

2001 DRAFTING REQUEST

Bill

Received: 03/20/2001

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Robert Ziegelbauer (608) 266-0315

By/Representing: luanne

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - sales

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Sales and use tax treatment of drop shipments

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>
/P1	jkreye 03/21/2001	gilfokm 03/21/2001	jfrantze 03/23/2001	_____	lrb_docadmin 03/23/2001		S&L Tax
	jkreye 04/02/2001	gilfokm 04/02/2001		_____			
/1			martykr 04/03/2001	_____	lrb_docadmin 04/03/2001	lrb_docadmin	S&L
						05/07/2001	

FE Sent For:

<END>

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km 4/3 *kt km 4/3*

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1?	jkreye	1/1-3/ King 2/21-01	2/23	Self 3/23			

FE Sent For:

<END>

Bill Request Form

Legislative Reference Bureau
100 N. Hamilton Street
Legal Section 266-3561

JK
7

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.
Use this form only for bill draft requests. Attach more pages if necessary.

Date 20 March 2001

Legislator, agency, or other person requesting this draft Rep. Ziegelbauer

Person submitting request (name and phone number) Wanna Kostelic 6-0315

Persons to contact for questions about this draft (names and phone numbers) above

Describe the problem, including any helpful examples. How do you want to solve the problem?

Wisconsin Sales & Use Tax Treatment
Drop Shipments
Delete Section 77.51(14)(d)

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy.

DOR memo attached -- see page 3

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 1999 LRB-2345/1 or 1997 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? YES NO

If yes: Anyone who asks? YES NO
Any legislator? YES NO

Only the following persons _____

Do you consider this request urgent? YES NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES NO

Wisconsin Sales and Use Tax Treatment Drop Shipments

MAR 20 2001

I. Introduction

What is a drop shipment?

A drop shipment is a sale in which the seller accepts an order from the customer, places the order with a third party (such as a manufacturer or wholesaler), and directs the third party to deliver the item directly to the customer. The third party may deliver the item in its own truck, arrange for delivery by common or contract carrier, or have the customer pick up the item at the third party's location.

II. Seller Is "Engaged in Business in Wisconsin"

Note: "Engaged in business in Wisconsin" means having some definite link or minimum connection between Wisconsin and the person, property or transaction. This minimum connection is often referred to as "nexus."

If the seller is engaged in business in Wisconsin, then it is a retailer responsible for collection and reporting Wisconsin tax on its sale of tangible personal property drop shipped into Wisconsin, regardless of whether the third party is engaged in business in Wisconsin. If the third party accepts a properly completed resale certificate from the seller, its charge to the seller is not subject to tax.

Example — Wisconsin retailer, Wisconsin customer, and Wisconsin wholesaler

Facts :

- Company A is a Wisconsin retailer registered for Wisconsin sales and use tax purposes.
- Customer Z is located in Wisconsin.
- Third Party G is a Wisconsin wholesaler that is *not* registered for Wisconsin sales and use tax purposes.
- Company A receives an order from Customer Z for a computer for \$1,200, including shipping.
- Company A orders the computer from Third Party G for \$900.
- Company A directs Third Party G to drop ship the computer to Customer Z's Wisconsin location.
- Third Party G hires a contract carrier to deliver the computer to Customer Z.

Question and Answer : Who is liable for Wisconsin sales or use tax?

Company A is liable for sales tax on the sale of the computer to Customer Z, unless an exemption applies (e.g., manufacturing). The amount subject to tax is the selling price of the computer, including shipping (\$1,200).

Company A should provide a resale certificate to Third Party G to purchase the computer without Wisconsin sales or use tax from Third Party G. The answer would be the same if Third Party G is an out-of-state wholesaler.

Note: Customer Z may be held liable for use tax on its \$1,200 purchase of the equipment if Company A does not charge Wisconsin sales or use tax.

III. Seller Is Not "Engaged in Business in Wisconsin," But Third Party Is "Engaged in Business in Wisconsin"

If the seller is *not* engaged in business in Wisconsin and is not registered to collect Wisconsin tax (i.e., does not hold a Wisconsin seller's permit or use tax registration certificate), but the third party is engaged in business in Wisconsin, the third party is the retailer responsible for collecting and reporting the Wisconsin tax on the sale of the drop shipped property to the customer. The amount subject to sales tax is the selling price of the tangible personal property to the customer. The third party may need to contact the seller to determine the following:

- A. If the seller is "engaged in business" in Wisconsin.
- B. If the seller is registered to collect Wisconsin sales or use tax.
- C. What price the seller charged its customer for the tangible personal property.

Note: Any person "engaged in business in Wisconsin" and making taxable sales is required to hold a Wisconsin seller's permit or use tax registration certificate. A seller or third party may voluntarily register to collect Wisconsin tax, even though it is not engaged in business in Wisconsin.

Example — Out-of-state retailer, Wisconsin customer, and Wisconsin manufacturer

Facts:

- Company C is *not* "engaged in business in Wisconsin" and is not registered for Wisconsin sales and use tax purposes.
- Company C receives an order from Customer X for construction equipment.
- Customer X is located in Wisconsin.
- Company C's retail selling price of the equipment is \$50,000.
Company C places an order with Third Party J, a manufacturer, to buy the equipment for \$45,000.
- Third Party J is registered for Wisconsin sales and use tax purposes.
- Company C directs Third Party J to drop ship the equipment to Customer X's Wisconsin location.
- Third Party J hires a common carrier to deliver the equipment to Customer X in Wisconsin.

Question and Answer: Who is liable for Wisconsin sales or use tax?

Third Party J is liable for sales tax on the sale of the sale of the equipment to Customer X, unless an exemption applies. The amount subject to tax is \$50,000 (Company C's selling price to Customer X).

Third Party J may not accept a resale certificate from Company C. Customer X may, if applicable, give an exemption certificate to Third Party J to purchase the equipment without Wisconsin sales or use tax.

Note: Customer X may be held liable for use tax on its \$50,000 purchase of the equipment if Third Party J does not charge Wisconsin sales or use tax.

IV. Neither Seller Nor Third Party Is "Engaged in Business in Wisconsin"

If neither the seller nor the third party is engaged in business in Wisconsin, the Wisconsin customer is liable for use tax on its purchase of the drop shipped property. The amount subject to use tax is the purchase price of the tangible personal property, including transportation.

Example — Out-of-state retailer, Wisconsin customer, and Out-of-state wholesaler

Facts:

- Company D is *not* "engaged in business in Wisconsin" and is not registered for Wisconsin sales and use tax purposes.
- Company D receives an order from Customer W for furniture.
- Customer W is located in Wisconsin.
- Company D's retail selling price of the furniture is \$600, plus \$50 for shipping.
- Company D places an order with Third Party K to purchase the furniture for \$500.
- Third Party K is an out-of-state wholesaler *not* "engaged in business in Wisconsin" and not registered for Wisconsin sales and use tax purposes.
- Company D directs Third Party K to drop ship the furniture to Customer W's Wisconsin location.
- Third Party K hires a common carrier to deliver the furniture to Customer W.

Question and Answer: Who is liable for Wisconsin sales or use tax?

Customer W is liable for use tax on its purchase of the furniture. The amount subject to use tax is \$650 (Customer W's purchase price, including shipping).

V. References

Section 77.51(14)(d), Wis. Stats. (1995-96) provides:

"The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery shall include the retail selling price of the property in that person's gross receipts."

Section Tax 11.94(1)(e), Wis. Adm. Code (December 1996 Register)

Section Tax 11.97, Wis. Adm. Code (October 1997 Register)

Prepared by: Vicki L. Gibbons
Wisconsin Department of Revenue
July 14, 1998



King
RMK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

3-21-01

D-N

gen

1 AN ACT/...; relating to: the sale of tangible personal property that is delivered
2 in this state.

Analysis by the Legislative Reference Bureau

Under current law, tangible personal property that is sold by a retailer who is not engaged in business in this state and that is delivered in this state by a third party is subject to the sales tax or the use tax. Under this bill, tangible personal property that is sold by a retailer who is not engaged in business in this state and that is delivered in this state by a third party is not subject to the sales tax or the use tax.

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. 77.51 (14) (d) of the statutes is repealed.

4 SECTION 2. Initial applicability.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2903/dn P1

JK:.....
Kmg

Representative Ziegelbauer:

Please review this draft carefully to ensure that it is consistent with your intent.
Please contact me if you have any questions.

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-2903/P1dn

JK:kmg:jf

March 23, 2001

Representative Ziegelbauer:

Please review this draft carefully to ensure that it is consistent with your intent.
Please contact me if you have any questions.

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

2903

gregglover - call Bill Ford at Council

shifting burden to the purchaser

shifting who collects



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2903/P1

JK:kmg:jf

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

in 4-2-01

SOON

1 AN ACT *Sen. Cost.* to repeal 77.51 (14) (d) of the statutes; relating to: the sale of tangible
2 personal property that is delivered in this state. *The third party collects the tax and remits it to the state.*

Analysis by the Legislative Reference Bureau

Under current law, tangible personal property that is sold by a retailer who is not engaged in business in this state and that is delivered in this state by a third party is subject to the sales tax ~~of the use tax~~. Under this bill, tangible personal property that is sold by a retailer who is not engaged in business in this state and that is delivered in this state by a third party is ~~not~~ subject to the ~~sales tax~~ *and the use tax*.

~~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. 77.51 (14) (d) of the statutes is repealed.

4 SECTION 2. Initial applicability.

and the purchaser of the tangible personal property remits the tax to the state

1 (1) This act first applies to tangible personal property that is delivered on the
2 effective date of this subsection.

3 (END)



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

April 3, 2001

MEMORANDUM

To: Representative Zieglerbauer

From: Joseph T. Kreye, Legislative Attorney

Re: LRB-2903/1 Sales and use tax treatment of drop shipments

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2263 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.