

let

Assembly Republican Majority Bill Summary

AB 24: Drop Shipments

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

By (Representatives Ziegelbauer, Albers, Bies, Grothman, Gunderson, Hahn, Huber, Kestell, M. Lehman, Olsen, Ott, Pocan, Staskunas, Stone, Vrakas and W. Wood; cosponsored by Senators A. Lasee, Schultz, Reynolds and Kanavas.

Date: April 29, 2003

BACKGROUND

Under current law, tangible personal property that is sold by a retailer who is not engaged in business in this state and that is delivered in this state by a third party is subject to the sales tax. The third party collects the tax and remits it to the state.

SUMMARY OF AB 24 (AS AMENDED BY COMMITTEE)

Assembly Bill 24 states that tangible personal property that is sold by a retailer who is not engaged in business in this state and that is delivered in this state by a third party is subject to the use tax and the purchaser of the tangible personal property remits the tax to the state. In short, this bill changes the liability for tax on drop shipments.

AMENDMENTS

AND Here, too.

Assembly Amendment 1 states that this will apply to the sales of tangible personal property on the first day of the 2nd month beginning after publication. [adopted 12-0-2 (Reps. F. Lasee and Colon absent)].

FISCAL EFFECT

A fiscal estimate prepared by the Department of Revenue indicates the decrease in sales tax would, in principle, be offset by an increase in the use tax. The degree to which the offset would occur depends on the type of purchaser. If the purchaser is a business, the use tax is more likely to be paid. However, private individual compliance with use tax liability is poor.

There is no data available to estimate the net decrease in taxes under the bill. County, professional baseball park and football stadium district taxes would also decrease. The DOR expects to be able to absorb any administrative costs associated with the bill.

PROS

1. The use tax would be the responsibility of the customer, as it now is in similar transactions of purchases from out-of-state vendors.
2. This bill would enable Wisconsin manufacturers and wholesalers to be more competitive in the regional market by eliminating disincentives for Wisconsin businesses to participate in "drop shipments."

CONS

1. The reduction in tax revenue.

SUPPORTERS

Bob always put in Senator Lasee
Rep. ~~Joe~~ Ziegelbauer, author; Sen. Tom Reynolds, Wisconsin Manufacturers & Commerce

OPPOSITION

No one registered or testified against AB
There were no appearances or registrations against this bill.

HISTORY

Assembly Bill 24 was introduced on February 5, 2003, and referred to the Assembly Committee on Ways and Means. A public hearing was held on March 5, 2003. On April 2, 2003 the Committee voted 12-0 - 2 [Reps. F. Lasee and Colon absent] to recommend passage of AB 24 as amended.

CONTACT: Vicky Halverson, Office of Rep. Mickey Lehman

AB24



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE ROBERT ZIEGELBAUER

FROM: William Ford, Senior Staff Attorney

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

DATE: November 19, 2002

This memorandum describes LRB-0182/1 ("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:jal;wu

Halverson, Vicky

From: Joan Hansen [jhansen@wmc.org]
Sent: Monday, March 03, 2003 12:15 PM
To: rep.lehman@legis.state.wi.us
Subject: AB 24

Rep. Lehman,

WMC supports AB 24, however, both James and I will be out of town this week. I will follow up with committee members and have someone register in support of the legislation on ~~Thursday~~ *Wed.* I apologize for being unable to testify. Thank you for holding a hearing and signing onto the legislation.

Joan Hansen

03/03/2003



BOB ZIEGELBAUER

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT

Committee on Ways and Means
Representative Mickey Lehman, Chair
Wednesday, March 5, 2003
9:30 a.m. – 415 Northwest, State Capitol

Support for 2003 AB 24
Sales and Use Tax Collection Responsibilities in Drop Shipment Sales

Mr. Chairman and Members:

Thank you for scheduling this hearing on AB 24 and for your consideration of it.

AB 24s 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 24 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 24 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.

STATE CAPITOL: P.O. BOX 8953, MADISON, WI 53708-8953 • (608) 266-0315
TOLL FREE: 1-888-529-0025 • FAX (608)-266-0316 or (608) 282-3625 • E-MAIL: bob.ziegelbauer@legis.state.wi.us
DISTRICT: 1213 S. 8TH STREET, P.O. BOX 325, MANITOWOC, WI 54221-0325
MANITOWOC OFFICE: (920) 684-6783 • HOME: (920) 684-4362

Halverson, Vicky

From: Kelly, Tom
Sent: Tuesday, March 11, 2003 11:18 AM
To: Halverson, Vicky
Subject: RE: Public Hearing/Executive Session Notice

Hi Vicky.

Just wanted to let you know (and thereby let your boss know) that Bob will have an amendment to AB 24.

The amendment was suggested by DOR and the drafting attorney. The amendment would make the bill effective for sales on the first day of the second month beginning after publication. This change will allow sufficient time to notify sellers of the law change. As currently drafted, it is not clear to which deliveries the effective date refers.

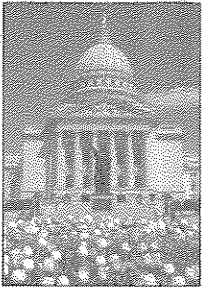
I just put in the drafting request. I'll get you a copy when it returns from the drafter.

Let me know if you have any questions.

-Tom Kelly

-----Original Message-----

From: Halverson, Vicky
Sent: Tuesday, March 11, 2003 10:56 AM
To: Berceau, Terese; Colon, Pedro; Hahn, Eugene; Hebl, Tom; Jeskewitz, Suzanne; Kerkman, Samantha; Lasee, Frank; Lothian, Thomas; Morris, Johnnie; Nass, Stephen; Wood, Jeffrey; Wood, Wayne; Ziegelbauer, Bob; Bilot, Erin; Brumm, Dottie; Burri, Lance; Chandler, Katie; DeBow, Royce; Dick Wheeler; Enwemwa, Madu; Ford, William; Gates-Hendrix, Sherrie; Gilbert, Melissa; Handrick, Diane; Hertel, Mollie; Hess, Martha; Hoey, Joseph; Hogle, Lindsay; Janssen, Andy; Karius, Bob; Kelly, Tom; Kostelic, Luanne; Kraak, Maureen; Loiselle, Debbie; Mikalsen, Mike; Minick, Wendy; Nowak, Ellen; Nussbaum, Jody; Pete Christianson; Powell, Thomas; Raschka, Adam; Rasmussen, Debra; Riley, Neci; Sewell, Pete; Stigler, Ken
Subject: Public Hearing/Executive Session Notice

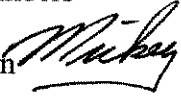


Michael (Mickey)
Lehman

State Representative
99th Assembly District

Committee Chair: Ways and Means

Memorandum

To: Ways & Means Committee Members
From: Rep. Michael "Mickey" Lehman 
Date: March 18, 2003
Re: Amendments for April 2nd Public Hearing/Executive Session

The following amendments will be considered by the Committee at our next Public Hearing/Executive Session:

A technical amendment to AB 10 requested by DOR;

An amendment introduced by Rep. Ziegelbauer to his AB 24, relating to the sale of tangible personal property.

An amendment to AB 48, relating to mailing property tax bills, drafted by the author--Rep. Ladwig.

Copies are attached for your information.

Vote Record

Committee on Ways and Means

Date: 4/2/03

Moved by: Jeskewitz

Seconded by: Ziegelbauer

AB 24

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

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
 Adoption
 Confirmation
 Concurrence
 Indefinite Postponement
 Introduction
 Rejection
 Tabling
 Nonconcurrence

Committee Member

| | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| ✓ Representative Michael Lehman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Jeffrey Wood | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Stephen Nass | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Eugene Hahn | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Frank Lasee | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Suzanne Jeskewitz | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Samantha Kerkman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Thomas Lothian | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Wayne Wood | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Pedro Colon | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Terese Berceau | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Robert Ziegelbauer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Johnnie Morris | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| ✓ Representative Tom Hebl | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Totals: 12 2

Vote Record

Committee on Ways and Means

Date: 4/2/03

Moved by: Ziegelbauer

Seconded by: Jeskewitz

AB 24

SB _____

Clearinghouse Rule _____

AJR _____

SJR _____

Appointment _____

AR _____

SR _____

Other _____

1 A/S Amdt 1 - A0300/1

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:

- | | | | | |
|---------------------------------------|--|---------------------------------------|---|--|
| <input type="checkbox"/> Passage | <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Confirmation | <input type="checkbox"/> Concurrence | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Rejection | <input type="checkbox"/> Tabling | <input type="checkbox"/> Nonconcurrence | |

Committee Member

| | <u>Aye</u> | <u>No</u> | <u>Absent</u> | <u>Not Voting</u> |
|-----------------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Representative Michael Lehman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Jeffrey Wood | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Stephen Nass | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Eugene Hahn | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Frank Lasee | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Representative Suzanne Jeskewitz | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Samantha Kerkman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Thomas Lothian | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Wayne Wood | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Pedro Colon | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Representative Terese Berceau | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Robert Ziegelbauer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Johnnie Morris | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Representative Tom Hebl | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Totals: 12 2

Halverson, Vicky

From: Karius, Bob
Sent: Friday, April 11, 2003 11:16 AM
To: Halverson, Vicky
Subject: RE: AB 24 & AB 28

Great, thanks again.

-----Original Message-----

From: Halverson, Vicky
Sent: Friday, April 11, 2003 11:07 AM
To: Karius, Bob
Subject: RE: AB 24 & AB 28

Yes. Mickey's policy on this and other bills that must also go to the Jt. Survey Com. on Tax Exemptions is that he will hold hearings, but will not hold an exec. on any of them. He recently met with the Speaker on this issue, and he will be notifying committee members of this policy. As you may know, we have several bills that this would apply to.

-----Original Message-----

From: Karius, Bob
Sent: Friday, April 11, 2003 11:02 AM
To: Halverson, Vicky
Subject: RE: AB 24 & AB 28

Thanks !

By the way, any word on the status of AB 10 - gamebirds ?

-----Original Message-----

From: Halverson, Vicky
Sent: Friday, April 11, 2003 10:29 AM
To: Karius, Bob
Subject: RE: AB 24 & AB 28

12-0 with 2 absent on both.

-----Original Message-----

From: Karius, Bob
Sent: Friday, April 11, 2003 10:28 AM
To: Halverson, Vicky
Subject: AB 24 & AB 28

Hi Vicky, just wondering what the votes on passage were for AB 24 and AB 28.

Thanks,
Bob

Rossiter - double tax - amendment to AB16
include clay pigeon

Jason - DGR - concerned about issue
mushrooming

Bill: Final consumer is where tax occurs.

Scott/Steve. Considered a double tax. They
were looking.

AB 24

AB - 1994? no grassline adjustment
ASSN. would still issue W-2

Fair exemption on this -

Fed. exempts thinks \$600.00

Rep loose

ML

quarterly reporting -

Fed. Diane Hardt -

~~Steve~~

~~Diane~~

~~Amber~~

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.)

Seller = S
Customer = C
Wholesaler = W

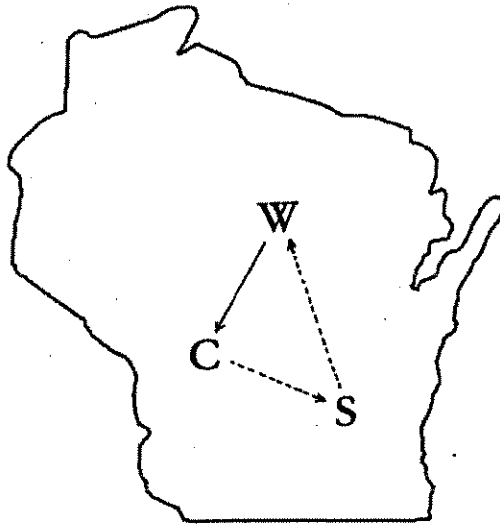


Diagram 1
No problem
Seller collects tax from customer

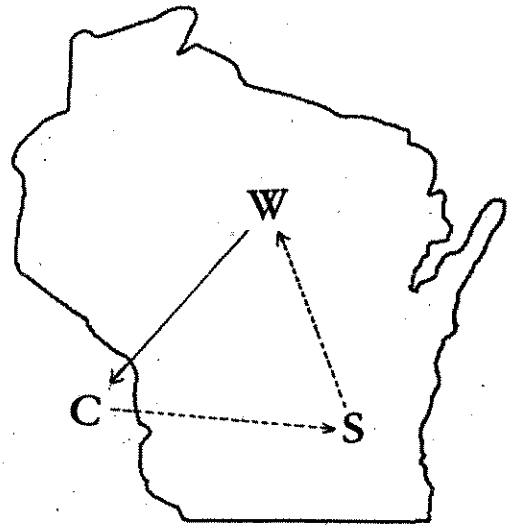


Diagram 2
No problem
No tax collection

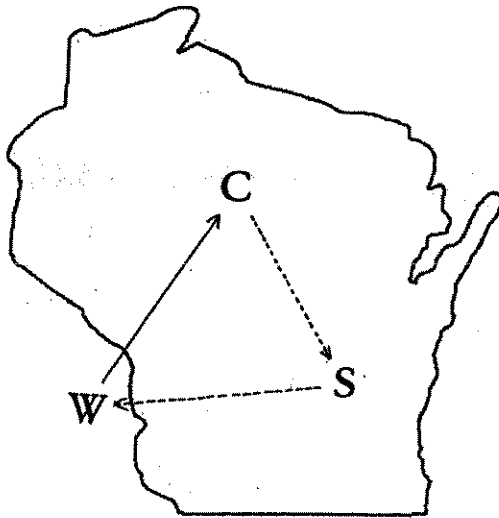


Diagram 3
No problem
Seller collects tax from customer

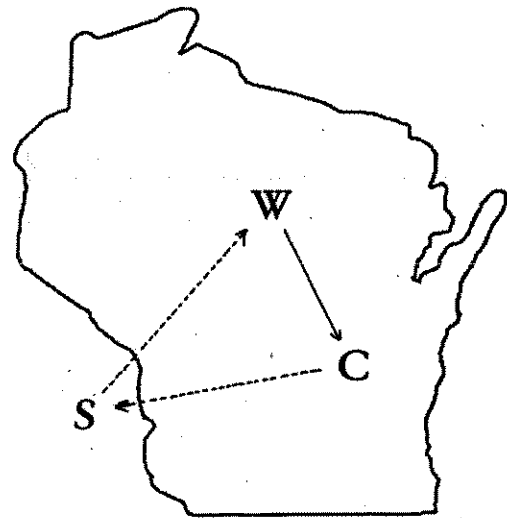


Diagram 4
Problem

- 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.)