

## Wisconsin enacts 2015-2017 budget bill including numerous tax law changes

July 20, 2015

### Overview

On July 12, 2015, Wisconsin Governor Scott Walker signed Senate Bill 21 (SB 21) as Wisconsin Act 55.<sup>1</sup> The bill contains numerous Wisconsin tax law provisions, including the following more significant changes:

- Modifies the qualification and computation of the Manufacturing and Agriculture Tax Credit;
- Modifies the calculations and definitions for the Research and Development Credit;
- Creates a new Business Development Credit;
- Conforms Wisconsin's individual income tax Alternative Minimum Tax (AMT) exemption amounts and exemption phaseout provisions to the federal income tax treatment in effect for the applicable tax year;
- Modifies sales and use tax definitions related to retailers doing business in Wisconsin;
- Delays implementation of the private label credit card "bad debt" provisions for sales and use tax purposes; and
- Specifies that a taxpayer does not have any right to sales and use tax refunds until the setoff procedure regarding local, state and federal government amounts due has been completed.<sup>2</sup>

In this Tax Alert we provide an overview of these Wisconsin tax law changes.

### Manufacturing and Agriculture Tax Credit

For taxable years beginning after December 31, 2014, and before January 1, 2016, the Manufacturing and Agriculture Tax Credit percentage is reduced from 5.526 percent to 5.025 percent.<sup>3</sup> For taxable years beginning after December 31, 2015, the Manufacturing and Agriculture Tax Credit percentage remains at 7.5 percent.<sup>4</sup>

The new law also provides that if an underpayment of estimated tax results due to the reduction in the credit percentage, the related amount will not be subject to underpayment interest or penalties.<sup>5</sup> Additionally, for purposes of qualifying for the Manufacturing and Agriculture Tax Credit, a claimant who the Wisconsin Department of Revenue (Department) approves to be classified as a manufacturer for purposes of Wisconsin Statutes Sec. 70.995, but who is not eligible to be listed on the Department's manufacturing roll until January 1 of the following year, may claim the credit in the year in which the manufacturing classification is approved.<sup>6</sup> The new law also removes the reference to IRC section 162 from the definitions of "direct" and "indirect costs" for purposes of calculating the credit.<sup>7</sup>

### Research and Development Credit

For taxable years beginning after December 31, 2014, a claimant may claim a Research and Development Credit equal to 5.75 percent (11.5 percent for activities related to internal combustion engines)<sup>8</sup> of the amount by which the taxpayer's qualified research expenses for the taxable year exceed 50 percent of the average qualified research expenses for the three taxable years immediately preceding the taxable year for which the claimant claims the credit.<sup>9</sup> If the claimant had no qualified research expenses in any of the three taxable years immediately

<sup>1</sup> 2015 Wisconsin Act 55, enacted July 12, 2015; published on July 13, 2015 and effective immediately.

<sup>2</sup> Note that certain highly debated tax law proposals were *not* contained in the final version of the bill signed by Governor Walker, including the proposed equalization of interest rates for sales and use tax refunds and assessments, as well as a proposed flow-through sales and use tax exemption for contractors performing realty improvements for exempt entities.

<sup>3</sup> SB 21, Sec. 2206d, amending § 71.07(5n)(b)3., Wis. Stats.; § 71.28(5n)(b)3., Wis. Stats.

<sup>4</sup> § 71.07(5n)(b), Wis. Stats.; § 71.28(5n)(b), Wis. Stats.

<sup>5</sup> SB 21, Sec. 2339d, amending § 71.09(11)(g), Wis. Stats.; § 71.29(7)(d), Wis. Stats.

<sup>6</sup> SB 21, Sec. 2206, amending § 71.07(5n)(a)5.d., Wis. Stats.; § 71.28(5n)(a)5.d., Wis. Stats.

<sup>7</sup> SB 21, Sec. 2204, amending § 71.07(5n)(a)3, Wis. Stats., § 71.28(5n)(a)3., Wis. Stats.; S.B. 21, Sec. 2205, amending § 71.07(5n)(a)4, Wis. Stats., § 71.28(5n)(a)4., Wis. Stats.

<sup>8</sup> SB 21, Sec. 2319e, amending § 71.07(4)(ad)5., Wis. Stats.; § 71.28(4)(ad)5., Wis. Stats.; Wis. Stats.; § 71.47(4)(ad)5.

<sup>9</sup> SB 21, Sec. 2319d, amending § 71.07(4k)(b)5., Wis. Stats.; § 71.28(4)(ad)4., Wis. Stats.; Wis. Stats.; § 71.47(4)(ad)4.

preceding the taxable year for which the claimant claims the credit, the claimant may claim an amount equal to 2.875 percent (5.75 percent for activities related to internal combustion engines)<sup>10</sup> of the corporation's qualified research expenses for the taxable year for which the claimant claims the credit.<sup>11</sup>

Additionally, for taxable years beginning after June 30, 2007, and before January 1, 2015, the calculation for "qualified research expenses" now includes compensation used in computing the credit under Wisconsin Statutes Secs. 71.28(1dj) and 71.47(1dj), the corporation's base amount, as defined in IRC section 41(c).<sup>12</sup>

### Business Development Credit

For taxable years beginning after December 31, 2015, a new Business Development Credit is created to help promote job creation or retention of jobs in Wisconsin.<sup>13</sup> Under these new provisions, a claimant is defined as a person certified to receive tax benefits by the Wisconsin Economic Development Corporation.<sup>14</sup> A taxpayer may claim the credit against tax imposed under Wisconsin Statutes Secs. 71.02, 71.08, 71.23 and 71.43, for the following:

- Wages paid to an eligible employee in the taxable year, not to exceed 10 percent of such wages;
- Wages paid to an eligible employee in the taxable year, not to exceed 5 percent of such wages, if the eligible employee is employed in an economically distressed area;
- Training costs that the claimant incurred, not to exceed 50 percent of such costs;
- Personal property investment, not to exceed 3 percent of such investment, and real property investment, not to exceed 5 percent of such investment; and
- An amount equal to a percentage of the amount of wages that the claimant paid to an eligible employee in the taxable year if the position in which the employee was employed was created or retained in connection with the claimant's location or retention of its corporate headquarters in Wisconsin.<sup>15</sup>

Corporations may claim the credit; however, partnerships, limited liability companies, and tax-option corporations may compute the credit and flow the amount of the credit through to its corporate partners, members, or shareholders.<sup>16</sup>

SB 21 specifically provides that if the allowable amount of the Business Development Credit exceeds the corporation franchise and income tax due, "the amount of the claim not used to offset the tax due shall be certified by the [Department] to the [Wisconsin] [D]epartment of [A]dministration for payment..."<sup>17</sup>

### Individual Income Tax

Beginning for tax years on or after January 1, 2017, the Wisconsin treatment of AMT exemption amounts and exemption phaseout provisions automatically adopt the federal income tax treatment in effect for the applicable tax year.<sup>18</sup>

### Sales and Use Tax

With respect to Wisconsin sales and use tax nexus, the definition of a "retailer" is revised to exclude qualified persons or their affiliates who operate a distribution facility and sell tangible personal property on behalf of a third-party seller that owns the items sold, provided certain criteria are met.<sup>19</sup>

Additionally, the definition of "retailer engaged in business in this state" is amended to include:

- Persons servicing, repairing, or installing equipment, tangible personal property, or other taxable items in Wisconsin<sup>20</sup>;
- Persons delivering tangible personal property or other taxable items into Wisconsin in a vehicle operated by the person that sells the property or items that are delivered<sup>21</sup>; and

<sup>10</sup> SB 21, Sec. 2319d, amending § 71.07(4k)(b)6., Wis. Stats.; § 71.28(4)(ad)5., Wis. Stats.; Wis. Stats.; § 71.47(4)(ad)5.

<sup>11</sup> SB 21, Sec. 2319d, amending § 71.07(4k)(b)5., Wis. Stats.; § 71.28(4)(ad)4., Wis. Stats.; Wis. Stats.; § 71.47(4)(ad)4.

<sup>12</sup> SB 21, Sec. 2317, amending § 71.28(4)(ad)1., Wis. Stats.; SB 21, Sec. 2433, amending § 71.47(4)(ad)1., Wis. Stats.; SB 21, Sec. 2318, amending § 71.28(4)(ad)2., Wis. Stats.; SB 21, Sec. 2434, amending § 71.47(4)(ad)2., Wis. Stats.; SB 21, Sec. 2319, amending § 71.28(4)(ad)3., Wis. Stats.; SB 21, Sec. 2435, amending § 71.47(4)(ad)3., Wis. Stats.

<sup>13</sup> SB 21, Sec. 2316, creating § 71.07(3y), Wis. Stats.; § 71.28(3y), Wis. Stats.; Wis. Stats.; § 71.47(3y), Wis. Stats.

<sup>14</sup> SB 21, Sec. 2316, creating § 71.07(3y), Wis. Stats.; § 71.28(3y), Wis. Stats.; Wis. Stats.; § 71.47(3y), Wis. Stats.

<sup>15</sup> SB 21, Sec. 2316, creating § 71.07(3y), Wis. Stats.; § 71.28(3y), Wis. Stats.; Wis. Stats.; § 71.47(3y), Wis. Stats.

<sup>16</sup> SB 21, Sec. 2316, creating § 71.07(3y), Wis. Stats.; § 71.28(3y), Wis. Stats.; Wis. Stats.; § 71.47(3y), Wis. Stats.

<sup>17</sup> SB 21, Sec. 2183, creating § 71.07(3y), Wis. Stats.; SB 21, Sec. 2316, creating § 71.28(3y), Wis. Stats.; Sec. 2432, creating § 71.47(3y), Wis. Stats.

<sup>18</sup> SB 21, Sec. 2213d, amending § 71.08(1)(d), Wis. Stats.

<sup>19</sup> SB 21, Sec. 2516, amending § 77.51(13), Wis. Stats.

<sup>20</sup> SB 21, Sec. 2521, amending § 77.51(13g), Wis. Stats.

- Persons performing construction activities in Wisconsin.<sup>22</sup>

Wisconsin's private label credit card "bad debt" deduction provisions have also been amended to take effect on July 1, 2017, and will now first apply to bad debts resulting from sales completed beginning on July 1, 2017.<sup>23</sup>

Lastly of note, under current law, the Department is authorized to set off refunds due a taxpayer against debts that the taxpayer owes state agencies, local governments, and the federal government.<sup>24</sup> If any amounts remain after the setoffs are satisfied, the taxpayer receives the balance.<sup>25</sup> SB 21 now specifies that a taxpayer does not have any right to refunds until the setoff procedure has been completed.<sup>26</sup>

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<sup>21</sup> SB 21, Sec. 2522, amending § 77.51(13g), Wis. Stats.

<sup>22</sup> SB 21, Sec. 2523, amending § 77.51(13g), Wis. Stats.

<sup>23</sup> SB 21, Secs. 4750 & 9437 and 2013 Wisconsin Act 229 amending § 77.585 Wis. Stats.

<sup>24</sup> § 77.59(5), Wis. Stats.

<sup>25</sup> § 77.59(5), Wis. Stats.

<sup>26</sup> SB 21, Sec. 2526, amending § 77.59(5), Wis. Stats.