

2001 DRAFTING REQUEST

Bill

Received: 12/07/2000

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Revenue 7-1262

By/Representing: sherrie gates-hendrix

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - miscellaneous

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Various tax changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 02/01/2001	jdyer 02/19/2001		_____			S&L Tax
/1	jkreye 03/01/2001	jdyer 03/01/2001	pgreensl 02/20/2001	_____	lrb_docadmin 02/20/2001		S&L Tax
/2	jkreye 03/22/2001	jdyer 03/23/2001	pgreensl 03/01/2001	_____	lrb_docadmin 03/01/2001		S&L Tax

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/3	jkreye 04/18/2001	jdye 04/19/2001	jfrantze 03/26/2001	_____	lrb_docadmin 03/26/2001		S&L Tax
/4	jkreye 06/05/2001		martykr 04/19/2001	_____	lrb_docadmin 04/19/2001	lrb_docadmin 06/06/2001	

FE Sent For:

Lat intro

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sent to
Rep. M. Lehman
per JK

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Ken 4/18 *XB 4/19*

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1?	jkreye	1 2/19 jld	2/20 PS	2/20 PS/RS			

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State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

December 6, 2000

TO: Joe Kreye

FROM: Sherrie Gates-Hendrix

SUBJECT: Changes to 1999 LRB 2437/5 --- "Taxpayer Friendly Bill"

Here are the changes we'd like to 1999 LRB2437/5 (AB 634 & SB 346) in a 2001 session draft.

- 1) Add the provisions of the attached proposal to permit use of private delivery services.



A14.doc

- 2) Take out all of the provisions relating to authorizing DOR to accept credits for tax payments, including the ch. 20 appropriation.
- 3) Add 2 technical changes that were included in AA2 to 1999 AB 634:
- Innocent spouse – under Secs 3, 4 and 6, the changes that read “except as provided...” in these sections are not needed. So the changes in p. 4, ll. 14, 15 and 20 and p. 5, line 14 can be eliminated.
 - Under Sec 12, retain 71.80(19)(c) and change the beginning of the paragraph to read “(c) In applicability to computation of amount. Except at the request of the department, paragraph”
- 4) Take out the portions of the bill that define “exclusively” for sales tax purposes
- 5) Add parts of 1999 AA4 as follows:
- Change p. 12, line 3 from 60 to 90 days – extending the time period for compliance with the sales and use tax refunds
 - Delete language which would make sales/use tax refunds retroactive to Sept 1, 1994.
 - Sec 37, nonstat: delete (1)

➤ Sec 38, Initial applicability:

(1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14(4), 73.01(4)(a) and 77.59(4)(c) and (5) of the statutes first applies:

(a) For taxes remitted to the dept, to notices or offsets on or after day after publication, even though such refunds or offsets relate to sales that first occurred on or after Sept 1, 1994.

(b) For amounts not remitted to the dept, to discoveries of tax collected in error on or after day after publication, even though related to sales that first occurred on or after Sept 1, 1994.

Thanks for your help. As I mentioned on the phone, I have one more potential item to add to this draft relating to electronic signatures on individual income tax forms. If we go with that item, I will send you instructions soon.

July 18, 2000

TITLE: Permit Use of Private Delivery Services

SUMMARY OF RECOMMENDATION:

Allow taxpayers to use private delivery services for purposes of "safe harbor" delivery of tax documents.

DESCRIPTION OF CURRENT LAW AND PROBLEM

Various Wisconsin tax statutes prescribe deadlines for filing documents and performing certain other acts. The statutes (for example, sec. 71.80(18)) also establish a "safe harbor" standard for an item to be considered timely received by the Department of Revenue. This standard provides that if an item is mailed in a properly addressed envelope with postage duly prepaid (in some cases the statute says "first class postage duly prepaid"), postmarked before midnight on the day of the deadline, and received by the Department of Revenue within 5 days of the deadline, the item will be considered timely.

Although the statutes that provide the safe harbor provision do not expressly prohibit the use of a private delivery service, neither do they specifically state that a private delivery service may be used. As a result, it is not clear whether or not the use of private delivery services is acceptable for purposes of the safe harbor mailing deadline provisions in the various Wisconsin tax statutes.

Federal income tax law specifically addresses the use of private delivery services. Section 7502(f) of the Internal Revenue Code provides that the Secretary of the Treasury may authorize "designated" private delivery services (that is, private delivery services that meet certain requirements) to be used for purpose of meeting federal timely mailing and filing deadlines. Copies of this section of the Internal Revenue Code and related Internal Revenue Service notices are attached.

Conforming to federal law with regard to the use of private delivery services would somewhat ease a taxpayer's burden of complying with the Wisconsin tax laws. A single set of rules applicable for both Wisconsin and federal tax purposes is generally desirable.

ADMINISTRATIVE IMPACT

Minimal.

FISCAL EFFECT

None

DRAFTING INSTRUCTIONS

Amend the following sections of the statutes to reference Internal Revenue Code Section 7502(f), and provide that private delivery services approved for use for federal purposes may also be used for purposes of meeting the Wisconsin timely filing and mailing deadlines:

71.80(18)
77.61(14)
139.03(2x)(d)
130.05(2a)
139.315(4)

Note: Amending secs. 71.80(18) and 77.61(14) will also affect the following sections of the statutes which reference either 71.80(18) or 77.61(14):

Statutes that reference 71.80(18)

77.96(4) –Recycling surcharge
77.9964(2) –Dry cleaning fees
78.67 –Fuel taxes
139.11(2m) –Beverage taxes
139.38(2m) –Cigarette tax
139.835 –Tobacco products tax

Statutes that reference 77.61(14)

77.982(2) –Expo tax
77.991(2) –Local rental car tax
77.9951(2) –State rental vehicle fee

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Day after publication.

DOR CONTACT PERSON

Clay Seth, 266-8920

PREPARED BY

Tom Reid, 266-8474

1376/1

2001 BILL

~~1999 ASSEMBLY BILL 634~~

IN 2-1-01

December 30, 1999 - Introduced by Representatives M. LEHMAN and WOOD, cosponsored by Senators WIRCH and DRZEWIECKI, by request of Department of Revenue. Referred to Committee on Ways and Means.

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

2 (b) 3.; *to renumber and amend* 71.80 (19) (a) and 77.59 (4) (c); *to amend* 50.14

3 (4), 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a), 71.65 (5) (a) 1., 73.01 (4) (a), 77.54

4 (5) (b), 77.54 (5) (c), 77.54 (6) (a), 77.54 (26m), 77.59 (5), 77.61 (3), 77.9941 (4),

5 77.9964 (2) and 78.68 (10); and *to create* 20.566 (1) (hd), 71.10 (6) (e), 71.10 (6m)

6 (c), 71.80 (21), 72.30 (1m), 73.13, 77.51 (20m), 77.51 (22m), 77.58 (3) (c), 78.39

7 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m) and 139.82 (2r) of the

8 statutes; **relating to:** the liability of married persons filing a joint income tax

9 return, the payment of the alternate fuel tax and the tobacco products tax,

10 reducing nondelinquent taxes, rounding dollar amounts to whole dollars on all

11 tax returns, allowing a mathematical computation of sales and use taxes, ~~items~~

12 ~~used exclusively for tax-exempt purposes, paying taxes with a credit card.~~

ASSEMBLY BILL 634

delivering tax-related documents and related payments,

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extending the time for filing a tax withholding report, granting rule-making

2

authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

REDUCING TAXES

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

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

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

INCOME AND FRANCHISE TAXES

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

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

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ASSEMBLY BILL 634

SALES AND USE TAXES

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

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

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

This bill requires a seller who receives any refund of sales or use taxes, or who collects sales or use taxes erroneously, to submit such a refund or taxes to the buyer, or to DOR if the buyer cannot be located, within ~~60~~ 90 days after receiving a refund or after discovering that the seller has collected taxes erroneously. Any portion of a refund or taxes not submitted to the buyer, or to DOR if the buyer cannot be located, within that ~~60~~ 90 days must be submitted to DOR, along with a penalty.

OTHER TAXATION

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

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

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

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

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

INSERT A ✓

ASSEMBLY BILL 634

SECTION 1

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

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

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

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

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

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

19 SECTION 4. 71.10 (6) (b) of the statutes is amended to read:

20 71.10 (6) (b) *Separate returns.* ~~(A) Except as provided in par. (e) a~~ spouse filing
21 a separate return may be relieved of liability for the tax, interest, penalties, fees,
22 additions to tax and additional assessments under this chapter with regard to
23 unreported marital property income in the manner specified in section 66 (c) of the
24 internal revenue code Internal Revenue Code. The department may not apply ch.
25 766 in assessing a taxpayer with respect to marital property income the taxpayer did

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ASSEMBLY BILL 634

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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.

SECTION 5. 71.10 (6) (e) of the statutes is created to read:

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

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

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71.10 (6m) (a) ~~Except as provided in par. (c),~~ 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 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

ASSEMBLY BILL 634

the former spouse and exclude all of that marital property income from the gross income of the person.

SECTION 7. 71.10 (6m) (c) of the statutes is created to read:

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

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

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

~~SECTION 9. 71.80 (19) (a) (title) of the statutes is repealed.~~

SECTION 10. 71.80 (19) (a) of the statutes is renumbered 71.80 (19) and amended to read:

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

SECTION 11. 71.80 (19) (b) of the statutes is repealed.

~~SECTION 12. 71.80 (19) (c) of the statutes is repealed.~~

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

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

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

INSERT 6-18 ✓

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ASSEMBLY BILL 634

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

7 (d) The department may contract for services relating to credit card payments
8 ~~under this section.~~

9 SECTION 14. 72.30 (1m) of the statutes is created to read:

10 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
11 return filed under ch. 71, applies to a tax return filed under sub. (1).

12 SECTION 15. 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), s. 76.38 (12) (a), 1993 stats., ss.
17 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (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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ASSEMBLY BILL 634

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 16. 73.13 of the statutes is created to read:

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

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

7 (b) "Tax" means an amount that is owed to this state under s. ~~66.0615~~ (1m) (f) 3.

8 or ch. 71, 72, 76, 77, 78, or 139, and that is not delinquent.

9 (2) (a) A taxpayer may petition the department to reduce the taxpayer's taxes,

10 including the costs, penalties, and interest related to the taxpayer's taxes. The

11 petition shall set forth a sworn statement of the taxpayer and shall be in a form that

12 the department prescribes. The department may examine the taxpayer under oath

13 about the petition and may require the taxpayer to provide the department with

14 financial statements and any other information requested by the department that

15 is related to the petition.

16 (b) If the department determines that the taxpayer is unable to pay the taxes,

17 costs, penalties, and interest in full, the department shall determine the amount that

18 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance

19 with the department's determination. The order shall provide that the order is

20 effective only if the reduced taxes are paid within 10 days from the date on which the

21 order is issued. The department or its collection agents, upon receipt of the order,

22 shall accept payment in accordance with the order. Upon payment of the reduced

23 taxes, the department shall credit the unpaid portion of the principal amount of the

24 taxes and record the unpaid amount of costs, penalties, and interest accrued to the

25 date of the order.

66.0615

ASSEMBLY BILL 634

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

20 ~~SECTION 17. 77.51 (20m) of the statutes is created to read:~~

21 ~~77.51 (20m) "Taxable year" has the meaning given in s. 71.01 (12).~~

22 ~~SECTION 18. 77.51 (22m) of the statutes is created to read:~~

23 ~~77.51 (22m) "Used exclusively" means used in a nontaxable manner for at least~~
24 ~~95% of total use, the percentage to be determined as follows, unless a person receives~~
25 ~~written approval from the department of revenue to use an alternative method:~~

ASSEMBLY BILL 634

SECTION 18

1 (a) For highway vehicles, including trailers and semitrailers, divide the
2 number of miles that the item is driven or hauled in a nontaxable manner in the
3 taxable year by the total number of miles that the item is driven or hauled in the same
4 taxable year.

5 (b) For an item other than that described in par. (a), divide the number of hours
6 that the item is used in a nontaxable manner in the taxable year by the total number
7 of hours that the item is used in the same taxable year.

8 **SECTION 19.** 77.54 (3) (b) 3. of the statutes is repealed.

9 **SECTION 20.** 77.54 (5) (b) of the statutes is amended to read:

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

16 **SECTION 21.** 77.54 (5) (c) of the statutes is amended to read:

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

ASSEMBLY BILL 634

1 **SECTION 22.** 77.54 (6) (a) of the statutes is amended to read:

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

6 **SECTION 23.** 77.54 (26m) of the statutes is amended to read:

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

19 **SECTION 24.** 77.58 (3) (c) ✓ of the statutes is created to read:

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

22 **SECTION 25.** 77.59 (4) (c) ✓ of the statutes is renumbered 77.59 (5m) ✓ and amended
23 to read:

24 77.59 (5m) A seller who receives a refund under par. (a) or (b) of taxes that the
25 seller has collected from buyers, who collects taxes erroneously from buyers, or who

PWF

1 is entitled to a refund that is offset under sub. (5), shall ~~return~~ submit the taxes and
 2 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~
 3 department if the seller cannot locate the buyers, within ~~60~~ days after the date of the
 4 refund, after the date of the offset, or after discovering that the seller has collected
 5 taxes erroneously from the buyers. If the seller does not submit the taxes and related
 6 interest to the department or the buyers within that period, the seller shall return
 7 submit to the department any part of a refund or taxes that the seller does not ~~return~~
 8 submit to a buyer or to the department along with a penalty of 25% of the amount
 9 not returned ~~or submitted or, in the case of fraud,~~ a penalty equal to the amount not
 10 returned ~~in the case of fraud~~ submitted.

90

11 SECTION 26. 77.59 (5) of the statutes is amended to read:

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

21 SECTION 27. 77.61 (3) of the statutes is amended to read:

22 77.61 (3) ~~The department shall provide~~ A retailer shall use either a bracket
 23 system to be used by retailers in collecting or a straight mathematical computation,
 24 under rules promulgated by the department, to determine the amount of the tax that
 25 the retailer may collect from their the retailer's customers, but the use of such

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ASSEMBLY BILL 634

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brackets either a bracket system or a straight mathematical computation shall not relieve the retailer from liability for payment of the full amount of the tax levied by ss. 77.51 to 77.62.

SECTION 28. 77.9941 (4) of the statutes is amended to read:

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

SECTION 29. 77.9964 (2) of the statutes is amended to read:

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

SECTION 30. 78.39 (5d) of the statutes is created to read:

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

SECTION 31. 78.39 (5m) of the statutes is created to read:

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

SECTION 32. 78.68 (10) of the statutes is amended to read:

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

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ASSEMBLY BILL 634

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1 SECTION 33. 139.11 (2r) of the statutes is created to read:

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

4 SECTION 34. 139.38 (2r) of the statutes is created to read:

5 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
6 applies to a report filed under this subchapter.

7 SECTION 35. 139.75 (9m) of the statutes is created to read:

8 139.75 (9m) "Sign" has the meaning given in s. 139.01 (9m).

9 SECTION 36. 139.82 (2r) of the statutes is created to read:

10 139.82 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
11 applies to a report filed under this subchapter.

12 SECTION 37. Nonstatutory provisions.

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

22 SECTION 38. Initial applicability.

23 (1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14
24 (4), 73.01 (4) (a) and 77.59 (4) (c) and (5) of the statutes first applies retroactively to

ASSEMBLY BILL 634

1 refunds that were due on sales that first occurred on September 1, 1994, and to taxes
2 first collected erroneously on September 1, 1994.

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

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

8 **SECTION 39. Effective dates.** This act takes effect on the day after publication,
9 except as follows:

10 (1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14
11 (4), 73.01 (4) (a) and 77.59 (4) (c) and (5) of the statutes takes effect retroactively to
12 September 1, 1994.

13 (2) SALES AND USE TAX EXEMPTIONS AND COMPUTATIONS. The treatment of sections
14 77.51 (20m) and (22m), 77.54 (3) (b) 3. and (5) (b) and (c), (6) (a) and (26m) and 77.61
15 (3) of the statutes takes effect on the first day of the 2nd month beginning after
16 publication.

17 (END) ✓

*, for amounts remitted to the department of revenue, to
notices or offsets on the effective date of this subsection
and, for amounts not remitted to the department of revenue,
to discoveries of taxes collected in error on the effective
date of this subsection*

2001 BILL

1 **AN ACT to amend** 71.80 (18), 77.61 (14), 139.03 (2x) (d), 139.05 (2a) and 139.315
 2 (4) of the statutes; **relating to:** delivering tax related documents and related
 3 payments.

INSERT A

Analysis by the Legislative Reference Bureau

Under current law, generally, a tax-related document or payment that ~~the~~ ~~department of revenue~~ must receive by a specified date is timely received, if the document or payment is mailed in a properly addressed envelope; the sender pays the postage; the envelope is postmarked on the day that the document or payment is due; and the document or payment is received within five days from the date on which the document or payment is due.

DOR

Under this bill, mailing a tax-related document or payment includes using a delivery service that has been approved by the Internal Revenue Service, for federal tax purposes.

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

4 **SECTION 1.** 71.80 (18) of the statutes is amended to read:
 5 71.80 (18) **TIMELY FILING DEFINED.** Documents and payments required or
 6 permitted by this chapter that are mailed shall be considered furnished, reported,

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1 filed or made on time, if mailed in a properly addressed envelope, with postage duly
 2 prepaid, which envelope is postmarked, or marked or recorded electronically as
 3 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight
 4 of the date prescribed for such furnishing, reporting, filing or making, provided such
 5 document or payment is actually received by the department or at the destination
 6 that the department or the department of administration prescribes within 5 days
 7 of such prescribed date. Documents and payments that are not mailed are timely if
 8 they are received on or before the due date by the department or at the destination
 9 that the department or the department of administration prescribes. For purposes
 10 of this subsection, "mailed" includes delivery by a delivery service designated under
 11 section 7502 (f) of the Internal Revenue Code. end of insert 6-8

12 **SECTION 2.** 77.61 (14) of the statutes is amended to read:

13 77.61 (14) Documents and payments required or permitted under this
 14 subchapter that are mailed are timely furnished, filed or made if they are mailed in
 15 a properly addressed envelope with the postage duly prepaid, if the envelope is
 16 postmarked, or marked or recorded electronically as provided under section 7502 (f)
 17 (2) (c) of the Internal Revenue Code, before midnight of the due date and if the
 18 document or payment is received by the department, or at the destination that the
 19 department prescribes, within 5 days after the prescribed date. Documents and
 20 payments that are not mailed are timely if they are received on or before the due date
 21 by the department or at the destination that the department designates. For
 22 purposes of this subsection, "mailed" includes delivery by a delivery service
 23 designated under section 7502 (f) of the Internal Revenue Code.

24 **SECTION 3.** 139.03 (2x) (d) of the statutes is amended to read:

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1 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return
 2 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered
 3 filed in time if it is mailed in a properly addressed envelope with 1st-class postage
 4 duly prepaid, if the envelope is officially postmarked, or marked or recorded
 5 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
 6 on the date due and if the return is actually received by the department or at the
 7 destination that the department prescribes within 5 days of the due date. A return
 8 that is not mailed is timely if it is received on or before the due date by the department
 9 or at the destination that the department prescribes. For purposes of this ✓ paragraph,
 10 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
 11 the Internal Revenue Code.

SECTION 4. 139.05 (2a) of the statutes is amended to read:

13 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed
 14 are furnished, filed or made on time, and payments therein referred to are timely, if
 15 mailed in a properly addressed envelope, with first-class postage duly prepaid, which
 16 envelope is officially postmarked, or marked or recorded electronically as provided
 17 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the
 18 date prescribed for such furnishing, filing or making of such payment, provided such
 19 statement, return or payment is actually received by the secretary of revenue or at
 20 the destination that the department prescribes within 5 days of the prescribed date.
 21 Payments and returns that are not mailed are timely if they are received on or before
 22 the due date by the department or at the destination that the department prescribes.
 23 For purposes of this subsection, ✓ “mailed” includes delivery by a delivery service
 24 designated under section 7502 (f) of the Internal Revenue Code.

SECTION 5. 139.315 (4) of the statutes is amended to read:

END OF INSERT
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CONA

SECTION 5

1 139.315 (4) LATE FILING FEE. Any person who fails to file a cigarette inventory
2 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely
3 if it is mailed in a properly addressed envelope with 1st class postage prepaid, if the
4 envelope is postmarked, or marked or recorded electronically as provided under
5 section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return
6 is actually received by the department or at the destination that the department
7 prescribes within 5 days of the due date. A return that is not mailed is timely if it
8 is received on or before the due date by the department or at the destination that the
9 department prescribes. For purposes of this subsection, "mailed" includes delivery
10 by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

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INSERT 6-18

Section #. 71.80 (19) (c) of the statutes is amended to read:

71.80 (19) (c) *Inapplicability to computation of amount.* Paragraph (a) does not apply to items which must be taken into account in making the computations necessary to determine the total amount required to be shown on a form, statement or other document but applies only to such final amount.

1987 a. 312; 1987 a. 411 ss. 70, 189 to 192; 1989 a. 31; 1991 a. 39, 301; 1993 a. 205; 1995 a. 27, 404, 418; 1997 a. 27, 39, 291. 1987 a. 312; 1987 a. 411 ss. 70, 189 to 192; 1989 a. 31; 1991 a. 39, 301; 1993 a. 205; 1995 a. 27, 404, 418; 1997 a. 27, 39, 291.

Except at the request of the department, paragraphs

end of insert 6-18

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Section #. 73.01 (4) (a) of the statutes is amended to read:

(5m) and

73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015, the commission shall be the final authority for the hearing and determination of all questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss. 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40, 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405 and 341.45, subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a pending appeal there is filed with the commission a stipulation signed by the department of revenue and the adverse party, under s. 73.03 (25), or the department of transportation and the adverse party agreeing to an affirmance, modification or reversal of the department of revenue's or department of transportation's position with respect to some or all of the issues raised in the appeal, the commission shall enter an order affirming or modifying in whole or in part, or canceling the assessment appealed from, or allowing in whole or in part or denying the petitioner's refund claim, as the case may be, pursuant to and in accordance with the stipulation filed. No responsibility shall devolve upon the commission, respecting the signing of an order of dismissal as to any pending appeal settled by the department of revenue or the department of transportation without the approval of the commission.

History: 1973 c. 90; 1975 c. 39, 199; 1977 c. 29; 1979 c. 177 s. 85; 1979 c. 221; 1981 c. 20, 317; 1983 a. 27, 277; 1985 a. 29 ss. 1403 to 1411, 3202 (56) (d); 1987 a. 27 ss. 1542m, 1543m, 3202 (47) (a); 1987 a. 142, 186, 198, 312, 399, 403; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 335; 1991 a. 39, 262, 315, 316; 1993 a. 184, 213; 1995 a. 351; 1997 a. 27; 1999 a. 145.

end of insert 8-3

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Wednesday, February 28, 2001 5:05 PM
To: Kreye, Joseph
Subject: LRB 1376/1

Hi Joe - Here are the comments of our staff on LRB 1376/1. They look pretty minor to me. Perhaps one more draft will do it!! --- Sherrie

Tom Reid

On page 13 of the draft at line 16, the words "1st class" need to be deleted. Section 139.315(4) would then read the same as sections 139.03(2x)(d) and 139.05(2a) as those sections are amended by this draft.

Vicki Gibbons

I have no changes to the statute text of the bill relating to seller sales tax refunds that must be passed on to buyers. The text properly reflects the amendments to 1999 AB 634 that were agreed to by DOR. However, changes should be made to the initial applicability provision. The effective date must state that the effective dates apply even though the notices, offsets, etc., relate to sales that may have occurred on or after September 1, 1994.

Without this language, there is no acknowledgement by the Legislature that this change has retroactive effect (see *Andrew K. Morris v. Wisconsin Department of Revenue* (9/26/83, CCH 202-256) and *Alan Marcwitz et al. v. Wisconsin Department of Revenue* (11/30/77, CCH 201-451)). Retroactive effect is limited only to the sales these refunds or notices relate to and not to the notice dates themselves. This limited retroactivity was agreed to on ASA 4 to 1999 AB 634.

The following is the initial applicability language DOR had previously proposed:

(1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14 (4), 73.01 (4) (a) and 77.59 (4) (c) and (5) of the statutes first applies:

- a. For taxes remitted to the department, to notices or offsets on or after day after publication, even though such refunds or offsets relate to sales that first occurred on or after September 1, 1994.
- b. For amounts not remitted to the department, to discoveries of tax collected in error on or after day after publication, even though related to sales that first occurred on or after September 1, 1994

The following is the actual language agreed to in ASA 4 to 1999 AB 634 which is also acceptable:

The treatment of sections 50.14 (4), 73.01 (4) (a) and 77.59 (4) (c) and (5) of the statutes first applies to notices of refunds or notices of amounts due dated, offsets taken and the discovery of amounts collected erroneously as taxes on the effective date of this subsection even if the notices, offsets and amounts relate to sales that occurred after August 31, 1994".

John Nordlie

It appears that the IRS filing requirement reference should also be added to 78.22 (4) and 139.38 (5).

Mike Hinnendael

Craig Johnson and I reviewed the provision relating to the option to use either a bracket system or a straight mathematical computation in LRB-1376/1 (Section 18, amendment to sec. 77.61(3), Wis. Stats.). We see no problems with this provision, assuming that Section 16 of LRB-1376/1 remains unchanged.

Note that LRB-1376/1 does not provide an effective date, other than the limited initial applicability provisions in Section 32.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1376/1

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2001 BILL

m 3-1-01

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1 AN ACT *to repeal* 71.80 (19) (b); *to renumber and amend* 77.59 (4) (c); *to*
2 *amend* 50.14 (4), 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a), 71.65 (5) (a) 1., 71.80
3 (18), 71.80 (19) (a), 71.80 (19) (c), 73.01 (4) (a), 77.59 (5), 77.61 (3), 77.61 (14),
4 77.9941 (4), 77.9964 (2), 78.68 (10), 139.03 (2x) (d), 139.05 (2a) and 139.315 (4);
5 and *to create* 71.10 (6) (e), 71.10 (6m) (c), 72.30 (1m), 73.13, 77.58 (3) (c), 78.39
6 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m) and 139.82 (2r) of the
7 statutes; **relating to:** the liability of married persons filing a joint income tax
8 return, the payment of the alternate fuel tax and the tobacco products tax,
9 reducing nondelinquent taxes, rounding dollar amounts to whole dollars on all
10 tax returns, allowing a mathematical computation of sales and use taxes,
11 extending the time for filing a tax withholding report, delivering tax-related

BILL

1 documents and related payments, granting rule-making authority, making an
2 appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau**REDUCING TAXES**

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

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

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

INCOME AND FRANCHISE TAXES

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

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

BILL**SALES AND USE TAXES**

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

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

This bill requires a seller who receives any refund of sales or use taxes, or who collects sales or use taxes erroneously, to submit such a refund or taxes to the buyer, or to DOR if the buyer cannot be located, within 90 days after receiving a refund or after discovering that the seller has collected taxes erroneously. Any portion of a refund or taxes not submitted to the buyer, or to DOR if the buyer cannot be located, within that 90 days must be submitted to DOR, along with a penalty.

OTHER TAXATION

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

Under current law, generally, a tax-related document or payment that DOR must receive by a specified date is timely received, if the document or payment is mailed in a properly addressed envelope; the sender pays the postage; the envelope is postmarked on the day that the document or payment is due; and the document or payment is received within five days from the date on which the document or payment is due.

Under this bill, mailing a tax-related document or payment includes using a delivery service that has been approved by the Internal Revenue Service, for federal tax purposes.

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

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

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

BILL**SECTION 1**

1 **SECTION 1.** 50.14 (4) of the statutes is amended to read:

2 50.14 (4) Sections 77.59 (1) to ~~(5)~~ (5m), (6) (intro.), (a) and (c) and (7) to (10),
3 77.60 (1) to (7), (9) and (10), 77.61 (9) and (12) to (14) and 77.62, as they apply to the
4 taxes under subch. III of ch. 77, apply to the assessment under this section.

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

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

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

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

24 **SECTION 4.** 71.10 (6) (e) of the statutes is created to read:

BILL

1 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
2 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
3 by the department, within 2 years after the date on which the department first
4 begins collection activities after the effective date of this paragraph [revisor
5 inserts date].

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

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

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

20 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
21 for relief with the department as provided under sub. (6) (e).

22 **SECTION 7.** 71.65 (5) (a) 1. of the statutes is amended to read:

23 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an
24 annual withholding report under sub. (3) (a) or (d).

25 **SECTION 8.** 71.80 (18) of the statutes is amended to read:

BILL

1 71.80 (18) **TIMELY FILING DEFINED.** Documents and payments required or
2 permitted by this chapter that are mailed shall be considered furnished, reported,
3 filed or made on time, if mailed in a properly addressed envelope, with postage duly
4 prepaid, which envelope is postmarked, or marked or recorded electronically as
5 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight
6 of the date prescribed for such furnishing, reporting, filing or making, provided such
7 document or payment is actually received by the department or at the destination
8 that the department or the department of administration prescribes within 5 days
9 of such prescribed date. Documents and payments that are not mailed are timely if
10 they are received on or before the due date by the department or at the destination
11 that the department or the department of administration prescribes. For purposes
12 of this subsection, “mailed” includes delivery by a delivery service designated under
13 section 7502 (f) of the Internal Revenue Code.

14 **SECTION 9.** 71.80 (19) (a) of the statutes is amended to read:

15 71.80 (19) (a) ~~With~~ At the request of the department, with respect to any
16 amount required to be shown on a form prescribed for any return, statement or other
17 document required by this chapter, if the amount of such item is other than a whole
18 dollar amount the fractional part of a dollar shall be disregarded unless it amounts
19 to 50 cents or more, in which case the amount (determined without regard to the
20 fractional part of a dollar) shall be increased to the next whole dollar.

21 **SECTION 10.** 71.80 (19) (b) of the statutes is repealed.

22 **SECTION 11.** 71.80 (19) (c) of the statutes is amended to read:

23 71.80 (19) (c) *Inapplicability to computation of amount.* Paragraph Except at
24 the request of the department, par. (a) does not apply to items which must be taken
25 into account in making the computations necessary to determine the total amount

BILL

1 required to be shown on a form, statement or other document but applies only to such
2 final amount.

3 **SECTION 12.** 72.30 (1m) of the statutes is created to read:

4 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
5 return filed under ch. 71, applies to a tax return filed under sub. (1).

6 **SECTION 13.** 73.01 (4) (a) of the statutes is amended to read:

7 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
8 the commission shall be the final authority for the hearing and determination of all
9 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
10 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss.
11 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40,
12 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405 and
13 341.45, subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a
14 pending appeal there is filed with the commission a stipulation signed by the
15 department of revenue and the adverse party, under s. 73.03 (25), or the department
16 of transportation and the adverse party agreeing to an affirmance, modification or
17 reversal of the department of revenue's or department of transportation's position
18 with respect to some or all of the issues raised in the appeal, the commission shall
19 enter an order affirming or modifying in whole or in part, or canceling the assessment
20 appealed from, or allowing in whole or in part or denying the petitioner's refund
21 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
22 No responsibility shall devolve upon the commission, respecting the signing of an
23 order of dismissal as to any pending appeal settled by the department of revenue or
24 the department of transportation without the approval of the commission.

25 **SECTION 14.** 73.13 of the statutes is created to read:

BILL

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

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

3 (b) “Tax” means an amount that is owed to this state under s. 66.0615 (1m) (f)
4 3. or ch. 71, 72, 76, 77, 78, or 139, and that is not delinquent.

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

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

22 (c) If within 3 years of the date of the order under par. (b) the department
23 ascertains that the taxpayer has an income or owns property sufficient to enable the
24 taxpayer to pay the unpaid portion of the principal amount of the taxes due,
25 including the costs, penalties, and interest recorded under par. (b), the department

BILL

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

16 **SECTION 15.** 77.58 (3) (c) of the statutes is created to read:

17 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
18 applies to a tax return filed under this section.

19 **SECTION 16.** 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended
20 to read:

21 77.59 (5m) A seller who receives a refund under ~~par. (a) or (b)~~ of taxes that the
22 seller has collected from buyers, who collects taxes erroneously from buyers, or who
23 is entitled to a refund that is offset under sub. (5), shall return submit the taxes and
24 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~
25 department if the seller cannot locate the buyers, within 90 days after the date of the

BILL

SECTION 16

1 refund, after the date of the offset, or after discovering that the seller has collected
2 taxes erroneously from the buyers. If the seller does not submit the taxes and related
3 interest to the department or the buyers within that period, the seller shall return
4 submit to the department any part of a refund or taxes that the seller does not return
5 submit to a buyer or to the department along with a penalty of 25% of the amount
6 not returned or submitted or, in the case of fraud, a penalty equal to the amount not
7 returned in the case of fraud submitted.

8 SECTION 17. 77.59 (5) of the statutes is amended to read:

9 77.59 (5) The department may offset the amount of any refund for a period,
10 together with interest on the refund, against deficiencies for another period, and
11 against penalties and interest on the deficiencies, or against any amount of whatever
12 kind, due and owing on the books of the department from the person ~~claiming who~~
13 is entitled to the refund. If the refund is to be paid to a buyer, the department may
14 also set off amounts in the manner in which it sets off income tax and franchise tax
15 refunds under s. 71.93 and may set off amounts for child support or maintenance or
16 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),
17 (6) and (7).

18 SECTION 18. 77.61 (3) of the statutes is amended to read:

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

BILL

1 **SECTION 19.** 77.61 (14) of the statutes is amended to read:

2 77.61 (14) Documents and payments required or permitted under this
3 subchapter that are mailed are timely furnished, filed or made if they are mailed in
4 a properly addressed envelope with the postage duly prepaid, if the envelope is
5 postmarked, or marked or recorded electronically as provided under section 7502 (f)
6 (2) (c) of the Internal Revenue Code, before midnight of the due date and if the
7 document or payment is received by the department, or at the destination that the
8 department prescribes, within 5 days after the prescribed date. Documents and
9 payments that are not mailed are timely if they are received on or before the due date
10 by the department or at the destination that the department designates. For
11 purposes of this subsection, "mailed" includes delivery by a delivery service
12 designated under section 7502 (f) of the Internal Revenue Code.

13 **SECTION 20.** 77.9941 (4) of the statutes is amended to read:

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

18 **SECTION 21.** 77.9964 (2) of the statutes is amended to read:

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

25 **SECTION 22.** 78.39 (5d) of the statutes is created to read:

INSERT 11-24 ✓

BILL

1 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

2 **SECTION 23.** 78.39 (5m) of the statutes is created to read:

3 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

4 **SECTION 24.** 78.68 (10) of the statutes is amended to read:

5 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75
6 (2), (4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under
7 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,
8 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies
9 to tax returns filed under ch. 71, applies to returns filed under this chapter.

10 **SECTION 25.** 139.03 (2x) (d) of the statutes is amended to read:

11 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return
12 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered
13 filed in time if it is mailed in a properly addressed envelope with ~~1st~~ class postage
14 duly prepaid, if the envelope is officially postmarked, or marked or recorded
15 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
16 on the date due and if the return is actually received by the department or at the
17 destination that the department prescribes within 5 days of the due date. A return
18 that is not mailed is timely if it is received on or before the due date by the department
19 or at the destination that the department prescribes. For purposes of this paragraph,
20 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
21 the Internal Revenue Code.

22 **SECTION 26.** 139.05 (2a) of the statutes is amended to read:

23 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed
24 are furnished, filed or made on time, and payments therein referred to are timely, if
25 mailed in a properly addressed envelope, with ~~first~~ class postage duly prepaid, which

BILL

1 envelope is officially postmarked, or marked or recorded electronically as provided
2 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the
3 date prescribed for such furnishing, filing or making of such payment, provided such
4 statement, return or payment is actually received by the secretary of revenue or at
5 the destination that the department prescribes within 5 days of the prescribed date.
6 Payments and returns that are not mailed are timely if they are received on or before
7 the due date by the department or at the destination that the department prescribes.
8 For purposes of this subsection, "mailed" includes delivery by a delivery service
9 designated under section 7502 (f) of the Internal Revenue Code.

10 **SECTION 27.** 139.11 (2r) of the statutes is created to read:

11 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
12 return filed under ch. 71, applies to a report filed under this subchapter.

13 **SECTION 28.** 139.315 (4) of the statutes is amended to read:

14 139.315 (4) LATE FILING FEE. Any person who fails to file a cigarette inventory
15 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely
16 if it is mailed in a properly addressed envelope with ~~1st class~~ postage prepaid, if the
17 envelope is postmarked, or marked or recorded electronically as provided under
18 section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return
19 is actually received by the department or at the destination that the department
20 prescribes within 5 days of the due date. A return that is not mailed is timely if it
21 is received on or before the due date by the department or at the destination that the
22 department prescribes. For purposes of this subsection, "mailed" includes delivery
23 by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

24 **SECTION 29.** 139.38 (2r) of the statutes is created to read:

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INSERT
14-2

1 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
2 applies to a report filed under this subchapter.

3 **SECTION 30.** 139.75 (9m) of the statutes is created to read:

4 139.75 (9m) "Sign" has the meaning given in s. 139.01 (9m).

5 **SECTION 31.** 139.82 (2r) of the statutes is created to read:

6 139.82 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
7 applies to a report filed under this subchapter.

8 **SECTION 32. Initial applicability.**

9 (1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14
10 (4), 73.01 (4) (a), and 77.59 (4) (c) and (5) of the statutes first applies ~~for amounts~~
11 ~~remitted to the department of revenue, to notices or offsets on the effective date of~~
12 ~~this subsection and, for amounts not remitted to the department of revenue, to~~
13 ~~discoveries of taxes collected in error on the effective date of this subsection.~~

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

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

19 (END)

INSERT 14-13

Insert 11-24

Section #. 78.22 (4) of the statutes is amended to read:

78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage duly prepaid and the envelope is officially postmarked on the date due and the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes.

History: 1981 c. 20; 1987 a. 312 s. 17; 1993 a. 16; 1997 a. 27.

or marked or recorded electronically as provided under section 7502(F)(2)(c) of the Internal Revenue Code,

For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502(F) of the Internal Revenue Code.

End of Insert 11-24

Insert 14-2

Section #. 139.38 (5) of the statutes is amended to read:

139.38 (5) If any permittee fails to file a report when due the permittee shall be required to pay a late filing fee of \$10. A report that is mailed is filed in time if it is mailed in a properly addressed envelope with ~~first class~~ postage duly prepaid, which envelope is officially postmarked on the date due, and if the report is actually received by the secretary or at the destination that the department prescribes within 5 days of the due date. A report that is not mailed is timely if it is received on or before the due date by the secretary or at the destination that the department prescribes.

History: 1977 c. 289 ss. 9, 11m; 1981 c. 20; 1983 a. 27; 1985 a. 302; 1987 a. 312 ss. 11, 17; 1991 a. 39; 1993 a. 482; 1997 a. 27.

, or marked or recorded electronically as provided under section 7502(f)(2)(c) of the Internal Revenue Code,

For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502(f) of the Internal Revenue Code.

end of insert