

**1999 SENATE BILL 480**

March 16, 2000 – Introduced by Senators CLAUSING, BURKE, RISSER, BRESKE, WIRCH, SHIBILSKI and ROBSON, cosponsored by Representatives PLOUFF and WOOD. Referred to Committee on Economic Development, Housing and Government Operations.

1 **AN ACT to amend** 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a), 71.74 (2) (c), 71.92  
 2 (3) and 73.01 (4) (a); and **to create** 73.03 (56), 73.13, 73.14 and 73.15 of the  
 3 statutes; **relating to:** creating a taxpayer bill of rights, filing tax returns and  
 4 paying taxes electronically, paying taxes in instalments, reducing  
 5 nondelinquent taxes, tape–recording in–person interviews with the  
 6 department of revenue, the liability of married persons filing a joint income tax  
 7 return, tax audits and making appropriations.

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***Analysis by the Legislative Reference Bureau***

This bill creates a number of duties for the department of revenue (DOR) with regard to taxpayers. For example, the bill requires DOR to ensure that its employees treat members of the public courteously, to ensure that during tax audits its employees provide a clear and concise statement of an assessment of additional taxes and to ensure that refunds are issued promptly.

Under the bill, DOR may allow a person who is required to file a return with DOR or to pay an amount to DOR to file the return electronically or to pay the amount electronically. Under the bill, if DOR interviews a person regarding a tax matter, the person may tape–record the interview.

Under current law, any taxpayer may petition DOR to compromise delinquent income or franchise taxes, including any applicable costs, penalties and interest. The

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

If, within three years of the date of a compromise, DOR determines that the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax, including costs, penalties and interest, DOR must reopen the matter and order the payment in full of such taxes, costs, penalties and interest. Before entering the order, however, DOR must provide the taxpayer with written notice advising the taxpayer of DOR's intention and fixing a time and place for the taxpayer to appear if the taxpayer desires a hearing. After entering the order, DOR is required to make a record of the principal amount of the taxes, and penalties, costs and interest, that are ordered to be paid and such taxes are immediately due, payable and subject to interest.

Under the bill, a compromise is effective if it is paid, in a lump sum, within ten days of the compromise or, a compromise is effective if it is paid according to a payment schedule agreed to by DOR. Also under the bill, DOR must reopen the matter within three years of the date of the final payment under a payment schedule and order full payment from the taxpayer if DOR determines that the taxpayer is able to pay the remainder of the tax and other costs.

This bill also 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.

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.

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

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

- 1           **SECTION 1.** 71.10 (6) (a) of the statutes is amended to read:
- 2           71.10 **(6)** (a) *Joint returns.* Persons filing a joint return are jointly and severally
- 3           liable for the tax, interest, penalties, fees, additions to tax and additional

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1 assessments under this chapter applicable to the return. A person shall be relieved  
2 of liability in regard to a joint return in the manner specified in section ~~6013(e)~~ 6015  
3 (a) to (d) and (f) of the ~~internal revenue code~~ Internal Revenue Code, notwithstanding  
4 the amount or percentage of the understatement.

5 **SECTION 2.** 71.10 (6) (b) of the statutes is amended to read:

6 71.10 **(6)** (b) *Separate returns.* A spouse filing a separate return may be  
7 relieved of liability for the tax, interest, penalties, fees, additions to tax and  
8 additional assessments under this chapter ~~with regard to unreported marital~~  
9 ~~property income~~ in the manner specified in section 66 (c) of the ~~internal revenue code~~  
10 Internal Revenue Code. The department may not apply ch. 766 in assessing a  
11 taxpayer with respect to marital property income the taxpayer did not report if that  
12 taxpayer failed to notify the taxpayer's spouse about the amount and nature of the  
13 income before the due date, including extensions, for filing the return for the taxable  
14 year in which the income was derived. The department shall include all of that  
15 marital property income in the gross income of the taxpayer and exclude all of that  
16 marital property income from the gross income of the taxpayer's spouse.

17 **SECTION 3.** 71.10 (6m) (a) of the statutes is amended to read:

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

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1 income before the due date, including extensions, for filing the return for the taxable  
2 year during which the income was derived. The department shall include all of that  
3 marital property income in the gross income of the former spouse and exclude all of  
4 that marital property income from the gross income of the person.

5 **SECTION 4.** 71.74 (2) (c) of the statutes is amended to read:

6 71.74 (2) (c) If it appears upon such an investigation under par. (b) that a person  
7 has been over or under assessed, or that no assessment has been made when one  
8 should have been made, the department shall make a correct assessment in the  
9 manner provided in this chapter. If the department determines, by using an income  
10 reconstruction method, that a person has been under assessed or that no assessment  
11 has been made when one should have been made, the department shall corroborate  
12 the results of the income reconstruction method with at least one other income  
13 reconstruction method.

14 **SECTION 5.** 71.92 (3) of the statutes is amended to read:

15 71.92 (3) Any taxpayer may petition the department of revenue to compromise  
16 his or her delinquent income or franchise taxes including the costs, penalties and  
17 interest. ~~Such~~ The petition shall set forth a sworn statement of the taxpayer and  
18 shall be in such a form as that the department shall ~~prescribe~~ prescribes and the  
19 department may examine the petitioner under oath concerning the matter. If the  
20 department finds that the taxpayer is unable to pay the taxes, costs, penalties and  
21 interest in full it shall determine the amount the taxpayer is able to pay and shall  
22 enter an order reducing such taxes, costs, penalties and interest in accordance with  
23 ~~such~~ the determination. ~~Such~~ The order shall provide that ~~such~~ the compromise  
24 ~~shall be, if paid in a lump sum, is~~ effective only if paid within 10 days, ~~or the order~~  
25 shall provide that the compromise is effective if paid according to a payment schedule

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1 agreed to by the department. The department or its collection agents upon receipt  
2 of such the order shall accept payment in accordance with the order. Upon payment  
3 of the total amount due under the order, the department shall credit the unpaid  
4 portion of the principal amount of such taxes and make appropriate record of the  
5 unpaid amount of penalties, costs, and interest accrued to the date of such the order.  
6 If within 3 years of the date of such the compromise order or the date of a final  
7 payment under a payment schedule, whichever is later, the department shall  
8 ~~ascertains~~ ascertains that the taxpayer has an income or property sufficient to  
9 enable the taxpayer to pay the remainder of the tax including costs, penalty and  
10 interest the department shall reopen said the matter and order the payment in full  
11 of such taxes, costs, penalties and interest. Before the entry of such the order a notice  
12 shall be given to the taxpayer in writing advising of the intention of the department  
13 of revenue to reopen such the matter and fixing a time and place for the appearance  
14 of the taxpayer if the taxpayer desires a hearing. Upon entry of such the order the  
15 department of revenue shall make an appropriate record of the principal amount of  
16 such the taxes, penalties, costs and interest ordered to be paid and such taxes shall  
17 be immediately due and payable and shall thereafter be subject to the interest  
18 provided by s. 71.82 (2), and the department shall immediately proceed to collect the  
19 same together with the unpaid portion of penalty, costs, and interest accrued to the  
20 date of the compromise order.

21 **SECTION 6.** 73.01 (4) (a) of the statutes is amended to read:

22 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,  
23 the commission shall be the final authority for the hearing and determination of all  
24 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.  
25 70.11 (21), 70.38 (4) (a), 70.397, 70.64 ~~and~~, 70.995 (8) and 73.13, s. 76.38 (12) (a), 1993

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1 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40,  
2 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, subch.  
3 XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal  
4 there is filed with the commission a stipulation signed by the department of revenue  
5 and the adverse party, under s. 73.03 (25), agreeing to an affirmance, modification  
6 or reversal of the department's position with respect to some or all of the issues raised  
7 in the appeal, the commission shall enter an order affirming or modifying in whole  
8 or in part, or canceling the assessment appealed from, or allowing in whole or in part  
9 or denying the petitioner's refund claim, as the case may be, pursuant to and in  
10 accordance with the stipulation filed. No responsibility shall devolve upon the  
11 commission, respecting the signing of an order of dismissal as to any pending appeal  
12 settled by the department without the approval of the commission.

13 **SECTION 7.** 73.03 (56) of the statutes is created to read:

14 73.03 (56) (a) To ensure that its employes treat members of the public  
15 courteously.

16 (b) To distribute to the public information about the state's tax laws.

17 (c) To provide employes to assist members of the public in filing state tax forms.

18 (d) To ensure that its employes treat members of the public fairly during tax  
19 audits. During an audit, an employe shall do all of the following:

20 1. Give the taxpayer a clear and concise explanation of an assessment of any  
21 additional taxes.

22 2. Give the taxpayer a clear and concise explanation of a denial or reduction  
23 of any refund or credit that has been claimed by the taxpayer.

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1           3. Allow the taxpayer to consult with an attorney or an accountant or to  
2 postpone an interview or an audit so that the taxpayer may consult an attorney or  
3 an accountant.

4           (e) To provide for reasonable tax collection arrangements for taxpayers with an  
5 outstanding tax liability.

6           **SECTION 8.** 73.13 of the statutes is created to read:

7           **73.13 Reducing nondelinquent taxes. (1)** In this section:

8           (a) “Department” means the department of revenue.

9           (b) “Tax” means an amount that is owed to this state under s. 66.75 (1m) (f) 3.  
10 or ch. 71, 72, 76, 77, 78 or 139, and that is not delinquent.

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

18           (b) If the department determines that the taxpayer is unable to pay the taxes,  
19 costs, penalties and interest in full, the department shall determine the amount that  
20 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance  
21 with the department’s determination. The order shall provide that the order is  
22 effective only if the reduced taxes are paid either within 10 days from the date on  
23 which the order is issued or according to a payment schedule agreed to by the  
24 department. The department or its collection agents, upon receipt of the order, shall  
25 accept payment in accordance with the order. Upon payment of the reduced taxes,

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1 the department shall credit the unpaid portion of the principal amount of the taxes  
2 and record the unpaid amount of costs, penalties, and interest accrued to the date  
3 of the order.

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

23 (d) A taxpayer may appeal a decision under this subsection to the tax appeals  
24 commission under s. 73.01.

25 **SECTION 9.** 73.14 of the statutes is created to read:



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1           **73.14 Electronic filing.** The department of revenue may allow a person who  
2 is required to file a return or a report with the department or to pay an amount to  
3 the department to file the return or the report electronically or to pay the amount  
4 electronically. If the department allows a person to remit taxes electronically that  
5 are due monthly, the person shall submit the returns related to the taxes on or before  
6 the last day of the month after the month in which the taxes are due.

7           **SECTION 10.** 73.15 of the statutes is created to read:

8           **73.15 Tape recording.** A taxpayer may tape-record any in-person interview  
9 of the taxpayer that is conducted by an employe of the department of revenue about  
10 the assessment or collection of taxes, if the taxpayer informs the employe, before the  
11 interview, that the taxpayer is tape-recording the interview.

12

(END)