

**ASSEMBLY AMENDMENT 4,
TO 1999 ASSEMBLY BILL 634**

March 22, 2000 - Offered by Representatives M. LEHMAN and WOOD.

1 At the locations indicated, amend the bill as follows:

2 1. Page 9, line 24: delete lines 24 and 25 and substitute "95% of total use, the
3 percentage to be determined as follows:".

4 2. Page 10, line 7: after that line insert:

5 "(c) For any item, by an alternative method that the department of revenue
6 determines reasonably reflects the usage of the item in the taxable year."

7 3. Page 12, line 3: delete "60" and substitute "90".

8 4. Page 14, line 12: delete lines 12 to 21.

9 5. Page 14, line 24: delete the material beginning with "retroactively" and
10 ending with "1994" on page 15, line 2, and substitute "to notices of refunds or notices

11 of amounts due dated, offsets taken, and the discovery of amounts collected
12 erroneously as taxes on the effective date of this subsection even if the notices, offsets,
13 and amounts relate to sales that occurred after August 31, 1994".

INSERT 14-13

1

6. Page 15, line 10: delete lines 10 to 12.

2

7. Page 15, line 13: delete "(2)" and substitute "(1)".

3

(END)

Barman, Mike

From: Barman, Mike
Sent: Thursday, March 01, 2001 2:48 PM
To: Sherrie Gates-Hendrix
Subject: LRB 01-1376/2



01-1376/2

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.baman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Tuesday, March 20, 2001 3:46 PM
To: Kreye, Joseph
Subject: LRB 1376/2

Hi Joe --- could you just make that one change to LRB 1376/2 to take out the phrase "making an appropriation" in the relating clause.


S.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1376/2
JK:jld:pg

3

2001 BILL

OTHER

m 3-22-01

Regen

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), 78.22 (4), 78.68 (10), 139.03 (2x) (d), 139.05 (2a),
5 139.315 (4) and 139.38 (5); and to create 71.10 (6) (e), 71.10 (6m) (c), 72.30 (1m),
6 73.13, 77.58 (3) (c), 78.39 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m)
7 and 139.82 (2r) of the statutes; relating to: the liability of married persons
8 filing a joint income tax return, the payment of the alternate fuel tax and the
9 tobacco products tax, reducing nondelinquent taxes, rounding dollar amounts
10 to whole dollars on all tax returns, allowing a mathematical computation of
11 sales and use taxes, extending the time for filing a tax withholding report,

BILL

1 delivering tax-related documents and related payments, granting
2 rule-making 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 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:

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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:

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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

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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:

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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

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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.

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

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1 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor
2 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed
3 in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage duly
4 prepaid and 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 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 subsection,
10 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
11 the Internal Revenue Code.

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

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

14 **SECTION 24.** 78.39 (5m) of the statutes is created to read:

15 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

16 **SECTION 25.** 78.68 (10) of the statutes is amended to read:

17 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75
18 (2), (4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under
19 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,
20 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies
21 to tax returns filed under ch. 71, applies to returns filed under this chapter.

22 **SECTION 26.** 139.03 (2x) (d) of the statutes is amended to read:

23 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return
24 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered
25 filed in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage

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1 duly prepaid, if the envelope is officially postmarked, or marked or recorded
2 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
3 on the date due and if the return is actually received by the department or at the
4 destination that the department prescribes within 5 days of the due date. A return
5 that is not mailed is timely if it is received on or before the due date by the department
6 or at the destination that the department prescribes. For purposes of this paragraph,
7 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
8 the Internal Revenue Code.

9 **SECTION 27.** 139.05 (2a) of the statutes is amended to read:

10 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed
11 are furnished, filed or made on time, and payments therein referred to are timely, if
12 mailed in a properly addressed envelope, with first-class postage duly prepaid, which
13 envelope is officially postmarked, or marked or recorded electronically as provided
14 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the
15 date prescribed for such furnishing, filing or making of such payment, provided such
16 statement, return or payment is actually received by the secretary of revenue or at
17 the destination that the department prescribes within 5 days of the prescribed date.
18 Payments and returns that are not mailed are timely if they are received on or before
19 the due date by the department or at the destination that the department prescribes.
20 For purposes of this subsection, “mailed” includes delivery by a delivery service
21 designated under section 7502 (f) of the Internal Revenue Code.

22 **SECTION 28.** 139.11 (2r) of the statutes is created to read:

23 139.11 (2r) **WHOLE DOLLAR AMOUNTS.** Section 71.80 (19), as it applies to a tax
24 return filed under ch. 71, applies to a report filed under this subchapter.

25 **SECTION 29.** 139.315 (4) of the statutes is amended to read:

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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.

11 **SECTION 30.** 139.38 (2r) of the statutes is created to read:

12 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
13 applies to a report filed under this subchapter.

14 **SECTION 31.** 139.38 (5) of the statutes is amended to read:

15 139.38 (5) If any permittee fails to file a report when due the permittee shall
16 be required to pay a late filing fee of \$10. A report that is mailed is filed in time if
17 it is mailed in a properly addressed envelope with first-class postage duly prepaid,
18 which envelope is officially postmarked, or marked or recorded electronically as
19 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due,
20 and if the report is actually received by the secretary or at the destination that the
21 department prescribes within 5 days of the due date. A report that is not mailed is
22 timely if it is received on or before the due date by the secretary or at the destination
23 that the department prescribes. For purposes of this subsection, “mailed” includes
24 delivery by a delivery service designated under section 7502 (f) of the Internal
25 Revenue Code.

BILL

1 **SECTION 32.** 139.75 (9m) of the statutes is created to read:

2 139.75 (9m) "Sign" has the meaning given in s. 139.01 (9m).

3 **SECTION 33.** 139.82 (2r) of the statutes is created to read:

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

6 **SECTION 34. Initial applicability.**

7 (1) **REFUNDS AND TAXES COLLECTED ERRONEOUSLY.** The treatment of sections 50.14
8 (4), 73.01 (4) (a), and 77.59 (4) (c) and (5) of the statutes first applies to notices of
9 refunds or notices of amounts due dated, offsets taken, and the discovery of amounts
10 collected erroneously as taxes on the effective date of this subsection even if the
11 notices, offsets, and amounts relate to sales that occurred after August 31, 1994.

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

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

17

(END)

**Legislative Proposal Summary
Wisconsin Department of Revenue
IS&E**

→ Permit waiving of interest on add'l Wisc. estate tax owed as a result of omitted assets

April 9, 2001

**TITLE – Amend Sec.72.02 Estate tax Imposed
Add Sec 72.23(2) Interest may be waived**

DESCRIPTION OF CURRENT LAW AND PROBLEM

Section 72.005 lays out the purpose of the estate tax. It says "The purpose of this chapter is to obtain for Wisconsin the benefit of the maximum credit allowable". Section 72.02 says "The tax imposed is equal to the credit allowed for state death taxes ". The difference in language in these 2 sections has on occasion caused confusion as to the proper amount of tax that is due to the state of Wisconsin. The Department's position is and has been that the proper tax due to the state of Wisconsin is the amount of the credit allowed or allowable for the state death taxes against the federal estate tax.

Currently the statutes pertaining to the estate tax require interest to be imposed at the rate of 12% per annum from the date of death on all amounts due that are not paid within 9 months of the date of death. There are no provisions for the Department to waive or reduce this interest when there is discovery of property omitted in the original determination of tax after the initial 9 month period has expired and due diligence has been used in the marshalling of the assets. The only relief available to an estate is petitioning the circuit court for a reduction or forgiveness of the interest due. This is both an additional expense and time consuming for both the estate and the department.

The discovery of assets years after the date of death is possible though uncommon. The personal representative of the estate is not always able to locate all of the assets within the nine month period after the decedent's death. Poor decedent record keeping and/or a lack of information available from family and friends are often the norm when preparing the inventory of the estate.

The department issues a Certificate Determining Estate Tax based on the information available at the time the estate tax return is filed. This Certificate is filed with the probate court in the county where the estate is being administered. Additional probate costs, tax, and 12% interest from date of death results in little to no incentive for a taxpayer to come forward when new assets are discovered. The 12% rate of interest back to date of death is a certain disincentive and encourages non compliance.

Before the inheritance tax law was repealed it contained a provision, section 72.23(2) to cover this type of situation. It rewarded honest reporting of previously unreported assets by allowing the department to waive interest charges if due diligence had been used to assemble the inventory of the estate.

ADMINISTRATIVE IMPACT

Adding the word allowable to section 72.02 will clarify the statute and eliminate disputes on the proper amount of tax that is payable to Wisconsin.

Adding a provision to waive interest in this type of circumstance will enable the Department to improve tax collection fairness and voluntary compliance by allowing a taxpayer to come forward and pay the tax due when the asset is discovered. It will also lead to some cost savings for the department by eliminating appeals to the circuit court in these situations.

FISCAL EFFECT

There would be minimal fiscal effect. Historically there have been few taxpayers that requested the interest to be waived under this provision in the past. Since the amount of estates and assets that are not subject to the estate tax has increased substantially with the repeal of the inheritance tax, there would be even fewer now. Currently this situation occurs perhaps 3 to 5 times a year.

DRAFTING INSTRUCTIONS

Add the word "allowable" to Section 72.02 so that it reads "An estate tax is imposed upon the transfer of all property that is subject to a federal estate tax and that has a taxable situs in this state. The tax imposed is equal to the credit allowed or ALLOWABLE for state death taxes"

Add Section 72.23(2) Wisconsin Stats to read, "The department or circuit court may waive interest on any additional tax arising from the discovery of property which was omitted in the inventory of total assets and/or original determination of tax. This subsection applies only where due diligence has been exercised in marshaling the assets."

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

ASAP

DOR CONTACT PERSON

Gregg Frazier
Section Chief
Office Audit Bureau
266-2767

PREPARED BY
Ruth Ann Malcolmson
266-9832

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ESTATE TAX

72.005 Purpose.	72.225 Instalment payments; closely held businesses.
72.01 Definitions.	72.23 Acceleration and interest.
72.02 Estate tax imposed.	72.235 Failure to file.
72.03 Notice.	72.24 Refunding.
72.045 Timely filing.	72.27 Jurisdiction of circuit court.
72.06 Confidentiality of tax returns.	72.30 Determination of tax.
72.11 Subjects liable.	72.33 Adjustments.
72.21 Personal liability.	72.34 Notice of obligations.
72.22 Payment.	72.35 Interstate arbitration of death taxes.

72.005 Purpose. The purpose of this chapter is to obtain for Wisconsin the benefit of the maximum credit allowable upon the United States estate tax, to the full extent that this state may be entitled, by imposing this tax. This chapter is to be liberally construed to effect this purpose.

History: 1971 c. 310; 1987 a. 27 s. 1538m; Stats. 1987 s. 72.005.

72.01 Definitions. In this chapter, unless otherwise specified:

(1) "Administration" means any proceeding relating to a decedent's estate whether decedent died testate or intestate.

(4) "Circuit court" means the circuit court which has jurisdiction under s. 72.27.

(6) "Death tax" is a tax imposed by a state, territory or district, because of a death or gift in contemplation of death, on property or a transfer of property, and includes estate, inheritance, succession, legacy and transfer taxes.

(7) "Decedent" means the deceased person.

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

(9) "Distributee" means any person to whom property is transferred by reason of a death or in contemplation of death other than in payment of a claim.

(9m) "District attorney" means the district attorney of the county whose circuit court has jurisdiction under s. 72.27.

(11) "Estate" means all property of a decedent transferred by reason of the decedent's death.

(12m) "File" means mail or deliver a document that the department prescribes to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(13) "The intestate laws of this state" include statutory rights and allowances to a child and to a surviving spouse and any other rights of a surviving spouse acquired by contract in lieu of any statutory rights.

(14m) "Pay" means mail or deliver funds to the department or, if the department prescribes another method of submitting or another destination, use that other method or submit to that other destination.

(16) "Personal representative" means any person to whom letters to administer a decedent's estate have been granted by the court but does not include a special administrator.

(19) "Property" means any interest, legal or equitable, present or future, in real or personal property, or income therefrom, in possession and enjoyment, trust or otherwise, within or without this state.

(21) "Transfer" means the passing of property.
History: 1971 c. 310; 1973 c. 90; 1977 c. 187 s. 135; 1977 c. 418; 1977 c. 449 ss. 181, 497; 1981 c. 20, 317; 1983 a. 27, 186, 189, 212; 1985 a. 29, 261; 1987 a. 27; 1997 a. 27.

72.02 Estate tax imposed. An estate tax is imposed upon the transfer of all property that is subject to a federal estate tax and that has a taxable situs in this state. The tax imposed is equal to the credit allowed for state death taxes against the federal estate

or allowable

tax as finally determined. If only a portion of a decedent's property has a taxable situs in this state, the tax imposed is the amount obtained by multiplying the federal credit allowed for state death taxes by a fraction the numerator of which is the value of the decedent's estate that has a taxable situs in this state and the denominator of which is the total value of the property in the estate that qualifies for the federal credit allowed for state death taxes.
History: 1987 a. 27.

72.03 Notice. Unless otherwise provided, where "notice" is required in this chapter it shall be given in the manner prescribed by s. 879.05.
History: 1971 c. 310.

72.045 Timely filing. Documents and payments required or permitted by this chapter that are filed by mail are on time if they are mailed in a properly addressed envelope, if the postage is paid, if the envelope is postmarked before midnight of the due date and if the department or the person that the department designates receives them no later than 5 days after the due date. Documents and payments that are not mailed are timely if they are received on or before the due date by the department or at the destination that the department prescribes.
History: 1991 a. 39; 1997 a. 27.

72.06 Confidentiality of tax returns. Sections 71.78 (1) and (4) to (9) and 71.83 (2) (a) 3. apply to any information obtained from any person by the department on a death tax return, report, schedule, exhibit or other document or from an audit report pertaining to the tax return.
History: 1979 c. 139, 221; 1987 a. 27; 1987 a. 312 s. 17.

72.11 Subjects liable. (1) RESIDENTS AND NONRESIDENTS. A tax is imposed upon any transfer of property to any distributee in the following cases:

(a) When the transfer is from a person who dies while a resident of this state.

(b) When the transfer is of property within the jurisdiction of this state and the decedent was not a resident of this state at the time of the decedent's death.

(2) EXCEPTION; RECIPROCITY AS TO NONRESIDENT DECEDENTS. A transfer, which is made taxable under this chapter and is of a nonresident decedent's intangible personal property is not subject to the tax imposed by this chapter if a like exemption is allowed at the time of the death of the decedent by the laws of the state, territory or district of the decedent's residence in favor of residents of this state. This subsection does not apply unless a tax is imposed on the transfer of the decedent's property by the laws of the state, territory or district of the decedent's residence.
History: 1971 c. 307, 310; 1973 c. 90; 1987 a. 27 s. 3200 (47); 1991 a. 316.

72.21 Personal liability. (1) Each personal representative, special administrator, and trustee of a trust in existence and containing property on the date of the decedent's death, is severally liable for the tax imposed by this chapter, with interest, to the

(c) Any distributee electing to pay under this subsection shall, within one year of the decedent's date of death, file written notice of the election with the department and with the person required to file the inheritance tax return. Any distributee who fails to give notice under this paragraph shall make full payment as required under sub. (3).

(d) Upon the filing of a notice under par. (c), distributees of real estate shall provide the department a certified copy of a lien for unpaid taxes and interest on the property to secure payment, recorded in the office of the register of deeds of the county in which the property is located. Distributees of personal property, upon the filing of a notice under par. (c), may either provide a lien or provide the department a financial guarantee bond equaling the estimated tax and interest elected to be paid under this subsection to secure payment if the tax has not been determined. Upon determination of the tax, distributees of personal property shall provide a lien or provide a financial guarantee bond sufficient to secure payment of the tax and interest or pay the department the excess over the amount of tax and interest secured by the bond. The department may require security to cover the tax with a lien affecting only part of the property if there is sufficient security to secure payment of the tax. Any distributee who fails to provide the security required under this paragraph, or who disposes of one-third or more of the property on which the tax is secured under this paragraph, shall make full payment as required under sub. (3).

(e) Upon the failure of any distributee to make a scheduled payment agreed to under par. (a), upon the distributee's death or if the security provided under par. (d) is jeopardized, the department may proceed to collect the payment or the entire unpaid balance of the taxes, costs and interest.

History: 1971 c. 310; 1973 c. 90; 1979 c. 1, 34, 221; 1981 c. 20, 317; 1983 a. 27, 212, 248; 1985 a. 29, 261; 1987 a. 27, 399.

72.23 Interest. (1) RATE. If the tax imposed by this subchapter is not paid within one year of the decedent's date of death, interest is due and payable at the rate of 12% per year from date of death. In computing time under this section, the day of death is excluded.

(2) **INTEREST MAY BE WAIVED.** The department or circuit court may waive interest on any additional tax arising from the discovery of property which was omitted in the original determination of tax. This subsection applies only where due diligence has been exercised in marshaling the assets.

History: 1971 c. 310; 1973 c. 90; 1977 c. 29; 1977 c. 449 s. 497; 1981 c. 20.

72.24 Refunding. Whenever any amount has been paid in excess of the tax determined, the state treasurer, upon certification by the department or circuit court, shall refund the excess to the payor or other person entitled thereto.

History: 1971 c. 310; 1973 c. 90; 1977 c. 449 s. 497.

72.25 Release or transfer of lien. Until the tax imposed upon all transfers to a distributee under this subchapter is paid it is a lien upon the property transferred to that distributee except:

(1) When the department is satisfied that collection of the tax will not be jeopardized, it may release this lien on all or part of the property. A duly executed release of the lien may be recorded with the register of deeds of the county in which the property is located. The recording fee shall be the same as for the recording of a mortgage satisfaction.

(2) The sale of any property the transfer of which is taxable under this subchapter by a personal representative, special administrator or trustee constitutes a release of the lien on that property. The lien is transferred to the sale's proceeds, the property passes free of that lien and the person to whom the property is sold has no liability for the tax.

History: 1971 c. 310; 1973 c. 90; 1983 a. 248; 1985 a. 29.

72.26 Bequest to a personal representative or trustee for services. If a decedent provides for a transfer to a personal representative or trustee in lieu of other compensation or makes him a distributee to an amount exceeding the maximum allowable compensation, the excess in value of the transfer above the maximum allowable compensation is a transfer taxable under this subchapter. This subsection does not authorize the deduction of trustees' fees incurred in the administration of a testamentary trust; such fees are not deductible in determining the value of the net taxable transfer.

History: 1971 c. 310.

72.27 Jurisdiction of circuit court. (1) RESIDENTS. The circuit court for the county of which the decedent died a resident has jurisdiction to hear and determine all questions arising under this subchapter and to do any act authorized by a circuit court in other matters or proceedings coming within its jurisdiction. If 2 or more courts are entitled to exercise jurisdiction, the court first acquiring it retains exclusive jurisdiction.

(2) **NONRESIDENTS.** The circuit court of Dane county has jurisdiction to hear and determine all questions relating to the determination and adjustment of the tax imposed by this subchapter, if a tax appears due because of the death of a nonresident decedent and in which it does not otherwise appear necessary for regular administration. If a nonresident dies possessed of real or tangible personal property located within this state, the circuit court of the county in which the property is located shall have concurrent jurisdiction with the circuit court for Dane county.

History: 1971 c. 310; 1973 c. 90; 1977 c. 449.

72.28 Valuation. (1) STANDARDS. (a) Homestead. Where a homestead consists of a single-family dwelling or a duplex, the equalized assessed valuation may be used and appraisal dispensed with, unless any interested party or the department requests an appraisal.

(b) **Securities.** When a decedent leaves any securities issued by a business organization, owning property or doing business in this state or leaves any interest therein or in the assets thereof, all inventories, books, papers, income tax returns and records thereof are competent evidence, and shall be made accessible to the personal representative, special administrator, appraiser, department or referee designated by the court, to ascertain the true value of such securities or interests. The court may order any inventories, books, papers and records to be produced in court, and may require the attendance and examination in court of any officer or employe of any such business organization. In this paragraph: "business organization" means corporation, joint stock company, partnership and association; "securities" includes stocks and bonds.

(c) **Future or limited estates. 1. Method of valuation. a.** Determination of the value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being shall be based on tables designated by the department. These tables shall be those used by the internal revenue service for like computations.

2. **Payment.** The tax, based on the value determined by subd. 1, is upon a transfer of a proportion of the principal of the estate equal to its present value and not upon any income of that property produced after death, which income shall be subject to the income tax. The tax imposed by this subchapter is due and payable out of the property transferred without right of recoupment from the life tenant.

(d) **Estate for life or years.** Where an estate for life or years can be divested by the act or omission of the distributee, it shall be valued as if there were no possibility of such divesting, subject to disclaimer under s. 853.40.

(e) **Power of appointment. 1. General power.** A transfer of an estate for life or years or of a beneficial interest in property accompanied by a general power of appointment over the remainder is taxed to the life or term tenant or transferee of the beneficial interest as the transfer of absolute ownership.

2. **Other power.** If the power is excluded from the definition of a power of appointment, then the remainder interest subject to the power is taxed in the estate of the donor of the power as if the power had been exercised in favor of the person in the restricted class in a manner that will result in the imposition of the largest amount of tax. Upon the exercise, failure to exercise or release of a power by the donee of the power, either upon his death or during his lifetime, the tax in the estate of the donor of the power shall be redetermined to accord with the ultimate devolution of the property. Any excess tax determined to have been paid shall, upon application to the department, be refunded with interest at the legal rate to the payor or other person entitled thereto.

(2) **COMPOSITION AGREEMENTS. (a)** The department may enter into an agreement with the personal representative, special administrator, trustee or distributee of any property where:

1. **Remainders, expectant estates or powers of appointment** are of such a nature that the tax on their transfer is not ascertainable under this chapter; or



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1376/3
JK:jld:jf

RM not run.

2001 BILL

in 4-18-01

re gen

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), 78.22 (4), 78.68 (10), 139.03 (2x) (d), 139.05 (2a),
 5 139.315 (4) and 139.38 (5); and to create 71.10 (6) (e), 71.10 (6m) (c), 72.30 (1m),
 6 73.13, 77.58 (3) (c), 78.39 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m)
 7 and 139.82 (2r) of the statutes; relating to: the liability of married persons
 8 filing a joint income tax return, the payment of the alternate fuel tax and the
 9 tobacco products tax, reducing nondelinquent taxes, rounding dollar amounts
 10 to whole dollars on all tax returns, allowing a mathematical computation of
 11 sales and use taxes, extending the time for filing a tax withholding report,

estate tax imposition and interest,

BILL

1 delivering tax-related documents and related payments, granting
2 rule-making authority, 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**SECTION 8**

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

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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:

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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

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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

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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.

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

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1 **78.22 (4) LATE FILING FEE.** Any person who fails to file a motor vehicle fuel floor
2 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed
3 in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage duly
4 prepaid and 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 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 subsection,
10 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
11 the Internal Revenue Code.

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

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

14 **SECTION 24.** 78.39 (5m) of the statutes is created to read:

15 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

16 **SECTION 25.** 78.68 (10) of the statutes is amended to read:

17 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75
18 (2), (4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under
19 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,
20 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies
21 to tax returns filed under ch. 71, applies to returns filed under this chapter.

22 **SECTION 26.** 139.03 (2x) (d) of the statutes is amended to read:

23 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return
24 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered
25 filed in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage

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1 duly prepaid, if the envelope is officially postmarked, or marked or recorded
2 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
3 on the date due and if the return is actually received by the department or at the
4 destination that the department prescribes within 5 days of the due date. A return
5 that is not mailed is timely if it is received on or before the due date by the department
6 or at the destination that the department prescribes. For purposes of this paragraph,
7 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
8 the Internal Revenue Code.

9 **SECTION 27.** 139.05 (2a) of the statutes is amended to read:

10 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed
11 are furnished, filed or made on time, and payments therein referred to are timely, if
12 mailed in a properly addressed envelope, with first class postage duly prepaid, which
13 envelope is officially postmarked, or marked or recorded electronically as provided
14 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the
15 date prescribed for such furnishing, filing or making of such payment, provided such
16 statement, return or payment is actually received by the secretary of revenue or at
17 the destination that the department prescribes within 5 days of the prescribed date.
18 Payments and returns that are not mailed are timely if they are received on or before
19 the due date by the department or at the destination that the department prescribes.
20 For purposes of this subsection, “mailed” includes delivery by a delivery service
21 designated under section 7502 (f) of the Internal Revenue Code.

22 **SECTION 28.** 139.11 (2r) of the statutes is created to read:

23 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
24 return filed under ch. 71, applies to a report filed under this subchapter.

25 **SECTION 29.** 139.315 (4) of the statutes is amended to read:

BILL**SECTION 29**

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.

11 **SECTION 30.** 139.38 (2r) of the statutes is created to read:

12 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
13 applies to a report filed under this subchapter.

14 **SECTION 31.** 139.38 (5) of the statutes is amended to read:

15 139.38 (5) If any permittee fails to file a report when due the permittee shall
16 be required to pay a late filing fee of \$10. A report that is mailed is filed in time if
17 it is mailed in a properly addressed envelope with ~~first-class~~ postage duly prepaid,
18 which envelope is officially postmarked, or marked or recorded electronically as
19 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due,
20 and if the report is actually received by the secretary or at the destination that the
21 department prescribes within 5 days of the due date. A report that is not mailed is
22 timely if it is received on or before the due date by the secretary or at the destination
23 that the department prescribes. For purposes of this subsection, “mailed” includes
24 delivery by a delivery service designated under section 7502 (f) of the Internal
25 Revenue Code.

Insert A

Under current law, an estate tax[✓] is imposed on the transfer of all property in this state that is subject to the federal estate tax. The estate tax is equal to the credit allowed for the state estate tax against the federal estate tax imposed on the transfer of the property. The bill clarifies that the estate tax is equal to the credit allowed for the state estate tax against the federal estate tax imposed on the transfer of the property, regardless of whether the taxpayer[✓] claims the credit.

Under current law, an estate tax that is not paid on the date[✓] it is due is subject to interest at the rate of 12%[✓] a year from the date of the decedent's death. Under the bill, DOR[✓] or the circuit court that has jurisdiction over matters related to the estate may waive the interest imposed on any additional estate taxes that arise from the discovery of property omitted in the inventory of the estate's total assets or in the original tax determination, if due diligence was exercised in determining the assets.

Insert 7 - 2

1 SECTION 1. 72.02[✓] of the statutes is amended to read:

2 **72.02 Estate tax imposed.** An estate tax is imposed upon the transfer of all
3 property that is subject to a federal estate tax and that has a taxable situs in this
4 state. The tax imposed is equal to the credit allowed or allowable[✓] for state death
5 taxes against the federal estate tax as finally determined. If only a portion of a
6 decedent's property has a taxable situs in this state, the tax imposed is the amount
7 obtained by multiplying the federal credit allowed or allowable[✓] for state death taxes
8 by a fraction the numerator of which is the value of the decedent's estate that has a
9 taxable situs in this state and the denominator of which is the total value of the
10 property in the estate that qualifies for the federal credit allowed or allowable[✓] for
11 state death taxes.

History: 1987 a. 27.

12 SECTION 2. 72.23[✓] of the statutes is renumbered 72.23 (1).

13 SECTION 3. 72.23 (2)[✓] of the statutes is created to read:

14 72.23 (2) The department[✓] or circuit court[✓] may waive interest on any additional
15 tax arising from the discovery of property omitted in the inventory of total assets or



- 1 in the original tax determination, if due diligence[✓] was exercised in determining the
- 2 assets.

(end ins 7-2)

Barman, Mike

From: Kreye, Joseph
Sent: Tuesday, June 05, 2001 9:19 AM
To: Barman, Mike
Subject: Jacketing request for 01-1376/4

Hi Mike,

I got a call from Rep. M. Lehman's office to jacket 01-1376/4. If you'd be so kind...
Thanks.

Joe

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