



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 491

**Assembly Substitute
Amendment 1**

Memo published: January 17, 2002

Contact: William Ford, Senior Staff Attorney (266-0680) or
Joyce L. Kiel, Senior Staff Attorney (266-3137)

CURRENT LAW

In general, a sales tax is imposed on the gross receipts from the sale, lease, or rental of tangible personal property and services identified in the statutes. A companion use tax is imposed on the storage, use, or other consumption of the property or services purchased from out-of-state retailers if the sale would have been taxable if the property or services had been purchased in the state. A credit is allowed for sales tax paid in the other state. Current law provides various general exemptions from the sales and use taxes as set forth in s. 77.54, Stats.

One of these exemptions is for the gross receipts from the sale of and the storage, use, or other consumption of:

Motor trucks, truck tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers and semitrailers *exclusively as common or contract carriers*, including the urban mass transportation of passengers as defined in s. 71.38. [s. 77.54 (5) (b), Stats. (emphasis added).]

Current statutes do not define “common carrier” or “contract carrier” for this purpose. The Department of Revenue (DOR) has promulgated administrative rules relating to the exemption for common carriers and contract carriers. [s. Tax 11.16, Wis. Adm. Code.] The administrative rules do not define “common carrier” or “contract carrier.” However, DOR uses the definitions in ch. 194, Stats., relating to motor vehicle transportation, and the use of these definitions has been endorsed by the Wisconsin Supreme Court. [*Gensler v. Department of Revenue*, 70 Wis. 2d 1108, 1114, 236 N.W.2d 648, 651 (1975).] These definitions are as follows:

“Common motor carrier” means any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers by motor vehicle between fixed end points or over a regular route upon the public highways or *property* over regular or irregular routes upon the public highways. The transportation of passengers in taxicab service or in commuter car pool or van pool vehicles with a passenger-carrying capacity of less than 16 persons or in a school bus under s. 120.13 (27) shall not be construed as being that of a common motor carrier. [s. 194.01 (1), Stats. (emphasis added).]

“Contract motor carrier” means any person engaged in the transportation by motor vehicle over a regular or irregular route upon the public highways of *property* for hire. [s. 194.01 (2), Stats. (emphasis added).]

According to DOR staff, DOR has a long-standing interpretation that “property” means something that has value. ***Thus, DOR does not consider a vehicle that is used to transport something that does not have value to be a vehicle used exclusively as a common carrier or contract carrier as provided in s. 77.54 (5) (b), Stats., even if the transportation is for hire. Thus, it is DOR’s position that such a vehicle does not qualify for the sales and use tax exemption.*** According to DOR staff, this position is based on interpretations from the Public Service Commission (which apparently regulated common and contract carriers in the past) and subsequently the Department of Transportation (DOT) that a person who hauls property without value (for example, garbage or snow) for hire is not considered to be either a common carrier required to obtain a certificate from DOT or a contract carrier required to obtain a license from DOT.

DOR administrative rules do not explicitly state that vehicles used to transport property that does not have value are not entitled to the exemption. However, the rules provide an example which states that “trucks purchased for hauling refuse, garbage or snow do not qualify for the exemption [from sales and use tax].” [s. Tax 11.16 (1) (h), Example 3., Wis. Adm. Code.]

It should be noted that under DOR rules, infrequent and sporadic use other than as a common or contract carrier would not invalidate the exemption for a vehicle. [s. Tax 11.16 (1) (am), Stats.] Thus, a vehicle could be used by a common or contract carrier on an infrequent and sporadic basis to haul valueless property for hire without losing the tax exemption.

ASSEMBLY SUBSTITUTE AMENDMENT 1 TO 2001 ASSEMBLY BILL 491

In contrast to 2001 Assembly Bill 491, Assembly Substitute Amendment 1 to the bill does not define “common carrier” or “contract carrier.” Thus, the definitions used by DOR and endorsed by the Wisconsin Supreme Court in *Gensler* would continue to be applied.

Instead, the substitute amendment ***creates an additional exemption from the sales and use tax*** for gross receipts from the sale of and the storage, use, or other consumption of the following:

1. Semitrailers that are at least ***40 feet long***, equipped with a ***walking floor***,¹ and used for any of the following:

¹ A walking floor allows material in a semitrailer to be moved along the floor of the semitrailer for unloading without tipping the semitrailer.

- a. Exclusively and directly to haul for hire² garbage, refuse, sludge, or other materials that *have no value, from a transfer station to a disposal site.*
 - b. *Part of the time* to haul for hire garbage, refuse, sludge, or other materials that have no value from a transfer station to a disposal site and *the remainder of the time* in use as common or contract carriers, as discussed above.
2. Road tractors or truck tractors³ that are used for any of the following:
 - a. Exclusively and directly to haul semitrailers described in 1., above.
 - b. Part of the time to haul semitrailers described in 1., above, and the remainder of the time in use as common or contract carriers, as discussed above.
 3. Accessories, attachments, parts, supplies, and materials for the vehicles described in items 1. and 2., above, if these articles are consumed by or remain with such vehicles.

The substitute amendment takes effect on the first day of the second month beginning after publication.

Assembly Bill 491 and Assembly Substitute Amendment 1 to the bill were introduced by Representative Stone. Assembly Substitute Amendment 1 was recommended for passage by the Assembly Committee on Ways and Means on January 16, 2002 by a vote of Ayes, 13, Noes, 0.

JLK:ksm;jal:rv;ksm;tlu

² “For hire” is defined as for compensation, and includes compensation obtained by a motor carrier indirectly, by subtraction from the purchase price or addition to the selling price of property transported, where the purchase or sale thereof is not a bonafide purchase or sale. [s. 194.01 (4), Stats.]

³ Road tractors and truck tractors are defined in s. 340.01 (53) and (73), Stats., respectively.