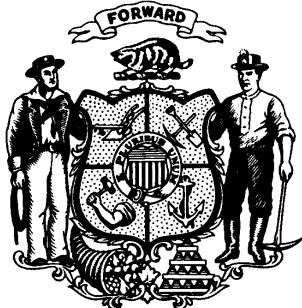


State of Wisconsin



1997 Assembly Bill 963

Date of enactment: **June 15, 1998**
Date of publication*: **June 29, 1998**

1997 WISCONSIN ACT 291

AN ACT to amend 71.65 (2) (b), 71.70 (1), 71.70 (2), 71.72, 71.77 (7) (a), 72.23, 77.52 (2) (a) 1., 77.54 (11), 77.54 (36), subchapter IV (title) of chapter 78 [precedes 78.64], 78.75 (1m) (a) 3., 125.14 (2) (e), 139.40 (2), 812.37 (1) and 812.44 (1) (b); **to repeal and recreate** 71.65 (5) and 71.73 (2); and **to create** 71.80 (6m) and 812.44 (1) (bg) of the statutes; **relating to:** the forms used to claim motor vehicle fuel tax refunds; replacing obsolete references to “special fuel” and “motor fuel”; authorizing the department of revenue to give seized cigarettes to law enforcement officers for use in criminal investigations; seized alcohol beverages; unpaid instalments of the estate tax; garnishment of earnings by debtors; the place of trial for criminal violations of certain income and franchise tax provisions; the statute of limitations for income taxes and franchise taxes; income tax information returns; and defining “one month” for the sales tax on certain rentals (suggested as remedial legislation by the department of revenue).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of revenue and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 71.65 (2) (b) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

71.65 (2) (b) Every resident of this state and every nonresident carrying on activities within this state, whether taxable or not under this chapter, who pays in any calendar year for services performed within this state by an individual remuneration which is excluded from the definition of wages, in the amount of \$600 or more, shall, on or before January 31 of the succeeding year February 28 of the year following the year in which the payments are made, furnish a statement in such form as re-

quired by the department, disclosing the name of the payor, the name and address of the recipient and the total amount paid in such year to such recipient. The person who pays for the services shall, on or before January 31 of the year in which the statement is required to be furnished to the department, furnish the recipient of the payment with a copy of that statement. In any case in which an individual receives wages and also remuneration for services which remuneration is excluded from such definition, both from the same payor, the wages and the excluded remuneration shall both be reported in the report required under this subsection in a manner satisfactory to the department, regardless of the amount of the excluded remuneration.

NOTE: Currently, payments for services which are excluded from the definition of wages must be reported to the department of revenue (DOR) by January 31 of the following year. Federal law provides that this information must be reported to the recipient by January 31 and to the internal revenue service, by February 28. This provision changes the dates to coincide with the dates required under federal law and pro-

* Section 991.11, WISCONSIN STATUTES 1995–96: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

vides that the person who pays for the service must furnish the recipient of the payment with a copy of the statement.

SECTION 2. 71.65 (5) of the statutes is repealed and recreated to read:

71.65 (5) EXTENSIONS. (a) If an employer applies for an extension and shows good cause why an extension should be granted, the department may grant the following extensions for the following statements:

1. Thirty days for filing a wage statement under sub. (1).

2. Sixty days for filing a statement of nonwage payments under sub. (2) (b).

(b) No extension under par. (a) extends the time to deposit with the public depository or pay to the department amounts that are required to be deducted and withheld under this subchapter.

NOTE: Currently, DOR may grant an extension of no more than 30 days for reports to the employees and DOR on payments. This provision allows an extension not to exceed 30 days for reports to employees on wage payments and an extension for not more than 60 days for filing a statement of nonwage payments.

SECTION 3. 71.70 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

71.70 (1) PERSONS OTHER THAN CORPORATIONS. Persons other than corporations deducting rent or royalties in determining taxable income shall file a report that shows the amounts and the name and address of all natural persons who are residents of this state and to whom royalties of \$600 or more were paid during the taxable year; and the amounts and the name and address of all natural persons to whom rent of \$600 or more is paid during the taxable year for property having a situs in this state. Such information shall be filed at the time of filing the income tax return on which such payments are deducted or at such other time as the department prescribes on or before February 28 of the year following the year in which the payments were made. The person who deducts rent or royalties shall, on or before January 31 of the year in which the report is required to be furnished, furnish the recipient with a copy of that report.

NOTE: This provision changes the date of filing by persons, other than corporations, who deduct rent or royalties in determining taxable income. The reporting date is changed from the time of the filing of the income tax return on which the payments are deducted or such other time as the department prescribes to February 28 of the year following the year in which the payments were made, to coincide with federal law. It further requires a copy of the report to be furnished to the recipient of the rent or royalties.

SECTION 4. 71.70 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

71.70 (2) CORPORATIONS. All corporations doing business in this state shall file, on or before March 15, any information relative to payments made within the preceding calendar year of rents and royalties to all natural persons taxable thereon under this chapter. A corporation shall, on or before January 31 of the year in which the statement is required to be furnished to the department,

furnish the recipient of the payment with a copy of that statement.

NOTE: This provision adds a requirement that a corporation shall, on or before January 31 of the year in which the statement of rent and royalty payments to natural persons is filed, furnish a copy of the statement to the recipient of the rent or royalties.

SECTION 5. 71.72 of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

71.72 Statement of nonwage payments. Every resident of this state and every nonresident carrying on activities within this state, whether taxable or not under this chapter, who pays in any calendar year for services performed within this state by an individual remuneration which is excluded from the definition of wages in s. 71.63 (6), in the amount of \$600 or more, shall, on or before January 31 of the succeeding year February 28 of the year following the year in which the payments were made, file a statement disclosing the name of the payor, the name and address of the recipient and the total amount paid in such year to such recipient. The person who pays for the services shall, on or before January 31 of the year in which the statement is required to be furnished to the department, furnish the recipient of the payment with a copy of that statement. In any case in which an individual receives wages, as defined in s. 71.63 (6), and also remuneration for services which remuneration is excluded from such definition, both from the same payor, the wages and the excluded remuneration shall both be reported in the statement required by s. 71.71 (2) in a manner satisfactory to the department, regardless of the amount of the excluded remuneration.

NOTE: This provision changes the requirement that the statement of nonwage payments be filed on or before January 31 of the succeeding year to February 28 of the year following the year in which the payments are made. It further requires the person who pays for the services to furnish the recipient of the payments with a copy of the statement on or before January 31 of the year in which the statement is required to be furnished to DOR.

SECTION 6. 71.73 (2) of the statutes is repealed and recreated to read:

71.73 (2) EXTENSIONS. If an employer applies for an extension and shows good cause why an extension should be granted, the department of revenue may grant the following extensions for the following statements:

(a) Sixty days for filing a rent and royalty statement under s. 71.70.

(b) Thirty days for filing a wage statement under s. 71.71.

(c) Sixty days for filing a statement of nonwage payments under s. 71.72.

NOTE: This provision amends the current statute which allows DOR to grant an extension to a person, partnership or limited liability company, not to exceed 30 days in which to furnish its employees and DOR with written statements of wages and withholding and nonwage payments to permit extensions not to exceed 60 days for filing a rent and royalty

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statement, 30 days for filing a wage statement and 60 days for filing a statement of nonwage payments.

SECTION 7. 71.77 (7) (a) of the statutes is amended to read:

71.77 (7) (a) If notice of assessment is given within 6 years after a return was filed and if on that return the taxpayer reported for taxation ~~on his or her return~~, or the taxpayers jointly reported for taxation, less than 75% of the net income properly assessable, except that no assessment of additional income may be made under this subsection for any year beyond the period specified in sub. (2) unless the aggregate of the taxes on the additional income of such year is in excess of \$100 in the case of ~~an individual or a separate return a return other than a joint return~~ or \$200 in the case of a joint return.

NOTE: This provision removes an ambiguity in s. 71.77 (7) (a) as to whether the 6-year statute of limitations on notice of assessments applies to corporations. If a corporation reports less than 75% of its net income and the taxes on the additional income are more than \$100, DOR may assess additional taxes or issue a refund within 6 years after the return is filed.

SECTION 8. 71.80 (6m) of the statutes is created to read:

71.80 (6m) **VENUE.** A proceeding for a criminal violation under this chapter may be brought in the circuit court for Dane County or for the county in which the defendant resides or is located when charged with the violation.

NOTE: This provision authorizes a trial for criminal violations of income tax laws to be held either in Dane County or the county in which the defendant resides or is located when charged with the violation.

SECTION 9. 72.23 of the statutes is amended to read:

72.23 Acceleration and interest. If the tax imposed by this chapter is not paid when it is due under s. 72.22, interest is due and payable at the rate of 12% per year from date of death. In computing time under this section, the day of death is excluded. If any payment of tax or interest under s. 72.225 is not paid when due, the unpaid portion of the tax and interest due shall be paid upon notice by the department.

NOTE: This provision provides a default on an instalment arrangement for payment of overdue taxes results in the entire remaining balance of tax and interest being payable, not just the overdue instalments.

SECTION 10. 77.52 (2) (a) 1. of the statutes is amended to read:

77.52 (2) (a) 1. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations, including the furnishing of rooms or lodging through the sale of a time-share property, as defined in s. 707.02 (32), if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit. In this subdivision, "transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In

this subdivision, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except accommodations, including mobile homes as defined in s. 66.058 (1) (d), rented for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual. In this subdivision, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

NOTE: Currently, the rental for a continuous period of more than one month of accommodations is exempt from the sales tax, and furnishing of public accommodations for a continuous period of one month or less is subject to the sales tax. Since no definition of "one month" is contained in ch. 77, s. 990.01 (21) applies. It defines a month as a calendar month unless otherwise expressed. This provision provides that one month is defined as a calendar month or 30 days, whichever is less, counting the first day of residence or rental and not counting the last day of the residence or rental.

SECTION 11. 77.54 (11) of the statutes is amended to read:

77.54 (11) The gross receipts from the sales of and the storage, use or other consumption in this state of motor vehicle fuel, general aviation fuel or special alternate fuel, subject to taxation under ch. 78, unless the motor ve-hicle fuel or speelial alternate fuel tax is refunded under s. 78.75 because the buyer does not use the fuel in operating a motor vehicle upon the public highways.

NOTE: This provision changes obsolete references to "special fuel" to "alternate fuel" and replaces references to "motor fuel" with "motor vehicle fuel" to conform to existing fuel tax laws. The statute was not updated when the definitions of fuels were changed in 1993 Wisconsin Act 16.

SECTION 12. 77.54 (36) of the statutes is amended to read:

77.54 (36) The gross receipts from the rental for a continuous period of one month or more of a mobile home, as defined in s. 66.058 (1) (d), that is used as a residence. In this subsection, "one month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental.

NOTE: This provision amends the exemption from the sales tax for mobile homes rented for more than one month to provide that one month means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of the rental. This change is made consistent with that in the treatment of s. 77.52 (2) (a) 1.

SECTION 13. Subchapter IV (title) of chapter 78 [precedes 78.64] of the statutes is amended to read:

CHAPTER 78
SUBCHAPTER IV
PROVISIONS COMMON TO MOTOR VEHICLE
**FUEL TAX, GENERAL AVIATION FUEL
TAX AND SPECIAL ALTERNATE FUEL TAX**

SECTION 14. 78.75 (1m) (a) 3. of the statutes, as affected by 1997 Wisconsin Act 27, section 2442, is amended to read:

78.75 (1m) (a) 3. Claims under subd. 1. shall be made and filed. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for motorboats, except motorboats exempt from registration as motor vehicles under s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle fuel or alternate fuels used for snowmobiles and that the estimated snowmobile motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and areas. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for all-terrain vehicles unless the all-terrain vehicle is registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate that estimated all-terrain vehicle motor vehicle fuel or alternate fuels tax payments are used for all-terrain vehicle trails and areas. The forms shall also indicate that refunds are not available for the tax on less than 100 gallons. The department shall distribute forms in sufficient quantities to each county clerk.

NOTE: This SECTION reconciles an apparent conflict between s. 78.75 (1m) (a) 3. and ss. 78.01 (2) (e) and (2m) (f) and 78.75 (1m) (a) 2. which impose a tax on fuel used to operate recreational motor boats. Current s. 78.75 (1m) (a) 3. appears to indicate that refunds are available for motor vehicle fuel used for recreational motor boats.

SECTION 15. 125.14 (2) (e) of the statutes is amended to read:

125.14 (2) (e) *Disposal.* The department shall dispose of the alcohol beverages turned over to it by the court by either giving it to law enforcement agencies free of charge for use in criminal investigations, giving it to state-operated veterans' hospitals in amounts needed for medicinal purposes, selling it to the highest bidder if the bidder is a person holding a license or permit issued under this chapter, or destroying it, at the discretion of the department. If the department elects to sell the alcohol beverages, it shall publish a class 2 notice under ch. 985 asking for sealed bids from qualified bidders. Any items or groups of items in the inventory subject to a security interest, the existence of which was established in the proceedings for conviction as being bona fide and as having been created without the secured party having notice that the items were being used or were to be used in connection with the violation, shall be sold separately. The net proceeds from the sale, less all costs of seizure, storage and sale, shall be turned over to the state treasurer and credited to the common school fund.

NOTE: Currently, law enforcement officers are authorized to seize all alcohol beverages owned, possessed, kept, stored,

manufactured, sold, distributed or transported in violation of state law. The law prohibits DOR from disposing of these beverages by furnishing them to local and state law enforcement agencies for use in criminal investigations. This change authorizes such use in addition to the other uses specifically authorized by statute.

SECTION 16. 139.40 (2) of the statutes is amended to read:

139.40 (2) If cigarettes which do not bear the proper tax stamps or on which the tax has not been paid are so seized they may be given to law enforcement officers to use in criminal investigations or sold to qualified buyers by the secretary, without notice, and. If the cigarettes are sold, after deducting the costs of the sale and the keeping of the property, the proceeds of the sale shall be paid into the state treasury. When If the secretary finds that such cigarettes may deteriorate or become unfit for use in criminal investigations or for sale or that such sale those uses would otherwise be impractical, the secretary may order them destroyed or give them to a charitable or penal institution for free distribution to patients or inmates.

NOTE: Currently, the law is unclear as to whether DOR may dispose of seized cigarettes by furnishing them to local and state law enforcement agencies for use in criminal investigations. This provision authorized DOR to give cigarettes that it seizes to law enforcement officers for this use in addition to other uses specifically authorized by statute.

SECTION 17. 812.37 (1) of the statutes is amended to read:

812.37 (1) The Except as provided in s. 812.34 (1), the debtor may claim an exemption under s. 812.34 (2) (b), or may assert any defense to the earnings garnishment, by completing the answer form and delivering or mailing it to the garnishee. The debtor or debtor's spouse may file an answer or an amended answer at any time before or during the effective period of the earnings garnishment.

NOTE: This provision adds a cross-reference to the statute that provides that in certain cases, the exemptions from garnishment do not apply.

SECTION 18. 812.44 (1) (b) of the statutes is amended to read:

812.44 (1) (b) No Except as provided under par. (bg), no party may use a form substantially different from those in this subchapter as revised under this subsection. No party may alter those forms in a manner that may mislead any other party. If the court finds that a party has used a misleading form, the court shall award the aggrieved party actual damages, costs and reasonable attorney fees resulting from the additional proceeding.

NOTE: This provision creates an exemption to the required use by parties to garnishment actions of the statutory forms for garnishment.

SECTION 19. 812.44 (1) (bg) of the statutes is created to read:

812.44 (1) (bg) If the judgment debt meets one of the conditions under s. 812.34 (1), the creditor shall amend the forms used under this subchapter to inform the gar-

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nishes and debtor that the exemptions provided under s. 812.34 (1) do not apply.

NOTE: This provision provides that the creditor, when it garnishes earnings, does not have to utilize the required forms if the debt is one to which the exemptions from garnishment do not apply. In these cases, the creditor is required to amend the forms used under the chapter, to inform the garnishee and the debtor that the exemptions from garnishment do not apply.

SECTION 20. Initial applicability.

(1) VENUE IN INCOME TAX CRIMINAL CASES. The treatment of section 71.80 (6m) of the statutes first applies to charges filed on the effective date of this subsection.

(2) EARNINGS GARNISHMENT. The treatment of sections 812.37 (1) and 812.44 (1) (b) and (bg) of the statutes first applies to actions commenced on the effective date of this subsection.

SECTION 21. Effective dates. This act takes effect on the day after publication, except as follows:

(1) INCOME TAX INFORMATION RETURNS. The treatment of sections 71.65 (2) (b) and (5), 71.70 (1) and (2), 71.72 and 71.73 (2) of the statutes takes effect on January 1, 1999.