State of Wisconsin

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STEPHEN R. MILLER
CHIEF

May 1, 2007

MEMORANDUM

To: Senator Miller

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

Debora A. Kennedy, Assistant Chief Counsel, (608) 266–0137

Subject: Technical Memorandum to **2007 SB 117** (LRB–2210/1) **by DOR**

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.

M E M O R A N D U M

April 17, 2007

TO: Joe Kreye & Debora Kennedy, Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on SB 117 – Soft Drink Tax

SB 117 imposes an excise tax on soft drinks.

The Department of Revenue has the following concerns with the bill:

- It is unclear how "doing business in this state," and "a sale in this state" is defined. Since the tax under the bill is similar to other excise taxes, the author of the bill could use definitions similar to those used for other excise taxes such as alcohol, tobacco, or motor fuels.

- The term "wholesaler" is defined in such a way that the same physical product may be taxed more than once. If the intent of the bill is to impose the tax only once with respect to a sale of a product, the bill should provide for a mechanism to exempt sales of the product by wholesalers which occur after the first sale in this state for which the tax was imposed.

- It is possible that under the bill an out-of-state wholesaler could sell soft drink products to Wisconsin retailers without being "engaged in business in this state" and not paying the tax. To eliminate this situation, the bill should provide that whenever an out-of-state wholesaler who is not "engaged in business" in Wisconsin makes a sale of soft drink products to a Wisconsin buyer, the buyer is liable for the tax.

- Products such as Kool-Aid are sold at retail in packets which make one-half gallon of soft drink according to the manufacturer's instructions. It is not clear from the bill if the intent is to tax these packets at $0.105 per packet (half of $0.21 per gallon) or not to tax them at all. If the intent is to exempt such packets from the tax, specific language providing for such an exemption is recommended. If the intent is to apply the tax to such packets, then it is suggested that appropriate wording be adopted to clarify this position.

- Many of the products that are defined to be soft drinks under the bill are not sold, literally, in a "bottle" but are packaged in aseptic boxes, foil pouches and cans. The author may consider providing a definition of "bottled soft drinks."

- The author may clarify how soft drink syrup is to be taxed. It appears that soft drink syrup is being taxed in two different manners. Under the bill, "soft drink syrup" is taxed at the rate of $2.00 per gallon (under sec. 77.9982(1)) and "soft drink syrups" are taxed at $0.21 for each gallon of soft drink that may be produced from each package or container under sec. 77.9982(3).

- In general, the State of Wisconsin may not impose a tax directly on the United States Government. Under the bill, the tax is imposed on the wholesaler on any soft drink sale by the wholesaler. The bill's author may qualify that the sale to the United States Government, its agents or offices, is exempted from the tax.

- To allow the Department of Revenue adequate time to educate taxpayers, develop computer programs, and provide the necessary reporting forms, it is recommended that the tax become effective no earlier than the first day of the third month following the date of publication.

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

	Chapter 20	**Amount**	**FTE**
One-time	s. 20.566 (1) (a)	$10,600	0.0
Annual	s. 20.566 (1) (a)	$51,400	1.0

If you have any questions regarding this technical memorandum, please contact Jacek Cianciara, at (608) 266-8133; for costs, please call Julie Raes at (608) 267-9892.

cc: Senator Miller