



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBs0386/1  
KRP&JK:all

**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO ASSEMBLY BILL 259**

February 22, 2018 - Offered by Representatives KOOYENGA, KATZMA and MACCO.

1     **AN ACT** *to amend* 71.01 (6) (k) 1., 71.01 (6) (k) 3., 71.05 (6) (b) 28. (intro.), 71.05  
2           (6) (b) 49. a., 71.05 (6) (b) 49. b., 71.05 (10) (i) 1., 71.05 (23) (b) 2., 71.08 (1) (d),  
3           71.10 (1m) (c), 71.22 (4) (k) 1., 71.22 (4) (k) 3., 71.22 (4m) (k) 1., 71.22 (4m) (k)  
4           3., 71.26 (2) (b) 11. a., 71.26 (2) (b) 11. d., 71.26 (3) (j), 71.30 (2m) (c), 71.34 (1g)  
5           (k) 1., 71.34 (1g) (k) 3., 71.42 (2) (k) 1., 71.42 (2) (k) 3., 71.80 (1m) (c), 71.98 (3),  
6           73.16 (3) (b), 77.52 (13), 77.53 (10), 77.54 (9m) and 224.50 (2) (a); and **to create**  
7           71.01 (6) (L), 71.05 (6) (b) 49. k., 71.22 (4) (L), 71.22 (4m) (L), 71.26 (2) (b) 12.,  
8           71.34 (1g) (L), 71.42 (2) (L), 71.98 (9), 73.16 (3) (c) and 77.54 (9a) (fc) of the  
9           statutes; **relating to:** the evidentiary standard for proving a transaction has  
10          economic substance; updating Internal Revenue Code references for state tax  
11          purposes; clarifying the duties of the College Savings Program Board; a sales  
12          and use tax exemption for title holding entities for certain tax-exempt  
13          charitable organizations; computing depletion for income and franchise tax

1 purposes; and reliance by a taxpayer on past audits by the Department of  
2 Revenue.

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

3 **SECTION 1.** 71.01 (6) (k) 1. of the statutes, as created by 2017 Wisconsin Act 59,  
4 is amended to read:

5 71.01 (6) (k) 1. For taxable years beginning after December 31, 2016, and before  
6 January 1, 2018, for individuals and fiduciaries, except fiduciaries of nuclear  
7 decommissioning trust or reserve funds, “Internal Revenue Code” means the federal  
8 Internal Revenue Code as amended to December 31, 2016, except as provided in  
9 subds. 2. and 3. and s. 71.98 and subject to subd. 4.

10 **SECTION 2.** 71.01 (6) (k) 3. of the statutes, as created by 2017 Wisconsin Act 59,  
11 is amended to read:

12 71.01 (6) (k) 3. For purposes of this paragraph, “Internal Revenue Code” does  
13 not include amendments to the federal Internal Revenue Code enacted after  
14 December 31, 2016, except that “Internal Revenue Code” includes sections 11024,  
15 11025, and 13543 of P.L. 115-97.

16 **SECTION 3.** 71.01 (6) (L) of the statutes is created to read:

17 71.01 (6) (L) 1. For taxable years beginning after December 31, 2017, for  
18 individuals and fiduciaries, except fiduciaries of nuclear decommissioning trust or  
19 reserve funds, “Internal Revenue Code” means the federal Internal Revenue Code  
20 as amended to December 31, 2017, except as provided in subds. 2. and 3. and s. 71.98  
21 and subject to subd. 4.

22 2. For purposes of this paragraph, “Internal Revenue Code” does not include  
23 the following provisions of federal public laws for taxable years beginning after

1 December 31, 2017: section 13113 of P.L. 103-66; sections 1, 3, 4, and 5 of P.L.  
2 106-519; sections 101, 102, and 422 of P.L. 108-357; sections 1310 and 1351 of P.L.  
3 109-58; section 11146 of P.L. 109-59; section 403 (q) of P.L. 109-135; section 513 of  
4 P.L. 109-222; sections 104 and 307 of P.L. 109-432; sections 8233 and 8235 of P.L.  
5 110-28; section 11 (e) and (g) of P.L. 110-172; section 301 of P.L. 110-245; section  
6 15351 of P.L. 110-246; section 302 of division A, section 401 of division B, and sections  
7 312, 322, 502 (c), 707, and 801 of division C of P.L. 110-343; sections 1232, 1241, 1251,  
8 1501, and 1502 of division B of P.L. 111-5; sections 211, 212, 213, 214, and 216 of P.L.  
9 111-226; sections 2011 and 2122 of P.L. 111-240; sections 753, 754, and 760 of P.L.  
10 111-312; section 1106 of P.L. 112-95; sections 104, 318, 322, 323, 324, 326, 327, and  
11 411 of P.L. 112-240; P.L. 114-7; section 1101 of P.L. 114-74; section 305 of division  
12 P of P.L. 114-113; sections 123, 125 to 128, 143, 144, 151 to 153, 165 to 167, 169 to  
13 171, 189, 191, 307, 326, and 411 of division Q of P.L. 114-113; and sections 11011,  
14 11012, 13201 (a) to (e) and (g), 13206, 13221, 13301, 13304 (a), (b), and (d), 13531,  
15 13601, 13801, 14101, 14102, 14103, 14201, 14202, 14211, 14212, 14213, 14214,  
16 14215, 14221, 14222, 14301, 14302, 14304, and 14401 of P.L. 115-97.

17 3. For purposes of this paragraph, “Internal Revenue Code” does not include  
18 amendments to the federal Internal Revenue Code enacted after December 31, 2017.

19 4. For purposes of this paragraph, the provisions of federal public laws that  
20 directly or indirectly affect the Internal Revenue Code, as defined in this paragraph,  
21 apply for Wisconsin purposes at the same time as for federal purposes.

22 **SECTION 4.** 71.05 (6) (b) 28. (intro.) of the statutes, as affected by 2017  
23 Wisconsin Act 59, is amended to read:

24 71.05 (6) (b) 28. (intro.) An amount paid by a claimant for tuition expenses and  
25 mandatory student fees for a student who is the claimant or who is the claimant’s

1 child and the claimant's dependent ~~who is claimed under section 151 (e), as defined~~  
2 under section 152 of the Internal Revenue Code, to attend any university, college,  
3 technical college or a school approved under s. 440.52, that is located in Wisconsin  
4 or to attend a public vocational school or public institution of higher education in  
5 Minnesota under the Minnesota-Wisconsin reciprocity agreement under s. 39.47,  
6 calculated as follows:

7 **SECTION 5.** 71.05 (6) (b) 49. a. of the statutes is amended to read:

8 71.05 (6) (b) 49. a. Subject to the definitions provided in subd. 49. b. to g. and  
9 the limitations specified in subd. 49. h. to j. for taxable years beginning after  
10 December 31, 2013, and subject to the limitation in subd. 49. k. for taxable years  
11 beginning after December 31, 2017, tuition expenses that are paid by a claimant for  
12 tuition for a pupil to attend an eligible institution.

13 **SECTION 6.** 71.05 (6) (b) 49. b. of the statutes is amended to read:

14 71.05 (6) (b) 49. b. In this subdivision, "claimant" means an individual who  
15 claims a pupil as a dependent ~~under section 151 (e), as defined under section 152~~ of  
16 the Internal Revenue Code, on his or her tax return.

17 **SECTION 7.** 71.05 (6) (b) 49. k. of the statutes is created to read:

18 71.05 (6) (b) 49. k. For taxable years beginning after December 31, 2017, no  
19 modification may be claimed under this subdivision for an amount paid for tuition  
20 expenses, as described under this subdivision, if the source of the payment is an  
21 amount withdrawn from a college savings account, as described in s. 224.50.

22 **SECTION 8.** 71.05 (10) (i) 1. of the statutes is amended to read:

23 71.05 (10) (i) 1. Subject to the conditions in this paragraph, an individual may  
24 subtract up to \$10,000 from federal adjusted gross income if he or she, or his or her  
25 dependent ~~who is claimed under section 151 (e), as defined under section 152~~ of the

1 Internal Revenue Code, while living, donates one or more of his or her human organs  
2 to another human being for human organ transplantation, as defined in s. 146.345  
3 (1), except that in this paragraph, “human organ” means all or part of a liver,  
4 pancreas, kidney, intestine, lung, or bone marrow. A subtract modification that is  
5 claimed under this paragraph may be claimed in the taxable year in which the  
6 human organ transplantation occurs.

7 **SECTION 9.** 71.05 (23) (b) 2. of the statutes is amended to read:

8 71.05 (23) (b) 2. An exemption of \$700 for each individual for whom the  
9 taxpayer is entitled to an exemption for the taxable year under section 151 (e)  
10 dependent, as defined under section 152 of the Internal Revenue Code, of the  
11 taxpayer.

12 **SECTION 10.** 71.08 (1) (d) of the statutes is amended to read:

13 71.08 (1) (d) Subtract from the amount under par. (c) the appropriate amount  
14 under section 55 (d) (1), (3), and (4) of the federal Internal Revenue Code in effect for  
15 the taxable year; except that surviving spouses shall be treated as single individuals;  
16 except that the amount under par. (c), not the federal alternative minimum taxable  
17 income, shall be used in calculating the phase-out and except that for nonresidents  
18 and part-year residents the amount under section 55 (d) (1), (3), and (4) of the federal  
19 Internal Revenue Code in effect for the taxable year shall be prorated on the basis  
20 of the ratio of Wisconsin adjusted gross income to federal adjusted gross income.

21 **SECTION 11.** 71.10 (1m) (c) of the statutes is amended to read:

22 71.10 (1m) (c) With respect to ~~transactions~~ a transaction between members of  
23 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, such  
24 ~~transactions~~ the transaction shall be presumed to lack economic substance, and the  
25 taxpayer shall bear the burden of establishing by clear and ~~convincing~~ satisfactory

1 evidence that ~~a~~ the transaction or ~~a~~ the series of transactions between the taxpayer  
2 and one or more members of the controlled group has economic substance.

3 **SECTION 12.** 71.22 (4) (k) 1. of the statutes, as created by 2017 Wisconsin Act  
4 59, is amended to read:

5 71.22 (4) (k) 1. For taxable years beginning after December 31, 2016, and before  
6 January 1, 2018, “Internal Revenue Code” means the federal Internal Revenue Code  
7 as amended to December 31, 2016, except as provided in subds. 2. and 3. and subject  
8 to subd. 4., and except as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g),  
9 71.42 (2), and 71.98.

10 **SECTION 13.** 71.22 (4) (k) 3. of the statutes, as created by 2017 Wisconsin Act  
11 59, is amended to read:

12 71.22 (4) (k) 3. For purposes of this paragraph, “Internal Revenue Code” does  
13 not include amendments to the federal Internal Revenue Code enacted after  
14 December 31, 2016, except that “Internal Revenue Code” includes sections 11024,  
15 11025, and 13543 of P.L. 115-97.

16 **SECTION 14.** 71.22 (4) (L) of the statutes is created to read:

17 71.22 (4) (L) 1. For taxable years beginning after December 31, 2017, “Internal  
18 Revenue Code” means the federal Internal Revenue Code as amended to December  
19 31, 2017, except as provided in subds. 2. and 3. and subject to subd. 4., and except  
20 as provided in sub. (4m) and ss. 71.26 (2) (b) and (3), 71.34 (1g), 71.42 (2), and 71.98.

21 2. For purposes of this paragraph, “Internal Revenue Code” does not include  
22 the following provisions of federal public laws for taxable years beginning after  
23 December 31, 2017: section 13113 of P.L. 103-66; sections 1, 3, 4, and 5 of P.L.  
24 106-519; sections 101, 102, and 422 of P.L. 108-357; sections 1310 and 1351 of P.L.  
25 109-58; section 11146 of P.L. 109-59; section 403 (q) of P.L. 109-135; section 513 of

1 P.L. 109-222; sections 104 and 307 of P.L. 109-432; sections 8233 and 8235 of P.L.  
2 110-28; section 11 (e) and (g) of P.L. 110-172; section 301 of P.L. 110-245; section  
3 15351 of P.L. 110-246; section 302 of division A, section 401 of division B, and sections  
4 312, 322, 502 (c), 707, and 801 of division C of P.L. 110-343; sections 1232, 1241, 1251,  
5 1501, and 1502 of division B of P.L. 111-5; sections 211, 212, 213, 214, and 216 of P.L.  
6 111-226; sections 2011 and 2122 of P.L. 111-240; sections 753, 754, and 760 of P.L.  
7 111-312; section 1106 of P.L. 112-95; sections 104, 318, 322, 323, 324, 326, 327, and  
8 411 of P.L. 112-240; P.L. 114-7; section 1101 of P.L. 114-74; section 305 of division  
9 P of P.L. 114-113; sections 123, 125 to 128, 143, 144, 151 to 153, 165 to 167, 169 to  
10 171, 189, 191, 307, 326, and 411 of division Q of P.L. 114-113; and sections 11011,  
11 11012, 13201 (a) to (e) and (g), 13206, 13221, 13301, 13304 (a), (b), and (d), 13531,  
12 13601, 13801, 14101, 14102, 14103, 14201, 14202, 14211, 14212, 14213, 14214,  
13 14215, 14221, 14222, 14301, 14302, 14304, and 14401 of P.L. 115-97.

14 3. For purposes of this paragraph, “Internal Revenue Code” does not include  
15 amendments to the federal Internal Revenue Code enacted after December 31, 2017.

16 4. For purposes of this paragraph, the provisions of federal public laws that  
17 directly or indirectly affect the Internal Revenue Code, as defined in this paragraph,  
18 apply for Wisconsin purposes at the same time as for federal purposes.

19 **SECTION 15.** 71.22 (4m) (k) 1. of the statutes, as created by 2017 Wisconsin Act  
20 59, is amended to read:

21 71.22 (4m) (k) 1. For taxable years beginning after December 31, 2016, and  
22 before January 1, 2018, “Internal Revenue Code”, for corporations that are subject  
23 to a tax on unrelated business income under s. 71.26 (1) (a), means the federal  
24 Internal Revenue Code as amended to December 31, 2016, except as provided in  
25 subds. 2. and 3. and s. 71.98 and subject to subd. 4.

1           **SECTION 16.** 71.22 (4m) (k) 3. of the statutes, as created by 2017 Wisconsin Act  
2 59, is amended to read:

3           71.22 **(4m)** (k) 3. For purposes of this paragraph, “Internal Revenue Code” does  
4 not include amendments to the federal Internal Revenue Code enacted after  
5 December 31, 2016, except that “Internal Revenue Code” includes sections 11024,  
6 11025, and 13543 of P.L. 115-97.

7           **SECTION 17.** 71.22 (4m) (L) of the statutes is created to read:

8           71.22 **(4m)** (L) 1. For taxable years beginning after December 31, 2017,  
9 “Internal Revenue Code”, for corporations that are subject to a tax on unrelated  
10 business income under s. 71.26 (1) (a), means the federal Internal Revenue Code as  
11 amended to December 31, 2017, except as provided in subds. 2. and 3. and s. 71.98  
12 and subject to subd. 4.

13           2. For purposes of this paragraph, “Internal Revenue Code” does not include  
14 the following provisions of federal public laws for taxable years beginning after  
15 December 31, 2017: section 13113 of P.L. 103-66; sections 1, 3, 4, and 5 of P.L.  
16 106-519; sections 101, 102, and 422 of P.L. 108-357; sections 1310 and 1351 of P.L.  
17 109-58; section 11146 of P.L. 109-59; section 403 (q) of P.L. 109-135; section 513 of  
18 P.L. 109-222; sections 104 and 307 of P.L. 109-432; sections 8233 and 8235 of P.L.  
19 110-28; section 11 (e) and (g) of P.L. 110-172; section 301 of P.L. 110-245; section  
20 15351 of P.L. 110-246; section 302 of division A, section 401 of division B, and sections  
21 312, 322, 502 (c), 707, and 801 of division C of P.L. 110-343; sections 1232, 1241, 1251,  
22 1501, and 1502 of division B of P.L. 111-5; sections 211, 212, 213, 214, and 216 of P.L.  
23 111-226; sections 2011 and 2122 of P.L. 111-240; sections 753, 754, and 760 of P.L.  
24 111-312; section 1106 of P.L. 112-95; sections 104, 318, 322, 323, 324, 326, 327, and  
25 411 of P.L. 112-240; P.L. 114-7; section 1101 of P.L. 114-74; section 305 of division



1 P of P.L. 114-113; sections 123, 125 to 128, 143, 144, 151 to 153, 165 to 167, 169 to  
2 171, 189, 191, 307, 326, and 411 of division Q of P.L. 114-113; and sections 11011,  
3 11012, 13201 (a) to (e) and (g), 13206, 13221, 13301, 13304 (a), (b), and (d), 13531,  
4 13601, 13801, 14101, 14102, 14103, 14201, 14202, 14211, 14212, 14213, 14214,  
5 14215, 14221, 14222, 14301, 14302, 14304, and 14401 of P.L. 115-97.

6 3. For purposes of this paragraph, “Internal Revenue Code” does not include  
7 amendments to the federal Internal Revenue Code enacted after December 31, 2017.

8 4. For purposes of this paragraph, the provisions of federal public laws that  
9 directly or indirectly affect the Internal Revenue Code, as defined in this paragraph,  
10 apply for Wisconsin purposes at the same time as for federal purposes.

11 **SECTION 18.** 71.26 (2) (b) 11. a. of the statutes, as created by 2017 Wisconsin  
12 Act 59, is amended to read:

13 71.26 (2) (b) 11. a. For taxable years beginning after December 31, 2016, and  
14 before January 1, 2018, for a corporation, conduit, or common law trust which  
15 qualifies as a regulated investment company, real estate mortgage investment  
16 conduit, real estate investment trust, or financial asset securitization investment  
17 trust under the Internal Revenue Code, “net income” means the federal regulated  
18 investment company taxable income, federal real estate mortgage investment  
19 conduit taxable income, federal real estate investment trust or financial asset  
20 securitization investment trust taxable income of the corporation, conduit, or trust  
21 as determined under the Internal Revenue Code.

22 **SECTION 19.** 71.26 (2) (b) 11. d. of the statutes, as created by 2017 Wisconsin  
23 Act 59, is amended to read:

24 71.26 (2) (b) 11. d. For purposes of subd. 11. a., “Internal Revenue Code” does  
25 not include amendments to the federal Internal Revenue Code enacted after

1 December 31, 2016, except that “Internal Revenue Code” includes sections 11024,  
2 11025, and 13543 of P.L. 115-97.

3 **SECTION 20.** 71.26 (2) (b) 12. of the statutes is created to read:

4 71.26 (2) (b) 12. a. For taxable years beginning after December 31, 2017, for a  
5 corporation, conduit, or common law trust which qualifies as a regulated investment  
6 company, real estate mortgage investment conduit, real estate investment trust, or  
7 financial asset securitization investment trust under the Internal Revenue Code,  
8 “net income” means the federal regulated investment company taxable income,  
9 federal real estate mortgage investment conduit taxable income, federal real estate  
10 investment trust or financial asset securitization investment trust taxable income  
11 of the corporation, conduit, or trust as determined under the Internal Revenue Code.

12 b. For purposes of subd. 12. a., “Internal Revenue Code” means the federal  
13 Internal Revenue Code as amended to December 31, 2017, except as provided in  
14 subd. 12. c. and d. and s. 71.98 and subject to subd. 12. e.

15 c. For purposes of subd. 12. a., “Internal Revenue Code” does not include the  
16 following provisions of federal public laws for taxable years beginning after  
17 December 31, 2017: section 13113 of P.L. 103-66; sections 1, 3, 4, and 5 of P.L.  
18 106-519; sections 101, 102, and 422 of P.L. 108-357; sections 1310 and 1351 of P.L.  
19 109-58; section 11146 of P.L. 109-59; section 403 (q) of P.L. 109-135; section 513 of  
20 P.L. 109-222; sections 104 and 307 of P.L. 109-432; sections 8233 and 8235 of P.L.  
21 110-28; section 11 (e) and (g) of P.L. 110-172; section 301 of P.L. 110-245; section  
22 15351 of P.L. 110-246; section 302 of division A, section 401 of division B, and sections  
23 312, 322, 502 (c), 707, and 801 of division C of P.L. 110-343; sections 1232, 1241, 1251,  
24 1501, and 1502 of division B of P.L. 111-5; sections 211, 212, 213, 214, and 216 of P.L.  
25 111-226; sections 2011 and 2122 of P.L. 111-240; sections 753, 754, and 760 of P.L.

1 111-312; section 1106 of P.L. 112-95; sections 104, 318, 322, 323, 324, 326, 327, and  
2 411 of P.L. 112-240; P.L. 114-7; section 1101 of P.L. 114-74; section 305 of division  
3 P of P.L. 114-113; sections 123, 125 to 128, 143, 144, 151 to 153, 165 to 167, 169 to  
4 171, 189, 191, 307, 326, and 411 of division Q of P.L. 114-113; and sections 11011,  
5 11012, 13201 (a) to (e) and (g), 13206, 13221, 13301, 13304 (a), (b), and (d), 13531,  
6 13601, 13801, 14101, 14102, 14103, 14201, 14202, 14211, 14212, 14213, 14214,  
7 14215, 14221, 14222, 14301, 14302, 14304, and 14401 of P.L. 115-97.

8 d. For purposes of subd. 12. a., “Internal Revenue Code” does not include  
9 amendments to the federal Internal Revenue Code enacted after December 31, 2017.

10 e. For purposes of subd. 12. a., the provisions of federal public laws that directly  
11 or indirectly affect the Internal Revenue Code, as defined in this subdivision, apply  
12 for Wisconsin purposes at the same time as for federal purposes.

13 **SECTION 21.** 71.26 (3) (j) of the statutes is amended to read:

14 71.26 (3) (j) Sections 243, 244, 245, 245A, 246 and 246A are excluded and  
15 replaced by the rule that corporations may deduct from income dividends received  
16 from a corporation with respect to its common stock if the corporation receiving the  
17 dividends owns, directly or indirectly, during the entire taxable year at least 70  
18 percent of the total combined voting stock of the payor corporation. In this  
19 paragraph, “dividends received” means gross dividends minus taxes on those  
20 dividends paid to a foreign nation and claimed as a deduction under this chapter. The  
21 same dividends may not be deducted more than once.

22 **SECTION 22.** 71.30 (2m) (c) of the statutes is amended to read:

23 71.30 (2m) (c) With respect to ~~transactions~~ a transaction between members of  
24 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, ~~such~~  
25 ~~transactions~~ the transaction shall be presumed to lack economic substance, and the

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

4 **SECTION 23.** 71.34 (1g) (k) 1. of the statutes, as created by 2017 Wisconsin Act  
5 59, is amended to read:

6 71.34 **(1g)** (k) 1. For taxable years beginning after December 31, 2016, and  
7 before January 1, 2018, for tax option corporations, “Internal Revenue Code” means  
8 the federal Internal Revenue Code as amended to December 31, 2016, except as  
9 provided in subds. 2., 3., and 5. and s. 71.98 and subject to subd. 4.

10 **SECTION 24.** 71.34 (1g) (k) 3. of the statutes, as created by 2017 Wisconsin Act  
11 59, is amended to read:

12 71.34 **(1g)** (k) 3. For purposes of this paragraph, “Internal Revenue Code” does  
13 not include amendments to the federal Internal Revenue Code enacted after  
14 December 31, 2016, except that “Internal Revenue Code” includes sections 11024,  
15 11025, and 13543 of P.L. 115-97.

16 **SECTION 25.** 71.34 (1g) (L) of the statutes is created to read:

17 71.34 **(1g)** (L) 1. For taxable years beginning after December 31, 2017, for tax  
18 option corporations, “Internal Revenue Code” means the federal Internal Revenue  
19 Code as amended to December 31, 2017, except as provided in subds. 2., 3., and 5. and  
20 s. 71.98 and subject to subd. 4.

21 2. For purposes of this paragraph, “Internal Revenue Code” does not include  
22 the following provisions of federal public laws for taxable years beginning after  
23 December 31, 2017: section 13113 of P.L. 103-66; sections 1, 3, 4, and 5 of P.L.  
24 106-519; sections 101, 102, and 422 of P.L. 108-357; sections 1310 and 1351 of P.L.  
25 109-58; section 11146 of P.L. 109-59; section 403 (q) of P.L. 109-135; section 513 of

1 P.L. 109-222; sections 104 and 307 of P.L. 109-432; sections 8233 and 8235 of P.L.  
2 110-28; section 11 (e) and (g) of P.L. 110-172; section 301 of P.L. 110-245; section  
3 15351 of P.L. 110-246; section 302 of division A, section 401 of division B, and sections  
4 312, 322, 502 (c), 707, and 801 of division C of P.L. 110-343; sections 1232, 1241, 1251,  
5 1501, and 1502 of division B of P.L. 111-5; sections 211, 212, 213, 214, and 216 of P.L.  
6 111-226; sections 2011 and 2122 of P.L. 111-240; sections 753, 754, and 760 of P.L.  
7 111-312; section 1106 of P.L. 112-95; sections 104, 318, 322, 323, 324, 326, 327, and  
8 411 of P.L. 112-240; P.L. 114-7; section 1101 of P.L. 114-74; section 305 of division  
9 P of P.L. 114-113; sections 123, 125 to 128, 143, 144, 151 to 153, 165 to 167, 169 to  
10 171, 189, 191, 307, 326, and 411 of division Q of P.L. 114-113; and sections 11011,  
11 11012, 13201 (a) to (e) and (g), 13206, 13221, 13301, 13304 (a), (b), and (d), 13531,  
12 13601, 13801, 14101, 14102, 14103, 14201, 14202, 14211, 14212, 14213, 14214,  
13 14215, 14221, 14222, 14301, 14302, 14304, and 14401 of P.L. 115-97.

14 3. For purposes of this paragraph, “Internal Revenue Code” does not include  
15 amendments to the federal Internal Revenue Code enacted after December 31, 2017.

16 4. For purposes of this paragraph, the provisions of federal public laws that  
17 directly or indirectly affect the Internal Revenue Code, as defined in this paragraph,  
18 apply for Wisconsin purposes at the same time as for federal purposes

19 5. For purposes of this paragraph, section 1366 (f) of the Internal Revenue Code  
20 (relating to pass-through of items to shareholders) is modified by substituting the  
21 tax under s. 71.35 for the taxes under sections 1374 and 1375 of the Internal Revenue  
22 Code.

23 **SECTION 26.** 71.42 (2) (k) 1. of the statutes, as created by 2017 Wisconsin Act  
24 59, is amended to read:

1           71.42 (2) (k) 1. For taxable years beginning after December 31, 2016, and before  
2 January 1, 2018, “Internal Revenue Code” means the federal Internal Revenue Code  
3 as amended to December 31, 2016, except as provided in subds. 2. to 4. and s. 71.98  
4 and subject to subd. 5.

5           **SECTION 27.** 71.42 (2) (k) 3. of the statutes, as created by 2017 Wisconsin Act  
6 59, is amended to read:

7           71.42 (2) (k) 3. For purposes of this paragraph, “Internal Revenue Code” does  
8 not include amendments to the federal Internal Revenue Code enacted after  
9 December 31, 2016, except that “Internal Revenue Code” includes sections 11024,  
10 11025, and 13543 of P.L. 115-97.

11           **SECTION 28.** 71.42 (2) (L) of the statutes is created to read:

12           71.42 (2) (L) 1. For taxable years beginning after December 31, 2017, “Internal  
13 Revenue Code” means the federal Internal Revenue Code as amended to December  
14 31, 2017, except as provided in subds. 2. to 4. and s. 71.98 and subject to subd. 5.

15           2. For purposes of this paragraph, “Internal Revenue Code” does not include  
16 the following provisions of federal public laws for taxable years beginning after  
17 December 31, 2017: section 13113 of P.L. 103-66; sections 1, 3, 4, and 5 of P.L.  
18 106-519; sections 101, 102, and 422 of P.L. 108-357; sections 1310 and 1351 of P.L.  
19 109-58; section 11146 of P.L. 109-59; section 403 (q) of P.L. 109-135; section 513 of  
20 P.L. 109-222; sections 104 and 307 of P.L. 109-432; sections 8233 and 8235 of P.L.  
21 110-28; section 11 (e) and (g) of P.L. 110-172; section 301 of P.L. 110-245; section  
22 15351 of P.L. 110-246; section 302 of division A, section 401 of division B, and sections  
23 312, 322, 502 (c), 707, and 801 of division C of P.L. 110-343; sections 1232, 1241, 1251,  
24 1501, and 1502 of division B of P.L. 111-5; sections 211, 212, 213, 214, and 216 of P.L.  
25 111-226; sections 2011 and 2122 of P.L. 111-240; sections 753, 754, and 760 of P.L.

1 111-312; section 1106 of P.L. 112-95; sections 104, 318, 322, 323, 324, 326, 327, and  
2 411 of P.L. 112-240; P.L. 114-7; section 1101 of P.L. 114-74; section 305 of division  
3 P of P.L. 114-113; sections 123, 125 to 128, 143, 144, 151 to 153, 165 to 167, 169 to  
4 171, 189, 191, 307, 326, and 411 of division Q of P.L. 114-113; and sections 11011,  
5 11012, 13201 (a) to (e) and (g), 13206, 13221, 13301, 13304 (a), (b), and (d), 13531,  
6 13601, 13801, 14101, 14102, 14103, 14201, 14202, 14211, 14212, 14213, 14214,  
7 14215, 14221, 14222, 14301, 14302, 14304, and 14401 of P.L. 115-97.

8 3. For purposes of this paragraph, “Internal Revenue Code” does not include  
9 amendments to the federal Internal Revenue Code enacted after December 31, 2017.

10 4. For purposes of this paragraph, “Internal Revenue Code” does not include  
11 section 847 of the federal Internal Revenue Code.

12 5. For purposes of this paragraph, the provisions of federal public laws that  
13 directly or indirectly affect the Internal Revenue Code, as defined in this paragraph,  
14 apply for Wisconsin purposes at the same time as for federal purposes.

15 **SECTION 29.** 71.80 (1m) (c) of the statutes is amended to read:

16 71.80 **(1m)** (c) With respect to ~~transactions~~ a transaction between members of  
17 a controlled group, as defined in section 267 (f) (1) of the Internal Revenue Code, ~~such~~  
18 ~~transactions~~ the transaction shall be presumed to lack economic substance, and the  
19 taxpayer shall bear the burden of establishing by clear and ~~convincing~~ satisfactory  
20 evidence that ~~a~~ the transaction or ~~a~~ the series of transactions between the taxpayer  
21 and one or more members of the controlled group has economic substance.

22 **SECTION 30.** 71.98 (3) of the statutes is amended to read:

23 71.98 **(3)** DEPRECIATION, DEPLETION, AND AMORTIZATION. For taxable years  
24 beginning after December 31, 2013, and for purposes of computing depreciation and  
25 amortization, the Internal Revenue Code means the federal Internal Revenue Code

1 in effect for federal purposes on January 1, 2014, except that sections 13201 (f),  
2 13203, 13204, and 13205 of P.L. 115-97 apply at the same time as for federal  
3 purposes. For taxable years beginning after December 31, 2013, and for purposes of  
4 computing depletion, the Internal Revenue ~~code~~ Code means the federal Internal  
5 Revenue ~~code~~ Code in effect for federal purposes for the year in which the property  
6 is placed in service.

7 **SECTION 31.** 71.98 (9) of the statutes is created to read:

8 71.98 (9) ROLLOVER AMOUNTS, AIRLINE CARRIER BANKRUPTCY. For taxable years  
9 beginning after December 31, 2011, section 1106 of P.L. 112-95, as amended by P.L.  
10 113-243 and section 307 of Division Q of P.L. 114-113, as it relates to the treatment  
11 of distributions to qualified airline employees that are rolled over into an individual  
12 retirement account, due to airline carrier bankruptcy. This provision does not apply  
13 to federal provisions relating to extensions of time to file amended federal returns.  
14 A qualified airline employee may file a claim for a refund to exclude income provided  
15 under this subsection pursuant to the time period specified in s. 71.75 (2) or no later  
16 than 180 days after the effective date of this subsection .... [LRB inserts date].

17 **SECTION 32.** 73.16 (3) (b) of the statutes is amended to read:

18 73.16 (3) (b) ~~This subsection Paragraph (a)~~ does not apply to any period  
19 associated with an audit determination, if the period begins after the promulgation  
20 of a rule, dissemination of written guidance to the public or to the person who is  
21 subject to the audit determination, the effective date of a statute, or the date on which  
22 a tax appeals commission or court decision becomes final and conclusive and if the  
23 rule, guidance, statute, or decision imposes the liability as a result of the tax issue  
24 described in par. (a) 1. ~~This subsection does not apply to any period associated with~~  
25 ~~an audit determination if the taxpayer did not give the department employee~~



1 ~~adequate and accurate information regarding the tax issue in the prior audit~~  
2 ~~determination or if the tax issue was settled in the prior audit determination by a~~  
3 ~~written agreement between the department and the taxpayer.~~

4 **SECTION 33.** 73.16 (3) (c) of the statutes is created to read:

5 73.16 (3) (c) Paragraph (a) does not apply to any period associated with an audit  
6 determination if any of the following applies:

7 1. The department establishes by clear and satisfactory evidence that the  
8 taxpayer provided incomplete or false information relevant to the tax issue in the  
9 prior audit determination.

10 2. The tax issue was settled in the prior audit determination by a written  
11 agreement between the department and the taxpayer that was entered into before  
12 the effective date of this subdivision .... [LRB inserts date].

13 3. The tax issue was settled in the prior audit determination by a written  
14 agreement between the department and the taxpayer that was entered into on or  
15 after the effective date of this subdivision .... [LRB inserts date], and in which the  
16 parties acknowledged that the department did not adopt the taxpayer's position on  
17 the tax issue.

18 **SECTION 34.** 77.52 (13) of the statutes, as affected by 2017 Wisconsin Act 59,  
19 is amended to read:

20 77.52 (13) For the purpose of the proper administration of this section and to  
21 prevent evasion of the sales tax it shall be presumed that all receipts are subject to  
22 the tax until the contrary is established. The burden of proving that a sale of tangible  
23 personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services  
24 is not a taxable sale at retail is upon the person who makes the sale unless that  
25 person takes from the purchaser an electronic or a paper certificate, in a manner

1 prescribed by the department, to the effect that the property, item, good, or service  
2 is purchased for resale or is otherwise exempt, except that no certificate is required  
3 for the sale of tangible personal property, or items, property, or goods under sub. (1)  
4 (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10),  
5 (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46),  
6 (51), (52), ~~and (66), and (67).~~

7 **SECTION 35.** 77.53 (10) of the statutes is amended to read:

8 77.53 (10) For the purpose of the proper administration of this section and to  
9 prevent evasion of the use tax and the duty to collect the use tax, it is presumed that  
10 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or  
11 (d), or taxable services sold by any person for delivery in this state is sold for storage,  
12 use, or other consumption in this state until the contrary is established. The burden  
13 of proving the contrary is upon the person who makes the sale unless that person  
14 takes from the purchaser an electronic or paper certificate, in a manner prescribed  
15 by department, to the effect that the property, or items, property, or goods under s.  
16 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise exempt  
17 from the tax, except that no certificate is required for the sale of tangible personal  
18 property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services that  
19 are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b),  
20 (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), ~~and (52), and (67).~~

21 **SECTION 36.** 77.54 (9a) (fc) of the statutes is created to read:

22 77.54 (9a) (fc) An entity described under section 501 (c) (2) of the Internal  
23 Revenue Code that is exempt from federal income tax under section 501 (a) of the  
24 Internal Revenue Code and that is organized for the exclusive purpose of holding title

1 to property, collecting income from that property, and turning over the entire amount  
2 of that income, less expenses, to an entity described under par. (f).

3 **SECTION 37.** 77.54 (9m) of the statutes is amended to read:

4 77.54 **(9m)** The sales price from the sale of and the storage, use, or other  
5 consumption of tangible personal property, or items or property under s. 77.52 (1) (b)  
6 or (c), sold to a construction contractor ~~who~~ that, in fulfillment of a real property  
7 construction activity, transfers the tangible personal property, or items or property  
8 under s. 77.52 (1) (b) or (c), to an entity described under sub. (9a) (b), (c), (d), (em),  
9 ~~or~~ (f), or (fc), if such tangible personal property, or items or property, becomes a  
10 component of a facility in this state that is owned by the entity. In this subsection,  
11 “facility” means any building, shelter, parking lot, parking garage, athletic field,  
12 athletic park, storm sewer, water supply system, or sewerage and waste water  
13 treatment facility, but does not include a highway, street, or road.

14 **SECTION 38.** 224.50 (2) (a) of the statutes, as affected by 2017 Wisconsin Act 59,  
15 is amended to read:

16 224.50 **(2)** (a) Except as provided in s. 224.51, establish and administer a  
17 college savings program that allows an individual, trust, legal guardian, or entity  
18 described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover  
19 tuition, fees, and the costs of room and board, books, supplies, and equipment  
20 required for the enrollment or attendance of a beneficiary at an eligible educational  
21 institution, as defined under 26 USC 529, and to cover tuition expenses in connection  
22 with enrollment or attendance at an elementary or secondary public, private, or  
23 religious school, as described in section 11032 of P.L. 115-97, related to qualified  
24 tuition programs under 26 USC 529.

25 **SECTION 39. Initial applicability.**

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

7 (2) RELIANCE ON PAST AUDITS. The treatment of section 73.16 (3) (b) and (c) of  
8 the statutes first applies to an audit determination issued on the effective date of this  
9 subsection, regardless of when a prior audit determination was issued.

10 (3) DEPRECIATION, DEPLETION, AND AMORTIZATION. The treatment of section 71.98  
11 (3) of the statutes first applies retroactively to taxable years beginning after  
12 December 31, 2013.

13 (4) BUILDING MATERIALS EXEMPTION. The treatment of section 77.54 (9m) of the  
14 statutes first applies retroactively to contracts entered into on September 1, 2017.

15 **SECTION 40. Effective dates.** This act takes effect on the day after publication,  
16 except as follows:

17 (1) SALES AND USE TAX EXEMPTION FOR TITLE HOLDING ENTITIES. The treatment of  
18 section 77.54 (9a) (fc) and (9m) of the statutes takes effect retroactively to September  
19 1, 2017.

20 (END)