

**2001 DRAFTING REQUEST**

**Bill**

Received: 01/02/2001

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-1805**

By/Representing: **Geisler**

This file may be shown to any legislator: **NO**

Drafter: **shoveme**

May Contact:

Alt. Drafters:

Subject: **Tax - individual income**

Extra Copies:

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**Pre Topic:**

DOA:.....Geisler -

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**Topic:**

Taxation of inter vivos trusts

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**Instructions:**

See Attached. Redraft inter vivos trust elements of 1999 AB 655, LRB -3922/3

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**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>
/?	shoveme 01/02/2001	jdye 01/04/2001		_____			State
/1			pgreensl 01/05/2001	_____	lrb_docadmin 01/05/2001		

FE Sent For:

<END>

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1?	shoveme	1/14 jld	1/5/01	1/5/01			
1/1 MEG	01/02/01		PG	PG/RS			

FE Sent For:

<END>

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON  
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SECRETARY



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**Date:** December 28, 2000

**To:** Steve Miller, LRB

**From:** Jeffrey A. Geisler, DOA  
266-1805

**Subject:** Taxation of Trusts Effective Date Statutory Language Draft

Please draft a change to chapter 71 that will make an inter vivos trust that is made irrevocable before October 29, 1999 taxable in Wisconsin only if the trust was administered in this state on or before October 29, 1999.

I have attached background materials (including sample language) for your consideration.

Please call me (6-1805) if you have questions.

Thanks



## Taxation of Trusts

### Effective Date Technical Correction

#### Background

The financial services industry in the United States is changing rapidly due to a wide range of technological and regulatory developments. One area where these changes are becoming readily apparent is the once obscure area of trust services. For example:

- Trust services, once a product of small, local markets, are now being offered by national companies doing business throughout the country.
- Financial institutions such as insurance companies, by acquiring or establishing a bank or thrift, now can provide trust services—an area once dominated by trust companies or bank trust departments.
- States, eager to attract trust business, are amending tax and creditor laws. Illinois, Delaware and Alaska have been leading the charge in this regard.
- Growing interstate competition for personal trust business has resulted in more options and better service for consumers.

Due to these changes, many Wisconsin-based companies are poised to become serious players in this area of the financial services marketplace.

#### What is a Trust?

Trusts are contractual arrangements for the ownership and management of assets by a *trustee* according to a trust agreement. The trustee manages trust assets on behalf of and for the benefit of the *trust beneficiaries*. The individual who provides the initial assets for the trust is known as the *grantor*.

Trusts have always been an important means of extending family financial management by parents beyond their lifetimes. In these arrangements, the trust is often used to distribute funds periodically rather than in a lump sum. The objective is usually to protect a child from a propensity to spend funds frivolously, or to provide professional financial management for an individual who may not be financially savvy.

While an individual may act as a trustee, trusts are often managed professionally by a corporate entity such as a trust company, a bank trust department, or a thrift subsidiary of an insurance company. Final distribution from such trusts is often predicated on the beneficiary's attainment of a specified age.

Although once viewed as a tactic reserved for extremely wealthy families, trusts now are seen as mechanisms to help people from many walks of life to prepare for sudden life changes or emergencies. In addition to the reasons mentioned above, trusts can also be used to guarantee the financial security of a disabled child or child with other special needs, fund charitable gifts, or to provide for family members who may be geographically dispersed.

### **Wisconsin's Pre-1999 Law**

Prior to the passage of the state budget in October of 1999, trusts were considered resident at the place where the trust is administered (see Wis. Stats. §71.14(3)). Where a trust is resident determines the "situs" of a trust's income, and the situs is the place where the trust is taxed.

Financial service companies headquartered in Wisconsin were at a significant competitive disadvantage because of the structure of the Wisconsin income tax on trusts. Wisconsin was in the minority of states that impose state income tax on trusts based on the location of trust administrator. Thus, nonresidents of Wisconsin had an incentive not to appoint Wisconsin financial services companies as trustees in order to avoid the Wisconsin state income tax. Wisconsin financial institutions lost as Wisconsin was an unwelcome location to establish a trust business. The State also lost revenue, as residents would simply have their trusts administered out of state and avoid any Wisconsin taxes--and in many cases avoid all taxes.

### **Modifications in the Budget**

The 1999-2000 state budget modified the Wisconsin income tax on trusts, changing its basis of taxation from where the trust is administered to where the grantor resides. Now, the Wisconsin income tax is applied only to trusts created by Wisconsin residents, regardless of where the trust is administered. This made the Wisconsin statute more like that of many other states and eliminated any incentive to move trust business out of Wisconsin due to state income tax factors. According to the Legislative Fiscal Bureau, the fiscal impact on the state will be negligible, because currently few nonresidents use Wisconsin financial institutions as a trust administrator.

## **Questions About Effective Date**

### **Original Language (as adopted by Joint Finance)**

As originally proposed and adopted by the Joint Finance Committee and the two legislative chambers, the provision would have provided a complete fresh start for the taxation of trusts by substituting the residency-based test for the "place where administered" test. This would have ended Wisconsin's taxation of retained trust income of *nonresident* grantors. At the same time, it would have closed a tax loophole under which Wisconsin *residents* have historically escaped trust taxation by crossing state lines to give their trust business to out-of-state competitor trust institutions.

This would have opened the state's borders to allow Wisconsin trust institutions to compete on a level playing field nationwide for trust business of nonresidents and residents alike. For future tax years, only trusts of Wisconsin residents would be subject to Wisconsin tax, regardless of their choice of trustee.

### **State Bar Association-Endorsed "Grandfather" Language**

After the budget was approved by both the Assembly and the Senate, the Real Property, Probate and Trust Law Section of the State Bar suggested a need for grandfathering of Wisconsin-resident trusts who had moved their administration from Wisconsin in reliance on previous law. In the spirit of compromise, Northwestern Mutual worked closely with the Bar Association and other providers of trust services in the state to come up with transition

language to clarify the effective date of this provision. The transition language applied the new, residency-based test of taxation only to:

1. New trusts – those which would become irrevocable after the effective date of the budget;
2. New property contributed to irrevocable trusts after the effective date;
3. Trusts first administered in this state after the effective date.

This compromise would have ensured that Wisconsin trust companies are still able to compete with other states for trust administration. Clause #3 was essential to assure that *nonresident* grantors of trusts that were already irrevocable would not be effectively barred from moving their trust administration to a Wisconsin-based financial institution.

### **Conference Committee Modifications**

During the final hours of the budget conference committee negotiations, it came to Northwestern Mutual's attention that the Reference Bureau drafter was uncertain of the rationale behind the State Bar modifications and the *entire* trust taxation modification was going to be dropped from the budget. A hasty process was initiated to restore either the original language as approved by the Assembly and Senate, or State Bar-endorsed modifications. Instead, the drafter chose to draft entirely new language. As signed into law by the Governor, the new, residency-based test applies *only* to trusts which had not yet become irrevocable as of the effective date, effectively excluding all existing irrevocable trusts.

Although at the time NML agreed to the substitute language as preferable to *no* new tax system at all, the effect is to erect a perpetual tax barricade at Wisconsin's borders for nonresident trusts, however long ago they may have been created. This barricade serves no practical purpose, and actually hinders future tax revenues and job creation.

### **Requested Action**

The technical correction we seek (copy attached) would restore item #3 in the Bar Association's thoroughly reviewed and industry-endorsed grandfather language. It is interesting to note that this technical correction is identical to that enacted by Minnesota in a technical correction two years after that state switched from an "administered" test to a "residency" test in 1995.

**Relevant Provisions of 1999 Assembly Bill 655**  
*(Passed by Voice Vote January 25, 2000)*

Under current law, an inter vivos trust (a trust that is created during the life of the grantor) that is made irrevocable before October 29, 1999, is considered resident at the place where the trust is being administered, and this state taxes a trust that is resident within this state. Therefore, an inter vivos trust that is made irrevocable before October 29, 1999, and that is administered in this state is subject to taxation by this state. Also under current law, in general, an inter vivos trust is taxable by this state if the grantor was a resident of this state.

Under this bill, an inter vivos trust that is made irrevocable before October 29, 1999 is considered resident, and thus taxable by this state, only if the trust was administered in this state on or before October 29, 1999.

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

71.14 (3) (intro.) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts created by contract, declaration of trust or implication of law that are made irrevocable and were administered in this state before October 29, 1999, 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:

**SECTION 2.** 71.14 (3m) of the statutes is amended to read:

71.14 (3m) (a) Subject to par. (b) and except as provided in sub. (2) and s. 71.04 (1) (b) 2., only the following trusts, or portion of trusts, which become irrevocable on or after October 29, 1999, or which became irrevocable before October 29, 1999, and are first administered in this state on or after October 29, 1999, are resident of this state:

**SECTION 2.** 71.14 (3m) (b) 2. of the statutes is amended to read:

2. Is irrevocable if the power to re-vest title, as described in ~~par. (a)~~ subd. 1., does not exist.



**1999 ASSEMBLY BILL 655**

January 19, 2000 - Introduced by COMMITTEE ON RULES. Referred to Committee on Rules.

1 **AN ACT** *to amend* 20.566 (1) (gg), 40.51 (8), 40.51 (8m), 66.46 (6) (am) 2. c., 71.14  
2 (3) (intro.), 71.14 (3m) (a) (intro.), 71.14 (3m) (b) 2., 185.981 (4t) and 185.983 (1)  
3 (intro.); *to create* 111.91 (2) (nm), 609.795 and 632.872 of the statutes; and *to*  
4 *affect* 1999 Wisconsin Act 9, section 9123 (14g); **relating to:** the  
5 administration and collection of local exposition district taxes,  
6 community-wide standards for marriage, taxation of certain inter vivos trusts,  
7 correcting a reference to the year in which Sheboygan County was created and  
8 prohibiting denial of payment for certain medical or surgical services or  
9 procedures.

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***Analysis by the Legislative Reference Bureau***

Under current law, a local exposition center district may impose a sales tax on all retailers that are located in the district at the rate of 0.25% of the gross receipts from the sale of food and beverages, and 3% of the gross receipts from car rentals and motel or hotel room rentals. The department of revenue (DOR) administers and collects the tax. DOR retains 2.55% of the collected tax for administrative purposes and distributes the rest of the collected tax to the district.

Under this bill, the amount of a local exposition center district taxes that DOR retains for administrative purposes that remains unencumbered at the end of the

**ASSEMBLY BILL 655**

state fiscal year and that exceeds 10% of the amount expended for administrative purposes during the fiscal year is distributed to the local exposition center district.

Under current law, an inter vivos trust (a trust that is created during the life of the grantor) that is made irrevocable before October 29, 1999, is considered resident at the place where the trust is being administered, and this state taxes a trust that is resident within this state. Therefore, an inter vivos trust that is made irrevocable before October 29, 1999, and that is administered in this state is subject to taxation by this state. Also under current law, in general, an inter vivos trust is taxable by this state if the grantor was a resident of this state.

Under this bill, an inter vivos trust that is made irrevocable before October 29, 1999, is considered resident, and is thus taxable by this state, only if the trust was administered in this state on or before October 29, 1999.

Under current law, the expenditure period for project costs for Tax Incremental District (TID) Number Six in the city of Sheboygan is 13 years after the TID is created, and expenditures may be made through December 31, 2004. Current law describes the county in which this TID is located as a county that was created in 1853. This bill changes that reference to 1836, the actual year in which Sheboygan County was created.

This bill prohibits a health insurer from denying payment for a medical or surgical service or procedure on the basis that the service or procedure is an integral component of another service or procedure for which payment is made. The bill allows payment for a service or procedure to be included in the payment for another service or procedure, however, if, under medicare Part B, payment for the first service or procedure is included in the payment for the second service or procedure.

Current law provides funding for an individual to coordinate the development of, and to assist local members of the clergy to develop, community-wide standards for marriages solemnized in this state by members of the clergy. This bill changes the individual's responsibilities to coordinating the development of community-wide standards for marriages solemnized in this state.

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

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

1           **SECTION 1.** 20.566 (1) (gg) of the statutes, as affected by 1999 Wisconsin Act 9,  
2 is amended to read:

3           20.566 (1) (gg) *Administration of local taxes.* The amounts in the schedule for  
4 administering the taxes under s. 66.75 (1m) (a) and (b) and subchs. VIII and IX of ch.  
5 77. An amount equal to 2.55% of all moneys received from the taxes imposed under

**ASSEMBLY BILL 655**

1 s. 66.75 (1m) (a) and (b) and subchs. VIII and IX of ch. 77 shall be credited to this  
2 appropriation. Notwithstanding s. 20.001 (3) (a), at the end of each fiscal year the  
3 unencumbered balance in this appropriation account that exceeds 10% of the  
4 expenditures from this appropriation account during the fiscal year shall revert to  
5 the appropriation under s. 20.835 (4) (gg).

6 **SECTION 2.** 40.51 (8) of the statutes is amended to read:

7 40.51 (8) Every health care coverage plan offered by the state under sub. (6)  
8 shall comply with ss. 631.89, 631.90, 631.93 (2), 632.72 (2), 632.746 (1) to (8) and (10),  
9 632.747, 632.748, 632.85, 632.853, 632.855, 632.87 (3) to (5), 632.872, 632.895 (5m)  
10 and (8) to (13) and 632.896.

11 **SECTION 3.** 40.51 (8m) of the statutes is amended to read:

12 40.51 (8m) Every health care coverage plan offered by the group insurance  
13 board under sub. (7) shall comply with ss. 632.746 (1) to (8) and (10), 632.747,  
14 632.748, 632.85, 632.853, 632.855, 632.872 and 632.895 (11) to (13).

15 **SECTION 4.** 66.46 (6) (am) 2. c. of the statutes, as created by 1999 Wisconsin Act  
16 9, is amended to read:

17 66.46 (6) (am) 2. c. Expenditures for project costs for Tax Incremental District  
18 Number Six in a city with a population of at least 45,000 that is located in a county  
19 that was created in 1853 1836 and that is adjacent to one of the Great Lakes. Such  
20 expenditures may be made no later than 13 years after the tax incremental district  
21 is created, and may be made through December 31, 2004.

22 **SECTION 5.** 71.14 (3) (intro.) of the statutes, as affected by 1999 Wisconsin Act  
23 9, is amended to read:

24 71.14 (3) (intro.) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts  
25 created by contract, declaration of trust or implication of law that are made

## ASSEMBLY BILL 655

1 irrevocable and were administered in this state before October 29, 1999, shall be  
2 considered resident at the place where the trust is being administered. The following  
3 trusts shall be considered to be administered in the state of domicile of the corporate  
4 trustee of the trust at any time that the grantor of the trust is not a resident of this  
5 state:

6 SECTION 6. 71.14 (3m) (a) (intro.) of the statutes, as created by 1999 Wisconsin  
7 Act 9, is amended to read:

8 71.14 (3m) (a) (intro.) Subject to par. (b) and except as provided in sub. (2) and  
9 s. 71.04 (1) (b) 2., only the following trusts, or portions of trusts, which become  
10 irrevocable on or after October 29, 1999, or which became irrevocable before October  
11 29, 1999, and are first administered in this state on or after October 29, 1999, are  
12 resident of this state:

13 SECTION 7. 71.14 (3m) (b) 2. of the statutes, as created by 1999 Wisconsin Act  
14 9, is amended to read:

15 71.14 (3m) (b) 2. Is irrevocable if the power to revest title, as described in par.  
16 (a) subd. 1., does not exist.

17 SECTION 8. 111.91 (2) (nm) of the statutes is created to read:

18 111.91 (2) (nm) The prohibition under s. 632.872 related to denying payment  
19 for certain procedures.

20 SECTION 9. 185.981 (4t) of the statutes is amended to read:

21 185.981 (4t) A sickness care plan operated by a cooperative association is  
22 subject to ss. 252.14, 631.89, 632.72 (2), 632.745 to 632.749, 632.85, 632.853, 632.855,  
23 632.87 (2m), (3), (4) and (5), 632.872, 632.895 (10) to (13) and 632.897 (10) and chs.  
24 149 and 155.

25 SECTION 10. 185.983 (1) (intro.) of the statutes is amended to read:

**ASSEMBLY BILL 655**

1           185.983 (1) (intro.) Every such voluntary nonprofit sickness care plan shall be  
2 exempt from chs. 600 to 646, with the exception of ss. 601.04, 601.13, 601.31, 601.41,  
3 601.42, 601.43, 601.44, 601.45, 611.67, 619.04, 628.34 (10), 631.89, 631.93, 632.72  
4 (2), 632.745 to 632.749, 632.775, 632.79, 632.795, 632.85, 632.853, 632.855, 632.87  
5 (2m), (3), (4) and (5), 632.872, 632.895 (5) and (9) to (13), 632.896 and 632.897 (10)  
6 and chs. 609, 630, 635, 645 and 646, but the sponsoring association shall:

7           **SECTION 11.** 609.795 of the statutes is created to read:

8           **609.795 Prohibiting denial of payment for certain procedures.** Limited  
9 service health organizations, preferred provider plans and managed care plans are  
10 subject to s. 632.872.

11           **SECTION 12.** 632.872 of the statutes is created to read:

12           **632.872 Prohibiting denial of payment for certain procedures.** (1) In  
13 this section:

14           (a) “Disability insurance policy” has the meaning given in s. 632.895 (1) (a).

15           (b) “Medicare Part B” means the federal supplementary medical insurance  
16 program under 42 USC 1395j to 1395w-2.

17           (2) An insurer may not deny payment under an individual or group disability  
18 insurance policy or a certificate of group disability insurance for a medical or surgical  
19 service or procedure on the basis that the service or procedure is an integral  
20 component of a 2nd medical or surgical service or procedure unless, under medicare  
21 Part B, payment for the first service or procedure is included in the payment for the  
22 2nd service or procedure.

23           **SECTION 13.** 1999 Wisconsin Act 9, section 9123 (14g) is amended to read:

24           [1999 Wisconsin Act 9] Section 9123 (14g) ~~COMMUNITY~~ COMMUNITY-WIDE  
25 MARRIAGE POLICY PROJECT. The authorized FTE positions for the department of health

**ASSEMBLY BILL 655****SECTION 13**

1 and family services are increased by 1.0 PR project position, to be funded from the  
2 appropriation under section 20.435 (3) (kx) of the statutes for the period beginning  
3 on the first day of the 2nd month beginning after the effective date of this subsection,  
4 and ending on September 30, 2003. The positions are increased under this  
5 subsection for the purpose of coordinating the development of, ~~and assisting local~~  
6 ~~members of the clergy to develop,~~ community-wide standards for marriages  
7 solemnized in this state ~~by members of the clergy.~~

**SECTION 9326. Initial applicability; insurance.****(1) PROHIBITING DENIAL OF CERTAIN PAYMENTS.**

10 (a) Except as provided in paragraph (b), if a disability insurance policy or group  
11 certificate contains terms or provisions that are inconsistent with section 632.872 of  
12 the statutes, as created by this act, the treatment of sections 40.51 (8) and (8m),  
13 111.91 (2) (nm), 185.981 (4t), 185.983 (1) (intro.), 609.795 and 632.872 of the statutes  
14 first applies to that disability insurance policy or group certificate upon renewal.

15 (b) The treatment of sections 40.51 (8) and (8m), 111.91 (2) (nm), 185.981 (4t),  
16 185.983 (1) (intro.), 609.795 and 632.872 of the statutes first applies to disability  
17 insurance policies or group certificates covering employees who are affected by a  
18 collective bargaining agreement containing provisions inconsistent with section  
19 632.872 of the statutes, as created by this act, that are issued or renewed on the  
20 earlier of the following:

- 21 1. The day on which the collective bargaining agreement expires.
- 22 2. The day on which the collective bargaining agreement is extended, modified  
23 or renewed.

**SECTION 9343. Initial applicability; revenue.**



- 1726/1  
LRB-9920/2  
MES: [unclear]  
jld (RMNR)

SUON

1999 BILL

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

NOTE

donot gen.

1 AN ACT to amend 71.14 (3) (intro.), 71.14 (3m) (a) (intro.) and 71.14 (3m) (b) 2.  
2 (of the statutes; relating to: the taxation of certain inter vivos trusts.

head 2  
TAXATION  
INCOME TAXATION  
Sub  
now and in the future

Analysis by the Legislative Reference Bureau

Under current law, an inter vivos trust (a trust that is created during the life of the grantor) that is made irrevocable before October 29, 1999, is considered resident at the place where the trust is being administered, and this state taxes a trust that is resident within this state. Therefore, an inter vivos trust that is made irrevocable before October 29, 1999, and that is administered in this state <sup>ever</sup> subject to taxation by this state. Also under current law, in general, an inter vivos trust is taxable by this state if the grantor was a resident of this state.

will be

Under this bill, an inter vivos trust that is made irrevocable before October 29, 1999, is considered resident, and is thus taxable by this state, only if the trust was administered in this state ~~now~~ before October 29, 1999.

This bill first applies, retroactively, to taxable years beginning on January 1, 1999.

For further information see the state 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:

3 SECTION 1. 71.14 (3) (intro.) of the statutes, as affected by 1999 Wisconsin Act  
4 is amended to read:

or, if administered in this state <sup>on or</sup> after October 29, 1999, if the grantor is a ~~Wisconsin~~ resident of this state



BILL

1 71.14 (3) (intro.) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts  
2 created by contract, declaration of trust or implication of law that are made  
3 irrevocable and were administered in this state before October 29, 1999, shall be  
4 considered resident at the place where the trust is being administered. The following  
5 trusts shall be considered to be administered in the state of domicile of the corporate  
6 trustee of the trust at any time that the grantor of the trust is not a resident of this  
7 state:

8 SECTION 2. 71.14 (3m) (a) (intro.) of the statutes ~~as created by 1999 Wisconsin~~  
9 ~~Act~~ is amended to read:

10 71.14 (3m) (a) (intro.) Subject to par. (b) and except as provided in sub. (2) and  
11 s. 71.04 (1) (b) 2., only the following trusts, or portions of trusts, ~~which~~ <sup>that</sup> become  
12 irrevocable on or after October 29, 1999, ~~or which~~ <sup>that</sup> became irrevocable before October  
13 29, 1999, and are first administered in this state on or after October 29, 1999, are  
14 resident of this state:

15 SECTION 3. 71.14 (3m) (b) 2. of the statutes ~~as created by 1999 Wisconsin~~  
16 ~~Act~~ is amended to read:

17 71.14 (3m) (b) 2. Is irrevocable if the power to revest title, as described in par.  
18 (a) subd. 1., does not exist.

19 SECTION 4. <sup>9344 ✓</sup> Initial applicability <sup>revenue ✓</sup>

20 (1) ~~This act~~ first applies to taxable years beginning on January 1, 1999. ✓

21 TAXATION OF INTER VIVOS TRUSTS.

<sup>(B)</sup> retroactively, (END)

The treatment of section 71.14 (3) (intro.) (3m) (a) and (b) 2. of the statutes

D-NOTE

This draft retains the 1/1/99 initial applicability provision from 1999 AB-655. Is this OK? AMZ

from 1999 WI ACT 135

RWF

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1726/1dn  
MES:jld:pg

January 5, 2001

This draft retains the 1/1/99 initial applicability provision from 1999 AB-655. Is this OK?

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-1726/1  
MES:jld:pg

DOA:.....Geisler - Taxation of inter vivos trusts

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the taxation of certain inter vivos trusts.

---

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**INCOME TAXATION**

Under current law, an inter vivos trust (a trust that is created during the life of the grantor) that is made irrevocable before October 29, 1999, is considered resident at the place where the trust is being administered, and this state taxes a trust that is resident within this state. Therefore, an inter vivos trust that is made irrevocable before October 29, 1999, and that is ever administered in this state will be subject to taxation by this state now and in the future. Also under current law, in general, an inter vivos trust is taxable by this state if the grantor was a resident of this state.

Under this bill, an inter vivos trust that is made irrevocable before October 29, 1999, is considered resident, and is thus taxable by this state, only if the trust was administered in this state before October 29, 1999, or, if administered in this state on or after October 29, 1999, if the grantor is a resident of this state.

This bill first applies, retroactively, to taxable years beginning on January 1, 1999.

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

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

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

2           71.14 (3) (intro.) Except as provided in sub. (2) and s. 71.04 (1) (b) 2., trusts  
3 created by contract, declaration of trust or implication of law that are made  
4 irrevocable and were administered in this state before October 29, 1999, shall be  
5 considered resident at the place where the trust is being administered. The following  
6 trusts shall be considered to be administered in the state of domicile of the corporate  
7 trustee of the trust at any time that the grantor of the trust is not a resident of this  
8 state:

9           **SECTION 2.** 71.14 (3m) (a) (intro.) of the statutes is amended to read:

10           71.14 (3m) (a) (intro.) Subject to par. (b) and except as provided in sub. (2) and  
11 s. 71.04 (1) (b) 2., only the following trusts, or portions of trusts, that from 1999 WI  
12 Act 185 become irrevocable on or after October 29, 1999, or that became irrevocable  
13 before October 29, 1999, and are first administered in this state on or after October  
14 29, 1999, are resident of this state:

15           **SECTION 3.** 71.14 (3m) (b) 2. of the statutes is amended to read:

16           71.14 (3m) (b) 2. Is irrevocable if the power to revest title, as described in par.  
17 (a) subd. 1., does not exist.

18           **SECTION 9344. Initial applicability; revenue.**

