

1999 DRAFTING REQUEST**Assembly Amendment (AA-AB133)**

Received: 06/11/99

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Legislative Fiscal Bureau 6-8849

By/Representing: Shanovich

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:

LFB:.....Shanovich (RR) -

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 06/12/99	wjackson 06/12/99	jfrantze 06/12/99	_____	lrb_docadmin 06/13/99		
	jkreye 06/14/99	wjackson 06/14/99		_____			
/2	jkreye 06/14/99	wjackson 06/14/99	jfrantze 06/14/99	_____	lrb_docadmin 06/14/99		
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/3	hubliks			_____	lrb_docadmin		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typist</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	06/15/99			_____	06/15/99		

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/2		12 Wlj 6/14	jfrantze 06/14/99	_____	lrb_docadmin 06/14/99		

13
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7/6/15 Jb/fg
6/15
<END>

TWO "12"'s went out —

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FE Sent For:

13 6/14 WLj
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/1	jkreye 06/12/99	wjackson 06/12/99	lrb_wpo	_____	_____		

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1?	jkreye	1 WLj 6/12	6/6/12	Jb/Km 6/6/12			

FE Sent For:

<END>

R0677

Wisconsin Department of Revenue
IS&E Division
May 21, 1999

TITLE: Tax Treatment of Corporations That Are Limited Partners or Members of Limited Liability Companies (LLCs)

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, Wisconsin treats most individuals who are partners or LLC members in the same manner.

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 taxpayers 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. Create a definition of "doing business in this state" in sec. 71.22 as follows:

"Doing business in this state" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. A corporation that directly or indirectly owns a general or limited partnership interest in a partnership that does business in this state, regardless of the percentage of ownership, or that directly or indirectly owns an interest in a limited liability company that does business in this state, regardless of the percentage of ownership, is doing business in this state in a corporate capacity, subject to constitutional limitations.

2. Amend secs. 71.23(1) and 71.43(1) as follows:

71.23 Imposition of tax. (1) **INCOME TAX.** For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state, derive income from sources within the state or from activities attributable to this state or whose business within this state during the taxable year, except as provided under sub. (3), consists exclusively of foreign commerce, interstate commerce, or both; except as exempted under s. 71.26(1). This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74(1) and (2).

71.43 Imposition of tax. (1) INCOME TAX. For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state, derive income from sources within the state or from activities attributable to this state or whose business within this state during the taxable year, except as provided under s. 71.23(3), consists exclusively of foreign commerce, interstate commerce, or both; except as exempted under ss. 71.26(1) and 71.45(1). This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74(1) and (2).

3. Amend sec. 71.25(5)(a) as amended by the section 1724 of the budget bill as follows:

71.25(5)(a) *Apportionable income.* (intro.) Except as provided in sub. (6), corporations engaged in business both within and without this state are subject to apportionment. Income, gain or loss from the sources listed in this paragraph is presumed apportionable, subject to constitutional limitations. Apportionable income includes all income or loss of corporations, other than nonapportionable income as specified in par. (b), including, but not limited to, income, gain or loss from the following sources:

4. 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. Following is suggested language:

provision under this section

A general or limited partner's share of the numerator and the denominator of the partnership's apportionment factors are included in the numerator and the denominator of the general or limited partner's apportionment factors and for a limited liability company treated as a partnership a member's share of the numerator and the denominator of the limited liability company's apportionment factors are included in the numerator and the denominator of the member's apportionment factors.

FISCAL/ADMINISTRATIVE IMPACT:

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

DRAFTING INSTRUCTIONS:

See the Recommendation.

EFFECTIVE DATE OR INITIAL APPLICABILITY:

The changes should apply for a corporation's taxable year beginning on or after January 1, 1999.

PERSON TO CONTACT:

Carol Held, telephone (608) 266-5464

Prepared by: Carol Held
May 21, 1999



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb06777D

JK.:/....

WJMR

in 6-12-99

LFB:.....Shanovich – Tax treatment of partners and members of limited liability companies

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

SOON

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

2 1. Page 856, line 24: after that line insert:

3 "SECTION 1722^{STET}. 71.22 (1r)[✓] of the statutes is created to read:

4 71.22 (1r) "Doing business" includes owning an interest in a partnership or
5 limited liability company that transacts in this state for pecuniary gain.

6 SECTION 1722^{STET}. 71.23 (1)[✓] of the statutes is amended to read:

7 71.23 (1) INCOME TAX. For the purpose of raising revenue for the state and the
8 counties, cities, villages and towns, there shall be assessed, levied, collected and paid
9 a tax as provided under this chapter on all Wisconsin net incomes of corporations

10 ~~which~~ ^{+that} are not subject to the franchise tax under sub. (2) and ~~which~~ ^{that} own property
11 within this state; that derive income from sources within this state or from activities

1 that are attributable to this state; or whose business within this state during the
2 taxable year, except as provided under sub. (3), consists exclusively of foreign
3 commerce, interstate commerce, or both; except as exempted under s. 71.26 (1). This
4 section shall not be construed to prevent or affect the correction of errors or omissions
5 in the assessments of income for former years under s. 71.74 (1) and (2).”.

6 **2.** Page 862, line 9: after that line insert:

7 “SECTION 1738g. 71.25 (15)[✓] of the statutes is created to read:

8 71.25 (15) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. A partner’s or a
9 member’s share of the numerator and denominator of a partnership’s apportionment
10 fractions or a limited liability company’s apportionment fractions under this section
11 are included in the numerator and denominator of the partner’s or the member’s
12 apportionment fractions under this section.”.

13 **3.** Page 879, line 21: after that line insert:

14 “SECTION 1748m. 71.43 (1)[✓] of the statutes is amended to read:

15 71.43 (1) INCOME TAX. For the purpose of raising revenue for the state and the
16 counties, cities, villages and towns, there shall be assessed, levied, collected and paid
17 a tax as provided under this chapter on all Wisconsin net incomes of corporations
18 ~~which~~^{that} are not subject to the franchise tax under sub. (2) and ~~which~~^{that} own property
19 within this state; that derive income from sources within this state or from activities
20 that are attributable to this state; or whose business within this state during the
21 taxable year, except as provided under s. 71.23 (3), consists exclusively of foreign
22 commerce, interstate commerce, or both; except as exempted under ss. 71.26 (1) and
23 71.45 (1). This section shall not be construed to prevent or affect the correction of

1 errors or omissions in the assessments of income for former years under s. 71.74 (1)
2 and (2).”.

3 ✓ **4.** Page 881, line 17: after that line insert:

4 “**SECTION 1753g.** 71.45 (6)✓ of the statutes is created to read:

5 71.45 (6) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. A partner’s or a
6 member’s share of the numerator and denominator of a partnership’s apportionment
7 fractions or a limited liability company’s apportionment fractions under this section
8 are included in the numerator and denominator of the partner’s or the member’s
9 apportionment fractions under this section.”.

10 ✓ **5.** Page 1477, line 8: after “(dr),” insert “71.23 (1),”.

11 **6.** Page 1477, line 9: delete that line and substitute: “(d)✓, (dc)✓, (dg)✓, (dn)✓ and
12 (dr)✓, (15)✓, 71.28 (4) (a)✓ and (am) 1., 71.45 (3) (intro.)✓ and (a)✓, (3m)✓ and (6)✓”.

13 ✓ **7.** Page 1477, line 10: delete “and the” and substitute “, the”.

14 ✓ **8.** Page 1477, line 11: after “statutes” insert “and the creation of section 71.22
15 (1r) of the statutes”.

16 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0677A
JK:wlj:jf

in 6-14-99

LFB:.....Shanovich (RR) – Tax treatment of partners and members of limited liability companies

FOR 1999-01 BUDGET – NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

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2 1. Page 856, line 24: after that line insert:

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4 71.22 (1r) "Doing business" includes owning an interest in a partnership or
5 limited liability company that transacts in this state for pecuniary gain.

6 SECTION 1722m. 71.23 (1) of the statutes is amended to read:

7 71.23 (1) INCOME TAX. For the purpose of raising revenue for the state and the
8 counties, cities, villages and towns, there shall be assessed, levied, collected and paid
9 a tax as provided under this chapter on all Wisconsin net incomes of corporations
10 ~~which that~~ are not subject to the franchise tax under sub. (2) and ~~which that~~ own
11 property within this state; that derive income from sources within this state or from

1 activities that are attributable to this state; or whose business within this state
2 during the taxable year, except as provided under sub. (3), consists exclusively of
3 foreign commerce, interstate commerce, or both; except as exempted under s. 71.26
4 (1). This section shall not be construed to prevent or affect the correction of errors or
5 omissions in the assessments of income for former years under s. 71.74 (1) and (2).”

6 **2.** Page 862, line 9: after that line insert:

7 **“SECTION 1738g.** 71.25 (15) of the statutes is created to read:

8 71.25 (15) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. A partner’s or a
9 member’s share of the numerator and denominator of a partnership’s apportionment
10 fractions or a limited liability company’s apportionment fractions under this section
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12 apportionment fractions under this section.”

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14 **“SECTION 1748m.** 71.43 (1) of the statutes is amended to read:

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20 activities that are attributable to this state; or whose business within this state
21 during the taxable year, except as provided under s. 71.23 (3), consists exclusively
22 of foreign commerce, interstate commerce, or both; except as exempted under ss.
23 71.26 (1) and 71.45 (1). This section shall not be construed to prevent or affect the

1 correction of errors or omissions in the assessments of income for former years under
2 s. 71.74 (1) and (2)."

3 4. Page 881, line 17: after that line insert:

4 "SECTION 1753g. 71.45 (6) of the statutes is created to read:

5 71.45 (6) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. A partner's or a
6 member's share of the numerator and denominator of a partnership's apportionment
7 fractions or a limited liability company's apportionment fractions under this section
8 are included in the numerator and denominator of the partner's or the member's
9 apportionment fractions under this section."

10 ~~5. Page 1477, line 8: after "(dr)," insert "71.23 (1)."~~

11 ~~6. Page 1477, line 9: delete that line and substitute: "(d), (de), (dg), (dn) and
12 (dr), (15), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.) and (a), (3m) and (6)."~~

13 ~~7. Page 1477, line 10: delete "and the" and substitute "the".~~

14 ~~8. Page 1477, line 11: after ^{1762 3} ~~that line~~ insert: ^{and the creation of section 71.22}
15 ⁽¹⁵⁾ ~~of the statutes".~~~~

16 (END)

INIT
APP
Fix
Component

4 " (22+) ^(C9) partnerships and limited liability
71.22 (1r), 71.25(15)
companies ⁽¹⁵⁾ the treatment of sections 71.23(1) and
71.43(1) ^{and 71.45(6)} of the statutes and the creation of section 1753g,
of the statutes first applies
to taxable years beginning on January 1, 1999.

LRB 677/1 - Refer to May 21 Proposal

1. Page 1, line 4: a. Does "owning an interest" include both direct and indirect ownership?
Do we need the words "direct or indirect"
 - b. Do we need to specify "general or limited" partnership interest in order to override "Sweltzer"?
 - c. Do we need to specify "subject to constitutional limitations"

2. Page 3, line 8: a. Do we need to specify "general or limited" partner?
 - b. It must specify that for an LLC the factors are included only if the LLC is being treated as a partnership.

3. Page 3, line 5: Same comments as # above.

4. Page 3, lines 10 through 15: I thought these were to be effective for taxable year beginning on or after 1/1/99 not 1/1/2000

5. Point #3 in proposal not done

Wisconsin Department of Revenue
IS&E Division
May 21, 1999

TITLE: Tax Treatment of Corporations That Are Limited Partners or Members of Limited Liability Companies (LLCs)

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, Wisconsin treats most individuals who are partners or LLC members in the same manner.

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2. Amend secs. 71.23(1) and 71.43(1) as follows:

71.23 Imposition of tax. (1) **INCOME TAX.** For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state, derive income from sources within the state or from activities attributable to this state or whose business within this state during the taxable year, except as provided under sub. (3), consists exclusively of foreign commerce, interstate commerce, or both; except as exempted under s. 71.26(1). This section shall not be construed to prevent or affect the correction of errors or omissions in the assessments of income for former years under s. 71.74(1) and (2).

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Not done

3. Amend sec. 71.25(5)(a) as amended by the section 1724 of the budget bill as follows:

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4. 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. Following is suggested language:

A. A general or limited partner's share of the numerator and the denominator of the partnership's apportionment factors are included in the numerator and the denominator of the general or limited partner's apportionment factors and for a limited liability company treated as a partnership a member's share of the numerator and the denominator of the limited liability company's apportionment factors are included in the numerator and the denominator of the member's apportionment factors.

FISCAL/ADMINISTRATIVE IMPACT:

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

DRAFTING INSTRUCTIONS:

See the Recommendation.

EFFECTIVE DATE OR INITIAL APPLICABILITY:

The changes should apply for a corporation's taxable year beginning on or after January 1, 1999.

Not done

PERSON TO CONTACT:

Carol Held, telephone (608) 266-5464

Prepared by: Carol Held
May 21, 1999

1999 - 2000 LEGISLATURE

LRBb0677/1
JK:wlj:jjf

LFB:.....Shanovich (RR) - Tax treatment of partners and members of limited liability companies

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

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5 limited liability company that transacts in this state for pecuniary gain, ^{Subject}
6 ^{constitutional limitations}

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 9 member's share of the numerator and denominator of a partnership's apportionment
 10 fractions or a limited liability company's apportionment fractions ^{if the limited liability} under this section ^{company}
 11 are included in the numerator and denominator of the partner's or the member's ^{is treated}
 12 apportionment fractions under this section." ^{as a}
_{partnership}

ok 13 3. Page 879, line 21: after that line insert:

14 "SECTION 1748m. 71.43 (1) of the statutes is amended to read:

15 71.43 (1) INCOME TAX. For the purpose of raising revenue for the state and the
 16 counties, cities, villages and towns, there shall be assessed, levied, collected and paid
 17 a tax as provided under this chapter on all Wisconsin net incomes of corporations
 18 ~~which that~~ are not subject to the franchise tax under sub. (2) and ~~which that~~ own
 19 property within this state; that derive income from sources within this state or from
 20 activities that are attributable to this state; or whose business within this state
 21 during the taxable year, except as provided under s. 71.23 (3), consists exclusively
 22 of foreign commerce, interstate commerce, or both; except as exempted under ss.
 23 71.26 (1) and 71.45 (1). This section shall not be construed to prevent or affect the

1 correction of errors or omissions in the assessments of income for former years under
2 s. 71.74 (1) and (2)."

3 4. Page 881, line 17: after that line insert:

4 "SECTION 1753g. 71.45 (6) of the statutes is created to read:

5 71.45 (6) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. ^{general or limit} A partner's or a
6 member's share of the numerator and denominator of a partnership's apportionment
7 fractions or a limited liability company's apportionment fractions ^{if the limited liab} under this section ^{can}
8 are included in the numerator and denominator of the partner's or the member's ^{as a}
9 apportionment fractions under this section." ^{partne}

10 5. Page 1477, line 8: after "(dr)," insert "71.23 (1)."

11 6. Page 1477, line 9: delete that line and substitute: "(d), (de), (dg), (dn) and
12 (dr), (15), 71.28 (4) (a) and (am) 1., 71.45 (3) (intro.) and (a), (3m) and (6)".

13 7. Page 1477, line 10: delete "and the" and substitute", the".

14 8. Page 1477, line 11: after "statutes" insert "and the creation of section 71.22
15 (1r) of the statutes".

(END)

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Draft
will be
typed

B Shurie
R J Klevorn

Re LFB amend to AB133 and SB45

I don't know the intent but the bill ^{may} does seem to read consistently. The proposal ~~will~~ ^{eliminate} most ~~most~~ taxation of trusts in this state. Sec 71.02(1) ^{states} limits ~~being~~ application of the income tax to resident trust. Resident trust as defined to limit application to irrevocable trusts of residents.

I don't know if "person" in sec 71.14(3m) ^{states} could be construed to mean a person's personal representative, also. That is, is there a possibility that the trust could be revocable after the trustee's death under the definition at sec 71.02(9) ^{states} which includes "fiduciaries", unless the context requires otherwise. Thus, it appears that after the trustee dies, the trust could be moved ^{out of state} by the fiduciary under the provisions of the trust instrument. I am hesitant to sign such due to my lack of background in the trust area.

~~In conclusion~~

m 6-14-99

LFB:.....Shanovich (RR) – Tax treatment of partners and members of limited liability companies

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

Joon

D-N

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

2 1. Page 856, line 24: after that line insert:

3 "SECTION 1722g. 71.22 (1r) of the statutes is created to read:

4 71.22 (1r) "Doing business" includes owning ~~an~~ interest in a partnership or
5 limited liability company that transacts in this state for pecuniary gain.

6 SECTION 1722m. 71.23 (1) of the statutes is amended to read:

7 71.23 (1) INCOME TAX. For the purpose of raising revenue for the state and the
8 counties, cities, villages and towns, there shall be assessed, levied, collected and paid
9 a tax as provided under this chapter on all Wisconsin net incomes of corporations
10 ~~which that~~ are not subject to the franchise tax under sub. (2) and ~~which that~~ own
11 property within this state; that derive income from sources within this state or from

direct or indirect
general or limited

1 activities that are attributable to this state; or whose business within this state
 2 during the taxable year, except as provided under sub. (3), consists exclusively of
 3 foreign commerce, interstate commerce, or both; except as exempted under s. 71.26
 4 (1). This section shall not be construed to prevent or affect the correction of errors or
 5 omissions in the assessments of income for former years under s. 71.74 (1) and (2).".

6 **2.** Page 862, line 9: after that line insert:

7 "SECTION 1738g. 71.25 (15) of the statutes is created to read:

8 **71.25 (15) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES.** ^(a) A partner's ~~share~~
 9 ~~member's~~ share of the numerator and denominator of a partnership's apportionment
 10 fractions ~~of a limited liability company's apportionment fractions~~ under this section
 11 are included in the numerator and denominator of the partner's ~~or the member's~~
 12 apportionment fractions under this section. ^(b)

13 **3.** Page 879, line 21: after that line insert:

14 "SECTION 1748m. 71.43 (1) of the statutes is amended to read:

15 **71.43 (1) INCOME TAX.** For the purpose of raising revenue for the state and the
 16 counties, cities, villages and towns, there shall be assessed, levied, collected and paid
 17 a tax as provided under this chapter on all Wisconsin net incomes of corporations
 18 ~~which that~~ are not subject to the franchise tax under sub. (2) and ~~which that~~ own
 19 property within this state; that derive income from sources within this state or from
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 21 during the taxable year, except as provided under s. 71.23 (3), consists exclusively
 22 of foreign commerce, interstate commerce, or both; except as exempted under ss.
 23 71.26 (1) and 71.45 (1). This section shall not be construed to prevent or affect the

(b) If a limited liability company is considered by the department of revenue to be a partnership, a member's share of the numerator and denominator of a limited liability company's apportionment fractions under this section are included in the numerator and denominator of the member's apportionment fractions under this section.

general or limited

general or limited

for tax purposes

1 correction of errors or omissions in the assessments of income for former years under
2 s. 71.74 (1) and (2)."

3 4. Page 881, line 17: after that line insert:

4 "SECTION 1753g. 71.45 (6) of the statutes is created to read:

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6 ~~member's~~ share of the numerator and denominator of a partnership's apportionment
7 ~~fractions of a limited liability company's apportionment fractions~~ under this section
8 are included in the numerator and denominator of the partner's ~~of the member's~~
9 apportionment fractions under this section."

10 5. Page 1462, line 3: after that line insert:

11 "(22t) PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. The treatment of sections
12 71.22 (11), 71.23 (1), 71.25 (15), 71.43 (1) and 71.45 (6) of the statutes first applies
13 to taxable years beginning on January 1, 1999."

14 (END)

(b) If a limited liability company is considered by the department of revenue to be a partnership, for tax purposes, a member's share of the numerator and denominator of a limited liability company's apportionment fractions under this section are included in the numerator and denominator of the member's apportionment fractions under this section.

general or limited

general or limited

DATE: June 14, 1999

TO: Sherrie Gates-Hendrix *MB*

FROM: Michael Buchanan *MB*

SUBJECT: Review of LFB Amendment

*put in
file #
80677*

I agree with the comments made by Carol Held. Unless "doing business" includes owning an indirect interest, the Commission and the Courts will undoubtedly find that it only includes a direct ownership interest since Wisconsin is a separate entity state. Furthermore, unless the word "limited" is added to partnership, the Commission and the Courts will find that the statute only refers to a general partnership since in Sweitzer v. DOR, 65 Wis. 2d 235 (1974), the Wisconsin Supreme Court has already ruled that ownership of a limited partnership interest does not constitute "income or loss from business" in the state where the partnership does business. It follows the residence of the recipient.

Furthermore, such a statutory change will undoubtedly produce substantial litigation on at least three grounds.

1. Whether ownership of a limited partnership interest can itself create nexus in a state?
2. Whether a separate entity state like Wisconsin can create nexus through an indirect ownership of any type of asset in Wisconsin?
3. Since the Wisconsin Supreme Court has already opined "that the appellant's limited partnership interest is similarly analogous to the interest held by a corporate shareholder," Sweitzer, supra, p. 240, can Wisconsin create nexus by ownership of a limited partnership interest when it does not create nexus by virtue of ownership of corporate stock?

If "doing business" only includes owning an actual interest in a limited partnership, the taxpayers will just run their ownership through another entity and we will not be able to impose Wisconsin tax. However, even if the Legislature adds the word "indirect," and states that indirect ownership in a limited partnership constitutes "doing business" in Wisconsin, I think we are going to have monumental problems getting the Commission and the Courts to allow a separate entity state to do so. If a Wisconsin subsidiary corporation owns real estate

Sherrie Gates-Hendrix
June 14, 1999
Page 2

in Wisconsin, it has nexus here. However, the Minnesota corporate parent of that subsidiary does not have nexus in Wisconsin just because its 100%-owned subsidiary owns real estate in Wisconsin.

I was given 20 minutes to review this proposed legislation and render an opinion. So what you are getting is just that – a 20 minute opinion. When taxpayers' attorneys have time to sit down and study this legislation and plan accordingly, they will tear it to shreds.

MJB:sjl
l:\opinion-doing business

pc: John Evans



State of Wisconsin
1999 - 2000 LEGISLATURE

LRBb0677/3
JK:wlj:jf

LFB:.....Shanovich (RR) – Tax treatment of partners and members of limited liability companies

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

LFB AMENDMENT

TO 1999 ASSEMBLY BILL 133 AND 1999 SENATE BILL 45

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6 state for pecuniary gain.

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10 limited partner’s share of the numerator and denominator of a partnership’s
11 apportionment fractions under this section are included in the numerator and
12 denominator of the general or limited partner’s apportionment fractions under this
13 section.

14 (b) If a limited liability company is considered by the department of revenue
15 to be a partnership, for tax purposes, a member’s share of the numerator and
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17 section are included in the numerator and denominator of the member’s
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