

2. Officer Liability for Taxes (Amend ss. 71.20(21), 77.60(9) and 78.70(6), effective dates are indicated below.)

The amendments to s. 71.20(21) and s. 77.60(9) provide that "other responsible persons" can be held liable for payment of withholding and sales/use taxes. This provision becomes effective July 20, 1985.

Section 78.70(6) imposes personal liability on officers, employes, fiduciaries and agents who are responsible for paying motor fuel, special fuel or aviation fuel taxes incurred by another person. This provision becomes effective for payments due on July 20, 1985.

3. Provide for Levy Upon Property for Delinquent Taxes (Create s. 71.133, effective December 1, 1985.)

a. Powers of Levy and Distrainment.

If any person who is liable for any tax administered by the Department of Revenue neglects or refuses to pay that tax within ten days after that tax becomes delinquent, the Department may collect that tax and the expenses of the levy by levy upon, and sale of, any property belonging to that person or any property on which there is a lien as provided by s. 71.13(2m) in respect to that delinquent tax.

"Levy" means all powers of distrainment and seizure. "Property" includes real and personal property, tangible and intangible property and rights to property at the time of levy. "Taxes" means the principal amount, interest, penalties and costs.

Whenever any property that has been levied upon is not sufficient to satisfy the claim of the Department, the Department may levy upon any other property of the person until the taxes and expenses of the levy are fully paid.

b. Duty to Surrender.

Any person in possession of, or obligated with respect to, property upon which a levy has been made shall, upon demand of the Department, surrender that property unless it is subject to attachment or execution under judicial process, or discharge that obligation, to the Department. Special rules are provided for levying upon a life insurance or endowment contract.

c. Failure to Surrender; Discharge.

Any person, including an officer or employe, who fails to surrender property that is subject to levy upon demand of the Department is liable to the Department for an amount equal to the value of the property not surrendered. However, this amount may not exceed the amount of taxes for the collection of which that levy was made, together with costs and interest at the rate of 18% per year from the date of that levy. Any amount, other than costs, recovered shall be credited against the tax liability.

In addition, if any person required to surrender property fails or refuses to surrender that property without reasonable cause, that person is liable for a penalty equal to 50% of the amount recoverable. No part of the penalty may be credited against the tax liability for the collection of which that levy was made.

Any person in possession of, or obligated with respect to, property upon which a levy has been made who surrenders that property, or discharges that obligation, to the Department or who pays a liability is discharged from any liability to the delinquent taxpayer or, in the case of payments from insurance contracts, to a beneficiary, with respect to that property arising from that surrender or payment.

d. Actions Against the State.

If the Department has levied upon or sold property, any person, other than the person who is assessed the tax out of which the levy arose, who claims an interest in or lien on that property and claims that that property was wrongfully levied upon may bring a civil action against the state in the Circuit Court of Dane County. No other action to question the validity of or restrain or enjoin a levy by the Department may be maintained.

If a levy or sale would irreparably injure rights to property, the court may enjoin the enforcement of that levy or prohibit that sale. If the court determines that the property has been wrongfully levied upon, it may order the return of specific property that the Department possesses or grant a judgment for the amount of money obtained by levy. If the property was sold, the court may grant a judgment for an amount not exceeding the amount received by the Department from the sale. If the property was purchased by the state, the state shall be treated as having received an amount equal to the minimum price determined or the amount received by the state from the resale of that property, whichever is larger.

For purposes of such an action against the state, the assessment of the tax upon which the interest or lien of the Department is based is conclusively presumed to be valid. Interest shall be allowed for judgments at the rate of 12% per year from the date the Department receives the money wrongfully levied upon to the date of payment of the judgment or from the date of sale to the date of payment.

e. Notice and Sale.

As soon as practicable after obtaining property, the Department shall notify, in writing, the owner of any real property, and the possessor of any personal property, obtained by the Department. That notice may be left at the person's usual place of residence or business. If the owner cannot be located or has no dwelling or place of business in Wisconsin, the Department may mail a notice to the owner's last-known address. That notice shall specify the sum demanded. It shall also contain, in the case of personal property, an account of the property obtained and, in the case of real property, a description with reasonable certainty of the property seized.

The Department shall also publish a notice of the sale in a newspaper published or generally circulated within the county where the property was obtained. If there is no newspaper published or generally circulated in that county, the Department shall post that notice at the city, town or village hall nearest the place where the property was obtained and in at least two other public places. That notice shall specify the property to be sold and the time, place, manner and conditions of the sale.

If any property liable to levy is not divisible so the Department can sell a part to raise the whole amount of the tax and expenses, the whole property shall be sold.

The sale shall occur not less than 10 days and not more than 40 days after the notice has been published or posted. The Department may interrupt the sale, but not for a period longer than 90 days. The sale shall be in the county in which the property is levied upon or in Dane County.

Before the sale, the Department shall determine a minimum price for which the property shall be sold. If no person offers at least the minimum price, the state shall purchase the property for the minimum price. Otherwise, the property shall be sold to the highest bidder. In determining the minimum price, the Department shall take into account the expense of making the levy and sale in addition to the value of the property. If payment in full is required at the time of acceptance of a bid and is not paid then, the Department shall sell the property in the manner provided. If part of the payment may be deferred and if that part is not paid within the prescribed period, the Department may sue the purchaser in the Circuit Court of Dane County for the unpaid part of the purchase price and interest at the rate of 12% per year from the date of the sale. In the alternative, the Department may declare the sale void and may sell the property again. If the property is sold again, the second purchaser shall receive it free of any claim of the defaulting purchaser and the amount paid upon the bid price by the defaulting purchaser is forfeited.

No property of any person is exempt from levy and sale.

f. Redemption.

Any person whose property has been levied upon may pay the amount due and the expenses of the proceeding to the Department at any time before the sale. Upon that payment, the Department shall restore the property to that person and stop all proceedings related to the levy.

The owners of real property sold, their heirs, executors or administrators, any person having an interest in or a lien on the real property, or any person in behalf of one of these persons may redeem the real property within 120 days after the sale. Redemption is accomplished by paying the purchaser the amount paid by the purchaser plus interest at the rate of 18% per year. If the purchaser cannot be found in the county in which the property to be redeemed is located, payment shall be made to the Department, for the use of the purchaser.

g. Certificate of Sale.

The Department shall give the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property sold and not redeemed, the Department shall execute a deed to the purchaser, upon surrender of the certificate of sale. The deed of sale of real property is prima facie evidence of the facts stated in it and conveys all of the right, title and interest the delinquent party had to the property.

The certificate of sale for personal property is prima facie evidence of the right of the Department to make the sale and conclusive evidence of the regularity of the proceedings of the sale. That certificate transfers to the purchaser all right, title and interest of the delinquent party to the property sold. If that property is stocks, that certificate is notice, when received, to any person of that transfer and authority to record the transfer on books and records as if the stocks were transferred or assigned by the party holding them, and all prior certificates are void. If the subject of sale is securities or other evidence of debt, the certificate is valid against any person possessing or claiming to possess the securities or other evidence of debt. If the property is a motor vehicle, the certificate is notice, when received, to the Department of Transportation as if the certificate of title were transferred or assigned by the party holding that certificate of title, and any prior certificate is void.

A certificate of sale of personal property given or a deed to real property executed by the Department discharges that property from all liens, encumbrances and titles subordinate to the Department's lien.

h. Use of Proceeds.

The Department shall apply all money realized first against the expenses of the proceedings and then against the liability in respect to which the levy was made or the sale was conducted and any other liability owed to the Department by the delinquent person. The Department may refund or credit any amount left to the person entitled to that amount.

i. Release of Levy.

The Department may release the levy upon all or part of property levied upon to facilitate the collection of the liability, but that release does not prevent any later levy.

j. Wrongful Levy.

If the Department determines that property has been wrongfully levied upon, the Department may return the property, an amount of money equal to the amount of money levied upon or an amount of money equal to the amount of money received by the state from the sale of that property.

The Department may return property at any time. The Department may return an amount of money equal to the amount of money levied upon or received from sale within 9 months after the levy.

k. Preservation of Remedies.

The availability of levy does not abridge the right of the Department to pursue other remedies.

l. Evasion.

Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized with intent to evade or defeat the assessment or collection of any tax administered by the Department may be fined not more than \$5,000 or imprisoned not more than three years or both, together with the costs of prosecution.

4. Eliminate Requirement That Warrants Be "Returned Not Satisfied" (Amend s. 71.13(3)(d), effective July 20, 1985.)

The amendment to s. 71.13(3)(d) eliminates archaic and unnecessary language from the Statutes. It does not result in any change in interpretation of the law.

5. Require Additional Employer Withholding (Renumber s. 71.135(1) to 71.135(1m) and amend s. 71.135(1m) as renumbered, create s. 71.135(1g), effective July 20, 1985.)

Prior law provided that the Department may require an employer to withhold (in addition to regular withholding of Wisconsin income taxes) from "compensation due" an employe, additional amounts to be applied towards an employe's tax delinquency owing the Department of Revenue. This provision provides that "employe" for purposes of this provision includes any subcontractor. "Compensation due" includes wages, salaries, income advances or other consideration paid for future services.

6. Index Withholding Tax Tables (Amend s. 71.20(2m), effective for 1986 tax year and thereafter.)

Section 71.20(2m) provides for indexing of the withholding tables to reflect any changes in the income tax rates or income tax brackets. The amendments to s. 71.20(2m) include a reference to s. 71.09(1e) and (1f), which are the new tax tables for single persons and married persons for the 1986 tax year and thereafter.

7. Increase Fee for Obtaining Tax Return Information to \$4 (Amend s. 71.11(44)(b), effective July 20, 1985.)

Under prior law, a person could obtain the amount of Wisconsin net income tax, franchise tax or gift tax paid or payable of another person by filling out a form and paying a \$1 fee. The fee for obtaining this information has been increased from \$1 to \$4 for each return.

8. Clarify Disclosure of Tax Return Information (Amend ss. 71.11(44)(a) and 77.61(5)(a), effective July 20, 1985.)

The amendments to s. 71.11(44)(a) and s. 77.61(5)(a) clarify that Department of Revenue employes or agents are not prohibited from offering or submitting any tax return or related information 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.

9. Increase Late Filing Fee (Amend s. 71.11(40), effective for returns required to be filed on or after July 20, 1985.)

A \$20 late filing fee shall be added to the tax if an income or franchise tax return is 60 or more days late.

10. Increase Penalty for Attempt to Defeat or Evade Tax (Amend s. 71.11(6)(b), effective for 1985 tax year and thereafter.)

Any person filing an incorrect return or failing to file a return with intent to defeat or evade the income or franchise tax, shall have added to the tax an amount equal to 100% of the tax on the entire underpayment. (For 1969 through 1984, the additional assessment was 50% of the tax.)

Included is a separate return filed by a spouse for a tax year for which a joint return is filed under s. 71.10(20) after the filing of that separate return, and a joint return filed by the spouses for a tax year for which a separate return is filed under s. 71.10(21) after the filing of that joint return.

11. Increase Penalties for Failure to File a Return or Filing a False or Fraudulent Return (Amend s. 71.11(41), effective July 20, 1985.)

Under prior law, any person who willfully failed or refused to make a return at the required time, willfully failed or refused to make required deposits or payments, or willfully rendered a false or fraudulent statement, deposit report or withholding report was guilty of a misdemeanor and could be fined not more than \$500 or imprisoned not to exceed six months or both, together with the cost of prosecution. Effective July 20, 1985 the penalty is increased to not more than a \$10,000 fine or imprisonment not to exceed nine months or both, together with the cost of prosecution.

12. Impose Penalties for False Documents (Create s. 71.11(42m), effective July 20, 1985.)

Any person who willfully makes and subscribes any return, claim, statement or document that that person does not believe to be true and correct as to every material matter or willfully aids in or advises the preparation of a document that is false or fraudulent may be fined not more than \$10,000 or imprisoned not more than nine months or both, together with the cost of prosecution.

13. Battery or Threat to Department Employee (Create s. 940.205, effective July 20, 1985.)

Whoever intentionally causes bodily harm or threatens to cause bodily harm to any Department of Revenue official, employe or agent or a member of his or her family is guilty of a Class D felony under the following circumstances:

- a. At the time of the act or threat, the actor knows or should have known that the victim is a Department of Revenue official, employe or agent or a member of his or her family.

- b. The official, employe or agent is acting in an official capacity at the time of the act or threat, or the act or threat is in response to any action taken in an official capacity.
- c. There is no consent by the person harmed or threatened.

14. Change Tax Appeals Commission Procedures (Amend ss. 73.01(1), (3)(a), (4)(b), (c), (dn) and (e)(intro.), 73.015(1) and (2), create s. 73.01(1)(b), (4)(am) and (4m), effective July 20, 1985.)

a. Small Claims Cases.

"Small claims" is a matter in which the amount in controversy, including any penalty, after the Department of Revenue takes final action on the petition for redetermination is less than \$2,500. A case will not be heard as a small claims case if the Commission determines that it should not be treated as such or if the Department of Revenue determines that the case has statewide significance.

Small claims cases shall be decided by one Commissioner assigned by the chairperson prior to the hearing. An oral decision or a written decision shall be provided within two weeks after the hearing.

Decisions in small claims cases are not precedents. Except in respect to small claims decisions, if the Commission construes a statute adversely to the contention of the Department of Revenue, the Department shall be deemed to acquiesce unless the Department seeks review of the decision or unless the Department issues a notice of nonacquiescence.

b. Frivolous Appeals.

Whenever it appears to the Commission, or to the Commissioner conducting a hearing, that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position is frivolous or groundless, the Commission or Commissioner may assess the taxpayer up to \$1,000 at the time the deficiency is assessed. Those damages shall be paid upon notice from the Department of Revenue and shall be collected as part of the tax.

c. Deadline for Decisions.

The final decision of the Commission shall be issued within 90 days after the date on which the last document necessary to the decision is received or the date on which a hearing is closed, whichever is later, unless good cause is shown or unless the parties and the Commission agree to an extension.

No member of the Commission, including the chairperson, or its hearing examiner may receive any salary unless he or she first executes an affidavit at the end of each salary period stating that he or she has complied with the deadlines.

If a member of the Commission, including the chairperson, or its hearing examiner is unable to comply with the deadline, that person shall so certify for the record, and the period is then extended for one additional period not to exceed 90 days.

- 15. Implement Property Tax Deferral Loan Program (Amend ss. 77.66(1), 77.67(1), (2) and (5), create ss. 25.38 and 77.67(2m), effective for property taxes assessed for 1985 and payable in 1986.)

As part of the 1981-83 budget bill (Chapter 20, Laws of 1981) the legislature created the property tax deferral loan program to make loans available to persons 65 years of age or older to pay property taxes on their residence. The money for the loans was to be generated by bonding administered by the Wisconsin Building Commission. The Department of Revenue would administer the loan program. However, implementation of the program was delayed due to high interest rates and technicalities in the sale of revenue bonds to fund the program.

To implement the property tax deferral loan program, s. 25.38 establishes an elderly property tax deferral fund consisting of a general fund loan, all amounts collected under the 1985 state tax amnesty program and amounts received from repayments of loans.

Beginning with property taxes assessed for 1985 and payable in 1986, the Department of Revenue shall enter into agreements with program participants and co-owners of a qualifying dwelling unit to loan funds to pay property taxes on the dwelling unit. (Note: This loan program does not replace the homestead credit program. Participants in the loan program may still qualify for homestead credit.)

A person must apply on forms prescribed by the Department by June 30 of the year in which the taxes are payable on a qualified dwelling unit. The application deadline for a loan for the 1985 taxes is June 30, 1986. Additional information about the property tax deferral loan program will be included in a future issue of the Wisconsin Tax Bulletin.

- 16. Require School District Information on Income Tax Forms (Create s. 73.03(29) and (30), effective July 20, 1985.)

The Department of Revenue is required to provide a place on income tax forms for taxpayers to indicate the school district in which they reside.

- 17. Renumber Definitions in Statutes (Renumbers various sections in Chapter 71, effective for 1986 tax year and thereafter, and two sections in Chapter 77, effective January 1, 1987.)

<u>Definition</u>	<u>Old Reference</u>	<u>New Reference</u>
a. Corporation Franchise/Income Taxes		
Life insurance	71.01(4)(g)9	71.01(4)(g)20
Net income	71.02(1)(a)	71.02(1)(c)
Person	71.02(1)(b)	71.02(1)(f)
Paid	71.02(1)(c)	71.02(1)(e)
Fiscal year	71.02(1)(d)	71.02(1)(b)
Entertainment corporation	71.02(1)(e)	71.02(1)(a)
Tax-option corporation	71.02(1)(f)	71.02(1)(g)
Net income or loss	71.02(1)(g)	71.02(1)(d)

<u>Definition</u>	<u>Old Reference</u>	<u>New Reference</u>
b. Individual Income Taxes		
Federal taxable income	71.02(2)(a)	71.02(2)(c)
Internal Revenue Code	71.02(2)(b)	71.02(2)(d)
Wisconsin taxable income - estates & trusts	71.02(2)(c)	71.02(2)(mb)
Wisconsin taxable income - natural persons	71.02(2)(d)	71.02(2)(me)
Wisconsin adjusted gross income	71.02(2)(e)	71.02(2)(i)
Wisconsin standard deduction - 1970	71.02(2)(g)	71.02(2)(mj)
Wisconsin standard deduction - 1971	71.02(2)(gh)	71.02(2)(mp)
Wisconsin standard deduction - 1972	71.02(2)(gn)	71.02(2)(ms)
Wisconsin standard deduction - 1973 to 1976	71.02(2)(gp)	71.02(2)(kg)
Wisconsin standard deduction - 1977 & 1978	71.02(2)(gq)1	71.02(2)(km)1
Wisconsin standard deduction - 1979 to 1985	71.02(2)(gq)2	71.02(2)(km)2
Standard deduction - fiscal filer	71.02(2)(gq)5	71.02(2)(km)5
Standard deduction - dependent	71.02(2)(gq)6	71.02(2)(km)6
Standard deduction - part year and nonresidents	71.02(2)(gq)7	71.02(2)(km)7
Index standard deduction	71.02(2)(gr)	71.02(2)(kr)
Taxable income	71.02(2)(h)	71.02(2)(g)
Person, fiduciary, income	71.02(2)(i)	71.02(2)(f)
Person	71.02(2)(j)	71.02(2)(em)
Taxable year	71.02(2)(k)	71.02(2)(h)
Federal net operating loss	71.02(2)(L)	71.02(2)(b)
Wisconsin net operating loss	71.02(2)(m)	71.02(2)(j)
Entertainer	71.02(2)(p)	71.02(2)(a)
Transitional date	71.05(2)(a)1	71.05(2)(a)6
Federal adjusted basis	71.05(2)(a)2	71.05(2)(a)4
Wisconsin adjusted basis	71.05(2)(a)3	71.05(2)(a)7
Adjusted basis	71.05(2)(a)4	71.05(2)(a)1
Constant basis assets	71.05(2)(a)5	71.05(2)(a)3
Changing basis assets	71.05(2)(a)6	71.05(2)(a)2
Owner	71.05(2)(a)7	71.05(2)(a)5
c. Homestead Credit		
Income	71.09(7)(a)1	71.09(7)(a)6
Household	71.09(7)(a)2	71.09(7)(a)4
Household income	71.09(7)(a)3	71.09(7)(a)5
Homestead	71.09(7)(a)4	71.09(7)(a)3
Claimant	71.09(7)(a)5	71.09(7)(a)1
Rent constituting property taxes accrued	71.09(7)(a)6	71.09(7)(a)8
Gross rent	71.09(7)(a)7	71.09(7)(a)2
Property taxes accrued	71.09(7)(a)8	71.09(7)(a)7

d. Withholding of Taxes

<u>Definition</u>	<u>Old Reference</u>	<u>New Reference</u>
Wages	71.19(1)	71.19(5)
Payroll period	71.19(2)	71.19(4)
Employee	71.19(3)	71.19(2)
Employer	71.19(4)	71.19(3)
Department	71.19(5)	71.19(1)

e. Sales/Use Taxes

Sale - services to interexchange carrier	77.51(4)(m)	77.51(14)(m)
Retailer - telephone company	77.51(7)(p)	77.51(13)(p)