



# Newsletter

The Voice of Independent Business in State Government

## NO NEW BUSINESS SALES TAXES!

### GOVERNOR DOYLE SIGNS STATE BUDGET

On June 29<sup>th</sup>, Governor Doyle signed a \$62.2 billion state budget for the 2009-11 biennium. The budget passed both Democrat-led houses by slim margins, with no Republicans voting for the bill. In the Senate, one Democrat, Sen. Jim Sullivan (D-Wauwatosa) joined the Republicans in voting no. In the Assembly, Democrat Representatives Peggy Krusick (D-Milwaukee) and Bob Ziegelbauer (D-Manitowoc) joined the Republicans in voting against the budget. The independent, Jeff Wood (I-Chippewa Falls) voted in favor of the budget.

Fortunately, the budget contains no expansion of the sales tax base, which was speculated to be in consideration among legislators. This is a victory for small businesses and farmers who would have paid significantly higher taxes if the sales tax had been applied to business services and farm necessities. For more information on this, see the article *How the Good Guys Won the Fight to Keep the Sales Tax off Business Services* later in this newsletter.

Now for the bad news – spending, borrowing and taxing all increased in the budget. Specifically, spending increased \$4 billion, borrowing increased \$2.9 billion and taxes increased by \$3.6 billion. Part of the \$3.6 billion in tax increases includes an allowance for property taxes to increase an additional \$1.5 billion.

Of major importance to small businesses and farmers, the budget decreased the capital gains exclusion to 30%. Prior to this budget, the capital gains exemption was 60%. This change will hit small businesses and farmers hard. The Senate's version of the budget would have taxed 100% of capital gains but a milder, although still very damaging, exclusion of 30% was in the final product. The capital gains tax increase was crafted in the middle of the night, behind closed doors in the final hours of negotiation. For a list of the tax and fee increases in the budget, see the article *Budget Raises Fees, Some Taxes* in this Newsletter.

We believe this will be devastating for Wisconsin's already challenged business climate.

► *Continued on page 2*

### UNEMPLOYMENT INSURANCE BATTLE ON THE HORIZON

**As fund delves deeper into debt, employers will be asked to make up the shortfall**

Wisconsin employers will pay higher unemployment insurance (UI) taxes in 2010. This is a result of the fund paying more in benefits than it has collected in taxes for 13 years. The balance began to drop over the last few years and worsened when the recession hit. At the end of May, the fund had a negative balance of \$238 million without any expectation of an early recovery.

The Department of Workforce Development estimates that the UI fund will have borrowed \$700 million from the federal government by the end of December 2009 and the deficit could reach \$1 billion by the end of 2011. The loans from the federal government will have to be paid back through higher taxes on Wisconsin employers for several years.

The Unemployment Insurance Advisory Council (UIAC), which is charged with monitoring the fund and suggesting changes to keep the system working, is not scheduled to meet again until September. Members of the council have indicated that they would prefer to not meet until the Fall and assess how the economy is doing at that time.

The time has come for the UIAC to address this shortfall. The fund has been headed for trouble for years while the imbalance was not addressed. Now, all employers will be asked to help stabilize the system. The last time the system faced a crisis like this was in the 1980's. At that time, the battle came down to small, positive balance employers versus large, negative balance maximum-rated employers. A repeat of this battle is expected again. WIB believes those with positive balances in their accounts should not be asked to bear an unfair portion of the burden to dig out of the hole.

WIB's long history and experience has prepared us well to protect stable, small businesses. WIB will work with the Department of Workforce Development, the UIAC and legislative leaders to keep positive balance employers from unduly having to bail out businesses that are paying out more in UI benefits than they have paid into the UI Fund and to insure the stability of the fund in the future. ■

## Inside

How the Good Guys Won  
p. 2

Budget Raises  
Multiple Taxes  
p. 3

Milwaukee Sick  
Leave Blocked  
p. 3

Legal Line  
p. 4

### ► *State Budget continued from page 1*

There is no argument that crafting this budget was difficult. Going forward will not be easy either. A significant portion of the revenue to fund this budget was done so with the federal stimulus funds. That is one-time money that won't be available for the next budget. That only means one thing – if spending is not significantly reduced, then taxes will be increased to make up for the shortfall. As a result, the battle over the expansion of the sales tax base, among other taxes, may very well be fought again in the near future. In fact, it is possible that if revenues fall further this year, the Governor and Legislature may be forced to address that shortfall with yet another budget repair bill.

The Legislature is now out of session until September 15<sup>th</sup>. Committee meetings will still take place and bills will be introduced over the summer months. WIB will continue to be a voice for you in the legislature and monitor proposals that would impact the success of small businesses and farmers. ■

### **INDIVIDUAL HEALTH INSURANCE REFORM CHANGES ENACTED IN BUDGET**

The recently passed state budget includes modifications to the laws governing the individual and small group health insurance markets. The changes will make it easier for individuals to retain coverage and effect pre-existing condition limits that accompany most individual policies.

New law provisions for individual health insurance policies include:

- No claim 12 months from the date of issue of an individual insurance policy may be reduced or denied on the ground that a condition existed prior to the effective date of coverage, unless the condition was excluded from coverage by a specific provision at the time the cost was incurred;
- Single adults up to the age of 27 must be covered if the parents have an individual policy and seek the adult child's coverage.
- A policy may not define a pre-existing condition more restrictively than a condition, regardless of the cause of the condition, for which medical advice, diagnosis, care or treatment was recommended or received before the effective date of the coverage. The policy must reduce the length of time during which a pre-existing condition exclusion may be imposed by the combination of the consecutive periods of coverage if there is no more than 63 days between coverage periods.

The legislation also expands the appeal rights for individual policy holders who have been denied coverage under a pre-existing condition dispute.

It remains to be seen how these changes will impact rates in the individual and small group insurance markets. ■

### **HOW THE GOOD GUYS WON THE FIGHT TO KEEP THE SALES TAX OFF BUSINESS SERVICES**

The State of Wisconsin has a new two year budget and the sales tax base has NOT been expanded to business services or anything else. How did one happen without the other? WIB members can take a lot of the credit!

Last autumn state officials knew they were facing the worst budget crisis since 1983. Expansion of the sales tax base was being discussed wherever any lawmakers gathered. The coalition Wisconsin Way wanted to expand the base and they included some of the most powerful special interest groups including the Wisconsin Education Association Council, Wisconsin Counties Association and Wisconsin Realtors Association.

What the administration and legislature didn't know then was that they would be facing the worst national economic crisis since the Great Depression. As the recession deepened last fall and Democrats won control of both houses of the legislature expansion of the sales tax base seemed almost inevitable. The state needed money and expansion of the sales tax base is an easy place to find it.

WIB urged members to talk with every legislative candidate during the 2008 campaign. WIB members understood the issue and responded enthusiastically. After the November election WIB urged members to contact new and reelected legislators and again WIB members responded. The phone calls and e-mails poured into the state Capitol from around Wisconsin.

WIB wrote Governor Doyle in early December that expansion of the sales tax base is "unthinkable" and put out a well-covered news release. The governor responded that he appreciated WIB's viewpoint but that, "I simply cannot take anything off the table." WIB pointed out in another well-publicized news release that a sales tax on accounting services is NOT a sales tax on accountants but is, in fact, a sales tax on businesses that use accounting services. Same is true for legal services, security, janitorial work and many other business services. Finally, we concluded December by explaining the Michigan mess. That legislature voted to massively expand the sales tax base and then was forced to rescind their action just hours after the new taxes took effect.

By early in 2009 WIB efforts seemed to be paying off. The governor suggested in a newspaper interview that he didn't want to do battle over expansion. He introduced his proposed budget with no expansion. There was behind the scenes talk but no public discussion of expansion during three months of hearings and deliberations by the budget-writing Joint Committee on Finance. WIB was at every hearing and every Finance Committee meeting. By the time the budget arrived in the Assembly and Senate expansion had effectively been killed. For now. As we have seen for decades, however, the issue – never really goes away. ■

## MILWAUKEE SICK LEAVE “UNCONSTITUTIONAL”

A circuit judge has ruled that the City of Milwaukee’s recently enacted mandatory sick leave ordinance is unconstitutional and its enactment was invalid. The ruling was another judicial step in what will be a long battle through the courts. 9 to 5, the National Association of Working Women, has said it will appeal the decision by Judge Thomas Cooper to the state Court of Appeals.

Cooper ruled the referendum language was not “concise” because the ordinance provides for “sick leave” in cases of domestic or sexual violence, stalking and related legal activities. Those issues fall far outside the normal definition of sick leave. The judge upheld several other aspects of the ordinance. The ordinance is being challenged by the Metropolitan Milwaukee Association of Commerce. ■

## BUDGET RAISES MULTIPLE TAXES

The 2009-2011 state budget signed into law by Governor Doyle contains **NO expansion** of the sales tax base. The WIB grass roots lobbying effort that began in summer 2008 was very successful in keeping expansion of the sales tax base from being introduced at any step in the budget process.

However, the budget contains a number of troubling tax and fee increases, some of which may impact some businesses and business owners. The following is a list of the tax increases in the budget:

- Increase the personal income tax on households earning more than \$300,000 a year and individuals earning \$225,000 a year;
- Reduce the capital gains income tax exclusion to 30%. It is currently 60%.
- Enact a 75 cent per month tax on all phones that can dial 911 to be used for municipal public safety purposes;
- Increase the cigarette tax 75 cent per pack;
- Increase from \$5 to \$10 the youth work permit fee.
- Create a new tax on outpatient surgery centers comparable to the recently imposed tax on hospitals. This revenue brings the state large amounts of federal dollars that are, in turn, rebated to the hospitals and outpatient surgical centers that have significant numbers of Medicaid patients;
- Increase the so-called “tipping fee” on solid waste disposal from \$5.90 per ton to \$14 per ton. This will bring in new revenue and, it is hoped, keep trash from Illinois and Minnesota from filling Wisconsin landfills. Federal law keeps Wisconsin from banning trash from neighboring states;
- Raise boat registration fees 15% and create a \$15 nonresident boat sticker beginning in January of 2010;
- Increase the assessment on licensed nursing home beds from \$75 per month to \$150 per month in 2009-10 and from \$150 per month to \$170 per month in 2010-11;
- Increase child care licensing fees for group child care centers from \$10.33 per child to \$16.94;
- Hike certain fees imposed on securities trading;
- Increase the insurance agent appointment fee by OCI to \$10 for resident and \$30 for non-resident agents;
- Raise the cost of background checks for handguns from \$8 to \$13;
- Raise the lien title fee from \$4 to \$10;
- Increase from \$210 to \$350 in the base fee portion of the annual environmental repair fee for generators of hazardous waste;
- Increase fees for asbestos abatement performed as part of nonresidential demolition and renovation projects. ■

## AUTOMATIC BUSINESS CONTRACT RENEWAL BILL INTRODUCED

Legislation to regulate automatic renewal clauses in business service and lease contracts has been introduced in the Wisconsin Senate by Senator Robert Wirth (D-Pleasant Prairie). The bill, SB 190, has been referred to the Senate Small Business Committee, which is chaired by Sen. Wirth. The bill is expected to have a public hearing.

SB 190 requires companies to disclose automatic renewal clauses in their service contracts and give customers the opportunity to prevent the automatic renewal. The bill also includes a provision that voids a business contract clause known as “right to match.” These clauses require a customer to permit the seller to match any offer the customer receives from, or makes to, another seller after the end of the contract’s stated term. SB 190 also provides that if a seller fails to comply with the reminder notice requirements or attempts to enforce a right to match provision, the customer will be allowed to bring legal action for damages.

This is the fourth consecutive legislative session that the bill has been introduced. WIB spoke out again automatic renewal clauses when after WIB members called our HOTLINE complaining about being stuck with contracts they thought were expiring.

SB 190 will be a major WIB legislative priority for the remainder of the 2009-10 legislative session. ■

**DO YOU WANT TO RECEIVE THE  
NEWSLETTER BY EMAIL?  
Email your request to [mmetz@wibiz.org](mailto:mmetz@wibiz.org).**

## SMALL CLAIMS LIMIT INCREASE SOUGHT

A bill to raise the small claims court jurisdictional limit is being prepared with support from Wisconsin Independent Businesses. Increasing the outdated limit of \$5,000 has been an important issue for many small business owners.

WIB wants to raise the limit to \$10,000 so small business owners can pursue money owed them without hiring an attorney. Rep. Gary Hebl (D-Sun Prairie) plans to introduce the bill later this session. Sen. Jon Erpenbach (D-Middleton) is working on a Senate version of the bill.

Small claims legislation is usually opposed by the court system and the counties. Because counties pay for the court commissioners who hear many small claims cases, counties fear raising the limit will mean more cases, more commissioners and more county costs.

The new bills will require that any increased caseload will be offset by increased income through raised fees. ■



Robert E. Gregg  
Boardman Law Firm

**Robert E. Gregg is a partner with the Boardman Law Firm of Madison. He has been associated with WIB for 25+ years. Boardman attorney Jennifer Mirus also contributed to this report. Find more employment law updates at the WIB web site, WWW.WIBIZ.ORG. Click on LEGAL LINE. Contact Bob at rgregg@boardmanlawfirm.com.**

The Wisconsin Legislature has amended the Fair Employment Act to conform with Federal Title VII and allow up to \$300,000 in compensatory and punitive damages in state EEO cases. Until now, the WFEA allowed only the award of pay loss, reinstatement and attorney fees. The extra damages will be on the same "sliding scale" as Title VII, depending on the size of the employer.

Unlike federal law, the new Wisconsin amendments will require *two trials*. The original decision on whether discrimination occurred will be made by an Administrative Law Judge at the State Equal Rights Division. Then a second trial on the extra damages will occur in Circuit Court. This will dramatically escalate the costs and turn what was a reasonably user-friendly administrative process into a Federal Court type of litigation. This will certainly be more expensive for employers and make employment practice liability insurance more important. The new process may also backfire on plaintiffs. The old, less formal administrative process was designed for use by unrepresented plaintiffs, with smaller issues, who often achieved favorable decisions. The new process will generate a "high stakes" expensive legal defense from the start. Small-case plaintiffs who cannot attract an attorney may well be blown out of the process. Thus, the people the WFEA was intended to help may have lost in the long run.

**"Voluntary" Homework Is Paid Time.** Training which enhances an employee's ability to do their current jobs is paid time. Even if it is

voluntary, it is directly and immediately beneficial to the employer. When the training requires homework or other non-standard time study, that, too, is "hours worked." The employer and employee can agree, in writing, to a reasonable number of study hours and a training pay rate, but the hours must be paid \_\_ and counted toward overtime calculation.

**"Speak American" Comments Create Case.** An immigrant from Mexico with limited English had a good work record in a packing operation. He then was placed under a new supervisor who eventually fired him for alleged poor performance. The evidence in the ensuing Title VII national origin discrimination case included several comments by the new supervisor. During a performance meeting, the supervisor told the employee's interpreter to be quiet and insisted the employee "speak American." The supervisor made comments to others that the employee should go back to Mexico if he couldn't speak English. There was no requirement or need to speak English on the job. It could be done, and had been done, well by the employee without any language skill. The court found the supervisor's comments were evidence of national origin discrimination. *Avila Jostens, Inc.* (10th Cir., 2009).

**Stereotypes About Mother Lose Case.** In *Chadwick v. Well-Point, Inc.* (1st Cir., 2009), the court found that an employee was passed over for promotion because she had four children. A less experienced person with lower performance evaluations was chosen instead. The court found that managers making the selection, all female, made comments relating to the plaintiff's family responsibilities, and one of the managers told her, "You have the kids and you have a lot on your plate right now." The court ruled that "an employer is not free to assume that a woman, because she is a woman, will necessarily be a poor worker because of family responsibilities."

**Employer could not justify no-work-from-home policy.** An employee requested to work from home two days a week due to her disability restrictions. Management refused on the grounds that removing the documents she worked with created a security risk. However, at trial, the employee's supervisor testified that her daily presence in the office was not necessary as long as she had documents to work on. Further, the papers at issue were low level, had no security designation, and were not covered by any department security or safekeeping practices. The employer's reason for denial of work from home were without foundation. *Freeman vs. Department of Homeland Security* (D. NJ, 2009). ■

If you have questions about these issues or any workplace problem, call the WIB toll-free member HOTLINE at 800-362-9644

[www.wibiz.org](http://www.wibiz.org)  
The Voice of Independent Business  
in State Government

  
**EXPLORE wisconsin.com**  
the site for all seasons and all reasons

**WIB BUDGET & UI UPDATES  
AT WWW.WIBIZ.ORG!**

P.O. Box 2135, Madison, WI 53701

The voice of independent business in state government



PRSRRT STD  
U.S. POSTAGE  
PAID  
MADISON, WI  
PERMIT NO. 2623