



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

LRB-24372

JK:K
RMR

PI submit

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

WPD: Fix Request Sheet D-N

gen

1 **AN ACT** ...; **relating to:** the abatement of interest charges on taxes, the liability

2 of married persons filing a joint income tax return, compromising delinquent

3 income and franchise taxes, rounding dollar amounts to whole dollars on all tax

4 returns, allowing a mathematical computation of sales and use taxes, items

5 used exclusively for tax exemption purposes, paying taxes with a credit card,

6 *extending the time* ~~an extension~~ for filing a tax withholding report ~~and~~, excluding the temporary

7 recycling surcharge from the computation of estimated tax payments.

granting rule-making authority making an appropriation and providing a penalty

Analysis by the Legislative Reference Bureau

COMPROMISING TAXES

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. If DOR determines that the taxpayer is unable to pay in full the amount due, based on an examination of the taxpayer under oath, the taxpayer's financial statements and any other information required by DOR, DOR determines the amount that the taxpayer is able to pay and then enters a compromise order reducing the taxes, costs, penalties and interest owed by the taxpayer.

If within three years from the date that DOR enters the compromise order DOR determines that the taxpayer has an income or owns property that is sufficient to

enable the taxpayer to pay the remainder of the original delinquent ~~tax~~ ^{taxes}, including costs, penalties, and interest, DOR must reopen the compromise order and order the payment in full of such ~~tax~~ ^{taxes}, costs, penalties, and interest.

This bill expands current law so that DOR is authorized to compromise any taxes, costs, penalties, and interest that are due from a taxpayer, regardless of whether ~~the~~ the taxes, costs, penalties and interest are delinquent.

INCOME AND FRANCHISE TAXES

Under current law, spouses that file a joint income tax return are both liable for the payment of any tax related to that return. However, DOR may relieve a person of any tax liability related to a joint return, in a manner specified by the Internal Revenue Code and adopted by this state. Generally, DOR may relieve a person of any tax liability related to a joint return if the person's spouse did not notify the person of any tax liability or understatement of taxes related to the joint return. This bill corrects an outdated reference to the sections of the Internal Revenue Code that relate to a spouse's tax liability for a joint income tax return.

Under current law, an employer is required to deduct and withhold state income taxes from an employee's ~~pay~~ ^{pay} and to deposit those taxes with DOR on a quarterly basis. An employer must also file a tax withholding report with DOR on a monthly, quarterly or annual basis. Under current law, DOR cannot grant an employer an extension for filing such a report. Before 1999, DOR could grant a ~~30 day~~ ^{30-day} extension for filing a withholding report to an employer who showed good cause for granting that extension. This bill restores the prior law which allowed DOR to grant such an extension.

Under current law, a temporary recycling surcharge is imposed on a business or a corporation based on the net income of a business or the gross tax liability of a corporation. The temporary recycling surcharge amount that a business or corporation ~~must pay~~ ^{paid in the previous taxable year} is included in the calculation to determine the estimated tax payments that are due from a business or corporation for a taxable year. The temporary recycling surcharge will not be imposed on a business or a corporation for taxable years ending after ~~April~~ ^{the current}, 1999. Under this bill, the temporary recycling surcharge amount will not be included in the calculation to determine the estimated tax payments that are due from a business or corporation for taxable years ending after ~~April~~ ^{March 31}, 1999.

March 31

promulgated

SALES AND USE TAXES

Under current law, a retailer is required to use a bracket system, as determined by DOR, to compute the sales or use ~~tax~~ ^{taxes} that the retailer must collect from the sale of goods. Under this bill, a retailer may also use a straight mathematical computation, under rules ~~prescribed~~ ^{prescribed} by DOR, to compute the sales or use ~~tax~~ ^{taxes} that the retailer must collect from the sale of goods.

Under current law, the sales of certain goods are exempt from the sales and use ~~tax~~ ^{taxes} if those goods are used exclusively for a particular purpose. This bill clarifies ^{the scope} such exemptions by providing that the sale of certain goods are exempt from the sales and use ~~tax~~ ^{taxes} if those goods are used in an exempt manner. to the exclusion of all other uses, except for other uses that do not exceed 5% of total use in a year.

of

taxes taxes

Under current law, if a seller makes a claim for a refund of sales taxes or use taxes and the claim is honored, the seller is required to pass along the refund and related interest to the buyers and to submit to DOR the portion of the refund that could not be passed on, along with a penalty. Under current law, if a seller receives a sales or use tax refund as the result of an audit, the seller is not required to submit the refund and related interest to the buyers. Also, a seller is not required to submit to the buyers sales or use taxes that are collected erroneously ~~was~~

This bill requires a seller who receives any refund of sales or use taxes, or who collects sales or use taxes erroneously, to submit such a refund to the buyer within 60 days ~~from~~ receiving a refund or after discovering that the seller has collected taxes erroneously. Any portion of a refund or taxes not submitted to the buyer within that 60 days must be submitted to DOR, along with a penalty.

after

3/1/04

OTHER TAXATION

Under current law, a taxpayer must pay interest on unpaid taxes at the rate of 12% a year. However, if a taxpayer pays more than the taxpayer owes in taxes, DOR pays the taxpayer a refund of the overpayment, along with interest on the overpayment at the rate of 9% a year. This bill changes the interest rate on unpaid taxes from 12% to 9%.

Under current law, DOR may absolve a taxpayer of any liability for interest and penalties on taxes owed by the taxpayer if the taxpayer shows that such liability resulted from the taxpayer's reliance on an erroneous written statement made by an employe of DOR, acting in the employe's official capacity, and if the taxpayer had given the employe accurate and adequate information. This bill changes current law so that DOR may absolve a taxpayer of any liability for interest and penalties on taxes owed by the taxpayer if the taxpayer shows that such liability resulted from an unreasonable error or delay by an employe or officer of DOR acting in an official capacity and performing a ministerial or managerial act, and if the taxpayer had employe's accurate and adequate information. ~~who was~~

Under current law, a taxpayer may round dollar amounts on an income or franchise tax return to the nearest whole dollar. This bill allows a taxpayer to also round dollar amounts to the nearest whole dollar on tax returns or tax reports related to sales and use taxes, estate taxes, fuel taxes, cigarette and tobacco product taxes, alcohol taxes, food and beverage taxes, premier resort area taxes, rental car fees and dry cleaning fees.

or officer

This bill allows DOR to accept payment for taxes, costs, penalties and interest from a taxpayer by use of a credit card and allows DOR to impose a credit card service charge on such payments.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

also requires

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

This bill requires that a taxpayer to round dollar amounts to the nearest whole dollar on income or franchise tax return.

1 **SECTION 1.** 20.566 (1) (hd) of the statutes is created to read:

2 **20.566 (1) (hd) Credit cardpayment service charge.** From moneys received from
3 credit card payment service charges collected under s. 71.80 (21) (c), a sum sufficient
4 to pay the costs incurred by the department of revenue to provide ^{for} the payment of
5 taxes by credit card, including the cost of contracting services under s. 71.80 (21) (d).

6 **SECTION 2.** 50.14 (4) of the statutes is amended to read:

7 50.14 (4) Sections 77.59 (1) to ~~(5)~~ ^{5m}, (6) (intro.), (a) and (c) and (7) to (lo),
8 77.60 (1) to (7), (9) and (10), **77.61 (9)** and (12) to (14) and 77.62, as they apply to the
9 taxes under **subch. III** of ch. 77, apply to the assessment under this section.

10 **SECTION 3.** 71.03 (7) (intro.) of the statutes is amended to read:

11 71.03 (7) **EXTENSION OF TIME TO FILE.** (intro.) Returns of natural persons and
12 fiduciaries that require a statement of amounts or information contained or entered
13 on a corresponding return under the ~~internal revenue code~~ Internal Revenue Code
14 shall be filed within the time fixed under that code for filing of the corresponding
15 federal return. Any extension of time granted by law or by the ~~internal revenue~~
16 service Internal Revenue Service for the filing of that corresponding federal return
17 extends the time for filing under this chapter if a copy of the taxpayer's application
18 to the ~~internal revenue service~~ Internal Revenue Service requesting the extension
19 is filed with the return under this chapter or if a copy of any request for an extension
20 required by the ~~interi revenue service~~ Internal Revenue Service is filed with the
21 return under this chapter or at an earlier date that the department prescribes by rule
22 and if the taxpayer pays the Wisconsin tax in the manner applicable to federal
23 income taxes under the ~~internal revenue code~~. Internal Revenue Code Taxes payable upon the filing of the
24 return do not become delinquent during the period of an extension but are subject
25 to interest at the rate of ~~12%~~ 9% per year during such period except as follows:

1 **SECTION 4.** 71.09 (1) (b) of the statutes is amended to read:

2 71.09 (1) (b) "Tax shown on the return" and "tax for the taxable year" mean the
3 net tax imposed under s. 71.02 after reduction for exemptions to, and credits against,
4 that tax but before reduction by amounts withheld under **subch. X** and before
5 reduction for amounts paid as estimated tax under this section for that tax plus the
6 tax imposed under s. 71.08 before reduction for amounts paid as estimated tax under
7 this section for that tax plus, for taxable years ending before April 1, 1999, the
8 surcharge imposed under s. 77.93 before reduction for amounts paid as estimated tax
9 under this section for that surcharge.

10 **SECTION 5.** 71.10 (6) (a) of the statutes is amended to read:

11 71.10 (6) (a) *Joint returns.* Persons filing a joint return are jointly and severally
12 liable for the tax, interest, penalties, fees, additions to tax and additional
13 assessments under this chapter applicable to the return. A person shall be relieved
14 of liability in regard to a joint return in the manner specified in section ~~6013(e)~~ 6015
15 (a) to (d) and (f) of the ~~internal revenue code, notwithstanding the amount or~~
16 ~~percentage of the understatement~~ Internal Revenue Code. Internal Revenue Code

17 **SECTION 6.** 71.10 (6) (b) of the statutes is amended to read:

18 71.10 (6) (b) *Separate returns.* A spouse filing a separate return may be
19 relieved of liability for the tax, interest, penalties, fees, additions to tax and
20 additional assessments under this chapter ~~with regard to unreported marital~~
21 ~~property income~~ in the manner specified in section 66 (c) of the ~~internal revenue code.~~
22 The department may not apply ch. 766 in assessing a taxpayer with respect to
23 marital property income the taxpayer did not report if that taxpayer failed to notify
24 the taxpayer's spouse about the amount and nature of the income before the due date,
25 including extensions, for filing the return for the taxable year in which the income

1 was derived. The department shall include all of that marital property income in the
 2 gross income of the taxpayer and exclude all of that marital property income from the
 3 gross income of the taxpayer's spouse.

4 **SECTION 7.** 71.10 (6m) (a) of the statutes is amended to read:

5 71.10 (6m) (a) A formerly married or remarried person filing a return for a
 6 period during which the person was married may be relieved of liability for the tax,
 7 interest, penalties, fees, additions to tax and additional assessments under this
 8 chapter ~~for unreported marital property income from that period~~ as if the person
 9 were a spouse under section 66 (c) of the ~~internal revenue code~~. The department may
 10 not apply ch. 766 in assessing the former spouse of the person with respect to marital
 11 property income that the former spouse did not report if that former spouse failed to
 12 notify the person about the amount and nature of the income before the due date,
 13 including extensions, for filing the return for the taxable year during which the
 14 income was derived. The department shall include all of that marital property
 15 income in the gross income of the former spouse and exclude all of that marital
 16 property income from the gross income of the person.

17 **SECTION 8.** 71.24 (7) (intro.) of the statutes is amended to read:

18 71.24 (7) **EXTENSIONS.** (intro.) In the case of a corporation required to file a
 19 return, when sufficient reason is shown, the department of revenue may on written
 20 request allow an extension of 30 days or until the original due date of the
 21 corporation's federal return, whichever is later, if the corporation has not received
 22 an extension on its federal return. Any extension of time granted by law or by the
 23 ~~internal revenue service~~ Internal Revenue Service for the filing of corresponding
 24 federal returns shall extend the time for filing under this subchapter to 30 days after
 25 the federal due date if a copy of any extension requested of the ~~internal revenue~~

Internal Revenue Code

1 ~~service~~ Internal Revenue Service is filed with the return. Termination of an
2 automatic extension by the ~~inter revenue service~~ Internal Revenue Service, or its
3 refusal to grant such automatic extension, shall similarly require that any returns
4 due under this subchapter are due on or before 30 days after the date for termination
5 fixed by the ~~internal revenue service~~ Internal Revenue Service. Except for payments
6 of estimated taxes, income or franchise taxes payable upon the filing of the tax return
7 shall not become delinquent during such extension period, but shall be subject to
8 interest at the rate of ~~12%~~ 9% per year during such period.

✓ 9 **SECTION 9.** 71.29 (1) (b) of the statutes is amended to read:

10 71.29 (1) (b) "Tax shown on the return" and "tax for the taxable year" mean the
11 net taxes imposed under s. 71.23 (1) or (2) after reduction for credits against those
12 taxes but before reduction for amounts paid as estimated tax under this section plus,
13 for taxable years ending before April 1, 1999, the surcharge imposed under s. 77.93
14 before reduction for amounts paid as estimated tax under this section for that
15 surcharge.

16 **SECTION 10.** 71.44 (3) of the statutes is amended to read:

17 71.44 (3) **EXTENSIONS.** In the case of a corporation required to file a return,
18 when sufficient reason is shown, the department of revenue may on written request
19 allow an extension of 30 days or until the original due date of the corporation's federal
20 return, whichever is later, if the corporation has not received an extension on its
21 federal return. Any extension of time granted by law or by the ~~internal revenue~~
22 ~~service~~ Internal Revenue Service for the filing of corresponding federal returns shall
23 extend the time for filing under this subchapter to 30 days after the federal due date
24 if a copy of any extension requested of the ~~inter revenue service~~ Internal Revenue
25 Service is filed with the return. Termination of an automatic extension by the

1 ~~internal revenue service~~ Internal Revenue Service, or its refusal to grant such
2 automatic extension, shall similarly require that any returns due under this
3 subchapter are due on or before 30 days after the date for termination fixed by the
4 ~~internal revenue service~~ Internal Revenue Service. Except for payments of
5 estimated taxes, income or franchise taxes payable upon the filing of the tax return
6 shall not become delinquent during such extension period, but shall be subject to
7 interest at the rate of ~~12%~~ 9% per year during such period.

8 **SECTION 11.** 71.65 (5) (a) 1. of the statutes is amended to read:

9 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or a
10 withholding report under sub. (3) (a) or (b).

11 **SECTION 12.** 71.80 (19) (b)[✓] of the statutes is repealed.

12 **SECTION 13.** 71.80 (21) of the statutes is created to read:

13 71.80 (21) **CREDIT CARD PAYMENTS.** (a) In this subsection, "taxes" has the
14 meaning given in s. **71.91 (6) (a) 4.**

15 (b) The department may accept payment by credit card of taxes that are
16 required to be paid to the department under this chapter.

17 (c) If the department permits the payment of taxes by credit card under par.
18 (b), the department shall impose a credit card service charge on that payment. The
19 credit card service charge shall be in addition to the taxes that are being paid by
20 credit card and shall be an amount that is no greater than necessary to pay the costs
21 to the department for providing payment by credit card, including the cost of any
22 services for which the department contracts under par. (d).

23 (d) The department may contract for services relating to credit card payments
24 under this section.

25 **SECTION 14.** 71.82 (1) (a) of the statutes is amended to read:

1 71.82 (1) (a) In assessing taxes interest shall be added to such taxes at ~~12%~~ 9%
2 per year from the date on which such taxes if originally assessed would have become
3 delinquent if unpaid, to the date on which such taxes when subsequently assessed
4 will become delinquent if unpaid.

5 SECTION 15. 71.82 (1) (c) of the statutes is amended to read:

6 71.82 (1) (c) Any assessment made as a result of the adjustment or disallowance
7 of a claim for credit under s. 71.07, 71.28 or 71.47 or **subch.** VIII or IX, except as
8 provided in sub. (2) (c), shall bear interest at ~~12%~~ 9% per year from the due date of
9 the claim.

10 SECTION 16. 71.82 (2) (b) of the statutes is amended to read:

11 71.82 (2) (b) **Department may reduce delinquent interest.** The department shall
12 provide by rule for reduction of interest under par. (a) to ~~12%~~ 9% per year in stated
13 instances wherein the secretary of revenue determines that reduction is fair and
14 equitable.

15 SECTION 17. 71.82 (2) (d) of the statutes is amended to read:

16 71.82 (2) (d) **Withholding tax.** Of the amounts required to be withheld any
17 amount not deposited or paid over to the department within the time required shall
18 be deemed delinquent and deposit reports or withholding reports filed after the due
19 date shall be deemed late. Delinquent deposits or payments shall bear interest at
20 the rate of 1.5% per month from the date deposits or payments are required under
21 this section until deposited or paid over to the department. The department shall
22 provide by rule for reduction of interest on delinquent deposits to ~~12%~~ 9% per year
23 in stated instances wherein the secretary of revenue determines reduction fair and
24 equitable. In the case of a timely filed deposit or withholding report, withheld taxes
25 shall become delinquent if not deposited or paid over on or before the due date of the

1 report. In the case of no report filed or a report filed late, withheld taxes shall become
2 delinquent if not deposited or paid over by the due date of the report. In the case of
3 an assessment under s. 71.83 (1) (b) 2., the amount assessed shall become delinquent
4 if not paid on or before the first day of the calendar month following the calendar
5 month in which the assessment becomes final, but if the assessment is contested
6 before the tax appeals commission or in the courts, it shall become delinquent on the
7 30th day following the date on which the order or judgment representing final
8 determination becomes final.

9 **SECTION 18.** 71.84 (1) of the statutes is amended to read:

10 71.84 (1) **INDIVIDUALS AND FIDUCIARIES.** Except as provided in s. 71.09 (11), in
11 the case of any underpayment of estimated tax by an individual, estate or trust,
12 except as provided under s. 71.09, there shall be added to the aggregate tax for the
13 taxable year interest at the rate of ~~12%~~ 9% per year on the amount of the
14 underpayment for the period of the underpayment. In this subsection, "the period
15 of the underpayment" means the time period from the due date of the instalment
16 until either the 15th day of the 4th month beginning after the end of the taxable year
17 or the date of payment, whichever is earlier.

18 **SECTION 19.** 71.84 (2) (a) of the statutes is amended to read:

19 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
20 of estimated tax under s. 71.29 or 71.48 there shall be added to the aggregate tax for
21 the taxable year interest at the rate of ~~12%~~ 9% per year on the amount of the
22 underpayment for the period of the underpayment. For corporations, except as
23 provided in par. (b), "period of the underpayment" means the time period from the
24 due date of the instalment until either the 15th day of the 3rd month beginning after
25 the end of the taxable year or the date of payment, whichever is earlier. If 90% of the

1 tax shown on the return is not paid by the 15th day of the 3rd month following the
2 close of the taxable year, the difference between that amount and the estimated taxes
3 paid, along with any interest due, shall accrue delinquent interest under s. 71.91 (1)
4 (a).

5 **SECTION 20.** 71.84 (2) (c) of the statutes is amended to read:

6 71.84 (2) (c) If a refund under s. 71.29 (3m) results in an income or franchise
7 tax liability that is greater than the amount of estimated taxes paid in reduced by
8 the amount of the refund, the taxpayer shall add to the aggregate tax for the taxable
9 year interest at an annual rate of ~~12%~~ 9% on the amount of the unpaid tax liability
10 for the period beginning on the date the refund is issued and ending on the 15th day
11 of the 3rd month beginning after the end of the taxable year, or the date the tax
12 liability is paid, whichever is earlier.

13 **SECTION 21.** 71.91 (6) (e) 3. of the statutes is amended to read:

14 71.91 (6) (e) 3. For purposes of an adjudication under this paragraph, the
15 assessment of the tax upon which the interest or lien of the department is based is
16 conclusively presumed to be valid. Interest shall be allowed for judgments under this
17 paragraph at the rate of ~~12%~~ 9% per year from the date the department receives the
18 money wrongfully levied upon to the date of payment of the judgment or from the
19 date of sale to the date of payment.

20 **SECTION 22.** 71.91 (6) (f) 5. of the statutes is amended to read:

21 71.91 (6) (f) 5. Before the sale, the department shall determine a minimum
22 price for which the property shall be sold. If no person offers for that property at the
23 sale at least the amount of the minimum price, the state shall purchase the property
24 for the minimum price; otherwise, the property shall be sold to the highest bidder.
25 In determining the minimum price, the department shall take into account the

1 expense of making the levy and sale in addition to the value of the property. If
2 payment in full is required at the time of acceptance of a bid and is not paid then, the
3 department shall sell the property in the manner provided under this paragraph.
4 If the conditions of the sale permit part of the payment to be deferred and if that part
5 is not paid within the prescribed period, the department may sue the purchaser in
6 the circuit court for Dane county for the unpaid part of the purchase price and
7 interest at the rate of ~~12%~~ 9% per year from the date of the sale or the department
8 may declare the sale void and may sell the property again under this paragraph. If
9 the property is sold again, the 2nd purchaser shall receive it free of any claim of the
10 defaulting purchaser and the amount paid upon the bid price by the defaulting
11 purchaser is forfeited. Internal Revenue Code

12 SECTION 23. 72.225 (1) of the statutes is amended to read:

13 72.225 (1) If a percentage of the federal tax on an estate may be paid in
14 instalments under section 6166 of the ~~internal revenue code~~, the same percentage
15 of the taxes under this chapter may be paid under the same instalment schedule if
16 written notice of the election to pay in instalments is given to the department within
17 9 months after the decedent's death. The ~~provisions on acceleration~~ Internal Revenue Code
18 6166 (g) of the ~~internal revenue code~~ apply to payments under this section. The
19 interest rate on payments is ~~12%~~ 9% and is calculated from the date of death.

20 SECTION 24. 72.23 of the statutes is amended to read:

21 **72.23 Acceleration and interest.** If the tax imposed by this chapter is not
22 paid when it is due under s. 72.22, interest is due and payable at the rate of ~~12%~~ 9%
23 per year from date of death. In computing time under this section, the day of death
24 is excluded. If any payment of tax or interest under s. 72.225 is not paid when due,
25 the tax and interest due shall be paid upon notice by the department.

133

1 **SECTION 25.** 72.30 (lm) of the statutes is created to read:

2 72.30 **(lm)** WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
3 return filed under ch. 71, applies to a tax return filed under sub. (1).

4 **SECTION 26.** 73.01 (4) (a) of the statutes is amended to read:

5 **73.01 (4)** (a) Subject to the provisions for judicial review contained in s. 73.015,
6 the commission shall be the final authority for the hearing and determination of all
7 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
8 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss.
9 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40,
10 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, subch.
11 XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal
12 there is filed with the commission a stipulation signed by the department of revenue
13 and the adverse party, under s. 73.03 (25), agreeing to an affirmance, modification
14 or reversal of the department's position with respect to some or all of the issues raised
15 in the appeal, the commission shall enter an order affirming or modifying in whole
16 or in part, or canceling the assessment appealed from, or allowing in whole or in part
17 or denying the petitioner's refund claim, as the case may be, pursuant to and in
18 accordance with the stipulation filed. No responsibility shall devolve upon the
19 commission, respecting the signing of an order of dismissal as to any pending appeal
20 settled by the department without the approval of the commission.

21 **SECTION 27.** 73.03 (47) of the statutes is amended to read:

22 73.03 (47) To absolve a taxpayer of liability for interest and penalties if the
23 taxpayer shows that the liability resulted ~~because he or she relied on an erroneous,~~
24 ~~written statement made from an unreasonable error or delay by an employe or officer~~
25 of the department of revenue acting in an official capacity and ~~that performing a~~

subsection

1 ministerial or managerial act, and if the taxpayer had given the employe adequate
2 and accurate information. The department of revenue shall promulgate rules to
3 implement this section.

4 SECTION 28. 73.13 of the statutes is created to read:

5 **73.13 ~~Compromising~~ *Reducing* nondelinquent taxes.** (1) In this section:

6 (a) "Tax" means an amount that is owed to this state under s. 66.75 (1m) (f) 3.
7 or ch. 71, 72, 76, 77, 78 or 139, and that is not delinquent.

8 (b) "Department" means the department of revenue.

9 (2) (a) A taxpayer may petition the department to ~~compromise~~ *reduce* the taxpayer's
10 taxes, including the costs, penalties and interest related to the taxpayer's taxes. The
11 petition shall set forth a sworn statement of the taxpayer and shall be in a form that
12 the department prescribes. The department may examine the taxpayer under oath
13 about the petition and may require the taxpayer to provide the department with
14 financial statements and any other information requested by the department that
15 is related to the petition.

16 (b) If the department determines that the taxpayer is unable to pay the taxes,
17 costs, penalties and interest in full, the department shall determine the amount that
18 the taxpayer is able to pay and shall enter ~~an compromise~~ *an* order reducing the taxes in
19 accordance with the department's determination. The order shall provide that the
20 ~~the order compromise~~ *the order* is effective only if the reduced taxes are paid within 10 days from the
21 date on which the order is issued. The department or its collection agents, upon
22 receipt of the order, shall accept payment in accordance with the order. Upon
23 payment of the ~~compromised~~ *reduced* taxes, the department shall credit the unpaid portion
24 of the principal amount of the taxes and record the unpaid amount of costs, penalties,
25 and interest accrued to the date of the order.

under par. (b)

1 (c) If within 3 years of the date of the ~~compromise~~ order under par. (b) the
2 department ascertains that the taxpayer has an income or owns property sufficient
3 to enable the taxpayer to pay the unpaid portion of the principal amount of the taxes
4 due, including the costs, penalties and interest recorded under par. (b), the
5 department shall reopen the ~~compromise~~ order and order the taxpayer to pay in full
6 the unpaid portion of the principal amount of the taxes due, including the costs,
7 penalties and interest recorded under par. (b). Before the entry of the order for
8 payment, the department shall send a written notice to the taxpayer, by certified
9 mail, ^{par.} advising the taxpayer of the department's intention to reopen the ~~compromise~~
10 order ^{under par. (b)} and fixing a time and place for the appearance of the taxpayer, if the taxpayer
11 desires a hearing. If the department determines that the taxpayer is able to pay the
12 unpaid portion of the principal amount of the taxes due, including the costs, penalties
13 and interest recorded under par. (b), the department shall enter the order for
14 payment in full. The unpaid portion of the principal amount of the taxes due,
15 including the costs, penalties and interest recorded under par. (b), shall be due and
16 payable immediately upon entry of the order for payment in full and shall thereafter
17 be subject to the interest under s. 71.82 (2), as that subsection applies to delinquent
18 income and franchise taxes under s. 71.82, and to the delinquent account fee under
19 s. 73.03 (33m).

20 **SECTION 29. 74.31 (1)** of the statutes is amended to read:

21 74.31 (1) INTEREST CHARGE. The taxation district or county which has not
22 settled shall pay ~~12%~~ 9% annual interest on the amount not timely paid to the taxing
23 jurisdiction, including this state, to which money is due, calculated from the date
24 settlement was required.

25 **SECTION 30. 76.13 (2)** of the statutes is amended to read:

1 76.13 (2) Every tax roll upon completion shall be delivered to the state
2 treasurer and a copy of the tax roll filed with the secretary of administration. The
3 department shall notify, by certified mail, all companies listed on the tax roll of the
4 amount of tax due, which shall be paid to the department. The payment dates
5 provided for in sub. (2a) shall apply. The payment of one-fourth of the tax of any
6 company may, if the company has brought an action in the Dane county circuit court
7 under s. 76.08, be made without delinquent interest as provided in s. 76.14 any time
8 prior to the date upon which the appeal becomes final, but any part of the tax
9 ultimately required to be paid shall bear interest from the original due date to the
10 date the appeal became final at the rate of ~~12%~~ 9% per year and at 1.5% per month
11 thereafter until paid. The taxes extended against any company after the same
12 become due, with interest, shall be a lien upon all the property of the company prior
13 to all other liens, claims and demands whatsoever, except as provided in ss. 292.31
14 (8) (i) and 292.81, which ~~lien~~ may be enforced in an action in the name of the state
15 in any court of competent jurisdiction against the property of the company within the
16 state as an entirety.

17 **SECTION 31.** 76.13 (2a) of the statutes is amended to read:

18 76.13 (2a) Taxes levied under this section shall be paid to the department in
19 semiannual instalments, on May 10 and November 10, on a partially estimated
20 basis. The May 10 payment shall be at least 50% of the total tax assessed for the
21 previous calendar year or 40% of the tax assessed for the current calendar year. Any
22 amounts not paid when due shall become delinquent and shall be subject to interest
23 under s. 76.14. The payment of 25% of the tax of any company may, if the company
24 has brought an action in the Dane county circuit court under s. 76.08, be made
25 without delinquent interest as provided in s. 76.14 any time prior to the date upon

1 which the appeal becomes final, but any part thereof ultimately required to be paid
2 shall bear interest from the original due date to the date the appeal becomes final
3 at the rate of ~~12%~~ 9% per year and at 1.5% per month thereafter until paid.
4 Companies with a tax liability under this section of less than \$2,000 are not required
5 to make semiannual payments but shall pay the full amount of taxes due on or before
6 November 10.

7 SECTION 32. 76.28 (4) (a) of the statutes is amended to read:

8 76.28 (4) (a) If after filing the reports specified in sub. (7) and after the
9 department's computation and assessment of license fees under sub. (2) it is
10 determined that the amount of gross revenues reported is in error, the department
11 shall compute the additional license fee to be paid or the amount of the overpayment
12 of license fee to be r e f u n d e d -. If an additional license fee is due,
13 the department shall give notice to the light, heat and power company against whom
14 the license fee is to be levied. All such additional assessments and claims for refunds
15 for excess license fees paid are subject to the same procedure for review and final
16 determination as additional income or franchise tax assessments and claims for
17 refunds under ch. 71 ~~as far as the same may be applicable~~, except that appeals of
18 denials of claims for refunds shall be made directly to the tax appeals commission
19 and except that the additional license fees shall become delinquent 60 days after
20 notice provided in this subsection or, if review proceedings are held, 60 days following
21 final determination of the review proceedings. All additional license fees shall bear
22 interest at the rate of ~~12%~~ 9% per year from the time they should have been paid to
23 the date on which the additional fees shall become delinquent if unpaid.

24 SECTION 33. 76.48 (5) of the statutes is amended to read:

1 76.48 (5) Additional assessments may be made, if notice of such assessment is
2 given, within 4 years of the date the annual return was filed, but if no return was
3 filed, or if the return filed was incorrect and was filed with intent to defeat or evade
4 the tax, an additional assessment may be made at any time upon the discovery of
5 gross revenues by the department. Refunds may be made if a claim for the refund
6 is filed in writing with the department within 4 years of the date the annual return
7 was filed. Refunds shall bear interest at the rate of 9% per year and shall be certified
8 by the department to the secretary of administration who shall audit the amounts
9 of such overpayments and the state treasurer shall pay the amount audited.
10 Additional assessments shall bear interest at the rate of ~~12%~~ 9% per year from the
11 time they should have been paid to the date upon which they shall become delinquent
12 if unpaid.

13 SECTION 34. 77.10 (2) (a) 1. of the statutes is amended to read:

14 77.10 (2) (a) 1. Any owner of forest croplands may elect to withdraw all or any
15 of such lands from under this subchapter, by filing with the department of natural
16 resources a declaration withdrawing from this subchapter any description owned by
17 such person which he or she specified, and by payment by such owner to the
18 department of natural resources within 60 days the amount of tax due from the date
19 of entry or the most recent date of renewal, whichever is later, as determined by the
20 department of revenue under s. 77.04 (1) with simple interest thereon at ~~12%~~ 9% per
21 year, less any severance tax and supplemental severance tax or acreage share paid
22 thereon, with interest computed according to the rule of partial payments at the rate
23 of ~~12%~~ 9% per year.

24 SECTION 35. 77.51 (~~2~~)^{22m} of the statutes is created to read:

1

22m
77.51 (2) "Used exclusively" means used in an exempt manner under s. 77.54

2 to the exclusion of any other use, except if the other use in a year does not exceed 5%

3 for at least 95% of total use in a year, unless a person who claims an exemption under s. 77.54

4 receives written approval from the department of revenue to use an alternative method

5 ~~method~~, the percentage of other use in a year shall be computed as follows:

6 (a) For an item described in s. 77.54 (5) (b), divide the number of miles the item
7 is driven in ~~a~~ ^{an} exempt manner in the year by the total number of miles the item
8 is driven in the same year. ^{that}

9 (b) For an item other than that which is described in s. 77.54 (5) (b), divide the
10 number of hours ^{that} the item is used in a ~~not~~ ^{an} exempt manner in the year by the total
11 number of hours ^{that} the item is used in the same year. ^{that}

12 SECTION 36. 77.54 (3) (b) 3. of the statutes is repealed.

13 SECTION 37. 77.54 (5) (b) of the statutes is amended to read:

14 77.54 (5) (b) Motor trucks, truck tractors, road tractors, buses, trailers and
15 semitrailers, and accessories, attachments, parts, supplies and materials therefor,
16 that are sold to common or contract carriers who use such motor trucks, truck
17 tractors, road tractors, buses, trailers and semitrailers and that are used exclusively
18 as in the business of the common or contract carriers, including the urban mass
19 transportation of passengers as defined in s. 71.38.

20 SECTION 38. 77.54 (5) (c) of the statutes is amended to read:

21 77.54 (5) (c) Motor vehicles which are not required to be licensed for highway
22 use and which are used exclusively and directly used in conjunction with waste
23 reduction or recycling activities which reduce the amount of solid waste generated,
24 reuse solid waste, recycle solid waste, compost solid waste or recover energy from
25 solid waste. For the purposes of this paragraph, "solid waste" means garbage, refuse,

1 sludge or other materials or articles, whether these materials or articles are
2 discarded or purchased, including solid, semisolid, liquid or contained gaseous
3 materials or articles resulting from industrial, commercial, mining or agricultural
4 operations or from domestic use or from public service activities.

5 **SECTION 39.** 77.54 (6) (a) of the statutes is amended to read:

6 77.54 (6) (a) Machines and specific processing equipment and repair parts or
7 replacements thereof, used exclusively and directly used by a manufacturer in
8 manufacturing tangible personal property and safety attachments for those
9 machines and equipment.

10 **SECTION 40.** 77.54 (26m) of the statutes is amended to read:

11 77.54 **(26m)** The gross receipts from the sale of and the storage, use or other
12 consumption of waste reduction or recycling machinery and equipment, including
13 parts therefor, used exclusively and directly used for waste reduction or recycling
14 activities which reduce the amount of solid waste generated, reuse solid waste,
15 recycle solid waste, compost solid waste or recover energy from solid waste. The
16 exemption applies even though an economically useful end product results from the
17 use of the machinery and equipment. For the purposes of this subsection, "solid
18 waste" means garbage, refuse, sludge or other materials or articles, whether these
19 materials or articles are discarded or purchased, including solid, semisolid, liquid or
20 contained gaseous materials or articles resulting from industrial, commercial,
21 mining or agricultural operations or from domestic use or from public service
22 activities.

23 **SECTION 41.** 77.58 (3) (c) of the statutes is created to read:

24 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
25 applies to a tax return filed under this section.

1 SECTION 42. 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended
2 to read:

3 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the
4 seller has collected from buyers, who collects taxes erroneously from buyers, or who
5 is entitled to a refund that is offset under sub. (5), shall return submit the taxes and
6 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~
7 denartment if the seller cannot locate the buyers, within 60 days after receiving a
8 refund or ~~from~~ ^{after} discovering that the seller has collected taxes erroneously from the
9 buyers. If the seller does not submit the taxes and related interest within that period,
10 the seller shall return submit to the department any part of a refund or taxes that
11 the seller does not return submit to a buyer along with a penalty of 25% of the amount
12 not ~~returned~~ ^{or} submitted or, in the case of fraud, a penalty equal to the amount not
13 returned ~~in the case of fraud~~ submitted.

14 SECTION 43. 77.59 (5) of the statutes is amended to read:

15 77.59 (5) The department may offset the amount of any refund for a period,
16 together with interest on the refund, against deficiencies for another period, and
17 against penalties and interest on the deficiencies, or against any amount of whatever
18 kind, due and owing on the books of the department from the person claiming who
19 is entitled to the refund. If the refund is to be paid to a buyer, the department may
20 also set off amounts in the manner in which it sets off income tax and franchise tax
21 refunds under s. 71.93 and may set off amounts for child support or maintenance or
22 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),
23 (6) and (7).

24 SECTION 44. 77.60 (1) (a) of the statutes is amended to read:

1 77.60 (1) (a) Except as provided in par. (b), unpaid taxes shall bear interest at
 2 the rate of ~~12%~~ 9% per year from the due date of the return until paid or deposited
 3 with the department. Taxes refunded to the seller shall bear interest at 9% per year
 4 from the due date of the return to the date on which the refund is certified on the
 5 refund rolls. An extension of time within which to file a return shall not extend the
 6 due date of the return for purposes of interest computation. Taxes refunded to the
 7 buyer shall bear interest at 9% per year from the last day of the month following the
 8 month during which the buyer paid the tax to the date on which the refund is certified
 9 on the refund rolls.

10 SECTION 45. 77.60 (1) (b) of the statutes is amended to read:

11 77.60 (1) (b) Any unpaid taxes for a calendar year or a fiscal year resulting from
 12 a field audit shall bear interest at the rate of ~~12%~~ 9% per year from the due date of
 13 the taxpayer's Wisconsin income or franchise tax return for that calendar or fiscal
 14 year or, if exempt, from the 15th day of the 4th month of the year after the close of
 15 the calendar or fiscal year for which the taxes are due to the date on which the taxes
 16 are paid or, if unpaid, become delinquent, whichever is earlier.

17 SECTION 46. 77.61 (3) of the statutes is amended to read:

18 77.61 (3) ~~The department~~ ~~shall provide~~ A retailer shall use a bracket system
 19 ~~to be used by retailers~~ [✓] or a straight mathematical computation. under rules
 20 prescribed [✓] by the denartment, in collecting the amount of the tax from ~~their~~ the
 21 retailer's customers, but the use of ~~such brackets~~ the bracket system or a straight
 22 mathematical computation shall not relieve the retailer from liability for payment
 23 of the full amount of the tax levied by ss. 77.51 to 77.62.

24 SECTION 47. 77.87 (3) of the statutes is amended to read:

✓
promulgated

1 77.87 (3) **PAYMENT.** A tax assessed under sub. (1) or (2) is due and payable to
2 the department on the last day of the month following the date the certificate is
3 mailed to the owner. The department shall collect interest at the rate of ~~12%~~ 9% per
4 year on any tax that is paid later than the due date. Amounts received shall be
5 credited to the conservation fund.

6 **SECTION 48.** 77.96 (5) of the statutes is amended to read:

7 77.96 (5) Each person subject to a surcharge under s. 77.93 shall, on or before
8 the due date, including extensions, for filing under ch. 71, file an accurate statement
9 of its gross tax liability or net business income. Payments made after the due date
10 under sub. (2) and on or before the due date under this subsection are not delinquent
11 but are subject to interest at the rate of ~~12%~~ 9% per year.

12 **SECTION 49.** 77.9941 (4) of the statutes is amended to read:

13 77.9941 (4) Sections 77.72 (1), (2) (a) and (3) (a), ~~77.73, 77.74, 77.75, 77.76 (1),~~
14 (2) and (4), 77.77 (1) and (2), 77.785 (1) and 77.79² as they apply to the taxes under
15 subch. ²₄ apply to the tax under this subchapter. Section 77.58 (3c), as it applies to
16 the taxes under subch. III, applies to the tax under this subchapter.

17 **SECTION 50.** 77.9964 (2) of the statutes is amended to read: ^{SS.}

18 77.9964 (2) Except as provided in s. 77.9961 (4), ~~sections~~ 71.74 (1) to (3), (7) and
19 (9), 71.75 (l), (2), (6), (7), (9) and (lo), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5)
20 to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), and (17) and (18) to (19), 71.82
21 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) l., 2. and 6., (2) (a) 1. to 3. and
22 (b) 1. to 3. and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2) and (4) to (6) and 71.93²
23 as they apply to the taxes under ch. 71³ apply to the fees under this subchapter.

24 **SECTION 51.** 78.68 (1) of the statutes is amended to read:

1 78.68 (1) Unpaid taxes shall bear interest at the rate of ~~12%~~ 9% per year from
 2 the due date of the tax until paid or deposited with the department, and all refunded
 3 taxes bear interest at the rate of 9% per year from the due date of the return to the
 4 date on which the refund is certified on the refund rolls.

5 **SECTION 52.** 78.68 (10) of the statutes is amended to read:

6 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (lm) (b), s. 71.75
 7 (2), (4) to (7) and (10) ²as it applies to the taxes under ch. 71 ²applies to the taxes under
 8 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,
 9 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies
 10 to tax returns filed under ch. 71, applies to returns filed under this chapter.

11 **SECTION 53.** 139.11 (2r) of the statutes is created to read:

12 (12) **139.11 (2r) WHOLE DOLLAR AMOUNTS.** Section 7 1.80 (19), as it applies to a ^{tax}return
 13 filed under ch. 71, applies to a report filed under this subchapter.

14 **SECTION 54.** 139.25 (1) of the statutes is amended to read:

15 139.25 (1) **INTEREST AND PENALTIES.** Unpaid taxes bear interest at the rate of
 16 ~~12%~~ 9% per year from the due date of the return until paid or deposited with the
 17 department, and all refunded taxes bear interest at the rate of 9% per year from the
 18 due date of the return to the date on which the refund is certified on the refund rolls.

19 **SECTION 55.** 139.38 (2r) of the statutes is created to read:

20 (20) 139.38 (2r) Section 71.80 (19), as it applies to a ^{tax}return filed under ch. 71,
 21 applies to a report filed under this subchapter.

22 **SECTION 56.** 139.44 (9) of the statutes is amended to read:

23 139.44 (9) Unpaid taxes bear interest at the rate of ~~12%~~ 9% per year from the
 24 due date of the return until paid or deposited with the department, and all refunded

1 taxes bear interest at the rate of 9% per year from the due date of the return to the
2 date on which the refund is certified on the refund rolls.

3 SECTION 57. 139.82 (2r) of the statutes is created to read: tax

4 139.82 (2r) Section 71.80 (19), as it applies to a return filed under ch. 71,
5 applies to a report filed under this subchapter.

6 SECTION 58. Nonstatutory provisions.

7 (1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY Notwithstanding section 77.59
8 (5m) of the statutes, as affected by this act, a seller who is required to submit to a
9 buyer a refund or a tax collected erroneously under section 77.59 (5m) of the statutes,
10 as affected by this act, from sales that occurred after August 31, 1994, but before the
11 effective date of this subsection shall submit that refund or tax to the buyer, or to the
12 department of revenue if the seller cannot locate the buyer, within 60 days after the
13 effective date of this subsection. A refund or tax that is not submitted to the buyer
14 or to the department of revenue within that period is subject to the penalties imposed
15 under section 77.59 (5m) of the statutes, as affected by this act.

16 SECTION 59. Initial applicability.

17 (1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14
18 (4), 73.01 (4) (a), 77.59 (5) ~~of the statutes~~ and ~~applies~~ retroactively to
19 refunds that were due on sales that first occurred on September 1, 1994, and to taxes collected
20 erroneously on September 1, 1994. (4)(c) and

21 (2) INTEREST ON UNPAID TAXES. The treatment of sections 71.03 (7), 71.24 (7) (contra)
22 71.44 (3), 71.82 (1) (a) and (c) ~~and~~ (2) (b) and (d), 71.84 (1) (2) (a) and (c) ~~and~~ (contra)
23 (e) 3. and (f) 5., 72.225 (1), 72.23, 77.10 (2) (a) 1., 77.60 (1) (a) and (b), 77.87 (3), 77.96
24 (5), 78.68 (1), 139.25 (1) and 139.44 (9) of the statutes first applies to tax returns that
25 are filed with the department of revenue on the effective date of this subsection.

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1 (3) MARRIED PERSONS TAX LIABILITY, The treatment of section 71.10 (6) (a) and
2 (b) and (6m) (a) of the statutes first applies to collection activity that commences on
3 the effective date of this subsection.

4 (4) WITHHOLDING REPORTS. The treatment of section 71.65 (5) (a) 1. of the
5 statutes first applies to withholding reports that are due on January 31, 2000.

6 (5) WHOLE DOLLAR AMOUNTS. The treatment of sections 71.80 (19) (b), ~~71.24 (1) (a) (i) (ii)~~
a 7 72.30 (1m), 77.58 (3) (c), 77.9941 (4), 77.9964 (2), 78.68 (10), 139.11 (2r), 139.38 (2r)
8 and 139.82 (2r) of the statutes first applies to returns or reports that are filed with
9 department of revenue on the effective date of this subsection.

10 SECTION 60. Effective dates. This act takes effect on the day after publication,
11 except as follows:

12 (1) SALES AND USE TAX EXEMPTIONS AND COMPUTATIONS. The treatment of sections
13 77.51 (2), 77.54 (5) (b) and (c), (6) (a) and (26m), 77.61 (3) ~~and (4) (a)~~ of the statutes
14 takes effect on the first day of the 2nd month after publication.

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(END)

Handwritten word: beginning

15 (#) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of
sections 50.14 (4), 73.01 (4) (a) and 77.59 (4) (c) and (5) of the
statutes takes effect retroactively on September 1, 1994.
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2437/2dn

JK:....

PK
JK

Tom Ourada:

Please review this draft carefully to ensure that it conveys **your intent**. For purposes of absolving a taxpayer from taxes, penalties or interest, **what is an "unreasonable" error?** Is it necessary to provide that items that are idle **or being repaired** are not included in calculating "other use" for purposes of the sales **and use tax exemptions**? If an item is idle or being repaired **it certainly** isn't being used. If you have any questions, please contact me.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: Joseph.Kreye@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2437/P1dn
JK:kmg:mrc

May 5, 1999

Tom Ourada:

Please review this draft carefully to ensure that it conveys your intent. For purposes of absolving a taxpayer from taxes, penalties or interest, what is an "unreasonable" error? Is it necessary to provide that items that are idle or being repaired are not included in calculating "other use" for purposes of the sales tax and use tax exemptions? If an item is idle or being repaired, it certainly isn't being used. If you have any questions, please contact me.

Joseph T. Kreye
Legislative Attorney
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E-mail: Joseph.Kreye@legis.state.wi.us



State of Wisconsin • DEPARTMENT OF REVENUE

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Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

June 2, 1999

TO: Joe Kreye, LRB

FROM: Sherrie ^{Shemie}Gates-Hendrix

SUBJECT: LRB 2437/P1

I'm attaching some comments on LRB 2437 from our **legal** staff and some technical comments from Clay Seth from the IS&E Division. I think they are pretty **self-explanatory**.

I also have one other thing we'd like to fold into this draft - adding definitions of "pay" and "sign" to the alternate fuel and tobacco products tax statutes. Attached is a page summarizing what we'd like.

I'm also attaching some pages from the draft marked with specific changes and 3 pages of comments that explain most of these changes. Some of these changes occur in the same sections that Clay's memo addresses - I hope this is not too confusing.

If you have any questions on any of this, you can call either Clay Seth (6-8920) or Vicki Gibbons (6-3873). Or you can call me (7-1262), although they know the material far better than I do.

Thanks !

Add to taxpayer friendly bill

Wisconsin Department of Revenue
IS&E Division
June 11, 1998

TITLE: Add definitions of "pay" and "sign."

DESCRIPTION OF CURRENT LAW AND PROBLEM:

When the definition for File, Pay, and Sign were added to the various Excise Tax Statutes, Pay and Sign were not added to s. 78.39 Alternate Fuel and Sign was not added to s. 139.75 Tobacco Products Tax.

RECOMMENDATION:

Add the definition for Sign and Pay to s. 78.39, and Sign to s. 139.75.

FISCAL/ADMINISTRATIVE IMPACT:

This proposal has no fiscal effect. This proposal adds statutory language which was not previously included.

DRAFTING INSTRUCTIONS:

78.39^d

(5^m) "Pay" means mail or deliver funds to the department or, if the department prescribes another method of payment or another destination, use that other method or submit to that other destination.

(5^m) "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

139.75

(9^m) "Sign" means write one's signature or, if the department prescribes another method of authenticating, use that other method.

Why is this necessary?

EFFECTIVE DATE:

Day after publication.

PERSON TO CONTACT: Tom Reid, (608) 266-8474

Prepared by: John Nordlie, (608) 267-3556, *excise*
June 11, 1998
e:\legislation\definitions

Date: May 17, 1999
To: Sherrie Gates-Hen&ix
From: Clay Seth
Subject: Comments on Taxpayer Friendly Bill - LRB 2437/P1

Introduction - page 1, line 12 & 13:

Change "compromising delinquent income and franchise taxes" to "reducing nondelinquent taxes."

Analysis by the LRB -

1) Sales and Use Taxes - page 3:

"Goods" in the first paragraph of this section should be "tangible personal property and taxable services"

"Goods" in the second paragraph of this section should be "tangible personal property"

The last paragraph of the sales and use tax analysis should make it clear that the penalty is only imposed if the seller fails to return the tax and related interest to the buyer, or the department if the buyer cannot be located, within the time period. No **penalty** will be imposed if the taxes and interest are returned to the department within the 60-day period.

2) Other Taxation - pages 3 and 4:

Interest Rate on Unpaid Taxes - delete paragraph since this proposal will not be pursued.

Rounding - This bill should require a taxpayer to round dollar amounts to the nearest whole dollar at the request of the department of revenue.

Law

1) Delete all references in LRB 2437/P1 to changing interest rate from 12% to 9% (too costly).

2) Sections 4 and 9:

The intent of the recommended change was to provide that persons who make estimated tax payments for 1999 would not be required to include the amount of the prior year surcharge when basing the amount of this payment on the prior year's tax.

This bill does not appear to accomplish this. By keeping the reference to the surcharge in **secs. 71.09(l)(b) and 71.29(1)(b)**, "tax shown on the return for the preceding year" could be interpreted to include the surcharge.

This could be clarified by also amending **secs. 71.09(13(a)2** and **71.29(9)(a)2** to provide that "For purposes of this subdivision, for taxable years ending after April 1, 1999, tax shown on the return for the preceding year does not include the surcharge imposed under sec. 77.93.

3) Section 11:

Various reports are discussed in sub. (3) (a). It should be clarified that the extension applies only to the annual report due January 31. In addition, sub. (3) (b) does not discuss the annual report and should not be part of the amendment. However, sub. (3) (d) does essentially restate the language relating to the annual report due January 31, and the amendment should therefore reference par. (d). Suggested language for **71.65(5)(a)1.** is as follows: "Thirty days for filing a wage statement under sub. (1) or an annual withholding report under sub. (3)(a) or (d)."

4) Section 12:

71.80(19)(b) of the statutes is repealed. While it is proper to repeal the election not to use whole dollar amounts, sec. 71.80(19)(a) needs to be amended to allow the department to require rounding.

Section 71.80(19)(c) contains language that could be interpreted as saying that the rounding requirement only applies to the total amount shown on the bottom of a return, such as the total amount owed or overpaid. The following is a suggested amendment: "(c) Inapplicability to computation of amount. Paragraph (a) does not apply to items which must be taken into account in making the computations necessary to ~~determine the total~~ an amount required to be shown on a form, statement or other document but applies only to such final amount."

5) Section 27:

Retain section **73.03(47)** and create section **73.03(47a)** as follows:

73.03(47) (Retain) To absolve a taxpayer of liability for interest and penalties if the taxpayer shows that the liability resulted because he or she relied on an erroneous, written statement made by an employe of the department of revenue acting in an official capacity and the taxpayer had given the employe adequate and accurate information.

73.03(47a) To absolve a taxpayer of liability for interest and penalties if the taxpayer shows that the liability resulted from an unreasonable delay by an employe of the department of revenue acting in an official capacity performing a ministerial or managerial act, and where no significant part of the delay can be attributed to the taxpayer and/or the taxpayer's representative.

6) Section 35:

Page 19 - Suggest removing the reference to s. 77.54 on lines 20 to 21. Otherwise, an item may be used for manufacturing (exempt under s. 77.54) and also rented out to third parties. The use of the item for "resale" is not exempt under s. 77.54, but is simply a nontaxable use of the item based on **secs. 77.51(14)(intro.)** and **(18)**, Wis. Stats.

2
↙
(a) already requires taxpayer to round

Example: An item of tangible personal property is used in manufacturing 60% of the time (use is exempt under s. 77.54) and is rented to third parties 40% of the time (purchases of items which will be rented out are not exempt from tax under s. 77.54, but are simply not taxable based on **secs. 77.51(14)(intro) and (18)**, Wis. Stats. Since this item is only used 60% of the time in a manner which is exempt under s. 77.54, will this invalidate the exemption?

It is recommended that as long as the item is not used in a taxable manner, the exemption will not be invalidated even though the "other use" of the item was not exempt under s. 77.54, but is instead simply not taxable based on **secs. 77.51(14)(intro) and (18)**, Wis. Stats.

Suggested language: "Used exclusively," means used in a nontaxable manner for at least 95% of the total use of the item in the taxable year.

Page 19 line 21, page 20 lines 2, 3, 5 and 6 - Does "year" mean "calendar year," "fiscal year," or "taxable year." I would suggest that "year" be changed to "taxable year" and "taxable year" be specifically defined or tied into the definition of "taxable year" provided in the income tax statutes

Page 19 - Suggest splitting lines 20 to 23 into 2 sentences: The first sentence would state that "used exclusively" means.. . The second sentence would state that "Unless a person receives prior written approval from the department of revenue, the percentage of use shall be computed as follows:"

Page 20, line 1 - Change "For an item described in s. 77.54(5)(b)" to "For motor trucks, truck tractors, road tractors, buses, trailers, semitrailers and other highway vehicles" since only some of the items are exempt under s. 77.54(5)(b).

Page 20, line 4 - Change "For an item other than that which is described in s. **77.54(5)(b)**" to "For machinery, equipment, non-highway vehicles and other items not identified in (a) above,"

7) Section 42:

Page 22, line 2 - Rather than the date received, use the date of the refund. The department will not be able to verify the date the refund is received, which depends of delivery by the Postal Service. However, the refund date is a date certain.

Page 22, line 3 - Insert that the 60-day period in the case of an offset of a refund (since there is no refund date) is from the date of the offset.

Page 22, lines 4 through 9 - Insert "to the department or buyers" after "interest" on line 4.
6. Insert "or department" after "buyer" on line 7.

Lines 2 through 6 on page 22 should read as follows: "department if the seller cannot locate the buyers, within 60 days after the date of refund or offset or after discovering that the seller has collected taxes erroneously from the buyers. If the seller does not submit the taxes and related interest to the department or buyers within that period, the seller shall submit to the department any part of a refund or taxes that the seller does not submit to a buyer or the department along with a penalty of 25% of the amount. .."

The department wants to make it clear that if a seller is unable to return the tax and interest to buyers, but does return it to the department within the 60-day period from the date of the refund, offset, or discovery of erroneous collection, no penalty is imposed. It is only when the **seller** has not returned the tax and interest to either the department or the buyer within the 60-day period

that a penalty should be imposed.

While it is clear in the nonstatutory provision that a penalty is only due when tax and interest are not returned to either party, that provision will not follow with statutory language that interested persons will read in future years. Therefore, the statute should be just as clear.

8) Section 46:

Page 23 - Add the word "either" between "use" and "a" on line 12 and change "a" to "the" *no!*

Page 23 - Change "in collecting the amount of tax from the retailer's customers" to "in determining the amount of tax the retailer may collect from the retailer's customers" - *no*

initial Applicability

no substantive effect

Delete all of paragraph (2) Interest on Unpaid Taxes since the interest rate changes are being deleted.

The effective date language of paragraph (3) Married Persons' Tax Liability is different that what the department had requested. The department wanted this change to apply to any liability (whether such liability arose before or after enactment of this change). This draft provides that it is effective only with respect to collection activity that commences after the effective date of the bill. This raises questions as to how it applies to amounts that become delinquent before passage of the bill, but are subject to continuing collection activity after passage (for example, installment payments). It is recommended that the effective date language read the same **as** the federal effective date language as follows: "The treatment of section 71.10(6)(a) and (b) and **(6m)(a)** of the statutes 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)(l)(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 2 years after the date of the first collection activity after the date of enactment."

Delete paragraph (5) Whole Dollar Amounts - By changing the law to require rounding at the request of the department of revenue, the effective date can be day after publication.

cc D. Hardt

my IA covers that

Joe - these first
3 pages will help
to explain the changes
I've marked on the
draft pages.

1. Section 35, page 20, lines 1-3 [s. 77.51 (22m) (a)] -- the inclusion of trailers and semitrailers under s. 77.54 (5)(b) raises a question as to whether things that are "pulled" would be considered as "driven." We may want to add "*or in the case of trailers and semitrailers, hauled*" after "driven" in line 2.
2. Section 42, page 21, line 24 [s. 77.59 (5m)] - replace the term "taxes" on line 24 with "*monies*" [or alternatively, "*monies represented to the customer as taxes*"]. If the seller collected money in error, it may not have been taxes. The original proposal was designed to remedy a situation where a retailer of telecommunications services imposed a tax that did not exist on customers and then refused to refund it.
3. Following from #2, Nonstatutory language, Section 58, beginning page 25, line 25 - remove "is required to submit to a buyer a refund or a tax" and replace it with "who receives a *refund of tax or holds monies collected as taxes erroneously*". The language here appears to be redundant. In addition, the retroactive nature of this proposal may be seen as a taking without due process. and may result in litigation. ^
4. Following from #2, Initial Applicability, Section 59, page 26, line 11, change "taxes" to "*monies or taxes*" or alternatively, "*monies*".

DATE: May 18, 1999

TO: Bob Hackman

FROM: Robert C. Stellick, Jr.

SUBJECT: Taxpayer Friendly bill-- LRB-2437/P1

Section 35, page 20, §77.51(22m)(a)--we create a standard for .54(5)(b) items by miles driven divided by total number of miles driven. .54(5)(b) includes trailers and semitrailers which are not "driven", but hauled or pulled, since they do not have traction motors. Should we add "or in the case of trailers and semitrailers, hauled"? *✓ in memo*

Section 35, page 20, §77.51(22m)(b)--do we intend to exclude "storage" from the number of hours of use? Currently, we do since the definition of "use" in .51(22)(a) does. Excluding storage would be 'consistent with (22m)(a), which relies on "driven", but it could result in taxation if the item-heavy-lift crane--is seldom used, but the noncomplying use is more than 5% of total "use". I am thinking of the Fort Howard Paper case--CCH ¶1202-975, 1988, where the TAC exempted a crane used in production as well as maintenance because the machine it serviced was run 24 hours/day and 7 days/week. Do we need to emphasize "use", not just available for "use", as the Commission did? I also am uncomfortable with putting another variant of the term "use" into the statutes again--and would prefer a term like "operated", if that is the sense we wish to employ. *use operated 6/5/11*

Section 42, page 21, §77.59(5m)--the term "taxes" in "who collects taxes erroneously from buyers" is a misnomer--if the monies were erroneously collected, they may not be "taxes". This legislation was to remedy a situation where a retailer of telecommunications services "imposed" a tax on his customers which did not exist and refused to refund it to the customers--and I *P. 21 X P. 27 X*

opined that the Department could not force a refund. It is now a broader proposal. But at its heart, the question remains whether we can argue that the retailer collected “taxes” when the statutes do not impose a liability. Should we use “monies identified to the customer as taxes”, or something similar?

1 (a) For an item described in s. 77.54 (5) (b), divide the number of miles that the
2 item is driven & n an exempt manner in the year by the total number of miles that the
3 item is driven ^{or in the case of trailers + semi trailers, hauled} in the same year.

4 (b) For an item other than that which is described in s. 77.54 (5) (b), divide the
5 number of hours that the item is ^{operated} used in an exempt manner in the year by the total
6 number of hours that the item is used in the same year.

7 SECTION 36. 77.54 (3) (b) 3. of the statutes is repealed.

8 SECTION 37. 77.54 (5) (b) of the statutes is amended to read:

9 77.54 (5) (b) Motor trucks, truck tractors, road tractors, buses, trailers and
10 semitrailers, and accessories, tittachments, parts, supplies and materials therefor,
11 that are sold to common or contract carriers ~~who use such motor trucks, truck~~
12 ~~tractors, road tractors, buses, trailers and semitrailers~~ and that are used exclusively
13 as in the business of the common or contract carriers, including the urban mass
14 transportation of passengers as defined in s. 71.38.

15 SECTION 38. 77.54 (5) (c) of the statutes is amended to read:

16 77.54 (5) (c) Motor vehicles which are not required to be licensed for highway
17 use and which are used exclusively and directly ~~used~~ in conjunction with waste
18 reduction or recycling activities which reduce the amount of solid waste generated,
19 reuse solid waste, recycle solid waste, compost solid waste or recover energy from
20 solid waste. For the purposes of this paragraph, "solid waste" means garbage, refuse,
21 sludge or other materials or articles, whether these materials or articles are
22 discarded or purchased, including solid, semisolid, liquid or contained gaseous
23 materials or articles resulting from industrial, commercial, mining or agricultural
24 operations or. from domestic use or from public service activities.

25 SECTION 39. 77.54 (6) (a) of the statutes is amended to read:

1 77.54 (6) (a) Machines and specific processing equipment and repair parts or
2 replacements thereof, used exclusively and directly ~~used~~ by a manufacturer in
3 manufacturing tangible personal property and safety attachments for those
4 machines and equipment.

5 **SECTION 40.** 77.54 (26m) of the statutes is amended to read:

6 77.54 (26m) The gross receipts from the sale of and the storage, use or other
7 consumption of waste reduction or recycling machinery and equipment, including
8 parts therefor, used exclusively and directly used for waste reduction or recycling
9 activities which ~~reduce~~ the amount of solid waste generated, reuse solid waste,
10 recycle solid waste, compost solid waste or recover energy from solid waste. The
11 exemption applies even though an economically useful end product results from the
12 use of the machinery and equipment. For the purposes of this subsection, "solid
13 waste" means garbage, refuse, sludge or other materials or articles, whether these
14 materials or articles are discarded or purchased, including solid, semisolid, liquid or
15 contained gaseous materials or articles resulting from industrial, commercial,
16 mining or agricultural operations or from domestic use or from public service
17 activities.

18 **SECTION 41.** 77.58 (3) (c) of the statutes is created to read:

19 **77.58 (3) (c)** Section 71.80 (19), as it applies to a tax return filed under ch. 71,
20 applies to a tax return filed under this section.

21 **SECTION 42.** 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended
22 to read:

23 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the
24 seller has collected from buyers, who collect taxes erroneously from buyers, or who
25 is entitled to a refund that is offset under sub. (5), shall return submit the taxes and

monies identified to the customer as taxes
monies

1 related interest to the buyers from whom the ^{monies} ~~taxes~~ were collected. ~~The, or to the~~
 2 ~~department if the seller cannot locate the buyers, within 60 days after receiving a~~
 3 ~~refund or after discovering that the seller has collected taxes erroneously from the~~ ^{monies identified to the}
 4 ~~buyers. If the seller does not submit the~~ ^{monies} ~~taxes and related interest within that period,~~ ^{as}
 5 ~~the seller shall return submit~~ to the department any part of a refund ~~or taxes~~ ^{monies} that
 6 the seller does not ~~return submit~~ to a buyer along with a ^{fee} penalty of 25% of the amount
 7 not ~~returned or submitted or, in the case of fraud,~~ a penalty equal to the amount not
 8 ~~returned in the case of fraud submitted.~~

9 SECTION 43. 77.59 (5) of the statutes is amended to read:

10 77.59 (5) The department may offset the amount of any refund for a period,
 11 together with interest on the refund, against deficiencies for another period, and
 12 against penalties and interest on the deficiencies, or against any amount of whatever
 13 kind, due and owing on the books of the department from the person claiming who
 14 is entitled to the refund. If the refund is to be paid to a buyer, the department may
 15 also set off amounts in the manner in which it sets off income tax and franchise tax
 16 refunds under s. 71.93 and may set off amounts for child support or maintenance or
 17 both in the manner in which it sets off income ~~taxes~~ under ss. 49.855 and 71.93 (3),
 18 (6) and (7).

19 SECTION 44. 77.60 (1) (a) of the statutes is amended to read:

20 77.60 (1) (a) Except as provided in par. (b), unpaid taxes shall bear interest at
 21 the rate of ~~12%~~ 9% per year from the due date of the return until paid or deposited
 22 with the department. Taxes refunded to the seller shall bear interest at 9% per year
 23 from the due date of the return to the date on which the refund is certified on the
 24 refund rolls. An extension of time within which to file a return shall not extend the
 25 due date of the return for purposes of interest computation. Taxes refunded to the

1 this chapter, Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,
 2 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies
 3 to tax returns filed under ch. 71, applies to returns filed under this chapter.

4 SECTION 53. 139.11 (2r) of the statutes is created to read:

5 139.11 (2r) **WHOLE DOLLAR AMOUNTS.** Section 71.80 (19), as it applies to a tax
 6 return filed under ch. 71, applies to a report filed under this subchapter.

7 SECTION 54. 139.25 (1) of the statutes is amended to read:

8 139.25 (1) **INTEREST AND PENALTIES.** Unpaid taxes bear interest at the rate of
 9 ~~12%~~ 9% per year from the due date of the return until paid or deposited with the
 10 department, and all refunded taxes bear interest at the rate of 9% per year from the
 11 due date of the return to the date on which the refund is certified on the refund rolls.

12 SECTION 55. 139.38 (2r) of the statutes is created to read:

13 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
 14 applies to a report filed under this subchapter.

15 SECTION 56. 139.44 (9) of the statutes is amended to read:

16 139.44 (9) Unpaid taxes bear interest at the rate of ~~12%~~ 9% per year from the
 17 due date of the return until paid or deposited with the department, and all refunded
 18 taxes bear interest at the rate of 9% per year from the due date of the return to the
 19 date on which the refund is certified on the refund rolls.

20 SECTION 57. 139.82 (2r) of the statutes is created to read:

21 139.82 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
 22 applies to a report filed under this subchapter.

23 SECTION 58. **Nonstatutory provisions.**

24 (1) **REFUNDS AND TAXES COLLECTED ERRONEOUSLY** Notwithstanding section 77.59
 25 (5m) of the statutes, as affected by this act, a seller who ~~is required to submit to a~~

receives a refund of tax or holds
 monies collected as taxes
 erroneously.

1 ~~buyer a refund or a tax~~ collected erroneously under section 77.59 (5m) of the statutes,
 2 as affected by this act, from sales that occurred after August 31, 1994, but before the
 3 effective date of this subsection shall submit that refund or tax to the buyer, or to the
 4 department of revenue if the seller cannot locate the buyer, within 60 days after the
 5 effective date of this subsection. A refund or tax that is not submitted to the buyer
 6 or to the department of revenue within that period is subject to the penalties imposed
 7 under section 77.59 (5m) of the statutes, as affected by this act.

8 **SECTION 59. Initial applicability.**

9 (1) ~~REFUNDS AND TAXES~~ ^{Monies} COLLECTED ERRONEOUSLY. The treatment of sections 50.14
 10 (4), 73.01 (4) (a) and 77.59 (4) (c) and (5) of the statutes first applies retroactively to
 11 refunds that were due on sales that first occurred on September 1, 1994, and to taxes
 12 first collected erroneously on September 1, 1994. ^{monies or}

13 (2) INTEREST ON UNPAID TAXES. The treatment of sections 71.03 (7) (intro.), 71.24
 14 (7) (intro.), 71.44 (3), 71.82 (1) (a) and (c) and (2) (b) and (d), 71.84 (1) and (2) (a) and
 15 (c), 71.91 (6) (e) 3. and (f) 5., 72.225 (1), 72.23, 77.10 (2) (a) 1., 77.60 (1) (a) and (b),
 16 77.87 (3), 77.96 (5), 78.68 (l), 139.25 (1) and 139.44 (9) of the statutes first applies
 17 to tax returns that are filed with the department of revenue on the effective date of
 18 this subsection.

19 (3) MARRIED PERSONS TAX LIABILITY. The treatment of section 71.10 (6) (a) and
 20 (b) and (6m) (a) of the statutes first applies to collection activity that commences on
 21 the effective date of this subsection.

22 (4) WITHHOLDING REPORTS. The treatment of section 71.65 (5) (a) 1. of the
 23 statutes first applies to withholding reports that are due on January 31, 2000.

24 (5) WHOLE DOLLAR AMOUNTS. The treatment of sections 71.80 (19) (b), 72.30
 25 (lm), 77.58 (3) (c), 77.9941 (4), 77.9964 (2), 78.68 (10), 139.11 (2r), 139.38 (2r) and

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2437/P2dn

JK:kmg:mrc

July 8, 1999

Sherrie Gates-Hendrix, Clay Seth and Vicki Gibbons:

1. I did not replace the word "goods" in the analysis with "tangible personal property" because "tangible personal property" is a legal term with no "common" meaning. The purpose of the analysis is to describe clearly, *in understandable language*, the substance and effect of a legislative proposal.

2. I did not add definitions for "pay" and "sign" because the proposed definitions are not more specific than the generally recognized meanings of "pay" and "sign" and the meaning of both words should be apparent from the context in which they are used. In addition, the department of revenue (DOR) already has the authority, under section 227.11 of the statutes, to promulgate rules regarding how a taxpayer may "pay" DOR and how a taxpayer may "sign" a form required by DOR.

3. I did not amend section 71.80 (19) (a) of the statutes because the plain language of that paragraph, as it currently exists, requires rounding the dollar amount on a form, statement or document to the nearest whole dollar. Also, I think section 71.80 (19) (c) of the statutes *does* state that section 71.80 (19) (a) of the statutes applies only to the total, final amount on any form, statement or document. Therefore, the bill now repeals section 71.80 (19) (c) of the statutes. Is this consistent with your intent?

4. Regarding section 73.03 (47) of the statutes, the inclusion of "ministerial or managerial act" seems redundant. If a DOR employe is acting in an official capacity, what other acts can the employe perform that aren't either ministerial or managerial? The recommended language regarding a delay caused in "significant part" by the taxpayer or the taxpayer's representative also seems redundant. If the acts of the taxpayer or the taxpayer's representative are significant in causing a delay, the taxpayer, presumably, will not be able to show that a DOR employe caused the delay. In addition, who is included in the definition of a taxpayer's representative?

5. Unless otherwise defined, the term "year" refers to the calendar year. See section 990.01 (49) of the statutes. Because the sales and use tax returns and payments under section 77.58 of the statutes are based on the calendar year, is it appropriate, or practical, to base the "use" calculation under section 77.51 (22m) of the statutes on anything but the calendar year?

6. Finally, I made the recommended change to the initial applicability related to tax liability. However, the recommended change related to the two-year period for

applying for relief is a substantive modification of sections 66 (c) and 6015 (b) and (c) of the Internal Revenue Code and, therefore, belongs in the text of the statutes. The recommended modification to the Internal Revenue Code is contained in section 71.10 (6) (e) and (6m) (c) of the statutes, as created by the bill. Please review those sections carefully to ensure that they are consistent with your intent. If you have any questions, please contact me.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: Joseph.Kreye@legis.state.wi.us

8/5

Hi Joe -

I think these
comments are all pretty
self-explanatory. Some
are just repeats of
comments from last time
— one more shot at
convincing you to make
some changes (!)

Let me know if you
have any questions

Sherrie
7-1262

Date: August 2, 1999
To: Sherrie Gates-Hen&ix
From: Clay Seth
Subject: Comments on Taxpayer Friendly Bill - LRB 2437/P2

The following comments are compiled from various department personnel who initiated the proposals:

Response to Joseph Kreve's memo dated July 8, 1999

Definitions of "Pay" and "Sign" - I believe these definitions were added to other Chapters so we thought they should be in alternate fuel and tobacco products tax too.

Rounding: Section 71.80(19) - The amendment does not accomplish what we want here. We will require rounding in one tax type at a time as we implement our integrated tax system. The law needs to state that the Department is permitted to require rounding, not that the bill requires rounding at one point in time. The repeal of Section 71.80(19)(b) and (c) is appropriate.

Absolving Taxpayers of Interest and Penalties: Section 73.03(47) - We are eliminating bur request for a law change. The proposed law is going to cause more problems than the law we have in Section 73.03(47).

introduction -

Page 1, line 10 - change "...reducing nondelinquent income and franchise taxes..." to "...reducing nondelinquent taxes..." This provision applies to all taxes.

Analysis by the LRB -

1) Reducing Taxes - page 1

1st paragraph, line 2 - change "...to reduce delinquent income or franchise taxes,..." to "... to reduce delinquent taxes,..."

2) Sales & Use Taxes - page 3

a) "Goods" in the first paragraph of this section should be "tangible personal property and taxable services" - I recommended this change the last time I reviewed this bill and the drafter indicated in his memo that "... 'tangible personal property' is a legal term with no 'common' meaning..." My question is: Does the term "goods" also include "services"? If not, then "services" should be added to make it clear that the change applies to the imposition of tax on both tangible personal property and taxable services.

2 b) 3rd paragraph, 4th line. - recommend that the sentence read "...could not be passed on along with or face a penalty."

incorrect statement of current law

see 78.55(5m) "pay"
78.55(6)
sign
139.01(5m)
139.01(9m)
omit this section of draft

Law

1) Section 7 - Section 71.10(6)(e) created in section 7 of this draft is not exactly what the department had requested. As drafted, sec. 71.10(6)(e) provides, in part, that relief is available "within 2 years after the date on which the department begins collection activities on such liability.....".

What was requested was that this limitation be "2 years after the date of the first collection activity after the date of enactment".

To illustrate the different result obtained under the two versions, assume this provision becomes law on October 1, 1999 and is being used by a taxpayer whom the department first took collection against on June 15, 1998. The first collection activity taken by the department after October 1 is taken on October 15, 1999.

As drafted, the limitation in question would expire on June 14, 2000 for the taxpayer in the example I have provided. Of course the taxpayer could still use the other limitation provided by sec. 71.10(6)(e). That limitation will not expire until 2 years after the bill becomes law, which in this example would be September 30, 2001.

As proposed by the department, the limitation in question would not expire for the taxpayer in the example until October 14, 2001 (which would be later than the date on which the other limitation provided in sec. 71.10(6)(e) expires).

2) Section 14 - Renumbered section 71.80(19) should read "*Rounding amounts*. At the request of the department any amount required to be shown on a form prescribed"

This would allow the department to require rounding at its request, but not in all cases,

3) Section 20 - Delete the amended language to section 73.03(47).

4) Section 22 -

a) Page 11, lines 9, 13, 14, 16 and 17 - Does "year" mean "calendar year," "fiscal year," or "taxable year." I would suggest that "year" be changed to "taxable year" and "taxable year" be specifically defined or tied into the definition of "taxable year" provided in the income tax statutes. If this "tie-in" is not made, a taxpayer whose tax year is other than a calendar year (e.g. ALL fiscal filers with year-ends other than 12/31), would be required to keep their records for determining "exclusive use" of a particular item on a calendar year basis while all of their other books and records are kept on a fiscal year basis.

The drafter stated in his July 8, 1999 memo that "Because the sales and use tax returns and payments under section 77.58 are based on the calendar year, is it appropriate, or practical, to base the "use" calculation. . . on anything but the calendar year." That is not a correct statement. In fact, a taxpayer whose fiscal year runs from May 1 through April 30 and who is required to file on a quarterly basis for sales tax purposes, would file their returns based on each quarter of their fiscal year (i.e., fiscal quarters for this taxpayer (April 30 year-end) would be May-July, August-October, November-January and February-April), rather than calendar year quarters.

b) Same suggestion/comment as last draft - Page. 11, lines 8 through 11 - Suggest splitting lines-8 through 11 into 2 sentences: The first sentence would state that "used exclusively" means..." The second sentence would state that "Unless a person receives prior written approval from the department of revenue, the percentage of use shall be computed as follows." I think this is clearer than the language reflected in the current draft.

c) Page II, line 13 - The phrase "or hauled" was only included on line 13. Shouldn't it also have been included on line 14 between "driven" and "in." ?

5) Section 31 -

a) Same comment as last draft - Recommend adding the word "either" between "use" and "a" on page 14, line 7 of the draft.

b) Same comment as last draft - On lines 9 & 10, change "in collecting the amount of tax from the retailer's customers" to "in determining the amount of tax the retailer may collect from the retailer's customers". The bracket system or straight mathematical calculation are used to determine the amount of tax that may be collected from the customer, not simply in collecting the tax.



in 8-6-99

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

re gen

1 **AN ACT** to **repeal** 71.80 (19) (a) (title), 71.80 (19) (b), 71.80 (19) (c) and 77.54 (3)

2 (b) 3.; **to renumber** 71.80 (19) (a); **to renumber and amend 77.59 (4) (c); to**

3 **amend** 50.14 (4), 71.09 (1) (b), 71.09 (13)(a) 2., 71.10 (6) (a), 71.10 (6) (b), 71.10

4 (6m) (a), 71.29 (1) (b), 71.29 (9) (a) 2., 71.65 (5) (a) 1., 73.01 (4) (a), 73.03 (47),

5 77.54 (5) (b), 77.54 (5) (c), 77.54 (6) (a), 77.54 (26m), 77.59 (5), 77.61 (3), 77.9941

6 (4), 77.9964 (2) and 78.68 (10); and **to create 20.566 (1) (hd), 71.10 (6) (e), 71.10**

7 **(6m) (c), 71.80 (21), 72.30 (lm), 73.13, 77.51 (22m), 77.58 (3) (c), 139.11 (2r),**

8 **139.38 (2r) and 139.82 (2r) of the statutes; relating to:** ~~the abatement of~~

9 ~~interest charges on taxes,~~ the liability of married persons filing a joint income

10 tax return, reducing nondelinquent ~~income and franchise~~ taxes, rounding

11 dollar amounts to whole dollars on all tax returns, allowing a mathematical

12 computation of sales and use taxes, items used exclusively for tax-exempt

13 purposes, paying taxes with a credit card, extending the time for filing a tax

14 withholding report, excluding the temporary recycling surcharge from the

the payment of the alternate ^{fuel} tax and the tobacco-products tax,

- 1 computation of estimated tax payments, granting rule-making authority,
2 making an appropriation and providing a penalty.

Analysis by the Legislative Reference Bureau

REDUCING TAXES

Under current law, any taxpayer may petition the department of revenue (DOR) to reduce delinquent ~~income or franchise~~ taxes, including any applicable costs, penalties and interest. If DOR determines that the taxpayer is unable to pay in full the amount due, based on an examination of the taxpayer under oath, the taxpayer's financial statements and any other information required by DOR, DOR determines the amount that the taxpayer is able to pay and then enters an order reducing the taxes, costs, penalties and interest owed by the taxpayer.

If within three years from the date on which DOR enters the order that reduces the taxpayer's taxes DOR determines that the taxpayer has an income or owns property that is sufficient to enable the taxpayer to pay the remainder of the original delinquent taxes, including costs, penalties and interest, DOR must reopen the order and order the payment in full of such taxes, costs, penalties and interest.

This bill expands current law so that DOR is authorized to reduce any taxes, costs, penalties and interest that are due from a taxpayer, regardless of whether the taxes, costs, penalties and interest are delinquent.

INCOME AND FRANCHISE TAXES

Under current law, spouses that file a joint income tax return are both liable for the payment of any tax related to that return. However, DOR may relieve a person of any tax liability related to a joint return, in a manner specified by the Internal Revenue Code and adopted by this state. Generally, DOR may relieve a person of any tax liability related to a joint return if the person's spouse did not notify the person of any tax liability or understatement of taxes related to the joint return. This bill corrects an outdated reference to the sections of the Internal Revenue Code that relate to a spouse's tax liability for a joint income tax return. The bill also requires a spouse to apply for relief from tax liability within two years from the date on which DOR begins collection activities on the spouse's tax liability or within two years from the effective date of the provision, whichever is later.

Under current law, an employer is required to deduct and withhold state income taxes from an employee's pay and to deposit those taxes with DOR on a quarterly basis. An employer must also file a tax withholding report with DOR on a monthly, quarterly or annual basis. Under current law, DOR cannot grant an employer an extension for filing such a report. Before 1999, DOR could grant a 30-day extension for filing a withholding report to an employer who showed good cause for granting that extension. This bill restores the prior law which allowed DOR to grant such an extension.

Under current law, a temporary recycling surcharge is imposed on a business or a corporation based on the net income of a business or the gross tax liability of a corporation. The temporary recycling surcharge amount that a business or

corporation paid in the previous taxable year is included in the calculation to determine the estimated tax payments that are due from a business or corporation for the current taxable year. The temporary recycling surcharge will not be imposed on a business or a corporation for taxable years ending after April 1, 1999. Under this bill, the temporary recycling surcharge amount will not be included in the calculation to determine the estimated tax payments that are due from a business or corporation for taxable years ending after April 1, 1999.

SALES AND USE TAXES

Under current law, a retailer is required to use a bracket system, as determined by DOR, to compute the sales or use taxes that the retailer must collect from the sale of goods and services. Under this bill, a retailer may also use a straight mathematical computation, under rules promulgated by DOR, to compute the sales or use taxes that the retailer must collect from the sale of goods and services.

Under current law, the sales of certain goods are exempt from the sales and use taxes if those goods are used exclusively for a particular purpose. This bill clarifies the scope of such exemptions by providing that the sales of certain goods are exempt from the sales and-use taxes if those goods are used in a nontaxable manner to the exclusion of all other uses, except for other uses that do not exceed 5% of total use in a year.

Under current law, if a seller makes a claim for a refund of sales taxes or use taxes and the claim is honored, the seller is required to pass along the refund and related interest to the buyers and to submit to DOR the portion of the refund that could not be passed on, along with a penalty. Under current law, if a seller receives a sales or use tax refund as the result of an audit, the seller is not required to submit the refund and related interest to the buyers. Also, a seller is not required to submit to the buyers sales or use taxes that are collected erroneously.

This bill requires a seller who receives any refund of sales or use taxes, or who collects sales or use taxes erroneously, to submit such a refund or taxes to the buyer, or to DOR if the buyer cannot be located, within 60 days after receiving a refund or after discovering that the seller has collected 'taxes erroneously. Any portion of a refund or taxes not submitted to the buyer, or to DOR if the buyer cannot be located, within that 60 days must be submitted to DOR, along with a penalty.

OTHER TAXATION

~~Under current law, DOR may absolve a taxpayer of any liability for interest and penalties on taxes owed by the taxpayer if the taxpayer shows that such liability resulted from the taxpayer's reliance on an erroneous written statement made by an employe of DOR, acting in the employe's official capacity, and if the taxpayer had given the employe accurate and adequate information. Under this bill, DOR may also absolve a taxpayer of any liability for interest and penalties on taxes owed by the taxpayer if the taxpayer shows that such liability resulted from an unreasonable delay by an employe of DOR who was acting in an official capacity.~~

Under current law, a taxpayer may round dollar amounts on an income or franchise tax return to the nearest whole dollar. This bill ^{that} requires a taxpayer to round dollar amounts to the nearest whole dollar on an income or franchise tax return. This bill also requires a taxpayer to round dollar amounts to the nearest

permits DOR to

that

permits DOR to

whole dollar on tax returns or tax reports related to sales and use taxes, estate taxes, fuel taxes, cigarette and tobacco product taxes, alcohol taxes, food and beverage taxes, premier resort area taxes, rental car fees and dry cleaning fees.

This bill allows DOR to accept payment for taxes, costs, penalties and interest from a taxpayer by use of a credit card and allows DOR to impose a credit card service charge on such payments.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the state and *local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 SECTION 1. 20.566 (1) (hd) of the statutes is created to read:

2 **20.566** (1) (hd) ***Credit cardpayment service charge.*** From moneys received from
3 credit card payment service charges collected under s. 71.80 (21) (c), a sum sufficient
4 to pay the costs incurred by the department of revenue to provide for the payment
5 of taxes by credit card, including the cost of contracting services under s. 71.80 (21)
6 (d).

7 SECTION 2. 50.14 (4) of the statutes is amended to read:

8 50.14 (4) Sections 77.59 (1) to ~~(5)~~ (5m), (6) (intro.), (a) and (c) and (7) to (10),
9 77.60 (1) to (7), (9) and (10), 77.61 (9) and ~~(12)~~ to (14) and 77.62, as they apply to the
10 taxes under subch. III of ch. 77, apply to the assessment under this section.

11 SECTION 3. 71.09 (1) (b) of the statutes is amended to read:

12 71.09 (1) (b) "Tax shown on the return" and "tax for the taxable year" mean the
13 net tax imposed under s. 71.02 after reduction for exemptions to, and credits against,
14 that tax but before reduction by amounts withheld under subch. X and before
15 reduction for amounts paid as estimated tax under this section for that tax plus the
16 tax imposed under s. 71.08 before reduction for amounts paid as estimated tax under
17 this section for that tax plus for taxable years ending before April 1, 1999, the

1 surcharge imposed under s. 77.93 before reduction for amounts paid as estimated tax
2 under this section for that surcharge.

3 SECTION 4. 71.09 (13) (a) 2. of the statutes is amended to read:

4 71.09 (13) (a) 2. The tax shown on the return for the preceding year. If a
5 husband and wife who filed separate returns for the preceding taxable year file a
6 joint return, the tax shown on the return for the preceding year is the sum of the taxes
7 shown on the separate returns of the husband and wife. If a husband and wife who
8 filed a joint return for the preceding taxable year file separate returns, the tax shown
9 on the return for the preceding year is the husband's or wife's proportion of that tax
10 based on what their respective tax liabilities for that year would have been had they
11 filed separately. For taxable years ending after April 1, 1999, the tax shown on the
12 return for the preceding year does not include the surcharge imposed under s. 77.93.

13 SECTION 5. 71.10 (6) (a) of the statutes is amended to read:

14 71.10 (6) (a) *Joint returns.* Persons filing a joint return are jointly and severally
15 liable for the tax, interest, penalties, fees, additions to tax and additional
16 assessments under this chapter applicable to the return. -A Except as provided in
17 par. (e), a person shall be relieved of liability in regard to a joint return in the manner
18 specified in section ~~6013 (e) 6015 (a) to (d) and (f)~~ of the ~~internal revenue code,~~
19 ~~notwithstanding the amount or percentage of the understatement~~ Internal Revenue
20 Code.

21 SECTION 6. 71.10 (6) (b) of the statutes is amended to read:

22 71.10 (6) (b) *Separate returns.* A Except as provided in par. (e), a spouse filing
23 a separate return may be relieved of liability for the tax, interest, penalties, fees,
24 additions to tax and additional assessments under this chapter ~~with regard to~~
25 ~~unreported marital property income~~ in the manner specified in section 66 (c) of the

1 ~~internal revenue code~~ Internal Revenue Code. The department may not apply ch.
 2 766 in assessing a taxpayer with respect to marital property income the taxpayer did
 3 not report if that taxpayer failed to notify the taxpayer's spouse about the amount
 4 and nature of the income before the due date, including extensions, for filing the
 5 return for the taxable year in which the income was derived. The department shall
 6 include all of that marital property income in the gross income of the taxpayer and
 7 exclude all of that marital property income from the gross income of the taxpayer's
 8 spouse.

9 **SECTION 7.** 71.10 (6) (e) of the statutes is created to read:

10 71.10 (6) **(e) Application for relief:** A person who seeks relief from liability
 11 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
 12 by the department, within 2 years after the date on which the department ^{first} begins
 13 collection activities ~~on such liability or within 2 years~~ after the effective date of this
 14 paragraph [revisor inserts date], ~~whichever is later~~.

15 **SECTION 8.** 71.10 (6m) (a) of the statutes is amended to read:

16 71.10 (6m) (a) ~~A. Except as provided in par. (c), a~~ formerly married or remarried
 17 person filing a return for a period during which the person was married may be
 18 relieved of liability for the tax, interest, penalties, fees, additions to tax and
 19 additional assessments under this chapter ~~for unreported marital property income~~
 20 from that period as if the person were a spouse under section 66 (c) of the ~~internal~~
 21 ~~revenue code~~ Internal Revenue Code. The department may not apply ch. 766 in
 22 assessing the former spouse of the person with respect to marital property income
 23 that the former spouse did not report if that former spouse failed to notify the person
 24 about the amount and nature of the income before the due date, including extensions,
 25 for filing the return for the taxable year during which the income was derived. The

1 department shall include all of that marital property income in the gross income of
2 the former spouse and exclude all of that marital property income from the gross
3 income of the person.

4 SECTION 9. 71.10 (6m) (c) of the statutes is created to read:

5 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
6 for relief with the department as provided under sub. (6) (e).

7 SECTION 10. 71.29 (1) (b) of the statutes is amended to read:

8 71.29 (1) (b) "Tax shown on the return" and "tax for the taxable year" mean the
9 net taxes imposed under s. 71.23 (1) or (2) after reduction for credits against those
10 taxes but before reduction for amounts paid as estimated tax under this section plus,
11 for taxable years ending before April 1, 1999, the surcharge imposed under s. 77.93
12 before reduction for amounts paid as estimated tax under this section for that
13 surcharge.

14 SECTION 11. 71.29 (9) (a) 2. of the statutes is amended to read:

15 71.29 (9) (a) 2. The tax shown on the return for the preceding year, except that
16 for taxable years ending after April 1, 1999, the tax shown on the return does not
17 include the surcharge imposed under s. 77.93.

18 SECTION 12. 71.65 (5) (a) 1. of the statutes is amended to read:

19 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an
20 annual withholding report under sub. (3) (a) or (d).

21 SECTION 13. 71.80 (19) (a) (title) of the statutes is repealed.

22 ~~SECTION 14. 71.80 (19) (a) of the statutes is renumbered 71.80 (19).~~

23 SECTION 15. 71.80 (19) (b) of the statutes is repealed.

24 SECTION 16. 71.80 (19) (c) of the statutes is repealed.

25 SECTION 17. 71.80 (21) of the statutes is created to read:

INSECT 7-22 ✓

1 71.80 (21) CREDIT CARD PAYMENTS. (a) In this subsection, “taxes” has the
2 meaning given in s. 71.91 (6) (a) 4.

3 (b) The department may accept payment by credit card of taxes that are
4 required to be paid to the department under this chapter.

5 (c) If the department permits the payment of taxes by credit card under par.
6 (b), the department shall impose a credit card service charge on that payment. The
7 credit card service charge shall be in addition to the taxes that are being paid by
8 credit card and shall be an amount that is no greater than necessary to pay the costs
9 to the department for providing payment by credit card, including the cost of any
10 services for which the department contracts under par. (d).

11 (d) The department may contract for services relating to credit card payments
12 under this section.

13 **SECTION 18.** 72.30 (1m) of the statutes is created to read:

14 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
15 return filed under ch. 71, applies to a tax return filed under sub. (1).

16 **SECTION 19.** 73.01 (4) (a) of the statutes is amended to read:

17 **73.01 (4)** (a) Subject to the provisions for judicial review contained in s. 73.015,
18 the commission shall be the final authority for the hearing and determination of all
19 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
20 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss.
21 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40,
22 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, subch.
23 XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal
24 there is filed with the commission a stipulation signed by the department of revenue
25 and the adverse party, under s. 73.03 (25), agreeing to an affirmance, modification

1 or reversal of the department's position with respect to some or all of the issues raised
2 in the appeal, the commission shall enter an order affirming or modifying in whole
3 or in part, or canceling the assessment appealed from, or allowing in whole or in part
4 or denying the petitioner's refund claim, as the case may be, pursuant to and in
5 accordance with the stipulation filed. No responsibility shall devolve upon the
6 commission, respecting the signing of an order of dismissal as to any pending appeal
7 settled by the department without the approval of the commission.

8 ~~SECTION 20.~~ 73.03 (47) of the statutes is amended to read: ---

9 ~~73.03 (47)~~ To absolve a taxpayer of liability for interest and penalties if the
10 taxpayer shows that the liability resulted from an unreasonable delay by an employe ✓
11 of the department acting in an official capacity or because he or she the taxpayer
12 relied on an erroneous written statement made by an employe of the department
13 acting in an official capacity and that the taxpayer had given the employe adequate
14 and accurate information.

15 SECTION 21. 73.13 of the statutes is created to read:

16 **73.13 Reducing nondelinquent taxes. (1)** In this section:

17 (a) "Department" means the department of revenue.

18 (b) "Tax" means an amount that is owed to this state under s. 66.75 (lm) (f) 3.
19 or ch. 71, 72, 76, 77, 78 or 139, and that is not delinquent.

20 (2) (a) A taxpayer may petition the department to reduce the taxpayer's taxes,
21 including the costs, penalties and interest related to the taxpayer's taxes. The
22 petition shall set forth a sworn statement of the taxpayer and shall be in a form that
23 the department prescribes. The department may examine the taxpayer under oath
24 about the petition and may require the taxpayer to provide the department with

1 financial statements and any other information requested by the department that
2 is related to the petition.

3 (b) If the department determines that the taxpayer is unable to pay the taxes,
4 costs, penalties and interest in full, the department shall determine the amount that
5 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance
6 with the department's determination. The order shall provide that the order is
7 effective only if the reduced taxes are paid within 10 days from the date on which the
8 order is issued. The department or its collection agents, upon receipt of the order,
9 shall accept payment in accordance with the order. Upon payment of the reduced
10 taxes, the department shall credit the unpaid portion of the principal amount of the
11 taxes and record the unpaid amount of costs, penalties, and interest accrued to the
12 date of the order.

13 (c) If within 3 years of the date of the order under par. (b) the department
14 ascertains that the taxpayer has an income or owns property sufficient to enable the
15 taxpayer to pay the unpaid portion of the principal amount of the taxes due,
16 including the costs, penalties and interest recorded under par. (b), the department
17 shall reopen the order under par. (b) and order the taxpayer to pay in full the unpaid
18 portion of the principal amount of the taxes due, including the costs, penalties and
19 interest recorded under par. (b). Before the entry of the order for payment, the
20 department shall send a written notice to the taxpayer, by certified mail, advising
21 the taxpayer of the department's intention to reopen the order under par. (b) and
22 fixing a time and place for the appearance of the taxpayer, if the taxpayer desires a
23 hearing. If the department determines that the taxpayer is able to pay the unpaid
24 portion of the principal amount of the taxes due, including the costs, penalties and
25 interest recorded under par. (b), the department shall enter the order for payment

1 in full. The unpaid portion of the principal amount of the taxes due, including the
2 costs, penalties and interest recorded under par. (b), shall be due and payable
3 immediately upon entry of the order for payment in full and shall thereafter be
4 subject to the interest under s. 71.82 (2), as that subsection applies to delinquent
5 income and franchise taxes under s. 71.82, and to the delinquent account fee under
6 s. 73.03 (33m).

7 **SECTION 22.** 77.51 (22m) of the statutes is created to read:

8 **77.51 (22m)** "Used exclusively" means used in a nontaxable manner for at least
9 95% of total use in ^{taxable} a year, the percentage to be determined as follows, unless a person
10 receives written approval from the department of revenue to use an alternative
11 method:

12 (a) For highway vehicles, including trailers and semitrailers, divide the
13 number of miles that the item is driven or hauled in a nontaxable manner in the year ^{taxable}
14 by the total number of miles that the item is driven ^{or hauled} in the same year. ^{taxable}

15 (b) For an item other than that described in par. (a), divide the number of hours
16 that the item is used in a nontaxable manner in the year ^{taxable}
17 that the item is used in the same year. ^{taxable}

18 **SECTION 23.** 77.54 (3) (b) 3. of the statutes is repealed.

19 **SECTION 24.** 77.54 (5) (b) of the statutes is amended to read:

20 77.54 (5) (b) Motor trucks, truck tractors, road tractors, buses, trailers and
21 semitrailers, and accessories, attachments, parts, supplies and materials therefor,
22 that are sold to common or contract carriers who use such motor trucks, truck
23 tractors, road tractors, buses, trailers and semitrailers and that are used exclusively
24 as in the business of the common or contract carriers, including the urban mass
25 transportation of passengers as defined in s. 71.38.

1 SECTION 25. 77.54 (5) (c) of the statutes is amended to read:

2 77.54 (5) (c) Motor vehicles which are not required to be licensed for highway
3 use and which are used exclusively and directly ~~used~~ in conjunction with waste
4 reduction or recycling activities which reduce the amount of solid waste generated,
5 reuse solid waste, recycle solid waste, compost solid waste or recover energy from
6 solid waste. For the purposes of this paragraph, "solid waste" means garbage, refuse,
7 sludge or other materials or articles, whether these materials or articles are
8 discarded or purchased, including solid, semisolid, liquid or contained gaseous
9 materials or articles resulting from industrial, commercial, mining or agricultural
10 operations or from domestic use or from public service activities.

11 SECTION 26. 77.54 (6) (a) of the statutes is amended to read:

12 77.54 (6) (a) Machines and specific processing equipment and repair parts or
13 replacements thereof, used exclusively and directly ~~used~~ by a manufacturer in
14 manufacturing tangible personal property and safety attachments for those
15 machines and equipment.

16 SECTION 27. 77.54 (26m) of the statutes is amended to read:

17 77.54 (26m) The gross receipts from the sale of and the storage, use or other
18 consumption of waste reduction or recycling machinery and equipment, including
19 parts therefor, used exclusively and directly ~~used~~ for waste reduction or recycling
20 activities which reduce the amount of solid waste generated, reuse solid waste,
21 recycle solid waste, compost solid waste or recover energy from solid waste. The
22 exemption applies even though an economically useful end product results from the
23 use of the machinery and equipment. For the purposes of this subsection, "solid
24 waste" means garbage, refuse, sludge or other materials or articles, whether these
25 materials or articles are discarded or purchased, including solid, semisolid, liquid or

1 contained gaseous materials or articles resulting from industrial, commercial,
2 mining or agricultural operations or from domestic use or from public service
3 activities.

4 **SECTION 28.** 77.58 (3) (c) of the statutes is created to read:

5 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
6 applies to a tax return filed under this section.

7 **SECTION 29.** 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended
8 to read:

9 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the
10 seller has collected from buyers, ~~who collects taxes erroneously from buyers, or who~~
11 ~~is entitled to a refund that is offset under sub. (5), shall return~~ submit the taxes and
12 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~
13 ~~denartment if the seller cannot locate the buyers, within 60 days after the date of the~~
14 ~~refund, after the date of the offset or after discovering that the seller has collected~~
15 ~~taxes erroneously from the buyers. If the seller does not submit the taxes and related~~
16 ~~interest to the denartment or the buyers within that period, the seller shall return~~
17 ~~submit~~ to the department any part of a refund ~~or taxes~~ that the seller does not ~~return~~
18 ~~submit~~ to a buyer ~~or to the department~~ along with a penalty of 25% of the amount
19 not ~~returned or submitted or, in the case of fraud,~~ a penalty equal to the amount not
20 ~~returned in the case of fraud~~ submitted.

21 **SECTION 30.** 77.59 (5) of the statutes is amended to read:

22 77.59 (5) The department may offset the amount of any refund for a period,
23 together with interest on the refund, against deficiencies for another period, and
24 against penalties and interest on the deficiencies, or against any amount of whatever
25 kind, due and owing on the books of the department from the person claiming who

1 is entitled to the refund. If the refund is to be paid to a buyer, the department may
2 also set off amounts in the manner in which it sets off income tax and franchise tax
3 refunds under s. 71.93 and may set off amounts for child support or maintenance or
4 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),
5 (6) and (7).

6 SECTION 31. 77.61 (3) of the statutes is a ^{either} read:

7 77.61 (3) ~~The department shall provide~~ ^{either} ~~retailers shall use~~ a bracket system
8 ~~to be used by retailers~~ ^{to determine} ~~or a straight mathematical computation, under rules~~ ^{that the retailer may collect}
9 ~~promulgated by the department, in collecting~~ the amount of the tax from their ~~the~~
10 ~~retailer's~~ customers, but the use of ~~such brackets~~ ^{either a} ~~the~~ bracket system or a straight
11 mathematical computation shall not relieve the retailer from liability for payment
12 of the full amount of the tax levied by ss. 77.51 to 77.62.

13 SECTION 32. 77.9941 (4) of the statutes is amended to read:

14 77.9941 (4) Sections 77.72 (1), (2) (a) and (3) (a), 77.73, 77.74, 77.75, 77.76 (1),
15 (2) and (4), 77.77 (1) and (2), 77.785 (1) and 77.79, as they apply to the taxes under
16 subch. V, apply to the tax under this subchapter. Section 77.58 (3c), as it applies to
17 the taxes under subch. III, applies to the tax under this subchapter.

18 SECTION 33. 77.9964 (2) of the statutes is amended to read:

19 77.9964 (2) Except as provided in s. 77.9961 (4), ~~sections ss.~~ 71.74 (1) to (3), (7)
20 and (9), 71.75 (1), (2), (6), (7), (9) and (10), 71.77 (1) and (4) to (B), 71.78 (1) to (4) and
21 (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), and (17) and (18) to (19), 71.82
22 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2. and 6., (2) (a) 1. to 3. and
23 (b) 1. to 3. and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2) and (4) to (6) and 71.93,
as they apply to the taxes under ch. 71, apply to the fees under this subchapter.

24

25

SECTION 34. 78.68 (10) of the statutes is amended to read:

insert 14-24 ✓

1 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (lm) (b), s. 71.75
2 (2),(4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under
3 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,
4 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies
5 to tax returns filed under ch. 71, applies to returns filed under this chanter.

6 SECTION 35. 139.11 (2r) of the statutes is created to read:

7 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
8 return filed under ch. 71, applies to a report filed under this subchapter.

9 SECTION 36. 139.38 (2r) of the statutes is created to read:

10 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
11 applies to a report filed under this subchapter.

12 SECTION 37. 139.82 (2r) of the statutes is created to read:

13 139.82 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
14 applies to a report filed under this subchapter.

15 SECTION 38. Nonstatutory provisions.

16 (1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. Notwithstanding section 77.59
17 (5m) of the statutes, as affected by this act, a seller who is required to submit to a
18 buyer a refund or a tax collected erroneously under section 77.59 (5m) of the statutes,
19 as affected by this act, from sales that occurred after August 31, 1994, but before the
20 effective date of this subsection shall submit that refund or tax to the buyer, or to the
21 department of revenue if the seller cannot locate the buyer, within 60 days after the
22 effective date of this subsection. A refund or tax that is not submitted to the buyer
23 or to the department of revenue within that period is subject to the penalties imposed
24 under section 77.59 (5m) of the statutes, as affected by this act.

25 SECTION 39. Initial applicability.

insert 15-11 ✓

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Insert 7 - 22 ✓

1 SECTION 1. 71.80 (19) (a) of the statutes is renumbered 71.80 (19) and amended
2 to read:

3 71.80 (19) WHOLE DOLLAR AMOUNTS. ~~With~~ At the request of the department,
4 with respect to any amount required to be shown on a form prescribed for any return,
5 statement or other document required by this chapter, if the amount of such item is
6 other than a whole dollar amount the fractional part of a dollar shall be disregarded
7 unless it amounts to 50 cents or more, in which case the amount (determined without
8 regard to the fractional part of a dollar) shall be increased to the next whole dollar.

Insert 14-24 ✓

9 SECTION 2. 78.39 (5d) of the statutes is created to read: ✓

10 78.39 (5d) "Pay" has the meaning given in s. 78.005 (13b).

11 SECTION 3. 78.39 (5m) of the statutes is created to read: ✓

12 78.39 (5m) "Sign" has the meaning given in s. 78.005 (13r).

Insert ~~14-24~~ 15-11

13 SECTION 4. 139.75 (9m) of the statutes is created to read:

14 139.75 (9m) "Sign" has the meaning given in s. 139.01 (9m). ✓

FACSIMILE COVER SHEET

**State of Wisconsin ,
Department of Revenue**

125 South Webster St.
P.O Box 8933
Madison, WI 53708-8933

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6-5648*

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Sender Sender's Phone Number

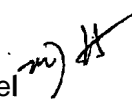
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S.*

CORRESPONDENCE/MEMORANDUM**STATE OF WISCONSIN
Department of Revenue**

Date: August 20, 1999

To: Clay Seth

From: Mike Hinnendael 

Subject: Comments on Taxpayer Friendly Bill --LRB-2437/1

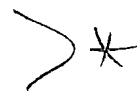
Sales and Use Taxes**Section 21 (Definition of "Used exclusively"):**

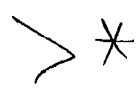
I. This provision has undesirable side effects. The provision states " 'Used exclusively' means used in a nontaxable manner for at least 95% of total use in a taxable year, the percentage to be determined as follows. . . ." This is followed by two methods of determining the percentage of use. The problem is that a person merely needs to use tangible personal property in a nontaxable manner at least 95% of total use in a *taxable year* to meet the definition of "used exclusively" and qualify for exemption, without regard to how the tangible personal property is used in other years.

For example, Company A, a manufacturer, purchases a machine on January 1, 2000. In its first taxable year after purchasing the machine (January 1, 2000 -- December 31, 2000), Company A uses it directly in manufacturing tangible personal property (nontaxable use) for 100% of the use for the taxable year.

In the second taxable year (January 1, 2001 - December 31, 2001), Company A uses the machine in a taxable manner for 100% of the use for the taxable year.

Even though Company A used the machine in a taxable manner for an entire taxable year, it does not owe any sales or use tax on the machine, because it met the definition of "used exclusively." Its nontaxable use in the first year automatically entitles Company A to the exemption on the machine, no matter how it uses the machine in the future.

The department desires that use be measured on a taxable year-by-taxable year basis. In other words, if tangible personal property is used in a taxable manner more than 5% of total use for any *taxable year*, sales or use tax should apply. 

2. A definition of "taxable year" is needed. See the comments on page 2 of Clay Seth's August 2, 1999 memo to Sherrie Gates-Hendrix (Part 4(a), Section 22). 

Section 23 (Common and Contract Carrier Exemption):

This provision has an undesirable side effect,

The problem is that the common and contract carrier exemption in sec. 77.54(5)(b), Wis. Stats., as amended by the bill, is greatly expanded. The requirement in current law that the motor truck, truck tractor, etc. be used exclusively **as a common or contract carrier** has been broadened to merely require that the truck, truck tractor, etc. be used exclusively **in the business of the** common or contract carrier.

There are many items that are used in the business of a common or contract carrier, but not necessarily as common or contract carriers.'

For example, Company A is a common or contract carrier and has 10 trucks that it uses exclusively in common and contract carriage (to haul property of others for hire). Company A qualifies for the exemption on these IO trucks, both under current law and under the proposed amendment.

Company A buys 20 additional trucks that it will use to haul its own property. Under current law, Company A must pay sales or use tax on these 20 additional trucks, because it is not using them "as common or contract carriers." Instead it is using the 20 trucks in private carriage.

Under the, proposed amendment, however, Company A qualifies for the exemption on the 20 trucks, because (1) the 20 trucks are sold to a common or contract carrier, and (2) Company A will use the 20 trucks exclusively in its business.

*Joe - we'd like to keep the effect to be as
under current law.*