

2013 DRAFTING REQUEST

Bill

Received: 10/31/2013 Received By: jkreye
Wanted: As time permits Same as LRB:
For: Cory Mason (608) 266-0634 By/Representing: alex Madorsky
May Contact: Drafter: jkreye
Subject: Tax, Business - crp inc, fran Addl. Drafters:
Extra Copies:
Submit via email: YES
Requester's email: Rep.Mason@legis.wisconsin.gov
Carbon copy (CC) to: joseph.kreye@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Combined reporting; tax havens

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>
/?	jkreye 11/5/2013			_____			
/P1	jkreye 11/19/2013	jdyer 11/14/2013	rschluet 11/14/2013	_____	sbasford 11/14/2013		
/P2	jkreye 1/15/2014	jdyer 11/19/2013	jmurphy 11/19/2013	_____	sbasford 11/19/2013		
/1		jdyer	jfrantze	_____	sbasford	lparisi	State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		1/16/2014	1/16/2014	_____	1/16/2014	2/12/2014	

FE Sent For:

1/16/2014 ~~12:00:00 AM~~

<END>

(
→ ("1")

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/?	jkreye	PI 11/14 JLd		==			

FE Sent For:

<END>

Kreye, Joseph

From: Madorsky, Alex
Sent: Thursday, October 31, 2013 9:36 AM
To: Kreye, Joseph
Cc: Selkove, Vicky
Subject: Tax Havens and Triple-Factor Taxation
Attachments: Oregon Enrolled House Bill 2460.pdf

Hi Joe,

We're looking create a P draft that would do both of the following things, modeled on a recent Oregon Statute which I have attached:

- Require for the purpose of determining Wisconsin taxable income any corporation that is a member of a unitary group incorporated in any of the following jurisdictions to be added to federal consolidated income tax returns: Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands, and Vanuatu.
- In the computation of the Wisconsin apportionment percentage of taxable income for the purposes of a consolidated federal return, the property, payroll, and sales of members of an affiliated group to any unitary group shall be taken into consideration. Members may not be treated as one taxpayer for purposes of determining whether the group is taxable in Wisconsin or any other state with regard to the apportionment factors used to attribute income to this state.

If you have any questions, please feel free to contact me by phone or by email.

Alex Madorsky
Office of State Representative Cory Mason
66th Assembly District
State Capitol, Room 6 North
PO Box 8953, Madison, WI 53708
Phone: (608) 266-0634
Toll-free: (888) 534-0066

77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

Enrolled
House Bill 2460

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

CHAPTER

AN ACT

Relating to tax compliance; creating new provisions; amending ORS 317.267 and 317.715; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. No later than February 1, 2014, the Department of Revenue shall make a report on the use of out-of-state tax shelters to the Seventy-seventh Legislative Assembly. The department shall use all data available to the department to prepare the report, which shall:

(1) Describe methods by which taxpayers shift income otherwise taxable by this state to outside the state; and

(2) Make recommendations for addressing noncompliance attributable to out-of-state tax shelters.

SECTION 2. ORS 317.715 is amended to read:

317.715. (1) If a corporation required to make a return under this chapter is a member of an affiliated group of corporations making a consolidated federal return under sections 1501 to 1505 of the Internal Revenue Code, the corporation's Oregon taxable income shall be determined beginning with federal consolidated taxable income of the affiliated group as provided in this section.

(2)(a) For purposes of determining Oregon taxable income, the taxable income or loss of any corporation that is a member of a unitary group and that is incorporated in any of the following jurisdictions shall be added to federal consolidated taxable income:

(b) Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain, Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle of Man, Jersey, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Samoa, San Marino, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, the Turks and Caicos Islands, the U.S. Virgin Islands and Vanuatu.

[(2)] (3) If the affiliated group, of which the corporation subject to taxation under this chapter is a member, consists of more than one unitary group, before the additions, subtractions, adjustments and modifications to federal taxable income provided for in this chapter are made, and before allocation and apportionment as provided in ORS 317.010 (10), if any, modified federal consolidated taxable income shall be computed. Modified federal consolidated taxable income shall be determined by eliminating from the federal consolidated taxable income of the affiliated group the separate taxable income, as determined under Treasury Regulations adopted under section 1502 of the Inter-

Enrolled House Bill 2460 (HB 2460-B)

Page 1

nal Revenue Code, and any deductions or additions or items of income, expense, gain or loss for which consolidated treatment is prescribed under Treasury Regulations adopted under section 1502 of the Internal Revenue Code, attributable to the member or members of any unitary group of which the corporation is not a member.

[(3)(a)] (4)(a) After modified federal consolidated taxable income is determined under subsection [(2)] (3) of this section, the additions, subtractions, adjustments and modifications prescribed by this chapter shall be made to the modified federal consolidated taxable income of the remaining members of the affiliated group, where applicable, as if all such members were subject to taxation under this chapter. After those modifications are made, Oregon taxable income or loss shall be determined as provided in ORS 317.010 (10)(a) to (c), if necessary.

(b) In the computation of the Oregon apportionment percentage for a corporation that is a member of an affiliated group filing a consolidated federal return, there shall be taken into consideration only the property, payroll, sales or other factors of those members of the affiliated group, and of those corporations described in subsection (2) of this section, whose items of income, expense, gain or loss remain in modified federal consolidated taxable income after the eliminations required under subsection [(2)] (3) of this section. Those members of an affiliated group making a consolidated federal return or a consolidated state return [shall] may not be treated as one taxpayer for purposes of determining whether any member of the group is taxable in this state or any other state with respect to questions of jurisdiction to tax or the composition of the apportionment factors used to attribute income to this state under ORS 314.280 or 314.605 to 314.675.

(5) The Department of Revenue shall adopt rules:

(a) To determine the computation of income or loss for a corporation that is a member of a unitary group and that is not otherwise required to file a consolidated federal return.

(b) To prevent double taxation or double deduction of any amount included in the computation of income under this section.

SECTION 3. ORS 317.267 is amended to read:

317.267. (1) To derive Oregon taxable income, there shall be added to federal taxable income amounts received as dividends from corporations deducted for federal purposes pursuant to section 243 or 245 of the Internal Revenue Code, except section 245(c) of the Internal Revenue Code, amounts paid as dividends by a public utility or telecommunications utility and deducted for federal purposes pursuant to section 247 of the Internal Revenue Code or dividends eliminated under Treasury Regulations adopted under section 1502 of the Internal Revenue Code that are paid by members of an affiliated group that are eliminated from a consolidated federal return pursuant to ORS 317.715 [(2)] (3).

(2) To derive Oregon taxable income, after the modification prescribed under subsection (1) of this section, there shall be subtracted from federal taxable income an amount equal to 70 percent of dividends (determined without regard to section 78 of the Internal Revenue Code) received or deemed received from corporations if such dividends are included in federal taxable income. However:

(a) In the case of any dividend on debt-financed portfolio stock as described in section 246A of the Internal Revenue Code, the subtraction allowed under this subsection shall be reduced under the same conditions and in same amount as the dividends received deduction otherwise allowable for federal income tax purposes is reduced under section 246A of the Internal Revenue Code.

(b) In the case of any dividend received from a 20 percent owned corporation, as defined in section 243(c) of the Internal Revenue Code, this subsection shall be applied by substituting "80 percent" for "70 percent."

(c) A dividend that is not treated as a dividend under section 243(d) or 965(c)(3) of the Internal Revenue Code may not be treated as a dividend for purposes of this subsection.

(d) If a dividends received deduction is not allowed for federal tax purposes because of section 246(a) or (c) of the Internal Revenue Code, a subtraction may not be made under this subsection for received dividends that are described in section 246(a) or (c) of the Internal Revenue Code.

(3) There shall be excluded from the sales factor of any apportionment formula employed to attribute income to this state any amount subtracted from federal taxable income under subsection (2) of this section.

SECTION 4. On or before January 1 of each odd-numbered year, the Department of Revenue shall submit a report to the Legislative Assembly in the manner provided by ORS 192.245. The report shall include recommendations for legislation related to jurisdictions listed in ORS 317.715 (2)(b), including recommendations for additions to or subtractions from the list of jurisdictions in ORS 317.715 (2)(b).

SECTION 5. The amendments to ORS 317.267 and 317.715 by sections 2 and 3 of this 2013 Act apply to tax years beginning on or after January 1, 2014.

SECTION 6. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

Passed by House May 22, 2013

Received by Governor:

Repassed by House June 27, 2013

.....M....., 2013

Approved:

.....
Rainona J. Line, Chief Clerk of House

.....M....., 2013

.....
Tina Kotek, Speaker of House

.....
John Kitzhaber, Governor

Passed by Senate June 26, 2013

Filed in Office of Secretary of State:

.....
Peter Courtney, President of Senate

.....M....., 2013

.....
Kate Brown, Secretary of State



jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 11-5-13

D-N

due Tues 11-19

Gen

X

1

AN ACT ...; relating to: the combined reporting of income from businesses incorporated in foreign jurisdictions considered tax havens.

2

and granting rule-making authority

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3

SECTION 1. 71.255 (2) (d) 6. of the statutes is created to read:

4

71.255 (2) (d) 6. For taxable years beginning after December 31, 2013, the

5

income or loss of any corporation that is a member of the unitary business that is

6

incorporated in any of the following jurisdictions, not including any income from

7

sources outside the United States under sections 861 to 865 of the Internal Revenue

8

Code: Andorra, Anguilla, Antigua, Aruba, the Bahamas, Bahrain, Barbados,

9

Barbuda, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook

1 Islands, Cyprus, ✓, Dominica, ✓, Gibraltar, ✓, Grenada, ✓, Guernsey-Sark-Alderney, the Isle
2 of Man, Jersey, ✓, Liberia, ✓, Liechtenstein, ✓, Luxembourg, ✓, Malta, ✓, the Marshall Islands,
3 Mauritius, ✓, Monaco, ✓, Montserrat, ✓, Nauru, ✓, the Netherlands Antilles, ✓, Niue, ✓, Samoa, ✓, San
4 Marino, ✓, Seychelles, ✓, St. Kitts and Nevis, ✓, St. Lucia, ✓, St. Vincent ✓ and the Grenadines,
5 the Turks and Caicos Islands, ✓, the U.S. Virgin Islands, ✓, and Vanuatu. ✓ The department
6 shall promulgate rules to determine the computation of income or loss under this
7 subdivision ✓ for a corporation that is a member of a unitary business that is not
8 required to file a federal consolidated return and to prevent double taxation or double
9 deduction of any amount included in the computation of income under this
10 subdivision. ✓

11

(END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3545/P1dn

JK: :....

date

Jld

Representative Mason: ✓

Please review this draft carefully to ensure that it is consistent with your intent. Because this draft concerns a relatively complicated part of the statute, you may want to consult with DOR before putting the draft into an introducible form. *

three
This draft does not address the issue of imposing an apportionment method based on property, payroll, and sales factors. Oregon uses an apportionment method based on those 3 factors, but Wisconsin uses an apportionment method based only on a single sales factor. Although I can draft a bill that applies a 3 factor apportionment formula to the income of a unitary business described in the bill, if I don't apply that formula to all other taxpayers, that method may be challenged as a violation of the equal protection clause of the 14th Amendment of the United States Constitution because the draft would treat certain foreign corporations differently from in-state corporations and from other foreign corporations. ✓ three

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

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

LRB-3545/P1dn
JK:jld:rs

November 14, 2013

Representative Mason:

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Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

Kreye, Joseph

From: Madorsky, Alex
Sent: Monday, November 18, 2013 1:44 PM
To: Kreye, Joseph
Cc: Selkowe, Vicky
Subject: RE: Tax Havens and Triple-Factor Taxation

Joe,

Thanks for your work on this. Rep. Mason would like a revised, preliminary draft omitting triple-factor taxation and adding the following countries to the list:

- Ireland
- Switzerland
- Lebanon
- Tonga
- Costa Rica
- Panama
- Hong Kong
- Macau
- Singapore
- Jordan

In addition, Antigua and Barbuda, listed separately in LRB-3545, should be listed as "Antigua and Barbuda." Thanks again.

Alex Madorsky
Office of State Representative Cory Mason
66th Assembly District
State Capitol, Room 6 North
PO Box 8953, Madison, WI 53708
Phone: (608) 266-0634
Toll-free: (888) 534-0066

From: Kreye, Joseph
Sent: Thursday, October 31, 2013 9:46 AM
To: Madorsky, Alex
Cc: Selkowe, Vicky
Subject: RE: Tax Havens and Triple-Factor Taxation

Will do.

Joseph T. Kreye
Senior Legislative Attorney
Legislative Reference Bureau
608 266 2263

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3545/P1
JK:jld:rs

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

m 11-18-13

SOON

lx

Regen

1 AN ACT to create 71.255 (2) (d) 6. of the statutes; relating to: the combined
2 reporting of income from businesses incorporated in foreign jurisdictions
3 considered tax havens and granting rule-making authority. ✓

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This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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9 Code: Andorra, Anguilla, Antigua, Aruba, the Bahamas, Bahrain, Barbados,

and Barbuda ✓

SECTION 1

1 Costa Rica, Hong Kong, Ireland, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook
 2 Islands, Cyprus, Dominica, Gibraltar, Grenada, Guernsey-Sark-Alderney, the Isle
 3 of Man, Jersey, Jordan, Lebanon, Macao, Liberia, Liechtenstein, Luxembourg, Malta, the Marshall Islands,
 4 Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Panama, San
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 10 deduction of any amount included in the computation of income under this
 11 subdivision.

(END)

Singapore,

Switzerland, Tonga,

Kreye, Joseph

From: Madorsky, Alex
Sent: Wednesday, January 15, 2014 2:48 PM
To: Kreye, Joseph
Subject: RE: Tax Havens and Triple-Factor Taxation
Attachments: LRB 3545 P2.pdf

Hi Joe,

Can we get a fiscal estimate on this please? Thanks!

Alex Madorsky
Office of State Representative Cory Mason
66th Assembly District
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PO Box 8953, Madison, WI 53708
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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3545/B2
JK:jld:jm

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 1-15-14

due Thursday
1-16

Regen

LX

1 AN ACT to create 71.255 (2) (d) 6. of the statutes; relating to: the combined
2 reporting of income from businesses incorporated in foreign jurisdictions
3 considered tax havens and granting rule-making authority. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

insert A ✓

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

4 SECTION 1. 71.255 (2) (d) 6. of the statutes is created to read: ✓
5 71.255 (2) (d) 6. For taxable years beginning after December 31, 2013, the
6 income or loss of any corporation that is a member of the unitary business that is
7 incorporated in any of the following jurisdictions, not including any income from
8 sources outside the United States under sections 861 to 865 of the Internal Revenue
9 Code: Andorra, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Bahrain,

1 Barbados, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the
2 Cook Islands, Costa Rica, Cyprus, Dominica, Gibraltar, Grenada,
3 Guernsey-Sark-Alderney, Hong Kong, Ireland, the Isle of Man, Jersey, Jordan,
4 Lebanon, Liberia, Liechtenstein, Luxembourg, Macau, Malta, the Marshall Islands,
5 Mauritius, Monaco, Montserrat, Nauru, the Netherlands Antilles, Niue, Panama,
6 Samoa, San Marino, Seychelles, Singapore, St. Kitts and Nevis, St. Lucia, St.
7 Vincent and the Grenadines, Switzerland, Tonga, the Turks and Caicos Islands, the
8 U.S. Virgin Islands, and Vanuatu. The department shall promulgate rules to
9 determine the computation of income or loss under this subdivision for a corporation
10 that is a member of a unitary business that is not required to file a federal
11 consolidated return and to prevent double taxation or double deduction of any
12 amount included in the computation of income under this subdivision.

13 (END)

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3545/lins
JK:jld:jm

Insert A

Under this bill, for income and franchise tax purposes, the combined report of a unitary business of which a foreign operating corporation is a member must include the income or loss of any corporation that is a member of the unitary business incorporated in a foreign jurisdiction that is considered a tax haven.

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

(end ins)

Barman, Mike

From: Barman, Mike
Sent: Thursday, January 16, 2014 10:15 AM
To: Madorsky, Alex
Subject: RE: Submitted: LRB -3545/1 Topic: Combined reporting; tax havens?body=

Good morning Alex,
I will submit your early FE request to DOA for assignment.
Please let me know if I can be of further assistance.

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Madorsky, Alex
Sent: Thursday, January 16, 2014 9:59 AM
To: LRB.Legal
Cc: Kreye, Joseph
Subject: Submitted: LRB -3545/1 Topic: Combined reporting; tax havens?body=

We would like a fiscal estimate on this draft prior to introduction.

Alex Madorsky
Office of State Representative Cory Mason
66th Assembly District
State Capitol, Room 6 North
PO Box 8953, Madison, WI 53708
Phone: (608) 266-0634
Toll-free: (888) 534-0066

Parisi, Lori

From: Madorsky, Alex
Sent: Wednesday, February 12, 2014 4:14 PM
To: LRB.Legal
Subject: Draft Review: LRB -3545/1 Topic: Combined reporting; tax havens

Please Jacket LRB -3545/1 for the ASSEMBLY.

Memo

To: Representative **Mason**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: **LRB-3545**

Version: **“/1”**

Fiscal Estimate Prepared By: (agency abbr.) **DOR** (original)

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

*** * * * ***

Entered In Computer And Copy Sent To Requester Via E-Mail: **03 / 03 / 2013**

To: **LRB – Legal Section PA's**

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

- > **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.
- > **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013

AB 844

Barman, Mike

From: Barman, Mike
Sent: Monday, March 03, 2014 11:33 AM
To: Rep.Mason
Cc: Madorsky, Alex
Subject: LRB-3545/1 (un-introduced) (FE & Tech. Memo by DOR - attached - for your review)



FE-3545_DOR_p...



TM-3545_DOR.p...

Drafter: JK
Subject: Tax, Business – crp inc, fran

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov