



**Wisconsin Institute of
Certified Public Accountants**

DATE: January 21, 2021

TO: Chairman Macco and members of the Assembly Ways and Means Committee

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

RE: Urge you to support SB1/AB3 authored by Senator Howard Marklein, CPA, Senator Dale Kooyenga, CPA, Senator Chris Kapenga, CPA, and Rep. John Macco and Rep. Robert Wittke

Support SB2/AB2 authored by Senator Howard Marklein, CPA, Senator Dale Kooyenga, CPA, Senator Chris Kapenga, CPA, and Rep. John Macco, Rep. Robert Wittke, Rep. Terry Katsma and Rep. Shannon Zimmerman

The Wisconsin Institute of CPAs (WICPA), which represents over 7,000 members across this state, has worked closely with the Wisconsin Department of Revenue and the lead authors of this legislation to obtain clarifying language for Wisconsin Act 368.

In December 2018, the Wisconsin legislature passed Wisconsin Act 368. The legislation provided for an election for pass-through entities, including partnerships, limited liability companies and tax-option corporations (e.g., S corporations) to be taxed at the entity level with the owners of the pass-through entities allowed an exclusion for the investors' distributive share of income subject to the new pass-through entity tax.

Under the federal Tax Cuts and Jobs Act, the deduction for state income, real estate and other taxes is limited at the individual level to \$10,000 per year per return. Taxes imposed on pass-through entities should be deductible at the entity level. Several state legislatures have enacted various approaches to assist their taxpayers in mitigating the new \$10,000 limitation on federal income tax deductions for state and local taxes.

In the bill, there were different provisions applying to partnerships and tax-option corporations. Basically, the individual tax rules were applied to partnerships and corporation tax rules were applied to tax-option corporations making the entity tax election. The intent was to have similar rules apply to both partnerships and tax-option corporations making the entity tax election. The proposed new bill will accomplish that goal.

The changes to the tax treatment of tax-option corporations that elect to pay tax at the entity level clarified in SB1/AB3 are as follows:

1. The bill allows these corporations to exclude from tax 30% of the gains realized from the sale of assets held more than one year and the sale of all assets acquired from a decedent and 60% of the gains realized from the sale of farm assets held more than one year and the sale of all farm assets acquired from a decedent.
2. The bill limits the excess capital loss deduction for these corporations to \$500. As such, under the bill, an electing tax-option corporation with a net loss after netting capital gains and losses may use up to \$500 of the net loss to offset income. A loss in excess of \$500 may be carried forward to the next taxable year in which the corporation makes the election to pay tax at the entity level.
3. The bill provides that an exception from the general requirement to pay interest on the underpayment of estimated taxes for corporations whose Wisconsin net income is less than \$250,000 does not apply to these corporations.
4. The bill provides that these corporations, when making quarterly estimated tax payments, compute the amount due using the standards applicable to taxpayers with net income of less than \$250,000, regardless of the corporation's actual net income.

For tax-option corporations making an entity election, partnerships making an entity election, and for individuals, the law will now be in conformity regarding the above four items.

By adopting these provisions, Wisconsin businesses will benefit, and state revenue should increase since the maximum Wisconsin individual tax rate is 7.65% and the Wisconsin entity tax rate is 7.9%.

We also urge you to pass this bill with the effective date for taxable years after Dec. 31, 2019. This legislation has been delayed for two years and should not be delayed further. CPAs are willing to manage any extensions or amended returns for their clients if forms are not readily available. In addition, the federal tax filing season has been delayed to Feb. 12. There is no defensible reason to further inconvenience state taxpayers who have already lost two years waiting for this bill to be passed.

SB2/AB2 is largely the Department of Revenue's omnibus tax package bill. The WICPA supports this legislation because taxpayers and businesses benefit from this clarification and increasing compliance. The bill also simplifies the Department of Revenue's administration to make the tax compliance process more effective and efficient as well as incorporating updates for Wisconsin tax code to follow the Internal Revenue Code. This will avoid taxpayer confusion.

The delay or failure to pass these bills now will be a disadvantage to Wisconsin taxpayers and businesses. It will be a challenge for the WICPA to explain to its members – and for CPAs to explain to their clients – why these bills were not passed. Businesses and individuals seek CPAs' professional tax expertise and want simplicity and conformity to comply with our tax laws.

The Wisconsin Institute of CPAs respectfully urges you to pass both bills. Simplification of our tax statutes and conformity to the federal tax code should always be a goal everyone can agree on. It is also important that these bills are passed timely, so the Department of Revenue can accommodate these changes in the development of tax forms for the 2020 tax filing year.

Thank you for your consideration.



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

January 21, 2021

**Assembly Committee on Ways and Means
Testimony on Assembly Bill 3**

Good Morning!

Thank you Chair Macco and committee members for hearing Assembly Bill 3 (AB 3) that makes modifications to the tax treatment of tax-option corporations (S corporations) that elect to pay tax at the entity level.

Under current law, S corporations, partnerships, and limited liability companies (LLCs) are collectively referred to as pass-through entities (PTEs). 2017 Wisconsin Act 368 (Act 368) made changes to the tax treatment for PTEs that elect to be taxed at the entity level. Under Act 368, businesses may elect to be taxed at the entity level for taxable years beginning in 2018 for S corporations and for taxable years beginning in 2019 for all other PTEs. The different dates for when the changes would take effect was intentional in the legislation. However, there were some differences in tax treatment that were not intended. **AB 3 seeks to align the tax treatment for all PTEs that make the election to be taxed at the entity level.**

The Wisconsin Institute of Certified Public Accountants (WICPA) worked with the Wisconsin Department of Revenue (DOR) to ensure similar treatment for S corporations and partnerships that make the election to be taxed at the entity level. There are three main issues addressed by the bill: 1) capital gains exclusion; 2) excess capital loss deduction 3) interest for underpayment of estimated taxes.

Regarding the capital gains exclusion, the bill allows these corporations to exclude from tax 30 percent of the gains realized from the sale of assets held more than one year and the sale of all assets acquired from a decedent and 60 percent of the gains realized from the sale of farm assets held more than one year and the sale of all farm assets acquired from a decedent.

After netting capital gains and capital losses, a S corporation may use up to \$500 of the net loss to offset income. A loss in excess of \$500 may be carried forward to the next taxable year in which the corporation makes the election to pay tax at the entity level.

The remaining provision creates an exception from the requirement to pay interest on the underpayment of estimated taxes for corporations whose Wisconsin net income is less than \$250,000, and provides that these corporations, when making quarterly estimated tax payments,

compute the amount due using the standards applicable to taxpayers with net income of less than \$250,000, regardless of the corporation's actual net income.

This bill is supported by the WICPA.

Thank you again for hearing AB 3, and your timely action on this proposal.