



2005 SENATE BILL 218

May 25, 2005 - Introduced by Senators ROESSLER, A. LASEE, LASSA, MILLER and HANSEN, cosponsored by Representatives KERKMAN, PRIDEMORE, ALBERS, BIES, HINES, HUBLER, KREIBICH, LEHMAN, MUSSER, TOWNSEND and TOLES. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

1 **AN ACT to repeal** 71.07 (5d) (c) 3.; **to renumber** 72.23; **to renumber and amend**
2 77.59 (4) (c); **to amend** 50.14 (4), 70.07 (6), 70.075 (6), 71.03 (6) (a), 71.03 (7) (d),
3 71.03 (8) (b), 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a), 71.63 (3) (c), 71.65 (5) (a)
4 1., 71.80 (18), 71.88 (2) (b), 73.01 (4) (a), 77.59 (5), 77.61 (14), 78.22 (4), 110.20
5 (8) (e), 139.03 (2x) (d), 139.05 (2a), 139.315 (4), 139.38 (5) and 560.205 (3) (d);
6 and **to create** 71.01 (7n), 71.10 (6) (e), 71.10 (6m) (c), 71.22 (5m), 71.34 (1m),
7 71.42 (2m), 71.65 (3) (h), 72.23 (2), 73.13, 78.39 (5d), 78.39 (5m) and 139.75 (9m)
8 of the statutes; **relating to:** appealing a determination by the board of
9 assessors, claiming angel and early stage investment tax credits, employers
10 who must withhold state income taxes, benefits to persons serving in Operation
11 Iraqi Freedom, eliminating the requirement that the Department of Revenue
12 audit the records of contractors who perform emissions inspections, the liability
13 of married persons filing a joint income tax return, the payment of the alternate
14 fuel tax and the tobacco products tax, estate tax interest, qualified retirement

SENATE BILL 218

1 systems, reducing nondelinquent taxes, extending the time for filing a tax
2 reconciliation report, delivering tax-related documents and related payments,
3 appeal of redetermination of earned income tax credits, granting rule-making
4 authority, and providing a penalty.

Analysis by the Legislative Reference Bureau**PROPERTY TAXES**

Under current law, a person who owns property in a first class city or in certain second class cities and who wants to appeal his or her property tax assessment, must first appeal the assessment to the city assessor. The city assessor reviews the appeal and makes a recommendation to the board of assessors. The board of assessors considers the city assessor's recommendation and, ultimately, notifies the property owner of the board's determination regarding the property owner's appeal. The property owner may appeal the determination of the board of assessors to the board of review by providing a notice of appeal to the commissioner of assessments within ten days. Current law, however, is not clear as to whether the notice to appeal to the board of review is due within ten days from the date that the board of assessors issues its determination or from the date that the property owner receives the determination of the board of assessors.

This bill specifies that a property owner may appeal the determination of the board of assessors to the board of review by providing a notice of appeal to the commissioner of assessments within 15 days from the date that the board of assessors issues its determination.

REDUCING TAXES

Under current law, any taxpayer may petition the Department of Revenue (DOR) to reduce delinquent taxes, including any applicable costs, penalties, and interest. If DOR determines that the taxpayer is unable to pay in full the amount due, based on an examination of the taxpayer under oath, the taxpayer's financial statements, and any other information required by DOR, DOR determines the amount that the taxpayer is able to pay and then enters an order reducing the taxes, costs, penalties, and interest owed by the taxpayer.

If within three years from either the date on which DOR enters the order that reduces the taxpayer's taxes or the date of the final payment according to a payment schedule determined by DOR, whichever is later, DOR determines that the taxpayer has an income or owns property that is sufficient to enable the taxpayer to pay the remainder of the original delinquent taxes, including costs, penalties, and interest, DOR must reopen the order and order the payment in full of such taxes, costs, penalties, and interest.

This bill expands current law so that DOR is authorized to reduce any taxes, costs, penalties, and interest that are due from a taxpayer, regardless of whether the taxes, costs, penalties, and interest are delinquent.

SENATE BILL 218**INCOME AND FRANCHISE TAXES**

Under current law, spouses that file a joint income tax return are both liable for the payment of any tax related to that return. However, DOR may relieve a person of any tax liability related to a joint return, in a manner specified by the Internal Revenue Code (IRC) and adopted by this state. Generally, DOR may relieve a person of any tax liability related to a joint return if the person's spouse did not notify the person of any tax liability or understatement of taxes related to the joint return. This bill corrects an outdated reference to the sections of the Internal Revenue Code that relate to a spouse's tax liability for a joint income tax return. The bill also requires a spouse to apply for relief from tax liability within two years from the date on which DOR begins collection activities on the spouse's tax liability or within two years from the effective date of the provision, whichever is later.

Under current law, a person may claim an individual income tax credit equal to 12.5 percent of the person's investment in a qualified new business venture, as certified by the Department of Commerce. Current law refers to this investment as a "bona fide angel investment." In addition, a person may claim an income or franchise tax credit equal to 25 percent of the amount that the person pays to a fund manager who invests the amount in a qualified new business venture, as certified by the Department of Commerce. Current law refers to this investment as an "early stage seed investment."

Under current law, a person who claims the bona fide angel investment credit and who is not a resident of this state or who is a part-year resident of this state must prorate the amount of the bona fide angel investment credit based on his or her Wisconsin adjusted gross income as compared to his or her federal adjusted gross income. Nonresidents and part-year residents who claim the early stage seed investment credit, however, are not required to prorate the amount of the credit. This bill eliminates the requirement that nonresidents and part-year residents prorate the bona fide angel investment credit.

Under current law, the Department of Commerce must promulgate rules to limit the aggregate amount of bona fide angel investment credits to \$3,000,000 per taxable year and the aggregate amount of early stage seed investment credits to \$3,500,000 per taxable year. Under the bill, the Department of Commerce must promulgate rules to limit the aggregate amount of bona fide angel investment credits to \$3,000,000 per calendar year and the aggregate amount of early stage seed investment credits to \$3,500,000 per calendar year.

Under current law, every employer must withhold state income taxes from the pay of each employee and remit the taxes to DOR. In the case of a single-owner entity that is disregarded as a separate entity under the Internal Revenue Code, the owner of the entity is considered to be the employer for purposes of withholding and remitting state income taxes. In addition, an employer must file a tax reconciliation report with DOR on an annual basis. Under current law, DOR cannot grant an extension for filing the report.

Under this bill, the owner of a single-owner entity that is disregarded as a separate entity under IRC is considered to be the employer for purposes of withholding and remitting state income taxes, unless the entity has elected to be an

SENATE BILL 218

employer for the purpose of withholding federal income taxes. This bill also allows DOR to grant a 30-day extension for filing an annual reconciliation report.

This bill clarifies that a qualified retirement fund for federal income tax purposes is a qualified retirement fund for state income tax purposes.

SALES AND USE TAXES

Under current law, if a seller makes a claim for a refund of sales taxes or use taxes and the claim is honored, the seller is required to pass along the refund and related interest to the buyers and to submit to DOR the portion of the refund that could not be passed on, along with a penalty. Under current law, if a seller receives a sales or use tax refund as the result of an audit, the seller is not required to submit the refund and related interest to the buyers. Also, a seller is not required to submit to the buyers sales or use taxes that are collected erroneously.

This bill requires a seller who receives any refund of sales or use taxes, or who collects sales or use taxes erroneously, to submit such a refund or taxes to the buyer, or to DOR if the buyer cannot be located, within 90 days after receiving a refund or after discovering that the seller has collected taxes erroneously. Any portion of a refund or taxes not submitted to the buyer, or to DOR if the buyer cannot be located, within that 90 days must be submitted to DOR, along with a penalty.

OTHER TAXATION

Under current law, an estate tax that is not paid on the date on which it is due is subject to interest at the rate of 12 percent a year from the date of the decedent's death. Under the bill, DOR may waive the interest imposed on any additional estate taxes that arise from the discovery of property omitted in the inventory of the estate's total assets or in the original tax determination, if due diligence was exercised in determining the assets.

Under current law, generally, a tax-related document or payment that DOR must receive by a specified date is timely received, if the document or payment is mailed in a properly addressed envelope; the sender pays the postage; the envelope is postmarked on the day that the document or payment is due; and the document or payment is received within five days from the date on which the document or payment is due.

Under this bill, mailing a tax-related document or payment includes using a delivery service that has been approved by the Internal Revenue Service, for federal tax purposes.

Under current law, a person may appeal DOR's redetermination of various tax credits without paying a \$25 filing fee. Under this bill, a person may appeal DOR's redetermination of an earned income tax credit without paying the filing fee.

This bill eliminates the requirement that the DOR audit the records of persons who perform emissions inspections under a contract with the Department of Transportation.

SENATE BILL 218

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.** 50.14 (4) of the statutes is amended to read:

2 50.14 (4) Sections 77.59 (1) to ~~(5)~~ (5m), (6) (intro.), (a) and (c) and (7) to (10),
3 77.60 (1) to (7), (9) and (10), 77.61 (9) and (12) to (14) and 77.62, as they apply to the
4 taxes under subch. III of ch. 77, apply to the assessment under this section, except
5 that the amount of any assessment collected under s. 77.59 (7) in excess of
6 \$14,300,000 in fiscal year 2003-04, in excess of \$13,800,000 in fiscal year 2004-05,
7 and, beginning July 1, 2005, in excess of ~~45%~~ 45 percent in each fiscal year shall be
8 deposited in the Medical Assistance trust fund.

9 **SECTION 2.** 70.07 (6) of the statutes is amended to read:

10 70.07 (6) The board of assessors shall remain in session until all corrections
11 and changes have been made, including all those resulting from investigations by
12 committees of objections to valuations filed with the commissioner of assessments
13 as provided in this subsection, after which the commissioner of assessments shall
14 prepare the assessment rolls as corrected by the board of assessors and submit them
15 to the board of review not later than the 2nd Monday in October. The person
16 assessed, having been notified of the determination of the board of assessors as
17 required in sub. (4), shall be deemed to have accepted the determination unless the
18 person notifies the commissioner of assessments in writing, within ~~10~~ 15 days from
19 the date that the notice of determination was issued under sub. (4), of the desire to
20 present testimony before the board of review. After the board of review has met, the
21 commissioner of assessments may appoint committees of the board of assessors to

SENATE BILL 218**SECTION 2**

1 investigate any objections to the amount or valuation of any real or personal property
2 which have been filed with the commissioner of assessments. The committees may
3 at the direction of the commissioner of assessments report their investigation and
4 recommendations to the board of review and any member of any such committee
5 shall be a competent witness in any hearing before the board of review.

6 **SECTION 3.** 70.075 (6) of the statutes is amended to read:

7 70.075 (6) The board of assessors shall remain in session until all corrections
8 and changes have been made, including all those resulting from investigations by
9 committees of objections to valuations filed with the city assessor as provided in this
10 section, after which the city assessor shall prepare the assessment rolls as corrected
11 by the board of assessors and submit them to the board of review not later than the
12 last Monday in July. A person assessed who has been notified of the determination
13 of the board of assessors as required in sub. (4) is deemed to have accepted such
14 determination unless the person notifies the city assessor in writing, within ~~10~~ 15
15 days from the date that the notice of determination was issued under sub. (4), of a
16 desire to present testimony before the board of review. After the board of review
17 meets, the city assessor may appoint committees of the board of assessors to
18 investigate any objections to the amount or valuation of any real or personal property
19 which are referred to the city assessor by the board of review. The committees so
20 appointed may at the city assessor's direction report their investigation and
21 recommendations to the board of review and any member of any such committee
22 shall be a competent witness in any hearing before the board of review.

23 **SECTION 4.** 71.01 (7n) of the statutes is created to read:

SENATE BILL 218

1 71.01 (7n) Notwithstanding sub. (6), a qualified retirement fund for a taxable
2 year for federal income tax purposes is a qualified retirement fund for the taxable
3 year for purposes of this subchapter.

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

5 71.03 (6) (a) Reports required under this section shall be made on or before
6 April 15, or April 30 if the person files an electronic return, following the close of a
7 year referred to in sub. (2) (a), or if such person's fiscal year is other than the calendar
8 year then on or before the 15th day, or the last day if the person files an electronic
9 return, of the 4th month following the close of such fiscal year, or if the return is for
10 less than a full taxable year on the date applicable for federal income taxes under the
11 ~~internal revenue code~~ Internal Revenue Code, to the department of revenue, in the
12 manner and form prescribed by the department of revenue, whether notified to do
13 so or not. Such persons shall be subject to the same penalties for failure to report as
14 those who receive notice. If the taxpayer is unable to make his or her own return,
15 the return shall be made by a duly authorized agent or by the guardian or other
16 person charged with the care of the person or property of such taxpayer.

17 **SECTION 6.** 71.03 (7) (d) of the statutes is amended to read:

18 71.03 (7) (d) For taxable years beginning after December 31, 2002, and before
19 January 1, ~~2005~~ 2007, for persons who served in support of Operation Iraqi Freedom
20 or an operation that is a successor to Operation Iraqi Freedom in the United States,
21 or for persons who qualify for a federal extension of time to file under 26 USC 7508,
22 who served outside the United States because of their participation in Operation
23 Iraqi Freedom or an operation that is a successor to Operation Iraqi Freedom in the
24 Iraqi Freedom theater of operations.

25 **SECTION 7.** 71.03 (8) (b) of the statutes is amended to read:

SENATE BILL 218**SECTION 7**

1 71.03 (8) (b) The final payment of taxes on incomes of persons other than
2 corporations who file on a calendar year basis shall be made on or before April 15,
3 or April 30 if the person files an electronic return, following the close of the calendar
4 year, except for persons electing to have the department compute their tax under sub.
5 (4). If the return of a person other than a corporation is made on the basis of a fiscal
6 year, such final payment shall be made on or before the 15th day, or the last day if
7 the person files an electronic return, of the 4th month following the close of such fiscal
8 year, except for persons electing to have the department compute their tax under sub.
9 (4).

10 **SECTION 8.** 71.07 (5d) (c) 3. of the statutes is repealed.

11 **SECTION 9.** 71.10 (6) (a) of the statutes is amended to read:

12 71.10 (6) (a) *Joint returns.* Persons filing a joint return are jointly and severally
13 liable for the tax, interest, penalties, fees, additions to tax and additional
14 assessments under this chapter applicable to the return. A person shall be relieved
15 of liability in regard to a joint return in the manner specified in section 6013 (e) 6015
16 (a) to (d) and (f) of the internal revenue code, notwithstanding the amount or
17 percentage of the understatement Internal Revenue Code.

18 **SECTION 10.** 71.10 (6) (b) of the statutes is amended to read:

19 71.10 (6) (b) *Separate returns.* A spouse filing a separate return may be
20 relieved of liability for the tax, interest, penalties, fees, additions to tax and
21 additional assessments under this chapter ~~with regard to unreported marital~~
22 ~~property income~~ in the manner specified in section 66 (c) of the ~~internal revenue code~~
23 Internal Revenue Code. The department may not apply ch. 766 in assessing a
24 taxpayer with respect to marital property income the taxpayer did not report if that
25 taxpayer failed to notify the taxpayer's spouse about the amount and nature of the

SENATE BILL 218

1 income before the due date, including extensions, for filing the return for the taxable
2 year in which the income was derived. The department shall include all of that
3 marital property income in the gross income of the taxpayer and exclude all of that
4 marital property income from the gross income of the taxpayer's spouse.

5 **SECTION 11.** 71.10 (6) (e) of the statutes is created to read:

6 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
7 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
8 by the department, within 2 years after the date on which the department first
9 begins collection activities after the effective date of this paragraph [revisor
10 inserts date].

11 **SECTION 12.** 71.10 (6m) (a) of the statutes is amended to read:

12 71.10 (6m) (a) A formerly married or remarried person filing a return for a
13 period during which the person was married may be relieved of liability for the tax,
14 interest, penalties, fees, additions to tax and additional assessments under this
15 chapter ~~for unreported marital property income~~ from that period as if the person
16 were a spouse under section 66 (c) of the ~~internal revenue code~~ Internal Revenue
17 Code. The department may not apply ch. 766 in assessing the former spouse of the
18 person with respect to marital property income that the former spouse did not report
19 if that former spouse failed to notify the person about the amount and nature of the
20 income before the due date, including extensions, for filing the return for the taxable
21 year during which the income was derived. The department shall include all of that
22 marital property income in the gross income of the former spouse and exclude all of
23 that marital property income from the gross income of the person.

24 **SECTION 13.** 71.10 (6m) (c) of the statutes is created to read:

SENATE BILL 218**SECTION 13**

1 71.10 **(6m)** (c) A person who seeks relief from liability under par. (a) shall apply
2 for relief with the department as provided under sub. (6) (e).

3 **SECTION 14.** 71.22 (5m) of the statutes is created to read:

4 71.22 **(5m)** Notwithstanding subs. (4) and (4m), a qualified retirement fund for
5 a taxable year for federal income tax purposes is a qualified retirement fund for the
6 taxable year for purposes of this subchapter.

7 **SECTION 15.** 71.34 (1m) of the statutes is created to read:

8 71.34 **(1m)** Notwithstanding sub. (1g), a qualified retirement fund for a taxable
9 year for federal income tax purposes is a qualified retirement fund for the taxable
10 year for purposes of this subchapter.

11 **SECTION 16.** 71.42 (2m) of the statutes is created to read:

12 71.42 **(2m)** Notwithstanding sub. (2), a qualified retirement fund for a taxable
13 year for federal income tax purposes is a qualified retirement fund for the taxable
14 year for purposes of this subchapter.

15 **SECTION 17.** 71.63 (3) (c) of the statutes is amended to read:

16 71.63 **(3)** (c) In regard to a single-owner entity that is disregarded as a separate
17 entity under section 7701 of the Internal Revenue Code, the owner, not the entity, is
18 an “employer;” except that, if the entity elects to be an employer for federal
19 withholding tax purposes, the entity is the employer for purposes of this subchapter.

20 **SECTION 18.** 71.65 (3) (h) of the statutes is created to read:

21 71.65 **(3)** (h) If a single-owner entity that is disregarded as a separate entity
22 under section 7701 of the Internal Revenue Code is an employer subject to
23 withholding under this subchapter and if the entity does not deduct, withhold,
24 report, and deposit the tax as required under this subchapter, the owner of the

SENATE BILL 218**SECTION 18**

1 single-owner entity is liable for any tax, interest, and penalties due under this
2 subchapter.

3 **SECTION 19.** 71.65 (5) (a) 1. of the statutes is amended to read:

4 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an
5 annual reconciliation report under sub. (3) (a) or (d).

6 **SECTION 20.** 71.80 (18) of the statutes is amended to read:

7 71.80 (18) TIMELY FILING DEFINED. Documents and payments required or
8 permitted by this chapter that are mailed shall be considered furnished, reported,
9 filed or made on time, if mailed in a properly addressed envelope, with postage duly
10 prepaid, which envelope is postmarked, or marked or recorded electronically as
11 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight
12 of the date prescribed for such furnishing, reporting, filing or making, provided such
13 document or payment is actually received by the department or at the destination
14 that the department or the department of administration prescribes within 5 days
15 of such prescribed date. Documents and payments that are not mailed are timely if
16 they are received on or before the due date by the department or at the destination
17 that the department or the department of administration prescribes. For purposes
18 of this subsection, "mailed" includes delivery by a delivery service designated under
19 section 7502 (f) of the Internal Revenue Code.

20 **SECTION 21.** 71.88 (2) (b) of the statutes is amended to read:

21 71.88 (2) (b) *Appeal of department's redetermination of credits.* Any person
22 aggrieved by the department of revenue's redetermination of a credit under s. 71.07
23 (3m) ~~or~~, (6), or (9e), 71.28 (1) or (2m) or 71.47 (1) or (2m) or subch. VIII or IX, except
24 when the denial is based upon late filing of claim for credit or is based upon a
25 redetermination under s. 71.55 (8) of rent constituting property taxes accrued as at

SENATE BILL 218**SECTION 21**

1 arm's length, may appeal the redetermination to the tax appeals commission by
2 filing a petition with the commission within 60 days after the redetermination, as
3 provided under s. 73.01 (5) with respect to income or franchise tax cases, and review
4 of the commission's decision may be had under s. 73.015. For appeals brought under
5 this paragraph, the filing fee required under s. 73.01 (5) (a) does not apply.

6 **SECTION 22.** 72.23 of the statutes is renumbered 72.23 (1).

7 **SECTION 23.** 72.23 (2) of the statutes is created to read:

8 **72.23 (2)** The department or circuit court may waive interest on any additional
9 tax arising from the discovery of property omitted in the inventory of total assets or
10 in the original tax determination, if due diligence was exercised in determining the
11 assets.

12 **SECTION 24.** 73.01 (4) (a) of the statutes is amended to read:

13 **73.01 (4) (a)** Subject to the provisions for judicial review contained in s. 73.015,
14 the commission shall be the final authority for the hearing and determination of all
15 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
16 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
17 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
18 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,
19 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending
20 appeal there is filed with the commission a stipulation signed by the department of
21 revenue and the adverse party, under s. 73.03 (25), or the department of
22 transportation and the adverse party agreeing to an affirmance, modification, or
23 reversal of the department of revenue's or department of transportation's position
24 with respect to some or all of the issues raised in the appeal, the commission shall
25 enter an order affirming or modifying in whole or in part, or canceling the assessment

SENATE BILL 218

1 appealed from, or allowing in whole or in part or denying the petitioner's refund
2 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
3 No responsibility shall devolve upon the commission, respecting the signing of an
4 order of dismissal as to any pending appeal settled by the department of revenue or
5 the department of transportation without the approval of the commission.

6 **SECTION 25.** 73.13 of the statutes is created to read:

7 **73.13 Reducing nondelinquent taxes. (1)** In this section:

8 (a) "Department" means the department of revenue.

9 (b) "Tax" means an amount that is owed to this state under s. 66.0615 (1m) (f)
10 3. or ch. 71, 72, 76, 77, 78, or 139, and that is not delinquent.

11 **(2)** (a) A taxpayer may petition the department to reduce the taxpayer's taxes,
12 including the costs, penalties, and interest related to the taxpayer's taxes. The
13 petition shall set forth a sworn statement of the taxpayer and shall be in a form that
14 the department prescribes. The department may examine the taxpayer under oath
15 about the petition and may require the taxpayer to provide the department with
16 financial statements and any other information requested by the department that
17 is related to the petition.

18 (b) If the department determines that the taxpayer is unable to pay the taxes,
19 costs, penalties, and interest in full, the department shall determine the amount that
20 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance
21 with the department's determination. The order shall provide either that the order
22 is effective only if the reduced taxes are paid in full within 10 days from the date on
23 which the order is issued or that the order is effective only if the reduced taxes are
24 paid according to a payment schedule that the department determines. The
25 department or its collection agents, upon receipt of the order, shall accept payment

SENATE BILL 218**SECTION 25**

1 in accordance with the order. Upon payment of the reduced taxes, the department
2 shall credit the unpaid portion of the principal amount of the taxes and record the
3 unpaid amount of costs, penalties, and interest accrued to the date of the order.

4 (c) If within 3 years from either the date of the order under par. (b) or the date
5 of the final payment according to a payment schedule as determined under par. (b),
6 whichever is later, the department ascertains that the taxpayer has an income or
7 owns property sufficient to enable the taxpayer to pay the unpaid portion of the
8 principal amount of the taxes due, including the costs, penalties, and interest
9 recorded under par. (b), the department shall reopen the order under par. (b) and
10 order the taxpayer to pay in full the unpaid portion of the principal amount of the
11 taxes due, including the costs, penalties, and interest recorded under par. (b). Before
12 the entry of the order for payment, the department shall send a written notice to the
13 taxpayer, by certified mail, advising the taxpayer of the department's intention to
14 reopen the order under par. (b) and fixing a time and place for the appearance of the
15 taxpayer, if the taxpayer desires a hearing. If the department determines that the
16 taxpayer is able to pay the unpaid portion of the principal amount of the taxes due,
17 including the costs, penalties, and interest recorded under par. (b), the department
18 shall enter the order for payment in full. The unpaid portion of the principal amount
19 of the taxes due, including the costs, penalties, and interest recorded under par. (b),
20 shall be due and payable immediately upon entry of the order for payment in full and
21 shall thereafter be subject to the interest under s. 71.82 (2), as that subsection
22 applies to delinquent income and franchise taxes under s. 71.82, and to the
23 delinquent account fee under s. 73.03 (33m).

24 **SECTION 26.** 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended
25 to read:

SENATE BILL 218**SECTION 26**

1 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the
2 seller has collected from buyers, who collects amounts as taxes erroneously from
3 buyers, or who is entitled to a refund that is offset under sub. (5), shall return submit
4 the taxes and related interest to the buyers from whom the taxes were collected. The,
5 or to the department if the seller cannot locate the buyers, within 90 days after the
6 date of the refund, after the date of the offset, or after discovering that the seller has
7 collected taxes erroneously from the buyers. If the seller does not submit the taxes
8 and related interest to the department or the buyers within that period, the seller
9 shall return submit to the department any part of a refund or taxes that the seller
10 does not return submit to a buyer or to the department along with a penalty of 25%
11 of the amount not returned or submitted or, in the case of fraud, a penalty equal to
12 the amount not returned in the case of fraud submitted. A person who collects
13 amounts as taxes erroneously from buyers for a real property construction activity
14 or nontaxable service may reduce the taxes and interest that he or she is required
15 to submit to the buyer or to the department under this subsection for that activity
16 or service by the amount of tax and interest subsequently due and paid on the sale
17 of or the storage, use, or other consumption of tangible personal property that is used
18 by the person in that activity or service and transferred to the buyer.

19 **SECTION 27.** 77.59 (5) of the statutes is amended to read:

20 77.59 (5) The department may offset the amount of any refund for a period,
21 together with interest on the refund, against deficiencies for another period, and
22 against penalties and interest on the deficiencies, or against any amount of whatever
23 kind, due and owing on the books of the department from the person claiming who
24 is entitled to the refund. If the refund is to be paid to a buyer, the department may
25 also set off amounts in the manner in which it sets off income tax and franchise tax

SENATE BILL 218**SECTION 27**

1 refunds under s. 71.93 and may set off amounts for child support or maintenance or
2 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),
3 (6) and (7).

4 **SECTION 28.** 77.61 (14) of the statutes is amended to read:

5 77.61 (14) Documents and payments required or permitted under this
6 subchapter that are mailed are timely furnished, filed or made if they are mailed in
7 a properly addressed envelope with the postage duly prepaid, if the envelope is
8 postmarked, or marked or recorded electronically as provided under section 7502 (f)
9 (2) (c) of the Internal Revenue Code, before midnight of the due date and if the
10 document or payment is received by the department, or at the destination that the
11 department prescribes, within 5 days after the prescribed date. Documents and
12 payments that are not mailed are timely if they are received on or before the due date
13 by the department or at the destination that the department designates. For
14 purposes of this subsection, "mailed" includes delivery by a delivery service
15 designated under section 7502 (f) of the Internal Revenue Code.

16 **SECTION 29.** 78.22 (4) of the statutes is amended to read:

17 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor
18 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed
19 in time if it is mailed in a properly addressed envelope with 1st class postage duly
20 prepaid and the envelope is officially postmarked, or marked or recorded
21 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
22 on the date due and the return is actually received by the department or at the
23 destination that the department prescribes within 5 days of the due date. A return
24 that is not mailed is timely if it is received on or before the due date by the department
25 or at the destination that the department prescribes. For purposes of this subsection,

SENATE BILL 218

1 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
2 the Internal Revenue Code.

3 **SECTION 30.** 78.39 (5d) of the statutes is created to read:

4 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

5 **SECTION 31.** 78.39 (5m) of the statutes is created to read:

6 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

7 **SECTION 32.** 110.20 (8) (e) of the statutes is amended to read:

8 110.20 (8) (e) The contractor shall collect, maintain and report data as the
9 department requires. The department shall reserve the right to enter and inspect
10 test station premises, equipment and records at all reasonable times in the discharge
11 of its administrative duties. ~~The department of revenue shall audit the records of~~
12 ~~the contractor annually and shall provide for the publication of the results of audits~~
13 ~~conducted under this paragraph in the official state newspaper.~~

14 **SECTION 33.** 139.03 (2x) (d) of the statutes is amended to read:

15 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return
16 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered
17 filed in time if it is mailed in a properly addressed envelope with 1st class postage
18 duly prepaid, if the envelope is officially postmarked, or marked or recorded
19 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
20 on the date due and if the return is actually received by the department or at the
21 destination that the department prescribes within 5 days of the due date. A return
22 that is not mailed is timely if it is received on or before the due date by the department
23 or at the destination that the department prescribes. For purposes of this paragraph,
24 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
25 the Internal Revenue Code.

SENATE BILL 218**SECTION 34**

1 **SECTION 34.** 139.05 (2a) of the statutes is amended to read:

2 139.05 **(2a)** The payments and returns under subs. (1) and (2) that are mailed
3 are furnished, filed or made on time, and payments therein referred to are timely, if
4 mailed in a properly addressed envelope, with ~~first class~~ postage duly prepaid, which
5 envelope is officially postmarked, or marked or recorded electronically as provided
6 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the
7 date prescribed for such furnishing, filing or making of such payment, provided such
8 statement, return or payment is actually received by the secretary of revenue or at
9 the destination that the department prescribes within 5 days of the prescribed date.
10 Payments and returns that are not mailed are timely if they are received on or before
11 the due date by the department or at the destination that the department prescribes.
12 For purposes of this subsection, "mailed" includes delivery by a delivery service
13 designated under section 7502 (f) of the Internal Revenue Code.

14 **SECTION 35.** 139.315 (4) of the statutes is amended to read:

15 139.315 **(4)** LATE FILING FEE. Any person who fails to file a cigarette inventory
16 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely
17 if it is mailed in a properly addressed envelope with ~~1st class~~ postage prepaid, if the
18 envelope is postmarked, or marked or recorded electronically as provided under
19 section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return
20 is actually received by the department or at the destination that the department
21 prescribes within 5 days of the due date. A return that is not mailed is timely if it
22 is received on or before the due date by the department or at the destination that the
23 department prescribes. For purposes of this subsection, "mailed" includes delivery
24 by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

25 **SECTION 36.** 139.38 (5) of the statutes is amended to read:

SENATE BILL 218**SECTION 36**

1 139.38 (5) If any permittee fails to file a report when due the permittee shall
2 be required to pay a late filing fee of \$10. A report that is mailed is filed in time if
3 it is mailed in a properly addressed envelope with ~~first class~~ postage duly prepaid,
4 which envelope is officially postmarked, or marked or recorded electronically as
5 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due,
6 and if the report is actually received by the secretary or at the destination that the
7 department prescribes within 5 days of the due date. A report that is not mailed is
8 timely if it is received on or before the due date by the secretary or at the destination
9 that the department prescribes. For purposes of this subsection, "mailed" includes
10 delivery by a delivery service designated under section 7502 (f) of the Internal
11 Revenue Code.

12 **SECTION 37.** 139.75 (9m) of the statutes is created to read:

13 139.75 (9m) "Sign" has the meaning given in s. 139.01 (9m).

14 **SECTION 38.** 560.205 (3) (d) of the statutes is amended to read:

15 560.205 (3) (d) *Rules.* The department of commerce, in consultation with the
16 department of revenue, shall promulgate rules to administer this section. The rules
17 shall further define "bona fide angel investment" for purposes of s. 71.07 (5d) (a) 1.
18 The rules shall limit the aggregate amount of tax credits under s. 71.07 (5d) that may
19 be claimed for investments in businesses certified under sub. (1) at \$3,000,000 per
20 taxable year for taxable years beginning after December 31, 2004. The rules shall
21 also limit the aggregate amount of the tax credits under ss. 71.07 (5b), 71.28 (5b), and
22 71.47 (5b) that may be claimed for investments paid to fund managers certified under
23 sub. (2) at \$3,500,000 per taxable year for taxable years beginning after December
24 31, 2004.

25 **SECTION 39. Initial applicability.**

SENATE BILL 218**SECTION 39**

1 (1) NOTICE OF APPEAL. The treatment of sections 70.07 (6) and 70.075 (6) of the
2 statutes first applies to the property tax assessments as of January 1, 2005.

3 (2) INVESTMENT CREDITS. The treatment of sections 71.07 (5d) (c) 3. and 560.205
4 (3) (d) of the statutes first applies to taxable years beginning on January 1, 2005.

5 (3) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14
6 (4), 73.01 (4) (a), and 77.59 (4) (c) and (5) of the statutes first applies to notices of
7 refunds or notices of amounts due dated, offsets taken, and the discovery of amounts
8 collected erroneously as taxes on the effective date of this subsection even if the
9 notices, offsets, and amounts relate to sales that occurred after August 31, 1994.

10 (4) MARRIED PERSONS' TAX LIABILITY. The treatment of section 71.10 (6) (a) and
11 (b) and (6m) (a) of the statutes first applies to tax liability that arises on the effective
12 date of this subsection or that remains unpaid on the effective date of this subsection.

13 (5) RECONCILIATION REPORTS. The treatment of section 71.65 (5) (a) 1. of the
14 statutes first applies to reconciliation reports that are due on January 31, 2006.

15 (6) INCOME TAX FILING DEADLINES FOR ELECTRONIC RETURNS. The treatment of
16 section 71.03 (6) (a) and (8) (b) of the statutes takes effect only if the secretary of
17 revenue issues a written certification to the governor that the federal government
18 has extended the income tax filing deadline for electronically filed individual income
19 tax returns in a way that is similar to the changes made by SECTIONS 5 and 7 of this
20 act.

21 (7) APPEAL OF REDETERMINATION. The treatment of section 71.88 (2) (b) of the
22 statutes first applies to appeals filed on the effective date of this subsection.

23 (END)