



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

February 6, 2008

MEMORANDUM

To: Representative Strachota

From: Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2007 AB 725** (LRB-3699/2) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 5, 2008

TO: Joe Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on 2007 AB 725 Exempting Certain Products under the Energy Star Program from Sales and Use Taxes

The department has the following concerns with the bill:

1. The temporary exemption provided in the bill is complex. As a result, the new exemption may be confusing to consumers, and lead to high compliance costs for retailers.
2. The bill creates administrative burdens for retailers. A retailer would have no way of knowing if a product was for residential use as required by the bill unless the retailer obtained an exemption certificate from each customer claiming that it is for residential use.
3. The bill creates complexity for retailers because of the \$1,500 cap on the exemption, especially if a purchase is leased. If a qualifying purchase is leased, a retailer would need to keep track of the tax on each of the lease payments.
4. If there is a change in the energy efficiency guidelines under the Energy Star program, it may be unclear whether the previous guidelines or the revised guidelines apply for purposes of the exemption. If it is the intent that the guidelines that are to apply are those that are in effect at the time of the sale of the equipment, it is suggested that the bill be revised to explicitly state this.
5. The bill creates an administrative burden for retailers, customers, and the department in that it may be difficult to distinguish between use for entertainment purposes and use for educational purposes. For example, is a computer that is used primarily for educational video games used primarily for entertainment purposes?
6. A definition "entertainment" should be provided. The terms "entertainment," "amusement," and "recreational" are each used in sec. 77.52(2)(a)2., and according to the rules of statutory construction each word has to be given meaning.
7. "Primarily," as used in sec. 77.54(50), as created by the bill, should be defined to mean more than 50 percent.
8. "Contractor" and "subcontractor" are undefined. It is not clear whether the "contractors" and "subcontractors" referred to in the bill are only those performing real property

construction activities, or whether these terms include persons fulfilling other contracts (for example, computer service contractors). If the intention of the bill is only to prevent real property construction contractors and real property construction subcontractors from qualifying for the exemption, the bill should be revised to state this.

9. The bill would prevent Wisconsin from being in compliance with the Main Street Equity Act (Streamlined Sales and Use Tax Agreement). The Main Street Equity Act was introduced as part of the 2007 Budget Bill. While the Main Street Equity Act was not passed into law in 2007, it may be introduced again. Wisconsin is not a streamlined member state, but if this bill is passed into law, Wisconsin could not become a member state unless the temporary exemption (i.e., sales tax holiday) provided in this bill is amended to comply with the Streamlined Agreement or is repealed.

Section 322.A. of the Streamlined Agreement provides that member states that have a temporary exemption period may not have such an exemption after December 31, 2004, unless the items to be exempted are specifically defined in the Streamlined Agreement.

The temporary exemption provided in the bill does not meet this requirement. To address this issue, it is suggested that the bill be revised to exempt an "Energy Star qualified product," and define such a product as follows to be consistent with the Streamlined Agreement:

A product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

The Streamlined Agreement also provides that a member state that wishes to exempt "Energy Star qualified products" during a sales tax holiday may:

1. exempt all Energy Star qualified products, or
2. exempt specified Energy Star qualified products, or
3. exempt specified classifications as categorized in the Energy Star product listing.

Therefore, it is suggested that the exemption provided in the bill be revised to delete the condition that the item not be used primarily for entertainment purposes, and, instead, exempt specified Energy Star qualified products or exempt specified classifications as categorized on the Energy Star product listing.

If you have any questions regarding this technical memorandum, please contact me at (608) 266-5773.

cc: Representative Strachota