

State of Wisconsin



2015 Senate Bill 503

Date of enactment: **March 1, 2016**
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2015 WISCONSIN ACT 218

AN ACT to repeal 71.10 (1m) (b) 1. and 2., 71.30 (2m) (b) 1. and 2. and 71.80 (1m) (b) 1. and 2.; **to renumber** 71.80 (9m) (a) and (b) and 77.61 (19) (a) and (b); and **to renumber and amend** 71.10 (1m) (b) (intro.), 71.30 (2m) (b) (intro.), 71.80 (1m) (b) (intro.), 71.80 (9m) (intro.) (except 71.80 (9m) (title)) and 77.61 (19) (intro.) of the statutes; **relating to:** factors that determine whether a transaction has economic substance for income and franchise tax purposes and the imposition of penalties on a taxpayer for failing to produce records and documents.

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

SECTION 1. 71.10 (1m) (b) (intro.) of the statutes is renumbered 71.10 (1m) (b) and amended to read:

71.10 **(1m)** (b) A transaction has economic substance only if ~~the taxpayer shows all of the following: the transaction is treated as having economic substance as determined under section 7701 (o) of the Internal Revenue Code, except that the tax effect shall be determined using federal, state, local, or foreign taxes, rather than only the federal income tax effect.~~

SECTION 2. 71.10 (1m) (b) 1. and 2. of the statutes are repealed.

SECTION 3. 71.30 (2m) (b) (intro.) of the statutes is renumbered 71.30 (2m) (b) and amended to read:

71.30 **(2m)** (b) A transaction has economic substance only if ~~the taxpayer shows both of the following: the transaction is treated as having economic substance as determined under section 7701 (o) of the Internal Revenue Code, except that the tax effect shall be determined using federal, state, local, or foreign taxes, rather than only the federal income tax effect.~~

SECTION 4. 71.30 (2m) (b) 1. and 2. of the statutes are repealed.

SECTION 5. 71.80 (1m) (b) (intro.) of the statutes is renumbered 71.80 (1m) (b) and amended to read:

71.80 **(1m)** (b) A transaction has economic substance only if ~~the taxpayer shows both of the following: the transaction is treated as having economic substance as determined under section 7701 (o) of the Internal Revenue Code, except that the tax effect shall be determined using federal, state, local, or foreign taxes, rather than only the federal income tax effect.~~

SECTION 6. 71.80 (1m) (b) 1. and 2. of the statutes are repealed.

SECTION 7. 71.80 (9m) (intro.) (except 71.80 (9m) (title)) of the statutes is renumbered 71.80 (9m) (a) (intro.) and amended to read:

71.80 **(9m)** (a) (intro.) A person who fails to produce records or documents, as provided under ss. 71.74 (2) and 73.03 (9), that support amounts or other information required to be shown on any return required under this chapter and fails to comply in good faith with a summons issued pursuant to s. 73.03 (9) seeking those records and documents may be subject to any of the following penalties, as determined by the department, except that the department may not impose a penalty under this subsection if the person shows that under all facts and circumstances the person's response, or failure to respond, to the

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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department's request was reasonable or justified by factors beyond the person's control:

SECTION 8. 71.80 (9m) (a) and (b) of the statutes are renumbered 71.80 (9m) (a) 1. and 2.

SECTION 9. 77.61 (19) (intro.) of the statutes is renumbered 77.61 (19) (a) (intro.) and amended to read:

77.61 (19) (a) (intro.) A person who fails to produce records or documents, as provided under s. ~~73.03 (9)~~ or 77.59 (2), that support amounts or other information required to be shown on a return required under s. 77.58 and fails to comply in good faith with a summons issued pursuant to s. 73.03 (9) seeking those records and documents may be subject to any of the following penalties, as determined by the department, except that the department may not impose a penalty under this subsection if the person shows that under all facts and circumstances the person's response, or failure to respond, to the depart-

ment's request was reasonable or justified by factors beyond the person's control:

SECTION 10. 77.61 (19) (a) and (b) of the statutes are renumbered 77.61 (19) (a) 1. and 2.

SECTION 11. Initial applicability.

(1) The treatment of sections 71.10 (1m) (b) (intro.), 1., and 2., 71.30 (2m) (b) (intro.), 1., and 2., and 71.80 (1m) (b) (intro.), 1., and 2. of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, this act first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect.

(2) The treatment of sections 71.80 (9m) (intro.), (a), and (b) and 77.61 (19) (intro.), (a), and (b) of the statutes first applies to an audit commenced, or a summons issued, on the effective date of this subsection.