

2001 DRAFTING REQUEST

Bill

Received: 09/26/2000

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Administration-Budget 6-8593

By/Representing: Holden

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:

DOA:.....Holden -

Topic:

Define member" and partner" as they relate to corporations and insurers for income and franchise tax purposes

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 09/28/2000	gilfokm 09/28/2000	pgreensl 09/29/2000	_____	lrb_docadmin 09/29/2000		State
	jkreye 10/10/2000	gilfokm 10/10/2000		_____			
/2			martykr 10/10/2000	_____	lrb_docadmin 10/10/2000		State

FE Sent For:

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12-10/10/00 mg *km 10/10* *Sub 10/10*

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1?	jkreye	1-9/28 kmj	9/29 pg	9/29 pg/km			

FE Sent For:

<END>

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Division of Executive Budget and Finance
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1736
Fax (608) 267-0372
TTY (608) 267-9629

0538

Date: September 25, 2000
To: Steve Miller, LRB
From: Kerry Holden, DOA *KH*
266-8593
Subject: DOR Statutory Language Requests

I'm forwarding statutory language changes submitted with its budget by the Department of Revenue that pertain to corporate income and franchise tax, sales and use tax, and utility and special taxes.

Corporate Income and Franchise Tax:

1. ~~Revise the definition of corporations that are members of LLCs or partners of partnerships taxed as corporations. See Attachment 1.~~

Sales and Use Tax:

2. Revise definition of tangible personal property for purposes of property affixed to real estate (trade fixtures). See Attachment 2.
3. Clarify property deemed to be tangible personal property for repair purposes. See Attachment 3.
4. Clarify definition of tangible personal property for information or data transferred in tangible form. See Attachment 4.
5. Provide exemption for construction materials sold to contractors for use in school projects. See Attachment 5.

Utility and Special Taxes:

6. Revisions to manufacturing assessment laws. See Attachment 6.
7. Classify multi-use telephone company buildings based on predominant use (instead of requiring multi-jurisdictional assessment). See Attachment 7.
8. Eliminate waste treatment exemption application. See Attachment 8.

Please feel free to call me if you have any questions or concerns. Thank you!

Legislative Proposal Summary
Wisconsin Department of Revenue
IS&E Division

June 2, 2000

TITLE

Clarify the Intent of current Law Treatment of Corporations that are Members of Limited Liability Companies (LLCs), or Partners of Partnerships who are Taxed as Corporations

SUMMARY OF RECOMMENDATION:

Clarify that a corporation or insurance company that is a member of an LLC, or a partner of a partnership, which is treated as a corporation, cannot claim the LLC's or partnership's tax credits. This was the original intent of the current statute as enacted. Also, clarify the computation of a corporate partner's or LLC member's apportionable income and apportionment factors. These clarifications would reduce the likelihood of litigation; no fiscal effect.

DESCRIPTION OF CURRENT LAW AND PROBLEM

For federal income tax purposes, limited liability companies (LLCs) may elect to be treated either as partnerships or as corporations. If an LLC elects to be treated as a partnership, the LLC is not subject to income tax, but instead, its income, deductions, and credits pass through to and are reported by its members on their tax returns. If an LLC elects to be treated as a corporation, the LLC is subject to income tax and reports its own income, deductions, and credits. In addition, the members of an LLC taxed as a corporation are subject to income tax on any distributions made by the LLC.

The Wisconsin treatment of an LLC and its members is the same as the federal treatment; the LLC cannot make a different election for Wisconsin. An LLC treated as a partnership for federal purposes is treated as a partnership for Wisconsin purposes, and an LLC treated as a corporation for federal purposes is treated as a corporation for Wisconsin.

Similarly, federal law provides that certain publicly traded partnerships are subject to income tax as corporations, and that same treatment applies for Wisconsin purposes.

The Wisconsin Statutes use inconsistent language with respect to LLCs and partnerships. As a result, it is unclear whether certain provisions apply to all LLC members and partners or only to members of LLCs, and partners of partnerships, that are treated as pass-through entities. Following are examples of provisions that create confusion.

1. Tax Credits

- a. Sections 71.07(2j)(c), 71.28(1j)(c), and 71.47(1j)(c), Stats., provide that partnerships and LLCs may not claim the development zone jobs credit. Partners

or members may claim the credit based on the partnership's or LLC's activities in proportion to their ownership interests. These provisions continue to apply for purposes of the new development zone credit. Sections 71.07(9m)(f), 71.28(6)(f), and 71.47(6)(f), Stats., contain similar language for the supplement to the federal historic rehabilitation tax credit.

The pass-through of tax credits calculated by a partnership or LLC is appropriate when the entity is treated as a pass-through entity. When the entity's income flows through and is taxable to its partners or members, its credits should be handled in the same manner. However, if a partnership or LLC is treated as a corporation under sec. 71.22(1), Stats., the credits should not flow through to its partners or members. When the partnership or LLC is a tax-paying entity, the partnership or LLC should claim any available credits.

For individuals and fiduciaries, sec. 71.01(8g), Stats., states that "member" does not include a member of an LLC treated as a corporation under sec. 71.22(1), and Stats. Section 71.01(8m), Stats., states that "partner" does not include a partner of a publicly traded partnership treated as a corporation under sec. 71.22(1), Stats. Thus it is clear that an individual who is a member of an LLC, or partner of a partnership, that is treated as a corporation cannot claim the LLC's, or partnership's, tax credits. However, the subchapters relating to corporations and insurance companies do not contain similar language to clarify that a corporation or insurance company which is a member of an LLC treated as a corporation, or a publicly traded partnership treated as a corporation, cannot claim the LLC's, or partnership's, tax credits.

- b. Sections 71.07(9m)(d), 71.28(6)(d), and 71.47(6)(d), Stats., require a partner's interest in a partnership or member's interest in an LLC to be adjusted for the supplement to the federal historic rehabilitation tax credit. If a partnership or LLC is taxed as a corporation, its partners or members should not be required to make basis adjustments for credits claimed since shareholders in regular corporations do not make such adjustments.

2. Apportionable Income and Apportionment Factors

For purposes of computing the apportionable income and apportionment factors of corporations which are members of LLCs or partners of partnerships, the Wisconsin Statutes do not clearly distinguish between those LLCs and partnerships treated as pass-through entities and those treated as corporations.

- a. Section 71.25(5)(a)14, Stats., provides that a corporation's apportionable income includes its share of income or loss from a partnership or LLC. As a result, it appears that a corporate member of an LLC or partnership treated as a corporation may be subject to tax not only on distributions received from the entity but also on its share of the entity's net income, even though the LLC or partnership is taxed on that net income. This was not the intent.
- b. Sections 71.04(7)(e)8 and 71.25(9)(e)8, Stats., provide that for purposes of the sales factor, sales include a partner's share of the partnership's gross receipts and a member's share of the LLC's gross receipts. Thus, it is unclear whether a member or partner could include in its sales factor a share of the LLC's or

partnership's gross receipts even if the LLC or partnership is taxed as a corporation.

Example: Corporation A, which is engaged in business in and outside Wisconsin, holds a 10% interest in an LLC. The LLC is engaged in business only in Wisconsin and is treated as a corporation for federal income tax purposes. The LLC has gross receipts of \$7 million and net income of \$1 million for 2000. The LLC does not make any distributions to its members. For federal income tax purposes, the LLC files a 2000 corporation income tax return and pays tax on its net income of \$1 million. Corporation A is not subject to federal income tax on its share of the LLC's net income. For Wisconsin purposes, the LLC is subject to Wisconsin corporate franchise or income tax on its \$1 million of net income. Therefore, Corporation A should not be required to include in its apportionable income its 10% share, or \$100,000, of the LLC's net income. In addition, Corporation A should not be permitted to include in its sales factor its 10% share of the LLC's gross receipts.

ADMINISTRATIVE IMPACT

Clarifying the law will reduce the likelihood of litigation.

FISCAL EFFECT

Since it is a clarification, this proposal has no fiscal effect.

DRAFTING INSTRUCTIONS

~~Corporation or insurance company that is a member of an LLC, or partner of a partnership, which is treated as a corporation cannot claim the LLC's or partnership's tax credits. It would also clarify the computation of a corporate partner's or LLC member's apportionable income and apportionment factors.~~
This would make it clear that a corporation or insurance company that is a member of an LLC, or partner of a partnership, which is treated as a corporation cannot claim the LLC's or partnership's tax credits. It would also clarify the computation of a corporate partner's or LLC member's apportionable income and apportionment factors.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Day after publication.

DOR CONTACT PERSON

Carol Held
Staff Specialist
(608) 266-5464

PREPARED BY

Carol Held



9/26

State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0538/1

JK:Y...
RMK

SOON

DOA:.....Holden - Define "member" and "partner" as they relate to corporations and insurers for income and franchise tax purposes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

in 9-28-00

DONT
GEN. CAT.

1

AN ACT ..., relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

Under current law, for income tax purposes, a limited liability company may elect to be treated either as a partnership or as a corporation. If a limited liability company elects to be treated as a partnership, it is not subject to income tax but, instead, its income is reported by its individual members. If a limited liability company elects to be treated as a corporation, it is subject to income tax.

Under current law, for income tax purposes, a partnership may elect to be treated either as a partnership or as a corporation. If a partnership elects to be treated as a partnership, it is not subject to income tax but, instead, its income is reported by its individual partners. If a partnership elects to be treated as a corporation, it is subject to income tax.

Under current law, with regard to taxing the income of partners or limited liability company members, "member" does not mean a member of a limited liability company treated as a corporation and "partner" does not mean a member of a partnership treated as a corporation. This prevents a partnership and its individual partners, or a limited liability company and its individual members, from reporting the same income and claiming the same tax credits or deductions related to that income.

partners

Under this bill, with regard to taxing the income of partnerships, ~~or~~ limited liability companies, "member" does not mean a member of a limited liability company treated as a corporation and "partner" does not mean a member of a partnership treated as a corporation.

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

and limited liability company members

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

1 SECTION 1. 71.22 (6m) of the statutes is created to read:

2 71.22 (6m) "Member" does not include a member of a limited liability company
3 treated as a corporation under ~~s. 71.22~~ ^{sub.} (1).

4 SECTION 2. 71.22 (7m) of the statutes is created to read:

5 71.22 (7m) "Partner" does not include a partner of a publicly traded
6 partnership treated as a corporation under ~~s. 71.22~~ ^{sub.} (1).

7 SECTION 3. 71.42 (3d) of the statutes is created to read:

8 71.42 (3d) "Member" does not include a member of a limited liability company
9 treated as a corporation under s. 71.22 (1).

10 SECTION 4. 71.22 (3h) of the statutes is created to read:

11 71.42 (3h) "Partner" does not include a partner of a publicly traded partnership
12 treated as a corporation under s. 71.22 (1).

13 SECTION 9344. Initial applicability; revenue.

14 (1) TAX TREATMENT OF PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. The
15 treatment of sections 71.22 (6m) and (7m) and 71.42 (3d) and (3h) of the statutes first
16 applies to taxable years beginning on January 1 of the year in which this subsection
17 takes effect, except that if this subsection takes effect after July 31 the treatment of
18 sections 71.22 (6m) and (7m) and 71.42 (3d) and (3h) 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)

Kreye, Joseph

From: Holden, Kerry
Sent: Tuesday, October 10, 2000 11:03 AM
To: Kreye, Joseph
Subject: FW: LRB Draft: 01-0538/1

Below are the comments received from DOR re: LRB draft 0538/1. I would suggest that if you have any questions regarding Carol Held's comments, that you contact her directly at 6-5464. Please let me know if I may be of further assistance.

Kerry Holden

-----Original Message-----

From: Gates-Hendrix, Sherrie
Sent: Tuesday, October 10, 2000 10:54 AM
To: Holden, Kerry
Subject: FW: LRB Draft: 01-0538/1

Kerry - Here is Carol Held's email on LRB 538/1:

-----Original Message-----

From: Held, Carol L
Sent: Tuesday, October 10, 2000 10:40 AM
To: Gates-Hendrix, Sherrie
Subject: RE: LRB Draft: 01-0538/1

I have reviewed this draft and my only comment is that the initial applicability language should be eliminated. Since this draft codifies our current policy, we do not believe that initial applicability language is appropriate. The initial applicability language could invite litigation, which is what we are trying to avoid.



01-0538/1



DOA:.....Holden - Define "member" and "partner" as they relate to corporations and insurers for income and franchise tax purposes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

M 10-10-00

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income. Under this bill, with regard to taxing the income of partners, partnerships, limited liability companies, and limited liability company members, “member” does not mean a member of a limited liability company treated as a corporation and “partner” does not mean a member of a partnership treated as a corporation.

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

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1 **SECTION 1.** 71.22 (6m) of the statutes is created to read:

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3 treated as a corporation under sub. (1).

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6 partnership treated as a corporation under sub. (1).

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2 subsection takes effect.

3

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0538/2

JK:kmg:km

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