



2009 ASSEMBLY BILL 343

July 8, 2009 – Introduced by Representatives SHERMAN, BERCEAU, JORGENSEN, NERISON, SCHNEIDER, TOLES, TURNER, A. WILLIAMS and DEXTER, cosponsored by Senators TAYLOR, GROTHMAN, LEHMAN, MILLER and SCHULTZ. Referred to Committee on State Affairs and Homeland Security.

1 **AN ACT** *to amend* 71.83 (1) (a) 1., 71.83 (1) (a) 1m., 71.83 (1) (a) 2., 71.83 (1) (a)
2 3. and 71.83 (1) (a) 4.; and *to create* 71.09 (11) (e) of the statutes; **relating to:**
3 expanding the secretary of revenue's authority to waive or reduce interest or
4 penalties.

Analysis by the Legislative Reference Bureau

Under current law, if an individual, fiduciary, or trust underpays its estimated tax, the state imposes interest at the rate of 12 percent per year 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 interest of fairness, no interest should be imposed.

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.

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Under this bill the secretary of revenue is authorized to exercise his or her discretion, in the interest of fairness, 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.

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 interest 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, 71.44, or 71.775 on the prescribed due date ~~prescribed therefor~~,
7 including any applicable extension of time for filing, unless it is shown that the
8 failure is due to reasonable cause and not due to willful neglect, there shall be added
9 to the amount required to be shown as tax on the return 5% of the amount of the tax
10 if the failure is for not more than one month, with an additional 5% for each
11 additional month or fraction thereof during which the failure continues, not
12 exceeding 25% in the aggregate. In the interest of fairness, the secretary of revenue
13 may exercise his or her discretion to waive or reduce the penalty that would
14 otherwise be imposed under this subdivision. For purposes of this subdivision, the
15 amount of tax required to be shown on the return shall be reduced by the amount of
16 any part of the tax which is paid on or before the due date prescribed for payment and
17 by the amount of any credit against the tax which may be claimed upon the return.

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

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1 71.83 (1) (a) 1m. ‘Failure to file information return.’ If a person fails to file a
2 return required under subch. XI by the prescribed due date, including any extension,
3 or files an incorrect or incomplete return, that person may be subject to a penalty of
4 \$10 for each violation. A penalty shall be waived if the person shows that a violation
5 is due to reasonable cause and not due to willful neglect. In the interest of fairness,
6 the secretary of revenue may exercise his or her discretion to waive or reduce the
7 penalty that would otherwise be imposed under this subdivision.

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

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

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

24 71.83 (1) (a) 3. ‘Incomplete or incorrect deposit or withholding report.’ If any
25 person required under subch. X to file a deposit report or withholding report files an

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

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

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

25 **SECTION 7. Initial applicability.**

