

1977 Assembly Bill 641

Date published: November 7, 1977

**CHAPTER 143, Laws of 1977**

AN ACT to repeal 71.11 (2); and to amend 71.09 (10), 71.10 (2) (c), (3) (a) and (10) (f) and (g), 71.11 (1), (3) to (5), (10), (13), (17), (19) (a), (20), (40)

and (44) (b), (bm) and (c) (intro.) and 1, 71.20 (5) (a), 73.03 (2) (a), 73.05 (title) and (2) to (4) and 73.07 (title), (1) and (3) of the statutes, for the purpose of deleting references to "assessors of incomes" (suggested as remedial legislation by the department of revenue).

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

SECTION 1. 71.09 (10) of the statutes is amended to read:

71.09 (10) In the case of any overpayment, the department of revenue ~~or the assessors of incomes~~, within the applicable period of limitations, may credit the amount of ~~such~~ overpayment, including any interest allowed ~~thereon~~, against any liability, in respect to any tax collected by the department, on the part of the person who made the overpayment, and shall refund any balance to ~~such~~ the person.

SECTION 2. 71.10 (2) (c), (3) (a) and (10) (f) and (g) of the statutes are amended to read:

71.10 (2) (c) Nothing in this subsection precludes the department of revenue from requiring any person other than a corporation to file an income tax return when in the judgment of the ~~assessor of incomes~~ department a return should be filed.

(3) (a) Every partnership shall furnish to the ~~assessor of incomes~~ department a true and accurate statement, on or before April 15 of each year, except that returns for fiscal years ending on some other date than December 31, shall be furnished on or before the ~~fifteenth~~ 15th day of the ~~fourth~~ 4th month following the close of such fiscal year, in such manner and form and setting forth such facts as the department of ~~revenue shall deem~~ deems necessary to enforce ~~the provisions of~~ this chapter. ~~Such~~ The statement shall be subscribed by one of the members of ~~said~~ the partnership.

(10) (f) Every claim for refund or credit of income or surtaxes shall be filed with the department of revenue ~~in case of assessments made by it, and with the assessor of incomes in case of assessments made by him~~, and ~~such claim~~ shall set forth specifically and explain in detail the reasons for and the basis of ~~such~~ the claim. After ~~such~~ the claim has been filed it shall be considered and acted upon in the same manner as are additional assessments made under ~~ss. s.~~ s. 71.11 (16) and ~~71.11~~ (20).

(g) The department of revenue ~~and assessors of incomes are~~ is directed to act on any claim for refund or credit within one year after ~~the receipt thereof and their~~ failure to act shall have the effect of allowing ~~such~~ the claim and the department of ~~revenue or assessor of incomes~~ shall certify ~~such~~ the refund or credit.

SECTION 3. 71.11 (1), (3) to (5), (10), (13), (17), (19) (a), (20), (40) and (44) (b), (bm) and (c) (intro.) and 1 of the statutes are amended to read:

71.11 (1) GENERAL. The department of revenue ~~and the assessor of incomes~~ shall assess incomes as provided in this chapter and in performance of such duty the department of ~~revenue and the assessors of income~~ shall respectively possess all powers now or hereafter granted by law to the department of ~~revenue or assessors~~ in the assessment of personal property and also the power to estimate incomes.

(3) (title) REPORTS REQUESTED BY DEPARTMENT. Whenever in the judgment of the ~~assessor of incomes~~ department any person other than a corporation ~~shall be~~ is subject to income tax ~~in his district under provisions of~~ this chapter, ~~he~~ the department shall notify ~~such~~ the person to ~~make~~ report ~~to him~~ on or before April 15 of each year in such manner and form as the department of ~~revenue shall prescribe~~ prescribes, specifying in detail the amounts of income received ~~by him~~ from all sources and such other information as the department ~~shall deem~~ deems necessary to enforce ~~the provisions of~~ this chapter.

(4) DEFAULT ASSESSMENT. Any person required to make an income or franchise tax return, who fails, neglects or refuses to do so in the manner and form and within the time prescribed by this chapter, or makes a return that does not disclose ~~his~~ the

~~person's~~ entire net income, shall be assessed by the department of ~~revenue or the assessor of incomes~~, as the case may be, according to ~~their~~ its best judgment.

(5) DEFAULT ASSESSMENT. In case of the failure on the part of any person to make a report of income within the time and in the manner prescribed by law, the department of ~~revenue or assessor of incomes~~ may enter an assessment against ~~said~~ the person upon 10 days' written notice ~~in writing~~ in a sum of not less than \$500. ~~Such~~ The notice may be served by mail. After the tax on ~~such~~ the assessment has been entered on the assessment roll the person assessed shall be forever barred from questioning the correctness of the same in any action or proceeding.

(10) RECORDS MAY BE REQUIRED OF TAXPAYER. Whenever ~~in the judgment of the department of revenue or the assessor of incomes it is deemed~~ deems it necessary that a person subject to an income tax should keep records to show whether or not ~~such~~ the person is liable to tax, the department of ~~revenue or assessor of incomes~~ may serve notice upon ~~such~~ the person and require such records to be kept as will include the entire net income of ~~such~~ the person and will enable the department of ~~revenue or assessor of incomes~~ to compute the taxable income. Thereafter, any taxes assessed upon information not contained in such records shall carry a penalty of 25% of the amount of the tax. ~~Such~~ The penalty shall be in addition to all other penalties provided in this chapter.

(13) RETURN PRESUMED CORRECT; ROLLS. The department of ~~revenue or the assessor of incomes~~ shall presume the incomes reported on the current return to be correct for the purpose of preparing initial assessment rolls, and shall enter the taxable income on initial assessment rolls by taxation districts. Such assessment rolls and all subsequent assessment rolls shall remain on file in the office of the department of ~~revenue or the assessor of incomes as the case may be~~. Additional assessment rolls shall be prepared from time to time, which shall include corrections made by office audits of current returns, initial assessments on any return omitted from the first initial roll, initial assessments of fiscal year returns, and corrections made after field audit pursuant to ~~s. 71.14~~ this section.

(17) NOTICE TO TAXPAYER OF ADJUSTMENT. The department of ~~revenue or the assessor of incomes~~ shall notify the taxpayer, as provided in ~~s. 71.14 sub. (22)~~, of any adjustment, correction and assessment made ~~pursuant to~~ under sub. (16).

(19) (a) If the tax is increased the department of ~~revenue~~ shall proceed to collect the additional tax in the same manner as other income taxes are collected. If the income taxes are decreased upon direction of the department of ~~revenue or assessor of incomes~~ the state treasurer shall refund to the taxpayer such part of the overpayment as was actually paid in cash, and the certification of ~~such~~ the overpayment by the department of ~~revenue or the assessor of incomes~~ shall be sufficient authorization to the treasurer for the refunding of ~~such~~ the overpayment. No refund of income tax shall be made by the treasurer unless ~~such~~ the refund is so certified. ~~Such~~ The part of the overpayment paid to the county and the local taxation district shall be deducted by the state treasurer in ~~his~~ the treasurer's next settlement with the county and local treasurer.

(20) VERIFICATION OF RETURN; FIELD AUDIT. (a) Whenever ~~in the judgment of the department of revenue or assessor of incomes it is deemed~~ deems it advisable to verify any return directly from the books and records of any person, or from any other sources of information, the department of ~~revenue or assessor of incomes~~ may direct any return to be so verified.

(b) For the purpose of ascertaining the correctness of any return or for the purpose of making a determination of the taxable income of any person, the department of ~~revenue or assessor of incomes~~ shall have power to may examine or cause to be examined by any agent or representative designated by it, any books, papers, records or memoranda bearing on the income of ~~such~~ the person, and may require the production of ~~such~~ the books, papers, records or memoranda, and require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for ~~their~~ its information. Upon such information as it may

be able to discover, the department of ~~revenue or the assessor of incomes~~ shall determine the true amount of income received during the year or years under investigation.

(c) If it ~~shall appear~~ appears upon such investigation that a person has been over or under assessed, or that no assessment has been made when one should have been made, the department of ~~revenue or assessor of incomes~~ shall make a correct assessment in the manner provided in this section.

(40) PENALTIES. If any person required under this chapter to file an income or franchise tax return fails to file ~~such a~~ return within the time prescribed by law, or as extended under s. 71.10 (5), the department of ~~revenue or the assessor of incomes~~ shall add to the tax of ~~such the~~ person \$10 in the case of corporations and in the case of persons other than corporations \$2 when the total normal income tax of ~~such the~~ person is less than \$10, \$3 when ~~such the~~ tax is \$10 or more but less than \$20, \$5 when ~~such the~~ tax is \$20 or more. If no tax is assessed against any such person the amount of this fee shall be collected as income taxes are collected, and no person shall be allowed in any action or proceeding to contest the imposition of such fee.

(44) (b). The department of ~~revenue or assessor of incomes~~ shall make available upon suitable forms prepared by ~~said the~~ department information setting forth the net income tax or gift tax reported as paid or payable in the returns filed by any individual, partnership, or corporation for any individual year upon request. Before ~~such the~~ request is granted, the person desiring to obtain ~~said the~~ information shall prove his or her identity and shall be required to sign a statement setting forth ~~his the~~ person's address and ~~his~~ reason for making ~~such the~~ request and indicating that ~~he the~~ person understands the provisions of this subsection with respect to the divulgement, publication or dissemination of information obtained from returns as provided in par. (a). The use of a fictitious name is declared to be a violation of this subsection. Within 24 hours after any ~~such~~ information from any such income tax or gift tax return has been so obtained, the department of ~~revenue or assessor of incomes~~ shall mail to the person, partnership or corporation from whose return ~~such the~~ information has been obtained a notification ~~thereof~~, which shall give the name and address of the person obtaining ~~said the~~ information and the reason assigned by ~~him~~ for requesting ~~said the~~ information. The department of ~~revenue or assessor of incomes~~ shall collect from the person requesting ~~such the~~ information a fee of \$1 for each return to defray the cost incident to the furnishing of ~~such the~~ information and the notification of the person, partnership or corporation from whose return ~~such the~~ information has been obtained.

(bm) The information described in par. (b) shall not be made available to any nonresident, or to any resident who is making the request for such information for the use or benefit, directly or indirectly, of a nonresident person or firm or a foreign corporation except to the extent that similar information in the state of residence of such person or firm or the state of incorporation of such foreign corporation is made available to residents of Wisconsin or Wisconsin corporations. As part of the statement required by par. (b), the department of ~~revenue or the assessor of incomes~~ shall require any person desiring to obtain such information to declare whether ~~he the~~ person is a nonresident of the state, and whether the information is desired for the use or benefit of a nonresident person or firm or a foreign corporation. No copy of any return shall be supplied to any person except as permitted by par. (c).

(c) (intro.) Subject to regulations of the department, any income tax or gift tax returns, or any schedules, exhibits, writings, or audit reports pertaining to the same, on file with the department of ~~revenue or assessor of incomes~~ shall be open to examination by any of the following persons or the contents thereof divulged or used as provided in the following cases and only to the extent therein authorized; ~~provided that~~ but the use of information so obtained is restricted to the discharge of duties imposed upon ~~said the~~ persons by law or by the duties of their office, and any of ~~said the~~ persons who use or permit the use of any information directly or indirectly so obtained beyond the

duties imposed upon them by law or by the duties of their office or by order of a court as set forth in subd. 6 shall be deemed in violation of this subsection:

1. The secretary of revenue, or any officer, agent or employe of the department of ~~revenue or assessor of incomes;~~

SECTION 4. 71.11 (2) of the statutes is repealed.

SECTION 5. 71.20 (5) (a) of the statutes is amended to read:

71.20 (5) (a) The penalties provided by this section shall be paid upon notice and demand of the secretary of revenue or ~~the assessors of incomes or their respective~~ the secretary's delegates and shall be assessed and collected in the same manner as income taxes. Any person required to withhold, account for or pay over any tax imposed by this chapter, whether exempt under s. 71.01 (3) or not, who intentionally fails to withhold such tax, or account for or pay over such tax, shall be liable to a penalty equal to the total amount of the tax not withheld, collected, accounted for or paid over.

SECTION 6. 73.03 (2) (a) of the statutes is amended to read:

73.03 (2) (a) To confer with, advise and direct assessors, boards of review, and county boards of assessment ~~and assessors of incomes~~ as to their duties under the statutes ~~of the state.~~

SECTION 7. 73.05 (title) and (2) to (4) of the statutes are amended to read:

**73.05 (title) Assessment districts; supervisors; duties.**

(2) ~~There shall be selected and appointed by the~~ The department of revenue an assessor of incomes for each income assessment district and shall select and appoint a supervisor of assessments for each property assessment district in the state. ~~Wherever it may be practicable in the interests of economy and efficiency, the department of revenue may appoint the same person to execute the duties of assessor of incomes and supervisor of assessments in one district.~~ Each assessor or supervisor shall be a citizen and an elector of this state, but need not be a resident of the district in which ~~he is~~ appointed to serve; ~~provided, that so.~~ So far as practicable, preference shall be given in making such appointments to residents of the districts.

(3) The department of ~~revenue~~ may ~~in its discretion~~ transfer any ~~assessor of incomes or~~ supervisor of assessments from one district to another.

(4) Each ~~assessor of incomes and~~ supervisor of assessments shall be under the complete direction and control of the department of ~~revenue~~, and shall make such reports to the department, and to such other bodies and perform such other duties, as the department ~~shall direct~~ directs. The supervisor of assessments shall meet with the equalization committee of the county board of each county not under a county assessor system, and of each county in which the county assessor is not required under s. 70.99 (9m) to meet with the county board, not later than the first Monday in October in each year pursuant to 5 days' notice by the county clerk of the time and place of ~~such~~ the meeting mailed to the clerk of each town, city and village in ~~such~~ the county for the purpose of considering ~~his~~ taxation district values required for the purpose of determining the valuations ~~pursuant to~~ under s. 70.61 before referring such values to the department of ~~revenue~~ for its approval for submission to the county board.

SECTION 8. 73.07 (title), (1) and (3) of the statutes are amended to read:

**73.07 (title) District offices, supplies, expenses.** (1) The county board of any county when requested to do so by the department of revenue ~~or the assessor of incomes~~ shall provide suitable rooms in the courthouse or other convenient building at the county seat, for the use of ~~such assessor~~ the department's district income tax office together with all furniture, fixtures, office equipment and office supplies necessary to properly conduct the duties of such office and necessary for the collection of income taxes of persons other than corporations by the department of revenue as provided by law. Such expense shall be paid by the county furnishing the same unless ~~such~~ the county is a part of an income assessment district. The expense of the district income tax office of the assessor of incomes, including rental of office space at not to exceed \$3.50 per square foot per annum together with the actual cost of heat, light and janitor

service connected therewith, and of the collection of income tax shall be borne by all the counties in the district, each county to pay at the ratio that the total normal income tax paid during the preceding calendar year by residents of the county bears to the total normal income tax paid during the preceding calendar year by residents of the district. Any county may agree with the department of revenue to pay the rent, heat, light and janitor service of offices outside the courthouse in consideration of the offices being located in such county. If any county fails or refuses to furnish such quarters, equipment and supplies for the use of ~~the assessor of incomes~~ the department's district income tax office as ~~herein~~ provided in this subsection, the department of ~~revenue~~ may procure the same at the expense of the counties responsible therefor. The rent of such office and the cost of such equipment and supplies, if procured by the department of ~~revenue~~, shall in the first instance, be paid out of the state treasury as other claims against the state are audited and paid, and the department of revenue shall certify to the department of administration the part of such amount chargeable against each county and these amounts shall be included in the next apportionment and certification of state taxes and charges and collected from such counties as other special charges are certified and collected. In case any county which is a part of an income assessment district provided for in s. 73.05 has, at the request of the department of revenue ~~or assessor of incomes~~, provided such district with office space and the heat, light and janitor service connected therewith, furniture, fixtures, office equipment or office supplies, and any other county in the district fails or refuses to pay its proper proportion ~~thereof~~ the amount shall be paid by the department of revenue and certified to the department of administration to be certified as a special charge against such county as provided above.

(3) The county board of any county shall also provide rooms as provided in sub. (1) for the use of the tax appeals commission upon the request of the chairman of ~~said~~ the commission. Hearings of ~~said~~ the commission may also be held in ~~the office of any assessor of incomes or supervisor of assessments~~ the department's district income tax office when the chairman of the commission deems it advisable.

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