

2015 DRAFTING REQUEST

Bill

Received: 1/13/2015 Received By: mshovers
Wanted: As time permits Same as LRB:
For: Administration-Budget 6-7597 By/Representing: Wimmer
May Contact: Drafter: mshovers
Subject: Tax, Other - miscellaneous Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to: sbostatlanguage@webapps.wi.gov
joseph.kreye@legis.wisconsin.gov

Pre Topic:

DOA:.....Wimmer, BB0444 -

Topic:

Clarify that overpayments, refundable credits, or refunds may not be paid to a taxpayer until setoffs have been completed

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>
/?	mshovers 1/14/2015			_____			
/1	mshovers 1/23/2015	jdye 1/19/2015	rschluet 1/19/2015	_____	lparisi 1/19/2015		
/2		kfollett	jfrantze	_____	sbasford		

Vers. Drafted

Reviewed
1/23/2015

Typed
1/24/2015

Proofed

Submitted
1/25/2015

Jacketed

Required

FE Sent For:

<END>

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/?	mshovers 1/14/2015			_____			
/1		jdyer 1/19/2015	rschluet 1/19/2015	_____	lparisi 1/19/2015		

FE Sent For:

1/23/15
1/23/15
1/23
JK
SR
23
<END>

2015 DRAFTING REQUEST

Bill

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See attached

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1?	mshovers	1/19 jld	<i>(Signature)</i>				
11	MES	1/14/15					

FE Sent For:

<END>

Shovers, Marc

From: Hanaman, Cathlene
Sent: Tuesday, January 13, 2015 2:57 PM
To: Kreye, Joseph; Shovers, Marc
Subject: FW: Statutory Language Drafting Request - BB0444
Attachments: Sept 15 Tax Admin - no overpayment rights prior to setoffs.pdf

From: robert.wimmer@wisconsin.gov [mailto:robert.wimmer@wisconsin.gov]
Sent: Tuesday, January 13, 2015 2:56 PM
To: Hanaman, Cathlene
Cc: Ziegler, Paul - DOA; Wimmer, Robert C - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0444

Biennial Budget: 2015-17

Topic: Refund Setoff of Overpayments

Tracking Code: BB0444

SBO Team: TLGED

SBO Analyst: Wimmer, Robert
Phone: 608-266-7597
E-mail: robert.wimmer@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: High

Intent:

To modify current law to avoid federal collection of overpayments, refundable credit or refunds under all state tax refunds have been completed.

Attachments: True

Please send completed drafts to SBOStatlanguage@webapps.wi.gov

TITLE: Refund Setoff of Overpayments

DESCRIPTION OF CURRENT LAW AND PROBLEM

Sections 71.93 and 71.935, Wis. Stats., authorize setoff of refunds against debt owed to other state agencies and local governments, after setoff of refunds to Department of Revenue (DOR) debt. A refund setoff hierarchy is established in sec. 71.93(3)(a), Wis. Stats. Federal tax obligations are number seven in the list.

Current setoff hierarchy in sec. 71.93(3)(a), Wis. Stats.:

1. DOR debt
2. DCF debt
3. Other WI state agency debt, including courts, legislature, and other authorities (per agreement)
4. WI local government debt (per agreement)
5. Other WI state agency debt (as certified to DOR)
6. WI county and municipal parking citations, property taxes, fines, fees; etc.... (as certified to DOR)
7. Federal tax obligations
8. Tribal obligations
9. Tax and nontax obligations of other states and their local government units

The problem is the U.S. Department of the Treasury issues levies to the department for refund setoff. They are taking the position that the federal levy takes precedence over state statute. The U.S. Department of the Treasury advised DOR that, through agreement, they will allow DOR to setoff DOR income debt and child support debt prior to federal debt.

Summary of problems:

- All types of WI state agency debt should be paid from DOR overpayments before money is sent to the U.S. Department of the Treasury
- Collections for delinquent DOR debt and debt owed to other state and local Wisconsin governments will decrease
- Making this change will involve a major programming effort and will be costly

RECOMMENDATION FOR ACTION

Amend sections 71.75(9), 71.80(3) and (3m), 71.93, 71.935, and 77.59(5), to clarify overpayments are not characterized as refunds until after setoff as provided in sections 71.93 and 71.935, Wis. Stats.

IMPACT ON JOB CREATION

None

FISCAL EFFECT

No fiscal effect if the legislation is enacted.

If the legislation is not enacted, programming costs will be at least \$320,000, plus staff time to test the programming changes, notify our agency partners, and update information published on our website and in publications.

If the legislation is not enacted, there will be lost revenue to DOR and to the state from refunds that previously were applied to DOR debt or debt of other agencies/local governments that will now be directed to child support debt and then IRS debt, rather than paying all DOR debt first.

- Potential \$3 million loss to state agencies and local government, other than DOR and child support, for debtors where the IRS also has debt certified for collection.
- Potential loss of up to \$8 million in DOR income refunds that was used to pay non-income debt.
 - \$1.4 million in DOR non-income debt owed by debtors common with the IRS
 - \$33 million in DOR non-income debt owed by debtors common to child support

DRAFTING INSTRUCTIONS

Amend sec. 71.75(9) to: "All refunds under this chapter are subject to attachment under ss. 49.855, 71.93 and 71.935. The taxpayer does not have any property rights or rights to any overpayment, refundable credit or refund under this chapter until setoff under ss. 49.855, 71.93 and 71.935 has been completed. The department is not obligated to pay any overpayment, refundable credit or refund to the taxpayer until setoff under ss. 49.855, 71.93 and 71.935 has been completed."

Use similar language in sections 71.80(3) and (3m), 71.93, 71.935, and 77.59(5), Wis. Stats.

EFFECTIVE DATE AND/OR INITIAL APPLICATION

Day after publication

INTERESTED/AFFECTED PARTIES

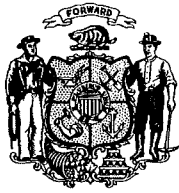
Persons owing delinquent debt to DOR and other state agencies; and state agencies and local governments who receive debt payments through refund setoff.

DOR CONTACT PERSON

Diane Hardt 608-266-6798

PREPARED BY

Adam Ben-Zikri and Catherine Bink



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1253/1

MES:.....

Due Wed, 1-21

check

jld

DOA:.....Wimmer, BB0444 - Clarify that overpayments, refundable credits, or refunds may not be paid to a taxpayer until setoffs have been completed ← LPS - please update

FOR 2015-2017 BUDGET - NOT READY FOR INTRODUCTION

D-note

FN
1/14

do not
get

4
1

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, DOR is authorized to set off refunds, refundable tax credits, and overpayments (collectively, refunds) due a taxpayer against debts that such a taxpayer owes DOR, other state agencies, local governments, and the federal government. If any amounts remain after the setoffs are satisfied, the taxpayer receives the balance due. The statutes list the order in which the setoffs are applied. This bill specifies that a taxpayer does not have any right to, or interest in, refunds until the setoff procedure has been completed.

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

2 SECTION 1. 71.75 (9) of the statutes is amended to read:

3 71.75 (9) All refunds under this chapter are subject to attachment under ss.
4 49.855, 71.93 and 71.935, and no taxpayer has any right to, or interest in, any refund

1 under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been
2 completed.

History: 1987 a. 312; 1987 a. 411 ss. 96, 187; 1989 a. 31; 1991 a. 39; 1993 a. 205; 1995 a. 27, 404; 1997 a. 27; 1999 a. 9.

***NOTE: I did not include references to overpayments because this statute deals only with refunds. Overpayments are addressed in s. 71.80 (3) and (3m), although the amendment of s. 71.80 (3) and (3m) is drafted broadly enough to encompass refunds. In addition, I don't really see how the amendment of this subsection makes any substantive legal change to current law, as ss. 71.93 (3) and 71.935 already require DOR to setoff any debt or other amount owed, or refunds due, to the department and other state and local governmental units.

DOR

3 SECTION 2. 71.80 (3) of the statutes is amended to read:

4 71.80 (3) CREDITING OF OVERPAYMENTS ON INDIVIDUAL OR SEPARATE RETURNS. In
5 the case of any overpayment, refundable credit, or refund on an individual or
6 separate return, the department, within the applicable period of limitations, may
7 credit the amount of overpayment, refundable credit, or refund, including any
8 interest allowed, against any liability in respect to any tax collected by the
9 department, a debt under s. 71.93 or 71.935 or a certification under s. 49.855 on the
10 part of the person who made the overpayment or received the refundable credit or
11 the refund and shall refund any balance to the person. No person has any right to,
12 or interest in, any overpayment, refundable credit, or refund, including any interest
13 allowed, under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been
14 completed. The department shall presume that the overpayment, refundable credit
15 or refund is nonmarital property of the filer. Within 2 years after the crediting, the
16 spouse or former spouse of the person filing the return may file a claim for a refund
17 of amounts credited by the department if the spouse or former spouse shows by clear
18 and convincing evidence that all or part of the state tax overpayment, refundable
19 credit or refund was nonmarital property of the nonobligated spouse.

History: 1987 a. 312; 1987 a. 411 ss. 70, 189 to 192; 1989 a. 31; 1991 a. 39, 301; 1993 a. 205; 1995 a. 27, 404, 418; 1997 a. 27, 39, 291; 2001 a. 44, 102; 2003 a. 33; 2005 a. 49; 2007 a. 20, 226; 2009 a. 2, 28, 276; 2013 a. 20, 349.

20 SECTION 3. 71.80 (3m) (intro.) of the statutes is amended to read:

1 71.80 (3m) CREDITING OF OVERPAYMENTS ON JOINT RETURNS. (intro.) For married
2 persons, unless within 20 days after the date of the notice under par. (c) the
3 nonobligated spouse shows by clear and convincing evidence that the overpayment,
4 refundable credit or refund is the nonmarital property of the nonobligated spouse,
5 notwithstanding s. 766.55 (2) (d), the department may credit overpayments,
6 refundable credits and refunds, including any interest allowed, resulting from joint
7 returns under this chapter as follows, except that no person has any right to, or
8 interest in, any overpayment, refundable credit, or refund, including any interest
9 allowed, under this chapter until setoff under ss. 49.855, 71.93[✓] and 71.935[✓] has been
10 completed:

History: 1987 a. 312; 1987 a. 411 ss. 70, 189 to 192; 1989 a. 31; 1991 a. 39, 301; 1993 a. 205; 1995 a. 27, 404, 418; 1997 a. 27, 39, 291; 2001 a. 44, 102; 2003 a. 33; 2005 a. 49; 2007 a. 20, 226; 2009 a. 2, 28, 276; 2013 a. 20, 349.

11 **SECTION 4.** 71.93 (3) (c) of the statutes is created to read:

12 71.93 (3) (c) No person has any right to, or interest in, any overpayment,
13 refundable credit, or refund, including any interest allowed, under this chapter[✓] until
14 setoff under this section[✓] and ss. 49.855[✓] and 71.935[✓] has been completed.

15 **SECTION 5.** 71.935 (6) of the statutes is created to read:

16 71.935 (6) No person has any right to, or interest in, any overpayment,
17 refundable credit, or refund, including any interest allowed, under this chapter[✓] until
18 setoff under this section[✓] and ss. 49.855[✓] and 71.93[✓] has been completed.

19 **SECTION 6.** 77.59 (5) of the statutes is amended to read:

20 77.59 (5) The department may offset the amount of any refund for a period,
21 together with interest on the refund, against deficiencies for another period, and
22 against penalties and interest on the deficiencies, or against any amount of whatever
23 kind, due and owing on the books of the department from the person who is entitled
24 to the refund. If the refund is to be paid to a buyer, the department may also set off

1 amounts in the manner in which it sets off income tax and franchise tax refunds
 2 under s. 71.93 and may set off amounts for child support or maintenance or both in
 3 the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3), (6) and
 4 (7). No person has any right to, or interest in, any refund under this chapter until
 5 setoff under ss. 49.855, 71.93, and 71.935 has been completed.

History: 1975 c. 186; 1979 c. 174, 203, 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1985 a. 261 ss. 13g, 13m, 13t; 1987 a. 312 s. 17; 1991 a. 39, 269; 1993 a. 308, 437; 1995 a. 404; 2003 a. 33; 2005 a. 49; 2007 a. 20; 2009 a. 2 ss. 386, 493 to 498; 2009 a. 28, 330; 2013 a. 20.

6 **SECTION 9337. Initial applicability; Revenue.**

7 (1) SETOFFS. The treatment of sections 71.75 (9), 71.80 (3) and (3m) (intro.),
 8 71.93 (3) (c), 71.935 (6) and 77.59 (5) of the statutes first applies to taxable years
 9 beginning on January 1 of the year in which this subsection takes effect, except that
 10 if this subsection takes effect after July 31 the treatment of sections 71.75 (9), 71.80
 11 (3) and (3m) (intro.), 71.93 (3) (c), 71.935 (6) and 77.59 (5) of the statutes first applies
 12 to taxable years beginning on January 1 of the year following the year in which this
 13 subsection takes effect.

14 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1253/1dn

MES#...
JLD

date

Robert Wimmer:

I believe that this ~~draft~~ ^{bill} reflects your instructions, but it does not seem to me that the draft makes any substantive legal changes to current law. In addition, the drafting instructions do not suggest any language to address the problem you've raised involving the U.S. Treasury Department's position that its levy takes precedence over state statutes. Please let me know if you'd like any changes made to the bill.

of the Treasury's
Marc E. Shovers
Senior Legislative Attorney
(608) 266-0129
marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1253/1dn
MES:jld:rs

January 19, 2015

Robert Wimmer:

I believe that this bill reflects your instructions, but it does not seem to me that the draft makes any substantive legal changes to current law. In addition, the drafting instructions do not suggest any language to address the problem you've raised involving the U.S. Department of the Treasury's position that its levy takes precedence over state statutes. Please let me know if you'd like any changes made to the bill.

Marc E. Shovers
Senior Legislative Attorney
(608) 266-0129
marc.shovers@legis.wisconsin.gov

Shovers, Marc

From: Wimmer, Robert C - DOA <Robert.Wimmer@wisconsin.gov>
Sent: Thursday, January 22, 2015 1:42 PM
To: Shovers, Marc
Subject: RE: Clarify that overpayments, refundable credits or refunds may not be paid to a taxpayer until setoffs have been completed

Mr. Shovers,

DOR has requested a small, and hopefully not tedious revision to some of the language for LRB-15-1253/P1 – BB0444. I have decided to copy and paste their response so it is hopefully better articulated. Please let me know if you have any questions. Below is their response. Thanks for your time.

In response to the drafter's note, we are not attempting to change the current hierarchy, we are seeking to preserve it. So, we essentially agree with the drafter, but our motivation for new language/same effect is based on challenges from the federal government. Our language is based on ongoing dialogue with the Treasury.

Secondly, he mentions in the drafter's notes that, " I did not include references to overpayments because this statute [71.75 (9)] deals only with refunds."

However, our Technical Services Section pointed out that both secs. 71.75 (3) and (5m) both use the term "overpayments." Thus, we prefer that the proposed change to 71.75 (9) [Page 1, line 3 to Page 2, line 2] be as follows:

71.75(9) All refunds, overpayments, or refundable credits under this chapter are subject to attachment under ss. 49.855, 71.93 and 71.935, and no taxpayer has any right to, or interest in, any refund, overpayment, or refundable credit under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been completed.

Bob Wimmer

Executive Policy & Budget Analyst

State Budget Office
Department of Administration | State of Wisconsin
608-266-7597
Robert.Wimmer@wisconsin.gov

From: Christopher.Connor@wisconsin.gov [mailto:Christopher.Connor@wisconsin.gov]
Sent: Monday, January 19, 2015 11:21 AM
To: Wimmer, Robert C - DOA
Cc: Ziegler, Paul - DOA; Grinde, Kirsten - DOA; Connor, Christopher B - DOA
Subject: Clarify that overpayments, refundable credits or refunds may not be paid to a taxpayer until setoffs have been completed

We have received an LRB draft for DOA Tracking Code: BB0444

LRB Draft Number: 15-1253/1

Drafter: MES

Drafting Attorney: Marc E. Shovers

Phone: (608) 266-0129

E-mail: marc.shovers@legis.wisconsin.gov

Drafter's Notes: I believe that this bill reflects your instructions, but it does not seem to me that the draft makes any substantive legal changes to current law. In addition, the drafting instructions do not suggest any language to address the problem you've raised involving the U.S. Department of the Treasury's position that its levy takes precedence over state statutes. Please let me know if you'd like any changes made to the bill.

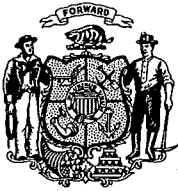
PDF of Drafter's Note is found in the [Drafter's Notes Library](#)

The [document](#) can be found in the Stat Language site on SharePoint.

Please Note: All new drafts are marked "OUT" and Final = "No" by default. Please update these fields in this record and related drafts as soon as you know if they are "IN" or Final.

Thanks,

Chris



DOA:.....Wimmer, BB0444 – Clarify that overpayments, refundable credits, or refunds may not be paid to a taxpayer until setoffs have been completed

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

1/24 or
1/25

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, DOR is authorized to set off refunds, refundable tax credits, and overpayments (collectively, refunds) due a taxpayer against debts that such a taxpayer owes DOR, other state agencies, local governments, and the federal government. If any amounts remain after the setoffs are satisfied, the taxpayer receives the balance due. The statutes list the order in which the setoffs are applied. This bill specifies that a taxpayer does not have any right to, or interest in, refunds until the setoff procedure has been completed.

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

2 SECTION 1. 71.75 (9) of the statutes is amended to read:

3 71.75 (9) All refunds ^{overpayments, or refundable credits} under this chapter are subject to attachment under ss.
4 49.855, 71.93 and 71.935, and no taxpayer has any right to, or interest in, any refund

, overpayment, or refundable credit

1 under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been
2 completed.

***NOTE: I did not include references to overpayments because this statute deals only with refunds. Overpayments are addressed in s. 71.80 (3) and (3m), although the amendment of s. 71.80 (3) and (3m) is drafted broadly enough to encompass refunds. In addition, I don't really see how the amendment of this subsection makes any substantive legal change to current law, as ss. 71.93 (3) and 71.935 already require DOR to setoff any debt or other amount owed, or refunds due, to DOR and other state and local governmental units.

3 SECTION 2. 71.80 (3) of the statutes is amended to read: ✓

4 71.80 (3) CREDITING OF OVERPAYMENTS ON INDIVIDUAL OR SEPARATE RETURNS. In
5 the case of any overpayment, refundable credit, or refund on an individual or
6 separate return, the department, within the applicable period of limitations, may
7 credit the amount of overpayment, refundable credit, or refund, including any
8 interest allowed, against any liability in respect to any tax collected by the
9 department, a debt under s. 71.93 or 71.935 or a certification under s. 49.855 on the
10 part of the person who made the overpayment or received the refundable credit or
11 the refund and shall refund any balance to the person. No person has any right to,
12 or interest in, any overpayment, refundable credit, or refund, including any interest
13 allowed, under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been
14 completed. The department shall presume that the overpayment, refundable credit
15 or refund is nonmarital property of the filer. Within 2 years after the crediting, the
16 spouse or former spouse of the person filing the return may file a claim for a refund
17 of amounts credited by the department if the spouse or former spouse shows by clear
18 and convincing evidence that all or part of the state tax overpayment, refundable
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20 SECTION 3. 71.80 (3m) (intro.) of the statutes is amended to read: ✓

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2 persons, unless within 20 days after the date of the notice under par. (c) the
3 nonobligated spouse shows by clear and convincing evidence that the overpayment,
4 refundable credit or refund is the nonmarital property of the nonobligated spouse,
5 notwithstanding s. 766.55 (2) (d), the department may credit overpayments,
6 refundable credits and refunds, including any interest allowed, resulting from joint
7 returns under this chapter as follows, except that no person has any right to, or
8 interest in, any overpayment, refundable credit, or refund, including any interest
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12 71.93 (3) (c) No person has any right to, or interest in, any overpayment,
13 refundable credit, or refund, including any interest allowed, under this chapter until
14 setoff under this section and ss. 49.855 and 71.935 has been completed.

15 SECTION 5. 71.935 (6) of the statutes is created to read: ✓

16 71.935 (6) No person has any right to, or interest in, any overpayment,
17 refundable credit, or refund, including any interest allowed, under this chapter until
18 setoff under this section and ss. 49.855 and 71.93 has been completed.

19 SECTION 6. 77.59 (5) of the statutes is amended to read: ✓

20 77.59 (5) The department may offset the amount of any refund for a period,
21 together with interest on the refund, against deficiencies for another period, and
22 against penalties and interest on the deficiencies, or against any amount of whatever
23 kind, due and owing on the books of the department from the person who is entitled
24 to the refund. If the refund is to be paid to a buyer, the department may also set off
25 amounts in the manner in which it sets off income tax and franchise tax refunds

1 under s. 71.93 and may set off amounts for child support or maintenance or both in
2 the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3), (6) and
3 (7). No person has any right to, or interest in, any refund under this chapter until
4 setoff under ss. 49.855, 71.93, and 71.935 has been completed.

5 **SECTION 9337. Initial applicability; Revenue.**

6 (1) SETOFFS. The treatment of sections 71.75 (9), 71.80 (3) and (3m) (intro.),
7 71.93 (3) (c), 71.935 (6), and 77.59 (5) of the statutes first applies to taxable years
8 beginning on January 1 of the year in which this subsection takes effect, except that
9 if this subsection takes effect after July 31 the treatment of sections 71.75 (9), 71.80
10 (3) and (3m) (intro.), 71.93 (3) (c), 71.935 (6), and 77.59 (5) of the statutes first applies
11 to taxable years beginning on January 1 of the year following the year in which this
12 subsection takes effect.

13 (END)



State of Wisconsin
2015 – 2016 LEGISLATURE

LRB-1253/2
MES:jld:jf

DOA:.....Wimmer, BB0444 – Clarify that overpayments, refundable credits, or refunds may not be paid to a taxpayer until setoffs have been completed

FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

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1 any right to, or interest in, any refund, overpayment, or refundable credit under this
2 chapter until setoff under ss. 49.855, 71.93, and 71.935 has been completed.

3 **SECTION 2.** 71.80 (3) of the statutes is amended to read:

4 71.80 (3) CREDITING OF OVERPAYMENTS ON INDIVIDUAL OR SEPARATE RETURNS. In
5 the case of any overpayment, refundable credit, or refund on an individual or
6 separate return, the department, within the applicable period of limitations, may
7 credit the amount of overpayment, refundable credit, or refund, including any
8 interest allowed, against any liability in respect to any tax collected by the
9 department, a debt under s. 71.93 or 71.935 or a certification under s. 49.855 on the
10 part of the person who made the overpayment or received the refundable credit or
11 the refund and shall refund any balance to the person. No person has any right to,
12 or interest in, any overpayment, refundable credit, or refund, including any interest
13 allowed, under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been
14 completed. The department shall presume that the overpayment, refundable credit
15 or refund is nonmarital property of the filer. Within 2 years after the crediting, the
16 spouse or former spouse of the person filing the return may file a claim for a refund
17 of amounts credited by the department if the spouse or former spouse shows by clear
18 and convincing evidence that all or part of the state tax overpayment, refundable
19 credit or refund was nonmarital property of the nonobligated spouse.

20 **SECTION 3.** 71.80 (3m) (intro.) of the statutes is amended to read:

21 71.80 (3m) CREDITING OF OVERPAYMENTS ON JOINT RETURNS. (intro.) For married
22 persons, unless within 20 days after the date of the notice under par. (c) the
23 nonobligated spouse shows by clear and convincing evidence that the overpayment,
24 refundable credit or refund is the nonmarital property of the nonobligated spouse,
25 notwithstanding s. 766.55 (2) (d), the department may credit overpayments,

1 refundable credits and refunds, including any interest allowed, resulting from joint
2 returns under this chapter as follows, except that no person has any right to, or
3 interest in, any overpayment, refundable credit, or refund, including any interest
4 allowed, under this chapter until setoff under ss. 49.855, 71.93, and 71.935 has been
5 completed:

6 **SECTION 4.** 71.93 (3) (c) of the statutes is created to read:

7 71.93 (3) (c) No person has any right to, or interest in, any overpayment,
8 refundable credit, or refund, including any interest allowed, under this chapter until
9 setoff under this section and ss. 49.855 and 71.935 has been completed.

10 **SECTION 5.** 71.935 (6) of the statutes is created to read:

11 71.935 (6) No person has any right to, or interest in, any overpayment,
12 refundable credit, or refund, including any interest allowed, under this chapter until
13 setoff under this section and ss. 49.855 and 71.93 has been completed.

14 **SECTION 6.** 77.59 (5) of the statutes is amended to read:

15 77.59 (5) The department may offset the amount of any refund for a period,
16 together with interest on the refund, against deficiencies for another period, and
17 against penalties and interest on the deficiencies, or against any amount of whatever
18 kind, due and owing on the books of the department from the person who is entitled
19 to the refund. If the refund is to be paid to a buyer, the department may also set off
20 amounts in the manner in which it sets off income tax and franchise tax refunds
21 under s. 71.93 and may set off amounts for child support or maintenance or both in
22 the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3), (6) and
23 (7). No person has any right to, or interest in, any refund under this chapter until
24 setoff under ss. 49.855, 71.93, and 71.935 has been completed.

25 **SECTION 9337. Initial applicability; Revenue.**

1 (1) SETOFFS. The treatment of sections 71.75 (9), 71.80 (3) and (3m) (intro.),
2 71.93 (3) (c), 71.935 (6), and 77.59 (5) of the statutes first applies to taxable years
3 beginning on January 1 of the year in which this subsection takes effect, except that
4 if this subsection takes effect after July 31 the treatment of sections 71.75 (9), 71.80
5 (3) and (3m) (intro.), 71.93 (3) (c), 71.935 (6), and 77.59 (5) of the statutes first applies
6 to taxable years beginning on January 1 of the year following the year in which this
7 subsection takes effect.

8 (END)