

1999 DRAFTING REQUEST

Bill

Received: 08/30/1999

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Alice Clausing (608) 266-7745

By/Representing: bill wenzel

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - miscellaneous

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

taxpayer bill of rights

Instructions:

See Attached

Drafting History:

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FE Sent For: (01/18/2000) (03/01/2000.)
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Handwritten notes:
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03-01-00
"1/6"

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Handwritten notes:
 cmk 1/10
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 km 1/10
 WRC 1/10
 km 1/10

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For: Alice Clausung (608) 266-7745

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jm 12/27 km 12/27

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FE Sent For:

cmH
10/21
10/27 MRC
10/25 MRC
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See Attached

submit P/11

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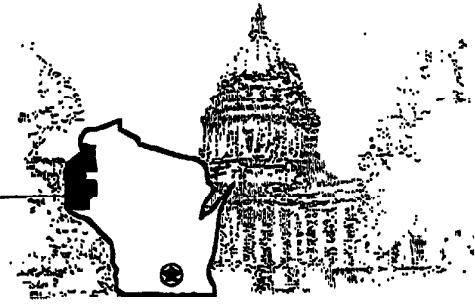
FE Sent For:

<END>



Alice Clausing

WISCONSIN STATE SENATOR



MEMORANDUM

To: Marc Shovers
From: Bill Wenzel
Re: Taxpayer Bill of Rights - LRB Draft
Date: August 24, 1999
Pages: 2

Sorry for communicating in this fashion, but I'm heading out of town on hearings and will not be back until Thursday.

Alice wanted work started on **Taxpayer Bill of Rights** legislation fashioned after federal law. I am attaching a piece that I pulled off the Internet FYI. I will call you tomorrow morning from Hayward to discuss this further, but if you could give it some thought and maybe get started/assign an LRB number I'd sincerely appreciate it.

Thanks!



Taxpayer Bill of Rights

General Topics

2

On November 10, 1988, the first "Taxpayer Bill of Rights" was signed into law. This law codified the rights of taxpayers with respect to Internal Revenue Service actions, and for the first time ever, made them subject to judicial enforcement.

On July 30, 1996, the President signed into law the "Taxpayer Bill of Rights 2," which increases taxpayers' rights in dealing with the Internal Revenue Service. The following are some of the bill's provisions:

- Abatement of interest on a deficiency attributable to IRS error or delay is expanded (e.g. loss of records by IRS, IRS personnel transfers, extended illnesses or leave).
- Extension of the interest-free period from 10 to 21 days after "notice and demand" for tax liabilities under \$100,000.
- Relief is provided for some small business startups from payroll tax deposit penalties for their first taxable quarter.
- Taxpayer's can sue IRS for up to \$1 million for damages caused by unauthorized collection actions (up from \$100,000).
- Taxpayer's who win lawsuits against the IRS can get legal expenses reimbursements more easily, and the reimbursement is increased from \$75 to \$110 an hour.
- IRS must now disclose collection activities to a former spouse regarding efforts to collect joint return tax liabilities from when they were married.
- IRS may withdraw a notice of tax lien or return levied property without full payment of the liability (e.g. If the taxpayer enters into an installment agreement) and more property is now exempt from levy.
- IRS is required to give taxpayer's 30-day notice before canceling or changing installment agreements.
- IRS must notify "responsible persons" of the 100% penalty for failure to deposit trust fund taxes 60 days prior to issuing a "notice and demand."
- IRS must make reasonable efforts, within 60 days, to notify taxpayer's who have made payments that the IRS cannot identify.
- The IRS is now given the authority to accept private delivery services for timely mailing. Previously, only the U.S. Postal Service could be used to prove timely filing.
- The bill established the Office of the Taxpayer Advocate to assist taxpayers in resolving problems with the IRS.

Fri 9-3-99 830AM

spoke with Bill Uenzel at Clousing's office
try to track the fed as close as possible
from constituent concerns & problem.

DOR pressuring — accusing taxpayers

draft the "advocate" position — → let Bill
know of any pros & cons of doing it as
an "oversight board"



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-35267

JK:.....
cmj
RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in 9-24-99

✓
D-N

gen.

1 AN ACT ...; relating to: creating a taxpayer bill of rights and a taxpayer rights
 2 advocate, filing tax returns and paying taxes electronically, paying taxes in
 3 instalments, reducing nondelinquent taxes, tape-recording in-person
 4 interviews with the department of revenue, the liability of married persons
 5 filing a joint income tax return and making appropriations.

Analysis by the Legislative Reference Bureau

This bill creates a taxpayer rights advocate whose duties include assisting taxpayers in resolving their complaints against the department of revenue (DOR) and coordinating the dissemination of DOR publications that inform taxpayers about state tax laws. The taxpayer rights advocate is also required to submit a report to each house of the legislature every two years summarizing the activities of the taxpayer rights advocate.

The bill also creates a number of duties for 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. DOR may also enter into a written agreement with a person to pay taxes that are owed by the person in instalments. 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 the department of revenue (DOR) to reduce delinquent 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.

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.

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

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

- 1 **SECTION 1.** 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
- 4 assessments under this chapter applicable to the return. ~~A~~ Except as provided in
- 5 par. (e), a person shall be relieved of liability in regard to a joint return in the manner
- 6 specified in section ~~6013 (e)~~ 6015 (a) to (d) and (f) of the ~~internal revenue code,~~

1 ~~notwithstanding the amount or percentage of the understatement~~ Internal Revenue
2 Code.

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

4 71.10 (6) (b) *Separate returns.* ~~A~~ Except as provided in par. (e), a spouse filing
5 a separate return may be relieved of liability for the tax, interest, penalties, fees,
6 additions to tax and additional assessments under this chapter ~~with regard to~~
7 ~~unreported marital property income~~ in the manner specified in section 66 (c) of the
8 ~~internal revenue code~~ Internal Revenue Code. The department may not apply ch.
9 766 in assessing a taxpayer with respect to marital property income the taxpayer did
10 not report if that taxpayer failed to notify the taxpayer's spouse about the amount
11 and nature of the income before the due date, including extensions, for filing the
12 return for the taxable year in which the income was derived. The department shall
13 include all of that marital property income in the gross income of the taxpayer and
14 exclude all of that marital property income from the gross income of the taxpayer's
15 spouse.

16 SECTION 3. 71.10 (6) (e) of the statutes is created to read:

17 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
18 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
19 by the department, within 2 years after the date on which the department first
20 begins collection activities after the effective date of this paragraph [revisor
21 inserts date].

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

23 71.10 (6m) (a) ~~A~~ Except as provided in par. (c), a formerly married or remarried
24 person filing a return for a period during which the person was married may be
25 relieved of liability for the tax, interest, penalties, fees, additions to tax and

1 additional assessments under this chapter for ~~unreported marital~~ [✓] property income
2 from that period as if the person were a spouse under section 66 (c) of the ~~internal~~
3 ~~revenue code~~ Internal Revenue [✓] Code. The department may not apply ch. 766 in
4 assessing the former spouse of the person with respect to marital property income
5 that the former spouse did not report if that former spouse failed to notify the person
6 about the amount and nature of the income before the due date, including extensions,
7 for filing the return for the taxable year during which the income was derived. The
8 department shall include all of that marital property income in the gross income of
9 the former spouse and exclude all of that marital property income from the gross
10 income of the person.

11 SECTION 5. 71.10 (6m) (c) of the statutes is created to read:

12 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply [✓]
13 for relief with the department as [✓] provided under sub. (6) (e).

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

15 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
16 the commission shall be the final authority for the hearing and determination of all
17 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
18 70.11 (21), 70.38 (4) (a), 70.397, 70.64 [↓] and ² 70.995 (8), ² ss. 73.13 and 73.16, [✓] s. 76.38 (12)
19 (a), 1993 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22,
20 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78,
21 subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending
22 appeal there is filed with the commission a stipulation signed by the department of
23 revenue and the adverse party, under s. 73.03 (25), agreeing to an affirmance,
24 modification or reversal of the department's position with respect to some or all of the
25 issues raised in the appeal, the commission shall enter an order affirming or

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

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

8 73.03 (56) (a) To ensure that its employes treat members of the public
9 courteously.

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

11 (c) To provide employes to assist members of the public in ^{filing} state tax forms.

12 (d) To ensure that its employes treat members of the public fairly during tax
13 audits. Such fair treatment shall include any of the following:

14 1. A clear and concise explanation of an assessment of additional taxes.

15 2. A clear and concise explanation of a denial or reduction of a refund or credit
16 that has been claimed by a tax filer.

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

19 **SECTION 8.** 73.03 (57) of the statutes is created to read:

20 73.03 (57) To have a taxpayer rights advocate whose duties shall include the
21 following:

22 (a) Assisting a taxpayer in resolving the taxpayer's complaints against the
23 department.

24 (b) Recommending to the secretary of ^{revenue} ~~the department~~ ^g legislation to simplify
25 and improve state tax laws, forms and procedures.

1 (c) Coordinating the dissemination of publications that inform taxpayers about
2 state tax laws.

3 (d) Submitting a report to the chief clerk of each house of the legislature for
4 distribution to the legislature under s. 13.172 (2) every 2 years, beginning on October
5 1, 2000, summarizing the activities of the taxpayer rights advocate's office.

6 SECTION 9. 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 within 10 days from the date on which the
23 order is issued. The department or its collection agents, upon receipt of the order,
24 shall accept payment in accordance with the order. Upon payment of the reduced
25 taxes, the department shall credit the unpaid portion of the principal amount of the

1 taxes and record the unpaid amount of costs, penalties, and interest accrued to the
2 date of the order.

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

22 SECTION 10. 73.14 of the statutes is created to read:

23 **73.14 Electronic filing.** The department of revenue may allow a person who
24 is required to file a return or a report with the department or to pay an amount to
25 the department to file the return or the report electronically or to pay the amount

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

1 electronically. If the department allows a person to remit taxes electronically that
2 are due monthly, the person shall submit the returns related to the taxes on or before
3 the last day of the month after the month in which the taxes are due.

4 **SECTION 11.** 73.15 of the statutes is created to read:

5 **73.15 Tape recording.** A taxpayer may tape[✓] record any in-person interview
6 of the taxpayer that is conducted by an employe of the department of revenue about
7 the assessment or collection of taxes, if the taxpayer informs the employe, before the
8 interview, that the taxpayer is tape[✓]-recording the interview.

9 **SECTION 12.** 73.16[✓] of the statutes is created to read:

10 **73.16 Instalment payments.** (1) The department of revenue may enter into
11 a written agreement with a taxpayer to pay in instalments any amount of taxes,
12 interest or penalties that are owed by the taxpayer.

13 (2) The department of revenue may terminate an agreement under sub. (1)
14 under any of the following conditions:

15 (a) The taxpayer gives the department inaccurate or incomplete information
16 related to an agreement under sub. (1).

17 (b) The department determines that it cannot reasonably collect the amount
18 of taxes, interest or penalties that are subject to an agreement under sub. (1) as
19 provided in the agreement.

20 (3) The department of revenue may modify or terminate an agreement under
21 sub. (1) under any of the following conditions:

22 (a) The department determines that the financial condition of a taxpayer who
23 entered into an agreement under sub. (1) has changed significantly and the
24 department notifies the taxpayer, at least 30 days before modifying or terminating
25 the taxpayer's agreement, that the department is modifying or terminating the

1 taxpayer's agreement. A notice to a taxpayer under this paragraph shall specify the
2 basis for the department's determination that the taxpayer's financial condition has
3 changed significantly.

4 (b) The taxpayer who entered into an agreement under sub. (1) fails to pay an
5 instalment payment on time, to pay another obligation to the department on time or
6 to provide financial information that the department requests.

7 (4) A taxpayer may appeal a decision under sub. (2) or (3) to the tax appeals
8 commission under s. 73.01.

9 **SECTION 13. Appropriation changes; revenue.**

10 (1) TAXPAYER RIGHTS ADVOCATE. In the schedule under section 20.005 (3) of the
11 statutes for the appropriation to the department of revenue under section 20.566 (1)

12 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
13 \$_____ for fiscal year 2000-01 to increase the authorized FTE positions of the
14 department by 1.0 GPR position on July 1, 2000, for a taxpayer rights advocate under
15 section 73.03 (56) of the statutes.

16 (2) TAXPAYER RIGHTS SUPPORT STAFF. In the schedule under section 20.005 (3) of
17 the statutes for the appropriation to the department of revenue under section 20.566

18 (1) (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased
19 by \$_____ for fiscal year 2000-01 to increase the authorized FTE positions of the
20 department by 1.0 GPR position on July 1, 2000, for the performance of support
21 services for the taxpayer rights advocate under section 73.03 (56) of the statutes.

22 (3) TAXPAYER RIGHTS OFFICE. In the schedule under section 20.005 (3) of the
23 statutes for the appropriation to the department of revenue under section 20.566 (3)

24 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by

create auto-reference "a"

57

57

1 \$_____ for fiscal year 2000-01 to rent and set up office space and provide supplies
2 for the taxpayer rights advocate and the advocate's support staff.

3 **SECTION 14. Initial applicability.**

4 (1) MARRIED PERSONS' TAX LIABILITY. The treatment of section 71.10 (6) (a) and
5 (b) and (6m) (a) of the statutes first applies to tax liability that arises on the effective
6 date of this subsection or that remains unpaid on the effective date of this subsection.

7 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
8 except as follows:

13 - auto-reference "a" - created on page 9.

9 (1) The treatment of SECTION ~~14~~ of this act takes effect on July 1, 2000.

10 (END)

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

PI
LRB-3526/2dn
JK:.....

CMH

date

Senator Clausung:

← Please review this draft carefully to ensure that it is consistent with your intent. I did not include everything that is included in the federal taxpayer bill of rights because some of it is either already incorporated into the state statutes or is not applicable.

Please note that the dollar amounts for the taxpayer advocate position, the taxpayer advocate staff position and the taxpayer office rental and set-up are blank. I will need to replace those blanks with dollar amounts to complete the bill. 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-3526/P1dn
JK:cmh:jf

September 28, 1999

Senator Clausing:

Please review this draft carefully to ensure that it is consistent with your intent. I did not include everything that is included in the federal taxpayer bill of rights because some of it either is already incorporated into the state statutes or is not applicable.

Please note that the dollar amounts for the taxpayer advocate position, the taxpayer advocate staff position and the taxpayer office rental and set-up are blank. I will need to replace those blanks with dollar amounts to complete the bill. 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

Kreye, Joseph

From: Wenzel, Bill
Sent: Tuesday, October 19, 1999 9:39 AM
To: Kreye, Joseph
Subject: Taxpayer Bill of Rights Proposal (LRB-3526/P1)

Dear Joe:

This draft looks good. We'd like to incorporate provisions on "burden of proof" requirements that make it crystal clear that "unfounded allegations by DOR" necessitating "proof of innocence by the taxpayer" will no longer be the Rule of Law - or the way it's practically applied by DOR agents.

Also could you give me an estimate of how long the changes will take? We want to circulate this in the near future in order to it introduced and scheduled for a hearing prior to the end of session. That might be "extremely ambitious" but we'd like to give it a shot.

Thanks for your cooperation!

Bill

6-7745

- representations made that are false
- arrogant attitude
- burdens in current law?
- pursuant to an audit
- needs certain level of proof before can make allegations?
- ▷ - interrupt audits for consultant with cty or accountant?
(Bill thought that was a good idea)
- ▷ - add \$ amounts based on past drafts → starting point for assessing fiscal impact.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3526/71
JK:cmh:jf

1

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

in 10-20-99

D-N

negot

1 **AN ACT to amend** 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a) and 73.01 (4) (a); and
 2 **to create** 71.10 (6) (e), 71.10 (6m) (c), 73.03 (56), 73.03 (57), 73.13, 73.14, 73.15
 3 and 73.16 of the statutes; **relating to:** creating a taxpayer bill of rights and a
 4 taxpayer rights advocate, filing tax returns and paying taxes electronically,
 5 paying taxes in instalments, reducing nondelinquent taxes, tape-recording
 6 in-person interviews with the department of revenue, the liability of married
 7 persons filing a joint income tax return and making appropriations.

Analysis by the Legislative Reference Bureau

This bill creates a taxpayer rights advocate whose duties include assisting taxpayers in resolving their complaints against the department of revenue (DOR) and coordinating the dissemination of DOR publications that inform taxpayers about state tax laws. The taxpayer rights advocate is also required to submit a report to each house of the legislature every two years summarizing the activities of the taxpayer rights advocate.

The bill also creates a number of duties for 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. DOR may also enter into a written agreement with a person to pay taxes that are owed by the person in instalments. 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 reduce delinquent 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.

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.

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

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

- 1 **SECTION 1.** 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
- 4 assessments under this chapter applicable to the return. ~~A. Except as provided in~~

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

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

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

18 **SECTION 3.** 71.10 (6) (e) of the statutes is created to read:

19 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
20 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
21 by the department, within 2 years after the date on which the department first
22 begins collection activities after the effective date of this paragraph [revisor
23 inserts date].

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

1 71.10 (6m) (a) ~~A~~ Except as provided in par. (c), a formerly married or remarried
2 person filing a return for a period during which the person was married may be
3 relieved of liability for the tax, interest, penalties, fees, additions to tax and
4 additional assessments under this chapter ~~for unreported marital property income~~
5 from that period as if the person were a spouse under section 66 (c) of the ~~internal~~
6 ~~revenue code~~ Internal Revenue Code. The department may not apply ch. 766 in
7 assessing the former spouse of the person with respect to marital property income
8 that the former spouse did not report if that former spouse failed to notify the person
9 about the amount and nature of the income before the due date, including extensions,
10 for filing the return for the taxable year during which the income was derived. The
11 department shall include all of that marital property income in the gross income of
12 the former spouse and exclude all of that marital property income from the gross
13 income of the person.

14 **SECTION 5.** 71.10 (6m) (c) of the statutes is created to read:

15 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
16 for relief with the department as provided under sub. (6) (e).

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

18 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
19 the commission shall be the final authority for the hearing and determination of all
20 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
21 70.11 (21), 70.38 (4) (a), 70.397, 70.64 ~~and~~, 70.995 (8), 73.13 and 73.16, s. 76.38 (12)
22 (a), 1993 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22,
23 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78,
24 subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending
25 appeal there is filed with the commission a stipulation signed by the department of

1 revenue and the adverse party, under s. 73.03 (25), agreeing to an affirmance,
 2 modification or reversal of the department's position with respect to some or all of the
 3 issues raised in the appeal, the commission shall enter an order affirming or
 4 modifying in whole or in part, or canceling the assessment appealed from, or allowing
 5 in whole or in part or denying the petitioner's refund claim, as the case may be,
 6 pursuant to and in accordance with the stipulation filed. No responsibility shall
 7 devolve upon the commission, respecting the signing of an order of dismissal as to
 8 any pending appeal settled by the department without the approval of the
 9 commission.

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

11 73.03 (56) (a) To ensure that its employes treat members of the public
 12 courteously.

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

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

15 (d) To ensure that its employes treat members of the public fairly during tax

16 audits. Such fair treatment shall ~~include~~ ^{do} any of the following:

17 1. ^{include} A clear and concise explanation of an assessment of additional taxes.

18 2. ^{include} A clear and concise explanation of a denial or reduction of a refund or credit

19 that has been claimed by a tax filer.

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

22 **SECTION 8.** 73.03 (57) of the statutes is created to read:

23 73.03 (57) To have a taxpayer rights advocate whose duties shall include the

24 following:

3. ^{to} allow a taxpayer to consult with an attorney or an
 accountant or to postpone an interview or an audit so
 that the taxpayer may consult an attorney or an accountant.

1 (a) Assisting a taxpayer in resolving the taxpayer's complaints against the
2 department.

3 (b) Recommending to the secretary of revenue legislation to simplify and
4 improve state tax laws, forms and procedures.

5 (c) Coordinating the dissemination of publications that inform taxpayers about
6 state tax laws.

7 (d) Submitting a report to the chief clerk of each house of the legislature for
8 distribution to the legislature under s. 13.172 (2) every 2 years, beginning on October
9 1, 2000, summarizing the activities of the taxpayer rights advocate's office.

10 **SECTION 9.** 73.13 of the statutes is created to read:

11 **73.13 Reducing nondelinquent taxes. (1)** In this section:

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

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

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

22 (b) If the department determines that the taxpayer is unable to pay the taxes,
23 costs, penalties and interest in full, the department shall determine the amount that
24 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance
25 with the department's determination. The order shall provide that the order is

1 effective only if the reduced taxes are paid within 10 days from the date on which the
2 order is issued. The department or its collection agents, upon receipt of the order,
3 shall accept payment in accordance with the order. Upon payment of the reduced
4 taxes, the department shall credit the unpaid portion of the principal amount of the
5 taxes and record the unpaid amount of costs, penalties, and interest accrued to the
6 date of the order.

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

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

3 **SECTION 10.** 73.14 of the statutes is created to read:

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

10 **SECTION 11.** 73.15 of the statutes is created to read:

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

15 **SECTION 12.** 73.16 of the statutes is created to read:

16 **73.16 Instalment payments.** (1) The department of revenue may enter into
17 a written agreement with a taxpayer to pay in instalments any amount of taxes,
18 interest or penalties that are owed by the taxpayer.

19 (2) The department of revenue may terminate an agreement under sub. (1)
20 under any of the following conditions:

21 (a) The taxpayer gives the department inaccurate or incomplete information
22 related to an agreement under sub. (1).

23 (b) The department determines that it cannot reasonably collect the amount
24 of taxes, interest or penalties that are subject to an agreement under sub. (1) as
25 provided in the agreement.

1 (3) The department of revenue may modify or terminate an agreement under
2 sub. (1) under any of the following conditions:

3 (a) The department determines that the financial condition of a taxpayer who
4 entered into an agreement under sub. (1) has changed significantly and the
5 department notifies the taxpayer, at least 30 days before modifying or terminating
6 the taxpayer's agreement, that the department is modifying or terminating the
7 taxpayer's agreement. A notice to a taxpayer under this paragraph shall specify the
8 basis for the department's determination that the taxpayer's financial condition has
9 changed significantly.

10 (b) The taxpayer who entered into an agreement under sub. (1) fails to pay an
11 instalment payment on time, to pay another obligation to the department on time or
12 to provide financial information that the department requests.

13 (4) A taxpayer may appeal a decision under sub. (2) or (3) to the tax appeals
14 commission under s. 73.01.

15 **SECTION 13. Appropriation changes; revenue.**

16 (1) TAXPAYER RIGHTS ADVOCATE. In the schedule under section 20.005 (3) of the
17 statutes for the appropriation to the department of revenue under section 20.566 (1)

18 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
19 ~~\$~~ ^{34,000} for fiscal year 2000-01 to increase the authorized FTE positions of the
20 department by 1.0 GPR position on July 1, 2000, for a taxpayer rights advocate under
21 section 73.03 (57) of the statutes.

22 (2) TAXPAYER RIGHTS SUPPORT STAFF. In the schedule under section 20.005 (3) of
23 the statutes for the appropriation to the department of revenue under section 20.566

24 (1) (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased

25 ~~\$~~ ^{28,000} for fiscal year 2000-01 to increase the authorized FTE positions of the

1 department by 1.0 GPR position on July 1, 2000, for the performance of support
2 services for the taxpayer rights advocate under section 73.03 (57) of the statutes.

3 (3) TAXPAYER RIGHTS OFFICE. In the schedule under section 20.005 (3) of the
4 statutes for the appropriation to the department of revenue under section 20.566 (3)
5 (a) of the statutes, as affected by the acts of 1999, the dollar amount is increased by
6 \$~~40,000~~^{19,500} for fiscal year 2000-01 to rent and set up office space and provide supplies
7 for the taxpayer rights advocate and the advocate's support staff.

8 **SECTION 14. Initial applicability.**

9 (1) MARRIED PERSONS' TAX LIABILITY. The treatment of section 71.10 (6) (a) and
10 (b) and (6m) (a) of the statutes first applies to tax liability that arises on the effective
11 date of this subsection or that remains unpaid on the effective date of this subsection.

12 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
13 except as follows:

14 (1) The treatment of SECTION 13 of this act takes effect on July 1, 2000.

15 (END)

3526/1/dv
VK/cm H

DATE

Please review this draft carefully to ensure that it is consistent with your intent. I have added a provision under section 73.03(56)(d) of the statutes, as created by the bill, that requires a department of revenue employee to allow a taxpayer to consult an attorney or an accountant during an audit. I have also provided dollar amounts for the taxpayer advocate position, the taxpayer advocate staff position and the taxpayer office rental and ^{setup} setup, as per your instructions.

VK

↑
setup

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

LRB-3526/1dn
JK:cmh:mrc

October 22, 1999

Please review this draft carefully to ensure that it is consistent with your intent. I have added a provision under section 73.03 (56) (d) of the statutes, as created by the bill, that requires a department of revenue employe to allow a taxpayer to consult an attorney or an accountant during an audit. I have also provided dollar amounts for the taxpayer advocate position, the taxpayer advocate staff position and the taxpayer office rental and setup, as per your instructions.

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

Kreye, Joseph

From: Wenzel, Bill
Sent: Tuesday, November 23, 1999 11:16 AM
To: Kreye, Joseph
Subject: Taxpayer Bill of Rights

Joe --

I have forwarded your last message up to our District office to contact Steve Winter about getting in touch with you. In case you need it - I am authorizing you to talk to Attorney Winter regarding the draft legislative proposal (LRB 3526/1).

Bill

check admin rules? > "income reconstruction"
** read 71.74(2)*

Kreye, Joseph

To: Wenzel, Bill
Subject: RE: Taxpayer Bill of Rights (LRB 3526/1) & Family Farm Protection Act (LRB 3955/P1)

Bill:

1. Regarding LRB 3526/1, I have reviewed the comments from Steve Wilson, but I am not sure how to incorporate those comments into the draft. Mr. Wilson's suggested language is confusing at best. I am also not convinced that Mr. Wilson's suggestions would protect the taxpayer any more than under current law or that the suggestions would reduce the number of appealed cases. It seems to me that an aggrieved taxpayer would still have to pursue a remedy in court and that the department of revenue would then have the burden of proof. It may be useful to speak with Mr. Wilson about the details of the Delander case so that I can craft language which would address the problem.

2. Regarding LRB 3955/P1, if I define a "small farm", for purposes of the sales tax exemption on electricity as "a **livestock operation** having less than 1000 animal units" then **no** horticulture or floraculture farm is eligible for the exemption. Is that consistent with your intent?

Joseph T. Kreye, Legislative Attorney
Legislative Reference Bureau
(608) 266-2263
joseph.kreye@legis.state.wi.us

-----Original Message-----

From: Wenzel, Bill
Sent: Tuesday, November 23, 1999 9:14 AM
To: Kreye, Joseph
Subject: Taxpayer Bill of Rights (LRB 3526/1) & Family Farm Protection Act (LRB 3955/P1)

Joe - -

Just following up on a couple of items:

- 1) Taxpayer Bill of Rights - On 11/4/99 I email some thoughts regarding "burden of proof" issues that were submitted to us by Attorney Steve Winter who has been working with us on this legislation and on some audit cases in the District. I was curious as to whether you had time to look at the comments and incorporate them into the draft. I think this is the last piece and we would like to begin to circulate the draft within the next couple of weeks so that it is ready for introduction the first of the year.
- 2) Family Farm Protection Act - you raised the question of our intent in the definition of "small farms" on LRB 3955/P1. In order to maintain consistency with the environmental regulatory provisions instead of using a revenue basis we would prefer that you define small farms as "a livestock operation having less than 1000 animal units"

If you have any questions or comments, please feel free to contact me at 6-7745

Thanks,
Bill

Kreye, Joseph

From: Wenzel, Bill
Sent: Thursday, November 04, 1999 12:44 PM
To: Kreye, Joseph
Subject: Taxpayer Bill of Rights (LRB - 3526/P1)

Joe - -

Please find attached some comments/suggestions from a tax attorney in the district on the issue of "burden of proof".
Take a look and see what you think.

Bill Wenzel
Sen. Clausen's Office
266-7745



TBR Burden of
Proof.102699.doc...

October 26, 1999

To: Bill Wenzel

From: Shirley Fredrickson

Re: Taxpayer Bill of Rights – Burden of Proof

I talked with Steve Wilson yesterday about this portion of this legislation. He agreed that the present law does have a presumed burden of proof on the DOR but only in cases that go to court. The problem is many of these taxpayers don't have the money to go to court so they are forced to pay the assessment even though they feel it is not owed.

Steve's suggestion is that there be a burden of proof during the audit process so that if the DOR makes assumptions about the taxpayers income or expenses then the DOR is required to have proof from some other source. For example, in the Delander case, Steve challenged the DOR to account for all the additional income they were attributing to Delanders as the Delanders net worth (assets) did not indicate the amount of income DOR was projecting. DOR simply said they spent the winter in the Caribbean – although this was untrue and they (DOR) had no proof of this claim.

For the state to impute a tax they should have to provide another proof. DOR should have to support their economic valuation or net worth – this is called the "cash T" in audit terms.

The burden of proof imposed during the audit process could be tested at the audit appellate level. This would protect the taxpayer and save the state money because it would cut down on the number of cases going to appeal.

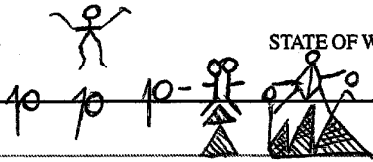
Steve's suggested wording for the Taxpayer Bill of Rights is:

"In the absence of audit results founded in client source documents – if auditor uses other methods – auditor should be required to corroborate the initial inferential findings with at least one other testing method – ie, economic valuation and/or net worth analysis"

Does this make sense to you? It did to me when I was talking with Steve. Steve would be glad to talk with you – telephone 715-425-0108. Just be prepared for a long conversation.

In other news, resulting from our inquiries, it appears that Kelleher's will win their appeal and Cave's – who have already paid \$156,000 – will get a refund. I guess the IRS has transferred all audits to their LaCrosse office and have found problems in several other areas of the state.

over
11-23-99
4pm



100MM - ...

Steve Wilson

stemming from bad office auditor in former
Eau Claire office

▷ "income reconstruction" for audits 71.74(2)
mark-up, network, bank-deposits method

▷ corroborate with at least one other testing
method

▷ problem for poorly designed audits



using an inferential method

something
other than
taxpayer books
or methods
records

if books and records are inadequate,
require corroboration by other method

mark

but then again, my let DOR
determine what is inadequate?
my note

an alternate method → an empirical model
rather than a theoretical model

if relying on facts beyond the facts that
are the basis of return → require
corroboration

test/audit results with some other method

receipts & expenditures method (preferred) based on situation

actually — may be better to corroborate
with 2 methods (under 71.74(2))

|
when audit results based on
inferential findings

would actually bolster court cases from DOR
perspective

⊗ If auditors use method under 71.74(2), auditor is
in more reconstruction
required to corroborate finding under that
method with at least one other more
reconstruction method