

(3) EXCEPTIONS. Non-processible documents or remittances, or both, as described in writing to the depository bank by the department's revenue accounting section, shall be exceptions to the treatment provided in sub. (1) and shall not be validated. Instead, they shall be sent to the department's revenue accounting section with the envelopes in which they were received.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. (1) (a) and (b) 4. and (2), Register, September, 1983, No. 333, eff. 10-1-83; renum. (1) and (2) to be (2) and (3) and am. (2) (a), cr. (1), Register, July, 1987, No. 379, eff. 8-1-87; am. (1), (2) (a) and (3), r. (2) (b), Register, June, 1990, No. 414, eff. 7-1-90.

Tax 1.11 Requirements for examination of returns. (ss. 70.375 (2) (b), 71.78, 72.06, 77.61 (5), 77.76 (3), 77.79, 78.80 (3) and (4), 139.11 (4), 139.38 (6) and 139.82 (6), Stats.) (1) PUBLIC OFFICER DEFINED. In this section, "public officer" means any person appointed or elected according to law, who has continuous duties, has taken an oath of office and who is responsible for the exercise of some portion of the sovereign power of this state, another state or the United States, in which the public has a concern. One, but not the sole, indicium of responsibility for exercising the sovereign power is the authority to make final policy with regard to those duties of a public officer requiring access to tax files under this section.

(2) GENERAL. The provisions of ss. 70.375 (2) (b), 71.78, 72.06, 77.61 (5), 77.76 (3), 77.79, 78.80 (3) and (4), 139.11 (4), 139.38 (6) and 139.82 (6), Stats., apply to the examination of mining net proceeds, income, franchise, gift, fiduciary, partnership, inheritance, estate, sales and use, county sales and use, withholding, motor fuel, general aviation fuel, special fuel, fermented malt beverage, distilled spirits and wine, cigarette and tobacco product tax returns and tax credit claims. No person may examine or receive information from a tax return or tax credit claim unless specifically authorized to do so by the appropriate statute.

(3) PERSONS WHO MAY EXAMINE RETURNS. (a) *Public officers of the federal government or other state governments.* No information may be divulged to a public officer of the federal government or another state government or the authorized agents of the officer under the provisions specified in sub. (2) unless the information requested is necessary in the administration of the tax laws of the government; the government accords similar rights of examination or information to the Wisconsin department of revenue; the government has entered into an agreement with the department for the disclosure or exchange of information; and the public officer first complies with all of the following:

1. Specifies in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office and the relation of the purpose to the duties of the office.

2. Specifies in writing the name, address and title of the agent authorized to examine tax returns.

3. Provides evidence that he or she is a public officer.

(b) *Members of the joint, senate or assembly committee on legislative organization.* 1. No information may be divulged to members of the joint committee on legislative organization, senate committee on organization or assembly committee on organization, or to any agent of these commit-

tees under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

a. Specification in writing of the purpose for each requested examination and the relation of the purpose to the official duties of the committee requesting the examination of tax returns.

b. Specification in writing of the name, address and title of the committee member or agent authorized to examine tax returns.

c. Certification by the chairperson of the committee that the committee, by a majority vote of a quorum of its members, has approved the requested examination of tax returns by the committee member or agent.

2. Sales and use tax returns may not be examined by the joint committee on legislative organization.

(a) *Attorney general or department of justice employes.* No information may be divulged to the attorney general or department of justice employes under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

1. The attorney general shall specify in writing the purpose for each requested examination, the statutory authority or other authority showing the duties of the office and the relation of the purpose to the duties of the office.

2. Each requested examination by a department of justice employe shall include the data in par. (c) 1 and an authorization identifying the employe by name, address and title. The authorization shall be signed and approved by the attorney general on whose behalf the department of justice employe is acting.

(d) *District attorneys.* No information may be divulged to district attorneys under the provisions specified in sub. (2) unless the following requirements are first complied with:

1. The tax information to be examined by the district attorney is for use in preparation for a judicial proceeding or an investigation which may result in a judicial proceeding involving any of the taxes or tax credits referred to in sub. (2) and one of the following applies:

a. The taxpayer is or may be a party to the proceeding.

b. The treatment of an item reflected in the tax information is or may be related to the resolution of an issue in the proceeding or investigation.

c. The tax information relates or may relate to a transactional relationship between the taxpayer and a person who is or may be a party to the proceeding which affects or may affect the resolution of an issue in the proceeding or investigation.

2. The district attorney specifies in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office and the relation of the purpose to the duties of the office.

(e) *Employes of this state.* No information may be divulged to employes of this state under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

1. The public officer of the department, division, bureau, board or commission of this state specifies in writing the purpose for each requested examination, the statutory or other authority showing the duties of the office and the relation of the purpose to the duties of the office, and the name, address and title of the employe of this state authorized to examine returns.

2. The department of revenue deems the examination necessary for the employe to perform his or her duties under contracts or agreements between the department of revenue and the department, division, bureau, board or commission of this state relating to the administration of tax laws or child support enforcement under s. 46.25, Stats.

(f) *Taxpayers and spouses or former spouses of taxpayers.* 1. No information may be divulged to a taxpayer under the provisions specified in sub. (2) unless the taxpayer, an officer of the taxpayer corporation or the authorized representative of the taxpayer provides appropriate identification.

2. No income tax information may be divulge to a taxpayer's spouse or former spouse under the provisions specified in sub. (2) except in the following cases:

a. In the case of a joint income tax return, the spouse or former spouse signed the joint return.

b. In the case of a separate income tax return, for the 1986 tax year and thereafter, the spouse or former spouse shows that the spouse or former spouse may be liable, or the spouse's or former spouse's property is subject to collection, for a delinquency relating to the tax return requested to be examined.

c. In the case of a combined income tax return, for the 1985 tax year and prior tax years, the spouse or former spouse signed the combined return.

(g) *Persons designated by court order.* No information may be divulged to a person designated by a court order under the provisions specified in sub. (2) unless all of the following requirements are first complied with:

1. The person serves a copy of the court order signed by a judge of a court of record on the custodian of files.

2. The order recites that the information contained in the tax return requested to be examined is relevant to the pending action for which the order is issued.

(4) **SPECIAL SITUATIONS.** (a) *Board of arbitration.* A member of the board of arbitration established under s. 71.10 (7), Stats., or a consultant under joint contract with the states of Minnesota and Wisconsin may examine income tax returns for purposes of determining the reciprocity loss to which either state is entitled.

(b) *Commissioner of insurance.* The office of the commissioner of insurance may request and receive a list of names and addresses of persons who indicate they are self-insurers on their annual withholding reports. The office of the commissioner of insurance may not examine tax returns of persons appearing on the list.

(c) *Legislative fiscal bureau.* Employees of the legislative fiscal bureau, to the extent the department deems the examination necessary to perform their duties under contracts or agreements between the department of revenue and the legislative fiscal bureau relating to the review and analysis of tax policy and state revenue collections, may examine tax returns under the provisions specified in sub. (2), except state and county sales and use tax returns.

(d) *Lottery board.* The executive director of the lottery board may request examination of tax returns for the purpose of withholding delinquent Wisconsin taxes, child support and other debts owing this state.

(e) *Department of development.* The secretary of the department of development and employees of that department may examine tax returns, except state and county sales and use tax returns, under the provisions specified in sub. (2), to the extent necessary to administer the development zone program under subch. VI of ch 560, Stats.

(f) *Refund setoffs.* The department may supply the address of a debtor to an agency certifying a debt of the debtor under the refund setoff provisions of s. 71.93, Stats.

(g) *Successor, guarantor or surety.* Any person against whom the department asserts liability under ch. 77, Stats., may examine the related sales and use tax returns.

(h) *Agreements.* The department may, when satisfied that the restrictions imposed under sub. (2) will be adequately safeguarded and a beneficial tax purpose is demonstrated, enter into agreements with governmental officials whereby information is disclosed or exchanged. In these instances, the requirements of this section may be modified in the discretion of the department.

(5) **FORM OF REQUEST.** (a) With each requested examination under subs. (3) and (4), there shall also be submitted in writing or by other means as approved by the department all of the following:

1. The name and address of each taxpayer whose return is requested.
2. The type of tax return or tax credit claim, such as mining net proceeds, income, franchise, gift, homestead credit, or sales and use tax.
3. The taxable period.
4. The taxpayer's social security number, if available, in the case of returns relating to individuals.
5. In the case of a request by a public officer, a statement indicating that the authorized agent understands the provisions specified in sub. (2) and that any 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 shall be deemed in violation of the provisions specified in sub. (2).

(b) The information required to be submitted to the department under sub. (5) (a) shall be submitted on forms provided by the department and shall be open to inspection by the public for a period of 2 years from the date the information is filed with the department. If a public officer, the attorney general or a district attorney responsible for enforcement of the criminal laws, in the statement required under sub. (3), declares that a

return is being examined for the purpose of a criminal investigation, the department shall accept that declaration as prima facie evidence of the fact that making the knowledge public would result in harm to the public interest which outweighs any benefit that would result from making it public, and the department shall not make the knowledge public for a period of 30 days from the date of filing the statement.

History: Cr. Register, August, 1975, No. 236, eff. 9-1-75; am. (4) and cr. (5), Register, January, 1976, No. 241, eff. 2-1-76; emerg. cr. (9), eff. 12-31-78; am. (1) (Intro.) and (a) and (2), r. (1) (b), renum. (1) (c) to be (1) (b) and am., renum. (3) to (5) to be (6) to (8) and am. (7) and (8), cr. (3) to (5), Register, January, 1979, No. 277, eff. 2-1-79; cr. (9), Register, March, 1979, No. 279, eff. 4-1-79; am. (1) (Intro.) and (b), (4) (a), r. (9), Register, July, 1981, No. 307, eff. 8-1-81; am. (1) (b), (2) (c), (3) (c), (4) (a) and (c) and (5) (b), Register, June, 1983, No. 330, eff. 7-1-83; am. (5) (Intro.) and (d), Register, September, 1983, No. 333, eff. 10-1-83; r. and recr. Register, January, 1991, No. 421, eff. 2-1-91.

Tax 1.13 Power of attorney. (ss. 71.78 (4) (e), 72.06, 77.61 (5) (b) 5a, 77.76 (3), 78.80 (3) 139.11 (4), 139.38 (6) and 139.82 (6), Stats.) (1) **POWER OF ATTORNEY.** (a) A power of attorney or other written authorization executed by the taxpayer shall be required by the Wisconsin department of revenue for the taxpayer's representative, on behalf of the taxpayer, to:

1. Inspect confidential information, e.g., tax returns and audit reports.
2. Receive notices, assessments, determinations, redeterminations, tax forms, billings, refunds, communications and correspondence containing confidential information.
3. Represent the taxpayer at conferences.
4. Execute a waiver to extend the statutory period for assessment or collection of a tax.
5. Execute any other waivers or agreements in behalf of the taxpayer.

(b) The power of attorney requirement applies to income, franchise, alternative minimum, withholding, gift, sales and use, county sales and use, inheritance, estate, motor fuel, general aviation fuel, special fuel, fermented malt beverage, intoxicating liquor, cigarette and tobacco products tax matters of individuals, partnerships and corporations, including (S) corporations, and homestead and farmland preservation credit matters.

(2) **EXCEPTIONS.** (a) A power of attorney is not required for a taxpayer's representative to inspect confidential information or to represent the taxpayer at conferences, if the representative is accompanied by the taxpayer or, if a corporation, by an officer or authorized employe of the corporation.

(b) Generally a power of attorney is not required in the case of a trustee, receiver, guardian, administrator or executor of an estate, or a representative appointed by a court.

(3) **FILING OF POWER OF ATTORNEY.** (a) One power of attorney form shall be filed with the Wisconsin department of revenue, with one additional copy for each additional tax matter.

Example. If a power of attorney covers 2 tax matters, e.g., income tax and sales tax, 2 power of attorney forms shall be filed.

(b) One power of attorney form shall be filed in each office of the department in which the taxpayer's representative, in connection with the matter under consideration, intends performing one or more of the acts enumerated in sub. (1).

(4) FORM OF POWER OF ATTORNEY. (a) Power of attorney forms are available from any Wisconsin department of revenue office. The Wisconsin form, Form A-222, is similar to the federal power of attorney form, Form 2848.

(b) Use of the Wisconsin power of attorney form is not mandatory. However, the department prefers that this form or another similar form be used. The Wisconsin power of attorney form or substitute form shall clearly express the scope of the authority granted the taxpayer's representative, the Wisconsin tax matters, e.g., income, sales, or gift tax, covered and the tax year or period to which it relates.

Note: A supply of forms may be obtained from the department at 4638 University Avenue, Madison, Wisconsin 53705 or from any other department of revenue office located throughout the state, or by mail request to P.O. Box 8903, Madison, Wisconsin 53708.

History: Cr. Register, February, 1978, No. 266, eff. 3-1-78; am. (1) (b), Register, September, 1983, No. 333, eff. 10-1-83; am. (1) (a) 1, and (b), (3) (a) and (4), Register, July, 1987, No. 379, eff. 8-1-87; am. (1) (a) 2, and (b), (2) (b), (3) (a) and (4) (b), Register, February, 1990, No. 410, eff. 3-1-90.