

State of Wisconsin



1995 Assembly Bill 866

Date of enactment: **June 6, 1996**
Date of publication*: **June 20, 1996**

1995 WISCONSIN ACT 408

AN ACT to repeal 70.995 (7) (c) and (d) and 70.995 (14); and **to amend** 59.20 (4m), 70.85 (7) (b), 70.995 (4), 74.30 (1) (intro.), 74.30 (2) (b), 74.33 (2), 74.37 (4) (c), 74.41 (1) (bn), 78.70 (7), 78.75 (1m) (c), 139.092, 139.39 (6) and 139.84 of the statutes; **relating to:** including property tax refunds made due to errors in the listing submitted to the department of revenue; deleting the prohibition on refunding or rescinding a property tax if the property is exempt from taxation; the statute of limitations for motor vehicle fuel, alcohol beverage and cigarette taxes; the date by which a county treasurer is required to furnish completed tax roll settlement sheets to the department of revenue; the settlement of the state's share of property taxes in taxation districts that allow multiple payments of those taxes; the deadline for settlement of property taxes in certain taxation districts; claims for property tax refunds; the length of time that certain motor vehicle fuel tax and aviation fuel tax records must be kept; outdated references to an assessment; and correcting obsolete phrasing for the tobacco products tax (suggested as remedial legislation by the department of revenue).

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of revenue and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 1. 59.20 (4m) of the statutes is amended to read:

59.20 (4m) Annually by ~~April~~ March 15th, furnish to the department of revenue the completed tax roll settlement sheets prescribed under s. 70.09 (3).

NOTE: Under current law, a county treasurer is required to file completed tax roll settlement sheets with the department of revenue by April 15 of each year. This date was selected because property tax settlement used to be done in March and in municipalities that allow payment of taxes in more than 2 instalments, taxes are settled by the 15th day of each month

after an instalment payment is due, which would be April 15th for property tax settlements done in March. 1987 Wisconsin Act 378 moved the settlement date from March to February. However, the filing date was not changed to correspond with the change in settlement date.

This amendment changes the date by which a county treasurer is required to file completed tax roll settlement sheets with the department of revenue to March 15 of each year, to correspond to the change in settlement date from March to February.

SECTION 2. 70.85 (7) (b) of the statutes is amended to read:

70.85 (7) (b) If the department of revenue has not completed the revaluation prior to the time of the tax levy, the tax upon property with respect to which the revaluation has not been completed shall be computed on the basis of the contested value of the property. The taxpayer shall pay in full the tax based upon the contested valuation. If the department of revenue reduces the valuation of the property, the taxpayer may file a claim under s.

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

74.37 70.511 (2) (b) for a refund of taxes resulting from the reduction in value.

NOTE: Under current law, a person who succeeds in an appeal with the department of revenue about property taxes after the local tax rate is determined, may make a tax claim against the taxation district for the excessive assessment. Currently, that claim is made under s. 74.37 of the statutes relating to claims on excessive assessments. This is an improper reference because the taxpayer is not seeking appeal but is seeking a resolution of his or her appeal through a refund.

This amendment changes this cross-reference to s. 70.511 (2) (b), which relates to delayed action of a reviewing authority, which stipulates the dates by which refunds must be paid and the amount of interest owed.

SECTION 3. 70.995 (4) of the statutes is amended to read:

70.995 (4) Whenever real property or tangible personal property is used for one, or some combination, of the processes mentioned in sub. (3) and also for other purposes, the department of revenue, if satisfied that there is substantial use in one or some combination of such processes, may assess the property under this section. For all purposes of this section the department of revenue shall have sole discretion for the determination of what is substantial use and what description of real property or what unit of tangible personal property shall constitute "the property" to be included for assessment purposes, and, in connection herewith, the department may include in a real property unit, real property owned by different persons. Vacant property designed for use in manufacturing, assembling, processing, fabricating, making or milling tangible property for profit may be assessed under this section or under s. 70.32 (1), and the period of vacancy may not be the sole ground for making that determination. In those specific instances where a portion of a description of real property includes manufacturing property rented or leased and operated by a separate person which does not satisfy the substantial use qualification for the entire property, the local assessor shall assess the entire real property description and all personal property not exempt under s. 70.11 (27). ~~The manufacturing machinery and equipment shall be valued by the department of revenue under sub. (7) (c) and shall qualify for exemption under s. 70.11 (27).~~ The applicable portions of the standard manufacturing property report form under sub. (12) as they relate to manufacturing machinery and equipment shall be submitted by such person.

SECTION 4. 70.995 (7) (c) and (d) of the statutes are repealed.

NOTE: Between 1974 and 1978, the state made payments to municipalities based on the value of property exempt from tax under the manufacturing machinery and equipment exemption. Under current law, these payments no longer exist. However, the statutes still contain language requiring a May 1, 1974 valuation of exempt manufacturing machinery and equipment and a related penalty to manufacturers who overstate the property value. This amendment deletes references to an assessment of manufacturing machinery and equipment that occurred in 1974.

SECTION 5. 70.995 (14) of the statutes is repealed.

NOTE: Between 1974 and 1978, the state made payments to municipalities based on the value of property exempt from tax under the manufacturing machinery and equipment exemption. Under current law, these payments no longer exist. However, the statutes still contain language requiring a May 1, 1974 valuation of exempt manufacturing machinery and equipment and a related penalty to manufacturers who overstate the property value. This amendment deletes references to an assessment of manufacturing machinery and equipment that occurred in 1974.

SECTION 6. 74.30 (1) (intro.) of the statutes is amended to read:

74.30 (1) FEBRUARY SETTLEMENT. (intro.) On or before February 15 ~~20~~, the taxation district treasurer shall do all of the following:

NOTE: Under current law, for jurisdictions that allow payment of taxes in 2 instalments, the property tax settlement date is February 20th. This date was changed from February 15th by 1991 Wisconsin Act 39 in order to allow these districts to have more time for the settlement process. However, 1991 Wisconsin Act 39 did not change the February 15th settlement date for taxing jurisdictions with more than 2 property tax instalments.

This amendment changes the settlement date for all multiple payment districts from February 15th to February 20th, to promote uniform treatment of all taxation districts that collect instalments.

SECTION 7. 74.30 (2) (b) of the statutes is amended to read:

74.30 (2) (b) Pay to each taxing jurisdiction within the district its proportionate share of real property taxes collected ~~and, as, except that the taxation district treasurer shall pay the state's proportionate share to the county, and the county treasurer shall settle for that share under s. 74.29. As part of that distribution, the taxation district treasurer shall retain for the taxation district and for each tax incremental district within the taxation district its proportionate share of real property taxes.~~

NOTE: Under current law, multiple instalment taxation districts are required to settle with each taxing jurisdiction a proportional share of the property taxes collected, except that the taxation district pays the state's share of taxes to the county, which then remits these taxes to the state. Two-payment districts also pay the state's share to the county. However, in subsequent settlements by multiple instalment taxation districts, there is no provision in current law that directs the taxation district to pay the state's share of taxes to the county. As a result, the state receives payment from every multiple instalment tax district for each subsequent settlement. Under this amendment, it is provided that the state's share of taxes are always paid to the county, so that the state receives one payment from each county that allows multiple payments at the time of the county settlement, rather than 2 or more payments from the multiple instalment taxation districts.

SECTION 8. 74.33 (2) of the statutes is amended to read:

74.33 (2) EXCEPTIONS. The governing body of a taxation district may not refund or rescind any tax under this section if the alleged error may be appealed under s. 70.995 (8) (c) or if the alleged error is solely that the assessor placed a valuation on the property that is excessive ~~or that the property is exempt from taxation.~~

NOTE: One of the grounds for refunding property taxes in s. 74.33 (1) is if the property is exempt by law from taxation, except as provided under s. 74.33 (2). However, s. 74.33 (2) provides, in part, that a governing body of a taxation district may not refund or rescind a property tax if the property is exempt from taxation. This amendment deletes this conflicting language from s. 74.33 (2).

SECTION 9. 74.37 (4) (c) of the statutes is amended to read:

74.37 (4) (c) ~~Except as provided in s. 70.85 (7) (b),~~ **No** claim or action for an excessive assessment may be brought or maintained under this section if the assessment of the property for the same year is contested under s. 70.47 (13) or 70.85. No assessment may be contested under s. 70.47 (13) or 70.85 if a claim is brought and maintained under this section based on the same assessment.

NOTE: Under current law, s. 74.37 of the statutes provides a procedure for making a claim against a taxation district for an excessive assessment of property. This amendment deletes an erroneous cross-reference to s. 70.85 (7) (b) of the statutes which exists in s. 74.37 (4) (c) of the statutes. This cross-reference is improper, because s. 70.85 (7) (b) relates not to a claim for excessive assessment, but to a taxpayer seeking a refund of taxes resulting from a reduction in valuation of property by the department of revenue.

SECTION 10. 74.41 (1) (bn) of the statutes is amended to read:

74.41 (1) (bn) Have been rescinded or refunded to taxpayers under s. ~~70.74 or 75.25 (2)~~.

NOTE: Under current law, certain errors in property tax assessments are corrected through taxpayer refunds or tax rescission. Section 74.41 outlines the process whereby the cost of these corrections may be shared with overlying taxing jurisdictions. However, this provision does not include refunds made under s. 75.25, which result from errors discovered when property is officially listed as tax delinquent. This means that taxation districts are not compensated for erroneous property assessments in this particular instance, even though they are compensated for a variety of similar errors that are discovered earlier in the tax processing year. This amendment adds property tax payments that are refunded under s. 75.25 to the process whereby the cost of these corrections may be shared with overlying taxing jurisdictions.

SECTION 11. 78.70 (7) of the statutes is amended to read:

78.70 (7) STATUTES OF LIMITATIONS. Section 71.77 as it applies to the taxes under ch. 71 applies to the taxes under this chapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this chapter.

NOTE: 1991 Wisconsin Act 39 created a 4-year statute of limitations for excise and occupational taxes by referencing income tax provisions. However, income tax returns are filed on an annual basis, while excise and occupational tax returns are filed monthly. In these instances, use of the income tax administrative provisions creates confusion as to when the statute of limitations begins toling.

This provision clarifies that the statute of limitations for excise and occupational taxes runs 4 years from the due date of the excise or occupational tax return.

SECTION 12. 78.75 (1m) (c) of the statutes is amended to read:

78.75 (1m) (c) The seller, upon request, shall furnish each purchaser with an invoice prepared at the time of delivery, and the purchaser shall send that invoice or a list of purchases to the department when making a claim for refund. The invoice shall contain the following information: date of sale; name and address of seller; name of purchaser, which name must be the name of the claimant; number of gallons purchased; the type of fuel; the purchase price; and the amount of Wisconsin motor vehicle fuel or alternate fuels tax paid as a separate item. If the purchaser sends invoices to the department, the purchaser shall send a separate invoice for each sale and delivery, and the invoice shall be legibly written and shall comply with the foregoing requirements. If the purchaser sends a list of purchases to the department, the purchaser shall retain for ~~3~~ **4** years the invoices that are evidence of those purchases and allow the department to inspect them. The claim shall state whether or not the applicant owns an automobile or truck or any other motor-driven machinery or appliance which consumes motor vehicle fuel or an alternate fuel; the total number of gallons of motor vehicle fuel or alternate fuel purchased; the number of gallons of such motor vehicle fuel or alternate fuel purchased on which refund is claimed; a detailed statement of the consumption of such motor vehicle fuel or alternate fuel on which a refund is claimed, describing the machinery, equipment or appliance in which consumed, giving the serial or manufacturer's number of the motor and the approximate number of gallons consumed in each; or if such fuel were not consumed in any such machinery, equipment or appliance, then a description of the purposes for which the fuel was consumed with the approximate number of gallons consumed for each purpose; a statement whether or not deduction has been made for motor vehicle fuel or alternate fuels consumed in applicant's automobile or truck; and such other information as the department deems necessary.

NOTE: Under current law, there is a 4-year record retention period required for motor vehicle fuel, general aviation fuel, beer, liquor, wine, tobacco products and cigarette excise taxes. Under prior law, a 3-year period of record retention was required. One of the 3-year record retention provisions remains in current law, however, because it was overlooked when the law was changed.

This amendment corrects this reference which was overlooked and changes it to the 4-year record retention requirement.

SECTION 13. 139.092 of the statutes is amended to read:

139.092 Audits; additional assessments; refunds. Sections 71.74 (1), (2), (10), (11), (13) and (14), 71.75 (2), (4) to (7) and (10), 71.77 and 71.80 (12) as they apply to the taxes under ch. 71 apply to the taxes under this subchapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this subchapter.

NOTE: 1991 Wisconsin Act 39 created a 4-year statute of limitations for excise and occupational taxes by referencing income tax provisions. However, income tax returns are filed on an annual basis, while excise and occupational tax returns are filed monthly. In these instances, use of the income tax administrative provisions creates confusion as to when the statute of limitations begins toling.

This provision clarifies that the statute of limitations for excise and occupational taxes runs 4 years from the due date of the excise or occupational tax return.

SECTION 14. 139.39 (6) of the statutes is amended to read:

139.39 (6) Sections 71.74 (1), (2), (10), (11) and (14), 71.77, 71.80 (12), 71.91 (1) (a) and (c) and (2) to (7) and 71.92 as they apply to the taxes under ch. 71 apply to the taxes under this subchapter. Section 71.74 (13) as it applies to the collection of the taxes under ch. 71 applies to the collection of the taxes under this subchapter, except that the period during which notice of an additional assessment shall be given begins on the due date of the report under this subchapter.

NOTE: 1991 Wisconsin Act 39 created a 4-year statute of limitations for excise and occupational taxes by referencing income tax provisions. However, income tax returns are filed on an annual basis, while excise and occupational tax returns are filed monthly. In these instances, use of the income tax administrative provisions creates confusion as to when the statute of limitations begins toling.

This provision clarifies that the statute of limitations for excise and occupational taxes runs 4 years from the due date of the excise or occupational tax return.

SECTION 15. 139.84 of the statutes is amended to read:

139.84 Bonds. Section 78.11, as it applies to ~~wholesalers~~ suppliers of motor vehicle fuel, applies to persons liable for the tax under this subchapter.

NOTE: Under current law, statutes relating to taxation of tobacco products contain a reference to a motor fuel tax provision that uses obsolete terminology by referring to “wholesalers of motor vehicle fuel”. This amendment deletes this obsolete terminology and inserts the correct reference to suppliers of motor vehicle fuel.

SECTION 16. Initial applicability; revenue.

(1) PROPERTY TAX REFUNDS. The treatment of sections 70.85 (7) (b) and 74.37 (4) (c) of the statutes first applies to claims filed with the department of revenue on the effective date of this subsection.

(2) TAX ROLL SETTLEMENT DATES. The treatment of section 59.20 (4m) of the statutes first applies to tax roll settlement sheets that must be completed in the year after the year in which this subsection takes effect.

(3) SETTLEMENT OF STATE TAXES. The treatment of section 74.30 (2) (b) of the statutes first applies to taxes based on the assessment as of January 1, 1996.

SECTION 17. Effective dates. This act takes effect on the day after publication, except as follows:

(1) STATUTE OF LIMITATIONS. The treatment of sections 78.70 (7), 139.092 and 139.39 (6) of the statutes takes effect on the first day of the first month beginning after publication.

(2) SETTLEMENT DEADLINE. The treatment of section 74.30 (1) (intro.) of the statutes takes effect on the January 1 after publication.