



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

March 05, 2014

MEMORANDUM

To: Representative Thiesfeldt

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

Subject: Technical Memorandum to **2013 AB 841** (LRB-4368/1) 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

March 5, 2014

TO: Joe Kreye
Legislative Reference Bureau

FROM: Bob Schmidt
Department of Revenue

SUBJECT: Technical Memorandum on 2013 AB 841 - Relating to defining prepared foods for purposes of imposing sales and use taxes.

The Department of Revenue (DOR) has the following concerns regarding the bill:

1. Under the Streamlined Sales and Use Tax Agreement (SSUTA), for a state to exclude prepared food from the exemption for food and food ingredients, it must use the definition of prepared food provided in the SSUTA Library of Definitions. If Wisconsin does not conform to the SSUTA and consequently loses its membership, out-of-state retailers that voluntarily registered through Streamlined would no longer be obligated to collect Wisconsin sales and use tax.

The department suggests the bill be modified to include the following language that is consistent with the preliminary language under consideration by the Streamlined Sales and Use Tax Governing Board (SSTGB):

77.51(10m)(b)6. For purposes of par. (a) 4., food not ready-to-eat at the time of sale because it is not fully cooked or baked and ordinarily requires additional cooking or baking by the consumer prior to consumption. "Food not ready to eat" does not include food that is fully cooked or baked and is only reheated by the consumer prior to consumption.

It should be noted that the SSUTA Library of Definitions does not yet include similar language. It is possible that the SSTGB may not adopt similar language, which would place Wisconsin out of compliance with the SSUTA.

2. The bill does not provide a definition for "dough." It may be unclear if certain products contain raw dough, which may determine the taxability of the product. For example, lasagna may contain raw pasta dough or dried pasta noodles. Adopting the language above would remedy this issue. Alternatively, the bill could be modified to provide more specific language regarding raw dough.

If you have any questions on this technical memorandum, please contact Bob Schmidt at 266-5773 or Robertk1.Schmidt@revenue.wi.gov

cc: Representative Thiesfeldt