

Fiscal: May have fiscal impact, but no statement yet issued
Revenue: May have revenue impact, but no statement yet issued

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WHAT THE MEASURE DOES:

Requires taxpayers to prove the economic substance of transactions if challenged by the Department of Revenue. Includes the requirement that the taxpayer provide the nontax, business purpose for entering into the transaction.

ISSUES DISCUSSED:

EFFECT OF COMMITTEE AMENDMENT:

No amendment.

BACKGROUND:

The doctrine of economic substance has been used by courts since the 1930s as a method of enforcing the concept of substance over form for transactions affecting tax liabilities. The treatment in federal courts, however, had been inconsistent for a number of years. Some courts relied on a conjunctive test that required taxpayers to demonstrate both a meaningful improvement in the taxpayer's economic position (i.e. profit) beyond tax savings and a substantial, non-tax business purpose for engaging in the transaction. (The former is considered an objective test while the latter is considered a subjective test.) Other courts simply required that the taxpayer demonstrate a reasonable expectation of profit. With the Health Care Reconciliation Act of 2010, Congress codified that when the economic substance doctrine is applied, it shall be applied with the two-part conjunctive test.