

1993 Assembly Bill 1097

Date of enactment: **April 6, 1994**
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1993 WISCONSIN ACT 205

AN ACT to repeal 76.38 (6); and **to amend** 16.009 (2) (k) and (m), 16.009 (2) (n) 1, 20.566 (1) (hm), 25.40 (1) (b), 71.55 (10) (b) 1. b. and (c) 2, 71.74 (11), 71.75 (6), 71.80 (9), 71.91 (6) (f) 1, 73.03 (28), 76.07 (3), 76.15 (2), 76.28 (10), 76.38 (3), 76.38 (11), 77.61 (4) (a), 78.68 (10), 139.092, 139.365, 180.1407 (3) and 867.03 (2) of the statutes, **relating to:** the forms on which certain tax refund or credit claims may be made; sales tax, income tax and franchise tax records; notice required for continuous tax levies; service of notice on corporate taxpayers by publication; the statute of limitations for bringing a real estate transfer fee claim against a dissolved corporation; copies of affidavits used to transfer property; generally referencing the homestead tax credit maximum income limitation for medicare assignment; action by the department of revenue on certain claims for refunds; notices of the assessed value of utilities; authorizing the department of revenue to enter into contracts to collect delinquent taxes from residents of this state; the minimum license fee for telephone companies; and making an appropriation.

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

SECTION 1. 16.009 (2) (k) and (m) of the statutes are amended to read:

16.009 (2) (k) After consulting with the department of regulation and licensing and obtaining from that department a listing of all practicing physicians in this state, by January 1, 1991, and annually thereafter, send an inquiry to each of those physicians as to whether he or she is a full-time physician who practices in this state and who treats beneficiaries of medicare Part B in this state. If the answer is affirmative, the inquiry shall be whether he or she voluntarily accepts, from each of his or her patients in this state who is a beneficiary and who had household income in the beneficiary's taxable year prior to the year in which treatment is received that did not exceed the maximum income allowed for claiming the homestead credit, as calculated under s. 71.54 (1) (d), assignment of the beneficiary's benefits for reimbursement for the provision of medical or other health service authorized under medicare Part B. The inquiry shall also be whether the physician does not require payment of any amount that is in excess of the reasonable charge, as

determined by the federal health care financing administration through the insurance carrier for medicare Part B in this state, for the medicare Part B authorized medical or other health service that the physician renders to the beneficiaries in this state.

(m) Inquire of and obtain from the carrier for medicare Part B in this state, by January 1, 1991, and annually thereafter, information concerning the percentage of the claims in this state for payment of services covered by medicare Part B, for which full-time physicians who practice in this state voluntarily accept, from each of their patients in this state who is a medicare Part B beneficiary and who had household income in the beneficiary's taxable year prior to the year in which treatment is received that did not exceed the maximum income allowed for claiming the homestead credit, as calculated under s. 71.54 (1) (d), assignment of the beneficiary's benefits for reimbursement for the provision of medical or other health service authorized under medicare Part B.

SECTION 2. 16.009 (2) (n) 1. of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

16.009 (2) (n) 1. Whether at least 80% of the full-time physicians who practice in this state and who treat beneficiaries of medicare Part B in this state voluntarily

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accept, from each of their patients in this state who is a beneficiary of medicare Part B and who had household income in the beneficiary's taxable year prior to the year in which treatment is received that did not exceed the maximum income allowed for claiming the homestead credit, as calculated under s. 71.54 (1) ~~(d)~~, assignment of the beneficiaries' benefits and do not require payment of any amount in excess of the reasonable charge. If the percentage determined under this subdivision is less than 80%, the board shall determine the applicable percentage.

SECTION 3. 20.566 (1) (hm) of the statutes is amended to read:

20.566 (1) (hm) (title) *Collections under contracts.* From moneys received from the collection of delinquent Wisconsin taxes ~~owed by nonresidents~~ under s. 73.03 (28), a sum sufficient to pay the costs of contracts and court costs for the collection of those taxes.

SECTION 4. 25.40 (1) (b) of the statutes is amended to read:

25.40 (1) (b) Motor vehicle fuel and general aviation fuel taxes and other revenues collected under ch. 78 minus the costs of collecting delinquent taxes ~~from non-residents~~ under s. 73.03 (28).

SECTION 5. 71.55 (10) (b) 1. b. and (c) 2. of the statutes are amended to read:

71.55 (10) (b) 1. b. His or her household income, as defined in s. 71.52 (5) and (6), for the beneficiary's taxable year prior to the year in which treatment is received, did not exceed the maximum income allowed for claiming the homestead credit, as calculated under s. 71.54 (1) ~~(d)~~.

(c) 2. Has a household income, as defined in s. 71.52 (5), if known to the department of revenue, for the individual's taxable year prior to the year in which distribution is made, that does not exceed the maximum income allowed for claiming the homestead credit, as calculated under s. 71.54 (1) ~~(d)~~.

SECTION 6. 71.74 (11) of the statutes is amended to read:

71.74 (11) NOTICE OF ADDITIONAL ASSESSMENT. The department shall notify the taxpayer in writing of any additional assessment by office audit or field investigation. That notice shall be served as are circuit court summonses, or by registered mail, or by regular mail if the person assessed admits receipt or there is satisfactory evidence of receipt. In the case of joint returns, notice of additional assessment may be a joint notice and service on one spouse is proper notice to both spouses. If the spouses have different addresses at the time the notice of additional assessment is served and if either spouse notifies the department of revenue in writing of those addresses, the department shall serve a duplicate of the original notice on the spouse who has the address other than the address to which the original notice was sent, if no request for a redetermination or a petition for review

has been commenced or finalized. For the spouse who did not receive the original notice, redetermination and appeal rights begin upon the service of a duplicate notice. If the taxpayer is a corporation and the department is unable to serve that taxpayer personally or by mail, the department may serve the notice by publishing a class 3 notice, under ch. 985, in the official state newspaper.

SECTION 7. 71.75 (6) of the statutes is amended to read:

71.75 (6) Every claim for refund or credit of income taxes, franchise taxes or surtaxes, if any, shall be filed with the department of revenue in the manner, and on a form, prescribed or approved by the department and signed by the person or, in the case of joint returns, by both persons who filed the return on which the claim is based and shall set forth specifically and explain in detail the reasons for and the basis of the claim. After the claim has been filed it shall be considered and acted upon in the same manner as are additional assessments made under s. 71.74 (1) and (2). No marital property agreement or unilateral statement under ch. 766 affects claims for refund or credit under this section.

SECTION 8. 71.80 (9) of the statutes is amended to read:

71.80 (9) RECORDS MAY BE REQUIRED OF TAXPAYER. Whenever the department deems it necessary that a person subject to an income or franchise tax should keep records to show whether or not the person is liable to tax, the department may serve notice upon the person and require such records to be kept as will include the entire net income of the person and will enable the department to compute the taxable income. The department may require any person who keeps records in machine-readable form for federal income tax purposes to keep those records in the same form for purposes of the taxes under this chapter.

SECTION 9. 71.91 (6) (f) 1. of the statutes is amended to read:

71.91 (6) (f) 1. As soon as practicable after obtaining property, the department shall notify, in writing, the owner of any real property, and the possessor of any personal property, obtained by the department under this subsection. That notice may be left at the person's usual place of residence or business. If the owner cannot be located or has no dwelling or place of business in this state, or if the property is obtained as a result of a continuous levy on commissions, wages or salaries, the department may mail a notice to the owner's last-known address. That notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property obtained and, in the case of real property, a description with reasonable certainty of the property seized.

SECTION 10. 73.03 (28) of the statutes is amended to read:

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73.03 (28) To enter into contracts to collect delinquent Wisconsin taxes ~~from nonresidents~~. The department shall allocate a portion of the amounts collected under ch. 78 through those contracts to the appropriation under s. 20.566 (1) (hm) to pay contract and court costs. The department shall allocate the remainder of those collections to the transportation fund under s. 25.40. The department shall allocate a portion of the amount collected under chs. 71, 72, 77 and 139 through those contracts to the appropriation under s. 20.566 (1) (hm) to pay contract and court costs. The department shall allocate the remainder of those collections to the general fund.

SECTION 11. 76.07 (3) of the statutes is amended to read:

76.07 (3) ASSESSMENT. For the purpose of determining the full market value of the property of each company appearing on the assessment roll, the department may view and inspect the property of such company and shall consider the reports filed in compliance with s. 76.04 and the reports and returns of the company filed in the office of any officer of this state, and other evidence or information bearing upon the full market value of the property of the company assessed. In case of companies which own or use property lying partly within and partly without the state, the department shall value and assess only the property within this state, using the methods under subs. (4g) and (4r). When the full market value of the property of a company within this state has been determined, the amount shall be entered upon the assessment roll opposite the name of the company and shall be the assessment of the entire property of such company within this state for the levy of taxes thereon, subject to review and correction. The department shall thereupon give notice by ~~registered~~ certified mail to each company assessed of the amount of its assessment as entered upon such roll.

SECTION 12. 76.15 (2) of the statutes is amended to read:

76.15 (2) The power to reassess the property of any company defined in s. 76.02 and the general property of the state, and to redetermine the average rate of taxation, may be exercised under sub. (1) as often as may be necessary until the amount of taxes legally due from any such company for any year under ss. 76.01 to 76.26 has been finally and definitely determined. Whenever any sum or part thereof, levied upon any property subject to taxation under ss. 76.01 to 76.26 so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment upon the property, and the reassessment of taxes to that extent shall be deemed to be satisfied. When the tax roll on the reassessment is completed and delivered to the state treasurer, the department shall immediately notify by ~~registered~~ certified mail each of the several companies taxed to pay the amount of the taxes extended on the tax roll within 30 days.

SECTION 13. 76.28 (10) of the statutes is amended to read:

76.28 (10) STANDING TO CHALLENGE ASSESSMENT. In case any light, heat or power company fails to make a report as required by sub. (7) within the time required, the department may enter an assessment against that company in a sum representing the approximate amount of the license fees, together with penalties and interest, for which that company may be liable as estimated by the department. Notice of that assessment shall be given by ~~registered~~ certified mail, and unless a report conforming to the requirements of this section is filed within 15 days of that notice, that estimated assessment shall become final. Thereafter the light, heat or power company assessed shall be forever barred from questioning the correctness of the assessment in any action or proceeding.

SECTION 14. 76.38 (3) of the statutes, as affected by 1991 Wisconsin Act 39, section 2012, is amended to read:

76.38 (3) On or before May 1 the department shall compute and assess the license fees imposed by ~~subs.~~ sub. (4) ~~and (6)~~, with respect to gross revenues of the preceding calendar year and on or before May 1 shall notify each person that was carrying on business as a telephone company on the preceding January 1 of the amount of the license fee assessed. Any person who pays the May 1 assessment in full has a license to carry on business as a telephone company in this state for the 12-month period beginning on the preceding January 1. The fees assessed by the department shall become delinquent if not paid when due, and when delinquent shall be subject to interest at the rate of 1.5% per month until paid. The department shall transmit all funds received under this section to the state treasurer within 15 days after receipt. The payment dates provided for in sub. (3a) shall apply.

SECTION 15. 76.38 (6) of the statutes is repealed.

SECTION 16. 76.38 (11) of the statutes is amended to read:

76.38 (11) In case any telephone company fails to make a report as required by sub. (2) within the time required, the department may enter an assessment against such company in a sum representing the approximate amount of the license fees, together with penalties and interest, for which such company may be liable as estimated by the department. Notice of such assessment shall be given by ~~registered~~ certified mail, and unless a report conforming to the requirements of this section is filed within 15 days of such notice, such estimated assessment shall become final. Thereafter the telephone company assessed shall be forever barred from questioning the correctness of the same in any action or proceeding.

SECTION 17. 77.61 (4) (a) of the statutes is amended to read:

77.61 (4) (a) Every seller and retailer and every person storing, using or otherwise consuming in this state tangible personal property or taxable services purchased from a retailer shall keep such records, receipts, invoices

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and other pertinent papers and records, including machine-readable records, in such form as the department requires. The department may, after giving notice, require any person to keep whatever records are needed for the department to compute the sales or use taxes the person should pay. Thereafter, the department shall add to any taxes assessed on the basis of information not contained in the records required a penalty of 25% of the amount of the tax so assessed in addition to all other penalties under this chapter.

SECTION 18. 78.68 (10) of the statutes is amended to read:

78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75 (2), (4) to ~~(6)~~ (7) and (10) as it applies to the taxes under ch. 71 applies to the taxes under this chapter. Section 71.74 (13) as it applies to refunds of the taxes under ch. 71 applies to the refund of the taxes under this chapter.

SECTION 19. 139.092 of the statutes is amended to read:

139.092 Audits; additional assessments; refunds. Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (2), (4) to ~~(6)~~ (7) and (10), 71.77 and 71.80 (12) as they apply to the taxes under ch. 71 apply to the taxes under this subchapter.

SECTION 20. 139.365 of the statutes is amended to read:

139.365 Other refunds. Section 71.75 (2), (4) to ~~(6)~~ (7) and (10) as it applies to the taxes under ch. 71 applies to the taxes under this subchapter. Section 71.74 (13) as it applies to the refund of taxes under ch. 71 applies to the refund of taxes under this subchapter.

SECTION 21. 180.1407 (3) of the statutes is amended to read:

180.1407 (3) This section does not apply to the liability of a corporation for an additional assessment under s. 71.74, for an additional assessment of real estate transfer fees under s. 77.26 or for sales and use taxes determined as owing under s. 77.59.

SECTION 22. 867.03 (2) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

867.03 (2) RELEASE OF LIABILITY OF TRANSFEROR. Upon the transfer to the heir furnishing the affidavit with an attached proof of mail delivery if required under sub. (1m) (b), ~~and mailing a copy of the affidavit to the department of revenue~~, the transferor is released to the same extent as if the transfer had been made to the personal representative of the estate of the decedent.

SECTION 9348. Initial applicability.

(1) LEVIES. The treatment of section 71.91 (6) (f) 1. of the statutes first applies to a levy served on the effective date of this subsection.

(2) FILING CLAIMS FOR REFUNDS. The treatment of section 71.75 (6) of the statutes first applies to a claim for refund or credit that is filed with the department of revenue on the effective date of this subsection.

(3) MINIMUM TELEPHONE FEE. The treatment of section 76.38 (3) and (6) of the statutes first applies to fees assessed on May 1, 1994.

(4) CLAIMS FOR REFUND. The treatment of sections 78.68 (10), 139.092 and 139.365 of the statutes first applies to refund claims received by the department of revenue on the effective date of this subsection.

(5) COPIES OF AFFIDAVITS. The treatment of section 867.03 (2) of the statutes first applies to transfers because of deaths occurring on January 1, 1992.

(6) MACHINE-READABLE RECORDS. The treatment of section 71.80 (9) of the statutes first applies to records for taxable years that begin on January 1, 1994.

SECTION 9400. Effective dates. This act takes effect on the day after publication, except as follows:

(1) FILING CLAIMS FOR REFUNDS. The treatment of section 71.75 (6) of the statutes and SECTION 9348 (2) of this act take effect on the first day of the 7th month beginning after publication.

(2) MINIMUM TELEPHONE FEE. The treatment of section 76.38 (3) and (6) of the statutes takes effect on January 1, 1994. If the date of publication of this act is later than January 1, 1994, the treatment takes effect retroactively.