

2011 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB380)

Received: 12/08/2011

Received By: jkreye

Wanted: As time permits

Companion to LRB:

For: Andre Jacque (608) 266-9870

By/Representing: michael

May Contact:

Drafter: jkreye

Subject: Tax, Other - sales

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Rep.Jacque@legis.wi.gov

Carbon copy (CC:) to: joseph.kreye@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Sales and use tax exemption for certain building materials

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>
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FE Sent For:

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1/?	jkreye	1/12/8 jld					

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<END>

Assembly Bill 380 (LRB 2173/1): Creation of a sales and use tax exemption for building materials that become a part of a facility for a local unit of government or nonprofit organization.

Suggestion 1: Creation of a Transitional Provision.

Under Section 2, specify that the exemption applies to contracts entered into on or after the effective date.

Suggestion 2: Further definition of "facility."

Facility is not currently defined in the bill except that certain items are included or excluded as being considered a facility.

Since no specific definition of facility is provided, DOR has to use a dictionary definition, which is vague and likely broader than the legislative intent of the bill.

Two alternatives exist to remedy this situation.

A) Change "includes" to "means" (page 2, line 9), or

B) Expand the list to be more specific. DOR is not in a position to determine your legislative intent if you were to pick this option, but it would be helpful for the agency in administering this exemption in the future if items that have to do with roads and highways (e.g. sidewalks, culverts, gutters, fencing, bike paths; etc.) were delineated as either exempt or non-exempt. Perhaps the Contractors could be helpful in identifying specific items. Without this clarification, disputes will undoubtedly arise as to whether or not specific items fall within the definition of "facility."

Suggestion 3: Clarify conflicting language on page 2, lines 5-8.

The exemption in the first sentence of this section is limited to property or items that become a component of certain "facilities." The second sentence states the exemption applies to the purchased materials whether or not they become a component of the facility.

This conflict is resolved by amending line 6 as follows:

"...property or item or property under s. 77.52 (1) (b) (c) that becomes a component of a facility and which is purchased by a construction contractor..."

Suggestion 4: Statute succinctness and clarity.

The bill currently creates a new subsection, 77.54 (58). However, a parallel to the construct of the exemption that would flow through to the contractor's purchase of materials in sec. 77.54 (26) would be to create this exemption by adding to the existing subsection in 77.54 (9a) (b) and (f). While this suggestion is not critical, it would create the advantage that the exemptions for purchases by the entities covered in the bill would also have the contractor exemption for purchases of their building materials in the same subsection.

In other words, this suggestion would amend the statute to say in the same subsection that the nonprofit or local government can make these purchases tax-exempt and so too can contractors purchasing on their behalf.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2173/1
JK:sbb&jld:rs

ASA to

keep

50267/1

2011 ASSEMBLY BILL 380

in turn, 12-8

due Friday 12-9

D-N

November 16, 2011 - Introduced by Representatives JACQUE, BROOKS, RIVARD, SPANBAUER, STEINEKE, STRACHOTA, STROEBEL and WYNN, cosponsored by Senators GROTHMAN, COWLES and HOLPERIN. Referred to Committee on Ways and Means. Referred to Joint Survey Committee on Tax Exemptions.

X

re you

1 AN ACT to create 77.54 (58) of the statutes; relating to: a sales and use tax
2 exemption for building materials that become a part of a facility for a local unit
3 of government or nonprofit organization.

Analysis by the Legislative Reference Bureau

Under current law, municipalities, school districts, and certain nonprofit organizations are exempt from paying the sales tax and the use tax on purchases of tangible personal property. To receive the sales tax or use tax exemption, the municipality, school district, or nonprofit organization must purchase the tangible personal property. A construction contractor hired by the municipality, school district, or nonprofit organization may not receive the exemption for property purchased by the contractor to be used for a municipality, school district, or nonprofit organization construction project.

Under this bill, the sale of tangible personal property that becomes a component of a facility in this state that is owned by a municipality or nonprofit organization is exempt from the sales tax and the use tax. The exemption applies to tangible personal property purchased by a construction contractor who transfers the property to the municipality or nonprofit organization as part of constructing the facility.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

ASSEMBLY BILL 380

For further information see the **state and local** 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. 77.54 (58) of the statutes is created to read:

77.54 (58) The sales price from the sale of and the storage, use, or other consumption of tangible personal property or item or property under s. 77.52 (1) (b) or (c) that becomes a component of a facility in this state that is owned by an entity described under sub. (9a) (b) or (f). This subsection applies to tangible personal property or item or property under s. 77.52 (1) (b) or (c) purchased by a construction contractor who, in fulfillment of a real property construction activity, transfers the property or item to the entity described under sub. (9a) (b) or (f). In this subsection, "facility" includes any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, or water supply system, but does not include a highway, street, or road.

tangible personal

SECTION 2. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after publication.

(END)

if such tangible personal property, item, or property becomes a component of a facility in this state that is owned by the entity

* Initial applicability (#) This act first applies to contracts entered into on the effective date of this subsection.

plain period

move

or property under s. 77.52 (1)(b) or (c)

D-note



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0267/3dn

JK:.....

date

Jld

Representative Jacque: ✓

This ✓ substitute amendment is based on the changes suggested by Mike Wagner at DOR. ✓

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**

LRBs0267/1dn
JKjld:rs

December 9, 2011

Representative Jacque:

This substitute amendment is based on the changes suggested by Mike Wagner at DOR.

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