



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 218
[2015 Senate Bill 503]

**Transactions Without Economic
Substance and Failure to Produce
Records Requested by the
Department of Revenue**

2015 Wisconsin Act 218 changes the criteria that determine whether a transaction is considered to be without “economic substance.” The Act also changes the conditions under which the Department of Revenue (DOR) may impose penalties on a person who fails to produce records requested by DOR.

TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE

Background

Under Wisconsin law, if a person engages in a transaction without economic substance in order to create a loss or to reduce taxable income, or to increase credits allowed in determining Wisconsin tax, DOR is required to disregard the transaction when it determines the amount of the taxpayer’s taxable income or tax.

Under prior law, a transaction had “economic substance” only if the taxpayer demonstrated all of the following:

- The transaction changed the taxpayer’s economic position in a meaningful way, apart from federal, state, local, and foreign tax effects.
- The taxpayer had a substantial nontax purpose¹ for entering into the transaction and the transaction was a reasonable means of accomplishing the substantial nontax purpose.

¹ Under prior law, a transaction had a “substantial nontax purpose” if it had substantial potential for profit, disregarding any tax effects.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

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The Act repeals the two prior law criteria that determined whether a transaction had economic substance, described in the bullet points above. The Act provides that a transaction has “economic substance” only if the transaction is treated as having economic substance under the Internal Revenue Code, except that the tax effect shall be determined using federal, state, local, or foreign taxes, rather than only the federal income tax effect.

The Act provides that these provisions first apply to taxable years beginning on January 1, 2016.

FAILURE TO PRODUCE RECORDS

Background

Prior law provided that a person was subject to certain penalties if the person failed to comply with a request by DOR to produce records or documents that support information on a tax return.

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The Act provides that a person is subject to certain penalties if the person fails to comply with a request by DOR to produce records or documents that support information on a tax return **and** fails to comply in good faith with a summons issued by DOR seeking the records or documents.

The Act provides that these provisions first apply to an audit commenced, or a summons issued, on March 3, 2016.

Effective date: March 3, 2016

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