

# State of Wisconsin



1995 Assembly Bill 775

Date of enactment: **June 7, 1996**  
Date of publication\*: **June 20, 1996**

## 1995 WISCONSIN ACT 428

AN ACT to *renumber and amend* 71.26 (3) (e); to *amend* 71.03 (2) (i) 2., 71.03 (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 (1) (a), 71.44 (3), 71.77 (8), 71.91 (1) (b), 71.91 (7) (b), 71.91 (7) (d), 71.91 (7) (h), 77.60 (2) (c) and 78.80 (1); and to *create* 71.01 (7u), 71.22 (5s), 71.26 (3) (e) 3., 71.34 (1) (h), 71.42 (2s), 71.738 and 71.83 (1) (a) 1m. of the statutes; **relating to**: reporting of nontaxable income; extensions for filing corporate income tax and franchise tax returns; denying a tax deduction to certain corporations for wages paid to an entertainer or entertainment corporation if withholding requirements are not met; withholding for income taxes; the date on which a delinquency determination for withholding, sales taxes or use taxes becomes due; allowing the department of revenue to use sampling to determine the liability for fuel taxes; information returns; and determining when late and extended tax returns are considered filed.

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

**SECTION 1.** 71.01 (7u) of the statutes is created to read:

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

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

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

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

71.03 (2) (j) 1. Both spouses filed separate returns before filing the joint return, on the date day when the last separate return was filed, but not earlier than the last date

day prescribed by law for filing the return of either spouse.

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

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

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

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

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

\* 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].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71.44 (1) (a) Every corporation, except corporations all of whose income is exempt from taxation and except as provided in sub. (1m), shall furnish to the department a true and accurate statement, on or before March 15 of each year, except that returns for fiscal years ending on some other date than December 31 shall be furnished on or before the 15th day of the 3rd month following the

close of such fiscal year and except that returns for less than a full taxable year shall be furnished on or before the date applicable for federal income taxes under the internal revenue code, in such manner and form and setting forth such facts as the department deems necessary to enforce this chapter. Every corporation that is required to furnish a statement under this paragraph and that has income that is not taxable under this subchapter shall include with its statement a report that identifies each item of its nontaxable income. The statement shall be subscribed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, the fiduciary shall subscribe the return. The fact that an individual's name is subscribed on the return shall be prima facie evidence that the individual is authorized to subscribe the return on behalf of the corporation.

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

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

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

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

**SECTION 17.** 71.77 (8) of the statutes is amended to read:

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

**SECTION 18.** 71.83 (1) (a) 1m. of the statutes is created to read:

71.83 (1) (a) 1m. 'Failure to file information return.' If a person fails to file a return required under subch. XI by the prescribed due date, including any extension, or files an incorrect or incomplete return, that person may be subject to a penalty of \$10 for each violation. A penalty shall be waived if the person shows that a violation is due to reasonable cause and not due to wilful neglect.

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

71.91 (1) (b) *Withholding.* Any amount not deposited or paid over to the department within the time required shall be deemed delinquent and deposit reports or withholding reports filed after the due date shall be deemed late. In the case of a timely filed deposit or withholding report, withheld taxes shall become delinquent if not deposited or paid over on or before the due date of the report. In the case of no report filed or a report filed late, withheld taxes shall become delinquent if not deposited or paid over by the due date of the report. In the case of an assessment under s. 71.83 (1) (b) 2., the amount assessed shall become delinquent if not paid on or before the first day of the calendar month following the calendar month in which the assessment becomes final due date specified in the notice of deficiency, but if the assessment is contested before the tax appeals commission or in the courts, it shall become delinquent on the 30th day following the date on which the order or judgment representing final determination becomes final.

**SECTION 20.** 71.91 (7) (b) of the statutes is amended to read:

71.91 (7) (b) The department may give notice to any employer deriving income having a taxable situs in this state (regardless of whether any such income is exempt from taxation) to the effect that an employe of such employer is delinquent in a certain amount with respect to state taxes, including penalties, interest and costs. Such notice may be served by certified mail, or by delivery by an employe of the department of revenue. Upon receipt of such notice of delinquency, the employer shall withhold from compensation due, or to become due to the employe, the total amount shown by the notice. The department may ~~arrange between~~ direct the employer ~~and the employe for a withholding of an amount not less than 10% of the total to withhold part of the~~ amount due the employe each pay period, until the total amount as shown by the notice, plus interest, has been withheld. The employer ~~shall may~~ not withhold more than 25% of the compensation due any employe for any one pay period,

except that, if the employe leaves the employ of the employer or gives notice of his or her intention to do so, or is discharged for any reason, the employer shall withhold the entire amount otherwise payable to such employe, or so much thereof as may be necessary to equal the unwithheld balance of the amount shown in the notice of delinquency, plus delinquent interest. In crediting amounts withheld against delinquent taxes of an employe, the department shall apply amounts withheld in the following order: costs, penalties, delinquent interest, delinquent tax. The "compensation due" any employe for purposes of determining the 25% maximum withholding for any one pay period shall include all wages, salaries and fees constituting income, including wages, salaries, income advances or other consideration paid for future services, when paid to an employe, less amounts payable pursuant to a garnishment action with respect to which the employer was served prior to being served with the notice of delinquency and any amounts covered by any irrevocable and previously effective assignment of wages, of which amounts and the facts relating to such assignment the employer shall give notice to the department within 10 days after service of the notice of delinquency.

**SECTION 21.** 71.91 (7) (d) of the statutes is amended to read:

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

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

71.91 (7) (h) The department may, by written notice served personally or by mail, require any employer, as defined in s. 71.63 (3), to withhold from the compensation due or to become due to any entertainer or entertainment corporation the amount of any delinquent state

taxes, including costs, penalties and interest, shown by the notice. The employer shall send the money withheld to the department ~~when the department specifies on or before the last day of the month after the month during which an amount was withheld.~~

**SECTION 23.** 77.60 (2) (c) of the statutes is amended to read:

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

**SECTION 24.** 78.80 (1) of the statutes is amended to read:

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

**SECTION 25. Initial applicability.**

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

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

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

(4) REPORTS OF NONTAXABLE INCOME. The treatment of sections 71.24 (1) and 71.44 (1) (a) of the statutes first applies to taxable years beginning on January 1, 1996.

**SECTION 26. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) WITHHOLDING OF DELINQUENT TAXES. The treatment of section 71.91 (7) (b), (d) and (h) of the statutes

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takes effect on the first day of the 3rd month beginning  
after publication.

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