

1999 Oc9 DRAFTING REQUEST

Assembly Amendment (AA-AB1)

Received: 11/02/1999

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

For: **Scott Suder (608) 267-0280**

By/Representing: **Anne**

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

Drafter: **shoveme**

May Contact:

Alt. Drafters:

Subject: **Tax - individual income**
Tax - sales

Extra Copies: **Sherrie Gates-Hendrix**
at DOR
JK

Pre Topic:

No specific pre topic given

Topic:

Onetime sales tax rebate

Instructions:

Allow DOR to set rebate amount for individuals who were incarcerated in a state or federal prison for any part of 1998.

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	shoveme 11/02/1999	chanaman 11/02/1999	mclark 11/02/1999	_____	lrb_docadmin 11/02/1999	lrb_docadmin 11/02/1999	
/2	shoveme 11/02/1999	gilfokm 11/02/1999	haugeca 11/02/1999	_____	lrb_docadmin 11/02/1999	lrb_docadmin 11/02/1999	
	shoveme 11/02/1999		haugeca 11/02/1999	_____			

FE Sent For:

<END>

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Subject: **Tax - individual income
Tax - sales**

Extra Copies: **Sherrie Gates-Hendrix
at DOR
JK**

Pre Topic:

No specific pre topic given

Topic:

Onetime sales tax rebate

Instructions:

Allow DOR to set rebate amount for individuals who were incarcerated in a state or federal prison for any part of 1998.

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	shoveme 11/02/1999	chanaman 11/02/1999	mclark 11/02/1999	_____	lrb_docadmin 11/02/1999	lrb_docadmin 11/02/1999	

11 MES 11/2/11-2-99
FE Sent For:

CH 11-2
CH
Kam 11-2

<END>

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Received: 11/02/1999

Received By: shoveme

Wanted: As time permits

Identical to LRB:

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May Contact:

Alt. Drafters:

Subject: Tax - individual income
Tax - sales

Extra Copies:

Sherrie Gates-Hendrix
at DOR
JK

e-mailed

Pre Topic:

No specific pre topic given

Topic:

Onetime sales tax rebate

Instructions:

Allow DOR to set rebate amount for individuals who were incarcerated in a state or federal prison, ~~for any~~
part of 1999

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	shoveme	cmw 11/2	MRC 11/2	MRC/km 11/2			

(1 MES 11/2/99)

FE Sent For:

<END>



State of Wisconsin
1999 - 2000 LEGISLATURE
October 1999 Special Session

LRBa0922/1
MES.....

cmv

ASSEMBLY AMENDMENT,
TO ASSEMBLY BILL 1

NOW

D-note

- 1 At the locations indicated, amend the bill as follows:
- 2 1. Page 8, line 7: after that line insert:
- 3 "j) The department shall calculate the rebate of an individual who has been,
- 4 or is, incarcerated in a state or federal prison."

5 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0922/1dn
MES.....

CMH

Representative Suder:

This amendment is drafted according to your instructions, in that no date is specified regarding an individual's incarceration, but I believe that the amendment has a practical problem, and could have a constitutional problem. As drafted, if an individual served time in state prison from 1947 to 1949, for example, he or she could have DOR calculate the amount of his or her rebate, even though the person had been out of prison for 50 years. This leads to the possible constitutional problem, an improper delegation of legislative authority under Article IV, section 1 of the Wisconsin Constitution, which I discussed with you briefly. (A)

Although fairly broad delegations of legislative power to state agencies are allowed in Wisconsin if the exercise of the authority is controlled by adequate safeguards (usually by means of review of administrative rules), an argument could be made that the authority given to the DOR, ^{in this amendment} violates Wisconsin law. See *Wisconsin Inspection Bureau v. Whitman*, 196 Wis. 472, 505, 506 (1928), *Schmidt v. Local Affairs & Development Dept.*, 39 Wis. 2d 46, 59 (1968) and *Milwaukee v. Sewerage Comm.*, 268 Wis 342, 350 (1954). *Schmidt* implies that a legislative delegation to an administrative agency that vests the agency with a great deal of discretion or policy making may be unconstitutional. See *Schmidt* at 60. Under 1999 Special Session AB-1, 1998 is the key year for determining eligibility for the tax rebate for everyone other than individuals who have been incarcerated. Under this amendment, DOR has very broad authority to set the rebate amount for anyone who ever has been, or still is, in state or federal prison. (B) for are,

The consensus among the courts that have considered challenges under Article IV, section 1, of the Wisconsin Constitution to the delegation of legislative authority to administrative agencies is that there must be a clear purpose, standards and procedural safeguards. In addition to the cases previously cited, see *Chicago and Northwestern Ry. Co. v. Public Service Comm.* 43 Wis. 2d 570 (1969); *Westring v. James*, 71 Wis. 2d 462 (1976); and *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168 (1984). It could be argued that the delegation to DOR in this amendment fails one or more of these tests, as there don't seem to be any standards or procedural safeguards.

It also seems to me that providing a mechanism for DOR to set a sales tax rebate amount for individuals who may have been incarcerated for the time period during which the rebates are calculated for everyone other than inmates could undermine the

power
numbered

Administration's goal of ensuring that the Internal Revenue Service treats the rebates as sales tax rebates. Allowing DOR to calculate rebates for individuals who may have had no opportunity to buy anything on which sales tax is paid could cause the IRS to determine that the sales tax rebates are taxable.

Marc E. Shovers
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0922/1dn
MES:cmh:mrc

November 2, 1999

Representative Suder:

This amendment is drafted according to your instructions, in that no date is specified regarding an individual's incarceration, but I believe that the amendment has a practical problem, and could have a constitutional problem. As drafted, if an individual served time in state prison from 1947 to 1949, for example, he or she could have DOR calculate the amount of his or her rebate, even though the person had been out of prison for 50 years. This leads to the possible constitutional problem; an improper delegation of legislative authority under Article IV, section I, of the Wisconsin Constitution, which I discussed with you briefly.

Although fairly broad delegations of legislative power to state agencies are allowed in Wisconsin if the exercise of the authority is controlled by adequate safeguards (usually by means of review of administrative rules), an argument could be made that the authority given to the DOR in this amendment violates Wisconsin law. See *Wisconsin Inspection Bureau v. Whitman*, 196 Wis. 472, 505, 506 (1928), *Schmidt v. Local Affairs & Development Dept.*, 39 Wis. 2d 46, 59 (1968) and *Milwaukee v. Sewerage Comm.*, 268 Wis. 342, 350 (1954). *Schmidt* implies that a legislative delegation to an administrative agency that vests the agency with a great deal of discretion or policy making may be unconstitutional. See *Schmidt* at 60. Under 1999 Special Session AB-1, 1998 is the key year for determining eligibility for the tax rebate for everyone other than individuals who have been, or are, incarcerated. Under this amendment, DOR has very broad authority to set the rebate amount for anyone who ever has been, or still is, in state or federal prison.

The consensus among the courts that have considered challenges under Article IV, section I, of the Wisconsin Constitution to the delegation of legislative authority to administrative agencies is that there must be a clear purpose, standards and procedural safeguards. In addition to the cases previously cited, see *Chicago and Northwestern Ry. Co. v. Public Service Comm.* 43 Wis. 2d 570 (1969); *Westring v. James*, 71 Wis. 2d 462 (1976); and *Gilbert v. Medical Examining Board*, 119 Wis. 2d 168 (1984). It could be argued that the delegation to DOR in this amendment fails one or more of these tests, as there don't seem to be any standards or procedural safeguards.

It also seems to me that providing a mechanism for DOR to set a sales tax rebate amount for individuals who may have been incarcerated for the time period during which the rebates are calculated for everyone other than inmates could undermine the

Administration's goal of ensuring that the Internal Revenue Service treats the rebates as sales tax rebates. Allowing DOR to calculate rebates for individuals who may have had no opportunity to buy anything on which sales tax is paid could cause the IRS to determine that the sales tax rebates are taxable.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us

Barman, Mike

From: Barman, Mike
Sent: Tuesday, November 02, 1999 5:04 PM
To: Gates-Hendrix, Sherrie
Cc: Shovers, Marc
Subject: 99a0922/1



99a0922/1



99a0922/1.dn

Mike Barman

Mike Barman - Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703



State of Wisconsin
 1999 - 2000 LEGISLATURE
 October 1999 Special Session

LRBa0922/Y
 MES:cmh/10

ASSEMBLY AMENDMENT,
 TO ASSEMBLY BILL 1

2
 RMA
 K9
 [scribbles]

D-note

1999 Wisconsin Act ...

NOW

1 At the locations indicated, amend the bill as follows:

2 1. Page 8, line 7: after that line insert:

3 "(j) The department shall calculate the rebate of an individual who has been,
 4 ^{was} or ~~is~~ incarcerated in a state or federal prison."

5

(END)

for the family only
 during the taxable year to which ^{this act} applies

D-note

This amendment is drafted according to your instructions, but I don't think the sentence makes sense. I'm also not sure why DOR believes this addresses the improper delegation problem. ^{that}
 I've also drafted a version of the amendment

AM 3A

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

LRBa0922/2dn
MES:cmh&kg:ch

November 2, 1999

This amendment is drafted according to your instructions, but I don't think the sentence makes sense. I'm also not sure why DOR believes that this version of the amendment addresses the improper delegation problem.

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266-0129
E-mail: Marc.Shovers@legis.state.wi.us

Barman, Mike

From: Barman, Mike
Sent: Tuesday, November 02, 1999 7:00 PM
To: Gates-Hendrix, Sherrie
Cc: Shovers, Marc
Subject: 99a0922/2



99a0922/2

Mike Barman

Mike Barman - Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

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