



State of Wisconsin
2015 - 2016 LEGISLATURE

LRBs0334/1
KRP&JK:amn

**SENATE SUBSTITUTE AMENDMENT 2,
TO SENATE BILL 503**

February 11, 2016 - Offered by Senator MARKLEIN.

1 **AN ACT to repeal** 71.10 (1m) (b) 1. and 2., 71.30 (2m) (b) 1. and 2. and 71.80 (1m)
2 (b) 1. and 2.; **to renumber** 71.80 (9m) (a) and (b) and 77.61 (19) (a) and (b); and
3 **to renumber and amend** 71.10 (1m) (b) (intro.), 71.30 (2m) (b) (intro.), 71.80
4 (1m) (b) (intro.), 71.80 (9m) (intro.) (except 71.80 (9m) (title)) and 77.61 (19)
5 (intro.) of the statutes; **relating to:** factors that determine whether a
6 transaction has economic substance for income and franchise tax purposes and
7 the imposition of penalties on a taxpayer for failing to produce records and
8 documents.

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

9 **SECTION 1.** 71.10 (1m) (b) (intro.) of the statutes is renumbered 71.10 (1m) (b)
10 and amended to read:

11 71.10 (**1m**) (b) A transaction has economic substance only if ~~the taxpayer shows~~
12 ~~all of the following:~~ the transaction is treated as having economic substance as

1 determined under section 7701 (o) of the Internal Revenue Code, except that the tax
2 effect shall be determined using federal, state, local, or foreign taxes, rather than
3 only the federal income tax effect.

4 **SECTION 2.** 71.10 (1m) (b) 1. and 2. of the statutes are repealed.

5 **SECTION 3.** 71.30 (2m) (b) (intro.) of the statutes is renumbered 71.30 (2m) (b)
6 and amended to read:

7 71.30 **(2m)** (b) A transaction has economic substance only if ~~the taxpayer shows~~
8 ~~both of the following:~~ the transaction is treated as having economic substance as
9 determined under section 7701 (o) of the Internal Revenue Code, except that the tax
10 effect shall be determined using federal, state, local, or foreign taxes, rather than
11 only the federal income tax effect.

12 **SECTION 4.** 71.30 (2m) (b) 1. and 2. of the statutes are repealed.

13 **SECTION 5.** 71.80 (1m) (b) (intro.) of the statutes is renumbered 71.80 (1m) (b)
14 and amended to read:

15 71.80 **(1m)** (b) A transaction has economic substance only if ~~the taxpayer shows~~
16 ~~both of the following:~~ the transaction is treated as having economic substance as
17 determined under section 7701 (o) of the Internal Revenue Code, except that the tax
18 effect shall be determined using federal, state, local, or foreign taxes, rather than
19 only the federal income tax effect.

20 **SECTION 6.** 71.80 (1m) (b) 1. and 2. of the statutes are repealed.

21 **SECTION 7.** 71.80 (9m) (intro.) (except 71.80 (9m) (title)) of the statutes is
22 renumbered 71.80 (9m) (a) (intro.) and amended to read:

23 71.80 **(9m)** (a) (intro.) A person who fails to produce records or documents, as
24 provided under ss. s. 71.74 (2) ~~and 73.03 (9)~~, that support amounts or other
25 information required to be shown on any return required under this chapter and fails

1 to comply in good faith with a summons issued pursuant to s. 73.03 (9) seeking those
2 records and documents may be subject to any of the following penalties, as
3 determined by the department, except that the department may not impose a
4 penalty under this subsection if the person shows that under all facts and
5 circumstances the person's response, or failure to respond, to the department's
6 request was reasonable or justified by factors beyond the person's control:

7 **SECTION 8.** 71.80 (9m) (a) and (b) of the statutes are renumbered 71.80 (9m) (a)
8 1. and 2.

9 **SECTION 9.** 77.61 (19) (intro.) of the statutes is renumbered 77.61 (19) (a)
10 (intro.) and amended to read:

11 77.61 (19) (a) (intro.) A person who fails to produce records or documents, as
12 provided under s. ~~73.03 (9)~~ or 77.59 (2), that support amounts or other information
13 required to be shown on a return required under s. 77.58 and fails to comply in good
14 faith with a summons issued pursuant to s. 73.03 (9) seeking those records and
15 documents may be subject to any of the following penalties, as determined by the
16 department, except that the department may not impose a penalty under this
17 subsection if the person shows that under all facts and circumstances the person's
18 response, or failure to respond, to the department's request was reasonable or
19 justified by factors beyond the person's control:

20 **SECTION 10.** 77.61 (19) (a) and (b) of the statutes are renumbered 77.61 (19) (a)
21 1. and 2.

22 **SECTION 11. Initial applicability.**

23 (1) The treatment of sections 71.10 (1m) (b) (intro.), 1., and 2., 71.30 (2m) (b)
24 (intro.), 1., and 2., and 71.80 (1m) (b) (intro.), 1., and 2. of the statutes first applies
25 to taxable years beginning on January 1 of the year in which this subsection takes

1 effect, except that if this subsection takes effect after July 31, this act first applies
2 to taxable years beginning on January 1 of the year following the year in which this
3 subsection takes effect.

4 (2) The treatment of sections 71.80 (9m) (intro.), (a), and (b) and 77.61 (19)
5 (intro.), (a), and (b) of the statutes first applies to an audit commenced, or a summons
6 issued, on the effective date of this subsection.

7 (END)