



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2769/P1
JK&GMM:jld:rs

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DUE MON.

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in Thurs 9-22

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due Monday 9-26

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1 AN ACT *to amend* 71.09 (11) (d), 71.82 (1) (a), 71.82 (1) (b), 71.82 (1) (c), 71.82 (2)
2 (a), 71.82 (2) (b), 71.82 (2) (c), 71.82 (2) (d), 71.83 (1) (a) 1., 71.83 (1) (a) 1m., 71.83
3 (1) (a) 2., 71.83 (1) (a) 3., 71.83 (1) (a) 4., 71.83 (3) (a), 71.84 (1), 71.84 (2) (a),
4 71.84 (2) (c), 71.90 (1), 71.91 (6) (d) 1., 71.91 (6) (e) 3., 71.91 (6) (f) 5., 71.91 (6)
5 (g) 2., 73.01 (4) (e) 2., 73.03 (25), 76.05 (1), 76.05 (2), 76.14, 76.28 (6) (b), 76.39
6 (3), 76.645 (2) (intro.), 77.59 (4) (a), 77.59 (8m), 77.60 (1) (a), 77.60 (1) (b), 77.60
7 (2) (intro.), 77.60 (3), 77.60 (4), 77.61 (5) (a), 77.96 (5), 78.68 (1), 78.68 (2) (intro.),
8 78.68 (3), 78.68 (4), 139.25 (3), 139.25 (4), 227.12 (3), 227.41 (1), 227.41 (3),
9 227.41 (4), 227.485 (2) (a), 227.485 (3), 227.485 (5), 227.485 (7), 227.485 (10)
10 (intro.) and 803.08; and *to create* 73.01 (4) (cm), 73.015 (3), 73.16, 77.59 (4) (c),
11 227.12 (4), 227.41 (5) and 227.485 (3m) of the statutes; **relating to:** various
12 duties of the Department of Revenue, including issuing declaratory judgments,
13 conducting audits and assessments, asserting liability, allowing claims for
14 refunds, awarding the costs of litigation to a prevailing party, imposing

1 penalties related to a taxpayer's negligence, calculating interest on unpaid
2 amounts, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Revenue (DOR) to take certain actions related to administering taxes and fees. Under the bill, generally, with regard to any audit, assessment, or claim for a refund, DOR may not take a position that is contrary to any rule promulgated by DOR that was in effect during the period related to the audit, assessment, or claim or that is contrary to any guidance published by DOR prior to that period and not subsequently retracted, altered, or amended.

Under the bill, generally, a person who is subject to an assessment or audit determination by DOR is not liable for any amount that DOR asserts that the person owes if the liability asserted is the result of a tax issue that existed in a prior assessment or audit, a DOR employee involved in the prior assessment or audit knew of the tax issue, and DOR did not assert the liability for the tax issue at the time of the prior assessment or audit. This provision, however, does not cover the treatment of tax issues that were not specifically addressed in the prior assessment or audit determination by DOR. Furthermore, a person against whom DOR asserts a liability may offset against the liability a refund of any tax or fee administered by DOR that the person may claim regardless of whether the time for claiming the refund has expired and regardless of whether the year and transaction related to the liability is the same as that related to the refund.

Also, under the bill, no agreement or waiver of a taxpayer's right to appeal a determination or to file a claim for a refund with respect to a particular audit or assessment period is valid if the agreement or waiver was executed prior to DOR's issuance of an appealable assessment or audit determination. In addition, the time within which DOR may act on the issuance of any assessment or audit determination may not be extended, except with regard to any action by DOR on a taxpayer's petition for redetermination.

Under the bill, DOR may not impose a penalty on a taxpayer for negligence or for otherwise filing an improper return unless the taxpayer's action was clearly contradicted by statute, rule, or DOR guidance and the statute, rule, or guidance was enacted, promulgated, or published prior to the period for which the penalty is imposed.

The bill requires that a buyer who paid an incorrect amount of sales tax on the sale of an item at retail apply for a refund of the tax with DOR rather than with the seller. The bill also prohibits class action lawsuits against the state or any other party if the relief sought by the plaintiff includes the refund of any tax administered by the state.

Under current law, DOR may choose not to appeal a ruling by the Tax Appeals Commission (commission) and, instead, file a notice of nonacquiescence with the clerk of the commission. The effect of filing the notice is that, although the commission's decision is binding on the parties involved in the ruling, the

Certain taxes and fees

issue a notice that it will issue a ruling on the facts contained in the petition,

commission's legal reasoning is not binding on DOR with regard to future cases. Under the bill, although DOR may file a notice of nonacquiescence and, therefore, not be required to follow the commission's legal reasoning, the parties involved in the ruling are bound by the commission's decision and the decision may be cited by the commission and the courts in future cases.

Under current law, a person may file a petition with a state agency to issue a declaratory ruling with respect to how a statute or rule applies to any person, property, or set of facts. The agency must, within a reasonable time after receiving the petition, either deny the petition for failure to complete a proper petition or schedule a hearing for the matter described in the petition. Under the bill, if a person files a petition with DOR to issue a declaratory ruling, DOR must either deny the petition for failure to complete a proper petition or schedule a hearing for the matter described in the petition no later than 30 days after receiving the petition. In

addition, if DOR does not deny the petition, DOR must hold a hearing and issue a ruling no later than 90 days after receiving the petition, unless the time for holding a hearing and issuing a ruling is extended by a written agreement with all parties involved.

Under current law, if an individual, a small nonprofit corporation, or small business is the prevailing party in any contested legal matter with a state agency and the prevailing party submits a motion for costs, the hearing examiner must award the prevailing party the costs incurred in the matter, unless the examiner finds that the agency was substantially justified in taking its position related to the matter or that special circumstances exist. However, an individual whose federal adjusted gross income (AGI) is \$150,000 or more is not eligible to recover the costs incurred in any contested legal matter with a state agency in which the individual is the prevailing party.

Under this bill, in any proceeding before the commission in which DOR is not the prevailing party and the prevailing party submits a motion for costs, the commission must award the prevailing party the costs incurred in connection with the proceeding unless the commission determines that DOR was substantially justified in taking its position or that special circumstances exist that would make the award unjust. With regard to proceedings before the commission, an individual who is the prevailing party in a contested legal matter with DOR may be awarded the costs incurred in the matter, regardless of the individual's federal AGI.

Under current law, certain persons may file a petition with a state agency to have the agency promulgate the rule. Under this bill, if a petition filed with DOR alleges that DOR has established a standard by which it construes a tax statute, but has not promulgated a rule to adopt the standard, DOR must begin the rule-making process no later than 90 days after receiving the petition and submit a rule to the legislature no later than 180 days after receiving the petition. The rule does not have to adhere to the standard established by DOR, but must address the same circumstances as the standard addresses.

Under current law, DOR may settle and dispose of tax cases pending before the Tax Appeals Commission if such action is in the state's best interest and, with the attorney general's approval, may settle and dispose of tax case pending in the courts.

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Under the bill, DOR may settle such tax cases based on the taxpayer's ability to pay the tax liability asserted by DOR.

Finally, the bill authorizes the Tax Appeals Commission to refer cases to mediation and requires that DOR propose legislation to provide alternative dispute resolution for disputes between DOR and taxpayers.

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. 71.09 (11) (d) of the statutes is amended to read:

2 71.09 (11) (d) The secretary of revenue determines that the taxpayer retired
3 during the taxable year or during the preceding taxable year after having attained
4 age 62 or becoming disabled and that the underpayment was due to reasonable cause
5 and not due to willful neglect except that this paragraph does not apply upon a
6 showing by the department under s. 73.16 (5).

7 SECTION 2. 71.82 (1) (a) of the statutes is amended to read:

8 71.82 (1) (a) In assessing taxes interest shall be added to such taxes at ~~12%~~ the
9 rate determined under s. 73.16 (6) (a) ✓ per year from the date on which such taxes if
10 originally assessed would have become delinquent if unpaid, to the date on which
11 such taxes when subsequently assessed will become delinquent if unpaid.

12 SECTION 3. 71.82 (1) (b) of the statutes is amended to read:

13 71.82 (1) (b) Except as otherwise specifically provided, in crediting
14 overpayments of income and surtaxes against underpayments or against taxes to be
15 subsequently collected and in certifying refunds of such taxes interest shall be added
16 at the rate of ~~9%~~ determined under s. 73.16 (6) (a) per year from the date on which
17 such taxes when assessed would have become delinquent if unpaid to the date on
18 which such overpayment was certified for refund except that if any overpayment of

1 tax is certified for refund within 90 days after the last date prescribed for filing the
2 return of such tax or 90 days after the date of actual filing of the return of such tax,
3 whichever occurs later, no interest shall be allowed on such overpayment. For
4 purposes of this section the return of such tax shall not be deemed actually filed by
5 an employee unless and until the employee has included the written statement
6 required to be filed under s. 71.65 (1). However when any part of a tax paid on an
7 estimate of income, whether paid in connection with a tentative return or not, is
8 refunded or credited to a taxpayer, such refund or credit shall not draw interest.

9 **SECTION 4.** 71.82 (1) (c) of the statutes is amended to read:

10 71.82 (1) (c) Any assessment made as a result of the adjustment or disallowance
11 of a claim for credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX, except as
12 provided in sub. (2) (c), shall bear interest at 12% the rate determined under s. 73.16
13 (6) (a) per year from the due date of the claim.

14 **SECTION 5.** 71.82 (2) (a) of the statutes is amended to read:

15 71.82 (2) (a) *Income and franchise taxes.* Income and franchise taxes shall
16 become delinquent if not paid when due under ss. 71.03 (8), 71.24 (9) and 71.44 (4),
17 and when delinquent shall be subject to interest at the rate of 1.5% a rate that is
18 equal to one-twelfth of the rate determined under s. 73.16 (6) (b) per month until
19 paid.

20 **SECTION 6.** 71.82 (2) (b) of the statutes is amended to read:

21 71.82 (2) (b) *Department may reduce delinquent interest.* The department shall
22 provide by rule for reduction of interest under par. (a) to 12% the rate determined
23 under s. 73.16 (6) (a) per year in stated instances wherein the secretary of revenue
24 determines that reduction is fair and equitable.

25 **SECTION 7.** 71.82 (2) (c) of the statutes is amended to read:

1 71.82 (2) (c) *Adjustment to credits.* Any assessment made as a result of the
2 disallowance of a claim for credit made under s. 71.07, 71.28 or 71.47 or subch. VIII
3 or IX with fraudulent intent, or of a portion of a claim made under said subchapters
4 or sections that was excessive and was negligently prepared, shall bear interest from
5 the due date of the claim, until refunded or paid, at one-twelfth of the rate of 1.5%
6 determined under s. 73.16 (6) (b) per month.

7 **SECTION 8.** 71.82 (2) (d) of the statutes is amended to read:

8 71.82 (2) (d) *Withholding tax.* Of the amounts required to be withheld any
9 amount not deposited or paid over to the department within the time required shall
10 be deemed delinquent and deposit reports or withholding reports filed after the due
11 date shall be deemed late. Delinquent deposits or payments shall bear interest at
12 one-twelfth of the rate of 1.5% determined under s. 73.16 (6) (b) per month from the
13 date deposits or payments are required under this section until deposited or paid
14 over to the department. The department shall provide by rule for reduction of
15 interest on delinquent deposits to 12% the rate determined under s. 73.16 (6) (a) per
16 year in stated instances wherein the secretary of revenue determines reduction fair
17 and equitable. In the case of a timely filed deposit or withholding report, withheld
18 taxes shall become delinquent if not deposited or paid over on or before the due date
19 of the report. In the case of no report filed or a report filed late, withheld taxes shall
20 become delinquent if not deposited or paid over by the due date of the report. In the
21 case of an assessment under s. 71.83 (1) (b) 2., the amount assessed shall become
22 delinquent if not paid on or before the first day of the calendar month following the
23 calendar month in which the assessment becomes final, but if the assessment is
24 contested before the tax appeals commission or in the courts, it shall become

1 delinquent on the 30th day following the date on which the order or judgment
2 representing final determination becomes final.

3 **SECTION 9.** 71.83 (1) (a) 1. of the statutes is amended to read:

4 71.83 (1) (a) 1. 'Failure to file.' In case of failure to file any return required
5 under s. 71.03, 71.24, 71.44, or 71.775 on the due date prescribed therefor, including
6 any applicable extension of time for filing, ~~unless it is shown that the failure is due~~
7 ~~to reasonable cause and not due to willful neglect~~ and upon a showing by the
8 department under s. 73.16 (5), there shall be added to the amount required to be
9 shown as tax on the return 5% of the amount of the tax if the failure is for not more
10 than one month, with an additional 5% for each additional month or fraction thereof
11 during which the failure continues, not exceeding 25% in the aggregate. For
12 purposes of this subdivision, the amount of tax required to be shown on the return
13 shall be reduced by the amount of any part of the tax which is paid on or before the
14 due date prescribed for payment and by the amount of any credit against the tax
15 which may be claimed upon the return.

16 **SECTION 10.** 71.83 (1) (a) 1m. of the statutes is amended to read:

17 71.83 (1) (a) 1m. 'Failure to file information return.' If a person fails to file a
18 return required under subch. XI by the prescribed due date, including any extension,
19 or files an incorrect or incomplete return, that person may be subject to a penalty of
20 \$10 for each violation. A penalty shall be waived ~~if the person shows that a violation~~
21 ~~is due to reasonable cause and not due to willful neglect~~ except upon a showing by
22 the department under s. 73.16 (5).

23 **SECTION 11.** 71.83 (1) (a) 2. of the statutes is amended to read:

24 71.83 (1) (a) 2. 'Incomplete or incorrect return.' If any person required under
25 this chapter to file an income or franchise tax return files an incomplete or incorrect

SECTION 11

1 return, ~~unless it is shown that such filing was due to good cause and not due to~~
2 ~~neglect and upon a showing by the department under s. 73.16 (5),~~ there shall be
3 added to such person's tax for the taxable year 25% of the amount otherwise payable
4 on any income subsequently discovered or reported. The amount so added shall be
5 assessed, levied and collected in the same manner as additional normal income or
6 franchise taxes, and shall be in addition to any other penalties imposed by this
7 chapter. In this subdivision, "return" includes a separate return filed by a spouse
8 with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g)
9 to (L) after the filing of that separate return, and a joint return filed by the spouses
10 with respect to a taxable year for which a separate return is filed under s. 71.03 (2)
11 (m) after the filing of that joint return.

12 **SECTION 12.** 71.83 (1) (a) 3. of the statutes is amended to read:

13 71.83 (1) (a) 3. 'Incomplete or incorrect deposit or withholding report.' If any
14 person required under subch. X to file a deposit report or withholding report files an
15 incomplete or incorrect report, or fails to properly withhold or fails to properly
16 deposit or pay over withheld funds, ~~unless it can be shown that the filing or failure~~
17 ~~was due to good cause and not due to neglect and upon a showing by the department~~
18 ~~under s. 73.16 (5),~~ there shall be added to the tax 25% of the amount not reported or
19 not withheld, deposited or paid over. The amount so added shall be assessed, levied
20 and collected in the same manner as additional income or franchise taxes, and shall
21 be in addition to any other penalties imposed in this subchapter. "Person", in this
22 subdivision, includes an officer or employee of a corporation or other responsible
23 person or a member or employee of a partnership or limited liability company or
24 other responsible person who, as such officer, employee, member or other responsible
25 person, is under a duty to perform the act in respect to which the violation occurs.

1 **SECTION 13.** 71.83 (1) (a) 4. of the statutes is amended to read:

2 71.83 (1) (a) 4. 'Late filing of withholding report.' In case of failure to file any
3 withholding deposit or payment report required under s. 71.65 (3) on the due date
4 prescribed therefor, ~~unless it is shown that the failure is due to reasonable cause and~~
5 ~~not due to willful neglect~~ upon a showing by the department under s. 73.16 (5), there
6 shall be added to the amount required to be shown as withheld taxes on the report
7 5% of the amount if the failure is not for more than one month, with an additional
8 5% for each additional month or fraction thereof during which the failure continues,
9 not exceeding 25% in the aggregate.

10 **SECTION 14.** 71.83 (3) (a) of the statutes is amended to read:

11 71.83 (3) (a) If any person required under this chapter to file an income or
12 franchise tax return fails to file a return within the time prescribed by law, or as
13 extended under s. 71.03 (7), 71.24 (7) or 71.44 (3), unless the return is filed under such
14 an extension but the person fails to file a copy of the extension that is granted by or
15 requested of the internal revenue service, the department shall add \$50 to the
16 person's tax if the return is filed under subch. I of this chapter or \$150 to the person's
17 tax if the return is filed under subch. IV or VII of this chapter. If no tax is assessed
18 against any such person the amount of this fee shall be collected as income or
19 franchise taxes are collected. If any person who is required under s. 71.65 (3) to file
20 a withholding report and deposit withheld taxes fails timely to do so and upon a
21 showing by the department under s. 73.16 (5); unless the person so required dies ~~or~~
22 ~~the failure is due to a reasonable cause and not due to neglect~~; the department of
23 revenue shall add \$50 to the amount due except that if the person is subject to
24 taxation under subch. IV or VII of this chapter the department shall add \$150 to the
25 amount due.

1 **SECTION 15.** 71.84 (1) of the statutes is amended to read:

2 71.84 (1) INDIVIDUALS AND FIDUCIARIES. Except as provided in s. 71.09 (11), in
3 the case of any underpayment of estimated tax by an individual, estate or trust,
4 except as provided under s. 71.09, there shall be added to the aggregate tax for the
5 taxable year interest at the rate of 12% determined under s. 73.16 (6) (a) per year on
6 the amount of the underpayment for the period of the underpayment. In this
7 subsection, "the period of the underpayment" means the time period from the due
8 date of the installment until either the 15th day of the 4th month beginning after the
9 end of the taxable year or the date of payment, whichever is earlier.

10 **SECTION 16.** 71.84 (2) (a) of the statutes is amended to read:

11 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
12 of estimated tax under s. 71.29 or 71.48 there shall be added to the aggregate tax for
13 the taxable year interest at the rate of 12% determined under s. 73.16 (6) (a) per year
14 on the amount of the underpayment for the period of the underpayment. For
15 corporations, except as provided in par. (b), "period of the underpayment" means the
16 time period from the due date of the installment until either the 15th day of the 3rd
17 month beginning after the end of the taxable year or the date of payment, whichever
18 is earlier. If 90% of the tax shown on the return is not paid by the 15th day of the 3rd
19 month following the close of the taxable year, the difference between that amount
20 and the estimated taxes paid, along with any interest due, shall accrue delinquent
21 interest under s. 71.91 (1) (a).

22 **SECTION 17.** 71.84 (2) (c) of the statutes is amended to read:

23 71.84 (2) (c) If a refund under s. 71.29 (3m) results in an income or franchise
24 tax liability that is greater than the amount of estimated taxes paid in reduced by
25 the amount of the refund, the taxpayer shall add to the aggregate tax for the taxable

1 year interest at an annual rate of 12% determined under s. 73.16 (6) (a) on the
2 amount of the unpaid tax liability for the period beginning on the date the refund is
3 issued and ending on the 15th day of the 3rd month beginning after the end of the
4 taxable year, or the date the tax liability is paid, whichever is earlier.

5 **SECTION 18.** 71.90 (1) of the statutes is amended to read:

6 71.90 (1) DEPOSIT. The department shall notify any person who files a petition
7 for redetermination that the person may deposit the amount of an additional
8 assessment, including any interest or penalty, with the department, or with a person
9 that the department prescribes, at any time before the department makes its
10 redetermination. The department shall notify spouses jointly except that, if the
11 spouses have different addresses and if either spouse notifies the department in
12 writing of those addresses, the department shall serve a duplicate of the original
13 notice on the spouse who has the address other than the address to which the original
14 notice was sent. Amounts deposited under this subsection shall be subject to the
15 interest provided by s. 71.82 only to the extent of the interest accrued prior to the first
16 day of the month succeeding the date of deposit. Any deposited amount which is
17 refunded shall bear interest at the rate of 9% determined under s. 73.16 (6) (a) per
18 year during the time the funds were on deposit. A person may also pay any portion
19 of an assessment which is admitted to be correct and the payment shall be considered
20 an admission of the validity of that portion of the assessment and may not be
21 recovered in an appeal or in any other action or proceeding.

22 **SECTION 19.** 71.91 (6) (d) 1. of the statutes is amended to read:

23 71.91 (6) (d) 1. Any person, including an officer or employee, who fails to
24 surrender property that is subject to levy upon demand of the department is liable
25 to the department for a sum equal to the value of the property not surrendered, but

not exceeding the amount of taxes for the collection of which that levy was made, together with costs and interest at the rate of 18% determined under s. 73.16 (6) (b) per year from the date of that levy. Any amount, other than costs, recovered under this paragraph shall be credited against the tax liability for the collection of which that levy was made. The liability under this paragraph may be assessed, levied and collected as are additional income or franchise taxes or may be recovered by the department in a civil action.

SECTION 20. 71.91 (6) (e) 3. of the statutes is amended to read:

71.91 (6) (e) 3. For purposes of an adjudication under this paragraph, the assessment of the tax upon which the interest or lien of the department is based is conclusively presumed to be valid. Interest shall be allowed for judgments under this paragraph at the rate of 12% determined under s. 73.16 (6) (a) per year from the date the department receives the money wrongfully levied upon to the date of payment of the judgment or from the date of sale to the date of payment.

SECTION 21. 71.91 (6) (f) 5. of the statutes is amended to read:

71.91 (6) (f) 5. Before the sale, the department shall determine a minimum price for which the property shall be sold. If no person offers for that property at the sale at least the amount of the minimum price, the state shall purchase the property for the minimum price; otherwise, the property shall be sold to the highest bidder. In determining the minimum price, the department shall take into account the expense of making the levy and sale in addition to the value of the property. If payment in full is required at the time of acceptance of a bid and is not paid then, the department shall sell the property in the manner provided under this paragraph. If the conditions of the sale permit part of the payment to be deferred and if that part is not paid within the prescribed period, the department may sue the purchaser in

1 the circuit court for Dane County for the unpaid part of the purchase price and
2 interest at the rate of 12% determined under s. 73.16 (6) (a) per year from the date
3 of the sale or the department may declare the sale void and may sell the property
4 again under this paragraph. If the property is sold again, the 2nd purchaser shall
5 receive it free of any claim of the defaulting purchaser and the amount paid upon the
6 bid price by the defaulting purchaser is forfeited.

7 **SECTION 22.** 71.91 (6) (g) 2. of the statutes is amended to read:

8 71.91 (6) (g) 2. The owners of any real property sold under par. (f), their heirs
9 or personal representatives, or any person having an interest in or a lien on that
10 property, or any person on behalf of a person specified in this subdivision may redeem
11 the property sold, or any part of that property, within 120 days after the sale by
12 payment to the purchaser or, if the purchaser cannot be found in the county in which
13 the property to be redeemed is situated, then to the department, for the use of the
14 purchaser or the purchaser's heirs or assigns, the amount paid by the purchaser and
15 interest at the rate of 18% determined under s. 73.16 (6) (b) per year.

16 **SECTION 23.** 73.01 (4) (cm) of the statutes is created to read:

17 73.01 (4) (cm) The commission may refer any matter pending before it to
18 mediation. The assignment of a mediator shall be subject to the approval of all
19 parties to the matter and all such parties shall pay, in equal amounts, the mediation
20 costs.

21 **SECTION 24.** 73.01 (4) (e) 2. of the statutes is amended to read:

22 73.01 (4) (e) 2. Except for hearings on ss. 341.405 and 341.45, the department
23 of revenue may choose not to appeal and to nonacquiesce in the decision or order by
24 sending a notice of nonacquiescence to the clerk of the commission, to the legislative
25 reference bureau for publication in the Wisconsin administrative register and to the

1 taxpayer or the taxpayer's representative before the time expires for seeking a
2 review of the decision or order under s. 73.015. The effect of this action is that,
3 although the decision or order is binding on the parties for the instant case and the
4 decision or order may be cited by the commission and the courts, the commission's
5 conclusions of law, the rationale and construction of statutes in the instant case are
6 not binding upon or required to be followed by the department of revenue in other
7 cases.

8 **SECTION 25.** 73.015 (3) of the statutes is created to read:

9 73.015 (3) Except for decisions and orders in small claims matters, as defined
10 in s. 73.01 (1) (b), a conclusion of law or other holding in any decision or order of the
11 tax appeals commission may be cited by the commission or the courts as authority
12 unless that conclusion of law or holding has been reversed, modified, overruled, or
13 vacated on the merits on appeal or by a subsequent decision or order of the
14 commission.

15 **SECTION 26.** 73.03 (25) of the statutes is amended to read:

16 73.03 (25) To settle and dispose of tax cases or issues pending before the tax
17 appeals commission when, in the judgment of the department of revenue, such action
18 is warranted in the best interests of the state; and, with the approval of the attorney
19 general, to settle and dispose of tax cases or issues pending in the courts. Settlements
20 under this subsection may be made on the basis of a taxpayer's ability to pay the
21 liability asserted by the department.

22 **SECTION 27.** 73.16 of the statutes is created to read:

23 **73.16 General provision. (1) DEFINITIONS.** In this section:

(a) "Department" means the department of revenue.

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Internal Revenue Code in s. 71.255(1)(c)

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(c) "Published" means prepared and issued for public distribution and does not include guidance on a private matter or issue.

(d) "Stale refund" means a refund of any tax or fee administered by the department for which a claim has not been timely filed.

(e) "Written guidance" means a written statement made by an employee of the department acting in an official capacity regarding a Wisconsin tax question to the taxpayer or the taxpayer's representative.

(2) RELYING ON PUBLISHED GUIDANCE. (a) Except as provided in pars. (b) and (c), in the course of any determination, or in the course of any proceeding appealing any determination, the department shall not take a position that is contrary to any rule promulgated by the department that was in effect during the period related to the determination or that is contrary to any guidance published by the department prior to that period and not subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the tax appeals commission or courts.

(am) Except as provided in pars. (b) and (c), in the course of any determination, or in the course of any proceeding appealing a determination, the department shall not take a position that is contrary to any written guidance that was provided to a person who is a party to the determination or the appeal of the determination regarding the same facts as in the determination and not subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the tax appeals commission or courts.

to reverse or substantially alter its policy with regard to, or its interpretation of,

1 (b) With regard to any position taken by the department in any matter

2 described under par. (a) or (am), if the department amends a rule *for any purpose*

3 *other than to implement* a legislative act or final and conclusive decision of the tax

4 *of* appeals commission or *the* courts, the department shall apply the amendment

5 prospectively from the effective date of the publication of the emergency or

6 permanent rule. A retroactive change in any rule that is related to implementing a

7 legislative act or final and conclusive decision of the tax appeals commission or courts

8 may take effect no earlier than the act's effective date or the date on which the

9 decision became final and conclusive unless otherwise prescribed by the legislature

10 or ~~ordered~~ by ~~the courts~~ *Clause 16-10* ✓

11 (c) With regard to any position taken by the department in any matter

12 described under par. (a) or (am), if the department retracts, alters, or amends

13 previously published or previously issued written guidance for any purpose other

14 than to implement a legislative act or final and conclusive decision of the tax appeals

15 commission or courts, the department shall apply the retraction, alteration, or

16 amendment prospectively only, unless the change is to a taxpayer's benefit, in which

17 case, the department shall apply the retraction, alteration, or amendment

18 retroactively. A retroactive change in any previously published or previously issued

19 written guidance related to implementing a legislative act or final and conclusive

20 decision of the tax appeals commission or courts may take effect no earlier than the

21 act's effective date or the date on which the decision became final and conclusive

22 unless otherwise prescribed by the legislature or ordered by the courts.

23 (3) RELYING ON PAST AUDITS. (a) A person who is subject to a determination by

24 the department, including all other members of that person's *commonly* controlled group for

25 purposes of determining the tax due under s. 71.23 for taxable years beginning after

1 December 31, 2008, shall not be liable for any amount that the department asserts
2 that the person owes if all of the following conditions are satisfied:

3 1. The liability asserted by the department is the result of a tax issue during
4 the period associated with a prior determination for which the person is subject to
5 and the tax issue is materially the same as the tax issue during the period associated
6 with the current determination.

7 2. A department employee who was involved in the prior determination
8 identified or reviewed the tax issue before completing the prior determination, as
9 shown by any schedules, exhibits, audit reports, documents, or other evidence
10 pertaining to the determination, that shows that the department did not adjust the
11 taxpayer's treatment of the tax issue. and the schedules, exhibits, reports, documents and other evidence show

12 3. The liability asserted by the department as described under subd. 1. was not
13 asserted in the prior determination.

14 (b) This subsection does not apply to any period associated with a
15 determination, if the period begins after the promulgation of a rule, dissemination
16 of written guidance to the public or to the person who is subject to the determination,
17 the effective date of a statute, or the date on which a tax appeals commission or court
18 decision becomes final and conclusive and if the rule, guidance, statute, or decision
19 imposes the liability as result of the tax issue described in par. (a) 1.

20 (4) INSERT 17-20 EQUITABLE RECOUPMENT. A person against whom the department asserts a
21 state tax liability under s. 134.65 or 134.66 or subch. III, VIII, IX, XI, or XII of ch. 77
22 or ch. 71, 72, 78, 125, or 139 may offset against that liability the amount of any stale
23 refund that the person may claim regardless of whether the time for claiming the
24 stale refund has expired and regardless of whether the year, transaction, tax, or fee
25 related to the liability is the same as that related to the stale refund. This subsection

insert 17-25

or state assessment

1 subsection does not apply to any state refund that is associated with any period that
2 is prior to the initial date of the period associated with the liability. *INSERT 18-2*

3 (5) NEGLIGENCE DETERMINATIONS. The department shall not impose a penalty
4 on a taxpayer under ss. 71.83 (1) (a) 1. to 4., 77.60 (3) and (4), 78.68 (3) and (4), and
5 139.25 (3) and (4) unless the department shows that the taxpayer's action or inaction
6 was caused by the taxpayer's failure to use ordinary business care and prudence to
7 comply with state tax laws as provided under the statutes, administrative rules,
8 published department guidance or other written notice provided by the department,
9 or a final and conclusive decision of the tax appeals commission or a court.

INSERT 18-5

10 ~~(6) CALCULATION OF INTEREST RATES. (a) Annually, except as provided in par. (b),~~
11 ~~the department shall determine and publish an interest rate that is applicable to~~
12 ~~amounts owed to the department and to taxpayers during that calendar year and~~
13 ~~equal to the 2-year U.S. department of the treasury rate as of December 1 of the prior~~
14 ~~year, plus 4 percent.~~
15 ~~(b) Annually, the department shall determine and publish an interest rate that~~
16 ~~is applicable to delinquent amounts owed to the department during that calendar~~
17 ~~year and equal to the 2-year U.S. department of the treasury rate as of December~~
18 ~~1 of the prior year, plus 10 percent.~~

Except as provided in subs. (4) and (5),

19 ~~(7) APPLICABILITY. Notwithstanding any other provision of law, this section~~
20 applies to all taxes and fees administered by the department.

SECTION 28. 76.05 (1) of the statutes is amended to read:

22 76.05 (1) If any company defined in s. 76.02 or its officers or agents shall refuse
23 or neglect to make any reports required by s. 76.04 or by the department, or shall
24 refuse or neglect to permit an inspection and examination of its records, books,
25 accounts or papers when requested by the department, or shall refuse or neglect to

1 appear before the department in obedience to a summons, and upon a showing by the
2 department under s. 73.16 (5), such company shall be estopped to question or
3 impeach the action or determination of the department ~~except upon satisfactory~~
4 ~~proof of fraud or mistake injurious to the company.~~

5 **SECTION 29.** 76.05 (2) of the statutes is amended to read:

6 76.05 (2) ~~No~~ Upon a showing by the department under s. 73.16 (5), no company
7 shall be allowed in any action or proceeding to question the amount or valuation of
8 its property as assessed by the department unless such company shall have made
9 and filed with the department a full and complete report of the facts and information
10 prescribed by s. 76.04 and called for by the department thereunder, ~~provided that the~~
11 ~~refusal or neglect of such company to file the report in time may on application of the~~
12 ~~company and for good cause shown be excused by the department on condition that~~
13 ~~such.~~ If the department has not made a showing under s. 73.16 (5), the company shall
14 make a full and complete report of all facts and information mentioned in said s.
15 76.04 within 15 days after notice by mail of the amount of the assessment of the
16 property of such company, and shall appear before the department at a time
17 designated by it and make a full disclosure of all property liable to assessment and
18 taxation under this subchapter and show the full value of such property to the
19 satisfaction of the department.

20 **SECTION 30.** 76.14 of the statutes is amended to read:

21 **76.14 Remedies for nonpayment of taxes.** All taxes levied under this
22 subchapter upon the property of any company defined in s. 76.02, which are not paid
23 at the time provided by law, shall thereupon become delinquent and bear interest at
24 the rate of 1.5% per month until actually paid. ~~The neglect~~ Upon a showing by the
25 department under s. 73.16 (5), the failure of any such company to pay the taxes and

1 interest so required of the company within 60 days after the entry of final judgment
2 dismissing in whole or in part any action of the company to restrain or set aside a tax,
3 or the ~~neglect~~ failure of the company within 60 days after the entry of final judgment
4 in favor of the state for the taxes and interest to pay the judgment shall be cause for
5 forfeiture of all the rights, privileges and franchises granted by special charter or
6 obtained under general laws, by or under which the company is organized and its
7 business is operated. The attorney general upon ~~such neglect~~ the showing by the
8 department under s. 73.16 (5) shall proceed by action to have forfeiture of such rights,
9 privileges and franchises of the company duly declared. Any such company, at any
10 time before the final judgment for forfeiture of such rights, privileges and franchises
11 is rendered, may be permitted ~~upon good cause shown,~~ absent a showing by the
12 department under s. 73.16 (5), to pay the taxes, interest and the costs of the action
13 upon special application to the court in which the action is pending upon such terms
14 as the court directs.

15 **SECTION 31.** 76.28 (6) (b) of the statutes is amended to read:

16 76.28 (6) (b) If any light, heat and power company that is required under this
17 section to file a report fails to file a report within the time prescribed by law or as
18 extended under sub. (7), ~~unless it is shown that the failure is due to reasonable cause~~
19 ~~and not due to willful neglect~~ and upon a showing by the department under s. 73.16
20 (5), there shall be added to the amount required to be shown as license fees on the
21 report 5% of the amount of such fees if the failure is for not more than one month,
22 with an additional 5% for each additional month or fraction thereof during which the
23 failure continues, not exceeding 25% in the aggregate.

24 **SECTION 32.** 76.39 (3) of the statutes is amended to read:

1 76.39 (3) Every railroad company operating in this state shall file annually
2 with the department, on or before April 15, on a form prepared by the department,
3 a true and accurate statement of all rentals paid to each car line company during the
4 previous calendar year and shall remit to the department the amount of the tax
5 required to be withheld under sub. (2). Every car line company, which during the
6 previous calendar year has received gross earnings in this state from a source other
7 than a railroad company operating in this state, shall, on or before April 15, on a form
8 prepared by the department, file with the department a true and accurate statement
9 of such gross earnings in this state and the name of the company from which received
10 and shall remit to the department the amount of the tax imposed under sub. (2) on
11 such gross earnings in this state. The payment dates provided for in sub. (3a) shall
12 apply. Upon written request received by the department before April 15, the
13 department may grant an extension of not to exceed 30 days for the filing of the report
14 and the payment of the taxes levied in this section. If any railroad company or car
15 line company fails to file such report when due, or as extended by the department,
16 ~~unless it is shown that the failure is due to reasonable cause and not due to willful~~
17 ~~neglect and upon a showing by the department under s. 73.16 (5),~~ there shall be
18 added to the amount required to be shown as gross earnings tax on the report 5% of
19 the amount thereof if the failure is for not more than one month, with an additional
20 5% for each additional month or fraction thereof during which the failure continues,
21 not exceeding 25% in the aggregate. If any railroad company or car line company
22 fails to pay all taxes due within the time prescribed or as extended by the
23 department, the unpaid taxes shall be delinquent, and shall be subject to interest
24 under sub. (4). All taxes, late filing fees, penalties and interest shall be deposited in
25 the general fund.

1 **SECTION 33.** 76.645 (2) (intro.) of the statutes is amended to read:

2 76.645 (2) NEGLIGENCE. (intro.) An insurer that fails to pay an amount due,
3 or file a return required, under s. 76.64, ~~unless the insurer shows that the failure is~~
4 ~~due to reasonable cause and not due to willful neglect~~ and upon a showing by the
5 department of revenue under s. 73.16 (5), is liable for the greater of the following
6 amounts:

7 ~~**SECTION 34.** 77.59 (4) (a) of the statutes is amended to read:~~

8 ~~77.59 (4) (a) Except as provided in sub. (3m), at any time within 4 years after~~
9 ~~the due date, or in the case of buyers the unextended due date, of a person's~~
10 ~~corresponding Wisconsin income or franchise tax return or, if exempt, within 4 years~~
11 ~~of the 15th day of the 4th month of the year following the close of the calendar or fiscal~~
12 ~~year for which that person files a claim, that person may, unless a determination by~~
13 ~~the department by office or field audit of a seller has been made and unless a~~
14 ~~determination by office audit of a buyer other than an audit in which the tax that is~~
15 ~~the subject of the refund claim was not adjusted has been made and unless a~~
16 ~~determination by field audit of the buyer has been made, file with the department~~
17 ~~a claim for refund of taxes paid to the department by that person. If the amount of~~
18 ~~the claim is at least \$50 or if either the seller has ceased doing business, the buyer~~
19 ~~is being field audited or the seller may no longer file a claim, the~~ The buyer may,
20 within the time period under this subsection, file a claim with the department for a
21 refund of the taxes paid to the seller. A claim is timely if it fulfills the requirements
22 under s. 77.61 (14). A buyer may claim a refund under this paragraph only on a form
23 prescribed by the department, only by signing that form and only if the seller signs
24 the form unless the department waives that requirement. If both a buyer and a seller
25 file a valid claim for the same refund, the department may pay either claim. The

1 claim for refund shall be regarded as a request for determination. The determination
2 thus requested shall be made by the department within one year after the claim for
3 refund is received by it unless the taxpayer has consented in writing to an extension
4 of the one-year time period prior to its expiration.

5 **SECTION 35.** 77.59 (4) (c) of the statutes is created to read:

6 77.59 (4) (c) The department may collect a \$25 fee for each refund claim filed
7 by a buyer under par. (a) for sales and use taxes paid in error to a seller.

8 **SECTION 36.** 77.59 (8m) of the statutes is amended to read:

9 77.59 (8m) Within the time period under sub. (4), the department of revenue
10 may refund excess taxes paid to it under this chapter, even if the person applying for
11 the refund has been field audited in respect to those taxes, if the applicant's
12 customers have ~~filed valid claims for refunds with~~ provided written notice to the
13 applicant requesting refunds and if the refund is passed along to those customers.

14 **SECTION 37.** 77.60 (1) (a) of the statutes is amended to read:

15 77.60 (1) (a) Except as provided in par. (b), unpaid taxes shall bear interest at
16 the rate of ~~12%~~ determined under s. 73.16 (6) (a) per year from the due date of the
17 return until paid or deposited with the department. Taxes refunded to the seller
18 shall bear interest at ~~9%~~ the rate determined under s. 73.16 (6) (a) per year from the
19 due date of the return to the date on which the refund is certified on the refund rolls.
20 An extension of time within which to file a return shall not extend the due date of the
21 return for purposes of interest computation. Taxes refunded to the buyer shall bear
22 interest at ~~9%~~ the rate determined under s. 73.16 (6) (a) per year from the last day
23 of the month following the month during which the buyer paid the tax to the date on
24 which the refund is certified on the refund rolls.

25 **SECTION 38.** 77.60 (1) (b) of the statutes is amended to read:

1 77.60 (1) (b) Any unpaid taxes for a calendar year or a fiscal year resulting from
2 a field audit shall bear interest at the rate of 12% determined under s. 73.16 (6) (a)
3 per year from the due date of the taxpayer's Wisconsin income or franchise tax return
4 for that calendar or fiscal year or, if exempt, from the 15th day of the 4th month of
5 the year after the close of the calendar or fiscal year for which the taxes are due to
6 the date on which the taxes are paid or, if unpaid, become delinquent, whichever is
7 earlier.

8 SECTION 39. 77.60 (2) (intro.) of the statutes is amended to read:

9 77.60 (2) (intro.) Delinquent Upon a showing by the department under s. 73.16
10 (5), delinquent sales and use tax returns shall be subject to a \$20 late filing fee unless
11 the return was not timely filed because of the death of the person required to file or
12 ~~unless the return was not timely filed due to good cause and not due to neglect.~~ The
13 fee shall not apply if the department has failed to issue a seller's permit or a use tax
14 registration within 30 days of the receipt of an application for a seller's permit or use
15 tax registration accompanied by the fee established under s. 73.03 (50), if the person
16 does not hold a valid certificate under s. 73.03 (50), and the security required under
17 s. 77.61 (2) ~~has not been placed with the department.~~ Delinquent sales and use taxes
18 shall bear interest at ~~the rate of 1.5%~~ a rate that is equal to one-twelfth of the rate
19 determined under s. 73.16 (6) (b) per month until paid. The taxes imposed by this
20 subchapter shall become delinquent if not paid:

21 SECTION 40. 77.60 (3) of the statutes is amended to read:

22 77.60 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by
23 the department under s. 73.16 (5), the entire tax finally determined shall be subject
24 to a penalty of 25%, or 50% in the case of returns under s. 77.61 (1) (c), of the tax
25 exclusive of interest or other penalty. ~~A person filing an incorrect return shall have~~

1 ~~the burden of proving that the error or errors were due to good cause and not due to~~
2 ~~neglect.~~

3 **SECTION 41.** 77.60 (4) of the statutes is amended to read:

4 77.60 (4) In case of failure to file any return required under authority of s. 77.58
5 by the due date, determined with regard to any extension of time for filing, ~~unless~~
6 ~~it is shown that such failure was due to reasonable cause and not due to neglect and~~
7 upon a showing by the department under s. 73.16 (5), there shall be added to the
8 amount required to be shown as tax on such return 5% of the amount of such tax if
9 the failure is not for more than one month, with an additional 5% for each additional
10 month or fraction thereof during which such failure continues, not exceeding 25% in
11 the aggregate. For purposes of this subsection, the amount of tax required to be
12 shown on the return shall be reduced by the amount of any part of the tax which is
13 paid on or before the due date prescribed for payment of the tax and by the amount
14 of any credit against the tax which may be claimed upon the return.

15 **SECTION 42.** 77.61 (5) (a) of the statutes is amended to read:

16 77.61 (5) (a) It is unlawful for the department or any person having an
17 administrative duty under this subchapter to make known in any manner whatever
18 the business affairs, operations or information obtained by an investigation of
19 records and equipment of any retailer or any other person visited or examined in the
20 discharge of official duty, or the amount or source of income, profits, losses,
21 expenditures, or any particular thereof, set forth or disclosed in any return, or to
22 permit any return or copy thereof to be seen or examined by any person. This
23 paragraph does not prohibit the department of revenue from publishing statistics
24 classified so as not to disclose the identity of particular returns or reports and the
25 items thereof. This paragraph does not prohibit employees or agents of the

1 department of revenue from offering or submitting information obtained by
2 investigation or any return or any schedule, exhibit or writing pertaining to a return
3 or any copy of, or information derived from, any of those documents as evidence into
4 the record of any contested matter involving the department in proceedings or
5 litigation on state tax matters if that evidence has reasonable probative value. This
6 paragraph does not prohibit employees or agents of the department of revenue from
7 informing a buyer or seller who has filed a claim for a refund that a refund has been
8 paid to a seller or buyer with respect to the same transaction.

9 **SECTION 43.** 77.96 (5) of the statutes is amended to read:

10 77.96 (5) Each person subject to a surcharge under s. 77.93 shall, on or before
11 the due date, including extensions, for filing under ch. 71, file an accurate statement
12 of its gross tax liability or net business income. Payments made after the due date
13 under sub. (2) and on or before the due date under this subsection are not delinquent
14 but are subject to interest at the rate of 12% determined under s. 73.16 (6) (a) per
15 year.

16 **SECTION 44.** 78.68 (1) of the statutes is amended to read:

17 78.68 (1) Unpaid taxes shall bear interest at the rate of 12% determined under
18 s. 73.16 (6) (a) per year from the due date of the tax until paid or deposited with the
19 department, and all refunded taxes bear interest at the rate of 9% determined under
20 s. 73.16 (6) (a) per year from the due date of the return to the date on which the refund
21 is certified on the refund rolls.

22 **SECTION 45.** 78.68 (2) (intro.) of the statutes is amended to read:

23 78.68 (2) (intro.) Delinquent tax returns are subject to a \$10 late filing fee.
24 Delinquent motor vehicle fuel, alternate fuels and general aviation fuel taxes bear
25 interest at the rate of 1.5% a rate that is equal to one-twelfth of the rate determined

1 under s. 73.16 (6) (b) per month until paid. The taxes imposed by this chapter are
2 delinquent if not paid as follows:

3 **SECTION 46.** 78.68 (3) of the statutes is amended to read:

4 78.68 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by
5 the department under s. 73.16 (5), the entire tax finally determined is subject to a
6 penalty of 25% of the tax exclusive of interest or other penalty. ~~A person filing an~~
7 ~~incorrect return has the burden of proving that the error or errors were due to good~~
8 ~~cause and not due to neglect.~~

9 **SECTION 47.** 78.68 (4) of the statutes is amended to read:

10 78.68 (4) In case of failure to file any return required under ss. 78.12, 78.49,
11 and 78.58 by the due date, ~~unless it is shown that that failure was due to reasonable~~
12 ~~cause and not due to neglect~~ and upon a showing by the department under s. 73.16
13 (5), there shall be added to the amount required to be shown as tax on that return
14 5% of the amount of the tax if the failure is for not more than one month, and an
15 additional 5% of the tax for each additional month or fraction thereof during which
16 the failure continues, not exceeding 25% of the tax in the aggregate. For purposes
17 of this subsection, the amount of tax required to be shown on the return shall be
18 reduced by the amount of any part of the tax which is paid on or before the due date
19 prescribed for payment of the tax and by the amount of any credit against the tax
20 which may be claimed upon the return.

21 **SECTION 48.** 139.25 (3) of the statutes is amended to read:

22 139.25 (3) INCORRECT RETURN. If ~~due to neglect~~ an incorrect return is filed and
23 upon a showing by the department under s. 73.16 (5), the entire tax finally
24 determined is subject to a penalty of 25% of the tax exclusive of interest or other

1 penalty. A person filing an incorrect return has the burden of proving that the error
2 or errors were due to good cause and not due to neglect.

3 **SECTION 49.** 139.25 (4) of the statutes is amended to read:

4 139.25 (4) FAILURE TO FILE RETURN. In case of failure to file any return required
5 under s. 139.05, 139.06 or 139.11 by the due date, ~~unless it is shown that that failure~~
6 ~~was due to reasonable cause and not due to neglect~~ and upon a showing by the
7 department under s. 73.16 (5), there shall be added to the amount required to be
8 shown as tax on that return 5% of the amount of that tax if the failure is for not more
9 than one month, and an additional 5% of the tax for each additional month or fraction
10 thereof during which that failure continues, not exceeding 25% of the tax in the
11 aggregate. For purposes of this subsection, the amount of tax required to be shown
12 on the return shall be reduced by the amount of any part of the tax which is paid on
13 or before the due date prescribed for payment of the tax and by the amount of any
14 credit against the tax which may be claimed upon the return.

15 **SECTION 50.** 227.12 (3) of the statutes is amended to read:

16 227.12 (3) ~~Within~~ Except as provided in sub. (4), within a reasonable period of
17 time after the receipt of a petition under this section, an agency shall either deny the
18 petition in writing or proceed with the requested rule making. If the agency denies
19 the petition, it shall promptly notify the petitioner of the denial, including a brief
20 statement of the reason for the denial. If the agency proceeds with the requested rule
21 making, it shall follow the procedures prescribed in this subchapter.

22 **SECTION 51.** 227.12 (4) of the statutes is created to read:

23 227.12 (4) If a petition to the department of revenue alleges that the
24 department has established a standard by which it is construing a state tax statute,
25 but has not promulgated a rule to adopt the standard or published the standard in

1 a manner that is available to the public, the department shall initiate rule making
 2 within 180 days from the date that the petition is received and submit a rule to the
 3 legislature pursuant to s. 227.19 (2) no later than 12 months from the date that the
 4 petition is received. The rule need not adhere to the standard established by the

5 department, but shall address the same circumstances as the standard addresses.
 6 If the department fails to comply with this subsection, any of the petitioners may
 7 commence an action in circuit court to compel the department's compliance. If an
 8 action is commenced under this subsection, the court may compel the department to
 9 provide information to the court related to the degree to which the department is
 10 enforcing the standard, except that the information provided by the department
 11 shall not disclose the identity of any person who is not a party to the action.

12 **SECTION 52.** 227.41 (1) of the statutes is amended to read:

13 227.41 (1) Any Except as provided in sub. (5), any agency may, on petition by
 14 any interested person, issue a declaratory ruling with respect to the applicability to
 15 any person, property or state of facts of any rule or statute enforced by it. Full
 16 opportunity for hearing shall be afforded to interested parties. A declaratory ruling
 17 shall bind the agency and all parties to the proceedings on the statement of facts
 18 alleged, unless it is altered or set aside by a court. A ruling shall be subject to review
 19 in the circuit court in the manner provided for the review of administrative decisions.

20 **SECTION 53.** 227.41 (3) of the statutes is amended to read:

21 227.41 (3) The Except as provided in sub. (5) (b), the petition shall be filed with
 22 the administrative head of the agency or with a member of the agency's policy board.

23 **SECTION 54.** 227.41 (4) of the statutes is amended to read:

24 227.41 (4) Within Except as provided in sub. (5) (c), within a reasonable time
 25 after receipt of a petition pursuant to this section, an agency shall either deny the

Amend.
29-4

9

*or the applicable rule or statute is repealed
or materially amended*

✓

1 petition in writing or schedule the matter for hearing. If the agency denies the
2 petition, it shall promptly notify the person who filed the petition of its decision,
3 including a brief statement of the reasons therefor.

4 SECTION 55. 227.41 (5) of the statutes is created to read:

*contained in the
ruling*

5 227.41 (5) (a) The department of revenue shall, on petition by any interested
6 person, or any group or association of interested persons, issue a declaratory ruling
7 with respect to the applicability to any person, property, or state of facts of any rule
8 or statute enforced by it. The department of revenue may issue a declaratory ruling
9 on the facts contained in the petition. If the department of revenue does not deny the
10 petition or issue a declaratory ruling on the facts contained in the petition, the
11 department of revenue shall hold a hearing, as provided under s. 227.44, and shall
12 afford all interested parties an opportunity to participate in the hearing. A
13 declaratory ruling shall bind the department and all parties to the proceedings on

14 the statement of facts *alleged or offered*, unless it is altered or set aside by the tax
15 appeals commission or a court. A ruling, including the denial of the petition, shall
16 be subject to review by the tax appeals commission as provided in ch. 73.

17 (b) A petition under par. (a) shall conform to the requirements under sub. (2)
18 and be filed with the secretary of revenue. A petition under par. (a) shall also allege
19 facts that show that a justiciable controversy exists, or that a justiciable controversy
20 will likely exist, for purposes of this subsection, but no petition under par. (a) shall
21 allege facts that are not likely to occur.

22 (c) No later than 30 days after the day that the secretary of revenue receives
23 a petition under this subsection, the department of revenue shall deny the petition
24 in writing, issue a notice that it will issue a declaratory ruling on the facts contained
25 in the petition, in which case the department of revenue shall issue the ruling no

Insert 31-4 ✓

1 later than 90 days after issuing the notice, or schedule the matter for hearing. The
2 department may deny the petition only if the petition fails to comply with the
3 requirements under sub. (2) and par. (b) or if the department determines that the
4 petition is frivolous or lacks merit. If the department denies the petition, it shall
5 promptly notify the person who filed the petition of its decision and include with the
6 notice a brief statement of the reasons for denying the petition. Insert 31-6 ✓

7 (d) If the department of revenue does not deny the petition, or issue a notice
8 that it will issue a declaratory ruling based on the facts contained in the petition, the
9 department shall hold a hearing and issue a ruling on the petition no later than 180
10 days after the day that the secretary of revenue receives the petition, unless the
11 deadline is extended by written agreement of all parties. Upon agreement of the
12 parties, the department may rule on the petition based on facts stipulated by the
13 parties.

Insert 31-13 ✓
14 SECTION 56. 227.485 (2) (a) of the statutes is amended to read:

15 227.485 (2) (a) "Hearing examiner" means the agency, tax appeals commission,
16 or hearing examiner conducting the hearing.

17 SECTION 57. 227.485 (3) of the statutes is amended to read:

18 227.485 (3) In Except as provided under sub. (3m), in any contested case in
19 which an individual, a small nonprofit corporation or a small business is the
20 prevailing party and submits a motion for costs under this section, the hearing
21 examiner shall award the prevailing party the costs incurred in connection with the
22 contested case, unless the hearing examiner finds that the state agency which is the
23 losing party was substantially justified in taking its position or that special
24 circumstances exist that would make the award unjust.

25 SECTION 58. 227.485 (3m) of the statutes is created to read:

1 227.485 **(3m)** In any proceeding before the tax appeals commission in which
2 the department of revenue is not the prevailing party and the prevailing party
3 submits a motion for costs under this section, the tax appeals commission shall
4 award the prevailing party the costs incurred in connection with the proceeding
5 unless the tax appeals commission determines that the department of revenue was
6 substantially justified in taking its position or that special circumstances exist that
7 would make the award unjust.

8 **SECTION 59.** 227.485 (5) of the statutes is amended to read:

9 227.485 **(5)** If the hearing examiner awards costs under sub. (3) or (3m), he or
10 she shall determine the costs under this subsection, except as modified under sub.
11 (4). The decision on the merits of the case shall be placed in a proposed decision and
12 submitted under ss. 227.47 and 227.48. The prevailing party shall submit, within
13 30 days after service of the proposed decision, to the hearing examiner and to the
14 state agency which is the losing party an itemized application for fees and other
15 expenses, including an itemized statement from any attorney or expert witness
16 representing or appearing on behalf of the party stating the actual time expended
17 and the rate at which fees and other expenses were computed. The state agency
18 which is the losing party has 15 working days from the date of receipt of the
19 application to respond in writing to the hearing examiner. The hearing examiner
20 shall determine the amount of costs using the criteria specified in s. 814.245 (5) and
21 include an order for payment of costs in the final decision.

22 **SECTION 60.** 227.485 (7) of the statutes is amended to read:

23 227.485 **(7)** An individual is not eligible to recover costs under this section if
24 the person's properly reported federal adjusted gross income was \$150,000 or more
25 in each of the 3 calendar years or corresponding fiscal years immediately prior to the

1 commencement of the case. This subsection applies whether the person files the tax
2 return individually or in combination with a spouse. This subsection does not apply
3 to costs awarded under sub. (3m).

4 **SECTION 61.** 227.485 (10) (intro.) of the statutes is amended to read:

5 227.485 (10) (intro.) If the examiner finds that the motion under sub. (3) or (3m)
6 is frivolous, the examiner may award the state agency all reasonable costs in
7 responding to the motion. In order to find a motion to be frivolous, the examiner must
8 find one or more of the following:

9 **SECTION 62.** 803.08 of the statutes is amended to read:

10 **803.08 Class actions.** When the question before the court is one of a common
11 or general interest of many persons or when the parties are very numerous and it
12 may be impracticable to bring them all before the court, one or more may sue or
13 defend for the benefit of the whole, except that no claim may be maintained against
14 the state or any other party under this section if the relief sought includes the refund
15 of or damages associated with a tax administered by the state.

16 **SECTION 63. Nonstatutory provisions.**
17 (1) The department of revenue shall, no later than March 1, 2012, submit
18 proposed legislation to the legislature that authorizes alternative dispute resolution
19 for disputes between the department of revenue and taxpayers.

20 **SECTION 64. Initial applicability.**

21 (1) The treatment of section 803.08 of the statutes first applies to lawsuits that
22 are commenced on the effective date of this subsection.

23 (2) The treatment of sections 73.01 (4) (e) 2., 73.16 (1) to (4) and (X), 77.59 (4)
24 (a) and (c) and (8m), and 227.485 (3), (3m), and (7) of the statutes first applies to
25 determinations that are issued on the effective date of this subsection, regardless of

1 whether the amounts at issue relate to transactions that occurred prior to the
2 effective date of this subsection.

3 (3) The treatment of sections 71.83 (1) (a) 1. to 4. and (3) (a), 73.16 (5), 76.05
4 (1) and (2), 76.14, 76.28 (6) (b), 76.39 (3), 76.645 (2) (intro.), 77.60 (2) (as it relates to
5 a showing by the department of revenue), (3), and (4), 78.68 (3) and (4), and 139.25
6 (3) and (4) of the statutes first applies to interest and penalties imposed on the
7 effective date of this subsection, regardless of whether the amounts at issue relate
8 to transactions that occurred prior to the effective date of this subsection.

9 (4) The treatment of sections 71.82 (1) (a), (b), and (c) and (2) (a), (b), (c), and
10 (d), 71.84 (1) and (2) (a) and (c), 71.90 (1), 71.91 (6) (d) 1., (e) 3., (f) 5., and (g) 2., 73.16
11 (6), 77.60 (1) (a) and (b) and (2) (intro.) (as it relates to the interest rate), 77.96 (5),
12 and 78.68 (1) and (2) (intro.) of the statutes first applies to assessments pertaining
13 to taxable years beginning after December 31, 2013.

14 **SECTION 65. Effective date.**

15 (1) This act takes effect on the first day of the 3rd month beginning after
16 publication.

17 (END)

D-note

Insert A - 1

ms JT
If DOR does not deny the petition and does not issue a notice, DOR must hold a hearing and determine, no later than 180 days after it receives the petition, whether the person submitting the petition has presented sufficient facts from which to issue a declaratory ruling. If DOR determines that it has sufficient facts from which to issue a declaratory ruling, DOR must issue a ruling on the merits of the petition no later than 180 days after that determination, unless the deadline for issuing the ruling is extended by written agreement with all parties involved.

Insert A - 2

Under current law, certain persons may file a petition with a state agency to have the agency promulgate a rule. In order to promulgate the rule, the agency must first prepare a statement of the scope of the proposed rule and submit the statement to the governor for the governor's approval. In addition, the agency must submit the proposed rule in final draft form to the governor for approval before the rule is published and submitted to the legislature for review.

Under this bill, if a petition filed with DOR alleges that DOR has established a standard by which it construes a tax statute, but has not promulgated a rule to adopt the standard, DOR must submit a statement of the scope of the proposed rule to the governor no later than 90 days after receiving the petition. No later than 270 days after the statement is approved by the governor, DOR must submit the proposed rule in final draft form to the governor for the governor's approval. The rule does not have to adhere to the standard established by DOR, but must address the same circumstances as the standard addresses.

Insert 16 - 10

ms JT
1 a tax appeals commission or court decision. The department may not propose
2 a retroactive change to any rule that relates to implementing a legislative act or a
3 final and conclusive decision of the tax appeals commission or the courts if the
4 legislative act took effect more than 18 months prior to preparing a statement of
5 scope for the proposed change or if the tax appeals commission or court decision
6 became final and conclusive more than 18 months prior to preparing a statement of
7 scope for the proposed change NO
#

Insert 17 - 20

NO

8 (a) In this subsection:
↓

1 1. "Stale assessment" means any assessment that could have been made except
2 for the statute of limitations.

3 2. "Stale refund" means any refund that could have been claimed except for the
4 statute of limitations.

5 (b) NO
#

Insert 17 - 25

6 *ms* The department may offset the amount of any stale refund claimed under this
7 subsection by any stale assessment that could have been made for any year.

Insert 18 - 2

8 *ms* No stale refund claimed, or stale assessment made, under this subsection shall
9 include interest. Stale refunds and stale assessments for any periods settled by a
10 written agreement with the department or resolved by a final decision of the tax
11 appeals commission or court, or for any period or item closed under s. 71.54 (4) and
12 77.59 (2), may not be used for offset under this subsection.

Insert 18 - 5

13 *ms* 71.09 (11) (d), 71.83 (1) (a) 1. to 4. and (3) (a), 76.05 (2), 76.14, 76.28 (6) (b), 76.39
14 (3), 76.645 (2), 77.60 (2) (intro.), (3), and (4), 78.68 (3) and (4), and 139.25 (3) and (4)

NO
#

Insert 29 - 4

15 *ms* shall, as provided under s. 227.135, submit a statement of the scope of the
16 proposed rule to the governor no later than 90 days after receiving the petition. No
17 later than 270 days after the statement is approved by the governor, the department
18 shall submit the proposed rule in final draft form to the governor for the governor's
19 approval, as provided under s. 227.185. At the department's request, the governor
20 may, at any time prior to the expiration of any deadline specified in this subsection,



NO
A

1 extend the time for submitting the statement or proposed rule in draft form for any
2 period not to exceed 60[✓] days. The governor may grant more than one extension under
3 this subsection, but the total period for all such extensions may not exceed 120[✓] days

Insert 31- 4

4 ^{mr 71}, a justiciable[✓] controversy does not exist, the ruling would not provide guidance
5 on matters of general applicability, or[✓] the ruling would substitute for other
6 procedures available to the parties for resolution of the dispute ^{NO}_A

Insert 31- 6

7 ^{mr 71} The department may not deny a petition for lack of a[✓] justiciable controversy
8 solely because the only parties to the matter are the petitioner and the department.[✓]

Insert 31- 13

9 ^A (d) 1. If the department of revenue[✓] does not deny the petition, or issue a notice
10 that it will issue a declaratory ruling based on the facts contained in the petition, the
11 department shall hold a hearing and determine, no later than 180[✓] days after the
12 secretary receives the petition, whether the petitioner has presented sufficient facts
13 from which to issue a declaratory ruling. The department of revenue, petitioner, and
14 other parties may take and preserve evidence prior to and during the hearing using
15 the methods allowed to parties under ^{es.} sec 227.45[✓]. With the agreement of the parties,
16 the department may rule on the petition based on facts stipulated by the parties.

17 2. If the department determines that it does not have sufficient facts from
18 which to issue a declaratory ruling, the department may deny the petition. If the
19 department determines that it has sufficient facts from which to issue a declaratory
20 ruling, the department shall issue a ruling on the merits of the petition no later than
21 180[✓] days after the determination, unless the deadline is extended by written



1 agreement of all parties. The ruling may deny the petition on the grounds that
2 petition is frivolous, a justiciable controversy does not exist, the ruling would not
3 provide guidance on matters of general applicability,[✓] or that the ruling would
4 substitute for other procedures available to the parties for resolution of the dispute. ✓

(end ins 31-13)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2769/P2dn
JK&GMM:jld:rs

date

Representative Strachota: ✓

Please review this draft carefully to ensure that it is consistent with your intent. ✓

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2769/P2dn
JK:jld:jf

September 26, 2011

Representative Strachota:

Please review this draft carefully to ensure that it is consistent with your intent.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

TO: Joe Kreye Deleted: Don Millis

FROM: Don Millis Deleted: Diane Hardt and Dana Erlandsen

DATE: September 27, 2011 Deleted: 26

RE: LRB-2769/P2

CC: Secretary Richard Chandler, Diane Hardt, Dana Erlandsen, Heather Moore, Hannah Huffman, Jason Culotta, Michael Wagner, Jennifer Western, Jack Jablonski Formatted: Indent: Left: 0", Hanging: 0.99"

Dana Erlandsen took the laboring oar and review the most recent draft and prepared the original version of this memo. (My comments are all shown via track changes.) I agree with most of the changes. Most of the changes I am recommending are technical and not substantive. The one place we disagree are the changes to the equitable recoupment that are highlighted in yellow. Dana and Diane recommended deleting the language highlighted in yellow. I think we should keep it. While there may be costs associated with equitable recoupment, these can be handled by delaying the effective date. Additional comments are inserted below.

We reviewed the newest draft of the legislation. It appears there are certain items missing that we agreed to:

1. **Insert browsing provision.** On page 3, there is no browsing provision. We had agreed to the following insertion:

Amend Section 71.78 (1m) as follows:

(1m) BROWSING PROHIBITED. (a) No person, except the person who filed the return or claim, may inspect any information derived from a return or claim that is filed under this chapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

(b) If any person is charged with a violation of par. (a), the secretary of revenue shall notify each taxpayer whose return or claim was improperly inspected by that person.

(c) Any person who is notified under par. (b) may bring an action for damages in regard to the inspection.

Create Section 77.61(6) as follows:

BROWSING PROHIBITED. (a) No person, except the person who filed the return or claim, may inspect any information derived from a return or claim that is filed under this chapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

Deleted: 5

Deleted: (h)

Deleted: i

(b) If any person is charged with a violation of par. (a), the secretary of revenue shall notify each taxpayer whose return or claim was improperly inspected by that person.

Deleted: ii

(c) Any person who is notified under par. (b) may bring an action for damages in regard to the inspection.

Deleted: iii

(d) Any person who violates par. (a) shall upon conviction be fined not less than \$100 nor more than \$500 or imprisoned for not less than one month nor more than 6 months or both.

[I think it makes more sense to create a new sub. (6) and it appears that some of the comments also anticipate creating a sub. (6).]

Amend Section 71.83(2)(a)3. as follows:

3m. 'Browsing in records.' Any person who violates s. 71.78 (1m) (a) or s. ~~77.61(6)~~ shall upon conviction be fined not less than \$100 nor more than \$500 or imprisoned for not less than one month nor more than 6 months or both.

Deleted: 5

Deleted: (h)

To make other tax statutes consistent:

- Estate tax – Include references to secs. 71.78(1m) and 71.83(2)(a)3m. in sec. 72.06.
- See language above.
- County sales and use tax – In the last sentence of sec. 77.76(3), the reference to sec. 77.61(5) should be changed to 77.61(5)(a), (g), and (6). (Note: The reference to subs. (6) is as created under sales tax above.
- Baseball park district – In the last sentence of sec. 77.76(3m), the reference to sec. 77.61(5) should be changed to 77.61(5)(a), (g), and (6).
- Football stadium district – In the last sentence of sec. 77.76(3p), the reference to sec. 77.61(5) should be changed to 77.61(5), and (6). [Don't see the need to limit the protections to just (5)(a) and (5)(g). But we should add reference to new sub 6.]
- *Recycling surcharge – Include a reference to sec. 71.83(2)(a)3m. in sec. 77.95.*
- *Local food and beverage tax – A reference to sec. 77.61(6) should be included in sec. 77.982(2).*
- *The reference to sec. 77.61(5) in sec. 77.982(3) should be changed to (5)(a) and (g) and include a reference to (6).*

Deleted: Sales tax – Create sec. 77.61(6) to read the same as sec. 71.78(1m). Also create subparagraph (d) to provide for a penalty the same as sec. 71.83(2)(a)3m

Deleted: (a), (g)

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- *Local rental car tax – A reference to sec. 77.61(6) should be included in sec. 77.991(2).*
- *The reference to sec. 77.61(5) in sec. 77.991(3) should be changed to (5)(a) and (g) and include a reference to (6).*
- *Premier resort area taxes – The reference to sec. 77.61(5) in sec. 77.9941(5) should be changed to (5)(a) and (g) and include a reference to (6).*
- *State rental vehicle fee — Section 77.9951(2) should be amended to include a reference to the created sec. 77.61(6).*
- *Dry cleaning fees – Include a reference to sec. 71.83(2)(a)3m. in sec. 77.9964(2).*
- *Regional transit authority fee – Amend sec. 77.9972(2) to include a reference to sec. 77.61(6).*
- *Fuel taxes – Include references to secs. 71.78(1m) and 71.83(2)(a)3m. in sec. 78.80(3).*
- *Alcohol beverages – Include references to sec. 71.78(1m) in secs. 125.52(8), 125.53(3), and 125.58(4)(a)4. Also include the following in each of these sections: The penalty provisions under s. 71.83(2)(a)3. and 3m apply.*
- *Beverage taxes – Include references to secs. 71.78(1m) and 71.83(2)(a) 3m. in sec. 139.11(4).*
- *Cigarette taxes – Include references to sec. 71.78(1m) and 71.83(2)(a) 3m. in sec. 139.38(6).*
- *Tobacco products tax – Include references to sec. 71.78(1m) and 71.83(2)(a) 3m. in sec. 139.82(6).*

[I was not able to check the references in italics. I was in the middle of doing this when the LRB's statute site went down. That is what I get for putting this off until the night.]

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2. **Correct negligence penalty standard.** The proposed language erroneously changes the negligence penalty standard. We had agreed that we wanted to shift the burden of proof, but not change the standard, since changing the standard would mean increased litigation costs for taxpayers and the department in order to determine what the new standard means. It is our understanding that the language of new section 73.16(5) should read as follows:

(5) NEGLIGENCE DETERMINATIONS. The department shall not impose a penalty on a taxpayer under ss. 71.09 (11) (d), 71.83 (1) (a) 1. to 4. and (3) (a), 76.05 (2), 76.14, 76.28 (6) (b), 76.39 (3), 76.645 (2), 77.60 (2) (intro.), (3), and (4), 78.68 (3) and (4), and 139.25 (3) and (4), unless the department shows that the taxpayer's action or inaction was due to ~~caused by the taxpayer's willful neglect and not to reasonable cause, failure to use ordinary business care and prudence to comply with state tax laws as provided under the statutes, administrative rules, published department guidance or other written notice provided by the department, or a final and conclusive decision of the tax appeals commission or a court.~~

3. **Correct definitions in subsection 73.16(1) and add definition of "person party to a determination."** There is a reference to the Internal Revenue Code that should be deleted in subsection (1)(a). The definition of stale refund in 73.16(1)(d) is redundant and possibly contradictory of the definition in 73.16(4)(a)2. It should be deleted. The lack of definition for "person who is a party to the determination" for the guidance section is a problem; we have suggested a definition to clarify who is a party to the determination.

73.16 General provision. (1) DEFINITION. In this section:

- (a) "Commonly controlled group" has the meaning given in s. 71.255 (1) ~~of the Internal Revenue Code.~~
- (b) "Department" means the department of revenue.
- (c) "Published" means prepared and issued for public distribution and does not include guidance on a private matter or issue.
- (d) ~~"Stale refund" means a refund of any tax or fee administered by the department for which a claim has not been timely filed.~~
- (e) "Written guidance" means a written statement made by an employee of the department acting in an official capacity to a natural or legal person or their representative regarding a tax question.
- (f) "Person who is party to the determination" means a natural or legal person who requests a determination for their benefit, files a claim for refund, or is assessed by the department. It does not include someone who, on behalf of natural or legal person, requests a determination, requests a claim for refund or appeals a determination. It does not include shareholders, members or partners unless they are named or identified in the determination, claim for refund or assessment. It does not include anonymous natural or legal persons who request a determination.

4. **Insert missing agreed to language in guidance section.** We agreed to language for section 73.16(2)(b) that replaced the previous subsections (b). That language describes the general rule that rule implementation is prospective unless certain specific circumstances apply, and gives ultimate power to the governor to determine prospective or retroactive treatment.

(b) 1. The department may retroactively apply any rule change that is related to implementing a legislative act or a final and conclusive decision of the tax appeals commission or courts to take effect no earlier than the act's effective date or the date on which the decision became final and conclusive unless otherwise prescribed by the legislature or tax appeals commission or court decision. This provision shall only apply if the department submits the rule's

scope statement to the governor for approval pursuant to s. 227.135(2), within 18 months of the (1) date of publication of the legislative act, (2) the effective date of the legislative act, (3) the initial applicability date of the legislative act, or (4) the date a decision becomes final and conclusive.

2. Otherwise, any retroactive application of a rule change must be approved by the governor pursuant to s. 227.185.

~~(b) With regard to any position taken by the department in any matter described under par. (a) or (am), if the department amends a rule to reverse or substantially alter its policy with regard to, or its interpretation of, a legislative act or final and conclusive decision of the tax appeals commission or the courts, the department shall apply the amendment prospectively from the effective date of the publication of the emergency or permanent rule. A retroactive change in any rule that is related to implementing a legislative act or final and conclusive decision of the tax appeals commission or courts may take effect no earlier than the act's effective date or the date on which the decision became final and conclusive unless otherwise prescribed by the legislature or by a tax appeals commission or court decision. The department may not propose a retroactive change to any rule that relates to implementing a legislative act or a final and conclusive decision of the tax appeals commission or the courts if the legislative act took effect more than 18 months prior to preparing a statement of scope for the proposed change or if the tax appeals commission or court decision became final and conclusive more than 18 months prior to preparing a statement of scope for the proposed change.~~

5. **Insert missing agreed-to "written evidence" in section on relying on past audits, and change taxpayer to person for consistency.** In section 73.16(3), we agreed that 73.16(a)(2) should be amended to read:

(3) RELYING ON PAST AUDITS. (a) A person who is subject to a determination by the department, including all other members of that person's commonly controlled group for purposes of determining the tax due under s. 71.23 for taxable years beginning after December 31, 2008, shall not be liable for any amount that the department asserts that the person owes if all of the following conditions are satisfied:

1. The liability asserted by the department is the result of a tax issue during the period associated with a prior determination for which the person is subject to and the tax issue is the same as the tax issue during the period associated with the current determination.
2. A department employee who was involved in the prior determination identified or reviewed the tax issue before completing the prior determination, as shown by any schedules, exhibits, audit reports, documents, or other written evidence pertaining to the determination, and the schedules, exhibits, reports, documents and other written evidence show that the department did not adjust the person-taxpayer's treatment of the tax issue.
3. The liability asserted by the department as described under subd. 1. was not asserted in the prior determination.

6. **Equitable recoupment – clarification of tax types, correction of a typographical error on sec. 71.54 (should be 71.75), and redundant language that can be deleted.** We had agreed that stale assessments and refunds were limited to those tax types listed in this subsection; however, the definition needs amendment to clarify this. There is a typographical error in a statutory reference that was corrected. Also, defining stale refund and stale assessment meant some language was no longer needed in subsection (b).

(4) **EQUITABLE RECOUPMENT.** (a) In this subsection:

1. "Stale assessment" means any assessment that could have been made pursuant to s. 134.65 or 134.66 or subch. III, VIII, IX, XI, or XII of ch. 77 or ch. 71, 72, 78, 125, or 139 except for the statute of limitations.

2. "Stale refund" means any refund that could have been claimed pursuant to s. 134.65 or 134.66 or subch. III, VIII, IX, XI, or XII of ch. 77 or ch. 71, 72, 78, 125, or 139 except for the statute of limitations.

(b) A person against whom the department asserts a state tax liability under s. 134.65 or 134.66 or subch. III, VIII, IX, XI, or XII of ch. 77 or ch. 71, 72, 78, 125, or 139 may offset against that liability the amount of any stale refund that the person may claim, regardless of whether the time for claiming the stale refund has expired and regardless of whether the year, transaction, tax, or fee related to the liability is the same as that related to the stale refund. The department may offset the amount of any stale refund claimed under this subsection by any stale assessment that could have been made for any year. This subsection does not apply to any stale refund or stale assessment that is associated with any period that is prior to the initial date of the period associated with the state tax liability. No stale refund claimed, or stale assessment made, under this subsection shall include interest. Stale refunds and stale assessments for any periods settled by a written agreement with the department or resolved by a final decision of the tax appeals commission or court, or for any period or item closed under ss. 71.5475 (4) and 77.59 (2), may not be used for offset under this subsection.

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[I think we need to keep the language highlighted in yellow. There may be other ways to keep the costs down.]

7. **Initial Applicability – Petitions for Administrative Declaratory Judgment.** I would add a fourth paragraph under the Initial Applicability provision in Section 38 to provide that the changes to s. 227.41 first apply to petitions filed on the effective date of this subsection.

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Champagne, Rick

From: Moore, Heather
Sent: Tuesday, September 27, 2011 3:05 PM
To: Champagne, Rick; Shovers, Marc
Cc: 'jennifer.western@revenue.wi.gov'
Subject: FW: Anti Browsing Addition/ LRB 2769

Importance: High

Rick,

Per our discussion.

Heather Moore

Office of Pat Strachota
Office (608) 264-8486
Toll-Free (888) 534-0058

From: Western, Jennifer N - DOR [<mailto:Jennifer.Western@revenue.wi.gov>]

Sent: Tuesday, September 27, 2011 2:38 PM

To: Kreye, Joseph

Cc: Moore, Heather; Schoenfeldt, Eileen - GOV; Polzin, Cindy M - GOV; Wagner, Michael W - DOR; Jablonski, Jack - DOR; Erlandsen, Dana J - DOR; Hardt, Diane L - DOR

Subject: Anti Browsing Addition

Importance: High

Hi Joe,

I just spoke with Heather in Strachota's office. Heather asked me to send you the language pertaining to the anti-browsing of taxpayer information, which was not in LRB 2769/P2. (DOR Reform Bill) It is my understanding that this provision must be in the bill in order to be represented in the relating clause. As this proposal is going to be listed tomorrow, it is important for this to be reflected in the relating clause. Can you please put this change through as soon as possible?

Please let me know if there are any questions.

Thanks,

Jennifer Western, *Executive Assistant*
Wisconsin Department of Revenue
E: jennifer.western@wisconsin.gov
P: (608) 266-7622
On the Web: <http://www.revenue.wi.gov/>

1. **Insert browsing provision.** On page 3, there is no browsing provision. We had agreed to the following insertion:

Amend Section 71.78 (1m) as follows:

(1m) BROWSING PROHIBITED. (a) No person, except the person who filed the return or claim, may inspect any information derived from a return or claim that is filed under this chapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

(b) If any person is charged with a violation of par. (a), the secretary of revenue shall notify

each taxpayer whose return or claim was improperly inspected by that person.

(c) Any person who is notified under par. (b) may bring an action for damages in regard to the inspection.

Create Section 77.61⁽⁶⁾~~(5)(A)~~^(a) as follows:

BROWSING PROHIBITED. (i) No person, except the person who filed the return or claim, may inspect any information derived from a return or claim that is filed under this chapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

(ii) If any person is charged with a violation of par. (a), the secretary of revenue shall notify each taxpayer whose return or claim was improperly inspected by that person.

(iii) Any person who is notified under par. (b) may bring an action for damages in regard to the inspection.

Amend Section 71.83(2)(a)3. as follows:

3m. 'Browsing in records.' Any person who violates s. 71.78 (1m) (a) or s. 77.61(5)(h) shall upon conviction be fined not less than \$100 nor more than \$500 or imprisoned for not less than one month nor more than 6 months or both.

To make other tax statutes consistent:

- ✓ • Estate tax – Include references to secs. 71.78(1m) and 71.83(2)(a)3m. in sec. 72.06.
- ✓ • Sales tax – Create sec. 77.61(6) to read the same as sec. 71.78(1m). Also create subparagraph (d) to provide for a penalty the same as sec. 71.83(2)(a)3m.
- ✓ • County sales and use tax – In the last sentence of sec. 77.76(3), the reference to sec. 77.61(5) should be changed to 77.61(5)(a), (g), and (6). (Note: The reference to subs. (6) is as created under sales tax above.
- ✓ • Baseball park district – In the last sentence of sec. 77.76(3m), the reference to sec. 77.61(5) should be changed to 77.61(5)(a), (g), and (6).
- ✓ • Football stadium district – In the last sentence of sec. 77.76(3p), the reference to sec. 77.61(5) should be changed to 77.61(5)(a), (g), and (6).
- ✓ • Recycling surcharge – Include a reference to sec. 71.83(2)(a)3m. in sec. 77.95.
- ✓ • Local food and beverage tax – A reference to sec. 77.61(6) should be included in sec. 77.982(2).
- ✓ • The reference to sec. 77.61(5) in sec. 77.982(3) should be changed to (5)(a) and (g) and include a reference to (6).
- ✓ • Local rental car tax – A reference to sec. 77.61(6) should be included in sec. 77.991(2).
- ✓ • The reference to sec. 77.61(5) in sec. 77.991(3) should be changed to (5)(a) and (g) and include a reference to (6).

- ✓ • Premier resort area taxes – The reference to sec. 77.61(5) in sec. 77.9941(5) should be changed to (5)(a) and (g) and include a reference to (6).
- ✓ • State rental vehicle fee — Section 77.9951(2) should be amended to include a reference to the created sec. 77.61(6).
- ✓ • Dry cleaning fees – Include a reference to sec. 71.83(2)(a)3m. in sec. 77.9964(2).
- ✓ • Regional transit authority fee – Amend sec. 77.9972(2) to include a reference to sec. 77.61(6).
- ✓ • Fuel taxes – Include references to secs. 71.78(1m) and 71.83(2)(a)3m. in sec. 78.80(3).
- ✓ • Alcohol beverages ⁽⁵⁾ *west* – Include references to sec. 71.78(1m) in secs. 125.52(8), 125.53(3), and 125.58(4)(a)4. Also include the following in each of these sections: The penalty provisions under s. 71.83(2)(a)3. and 3m apply.
- ✓ • Beverage taxes – Include references to secs. 71.78(1m) and 71.83(2)(a) 3m. in sec. 139.11(4).
- ✓ • Cigarette taxes – Include references to sec. 71.78(1m) and 71.83(2)(a) 3m. in sec. 139.38(6).
- ✓ • Tobacco products tax – Include references to sec. 71.78(1m) and 71.83(2)(a) 3m. in sec. 139.82(6).

She asked if I would send you language for

Jennifer Western, *Executive Assistant*
 Wisconsin Department of Revenue
 E: jennifer.western@wisconsin.gov
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take out 227.485

227.483 Costs upon frivolous claims.

(1) If a hearing examiner or the tax appeals commission finds, at any time during the proceeding, that an administrative hearing commenced or continued by a petitioner or a claim or defense used by a party is frivolous, the hearing examiner or tax appeals commission shall award the successful party the costs and reasonable attorney fees that are directly attributable to responding to the frivolous petition, claim, or defense.

(2) If the costs and fees awarded under sub. (1) are awarded against the party other than a public agency, those costs may be assessed fully against either the party or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(3) To find a petition for a hearing or a claim or defense to be frivolous under sub. (1), the hearing examiner must find at least one of the following:

(a) That the petition, claim, or defense was commenced, used, or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) That the party or the party's attorney knew, or should have known, that the petition, claim, or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

Moore, Heather

From: Western, Jennifer N - DOR [Jennifer.Western@revenue.wi.gov]
Sent: Wednesday, September 28, 2011 9:03 AM
To: Moore, Heather; Rep.Strachota
Subject: Dor Reform Bill

Heather, as I mentioned on the phone, being mindful of the fiscal effect of the bill, Secretary Chandler would like to hold off on the equitable recoupment provision. Based on Rick's conversation with James, there is agreement on both sides that the equitable recoupment provision should be deleted. There would be a sunrise for the reliance on past audits provision in FY 14. Please let me know if Rep. Strachota has any questions or concerns.

And actually, if she does have any questions, can she call my cell: 608-692-8640? The phones to the Sec Office will be going to voicemail during our meeting at 9:00. So I will answer my cell.

As soon as I am out of this meeting I will also make a call to Sen Zipperer's office and Sen Galloway's office.

Thanks,

Jennifer
Jennifer Western, *Executive Assistant*
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