



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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MADISON, WI 53701-2037

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STEPHEN R. MILLER
CHIEF

March 1, 2000

MEMORANDUM

To: Senator Clausing

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memo to **(un-introduced)**(LRB 99-3526/4 ... old version)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

Please note: This draft is now a “/6”.

MEMORANDUM

February 28, 2000

TO: Joseph T. Kreye
Legislative Reference Bureau

FROM: Yeang-Eng Braun *YEB*
Department of Revenue

SUBJECT: Technical Memorandum on LRB 3526/4, the Taxpayer Bill of Rights

The Department of Revenue (DOR) has several suggestions on this bill, indicated by bill section number below:

Section 6: The bill requires that DOR verify the results of audit investigations under sec. 71.42 (2)(b) through an income reconstruction method different from the method used under that section. First, most audits are not income reconstruction audits. Second, when an income reconstruction audit is performed, it generally is because the entity has not kept sufficient records on its economic activity, so the auditor must reconstruct it. Because of the lack of adequate record keeping, it is difficult to find sufficient records for one income reconstruction method. Using yet a second method would be much more difficult and time consuming, for DOR auditors, the taxpayer and others having access to records of the taxpayer (e.g., financial institutions). It would require the hiring of additional field auditors, as outlined below.

If the sponsor wishes to retain this requirement, it may be useful to define "income reconstruction method" so that it is clear when an assessment is due to a reconstruction of income and when a second reconstruction method is needed.

Section 9: This section requires DOR to provide several services. The services listed are broadly defined, and we believe that the Department is already providing them. In some cases, the requirements are more specifically enumerated in existing statutes. For example, proposed sec. 73.03 (56)(e) would require DOR to provide reasonable tax collections arrangements, a responsibility currently laid out in greater detail in sec. 71.91 of the statutes.

If the sponsor wishes DOR to provide additional services, then specific responsibilities should be defined and the resources for providing them should be authorized. For example, proposed sec. 73.03 (56)(c) would require DOR to assist taxpayers in filing tax forms. We currently provide substantial taxpayer assistance, but we do not actually complete tax returns for

JAN 19 2000

NOTE: PLEASE RETURN THIS BILL DRAFT AND THIS TRANSMITTAL SHEET WITH YOUR FISCAL ESTIMATE FORMS

IF THERE IS A FISCAL EFFECT TO THE BILL, PLEASE SUBMIT THE FISCAL ESTIMATE WORKSHEET.

TO: **Eng Braun**
Department of Revenue

FROM: Deborah Uecker
Division of Executive Budget and Finance
101 East Wilson Street
Administration Building, 10th Floor
Madison, WI 53707

SUBJECT: Fiscal Estimate - **LRB Number 3526/4**
1999 Bill Number

Please provide the necessary information on fiscal estimate forms and return the original AND one copy of the original to Deborah Uecker, no later than:

25-Jan-00

If you cannot comply with the above deadline for any reason, please call Deborah at 267-0371.

Provide local government costs.

_____ is responsible for local government costs.

ALSO SENT TO:
Department of Revenue

DATE DOA SENT TO AGENCY:

18-Jan-00

DATE DOA RECEIVED FROM AGENCY:

2/29/00

TO BE COMPLETED BY AGENCY:

Name and phone number of person who prepared the fiscal estimate.

(Name)

(Phone Number)

PLEASE SEND ORIGINAL COPIES OF THE FORMS THAT CAN BE REPRODUCED.

taxpayers. If that is what the sponsor intends, it would be a substantial increase over our current responsibilities that would require additional resources.

Section 10: These provisions allowing compromise of nondelinquent taxes generally parallel the current provisions allowing compromise of delinquent income and franchise taxes. However, the new provisions in this section do not allow payments over a one-year period, which the changes in Section 7 of the bill allow for delinquent taxes.

Section 11: The provision that taxes due monthly and remitted electronically are to be paid by the last day of the month conflicts with earlier due dates for some monthly filers elsewhere in the statutes. We recommend that the existing due dates continue to apply.

Section 12: DOR currently allows taxpayers to tape record meetings if DOR is made aware of the intention to record the meeting ahead of time. In these instances, the DOR generally tapes the meeting as well so that it has an independent record of the meeting. If this provision is to remain in the bill, it should also permit DOR to record any meeting recorded by a taxpayer, and should require advance notice to DOR so that recording equipment can be brought to the meeting. This would necessitate the purchase of tape recorders for field revenue agents and auditors.

Also, the sponsor may wish to limit the recording to an audiotape. Videotaping a meeting does not appear necessary.

Administrative Costs

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language needs to be developed and costs allocated in the following manner:

| | <u>Chapter 20</u> | <u>Amount</u> | <u>FTE</u> |
|----------------|-------------------|---------------|------------|
| FY01 | | | |
| one-time costs | s. 20.566 (1)(a) | \$36,300 | |
| ongoing costs | s. 20.566 (1)(a) | \$87,800 | 1.5 |

If you have questions regarding this technical memorandum, please contact Dennis Collier at 266-5773. If you have any questions regarding the administrative costs, please contact Jackie Wipperfurth at 266-9513.

YEB:DC:ds
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FISCAL ESTIMATE FORM

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # 99-3526/4

INTRODUCTION #

Admin. Rule #

Subject

Taxpayer Bill of Rights

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be Possible to Absorb
 Within Agency's Budget Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.566 (1)(a)

Assumptions Used in Arriving at Fiscal Estimate:

The bill makes the following changes to state tax law that, unless otherwise indicated, will have no effect on state tax collections or administration:

- ◆ Wisconsin provisions for providing relief to innocent spouses from payments of taxes on a joint return are conformed to the federal innocent spouse provisions.
- ◆ The Department of Revenue (DOR) is required to verify the results of a field audit in which an assessment has been made using an income reconstruction method different from the method used in making the assessment. To satisfy this requirement, the Department would need to hire 1.5 field auditors at an annual cost of \$87,800, plus development costs of \$18,800.
- ◆ Payment of a compromise with a delinquent taxpayer unable to make full payment of delinquent income and franchise taxes may be made through a schedule in which payment is made within a one-year period. Currently the compromise must be paid within ten days. The bill may alter the timing of payments and, by providing a longer time period for payments, may permit the payment of larger amounts under compromises. However, the effect on state tax collections is not expected to be significant.
- ◆ DOR is allowed to compromise the payment of nondelinquent taxes when the taxpayer is unable to pay the full amount. Currently, compromise is permitted only for delinquent taxes. The bill may permit some payments that would not otherwise be made, but is not expected to have a significant effect on state tax collections.

(continued on page two)

Long-Range Fiscal Implications:

| Agency/Prepared by: (Name & Phone No.) | Authorized Signature/Telephone No. | Date |
|---|---|---------|
| Wisconsin Department of Revenue Dennis Collier. (608) 266-5773 | Yeang-Eng Braun <i>Yeang Eng Braun</i> (608) 266-2700 | 2/28/00 |

FISCAL ESTIMATE FORM

LRB 3526/4

Page 2

- ◆ DOR is required to ensure its employees treat the public courteously, distribute information about state tax law, provide assistance in the filing of tax forms, ensure fair treatment to taxpayer is during audits and provide reasonable tax collection arrangements for taxpayers with outstanding liability.
- ◆ DOR is permitted to allow for electronic filing of tax returns and electronic payment of taxes.
- ◆ Taxpayers being interviewed in person by a DOR employee about a tax assessment or collection are allowed to tape record the interview, if the DOR employee is informed that the interview is being recorded. Assuming that all field revenue agents and auditors would need to be equipped with tape recorders in order to record meetings that taxpayers are recording, the department would incur one-time costs of \$17,500.

YEB
2/28/00

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect

1999 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

| | |
|------------------------|----------------------|
| LRB # 99-3526/4 | Admin. Rule # |
| INTRODUCTION # | |

Subject
 Taxpayer Bill of Rights

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$36,300 in FY01

| II. Annualized Costs: | Annualized Fiscal Impact on State funds from: | |
|---|---|-----------------|
| A. State Costs by Category | Increased Costs | Decreased Costs |
| State Operations - Salaries and Fringe | \$ 87,800 | \$ - |
| (FTE Position Changes) | (1.5 FTE) | (- FTE) |
| State Operations-Other Costs | | - |
| Local Assistance | | - |
| Aids to Individuals or Organizations | | - |
| TOTAL State Costs by Category | \$ 87,800 | \$ - |
| B. State Costs by Source of Funds | Increased Costs | Decreased Costs |
| GPR | \$ 87,800 | \$ - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | | - |
| III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Rev. | Decreased Rev. |
| GPR Taxes | \$ | \$ - |
| GPR Earned | | - |
| FED | | - |
| PRO/PRS | | - |
| SEG/SEG-S | | - |
| TOTAL State Revenues | \$ | \$ - |

NET ANNUALIZED FISCAL IMPACT

| | <u>STATE</u> | <u>LOCAL</u> |
|------------------------|--------------|--------------|
| NET CHANGE IN COSTS | \$ +87,800 | \$ |
| NET CHANGE IN REVENUES | \$ | \$ |

| | | |
|---|---|-------------|
| Agency/Prepared by: (Name & Phone No.) | Authorized Signature/Telephone No. | Date |
| Wisconsin Department of Revenue Dennis Collier, (608) 266-5773 | Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i> | 2/28/00 |



1999 BILL

in 1-7-2000

Free gen

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

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

BILL

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 within one year of the compromise if DOR agrees to a payment schedule. 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. 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:

BILL

1 71.10 (6) (a) *Joint returns.* Persons filing a joint return are jointly and severally
2 liable for the tax, interest, penalties, fees, additions to tax and additional
3 assessments under this chapter applicable to the return. ~~A- Except as provided in~~
4 ~~par. (e), a person shall be relieved of liability in regard to a joint return in the manner~~
5 ~~specified in section 6013 (e) 6015 (a) to (d) and (f) of the internal revenue code,~~
6 ~~notwithstanding the amount or percentage of the understatement~~ Internal Revenue
7 Code.

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

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

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

22 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
23 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
24 by the department, within 2 years after the date on which the department first

BILL**SECTION 3**

1 begins collection activities after the effective date of this paragraph [revisor
2 inserts date].

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

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

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

18 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
19 for relief with the department as provided under sub. (6) (e).

20 **SECTION 6.** 71.74 (2) (c) of the statutes is amended to read:

21 71.74 (2) (c) If it appears upon ~~such an~~ an investigation under par. (b) that a person
22 has been over or under assessed, or that no assessment has been made when one
23 should have been made, the department shall make a correct assessment in the
24 manner provided in this chapter. If, after an investigation under par. (b), the
25 department determines that a person has been under assessed, or that no

BILL

1 assessment has been made when one should have been made, the department shall
2 verify the results of the investigation under par. (b) by using at least one income
3 reconstruction method that is different than any income reconstruction method used
4 for the investigation under par. (b).

5 **SECTION 7.** 71.92 (3) of the statutes is amended to read:

6 71.92 (3) Any taxpayer may petition the department of revenue to compromise
7 his or her delinquent income or franchise taxes including the costs, penalties and
8 interest. ~~Such~~ The petition shall set forth a sworn statement of the taxpayer and
9 shall be in ~~such a~~ a form as ~~that~~ the department ~~shall prescribe~~ prescribes and the
10 department may examine the petitioner under oath concerning the matter. If the
11 department finds that the taxpayer is unable to pay the taxes, costs, penalties and
12 interest in full it shall determine the amount the taxpayer is able to pay and shall
13 enter an order reducing such taxes, costs, penalties and interest in accordance with
14 ~~such the~~ the determination. ~~Such~~ The order shall provide that ~~such the~~ the compromise
15 ~~shall be, if paid in a lump sum, is~~ effective only if paid within 10 days or the order
16 shall provide that the compromise is effective if paid within one year if the
17 department agrees to set up a payment schedule. The department or its collection
18 agents upon receipt of ~~such the~~ the order shall accept payment in accordance with the
19 order. Upon payment of the total amount due under the order, the department shall
20 credit the unpaid portion of the principal amount of such taxes and make appropriate
21 record of the unpaid amount of penalties, costs, and interest accrued to the date of
22 ~~such the~~ the order. If within 3 years of the date of ~~such the~~ the compromise order or the date
23 of a final payment under a payment schedule, whichever is later, the department
24 ~~shall ascertain~~ ascertains that the taxpayer has an income or property sufficient to
25 enable the taxpayer to pay the remainder of the tax including costs, penalty and

BILL**SECTION 7**

1 interest the department shall reopen said ~~the~~ matter and order the payment in full
2 of such taxes, costs, penalties and interest. Before the entry of such ~~the~~ order a notice
3 shall be given to the taxpayer in writing advising of the intention of the department
4 of revenue to reopen such ~~the~~ matter and fixing a time and place for the appearance
5 of the taxpayer if the taxpayer desires a hearing. Upon entry of such ~~the~~ order the
6 department of revenue shall make an appropriate record of the principal amount of
7 such ~~the~~ taxes, penalties, costs and interest ordered to be paid and such taxes shall
8 be immediately due and payable and shall thereafter be subject to the interest
9 provided by s. 71.82 (2), and the department shall immediately proceed to collect the
10 same together with the unpaid portion of penalty, costs, and interest accrued to the
11 date of the compromise order.

12 **SECTION 8.** 73.01 (4) (a) of the statutes is amended to read:

13 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
14 the commission shall be the final authority for the hearing and determination of all
15 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
16 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and, 70.995 (8) ^{plain comma} and 73.13 ^{move plain comma} s. 76.38 (12) (a), 1993
17 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40,
18 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, subch.
19 XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal
20 there is filed with the commission a stipulation signed by the department of revenue
21 and the adverse party, under s. 73.03 (25), agreeing to an affirmance, modification
22 or reversal of the department's position with respect to some or all of the issues raised
23 in the appeal, the commission shall enter an order affirming or modifying in whole
24 or in part, or canceling the assessment appealed from, or allowing in whole or in part
25 or denying the petitioner's refund claim, as the case may be, pursuant to and in

BILL

1 accordance with the stipulation filed. No responsibility shall devolve upon the
2 commission, respecting the signing of an order of dismissal as to any pending appeal
3 settled by the department without the approval of the commission.

4 **SECTION 9.** 73.03 (56) of the statutes is created to read:

5 73.03 (56) (a) To ensure that its employes treat members of the public
6 courteously.

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

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

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

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

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

15 3. Allow the taxpayer to consult with an attorney or an accountant or to
16 postpone an interview or an audit so that the taxpayer may consult an attorney or
17 an accountant.

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

20 ~~**SECTION 10.** 73.03 (57) of the statutes is created to read:~~

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

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

BILL

~~1 (b) Recommending to the secretary of revenue legislation to simplify and
2 improve state tax laws, forms and procedures.~~

~~3 (c) Coordinating the dissemination of publications that inform taxpayers about
4 state tax laws.~~

~~5 (d) Submitting a report to the chief clerk of each house of the legislature for
6 distribution to the legislature under s. 13.172 (2) every 2 years, beginning on October
7 1, 2000, summarizing the activities of the taxpayer rights advocate's office.~~

8 **SECTION 11.** 73.13 of the statutes is created to read:

9 **73.13 Reducing nondelinquent taxes.** (1) In this section:

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

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

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

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

BILL

1 shall accept payment in accordance with the order. Upon payment of the reduced
2 taxes, the department shall credit the unpaid portion of the principal amount of the
3 taxes and record the unpaid amount of costs, penalties, and interest accrued to the
4 date of the order.

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

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

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 01/10/2000

To: Senator Clausen

Relating to LRB drafting number: LRB-3526

Topic

taxpayer bill of rights

Subject(s)

Tax - miscellaneous

1. **JACKET** the draft for introduction _____

in the **Senate** ____ or the **Assembly** ____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction Alice Clausen

*Requested
1/24/00
1/18/00*

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Joseph T. Kreye, Legislative Attorney
Telephone: (608) 266-2263

Kreye, Joseph

From: Wenzel, Bill
Sent: Wednesday, February 09, 2000 3:03 PM
To: Kreye, Joseph; Ford, William
Subject: Taxpayer Bill of Rights (LRB 3526/4)

Hi Joe - -

I have one final round of request for revisions (promise) to the *Taxpayer Bill of Rights* proposal. Bill, please correct me if I'm wrong.

- ✓ • Page 3 - **Section 71.10(6)(a)** Delete lines 3 through 7 beginning with *Except as provided in para. (e)* and ending with *Internal Revenue Code*. It is my understanding that an innocent spouse without knowledge is already relieved of liability. **See - Assembly Amendment 2 to AB 634.**
- ✓ • Page 3 - **Section 71.10(6)(b)** Delete lines 9 through 13 - same provision as above.
- ✓ • Page 4 - **Section 71.10 (6m)(a)** Delete lines 4 through 9 beginning with *Except as provided in para. (c)* and ending with *Internal Revenue Code*. **See - Assembly Amendment 2 to AB 634.**
- ✓ • Pages 4, 5 - **Section 71.74(2)(c)** Modify language underlined (i.e. p.4 beginning @ line 24 beginning with *If, after an investigation* and ending on p.5 @ line 4 *investigation under para.(b)*). The bill should provide that the requirement of a second method of income reconstruction should apply only if DOR has used income reconstruction to make the assessment. It should also be made clear that the second method of income reconstruction is only to be used to *reasonably corroborate* the results obtained under the first method.
- ✓ • Page 5 - **Section 71.92(3)** Replace the following language at lines 16, 17 *within one year if the department agrees to set up a payment schedule with according the payment schedule agreed to by the department*. **See - Assembly Amendment 1 to AB 402.**

Thanks for your cooperation in this regard. If you have any questions please feel free to call me at 266-7745.

Sincerely,
Bill



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-3526/4
JK:cmh&jlg:km

1999 BILL

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

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} ~~within one year of~~ ^{agreed to by DOR} the compromise if DOR agrees to a payment schedule. 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. 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:

~~SECTION 1. 71.10 (6) (a) of the statutes is amended to read:~~

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1 71.10 (6) (a) *Joint returns.* Persons filing a joint return are jointly and severally
2 liable for the tax, interest, penalties, fees, additions to tax and additional
3 assessments under this chapter applicable to the return. ~~A~~ Except as provided in
4 par. (e), a person shall be relieved of liability in regard to a joint return in the manner
5 specified in section 6013 (e) 6015 (a) to (d) and (f) of the internal revenue code,
6 notwithstanding the amount or percentage of the understatement Internal Revenue
7 Code.

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

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

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

22 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
23 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
24 by the department, within 2 years after the date on which the department first

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1 begins collection activities after the effective date of this paragraph [revisor
2 inserts date].

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

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

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

18 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
19 for relief with the department as provided under sub. (6) (e).

20 **SECTION 6.** 71.74 (2) (c) of the statutes is amended to read:

21 71.74 (2) (c) If it appears upon such an investigation under par. (b) that a person
22 has been over or under assessed, or that no assessment has been made when one
23 should have been made, the department shall make a correct assessment in the
24 manner provided in this chapter. ~~If after an investigation under par. (b), the~~
25 department determines that a person has been under assessed or that no

by using an income reconstruction method

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assessment has been made when one should have been made, the department shall ^{corroborate} verify the results of the ~~investigation under par. (b)~~ ^{income reconstruction} by using at least one ^{method} income reconstruction method ^{with} that is different than any income reconstruction method used ^{other} for the investigation under par. (b).

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SECTION 7. 71.92 (3) of the statutes is amended to read:

71.92 (3) Any taxpayer may petition the department of revenue to compromise his or her delinquent income or franchise taxes including the costs, penalties and interest. ~~Such~~ The petition shall set forth a sworn statement of the taxpayer and shall be in such a form as that the department shall ~~prescribe~~ prescribes and the department may examine the petitioner under oath concerning the matter. If the department finds that the taxpayer is unable to pay the taxes, costs, penalties and interest in full it shall determine the amount the taxpayer is able to pay and shall enter an order reducing such taxes, costs, penalties and interest in accordance with such the determination. ~~Such~~ The order shall provide that ~~such~~ the compromise shall be, if paid in a lump sum, is effective only if paid within 10 days or the order shall provide that the compromise is effective if paid within one year if the department agrees to set up a payment schedule. The department or its collection agents upon receipt of such the order shall accept payment in accordance with the order. Upon payment of the total amount due under the order, the department shall credit the unpaid portion of the principal amount of such taxes and make appropriate record of the unpaid amount of penalties, costs, and interest accrued to the date of such the order. If within 3 years of the date of such the compromise order or the date of a final payment under a payment schedule, whichever is later, the department shall ~~ascertains~~ ascertains that the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax including costs, penalty and

agreed to by the department ✓

BILL**SECTION 7**

1 interest the department shall reopen ~~said~~ the matter and order the payment in full
2 of such taxes, costs, penalties and interest. Before the entry of ~~such~~ the order a notice
3 shall be given to the taxpayer in writing advising of the intention of the department
4 of revenue to reopen ~~such~~ the matter and fixing a time and place for the appearance
5 of the taxpayer if the taxpayer desires a hearing. Upon entry of ~~such~~ the order the
6 department of revenue shall make an appropriate record of the principal amount of
7 ~~such~~ the taxes, penalties, costs and interest ordered to be paid and such taxes shall
8 be immediately due and payable and shall thereafter be subject to the interest
9 provided by s. 71.82 (2), and the department shall immediately proceed to collect the
10 same together with the unpaid portion of penalty, costs, and interest accrued to the
11 date of the compromise order.

12 **SECTION 8.** 73.01 (4) (a) of the statutes is amended to read:

13 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
14 the commission shall be the final authority for the hearing and determination of all
15 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
16 70.11 (21), 70.38 (4) (a), 70.397, 70.64 ~~and~~, 70.995 (8) and 73.13, s. 76.38 (12) (a), 1993
17 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40,
18 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, subch.
19 XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal
20 there is filed with the commission a stipulation signed by the department of revenue
21 and the adverse party, under s. 73.03 (25), agreeing to an affirmance, modification
22 or reversal of the department's position with respect to some or all of the issues raised
23 in the appeal, the commission shall enter an order affirming or modifying in whole
24 or in part, or canceling the assessment appealed from, or allowing in whole or in part
25 or denying the petitioner's refund claim, as the case may be, pursuant to and in

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1 accordance with the stipulation filed. No responsibility shall devolve upon the
2 commission, respecting the signing of an order of dismissal as to any pending appeal
3 settled by the department without the approval of the commission.

4 **SECTION 9.** 73.03 (56) of the statutes is created to read:

5 73.03 **(56)** (a) To ensure that its employes treat members of the public
6 courteously.

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

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

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

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

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

15 3. Allow the taxpayer to consult with an attorney or an accountant or to
16 postpone an interview or an audit so that the taxpayer may consult an attorney or
17 an accountant.

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

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

21 **73.13 Reducing nondelinquent taxes.** (1) In this section:

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

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

BILL

1 (2) (a) A taxpayer may petition the department to reduce the taxpayer's taxes,
2 including the costs, penalties and interest related to the taxpayer's taxes. The
3 petition shall set forth a sworn statement of the taxpayer and shall be in a form that
4 the department prescribes. The department may examine the taxpayer under oath
5 about the petition and may require the taxpayer to provide the department with
6 financial statements and any other information requested by the department that
7 is related to the petition.

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

18 (c) If within 3 years of the date of the order under par. (b) the department
19 ascertains that the taxpayer has an income or owns property sufficient to enable the
20 taxpayer to pay the unpaid portion of the principal amount of the taxes due,
21 including the costs, penalties and interest recorded under par. (b), the department
22 shall reopen the order under par. (b) and order the taxpayer to pay in full the unpaid
23 portion of the principal amount of the taxes due, including the costs, penalties and
24 interest recorded under par. (b). Before the entry of the order for payment, the
25 department shall send a written notice to the taxpayer, by certified mail, advising

BILL

1 the taxpayer of the department's intention to reopen the order under par. (b) and
2 fixing a time and place for the appearance of the taxpayer, if the taxpayer desires a
3 hearing. If the department determines that the taxpayer is able to pay the unpaid
4 portion of the principal amount of the taxes due, including the costs, penalties and
5 interest recorded under par. (b), the department shall enter the order for payment
6 in full. The unpaid portion of the principal amount of the taxes due, including the
7 costs, penalties and interest recorded under par. (b), shall be due and payable
8 immediately upon entry of the order for payment in full and shall thereafter be
9 subject to the interest under s. 71.82 (2), as that subsection applies to delinquent
10 income and franchise taxes under s. 71.82, and to the delinquent account fee under
11 s. 73.03 (33m).

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

14 **SECTION 11.** 73.14 of the statutes is created to read:

15 **73.14 Electronic filing.** The department of revenue may allow a person who
16 is required to file a return or a report with the department or to pay an amount to
17 the department to file the return or the report electronically or to pay the amount
18 electronically. If the department allows a person to remit taxes electronically that
19 are due monthly, the person shall submit the returns related to the taxes on or before
20 the last day of the month after the month in which the taxes are due.

21 **SECTION 12.** 73.15 of the statutes is created to read:

22 **73.15 Tape recording.** A taxpayer may tape-record any in-person interview
23 of the taxpayer that is conducted by an employe of the department of revenue about
24 the assessment or collection of taxes, if the taxpayer informs the employe, before the
25 interview, that the taxpayer is tape-recording the interview.

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SECTION 13. Initial applicability.

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

(END)

Kreye, Joseph

From: Wenzel, Bill
Sent: Monday, February 14, 2000 10:44 AM
To: Kreye, Joseph
Cc: Ford, William
Subject: Taxpayer Bill of Rights

Hi Joe - -

The never ending battle to reach closure on this continues. Mostly as a result of lack of clear instructions on my part:

1. The changes that provide that the *compromise is effective if paid according to a payment schedule agreed to by the department* was incorporated into **Section 2 - 71.92 (3)**. However, the same language needs to be incorporated at **Section 5 - 73.13(2)(b)** after the sentence beginning at p.6, line 9 and ending at p.6, line 11 (i.e. *The order shall provide...which the order issued*).
2. Additionally, it appears that the **innocent spouse exemptions** were deleted in there entirety. Our intention was not to eliminate these provisions, but rather to delete references to the following exceptions in LRB 3526/4:
 - Except as provided in para. (e) a person shall be relieved of liability in regard to a joint return in a manner specified in section 6015(a) to (d) and (f) of the Internal Revenue Code.
 - **Section 1 - 71.10(6)(a): lines 3 thru 7.**
 - **Section 2 - 71.10(6)(b): lines 9 thru 13.**
 - Except as provided in para. (c), a
 - **Section 4 - 71.10(6m)(a): lines 4**

My apologies, Joe. If you have any questions please feel free to contact me or Bill Ford.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-35265
JK:cmh&jlg:jf

1999 BILL

in 2-14-2000

re gov

the liability of married persons
filing a joint income tax
returns

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

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 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

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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.

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

INSERT A

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

- 1 **SECTION 1.** 71.74 (2) (c) of the statutes is amended to read:
- 2 71.74 (2) (c) If it appears upon such an investigation under par. (b) that a person
- 3 has been over or under assessed, or that no assessment has been made when one
- 4 should have been made, the department shall make a correct assessment in the
- 5 manner provided in this chapter. If the department determines, by using an income
- 6 reconstruction method, that a person has been under assessed or that no assessment
- 7 has been made when one should have been made, the department shall corroborate

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1 the results of the income reconstruction method with at least one other income
2 reconstruction method.

3 **SECTION 2.** 71.92 (3) of the statutes is amended to read:

4 71.92 (3) Any taxpayer may petition the department of revenue to compromise
5 his or her delinquent income or franchise taxes including the costs, penalties and
6 interest. ~~Such~~ The petition shall set forth a sworn statement of the taxpayer and
7 shall be in ~~such a~~ a form as ~~that~~ the department ~~shall prescribe~~ prescribes and the
8 department may examine the petitioner under oath concerning the matter. If the
9 department finds that the taxpayer is unable to pay the taxes, costs, penalties and
10 interest in full it shall determine the amount the taxpayer is able to pay and shall
11 enter an order reducing such taxes, costs, penalties and interest in accordance with
12 ~~such the~~ the determination. ~~Such~~ The order shall provide that ~~such the~~ the compromise
13 shall be, if paid in a lump sum, is effective only if paid within 10 days ² or the order
14 shall provide that the compromise is effective if paid according to a payment schedule
15 agreed to by the department. The department or its collection agents upon receipt
16 of ~~such the~~ the order shall accept payment in accordance with the order. Upon payment
17 of the total amount due under the order, the department shall credit the unpaid
18 portion of the principal amount of such taxes and make appropriate record of the
19 unpaid amount of penalties, costs, and interest accrued to the date of ~~such the~~ the order.
20 If within 3 years of the date of ~~such the~~ the compromise order or the date of a final
21 payment under a payment schedule, whichever is later, the department ~~shall~~
22 ascertains ascertains that the taxpayer has an income or property sufficient to
23 enable the taxpayer to pay the remainder of the tax including costs, penalty and
24 interest the department shall reopen ~~said~~ the matter and order the payment in full
25 of such taxes, costs, penalties and interest. Before the entry of ~~such the~~ the order a notice

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1 shall be given to the taxpayer in writing advising of the intention of the department
2 of revenue to reopen ~~such~~ the matter and fixing a time and place for the appearance
3 of the taxpayer if the taxpayer desires a hearing. Upon entry of ~~such~~ the order the
4 department of revenue shall make an appropriate record of the principal amount of
5 ~~such~~ the taxes, penalties, costs and interest ordered to be paid and such taxes shall
6 be immediately due and payable and shall thereafter be subject to the interest
7 provided by s. 71.82 (2), and the department shall immediately proceed to collect the
8 same together with the unpaid portion of penalty, costs, and interest accrued to the
9 date of the compromise order.

10 **SECTION 3.** 73.01 (4) (a) of the statutes is amended to read:

11 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
12 the commission shall be the final authority for the hearing and determination of all
13 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
14 70.11 (21), 70.38 (4) (a), 70.397, 70.64 ~~and~~, 70.995 (8) ~~and~~ 73.13, s. 76.38 (12) (a), 1993
15 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40,
16 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76 and 139.78, subch.
17 XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal
18 there is filed with the commission a stipulation signed by the department of revenue
19 and the adverse party, under s. 73.03 (25), agreeing to an affirmance, modification
20 or reversal of the department's position with respect to some or all of the issues raised
21 in the appeal, the commission shall enter an order affirming or modifying in whole
22 or in part, or canceling the assessment appealed from, or allowing in whole or in part
23 or denying the petitioner's refund claim, as the case may be, pursuant to and in
24 accordance with the stipulation filed. No responsibility shall devolve upon the

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1 commission, respecting the signing of an order of dismissal as to any pending appeal
2 settled by the department without the approval of the commission.

3 **SECTION 4.** 73.03 (56) of the statutes is created to read:

4 73.03 (56) (a) To ensure that its employes treat members of the public
5 courteously.

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

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

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

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

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

14 3. Allow the taxpayer to consult with an attorney or an accountant or to
15 postpone an interview or an audit so that the taxpayer may consult an attorney or
16 an accountant.

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

19 **SECTION 5.** 73.13 of the statutes is created to read:

20 **73.13 Reducing nondelinquent taxes. (1)** In this section:

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

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

24 (2) (a) A taxpayer may petition the department to reduce the taxpayer's taxes,
25 including the costs, penalties and interest related to the taxpayer's taxes. The

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1 petition shall set forth a sworn statement of the taxpayer and shall be in a form that
2 the department prescribes. The department may examine the taxpayer under oath
3 about the petition and may require the taxpayer to provide the department with
4 financial statements and any other information requested by the department that
5 is related to the petition.

6 (b) If the department determines that the taxpayer is unable to pay the taxes,
7 costs, penalties and interest in full, the department shall determine the amount that
8 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance
9 with the department's determination. The order shall provide that the order is
10 effective only if the reduced taxes are paid ^{either} within 10 days from the date on which the
11 order is issued. The department or its collection agents, upon receipt of the order,

12 shall accept payment in accordance with the order. Upon payment of the reduced
13 taxes, the department shall credit the unpaid portion of the principal amount of the
14 taxes and record the unpaid amount of costs, penalties, and interest accrued to the
15 date of the order.

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

*or according to a payment schedule agreed to
by the department*

BILL

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

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

12 **SECTION 6.** 73.14 of the statutes is created to read:

13 **73.14 Electronic filing.** The department of revenue may allow a person who
14 is required to file a return or a report with the department or to pay an amount to
15 the department to file the return or the report electronically or to pay the amount
16 electronically. If the department allows a person to remit taxes electronically that
17 are due monthly, the person shall submit the returns related to the taxes on or before
18 the last day of the month after the month in which the taxes are due.

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

20 **73.15 Tape recording.** A taxpayer may tape-record any in-person interview
21 of the taxpayer that is conducted by an employe of the department of revenue about
22 the assessment or collection of taxes, if the taxpayer informs the employe, before the
23 interview, that the taxpayer is tape-recording the interview.

24 (END)

3526/6
JK

INSERT A

(9) 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.

(END OF INSERT)

INSERT 2-1

Section #. 71.10 (6) (a) of the statutes is amended to read:

6015 (a) to (d) and (f)

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

Internal Revenue Code

1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9. 1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9.

INSERT
2-1

Section #. 71.10 (6) (b) of the statutes is amended to read:

71.10 (6) (b) *Separate returns.* A spouse filing a separate return may be relieved of liability for the tax, interest, penalties, fees, additions to tax and additional assessments under this chapter ~~with~~ ←

→ ~~regard to unreported marital property income~~ in the manner specified in section 66 (c) of the ~~internal revenue code.~~

The department may not apply ch. 766 in assessing a taxpayer with respect to marital property income the taxpayer did not report if that taxpayer failed to notify the taxpayer's spouse about the amount and nature of the income before the due date, including extensions, for filing the return for the taxable year in which the income was derived. The department shall include all of that marital property income in the gross income of the taxpayer and exclude all of that marital property income from the gross income of the taxpayer's spouse.

1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9. 1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9.

Internal Revenue Code

INSERT 2-1

Internal Revenue
=
Code
=

Section #. 71.10 (6m) (a) of the statutes is amended to read:

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

1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9. 1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9.

————— end of insert 2-1 —————

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 02/17/2000

To: Senator Clausing

Relating to LRB drafting number: LRB-3526

Topic

taxpayer bill of rights

Subject(s)

Tax - miscellaneous

1. JACKET the draft for introduction _____

in the Senate or the Assembly _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. REDRAFT. See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain FISCAL ESTIMATE NOW, prior to introduction _____

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Joseph T. Kreye, Legislative Attorney
Telephone: (608) 266-2263



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 266-5648

STEPHEN R. MILLER
CHIEF

March 21, 2000



MEMORANDUM

To: Senator Clausing

From: Joseph Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to 1999 SB 480 (LRB 99-3526/6)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

March 20, 2000

TO: Joseph T. Kreye
Legislative Reference Bureau

FROM: Yeang-Eng Braun *YEB*
Department of Revenue

SUBJECT: Technical Memorandum on LRB 3526/6, the Taxpayer Bill of Rights

The Department of Revenue (DOR) has several suggestions on this bill, indicated by bill section number below:

Sections 1-4: The bill has no time limits within which a taxpayer must file for innocent spouse relief. This suggests that a taxpayer could file at any time, 10 or 20 or even more years after DOR begins collection activities. DOR suggests that the 2-year limit appearing in an earlier draft of the bill (LRB 3526/4), which is patterned after federal innocent spouse relief provisions, be restored.

Section 6: The bill requires that DOR verify the results of audit investigations under sec. 71.42 (2)(b) through an income reconstruction method different from the method used under that section. First, most audits are not income reconstruction audits. Second, when an income reconstruction audit is performed, it generally is because the entity has not kept sufficient records on its economic activity, so the auditor must reconstruct it. Because of the lack of adequate record keeping, it is difficult to find sufficient records for one income reconstruction method. Using yet a second method would be much more difficult and time consuming, for DOR auditors, the taxpayer and others having access to records of the taxpayer (e.g., financial institutions). It would require the hiring of additional field auditors, as outlined below.

If the sponsor wishes to retain this requirement, it may be useful to define "income reconstruction method" so that it is clear when an assessment is due to a reconstruction of income and when a second reconstruction method is needed.

Section 9: This section requires DOR to provide several services. The services listed are broadly defined, and we believe that the Department is already providing them. In some cases, the requirements are more specifically enumerated in existing statutes. For example, proposed sec. 73.03 (56)(e) would require DOR to provide reasonable tax collections arrangements, a responsibility currently laid out in greater detail in sec. 71.91 of the statutes.

If the sponsor wishes DOR to provide additional services, then specific responsibilities should be defined and the resources for providing them should be authorized. For example, proposed sec. 73.03 (56)(c) would require DOR to assist taxpayers in filing tax forms. We currently provide substantial taxpayer assistance, but we do not actually complete tax returns for taxpayers. If that is what the sponsor intends, it would be a substantial increase over our current responsibilities that would require additional resources.

Section 10: These provisions allowing compromise of nondelinquent taxes generally parallel the current provisions allowing compromise of delinquent income and franchise taxes. However, the new provisions in this section do not allow payments over a one-year period, which the changes in Section 7 of the bill allow for delinquent taxes.

Section 11: The provision that taxes due monthly and remitted electronically are to be paid by the last day of the month conflicts with earlier due dates for some monthly filers elsewhere in the statutes. We recommend that the existing due dates continue to apply.

Section 12: DOR currently allows taxpayers to tape record meetings if DOR is made aware of the intention to record the meeting ahead of time. In these instances, the DOR generally tapes the meeting as well so that it has an independent record of the meeting. If this provision is to remain in the bill, it should also permit DOR to record any meeting recorded by a taxpayer, and should require advance notice to DOR so that recording equipment can be brought to the meeting. This would necessitate the purchase of tape recorders for field revenue agents and auditors.

Also, the sponsor may wish to limit the recording to an audiotape. Videotaping a meeting does not appear necessary.

Administrative Costs

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language needs to be developed and costs allocated in the following manner:

| | <u>Chapter 20</u> | <u>Amount</u> | <u>FTE</u> |
|----------------|-------------------|---------------|------------|
| FY01 | | | |
| one-time costs | s. 20.566 (1)(a) | \$36,300 | |
| ongoing costs | s. 20.566 (1)(a) | \$87,800 | 1.5 |

If you have questions regarding this technical memorandum, please contact Dennis Collier at 266-5773. If you have any questions regarding the administrative costs, please contact Jackie Wipperfurth at 266-9513.

YEB:DC:ds
t:\fsn99-00\dc\lrb35266.tec