

**1999 DRAFTING REQUEST**

**Assembly Amendment (AA-ASA1-AB133)**

Received: 09/30/1999

Received By: shoveme

Wanted: As time permits

Identical to LRB:

For: Legislative Fiscal Bureau 7-7417

By/Representing: Doty

This file may be shown to any legislator: NO

Drafter: shoveme

May Contact: Rob Reinhardt,  
6-3773

Alt. Drafters:

Subject: Tax - individual income  
Tax - miscellaneous

Extra Copies: PG, Rob Reinhardt

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**Pre Topic:**

LFB:.....Doty -

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**Topic:**

Inter vivos trust provisions

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	shoveme 10/03/1999	wjackson 10/03/1999	martykr 10/03/1999	_____	lrb_docadmin 10/03/1999		
	shoveme 10/04/1999	chanaman 10/04/1999		_____			
/2			mclark 10/04/1999	_____	lrb_docadmin 10/04/1999		

10/04/1999 04:44:10 PM  
Page 2

FE Sent For:

**<END>**

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**6-3773**

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Subject: **Tax - individual income**  
**Tax - miscellaneous**

Extra Copies: **JK, Rob Reinhardt**

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LFB:.....Doty -

**Topic:**

*er*  
*(M)* inter vivos trust provisions

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See Attached

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/1	shoveme 10/03/1999	wjackson 10/03/1999	martykr 10/03/1999	_____	lrb_docadmin 10/03/1999		

*1/2 MES 10/4/99*  
FE Sent For:  
*cmH 10/4*  
*12*

*mre 10/4*  
*mrc/cmh 10/4*  
*<END>*

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*JK* **Rob Reinhardt**

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/1	shoveme	11 WLJ 10/3 <del>10/3</del>		4# <del>10/3</del>			
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*11 MES 10/3/99*

FE Sent For:

<END>

## **Shovers, Marc**

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**From:** Burnett, Douglas  
**Sent:** Sunday, October 03, 1999 4:41 PM  
**To:** Shovers, Marc; Healy, Brett; Reinhardt, Rob  
**Subject:** Inter Vivos Trust

Marc and Rob-This is just to confirm that the trust provision should be removed entirely from the conference report. Both Sen. Chvala and Speaker Jensen have signed off on removing it.

Doug Burnett  
Office of Senate Majority Leader Chuck Chvala  
608-266-9170



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1912/1  
MES.../...  
wlj

LFB:.....Doty - <sup>Frank</sup> Inter vivos trust provisions

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO 1999 ASSEMBLY BILL 133

TODAY

1 At the locations indicated, amend the substitute amendment as follows:

2 ✓ 1. Page 822, line 22: delete lines 22 to 25.

3 ✓ 2. Page 823, line 1: delete lines 1 to 20.

4 ✓ 3. Page 852, line 3: delete lines 3 to 24.

5 ✓ 4. Page 853, line 1: delete lines 1 to 8.

6 ✓ 5. Page 1598, line 4: delete lines 4 to 7.

7 (END)

**From:** "Burnett, Douglas" <Douglas.Burnett@legis.state.wi.us>  
**To:** "Katie Boyce" <boyce@inxpress.net>  
**Date:** Mon, Oct 4, 1999, 11:10 AM  
**Subject:** RE: Trust Language

---

Hi Katie—I will talk with Chuck on it once there is language.

-----Original Message-----

From: Katie Boyce [mailto:boyce@inxpress.net]  
Sent: Monday, October 04, 1999 10:41 AM  
To: Douglas.Burnett@legis.state.wi.us  
Subject: Trust Language

Doug -

Since my email to you this morning, quite a few things have been done.

We (State Bar and NML) have asked Shovers to draft a provision that would:

1. Grandfather all existing trusts
2. Would make the new law applicable to the 1999 tax law.

Shovers said he could do that. We had the Speaker's office permission to speak with him. The Bar is happy, NML is happy. Speaker's office has signed off. Bill spoke with Eric Peterson and he explained your conversation, and we understand that you are comfortable with this if Mark Shovers is comfortable. Please call if you should have any questions, 255-05566. Thank you for all your help.

Bill Broydrick  
Steve Radke, NML  
Jen Boese, Trust Lawyers  
Katie Boyce

Bill Broyderick  
414 719 1399

Prop points 2 & 3

10/4/98

Current law applies to current TS  
New law <sup>136</sup> applies 1/1/99 to TS that became

IRREVOC on

Catherinewilbert @ Northwesternmutual.com

for TS that became IRK or were  
first administered in WI before the  
eff date of this subsection  
a resident trust means any T administered  
in WI  
(and) - more generous - not taxed today

talk to Catherine Wilbert at  
NML re: tech. questions

Chvala & Jensen say to try a draft  
based on Broyderick's State Bar's &  
NML's instructions - -

ONLY DO Point 1 of their memo





**STATE BAR  
of WISCONSIN**

5302 Eastpark Blvd.  
P.O. Box 7158  
Madison, WI 53707-7158

**MEMORANDUM**

**To:** Budget Conferees  
**From:** Real Property, Probate and Trust Law Section  
*State Bar of Wisconsin*  
**Date:** September 2, 1999  
**Re:** Inter Vivos Trust Provision - Effective Date

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The Real Property, Probate and Trust Law Section has been working with Senator Brian Burke, Representative Dean Kaufert, Northwestern Mutual Life, Firststar, Aid Association for Lutherans, M&I Trust and others to come to a suitable compromise on language to clarify the effective date of the inter vivos trust provision as contained in the budget bill (Motion 1407 offered by Kaufert/Burke; see attached).

The Real Property, Probate and Trust Law Section became concerned with the constitutionality of the new provision's initial applicability, fearing it would create an "ex post facto law." The concern was that the tax changes would negatively affect the taxation of trusts which had already moved situs from Wisconsin in previous years and under previous laws, and that those trusts would be re-subject to taxation due to the changes.

**Example:** as drafted, the statute would tax trusts created in Wisconsin in 1970 by a resident who died in Wisconsin in 1990 and which trust administration was moved to another state in 1990. Under the law in place at that time, Wisconsin income taxation ceased when the trust was no longer resident in Wisconsin. The terms of the proposed language would impose an income tax on that trust in the years 2000 going forward.

The following language has been approved by the above mentioned parties to address these constitutional concerns.

**CLARIFICATION LANGUAGE**

In the Joint Finance version of the budget, page 1598, section 9343 (13m) change to year of enactment, new language to read:

(13m) CHANGES TO METHOD OF TAXING CERTAIN TRUSTS, the treatment of sections 71.02(1) and 71.14(3)(intro.), (a) and (b) and (3m) of the statutes first applies to taxable years ending after the date this subsection takes effect. Such statutes, as amended, are effective only for (1) trusts or portions of trusts which become



## **Inter Vivos Trusts**

### **Page 2**

irrevocable after the date this subsection takes effect, (2) property contributed to irrevocable trusts after the date this subsection takes effect, regardless when such trusts became irrevocable, and (3) trusts first administered in this state after the date this subsection takes effect, regardless when such trusts became irrevocable.

### **COMMENTS ON CLARIFICATION LANGUAGE**

✓ The tax change will now apply to tax year 1999 and forward.

✓ (1) - Trusts or portions of trusts which become irrevocable after the date this subsection takes effect.

This provision is the grandfather provision for Wisconsin residents. If the trust is already irrevocable then the new law does not affect them.

✓ (2) - Property contributed to irrevocable trusts after the date this subsection takes effect, regardless when such trust became irrevocable

This provision recognizes that someone can still put money into an irrevocable trust. The new tax changes should apply in these instances. It would be done with full knowledge (or should be done with full knowledge of the law) because it only applies to that property contributed after the effective date.

✓ (3) - Trusts first administered in this state after the date this subsection takes effect, regardless when such trusts became irrevocable.

This provision is to ensure that Wisconsin trust companies are still able to compete with other states for trust administration. The desire is to have irrevocable trusts be able to move to Wisconsin but the concern was that the effective date language under (1) would create a competitive disadvantage for Wisconsin compared with other states. It was felt that the key date for the new tax provision rests on when the trust becomes irrevocable and trusts that are already irrevocable would see no reason to come here because the new tax provision would not apply. (This language is similar to language Minnesota enacted regarding this very same issue.)

*For more information contact Jenny Boese at the State Bar at 608-250-6045 or email at 'jboese@wisbar.org'.*



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1912/1

MES:wj:km

8 cmh  
RMP

LFB:.....Doty - Yank inter vivos trust provisions

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

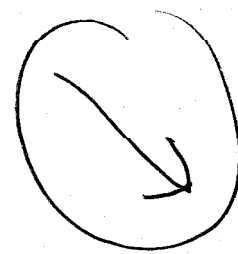
TO 1999 ASSEMBLY BILL 133

WPO  
Please  
give  
topic  
line  
or  
request  
sheet

1 At the locations indicated, amend the substitute amendment as follows:

2  
3  
4  
5  
6  
7

- 1. Page 822, line 22: delete lines 22 to 25.
- 2. Page 823, line 1: delete lines 1 to 20.
- 3. Page 852, line 3: delete lines 3 to 24.
- 4. Page 853, line 1: delete lines 1 to 8.
- 5. Page 1598, line 4: delete lines 4 to 7.



(END)  
M

**ASSEMBLY AMENDMENT ,  
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 1999 ASSEMBLY BILL 133**

At the locations indicated, amend the substitute amendment as follows:

1. Page 852, line 3: delete the material beginning with that line and ending with page 853, line 8, and substitute:

“SECTION 1721<sup>as is</sup> 71.14 (3) (intro.) of the statutes is amended to read:

71.14 (3) (intro.) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts created by contract, declaration of trust or implication of law that are made irrevocable before the effective date of this subsection .... [revisor inserts date], shall be considered resident at the place where the trust is being administered. The following trusts shall be considered to be administered in the state of domicile of the corporate trustee of the trust at any time that the grantor of the trust is not a resident of this state:

SECTION 1721it. 71.14 (3m) of the statutes is created to read:

1           71.14 (3m)(a) Subject to par. (b) and except as provided in sub. (2) and s. 71.04  
 2 (1) (b) 2., only the following trusts, or portions of trusts, which become irrevocable  
 3 on or after the effective date of this paragraph ... [revisor inserts date], are resident  
 4 of this state:

5           1. Trusts, or portions of trusts, the assets of which consist of property placed  
 6 in the trust by a person who is a resident of this state at the time that the property  
 7 was placed in the trust if, at the time that the assets were placed in the trust, the trust  
 8 was irrevocable.

9           2. Trusts, or portions of trusts, the assets of which consist of property placed  
 10 in the trust by a person who is a resident of this state at the time that the trust  
 11 became irrevocable if, at the time that the property was placed in the trust, the trust  
 12 was revocable.

13           (b) A trust described under par. (a):

14           1. Is revocable if the person whose property constitutes the trust may revest  
 15 title to the property in that person.

16           2. Is irrevocable if the power to revest title, as described in par. (a), does not  
 17 exist."

18           2. Page 1598, line 4: delete lines 4 to 7 and substitute:

19           "~~(13mt)~~ CHANGES TO METHOD OF TAXING CERTAIN TRUSTS. The treatment of  
 20 sections 71.02 (1) and 71.14 (3) (intro.) and (3m) of the statutes first applies to taxable  
 21 years beginning on January 1, 1999."

(END)

26

19

letter "g"

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Monday, October 04, 1999 4:52 PM  
**To:** Reinhardt, Rob  
**Cc:** Shovers, Marc  
**Subject:** 99b1912/2 (by request of MES)



99b1912/2

*Mike Barman*

Mike Barman - Program Asst. (PH. 608-266-3561)  
(E-Mail: [mike.barman@legis.state.wi.us](mailto:mike.barman@legis.state.wi.us)) (FAX: 608-264-6948)

State of Wisconsin  
Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRBb1912/2  
MES:wlj&cmh:mrc

LFB:.....Doty - Inter vivos trust provisions

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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7 irrevocable before the effective date of this subsection .... [revisor inserts date], shall  
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9 following trusts shall be considered to be administered in the state of domicile of the

1 corporate trustee of the trust at any time that the grantor of the trust is not a resident  
2 of this state:

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6 on or after the effective date of this paragraph .... [revisor inserts date], are resident  
7 of this state:

8 1. Trusts, or portions of trusts, the assets of which consist of property placed  
9 in the trust by a person who is a resident of this state at the time that the property  
10 was placed in the trust if, at the time that the assets were placed in the trust, the trust  
11 was irrevocable.

12 2. Trusts, or portions of trusts, the assets of which consist of property placed  
13 in the trust by a person who is a resident of this state at the time that the trust  
14 became irrevocable if, at the time that the property was placed in the trust, the trust  
15 was revocable.

16 (b) A trust described under par. (a):

17 1. Is revocable if the person whose property constitutes the trust may revest  
18 title to the property in that person.

19 2. Is irrevocable if the power to revest title, as described in par. (a), does not  
20 exist.”.

21 **2.** Page 1598, line 4: delete lines 4 to 7 and substitute:



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2     71.02 (1) and 71.14 (3) (intro.) and (3m) of the statutes first applies to taxable years  
3     beginning on January 1, 1999.”.

4

(END)