



State of Wisconsin
1997 - 1998 LEGISLATURE

LRB-5172/2
JS/RPN/MES/PEN:all:km

1997 ASSEMBLY BILL 963

March 26, 1998 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 71.65 (2) (b), 71.70 (1), 71.70 (2), 71.72, 71.77 (7) (a), 72.23,
2 77.52 (2) (a) 1., 77.54 (11), 77.54 (36), subchapter IV (title) of chapter 78
3 [precedes 78.64], 78.75 (1m) (a) 3., 125.14 (2) (e), 139.40 (2), 812.37 (1) and
4 812.44 (1) (b); **to repeal and recreate** 71.65 (5) and 71.73 (2); and **to create**
5 71.80 (6m) and 812.44 (1) (bg) of the statutes; **relating to:** the forms used to
6 claim motor vehicle fuel tax refunds; replacing obsolete references to “special
7 fuel” and “motor fuel”; authorizing the department of revenue to give seized
8 cigarettes to law enforcement officers for use in criminal investigations; seized
9 alcohol beverages; unpaid instalments of the estate tax; garnishment of
10 earnings by debtors; the place of trial for criminal violations of certain income
11 and franchise tax provisions; the statute of limitations for income taxes and
12 franchise taxes; income tax information returns; and defining “one month” for

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1 the sales tax on certain rentals (suggested as remedial legislation by the
2 department of revenue).

Analysis by the Legislative Reference Bureau

This bill conforms the requirements for the motor vehicle fuel tax refund forms to the exemptions from that tax.

This bill replaces obsolete references to “special fuel” with the appropriate term, “alternate fuel”, and replaces references to “motor fuel” with “motor vehicle fuel”.

This bill authorizes the department of revenue to give cigarettes that it seizes to law enforcement officers for use in criminal investigations.

Current law authorizes law enforcement officers to seize all alcohol beverages that are owned, possessed, kept, stored, manufactured, sold, distributed or transported in violation of state law. Upon conviction of a person for such violations, the seized alcohol beverages are turned over to the department of revenue (DOR) to be given to state-operated veterans’ hospitals in amounts needed for medicinal purposes, to be sold to the highest eligible bidder or to be destroyed, at the discretion of DOR, except that seized alcohol beverages that are unfit for sale must be destroyed. If sold, the net proceeds from the sale, less all costs of seizure, storage and sale, are turned over to the state treasurer and credited to the common school fund, or are refunded to a person who has a security interest in the seized beverages and who was not involved in the violation.

This bill authorizes DOR, in addition to the disposal alternatives presently available, to dispose of seized alcohol beverages by giving the beverages free of charge to law enforcement agencies for use in criminal investigations.

Under current law, if an instalment payment of the estate tax is not paid when it is due, the unpaid portion of the tax and interest is due. Under this bill, in that circumstance the entire balance of the tax and interest is due.

Current law requires every party in an earnings garnishment action to use the earnings garnishment forms set forth in the statutes. However, current law also provides that the exemptions mentioned in those forms do not apply to certain types of judgment debts, including debts for unpaid taxes. The forms set forth in the statutes are misleading for garnishments involving debts in which exemptions are not allowed. This bill requires creditors who are seeking an earnings garnishment for a judgment debt in which exemptions are not allowed to amend the garnishment forms to inform the garnishee and debtor of the lack of exemptions.

This bill specifies that a trial for criminal violations of certain income and franchise tax provisions may be held in either Dane County or in the county in which the defendant resides or is located when charged with the violation.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

Under current law, if for income-tax purposes a taxpayer reports less than 75% of his or her net income and if the taxes on the additional income are more than \$100

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for individual returns and more than \$200 for joint returns, the department of revenue may assess additional taxes or issue a refund within 6 years after the return is filed. This bill rewords the rule so as to indicate its application to taxpayers other than individuals.

This bill changes the dates on which certain persons must report to DOR on rents, royalties and payments other than wages that they pay. The new dates coincide with the dates under federal law. The bill also requires those persons to furnish the recipients of those payments with a copy of those reports. Under current law, DOR may grant an extension of no more than 30 days for the reports to DOR on payments other than wages and for reports to employes on wage payments. This bill retains the extension for reports to employes on wage payments and allows an extension of no more than 60 days for the reports to DOR on rents, royalties and payments other than wages.

Under current law, the rental for a continuous period of one month or more of a mobile home that is used as a residence is exempt from the sales tax, and the furnishing of public accommodations for a continuous period of less than one month is subject to the sales tax. For both purposes, "one month" is defined as a calendar month. Under this bill, for those purposes, "one month" is defined as a calendar month or 30 days, whichever is less, counting the first day of residence or the rental and not counting the last day of residence or the rental.

For further information see the *state and local* 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:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of revenue and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 71.65 (2) (b) of the statutes, as affected by 1997 Wisconsin Act 27,
2 is amended to read:

3 71.65 (2) (b) Every resident of this state and every nonresident carrying on
4 activities within this state, whether taxable or not under this chapter, who pays in
5 any calendar year for services performed within this state by an individual
6 remuneration which is excluded from the definition of wages, in the amount of \$600
7 or more, shall, on or before ~~January 31 of the succeeding year~~ February 28 of the year

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1 following the year in which the payments are made, furnish a statement in such form
2 as required by the department, disclosing the name of the payor, the name and
3 address of the recipient and the total amount paid in such year to such recipient. The
4 person who pays for the services shall, on or before January 31 of the year in which
5 the statement is required to be furnished to the department, furnish the recipient of
6 the payment with a copy of that statement. In any case in which an individual
7 receives wages and also remuneration for services which remuneration is excluded
8 from such definition, both from the same payor, the wages and the excluded
9 remuneration shall both be reported in the report required under this subsection in
10 a manner satisfactory to the department, regardless of the amount of the excluded
11 remuneration.

NOTE: Currently, payments for services which are excluded from the definition of wages must be reported to the department of revenue (DOR) by January 31 of the following year. Federal law provides that this information must be reported to the recipient by January 31 and to the internal revenue service, by February 28. This provision changes the dates to coincide with the dates required under federal law and provides that the person who pays for the service must furnish the recipient of the payment with a copy of the statement.

12 **SECTION 2.** 71.65 (5) of the statutes is repealed and recreated to read:

13 71.65 (5) EXTENSIONS. (a) If an employer applies for an extension and shows
14 good cause why an extension should be granted, the department may grant the
15 following extensions for the following statements:

16 1. Thirty days for filing a wage statement under sub. (1).

17 2. Sixty days for filing a statement of nonwage payments under sub. (2) (b).

18 (b) No extension under par. (a) extends the time to deposit with the public
19 depository or pay to the department amounts that are required to be deducted and
20 withheld under this subchapter.

NOTE: Currently, DOR may grant an extension of no more than 30 days for reports to the employees and DOR on payments. This provision allows an extension not to exceed

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30 days for reports to employes on wage payments and an extension for not more than 60 days for filing a statement of nonwage payments.

1 **SECTION 3.** 71.70 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is
2 amended to read:

3 **71.70 (1) PERSONS OTHER THAN CORPORATIONS.** Persons other than corporations
4 deducting rent or royalties in determining taxable income shall file a report that
5 shows the amounts and the name and address of all natural persons who are
6 residents of this state and to whom royalties of \$600 or more were paid during the
7 taxable year; and the amounts and the name and address of all natural persons to
8 whom rent of \$600 or more is paid during the taxable year for property having a situs
9 in this state. Such information shall be filed ~~at the time of filing the income tax~~
10 ~~return on which such payments are deducted or at such other time as the department~~
11 prescribes on or before February 28 of the year following the year in which the
12 payments were made. The person who deducts rent or royalties shall, on or before
13 January 31 of the year in which the report is required to be furnished, furnish the
14 recipient with a copy of that report.

NOTE: This provision changes the date of filing by persons, other than corporations, who deduct rent or royalties in determining taxable income. The reporting date is changed from the time of the filing of the income tax return on which the payments are deducted or such other time as the department prescribes to February 28 of the year following the year in which the payments were made, to coincide with federal law. It further requires a copy of the report to be furnished to the recipient of the rent or royalties.

15 **SECTION 4.** 71.70 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is
16 amended to read:

17 **71.70 (2) CORPORATIONS.** All corporations doing business in this state shall file,
18 on or before March 15, any information relative to payments made within the
19 preceding calendar year of rents and royalties to all natural persons taxable thereon
20 under this chapter. A corporation shall, on or before January 31 of the year in which

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1 the statement is required to be furnished to the department, furnish the recipient of
2 the payment with a copy of that statement.

NOTE: This provision adds a requirement that a corporation shall, on or before January 31 of the year in which the statement of rent and royalty payments to natural persons is filed, furnish a copy of the statement to the recipient of the rent or royalties.

3 **SECTION 5.** 71.72 of the statutes, as affected by 1997 Wisconsin Act 27, is
4 amended to read:

5 **71.72 Statement of nonwage payments.** Every resident of this state and
6 every nonresident carrying on activities within this state, whether taxable or not
7 under this chapter, who pays in any calendar year for services performed within this
8 state by an individual remuneration which is excluded from the definition of wages
9 in s. 71.63 (6), in the amount of \$600 or more, shall, on or before ~~January 31 of the~~
10 ~~succeeding year~~ February 28 of the year following the year in which the payments
11 were made, file a statement disclosing the name of the payor, the name and address
12 of the recipient and the total amount paid in such year to such recipient. The person
13 who pays for the services shall, on or before January 31 of the year in which the
14 statement is required to be furnished to the department, furnish the recipient of the
15 payment with a copy of that statement. In any case in which an individual receives
16 wages, as defined in s. 71.63 (6), and also remuneration for services which
17 remuneration is excluded from such definition, both from the same payor, the wages
18 and the excluded remuneration shall both be reported in the statement required by
19 s. 71.71 (2) in a manner satisfactory to the department, regardless of the amount of
20 the excluded remuneration.

NOTE: This provision changes the requirement that the statement of nonwage payments be filed on or before January 31 of the succeeding year to February 28 of the year following the year in which the payments are made. It further requires the person who pays for the services to furnish the recipient of the payments with a copy of the statement on or before January 31 of the year in which the statement is required to be furnished to DOR.

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1 **SECTION 6.** 71.73 (2) of the statutes is repealed and recreated to read:

2 71.73 (2) EXTENSIONS. If an employer applies for an extension and shows good
3 cause why an extension should be granted, the department of revenue may grant the
4 following extensions for the following statements:

5 (a) Sixty days for filing a rent and royalty statement under s. 71.70.

6 (b) Thirty days for filing a wage statement under s. 71.71.

7 (c) Sixty days for filing a statement of nonwage payments under s. 71.72.

NOTE: This provision amends the current statute which allows DOR to grant an extension to a person, partnership or limited liability company, not to exceed 30 days in which to furnish its employes and DOR with written statements of wages and withholding and nonwage payments to permit extensions not to exceed 60 days for filing a rent and royalty statement, 30 days for filing a wage statement and 60 days for filing a statement of nonwage payments.

8 **SECTION 7.** 71.77 (7) (a) of the statutes is amended to read:

9 71.77 (7) (a) If notice of assessment is given within 6 years after a return was
10 filed and if on that return the taxpayer reported for taxation ~~on his or her return~~, or
11 the taxpayers jointly reported for taxation, less than 75% of the net income properly
12 assessable, except that no assessment of additional income may be made under this
13 subsection for any year beyond the period specified in sub. (2) unless the aggregate
14 of the taxes on the additional income of such year is in excess of \$100 in the case of
15 ~~an individual or a separate return~~ a return other than a joint return or \$200 in the
16 case of a joint return.

NOTE: This provision removes an ambiguity in s. 71.77 (7) (a) as to whether the 6-year statute of limitations on notice of assessments applies to corporations. If a corporation reports less than 75% of its net income and the taxes on the additional income are more than \$100, DOR may assess additional taxes or issue a refund within 6 years after the return is filed.

17 **SECTION 8.** 71.80 (6m) of the statutes is created to read:

ASSEMBLY BILL 963**SECTION 8**

1 71.80 **(6m)** VENUE. A proceeding for a criminal violation under this chapter
2 may be brought in the circuit court for Dane County or for the county in which the
3 defendant resides or is located when charges with the violation.

NOTE: This provision authorizes a trial for criminal violations of income tax laws to be held either in Dane County or the county in which the defendant resides or is located when charged with the violation.

4 **SECTION 9.** 72.23 of the statutes is amended to read:

5 **72.23 Acceleration and interest.** If the tax imposed by this chapter is not
6 paid when it is due under s. 72.22, interest is due and payable at the rate of 12% per
7 year from date of death. In computing time under this section, the day of death is
8 excluded. If any payment of tax or interest under s. 72.225 is not paid when due, the
9 ~~unpaid portion~~ of the tax and interest due shall be paid upon notice by the
10 department.

NOTE: This provision provides a default on an instalment arrangement for payment of overdue taxes results in the entire remaining balance of tax and interest being payable, not just the overdue instalments.

11 **SECTION 10.** 77.52 (2) (a) 1. of the statutes is amended to read:

12 77.52 **(2)** (a) 1. The furnishing of rooms or lodging to transients by hotelkeepers,
13 motel operators and other persons furnishing accommodations that are available to
14 the public, irrespective of whether membership is required for use of the
15 accommodations, including the furnishing of rooms or lodging through the sale of a
16 time-share property, as defined in s. 707.02 (32), if the use of the rooms or lodging
17 is not fixed at the time of sale as to the starting day or the lodging unit. In this
18 subdivision, "transient" means any person residing for a continuous period of less
19 than one month in a hotel, motel or other furnished accommodations available to the
20 public. In this subdivision, "hotel" or "motel" means a building or group of buildings
21 in which the public may obtain accommodations for a consideration, including,

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1 without limitation, such establishments as inns, motels, tourist homes, tourist
2 houses or courts, lodging houses, rooming houses, summer camps, apartment hotels,
3 resort lodges and cabins and any other building or group of buildings in which
4 accommodations are available to the public, except accommodations, including
5 mobile homes as defined in s. 66.058 (1) (d), rented for a continuous period of more
6 than one month and accommodations furnished by any hospitals, sanatoriums, or
7 nursing homes, or by corporations or associations organized and operated
8 exclusively for religious, charitable or educational purposes provided that no part of
9 the net earnings of such corporations and associations inures to the benefit of any
10 private shareholder or individual. In this subdivision, "one month" means a calendar
11 month or 30 days, whichever is less, counting the first day of the rental and not
12 counting the last day of the rental.

NOTE: Currently, the rental for a continuous period of more than one month of accommodations is exempt from the sales tax, and furnishing of public accommodations for a continuous period of one month or less is subject to the sales tax. Since no definition of "one month" is contained in ch. 77, s. 990.01 (21) applies. It defines a month as a calendar month unless otherwise expressed. This provision provides that one month is defined as a calendar month or 30 days, whichever is less, counting the first day of residence or rental and not counting the last day of the residence or rental.

13 **SECTION 11.** 77.54 (11) of the statutes is amended to read:

14 77.54 (11) The gross receipts from the sales of and the storage, use or other
15 consumption in this state of motor vehicle fuel, general aviation fuel or ~~special~~
16 alternate fuel, subject to taxation under ch. 78, unless the motor vehicle fuel or
17 ~~special~~ alternate fuel tax is refunded under s. 78.75 because the buyer does not use
18 the fuel in operating a motor vehicle upon the public highways.

NOTE: This provision changes obsolete references to "special fuel" to "alternate fuel" and replaces references to "motor fuel" with "motor vehicle fuel" to conform to existing fuel tax laws. The statute was not updated when the definitions of fuels were changed in 1993 Wisconsin Act 16.

19 **SECTION 12.** 77.54 (36) of the statutes is amended to read:

ASSEMBLY BILL 963**SECTION 12**

1 77.54 **(36)** The gross receipts from the rental for a continuous period of one
2 month or more of a mobile home, as defined in s. 66.058 (1) (d), that is used as a
3 residence. In this subsection, "one month" means a calendar month or 30 days,
4 whichever is less, counting the first day of the rental and not counting the last day
5 of the rental.

NOTE: This provision amends the exemption from the sales tax for mobile homes
rented for more than one month to provide that one month means a calendar month or
30 days, whichever is less, counting the first day of the rental and not counting the last
day of the rental. This change is made consistent with that in the treatment of s. 77.52
(2) (a) 1.

6 **SECTION 13.** Subchapter IV (title) of chapter 78 [precedes 78.64] of the statutes
7 is amended to read:

CHAPTER 78

SUBCHAPTER IV

PROVISIONS COMMON TO MOTOR VEHICLE

FUEL TAX, GENERAL AVIATION FUEL

TAX AND ~~SPECIAL~~ ALTERNATE FUEL TAX

13 **SECTION 14.** 78.75 (1m) (a) 3. of the statutes, as affected by 1997 Wisconsin Act
14 27, section 2442, is amended to read:

15 78.75 **(1m)** (a) 3. Claims under subd. 1. shall be made and filed. The forms shall
16 indicate that refunds are not available for motor vehicle fuel or alternate fuels used
17 for motorboats, except motorboats exempt from registration as motor vehicles under
18 s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle
19 fuel or alternate fuels used for snowmobiles and that the estimated snowmobile
20 motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and
21 areas. The forms shall indicate that refunds are not available for motor vehicle fuel
22 or alternate fuels used for all-terrain vehicles unless the all-terrain vehicle is

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1 registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate that
2 estimated all-terrain vehicle motor vehicle fuel or alternate fuels tax payments are
3 used for all-terrain vehicle trails and areas. The forms shall also indicate that
4 refunds are not available for the tax on less than 100 gallons. The department shall
5 distribute forms in sufficient quantities to each county clerk.

NOTE: This SECTION reconciles an apparent conflict between s. 78.75 (1m) (a) 3. and
ss. 78.01 (2) (e) and (2m) (f) and 78.75 (1m) (a) 2. which impose a tax on fuel used to operate
recreational motor boats. Current s. 78.75 (1m) (a) 3. appears to indicate that refunds
are available for motor vehicle fuel used for recreational motor boats.

6 **SECTION 15.** 125.14 (2) (e) of the statutes is amended to read:

7 125.14 (2) (e) *Disposal*. The department shall dispose of the alcohol beverages
8 turned over to it by the court by either giving it to law enforcement agencies free of
9 charge for use in criminal investigations, giving it to state-operated veterans'
10 hospitals in amounts needed for medicinal purposes, selling it to the highest bidder
11 if the bidder is a person holding a license or permit issued under this chapter, or
12 destroying it, at the discretion of the department. If the department elects to sell the
13 alcohol beverages, it shall publish a class 2 notice under ch. 985 asking for sealed bids
14 from qualified bidders. Any items or groups of items in the inventory subject to a
15 security interest, the existence of which was established in the proceedings for
16 conviction as being bona fide and as having been created without the secured party
17 having notice that the items were being used or were to be used in connection with
18 the violation, shall be sold separately. The net proceeds from the sale, less all costs
19 of seizure, storage and sale, shall be turned over to the state treasurer and credited
20 to the common school fund.

NOTE: Currently, law enforcement officers are authorized to seize all alcohol
beverages owned, possessed, kept, stored, manufactured, sold, distributed or transported
in violation of state law. The law prohibits DOR from disposing of these beverages by
furnishing them to local and state law enforcement agencies for use in criminal

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investigations. This change authorizes such use in addition to the other uses specifically authorized by statute.

1 **SECTION 16.** 139.40 (2) of the statutes is amended to read:

2 139.40 (2) If cigarettes which do not bear the proper tax stamps or on which
3 the tax has not been paid are so seized they may be given to law enforcement officers
4 to use in criminal investigations or sold to qualified buyers by the secretary, without
5 notice, and. If the cigarettes are sold, after deducting the costs of the sale and the
6 keeping of the property, the proceeds of the sale shall be paid into the state treasury.
7 ~~When~~ If the secretary finds that such cigarettes may deteriorate or become unfit for
8 use in criminal investigations or for sale or that such sale those uses would otherwise
9 be impractical, the secretary may order them destroyed or give them to a charitable
10 or penal institution for free distribution to patients or inmates.

NOTE: Currently, the law is unclear as to whether DOR may dispose of seized cigarettes by furnishing them to local and state law enforcement agencies for use in criminal investigations. This provision authorized DOR to give cigarettes that it seizes to law enforcement officers for this use in addition to other uses specifically authorized by statute.

11 **SECTION 17.** 812.37 (1) of the statutes is amended to read:

12 812.37 (1) ~~The~~ Except as provided in s. 812.34 (1), the debtor may claim an
13 exemption under s. 812.34 (2) (b), or may assert any defense to the earnings
14 garnishment, by completing the answer form and delivering or mailing it to the
15 garnishee. The debtor or debtor's spouse may file an answer or an amended answer
16 at any time before or during the effective period of the earnings garnishment.

NOTE: This provision adds a cross-reference to the statute that provides that in certain cases, the exemptions from garnishment do not apply.

17 **SECTION 18.** 812.44 (1) (b) of the statutes is amended to read:

18 812.44 (1) (b) ~~No~~ Except as provided under par. (bg), no party may use a form
19 substantially different from those in this subchapter as revised under this
20 subsection. No party may alter those forms in a manner that may mislead any other

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1 party. If the court finds that a party has used a misleading form, the court shall
2 award the aggrieved party actual damages, costs and reasonable attorney fees
3 resulting from the additional proceeding.

NOTE: This provision creates an exemption to the required use by parties to
garnishment actions of the statutory forms for garnishment.

4 **SECTION 19.** 812.44 (1) (bg) of the statutes is created to read:

5 812.44 (1) (bg) If the judgment debt meets one of the conditions under s. 812.34
6 (1), the creditor shall amend the forms used under this subchapter to inform the
7 garnishee and debtor that the exemptions provided under s. 812.34 (1) do not apply.

NOTE: This provision provides that the creditor, when it garnishes earnings, does
not have to utilize the required forms if the debt is one to which the exemptions from
garnishment do not apply. In these cases, the creditor is required to amend the forms used
under the chapter, to inform the garnishee and the debtor that the exemptions from
garnishment do not apply.

8 **SECTION 20. Initial applicability.**

9 (1) VENUE IN INCOME TAX CRIMINAL CASES. The treatment of section 71.80 (6m)
10 of the statutes first applies to charges filed on the effective date of this subsection.

11 (2) EARNINGS GARNISHMENT. The treatment of sections 812.37 (1) and 812.44 (1)
12 (b) and (bg) of the statutes first applies to actions commenced on the effective date
13 of this subsection.

14 **SECTION 21. Effective dates.** This act takes effect on the day after publication,
15 except as follows:

16 (1) INCOME TAX INFORMATION RETURNS. The treatment of sections 71.65 (2) (b) and
17 (5), 71.70 (1) and (2), 71.72 and 71.73 (2) of the statutes takes effect on January 1,
18 1999.

19 (END)