

1999 DRAFTING REQUEST

Assembly Amendment (AA-AB133)

Received: 06/11/99

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:

Alt. Drafters: **jkreye**

Subject: **Tax - individual income
Tax - corp. inc. and fran.**

Extra Copies:

Pre Topic:

LFB:.....Doty -

Topic:

Changes to method of taxing certain trusts

Instructions:

See Attached. LFB motion # 1407,

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 06/12/99	wjackson 06/12/99	haugeca 06/13/99	_____	lrb_docadmin 06/13/99		

FE Sent For:

<END>

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/1	shoveme	1 6/12 WLJ		6/13 KSA			
11 MES 6/12/99							

FE Sent For:

<END>

Shovers, Marc

From: Doty, Kelsie
Sent: Friday, June 11, 1999 9:45 AM
To: Shovers, Marc
Subject: Income tax drafting request

I have six items that need drafts. Give me a call if you need clarification.

1. Paper #100 -- Alt 2. Maintain the current law tax treatment of social security benefits.
2. Paper #101 -- Alt 2. Retain indexing of the income tax brackets. Start indexing the newly created top tax bracket in 2001.
3. Add the provisions of Substitute Amendment 1 to SB 49 (filing thresholds).
4. Paper #106 -- Alt 1 (as modified). Approve the Governor's recommendation to eliminate miscellaneous itemized deductions with two changes.
 - a. Continue to allow professional dues and union dues to be included as a miscellaneous itemized deduction under the credit.
 - b. Create a subtract modification from federal AGI for the amount claimed as a federal miscellaneous itemized deduction for repayment of income that was taxed in a prior year. Specify that the amount claimed under the claim of right credit can not be claimed under the subtraction.
5. Paper #108 -- Alt 1. Modify the current indexing provisions to incorporate the federal indexing method into state law. Specifically, eliminate the maximum income amounts for the standard deduction from the statutes and specify that the tax brackets and standard deduction be indexed based on the 1998 amounts.
6. Motion #1407. Modify current law as it relates to the taxation of inter vivos trusts. I'll fax over a copy of the motion and the language that the lobbyist attempted to draft.

Kelsie Doty
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Legislative Fiscal Bureau
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Madison, WI 53703
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Kelsie.Doty@legis.state.wi.us



Senator Burke
Representative Kaufert

GENERAL FUND TAXES -- INDIVIDUAL AND CORPORATE INCOME TAXES

Taxation of Trusts

Motion:

Move to modify current law as it relates to the taxation of inter vivos trusts as follows: (a) modify current law so that Wisconsin would be able to tax trusts created by persons who were Wisconsin residents at the time the trust becomes irrevocable, whether the trust is administered in Wisconsin or in another state; and (b) prohibit Wisconsin from taxing the trusts of nonresidents that are administered in Wisconsin. Specify that this provision would take effect with tax year 2000.

Post-It® Fax Note	7671	Date	6-11	# of pages	3
To	Marc	From	Kelsie		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

Pass
160
6/10/99

Note:

Under current law, Wisconsin taxes the undistributed income and gains of certain trusts, as determined by statute. A trust created at death (a testamentary trust) by a decedent who was a resident of Wisconsin at the time of death is taxable to Wisconsin regardless of where the trust is administered. On the other hand, Wisconsin taxes trusts created by a living person (an inter vivos trust) if the trust is administered in Wisconsin. For inter vivos trusts, Wisconsin taxes trusts created by nonresidents that are administered in Wisconsin and does not tax trusts established by Wisconsin residents that are administered in other states.

The motion would modify current law as it relates to the taxation of inter vivos trusts in two ways. First, current law would be modified so that Wisconsin would be able to tax trusts created by persons who were Wisconsin residents at the time the trust becomes irrevocable, whether the trust is administered in Wisconsin or in another state. Second, Wisconsin would not be able to tax the trusts of nonresidents that are administered in Wisconsin.

Based on information from various financial institutions that administer trusts in Wisconsin, it is estimated that approximately 1% of existing irrevocable trusts are attributable to nonresidents. This would result in a revenue loss of approximately \$300,000 annually in the initial years of

implementation of this proposal.

This revenue loss could be offset in future years by additional tax revenues from the taxation of inter vivos trusts of Wisconsin residents that are administered in other states. The state of Minnesota made a law change that was similar to this proposal on January 1, 1996. Staff at the Minnesota Department of Revenue indicated that the amount of tax revenue has remained unchanged since the law change. However, it is not known whether the lack of revenue loss was the result of additional tax revenues from the trusts of Minnesota residents that are administered in other states or for other reasons, such as increased capital gain realizations that have occurred in recent years.

One additional point should be made regarding this proposal and the taxation of trusts of Wisconsin residents that are administered in other states. A state's ability to tax the undistributed income of a trust created by a state resident that is administered in another state has been subject to litigation in recent years, especially in situations where the assets of the trust and the beneficiaries are also located outside of the state. Since this issue may continue to be litigated in the future, the potential for revenue growth from enabling Wisconsin to tax the trusts of Wisconsin residents that are administered outside of the state is uncertain.

[Change to Bill: -\$300,000 GPR-REV]

AN ACT to amend 71.14 (3) of the statutes relating to residency status of inter vivos trusts.

TEXT

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

SECTION 1. 71.14(3) of the statutes is amended to read:

71.14 (3). Except as provided in sub. (2) and s. 71.04(1)(b)2, a trust or a portion of a trust consisting of property of:

(a) a person who is a resident of this state at the time such property was transferred to the trust, if such trust or portion of a trust was then irrevocable; or

(b) a person who is a resident of this state at the time such trust or portion of a trust became irrevocable, if it was revocable when such property was transferred to the trust but has subsequently become irrevocable

shall be considered a resident of this state. For purposes of the foregoing, a trust or portion of a trust is revocable if it is subject to a power, exercisable immediately or at any future time by the person whose property constitutes such trust or portion of a trust to revert title in such person; and a trust or portion of a trust becomes irrevocable when the possibility that such power may be exercised has been terminated. A trust that is not a resident of this state as provided in this section shall be considered a nonresident of this state.

Trusts created by contract, declaration of trust or implication of law 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:

(a) Trusts that have any assets invested in a common trust fund, as defined in section 584 of the internal revenue code, maintained by a bank or trust company domiciled in this state that is a member of the same affiliated group, as defined in section 1504 of the internal revenue code, as the corporate trustee.

(b) Trusts the assets of which in whole or in part are managed, or about which investment decisions are made, by a corporation domiciled in this state if that corporation and the corporate trustee are members of the same affiliated group, as defined in section 1504 of the internal revenue code.

SECTION 2. Initial applicability.

(1) This act first applies to taxable years beginning on or after January 1 of the year following the year in which this subsection takes effect.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0669/1
MES & OK.../.....
Wlj

LFB:.....Doty - Changes to method of taxing certain trusts

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 837 line 13: after that line insert: **INS - A**

3 ✓ 2. Page 856, line 19: after that line insert: **INS - B**

4 3. Page ¹⁴⁶⁰~~1458~~, line 9: after that line insert: **INS - C**

5 (END)



1999 BILL

1 **AN ACT to amend 71.02 (1), 71.14 (3) (intro.), 71.14 (3) (a) and 71.14 (3) (b); and**
2 **to create 71.14 (3m) of the statutes; relating to: changing the factors used to**
3 **determine the situs of income of certain trusts.**

Analysis by the Legislative Reference Bureau

Under current law and subject to certain exceptions, trusts that are created by contract, declaration of trust or implication of law are considered resident at the place where the trust is being administered. Generally, a trust is considered to be administered in the state of domicile of the corporate trustee. Where a trust is "resident" and considered to be "administered" determines the situs of a trust's income, and the situs is the place where the trust is taxed.

Currently, the following trusts are considered to be administered by a corporate trustee that is domiciled in this state, and therefore subject to income taxation by this state, at any time that the grantor of the trust is not a Wisconsin resident: 1) trusts that have any assets in a common trust fund maintained by a bank or trust company domiciled in Wisconsin that is a member of the same affiliated group as the corporate trustee; 2) trusts the assets of which in whole or in part are managed, or about which investment decisions are made, by a corporation domiciled in Wisconsin if that corporation and the corporate trustee are members of the same affiliated group.

Under this bill, and subject to some exceptions, only two types of trusts, or portions of trusts, are considered resident of this state:

1. Trusts that consist of property placed in trust by a person who is a resident of this state at the time the property was placed in trust if the trust was irrevocable at the time the assets were placed in trust.

BILL

2. Irrevocable trusts that consist of property placed in trust by a person who is a resident of this state at the time that the trust became irrevocable if the trust was revocable at the time the property was placed in trust.

Under the bill, a trust is revocable if the person whose property constitutes the trust may revest title to the property in that person; a trust is irrevocable if the power to revest title to such property in that person is terminated. The bill first applies to taxable years beginning on January 1, 2000.

For further information see the *state and local* 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:

INS-A
P. 10/02

16742 (b)
SECTION 1. 71.02 (1) of the statutes is amended to read:

2 71.02 (1) For the purpose of raising revenue for the state and the counties,
3 cities, villages and towns, there shall be assessed, levied, collected and paid a tax on
4 all net incomes of individuals and fiduciaries, except fiduciaries of nuclear
5 decommissioning trust or reserve funds subject to the tax under s. 71.23 (2), by every
6 natural person residing within the state or by his or her personal representative in
7 case of death, and trusts administered resident within the state; by every
8 nonresident natural person and trust of this state, upon such income as is derived
9 from property located or business transacted within the state including, but not
10 limited by enumeration, income derived from a limited partner's distributive share
11 of partnership income, income derived from a limited liability company member's
12 distributive share of limited liability company income, the state lottery under ch.
13 565, any multijurisdictional lottery under ch. 565 if the winning lottery ticket or
14 lottery share was purchased from a retailer, as defined in s. 565.01 (6), located in this
15 state or from the department, winnings from a casino or bingo hall that is located in
16 this state and that is operated by a Native American tribe or band and pari-mutuel
17 wager winnings or purses under ch. 562, and also by every nonresident natural

BILL

INS-A, cont

1 person upon such income as is derived from the performance of personal services
2 within the state, except as exempted under s. 71.05 (1) to (3). Every natural person
3 domiciled in the state shall be deemed to be residing within the state for the purposes
4 of determining liability for income taxes and surtaxes. A single-owner entity that is
5 disregarded as a separate entity under section 7701 of the Internal Revenue Code
6 is disregarded as a separate entity under this chapter, and its owner is subject to the
7 tax on the entity's income. //

INS,
B,
P. 1069

8 SECTION ~~2~~ ¹⁷²¹² 71.14 (3) (intro.) of the statutes is amended to read:

9 71.14 (3) (intro.) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts
10 ~~created by contract, declaration of trust or implication of law shall be considered~~
11 ~~resident at the place where the trust is being administered. The following trusts~~
12 ~~shall be considered to be administered in the state of domicile of the corporate trustee~~
13 ~~of the trust at any time that the grantor of the trust is not a resident of this state and~~
14 ~~subject to sub. (3m), only the following trusts, or portions of trusts, shall be~~
15 considered resident of this state:

16 SECTION ~~2~~ ¹⁷²¹⁴ 71.14 (3) (a) of the statutes is amended to read:

17 71.14 (3) (a) ~~Trusts that have any assets invested in a common trust fund, as~~
18 ~~defined in section 584 of the internal revenue code, maintained by a bank or trust~~
19 ~~company domiciled in this state that is a member of the same affiliated group, as~~
20 ~~defined in section 1504 of the internal revenue code, as the corporate trustee the~~
21 assets of which consist of property placed in the trust by a person who is a resident
22 of this state at the time the property was placed in the trust if, at the time the assets
23 were placed in the trust, the trust was irrevocable.

24 SECTION ~~2~~ ¹⁷²¹⁹ 71.14 (3) (b) of the statutes is amended to read:

BILL

INSI
B, con
P. 2000

71.14 (3) (b) ~~Trusts Irrevocable trusts, the assets of which in whole or in part are managed, or about which investment decisions are made, by a corporation domiciled in this state if that corporation and the corporate trustee are members of the same affiliated group, as defined in section 1504 of the internal revenue code consist of property placed in the trust by a person who is a resident of this state at the time that the trust became irrevocable if, at the time the property was placed in the trust, the trust was revocable.~~

SECTION 1721h k (b) 71.14 (3m) of the statutes is created to read:

71.14 (3m) A trust described under sub. (3):

(a) Is revocable if the person whose property constitutes the trust may revest title to the property in that person.

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

SECTION 6. Initial applicability

The treatment of sections 71.02 (1) and 71.14 (3) (intra), (a), (c) and (3m) of the statutes first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect. "

INIT APP

INS-C

CHANGES TO METHOD OF TAXING CERTAIN TRUSTS. (CS)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0669/1
MES & JK:wlj:ksh

LFB:.....Doty – Changes to method of taxing certain trusts

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

1 At the locations indicated, amend the bill as follows:

2 1. Page 837 line 13: after that line insert:

3 “SECTION 1674e. 71.02 (1) of the statutes is amended to read:

4 71.02 (1) For the purpose of raising revenue for the state and the counties,
5 cities, villages and towns, there shall be assessed, levied, collected and paid a tax on
6 all net incomes of individuals and fiduciaries, except fiduciaries of nuclear
7 decommissioning trust or reserve funds subject to the tax under s. 71.23 (2), by every
8 natural person residing within the state or by his or her personal representative in
9 case of death, and trusts administered resident within the state; by every
10 nonresident natural person and trust of this state, upon such income as is derived
11 from property located or business transacted within the state including, but not
12 limited by enumeration, income derived from a limited partner’s distributive share

1 of partnership income, income derived from a limited liability company member's
2 distributive share of limited liability company income, the state lottery under ch.
3 565, any multijurisdictional lottery under ch. 565 if the winning lottery ticket or
4 lottery share was purchased from a retailer, as defined in s. 565.01 (6), located in this
5 state or from the department, winnings from a casino or bingo hall that is located in
6 this state and that is operated by a Native American tribe or band and pari-mutuel
7 wager winnings or purses under ch. 562, and also by every nonresident natural
8 person upon such income as is derived from the performance of personal services
9 within the state, except as exempted under s. 71.05 (1) to (3). Every natural person
10 domiciled in the state shall be deemed to be residing within the state for the purposes
11 of determining liability for income taxes and surtaxes. A single-owner entity that is
12 disregarded as a separate entity under section 7701 of the Internal Revenue Code
13 is disregarded as a separate entity under this chapter, and its owner is subject to the
14 tax on the entity's income."

15 **2.** Page 856, line 19: after that line insert:

16 "SECTION 1721et. 71.14 (3) (intro.) of the statutes is amended to read:

17 71.14 (3) (intro.) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts
18 ~~created by contract, declaration of trust or implication of law shall be considered~~
19 ~~resident at the place where the trust is being administered. The following trusts~~
20 ~~shall be considered to be administered in the state of domicile of the corporate trustee~~
21 ~~of the trust at any time that the grantor of the trust is not a resident of this state and~~
22 subject to sub. (3m), only the following trusts, or portions of trusts, shall be
23 considered resident of this state:

24 SECTION 1721ft. 71.14 (3) (a) of the statutes is amended to read:

1 71.14 (3) (a) ~~Trusts that have any assets invested in a common trust fund, as~~
2 ~~defined in section 584 of the internal revenue code, maintained by a bank or trust~~
3 ~~company domiciled in this state that is a member of the same affiliated group, as~~
4 ~~defined in section 1504 of the internal revenue code, as the corporate trustee the~~
5 ~~assets of which consist of property placed in the trust by a person who is a resident~~
6 ~~of this state at the time the property was placed in the trust if, at the time the assets~~
7 ~~were placed in the trust, the trust was irrevocable.~~

8 **SECTION 1721gt.** 71.14 (3) (b) of the statutes is amended to read:

9 71.14 (3) (b) ~~Trusts~~ Irrevocable trusts, the assets of which ~~in whole or in part~~
10 ~~are managed, or about which investment decisions are made, by a corporation~~
11 ~~domiciled in this state if that corporation and the corporate trustee are members of~~
12 ~~the same affiliated group, as defined in section 1504 of the internal revenue code~~
13 ~~consist of property placed in the trust by a person who is a resident of this state at~~
14 ~~the time that the trust became irrevocable if, at the time the property was placed in~~
15 ~~the trust, the trust was revocable.~~

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

17 71.14 (3m) A trust described under sub. (3):

18 (a) Is revocable if the person whose property constitutes the trust may revest
19 title to the property in that person.

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

22 **3.** Page 1460, line 9: after that line insert:

23 “(13m) **CHANGES TO METHOD OF TAXING CERTAIN TRUSTS.** The treatment of sections
24 71.02 (1) and 71.14 (3) (intro.), (a) and (b) and (3m) of the statutes first applies to

1 taxable years beginning on January 1 of the year following the year in which this
2 subsection takes effect.”.

3 (END)