

## 2001 ASSEMBLY BILL 648

November 27, 2001 – Introduced by Representatives PLOUFF, RICHARDS, HAHN, KRUG, J. LEHMAN, OLSEN, MILLER, ALBERS and BLACK, cosponsored by Senator MOEN. Referred to Committee on Ways and Means.

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

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### ***Analysis by the Legislative Reference Bureau***

This bill creates a number of duties for the department of revenue (DOR) with regard to taxpayers. For example, the bill requires DOR to ensure that its employees treat members of the public courteously, to ensure that during tax audits its employees provide a clear and concise statement of an assessment of additional taxes and to ensure that refunds are issued promptly.

Under the bill, DOR may allow a person who is required to file a return with DOR or to pay an amount to DOR to file the return electronically or to pay the amount electronically. Under the bill, if DOR interviews a person regarding a tax matter, the person may tape–record the interview.

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

Under current law, spouses that file a joint income tax return are both liable for the payment of any tax related to that return. However, DOR may relieve a person

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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 This bill corrects an outdated reference to the sections of the Internal Revenue Code that relate to a spouse's tax liability for a joint income tax return.

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

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

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

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

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

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

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1 marital property income in the gross income of the taxpayer and exclude all of that  
2 marital property income from the gross income of the taxpayer's spouse.

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

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

16 **SECTION 4.** 71.74 (2) (c) of the statutes is amended to read:

17 71.74 **(2)** (c) If it appears upon ~~such an~~ an investigation under par. (b) that a person  
18 has been over or under assessed, or that no assessment has been made when one  
19 should have been made, the department shall make a correct assessment in the  
20 manner provided in this chapter. If the department determines, by using an income  
21 reconstruction method, that a person has been under assessed or that no assessment  
22 has been made when one should have been made, the department shall corroborate  
23 the results of the income reconstruction method with at least one other income  
24 reconstruction method.

25 **SECTION 5.** 73.01 (4) (a) of the statutes is amended to read:

**ASSEMBLY BILL 648****SECTION 5**

1           73.01 **(4)** (a) Subject to the provisions for judicial review contained in s. 73.015,  
2 the commission shall be the final authority for the hearing and determination of all  
3 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.  
4 70.11 (21), 70.38 (4) (a), 70.397, 70.64 and, 70.995 (8), and 73.13, s. 76.38 (12) (a), 1993  
5 stats., ss. 76.39 (4) (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (6) (b), 78.01, 78.22, 78.40,  
6 78.555, 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405 and  
7 341.45, subch. XIV of ch. 71 and subch. VII of ch. 77. Whenever with respect to a  
8 pending appeal there is filed with the commission a stipulation signed by the  
9 department of revenue and the adverse party, under s. 73.03 (25), or the department  
10 of transportation and the adverse party agreeing to an affirmance, modification or  
11 reversal of the department of revenue's or department of transportation's position  
12 with respect to some or all of the issues raised in the appeal, the commission shall  
13 enter an order affirming or modifying in whole or in part, or canceling the assessment  
14 appealed from, or allowing in whole or in part or denying the petitioner's refund  
15 claim, as the case may be, pursuant to and in accordance with the stipulation filed.  
16 No responsibility shall devolve upon the commission, respecting the signing of an  
17 order of dismissal as to any pending appeal settled by the department of revenue or  
18 the department of transportation without the approval of the commission.

19           **SECTION 6.** 73.03 (56) of the statutes is created to read:

20           73.03 **(56)** (a) To ensure that its employees treat members of the public  
21 courteously.

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

23           (c) To provide employees to assist members of the public in filing state tax  
24 forms.

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1 (d) To ensure that its employees treat members of the public fairly during tax  
2 audits. During an audit, an employee shall do all of the following:

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

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

7 3. Allow the taxpayer to consult with an attorney or an accountant or to  
8 postpone an interview or an audit so that the taxpayer may consult an attorney or  
9 an accountant.

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

12 **SECTION 7.** 73.13 of the statutes is created to read:

13 **73.13 Reducing nondelinquent taxes. (1)** In this section:

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

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

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

24 (b) If the department determines that the taxpayer is unable to pay the taxes,  
25 costs, penalties, and interest in full, the department shall determine the amount that

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1 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance  
2 with the department's determination. The order shall provide that the order is  
3 effective only if the reduced taxes are paid either within 10 days from the date on  
4 which the order is issued or according to a payment schedule agreed to by the  
5 department. The department or its collection agents, upon receipt of the order, shall  
6 accept payment in accordance with the order. Upon payment of the reduced taxes,  
7 the department shall credit the unpaid portion of the principal amount of the taxes  
8 and record the unpaid amount of costs, penalties, and interest accrued to the date  
9 of the order.

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

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1 subject to the interest under s. 71.82 (2), as that subsection applies to delinquent  
2 income and franchise taxes under s. 71.82, and to the delinquent account fee under  
3 s. 73.03 (33m).

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

6 **SECTION 8.** 73.14 of the statutes is created to read:

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

13 **SECTION 9.** 73.15 of the statutes is created to read:

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

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(END)