



1995 ASSEMBLY BILL 775

January 9, 1996 - Introduced by Representatives LEHMAN and BELL, by request of
The Department of Revenue. Referred to Committee on Ways and Means.

1 **AN ACT** *to renumber and amend* 71.26 (3) (e); *to amend* 71.03 (2) (i) 2., 71.03
2 (2) (j) 1., 71.03 (2) (j) 2., 71.03 (2) (k), 71.03 (2) (m) 1., 71.24 (1), 71.24 (7), 71.44
3 (1) (a), 71.44 (3), 71.74 (2) (b), 71.77 (8), 71.90 (1), 71.91 (1) (b), 71.91 (7) (b), 71.91
4 (7) (d), 71.91 (7) (h), 77.60 (2) (c) and 78.80 (1); and *to create* 71.01 (7u), 71.22
5 (5s), 71.26 (3) (e) 3., 71.34 (1) (h), 71.42 (2s), 71.738, 71.83 (1) (a) 1m. and 77.53
6 (9g) of the statutes; **relating to:** reporting of nontaxable income; extensions for
7 filing corporate income tax and franchise tax returns; denying a tax deduction
8 to certain corporations for wages paid to an entertainer or entertainment
9 corporation if withholding requirements are not met; requiring certain persons
10 who have liability for the use tax to register with the department of revenue;
11 withholding for income taxes; the date on which a delinquency determination
12 for withholding, sales taxes or use taxes becomes due; allowing the department
13 of revenue to use sampling to determine the liability for certain taxes;
14 depositing tax assessments with the department of revenue; information

1 returns; and determining when late and extended tax returns are considered
2 filed.

Analysis by the Legislative Reference Bureau

This bill requires corporations that have nontaxable income and that are required to file income tax or franchise tax returns to identify each item of their nontaxable income, to state the reason why each item is not taxable and to provide evidence to support their claims.

Under current law, the department of revenue (DOR) may allow extensions of up to 30 days for filing corporate income tax and franchise tax returns. Under this bill, the extension is 30 days or until the original due date of the federal return, whichever is later, if the corporation has not received a federal extension.

Under current law, an individual may not deduct from his or her adjusted gross income any wages paid to an entertainer or entertainment corporation unless the taxpayer complies with various tax withholding requirements. This bill creates a similar provision for corporations and tax-option corporations.

This bill requires persons who incur \$300 of use tax liability in a year to register with DOR.

Under current law, DOR may give notice by certified mail or by delivery to employers who have employees who are delinquent in paying taxes. Then DOR arranges for the employer to withhold between 10% and 25% of the employee's compensation. The employer must send the amount collected to DOR by the last day of the month after the calendar quarter ends. Under this bill, the notice may be given by regular mail or be delivered, there is no minimum percentage and the employers must send the amount that they collect to DOR by the end of the next month.

Under current law, if DOR determines that a person has a deficiency in withholding for income taxes, in sales taxes or in use taxes, the deficiency is delinquent on the first day of the month after the month that the deficiency becomes final. Under this bill, those amounts are delinquent on the due date specified in the notice of deficiency.

This bill allows DOR to use sampling to determine liability for the income tax, the franchise tax, the mining tax, the oil and gas severance tax, the fuel taxes, the beverage taxes and the cigarette tax and also for determining the property in this state for the utility tax.

Under current law, a taxpayer who contests an income or franchise tax assessment made by DOR may deposit with DOR the additional assessment, plus interest and penalties. By making the deposit, a taxpayer avoids additional interest on the assessment during the time that a redetermination of the assessment is pending. This bill directs a taxpayer who elects to deposit the assessment to deposit the entire amount of the assessment, plus interest and penalties, to avoid future interest costs on the contested tax. By cross-references, this change also applies to certain other contested assessments, including fuel taxes, beverage taxes, cigarette and tobacco products taxes and certain medical assistance service providers.

Under current law, a person who fails to file an income or franchise tax return is subject to a penalty calculated as a percentage of the amount of the tax due that is reportable on the return. Under this bill, a person who fails to file an information return is subject to a \$10 penalty. An information return is a statement that a person (generally a corporation) is required to file with DOR to disclose wages, royalties or nonwage compensation paid by the person filing the report or to disclose information about transfers of capital stock that was issued by the corporation filing the report.

Under current law, a tax return that is filed before the last day prescribed by law is considered as filed on the last such day. This bill defines "last day prescribed by law", subject to some exceptions, to mean the unextended due date of the tax return and provides that a tax return filed late or under an extension of time to file is considered filed when it is received by DOR. These provisions are consistent with current DOR policy and with the decision of the Milwaukee circuit court in *Sta-Rite Industries v. Wisconsin Department of Revenue*.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the **state and local** 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.** 71.01 (7u) of the statutes is created to read:

2 71.01 (7u) "Last day prescribed by law" has the meaning given in s. 71.738,
3 except that in s. 71.03 (2) (e) 1. and 2. "last day prescribed by law" includes
4 extensions.

5 **SECTION 2.** 71.03 (2) (i) 2. of the statutes is amended to read:

6 71.03 (2) (i) 2. Four or more years from the last ~~date~~ day prescribed by law for
7 filing the return for that taxable year have elapsed, determined without regard to
8 any extension of time granted to either spouse.

9 **SECTION 3.** 71.03 (2) (j) 1. of the statutes is amended to read:

10 71.03 (2) (j) 1. Both spouses filed separate returns before filing the joint return,
11 on the date day when the last separate return was filed, but not earlier than the last
12 ~~date~~ day prescribed by law for filing the return of either spouse.

1 **SECTION 4.** 71.03 (2) (j) 2. of the statutes is amended to read:

2 71.03 (2) (j) 2. Only one spouse filed a separate return before filing the joint
3 return and the other spouse had less than \$3,420 of gross income for that taxable
4 year, on the ~~date~~ day of the filing of that separate return, but not earlier than the last
5 ~~date~~ day prescribed by law for the filing of that separate return.

6 **SECTION 5.** 71.03 (2) (k) of the statutes is amended to read:

7 71.03 (2) (k) *Filing date assumed.* For purposes of s. 71.75, a joint return filed
8 under this section is deemed to be filed on the last ~~date~~ day prescribed by law for filing
9 the return for that taxable year, determined without regard to any extension of time
10 granted to either spouse.

11 **SECTION 6.** 71.03 (2) (m) 1. of the statutes is amended to read:

12 71.03 (2) (m) 1. Except as provided in subds. 3. and 5., for a taxable year for
13 which a joint return has been filed, separate returns may be filed by the spouses on
14 or before the last ~~date~~ day prescribed by law for timely filing the return of either has
15 elapsed.

16 **SECTION 7.** 71.22 (5s) of the statutes is created to read:

17 71.22 (5s) "Last day prescribed by law" has the meaning given in s. 71.738.

18 **SECTION 8.** 71.24 (1) of the statutes is amended to read:

19 71.24 (1) **FILING RETURNS.** Every corporation, except corporations all of whose
20 income is exempt from taxation and except as provided in sub. (1m), shall furnish to
21 the department a true and accurate statement, on or before March 15 of each year,
22 except that returns for fiscal years ending on some other date than December 31 shall
23 be furnished on or before the 15th day of the 3rd month following the close of such
24 fiscal year and except that returns for less than a full taxable year shall be furnished
25 on or before the date applicable for federal income taxes under the internal revenue

1 code, in such manner and form and setting forth such facts as the department deems
2 necessary to enforce this chapter. Every corporation that is required to furnish a
3 statement under this subsection and that has income that is not taxable under this
4 subchapter shall include with its statement a report that identifies each item of its
5 nontaxable income and that explains why the item is not taxable and shall include
6 evidence that supports its claim that each item is not taxable. The statement shall
7 be subscribed by the president, vice president, treasurer, assistant treasurer, chief
8 accounting officer or any other officer duly authorized so to act. In the case of a return
9 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The
10 fact that an individual's name is subscribed on the return shall be prima facie
11 evidence that the individual is authorized to subscribe the return on behalf of the
12 corporation.

13 **SECTION 9.** 71.24 (7) of the statutes is amended to read:

14 71.24 (7) EXTENSIONS. In the case of a corporation required to file a return,
15 when sufficient reason is shown, the department of revenue may on written request
16 allow ~~such further time for making and delivering the return as is considered~~
17 ~~necessary, not to exceed 30 days.~~ In the case of a cooperative filing a return or a
18 domestic international sales corporation, as defined in s. 71.30 (5), the department
19 of revenue may allow ~~an extension not to exceed 6 months.~~ In the case of a foreign
20 corporation that does not have an office or place of business in the United States the
21 department of revenue may allow an extension not to exceed 3 months an extension
22 of 30 days or until the original due date of the corporation's federal return, whichever
23 is later, if the corporation has not received an extension on its federal return. Any
24 extension of time granted by law or by the internal revenue service for the filing of
25 corresponding federal returns shall extend the time for filing under this subchapter

1 to 30 days after the federal due date if a copy of any extension requested of the
2 internal revenue service is filed with the return. Termination of an automatic
3 extension by the internal revenue service, or its refusal to grant such automatic
4 extension, shall similarly require that any returns due under this subchapter are due
5 on or before 30 days after the date for termination fixed by the internal revenue
6 service. Except for payments of estimated taxes, income or franchise taxes payable
7 upon the filing of the tax return shall not become delinquent during such extension
8 period, but shall be subject to interest at the rate of 12% per year during such period.

9 **SECTION 10.** 71.26 (3) (e) of the statutes is renumbered 71.26 (3) (e) (intro.) and
10 amended to read:

11 71.26 (3) (e) (intro.) Section 162 (relating to trade or business expenses) is
12 modified so as follows:

13 1. So that payments for wages, salaries, commissions and bonuses of employes
14 and officers may be deducted only if the name, address and amount paid to each
15 resident of this state to whom compensation of \$600 or more has been paid during
16 the taxable year is reported or if the department of revenue is satisfied that failure
17 to report has resulted in no revenue loss to this state ~~and so~~.

18 2. So that payments for rent may be deducted only if the amount paid, together
19 with the names and addresses of the parties to whom rent has been paid, is reported
20 as provided under s. 71.70 (2).

21 **SECTION 11.** 71.26 (3) (e) 3. of the statutes is created to read:

22 71.26 (3) (e) 3. So that payments for wages, salaries, bonuses, interest or other
23 expenses paid to an entertainer or entertainment corporation may be deducted only
24 if the corporation complies with ss. 71.63 (3) (b), 71.64 (4) and (5) and 71.80 (15) (e).

25 **SECTION 12.** 71.34 (1) (h) of the statutes is created to read:

1 71.34 (1) (h) Section 162 of the internal revenue code (relating to trade or
2 business expenses) is modified so that payments for wages, salaries, bonuses,
3 interest or other expenses paid to an entertainer or entertainment corporation may
4 be deducted only if the corporation complies with ss. 71.63 (3) (b), 71.64 (4) and (5)
5 and 71.80 (15) (e).

6 **SECTION 13.** 71.42 (2s) of the statutes is created to read:

7 71.42 (2s) “Last day prescribed by law” has the meaning given in s. 71.738.

8 **SECTION 14.** 71.44 (1) (a) of the statutes is amended to read:

9 71.44 (1) (a) Every corporation, except corporations all of whose income is
10 exempt from taxation and except as provided in sub. (1m), shall furnish to the
11 department a true and accurate statement, on or before March 15 of each year, except
12 that returns for fiscal years ending on some other date than December 31 shall be
13 furnished on or before the 15th day of the 3rd month following the close of such fiscal
14 year and except that returns for less than a full taxable year shall be furnished on
15 or before the date applicable for federal income taxes under the internal revenue
16 code, in such manner and form and setting forth such facts as the department deems
17 necessary to enforce this chapter. Every corporation that is required to furnish a
18 statement under this paragraph and that has income that is not taxable under this
19 subchapter shall include with its statement a report that identifies each item of its
20 nontaxable income and that explains why the item is not taxable and shall include
21 evidence that supports its claim that each item is not taxable. The statement shall
22 be subscribed by the president, vice president, treasurer, assistant treasurer, chief
23 accounting officer or any other officer duly authorized so to act. In the case of a return
24 made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The
25 fact that an individual’s name is subscribed on the return shall be prima facie

1 evidence that the individual is authorized to subscribe the return on behalf of the
2 corporation.

3 **SECTION 15.** 71.44 (3) of the statutes is amended to read:

4 71.44 (3) EXTENSIONS. In the case of a corporation required to file a return,
5 when sufficient reason is shown, the department of revenue may on written request
6 allow ~~such further time for making and delivering the return as is considered~~
7 ~~necessary, not to exceed 30 days. In the case of a cooperative filing a return or a~~
8 ~~domestic international sales corporation, as defined in s. 71.30 (5), the department~~
9 ~~of revenue may allow an extension not to exceed 6 months. In the case of a foreign~~
10 ~~corporation that does not have an office or place of business in the United States the~~
11 ~~department of revenue may allow an extension not to exceed 3 months~~ an extension
12 of 30 days or until the original due date of the corporation's federal return, whichever
13 is later, if the corporation has not received an extension on its federal return. Any
14 extension of time granted by law or by the internal revenue service for the filing of
15 corresponding federal returns shall extend the time for filing under this subchapter
16 to 30 days after the federal due date if a copy of any extension requested of the
17 internal revenue service is filed with the return. Termination of an automatic
18 extension by the internal revenue service, or its refusal to grant such automatic
19 extension, shall similarly require that any returns due under this subchapter are due
20 on or before 30 days after the date for termination fixed by the internal revenue
21 service. Except for payments of estimated taxes, income or franchise taxes payable
22 upon the filing of the tax return shall not become delinquent during such extension
23 period, but shall be subject to interest at the rate of 12% per year during such period.

24 **SECTION 16.** 71.738 of the statutes is created to read:

1 **71.738 Definition.** In this subchapter, “last day prescribed by law” means the
2 unextended due date of the return, or of the claim made under subch. VIII.

3 **SECTION 17.** 71.74 (2) (b) of the statutes is amended to read:

4 71.74 (2) (b) For the purpose of ascertaining the correctness of any return or
5 for the purpose of making a determination of the taxable income of any person, the
6 department may examine or cause to be examined by any agent or representative
7 designated by it, any books, papers, records or memoranda bearing on the income of
8 the person, and may require the production of the books, papers, records or
9 memoranda, and require the attendance of any person having knowledge in the
10 premises, and may take testimony and require proof material for its information.
11 The department may determine any person’s liability for a tax under this chapter on
12 the basis of sampling, whether or not the person being audited has complete records
13 of transactions and whether or not the person being audited consents. Upon such
14 information as it may be able to discover, the department shall determine the true
15 amount of income received during the year or years under investigation.

16 **SECTION 18.** 71.77 (8) of the statutes is amended to read:

17 71.77 (8) For purposes of this section, a return filed before the last day
18 prescribed by law for the filing thereof of the return shall be considered as filed on
19 such last day, and a return filed after the last day prescribed by law shall be
20 considered as filed on the date that the return is received by the department of
21 revenue.

22 **SECTION 19.** 71.83 (1) (a) 1m. of the statutes is created to read:

23 71.83 (1) (a) 1m. ‘Failure to file information return.’ If a person fails to file a
24 return required under subch. XI by the prescribed due date, including any extension,
25 or files an incorrect or incomplete return, that person may be subject to a penalty of

1 \$10 for each violation. A penalty shall be waived if the person shows that a violation
2 is due to reasonable cause and not due to wilful neglect.

3 **SECTION 20.** 71.90 (1) of the statutes is amended to read:

4 71.90 (1) DEPOSIT WITH THE DEPARTMENT. The department shall notify any
5 person who files a petition for redetermination that the person may deposit the entire
6 amount of ~~an additional~~ the assessment, including any interest or penalty, with the
7 department at any time before the department makes its redetermination. The
8 department shall notify spouses jointly except that, if the spouses have different
9 addresses and if either spouse notifies the department in writing of those addresses,
10 the department shall serve a duplicate of the original notice on the spouse who has
11 the address other than the address to which the original notice was sent. Amounts
12 deposited under this subsection shall be subject to the interest provided by s. 71.82
13 only to the extent of the interest accrued prior to the first day of the month succeeding
14 the date of deposit. Any deposited amount which is refunded shall bear interest at
15 the rate of 9% per year during the time the funds were on deposit. A person may also
16 pay any portion of an assessment which is admitted to be correct and the payment
17 shall be considered an admission of the validity of that portion of the assessment and
18 may not be recovered in an appeal or in any other action or proceeding.

19 **SECTION 21.** 71.91 (1) (b) of the statutes is amended to read:

20 71.91 (1) (b) *Withholding.* Any amount not deposited or paid over to the
21 department within the time required shall be deemed delinquent and deposit reports
22 or withholding reports filed after the due date shall be deemed late. In the case of
23 a timely filed deposit or withholding report, withheld taxes shall become delinquent
24 if not deposited or paid over on or before the due date of the report. In the case of no
25 report filed or a report filed late, withheld taxes shall become delinquent if not

1 deposited or paid over by the due date of the report. In the case of an assessment
2 under s. 71.83 (1) (b) 2., the amount assessed shall become delinquent if not paid on
3 or before the ~~first day of the calendar month following the calendar month in which~~
4 ~~the assessment becomes final~~ due date specified in the notice of deficiency, but if the
5 assessment is contested before the tax appeals commission or in the courts, it shall
6 become delinquent on the 30th day following the date on which the order or judgment
7 representing final determination becomes final.

8 **SECTION 22.** 71.91 (7) (b) of the statutes is amended to read:

9 71.91 (7) (b) The department may give notice to any employer deriving income
10 having a taxable situs in this state (regardless of whether any such income is exempt
11 from taxation) to the effect that an employe of such employer is delinquent in a
12 certain amount with respect to state taxes, including penalties, interest and costs.
13 Such notice may be served by ~~certified~~ mail, or by delivery by an employe of the
14 department of revenue. Upon receipt of such notice of delinquency, the employer
15 shall withhold from compensation due, or to become due to the employe, the total
16 amount shown by the notice. The department may ~~arrange between~~ direct the
17 employer and the employe ~~for a withholding of an amount not less than 10% of the~~
18 ~~total~~ to withhold part of the amount due the employe each pay period, until the total
19 amount as shown by the notice, plus interest, has been withheld. The employer ~~shall~~
20 may not withhold more than 25% of the compensation due any employe for any one
21 pay period, except that, if the employe leaves the employ of the employer or gives
22 notice of his or her intention to do so, or is discharged for any reason, the employer
23 shall withhold the entire amount otherwise payable to such employe, or so much
24 thereof as may be necessary to equal the unwithheld balance of the amount shown
25 in the notice of delinquency, plus delinquent interest. In crediting amounts withheld

1 against delinquent taxes of an employe, the department shall apply amounts
2 withheld in the following order: costs, penalties, delinquent interest, delinquent tax.
3 The "compensation due" any employe for purposes of determining the 25% maximum
4 withholding for any one pay period shall include all wages, salaries and fees
5 constituting income, including wages, salaries, income advances or other
6 consideration paid for future services, when paid to an employe, less amounts
7 payable pursuant to a garnishment action with respect to which the employer was
8 served prior to being served with the notice of delinquency and any amounts covered
9 by any irrevocable and previously effective assignment of wages, of which amounts
10 and the facts relating to such assignment the employer shall give notice to the
11 department within 10 days after service of the notice of delinquency.

12 **SECTION 23.** 71.91 (7) (d) of the statutes is amended to read:

13 71.91 (7) (d) The employer shall, on or before the last day of the ~~next~~ month
14 after ~~every calendar quarter~~ the month during which an amount was withheld, remit
15 to the department the that amount withheld ~~during the calendar quarter~~. Any
16 amount withheld from an employe by an employer shall immediately be a trust fund
17 for this state. Should any employer, after notice, wilfully fail to withhold in
18 accordance with the notice and this subsection, or wilfully fail to remit any amount
19 withheld, as required by this subsection, such employer shall be liable for the total
20 amount set forth in the notice together with delinquent interest as though the
21 amount shown by the notice was due by such employer as a direct obligation to the
22 state for delinquent taxes, and may be collected by any means provided by law
23 including the means provided for the collection of delinquent income or franchise
24 taxes. However, no amount required to be paid by an employer by reason of his or
25 her failure to remit under this ~~subsection~~ paragraph may be deducted from the gross

1 income of such employer. Any amount collected from the employer for failure to
2 withhold or for failure to remit under this subsection shall be credited as tax, costs,
3 penalties and interest paid by the employe.

4 **SECTION 24.** 71.91 (7) (h) of the statutes is amended to read:

5 71.91 (7) (h) The department may, by written notice served personally or by
6 mail, require any employer, as defined in s. 71.63 (3), to withhold from the
7 compensation due or to become due to any entertainer or entertainment corporation
8 the amount of any delinquent state taxes, including costs, penalties and interest,
9 shown by the notice. The employer shall send the money withheld to the department
10 ~~when the department specifies~~ on or before the last day of the month after the month
11 during which an amount was withheld.

12 **SECTION 25.** 77.53 (9g) of the statutes is created to read:

13 77.53 (9g) Every person who is not required to register under sub. (9) or under
14 s. 77.52 (7) and who incurs at least \$300 in use tax liability during the year or, if that
15 person files franchise or income tax returns on a fiscal year basis, during that
16 person's fiscal year shall register with the department within 60 days after they
17 incur that amount of liability and shall provide the information that the department
18 requires.

19 **SECTION 26.** 77.60 (2) (c) of the statutes is amended to read:

20 77.60 (2) (c) In the case of deficiency determinations, on or before the ~~first day~~
21 ~~of the calendar month following the calendar month in which the determination~~
22 ~~becomes final~~ due date specified in the notice of deficiency, except that if the
23 determination is contested before the tax appeals commission or in the courts, on or
24 before the 30th day following the date on which the order or judgment representing
25 the final determination, becomes final.

1 **SECTION 27.** 78.80 (1) of the statutes is amended to read:

2 78.80 (1) The department, or any deputy, employe or agent appointed in
3 writing, is authorized at any time during the business day to examine the books,
4 records, papers, receipts, invoices, storage tanks and any equipment of any licensee
5 under s. 78.09 or 78.47, broker, dealer, general aviation fuel licensee or other person,
6 purchaser or common carrier, pertaining to motor vehicle fuel, crude petroleum or
7 general aviation fuel or alternate fuels to verify the truth and accuracy of any
8 statement, report or return, or to ascertain whether or not the taxes imposed by this
9 chapter have been paid or to determine the financial responsibility of any licensee
10 for the payment of motor vehicle fuel or general aviation fuel or alternate fuels taxes.
11 The department is ~~further authorized to~~ may redetermine taxes and to ~~to~~ may allow
12 credits for overpayments due to error. The department may determine any person's
13 liability for a tax under this chapter on the basis of sampling, whether or not the
14 person being audited has complete records of transactions and whether or not the
15 person being audited consents.

16 **SECTION 28. Initial applicability.**

17 (1) ENTERTAINER WAGES DEDUCTION DENIAL. The treatment of sections 71.26 (3)
18 (e) and 71.34 (1) (h) of the statutes and the creation of section 71.26 (3) (e) 3. of the
19 statutes first apply to taxable years beginning on January 1, 1996.

20 (2) FILING EXTENSIONS. The treatment of sections 71.24 (7) and 71.44 (3) of the
21 statutes first applies to taxable years beginning on January 1, 1996.

22 (3) INFORMATION RETURNS. The treatment of section 71.83 (1) (a) 1m. of the
23 statutes first applies to taxable years beginning on January 1, 1996.

