



2015 ASSEMBLY BILL 219

May 15, 2015 - Introduced by Representatives RODRIGUEZ, ALLEN, BALLWEG, E. BROOKS, R. BROOKS, GANNON, HUTTON, KAPENGA, KLEEFISCH, KNODL, KOOYENGA, KRUG, KULP, MURPHY, SANFELIPPO and SKOWRONSKI, cosponsored by Senators LEMAHIEU, MARKLEIN, NASS and WANGGAARD. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 71.77 (5), 77.59 (1), 77.59 (2) and 77.59 (3); and **to create** 71.74
2 (2) (d), 71.77 (5m), 77.59 (2r) and 77.59 (3r) of the statutes; **relating to:** income
3 and sales and use tax audits and statistical sampling.

Analysis by the Legislative Reference Bureau

This bill provides that, before commencing any income or sales tax field audit of a person regarding a year for which the person filed a return, the Department of Revenue (DOR) must send a notice to the person by certified mail or personal service. The notice must specify the years that are subject to the audit, the contact information for the DOR employee who is conducting the audit, and the deadline for issuing a determination.

The bill requires that DOR make a determination no later than eight months after the person being audited receives the notice unless, at DOR's request, the person consents in writing to extending the deadline. If the person agrees to an extension, the interest on any taxes the person owes as a result of the audit do not accrue during the extended period.

Under the bill, DOR may, with the taxpayer's consent, make a sales and use tax field audit determination using statistical sampling. The bill defines "statistical sampling" as a method by which a random, unbiased sample of not more than 7.5 percent of the taxpayer's annual sales transactions or 7.5 percent of the taxpayer's annual purchases of nondepreciable property are analyzed to determine a net error rate. Under the bill, the "net error rate" is, generally, a computation used to determine whether the taxpayer has properly collected, reported, and submitted the

ASSEMBLY BILL 219

appropriate sales or use tax for the year being audited within an acceptable margin of error. If the net error rate is within the acceptable margin of error, the taxpayer owes no additional tax, penalty, or interest on amounts that the taxpayer would otherwise owe and DOR must instruct the taxpayer on methods for reducing the net error rate.

Finally, the bill requires DOR to promulgate rules and suggest statutory changes in order to require the use of random, statistical sampling for making sales and use tax audit determinations.

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.** 71.74 (2) (d) of the statutes is created to read:

2 71.74 (2) (d) Before commencing any field audit of a person regarding a year
3 for which the person filed a return, the department shall send a notice to the person
4 by certified mail, return receipt requested, or by personal service. The department
5 shall send the notice to the person's address as indicated on the return or to the most
6 recent address known to the department. The notice shall specify the years that are
7 subject to the audit, the contact information for the department employee who is
8 conducting the audit or who is responsible for the audit, and the deadline for making
9 an assessment, as determined under s. 71.77 (5m).

10 **SECTION 2.** 71.77 (5) of the statutes is amended to read:

11 71.77 (5) The Except as provided in sub. (5m), the limitation periods provided
12 in this section may be extended by written agreement between the taxpayer and the
13 department prior to the expiration of such limitation periods or any extension of such
14 limitation periods. During any such extension period, the department may issue an
15 assessment or a refund, and the taxpayer may file a claim for a refund, relating to
16 the year which the extension covers. Subsection (4) shall not apply to any
17 assessment made in any such extended period. The department of revenue shall

ASSEMBLY BILL 219

1 assess the taxes owed or compute the refund due for taxable years beginning before
2 January 1, 1990, by using the definition of "Internal Revenue Code" that applied to
3 the year for which the assessment was made, as modified by P.L. 104-188 and P.L.
4 105-34 if P.L. 104-188 or P.L. 105-34 applied for federal purposes for that year.

5 **SECTION 3.** 71.77 (5m) of the statutes is created to read:

6 71.77 (5m) The department shall issue an assessment for any year subject to
7 a field audit for which the department provides notice under s. 71.74 (2) (d) no later
8 than 8 months after the date on which the person being audited received the notice,
9 except that, at the department's request, the person being audited may consent in
10 writing to extend the time for issuing an assessment. If the person being audited
11 consents to an extension under this subsection, no interest shall accrue under s.
12 71.82 (1) on any assessment resulting from the audit during the period beginning on
13 the date that is 8 months after the date on which the person received notice under
14 s. 71.74 (2) (d) and ending on the extended deadline for issuing the assessment.

15 **SECTION 4.** 77.59 (1) of the statutes is amended to read:

16 77.59 (1) The department may, by office audit, determine the tax required to
17 be paid to the state or the refund due to any person pursuant to this subchapter. The
18 determination may be made upon the basis of the facts contained in the return being
19 audited or upon the basis of any other information within the department's
20 possession. The determination shall be presumed to be correct and the burden of
21 proving it to be incorrect shall be upon the person challenging the correctness
22 thereof. One or more such office audit determinations may be made of the amount
23 due for any one or for more than one period, except that the department may not
24 make an office audit determination of a person for any period for which the
25 department has made a field office determination of that person or for any period for

ASSEMBLY BILL 219**SECTION 4**

1 which the department has made a field office determination as described in sub. (2r)
2 (d) or (e).

3 **SECTION 5.** 77.59 (2) of the statutes is amended to read:

4 77.59 (2) The Except as provided under sub. (2r), the department may, by field
5 audit, determine the tax required to be paid to the state or the refund due to any
6 person under this subchapter. The determination may be made upon the basis of the
7 facts contained in the return being audited or upon any other information in the
8 department's possession. The determination may be made on the basis of sampling,
9 whether or not the person being audited has complete records of transactions and
10 whether or not the person being audited consents. The department may examine
11 and inspect the books, records, memoranda and property of any person in order to
12 verify the tax liability of that person or of another person. The department may
13 subpoena any person to give testimony under oath before it and to produce whatever
14 books, records or memoranda are necessary in order to enable the department to
15 verify the tax liability of that person or of another person. The determination shall
16 be presumed to be correct and the burden of proving it to be incorrect shall be upon
17 the person challenging its correctness. A determination by the department in a field
18 audit becomes final at the expiration of the appeal periods provided in sub. (6), and
19 the tax liability of the taxpayer for the period audited may not be subsequently
20 adjusted except as provided in sub. (4) (b), (8) or (8m). If the taxpayer files or is
21 required to file more than one return for the taxpayer's fiscal year or for a calendar
22 year, the determination made by field audit for that fiscal or calendar year shall be
23 based on the receipts, purchases, deductions and exemptions for the entire fiscal or
24 calendar year.

25 **SECTION 6.** 77.59 (2r) of the statutes is created to read:

ASSEMBLY BILL 219

1 77.59 (2r) (a) In this subsection:

2 1. “Net error rate” means:

3 a. For sales transactions, a fraction determined by the department’s review of
4 a statistical sample, the numerator of which is the amount of additional taxes owed
5 by the person audited, not including interest, penalties, and amounts owed as a
6 refund to the person audited, and the denominator of which is the total amount of
7 the sales transactions in the statistical sample.

8 b. For purchases of nondepreciable property, a fraction determined by the
9 department’s review of a statistical sample, the numerator of which is the amount
10 of additional taxes owed by the person audited, not including interest, penalties, and
11 amounts owed as a refund to the person audited, and the denominator of which is the
12 total amount of the purchases of nondepreciable property in the statistical sample.

13 2. “Nondepreciable property” means tangible personal property that may not
14 be depreciated or amortized under ch. 71.

15 3. “Return” means a return filed under s. 77.58 or any other return, including
16 a return filed under ch. 71, in which a person reports sales or use tax liability.

17 4. “Statistical sample” means, for sales transactions, the sample of such
18 transactions selected through statistical sampling and, for purchases of
19 nondepreciable property, the sample of such purchases selected through statistical
20 sampling.

21 5. “Statistical sampling” means a sampling method by which a random,
22 unbiased sample of not more than 7.5 percent of the year’s sales transactions or not
23 more than 7.5 percent of the year’s purchases of nondepreciable property is analyzed
24 to determine a net error rate.

ASSEMBLY BILL 219**SECTION 6**

1 (b) With the consent of the person being audited, when conducting a field audit
2 regarding a year for which the person filed a return, the department shall use
3 statistical sampling to analyze sales transactions, if the person engaged in at least
4 500 sales transactions in that year, and purchases of nondepreciable property, if the
5 person engaged in at least 200 purchases in that year.

6 (c) 1. For purposes of par. (b), if for any a year under audit the net error rate
7 of nondepreciable property purchases is 1 percent or less, no additional tax, penalty,
8 or interest may be imposed on the person being audited for that year and the
9 department shall instruct the person on methods to reduce the net error rate on such
10 purchases.

11 2. For purposes of par. (b), if for any a year under audit the net error rate of sales
12 transactions is 0.75 percent or less, no additional tax, penalty, or interest may be
13 imposed on the person being audited for that year and the department shall instruct
14 the person on methods to reduce the net error rate on such transactions.

15 (d) 1. For purposes of par. (b), if for the 2 most recent years under audit the net
16 error rate of nondepreciable property purchases is 2 percent or less, the 4-year
17 period for providing notice under sub. (3) shall be a 2-year period and no penalty or
18 interest may be imposed on the person being audited for that year.

19 2. If subd. 1. applies to an audit, the department may conduct only one field
20 audit or one office audit of the person being audited with regard to the 4 years
21 following the last year under audit to which subd. 1. applies, but only if the person
22 continues to file returns during those 4 years.

23 (e) 1. For purposes of par. (b), if for the 2 most recent years under audit the net
24 error rate of sales transactions is 1.5 percent or less, the 4-year period for providing

ASSEMBLY BILL 219

1 notice under sub. (3) shall be a 2-year period and no penalty or interest may be
2 imposed on the person being audited for that year.

3 2. If subd. 1. applies to an audit, the department may conduct only one field
4 audit or one office audit of the person being audited with regard to the 4 years
5 following the last year under audit to which subd. 1. applies, but only if the person
6 continues to file returns during those 4 years.

7 (f) Before commencing a field audit of a person who has filed a return for each
8 of the years under audit, the department shall send a notice to the person by certified
9 mail, return receipt requested, or by personal service. The department shall send
10 the notice to the person's address as indicated on the return or to the most recent
11 address known to the department. The notice shall specify the years that are subject
12 to the audit, the contact information for the department employee who is conducting
13 the audit or who is responsible for the audit, and the deadline for making a issuing
14 a determination based on the audit. Notwithstanding any other provision of this
15 section, and unless the person being audited agrees to extend the deadline for
16 making a determination, the department shall issue a determination with regard to
17 any year identified in the notice no later than 240 days following the date on which
18 person receives the notice.

19 (g) In addition to any other means available to the person being audited to
20 challenge the audit, if the audit is conducted using statistical sampling, the person
21 may challenge the sampling validity or method.

22 **SECTION 7.** 77.59 (3) of the statutes is amended to read:

23 77.59 (3) ~~No~~ Except as provided in sub. (2r) (d) and (e), no determination of the
24 tax liability of a person may be made unless written notice of the determination is
25 given to the taxpayer within 4 years after the due date of the taxpayer's Wisconsin

ASSEMBLY BILL 219**SECTION 7**

1 income or franchise tax return or, if exempt, within 4 years of the 15th day of the 4th
2 month of the year following the close of the calendar or fiscal year, within 4 years of
3 the dissolution of a corporation or within 4 years of the date any sales and use tax
4 return required to be filed for any period in that year was filed, whichever is later.
5 The notice required under this paragraph shall specify whether the determination
6 is an office audit determination or a field audit determination, and it shall be in
7 writing. If the department is unable to obtain service by mail, publication of it as a
8 class 3 notice, under ch. 985, shall be service of notice in any case where notice is
9 required under this subchapter.

10 **SECTION 8.** 77.59 (3r) of the statutes is created to read:

11 77.59 (3r) (a) Notwithstanding subs. (3) and (3m), before commencing any field
12 audit of a person regarding a year for which the person filed a return, the department
13 shall send a notice to the person by certified mail, return receipt requested, or by
14 personal service. The department shall send the notice to the person's address as
15 indicated on the return or to the most recent address known to the department. The
16 notice shall specify the years that are subject to the audit, the contact information
17 for the department employee who is conducting the audit or who is responsible for
18 the audit, and the deadline for making an assessment, as determined under par. (b).

19 (b) The department shall issue a determination for any year subject to a field
20 audit for which the department provides notice under par. (a) no later than 8 months
21 after the date on which the person being audited received the notice, except that, at
22 the department's request, the person being audited may consent in writing to extend
23 the time for issuing a determination. If the person being audited consents to an
24 extension under this subsection, no interest shall accrue under s. 77.60 (1) on any
25 determination resulting from the audit during the period beginning on the date that

ASSEMBLY BILL 219

1 is 8 months after the date on which the person received notice under par. (a) and
2 ending on the extended deadline for issuing the determination.

3 **SECTION 9. Nonstatutory provisions.**

4 (1) SALES AND USE TAX AUDITS; STATISTICAL SAMPLING. No later than June 30, 2016,
5 the department of revenue shall promulgate rules to require the use of random,
6 statistical sampling for making audit determinations under section 77.59 (2) of the
7 statutes in order to reduce the sample size and increase accuracy. The rules,
8 however, shall provide that the department of revenue and taxpayers may enter into
9 agreements not to use statistical sampling. The rules shall also create safe harbors
10 for taxpayers who use such sampling to prepare their sales and use tax returns. The
11 department of revenue shall prepare legislation, no later than October 1, 2015,
12 allowing the department to enter into binding agreements with taxpayers to use
13 statistical sampling.

14 **SECTION 10. Initial applicability.**

15 (1) This act first applies to audits commencing on the effective date of this
16 subsection.

17 (END)