



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

April 18, 2005

MEMORANDUM

To: Representative Molepske

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2005 AB-249** (LRB 05-1126/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

April 15, 2005

TO: Joe Kreye
Legislative Reference Bureau

FROM: Blair Kruger
Department of Revenue

SUBJECT: Technical Memorandum on AB 249 - Direct Marketing of Cigarettes

In some sections, the bill is unclear and does not fully accomplish the desired result. The following changes are suggested.

1. The bill should require direct marketers to pay the sales tax. The author might consider renumbering ss. 77.61 (11) to 77.61 (11) (a) and create s. 77.61 (11) (b) to read:

The department, whose duty it is to issue permits to direct marketers under ss. 139.345 and 139.795, shall, before issuing such permit, require proof that the person to whom such permit is to be issued is the holder of a seller's permit or is otherwise registered to collect, report, and remit use tax under this subchapter or has been informed by an employee of the department that the department will issue a seller's permit or register the direct marketer to collect, report and remit use tax under this subchapter.

2. To assure consistency with other retail applications, the bill should require the Department of Revenue to prepare an application form for cigarette and tobacco products containing specific information to be defined by the department.
3. Page 7, line 22. The insertion "or from the first importer of record" after "the manufacturer thereof" may impede the enforcement of the cigarette Master Settlement Agreement (MSA).
4. To assure consistency with the cigarette MSA under ss. 895.10 and 895.12, the author might amend s. 139.30 (7) to add the word "directly" before "manufactures cigarettes for the purpose of sale".
5. Page 11, line 15. The direct-buy requirement under current law is a major enforcement tool for safeguarding MSA payments to the state. The author should consider retaining the phrase "from the manufacturers thereof" in s. 139.34 (6) to help the enforcement.
6. Page 12, lines 14-15. The author might consider adding "in the manner prescribed by the department" after "unless the person certifies to the department" to assure consistency of the certification process.
7. Page 12, lines 16-17. Since a person can buy stamped cigarettes only from a licensed distributor, the bill should be amended to reflect this limitation.

8. Page 12, lines 14-23. Whenever "distributor" (purchases tax stamps from the department and affixes those stamps to unstamped cigarettes acquired from the manufacturer of those cigarettes) or "cigarette jobber" (purchases cigarettes already tax stamped from a distributor) is referenced, a "direct marketer authorized by the department to purchase and affix tax stamps" should also be referenced.
9. Since the bill refers to two different and distinctive direct marketer permits to be issued by the department under s. 139.345 (1) (c), the term "direct marketer" should be clarified. Without this clarification, direct marketer permittees may alter their business activities without the department's knowledge and required approval, causing enforcement and/or tax collection issues.
10. Under current law, all brands of cigarettes must be certified to the Attorney General prior to being sold in the State. The author should consider creating a s. 139.345 (3) (c) to read:

No person may sell cigarettes to consumers in this state by direct marketing unless the cigarette brands are approved by the department and listed in the directory of certified tobacco product manufacturers and brands as provided under s. 895.12 (2) (b).
11. An effective date of July 1, 2006 is recommended to allow time to notify and register direct marketers and make other changes to department's forms, publications and systems.

The department recommends drafting this bill based on the proposal for direct marketing of cigarettes in AB 100. AB 100 reflects the department's position on direct marketing of cigarettes and the department is willing to work with the author to make the necessary technical changes which were included in AB 100 that are needed to administer and enforce direct marketing, such as officer liability and issuing updated permits.

If you have any questions regarding this technical memorandum, please contact Jacek Cianciara at 267-5189.

cc: Rep. Molepske