

Assembly Hearing Slip

(Please print plainly)

Date: 8-8-01

Bill No. AB 386

Or Subject \_\_\_\_\_

Name Tom Ourada - DOR

Street Address or Route Number \_\_\_\_\_

City and Zip Code \_\_\_\_\_

Representing \_\_\_\_\_

Speaking in favor:	<input checked="" type="checkbox"/>
Speaking against:	<input type="checkbox"/>
Registering in favor:	<input type="checkbox"/>
Registering against:	<input type="checkbox"/>
Speaking for information only:	<input type="checkbox"/>
Neither for nor against:	<input type="checkbox"/>

Please promptly return this slip to the messenger at the committee.

Provided by:  
Assembly Sergeant at Arms  
411 West, State Capitol  
Madison, WI 53708

Assembly Hearing Slip

(Please print plainly)

Date: 8/8/01

Bill No. AB 386

Or Subject \_\_\_\_\_

Name Bob Zegebauer

Street Address or Route Number 25th A.D.

City and Zip Code \_\_\_\_\_

Representing \_\_\_\_\_

Speaking in favor:	<input checked="" type="checkbox"/>
Speaking against:	<input type="checkbox"/>
Registering in favor:	<input type="checkbox"/>
Registering against:	<input type="checkbox"/>
Speaking for information only:	<input type="checkbox"/>
Neither for nor against:	<input type="checkbox"/>

Please promptly return this slip to the messenger at the committee.

Provided by:  
Assembly Sergeant at Arms  
411 West, State Capitol  
Madison, WI 53708

AB 386

DOR Supports

- Could be double taxation
- Manuf being asked to perform responsibilities of a retailer.

# Assembly Committee on Ways and Means

DATE \_\_\_\_\_

Moved by \_\_\_\_\_

*Zieg*

Seconded by \_\_\_\_\_

*Olsen*

AB 386 \_\_\_\_\_

SB \_\_\_\_\_

Clearinghouse Rule \_\_\_\_\_

AJR \_\_\_\_\_

SJR \_\_\_\_\_

A \_\_\_\_\_

SR \_\_\_\_\_

Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_

to A/S Amdt \_\_\_\_\_

A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_

to A/S Sub Amdt \_\_\_\_\_

A/S Amdt \_\_\_\_\_

to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:

Passage

Introduction

Adoption

Rejection

Indefinite Postponement

Tabling

Concurrence

Nonconcurrence

	Committee Member	Aye	No	Absent	Not voting
1.	Rep. Mickey Lehman, chair	1			
2.	Rep. John Ainsworth, vice-chair	2			
3.	Rep. Suzanne Jeskewitz				
4.	Rep. Frank Lasee	11			
5.	Rep. Samantha Starzyk	3			
6.	Rep. Tom Sykora	4			
7.	Rep. Carol Owens	5			
8.	Rep. Luther Olsen	6			
9.	Rep. Wayne Wood	7			
10.	Rep. Bob Ziegelbauer	8			
11.	Rep. Johnie Morris-Tatum	12			
12.	Rep. Mark Pocan	9			
13.	Rep. Bob Turner	10			
Totals		10	0		

MOTION CARRIED

MOTION FAILED

# **Assembly Republican Majority**

## **Bill Summary**

### **AB 386: Drop Shipments**

Relating to: the sale of tangible personal property that is delivered in this state.

By Representative, Ziegelbauer

**Date:** January 29<sup>th</sup>, 2002

### **BACKGROUND**

Under current law, tangible personal property that is sold by a retailer who is not engaged in business in this state and which is delivered in this state by a third party is subject to the sales tax. This is called a "drop shipment." With a drop shipment, the third party collects the sales tax and remits the tax to the State. For the purposes of this statute, "engaged in business in Wisconsin" is defined as having some definite link or minimum connection between Wisconsin and the person, property or transaction. This is often referred to as "nexus."

The most typical example of a drop shipment involves an out-of-state retailer that makes a sale to a resident of Wisconsin and instructs the manufacturer to deliver the goods. In this case, the manufacturer is responsible for collecting the sales tax.

### **SUMMARY OF AB 386**

Under Assembly Bill 386, tangible personal property that is sold by a retailer who is not engaged in business in this state (does not have nexus) and that is delivered in this state by a third party is subject to the use tax and the *purchaser* of the property is liable for the tax and must remit the use tax to the state.

In brief, this legislation changes the tax liability on drop shipment transactions.

### **FISCAL EFFECT**

A fiscal estimate prepared by the Department of Revenue, indicates that because the drop in sales tax revenue would be offset by an increase in use tax revenue, ~~that~~ the net effect to the state would be zero. However, the compliance of use tax payments is, as the Department states, "notoriously poor," and as a result, the state would likely see a reduction in tax revenue. Because this involves speculation, there is no data as to the degree of reduction in tax revenue the state would experience.

The fiscal estimate also indicates that county, baseball park district and football stadium district sales taxes would also be likely to decrease under the bill.

### **PROS**

1. Under current law, non-retail businesses (such as the manufacturer) are required to perform the duties of a retailer. This would remedy such a situation.

### **CONS**

1. There would most likely be a reduction in tax revenue.

### **SUPPORTERS**

Rep. Bob Ziegelbauer, author; Senator Alberta Darling, lead co-sponsor; Wisconsin Department of Revenue.

### **OPPOSITION**

None appeared in opposition to this legislation

### **HISTORY**

Assembly Bill 386 was introduced on 05-10-01, and referred to the Assembly Committee on Ways & Means. A public hearing was held on 08-08-01. On 09-05-01, the Committee voted 12-0 [Representative Jeskewitz absent] to recommend passage of AB 386.

**CONTACT:** Andrew Nowlan, Office of Rep. Michael Lehman

**Nowlan, Andrew**

**From:** Gates-Hendrix, Sherrie  
**Sent:** Thursday, May 31, 2001 11:19 AM  
**To:** Nowlan, Andrew  
**Subject:** AB 386 - drop shipment

Hi Andrew ---

Hope you aren't too swamped after vacation. I know how that goes and it usually isn't fun!

You asked some time ago about our position on Rep. Ziegelbauer's AB 386 relating to drop shipments. Sorry it took me a while to get Rick's take on this. We are officially in support of this bill. Rick feels that the current law may put an unfair burden on Wisconsin manufacturers and we'd like to see the law changed.

Hope you had a good vacation. Welcome back.

Sherrie

## Wisconsin Sales and Use Tax Treatment Drop Shipments

### I. Introduction

#### *What is a drop shipment?*

A drop shipment is a sale in which the seller accepts an order from the customer, places the order with a third party (such as a manufacturer or wholesaler), and directs the third party to deliver the item directly to the customer. The third party may deliver the item in its own truck, arrange for delivery by common or contract carrier, or have the customer pick up the item at the third party's location.

### II. Seller Is "Engaged in Business in Wisconsin"

**Note:** "Engaged in business in Wisconsin" means having some definite link or minimum connection between Wisconsin and the person, property or transaction. This minimum connection is often referred to as "nexus."

If the seller is engaged in business in Wisconsin, then it is a retailer responsible for collection and reporting Wisconsin tax on its sale of tangible personal property drop shipped into Wisconsin, regardless of whether the third party is engaged in business in Wisconsin. If the third party accepts a properly completed resale certificate from the seller, its charge to the seller is not subject to tax.

#### *Example — Wisconsin retailer, Wisconsin customer, and Wisconsin wholesaler*

#### **Facts :**

- Company A is a Wisconsin retailer registered for Wisconsin sales and use tax purposes.
- Customer Z is located in Wisconsin.
- Third Party G is a Wisconsin wholesaler that is *not* registered for Wisconsin sales and use tax purposes.
- Company A receives an order from Customer Z for a computer for \$1,200, including shipping.
- Company A orders the computer from Third Party G for \$900.
- Company A directs Third Party G to drop ship the computer to Customer Z's Wisconsin location.
- Third Party G hires a contract carrier to deliver the computer to Customer Z.

#### **Question and Answer :** Who is liable for Wisconsin sales or use tax?

Company A is liable for sales tax on the sale of the computer to Customer Z, unless an exemption applies (e.g., manufacturing). The amount subject to tax is the selling price of the computer, including shipping (\$1,200).

Company A should provide a resale certificate to Third Party G to purchase the computer without Wisconsin sales or use tax from Third Party G. The answer would be the same if Third Party G is an out-of-state wholesaler.

Note: Customer Z may be held liable for use tax on its \$1,200 purchase of the equipment if Company A does not charge Wisconsin sales or use tax.

### III. Seller Is Not "Engaged in Business in Wisconsin," But Third Party Is "Engaged in Business in Wisconsin"

If the seller is *not* engaged in business in Wisconsin and is not registered to collect Wisconsin tax (i.e., does not hold a Wisconsin seller's permit or use tax registration certificate), but the third party is engaged in business in Wisconsin, the third party is the retailer responsible for collecting and reporting the Wisconsin tax on the sale of the drop shipped property to the customer. The amount subject to sales tax is the selling price of the tangible personal property to the customer. The third party may need to contact the seller to determine the following:

- A. If the seller is "engaged in business" in Wisconsin.
- B. If the seller is registered to collect Wisconsin sales or use tax.
- C. What price the seller charged its customer for the tangible personal property.

**Note:** Any person "engaged in business in Wisconsin" and making taxable sales is required to hold a Wisconsin seller's permit or use tax registration certificate. A seller or third party may voluntarily register to collect Wisconsin tax, even though it is not engaged in business in Wisconsin.

#### *Example — Out-of-state retailer, Wisconsin customer, and Wisconsin manufacturer*

##### **Facts:**

- Company C is *not* "engaged in business in Wisconsin" and is not registered for Wisconsin sales and use tax purposes.
- Company C receives an order from Customer X for construction equipment.
- Customer X is located in Wisconsin.
- Company C's retail selling price of the equipment is \$50,000.  
Company C places an order with Third Party J, a manufacturer, to buy the equipment for \$45,000.
- Third Party J is registered for Wisconsin sales and use tax purposes.
- Company C directs Third Party J to drop ship the equipment to Customer X's Wisconsin location.
- Third Party J hires a common carrier to deliver the equipment to Customer X in Wisconsin.

##### **Question and Answer:** Who is liable for Wisconsin sales or use tax?

Third Party J is liable for sales tax on the sale of the sale of the equipment to Customer X, unless an exemption applies. The amount subject to tax is \$50,000 (Company C's selling price to Customer X).

Third Party J may not accept a resale certificate from Company C. Customer X may, if applicable, give an exemption certificate to Third Party J to purchase the equipment without Wisconsin sales or use tax.

Note: Customer X may be held liable for use tax on its \$50,000 purchase of the equipment if



Third Party J does not charge Wisconsin sales or use tax.

#### IV. Neither Seller Nor Third Party Is "Engaged in Business in Wisconsin"

If neither the seller nor the third party is engaged in business in Wisconsin, the Wisconsin customer is liable for use tax on its purchase of the drop shipped property. The amount subject to use tax is the purchase price of the tangible personal property, including transportation.

##### *Example — Out-of-state retailer, Wisconsin customer, and Out-of-state wholesaler*

##### **Facts:**

- Company D is *not* "engaged in business in Wisconsin" and is not registered for Wisconsin sales and use tax purposes.
- Company D receives an order from Customer W for furniture.
- Customer W is located in Wisconsin.
- Company D's retail selling price of the furniture is \$600, plus \$50 for shipping.
- Company D places an order with Third Party K to purchase the furniture for \$500.
- Third Party K is an out-of-state wholesaler *not* "engaged in business in Wisconsin" and not registered for Wisconsin sales and use tax purposes.
- Company D directs Third Party K to drop ship the furniture to Customer W's Wisconsin location.
- Third Party K hires a common carrier to deliver the furniture to Customer W.

##### **Question and Answer:** Who is liable for Wisconsin sales or use tax?

Customer W is liable for use tax on its purchase of the furniture. The amount subject to use tax is \$650 (Customer W's purchase price, including shipping).

#### V. References

Section 77.51(14)(d), Wis. Stats. (1995-96) provides:

*"The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery shall include the retail selling price of the property in that person's gross receipts."*

Section Tax 11.94(1)(e), Wis. Adm. Code (December 1996 Register)

Section Tax 11.97, Wis. Adm. Code (October 1997 Register)

Prepared by: Vicki L. Gibbons  
Wisconsin Department of Revenue  
July 14, 1998





# Facsimile Cover Sheet

Wisconsin Department of Revenue  
 Income, Sales & Excise Tax Division  
 Administration, Mail Stop 6-40  
 2135 Rimrock Road  
 P.O. Box 8933  
 Madison, WI 53708-8933  
 (608)266-1911

Fax Number: (608) 261-6240

Number of pages attached, including this cover sheet: 4

If all pages are not received or are illegible, please call:

Deliver to:	<u>Tom</u>	<u>6-0315</u>
	Addressee	Addressee's Phone Number
From:	<u>Vicki Gibbons</u>	<u>6-3873</u>
	Sender	Sender's Phone Number

Please reply when received:  Yes  No

Additional Information:

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**BOND  
INSERT****SALES & USE TAX  
ALERT****State Taxability of Drop Shipments**

A drop shipment is a shipment of tangible personal property from a seller directly to the purchaser's customer at the purchaser's direction. These sales also are known as third-party sales because they require that there be, at arm's length, three parties and two separate sales transactions. Generally, a retailer accepts an order from a consumer, places the order with a third party, usually a manufacturer or wholesale distributor ("supplier"); and directs the third party to ship the goods directly to the consumer. The transaction between the third-party supplier (manufacturer/wholesaler) and retailer is the "primary sale"; the transaction between the retailer and the customer/consumer is the "secondary" sale.

The following information summarizes the status of drop shipments when both the manufacturer/wholesaler and the consumer are in a state but the retailer is located outside the state. Many states view the drop shipment scenario as two separate, potentially taxable events. Others, however, collapse the three-party, two-transaction scenario into a single taxable event. In the latter case, the theory advanced is that in the primary transaction, the manufacturer/wholesaler has no obligation to collect sales tax from the out-of-state retailer if there is no nexus between the retailer and the consumer's state. Consequently, the consumer is liable for the use tax.

**Alabama**

Primary sale exempt if retailer furnishes a resale exemption from retailer's state. Consumer subject to use tax on secondary transaction.

**Colorado**

Primary sale exempt if retailer furnishes a resale certificate. A resale certificate from retailer's state is accepted. Consumer pays use tax on secondary transaction.

**Arizona**

Primary sale exempt if retailer furnishes resale certificate. A resale certificate from retailer's state is accepted. Consumer subject to use tax on secondary transaction.

**Connecticut**

Party making the drop shipment is deemed the retailer and is thus responsible for collecting tax from the consumer, unless the consumer provides a resale certificate.

**Arkansas**

Primary sale exempt if retailer furnishes resale certificate. Consumer subject to compensating (use) tax on secondary transaction.

**District of Columbia**

Manufacturer/wholesaler must collect sales or use tax from retailer unless retailer furnishes a valid D.C. resale certificate. A resale certificate from the retailer's home state is not accepted, nor is a resale certificate furnished to the retailer by the consumer.

**California**

Party making the drop shipment is deemed the retailer and is thus responsible for collecting tax from the consumer, unless the consumer provides a resale certificate.

**Florida**

Manufacturer/wholesaler must collect sales tax from retailer on the theory that the retailer, because it is located outside the state and not registered in Florida for sales tax purposes, cannot furnish a Florida resale certificate.

January 15, 2001

**Georgia**

Primary sale exempt if retailer furnishes a resale certificate. A resale certificate from retailer's state accepted. Consumer liable for use tax on secondary transaction.

**Hawaii**

State law treats drop shipments differently depending on which parties have nexus. A) If a retailer has nexus and the wholesaler does not, the retailer is considered to have imported the property to resell it at retail and is subject to use tax at the rate of 0.5%. When the retailer resells the property, the retail sale is subject to the 4.0% general excise tax rate. B) If both the retailer and the wholesaler have nexus, both sales are subject to the general excise tax. The wholesaler's income is taxable at 0.5%. The retailer's income is taxable at 4.0%. C) If the wholesaler has nexus but the retailer does not, the sale from wholesaler to retailer does not qualify as a wholesale sale. Instead, the wholesaler is considered to have imported the property for resale at retail and is subject to the 0.5% use tax. In addition, the wholesaler must collect the 4.0% general excise tax on the retail sale. (HRS §18-237-13-02.01)

**Idaho**

Primary sale is not taxable on the theory that there is no nexus between the retailer and Idaho. Consumer responsible for use tax.

**Illinois**

Primary sale exempt if retailer furnishes an Illinois resale number or other evidence that the sale is for resale. Consumer liable for use tax on secondary transaction.

**Indiana**

No regulations specifically dealing with drop shipments. However, the Dept. of Revenue has stated that when an out-of-state retailer is not required or permitted to collect Indiana sales tax, the Indiana purchaser (consumer) is liable for use tax.

**Iowa**

Consumer liable for use tax.

**Kansas**

No regulations specifically dealing with drop shipments. However, Kansas statutes indicate that property purchased outside the state and used inside the state is subject to use tax if it would have been subject to Kansas sales tax had the transaction been wholly within Kansas. State law also indicates that the primary sale is exempt if the manufacturer/wholesaler receives an exemption certificate. Consumer liable for use tax on secondary transaction.

**Kentucky**

Primary sale exempt if retailer furnishes a Kentucky resale certificate. A nonresident retailer uses a Kentucky certificate but makes a notation on the face to the effect that it is a nonresident purchaser not required to register in Kentucky. A resale certificate from retailer's state also is accepted. Consumer liable for use tax on secondary transaction.

**Louisiana**

Retailer must give manufacturer/wholesaler advance payment of sales tax, which the dealer is required to collect upon the sale at retail.

**Maine**

Consumer liable for use tax.

**Maryland**

Manufacturer/wholesaler may either (1) require retailer to register as a Maryland vendor and furnish a resale certificate, or (2) collect tax from the retailer based on the wholesale price paid.

**Massachusetts**

Supplier must include the retail selling price charged by the retailer in its gross receipts and must collect tax imposed from the retailer.

**Michigan**

Customer liable for use tax.

**Minnesota**

Minnesota exempts the primary sale provided the purchaser furnishes a resale certificate. Customer liable for use tax.

**Mississippi**

No specific provisions.

**Missouri**

Primary sale exempt if retailer furnishes a Missouri Resale Exemption Certificate with its out-of-state registration listed. Customer liable for use tax.

**Nebraska**

Supplier must collect sales tax from retailer; a resale certificate from the out-of-state retailer is not accepted unless retailer registers to collect Nebraska sales and use taxes. Basis of tax: wholesale price. Nebraska also requires customer to pay use tax on the basis of the retail price.

**Nevada**

Supplier treated as retailer and is responsible for collecting sales tax from the out-of-state retailer based on the wholesale price. Resale certificate not accepted from out-of-state retailer unless retailer registers to collect Nevada sales and use taxes.

**New Jersey**

Primary sale exempt if retailer furnishes supplier with evidence that the sale is for resale. Customer liable for payment of use tax.

January 15, 2001

**BONUS INSERT**

Sales &amp; Use Tax Alert 3

**New Mexico**

Primary sale exempt if retailer furnishes a nontaxable transaction certificate. Customer liable for use tax.

**New York**

Primary sale exempt if retailer furnishes a resale certificate or other appropriate evidence that the sale is made for resale. Customer liable for use tax.

**North Carolina**

Supplier not required to collect sales tax on its sales to an out-of-state retailer registered in another taxing jurisdiction when the supplier drop ships taxable tangible personal property to the retailer's North Carolina customers (no nexus). Customer liable for use tax.

**North Dakota**

Primary sale exempt if retailer furnishes a resale certificate. Customer liable for use tax.

**Ohio**

Primary sale exempt if retailer furnishes a resale certificate. Customer liable for use tax.

**Oklahoma**

Primary sale exempt if retailer furnishes a resale exemption certificate from retailer's state or similar evidence, such as a Multistate Tax Commission certificate, that the sale is for resale. Customer liable for use tax.

**Pennsylvania**

No specific regulations on drop shipments, but state law indicates that a person who purchases taxable tangible personal property outside Pennsylvania pays use tax if the property is used or consumed in Pennsylvania and Pennsylvania tax is not paid to the vendor.

**Rhode Island**

Supplier is considered to be making a retail sale on the theory that he or she is the former owner of, or has a factor's interest in, the goods. Supplier is thus required to collect and remit tax based on the retail selling price.

**South Carolina**

Customer liable for use tax.

**South Dakota**

Supplier must collect sales tax from retailer; resale exemption certificate not accepted unless retailer registers to collect South Dakota sales or use tax. Basis of tax: wholesale price. Consumer is responsible for use tax.

**Tennessee**

Supplier must collect sales or use tax from the customer, the theory being that the supplier is acting as agent for the out-of-state retailer.

**Texas**

Primary sale exempt where retailer furnishes a Texas resale certificate validated with a registration number issued by the retailer's home state. On the secondary sale, customer liable for use tax.

**Utah**

Primary sale exempt if retailer furnishes resale certificate from retailer's state. Customer liable for use tax on secondary transaction.

**Vermont**

On the primary sale, if no resale certificate is presented, sale is taxable, with supplier collecting sales tax from retailer. Secondary sale not taxable since retailer has no nexus with Vermont.

**Virginia**

Primary sale exempt if retailer furnishes resale certificate from retailer's state. Customer liable for use tax on secondary transaction.

**Washington**

Primary sale exempt if retailer furnishes resale certificate from retailer's state. Customer liable for use tax in secondary transaction.

**West Virginia**

Primary sale exempt if retailer furnishes resale certificate from retailer's state. Customer liable for use tax on secondary transaction.

**Wisconsin**

Delivery by supplier to Wisconsin customer of an out-of-state retailer is regarded as a taxable sale. Supplier must collect tax from the customer based on the retail price of the property delivered. However, if the Wisconsin purchaser furnishes a properly completed exemption certificate, the delivery is not a taxable sale.

**Wyoming**

Primary sale exempt if supplier receives a resale certificate. Customer liable for use tax on secondary transaction.

Source: Except where otherwise indicated, information is from the 2000 U.S. Master Sales & Use Tax Guide, CCH INCORPORATED, (800) 248-3248, www.cch.com.



**BOB ZIEGELBAUER**

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT

**Committee on Ways and Means  
Representative Mickey Lehman, Chair  
Wednesday, August 8, 2001**

**9:30 a.m. – 415 Northwest, State Capitol**

**Support for 2001 AB 386**

**Sales and Use Tax Collection Responsibilities in Drop Shipment Sales**

Mr. Chairman and Members:

Thank you for scheduling this hearing on AB 386 and for your consideration of it.

AB 386 is designed to allow Wisconsin manufacturers and wholesalers to be a little more competitive in the regional market place by eliminating disincentives for Wisconsin businesses to participate in “drop shipments.”

A “drop shipment” is a sale in which the seller accepts an order from a customer, places that order with a third party (a manufacturer or wholesaler), and directs the third party to deliver the item directly to the customer.

If all the parties are located within the state, the seller is responsible for collecting sales or use tax as appropriate and forwarding that money to the state. (Please refer to Diagram 1 of the attachment.)

If the customer is not a resident of Wisconsin and initiates the sale from out of state (by telephone, fax or the Internet), Wisconsin sales tax is not charged regardless of where the seller and the third party are located. (Please refer to Diagram 2.)

If the customer and seller are in Wisconsin and the third party is not, the seller must collect sales tax. AB 386 would not effect these transactions. (Please refer to Diagram 3.)

However, problems sometimes arise when these orders cross state lines. If the customer and third party are in Wisconsin and the seller is not, the third party shipper must pay sales tax. (Please refer to Diagram 4.) This creates a significant disincentive for these wholesalers and manufacturers to locate in Wisconsin. AB 386 would eliminate the tax collection responsibility of third party shippers when the customer and third party are located in Wisconsin and the seller is out-of-state. As a result, “drop ship” distributors registered with Wisconsin to collect Wisconsin sales tax would not be at a disadvantage when competing to be a drop ship vendor.

Use tax would be the responsibility of the customer as it now is in similar transactions of purchases from out of state vendors.

Thank you again for your consideration. I would be happy to answer any questions.

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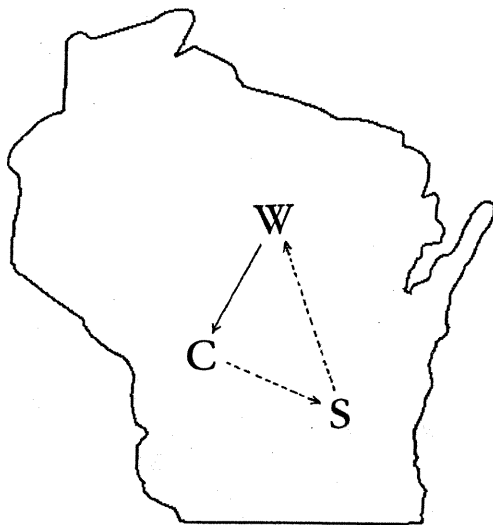
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TOLL FREE : 1-888-529-0025 • FAX (608) 266-0316 • E-MAIL: bob.ziegelbauer@legis.state.wi.us

DISTRICT: 1213 S. 8TH STREET, P.O. BOX 325, MANITOWOC, WI 54221-0325  
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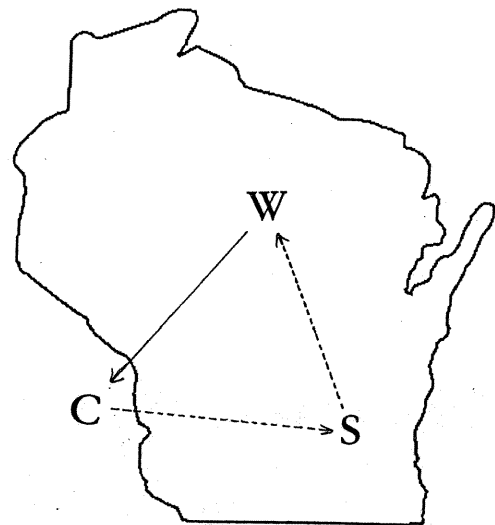
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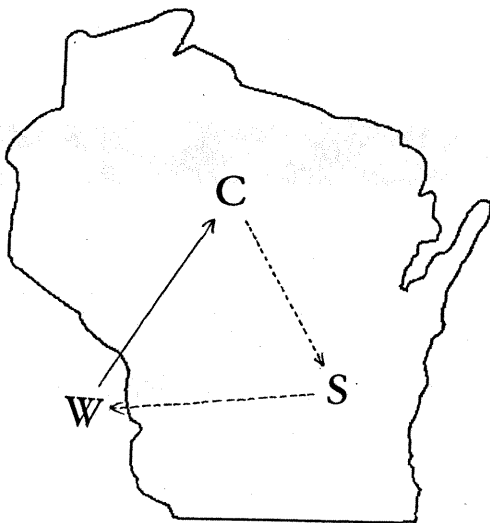
**Seller = S**  
**Customer = C**  
**Wholesaler = W**



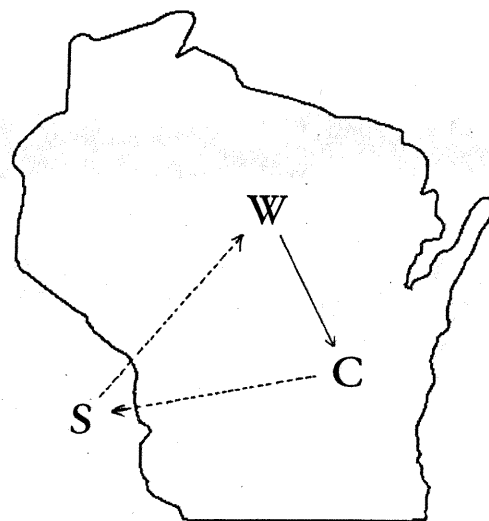
**Diagram 1**  
*No problem*  
Seller collects tax from customer



**Diagram 2**  
*No problem*  
No tax collection



**Diagram 3**  
*No problem*  
Seller collects tax from customer



**Diagram 4**  
*Problem*

- Disincentive for wholesaler to locate in Wisconsin because the wholesaler, not the seller, must collect tax from the customer.
- Since tax is supposed to be charged based upon seller's price to consumer, correct amount to charge could be a mystery.
- Reseller views tax as an additional cost of buying from a Wisconsin registrant. (Due to self-assessment of use tax, Wisconsin customer often pays double tax.)



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**WISCONSIN LEGISLATIVE COUNCIL  
STAFF MEMORANDUM**

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TO: REPRESENTATIVE ROBERT ZIEGELBAUER

FROM: William Ford, Senior Staff Attorney *WF*

RE: Sales and Use Tax Collection Responsibilities in Drop Shipment Sales

DATE: April 3, 2001

This memorandum describes LRB-2903/1 ("the draft"). As will be explained below, the draft repeals s. 77.51 (14) (d), Stats., which requires "third parties" who are not retail sellers (typically, manufacturers or wholesalers) who deliver tangible personal property to a purchaser in this state to collect sales tax on the sale in certain "drop shipment" transactions.

A sales transaction in which a retail seller accepts an order from a purchaser and then directs a third party (generally a manufacturer or a wholesaler) to deliver the property to the purchaser is referred to as a "drop shipment." If the seller operates a business in Wisconsin, and has property and employees in Wisconsin, the seller is required to collect and remit sales tax on the transaction to the state. However, if the seller does *not* operate a business in Wisconsin, and thus may not be required to collect and remit sales tax to the state; s. 77.51 (14) (d), Stats., requires the *third party* in the drop shipment transaction to collect and remit sales taxes to the state. The responsibility to collect and remit sales taxes may be imposed on the third party only if the third party operates a business in Wisconsin.

The draft repeals s. 77.51 (14) (d), Stats., and therefore relieves the third party in a drop shipment transaction, where the seller does not operate a business in Wisconsin, from collecting and remitting the sales tax. If the draft were enacted into law, the *purchaser* would be required to pay a use tax to the state, which is imposed at the same rate as the sales tax on the purchase.

Please contact me at the Legislative Council Staff offices if I can provide more information pertaining to the draft.

WF:wu:tlu





BOB ZIEGELBAUER

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT

## State Taxability of Drop Shipments

January 15, 2001

The following information summarizes the status of drop shipments when both the manufacturer / wholesaler and the consumer are in a state but the retailer is located outside the state.

### Illinois

Primary sale exempt if retailer furnishes an Illinois resale number or other evidence that the sale is for resale. Consumer liable for use tax on secondary transaction.

### Iowa

Consumer liable for use tax.

### Michigan

Consumer liable for use tax.

### Minnesota

Exempts the primary sale provided the purchaser furnishes a resale certificate. Customer liable for use tax.

### Wisconsin

Delivery by supplier to Wisconsin customer of an out-of-state retailer is regarded as a taxable sale. Supplier must collect tax from the customer based on the retail price of the property delivered. However, if the Wisconsin purchaser furnishes a property completed exemption certificate, the delivery is not a taxable sale.

*(The above information was taken from "Sales & Use Tax Alert – State Taxability of Drop Shipments", January 15, 2001 which was forwarded to my office from the WI Department of Revenue.)*

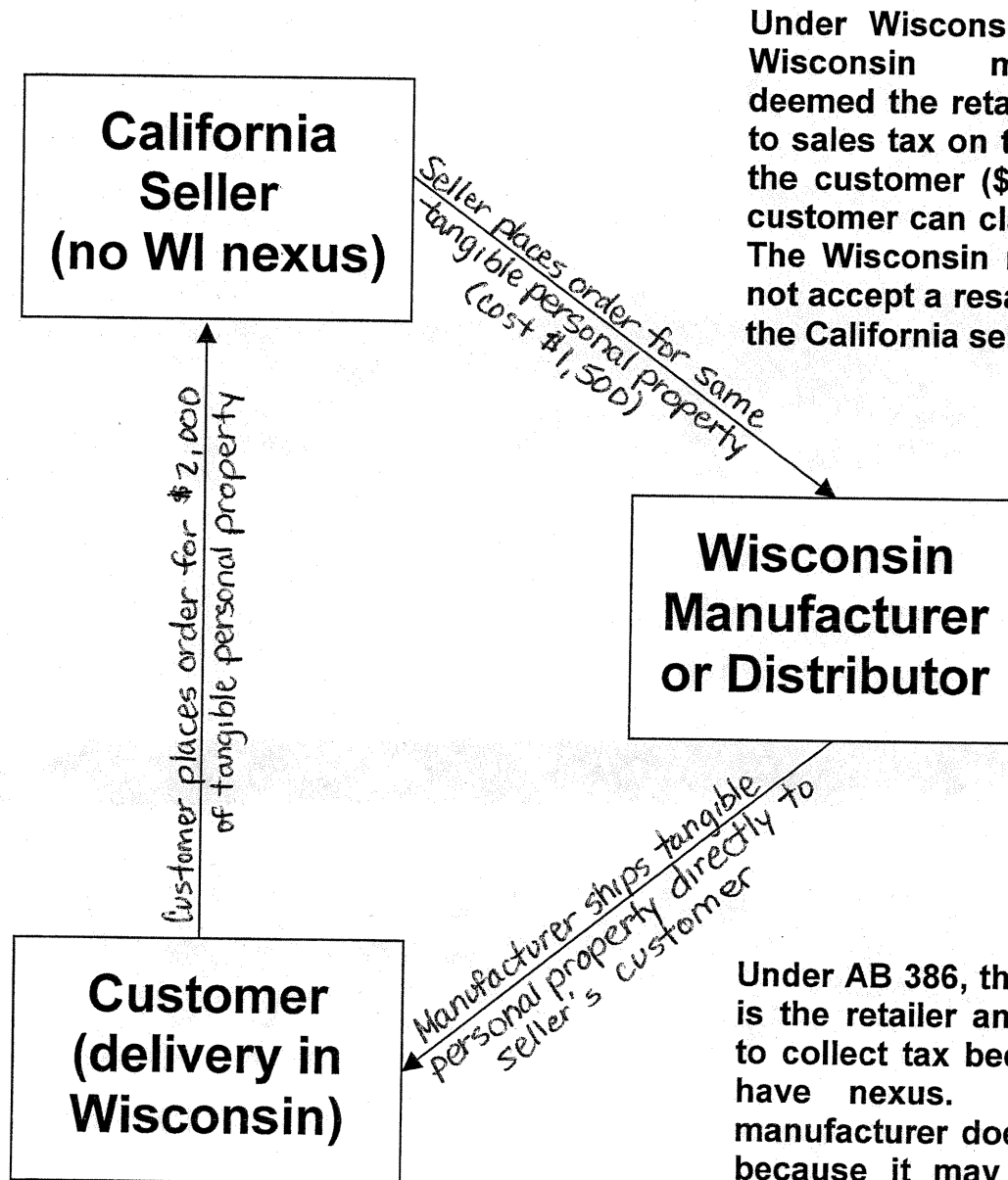
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## Wisconsin Drop Shipment Illustration



Under Wisconsin law today, the Wisconsin manufacturer is deemed the retailer and is subject to sales tax on the selling price to the customer (\$2,000), unless the customer can claim an exemption. The Wisconsin manufacturer may not accept a resale certificate from the California seller.

Under AB 386, the California seller is the retailer and is not required to collect tax because it does not have nexus. The Wisconsin manufacturer does not charge tax because it may accept a resale certificate from the seller. Use tax must be self-assessed by the customer, unless an exemption applies.

### Fiscal Estimate - 2001 Session

Original     
  Updated     
  Corrected     
  Supplemental

**LRB Number**    **01-2903/1**                     
 **Introduction Number**    **AB-386**

**Subject**  
 Sales and use tax treatment of drop shipments

**Fiscal Effect**

**State:**

- No State Fiscal Effect
- Indeterminate
  - Increase Existing Appropriations
  - Decrease Existing Appropriations
  - Create New Appropriations
- Increase Existing Revenues
- Decrease Existing Revenues
- Increase Costs - May be possible to absorb within agency's budget
  - Yes                       No
  - Decrease Costs

**Local:**

- No Local Government Costs
- Indeterminate
  - 1.  Increase Costs                      3.  Increase Revenue
  - Permissive  Mandatory             Permissive  Mandatory
  - 2.  Decrease Costs                      4.  Decrease Revenue
  - Permissive  Mandatory             Permissive  Mandatory
- 5. Types of Local Government Units Affected
  - Towns                       Village                       Cities
  - Counties                       Others                      Baseball & football districts
  - School Districts                       WTCS Districts

**Fund Sources Affected**    **Affected Ch. 20 Appropriations**

- GPR     FED     PRO     PRS     SEG     SEGS

<b>Agency/Prepared By</b>	<b>Authorized Signature</b>	<b>Date</b>
DOR/ Blair Kruger (608) 266-1310	Dennis Collier (608) 266-5773	5/18/01

## Fiscal Estimate Narratives

DOR 5/21/01

LRB Number 01-2903/1	Introduction Number AB-386	Estimate Type Original
<b>Subject</b>		
Sales and use tax treatment of drop shipments		

### Assumptions Used in Arriving at Fiscal Estimate

Under current law, tangible personal property that is sold by an out-of-state retailer and delivered in Wisconsin by a third party is subject to sales tax. The third party collects the tax and remits it to the state. Under the bill, tangible personal property that is sold by an out-of-state retailer and delivered in Wisconsin by a third party would continue to be taxable. However, under the bill, the third party would no longer collect and remit sales tax to the state; instead, the purchaser would remit use tax.

In plain language, the bill changes the liability for tax on drop shipments. A drop shipment occurs when, for example, an Illinois retailer sells tangible personal property to a Wisconsin customer and instructs the Wisconsin manufacturer (the third party) to deliver the property directly to the Wisconsin customer. Under current law, the manufacturer pays sales tax; under the bill, the purchaser would pay use tax.

Since drop shipments of tangible personal property remain taxable under the bill, the decrease in sales tax would, in principle, be offset by an increase in use tax. However, compliance with use tax liability is notoriously poor and so a revenue reduction is likely under the bill. Data to estimate the revenue reduction are not available.

County, baseball park district, and football stadium district sales taxes would also be likely to decrease under the bill.

### Long-Range Fiscal Implications

## Fiscal Estimate Worksheet - 2001 Session

Detailed Estimate of Annual Fiscal Effect

Original     
  Updated     
  Corrected     
  Supplemental

LRB Number <b>01-2903/1</b>	Introduction Number <b>AB-386</b>
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**Subject**  
 Sales and use tax treatment of drop shipments

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
 Data are not available to estimate the annual state and local revenue decreases that are likely under the bill.

II. Annualized Costs:	Annualized Fiscal Impact on funds from:	
	Increased Costs	Decreased Costs

A. State Costs by Category		
	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$	
(FTE Position Changes)		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$</b>

B. State Costs by Source of Funds		
	Increased Costs	Decreased Costs
GPR		
FED		
PRO/PRS		
SEG/SEG-S		

**III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, ets.)**

	Increased Rev	Decreased Rev
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$</b>

**NET ANNUALIZED FISCAL IMPACT**

	State	Local
NET CHANGE IN COSTS	\$	\$
NET CHANGE IN REVENUE	\$	\$

Agency/Prepared By DOR/ Blair Kruger (608) 266-1310	Authorized Signature Dennis Collier (608) 266-5773	Date 5/18/01
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