

DATE: April 10, 2020

TO: Members of the Wisconsin Legislature

FROM: Cooperative Network of Wisconsin  
Independent Insurance Agents of Wisconsin  
National Federation of Independent Business  
Wisconsin Bankers Association  
Wisconsin Credit Union League  
Wisconsin Independent Business  
Wisconsin Institute of CPAs  
Wisconsin Manufacturers & Commerce  
Wisconsin Restaurant Association

RE: Including federal COVID-19 provisions in Extraordinary Session Legislation

On behalf of Wisconsin's business community and the organizations listed above, we request that you include the following Federal Tax Law Changes Enacted in Response to the Coronavirus Outbreak as outlined in the Families First Coronavirus Response Act (P.L. 116-127) and the Coronavirus Aid, Relief, and Economic Security Act.

We ask that you adopt relevant provisions of the Act as part of state legislation to update references to the federal IRC.

- 1. Paycheck Protection Loan Forgiveness (Most Important)**
2. Special Rules for Use of Retirement Funds
3. Partial Above-the-Line Deduction for Charitable Contributions
4. Suspension of Limitation on Certain Charitable Contributions
5. Telehealth Services for High Deductible Health Plans
6. Additional Qualified Medical Expenses under Health Savings Accounts
7. Exclusion for Certain Employer Payments of Student Loans
8. Depreciation of Qualified Improvement Property

These provisions were outlined in a memo to the Wisconsin Legislature on April 6, 2020 from Director Bob Lang of the Legislative Fiscal Bureau and detailed below.

**Additionally, we ask that you assess the impact of any additional future COVID-19 related federal legislation and what it will have on the Wisconsin economy. We desire to maintain a frequent and ongoing dialogue to discuss any action necessary to help sustain, reboot, and empower all of Wisconsin.**

Please contact Mike Semmann at [msemmann@wisbank.com](mailto:msemmann@wisbank.com), 608-516-8567 for additional information. Thank you for considering our request.



## **PROVISIONS THAT WOULD REQUIRE LEGISLATIVE ACTION (taken from the April 6, 2020 memo)**

### **Paycheck Protection Loan Forgiveness**

In order to assist businesses and their employees during the COVID-19 pandemic, the Act provides \$349 billion for paycheck protection loans under the Small Business Administration's (SBA) Section 7(a) loan guarantee program available for the period of time from Feb. 15, 2020, through June 30, 2020 (the "covered period"). Paycheck protection loan funds may be used to cover: (a) payroll expenses; (b) costs related to group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; (c) mortgage payments; (d) rent; (e) utility bills; and (e) other debt service obligations incurred before the covered period. Loans will be disbursed via the network of banks participating in the SBA's current Section 7(a) loan program, and, eventually, through other lenders determined by the SBA and the Secretary of the U.S. Treasury.

A portion of paycheck protection loans may be forgiven on a tax-free basis equal to the sum of payments for payroll expenses, mortgage payments, rent, and utility bills made during the eight-week period beginning on the date the loan was issued, not to exceed the principal amount of financing made available under the covered loan. The amount of loan forgiven may be reduced if the recipient does not maintain certain employment and wage thresholds specified in the Act. The amount of the loan forgiven is considered canceled debt income and excluded from federal gross income by the lender. The amount of loan forgiven that would otherwise be included in gross income of the eligible recipient is excluded from federal gross income under the Act.

Under state law, any canceled debt on a paycheck protection loan would be included into the borrower's Wisconsin income for purposes of the individual income tax and the corporate franchise/income tax. Because the paycheck protection loan program did not previously exist, such revenues are not part of prior estimates of general fund revenue. For that reason, it is estimated that conforming to federal law would not decrease state income and franchise tax collections compared to current estimates. On the other hand, if state law were not amended to conform to federal law, DOR estimates that state revenues would increase by \$114.0 million in 2019-20, \$102.0 million in 2020-21, \$11.0 million in 2021-22, and a minimal amount thereafter due to increased collections from businesses receiving forgiveness on emergency loans under the payroll protection loan program including the forgiven amounts as taxable income in Wisconsin.

### **Special Rules for Use of Retirement Funds**

#### **Treatment of Coronavirus-Related Distributions.**

In general, federal law imposes a 10% additional tax penalty on the amount of an early withdrawal (one made before the individual reaches a federally specified age) from certain qualified retirement accounts. State law provides that taxpayers taking early withdrawals must pay a state penalty of 33% of the amount of the federal penalty. The Act specifies that the federal tax penalty does not apply to any coronavirus-related distribution, which is defined as any distribution from an eligible retirement plan (as set forth under federal law) in calendar year 2020 to an individual: (a) who is diagnosed with SARS-CoV-2

or COVID-19; (b) whose spouse is diagnosed with either illness; or (c) who experiences certain adverse direct or indirect financial consequences as a result of either illness.

A coronavirus-related distribution cannot exceed \$100,000 per individual in any taxable year and can only be made in calendar year 2020. Any individual who receives a coronavirus-related distribution may, within three years of initial distribution, make contributions to an eligible retirement plan up to the amount initially distributed. Provided such repayments meet certain federal requirements, the amounts initially distributed would be excluded from gross income. When coronavirus-related distributions are not recontributed in this manner, the Act provides that the distribution be included in gross income over a three-year period.

#### Increase on Loan Limits from Qualified Employer Plans.

Federal law treats loans from qualified employer retirement plans as distributions includable in gross income. However, up to \$50,000 of such loans are not required to be treated as distributions. The Act increases this limitation to \$100,000 and delays the due date for repayment of such loans by one year. This provision applies for loans made during the 180-day period beginning on the date of enactment of the Act.

State adoption of these provisions is estimated to increase individual income tax revenues by \$0.4 million in 2019-20, and reduce such revenues by \$12.1 million in 2020-21, \$2.0 million in 2021-22, and \$0.2 million in 2022-23.

#### **Partial Above-the-Line Deduction for Charitable Contributions**

The starting point for determining Wisconsin taxable income is federal adjusted gross income (federal AGI). To arrive at federal AGI, several additions and subtractions are made to an individual's gross income. The Act creates an additional subtraction by allowing up to \$300 of qualified charitable contributions to be deducted from gross income in tax year 2020.

A qualified charitable contribution is one which is made in cash and meets certain other federal requirements. This deduction is available to taxpayers who claim the standard deduction (do not itemize their deductions). This provision applies only to tax year 2020. If adopted, it is estimated that the provision will reduce individual income tax revenues by \$0.5 million in 2019-20 and \$4.2 million in 2020-21. Because the provision is only in effect for tax year 2020, there is no estimated fiscal effect in subsequent fiscal years.

State law provides an itemized deduction credit equal to 5% of the amount by which certain federal itemized deductions (including the deduction for charitable contributions) exceed the state sliding scale standard deduction. It should be noted that if this provision is not adopted by Wisconsin, it is possible that itemized deduction credit claim amounts would increase, resulting in a reduction of state individual income tax revenues.

#### **Suspension of Limitation on Certain Charitable Contributions**

Federal law generally provides that an individual may deduct qualified charitable contributions equaling up to 50% of the taxpayer's federal AGI in that tax year (or 60% for cash contributions made between tax years 2018 to 2025). The Act permits qualified charitable contributions made in calendar year 2020 up to 100% of the taxpayer's federal AGI. Any amounts exceeding the taxpayer's federal AGI may be carried over to the next five taxable years.

For qualified contributions, the Act increases the limitation on the deduction for charitable contributions by corporate taxpayers from 10% of adjustable taxable income to 25%. Any amounts exceeding this limit may be carried over to the next five taxable years. Similar to current law, the current year contribution is deducted first with carryover contributions applied in chronological order.

"Qualified contribution" means any charitable contribution if paid in cash during calendar year 2020 and the taxpayer elects to treat the contribution as a qualified contribution, but does not include contributions to tax exempt organizations that are organized under section 509(a)(3) of the IRC to establish a new, or maintain a preexisting, donor advised fund. The provision is estimated to reduce state income and franchise tax revenues by \$3.2 million in 2019-20 and \$25.7 million in 2020-21. However, income and franchise tax revenues are expected to increase by \$14.4 million in 2021-22 and by \$4.4 million in 2022-23 because increasing the limitation on the deduction in 2020 will reduce the amount that would otherwise carry forward to be used over the next five years.

### **Telehealth Services for High Deductible Health Plans**

Under federal law, contributions to a health savings account by an individual covered under a high deductible health plan are tax-deductible, subject to annual contribution limits. The Act specifies that a health plan shall not fail to be treated as a high deductible health plan by reason of failing to provide a deductible for telehealth and other remote care services. In the absence of this provision, an individual could not deduct contributions to a high deductible health plan that does not provide a deductible for telehealth and other remote care services for federal tax purposes. Such treatment applies to plan years beginning on or before Dec. 31, 2021. It is estimated that state adoption of this provision will reduce individual income tax revenues by \$0.4 million in 2020-21, \$0.2 million in 2021-22, and by a minimal amount thereafter.

### **Additional Qualified Medical Expenses under Health Savings Accounts**

Under federal law, a health savings account is established solely for the purpose of paying the qualified medical expenses of the account beneficiary. When a distribution is taken to pay for such expenses, the amounts are excluded from gross income.

Qualified medical expenses include any amounts paid by the beneficiary for medical care for themselves, their spouse, and their dependents, to the extent these amounts are not otherwise compensated for (such as through insurance). The Act stipulates that amounts paid for menstrual care products shall be treated as having been paid for medical care and thereby excluded from gross income. The Act defines menstrual care products to mean a tampon, pad, liner, cup, sponge, or similar product used by individuals with respect to menstruation or other genital-tract secretions.

The Act provides similar treatment for Archer medical savings accounts, health flexible spending arrangements, and health reimbursement arrangements, such that amounts paid for menstrual care products are treated as having been paid for medical care and excluded from gross income. This provision applies for distributions taken, and qualified medical expenses incurred, after Dec. 31, 2019. State adoption of this provision is estimated to reduce individual income tax revenues by \$0.2 million in 2019-20, \$3.2 million in 2020-21, \$4.2 million in 2021-22, and \$4.5 million in 2022-23.

### **Exclusion for Certain Employer Payments of Student Loans**

Under current law, payment of a debt paid on a taxpayer's behalf is generally considered income to that taxpayer. Certain exclusions from such income apply, such as up to \$5,250 of qualified educational expenses paid by an employer on behalf of an employee. For payments made after the day of the Act's enactment and before Jan. 1, 2021, the Act expands this exclusion to include payments of student loan principal and interest made by an employer on behalf of an employee. The limitation on the exclusion remains the same, such that the limitation of \$5,250 applies to all combined payments of student loan debt and qualified educational expenses. An employee may not deduct loan interest for payments made by the employer. DOR estimates that conforming to federal law would decrease income and franchise tax collections by \$0.6 million in 2019-20, by \$2.1 million in 2020-21, and by a minimal amount thereafter.

### **Depreciation of Qualified Improvement Property**

The Tax Cuts and Jobs Act of 2017 (TCJA) intended to provide a 15-year recovery period for qualified improvement property. However, due to a drafting error no such provision was included into the final language of the TCJA. Thus, in most cases qualified improvement property is treated as nonresidential real property having a 39-year recovery period (40 years under the alternative depreciation system). The Act corrects the drafting error to provide the intended 15-year recovery period retroactive to Jan. 1, 2018. DOR estimates that conforming state law to this provision would decrease revenues by a minimal amount.