

Wisconsin Enacts 2013-2015 Budget Bill with Changes to Corporate and Individual Income Tax, Sales/Use Tax and Administrative Provisions

July 8, 2013

Overview

On June 30, 2013, Wisconsin Governor Scott Walker signed Assembly Bill 40 (“A.B. 40”).¹ The bill amends Wisconsin tax law in the following manner:

- Updates references to the Internal Revenue Code (“I.R.C.”) and conforms to federal depreciation and amortization;
- Repeals several income tax credits;
- Provides that partnerships, limited liability companies and S corporations are eligible to compute and pass through research credits;
- Modifies various individual income tax provisions, most notably a reduction of the individual income tax rates;
- Eliminates the Economic Development Surcharge for individuals, estates, trusts and partnerships;
- Provides new exemptions for taxpayers engaged in certain commercial printing activities and for printing services that result in advertising and promotional direct mail;
- Modifies the sales/use tax exemption for research and development activities;
- Modifies the sales/use tax treatment of taxable products provided under a lump sum contract;
- Modifies various administrative provisions, including decreasing the interest rate for refunds, and establishing penalties for negligent and fraudulent income and franchise refund claims.

In this External Tax Alert, we summarize the more significant Wisconsin tax law changes.

Changes Generally Applicable to All Taxpayers

A.B. 40 makes the following changes that are generally applicable to all taxpayers:

- Updates the I.R.C. to December 31, 2010 with various exceptions,² for all taxable years beginning after December 31, 2010.³
- Adopts federal depreciation and amortization starting with the first taxable year beginning after December 31, 2013 and that are in effect on such date.⁴ In an effort to move away from decoupling from bonus depreciation, A.B. 40 provides “catch-up” adjustments to be taken over five years. Starting with the first taxable year beginning after December 31, 2013 and for each of

¹ 2013 Wisconsin Act 20, enacted June 30, 2013; published on July 1, 2013 and effective July 2, 2013.

² The I.R.C. means the federal the I.R.C as amended to December 31, 2010 excluding numerous sections of Public Laws. However, A.B. 40 did not exclude any notable Public Laws; the specifics are beyond the scope of this alert.

³ A.B. 40, Sec. 1288-1297, amending § 71.01(6), Wis. Stat.; A.B. 40, Sec. 1353-1372, amending § 71.22(4), (4m), Wis. Stat.; A.B. 40, Sec. 1374-1383, amending § 71.26(2)(b), Wis. Stat.; A.B. 40, Sec. 1399-1408, amending § 71.34(1g), Wis. Stat.; and A.B. 40, Sec. 1409-1418, amending § 71.42(2), Wis. Stat.

⁴ A.B. 40, Sec. 1297d, amending § 71.01(7r)(a), Wis. Stat.; A.B. 40, Sec. 1383d, amending § 71.26.(3)(y), Wis. Stat.; A.B. 40, Sec. 1408f, amending § 71.365(1m), Wis. Stat.; and A.B. 40, Sec. 1419e, amending § 71.45(2)(a)(13), Wis. Stat.

the next four taxable years, taxpayers subtract 20% of the difference between the federal basis and Wisconsin basis as determined on the last day of the taxable year beginning in 2013.⁵

- Repeals several income tax credits effective for tax years beginning on or after December 31, 2013. Some of the more significant credits that are being repealed include:
 - Food Processing Plant and Food Warehouse Investment Credit,⁶
 - Research Facilities Credit,⁷
 - Electronic Medical Records Credit,⁸ and
 - Relocated Business Credit.⁹

Partnerships, Limited Liability Companies and S Corporations

A.B. 40 makes the following changes for partnerships, limited liability companies and S corporations:

- For years beginning on or after December 31, 2012, partnerships, limited liability companies and S corporations may compute the Research Credit and Research Facilities Credit and flow the amount of the credit through to its partners, members and shareholders. Under prior law, only C corporations were allowed to claim these credits. The credits are calculated at the entity level and the partner, member or shareholder is then allowed to claim a percentage of the credit based on the ownership percentage.¹⁰
- Effective for taxable years beginning on or after January 1, 2013, the Economic Development Surcharge¹¹ for partnerships and limited liability companies treated as partnerships is no longer applicable.¹²

Personal Income Tax

A.B. 40 makes the following changes to the personal income tax:

- Effective for taxable years beginning after December 31, 2012, reduces the applicable individual income tax brackets from five brackets to four brackets¹³ and reduces the income tax rates for all four individual income tax brackets to the following: 4.40%, 5.84%, 6.27% and 7.65%.¹⁴ Under prior law, the rates were 4.6%, 6.15%, 6.5%, 6.75% and 7.75%.

⁵ A.B. 40, Sec. 1304gm, adding § 71.05(6)(b)50, Wis. Stat.; A.B. 40, Sec. 1383f, adding § 71.26(3)(ym), Wis. Stat.; A.B. 40, Sec. 1408c, adding § 71.34(1k)(n), Wis. Stat.; and A.B. 40, Sec. 1419f, adding § 71.45(2)(a)19, Wis. Stat.

⁶ A.B. 40, Sec. 1338s-1338u, amending § 71.07(3m), Wis. Stat.; A.B. 40, Sec. 1390s-1390u, amending § 71.28(3m), Wis. Stat.; and A.B. 40, Sec. 1426s-1426u, amending § 71.47(3m), Wis. Stat.

⁷ A.B. 40, Sec. 1343c, adding § 71.07(4n)(e), Wis. Stat.; A.B. 40, Sec. 1395be, adding § 71.28(5)(c), Wis. Stat.; and A.B. 40, Sec. 1431be, adding § 71.47(5)(c), Wis. Stat.

⁸ A.B. 40, Sec. 1345, amending § 71.05(5i)(b), Wis. Stat.; A.B. 40, Sec. 1396, amending § 71.28(5i)(b), Wis. Stat.; A.B. 40, Sec. 1432, amending § 71.47(5i)(b), Wis. Stat.

⁹ A.B. 40, Sec. 1304d-1304e, amending § 71.05(6)(b)47, Wis. Stat.; A.B. 40, Sec. 1398k-1398L, amending § 71.28(9s), Wis. Stat. and A.B. 40, Sec. 1434k-1434L, amending § 71.47(9s), Wis. Stat.

¹⁰ A.B. 40, Sec. 1343b and 1343c, adding § 71.07(4k) and (4n), Wis. Stat.; A.B. 40, Sec. 1395ar, adding § 71.28(4)(j), Wis. Stat.; A.B. 40, Sec. 1431as, adding § 71.47(4)(j), Wis. Stat.

¹¹ The Economic Development Surcharge was imposed on partnerships that have more than \$4,000,000 of gross receipts and was determined by multiplying allocated or apportioned net business income by 0.2% with a minimum of \$25 and maximum of \$9,800.

¹² A.B. 40, Sec. 1501h-1501k, amending § 77.93, Wis. Stat.; A.B. 40, Sec. 1501L-1501q, amending § 77.94, Wis. Stat. and A.B. 40, § 1501r, repealing § 77.947, Wis. Stat.

¹³ The new four tax brackets for fiduciaries, single individuals and head of households are (1) \$0 to \$7,500; (2) \$7,501 to \$15,000; (3) 15,001 to \$225,000 and (4) all taxable income exceeding \$225,000. The new four tax brackets for married filing separately are (1) \$0 to \$5,000; (2) \$5,001 to \$10,000; (3) 10,001 to \$150,000 and (4) all taxable income exceeding \$150,000. The new four tax brackets for married filing joint are (1) \$0 to \$10,000; (2) \$10,001 to (3) \$20,000; \$20,001 to \$300,000 and (4) all taxable income exceeding \$300,000.

¹⁴ A.B. 40, Sec. 1321-1326, amending § 71.06, Wis. Stat.

- Starting with taxable years beginning on January 1, 2014, individuals will be allowed to carryback NOLs for 2 years and the carry forward period for NOLs is extended from 15 to 20 years.¹⁵
- Starting with taxable years beginning on January 1, 2014, the MAC flowing through from an S corporation, partnership or limited liability company may be offset only against the amount of the tax imposed upon or measure by the business operations of the claimant on which the credit is computed.¹⁶
- Adopts the federal treatment of gains from certain small business stock. For stock acquired after December 31, 2013, Wisconsin conforms to the treatment of I.R.C. Sec 1202, as amended to December 31, 2012, related to the exclusion for gain from certain small business stock.¹⁷

Effective for taxable years beginning on or after January 1, 2013, the Economic Development Surcharge¹⁸ for individuals, estates and trusts is no longer applicable.¹⁹

Sales/Use Tax

A.B. 40 makes the following changes to the scope of sales/use tax exemptions:

- For qualified commercial printers, an exemption is provided for computers and servers used to store copies of the product sent to a printing press and tangible personal property purchased from out-of-state sellers that is temporarily stored for not more than 180 days and then delivered and used outside the state.²⁰ The exemption is effective the first day of the 3rd month beginning after publication or October 1, 2013.²¹
- An exemption is allowed for printing services that result in advertising and promotional direct mail.²² The exemption takes effect on July 1, 2013.²³ A previously enacted exemption for finished goods constituting advertising and promotional direct mail is effective the same date.²⁴
- The research and development machinery and supplies exemption is modified to include qualified expenses that are funded by a member of a combined group for another member of a combined group who is a “manufacturer” as defined, and redefining eligibility by tying the exemption to the property tax classification as a manufacturer.²⁵ The change first applies to sales made on or after the effective date of A.B. 40 or July 2, 2013.²⁶
- An exemption is provided for taxable property and services transferred to a customer that are less than 10% of the total amount of a lump sum contract; the contractor is the deemed consumer of such products unless the contract is being performed for an exempt entity.²⁷ The exemption is effective for contracts entered into on or after the first day of the 3rd month beginning after publication, or October 1, 2013.²⁸

¹⁵ A.B. 40, Sec. 1304h-1304he, amending § 71.05(8), Wis. Stat. and A.B. 40, Sec. 9337(4d).

¹⁶ A.B. 40, Sec. 1345hf-1345k, amending § 71.07(5n)(c), Wis. Stat. and A.B. 40, Sec. 9337(15d).

¹⁷ A.B. 40, Sec. 1453e, adding § 71.98(5), Wis. Stat.

¹⁸ The Economic Development Surcharge was imposed on individuals, estates and trusts that have a non-farm trade or business with more than \$4,000,000 of gross receipts and was determined by multiplying allocated or apportioned net business income by 0.2% with a minimum of \$25 and maximum of \$9,800. An individual, estate or trust that has a farm trade or business with more than \$4,000,000 of gross receipts was subject to the \$25 minimum.

¹⁹ A.B. 40, Sec. 1501h-1501k, amending § 77.93, Wis. Stat..

²⁰ A.B. 40, Sec. 1497d, adding § 77.54 (61), Wis. Stats.

²¹ A.B. 40, Sec. 9437(8e). *Supra*, fn 1.

²² A.B. 40, Sec. 1485, amending § 77.52 (2)(a)11, Wis. Stats.

²³ A.B. 40, Sec. 9437(12).

²⁴ § 77.54(59), Wis. Stats.

²⁵ A.B. 40, Sec. 1496, amending § 77.54(57), Wis. Stats.

²⁶ A.B. 40, Sec. 9400 and 9337(9).

²⁷ A.B. 40, Sec. 1497, adding § 77.54(60), Wis. Stats.

²⁸ A.B. 40, Sec. 9337(8) and 9437(10).

Administrative Provisions

A.B. 40 makes the following changes to administrative provisions:²⁹

- Reduces the interest paid on refunds from 9% to 3%. Overpayments of income and surtaxes shall be refunded with a rate of interest of 3% per year from the date on which such taxes are assessed. This provision first applies to any refunds paid on the effective date of A.B. 40 or July 2, 2013, regardless of the tax years to which such refund applies. This provision applies to income and franchise tax, sales tax, motor vehicle and general aviation fuel taxes, beverage, controlled substances and tobacco taxes and cigarette taxes.³⁰
- Creates two new penalties associated with negligent and fraudulent income and franchise tax refund claims. The penalties are effective for income and franchise tax refunds first filed on after the effective date of A.B. 40 or July 2, 2013. The penalty rates are 25% for a negligently filed claim and 100% for a fraudulently filed claim and the penalty is based on the difference between the amount claimed and the amount that should have been claimed. Note that if a taxpayer is found to have filed a reckless claim, such taxpayer is precluded from filing a claim for a credit for 2 successive taxable years beginning with the year for which the Department determined a reckless claim was filed.³¹

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²⁹ A.B. 40 also provides taxpayers the ability to rely on past audits for purposes of determining the liability on current audits, subject to various limitations. However, the specifics of this development are beyond the scope of this Alert. A.B. 40, Sec. 1466, adding § 73.16(3), Wis. Stats.

³⁰ A.B. 40, Sec. 1440e, amending § 71.82(1)(b), Wis. Stats.; A.B. 40, Sec. 1444d, amending § 71.90(1), Wis. Stats.; A.B. 40, Sec. 1500f, amending § 77.59(6)(c), Wis. Stats.; A.B. 40, Sec. 1500j, amending § 77.60(1)(a), Wis. Stats.; A.B. 40, Sec. 1508r, amending § 78.68(1), Wis. Stats.; A.B. 40, Sec. 1896w, amending § 139.25(1), Wis. Stats.; A.B. 40, Sec. 1897h, amending § 139.44(9), Wis. Stats.; A.B. 40, Sec. 1897j, amending § 139.94, Wis. Stats.; A.B. 40, Sec. 1961n, amending § 168.12(6)(c), Wis. Stats.; and A.B. 40, Sec. 9337(4i).

³¹ A.B. 40, Sec. 1441-1444, amending § 71.83, Wis. Stats. and A.B. 40, Sec. 9337(5).

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