

2017 DRAFTING REQUEST**Bill**

For: **Terry Katsma (608) 266-0656** Drafter: **kpleviak**
 By: **Nick** Secondary Drafters:
 Date: **3/21/2017** May Contact:
 Same as LRB: **-2707**

Submit via email: **YES**
 Requester's email: **Rep.Katsma@legis.wisconsin.gov**
 Carbon copy (CC) to: **krista.pleviak@legis.wisconsin.gov**
joseph.kreye@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Various tax law changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kpleviak 3/21/2017	aernstr 3/23/2017			
/P1	kpleviak 3/24/2017		lparisi 3/23/2017		State
/P2	kpleviak 3/29/2017	aernstr 3/28/2017	mbarman 3/28/2017		State
/1		aernstr 3/29/2017	rmilford 3/29/2017	lparisi 4/13/2017	State

FE Sent For:

*at
intro*

<END>

Pleviak, Krista

From: Krueger, Nick
Sent: Monday, March 20, 2017 3:15 PM
To: Kreye, Joseph; Pleviak, Krista
Cc: Ramirez, Zach
Subject: New Katsma drafting request

Hi Joe and Krista,

I hope you're both well. I'm writing to request your help to draft one four-part bill for Rep. Katsma. (I'm told that you've both participated in drafting these ideas in the past.) I'm also copying Zach Ramirez on this email as he was involved in 2015 SB 503 last session, which partially addressed some of these same issues.

Please draft one bill that achieves the following four things:

- 1) Include the provisions of 2017 LRB-2382/P1 (which, I gather, Krista recently worked on for another office). Our goal is to federalize the recognition period for built-in gains taxes on S corporations that convert from C corporations. We like the language in the -2382 draft that says Wisconsin's recognition period is to be the same as the federal recognition period, whatever that may be.
- 2) Change the evidentiary standard for economic substance from "clear and convincing" (under current law) to "a preponderance of the evidence." We think this would be achieved by language found in Sections 6, 11, 14 and 30(1) of 2015 SB 503. (I understand that both of you worked on that draft: it was 2015 LRB-3740/1.)
- 3) Allow for audits underway to wrap up during the current state fiscal year before Wisconsin's relationship with the Multi-State Tax Commission is terminated. We think this would be achieved by language found in Sections 1, 10, 23, 24(2) and 25 of SSA 1 to 2015 SB 503.
- 4) Include Sections 19 and 30(4) of 2015 SB 503. Our goal is to delete the "reliance on past audits" provision added during the 2013 budget.

Thanks! Let me know what questions you have.

Best,

Nick Krueger

Office of Representative Terry Katsma

Wisconsin State Assembly

Room 208 North, State Capitol

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Madison, WI 53708

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State of Wisconsin
2017 - 2018 LEGISLATURE

IN: 03/21/17
DUE: 03/23/17 (Thurs.)

LRB-2602(?)
KRP...
PI
ahe

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

sa ✓

gen ✓

1 **AN ACT ...; relating to:** the length of the recognition period for built-in gains tax;
 2 the evidentiary standard for proving a transaction has economic substance;
 3 participation by the Department of Revenue in the Multistate Tax Commission
 4 Audit Program; and reliance by a taxpayer on past audits by the Department of
 5 Revenue.

Analysis by the Legislative Reference Bureau

This bill makes the following tax law changes: 1) changes the length of the recognition period for built-in gains tax; 2) changes the standard of proof a taxpayer must meet to establish that a transaction has economic substance for income and franchise tax purposes; 3) eliminates the Department of Revenue's obligation and authority to participate in the Multistate Tax Commission Audit Program; and 4) eliminates an exception to current law that allows a taxpayer to rely on past audits to avoid tax liability in later audits.

Length of Recognition Period for Built-in Gains Tax

The bill changes the period of time after a corporation elects tax-option corporation status, called a recognition period, during which a tax-option corporation that sells certain assets for a profit must pay income or franchise taxes on the profit as though the tax-option corporation were a regular corporation. That tax is commonly called a built-in gains tax.

Under current law, the term "recognition period" is defined by reference to federal law, but the definition is not automatically updated to reflect changes to

federal law. The federal Protecting Americans from Tax Hikes Act of 2015 makes permanent a reduction in the recognition period under federal law from ten years to five years. The bill provides that the recognition period for purposes of Wisconsin law is the same as under federal law, as federal law is amended from time to time.

Evidentiary Standard to Prove Transaction Has Economic Substance

The bill changes the standard of proof a taxpayer must meet to establish that a transaction has economic substance for income and franchise tax purposes.

Under current law, if a taxpayer engages in a transaction without economic substance to create a loss, to reduce taxable income, or to increase credits allowed in determining Wisconsin income or franchise tax, DOR may disregard the transaction for purposes of calculating the taxpayer's tax liability. Under current law, there is a rebuttable presumption that transactions between members of a controlled group lack economic substance.

The bill changes the evidentiary standard for a taxpayer to rebut the presumption from "clear and convincing evidence" to "a preponderance of the evidence."

Multistate Tax Commission Audit Program

The bill eliminates DOR's obligation and authority to participate in the Multistate Tax Commission Audit Program.

Reliance by Taxpayer on Past Audits

The bill eliminates an exception to current law that allows a taxpayer to rely on past audits to avoid tax liability in later audits. Under current law, a taxpayer subject to an audit determination by DOR is not liable for amounts asserted by DOR if the following conditions are met:

- 1) The tax issue giving rise to the liability was present during a period of time for which the taxpayer was previously audited.
- 2) DOR identified the tax issue during the prior audit.
- 3) DOR did not assert any liability for the tax issue during the prior audit.

Current law provides certain exceptions to a taxpayer's ability to rely on past audits to avoid liability in later audits.

The bill eliminates an exception that provides that, if a taxpayer did not give DOR adequate and accurate information regarding the tax issue during the prior audit or if the taxpayer and DOR settled the tax issue in the prior audit by a written agreement, the taxpayer cannot rely on the prior audit to avoid liability for the tax issue in a later audit. Under the bill, a taxpayer can rely on a prior audit even if the taxpayer provided inadequate or inaccurate information during the prior audit or settled the same tax issue with DOR during the prior audit.

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:

1 ~~§~~ **SECTION 1.** 20.566 (1) (hn) of the statutes is repealed.

2 ~~§~~ **SECTION 2.** 71.10 (1m) (c) of the statutes is amended to read:

3 71.10 (1m) (c) With respect to transactions a transaction between members of
4 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, such
5 transactions the transaction shall be presumed to lack economic substance, and the
6 taxpayer shall bear the burden of establishing by ~~clear and convincing~~ a
7 preponderance of the evidence that ~~a~~ the transaction or ~~a~~ the series of transactions
8 between the taxpayer and one or more members of the controlled group has economic
9 substance.

History: 1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9, 167; 2001 a. 16, 109; 2003 a. 33, 99, 135, 176, 255, 321; 2005 a. 25, 49, 71, 74, 177, 178, 323, 361, 460, 479, 483; 2007 a. 1, 20, 96, 97; 2009 a. 2, 28, 89, 265, 269, 295, 332; 2011 a. 32, 76, 169, 212, 222, 232; 2011 a. 260 ss. 25, 80; 2013 a. 20, 62, 145; 2013 a. 165 s. 114; 2015 a. 55, 197, 218.

10 ~~§~~ **SECTION 3.** 71.30 (2m) (c) of the statutes is amended to read:

11 71.30 (2m) (c) With respect to transactions a transaction between members of
12 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, such
13 transactions the transaction shall be presumed to lack economic substance, and the
14 taxpayer shall bear the burden of establishing by ~~clear and convincing~~ a
15 preponderance of the evidence that ~~a~~ the transaction or ~~a~~ the series of transactions
16 between the taxpayer and one or more members of the controlled group has economic
17 substance.

History: 1987 a. 312; 1987 a. 411 ss. 144, 145, 182 to 185; 1989 a. 31, 56; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33, 99, 135, 255; 2005 a. 25, 74, 361, 479, 483; 2007 a. 20, 226; 2009 a. 2, 28, 265, 269, 295, 332; 2011 a. 3, 32, 212, 222, 232; 2011 a. 260 ss. 26, 80; 2015 a. 55; s. 2015 a. 197 s. 51; s. 2015 a. 218.

18 ~~§~~ **SECTION 4.** 71.80 (1m) (c) of the statutes is amended to read:

19 71.80 (1m) (c) With respect to transactions a transaction between members of
20 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, such
21 transactions the transaction shall be presumed to lack economic substance, and the
22 taxpayer shall bear the burden of establishing by ~~clear and convincing~~ a
23 preponderance of the evidence that ~~a~~ the transaction or ~~a~~ the series of transactions

1 between the taxpayer and one or more members of the controlled group has economic
2 substance.

History: 1987 a. 312; 1987 a. 411 ss. 70, 189 to 192; 1989 a. 31; 1991 a. 39, 301; 1993 a. 205; 1995 a. 27, 404, 418; 1997 a. 27, 39, 291; 2001 a. 44, 102; 2003 a. 33; 2005 a. 49; 2007 a. 20, 226; 2009 a. 2, 28, 276; 2013 a. 20, 349; 2015 a. 55, 218, 295.

3 ~~SECTION 5.~~ SECTION 5. 71.98 (8) of the statutes is created to read:

4 71.98 (8) RECOGNITION PERIOD FOR BUILT-IN GAINS TAX. For taxable years
5 beginning after December 31, 2017, and for purposes of determining the recognition
6 period for tax imposed on certain built-in gains, section 1374 (d) (7) of the Internal
7 Revenue Code means section 1374 (d) (7) of the federal Internal Revenue Code in
8 effect on the date the recognition period of the corporation begins.

9 ~~SECTION 6.~~ SECTION 6. 73.03 (28d) of the statutes is repealed.

10 ~~SECTION 7.~~ SECTION 7. 73.16 (3) (b) of the statutes is amended to read:

11 73.16 (3) (b) This subsection does not apply to any period associated with an
12 audit determination, if the period begins after the promulgation of a rule,
13 dissemination of written guidance to the public or to the person who is subject to the
14 audit determination, the effective date of a statute, or the date on which a tax appeals
15 commission or court decision becomes final and conclusive and if the rule, guidance,
16 statute, or decision imposes the liability as a result of the tax issue described in par.

17 ~~(a) 1. This subsection does not apply to any period associated with an audit~~
18 ~~determination if the taxpayer did not give the department employee adequate and~~
19 ~~accurate information regarding the tax issue in the prior audit determination or if~~
20 ~~the tax issue was settled in the prior audit determination by a written agreement~~
21 ~~between the department and the taxpayer.~~

History: 2011 a. 68; 2013 a. 20.

22 SECTION 8. Nonstatutory provisions.

23 (1) MULTISTATE TAX COMMISSION AUDIT PROGRAM. The repeal of sections 20.566

24 (1) (hn) and 73.03 (28d) of the statutes does not affect the validity of any assessment

1 based entirely or in part on information or documents obtained from the multistate
2 tax commission prior to the repeal.

3 **SECTION 9. Initial applicability.**

4 (1) EVIDENTIARY STANDARD TO PROVE TRANSACTION HAS ECONOMIC SUBSTANCE. The
5 treatment of sections 71.10 (1m)[✓] (c), 71.30 (2m)[✓] (c), and 71.80 (1m)[✓] (c) of the statutes
6 first applies to taxable years beginning on January 1 of the year in which this
7 subsection takes effect, except that if this subsection takes effect after July 31, this
8 act first applies to taxable years beginning on January 1 of the year following the
9 year in which this subsection takes effect.

10 (2) MULTISTATE TAX COMMISSION AUDIT PROGRAM. The treatment of section 73.03
11 (28d)[✓] of the statutes first applies to a contract that is entered into or extended,
12 modified, or renewed on July 1, 2019.

13 (3) RELIANCE ON PAST AUDITS. The treatment of section 73.16 (3) (b) of the
14 statutes first applies to an audit commenced on the effective date of this subsection.

15 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
16 except as follows:

17 (1) MULTISTATE TAX COMMISSION AUDIT PROGRAM. The treatment of section 20.566[✓]
18 (1) (hn) of the statutes takes effect on July 1, 2019.

19 (END)

Pleviak, Krista

Subject: FW: LRB-2602

From: Krueger, Nick
Sent: Friday, March 24, 2017 9:50 AM
To: Pleviak, Krista <Krista.Pleviak@legis.wisconsin.gov>
Cc: Williams, Vincent <Vincent.Williams@legis.wisconsin.gov>
Subject: LRB-2602

Hi Krista,

Thanks again for your quick work putting together LRB-2602/P1 for us.

Could you please create a P2 draft that makes one slight change: on pg. 5, line 14 and line 20, we'd like to change "July 1, 2019" to "July 1, 2018."

No particular hurry on this—early next week would be fine.

Thanks!

Nick Krueger

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State of Wisconsin
2017 - 2018 LEGISLATURE

IN: 03/24/17

DUE: 03/28/17 (Tues.)

P2
LRB-2602/P1
KRP:ahc

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

KMR

1 **AN ACT to repeal** 20.566 (1) (hn) and 73.03 (28d); **to amend** 71.10 (1m) (c), 71.30
2 (2m) (c), 71.80 (1m) (c) and 73.16 (3) (b); and **to create** 71.98 (8) of the statutes;
3 **relating to:** the length of the recognition period for built-in gains tax; the
4 evidentiary standard for proving a transaction has economic substance;
5 participation by the Department of Revenue in the Multistate Tax Commission
6 Audit Program; and reliance by a taxpayer on past audits by the Department
7 of Revenue.

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This bill makes the following tax law changes: 1) changes the length of the recognition period for built-in gains tax; 2) changes the standard of proof a taxpayer must meet to establish that a transaction has economic substance for income and franchise tax purposes; 3) eliminates the Department of Revenue's obligation and authority to participate in the Multistate Tax Commission Audit Program; and 4) eliminates an exception to current law that allows a taxpayer to rely on past audits to avoid tax liability in later audits.

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on the profit as though the tax-option corporation were a regular corporation. That tax is commonly called a built-in gains tax.

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

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4 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, ~~such~~
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6 taxpayer shall bear the burden of establishing by ~~clear and convincing~~ a
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9 Revenue Code means section 1374 (d) (7) of the federal Internal Revenue Code in
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17 commission or court decision becomes final and conclusive and if the rule, guidance,
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9 subsection takes effect, except that if this subsection takes effect after July 31, this
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11 year in which this subsection takes effect.

12 (2) MULTISTATE TAX COMMISSION AUDIT PROGRAM. The treatment of section 73.03
13 (28d) of the statutes first applies to a contract that is entered into or extended,
14 modified, or renewed on July 1, 2019² 2018

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16 statutes first applies to an audit commenced on the effective date of this subsection.

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21

(END)

Pleviak, Krista

From: Pleviak, Krista
Sent: Wednesday, March 29, 2017 12:44 PM
To: Krueger, Nick
Subject: RE: Draft review: LRB -2602/P2

Will do. (I assume you mean LRB-2602, not LRB-2062.)

Krista R. Pleviak
Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266 - 7290
krista.pleviak@legis.wisconsin.gov

From: Krueger, Nick
Sent: Wednesday, March 29, 2017 12:04 PM
To: Pleviak, Krista <Krista.Pleviak@legis.wisconsin.gov>
Subject: RE: Draft review: LRB -2602/P2

Hi Krista,

Could you please go ahead and turn LRB-2062/P2 into an introducible /1 draft for us?

Thank you!

Nick Krueger
Office of Representative Terry Katsma
Wisconsin State Assembly
Room 208 North, State Capitol
P.O. Box 8952
Madison, WI 53708
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From: LRB.Legal
Sent: Tuesday, March 28, 2017 10:39 AM
To: Rep.Katsma <Rep.Katsma@legis.wisconsin.gov>
Subject: Draft review: LRB -2602/P2

Following is the PDF version of draft LRB -2602/P2.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-2602/P2
KRP:ahc

TODAY

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMR

No CHANGES

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11 71.30 (**2m**) (c) With respect to ~~transactions~~ a transaction between members of
12 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, such
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16 between the taxpayer and one or more members of the controlled group has economic
17 substance.

18 **SECTION 4.** 71.80 (1m) (c) of the statutes is amended to read:

19 71.80 (**1m**) (c) With respect to ~~transactions~~ a transaction between members of
20 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, such
21 ~~transactions~~ the transaction shall be presumed to lack economic substance, and the

1 taxpayer shall bear the burden of establishing by clear and convincing a
2 preponderance of the evidence that a the transaction or a the series of transactions
3 between the taxpayer and one or more members of the controlled group has economic
4 substance.

5 **SECTION 5.** 71.98 (8) of the statutes is created to read:

6 71.98 (8) RECOGNITION PERIOD FOR BUILT-IN GAINS TAX. For taxable years
7 beginning after December 31, 2017, and for purposes of determining the recognition
8 period for tax imposed on certain built-in gains, section 1374 (d) (7) of the Internal
9 Revenue Code means section 1374 (d) (7) of the federal Internal Revenue Code in
10 effect on the date the recognition period of the corporation begins.

11 **SECTION 6.** 73.03 (28d) of the statutes is repealed.

12 **SECTION 7.** 73.16 (3) (b) of the statutes is amended to read:

13 73.16 (3) (b) This subsection does not apply to any period associated with an
14 audit determination, if the period begins after the promulgation of a rule,
15 dissemination of written guidance to the public or to the person who is subject to the
16 audit determination, the effective date of a statute, or the date on which a tax appeals
17 commission or court decision becomes final and conclusive and if the rule, guidance,
18 statute, or decision imposes the liability as a result of the tax issue described in par.

19 (a) 1. ~~This subsection does not apply to any period associated with an audit~~
20 ~~determination if the taxpayer did not give the department employee adequate and~~
21 ~~accurate information regarding the tax issue in the prior audit determination or if~~
22 ~~the tax issue was settled in the prior audit determination by a written agreement~~
23 ~~between the department and the taxpayer.~~

24 **SECTION 8. Nonstatutory provisions.**

Parisi, Lori

From: Krueger, Nick
Sent: Thursday, April 13, 2017 11:27 AM
To: LRB.Legal
Subject: Draft Review: LRB -2602/1

Please Jacket LRB -2602/1 for the ASSEMBLY.

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