

## 2007 DRAFTING REQUEST

### Bill

Received: 12/22/2006

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Gary Sherman (608) 266-7690

By/Representing: Judy

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Tax, Individual - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Sherman@legis.wisconsin.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

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### Topic:

Give discretion to secretary of revenue in waiving interest, penalties, under certain hardship circumstances

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### Instructions:

See Attached. Am; s. 71.09 (11) (c) to allow sec. of rev. some discretion to waive interest for reasons other than those specified, and allow discretionary waivers for penalties imposed under s. 71.83 (1) (a) 1., 1m. 2., 3., and 4.

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### 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>
/?				_____			State
/1	mshovers 01/31/2007	wjackson 02/22/2007	pgreensl 02/23/2007	_____	sbasford 02/23/2007	cduerst 02/23/2007	

FE Sent For: "/1" AT INTRO. 6-1-2007  
<END>

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/?	mshovers	1 wlj 2/22	2/23 SP8	2/23 p8/10/06			
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FE Sent For:

<END>

Rep. Sherman - Judy 6-7690

1) A.M.; s. 71.09 (1)(c) so Sec. of Rev.  
has some discretion -- allow waiver  
of interest by Sec. of Rev for  
reasons other than those specified

2) Create a similar <sup>discretionary waiver</sup> provision for  
penalties imposed under s. 71.83 (1)(a)  
1., 1m, 2., 3., 4.



State of Wisconsin  
2007 - 2008 LEGISLATURE

2/24  
cmh

LRB-1297/3  
MES.../.....

wlj  
FMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gjm

- 1 AN ACT ...; **relating to:** expanding the secretary of revenue's authority to waive
- 2 or reduce interest or penalties.

the state imposes

**Analysis by the Legislative Reference Bureau**

Under current law, if an individual, fiduciary, or trust underpays its estimated tax, interest at the rate of 12 percent per year ~~is imposed~~ on the amount of the underpayment, unless one of a number of exceptions apply. The exceptions include a determination by the secretary of revenue that it is not equitable to impose the interest due to casualty, disaster, or other unusual circumstances. Another exception applies to an individual who had no income or alternative minimum tax liability for the preceding 12 month taxable year and who was a full-time Wisconsin resident during that period.

This bill creates another exception. Under the bill, no interest on an underpayment is due if the secretary of revenue determines that, in the interests of fairness, no interest should be imposed.

Also under current law, certain persons are required to pay civil penalties for offenses such as failing to file an income or income and franchise tax return by the statutorily required due date, for failure to file an information return, for filing an incomplete or incorrect return, for filing an incomplete or incorrect deposit or withholding report, and for the late filing of a withholding report.

Under this bill the secretary of revenue, in the interests of fairness, is authorized to exercise his or her discretion to waive or reduce the penalty that would otherwise be imposed under such circumstances.

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

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

1           **SECTION 1.** 71.09 (11) (e) of the statutes is created to read:

2           71.09 (11) (e) The secretary of revenue determines that in the interests of  
3 fairness, no interest should be imposed.

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

5           71.83 (1) (a) 1. 'Failure to file.' In case of failure to file any return required  
6 under s. 71.03, 71.24 or 71.44 on the due date prescribed therefor, including any  
7 extension of time for filing, unless it is shown that the failure is due to reasonable  
8 cause and not due to willful neglect, there shall be added to the amount required to  
9 be shown as tax on the return 5% of the amount of the tax if the failure is for not more  
10 than one month, with an additional 5% for each additional month or fraction thereof  
11 during which the failure continues, not exceeding 25% in the aggregate. In the  
12 interests of fairness, the secretary of revenue may exercise his or her discretion to  
13 waive or reduce the penalty that would otherwise be imposed under this subdivision.

14 For purposes of this subdivision, the amount of tax required to be shown on the  
15 return shall be reduced by the amount of any part of the tax which is paid on or before  
16 the due date prescribed for payment and by the amount of any credit against the tax  
17 which may be claimed upon the return.

18 History: 1987 a. 312; 1989 a. 31, 90; 1991 a. 39, 190, 269, 315; 1993 a. 16, 112, 213; 1995 a. 428, 453; 1997 a. 27, 237, 283, 323; 1999 a. 32; 2001 a. 109.

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

19           71.83 (1) (a) 1m. 'Failure to file information return.' If a person fails to file a  
20 return required under subch. XI by the prescribed due date, including any extension,  
21 or files an incorrect or incomplete return, that person may be subject to a penalty of

1 \$10 for each violation. A penalty shall be waived if the person shows that a violation  
2 is due to reasonable cause and not due to willful neglect. In the interests of fairness,  
3 the secretary of revenue may exercise his or her discretion to waive or reduce the  
4 penalty that would otherwise be imposed under this subdivision.

5 History: 1987 a. 312; 1989 a. 31, 90; 1991 a. 39, 190, 269, 315; 1993 a. 16, 112, 213; 1995 a. 428, 453; 1997 a. 27, 237, 283, 323; 1999 a. 32; 2001 a. 109.

6 **SECTION 4.** 71.83 (1) (a) 2. of the statutes is amended to read:

7 71.83 (1) (a) 2. 'Incomplete or incorrect return.' If any person required under  
8 this chapter to file an income or franchise tax return files an incomplete or incorrect  
9 return, unless it is shown that such filing was due to good cause and not due to  
10 neglect, there shall be added to such person's tax for the taxable year 25% of the  
11 amount otherwise payable on any income subsequently discovered or reported. The  
12 amount so added shall be assessed, levied and collected in the same manner as  
13 penalties imposed by this chapter. In the interests of fairness, the secretary of  
14 revenue may exercise his or her discretion to waive or reduce the penalty that would  
15 otherwise be imposed under this subdivision. In this subdivision, "return" includes  
16 a separate return filed by a spouse with respect to a taxable year for which a joint  
17 return is filed under s. 71.03 (2) (g) to (L) after the filing of that separate return, and  
18 a joint return filed by the spouses with respect to a taxable year for which a separate  
19 return is filed under s. 71.03 (2) (m) after the filing of that joint return.

20 History: 1987 a. 312; 1989 a. 31, 90; 1991 a. 39, 190, 269, 315; 1993 a. 16, 112, 213; 1995 a. 428, 453; 1997 a. 27, 237, 283, 323; 1999 a. 32; 2001 a. 109.

21 **SECTION 5.** 71.83 (1) (a) 3. of the statutes is amended to read:

22 71.83 (1) (a) 3. 'Incomplete or incorrect deposit or withholding report.' If any  
23 person required under subch. X to file a deposit report or withholding report files an  
24 incomplete or incorrect report, or fails to properly withhold or fails to properly  
deposit or pay over withheld funds, unless it can be shown that the filing or failure

1 was due to good cause and not due to neglect, there shall be added to the tax 25% of  
2 the amount not reported or not withheld, deposited or paid over. The amount so  
3 added shall be assessed, levied and collected in the same manner as additional  
4 income or franchise taxes, and shall be in addition to any other penalties imposed in  
5 this subchapter. In the interests of fairness, the secretary of revenue may exercise  
6 his or her discretion to waive or reduce the penalty that would otherwise be imposed  
7 under this subdivision. "Person", in this subdivision, includes an officer or employee  
8 of a corporation or other responsible person or a member or employee of a partnership  
9 or limited liability company or other responsible person who, as such officer,  
10 employee, member or other responsible person, is under a duty to perform the act in  
11 respect to which the violation occurs.

12 **History:** 1987 a. 312; 1989 a. 31, 90; 1991 a. 39, 190, 269, 315; 1993 a. 16, 112, 213; 1995 a. 428, 453; 1997 a. 27, 237, 283, 323; 1999 a. 32; 2001 a. 109.

**SECTION 6.** 71.83 (1) (a) 4. of the statutes is amended to read:

13 71.83 (1) (a) 4. 'Late filing of withholding report.' In case of failure to file any  
14 withholding deposit or payment report required under s. 71.65 (3) on the due date  
15 prescribed therefor, unless it is shown that the failure is due to reasonable cause and  
16 not due to willful neglect, there shall be added to the amount required to be shown  
17 as withheld taxes on the report 5% of the amount if the failure is not for more than  
18 one month, with an additional 5% for each additional month or fraction thereof  
19 during which the failure continues, not exceeding 25% in the aggregate. In the  
20 interests of fairness, the secretary of revenue may exercise his or her discretion to  
21 waive or reduce the penalty that would otherwise be imposed under this subdivision.

22 **History:** 1987 a. 312; 1989 a. 31, 90; 1991 a. 39, 190, 269, 315; 1993 a. 16, 112, 213; 1995 a. 428, 453; 1997 a. 27, 237, 283, 323; 1999 a. 32; 2001 a. 109.

**SECTION 7. Initial applicability.**



1

(1) This act first applies to <sup>the</sup> finding, determination, or exercise of discretion  
made by the secretary of revenue on the effective date of this subsection.

2

3

(END)

**Duerst, Christina**

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**From:** Sherman, Gary  
**Sent:** Friday, February 23, 2007 10:51 AM  
**To:** LRB.Legal  
**Cc:** Tribys, Eleanora; Kelly, Judy  
**Subject:** Draft Review: LRB 07-1297/1 Topic: Give discretion to secretary of revenue in waiving interest, penalties, under certain hardship circumstances

Please Jacket LRB 07-1297/1 for the ASSEMBLY.