2019 DRAFTING REQUEST

Bill

For:	**Amy Loudenbeck (608) 266-9967**	Drafter:	**jkreye**
By:	**danielle**	Secondary Drafters:	
Date:	**1/9/2019**	May Contact:	
Same as LRB:	**-1353**		

Submit via email: **YES**
Requester's email: **Rep.Loudenbeck@legis.wisconsin.gov**
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Disclosure of seller's tax liability to successor

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Submitted	Jacketed	Required
/?	jkreye 1/9/2019				
/P1		csicilia 1/10/2019	mbarman 1/10/2019		
/1			mbarman 1/14/2019	mbarman 1/15/2019	

FE Sent For: *Not Needed*   **<END>**

Kreye, Joseph

From:	Zimmerman, Danielle
Sent:	Wednesday, January 09, 2019 9:07 AM
To:	Kreye, Joseph
Subject:	tax successor liability drafting
Attachments:	201901090845.pdf

Hi Joe-

Rep. Loudenbeck is interesting in drafting a bill that would allow DOR to inform a purchaser about tax liability debt. I've attached some information. Would you be the correct person to help us get something started?

Thank you.

Danielle Zimmerman
Chief of Staff
Office of Rep. Amy Loudenbeck | District #31 | 608-266-9967
Room 304 East | State Capitol | P.O. Box 8952 | Madison, WI 53708

Disclosure of Seller's Tax Liability to Successor

yes

DESCRIPTION OF PROBLEM

The Department of Revenue (DOR), under sec. 77.61(5), Wis. Stats, does not have the authority to provide or share sales and use tax information with the potential purchaser or successor of a business.

The problem is that a potential purchaser must rely on the seller to provide past due sales tax obligations. A purchaser is required to hold amounts to satisfy the sales tax liability under sec. 77.52(18), Wis. Stats., in escrow until a clearance certificate can be obtained from DOR. Due to confidentiality provisions, DOR is not able to share the seller's sales tax history prior to the sale which makes it difficult for purchasers to verify amounts and make an informed decision related to their purchase.

SOLUTION

Provide the potential purchaser or successor of a business with information pertaining to the business' outstanding sales tax debt. The states of Minnesota and Illinois have similar legislation.

DRAFTING INSTRUCTIONS

Create sec. 77.61(5)(b)14, Wis. Stats. to read:

> For purposes of determining whether a retailer is liable for any amount of tax under this subchapter and obtaining the outstanding liability of the retailer as required under s. 77.52(18), any person, or authorized agent of any person, who provides satisfactory evidence to the department, as determined by the department, that the person intends to purchase or has purchased the retailer's business or stock of goods or that the retailer will quit the business and the person will be the successor or assignee of the retailer.

FISCAL EFFECT

There is no fiscal effect.
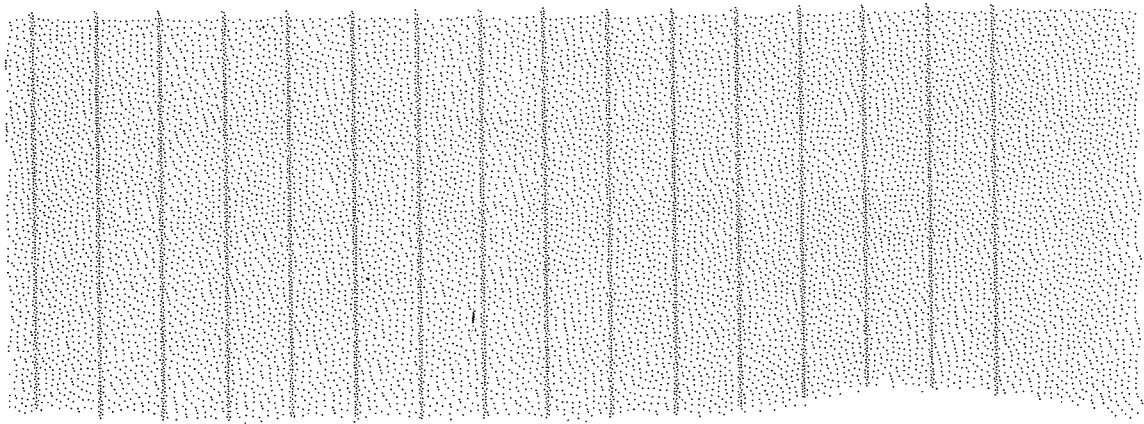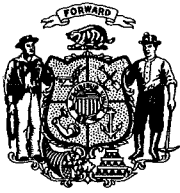
PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; **relating to:** the disclosure of a retailer's sales tax liability to a

2 successor.

Analysis by the Legislative Reference Bureau

Current law generally prohibits the Department of Revenue from divulging information about a retailer that is included in the sales tax returns filed by the retailer. DOR is also prohibited from disclosing information about a retailer included in an audit or investigation of its sales tax liability. However, DOR may allow certain persons to examine the returns, and related schedules, exhibits, and audit reports, for purposes of administration and enforcement. Such persons include the secretary of DOR and DOR officers, agents, and employees; the attorney general and department of justice employees; public officers of the federal government or other state governments, to the extent that those governments afford similar rights of examination to Wisconsin state officials; and any person against whom DOR asserts a sales tax liability, including a successor, guarantor or surety.

Under this bill, if a person provides evidence to DOR that the person intends to purchase or has purchased a retailer's business or inventory or that the retailer is quitting the business and the person will be the retailer's successor or assignee, that person may examine the retailer's sales tax returns, and related schedules, exhibits, and audit reports, for the purpose of determining whether the retailer is liable for any amount of sales tax and obtaining the amount of its outstanding liability. Current law requires the purchaser of a retailer's business or inventory to withhold the amount of the purchase price sufficient to pay the retailer's outstanding

sales tax liability. If the purchaser does not withhold the required amount, the purchaser becomes personally liable for payment of that amount to DOR.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   SECTION 1. 77.61 (5) (b) 14. of the statutes is created to read:

2   77.61 **(5)** (b) 14. For purposes of determining whether a retailer is liable for any

3   amount of tax under this subchapter and obtaining the outstanding liability of the

4   retailer as required under s. 77.52 (18), any person, or authorized agent of any

5   person, who provides satisfactory evidence to the department, as determined by the

6   department, that the person intends to purchase or has purchased the retailer's

7   business or stock of goods, or that the retailer will quit the business and the person

8   will be the successor or assignee of the retailer.

9   **(END)**

in order to comply with

Kreye, Joseph

From:	Zimmerman, Danielle
Sent:	Monday, January 14, 2019 12:14 PM
To:	Kreye, Joseph
Subject:	RE: tax successor liability drafting

Hi Joe-

The bill looks great. Could we get the /1?

Thanks!

From: Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>
Sent: Wednesday, January 09, 2019 1:05 PM
To: Zimmerman, Danielle <Danielle.Zimmerman@legis.wisconsin.gov>
Cc: Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>; McNulty, Patrick <Patrick.McNulty@legis.wisconsin.gov>
Subject: RE: tax successor liability drafting

Will do. Thanks Danielle.

Joseph T. Kreye
Legal Services Manager
Legislative Reference Bureau
608 504-5857

From: Zimmerman, Danielle <Danielle.Zimmerman@legis.wisconsin.gov>
Sent: Wednesday, January 09, 2019 1:03 PM
To: Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>
Cc: Lonergan, Sandy <Sandy.Lonergan@legis.wisconsin.gov>; McNulty, Patrick <Patrick.McNulty@legis.wisconsin.gov>
Subject: FW: tax successor liability drafting

Hi Joe-

Senator Kooyenga's office is going to be the lead in the Senate, if you'd like to draft a companion for them.

Thank you!

From: Zimmerman, Danielle
Sent: Wednesday, January 09, 2019 9:07 AM
To: Kreye, Joseph <Joseph.Kreye@legis.wisconsin.gov>
Subject: tax successor liability drafting

Hi Joe-

Rep. Loudenbeck is interesting in drafting a bill that would allow DOR to inform a purchaser about tax liability debt. I've attached some information. Would you be the correct person to help us get something started?

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Danielle Zimmerman

Chief of Staff
Office of Rep. Amy Loudenbeck | District #31 | 608-266-9967
Room 304 East | State Capitol | P.O. Box 8952 | Madison, WI 53708

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1   AN ACT *to create* 77.61 (5) (b) 14. of the statutes; **relating to:** the disclosure of

2   a retailer's sales tax liability to a successor.

Analysis by the Legislative Reference Bureau

Current law generally prohibits the Department of Revenue from divulging information about a retailer that is included in the sales tax returns filed by the retailer. DOR is also prohibited from disclosing information about a retailer included in an audit or investigation of its sales tax liability. However, DOR may allow certain persons to examine the returns, and related schedules, exhibits, and audit reports, for purposes of administration and enforcement. Such persons include the secretary of revenue and DOR officers, agents, and employees; the attorney general and department of justice employees; public officers of the federal government or other state governments, to the extent that those governments afford similar rights of examination to Wisconsin state officials; and any person against whom DOR asserts a sales tax liability, including a successor, guarantor or surety.

Under this bill, if a person provides evidence to DOR that the person intends to purchase or has purchased a retailer's business or inventory or that the retailer is quitting the business and the person will be the retailer's successor or assignee, that person may examine the retailer's sales tax returns, and related schedules, exhibits, and audit reports, for the purpose of determining whether the retailer is liable for any amount of sales tax and obtaining the amount of its outstanding liability. Current law requires the purchaser of a retailer's business or inventory to withhold the amount of the purchase price sufficient to pay the retailer's outstanding

sales tax liability. If the purchaser does not withhold the required amount, the purchaser becomes personally liable for payment of that amount to DOR.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   SECTION 1. 77.61 (5) (b) 14. of the statutes is created to read:

2   77.61 **(5)** (b) 14. For purposes of determining whether a retailer is liable for any

3 amount of tax under this subchapter and obtaining the outstanding liability of the

4 retailer in order to comply with s. 77.52 (18), any person, or authorized agent of any

5 person, who provides satisfactory evidence to the department, as determined by the

6 department, that the person intends to purchase or has purchased the retailer's

7 business or stock of goods, or that the retailer will quit the business and the person

8 will be the successor or assignee of the retailer.

9   **(END)**

From:	Zimmerman, Danielle
Sent:	Tuesday, January 15, 2019 7:35 AM
To:	LRB.Legal
Subject:	Draft Review: LRB -1297/1

Please Jacket LRB -1297/1 for the ASSEMBLY.