition of "farming" would be referenced to the Internal Revenue Code and would mean the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. "Financial management program" would mean a course in farm financial management that was offered by an educational institution.

Because the tax credits would first apply to tax years beginning after December 31, 2010, there would not be a fiscal effect during the 2009-11 biennium. However, the tax credits would reduce individual and corporate income and franchise revenues by an estimated \$700,000 in 2011-12, and \$1,000,000 annually thereafter.

Under current law, gross business income is income that is generated by a taxpayer in the active conduct of a trade or business. Business income includes gross profit, dividends, interest, rents, royalties, capital gains or losses, and other income.

Under current law, an individual can deduct the costs of qualifying work-related education as a business expense if it meets one of the following two tests: (a) the education is required by an employer or the law to keep the individual's present salary, status, or job; or (b) the education maintains or improves skills needed in the individual's present work. However, even if the education meets one or both of these tests, it is not qualifying work-related education if it: (a) is needed to meet the minimum educational requirements of the individual's present trade or business; or (b) is part of a program of study that will qualify the individual for a new trade or business.

[Act 28 Sections: 627, 1540d, 1584, 1589b, 1593b, 1598d, 1625d, 1667, 1677b, 1686, 1702d, 1733, 1741b, 1873d, and 1974]

**33. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAXES --
DEFINITION OF AIR CARRIER [LFB Paper 369]**

	Governor (Chg. to Base)	Legislature (Chg. to Gov)	Net Change
GPR-REV	\$8,000,000	-\$8,000,000	\$0

Governor: Provide that "air carrier" would be defined as a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation, under the state individual income and corporate income and franchise taxes. As a result, certain corporations engaged in air transportation activities would be required to use the single sales factor apportionment formula. This provision would increase state income and franchise tax revenues by an estimated \$4,000,000 annually.

Under current law, for state income and franchise tax purposes, most corporations, insurance companies, nonresident individuals, estates, and trusts apportion income to Wisconsin using a single sales factor apportionment formula. However, certain types of businesses, including interstate air carriers, are required to use different apportionment formulas to determine net taxable income. Specifically, the apportionable income of interstate air carriers is apportioned to Wisconsin on the basis of a ratio obtained by taking the arithmetical average of the following three ratios:

- a. Ratio of aircraft arrivals and departures in state to total aircraft arrivals and departures.
- b. Ratio of revenue tons handled at airports in state to total revenue tons handled.
- c. Ratio of originating revenue in state to total originating revenue.

No specific definition of "air carrier" is provided under current law.

Joint Finance: Delete the Governor's recommendation and, instead, define "air carrier" to mean a person who provides or offers to provide air transportation and whose business is 51% or more the provision of air transportation during the tax year. "Air carrier" would not include an air freight forwarder, or an aircraft lessor.

Senate/Legislature: Delete provision.

34. KENOSHA DEVELOPMENT OPPORTUNITY ZONE

Joint Finance/Legislature: Require the Department of Commerce to designate an area in the City of Kenosha as a development opportunity zone that would exist for five years. Any business that located and conducted activity in the zone would be eligible to claim the development zone environmental remediation and jobs tax credit and the development zone capital investment tax credit, and the maximum amount of tax credits that could be claimed by

businesses in the zone would be \$5.0 million. In order to claim tax credits, a business that conducts economic activity in the Kenosha development opportunity zone would have to submit a project plan to Commerce, and comply with other statutory provisions governing development opportunity zones. Commerce could extend the zone an additional five years, and provide an additional \$5.0 million in tax credits, if it would support economic development in the city. There would be an estimated minimal revenue loss in the 2009-11 biennium. The \$5 million in tax credits would be claimed over the next two biennia.

[Act 28 Sections: 3092g, 3092r, 3110e, 3110h, and 3110p thru 3110y]

35. JANESVILLE DEVELOPMENT OPPORTUNITY ZONE

Joint Finance/Legislature: Require the Department of Commerce to designate an area in the City of Janesville as a development opportunity zone that would exist for five years. Any business that located and conducted activity in the zone would be eligible to claim the development zone environmental remediation and jobs tax credit and the development zone capital investment tax credit, and the maximum amount of tax credits that could be claimed by businesses in the zone would be \$5.0 million. In order to claim tax credits, a business that conducts economic activity in the Janesville development opportunity zone would have to submit a project plan to Commerce, and comply with other statutory provisions governing development opportunity zones. Commerce could extend the zone an additional five years, and provide an additional \$5.0 million in tax credits, if it would support economic development in the city. There would be an estimated minimal revenue loss in the 2009-11 biennium. The \$5 million in tax credits would be claimed over the next two biennia.

[Act 28 Sections: 3092g thru 3110b, 3110h, 3110L, and 3110r thru 3110y]

36. DELAY COMMUNITY REHABILITATION PROGRAM TAX CREDIT EFFECTIVE DATE

GPR-REV	\$6,600,000
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Joint Finance/Legislature: Delay implementation of the community rehabilitation program tax credit enacted in 2007 Act 20 until tax years beginning on or after July 1, 2011, rather than July 1, 2009, under current law. Act 20 created a community rehabilitation program tax credit equal to 5% of the amount that a claimant pays to a community rehabilitation program to perform work for the claimant's business, pursuant to a contract. The credit will be available under the individual income tax and the corporate income and franchise tax. Under current law, the credit will first apply for tax years beginning on or after July 1, 2009. This provision would delay implementation of the credit by two years, which would result in estimated increased income and franchise tax revenues of \$3,300,000 in 2009-10 and 2010-11.

[Act 28 Sections: 1583d, 1662d, and 1728d]

**37. CORPORATE INCOME AND FRANCHISE TAX -- COMBINED REPORTING
TECHNICAL AND MINOR POLICY MODIFICATIONS**

Joint Finance/Legislature: Make the following modifications to state income and franchise tax provisions related to combined reporting: (a) provide that, in the computation of the business income of the combined group, that combined groups operating wholly in Wisconsin be treated the same as multistate groups in determining modifications for an expanded dividends received deduction, deferral of intercompany gains and losses, application of charitable contribution limitations, and the sharing of net business losses; (b) specify that the definition of doing business in the state is subject to the limitations of federal Public Law 86-272, and that taxpayers that have nexus with the state for any part of the year would be considered to have nexus for the entire year; (c) repeal certain throwback provisions for sales of items other than tangible personal property; (d) clarify that a corporation engaged in a unitary business with one or more other corporations in a commonly controlled group must use combined reporting; (e) modify provisions related to the required duties of designated agents to allow DOR, through administrative rules, to authorize other entities to perform certain duties; (f) delete the requirement that a corporation must be a member of a combined group for 365 days to eliminate dividends paid by that corporation to another combined group member in determining income; and (g) authorize DOR to promulgate administrative rules necessary to conform state treatment of transactions between members of a combined group with those that apply to members of a federal consolidated group.

[Act 28 Sections: 1537, 1538b thru 1539d, 1599d, 1619, 1620b thru 1621e, 1621f thru 1621k, 1621L, 1621m thru 1621r, 1798, and 9343(21b)]

**38. CORPORATE INCOME AND FRANCHISE TAX -- COMBINED
GROUP TAX CREDIT SHARING**

GPR-REV - \$6,000,000

Assembly/Legislature: Provide that, for any year that a corporation that was a member of a combined group had an unused research credit (including the 10% credit related to designing internal combustion engines and the 10% credit for designing and manufacturing certain lighting or building automation systems, or car batteries) and/or research facilities tax credit or credit carry-forward, the corporation could, after using the credit or carry-forward to offset the corporation's own tax liability, use the unused credit or credit carry-forward to offset the tax liability of all the other members of the combined group, on a proportionate basis. If the corporation was not included in the combined group, the corporation could only apply unused tax credits to that corporation's tax liability, unless otherwise provided by DOR by rule. This provision would apply to tax years beginning on or after January 1, 2009, and would reduce corporate income and franchise tax revenues by an estimated \$3,000,000 in 2009-10 and 2010-11.

[Act 28 Sections: 1621km, 1621Ld, and 9343(21b)]

39. CORPORATE INCOME AND FRANCHISE TAX -- ELECTION TO INCLUDE MEMBERS OF CONTROLLED GROUP IN COMBINED REPORT

Assembly/Legislature: Authorize the designated agent of a combined group to elect, without first obtaining written approval from DOR, to include in its combined group every corporation in its commonly controlled group, regardless of whether those corporations are engaged in the same unitary business as the designated agent. Corporations included in the combined group through this election would be required to use combined reporting only to the extent required under current law provisions that specify the corporations required to use combined reporting. The commonly controlled group would have to calculate its Wisconsin income and apportionment factors under current law combined reporting provisions. All income of all members of the commonly controlled group would be required to be treated as apportionable income for the purposes of the combined report, regardless of whether or not the income would be subject to apportionment, or be allocable to a particular state, in the absence of an election to include all members of the commonly controlled group in the combined group.

The election to include all members of a commonly controlled group in the combined group would have to be executed by the designated agent on an original, timely filed combined report for the group. Any corporation that was included in the commonly controlled group subsequent to the year of election would be considered as having waived any objection to being included in the group's combined report.

An election to include all members of a commonly controlled group in a combined report would be effective for 10 years, and could be renewed for an additional 10 years without prior written approval by DOR, after the election had been effective for 10 years. The renewal would have to be made on an original, timely filed return for the first tax year after the first 10-year election period was completed. An election that was not renewed would be revoked, and could not be renewed for the following three years. DOR would be authorized to disregard the tax effect of an election, or disallow an election, for any controlled group member, if DOR determined the election was for tax avoidance purposes.

This provision would apply to tax years beginning on or after January 1, 2009.

[Act 28 Sections: 1621eb and 9343(21b)]

40. INDIVIDUAL AND CORPORATE INCOME AND FRANCHISE TAX -- BIODIESEL FUEL PRODUCTION TAX CREDIT

GPR-REV	\$2,600,000
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Conference Committee/Legislature: Delay the effective date for the biodiesel fuel production tax credit, under the state individual income and corporate income and franchise taxes, to apply to tax years beginning after December 31, 2011, and before January 1, 2015. This would increase state individual income and corporate income and franchise tax collections by an estimated \$800,000 in 2009-10 and \$1,800,000 in 2010-11. Under current law, the credit is equal to 10 cents per gallon of biodiesel fuel produced by biodiesel fuel producers in the state

that produce at least 2.5 million gallons of biodiesel fuel per year. The maximum credit that can be claimed is \$1,000,000. Under current law, the credit is effective for tax years beginning after December 31, 2009, and before January 1, 2013.

[Act 28 Sections: 1554d, 1643d, and 1709d]

41. DAIRY MANUFACTURING FACILITIES INVESTMENT TAX CREDIT

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	- \$14,000	- \$71,800	- \$85,800

Governor: Reduce funding for the refundable dairy manufacturing facilities tax credit by \$7,000 annually as part of 1% across-the-board budget reductions.

Joint Finance/Legislature: Delete an additional \$35,900 annually relating to increased across-the-board budget reductions. The reductions are generally equivalent to 5.135% of base level funding. Total annual funding of \$657,100 would remain for tax credit claims.

General Sales and Use Tax

1. SALES AND USE TAX TREATMENT OF DISREGARDED ENTITIES [LFB Paper 375]

GPR-REV \$40,800,000

Governor: Provide that a single-owner entity that is disregarded as a separate entity for income or franchise tax purposes would also be disregarded as a separate entity for sales and use tax purposes. The proposal would become effective on the day after publication of the budget bill. Assuming an effective date of July 1, 2009, the administration estimates that the proposal would increase sales and use tax revenue by \$19,800,000 in 2009-10 and \$21,000,000 in 2010-11.

A disregarded entity is a separate entity from its owner, but the disregarded entity and its owner are treated as a single entity for income or franchise tax purposes. Businesses may establish separate entities from their owners, such as single-member limited liability companies, for liability reasons; so that if the business is sued, the owner would not be liable for the lawsuit. The owner then chooses to disregard these separate entities for the purposes of the business owner's income or franchise tax return.

Under current law, the owner of a single-owner entity that is disregarded as a separate entity for purposes of the income or franchise tax is regarded as a separate entity for purposes

of the sales and use tax. According to the Department of Revenue, separate entity treatment under the sales and use tax for disregarded entities has encouraged some businesses to engage in a number of tax avoidance strategies, some of which have become common practice. Some examples are described below:

Separate Transportation Companies. An owner entity may create a separate transportation company solely to haul products for the owner. In the absence of the separate company, the owner would owe tax on its purchases of trucks, trailers, and other hauling equipment. However, the separate transportation company would qualify for the sales tax exemption for vehicles purchased by common or contract carriers.

Sales for Resale. The sales and use tax is imposed on sales at retail. Purchases of merchandise by sellers for resale are exempt from the tax. DOR indicates that business owners may establish a separate entity to purchase items for resale to the owner for \$1, which results in the sales tax being imposed on the final sale for \$1 rather than on the original purchase price of the items.

Construction Contractors. Under current law, construction contractors are required to pay the sales tax on materials they purchase and use in real property construction, even if the structure is sold to a governmental unit or other exempt entity. DOR indicates that contractors may create separate supply companies that purchase the materials and then resell them to the exempt entity for which the structure is being built. Such arrangements result in the materials remaining untaxed since the supply company purchases the materials without tax for resale, and the sale of the materials to the exempt entity is not taxable.

The Governor's proposal would eliminate the ability of parent companies to avoid the sales and use tax for these types of purchases made by subsidiary entities which are disregarded for purposes of the income or franchise tax.

Joint Finance/Legislature: Approve the Governor's proposal with modifications to include the following transitional provisions requested by the Department of Revenue:

- a. Clarify that purchases made prior to the effective date of the disregarded entity provisions would be treated as provided under current law.
- b. Specify that purchases of building materials, if the materials are affixed and made a structural part of real estate and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the disregarded entity provisions, or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before the effective date of the disregarded entity provisions, would not be subject to the proposed change in sales tax treatment.

The intent of these modifications is to prevent the sales and use tax from being imposed on purchases made prior to the effective date of the disregarded entity provisions, and to prevent the imposition of the sales tax on purchases made pursuant to contracts which were

agreed upon and cannot be rebid on to account for the entity's proposed change in tax treatment.

[Act 28 Sections: 1833, 1833b, 1855, 1855b, and 9443(9d)]

2. SEPARATE SALES TAX RETURNS FOR DISREGARDED ENTITIES

Governor/Legislature: Provide that owners of disregarded entities for purposes of the income or franchise tax may elect to file separate electronic sales and use tax returns for each disregarded entity. Under the proposal, if an owner of more than one entity that is disregarded as a separate entity under the income or franchise tax elects to file a separate sales tax return for one disregarded entity, the owner would have to file separate returns for all of its disregarded entities. Under current law, the owner of entities that are disregarded for purposes of the income or franchise tax must file a single sales and use tax return including all entities. The provision would become effective on the first day of the third month beginning after publication of the budget bill. The administration estimates that the provision would have a minimal fiscal effect.

According to DOR, the process of compiling the necessary information by an owner from each of its disregarded entities can be burdensome for an owner that has a relatively large number of disregarded entities, but a relatively small tax department. The proposal would allow a business owner of a disregarded entity the flexibility to either file a single sales and use tax return that includes all of its disregarded entities, or to file separate a sales and use tax return for each disregarded entity.

[Act 28 Sections: 1852, 1852b, and 9443(9)&(14q)]

3. SALES AND USE TAX DEFINITION OF NEXUS [LFB Paper 376]

GPR-REV \$3,000,000

Governor/Legislature: Expand the definition of nexus for purposes of the sales and use tax to include certain businesses that have affiliates in this state.

Under current law and administrative rule, a state may not require a seller to collect and remit sales and use taxes unless the seller has a sufficient business connection (or "nexus") with the state, which is generally established by the seller having a physical presence in the state. In Wisconsin, a seller has nexus if it does any of the following: (a) owns real property in the state; (b) leases or rents out tangible personal property located in this state; (c) maintains, occupies, or uses a place of business in this state; (d) has any representative or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property or taxable services; (e) services, repairs, or installs equipment or other tangible personal property in Wisconsin; (f) delivers goods into this state in company operated vehicles; or (g) performs construction activities in this state.

The Department of Revenue reports that under current law, certain separate affiliates of brick and mortar businesses in this state do not collect and remit the sales and use tax on their Internet sales to Wisconsin residents, even if the purchase is made from a computer located at the Wisconsin store. Certain businesses provide in-store kiosks for the purchase of online sales from a store's out-of-state affiliate. These brick and mortar businesses accept returned merchandise on the affiliate's behalf, and provide in-store credit for the dollar amount of the returned affiliate's merchandise. Current law provides that an Internet retailer is engaged in business in this state if an affiliate who has nexus with Wisconsin performs specified services on its behalf [item (d) above]; however, current law does not clearly subject these types of transactions by an online affiliate to the sales and use tax.

Under the Governor's proposal, nexus would be extended to specifically include any person who has an affiliate in this state, if the person is related to the affiliate and if the affiliate uses facilities or employees in this state to advertise, promote, or facilitate the establishment of or market for sales of items by the related person to purchasers in this state or for providing services to the related person's purchasers in this state, including accepting returns of purchases or resolving customer complaints. For purposes of this provision, two persons would be "related" if any of the following apply:

- a. One person, or each person, is a corporation and one person and any person related to that person in a manner that would require a stock attribution from the corporation to the person or from the person to the corporation, as defined under federal law, owns directly, indirectly, beneficially, or constructively at least 50% of the corporation's outstanding stock value.
- b. One person, or each person, is a partnership, estate, or trust and any partner or beneficiary; and the partnership, estate, or trust and its partners or beneficiaries; own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of the profits, capital, stock, or value of the other person or both persons.
- c. An individual stockholder and the members of the stockholder's family, as defined under federal law, owns directly, indirectly, beneficially, or constructively, in the aggregate, at least 50% of both persons' outstanding stock value.

The Governor's proposal would become effective on the day following publication of the budget bill. Based on the administration's estimates and assuming an effective date of July 1, 2009, the proposal would increase use tax revenue by \$1,500,000 in 2009-10 and in 2010-11.

[Act 28 Section: 1836]

4. SALES AND USE TAX ON TOWING AND HAULING OF MOTOR VEHICLES

Governor/Legislature: Create a statute to specifically impose the sales and use tax on the towing and hauling of motor vehicles.

Under current law, the sales tax is applicable to certain services including "towing... of all items of personal tangible property," which includes the towing of motor vehicles. The current sales tax statutes do not include a definition for the word "tow." Therefore, the dictionary definition must be used to define that term. Based on dictionary definitions for "tow," DOR has determined that the term only includes those motor vehicle towing services which "draw or pull along behind by a chain or line..." Based on the dictionary definition, DOR has determined that current law does not allow the sales tax to be imposed on services that "haul," or drive a car onto a flatbed "tow" truck and "haul" a vehicle to a repair facility. The Department indicates, with input from industry members, that hauling rather than towing an automobile from an accident has become the industry standard because of modern vehicles' "...fragile fiberglass fascia and plastic body panels..." Most towing service providers currently collect the sales tax for hauling motor vehicles, but they may not be required to under the current statutory language.

The Governor's proposal would specify that both the hauling and towing of motor vehicles would be subject to the sales and use tax. The proposal would take effect on the day after publication of the budget bill. The proposal would preserve the sales tax collection of an estimated \$2,400,000 in 2009-10 and \$2,500,000 in 2010-11 related to flatbed hauling of motor vehicles. If the proposal is not adopted, the state could eventually lose these revenues.

[Act 28 Sections: 1839, 1839b, and 9443(14q)]

5. SALES TAX EXEMPTION FOR ADMISSION TO YOUTH LEAGUE SPORTS

Governor/Legislature: Create an exemption from the sales and use tax for admissions sold by nonprofit organizations to participate in any sports activity in which more than 50% of the participants are of age 19 or younger. The proposal would become effective on the day following publication of the bill, and is expected to have a minimal fiscal effect.

Under current law, the state sales and use tax is generally imposed on the sale of admissions to amusement, athletic, entertainment, or recreational events.

[Act 28 Sections: 1837 and 1838]

6. SALES TAX DEFINITION OF MANUFACTURING

Governor/Legislature: Modify certain sales and use tax exemptions for tangible personal property or services consumed in the process of manufacturing. The proposal would take effect on the first day of the second month beginning after publication of the budget bill.

Background. Under current law, exemptions from the sales and use tax related to manufacturing include: (a) property that becomes an ingredient or component or that is consumed or destroyed in the process of manufacturing tangible personal property that is subsequently sold; (b) fuel and electricity consumed in manufacturing tangible personal

property in Wisconsin; (c) manufacturing machinery and equipment (including safety attachments); and (d) packing and shipping materials and containers used to transfer merchandise to customers or to pack or ship meat products.

For purposes of the exemption for machinery and equipment [item (c) above], current law defines manufacturing as the production by machinery of a new article with a different form, use, and name from existing materials by a process popularly regarded as manufacturing. "Manufacturing" includes, but is not limited to: crushing, washing, grading, and blending sand, rock, gravel, and other minerals; ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including but not limited to the preparation of ore for smelting.

According to DOR, the proposed modifications to current law would clarify the statutory definition of "manufacturing" to reflect current practices under administrative rule. The provisions would prevent manufacturers from claiming the exemption for tangible personal property that is consumed indirectly within the scope of manufacturing. The provision would help DOR minimize potential litigation time and resources challenging manufacturing sales tax exemption claims for items indirectly used in the scope of manufacturing, such as brooms and mops purchased by janitorial services hired by manufacturers or pens and pencils purchased by a manufacturer's accounting department.

Definition of "Manufacturing." The Governor's proposal would create the following two definitions relating to the process of manufacturing:

"Plant" would mean a parcel of property or adjoining parcels of property, including parcels that are separated only by a public road, and the buildings, machinery, and equipment that are located on the parcel, that are owned by or leased to the manufacturer.

"Plant inventory" would not include unsevered mineral deposits.

The proposal would amend the current definition of "manufacturing" to mean the production by machinery of a new article of tangible personal property with a different form, use, and name from existing materials by a process popularly regarded as manufacturing, and that begins with conveying raw materials and supplies from plant inventory to the place where work is performed in the same plant and ends with conveying finished units of tangible personal property to the point of first storage in the same plant.

As under current law, "manufacturing" would specifically include: (a) crushing, washing, grading, and blending sand, rock, gravel, and other minerals; and (b) ore dressing, including the mechanical preparation, by crushing and other processes, and the concentration, by flotation and other processes, of ore, and beneficiation, including the preparation of ore for smelting.

In addition, the bill would specify that "manufacturing" includes conveying work in progress directly from one manufacturing process to another in the same plant; testing or inspecting, throughout the manufacturing process, the new article of tangible personal property

that is being manufactured; storing work in progress in the same plant where the manufacturing occurs; assembling finished units of tangible personal property; and packaging a new article of tangible personal property, if the manufacturer, or another person on the manufacturer's behalf, performs the packaging and if the packaging becomes part of the new article as it is customarily offered for sale by the manufacturer.

Under the bill, "manufacturing" would specifically not include storing raw materials or finished units of tangible personal property, research or development, delivery to or from the plant, or repairing or maintaining plant facilities.

Under the Governor's proposal, the new definition of "manufacturing" would apply to all of the sales tax exemptions, not just the exemption for machinery and equipment. The administration indicates that this change would not significantly affect the application of other current exemptions.

Exemption for Inputs for Manufacturing. Current law provides an exemption from the sales tax for the gross receipts from the sales of and the storage, use, or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property destined for sale. Under the Governor's proposal, the exemption would only apply if the tangible personal property that becomes an ingredient or component part were used exclusively and directly by a manufacturer in manufacturing an article of tangible personal property. The proposal would also incorporate current administrative rules as statutory law by requiring that the tangible personal property inputs would only be exempt if the manufactured article were destined for sale.

Exemption for Shoppers Guides, Newspapers, and Periodicals. Current law provides an exemption from the sales tax for the gross receipts from the sale of and the storage, use, or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers, or periodicals or that are consumed or lose their identity in the manufacture of such publications, whether or not the publications are transferred without charge to the recipient. Under the Governor's proposal, the sales tax exemption would only apply if the tangible personal property and services that were to become an ingredient or component of shoppers guides, newspapers, or periodicals were used exclusively and directly by a manufacturer in manufacturing such publications.

[Act 28 Sections: 1571, 1643, 1709, 1830f thru 1832b, 1834, 1835, 1842 thru 1843c, 1843g thru 1846, and 9443(5f)&(14q)]

7. SALES AND USE TAX EXEMPTIONS FOR BIOTECHNOLOGY AND MANUFACTURING RESEARCH [LFB Paper 377]

Governor: Create exemptions from the sales and use tax for purchases of: (a) machinery and equipment, including attachments, parts, and accessories, that are sold to persons who are

engaged primarily in manufacturing or biotechnology in this state and are used exclusively and directly in qualified research; and (b) tangible personal property that is sold to persons who are engaged primarily in manufacturing or biotechnology in this state, if the property is consumed, destroyed, or loses its identity while being used exclusively and directly in manufacturing or biotechnology qualified research.

The Governor's proposal would create the following definitions to specify what activities would relate to qualified research in biotechnology and manufacturing:

"Biotechnology" would mean the application of biotechnologies, including recombinant deoxyribonucleic acid techniques, biochemistry, molecular and cellular biology, genetics, genetic engineering, biological cell fusion, and other bioprocesses, that use living organisms or parts of an organism to produce or modify products to improve plants or animals or improve animal health, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

"Primarily" would mean more than 50%.

"Qualified research" would mean research undertaken for the purpose of discovering information which is technological in nature, and the application of which was intended to be useful in the development of a new or improved business component of the taxpayer.

"Used exclusively" would mean used to the exclusion of all other uses except for other use not exceeding 5% of total use.

As under the current property tax statutes, "machinery" would mean a structure or assemblage of parts that transmits forces, motion, or energy from one part to another in a predetermined way by electrical, mechanical, or chemical means, but "machinery" would not include a building.

"Manufacturing" would be defined as described in the previous entry.

The proposal would become effective January 1, 2012. There is no fiscal effect for the 2009-11 biennium. The exemption is estimated to reduce sales tax revenue by \$5,000,000 in 2011-12 and \$10,000,000 in 2012-13 and annually thereafter.

[An amendment would be required to achieve the administration's intent to refer to the new definition of "manufacturing" proposed under the bill and described in the previous entry.]

Joint Finance: Approve the Governor's provisions. In addition, provide a technical modification to the definition of "manufacturing" for purposes of this provision to refer to the definition of "manufacturing" as modified under the budget bill, and reestimate reduced sales and use tax revenues under the provisions at \$13 million per year, beginning January 1, 2012.

Senate: In addition to the Joint Finance provisions, create new sales and use tax

exemptions for:

a. Machines and specific processing equipment, including accessories, attachments, and parts for the machines or equipment, that are used exclusively and directly in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity in qualified research or manufacturing;

b. Tangible personal property used exclusively and directly in raising animals that are sold to a biotechnology business, a public or private institution of higher education, or a governmental unit for exclusive and direct use by any such entity that is primarily engaged in qualified research in biotechnology or manufacturing, including: (i) sales of certain tangible personal property the sales of which are currently exempt when used in the business of farming (seeds for planting, plants, feed, fertilizer, soil conditioners, animal bedding, sprays, pesticides, fungicides, breeding other livestock, poultry, farm work stock, baling twine and baling wire, containers for fruits, vegetables, grain, hay silage, animal wastes, and plastic bags, sleeves, and sheeting used to store or cover hay or silage); (ii) medicines; (iii) semen for artificial insemination; (iv) fuel; and (v) electricity; and

c. Animals that are sold to a biotechnology business and used exclusively and directly in qualified biotechnology research.

Define "animals" to include bacteria, viruses, and other microorganisms. Define "biotechnology business" to mean a business, as certified by DOR in the manner prescribed by the Department, that is primarily engaged in the application of biotechnologies that use a living organism or parts of an organism to produce or modify products to improve plants or animals, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

These additional exemptions would take effect on January 1, 2012, and are expected to reduce revenues by a minimal amount.

Conference Committee/Legislature: Approve the Senate provisions except for the proposed exemption under "c" for animals sold to a biotechnology business.

[Act 28 Sections: 1851 and 9443(12)]

8. SALES TAX EXEMPTION FOR NATIVE AMERICAN PURCHASERS [LFB Paper 378]

Governor/Legislature: Create an exemption from the sales and use tax for purchases made by any federally recognized American Indian tribe or band in this state. This provision would become effective the first day of the second month beginning after publication of the bill, and is estimated to reduce sales tax revenues by a minimal amount.

[Act 28 Sections: 1848 and 9443(8)]

9. USE TAX CREDIT FOR PURCHASES MADE ON NATIVE AMERICAN LANDS [LFB Paper 683]

Governor: Provide a credit against the use tax equal to the amount of sales, use, or excise tax paid to a federally recognized American Indian tribe or band if the purchase, rental, or lease of tangible personal property or service occurred on tribal lands.

Under current law, if the purchase, rental, or lease of tangible personal property or service subject to the 5% use tax was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid to the other state is applied as a credit against and deducted from the use tax owed to this state. The Governor's proposal would provide a similar credit for the amount of sales, use, or excise tax paid to a federally recognized American Indian tribe or band. The proposal would become effective on the day after publication of the budget bill. The administration estimates that the proposal would reduce use tax revenues by a minimal amount.

According to DOR, no tribes in this state impose a sales tax; however, certain tribes in this state do impose room taxes. Tribes in other states (such as Minnesota, North Dakota, and South Dakota) currently impose a sales tax, and some Wisconsin tribes have expressed interest in adopting and imposing a sales tax on sales that occur on tribal lands. The proposal would allow for a credit against the use tax owed to Wisconsin for any future sales, use, or excise tax paid to any federally recognized American Indian tribe or band.

Joint Finance/Legislature: Modify the Governor's provision to: (a) only allow the proposed use tax credit as determined by an agreement between DOR and the tribal council; and (b) clarify that the credit would only apply if the tribal tax was imposed prior to imposition of the use tax. The intent of these provisions is to ensure that any revenue-sharing agreements between the state and the tribes will not result in double-taxation of state residents if the agreements include a tribal sales, use, or excise tax.

[Act 28 Sections: 1815, 1841, 1841b, and 9443(14q)]

10. STREAMLINED SALES AND USE TAX AGREEMENT MODIFICATIONS [LFB Paper 379]

Joint Finance/Legislature: Adopt a number of technical modifications to the sales and use tax statutes. These provisions are intended to reconcile various provisions in AB 75 with legislation enacted pursuant to 2009 Wisconsin Act 2, which will take effect October 1, 2009. Several provisions modify technical changes to the statutes that were not addressed in Act 2.

[Act 28 Sections: 1830b thru 1830f, 1831b, 1832b, 1833b, 1835e, 1835f, 1836c, 1836d, 1836f thru 1836j, 1839b thru 1840h, 1841b, 1841d, 1842d, 1843c thru 1843g, 1846d thru 1846f, 1849b thru 1849d, 1849s, 1850b thru 1850e, 1850ef, 1851e thru 1851h, 1852b thru 1852g, 1853d, 1855b, 1855d, 1858b, 1864m, 1874b, 1887b, 1889d, 9143(3q), and 9443(14a)&(14q)]

11. RETAILER'S DISCOUNT

	Jt. Finance (Chg. to Base)	Legislature (Chg. to JFC)	Net Change
GPR-REV	\$8,100,000	\$2,600,000	\$10,700,000

Joint Finance: Impose a \$1,000 limit on the amount a retailer may deduct under the retailer's discount for filing a sales and use tax return with DOR. Specify that the provision would first apply to sales and use taxes that are payable on the last day of the first month following the first calendar quarter that begins after the budget bill's general effective date.

Under current law, sales tax returns and payments are generally due on a quarterly basis, but the Department may require sellers with a quarterly liability exceeding \$600 to report monthly, due on the last day of the next month. Sellers with a quarterly liability exceeding \$3,600 may be required to report monthly, due on the 20th day of the next month. Retailers with a sales and use tax liability of \$300 or less have the option of filing annually. The Department may also permit a different reporting period. Sellers may deduct the retailer's discount from taxes due as compensation for administrative costs equal to the greater of \$10 or 0.5% of the tax liability per reporting period, but not more than the amount of tax actually payable. If reports and payments are delinquent, the discount is forfeited.

The provision would provide that for each filing, a retailer would not be permitted to deduct more than \$1,000 under the retailer's discount. The provision would limit the maximum discount a retailer could receive if the retailer remits in excess of \$200,000 of sales and use tax revenue per filing.

The provision would first apply to sales and use taxes that are payable on the last day of the first month following the first calendar quarter that begins after the budget bill's general effective date. Therefore, if the bill takes effect in July, 2009, the provision would first apply to taxes payable on January 31, 2010. According to information provided by DOR and assuming an effective date of January 31, 2010, the provision would reduce the retailer's discount by an estimated \$2,600,000 in 2009-10, and by \$5,500,000 in 2010-11. As a result, it is estimated that state sales tax collections would increase by the same amounts.

Conference Committee/Legislature: Make the Joint Finance provision first apply to sales and use taxes payable August 1, 2009. As compared to the Joint Finance provision, the new effective date would reduce the retailer's discount by an estimated \$2,600,000 in 2009-10. As a result, it is estimated that state sales tax collections would increase by the same amount.

[Act 28 specifies that this provision first applies to sales and use taxes payable on August 1, 2009. However, the provision amends a current statute, pursuant to 2009 Act 2, which will take effect on October 1, 2009. Due to the effective date of Act 2, DOR has interpreted the provision to first apply to sales and use taxes payable on October 1, 2009. The later effective date is estimated to reduce tax revenue by \$900,000 in 2009-10 as compared to the revenue estimates described above.]

[Act 28 Sections: 1852m and 9343(21f)]

12. SALES AND USE TAX EXEMPTION FOR FUEL USED BY CHARTERED FISHING VESSELS

Joint Finance/Legislature: Create a sales and use tax exemption for fuel consumed by boats during business associated with chartered fishing by persons possessing a sport trolling license. It is estimated that this provision would reduce state sales and use tax revenue by a minimal amount. The provision would take effect on the first day of the second month beginning after publication of the budget bill.

[Act 28 Sections: 1849m and 9443(8d)]

13. SALES TAX EXEMPTIONS FOR ALTERNATIVE ENERGY -- DELAYED EFFECTIVE DATE

GPR-REV	\$2,600,000
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Conference Committee/Legislature: Delay the effective date of the following two sales and use tax exemptions until July 1, 2011: (a) a product, other than an uninterruptible power source for computers, whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure and other agricultural waste, if the product produces at least 200 watts of alternative current or 600 British thermal units per day; and (b) electricity or energy that is produced from such a product.

Under current law, pursuant to 2007 Act 20, these two sales and use tax exemptions were scheduled to take effect July 1, 2009, and are estimated to reduce revenue by \$1,300,000, annually. Due to the delayed effective date, the estimated reduced tax revenue would not occur until 2011-12.

[Act 28 Sections: 1850ed, 1850ef, and 9443(8bu)&(14q)]

Excise Taxes and Regulation of Alcohol and Tobacco

1. CIGARETTE AND TOBACCO PRODUCTS TAX INCREASE [LFB Paper 385]

	Governor (Chg. to Base)	Jt. Finance (Chg. to Gov)	Legislature (Chg. to JFC)	Net Change
GPR-REV	\$343,600,000	-\$8,400,000	-\$420,000	\$334,780,000
GPR	20,470,000	- 1,670,000	0	18,800,000

Governor: Increase the cigarette tax by \$0.75 per pack (from \$1.77 to \$2.52), increase the general tax rate on tobacco products from 50% of the manufacturer's established list price to 71% of the manufacturer's established list price, increase the maximum allowable tax per cigar

from 50 cents per cigar to 71 cents per cigar, increase the tax on moist snuff from \$1.31 per ounce to \$1.87 per ounce, and create and impose an inventory tax on moist snuff. Specify that the increases would become effective September 1, 2009, or on the first day of the third month beginning after publication of the budget bill, whichever is later.

The cigarette, tobacco products, and moist snuff taxes are excise taxes that are generally imposed on distributors and passed on to the ultimate consumers. Distributors pay the tobacco products tax through monthly returns filed with DOR. The cigarette tax is paid through the purchase of tax stamps from DOR, generally by a manufacturer or distributor. The tax stamp must be affixed to each pack of cigarettes prior to its first sale in the state. Manufacturers and distributors currently receive a 0.7% discount on cigarette tax stamp purchases as compensation for their administrative costs. Under the bill, the manufacturers and distributors discount would be reduced to 0.5%.

The bill would also create an inventory tax on moist snuff that would become effective on the date of any increase in the tax rate. The inventory tax would be calculated by multiplying the difference between the prior tax rate and the new tax rate by the ounces of moist snuff held in inventory for sale or resale on which the moist snuff tax had already been paid. Sellers would be required to file a return and pay the tax due within 30 days of the effective date of the tax increase. Any person who failed to file a moist snuff tax return when due would have to pay a late filing fee of \$10. If any person did not timely pay the inventory tax, that person would be liable for interest at the rate of 1.5% per month or fraction of a month from the date the tax were due until the date when the tax were paid. If any person were to file a false or fraudulent return, that person would also be liable for an amount equal to the amount of tax the person evaded or attempted to evade in addition to the amount of the tax due. These provisions are similar to the current inventory (or "floor") tax on cigarettes.

Under the Governor's proposal, assuming an effective date of September 1, 2009, the administration estimates an increase in cigarette tax revenues of \$153,900,000 in 2009-10 and \$156,500,000 in 2010-11. The administration estimates an increase in tobacco products tax revenue of \$15,200,000 in 2009-10 and \$18,000,000 in 2010-11.

Under current law, for sales of cigarettes that occur on reservations or trust lands, the tribes receive a refund of 100% of the excise tax on cigarettes sold to tribal members and 70% of the tax on sales to non-tribal members. For tobacco products (excluding cigarettes) sold on reservations or trust lands, the tribes receive a refund of 100% of the tax on products sold to tribal members and 50% of the tax on products sold to non-tribal members. The refunds are paid through a sum sufficient GPR appropriation. To account for the proposed tax increases, the bill would increase the estimate of sum sufficient funding required for cigarette and tobacco products tax refunds by \$10,170,000 in 2009-10 and \$10,300,000 in 2010-11.

Joint Finance: Approve the Governor's recommendation with the following modifications:

- a. Decrease the estimated revenue from the tobacco products tax increase by

\$3,700,000 in 2009-10 and \$4,700,000 in 2010-11. With these revisions, the tobacco products tax increase is estimated to generate additional revenues of \$11,500,000 in the first year and \$13,300,000 in the second year.

b. Reduce the estimated additional amount of tribal refunds by \$1,670,000 GPR in 2009-10. With this adjustment, compared to current law, tribal refunds are estimated to increase by \$8,500,000 in 2009-10 and \$10,300,000 in 2010-11 as a result of the tax increases.

c. Specify that the tax increases would take effect on the later of September 1, 2009, or the first day of the second month beginning after publication of the budget bill (rather than the first day of the third month beginning after publication).

Assembly: Delete the provision increasing the maximum tax per cigar from 50 cents to 71 cents and, instead, maintain the current law maximum tax per cigar of 50 cents. As compared to the Joint Finance provisions, tobacco products tax revenue would be reduced by an estimated \$420,000 in 2009-10 and \$500,000 in 2010-11.

Senate: Approve the Assembly provision regarding the tax on cigars. In addition, convert the tax on moist snuff from a weight-based tax at a rate of \$1.87 per ounce to a price-based tax at a rate of 97% of the manufacturer's established list price. Delete provisions related to the imposition of a floor tax on moist snuff. As compared to the Assembly provision, estimated tobacco products tax revenue would increase by \$400,000 in 2009-10 and by \$1,000,000 in 2010-11.

Conference Committee/Legislature: Approve the Senate provisions with a modification to set the price-based tax on moist snuff at a rate of 100% of the manufacturer's established list price rather than 97%. In addition, delete the provision reducing the manufacturers and distributors discount from 0.7% to 0.5% on cigarette tax stamp purchases and, instead, maintain the 0.7% discount rate under current law. As compared to the Senate provision, estimated tobacco products tax revenue would increase by \$700,000 in 2009-10 and \$800,000 in 2010-11 due to the higher tax rate. Under all prior versions of the budget, the manufacturers and distributors discount would have been reduced to 0.5%. As compared to all prior versions of the budget bill, retaining the 0.7% discount would reduce cigarette tax revenues by an estimated \$1,100,000 in 2009-10 and \$1,300,000 in 2010-11.

Effective September 1, 2009, the net results of these provisions are as follows: (a) the cigarette tax will be increased from \$1.77 per pack to \$2.52 per pack; (b) the manufacturers and distributors discount under the cigarette tax will remain at 0.7%; (c) the tax on moist snuff will be converted from a weight-based tax equal to \$1.31 per ounce to a price-based tax equal to 100% of the manufacturer's list price; (d) the tax on all other tobacco products will be increased from 50% of the manufacturers list price to 71%; (e) the maximum tax on cigars will remain at 50 cents per cigar; and (f) there will be no floor tax imposed on moist snuff.

Compared to current law, cigarette tax revenues will increase by an estimated \$152,800,000 in 2009-10 and \$155,200,000 in 2010-11, and tobacco products tax revenues will

increase by an estimated \$12,180,000 in 2009-10 and \$14,600,000 in 2010-11. Tribal refunds will increase by an estimated \$8,500,000 in 2009-10 and \$10,300,000 in 2010-11.

[Act 28 Sections: 2332, 2333, 2392, 2395, and 9443(14)]

2. CIGARETTE AND TOBACCO PRODUCT TAX REFUNDS -- CURRENT LAW REESTIMATE [LFB Paper 386]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$23,700,000	-\$2,800,000	\$20,900,000

Governor: Increase funding for cigarette and tobacco products tax refunds by \$11,500,000 in 2009-10 and \$12,200,000 in 2010-11 to reflect higher estimates of the sum sufficient appropriation amounts required to reimburse Native American tribes under present law.

2007 Act 20 enacted higher tax rates for cigarettes (\$1.77 per pack from \$0.77 per pack) and tobacco products (50% of manufacturer's price and \$1.31 per ounce of moist snuff from 25% of manufacturer's price). The higher taxes took effect on January 1, 2008. In order to account for the impact of the tax increases, funding for tribal refunds was increased from a 2006-07 base level of \$12,200,000 to \$17,800,000 in 2007-08 and \$20,900,000 in 2008-09. However, actual expenditures totaled \$20,300,000 in 2007-08 and are estimated at \$30,700,000 in 2008-09. The Governor's funding amounts for the 2009-11 biennium reflect the higher-than-anticipated expenditures that have occurred since the tax increases took effect.

[As noted in the previous entry, the bill includes another increase in the state excise taxes on cigarettes and tobacco products, and provides \$10,170,000 GPR in 2009-10 and \$10,300,000 GPR in 2010-11 to account for larger tribal refunds associated with the proposed tax increases. With the current-law reestimate described in this entry and the funding associated with the new tax increases, the total amount appropriated under the bill for the tribal refunds would be \$42,570,000 in 2009-10 and \$43,400,000 in 2010-11.]

Joint Finance/Legislature: Reestimate funding for cigarette and tobacco product tax refunds under current law at \$31,000,000 in 2009-10 and at \$31,700,000 in 2010-11. The reestimate reflects lower consumption expectations of cigarette and tobacco products in response to increased federal excise tax rates. The revised estimates are higher than the base funding level by \$10,100,000 in 2009-10 and \$10,800,000 in 2010-11. Compared to the Governor's proposal, the revised estimates decrease funding for the refunds by \$1,400,000 in each year.

[As noted in the previous entry, the bill includes another increase in the state excise taxes on cigarettes and tobacco products, and provides a reestimated increase of \$8,500,000 GPR in 2009-10 and \$10,300,000 GPR in 2010-11 to account for larger tribal refunds associated with the proposed tax increases. With the current-law reestimate described in this entry and the funding associated with the new tax increases, the total amount appropriated under the bill for the tribal

refunds would be \$39,500,000 in 2009-10 and \$42,000,000 in 2010-11.]

3. EXPAND THE NATIVE AMERICAN CIGARETTE AND TOBACCO PRODUCTS TAX REFUNDS [LFB Paper 387]

Governor/Legislature: Authorize the Department of Revenue to provide refunds of state excise taxes on cigarettes and other tobacco products sold by tribal retailers if the land on which the sale occurred was designated a reservation or trust land on or before January 1, 1983, or on a later date as determined by an agreement between DOR and the tribal council. Under current law, DOR may only enter into agreements with, and pay refunds to, tribes whose land was designated a reservation or trust land prior to January 1, 1983. This provision is estimated to increase cigarette and tobacco products refunds by a minimal amount.

[Act 28 Sections: 2338 and 2401]

4. DIRECT MARKETING OF CIGARETTES AND TOBACCO PRODUCTS

Governor: Modify current law with respect to the direct marketing of cigarettes and create provisions to permit and regulate the direct marketing of tobacco products.

Current state law prohibits direct market sales of cigarettes and tobacco products to Wisconsin consumers for sellers that do not hold a valid municipal retail permit for the municipality into which each sale is made. Federal law, under provisions referred to as the Jenkins Act, requires a person who sells and ships cigarettes into another state to anyone other than a licensed distributor to file reports to the state on such sales. Compliance with the federal law is intended to enable states to collect cigarette excise taxes from consumers associated with remote sales, such as sales through the Internet. Federal law provides that a person who violates these provisions is guilty of a misdemeanor and is to be fined not more than \$1,000, or imprisoned for not more than six months, or both. States, however, lack the authority to enforce the Jenkins Act, and it is generally thought to be the case that state excise tax avoidance through Internet purchases of cigarettes is significant.

As provided under 2005 Act 25, the 2005-07 biennial budget, current state law allows cigarette sales to consumers in Wisconsin by direct marketing if a direct marketer fulfills certain requirements (including the requirement described above with respect to municipal retail permits). Current law includes no provisions specifically related to the direct marketing of tobacco products. The Governor's proposal would modify certain provisions related to the direct marketing of cigarettes under current law and would require a direct marketer of cigarettes to obtain a direct marketing permit from the Department of Revenue. The bill would also create provisions to permit and regulate the direct marketing of tobacco products.

Direct Marketing of Cigarettes Under Current Law

Current law specifies that it is an unfair method of competition or an unfair trade practice for any person to sell cigarettes to consumers in this state in violation of the provisions on direct marketing of cigarettes. The following definitions apply to the direct marketing of cigarettes:

a. "Direct marketing" means publishing or making accessible an offer for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes;

b. "Direct marketer" means a bonded direct marketer or a nonbonded direct marketer;

c. "Bonded direct marketer" means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes tax stamps to the packages or other containers, stores them and sells them by direct marketing to consumers for their own personal use, and who may also acquire stamped (taxed) cigarettes from manufacturers or distributors for such sales;

d. "Nonbonded direct marketer" means any person who acquires stamped cigarettes from manufacturers or distributors, stores them, and sells them by direct marketing to consumers for their own personal use.

The cigarette tax is paid through the purchase of tax stamps from DOR, generally by a manufacturer or distributor. The tax stamp must be affixed to each pack of cigarettes prior to its first sale in the state. "First sale" excludes a sale by a manufacturer to a distributor or certain permittees who are allowed to possess unstamped cigarettes (for example, cigarettes sold to post exchanges of the armed forces of the United States and cigarettes sold for shipment outside this state in interstate commerce). In addition, as provided under 2005 Act 25, "first sale" excludes a sale by a manufacturer to a bonded direct marketer, which allows such a direct marketer to purchase unstamped cigarettes and subsequently affix the stamps prior to selling the cigarettes to consumers. However, a nonbonded direct marketer may only acquire stamped cigarettes.

In order to sell to a Wisconsin consumer by direct marketing, a direct marketer is required to submit to DOR the person's name, trade name, address of the person's principal place of business, phone number, email address, and Web site address. The direct marketer must certify to DOR that the direct marketer will: (a) acquire unstamped cigarettes from the manufacturer, pay the state cigarette tax, affix tax stamps to the cigarette packages or containers, store such packages or containers, and sell only such packages or containers to consumers in this state by direct marketing; or (b) purchase stamped cigarettes from a licensed distributor and sell only such packages or containers to consumers in this state by direct marketing.

A direct marketer must also certify to DOR that the person will register with credit card and debit card companies, that the invoices and all means of solicitation for all shipments of cigarette sales from the person will bear the person's name and address, and that the person will

provide DOR any information the Department considers necessary to administer the direct marketing provisions. A direct marketer is not permitted to sell cigarettes to consumers in this state unless the state sales or use tax is paid on the sale of such cigarettes. A direct marketer who sells cigarettes to consumers in this state is also required to verify the consumer's name and address and that the consumer is at least 18 years old. A direct marketer must also obtain from the consumer at the time of purchase a statement signed by the consumer that confirms all of the following: (a) the consumer's name, address, and birth date; (b) that the consumer understands that no person who is under 18 years of age may purchase or possess cigarettes or falsely represent his or her age for the purpose of receiving cigarettes; and (c) that the consumer understands that any person who, for the purpose of obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses with intent to use, any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her, is guilty of a Class H felony. (The punishment for a Class H felony is a fine not to exceed \$10,000, or three years confinement and three years extended supervision, or both.)

A direct marketer who sells cigarettes by means of the Internet is required to obtain, at the time of the sale, the purchaser's email address and to receive payment for the sale by credit card, debit card, or check prior to shipping. The invoice for any shipment of cigarettes sold to consumers in this state by direct marketing must specify the name and address of the seller and any valid permit issued under the cigarette tax statutes that is held by the seller. All packages of cigarettes shipped to consumers in this state must clearly be labeled "CIGARETTES" on the outside of such packages.

Currently, no person may deliver a package of cigarettes sold by direct marketing to a consumer in this state unless the person making the delivery receives a government issued identification card from the person receiving the package and verifies that the person receiving the package is at least 18 years of age. If the person receiving the package is not the person to whom the package is addressed, the person delivering the package must have the person receiving the package sign a statement affirming that the person to whom the package is addressed is at least 18 years of age.

Finally, no person may deliver a package of cigarettes to a consumer in this state unless the seller of the cigarettes provides proof to the person making the delivery that the seller has complied with all of the requirements related to the cigarette tax statutes. A seller has no course of action against any person who refuses to deliver cigarettes under these provisions.

According to DOR, to date, no one has registered as a direct marketer of cigarettes under the 2005 Act 25 provisions.

Modifications Related to Retail Licenses and Restrictions on Cigarette and Tobacco Products Sales or Gifts

The following section describes proposed changes to provisions related to municipal retail licenses to sell cigarettes and tobacco products as well as restrictions on cigarette and tobacco products sales and gifts.

Under current law, as provided in the statutes relating to cigarette and tobacco products retailer licenses under Chapter 134, "Miscellaneous Trade Regulations", no person may sell, expose for sale, possess with intent to sell, exchange, barter, dispose of, or give away any cigarettes or tobacco products to any person not holding a license or permit for the sale of cigarettes or tobacco products without first obtaining a license from the clerk of the city, village, or town where such products are to be sold or otherwise disposed of. Under this provision, a direct marketer is not allowed to sell to consumers in Wisconsin without holding a municipal retail license in each municipality into which a sale is made. The bill would specify that the requirement to obtain a municipal retailer's license would not apply to a person holding a valid permit from DOR as a direct marketer of cigarettes or tobacco products who sells such products solely as a direct marketer.

Current law prohibits a city, village, or town clerk whose duty it is to issue licenses or permits to engage in a business involving retail sales subject to the sales and use tax from issuing such licenses or permits without proof that the applicant holds a seller's permit or has been informed by DOR that a seller's permit will be issued to the applicant. The bill would modify this provision to permit a municipality to also issue municipal licenses and permits if the applicant is the holder of a use tax registration certificate or has been informed by DOR that the Department will register the applicant to do so.

The bill would require DOR to prepare an application form for cigarette and tobacco products retailers' licenses. In addition to providing information required under current law with respect to whether the cigarettes or tobacco products are to be sold over the counter, or in a vending machine, or both, the application form would have to require all of the following information: (a) the applicant's history relevant to the applicant's fitness to hold a license; (b) the kind of license for which the applicant is applying; (c) the premises where cigarettes or tobacco products will be sold or stored; (d) if the applicant is a corporation, the identity of the corporate officers and agent; (e) if the applicant is a limited liability company, the identity of the company members or managers and agent; (f) the applicant's trade name, if any; and (g) any other information required by the Department.

Each applicant for a cigarette and tobacco products retailer license would be required to use the application form prepared by DOR, to swear to the application, and to submit the application with the clerk of every city, village, or town where the intended place of sale is located. The Department would be required to provide a copy of the application to each city, village, and town. Within 10 days of any change in any fact set forth in an application, the applicant or license holder would have to file a written description of the change with the clerk of the city, village, or town where the application was submitted.

The bill would authorize any person to inspect an application for a cigarette or tobacco products retailer license. The clerk of each city, village, or town where such applications are submitted would be required to retain all applications submitted for four years.

The bill would prohibit a municipality from issuing a cigarette or tobacco products retailer's license to any person who: (a) has an arrest record or conviction record (subject to nondiscrimination provisions under current law); (b) has been convicted of a felony, or as a repeat or habitual offender, unless pardoned; (c) has not submitted proof that the person holds a sales tax seller's permit or use tax registration certificate or that DOR will issue a seller's permit to the person or register the person; or (d) is not 18 years of age or older. These requirements would apply to all partners of a partnership, all members and agents of an LLC, and all agents and officers of a corporation. Subject to nondiscrimination provisions, if a business entity has been convicted of a crime, the entity could not be issued a license unless the entity had terminated its relationship with the individuals whose actions directly contributed to the conviction.

The bill would prohibit a corporation or LLC organized under the laws of the state, or of any other state or foreign country, from being issued a cigarette or tobacco products retailer's license unless the corporation or LLC: (a) first appoints an agent in the manner prescribed by the city, village, or town who is satisfactory to the municipality with respect to character, record, and reputation, as well as satisfies all of the qualifications of a person attaining a municipal license [as listed in the paragraph above]; and (b) vests in the agent via properly authorized and executed written delegation full authority and control of the premises described in the entity's license and of the conduct of all business on the premises relative to the sale of cigarette and tobacco products that the licensee could have and exercise if it were a natural person. A corporation or LLC could cancel the appointment of an agent and appoint a successor for the remainder of the license year if the successor agent meets the same qualifications required of the first appointed agent and the entity notifies the municipality, in writing, of the appointment of the successor agent and the reason for the cancellation and new appointment. The successor agent would have all the authority, perform all of the functions, and be charged with all the duties of the previous agent until the next regular or special meeting of the municipality is held. However, the license of the corporation or LLC would cease to be in force if, prior to the next regular or special meeting of the municipality, the municipal clerk were to receive a notice of disapproval of the successor agent by a peace officer of the licensing city, village, or town. The license of the corporation or LLC would not be in force after the next regular or special meeting of the municipality unless and until the successor agent or another qualified agent were appointed and approved by the city, village, or town. The corporation or LLC would pay a fee of \$10 following the approval of each successor agent. If an agent were to resign, the bill would require that the LLC or corporation and the municipality receive 48 hours notification in writing from the agent.

Under current law, any person violating the cigarette and tobacco products retailer license provisions is subject to a fine of \$25 to \$100 for a first offense and a fine of \$25 to \$200 for a second or subsequent offense. If, upon such a second or subsequent violation, the person was

personally guilty of a failure to exercise due care to prevent the violation, the person is subject to a fine of \$25 to \$300, imprisonment for up to 60 days, or both. Conviction would immediately terminate the license of a person being found guilty of such a failure to exercise due care, and the person would not be able to obtain another license for a period of five years. During the five-year period, such a person would also be prohibited from acting as the servant or agent of a person holding a cigarette and tobacco products retailer license for performance of acts authorized under such a license. Technically, these penalties currently apply in the case of a direct marketer selling without a municipal retail license. However, the administration indicates that it is not practical to enforce such penalties with respect to direct marketers.

The bill would modify this provision by increasing the penalty for a first offense to a fine of \$500 to \$1,000 and by increasing the penalty for a second or subsequent offense to a fine of \$1,000 to \$5,000, imprisonment for up to 180 days, or both. The current provision imposing additional fines and/or imprisonment for individuals who are guilty of failing to exercise due care to avoid a second or subsequent violation would be deleted. In addition, the current provision on termination of a license upon conviction of a failure to exercise due care to prevent a violation would be modified to require the court to terminate a license upon conviction of a second or subsequent offense of the Chapter 134 requirements on cigarette and tobacco products retailer licenses. The current provisions related to the five-year period following such a license termination would continue to apply.

The bill would also prohibit the imposition of such penalties if DOR determined that imposing a penalty would be inequitable because of inadvertent acts, mistakes, or unusual circumstances related to the violation or if the person subject to the penalty had good cause for the violation and such violation did not result from the person's neglect. [Under the bill, a direct marketer holding a direct marketing permit from DOR would not be subject to the penalties described above for violations of retailer license provisions, but would, instead, be subject to specific penalties provided under the bill and described below.]

The bill would specify that no retailer, direct marketer, manufacturer, distributor, jobber, or subjobber could provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18. These restrictions would also apply to an agent, employee, or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber, or subjobber and to an agent or employee of an independent contractor.

The bill would specify that proof of all of the following facts by a direct marketer who sells cigarettes or tobacco products to a person under the age of 18 would be a defense to any prosecution for a violation of the restrictions on such sales: (a) that the direct marketer used a mechanism, approved by DOR, for verifying the age of the purchaser; (b) that the purchaser falsely represented that he or she had attained the age of 18 and presented a copy or facsimile of an identification card; (c) that the name and birth date of the purchaser, as indicated by the purchaser, matched the name and birth date on the identification card; and (d) that the sale was made in good faith, in reasonable reliance on the mechanism approved by DOR and the representation of identification as required above, and in the belief that the purchaser had

attained the age of 18. Similar provisions currently exist for persons who sell cigarettes directly to consumers.

Modifications Related Specifically to Cigarettes

The following section describes proposed changes specific to sales of cigarettes.

Chapter 100 of the statutes, which addresses "Marketing and Trade Practices," imposes minimum mark-up requirements on sales of certain products, including cigarettes and tobacco products. The bill would provide that minimum mark-up requirements related to distributors and the wholesale portion of the business of multiple retailers of cigarettes would also apply in the case of a bonded direct marketer. (A "multiple retailer" is a person who acquires stamped cigarettes from manufacturers or distributors, stores them, and sells them to consumers through 10 or more retail outlets that the retailer owns and operates within or outside this state. A multiple retailer that also holds a permit as a distributor has the option to acquire unstamped cigarettes from manufacturers and affix the tax stamps.)

Definitions under the Cigarette Tax Statutes (Chapter 139)

Current law, as provided under 2005 Act 25, defines "government issued identification" as including a valid driver's license, state identification card, passport, or military identification. Certain provisions under Act 25 require that a copy of such government issued identification be obtained before selling and delivering cigarettes through direct marketing. The bill would delete the definition for government issued identification and would, instead, replace it with a definition for "identification card." Under the bill, "identification card" would reference a definition provided in Chapter 134 of the statutes, which defines the term to mean either a Wisconsin driver's license containing a photograph, an alternative approved for state residents who do not have a driver's license, or certain cards that had been approved under 1987 law related to identification cards for alcohol beverages. The current law references in the cigarette tax statutes to "government issued identification" would be replaced with references to "identification card."

Chapter 139 of the statutes currently defines a manufacturer as any person who manufactures cigarettes for the purpose of sale, including the authorized agent of such a person. The bill would modify this definition to refer to a person who directly manufactures cigarettes for the purpose of sale.

The bill would also create a new definition for "person," as any individual, sole proprietorship, partnership, LLC, corporation, or association, or any owner of a single-owner entity that is disregarded as a separate entity under the income and franchise tax statutes.

Unlawful Possession of Cigarettes

Under current law, with exceptions, it is unlawful for any person to possess cigarettes unless the required stamps are properly affixed. These provisions do not apply to manufacturers, distributors, or warehouse operators possessing valid permits issued by DOR. The bill would

modify this provision to apply it to purchases of cigarettes in addition to possession of cigarettes. The bill would also add bonded direct marketers to the list of persons to whom the provision does not apply.

Permit Requirements for Cigarette Manufacturers and Distributors

Under current law, no person may manufacture cigarettes in this state or sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer and no person may operate a warehouse in this state for the storage of cigarettes for another person without first filing an application for and obtaining the proper permit to perform such operations from DOR. This provision applies to all officers, directors, agents and stockholders holding 5% or more of the stock of any corporation applying for a permit. The proposal would apply the permit requirement to direct marketers, and would also clarify that an out-of-state manufacturer selling in this state would be required to have a permit. [This provision is needed to assist Wisconsin in complying with a requirement under the Master Settlement Agreement (MSA) between 46 states and certain tobacco companies with respect to reporting of cigarette sales.] In addition, the provision regarding corporate officers, directors, agents, and stockholders would be repealed.

Under current law, subject to nondiscrimination provisions, a permit to manufacture or sell cigarettes may not be granted to any person to whom any of the following applies: (a) the person has been convicted of a misdemeanor not involving Chapters 340 to 349 of the statutes (relating to motor vehicles) at least three times; (b) the person has been convicted of a felony, unless pardoned; (c) the person is addicted to the use of a controlled substance or controlled substance analog; (d) the person has income that comes principally from gambling or has been convicted of two or more gambling offenses; (e) the person has been guilty of crimes relating to prostitution; (f) the person has been guilty of crimes relating to loaning money or anything of value to persons holding licenses or permits pursuant to the provisions regarding the regulation of alcohol beverages; or (g) the person does not hold a sales tax seller's permit, if the person is a retailer.

With the exception of item (g), the bill would modify the current provisions limiting the granting of a permit to manufacture or sell cigarettes. Item (a) and items (c) through (f) would be repealed. The bill would provide, instead, that no permit could be granted to any person who has an arrest record or a conviction record (subject to nondiscrimination provisions) or to a person younger than age 18. In addition, item (b) would be modified to refer to, unless pardoned, a person who has been convicted of a felony or as a repeat or habitual offender. The provision would also require a person to be the holder of or be in the process of obtaining a seller's permit or use tax registration certificate (regardless of whether they are a retailer). Finally, the bill would provide that these provisions apply to the following: all partners of a partnership; all members of an LLC; all agents of an LLC or corporation; and all officers of a corporation.

The bill would prohibit a corporation or LLC organized under the laws of this state, or of any other state or foreign country, from being issued a cigarette direct marketer's permit unless the corporation or LLC: (a) first appoints an agent in the manner prescribed by DOR who is satisfactory to the Department with respect to character, record, and reputation as well as satisfies all of the qualifications of a person attaining a permit [as listed in the preceding paragraphs]; and

(b) vests in the agent via properly authorized and executed written delegation full authority and control of the premises described in the entity's license and of the conduct of all business on the premises relative to the sale of cigarettes that the permittee could have and exercise if it were a natural person. A corporation or LLC could cancel the appointment of an agent and appoint a successor for the remainder of the license year if the successor agent meets the same qualifications required of the first appointed agent and the entity notifies the Department, in writing, of the appointment of the successor agent and the reason for the cancellation and new appointment. The successor agent would have all the authority, perform all of the functions, and be charged with all of the duties of the previous agent. The corporation or LLC would pay a fee of \$10 following the approval of each successor agent. If an agent were to resign, the bill would require that the corporation or LLC and the Department receive 48 hour notification, in writing, from the agent.

Currently, a separate permit is required for each class of permittee under the cigarette tax statutes, and the holder of any permit may only perform the operations thereby authorized. Such a permit is not transferable among persons or premises. A separate permit is required for each place where cigarettes are stored for sale at wholesale, through vending machines, or multiple retail outlets. Under the bill, a separate permit would also be required for each place where cigarettes are stored for sale by direct marketing.

Current law authorizes a vending machine operator or a multiple retailer to acquire unstamped cigarettes from manufacturers thereof and affix the stamps to packages or other containers only if the vending machine operator or multiple retailer also holds a permit as a distributor. Under the bill, a vending machine operator or multiple retailer could also satisfy these requirements by holding a permit as a bonded direct marketer.

The law also currently provides that the holder of a warehouse permit is entitled to store cigarettes on the premises described in the permit. The warehouse permit does not authorize the holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a manufacturer or distributor may be delivered only to a person holding a permit as a manufacturer or distributor. The bill would provide that a bonded direct marketer authorized by DOR to purchase and affix tax stamps would also be permitted to receive deliveries of unstamped cigarettes stored in a warehouse.

Direct Marketing of Cigarettes

As noted, current law permits the sale of cigarettes to consumers in Wisconsin by a direct marketer if the direct marketer fulfills requirements related to providing information and certifications to DOR and to verifying specified information about the direct marketer's customers. The bill would modify the current provisions to require a direct marketer to also obtain a direct marketer's permit from DOR. Specifically, the bill would modify the existing provisions as follows:

a. Under current law, no person may sell cigarettes to consumers in this state as a direct marketer unless the person submits to DOR the person's name, trade name, address of the person's principal place of business, phone number, email address, and Web site address. The

bill would delete the provisions on submitting information to DOR and would, instead, require a person selling or soliciting sales of cigarettes to consumers in this state by direct marketing to obtain a permit to do so. The person would also be required to file an application for a direct marketing permit in the manner prescribed by DOR.

b. Current provisions requiring a person selling cigarettes as a direct marketer to a Wisconsin consumer to make certain certifications to DOR would be modified to prohibit DOR from issuing a direct marketing permit to a person unless the person makes such certifications. In addition, a direct marketer would be required to certify to DOR that the invoices and all means of solicitation for all shipments of cigarettes sales from the person would include the direct marketing permit number.

c. Under current law, a direct marketer must verify the consumer's name and address, and that the consumer is at least 18 years of age, prior to the sale of cigarettes by any of the following methods: (a) using a database that includes information based on public records; and (b) receiving from the consumer, at the time of purchase, a copy of a government issued identification; or (c) using a different mechanism approved by DOR. Under the proposal, a direct marketer would be required to verify the consumer's identity and address rather than the consumer's name and address. Additionally, the bill would modify item (b) to require receiving from the consumer, at the time of purchase, a copy of an identification card (as defined under the bill) and verifying that the name specified on the identification card matches the name of the consumer and that the birth date on the identification card indicates that the consumer is at least 18 years of age.

d. Under current law, no person may deliver a package of cigarettes sold by direct marketing to a consumer in this state unless the person making the delivery receives a government issued identification card from the person receiving the package and verifies that the person receiving the package is at least 18 years of age. If the person receiving the package is not the person to whom the package is addressed, the person delivering the package must have the person receiving the package sign a statement that affirms that the addressee is at least 18 years of age. Additionally, no person may deliver a package of cigarettes to a consumer in this state unless the seller provides proof to the person making the delivery that the seller has complied with all the requirements related to the cigarette statutes; and a seller has no course of action against any person who refuses to deliver cigarettes. Under the bill, these provisions would be deleted.

The bill would provide that no person could sell cigarettes to consumers in this state by direct marketing unless the cigarette tax is paid on such cigarettes and tax stamps are affixed to the cigarette packages or containers. In addition, no person could sell cigarettes to consumers in this state by direct marketing unless the person verified that the cigarette brands are approved by DOR and listed in the directory of certified tobacco product manufacturers and brands as provided under the MSA.

With the exceptions described below, any person who, without having a valid permit, sells or solicits sales of cigarettes to consumers in this state by direct marketing would have to pay a penalty to DOR of the greater of \$5,000 or an amount equal to \$50 for every 200 cigarettes, or fraction thereof, sold to consumers in this state by direct marketing.

No sale of cigarettes to a consumer in this state by direct marketing could exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser or address. With the exceptions described below, any person who sells cigarettes that exceed these maximum amounts would have to pay a penalty to DOR of the greater of \$5,000 or an amount equal to \$50 for every 200 cigarettes, or fraction thereof, sold above the maximum amounts. Any person who purchases cigarettes that exceed the maximum amount would have to pay a penalty to DOR of \$25 per carton purchased above the maximum amount. In addition, the person would have to apply for a wholesale cigarette permit with DOR. (While it is unlikely that the person would subsequently qualify to obtain a wholesaler's permit, the provision is intended to make it clear that a consumer could not purchase large quantities of cigarettes from a direct marketer without acting in a wholesaler capacity and satisfying associated requirements.)

Exceptions to the penalties described above would be provided if: (a) DOR determined that imposing a penalty would be inequitable because of inadvertent acts, mistakes, or unusual circumstances related to the violation; or (b) the person who is subject to the penalty had good cause to violate the provisions and the violation did not result from the person's neglect.

As a condition for obtaining a permit as a direct marketer, the bill would require any nonresident or foreign direct marketer who has not registered to do business in this state as a foreign corporation or business entity to appoint and continually engage the services of an agent in this state who would serve as the direct marketer's agent for the purpose of service of process on the direct marketer concerning or arising out of the enforcement of Chapter 139. The bill would provide that such service of process would constitute legal and valid service of process on the direct marketer. The direct marketer would be required to provide to DOR the name, address, phone number, and proof of the appointment and availability of the agent. A direct marketer would be required to provide notice to DOR no later than 30 calendar days before termination of the authority of such an agent and to provide proof to the satisfaction of DOR of the appointment of a new agent no later than five calendar days before the termination of an existing appointment. In the event an agent terminated an appointment, the direct marketer would be required to notify DOR of that termination no later than five calendar days after the termination and to include proof to the satisfaction of DOR of the appointment of a new agent.

The bill would specify that the Secretary of State is the agent in this state for the service of process of any direct marketer who has not appointed and engaged an agent as described above, except that the Secretary of State acting as the direct marketer's agent for the service of process would not satisfy the requirement related to the appointment of an agent as a condition for obtaining a permit as a direct marketer.

Cigarette Tax -- Administrative Procedures

The following modifications related to administrative procedures would also be provided:

Meter Machines. Obsolete references to meter machines and a cigarette meter that may be used in lieu of tax stamps would be deleted and replaced with machines and a cigarette tax impression machine or tax indicia.

Seizures. Current law provides that all cigarettes acquired, owned, imported, possessed, kept, stored, made, sold, distributed, or transported in violation of the cigarette tax statutes, and all personal property used in connection therewith is unlawful property and subject to seizure by the Secretary of DOR or any peace officer. Under the bill, this provision would also apply to violations of provisions of Chapter 134 related to cigarette and tobacco products retailer licenses.

Currently, if cigarettes that do not bear the proper tax stamps or on which the tax has not been paid are seized under these provisions, they may be given to law enforcement officers for use in criminal investigations or sold to qualified buyers by DOR, without notice. If the cigarettes are sold, the proceeds of the sale, after deducting for costs of the sale and the keeping of the property, are to be paid into the state treasury. The Secretary of DOR may also order the cigarettes to be destroyed or given to a charitable or penal institution for free distribution to patients or inmates. Under the bill, these provisions would apply to any cigarettes that have been seized as a result of violations of the cigarette tax statutes (not just those that do not bear a tax stamp or on which the tax has not been paid). The bill would, however, eliminate the provision granting the Secretary of DOR the choice to provide seized cigarettes to a charitable or penal institution for free distribution to patients or inmates.

Class I Felony. The bill would provide that any person who manufactures or sells cigarettes in this state without holding the proper permit or license under the cigarette tax statutes is guilty of a Class I felony. The penalty for a Class I felony is a fine, not to exceed \$10,000, or imprisonment, not to exceed 18 months confinement and two years extended supervision, or both. Under current law, any person who manufactures or sells cigarettes in this state without holding the proper permit would be subject to the general penalty for violations of the cigarette and tobacco products tax statutes for which no other penalty is provided, which includes a fine of \$100 to \$1,000, imprisonment for 10 to 90 days, or both. (Under the bill, as described under the section "Additional Provisions Affecting Both Cigarettes and Tobacco Products," this general penalty would be changed to a fine of no more than \$10,000, imprisonment of no more than nine months, or both.)

Modifications Related Specifically to Tobacco Products

In order to permit and regulate the direct marketing of tobacco products, the bill would create provisions that would parallel provisions under current law, as modified under the bill, with respect to the direct marketing of cigarettes.

Current law specifies that it is an unfair method of competition or an unfair trade practice for any person to sell cigarettes to consumers in this state in violation of the provisions on direct marketing of cigarettes. The bill would expand this provision to also apply to selling tobacco products to consumers in this state in violation of the provisions on direct marketing of tobacco products.

Definitions under the Tobacco Products Tax Statutes (Chapter 139)

The bill would provide the following definitions under the tobacco products tax statutes:

- a. "Direct marketing" would mean publishing or making accessible an offer for the sale of tobacco products to consumers in this state, or selling tobacco products to consumers in this state, using any means by which the consumer is not physically present on a premise that sells tobacco products;
- b. "Direct marketer" would mean any person who solicits or sells tobacco products to consumers in this state by direct marketing;
- c. "Person" would mean any individual, sole proprietorship, partnership, LLC, corporation, association, or any owner of a single-owner entity that is disregarded as a separate entity under the income tax statutes; and
- d. "Identification card" would reference the meaning provided under Chapter 134, as described above with respect to a proposed modification to the cigarette tax statutes.

The bill would also modify a number of current definitions. Under current law, a "consumer" means any person who has title to, or possession of, tobacco products in storage for use or other consumption in this state. The bill would change the definition to mean any individual who receives tobacco products for his or her own personal use or consumption or any individual who has title to, or possession of, tobacco products for any purposes other than sale or resale.

Under current law, a tobacco products "distributor" means, among other things, any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale. The bill would change this definition to specify that "distributor" would mean, among other things, any person in this state engaged in the business of selling tobacco products who brings, or causes to be brought, into this state from outside the state any tobacco products for sale or resale (underline added to emphasize the location of the phrases "in this state" and "or resale"). These modifications would clarify current law and reflect current practice.

The current definition of "distributor" also includes any person engaged in the business of selling tobacco products outside this state who ships or transports tobacco products to retailers in this state to be sold by those retailers. The proposal would modify this definition to refer to any person outside this state engaged in the business of selling tobacco products that ships or transports tobacco products to retailers in this state to be sold by those retailers (underline added to emphasize location of the phrase "outside of this state"). These modifications would clarify current law and reflect current practice.

The definition of "distributor" would also be expanded to include any person outside this state engaged in the business of selling tobacco products who ships or transports tobacco products to consumers in this state. Under this provision, a person outside this state who sells tobacco products to consumers in the state through direct marketing would be defined as a distributor (in

addition to a direct marketer) and would be required to obtain a permit as a distributor (in addition to a permit as a direct marketer). The modification is intended to make it clear that a direct marketer would be responsible for collecting and remitting the excise tax on tobacco products and also for submitting to DOR required reports on any wholesale sales of tobacco products made by the direct marketer.

"Retail outlet" is currently defined to mean each place of business from which tobacco products are sold to consumers. The bill would clarify that the definition applies to such products sold to consumers by a retailer.

A "retailer" is currently defined to mean any person engaged in the business of selling tobacco products to ultimate consumers. The bill would delete this definition and replace it with a reference to the definition under Chapter 134, which means any person with a municipal cigarette or tobacco products retailer license.

Tobacco Products Tax and Associated Permits

With certain exceptions, the bill would specify that no person could possess tobacco products in this state unless the excise tax on tobacco products is paid on such products, and that no person other than a distributor with a valid permit under these provisions could import, ship, or transport into this state tobacco products for which the tobacco products tax has not been paid.

Currently, no person may engage in the business of a distributor or subjobber of tobacco products at any place of business unless that person has filed an application for and obtained a permit from DOR to engage in that business at such place. The bill would similarly prohibit a person from engaging in the business of a direct marketer of tobacco products without a proper permit.

Under current law, provisions limiting the granting of a permit to manufacture or sell cigarettes also apply with respect to tobacco products. The bill would modify the references to such provisions to reflect changes proposed to the cigarette tax provisions under the bill, as described above.

Direct Marketing of Tobacco Products

The bill would prohibit a person from selling tobacco products by direct marketing to consumers in this state as a direct marketer or soliciting sales of tobacco products to consumers in this state by direct marketing unless the person has obtained a permit from DOR to make such sales or solicitations. The person would have to file an application for a permit with DOR, in the manner prescribed by the Department. No person could be issued a direct marketing permit unless the person holds a valid tobacco products distributor's permit.

Under current law, the following provisions that apply with respect to cigarette permits also apply in the case of tobacco products wholesaler permits: (a) provisions requiring denial of a permit by DOR to persons who have been convicted of certain crimes; (b) requirements related to certification from the Department of Financial Institutions before a foreign corporation or a foreign

LLC may be granted a permit; and (c) the requirements that: a separate permit be issued for each class of permittee; that the holder of any permit could only perform the operations thereby authorized; that such a permit could not be transferred among persons or premises; and that a separate permit would be needed for each place where tobacco products are stored for sale at wholesale, through vending machines, through direct marketing, or through multiple retail outlets. The bill would also provide that these requirements apply in the case of a permit for direct marketing of tobacco products.

No person could be issued a permit under these provisions unless the person certifies to DOR, in the manner prescribed by the Department, that the person will register with credit card and debit card companies; that the invoices and all means of shipments of tobacco product sales from the person will bear the person's name, address, and permit number; and that the person will provide to DOR any information the Department considers necessary to administer these provisions.

No person could sell tobacco products by direct marketing to consumers in this state unless the tobacco products tax and state sales and use tax have been paid with regard to such products.

No person could sell tobacco products to consumers in this state by direct marketing unless the person verifies the consumer's identity and address and that the consumer is at least 18 years old by using a database that includes information based on public records, by receiving from the consumer, at the time of purchase, a copy of an identification card and verifying that the name specified on the identification card matches the name of the consumer and that the birth date on the identification card indicates that the consumer is at least 18 years of age, or by using a different mechanism approved by DOR. In addition, the person would have to obtain from the consumer at the time of purchase a statement signed by the consumer that confirms all of the following: (a) the consumer's name, address, and birth date; (b) that the consumer understands that no person who is under 18 years of age may purchase or possess tobacco products or falsely represent his or her age for the purpose of receiving tobacco products; and (c) that the consumer understands that any person who, for the purpose of obtaining credit, goods, or services, intentionally uses, attempts to use, or possesses with intent to use, any personal identifying information or personal identification document of an individual, including a deceased individual, without the authorization or consent of the individual and by representing that he or she is the individual, that he or she is acting with the authorization or consent of the individual, or that the information or document belongs to him or her, is guilty of a Class H felony.

Any person who, without having a valid direct marketing permit, sells or solicits sales of tobacco products to consumers in this state by direct marketing would have to pay a penalty to DOR of the greater of \$5,000 or an amount that is equal to 50% of the tax due on the tobacco products the person sold to consumers in this state by direct marketing.

All packages of tobacco products shipped to consumers in this state would have to be clearly labeled "TOBACCO PRODUCTS" on the outside of such packages.

As a condition for obtaining a permit as a direct marketer of tobacco products, the bill would require any nonresident or foreign direct marketer that has not registered to do business in this state as a foreign corporation or business entity to appoint and continually engage the services of an agent in this state who would serve as the direct marketer's agent for the purpose of service of process on the direct marketer concerning or arising out of the enforcement of Chapter 139. The bill would provide that such service of process would constitute legal and valid service of process on the direct marketer. The direct marketer would be required to provide to DOR the name, address, phone number, and proof of the appointment and availability of the agent. A direct marketer would be required to provide notice to DOR no later than 30 calendar days before termination of the authority of such an agent and to provide proof to the satisfaction of DOR of the appointment of a new agent no later than five calendar days before the termination of an existing appointment. In the event an agent terminated an appointment, the direct marketer would be required to notify DOR of that termination no later than five calendar days after the termination and to include proof to the satisfaction of DOR of the appointment of a new agent.

The bill would specify that the Secretary of State is the agent in this state for the service of process of any direct marketer who has not appointed and engaged an agent as described above, except that the Secretary of State acting as the direct marketer's agent for the service of process would not satisfy the requirement related to the appointment of an agent as a condition for obtaining a permit as a direct marketer.

Prosecutions by Attorney General. Under current law, upon request by the Secretary of DOR, the Attorney General may represent this state or assist a district attorney in prosecuting any case arising under the tobacco products tax statutes. The bill would also provide that the Attorney General may take any action necessary to enforce the provisions related to direct marketing of tobacco products.

Additional Provisions Affecting Both Cigarettes and Tobacco Products

The following modifications apply to both the cigarette and tobacco products tax provisions.

Salespersons of Cigarettes and Tobacco Products. Current law provides that no person may sell or take orders for cigarettes or tobacco products for resale in Wisconsin for a manufacturer or permittee without first obtaining a salesperson's permit from DOR. Further, under current law no manufacturer or permittee can authorize a person to sell or take orders for cigarettes or tobacco products without that person having secured a salesperson's permit. Currently, DOR must issue the required number of permits to manufacturers and permittees who hold a valid business tax registration certificate. Each application for a permit must disclose the name and address of the employer, and the permit will remain effective only while the salesperson represents that employer. If the salesperson is later employed by another manufacturer or permittee, the salesperson must obtain a new salesperson's permit. Each manufacturer or permittee is required to notify DOR within 10 days after the resignation or dismissal of a salesperson holding a permit.

The bill would modify these requirements to provide that: (a) no person could sell cigarettes, take orders for cigarettes for resale, solicit cigarette sales, or sell or solicit sales of tobacco products in this state unless the person has filed for and obtained a valid Wisconsin business tax registration certificate and a salesperson's permit; (b) no permittee could authorize a person to sell cigarettes, take orders for cigarettes, solicit cigarette sales, or sell or solicit sales of tobacco products without that person having secured a valid Wisconsin business tax registration certificate and a salesperson's permit; and (c) no person could authorize the sale or solicitation of cigarettes or sale or solicitation of tobacco products in this state unless that person has a valid business tax registration certificate and a valid permit under the cigarette or tobacco products tax statutes. The bill would also clarify that, under these provisions, each application for a salesperson's permit must disclose the name and address of the employer. In addition, this and other references to employers of salespersons would be modified so that brokers soliciting sales on behalf of a person other than an employer would be subject to the same requirements as those applicable to a salesperson of an employer. Also, certain references to a "manufacturer and a permittee" would be changed to a "permittee." (Under the bill, a "permittee" would include any manufacturer manufacturing or selling in this state.)

List of Direct Marketers. Under current law, DOR is required to maintain a list of direct marketers who have complied with the provisions on direct marketing of cigarettes, maintain a list of direct marketers who the Department knows have not complied with such requirements, and provide copies of these lists to the Attorney General and to each person who delivers cigarettes to consumers in this state that are sold by direct marketing. The bill would delete the requirement that the Department compile and report to the Attorney General and persons that deliver cigarettes a list of direct marketers who the Department knows have not complied with the provisions on direct marketing of cigarettes.

Similar to the above requirements regarding direct marketing of cigarettes, DOR would be required to compile and maintain a list of direct marketers who have complied with the requirements of the provisions on direct marketing of tobacco products. DOR would be required to provide copies of the list to the Attorney General and to each person delivering tobacco products to consumers in the state sold by direct marketing.

Penalty for False or Fraudulent Reports. Current law provides that any person who makes or signs any false or fraudulent report or who attempts to evade the tax imposed on cigarettes or tobacco products, or who aids in or abets the evasion or attempted evasion of that tax may be fined not more than \$10,000 or imprisoned for not more than nine months or both. The bill would instead provide that a person who performs such actions is guilty of a Class H felony.

Penalties for Failure to Keep Required Records or to Allow Inspection. Under current law, any cigarette or tobacco products permittee who fails to keep the records required under the cigarette or tobacco products tax statutes may be fined not less than \$100 nor more than \$500 or imprisoned not more than six months or both. The proposal would, instead, specify that the penalty for a first offense would be a fine of \$500 to \$1,000. For a second or subsequent offense, the penalty would be a fine of \$1,000 to \$5,000, imprisonment for up to 180 days, or both. In addition,

the provisions would apply to a licensee under the cigarette or tobacco products tax statutes as well as to a permittee. [Retailers selling cigarettes and tobacco products are licensees, rather than permittees. The addition of the term "licensee" to this provision would clarify that the penalty provisions for failure to keep required records or to allow inspections also apply to retailers who are subject to such requirements under Chapter 139.]

Currently, any person who refuses to permit any examination or inspection of its premises or records authorized under the cigarette or tobacco products tax statutes may be fined not more than \$500 or imprisoned not more than 90 days or both. In addition, such a refusal provides cause for immediate suspension or revocation of a permit by DOR. The proposal would increase the penalty to a fine of \$500 to \$1,000, imprisonment for up to 180 days, or both. In addition, the bill would modify the current provision specifying that a refusal to permit examinations or inspections serves as cause for immediate suspension or revocation of a permit by DOR to specify, instead, that such a refusal would serve as cause for immediate revocation of a permit or license by DOR. [As in the above provision, the addition of the term "license" to this provision would clarify that such penalties also apply in the case of retailers who are subject to such requirements under Chapter 139.]

Other Penalties. Current law provides that a person who violates the provisions of the cigarette and tobacco products tax statutes for which no other penalty is provided is to be fined not less than \$100 nor more than \$1,000 or imprisoned not less than 10 days nor more than 90 days or both. The bill would specify, instead, a fine of not more than \$10,000 or imprisonment of not more than nine months or both.

Current law also provides that a person who violates any of DOR's rules relating to the taxation of cigarettes and tobacco products is to be fined not less than \$100 nor more than \$500 or be imprisoned not more than six months or both. The bill would modify these provisions to specify a fine of not less than \$500 nor more than \$1,000 or imprisonment for not more than nine months or both.

Currently, in addition to the other penalties imposed for violation of the cigarette or tobacco products tax statutes or any of the rules of DOR, the permit of any person convicted must be automatically revoked and he or she may not be granted another permit for a period of two years following the revocation. Under the bill, revocation of the permit would only occur after a second or subsequent conviction and would be for a period of five years.

Notwithstanding the provisions described above and additional provisions on interest and penalties related to cigarettes and tobacco products, the bill would prohibit the imposition of the interest and penalties if DOR determined that imposing a penalty would be inequitable because of inadvertent acts, mistakes, or unusual circumstances related to the violation or if the person subject to the penalty had good cause for the violation and such violation did not result from the person's neglect.

Effective Date

These provisions would first apply with respect to sales of cigarettes and tobacco products made on the budget bill's general effective date.

Joint Finance/Legislature: Delete provision as non-fiscal policy item.

5. MUNICIPAL LIQUOR LICENSES

Joint Finance: Permit a fourth class city located in Dane County with a population between 8,000 and 9,000 people, as of the 2000 Census, to issue one "Class B" license in addition to the number of "Class B" licenses permitted under the municipality's current law quota.

Also, permit a city immediately adjacent to the southern border of the City of Milwaukee, and whose eastern boundary is Lake Michigan to issue three "Class B" licenses in addition to the number of "Class B" licenses permitted under the municipality's current law quota.

A retail "Class B" license authorizes the retail sale of intoxicating liquor and wine for consumption on the premises where sold. Municipalities are subject to a quota on the total number of "Class B" licenses that may be issued within each municipality. Quotas are generally calculated by a formula based on a municipality's population, as well as the number of licenses that were in effect in the municipality as of December 1, 1997. Certain exemptions from the quota on "Class B" licenses exist, such as for full-service restaurants with a seating capacity of 300 or more persons.

Senate/Legislature: Approve the Joint Finance provisions. In addition, permit a third class city located in Dane County with a population between 15,000 and 16,000 people, as of the 2000 Census, to issue two "Class B" licenses in addition to the number of "Class B" licenses permitted under the municipality's current law quota.

[Act 28 Sections: 2318g thru 2318im]

6. ALCOHOL SALES AT HERITAGE HILL STATE HISTORICAL PARK

Joint Finance/Legislature: Authorize a caterer with a license to sell beer and/or intoxicating liquor (including wine) at retail for on and off premises consumption to sell beer and/or intoxicating liquor at the Heritage Hill State Historical Park for special events held at the Park.

Provide that, for purposes of this provision, a "caterer" would mean any person holding a state restaurant permit who is in the business of preparing food and transporting it for consumption on premises where gatherings, meetings, or events are held, if the sale of food at each gathering, meeting, or event accounts for more than 50% of the gross receipts of all the food and beverages served at the gathering, meeting, or event.

Provide that a Class "B" license for the retail sale of beer for on premises or off premises consumption would also authorize a caterer to provide beer, including the retail sale of beer, at the Heritage Hill State Historical Park during special events held at the museum, notwithstanding the provisions under current law that specify the following: (a) each application for an alcoholic beverage license or permit must specify the premises where the alcoholic beverages will be sold or stored or both; (b) with certain exceptions, retailers and other alcoholic beverage licensees and permittees must have a separate permit or license covering each location or premises from which deliveries and sales of alcoholic beverages are made or at which alcoholic beverages are stored; and (c) with certain exceptions, owners, lessees, or persons in charge of a public place may not permit the consumption of alcoholic beverages on the premises of the public place unless the person has an appropriate retail license or permit.

Provide that, notwithstanding current provisions that authorize municipal governing bodies to issue a Class "B" license for the sale of beer from a premise within the municipality to be consumed either on the premises where sold or off the premises, a caterer may provide beer at any location at the Heritage Hill State Historical Park even though the Park is not part of the caterer's licensed premises, and even if the Park is not located within the municipality that issued the caterer's license. Specify that a caterer providing beer under these provisions would be subject to certain provisions related to premises operated under a Class "B" license as if the beer were provided on the caterer's Class "B" licensed premises.

Specify that these provisions would not authorize the Heritage Hill State Historical Park to sell beer at retail or to procure or stock beer for purposes of retail sale. Specify that all of the provisions described above with respect to sales of beer by a caterer at the Heritage Hill State Historical Park would not apply if, at any time, the Park held a Class "B" license.

Provide parallel provisions related to a "Class B" license to sell intoxicating liquor (which includes wine but does not include beer).

These provisions would allow sales of beer, wine, and liquor at special events held at Heritage Hill State Historical Park and are identical to current law provisions for the National Railroad Museum in Green Bay, which were included in 2007 Act 20.

[Act 28 Sections: 2318e and 2318f]

7. BEER AND WINE PROVIDED BY A NON-PROFIT ORGANIZATION DURING FUNDRAISING EVENTS

Joint Finance: Allow any non-profit organization to provide beer or wine, free of charge, during either an indoor or outdoor fundraising event, without requiring the non-profit organization to hold any municipal license.

Assembly: Delete provision.

Senate: Permit a non-profit organization holding a fundraising event to be included as an entity that qualifies for a picnic beer and wine license for purposes of laws governing temporary Class "B" licenses and laws governing temporary "Class B" licenses. Specify that such temporary licenses would authorize the sale of beer and wine and the provision of beer and wine free of charge. Specify that temporary Class "B" and temporary "Class B" licenses issued to a non-profit for purposes of a fundraising event would be exempt from the restriction that no Class "B" or "Class B" license or permit may be granted for any premises where any other business is conducted in connection with the premises. For purposes of this provision, define a non-profit organization as a section 501(3)(c) organization under the federal Internal Revenue Code. Under current law, not more than two temporary "Class B" licenses may be issued to a permitted issuer in any 12-month period. A non-profit organization holding a fund raising event would also be subject to this restriction.

Conference Committee/Legislature: Delete provision.

8. MANUFACTURER AND RECTIFIER RETAIL SALES, WINERY PERMITS, AND SAMPLING OF INTOXICATING LIQUOR

Joint Finance: Modify the following laws relating to manufacturers and rectifiers of intoxicating liquor:

Specify that the holder of a manufacturer's or rectifier's permit is authorized to provide intoxicating liquor that is manufactured or rectified on premise in the form of retail sales for consumption on or off premise, or in the form of free taste samples that do not exceed a total of 1.5 fluid ounces to any one person for consumption on premise.

Specify that DOR may prescribe additional regulations under the above provisions for the sale of intoxicating liquor if the additional regulations do not conflict with the requirements applicable to holders of "Class B" licenses.

Specify that these provisions apply to a person holding a manufacturer's or rectifier's permit in addition to both a winery permit and either a "Class A" license or a "Class B" license issued to a winery, all issued for the same premises or portions of the same premises.

Prohibit a person holding a manufacturer's or rectifier's permit from allowing the sale or provision of taste samples of intoxicating liquor on the manufacturing or rectifying premises unless there is, on the premises, the licensee or permittee, the agent named in the license or permit if the licensee or permittee is a corporation or a limited liability company, or some person who has an operator's (bartender's) license, and who is responsible for the acts of all persons selling or serving any intoxicating liquor to customers.

Permit a person to hold a manufacturer's or rectifier's permit in addition to a winery permit and either a "Class A" or a "Class B" license. Specify that a person holding this combination of licenses is authorized to make retail sales and provide taste samples as authorized under a "Class

A" or a "Class B" license, respectively. Specify that the holder of such a combination of licenses may hold a direct or indirect interest in a manufacturer, rectifier, winery, or retailer.

Under current law, DOR is authorized to provide certain permits regarding the production and consumption of intoxicating liquor. Manufacturers' and rectifiers' permits authorize the manufacture or rectification, respectively, of intoxicating liquor on the premises covered by the permit, and authorize the manufacture and bottling of wine without obtaining a winery permit. A manufacturer's or rectifier's permit entitles the permittee to sell intoxicating liquor to wholesalers, wineries, and to other manufacturers and rectifiers from the premises described in the permit. According to DOR, the Department currently issues four manufacturer's permits and five rectifier's permits in this state. Three of these permit holders hold both a manufacturer's permit and a rectifier's permit. Under current law, no sales may be made by a person holding a manufacturer's or rectifier's permit for consumption on or off the premises of a permittee.

Under the Joint Finance provisions, a person holding a manufacturer's or rectifier's permit would be authorized to make sales of intoxicating liquor that is manufactured or rectified on the premises for consumption on or off the premises. A person holding a manufacturer's or rectifier's permit would not be required to obtain any other municipal license to make such sales. These provisions would authorize a person holding a manufacturer's or rectifier's permit to provide free taste samples of intoxicating liquor that is manufactured or rectified on the premises in an amount not to exceed 1.5 fluid ounces to any one person for consumption on the premises.

Under current law, municipalities may issue "Class A" and "Class B" licenses authorizing the sale of intoxicating liquor within the municipality. A "Class A" license authorizes the retail sale of intoxicating liquor for consumption off the premises where sold and in the original packages and containers. A "Class B" license authorizes the retail sale of intoxicating liquor for consumption on the premises where sold by the glass and not in the original package or container, and authorizes the sale of wine in the original package or container in any quantity to be consumed off the premises. Authorization of a "Class B" license is subject to certain restrictions, such as whether a municipality has adopted an ordinance related to "Class B" licenses. A "Class B" license issued to a winery authorizes the sale of wine to be consumed by the glass or in opened containers only on the premises where sold, and also authorizes the sale of wine in the original package or container to be consumed off the premises where sold, but does not authorize the sale of beer or any other type of intoxicating liquor other than wine.

Under current law, in general, no intoxicating liquor manufacturer, rectifier, winery, out-of-state shipper permittee, or wholesaler may hold any direct or indirect interest in any "Class A" license or establishment, and no "Class A" licensee may hold any direct or indirect interest in a wholesale permit or establishment. However, a winery that has a winery permit may have an ownership interest in a "Class A" license.

The Joint Finance provisions would amend current law to also allow the holder of a manufacturer's or rectifier's permit to hold both a "Class A" license and a winery permit, and to make retail sales and provide taste samples as authorized under the provisions.

Current law provides that, in general, no intoxicating liquor manufacturer, rectifier, winery, out-of-state shipper permittee, or wholesaler may hold any direct or indirect interest in any "Class B" license or permit or establishment, and no "Class B" licensee or permittee may hold any direct or indirect interest in a manufacturer, rectifier, winery, out-of-state shipper, or wholesale permit or establishment. However, a winery may be issued a "Class B" license authorizing the sale of wine to be consumed by the glass or in opened containers only on the premises where sold and the sale of wine in the original package or container to be consumed off the premises where sold. Such wineries may have an ownership interest in the "Class B" license.

The Joint Finance provisions would specify that a person may hold a "Class B" license and both a winery permit and a manufacturer's or rectifier's permit, and may make retail sales and provide taste samples as authorized under the "Class B" license and these provisions.

The Joint Finance provisions would also prohibit persons who hold a manufacturer's or rectifier's permit from allowing the sale or provision of taste samples of intoxicating liquor on the manufacturing or rectifying premises unless there is upon the premises either the permittee, the agent named in the permit if the permittee is a corporation or a limited liability company, or some person who has an operator's (bartender's) license and who is responsible for the acts of all persons selling or serving any intoxicating liquor to customers. These requirements currently apply to other establishments that serve alcohol for on-premises consumption.

Senate: Delete provision.

Conference Committee/Legislature: Restore the Joint Finance provisions.

[Act 28 Sections: 2318j thru 2318x]

9. TRIBAL MUNICIPAL BEER AND LIQUOR PERMITS

Senate/Legislature: Require the Department of Revenue to issue Class "B" beer and "Class B" liquor permits to tribal applicants. Specify that a Class "B" and/or a "Class B" permit issued to a tribe would authorize the retail sale of beer, wine, and liquor for on and off premise consumption in a similar manner as authorized for Class "B" and "Class B" municipal licenses. Upon application by a tribe, the Department would be required to issue a Class "B" and/or a "Class B" permit to a tribal applicant if the tribal applicant meets the general permit qualification and application requirements for Class "B" and/or "Class B" permits. Specify that a "tribe" means a federally recognized American Indian tribe in this state having a reservation created pursuant to treaty with the United States encompassing not less than 60,000 acres nor more than 70,000 acres or any business entity that is wholly owned and operated by such a tribe. An issuer of a Class "B" and/or a "Class B" permit under this provision would be subject to all laws that generally apply to an issuer of a Class "B" beer and a "Class B" liquor license.

[Act 28 Sections: 2318em and 2318it]

10. MUNICIPAL LIQUOR LICENSES -- CAPITAL IMPROVEMENT AREAS

Senate: Create statutory provisions authorizing the issuance of additional "Class B" liquor licenses to qualified applicants located in capital improvement areas enumerated by the Legislature. Specify that the geographic area composed of all land within the Tax Incremental District Number 3 within the City of Oconomowoc in Waukesha County that lies either south of Valley Road and east of State Highway 67 or south of I-94 and west of State Highway 67 would be enumerated as a capital improvement area.

Specify that, notwithstanding current law governing "Class B" license quotas, upon application by a qualified applicant, the governing body of any municipality containing an enumerated capital improvement area would be required to issue one license to a qualified applicant in addition to the number of licenses determined for the municipality's reserve "Class B" licenses, and any licenses issued to certain entities exempt from municipal quotas. After a qualified applicant has filed an application and upon application by an initial qualified applicant, the governing body of any municipality containing an enumerated capital improvement area would have to determine the improvement increment within the capital improvement area for the calendar year in which the application was filed and, if the improvement increment was at least \$10 million above \$50 million, the governing body of the municipality would have to issue to the initial qualified applicant a "Class B" license.

For each \$10 million of improvement increment above \$50 million, the governing body of the municipality would be authorized to issue one "Class B" license and, upon each application by a qualified applicant subsequent to that of the initial qualified applicant, the governing body of the municipality would be required to issue a "Class B" license to the qualified applicant until all licenses authorized for the capital improvement area have been issued. If the governing body of any municipality would receive an application by a qualified applicant in a calendar year subsequent to the calendar year in which it would receive the application of the initial qualified applicant, the governing body of the municipality would be required to re-determine the improvement increment for that year for the purpose of determining the number of "Class B" licenses authorized for the capital improvement area. The "Class B" licenses that a municipality would be authorized to issue would be in addition to the number of licenses determined for the municipality's reserve licenses, any license for exempt entities, and the original license for the capital improvement area.

Specify that no more than ten "Class B" licenses could be issued under these provisions for premises within the same capital improvement area, and that no municipality could issue a license for a capital improvement area after July 1, 2017. Notwithstanding the prior sentence, any license issued pursuant to an enumerated capital improvement area could be transferred, pursuant to laws governing the transfer of alcohol beverage licenses and permits, to a premise within the same capital improvement area. If a license issued for a capital improvement area were surrendered to the issuing municipality, revoked, or not renewed, the municipality could reissue the license to a qualified applicant for a premise that is located within the same capital improvement area in which the license was originally issued, provided the license was

originally issued prior to July 1, 2017.

Define the following five terms for purposes of capital improvement areas under laws governing quotas on "Class B" liquor licenses:

a. "Capital improvement area" would mean a geographic area that has been enumerated by the Legislature as having an improvement increment exceeding \$50 million in the year in which the area is enumerated, and being located within a municipality with insufficient reserve "Class B" licenses to issue a "Class B" license for each business or proposed business that would reasonably require one;

b. "Improvement increment" would mean the aggregate assessed value of all taxable property in a capital improvement area as of January 1 of any year minus the area base value;

c. "Area base value" would mean the aggregate assessed value of all taxable property located within the geographic bounds of a capital improvement area on January 1 of the year five years prior to the year in which such capital improvement area is enumerated as a capital improvement area;

d. "Qualified applicant" would mean an applicant that complies with all requirements under current law governing qualifications for licenses and permits for alcohol beverages and any applicable ordinance, that certifies by affidavit that the applicant has made a good faith attempt to purchase the business of a person holding a "Class B" license within the municipality and have that license transferred to the applicant pursuant to laws governing the transfer of alcohol beverage licenses and permits, and for whom the issuing municipality has determined that these requirements have been met; and

e. "Good faith," with respect to an applicant's attempt to purchase a "Class B" licensed business, would include an applicant making an offer to purchase the business for an amount exceeding \$25,000 in total value, without additional significant conditions placed on the purchase by either party, after having given notice of the applicant's interest in purchasing a licensed business to all current "Class B" license holders within the municipality where the business is located, by U.S. mail addressed to either the licensee's last known address or to the licensed premises. An offer in an amount of \$25,000 or less could also be considered to be in good faith depending on the fair market value of the business, the availability of other licensed businesses for purchase, and any conditions attached to the sale.

As compared to current law, it is estimated that the number of "Class B" licenses that could be issued by the City of Oconomowoc would increase by 10. These provisions would also establish a framework under which the Legislature could enumerate additional capital improvement areas to provide additional "Class B" liquor licenses to qualified applicants.

A retail "Class B" license authorizes the retail sale of intoxicating liquor and wine for consumption on the premises where sold. Municipalities are subject to a quota on the total number of "Class B" licenses that may be issued within each municipality. Quotas are generally

calculated by a formula based on a municipality's population, as well as the number of licenses that were in effect in the municipality as of December 1, 1997. Certain exemptions from the quota on "Class B" licenses exist, such as for full-service restaurants with a seating capacity of 300 or more persons.

Conference Committee/Legislature: Approve the Senate provisions with the following modifications: (a) reduce the number of "Class B" licenses that could be issued under these provisions for premises within the same capital improvement area from ten to eight; and (b) require that a qualified applicant receiving a "Class B" liquor license under these provisions must pay a fee of not less than \$10,000 to the municipal governing body.

As compared to current law, it is estimated that the number of "Class B" licenses that could be issued by the City of Oconomowoc would increase by eight. As compared to the Senate's provisions, it is estimated that the number of "Class B" licenses that could be issued by the City of Oconomowoc would be reduced by two. Under current law, each municipal governing body must establish a fee of not less than \$10,000 for the initial issuance of each reserve "Class B" license. The modification would require a similar fee be paid for the initial issuance of each "Class B" license to a qualified applicant in an enumerated capital improvement area.

[Act 28 Sections: 2318fm and 2318ip]