



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

<b>September 2011 Special Session Senate Bill 23</b>	<b>Senate Amendments 1 and 2</b>
<i>Memo published: November 2, 2011</i>	<i>Contact: Scott Grosz, Senior Staff Attorney (266-1307)</i>

*September 2011 Special Session Senate Bill 23* proposes several changes to the duties of the Department of Revenue (DOR), including changes related to the administration of taxes and fees and the department's interaction with taxpayers in audits and in disputes regarding imposition of tax liability.

In particular, the bill specifies that a person subject to assessment or audit is not liable for any amount that DOR asserts that the person owes if the liability asserted is a 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. The initial applicability section of the bill indicates that the proposed treatment of reliance on past audits would apply to audit determinations issued after January 1, 2014.

Under *Senate Amendment 1* to the bill, the January 1, 2014, initial applicability is relocated from the initial applicability section of the bill to s. 73.16 (3), as created by the bill.

Under *Senate Amendment 2*, the provisions of the bill relating to taxpayer reliance on past audits are deleted. Instead, the amendment directs DOR to include a substantially similar provision as part of its budget proposals for the 2013-15 Biennial Budget Bill.

Under current law, DOR employees are prohibited from "browsing" of income or franchise tax returns and claims; an employee may inspect income and franchise tax returns and claims only if doing so in performing the duties of his or her position.

*Special Session Senate Bill 23* would modify the "browsing" prohibition to also prohibit the viewing of any information derived from an income or franchise tax return or claim. Additionally, the bill would extend the "browsing" prohibition to other tax returns and claims, such as sales and use tax

returns and claims, estate tax returns and claims, and information relating to intoxicating liquor and wine permits.

*Senate Amendment 1* would delete the provisions of the bill that apply the browsing prohibition to winery permits and manufacturers' and rectifiers' and out-of-state shippers' permits for intoxicating liquor.

*Special Session Senate Bill 23* also directs DOR to conduct administrative rule-making if it receives a petition that alleges that DOR has established a standard by which it construes a state tax statute but has not promulgated a rule to adopt the standard. The bill specifies certain timelines for promulgation of rules under this process.

*Senate Amendment 1* would replace "alleges" with "establishes" so as to require a petition to establish that the department has a standard by which it construes a tax statute without promulgation of a rule before the timelines and other rule-making provisions of the bill would apply.

### **Legislative History**

September 2011 Special Session Senate Bill 23 was introduced on October 18, 2011, by the Committee on Senate Organization, by request of Governor Scott Walker, Senator Zipperer, and Representative Strachota. On October 26, 2011, the Joint Committee on Finance offered Senate Amendment 1, and recommended adoption of the amendment on a vote of Ayes, 15; Noes, 0. The Joint Committee on Finance then recommended adoption of September 2011 Special Session Senate Bill 23, as amended, on a vote of Ayes, 12; Noes, 3. On October 27, 2011, Senator Cowles introduced Senate Amendment 2. On the same day, the Senate adopted Senate Amendments 1 and 2. The Senate then passed the bill on a vote of Ayes, 17; Noes, 15.

SG:ksm