

2001 DRAFTING REQUEST

Bill

Received: 12/13/2000

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Administration-Budget 6-8593

By/Representing: Holden

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - corp. inc. and fran.

Extra Copies:

Pre Topic:

DOA:.....Holden -

Topic:

Tax treatment of partners and members of limited liability companies

Instructions:

See Attached

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	jkreye 12/13/2000	wjackson 12/14/2000	pgreensl 12/15/2000	_____	lrb_docadmin 12/15/2000		State

FE Sent For:

<END>

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1?	jkreye	1 WLJ 12/14	D/15 P8	12/15 P8/SK			

FE Sent For:

<END>

July 18, 2000

TITLE: Tax Treatment of Corporations that are Limited Partners or Members of LLCs

**SUMMARY OF RECOMMENDATION:**

Tax all corporate partners and LLC members on income derived from Wisconsin sources, regardless of whether the partnership or LLC is an extension of a corporation's business. This proposal is estimated to increase GPR tax revenues by \$8 million annually and prevent further erosion of the corporate tax base through restructuring done solely or primarily for the purpose of tax avoidance.

**DESCRIPTION OF CURRENT LAW AND PROBLEM**

Currently, the Wisconsin tax treatment of corporate partners and LLC members depends on whether or not the partnership or LLC is an extension of the corporation's business. If the partnership or LLC is an extension of the corporation's business, the corporation is considered to be doing business in Wisconsin as a result of that ownership interest. On the other hand, if the partnership or LLC is not an extension of the corporation's business, the corporation is not subject to Wisconsin taxation if its only connection to Wisconsin is that ownership interest. Most states with a corporate income tax do not make this distinction; all partners or LLC members are treated in the same manner. In addition, the Wisconsin income tax treatment generally is the same for individuals, whether they are general or limited partners or active or passive LLC members.

Since the determination of whether the ownership of a partnership or LLC interest is an extension of the corporation's business must be made on a case-by-case basis, the current law is difficult for corporations to comply with and for the department to administer.

As a result of the inconsistent treatment of corporate partners and LLC members, corporations can structure their Wisconsin business operations so that they can avoid paying tax on the income generated by the Wisconsin business.

**RECOMMENDATION FOR ACTION**

1. Amend the statutes to impose the corporate franchise or income tax on corporations that directly or indirectly own either a general or limited interest in a partnership that does business in Wisconsin or an interest in an LLC that does business in Wisconsin, regardless of the percentage of ownership. Provide an exception for those situations in which it would be unconstitutional to subject a corporation to franchise or income tax on the corporation.

2. Provide that a partner's share of the partnership's apportionment factors are included in computing the numerator and denominator of the partner's apportionment factors. If an LLC is treated as a partnership, a member's share of the LLC's apportionment factors are included in computing the numerator and denominator of the member's apportionment factors.

#### ADMINISTRATIVE IMPACT

Treating all corporate partners or LLC members in the same way will simplify compliance with and the administration of the law.

#### FISCAL IMPACT

Adopting the same treatment for all partners and LLC members would increase corporate tax revenues by an estimated ~~\$11.5 million GPR in FY02~~ and by ~~\$8.0 million GPR in FY03~~ and in each fiscal year thereafter. <sup>7.5m</sup> <sup>5.0m</sup>

#### DRAFTING INSTRUCTIONS

1. Amend sec. 71.22(1r), Stats., to include the following language:

"Doing business in this state" includes owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership, and owning, directly or indirectly, an interest in a limited liability company that does business in this state, regardless of the percentage of ownership, subject to constitutional limitations.

2. Create a provision in sec. 71.25 and in sec. 71.45 to address the treatment of a partner's share of the partnership's apportionment factors and, for an LLC treated as a partnership, a member's share of the LLC's apportionment factors. The following is suggested language:

A general or limited partner's share of the numerator and denominator of a partnership's apportionment factors are included in the numerator and denominator of the general or limited partner's apportionment factors under this section. If a limited liability company is treated as a partnership under the Internal Revenue Code, a member's share of the numerator and denominator of a limited liability company's apportionment factors are included in the numerator and denominator of the member's apportionment factors under this section.

#### EFFECTIVE DATE OR INITIAL APPLICABILITY

For a corporate partner's or member's taxable year beginning on or after January 1, 2001, regardless of the beginning or ending date of the partnership's or LLC's taxable year.

#### PERSON TO CONTACT

Carol Held  
Staff Specialist  
(608) 266-5464

#### PREPARED BY

Carol Held



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1493/7

JK: /:.....

WJ  
RMR

DOA:.....Holden – Tax treatment of partners and members of limited liability companies

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

in 12-13-00

SOON

D-N

DO NOT GEN

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

head → TAXATION  
sub → OTHER TAXATION

\* Under current law, for income tax and franchise tax purposes, “doing business” includes issuing credit, debit or travel and entertainment cards to customers in this state. Under this bill, for income tax and franchise tax purposes, the term “doing business” is changed to “doing business in this state” and includes issuing credit, \* debit or travel and entertainment cards to customers in this state; owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership; and owning, directly or indirectly, an interest in a limited liability company that does business in this state, regardless of the percentage of ownership.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 71.22 (1r) of the statutes is amended to read:

3 71.22 (1r) “Doing business in this state” includes issuing credit, debit or travel and entertainment cards to customers in this state; owning, directly or indirectly, a

1 general or limited partnership interest in a partnership that does business in this  
2 state, regardless of the percentage of ownership; and owning, directly or indirectly,  
3 an interest in a limited liability company that does business in this state, regardless  
4 of the percentage of ownership.

5 **SECTION 2.** 71.25 (15)<sup>✓</sup> of the statutes is created to read:

6 71.25 (15) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. (a) A general or  
7 limited partner's share of the numerator and denominator of a partnership's  
8 apportionment factors under this section are included in the numerator and  
9 denominator of the general or limited partner's apportionment factors under this  
10 section.

11 (b) If a limited liability company is treated as <sup>a</sup> partnership, for federal tax  
12 purposes, a member's share of the numerator and denominator of a limited liability  
13 company's apportionment factors under this section are included in the numerator  
14 and denominator of the member's apportionment factors under this section.

15 **SECTION 3.** 71.45 (6)<sup>✓</sup> of the statutes is created to read:

16 71.45 (6) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. (a) A general or  
17 limited partner's share of the numerator and denominator of a partnership's  
18 apportionment factors under this section are included in the numerator and  
19 denominator of the general or limited partner's apportionment factors under this  
20 section.

21 (b) If a limited liability company is treated as <sup>a</sup> partnership, for federal tax  
22 purposes, a member's share of the numerator and denominator of a limited liability  
23 company's apportionment factors under this section are included in the numerator  
24 and denominator of the member's apportionment factors under this section.

25 **SECTION 9344.**<sup>✓</sup> **Initial applicability; revenue.**

1           (1) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. The treatment of sections  
2       71.22 (1r)<sup>1</sup>, 71.25 (15)<sup>1</sup>, and 71.45 (6)<sup>1</sup> of the statutes first applies to taxable years for  
3       partnership partners or limited liability company members beginning on January  
4       1, 2001.

5

**(END)**

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1493/dn

JK: /:...

WLJ

December 13, 2000

Kerry Holden:

Please review this draft carefully to ensure that it is consistent with your intent. I did not include the phrase "subject to constitutional limitations" in the definition of "doing business in this state" because that phrase has no legal <sup>effect</sup> ~~effect~~: all statutes are subject to constitutional limitations. Please contact me if you have any questions.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: joseph.krcyc@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1493/1dn  
JK:wlj:pg

December 15, 2000

Kerry Holden:

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1493/1  
JK:wlj:pg

DOA:.....Holden – Tax treatment of partners and members of limited liability companies

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

Under current law, for income tax and franchise tax purposes, “doing business” includes issuing credit, debit, or travel and entertainment cards to customers in this state. Under this bill, for income tax and franchise tax purposes, the term “doing business” is changed to “doing business in this state” and includes issuing credit, debit, or travel and entertainment cards to customers in this state; owning, directly or indirectly, a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership; and owning, directly or indirectly, an interest in a limited liability company that does business in this state, regardless of the percentage of ownership.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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4 general or limited partnership interest in a partnership that does business in this  
5 state, regardless of the percentage of ownership; and owning, directly or indirectly,  
6 an interest in a limited liability company that does business in this state, regardless  
7 of the percentage of ownership.

8           **SECTION 2.** 71.25 (15) of the statutes is created to read:

9           71.25 (15) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. (a) A general or  
10 limited partner’s share of the numerator and denominator of a partnership’s  
11 apportionment factors under this section are included in the numerator and  
12 denominator of the general or limited partner’s apportionment factors under this  
13 section.

14           (b) If a limited liability company is treated as a partnership, for federal tax  
15 purposes, a member’s share of the numerator and denominator of a limited liability  
16 company’s apportionment factors under this section are included in the numerator  
17 and denominator of the member’s apportionment factors under this section.

18           **SECTION 3.** 71.45 (6) of the statutes is created to read:

19           71.45 (6) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. (a) A general or  
20 limited partner’s share of the numerator and denominator of a partnership’s  
21 apportionment factors under this section are included in the numerator and  
22 denominator of the general or limited partner’s apportionment factors under this  
23 section.

24           (b) If a limited liability company is treated as a partnership, for federal tax  
25 purposes, a member’s share of the numerator and denominator of a limited liability

1 company's apportionment factors under this section are included in the numerator  
2 and denominator of the member's apportionment factors under this section.

3 **SECTION 9344. Initial applicability; revenue.**

4 (1) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. The treatment of sections  
5 71.22 (1r), 71.25 (15), and 71.45 (6) of the statutes first applies to taxable years for  
6 partnership partners or limited liability company members beginning on January  
7 1, 2001.

8 (END)