

2005 ASSEMBLY BILL 968

February 2, 2006 – Introduced by Representatives STRACHOTA, GARD, J. FITZGERALD, HUEBSCH, JENSEN, WOOD, HUNDERTMARK, NISCHKE, MURSAU, FREESE, LOTHIAN, KRAWCZYK, MONTGOMERY, LAMB, KREIBICH, TOWNS, GUNDERSON, BALLWEG, LOEFFELHOLZ, VOS, ALBERS, LEMAHIEU, JESKEWITZ, F. LASEE, PETTIS, MCCORMICK and MUSSER, cosponsored by Senators KANAVAS, DARLING, STEPP, GROTHMAN, SCHULTZ, BROWN, OLSEN and ROESSLER. Referred to Committee on Ways and Means.

1 **AN ACT** *to repeal* 77.59 (3m); *to amend* 71.82 (1) (a), 71.82 (1) (b), 71.82 (1) (c),
2 71.82 (2) (a), 71.82 (2) (b), 71.82 (2) (c), 71.82 (2) (d), 71.83 (1) (a) 2., 71.83 (1)
3 (a) 3., 71.84 (1), 71.84 (2) (a), 71.84 (2) (c), 71.90 (1), 71.90 (2), 71.91 (6) (d) 1.,
4 71.91 (6) (e) 3., 71.91 (6) (f) 5., 71.91 (6) (g) 2., 73.01 (4) (e) 2., 73.03 (25), 77.59
5 (4) (a), 77.59 (8m), 77.60 (1) (a), 77.60 (1) (b), 77.60 (2) (intro.), 77.60 (3), 77.60
6 (4), 77.60 (5), 77.96 (5), 78.68 (1), 78.68 (2) (intro.), 78.68 (3), 227.12 (3), 227.41
7 (1), 227.41 (3), 227.41 (4), 227.485 (2) (a), 227.485 (3), 227.485 (5), 227.485 (7),
8 227.485 (10) (intro.) and 803.08; and *to create* 73.015 (3), 73.14, 227.12 (4),
9 227.41 (5) and 227.485 (3m) of the statutes; **relating to:** various duties of the
10 Department of Revenue, including issuing declaratory judgments, conducting
11 audits and assessments, asserting liability, allowing claims for refunds,
12 awarding the costs of litigation to a prevailing party, imposing penalties related

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1 to a taxpayer's negligence, calculating interest on unpaid amounts, and
2 requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Revenue (DOR) to take certain actions related to administering taxes and fees. Under the bill, generally, with regard to any audit, assessment, or claim for a refund, DOR may not take a position that is contrary to any rule promulgated by DOR that was in effect during the period related to the audit, assessment, or claim or that is contrary to any guidance published by DOR prior to that period and not subsequently retracted, altered, or amended.

Under the bill, generally, a person who is subject to an assessment or audit determination by DOR is not liable for any amount that DOR asserts that the person owes if the liability asserted is the result of a condition that existed in a prior assessment or audit, a DOR employee involved in the prior assessment or audit knew or should have known that the condition existed, and DOR did not assert the liability at the time of the prior assessment or audit. Furthermore, a person against whom DOR asserts a liability may offset against the liability a refund of any tax or fee administered by DOR that the person may claim regardless of whether the time for claiming the refund has expired and regardless of whether the year and transaction related to the liability is the same as that related to the refund.

Also, under the bill, no agreement or waiver of a taxpayer's right to appeal a determination or to file a claim for a refund with respect to a particular audit or assessment period is valid if the agreement or waiver was executed prior to DOR's issuance of an appealable assessment or audit determination. In addition, the time within which DOR may act on the issuance of any assessment or audit determination may not be extended, except with regard to any action by DOR on a taxpayer's petition for redetermination.

Under the bill, DOR may not impose a penalty on a taxpayer for negligence or for otherwise filing an improper return unless the taxpayer's action was clearly contradicted by statute, rule, or DOR guidance and the statute, rule, or guidance was enacted, promulgated, or published prior to the period for which the penalty is imposed.

The bill requires that a buyer who paid an incorrect amount of sales tax on the sale of an item at retail apply for a refund of the tax with DOR rather than with the seller. The bill also prohibits class action lawsuits against the state or any other party if the relief sought by the plaintiff includes the refund of any tax administered by the state.

Under current law, DOR may choose not to appeal a ruling by the Tax Appeals Commission and, instead, file a notice of nonacquiescence with the clerk of the commission. The effect of filing the notice is that, although the commission's decision is binding on the parties involved in the ruling, the commission's legal reasoning is not binding on DOR with regard to future cases. Under the bill, although DOR may file a notice of nonacquiescence and, therefore, not be required to follow the

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commission's legal reasoning, the parties involved in the ruling are bound by the commission's decision and the decision may be cited by the commission and the courts in future cases.

Under current law, a person may file a petition with a state agency to issue a declaratory ruling with respect to how a statute or rule applies to any person, property, or set of facts. The agency must, within a reasonable time after receiving the petition, either deny the petition for failure to complete a proper petition or schedule a hearing for the matter described in the petition. Under the bill, if a person files a petition with DOR to issue a declaratory ruling, DOR must either deny the petition for failure to complete a proper petition or schedule a hearing for the matter described in the petition no later than 30 days after receiving the petition. In addition, if DOR does not deny the petition, DOR must hold a hearing and issue a ruling no later than 90 days after receiving the petition, unless the time for holding a hearing and issuing a ruling is extended by a written agreement with all parties involved.

Under current law, generally, a taxpayer must pay interest on any amount owed to DOR that is past due, but not delinquent, at the rate of 12 percent per year. However, any amount that DOR owes a taxpayer is subject to interest at 9 percent per year. Under the bill, amounts that taxpayers owe to DOR that are not delinquent and amounts that DOR owe to taxpayers are subject to interest at an annual rate that is equal to the two-year U.S. Department of the Treasury rate plus 4 percent.

Under current law, generally, a taxpayer must pay interest on any amount owed to DOR that is delinquent at the rate of 18 percent per year, or 1.5 percent per month. Under the bill, delinquent amounts that taxpayers owe to DOR are subject to interest at a monthly rate that is equal to one-half of the two-year U.S. Department of the Treasury Department rate plus 10 percent.

Under current law, if an individual, a small nonprofit corporation, or small business is the prevailing party in any contested legal matter with a state agency and the prevailing party submits a motion for costs, the hearing examiner must award the prevailing party the costs incurred in the matter, unless the examiner finds that the agency was substantially justified in taking its position related to the matter or that special circumstances exist. However, an individual whose federal adjusted gross income is \$150,000 or more is not eligible to recover the costs incurred in any contested legal matter with a state agency in which the individual is the prevailing party.

Under this bill, in any proceeding before the Tax Appeals Commission (commission) in which DOR is not the prevailing party and the prevailing party submits a motion for costs, the commission must award the prevailing party the costs incurred in connection with the proceeding unless the commission determines that DOR was substantially justified in taking its position or that special circumstances exist that would make the award unjust. With regard to proceedings before the commission, an individual who is the prevailing party in a contested legal matter with DOR may be awarded the costs incurred in the matter, regardless of the individual's federal adjusted gross income.

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Finally, under current law, certain persons may file a petition with a state agency to have the agency promulgate the rule. Under this bill, if a petition filed with DOR alleges that DOR has established a standard by which it construes a tax statute, but has not promulgated a rule to adopt the standard, DOR must begin the rule-making process no later than 90 days after receiving the petition and submit a rule to the legislature no later than 180 days after receiving the petition. The rule does not have to adhere to the standard established by DOR, but must address the same circumstances as the standard addresses.

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

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

1 **SECTION 1.** 71.82 (1) (a) of the statutes is amended to read:

2 71.82 (1) (a) In assessing taxes interest shall be added to such taxes at ~~12%~~ the
3 rate determined under s. 73.14 (7) (a) per year from the date on which such taxes if
4 originally assessed would have become delinquent if unpaid, to the date on which
5 such taxes when subsequently assessed will become delinquent if unpaid.

6 **SECTION 2.** 71.82 (1) (b) of the statutes is amended to read:

7 71.82 (1) (b) Except as otherwise specifically provided, in crediting
8 overpayments of income and surtaxes against underpayments or against taxes to be
9 subsequently collected and in certifying refunds of such taxes interest shall be added
10 at the rate of ~~9%~~ determined under s. 73.14 (7) (a) per year from the date on which
11 such taxes when assessed would have become delinquent if unpaid to the date on
12 which such overpayment was certified for refund except that if any overpayment of
13 tax is certified for refund within 90 days after the last date prescribed for filing the
14 return of such tax or 90 days after the date of actual filing of the return of such tax,
15 whichever occurs later, no interest shall be allowed on such overpayment. For
16 purposes of this section the return of such tax shall not be deemed actually filed by
17 an employee unless and until the employee has included the written statement

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1 required to be filed under s. 71.65 (1). However when any part of a tax paid on an
2 estimate of income, whether paid in connection with a tentative return or not, is
3 refunded or credited to a taxpayer, such refund or credit shall not draw interest.

4 **SECTION 3.** 71.82 (1) (c) of the statutes is amended to read:

5 71.82 (1) (c) Any assessment made as a result of the adjustment or disallowance
6 of a claim for credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX, except as
7 provided in sub. (2) (c), shall bear interest at ~~12%~~ the rate determined under s. 73.14
8 (7) (a) per year from the due date of the claim.

9 **SECTION 4.** 71.82 (2) (a) of the statutes is amended to read:

10 71.82 (2) (a) *Income and franchise taxes.* Income and franchise taxes shall
11 become delinquent if not paid when due under ss. 71.03 (8), 71.24 (9) and 71.44 (4),
12 and when delinquent shall be subject to interest at ~~the rate of 1.5%~~ a rate that is
13 equal to one-twelfth of the rate determined under s. 73.14 (7) (b) per month until
14 paid.

15 **SECTION 5.** 71.82 (2) (b) of the statutes is amended to read:

16 71.82 (2) (b) *Department may reduce delinquent interest.* The department shall
17 provide by rule for reduction of interest under par. (a) to ~~12%~~ the rate determined
18 under s. 73.14 (7) (a) per year in stated instances wherein the secretary of revenue
19 determines that reduction is fair and equitable.

20 **SECTION 6.** 71.82 (2) (c) of the statutes is amended to read:

21 71.82 (2) (c) *Adjustment to credits.* Any assessment made as a result of the
22 disallowance of a claim for credit made under s. 71.07, 71.28 or 71.47 or subch. VIII
23 or IX with fraudulent intent, or of a portion of a claim made under said subchapters
24 or sections that was excessive and was negligently prepared, shall bear interest from

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1 the due date of the claim, until refunded or paid, at one-twelfth of the rate of 1.5%
2 determined under s. 73.14 (7) (b) per month.

3 **SECTION 7.** 71.82 (2) (d) of the statutes is amended to read:

4 71.82 (2) (d) *Withholding tax.* Of the amounts required to be withheld any
5 amount not deposited or paid over to the department within the time required shall
6 be deemed delinquent and deposit reports or withholding reports filed after the due
7 date shall be deemed late. Delinquent deposits or payments shall bear interest at
8 one-twelfth of the rate of 1.5% determined under s. 73.14 (7) (b) per month from the
9 date deposits or payments are required under this section until deposited or paid
10 over to the department. The department shall provide by rule for reduction of
11 interest on delinquent deposits to ~~12%~~ the rate determined under s. 73.14 (7) (a) per
12 year in stated instances wherein the secretary of revenue determines reduction fair
13 and equitable. In the case of a timely filed deposit or withholding report, withheld
14 taxes shall become delinquent if not deposited or paid over on or before the due date
15 of the report. In the case of no report filed or a report filed late, withheld taxes shall
16 become delinquent if not deposited or paid over by the due date of the report. In the
17 case of an assessment under s. 71.83 (1) (b) 2., the amount assessed shall become
18 delinquent if not paid on or before the first day of the calendar month following the
19 calendar month in which the assessment becomes final, but if the assessment is
20 contested before the tax appeals commission or in the courts, it shall become
21 delinquent on the 30th day following the date on which the order or judgment
22 representing final determination becomes final.

23 **SECTION 8.** 71.83 (1) (a) 2. of the statutes is amended to read:

24 71.83 (1) (a) 2. 'Incomplete or incorrect return.' If Subject to s. 73.14 (6), if any
25 person required under this chapter to file an income or franchise tax return files an

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1 incomplete or incorrect return, unless it is shown that such filing was due to good
2 cause and not due to neglect, there shall be added to such person's tax for the taxable
3 year 25% of the amount otherwise payable on any income subsequently discovered
4 or reported. The amount so added shall be assessed, levied and collected in the same
5 manner as additional normal income or franchise taxes, and shall be in addition to
6 any other penalties imposed by this chapter. In this subdivision, "return" includes
7 a separate return filed by a spouse with respect to a taxable year for which a joint
8 return is filed under s. 71.03 (2) (g) to (L) after the filing of that separate return, and
9 a joint return filed by the spouses with respect to a taxable year for which a separate
10 return is filed under s. 71.03 (2) (m) after the filing of that joint return.

11 **SECTION 9.** 71.83 (1) (a) 3. of the statutes is amended to read:

12 71.83 (1) (a) 3. 'Incomplete or incorrect deposit or withholding report.' If
13 Subject to s. 73.14 (6), if any person required under subch. X to file a deposit report
14 or withholding report files an incomplete or incorrect report, or fails to properly
15 withhold or fails to properly deposit or pay over withheld funds, unless it can be
16 shown that the filing or failure was due to good cause and not due to neglect, there
17 shall be added to the tax 25% of the amount not reported or not withheld, deposited
18 or paid over. The amount so added shall be assessed, levied and collected in the same
19 manner as additional income or franchise taxes, and shall be in addition to any other
20 penalties imposed in this subchapter. "Person", in this subdivision, includes an
21 officer or employee of a corporation or other responsible person or a member or
22 employee of a partnership or limited liability company or other responsible person
23 who, as such officer, employee, member or other responsible person, is under a duty
24 to perform the act in respect to which the violation occurs.

25 **SECTION 10.** 71.84 (1) of the statutes is amended to read:

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1 71.84 (1) INDIVIDUALS AND FIDUCIARIES. Except as provided in s. 71.09 (11), in
2 the case of any underpayment of estimated tax by an individual, estate or trust,
3 except as provided under s. 71.09, there shall be added to the aggregate tax for the
4 taxable year interest at the rate of ~~12%~~ determined under s. 73.14 (7) (a) per year on
5 the amount of the underpayment for the period of the underpayment. In this
6 subsection, “the period of the underpayment” means the time period from the due
7 date of the installment until either the 15th day of the 4th month beginning after the
8 end of the taxable year or the date of payment, whichever is earlier.

9 **SECTION 11.** 71.84 (2) (a) of the statutes is amended to read:

10 71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment
11 of estimated tax under s. 71.29 or 71.48 there shall be added to the aggregate tax for
12 the taxable year interest at the rate of ~~12%~~ determined under s. 73.14 (7) (a) per year
13 on the amount of the underpayment for the period of the underpayment. For
14 corporations, except as provided in par. (b), “period of the underpayment” means the
15 time period from the due date of the installment until either the 15th day of the 3rd
16 month beginning after the end of the taxable year or the date of payment, whichever
17 is earlier. If 90% of the tax shown on the return is not paid by the 15th day of the 3rd
18 month following the close of the taxable year, the difference between that amount
19 and the estimated taxes paid, along with any interest due, shall accrue delinquent
20 interest under s. 71.91 (1) (a).

21 **SECTION 12.** 71.84 (2) (c) of the statutes is amended to read:

22 71.84 (2) (c) If a refund under s. 71.29 (3m) results in an income or franchise
23 tax liability that is greater than the amount of estimated taxes paid in reduced by
24 the amount of the refund, the taxpayer shall add to the aggregate tax for the taxable
25 year interest at an annual rate of ~~12%~~ determined under s. 73.14 (7) (a) on the

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1 amount of the unpaid tax liability for the period beginning on the date the refund is
2 issued and ending on the 15th day of the 3rd month beginning after the end of the
3 taxable year, or the date the tax liability is paid, whichever is earlier.

4 **SECTION 13.** 71.90 (1) of the statutes is amended to read:

5 71.90 (1) DEPOSIT. The department shall notify any person who files a petition
6 for redetermination that the person may deposit the amount of an additional
7 assessment, including any interest or penalty, with the department, or with a person
8 that the department prescribes, at any time before the department makes its
9 redetermination. The department shall notify spouses jointly except that, if the
10 spouses have different addresses and if either spouse notifies the department in
11 writing of those addresses, the department shall serve a duplicate of the original
12 notice on the spouse who has the address other than the address to which the original
13 notice was sent. Amounts deposited under this subsection shall be subject to the
14 interest provided by s. 71.82 only to the extent of the interest accrued prior to the first
15 day of the month succeeding the date of deposit. Any deposited amount which is
16 refunded shall bear interest at the rate of ~~9%~~ determined under s. 73.14 (7) (a) per
17 year during the time the funds were on deposit. A person may also pay any portion
18 of an assessment which is admitted to be correct and the payment shall be considered
19 an admission of the validity of that portion of the assessment and may not be
20 recovered in an appeal or in any other action or proceeding.

21 **SECTION 14.** 71.90 (2) of the statutes is amended to read:

22 71.90 (2) DEPOSIT WITH THE SECRETARY OF ADMINISTRATION. At any time while the
23 petition is pending before the tax appeals commission or an appeal in regard to that
24 petition is pending in a court, the taxpayer may offer to deposit the entire amount
25 of the additional taxes, together with interest, with the secretary of administration.

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1 If an offer to deposit is made, the department of revenue shall issue a certificate to
2 the secretary of administration authorizing the secretary to accept payment of such
3 taxes together with interest to the first day of the succeeding month and to give a
4 receipt. A copy of the certificate shall be mailed to the taxpayer who shall pay the
5 taxes and interest to the secretary of administration within 30 days. A copy of the
6 receipt of the secretary of administration shall be filed with the department. The
7 department shall, upon final determination of the appeal, certify to the secretary of
8 administration the amount of the taxes as finally determined and direct the
9 secretary of administration to refund to the appellant any portion of such payment
10 which has been found to have been improperly assessed, including interest. The
11 secretary of administration shall make the refunds directed by the certificate within
12 30 days after receipt. Taxes paid to the secretary of administration under this
13 subsection shall be subject to the interest provided by ss. 71.82 and 71.91 (1) (c) only
14 to the extent of the interest accrued on the taxes prior to the first day of the month
15 succeeding the application for hearing. Any portion of the amount deposited with the
16 secretary of administration which is refunded to the taxpayer shall bear interest at
17 the rate of 9% determined under s. 73.14 (7) (a) per year during the time that the
18 funds are on deposit.

19 **SECTION 15.** 71.91 (6) (d) 1. of the statutes is amended to read:

20 71.91 **(6)** (d) 1. Any person, including an officer or employee, who fails to
21 surrender property that is subject to levy upon demand of the department is liable
22 to the department for a sum equal to the value of the property not surrendered, but
23 not exceeding the amount of taxes for the collection of which that levy was made,
24 together with costs and interest at the rate of 18% determined under s. 73.14 (7) (b)
25 per year from the date of that levy. Any amount, other than costs, recovered under

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1 this paragraph shall be credited against the tax liability for the collection of which
2 that levy was made. The liability under this paragraph may be assessed, levied and
3 collected as are additional income or franchise taxes or may be recovered by the
4 department in a civil action.

5 **SECTION 16.** 71.91 (6) (e) 3. of the statutes is amended to read:

6 71.91 (6) (e) 3. For purposes of an adjudication under this paragraph, the
7 assessment of the tax upon which the interest or lien of the department is based is
8 conclusively presumed to be valid. Interest shall be allowed for judgments under this
9 paragraph at the rate of ~~12%~~ determined under s. 73.14 (7) (a) per year from the date
10 the department receives the money wrongfully levied upon to the date of payment
11 of the judgment or from the date of sale to the date of payment.

12 **SECTION 17.** 71.91 (6) (f) 5. of the statutes is amended to read:

13 71.91 (6) (f) 5. Before the sale, the department shall determine a minimum
14 price for which the property shall be sold. If no person offers for that property at the
15 sale at least the amount of the minimum price, the state shall purchase the property
16 for the minimum price; otherwise, the property shall be sold to the highest bidder.
17 In determining the minimum price, the department shall take into account the
18 expense of making the levy and sale in addition to the value of the property. If
19 payment in full is required at the time of acceptance of a bid and is not paid then, the
20 department shall sell the property in the manner provided under this paragraph.
21 If the conditions of the sale permit part of the payment to be deferred and if that part
22 is not paid within the prescribed period, the department may sue the purchaser in
23 the circuit court for Dane County for the unpaid part of the purchase price and
24 interest at the rate of ~~12%~~ determined under s. 73.14 (7) (a) per year from the date
25 of the sale or the department may declare the sale void and may sell the property

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1 again under this paragraph. If the property is sold again, the 2nd purchaser shall
2 receive it free of any claim of the defaulting purchaser and the amount paid upon the
3 bid price by the defaulting purchaser is forfeited.

4 **SECTION 18.** 71.91 (6) (g) 2. of the statutes is amended to read:

5 71.91 **(6)** (g) 2. The owners of any real property sold under par. (f), their heirs
6 or personal representatives, or any person having an interest in or a lien on that
7 property, or any person on behalf of a person specified in this subdivision may redeem
8 the property sold, or any part of that property, within 120 days after the sale by
9 payment to the purchaser or, if the purchaser cannot be found in the county in which
10 the property to be redeemed is situated, then to the department, for the use of the
11 purchaser or the purchaser's heirs or assigns, the amount paid by the purchaser and
12 interest at the rate of ~~18%~~ determined under s. 73.14 (7) (b) per year.

13 **SECTION 19.** 73.01 (4) (e) 2. of the statutes is amended to read:

14 73.01 **(4)** (e) 2. Except for hearings on ss. 341.405 and 341.45, the department
15 of revenue may choose not to appeal and to nonacquiesce in the decision or order by
16 sending a notice of nonacquiescence to the clerk of the commission, to the revisor of
17 statutes for publication in the Wisconsin administrative register and to the taxpayer
18 or the taxpayer's representative before the time expires for seeking a review of the
19 decision or order under s. 73.015. The effect of this action is that, although the
20 decision or order is binding on the parties for the instant case and the decision or
21 order may be cited by the commission and the courts, the commission's conclusions
22 of law, the rationale and construction of statutes in the instant case are not binding
23 upon or required to be followed by the department of revenue in other cases.

24 **SECTION 20.** 73.015 (3) of the statutes is created to read:

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1 73.015 (3) Except for decisions and orders in small claims matters, as defined
2 in s. 73.01 (1) (b), a conclusion of law or other holding in any decision or order of the
3 commission may be cited by the commission or the courts as authority unless that
4 conclusion of law or holding has been reversed, modified, overruled, or vacated on the
5 merits on appeal or by a subsequent decision or order of the commission.

6 **SECTION 21.** 73.03 (25) of the statutes is amended to read:

7 73.03 (25) To settle and dispose of tax cases or issues pending before the tax
8 appeals commission when, in the judgment of the department of revenue, such action
9 is warranted in the best interests of the state; and, with the approval of the attorney
10 general, to settle and dispose of tax cases or issues pending in the courts. Settlements
11 under this subsection may be made on the basis of a taxpayer's ability to pay the
12 liability asserted by the department.

13 **SECTION 22.** 73.14 of the statutes is created to read:

14 **73.14 General provision. (1) DEFINITION.** In this section, “department”
15 means the department of revenue.

16 **(2) RELYING ON PUBLISHED GUIDANCE.** (a) In the course of any audit, assessment,
17 or claim for refund, or in the course of any proceeding appealing any audit
18 determination, assessment, or the denial of any claim for refund, the department
19 shall not take a position adverse to any taxpayer that is contrary to any rule
20 promulgated by the department that was in effect during the period related to the
21 audit, assessment, or claim or that is contrary to any guidance published by the
22 department prior to that period and not subsequently retracted, altered, or amended
23 in any material manner.

24 (b) With regards to any position taken by the department in any matter
25 described under par. (a), if the department amends a rule or amends, retracts, or

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1 alters previously published guidance in a manner that is adverse to any taxpayer,
2 the department shall apply the amendment, retraction, or alteration prospectively
3 only.

4 **(3) RELYING ON PAST AUDITS.** (a) A person who is subject to an assessment or
5 audit determination by the department, including any subsidiary, heir, assignee, or
6 related party of the person, shall not be liable for any amount that the department
7 asserts that the person owes if all of the following conditions are satisfied:

8 1. The liability asserted by the department is the result of a condition, activity,
9 attribute, or transaction that was present in a prior audit or assessment of the
10 person.

11 2. A department employee who was involved in the prior audit or assessment
12 knew or should reasonably have known of the condition, activity, attribute, or
13 transaction prior to completing the prior audit or assessment.

14 3. The liability asserted by the department as described under subd. 1. was not
15 asserted in the prior audit or assessment.

16 (b) This subsection does not apply to any assessment or audit that is
17 subsequent to the promulgation of a rule, dissemination of guidance to the general
18 public, or effective date of a statute, if the rule, guidance, or statute clearly and
19 unequivocally imposes the liability as result of the condition, activity, attribute, or
20 transaction described in par. (a) 1.

21 **(4) WAIVER OF TAXPAYER RIGHTS.** (a) The time within which the department may
22 act on the issuance of any assessment or audit determination may not be extended,
23 except that this paragraph does not apply to any action by the department on a
24 petition for redetermination.

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1 (b) No agreement or waiver of a person's right to appeal a determination or to
2 file a claim for a refund with respect to a particular audit or assessment period shall
3 be valid if the agreement or waiver was executed prior to the department's issuance
4 of an appealable assessment or audit determination with respect to that audit or
5 assessment period.

6 (5) **EQUITABLE RECOUPMENT.** A person against whom the department asserts a
7 liability may offset against the liability a refund of any tax or fee administered by the
8 department that the person may claim regardless of whether the time for claiming
9 the refund has expired and regardless of whether the year and transaction related
10 to the liability is the same as that related to the refund. This subsection does not
11 apply to any refund that is associated with any period that is prior to the initial date
12 of the audit or assessment period that results in the liability.

13 (6) **NEGLIGENCE DETERMINATIONS.** The department shall not impose a penalty
14 on a taxpayer for negligence or for otherwise filing an improper return unless the
15 department proves by the preponderance of the evidence that the taxpayer's action
16 was clearly contradicted by statute, rule, or department guidance and the statute,
17 rule, or guidance was enacted, promulgated, or published prior to the period for
18 which the penalty is imposed.

19 (7) **CALCULATION OF INTEREST RATES.** (a) Annually, except as provided in par. (b),
20 the department shall determine and publish an interest rate that is applicable to
21 amounts owed to the department and to taxpayers during that calendar year and
22 equal to the 2-year U.S. department of the treasury rate as of December 1 of the prior
23 year, plus 4 percent.

24 (b) Annually, the department shall determine and publish an interest rate that
25 is applicable to delinquent amounts owed to the department during that calendar

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1 year and equal to the 2-year U.S. department of the treasury rate as of December
2 1 of the prior year, plus 10 percent.

3 **(8) APPLICABILITY.** Notwithstanding any other provision of law, this section
4 applies to all taxes and fees administered by the department.

5 **SECTION 23.** 77.59 (3m) of the statutes is repealed.

6 **SECTION 24.** 77.59 (4) (a) of the statutes is amended to read:

7 77.59 **(4)** (a) ~~Except as provided in sub. (3m), at~~ At any time within 4 years after
8 the due date, or in the case of buyers the unextended due date, of a person's
9 corresponding Wisconsin income or franchise tax return or, if exempt, within 4 years
10 of the 15th day of the 4th month of the year following the close of the calendar or fiscal
11 year for which that person files a claim, that person may, unless a determination by
12 the department by office or field audit of a seller has been made and unless a
13 determination by office audit of a buyer other than an audit in which the tax that is
14 the subject of the refund claim was not adjusted has been made and unless a
15 determination by field audit of the buyer has been made, file with the department
16 a claim for refund of taxes paid to the department by that person. ~~If the amount of~~
17 ~~the claim is at least \$50 or if either the seller has ceased doing business, the buyer~~
18 ~~is being field audited or the seller may no longer file a claim, the~~ The buyer may,
19 within the time period under this subsection, file a claim with the department for a
20 refund of the taxes paid to the seller. A claim is timely if it fulfills the requirements
21 under s. 77.61 (14). A buyer may claim a refund under this paragraph only on a form
22 prescribed by the department, only by signing that form and only if the seller signs
23 the form unless the department waives that requirement. If both a buyer and a seller
24 file a valid claim for the same refund, the department may pay either claim. The
25 claim for refund shall be regarded as a request for determination. The determination

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1 thus requested shall be made by the department within one year after the claim for
2 refund is received by it unless the taxpayer has consented in writing to an extension
3 of the one-year time period prior to its expiration. All claims for refund shall be filed
4 with the department. The seller shall not be liable to any buyer for amounts that the
5 seller collected and paid to the department.

6 **SECTION 25.** 77.59 (8m) of the statutes is amended to read:

7 77.59 (8m) Within the time period under sub. (4), the department of revenue
8 may refund excess taxes paid to it under this chapter, even if the person applying for
9 the refund has been field audited in respect to those taxes, if the applicant's
10 customers have filed valid claims for refunds with the ~~applicant~~ department, and if
11 the refund is passed along to those customers.

12 **SECTION 26.** 77.60 (1) (a) of the statutes is amended to read:

13 77.60 (1) (a) Except as provided in par. (b), unpaid taxes shall bear interest at
14 the rate of ~~12%~~ determined under s. 73.14 (7) (a) per year from the due date of the
15 return until paid or deposited with the department. Taxes refunded to the seller
16 shall bear interest at ~~9%~~ the rate determined under s. 73.14 (7) (a) per year from the
17 due date of the return to the date on which the refund is certified on the refund rolls.
18 An extension of time within which to file a return shall not extend the due date of the
19 return for purposes of interest computation. Taxes refunded to the buyer shall bear
20 interest at ~~9%~~ the rate determined under s. 73.14 (7) (a) per year from the last day
21 of the month following the month during which the buyer paid the tax to the date on
22 which the refund is certified on the refund rolls.

23 **SECTION 27.** 77.60 (1) (b) of the statutes is amended to read:

24 77.60 (1) (b) Any unpaid taxes for a calendar year or a fiscal year resulting from
25 a field audit shall bear interest at the rate of ~~12%~~ determined under s. 73.14 (7) (a)

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1 per year from the due date of the taxpayer's Wisconsin income or franchise tax return
2 for that calendar or fiscal year or, if exempt, from the 15th day of the 4th month of
3 the year after the close of the calendar or fiscal year for which the taxes are due to
4 the date on which the taxes are paid or, if unpaid, become delinquent, whichever is
5 earlier.

6 **SECTION 28.** 77.60 (2) (intro.) of the statutes is amended to read:

7 77.60 (2) (intro.) Delinquent sales and use tax returns shall be subject to a \$20
8 late filing fee unless the return was not timely filed because of the death of the person
9 required to file or unless the return was not timely filed due to good cause and not
10 due to neglect. The fee shall not apply if the department has failed to issue a seller's
11 permit or a use tax registration within 30 days of the receipt of an application for a
12 seller's permit or use tax registration accompanied by the fee established under s.
13 73.03 (50), if the person does not hold a valid certificate under s. 73.03 (50), and the
14 security required under s. 77.61 (2) has not been placed with the department.
15 Delinquent sales and use taxes shall bear interest at ~~the rate of 1.5%~~ a rate that is
16 equal to one-twelfth of the rate determined under s. 73.14 (7) (b) per month until
17 paid. The taxes imposed by this subchapter shall become delinquent if not paid:

18 **SECTION 29.** 77.60 (3) of the statutes is amended to read:

19 77.60 (3) ~~If Subject to s. 73.14 (6),~~ if due to neglect an incorrect return is filed,
20 the entire tax finally determined shall be subject to a penalty of 25%, or 50% in the
21 case of returns under s. 77.61 (1) (c), of the tax exclusive of interest or other penalty.
22 A person filing an incorrect return shall have the burden of proving that the error
23 or errors were due to good cause and not due to neglect.

24 **SECTION 30.** 77.60 (4) of the statutes is amended to read:

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1 77.60 (4) ~~In~~ Subject to s. 73.14 (6), in case of failure to file any return required
2 under authority of s. 77.58 by the due date, determined with regard to any extension
3 of time for filing, unless it is shown that such failure was due to reasonable cause and
4 not due to neglect, there shall be added to the amount required to be shown as tax
5 on such return 5% of the amount of such tax if the failure is not for more than one
6 month, with an additional 5% for each additional month or fraction thereof during
7 which such failure continues, not exceeding 25% in the aggregate. For purposes of
8 this subsection, the amount of tax required to be shown on the return shall be
9 reduced by the amount of any part of the tax which is paid on or before the due date
10 prescribed for payment of the tax and by the amount of any credit against the tax
11 which may be claimed upon the return.

12 **SECTION 31.** 77.60 (5) of the statutes is amended to read:

13 77.60 (5) ~~If~~ Subject to s. 73.14 (6), if a person fails to file a return when due or
14 files a false or fraudulent return with intent in either case to defeat or evade the tax
15 imposed by this subchapter, a penalty of 50% shall be added to the tax required to
16 be paid, exclusive of interest and other penalties.

17 **SECTION 32.** 77.96 (5) of the statutes is amended to read:

18 77.96 (5) Each person subject to a surcharge under s. 77.93 shall, on or before
19 the due date, including extensions, for filing under ch. 71, file an accurate statement
20 of its gross tax liability or net business income. Payments made after the due date
21 under sub. (2) and on or before the due date under this subsection are not delinquent
22 but are subject to interest at the rate ~~of 12%~~ determined under s. 73.14 (7) (a) per
23 year.

24 **SECTION 33.** 78.68 (1) of the statutes is amended to read:

ASSEMBLY BILL 968**SECTION 33**

1 78.68 (1) Unpaid taxes shall bear interest at the rate of 12% per year from the
2 due date of the tax until paid or deposited with the department, and all refunded
3 taxes bear interest at the rate of 9% determined under s. 73.14 (7) (a) per year from
4 the due date of the return to the date on which the refund is certified on the refund
5 rolls.

6 **SECTION 34.** 78.68 (2) (intro.) of the statutes is amended to read:

7 78.68 (2) (intro.) Delinquent tax returns are subject to a \$10 late filing fee.
8 Delinquent motor vehicle fuel, alternate fuels and general aviation fuel taxes bear
9 interest at the rate of 1.5% a rate that is equal to one-twelfth of the rate determined
10 under s. 73.14 (7) (b) per month until paid. The taxes imposed by this chapter are
11 delinquent if not paid as follows:

12 **SECTION 35.** 78.68 (3) of the statutes is amended to read:

13 78.68 (3) If Subject to s. 73.14 (6), if due to neglect an incorrect return is filed,
14 the entire tax finally determined is subject to a penalty of 25% of the tax exclusive
15 of interest or other penalty. ~~A person filing an incorrect return has the burden of~~
16 ~~proving that the error or errors were due to good cause and not due to neglect.~~

17 **SECTION 36.** 227.12 (3) of the statutes is amended to read:

18 227.12 (3) ~~Within~~ Except as provided in sub. (4), within a reasonable period of
19 time after the receipt of a petition under this section, an agency shall either deny the
20 petition in writing or proceed with the requested rule making. If the agency denies
21 the petition, it shall promptly notify the petitioner of the denial, including a brief
22 statement of the reason for the denial. If the agency proceeds with the requested rule
23 making, it shall follow the procedures prescribed in this subchapter.

24 **SECTION 37.** 227.12 (4) of the statutes is created to read:

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1 227.12 (4) If a petition to the department of revenue alleges that the
2 department has established a standard by which it is construing a state tax statute,
3 but has not promulgated a rule to adopt the standard or published the standard in
4 a manner that is available to the public, the department shall initiate rule making
5 within 90 days from the date that the petition is received and submit a rule to the
6 legislature pursuant to s. 227.19 (2) no later than 180 days from the date that the
7 petition is received. The rule need not adhere to the standard established by the
8 department, but shall address the same circumstances as the standard addresses.
9 If the department fails to comply with this subsection, any of the petitioners may
10 commence an action in circuit court to compel the department's compliance. If an
11 action is commenced under this subsection, the court may compel the department to
12 provide information to the court related to the degree to which the department is
13 enforcing the standard, except that the information provided by the department
14 shall not disclose the identity of any person who is not a party to the action.

15 **SECTION 38.** 227.41 (1) of the statutes is amended to read:

16 227.41 (1) ~~Any~~ Except as provided in sub. (5), any agency may, on petition by
17 any interested person, issue a declaratory ruling with respect to the applicability to
18 any person, property or state of facts of any rule or statute enforced by it. Full
19 opportunity for hearing shall be afforded to interested parties. A declaratory ruling
20 shall bind the agency and all parties to the proceedings on the statement of facts
21 alleged, unless it is altered or set aside by a court. A ruling shall be subject to review
22 in the circuit court in the manner provided for the review of administrative decisions.

23 **SECTION 39.** 227.41 (3) of the statutes is amended to read:

24 227.41 (3) ~~The~~ Except as provided in sub. (5) (b), the petition shall be filed with
25 the administrative head of the agency or with a member of the agency's policy board.

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1 **SECTION 40.** 227.41 (4) of the statutes is amended to read:

2 227.41 (4) Within Except as provided in sub. (5) (c), within a reasonable time
3 after receipt of a petition pursuant to this section, an agency shall either deny the
4 petition in writing or schedule the matter for hearing. If the agency denies the
5 petition, it shall promptly notify the person who filed the petition of its decision,
6 including a brief statement of the reasons therefor.

7 **SECTION 41.** 227.41 (5) of the statutes is created to read:

8 227.41 (5) (a) The department of revenue shall, on petition by any interested
9 person, or any group or association of interested persons, issue a declaratory ruling
10 with respect to the applicability to any person, property, or state of facts of any rule
11 or statute enforced by it. Full opportunity for hearing shall be afforded to interested
12 parties. A declaratory ruling shall bind the department and all parties to the
13 proceedings on the statement of facts alleged, unless it is altered or set aside by the
14 tax appeals commission or a court. A ruling, including the denial of the petition, shall
15 be subject to review by the tax appeals commission as provided in ch. 73.

16 (b) A petition under par. (a) shall conform to the requirements under sub. (2)
17 and be filed with the secretary of revenue.

18 (c) No later than 30 days after the day that the secretary of revenue receives
19 a petition under this subsection, the department of revenue shall either deny the
20 petition in writing or schedule the matter for hearing. The department may deny the
21 petition only if the petition fails to comply with the requirements under sub. (2). If
22 the department denies the petition, it shall promptly notify the person who filed the
23 petition of its decision and include with the notice a brief statement of the reasons
24 for denying the petition.

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1 (d) If the department of revenue does not deny the petition, the department
2 shall hold a hearing and issue a ruling on the petition no later than 90 days after the
3 day that the secretary of revenue receives the petition, unless the deadline is
4 extended by written agreement of all parties. Upon agreement of the parties, the
5 department may rule on the petition based on facts stipulated by the parties.

6 **SECTION 42.** 227.485 (2) (a) of the statutes is amended to read:

7 227.485 (2) (a) “Hearing examiner” means the agency, tax appeals commission,
8 or hearing examiner conducting the hearing.

9 **SECTION 43.** 227.485 (3) of the statutes is amended to read:

10 227.485 (3) ~~In~~ Except as provided under sub. (3m), in any contested case in
11 which an individual, a small nonprofit corporation or a small business is the
12 prevailing party and submits a motion for costs under this section, the hearing
13 examiner shall award the prevailing party the costs incurred in connection with the
14 contested case, unless the hearing examiner finds that the state agency which is the
15 losing party was substantially justified in taking its position or that special
16 circumstances exist that would make the award unjust.

17 **SECTION 44.** 227.485 (3m) of the statutes is created to read:

18 227.485 (3m) In any proceeding before the tax appeals commission in which
19 the department of revenue is not the prevailing party and the prevailing party
20 submits a motion for costs under this section, the tax appeals commission shall
21 award the prevailing party the costs incurred in connection with the proceeding
22 unless the tax appeals commission determines that the department of revenue was
23 substantially justified in taking its position or that special circumstances exist that
24 would make the award unjust.

25 **SECTION 45.** 227.485 (5) of the statutes is amended to read:

ASSEMBLY BILL 968**SECTION 45**

1 227.485 (5) If the hearing examiner awards costs under sub. (3) or (3m), he or
2 she shall determine the costs under this subsection, except as modified under sub.
3 (4). The decision on the merits of the case shall be placed in a proposed decision and
4 submitted under ss. 227.47 and 227.48. The prevailing party shall submit, within
5 30 days after service of the proposed decision, to the hearing examiner and to the
6 state agency which is the losing party an itemized application for fees and other
7 expenses, including an itemized statement from any attorney or expert witness
8 representing or appearing on behalf of the party stating the actual time expended
9 and the rate at which fees and other expenses were computed. The state agency
10 which is the losing party has 15 working days from the date of receipt of the
11 application to respond in writing to the hearing examiner. The hearing examiner
12 shall determine the amount of costs using the criteria specified in s. 814.245 (5) and
13 include an order for payment of costs in the final decision.

14 **SECTION 46.** 227.485 (7) of the statutes is amended to read:

15 227.485 (7) An individual is not eligible to recover costs under this section if
16 the person's properly reported federal adjusted gross income was \$150,000 or more
17 in each of the 3 calendar years or corresponding fiscal years immediately prior to the
18 commencement of the case. This subsection applies whether the person files the tax
19 return individually or in combination with a spouse. This subsection does not apply
20 to costs awarded under sub. (3m).

21 **SECTION 47.** 227.485 (10) (intro.) of the statutes is amended to read:

22 227.485 (10) (intro.) If the examiner finds that the motion under sub. (3) or (3m)
23 is frivolous, the examiner may award the state agency all reasonable costs in
24 responding to the motion. In order to find a motion to be frivolous, the examiner must
25 find one or more of the following:

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1 **SECTION 48.** 803.08 of the statutes is amended to read:

2 **803.08 Class actions.** When the question before the court is one of a common
3 or general interest of many persons or when the parties are very numerous and it
4 may be impracticable to bring them all before the court, one or more may sue or
5 defend for the benefit of the whole, except that no claim may be maintained against
6 the state or any other party under this section if the relief sought includes the refund
7 of or damages associated with a tax administered by the state.

8 **SECTION 49. Initial applicability.**

9 (1) The treatment of section 803.08 of the statutes first applies to lawsuits that
10 are pending on the effective date of this subsection.

11 (2) The treatment of sections 71.83 (1) (a) 2. and 3., 73.01 (4) (e) 2., 73.03 (25),
12 73.14 (1) to (6) and (8), 77.59 (3m), (4) (a), and (8m), 77.60 (3), (4), and (5), 78.68 (3),
13 and 227.485 (3), (3m), and (7) of the statutes first applies to audits, assessments,
14 claims for refunds, and actions concerning any appeal that are pending on the
15 effective date of this subsection.

16 (3) The treatment of sections 71.82 (1) (a), (b), and (c) and (2) (a), (b), (c), and
17 (d), 71.84 (1) and (2) (a) and (c), 71.90 (1) and (2), 71.91 (6) (d) 1., (e) 3., (f) 5., and (g)
18 2., 73.14 (7), 77.60 (1) (a) and (b) and (2) (intro.), 77.96 (5), and 78.68 (1) and (2) (intro.)
19 of the statutes first applies to audits and assessments that are issued, and claims for
20 refunds that are filed, on January 1, 2007.

21 **SECTION 50. Effective date.**

22 (1) This act takes effect on the first day of the 2nd month beginning after
23 publication.

24

(END)