

Enabling Department to Hold Managing Partners of LLPs Personally Liable

Date: February 19, 2015
Proposed by: DWD
Prepared by: Andrew Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

HOLDING MANAGING PARTNERS OF LIMITED LIABILITY PARTNERSHIPS (“LLPS”) PERSONALLY LIABLE FOR THE CONTRIBUTIONS OWED BY THE LLP

1. Description of Proposed Change

Currently, the department may hold individuals who are officers, employees, members or managers holding at least 20% of the ownership interest of a corporation or limited liability company (LLC) personally liable for the unpaid unemployment insurance (UI) contributions of the corporation or LLC. Wis. Stat. § 108.22(9).

Current law does not clearly permit the department to hold the managing partners of a limited liability partnership (LLP) personally liable for the unpaid contributions of the LLP.

Wisconsin Law permits the Wisconsin Department of Revenue (WI-DOR) to hold an “officer, employee or **other responsible person** of a corporation or **other form of business association** or a member, employee or other responsible person of a partnership, limited liability company or sole proprietorship” personally liable for the unpaid sales and use tax of a business entity. Wis. Stat. § 77.60(9).

Wisconsin law also allows WI-DOR to hold an individual personally liable for the unpaid income or franchise taxes of a “corporation, **other form of business association**, partnership, limited liability company or sole proprietorship.” Wis. Stat. § 71.83(1)(b)2. WI-DOR confirms that these statutes result in personal liability for LLP tax debts.

This proposal amends Wis. Stat. § 108.22(9) in order to permit the department to hold individuals personally liable for the UI contributions of “other forms of business association,” which include LLPs.

2. Proposed Statutory Language

108.22 (9) of the statutes is amended to read:

108.22 (9) An individual who is an officer, employee, member, or manager, partner or other responsible person holding at least 20% of the ownership interest of a corporation, or limited liability company or of any other form of business association subject to this chapter, and who has control or supervision of or responsibility for filing any required contribution reports or

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making payment of contributions, and who willfully fails to file such reports or to make such payments to the department, or to ensure that such reports are filed or that such payments are made, may be found personally liable for such amounts, including interest, tardy payment or filing fees, costs and other fees, in the event that after proper proceedings for the collection of such amounts, as provided in this chapter, the corporation, ~~or~~ limited liability company or other form of business association is unable to pay such amounts to the department. Ownership interest of a corporation, ~~or~~ limited liability company or other form of business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual's spouse or child, by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them, and such ownership interest of a parent corporation, ~~or~~ limited liability company or other form of business association of which the corporation, ~~or~~ limited liability company or other form of business association unable to pay such amounts is a wholly owned subsidiary. The personal liability of such officer, employee, member, ~~or~~ manager, partner, or other responsible person as provided in this subsection survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation, ~~or~~ limited liability company or other form of business association and shall be set forth in a determination or decision issued under s. 108.10.

3. Reason for the Change

This proposal will create a more level playing field because it will ensure that responsible persons are not able to avoid personal liability for unpaid UI contributions simply because they chose a particular form of business entity. It also provides flexibility for the department to impose personal liability if the Legislature creates other business forms (such as a Low-Profit Limited Liability Company or "L3C").

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4. Effects of Proposed Changes

- a. Policy. The legislative change will result in the UI law more closely tracking the WI-DOR statutes, ensuring more predictability for individuals who are potentially personally liable for unpaid taxes.
- b. Administrative Impact. Implementation of this proposal should be relatively straightforward. The department already determines individuals personally liable for UI contributions owed by corporations and LLCs. The tax collections staff will need to be trained to issue personal liability determinations to responsible persons related to other types of business associations.

The department should not need to change any existing or promulgate any new administrative code provisions.

- c. Fiscal. See attached fiscal estimate.

5. State and Federal Issues

This proposal will make the UI law more closely track the WI-DOR statutes and therefore will ensure more predictability for individuals who are potentially personally liable for unpaid taxes.

There are no known federal conformity issues.

6. Proposed Effective/Applicability Date

This proposal will be effective and applicable on the first day of the quarter following enactment.

Proposal:
Limited Liability Partnership Tax Liability (D15-05)

Date: 11/17/2014

Prepared by: Technical Services Section

TRUST FUND FISCAL ANALYSIS OF PROPOSED LAW CHANGE

Impact:

This proposal is expected to save the Trust Fund approximately **\$3,800 annually** via additional employer state UI tax collections. Once the Treasury Offset Program (TOP) is expanded to include employer tax debt (current law proposal), the savings are estimated at \$4,800 annually.

Summary of the Proposal:

This proposal allows managing partners of limited liability partnerships (LLPs) be held personally liable for employer tax debt. Currently, sole proprietors, partnerships, and people holding at least 20% ownership interest in a corporation or limited liability company (LLC), can be found personally liable for unpaid state unemployment tax contributions. The current law does not specifically allow for partners of a limited liability partnership to be found personally for unpaid state UI tax contributions. This proposal would provide more equity to businesses and allow UI collections to recover more tax debt.

Methodology:

LLPs represent a small percentage of the employers in the state. This proposal will not result in significant savings to the Trust Fund via employer tax collections; rather it will bring more equity to how the UI Division can collect unpaid tax debt.

Since 2008, \$64,464 of 76 accounts have been written off due to the inability to hold partners of LLPs liable for unpaid state UI tax debt. This averages approximately \$10,000 annually. Collections recovers an estimated 38% of debt from preliminary closed and closed accounts of all types of employers, presumably the percentage of debt that may now be recovered from LLPs due to the ability to recover from personal liability. If 38% of this debt could now be collected due to personal liability of the LLP, this equates to a savings to the Trust Fund of approximately \$3,800 annually via additional employer debt collections.

The use of the TOP to collect employer tax debt that can be assigned to personal liability is mandated by the Federal government. Once implemented, the tax debt recovery rate for closed or preliminary closed accounts is estimated to be closer to 48% based on current claimant overpayment TOP recovery rates. That will equate to Trust Fund savings of approximately \$4,800 annually.

IT/Administrative Costs:

IT one-time cost to change SUITES is estimated at 40-80 hours or \$3,320 to \$6,640. There are no expected UI administrative one-time costs or ongoing costs.