

Wisconsin state budget includes important tax law changes

Overview

On September 21, 2017, Governor Walker signed Assembly Bill 64¹, which became 2017 Wisconsin Act 59 (Act 59).² Act 59 impacts state corporate and personal income, sales and use, and other taxes. This Tax Alert highlights some of the more notable Wisconsin tax law changes (which have various effective dates as specified in the discussion that follows) that were contained in Act 59, including:

- Updating the Wisconsin income tax code to conform to the Internal Revenue Code (IRC) as amended through December 31, 2016;
- Introducing special sourcing rules for broadcasters for apportionment purposes;
- Creating a partially refundable Research and Development tax credit;
- Aligning the “look-back” period for credits and net business losses;
- Modifying the allowable Manufacturing and Agriculture Credit that can be claimed;
- Introducing a limitation on the personal income tax credit for taxes paid to other states;
- Exempting from state sales and use taxes tangible personal property sold to construction contractors who, in fulfillment of a contract for construction activities, transfer the property to certain entities within the University of Wisconsin system;
- Repealing Wisconsin’s sales tax on Internet access charges, effective July 1, 2020; and
- Creating a sales and use tax exemption for certain frozen foods manufactured by a retailer at a retailer’s off-site manufacturing facility.

Corporate and Personal Income tax

Updates IRC Conformity Date

Effective for taxable years beginning after December 31, 2016, Act 59 generally updates references to the IRC as amended through December 31, 2016, with certain enumerated exceptions, for state corporate and personal income tax purposes.³

Introduces Special Sourcing Rules for Broadcasters

Act 59 introduces special sourcing rules for defined broadcasters. Effective for taxable years beginning after December 31, 2018, a broadcaster is defined to include a television or radio station licensed by the Federal Communications Commission, a television or radio broadcast network, or a television distribution company, but excludes a cable service provider, a direct broadcast satellite system, or an Internet content distributor.⁴ A broadcaster’s gross receipts from advertising are sourced to Wisconsin only if the advertiser’s commercial domicile is in Wisconsin.⁵ A broadcaster’s gross royalties and other gross receipts received for the use or license of intangible property are sales sourced to Wisconsin only if the commercial domicile of the purchaser or licensee is in Wisconsin and the purchaser or licensee has a direct connection or relationship with the broadcaster pursuant to a contract under which the royalties or receipts are derived.⁶ Act 59 specifies that if a broadcaster is a member of a combined group, these new special sourcing rules do not apply to those members that are not defined

¹ A copy of the assembly bill is accessible [here](#).

² 2017-18 Wisconsin Statutes, 2017 General Session (Act 59). A copy of the adopted law is accessible [here](#).

³ Act 59, Section 1009, creating § 71.01(6)(k)1., Wis. Stats.; Act 59, Section 1071, creating § 71.22(4m)(k)1., Wis. Stats.; Act 59, Section 1104, creating § 71.42(2)(k)1., Wis. Stats.

⁴ Act 59, Section 1002m, creating § 71.01(1as), Wis. Stats.; Act 59, Section 1057d, creating § 71.22(1e), Wis. Stats.

⁵ Act 59, Section 1013e, creating § 71.04(7)(dh)4., Wis. Stats.; Act 59, Section 1057d, creating § 71.25(9)(dh)4., Wis. Stats.

⁶ Act 59, Section 1013h, creating § 71.04(7)(dj)2., Wis. Stats.; Act 59, Section 1057d, creating § 71.22(9)(dj)2m., Wis. Stats.

broadcasters.⁷ Act 59 additionally provides that, in certain instances, the amount of the broadcaster's gross receipts from advertising and the use or license of intangible property included within the numerator of the apportionment factor shall be adjusted in accordance with the provisions outlined within § 71.04(7)(g)1.; § 71.25(9)(g)1. Wis. Stats.⁸

Creates a Partially Refundable Research and Development Tax Credit

Prior to Act 59, the amount of Wisconsin's Research and Development (R&D) tax credit claim not used to offset tax due could only be carried forward and credited against Wisconsin income taxes otherwise due for the following 15 taxable years, to the extent not offset by such taxes otherwise due in all intervening years between the year in which the expenses were incurred and the year in which the carryforward R&D credit is claimed.⁹ Under Act 59, for taxable years beginning after December 31, 2017,¹⁰ if the allowable amount of the R&D credit claim exceeds the tax otherwise due under s. 71.23 Wis. Stats., the following will apply:

- a. The amount of the R&D credit claim not used to offset the tax due, not to exceed 10 percent of the allowable amount of the claim, must be certified by the Wisconsin Department of Revenue to the Wisconsin Department of Administration for payment to the claimant by check, share draft, or other draft drawn from the appropriation account under s. 20.835(2)(d) Wis. Stats.¹¹; and
- b. The amount of the R&D credit claim not used to offset the tax due and not certified for payment to the taxpayer may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years, to the extent not offset by such taxes otherwise due in all intervening years between the year in which the expenses were incurred and the year in which the carryforward R&D credit is claimed.¹²

Aligns the look-back period for credits and net business loss

Effective beginning with losses claimed on or after September 23, 2017, regardless of the year in which the loss was incurred,¹³ no offset of Wisconsin taxable income may be made unless the incurred loss was computed on a return that was filed within four years of the non-extended due date for filing the original return for the taxable year in which the loss was incurred.¹⁴ No carryback of a loss may be allowed under § 71.05(8)(b)1., Wis. Stats., unless claimed within four years of the non-extended due date for filing the original return for the tax year to which the loss is carried back.¹⁵ This law change under Act 59 essentially aligns the look-back period regarding net business losses with the existing look-back period for credits in which taxpayers can only claim credits if the claim is filed within four years of the non-extended due date of the return for which the credit is claimed.¹⁶

Personal Income tax

Modifies the Allowable Manufacturing Credit and Agriculture Credit that Can be Claimed

Prior to Act 59, individual taxpayers could claim both the Wisconsin Manufacturing and Agriculture Credit and the "Credit for Taxes Paid to Other States" on their Wisconsin income tax returns for the same items of income. The Legislature apparently viewed this as an "unintended overlap" in the Manufacturing and Agriculture Credit and thus enacted certain provisions in Act 59 to address this issue.¹⁷ Under Act 59, effective for taxable years beginning on or after January 1, 2017,¹⁸ the amount of the eligible qualified production activities income that a taxpayer may claim in

⁷ Act 59, Section 1013e, creating § 71.04(7)(dh)4., Wis. Stats.; Act 59, Section 1057d, creating § 71.25(9)(dh)4., Wis. Stats.; Act 59, Section 1013h, creating § 71.04(7)(dj)2., Wis. Stats.; Act 59, Section 1057d, creating § 71.22(9)(dj)2m., Wis. Stats.

⁸ Act 59, Section 1031i, creating § 71.04(7)(g)1., Wis. Stats.; Act 59, Section 1076k, creating § 71.25(9)(g)1., Wis. Stats.

⁹ § 71.07(4k)(e), Wis. Stats.; § 71.28(4)(f), Wis. Stats.

¹⁰ Act 59, Section 1038t, creating § 71.07(4k)(e)2., Wis. Stats.; Act 59, Section 1086i, creating § 71.28(4)(k), Wis. Stats.

¹¹ Act 59, Section 1038t, creating § 71.07(4k)(e)2.a., Wis. Stats.; Act 59, Section 1086i, creating § 71.28(4)(k)1., Wis. Stats.

¹² Act 59, Section 1038t, creating § 71.07(4k)(e)2.b., Wis. Stats.; Act 59, Section 1086i, creating § 71.28(4)(k)2., Wis. Stats.

¹³ Act 59, Section 9338(10); Act 59, Section 9400.

¹⁴ Act 59, Section 1152, creating § 71.80(25)(a). Wis. Stats.

¹⁵ Act 59, Section 1152, creating § 71.80(25)(b). Wis. Stats.

¹⁶ § 71.75(2), Wis. Stats.

¹⁷ Wisconsin Department of Administration, 2017-19 Executive Budget, *Budget in Brief*, p.79,

<http://doa.wi.gov/Documents/DEBF/Budget/Biennial%20Budget/2017-19%20Executive%20Budget/17-19%20BIB%20FINAL%20revised%2002082017.pdf>, (last visited October 3, 2017).

¹⁸ Act 59, Section 9938(8).

computing the Manufacturing and Agriculture Credit must be reduced by the amount of qualified production activities income taxed by another state for which the "Credit for Taxes Paid to Other States" is claimed.¹⁹

Introduces a Limitation on the Credit for Taxes Paid to Other States

Effective for taxable years beginning on or after January 1, 2017,²⁰ the "Credit for Taxes Paid to Other States" may not exceed an amount determined by multiplying the taxpayer's net Wisconsin income tax by a ratio derived by dividing the income subject to tax in the other state that is also subject to tax in Wisconsin while the taxpayer is a resident of Wisconsin, by the taxpayer's Wisconsin adjusted gross income.²¹ "Net Wisconsin income tax" means the gross Wisconsin income tax less all nonrefundable credits that may be claimed by the taxpayer, except the Credit for Taxes Paid to Other States.²² This limitation does not apply to income that is taxed by one of the four states that borders Wisconsin.^{23 24}

Sales, Use, and Other Taxes

Building Materials for the University of Wisconsin and Technical College

Act 59 amends Wis. Stat. § 77.54 (9m) to create a sales tax exemption for tangible personal property that is sold to a construction contractor who, in fulfillment of a real property construction activity, transfers the tangible personal property to a Wisconsin technical college district, the Board of Regents of the University of Wisconsin System, certain listed institutions, a Wisconsin college campus, or the University of Wisconsin-Extension.²⁵ The tangible personal property must then become a component of a facility in Wisconsin that is owned by the entity.

Internet Access Charges

Wisconsin currently imposes a 5% sales tax on the "sale of Internet access services."²⁶ Effective July 1, 2020, this tax is repealed under Act 59, in accordance with the federal Internet Tax Freedom Act, a law that prohibits all states from taxing Internet access beyond June 30, 2020.²⁷

Sales and Use Tax Exemption: Frozen Foods Prepared Off-Site

Act 59 creates a new Wisconsin sales and use tax exemption for certain frozen foods manufactured by a retailer at the retailer's off-site manufacturing facility.²⁸ The exemption applies whenever the following conditions are present:

- i. the prepared food is manufactured by the retailer in a building assessed for state property tax purposes as manufacturing property or that would be assessed as manufacturing property if the building was located in Wisconsin;
- ii. the retailer makes no retail sales of prepared food at the building in which the prepared food is manufactured;
- iii. the retailer freezes the prepared food prior to its sale;
- iv. the retailer sells the prepared food at retail in a frozen state;
- v. the prepared food is not sold with eating utensils that are provided by the retailer; and
- vi. the prepared food is not candy, soft drinks, or dietary supplements.

Miscellaneous Sales Tax Items within Act 59

Act 59 also makes the following changes that may affect corporate taxpayers subject to Wisconsin sales and use taxation:

1. Act 59 increases the occasional sales exemption threshold from \$1,000 to \$2,000, and modifies the definition of "occasional sales" to provide a presumption that a seller who sells less than \$2,000 of property, items, goods, and services during a calendar year is not pursuing a full-time or part-time vocation, occupation, or business.²⁹

¹⁹ Act 59, Section 1042, creating § 71.07(5n)(d)3, Wis. Stats.

²⁰ Act 59, Section 9938(3t).

²¹ Act 59, Section 1044u, creating § 71.07(7)(c), Wis. Stats.

²² Act 59, Section 1044r, creating § 71.07(7)(a)1., Wis. Stats.

²³ Act 59, Section 1044u, creating § 71.07(7)(d), Wis. Stats.

²⁴ These four states bordering Wisconsin are: Illinois, Iowa, Michigan and Minnesota.

²⁵ 2017 WI Act 59 Sec. 1186d, amending § 77.54 (9m), Wis. Stats.

²⁶ Wis. Stat. § 77.52(2)(a)5a.

²⁷ 47 U.S.C. § 151; P.L. 114-125 (2015-16).

²⁸ AB 64, Sec. 1187, 2017 WI Act 59 Sec. 1187, creating § 77.54 (20n),(d), Wis. Stats.

²⁹ AB 64, Sec. 1174, 2017 WI Act 59 Sec. 1174, amending § 77.51(11)(d), Wis. Stat.

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2. Effective December 1, 2017, Act 59 expands the sales tax exemption for property, items, and services sold in connection with real property construction activities as part of a lump sum contract to all construction contracts.³⁰ It does so by expanding current law to apply to all construction contracts involving real property construction activities if the total sales price of the taxable products is less than 10 percent of the total contract price.
3. Effective December 1, 2017, Act 59 expands the statutory sales and use tax exemptions available to farmers to include beekeeping activities.³¹
4. Act 59 creates a new exemption which exempts the sale of farm-raised fish sold to a fish farm that is registered with the Wisconsin Department of Agriculture, Trade, and Consumer Protection, or to a person who holds a valid permit for the stocking of fish.³²
5. Effective March 1, 2018, the Wisconsin Department of Revenue will be required to establish by administrative rule the criteria applicable to sales and use tax field audits for which an auditor uses a statistical sampling method to assess invoices.³³
6. Act 59 postpones the effective date of retailers claiming a sales tax deduction for qualifying bad debts to July 1, 2018.³⁴

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³⁰ AB 64, Sec. 1176, 2017 WI Act 59 Sec. 1176, amending § 77.51(9)(a) 2., Wis. Stats.; § 77.51(11)(d), Wis. Stats.; § 77.51(12)(t), Wis. Stats.

³¹ 2017 WI Act 59 Sec. 1185p, amending § 77.54(3)(a), Wis. Stats.

³² 2017 WI Act 59 Sec. 1194c, creating § 77.54(66), Wis. Stats.

³³ 2017 WI Act 59 Sec. 1194e, creating § 77.59 (2g), Wis. Stats.

³⁴ 2017 WI Act 59 Sec. 2265, amending 2015 Wisconsin Act 55.

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