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# ROBERT WITTKE

STATE REPRESENTATIVE • 62<sup>nd</sup> ASSEMBLY DISTRICT

## TESTIMONY: Assembly Ways & Means

January 19, 2022

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Chairman Macco and Members,

Thank you for holding a hearing on **Assembly Bill 816 (AB 816)** relating to pass-through entity audits. This legislation came to me from the Wisconsin Institute of Certified Public Accountants (WICPA) and I'm pleased to help move this legislation through the process.

Currently, the Department of Revenue collects taxes and administers the audit of a pass-through entity – partnerships, limited liability company, or tax-option (S) corporation – by contacting each separate member of the entity. It's a "taxing" process for both the DOR and taxpayer.

In recent years, the Internal Revenue Service (IRS) changed how they collect tax and audit partnerships, **AB 816** will make similar changes to state law so the Department of Revenue may put in to practice a more efficient collection and audit approach.

**Assembly Amendment 1 to AB 816** is a technical change that does two things: Adds the word "of" where it was missing, and secondly the amendment clarifies the department may assess any member "their" portion.

**AB 816** provides another important step in creating a better tax environment for Wisconsin taxpayers.

Thank you again for holding a public hearing on AB 816.



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# HOWARD MARKLEIN

STATE SENATOR • 17<sup>TH</sup> SENATE DISTRICT

**January 19, 2022**

**Assembly Committee on Ways & Means  
Testimony on Assembly Bill 816**

Good Afternoon!

Thank you Chair Macco and committee members for hearing Assembly Bill 816 (AB 816) that makes changes to the procedures the Department of Revenue (DOR) can use when auditing a pass-through entity.

Pass-through entities include partnerships, LLCs, tax-option corporations, estates and trusts. While some entities may have just a couple of members, other pass-through entities have hundreds or thousands of members. Currently, when DOR is auditing one of these entities, they must contact each separate member of the entity while performing the audit. This can be extremely time consuming and creates a lot of unnecessary work, not only for the DOR auditor but for the business being audited.

AB 816 allows DOR to conduct an audit of a pass-through entity at the entity level. This includes: assessing and collecting additional tax, adjusting tax credits, and issuing refunds. The bill before you sets up a process whereby the entity will designate a representative that will have the authority to act on behalf of the entity and its members, including the ability to contest an audit determination and appeal to the Tax Appeals Commission.

A few years ago, the Internal Revenue Service (IRS) began administering new partnership audit procedures allowing the IRS to assess and collect tax at the partnership entity level. The IRS finds that their new procedures reduce the administrative burdens for both the IRS and taxpayers. This bill would do essentially the same thing at the state level. DOR has received numerous requests from pass-through entities asking if their audit can be conducted this way.

The goal of AB 816 is to simplify entity audit procedures and reduce wasteful time spent. This proposal is supported by the Wisconsin Institute of Certified Public Accountants (WICPA) and the Wisconsin Department of Revenue.

Thank you again for hearing AB 816, and your timely action on this proposal.



**Wisconsin Institute of  
Certified Public Accountants**

DATE: January 19, 2022

TO: Chairman Macco, Vice Chair Wittke and members of the Assembly Committee on Ways & Means

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

RE: Urge you to support AB816/SB794 with a technical amendment authored by Rep. Robert Wittke, Rep. David Armstrong, Rep. Robert Brooks, Rep. Daniel Knodl and Senator Howard Marklein, CPA and Senator Dale Kooyenga, CPA

The Wisconsin Institute of CPAs (WICPA), which represents over 7,100 members across this state, has worked closely with the Wisconsin Department of Revenue and the lead authors of this legislation to simplify and allow Wisconsin to have efficient auditing and administration of pass-through entities.

Many department audits are performed on pass-through entities with many members/owners. In addition, there are tiered entity structures that require adjustments to be made to multiple returns before tax can be assessed and collected.

Under current law, the provisions for statutes of limitation, assessments, confidentiality, and appeals require the department to administer the audit of a pass-through entity by contacting each separate member of the entity (and often indirect members). This creates significant complexities and inefficiencies for taxpayers and the department.

In addition, effective for taxable years after December 31, 2017, the Internal Revenue Service (IRS) administered new partnership audit procedures as provided in the federal Bipartisan Budget Act of 2015. The new procedures allow the IRS to assess and collect tax at the partnership entity level (e.g., the partnership pays the assessment on behalf of its partners). The new procedures reduce the administrative burdens for both the IRS and taxpayers, particularly with larger partnerships. The Department, taxpayers and CPAs continue to support procedures to also reduce the administrative burdens in Wisconsin by modeling federal laws.

The provisions in this bill allow administrative functions related to the audit of a pass-through entity to be centralized at the entity level, while still maintaining the pass-through status of the entity.

1. The bill allows for the following:
  - a. The Department's ability to assess and collect additional tax from a pass-through entity on income otherwise reportable by its pass-through members.
  - b. Provide an election for pass-through entities with 25 or fewer members to require the Department to assess the members rather than the pass-through entity.
  - c. Direct the secretary of the Department of Administration to refund to a pass-through entity that part of an overpayment paid by the pass-through entity and not by the entity's pass-through members.
  - d. Assess an adjustment to reduce a tax credit to a pass-through entity if the pass-through entity previously computed the credit and reported the credit to its pass-through members.
  - e. Assess an adjustment to increase a tax credit to offset additional tax assessed to a pass-through entity.
  
2. We also have requested two simple amendments which we worked with Senator Marklein and Rep. Wittke's office and have submitted them, one very minor and one technical.
  - a. First, we request to fix a grammatical error in Section 5 (3) ADJUSTMENT OF CREDITS. Except as provided in sub. (9), for the purpose **of** adjusting credits... (add "of")
  - b. Second, we would like to clarify the intent and make a technical change to provide additional clarification in Section 5, 71.745 under Number 7 LIABILITY MAY BE ASSESSED TO MORE THAN ONE PERSON to read, "If the department determines that a liability exists under this chapter and that the liability may be owed by more than one pass-through member of a pass-through entity, the department may assess any pass-through member of the pass-through entity for **their allocated portion of** additional tax otherwise due under this chapter."

The Wisconsin Institute of CPAs supports this legislation with the simple amendments stated above and respectfully urges you to pass this legislation with the corrections noted because taxpayers, businesses, the Department and CPAs benefit from this clarification and simplification.

Thank you for your consideration.



## State of Wisconsin • DEPARTMENT OF REVENUE

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*Tony Evers*  
Governor

*Peter W. Barca*  
Secretary of Revenue

### Testimony on AB 816 by Peter Barca, Secretary of the Wisconsin Department of Revenue Assembly Committee on Ways and Means January 19, 2022

Good morning, Chairman Macco, Ranking Member McGuire, Members of the Assembly Committee on Ways and Means.

Thank you for your consideration of AB 816, a bill that amends our statutes to create efficiencies for audits of pass-through entities.

The Department of Revenue had initially brought this item to the legislature in 2019, in our Taxpayer Enhancement Package, which subsequently became 2021 WI Act 1, however, at the time, the Wisconsin Institute of CPAs asked that we hold the item to resolve some questions by their Tax Committee. We have, over the course of several months, collaborated to resolve the issues and bring forward this new version that has the support of both the DOR and WICPAs. Some changes and clarifications have been made and we thank the WICPA for their cooperation in bringing this forward.

Provisions under the bill include:

- Allow DOR to assess income tax to a pass-through entity, rather than issuing separate assessments to each of its members.
- Allow a pass-through entity with 25 or fewer members to preclude DOR from issuing an entity-level assessment.
- Requires a pass-through entity undergoing an audit to have a "state representative" that will:
  - Inform all members of audit proceedings, receive audit notices and determinations
  - Enter into extension agreements for the audit (if applicable)
  - Notify all members of any changes to their pass-through income which result from the audit
  - File appeals on behalf of all members
  - Enter into settlement agreements, which are binding on the members
- Allow DOR to disclose certain taxpayer information:
  - Disclose to a member that the pass-through entity has been audited, where necessary to explain amounts assessed to a member.
  - Disclose to a pass-through entity that one or more members have not reported the Wisconsin income from the entity, where necessary to explain amounts assessed to a pass-through entity.

Again, thank you for your time and favorable consideration of this bill. I would also like to thank the WICPA, and the bill sponsor, Representative Wittke for bringing this matter forward.