



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 259

**Assembly Substitute
Amendment 2**

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2017 ASSEMBLY BILL 259

Assembly Bill 259 makes the following changes to current tax law in Wisconsin:

- It shortens the length of the recognition period for the built-in gains tax from 10 to 5 years, matching federal law.
- It lowers the standard of proof a taxpayer must meet in order to establish that a transaction has economic substance for income and franchise tax purposes from clear and convincing evidence, to a preponderance of the evidence.
- It eliminates Department of Revenue (DOR) participation in the Multistate Tax Commission Audit Program.
- It eliminates the current law exception that provides, if a taxpayer did not give DOR adequate and accurate information regarding a tax issue during a prior audit, the taxpayer cannot rely on the prior audit to avoid liability in future audits.

ASSEMBLY SUBSTITUTE AMENDMENT 2

Assembly Substitute Amendment 2 makes extensive changes to the bill, including:

- Deletion of the provision that shortens the length of the recognition period for the built-in gains tax from 10 to 5 years.
- Change to the standard of proof a taxpayer must meet in order to establish that a transaction has economic substance for income and franchise tax purposes from a preponderance of the evidence, to “clear and satisfactory” evidence.

- Deletion of the provision that eliminates DOR participation in the Multistate Tax Commission Audit Program.
- Modification of the provision regarding taxpayer reliance on prior audits to prohibit a taxpayers reliance on a prior audit under the following circumstances:
 - The department establishes by clear and satisfactory evidence that the taxpayer provided incomplete or false information relevant to the tax issue in the prior audit determination.
 - The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into before the effective date of the bill.
 - The tax issue was settled in the prior audit determination by a written agreement between the department and the taxpayer that was entered into on or after the effective date of the bill, and in which the parties acknowledged that the department did not adopt the taxpayer's position on the tax issue.
- Adoption, for state income and franchise tax purposes, of certain provisions of the Internal Revenue Code that were adopted as part of the federal Tax Cuts and Jobs Act that was enacted in December 2017, including provisions relating to individual retirement accounts, discharge of student loan indebtedness, and use of distributions from 529 accounts for private elementary and secondary school expenses.
- Clarification of references to the Internal Revenue Code with respect to the computation of depletion.
- Creation of a sales and use tax exemption for title holding entities for certain tax-exempt charitable organizations.

BILL HISTORY

Assembly Substitute Amendment 2 was offered by Representative Kooyenga on February 22, 2018. On the same day, the Assembly adopted Assembly Substitute Amendment 2 and passed Assembly Bill 259 on a vote of Ayes, 61; Noes, 33.

SG:jal