



2011 ASSEMBLY BILL 635

February 27, 2012 - Introduced by Representatives STRACHOTA, KOOYENGA, SPANBAUER, MARKLEIN, BIES, RIVARD, STROEBEL, ENDSLEY and JACQUE, cosponsored by Senators LASEE, HOLPERIN, GROTHMAN and SCHULTZ. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 70.995 (9), 76.08 (1), 76.10 (1), 76.13 (2), 76.13 (2a), 76.13 (3)
2 and 77.59 (6) (b) of the statutes; **relating to:** appeals from tax determinations.

Analysis by the Legislative Reference Bureau

Under current law, a person who wishes to appeal an assessment of the person's manufacturing property may appeal the assessment to the Tax Appeals Commission (TAC). The person may appeal a TAC decision to the Dane County Circuit Court. Under this bill, the person may also appeal a TAC decision to the circuit court of the county where the property is located.

Under current law, air carriers, railroads, pipeline companies, sleeping car companies, telephone companies, and conservation and regulation companies pay a property tax based on an assessment made by the Department of Revenue (DOR). An assessment of the tax may be appealed to the Dane County Circuit Court. Under the bill, the assessment of the tax may also be appealed to the circuit court of the county where the company's property is located.

Under current law, DOR may determine if a retailer is entitled to a refund of any portion of the sales taxes the retailer remitted to the state or if the retailer has not remitted the correct amount of such taxes. The retailer may appeal DOR's determination to the TAC. A retailer may appeal the TAC's decision to the Dane County Circuit Court. The bill allows the retailer to appeal the TAC's decision to the circuit court of any county where the retailer does business in this state.

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For further information see the *state* 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.** 70.995 (9) of the statutes is amended to read:

2 70.995 (9) Any aggrieved party may appeal a determination by the tax appeals
3 commission under sub. (8) to the circuit court for Dane County, or to the circuit court
4 of the county in the which the manufacturing property is located, under s. 73.015.

5 **SECTION 2.** 76.08 (1) of the statutes is amended to read:

6 76.08 (1) Notice of the assessments determined under s. 76.07 and of
7 adjustments under s. 76.075 shall be given by certified mail to each company the
8 property of which has been assessed, and the notice of assessment shall be mailed
9 on or before the assessment date specified in s. 76.07 (1). Any company aggrieved
10 by the assessment or adjustment of its property thus made may have its assessment
11 or adjustment redetermined by the Dane County circuit court or the circuit court of
12 the county in which the property is located if within 30 days after notice of
13 assessment or adjustment is mailed to the company under s. 76.07 (3) an action for
14 the redetermination is commenced by filing a summons and complaint with that
15 court, and service of authenticated copies of the summons and complaint is made
16 upon the department of revenue. No answer need be filed by the department and the
17 allegations of the complaint in opposition to the assessment or adjustment shall be
18 deemed denied. Upon the filing of the summons and complaint the court shall set
19 the matter for hearing without a jury. If the plaintiff fails to file the summons and
20 complaint within 5 days of service upon the department, the department may file a
21 copy thereof with the court in lieu of the original. The department may be named as

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1 the defendant in any such action and shall appear and be represented by its counsel
2 in all proceedings connected with the action but, on the request of the secretary of
3 revenue, the attorney general may participate with or serve in lieu of departmental
4 counsel. In an action for redetermination of an adjustment, only the issues raised
5 in the department's adjustment under s. 76.075 may be raised.

6 **SECTION 3.** 76.10 (1) of the statutes is amended to read:

7 76.10 (1) Every company defined in s. 76.02 shall, on or before October 1 in each
8 year, be entitled, on its own motion, to present evidence before the department
9 relating to the state assessment made in the preceding year pursuant to s. 70.575.
10 On request, in writing, for such hearing or presentation, the department shall fix a
11 time therefor within 60 days after such application is filed, the same to be conducted
12 in such manner as the department directs. Notice of such hearing shall be mailed
13 to any company requesting a hearing and shall be published in the official state
14 paper. Within 30 days after the conclusion of such hearing the department shall
15 enter an order either affirming the state assessment or ordering correction thereof
16 as provided in sub. (2). A copy of such order shall be sent by certified mail to the
17 company or companies requesting such hearing and to any interested party who has
18 made an appearance in such proceeding. The department may, on its own motion,
19 correct such state assessment. Any company having filed application for review of
20 the state assessment pursuant to this section, or any other interested party
21 participating in such hearing, if aggrieved by the order entered by the department,
22 may bring an action in the circuit court for Dane County or the circuit court of the
23 county in which the property is located within 30 days after the entry of such order
24 to have said order set aside and a redetermination made of the state assessment. In
25 any such action or in any hearing before the department pursuant to this section, any

ASSEMBLY BILL 635**SECTION 3**

1 interested party may appear and be heard. An interested party includes any division
2 of government whose revenues would be affected by any adjustment of the state
3 assessment.

4 **SECTION 4.** 76.13 (2) of the statutes is amended to read:

5 76.13 (2) Every tax roll upon completion shall be delivered to the secretary of
6 administration. The department shall notify, by certified mail, all companies listed
7 on the tax roll of the amount of tax due, which shall be paid to the department. The
8 payment dates provided for in sub. (2a) shall apply. The payment of one-fourth of
9 the tax of any company may, if the company has brought an action in the ~~Dane~~
10 ~~County circuit~~ court under s. 76.08, be made without delinquent interest as provided
11 in s. 76.14 any time prior to the date upon which the appeal becomes final, but any
12 part of the tax ultimately required to be paid shall bear interest from the original due
13 date to the date the appeal became final at the rate of 12% per year and at 1.5% per
14 month thereafter until paid. The taxes extended against any company after the same
15 become due, with interest, shall be a lien upon all the property of the company prior
16 to all other liens, claims, and demands whatsoever, except as provided in ss. 292.31
17 (8) (i) and 292.81, which lien may be enforced in an action in the name of the state
18 in any court of competent jurisdiction against the property of the company within the
19 state as an entirety.

20 **SECTION 5.** 76.13 (2a) of the statutes is amended to read:

21 76.13 (2a) Taxes levied under this section shall be paid to the department in
22 semiannual installments, on May 10 and November 10, on a partially estimated
23 basis. The May 10 payment shall be at least 50% of the total tax assessed for the
24 previous calendar year or 40% of the tax assessed for the current calendar year. Any
25 amounts not paid when due shall become delinquent and shall be subject to interest

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1 under s. 76.14. The payment of 25% of the tax of any company may, if the company
2 has brought an action in the ~~Dane County circuit~~ court under s. 76.08, be made
3 without delinquent interest as provided in s. 76.14 any time prior to the date upon
4 which the appeal becomes final, but any part thereof ultimately required to be paid
5 shall bear interest from the original due date to the date the appeal becomes final
6 at the rate of 12% per year and at 1.5% per month thereafter until paid. Companies
7 with a tax liability under this section of less than \$2,000 are not required to make
8 semiannual payments but shall pay the full amount of taxes due on or before
9 November 10.

10 **SECTION 6.** 76.13 (3) of the statutes is amended to read:

11 76.13 (3) If the ~~Dane County circuit~~ court, after such roll is delivered to the
12 secretary of administration, increases or decreases the assessment of any company,
13 the department shall immediately redetermine the tax of the company on the basis
14 of the revised assessment, and shall certify and deliver the revised assessment to the
15 secretary of administration as a revision of the tax roll. If the amount of tax upon
16 the assessment as determined by the court is less than the amount paid by the
17 company, the secretary of administration shall refund the excess to the company with
18 interest at the rate of 9% per year. If the amount of the tax upon the assessment as
19 determined by the court is in excess of the amount of the tax as determined by the
20 department, interest shall be paid on the additional amount at the rate of 12% per
21 year from the date of entry of judgment to the date the judgment becomes final, and
22 at 1.5% per month thereafter until paid.

23 **SECTION 7.** 77.59 (6) (b) of the statutes is amended to read:

24 77.59 (6) (b) Appeals from the department's redeterminations shall be
25 governed by the statutes applicable to income or franchise tax appeals ~~but all appeals~~

ASSEMBLY BILL 635**SECTION 7**

1 ~~from decisions of the tax appeals commission with respect to the taxes imposed by~~
2 ~~this subchapter shall be appealed to the circuit court for Dane County.~~

3 **SECTION 8. Initial applicability.**

4 (1) The treatment of sections 70.995 (9), 76.08 (1), 76.10 (1), 76.13 (2), (2a), and
5 (3), and 77.59 (6) (b) of the statutes first applies to tax determinations, levies, and
6 assessments made on the effective date of this subsection.

7 (END)