

# Administrative Agent's Responsibilities with Regard to Wisconsin Income Tax Payable by Out-of-State Lenders in Connection with a Loan Secured by Wisconsin Property

As noted in prior Real Estate Opinion Updates, an out-of-state lender may be subject to Wisconsin income tax even in situations in which their sole contact with the state of Wisconsin is limited to making one loan secured by Wisconsin real or personal property. In light of this possibility, Reinhart's real estate and tax team have been recently asked to examine whether a bank or other institution serving as the administrative agent for a pool of lenders would be taking on any withholding or tax filing obligations on behalf of any of the lenders in the pool who may be obligated to pay Wisconsin income tax. In this short (but hopefully reassuring) update, we note that such withholding and filing obligations do not appear to be required of a bank or other institution simply due to its role of serving as an administrative agent for a loan secured by Wisconsin property.

## Withholding Obligations of Administrative Agents for Loans Secured by Wisconsin Property

Wisconsin law does not require a bank or other entity, acting solely as the administrative agent, to withhold income tax on the interest and principal amounts collected from the Borrower and distributed to the Lenders. Withholding tax obligations in Wisconsin are found in Chapter 71, Subchapter X. In addition, withholding requirements for pass-through entities are found in Wisconsin Statutes § 71.775.

There is no provision in Chapter 71, Subchapter X that would require a bank or other entity, as administrative agent, to withhold income tax on amounts distributed to the Lenders. Further, it is our understanding that an administrative agent is not considered a pass-through entity for this purpose under Wisconsin law and, therefore, the withholding tax requirements under Wisconsin Statutes § 71.775 do not apply.<sup>1</sup>

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## Tax Information Return Obligations of Administrative Agents for Loans Secured by Wisconsin Property

The requirements for filing tax information returns in Wisconsin are found in Wisconsin Statutes Chapter 71, Subchapter XI. There is no provision in Chapter 71, Subchapter XI that would require a lender to file tax information returns in its role as administrative agent. Note, this e-alert addresses only information returns for Wisconsin income taxes and does not address whether there are any federal income tax or federal or state regulatory provisions that may require information reports or returns related to an entity's role as an administrative agent.

If you have questions about this update, please contact your Reinhart attorney, [Margaret Derus](#), [John Murphy](#), [Kristina Somers](#) or any member of the Reinhart Real Estate Opinion Team.

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<sup>1</sup>A pass-through entity is defined for withholding tax purposes as "a partnership, a limited liability company, a tax-option corporation, an estate, or a trust that is treated as a pass-through entity for federal income tax purposes". Wis. Stat. § 71.775(1)(b).

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