

2005 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB968)

Received: 04/17/2006

Received By: jkreye

Wanted: Today

Identical to LRB:

For: Patricia Strachota (608) 264-8486

By/Representing:

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Business - miscellaneous

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Various duties of the department of revenue

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 04/17/2006	lkunkel 04/17/2006		_____			
/1			chaugen 04/17/2006	_____	lnorthro 04/17/2006	lnorthro 04/17/2006	

FE Sent For:

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/?	jkreye	1/mk 4/17	ch 4-17	ch 4-17 AB			

FE Sent For:

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STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Rep. Thacker.

AB968 — sub A 58518

5585/1 + 2775/1



50700/1
Keep

assembly
SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 518 *968*

Assembly

March 9, 2006 - Offered by Senator KANAVAS.

in 4-17-06
Today

ReGen ✓

1 AN ACT *to amend* 71.83 (1) (a) 1., 71.83 (1) (a) 2., 71.83 (1) (a) 3., 71.83 (1) (a) 4.,
2 73.01 (4) (e) 2., 77.59 (4) (a), 77.59 (8m), 77.60 (3), 77.60 (4), 77.61 (5) (a), 78.68
3 (3), 78.68 (4), 139.25 (3), 139.25 (4), 227.12 (3), 227.41 (1), 227.41 (3), 227.41 (4),
4 227.485 (2) (a), 227.485 (3), 227.485 (5), 227.485 (7), 227.485 (10) (intro.) and
5 803.08; and *to create* 73.015 (3), 73.14, 227.12 (4), 227.41 (5) and 227.485 (3m)
6 of the statutes; **relating to:** various duties of the Department of Revenue,
7 including issuing declaratory judgments, conducting audits and assessments,
8 asserting liability, allowing claims for refunds, awarding the costs of litigation
9 to a prevailing party, imposing penalties related to a taxpayer's negligence, and
10 requiring the exercise of rule-making authority.

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

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

1 71.83 (1) (a) 1. 'Failure to file.' In case of failure to file any return required
2 under s. 71.03, 71.24 or 71.44 on the due date prescribed therefor, including any
3 extension of time for filing, ~~unless it is shown that the failure is due to reasonable~~
4 ~~cause and not due to willful neglect~~ and upon a showing by the department under
5 s. 73.14 (5), there shall be added to the amount required to be shown as tax on the
6 return 5% of the amount of the tax if the failure is for not more than one month, with
7 an additional 5% for each additional month or fraction thereof during which the
8 failure continues, not exceeding 25% in the aggregate. For purposes of this
9 subdivision, the amount of tax required to be shown on the return shall be reduced
10 by the amount of any part of the tax which is paid on or before the due date prescribed
11 for payment and by the amount of any credit against the tax which may be claimed
12 upon the return.

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

14 71.83 (1) (a) 2. 'Incomplete or incorrect return.' If any person required under
15 this chapter to file an income or franchise tax return files an incomplete or incorrect
16 return, ~~unless it is shown that such filing was due to good cause and not due to~~
17 ~~neglect~~ and upon a showing by the department under s. 73.14 (5), there shall be
18 added to such person's tax for the taxable year 25% of the amount otherwise payable
19 on any income subsequently discovered or reported. The amount so added shall be
20 assessed, levied and collected in the same manner as additional normal income or
21 franchise taxes, and shall be in addition to any other penalties imposed by this
22 chapter. In this subdivision, "return" includes a separate return filed by a spouse
23 with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g)
24 to (L) after the filing of that separate return, and a joint return filed by the spouses

1 with respect to a taxable year for which a separate return is filed under s. 71.03 (2)
2 (m) after the filing of that joint return.

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

4 71.83 (1) (a) 3. 'Incomplete or incorrect deposit or withholding report.' If any
5 person required under subch. X to file a deposit report or withholding report files an
6 incomplete or incorrect report, or fails to properly withhold or fails to properly
7 deposit or pay over withheld funds, ~~unless it can be shown that the filing or failure~~
8 ~~was due to good cause and not due to neglect~~ and upon a showing by the department
9 under s. 73.14 (5), there shall be added to the tax 25% of the amount not reported or
10 not withheld, deposited or paid over. The amount so added shall be assessed, levied
11 and collected in the same manner as additional income or franchise taxes, and shall
12 be in addition to any other penalties imposed in this subchapter. "Person", in this
13 subdivision, includes an officer or employee of a corporation or other responsible
14 person or a member or employee of a partnership or limited liability company or
15 other responsible person who, as such officer, employee, member or other responsible
16 person, is under a duty to perform the act in respect to which the violation occurs.

17 **SECTION 4.** 71.83 (1) (a) 4. of the statutes is amended to read:

18 71.83 (1) (a) 4. 'Late filing of withholding report.' In case of failure to file any
19 withholding deposit or payment report required under s. 71.65 (3) on the due date
20 prescribed therefor, ~~unless it is shown that the failure is due to reasonable cause and~~
21 ~~not due to willful neglect~~ upon a showing by the department under s. 73.14 (5), there
22 shall be added to the amount required to be shown as withheld taxes on the report
23 5% of the amount if the failure is not for more than one month, with an additional
24 5% for each additional month or fraction thereof during which the failure continues,
25 not exceeding 25% in the aggregate.

1 **SECTION 5.** 73.01 (4) (e) 2. of the statutes is amended to read:

2 73.01 **(4)** (e) 2. Except for hearings on ss. 341.405 and 341.45, the department
3 of revenue may choose not to appeal and to nonacquiesce in the decision or order by
4 sending a notice of nonacquiescence to the clerk of the commission, to the revisor of
5 statutes for publication in the Wisconsin administrative register and to the taxpayer
6 or the taxpayer’s representative before the time expires for seeking a review of the
7 decision or order under s. 73.015. The effect of this action is that, although the
8 decision or order is binding on the parties for the instant case and the decision or
9 order may be cited by the commission and the courts, the commission’s conclusions
10 of law, the rationale and construction of statutes in the instant case are not binding
11 upon or required to be followed by the department of revenue in other cases.

12 **SECTION 6.** 73.015 (3) of the statutes is created to read:

13 73.015 **(3)** Except for decisions and orders in small claims matters, as defined
14 in s. 73.01 (1) (b), a conclusion of law or other holding in any decision or order of the
15 commission may be cited by the commission or the courts as authority unless that
16 conclusion of law or holding has been reversed, modified, overruled, or vacated on the
17 merits on appeal or by a subsequent decision or order of the commission.

18 **SECTION 7.** 73.14 of the statutes is created to read:

19 **73.14 General provision. (1) DEFINITION.** In this section:

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

21 (b) “Controlled group” has the meaning given under section 267 (f) (1) of the
22 Internal Revenue Code.

23 (c) “Stale refund” means a refund of any tax or fee administered by the
24 department for which a claim has not been timely filed.

1 **(2) RELYING ON PUBLISHED GUIDANCE.** (a) Except as provided in pars. (b) and (c),
2 in the course of any determination, or in the course of any proceeding appealing any
3 determination, the department shall not take a position that is contrary to any rule
4 promulgated by the department ~~or any statute~~ that was in effect during the period
5 related to the determination or that is contrary to any guidance published by the
6 department prior to that period and not subsequently retracted, altered, or amended
7 by the department or the legislature or by a final and conclusive decision of the tax
8 appeals commission or courts.

9 (am) Except as provided in pars. (b) and (c), in the course of any determination,
10 or in the course of any proceeding appealing a determination, the department shall
11 not take a position that is contrary to any written guidance that was provided to a
12 person who is a party to the determination or the appeal of the determination.

13 (b) With regard to any position taken by the department in any matter
14 described under par. (a) or (am), if the department amends a rule for any purpose
15 other than to implement a legislative act or final and conclusive decision of the tax
16 appeals commission or courts, the department shall apply the amendment
17 prospectively. A retroactive change in any rule that is related to implementing a
18 legislative act or final and conclusive decision of the tax appeals commission or courts
19 may take effect no earlier than the act's effective date or the date on which the
20 decision became final and conclusive.

21 (c) With regard to any position taken by the department in any matter
22 described under par. (a) or (am), if the department retracts, alters, or amends
23 previously published or previously issued guidance for any purpose other than to
24 implement a legislative act or final and conclusive decision of the tax appeals
25 commission or courts, the department shall apply the retraction, alteration, or

1 amendment prospectively only, unless the change is to a taxpayer's benefit, in which
2 case, the department shall apply the retraction, alteration, or amendment
3 retroactively. A retroactive change in any previously published or previously issued
4 guidance related to implementing a legislative act or final and conclusive decision
5 of the tax appeals commission or courts may take effect no earlier than the act's
6 effective date or the date on which the decision became final and conclusive.

7 **(3) RELYING ON PAST AUDITS.** (a) A person who is subject to a determination by
8 the department, including all other members of that person's controlled group, shall
9 not be liable for any amount that the department asserts that the person owes if all
10 of the following conditions are satisfied:

11 1. The liability asserted by the department is the result of a condition, activity,
12 attribute, or transaction that was present during the period associated with a prior
13 determination for which the person is subject to and the condition, activity, attribute,
14 or transaction is materially the same as the condition, activity, attribute, or
15 transaction that is present during the period associated with the current
16 determination.

17 2. A department employee who was involved in the prior determination
18 identified or reviewed the condition, activity, attribute, or transaction before
19 completing the prior determination, as shown by any schedules, exhibits, audit
20 reports, documents, or other evidence pertaining to the determination.

21 3. The liability asserted by the department as described under subd. 1. was not
22 asserted in the prior determination.

23 (b) This subsection does not apply to any period associated with a
24 determination, if the period begins after the promulgation of a rule, dissemination
25 of written guidance to the public or to the person who is subject to the determination,

1 the effective date of a statute, or the date on which a tax appeals commission or court
2 decision becomes final and conclusive and if the rule, guidance, statute, or decision
3 unambiguously imposes the liability as result of the condition, activity, attribute, or
4 transaction described in par. (a) 1.

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

12 **(5) NEGLIGENCE DETERMINATIONS.** The department shall not impose a penalty
13 on a taxpayer under ss. 71.83 (1) (a) 1. to 4., 77.60 (3) and (4), 78.68 (3) and (4), and
14 139.25 (3) and (4), unless the department shows that the taxpayer's action or inaction
15 was caused by the taxpayer's failure to use ordinary care to comply with state tax
16 laws as provided under the statutes, administrative rules, published department
17 guidance or other written notice provided by the department, or a final and
18 conclusive decision of the tax appeals commission or a court.

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

21 **SECTION 8.** 77.59 (4) (a) of the statutes is amended to read:

22 77.59 **(4)** (a) Except as provided in sub. (3m), at any time within 4 years after
23 the due date, or in the case of buyers the unextended due date, of a person's
24 corresponding Wisconsin income or franchise tax return or, if exempt, within 4 years
25 of the 15th day of the 4th month of the year following the close of the calendar or fiscal

1 year for which that person files a claim, that person may, unless a determination by
2 the department by office or field audit of a seller has been made and unless a
3 determination by office audit of a buyer other than an audit in which the tax that is
4 the subject of the refund claim was not adjusted has been made and unless a
5 determination by field audit of the buyer has been made, file with the department
6 a claim for refund of taxes paid to the department by that person. ~~If the amount of~~
7 ~~the claim is at least \$50 or if either the seller has ceased doing business, the buyer~~
8 ~~is being field audited or the seller may no longer file a claim, the~~ The buyer may,
9 within the time period under this subsection, file a claim with the department for a
10 refund of the taxes paid to the seller. A claim is timely if it fulfills the requirements
11 under s. 77.61 (14). A buyer may claim a refund under this paragraph only on a form
12 prescribed by the department, only by signing that form and only if the seller signs
13 the form unless the department waives that requirement. If both a buyer and a seller
14 file a valid claim for the same refund, the department may pay either claim. The
15 claim for refund shall be regarded as a request for determination. The determination
16 thus requested shall be made by the department within one year after the claim for
17 refund is received by it unless the taxpayer has consented in writing to an extension
18 of the one-year time period prior to its expiration.

19 **SECTION 9.** 77.59 (8m) of the statutes is amended to read:

20 77.59 **(8m)** Within the time period under sub. (4), the department of revenue
21 may refund excess taxes paid to it under this chapter, even if the person applying for
22 the refund has been field audited in respect to those taxes, if the applicant's
23 customers have filed ~~valid claims for refunds with~~ provided written notice to the
24 applicant requesting refunds and if the refund is passed along to those customers.

25 **SECTION 10.** 77.60 (3) of the statutes is amended to read:

1 77.60 (3) ~~If due to neglect an incorrect return is filed, and upon a showing by~~
2 ~~the department under s. 73.14 (5), the entire tax finally determined shall be subject~~
3 ~~to a penalty of 25%, or 50% in the case of returns under s. 77.61 (1) (c), of the tax~~
4 ~~exclusive of interest or other penalty. A person filing an incorrect return shall have~~
5 ~~the burden of proving that the error or errors were due to good cause and not due to~~
6 ~~neglect.~~

7 **SECTION 11.** 77.60 (4) of the statutes is amended to read:

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

19 **SECTION 12.** 77.61 (5) (a) of the statutes is amended to read:

20 77.61 (5) (a) It is unlawful for the department or any person having an
21 administrative duty under this subchapter to make known in any manner whatever
22 the business affairs, operations or information obtained by an investigation of
23 records and equipment of any retailer or any other person visited or examined in the
24 discharge of official duty, or the amount or source of income, profits, losses,
25 expenditures, or any particular thereof, set forth or disclosed in any return, or to

1 permit any return or copy thereof to be seen or examined by any person. This
2 paragraph does not prohibit the department of revenue from publishing statistics
3 classified so as not to disclose the identity of particular returns or reports and the
4 items thereof. This paragraph does not prohibit employees or agents of the
5 department of revenue from offering or submitting information obtained by
6 investigation or any return or any schedule, exhibit or writing pertaining to a return
7 or any copy of, or information derived from, any of those documents as evidence into
8 the record of any contested matter involving the department in proceedings or
9 litigation on state tax matters if that evidence has reasonable probative value. This
10 paragraph does not prohibit employees or agents of the department of revenue from
11 informing a buyer or seller who has filed a claim for a refund that a refund has been
12 paid to a seller or buyer with respect to the same transaction.

13 **SECTION 13.** 78.68 (3) of the statutes is amended to read:

14 78.68 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by
15 the department under s. 73.14 (5), the entire tax finally determined is subject to a
16 penalty of 25% of the tax exclusive of interest or other penalty. ~~A person filing an~~
17 ~~incorrect return has the burden of proving that the error or errors were due to good~~
18 ~~cause and not due to neglect.~~

19 **SECTION 14.** 78.68 (4) of the statutes is amended to read:

20 78.68 (4) In case of failure to file any return required under ss. 78.12, 78.49,
21 and 78.58 by the due date, ~~unless it is shown that that failure was due to reasonable~~
22 ~~cause and not due to neglect~~ and upon a showing by the department under s. 73.14
23 (5), there shall be added to the amount required to be shown as tax on that return
24 5% of the amount of the tax if the failure is for not more than one month, and an
25 additional 5% of the tax for each additional month or fraction thereof during which

1 the failure continues, not exceeding 25% of the tax in the aggregate. For purposes
2 of this subsection, the amount of tax required to be shown on the return shall be
3 reduced by the amount of any part of the tax which is paid on or before the due date
4 prescribed for payment of the tax and by the amount of any credit against the tax
5 which may be claimed upon the return.

6 **SECTION 15.** 139.25 (3) of the statutes is amended to read:

7 139.25 (3) INCORRECT RETURN. If ~~due to neglect~~ an incorrect return is filed and
8 upon a showing by the department under s. 73.14 (5), the entire tax finally
9 determined is subject to a penalty of 25% of the tax exclusive of interest or other
10 penalty. A person filing an incorrect return has the burden of proving that the error
11 or errors were due to good cause and not due to neglect.

12 **SECTION 16.** 139.25 (4) of the statutes is amended to read:

13 139.25 (4) FAILURE TO FILE RETURN. In case of failure to file any return required
14 under s. 139.05, 139.06 or 139.11 by the due date, ~~unless it is shown that that failure~~
15 ~~was due to reasonable cause and not due to neglect~~ and upon a showing by the
16 department under s. 73.14 (5), there shall be added to the amount required to be
17 shown as tax on that return 5% of the amount of that tax if the failure is for not more
18 than one month, and an additional 5% of the tax for each additional month or fraction
19 thereof during which that failure continues, not exceeding 25% of the tax in the
20 aggregate. For purposes of this subsection, the amount of tax required to be shown
21 on the return shall be reduced by the amount of any part of the tax which is paid on
22 or before the due date prescribed for payment of the tax and by the amount of any
23 credit against the tax which may be claimed upon the return.

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

1 227.12 (3) Within Except as provided in sub. (4), within a reasonable period of
2 time after the receipt of a petition under this section, an agency shall either deny the
3 petition in writing or proceed with the requested rule making. If the agency denies
4 the petition, it shall promptly notify the petitioner of the denial, including a brief
5 statement of the reason for the denial. If the agency proceeds with the requested rule
6 making, it shall follow the procedures prescribed in this subchapter.

7 **SECTION 18.** 227.12 (4) of the statutes is created to read:

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

22 **SECTION 19.** 227.41 (1) of the statutes is amended to read:

23 227.41 (1) Any Except as provided in sub. (5), any agency may, on petition by
24 any interested person, issue a declaratory ruling with respect to the applicability to
25 any person, property or state of facts of any rule or statute enforced by it. Full

1 opportunity for hearing shall be afforded to interested parties. A declaratory ruling
2 shall bind the agency and all parties to the proceedings on the statement of facts
3 alleged, unless it is altered or set aside by a court. A ruling shall be subject to review
4 in the circuit court in the manner provided for the review of administrative decisions.

5 **SECTION 20.** 227.41 (3) of the statutes is amended to read:

6 227.41 (3) ~~The Except as provided in sub. (5) (b).~~ the petition shall be filed with
7 the administrative head of the agency or with a member of the agency's policy board.

8 **SECTION 21.** 227.41 (4) of the statutes is amended to read:

9 227.41 (4) ~~Within Except as provided in sub. (5) (c).~~ within a reasonable time
10 after receipt of a petition pursuant to this section, an agency shall either deny the
11 petition in writing or schedule the matter for hearing. If the agency denies the
12 petition, it shall promptly notify the person who filed the petition of its decision,
13 including a brief statement of the reasons therefor.

14 **SECTION 22.** 227.41 (5) of the statutes is created to read:

15 227.41 (5) (a) The department of revenue shall, on petition by any interested
16 person, or any group or association of interested persons, issue a declaratory ruling
17 with respect to the applicability to any person, property, or state of facts of any rule
18 or statute enforced by it. The department of revenue may issue a declaratory ruling
19 on the facts contained in the petition. If the department of revenue does not deny the
20 petition or issue a declaratory ruling on the facts contained in the petition, the
21 department of revenue shall hold a hearing, as provided under s. 227.44, and shall
22 afford all interested parties an opportunity to participate in the hearing. A
23 declaratory ruling shall bind the department and all parties to the proceedings on
24 the statement of facts alleged or offered, unless it is altered or set aside by the tax

1 appeals commission or a court. A ruling, including the denial of the petition, shall
2 be subject to review by the tax appeals commission as provided in ch. 73.

3 (b) A petition under par. (a) shall conform to the requirements under sub. (2)
4 and be filed with the secretary of revenue. A petition under par. (a) shall also allege
5 facts that show that a justiciable controversy exists, or that a justiciable controversy
6 will likely exist, for purposes of this subsection, but no petition under par. (a) shall
7 allege facts that are not likely to occur.

8 (c) No later than 30 days after the day that the secretary of revenue receives
9 a petition under this subsection, the department of revenue shall deny the petition
10 in writing, issue a notice that it will issue a declaratory ruling on the facts contained
11 in the petition, in which case the department of revenue shall issue the ruling no
12 later than 90 days after issuing the notice, or schedule the matter for hearing. The
13 department may deny the petition only if the petition fails to comply with the
14 requirements under sub. (2) and par. (b) or if the department determines that the
15 petition is frivolous or lacks merit. If the department denies the petition, it shall
16 promptly notify the person who filed the petition of its decision and include with the
17 notice a brief statement of the reasons for denying the petition.

18 (d) If the department of revenue does not deny the petition, or issue a notice
19 that it will issue a declaratory ruling based on the facts contained in the petition, the
20 department shall hold a hearing and issue a ruling on the petition no later than 180
21 days after the day that the secretary of revenue receives the petition, unless the
22 deadline is extended by written agreement of all parties. Upon agreement of the
23 parties, the department may rule on the petition based on facts stipulated by the
24 parties.

25 **SECTION 23.** 227.485 (2) (a) of the statutes is amended to read:

1 227.485 (2) (a) “Hearing examiner” means the agency, tax appeals commission,
2 or hearing examiner conducting the hearing.

3 **SECTION 24.** 227.485 (3) of the statutes is amended to read:

4 227.485 (3) ~~In~~ Except as provided under sub. (3m), in any contested case in
5 which an individual, a small nonprofit corporation or a small business is the
6 prevailing party and submits a motion for costs under this section, the hearing
7 examiner shall award the prevailing party the costs incurred in connection with the
8 contested case, unless the hearing examiner finds that the state agency which is the
9 losing party was substantially justified in taking its position or that special
10 circumstances exist that would make the award unjust.

11 **SECTION 25.** 227.485 (3m) of the statutes is created to read:

12 227.485 (3m) In any proceeding before the tax appeals commission in which
13 the department of revenue is not the prevailing party and the prevailing party
14 submits a motion for costs under this section, the tax appeals commission shall
15 award the prevailing party the costs incurred in connection with the proceeding
16 unless the tax appeals commission determines that the department of revenue was
17 substantially justified in taking its position or that special circumstances exist that
18 would make the award unjust.

19 **SECTION 26.** 227.485 (5) of the statutes is amended to read:

20 227.485 (5) If the hearing examiner awards costs under sub. (3) or (3m), he or
21 she shall determine the costs under this subsection, except as modified under sub.
22 (4). The decision on the merits of the case shall be placed in a proposed decision and
23 submitted under ss. 227.47 and 227.48. The prevailing party shall submit, within
24 30 days after service of the proposed decision, to the hearing examiner and to the
25 state agency which is the losing party an itemized application for fees and other

1 expenses, including an itemized statement from any attorney or expert witness
2 representing or appearing on behalf of the party stating the actual time expended
3 and the rate at which fees and other expenses were computed. The state agency
4 which is the losing party has 15 working days from the date of receipt of the
5 application to respond in writing to the hearing examiner. The hearing examiner
6 shall determine the amount of costs using the criteria specified in s. 814.245 (5) and
7 include an order for payment of costs in the final decision.

8 **SECTION 27.** 227.485 (7) of the statutes is amended to read:

9 227.485 (7) An individual is not eligible to recover costs under this section if
10 the person's properly reported federal adjusted gross income was \$150,000 or more
11 in each of the 3 calendar years or corresponding fiscal years immediately prior to the
12 commencement of the case. This subsection applies whether the person files the tax
13 return individually or in combination with a spouse. This subsection does not apply
14 to costs awarded under sub. (3m).

15 **SECTION 28.** 227.485 (10) (intro.) of the statutes is amended to read:

16 227.485 (10) (intro.) If the examiner finds that the motion under sub. (3) or (3m)
17 is frivolous, the examiner may award the state agency all reasonable costs in
18 responding to the motion. In order to find a motion to be frivolous, the examiner must
19 find one or more of the following:

20 **SECTION 29.** 803.08 of the statutes is amended to read:

21 **803.08 Class actions.** When the question before the court is one of a common
22 or general interest of many persons or when the parties are very numerous and it
23 may be impracticable to bring them all before the court, one or more may sue or
24 defend for the benefit of the whole, except that no claim may be maintained against

1 the state or any other party under this section if the relief sought includes the refund
2 of or damages associated with a tax administered by the state.

3 **SECTION 30. Initial applicability.**

4 (1) The treatment of section 803.08 of the statutes first applies to lawsuits that
5 are commenced on the effective date of this subsection.

6 (2) The treatment of sections 73.01 (4) (e) 2., 73.14 (1) to (4) and (6), 77.59 (4)
7 (a) and (8m), and 227.485 (3), (3m), and (7) of the statutes first applies to
8 determinations that are issued on the effective date of this subsection, regardless of
9 whether the amounts at issue relate to transactions that occurred prior to the
10 effective date of this subsection.

11 (3) The treatment of sections 71.83 (1) (a) 1. to 4., 73.14 (5), 77.60 (3) and (4),
12 78.68 (3) and (4), and 139.25 (3) and (4) of the statutes first applies to interest and
13 penalties imposed on the effective date of this subsection, regardless of whether the
14 amounts at issue relate to transactions that occurred prior to the effective date of this
15 subsection.

16 **SECTION 31. Effective date.**

17 (1) This act takes effect on the first day of the 3rd month beginning after
18 publication.

19 (END)