



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-2060/2  
JK:jld&emw

## 2015 ASSEMBLY BILL 226

May 19, 2015 – Introduced by Representatives KREMER, HORLACHER, BRANDTJEN, R. BROOKS, JARCHOW and KNODL, cosponsored by Senators LEMAHIEU and NASS. Referred to Committee on Ways and Means.

1     **AN ACT to amend** 71.82 (1) (a), 71.82 (1) (c), 71.82 (2) (b), 71.82 (2) (d), 71.84 (1),  
2             71.84 (2) (a), 71.84 (2) (c), 71.91 (6) (e) 3., 71.91 (6) (f) 5., 77.60 (1) (a), 77.60 (1)  
3             (b), 77.96 (5) and 78.68 (1); and **to create** 71.74 (16), 73.16 (3m) and 77.59 (4m)  
4             of the statutes; **relating to:** audits and interest rates on past due amounts.

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### *Analysis by the Legislative Reference Bureau*

Under this bill, interest on the amount of a taxpayer's unpaid income or sales taxes does not accrue during the period when the taxpayer is subject to an audit by the Department of Revenue (DOR). In addition, DOR's audit of a person that has annual adjusted gross income of less than \$5,000,000 may not last longer than 240 days unless DOR and the person enter into a written agreement to extend the time for conducting the audit. Finally, if such a person is being audited for the first time, DOR may not assess any interest or penalties on amounts owed by the person unless the person commits fraud or willfully attempts to evade paying the taxes owed.

Under current law, a taxpayer must pay interest on any amount owed to DOR that is past due, but not delinquent, at the rate of 12 percent per year. Under the bill, DOR must reduce the interest rate on such amounts by 0.5 percent each year until the rate equals 1 percent plus the prime rate, as reported by the Federal Reserve Board.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 71.74 (16) of the statutes is created to read:

2           71.74 (16) OTHER AUDITS. The department's audit of a person that has annual  
3 adjusted gross income of less than \$5,000,000 may not last longer than 240 days  
4 unless the department and the person enter into a written agreement that extends  
5 the time for conducting the audit and specifies the date on which the audit shall end.  
6 Notwithstanding ss. 71.82 and 71.83, the department may not assess any interest  
7 and penalties on a person described under this subsection as result of the  
8 department's first audit of the person, except as provided under s. 71.83 (1) (b) and  
9 (2). For purposes of this subsection, an audit commences on the day on which the  
10 department sends notice of the audit to the person being audited.

11           **SECTION 2.** 71.82 (1) (a) of the statutes is amended to read:

12           71.82 (1) (a) In assessing taxes interest shall be added to such taxes at ~~12%~~ the  
13 rate determined under s. 73.16 (3m) per year from the date on which such taxes if  
14 originally assessed would have become delinquent if unpaid, to the date on which  
15 such taxes when subsequently assessed will become delinquent if unpaid.

16           **SECTION 3.** 71.82 (1) (c) of the statutes is amended to read:

17           71.82 (1) (c) Any assessment made as a result of the adjustment or disallowance  
18 of a claim for credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX, except as  
19 provided in sub. (2) (c), shall bear interest at ~~12%~~ the rate determined under s. 73.16  
20 (3m) per year from the due date of the claim, except that interest shall not accrue  
21 during the period in which the taxpayer is being audited under s. 71.74.

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1           **SECTION 4.** 71.82 (2) (b) of the statutes is amended to read:

2           71.82 (2) (b) *Department may reduce delinquent interest.* The department shall  
3 provide by rule for reduction of interest under par. (a) to ~~12%~~ the rate determined  
4 under s. 73.16 (3m) per year in stated instances wherein the secretary of revenue  
5 determines that reduction is fair and equitable.

6           **SECTION 5.** 71.82 (2) (d) of the statutes is amended to read:

7           71.82 (2) (d) *Withholding tax.* Of the amounts required to be withheld any  
8 amount not deposited or paid over to the department within the time required shall  
9 be deemed delinquent and deposit reports or withholding reports filed after the due  
10 date shall be deemed late. Delinquent deposits or payments shall bear interest at  
11 the rate of 1.5% per month from the date deposits or payments are required under  
12 this section until deposited or paid over to the department. The department shall  
13 provide by rule for reduction of interest on delinquent deposits to ~~12%~~ the rate  
14 determined under s. 73.16 (3m) per year in stated instances wherein the secretary  
15 of revenue determines reduction fair and equitable. In the case of a timely filed  
16 deposit or withholding report, withheld taxes shall become delinquent if not  
17 deposited or paid over on or before the due date of the report. In the case of no report  
18 filed or a report filed late, withheld taxes shall become delinquent if not deposited  
19 or paid over by the due date of the report. In the case of an assessment under s. 71.83  
20 (1) (b) 2., the amount assessed shall become delinquent if not paid on or before the  
21 first day of the calendar month following the calendar month in which the  
22 assessment becomes final, but if the assessment is contested before the tax appeals  
23 commission or in the courts, it shall become delinquent on the 30th day following the  
24 date on which the order or judgment representing final determination becomes final.

25           **SECTION 6.** 71.84 (1) of the statutes is amended to read:

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1           71.84 (1) INDIVIDUALS AND FIDUCIARIES. Except as provided in s. 71.09 (11), in  
2 the case of any underpayment of estimated tax by an individual, estate or trust,  
3 except as provided under s. 71.09, there shall be added to the aggregate tax for the  
4 taxable year interest at the rate of ~~12%~~ determined under s. 73.16 (3m) per year on  
5 the amount of the underpayment for the period of the underpayment. In this  
6 subsection, “the period of the underpayment” means the time period from the due  
7 date of the installment until either the 15th day of the 4th month beginning after the  
8 end of the taxable year or the date of payment, whichever is earlier.

9           **SECTION 7.** 71.84 (2) (a) of the statutes is amended to read:

10           71.84 (2) (a) Except as provided in s. 71.29 (7), in the case of any underpayment  
11 of estimated tax under s. 71.29 or 71.48 there shall be added to the aggregate tax for  
12 the taxable year interest at the rate of ~~12%~~ determined under s. 73.16 (3m) per year  
13 on the amount of the underpayment for the period of the underpayment. For  
14 corporations, except as provided in par. (b), “period of the underpayment” means the  
15 time period from the due date of the installment until either the 15th day of the 3rd  
16 month beginning after the end of the taxable year or the date of payment, whichever  
17 is earlier. If 90% of the tax shown on the return is not paid by the 15th day of the 3rd  
18 month following the close of the taxable year, the difference between that amount  
19 and the estimated taxes paid, along with any interest due, shall accrue delinquent  
20 interest under s. 71.91 (1) (a).

21           **SECTION 8.** 71.84 (2) (c) of the statutes is amended to read:

22           71.84 (2) (c) If a refund under s. 71.29 (3m) results in an income or franchise  
23 tax liability that is greater than the amount of estimated taxes paid in reduced by  
24 the amount of the refund, the taxpayer shall add to the aggregate tax for the taxable  
25 year interest at an annual rate of ~~12%~~ determined under s. 73.16 (3m) on the amount

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1 of the unpaid tax liability for the period beginning on the date the refund is issued  
2 and ending on the 15th day of the 3rd month beginning after the end of the taxable  
3 year, or the date the tax liability is paid, whichever is earlier.

4 **SECTION 9.** 71.91 (6) (e) 3. of the statutes is amended to read:

5 71.91 (6) (e) 3. For purposes of an adjudication under this paragraph, the  
6 assessment of the tax upon which the interest or lien of the department is based is  
7 conclusively presumed to be valid. Interest shall be allowed for judgments under this  
8 paragraph at the rate of ~~12%~~ determined under s. 73.16 (3m) per year from the date  
9 the department receives the money wrongfully levied upon to the date of payment  
10 of the judgment or from the date of sale to the date of payment.

11 **SECTION 10.** 71.91 (6) (f) 5. of the statutes is amended to read:

12 71.91 (6) (f) 5. Before the sale, the department shall determine a minimum  
13 price for which the property shall be sold. If no person offers for that property at the  
14 sale at least the amount of the minimum price, the state shall purchase the property  
15 for the minimum price; otherwise, the property shall be sold to the highest bidder.  
16 In determining the minimum price, the department shall take into account the  
17 expense of making the levy and sale in addition to the value of the property. If  
18 payment in full is required at the time of acceptance of a bid and is not paid then, the  
19 department shall sell the property in the manner provided under this paragraph.  
20 If the conditions of the sale permit part of the payment to be deferred and if that part  
21 is not paid within the prescribed period, the department may sue the purchaser in  
22 the circuit court for Dane County for the unpaid part of the purchase price and  
23 interest at the rate of ~~12%~~ determined under s. 73.16 (3m) per year from the date of  
24 the sale or the department may declare the sale void and may sell the property again  
25 under this paragraph. If the property is sold again, the 2nd purchaser shall receive

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1 it free of any claim of the defaulting purchaser and the amount paid upon the bid  
2 price by the defaulting purchaser is forfeited.

3 **SECTION 11.** 73.16 (3m) of the statutes is created to read:

4 73.16 (3m) CALCULATION OF INTEREST RATES. Annually, the department shall  
5 determine and publish an interest rate that is applicable to amounts owed to the  
6 department during that calendar year. The rate in effect on January 1, 2016, is 11.5  
7 percent. The department shall reduce the rate by 0.5 percent on January 1 of each  
8 year until the rate equals 1 percent plus the prime rate in effect on January 1, as  
9 reported by the federal reserve board in federal reserve statistical release H. 15.

10 **SECTION 12.** 77.59 (4m) of the statutes is created to read:

11 77.59 (4m) The department's audit of a person that has annual Wisconsin  
12 adjusted gross income of less than \$5,000,000 may not last longer than 240 days  
13 unless the department and the person enter into a written agreement that extends  
14 the time for conducting the audit and specifies the date on which the audit shall end.  
15 Notwithstanding s. 77.60, the department may not assess any interest and penalties  
16 on a person described under this subsection as result of the department's first audit  
17 of the person, except as provided under s. 77.60 (10) and (11). For purposes of this  
18 subsection, an audit commences on the day on which the department sends notice  
19 of the audit to the person being audited.

20 **SECTION 13.** 77.60 (1) (a) of the statutes is amended to read:

21 77.60 (1) (a) Except as provided in par. (b), unpaid taxes shall bear interest at  
22 the rate of ~~12%~~ determined under s. 73.16 (3m) per year from the due date of the  
23 return until paid or deposited with the department. Taxes refunded to the seller  
24 shall bear interest at 3 percent per year from the due date of the return to the date  
25 on which the refund is certified on the refund rolls. An extension of time within

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1 which to file a return shall not extend the due date of the return for purposes of  
2 interest computation. Taxes refunded to the buyer shall bear interest at 3 percent  
3 per year from the last day of the month following the month during which the buyer  
4 paid the tax to the date on which the refund is certified on the refund rolls.

5 **SECTION 14.** 77.60 (1) (b) of the statutes is amended to read:

6 77.60 (1) (b) Any unpaid taxes for a calendar year or a fiscal year resulting from  
7 ~~a field~~ an audit under s. 77.59 shall bear interest at the rate of ~~12%~~ determined under  
8 s. 73.16 (3m) per year from the due date of the taxpayer's Wisconsin income or  
9 franchise tax return for that calendar or fiscal year or, if exempt, from the 15th day  
10 of the 4th month of the year after the close of the calendar or fiscal year for which the  
11 taxes are due to the date on which the taxes are paid or, if unpaid, become delinquent,  
12 whichever is earlier, except that interest shall not accrue during the period in which  
13 the taxpayer is being audited under s. 77.59.

14 **SECTION 15.** 77.96 (5) of the statutes is amended to read:

15 77.96 (5) Each person subject to a surcharge under s. 77.93 shall, on or before  
16 the due date, including extensions, for filing under ch. 71, file an accurate statement  
17 of its gross tax liability. Payments made after the due date under sub. (2) and on or  
18 before the due date under this subsection are not delinquent but are subject to  
19 interest at the rate of ~~12%~~ determined under s. 73.16 (3m) per year.

20 **SECTION 16.** 78.68 (1) of the statutes is amended to read:

21 78.68 (1) Unpaid taxes shall bear interest at the rate of ~~12%~~ determined under  
22 s. 73.16 (3m) per year from the due date of the tax until paid or deposited with the  
23 department, and all refunded taxes bear interest at the rate of 3 percent per year  
24 from the due date of the return to the date on which the refund is certified on the  
25 refund rolls.

