

2001 DRAFTING REQUEST

Assembly Amendment (AA-AB439)

Received: 09/04/2001

Received By: jkreye

Wanted: Today

Identical to LRB:

For: Michael Lehman (608) 267-2367

By/Representing: andrew.

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - miscellaneous
Tax - sales

Extra Copies:

Submit via email: YES

Requester's email: Rep.Lehman@legis.state.wi.us

Carbon copy (CC:) to: Andrew.Nowlan@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Erroneous tax collected on construction activities and nontaxable services; payment schedule for nondelinquent taxes

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>
/1	jkreye 09/04/2001	csicilia 09/04/2001	kfollet 09/04/2001	_____	lrb_docadmin 09/04/2001	lrb_docadmin 09/04/2001	

FE Sent For:

<END>

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/1	jkreye	cjs /1 9/4/01	LSL 9/4	SL /RS 9/4			

FE Sent For:

<END>

Proposed Amendment to Section 17 of AB 439

Section 17, 73.13 of the statutes is created to read:

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

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

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

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

(b) If the department determines that the taxpayer is unable to pay the taxes, costs, penalties, and interest in full, the department shall determine the amount that the taxpayer is able to pay and shall enter an order reducing the taxes in accordance with the department's determination. The order shall provide that the order, if paid in a lump sum, is effective only if the reduced taxes are paid within 10 days from the date on which the order is issued or the order shall provide that the reduced taxes is effective if paid according to a payment schedule that is set up by the department. The department or its collection agents, upon receipt of the order, shall accept payment in accordance with the order. Upon payment of the reduced taxes, the department shall credit the unpaid portion of the principal amount of the taxes and record the unpaid amount of costs, penalties, and interest accrued to the date of the order.

(c) If within 3 years of the date of the order under par. (b) or the date of a final payment under a payment schedule, whichever is later, the department ascertains that the taxpayer has an income or owns property sufficient to enable the taxpayer to pay the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), the department shall reopen the order under par. (b) and order the taxpayer to pay in full the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b). Before the entry of the order for payment, the department shall send a written notice to the taxpayer, by certified mail, advising the taxpayer of the department's intention to reopen the order under par. (b) and fixing a time and place for the appearance of the taxpayer, if the taxpayer desires a hearing. If the department determines that the taxpayer is able to pay the unpaid portion of the principal amount of the taxes due, including the costs,

penalties, and interest recorded under par. (b), the department shall enter the order for payment in full. The unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), shall be due and payable immediately upon entry of the order for payment in full and shall thereafter be subject to the interest under s. 71.82(2), as that subsection applies to delinquent income and franchise taxes under s. 71.82, and to the delinquent account fee under s. 73.03(33m).

Ford, William

From: Nowlan, Andrew
Sent: Monday, August 27, 2001 10:17 AM
To: Ford, William
Subject: FW: AB 439 amendments

One...

Andrew Nowlan
Andrew.Nowlan@legis.state.wi.us (work)
Fourlakes_99@yahoo.com (home)

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

From: Gates-Hendrix, Sherrie
Sent: Wednesday, August 22, 2001 2:12 PM
To: Nowlan, Andrew
Subject: AB 439 amendments

Andrew -

Here is what we'd suggest as a solution to the WMC concern regarding real property construction contractors who incorrectly charge sales tax. The amendment would allow a contractor to reduce the tax and interest it has to refund to the buyer that was incorrectly charged on real property improvement by the tax the contractor owes and pays on its purchase of materials for that real property improvement. I think Secretary Chandler's August 10th memo to the committee talks a little about this too. Let me know if you need more on this.

I will email you tomorrow about the issue of changing the compromise language in AB 439 to address the changes made last session in 99 Act 189 (I'll send you specific drafting instructions).

Are both of these issues things you plan to have drafted as amendments for discussion at the Sept 5th meeting... or is there anything you want me to do with these? Just let me know.

Thanks again.

Sherrie

Proposed Amendment to Section 19 of AB 439

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

77.59 (5m) A seller who receives a refund under par. (a) or (b) of taxes that the seller has collected from buyers, who collects taxes erroneously from buyers, or who is entitled to a refund that is offset under sub. (5), shall return submit the taxes and related interest to the buyers from whom the taxes were collected. The, or to the department if the seller cannot locate the buyers, within 90 days after the date of the refund, after the date of the offset, or after discovering that the seller has collected taxes erroneously from the buyers. If the seller does not submit the taxes and related interest to the department or the buyers within that period, the seller shall return submit to the department any part of a refund or taxes that the seller does not return submit to a buyer or to the department along with a penalty of 25% of the amount not returned or submitted or, in the case of fraud, a penalty equal to the amount not returned in the case of fraud submitted. In the case of a person who collects taxes

or nontaxable service

erroneously from buyers for a real property construction activity, the taxes and interest required to be submitted under this section to the buyer or the department for that activity, may be reduced by the amount of tax and interest due and paid on the sale of or storage, use, or other consumption tangible personal property used by the person in that real property construction activity and transferred to the buyer.

Subsequently

or nontaxable service

or service

Kreye, Joseph

From: Nowlan, Andrew
Sent: Saturday, September 01, 2001 2:05 PM
To: Kreye, Joseph
Cc: Ford, William
Subject: FW: Possible Change to AB 439 -- Refunds of Sales/Use Tax to Buyers

Joe,

Did Bill send you this language for an additional/revised amendment to AB 439 which is scheduled for an exec in W&M on Wed? This looks to me to be a re-write to LRB a0655/1.

If he did not, I would like to request it be drafted. Thanks.

Andrew Nowlan
Andrew.Nowlan@legis.state.wi.us (work)
Furlakes_99@yahoo.com (home)

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

From: Ford, William
Sent: Thursday, August 30, 2001 3:16 PM
To: Gates-Hendrix, Sherrie
Cc: Nowlan, Andrew
Subject: RE: Possible Change to AB 439 -- Refunds of Sales/Use Tax to Buyers

The language looks fine to me.

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

From: Gates-Hendrix, Sherrie
Sent: Wednesday, August 29, 2001 2:55 PM
To: Ford, William
Subject: FW: Possible Change to AB 439 -- Refunds of Sales/Use Tax to Buyers

Bill - how does this look to you? Vicki has conferred with Bob Stellick, an attorney in our legal section, and they both feel comfortable with this language.

Sherrie

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

From: Gates-Hendrix, Sherrie
Sent: Wednesday, August 29, 2001 2:54 PM
To: Nowlan, Andrew
Subject: Possible Change to AB 439 -- Refunds of Sales/Use Tax to Buyers

Hi Andrew -

This is the language I mentioned when I called earlier. It relates to the WMC concern regarding real property construction contractors that I emailed you about on 8/22, but this proposal is for broader language that would cover possibly similar problems with other service providers who incorrectly charge tax on their nontaxable service and buy materials transferred without tax for resale. Bill Ford suggested that such broader language may be appropriate in the event that concerns ever did arise outside of the real property construction arena.

While Vicki Gibbons indicates that she originally suggested the more narrow language because she is not aware of any other industry outside of the construction industry in which this problem has arisen, she is comfortable with the language below that addresses the issue for other service providers as well, and not just real property construction contractors.

This new proposal would mean that:

- If a seller collects tax from a buyer on a nontaxable service and is required to refund the tax to the buyer or submit the tax to DOR (because it can not be returned to the buyer for some reason),

- Then the seller is allowed to reduce the tax it must refund to the buyer by the amount of tax the seller owes on its original purchase of materials (tangible personal property)

I hope to talk with Bill Ford tomorrow morning about this language to make sure he's comfortable with it as well.

If Bill is OK with the language, would Rep. Lehman most likely introduce it as a committee amendment next Wednesday?

Suggested addition to Section 19 of AB 439 - new language added to original suggestion in August 10th letter is underlined. This would be the last sentence in Section 19.

In the case of a person who collects taxes erroneously from buyers for a real property construction activity or nontaxable service, the taxes and interest required to be submitted under this section to the buyer or the department for that activity or service may be reduced by the amount of tax and interest subsequently due and paid on the sale of or storage, use, or other consumption of tangible personal property used by the person in that real property construction activity or nontaxable service and transferred to the buyer.

2001 ASSEMBLY BILL 439

June 7, 2001 – Introduced by Representatives M. LEHMAN, HUEBSCH, WOOD, VRAKAS, ALBERS, POWERS, PLALE, AINSWORTH, GRONEMUS, SYKORA, MUSSER, PLOUFF, HAHN, MILLER and GROTHMAN, cosponsored by Senators M. MEYER, ZIEN, WIRCH and HUELSMAN. Referred to Committee on Ways and Means.

1 **AN ACT to repeal** 71.80 (19) (b); **to renumber** 72.23; **to renumber and amend**
2 77.59 (4) (c); **to amend** 50.14 (4), 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a), 71.65
3 (5) (a) 1., 71.80 (18), 71.80 (19) (a), 71.80 (19) (c), 72.02, 73.01 (4) (a), 77.59 (5),
4 77.61 (3), 77.61 (14), 77.9941 (4), 77.9964 (2), 78.22 (4), 78.68 (10), 139.03 (2x)
5 (d), 139.05 (2a), 139.315 (4) and 139.38 (5); and **to create** 71.10 (6) (e), 71.10
6 (6m) (c), 72.23 (2), 72.30 (1m), 73.13, 77.58 (3) (c), 78.39 (5d), 78.39 (5m), 139.11
7 (2r), 139.38 (2r), 139.75 (9m) and 139.82 (2r) of the statutes; **relating to:** the
8 liability of married persons filing a joint income tax return, the payment of the
9 alternate fuel tax and the tobacco products tax, estate tax imposition and
10 interest, reducing nondelinquent taxes, rounding dollar amounts to whole
11 dollars on all tax returns, allowing a mathematical computation of sales and
12 use taxes, extending the time for filing a tax withholding report, delivering

ASSEMBLY BILL 439

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

ASSEMBLY BILL 439**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, 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 on which 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.

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

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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:

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

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1 taxpayer with respect to marital property income the taxpayer did not report if that
2 taxpayer failed to notify the taxpayer's spouse about the amount and nature of the
3 income before the due date, including extensions, for filing the return for the taxable
4 year in which the income was derived. The department shall include all of that
5 marital property income in the gross income of the taxpayer and exclude all of that
6 marital property income from the gross income of the taxpayer's spouse.

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

8 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
9 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
10 by the department, within 2 years after the date on which the department first
11 begins collection activities after the effective date of this paragraph [revisor
12 inserts date].

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

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

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

2 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
3 for relief with the department as provided under sub. (6) (e).

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

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

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

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

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

22 71.80 (19) (a) ~~With~~ At the request of the department, with respect to any
23 amount required to be shown on a form prescribed for any return, statement or other
24 document required by this chapter, if the amount of such item is other than a whole
25 dollar amount the fractional part of a dollar shall be disregarded unless it amounts

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1 to 50 cents or more, in which case the amount (determined without regard to the
2 fractional part of a dollar) shall be increased to the next whole dollar.

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

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

5 71.80 (19) (c) *Inapplicability to computation of amount.* ~~Paragraph~~ Except at
6 the request of the department, par. (a) does not apply to items which must be taken
7 into account in making the computations necessary to determine the total amount
8 required to be shown on a form, statement or other document but applies only to such
9 final amount.

10 **SECTION 12.** 72.02 of the statutes is amended to read:

11 **72.02 Estate tax imposed.** An estate tax is imposed upon the transfer of all
12 property that is subject to a federal estate tax and that has a taxable situs in this
13 state. The tax imposed is equal to the credit allowed or allowable for state death
14 taxes against the federal estate tax as finally determined. If only a portion of a
15 decedent's property has a taxable situs in this state, the tax imposed is the amount
16 obtained by multiplying the federal credit allowed or allowable for state death taxes
17 by a fraction the numerator of which is the value of the decedent's estate that has a
18 taxable situs in this state and the denominator of which is the total value of the
19 property in the estate that qualifies for the federal credit allowed or allowable for
20 state death taxes.

21 **SECTION 13.** 72.23 of the statutes is renumbered 72.23 (1).

22 **SECTION 14.** 72.23 (2) of the statutes is created to read:

23 72.23 (2) The department or circuit court may waive interest on any additional
24 tax arising from the discovery of property omitted in the inventory of total assets or

ASSEMBLY BILL 439**SECTION 14**

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

3 **SECTION 15.** 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 16.** 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 17.** 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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SECTION 17

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 18.** 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 19.** 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

ASSEMBLY BILL 439

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 20.** 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 21.** 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.

ASSEMBLY BILL 439**SECTION 22**

1 **SECTION 22.** 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 23.** 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 24.** 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 25.** 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 26.** 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 27.** 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 28.** 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 29.** 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

ASSEMBLY BILL 439**SECTION 29**

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 30.** 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 31.** 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 32.** 139.315 (4) of the statutes is amended to read:

ASSEMBLY BILL 439

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 33.** 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 34.** 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.

066/1

**ASSEMBLY AMENDMENT ,
TO 2001 ASSEMBLY BILL 439**

Today
9-4-01

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

2 **1.** Page 9, line 15: delete lines 15 to 17 and substitute: "with the department's
3 determination. The order shall provide either that the order is effective only if the
4 reduced taxes are paid in full within 10 days from the date on which the order is
5 issued or that the order is effective only if the reduced taxes are paid according to a
6 payment schedule that the department determines. The department or its collection
7 agents, upon receipt of the order,".

8 **2.** Page 9, line 22: delete "years of" and substitute "years from either".

9 **3.** Page 9, line 22: after "(b)" insert "or the date of the final payment according
10 to a payment schedule as determined under par. (b), whichever is later,".

11

~~(EX-10)~~

~~ASSEMBLY AMENDMENT ,
TO 2001 ASSEMBLY BILL 439~~

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At the locations indicated, amend the bill as follows:

1. Page 11, line 7: before the period insert "A person who collects taxes
erroneously from buyers for a real property construction activity may reduce the
taxes and interest that he or she is required to submit to the buyer or to the
department under this subsection for that activity by the amount of tax and interest
due and paid on the sale of or the storage, use, or other consumption of tangible
personal property that is used by the person and transferred to the buyer".

(END)

subsequently

or montaxable service
or service
in that activity or service