

STATE OF WISCONSIN
REPORT OF THE JOINT SURVEY COMMITTEE ON TAX EXEMPTIONS
2003 SENATE BILL 6

[Introduced by Joint Committee for Review of Administrative Rules by request of 2001-02 Rule Objection.]

General Nature of Proposal

Current law generally imposes the sales and use tax on the sale of property to a service provider who transfers the property in conjunction with the furnishing of any service if the property is incidental to the service. [See s. 77.51 (13) (e), Stats.] Further, current law provides that tangible personal property transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service. [See s. 77.51 (5), Stats.] Specifically, the Wisconsin Administrative Code provides that persons who are engaged in the business of furnishing services are consumers, not retailers, of the tangible personal property which they use incidentally in rendering their service and, therefore, the sales and use tax applies to the sale of the tangible personal property to them. [s. Tax 11.67 (2), Wis. Adm. Code.] Further the code provides that the sales tax is imposed on the sale by farmers of game birds sold to persons, regardless of whether the birds are used as food for human consumption, if the primary reason for the purchase of the game birds is for hunting. [s. Tax 11.12 (7) (a), Wis. Adm. Code.]

In 2002, at the request of 37 legislators, the Joint Committee for Review of Administrative Rules (JCRAR) investigated the taxing of game bird sales under s. Tax 11.12 (7) (a), Wis. Adm. Code. A Department of Revenue (DOR) audit had recently discovered that game farms were not paying sales tax on the purchase of their game birds. As a result, DOR ordered the game farms to pay four years of back taxes plus interest. According to JCRAR, the game farms then produced a 1989 DOR memo including the following statement: "Game farms and shooting preserves which transfer birds to their customers as part of a recreational facility and which paid a sales tax on their receipts from the operation can purchase the birds without tax by giving a resale certificate to the seller." Consequently, DOR rescinded its request for back taxes and interest but notified the game farms of its intention to prospectively apply a rule requiring the imposition of a sales tax on the purchase of game birds by game farms. It was this decision that led the 37 legislators to request JCRAR to hold a hearing and suspend s. Tax 11.12 (7) (a), Wis. Adm. Code.

On November 7, 2002, the JCRAR held a public hearing and an executive session on s. Tax 11.12 (7) (a). The committee unanimously passed a motion, pursuant to s. 227.26 (2) (d), Stats., to suspend the administrative code provision. JCRAR also voted unanimously to introduce legislation to create a sales and use tax exemption for the sale of game birds to game farms and game clubs.

Senate Bill 6 was introduced by JCRAR. The bill exempts from the sales and use tax the sale of and the storage, use, or other consumption of game birds that are sold to game farms and game clubs. The sales and use tax exemption would become effective on the first day of the second month after the bill is published as law.

Legality Involved

There are no questions of legality involved.

Fiscal Effect Upon the State and Its Subdivisions

The DOR explains the fiscal effect of the bill as follows:

According to the Department of Natural Resources (DNR), each year DNR sells to operators of game farms about 300,000 tags which are attached to pheasants before being removed from the farm. According to the Wisconsin Gamebird Preserve Association (WGPA), about 75% of pheasants purchased by game farms are removed from farms. Thus, an estimated 400,000 pheasants ($300,000/.75$) are sold to game farms annually. Also according to WGPA, a mature game bird costs about \$7.50 on average. Therefore, estimated sales of game birds to game farms are about \$3,000,000 ($\$7.50 \times 400,000$) annually. In addition, according to the WGPA, about 40,000 chukar partridges, which do not require DNR tags, are purchased annually. Game farms pay about \$6 per chukar partridge and so total chukar partridge sales are estimated to be about \$240,000 ($\$6 \times 40,000$) per year. Total game bird sales are an estimated \$3,240,000 per year; therefore, under the bill, state sales taxes would decrease by about \$162,000 ($5\% \times \$3,240,000$) per year.

Distributions of county, baseball park and football stadium sales taxes were 7.268% of state sales taxes in FY02. Assuming this percentage remains constant, distributions of local sales taxes would decrease by about \$12,000 ($\$162,000 \times 7.268\%$) annually under the bill.

Administrative costs of the bill are minimal and would be absorbed by the Department.

Public Policy Involved

The bill is good public policy.