

2009 DRAFTING REQUEST

Bill

Received: 12/18/2008

Received By: jkreyc

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Lillethun

This file may be shown to any legislator: NO

Drafter: jkreyc

May Contact:

Adl. Drafters:

Subject: Tax, Other - sales

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Lillethun, BB0290 -

Topic:

Separate sales tax returns for disregarded entities

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	jkreyc 01/06/2009	jdycr 01/07/2009	phenry 01/07/2009	_____	mbarman 01/07/2009		

FE Sent For:

<END>

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FE Sent For:

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2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Allow Separate Sales Tax Returns for Disregarded Entities
- Tracking Code: BB0290
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
 - Phone: 266-7597
 - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Low

Intent:

Provide that the owner of a disregarded entity has the option to either report the Wisconsin sales or use tax liability for the disregarded entity on the owner's return or file a separate return for the disregarded entity.

**2009-2011 Legislative Proposal
Wisconsin Department of Revenue
IS&E Division**

Date: November 25, 2008

TITLE: ALLOW DISREGARDED ENTITIES TO FILE SEPARATE SALES TAX RETURNS

DESCRIPTION OF CURRENT LAW AND PROBLEM

A disregarded entity is a business entity with a single owner that chooses to be regarded as unified with its owner (i.e. the entity is "disregarded") for income/franchise tax purposes. The disregarded entity reports its income/franchise tax liability on the return of its owner and the owner is subject to the tax on the disregarded entity's income.

Current Wisconsin law does not allow a disregarded entity to file and report its own Wisconsin sales and use tax liability. Instead, the information for the disregarded entity must be compiled and reported on the disregarded entity's owner's return. The process of compiling the necessary information by the owner from each of its disregarded entities is a burdensome process for an owner that has a relatively large number of disregarded entities, but a small tax department.

Section 77.58(3)(a), Wis. Stats. (2005-06), provides that:

"For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property or services, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a qualified subchapter S subsidiary is not regarded as a separate entity under ch. 71, the owner of that subsidiary shall include the information for that subsidiary on the owner's return. Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath. If a single-owner entity is disregarded as a separate entity under ch. 71, the owner shall include the information from the entity on the owner's return."

RECOMMENDATION FOR ACTION

Amend sec. 77.58(3)(a), Wis. Stats. (2005-06), to provide that the owner of a disregarded entity has the option to elect to either report the Wisconsin sales and use tax liability for the disregarded entity on the owner's return or file a separate return for the disregarded entity. If an owner owns more than one disregarded entity, the owner must treat each of the disregarded entities the same way. If an owner elects to file a separate return for each disregarded entity, the owner must separately register each of the disregarded entities and provide the necessary information prescribed by the Department of Revenue so that the department knows that it is a disregarded entity that is electing to file a separate sales and use tax return. The owner and disregarded entity must also file the returns for the disregarded entities electronically.

ADMINISTRATIVE IMPACT

The proposed change would provide the owners of a disregarded entity with the option of either filing one combined return for the owner and all of the disregarded entities or filing separate returns for owner and each of the disregarded entities.

FAIRNESS/TAX EQUITY

Since this reporting option would be available to all owners of disregarded entities it will not create any fairness or tax equity issues.

IMPACT ON ECONOMIC DEVELOPMENT

No impact on economic development is anticipated.

FISCAL EFFECT

The proposal has no impact on state and local revenues and creates no significant fiscal impact on the department.

DRAFTING INSTRUCTIONS

It is recommended that sec. 77.58(3)(a), Wis. Stats. (2005-06), be amended to provide owners of disregarded entities the option of reporting the Wisconsin sales and use tax liability for a disregarded entity either (1) on the owner's sales and use tax return or (2) on a separate return just for the disregarded entity. If an owner of more than one disregarded entity chooses to file a separate return for one of its disregarded entities, it must file separate returns for all of its disregarded entities and these returns must be filed electronically. In addition, the disregarded entity must provide any information that the Department deems necessary to indicate that this entity is a disregarded entity that is electing to file a separate sales and use tax return. This information may include the name and identifying number of the owner as well as any other disregarded entities owned by that same owner.

Suggested changes to sec. 77.58(3)(a), Wis. Stats. (2005-06), are as follows:

"For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property or services, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a qualified subchapter S subsidiary is not regarded as a separate entity under ch. 71, the owner of that subsidiary shall elect to either include the information for that subsidiary on the owner's return, or elect to file a separate electronic return for that entity. ~~Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.~~ If a single-owner entity is disregarded as a separate entity under ch. 71, the owner shall elect to either include the information from the entity on the owner's return, or elect to file a separate electronic return for that entity. If an owner that owns more than one entity that is disregarded as a separate entity under ch. 71 elects to file a separate return for one of its disregarded entities, it must do the same for all of its disregarded entities. Returns shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath. "

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

First day of third month after publication.

INTERESTED/AFFECTED PARTIES

All retailers who have disregarded entities.

DOR CONTACT PERSON

Diane Hardt, Division Administrator
(608) 266-6798

PREPARED BY

Craig Johnson, Staff Specialist



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1220/P1

JK:.....
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DOA:.....Lillethun, BB0290 - ✓ Separate sales tax returns for disregarded entities

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

mn 1-6-09

don't gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, for sales tax purposes, a seller is required to file a sales tax return. If a person's subsidiary makes sales in this state, but the subsidiary is not regarded as a separate entity for state income and franchise tax purposes, the person must include the information for that subsidiary on the person's sales tax return. If a person owns a single-owner entity that makes sales in this state, but the entity is disregarded as a separate entity for income and franchise tax purposes, the person must include the information from the entity on the person's sales tax return.

Under this bill, if a subsidiary is not regarded as a separate entity for state income and franchise tax purposes, the owner of the subsidiary must elect to either include the information for that subsidiary on the owner's sales tax return or file a separate electronic return for that entity. If a single-owner entity is disregarded as a separate entity for state income and franchise tax purposes, the owner must elect to either include the information from the entity on the owner's return or file a separate electronic return for that entity. If an owner that owns more than one entity that is disregarded as a separate entity elects to file a separate return for one of its disregarded entities, the owner shall file separate returns for all of its disregarded entities.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 77.58 (3) (a) of the statutes is amended to read:

77.58 (3) (a) For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property or services, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a qualified subchapter S subsidiary is not regarded as a separate entity under ch. 71, the owner of that subsidiary shall elect to either include the information for that subsidiary on the owner's return. Returns shall be signed by the person required to file the return ~~or by a duly authorized agent but need not be verified by oath~~ or file a separate electronic return for that entity. If a single-owner entity is disregarded as a separate entity under ch. 71, the owner shall elect to either include the information from the entity on the owner's return or file a separate electronic return for that entity. If an owner that owns more than one entity that is disregarded as a separate entity under ch. 71 elects to file a separate return for one of its disregarded entities, the owner shall file separate returns for all of its disregarded entities. Returns file under this paragraph shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.

History: 1971 c. 316; 1975 c. 39, 199; 1977 [✓] 29, 142; 1979 c. 1, 174, 221, 355; 1981 c. 20; 1983 a. 465; 1991 a. 316; 1995 a. 27; 1997 a. 27.

SECTION 9443. Effective dates; Revenue.

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(1) SALES AND USE TAX RETURNS. The treatment of section 77.58 (3) (a) of the statutes takes effect on the first day of the 3rd month beginning after publication.

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1220/P1
JK:jld:ph

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4 business in this state and by every person purchasing tangible personal property or
5 services, the storage, use or other consumption of which is subject to the use tax, who
6 has not paid the use tax due to a retailer required to collect the tax. If a qualified
7 subchapter S subsidiary is not regarded as a separate entity under ch. 71, the owner
8 of that subsidiary shall elect to either include the information for that subsidiary on
9 the owner's return. ~~Returns shall be signed by the person required to file the return~~
10 ~~or by a duly authorized agent but need not be verified by oath~~ or file a separate
11 electronic return for that entity. If a single-owner entity is disregarded as a separate
12 entity under ch. 71, the owner shall elect to either include the information from the
13 entity on the owner's return or file a separate electronic return for that entity. If an
14 owner that owns more than one entity that is disregarded as a separate entity under
15 ch. 71 elects to file a separate return for one of its disregarded entities, the owner
16 shall file separate returns for all of its disregarded entities. Returns filed under this
17 paragraph shall be signed by the person required to file the return or by a duly
18 authorized agent but need not be verified by oath.

19 **SECTION 9443. Effective dates; Revenue.**

