



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Senate Bill 203**

**Senate Amendment 1**

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### **2017 SENATE BILL 203**

Senate Bill 203 makes the following changes to current tax law in Wisconsin:

- It shortens the length of the recognition period for the built-in gains tax from 10 to 5 years, matching federal law.
- It lowers the standard of proof a taxpayer must meet in order to establish that a transaction has economic substance for income and franchise tax purposes from clear and convincing evidence, to a preponderance of the evidence.
- It eliminates Department of Revenue (DOR) participation in the Multistate Tax Commission Audit Program.
- It eliminates the current law exception that provides, if a taxpayer did not give DOR adequate and accurate information regarding a tax issue during a prior audit, the taxpayer cannot rely on the prior audit to avoid liability in future audits.

### **SENATE AMENDMENT 1**

Senate Amendment 1 makes the following changes to the bill:

- It deletes the provision that shortens the length of the recognition period for the built-in gains tax from 10 to 5 years.
- It changes the standard of proof a taxpayer must meet in order to establish that a transaction has economic substance for income and franchise tax purposes from a preponderance of the evidence, to “clear and satisfactory” evidence.

- It deletes the provision that eliminates DOR participation in the Multistate Tax Commission Audit Program.
- It modifies the provision regarding taxpayer reliance on prior audits to prohibit a taxpayers reliance on a prior audit under the following circumstances:
  - The department establishes by clear and satisfactory evidence that the taxpayer provided incomplete or false information relevant to the tax issue in the prior audit determination.
  - The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into before the effective date of the bill.
  - The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into on or after the effective date of the bill, and in which the parties acknowledged that the department did not adopt the taxpayer's position on the tax issue.

### **BILL HISTORY**

Senate Amendment 1 was offered by Senator Marklein on February 1, 2018. On February 14, 2018, the Senate Committee on Revenue, Financial Institutions and Rural Issues recommended Senate Amendment 1 for adoption by a vote of Ayes, 4; Noes, 1, and recommended Senate Bill 203 for adoption, as amended, by a vote of Ayes, 3; Noes, 2.

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