

Date: September 29, 2012
Proposed by: DWD
Prepared by: Shashank Partha

ANALYSIS OF PROPOSED UI LAW CHANGE

License denial, nonrenewal, discontinuation, suspension and revocation based on tax delinquency.

1. Description of Proposed Change

The department proposes to identify delinquent debtor accounts in which the owners, corporate officers or members require licensure by the State. This proposed statute will authorize the department to require license holders to be current on their UI taxes or face non-renewal, discontinuation, suspension or revocation. This is a robust tool that would lead to fewer delinquent accounts and more compliance with the UI law. Other State taxing authorities already have similar powers so this would simply provide uniform enforcement ability among such authorities.

2. Proposed Statutory Language

Amend Wis. Stat. § 73.0301(2) to read:

73.0301. License denial, nonrenewal, discontinuation, suspension and revocation based on tax delinquency.

(2) DUTIES AND POWERS OF LICENSING DEPARTMENTS.

(a) Each licensing department and the supreme court, if the supreme court agrees, shall enter into a memorandum of understanding with the department of revenue or department of workforce development under sub. (4) (a) that requires the licensing department or supreme court to do all of the following:

1. Request the department of revenue or department of workforce development to certify whether an applicant for a license or license renewal or continuation is liable for delinquent taxes. With respect to an applicant for a license granted by a credentialing board, the department of safety and professional services shall make a request under this subdivision. This subdivision does not apply to the department of transportation with respect to licenses described in sub. (1) (d) 7.

2. Request the department of revenue or department of workforce development to certify whether a license holder is liable for delinquent taxes. With respect to a holder of a license granted by a credentialing board, the department of safety and professional services shall make a request under this subdivision.

(b) Each licensing department and the supreme court, if the supreme court agrees, shall do all of the following:

1.

a. If, after a request is made under par. (a) 1. or 2., the department of revenue or department of workforce development certifies that the license holder or applicant for a license or license renewal or continuation is liable for delinquent taxes, revoke the license or deny the application for the license or license renewal or continuation. The department of transportation may suspend licenses described in sub. (1) (d) 7. in lieu of revoking those licenses. A suspension, revocation or denial under this subd. 1. a. is not subject to administrative review or, except as provided in subd. 2. and sub. (5) (am), judicial review. With respect to a license granted by a credentialing board, the department of safety and professional services shall make a revocation or denial under this subd. 1. a. With respect to a license to practice law, the department of revenue or department of workforce development shall not submit a certification under this subd. 1. a. to the supreme court until after the license holder or applicant has exhausted his or her remedies under sub. (5) (a) and (am) or has failed to make use of such remedies.

b. Mail a notice of suspension, revocation or denial under subd. 1. a. to the license holder or applicant. The notice shall include a statement of the facts that warrant the suspension, revocation or denial and a statement that the license holder or applicant may, within 30 days after the date on which the notice of denial, suspension or revocation is mailed, file a written request with the department of revenue or department of workforce development to have the certification of tax delinquency on which the suspension, revocation or denial is based reviewed at a hearing under sub. (5) (a) With respect to a license granted by a credentialing board, the department of safety and professional services shall mail a notice under this subd. 1. b. With respect to a license to practice law, the department of revenue or department of workforce development shall mail a notice under this subd. 1. b. and the notice shall indicate that the license holder or applicant may request a hearing under sub. (5) (a) and (am) and that the department of revenue or department of workforce development shall submit a certificate of delinquency to suspend, revoke, or deny a license to practice law to the supreme court after the license holder or applicant has exhausted his or her remedies under sub. (5) (a) and (am) or has failed to make use of such remedies. A notice sent to a person who holds a license to practice law or who is an applicant for a license to practice law shall also indicate that the department of revenue or department of workforce development may not submit a certificate of delinquency to the supreme court if the license holder or applicant pays the delinquent tax in full or enters into an agreement with the department of revenue or department of workforce development to satisfy the delinquency.

2. Except as provided in subd. 2m., if notified by the department of revenue or department of workforce development that the department of revenue or department of workforce development has affirmed a certification of tax delinquency after a hearing under sub. (5) (a), affirm a suspension, revocation or denial under subd. 1. a. A license holder or applicant may seek judicial review under ss. 227.52 to 227.60, except that the review shall be in the circuit court for Dane County, of an affirmation of a revocation or

denial under this subdivision. With respect to a license granted by a credentialing board, the department of safety and professional services shall make an affirmation under this subdivision.

2m. With respect to a license to practice law, if notified by the department of revenue or department of workforce development that the department of revenue or department of workforce development has affirmed a certification of tax delinquency after any requested review under sub. (5) (a) and (am), decide whether to suspend, revoke, or deny a license to practice law.

3. If a person submits a nondelinquency certificate issued under sub. (5) (b) 1., reinstate the license or grant the application for the license or license renewal or continuation, unless there are other grounds for suspending or revoking the license or for denying the application for the license or license renewal or continuation. If reinstatement is required under this subdivision, a person is not required to submit a new application or other material or to take a new test. No separate fee may be charged for reinstatement of a license under this subdivision. With respect to a license granted by a credentialing board, the department of safety and professional services shall reinstate a license or grant an application under this subdivision.

4. If a person whose license has been suspended or revoked or whose application for a license or license renewal or continuation has been denied under subd. 1. a. submits a nondelinquency certificate issued under sub. (3) (a) 2., reinstate the license or grant the persons application for the license or license renewal or continuation, unless there are other grounds for not reinstating the license or for denying the application for the license or license renewal or continuation. With respect to a license granted by a credentialing board, the department of safety and professional services shall reinstate a license or grant an application under this subdivision.

(c)

1. Each licensing department and the supreme court may require a holder of a license to provide the following information upon request:

a. If the license holder is an individual and has a social security number, the license holders social security number.

am. If the applicant is an individual and does not have a social security number, a statement made or subscribed under oath or affirmation that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A license issued in reliance upon a false statement submitted under this subd. 1. am. is invalid.

b. If the license holder is not an individual, the license holders federal employer identification number.

2. A licensing department may not disclose any information received under subd. 1. a. or b. to any person except to the department of revenue or department of workforce

D12-17

development for the purpose of requesting certifications under par. (b) 2. in accordance with the memorandum of understanding under sub. (4) and administering state taxes or to the department of children and families for the purpose of administering s. 49.22

(3) DUTIES AND POWERS OF DEPARTMENT OF REVENUE/DEPARTMENT OF WORKFORCE DEVELOPMENT.

(a) The department of revenue /department of workforce development shall do all of the following:

1. Enter into a memorandum of understanding with each licensing department and the supreme court, if the supreme court agrees, under sub. (4) (a)

2. Upon the request of any applicant for issuance, renewal, continuation or reinstatement of a license whose license has been previously revoked or whose application for a license or license renewal or continuation has been previously denied under sub. (2) (b) 1. a., issue a nondelinquency certificate to the applicant if the applicant is not liable for delinquent taxes.

(b) If a request for certification is made under sub. (2) (a) 1. or 2., the department of revenue or department of workforce development may, in accordance with a memorandum of understanding entered into under par. (a) 1., certify to the licensing department or the supreme court that the applicant or license holder is liable for delinquent taxes.

(4) MEMORANDUM OF UNDERSTANDING.

(a) Each memorandum of understanding shall include procedures that do all of the following:

1. Establish requirements for making requests under sub. (2) (a) 1. and 2., including specifying the time when a licensing department or the supreme court shall make requests under sub. (2) (a) 1. and 2., and for making certifications under sub. (3) (b)

2. Implement the requirements specified in sub. (2) (b) 3. and 4. (b) Factors such as the need to issue licenses in a timely manner, the convenience of applicants, the impact on collecting delinquent taxes, the effects on program administration and whether a suspension, revocation or denial under sub. (2) (b) 1. a. will have an impact on public health, safety or welfare or the environment shall be considered in establishing requirements under par. (a) 1.

(5) HEARING.

(a) The department of revenue or department of workforce development shall conduct a hearing requested by a license holder or applicant for a license or license renewal or continuation under sub. (2) (b) 1. b. or by an applicant for certification or recertification or a certificate holder under s. 73.03 (50) or 73.09 (7m) (b) to review a certification or

determination of tax delinquency that is the basis of a denial or revocation of a license in accordance with this section or of a certificate, certification or recertification under s. 73.03 (50) or 73.09 (7m) A hearing under this paragraph is limited to questions of mistaken identity of the license or certificate holder or applicant and of prior payment of the delinquent taxes for which the department of revenue or department of workforce development certified or determined the license or certificate holder or applicant is liable. At a hearing under this paragraph, any statement filed by the department of revenue or department of workforce development, the licensing department or the supreme court, if the supreme court agrees, may be admitted into evidence and is prima facie evidence of the facts that it contains. Notwithstanding ch. 227, a person entitled to a hearing under this paragraph is not entitled to any other notice, hearing or review, except as provided in par. (am) and sub. (2) (b) 2. (am) If a person who holds a license to practice law or who is an applicant for a license to practice law receives a hearing under par. (a) to review a certification or determination of tax delinquency that is the basis for a denial, suspension, or revocation of a license to practice law and such certification or determination is affirmed as a result of the hearing under par. (a), the person may seek judicial review of the certification or determination of tax delinquency under ss. 227.52 to 227.60, except that the review shall be in the circuit court for Dane County.

(b) After a hearing conducted under par. (a) or, in the case of a determination related to a license to practice law, after a hearing under par. (a) or, if the hearing is appealed, after judicial review under par. (am), the department of revenue or department of workforce development shall do one of the following:

1. Issue a nondelinquency certificate to a license holder or an applicant for a license or license renewal or continuation if the department determines that the license holder or applicant is not liable for delinquent taxes. For a hearing requested by an applicant for certification or recertification or a certificate holder under s. 73.03 (50) or 73.09 (7m) (b), the department shall grant a certification or recertification or reinstate a certification if the department determines that the applicant or certificate holder is not liable for delinquent taxes, unless there are other grounds for denying the application or revoking the certification.

2. Provide notice that the department of revenue or department of workforce development has affirmed its certification of tax delinquency to a license holder; to an applicant for a license, a license renewal or a license continuation; and to the licensing department or the supreme court, if the supreme court agrees. For a hearing requested by an applicant for certification or recertification or a certificate holder under s. 73.03 (50), or 73.09 (7m) (b), the department of revenue or department of workforce development shall provide notice to the applicant or certificate holder that the department of revenue or department of workforce development has affirmed its determination of tax delinquency.

3. Proposer's Reason for the Change

This information will provide us similar power as possessed by the Department of Revenue to collect unpaid taxes from individuals who need licensure as part of their job functions.

4. Brief History and Background of Current Provision

In the recent years, other state agencies such as Department of Children and Families (DCF) and Department of Revenue (DOR) have successfully used licensure revocations to obtain either unpaid child support or unpaid taxes.

Effects of Proposed Change

- a. Administrative Impact. Will require Department to develop methods similar to those already employed by other state agencies. May also require entering into a Memorandum of Understanding with the Supreme Court or other state agencies that provide licenses. Also will add potentially a small number of hearings for administrative law judges to hear.
- b. Fiscal. No measurable effect on the Trust Fund is anticipated. Since this proposal only represents a small fraction of firms there will be no measureable impact on the Trust Fund.

5. State and Federal Issues

- a. Chapter 108. Due to fact that simply adding this authority to another portion of state statute, no changes to Chapter 108 are envisioned with this proposed change.
- a. Rules. No administrative rules will need to be promulgated or changed as a result of this proposal.
- b. Conformity. None.

6. Proposed Effective/Applicability Date

The law change should be effective as of the effective date of the legislation.