

2003 DRAFTING REQUEST

Bill

Received: **01/06/2003**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Wilson**

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

Drafter: **rmarchan**

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Subject: **Tax - miscellaneous
Tax - sales
State Govt - procurement**

Extra Copies:

Submit via email: **YES**

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Pre Topic:

DOA:.....Wilson - BB0319,

Topic:

Require vendors doing business with the state to register with DOR and remit sales and use taxes; prohibit procurement from vendors that fail to do so

Instructions:

Require vendors doing business with the state to register with DOR and remit sales and use taxes; prohibit procurement from vendors that fail to do so.

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>
/?	jkreye 01/07/2003	kgilfoy 01/07/2003		_____			State

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

rmarchan
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1387

Topic: Biennial Budget Drafting Request—Require Vendors Doing Business with the State of Wisconsin to Register and Remit Wisconsin Sales or Use Tax

Analyst Name(s): Lori Wilson & John Koskinen

Analyst Team: Special Projects Unit

Agency: Department of Revenue

Agency Number: 566

BB03/9

STATE OF WISCONSIN

JAMES E. DOYLE
GOVERNOR-ELECT



Date: January 2, 2003

To: Steve Miller, Chief
Legislative Reference Bureau

From: Lori Wilson & John Koskinen, Special Projects Unit
State Budget Office, DOA

Subject: Biennial Budget Drafting Request—Require Vendors Doing Business with the State of Wisconsin to Register and Remit Wisconsin Sales or Use Tax

Please amend state statutes to require vendors doing business with the State of Wisconsin to register and remit Wisconsin sales or use tax. Attached is a copy of the Department of Revenue's Legislative Proposal Summary.

Please contact me at 266-2081 or by email at john.koskinen@doa.state.wi.us with any questions.

Thank you.

**Legislative Proposal Summary
Wisconsin Department of Revenue
IS&E Division**

December 10, 2002

TITLE: Require Vendors Doing Business with the State of Wisconsin to Register and Remit Wisconsin Sales or Use Tax

SUMMARY OF RECOMMENDATION:

Require any business or its affiliate that makes taxable sales in Wisconsin to register and remit Wisconsin sales or use tax as a condition of selling goods and services to the State of Wisconsin. This proposal is intended to improve tax collections from out-of-state vendors that currently sell goods and services to the State of Wisconsin, or who want to contract with the State of Wisconsin to sell their goods and services here, yet do not collect Wisconsin sales and use tax on sales of taxable goods and services to other Wisconsin customers.

DESCRIPTION OF CURRENT LAW AND PROBLEM

Since the 1980s, states have become increasingly concerned with the revenue loss associated with out-of-state sellers, including mail order, catalog, Internet and other remote sellers. In 1967, the U.S. Supreme Court ruled in *National Bellas Hess* that a state could not require an out-of-state retailer to collect tax on its sales into a state unless the retailer had certain level of contact with the state. The Supreme Court reaffirmed this decision in 1992 in *Quill Corp. v. North Dakota*. Some companies have avoided making the contacts with states that would subject them to state taxing jurisdiction by creating separate affiliated entities to perform functions such as service and warranty work.

States have unsuccessfully negotiated with direct marketers on at least two occasions to craft a voluntary collection agreement under which marketers would collect the tax and states would simplify their reporting requirements. Currently, state and local governments along with retailers are engaged in the Streamlined Sales Tax Project – an effort to simplify the sales tax system to adapt it for electronic commerce and the 21st Century economy.

RECOMMENDATION FOR ACTION

The department recommends that an out-of-state business or its affiliate would be required to register to collect Wisconsin sales on all sales of tangible personal property and taxable services in Wisconsin before the business or its affiliate could sell property or services to the State.

Under the proposal, DOR would work with DOA purchasing staff and periodically identify those businesses not collecting tax. Those businesses would be required to register and begin collecting sales or use tax or cease doing business with the State of Wisconsin. This change will help to create a level playing field for all vendors who provide goods and services to customers in Wisconsin.

ADMINISTRATIVE IMPACT

In 1999, North Carolina enacted a law that required vendors and their affiliates to register to collect North Carolina sales taxes as a condition of doing business with the State of North Carolina or any local governments, including school districts. The North Carolina law has not been successfully challenged in any court and has increased compliance with that state's tax law.

According to the North Carolina Department of Revenue, the law was quickly implemented and the administrative costs of notifying and registering new taxpayers to implement the new law were minimal.

FISCAL EFFECT

The 1999 North Carolina law similar to the proposal has been fully implemented and, in FY02, North Carolina collected \$8.2 million under the law. Adjusting for North Carolina's 4% sales tax rate, and assuming Wisconsin's taxable sales are related to state personal income in the same proportion as North Carolina's collections, Wisconsin would have collected about \$7.2 million in FY02 under the proposal.

DRAFTING INSTRUCTIONS

Prohibit the state from purchasing property or services from a vendor if the vendor, or an affiliate of the vendor, has been identified by the Department of Revenue as a vendor who makes taxable sales of property or services to Wisconsin customers but is not registered to collect and remit or, if registered, does not collect and remit the sales and use tax imposed under ss. 77.52 and 77.53 Wis. Stats. Suggested draft language:

Create a paragraph under s. 16.75 as follows:

The department, any other designated purchasing agent under s. 16.71(1), any agency making purchases under s. 16.74, and any authority shall not enter into any contract or order for the purchase of materials, supplies, equipment, or contractual services with a person who has been identified by the Secretary of Revenue as a person who makes sales of tangible personal property or services that are subject to the sales or use tax levied under Chapter 77 of the Wisconsin Statutes but who is not registered with the Department of Revenue to collect and remit such tax, or who is registered to collect and remit the sales or use tax levied under Chapter 77 of the Wisconsin Statutes but does not collect and remit such tax. The Secretary of Administration shall provide the Secretary of Revenue periodically with a list of all persons who sell materials, supplies, equipment or contractual services to the state and any bidders lists maintained under s. 16.7015 for purposes of verifying that such persons are registered and are remitting Wisconsin sales or use taxes. These lists shall include each person's name, address and federal employers identification number or social security number.

Also, refer to the definition of "person" used in s. 77.51(10).

Create paragraphs under chapter 16.70 – Purchasing; definitions of an "Affiliate" and "Control" as follows:

"Affiliate" means a person that controls, is controlled by, or is under common control with another person.

"Control" – A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting shares of that entity. As used in this subdivision, the term "voting share" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A partnership interest and a limited liability company member interest is a voting security.

Under s. 77.66, create a section that requires the DOR Secretary to certify periodically, from the list of persons selling tangible personal property or services to the State of Wisconsin provided by the DOA Secretary, those persons to whom the newly-created paragraph under s. 16.75 applies.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Day after publication

DOR CONTACT:

Lili Best Crane, 266-8025
lili.crane@dor.state.wi.us

JTK:kmg:pg
RSM

Soon

Print
DOTE

DOA:.....Ziegler - Prohibit state from contracting with vendor who refuses to collect sales and use taxes

FOR 2001-03 BUDGET -- NOT READY FOR INTRODUCTION

DOA-Bud

PWF - all amended stats.

1 AN ACT ^{Don't Gen. Cat.} relating to: procurement by state agencies and authorities from
2 persons who refuse to collect sales and use taxes.

Analysis by the Legislative Reference Bureau
STATE GOVERNMENT
OTHER STATE GOVERNMENT

This bill prohibits all state agencies and authorities, ~~except the World Dairy Center Authority~~, from entering into a contract or order for the purchase of materials, supplies, equipment, or contractual services with any person, if the name of that person, or the name of an affiliate of that person, is certified to DOA by the secretary of revenue because the secretary of revenue determines that the person or affiliate refuses to collect and remit sales and use taxes on its sales delivered to this state.

Currently, there is no such prohibition. Under current law, most orders and contracts of state agencies are required to be awarded to the person submitting the lowest responsible bid or the most advantageous competitive sealed proposal.

For further information see the *state* 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:

1 SECTION 1. 13.92 (1) (b) 1. b. of the statutes is amended to read:

2 13.92 (1) (b) 1. b. Any agency, as defined in s. 16.70 (1) (1e), created under ch.
3 13, 14, 15, or 758.

4 SECTION 2. 16.52 (6) (a) of the statutes is amended to read:

5 16.52 (6) (a) Except as authorized in s. 16.74, all purchase orders, contracts,
6 or printing orders for any agency, as defined in s. 16.70 (1) (1e), shall, before any
7 liability is incurred thereon, be submitted to the secretary for his or her approval as
8 to legality of purpose and sufficiency of appropriated and allotted funds therefor. In
9 all cases the date of the contract or order governs the fiscal year to which the contract
10 or order is chargeable, unless the secretary determines that the purpose of the
11 contract or order is to prevent lapsing of appropriations or to otherwise circumvent
12 budgetary intent. Upon such approval, the secretary shall immediately encumber
13 all contracts or orders, and indicate the fiscal year to which they are chargeable.

14 SECTION 3. 16.53 (13) (a) of the statutes is amended to read:

15 16.53 (13) (a) In this subsection, "agency" has the meaning given in s. 16.70 (1)
16 (1e).

17 SECTION 4. 16.545 (9) of the statutes is amended to read:

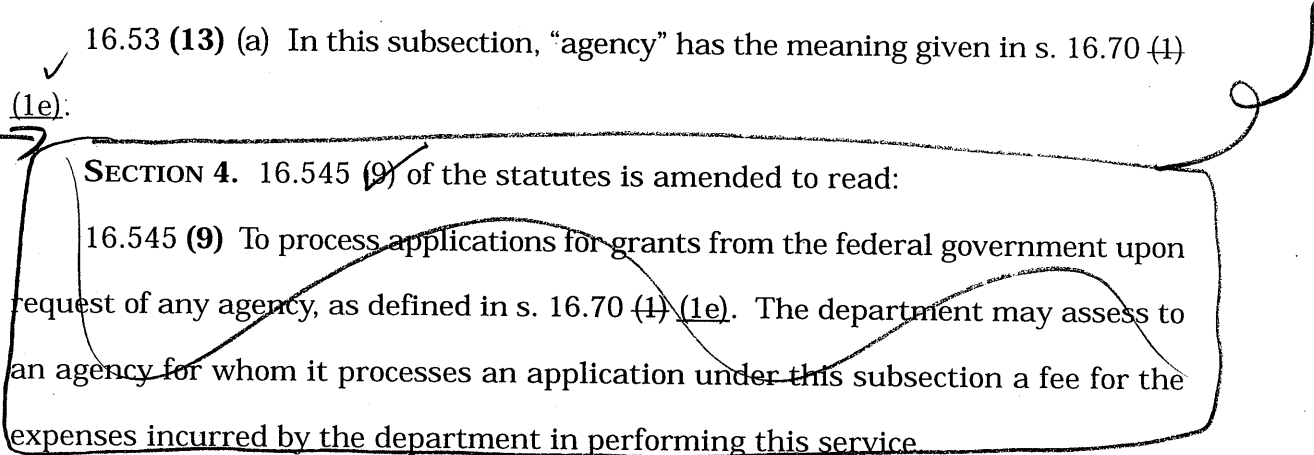
18 16.545 (9) To process applications for grants from the federal government upon
19 request of any agency, as defined in s. 16.70 (1) (1e). The department may assess to
20 an agency for whom it processes an application under this subsection a fee for the
21 expenses incurred by the department in performing this service.

22 SECTION 5. 16.70 (1) of the statutes is renumbered 16.70 (1e).

23 SECTION 6. 16.70 (1b) of the statutes is created to read:

24 16.70 (1b) "Affiliate" means an individual or business that controls, is
25 controlled by, or is under common control with another individual or business.

NS 2/16



1 SECTION 7. 16.70 (2e) of the statutes is created to read:

2 16.70 (2e) "Business" means a corporation, partnership, limited liability
3 company, association, or sole proprietorship operated for profit.

4 SECTION 8. 16.70 (3e) of the statutes is created to read:

5 16.70 (3e) "Control" means to own, directly or indirectly, more than 10% of the
6 interest in or voting securities of a business.

7 SECTION 9. 16.70 (1⁶) of the statutes is created to read:

8 16.70 (1⁶) "Voting securities" means securities that confer upon the holder the
9 right to vote for the election of members of the board of directors or similar governing
10 body of a business, or are convertible into, or entitle the holder to receive upon their
11 exercise, securities that confer such a right to vote.

12 SECTION 10. 16.75 (1) (a) 1. of the statutes is amended to read:

13 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
14 materials, supplies, equipment, ^{plain comma} and contractual services to be provided to any
15 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),
16 (6), (7), (8) ² and (9) ³ and (10m) and ss. 16.73 (4) (a), 16.751, 16.754, 50.05 (7) (f), 287.15
17 (7) ~~and (10m)~~ ^{plain} shall be awarded to the lowest responsible bidder, taking into
18 consideration life cycle cost estimates under sub. (1m), when appropriate, the
19 location of the agency, the quantities of the articles to be supplied, their conformity
20 with the specifications, and the purposes for which they are required and the date
21 of delivery.

22 SECTION 11. 16.75 (10m) of the statutes is created to read:

23 16.75 (10m) The department, any other designated purchasing agent under s.
24 16.71 (1), any agency making purchases under s. 16.74, and any authority shall not
25 enter into any contract or order for the purchase of materials, supplies, equipment,

Act 16

Act 16

16.964(8)

and

1 or contractual services with a person if the name of the person, or the name of an
2 affiliate of that person, is certified to the department by the secretary of revenue
3 under s. ~~77.66~~ ^{77.66} ✓

4 SECTION 12. 16.84 (14) of the statutes is amended to read:

5 16.84 (14) Provide interagency mail delivery service for agencies, as defined
6 in s. 16.70 ~~(1)~~ (1e). The department may charge agencies for this service. Any moneys
7 collected shall be credited to the appropriation account under s. 20.505 (1) ~~16.84~~. (Kb)

8 SECTION 13. 16.841 (1) (a) of the statutes is amended to read:

9 16.841 (1) (a) "Agency" has the meaning given in s. 16.70 ~~(1)~~ (1e). ✓

10 SECTION 14. 16.855 (16) (b) 1. of the statutes is amended to read:

11 16.855 (16) (b) 1. In this paragraph, "agency" has the meaning given in s. 16.70
12 ~~(1)~~ (1e).

13 SECTION 15. ~~16.841~~ ^{22.01} of the statutes is amended to read:

14 ~~16.841~~ ^{22.01} (1) "Agency" has the meaning given in s. 16.70 ~~(1)~~ (1e). ✓

15 SECTION 16. 77.65 ⁶ of the statutes is created to read:

16 77.65 ⁶ **Refusal to collect taxes; certification.** The secretary of revenue shall
17 determine and periodically certify to the secretary of administration the names of
18 persons, and affiliates, as defined in s. 16.70 (1b), of persons, who refuse to collect and
19 remit the taxes imposed under ss. 77.52 ✓ and 77.53 ✓ on their sales delivered to this
20 state.

21 SECTION 17. 146.185 (1) (i) of the statutes is amended to read:

22 146.185 (1) (i) "State agency" has the meaning given in s. 16.70 ~~(1)~~ (1e). ✓

23 (END)

TNSR 2-16 ✓

✓
Section #. 16.545 (9) of the statutes is amended to read:

✓ (1e)

16.545 (9) To initiate contacts with the federal government for the purpose of facilitating participation by agencies, as defined in s. 16.70 (1), in federal aid programs, to assist those agencies in applying for such aid, and to facilitate influencing the federal government to make policy changes that will be beneficial to this state. The department may assess an agency to which it provides services under this subsection a fee for the expenses incurred by the department in providing those services.

History: 1975 c. 39; 1983 a. 192 s. 303 (3); 1983 a. 308, 538; 1995 a. 27; 2001 a. 16.

Robert 4-14

Section #. 22.01 (1) of the statutes is amended to read:

22.01 (1) "Agency" has the meaning given in s. 16.70 (1)

(1e)

History: 2001 a. 16 ss. 346, 347, 1027; stats 2001 s. 22.01.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

1327/1da
LRB-00217/Tdn
JTK:kmg:pg

RSM ↑

November 28, 2000

Lori Wilson

Paul Ziegler:

You may want to provide a little more detail regarding the procedure that the secretary of revenue will use to determine who is refusing to collect the sales and use taxes. Due process requirements under the Fifth Amendment and equal protection requirements under the Fourteenth Amendment will necessitate that there be a definite and uniform procedure used to make this determination, which will have to include some means whereby an alleged refuser may be afforded the opportunity to be heard.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

RSM

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

LRB-1327/1dn
RJM:kmg:rs

January 7, 2003

Lori Wilson:

You may want to provide a little more detail regarding the procedure that the secretary of revenue will use to determine who is refusing to collect the sales and use taxes. Due process requirements under the Fifth Amendment and equal protection requirements under the Fourteenth Amendment will necessitate that there be a definite and uniform procedure used to make this determination, which will have to include some means whereby an alleged refuser may be afforded the opportunity to be heard.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

DOA:.....Wilson – BB0319, Require vendors doing business with the state to register with DOR and remit sales and use taxes; prohibit procurement from vendors that fail to do so

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** procurement by state agencies and authorities from
2 persons who refuse to collect sales and use taxes.

Analysis by the Legislative Reference Bureau

STATE GOVERNMENT

OTHER STATE GOVERNMENT

This bill prohibits all state agencies and authorities from entering into a contract or order for the purchase of materials, supplies, equipment, or contractual services with any person, if the name of that person, or the name of an affiliate of that person, is certified to DOA by the secretary of revenue because the secretary of revenue determines that the person or affiliate refuses to collect and remit sales and use taxes on its sales delivered to this state.

Currently, there is no such prohibition. Under current law, most orders and contracts of state agencies are required to be awarded to the person submitting the lowest responsible bid or the most advantageous competitive sealed proposal.

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3 13, 14, 15, or 758.

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15 16.53 **(13)** (a) In this subsection, “agency” has the meaning given in s. 16.70 ~~(1)~~
16 (1e).

17 **SECTION 4.** 16.545 (9) of the statutes is amended to read:

18 16.545 **(9)** To initiate contacts with the federal government for the purpose of
19 facilitating participation by agencies, as defined in s. 16.70 ~~(1)~~ (1e), in federal aid
20 programs, to assist those agencies in applying for such aid, and to facilitate
21 influencing the federal government to make policy changes that will be beneficial to
22 this state. The department may assess an agency to which it provides services under
23 this subsection a fee for the expenses incurred by the department in providing those
24 services.

25 **SECTION 5.** 16.70 (1) of the statutes is renumbered 16.70 (1e).

1 **SECTION 6.** 16.70 (1b) of the statutes is created to read:

2 16.70 (1b) “Affiliate” means an individual or business that controls, is
3 controlled by, or is under common control with another individual or business.

4 **SECTION 7.** 16.70 (2e) of the statutes is created to read:

5 16.70 (2e) “Business” means a corporation, partnership, limited liability
6 company, association, or sole proprietorship operated for profit.

7 **SECTION 8.** 16.70 (3e) of the statutes is created to read:

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9 interest in or voting securities of a business.

10 **SECTION 9.** 16.70 (16) of the statutes is created to read:

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12 right to vote for the election of members of the board of directors or similar governing
13 body of a business, or are convertible into, or entitle the holder to receive upon their
14 exercise, securities that confer such a right to vote.

15 **SECTION 10.** 16.75 (1) (a) 1. of the statutes is amended to read:

16 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
17 materials, supplies, equipment, and contractual services to be provided to any
18 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),
19 (6), (7), (8), and (9), and (10m) and ss. 16.73 (4) (a), 16.751, 16.754, 16.964 (8), 50.05
20 (7) (f), and 287.15 (7), shall be awarded to the lowest responsible bidder, taking into
21 consideration life cycle cost estimates under sub. (1m), when appropriate, the
22 location of the agency, the quantities of the articles to be supplied, their conformity
23 with the specifications, and the purposes for which they are required and the date
24 of delivery.

25 **SECTION 11.** 16.75 (10m) of the statutes is created to read:

1 16.75 (10m) The department, any other designated purchasing agent under s.
2 16.71 (1), any agency making purchases under s. 16.74, and any authority shall not
3 enter into any contract or order for the purchase of materials, supplies, equipment,
4 or contractual services with a person if the name of the person, or the name of an
5 affiliate of that person, is certified to the department by the secretary of revenue
6 under s. 77.66.

7 **SECTION 12.** 16.84 (14) of the statutes is amended to read:

8 16.84 (14) Provide interagency mail delivery service for agencies, as defined
9 in s. 16.70 ~~(1)~~ (1e). The department may charge agencies for this service. Any moneys
10 collected shall be credited to the appropriation account under s. 20.505 (1) (kb).

11 **SECTION 13.** 16.841 (1) (a) of the statutes is amended to read:

12 16.841 (1) (a) “Agency” has the meaning given in s. 16.70 ~~(1)~~ (1e).

13 **SECTION 14.** 16.855 (16) (b) 1. of the statutes is amended to read:

14 16.855 (16) (b) 1. In this paragraph, “agency” has the meaning given in s. 16.70
15 ~~(1)~~ (1e).

16 **SECTION 15.** 22.01 (1) of the statutes is amended to read:

17 22.01 (1) “Agency” has the meaning given in s. 16.70 ~~(1)~~ (1e).

18 **SECTION 16.** 77.66 of the statutes is created to read:

19 **77.66 Refusal to collect taxes; certification.** The secretary of revenue shall
20 determine and periodically certify to the secretary of administration the names of
21 persons, and affiliates, as defined in s. 16.70 (1b), of persons, who refuse to collect and
22 remit the taxes imposed under ss. 77.52 and 77.53 on their sales delivered to this
23 state.

24 **SECTION 17.** 146.185 (1) (i) of the statutes is amended to read:

1 146.185 (1) (i) “State agency” has the meaning given in s. 16.70 ~~(1)~~ (1e).

2 (END)