



## THE NEW STATE LOTTERY CREDIT

The biennial state budget act (1997 Wisconsin Act 27), passed by the legislature and signed by Governor Tommy Thompson on October 11, 1997, creates a new basis for distribution of the net proceeds from the state lottery. The old method, which distributed lottery profits only to Wisconsin resident homeowners, was declared unconstitutional by the Dane County Circuit Court in October 1996. Now, profits will be shared by owners of all taxable real property (residential, commercial, etc.) and taxable personal property that is located in the state, regardless of where the owners reside. It is predicted property owners will receive an average credit of about \$80 on tax bills mailed in December 1997, accounting for two years of lottery profits. Credits will likely be about half as large in subsequent years.

### I. PREVIOUS LAWS DECLARED UNCONSTITUTIONAL

The 1987 constitutional amendment which authorized the legislature to create a state lottery required that the net proceeds of the lottery be used for property tax relief as provided by law. At first, beginning with the September 1988 startup of the lottery, proceeds were applied to general school equalization aids, farmland tax relief credits and district attorney salaries. In a class action suit, Dane County Circuit Court Judge Michael Nowakowski ruled in May 1992 that using lottery profits to supplement school aids was unconstitutional, because the intent of the voters in ratifying the the lottery amendment was to provide for direct property tax relief which was "separate, different and extra".

The legislature responded by creating a "lottery credit for school property tax relief", under which owners of principal residences were eligible for the credit on their local property tax bills, relative to the amount of property taxes owed toward the local school levy. In a suit brought by a group of out-of-state landowners, Dane County Circuit Court Judge Angela Bartell held in October 1996 that this credit violated the uniformity clause of the state constitution. Because all classes of property, unless exempted by constitutional amendment, must be treated equally for property taxation purposes, homes owned by out-of-state residents, second homes owned by Wisconsin residents and commercial property cannot be excluded from the lottery property tax credit program. The ruling resulted in no lottery credits being distributed in 1996. Instead, they were held in escrow awaiting a change in the statutory formula.

### II. HOW THE NEW DISTRIBUTION FORMULA WORKS

Annually, by October 16, the Department of Administration (DOA) determines the total lottery proceeds available for distribution under the lottery credit in the upcoming year. The

amount varies depending upon lottery ticket sales. According to DOA, \$253.5 million will be available for distribution in 1998, consisting of proceeds from both 1996 and 1997.

After DOA determines the dollars to be distributed, the Department of Revenue determines that year's maximum value of property ("credit base") that will be used to calculate the property credit. For taxes due in 1998, every owner of taxable property, real or personal, is entitled to receive a lottery credit equal to the gross full value tax rate for the respective school district multiplied by the property's fair market value, up to the 1998 maximum credit base of approximately \$8,500. Persons with property worth less than \$8,500 will get a lower credit (school tax rate multiplied by actual property value). However, because most parcels are valued above the credit base, most property owners in the same district receive the same credit. The Legislative Fiscal Bureau estimated in October 1997 that statewide the average 1998 lottery credit for a property will be about \$80.

### **III. NEW CREDIT MAY BE CHALLENGED; CONSTITUTIONAL AMENDMENT CONSIDERED**

Some believe that the new plan for distribution of the lottery tax credit may be vulnerable on constitutional grounds because, although the basis for calculating the credit is uniform, the comparative value of the credit, as a percentage of the total assessed value of each property, varies greatly. For example, they assert that the uniformity clause is violated if the owner of a business property valued at \$1 million receives the same dollar amount credit as the owner of a house valued at \$100,000.

In another approach, the governor and various legislators of both parties have indicated their support for a proposed constitutional amendment permitting lottery property tax relief directed exclusively to owners of principal residences.

### **IV. FOR MORE INFORMATION**

For a copy of Section 79.10, Wisconsin Statutes, relating to the state lottery property tax relief credit, contact the Legislative Reference Bureau at (608) 266-0342.

For further information about the lottery credit program, contact the Department of Revenue, Bureau of Local Financial Assistance at (608) 266-0204 or 267-8965.

An in-depth discussion of the lottery credit is included in the recent LRB publication "The Evolution of Legalized Gambling in Wisconsin", Research Bulletin 97-1, September 1997.