

"Tax inc for retailers"
"Penalties a bit harsh"
-from Joan

WMC
Sec 19+20

Assembly Hearing Slip

(Please print plainly)

Date: July 25, 2001

Bill No. AB 439

Or
Subject

Tom Ours
(Name)

(Street Address or Route Number)

(City & Zip Code)

(Representing)

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

Assembly Hearing Slip

(Please print plainly)

Date: 7/25/01

Bill No. AB 439

Or
Subject

Robert Paul Lehman
(Name)

1030 State Capital
(Street Address or Route Number)

(City & Zip Code)

(Representing)

Speaking In favor:

Speaking against:

Registering In favor:

Registering against:

Speaking for Information only:

Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, VT 53702

**Ways & Means Committee
Preliminary Report on Referred Legislation
July 25, 2001**

Bill: **AB 439**
Author: **Rep. M. Lehman**
Date Referred: **06-07-2001**
Public Hearing: **07-25-2001**
Executive Session: **N/A**

Relating Clause: **"Tax Payer Friendly Act"**

Comments from Department of Revenue-
comments.

Comments from the Author-

Author's reasoning for introducing legislation:
comments.

Author's intent:
comments.

Does the Author want the legislation moved forward?

Yes No

If no, do we have this in writing?

Yes No

Is the legislation in its final form?

Yes No

If major changes are required, the author shall prepare and introduce the necessary amendments.

Notes-
comments.

Assembly Republican Majority Bill Summary

AB 439: Taxpayer Friendly Bill

Relating to: the liability of married persons filing a joint income tax return, the payment of the alternate fuel tax and the tobacco products tax, estate tax imposition and interest, reducing nondelinquent taxes, rounding dollar amounts to whole dollars on all tax returns, allowing a mathematical computation of sales and use taxes, extending the time for filing a tax withholding report, delivering tax-related documents and related payments, granting rule-making authority, and providing a penalty.

By Representatives M. Lehman, Huebsch, Wood, Vrakas, Albers, Powers, Plale, Ainsworth, Gronemus, Sykora, Musser, Plouff, Hahn, Miller and Grothman; cosponsored by Senators M. Meyer, Zien, Wirch and Huelsman.

Date: October 23rd, 2001

BACKGROUND

Assembly Bill 439, known as "The Taxpayer Friendly Bill," introduced by Representative Mickey Lehman on behalf of the Department of Revenue (DOR), makes a number of "tax law modifications to assist taxpayers." These modifications include provisions affecting the treatment of nondelinquent taxes by DOR; an innocent spouse provision; the refunding of sales tax to a buyer; a filing extension for withholding reports; sales tax computation options; the use of private delivery services for filing tax returns; the rounding of dollars in tax returns; definition changes; and the waiver of estate tax interest on certain omitted assets.

SUMMARY OF AB 439 (AS AMENDED BY COMMITTEE)

Under current law, the DOR may, upon petition from a taxpayer, compromise or reduce the taxpayer's delinquent taxes including the costs, penalties and interest in cases where the taxpayer lacks the financial ability to pay the taxes. Under AB 439, the DOR would not have to wait until a taxpayer became delinquent to enter into such an agreement. The DOR would follow the same procedure for nondelinquent taxes as they do so currently for delinquent taxes.

The Wisconsin innocent spouse statute is designed to provide relief to individuals in certain circumstances as specified by the Internal Revenue Code (IRC). The IRC was modified to protect taxpayers from the misdeeds of their spouses. AB 439 would conform the Wisconsin innocent spouse provisions to those that currently apply for federal income tax purposes.

Under current law, only sales tax collected in error and refunded to the seller by the DOR as a result of a claim for refund filed by the seller must be returned to the buyer. Under AB 439, a seller would be required to refund any sales or use tax collected in error to the buyer. If the buyer can not be located, the tax must be turned over to the DOR to prevent any unjust enrichment to the seller.

Under current law, an employer is required to submit a report to the DOR that reconciles all withholding and wages for employees. Since 1999, this report must be filed by January 31st by the employer. AB 439 would restore a provision deleted by mistake in 1997 Wisconsin Act 291 that eliminated the ability of an employer to obtain a 30 day extension for filing that report.

Currently, the Wisconsin statutes require the use of a bracket system when computing sales or use tax due on a transaction. Not all retailers have the capability of computing sales and use tax using the bracket

system. AB 439 would grant retailers the ability to use either the bracket system or a straight mathematical computation.

Under current law, taxes are considered paid in a timely manner if received by the DOR within 5 days of the deadline and in a postage paid envelope postmarked before midnight on the day of the deadline. This is known as the "Safe Harbor" provision and currently relies on the US Postal Service. AB 439 would allow taxpayers to utilize private delivery services such as Federal Express or UPS while still qualifying for the safe harbor provision.

AB 439 would grant the DOR the ability to increase instances where rounding would be required on tax return forms. This is in an effort to simplify forms and computer system requirements. Rounding requirements would vary depending on technology constraints or other such limitations.

Under current law, the DOR is charged with developing alternative methods of paying taxes, filing tax reports and authenticating documents. In the inclusion of language under 1997 Wisconsin Act 27 to authorize the use of alternative electronic methods to accomplish the above tasks, the definitions of "pay" and "sign" were mistakenly omitted in two sections. AB 439 would add the definitions to these sections.

Under current law, all Wisconsin estate tax that is not paid on the date due is assessed interest at the rate of 12% per year from the date of the death of the decedent. On occasion, an asset of the decedent is discovered after the estate is closed and/or the tax return is filed. Under this bill, the DOR may waive interest due on the tax relating to that omitted asset if a determination was made that all due diligence was performed in an effort to account for all assets at the time of settlement of the estate.

AMENDMENTS

Assembly Amendment 1 made mostly technical changes to AB 439. In regards to the DOR reducing a taxpayer's nondelinquent taxes, a taxpayer must pay the reduced tax amount in full, or according to a payment schedule, within 10 days of the tax reducing order.

Another change of note in the amendment relates to the refund of sales or use tax collected by a seller in error. The seller may reduce the amount of the refund due to the buyer by any amount of tax due to the seller resulting from subsequent sales.

FISCAL EFFECT

A fiscal estimate prepared by the Department of Revenue indicates that there would be an increase in costs at the state level but that those costs could be absorbed within the agency's current budget.

There are no local costs associated with this legislation.

PROS

1. This bill makes several changes to tax law that will simplify and clarify certain tax procedures.
2. Changes within the bill can be viewed as making Wisconsin tax code more "fair" protecting innocent taxpayers and allowing for special circumstances for taxpayers facing difficult situations.

3. The bill makes changes that prepare Wisconsin tax law for the future and the electronic capabilities of that future.

CONS

1. No potentially detrimental aspects of the bill were cited or discussed during the committee process.

SUPPORTERS

Rep. Michael Lehman, author; Tom Ourada, WIDOR.

OPOSITION

There are no registrations in opposition to this legislation.

HISTORY

Assembly Bill 439 was introduced on June 7th, 2001, and referred to the Assembly Committee on Ways & Means. A public hearing was held on July 25th, 2001. On September 5th, 2001, the Committee voted 12-0 [Representative Jeskewitz absent] to recommend passage of AB 439 as amended.

CONTACT: Andrew Nowlan, Office of Rep. Michael Lehman

Draft -Taxpayer Friendly Bill Summary
LRB 1376/4

Reducing Nondelinquent Taxes

Under current law, any taxpayer may petition the department of revenue to compromise or reduce the taxpayer's delinquent taxes including the costs, penalties and interest in cases where the taxpayer has an inability to pay. The department requires the taxpayer to provide financial statements and any other information that is related to the petition. If the department finds that the taxpayer is unable to pay the taxes, costs, penalties and interest in full, the department enters an order reducing the delinquent amounts in accordance with the determination. If within 3 years of the date of the order reducing the delinquent amount, the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax including costs, penalties and interest, the department reopens the matter and orders full payment of the original delinquent amount.

The department occasionally finds in audits and appeals that a taxpayer is unable to pay in full the amounts assessed and/or due. An example would be a review of Homestead credit filings which results in a determination that a taxpayer incorrectly claimed Homestead with the Department making an assessment for a three or four year period. The taxpayer is likely a low-income individual and unable to pay back the improperly claimed credits. At the point in time of the audit and/or appeal, the assessed taxes including penalties and interest is not yet delinquent. It is more efficient to make an early determination of inability to pay in these situations.

This provision would give the department the authority to reduce the amount of nondelinquent taxes due to the state. The department would follow the same procedures for determining inability to pay regardless of whether an amount due is delinquent or not. The Compliance Bureau will be establishing procedures that are consistent regarding the ability to pay.

Innocent Spouse Provisions

Married persons filing a joint income tax return are both liable for payment of taxes related to the return. However, the Department may provide relief to a spouse in certain situations specified by the Internal Revenue Code.

The federal provisions were changed to protect married taxpayers from the tax misdeeds of their spouses. The requirements for obtaining innocent spouse relief were made less stringent, and relief is available on an apportioned basis. In the case of divorced taxpayers and married taxpayers who are legally separated or who have been living apart for at least one year, such individuals may elect separate tax liability despite having filed a joint return.

Example of Federal Provision: In 1999, a husband earns \$30,000 from freelance work. He does not tell his wife about the \$30,000. The income is not reported on the couple's joint return. The couple gets a divorce in 2000. If the IRS assesses a deficiency for the unreported income, the wife may elect separate liability and owe none of the deficiency, regardless of the IRS' ability to collect the deficiency from the husband. The husband will be liable for the entire deficiency.

The changes proposed by this bill conform the Wisconsin innocent spouse provisions to the innocent spouse provisions that currently apply for federal income tax purposes.

Seller Required to Refund Sales or Use Tax to Buyer

The bill requires that a seller who charges a buyer sales tax that (1) is refunded to the seller by the Department of Revenue through audit, or (2) is never remitted to the department because the sale was never taxable, must return the tax to the buyer. Without such a requirement, the seller profits while the buyer has no recourse under the sales and use tax law to get the sales tax it paid in error back from the seller or the department. If the seller cannot return the tax to the buyer, the seller must return the tax to the state preventing any unjust enrichment to the seller.

Example: Company A sold equipment to Company B for \$10,000 and collected \$500 sales tax from the customer, which it remitted to the Department of Revenue. Company A is audited and the department determines that the \$500 sales tax was not due. The department refunds the tax, plus interest, to Company A. Currently, Company A can keep the \$500 plus interest, even though it was Company B who actually paid the tax. Company A is unjustly enriched.

Example: Company C charges sales tax of \$500 on services it furnishes to an individual. After receiving payment from the individual, Company C realizes that such services are not taxable and does not remit the \$500 of tax collected to either the individual or the department. There is no recourse under the sales and use tax law for the individual or the department to collect the tax from Company C. Company C is unjustly enriched.

Note: Currently, a seller is only required to return to buyers sales tax collected in error if such tax was refunded by the department to the seller as a result of a claim for refund filed by the seller.

Penalty provisions will apply in the case of refunds that are not returned to the buyer and not sent back to the state in a timely manner. The penalty is 25% of the amount improperly collected or 100% in fraud cases.

30 Day Extension for Filing a Withholding Report

An employer is required to deduct and withhold state income taxes from an employee's pay and deposit those taxes with the department on a regular basis (monthly, twice-monthly, quarterly or annually). A withholding tax report must also be filed on a similar schedule. By Jan. 31st, employers must submit a report that reconciles all withholding and wages for employees. Prior to 1999, the Department could grant an employer a 30 day extension to file the withholding report. This bill restores an inadvertently eliminated provision in 1997 Wis. Act 291 to again permit a 30 day extension of time for employers to file the annual withholding reconciliation report.

Option to Use Either a Bracket System or a Straight Mathematical Computation

Computers play an increasing role in business operations. However, the Wisconsin Statutes still require the use of the bracket system (e.g. 0-9 cents = no tax, 10-27 cents = 1 penny tax, etc.) in computing Wisconsin sales or use tax due on a transaction.

Although some retailers have computer systems capable of using the bracket system, many retailers' computer systems or cash registers are not capable of using the bracket system to determine the amount of sales or use tax due on a transaction. Retailers who have computer systems that generate their sales invoices, but whose systems do not have the capability of using the bracket system, are currently having their computer systems compute the amount of sales tax due on a transaction using a straight mathematical computation (sales price times the tax rate) rather than the bracket system.

This bill will provide statutory authority allowing taxpayers to compute the sales tax due on a transaction through the use of either 1) a straight mathematical computation using procedures described in department rules or 2) the use of the bracket system.

Example: Retailer A sells Customer B three different items in one transaction: Item 1's selling price is \$14.70, item 2's selling price is \$8.30, and item 3's selling price is \$7.10. The aggregate selling price of the taxable items is \$30.10.

The Wisconsin sales tax due on this transaction using a straight mathematical computation, assuming a 5% tax rate, is \$1.51 ($\$30.10 \times 5\% = \1.505 , and that amount is rounded up to \$1.51).

The Wisconsin sales tax due on this transaction using the bracket system is also \$1.51.

Permit Use of Private Delivery Services

Various Wisconsin tax statutes prescribe deadlines for filing tax returns and other documents. The statutes also establish a "safe harbor" standard for a tax return or other document to be considered timely received by the Department of Revenue. This standard

relies on the US Postal Service and provides that if an item is mailed in a properly addressed envelope with postage duly prepaid, postmarked before midnight on the day of the deadline, and received by the Department of Revenue within 5 days of the deadline, the item will be considered timely.

Under this bill, taxpayers will be allowed to use certain private delivery services (for example, Federal Express and UPS) in addition to the US Postal Service for purposes of meeting the "safe harbor" provisions relating to timely filing of tax documents.

Rounding Dollars

As the department implements the integrated tax system, the department would like to simplify forms and computer system requirements by eliminating cents and require rounding. Since the department will implement one tax type at a time within the integrated tax system, the department requires flexibility as to when the rounding requirement applies for each tax type.

Computer system requirements also dictate where rounding must occur in tax computations. In most cases, rounding only applies to the final amount to be shown on a return. For example, a taxpayer should retain the cents in computations on Federal Schedules A&B and C, and Form 1040, and only do the rounding as required when carrying figures forward to the Wisconsin Form 1.

In other cases, rounding is required since supporting figures need to be recomputed and retained. For example, the TeleFile system requires taxpayers to enter their individual W-2 wage and withholding as whole dollar amounts. The system uses these figures to compute the proper income and allowable credits. The department therefore requires flexibility in determining how rounding should be applied.

Add Definitions of "Pay" and "Sign"

The Department of Revenue is authorized to prescribe alternative methods of paying taxes, filing tax reports, and authenticating documents. The department is currently using electronic filing and payment requirements which results in statutory language being needed to authorize the use of the new electronic methods. In the original language adding these definitions to the various Department of Revenue statutes (1997 Wisconsin Act 27), the definitions for "Pay" and "Sign" were inadvertently not included in s. 78.39 Alternate Fuels, and "Sign" was not included in s. 139.75 Tobacco Products.

This proposal adds statutory definition language which was not previously included for these types of taxes.

Waiver of Estate Tax Interest on Omitted Assets

Under current law, all Wisconsin estate tax that is not paid on the date it is due is assessed interest at the rate of 12% per year from the date of death of the decedent. Occasionally, after an estate tax return is filed or the estate is closed, there will be a discovery of an asset owned by the decedent that was not reported in the inventory of the estate, or on the estate tax return. The estate files an amended estate tax return to pay the additional tax. Interest is imposed on the additional estate tax at 12% per year from the date of the decedent's death. The circuit court has jurisdiction to hear and determine all matters relating to the estate tax. Currently, it is necessary for the estate to petition the circuit court to reduce or waive the interest.

This provision would give the Department of Revenue or the circuit court the authority to waive the interest imposed on any additional estate taxes that arise from the discovery of omitted property in the inventory of the estate's total assets in which an original tax determination was made, if due diligence was exercised in determining the assets.

In addition this provision clarifies current law so that it is clear that the amount of Wisconsin estate tax is equal to the credit allowed (for the state death tax credit) against the federal estate tax imposed on the transfer of property, regardless of whether the taxpayer claims the credit on the federal estate tax return.

4/30/01



State of Wisconsin • DEPARTMENT OF REVENUE

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Scott McCallum
Governor

Richard G. Chandler
Secretary of Revenue

Date: July 25, 2001
To: Assembly Ways & Means Committee
From: Tom Ourada
Subject: AB439 - DOR's Taxpayer Friendly Bill Summary

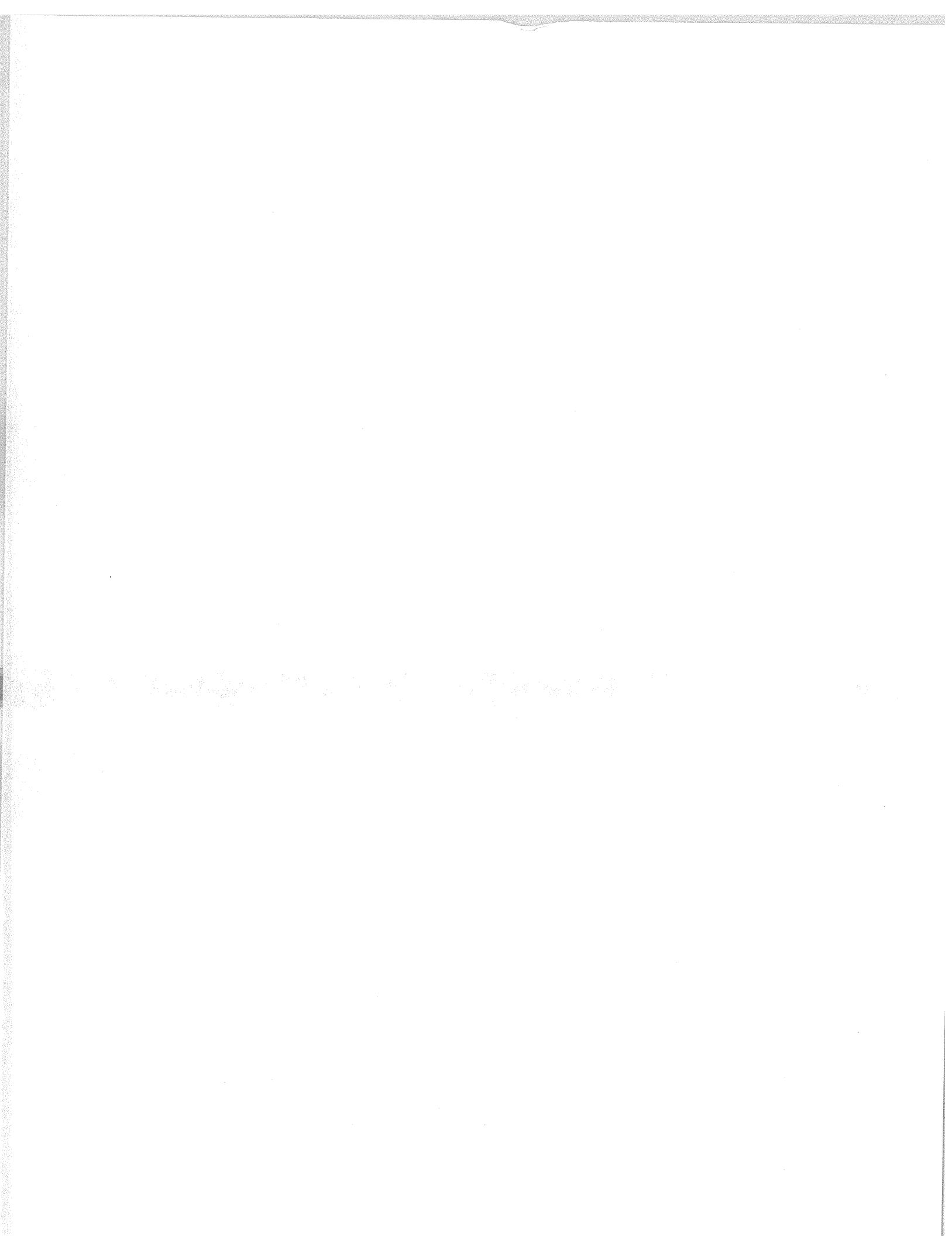
Thank you for your consideration of Assembly Bill 439, legislation which provides a number of tax law modifications to assist taxpayers. I am providing a brief summary of the bill.

Reducing Nondelinquent Taxes

Under current law, any taxpayer may petition the department of revenue to compromise or reduce the taxpayer's delinquent taxes including the costs, penalties and interest in cases where the taxpayer has an inability to pay. The department requires the taxpayer to provide financial statements and any other information that is related to the petition. If the department finds that the taxpayer is unable to pay the taxes, costs, penalties and interest in full, the department enters an order reducing the delinquent amounts in accordance with the determination. If within 3 years of the date of the order reducing the delinquent amount, the taxpayer has an income or property sufficient to enable the taxpayer to pay the remainder of the tax including costs, penalties and interest, the department reopens the matter and orders full payment of the original delinquent amount.

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This proposal adds statutory definition language which was not previously included for these types of taxes.

Wood has concerns on language

Waiver of Estate Tax Interest on Omitted Assets

Under current law, all Wisconsin estate tax that is not paid on the date it is due is assessed interest at the rate of 12% per year from the date of death of the decedent. Occasionally, after an estate tax return is filed or the estate is closed, there will be a discovery of an asset owned by the decedent that was not reported in the inventory of the estate, or on the estate tax return. The estate files an amended estate tax return to pay the additional tax. Interest is imposed on the additional estate tax at 12% per year from the date of the decedent's death. The circuit court has jurisdiction to hear and determine all matters relating to the estate tax. Currently, it is necessary for the estate to petition the circuit court to reduce or waive the interest.

This provision would give the Department of Revenue or the circuit court the authority to waive the interest imposed on any additional estate taxes that arise from the discovery of omitted property in the inventory of the estate's total assets in which an original tax determination was made, if due diligence was exercised in determining the assets.

In addition this provision clarifies current law so that it is clear that the amount of Wisconsin estate tax is equal to the credit allowed (for the state death tax credit) against the federal estate tax imposed on the transfer of property, regardless of whether the taxpayer claims the credit on the federal estate tax return.



Memo

To: Members of the Assembly Committee on Ways and Means

From: Joan Hansen, Director of Tax and Corporate Policy

Date: August 1, 2001

Re: 2001 Assembly Bill 439

After carefully reviewing Assembly Bill 439, requested by the Department of Revenue, Wisconsin Manufacturers and Commerce would ask that sections 19 and 20 of the legislation be deleted for the following reasons.

Current law was enacted to prevent a situation deemed problematic by the legislature. Prior to enactment of current law, a taxpayer could receive a refund of sales taxes it collected from ultimate consumers without a requirement that these sales taxes be returned to the ultimate consumer. A number of taxpayers were seeking refunds without either the intention or in some cases the ability to pass along the refund (because the ultimate consumer was unknown or the amount of each refund was relatively small, etc.).

Current law now requires that such refunds either be fully returned to the ultimate consumer or returned to the state. This solution has substantially corrected the problem with minimal impact on the taxpayers that are required to collect sales tax and has generally not resulted in a material burden on business.

The proposed changes in Sections 19 & 20 of AB 439 add further requirements on business in situations that are generally not creating a problem that is sufficiently large to justify the burden that may be imposed on businesses, particularly small businesses. In other words, the legislature substantially fixed the problem that needed fixing several years ago. Sections 19 & 20 attempt to fine-tune the statutes in a fashion that yields minimal benefit to the state with disproportionate burden to small businesses.

As an example consider the following:

A construction contractor in good faith collects sales tax from the home-owner or building owner in conjunction with the performance of services on the property in question and remits the tax to the state. The Department of Revenue upon audit disagrees with the contractor's interpretation of the law and instead determines that the contractor should not have collected sales tax on the items in question because the job was deemed to be an improvement to real property. The Department would refund the erroneously collected sales tax, but then it would also assess the proper amount of tax that the contractor should have paid on the materials it used on the job. Under current law, the Department of Revenue offsets the refund against the tax due and the contractor pays the difference (usually not a major expense). This is not an unusual situation. The sales tax laws, particularly as applied to contractors are very complex, fact specific and frequently subject to errors.

The result is the state collects the tax that it should have received. The customer gets a bit of a break because the contractor didn't figure in the sales tax on

materials when quoting the job. This is somewhat offset because the customer paid some sales tax directly when the contractor added sales tax to the bill. All in all, the state is treated fairly, and the contractor and ultimate consumer for the most part have a result that is economically close to the right answer.

If Sections 19 & 20 are enacted, there will be a substantially different result that hurts the small business and allows the state to collect sales tax twice on the same transaction. AB 439 would require the incorrectly collected sales tax to be refunded by the contractor to the ultimate customer. If it cannot be refunded, the tax must be returned to the state within 90 days (or else there are penalties). Often it will not be possible to find the ultimate customer within this 90-day period. Consequently the state will receive this refund. In addition, the state will still collect the correct sales tax from the contractor. **This is collecting tax twice on the same transaction.** Under current law, the state gets the tax that is entitled and the contractor bears the burden of not reading the law correctly, but it is usually not such a large burden that it creates economic hardship.

In addition, the 90-day period imposed by Section 20 is unreasonably short. The statute does not specify when it starts to run. In addition, it doesn't take into consideration the difficulty of locating customers, sending out notices, confirming that the refund is correct, writing checks and mailing.

For the above-mentioned reasons, WMC respectfully requests sections 19 and 20 of Assembly Bill 439 to be deleted.

cc: Governor Scott McCallum
Secretary Richard Chandler, Department of Revenue
Speaker Scott Jensen



State of Wisconsin • DEPARTMENT OF REVENUE

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Scott McCallum
Governor

Richard G. Chandler
Secretary of Revenue

August 10, 2001

The Honorable Michael Lehman, Chair
and Members of the Assembly Committee on Ways and Means
103 West – State Capitol
Madison, WI 53702

Dear Chairman Lehman and Members:

The purpose of this letter is to provide comment and clarification regarding the August 1, 2001 memo from Joan Hansen on behalf of Wisconsin Manufacturers and Commerce (WMC) regarding 2001 Assembly Bill 439.

WMC proposes eliminating Sections 19 and 20 of AB 439 due to concerns with administration of these sales tax refund provisions within the construction industry. The Department of Revenue opposes the elimination of Sections 19 and 20. These provisions were proposed to help consumers obtain refunds of sales tax collected from them in error. Without these changes, some consumers may never get their money back. Current law allows sellers who collect sales tax from consumers in error to, in some cases, keep the sales tax revenues and not remit them to DOR or return them to the consumer. Sections 19 and 20 of AB 439 would eliminate this problem -- sellers would no longer be able to keep sales tax revenues collected in error.

Current Law

Under current law, a seller who files a claim for refund with DOR for sales tax charged in error to a buyer must return the tax and interest refunded to the buyer. However, there is no similar requirement when sales tax is refunded to a seller as a result of a DOR audit or when the tax is collected in error by the seller and never remitted to DOR. **Attachment 1** provides several examples of situations in which problems with sales tax refunds to consumers (both individuals and businesses) could arise.

AB 439

Sections 19 and 20 of AB 439 require that a seller return sales tax revenues to the buyer if: **(1)** the tax is refunded to the seller by DOR as part of an audit; or **(2)** the tax is never remitted to DOR because the sale was never taxable. Neither of these situations is covered under current law, and without specifics in the statutes, buyers have limited recourse to reclaim sales tax paid in error to a seller.

AB 439 also requires that if the seller cannot return the erroneously collected tax to the buyer, the seller must remit the tax to DOR, thus eliminating the incentive for sellers to collect sales tax not due under Wisconsin law.

August 10, 2001
Page Two

WMC/Construction Industry Concern with AB 439 and Suggested Change to Bill

WMC is correct in stating that the provisions of both current law and the provisions in AB 439 may adversely affect some real property construction contractors who incorrectly charge sales tax. I would like to point out that this problem only occurs with regard to construction contractors. No other retailer would be similarly affected. More than likely, the contractor has not paid tax on its purchase of the materials and will be assessed that tax by the department or will self-assess that tax. The potential problem for the contractor is obtaining reimbursement from the buyer for use tax paid on purchases once the contract has been completed. See **Attachment 2** for a tax release on the subject.

While some buyers are willing to compensate contractors for these costs from the proceeds of the sales tax that the buyer is refunded, not all buyers are willing to do so. To avoid this problem, construction contracts could include a standard clause whereby buyers agree in advance that if refunds of incorrectly imposed sales tax are to be made, the buyer is responsible for reimbursing the contractor for any use tax that may be due on materials consumed by the contractor.

Have amendment done.

As a statutory solution to this problem, I suggest that an amendment be made to Section 19 to allow a contractor to reduce the tax and interest it must refund to the buyer that was incorrectly charged on a real property improvement by the tax the contractor owes and pays on its purchase of materials for that real property improvement. This solution protects buyers who have paid sales tax incorrectly without adversely affecting contractors that WMC refers to in its letter. See suggested statutory language in **Attachment 3**.

90 Day Timeframe for Sellers to Return Taxes Collected in Error

WMC also suggests that the 90-day timeframe in which a seller is required to return the tax to buyers be extended to 120 days. While DOR originally suggested a 60-day timeframe, the 90-day timeframe was agreed to as a result of meetings last session between WMC, Representatives Lehman and Wood, and representatives of the State Bar. DOR still believes that 3 months is sufficient time for a seller to return tax to buyers who are waiting for their tax refunds.

If you have any questions or concerns regarding this memo, please contact me.

Sincerely,



Richard G. Chandler
Secretary of Revenue

Attachments

RGC:VLG:TDO:tmb

DOR Examples of Problems with Sales Tax Refunds to Consumers Under Current Law

Under current law, sellers who collect sales tax from consumers in error are in some cases allowed to keep the sales tax revenues. These revenues are not remitted to DOR or returned to the consumer, and the consumer has no recourse to get their tax back. The following examples illustrate this problem:

Example 1: A telephone company collects Wisconsin sales tax on 911 services billed to buyers. The telephone company remits that tax collected to the Department of Revenue. Such charges are exempt from sales tax. The department audits the telephone company and determines sales tax was collected in error from buyers. The department refunds the sales tax remitted in error to the telephone company. The telephone company is not required, under current law, to return to the buyer that tax collected from the buyer. The seller may have the overpaid sales tax applied against its other sales and use tax liabilities found in the audit or be refunded the tax overpaid in cash.

Example 2: A utility charges apartment owners sales tax on sales of electricity for rental units for the entire year, even though sales tax is only due on electricity for the months of May through October. The utility only remits the sales tax collected from buyers for the months of May through October. Without Section 19 and 20 of AB 439, there is no means in which the department can require that the utility return to its buyers tax charged and collected incorrectly on electricity for the months of November through April. The buyer could file a claim for refund directly with the Department of Revenue. The department would be required to issue the refund even though the seller never remitted the tax.

Example 3: Company A sold equipment to Company B for \$10,000 and collected \$500 sales tax from the customer, which it remitted to the Department of Revenue. Company A is audited and the department determines that the \$500 sales tax was not due. The department refunds the tax, plus interest, to Company A. Currently, Company A can keep the \$500 plus interest, even though it was Company B who actually paid the tax. Company A is unjustly enriched.

Example 4: Company C charges sales tax of \$500 on services it furnishes to an individual. After receiving payment from the individual, Company C realizes that such services are not taxable and does not remit the \$500 of tax collected to either the individual or the department. There is no recourse under the sales and use tax law for the individual or the department to collect the tax from Company C. Company C is unjustly enriched.

From *Wisconsin Tax Bulletin 91***Claims for Refund — Construction Activities**

Note: This tax release applies to claims for refund of sales or use tax filed on or after September 1, 1994.

Statutes: Sections 77.51(2), 77.52(1) and (2)(a)10, and 77.59(4)(a) and (c), Wis. Stats. (1993-94)

Background: Section 77.59(4)(a), Wis. Stats. (1993-94), provides that a buyer or seller may file a claim for refund with the Department of Revenue for sales or use tax paid in error to a seller or the department if certain conditions are met.

Section 77.59(4)(c), Wis. Stats. (1993-94), provides that a seller who receives a refund of sales or use tax from the Department of Revenue that the seller has collected from buyers shall return the taxes and related interest to the buyers from whom the taxes were collected. The seller shall return to the Department of Revenue any part of a refund that the seller does not return to a buyer. Failure by the seller to return the refund to a buyer or the department may result in penalties.

Facts and Questions 1: Contractor A sells and installs a furnace in the home of Individual B. This transaction is a real property improvement. However, Contractor A incorrectly assumes that the furnace is tangible personal property when installed and invoices Individual B as follows:

| | |
|--------------------------|----------------|
| Materials | \$1,000 |
| Labor | 750 |
| Subtotal | \$1,750 |
| Sales Tax (\$1,750 x 5%) | 88 |
| Amount Due | <u>\$1,838</u> |

Individual B pays the contractor \$1,838. Subsequently, Individual B files with the Department of Revenue a timely claim for refund for the \$88 of sales tax it paid to the contractor on the real property improvement. The claim is properly completed and filed on forms prescribed by the Department of Revenue.

Will the Department of Revenue refund the \$88 of tax plus applicable interest to Individual B under sec. 77.59(4)(a), Wis. Stats. (1993-94)?

Answer 1: Yes. Note, however, that Contractor A is liable for Wisconsin use tax on its purchase price of the materials (e.g., furnace) used in the real property improvement.

Facts and Question 2: Contractor A invoices Individual B for the sale and installation of cabinets in Individual B's home. This transaction is a real property improvement. Contractor A purchased the materials it used in installing the cabinets (e.g., cabinets, handles, hinges, etc.) without Wisconsin sales or use tax. Contractor A invoices Individual B for the sale and installation of the cabinets as follows:

| | |
|--------------------------|----------------|
| Materials | |
| (\$1,200 cost + markup) | \$1,500 |
| Labor | 800 |
| Subtotal | \$2,300 |
| Sales Tax (\$2,300 x 5%) | 115 |
| Amount Due | <u>\$2,415</u> |

Later, Contractor A determines it incorrectly charged Individual B Wisconsin sales tax on the sale and installation of the cabinets.

The sales tax paid in error on the sale of the cabinets by Contractor A to Individual B is \$115. Use tax of \$60 ($\$1,200 \times 5\%$) is due from Contractor A on the purchase price of the materials it used in installing the cabinets. The department issues a net refund of \$55 ($\$115 - \60), plus interest, to Contractor A.

What is the amount of refund and interest Contractor A must pass on to Individual B under sec. 77.59(4)(c), Wis. Stats. (1993-94)?

Answer 2: Contractor A is required to return to Individual B the \$115 of sales tax collected from Individual B in error, even though the net refund by the department to Contractor A was \$55. Contractor A must also remit to Individual B interest related to the \$115 of sales tax being refunded to Individual B. Interest is refunded at 9%, under sec. 77.60(1), Wis. Stats. (1993-94), from the due date of Contractor A's sales and use tax return for the period in which the sale and installation occurred to the date the refund was issued by the department to Contractor A.

Proposed Amendment to Section 19 of AB 439

SECTION 19. 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended to read:

77.59 (5m) A seller who receives a refund under par. (a) or (b) of taxes that the seller has collected from buyers, who collects taxes erroneously from buyers, or who is entitled to a refund that is offset under sub. (5), shall return submit the taxes and related interest to the buyers from whom the taxes were collected. The, or to the department if the seller cannot locate the buyers, within 90 days after the date of the refund, after the date of the offset, or after discovering that the seller has collected taxes erroneously from the buyers. If the seller does not submit the taxes and related interest to the department or the buyers within that period, the seller shall return submit to the department any part of a refund or taxes that the seller does not return submit to a buyer or to the department along with a penalty of 25% of the amount not returned or submitted or, in the case of fraud, a penalty equal to the amount not returned in the case of fraud submitted. In the case of a person who collects taxes erroneously from buyers for a real property construction activity, the taxes and interest required to be submitted under this section to the buyer or the department for that activity may be reduced by the amount of tax and interest due and paid on the sale of or storage, use, or other consumption tangible personal property used by the person in that real property construction activity and transferred to the buyer.

Nowlan, Andrew

From: Gates-Hendrix, Sherrie
Sent: Wednesday, August 22, 2001 2:12 PM
To: Nowlan, Andrew
Subject: AB 439 amendments

Andrew -

Here is what we'd suggest as a solution to the WMC concern regarding real property construction contractors who incorrectly charge sales tax. The amendment would allow a contractor to reduce the tax and interest it has to refund to the buyer that was incorrectly charged on real property improvement by the tax the contractor owes and pays on its purchase of materials for that real property improvement. I think Secretary Chandler's August 10th memo to the committee talks a little about this too. Let me know if you need more on this.

I will email you tomorrow about the issue of changing the compromise language in AB 439 to address the changes made last session in 99 Act 189 (I'll send you specific drafting instructions).

Are both of these issues things you plan to have drafted as amendments for discussion at the Sept 5th meeting... or is there anything you want me to do with these? Just let me know.

Thanks again.

Sherrie

Proposed Amendment to Section 19 of AB 439

SECTION 19. 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended to read:

77.59 (5m) A seller who receives a refund under par. (a) or (b) of taxes that the seller has collected from buyers, who collects taxes erroneously from buyers, or who is entitled to a refund that is offset under sub. (5), shall ~~return~~ submit the taxes and related interest to the buyers from whom the taxes were collected. The, or to the department if the seller cannot locate the buyers, within 90 days after the date of the refund, after the date of the offset, or after discovering that the seller has collected taxes erroneously from the buyers. If the seller does not submit the taxes and related interest to the department or the buyers within that period, the seller shall return ~~submit~~ to the department any part of a refund or taxes that the seller does not ~~return~~ submit to a buyer or to the department along with a penalty of 25% of the amount not ~~returned or submitted or, in the case of fraud,~~ a penalty equal to the amount not ~~returned in the case of fraud~~ submitted. In the case of a person who collects taxes erroneously from buyers for a real property construction activity, the taxes and interest required to be submitted under this section to the buyer or the department for that activity may be reduced by the amount of tax and interest due and paid on the sale of or storage, use, or other consumption tangible personal property used by the person in that real property construction activity and transferred to the buyer.

Proposed Amendment to Section 17 of AB 439

Section 17, 73.13 of the statutes is created to read:

73.13 Reducing nondelinquent taxes. (1) In this section:

(a) "Department" means the department of revenue.

(b) "Tax" means an amount that is owed to this state under s. 66.0615(1m)(f)3. or ch. 71, 72, 76,77, 78, or 139, and that is not delinquent.

(2) (a) A taxpayer may petition the department to reduce the taxpayer's taxes, including the costs, penalties, and interest related to the taxpayer's taxes. The petition shall set forth a sworn statement of the taxpayer and shall be in a form that the department prescribes. The department may examine the taxpayer under oath about the petition and may require the taxpayer to provide the department with financial statements and any other information requested by the department that is related to the petition.

(b) If the department determines that the taxpayer is unable to pay the taxes, costs, penalties, and interest in full, the department shall determine the amount that the taxpayer is able to pay and shall enter an order reducing the taxes in accordance with the department's determination. The order shall provide that the order, if paid in a lump sum, is effective only if the reduced taxes are paid within 10 days from the date on which the order is issued or the order shall provide that the reduced taxes is effective if paid according to a payment schedule that is set up by the department. The department or its collection agents, upon receipt of the order, shall accept payment in accordance with the order. Upon payment of the reduced taxes, the department shall credit the unpaid portion of the principal amount of the taxes and record the unpaid amount of costs, penalties, and interest accrued to the date of the order.

(c) If within 3 years of the date of the order under par. (b) or the date of a final payment under a payment schedule, whichever is later, the department ascertains that the taxpayer has an income or owns property sufficient to enable the taxpayer to pay the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), the department shall reopen the order under par. (b) and order the taxpayer to pay in full the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b). Before the entry of the order for payment, the department shall send a written notice to the taxpayer, by certified mail, advising the taxpayer of the department's intention to reopen the order under par. (b) and fixing a time and place for the appearance of the taxpayer, if the taxpayer desires a hearing. If the department determines that the taxpayer is able to pay the unpaid portion of the principal amount of the taxes due, including the costs,

penalties, and interest recorded under par. (b), the department shall enter the order for payment in full. The unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), shall be due and payable immediately upon entry of the order for payment in full and shall thereafter be subject to the interest under s. 71.82(2), as that subsection applies to delinquent income and franchise taxes under s. 71.82, and to the delinquent account fee under s. 73.03(33m).

Nowlan, Andrew

From: Gates-Hendrix, Sherrie
Sent: Thursday, August 23, 2001 11:02 AM
To: Nowlan, Andrew
Subject: suggested amendment to AB 439

Andrew –

Here is our suggestion for an amendment to AB 439 to align it with 1999 Act 189. As I mentioned, Rep. Wood brought the need for an amendment to our attention.

Act 189 changed the law regarding DOR's ability to enter into a compromise (agreement for reduced tax payment) with a delinquent taxpayer. The Act allows DOR to offer the taxpayer a payment schedule to pay the compromise amount, rather than having to pay within 10 days, as specified in prior law. Act 189 also allows DOR to order the taxpayer to pay the full amount of the delinquency if the dept determines that, within three years of final payment under the schedule, the taxpayer has the financial means to make a full payment. Prior law began the three-year clock at the date of the compromise agreement rather than the date of the last payment.

The attached suggestion for an amendment to AB 439 would make these same changes in the part of the statutes that address compromises of non-delinquent taxes. AB 439 as introduced creates the ability for DOR to compromise non-delinquent taxes. However, the language in the bill as introduced does not take into account the changes to the statute during the last session that affected s.71.92(3) relating to compromising delinquent taxes.

DOR suggests that the attached amendment be made to AB 439 to ensure that the same provisions regarding payment plans apply to both delinquent and non-delinquent taxpayers who enter into such plans.

I hope this is clear---let me know if you have questions or need more info.

Thanks.

Sherrie



AB 439 (TPr Fr)
amendment re c...

Proposed Amendment to Section 17 of AB 439

Section 17, 73.13 of the statutes is created to read:

73.13 Reducing nondelinquent taxes. (1) In this section:

(a) "Department" means the department of revenue.

(b) "Tax" means an amount that is owed to this state under s. 66.0615(1m)(f)3. or ch. 71, 72, 76,77, 78, or 139, and that is not delinquent.

(2) (a) A taxpayer may petition the department to reduce the taxpayer's taxes, including the costs, penalties, and interest related to the taxpayer's taxes. The petition shall set forth a sworn statement of the taxpayer and shall be in a form that the department prescribes. The department may examine the taxpayer under oath about the petition and may require the taxpayer to provide the department with financial statements and any other information requested by the department that is related to the petition.

(b) If the department determines that the taxpayer is unable to pay the taxes, costs, penalties, and interest in full, the department shall determine the amount that the taxpayer is able to pay and shall enter an order reducing the taxes in accordance with the department's determination. The order shall provide that the order, if paid in a lump sum, is effective only if the reduced taxes are paid within 10 days from the date on which the order is issued or the order shall provide that the reduced taxes is effective if paid according to a payment schedule that is set up by the department. The department or its collection agents, upon receipt of the order, shall accept payment in accordance with the order. Upon payment of the reduced taxes, the department shall credit the unpaid portion of the principal amount of the taxes and record the unpaid amount of costs, penalties, and interest accrued to the date of the order.

(c) If within 3 years of the date of the order under par. (b) or the date of a final payment under a payment schedule, whichever is later, the department ascertains that the taxpayer has an income or owns property sufficient to enable the taxpayer to pay the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), the department shall reopen the order under par. (b) and order the taxpayer to pay in full the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b). Before the entry of the order for payment, the department shall send a written notice to the taxpayer, by certified mail, advising the taxpayer of the department's intention to reopen the order under par. (b) and fixing a time and place for the appearance of the taxpayer, if the taxpayer desires a hearing. If the department determines that the taxpayer is able to pay the unpaid portion of the principal amount of the taxes due, including the costs,

penalties, and interest recorded under par. (b), the department shall enter the order for payment in full. The unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), shall be due and payable immediately upon entry of the order for payment in full and shall thereafter be subject to the interest under s. 71.82(2), as that subsection applies to delinquent income and franchise taxes under s. 71.82, and to the delinquent account fee under s. 73.03(33m).

WAYNE W. WOOD

State Representative

44th Assembly District

COMMITTEE ASSIGNMENTS

Member:

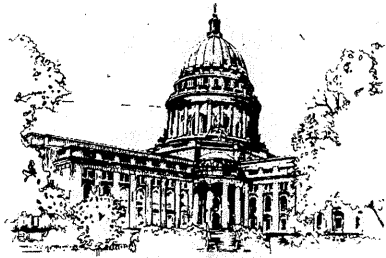
Rules

Criminal Justice

Ranking Minority Member:

State Affairs

Ways and Means



Wisconsin Legislature
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(608) 266-7503

Toll-free 1-888-947-0044

TO: Assembly Committee on Ways and Means Members

FROM: State Representative Wayne W. Wood

DATE: September 21, 2001

Attached is a letter I received from Richard Chandler, Secretary of Revenue. I am sending you a copy for your information.



State of Wisconsin • DEPARTMENT OF REVENUE

SEP 18 2001

2135 RIMROCK ROAD • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718 • <http://www.dor.state.wi.us>

Scott McCallum
Governor

Richard G. Chandler
Secretary of Revenue

September 12, 2001

Assembly Committee on Ways & Means
Honorable Michael Lehman, Chair
103 West Capitol
Honorable Wayne Wood, Vice Chair
104 North Capitol
Madison, WI 53702

Dear Representatives Lehman and Wood:

Thank you for the opportunity to comment on AB 439, the "Taxpayer Friendly" bill you introduced on behalf of the Department of Revenue. In response to Representative Wood's question at the Committee's September 5 meeting regarding implementation of the bill's dollar rounding provisions, I would like to offer the following comments.

- AB 439 would allow (but not mandate) DOR to require a taxpayer to round dollar amounts to the nearest whole dollar on tax returns relating to income, franchise, sales, use, estate, fuel, cigarette/tobacco, alcohol, food and beverage, and premier resort taxes.
- DOR is seeking the statutory change to allow us to require rounding in connection with the implementation of our Integrated Tax System (ITS) which, over the course of the next 5 years, will further automate and integrate the department's collection and storage of tax data.
- DOR intends to require rounding for most major tax types, particularly as those tax types are integrated into the new ITS system. Once the department requires rounding for a tax type, we would not plan to reverse that requirement, either for individual taxpayers or by tax type.
- There may be instances in which the department requires rounding only of the final amount shown as due (or refund owing) on a tax return. For example, a taxpayer would retain the cents in detailed computations made prior to entering the final amount and only round the final figure on the tax return.

For these reasons, I believe the flexible language in AB 439 giving DOR the ability to require rounding of dollar amounts on a tax return is warranted. A strict requirement for immediate rounding in all cases would pose significant implementation difficulties for the department.

I hope this background on the department's intent to using rounding on tax returns is useful and that it answers the questions raised on September 5th. I appreciate the work of the committee and your assistance in particular in moving this legislation forward. Feel free to call me if you would like additional detail or would like to discuss the rounding provision in AB 439.

Sincerely,

Richard G. Chandler
Secretary of Revenue

RGC:SGH

Nowlan, Andrew

From: Scocos, John
Sent: Monday, October 15, 2001 2:26 PM
To: *Legislative All Assembly
Subject: JCLO Adopted Policy Changes

Last Friday on October 12, JCLO Rule was distributed electronically as well as a paper copy concerning the adopted policy changes. I have had numerous calls concerning the following:

- Time Reporting Procedures, each appointing authority will set the hours required for each employee to ensure a 40 hour work week. Vacation, Sick Time, and Comp Time will also be recorded on the bimonthly time sheet which will be provided. The new Time Reporting Forms major purpose as stated in the JCLO rule is to indicate the dates and hours the employee was engaged in employment for the Legislature and a statement attesting that the employee did not engage in campaign activities during the hours claimed .
- Standards of Conduct are covered in page 14 of the Assembly Chief Clerk report adopted under the JCLO rule. It also states that the responsibility of the Appointing Authority to implement the standards.
- These rules and standards will be effective on November 1, 2001 as per the JCLO Rule passed on October 11, 2001. This office is in the process of setting up briefings on the changes for all employees.

Please do not hesitate to contact me if you have any questions at 267-4355.

Fiscal Estimate - 2001 Session

Original Updated Corrected Supplemental

| | | |
|---|--|------------------------|
| LRB Number 01-1376/4 | Introduction Number AB-439 | |
| Subject Various tax changes | | |
| Fiscal Effect | | |
| State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Decrease Existing Appropriations <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Create New Appropriations <input type="checkbox"/> Decrease Costs | | |
| Local: <input checked="" type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue 5. Types of Local Government Units Affected <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenue <input type="checkbox"/> Counties <input type="checkbox"/> Others <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts | | |
| Fund Sources Affected Affected Ch. 20 Appropriations <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS | | |
| Agency/Prepared By DOR/ Dennis Collier (608) 266-5773 | Authorized Signature Dennis Collier (608) 266-5773 | Date 6/15/01 |

Fiscal Estimate Narratives

DOR 6/15/01

| | | |
|---------------------------------------|----------------------------|------------------------|
| LRB Number 01-1376/4 | Introduction Number AB-439 | Estimate Type Original |
| Subject Various tax changes | | |

Assumptions Used in Arriving at Fiscal Estimate

This bill, introduced at the request of the Department of Revenue, makes the following changes, none of which are expected to have a significant effect on either tax revenues or administrative costs:

- conforms the Wisconsin provisions for providing relief to innocent spouses from payment of taxes on a joint tax return to the federal innocent spouse provisions;
- requires retailers who collect sales or use tax in error from a purchaser to refund that tax to the purchaser;
- allows retailers to use a mathematical computation instead of the bracket system required under current law to calculate sales and use tax due on a transaction;
- clarifies that the Wisconsin estate tax equals the amount of credit allowed against the federal estate tax, whether or not the taxpayer claims the credit;
- permits the Department or Circuit Court to waive interest on additional estate taxes arising from discovery of property omitted from the original tax determination if due diligence was exercised in determining assets;
- adds definitions of the terms "pay" and "sign" to the statutes relating to alternative fuel taxes and of the term "sign" to statutes relating to the tobacco products tax (these definitions were inadvertently omitted from 1997 Wisconsin Act 27, which provided these definitions for other excise taxes);
- provides that tax-related documents or payments may be made using a delivery service approved by the Internal Revenue Service for federal tax purposes;
- allows the Department to require taxpayers to round amounts reported on tax forms to the nearest whole dollar;
- allows the Department to compromise non-delinquent taxes, interest and penalties (currently the Department may compromise only delinquent taxes, interest and penalties);
- restores a 30-day extension for employers to file an annual withholding reconciliation report, which was inadvertently eliminated from the statutes by 1997 Wisconsin Act 291.

Long-Range Fiscal Implications