



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2015 Senate Bill 503

Senate Substitute Amendment 2

Memo published: February 17, 2016

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2015 Senate Bill 503 (the bill) generally makes changes to current law relating to: (1) transactions without economic substance; (2) construction contracts; (3) the manufacturing and agriculture tax credit; (4) rule-making by the Department of Revenue (DOR); (5) failure to produce records; (6) reliance on past audits; and (7) the Multistate Tax Commission Audit Program.

Senate Substitute Amendment 2 (the substitute amendment) removes the bill's provisions relating to items 2, 3, 4, 6, and 7 listed above.

Under the substitute amendment, changes would be made to current law regarding transactions without economic substance and failure to produce records.

TRANSACTIONS WITHOUT ECONOMIC SUBSTANCE

Current Law

Under current law, if a person engages in a transaction without economic substance to create a loss or to reduce taxable income, or to increase credits allowed in determining Wisconsin tax, DOR must disregard the transaction when it determines the amount of the taxpayer's taxable income or tax. A transaction has "economic substance" only if the taxpayer demonstrates all of the following:

- The transaction changes the taxpayer's economic position in a meaningful way, apart from federal, state, local, and foreign tax effects.

- The taxpayer has a substantial nontax purpose¹ for entering into the transaction and the transaction is a reasonable means of accomplishing the substantial nontax purpose.

Senate Substitute Amendment 2

The substitute amendment repeals the two current law criteria that determine economic substance, described in the bullet points above. The substitute amendment provides that a transaction has “economic substance” only if the transaction is treated as having economic substance under the Internal Revenue Code, considering federal, state, local, or foreign taxes. The substitute amendment provides that these provisions first apply to taxable years beginning on January 1 of the year in which the bill takes effect, except that if it takes effect after July 31, it first applies to taxable years beginning on January 1 of the year following the year in which it takes effect.

FAILURE TO PRODUCE RECORDS

Current Law

Current law provides that a person who fails to produce records or documents that support amounts or other information on a tax return is subject to certain penalties.

Senate Substitute Amendment 2

Under the substitute amendment, to be subject to penalties provided under current law, a person must also fail to comply in good faith with a summons issued by DOR seeking the records or documents. The substitute amendment provides that these provisions first apply to an audit commenced, or a summons issued, on the effective date of the provisions.

BILL HISTORY

Senator Marklein offered Senate Substitute Amendment 1 on January 27, 2016. On February 2, 2016, Senator Marklein offered Senate Amendment 1 to Senate Substitute Amendment 1.

On February 8, 2016, the Senate Committee on Revenue, Financial Institutions, and Rural Issues recommended adoption of Senate Amendment 1 to Senate Substitute Amendment 1, on a vote of Ayes, 5; Noes, 0. On the same day, the committee recommended adoption of Senate Substitute Amendment 1 as amended and passage of the bill as amended, on votes of Ayes, 3; Noes, 2.

On February 11, 2016, Senator Marklein offered Senate Substitute Amendment 2. On February 16, 2016, the Senate adopted Senate Amendment 1 to Senate Substitute Amendment 1;

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

Senate Substitute Amendment 1, as amended; and Senate Substitute Amendment 2, on voice votes. On the same day, the Senate passed Senate Bill 503, as amended, on a vote of Ayes, 19; Noes, 13.

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