

1999 DRAFTING REQUEST

Bill

Received: 04/16/1999

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Glenn Grothman (608) 264-8486

By/Representing: Maggie

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - sales

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

amend sales and use tax exemption for recycling machinery to include the collection process

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>
/1	jkreye 05/25/1999	ygeller 05/26/1999	jfrantze 06/01/1999	_____	lrb-docadmin 06/01/1999		S&L Tax
	jkreye 07/12/1999	ygeller 07/12/1999		_____			
/2			mclark 07/12/1999	_____	lrb-docadmin 07/12/1999	lrb_docadmin	S&L T a x

FE Sent For:

<END>

42"
3/30/00

1999 DRAFTING REQUEST

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/1	jkreya 05/25/99	ygeller 05/26/99	jfrantze 06/1/99	_____	lrb-docadmin 06/1/99		S&L Tax
	jkreya 07/12/99	ygeller 07/12/99		_____			
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1/2 7/12 jlg MRC 7/12 MRC/SF 7/12

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1?	jkreye	1 5/26 jlg	to 6/1	to K/6 6/1			

FE Sent For:

<END>

BILL DRAFTING REQUEST

DATE: 4/16/99
TO: BILL DRAFTING ATTORNEY, LEGISLATIVE REFERENCE BUREAU
FROM: REPRESENTATIVE GLENN GROTHMAN
RE: RECYCLING SALES TAX EXEMPTION

*Auth: Joe
KREYE 6-2263*

I would like to draft a bill on behalf of one of my constituents who owns a recycling center. Currently, the Department of Revenue is interpreting ss. 77.54(26m) to **not** include the collection phase of recycling under the sales and use tax exemption. Therefore, a number of my constituent's storage bins and balers are not exempt because of the this narrow definition of recycling. A Wisconsin Supreme Court decision, which has been cited by DOR is WI Dept. of Revenue v. Parks-Pioneer Corporation. Please find attached the dissenting opinion, which may be helpful for the bill draft. My intent for this legislation is to exempt recycling centers from sales and use tax, which I believe was more in line with the original legislative intent.

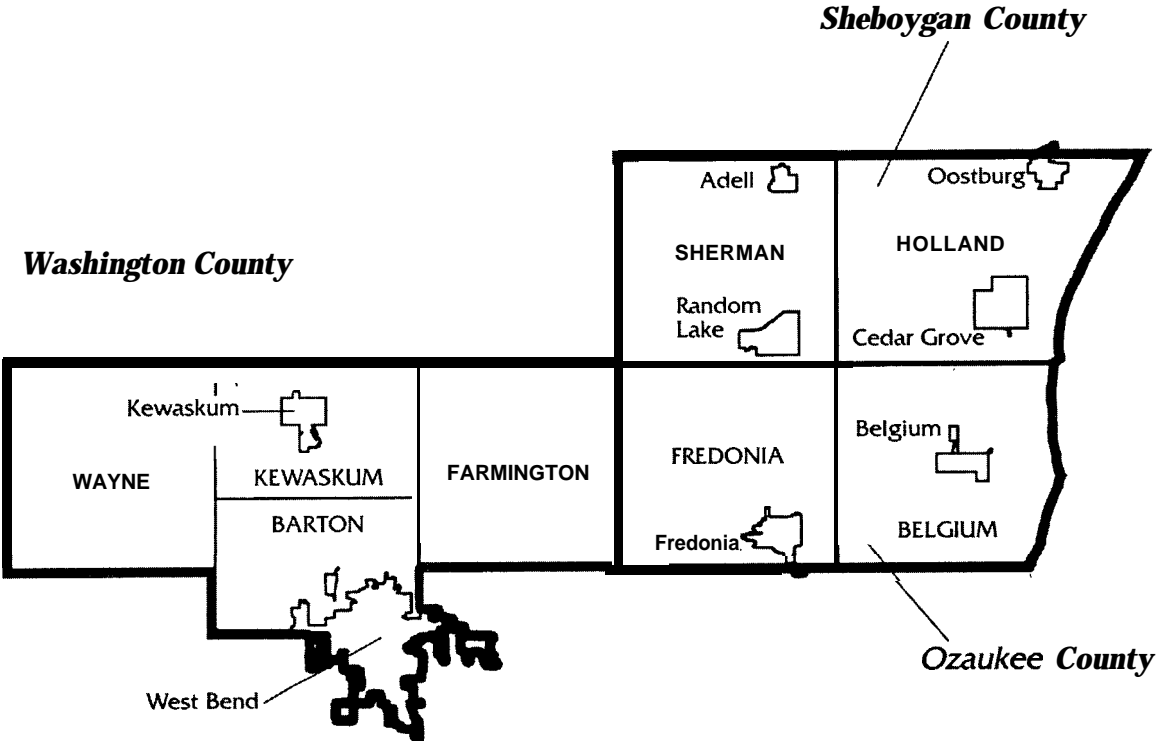
Please keep this draft confidential. If you need any further clarification or have questions please do not hesitate to contact myself or Maggie in my office at 4-8486.

GG/MJG

ENC. 1

Confidential

59th Assembly District



OCT 14 1992

Office of the Clerk
SUPREME COURT

231 E. STATE CAPITOL
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
TELEPHONE 608-266-1880

STATE OF WISCONSIN
DEPARTMENT OF REVENUE
NOV 06 1992
RECEIVED
LEGAL DIVISION

To:

October 13, 1992

Hon. P. Charles Jones
Dane County Circuit Court
210 M.L. King, Jr. Blvd.
Madison, WI 53709

Frederic J. Brouner
DeWitt, Porter, Huggett,
Schumacher & Morgan
2 E. Mifflin St., #600
Madison, WI 53703

Gerald S. Wilcox
Asst. Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You **are hereby notified** that the Court has entered the following order:

No. 91-0810 Wisconsin Department of Revenue v.
Parks-Pioneer Corporation L.C. #90CV1663

A **petition for** review pursuant to sec. 808.10, Stats., having been filed on behalf of respondent-respondent-petitioner Parks-Pioneer Corporation, and considered by the court,

IT IS ORDERED that the petition for **review is** denied, without costs.

170Wis2244

Ceci, J., dissents.

Bablitch, J., did not participate.

Marilyn L Graves
Clerk of Supreme Court

DYKMAN, J. (*concurring in part; dissenting in part*). The majority's opinion is contained in one sentence: "The scrap is recycled after it is collected and transported to the plant." Majority op. at 50.

In the view of the majority, recycling is an instantaneous process in which scrap is converted to a "new" item. This narrow view of recycling defeats the legislative intent to make recycling more available and attractive by exempting equipment used in that business from some taxation.

Recycling is not just the act of melting down steel, aluminum or glass. In today's use of the word, recycling begins when an item, formerly discarded, begins a diversion from a landfill to re-use. We are all familiar with the bags and containers used as part of municipal recycling programs. Most people, when they put a can or bottle in an appropriate container, speak of what they are doing as "recycling."

I am not persuaded by the majority's reliance on sec. 77.54(5)(c), Stats. Tax exemptions have little to do with each other. Section 77.54(21), Stats., exempts the gross receipts from caskets and burial vaults. Section 77.54(22)(c), Stats., exempts artificial teeth sold by dentists. Section 77.54(27), Stats., exempts bull semen. Section 77.54(28), Stats., exempts equipment to inject insulin and sec. 77.54(29), Stats., exempts equipment used to produce maple syrup.

The majority comes to the mistaken conclusion that "[s]ince motor vehicles are not 'directly' used for recycling activities, neither is the machinery or equipment utilized with those vehicles. . . ." Majority op. at 50. The mistake is assuming that the same motor vehicles are involved in both activities. They are not. Section 77.54(5)(c), Stats., pertains to vehicles not licensed for highway use. The majority admits that the lugger and

"integral function" in the brewing process because the grain underwent an organic change in the bins. *Id.*

But we cannot say that the lugger and roll-off boxes, tarps, bands, hoists, scales and hose perform integral functions in Parks-Pioneer's recycling activities. The scrap is recycled after it is collected and transported to the plant.

[5]

Section 77.54(5)(c), Stats., supports our conclusion.

That statute exempts from the sales tax "[m]otor vehicles which are not required to be licensed for highway use and which are exclusively and directly used in *conjunction with* waste reduction or recycling activities." (Emphasis added.) Section 77.54(5)(c) evinces legislative recognition that motor vehicles used in recycling activities are not "directly" used for recycling activities even if they are "directly used in conjunction with" that activity. Since motor vehicles are not "directly" used for recycling activities, neither is the machinery or equipment utilized with those vehicles, in this case the lugger and roll-off boxes, tarps, bands, hoists, scales and replacement parts for the trucks.

[6]

Starting fluid is not exempt under sec. 77.54(26m), Stats. Starting fluid is neither machinery nor equipment. We reject the trial court's conclusion that since the fluid is necessary to run the crane it qualifies as a "part" of the crane. Under that reasoning, fuel used as the source of power for a crane would qualify as a part of the crane itself. A "part" of a machine will not last forever but it has an operating life well beyond the time it takes to start a machine.

By the Court.—Order reversed.

STATE of Wisconsin, Plaintiff-Respondent,†

v.

Alfred H. CAMACHO, Defendant-Appellant.††

Court of Appeals

No. 91-0770-CR. Oral argument January 7, 1992.—Decided
June 29, 1992.

(Also reported in 487 N.W.2d 67.)

1. Criminal Law and Procedure § 598*—jury instructions—objections—waiver on appeal.

General rule requires that party object to improper jury instruction at instruction conference or there is waiver of right to challenge jury instructions on appeal.

2. Criminal Law and Procedure § 598*—jury instructions—objections—appeal.

Court of appeals has broad discretionary power of reversal when court is convinced that real controversy has not been fully tried, and in exercising this discretionary power of reversal it is not necessary to conclude that there is probability of different result on retrial and court may use this discretionary power of reversal where there is waiver of error in jury instructions.

8. Criminal Law and Procedure § 678*—unobjected to jury instructions—appeal—first-degree murder and manslaughter/imperfect self-defense instruction.

† Petition to review granted.
†† Petition to cross review denied.

*See Callaghan's Wisconsin Digest, same topic and section number.

roll-off boxes are used to transport scrap from a supplier's premises to Parks-Pioneer's premises. This can hardly be accomplished by vehicles not licensed for highway use. I do not accept that a statute pertaining to end-loaders, bulldozers and cranes is valuable in determining the meaning of sec. 77.54(26), Stats. But I do agree that starting fluid is neither machinery nor equipment. But for this last item, I would affirm the trial court.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-2925A
JK:..... RMR
JG
D-N

gen

1 AN ACT ...; relating to: the sales and use tax exemption for recycling equipment.

Analysis by the Legislative Reference Bureau

Under current law, the purchase of waste recycling machinery and equipment used exclusively and directly for recycling activities is exempt from the sales tax and the use tax. The court of appeals has held that certain equipment used in the collection of waste materials for recycling is not exempt from the sales tax and the use tax because such equipment is not used directly for recycling activities. See *Department of Revenue v. Parks-Pioneer Corporation*, 170 Wis.2d 44 (Ct. App. 1992). Under this bill, certain equipment used in the collection of waste materials for recycling is exempt from the sales tax and the use tax, if such equipment is used exclusively for recycling activities, regardless of whether such equipment is used directly for recycling activities.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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:

2 SECTION 1. 77.54 (26m)^x of the statutes is amended to read:

3 77.54 (26m) The gross receipts from the sale of and the storage, use or other
4 consumption of waste reduction or recycling machinery and equipment, including

1 storage bins; balers; lunger and roll-off boxes; dead-lift roll-off hoists; truck and
2 platform scales; and accessories, attachments and parts therefor, exclusively and
3 ~~directly~~ used for waste reduction or recycling activities which reduce the amount of
4 solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or
5 recover energy from solid waste. The exemption applies even though an
6 economically useful end product results from the use of the machinery and
7 equipment. For the purposes of this subsection, "solid waste" means garbage, refuse,
8 sludge or other materials or articles, whether these materials or articles are
9 discarded or purchased, including solid, semisolid, liquid or contained gaseous
10 materials or articles resulting from industrial, commercial, mining or agricultural
11 operations or from domestic use or from public service activities.

12 SECTION 2. **Effective date.**

13 (1) This act takes effect on the first day of the [✓]2nd month beginning after
14 publication.

15 (END)

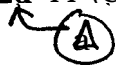
DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-29251 7dn

JK:.....

jkg

Please review this draft carefully to ensure that it is consistent with your intent. This bill exempts the collection equipment mentioned in your drafting request and the equipment that the court of appeals held was not exempt in *Department of Revenue v. Parks-Pioneer Corporation*, 170 Wis.2d 44 (Ct. App. 1992). Do you want the exemption to be broader?



Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: Joseph.Kreye@legis.state.wi.us

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

LRB-2925/1dn
JK:jlj:jf

June 1, 1999

Please review this draft carefully to ensure that it is consistent with your intent. This bill exempts the collection equipment mentioned in your drafting request and the equipment that the court of appeals held was not exempt in *Department of Revenue v. Parks-Pioneer Corporation*; 170 Wis. 2d 44 (Ct. App. 1992). Do you want the exemption to be broader?

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: Joseph.Kreye@legis.state.wi.us

Kreye, Joseph

From: Grimm, Maggie
Sent: Wednesday, June 02, 1999 9:48 AM
To: Kreye, Joseph
Subject: RE:

CRB-2925

Thanks much.

-----Original Message-----

From: Kreye, Joseph
Sent: Wednesday, June 02, 1999 09:46 AM
To: Grimm, Maggie
Subject: RE:

The interpretation of the word "directly" was an important **part** of the Parks-Pioneer court case. Essentially, the court found that items such as lugger and roll-off boxes were not exempt because those items were not used "directly" in recycling. Although it is possible that a court (or the department of revenue) could interpret the "including clause" as restricting the exemption to only those listed items, an including clause is usually interpreted more broadly to include other items that are similar to those listed. I could use a phrase such as "including machinery and equipment used for storage and collection" if it is your intent to have a broader exemption. Such language, however, could also be interpreted as vague and may not be interpreted to include the items that you're most concerned about. If you have any questions, please contact me. I'll send a pdf copy via separate e-mail.

Joseph T. Kreye, Legislative Attorney
Legislative Reference Bureau
(608) 266-2263
joseph.kreye@legis.state.wi.us

-----Original Message-----

From: Grimm, Maggie
Sent: Wednesday, June 02, 1999 9:23 AM
To: Kreye, Joseph
Subject:

Thanks for the draft. I have a couple questions. If the word directly is taken out, is that an adequate clarification of the statute? In other words, what was your logic behind only using the word exclusively used for waste reduction? As written, do you foresee that the draft will be limited strictly to the items which were added in the including clause to the existing statute? Also, is it possible to get a pdf copy of the draft? Feel free to call me if it's easier. 4-8486
Thanks.

Maggie Grimm
Office of Rep. Glenn Grothman

Kreye, Joseph

99-2925

From: Grimm, Maggie
Sent: Friday, July 09, 1999 10:46 AM
To: Kreye, Joseph

Additions to line 3 and 4: Compactors, repairs and services

Additions to line 7 following "recover energy from solid waste." : used at recycling centers or recycling buyback centers throughout the state of Wisconsin, including a **recycler** whether he does or does not produce a finished end product for resale.

Thank you Joe!!

Maggie — Brothman's office

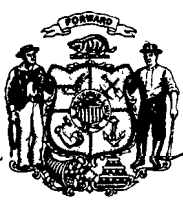
~~LRB - 2925/1 — pull for a redraft~~

+ compactors

+ repair and render on slot equipment

p2 line 7 — after = sending language via email

includes "buyback" recycling
— where no "end product" results



in 7-12-99

D-N

Under the bill, such equipment is also exempt from the sales tax and the use tax. In addition, a recycling buyback center is exempt from the sales tax, regardless of whether such center produces an end product for resale.

1999 BILL

Regen

1 **AN ACT to amend 77.54 (26m) of the statutes; relating to:** the sales and use tax
2 exemption for recycling equipment.

Analysis by the Legislative Reference Bureau

Under current law, the purchase of waste recycling machinery and equipment used exclusively and directly for recycling activities is exempt from the sales tax and the use tax. The court of appeals has held that certain equipment used in the collection of waste materials for recycling is not exempt from the sales tax and the use tax because such equipment is not used directly for recycling activities. See **Department of Revenue v. Parks-Pioneer Corporation**, 170 Wis. 2d 44 (Ct. App. 1992). Under this bill, certain equipment used in the collection of waste materials for recycling is exempt from the sales tax and the use tax, if such equipment is used exclusively for recycling activities, regardless of whether such equipment is used directly for recycling activities.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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:

3 **SECTION 1.** 77.54 (26m) of the statutes is amended to read:

BILL

SECTION 1

including the repair and maintenance,

1 77.54 (26m) The gross receipts from the sale of and the storage, use or other
 2 consumption of waste reduction or recycling machinery and equipment, including
 3 storage bins; balers; ^{compactors;} lugger and roll-off boxes; dead-lift roll-off hoists; truck and
 4 platform scales; and accessories, attachments and parts therefor, exclusively ~~and~~
 5 directly used for waste reduction or recycling activities which reduce the amount of
 6 solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or
 7 recover energy from solid waste. The exemption applies even though an
 8 economically useful end product results from the use of the machinery and
 9 equipment. For the purposes of this subsection, "solid waste" means garbage, refuse,
 10 sludge or other materials or articles, whether these materials or articles are
 11 discarded or purchased, including solid, semisolid, liquid or contained gaseous
 12 materials or articles resulting from industrial, commercial, mining or agricultural
 13 operations or from domestic use or from public service activities.

SECTION 2. Effective date.

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

(END)

machinery and equipment used by a

NO P

This subsection applies to recycling center or a recycling buyback center, regardless of whether the recycling center or the recycling buyback center produces an economically useful end product for resale.

2925/2
JK

D N

Representative Grothman:

P Please review this draft carefully to ensure that it is consistent with your interest. This bill refers to "recycling centers" and "recycling buyback centers," but does not define either term. Do you want to define these terms? If you have any questions, please contact me.

JK

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

LRB-2925/2dn
JK:jlg:mrc

July 12, 1999

Representative Grothman:

Please review this draft carefully to ensure that it is consistent with your intent. This bill refers to "recycling centers" and "recycling buyback centers", but does not define either term. Do you want to define these terms? If you have any questions, please contact me.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: Joseph.Kreye@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

JUL 12 1999

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and **sign** on the appropriate line(s) below.

Date: 7/12/99

To: Representative Grothman

Relating to LRB drafting number: LRB-2925

Topic

amend sales and use tax exemption for recycling machinery to include the collection process

Subject(s)

Tax - sales

1. **JACKET** the draft for introduction _____ 

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

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