



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 775**

February 14, 1996 - Offered by COMMITTEE ON WAYS AND MEANS.

1 **AN ACT** *to renumber and amend* 71.26 (3) (e); *to amend* 71.03 (2) (i) 2., 71.03
2 (2) (j) 1., 71.03 (2) (j) 2., 71.03 (2) (k), 71.03 (2) (m) 1., 71.24 (1), 71.24 (7), 71.44
3 (1) (a), 71.44 (3), 71.77 (8), 71.91 (1) (b), 71.91 (7) (b), 71.91 (7) (d), 71.91 (7) (h),
4 77.60 (2) (c) and 78.80 (1); and *to create* 71.01 (7u), 71.22 (5s), 71.26 (3) (e) 3.,
5 71.34 (1) (h), 71.42 (2s), 71.738 and 71.83 (1) (a) 1m. of the statutes; **relating**
6 **to:** reporting of nontaxable income; extensions for filing corporate income tax
7 and franchise tax returns; denying a tax deduction to certain corporations for
8 wages paid to an entertainer or entertainment corporation if withholding
9 requirements are not met; withholding for income taxes; the date on which a
10 delinquency determination for withholding, sales taxes or use taxes becomes
11 due; allowing the department of revenue to use sampling to determine the
12 liability for fuel taxes; information returns; and determining when late and
13 extended tax returns are considered filed.

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

14 **SECTION 1.** 71.01 (7u) of the statutes is created to read:

1 71.01 (7u) “Last day prescribed by law” has the meaning given in s. 71.738,
2 except that in s. 71.03 (2) (e) 1. and 2. “last day prescribed by law” includes
3 extensions.

4 **SECTION 2.** 71.03 (2) (i) 2. of the statutes is amended to read:

5 71.03 (2) (i) 2. Four or more years from the last ~~date~~ day prescribed by law for
6 filing the return for that taxable year have elapsed, determined without regard to
7 any extension of time granted to either spouse.

8 **SECTION 3.** 71.03 (2) (j) 1. of the statutes is amended to read:

9 71.03 (2) (j) 1. Both spouses filed separate returns before filing the joint return,
10 on the ~~date~~ day when the last separate return was filed, but not earlier than the last
11 ~~date~~ day prescribed by law for filing the return of either spouse.

12 **SECTION 4.** 71.03 (2) (j) 2. of the statutes is amended to read:

13 71.03 (2) (j) 2. Only one spouse filed a separate return before filing the joint
14 return and the other spouse had less than \$3,420 of gross income for that taxable
15 year, on the ~~date~~ day of the filing of that separate return, but not earlier than the last
16 ~~date~~ day prescribed by law for the filing of that separate return.

17 **SECTION 5.** 71.03 (2) (k) of the statutes is amended to read:

18 71.03 (2) (k) *Filing date assumed.* For purposes of s. 71.75, a joint return filed
19 under this section is deemed to be filed on the last ~~date~~ day prescribed by law for filing
20 the return for that taxable year, determined without regard to any extension of time
21 granted to either spouse.

22 **SECTION 6.** 71.03 (2) (m) 1. of the statutes is amended to read:

23 71.03 (2) (m) 1. Except as provided in subds. 3. and 5., for a taxable year for
24 which a joint return has been filed, separate returns may be filed by the spouses on

1 or before the last date day prescribed by law for timely filing the return of either has
2 elapsed.

3 **SECTION 7.** 71.22 (5s) of the statutes is created to read:

4 71.22 (5s) "Last day prescribed by law" has the meaning given in s. 71.738.

5 **SECTION 8.** 71.24 (1) of the statutes is amended to read:

6 71.24 (1) FILING RETURNS. Every corporation, except corporations all of whose
7 income is exempt from taxation and except as provided in sub. (1m), shall furnish to
8 the department a true and accurate statement, on or before March 15 of each year,
9 except that returns for fiscal years ending on some other date than December 31 shall
10 be furnished on or before the 15th day of the 3rd month following the close of such
11 fiscal year and except that returns for less than a full taxable year shall be furnished
12 on or before the date applicable for federal income taxes under the internal revenue
13 code, in such manner and form and setting forth such facts as the department deems
14 necessary to enforce this chapter. Every corporation that is required to furnish a
15 statement under this subsection and that has income that is not taxable under this
16 subchapter shall include with its statement a report that identifies each item of its
17 nontaxable income. The statement shall be subscribed by the president, vice
18 president, treasurer, assistant treasurer, chief accounting officer or any other officer
19 duly authorized so to act. In the case of a return made for a corporation by a fiduciary,
20 the fiduciary shall subscribe the return. The fact that an individual's name is
21 subscribed on the return shall be prima facie evidence that the individual is
22 authorized to subscribe the return on behalf of the corporation.

23 **SECTION 9.** 71.24 (7) of the statutes is amended to read:

24 71.24 (7) EXTENSIONS. In the case of a corporation required to file a return,
25 when sufficient reason is shown, the department of revenue may on written request

1 allow ~~such further time for making and delivering the return as is considered~~
2 ~~necessary, not to exceed 30 days. In the case of a cooperative filing a return or a~~
3 ~~domestic international sales corporation, as defined in s. 71.30 (5), the department~~
4 ~~of revenue may allow an extension not to exceed 6 months. In the case of a foreign~~
5 ~~corporation that does not have an office or place of business in the United States the~~
6 ~~department of revenue may allow an extension not to exceed 3 months an extension~~
7 ~~of 30 days or until the original due date of the corporation's federal return, whichever~~
8 ~~is later, if the corporation has not received an extension on its federal return. Any~~
9 extension of time granted by law or by the internal revenue service for the filing of
10 corresponding federal returns shall extend the time for filing under this subchapter
11 to 30 days after the federal due date if a copy of any extension requested of the
12 internal revenue service is filed with the return. Termination of an automatic
13 extension by the internal revenue service, or its refusal to grant such automatic
14 extension, shall similarly require that any returns due under this subchapter are due
15 on or before 30 days after the date for termination fixed by the internal revenue
16 service. Except for payments of estimated taxes, income or franchise taxes payable
17 upon the filing of the tax return shall not become delinquent during such extension
18 period, but shall be subject to interest at the rate of 12% per year during such period.

19 **SECTION 10.** 71.26 (3) (e) of the statutes is renumbered 71.26 (3) (e) (intro.) and
20 amended to read:

21 71.26 (3) (e) (intro.) Section 162 (relating to trade or business expenses) is
22 modified so as follows:

23 1. So that payments for wages, salaries, commissions and bonuses of employes
24 and officers may be deducted only if the name, address and amount paid to each
25 resident of this state to whom compensation of \$600 or more has been paid during

1 the taxable year is reported or if the department of revenue is satisfied that failure
2 to report has resulted in no revenue loss to this state and so.

3 2. So that payments for rent may be deducted only if the amount paid, together
4 with the names and addresses of the parties to whom rent has been paid, is reported
5 as provided under s. 71.70 (2).

6 **SECTION 11.** 71.26 (3) (e) 3. of the statutes is created to read:

7 71.26 (3) (e) 3. So that payments for wages, salaries, bonuses, interest or other
8 expenses paid to an entertainer or entertainment corporation may be deducted only
9 if the corporation complies with ss. 71.63 (3) (b), 71.64 (4) and (5) and 71.80 (15) (e).

10 **SECTION 12.** 71.34 (1) (h) of the statutes is created to read:

11 71.34 (1) (h) Section 162 of the internal revenue code (relating to trade or
12 business expenses) is modified so that payments for wages, salaries, bonuses,
13 interest or other expenses paid to an entertainer or entertainment corporation may
14 be deducted only if the corporation complies with ss. 71.63 (3) (b), 71.64 (4) and (5)
15 and 71.80 (15) (e).

16 **SECTION 13.** 71.42 (2s) of the statutes is created to read:

17 71.42 (2s) "Last day prescribed by law" has the meaning given in s. 71.738.

18 **SECTION 14.** 71.44 (1) (a) of the statutes is amended to read:

19 71.44 (1) (a) Every corporation, except corporations all of whose income is
20 exempt from taxation and except as provided in sub. (1m), shall furnish to the
21 department a true and accurate statement, on or before March 15 of each year, except
22 that returns for fiscal years ending on some other date than December 31 shall be
23 furnished on or before the 15th day of the 3rd month following the close of such fiscal
24 year and except that returns for less than a full taxable year shall be furnished on
25 or before the date applicable for federal income taxes under the internal revenue

1 code, in such manner and form and setting forth such facts as the department deems
2 necessary to enforce this chapter. Every corporation that is required to furnish a
3 statement under this paragraph and that has income that is not taxable under this
4 subchapter shall include with its statement a report that identifies each item of its
5 nontaxable income. The statement shall be subscribed by the president, vice
6 president, treasurer, assistant treasurer, chief accounting officer or any other officer
7 duly authorized so to act. In the case of a return made for a corporation by a fiduciary,
8 the fiduciary shall subscribe the return. The fact that an individual's name is
9 subscribed on the return shall be prima facie evidence that the individual is
10 authorized to subscribe the return on behalf of the corporation.

11 **SECTION 15.** 71.44 (3) of the statutes is amended to read:

12 71.44 (3) EXTENSIONS. In the case of a corporation required to file a return,
13 when sufficient reason is shown, the department of revenue may on written request
14 ~~allow such further time for making and delivering the return as is considered~~
15 ~~necessary, not to exceed 30 days.~~ In the case of a cooperative filing a return or a
16 ~~domestic international sales corporation, as defined in s. 71.30 (5), the department~~
17 ~~of revenue may allow an extension not to exceed 6 months.~~ In the case of a foreign
18 corporation that does not have an office or place of business in the United States the
19 ~~department of revenue may allow an extension not to exceed 3 months~~ an extension
20 of 30 days or until the original due date of the corporation's federal return, whichever
21 is later, if the corporation has not received an extension on its federal return. Any
22 extension of time granted by law or by the internal revenue service for the filing of
23 corresponding federal returns shall extend the time for filing under this subchapter
24 to 30 days after the federal due date if a copy of any extension requested of the
25 internal revenue service is filed with the return. Termination of an automatic

1 extension by the internal revenue service, or its refusal to grant such automatic
2 extension, shall similarly require that any returns due under this subchapter are due
3 on or before 30 days after the date for termination fixed by the internal revenue
4 service. Except for payments of estimated taxes, income or franchise taxes payable
5 upon the filing of the tax return shall not become delinquent during such extension
6 period, but shall be subject to interest at the rate of 12% per year during such period.

7 **SECTION 16.** 71.738 of the statutes is created to read:

8 **71.738 Definition.** In this subchapter, “last day prescribed by law” means the
9 unextended due date of the return, or of the claim made under subch. VIII.

10 **SECTION 17.** 71.77 (8) of the statutes is amended to read:

11 71.77 (8) For purposes of this section, a return filed on or before the last day
12 prescribed by law for the filing thereof of the return shall be considered as filed on
13 such last day, and a return filed after the last day prescribed by law shall be
14 considered as filed on the date that the return is received by the department of
15 revenue.

16 **SECTION 18.** 71.83 (1) (a) 1m. of the statutes is created to read:

17 71.83 (1) (a) 1m. ‘Failure to file information return.’ If a person fails to file a
18 return required under subch. XI by the prescribed due date, including any extension,
19 or files an incorrect or incomplete return, that person may be subject to a penalty of
20 \$10 for each violation. A penalty shall be waived if the person shows that a violation
21 is due to reasonable cause and not due to wilful neglect.

22 **SECTION 19.** 71.91 (1) (b) of the statutes is amended to read:

23 71.91 (1) (b) *Withholding.* Any amount not deposited or paid over to the
24 department within the time required shall be deemed delinquent and deposit reports
25 or withholding reports filed after the due date shall be deemed late. In the case of

1 a timely filed deposit or withholding report, withheld taxes shall become delinquent
2 if not deposited or paid over on or before the due date of the report. In the case of no
3 report filed or a report filed late, withheld taxes shall become delinquent if not
4 deposited or paid over by the due date of the report. In the case of an assessment
5 under s. 71.83 (1) (b) 2., the amount assessed shall become delinquent if not paid on
6 or before the ~~first day of the calendar month following the calendar month in which~~
7 ~~the assessment becomes final~~ due date specified in the notice of deficiency, but if the
8 assessment is contested before the tax appeals commission or in the courts, it shall
9 become delinquent on the 30th day following the date on which the order or judgment
10 representing final determination becomes final.

11 **SECTION 20.** 71.91 (7) (b) of the statutes is amended to read:

12 71.91 (7) (b) The department may give notice to any employer deriving income
13 having a taxable situs in this state (regardless of whether any such income is exempt
14 from taxation) to the effect that an employe of such employer is delinquent in a
15 certain amount with respect to state taxes, including penalties, interest and costs.
16 Such notice may be served by ~~certified~~ mail, or by delivery by an employe of the
17 department of revenue. Upon receipt of such notice of delinquency, the employer
18 shall withhold from compensation due, or to become due to the employe, the total
19 amount shown by the notice. The department may ~~arrange between~~ direct the
20 employer and the employe for a withholding of an amount not less than 10% of the
21 ~~total~~ to withhold part of the amount due the employe each pay period, until the total
22 amount as shown by the notice, plus interest, has been withheld. The employer ~~shall~~
23 may not withhold more than 25% of the compensation due any employe for any one
24 pay period, except that, if the employe leaves the employ of the employer or gives
25 notice of his or her intention to do so, or is discharged for any reason, the employer

1 shall withhold the entire amount otherwise payable to such employe, or so much
2 thereof as may be necessary to equal the unwithheld balance of the amount shown
3 in the notice of delinquency, plus delinquent interest. In crediting amounts withheld
4 against delinquent taxes of an employe, the department shall apply amounts
5 withheld in the following order: costs, penalties, delinquent interest, delinquent tax.
6 The "compensation due" any employe for purposes of determining the 25% maximum
7 withholding for any one pay period shall include all wages, salaries and fees
8 constituting income, including wages, salaries, income advances or other
9 consideration paid for future services, when paid to an employe, less amounts
10 payable pursuant to a garnishment action with respect to which the employer was
11 served prior to being served with the notice of delinquency and any amounts covered
12 by any irrevocable and previously effective assignment of wages, of which amounts
13 and the facts relating to such assignment the employer shall give notice to the
14 department within 10 days after service of the notice of delinquency.

15 **SECTION 21.** 71.91 (7) (d) of the statutes is amended to read:

16 71.91 (7) (d) The employer shall, on or before the last day of the ~~next~~ month
17 after ~~every calendar quarter~~ the month during which an amount was withheld, remit
18 to the department the that amount withheld ~~during the calendar quarter~~. Any
19 amount withheld from an employe by an employer shall immediately be a trust fund
20 for this state. Should any employer, after notice, wilfully fail to withhold in
21 accordance with the notice and this subsection, or wilfully fail to remit any amount
22 withheld, as required by this subsection, such employer shall be liable for the total
23 amount set forth in the notice together with delinquent interest as though the
24 amount shown by the notice was due by such employer as a direct obligation to the
25 state for delinquent taxes, and may be collected by any means provided by law

1 including the means provided for the collection of delinquent income or franchise
2 taxes. However, no amount required to be paid by an employer by reason of his or
3 her failure to remit under this ~~subsection~~ paragraph may be deducted from the gross
4 income of such employer. Any amount collected from the employer for failure to
5 withhold or for failure to remit under this subsection shall be credited as tax, costs,
6 penalties and interest paid by the employe.

7 **SECTION 22.** 71.91 (7) (h) of the statutes is amended to read:

8 71.91 (7) (h) The department may, by written notice served personally or by
9 mail, require any employer, as defined in s. 71.63 (3), to withhold from the
10 compensation due or to become due to any entertainer or entertainment corporation
11 the amount of any delinquent state taxes, including costs, penalties and interest,
12 shown by the notice. The employer shall send the money withheld to the department
13 ~~when the department specifies~~ on or before the last day of the month after the month
14 during which an amount was withheld.

15 **SECTION 23.** 77.60 (2) (c) of the statutes is amended to read:

16 77.60 (2) (c) In the case of deficiency determinations, on or before the ~~first day~~
17 ~~of the calendar month following the calendar month in which the determination~~
18 ~~becomes final~~ due date specified in the notice of deficiency, except that if the
19 determination is contested before the tax appeals commission or in the courts, on or
20 before the 30th day following the date on which the order or judgment representing
21 the final determination, becomes final.

22 **SECTION 24.** 78.80 (1) of the statutes is amended to read:

23 78.80 (1) The department, or any deputy, employe or agent appointed in
24 writing, is authorized at any time during the business day to examine the books,
25 records, papers, receipts, invoices, storage tanks and any equipment of any licensee

1 under s. 78.09 or 78.47, broker, dealer, general aviation fuel licensee or other person,
2 purchaser or common carrier, pertaining to motor vehicle fuel, crude petroleum or
3 general aviation fuel or alternate fuels to verify the truth and accuracy of any
4 statement, report or return, or to ascertain whether or not the taxes imposed by this
5 chapter have been paid or to determine the financial responsibility of any licensee
6 for the payment of motor vehicle fuel or general aviation fuel or alternate fuels taxes.
7 The department is ~~further authorized to~~ may redetermine taxes and to may allow
8 credits for overpayments due to error. The department may determine any person's
9 liability for a tax under this chapter on the basis of sampling, whether or not the
10 person being audited has complete records of transactions and whether or not the
11 person being audited consents.

12 **SECTION 25. Initial applicability.**

13 (1) ENTERTAINER WAGES DEDUCTION DENIAL. The treatment of sections 71.26 (3)
14 (e) and 71.34 (1) (h) of the statutes and the creation of section 71.26 (3) (e) 3. of the
15 statutes first apply to taxable years beginning on January 1, 1996.

16 (2) FILING EXTENSIONS. The treatment of sections 71.24 (7) and 71.44 (3) of the
17 statutes first applies to taxable years beginning on January 1, 1996.

18 (3) INFORMATION RETURNS. The treatment of section 71.83 (1) (a) 1m. of the
19 statutes first applies to taxable years beginning on January 1, 1996.

20 (4) REPORTS OF NONTAXABLE INCOME. The treatment of sections 71.24 (1) and
21 71.44 (1) (a) of the statutes first applies to taxable years beginning on January 1,
22 1996.

23 **SECTION 26. Effective dates.** This act takes effect on the day after
24 publication, except as follows:

