



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2769/P2
JK&GMM:jld:jf

RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

prohibiting browsing of returns
prohibiting browsing of returns, claims and claims

Today

filed 9-28

- re you

1 **AN ACT to amend** 71.09 (11) (d), 71.83 (1) (a) 1., 71.83 (1) (a) 1m., 71.83 (1) (a)
2 2., 71.83 (1) (a) 3., 71.83 (1) (a) 4., 71.83 (3) (a), 73.01 (4) (e) 2., 76.05 (1), 76.05
3 (2), 76.14, 76.28 (6) (b), 76.39 (3), 76.645 (2) (intro.), 77.60 (2) (intro.), 77.60 (3),
4 77.60 (4), 77.61 (5) (a), 78.68 (3), 78.68 (4), 139.25 (3), 139.25 (4), 227.12 (3),
5 227.41 (1), 227.41 (3), 227.41 (4), 227.485 (2) (a), 227.485 (3), 227.485 (5),
6 227.485 (7), 227.485 (10) (intro.) and 803.08; and **to create** 73.015 (3), 73.16,
7 227.12 (4), 227.41 (5) and 227.485 (3m) of the statutes; **relating to:** various
8 duties of the Department of Revenue, including issuing declaratory judgments,
9 conducting audits and assessments, asserting liability, allowing claims for
10 refunds, awarding the costs of litigation, imposing penalties related to a
11 taxpayer's negligence, and requiring the exercise of rule-making authority.

and providing a penalty

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 certain taxes and fees 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.

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 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 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 deny the petition, issue a notice that it will issue a ruling on the facts contained in the petition, or schedule a hearing for the matter described in the petition no later than 30 days after receiving the petition. 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.

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.

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

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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) (4)

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

8 71.83 (1) (a) 1. 'Failure to file.' In case of failure to file any return required
9 under s. 71.03, 71.24, 71.44, or 71.775 on the due date prescribed therefor, including
10 any applicable extension of time for filing, ~~unless it is shown that the failure is due~~
11 ~~to reasonable cause and not due to willful neglect~~ and upon a showing by the
12 department under s. 73.16 (5), there shall be added to the amount required to be

(4)

1 shown as tax on the return 5% of the amount of the tax if the failure is for not more
 2 than one month, with an additional 5% for each additional month or fraction thereof
 3 during which the failure continues, not exceeding 25% in the aggregate. For
 4 purposes of this subdivision, the amount of tax required to be shown on the return
 5 shall be reduced by the amount of any part of the tax which is paid on or before the
 6 due date prescribed for payment and by the amount of any credit against the tax
 7 which may be claimed upon the return.

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

9 71.83 (1) (a) 1m. 'Failure to file information return.' If a person fails to file a
 10 return required under subch. XI by the prescribed due date, including any extension,
 11 or files an incorrect or incomplete return, that person may be subject to a penalty of
 12 \$10 for each violation. A penalty shall be waived ~~if the person shows that a violation~~
 13 ~~is due to reasonable cause and not due to willful neglect~~ except upon a showing by
 14 the department under s. 73.16(5) (4)

15 **SECTION 4.** 71.83 (1) (a) 2. of the statutes is amended to read:

16 71.83 (1) (a) 2. 'Incomplete or incorrect return.' If any person required under
 17 this chapter to file an income or franchise tax return files an incomplete or incorrect
 18 return, ~~unless it is shown that such filing was due to good cause and not due to~~
 19 ~~neglect~~ and upon a showing by the department under s. 73.16(5) (4) there shall be
 20 added to such person's tax for the taxable year 25% of the amount otherwise payable
 21 on any income subsequently discovered or reported. The amount so added shall be
 22 assessed, levied and collected in the same manner as additional normal income or
 23 franchise taxes, and shall be in addition to any other penalties imposed by this
 24 chapter. In this subdivision, "return" includes a separate return filed by a spouse
 25 with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g)

1 to (L) after the filing of that separate return, and a joint return filed by the spouses
2 with respect to a taxable year for which a separate return is filed under s. 71.03 (2)
3 (m) after the filing of that joint return.

4 **SECTION 5.** 71.83 (1) (a) 3. of the statutes is amended to read:

5 71.83 (1) (a) 3. 'Incomplete or incorrect deposit or withholding report.' If any
6 person required under subch. X to file a deposit report or withholding report files an
7 incomplete or incorrect report, or fails to properly withhold or fails to properly
8 deposit or pay over withheld funds, ~~unless it can be shown that the filing or failure~~

9 was due to good cause and not due to neglect and upon a showing by the department

(4) 10 under s. 73.16⁽⁰⁾(5), there shall be added to the tax 25% of the amount not reported or
11 not withheld, deposited or paid over. The amount so added shall be assessed, levied
12 and collected in the same manner as additional income or franchise taxes, and shall
13 be in addition to any other penalties imposed in this subchapter. "Person", in this
14 subdivision, includes an officer or employee of a corporation or other responsible
15 person or a member or employee of a partnership or limited liability company or
16 other responsible person who, as such officer, employee, member or other responsible
17 person, is under a duty to perform the act in respect to which the violation occurs.

18 **SECTION 6.** 71.83 (1) (a) 4. of the statutes is amended to read:

19 71.83 (1) (a) 4. 'Late filing of withholding report.' In case of failure to file any
20 withholding deposit or payment report required under s. 71.65 (3) on the due date
21 prescribed therefor, ~~unless it is shown that the failure is due to reasonable cause and~~

(22) not due to willful neglect upon a showing by the department under s. 73.16⁽⁰⁾(5), there
23 shall be added to the amount required to be shown as withheld taxes on the report
24 5% of the amount if the failure is not for more than one month, with an additional

1 5% for each additional month or fraction thereof during which the failure continues,
2 not exceeding 25% in the aggregate.

3 **SECTION 7.** 71.83 (3) (a) of the statutes is amended to read:

4 71.83 (3) (a) If any person required under this chapter to file an income or
5 franchise tax return fails to file a return within the time prescribed by law, or as
6 extended under s. 71.03 (7), 71.24 (7) or 71.44 (3), unless the return is filed under such
7 an extension but the person fails to file a copy of the extension that is granted by or
8 requested of the internal revenue service, the department shall add \$50 to the
9 person's tax if the return is filed under subch. I of this chapter or \$150 to the person's
10 tax if the return is filed under subch. IV or VII of this chapter. If no tax is assessed
11 against any such person the amount of this fee shall be collected as income or
12 franchise taxes are collected. If any person who is required under s. 71.65 (3) to file
13 a withholding report and deposit withheld taxes fails timely to do so and upon a
14 showing by the department under s. 73.16⁽⁴⁾(5), unless the person so required dies or
15 ~~the failure is due to a reasonable cause and not due to neglect~~; the department of
16 revenue shall add \$50 to the amount due except that if the person is subject to
17 taxation under subch. IV or VII of this chapter the department shall add \$150 to the
18 amount due.

19 **SECTION 8.** 73.01 (4) (e) 2. of the statutes is amended to read:

20 73.01 (4) (e) 2. Except for hearings on ss. 341.405 and 341.45, the department
21 of revenue may choose not to appeal and to nonacquiesce in the decision or order by
22 sending a notice of nonacquiescence to the clerk of the commission, to the legislative
23 reference bureau for publication in the Wisconsin administrative register and to the
24 taxpayer or the taxpayer's representative before the time expires for seeking a
25 review of the decision or order under s. 73.015. The effect of this action is that,

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1 although the decision or order is binding on the parties for the instant case and the
2 decision or order may be cited by the commission and the courts, the commission's
3 conclusions of law, the rationale and construction of statutes in the instant case are
4 not binding upon or required to be followed by the department of revenue in other
5 cases.

6 SECTION 9. 73.015 (3) of the statutes is created to read:

7 73.015 (3) Except for decisions and orders in small claims matters, as defined
8 in s. 73.01 (1) (b), a conclusion of law or other holding in any decision or order of the
9 tax appeals commission may be cited by the commission or the courts as authority
10 unless that conclusion of law or holding has been reversed, modified, overruled, or
11 vacated on the merits on appeal or by a subsequent decision or order of the
12 commission.

13 SECTION 10. 73.16 of the statutes is created to read:

14 73.16 General provision. (1) DEFINITIONS. In this section:

15 (a) "Commonly controlled group" has the meaning given in s. 71.255 (1) (c) of
16 the Internal Revenue Code.

17 (b) "Department" means the department of revenue.

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

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

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

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

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

16 (b) With regard to any position taken by the department in any matter
17 described under par. (a) or (am), if the department amends a rule to reverse or
18 substantially alter its policy with regard to, or its interpretation of, a legislative act
19 or final and conclusive decision of the tax appeals commission or the courts, the
20 department shall apply the amendment prospectively from the effective date of the
21 publication of the emergency or permanent rule. A retroactive change in any rule
22 that is related to implementing a legislative act or final and conclusive decision of
23 the tax appeals commission or courts may take effect no earlier than the act's
24 effective date or the date on which the decision became final and conclusive unless
25 otherwise prescribed by the legislature or by a tax appeals commission or court

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1 ~~decision. The department may not propose a retroactive change to any rule that~~
 2 ~~relates to implementing a legislative act or a final and conclusive decision of the tax~~
 3 ~~appeals commission or the courts if the legislative act took effect more than 18~~
 4 ~~months prior to preparing a statement of scope for the proposed change or if the tax~~
 5 ~~appeals commission or court decision became final and conclusive more than 18~~
 6 ~~months prior to preparing a statement of scope for the proposed change.~~

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7 (c) With regard to any position taken by the department in any matter
 8 described under par. (a) or (am), if the department retracts, alters, or amends
 9 previously published or previously issued written guidance for any purpose other
 10 than to implement a legislative act or final and conclusive decision of the tax appeals
 11 commission or courts, the department shall apply the retraction, alteration, or
 12 amendment prospectively only, unless the change is to a taxpayer's benefit, in which
 13 case, the department shall apply the retraction, alteration, or amendment
 14 retroactively. A retroactive change in any previously published or previously issued
 15 written guidance related to implementing a legislative act or final and conclusive
 16 decision of the tax appeals commission or courts may take effect no earlier than the
 17 act's effective date or the date on which the decision became final and conclusive
 18 unless otherwise prescribed by the legislature or ordered by the courts.

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

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

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

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

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

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

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

~~2. "Stale refund" means any refund that could have been claimed 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,~~

1 or 139 may offset against that liability the amount of any stale refund that the person
 2 may claim regardless of whether the time for claiming the stale refund has expired
 3 and regardless of whether the year, transaction, tax, or fee related to the liability is
 4 the same as that related to the stale refund. The department may offset the amount
 5 of any stale refund claimed under this subsection by any stale assessment that could
 6 have been made for any year. This subsection does not apply to any stale refund or
 7 stale assessment that is associated with any period that is prior to the initial date
 8 of the period associated with the liability. No stale refund claimed, or stale
 9 assessment made, under this subsection shall include interest. Stale refunds and
 10 stale assessments for any periods settled by a written agreement with the
 11 department or resolved by a final decision of the tax appeals commission or court, or
 12 for any period or item closed under ss. 71.54 (4) and 77.59 (2), may not be used for
 13 offset under this subsection.

14 (4) (5) NEGLIGENCE DETERMINATIONS. The department shall not impose a penalty
 15 on a taxpayer under ss. 71.09 (11) (d), 71.83 (1) (a) 1. to 4. and (3) (a), 76.05 (2), 76.14,
 16 76.28 (6) (b), 76.39 (3), 76.645 (2), 77.60 (2) (intro.), (3), and (4), 78.68 (3) and (4), and
 17 139.25 (3) and (4), unless the department shows that the taxpayer's action or inaction

18 was caused by the taxpayer's failure to use ordinary business care and prudence to
 19 comply with state tax laws as provided under the statutes, administrative rules,
 20 published department guidance or other written notice provided by the department,
 21 or a final and conclusive decision of the tax appeals commission or a court.

22 (6) APPLICABILITY. Except as provided in subs. (3) and (4), notwithstanding any
 23 other provision of law, this section applies to all taxes and fees administered by the
 24 department.

25 SECTION 11. 76.05 (1) of the statutes is amended to read:

*willful neglect and not
to reasonable
cause*

due to

SECTION 11

1 76.05 (1) If any company defined in s. 76.02 or its officers or agents shall refuse
 2 or neglect to make any reports required by s. 76.04 or by the department, or shall
 3 refuse or neglect to permit an inspection and examination of its records, books,
 4 accounts or papers when requested by the department, or shall refuse or neglect to
 5 appear before the department in obedience to a summons, and upon a showing by the
 6 department under s. 73.16 (5) such company shall be estopped to question or
 7 impeach the action or determination of the department ~~except upon satisfactory~~
 8 ~~proof of fraud or mistake injurious to the company.~~

9 **SECTION 12.** 76.05 (2) of the statutes is amended to read:

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

24 **SECTION 13.** 76.14 of the statutes is amended to read:

1 **76.14 Remedies for nonpayment of taxes.** All taxes levied under this
 2 (4) subchapter upon the property of any company defined in s. 76.02, which are not paid
 3 at the time provided by law, shall thereupon become delinquent and bear interest at
 4 the rate of 1.5% per month until actually paid. ~~The neglect~~ Upon a showing by the
 5 (5) department under s. 73.16 (5) the failure of any such company to pay the taxes and
 6 interest so required of the company within 60 days after the entry of final judgment
 7 dismissing in whole or in part any action of the company to restrain or set aside a tax,
 8 or the ~~neglect~~ failure of the company within 60 days after the entry of final judgment
 9 in favor of the state for the taxes and interest to pay the judgment shall be cause for
 10 forfeiture of all the rights, privileges and franchises granted by special charter or
 11 obtained under general laws, by or under which the company is organized and its
 12 business is operated. The attorney general upon ~~such neglect~~ the showing by the
 13 (13) department under s. 73.16 (5) (4) shall proceed by action to have forfeiture of such rights,
 14 privileges and franchises of the company duly declared. Any such company, at any
 15 time before the final judgment for forfeiture of such rights, privileges and franchises
 16 is rendered, may be permitted ~~upon good cause shown,~~ absent a showing by the
 17 (17) department under s. 73.16 (5) (4) to pay the taxes, interest and the costs of the action
 18 upon special application to the court in which the action is pending upon such terms
 19 as the court directs.

20 **SECTION 14.** 76.28 (6) (b) of the statutes is amended to read:

21 76.28 (6) (b) If any light, heat and power company that is required under this
 22 section to file a report fails to file a report within the time prescribed by law or as
 23 extended under sub. (7), ~~unless it is shown that the failure is due to reasonable cause~~
 24 ~~and not due to willful neglect~~ and upon a showing by the department under s. 73.16
 25 (5) there shall be added to the amount required to be shown as license fees on the

(4)

1 report 5% of the amount of such fees if the failure is for not more than one month,
2 with an additional 5% for each additional month or fraction thereof during which the
3 failure continues, not exceeding 25% in the aggregate.

4 **SECTION 15.** 76.39 (3) of the statutes is amended to read:

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

1 fails to pay all taxes due within the time prescribed or as extended by the
2 department, the unpaid taxes shall be delinquent, and shall be subject to interest
3 under sub. (4). All taxes, late filing fees, penalties and interest shall be deposited in
4 the general fund.

5 **SECTION 16.** 76.645 (2) (intro.) of the statutes is amended to read:

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

11 **SECTION 17.** 77.60 (2) (intro.) of the statutes is amended to read:

12 (4) 77.60 (2) (intro.) Delinquent Upon a showing by the department under s. 73.16
13 (5) delinquent sales and use tax returns shall be subject to a \$20 late filing fee unless
14 the return was not timely filed because of the death of the person required to file ~~or~~
15 ~~unless the return was not timely filed due to good cause and not due to neglect.~~ The
16 fee shall not apply if the department has failed to issue a seller's permit or a use tax
17 registration within 30 days of the receipt of an application for a seller's permit or use
18 tax registration accompanied by the fee established under s. 73.03 (50), if the person
19 does not hold a valid certificate under s. 73.03 (50), and the security required under
20 s. 77.61 (2) has not been placed with the department. Delinquent sales and use taxes
21 shall bear interest at the rate of 1.5% per month until paid. The taxes imposed by
22 this subchapter shall become delinquent if not paid:

23 **SECTION 18.** 77.60 (3) of the statutes is amended to read:

24 77.60 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by
25 the department under s. 73.16 (5), the entire tax finally determined shall be subject
(4) ✓

1 to a penalty of 25%, or 50% in the case of returns under s. 77.61 (1) (c), of the tax
2 exclusive of interest or other penalty. ~~A person filing an incorrect return shall have~~
3 ~~the burden of proving that the error or errors were due to good cause and not due to~~
4 ~~neglect.~~

5 SECTION 19. 77.60 (4) of the statutes is amended to read:

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

17 SECTION 20. 77.61 (5) (a) of the statutes is amended to read:

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

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

11 SECTION 21. 78.68 (3) of the statutes is amended to read:

12 78.68 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by
13 the department under s. 73.16 (5), ⁽⁴⁾ the entire tax finally determined is subject to a
14 penalty of 25% of the tax exclusive of interest or other penalty. ~~A person filing an~~
15 ~~incorrect return has the burden of proving that the error or errors were due to good~~
16 ~~cause and not due to neglect.~~

17 SECTION 22. 78.68 (4) of the statutes is amended to read:

18 78.68 (4) In case of failure to file any return required under ss. 78.12, 78.49,
19 ⁽⁴⁾ and 78.58 by the due date, ~~unless it is shown that that failure was due to reasonable~~
20 ~~cause and not due to neglect~~ and upon a showing by the department under s. 73.16 ⁽⁴⁾

21 ⁽⁵⁾ there shall be added to the amount required to be shown as tax on that return
22 5% of the amount of the tax if the failure is for not more than one month, and an
23 additional 5% of the tax for each additional month or fraction thereof during which
24 the failure continues, not exceeding 25% of the tax in the aggregate. For purposes
25 of this subsection, the amount of tax required to be shown on the return shall be

Insert 18-23

1 reduced by the amount of any part of the tax which is paid on or before the due date
2 prescribed for payment of the tax and by the amount of any credit against the tax
3 which may be claimed upon the return.

4 **SECTION 23.** 139.25 (3) of the statutes is amended to read:

5 139.25 (3) INCORRECT RETURN. If ~~due to neglect~~ an incorrect return is filed and
6 upon a showing by the department under s. 73.16 (5) (4) the entire tax finally
7 determined is subject to a penalty of 25% of the tax exclusive of interest or other
8 penalty. A person filing an incorrect return has the burden of proving that the error
9 or errors were due to good cause and not due to neglect.

10 **SECTION 24.** 139.25 (4) of the statutes is amended to read:

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

22 **SECTION 25.** 227.12 (3) of the statutes is amended to read:

23 227.12 (3) ~~Within~~ Except as provided in sub. (4), within a reasonable period of
24 time after the receipt of a petition under this section, an agency shall either deny the
25 petition in writing or proceed with the requested rule making. If the agency denies

Insert 18-21 ✓

1 the petition, it shall promptly notify the petitioner of the denial, including a brief
2 statement of the reason for the denial. If the agency proceeds with the requested rule
3 making, it shall follow the procedures prescribed in this subchapter.

4 **SECTION 26.** 227.12 (4) of the statutes is created to read:

5 227.12 (4) If a petition to the department of revenue alleges that the
6 department has established a standard by which it is construing a state tax statute,
7 but has not promulgated a rule to adopt the standard or published the standard in
8 a manner that is available to the public, the department shall, as provided under s.
9 227.135, submit a statement of the scope of the proposed rule to the governor no later
10 than 90 days after receiving the petition. No later than 270 days after the statement
11 is approved by the governor, the department shall submit the proposed rule in final
12 draft form to the governor for the governor's approval, as provided under s. 227.185.
13 At the department's request, the governor may, at any time prior to the expiration
14 of any deadline specified in this subsection, extend the time for submitting the
15 statement or proposed rule in draft form for any period not to exceed 60 days. The
16 governor may grant more than one extension under this subsection, but the total
17 period for all such extensions may not exceed 120 days. The rule need not adhere to
18 the standard established by the department, but shall address the same
19 circumstances as the standard addresses. If the department fails to comply with this
20 subsection, any of the petitioners may commence an action in circuit court to compel
21 the department's compliance. If an action is commenced under this subsection, the
22 court may compel the department to provide information to the court related to the
23 degree to which the department is enforcing the standard, except that the
24 information provided by the department shall not disclose the identity of any person
25 who is not a party to the action.

1 **SECTION 27.** 227.41 (1) of the statutes is amended to read:

2 227.41 (1) ~~Any~~ Except as provided in sub. (5), any agency may, on petition by
3 any interested person, issue a declaratory ruling with respect to the applicability to
4 any person, property or state of facts of any rule or statute enforced by it. Full
5 opportunity for hearing shall be afforded to interested parties. A declaratory ruling
6 shall bind the agency and all parties to the proceedings on the statement of facts
7 alleged, unless it is altered or set aside by a court. A ruling shall be subject to review
8 in the circuit court in the manner provided for the review of administrative decisions.

9 **SECTION 28.** 227.41 (3) of the statutes is amended to read:

10 227.41 (3) The Except as provided in sub. (5) (b), the petition shall be filed with
11 the administrative head of the agency or with a member of the agency's policy board.

12 **SECTION 29.** 227.41 (4) of the statutes is amended to read:

13 227.41 (4) ~~Within~~ Except as provided in sub. (5) (c), within a reasonable time
14 after receipt of a petition pursuant to this section, an agency shall either deny the
15 petition in writing or schedule the matter for hearing. If the agency denies the
16 petition, it shall promptly notify the person who filed the petition of its decision,
17 including a brief statement of the reasons therefor.

18 **SECTION 30.** 227.41 (5) of the statutes is created to read:

19 227.41 (5) (a) The department of revenue shall, on petition by any interested
20 person, or any group or association of interested persons, issue a declaratory ruling
21 with respect to the applicability to any person, property, or state of facts of any rule
22 or statute enforced by it. The department of revenue may issue a declaratory ruling
23 on the facts contained in the petition. If the department of revenue does not deny the
24 petition or issue a declaratory ruling on the facts contained in the petition, the
25 department of revenue shall hold a hearing, as provided under s. 227.44, and shall

1 afford all interested parties an opportunity to participate in the hearing. A
2 declaratory ruling shall bind the department and all parties to the proceedings on
3 the statement of facts contained in the ruling, unless it is altered or set aside by the
4 tax appeals commission or a court or the applicable rule or statute is repealed or
5 materially amended. A ruling, including the denial of the petition, shall be subject
6 to review by the tax appeals commission as provided in ch. 73.

7 (b) A petition under par. (a) shall conform to the requirements under sub. (2)
8 and be filed with the secretary of revenue.

9 (c) No later than 30 days after the day that the secretary of revenue receives
10 a petition under this subsection, the department of revenue shall deny the petition
11 in writing, issue a notice that it will issue a declaratory ruling on the facts contained
12 in the petition, in which case the department of revenue shall issue the ruling no
13 later than 90 days after issuing the notice, or schedule the matter for hearing. The
14 department may deny the petition only if the petition fails to comply with the
15 requirements under sub. (2) and par. (b) or if the department determines that the
16 petition is frivolous, a justiciable controversy does not exist, the ruling would not
17 provide guidance on matters of general applicability, or the ruling would substitute
18 for other procedures available to the parties for resolution of the dispute. If the
19 department denies the petition, it shall promptly notify the person who filed the
20 petition of its decision and include with the notice a brief statement of the reasons
21 for denying the petition. The department may not deny a petition for lack of a
22 justiciable controversy solely because the only parties to the matter are the
23 petitioner and the department.

24 (d) 1. If the department of revenue does not deny the petition, or issue a notice
25 that it will issue a declaratory ruling based on the facts contained in the petition, the

1 department shall hold a hearing and determine, no later than 180 days after the
2 secretary receives the petition, whether the petitioner has presented sufficient facts
3 from which to issue a declaratory ruling. The department of revenue, petitioner, and
4 other parties may take and preserve evidence prior to and during the hearing using
5 the methods allowed to parties under s. 227.45. With the agreement of the parties,
6 the department may rule on the petition based on facts stipulated by the parties.

7 2. If the department determines that it does not have sufficient facts from
8 which to issue a declaratory ruling, the department may deny the petition. If the
9 department determines that it has sufficient facts from which to issue a declaratory
10 ruling, the department shall issue a ruling on the merits of the petition no later than
11 180 days after the determination, unless the deadline is extended by written
12 agreement of all parties. The ruling may deny the petition on the grounds that
13 petition is frivolous, a justiciable controversy does not exist, the ruling would not
14 provide guidance on matters of general applicability, or that the ruling would
15 substitute for other procedures available to the parties for resolution of the dispute.

16 **SECTION 31.** 227.485 (2) (a) of the statutes is amended to read:

17 227.485 (2) (a) "Hearing examiner" means the agency, tax appeals commission,
18 or hearing examiner conducting the hearing.

19 **SECTION 32.** 227.485 (3) of the statutes is amended to read:

20 227.485 (3) ~~In Except as provided under sub. (3m), in any contested case in~~
21 ~~which an individual, a small nonprofit corporation or a small business is the~~
22 ~~prevailing party and submits a motion for costs under this section, the hearing~~
23 ~~examiner shall award the prevailing party the costs incurred in connection with the~~
24 ~~contested case, unless the hearing examiner finds that the state agency which is the~~

INVENT
2-15

1 losing party was substantially justified in taking its position or that special
2 circumstances exist that would make the award unjust.

3 **SECTION 33.** 227.485 (3m) of the statutes is created to read:

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

11 **SECTION 34.** 227.485 (5) of the statutes is amended to read:

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

25 **SECTION 35.** 227.485 (7) of the statutes is amended to read:

1 227.485 (7) An individual is not eligible to recover costs under this section if
 2 the person's properly reported federal adjusted gross income was \$150,000 or more
 3 in each of the 3 calendar years or corresponding fiscal years immediately prior to the
 4 commencement of the case. This subsection applies whether the person files the tax
 5 return individually or in combination with a spouse. This subsection does not apply
 6 to costs awarded under sub. (3m).

7 **SECTION 36.** 227.485 (10) (intro.) of the statutes is amended to read:

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

12 **SECTION 37.** 803.08 of the statutes is amended to read:

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

19 **SECTION 38. Initial applicability.**

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

22 (2) The treatment of sections 73.01 (4) (e) 2., 73.16 (1) to (4) and (6) and 227.485
 23 (3), (3m), and (7) of the statutes first applies to determinations that are issued on the
 24 effective date of this subsection, regardless of whether the amounts at issue relate
 25 to transactions that occurred prior to the effective date of this subsection.

Handwritten annotations: (2), (5), 227.485(1), and checkmarks.

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

7 **SECTION 39. Effective date.**

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

10 (END)

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25-6

2011-2012 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2769/lins
JK&GMM:jld:jf

Insert A

Under current law, no person, other than the person who filed the return or claim, may inspect an income or franchise tax return or claim, unless that person is doing so in performing the duties of his or her position. Under this bill, no person, other than the person who filed the return or claim, may inspect an income or franchise tax return or claim, or any information derived from the return or claim, unless that person is doing so in performing the duties of his or her position. In addition, under the bill, the same prohibition applies to other tax returns and claims, including sales and use tax returns and claims, estate tax returns and claims, and cigarette tax returns and claims.

Insert 4 - 6

1 SECTION 1. 71.78 (1m) (a) of the statutes is amended to read:
2 71.78 (1m) (a) No person, except the person who filed the return or claim, may
3 inspect a return or claim, or any information derived from a return or claim, that is
4 filed under this chapter unless that person does so in performing the duties of his or
5 her position. Violation of this paragraph by a state employee is grounds for
6 dismissal.

History: 1987 a. 312; 1987 a. 411 ss. 99, 100, 188; 1991 a. 269, 301; 1993 a. 112, 399; 1995 a. 27 ss. 3420x to 3423g, 9116 (5); 1995 a. 233, 404; 1997 a. 27, 63, 237, 323; 1999 a. 32, 89; 2005 a. 25; 2007 a. 20; 2011 a. 32.

Insert 6 - 18

7 SECTION 2. 72.06 of the statutes is amended to read:
8 72.06 Confidentiality of tax returns. Sections 71.78 (1), (1m), and (4) to (9)
9 and 71.83 (2) (a) 3. and 3m apply to any information obtained from any person by
10 the department on a death tax return, report, schedule, exhibit or other document
11 or from an audit report pertaining to the tax return.

History: 1979 c. 139, 221; 1987 a. 27; 1987 a. 312 s. 17.

Insert 7 - 24

12 (C) (1) "Person who is a party to the determination" means a person who requests
13 a determination for that person's benefit, files a claim for a refund, or is assessed by
14 the department, but not including any of the following:



1 1. A person who, on behalf of another person, requests a determination or a
2 claim for a refund or appeals a determination. ✓

3 2. A shareholder of a tax-option corporation, ✓ a member of a limited liability
4 company, or a partner of a partnership, unless such an individual is named or
5 identified in the determination, claim for a refund, or assessment. ✓

6 3. An anonymous person who requests a determination. ✓

Insert 9 - 6

7 (b) The department ✓ may retroactively apply any rule change that is related to
8 implementing a legislative act or a final and conclusive decision of the tax appeals
9 commission ✓ or the courts to take effect no earlier than the act's effective date or the
10 date on which the decision became final and conclusive, unless otherwise prescribed
11 by the legislature, tax appeals commission, or court, and only if the department
12 submits the rule's scope statement to the governor for approval under s. 227.135 (2) ✓
13 no later than 18 ✓ months after the latter of the legislative act's publication date,
14 effective date, or initial applicability date, or the date on which the decision becomes
15 final and conclusive. ✓ A retroactive application of a rule change not described under
16 this paragraph shall be subject to approval under s. 227.185. ✓

Insert 17 - 10

17 **SECTION 3.** 77.61 (6) ✓ of the statutes is created to read:

18 77.61 (6) (a) No person, except the person who filed the return or claim, may
19 inspect a return or claim, or any information derived from a return or claim, ✓ that is
20 filed under this subchapter ✓ unless that person does so in performing the duties of his
21 or her position. Violation of this paragraph ✓ by a state employee is grounds for
22 dismissal.



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

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

6 (d) Any person who violates par. (a)[✓] shall upon conviction be fined not less than
7 [✓]\$100 nor more than \$500[✓] or imprisoned ^{for} not less than one[✓] month nor more than 6[✓]
8 months or both.

9 **SECTION 4.** 77.76 (3)[✓] of the statutes is amended to read:

10 77.76 (3) From the appropriation under s. 20.835 (4) (g) the department shall
11 distribute 98.25% of the county taxes reported for each enacting county, minus the
12 county portion of the retailers' discounts, to the county and shall indicate the taxes
13 reported by each taxpayer, no later than 75 days following the last day of the calendar
14 quarter in which such amounts were reported. In this subsection, the "county
15 portion of the retailers' discount" is the amount determined by multiplying the total
16 retailers' discount by a fraction the numerator of which is the gross county sales and
17 use taxes payable and the denominator of which is the sum of the gross state and
18 county sales and use taxes payable. The county taxes distributed shall be increased
19 or decreased to reflect subsequent refunds, audit adjustments and all other
20 adjustments of the county taxes previously distributed. Interest paid on refunds of
21 county sales and use taxes shall be paid from the appropriation under s. 20.835 (4)
22 (g) at the rate paid by this state under s. 77.60 (1) (a). The county may retain the
23 amount it receives or it may distribute all or a portion of the amount it receives to
24 the towns, villages, cities and school districts in the county. Any county receiving a



1 report under this subsection is subject to the duties of confidentiality to which the
2 department of revenue is subject under s. 77.61 (5) and (6). ✓

3 History: 1985 a. 29, 41; 1991 a. 37, 269; 1995 a. 56; 1999 a. 167; 2001 a. 16; 2009 a. 28; 2011 a. 32.

SECTION 5. 77.76 (3m) of the statutes is amended to read:

4 **77.76 (3m)** From the appropriation under s. 20.835 (4) (gb) the department, for
5 the first 2 years of collection, shall distribute 97% of the taxes reported for each local
6 professional baseball park district that has imposed taxes under this subchapter,
7 minus the district portion of the retailers' discounts, to the local professional baseball
8 park district no later than the end of the 3rd month following the end of the calendar
9 quarter in which such amounts were reported. From the appropriation under s.
10 20.835 (4) (gb) the department, after the first 2 years of collection, shall distribute
11 98.5% of the taxes reported for each local professional baseball park district that has
12 imposed taxes under this subchapter, minus the district portion of the retailers'
13 discount, to the local professional baseball park district no later than the end of the
14 3rd month following the end of the calendar quarter in which such amounts were
15 reported. At the time of distribution the department shall indicate the taxes reported
16 by each taxpayer. In this subsection, the "district portion of the retailers' discount"
17 is the amount determined by multiplying the total retailers' discount by a fraction
18 the numerator of which is the gross local professional baseball park district sales and
19 use taxes payable and the denominator of which is the sum of the gross state and local
20 professional baseball park district sales and use taxes payable. The local
21 professional baseball park district taxes distributed shall be increased or decreased
22 to reflect subsequent refunds, audit adjustments and all other adjustments of the
23 local professional baseball park district taxes previously distributed. Interest paid
24 on refunds of local professional baseball park district sales and use taxes shall be



1 paid from the appropriation under s. 20.835 (4) (gb) at the rate paid by this state
2 under s. 77.60 (1) (a). Any local professional baseball park district receiving a report
3 under this subsection is subject to the duties of confidentiality to which the
4 department of revenue is subject under s. 77.61 (5) and (6). ✓

History: 1985 a. 29, 41; 1991 a. 37, 269; 1995 a. 56; 1999 ✓⁹, 167; 2001 a. 16; 2009 a. 28; 2011 a. 32.

5 **SECTION 6. 77.76 (3p)** of the statutes is amended to read:

6 **77.76 (3p)** From the appropriation under s. 20.835 (4) (ge) the department of
7 revenue shall distribute 98.5% of the taxes reported for each local professional
8 football stadium district that has imposed taxes under this subchapter, minus the
9 district portion of the retailers' discount, to the local professional football stadium
10 district no later than the end of the 3rd month following the end of the calendar
11 quarter in which such amounts were reported. At the time of distribution the
12 department of revenue shall indicate the taxes reported by each taxpayer. In this
13 subsection, the "district portion of the retailers' discount" is the amount determined
14 by multiplying the total retailers' discount by a fraction the numerator of which is
15 the gross local professional football stadium district sales and use taxes payable and
16 the denominator of which is the sum of the gross state and local professional football
17 stadium district sales and use taxes payable. The local professional football stadium
18 district taxes distributed shall be increased or decreased to reflect subsequent
19 refunds, audit adjustments and all other adjustments of the local professional
20 football stadium district taxes previously distributed. Interest paid on refunds of
21 local professional football stadium district sales and use taxes shall be paid from the
22 appropriation under s. 20.835 (4) (ge) at the rate paid by this state under s. 77.60 (1)
23 (a). Any local professional football stadium district receiving a report under this



1 subsection is subject to the duties of confidentiality to which the department of
2 revenue is subject under s. 77.61 (5) and (6). ✓

3 History: 1985 a. 29, 41; 1991 a. 37, 269; 1995 a. 56; 1999 a. 9, 167; 2001 a. 16; 2009 a. 28; 2011 a. 32.

SECTION 7. 77.95 of the statutes is amended to read:

4 **77.95 Interest and penalties.** The interest and penalty provisions under ss.
5 71.82 (1) (a) and (b) and (2) (a) and (b), 71.83 (1) (a) 1., 2. and 7. and (b) 1., (2) (a) 1.
6 to ~~3~~ ^{← strike} 3m. and (b) 1. to 3. and (3) and 71.85, as they apply to the taxes under ch. 71, apply
7 to the surcharge under this subchapter. ^{← score}

8 History: 1989 a. 335; 1991 a. 39; 1993 a. 6.

SECTION 8. 77.982 (2) of the statutes, as affected by 2011 Wisconsin Act 18, is
9 amended to read:

10 77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (14), (14g), (15a), and (15b),
11 77.52 (1b), (3), (5), (13), (14), and (18) to (23), 77.54 (51) and (52), 77.58 (1) to (5), (6m),
12 and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), and (12) to (15),
13 and 77.62, as they apply to the taxes under subch. III, apply to the tax under this
14 subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the
15 tax under this subchapter. ^{← single underscore}

16 History: 1993 a. 263, 491; 1999 a. 9; ~~2003 a. 203~~; 2007 a. 20; 2009 a. 2, 330; 2011 a. 18.

SECTION 9. 77.982 (3) of the statutes is amended to read:

17 77.982 (3) From the appropriation under s. 20.835 (4) (gg), the department of
18 revenue shall distribute 97.45% of the taxes collected under this subchapter for each
19 district to that district and shall indicate to the district the taxes reported by each
20 taxpayer in that district, no later than the end of the month following the end of the
21 calendar quarter in which the amounts were collected. The taxes distributed shall
22 be increased or decreased to reflect subsequent refunds, audit adjustments, and all
23 other adjustments. Interest paid on refunds of the tax under this subchapter shall
24 be paid from the appropriation under s. 20.835 (4) (gg) at the rate under s. 77.60 (1)



1 (a). Those taxes may be used only for the district's debt service on its bond
2 obligations. Any district that receives a report along with a payment under this
3 subsection is subject to the duties of confidentiality to which the department of
4 revenue is subject under s. 77.61 (5) and (6).[✓]

5 History: 1993 a. 263, 491; 1999 a. 9; 2003 a. 203; 2007 a. 20^X; 2009 a. 2, 330; 2011 a. 18.

SECTION 10. 77.991 (2) of the statutes, as affected by 2011 Wisconsin Act 18,

6 is amended to read:

7 77.991 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5),
8 (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60,
9 77.61 (2), (3m), (5), (6),[✓] (8), (9), and (12) to (15), and 77.62, as they apply to the taxes
10 under subch. III, apply to the tax under this subchapter. Section 77.73, as it applies
11 to the taxes under subch. V, applies to the tax under this subchapter. The renter shall
12 collect the tax under this subchapter from the person to whom the passenger car is
13 rented.

14 History: 1993 a. 263; 1999 a. 9; 2003 a. 203; 2007 a. 20^X; 2009 a. 2, 330; 2011 a. 18.

SECTION 11. 77.9941 (5) of the statutes is amended to read:

15 77.9941 (5) From the appropriation under s. 20.835 (4) (gd) the department
16 shall distribute 97% of the taxes under this subchapter reported, for each
17 municipality or county that has imposed the tax, minus the municipality's or county's
18 portion of the retailers' discounts, to the municipality or county and shall indicate
19 the taxes reported by each taxpayer, no later than the end of the 3rd month following
20 the end of the calendar quarter in which such amounts were reported. In this
21 subsection, the "municipality's or county's portion of the retailers' discount" is the
22 amount determined by multiplying the total retailers' discount by a fraction the
23 numerator of which is the gross sales and use taxes payable under this subchapter
24 and the denominator of which is the sum of the gross state sales and use taxes and



1 the sales taxes and use taxes payable under this subchapter. The taxes under this
 2 subchapter distributed shall be increased or decreased to reflect subsequent refunds,
 3 audit adjustments and all other adjustments of the taxes under this subchapter
 4 previously distributed. Interest paid on refunds of sales and use taxes under this
 5 subchapter shall be paid from the appropriation under s. 20.835 (4) (gd) at the rate
 6 paid by this state under s. 77.60 (1) (a). Any municipality or county receiving a report
 7 under this subsection is subject to the duties of confidentiality to which the
 8 department of revenue is subject under s. 77.61 (5) and (6).[✓]

History: 1997 a. 27; 2005 a. 25; 2009 a. 2, 28. ^X

9 **SECTION 12.** 77.9951 (2) of the statutes, as affected by 2011 Wisconsin Act 18,

10 is amended to read:

11 77.9951 (2) Sections 77.51 (3r), (12m), (14), (14g), (15a), and (15b), 77.52 (1b),
 12 (3), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59,
 13 77.60, 77.61 (2), (3m), (5), [✓](6), (8), (9), and (12) to (15), and 77.62, as they apply to the
 14 taxes under subch. III, apply to the fee under this subchapter. The renter shall collect
 15 the fee under this subchapter from the person to whom the vehicle is rented.

History: 1997 a. 27; 2007 a. 20; 2009 a. 2, 28, 330; 2011 a. 18.

16 **SECTION 13.** 77.9964 (2) of the statutes is amended to read:

17 77.9964 (2) Except as provided in s. 77.9961 (1) (b), (d), and (e), ss. 71.74 (1) to
 18 (3), (7), (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77 (1) and (4) to (8),
 19 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and
 20 (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2., and 6., (2) (a)
 21 1. to ~~3m~~ and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3), and
 22 (4) to (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the fees
 23 under this subchapter.

History: 1997 a. 27; 1999 a. 9; 2003 a. 312.



1 **SECTION 14.** 77.9972 (2) of the statutes, as affected by 2011 Wisconsin Act 180,

2 is amended to read:

3 77.9972 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3),
4 (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60,
5 77.61 (2), (3m), (5), (6), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes
6 under subch. III, apply to the fee under this subchapter. Section 77.73, as it applies
7 to the taxes under subch. V, applies to the fee under this subchapter. The renter shall
8 collect the fee under this subchapter from the person to whom the passenger car is
9 rented.

History: 2005 a. 25; 2007 a. 20; 2009 a. 2, 28, 330; 2011 a. 18, 32.

Insert 18 - 3

10 **SECTION 15.** 125.52 (8) of the statutes is created to read:

11 125.52 (8) CONFIDENTIALITY. Sections 71.78 (1m) and 71.83 (2) (a) 3. and 3m.,
12 as they apply to returns and claims under ch. 71, apply to permits issued under this
13 section.

14 **SECTION 16.** 125.53 (3) of the statutes is created to read:

15 125.23 (3) Sections 71.78 (1m) and 71.83 (2) (a) 3. and 3m., as they apply to
16 returns and claims under ch. 71, apply to permits issued under this section.

17 **SECTION 17.** 125.58 (5) of the statutes is created to read:

18 125.58 (5) Sections 71.78 (1m) and 71.83 (2) (a) 3. and 3m., as they apply to
19 returns and claims under ch. 71, apply to permits issued under this section.

20 **SECTION 18.** 139.11 (4) (a) of the statutes is amended to read:

21 139.11 (4) (a) Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m.,
22 relating to confidentiality of income, franchise and gift tax returns, apply to any
23 information obtained from any person on a fermented malt beverage tax return,



1 report, schedule, exhibit or other document or from an audit report relating to any
2 of those documents, except that the department of revenue shall publish brewery
3 production and sales statistics.

History: 1981 c. 20; 1985 a. 120, 302; 1987 a. 312 ss. 10, 17; 1991 a. 39; 1993 a. 482; 1997 a. 27; 2007 a. 20, 85.

Insert 18 - 21

4 **SECTION 19.** 139.38 (6) of the statutes is amended to read:

5 139.38 (6) Sections 71.78 (1), (1m) and (4) to (9) and 71.83 (2) (a) 3. and 3m.,
6 relating to confidentiality of income, franchise and gift tax returns, apply to any
7 information obtained from any person on a cigarette tax return, report, schedule,
8 exhibit or other document or from an audit report pertaining to the same.

History: 1977 c. 289 ss. 9, 11m; 1981 c. 20; 1983 a. 27; 1985 a. 302; 1987 a. 312 ss. 11, 17; 1991 a. 39; 1993 a. 482; 1997 a. 27; 2005 a. 25, 49.

9 **SECTION 20.** 139.82 (6) of the statutes is amended to read:

10 139.82 (6) Sections 71.78 (1), (1m) and (4) to (9) and 71.83 (2) (a) 3. and 3m.,
11 relating to confidentiality of income, franchise and gift tax returns, apply to any
12 information obtained from any person on a tobacco product tax return, report,
13 schedule, exhibit or other document or from an audit report pertaining to the same.

History: 1981 c. 20; 1987 a. 312; 1991 a. 39; 1997 a. 27; 1999 a. 9.

Insert 22 - 15

14 **SECTION 21.** 227.483 (1) of the statutes is amended to read:

15 227.483 (1) If a hearing examiner or the tax appeals commission finds, at any
16 time during the proceeding, that an administrative hearing commenced or continued
17 by a petitioner or a claim or defense used by a party is frivolous, the hearing examiner
18 or tax appeals commission shall award the successful party the costs and reasonable
19 attorney fees that are directly attributable to responding to the frivolous petition,
20 claim, or defense.

History: 2003 a. 118.

Insert 25 - 6



1 (4) The treatment of section 73.16 (3) ✓ of the statutes first applies to final audit
2 reports beginning on January 1, 2014. ✓

3 (5) The treatment of section 227.41 (1), (3), (4), and (5) ✓ of the statutes first
4 applies to petitions filed on the effective date of this subsection. ✓

TO: Representative Strachota and Senator Zipperer
FROM: Diane Hardt, Income, Sales & Excise Tax Administrator
Wisconsin Department of Revenue
DATE: September 29, 2011
RE: LRB-2769/1

The Department has six technical comments on this draft.

1. **Page 11-12: delete erroneous inclusion of fraud section (76.05(1)) in negligence standard.** Section 76.05(1) deals with situations in which a utility who has refused to provide any papers or testimony to the department cannot attack the department's determination thereafter unless the utility shows fraud or mistake. It is NOT a negligence penalty situation (that is imposed against such companies in sec. 76.05(2), which is modified by this bill). Since there is no intent to modify fraud standards, this section should not be part of this bill.

~~76.05 (1) If any company defined in s. 76.02 or its officers or agents shall refuse or neglect to make any reports required by s. 76.04 or by the department, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by the department, or shall refuse or neglect to appear before the department in obedience to a summons, and upon a showing by the department under s. 73.16 (4), such company shall be estopped to question or impeach the action or determination of the department except upon satisfactory proof of fraud or mistake injurious to the company.~~

2. **Page 2: In Analysis, delete equitable recoupment (no longer in bill) and delete erroneous negligence standard.** On page 2, the first three paragraphs of the Analysis should be modified to delete the sentence describing equitable recoupment, and to delete the negligence standard (as the intent is to leave the standard unchanged, but shift the burden of proof to the Department of Revenue).

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 certain taxes and fees 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.~~

Under the bill, DOR may not impose a penalty on a taxpayer for negligence or for otherwise filing an improper return unless the the taxpayer's action was due to the taxpayer's willful neglect and not to reasonable cause. ~~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.~~

3. **Page 30: clarify effective date in Section 53 for written guidance reliance.** "Final audit reports" is not a technical term – audit determination is. Also, it is unclear whether this will apply for audit determinations with audit periods beginning on or after 1/1/14, or audit determinations for ANY audit periods where the determinations are issued beginning on 1/1/14. We assume the latter and recommend that it be amended as follows:

(4) The treatment of section 73.16(3) of the statutes first applies to ~~final-audit reports~~ determinations beginning on ~~issued after~~ January 1, 2014.

4. **Page 9-10: correct cross-references in guidance section, sec. 73.16(2).** Paragraph (b) is all new and no longer contains a reference to pars. (a) and (am). However, the other three paragraphs still contain a cross referencing problems. For example, par. (a) refers to an exception in pars. (b) and (c). Par. (a) and par. (b) both address rules, but par. (c) addresses written guidance so par. (a) should only refer to the exception in par. (b) and not par. (c). Therefore, we recommend the following changes:

1. Par (a) - Eliminate reference to par. (c).
2. Par (am) - Eliminate reference to par. (b).
3. Par (c) - Eliminate reference to par. (a).

5. **Page 8: delete "modified" to avoid unduly restraining TAC's ability to cite its own decisions.** On page 8, sec. 73.015(3) tell courts when they cannot cite a Tax Appeals Commission decision. There is a separation of powers issue that may make this ineffective: it may be argued that the legislative and executive branch cannot tell the judicial branch what it can and cannot cite.

Also, this language is confusing and could prohibit the TAC from citing its own holdings if they were previously modified. Consider this example:

CASE A: holds persons and partnerships can depreciate cars used for business.

CASE B: modifies Case A so partnerships cannot depreciate cars used for business.

CASE C: TAC wants to cite Case A as authority that persons can depreciate cars used for business, but can't cite it because Case A's holding on depreciation was modified by case B.

For that reason, if this section is included, we recommend the following:

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

- ✓ **6. Be consistent on referring to persons rather than taxpayers.** Section 73.16(1)(c) refers to "persons." For consistency, we should change sec. 73.16(1)(e) as follows:

"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~~ a person or the ~~taxpayer's~~ person's representative.