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Proposed by: BTA  
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## ANALYSIS OF PROPOSED LAW CHANGE

### Treat Each Limited Liability Company as a Separate Employer

#### 1. Description of Proposed Change

The department proposes to discontinue treating limited liability companies (LLCs) with the same members as a single employer.

#### 2. Proposed Statutory Language

**Amend 108.02 (13) (a) and 108.16 (2) (g) and (h):**

**108.02 (13) EMPLOYER.** (a) "Employer" means every government unit and Indian tribe, and any person, association, corporation, whether domestic or foreign, or legal representative, debtor in possession or trustee in bankruptcy or receiver or trustee of a person, partnership, association, or corporation, or guardian of the estate of a person, or legal representative of a deceased person, any partnership or partnerships consisting of the same partners, except as provided in par. (L), any limited liability company or limited liability companies consisting of the same members, except as provided in par. (kL), and any fraternal benefit society as defined in s. 614.01 (1) (a), which is subject to this chapter under the statutes of 1975, or which has had employment in this state and becomes subject to this chapter under this subsection and, notwithstanding any other provisions of this section, any service insurance corporation organized or operating under ch. 613, except as provided in s. 108.152 (6) (a) 3.

**108.16 (2) (g)** Whenever the department receives a request of 2 or more partnerships or limited liability companies consisting of the same partners or members to be treated as separate employers prior to October 1 of any year, the department shall apportion the balance in any existing account of the partnerships or limited liability companies among the separate employers on January 1 following the date of receipt of the request in proportion to the payrolls incurred in the businesses operated by each of the employers in the 4 completed calendar quarters ending on the computation date preceding the date of receipt of the request and shall calculate the reserve percentage of each separate employer in accordance with the proportion of the payroll attributable to that employer. Section 108.18 (2) is not made applicable to the separate employers by reason of such treatment. For purposes of s. 108.18 (7), the department shall treat the partnerships or limited liability companies as separate employers on November 1 preceding that January 1. For purposes of s. 108.18 (7) (b) and (c), the department shall treat the separate employers as existing employers on that January 1.

(h) Whenever, prior to October 1 of any year, the department receives a written request by all partnerships or ~~limited liability companies~~ consisting of the same partners or members which have elected to be treated as separate employers for the partnerships or ~~limited liability companies~~ to be treated as a single employer, the department shall combine the balances in the existing accounts of the separate employers into a new account on January 1 following the date of receipt of the request and shall calculate the reserve percentage of the single employer in accordance with the combined payroll attributable to each of the separate employers in the 4 completed calendar quarters ending on the computation date preceding that January 1. Section 108.18 (2) is not made applicable to the single employer by reason of such treatment. For purposes of s. 108.18 (7), the department shall treat the partnerships or ~~limited liability companies~~ as a single employer on November 1 preceding that January 1. For purposes of s. 108.18 (7) (b) and (c), the department shall treat the single employer as an existing employer on that January 1.

**Repeal 108.02 (13) (kL):**

~~108.02 (13) (kL) "Employer" means all limited liability companies consisting of the same members except that "employer" means each limited liability company consisting of the same members if:~~

- ~~1. Each limited liability company maintains separate accounting records;~~
- ~~2. Each limited liability company otherwise qualifies as an "employer" under this subsection;~~
- ~~3. Each limited liability company files a written request with the department to be treated as an "employer"; and~~
- ~~4. The department approves the requests.~~

**3. Proposer's reason for Change**

Under current law, Wisconsin conflicts with the Federal Unemployment Tax Act (FUTA) reporting requirements. Prior to 2009, limited liability companies were disregarded as entities separate from their owners for Federal tax purposes. Effective January 1, 2009, limited liability companies are treated as separate entities for federal employment tax purposes and each limited liability company must file and pay FUTA tax as a separate employing entity.

Since there is no business reason for companies to report the adding, removing or changing of members of limited liability companies (because such changes do not result in a change of legal entity), it is not feasible for the department to determine if all limited liability companies with the same members are being covered as a single employer as required under current law. The current provisions would also require newly formed limited liability companies, or existing LLCs that have changed members, to be combined and reported with other LLCs that have the same members even if that is contrary to their wishes or intent.

**4. Brief History and Background of Current Provision**

Section 108.02 (13) (kL), the reference to (kL) in the definition of employer in 108.02 (13)(a), and the references to LLCs in s. 108.16(2)(g) and (h) were created in 1993 Wis. Act 112. They have not been amended since that time.

**5. Effects of the Proposed Change**

- a. Policy: The proposed changes will provide for consistency with federal reporting requirements.
- b. Administrative Feasibility: There are no system changes required for this change.
- c. Equitable: Employers will use the same reporting requirements as LLCs for FUTA and Wisconsin unemployment law.
- d. Fiscal: This will have no impact on the solvency of the UI Trust Fund. Currently different LLCs with exactly the same membership may be treated the as one employer under Wisconsin law. In practice LLCs are all treated as separate entities. Given that this codifies existing practice there will not be any impact to the UI Trust Fund.

**6. State and Federal Issues**

The proposed changes will provide for consistency with federal reporting requirements.

**7. Proposed Effective/Applicability Date**

The provisions should be effective as of the effective date of the legislation.