



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0641/3  
JK:jld:jf

*RMK*

**2003 BILL**

*in 3-3-03*

*Eni March 7*

*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* 71.01 (7n), 71.10 (6) (e),  
6 71.10 (6m) (c), 71.22 (5m), 71.34 (1m), 71.42 (2m), 72.23 (2), 72.30 (1m), 73.13,  
7 77.58 (3) (c), 78.39 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m) and  
8 139.82 (2r) of the statutes; **relating to:** the liability of married persons filing  
9 a joint income tax return, the payment of the alternate fuel tax and the tobacco  
10 products tax, estate tax interest, qualified retirement systems, reducing  
11 nondelinquent taxes, rounding dollar amounts to whole dollars on all tax  
12 returns, allowing a mathematical computation of sales and use taxes,  
13 extending the time for filing a tax withholding report, delivering tax-related

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

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***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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→ This bill clarifies that a qualified retirement fund for federal income tax purposes is a qualified retirement fund for state income tax purposes.

**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.

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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:*

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.** 71.01 (7n) of the statutes is created to read:

6           71.01 (7n) Notwithstanding sub. (6), a qualified retirement fund for a taxable  
7           year for purposes of <sup>✓ federal income tax</sup> ~~the Internal Revenue Code~~ is a qualified retirement fund for the  
8           taxable year for purposes of this subchapter.

9           **SECTION 3.** 71.03 (6) (a) of the statutes is amended to read:

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

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1 those who receive notice. If the taxpayer is unable to make his or her own return,  
2 the return shall be made by a duly authorized agent or by the guardian or other  
3 person charged with the care of the person or property of such taxpayer.

4 **SECTION 4.** 71.03 (8) (b) of the statutes is amended to read:

5 71.03 (8) (b) The final payment of taxes on incomes of persons other than  
6 corporations who file on a calendar year basis shall be made on or before April 15,  
7 or April 30 if the person files an electronic return, following the close of the calendar  
8 year, except for persons electing to have the department compute their tax under sub.

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

13 (4).

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~~

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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.** 71.22 (5m) of the statutes is created to read:

7 71.22 (5m) Notwithstanding subs. (4) and (4m), a qualified retirement fund for  
8 a taxable year for purposes of <sup>federal income tax</sup> ~~the Internal Revenue Code~~ <sup>MASSACHUSETTS</sup> ✓ is a qualified retirement  
9 fund for the taxable year for purposes of this subchapter.

10 **SECTION 11.** 71.34 (1m) of the statutes is created to read:

11 71.34 (1m) Notwithstanding sub. (1g), a qualified retirement fund for a taxable  
12 year for purposes of <sup>of</sup> ~~the Internal Revenue Code~~ is a qualified retirement fund for the  
13 taxable year for purposes of this subchapter.

14 **SECTION 12.** 71.42 (2m) of the statutes is created to read:

15 71.42 (2m) Notwithstanding sub. (2), a qualified retirement fund for a taxable  
16 year for purposes of <sup>of</sup> ~~the Internal Revenue Code~~ is a qualified retirement fund for the  
17 taxable year for purposes of this subchapter.

18 **SECTION 13.** 71.65 (5) (a) 1. of the statutes is amended to read:

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

21 **SECTION 14.** 71.80 (18) of the statutes is amended to read:

22 71.80 (18) **TIMELY FILING DEFINED.** Documents and payments required or  
23 permitted by this chapter that are mailed shall be considered furnished, reported,  
24 filed or made on time, if mailed in a properly addressed envelope, with postage duly  
25 prepaid, which envelope is postmarked, or marked or recorded electronically as

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

10 **SECTION 15.** 71.80 (19) (b) of the statutes is repealed.

11 **SECTION 16.** 72.23 of the statutes is renumbered 72.23 (1).

12 **SECTION 17.** 72.23 (2) of the statutes is created to read:

13 72.23 (2) The department or circuit court may waive interest on any additional  
14 tax arising from the discovery of property omitted in the inventory of total assets or  
15 in the original tax determination, if due diligence was exercised in determining the  
16 assets.

17 **SECTION 18.** 72.30 (1m) of the statutes is created to read:

18 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax  
19 return filed under ch. 71, applies to a tax return filed under sub. (1).

20 **SECTION 19.** 73.01 (4) (a) of the statutes is amended to read:

21 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,  
22 the commission shall be the final authority for the hearing and determination of all  
23 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.  
24 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)  
25 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,

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1 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,  
2 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending  
3 appeal there is filed with the commission a stipulation signed by the department of  
4 revenue and the adverse party, under s. 73.03 (25), or the department of  
5 transportation and the adverse party agreeing to an affirmance, modification, or  
6 reversal of the department of revenue's or department of transportation's position  
7 with respect to some or all of the issues raised in the appeal, the commission shall  
8 enter an order affirming or modifying in whole or in part, or canceling the assessment  
9 appealed from, or allowing in whole or in part or denying the petitioner's refund  
10 claim, as the case may be, pursuant to and in accordance with the stipulation filed.  
11 No responsibility shall devolve upon the commission, respecting the signing of an  
12 order of dismissal as to any pending appeal settled by the department of revenue or  
13 the department of transportation without the approval of the commission.

14 **SECTION 20.** 73.13 of the statutes is created to read:

15 **73.13 Reducing nondelinquent taxes.** (1) In this section:

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

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

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

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

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

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

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

8 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,  
9 applies to a tax return filed under this section.

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

12 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the  
13 seller has collected from buyers, who collects taxes erroneously from buyers, or who  
14 is entitled to a refund that is offset under sub. (5), shall return submit the taxes and  
15 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~  
16 department if the seller cannot locate the buyers, within 90 days after the date of the  
17 refund, after the date of the offset, or after discovering that the seller has collected  
18 taxes erroneously from the buyers. If the seller does not submit the taxes and related  
19 interest to the department or the buyers within that period, the seller shall return  
20 submit to the department any part of a refund or taxes that the seller does not ~~return~~  
21 submit to a buyer or to the department along with a penalty of 25% of the amount  
22 not returned ~~or submitted or, in the case of fraud,~~ a penalty equal to the amount not  
23 returned ~~in the case of fraud~~ submitted. A person who collects taxes erroneously  
24 from buyers for a real property construction activity or nontaxable service may  
25 reduce the taxes and interest that he or she is required to submit to the buyer or to

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1 the department under this subsection for that activity or service by the amount of tax  
2 and interest subsequently due and paid on the sale of or the storage, use, or other  
3 consumption of tangible personal property that is used by the person in that activity  
4 or service and transferred to the buyer.

5 **SECTION 23.** 77.59 (5) of the statutes is amended to read:

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

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

16 77.61 (3) ~~The department shall provide~~ A retailer shall use either a bracket  
17 system to be used by retailers in collecting or a straight mathematical computation,  
18 under rules promulgated by the department, to determine the amount of the tax that  
19 the retailer may collect from their the retailer's customers, but the use of such  
20 brackets either a bracket system or a straight mathematical computation shall not  
21 relieve the retailer from liability for payment of the full amount of the tax levied by  
22 ss. 77.51 to 77.62.

23 **SECTION 25.** 77.61 (14) of the statutes is amended to read:

24 77.61 (14) Documents and payments required or permitted under this  
25 subchapter that are mailed are timely furnished, filed or made if they are mailed in

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

10 **SECTION 26.** 77.9941 (4) of the statutes is amended to read:

11 77.9941 (4) Sections 77.72 (1), (2) (a) and (3) (a), 77.73, 77.74, 77.75, 77.76 (1),  
12 (2) and (4), 77.77 (1) and (2), 77.785 (1) and 77.79, as they apply to the taxes under  
13 subch. V, apply to the tax under this subchapter. Section 77.58 (3) (c), as it applies  
14 to the taxes under subch. III, applies to the tax under this subchapter.

15 **SECTION 27.** 77.9964 (2) of the statutes is amended to read:

16 77.9964 (2) Except as provided in s. 77.9961 (4), ~~sections ss.~~ 71.74 (1) to (3), (7)  
17 and (9), 71.75 (1), (2), (6), (7), (9) and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and  
18 (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), ~~and (17) and (18) to (19)~~, 71.82  
19 (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  
20 (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,  
21 as they apply to the taxes under ch. 71, apply to the fees under this subchapter.

22 **SECTION 28.** 78.22 (4) of the statutes is amended to read:

23 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor  
24 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed  
25 in time if it is mailed in a properly addressed envelope with 1st class postage duly

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

9 **SECTION 29.** 78.39 (5d) of the statutes is created to read:

10 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

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

12 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

13 **SECTION 31.** 78.68 (10) of the statutes is amended to read:

14 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75  
15 (2), (4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under  
16 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,  
17 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies  
18 to tax returns filed under ch. 71, applies to returns filed under this chapter.

19 **SECTION 32.** 139.03 (2x) (d) of the statutes is amended to read:

20 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return  
21 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered  
22 filed in time if it is mailed in a properly addressed envelope with 1st class postage  
23 duly prepaid, if the envelope is officially postmarked, or marked or recorded  
24 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,  
25 on the date due and if the return is actually received by the department or at the

**BILL**

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

6 **SECTION 33.** 139.05 (2a) of the statutes is amended to read:

7 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed  
8 are furnished, filed or made on time, and payments therein referred to are timely, if  
9 mailed in a properly addressed envelope, with ~~first class~~ postage duly prepaid, which  
10 envelope is officially postmarked, or marked or recorded electronically as provided  
11 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the  
12 date prescribed for such furnishing, filing or making of such payment, provided such  
13 statement, return or payment is actually received by the secretary of revenue or at  
14 the destination that the department prescribes within 5 days of the prescribed date.  
15 Payments and returns that are not mailed are timely if they are received on or before  
16 the due date by the department or at the destination that the department prescribes.  
17 For purposes of this subsection, “mailed” includes delivery by a delivery service  
18 designated under section 7502 (f) of the Internal Revenue Code.

19 **SECTION 34.** 139.11 (2r) of the statutes is created to read:

20 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax  
21 return filed under ch. 71, applies to a report filed under this subchapter.

22 **SECTION 35.** 139.315 (4) of the statutes is amended to read:

23 139.315 (4) LATE FILING FEE. Any person who fails to file a cigarette inventory  
24 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely  
25 if it is mailed in a properly addressed envelope with ~~1st class~~ postage prepaid, if the

**BILL****SECTION 35**

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

8 **SECTION 36.** 139.38 (2r) of the statutes is created to read:

9 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,  
10 applies to a report filed under this subchapter.

11 **SECTION 37.** 139.38 (5) of the statutes is amended to read:

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

23 **SECTION 38.** 139.75 (9m) of the statutes is created to read:

24 139.75 (9m) “Sign” has the meaning given in s. 139.01 (9m).

25 **SECTION 39.** 139.82 (2r) of the statutes is created to read:



## Kreye, Joseph

---

**From:** Gates-Hendrix, Sherrie  
**Sent:** Friday, March 28, 2003 2:09 PM  
**To:** Kreye, Joseph  
**Subject:** taxpayer friendly

Joe -- I have a few more changes to this draft. Hard to believe.

They are:

The new language in sec. 71.65(5)(a)1 should only provide an extension of time to file the "annual reconciliation report" required under sec. 71.65(3)(a) and (d). This is the report required by the third to the last sentence of 71.65(3)(a), and also by 71.65(3)(d). (Note: Employers file this report on Wisconsin Form WT-7.)

The language being added to sec. 71.65(5)(a)1 is not intended to provide an extension of time to file the periodic deposit reports required under sec. 71.65(3)(a). This is because sec. 71.65(5)(b) provides that no extension of time may be granted for making the deposits required to accompany the periodic deposit reports. (Note: Employers file these deposit reports on Wisconsin Form WT-6.)

AND

Regarding the bracket system, we would just like to delete the changes suggested for 77.61(3) (lines 16-22 of page 12) at this time and wait for the Streamlined legislation (I believe it is already included in the Streamlined legislation).

We will probably have a few more changes as the new secy has mentioned adding a few more provisions. But I thought I'd just have you do these 2 for now. So at least that much is done. This process drives me crazy.

Have a good weekend. ----Sherrie



03-06414.pdf



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0641/4  
JK:jld:cph

FRIDAY

**2003 BILL**

*RM run*

*in 3-31-03*

*re gen*

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** 71.01 (7n), 71.10 (6) (e),  
6 71.10 (6m) (c), 71.22 (5m), 71.34 (1m), 71.42 (2m), 72.23 (2), 72.30 (1m), 73.13,  
7 77.58 (3) (c), 78.39 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m) and  
8 139.82 (2r) of the statutes; **relating to:** the liability of married persons filing  
9 a joint income tax return, the payment of the alternate fuel tax and the tobacco  
10 products tax, estate tax interest, qualified retirement systems, reducing  
11 nondelinquent taxes, rounding dollar amounts to whole dollars on all tax  
12 returns, ~~allowing a mathematical computation of sales and use taxes~~  
13 extending the time for filing a tax ~~withholding~~ report, delivering tax-related

8

*reconciliation* ✓

**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 ~~quarterly or~~ ~~monthly~~ ~~quarterly~~ 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.

an  
a 30-day  
for filing  
reconciliation report  
an annual  
allows  
reconciliation

**BILL**

This bill clarifies that a qualified retirement fund for federal income tax purposes is a qualified retirement fund for state income tax purposes.

**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:*

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.** 71.01 (7n) of the statutes is created to read:

6           71.01 (7n) Notwithstanding sub. (6), a qualified retirement fund for a taxable  
7           year for federal income tax purposes is a qualified retirement fund for the taxable  
8           year for purposes of this subchapter.

9           **SECTION 3.** 71.03 (6) (a) of the statutes is amended to read:

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

**BILL**

1 those who receive notice. If the taxpayer is unable to make his or her own return,  
2 the return shall be made by a duly authorized agent or by the guardian or other  
3 person charged with the care of the person or property of such taxpayer.

4 **SECTION 4.** 71.03 (8) (b) of the statutes is amended to read:

5 71.03 (8) (b) The final payment of taxes on incomes of persons other than  
6 corporations who file on a calendar year basis shall be made on or before April 15,  
7 or April 30 if the person files an electronic return, following the close of the calendar  
8 year, except for persons electing to have the department compute their tax under sub.  
9 (4). If the return of a person other than a corporation is made on the basis of a fiscal  
10 year, such final payment shall be made on or before the 15th day, or the last day if  
11 the person files an electronic return, of the 4th month following the close of such fiscal  
12 year, except for persons electing to have the department compute their tax under sub.  
13 (4).

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

**BILL**

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.** 71.22 (5m) of the statutes is created to read:

7 71.22 (5m) Notwithstanding subs. (4) and (4m), a qualified retirement fund for  
8 a taxable year for federal income tax purposes is a qualified retirement fund for the  
9 taxable year for purposes of this subchapter.

10 **SECTION 11.** 71.34 (1m) of the statutes is created to read:

11 71.34 (1m) Notwithstanding sub. (1g), a qualified retirement fund for a taxable  
12 year for federal income tax purposes is a qualified retirement fund for the taxable  
13 year for purposes of this subchapter.

14 **SECTION 12.** 71.42 (2m) of the statutes is created to read:

15 71.42 (2m) Notwithstanding sub. (2), a qualified retirement fund for a taxable  
16 year for federal income tax purposes is a qualified retirement fund for the taxable  
17 year for purposes of this subchapter.

18 **SECTION 13.** 71.65 (5) (a) 1. of the statutes is amended to read:

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

21 **SECTION 14.** 71.80 (18) of the statutes is amended to read:

22 71.80 (18) **TIMELY FILING DEFINED.** Documents and payments required or  
23 permitted by this chapter that are mailed shall be considered furnished, reported,  
24 filed or made on time, if mailed in a properly addressed envelope, with postage duly  
25 prepaid, which envelope is postmarked, or marked or recorded electronically as

**BILL**

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

10 **SECTION 15.** 71.80 (19) (b) of the statutes is repealed.

11 **SECTION 16.** 72.23 of the statutes is renumbered 72.23 (1).

12 **SECTION 17.** 72.23 (2) of the statutes is created to read:

13 72.23 (2) The department or circuit court may waive interest on any additional  
14 tax arising from the discovery of property omitted in the inventory of total assets or  
15 in the original tax determination, if due diligence was exercised in determining the  
16 assets.

17 **SECTION 18.** 72.30 (1m) of the statutes is created to read:

18 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax  
19 return filed under ch. 71, applies to a tax return filed under sub. (1).

20 **SECTION 19.** 73.01 (4) (a) of the statutes is amended to read:

21 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,  
22 the commission shall be the final authority for the hearing and determination of all  
23 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.  
24 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)  
25 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,

**BILL**

1 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,  
2 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending  
3 appeal there is filed with the commission a stipulation signed by the department of  
4 revenue and the adverse party, under s. 73.03 (25), or the department of  
5 transportation and the adverse party agreeing to an affirmance, modification, or  
6 reversal of the department of revenue's or department of transportation's position  
7 with respect to some or all of the issues raised in the appeal, the commission shall  
8 enter an order affirming or modifying in whole or in part, or canceling the assessment  
9 appealed from, or allowing in whole or in part or denying the petitioner's refund  
10 claim, as the case may be, pursuant to and in accordance with the stipulation filed.  
11 No responsibility shall devolve upon the commission, respecting the signing of an  
12 order of dismissal as to any pending appeal settled by the department of revenue or  
13 the department of transportation without the approval of the commission.

14 **SECTION 20.** 73.13 of the statutes is created to read:

15 **73.13 Reducing nondelinquent taxes.** (1) In this section:

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

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

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

**BILL**

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

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

**BILL**

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

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

8 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,  
9 applies to a tax return filed under this section.

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

12 77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the  
13 seller has collected from buyers, who collects taxes erroneously from buyers, or who  
14 is entitled to a refund that is offset under sub. (5), shall return submit the taxes and  
15 related interest to the buyers from whom the taxes were collected. ~~The, or to the~~  
16 department if the seller cannot locate the buyers, within 90 days after the date of the  
17 refund, after the date of the offset, or after discovering that the seller has collected  
18 taxes erroneously from the buyers. If the seller does not submit the taxes and related  
19 interest to the department or the buyers within that period, the seller shall return  
20 submit to the department any part of a refund or taxes that the seller does not return  
21 submit to a buyer or to the department along with a penalty of 25% of the amount  
22 not returned or submitted or, in the case of fraud, a penalty equal to the amount not  
23 returned in the case of fraud submitted. A person who collects taxes erroneously  
24 from buyers for a real property construction activity or nontaxable service may  
25 reduce the taxes and interest that he or she is required to submit to the buyer or to

**BILL**

1 the department under this subsection for that activity or service by the amount of tax  
2 and interest subsequently due and paid on the sale of or the storage, use, or other  
3 consumption of tangible personal property that is used by the person in that activity  
4 or service and transferred to the buyer.

5 **SECTION 23.** 77.59 (5) of the statutes is amended to read:

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

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

16 ~~77.61 (3) The department shall provide A retailer shall use either a bracket  
17 system to be used by retailers in collecting or a straight mathematical computation,  
18 under rules promulgated by the department, to determine the amount of the tax that  
19 the retailer may collect from their the retailer's customers, but the use of such  
20 brackets either a bracket system or a straight mathematical computation shall not  
21 relieve the retailer from liability for payment of the full amount of the tax levied by  
22 ss. 77.51 to 77.62.~~

23 **SECTION 25.** 77.61 (14) of the statutes is amended to read:

24 77.61 (14) Documents and payments required or permitted under this  
25 subchapter that are mailed are timely furnished, filed or made if they are mailed in

**BILL**

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

10 **SECTION 26.** 77.9941 (4) of the statutes is amended to read:

11 77.9941 (4) Sections 77.72 (1), (2) (a) and (3) (a), 77.73, 77.74, 77.75, 77.76 (1),  
12 (2) and (4), 77.77 (1) and (2), 77.785 (1) and 77.79, as they apply to the taxes under  
13 subch. V, apply to the tax under this subchapter. Section 77.58 (3) (c), as it applies  
14 to the taxes under subch. III, applies to the tax under this subchapter.

15 **SECTION 27.** 77.9964 (2) of the statutes is amended to read:

16 77.9964 (2) Except as provided in s. 77.9961 (4), sections ss. 71.74 (1) to (3), (7)  
17 and (9), 71.75 (1), (2), (6), (7), (9) and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and  
18 (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), ~~and (17) and (18)~~ to (19), 71.82  
19 (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  
20 (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,  
21 as they apply to the taxes under ch. 71, apply to the fees under this subchapter.

22 **SECTION 28.** 78.22 (4) of the statutes is amended to read:

23 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor  
24 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed  
25 in time if it is mailed in a properly addressed envelope with 1st-class postage duly

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

9 **SECTION 29.** 78.39 (5d) of the statutes is created to read:

10 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

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

12 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

13 **SECTION 31.** 78.68 (10) of the statutes is amended to read:

14 78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75  
15 (2), (4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under  
16 this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,  
17 applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies  
18 to tax returns filed under ch. 71, applies to returns filed under this chapter.

19 **SECTION 32.** 139.03 (2x) (d) of the statutes is amended to read:

20 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return  
21 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered  
22 filed in time if it is mailed in a properly addressed envelope with 1st-class postage  
23 duly prepaid, if the envelope is officially postmarked, or marked or recorded  
24 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,  
25 on the date due and if the return is actually received by the department or at the

**BILL**

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

6 **SECTION 33.** 139.05 (2a) of the statutes is amended to read:

7 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed  
8 are furnished, filed or made on time, and payments therein referred to are timely, if  
9 mailed in a properly addressed envelope, with ~~first-class~~ postage duly prepaid, which  
10 envelope is officially postmarked, or marked or recorded electronically as provided  
11 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the  
12 date prescribed for such furnishing, filing or making of such payment, provided such  
13 statement, return or payment is actually received by the secretary of revenue or at  
14 the destination that the department prescribes within 5 days of the prescribed date.  
15 Payments and returns that are not mailed are timely if they are received on or before  
16 the due date by the department or at the destination that the department prescribes.  
17 For purposes of this subsection, “mailed” includes delivery by a delivery service  
18 designated under section 7502 (f) of the Internal Revenue Code.

19 **SECTION 34.** 139.11 (2r) of the statutes is created to read:

20 139.11 (2r) **WHOLE DOLLAR AMOUNTS.** Section 71.80 (19), as it applies to a tax  
21 return filed under ch. 71, applies to a report filed under this subchapter.

22 **SECTION 35.** 139.315 (4) of the statutes is amended to read:

23 139.315 (4) **LATE FILING FEE.** Any person who fails to file a cigarette inventory  
24 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely  
25 if it is mailed in a properly addressed envelope with 1st-class postage prepaid, if the

**BILL**

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

8 **SECTION 36.** 139.38 (2r) of the statutes is created to read:

9 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,  
10 applies to a report filed under this subchapter.

11 **SECTION 37.** 139.38 (5) of the statutes is amended to read:

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

23 **SECTION 38.** 139.75 (9m) of the statutes is created to read:

24 139.75 (9m) “Sign” has the meaning given in s. 139.01 (9m).

25 **SECTION 39.** 139.82 (2r) of the statutes is created to read:





State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-0641/3  
JK:jld:jf

16

2003 BILL

RMR

in 4-7-03

By Eri.  
4-11

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 (14), 77.9941 (4), 77.9964 (2), 78.22 (4), 78.68 (10), 139.03 (2x) (d), 139.05 (2a),  
5 139.315 (4) and 139.38 (5); and *to create* 71.01 (7n), 71.10 (6) (e), 71.10 (6m)  
6 (c), 71.22 (5m), 71.34 (1m), 71.42 (2m), 72.23 (2), 72.30 (1m), 73.13, 77.58 (3) (c),  
7 78.39 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m) and 139.82 (2r) of  
8 the statutes; **relating to:** the liability of married persons filing a joint income  
9 tax return, the payment of the alternate fuel tax and the tobacco products tax,  
10 estate tax interest, qualified retirement systems, reducing nondelinquent  
11 taxes, rounding dollar amounts to whole dollars on all tax returns, extending  
12 the time for filing a tax reconciliation report, delivering tax-related documents

**BILL**

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

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***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 reconciliation report with DOR on an annual basis. Under current law, DOR cannot grant an employer an extension for filing such a report. This bill allows DOR to grant a 30-day extension for filing an annual reconciliation report.

This bill clarifies that a qualified retirement fund for federal income tax purposes is a qualified retirement fund for state income tax purposes.

**BILL****SALES AND USE TAXES**

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.

**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:*

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.** 71.01 (7n) of the statutes is created to read:

6           71.01 (7n) Notwithstanding sub. (6), a qualified retirement fund for a taxable  
7           year for federal income tax purposes is a qualified retirement fund for the taxable  
8           year for purposes of this subchapter.

9           **SECTION 3.** 71.03 (6) (a) of the statutes is amended to read:

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

**BILL**

1           **SECTION 4.** 71.03 (8) (b) of the statutes is amended to read:

2           71.03 (8) (b) The final payment of taxes on incomes of persons other than  
3 corporations who file on a calendar year basis shall be made on or before April 15,  
4 or April 30 if the person files an electronic return, following the close of the calendar  
5 year, except for persons electing to have the department compute their tax under sub.  
6 (4). If the return of a person other than a corporation is made on the basis of a fiscal  
7 year, such final payment shall be made on or before the 15th day, or the last day if  
8 the person files an electronic return, of the 4th month following the close of such fiscal  
9 year, except for persons electing to have the department compute their tax under sub.  
10 (4).

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

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

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

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

**BILL****SECTION 6**

1 income before the due date, including extensions, for filing the return for the taxable  
2 year in which the income was derived. The department shall include all of that  
3 marital property income in the gross income of the taxpayer and exclude all of that  
4 marital property income from the gross income of the taxpayer's spouse.

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

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

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

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

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

**BILL**

1           71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply  
2 for relief with the department as provided under sub. (6) (e).

3           **SECTION 10.** 71.22 (5m) of the statutes is created to read:

4           71.22 (5m) Notwithstanding subs. (4) and (4m), a qualified retirement fund for  
5 a taxable year for federal income tax purposes is a qualified retirement fund for the  
6 taxable year for purposes of this subchapter.

7           **SECTION 11.** 71.34 (1m) of the statutes is created to read:

8           71.34 (1m) Notwithstanding sub. (1g), a qualified retirement fund for a taxable  
9 year for federal income tax purposes is a qualified retirement fund for the taxable  
10 year for purposes of this subchapter.

11          **SECTION 12.** 71.42 (2m) of the statutes is created to read:

12          71.42 (2m) Notwithstanding sub. (2), a qualified retirement fund for a taxable  
13 year for federal income tax purposes is a qualified retirement fund for the taxable  
14 year for purposes of this subchapter.

15          **SECTION 13.** 71.65 (5) (a) 1. of the statutes is amended to read:

16          71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an  
17 annual reconciliation report under sub. (3) (a) or (d).

18          **SECTION 14.** 71.80 (18) of the statutes is amended to read:

19          71.80 (18) **TIMELY FILING DEFINED.** Documents and payments required or  
20 permitted by this chapter that are mailed shall be considered furnished, reported,  
21 filed or made on time, if mailed in a properly addressed envelope, with postage duly  
22 prepaid, which envelope is postmarked, or marked or recorded electronically as  
23 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight  
24 of the date prescribed for such furnishing, reporting, filing or making, provided such  
25 document or payment is actually received by the department or at the destination

**BILL****SECTION 14**

1 that the department or the department of administration prescribes within 5 days  
2 of such prescribed date. Documents and payments that are not mailed are timely if  
3 they are received on or before the due date by the department or at the destination  
4 that the department or the department of administration prescribes. For purposes  
5 of this subsection, “mailed” includes delivery by a delivery service designated under  
6 section 7502 (f) of the Internal Revenue Code.

7 **SECTION 15.** 71.80 (19) (b) of the statutes is repealed.

8 **SECTION 16.** 72.23 of the statutes is renumbered 72.23 (1).

9 **SECTION 17.** 72.23 (2) of the statutes is created to read:

10 72.23 (2) The department or circuit court may waive interest on any additional  
11 tax arising from the discovery of property omitted in the inventory of total assets or  
12 in the original tax determination, if due diligence was exercised in determining the  
13 assets.

14 **SECTION 18.** 72.30 (1m) of the statutes is created to read:

15 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax  
16 return filed under ch. 71, applies to a tax return filed under sub. (1).

17 **SECTION 19.** 73.01 (4) (a) of the statutes is amended to read:

18 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,  
19 the commission shall be the final authority for the hearing and determination of all  
20 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.  
21 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)  
22 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,  
23 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,  
24 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending  
25 appeal there is filed with the commission a stipulation signed by the department of

**BILL**

1 revenue and the adverse party, under s. 73.03 (25), or the department of  
2 transportation and the adverse party agreeing to an affirmance, modification, or  
3 reversal of the department of revenue's or department of transportation's position  
4 with respect to some or all of the issues raised in the appeal, the commission shall  
5 enter an order affirming or modifying in whole or in part, or canceling the assessment  
6 appealed from, or allowing in whole or in part or denying the petitioner's refund  
7 claim, as the case may be, pursuant to and in accordance with the stipulation filed.  
8 No responsibility shall devolve upon the commission, respecting the signing of an  
9 order of dismissal as to any pending appeal settled by the department of revenue or  
10 the department of transportation without the approval of the commission.

11 **SECTION 20.** 73.13 of the statutes is created to read:

12 **73.13 Reducing nondelinquent taxes.** (1) In this section:

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

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

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

23 (b) If the department determines that the taxpayer is unable to pay the taxes,  
24 costs, penalties, and interest in full, the department shall determine the amount that  
25 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance

**BILL****SECTION 20**

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

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

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

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

5 77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,  
6 applies to a tax return filed under this section.

7 SECTION 22. 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended  
8 to read:

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

**BILL****SECTION 22**

1 consumption of tangible personal property that is used by the person in that activity  
2 or service and transferred to the buyer.

3 **SECTION 23.** 77.59 (5) of the statutes is amended to read:

4 77.59 (5) The department may offset the amount of any refund for a period,  
5 together with interest on the refund, against deficiencies for another period, and  
6 against penalties and interest on the deficiencies, or against any amount of whatever  
7 kind, due and owing on the books of the department from the person claiming who  
8 is entitled to the refund. If the refund is to be paid to a buyer, the department may  
9 also set off amounts in the manner in which it sets off income tax and franchise tax  
10 refunds under s. 71.93 and may set off amounts for child support or maintenance or  
11 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),  
12 (6) and (7).

13 **SECTION 24.** 77.61 (14) of the statutes is amended to read:

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

25 **SECTION 25.** 77.9941 (4) of the statutes is amended to read:

**BILL**

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 26.** 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 27.** 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 28.** 78.39 (5d) of the statutes is created to read:

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

**BILL****SECTION 29**

1           **SECTION 29.** 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 30.** 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 31.** 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 32.** 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 33.** 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 34.** 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 35.** 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 36**

1           **SECTION 36.** 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 37.** 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 38.** 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 39. 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.



## Kreye, Joseph

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**From:** Gates-Hendrix, Sherrie  
**Sent:** Monday, April 07, 2003 2:00 PM  
**To:** Kreye, Joseph  
**Subject:** taxpayer friendly change to /5

Hi Joe --

Could you make one more technical change to the taxpayer friendly bill (LRB 0641/5!) ?

on page 11, lines 10 and 20, insert the words "amounts as" following the work "collects"

So the phrase would read "who collects amounts as taxes erroneously from buyers..."

Our legal counsel thinks this phrase will better convey the notion that what the seller calls taxes and collects from the customer must in fact be taxes imposed by law.

thanks

Sherrie

## Kreye, Joseph

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**From:** Shovers, Marc  
**Sent:** Monday, November 17, 2003 10:37 AM  
**To:** Kreye, Joseph  
**Subject:** FW: "taxpayer friendly" bill draft 641/6 -- need change

Hi Joe:

I thought we talked about this one when you got back from leave, but it may have fallen through the cracks. Was this the one that we couldn't find the "guts" to? In any event, Sherrie is still looking for it. Do you have time to take care of it, or do you want me to do it?

Marc

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

**From:** Gates-Hendrix, Sherrie  
**Sent:** Monday, November 17, 2003 10:30 AM  
**To:** Shovers, Marc  
**Subject:** FW: "taxpayer friendly" bill draft 641/6 -- need change

Hi Marc -- Just wondering if you know how things are going with this draft. I'm sure you've been swamped with all the drafts flying around lately. Do you know when this one might be available?

Thanks

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

**From:** Gates-Hendrix, Sherrie  
**Sent:** Wednesday, August 13, 2003 9:07 AM  
**To:** Shovers, Marc  
**Subject:** "taxpayer friendly" bill draft 641/6 -- need change



03-06416.pdf

Marc --

This is one of the drafts I've worked with Joe on in the past. I'd like to have one item taken out -- the piece that permits DOR to require a taxpayer to round dollar amounts to the nearest whole dollar. I think this should eliminate the need for the fiscal estimate (?)

I'm also wondering if the bill needs the tag line about going to Tax Exemptions. The same line was in the bill (AB 439) last session and the committee just issued a brief report saying the bill "does not modify existing laws or create new laws relating to the exemption of property or persons from any state or local taxes." Could that reference to Tax Exemptions come out? See what you think. I think it may have just been left over from a couple of sessions ago when the bill did contain a tax exemption. Bob Conlin (staff to Tax Exemptions) has a copy of the draft too, so you could consult with him if you have time. I think he's only here the rest of this week and then gone for 2 weeks, though.

I was talking to our estate tax person over here about one other provision in the bill and just thought I'd mention her comment on the analysis regarding estate tax. On page 3, 2nd paragraph under "other taxation" talks about the estate tax. The analysis says that the bill gives DOR and the circuit court the ability to waive the interest amounts in question. Apparently the circuit court, based on case law, has been waiving this interest for many years. So giving the circuit court the ability is more of a technical change since they already do it (as opposed to giving us the authority, which we definitely don't have now).

Thanks for looking at this. Hope things slow down for you.

200

Sherrie  
7-1262