# Recent Expansion of the Definition of "Doing Business" in Wisconsin's Corporate Tax Statutes Restricts Wisconsin Local Counsel's Ability to Opine That Out-of-State Lenders Will Not Be Subject to Wisconsin Income or Franchise Taxes

It is not uncommon for out-of-state commercial lenders taking a mortgage on Wisconsin real property to request that Wisconsin counsel opine that the lender will not be subject to Wisconsin income or franchise taxes if the lender's contact with the State of Wisconsin is limited to making a loan to and receiving a mortgage from the borrower. Below is an opinion Reinhart was recently requested to give in its capacity as local counsel:

> The making of the Loan and enforcement of the provisions of the Documents will not result in the imposition upon Lender of any taxes of the State, or any subdivision thereof in which the applicable Mortgaged Property is located (including, without limitation, franchise, license, tax on interest received or income taxes), other than taxes which Lender, if and when it becomes the actual and record owner of such Mortgaged Property, by reason of power of sale or foreclosure under the applicable Mortgage or by deed in lieu of foreclosure, would be required to pay.

In the past, our firm had provided a reasoned opinion that it was unlikely that simply making a loan, taking a mortgage on property in Wisconsin and enforcing rights under that mortgage would be determined to provide a "nexus" within the State of Wisconsin so as to subject the lender to Wisconsin income tax or franchise tax. Unfortunately, however, the Wisconsin Statutes have been recently amended in such a manner as to make it impossible for us to provide this type of opinion.

Pursuant to the current version of section 71.22(1r) of the Wisconsin Statutes, corporations and limited liability companies and other entities treated as corporations under the Internal Revenue Code are deemed to be "doing business in Wisconsin" for Wisconsin tax purposes if, among other activities, those entities

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are "holding loans secured by real or tangible personal property located in Wisconsin." Given the clarity of the revisions made to section 71.22(1r), it will likely be very difficult for any Wisconsin attorney to provide a meaningful opinion that making a loan secured by Wisconsin property will not result in the imposition of any income or franchise tax on the lender making such a loan.

If you have questions about this update, please contact your Reinhart attorney or any member of the Reinhart Real Estate Opinion Team.

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