

STATE OF WISCONSIN

REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS

1999 ASSEMBLY BILL 634

[Introduced by Representatives M. Lehman and Wood; cosponsored by Senators Wirch and Drzewiecki.]

General Nature of Proposal

The bill makes numerous changes to Wisconsin's tax laws, which are described in the Legislative Reference Bureau analysis to the bill. The provision of the bill that affects a tax exemption is described below.

Under current law, the sale of certain goods are exempt from the sales and use taxes if those goods are "used exclusively" for a particular purpose. Generally, the statutes do not define what it means to be "used exclusively" for a particular purpose. However, the term is defined for purposes of the sales and use tax exemption related to certain tractors and machines used in the business of farming. Under that provision, the term "used exclusively" means used to the exclusion of all other uses, except for other use not exceeding 5% of total use.

The bill defines the term "used exclusively" for purposes of the current exemptions that use that term. Under the bill, an item is "used exclusively" if the item is used in a nontaxable manner to the exclusion of all other uses, except for other uses that do not exceed 5% of total use in a year. Under the bill, the percentage of total use is to be determined as follows, unless a person receives written approval from the Department of Revenue to use an alternate method:

a. For highway vehicles, including trailers and semitrailers, exclusive use is determined by dividing the number of miles that the item is driven or hauled in a nontaxable manner in the taxable year by the total number of miles that the item is driven or hauled in the same taxable year.

b. For an item other than that described in item a., above, exclusive use is determined by dividing the number of hours that the item is used in a nontaxable manner in the taxable year by the total number of hours that the item is used in the same taxable year.

Generally, the bill affects the exemption for the following items: equipment, tractors and machinery used for farming; trucks, buses and other items used by common and contract carriers; waste reduction and recycling equipment and motor vehicles; and manufacturing equipment and machinery.

Legality Involved

There are no questions of legality involved.

Fiscal Effect Upon the State and Its Subdivisions

The Department of Revenue estimates that the changes provided in the bill, including the above-described changes, relating to the definition of "used exclusively," are not expected to have a significant fiscal effect upon the state.

Public Policy Involved

The provisions of the bill affecting tax exemptions are good public policy.



**STATE BAR
of WISCONSIN**

5302 Eastpark Blvd.
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Madison, WI 53707-7158

MEMORANDUM

To: Members of the Joint Committee on Taxation Exemptions
From: Taxation Law Section
Date: March 16, 2000
Re: Assembly Bill 634

The Taxation Law Section is providing this memo to inform members of the Joint Committee on Tax Exemptions of an agreed upon amendment to Senate Bill 346, the companion of AB 634.

The Taxation Law Section supports the efforts of Senator Wirch, Representative Lehman and the Dept. of Revenue in their efforts to create "taxpayer friendly" legislation under Senate Bill 346 and its companion, Assembly Bill 634. The Section appreciates the opportunity to work with legislators and the Dept. Of Revenue on an amendment that addresses several concerns with the original draft of the bill. Agreed upon changes include:

- Sales and Use Tax Provisions– Delete language which would make sales and use tax refunds retroactive to September 1, 1994. The Taxation Law Section was concerned that applying these changes retroactively to situations that were not covered under the original 1994 legislation is unfair. It is inappropriate to hold individuals accountable today for something that was not law at that time. The Taxation Law Section has no objection to applying the changes prospectively.
- Sales and Use Tax Provisions – Extending the time period for compliance with the sales and use tax refunds from 60 to 90 days. SB 236/AB 634 establish a 60 day time period for compliance with this provision. The Taxation Law Section felt 90 days is a more reasonable time period.
- "Exclusively Used" Methodology – Removal of requirement to obtain "prior written approval" to use an alternative method for determining exclusive use. The requirement would have been burdensome and the Taxation Law Section felt more appropriate language would be to allow for other reasonable methods of determining exclusive use but without the requirement for prior written approval.

For more information contact Jenny Boese at the State Bar of Wisconsin at 608-250-6045 or email at jboese@wisbar.org



**SENATE AMENDMENT,
TO 1999 SENATE BILL 346**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 9, line 24: delete lines 24 and 25 and substitute "95% of total use, the
3 percentage to be determined as follows:".

4 **2.** Page 10, line 7: after that line insert:

5 "(c) For any item, by an alternative method that the department of revenue
6 determines reasonably reflects the usage of the item in the taxable year.".

7 **3.** Page 12, line 3: delete "60" and substitute "90".

8 **4.** Page 14, line 12: delete lines 12 to 21.

9 **5.** Page 14, line 24: delete the material beginning with "retroactively" and
10 ending with "1994" on page 15, line 2, and substitute "to notices of refunds or notices
11 of amounts due dated, offsets taken and the discovery of amounts collected
12 erroneously as taxes on the effective date of this subsection even if the notices, offsets
13 and amounts relate to sales that occurred after August 31, 1994".

Date: March 7, 2000
To: **Members of Assembly Ways & Means Committee**
From: Tom Ourada
Subject: AB 634 – DOR's Taxpayer Friendly Bill Summary

Thank you for your consideration of Assembly Bill 634, legislation which provides a number of tax law modifications to assist taxpayers. I am providing a brief summary of the provisions of the bill.

Reducing Nondelinquent Taxes

Under current law, any taxpayer may petition the department of revenue to compromise or reduce the taxpayer's delinquent taxes including the costs, penalties and interest in cases where the taxpayer has an inability to pay. The department requires the taxpayer to provide financial statements and any other information that is related to the petition. If the department finds that the taxpayer is unable to pay the taxes, costs, penalties and interest in full, the department enters an order reducing the delinquent amounts in accordance with the determination. If within 3 years of the date of the order reducing the delinquent amount, the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax including costs, penalties and interest, the department reopens the matter and orders full payment of the original delinquent amount.

The department occasionally finds in audits and appeals that a taxpayer is unable to pay in full the amounts assessed and/or due. An example would be a review of Homestead credit filings which results in a determination that a taxpayer incorrectly claimed Homestead with the Department making an assessment for a three or four year period. The taxpayer is likely a low-income individual and unable to pay back the improperly claimed credits. At the point in time of the audit and/or appeal, the assessed taxes including penalties and interest is not yet delinquent. It is more efficient to make an early determination of inability to pay in these situations.

This provision would give the department the authority to reduce the amount of nondelinquent taxes due to the state. The department would follow the same procedures for determining inability to pay regardless of whether an amount due is delinquent or not. The Compliance Bureau will be establishing procedures that are consistent regarding the ability to pay.

Innocent Spouse Provisions

Married persons filing a joint income tax return are both liable for payment of taxes related to the return. However, the Department may provide relief to a spouse in certain situations specified by the Internal Revenue Code.

The federal provisions were changed to protect married taxpayers from the tax misdeeds of their spouses. The requirements for obtaining innocent spouse relief were made less stringent, and relief is available on an apportioned basis. In the case of divorced taxpayers and married taxpayers who are legally separated or who have been living

apart for at least one year, such individuals may elect separate tax liability despite having filed a joint return.

Example of Federal Provision: In 1998, a husband earns \$30,000 from freelance work. He does not tell his wife about the \$30,000. The income is not reported on the couple's joint return. The couple gets a divorce in 1999. If the IRS assesses a deficiency for the unreported income, the wife may elect separate liability and owe none of the deficiency, regardless of the IRS' ability to collect the deficiency from the husband. The husband will be liable for the entire deficiency.

The changes proposed by this bill conform the Wisconsin innocent spouse provisions to the innocent spouse provisions that currently apply for federal income tax purposes.

Seller Required to Refund Sales or Use Tax to Buyer

The bill requires that a seller who charges a buyer sales tax that (1) is refunded to the seller by the Department of Revenue through audit, or (2) is never remitted to the department because the sale was never taxable, must return the tax to the buyer. Without such a requirement, the seller profits while the buyer has no recourse under the sales and use tax law to get the sales tax it paid in error back from the seller or the department. If the seller cannot return the tax to the buyer, the seller must return the tax to the state preventing any unjust enrichment to the seller.

Example: Company A sold equipment to Company B for \$10,000 and collected \$500 sales tax from the customer, which it remitted to the Department of Revenue. Company A is audited and the department determines that the \$500 sales tax was not due. The department refunds the tax, plus interest, to Company A. Currently, Company A can keep the \$500 plus interest, even though it was Company B who actually paid the tax. Company A is unjustly enriched.

Example: Company C charges sales tax of \$500 on services it furnishes to an individual. After receiving payment from the individual, Company C realizes that such services are not taxable and does not remit the \$500 of tax collected to either the individual or the department. There is no recourse under the sales and use tax law for the individual or the department to collect the tax from Company C. Company C is unjustly enriched.

Note: Currently, a seller is only required to return to buyers sales tax collected in error if such tax was refunded by the department to the seller as a result of a claim for refund filed by the seller.

Penalty provisions will apply in the case of refunds that are not returned to the buyer and not sent back to the state in a timely manner. The penalty is 25% of the amount improperly collected or 100% in fraud cases.

30 Day Extension for Filing a Withholding Report

An employer is required to deduct and withhold state income taxes from an employee's pay and deposit those taxes with the department on a regular basis (monthly, twice-monthly, quarterly or annually). A withholding tax report must also be filed on a similar schedule. By Jan. 31st, employers must submit a report that reconciles all withholding

and wages for employees. Prior to 1999, the Department could grant an employer a 30 day extension to file the withholding report. This bill restores an inadvertently eliminated provision in 1997 Wis. Act 291 to again permit a 30 day extension of time for employers to file the annual withholding reconciliation report.

Option to Use Either a Bracket System or a Straight Mathematical Computation

Computers play an increasing role in business operations. However, the Wisconsin Statutes still require the use of the bracket system (e.g. 0-9 cents = no tax, 10-27 cents = 1 penny tax, etc.) in computing Wisconsin sales or use tax due on a transaction.

Although some retailers have computer systems capable of using the bracket system, many retailers' computer systems or cash registers are not capable of using the bracket system to determine the amount of sales or use tax due on a transaction. Retailers who have computer systems that generate their sales invoices, but whose systems do not have the capability of using the bracket system, are currently having their computer systems compute the amount of sales tax due on a transaction using a straight mathematical computation (sales price times the tax rate) rather than the bracket system.

This bill will provide statutory authority allowing taxpayers to compute the sales tax due on a transaction through the use of either 1) a straight mathematical computation using procedures described in department rules or 2) the use of the bracket system.

Example: Retailer A sells Customer B three different items in one transaction: Item 1's selling price is \$14.70, item 2's selling price is \$8.30, and item 3's selling price is \$7.10. The aggregate selling price of the taxable items is \$30.10.

The Wisconsin sales tax due on this transaction using a straight mathematical computation, assuming a 5% tax rate, is \$1.51 ($\$30.10 \times 5\% = \1.505 , and that amount is rounded up to \$1.51).

The Wisconsin sales tax due on this transaction using the bracket system is also \$1.51.

Define "Exclusively" for Sales and Use Tax Exemptions

Various sections of Wisconsin sales and use tax law provide exemptions for items used "exclusively" in a particular manner. The courts have determined that an item does not have to be used "solely" or "only" in an exempt manner, but may be also be used for other purposes and still qualify for the exemption. Attempts to allow an "infrequent and sporadic use" of an exempt item in a taxable manner and still not invalidate the exemption have been met with uncertainty and inconsistency.

This bill would define "used exclusively" in a specific quantifiable amount (used in nontaxable manner for at least 95% of total use) which would be applied uniformly by the department and courts to all taxpayers. The types of exemptions that are covered include: equipment, tractors and machinery used for farming, common and contract carriers, waste reduction and recycling equipment and motor vehicles, and manufacturing equipment and machinery.

Example: A baler is used by Grocery Store A to compact and bale its solid waste, such as boxes, cans, and paper. The use of the baler is as follows:

95% of Grocery Store A's use of the baler is to compact and bale waste that will be sold to a recycling company (use in nontaxable manner).

5% of Grocery Store A's use of the baler is to compact and bale solid waste that will be sent to a landfill (use in taxable manner).

Under the bill, Grocery Store A uses the baler "exclusively" in a nontaxable manner, because it uses the baler in a nontaxable manner for at least 95% of total use. (Under current law, Grocery Store A would have to determine whether its taxable use of the baler is "infrequent and sporadic" to determine if the baler qualifies for exemption.)

Rounding Dollars

As the department implements the integrated tax system, the department would like to simplify forms and computer system requirements by eliminating cents and require rounding. Since the department will implement one tax type at a time within the integrated tax system, the department requires flexibility as to when the rounding requirement applies for each tax type.

Computer system requirements also dictate where rounding must occur in tax computations. In most cases, rounding only applies to the final amount to be shown on a return. For example, a taxpayer should retain the cents in computations on Federal Schedules A&B and C, and Form 1040, and only do the rounding as required when carrying figures forward to the Wisconsin Form 1.

In other cases, rounding is required since supporting figures need to be recomputed and retained. For example, the TeleFile system requires taxpayers to enter their individual W-2 wage and withholding as whole dollar amounts. The system uses these figures to compute the proper income and allowable credits. The department therefore requires flexibility in determining how rounding should be applied.

Add Definitions of "Pay" and "Sign"

The Department of Revenue is authorized to prescribe alternative methods of paying taxes, filing tax reports, and authenticating documents. The department is currently using electronic filing and payment requirements which results in statutory language being needed to authorize the use of the new electronic methods. In the original language adding these definitions to the various Department of Revenue statutes (1997 Wisconsin Act 27), the definitions for "Pay" and "Sign" were inadvertently not included in s. 78.39 Alternate Fuels, and "Sign" was not included in s. 139.75 Tobacco Products. This proposal adds statutory definition language which was not previously included for these types of taxes.

Paying Taxes with a Credit Card

In today's electronic environment, DOR wants to be in a position to accept credit card payments of taxes. This is an added convenience for many taxpayers. The Internal Revenue Service and several other states already allow for credit card payments of taxes.

**ASSEMBLY AMENDMENT 1,
TO 1999 ASSEMBLY BILL 634**

January 12, 2000 – Offered by COMMITTEE ON WAYS AND MEANS.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 2: delete “*Credit*” and substitute “*Financial transaction*”.

3 **2.** Page 4, line 3: on lines 3 and 5, delete “credit card” and substitute “financial
4 transaction card”.

5 **3.** Page 6, line 21: delete lines 21 and 22 and substitute:

6 “71.80 (21) FINANCIAL TRANSACTION CARD PAYMENTS. (a) In this subsection:

7 1. “Financial transaction card” has the meaning given in s. 943.41 (1) (em).

8 2. “Taxes” has the meaning given in s. 71.91 (6) (a) 4.”.

9 **4.** Page 6, line 23: delete “credit card” and substitute “financial transaction
10 card”. *AMEX, Debit*

11 **5.** Page 7, line 1: on lines 1, 4, 5 and 7, delete “credit card” and substitute
12 “financial transaction card”.



**STATE BAR
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COPY

MEMORANDUM

To: Members of the Senate Committee on Economic Development, Housing and Government Operations
From: Taxation Law Section
Date: March 9, 2000
Re: Senate Bill 346

The Taxation Law Section supports the efforts of Senator Wirch, Representative Lehman and the Dept. of Revenue in their efforts to create "taxpayer friendly" legislation under Senate Bill 346 and its companion, Assembly Bill 634.

The Taxation Law Section appreciates the opportunity to work with these individuals on amendments that address several concerns with the original draft of the bill. Agreed upon changes include:

- Sales and Use Tax Provisions— Delete language which would make sales and use tax refunds retroactive to September 1, 1994. The Taxation Law Section was concerned that applying these changes retroactively to situations that were not covered under the original 1994 legislation is unfair. It is inappropriate to hold individuals accountable today for something that was not law at that time. The Taxation Law Section has no objection to applying the changes prospectively.
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Again, the Taxation Law Section appreciates the chance to work with individuals on these changes and urges your support for the amendments.

For more information contact Jenny Boese at the State Bar of Wisconsin at 608-250-6045 or email at jboese@wisbar.org



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