



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

August 17, 2009

MEMORANDUM

To: Representative Murtha

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

Subject: Technical Memorandum to **2009 AB 339** (LRB-1922/1) **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.

MEMORANDUM

August 14, 2009

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical memorandum on AB 339 – sales tax holiday for purchases of certain construction materials

The Department has the following concerns with the bill:

1. The bill does not conform to the Streamlined Sales and Use Tax Agreement (SSUTA) requirements for allowable temporary sales tax exemptions. Under SSUTA, a member state, including Wisconsin, may only provide a temporary sales tax exemption for the items expressly defined in the Library of Definitions in the Streamlined Agreement. None of the items listed in the bill (such as lumber and siding) are defined in the Library of Definitions. Conversion of the bill from a temporary to a permanent exemption would be necessary to exempt the desired items under the bill while maintaining compliance with SSUTA.
2. SSUTA also requires member states to provide notice of an exemption period at least 60 days prior to the first day of the calendar quarter in which an exemption period will begin. The bill, however, is effective the first day of the second month beginning after publication, and consequently, does not allow for the SSUTA required notice.
3. If Wisconsin implemented a temporary sales tax exemption outside SSUTA standards, Wisconsin could lose its SSUTA membership. Approximately 1,100 retailers will register with Wisconsin no later than October 1, 2009 when Wisconsin becomes a full member state to the SSUTA agreement. If Wisconsin does not conform to the SSUTA and consequently loses its membership, those 1,100 out-of-state retailers would not be obligated to collect sales and use taxes for Wisconsin.
4. The retroactive nature of the exemption will create complexity for retailers and the Department of Revenue. The bill allows the exemption for certain construction materials used in residences placed in service after the effective date of the bill. Consequently, contractors who paid the sales or use tax on purchases of materials used in construction prior to the effective date would have to file refund claims to recover the tax paid on such purchases. This would create administrative burdens for contractors in filing refund claims and for the Department of Revenue in auditing and processing the claims. This concern could be addressed by modifying the bill to apply the exemption to purchases made on or after the effective date.

5. The bill would increase the burden on retailers to obtain and retain exemption certificates. Currently, the number of buyers providing exemption certificates is relatively limited (including persons who are in business and buying for resale, farmers, manufacturers, etc.) If this exemption is passed, however, the number of exemption certificates would greatly increase because anyone buying one of the specified items (lumber, siding, etc.) would qualify for the exemption provided it is used for a single-family residence. Because the exemption depends on the buyer's use of the item purchased, sellers would have to obtain exemption certificates from buyers in order to document the exemption.
6. Certain terms in the bill are ambiguous. For example, it is unclear whether "lumber" includes pre-built trusses, plywood, or wood cabinets. It is also unclear whether lumber purchased and used to build construction site accessories would be eligible for exemption, such as a contractor buying lumber used to build sawhorses. To clarify several of these issues, the bill could be amended to indicate whether or not it includes pre-built items such as cabinets and trusses. Also, if desired, a condition could be added to require that, in order for the exemption to apply, the lumber, siding, cement, windows, doors, and roofing materials must become a part of the single family residence. The Department of Revenue could also be given authority to address a range of other issues by administrative rule – such as layaway sales, coupons and discounts, splitting of items normally sold together, rain checks, exchanges, delivery charges, order date and back orders, and returns.

If you have questions regarding this technical memorandum, please contact Jacek Cianciara at (608) 266-8133 or jcianciara@dor.state.wi.us.

cc: Rep. Murtha