

SENATE BILL 23, SEPTEMBER 2011 SPECIAL SESSION (LRB -3044)

An Act to amend 71.09 (11) (d), 71.78 (1m) (a), 71.83 (1) (a) 1., 71.83 (1) (a) 1m., 71.83 (1) (a) 2., 71.83 (1) (a) 3., 71.83 (1) (a) 4., 71.83 (3) (a), 72.06, 73.01 (4) (e) 2., 76.05 (2), 76.14, 76.28 (6) (b), 76.39 (3), 76.645 (2) (intro.), 77.60 (2) (intro.), 77.60 (3), 77.60 (4), 77.61 (5) (a), 77.76 (3), 77.76 (3m), 77.76 (3p), 77.95, 77.982 (2), 77.982 (3), 77.991 (2), 77.9941 (5), 77.9951 (2), 77.9964 (2), 77.9972 (2), 78.68 (3), 78.68 (4), 139.11 (4) (a), 139.25 (3), 139.25 (4), 139.38 (6), 139.82 (6), 227.12 (3), 227.41 (1), 227.41 (3), 227.41 (4), 227.483 (1) and 803.08; and to create 73.015 (3), 73.16, 77.61 (6), 125.52 (8), 125.53 (3), 125.58 (5), 227.12 (4) and 227.41 (5) of the statutes; relating to: various duties of the Department of Revenue, including issuing declaratory judgments, conducting audits and assessments, asserting liability, allowing claims for refunds, awarding the costs of litigation, prohibiting browsing of returns and claims, imposing penalties related to a taxpayer's negligence, requiring the exercise of rule-making authority, and providing a penalty. (FE)

2011

10-18.	S.	Introduced by committee on SENATE ORGANIZATION , by request of Governor Scott Walker, Senator Zipperer, and Representative Strachota.	
10-18.	S.	Read first time and referred to committee on Public Health, Human Services, and Revenue	501
10-18.	S.	Senator Zipperer added as a coauthor	502
10-18.	S.	Representative Strachota added as a cosponsor	502
10-18.	S.	Senators Galloway, Grothman, Darling and Lasee added as coauthors.	
10-18.	S.	Representatives Kooyenga, Craig, Knodl, Endsley, Kestell, LeMahieu, Kaufert, Marklein, Vos, A. Ott, Litjens, Jacque and Mursau added as cosponsors.	
10-24.	S.	Public hearing held.	
10-25.	S.	Fiscal estimate received.	
10-25.	S.	Fiscal estimate received.	
10-26.	S.	Executive action taken.	
10-26.	S.	Report passage recommended by committee on Public Health, Human Services, and Revenue, Ayes 3, Noes 2	537
10-26.	S.	Available for scheduling.	
10-26.	S.	Referred to joint committee on Finance by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	537
10-26.	S.	Executive action taken.	
10-26.	S.	Report introduction of Senate Amendment 1 recommended by joint committee on Finance, Ayes 15, Noes 0 (LRB a1788)	537
10-26.	S.	Report adoption of Senate Amendment 1 recommended by joint committee on Finance, Ayes 15, Noes 0 ..	537
10-26.	S.	Report passage as amended recommended by joint committee on Finance, Ayes 12, Noes 3	537
10-26.	S.	Available for scheduling.	
10-26.	S.	Placed on calendar 10-27-2011 pursuant to Senate Rule 18(1)	537
10-27.	S.	Read a second time	543
✓10-27.	S.	Senate amendment 1 adopted	543
10-27.	S.	Senate amendment 2 offered by Senator Cowles (LRB a1829)	543
✓10-27.	S.	Senate amendment 2 adopted	543
10-27.	S.	Ordered to a third reading	543
10-27.	S.	Rules suspended	543
✓10-27.	S.	Read a third time and passed , Ayes 17, Noes 15	543
10-27.	S.	Ordered immediately messaged	544
10-31.	A.	Received from Senate	630
10-31.	A.	Read first time and referred to calendar 11-1-2011 pursuant to Assembly Rule 93	631
11-03.	A.	Rules suspended to withdraw from calendar and take up.	
11-03.	A.	Read a second time.	
11-03.	A.	Ordered to a third reading.	
11-03.	A.	Rules suspended.	
✓11-03.	A.	Read a third time and concurred in , Ayes 72, Noes 22, Paired 2.	
11-03.	A.	Ordered immediately messaged.	
11-04.	S.	Received from Assembly concurred in.	

9MB

Sept 2011 Special Session

**2011
ENROLLED BILL**

11en S B-23

ADOPTED DOCUMENTS:

Orig **Engr** **SubAmdt**

11 304411

Amendments to above (if none, write "NONE"): SA1(a1788/1), SA2(a1829/1)

Corrections - show date (if none, write "NONE"): _____

11-9-11 (CCC in enrolling)

Topic See attached

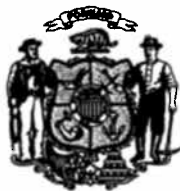
11-4-11
Date

Gen F. Kaupp
Enrolling Drafter

Editor: SEN. AMD 1, item 1 not given effect

TOPIC

Various duties of the Department of Revenue, including issuing declaratory judgments, conducting audits and assessments, asserting liability, allowing claims for refunds, and imposing penalties related to a taxpayer's negligence.



State of Wisconsin
2011-2012 LEGISLATURE

CORRECTIONS IN:

September 2011 Special Session

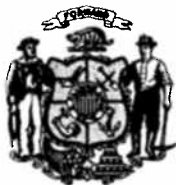
SENATE BILL 23

Prepared by the Legislative Reference Bureau
(November 9, 2011)

In enrolling, the following correction was made:

Item 1 of senate amendment 1 was not given effect because item 1 of senate amendment 2 deleted that material.

(END)



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRB-3044/1
JK&GMM:jld:rs

SENATE BILL 23

October 18, 2011 - Introduced by COMMITTEE ON SENATE ORGANIZATION, by request of Governor Scott Walker, Senator Zipperer, and Representative Strachota. Referred to Committee on Public Health, Human Services, and Revenue.

1 **AN ACT** *to amend* 71.09 (11) (d), 71.78 (1m) (a), 71.83 (1) (a) 1., 71.83 (1) (a) 1m.,
2 71.83 (1) (a) 2., 71.83 (1) (a) 3., 71.83 (1) (a) 4., 71.83 (3) (a), 72.06, 73.01 (4) (e)
3 2., 76.05 (2), 76.14, 76.28 (6) (b), 76.39 (3), 76.645 (2) (intro.), 77.60 (2) (intro.),
4 77.60 (3), 77.60 (4), 77.61 (5) (a), 77.76 (3), 77.76 (3m), 77.76 (3p), 77.95, 77.982
5 (2), 77.982 (3), 77.991 (2), 77.9941 (5), 77.9951 (2), 77.9964 (2), 77.9972 (2),
6 78.68 (3), 78.68 (4), 139.11 (4) (a), 139.25 (3), 139.25 (4), 139.38 (6), 139.82 (6),
7 227.12 (3), 227.41 (1), 227.41 (3), 227.41 (4), 227.483 (1) and 803.08; and *to*
8 **create** 73.015 (3), 73.16, 77.61 (6), 125.52 (8), 125.53 (3), 125.58 (5), 227.12 (4)
9 and 227.41 (5) of the statutes; **relating to:** various duties of the Department
10 of Revenue, including issuing declaratory judgments, conducting audits and
11 assessments, asserting liability, allowing claims for refunds, awarding the
12 costs of litigation, prohibiting browsing of returns and claims, imposing

1 penalties related to a taxpayer's negligence, requiring the exercise of
2 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.

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 due to the taxpayer's willful neglect and not to reasonable cause.

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.

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.

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 (4).

1 SECTION 2. 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.

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

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

21 71.83 (1) (a) 1m. 'Failure to file information return.' If a person fails to file a
22 return required under subch. XI by the prescribed due date, including any extension,
23 or files an incorrect or incomplete return, that person may be subject to a penalty of
24 \$10 for each violation. A penalty shall be waived ~~if the person shows that a violation~~

1 ~~is due to reasonable cause and not due to willful neglect~~ except upon a showing by
2 the department under s. 73.16 (4).

3 **SECTION 5.** 71.83 (1) (a) 2. of the statutes is amended to read:

4 71.83 (1) (a) 2. ‘Incomplete or incorrect return.’ If any person required under
5 this chapter to file an income or franchise tax return files an incomplete or incorrect
6 return, ~~unless it is shown that such filing was due to good cause and not due to~~
7 ~~neglect~~ and upon a showing by the department under s. 73.16 (4), there shall be
8 added to such person’s tax for the taxable year 25% of the amount otherwise payable
9 on any income subsequently discovered or reported. The amount so added shall be
10 assessed, levied and collected in the same manner as additional normal income or
11 franchise taxes, and shall be in addition to any other penalties imposed by this
12 chapter. In this subdivision, “return” includes a separate return filed by a spouse
13 with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g)
14 to (L) after the filing of that separate return, and a joint return filed by the spouses
15 with respect to a taxable year for which a separate return is filed under s. 71.03 (2)
16 (m) after the filing of that joint return.

17 **SECTION 6.** 71.83 (1) (a) 3. of the statutes is amended to read:

18 71.83 (1) (a) 3. ‘Incomplete or incorrect deposit or withholding report.’ If any
19 person required under subch. X to file a deposit report or withholding report files an
20 incomplete or incorrect report, or fails to properly withhold or fails to properly
21 deposit or pay over withheld funds, ~~unless it can be shown that the filing or failure~~
22 ~~was due to good cause and not due to neglect~~ and upon a showing by the department
23 under s. 73.16 (4), there shall be added to the tax 25% of the amount not reported or
24 not withheld, deposited or paid over. The amount so added shall be assessed, levied
25 and collected in the same manner as additional income or franchise taxes, and shall

1 be in addition to any other penalties imposed in this subchapter. “Person”, in this
2 subdivision, includes an officer or employee of a corporation or other responsible
3 person or a member or employee of a partnership or limited liability company or
4 other responsible person who, as such officer, employee, member or other responsible
5 person, is under a duty to perform the act in respect to which the violation occurs.

6 **SECTION 7.** 71.83 (1) (a) 4. of the statutes is amended to read:

7 71.83 (1) (a) 4. ‘Late filing of withholding report.’ In case of failure to file any
8 withholding deposit or payment report required under s. 71.65 (3) on the due date
9 prescribed therefor, ~~unless it is shown that the failure is due to reasonable cause and~~
10 ~~not due to willful neglect~~ upon a showing by the department under s. 73.16 (4), there
11 shall be added to the amount required to be shown as withheld taxes on the report
12 5% of the amount if the failure is not for more than one month, with an additional
13 5% for each additional month or fraction thereof during which the failure continues,
14 not exceeding 25% in the aggregate.

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

16 71.83 (3) (a) If any person required under this chapter to file an income or
17 franchise tax return fails to file a return within the time prescribed by law, or as
18 extended under s. 71.03 (7), 71.24 (7) or 71.44 (3), unless the return is filed under such
19 an extension but the person fails to file a copy of the extension that is granted by or
20 requested of the internal revenue service, the department shall add \$50 to the
21 person’s tax if the return is filed under subch. I of this chapter or \$150 to the person’s
22 tax if the return is filed under subch. IV or VII of this chapter. If no tax is assessed
23 against any such person the amount of this fee shall be collected as income or
24 franchise taxes are collected. If any person who is required under s. 71.65 (3) to file
25 a withholding report and deposit withheld taxes fails timely to do so and upon a

1 ~~showing by the department under s. 73.16 (4); unless the person so required dies or~~
2 ~~the failure is due to a reasonable cause and not due to neglect;~~ the department of
3 revenue shall add \$50 to the amount due except that if the person is subject to
4 taxation under subch. IV or VII of this chapter the department shall add \$150 to the
5 amount due.

6 **SECTION 9.** 72.06 of the statutes is amended to read:

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

11 **SECTION 10.** 73.01 (4) (e) 2. of the statutes is amended to read:

12 73.01 (4) (e) 2. Except for hearings on ss. 341.405 and 341.45, the department
13 of revenue may choose not to appeal and to nonacquiesce in the decision or order by
14 sending a notice of nonacquiescence to the clerk of the commission, to the legislative
15 reference bureau for publication in the Wisconsin administrative register and to the
16 taxpayer or the taxpayer's representative before the time expires for seeking a
17 review of the decision or order under s. 73.015. The effect of this action is that,
18 although the decision or order is binding on the parties for the instant case and the
19 decision or order may be cited by the commission and the courts, the commission's
20 conclusions of law, the rationale and construction of statutes in the instant case are
21 not binding upon or required to be followed by the department of revenue in other
22 cases.

23 **SECTION 11.** 73.015 (3) of the statutes is created to read:

24 73.015 (3) Except for decisions and orders in small claims matters, as defined
25 in s. 73.01 (1) (b), a conclusion of law or other holding in any decision or order of the

1 tax appeals commission may be cited by the commission or the courts as authority
2 unless that conclusion of law or holding has been reversed, overruled, or vacated on
3 the merits on appeal or by a subsequent decision or order of the commission.

4 **SECTION 12.** 73.16 of the statutes is created to read:

5 **73.16 General provision. (1) DEFINITIONS.** In this section:

6 (a) “Commonly controlled group” has the meaning given in s. 71.255 (1) (c).

7 (b) “Department” means the department of revenue.

8 (c) “Person who is a party to the determination” means a person who requests
9 a determination for that person’s benefit, files a claim for a refund, or is assessed by
10 the department, but not including any of the following:

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

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

16 3. An anonymous person who requests a determination.

17 (d) “Published” means prepared and issued for public distribution and does not
18 include guidance on a private matter or issue.

19 (e) “Written guidance” means a written statement made by an employee of the
20 department acting in an official capacity regarding a Wisconsin tax question to the
21 person or the person’s representative.

22 **(2) RELYING ON PUBLISHED GUIDANCE.** (a) Except as provided in par. (b), in the
23 course of any determination, or in the course of any proceeding appealing any
24 determination, the department shall not take a position that is contrary to any rule
25 promulgated by the department that was in effect during the period related to the

1 determination or that is contrary to any guidance published by the department prior
2 to that period and not subsequently retracted, altered, or amended by the
3 department or the legislature or by a final and conclusive decision of the tax appeals
4 commission or courts.

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

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

22 (c) With regard to any position taken by the department in any matter
23 described under par. (am), if the department retracts, alters, or amends previously
24 published or previously issued written guidance for any purpose other than to
25 implement a legislative act or final and conclusive decision of the tax appeals

1 commission or courts, the department shall apply the retraction, alteration, or
2 amendment prospectively only, unless the change is to a taxpayer's benefit, in which
3 case, the department shall apply the retraction, alteration, or amendment
4 retroactively. A retroactive change in any previously published or previously issued
5 written guidance related to implementing a legislative act or final and conclusive
6 decision of the tax appeals commission or courts may take effect no earlier than the
7 act's effective date or the date on which the decision became final and conclusive
8 unless otherwise prescribed by the legislature or ordered by the courts.

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

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

19 2. A department employee who was involved in the prior determination
20 identified or reviewed the tax issue before completing the prior determination, as
21 shown by any schedules, exhibits, audit reports, documents, or other written
22 evidence pertaining to the determination, and the schedules, exhibits, reports,
23 documents and other written evidence show that the department did not adjust the
24 person's treatment of the tax issue.

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

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

9 (4) NEGLIGENCE DETERMINATIONS. The department shall not impose a penalty
10 on a taxpayer under ss. 71.09 (11) (d), 71.83 (1) (a) 1. to 4. and (3) (a), 76.05 (2), 76.14,
11 76.28 (6) (b), 76.39 (3), 76.645 (2), 77.60 (2) (intro.), (3), and (4), 78.68 (3) and (4), and
12 139.25 (3) and (4), unless the department shows that the taxpayer's action or inaction
13 was due to the taxpayer's willful neglect and not to reasonable cause.

14 (5) APPLICABILITY. Except as provided in subs. (3) and (4), notwithstanding any
15 other provision of law, this section applies to all taxes and fees administered by the
16 department.

17 SECTION 13. 76.05 (2) of the statutes is amended to read:

18 76.05 (2) ~~No~~ Upon a showing by the department under s. 73.16 (4), no company
19 shall be allowed in any action or proceeding to question the amount or valuation of
20 its property as assessed by the department unless such company shall have made
21 and filed with the department a full and complete report of the facts and information
22 prescribed by s. 76.04 and called for by the department thereunder, ~~provided that the~~
23 ~~refusal or neglect of such company to file the report in time may on application of the~~
24 ~~company and for good cause shown be excused by the department on condition that~~
25 ~~such.~~ If the department has not made a showing under s. 73.16 (4), the company shall

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1 make a full and complete report of all facts and information mentioned in said s.
2 76.04 within 15 days after notice by mail of the amount of the assessment of the
3 property of such company, and shall appear before the department at a time
4 designated by it and make a full disclosure of all property liable to assessment and
5 taxation under this subchapter and show the full value of such property to the
6 satisfaction of the department.

7 **SECTION 14.** 76.14 of the statutes is amended to read:

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

1 upon special application to the court in which the action is pending upon such terms
2 as the court directs.

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

4 76.28 (6) (b) If any light, heat and power company that is required under this
5 section to file a report fails to file a report within the time prescribed by law or as
6 extended under sub. (7), ~~unless it is shown that the failure is due to reasonable cause~~
7 ~~and not due to willful neglect and upon a showing by the department under s. 73.16~~
8 (4), there shall be added to the amount required to be shown as license fees on the
9 report 5% of the amount of such fees if the failure is for not more than one month,
10 with an additional 5% for each additional month or fraction thereof during which the
11 failure continues, not exceeding 25% in the aggregate.

12 **SECTION 16.** 76.39 (3) of the statutes is amended to read:

13 76.39 (3) Every railroad company operating in this state shall file annually
14 with the department, on or before April 15, on a form prepared by the department,
15 a true and accurate statement of all rentals paid to each car line company during the
16 previous calendar year and shall remit to the department the amount of the tax
17 required to be withheld under sub. (2). Every car line company, which during the
18 previous calendar year has received gross earnings in this state from a source other
19 than a railroad company operating in this state, shall, on or before April 15, on a form
20 prepared by the department, file with the department a true and accurate statement
21 of such gross earnings in this state and the name of the company from which received
22 and shall remit to the department the amount of the tax imposed under sub. (2) on
23 such gross earnings in this state. The payment dates provided for in sub. (3a) shall
24 apply. Upon written request received by the department before April 15, the
25 department may grant an extension of not to exceed 30 days for the filing of the report

1 and the payment of the taxes levied in this section. If any railroad company or car
2 line company fails to file such report when due, or as extended by the department,
3 ~~unless it is shown that the failure is due to reasonable cause and not due to willful~~
4 ~~neglect and upon a showing by the department under s. 73.16 (4),~~ there shall be
5 added to the amount required to be shown as gross earnings tax on the report 5% of
6 the amount thereof if the failure is for not more than one month, with an additional
7 5% for each additional month or fraction thereof during which the failure continues,
8 not exceeding 25% in the aggregate. If any railroad company or car line company
9 fails to pay all taxes due within the time prescribed or as extended by the
10 department, the unpaid taxes shall be delinquent, and shall be subject to interest
11 under sub. (4). All taxes, late filing fees, penalties and interest shall be deposited in
12 the general fund.

13 **SECTION 17.** 76.645 (2) (intro.) of the statutes is amended to read:

14 76.645 (2) NEGLIGENCE. (intro.) An insurer that fails to pay an amount due,
15 or file a return required, under s. 76.64, ~~unless the insurer shows that the failure is~~
16 ~~due to reasonable cause and not due to willful neglect and upon a showing by the~~
17 ~~department of revenue under s. 73.16 (4),~~ is liable for the greater of the following
18 amounts:

19 **SECTION 18.** 77.60 (2) (intro.) of the statutes is amended to read:

20 77.60 (2) (intro.) ~~Delinquent~~ Upon a showing by the department under s. 73.16
21 (4), delinquent sales and use tax returns shall be subject to a \$20 late filing fee unless
22 the return was not timely filed because of the death of the person required to file ~~or~~
23 ~~unless the return was not timely filed due to good cause and not due to neglect.~~ The
24 fee shall not apply if the department has failed to issue a seller's permit or a use tax
25 registration within 30 days of the receipt of an application for a seller's permit or use

1 tax registration accompanied by the fee established under s. 73.03 (50), if the person
2 does not hold a valid certificate under s. 73.03 (50), and the security required under
3 s. 77.61 (2) has not been placed with the department. Delinquent sales and use taxes
4 shall bear interest at the rate of 1.5% per month until paid. The taxes imposed by
5 this subchapter shall become delinquent if not paid:

6 **SECTION 19.** 77.60 (3) of the statutes is amended to read:

7 77.60 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by
8 the department under s. 73.16 (4), the entire tax finally determined shall be subject
9 to a penalty of 25%, or 50% in the case of returns under s. 77.61 (1) (c), of the tax
10 exclusive of interest or other penalty. ~~A person filing an incorrect return shall have~~
11 ~~the burden of proving that the error or errors were due to good cause and not due to~~
12 ~~neglect.~~

13 **SECTION 20.** 77.60 (4) of the statutes is amended to read:

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

25 **SECTION 21.** 77.61 (5) (a) of the statutes is amended to read:

1 77.61 (5) (a) It is unlawful for the department or any person having an
2 administrative duty under this subchapter to make known in any manner whatever
3 the business affairs, operations or information obtained by an investigation of
4 records and equipment of any retailer or any other person visited or examined in the
5 discharge of official duty, or the amount or source of income, profits, losses,
6 expenditures, or any particular thereof, set forth or disclosed in any return, or to
7 permit any return or copy thereof to be seen or examined by any person. This
8 paragraph does not prohibit the department of revenue from publishing statistics
9 classified so as not to disclose the identity of particular returns or reports and the
10 items thereof. This paragraph does not prohibit employees or agents of the
11 department of revenue from offering or submitting information obtained by
12 investigation or any return or any schedule, exhibit or writing pertaining to a return
13 or any copy of, or information derived from, any of those documents as evidence into
14 the record of any contested matter involving the department in proceedings or
15 litigation on state tax matters if that evidence has reasonable probative value. This
16 paragraph does not prohibit employees or agents of the department of revenue from
17 informing a buyer or seller who has filed a claim for a refund that a refund has been
18 paid to a seller or buyer with respect to the same transaction.

19 **SECTION 22.** 77.61 (6) of the statutes is created to read:

20 77.61 (6) (a) No person, except the person who filed the return or claim, may
21 inspect a return or claim, or any information derived from a return or claim, that is
22 filed under this subchapter unless that person does so in performing the duties of his
23 or her position. Violation of this paragraph by a state employee is grounds for
24 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
8 6 months or both.

9 **SECTION 23.** 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 **SECTION 24.** 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
25 paid from the appropriation under s. 20.835 (4) (gb) at the rate paid by this state

1 under s. 77.60 (1) (a). Any local professional baseball park district receiving a report
2 under this subsection is subject to the duties of confidentiality to which the
3 department of revenue is subject under s. 77.61 (5) and (6).

4 **SECTION 25.** 77.76 (3p) of the statutes is amended to read:

5 77.76 (3p) From the appropriation under s. 20.835 (4) (ge) the department of
6 revenue shall distribute 98.5% of the taxes reported for each local professional
7 football stadium district that has imposed taxes under this subchapter, minus the
8 district portion of the retailers' discount, to the local professional football stadium
9 district no later than the end of the 3rd month following the end of the calendar
10 quarter in which such amounts were reported. At the time of distribution the
11 department of revenue shall indicate the taxes reported by each taxpayer. In this
12 subsection, the "district portion of the retailers' discount" is the amount determined
13 by multiplying the total retailers' discount by a fraction the numerator of which is
14 the gross local professional football stadium district sales and use taxes payable and
15 the denominator of which is the sum of the gross state and local professional football
16 stadium district sales and use taxes payable. The local professional football stadium
17 district taxes distributed shall be increased or decreased to reflect subsequent
18 refunds, audit adjustments and all other adjustments of the local professional
19 football stadium district taxes previously distributed. Interest paid on refunds of
20 local professional football stadium district sales and use taxes shall be paid from the
21 appropriation under s. 20.835 (4) (ge) at the rate paid by this state under s. 77.60 (1)
22 (a). Any local professional football stadium district receiving a report under this
23 subsection is subject to the duties of confidentiality to which the department of
24 revenue is subject under s. 77.61 (5) and (6).

25 **SECTION 26.** 77.95 of the statutes is amended to read:

1 **77.95 Interest and penalties.** The interest and penalty provisions under ss.
2 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.
3 to ~~3.~~ 3m. and (b) 1. to 3. and (3) and 71.85, as they apply to the taxes under ch. 71,
4 apply to the surcharge under this subchapter.

5 **SECTION 27.** 77.982 (2) of the statutes, as affected by 2011 Wisconsin Act 18,
6 is amended to read:

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

13 **SECTION 28.** 77.982 (3) of the statutes is amended to read:

14 77.982 (3) From the appropriation under s. 20.835 (4) (gg), the department of
15 revenue shall distribute 97.45% of the taxes collected under this subchapter for each
16 district to that district and shall indicate to the district the taxes reported by each
17 taxpayer in that district, no later than the end of the month following the end of the
18 calendar quarter in which the amounts were collected. The taxes distributed shall
19 be increased or decreased to reflect subsequent refunds, audit adjustments, and all
20 other adjustments. Interest paid on refunds of the tax under this subchapter shall
21 be paid from the appropriation under s. 20.835 (4) (gg) at the rate under s. 77.60 (1)
22 (a). Those taxes may be used only for the district's debt service on its bond
23 obligations. Any district that receives a report along with a payment under this
24 subsection is subject to the duties of confidentiality to which the department of
25 revenue is subject under s. 77.61 (5) and (6).

1 **SECTION 29.** 77.991 (2) of the statutes, as affected by 2011 Wisconsin Act 18,
2 is amended to read:

3 77.991 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5),
4 (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 tax under this subchapter. Section 77.73, as it applies
7 to the taxes under subch. V, applies to the tax under this subchapter. The renter shall
8 collect the tax under this subchapter from the person to whom the passenger car is
9 rented.

10 **SECTION 30.** 77.9941 (5) of the statutes is amended to read:

11 77.9941 (5) From the appropriation under s. 20.835 (4) (gd) the department
12 shall distribute 97% of the taxes under this subchapter reported, for each
13 municipality or county that has imposed the tax, minus the municipality's or county's
14 portion of the retailers' discounts, to the municipality or county and shall indicate
15 the taxes reported by each taxpayer, no later than the end of the 3rd month following
16 the end of the calendar quarter in which such amounts were reported. In this
17 subsection, the "municipality's or county's portion of the retailers' discount" is the
18 amount determined by multiplying the total retailers' discount by a fraction the
19 numerator of which is the gross sales and use taxes payable under this subchapter
20 and the denominator of which is the sum of the gross state sales and use taxes and
21 the sales taxes and use taxes payable under this subchapter. The taxes under this
22 subchapter distributed shall be increased or decreased to reflect subsequent refunds,
23 audit adjustments and all other adjustments of the taxes under this subchapter
24 previously distributed. Interest paid on refunds of sales and use taxes under this
25 subchapter shall be paid from the appropriation under s. 20.835 (4) (gd) at the rate

1 paid by this state under s. 77.60 (1) (a). Any municipality or county receiving a report
2 under this subsection is subject to the duties of confidentiality to which the
3 department of revenue is subject under s. 77.61 (5) and (6).

4 **SECTION 31.** 77.9951 (2) of the statutes, as affected by 2011 Wisconsin Act 18,
5 is amended to read:

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

11 **SECTION 32.** 77.9964 (2) of the statutes is amended to read:

12 77.9964 (2) Except as provided in s. 77.9961 (1) (b), (d), and (e), ss. 71.74 (1) to
13 (3), (7), (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77 (1) and (4) to (8),
14 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and
15 (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2., and 6., (2) (a)
16 1. to ~~3.~~ 3m. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3),
17 and (4) to (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the
18 fees under this subchapter.

19 **SECTION 33.** 77.9972 (2) of the statutes, as affected by 2011 Wisconsin Act 18,
20 is amended to read:

21 77.9972 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3),
22 (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60,
23 77.61 (2), (3m), (5), (6), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes
24 under subch. III, apply to the fee under this subchapter. Section 77.73, as it applies
25 to the taxes under subch. V, applies to the fee under this subchapter. The renter shall

1 collect the fee under this subchapter from the person to whom the passenger car is
2 rented.

3 **SECTION 34.** 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 (4), 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 35.** 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 (4), 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.

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SECTION 36. 125.52 (8) of the statutes is created to read:

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

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SECTION 37. 125.53 (3) of the statutes is created to read:

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1 125.53 (3) Sections 71.78 (1m) and 71.83 (2) (a) 3. and 3m., as they apply to
2 returns and claims under ch. 71, apply to permits issued under this section.

3 SECTION 38. 125.58 (5) of the statutes is created to read:

4 125.58 (5) Sections 71.78 (1m) and 71.83 (2) (a) 3. and 3m., as they apply to
5 returns and claims under ch. 71, apply to permits issued under this section.

6 SECTION 39. 139.11 (4) (a) of the statutes is amended to read:

7 139.11 (4) (a) Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m.,
8 relating to confidentiality of income, franchise and gift tax returns, apply to any
9 information obtained from any person on a fermented malt beverage tax return,
10 report, schedule, exhibit or other document or from an audit report relating to any
11 of those documents, except that the department of revenue shall publish brewery
12 production and sales statistics.

13 SECTION 40. 139.25 (3) of the statutes is amended to read:

14 139.25 (3) INCORRECT RETURN. ~~If due to neglect an incorrect return is filed and~~
15 upon a showing by the department under s. 73.16 (4), the entire tax finally
16 determined is subject to a penalty of 25% of the tax exclusive of interest or other
17 penalty. A person filing an incorrect return has the burden of proving that the error
18 or errors were due to good cause and not due to neglect.

19 SECTION 41. 139.25 (4) of the statutes is amended to read:

20 139.25 (4) FAILURE TO FILE RETURN. In case of failure to file any return required
21 under s. 139.05, 139.06 or 139.11 by the due date, ~~unless it is shown that that failure~~
22 ~~was due to reasonable cause and not due to neglect~~ and upon a showing by the
23 department under s. 73.16 (4), there shall be added to the amount required to be
24 shown as tax on that return 5% of the amount of that tax if the failure is for not more
25 than one month, and an additional 5% of the tax for each additional month or fraction

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1 thereof during which that failure continues, not exceeding 25% of the tax in the
2 aggregate. For purposes of this subsection, the amount of tax required to be shown
3 on the return shall be reduced by the amount of any part of the tax which is paid on
4 or before the due date prescribed for payment of the tax and by the amount of any
5 credit against the tax which may be claimed upon the return.

6 **SECTION 42.** 139.38 (6) of the statutes is amended to read:

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

11 **SECTION 43.** 139.82 (6) of the statutes is amended to read:

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

16 **SECTION 44.** 227.12 (3) of the statutes is amended to read:

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

23 **SECTION 45.** 227.12 (4) of the statutes is created to read:

24 227.12 (4) If a petition to the department of revenue alleges that the
25 department has established a standard by which it is construing a state tax statute,

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1 but has not promulgated a rule to adopt the standard or published the standard in
2 a manner that is available to the public, the department shall, as provided under s.
3 227.135, submit a statement of the scope of the proposed rule to the governor no later
4 than 90 days after receiving the petition. No later than 270 days after the statement
5 is approved by the governor, the department shall submit the proposed rule in final
6 draft form to the governor for the governor's approval, as provided under s. 227.185.
7 At the department's request, the governor may, at any time prior to the expiration
8 of any deadline specified in this subsection, extend the time for submitting the
9 statement or proposed rule in draft form for any period not to exceed 60 days. The
10 governor may grant more than one extension under this subsection, but the total
11 period for all such extensions may not exceed 120 days. The rule need not adhere to
12 the standard established by the department, but shall address the same
13 circumstances as the standard addresses. If the department fails to comply with this
14 subsection, any of the petitioners may commence an action in circuit court to compel
15 the department's compliance. If an action is commenced under this subsection, the
16 court may compel the department to provide information to the court related to the
17 degree to which the department is enforcing the standard, except that the
18 information provided by the department shall not disclose the identity of any person
19 who is not a party to the action.

20 **SECTION 46.** 227.41 (1) of the statutes is amended to read:

21 227.41 (1) Any Except as provided in sub. (5), any agency may, on petition by
22 any interested person, issue a declaratory ruling with respect to the applicability to
23 any person, property or state of facts of any rule or statute enforced by it. Full
24 opportunity for hearing shall be afforded to interested parties. A declaratory ruling
25 shall bind the agency and all parties to the proceedings on the statement of facts

1 alleged, unless it is altered or set aside by a court. A ruling shall be subject to review
2 in the circuit court in the manner provided for the review of administrative decisions.

3 **SECTION 47.** 227.41 (3) of the statutes is amended to read:

4 227.41 (3) ~~The Except as provided in sub. (5) (b), the~~ petition shall be filed with
5 the administrative head of the agency or with a member of the agency's policy board.

6 **SECTION 48.** 227.41 (4) of the statutes is amended to read:

7 227.41 (4) ~~Within Except as provided in sub. (5) (c), within~~ a reasonable time
8 after receipt of a petition pursuant to this section, an agency shall either deny the
9 petition in writing or schedule the matter for hearing. If the agency denies the
10 petition, it shall promptly notify the person who filed the petition of its decision,
11 including a brief statement of the reasons therefor.

12 **SECTION 49.** 227.41 (5) of the statutes is created to read:

13 227.41 (5) (a) The department of revenue shall, on petition by any interested
14 person, or any group or association of interested persons, issue a declaratory ruling
15 with respect to the applicability to any person, property, or state of facts of any rule
16 or statute enforced by it. The department of revenue may issue a declaratory ruling
17 on the facts contained in the petition. If the department of revenue does not deny the
18 petition or issue a declaratory ruling on the facts contained in the petition, the
19 department of revenue shall hold a hearing, as provided under s. 227.44, and shall
20 afford all interested parties an opportunity to participate in the hearing. A
21 declaratory ruling shall bind the department and all parties to the proceedings on
22 the statement of facts contained in the ruling, unless it is altered or set aside by the
23 tax appeals commission or a court or the applicable rule or statute is repealed or
24 materially amended. A ruling, including the denial of the petition, shall be subject
25 to review by the tax appeals commission as provided in ch. 73.

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

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

18 (d) 1. If the department of revenue does not deny the petition, or issue a notice
19 that it will issue a declaratory ruling based on the facts contained in the petition, the
20 department shall hold a hearing and determine, no later than 180 days after the
21 secretary receives the petition, whether the petitioner has presented sufficient facts
22 from which to issue a declaratory ruling. The department of revenue, petitioner, and
23 other parties may take and preserve evidence prior to and during the hearing using
24 the methods allowed to parties under s. 227.45. With the agreement of the parties,
25 the department may rule on the petition based on facts stipulated by the parties.

1 2. If the department determines that it does not have sufficient facts from
2 which to issue a declaratory ruling, the department may deny the petition. If the
3 department determines that it has sufficient facts from which to issue a declaratory
4 ruling, the department shall issue a ruling on the merits of the petition no later than
5 180 days after the determination, unless the deadline is extended by written
6 agreement of all parties. The ruling may deny the petition on the grounds that
7 petition is frivolous, a justiciable controversy does not exist, the ruling would not
8 provide guidance on matters of general applicability, or that the ruling would
9 substitute for other procedures available to the parties for resolution of the dispute.

10 **SECTION 50.** 227.483 (1) of the statutes is amended to read:

11 227.483 (1) If a hearing examiner or the tax appeals commission finds, at any
12 time during the proceeding, that an administrative hearing commenced or continued
13 by a petitioner or a claim or defense used by a party is frivolous, the hearing examiner
14 or tax appeals commission shall award the successful party the costs and reasonable
15 attorney fees that are directly attributable to responding to the frivolous petition,
16 claim, or defense.

17 **SECTION 51.** 803.08 of the statutes is amended to read:

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

24 **SECTION 52. Initial applicability.**

Ins
SA2-3 →

✓✓

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

3 (2) The treatment of sections 73.01 (4) (e) 2., 73.16 (1), (2), and (5) and 227.483
4 (1) of the statutes first applies to determinations that are issued on the effective date
5 of this subsection, regardless of whether the amounts at issue relate to transactions
6 that occurred prior to the effective date of this subsection.

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

13 (4) The treatment of section 73.16 (3) of the statutes first applies to audit
14 determinations issued after on January 1, 2014.

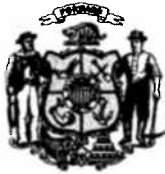
SA 1
SA 2
✓

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

17 **SECTION 53. Effective date.**

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

20 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRBa1788/1

JK:kjfrs

SENATE AMENDMENT 1,
TO SENATE BILL 23

October 26, 2011 - Offered by JOINT COMMITTEE ON FINANCE.

1 At the locations indicated, amend the bill as follows:

2 ~~1.~~ Page 10, line 10: after "department" insert on or after January 1, 2014. Ins SA1-1 ✓x

3 2. Page 23, line 21: delete the material beginning with that line and ending ✓
4 with page 24, line 5. ✓

5 3. Page 25, line 24: delete "alleges" and substitute establishes. Ins SA1-3 ✓✓

6 4. Page 30, line 13: delete lines 13 and 14. ✓✓

7 (END)

Item 1
NOT GIVEN EFFECT



State of Wisconsin
2011 - 2012 LEGISLATURE

September 2011 Special Session



LRBa1829/1

JK:kjf:jf

SENATE AMENDMENT 2,
TO SENATE BILL 23

October 27, 2011 - Offered by Senator COWLES.

1 At the locations indicated, amend the bill as follows:

2 1. Page 10, line 9: delete the material beginning with that line and ending with
3 page 11, line 8. ✓✓

4 2. Page 11, line 14: delete "subs. (3) and" and substitute "(sub)". ✓✓

5 3. Page 29, line 23: after that line insert:

Ins SA2-2

6 "SECTION 51d. Nonstatutory provisions.

INS SA2-3

7 (1) The department of revenue shall submit as part of its budget proposals for
8 the 2013-15 biennial budget bill a provision that is substantially similar to the
9 provision related to relying on past audits under section 73.16 (3) of the statutes, as
10 created in September 2011 Special Session Senate Bill 23." ✓✓

11 4. Page 30, line 13: delete lines 13 and 14. ✓✓

12

(END)