

1999 DRAFTING REQUEST

Bill

Received: **03/08/1999**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Revenue 6-6466**

By/Representing: **Tom Ourada**

This file may be shown to any legislator: NO

Drafter: **jkreye**

May Contact:

Alt. Drafters: **shoveme**

Subject: **Tax - corp. inc. and fran.**
Tax - individual income
Tax - sales
Tax - miscellaneous

Extra Copies: **MES**

Pre Topic:

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Instructions:

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For Rep. M. Lehman
per JK

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SUBMIT P2

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MRC 7/9*

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3-8-99

Tom Ourada DOR

drafting requests — C-6466

*whole package of "taxpayer friendly" changes

*incorporate other drafts — refund and penalty
under 77.59

M. Lehman probably sponsor the draft

see DOR packets

Wisconsin Department of Revenue
IS&E Division
February 2, 1999

TITLE: Conform Innocent Spouse Provisions to Federal Provisions

DESCRIPTION OF CURRENT LAW AND PROBLEM

The IRS Restructuring and Reform Act of 1998 made significant changes to the federal innocent spouse provisions. This Act amended sec. 66(e), repealed sec. 6013(e), and created sec. 6015, IRC.

Certain provisions of Wisconsin law reference IRC secs. 66(c) and 6013(e):

- Section 71.10(6)(a), Wis. Stats., provides that "A spouse shall be relieved in regard to a joint return in the manner specified in section 6013(e) of the internal revenue code, notwithstanding the amount or percentage of the understatement."
- Section 71.10(6)(b), Wis. Stats., provides that "A spouse filing a separate return may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments under this chapter with regard to unreported marital property income in the manner specified in section 66(c) of the internal revenue code."
- Section 71.10(6m)(a), Wis. Stats., provides that "A formerly married or remarried person filing a return for a period during which the person was married may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments under this chapter for unreported marital property income from that period as if the person were a spouse under section 66(c) of the internal revenue code."

The question is whether the department wants to continue to use the innocent spouse provisions provided by old federal law or adopt the innocent spouse provisions provided by new federal law. Either alternative requires a change in Wisconsin law, that is, to restrict the reference to the Internal Revenue Code by adding "as that section existed on December 31, '1997" or to adopt the new federal innocent spouse provisions.

It is felt that it is simpler for the taxpayer when federal and Wisconsin laws are the same.

RECOMMENDATION FOR ACTION

Adopt the new federal innocent spouse provisions for Wisconsin. (See attached copy of IRS Publication 971 for a description of the changes.)

FISCAL/ADMINISTRATIVE IMPACT ,

Unknown

DRAFTING INSTRUCTIONS

1. Amend sec. 71.10(6)(a) to change the reference from "section 6013(e) of the internal revenue code" to "section 6015(a)-(d) and (f) of the internal revenue code." Also delete the words "notwithstanding the amount or percentage of the understatement.?"
2. Amend sec. 71.10(6)(b) to ~~delete the words~~ "with regard to unreported marital property income:"
3. Amend sec. 71.10(6m)(a) to delete the words "for unreported marital property income."

why?
 } amendment of
 } § 66 of IRC
 } doesn't really
 } change this
 } & "marital
 } property"
 } is mentioned
 } elsewhere
 } in both
 } parts.

EFFECTIVE DATE OR INITIAL APPLICABILITY

Applies to any liability for tax arising after the date of enactment of this Act and any liability for tax arising on or before such date but remaining unpaid as of such date. The 2-year period-under subs. (b)(1)(E) or (c)(3)(B) of sec. 6015 of the Internal Revenue Code as referenced in sec. 71.10(6)(a) shall not expire before the date which is $\frac{2}{7}$ years after the date of the first collection activity after the date of enactment.

PERSON TO CONTACT

Clay Seth
2664920

PREPARED BY: Marcy Stock
February 2, 1999
i:leg/innocentspouse



Publication 971
(Rev. December 1998)
Cat. No. 25757C

Innocent Spouse Relief

(And Separation of Liability and Equitable Relief)

Contents

Important Change	1
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Important Change

New tax law made it easier to qualify for innocent spouse relief. You can now request innocent spouse relief for an understatement of tax (defined on page 3) no matter how small the amount. (Previously the understatement of tax had to be more than \$500.) See **Questions & Answers**, near the end of this publication for a list of questions and answers about innocent spouse relief.

The new law also added two other ways for you to get relief. If you are divorced; separated, or no longer living with your spouse, you can request relief by separating the liability for an understatement of tax between you and your spouse. If you do not qualify for innocent spouse relief or relief by separation of liability, the IRS may grant you equitable relief. Equitable relief may be granted if it would be unfair to hold you liable for the tax that should be paid only by your spouse.

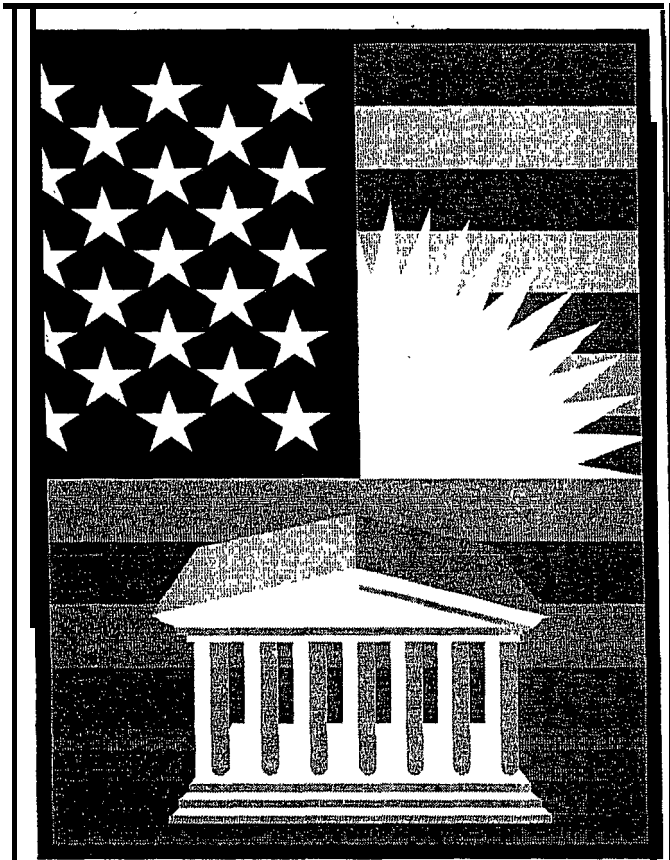
The changes apply to tax liabilities arising after July 22, 1998, and tax liabilities arising on or before that date that remained unpaid on that date.

Introduction

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due even if all the income was earned by the other spouse.

In some cases, a spouse will be relieved of the tax, interest, and penalties on a joint tax return. Three types of relief are available.

- 1) Innocent spouse relief.
- 2) Separation of liability.
- 3) Equitable relief.



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- From your FAX machine, dial • (703) 368-9694
- See *How To Get More Information* in this publication.

Table 1 compares the rules for these three types of relief. This publication explains these types of relief, who may qualify for them, and how to get them.

Each type of relief has different requirements. They are explained separately in different parts of this publication. Read each part to see if you qualify for that type of relief.



You are not required to figure the tax, interest, and penalties that qualify for relief: The IRS will figure these amounts after you file Form 8857,

Request for innocent Spouse Relief.



You can only qualify for equitable relief if you do not qualify for innocent spouse relief or relief by separation of liability.

What this publication does not cover. This publication does **not** discuss filing an **injured spouse** claim. You are an injured spouse if your share of the overpayment shown on your joint return was, or is expected to be, applied against your spouse's past-due federal debts, state taxes, or child or spousal support payments. If you are an injured spouse, you may be entitled to receive a refund of your share of the overpayment. For more information, get Form 8379, **Injured Spouse Claim and Allocation**.

How To Request Relief

File Form 8857, **Request for Innocent Spouse Relief**, to ask the IRS for the types of relief discussed in this publication. You only need to file one Form 8857 even if you are requesting relief for more than one tax year.

The IRS will review your Form 8857, figure the understatement or underpayment of tax and related interest and penalties, and let you know if you qualify.

A completed Form 8857 is shown later.

When to file Form 8857. You must file Form 8857 no later than 2 years after the date on which the IRS first attempted to collect the tax from you (such as a levy or seizure) after **July 22, 1998**.

IRS spousal notification. The IRS is required to inform your spouse (or former spouse) if you request innocent spouse relief or separation of liability, and to allow your spouse (or former spouse) to participate in the determination of the amount of relief from liability.

Tax Court Review of Request

After you file Form 8857 to request innocent spouse relief or relief by separation of liability, you can ask the United States Tax Court to review your request. You can ask the United States Tax Court to review your request in the following two situations.

- 1) You disagree with the IRS' determination notice telling you the extent to which your request for relief has been denied.

- 2) You have not received a determination notice from the IRS within 6 months from the date you filed Form 8857.

The United States Tax Court is an independent judicial body and has no connection with the IRS.

You must file a petition with the United States Tax Court in order for it to review your request for relief. You must file the petition **no later than 90 days** from the date the IRS mails its determination notice to you. If you do not file a petition, or you file it late, the Tax Court cannot review your request for relief.

You can get a copy of the rules for filing a petition by writing to the Tax Court at the following address.

United States Tax Court
400 Second Street, NW
Washington, DC 20217

Community Property Laws

You must generally follow community property laws when filing a tax return if you are married and live in a community property state. Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or to your spouse (or former spouse) for purposes of requesting any relief from liability.



If you were married and filed a separate return in a community property state and are now liable for an underpayment or understatement of tax you believe should belong only to your spouse (or former spouse), you may request equitable relief (discussed later).

In addition to equitable relief, you may request relief from liability for community income. For details about this type of relief, see Publication 555, Community Property.

Innocent Spouse Relief

By requesting innocent spouse relief, you can be relieved of responsibility for paying tax, interest, and penalties if your spouse did something wrong on your tax return. The tax, interest, and penalties that qualify for relief can only be collected from your spouse. However, you are jointly and individually responsible for any tax, interest, and penalties that do not qualify for relief. The IRS can collect these amounts from either you or your spouse.

You must meet **all** of the following conditions to qualify for innocent spouse relief.

- 1) You filed a joint return which has an **understatement of tax** due to **erroneous items** (defined later) of your spouse.

Table 1. Three Types of Relief at a Glance

Factors	Rules for Innocent Spouse Relief	Rules for Separation of Liability	Rules for Equitable Relief
Type of Liability	You must have filed a joint return that has an understatement of tax due to an erroneous item of your spouse.	You must have filed a joint return that has an understatement of tax due, in part, to an item of your spouse.	You must have filed a return that has either an understatement or an underpayment of tax.
Marital Status		You must be no longer married, legally separated, or have not lived with your spouse in the same house for an entire year before you file for relief.	
Knowledge	You must establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax.	If IRS establishes that you actually knew of the item giving rise to the understatement, then you are not entitled to make the election to the extent of the actual knowledge.	
Other Qualifications			You do not qualify for innocent spouse relief or separation of liability.
Unfairness	It must be unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.		It must be unfair to hold you liable for the underpayment or understatement of tax taking into account all the facts and circumstances.
R e f u n d s	Yes, your request can generate a refund.	No, your request cannot generate a refund.	Yes, for amounts paid between July 22, 1998, and April 75, 1999, and for amounts paid pursuant to an installment agreement after the date the request for relief is made.

- 2) You establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax.
- 3) Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax. (See *Indications of Unfairness*, later.)

Erroneous Items

Erroneous items are either of the following.

- 1) **Unreported income.** This is any gross income item received by your spouse that is not reported.
- 2) **Incorrect deduction, credit, or basis.** This is any improper deduction, credit, or property basis claimed by your spouse.

The following are examples of erroneous items.

- 1) The expense for which the deduction is taken was never made. For example, your spouse deducted \$10,000 of advertising expenses on Schedule C (Form 1040), but never paid for any advertising.
- 2) The expense does not qualify as a deductible expense. For example, your spouse claimed a business fee deduction of \$10,000 that was for the payment of state fines; fines are not deductible.
- 3) No legal argument can be made to support the deductibility of the expense. For example, your spouse claimed \$4,000 for security costs related to

a home office, which were actually veterinary and food costs for your family's two dogs.

Understatement of Tax

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return.



The IRS will figure the understatement of tax due to erroneous items of your spouse after you file Form 8857. You are not required to do this computation. But if you wish, you can do the computation yourself; See Worksheet f, under How To Figure the Understatement of Tax, later.

Partial relief when extent of understatement is unknown. You may qualify for partial relief if, at the time you filed your return, you knew or had **reason to know**, that there was an understatement of tax due to your spouse's erroneous items, but you did not know how large the understatement was. You will be relieved of the understatement to the extent you did not know about it and had no reason to know about it.

Example. At the time you signed your joint return, you knew that your spouse did not report \$5,000 of gambling winnings. The IRS examined your tax return several months after you filed it and determined that your spouse's unreported gambling winnings were actually \$25,000. This resulted in a much larger understatement of tax than you knew about at the time you signed your return. You established that you did not

know about, and had no reason to know about, the additional \$20,000 because of the way your spouse handled gambling winnings. The understatement of tax due to the \$20,000 will qualify for innocent spouse relief if you meet the other requirements. The understatement of tax due to the \$5,000 of gambling winnings will not qualify for relief.

Indications of Unfairness

The IRS will consider all of the facts and circumstances of the case in order to determine whether it is unfair to hold you responsible for the understatement. Two indicators the IRS may use to decide that it is unfair to hold you responsible for the tax are whether you:

- 1) Received any significant benefit from the understatement of tax, or
- 2) Were later divorced from or deserted by your spouse.

Significant benefit. You can receive significant benefit either directly or indirectly. For example, if your spouse did not report \$10,000 of income on your joint return, you can benefit directly if your spouse shares that \$10,000 with you. You can benefit indirectly from the unreported income if your spouse uses it to pay extraordinary household expenses.

You do not have to receive a benefit immediately for it to be significant. For example, money your spouse gives you several years after he or she received it or amounts inherited from your spouse (or former spouse) can be a significant benefit.

TIP *Support payments that you receive as a result of a divorce proceeding are not a significant benefit.*

How To Figure the Understatement of Tax

The IRS will figure the tax, interest, and penalties that qualify for relief after you file a completed Form 8857 with all the required attachments. You **are not required** to **figure** these **amounts**. But if you wish, you can figure the understatement of tax yourself by using Worksheet 1. If you want to use Worksheet 1, you will need the following items.

- A copy of your tax return for the year(s) you are requesting relief.
- The tax return instructions for the year(s) you are requesting relief. The instructions have the tax table or tax rate schedule you will need.

Worksheet 1 asks you to refigure the total tax for the year(s) you are requesting innocent spouse relief. The following table shows where to find the total tax line on your return.

Form	Year		
	1995	1996	1997
1040	Line 54	Line 51	Line 53
1040A	Line 28	Line 28	Line 28
1040EZ	Line 10	Line 10	Line 10

TIP *You may find it easier to fill out Worksheet 1 if you complete a second copy of the relevant forms and schedules of the return for which you are requesting innocent spouse relief.*

Worksheet 1. Worksheet for Figuring Tax That Qualifies for Innocent Spouse Relief

(Note. This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)

1. Enter your total tax including all changed items. 1 _____
Note. This should be shown on the IRS notice or audit report.
2. Refigure your total tax by including all items except your spouse's erroneous items. Include items you knew about or had reason to know about. 2 _____
3. **Tax eligible for innocent spouse relief.**
Subtract line 2 from line 1. 3 _____

Example. Mark and Carol Smith filed a joint 1996 tax return (Form 1040) in 1997. The total tax on the return was \$2,734. In 1998, the IRS audited their return and discovered that Carol did not report \$7,500 in wages. On August 10, 1998, the IRS mailed the Smiths a Notice of Deficiency showing additional tax of \$1,125 plus \$300 in interest and penalties.

At the time Mark signed the return, he knew about \$2,500 of Carol's wages. He did not know about, and had no reason to know about, the other \$5,000. He believes it would be unfair for the IRS to hold him responsible for the understatement of tax due to the \$5,000 of wages because he did not benefit from them. He uses Worksheet 1 to figure the tax that qualifies for innocent spouse relief. He fills out Worksheet 1 as follows.

Line 1. Mark enters \$3,859. This is the total tax as refigured by the IRS in the Notice of Deficiency.

Line 2. \$3,109 is what the total tax would be by including only the unreported income that Mark knew about. He figured this amount as follows;

1. Taxable income shown on the joint return	\$ 1 8 , 2 0 0
2. Plus: Carol's unreported income that Mark knew about	<u>2,500</u>
3. Refigured taxable income	\$20,700
4. Refigured tax on \$20,700 from Tax Table in 1996 Form 1040 instructions	<u>\$3,109</u>

The Smiths did not claim any tax credits and **were** not liable for other taxes (Form 1040, lines 45-50). Ac-

Accordingly, \$3,109 is their total tax for purposes of line 2.

Line 3. Mark subtracts line 2 from line 1 to get the understatement of tax (\$750) due to the unreported wages that Mark did not know about, and had no reason to know about. This is the tax that is eligible for innocent spouse relief.

Filled-in? Worksheet 1, **Worksheet for Figuring Tax That Qualifies for Innocent Spouse Relief**

(Note. This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)

1. Enter your total tax including all changed items.	1	\$3,859
Note. This should be shown on the IRS notice or audit report.		
2. Refigure your total tax by including all items except your spouse's erroneous items. Include items you knew about or had reason to know about.	2	\$3,109
3. Tax eligible for innocent spouse relief. Subtract line 2 from line 1.	3	\$750

Relief by Separation of Liability

Under this type of relief, you allocate (divide) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse (or former spouse). The understatement of tax allocated to you is generally the amount you are responsible for. See *How To Figure Your Separation of Liability*, later.

TIP You can request this type of relief whether or not you request innocent spouse relief

To request relief by separation of liability, you must have filed a joint return and meet **either** of the following requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

Burden of proof. You have the burden of proof in establishing the basis for separating your liability.

Invalid request. Even if you meet the requirements discussed previously, a request for separation of liability will **not** be granted in the following situations.

- 1) The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
- 2) The IRS proves that at the time you signed your joint return, you had actual knowledge that any

items giving rise to the deficiency and allocable to your spouse were incorrect.

- 3) You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax. See *Transfers of property to avoid tax*, later.

In situations (2) and (3), a request will be denied only for the part of the deficiency due to the incorrect items about which you had actual knowledge, or to the extent of the value of the property transferred. If you establish that you signed your joint return under duress, then it is not a joint return, and you are not liable for amounts from that return. However, you may be required to file a separate return for that tax year.

Example. Bill and Karen Green filed a joint return showing Karen's wages of \$50,000 and Bill's self-employment income of \$10,000. The IRS audited their return and found that Bill did not report \$20,000 of self-employment income. The additional income resulted in a \$6,000 understatement of tax, plus interest and penalties. After obtaining a legal separation from Bill, Karen filed Form 8857 to request relief by separation of liability. The IRS proved that Karen actually knew about \$5,000 of the additional income at the time she signed the joint return. Bill is liable for all of the understatement of tax, interest, and penalties because all of it was due to his unreported income. Karen is also liable for the understatement of tax, interest, and penalties due to the \$5,000 of additional income that she actually knew about. The IRS can collect that part from either Karen or Bill. The IRS can collect the remainder only from Bill.

Transfers of property to avoid tax. If your spouse transfers property to you for the main purpose of avoiding tax or payment of tax, the tax liability allocated to you will be increased by the value of the property transferred. A transfer will be presumed to have as its main purpose the avoidance of tax or payment of tax if the transfer is made after the date that is 1 year before the date on which the IRS sent its first letter of proposed deficiency allowing you an opportunity for a meeting in the IRS Appeals Office. This presumption will not apply if the transfer was made under a divorce decree, separate maintenance decree, or a written instrument incident to such a decree.

Exception. The above rule will not apply if you establish that the transfer did not have as its main purpose the avoidance of tax or payment of tax.

How To Figure Your Separation of Liability

The IRS will figure your separation of liability and figure any related interest and penalties after you file a completed Form 8857 with the required attachment. You **are not required to figure these amounts**. But if you wish, you can figure your separation of liability yourself by using Worksheet 2 and instructions that follow. However, if you filed Form 8814 to report your child's tax liability on your joint return, do not include that liability when figuring your separation of liability. Allocate it as appropriate between you and your spouse.

Instructions for Completing Worksheet 2

Use the following instructions to complete Worksheet 2.

Line 1. When allocating income and deductions taken into account in computing the understatement of tax, allocate them in the same manner you would have allocated them if you and your spouse had filed separate returns.

Allocate wages and salaries to the spouse who performed the job and received the Form W-2. You generally allocate business and investment income (including capital gains) according to which spouse owned the business or investment that produced the income. Income from a jointly owned business or investment should be allocated equally between you and your spouse unless there is clear and convincing evidence that supports a different allocation.

Allocate business deductions according to the ownership of the business. Allocate personal deductions (such as itemized deductions for mortgage interest and taxes) equally between you and your spouse unless there is evidence that shows a different allocation is appropriate.

Items that are limited or not allowed on separate returns. If a deduction would not be allowed if you had filed a separate return, figure the deduction as you would on a joint return and allocate that amount between you and your spouse.

A similar rule applies to income and deductions (such as taxable social security benefits and the IRA deduction) that are subject to special limits on a separate return. Figure these items as you would on a joint return and allocate them between you and your spouse.

Example. Charles and Mary filed a joint return for 1997. Charles received social security benefits in 1997, but none of them were taxable because his and Mary's total income was less than the base amount (\$32,000) for joint returns. Several months after filing their return, Charles and Mary received a notice from the IRS for additional tax because they did not report some interest and dividend income. The notice also showed that half of Charles' social security benefits were taxable because the additional interest and dividend income increased their total income so that it was more than the \$32,000 base amount. If Charles had filed a separate return, 85% of his social security benefits would have been taxable. When figuring his separation of liability, Charles allocates only half of his social security benefits. This is true even though 85% of his benefits would have been taxable if he and Mary had filed separate returns.

Items allocable to one spouse that benefit the other spouse. A deduction that is otherwise allocable to one spouse must be allocated to the other spouse to the extent the item created a tax benefit for the other spouse.

Example. Your joint return shows \$50,000 of wages all of which are allocated to you and \$15,000 of self-employment income allocable to your spouse. The IRS audited your return and disallowed a \$20,000 deduction allocable to your spouse. Only \$15,000 of the disallowed deduction

is allocated to your spouse because that is the amount that offset your spouse's self-employment income. The remaining \$5,000 must be allocated to you because that amount offset your income.

Lines 5 and 6. Enter the part of the understatement of tax that is due to the disallowance of a credit or to the increase in any tax **other than the income tax or alternative minimum tax.** Allocate credits and other taxes in the same manner you would have allocated them if you and your spouse had filed separate returns.

Example. You reported \$750 in self-employment tax on your return. All of this tax is allocable to you. The IRS audited your return and determined that your self-employment tax should have been \$1,100. On line 6, you enter the \$350 increase in self-employment tax (\$1,100 - \$750).

Credits that are not allowed on separate returns. If a credit would not be allowed if you had filed a separate return, figure the credit as you would on a joint return and allocate it between you and your spouse. Examples of credits that are generally not allowed on a separate return are the child and dependent care credit, the credit for the elderly, the adoption credit, the Hope and lifetime learning credits, and the earned income credit.

Example. You claimed a credit of \$860 for child and dependent care expenses on your tax return. The IRS audited your return and allowed you only \$500. The remaining \$360 was disallowed. Even though none of the credit would have been allowed on separate returns, you are entitled to a \$500 credit for purposes of figuring your separation of liability. You allocate the \$360 disallowance (rather than the full \$860) between you and your spouse (or former spouse) on lines 5 and 6 of Worksheet 2.

Credits allocable to one spouse that benefit the other spouse. A credit that is otherwise allocated to one spouse must be allocated to the other spouse to the extent the item created a tax benefit for the other spouse.

Worksheet 2 Example

Cindy and Clarence Brown filed a joint return for 1996. They divorced in 1997. On July 27, 1998, the IRS issued a Notice of Deficiency to the Browns relating to their 1996 return. There were four items listed on the notice.

- 1) \$2,378 is nonemployee compensation that Clarence got for some consulting work and did not report.
- 2) \$336 is self-employment tax related to the \$2,378 nonemployee compensation.
- 3) \$168 is the deduction for half of the self-employment tax.
- 4) \$500 is interest income from an account that belonged entirely to Cindy.

Cindy decides to file Form 8857 (not illustrated) to request relief under separation of liability. She allocates

Worksheet 2. **Worksheet for Figuring Your Separation of Liability**



(Note: This worksheet is optional. Keep it for your records. Do not mail it to the IRS.)

1. Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you*	1. _____
2. Enter the net amount of all income and deductions taken into account in computing the understatement of tax*	2. _____
3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least 3 places)	3. _____
4. Enter the understatement of tax*	4. _____
5. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse*	5. _____
6. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to you*	6. _____
7. Add lines 5 and 6.	7. _____
8. Subtract line 7 from line 4	8. _____
9. Multiply line 8 by line 3	9. _____
10. Add lines 9 and 6. This is the understatement of tax you are responsible for	10. _____

*This should be shown on the IRS notice or audit report.

the items between her and Clarence as follows. (She attaches this allocation to Form 8857.)

<u>Items to allocate</u>	<u>Cindy</u>	<u>Clarence</u>
Nonemployee compensation		\$ 2,378
Interest income	\$500	
Deduction for 1/2 of self-employment tax		168
Self-employment tax		336

Although not required, Cindy uses Worksheet 2 to determine the understatement of tax that is allocable to her. She fills out the worksheet (shown on page 8) as follows.

Line 1. Cindy enters the interest income from her bank account.

Line 2. The net amount of income and deductions taken into account in computing the understatement of tax is \$2,710. This is the sum of the nonemployee compensation (\$2,378) and interest income (\$500), minus the deduction for one-half of self-employment tax (\$168).

Line 3. Cindy divides line 1 by line 2 to get .184.

Line 4. Cindy enters the \$743 understatement of tax. This is shown on the Notice of Deficiency.

Line 5. Cindy enters Clarence's self-employment tax of \$336.

Line 6. Cindy enters -0- because there are no credits or other taxes to be allocated to her.

Lines 7 - 10. Cindy completes lines 7 through 10. Line 10 shows that she is responsible for \$75 of the understatement of tax. Clarence is responsible for the remaining amount (\$668).

Equitable Relief,

You may not be able to qualify for innocent spouse relief or separation of liability. You may still, however, be relieved of responsibility for tax, interest, and penalties through equitable relief. You may qualify for equitable relief if you meet all of the following conditions.

- 1) Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax. (See *Indications of Unfairness*, under *Innocent Spouse Relief*, earlier.)
- 2) You are not eligible for innocent spouse relief.
- 3) You are not eligible for separation of liability.

Unlike innocent spouse relief or separation of liability, you can get relief from an understatement of tax (defined earlier) or an **underpayment of tax** through equitable relief.

Underpayment of tax. An underpayment of tax is an amount of tax you properly reported on your return but you have not paid. For example, your joint 1996 return shows that you and your spouse owed \$5,000. You pay \$2,000 with the return. You have an underpayment of \$3,000.

Examples. The following examples show situations that may qualify for equitable relief.

Example 1. You and your spouse file a joint 1996 return. That return shows you owe \$10,000. You pay \$5,000 with the return. You take out a loan to pay the other \$5,000 and without telling you, your spouse takes the \$5,000 and spends it on himself. You may be able to get equitable relief for the \$5,000 underpayment.

Filled-in Worksheet 2. **Worksheet for Figuring Your Separation of Liability**

(Note: This worksheet is optional. Keep for your records. Do not mail it to the IRS.)

1. Enter the net amount of income and deductions taken into account in computing the understatement of tax and allocated to you'	1.	<u>500</u>
2. Enter the net amount of all income and deductions taken into account in computing the understatement of tax'	2.	<u>2,710</u>
3. Divide line 1 by line 2. Enter the result as a decimal (rounded to at least 3 places)	3.	<u>.184</u>
4. Enter the understatement of tax*	4.	<u>743'</u>
5. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to your spouse*	5.	<u>336</u>
6. Enter the credits and other taxes taken into account in computing the understatement of tax and allocated to you*	6.	<u>0</u>
7. Add lines 5 and 6.	7.	<u>336</u>
8. Subtract line 7 from line 4	8.	<u>407</u>
9. Multiply line 8 by line 3	9.	<u>75</u>
10. Add lines 9 and 6. This is the understatement of tax you are responsible for	10.	<u>75</u>

*This should be shown on the IRS notice or audit report.

Example 2. You request innocent spouse relief or separation of liability, but the IRS determines you do not qualify for either one. The IRS automatically will consider whether equitable relief would apply.

3) Janie believes she meets the third condition. She believes it would be unfair to be held liable for the tax because she did not benefit from the award. Joe spent it on personal items for his use only.

Filled-in Form 8857

This part explains how Janie Boulder fills out Form 8857 to request innocent spouse relief.

Janie and Joe Boulder filed a joint tax return for 1996. Joe did not report a \$5,000 award he won that year. They received an IRS Notice of Deficiency for additional tax of \$650 and penalties and interest of \$165.

Janie applies the conditions listed under *Innocent Spouse Relief* to see if she qualifies for relief.

- 1) Janie meets **the** first condition because the joint tax return they filed has an understatement of tax.
- 2) Janie believes she meets the second condition. She did not know about the award and had no reason to know about it because of the secretive way Joe conducted his financial affairs.

Because Janie believes she qualifies for innocent-spouse relief, she files Form 8857 with the IRS. She fills in her name, address, social security number, and daytime phone number. She fills out the rest of the form as follows:

Line 1. Janie enters "1996" because this is the tax year for which she is requesting relief.

Line 2. She enters the name, address, social security number, and daytime phone number of her spouse.

Line 4. Janie checks the box on this line because she believes she qualifies for innocent spouse relief.

Janie signs and dates the form. She attaches the explanatory statement (not illustrated) required by the Form 8857 instructions. Finally, she mails the form to the IRS employee named in the Notice of Deficiency before the end of the 90-day period specified in the Notice.

**Request for Innocent Spouse Relief
(And Separation of Liability and Equitable Relief)**

OMB No. 1545-I 596

▶ Do not file with your tax return. ▶ See instructions.

Your name Janie Boulder		Your social security number 123 : 00 : 9876	
Your current address 5161 Old Farm Estates		Apt. no.	
City, town or post office, state, and ZIP code. If a foreign address, see instructions. Hutchinson, IA 55555		Daytime phone no. (optional) (720)555-1023	

Before you begin, you need to understand the following terms. See instructions for descriptions.

- Separation of Liability
- Joint and Several Liability
- Innocent Spouse Relief
- Understatement of Tax
- Equitable Relief
- Underpayment of Tax



The IRS can help you with your request. If you are working with an IRS employee, you can ask that employee, or you can call 1-800-829-7040.

1 Enter the year(s) for which you are requesting relief from liability of tax (see instructions) . ▶ ...1996...

2 Information about your spouse (or former spouse) to whom you were married at the end of the year(s) on line 1.

Name Joe E. Boulder		Social security number 234 : 00 : 8765	
Current home address (number and street). If a P.O. box, see instructions. 3898 Timber Way		Apt. no.	
City, town or post office, state, and ZIP code. If a foreign address, see instructions. Creekbed, MS 77717		Daytime phone no. (If known) (270)555-2345	



If you only have an underpayment of tax (tax shown on your joint return that was not paid), you may only request equitable relief. Skip lines 3 and 4 and see line 5 and its instructions.

3 If you have an **understatement of tax**, you may request **Separation of Liability**. You may be relieved of liability for your spouse's (or former spouse's) part of the liability. However, this relief is available only if you and your spouse (or former spouse):

- Are no longer married, or
- Are legally separated, or
- Have lived apart at all times during the 12-month period prior to the date you file this form.

If one of the above conditions apply, attach a statement as explained on page 3 and check here . . . ▶

4 If you have an **understatement of tax** due to erroneous items of your spouse (or former spouse), you may be allowed **Innocent Spouse Relief**. Attach a statement as explained on page 4 and check here . . . ▶

5 If you have an **underpayment of tax** or you do not qualify for relief under 3 or 4 above, we will automatically consider whether you qualify for **Equitable Relief**. Attach a statement as explained on page 4 and check here . . . ▶

Where To File: Generally, send this form to: **Internal Revenue Service Center, Cincinnati, OH 45999-0857**. But if you are meeting with an IRS employee or you received an IRS notice of deficiency, see page 2.

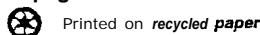
Under penalties of perjury, I declare that I have examined this form and any accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Sign Here Keep a copy of this form for your records.	Your signature Janie Boulder		Date 11/12/98
	Preparer's signature	Date	Preparer's social security no.
Paid Preparer's Use Only	Firm's name (or yours if self-employed) and address		EIN ;
			ZIP code

For Privacy Act and Paperwork Reduction Act Notice, see page 4.

Cat. No. 24647V

Form 8857 (Rev. 12-98)



Questions & Answers

This section answers questions commonly asked by taxpayers about innocent spouse relief.

What is joint and several liability?

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. Both taxpayers are jointly and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due.

How can I get relief from joint and several liability?

Relief now falls into three categories: "innocent spouse relief," "separation of liability," and "equitable relief." Each of these types of relief have different requirements. They are explained separately below.

What are the rules for innocent spouse relief?

To qualify for innocent spouse relief, you must meet **all** of the following conditions.

- You must have filed a joint return which has an understatement of tax.
- The understatement of tax must be due to erroneous items of your spouse (or former spouse).
- You must establish that at the time you signed the joint return, you did not know, and had no reason to know, that there was an understatement of tax.
- Taking into account all of the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.
- You must request relief within 2 years after the date on which

the IRS first began collection activity against you after July 22, 1990.

What are "erroneous items"?

Erroneous items are any deductions, credits, or bases that are incorrectly stated on the return, and any income that is not reported on the return.

What is an "understatement of tax"?

An understatement of tax is generally the difference between the total amount of tax that should have been shown on your return and the amount of tax that was actually shown on your return. For example, you reported total tax on your 1996 return of \$2,500. IRS determined in an audit of your 1996 return that the total tax should be \$3,000. You have a \$500 understatement of tax.

Will I qualify for innocent spouse relief in any situation where there is an understatement of tax?

No. There are many situations in which you may owe tax that is related to your spouse, but not be eligible for innocent spouse relief. For example, you and your spouse file a joint return that reports \$10,000 of income and deductions, but you knew that your spouse was not reporting \$5,000 of dividends. You are **not** eligible for innocent spouse relief when you have knowledge of the understatement.

What are the rules for separation of liability?

Under this type of relief, you divide (separate) the understatement of tax (plus interest and penalties) **on** your joint return between you and your spouse. The understatement of tax allocated to you is generally the amount you are responsible for. To qualify for separation of liability, you must have filed a joint return and meet **either** of the following

requirements at the time you file Form 8857.

- You are no longer married to, or are legally separated from, the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

Why would a request for separation of liability be denied?

Even if you meet the requirements listed earlier, a request for separation of liability will not be granted in the following situations.

- The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
- The IRS proves that at the time you signed your joint return, you had actual knowledge that any items giving rise to the deficiency and that can be allocated to your spouse were incorrect.
- You transferred property to your spouse (or former spouse) just to avoid tax or the payment of tax.

What are the rules for equitable relief?

Equitable relief is only available if **you** meet **all** of the following conditions.

- You do not qualify for innocent spouse relief or separation of liability.
- The IRS determines that it is unfair to hold you liable for the understatement of tax taking into account all the facts and circumstances.

Note. Unlike innocent spouse relief or separation of liability, if you qualify for equitable relief, you can

get relief from an understatement of tax or an underpayment of tax. (An underpayment of tax is an amount properly shown on the return, but not paid.)

How do state community property laws affect my ability to qualify for relief?

Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Generally, community property laws require you to allocate community income and expenses equally between both spouses. However, community property laws are not taken into account in determining whether an item belongs to you or to your spouse (or former spouse) for purposes of requesting any relief from liability.

How do I request relief?

File Form 8857, **Request for Innocent Spouse Relief**, to ask the IRS for relief. You only need to file one Form 8857 even if you are requesting relief for more than one year.

if I am denied innocent spouse relief, must I reapply if I believe I might qualify under one of the other two provisions?

No. The IRS automatically will consider whether any of the other provisions would apply.

I applied for innocent spouse relief before the law changed (July 22, 1998). Do I need to re-apply?

No. The Service will consider your request under the new law as long as the liability was unpaid as of July 22, 1998.

When should I file Form 8857?

If you are requesting innocent spouse relief, separation of liability, or equitable relief, file Form 8857 no later than 2 years after the date on which the IRS first began collection activities against you after July 22, 1998.

Where should I file Form 8857?

Follow the instructions on Form 8857.

I am currently undergoing an examination of my return. How do I request innocent spouse relief?

File Form 8857 with the employee assigned to examine your return.

What if the IRS has levied my account for the tax liability and I decide to request relief?

All collection activity is suspended from the date the request is received by the Service until the final determination is made.

What is "injured spouse relief"?

Injured spouse relief is different from innocent spouse relief. When a joint return is filed and the refund is used to pay one spouse's past-due child and/or spousal Support, a past-due federal debt, or past-due state income tax, the other spouse may be considered an injured spouse. The injured spouse can claim his or her share of the refund using Form 8379, **Injured Spouse Claim and Allocation**. To be considered an injured spouse, you must have:

- Filed a joint return,
- Received income (such as wages, interest, etc.),
- Made tax payments (such as withholding or estimated tax payments),
- Reported the income and tax payments on the joint return, and
- An overpayment, all or part of which was applied to the past-due amount of the other spouse.

How To Get More Information

You can order free publications and forms, ask **tax** questions, and get more information from the IRS in **several** ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Free tax services. To find out what services are available, get Publication 910, **Guide to Free Tax Services**. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education **and** assistance programs and a list of **TeleTax** topics.



Personal computer. With your personal computer and modem, you can access the IRS on the Internet at **www.irs.ustreas.gov**. While visiting our Web Site, you can select:

- **Frequently Asked Tax Questions** to find answers to questions you may have.
- **Fill-in Forms** to complete tax forms on-line.
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- **Digital Dispatch** and **IRS Local News Net** to receive our electronic newsletters on hot tax issues and news.

You can also reach us with your computer using any of the following.

- Telnet at **iris.irs.ustreas.gov**
- File Transfer Protocol at **ftp.irs.ustreas.gov**

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703-321-8020



TaxFax Service. Using the phone attached to your fax machine, you can receive forms, instructions, and tax information by calling 703-368-9694. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.



Phone. Many services are available by phone.

- **Ordering forms, instructions, and publications.** Call 1-800-829-3676 to order current and prior year forms, instructions, and publications.
- **Asking tax questions.** Call the IRS with your tax questions at 1-800-829-1040.
- **TTY/TDD equipment.** If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- **TeleTax topics.** Call 1-800-629-4477 to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure that IRS representatives give ac-

curate, courteous, and professional answers, we evaluate the quality of our telephone services in several ways.

- A second IRS representative sometimes monitors live telephone calls. That person only evaluates the IRS assistor and does not keep a record of any taxpayer's name or tax identification number.
- We sometimes record telephone calls to evaluate IRS assistors objectively. We hold these recordings no longer than one week and use them only to measure the quality of assistance.
- We value our customers' opinions. Throughout this year, we will be surveying our customers for their opinions on our service.



Walk-in. You can pick up certain forms, instructions, and publications at many post offices, libraries, and IRS offices. Some libraries and IRS offices have an extensive collection of products available to print from a CD-ROM or photocopy from reproducible proofs.



Mail. You can send your order for forms, instructions, and publications to the Distribution Center nearest to you and receive a response 7 to 15 workdays after your request is received. Find the address that applies to your part of the country.

- **Western part of U.S.:**
Western Area Distribution Center
Rancho Cordova, CA
95743-0001
- **Central part of U.S.:**
Central Area Distribution Center
P.O. Box 8903
Bloomington, IL 61702-8903
- **Eastern part of U.S. and foreign addresses:**
Eastern Area Distribution Center
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CO-ROM. You can order IRS Publication 1796, **Federal Tax Products on CD-ROM**, and obtain:

- Current tax forms, instructions, and publications.
- Prior-year tax forms, instructions, and publications,
- Popular tax forms which may be filled-in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) for \$25.00 by calling 1-877-233-6767 or for \$18.00 on the Internet at www.irs.ustreas.gov/cdorders. The first release is available in mid-December and the final release is available in late January.

Sec. 66. Treatment of community income

(a) Treatment of community income where spouses live apart

then, for purposes of this title, any community income of such individuals for the calendar year shall be treated in accordance with the rules provided by section 879(a).

(b) Secretary may disregard community property laws where spouse not notified of community income

(c) Spouse relieved of liability in certain other cases

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual),

Under procedures prescribed by the Secretary, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Secretary may relieve such individual of such liability.

(d) Definitions

The term "earned income" has the meaning given to such term by section 91 l(d)(2).

(2) Community income

The term "community income" means income which, under applicable community property laws, is treated as community income.

(3) Community property laws

The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

Wisconsin Department of Revenue
Division: IS&E
March 2, 1999

TITLE: Equalize Interest Rates For All Taxes

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Under current law an interest rate differential exists between assessing and refunding taxes. For all taxes administered by the Department of Revenue, the laws provide that in assessing taxes interest shall be added to such taxes at 12% per year. In contrast, the laws provide that in refunding overpayments, interest shall be added at the rate of 9% per year.

The interest rate differential is a frequent point of contention among taxpayers and practitioners as an unfair law which creates an uneven playing field. If taxes are underpaid, interest is charged at 12% per year, whereas if taxes are overpaid, interest is refunded at only 9% per year.

RECOMMENDATION FOR ACTION:

Change the interest rate on assessments from 12% to 9% per year on underpaid taxes.

FISCAL/ADMINISTRATIVE IMPACT:

Unknown

DRAFTING INSTRUCTIONS:

The following changes would be required to equalize the interest rate from 12% to 9% on all taxes:

- 1) ~~Income and Franchise~~ - Amend sections ~~71.03(7), 71.24(7), 71.44(3), 71.82(1)(a) and (c), 71.82(2)(b) and (d), 71.84(1), 71.84(2)(a) and (e), 71.91(6)(e)3 and 71.91(6)(f)5~~ by striking the numerical percentages of 12% and substituting therefor 9%. (Note - sections 71.84(2)(a) and (c) relate to the addition to tax rate).
- 2) Sales and Use Tax - Amend section 77.60 ~~(1)(a) and (b)~~ by striking the numerical percentages of 12% and substituting therefor 9%.
- 3) Forest Cropland Withdrawals - Amend section 77.10 ~~(2)(a)1~~ by striking the numerical percentage of 12% and substituting therefor 9%.
- 4) Managed Forest Lands - Yield Tax - Amend section 77.87(3) by striking the numerical percentage of 12% and substituting therefor 9%.
- 5) Temporary Recycling Surcharge - Amend section 77.96(5) by striking the numerical percentage of 12% and substituting therefor 9% (not necessary unless the law is renewed - the surcharge is scheduled to expire for taxable years ending on or after April 1, 1999).

do folio search of "12%" (d "interest")

6) 'Estate Tax - Amend sections 72.22~~5~~(1) and 72.23 by striking the numerical percentages of 12% and substituting therefor 9%.

7) Motor Vehicle Fuel, General Aviation Fuel and Alternate Fuel Tax - Amend section 78.68(1) by striking the numerical percentage of 12% and substituting therefor 9%.

8) Beverage and Cigarette Tax -Amend sections 139.25(1) and 139.44(9) by striking the numerical percentages of '12% and substituting therefor 9%.

EFFECTIVE DATE OF INITIAL APPLICABILITY:

Day after publication (or "applies to all assessments issued on or after (date) regardless of the taxable period to which they pertain" if intent is to make the law retroactive.)

PERSON TO CONTACT:

Clay Seth, 6-8920

PREPARED BY:

Clay Seth
March 2, 1999



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • (608) 266-6798
FAX (608) 261-6240 • <http://www.dor.state.wi.us>



Date: March 31, 1998

To: Diana
Senator Weeden's Office

F r o m : Diane Hardt *DHardt*

Subject: Interest Rate Differential

You inquired about the interest rate differential in assessing and refunding taxes. For example, for individual income and corporate franchise/income taxes, section 71.82(l)(a), Wis. Stats. (1995-96), provides that in assessing taxes interest shall be added to such taxes at 12% per year. Also, section 71.82(1)(b), Wis. Stats. (1995-96), provides that in refunding overpayments, interest shall be added at the rate of 9% per year. There are similar interest provisions in all of the taxes. Also, please note that the delinquent interest rate is 1.5% per month until the taxes are paid.

I have found very little historical information on this rate differential. The assessment rate of interest was increased from 9% to 12% for all taxes in Chapter 20, Laws of 1981 (the 1981-83 budget bill). At that time it was anticipated that the interest rate change would raise state tax revenue by \$2 million for the 1981-83 biennium. Attached are the related documents.

Since that time I believe there has been discussion of changes in interest rates. However, I can find no actual bills or fiscal estimates.

TAXES, SHARED REVENUE AND PROPERTY TAX RELIEF (continued)

Fiscal Change
Over 1980-81 Doubled

Department of Revenue must prepare the tax roll for all assessed companies from September 15 to October 1.

18. Change the date terminal taxes are distributed to municipalities from July 10 to August 15.

RELATED ASA 1 TO AB 66 SECTIONS: 1090o, 1092c, 1097c, 1097e, 1097h, 1097L, 1098, 1099m, 1100m, 1101s, 1102c, 1102d, 1102h, 1102j, 1103v, 1103x, 1111b, 1111m, 1112c, 1123b, 1123c, 1123g, 1123m, 1125c, 1125g, 1125h, 1125i, 1125j, 1133g, 1133m, 1133p, 1133r, 1387i, 1387w, 1387x, 2203(45) p, q, r, s, t, u and v and 2204(45)(h).

\$-0-

67. INTEREST RATE CHANGES

GOVERNOR: No provision

JOINT FINANCE: Raise the normal interest rate for late tax payments to 12% from the current level of 9%, effective August 1, 1981. This provision is estimated to increase general fund revenues \$2,000,000 i.o. 1981-83.

RELATED ASA 1 TO AB 66 SECTIONS: 1090n, 1097b, 1097L, 1097s, 1102b, 1102g, 1102i, 1102k, 1103j, 1103n, 1103p, 1103r, 1111m, 1111r, 1113g, 1113r, 1114m, 1125hm, 1286w and 2203(45)(g).

REV CHANGE

TAXES, SHARED REVENUE AND PROPERTY TAX RELIEF

Revenue Changes

Motion:

Move to include within the Committee's Substitute Amendment to AB 66 the following provisions :

1. Increase the cigarette tax to 20¢ per pack and reduce the cigarette stamp discount to 1.8% for distributors affixing cigarette stamps? effective August 1, 1981;
2. increase the liquor tax rate on intoxicating liquors to \$3.15 per gallon, effective August 1, 1981 and increase the special liquor tax rate so that the differential between the general liquor tax rate and the special liquor tax rate will be maintained consistent with earlier Committee actions on the special liquor tax rate;
3. Increase the wine tax to 25¢ per gallon for wine containing 14% or less of alcohol and to 45¢ per gallon for wine containing more than 14% and less than 21% of alcohol, effective August 1, 1981;
4. Provide that quarterly estimated tax payments for fire department dues, for domestic life and domestic mortgage guaranty companies be required, except for town mutual insurers, effective for the September 15, 1981, quarterly payments;
5. Repeal the deduction for personal property taxes against insurance company license fees paid by domestic life insurers and repeal the exclusion from the elective 3.5% investment income tax for income earned from rents of real estate upon which the insurer has paid property taxes, effective for license fees based upon the 1981 calendar year;
6. Raise the normal interest rate for late tax payments to 12% a year, effective August 1, 1981.

9% to 12%

all taxes

18% - no change

MCC

*include
9% interest
H.C.*

Note:

Under current law, the cigarette tax is 16¢ per pack, and the cigarette stamp discount is 7.1%. This motion would increase the cigarette tax to 20¢ per pack and decrease the cigarette stamp discount to 1.8% effective August 1, 1981. The amount of cigarette stamp discount would be maintained at approximately the same level as under current law.

Under current law, the general liquor tax rate is \$2.50 per gallon for intoxicating liquors. Under current law, there is a \$1.00 per gallon special tax rate for alcohol produced from pollution control facilities, lease whey and brewer's waste. This motion would increase the general liquor tax rate to \$1.25 per gallon and would increase the special liquor tax rate so that the differential between the general liquor tax rate and the special liquor tax rate will be maintained consistent with earlier committee actions on the special liquor tax rate. Further, the wine tax would be increased to 25¢ per gallon for wine containing 14% or less of alcohol and to 45¢ per gallon for wine containing more than 14% and less than 21% of alcohol. The current wine tax rates are 19.5¢ and 39¢, respectively. The cigarette, liquor and wine tax rates changes are effective August 1, 1981 and would increase revenues by \$59.6 million in the 1981-83 biennium.

Under current law, quarterly estimated payments for insurance companies taxable under Chapter 76 are required, except for domestic life and domestic mortgage guaranty. This motion would require quarterly payments of estimated taxes for these companies. In addition, this motion would provide that fire department dues be paid quarterly, except by town mutual insurers. These changes, effective for the September 15, 1981, are estimated to increase revenues by \$1.3 million GPR revenue and \$2.5 million revenue in fiscal year 1981-82.

Under current law, domestic life insurance companies taxable under Chapter 76 may deduct an amount equal to one-half of the general property taxes paid for the previous year on personal property located in this state which is used in the operation of the business and not held primarily for investment purposes, up to 25% of the license fee. Under current law, domestic life insurers that elect to pay the 3.5% tax upon investment income may deduct income from rents of real estate upon which the insurer has paid the taxes. This motion repeals both these provisions, effective for license fees based upon the 1981 calendar year. These changes will increase revenues by approximately \$800,000 for the 1981-83 biennium.

Under current law, interest of 9% a year is assessed against taxes due from the date the payment is statutorily due until the date allowed by an extension to file or until an additional assessment is made by the Department of Revenue. After that time, the interest rate applicable to delinquent taxes is 18% annually. Increasing the current normal interest rate of 9% to 12% for late tax payments would raise state tax revenue by \$1,000,000 for the 1981-83 biennium.

(FISCAL/POSITION CHANGE TO BASE: \$63,700,000 GPR-Revenue; \$2,700,000 Revenue)

(FISCAL/POSITION CHANGE TO AB 66: \$63,700,000 GPR-Revenue; \$2,700,000 Revenue)

Handwritten notes:
It should be noted
that the present
law is not in the
best interest of the
state.

TITLE: Grant Extension of Time to File Withholding Report

DESCRIPTION OF CURRENT LAW AND PROBLEM:

In years prior to 1999, sec. 71.65(5), Wis. Stats., provided a thirty-day extension of time for employers to file the annual withholding reconciliation report, Form WT-7. This statutory provision was inadvertently eliminated in legislation intended to federalize the Wisconsin due dates of information returns (1997 Wisconsin Act 291, provision effective January 1, 1999).

RECOMMENDATION FOR ACTION:

Amend sec. 71.65(5)(a)1., Wis. Stats. (1997-98), to restore the thirty-day extension to file Form WT-7s, by adding language similar to "of a withholding report as required by sub. (3)(a)."

FISCAL/ADMINISTRATIVE IMPACT

None

DRAFTING INSTRUCTIONS:

See Recommendation for Action,

EFFECTIVE DATE OR INITIAL APPLICABILITY:

Effective for withholding reports due January 31, 2000.

PERSON TO CONTACT: Clay Seth 266-8920

PREPARED BY: Mark P. Wipperfurth
January 29, 1999

of (b) ?
↓
this change restores
the prior extension

Wisconsin Department of Revenue
IS&E Division
August 7, 1998

TITLE: Define the Term "Exclusively" for Purposes of the Sales and Use Tax Exemptions Allowed in Secs. 77.54(3m), (5)(b), (5)(c), (6)(a), (26m), (34), and (39), Wis. Stats. (1995-96)

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Sections 77.54(3m), (5)(b), (5)(c), (6)(a), (26m), (34), and (39), Wis. Stats. (1995-96), provide exemptions from Wisconsin sales and use tax for various items used "exclusively" in a particular manner. See Attachment 1 for a list of each of these statutes and the specific exemption each statute provides.

The Wisconsin Tax Appeals Commission (WTAC) and the courts have long recognized that tax exemptions are a matter of legislative grace and that it is up to the taxpayer to show that they clearly fall within the exemption being claimed. However, the Wisconsin Supreme Court has also stated that "...an exemption statute need not be given an unreasonable construction or the narrowest possible construction..." *Columbia Hospital Assn. v. Milwaukee*, 35 Wis. 2d 660, 668, 151 N.W. 2d 750, 754 (1967). The problem with this is that the Supreme Court did not provide a definite amount of taxable usage, when once exceeded, that results in an item no longer being used "exclusively" in the exempt manner for which it was purchased. In other words, the courts and the department recognize that items purchased under the above identified exemption statutes do not have to be used "solely" or "only" in an exempt manner, but may also be used for other purposes and still qualify for the exemption.

Recognizing the fact that an item does not have to be used "solely" or "only" in an exempt manner to qualify for exemption from Wisconsin sales and use tax, the Department of Revenue defined the term "exclusively" in three of its applicable administrative rules. The three administrative rules which currently contain a definition of the word "exclusively" provide that "...an infrequent and sporadic use..." of an exempt item in a taxable manner will not invalidate the exemption under which the item was purchased (Sections Tax 11.12(4)(b) (Farming), Tax 11.16(1)(am) (Common and Contract Carriers), and Tax 11.40(1) (Manufacturing), Wis. Adm. Code).

Neither the department, the courts, nor taxpayers know for certain how much "taxable usage" an item may have and still qualify for the exemption under the "infrequent and sporadic" definition currently being used.

For example, if a common carrier purchases a dump truck and uses the dump truck 99% of the time in common carriage and 1% of the time in hauling his own products (i.e., not common carriage), it is not clear whether the exemption claimed on the truck when it was originally purchased will be invalidated by the 1% use of the truck in other than common carriage. It depends on whether such 1% use was "infrequent and sporadic."

Therefore, it is highly desirable to define the term "exclusive," as it relates to the exemptions identified above, in a specific quantifiable amount which would be applied uniformly by the department and the courts to all taxpayers.

The legislature has already taken this approach with the exemption for tractors and farm machinery used exclusively and directly in farming as provided in sec. 77.54(3)(a), Wis. Stats. (1995-96), by defining the term "used exclusively" in sec. 77.54(3)(b)3, Wis. Stats.

Section 77.54(3)(b)3, Wis. Stats. (1995-96), defines the term "used exclusively" as it relates to tractors and farm machinery as "...used to the exclusion of all other uses except for other use not exceeding 5% of total use." (emphasis added). By having this specific quantifiable amount of taxable use (i.e., 5%), when once exceeded; that results in tax being due on the purchase of the tractor or farm machinery, the Department, the courts, and taxpayers know when sales and use tax will and will not be imposed on these types of purchases.

RECOMMENDATION FOR ACTION:

It is recommended that Chapter 77 of the Wisconsin Statutes contain a definition of the term "exclusively" which would apply to each of the exemptions identified above. The definition could read as follows:

"Exclusively," as used in secs. 77.54(3m), (5)(b), (5)(c), (6)(a), (26m), (34), and (39), Wis. Stats. (1995-96), means that the item is used, to the exclusion of all other uses, in an exempt manner, except for "other use" not exceeding 5% of total use in each calendar year the item is used. The percentage of other use is computed as follows:

- 1) For ~~motor trucks, truck tractors, road tractors, buses, trailers, semitrailers, and other highway vehicles~~, the percentage of other use is computed by dividing the number of miles the vehicle is driven in a nonexempt manner in a calendar year by the total number of miles the vehicle is driven in the same calendar year.
- 2) For ~~machinery, equipment, non-highway vehicles, and other items not identified in 1 above~~, the percentage of other use is computed by dividing the number of hours the machinery, equipment, non-highway vehicle, or other item is used in a nonexempt manner in a calendar year by the total number of hours the machinery, equipment, non-highway vehicle, or other item is used in the same calendar year. For purposes of determining the total number of hours the machinery, equipment, non-highway vehicle, or other item is used in a calendar year, the amount of time the item is ~~idle or is being repaired~~ is not included in either the numerator or denominator.

If a person wishes to use a method of computing the "other use" percentage other than one of the methods identified in 1 and 2 above, the person must obtain written approval from the Department of Revenue prior to using such method.

The following examples illustrate how the percentage of other use shall be computed for purposes of determining "exclusive" use.

Example 1 - Highway Vehicles - Contract Carrier A purchases a dump truck for use in common and contract carriage (exempt use). In addition to hauling products of others, Contract Carrier A also hauls its own products (taxable use). Contract Carrier A drives its dump truck 90,000 miles hauling products of others (exempt use) and 10,000 miles hauling his own products (taxable use). Contract Carrier A would compute his "other use" as follows:

or: 77.51(24)
add general definition in add new sub. don't amend - need to amend definition
or, def. for "used exclusively" then amend all sections to conform to that usage.
items that are not highway vehicles

delete def. from this

put this in s. 77-61 (administrative provisions)

** need def. for "hwy veh" ?*

Miles driven for "other use" in calendar year	10,000
Divided by	----- = 10% Other Use (taxable use)
Total miles driven in calendar year	100,000

Since Contract Carrier A's taxable use of the dump truck is greater than 5% of the total use of the dump truck, the exemption under sec. 77.54(5)(b), Wis. Stats. (1995-96), does not apply. Contract Carrier A is required to pay Wisconsin sales or use tax on its purchase price of the dump truck.

Example 2 - Manufacturing Machine - Manufacturer B purchases an overhead crane which will be used to move items from one process to another during the manufacturing process (exempt use). In addition, Manufacturer B will also use the crane for emptying garbage bins and machine repair (taxable use). Manufacturer B uses the crane 160 hours per week in an exempt manner and 7 hours per week in a taxable manner. The crane either sits idle or is being repaired the other 1 hour per week. Manufacturer B would compute her "other use" of the crane as follows:

Hours used for "other use" in calendar year (7 hrs.* x 52 weeks)	364
Divided by	----- = 4.19% Other Use (taxable use)
Total hours machine used in calendar year (167 hrs.* x 52 weeks)	8,684

* The 1 hour per week which the crane sits idle or is being repaired is not considered to be time which the crane is being "used."

Since Manufacturer B's taxable use of the overhead crane is 5% or less of the total time the crane is being used during the calendar year, Manufacturer B would not be required to pay Wisconsin sales or use tax on her purchase of the overhead crane under sec. 77.54(6)(a), Wis. Stats. (1995-96). If Manufacturer B's taxable use of the overhead crane exceeds 5% of the total use in a later calendar year, Manufacturer B would be required to remit Wisconsin use tax on the overhead crane.

Example 3 - Breeding and Other Livestock Used In Farming - Farmer C purchases a horse (farm work stock) for use in its farming operations (exempt use). In addition to using the horse in its farming operations, Farmer C also rides the horse for recreational purposes (taxable use). Farmer C uses the horse an average of 19 hours per week in its farming operations (exempt use) and 1 hour per week for recreational riding (taxable use). Farmer C would compute his "other use" of the horse as follows:

Hours used for "other use" in calendar year (1 hr.* x 52 weeks)	52
Divided by	----- = 5% Other Use (taxable use)
Total hours horse used in calendar year (20 hrs.* x 52 weeks)	1,040

- * The amount of time which the horse is not being used is not included as part of the other use or total use.

Since Farmer C's taxable use of the horse is 5% or less of the total time the horse is being used, Farmer C would not be required to pay Wisconsin sales or use tax on his purchase of the horse under sec. 77.54(3m), Wis. Stats. (1995-96).

Example 4 - Baling Twine Used in Farming - Farmer D purchases 1,000 feet of baling twine for \$100 (10¢ per foot x 1,000 feet). Farmer D uses 900 feet directly in farming (exempt use) and 100 feet for other purposes (taxable use). Although Farmer D only used 90% of the total twine purchased in an exempt manner, the 900 feet which were used directly in farming are exempt from Wisconsin sales and use tax. The 100 feet which Farmer D used in a taxable manner are subject to Wisconsin sales and use tax (100 feet x 10¢ per foot = \$10 subject to Wisconsin sales and use tax).

Note: If the **same** piece of twine was used in farming (exempt use) and nonfarming (**taxable** use) activities, the farmer would need to determine the amount of time the particular piece of twine was used for each purpose as described in Examples 2 and 3 on the previous page.

FISCAL/ADMINISTRATIVE IMPACT:

This will provide taxpayers and the department a clear amount of taxable use which is allowed without invalidating the exemption being claimed.

DRAFTING INSTRUCTIONS:

See Recommendation.

EFFECTIVE DATE OR INITIAL APPLICABILITY:

Day after publication.

PERSON TO CONTACT:

Craig Johnson (608)266-7166

PREPARED BY: Craig Johnson
August 7, 1998

i:\craig\exclusively

Wisconsin Department of Revenue
IS&E Division
March 8, 1999

TITLE: Exclusion of Temporary Recycling Surcharge from Computation of Estimated Tax Payments for Taxable Years ending after April 1, 1999

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Wisconsin Statutes sec. 77.94(4) provides for the expiration of the temporary recycling surcharge for taxable years ending after April 1, 1999. However, sec. 71.09(1)(b) and sec. 71.29(1)(b) define "tax shown on the return" and "tax for the taxable year" for computing estimated payments as net tax plus surcharge. The problem is that although taxpayers will not be subject to the surcharge for taxable years ending after April 1, 1999, the language in sec. 71.09(1)(b) and sec. 71.29(1)(b) requires them to make estimated tax payments that include the surcharge when using the safe harbor provision which bases estimated tax payments on the prior year's liability. Literally, by statute, a taxpayer is required to make estimated payments based on the inclusion of the surcharge, an amount that they clearly will not owe. If estimated payments are made based on tax only, the amount underpaid will be subject to 12% underpayment interest.

For example, for taxable year 1998 a taxpayer filed a full calendar year return. The net tax shown on the return was \$100,000 plus \$9,800 surcharge, totaling \$109,800. The 1999 calendar year tax period will not be subject to the surcharge. However, under current law, the total \$109,800 would be the basis for computing estimated payments and underpayment interest based on the return from the preceding year. If four quarterly payments of \$25,000 were made based on the \$100,000 tax liability only, the taxpayer would be subject to 12% underpayment interest on the remaining \$9,800. Conversely, if the surcharge amount was paid and no additional tax was due, the surcharge amount would simply be refunded.

RECOMMENDATION FOR ACTION:

Delete the reference to the surcharge in secs. 71.09(1)(b) and 71.29(1)(b).

FISCAL/ADMINISTRATIVE IMPACT

Unknown

DRAFTING INSTRUCTIONS:

See Recommendation for Action above.

EFFECTIVE DATE OR INITIAL APPLICABILITY

Taxable years ending after April 1, 1999.

PERSON TO CONTACT

Clay Seth
266-8920

PREPARED BY: Kristine Schmid
264-7765
e:legislation/surcharge

Wisconsin Department of Revenue
I S & E Tax Division
August 7, 1998

T I T L E : Compromising Non-Delinquent Taxes, Interest, Penalties and Costs for inability to
Pay

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Section 71.92(3), Wis. Stats. (1995-96), provides that any taxpayer may petition the Department of Revenue to compromise **delinquent** income or **franchise** taxes including the costs, penalties and interest. The petition must set forth a sworn statement of the taxpayer and must be in the form the department prescribes. The department may examine the petitioner under oath concerning the matter.

If the department determines there is an inability to pay (based on financial statements and any other information requested by the department), the department determines the amount the taxpayer is able to pay. The compromise is effective only if paid within ten days. Upon payment, the department credits the unpaid portion of taxes, interest, penalties and costs.

If within 3 years of the date of compromise, the department determines the taxpayer has income or property sufficient to enable the taxpayer to pay the remainder of the tax, interest, penalties and costs, the department may reopen the matter and order the payment in full of such taxes, interest, penalties and costs. A notice is given to the taxpayer in writing advising of the intention of the department of revenue to reopen such matter. If the taxpayer desires a hearing, it is arranged.

The department, makes the appropriate record of the taxes, interest, penalties and costs and they become immediately due and payable. The taxes are subject to interest provided by section 71.82(2), Wis. Stats. The department proceeds to collect these amounts due.

These compromise provisions are solely related to **delinquent** taxes. The department would like the statutory authority to compromise any taxes, interest, penalties and costs at any level of assessment or appeal, but not yet recorded as delinquent, for inability to pay. The procedures would be identical to those in section 71.92(3), Wis. Stats. (3 995-96).

RECOMMENDATION FOR ACTION:

The department should be provided the authority to compromise any taxes, interest, penalties and costs at any level of assessment or appeal, but not yet recorded as delinquent, for inability to pay. The procedure would be identical to those in section 71.92(3), Wis. Stats. (199596). The new compromise provisions for **non-delinquent taxes**, interest, penalties and costs should apply to all taxes administered by the department (not just income and franchise taxes).

The new compromise provisions would require the taxpayer to petition the department on a form the department prescribes and with a sworn statement. The petitioner must provide financial statements and other financial information requested by the department. The new procedures would require payment within ten days and the authority for the department to

DOA:Gates-Hendrix - 'Compromising nondelinquent taxes, interest,
penalties and costs

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT relating to:** authorizing the department of revenue to compromise
2 nondelinquent taxes, interest, penalties and costs.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, any taxpayer may petition the department of revenue (DOR) to compromise delinquent income or franchise taxes, including any applicable costs, penalties and interest. The petition must contain a sworn statement of the taxpayer, and DOR may examine the taxpayer under oath regarding the matter.' If the department determines that the taxpayer is unable to pay in full the amount due, based on an examination of the, taxpayer's financial statements and any other information required by DOR, the department is required to determine the amount that the taxpayer is able to pay. The department is then required to enter an order reducing the taxes, costs, penalties and interest due in accordance with its determination. The compromise is effective only if it is paid within ten days.

If within three years of the date of a compromise DOR determines that the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax, including costs, penalties and interest, the department must reopen the matter and order the payment in full of such taxes, costs, penalties and interest. Before entering the order, however, DOR must provide the taxpayer with

written notice advising the taxpayer of DOR's intention and fixing a time and place for the taxpayer to appear if the taxpayer desires a hearing. After entering the order, DOR is required to make a record of the principal amount of the taxes, and penalties, costs and interest, that are ordered to be paid and such taxes are immediately due, payable and subject to interest.

Under this bill, DOR is authorized to compromise any taxes, interest, penalties and costs that are due this state and that have not yet been recorded as delinquent. The procedures that DOR is required to follow are the same as the current procedures that apply to compromises regarding delinquent income or franchise taxes, including costs, penalties and interest.

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.** 73.13 of the statutes is created to read:

2 **73.13 Compromising nondelinquent taxes. (1)** In this section, "tax"
3 means an amount that is owed to this state under s. 66.75 (lm) (f) 3. or ch. 71, 72,
4 76, 77, 78 or 139, that is not delinquent, and any addition to tax, interest, penalties,
5 costs or other liability in respect to those amounts.

6 (2) Any taxpayer may petition the department of revenue to compromise the
7 taxpayer's taxes including the costs, penalties and interest. The petition shall set
8 forth a sworn statement of the taxpayer and shall be in a form that the department
9 prescribes. The department may examine the petitioner under oath concerning the
10 matter and may require the taxpayer to provide the department with financial
11 statements and any other information requested by the department that is related
12 to the petition. If the department finds that the taxpayer is unable to pay the taxes,
13 costs, penalties and interest in full, the department shall determine the amount that
14 the taxpayer is able to pay and shall enter an order reducing the taxes, costs,
15 penalties and interest in accordance with the determination. The order shall provide

1 that the compromise is effective only if paid within 10 days of the date on which the
2 order is issued. The department or its collection agents, upon receipt of the order,
3 shall accept payment in accordance with the order. Upon payment the department
4 shall credit the unpaid portion of the principal amount of the taxes and make
5 appropriate record of the unpaid amount of penalties, costs, and interest accrued to
6 the date of the order. ~~///~~ If within 3 years of the date of the compromise order the
7 department ascertains that the taxpayer has an income or property sufficient to
8 enable the taxpayer to pay the remainder of the tax including costs, penalties and
9 interest, the department shall reopen the matter and order the payment in full of the
10 taxes, costs, penalties and interest. Before the entry of the order, a written notice
11 shall be given to the taxpayer advising of the intention of the department to reopen
12 the matter and fixing a time and place for the appearance of the taxpayer if the
13 taxpayer desires a hearing. Upon entry of the order the department shall make an
14 appropriate record of the principal amount of the taxes, penalties, costs and interest
15 ordered to be paid. Such taxes shall be immediately due and payable and shall
16 thereafter be subject to the interest provided by s. 71.82 (2), as that subsection
17 applies to delinquent income and franchise taxes under s. 71.82, and to the
18 delinquent account fee described in s. 73.03 (33m), and the department shall
19 immediately proceed to collect the taxes together with the unpaid portion of
20 penalties, costs, and interest accrued to the date of the compromise order and the fee
21 described in s. 73.03 (33m).

22 **SECTION 9443. Effective dates; revenue.**

23 (1) COMPROMISINGNONDELINQUENTTAXES. The treatment of section 73.13 of the
24 statutes takes effect on the first day of the 2nd month following publication.

25 (END)

Allow use of either (1) bracket syst
or (2) straight mathematical
computation

Wisconsin Department of Revenue
IS&E Division
August 7, 1998

TITLE: Allow Use of Either (1) Bracket System or (2) Straight Mathematical Computation
(Sales Price Times Tax Rate) in Computing Sales Tax Due on Taxable Transactions

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Section 77.61(3), Wis. Stats. (1995-96), provides that:

“The department shall provide a bracket system to be used by retailers in collecting the amount of the tax from their customers, but the use of such brackets shall not relieve the retailer from liability for payment of the full amount of the tax levied by ss. 77.51 to 77.62.”

In a time period when computers are playing an ever increasing role in business operations, the Wisconsin Statutes still require the use of the bracket system in computing Wisconsin sales or use tax due on a transaction.

Although some retailers have computer systems capable of using the bracket system, many retailers' computer systems or cash registers are not capable of using the bracket system to determine the amount of sales or use tax due on a transaction. Retailers who have computer systems that generate their sales invoices, but whose systems do not have the capability of using the bracket system, are currently having their computer systems compute the amount of sales tax due on a transaction using a straight mathematical computation (sales price times the tax rate) rather than the bracket system.

Retailers who compute the Wisconsin sales tax due on a transaction by multiplying the sales price times the tax rate will arrive at the EXACT same dollar amount of tax which would be computed using the “bracket system,” provided they follow the method of rounding to two decimal places (i.e., to the penny), as described below:

- 1) For all amounts less than \$.005, the amount should be rounded down to the next lowest penny (i.e., \$0.049999 would be rounded to \$.04, \$3.2549 would be rounded to \$3.25, etc.), and
- 2) For all amounts equal to or greater than \$.005, the amount should be rounded up to the next highest penny (i.e., \$0.05000 would be rounded to \$.06, \$6.455001 would be rounded to \$6.46, etc.)

The two examples on the following page describe how a retailer is to “round” numbers to two decimal places (i.e., to the penny), when computing the sales tax due on a particular sale using a straight mathematical computation.

Example 1 - Customer A purchases a taxable item from Retailer B for \$6.96 plus tax where the tax rate is 5.1%. The tax computed by multiplying the sales price (\$6.96) times the tax rate (5.1%) is equal to \$35496. Since the amount over \$.35 is less than \$.005 (it is \$.00496), the tax

OK

due on this transaction, when rounded to two decimal places, equals **\$.35**.

Example 2 - Customer C purchases a taxable item from Retailer D for \$5.00 plus tax where the tax rate is 5.1%. The tax computed by multiplying the sales price (\$5.00) times the tax rate (5.1%) is equal to **\$.255**. Since the amount over **\$.25** is equal to or greater than **\$.005** (it is **\$.005**), the tax due on this transaction, when rounded to two decimal places, equals **\$.26**.

The requirement that retailers shall use the bracket system set-up by the Department of Revenue (rather than a straight mathematical computation) is an unnecessary government mandate. The use of either the (1) bracket system or (2) straight mathematical computation (sales price times tax rate) and the rounding procedures described above, results in the EXACT same amount of Wisconsin sales and use tax being due on a taxable transaction.

In addition, current law does not provide any penalties for persons who fail to use the bracket system.

RECOMMENDATION FOR ACTION:

Amend seo. 77.61(3) to allow the use of either: (1) a straight mathematical computation following the rounding procedures which shall be provided by Department of Revenue rules or (2) the bracket system, to compute the amount of Wisconsin sales tax due on a transaction as described above.

In addition, there should also be penalties which may be issued at the department's discretion for retailers who fail to use one of the methods described above in computing the amount, of Wisconsin sales and use tax due on a transaction.

The language should provide that if a retailer is charging more tax to customers than is legally due and owing, the retailer may be required by the department to return the tax and interest at the rate of 12% per year to the customers, and pay a negligence penalty to the department equal to 25% of the amount of tax which the customers were overcharged.

If the retailer is unable to identify the specific customers who were overcharged Wisconsin sales and use tax, the retailer may be required to pay the tax, interest, and penalty to the department.

Example - Retailer A overcharges Customer B \$1000 in Wisconsin sales tax. The department may require Retailer A to return the \$1000 in excess tax collected and related interest at the rate of 12% to Customer B. In addition, Retailer A may also be required to pay a negligence penalty to the Department of Revenue of \$250 (25% of the amount of tax overcharged) for overcharging the customer Wisconsin sales tax.

In the above example, if Retailer A had not been able to identify the specific customer who was overcharged the tax, Retailer A may have been required to pay the tax (\$1000), related interest at 12%, and a negligence penalty of (\$250) to the department.

FISCAL/ADMINISTRATIVE IMPACT:

This will provide statutory authority allowing taxpayers to compute the sales tax due on a transaction through the use of either (1) a straight mathematical computation using procedures described in department rules or (2) the use of the bracket system.

In addition, this proposal will also provide for the imposition of penalties on persons who charge their customers more tax than is allowed by law.

see previous drafting request

DRAFTING INSTRUCTIONS:

See Recommendation.

EFFECTIVE DATE OR INITIAL APPLICABILITY:

Day after publication.

PERSON TO CONTACT:

Craig Johnson (telephone (608)266-7166)

PREPARED BY: Craig Johnson
August 7, 1998

!:\craig\bracket

Wisconsin Department of Revenue
Income, Sales & Excise Tax Division
September 28, 1998

Title: Use of Credit Cards to Pay Taxes, Interest, Penalties, Fees and Deposits

Description of Current Law and Problem:

Current Wisconsin law does not allow for the payment of taxes, interest, penalties, fees and deposits to the department through the use of credit cards. Individual taxpayers filing electronically who have a balance due are now limited to sending paper checks to the department. The department also offers electronic funds transfer (EFT) for some amounts due. In order to encourage more persons having a balance due to file electronically, and to make filing more convenient, it is necessary for the department to provide an alternative to sending a paper check. Authorizing credit cards for amounts due would completely automate and simplify electronic filing, and encourage other payments on a more timely basis. In addition, the IRS is allowing the use of credit cards for the payment of income taxes beginning in 1999.

Recommendation:

Revise appropriate statutes to allow for the payment of various/ taxes, interest, penalties, fees and deposits through the use of credit cards. Authorize the department to contract with outside vendors relating to the payments by credit card. If the department permits payment by credit card, allow the department to charge a credit card service charge for each transaction to cover the costs to provide this service. —

Fiscal/Administrative Impacts:

The cost to develop and maintain the credit card system would be paid for by additional transaction fees. The fees would be determined by the amount of the individual charges. There is no estimate of additional state collections through the use of credit cards as there is no real experience to draw upon for such information. The service should be offered as a convenience to the taxpayers and to provide similar services to those offered by the IRS.

Effective Date:

The day following publication.

Drafting Instructions:

See attached credit card legislation for credit card payments by Department of Regulation and Licensing, sec. 440.055, and Department of Transportation, sec. 85.14.

Contact Person:

Tom Reid, (608) 266-8474

Prepared By:

Rod Phelps, (608) 266-1 158

need an appropriation?

ch. 71 only

make change under ch. 73?

*or; 73.033?
= 73.14?*

ation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(3) Control the allocation, disbursement and budgeting of the funds received by the examining boards and affiliated credentialing boards in connection with their credentialing and regulation.

(4) Employ, assign and reassign such staff as are required by the department and the attached examining boards and affiliated credentialing boards in the performance of their functions.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech-language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech-language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (3) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418 s. 24; 1979 c. 34; 1981 c. 20; 1985 s. 29; 1987 s. 27; 1989 s. 315; 1991 s. 39; 1993 s. 102, 107; 1995 s. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1983 s. 16 ss. 3269, 3299; 1993 s. 107.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 s. 107.

Relationship between department, cosmology examining board and governor discussed. 70 Asy. Con. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 442.06, 444.03, 444.05, 444.11, 449.17, 449.18 and 459.46:

(1) (a) Initial credential: \$39. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee. The fee for examination shall be an amount equal to the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a test service.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub. (1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: \$10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: \$10.

(9) Endorsement of persons who are credentialed to other states: \$10.

History: 1977 c. 29, 418; 1979 c. 34; 1979 s. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 s. 27; 1985 s. 29; 1987 s. 264, 265, 309, 398, 400; 1989 s. 31, 329, 307, 315, 336, 340, 341, 359; 1991 s. 39, 269, 276, 315; 1993 s. 16; 1995 s. 27.

440.055 Credit card payments. (1) The department may accept payment by credit card of a fee that is required to be paid to the department under chs. 440 to 480.

(2) If the department permits the payment of a fee with use of a credit card under sub. (1), the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub. (3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 s. 27.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 s. 39; 1995 s. 102.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and

46884

(2) **DEFINITION.** In this section, "minority" has the meaning specified for "minority group member" under s. 560.036 (1) (f).

(3) **ADMINISTRATION.** From the appropriation under s. 20.395 (4) (aq), the department may:

(a) **Award** scholarships to resident minority students enrolled fulltime and registered as sophomores, juniors or seniors in a civil engineering bachelor of science program offered by an accredited institution of higher education in this state. Scholarships under this paragraph shall not exceed the following amounts:

1. For a sophomore, \$1,500.
2. For a junior, \$2,000.
3. For a senior, \$2,500.

(b) 1. Make loan repayment grants to minority civil engineers who are employed by the department and have education loans outstanding. Subject to subd. 2., loan repayment grants under this subdivision shall not exceed the following amounts:

- a. After one year of employment by the department, \$1,000.
- b. After 2 years of employment by the department, an additional \$1,200.
- c. After 3 years of employment by the department, an additional \$1,700.
- d. After 4 years of employment by the department, an additional \$2,100.

2. The total amount of loan repayment grants under this paragraph made to an employe shall not exceed the amount of the employe's education loans outstanding.

(4) **RULE MAKING.** The department shall promulgate rules to implement and administer this section.

History: 1987 a. 27.

85.12 Statewide public safety radio management program. (1) The department shall administer a statewide public safety radio management program. From the appropriations under s. 20.395 (5) (dk) and (dq), the department may provide statewide tower site management, public safety frequency management, public safety database administration and planning services related to statewide public safety radio management.

(2) The department shall maintain any existing communication equipment at state patrol towers and stations that is used by emergency medical services programs under s. 146.55 unless the cost of maintaining the equipment exceeds the benefits that will result from such maintenance.

History: 1993 a. 16.

85.13 -Cost of traffic violation and registration program. The department shall develop a system for charging local units of government or other authority as defined in s. 345.28 (1) (a) for the cost of the development and operation of the traffic violation and registration program under ss. 341.08 (4m), 341.10 (7) and (7m), 341.63 (1) (c), 345.28 (4) and 345.47 (1) (d) based on the number of transactions processed by the local unit of government or other authority. No notices under s. 345.28 (4) submitted by an authority or under s. 345.47 (1) (d) submitted by the court may be processed by the department unless the local unit of government or other authority involved has paid the department the appropriate amount determined by the department under this section.

History: 1979 c. 221 5.903x; 1981 c 165; 1983 a. 330.

85.14 Payments of fees and deposits by credit card.

(1) (a) The department may accept payment by credit card of a fee that is required to be paid to the department under ch. 194.218, 341, 342, 343 or 348. The department shall determine which fees may be paid by credit card and the manner in which the payments may be made.

(b) Except for charges associated with a contract under par. (c), the department shall pay to the state treasurer the amount of charges associated with the use of credit cards under par. (a) that are assessed to the department.

(c) The department may contract for services relating to the payment of fees by credit cards under this subsection. Any charges associated with a contract under this paragraph shall be paid from the appropriations under s. 20.395 (5) (cg) and (cq).

(2) The department shall certify to the state treasurer the amount of charges associated with the use of credit cards that is assessed to the department on deposits accepted under s. 345.26 (3) (a) by state traffic patrol officers and state motor vehicle inspectors, and the state treasurer shall pay the charges from moneys under s. 59.20 (8) and (8m) that are reserved for payment of the charges under s. 14.58 (21).

History: 1985 a. 29; 1989 a. 31; 1991 a. 39.

85.15 Property management. The department may improve, use, maintain or lease any property acquired for highway, airport or any other transportation purpose until the property is actually needed for any such purpose and may permit use of the property for purposes and upon such terms and conditions as the department deems in the public interest.

History: 1977 c. 29; 1991 a. 269.

85.16 Department rules and forms. (1) The secretary may make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department. The secretary may also prescribe forms for applications, notices and reports required by law to be made to the department or which are deemed necessary to the efficient discharge of all powers, duties and functions and prescribe the form and manner in which those applications, notices and reports may be filed or submitted.

(2) Any person violating an order, determination or rule adopted under chs. 84 to 86, 110, 114, 218 and 341 to 349 and not subject to another statutory penalty shall be required to forfeit not less than \$20 nor more than \$400.

History: 1983 a 175 ss. 1, 3; 1983 a. 538; 1989 a. 31.

85.77 Storage of highway salt. (1) DEFINITIONS. In this section:

(a) "Highway salt" means bulk quantities of a chloride intended for application to highways during winter months, and includes mixtures in any proportion of sand and chlorides.

(b) "Waters of the state" has the meaning specified under s. 144.01 (19).

(2) **STORAGE OF HIGHWAY SALT.** Every person who stores highway salt shall comply with the standards adopted under sub. (3).

(3) **STANDARDS.** The department shall adopt by rule standards for the storage of highway salt for the purpose of protecting the waters of the state from harm due to contamination by dissolved chlorides. The rule shall comply with ch. 160. The rule may include different standards for various types of chlorides, or for mixtures of sand and chlorides. The rule may not require the storage of mixtures of sand and chlorides in a building or structure. The rule may include different standards for various storage facilities and conditions, quantities of highway salt and times during the year when salt is stored. All standards under this section shall provide substantially similar protection for the waters of the state.

(4) **INFORMATION.** The department may collect and publish information relating to this section and distribute it to municipalities and persons subject to this section.

(5) **ENFORCEMENT.** (a) The department shall enforce this section.

(b) The department may enter and inspect, during regular business hours, places where highway salt is stored on private or public property.

(c) The department shall conduct periodic inspections, at least once annually, of each location where highway salt is stored, to ascertain compliance with this section.

(d) The department shall issue special orders directing and requiring compliance with the rules and standards of the department adopted under this section whenever, in the judgment of the

Wisconsin Department of Revenue
IS&E Division
February 19, 1999

TITLE: Abatement of Interest Charges

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Wisconsin taxes not paid by the due date prescribed by law are subject to mandatory interest charges. An error or delay by an employe of the Wisconsin Department of Revenue in performing a ministerial act (that is, a procedural or mechanical act) can increase the amount of this interest charge.

RECOMMENDATION FOR ACTION:

Authorize **the** Department of Revenue to abate interest charges attributable to unreasonable errors and **delays** by a department employe in **performing** a ministerial act. Insert language in sec. 73.03(47) that is **similar** to that found in section 6404(e)(1) of the Internal Revenue Code (copy attached). Authorize the department to **define** "ministerial act" by administrative rule. (Note: The Internal Revenue Service defines the term "ministerial act" in Regulation 301.6404-2T, copy attached.)

FISCAL/ADMINISTRATIVE IMPACT:

Unknown.

DRAFTING INSTRUCTIONS:

Amend the Wisconsin Statutes as described under Recommendation above

EFFECTIVE DATE OR INITIAL APPLICABILITY:

Errors or delays that occur on or after the day after publication.

PERSON TO CONTACT:

Clay Seth (608) 266-8920

PREPARED BY: Tom Reid
February 19, 1999

add requests for amendments to 77.59

Amendments

P.L. 105-33, § 5514(a)(1):

Act Sec. 5514(a)(1) struck the change made by Act Sec. 110(i)(7)(B) of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. W-193), which redesignated Code Sec. 6402(g) as Code Sec. 6402(h). The provision of law added by P.L. 104-193 is restored as if Act Sec. 110(i)(7)(B) had not been enacted. Thus, subsection (h) of Code Sm. MO2 is now designated as subsection (g) of Code Sec. 6402.

The above amendment is effective on July 1, 1997.

P.L. 104-193, § 110(i)(7)(B):

Act Sec. 110(i)(7)(B) amended Code Sec. 6402 by redesignating subsection (g) as subsection (h).

The above amendment is effective on July 1, 1997.

P.L. 98-378, § 21(e)(2):

Amended Code Sec. 6402 by adding at the end thereof new subsection (g) to read as above. Applicable with respect to refunds payable under Code Sec. 6402 after December 31, 1985.

[Sec. 6402(h)]

(h) CROSS REFERENCE.-For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.

Amendments

P.L. 105-33, § 5514(a)(1):

Act Sec. 5514(a)(1) struck the change made by Act Sec. 110(i)(7)(B) of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. W-193), which redesignated Code Sec. 6402(h) as Code Sec. 6402(i). The provision of law added by P.L. 104-193 is restored as if Act Sec. 110(i)(7)(B) had not been enacted. Thus, subsection (i) of Code Sm. 6402 is now designated as subsection (h) of Code Sec. 6402.

The above amendment is effective on July 1, 1997.

P.L. 104-193, § 110(i)(7)(B):

Act Sec. 110(i)(7)(B) amended Code Sec. 6402 by redesignating subsection (h) as subsection (i).

The above amendment is effective on July 1, 1997.

P.L. 98-378, § 21(e)(2):

Redesignated Code Sec. 6402(g) as (h). Applicable with respect to refunds payable under Code Sec. 6402 after December 31, 1985.

P.L. 98-369, § 2653(b)(1):

Act Sec. 2653(b)(1) amended Code Sec. 6402 by adding subsection (g) to read as above.

The above amendment applies with respect to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31 [effective date changed by P.L. 100-485 and P.L. 102-164].

k c . 6402(i)]

(i) REFUNDS TO CERTAIN FIDUCIARIES OF INSOLVENT MEMBERS OF AFFILIATED GROUPS.-Notwithstanding any other provision of law, in the case of an insolvent corporation which is a member of an affiliated group of corporations filing a consolidated return for any taxable year and which is subject to a statutory or court-appointed fiduciary, the Secretary may by regulation provide that any refund for such taxable year may be paid on behalf of such insolvent corporation to such fiduciary to the extent that the Secretary determines that the refund is attributable to losses or credits of such insolvent corporation.

Amendments

P.L. 105-33, § 5514(a)(1):

Act Sec. 5514(a)(1) struck the change made by Act Sec. 110(i)(7)(B) of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193), which redesignated Code Sec. 6402(i) as Code Sec. 6402(j). The provision of law added by P.L. 104-193 is restored as if Act Sec. 110(i)(7)(B) had not been enacted. Thus, subsection (j) of Code Sec. MO2 is now designated as subsection (i) of Code Sec. 6402.

The above amendment is effective on July 1, 1997.

P.L. 104-193, § 110(i)(7)(B):

Act Sec. 110(i)(7)(B) amended Code Sec. 6402 by redesignating subsection (i) as subsection (j).

The above amendment is effective on July 1, 1997.

P.L. 100-647, § 6276:

Act Sec. 6276 amended Code Sec. 6402 by adding at the end thereof new subsection (i) to read as above.

The above amendment is effective on November 10, 1988.

[Sec. 6403]**SEC. 6403. OVERPAYMENT OF INSTALLMENT.**

In the case of a tax payable in installments, if the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 6402.

(Sec. 6404)**SEC. 6404. ABATEMENTS.****[Sec. 6404(a)]**

(a) GENERAL RULE.-The Secretary is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

Sec. 6402(h)

- (1) is excessive in amount, or
- (2) is assessed after the expiration of the period of limitations properly applicable thereto, or
- (3) is erroneously or illegally assessed.

Amrmdments

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

[Sec. 6404(b)]

(b) **NO CLAIM FOR ABATEMENT OF INCOME, ESTATE, AND GIFT TAXES.**—No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under subtitle A or R.

[Sec. 6404(c)]

(c) **SMALL TAX BALANCES.**—The Secretary is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if the Secretary determines under uniform rules prescribed by the Secretary that the administration and collection costs involved would not warrant collection of the amount due.

Amendments

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

[Sec. 6404(d)]

(d) **ASSESSMENTS ATTRIBUTABLE TO CERTAIN MATHEMATICAL ERRORS BY INTERNAL REVENUE SERVICE.**—In the case of an assessment of any tax imposed by chapter 1 attributable in whole or in part to a mathematical error described in section 6213(g)(2)(A), if the return was prepared by an officer or employee of the Internal Revenue Service acting in his official capacity to provide assistance to taxpayers in the preparation of income tax returns, the Secretary is authorized to abate the assessment of all or any part of any interest on such deficiency for any period ending on or before the 30th day following the date of notice and demand by the Secretary for payment of the deficiency.

Amendments

P.L. 96-589, § 6(b)(2):

Amended Code Sec. 6404(d) by striking out "section 6213(f)(2)(A)" and inserting in lieu thereof "section 6213(g)(2)(A)", effective October 1, 1979, but inapplicable to any proceeding under the Bankruptcy Act commenced before that date.

P.L. 94-455, § 1212(a):

Added Code Sec. 6404(d) to read as above. Applicable with respect to returns filed for taxable years ending after October 4, 1976.

[Sec. 6404(e)]

(e) **ABATEMENT OF INTEREST ATTRIBUTABLE TO UNREASONABLE ERRORS AND DELAYS BY INTERNAL REVENUE SERVICE.**—

(1) **IN GENERAL.**—In the case of any assessment of interest on-

(A) any deficiency attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Internal Revenue Service (acting in his official capacity) in performing a ministerial or managerial act, or

(B) any payment of any tax described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to such officer or employee being erroneous or dilatory in performing a ministerial or managerial act,

the Secretary may abate the assessment of all or any part of such interest for any period. For purposes of the preceding sentence, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment.

(2) **INTEREST ABATED WITH RESPECT TO ERRONEOUS REFUND CHECK.**—The Secretary shall abate the assessment of all interest on any erroneous refund under section 6602 until the date demand for repayment is made, unless—

- (A) the taxpayer (or a related party) has in any way caused such erroneous refund, or
(B) such erroneous refund exceeds \$50,000.

Amcndmnts

P.L. 104-168, § 301(a)(1)-(2):

Act Sec. 301(a)(1)-(2) amended Code Sec. 6404(e)(1) by inserting "unreasonable" before "error" each place it appears in subparagraphs (A) and (B), and by striking "in performing a ministerial act" each place it appears and inserting "in performing a ministerial or managerial act".

P.L. 104-168, § 301(b)(1)-(2):

Act Sec. 301(b)(1)-(2) amended Code Sec. 6404(e) by striking "ASSESSMENTS" and inserting "ABATEMENT", and by inserting "UNREASONABLE" before "ERRORS" in the heading.

The above amendments apply to interest accruing with respect to deficiencies or payments for tax years beginning after July 30, 1996.

P.L. 100-647, § 1015(n)(1)-(2):

Act Sec. 1015(n)(1)-(2) amended Code Sec. 6404(e)(1)(B) by inserting "error or" before "delay", and by inserting "erroneous or" before "dilatory".

The above amendment is effective as if included in the provision of the Tax Reform Act of 1986 (P.L. 99-514) to which it relates.

P.L. 99-514, § 1563(a):

Act Sec. 1563(a) amended Code Sec. 6404 by adding at the end thereof new subsection (e) to read as above.

The above amendment applies to interest accruing with respect to deficiencies or payments for tax years beginning after December 31, 1978. However, see Act Sec. 1563(b)(2), below.

(b) No claim for abatement may be filed with respect to income, estate, or gift tax.

(c) Except in case of income, estate, or gift tax, if more than the correct amount of tax, interest, additional amount assessed but not paid to the district director, the person against whom the assessment is made may file a claim for abatement or overassessment. Each claim for abatement under this section shall be made on Form 843. In the case of a claim filed prior to April 15, 1968, the claim shall be filed in the office of the internal revenue officer by whom the tax was assessed or with the assistant regional commissioner (alcohol, tobacco, and firearms) where the regulations respecting the particular tax to which the claim relates specifically require the claim to be filed with that officer; otherwise, the claim shall be filed with the service center serving the internal revenue district in which the tax was assessed. Form 843 shall be made in accordance with the instructions relating to such form.

(d) The Commissioner may issue uniform instructions to district directors authorizing them, to the extent permitted by such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

T.D. 6119, 12/31/54, amend. T.D. 6585, 12/27/61. T.D. 6950, 4/3/68, T.D. 7008, 2/28/69. T.D. 7188, 6/28/72.

§ 301.6404-2T Definition of ministerial act (temporary).

(n) In general. Section 6404(e)(1) provides that the Commissioner may (in his or her discretion) abate the assessment of all or any part of interest on-

(f) Any deficiency (as defined in section 6211(a), relating to income, estate, gift, generation-skipping, and excise taxes) attributable in whole or in part to any error or delay by an officer or employee of the Internal Revenue Service (acting in an official capacity) in performing a ministerial act, or

(2) Any payment of any tax described in section 6212(a) (relating to income, estate, gift, generation-skipping, and certain excise taxes) to the extent that any delay in such payment is attributable to such an officer or employee being dilatory in performing a ministerial act. An error or delay in performing a ministerial act shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved or to a person related to the taxpayer within the meaning of section 267(b) or section 707(b)(1). Moreover, an error or delay in performing a ministerial act shall be taken into account only if it occurs after the Service has contacted the taxpayer in writing with respect to the deficiency or payment.

(b) Ministerial act. (1) Definition. The term "ministerial act" means a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the application of federal tax law (or other federal or state law) is not a ministerial act.

(2) Examples. The definition of ministerial act may be illustrated by the following examples.

Example (1). A taxpayer moves from one state to another before the Internal Revenue Service selects the taxpayer's income tax return for examination. A letter explaining that the return has been selected for examination is sent to the taxpayer's old address and then forwarded to the new address. The taxpayer timely responds, asking that the audit be transferred to the Service's district office that is nearest the new address. The group manager approves the request. After the request for transfer has been approved, the transfer of the case is a ministerial act. The Commissioner may (in his or her discretion) abate interest attributable to a delay in transferring the case.

Example (2). An examination of a taxpayer's income tax return reveals a deficiency with respect to which a notice of deficiency will be issued. After the taxpayer and the Internal Revenue Service have identified all agreed and unagreed issues, the notice has been prepared and reviewed (including review by District Council, if necessary) and any other relevant prerequisites have been completed. The issuance of the notice of deficiency is a ministerial act. The Commissioner may (in his or her discretion) abate interest attributable to a delay in issuing the notice.

Example (3). A taxpayer invested in a tax shelter and reported a loss from the tax shelter on the taxpayer's income tax return. Internal Revenue Service personnel conducted an extensive examination of the tax shelter, and the processing of the taxpayer's case was delayed during such examination. Because the period of limitations on assessment was about to expire, the taxpayer executed a consent to extend the period of limitations. The time required to process the taxpayer's case was not a result of a delay in performing a ministerial act; consequently, interest attributable to this period cannot be abated under paragraph (a) of this section.

Example (4). A revenue agent is sent to a training course, and the agent's supervisor decides not to reassign the agent's cases. During the training course, no work is done on the cases assigned to the agent. Neither the decision to send the agent to the training course nor the decision not to reassign the agent's cases is, under the circumstances, a ministerial act. Thus, interest attributable to the delay cannot be abated.

Example (5). A taxpayer who claimed a loss from a tax shelter on the taxpayer's income tax return is notified that the Internal Revenue Service intends to examine the return. However, because of other work priorities and resource limitations, a decision is made not to commence the examination for an extended period thereafter. The decision not to commence the examination involves the exercise of judgment and discretion and is not a ministerial act; consequently, interest attributable to the period of delay cannot be abated.

(c) Effective date. The provisions of this section apply to interest accruing with respect to deficiencies or payments of tax described in section 6212(a) for taxable years beginning after December 31, 1978. If a refund or credit of interest attributable to the application of paragraph (a) of this section to a tax liability arising with respect to any such taxable year is prevented at any time on or before October 22, 1987, by the operation of any law or rule of law (including res judicata), refund or credit of such interest (to the extent attributable to the application of paragraph (a) of this section) may, nevertheless, be made or allowed if a claim for such interest is filed on or before October 22, 1987.

T.D. 8150, 8/10/87.

§ 301.6404-3 Abatement of interest attributable to delay in issuing notice of deficiency

(a) General rule. The amount of interest attributable to a delay in issuing a notice of deficiency shall be abated if the delay is attributable to a ministerial act.

(b) Requirements. The abatement of interest attributable to a delay in issuing a notice of deficiency shall apply only if-

- (i) The written notice of deficiency is issued;
(ii) The taxpayer requests a refund or credit of interest;
(iii) The taxpayer timely responds to the notice of deficiency.

(2) Advice was issued. The abatement of interest attributable to a delay in issuing a notice of deficiency shall apply only if the taxpayer has received written advice from the Service that the delay in issuing the notice of deficiency is attributable to a ministerial act.

(i) Advice received from the Service. The abatement of interest attributable to a delay in issuing a notice of deficiency shall apply only if the taxpayer has received written advice from the Service that the delay in issuing the notice of deficiency is attributable to a ministerial act.

(ii) Amended return. The abatement of interest attributable to a delay in issuing a notice of deficiency shall apply only if the taxpayer has received written advice from the Service that the delay in issuing the notice of deficiency is attributable to a ministerial act.

(iv) Advice not received. The abatement of interest attributable to a delay in issuing a notice of deficiency shall apply only if the taxpayer has received written advice from the Service that the delay in issuing the notice of deficiency is attributable to a ministerial act.

(v) Period of limitation. The abatement of interest attributable to a delay in issuing a notice of deficiency shall apply only if the taxpayer has received written advice from the Service that the delay in issuing the notice of deficiency is attributable to a ministerial act.

- (A) Enactment of a law;
(B) A decision of a court;
(C) The issuance of a notice of deficiency;
(D) The issuance of a refund or credit of interest.

(3) Advice was issued. The abatement of interest attributable to a delay in issuing a notice of deficiency shall apply only if the taxpayer has received written advice from the Service that the delay in issuing the notice of deficiency is attributable to a ministerial act.

overpayment installments of tax amount of tax refunded as to 301.6402-4.

contained in temporary).

in to tax attributable Internal Revenue.

rest. ite and accurate.

ended Reg 8 by P.L. 100-

the regional service unpaid portion of correct tax liability to the expiration date, or if the assessment is not a ministerial act.

Att. 3

Payment or Deposit

Deposits differ from payments in two ways:

- 1) You can have all or part of your deposit returned to you without filing for a refund. However, if you request and receive your deposit and we later assess a deficiency for that period and type of tax, we will figure the interest as if the funds were never on deposit. Also, we will not return your deposit if one of the following situations apply:
 - a) We assess a tax liability.
 - b) We determine that by returning it, we may not be able to collect a future deficiency.
 - c) We determine that it should be applied against another tax liability.

- 2) Deposits do not earn interest. No interest will be included when a deposit is returned to you.

If you send money before being notified of a notice of deficiency, you can ask the IRS to treat it as a deposit. You must make your request in writing. However, if the following conditions exist, the IRS will treat the amount as a payment:

- You do not request it to be a deposit,
- You send the money after being notified of a proposed liability, and
- You send an amount that is large enough to cover the proposed liability.

If the amount you send is the same as or is more than the proposed liability, we will not send you a notice of deficiency. If we do not send you a notice of deficiency, you cannot take your case to the Tax Court. See *Tax Court*, later.

If, after we have mailed the notice of deficiency, you send money without written instructions, we will treat it as a payment. You will still be able to petition the Tax Court.

If you send money after receiving a notice of deficiency and you have specified in writing that it is a deposit in the nature of a cash bond, we will treat it as a deposit if you send it before either:

The close of the 90-day or 150-day period for filing a petition with the Tax Court to appeal the deficiency, or

The Tax Court decision is final, if you have filed a petition.

Using a Deposit to Pay the Tax

We will apply your deposit against any amount you owe if you agree with the examiner's proposed changes after the examination. We will not mail you a notice of deficiency and you will not have the right to take your case to the Tax Court.

If you do not agree to the full amount of the deficiency after the examination, we will mail you a notice of deficiency. Then, we will apply your deposit against the proposed deficiency unless you write to us before the end of the 90-day or 50-day period, stating that you still want the money to be treated as a deposit. You will still have the right to take your case to the Tax Court. See *If You Do Not Agree*, discussed earlier.

Interest Due to Error or Delay by the Internal Revenue Service

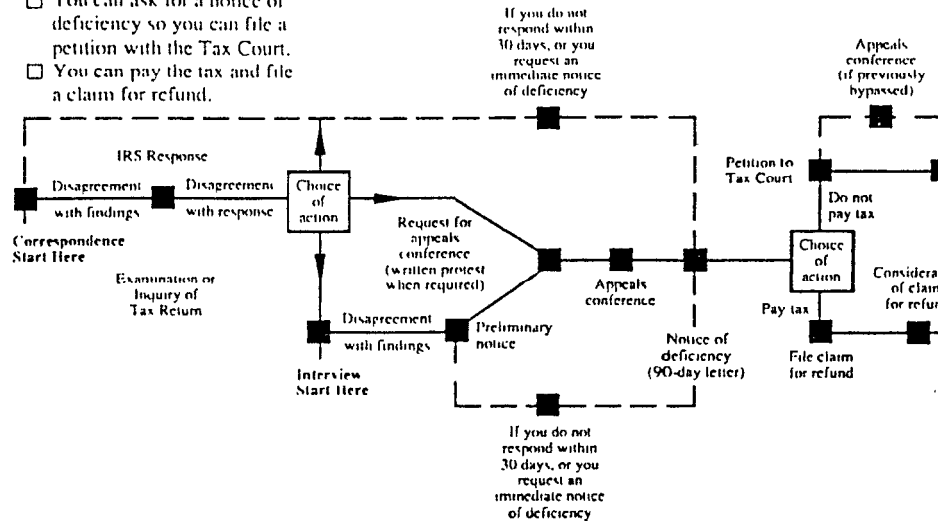
We may lower the interest on tax you owe when the interest is due to an error or delay by an IRS official performing a ministerial act or duty (discussed later). We will only lower the interest in the following taxes:

- Income,
- Estate,
- Gift,
- Generationskipping, and
- Certain excise taxes,

Income Tax Appeal Procedure

At any stage

- You can agree and arrange to pay.
- You can ask for a notice of deficiency so you can file a petition with the Tax Court.
- You can pay the tax and file a claim for refund.



We will not lower the interest if you or anyone related to you contributed significantly to the error or delay. Also, we will only lower the interest if the error or delay happened after we contacted you in writing. An audit notification letter is such a contact.

A Ministerial act is a procedural or mechanical act, not involving the exercise of judgment or discretion, that occurs during the processing of your case after all prerequisites (for example, conferences and review by supervisors) have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

Example 1. You move from one state to another before the IRS selects your tax return for examination. A letter stating that your return has been selected is sent to your old address and then forwarded to your new address. When you get the letter, you respond with a request that the examination be transferred to the district office closest to your new address. The examination group manager approves your request. After your request has been approved, the transfer is a ministerial act. We may reduce the interest because of any delay in transferring the case.

Example 2. An examination of your return reveals tax due for which we will issue a statutory notice of deficiency (90-day letter). After you and the IRS discuss the issues, the notice is prepared and reviewed. After the review process, issuing the notice of deficiency is a ministerial act. If we delay sending the notice of deficiency to you, interest resulting from the delay may be reduced.

Example 3. A revenue agent is examining your tax return. During the middle of the examination, the agent is sent to a training course. The agent's supervisor decides not to reassign your case, so the work on it is delayed until the agent returns. Interest from the delay cannot be reduced, because neither the decision to send the agent to the training class nor the decision not to reassign your case to another agent is, under the circumstances, a ministerial act.

How to request reduction of interest. You request a reduction of interest on Form 843, *Claim for Refund and Request for Abatement*. You should file the claim with the IRS Service Center where you filed the tax return that was affected by the ministerial error or delay. If you do not remember the Service Center where you filed that tax return, send your claim to the Service Center where you filed your last tax return.

You should fill in your name and address and complete lines 1 through 4, whichever are applicable. Show on line 5 the tax period affected, not the period for which you are requesting a reduction of interest. Leave lines 6 and 9 of Form 643 blank. On line 7, *Dates of Payment*, show the dates of any payment of interest or tax liability related to the tax period in question. You should check the box of line 8b(i).

Show on line 10 of Form 643:

- The type of tax involved,
- The date we first contacted you in writing regarding your payment or tax due,
- The specific period for which you are requesting reduction of interest,
- The circumstances of the case, and
- The reason why you believe that failure to reduce the interest would result in grossly unfair treatment.

Generally, you should file a separate Form 643 for each tax period and each type of tax. However, complete only one Form 843 if the interest is from our error or delay and affected your tax for more than one tax period or for more than one type of tax (for example, where we were examining two or more tax years). You do not have to figure the dollar amounts of interest that you want lowered.

If your request for reduction of interest is denied, you may appeal the decision to the Appeals Office.

Appeal Rights

Because people sometimes disagree on tax matters, the Service has an appeals system. Most differences can be settled within this system without expensive and time-consuming court trials.

However, your reasons for the disagreement must come within the scope of the tax laws. For example, you cannot appeal your case based only on moral, religious, political, constitutional, conscientious, or similar grounds.

If you do not want to appeal your case within the IRS, you can take your case directly to court.

Appeal Within the IRS

You may appeal an IRS tax decision to a regional Appeals Office, which is independent of your local District Director or Service Center Director. The regional Appeals Office is the only level of appeal

Allow DOR to require rounding of amounts on returns to whole dollars

Wisconsin Department of Revenue
IS&E Division
August 12, 1998

TITLE: Allow the Department to Require Rounding of Amounts on Tax Returns to Whole Dollars

DESCRIPTION OF CURRENT LAW AND PROBLEM:

Current law does not allow the department to require taxpayers to round amounts entered on tax returns to whole dollars. Imposing such a requirement would simplify tax return preparation and processing without significant shifts in amounts owed or overpaid. In a recent survey, the Federation of Tax Administrators found that 38 states either require or permit rounding on tax returns. Of these, 20 require rounding for one or more types of tax.

The only provision in current law that addresses rounding to whole dollars is section 71.80(19), Wis. Stats. This provision allows rounding on income or franchise tax returns only, and only on the total amount shown on a return. It also expressly allows return preparers to elect not to use whole dollar amounts.

Recent department initiatives underscore the need for a rounding requirement. In 1996, the department implemented scanning/imaging to capture data from sales and use tax returns. Capturing only whole dollar amounts would make the process of scanning and verifying data more efficient and accurate,

The department is currently engaged in a project to develop an integrated tax system. This is a single function-based system that will replace several 'current systems which are based on separate tax types. This system will provide employees with more accurate and complete data for all tax types so that they can provide better service to taxpayers. Applying common return preparation rules among all tax types would facilitate integration of tax processing.

RECOMMENDATION FOR ACTION:

It is recommended that section 71.80(19) be amended and other provisions be added to allow the department to require rounding to whole dollars of all amounts 'on returns for income and franchise tax, withholding tax, sales and use tax, estate tax, exposition tax, motor vehicle fuels taxes, beer and liquor taxes, tobacco products tax, premier resort area tax, rental vehicle fee, and dry cleaning fee, and on claims for homestead credit and farmland preservation credit.

²
see local food & beverage & local rental car

FISCAL ADMINISTRATIVE IMPACT:

Elimination of a decimal point and the cents digits would increase speed of data capture, and reduce the amount of data storage space required.

DRAFTING INSTRUCTIONS:

Modify section 71.80(19) to allow the department to-rounding of all amounts on returns to whole dollars. Add similar rounding provisions or references to section 71.80(19) in sections 72.30, 77.61, 139.11, and 439.82. Add references to section 71.80(19) or the rounding provision in 77.61 in sections 77.982(2), 77.991(2), 77.9941(4), 77.9951(2), 77.9964(2), and 78.68(10). *to 71.58*

EFFECTIVE DATE OR INITIAL APPLICABILITY:

Taxable years beginning January 1, 2000.

PERSON TO CONTACT:

Diane L. Hardt - (608) 266-6798

PREPARED BY: Brad Matthiesen
August 12, 1998

*139.38?
- Jen*