

2013 DRAFTING REQUEST

Bill

Received: **2/24/2014** Received By: **jkreye**
 Wanted: **As time permits** Same as LRB:
 For: **Dale Schultz (608) 266-0703** By/Representing: **tom**
 May Contact: Drafter: **jkreye**
 Subject: **Tax, Other - real est trnsfr fee** Addl. Drafters:
 Extra Copies:

Submit via email: **YES**
 Requester's email: **Sen.Schultz@legis.wisconsin.gov**
 Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Transfers to a limited liability company by unrelated persons with equal interests

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>
/?	jkreye 2/25/2014			_____			
/P1	jkreye 3/17/2014	jdyer 2/26/2014	rschluet 2/26/2014	_____	mbarman 2/26/2014		State S&L
/1		jdyer 3/17/2014	jmurphy 3/17/2014	_____	mbarman 3/17/2014	mbarman 3/17/2014	State S&L

FE Sent For:

→ At
Intro.

<END>

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2/26/14

FE Sent For:

<END>

Kreye, Joseph

From: Shovers, Marc
Sent: Monday, February 24, 2014 10:26 AM
To: Kreye, Joseph
Subject: FW: Sen. Schultz - LRB/Marc Shovers: drafting request: Sec 77.25 real estate transfer tax exemption

I think this belongs to you, Sir.

From: Jackson, Tom
Sent: Friday, February 21, 2014 4:21 PM
To: Shovers, Marc
Cc: Lance McNaughton (mcnaughton@duxstadlaw.com); Sen.Schultz
Subject: Sen. Schultz - LRB/Marc Shovers: drafting request: Sec 77.25 real estate transfer tax exemption

Marc –

Sen. Schultz requests a preliminary draft relating to a real estate transfer tax exemption, Sec 77.25(15s)

The draft would exempt the transfer fee when more than one human owners of equal economic interest transfer ownership of the real estate to a WI LLC. The owners would not be limited to those who are married, have a familial relation, or are domestic partners. The issue is when the owners of a general partnership want to take advantage of the liability protections of an LLC, and maintain the same financial interest in real estate.

Senator Schultz requests you contact Attorney Lance McNaughton (see below) to discuss the proposal and determine if the draft will amend (15s) or be a separate, new exemption.

Please be in touch with any questions about this drafting request.

Thank you.

- Tom Jackson

Office of Senator Dale Schultz

tjackson@legis.wi.gov

Office 266.0703

Cell 608.516.5382

Feb 20, 2014

Attorney Lance A. McNaughton
Duxstad and Bestul, S.C.
213 Main Street
Darlington, WI 53530
608-776-2662
mcnaughton@duxstadlaw.com

Subject: Sec. 77.25, relating to exemptions from the Wisconsin real estate transfer tax.

Under existing rules, a single person transferring real estate to his single-member LLC is exempt from the transfer tax. However, if equal owners of real estate wish to transfer real estate to an LLC in which they have

an equal share of ownership, they are subject to the tax. The result for clients of ours is a tax of over \$4,500, simply for transferring title to their own LLC without any consideration changing hands, and without either relinquishing or gaining any real interest in the property. An exemption would apply if the LLC members were married. But, for business partners who are not married, the tax applies instead.

It's our position that an exemption should apply if the circumstances present here exist: two unmarried equal owners of real estate transferring their interests to an LLC in which they share equal membership. The Department of Revenue has explained that there is no exemption available. Legislation would be necessary to change Sec. 77.25(15s) to provide for the exemption.

An LLC is a smarter and safer business model than a general partnership and the real estate transfer fee presents a significant obstacle to making that conversion.

This would be from a general partnership to an LLC, but the transfer could also be from a general partnership to a corporation.

What's critical is that the financial interests remain as they were.

Look to 77.25(6m). The exemption is already available when switching between limited partnerships, corporations and LLCs. It seems only unavailable when starting as a general partnership. Under (6d) it's available to general partnerships converting to limited partnerships, but not when switching to LLCs, which are managed and taxed as partnerships in most situations.

When you look at all the exemptions that already exist, you have to wonder why the exemption does not already exist. Maybe something in the legislative history explains it.

<https://docs.legis.wisconsin.gov/statutes/statutes/77/II/25/>

(15s) Between a limited liability company and one or more of its members if all of the members are related to each other as spouses, as lineal ascendants, lineal descendants or siblings, whether by blood or by adoption, or as spouses of siblings and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company.



Jld

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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X Gen
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AN ACT ...; relating to: an exemption from the real estate transfer fee involving members of a limited liability company. ✓

Analysis by the Legislative Reference Bureau

Under current law, a real estate transfer fee is imposed on a person who conveys real estate to another person. The fee is equal to 30 cents for each \$100 of property value. The real estate transfer fee, however, does not apply to certain conveyances. Under current law, a conveyance between a limited liability company and one or more of its members is exempt from the fee if all the members are related to each other and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company. ✓

This bill creates an additional exemption to the real estate transfer fee so that a conveyance between a limited liability company and two or more of its members is exempt from the fee if the members have equal interests in the limited liability company and if the transfer is for no consideration other than the assumption of debt or an interest in the limited liability company. ✓

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:

3

SECTION 1. 77.25 (15t) of the statutes is created to read: ✓

1 77.25 (15t) Between a limited liability company and 2[✓] or more of its members
2 if the members have equal interests in the limited liability company and if the
3 transfer is for no consideration other than the assumption of debt or an interest in
4 the limited liability company.✓

5 **SECTION 2. Initial applicability.**

6 (1) This act first applies to conveyances recorded on the effective date of this
7 subsection.✓

8 **SECTION 3. Effective date.**

9 (1) This act takes effect on first day of the 2nd month beginning after
10 publication.✓

11

(END)

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4329/P1dn

JK: A:...

Jkd

date

Senator Schultz:

Please review this draft carefully to ensure that it is consistent with your intent. ✓

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

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

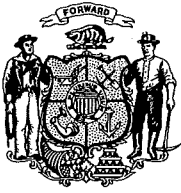
LRB-4329/P1dn
JK:jld:rs

February 26, 2014

Senator Schultz:

Please review this draft carefully to ensure that it is consistent with your intent.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov



RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

9
Tooley 3-17

x
Regen

1 AN ACT *to create* 77.25 (15t) of the statutes; **relating to:** an exemption from the
2 real estate transfer fee involving members of a limited liability company.

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11 (END)

Barman, Mike

From: LRB.Legal
To: Sen.Schultz
Subject: Draft review: LRB -4329/1 Topic: Transfers to a limited liability company by unrelated persons with equal interests
Attachments: 13-4329/1

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Joseph T. Kreye, Senior Attorney, at (608) 266-2263, at joseph.kreye@legis.wisconsin.gov, or at One East Main Street, Suite 200.

Per instructions from your office ... we will jacket this draft for the Senate and send it (by page) to your office this afternoon.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.