

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: 06/15/2001

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

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:

SDC:.....Keckhaver - CN7002,

Topic:

Sales tax exemption on water slides

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 06/16/2001	gilfokm 06/16/2001	jfrantze 06/16/2001	_____	lrb_docadmin 06/16/2001		

FE Sent For:

<END>

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1?	jkreye	6/16 King	To 6/16	To 6/16 6/16			

FE Sent For:

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Agency: Revenue

caucus number 7002

duplicate flag:
duplicate with:

Other reference numbers:	LFB Sum #:
bill number/amondment number:	
LRB draft # a1941/1	LRB P-draft:

description: Sales tax and use tax exemption for waterslides. No fiscal impact, clarifies stat. 77.52(2)(a)(10) which is ambiguous.

other notes

Description2:

drafting instructions:

more instructions:

Agency: **Revenue**

Number of Amendments: 1

JK

SALES TAX AND USE TAX EXEMPTION FOR WATERSLIDES

(17002)

This amendment is needed to clarify § 77.52(2)(a)(10) Wis. Stats. which is ambiguous. Current DOR construction of this statute is overbroad and wrongly attempts to subject to sales tax the labor associated with constructing the waterslides, which should be treated as improvements to real estate under Wisconsin law.

General rule for taxation of real estate construction

Generally, a real estate construction contractor is treated as the end “user” of materials it purchases for incorporation into the construction of real estate or improvements to real estate. However, the labor associated with the construction of real estate and improvements to real estate is generally not subject to the sales tax.

Statutory Tangible Personal Property

There is a current exception to this general rule relating to items of personal property that, after being incorporated into the real estate, continues to retain its character as personal property, with the result that both the materials and the labor to install this so-called “statutory tangible personal property” is subject to sales tax. This list, contained in § 77.52(2)(a)(10) Wis. Stats. includes furnaces, boilers, stoves, heaters, air conditioners, water heaters, dishwashers, garbage disposals and similar types of equipment that if removed from a building could be reinstalled with ease in another building.

Waterslide Equipment

The Department only recently attempted to expand that definition to include large water slide structure and related equipment weighing several tons and which are often two or more stories in height. This is an attempt by the Department to do an end-run on the Wisconsin Supreme Court’s ruling in *Dept. of Revenue v. A.O. Smith Harvestore Products, Inc.*, 72 Wis. 2d 60 (1976), under which these structures are realty and are to be taxed as realty for sales tax purposes (i.e., taxed on the materials but not the labor to construct them).

STATUS:	Drafted last session as a1941/1 (attached)
DEPARTMENT(S):	Department of Revenue
FISCAL IMPACT:	None.
INTRODUCTION:	Either JFC



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb0945/7

JK:.....

mg
mk

SDC:.....Keckhaver – CN7002, Sales tax exemption on water slides

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

m 4-16-01

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 847, line 15: after that line insert: **Insert A**

3 **2.** Page 1423, line 21: after that line insert:

4 **(34)** SALES AND USE TAX EXEMPTION FOR WATER SLIDES. The treatment of section
5 77.54 (46) of the statutes takes effect on the first day of the 2nd month beginning after
6 publication.”

7 (END)

**ASSEMBLY AMENDMENT 3,
TO 1999 ASSEMBLY BILL 634**

March 22, 2000 - Offered by Representatives M. LEHMAN and WOOD.

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

2 **1.** Page 1, line 12: after "purposes," insert "a sales tax and use tax exemption
3 for water slides,".

4 **2.** Page 11, line 18: after that line insert:

5 "~~SECTION 27m.~~ 77.54 (4^b) of the statutes is created to read:

6 2246 m d m 77.54 (4^b) The gross receipts from the sale of and the storage, use, or other
7 consumption of water slides, including support structures, attachments, and parts
8 for water slides, but excluding underground piping, foundations, and wholly or
9 partially underground pools that are additions or improvements to real property."

10 **3.** Page 15, line 14: delete "~~and (26m)~~" and substitute "~~, (26m) and (45)~~,"

11 (END)

INSERT A

SDC:.....Keckhaver – CN7002, Sales tax exemption on water slides

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5 consumption of water slides, including support structures, attachments, and parts
6 for water slides, but excluding underground piping, foundations, and wholly or
7 partially underground pools that are additions or improvements to real property.”.

8 **2.** Page 1423, line 21: after that line insert:

1 “(3w) SALES AND USE TAX EXEMPTION FOR WATER SLIDES. The treatment of section
2 77.54 (46) of the statutes takes effect on the first day of the 2nd month beginning after
3 publication.”.

4 (END)