



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 16, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 343: Authority for the Secretary of Revenue to Waive Certain Interest Charges and Civil Penalties

Assembly Bill 343 was introduced on July 8, 2009, and referred to the Assembly Committee on State Affairs and Homeland Security. Assembly Amendment 1 was offered by the Committee on September 24, 2009. On October 9, 2009, Assembly Amendment 1 was recommended for adoption by the Committee on State Affairs and Homeland Security by a vote of 5 to 3. On that same date Assembly Bill 343, as amended, was recommended for adoption by a vote of 5 to 3, and referred to the Joint Committee on Finance.

CURRENT LAW

Under current law, a taxpayer is subject to interest on underpayment of estimated individual income taxes, and to civil penalties for incomplete, incorrect, or late filing of certain returns or forms. Taxpayers that have difficulty in paying taxes, interest, and penalties owed can file a petition for compromise or make arrangements for installment payments with the Department of Revenue (DOR).

Underpayment of Estimated Individual Income Tax. In general, in cases where an individual, estate, or trust underpays its estimated income tax, interest is imposed at the rate of 12% per year on the amount of underpayment for the period of the underpayment. The "period of underpayment" means the time period from the due date of the estimated payment installment to the earlier of the date of payment or the fourth month beginning after the end of the tax year. No interest is imposed if any of the following conditions apply:

a. The tax shown on the return or, if no return is filed, the tax minus amounts withheld is less than \$200.

b. The preceding tax year was 12 months, the taxpayer had no income or minimum tax liability, and the taxpayer was a resident of Wisconsin for all of that year.

c. The Secretary of Revenue determines that, because of casualty, disaster, or other unusual circumstances it is not equitable to impose interest.

d. The Secretary of Revenue determines that the taxpayer retired during the current or preceding tax year after attaining age 62 or becoming disabled, and that the underpayment of estimated taxes was due to reasonable cause and not due to willful neglect.

e. For tax years beginning after December 31, 2008, the taxpayer qualifies for an extension of time to file under federal law, due to a presidentially declared disaster, or terroristic or military action.

f. The taxpayer underpaid estimated taxes due to a change in the top individual income tax bracket. The interest exclusion only applies to the first tax year to which the bracket change applies.

Failure to File Income and Withholding Tax Returns. If a taxpayer fails to file an individual income, corporate income or franchise, or withholding tax return by the due date of the return, or by an extension of the filing date, the taxpayer is subject to a civil penalty of 5% of the amount of tax for each month or part of a month during which the return is not filed, up to a maximum penalty of 25% of the tax, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

Failure to File Information Returns. In cases where a person (entity) fails to file a required information return by the prescribed due date, including an extension, or where the person files an incomplete or incorrect return, the person is subject to a civil penalty of \$10 for each violation. The required information returns include: (a) statement of corporate capital stock transfers to Wisconsin residents during the preceding calendar year; (b) report of rent and royalty payments to state residents; and (c) statement of nonwage payments made for services performed in Wisconsin. The penalty may be waived if the person shows that a violation is due to reasonable cause and not due to willful neglect.

Filing Incomplete or Incorrect Income or Franchise Tax Returns. A person (entity) that is required to file an income or franchise tax return that files an incomplete or incorrect return is subject to a civil penalty equal to 25% of the amount otherwise payable on any income subsequently discovered or reported, unless it is shown that such filing was due to good cause and not neglect. The penalty is assessed, levied, and collected in the same manner as additional normal income or franchise taxes and in addition to any other civil penalties that are imposed.

Incomplete or Incorrect Deposit or Withholding Reports. Any person (entity) required to file a deposit report or withholding report that files an incomplete or incorrect report, or fails to properly

withhold, or fails to properly deposit or pay over withheld funds is subject to a civil penalty of 25% of the amount not reported, or not withheld, not deposited, or not paid over, unless it can be shown that the incomplete or incorrect filing, or failure to deposit or withhold was due to good cause and not neglect. The penalty amount is assessed, levied, and collected in the same manner as additional income or franchise taxes, and is imposed in addition to other civil penalties.

Late Filing of Withholding Report. In cases where a taxpayer fails to file a withholding deposit or payment report by the prescribed due date, a civil penalty is imposed equal to 5% of the amount of deposit or payment for each month or part of a month during which the withholding deposit or payment report is not filed, up to a maximum penalty of 25% of the amount, unless it is shown that the failure to file is due to reasonable cause and not willful neglect.

Petition for Compromise of Taxes. In cases where a taxpayer cannot pay the amount of taxes, interest, and penalties owed in full, and the taxpayer does not expect to be able to pay the amount owed in the future, the taxpayer may offer to settle with DOR for a smaller amount by filing a petition for compromise. In general, the following conditions must be met for DOR to accept a petition: (a) the taxpayer must demonstrate that assets cannot be disposed or borrowed against to pay the liability in full; and (b) the taxpayer's income statement included in the petition must demonstrate that monthly income is insufficient to pay the liability through installment payments.

DOR determines the taxpayer's ability to pay by reviewing a number of factors, including: (a) the taxpayer's equity in any real or personal property; (b) past, present, and future earning potential; (c) whether the taxpayer's current financial condition is likely to be temporary or permanent; (d) the priority of other creditors; (e) the taxpayer's present life style; (f) the taxpayer's ability to borrow; and (g) other factors DOR considers relevant.

After reviewing the petition, DOR sends a written response that: (a) accepts the offer; (b) rejects the offer, but proposes a counteroffer; or (c) rejects the offer and refers the taxpayer to a Department collection agent to determine the best method for the taxpayer to pay the liability. If DOR accepts a compromise offer, the amount must be paid in full within 10 days of the taxpayer's receipt of the Department's acceptance.

Installment Agreements. If a taxpayer cannot pay the amount of taxes, interest, and penalties in full, the taxpayer may request an installment agreement with DOR. The taxpayer may contact a Department office or file an online request form. If the proposed payment schedule does not satisfy the taxpayer's balance in one year, the taxpayer must complete a financial information form and send it to the Department. DOR may approve a request or request additional information. If approved as proposed, an installment agreement is forwarded to the taxpayer. However, if it is determined that larger payments are necessary, or additional information is required, a DOR revenue agent will contact the taxpayer, and negotiate the installment payment terms.

Upon DOR approval of an installment agreement a \$20 fee is charged to the taxpayer's balance. An installment agreement remains in effect as long as the taxpayer honors the terms of the

agreement, including: (a) paying each installment on time; and (b) paying other tax liabilities as they occur. However, DOR may file delinquent tax warrants and intercept state and federal tax refunds. In addition, the Department may review the financial condition of the taxpayer periodically, and may revise the terms of the installment agreement, but only after notifying the taxpayer.

BILL SUMMARY

Assembly Bill 343 would create an exception from the requirement that interest be imposed on estimated tax underpayments for cases where, in the interest of fairness, the Secretary of Revenue determines that no or less interest should be imposed. Similarly, AB 343 provides that, in the interest of fairness, the Secretary of Revenue would be authorized to waive or reduce the civil penalty that would otherwise be imposed for the failure to file income, franchise, and withholding returns, the failure to file information returns, filing incomplete or incorrect income or franchise tax returns, filing incomplete or incorrect deposit or withholding reports, and late filing of withholding reports.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 would provide that the Secretary of Revenue could only reduce interest or penalties that would be imposed on an individual (and not on corporations or other entities).

FISCAL EFFECT

The Department of Revenue indicates that because current law allows taxpayers to petition for compromise to address issues of fairness, or inability to pay taxes, interest, and penalties, it is unlikely that a significant amount of interest or penalties would be waived or reduced under the provisions of the bill. The fiscal effect would be minimal.

Prepared by: Ron Shanovich