



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0641/P1
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RM not done

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

in 1-28-03

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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), 71.03 (6) (a), 71.03 (8) (b), 71.10 (6) (b), 71.10
3 (6m) (a), 71.65 (5) (a) 1., 71.80 (18), 71.80 (19) (a), 71.80 (19) (c), 71.84 (1), 71.84
4 (2) (a), 71.84 (2) (b), 71.84 (2) (c), 73.01 (4) (a), 77.59 (5), 77.61 (3), 77.61 (14),
5 77.9941 (4), 77.9964 (2), 78.22 (4), 78.68 (10), 139.03 (2x) (d), 139.05 (2a),
6 139.315 (4) and 139.38 (5); and *to create* 71.10 (6) (e), 71.10 (6m) (c), 72.23 (2),
7 72.30 (1m), 73.13, 77.58 (3) (c), 78.39 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r),
8 139.75 (9m) and 139.82 (2r) of the statutes; **relating to:** the liability of married
9 persons filing a joint income tax return, the payment of the alternate fuel tax
10 and the tobacco products tax, estate tax interest, reducing nondelinquent taxes,
11 rounding dollar amounts to whole dollars on all tax returns, allowing a
12 mathematical computation of sales and use taxes, extending the time for filing

1 a tax withholding report, delivering tax-related documents and related
2 payments, granting 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 either the date on which DOR enters the order that reduces the taxpayer's taxes or the date of the final payment according to a payment schedule determined by DOR, whichever is later, 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.

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 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 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.** 71.03 (6) (a) of the statutes is amended to read:

6 71.03 (6) (a) Reports required under this section shall be made on or before
7 April 15, or April 30 if the person files an electronic return, following the close of a
8 year referred to in sub. (2) (a), or if such person's fiscal year is other than the calendar
9 year then on or before the 15th day, or the last day if the person files an electronic
10 return, of the 4th month following the close of such fiscal year, or if the return is for
11 less than a full taxable year on the date applicable for federal income taxes under the
12 internal revenue code Internal Revenue Code, to the department of revenue, in the
13 manner and form prescribed by the department of revenue, whether notified to do
14 so or not. Such persons shall be subject to the same penalties for failure to report as
15 those who receive notice. If the taxpayer is unable to make his or her own return,
16 the return shall be made by a duly authorized agent or by the guardian or other
17 person charged with the care of the person or property of such taxpayer.

18 **SECTION 3.** 71.03 (8) (b) of the statutes is amended to read:

19 71.03 (8) (b) The final payment of taxes on incomes of persons other than
20 corporations who file on a calendar year basis shall be made on or before April 15,

1 or April 30 if the person files an electronic return, following the close of the calendar
2 year, except for persons electing to have the department compute their tax under sub.
3 (4). If the return of a person other than a corporation is made on the basis of a fiscal
4 year, such final payment shall be made on or before the 15th day, or the last day if
5 the person files an electronic return, of the 4th month following the close of such fiscal
6 year, except for persons electing to have the department compute their tax under sub.
7 (4).

8 **SECTION 4.** 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
18 marital property income in the gross income of the taxpayer and exclude all of that
19 marital property income from the gross income of the taxpayer's spouse.

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

21 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
22 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
23 by the department, within 2 years after the date on which the department first
24 begins collection activities after the effective date of this paragraph [revisor
25 inserts date].

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

2 71.10 (6m) (a) A formerly married or remarried person filing a return for a
3 period during which the person was married may be relieved of liability for the tax,
4 interest, penalties, fees, additions to tax and additional assessments under this
5 chapter ~~for unreported marital property income~~ from that period as if the person
6 were a spouse under section 66 (c) of the ~~internal revenue code~~ Internal Revenue
7 Code. The department may not apply ch. 766 in assessing the former spouse of the
8 person with respect to marital property income that the former spouse did not report
9 if that former spouse failed to notify the person about the amount and nature of the
10 income before the due date, including extensions, for filing the return for the taxable
11 year during which the income was derived. The department shall include all of that
12 marital property income in the gross income of the former spouse and exclude all of
13 that marital property income from the gross income of the person.

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

15 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
16 for relief with the department as provided under sub. (6) (e).

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

18 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an
19 annual withholding report under sub. (3) (a) or (d).

20 **SECTION 9.** 71.80 (18) of the statutes is amended to read:

21 71.80 (18) **TIMELY FILING DEFINED.** Documents and payments required or
22 permitted by this chapter that are mailed shall be considered furnished, reported,
23 filed or made on time, if mailed in a properly addressed envelope, with postage duly
24 prepaid, which envelope is postmarked, or marked or recorded electronically as
25 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight

1 of the date prescribed for such furnishing, reporting, filing or making, provided such
2 document or payment is actually received by the department or at the destination
3 that the department or the department of administration prescribes within 5 days
4 of such prescribed date. Documents and payments that are not mailed are timely if
5 they are received on or before the due date by the department or at the destination
6 that the department or the department of administration prescribes. For purposes
7 of this subsection, "mailed" includes delivery by a delivery service designated under
8 section 7502 (f) of the Internal Revenue Code.

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

10 ~~71.80 (19) (a) With At the request of the department, with respect to any~~
11 ~~amount required to be shown on a form prescribed for any return, statement or other~~
12 ~~document required by this chapter, if the amount of such item is other than a whole~~
13 ~~dollar amount the fractional part of a dollar shall be disregarded unless it amounts~~
14 ~~to 50 cents or more, in which case the amount (determined without regard to the~~
15 ~~fractional part of a dollar) shall be increased to the next whole dollar.~~

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

17 ~~SECTION 12. 71.80 (19) (c) of the statutes is amended to read:~~

18 ~~71.80 (19) (c) *Inapplicability to computation of amount.* Paragraph Except at~~
19 ~~the request of the department, par. (a) does not apply to items which must be taken~~
20 ~~into account in making the computations necessary to determine the total amount~~
21 ~~required to be shown on a form, statement or other document but applies only to such~~
22 ~~final amount.~~

23 ~~SECTION 13. 71.84 (1) of the statutes is amended to read:~~

24 ~~71.84 (1) INDIVIDUALS AND FIDUCIARIES. Except as provided in s. 71.09 (11), in~~
25 ~~the case of any underpayment of estimated tax by an individual, estate or trust,~~

1 except as provided under s. 71.09, there shall be added to the aggregate tax for the
2 taxable year interest at the rate of 12% per year on the amount of the underpayment
3 for the period of the underpayment. In this subsection, "the period of the
4 underpayment" means the time period from the due date of the installment until
5 either the 15th day, or the last day if the person files an electronic return, of the 4th
6 month beginning after the end of the taxable year or the date of payment, whichever
7 is earlier.

8 **SECTION 14.** 71.84 (2) (a) of the statutes is amended to read:

9 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
10 of estimated tax under s. 71.29 or 71.48 there shall be added to the aggregate tax for
11 the taxable year interest at the rate of 12% per year on the amount of the
12 underpayment for the period of the underpayment. For corporations, except as
13 provided in par. (b), "period of the underpayment" means the time period from the
14 due date of the installment until either the 15th day, or the last day if the person files
15 an electronic return, of the 3rd month beginning after the end of the taxable year or
16 the date of payment, whichever is earlier. If 90% of the tax shown on the return is
17 not paid by the 15th day, or the last day if the person files an electronic return, of the
18 3rd month following the close of the taxable year, the difference between that amount
19 and the estimated taxes paid, along with any interest due, shall accrue delinquent
20 interest under s. 71.91 (1) (a).

21 **SECTION 15.** 71.84 (2) (b) of the statutes is amended to read:

22 71.84 (2) (b) For corporations that are subject to a tax under this chapter on
23 unrelated business taxable income, as defined under section 512 of the internal
24 revenue code, and virtually exempt entities, "period of the underpayment" means the
25 time period from the due date of the installment until either the 15th day, or the last

1 ~~day if the person files an electronic return, of the 5th month beginning after the end~~
2 ~~of the taxable year or the date of payment, whichever is earlier. If 90% of the tax~~
3 ~~shown on the return is not paid by the 15th day, or the last day if the person files an~~
4 ~~electronic return, of the 5th month following the close of the taxable year, the~~
5 ~~difference between that amount and the estimated taxes paid along with any interest~~
6 ~~due, shall accrue delinquent interest under s. 71.91 (1) (a).~~

7 **SECTION 16.** 71.84 (2) (c) of the statutes is amended to read:

8 71.84 (2) (c) If a refund under s. 71.29 (3m) results in an income or franchise
9 tax liability that is greater than the amount of estimated taxes paid in reduced by
10 the amount of the refund, the taxpayer shall add to the aggregate tax for the taxable
11 year interest at an annual rate of 12% on the amount of the unpaid tax liability for
12 the period beginning on the date the refund is issued and ending on the 15th day, or
13 ~~the last day if the person files an electronic return, of the 3rd month beginning after~~
14 ~~the end of the taxable year, or the date the tax liability is paid, whichever is earlier.~~

15 **SECTION 17.** 72.23 of the statutes is renumbered 72.23 (1).

16 **SECTION 18.** 72.23 (2) of the statutes is created to read:

17 72.23 (2) The department or circuit court may waive interest on any additional
18 tax arising from the discovery of property omitted in the inventory of total assets or
19 in the original tax determination, if due diligence was exercised in determining the
20 assets.

21 **SECTION 19.** 72.30 (1m) of the statutes is created to read:

22 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
23 return filed under ch. 71, applies to a tax return filed under sub. (1).

24 **SECTION 20.** 73.01 (4) (a) of the statutes is amended to read:

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 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
5 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
6 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,
7 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending
8 appeal there is filed with the commission a stipulation signed by the department of
9 revenue and the adverse party, under s. 73.03 (25), or the department of
10 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 21.** 73.13 of the statutes is created to read:

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

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

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

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

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

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

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

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

12 **SECTION 22.** 77.58 (3) (c) of the statutes is created to read:

13 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
14 applies to a tax return filed under this section.

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

17 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the
18 seller has collected from buyers, who collects taxes erroneously from buyers, or who
19 is entitled to a refund that is offset under sub. (5), shall return submit the taxes and
20 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~
21 department if the seller cannot locate the buyers, within 90 days after the date of the
22 refund, after the date of the offset, or after discovering that the seller has collected
23 taxes erroneously from the buyers. If the seller does not submit the taxes and related
24 interest to the department or the buyers within that period, the seller shall return
25 submit to the department any part of a refund or taxes that the seller does not ~~return~~

1 submit to a buyer or to the department along with a penalty of 25% of the amount
2 not returned or submitted or, in the case of fraud, a penalty equal to the amount not
3 returned in the case of fraud submitted. A person who collects taxes erroneously
4 from buyers for a real property construction activity or nontaxable service may
5 reduce the taxes and interest that he or she is required to submit to the buyer or to
6 the department under this subsection for that activity or service by the amount of tax
7 and interest subsequently due and paid on the sale of or the storage, use, or other
8 consumption of tangible personal property that is used by the person in that activity
9 or service and transferred to the buyer.

10 **SECTION 24.** 77.59 (5) of the statutes is amended to read:

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

20 **SECTION 25.** 77.61 (3) of the statutes is amended to read:

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

1 relieve the retailer from liability for payment of the full amount of the tax levied by
2 ss. 77.51 to 77.62.

3 **SECTION 26.** 77.61 (14) of the statutes is amended to read:

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

15 **SECTION 27.** 77.9941 (4) of the statutes is amended to read:

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

20 **SECTION 28.** 77.9964 (2) of the statutes is amended to read:

21 77.9964 (2) Except as provided in s. 77.9961 (4), sections ss. 71.74 (1) to (3), (7)
22 and (9), 71.75 (1), (2), (6), (7), (9) and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and
23 (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), and (17) and (18) to (19), 71.82
24 (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

1 (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,
2 as they apply to the taxes under ch. 71, apply to the fees under this subchapter.

3 **SECTION 29.** 78.22 (4) of the statutes is amended to read:

4 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor
5 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed
6 in time if it is mailed in a properly addressed envelope with 1st class postage duly
7 prepaid and the envelope is officially postmarked, or marked or recorded
8 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
9 on the date due and the return is actually received by the department or at the
10 destination that the department prescribes within 5 days of the due date. A return
11 that is not mailed is timely if it is received on or before the due date by the department
12 or at the destination that the department prescribes. For purposes of this subsection,
13 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
14 the Internal Revenue Code.

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

16 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

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

18 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

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

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

25 **SECTION 33.** 139.03 (2x) (d) of the statutes is amended to read:

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

12 **SECTION 34.** 139.05 (2a) of the statutes is amended to read:

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

25 **SECTION 35.** 139.11 (2r) of the statutes is created to read:

1 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
2 return filed under ch. 71, applies to a report filed under this subchapter.

3 **SECTION 36.** 139.315 (4) of the statutes is amended to read:

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

14 **SECTION 37.** 139.38 (2r) of the statutes is created to read:

15 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
16 applies to a report filed under this subchapter.

17 **SECTION 38.** 139.38 (5) of the statutes is amended to read:

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

1 that the department prescribes. For purposes of this subsection, “mailed” includes
2 delivery by a delivery service designated under section 7502 (f) of the Internal
3 Revenue Code.

4 **SECTION 39.** 139.75 (9m) of the statutes is created to read:

5 139.75 (9m) “Sign” has the meaning given in s. 139.01 (9m).

6 **SECTION 40.** 139.82 (2r) of the statutes is created to read:

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

9 **SECTION 41. Initial applicability.**

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

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

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

20 (4) INCOME TAX FILING DEADLINES FOR ELECTRONIC RETURNS. The treatment of
21 section 71.03 (6) (a) and (8) (b) of the statutes takes effect only if the secretary of
22 revenue issues a written certification to the governor ~~not later than April 1, 2004,~~
23 that the federal government has extended the income tax filing deadline for

1 electronically filed individual income tax returns in a way that is similar to the
2 changes made by SECTIONS 2 and 3 of this act.

3 (END)

INSERT 5-7

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

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

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

1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9, 167; 2001 a. 16, 109. 1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9, 167; 2001 a. 16, 109.

end of insert

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Monday, February 03, 2003 4:32
To: Kreye, Joseph
Subject: 641/1 - taxpayer friendly 2nd draft

Hi Joe --

Thanks for this latest draft -- looks great. I've gotten everyone to sign of on it in record time (for DOR).

We'd like to add another piece to the draft, though -- see what I've included at the bottom of this email. I hope this is not difficult to add. You can contact Tom Reid or Carol Held (listed at bottom) if you need the appropriate statutory citations.

Thanks.

p.s. Vicky is still working on the SST draft, but since it's not going into the budget, I told her she could take a little more time. Should have a few changes to that one soon, too. I guess we'll need it converted back to a separate legislation draft. Ah well.

Sherrie

INDIVIDUAL INCOME TAX - QUALIFIED RETIREMENT SYSTEMS

DESCRIPTION OF CURRENT LAW AND PROBLEM

The Legislature's delay in adopting the pension changes of the federal Economic Growth and Tax Relief Reconciliation (EGTRRA) raised questions as to whether a qualified retirement system under federal law would be a qualified retirement system for Wisconsin purposes, should Wisconsin not conform to federal pensions laws. If it did not, a retirement system satisfying federal pensions laws and thus exempt from federal income tax would be subject to Wisconsin income tax.

RECOMMENDATION FOR ACTION

Amend Wisconsin individual income tax statutes to provide that a qualified retirement system under federal law is a qualified retirement system under Wisconsin law. This affects businesses as well as individuals so changes should be included in the corporation (including exempt entities), tax-option corporation, and insurance company subchapters.

ADMINISTRATIVE IMPACT

The change would prevent the department from having to determine—in situations where the state failed to conform to federal pension regulations—whether or not retirement systems following federal law and thus exempt from federal tax were subject to Wisconsin income tax and, potentially, imposing a tax on these federally exempt systems and/or their participants.

FISCAL EFFECT

None.

02/04/2003

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Tax years beginning on January 1, 2003.

CONTACTS: Individual Income Tax -- Tom Reid, 6-8474

Corporate/Tax Option/Insurance -- Carol Held, 6-5464



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0641/A
JK:jld:rs

2003 BILL

RM not done

*re fer
in 2-4-03*

✓ qualified retirement systems

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), 71.03 (6) (a), 71.03 (8) (b), 71.10 (6) (a), 71.10
3 (6) (b), 71.10 (6m) (a), 71.65 (5) (a) 1., 71.80 (18), 73.01 (4) (a), 77.59 (5), 77.61
4 (3), 77.61 (14), 77.9941 (4), 77.9964 (2), 78.22 (4), 78.68 (10), 139.03 (2x) (d),
5 139.05 (2a), 139.315 (4) and 139.38 (5); and *to create* 71.10 (6) (e), 71.10 (6m)
6 (c), 72.23 (2), 72.30 (1m), 73.13, 77.58 (3) (c), 78.39 (5d), 78.39 (5m), 139.11 (2r),
7 139.38 (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 interest, reducing
10 nondelinquent taxes, rounding dollar amounts to whole dollars on all tax
11 returns, allowing a mathematical computation of sales and use taxes,
12 extending the time for filing a tax withholding report, delivering tax-related

BILL

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

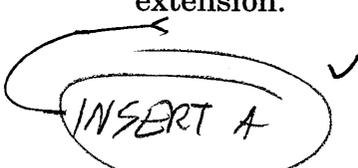
If within three years from either the date on which DOR enters the order that reduces the taxpayer's taxes or the date of the final payment according to a payment schedule determined by DOR, whichever is later, DOR determines that the taxpayer has an income or owns property that is sufficient to enable 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.



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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, 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 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.

BILL

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.** 71.03 (6) (a) of the statutes is amended to read:

6 71.03 (6) (a) Reports required under this section shall be made on or before
7 April 15, or April 30 if the person files an electronic return, following the close of a
8 year referred to in sub. (2) (a), or if such person's fiscal year is other than the calendar
9 year then on or before the 15th day, or the last day if the person files an electronic
10 return, of the 4th month following the close of such fiscal year, or if the return is for
11 less than a full taxable year on the date applicable for federal income taxes under the
12 ~~internal revenue code~~ Internal Revenue Code, to the department of revenue, in the
13 manner and form prescribed by the department of revenue, whether notified to do
14 so or not. Such persons shall be subject to the same penalties for failure to report as
15 those who receive notice. If the taxpayer is unable to make his or her own return,
16 the return shall be made by a duly authorized agent or by the guardian or other
17 person charged with the care of the person or property of such taxpayer.

18 **SECTION 3.** 71.03 (8) (b) of the statutes is amended to read:

19 71.03 (8) (b) The final payment of taxes on incomes of persons other than
20 corporations who file on a calendar year basis shall be made on or before April 15,

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⑦ ✓

1 or April 30 if the person files an electronic return, following the close of the calendar
 2 year, except for persons electing to have the department compute their tax under sub.
 3 (4). If the return of a person other than a corporation is made on the basis of a fiscal
 4 year, such final payment shall be made on or before the 15th day, or the last day if
 5 the person files an electronic return, of the 4th month following the close of such fiscal
 6 year, except for persons electing to have the department compute their tax under sub.
 (4).

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

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

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

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

BILL**SECTION 5**

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

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

9 **SECTION 7.** 71.10 (6m) (a) of the statutes is amended to read:

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

22 **SECTION 8.** 71.10 (6m) (c) of the statutes is created to read:

23 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
24 for relief with the department as provided under sub. (6) (e).

25 **SECTION 9.** 71.65 (5) (a) 1. of the statutes is amended to read:

BILL

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

3 **SECTION 10.** 71.80 (18) of the statutes is amended to read:

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

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

18 **SECTION 12.** 72.23 of the statutes is renumbered 72.23 (1).

19 **SECTION 13.** 72.23 (2) of the statutes is created to read:

20 72.23 (2) The department or circuit court may waive interest on any additional
21 tax arising from the discovery of property omitted in the inventory of total assets or
22 in the original tax determination, if due diligence was exercised in determining the
23 assets.

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

BILL**SECTION 14**

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

3 **SECTION 15.** 73.01 (4) (a) of the statutes is amended to read:

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

22 **SECTION 16.** 73.13 of the statutes is created to read:

23 **73.13 Reducing nondelinquent taxes.** (1) In this section:

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

BILL

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

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

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

21 (c) If within 3 years from either the date of the order under par. (b) or the date
22 of the final payment according to a payment schedule as determined under par. (b),
23 whichever is later, the department ascertains that the taxpayer has an income or
24 owns property sufficient to enable the taxpayer to pay the unpaid portion of the
25 principal amount of the taxes due, including the costs, penalties, and interest

BILL**SECTION 16**

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

16 **SECTION 17.** 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 18.** 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

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. A person who collects taxes erroneously
8 from buyers for a real property construction activity or nontaxable service may
9 reduce the taxes and interest that he or she is required to submit to the buyer or to
10 the department under this subsection for that activity or service by the amount of tax
11 and interest subsequently due and paid on the sale of or the storage, use, or other
12 consumption of tangible personal property that is used by the person in that activity
13 or service and transferred to the buyer.

14 **SECTION 19.** 77.59 (5) of the statutes is amended to read:

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

24 **SECTION 20.** 77.61 (3) of the statutes is amended to read:

BILL**SECTION 20**

1 77.61 (3) ~~The department shall provide~~ A retailer shall use either a bracket
2 system to be used by retailers in collecting or a straight mathematical computation,
3 under rules promulgated by the department, to determine the amount of the tax that
4 the retailer may collect from their the retailer's customers, but the use of such
5 brackets either a bracket system or a straight mathematical computation shall not
6 relieve the retailer from liability for payment of the full amount of the tax levied by
7 ss. 77.51 to 77.62.

8 **SECTION 21.** 77.61 (14) of the statutes is amended to read:

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

20 **SECTION 22.** 77.9941 (4) of the statutes is amended to read:

21 77.9941 (4) Sections 77.72 (1), (2) (a) and (3) (a), 77.73, 77.74, 77.75, 77.76 (1),
22 (2) and (4), 77.77 (1) and (2), 77.785 (1) and 77.79, as they apply to the taxes under
23 subch. V, apply to the tax under this subchapter. Section 77.58 (3) (c), as it applies
24 to the taxes under subch. III, applies to the tax under this subchapter.

25 **SECTION 23.** 77.9964 (2) of the statutes is amended to read:

BILL

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

7 **SECTION 24.** 78.22 (4) of the statutes is amended to read:

8 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor
9 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed
10 in time if it is mailed in a properly addressed envelope with ~~1st class~~ postage duly
11 prepaid and the envelope is officially postmarked, or marked or recorded
12 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
13 on the date due and the return is actually received by the department or at the
14 destination that the department prescribes within 5 days of the due date. A return
15 that is not mailed is timely if it is received on or before the due date by the department
16 or at the destination that the department prescribes. For purposes of this subsection,
17 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
18 the Internal Revenue Code.

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

20 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

21 **SECTION 26.** 78.39 (5m) of the statutes is created to read:

22 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

23 **SECTION 27.** 78.68 (10) of the statutes is amended to read:

24 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75
25 (2), (4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under

BILL**SECTION 27**

1 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,
2 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies
3 to tax returns filed under ch. 71, applies to returns filed under this chapter.

4 **SECTION 28.** 139.03 (2x) (d) of the statutes is amended to read:

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

16 **SECTION 29.** 139.05 (2a) of the statutes is amended to read:

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

BILL

1 the due date by the department or at the destination that the department prescribes.

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

4 **SECTION 30.** 139.11 (2r) of the statutes is created to read:

5 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
6 return filed under ch. 71, applies to a report filed under this subchapter.

7 **SECTION 31.** 139.315 (4) of the statutes is amended to read:

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

18 **SECTION 32.** 139.38 (2r) of the statutes is created to read:

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

21 **SECTION 33.** 139.38 (5) of the statutes is amended to read:

22 139.38 (5) If any permittee fails to file a report when due the permittee shall
23 be required to pay a late filing fee of \$10. A report that is mailed is filed in time if
24 it is mailed in a properly addressed envelope with ~~first class~~ postage duly prepaid,
25 which envelope is officially postmarked, or marked or recorded electronically as

BILL**SECTION 33**

1 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due,
2 and if the report is actually received by the secretary or at the destination that the
3 department prescribes within 5 days of the due date. A report that is not mailed is
4 timely if it is received on or before the due date by the secretary or at the destination
5 that the department prescribes. For purposes of this subsection, “mailed” includes
6 delivery by a delivery service designated under section 7502 (f) of the Internal
7 Revenue Code.

8 **SECTION 34.** 139.75 (9m) of the statutes is created to read:

9 139.75 (9m) “Sign” has the meaning given in s. 139.01 (9m).

10 **SECTION 35.** 139.82 (2r) of the statutes is created to read:

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

13 **SECTION 36. Initial applicability.**

14 (1) **REFUNDS AND TAXES COLLECTED ERRONEOUSLY.** The treatment of sections 50.14
15 (4), 73.01 (4) (a), and 77.59 (4) (c) and (5) of the statutes first applies to notices of
16 refunds or notices of amounts due dated, offsets taken, and the discovery of amounts
17 collected erroneously as taxes on the effective date of this subsection even if the
18 notices, offsets, and amounts relate to sales that occurred after August 31, 1994.

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

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

24 (4) **INCOME TAX FILING DEADLINES FOR ELECTRONIC RETURNS.** The treatment of
25 section 71.03 (6) (a) and (8) (b) of the statutes takes effect only if the secretary of

BILL

1 revenue issues a written certification to the governor that the federal government
2 has extended the income tax filing deadline for electronically filed individual income
3 tax returns in a way that is similar to the changes made by SECTIONS 2 and 3 of this
4 act.

5 (END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0641/lins
JK:jld:rs

Insert A

This bill clarifies that payments received from a qualified retirement system under federal law that ~~is~~^{are} exempt from the federal income tax are exempt from the state income tax.

Insert 5 - 7

- 1 SECTION 1. [✓]71.05 (1m) of the statutes is created to read:
- 2 71.05 (1m) QUALIFIED RETIREMENT SYSTEMS. [✓] For the purposes of sub. [✓](1),
- 3 payments received from a qualified retirement system under federal law that ~~are~~^{are}
- 4 exempt from the federal income tax are exempt from taxation under this subchapter. [✓] _{plain}

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Tuesday, February 11, 2003 9:47 AM
To: Kreye, Joseph
Subject: 641/2 - taxpayer friendly draft

Hi Joe --

LRB 0641/2 with regard to the qualified retirement system does not accomplish quite what we were looking for.

Our intention is not to provide automatically the same treatment for payments from a qualified retirement system under federal law. Rather, we want to avoid situations in which a retirement system is a qualified retirement system under federal law by conforming to current federal provisions, but might not be qualified under Wisconsin law because it has not adopted these current federal provisions.

Our income tax people suggested some "notwithstanding" language in s. 71.01, and probably in 71.22 and maybe in other definition section, providing something along the lines of the following: notwithstanding sub. (6), a qualified retirement fund for the taxable year for purposes of the internal revenue code is a qualified retirement fund for purposes of this chapter. Would that work?

Also, we'd like to change the initial applicability date for withholding reports (page 17, lines 4-5) to January 31, 2004.

Thanks, Joe.

Sherrie



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0641/2
JK:jld:cph

3

RM not run

2003 BILL

in 2-11-03

Regen

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), 71.03 (6) (a), 71.03 (8) (b), 71.10 (6) (a), 71.10
3 (6) (b), 71.10 (6m) (a), 71.65 (5) (a) 1., 71.80 (18), 73.01 (4) (a), 77.59 (5), 77.61
4 (3), 77.61 (14), 77.9941 (4), 77.9964 (2), 78.22 (4), 78.68 (10), 139.03 (2x) (d),
5 139.05 (2a), 139.315 (4) and 139.38 (5); and *to create* 71.05 (1m), 71.10 (6) (e),
6 71.10 (6m) (c), 72.23 (2), 72.30 (1m), 73.13, 77.58 (3) (c), 78.39 (5d), 78.39 (5m),
7 139.11 (2r), 139.38 (2r), 139.75 (9m) and 139.82 (2r) of the statutes; **relating**
8 **to:** the liability of married persons filing a joint income tax return, the payment
9 of the alternate fuel tax and the tobacco products tax, estate tax interest,
10 qualified retirement systems, reducing nondelinquent taxes, rounding dollar
11 amounts to whole dollars on all tax returns, allowing a mathematical
12 computation of sales and use taxes, extending the time for filing a tax

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1 withholding report, delivering tax-related documents and related payments,
2 granting 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 either the date on which DOR enters the order that reduces the taxpayer's taxes or the date of the final payment according to a payment schedule determined by DOR, whichever is later, 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.

purpose is a qualified retirement fund for

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This bill clarifies that ~~payments received from~~ a qualified retirement ~~system~~ *fund* ~~under federal law that are exempt from the federal income tax~~ ~~are exempt from the~~ state income tax *purpose*

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 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 or payment is received within five days from the date on which the document or payment is due.

BILL

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.

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

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

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

SECTION 2. 71.03 (6) (a) of the statutes is amended to read:

71.03 (6) (a) Reports required under this section shall be made on or before April 15, or April 30 if the person files an electronic return, following the close of a year referred to in sub. (2) (a), or if such person's fiscal year is other than the calendar year then on or before the 15th day, or the last day if the person files an electronic return, of the 4th month following the close of such fiscal year, or if the return is for less than a full taxable year on the date applicable for federal income taxes under the ~~internal revenue code~~ Internal Revenue Code, to the department of revenue, in the manner and form prescribed by the department of revenue, whether notified to do so or not. Such persons shall be subject to the same penalties for failure to report as those who receive notice. If the taxpayer is unable to make his or her own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

SECTION 3. 71.03 (8) (b) of the statutes is amended to read:

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1 71.03 (8) (b) The final payment of taxes on incomes of persons other than
2 corporations who file on a calendar year basis shall be made on or before April 15,
3 or April 30 if the person files an electronic return, following the close of the calendar
4 year, except for persons electing to have the department compute their tax under sub.
5 (4). If the return of a person other than a corporation is made on the basis of a fiscal
6 year, such final payment shall be made on or before the 15th day, or the last day if
7 the person files an electronic return, of the 4th month following the close of such fiscal
8 year, except for persons electing to have the department compute their tax under sub.
9 (4).

10 ~~SECTION 4. 71.05 (1m) of the statutes is created to read:~~

11 71.05 (1m) QUALIFIED RETIREMENT SYSTEMS. For the purposes of sub. (1)
12 payments received from a qualified retirement system under federal law that are
13 ~~exempt from the federal income tax are exempt from taxation under this subchapter.~~

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

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

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

22 71.10 (6) (b) *Separate returns.* A spouse filing a separate return may be
23 relieved of liability for the tax, interest, penalties, fees, additions to tax and
24 additional assessments under this chapter ~~with regard to unreported marital~~
25 ~~property income~~ in the manner specified in section 66 (c) of the ~~internal revenue code~~

BILL

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

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

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

14 **SECTION 8.** 71.10 (6m) (a) of the statutes is amended to read:

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

3 **SECTION 9.** 71.10 (6m) (c) of the statutes is created to read:

4 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
5 for relief with the department as provided under sub. (6) (e).

6 **SECTION 10.** 71.65 (5) (a) 1. of the statutes is amended to read:

7 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an
8 annual withholding report under sub. (3) (a) or (d).

9 **SECTION 11.** 71.80 (18) of the statutes is amended to read:

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

23 **SECTION 12.** 71.80 (19) (b) of the statutes is repealed.

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

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

BILL**SECTION 14**

1 72.23 (2) The department or circuit court may waive interest on any additional
2 tax arising from the discovery of property omitted in the inventory of total assets or
3 in the original tax determination, if due diligence was exercised in determining the
4 assets.

5 **SECTION 15.** 72.30 (1m) of the statutes is created to read:

6 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
7 return filed under ch. 71, applies to a tax return filed under sub. (1).

8 **SECTION 16.** 73.01 (4) (a) of the statutes is amended to read:

9 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
10 the commission shall be the final authority for the hearing and determination of all
11 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
12 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
13 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
14 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,
15 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending
16 appeal there is filed with the commission a stipulation signed by the department of
17 revenue and the adverse party, under s. 73.03 (25), or the department of
18 transportation and the adverse party agreeing to an affirmance, modification, or
19 reversal of the department of revenue's or department of transportation's position
20 with respect to some or all of the issues raised in the appeal, the commission shall
21 enter an order affirming or modifying in whole or in part, or canceling the assessment
22 appealed from, or allowing in whole or in part or denying the petitioner's refund
23 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
24 No responsibility shall devolve upon the commission, respecting the signing of an

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1 order of dismissal as to any pending appeal settled by the department of revenue or
2 the department of transportation without the approval of the commission.

3 **SECTION 17.** 73.13 of the statutes is created to read:

4 **73.13 Reducing nondelinquent taxes.** (1) In this section:

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

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

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

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

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

21 **SECTION 18.** 77.58 (3) (c) of the statutes is created to read:

22 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
23 applies to a tax return filed under this section.

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

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1 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the
2 seller has collected from buyers, who collects taxes erroneously from buyers, or who
3 is entitled to a refund that is offset under sub. (5), shall return submit the taxes and
4 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~
5 department if the seller cannot locate the buyers, within 90 days after the date of the
6 refund, after the date of the offset, or after discovering that the seller has collected
7 taxes erroneously from the buyers. If the seller does not submit the taxes and related
8 interest to the department or the buyers within that period, the seller shall return
9 submit to the department any part of a refund or taxes that the seller does not ~~return~~
10 submit to a buyer or to the department along with a penalty of 25% of the amount
11 not returned ~~or submitted or, in the case of fraud,~~ a penalty equal to the amount not
12 ~~returned in the case of fraud~~ submitted. A person who collects taxes erroneously
13 from buyers for a real property construction activity or nontaxable service may
14 reduce the taxes and interest that he or she is required to submit to the buyer or to
15 the department under this subsection for that activity or service by the amount of tax
16 and interest subsequently due and paid on the sale of or the storage, use, or other
17 consumption of tangible personal property that is used by the person in that activity
18 or service and transferred to the buyer.

19 **SECTION 20.** 77.59 (5) of the statutes is amended to read:

20 77.59 (5) The department may offset the amount of any refund for a period,
21 together with interest on the refund, against deficiencies for another period, and
22 against penalties and interest on the deficiencies, or against any amount of whatever
23 kind, due and owing on the books of the department from the person claiming who
24 is entitled to the refund. If the refund is to be paid to a buyer, the department may
25 also set off amounts in the manner in which it sets off income tax and franchise tax

BILL**SECTION 20**

1 refunds under s. 71.93 and may set off amounts for child support or maintenance or
2 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),
3 (6) and (7).

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

5 77.61 (3) ~~The department shall provide~~ A retailer shall use either a bracket
6 system to be used by retailers in collecting or a straight mathematical computation,
7 under rules promulgated by the department, to determine the amount of the tax that
8 the retailer may collect from their the retailer's customers, but the use of such
9 brackets either a bracket system or a straight mathematical computation shall not
10 relieve the retailer from liability for payment of the full amount of the tax levied by
11 ss. 77.51 to 77.62.

12 **SECTION 22.** 77.61 (14) of the statutes is amended to read:

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

24 **SECTION 23.** 77.9941 (4) of the statutes is amended to read:

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

5 **SECTION 24.** 77.9964 (2) of the statutes is amended to read:

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

12 **SECTION 25.** 78.22 (4) of the statutes is amended to read:

13 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor
14 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed
15 in time if it is mailed in a properly addressed envelope with 1st class postage duly
16 prepaid and the envelope is officially postmarked, or marked or recorded
17 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
18 on the date due and the return is actually received by the department or at the
19 destination that the department prescribes within 5 days of the due date. A return
20 that is not mailed is timely if it is received on or before the due date by the department
21 or at the destination that the department prescribes. For purposes of this subsection,
22 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
23 the Internal Revenue Code.

24 **SECTION 26.** 78.39 (5d) of the statutes is created to read:

25 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

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1 **SECTION 27.** 78.39 (5m) of the statutes is created to read:

2 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

3 **SECTION 28.** 78.68 (10) of the statutes is amended to read:

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

9 **SECTION 29.** 139.03 (2x) (d) of the statutes is amended to read:

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

21 **SECTION 30.** 139.05 (2a) of the statutes is amended to read:

22 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed
23 are furnished, filed or made on time, and payments therein referred to are timely, if
24 mailed in a properly addressed envelope, with ~~first class~~ postage duly prepaid, which
25 envelope is officially postmarked, or marked or recorded electronically as provided

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

9 **SECTION 31.** 139.11 (2r) of the statutes is created to read:

10 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
11 return filed under ch. 71, applies to a report filed under this subchapter.

12 **SECTION 32.** 139.315 (4) of the statutes is amended to read:

13 139.315 (4) LATE FILING FEE. Any person who fails to file a cigarette inventory
14 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely
15 if it is mailed in a properly addressed envelope with 1st class postage prepaid, if the
16 envelope is postmarked, or marked or recorded electronically as provided under
17 section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return
18 is actually received by the department or at the destination that the department
19 prescribes within 5 days of the due date. A return that is not mailed is timely if it
20 is received on or before the due date by the department or at the destination that the
21 department prescribes. For purposes of this subsection, “mailed” includes delivery
22 by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

23 **SECTION 33.** 139.38 (2r) of the statutes is created to read:

24 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
25 applies to a report filed under this subchapter.

BILL**SECTION 34**

1 **SECTION 34.** 139.38 (5) of the statutes is amended to read:

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

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

14 139.75 (9m) “Sign” has the meaning given in s. 139.01 (9m).

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

16 139.82 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
17 applies to a report filed under this subchapter.

18 **SECTION 37. Initial applicability.**

19 (1) **REFUNDS AND TAXES COLLECTED ERRONEOUSLY.** The treatment of sections 50.14
20 (4), 73.01 (4) (a), and 77.59 (4) (c) and (5) of the statutes first applies to notices of
21 refunds or notices of amounts due dated, offsets taken, and the discovery of amounts
22 collected erroneously as taxes on the effective date of this subsection even if the
23 notices, offsets, and amounts relate to sales that occurred after August 31, 1994.

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0641/2ins
JK:jld:cph

Insert 1 - 4

1 **SECTION 1.** 71.01 (7n)✓ of the statutes is created to read:
2 71.01 (7n) Notwithstanding sub. (6)✓, a qualified retirement fund for a taxable
3 year for purposes of the Internal Revenue Code is a qualified retirement fund for the
4 taxable year for purposes of this subchapter.✓

Insert 7 - 5

5 **SECTION 2.** 71.22 (5m)✓ of the statutes is created to read:
6 71.22 (5m) Notwithstanding subs. (4) and (4m)✓, a qualified retirement fund for
7 a taxable year for purposes of the Internal Revenue Code is a qualified retirement
8 fund for the taxable year for purposes of this subchapter.✓

9 **SECTION 3.** 71.34 (1m)✓ of the statutes is created to read:
10 71.34 (1m) Notwithstanding sub. (1g)✓, a qualified retirement fund for a taxable
11 year for purposes of the Internal Revenue Code is a qualified retirement fund for the
12 taxable year for purposes of this subchapter.✓

13 **SECTION 4.** 71.42 (2m)✓ of the statutes is created to read:
14 71.42 (2m) Notwithstanding sub. (2)✓, a qualified retirement fund for a taxable
15 year for purposes of the Internal Revenue Code is a qualified retirement fund for the
16 taxable year for purposes of this subchapter.✓

(end ins 7-5)

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Monday, February 24, 2003 4:54 PM
To: Kreye, Joseph
Subject: taxpayer friendly draft revision

Hi Joe --

Ug -- just one more change to this draft ...

In the sections relating to retirement plans (secs. 71.01(7n), 71.22(5m), 71.34(1m), and 71.42(2m)), change:

... for federal purposes of the ~~Internal Revenue Code~~ ...

Our analyst thought the current language may appear to create a circular definition of "Internal Revenue Code."

Thanks --- Sherrie



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