

# State of Wisconsin



September 2011 Special Session  
Senate Bill 23

Date of enactment: **November 16, 2011**  
Date of publication\*: **December 1, 2011**

## 2011 WISCONSIN ACT 68

**AN ACT to amend** 71.09 (11) (d), 71.78 (1m) (a), 71.83 (1) (a) 1., 71.83 (1) (a) 1m., 71.83 (1) (a) 2., 71.83 (1) (a) 3., 71.83 (1) (a) 4., 71.83 (3) (a), 72.06, 73.01 (4) (e) 2., 76.05 (2), 76.14, 76.28 (6) (b), 76.39 (3), 76.645 (2) (intro.), 77.60 (2) (intro.), 77.60 (3), 77.60 (4), 77.61 (5) (a), 77.76 (3), 77.76 (3m), 77.76 (3p), 77.95, 77.982 (2), 77.982 (3), 77.991 (2), 77.9941 (5), 77.9951 (2), 77.9964 (2), 77.9972 (2), 78.68 (3), 78.68 (4), 139.11 (4) (a), 139.25 (3), 139.25 (4), 139.38 (6), 139.82 (6), 227.12 (3), 227.41 (1), 227.41 (3), 227.41 (4), 227.483 (1) and 803.08; and **to create** 73.015 (3), 73.16, 77.61 (6), 227.12 (4) and 227.41 (5) of the statutes; **relating to:** various duties of the Department of Revenue, including issuing declaratory judgments, conducting audits and assessments, asserting liability, allowing claims for refunds, awarding the costs of litigation, prohibiting browsing of returns and claims, imposing penalties related to a taxpayer's negligence, requiring the exercise of rule-making authority, and providing a penalty.

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

**SECTION 1.** 71.09 (11) (d) of the statutes is amended to read:

71.09 (11) (d) The secretary of revenue determines that the taxpayer retired during the taxable year or during the preceding taxable year after having attained age 62 or becoming disabled ~~and that the underpayment was due to reasonable cause and not due to willful neglect except that this paragraph does not apply upon a showing by the department under s. 73.16 (4).~~

**SECTION 2.** 71.78 (1m) (a) of the statutes is amended to read:

71.78 (1m) (a) No person, except the person who filed the return or claim, may inspect a return or claim, or any information derived from a return or claim, that is filed under this chapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

**SECTION 3.** 71.83 (1) (a) 1. of the statutes is amended to read:

71.83 (1) (a) 1. 'Failure to file.' In case of failure to file any return required under s. 71.03, 71.24, 71.44, or 71.775 on the due date prescribed therefor, including any applicable extension of time for filing, ~~unless it is shown that the failure is due to reasonable cause and not due to willful neglect~~ and upon a showing by the department under s. 73.16 (4), there shall be added to the amount required to be shown as tax on the return 5% of the amount of the tax if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. For purposes of this subdivision, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment and by the amount of any credit against the tax which may be claimed upon the return.

**SECTION 4.** 71.83 (1) (a) 1m. of the statutes is amended to read:

\* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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71.83 (1) (a) 1m. 'Failure to file information return.' If a person fails to file a return required under subch. XI by the prescribed due date, including any extension, or files an incorrect or incomplete return, that person may be subject to a penalty of \$10 for each violation. A penalty shall be waived if ~~the person shows that a violation is due to reasonable cause and not due to willful neglect except upon a showing by the department under s. 73.16 (4).~~

**SECTION 5.** 71.83 (1) (a) 2. of the statutes is amended to read:

71.83 (1) (a) 2. 'Incomplete or incorrect return.' If any person required under this chapter to file an income or franchise tax return files an incomplete or incorrect return, ~~unless it is shown that such filing was due to good cause and not due to neglect and upon a showing by the department under s. 73.16 (4),~~ there shall be added to such person's tax for the taxable year 25% of the amount otherwise payable on any income subsequently discovered or reported. The amount so added shall be assessed, levied and collected in the same manner as additional normal income or franchise taxes, and shall be in addition to any other penalties imposed by this chapter. In this subdivision, "return" includes a separate return filed by a spouse with respect to a taxable year for which a joint return is filed under s. 71.03 (2) (g) to (L) after the filing of that separate return, and a joint return filed by the spouses with respect to a taxable year for which a separate return is filed under s. 71.03 (2) (m) after the filing of that joint return.

**SECTION 6.** 71.83 (1) (a) 3. of the statutes is amended to read:

71.83 (1) (a) 3. 'Incomplete or incorrect deposit or withholding report.' If any person required under subch. X to file a deposit report or withholding report files an incomplete or incorrect report, or fails to properly withhold or fails to properly deposit or pay over withheld funds, ~~unless it can be shown that the filing or failure was due to good cause and not due to neglect and upon a showing by the department under s. 73.16 (4),~~ there shall be added to the tax 25% of the amount not reported or not withheld, deposited or paid over. The amount so added shall be assessed, levied and collected in the same manner as additional income or franchise taxes, and shall be in addition to any other penalties imposed in this subchapter. "Person", in this subdivision, includes an officer or employee of a corporation or other responsible person or a member or employee of a partnership or limited liability company or other responsible person who, as such officer, employee, member or other responsible person, is under a duty to perform the act in respect to which the violation occurs.

**SECTION 7.** 71.83 (1) (a) 4. of the statutes is amended to read:

71.83 (1) (a) 4. 'Late filing of withholding report.' In case of failure to file any withholding deposit or pay-

ment report required under s. 71.65 (3) on the due date prescribed therefor, ~~unless it is shown that the failure is due to reasonable cause and not due to willful neglect upon a showing by the department under s. 73.16 (4),~~ there shall be added to the amount required to be shown as withheld taxes on the report 5% of the amount if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate.

**SECTION 8.** 71.83 (3) (a) of the statutes is amended to read:

71.83 (3) (a) If any person required under this chapter to file an income or franchise tax return fails to file a return within the time prescribed by law, or as extended under s. 71.03 (7), 71.24 (7) or 71.44 (3), unless the return is filed under such an extension but the person fails to file a copy of the extension that is granted by or requested of the internal revenue service, the department shall add \$50 to the person's tax if the return is filed under subch. I of this chapter or \$150 to the person's tax if the return is filed under subch. IV or VII of this chapter. If no tax is assessed against any such person the amount of this fee shall be collected as income or franchise taxes are collected. If any person who is required under s. 71.65 (3) to file a withholding report and deposit withheld taxes fails timely to do so ~~and upon a showing by the department under s. 73.16 (4);~~ unless the person so required dies ~~or the failure is due to a reasonable cause and not due to neglect;~~ the department of revenue shall add \$50 to the amount due except that if the person is subject to taxation under subch. IV or VII of this chapter the department shall add \$150 to the amount due.

**SECTION 9.** 72.06 of the statutes is amended to read:

**72.06 Confidentiality of tax returns.** Sections 71.78 (1), ~~(1m),~~ and (4) to (9) and 71.83 (2) (a) 3. ~~and 3m.~~ apply to any information obtained from any person by the department on a death tax return, report, schedule, exhibit or other document or from an audit report pertaining to the tax return.

**SECTION 10.** 73.01 (4) (e) 2. of the statutes is amended to read:

73.01 (4) (e) 2. Except for hearings on ss. 341.405 and 341.45, the department of revenue may choose not to appeal and to nonacquiesce in the decision or order by sending a notice of nonacquiescence to the clerk of the commission, to the legislative reference bureau for publication in the Wisconsin administrative register and to the taxpayer or the taxpayer's representative before the time expires for seeking a review of the decision or order under s. 73.015. The effect of this action is that, although the decision or order is binding on the parties for the instant case ~~and the decision or order may be cited by the commission and the courts,~~ the commission's conclusions of law, the rationale and construction of statutes in

the instant case are not binding upon or required to be followed by the department of revenue in other cases.

**SECTION 11.** 73.015 (3) of the statutes is created to read:

73.015 (3) Except for decisions and orders in small claims matters, as defined in s. 73.01 (1) (b), a conclusion of law or other holding in any decision or order of the tax appeals commission may be cited by the commission or the courts as authority unless that conclusion of law or holding has been reversed, overruled, or vacated on the merits on appeal or by a subsequent decision or order of the commission.

**SECTION 12.** 73.16 of the statutes is created to read:

**73.16 General provision. (1) DEFINITIONS.** In this section:

(a) "Commonly controlled group" has the meaning given in s. 71.255 (1) (c).

(b) "Department" means the department of revenue.

(c) "Person who is a party to the determination" means a person who requests a determination for that person's benefit, files a claim for a refund, or is assessed by the department, but not including any of the following:

1. A person who, on behalf of another person, requests a determination or a claim for a refund or appeals a determination.

2. A shareholder of a tax-option corporation, a member of a limited liability company, or a partner of a partnership, unless such an individual is named or identified in the determination, claim for a refund, or assessment.

3. An anonymous person who requests a determination.

(d) "Published" means prepared and issued for public distribution and does not include guidance on a private matter or issue.

(e) "Written guidance" means a written statement made by an employee of the department acting in an official capacity regarding a Wisconsin tax question to the person or the person's representative.

(2) **RELYING ON PUBLISHED GUIDANCE.** (a) Except as provided in par. (b), in the course of any determination, or in the course of any proceeding appealing any determination, the department shall not take a position that is contrary to any rule promulgated by the department that was in effect during the period related to the determination or that is contrary to any guidance published by the department prior to that period and not subsequently retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the tax appeals commission or courts.

(am) Except as provided in par. (c), in the course of any determination, or in the course of any proceeding appealing a determination, the department shall not take a position that is contrary to any written guidance that was provided to a person who is a party to the determination or the appeal of the determination regarding the same facts as in the determination and not subsequently

retracted, altered, or amended by the department or the legislature or by a final and conclusive decision of the tax appeals commission or courts.

(b) The department may retroactively apply any rule change that is related to implementing a legislative act or a final and conclusive decision of the tax appeals commission or the courts to take effect no earlier than the act's effective date or the date on which the decision became final and conclusive, unless otherwise prescribed by the legislature, tax appeals commission, or court, and only if the department submits the rule's scope statement to the governor for approval under s. 227.135 (2) no later than 18 months after the latter of the legislative act's publication date, effective date, or initial applicability date, or the date on which the decision becomes final and conclusive. A retroactive application of a rule change not described under this paragraph shall be subject to approval under s. 227.185.

(c) With regard to any position taken by the department in any matter described under par. (am), if the department retracts, alters, or amends previously published or previously issued written guidance for any purpose other than to implement a legislative act or final and conclusive decision of the tax appeals commission or courts, the department shall apply the retraction, alteration, or amendment prospectively only, unless the change is to a taxpayer's benefit, in which case, the department shall apply the retraction, alteration, or amendment retroactively. A retroactive change in any previously published or previously issued written guidance related to implementing a legislative act or final and conclusive decision of the tax appeals commission or courts may take effect no earlier than the act's effective date or the date on which the decision became final and conclusive unless otherwise prescribed by the legislature or ordered by the courts.

(4) **NEGLIGENCE DETERMINATIONS.** The department shall not impose a penalty on a taxpayer under ss. 71.09 (11) (d), 71.83 (1) (a) 1. to 4. and (3) (a), 76.05 (2), 76.14, 76.28 (6) (b), 76.39 (3), 76.645 (2), 77.60 (2) (intro.), (3), and (4), 78.68 (3) and (4), and 139.25 (3) and (4), unless the department shows that the taxpayer's action or inaction was due to the taxpayer's willful neglect and not to reasonable cause.

(5) **APPLICABILITY.** Except as provided in sub. (4), notwithstanding any other provision of law, this section applies to all taxes and fees administered by the department.

**SECTION 13.** 76.05 (2) of the statutes is amended to read:

76.05 (2) ~~Ne~~ Upon a showing by the department under s. 73.16 (4), no company shall be allowed in any action or proceeding to question the amount or valuation of its property as assessed by the department unless such company shall have made and filed with the department a full and complete report of the facts and information

prescribed by s. 76.04 and called for by the department thereunder, ~~provided that the refusal or neglect of such company to file the report in time may on application of the company and for good cause shown be excused by the department on condition that such.~~ If the department has not made a showing under s. 73.16 (4), the company shall make a full and complete report of all facts and information mentioned in said s. 76.04 within 15 days after notice by mail of the amount of the assessment of the property of such company, and shall appear before the department at a time designated by it and make a full disclosure of all property liable to assessment and taxation under this subchapter and show the full value of such property to the satisfaction of the department.

**SECTION 14.** 76.14 of the statutes is amended to read:

**76.14 Remedies for nonpayment of taxes.** All taxes levied under this subchapter upon the property of any company defined in s. 76.02, which are not paid at the time provided by law, shall thereupon become delinquent and bear interest at the rate of 1.5% per month until actually paid. ~~The neglect~~ Upon a showing by the department under s. 73.16 (4), the failure of any such company to pay the taxes and interest so required of the company within 60 days after the entry of final judgment dismissing in whole or in part any action of the company to restrain or set aside a tax, or the ~~neglect~~ failure of the company within 60 days after the entry of final judgment in favor of the state for the taxes and interest to pay the judgment shall be cause for forfeiture of all the rights, privileges and franchises granted by special charter or obtained under general laws, by or under which the company is organized and its business is operated. The attorney general upon ~~such neglect~~ the showing by the department under s. 73.16 (4) shall proceed by action to have forfeiture of such rights, privileges and franchises of the company duly declared. Any such company, at any time before the final judgment for forfeiture of such rights, privileges and franchises is rendered, may be permitted ~~upon good cause shown, absent a showing by the department under s. 73.16 (4),~~ to pay the taxes, interest and the costs of the action upon special application to the court in which the action is pending upon such terms as the court directs.

**SECTION 15.** 76.28 (6) (b) of the statutes is amended to read:

76.28 (6) (b) If any light, heat and power company that is required under this section to file a report fails to file a report within the time prescribed by law or as extended under sub. (7), ~~unless it is shown that the failure is due to reasonable cause and not due to willful neglect and upon a showing by the department under s. 73.16 (4),~~ there shall be added to the amount required to be shown as license fees on the report 5% of the amount of such fees if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof

during which the failure continues, not exceeding 25% in the aggregate.

**SECTION 16.** 76.39 (3) of the statutes is amended to read:

76.39 (3) Every railroad company operating in this state shall file annually with the department, on or before April 15, on a form prepared by the department, a true and accurate statement of all rentals paid to each car line company during the previous calendar year and shall remit to the department the amount of the tax required to be withheld under sub. (2). Every car line company, which during the previous calendar year has received gross earnings in this state from a source other than a railroad company operating in this state, shall, on or before April 15, on a form prepared by the department, file with the department a true and accurate statement of such gross earnings in this state and the name of the company from which received and shall remit to the department the amount of the tax imposed under sub. (2) on such gross earnings in this state. The payment dates provided for in sub. (3a) shall apply. Upon written request received by the department before April 15, the department may grant an extension of not to exceed 30 days for the filing of the report and the payment of the taxes levied in this section. If any railroad company or car line company fails to file such report when due, or as extended by the department, ~~unless it is shown that the failure is due to reasonable cause and not due to willful neglect and upon a showing by the department under s. 73.16 (4),~~ there shall be added to the amount required to be shown as gross earnings tax on the report 5% of the amount thereof if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not exceeding 25% in the aggregate. If any railroad company or car line company fails to pay all taxes due within the time prescribed or as extended by the department, the unpaid taxes shall be delinquent, and shall be subject to interest under sub. (4). All taxes, late filing fees, penalties and interest shall be deposited in the general fund.

**SECTION 17.** 76.645 (2) (intro.) of the statutes is amended to read:

76.645 (2) NEGLIGENCE. (intro.) An insurer that fails to pay an amount due, or file a return required, under s. 76.64, ~~unless the insurer shows that the failure is due to reasonable cause and not due to willful neglect and upon a showing by the department of revenue under s. 73.16 (4),~~ is liable for the greater of the following amounts:

**SECTION 18.** 77.60 (2) (intro.) of the statutes is amended to read:

77.60 (2) (intro.) ~~Delinquent~~ Upon a showing by the department under s. 73.16 (4), delinquent sales and use tax returns shall be subject to a \$20 late filing fee unless the return was not timely filed because of the death of the person required to file ~~or unless the return was not timely~~

filed due to good cause and not due to neglect. The fee shall not apply if the department has failed to issue a seller's permit or a use tax registration within 30 days of the receipt of an application for a seller's permit or use tax registration accompanied by the fee established under s. 73.03 (50), if the person does not hold a valid certificate under s. 73.03 (50), and the security required under s. 77.61 (2) has not been placed with the department. Delinquent sales and use taxes shall bear interest at the rate of 1.5% per month until paid. The taxes imposed by this subchapter shall become delinquent if not paid:

**SECTION 19.** 77.60 (3) of the statutes is amended to read:

77.60 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by the department under s. 73.16 (4), the entire tax finally determined shall be subject to a penalty of 25%, or 50% in the case of returns under s. 77.61 (1) (c), of the tax exclusive of interest or other penalty. ~~A person filing an incorrect return shall have the burden of proving that the error or errors were due to good cause and not due to neglect.~~

**SECTION 20.** 77.60 (4) of the statutes is amended to read:

77.60 (4) In case of failure to file any return required under authority of s. 77.58 by the due date, determined with regard to any extension of time for filing, ~~unless it is shown that such failure was due to reasonable cause and not due to neglect~~ and upon a showing by the department under s. 73.16 (4), there shall be added to the amount required to be shown as tax on such return 5% of the amount of such tax if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

**SECTION 21.** 77.61 (5) (a) of the statutes is amended to read:

77.61 (5) (a) It is unlawful for the department or any person having an administrative duty under this subchapter to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof to be seen or examined by any person. This paragraph does not prohibit the department of revenue from publishing statistics classified so as not to disclose the identity of particular returns or reports and the items thereof. This paragraph does not prohibit employees or

agents of the department of revenue from offering or submitting information obtained by investigation or any return or any schedule, exhibit or writing pertaining to a return or any copy of, or information derived from, any of those documents as evidence into the record of any contested matter involving the department in proceedings or litigation on state tax matters if that evidence has reasonable probative value. This paragraph does not prohibit employees or agents of the department of revenue from informing a buyer or seller who has filed a claim for a refund that a refund has been paid to a seller or buyer with respect to the same transaction.

**SECTION 22.** 77.61 (6) of the statutes is created to read:

77.61 (6) (a) No person, except the person who filed the return or claim, may inspect a return or claim, or any information derived from a return or claim, that is filed under this subchapter unless that person does so in performing the duties of his or her position. Violation of this paragraph by a state employee is grounds for dismissal.

(b) If any person is charged with a violation of par. (a), the secretary of revenue shall notify each taxpayer whose return or claim was improperly inspected by that person.

(c) Any person who is notified under par. (b) may bring an action for damages in regard to the inspection.

(d) Any person who violates par. (a) shall upon conviction be fined not less than \$100 nor more than \$500 or imprisoned for not less than one month nor more than 6 months or both.

**SECTION 23.** 77.76 (3) of the statutes is amended to read:

77.76 (3) From the appropriation under s. 20.835 (4) (g) the department shall distribute 98.25% of the county taxes reported for each enacting county, minus the county portion of the retailers' discounts, to the county and shall indicate the taxes reported by each taxpayer, no later than 75 days following the last day of the calendar quarter in which such amounts were reported. In this subsection, the "county portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross county sales and use taxes payable and the denominator of which is the sum of the gross state and county sales and use taxes payable. The county taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the county taxes previously distributed. Interest paid on refunds of county sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (g) at the rate paid by this state under s. 77.60 (1) (a). The county may retain the amount it receives or it may distribute all or a portion of the amount it receives to the towns, villages, cities and school districts in the county. Any county receiving a report under this subsection is subject to the duties of confiden-

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tiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**SECTION 24.** 77.76 (3m) of the statutes is amended to read:

77.76 (3m) From the appropriation under s. 20.835 (4) (gb) the department, for the first 2 years of collection, shall distribute 97% of the taxes reported for each local professional baseball park district that has imposed taxes under this subchapter, minus the district portion of the retailers' discounts, to the local professional baseball park district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. From the appropriation under s. 20.835 (4) (gb) the department, after the first 2 years of collection, shall distribute 98.5% of the taxes reported for each local professional baseball park district that has imposed taxes under this subchapter, minus the district portion of the retailers' discount, to the local professional baseball park district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. At the time of distribution the department shall indicate the taxes reported by each taxpayer. In this subsection, the "district portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross local professional baseball park district sales and use taxes payable and the denominator of which is the sum of the gross state and local professional baseball park district sales and use taxes payable. The local professional baseball park district taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the local professional baseball park district taxes previously distributed. Interest paid on refunds of local professional baseball park district sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (gb) at the rate paid by this state under s. 77.60 (1) (a). Any local professional baseball park district receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**SECTION 25.** 77.76 (3p) of the statutes is amended to read:

77.76 (3p) From the appropriation under s. 20.835 (4) (ge) the department of revenue shall distribute 98.5% of the taxes reported for each local professional football stadium district that has imposed taxes under this subchapter, minus the district portion of the retailers' discount, to the local professional football stadium district no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. At the time of distribution the department of revenue shall indicate the taxes reported by each taxpayer. In this subsection, the "district portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the

numerator of which is the gross local professional football stadium district sales and use taxes payable and the denominator of which is the sum of the gross state and local professional football stadium district sales and use taxes payable. The local professional football stadium district taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the local professional football stadium district taxes previously distributed. Interest paid on refunds of local professional football stadium district sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (ge) at the rate paid by this state under s. 77.60 (1) (a). Any local professional football stadium district receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**SECTION 26.** 77.95 of the statutes is amended to read:

**77.95 Interest and penalties.** The interest and penalty provisions under ss. 71.82 (1) (a) and (b) and (2) (a) and (b), 71.83 (1) (a) 1., 2. and 7. and (b) 1., (2) (a) 1. to 3. 3m. and (b) 1. to 3. and (3) and 71.85, as they apply to the taxes under ch. 71, apply to the surcharge under this subchapter.

**SECTION 27.** 77.982 (2) of the statutes, as affected by 2011 Wisconsin Act 18, is amended to read:

77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5), (13), (14), and (18) to (23), 77.54 (51) and (52), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the tax under this subchapter.

**SECTION 28.** 77.982 (3) of the statutes is amended to read:

77.982 (3) From the appropriation under s. 20.835 (4) (gg), the department of revenue shall distribute 97.45% of the taxes collected under this subchapter for each district to that district and shall indicate to the district the taxes reported by each taxpayer in that district, no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments. Interest paid on refunds of the tax under this subchapter shall be paid from the appropriation under s. 20.835 (4) (gg) at the rate under s. 77.60 (1) (a). Those taxes may be used only for the district's debt service on its bond obligations. Any district that receives a report along with a payment under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**SECTION 29.** 77.991 (2) of the statutes, as affected by 2011 Wisconsin Act 18, is amended to read:

77.991 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the tax under this subchapter. The renter shall collect the tax under this subchapter from the person to whom the passenger car is rented.

**SECTION 30.** 77.9941 (5) of the statutes is amended to read:

77.9941 (5) From the appropriation under s. 20.835 (4) (gd) the department shall distribute 97% of the taxes under this subchapter reported, for each municipality or county that has imposed the tax, minus the municipality's or county's portion of the retailers' discounts, to the municipality or county and shall indicate the taxes reported by each taxpayer, no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were reported. In this subsection, the "municipality's or county's portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross sales and use taxes payable under this subchapter and the denominator of which is the sum of the gross state sales and use taxes and the sales taxes and use taxes payable under this subchapter. The taxes under this subchapter distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the taxes under this subchapter previously distributed. Interest paid on refunds of sales and use taxes under this subchapter shall be paid from the appropriation under s. 20.835 (4) (gd) at the rate paid by this state under s. 77.60 (1) (a). Any municipality or county receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5) and (6).

**SECTION 31.** 77.9951 (2) of the statutes, as affected by 2011 Wisconsin Act 18, is amended to read:

77.9951 (2) Sections 77.51 (3r), (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the fee under this subchapter. The renter shall collect the fee under this subchapter from the person to whom the vehicle is rented.

**SECTION 32.** 77.9964 (2) of the statutes is amended to read:

77.9964 (2) Except as provided in s. 77.9961 (1) (b), (d), and (e), ss. 71.74 (1) to (3), (7), (9), and (10) to (12), 71.75 (1), (2), (6), (7), (9), and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2., and

6., (2) (a) 1. to ~~3.~~ 3m. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under ch. 71 apply to the fees under this subchapter.

**SECTION 33.** 77.9972 (2) of the statutes, as affected by 2011 Wisconsin Act 18, is amended to read:

77.9972 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (6), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the fee under this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the fee under this subchapter. The renter shall collect the fee under this subchapter from the person to whom the passenger car is rented.

**SECTION 34.** 78.68 (3) of the statutes is amended to read:

78.68 (3) If ~~due to neglect~~ an incorrect return is filed, and upon a showing by the department under s. 73.16 (4), the entire tax finally determined is subject to a penalty of 25% of the tax exclusive of interest or other penalty. ~~A person filing an incorrect return has the burden of proving that the error or errors were due to good cause and not due to neglect.~~

**SECTION 35.** 78.68 (4) of the statutes is amended to read:

78.68 (4) In case of failure to file any return required under ss. 78.12, 78.49, and 78.58 by the due date, ~~unless it is shown that that failure was due to reasonable cause and not due to neglect~~ and upon a showing by the department under s. 73.16 (4), there shall be added to the amount required to be shown as tax on that return 5% of the amount of the tax if the failure is for not more than one month, and an additional 5% of the tax for each additional month or fraction thereof during which the failure continues, not exceeding 25% of the tax in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

**SECTION 39.** 139.11 (4) (a) of the statutes is amended to read:

139.11 (4) (a) Sections 71.78 (1), (1m), and (4) to (9) and 71.83 (2) (a) 3. and 3m., relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a fermented malt beverage tax return, report, schedule, exhibit or other document or from an audit report relating to any of those documents, except that the department of revenue shall publish brewery production and sales statistics.

**SECTION 40.** 139.25 (3) of the statutes is amended to read:

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139.25 (3) INCORRECT RETURN. ~~If due to neglect an incorrect return is filed and upon a showing by the department under s. 73.16 (4), the entire tax finally determined is subject to a penalty of 25% of the tax exclusive of interest or other penalty. A person filing an incorrect return has the burden of proving that the error or errors were due to good cause and not due to neglect.~~

**SECTION 41.** 139.25 (4) of the statutes is amended to read:

139.25 (4) FAILURE TO FILE RETURN. In case of failure to file any return required under s. 139.05, 139.06 or 139.11 by the due date, ~~unless it is shown that that failure was due to reasonable cause and not due to neglect and upon a showing by the department under s. 73.16 (4),~~ there shall be added to the amount required to be shown as tax on that return 5% of the amount of that tax if the failure is for not more than one month, and an additional 5% of the tax for each additional month or fraction thereof during which that failure continues, not exceeding 25% of the tax in the aggregate. For purposes of this subsection, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the due date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

**SECTION 42.** 139.38 (6) of the statutes is amended to read:

139.38 (6) Sections 71.78 (1), ~~(1m)~~, and (4) to (9) and 71.83 (2) (a) 3. ~~and 3m.~~, relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a cigarette tax return, report, schedule, exhibit or other document or from an audit report pertaining to the same.

**SECTION 43.** 139.82 (6) of the statutes is amended to read:

139.82 (6) Sections 71.78 (1), ~~(1m)~~, and (4) to (9) and 71.83 (2) (a) 3. ~~and 3m.~~, relating to confidentiality of income, franchise and gift tax returns, apply to any information obtained from any person on a tobacco product tax return, report, schedule, exhibit or other document or from an audit report pertaining to the same.

**SECTION 44.** 227.12 (3) of the statutes is amended to read:

227.12 (3) ~~Within~~ Except as provided in sub. (4), within a reasonable period of time after the receipt of a petition under this section, an agency shall either deny the petition in writing or proceed with the requested rule making. If the agency denies the petition, it shall promptly notify the petitioner of the denial, including a brief statement of the reason for the denial. If the agency proceeds with the requested rule making, it shall follow the procedures prescribed in this subchapter.

**SECTION 45.** 227.12 (4) of the statutes is created to read:

227.12 (4) If a petition to the department of revenue establishes that the department has established a standard

by which it is construing a state tax statute, but has not promulgated a rule to adopt the standard or published the standard in a manner that is available to the public, the department shall, as provided under s. 227.135, submit a statement of the scope of the proposed rule to the governor no later than 90 days after receiving the petition. No later than 270 days after the statement is approved by the governor, the department shall submit the proposed rule in final draft form to the governor for the governor's approval, as provided under s. 227.185. At the department's request, the governor may, at any time prior to the expiration of any deadline specified in this subsection, extend the time for submitting the statement or proposed rule in draft form for any period not to exceed 60 days. The governor may grant more than one extension under this subsection, but the total period for all such extensions may not exceed 120 days. The rule need not adhere to the standard established by the department, but shall address the same circumstances as the standard addresses. If the department fails to comply with this subsection, any of the petitioners may commence an action in circuit court to compel the department's compliance. If an action is commenced under this subsection, the court may compel the department to provide information to the court related to the degree to which the department is enforcing the standard, except that the information provided by the department shall not disclose the identity of any person who is not a party to the action.

**SECTION 46.** 227.41 (1) of the statutes is amended to read:

227.41 (1) ~~Any~~ Except as provided in sub. (5), any agency may, on petition by any interested person, issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforced by it. Full opportunity for hearing shall be afforded to interested parties. A declaratory ruling shall bind the agency and all parties to the proceedings on the statement of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.

**SECTION 47.** 227.41 (3) of the statutes is amended to read:

227.41 (3) ~~The~~ Except as provided in sub. (5) (b), the petition shall be filed with the administrative head of the agency or with a member of the agency's policy board.

**SECTION 48.** 227.41 (4) of the statutes is amended to read:

227.41 (4) ~~Within~~ Except as provided in sub. (5) (c), within a reasonable time after receipt of a petition pursuant to this section, an agency shall either deny the petition in writing or schedule the matter for hearing. If the agency denies the petition, it shall promptly notify the person who filed the petition of its decision, including a brief statement of the reasons therefor.



**SECTION 49.** 227.41 (5) of the statutes is created to read:

227.41 (5) (a) The department of revenue shall, on petition by any interested person, or any group or association of interested persons, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforced by it. The department of revenue may issue a declaratory ruling on the facts contained in the petition. If the department of revenue does not deny the petition or issue a declaratory ruling on the facts contained in the petition, the department of revenue shall hold a hearing, as provided under s. 227.44, and shall afford all interested parties an opportunity to participate in the hearing. A declaratory ruling shall bind the department and all parties to the proceedings on the statement of facts contained in the ruling, unless it is altered or set aside by the tax appeals commission or a court or the applicable rule or statute is repealed or materially amended. A ruling, including the denial of the petition, shall be subject to review by the tax appeals commission as provided in ch. 73.

(b) A petition under par. (a) shall conform to the requirements under sub. (2) and be filed with the secretary of revenue.

(c) No later than 30 days after the day that the secretary of revenue receives a petition under this subsection, the department of revenue shall deny the petition in writing, issue a notice that it will issue a declaratory ruling on the facts contained in the petition, in which case the department of revenue shall issue the ruling no later than 90 days after issuing the notice, or schedule the matter for hearing. The department may deny the petition only if the petition fails to comply with the requirements under sub. (2) and par. (b) or if the department determines that the petition is frivolous, a justiciable controversy does not exist, the ruling would not provide guidance on matters of general applicability, or the ruling would substitute for other procedures available to the parties for resolution of the dispute. If the department denies the petition, it shall promptly notify the person who filed the petition of its decision and include with the notice a brief statement of the reasons for denying the petition. The department may not deny a petition for lack of a justiciable controversy solely because the only parties to the matter are the petitioner and the department.

(d) 1. If the department of revenue does not deny the petition, or issue a notice that it will issue a declaratory ruling based on the facts contained in the petition, the department shall hold a hearing and determine, no later than 180 days after the secretary receives the petition, whether the petitioner has presented sufficient facts from which to issue a declaratory ruling. The department of revenue, petitioner, and other parties may take and preserve evidence prior to and during the hearing using the methods allowed to parties under s. 227.45. With the

agreement of the parties, the department may rule on the petition based on facts stipulated by the parties.

2. If the department determines that it does not have sufficient facts from which to issue a declaratory ruling, the department may deny the petition. If the department determines that it has sufficient facts from which to issue a declaratory ruling, the department shall issue a ruling on the merits of the petition no later than 180 days after the determination, unless the deadline is extended by written agreement of all parties. The ruling may deny the petition on the grounds that petition is frivolous, a justiciable controversy does not exist, the ruling would not provide guidance on matters of general applicability, or that the ruling would substitute for other procedures available to the parties for resolution of the dispute.

**SECTION 50.** 227.483 (1) of the statutes is amended to read:

227.483 (1) If a hearing examiner or the tax appeals commission finds, at any time during the proceeding, that an administrative hearing commenced or continued by a petitioner or a claim or defense used by a party is frivolous, the hearing examiner or tax appeals commission shall award the successful party the costs and reasonable attorney fees that are directly attributable to responding to the frivolous petition, claim, or defense.

**SECTION 51.** 803.08 of the statutes is amended to read:

**803.08 Class actions.** When the question before the court is one of a common or general interest of many persons or when the parties are very numerous and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole, except that no claim may be maintained against the state or any other party under this section if the relief sought includes the refund of or damages associated with a tax administered by the state.

**SECTION 51d. Nonstatutory provisions.**

(1) The department of revenue shall submit as part of its budget proposals for the 2013–15 biennial budget bill a provision that is substantially similar to the provision related to relying on past audits under section 73.16 (3) of the statutes, as created in September 2011 Special Session Senate Bill 23.

**SECTION 52. Initial applicability.**

(1) The treatment of section 803.08 of the statutes first applies to lawsuits that are commenced on the effective date of this subsection.

(2) The treatment of sections 73.01 (4) (e) 2., 73.16 (1), (2), and (5) and 227.483 (1) of the statutes first applies to determinations that are issued on the effective date of this subsection, regardless of whether the amounts at issue relate to transactions that occurred prior to the effective date of this subsection.

(3) The treatment of sections 71.83 (1) (a) 1. to 4. and (3) (a), 73.16 (4), 76.05 (2), 76.14, 76.28 (6) (b), 76.39

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(3), 76.645 (2) (intro.), 77.60 (2) (intro.) (3), and (4), 78.68 (3) and (4), and 139.25 (3) and (4) of the statutes first applies to interest and penalties imposed on the effective date of this subsection, regardless of whether the amounts at issue relate to transactions that occurred prior to the effective date of this subsection.

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(5) The treatment of section 227.41 (1), (3), (4), and (5) of the statutes first applies to petitions filed on the effective date of this subsection.

**SECTION 53. Effective date.**

(1) This act takes effect on the first day of the 3rd month beginning after publication.