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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Job Creation, Economic Development and Consumer Affairs (SC-JCEDCA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (August/2012)

Senate

Record of Committee Proceedings

Committee on Job Creation, Economic Development and Consumer Affairs

Senate Bill 218

Relating to: appealing a determination by the board of assessors, claiming angel and early stage investment tax credits, employers who must withhold state income taxes, benefits to persons serving in Operation Iraqi Freedom, eliminating the requirement that the Department of Revenue audit the records of contractors who perform emissions inspections, the liability of married persons filing a joint income tax return, the payment of the alternate fuel tax and the tobacco products tax, estate tax interest, qualified retirement systems, reducing nondelinquent taxes, extending the time for filing a tax reconciliation report, delivering tax-related documents and related payments, appeal of redetermination of earned income tax credits, granting rule-making authority, and providing a penalty.

By Senators Roessler, A. Lasee, Lassa, Miller and Hansen; cosponsored by Representatives Kerkman, Pridemore, Albers, Bies, Hines, Hubler, Kreibich, Lehman, Musser, Townsend and Toles.

May 25, 2005 Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

June 22, 2005 **PUBLIC HEARING HELD**

Present: (5) Senators Kanavas, Zien, Reynolds, Lassa and Decker.
Absent: (0) None.

Appearances For
- Carol Roessler — Senator
- Ms. Sherrie Gates-Hendrix, Madison — Department of Revenue
- Mr. Jeff Hanson, Madison — Wisconsin Department of Revenue
- Ms. Jennifer Gonda — City of Milwaukee

Appearances Against
- None.

Appearances for Information Only
- None.

Registrations For
- Samantha Kerkman, Madison — Representative

Registrations Against
- Ms. Michelle Kussow, Madison — Wisconsin Grocers Association

- Mr. Jeff Schoepke — Wisconsin Manufacturers and Commerce

August 25, 2005 **EXECUTIVE SESSION HELD**

Present: (5) Senators Kanavas, Zien, Reynolds, Lassa and Decker.
Absent: (0) None.

Moved by Senator Kanavas that **Senate Amendment 1 to Senate Amendment 1** be recommended for adoption.

Ayes: (5) Senators Kanavas, Zien, Reynolds, Lassa and Decker.
Noes: (0) None.

ADOPTION OF SENATE AMENDMENT 1 TO SENATE AMENDMENT 1 RECOMMENDED, Ayes 5, Noes 0

Moved by Senator Kanavas that **Senate Amendment 1** be recommended for adoption.

Ayes: (5) Senators Kanavas, Zien, Reynolds, Lassa and Decker.
Noes: (0) None.

ADOPTION OF SENATE AMENDMENT 1 RECOMMENDED, Ayes 5, Noes 0

Moved by Senator Kanavas that **Senate Amendment 2** be recommended for adoption.

Ayes: (5) Senators Kanavas, Zien, Reynolds, Lassa and Decker.
Noes: (0) None.

ADOPTION OF SENATE AMENDMENT 2 RECOMMENDED, Ayes 5, Noes 0

Moved by Senator Kanavas that **Senate Bill 218** be recommended for passage as amended.

Ayes: (5) Senators Kanavas, Zien, Reynolds, Lassa and Decker.
Noes: (0) None.

PASSAGE AS AMENDED RECOMMENDED, Ayes 5, Noes 0

Jeremey Shepherd
Committee Clerk

SENATE BILL 218 (LRB -2029)

An Act to repeal 71.07 (5d) (c) 3.; to renumber 72.23; to renumber and amend 77.59 (4) (c); to amend 50.14 (4), 70.07 (6), 70.075 (6), 71.03 (6) (a), 71.03 (7) (d), 71.03 (8) (b), 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a), 71.63 (3) (c), 71.65 (5) (a) 1., 71.80 (18), 71.88 (2) (b), 73.01 (4) (a), 77.59 (5), 77.61 (14), 78.22 (4), 110.20 (8) (e), 139.03 (2x) (d), 139.05 (2a), 139.315 (4), 139.38 (5) and 560.205 (3) (d); and to create 71.01 (7n), 71.10 (6) (e), 71.10 (6m) (c), 71.22 (5m), 71.34 (1m), 71.42 (2m), 71.65 (3) (h), 72.23 (2), 73.13, 78.39 (5d), 78.39 (5m) and 139.75 (9m) of the statutes; relating to: appealing a determination by the board of assessors, claiming angel and early stage investment tax credits, employers who must withhold state income taxes, benefits to persons serving in Operation Iraqi Freedom, eliminating the requirement that the Department of Revenue audit the records of contractors who perform emissions inspections, the liability of married persons filing a joint income tax return, the payment of the alternate fuel tax and the tobacco products tax, estate tax interest, qualified retirement systems, reducing nondelinquent taxes, extending the time for filing a tax reconciliation report, delivering tax-related documents and related payments, appeal of redetermination of earned income tax credits, granting rule-making authority, and providing a penalty.

2005

05-25.	S.	Introduced by Senators **Roessler**, **A. Lasee**, **Lassa**, **Miller** and **Hansen**; cosponsored by Representatives **Kerkman**, **Pridemore**, **Albers**, **Bies**, **Hines**, **Hubler**, **Kreibich**, **Lehman**, **Musser**, **Townsend** and **Toles**.	
05-25.	S.	Read first time and referred to committee on Job Creation, Economic Development and Consumer Affairs	232
06-07.	S.	Fiscal estimate received.	
06-14.	S.	Fiscal estimate received.	
06-16.	S.	Fiscal estimate received.	
06-22.	S.	Public hearing held.	
07-20.	S.	Senate amendment 1 offered by Senator Roessler **(LRB a0844)**	306
08-08.	S.	Senate amendment 2 offered by Senator Roessler **(LRB a0869)**	319
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08-26.	S.	Report adoption of Senate Amendment 1 to Senate Amendment 1 recommended by committee on Job Creation, Economic Development and Consumer Affairs, Ayes 5, Noes 0	333
08-26.	S.	Report adoption of Senate Amendment 1 recommended by committee on Job Creation, Economic Development and Consumer Affairs, Ayes 5, Noes 0	333
08-26.	S.	Report adoption of Senate Amendment 2 recommended by committee on Job Creation, Economic Development and Consumer Affairs, Ayes 5, Noes 0	333
08-26.	S.	Report passage as amended recommended by committee on Job Creation, Economic Development and Consumer Affairs, Ayes 5, Noes 0	333
08-26.	S.	Available for scheduling.	
09-19.	S.	Senate amendment 2 to Senate amendment 1 offered by Senator Roessler **(LRB a0934)**	353
09-19.	S.	Referred to joint committee on Finance by committee on Senate Organization pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	352
09-19.	S.	Withdrawn from joint committee on Finance and placed on calendar 9-20-2005 by committee on Senate Organization, pursuant to Senate Rule 41 (1)(e), Ayes 5, Noes 0	353
09-20.	S.	Read a second time	356
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09-20.	S.	Ordered to a third reading	356
09-20.	S.	Rules suspended	356
09-20.	S.	Read a third time and **passed**, Ayes 33, Noes 0	356
09-20.	S.	Ordered immediately messaged	358
09-27.	A.	Received from Senate	2
09-27.	A.	Read first time and referred to committee on Rules	2
09-27.	A.	Rules suspended to withdraw from committee on Rules and take up	2
09-27.	A.	Read a second time	2
09-27.	A.	Ordered to a third reading	2
09-27.	A.	Rules suspended	2
09-27.	A.	**Concurred in**	2
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09-29.	S.	Received from Assembly concurred in	381
10-04.	S.	**LRB correction**	388
10-05.	S.	Report correctly enrolled on 10-4-2005	388
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10-13.	S.	Report **approved** by the Governor on 10-13-2005. 2005 Wisconsin Act 49	393
10-17.	S.	Published 10-27-2005	395

Taxpayer Friendly Bill

June 2005

SB 218 and AB 482 – Senator Roessler & Rep. Kerkman

Reducing Nondelinquent Taxes – Help for Low-Income Persons

Under current law, any taxpayer can petition DOR to compromise (reduce) his or her delinquent taxes including the costs, penalties and interest if the person can not afford to pay. After reviewing financial statements and any other information related to the petition, the department can reduce the debt significantly.

The Taxpayer Friendly Bill would give DOR the authority to reduce the amount of nondelinquent taxes due to the state. The department would follow the same procedures for determining inability to pay regardless of whether an amount due is delinquent or not. This new flexibility would be especially helpful for those low-income individuals who have made an honest error in calculating taxes and find themselves unable to pay the amount they owe.

A good example of this is an elderly couple who discover that they have inadvertently been claiming a large Homestead Tax Credit for several years. The couple may live on a fixed income and be unable to pay back the credits they have been claiming (perhaps over $4,000 in total for the 4 years DOR can assess in audits). While their inability to pay may be clear to all, current law does not allow DOR to write off the debt for these taxpayers until it becomes delinquent. Owing delinquent taxes is often a traumatic event for the elderly, and making an early determination of inability to pay is much more efficient for DOR. The Taxpayer Friendly Bill would allow DOR to reduce write off the debt for this couple as soon as it was clear they could not afford to pay.

Protecting Innocent Spouses

Married persons filing a joint income tax return are both liable for payment of taxes related to the return. But in situations where one spouse is hiding income or otherwise misrepresenting the couple's finances on the tax return, DOR can grant "innocent spouse relief" to the other spouse under certain conditions.

DOR's ability to grant this type of relief is tied to the federal Internal Revenue Code, and the Code was updated several years ago to make it much easier to obtain relief. DOR would like to adopt these new federal standards as part of the Taxpayer Friendly Bill.

Easing current restrictions on innocent spouse relief will make the law more simple and more fair. Current law contains minimum dollar thresholds for relief that are arbitrary and discriminate against low income persons. Right now, one spouse would have to understate income that results in at least $500 in tax before the "innocent" spouse can be granted relief. The law DOR is proposing would eliminate this limit. The update will make relief from Wisconsin taxes more widely available and more equitable.

The new federal law also allows the innocent spouse to elect separate tax liability even though they have filed a joint tax return. This option, not available under current law, can completely wipe out the tax liability for the innocent spouse in many circumstances.

Interest Abatement for Troops

Restore a provision in current law that expired at the end of 2004 that allowed an interest abatement for people serving in support of Operation Iraqi Freedom if they do not pay their taxes by the April 15 deadline. The bill would extend this provision through tax year 2006.

Exception for Earned Income Tax Credit Appeals from Filing Fee

This provision would grant an exception to the $25 filing fee paid to the Tax Appeals Commission for those people who are appealing DOR's decisions on their Earned Income Tax Credit (EITC). Current law already provides this exception from the fee for those who are appealing decisions regarding Farmland Tax Relief Credit, Married Persons Credit, Community Development Finance Credit, Homestead Tax Credit and Farmland Preservation Tax Credit.

If state law provides exceptions to the Tax Appeals Commission filing fee, it would make sense to provide this exception to those who claim the EITC, a credit for lower income workers with children.

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<u>Seller Required to Refund Sales or Use Tax to Buyer</u>

Retailers Audit exposure How do you find the buyers?

The Taxpayer Friendly Bill requires a seller to refund sales tax to a buyer if the tax should not have been charged in the first place and imposes a penalty when refunds aren't made on time. Current law contains this requirement when the seller is applying for a refund from DOR for taxes collected in error, but the law does not require the seller to return the tax in two other common situations – when the error is discovered as a result of an audit, or when the tax collected in error has never been sent to DOR.

Without such a requirement, the seller profits while the buyer has no recourse to get the sales tax it paid in error back from the seller or DOR. Right now, if a phone company collects sales tax from its customers on a non-taxable service (such as 911 service) and as part of an audit DOR refunds the tax to the phone company, the company is not required to return the tax to its customers. Customers may never know they were overcharged, so they are not able to file a claim for refund.

The Taxpayer Friendly bill would also require the seller to return the tax to the state if they are not able to locate the buyer and return the tax.

A similar provision of the bill would protect real property construction contractors and other service providers who inadvertently impose sales tax on non-taxable real property improvements (for example, kitchen cabinet installation). Because of the complicated nature of sales and use tax laws for contractors, it is not unusual for contractors to charge sales tax when none is due. The bill allows contractors to subtract any amount of tax they may owe on materials used in a job from any amount they are required to refund to the buyer because tax was collected when it wasn't due.

<u>30 Day Extension for Filing a Withholding Report</u>

Prior to 1999, DOR was able to grant employers 30-day extensions to file required reports reconciling all wages and withholding for their employees. The report is due to DOR annually on January 31st, a hectic time of the years for many employers. A provision of 1997 Act 291 inadvertently removed DOR's ability to grant extensions. The Taxpayer Friendly Bill would restore this flexibility.

Permit Use of Private Delivery Services

Current law provides that tax returns and other documents are considered received on time if they are:

- postmarked before midnight on the day they are due,
- received by DOR within 5 days of the deadline, and
- mailed in a properly addressed envelope with postage prepaid.

The law now requires that to receive this "safe harbor" treatment, a document must be mailed using the U.S. Postal Service.

The Taxpayer Friendly bill would allow the use of private delivery services, such as Federal Express and UPS, in addition to the U.S. Postal Service for purposes of receiving "safe harbor" treatment.

Allow More Flexible Methods for Paying, Filing and Authenticating

For most taxes and reports, DOR has the authority to allow a variety of methods for paying taxes, filing reports and authenticating documents (other than paper tax returns and paper checks for payment). This flexibility was added throughout DOR tax statutes in 1997 Act 27 and has provided a broad range of options, including electronic filing, payment by credit card and electronic funds transfer.

The changes were overlooked in two chapters of the statutes, however. The Taxpayer Friendly Bill would give DOR the flexibility to allow more methods of paying, filing and signing documents defined in the Alternate Fuels and Tobacco Products chapters of the statutes. New definitions of "pay" and "sign" would be added to s. 78.39 and s. 139.75.

Estate Tax – Waiver of Interest and Clarification of Credit Status

2. Under current law, all Wisconsin estate tax that is not paid on the date it is due is assessed interest at the rate of 12% per year from the date of death of the decedent. Occasionally, after an estate tax return is filed or the estate is closed, there will be a discovery of an asset owned by the decedent that was not reported in the inventory of the estate, or on the estate tax return.

The Taxpayer Friendly Bill would allow DOR to waive the interest imposed on estate taxes related to assets not initially reported if the person filing the initial tax return had exercised "due diligence" in filing that initial return. Currently the estate must petition the circuit court to reduce or waive interest. The bill would provide a streamlined option for waiving interest.

The bill also makes a technical clarification to Wisconsin statutes so that it is clear that the amount of Wisconsin estate tax is equal to the credit allowed (for the state death tax credit) against the federal estate tax imposed on the transfer of property, regardless of whether the taxpayer claims the credit on the federal estate tax return. This is currently the way DOR administers the estate tax.

Due Date for Electronically Filed Returns

Under current law, all individual income tax returns are due to the Department of Revenue on April 15th. Under the Taxpayer Friendly Bill the due date for e-filed returns would be extended to April 30th **if** the federal government makes the same change for e-filed federal individual income tax returns. The federal government is currently considering such a change.

Qualified Retirement Systems

This provision would ensure that a pension system that is a qualified system under federal law is also considered a qualified system under state law. The practical result of the change is to ensure that a pension system exempt from federal tax is also exempt from Wisconsin tax. This tax treatment is current law and has been for many years.

The provisions do not mean that Wisconsin automatically adopts any changes in pension law; as under current law, the Legislature would have to enact legislation adopting any future changes in federal pension law before they apply for Wisconsin tax purposes. The Taxpayer Friendly Bill simply provides that pension systems exempt from federal tax because they conform to federal pension law are also exempt from Wisconsin tax.

If a pension plan became disqualified due to changes in federal law, all amounts in the plan would immediately be taxable to the participants and any employer contributions would be taxable to the employee as well.

The Taxpayer Friendly Bill would avoid these consequences for Wisconsin residents.

Angel Investment Credit – Simplify Filing Requirements

This provision would allow nonresidents and part-year residents to claim the angel investment credit without prorating the credit based on Wisconsin AGI vs. federal AGI. The change in the bill would eliminate a circular reference in the statutes that makes it very difficult for these filers to claim the credit. The change also eliminates the requirement that the credit be claimed on a tax year basis.

Lengthen and Clarify Property Assessment Appeals Timeframe

This provision would specify that a property owner who wishes to appeal a Board of Assessors determination must notify the appropriate body within 15 days from the time the Board issues its determination. Current law provides only 10 days, but is unclear in terms of whether the timeframe is 10 days from the time the notice was sent or from the time the notice was received.

Eliminate Motor Vehicle Emission Inspection Contractor Audit

The Legislative Audit Bureau has recommended eliminating the requirement that DOR audit the records of the contractor that provides vehicle emission inspections in southeastern Wisconsin. The audit was initially recommended when individual vehicle owners were to pay the contractor directly. Changes in implementation of the emission inspection program have resulted in DOT paying the contractor. DOR does not typically audit the vendors that other state agencies do business with (except in the course of its normal, confidential tax audits).

Align Wisconsin Withholding Law with Federal Practice

This provision would allow a single owner to choose whether it or an entity it owns would be considered the "employer" for withholding tax purposes. The IRS allows the owner of LLCs (limited liability companies) that have been disregarded for income tax purposes to elect to have the LLC be considered the employer for withholding tax purposes. Wisconsin law currently does not allow this flexibility and it creates confusion and inconvenience for Wisconsin businesses.


FORWARD
E PLURIBUS UNUM

From: njb1501947@yahoo.com [mailto:njb1501947@yahoo.com]
Sent: Tuesday, June 21, 2005 4:22 PM
To: vgibbons@dor.state.wi.us
Subject: Fwd: Sales Tax -- Senate Bill 218

courtesy copy to V. Gibbons, WI Dept of Rev, Audit Bureau

"njb1501947@yahoo.com" <njb1501947@yahoo.com> wrote:
Date: Tue, 21 Jun 2005 14:16:28 -0700 (PDT)
From: "njb1501947@yahoo.com" <njb1501947@yahoo.com>
Subject: Sales Tax -- Senate Bill 218
To: sen.brown@legis.state.wi.us, rep.kreibich@legis.state.wi.us

June 21, 2005

Dear State Senator Brown and State Representative Kreibich,

I am a voter and consumer residing in your respective voting districts. It recently came to my attention that a local grocery retailer was charging sales tax on ice cream sold in cartons to be consumed off the premises. This is in violation of the Dept of Revenue's Regulations which I was able to research easily on that department's website. I provided printouts from the Dept of Revenue's website to the gen mgr of the grocery store and that store now is no longer charging sales tax on ice cream sold in containers.

The consumer takes it on good faith that the grocer is properly implementing state sales tax collection law and is unlikely to challenge any practice. I happened to notice it because I shop at two different stores and I enter my receipt information into my personal accounting system. As it was, I have been buying my groceries from two and sometimes three different stores and only noticed this discrepancy after several months.

It occurred to me that it would be fairly easy for a disreputable grocer to erroneously collect sales tax intentionally and keep the money. I wrote to Vicki Gibbons, Director of the Wisconsin Department of Revenue's Audit Bureau (I got her name from the website) about this matter. She responded that there are no penalties for a merchant collecting sales tax erroneously and not turning the money over to the State. She said that legislation regarding this has been presented over the years but none has passed. I understand that 2005 Senate Bill 218 addresses this matter for the current legislative session. I urge you to support this legislation and to encourage your colleagues to do the same. I will be following this issue closely.

Thank you for serving the voters.

Sincerely,
Nancy Brossow (electronic signature)
N2547 440th St
Menomonie, WI 54751
715-505-6384

State of Wisconsin • DEPARTMENT OF REVENUE

2135 RIMROCK ROAD • P.O.BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718 • http://www.dor.state.wi.us

Jim Doyle
Governor

Michael L. Morgan
Secretary of Revenue

June 22, 2005

Senate Committee on Job Creation, Economic Development and Consumer Affairs

Taxpayer Friendly Bill

SB 218 – Senator Roessler (AB 482 – Rep. Kerkman)

Overview: A package of administrative changes that will greatly benefit your constituents – primarily individual income taxpayers. The bill has no fiscal effect, but will take some positive, cost-efficient steps to improve tax fairness and administration.

Reducing Nondelinquent Taxes – Help for Low-Income Persons

Under current law, any taxpayer can petition DOR to compromise (reduce) his or her delinquent taxes including the costs, penalties and interest if the person can not afford to pay. After reviewing financial statements and any other information related to the petition, the department can reduce the debt significantly.

The Taxpayer Friendly Bill would give DOR the authority to reduce the amount of nondelinquent taxes due to the state. The department would follow the same procedures for determining inability to pay regardless of whether an amount due is delinquent or not. This new flexibility would be especially helpful for those low-income individuals who have made an honest error in calculating taxes and find themselves unable to pay the amount they owe.

A good example of this is an elderly couple who discover that they have inadvertently been claiming a large Homestead Tax Credit for several years. The couple may live on a fixed income and be unable to pay back the credits they have been claiming (perhaps over $4,000 in total for the 4 years DOR can assess in audits). While their inability to pay may be clear to all, current law does not allow DOR to write off the debt for these taxpayers until it becomes delinquent. Owing delinquent taxes is often a traumatic event for the elderly, and making an early determination of inability to pay is much more efficient for DOR. The Taxpayer Friendly Bill would allow DOR to reduce write off the debt for this couple as soon as it was clear they could not afford to pay.

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The new federal law also allows the innocent spouse to elect separate tax liability even though they have filed a joint tax return. This option, not available under current law, can completely wipe out the tax liability for the innocent spouse in many circumstances.

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If state law provides exceptions to the Tax Appeals Commission filing fee, it would make sense to provide this exception to those who claim the EITC, a credit for lower income workers with children.

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Without such a requirement, the seller profits while the buyer has no recourse to get the sales tax it paid in error back from the seller or DOR. Right now, if a phone company collects sales tax from its customers on a non-taxable service (such as 911 service) and as part of an audit DOR refunds the tax to the phone company, the company is not required to return the tax to its customers. Customers may never know they were overcharged, so they are not able to file a claim for refund.

The Taxpayer Friendly bill would also require the seller to return the tax to the state if they are not able to locate the buyer and return the tax.

A similar provision of the bill would protect real property construction contractors and other service providers who inadvertently impose sales tax on non-taxable real property improvements (for example, kitchen cabinet installation). Because of the complicated nature of sales and use tax laws for contractors, it is not unusual for contractors to charge sales tax when none is due. The bill allows contractors to subtract any amount of tax they may owe on materials used in a job from any amount they are required to refund to the buyer because tax was collected when it wasn't due.

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The law now requires that to receive this "safe harbor" treatment, a document must be mailed using the U.S. Postal Service.

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The Taxpayer Friendly Bill would allow DOR to waive the interest imposed on estate taxes related to assets not initially reported if the person filing the initial tax return had exercised "due diligence" in filing that initial return. Currently the estate must petition the circuit court to reduce or waive interest. The bill would provide a streamlined option for waiving interest.

The bill also makes a technical clarification to Wisconsin statutes so that it is clear that the amount of Wisconsin estate tax is equal to the credit allowed (for the state death tax credit) against the federal estate tax imposed on the transfer of property, regardless of whether the taxpayer claims the credit on the federal estate tax return. This is currently the way DOR administers the estate tax.

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This provision would ensure that a pension system that is a qualified system under federal law is also considered a qualified system under state law. The practical result of the change is to ensure that a pension system exempt from federal tax is also exempt from Wisconsin tax. This tax treatment is current law and has been for many years.

The provisions do not mean that Wisconsin automatically adopts any changes in pension law; as under current law, the Legislature would have to enact legislation adopting any future changes in federal pension law before they apply for Wisconsin tax purposes. The Taxpayer Friendly Bill simply provides that pension systems exempt from federal tax because they conform to federal pension law are also exempt from Wisconsin tax.

If a pension plan became disqualified due to changes in federal law, all amounts in the plan would immediately be taxable to the participants and any employer contributions would be taxable to the employee as well.

The Taxpayer Friendly Bill would avoid these consequences for Wisconsin residents.

Angel Investment Credit – Simplify Filing Requirements

This provision would allow nonresidents and part-year residents to claim the angel investment credit without prorating the credit based on Wisconsin AGI vs. federal AGI. The change in the bill would eliminate a circular reference in the statutes that makes it very difficult for these filers to claim the credit. The change also eliminates the requirement that the credit be claimed on a tax year basis.

Lengthen and Clarify Property Assessment Appeals Timeframe

This provision would specify that a property owner who wishes to appeal a Board of Assessors determination must notify the appropriate body within 15 days from the time the Board issues its determination. Current law provides only 10 days, but is unclear in terms of whether the timeframe is 10 days from the time the notice was sent or from the time the notice was received.

Eliminate Motor Vehicle Emission Inspection Contractor Audit

The Legislative Audit Bureau has recommended eliminating the requirement that DOR audit the records of the contractor that provides vehicle emission inspections in southeastern Wisconsin. The audit was initially recommended when individual vehicle owners were to pay the contractor directly. Changes in implementation of the emission inspection program have resulted in DOT paying the contractor. DOR does not typically audit the vendors that other state agencies do business with (except in the course of its normal, confidential tax audits).

Align Wisconsin Withholding Law with Federal Practice

This provision would allow a single owner to choose whether it or an entity it owns would be considered the "employer" for withholding tax purposes. The IRS allows the owner of LLCs (limited liability companies) that have been disregarded for income tax purposes to elect to have the LLC be considered the employer for withholding tax purposes. Wisconsin law currently does not allow this flexibility and it creates confusion and inconvenience for Wisconsin businesses.

WISCONSIN STATE LEGISLATURE

WMC
REPRESENTING WISCONSIN BUSINESS

Wisconsin Manufacturers & Commerce

Memo

TO: Senate Committee on Job Creation, Economic Development and Consumer Affairs
FROM: Jeff Schoepke, Director of Tax and Corporate Policy
RE: Senate Bill 218
DATE: June 22, 2005

Wisconsin's tax code is a complicated web of requirements that can trap unsuspecting taxpayers. Senate Bill 218 (SB 218) attempts to modify several areas of tax law to make it less burdensome and complicated. WMC shares this goal, and supports many provisions included in this bill. However, there are several sections which, while well intended, could add complication. WMC therefore recommends the following changes to SB 218.

Sales and Use Tax Refunds
SB 218 extends the mandatory sales tax refund requirements and penalties to refunds received as a result of an audit. The present statute is already considered punitive by many sellers, and this bill would make it even more so.

Given the complicated nature of the sales tax, current practice for many sellers is to absorb losses from underpayment of sales tax as a cost of doing business. However, many audits involve netting of multiple transactions where refunds are granted and transactions where taxes are owed. It appears that under this bill sellers must refund every item where taxes are overpaid and absorb the cost of every item on which taxes are underpaid. This is not a fair and balanced policy for collectors of sales tax.

Further, it is often impossible for a seller to find a buyer more than three to five years after a sale occurred to either collect taxes due or to provide a refund. SB 218 requires a seller to find past buyers in 90 days, or remit the balance of refunds to the Department of Revenue (DOR). This puts sellers in an untenable position, with imposition of penalties likely. It is fair to assume that the vast majority of refunds now will simply be paid to DOR.

These provisions, sections 26 and 27, should be removed from this bill.

Reducing Delinquent Taxes
SB 218 allows taxpayers to settle taxes that are not yet delinquent based on the ability to pay. WMC supports this concept, but offers two changes to improve this section.

First, it is critically important for this new process to occur before the taxpayer's appeal rights have expired. That is, it should be clear that it takes place before DOR's assessment is final and conclusive.

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In disputes between private parties, the ability to pay is one of the first facts a party considers. A business, for example, simply will not spend thousands of dollars to get a judgment against a business that cannot pay or can pay less than the cost of reaching a settlement. The same considerations should apply in disputes between DOR and taxpayers. Allowing for the procedure to operate while a dispute is pending should encourage more settlements, and reasonable settlements. While this may be the author's intent, it is not clear whether SB 218 allows a petition to be filed prior to the time an assessment is made final.

Second, the bill should be modified to allow a taxpayer to withdraw from an agreement if it disagrees with the department's determination. A taxpayer could then proceed with an appeal.

Board of Assessors

Extending the appeal period from 10 to 15 days is a policy change with merit. However, some members have expressed concerns about the procedural requirements of some local property tax assessors. Perhaps a better approach would be an appeal period 15 days from the earlier of the day the notice was postmarked or the day it was received. This change would allow for those situations in which the notice is handed to the taxpayer at the end of a meeting of the board.

Thank you for the opportunity to provide these comments. I look forward to working with the authors on this legislation and more generally to improve Wisconsin's tax climate.