



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

March 9, 2012

MEMORANDUM

To: Senator Ellis

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

Subject: Technical Memorandum to **2011 SB 456** (LRB-4019/1) 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

March 5, 2012

TO: Joe Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on SB 456 – relating to authorizing the creation of a Fox Cities regional transit authority and making appropriations.

The Department has the following concerns with SB 456:

1. The Streamlined Sales and Use Tax Agreement (SSUTA) requires member states to provide at least 120 days notice prior to local sales tax rate changes. Several sections of the bill, however, allow circumstances where DOR would be unable to provide this required notice.
 - a. Under the bill, it appears a regional transit authority tax may be effective, even if the RTA does not provide the Department of Revenue (DOR) the certified copy of the resolution at least 120 days before its effective date. In addition, the bill does not require the RTA to provide DOR with a certified copy of the referendum.
 - b. Under the bill, the repeal of the transit authority's tax may be effective on the first day of the calendar quarter after the quarter in which the transit authority adopts the repeal, even though DOR does not receive a certified copy of the repeal resolution at least 120 days before the effective date. As a result, the transit authority could adopt a repeal resolution near the end of a calendar quarter with an effective date on the first day of the next calendar quarter, which would not allow DOR to provide 120 days notice to filers.

In order to ensure the RTA provides DOR with certified copies of the resolution, referendum, and repeal resolution at least 120 days before the effective date of a transit authority tax (and thereby allow compliance with the SSUTA), DOR recommends the following changes:

- Amend sec. 77.708 (1) (page 25, lines 1-3), to read as follows:

"...The resolution and referendum shall be effective on the first day of the calendar quarter that begins at least 120 days after a certified copy of the resolution and affirmative result of the referendum is delivered to the department of revenue."

- Amend sec. 77.708 (2), (page 25, lines 4-9), to read as follows:

"Retailers and the department of revenue may not collect a tax under sub. (1) for any transit authority created under s. 66.1039 beginning on the first day of the calendar quarter that is at least 120 days after a certified copy of the repeal resolution under sec. 66.1039 (4) (s), is delivered to the department of revenue,..."

Approximately 1,100 retailers registered with Wisconsin by October 1, 2009 when Wisconsin became a full member state to the SSUTA agreement. If Wisconsin does not conform to the SSUTA and consequently loses its membership, those out-of-state retailers that do not have a legal requirement to register in Wisconsin would no longer be obligated to collect sales and use taxes for Wisconsin and this would result in a decrease in sales tax revenues.

2. Under the bill, the RTA may impose a sales tax of up to 0.5%. The transit authority could adopt a rate that is difficult for retailers and the department to accommodate in their systems. To ensure that retailers' and the department's systems can accommodate the tax rates adopted by the RTA, the department recommends that the bill restrict sales and use tax rates to increments of one-tenth of one percent (for example, 0.3% or 0.2%) up to the bill's maximum of 0.5%.
3. Under the bill, s.77.76 (5) provides that if a retailer receives notice from DOR that the retailer is required to collect transit authority taxes, but the retailer believes it is not "doing business" in the transit authority's jurisdictional area, the retailer shall notify DOR, who will then affirm or revise its determination. Under s.77.73 (3) as amended by the bill, however, the RTA (parallel to a county or a special district) has jurisdiction to impose its sales and use taxes on any retailer who is required to collect and remit Wisconsin state sales or use tax regardless of whether that retailer is "doing business" within the RTA. Given the potential conflict between these provisions, DOR recommends that s.77.76 (5) (section 26 of the bill) be deleted to maintain consistency with existing local sales tax provisions.

If you have questions regarding this technical memorandum, please contact Bob Schmidt at (608) 267-9892 or robertk1.schmidt@revenue.wi.gov.

cc: Senator Ellis