



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

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:

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

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.

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

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

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

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

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

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

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

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

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

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

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

SECTION 9337. Initial applicability; Revenue.

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

(END)