

2009 DRAFTING REQUEST

Bill

Received: **12/18/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0302 -

Topic:

Expand tribal tax refund and sharing agreements

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	jkreye 01/08/2009	jdyer 01/09/2009	phenry 01/12/2009	_____	lparisi 01/12/2009		State
/P2	jkreye 01/15/2009	jdyer 01/15/2009	jfrantze 01/15/2009	_____	cduerst 01/15/2009		State
/P3	jkreye 01/22/2009	jdyer 01/22/2009	rschluet 01/22/2009	_____	sbasford 01/22/2009		State
/P4	jkreye 01/24/2009	bkraft 01/24/2009	phenry 01/24/2009	_____	chanaman 01/25/2009		State
	jkreye	kfollett		_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/28/2009	01/28/2009		_____			
/P5			mduchek 01/28/2009	_____	sbasford 01/28/2009		State
/P6	jkreye 01/30/2009	wjackson 01/30/2009	mduchek 01/30/2009	_____	cduerst 01/30/2009		

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: **12/18/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0302 -

Topic:

Expand tribal tax refund and sharing agreements

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	jkreye 01/08/2009	jdyer 01/09/2009	phenry 01/12/2009	_____	lparisi 01/12/2009		State
/P2	jkreye 01/15/2009	jdyer 01/15/2009	jfrantze 01/15/2009	_____	cduerst 01/15/2009		State
/P3	jkreye 01/22/2009	jdyer 01/22/2009	rschluet 01/22/2009	_____	sbasford 01/22/2009		State
/P4	jkreye 01/24/2009 jkreye	bkraft 01/24/2009 kfollett	phenry 01/24/2009	_____	chanaman 01/25/2009		State

AD
AD
R/30

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/28/2009	01/28/2009		_____			
/P5		1/26 wlj 1/30	mduchek	_____	sbasford		
			01/28/2009	_____	01/28/2009		

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: **12/18/2008**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0302 -

Topic:

Expand tribal tax refund and sharing agreements

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	jkreye 01/08/2009	jdyer 01/09/2009	phenry 01/12/2009	_____	lparisi 01/12/2009		State
/P2	jkreye 01/15/2009	jdyer 01/15/2009	jfrantze 01/15/2009	_____	cduerst 01/15/2009		State
/P3	jkreye 01/22/2009	jdyer 01/22/2009	rschluet 01/22/2009	_____	sbasford 01/22/2009		State
/P4	jkreye 01/24/2009	bkraft 01/24/2009	phenry 01/24/2009	_____	chanaman 01/25/2009		

1/28/09 PSK/f MD 1/28/09 MDJF

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: 12/18/2008

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Lillethun

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Other - miscellaneous

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Lillethun, BB0302 -

Topic:

Expand tribal tax refund and sharing agreements

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	jkreye 01/08/2009	jdyer 01/09/2009	phenry 01/12/2009	_____	lparisi 01/12/2009		State
/P2	jkreye 01/15/2009	jdyer 01/15/2009	jfrantze 01/15/2009	_____	cduerst 01/15/2009		State
/P3	jkreye 01/22/2009	jdyer 01/22/2009	rschluet 01/22/2009	_____	sbasford 01/22/2009		

FE Sent For:

*y/2e
pt*
ph/cmH
<END>

2009 DRAFTING REQUEST

Bill

Received: 12/18/2008

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Lillethun

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Other - miscellaneous

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Lillethun, BB0302 -

Topic:

Expand tribal tax refund and sharing agreements

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>
/?		<i>1/3/09 jld</i>		_____			State
/P1	jkreye 01/08/2009	jdyer 01/09/2009	phenry 01/12/2009	_____	lparisi 01/12/2009		State
/P2	jkreye 01/15/2009	jdyer 01/15/2009	jfrantze 01/15/2009	_____	cduerst 01/15/2009		

FE Sent For:

[Handwritten signature]
<END>

2009 DRAFTING REQUEST

Bill

Received: 12/18/2008

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Lillethun

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Other - miscellaneous

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Lillethun, BB0302 -

Topic:

Expand tribal tax refund and sharing agreements

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>
/?		P2 1/15 jld		_____			State
/P1	jkreye 01/08/2009	jdye 01/09/2009	phenry 01/12/2009	_____	lparisi 01/12/2009		

FE Sent For:


1/15


1/15
<END>

2009 DRAFTING REQUEST

Bill

Received: 12/18/2008

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Lillethun

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Other - miscellaneous

Extra Copies:

Submit via email: NO

Pre Topic:

DOA:.....Lillethun, BB0302 -

Topic:

Expand tribal tax refund and sharing agreements

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>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/?	jkreye	PI x jld	1/12 ph	1/12 ph			
----	--------	----------	------------	------------	--	--	--

FE Sent For:

<END>

1230

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Authorize for DOR to Expand Tribal Tax Refund and Sharing Agreements
- Tracking Code: BBO302
- 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:

Authorize the department to enter tribal tax refund and sharing agreements for individual income and withholding taxes, sales and use taxes, motor fuel taxes, and alcoholic beverage taxes.

**Legislative Proposal Summary
Wisconsin Department of Revenue
Income, Sales & Excise Tax Division**

Date: November 24, 2008

TITLE: Authorization for DOR to Expand Tribal Tax Refund and Sharing Agreements

DESCRIPTION OF CURRENT LAW AND PROBLEM

There are many unsettled questions concerning taxation of American Indians. To resolve some of these issues, some states have entered tax refund and revenue sharing agreements with tribes. (1) These agreements allow the state to refund certain state taxes paid by American Indians, to share (2) tax revenue from certain activities on tribal lands and outside of tribal lands, and (for sales and use tax) to allow credit for certain tribal taxes paid against state taxes otherwise due. (3)

States benefit from these agreements because they resolve disputed tax issues while reducing the risk of litigation. The agreements also help level the playing field for businesses located outside tribal land boundaries.

Currently, the Department of Revenue is authorized to enter refund and sharing agreements with tribes for cigarette and tobacco products taxes.

Multiple Wisconsin tribes have expressed interest in an agreement that covers additional tax types. The Department does not have statutory authority to enter agreements for additional tax types.

Certain tribes cannot fully participate in the refund and sharing programs for cigarette and tobacco products taxes because those provisions apply only to sales made on lands designated as reservation or trust lands on or before January 1, 1983.

Units of federal, state, and local government are exempt from sales and use tax on items and taxable services they purchase in Wisconsin, but governments of federally recognized American Indian tribes or bands are not exempt on purchases made outside their own tribal land, even when the purchaser is on official tribal government business.

RECOMMENDATION FOR ACTION

The Department seeks authority to enter tribal tax refund and sharing agreements for individual income and withholding taxes, sales and use taxes, motor fuel taxes, and alcoholic beverage taxes. These agreements would authorize the Department to share with tribes, a portion of the tax collected by its tribal businesses with respect to sales to persons other than American Indians, and the tax paid by American Indians on purchases made off the tribal land on which they reside. No such agreements would apply to sales by non-tribal businesses.

The provisions for cigarette and tobacco products tax agreements should authorize the Department to enter agreements that relate to sales made on lands designated as tribal lands by January 1, 1983, or a later date to be determined in the agreement.

Sales to a federally recognized American Indian tribe or band in this state would be exempt from payment of sales and use taxes for purchases made in Wisconsin outside tribal lands. This provision is comparable to the sales and use tax exemption provided to other units of government in this state for sales made to those units of government and their employees traveling on government business.

DOR has conducted ongoing discussions with several tribes leading to the framework for a legislative proposal. DOR has also reviewed comparable agreements between tribes and the Minnesota Department of Revenue, and tribes and the Michigan Department of Treasury. DOR is consulting with the tribes to develop legislation creating the necessary authority within state statute.

ADMINISTRATIVE IMPACT

To administer the refund and revenue sharing agreements, the Department would be responsible for collecting all taxes covered by the agreement and making appropriations and payments of such funds on a monthly basis.

FAIRNESS / TAX EQUITY

The agreements authorized by this proposal would reduce the likelihood of non-tribal members using the tribal land to purchase tangible personal property without paying sales or use tax. This would level the playing field for businesses located outside the tribal land boundaries.

IMPACT ON ECONOMIC DEVELOPMENT

Since the agreements authorized by this proposal would encourage tribal self-sufficiency, this proposal would further economic development on tribal lands. Further, since the agreements would enable businesses located outside tribal land boundaries to better compete with those located on the tribal land, this proposal would encourage economic development in areas bordering tribal lands.

FISCAL EFFECT

The fiscal effect of the proposal will be based on the to-be-negotiated agreements and, therefore, cannot be reliably determined in advance. A fiscal estimate for each agreement will be developed in conjunction with each negotiation.

DRAFTING INSTRUCTIONS

Allow DOR to enter into tribal tax refund and sharing agreements for individual income and withholding taxes, sales and use taxes, motor fuel taxes and alcohol beverage taxes. The proposal is modeled after the successful cigarette tax and tobacco product tax agreements between DOR and the tribes, in existence since 1983. In fiscal year 2007-2008, the Department refunded \$20.3 million in cigarette tax and tobacco products tax to the 11 federally recognized tribes in Wisconsin.

DOR will be authorized to negotiate agreements sharing a portion of income and withholding taxes, sales and use taxes, motor fuel taxes, and alcohol beverage taxes collected by tribal retailers and tribal member retailers on tribal lands. The proposal will include the following provisions:

- Authorize DOR to negotiate agreements sharing sales or use tax collected by tribal retailers and tribal member retailers with respect to all sales to non-tribal members and non-resident tribal members that occur within tribal lands. Sales to resident tribal members would remain exempt from the sales and use tax.
- Tribal retailers and tribal member retailers would collect and remit to DOR the state and local sales or use taxes, as applicable, on all sales to non-tribal members and non-resident tribal members that occur within tribal lands. DOR would administer the tax, i.e., issue permits, process tax returns and payments, provide customer service, audit tax filers, and

collect delinquent tax amounts. Nothing in the law would prohibit DOR from agreeing that a tribe could provide tax administration services in relation to the taxes collected under these agreements.

- An agreement will not apply to sales by non-Native American retailers occurring on tribal lands.
- Tribes entering agreements with DOR will agree that any tribal sales and use tax will conform to the State sales and use tax base and related administrative provisions in Chapter 77 of the Wisconsin statutes. The agreements will conform to the provisions of the Streamlined Sales and Use Tax Agreement, which provides that there will be one sales tax administration authority per state, and thus, only one sales tax return filed for all state, tribal and local governments in each state.
- No person will pay a tribal sales and use tax and a state sales and use tax on the same transaction. Instead, any person who pays a sales or use tax imposed by a tribe that has entered into a tax sharing agreement may credit the tribal tax against the state sales and uses taxes otherwise due on the transaction. Comparable to the credit granted to taxpayers making a purchase in another state for sales tax imposed by the other state, see Wis. Stats., sec. 77.53 (16).
- A federally recognized American Indian tribe or band in Wisconsin would be exempt from payment of sales and use taxes for purchases made in Wisconsin outside tribal lands. This exemption would include purchases made by tribal employees if they are making such purchases on behalf of the tribe or band, e.g., sales of meals and lodging to the tribe or band for its tribal employees traveling on tribal business would be exempt from the sales and use tax. This provides a sales and use tax exemption comparable to other units of government in this state, see Wis. Stats., sections 77.54 (9a) (b) and 77.54 (9a) (e).
- Cigarette and tobacco products tax agreements would apply to sales made on lands designated as tribal lands by Jan. 1, 1983, or a later date to be determined in the agreement.
- Agreements would also apply to alcohol beverage tax, currently imposed at the distributor level and included in sales of alcohol beverages to tribal members and non-tribal members purchasing alcohol beverages on tribal lands.
- Taxes collected from sales of motor fuel to non-tribal members and non-resident tribal members imposed at the terminal rack and included in sales of motor fuel occurring on tribal lands could also be included in the agreements.
- Address questions regarding the individual income tax and withholding requirements, e.g., entertainer withholding, providing 1099s or other information returns.
- DOR and the tribes agree that any tax or financial information disclosed during negotiations, or contained within final agreements, shall be protected pursuant to the confidentiality provisions of sec. 71.78, Wis. Stats.
- In addition, DOR would prepare a fiscal analysis for each agreement reflecting the specific provisions of each agreement and submit a report including an estimate of the fiscal effect of each agreement to the Joint Finance Committee for review. If after 14 days the Committee does not notify DOR of a meeting to review the report, the agreements are considered approved by the Committee.

wouldn't the agreement also require conformity to the tax laws?

- DOR shall make monthly sharing agreement payments to tribes.

INITIAL APPLICABILITY

The day after publication.

INTERESTED/AFFECTED PARTIES

Wisconsin's eleven federally recognized American Indian tribes and bands, and businesses located outside of tribal land boundaries.

DOR CONTACT PERSON

Diane Hardt
266-6798
Diane.Hardt@revenue.wi.gov

PREPARED BY Lili Crane & Tom Ourada



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1230/P1

JK: ^:...

JLD

DOA:.....Lillethun, BB0302 - Expand tribal tax refund and sharing agreements

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

m 1-8-09
D-N

X

don't gen

1

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

Analysis by the Legislative Reference Bureau

TAXATION ✓

OTHER TAXATION ✓

Under current law, DOR ✓ may enter into agreements with American Indian tribes or bands located in this state to refund, generally, the cigarette and tobacco product taxes imposed on sales of cigarettes and tobacco products sold on land that was designated a reservation or trust land on or before January 1, 1983. ✓ Under this bill, DOR may provide tax refunds for cigarettes and tobacco products sold on land designated a reservation or trust land on or before January 1, 1983, or on a later date determined by an agreement between DOR ✓ and the tribal council.

This bill also allows DOR ✓ to enter into agreements with American Indian tribes or bands ✓ located in this state to collect, remit, and provide refunds of income, withholding, ✓ sales and use, motor vehicle fuel, and beverage ✓ taxes related to activities occurring on tribal lands or undertaken by tribal members outside of tribal lands. ✓

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:

1 SECTION 1. 73.03 (64) of the statutes is created to read:

2 73.03 (64) (a) To enter into agreements with federally recognized American
3 Indian tribes or bands in this state to collect, remit, and provide refunds of the
4 following taxes for activities that occur on tribal lands or are undertaken by tribal
5 members outside of tribal lands:

- 6 1. Income taxes imposed under subch. I of ch. 71.
- 7 2. Withholding taxes imposed under subch. X of ch. 71.
- 8 3. Sales and use taxes under subch. III of ch. 77.
- 9 4. Motor vehicle fuel taxes imposed under subch. I of ch. 78.
- 10 5. Beverage taxes imposed under subch. I of ch. 139.

11 (b) For purposes of this subsection, all tax and financial information disclosed
12 during negotiations, or contained in a final agreement, between the department and
13 a federally recognized American Indian tribe or band in this state is subject to the
14 confidentiality provisions under s. 71.78.

15 (c) The department shall prepare a fiscal analysis of each agreement negotiated
16 under this subsection and shall submit that analysis with the agreement to the joint
17 committee on finance for its review. If the cochairpersons of the committee do not
18 notify the department within 14 working days after the date of the department's
19 submittal that the committee has scheduled a meeting for the purpose of reviewing
20 the agreement and fiscal analysis, the agreement may be implemented as proposed
21 by the department. If, within 14 working days after the date of the department's
22 submittal, the cochairpersons of the committee notify the department that the
23 committee has scheduled a meeting for the purpose of reviewing the proposed
24 agreement and the fiscal analysis, the agreement may be implemented only upon
25 approval of the committee.

1 **SECTION 2.** 139.323 (3) of the statutes is amended to read:

2 139.323 (3) The land on which the sale occurred was designated a reservation
3 or trust land on or before January 1, 1983, or on a later date as determined by an
4 agreement between the department and the tribal council.

5 History: 1983 a. 27; 1985 a. 29, 302.

5 **SECTION 3.** 139.803 (3) of the statutes is amended to read:

6 139.803 (3) The land on which the sale occurred was designated a reservation
7 or trust land on or before January 1, 1983, or on a later date as determined by an
8 agreement between the department and the tribal council.

9 History: 1999 a. 9.

(END)

d-note
↓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1230/P1dn

JK: a:...

date

Jld

Chad (and DOR):

Please review this draft carefully to ensure that it is consistent with your intent. I decided to take a simpler approach than what appears to be suggested in the drafting instructions from DOR. Therefore, the draft is very similar to the tax and refund agreement provisions in ch. 139 (related to the cigarette and tobacco product taxes) to the extent that those provisions lack the detail that is presumably contained in the agreements between the tribes and DOR. I would suggest that, given our approaching budget deadlines, we craft something that is not too complicated, but yet gives DOR the authority to negotiate with the tribes.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1230/P1dn
JK:jld:ph

January 12, 2009

Chad (and DOR):

Please review this draft carefully to ensure that it is consistent with your intent. I decided to take a simpler approach than what appears to be suggested in the drafting instructions from DOR. Therefore, the draft is very similar to the tax and refund agreement provisions in ch. 139 (related to the cigarette and tobacco product taxes) to the extent that those provisions lack the detail that is presumably contained in the agreements between the tribes and DOR. I would suggest that, given our approaching budget deadlines, we craft something that is not too complicated, but yet gives DOR the authority to negotiate with the tribes.

Joseph T. Kreye
Senior Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.wisconsin.gov

2009-11 LRB Draft Review

Date:

01-14-09

LRB Number:

LRB-1230/P1

Reviewed by:

Tom Ourada

Brief Description of LRB Draft:

The draft authorizes the Department to enter into additional tax agreements with federally recognized Tribes and bands located in the State. Currently the Department may enter into agreements addressing cigarette tax and tobacco product taxes. The draft allows for agreements addressing additional tax types, including income and withholding tax, sales and use tax, motor vehicle fuel tax, and beverage tax. The Department would need to prepare a fiscal analysis after each agreement and submit the analysis to the Joint Finance Committee for their approval.

Comments on Draft:

While the proposal will accomplish the Department's intent in expanding tax agreements with the Tribes beyond those authorized under current law, the Department's drafting instructions proposed specific statutes governing agreements for each tax type, including specific limitations on the provisions of the agreements. In contrast, the draft creates a general statute authorizing the Department and the Tribes to enter into agreements regarding the expanded list of tax types. The Department proposed creating a statute that authorized agreements if certain conditions were met, for example, the Tribe would agree that Tribal sales tax would conform to the State sales and use tax base and would follow all the sales tax administrative provisions found in Chapter 77, or that the Department would be responsible for the administration of taxes, i.e. issuing permits, processing tax returns, auditing tax filers, and collecting delinquent tax amounts, etc. The LRB draft is silent with regard to these types of specific requirements, meaning the Department could enter into agreements that do not require such conditions be met. The statute does not preclude the Department from requiring that such provisions be a part of any agreements.

Although the general statute created in the draft will allow the Department to enter into voluntary agreements with interested Tribes, thereby meeting the original intent, there are some specific requirements that the Department believes should be explicitly stated in the statute. Those requirements are listed below.

Changes Needed & Why:

- Page 2, lines 11 to 14 - the confidentiality provision listed in the draft should also reference the sales and use tax confidentiality statute section 77.61 (5), and clarify that while the information exchanged in relation to the agreement is confidential, the agreements themselves will be public documents. To address this concern lines 11 to 14 could be amended to read:
“(b) For purposes of this subsection, all tax and financial information disclosed during negotiations or exchanged pursuant to, ~~or contained in a final agreement,~~ between the department and a federally recognized American Indian tribe or band in this state is subject to the confidentiality provisions under ss. 71.78 and 77.61(5).”
- To avoid requiring the payment of both a Tribal sales and use tax and a State sales and use tax on the same transaction, the draft should state that any person who pays a Tribal sales or use imposed by a Tribe that has entered into an agreement may credit the Tribal tax against the State sales and use taxes that would otherwise be due. Such a credit would be comparable to the credit granted to taxpayers making purchases in another state for sales tax imposed by the other state. The existing credit can be found in s. 77.53 (16).
- Page 2, lines 17-25 – beginning with: “If the cochairpersons of the committee do not...only upon approval of the committee” should be deleted, and replaced with a requirement to submit the fiscal analysis within thirty days of the signing of each agreement. The result is a requirement that the Department must submit a fiscal analysis of each agreement to the Joint Committee on Finance, within 30 days of the agreement being signed, rather than requiring that the agreements be submitted to the Committee for approval under 14 day passive review.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1230/P1

JK:jld:ph

mir

DOA:.....Lillethun, BB0302 - Expand tribal tax refund and sharing agreements

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

mir 1-15-09

x *don't gen*
1 AN ACT ...; relating to: the budget. *✓*

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, DOR may enter into agreements with American Indian tribes or bands located in this state to refund, generally, the cigarette and tobacco product taxes imposed on sales of cigarettes and tobacco products sold on land that was designated a reservation or trust land on or before January 1, 1983. Under this bill, DOR may provide tax refunds for cigarettes and tobacco products sold on land designated a reservation or trust land on or before January 1, 1983, or on a later date determined by an agreement between DOR and the tribal council.

This bill also allows DOR to enter into agreements with American Indian tribes or bands located in this state to collect, remit, and provide refunds of income, withholding, sales and use, motor vehicle fuel, and beverage taxes related to activities occurring on tribal lands or undertaken by tribal members outside of tribal lands.

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:

exchanged pursuant to ✓

SECTION 1. 73.03 (64) of the statutes is created to read:

73.03 (64) (a) To enter into agreements with federally recognized American Indian tribes or bands in this state to collect, remit, and provide refunds of the following taxes for activities that occur on tribal lands or are undertaken by tribal members outside of tribal lands:

1. Income taxes imposed under subch. I of ch. 71.
2. Withholding taxes imposed under subch. X of ch. 71.
3. Sales and use taxes under subch. III of ch. 77.
4. Motor vehicle fuel taxes imposed under subch. I of ch. 78.
5. Beverage taxes imposed under subch. I of ch. 139.

(b) For purposes of this subsection, all tax and financial information disclosed during negotiations, or ~~contained in~~ a final agreement, between the department and a federally recognized American Indian tribe or band in this state is subject to the confidentiality provisions under ^{ss.} s. 71.78 and 77.61(5) ✓

(c) The department shall prepare a fiscal analysis of each agreement negotiated under this subsection and shall submit that analysis with the agreement to the joint committee on finance for its review. If the cochairpersons of the committee do not notify the department within 14 working days after the date of the department's submittal that the committee has scheduled a meeting for the purpose of reviewing the agreement and fiscal analysis, the agreement may be implemented as proposed by the department. If, within 14 working days after the date of the department's submittal, the cochairpersons of the committee notify the department that the committee has scheduled a meeting for the purpose of reviewing the proposed agreement and the fiscal analysis, the agreement may be implemented only upon approval of the committee.

plain period → *no later than 30[✓] days after the agreement is signed by the department ✓ and the tribe or band.*

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1230/P2ins
JK:jld:ph

Insert 3 - 0

1 **SECTION 1.** 77.53 (16m) [✓] of the statutes is created to read:
2 77.53 (16m) If the purchase, rental, or lease [✓] of tangible personal property or
3 service subject to the tax imposed by this section [✓] was subject to a [✓] sales tax by a
4 federally recognized [✓] American Indian tribe or band [✓] in this state, the amount of sales
5 tax paid to the tribe or band [✓] shall be applied as a credit against and deducted from
6 the tax, to the extent thereof, imposed by this section. [✓] In this subsection ^{fix} "sales tax" [✓]
7 includes a use or excise tax [✓] imposed on the use of [✓] tangible personal property or
8 taxable service by the tribe or band. [✓]

Kreye, Joseph

From: Lillethun, Chad W - DOA [Chad.Lillethun@wisconsin.gov]
Sent: Thursday, January 22, 2009 10:23 AM
To: Kreye, Joseph
Cc: Grinde, Kirsten - DOA; Templeton, Carrie E - DOR; Ourada, Thomas D - DOR; Raes, Julie M - DOR; Gates-Hendrix, Sherrie L - DOR
Subject: FW: 1230-P2 Review
Attachments: 1230-P2 Review of revised LRB draft.doc

Joe - Attached is the DOR review for expansion of revenue sharing with Native American tribes, though I need to note a change to reviewer's instructions. This item has been approved with the exception of providing a general sales tax refund to tribal members when making tribal purchases while off tribal lands. We will, however, extend a sales tax refund to tribal employees who make purchases on official tribal business, similar to the current sales tax treatment for purchases made by government employees for work purposes.

Therefore, the second part of the reviewers comments (below) is applicable, while the first should be disregarded. Thanks.

The draft should clearly authorize a sale and use tax exemption so that a federally recognized American Indian tribe or band in Wisconsin would be exempt from payment of sales and use taxes for purchases made in Wisconsin outside Tribal lands. This exemption would include purchases made by tribal employees if they are making such purchases on behalf of the tribe or band, e.g., sales of meals and lodging to the tribe or band for its tribal employees traveling on tribal business would be exempt from the sales and use tax.

From: Raes, Julie M - DOR
Sent: Tuesday, January 20, 2009 7:36 PM
To: Lillethun, Chad W - DOA
Cc: Gates-Hendrix, Sherrie L - DOR
Subject: 1230-P2 Review

Chad,

There are recommended changes meant to clarify credit and exemption provisions.

Thank you, Julie

2009-11 LRB Draft Review

Date:

01-20-09

LRB Number:

LRB-1230/P2

Reviewed by:

Tom Ourada

Brief Description of LRB Draft:

The draft authorizes the Department to enter into additional tax agreements with federally recognized Tribes and bands located in the State. Currently the Department may enter into agreements addressing cigarette tax and tobacco product taxes. The draft allows for agreements addressing additional tax types, including income and withholding tax, sales and use tax, motor vehicle fuel tax, and beverage tax. The Department would need to prepare a fiscal analysis within 30 days of the signing of each agreement and after each agreement and submit the analysis to the Joint Finance Committee for their approval.

Comments on Draft:

Indicate whether draft will accomplish intent, or if not, why not

While the proposal will accomplish the Department's intent in expanding tax agreements with the Tribes beyond those authorized under current law, the Department's drafting instructions proposed specific statutes governing agreements for each tax type, including specific limitations on the provisions of the agreements. In contrast, the drafting attorney has chosen to create a general statute authorizing the Department and the Tribes to enter into agreements regarding the expanded list of tax types. The Department proposed creating a statute that authorized agreements if certain conditions were met, for example, the Tribe would agree that Tribal sales tax would conform to the State sales and use tax base and would follow all the sales tax administrative provisions found in Chapter 77, or that the Department would be responsible for the administration of taxes, i.e. issuing permits, processing tax returns, auditing tax filers, and collecting delinquent tax amounts, etc. The LRB draft is silent with regard to these types of specific requirements, meaning the Department could enter into agreements that do not require such conditions be met. On the other hand, the statute does not preclude the Department from requiring that such provisions be a part of any agreements.

Although the general statute created in the draft will allow the Department to enter into voluntary agreements with interested Tribes, thereby meeting the

original intent, the Department believes one additional provision, listed below, should be explicitly stated in the statute. Finally, a clarification is needed concerning the credit against state taxes for tribal taxes paid.

Changes Needed & Why:

Include page and line references if appropriate. Example: page 2, line 4-5 – omit the phrase “with respect to a product under s.77.51 (3) (a)...” and replace with the phrase “all products used in a manner consistent with...”

- The draft should clearly authorize a sale and use tax exemption so that a federally recognized American Indian tribe or band in Wisconsin would be exempt from payment of sales and use taxes for purchases made in Wisconsin outside Tribal lands. This exemption would include purchases made by tribal employees if they are making such purchases on behalf of the tribe or band, e.g., sales of meals and lodging to the tribe or band for its tribal employees traveling on tribal business would be exempt from the sales and use tax. This provides a sales and use tax exemption comparable to other units of government in this state, see Wis. Stats., sections 77.54 (9a) (b) and 77.54 (9a) (e). It is not clear that the Department would have the authority to create such an exemption solely as part of an agreement; therefore we believe it necessary to provide clear authority for this exemption in the statute, and request that the draft include this new exemption.
- Page 2, line 21 – insert the phrase “occurred on tribal lands and” after “imposed by this section”. Adding this language will prevent the credit from being allowed if the tribal sales tax was charged on a transaction that took place in Wisconsin off tribal lands. This language is comparable to the language of s. 77.53 (16) that allows the credit for taxes paid to other states only for purchases made in those states.