



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Assembly Bill 24

Assembly Amendment 1

Memo published: April 4, 2003

Contact: William Ford, Senior Staff Attorney (266-0680)

Assembly Bill 24 would repeal a state statute that imposes the liability for collecting the sales and use tax on manufacturers or wholesalers in certain instances where the state cannot legally require the seller of the item to collect and remit the sales tax to the state. The bill would first apply to tangible personal property that is delivered on the effective date of the enacted bill.

Assembly Amendment 1 (LRBa0300/1) would change the initial applicability of the bill so that it would first apply to sales of tangible personal property on the first day of the second month beginning after publication of the bill as an act.

Legislative History

Assembly Amendment 1 was recommended for adoption by the Assembly Committee on Ways and Means on April 2, 2003 by a vote of Ayes, 12, Noes, 0, and Absent or Not Voting, 2, and Assembly Bill 24 was recommended for passage, as amended, by a vote of Ayes, 12, Noes, 0, and Absent or Not Voting, 2.

WF:jal:wu:ksm



State of Wisconsin • DEPARTMENT OF REVENUE

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

Jim Doyle
Governor

Michael L. Morgan
Secretary of Revenue

Senate Homeland Security, Veterans & Government Reform Committee Hearing, February 18, 2004

AB 24 – Sales of Tangible Personal Property That Is Delivered in this State (Rep. Ziegelbauer, Sen. Lasee)

Description of Current Law and Proposed Change

- Under current law, sales tax on tangible personal property sold by an out-of-state retailer and delivered to a Wisconsin customer by a third party (often a Wisconsin manufacturer or a delivery company) is owed by the third party. Under the bill, the customer would pay use tax on purchases of such tangible personal property. The bill was amended to address the Department's concern with the initial applicability of the bill.
- In plain language, the bill changes the liability for tax on drop shipments. A drop shipment occurs when, for example, an Illinois retailer sells tangible personal property to a Wisconsin customer and instructs the Wisconsin manufacturer (the third party) to deliver the property directly to the Wisconsin customer. Under current law, the manufacturer pays sales tax; under the bill, the customer would pay use tax.

Fairness/Tax Equity

- The current treatment may result in the wrong amount of tax being collected on drop shipments – the third party may remit the wrong amount of sales tax since it typically does not know the price charged by the out of state retailer. Discovering and correcting errors is costly for both the taxpayer and Department.
- The current treatment of drop shipments may result in tax being charged twice for the same transaction. A customer lacking a receipt for sales tax paid by the third party may be liable for use tax on the same product.

Impact on Economic Development

- AB 24 is consistent with most states' current treatment and the Streamlined Sales Tax Project's treatment of drop shipments. Such consistency may increase efficiency by reducing taxpayer's compliance costs.

Administrative Impact/Fiscal Effect

- Since drop shipments remain taxable under the bill, the decrease in sales tax would, in principle, be offset by an increase in use tax. However, compliance with use tax liability

is very poor compared with sales tax compliance. Data are not available to estimate the likely revenue reduction under the bill.

DOR Position

- Support.

Prepared by: Blair P. Kruger 266-1310

February 17, 2004

BK:skr
I:\hearing\session 2002-2004\2004\bk\ab024/doc



BOB ZIEGELBAUER

STATE REPRESENTATIVE • TWENTY FIFTH ASSEMBLY DISTRICT

Committee on Homeland Security, Veterans and Military Affairs and Government Reform

Senator Ron Brown, Chair

Wednesday, February 18, 2004

9:00 a.m. – 330 Southwest, State Capitol

Support for 2003 AB 24

Sales and Use Tax Collection Responsibilities in Drop Shipment Sales

Mr. Chairman and Members:

Thank you for scheduling this hearing on AB 24 and for your consideration of it.

AB 24 is designed to allow Wisconsin manufacturers and wholesalers to be a little more competitive in the regional market place by eliminating disincentives for Wisconsin businesses to participate in "drop shipments."

A "drop shipment" is a sale in which the seller accepts an order from a customer, places that order with a third party (a manufacturer or wholesaler), and directs the third party to deliver the item directly to the customer.

If all the parties are located within the state, the seller is responsible for collecting sales or use tax as appropriate and forwarding that money to the state. (Please refer to Diagram 1 of the attachment.)

If the customer is not a resident of Wisconsin and initiates the sale from out of state (by telephone, fax or the Internet), Wisconsin sales tax is not charged regardless of where the seller and the third party are located. (Please refer to Diagram 2.)

If the customer and seller are in Wisconsin and the third party is not, the seller must collect sales tax. AB 24 would not effect these transactions. (Please refer to Diagram 3.)

However, problems sometimes arise when these orders cross state lines. If the customer and third party are in Wisconsin and the seller is not, the third party shipper must pay sales tax. (Please refer to Diagram 4.) This creates a significant disincentive for these wholesalers and manufacturers to locate in Wisconsin. AB 24 would eliminate the tax collection responsibility of third party shippers when the customer and third party are located in Wisconsin and the seller is out-of-state. As a result, "drop ship" distributors registered with Wisconsin to collect Wisconsin sales tax would not be at a disadvantage when competing to be a drop ship vendor.

Use tax would be the responsibility of the customer as it now is in similar transactions of purchases from out of state vendors.

Thank you again for your consideration. I would be happy to answer any questions.

STATE CAPITOL: P.O. BOX 8953, MADISON, WI 53708-8953 • (608) 266-0315

TOLL FREE: 1-888-529-0025 • FAX (608)-266-0316 or (608) 282-3625 • E-MAIL: bob.ziegelbauer@legis.state.wi.us

DISTRICT: 1213 S. 8TH STREET, P.O. BOX 325, MANITOWOC, WI 54221-0325

MANITOWOC OFFICE: (920) 684-6783 • HOME: (920) 684-4362

Seller = S
Customer = C
Wholesaler = W

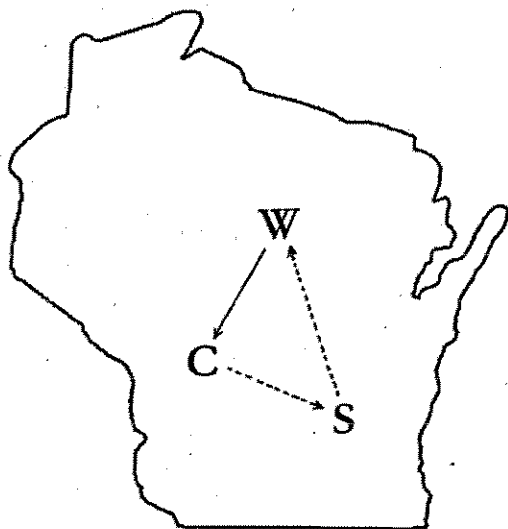


Diagram 1
No problem
Seller collects tax from customer

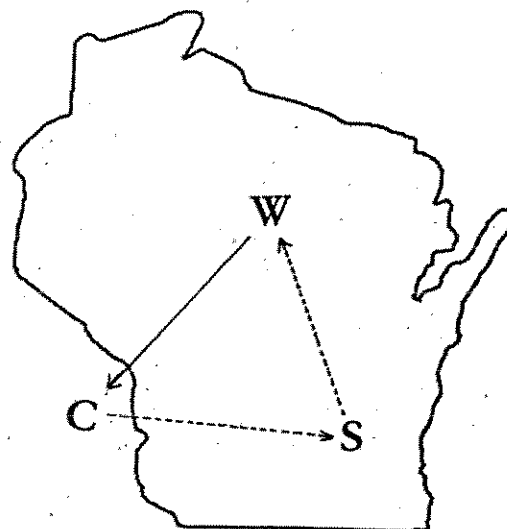


Diagram 2
No problem
No tax collection

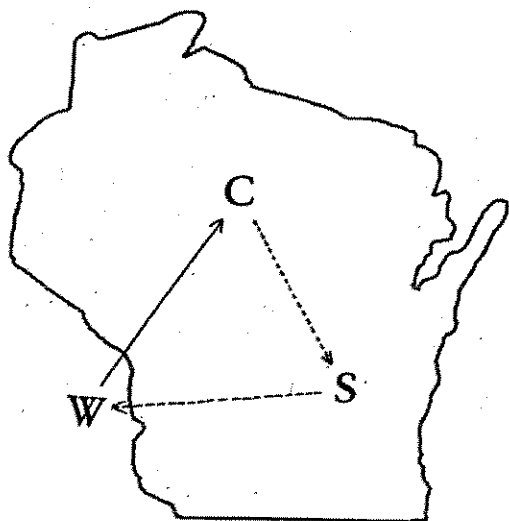


Diagram 3
No problem
Seller collects tax from customer

Streamline Sales Tax

Require the seller to collect.

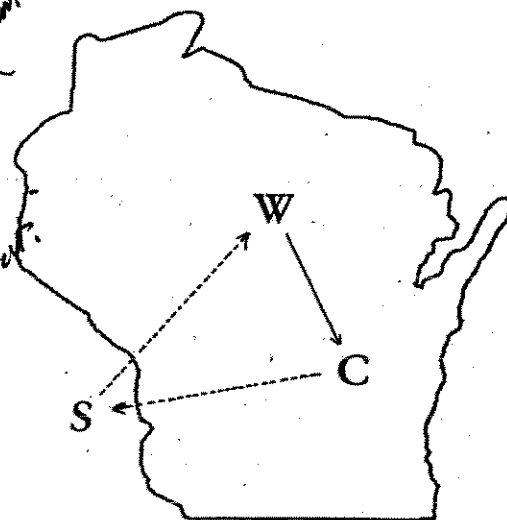


Diagram 4
Problem

- Disincentive for wholesaler to locate in Wisconsin because the wholesaler, not the seller, must collect tax from the customer.
- Since tax is supposed to be charged based upon seller's price to consumer, correct amount to charge could be a mystery.
- Reseller views tax as an additional cost of buying from a Wisconsin registrant. (Due to self-assessment of use tax, Wisconsin customer often pays double tax.)

State Taxability of Drop Shipments

January 15, 2001

The following information summarizes the status of drop shipments when both the manufacturer / wholesaler and the consumer are in a state but the retailer is located outside the state.

Illinois

Primary sale exempt if retailer furnishes an Illinois resale number or other evidence that the sale is for resale. Consumer liable for use tax on secondary transaction.

Iowa

Consumer liable for use tax.

Michigan

Consumer liable for use tax.

Minnesota

Exempts the primary sale provided the purchaser furnishes a resale certificate. Customer liable for use tax.

Wisconsin

Delivery by supplier to Wisconsin customer of an out-of-state retailer is regarded as a taxable sale. Supplier must collect tax from the customer based on the retail price of the property delivered. However, if the Wisconsin purchaser furnishes a property completed exemption certificate, the delivery is not a taxable sale.

(The above information was taken from "Sales & Use Tax Alert – State Taxability of Drop Shipments", January 15, 2001 which was forwarded to my office from the WI Department of Revenue.)



**WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO**

2003 Assembly Bill 24	Assembly Amendment 1
<i>Memo published: April 4, 2003</i>	<i>Contact: William Ford, Senior Staff Attorney (266-0680)</i>

Assembly Bill 24 would repeal a state statute that imposes the liability for collecting the sales and use tax on manufacturers or wholesalers in certain instances where the state cannot legally require the seller of the item to collect and remit the sales tax to the state. The bill would first apply to tangible personal property that is delivered on the effective date of the enacted bill.

Assembly Amendment 1 (LRBa0300/1) would change the initial applicability of the bill so that it would first apply to sales of tangible personal property on the first day of the second month beginning after publication of the bill as an act.

Legislative History

Assembly Amendment 1 was recommended for adoption by the Assembly Committee on Ways and Means on April 2, 2003 by a vote of Ayes, 12, Noes, 0, and Absent or Not Voting, 2, and Assembly Bill 24 was recommended for passage, as amended, by a vote of Ayes, 12, Noes, 0, and Absent or Not Voting, 2.

WF;jal:wu;ksm