

No. 907, A.

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CHAPTER 580

AN ACT to amend 20.552 (55) and 20.800 (10), as affected by chapter 566, laws of 1963, and 52.01 (1); and to repeal and recreate 71.09 (7), as affected by chapter 566, laws of 1963, of the statutes, relating to tax relief for persons aged 65 and over and making appropriations.

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

SECTION 1. 20.552 (55) of the statutes, as repealed and recreated by chapter 566, laws of 1963, is amended to read:

20.552 (55) \$49,850,000 on March 1, 1965, and annually thereafter on March 1, an amount equal to \$55,000,000 less one-half * * * of the aggregate claims approved under s. 71.09 (7) for the previous fiscal year.

SECTION 2. 20.800 (10) of the statutes, as created by chapter 566, laws of 1963, is amended to read:

20.800 (10) On * * * January 1, 1965, and on July 1, 1965, and annually thereafter \$10,300,000 * * * as a nonlapsible appropriation to pay the aggregate claims approved under s. 71.09 (7).

SECTION 3. 52.01 (1) of the statutes is amended to read:

52.01 (1) The parent, spouse and child of any dependent person (as defined in s. 49.01) who is unable to maintain himself shall maintain such dependent person, so far as able, in a manner approved by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person is; but no child of school age shall be compelled to labor contrary to the child labor laws. *For the purpose of determining the ability of a parent, spouse or child to maintain a dependent person, relief granted under s. 71.09 (7) shall not be considered.*

SECTION 4. 71.09 (7) of the statutes, as created by chapter 566, laws of 1963, is repealed and recreated to read:

71.09 (7) The purpose of this subsection is to provide relief to certain persons 65 years of age and over who own or rent their homestead, through a system of income tax credits and refunds, and appropriations from the general fund.

(a) *Definitions.* As used in this subsection, unless the context clearly indicates otherwise:

1. "Income" means the sum of adjusted gross income as defined in s. 71.05 (13a) (c), net income from sources outside the state, alimony, support money, cash public assistance and relief, the gross amount of any pension or annuity (including railroad retirement benefits, all payments received under the federal social security act, and veterans disability pensions), nontaxable interest received from the federal government or any of its instrumentalities, workman's compensation and the gross amount of "loss of time" insurance. It does not include gifts from nongovernmental sources, or surplus food or other relief in kind supplied by a governmental agency.

2. "Household" means a claimant and an individual related to the claimant as husband or wife, and individuals related to the claimant as defined in sub. (6) (b) 1 to 8, all residing in the homestead of the claimant.

3. "Household income" means all income received by all persons of a household in a calendar year while members of such household.

4. "Homestead" means the dwelling, whether owned or rented, and so much of the land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multi-dwelling or multi-purpose building and a part of the land upon which it is built. ("Owned" includes a vendee in possession under a land contract and of one or more joint tenants or tenants in common.) It does not include personal property such as furniture, furnishings or appliances, but a mobile home may be a homestead.

5. "Claimant" means a person who has filed a claim under this subsection and was both domiciled in this state and 65 years of age or over during the entire calendar year preceding the year in which he files claim for relief under this subsection. When 2 or more individuals of a household are able to meet the qualifications for a claimant, they may determine between them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the commissioner of taxation and his decision shall be final. When a homestead is occupied by 2 or more individuals and more than one such individual is able to qualify as a claimant, and some or all such qualified individuals are not related as determined under subd. 2, such individuals may determine between them as to who the claimant shall be. If they are unable to agree, the matter shall be referred to the commissioner of taxation and his decision shall be final.

6. "Rent constituting property taxes accrued" means 25 per cent of the gross rent actually paid in cash or its equivalent in 1964 or any subsequent calendar year by a claimant and his household solely for the right of occupancy of their Wisconsin homestead in such calendar year, and which rent constitutes the basis, in the succeeding calendar year of a claim for relief under this section by such claimant.

7. "Gross rent" means rental paid solely for the right of occupancy (at arms-length) of a homestead, exclusive of charges for any utilities, services, furniture, furnishings or personal property appliances furnished by the landlord as a part of the rental agreement, whether expressly set out in the rental agreement or not. In any case in which the landlord and tenant have not dealt with each other at arms-length and the department is satisfied that the gross rent charged was excessive, the department may adjust such gross rent to a reasonable amount for purposes of this subsection.

8. "Property taxes accrued" means property taxes (exclusive of special assessments, delinquent interest and charges for service) levied on a claimant's homestead in 1964 or any calendar year thereafter pursuant to ch. 70, less the tax credit, if any, afforded in respect of such property by s. 77.63 (3). When a homestead is owned by 2 or more persons or entities as joint tenants or tenants in common and one or more such persons or entities is not a member of claimant's household, "property taxes accrued" is that part of property taxes levied on such homestead (reduced by the tax credit hereinbefore referred to) as reflects the ownership percentage of the claimant and his household. For purposes of this paragraph property taxes are "levied" when the tax roll is delivered to the local treasurer with his warrant for collection. When a claimant and his household own their homestead part of a calendar year and rent the same or a different homestead for part of the same year "property taxes accrued" means only taxes levied on the homestead when both owned and occupied as such by claimant and his household at the time of the levy, multiplied by the percentage of 12 months that such property was owned and occupied by such household as its homestead in such year. When a household sells or otherwise disposes of ownership of its homestead in any year prior to the levy of taxes on such homestead in such year and rents the same or another homestead, "rent constituting property taxes accrued" for such year shall be 25 per cent of gross rent paid after annualization of gross rent paid in such year. (Gross rent paid shall be annualized by dividing actual gross rent paid by the number of months for which paid and multiplying the resulting figure by 12.) When a household owns and occupies 2 or more different homesteads in the same calendar year, property taxes accrued shall relate only to that property occupied by the household as a homestead on the levy date occurring in such calendar year. Whenever a homestead is an integral part of a larger unit such as a farm, or a multi-purpose or multi-dwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the homestead is of the total value.

(b) The right to file claim under this subsection shall be personal to the claimant and shall not survive his death, but such right may be exercised on behalf of a claimant by his legal guardian or attorney-in-fact. When a claimant dies after having filed a timely claim the amount thereof shall be disbursed to another member of the household as determined by the commissioner of taxation. If the claimant was the only member of his household, the claim may be paid to his executor or administrator, but if neither is appointed and qualified within 2 years of the filing of the claim, the amount of the claim shall escheat to the state.

(c) Subject to the limitations provided in this subsection, a claimant may claim as a credit against Wisconsin income taxes otherwise due on his 1964 income, Wisconsin property taxes accrued in 1964 (and having been actually paid by him or his household prior to the filing of such claim) or 1964 rent constituting property taxes accrued or both. If the allowable amount of such claim exceeds the income taxes otherwise due on claimant's 1964 income or if there are no Wisconsin income taxes due on claimant's 1964 income, the amount of the claim not used as an offset against income taxes on 1964 income, after audit by the department of taxation, shall be certified to the department of administration for payment to the claimant by check drawn on the general fund. No such check and no offset against income taxes otherwise payable, or refund of income taxes paid in respect of any such claim shall be charged against any town, city, village or county in the distribution of income taxes under this chapter. No interest shall be allowed on any payment made to a claimant pursuant to this subsection.

(d) No claim in respect of property taxes accrued in 1964 or in respect of 1964 rent constituting property taxes accrued shall be paid or allowed unless such claim is actually filed with and in the possession of the department of taxation on or before April 15, 1965. Subject to the same conditions and limitations, claims may be filed on or before April 15, 1966, and each succeeding year in respect of property taxes accrued and rent constituting property taxes accrued of the next preceding year.

(e) The amount of any claim otherwise payable under this subsection may be applied by the department of taxation against any liability outstanding on the books of the department against claimant, or against any other individual who was a member of his household in the year to which the claim relates.

(f) Only one claimant per household per year shall be entitled to relief under this subsection.

(g) The amount of any claim pursuant to this subsection shall be limited as follows:

1. If the household income of the claimant's household was \$1,000 or less in the year to which the claim relates, the claim shall be limited to 75 per cent of the amount by which the paid property taxes accrued or rent constituting property taxes accrued or both in such year on claimant's homestead is in excess of 5 per cent of such household income.

2. If the household income of claimant's household was more than \$1,000 in the year to which the claim relates, the claim shall be limited to 50 per cent of the amount by which the paid property taxes accrued or rent constituting property taxes accrued or both in such year on claimant's homestead is in excess of 5 per cent of the first \$2,000 of household income and 20 per cent of all household income over \$2,000.

(h) In any case in which paid property taxes accrued or rent constituting property taxes accrued or both in any one year in respect of any one household exceeds \$300, the amount thereof shall, for purposes of this subsection, be deemed to have been \$300.

(i) In administering this subsection, the department of taxation shall make available suitable forms with instructions for claimants, including a form which may be included with or a part of the individual income tax blank.

(j) Every claimant under this subsection shall supply to the department, in support of his claim, reasonable proof of age, rent paid, property taxes accrued and paid, changes of homestead, household membership, household income and size and nature of property claimed as the homestead.

(k) Whenever on the audit of any claim filed under this subsection the department determines the amount thereof to have been incorrectly determined, the department shall redetermine such claim and notify the claimant of such redetermination and the reasons therefor. Such redetermination shall be final unless appealed to the Wisconsin board of tax appeals within 30 days of notice thereof.

(L) In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income taxes are assessed and such assessment shall bear interest from the date of payment or credit of the claim, until refunded or paid, at the rate of one per cent per month. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim or supplied information upon which such excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared 10 per cent of the corrected claim shall be disallowed and if the claim has been paid, or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at one per cent per month from the date of payment until refunded or paid.

(m) In any case in which a homestead is rented by a person from another person under circumstances deemed by the department of taxation to be not at arms-length, it may, with the aid of its property tax division, determine rent constituting property taxes accrued as at arms-length, and, for purposes of this section, such determination shall be final.

(n) Any person aggrieved by the denial in whole or in part of relief claimed under this subsection (except when the denial is based upon late filing of claim for relief or is based upon a re-determination of rent constituting property taxes accrued as at arms-length) may appeal such denial to the Wisconsin board of tax appeals by filing a petition with the board within 30 days after such denial, as provided in s. 73.01 (6) with respect to income tax cases, and review of the board's decision may be had under s. 73.015. For appeals brought under this paragraph or under par. (k), the filing fee required under s. 73.01 (6) (a) shall not apply.

(o) The department shall process claims and allow credits and refunds in full, to the extent of the funds available under s. 20.800 (10).

(p) No claim for relief under this section shall be allowed to any claimant who at the time of filing such claim is a recipient of assistance under s. 49.18, 49.20 or 49.61.

Approved December 11, 1964.