



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4162/1
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2015 SENATE BILL 799

April 7, 2016 – Introduced by Senator GUDEx. Referred to Committee on Revenue, Financial Institutions, and Rural Issues.

1 **AN ACT** *to renumber and amend* 177.01 (10) (b); *to amend* 73.01 (4) (a), 73.16
2 (3) (a) 2., 177.01 (5), 177.04 (2), 177.17 (4) (a) 1., 177.17 (4) (a) 2., 177.19 (2),
3 177.26, 177.29 (2) (a), 177.31 (1) and 177.34 (1); and *to create* 73.03 (73), 73.16
4 (6), 177.01 (10) (b) 2. to 8., 177.17 (2) (bm), 177.17 (4) (a) 3., 177.17 (6), 177.24
5 (5), 177.263, 177.30 (6), 177.315, 177.42 and 177.43 of the statutes; **relating to:**
6 various changes to unclaimed property law; agreements by the Department of
7 Revenue to allow third-party tax audits; burden of proof for tax assessments
8 based on third-party audits; and requiring the exercise of rule-making
9 authority.

Analysis by the Legislative Reference Bureau

INTRODUCTION

This bill makes various changes to 1) the Department of Revenue's authority related to third-party tax audits and 2) unclaimed property law.

THIRD-PARTY TAX AUDITS

This bill provides that DOR must bear the burden of proof by clear and convincing evidence of each element of any assessment issued by DOR that is based

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on information, documents, or audit determinations made by any person other than DOR. The bill also prohibits DOR from entering into an agreement to allow a person to engage in an audit of another person's documents or records in order to assess, enforce, or collect a tax or fee administered by DOR or to purchase taxpayer information arising from the audit of a taxpayer or any other person, except for information received by the federal government.

UNCLAIMED PROPERTY***Holder Rights and Obligations***

This bill makes various changes to the rights and obligations of persons in possession of property belonging to others (holders) under this state's version of the Uniform Unclaimed Property Act (UUPA).

Under current law, a holder in possession of property that is presumed abandoned and subject to the custody of this state as unclaimed property under the UUPA must annually file a report with the secretary of revenue regarding the property. In addition to the other information a holder must report under current law, this bill requires a holder to also report the date of birth and social security number or other tax identification number of each person who appears to own the property if that information is known and readily available to the holder. This bill requires annual reports to be filed no later than November 1 of each year. Under current law, reports must be filed before November 1 of each year.

This bill also requires a holder to maintain a record of all information included in a report for three years after the property becomes reportable. Under current law, the holder is only required to maintain a record of the name and last-known address of any owner of abandoned property included in the report, and the information must be maintained for five years after the property is actually reported to the secretary.

Under current law, a holder must, concurrently with the filing of a report, pay or deliver to the secretary all abandoned property included in the report. This bill provides that, with respect to contents of safe deposit boxes, a holder must pay and deliver the contents no earlier than February 1 and no later than February 15 of the year following the year in which the holder was required to file a report with respect to the contents.

Under this bill, if a holder fails to timely pay or deliver abandoned property to the secretary, the holder must pay interest on the value of the property at the annual rate of 6 percent. Under current law, the annual interest rate is 18 percent.

The bill also provides that a holder may appeal any determination made by the secretary in the same manner as a person may appeal income and franchise tax assessment determinations made by DOR. The UUPA does not currently provide any express appeal rights to holders.

This bill provides that no person may commence a civil action with respect to any duty of a holder more than three years after that duty arose. Under current law, a civil action must be commenced within five years.

Claims for Return of Abandoned Property

Under current law, any person claiming an interest in property paid or delivered to the secretary under the UUPA may file a claim for return of the property. This bill provides that any information provided by a claimant is confidential, except

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that if more than one claimant files a claim for return of the same property, the secretary may divulge to each claimant certain details about the property and the other claimants.

This bill also provides that a claimant may appeal an adverse determination made by the secretary in the same manner as a person may appeal income and franchise tax assessment determinations made by DOR. Under current law, a claimant aggrieved by a decision of the secretary may appeal that decision in circuit court.

This bill also allows the secretary, if the secretary determines that a claim was paid in error, to undertake collection actions and commence suit to recover the incorrect payment.

Voluntary Compliance Program

This bill directs the secretary to create a voluntary compliance program to encourage persons who are not in compliance with their obligations under the UUPA to voluntarily report and pay or deliver abandoned property to the secretary. The secretary must promulgate rules to implement and administer the program. Among other things, the rules must allow a participant in the program to conduct his or her own audit to determine the participant's liability under the UUPA. A participant who successfully completes the program must report and pay or deliver all abandoned property for no more than the prior three fiscal years, and the participant will receive a reduction in or complete waiver of all interest and penalties that would have been imposed on the participant for noncompliance. The rules also must provide that if a participant in the program makes false or misleading statements in connection with the program, the secretary may revoke any benefits conferred on the participant under the program.

Business-to-Business Obligations

This bill amends the definition of intangible property to exclude certain obligations owed by one business to another business. Under this bill, those business-to-business obligations are not covered under the UUPA. As a result, those obligations will not be presumed abandoned and subject to the custody of this state under the UUPA, even if the obligations remain unclaimed by the owner, and the holders of those obligations will not be required to turn over those funds to the secretary.

Period of Time after which Money Orders are Presumed Abandoned

This bill reduces the period of time required for an unclaimed money order to be presumed abandoned under the UUPA. Under current law, a money order or other similar instrument, other than a third-party check, that has been outstanding for more than seven years after its issuance is presumed abandoned, unless the owner has communicated in writing with the issuer concerning the money order within that period of time. This bill reduces the applicable period of time from seven years to five years.

Prohibiting Third-Party Audits

This bill prohibits the administrator from entering into an agreement to allow a person to engage in an audit of another person's documents or records in order to

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administer the unclaimed property law or to purchase information arising from the audit, except for information received by the federal government.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 73.01 (4) (a) of the statutes, as affected by 2015 Wisconsin Act 216,
2 is amended to read:

3 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
4 the commission shall be the final authority for the hearing and determination of all
5 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
6 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
7 (c), 76.48 (6), 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555, 139.02,
8 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 177.43, 341.405, and 341.45,
9 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending
10 appeal there is filed with the commission a stipulation signed by the department of
11 revenue and the adverse party, under s. 73.03 (25), or the department of
12 transportation and the adverse party agreeing to an affirmance, modification, or
13 reversal of the department of revenue's or department of transportation's position
14 with respect to some or all of the issues raised in the appeal, the commission shall
15 enter an order affirming or modifying in whole or in part, or canceling the assessment
16 appealed from, or allowing in whole or in part or denying the petitioner's refund
17 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
18 No responsibility shall devolve upon the commission, respecting the signing of an

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1 order of dismissal as to any pending appeal settled by the department of revenue or
2 the department of transportation without the approval of the commission.

3 **SECTION 2.** 73.03 (73) of the statutes is created to read:

4 73.03 (73) To bear the burden of proof by clear and convincing evidence of each
5 element of any assessment issued by the department that is based in whole or in part
6 on information, documents, or audit determinations made or provided by any person,
7 other than the department.

8 **SECTION 3.** 73.16 (3) (a) 2. of the statutes is amended to read:

9 73.16 (3) (a) 2. A department employee who was involved in the prior audit
10 determination identified or reviewed the tax issue before completing the prior audit
11 determination, as shown by any schedules, exhibits, audit reports, documents, or
12 other written evidence pertaining to the audit determination, and the schedules,
13 exhibits, reports, documents, and other written evidence show that the department
14 did not adjust the person's treatment of the tax issue, except that the condition in this
15 subdivision does not apply if the prior audit was based on information, documents,
16 or audit determinations that were made or provided by any person other than the
17 department.

18 **SECTION 4.** 73.16 (6) of the statutes is created to read:

19 73.16 (6) THIRD-PARTY AUDITS. Except as provided in s. 73.03 (28d), the
20 department may not enter into a contract or other agreement to permit any person
21 to engage in an audit of another person's documents or records as part of an effort
22 to assess, enforce, or collect a tax or fee administered by the department, or to
23 purchase taxpayer information or documents arising from the audit of a taxpayer or
24 any other person, except that this subsection does not apply to information received
25 from the federal government.

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1 **SECTION 5.** 177.01 (5) of the statutes is amended to read:

2 177.01 (5) “Business association” means a ~~nonpublic~~ corporation, joint stock
3 company, investment company, business trust, partnership, limited liability
4 company, sole proprietor, or association for business purposes, whether or not for
5 profit, including a banking organization, financial organization, insurance company,
6 or utility.

7 **SECTION 6.** 177.01 (10) (b) of the statutes is renumbered 177.01 (10) (b) (intro.)
8 and amended to read:

9 177.01 (10) (b) (intro.) “Intangible property” does not include ~~a credit balance~~
10 ~~issued to a commercial customer account~~ any of the following obligations that is owed
11 ~~by a business association in the ordinary course of business to another business~~
12 association:

13 1. A credit balance issued to a commercial customer account, unless the credit
14 balance is property described in s. 177.06 (1) or (2) held by a banking organization
15 or financial organization.

16 **SECTION 7.** 177.01 (10) (b) 2. to 8. of the statutes are created to read:

17 177.01 (10) (b) 2. A customer overpayment.

18 3. A security deposit.

19 4. A refund.

20 5. A credit memorandum.

21 6. An unused airline ticket.

22 7. An unidentified remittance.

23 8. An uncashed check, draft, or other similar instrument.

24 **SECTION 8.** 177.04 (2) of the statutes is amended to read:

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1 177.04 (2) Subject to sub. (4), any sum payable on a money order or similar
2 written instrument, other than a 3rd-party bank check, that has been outstanding
3 for more than ~~7~~ 5 years after its issuance is presumed abandoned unless the owner,
4 within ~~7~~ 5 years, has communicated in writing with the issuer concerning it or
5 otherwise indicated an interest as evidenced by a memorandum or other record on
6 file prepared by an employee of the issuer.

7 **SECTION 9.** 177.17 (2) (bm) of the statutes is created to read:

8 177.17 (2) (bm) The date of birth and social security number or other tax
9 identification number of each apparent owner, if that information is known and
10 readily available to the holder.

11 **SECTION 10.** 177.17 (4) (a) 1. of the statutes is amended to read:

12 177.17 (4) (a) 1. ~~Before~~ No later than November 1 of each year, each holder shall
13 file a report covering the previous fiscal year. In this paragraph, "fiscal year" means
14 the period beginning on July 1 and ending on the following June 30. On written
15 request by any person required to file a report, the administrator may extend the
16 deadline established in this paragraph.

17 **SECTION 11.** 177.17 (4) (a) 2. of the statutes is amended to read:

18 177.17 (4) (a) 2. Except as otherwise provided in this subdivision and except
19 as provided in subd. 3. and s. 177.06 (4), upon filing the report under subd. 1., the
20 holder shall pay or deliver to the administrator all abandoned property required to
21 be reported. This subdivision does not apply to abandoned property that is in the
22 form of amounts credited under s. 20.912 (1) to the support collections trust fund or
23 amounts not distributable from the support collections trust fund to the persons for
24 whom the amounts were awarded.

25 **SECTION 12.** 177.17 (4) (a) 3. of the statutes is created to read:

SENATE BILL 799**SECTION 12**

1 177.17 (4) (a) 3. With respect to the contents of safe deposit boxes and other
2 safekeeping repositories required to be reported under subd. 1., the holder shall pay
3 or deliver the contents of safe deposit boxes and other safekeeping repositories to the
4 administrator no earlier than February 1, and no later than February 15, of the year
5 following the year in which the holder was required to file the report under subd. 1.

6 **SECTION 13.** 177.17 (6) of the statutes is created to read:

7 177.17 (6) The administrator may promulgate rules establishing procedures
8 for filing reports and for payment and delivery of abandoned property under this
9 section, including transmission and storage safeguards to prevent unauthorized
10 disclosure of dates of birth, social security numbers, and other tax identification
11 numbers reported under this section.

12 **SECTION 14.** 177.19 (2) of the statutes, as created by 2013 Wisconsin Act 308,
13 is amended to read:

14 177.19 (2) The department of revenue shall notify the administrator if any
15 person under sub. (1) has filed a Wisconsin income tax return in that year and shall
16 provide the administrator with the address of the person that appears on the tax
17 return. The department of revenue shall also notify the administrator if any person
18 under sub. (1) is a debtor under s. 71.93 or 71.935. Any information provided by the
19 department of revenue under this subsection shall be subject to the confidentiality
20 provisions under s. 71.78.

21 **SECTION 15.** 177.24 (5) of the statutes is created to read:

22 177.24 (5) Any information provided by a claimant to the administrator under
23 this section shall be considered confidential information under s. 177.42, except that,
24 if the administrator receives more than one claim for the same property, the
25 administrator may divulge to each claimant the name of any other claimant of the

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1 same property, the name of any person appearing to be the owner of the property, and
2 whether the property has been paid or delivered to any claimant.

3 **SECTION 16.** 177.26 of the statutes is amended to read:

4 **177.26 Action to establish claim.** A person aggrieved by a decision of the
5 administrator under s. 177.24 or 177.25 or whose claim has not been acted upon
6 within 90 days after its filing may ~~bring an action to establish the claim in the circuit~~
7 ~~court, naming the administrator as a defendant. The action shall be brought, within~~
8 ~~90 days after the decision of the administrator or within 180 days after the filing of~~
9 ~~the claim if the administrator has failed to act on it. If the person establishes the~~
10 ~~claim in an action against the administrator, the court shall award the person costs~~
11 ~~and reasonable attorney fees~~ appeal the decision as provided under s. 177.43. The
12 administrator's failure to act upon a claim under s. 177.24 or 177.25 within 90 days
13 after its filing is considered notice of a final decision solely for the purpose of
14 appealing the decision under this section.

15 **SECTION 17.** 177.263 of the statutes is created to read:

16 **177.263 Recovery of incorrect payments.** If the administrator determines
17 that a claim paid under s. 177.24 or 177.25 was paid in error, the administrator may
18 undertake any collection actions and may commence suit to recover the incorrect
19 payment from the recipient to whom or on whose behalf the payment was made.

20 **SECTION 18.** 177.29 (2) (a) of the statutes is amended to read:

21 177.29 (2) (a) Except as provided in par. (b), no civil action or proceeding with
22 respect to any duty of a holder under this chapter may be commenced more than ~~5~~
23 3 years after the duty arose.

24 **SECTION 19.** 177.30 (6) of the statutes is created to read:

SENATE BILL 799**SECTION 19**

1 177.30 (6) The administrator may not enter into a contract or other agreement
2 to permit any person to engage in an audit of another person's documents or records
3 as part of an effort to administer this chapter, or to purchase information or
4 documents arising from the audit, except that this subsection does not apply to
5 information received from the federal government.

6 **SECTION 20.** 177.31 (1) of the statutes is amended to read:

7 177.31 (1) Every holder required to file a report under s. 177.17 shall, ~~as to any~~
8 ~~property for which it has obtained the last-known address of the owner,~~ maintain the
9 records ~~the name and last-known address of the owner~~ containing the information
10 required to be included in the report for ~~5~~ 3 years after the property ~~is reported~~
11 becomes reportable, unless a shorter time is provided in sub. (2) or by rule of the
12 administrator.

13 **SECTION 21.** 177.315 of the statutes is created to read:

14 **177.315 Voluntary compliance program. (1) DEFINITION.** In this section,
15 "fiscal year" has the meaning given in s. 177.17 (4) (a) 1.

16 **(2) ESTABLISHMENT OF PROGRAM.** The administrator shall establish a voluntary
17 compliance program to encourage persons who are not in compliance with this
18 chapter to voluntarily report and pay or deliver abandoned property held by them
19 that should have been, but was not, reported and paid or delivered to the
20 administrator.

21 **(3) RULES.** The administrator shall promulgate rules to implement and
22 administer the program established under sub. (2). The rules shall do all of the
23 following:

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1 (a) Provide that any person is eligible to participate in the program unless, at
2 the time the person applies to participate in the program, the administrator is
3 conducting an examination of the person's records under s. 177.30 (2) or (3).

4 (b) Specify the process that a person must follow to apply to participate in the
5 program and to successfully complete the program.

6 (c) Unless the administrator has reason to believe that a person intentionally
7 provided information in connection with the program that is untrue, require the
8 administrator to refrain from conducting an examination of records under s. 177.30
9 (2) and allow the person to conduct the person's own audit, examination, review, or
10 other inspection of the person's records to determine what abandoned property the
11 person should have reported and paid or delivered to the administrator for each of
12 the 3 fiscal years immediately preceding the date on which the person applied to
13 participate in the program.

14 (d) Provide that any person who successfully completes the program shall be
15 deemed to be in compliance with the person's obligations under this chapter upon
16 reporting and paying or delivering abandoned property for each of the 3 fiscal years
17 immediately preceding the date on which the person applied to participate in the
18 program.

19 (e) Provide that, for any person who successfully completes the program, the
20 administrator shall enter into an agreement with the person by which the
21 administrator shall do all of the following:

22 1. If the person completes the program within the first year that the program
23 is available, waive all interest and penalties imposed under s. 177.34 for all fiscal
24 years preceding the date on which the person applied to participate in the program.

SENATE BILL 799**SECTION 21**

1 2. If the person completes the program after the first year that the program is
2 available, all of the following:

3 a. Reduce the annual rate of interest payable under s. 177.34 (1) to 3 percent
4 for each fiscal year covered by the agreement.

5 b. Waive all interest imposed under s. 177.34 (1) for all fiscal years prior to the
6 period covered by the agreement.

7 c. Waive all penalties imposed under s. 177.34 (2) to (4) for all fiscal years
8 covered by the agreement and prior to the period covered by the agreement.

9 3. Agree to refrain from conducting an examination of the person's records
10 under s. 177.30 (2) or (3) or from seeking an estimate of liability under s. 177.30 (5)
11 with respect to any fiscal year covered by the agreement or prior to the period covered
12 by the agreement.

13 (f) Provide that, if the person makes false or misleading statements in
14 connection with the program, the agreement described in par. (e) is voidable at the
15 option of the administrator, and the administrator may revoke any of the benefits
16 conferred on the person under the program.

17 **SECTION 22.** 177.34 (1) of the statutes is amended to read:

18 177.34 (1) A person who fails to pay or deliver property within the time
19 prescribed by this chapter shall pay the administrator interest at the annual rate of
20 ~~18%~~ 6 percent on the property or the value thereof of the property from the date the
21 property should have been paid or delivered.

22 **SECTION 23.** 177.42 of the statutes is created to read:

23 **177.42 Confidentiality. (1) DEFINITION.** In this section, "confidential
24 information" means a report filed under s. 177.17, a record examined under s. 177.30,
25 a document submitted in connection with the voluntary compliance program under

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1 s. 177.315, or any information contained in, derived from, or related to the report,
2 record, or document.

3 **(2) DIVULGING INFORMATION.** Except as provided in sub. (3) and s. 177.18, no
4 person may divulge, circulate, or offer to obtain, divulge, or circulate confidential
5 information.

6 **(3) EXCEPTIONS.** This section does not prohibit any of the following:

7 (a) The administrator from publishing information necessary to allow owners
8 and apparent owners to claim their property.

9 (b) The administrator from reporting information necessary to comply with
10 agreements with other states under s. 177.33.

11 (c) The administrator from publishing statistics classified so as not to disclose
12 the identity of particular holders or of particular reports.

13 (d) The administrator or the administrator's agents from offering or submitting
14 confidential information as evidence into the record of any contested matter
15 involving the administrator or the administrator's agents in proceedings or litigation
16 under this chapter if, in the administrator's judgment, that evidence has reasonable
17 probative value.

18 **(4) BROWSING PROHIBITED.** (a) No person, except the person who provided the
19 confidential information, may inspect confidential information unless that person
20 does so in performing the duties of his or her position. Violation of this paragraph
21 by a state employee is grounds for dismissal.

22 (b) If any person is charged with a violation of par. (a), the administrator shall
23 notify each person whose confidential information was improperly inspected by the
24 person charged with a violation of par. (a).

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1 (c) Any person notified under par. (b) may bring an action for damages with
2 regard to the improper inspection.

3 **SECTION 24.** 177.43 of the statutes is created to read:

4 **177.43 Appeals.** Subchapter XIV of ch. 71, as it applies to appeals of income
5 and franchise tax assessment determinations under ch. 71, applies to appeals of the
6 determinations made by the administrator under this chapter.

7 **SECTION 25. Initial applicability.**

8 (1) AUDITS. The treatment of sections 73.03 (73) and 73.16 (3) (a) 2. and (6) of
9 the statutes first applies to an audit that is commenced, or an assessment that is
10 issued, by the department of revenue on the effective date of this subsection.

11 (2) INTANGIBLE PROPERTY; PRESUMPTION OF ABANDONMENT; CONTENTS OF REPORTS.
12 The treatment of sections 177.01 (5), 177.04 (2), and 177.17 (2) (bm) of the statutes,
13 the renumbering and amendment of section 177.01 (10) (b) of the statutes, and the
14 creation of section 177.01 (10) (b) 2. to 8. of the statutes first apply to fiscal years, as
15 defined in section 177.17 (4) (a) 1. of the statutes, as affected by this act, beginning
16 on July 1, 2016.

17 (3) REPORTING, PAYMENT, AND DELIVERY DEADLINES. The treatment of section
18 177.17 (4) (a) 1., 2., and 3. of the statutes first applies to a report required to be filed
19 with respect to a fiscal year, as defined in section 177.17 (4) (a) 1. of the statutes, as
20 affected by this act, beginning on July 1, 2016.

21 (4) CLAIMS. The treatment of sections 177.24 (5) and 177.26 of the statutes first
22 applies to a claim filed on the effective date of this subsection.

23 (5) STATUTE OF LIMITATIONS. The treatment of section 177.29 (2) (a) of the
24 statutes first applies to a duty of a holder that arises on the effective date of this
25 subsection.

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1 (6) RECORDS REQUIRED TO BE MAINTAINED. The treatment of section 177.31 (1) of
2 the statutes first applies to records relating to property that becomes reportable on
3 November 1, 2016.

4 (7) INTEREST. The treatment of section 177.34 (1) of the statutes first applies
5 to a duty to pay or deliver property that arises on the effective date of this subsection.

6 (8) APPEALS. The treatment of section 177.43 of the statutes first applies to a
7 determination of the administrator made on the effective date of this subsection.

8 **SECTION 26. Effective dates.** This act takes effect on the day after publication,
9 except as follows:

10 (1) INTANGIBLE PROPERTY. The amendment of section 177.01 (5) of the statutes,
11 the renumbering and amendment of section 177.01 (10) (b) of the statutes, and the
12 creation of section 177.01 (10) (b) 2. to 8. of the statutes take effect on July 1, 2016.

13

(END)