



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

April 17, 2007

MEMORANDUM

To: Senator Hansen

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

Subject: Technical Memorandum to **2007 SB 122** (LRB-2089/3) 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.

MEMORANDUM

April 10, 2007

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on SB 122: Waste Treatment Exemption – Exclusive Use Requirement

The Department of Revenue has the following technical concerns regarding the bill:

Property Tax

1. The definition of "used exclusively" in the bill should be refined. The term "energy" is undefined and it is unclear whether the two exceptions to "used exclusively" are independent or intertwined. Also, if it is the author's intent to exempt from the property tax boilers fueled exclusively by waste, this intent may be achieved more directly by allowing the exception for "used exclusively" to be for the production of heat or steam exclusively (95%) produced from industrial waste.

To incorporate these concerns, the definition of "used exclusively" under section 70.11(21)(ab) should read as follows:

3. "Used exclusively" means to the exclusion of all other uses except:
 - a. For other use not exceeding 5 percent of total use, or
 - b. To produce heat or steam from fuel that is 95% or more industrial waste for a manufacturing process, if the industrial waste would otherwise be considered superfluous, discarded, or fugitive material.
2. Nonstatutory provisions would be needed to ensure appeal rights and address transitional issues for the first year of the law change if the bill were to become law after assessments of waste treatment property for 2007 are sent out. Language would be needed to clearly specify that, notwithstanding an earlier assessment, the assessment under provisions of [this act] would supersede the previous one. In addition, language should clearly establish the right of the companies and municipalities affected by new assessments to appeal the new assessment during the transitional period.

Sales Tax

1. A retroactive effective date of January 1, 2007, could result in sales of property becoming taxable after a sale has occurred. To avoid that problem, the Department recommends creating an effective date for purposes of sales tax that would first apply to sales on the first day of the second month after publication.
2. A builder may have entered into a contract to construct real property -- an exempt-under-Newark waste treatment facility -- where the contract price does not include sales and use tax. In this case, the builder would give the building supply company an exemption certificate since the materials are for exempt waste treatment real property. Under SB 122, the taxable/exempt status of the real property changes -- the real property that was exempt at the time the contract is signed is taxable at the time materials are bought. The contractor cannot pass the tax through to the customer.

To shield the contractor from having to absorb the sales and use tax in this instance, the Department suggests amending s. 77.54 (26) to include language such as:

The treatment for sales and use tax purposes under [this act] does not apply to tangible personal property purchased in fulfillment of a contract to construct, repair, or improve a waste treatment facility entered into, or a formal bid made, prior to [effective date of this act] where the tangible personal property is affixed to and made a structural part of the real property.

If you have any questions regarding this technical memorandum, please contact Pam Walgren at 266-7817 for property tax issues and Blair Kruger at 266-1310 for sales tax issues.

cc: Sen. Hansen