



Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Testimony on SB 794
by Peter Barca, Secretary of the Wisconsin Department of Revenue
Senate Committee on Financial Institutions and Revenue
January 11, 2022

Good morning, Chairman Kooyenga, Ranking Member Ringhand, Members of the Senate Committee on Financial Institutions and Revenue.

Thank you for your consideration of SB 794, a bill that amends our statutes to create efficiencies for audits of pass-through entities.

The Department of Revenue had initially brought this item to the legislature in 2019, in our Taxpayer Enhancement Package, which subsequently became 2021 WI Act 1, however, at the time, the Wisconsin Institute of CPAs asked that we hold the item to resolve some questions by their Tax Committee. We have, over the course of several months, collaborated to resolve the issues and bring forward this new version that has the support of both the DOR and WICPAs. Some changes and clarifications have been made and we thank the WICPA for their cooperation in bringing this forward.

Provisions under the bill include:

- Allow DOR to assess income tax to a pass-through entity, rather than issuing separate assessments to each of its members.
- Allow a pass-through entity with 25 or fewer members to preclude DOR from issuing an entity-level assessment.
- Requires a pass-through entity undergoing an audit to have a "state representative" that will:
 - Inform all members of audit proceedings, receive audit notices and determinations
 - Enter into extension agreements for the audit (if applicable)
 - Notify all members of any changes to their pass-through income which result from the audit
 - File appeals on behalf of all members
 - Enter into settlement agreements, which are binding on the members
- Allow DOR to disclose certain taxpayer information:
 - Disclose to a member that the pass-through entity has been audited, where necessary to explain amounts assessed to a member.
 - Disclose to a pass-through entity that one or more members have not reported the Wisconsin income from the entity, where necessary to explain amounts assessed to a pass-through entity.

Again, thank you for your time and favorable consideration of this bill. I would also like to thank the bill sponsors, Senators Kooyenga and Marklein for bringing this matter forward.

I, along with Nate Weber, our Director of Technical Services in our Division of Income, Sales and Excise Tax Division is here to answer your questions. Thank you.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

January 11, 2022

**Senate Committee on Financial Institutions & Revenue
Testimony on Senate Bill 794**

Good Morning!

Thank you Chair Kooyenga and committee members for hearing Senate Bill 794 (SB 794) that makes changes to the procedures the Department of Revenue (DOR) can use when auditing a pass-through entity.

Pass-through entities include partnerships, LLCs, tax-option corporations, estates and trusts. While some entities may have just a couple of members, other pass-through entities have hundreds or thousands of members. Currently, when DOR is auditing one of these entities, they must contact each separate member of the entity while performing the audit. This can be extremely time consuming and creates a lot of unnecessary work, not only for the DOR auditor but for the business being audited.

SB 794 allows DOR to conduct an audit of a pass-through entity at the entity level. This includes: assessing and collecting additional tax, adjusting tax credits, and issuing refunds. The bill before you sets up a process whereby the entity will designate a representative that will have the authority to act on behalf of the entity and its members, including the ability to contest an audit determination and appeal to the Tax Appeals Commission.

A few years ago, the Internal Revenue Service (IRS) began administering new partnership audit procedures allowing the IRS to assess and collect tax at the partnership entity level. The IRS finds that their new procedures reduce the administrative burdens for both the IRS and taxpayers. This bill would do essentially the same thing at the state level. DOR has received numerous requests from pass-through entities asking if their audit can be conducted this way.

The goal of SB 794 is to simplify entity audit procedures and reduce wasteful time spent. This proposal is supported by the Wisconsin Institute of Certified Public Accountants (WICPA) and the Wisconsin Department of Revenue.

Thank you again for hearing SB 794, and your timely action on this proposal.



ROBERT WITTKE

STATE REPRESENTATIVE • 62nd ASSEMBLY DISTRICT

TESTIMONY: SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND REVENUE
January 11, 2022

Chairman Kooyenga and Members,

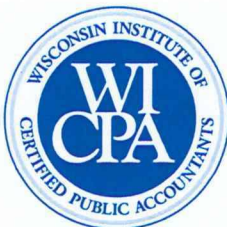
Thank you for holding a hearing on **Senate Bill 794 (SB794)** relating to pass-through entity audits. This legislation came to me from the Wisconsin Institute of Certified Public Accountants (WICPA) and I'm pleased to help move this legislation through the process.

Currently, the Department of Revenue collects taxes and administers the audit of a pass-through entity – partnerships, limited liability company, or tax-option (S) corporation – by contacting each separate member of the entity. It's a "taxing" process for both the DOR and taxpayer.

In recent years, the Internal Revenue Service (IRS) changed how they collect tax and audit partnerships, SB 794 will make similar changes to state law so the Department of Revenue may put in to practice a more efficient collection and audit approach.

This is another important step in creating a better tax environment for Wisconsin taxpayers.

Thank you again for holding a public hearing on SB 794.



**Wisconsin Institute of
Certified Public Accountants**

DATE: January 10, 2022

TO: Chairman Kooyenga and members of the Committee on Financial Institutions & Revenue

FROM: Tammy Hofstede, President & CEO
Wisconsin Institute of Certified Public Accountants

RE: Urge you to support SB794/AB816 with a technical amendment authored by Senator Howard Marklein, CPA, Senator Dale Kooyenga, CPA, and Rep. Robert Wittke, Rep. David Armstrong and Rep. Robert Brooks

The Wisconsin Institute of CPAs (WICPA), which represents over 7,100 members across this state, has worked closely with the Wisconsin Department of Revenue and the lead authors of this legislation to simplify and allow Wisconsin to have efficient auditing and administration of pass-through entities.

Many department audits are performed on pass-through entities with many members/owners. In addition, there are tiered entity structures that require adjustments to be made to multiple returns before tax can be assessed and collected.

Under current law, the provisions for statutes of limitation, assessments, confidentiality, and appeals require the department to administer the audit of a pass-through entity by contacting each separate member of the entity (and often indirect members). This creates significant complexities and inefficiencies for taxpayers and the department.

In addition, effective for taxable years after December 31, 2017, the Internal Revenue Service (IRS) administered new partnership audit procedures as provided in the federal Bipartisan Budget Act of 2015. The new procedures allow the IRS to assess and collect tax at the partnership entity level (e.g., the partnership pays the assessment on behalf of its partners). The new procedures reduce the administrative burdens for both the IRS and taxpayers, particularly with larger partnerships. The Department, taxpayers and CPAs continue to support procedures to also reduce the administrative burdens in Wisconsin.

The provisions in this bill allow administrative functions related to the audit of a pass-through entity to be centralized at the entity level, while still maintaining the pass-through status of the entity.

1. The bill allows for the following:
 - a. The Department's ability to assess and collect additional tax from a pass-through entity on income otherwise reportable by its pass-through members.
 - b. Provide an election for pass-through entities with 25 or fewer members to require the Department to assess the members rather than the pass-through entity.
 - c. Direct the secretary of the Department of Administration to refund to a pass-through entity that part of an overpayment paid by the pass-through entity and not by the entity's pass-through members.
 - d. Assess an adjustment to reduce a tax credit to a pass-through entity if the pass-through entity previously computed the credit and reported the credit to its pass-through members.
 - e. Assess an adjustment to increase a tax credit to offset additional tax assessed to a pass-through entity.

2. We would also like to request two changes, one very minor and one technical. We will work with the lead authors, Senator Marklein and Rep. Wittke for these simple amendments:
 - a. First, we request to fix a grammatical error in Section 5 (3) ADJUSTMENT OF CREDITS. Except as provided in sub. (9), for the purpose **of** adjusting credits... (add "of")
 - b. Second, we would like to clarify the intent and make a technical change to provide additional clarification in Section 5, 71.745 under Number 7 LIABILITY MAY BE ASSESSED TO MORE THAN ONE PERSON to read, "If the department determines that a liability exists under this chapter and that the liability may be owed by more than one pass-through member of a pass-through entity, the department may assess any pass-through member of the pass-through entity for **their allocation portion of** additional tax otherwise due under this chapter."

The Wisconsin Institute of CPAs supports this legislation with the simple amendments stated above and respectfully urges you to pass this legislation with the corrections noted because taxpayers, businesses and the Department benefit from this clarification and simplification.

Thank you for your consideration.