Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

2017 Joint Committee on Finance Paper #301

Disregarded Entity Notification
(General Fund Taxes -- Income and Franchise Taxes)

[LFB 2017-19 Budget Summary: Page 188, #27]

CURRENT LAW

Businesses may establish separate entities from their owners, such as single-member limited liability companies (LLCs), for liability reasons; so that if the business is sued, the owner would not be liable for the lawsuit. The owner may then elect to disregard these separate entities for the purposes of the business owner's federal and state income or franchise tax return.

Under laws governing business corporations, unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation. Under laws governing LLCs, the debts, obligations, and liabilities of an LLC are solely those of the LLC. In general, a member or manager of an LLC is not personally liable for any debt, obligation, or liability of the LLC.

GOVERNOR

Specify that, with regard to a single-owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code, any notice that the Department of Revenue (DOR) sends to the owner or to the entity is considered a notice sent to both. Both entities would be liable for any amount specified in the notice. This provision would apply to all laws administered by DOR. According to DOR, this provision would clarify that the owner of a disregarded entity is liable for both the activities of the disregarded entity and for any delinquent tax collection notification that the Department may send to the disregarded entity, regardless of which specific tax may have generated the notification.

MODIFICATION

Amend the statutes relating to business corporations and LLCs to specify that a notice sent by DOR to a disregarded entity extends liability for amounts specified in the notice to shareholders of qualified subchapter S subsidiaries and to members or managers of an LLC.

> **Explanation:** On March 31, 2017, the Department of Administration (DOA) submitted a letter requesting a number of modifications to the Governor's budget bill. Current law provides liability protection, with exceptions, for shareholders of an S-corporation and members of an LLC. DOA states that the modification is necessary to clarify that owners of an LLC or S-corporation that disregard those entities for federal and state tax purposes are liable for tax-related assessment notices sent by DOR regardless of whether the notice is sent to the entity or its owner.

Prepared by: Sean Moran