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Wis. Stat., Section 71.74

Department audits, additional assessments and refunds

(1) Office audit. The department shall, as soon as practicable, office audit such returns as it deems advisable and if it is found from such office audit that a person has been over or under assessed, or found that no assessment has been made when one should have been made, the department shall correct or assess the income of such person. Any assessment, correction or adjustment made as a result of such office audit shall be presumed to be the result of an audit of the return only, and such office audit shall not be deemed a verification of any item in said return unless the amount of such item and the propriety thereof shall have been determined after hearing and review as provided in s. 71.88 (1) (a) and (2) (a). Such office audit shall not preclude the department from making field audits of the books and records of the taxpayer and from making further adjustment, correction and assessment of income.

(2) Field audit.

(a) Whenever the department deems it advisable to verify any return directly from the books and records of any person, or from any other sources of information, the department may direct any return to be so verified.

(b) For the purpose of ascertaining the correctness of any return or for the purpose of making a determination of the taxable income of any person, the department may examine or cause to be examined by any agent or representative designated by it, any books, papers, records or memoranda bearing on the income of the person, and may require the production of the books, papers, records or memoranda, and require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information. Upon such information as it may be able to discover, the department shall determine the true amount of income received during the year or years under investigation.

(c) If it appears upon such investigation that a person has been over or under assessed, or that no assessment has been made when one should have been made, the department shall make a correct assessment in the manner provided in this chapter.

(3) Default assessment. Any person required to file an income or franchise tax return, who fails, neglects or refuses to do so within the time prescribed by this chapter or files a return that does not disclose the person's entire net income, shall be assessed by the department according to its best judgment.

(4) Assessment for failure of natural persons and fiduciaries to file information returns. The department may assess as an addition to taxable income the amount of deductions taken in arriving at federal adjusted gross income or federal taxable income by natural persons and fiduciaries for wages, rent or royalties, upon failure to file information returns concerning such payments where required under s. 71.65 (1) and (2) (a) or (b) and 71.70 (1). Such assessments shall be made and reviewed in the same manner as other income tax assessments.

Cross-reference: See also s. Tax 2.04, Wis. adm. code.

(5) Assessment when prices affect taxable income. When any corporation liable to taxation under this chapter conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business, by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income, the department may determine the amount of taxable income to such corporation for the calendar or fiscal year, having due regard to the reasonable profits which but for such arrangement or understanding might or could have been obtained from dealing in such products, goods or commodities.

(6) Consolidated statements. For the purpose of this chapter, whenever a corporation which is required to file an income or franchise tax return is affiliated with or related to any other corporation through stock ownership by the same interests or as parent or subsidiary corporations, or whose income is regulated through contract or other arrangement, the department may require such consolidated statements as in its opinion are necessary in order to determine the taxable income received by any one of the affiliated or related corporations or to determine whether the corporations are a unitary business.

(7) Additional assessments against dissolved corporation. If all or substantially all of the business or property of a corporation is transferred to one or more persons and the corporation is liquidated, dissolved, merged, consolidated or otherwise terminated, any tax imposed by this chapter on such corporation may be assessed and collected as prescribed in this section against the transferee or transferees of such business or property. Notice shall be given to such transferee or transferees under sub. (11) within the time specified in s. 71.77 irrespective of any other limitations imposed by law. If such corporation has dissolved, such notice may be served on any one of the last officers or members of the board of directors of such corporation.

(8) Adjustment of credits.

(a) If an audit of a claim for a credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX indicates that an incorrect claim was filed, the department shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor under sub. (11) within 4 years of the last day prescribed by law for filing the claim. If the claim has been paid, or credited against income or franchise taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income or franchise taxes are assessed.

(b) If a claim for a credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX is false or excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid or a credit has been allowed against income or franchise taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income or franchise taxes are assessed.

(c) If a claim for a credit under s. 71.07, 71.28 or 71.47 or subch. VIII or IX is excessive and was negligently prepared, 10 percent of the corrected claim shall be disallowed and, if the claim has been paid or credited against income or franchise taxes otherwise payable, the credit shall be reduced or canceled and the proper portion of any amount paid shall be similarly recovered by assessment as income or franchise taxes are assessed.

(d) If a claim for a state historic rehabilitation credit under s. 71.07 (9r) is false or excessive, the department shall disallow the claim in full. If a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount may be recovered by assessment as income taxes are assessed. Notwithstanding par. (a) and s. 71.77, the department shall notify the claimant of the determination and shall give reasons for the disallowance under sub. (11) within 4 years after the date that the state historical society notifies the department that the preservation or rehabilitation is not in compliance with s. 71.07 (9r) (b) 3. b. or 4., but that notification must be made within 6 years after the date that the physical work of construction, or destruction in preparation for construction, begins.

(9) Liability may be assessed to more than one person. If the department determines that a liability exists under this chapter and that the liability may be owed by more than one person, the department may assess the entire amount to each person, specifying that it is assessing in the alternative.

(10) Notice to taxpayer of adjustment. The department shall notify the taxpayer, as provided in sub. (11), of any adjustment, correction and assessment made under sub. (1).

(11) Notice of additional assessment. The department shall notify the taxpayer in writing of any additional assessment by office audit or field investigation. The department shall serve that notice as provided in s. 73.03 (73m). In the case of joint returns, notice of additional assessment may be a joint notice, and service on one spouse is proper notice to both spouses. If the spouses have different addresses at the time the department serves the notice of additional assessment and if either spouse notifies the department in writing of those addresses, the department shall serve a duplicate of the original notice on the spouse who has the address other than the address to which the department sent the original notice, if no request for a redetermination or a petition for review has been commenced or finalized. For the spouse who did not receive the original notice, redetermination and appeal rights begin upon the service of a duplicate notice. If the taxpayer is a corporation and the department is unable to serve that taxpayer as provided in s. 73.03 (73m), the department may serve the notice by publishing a class 3 notice, under ch. 985, in the official state newspaper.

(12) Taxes delinquent after due date. Additional income or franchise taxes assessed under subs. (1) to (5), (7) and (8) shall become delinquent if not paid on or before the due date stated in the notice to the taxpayer.

(13) Collection of additional tax and issuance of refunds.

(a) If the tax is increased the department shall proceed to collect the additional tax in the same manner as other income or franchise taxes are collected. If the income or franchise taxes are decreased upon direction of the department the secretary of administration shall refund to the taxpayer such part of the overpayment as was actually paid in cash, and the certification of the overpayment by the department shall be sufficient authorization to the secretary of administration for the refunding of the overpayment. No refund of income or franchise tax shall be made by the secretary of administration unless the refund is so certified. The part of the overpayment paid to the county and the local taxation district shall be deducted by the secretary of administration in the secretary's next settlement with the county and local treasurer.

(b) No action or proceeding whatsoever shall be brought against the state or the secretary of administration for the recovery, refund, or credit of any income or surtaxes; except in

case the secretary of administration shall neglect or refuse for a period of 60 days to refund any overpayment of any income or surtaxes certified, the taxpayer may maintain an action to collect the overpayment against the secretary of administration so neglecting or refusing to refund such overpayment, without filing a claim for refund with the secretary of administration, provided that such action shall be commenced within one year after the certification of such overpayment.

(14) Additional remedy to collect tax. The department may also proceed under s. 71.91 (5) for the collection of any additional assessment of income or franchise taxes or surtaxes, after notice thereof has been given under sub. (11) and before the same shall have become delinquent, when the department has reasonable grounds to believe that the collection of such additional assessment will be jeopardized by delay. In such cases, the department shall give notice of the intention to so proceed to the taxpayer as provided in s. 73.03 (73m), and the warrant of the department shall not issue if the taxpayer within 10 days after such notice furnishes a bond in such amount, not exceeding double the amount of the tax, and with such sureties as the department shall approve, conditioned upon the payment of so much of the additional taxes as shall finally be determined to be due, together with interest thereon as provided by s. 71.82 (1) (a). Nothing in this subsection affects the review of additional assessments provided by ss. 71.88 (1) (a) and (2) (a), 71.89 (2), 73.01, and 73.015, and any amounts collected under this subsection shall be deposited with the department and disbursed after final determination of the taxes as are amounts deposited under s. 71.90 (2).

(15) Payments. All nondelinquent payments of additional amounts owed shall be applied in the following order: penalties, interest, tax principal.