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Testimony on Assembly Bill 910

Assembly Committee on Jobs, Economy and Small Business Devolvement

Thank you, Chairman Gundrum, for bringing this bill before your committee today.

In short, this bipartisan legislation is needed to create a clear mechanism for out-of-state retailers of cigars to collect and remit Wisconsin excise tax on products sold remotely to state residents.

As committee members may know, in 2018, the US Supreme Court's *South Dakota v. Wayfair* decision cleared the way for states to collect sales tax on remote purchases. Wisconsin followed other states in enacting "Wayfair" laws to facilitate remote sales transactions. However, as with many other states, the Wisconsin law did not address excise tax collections.

This issue was brought to my attention by the cigar industry, whose products are often bought and sold remotely by retailers who are willing and wanting to collect and remit all required state tax revenue. The law is needed to address exactly when a state's excise taxes become attached to a product in a store or warehouse that is being sold to an individual in another state.

Wisconsin is not alone in needing this statutory clarification, and many other states have or are in the process of adopting similar legislation. So far, similar measures have passed in Colorado, Indiana, Maine, Maryland, Michigan, North Carolina, and Virginia and are currently under consideration in Illinois.

As bill authors, we have been in conversation with the Department of Revenue and other stakeholders regarding the bill's language. AB 910 reflects several changes that were recommended by DOR in the drafting stage, but it is my understanding that the Department is raising some additional concerns. I want to be clear that I am happy to continue to work with them to improve the language and getting it signed into law before the Legislature adjourns is a mutual goal.

The lack of certainty under the current law needs to be addressed, and at the end of the day, you have retailers who are willing to comply with Wisconsin's tax policy and need this bill to help them comply.

As for the specifics of the tax law, there will be other testimony here today that will go into greater detail on why this language is needed and what is happening around the country to address the excise tax issue.

Thank you again, Mr. Chairman, and I am happy to answer any questions I can.



DAN FEYEN

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To: The Assembly Committee on Jobs, Economy and Small Business Development
From: Sen. Dan Feyen
Re: Assembly Bill 910

Thank you, Chairman Gundrum and members of the committee, for holding this public hearing today.

Under current tax law, there is a lack of certainty pertaining to the remote sale of cigars by out of state retailers. Specifically, this legislation seeks to provide clarity and create an avenue for out of state retailers to collect and remit Wisconsin excise tax when they have remotely sold a product to a Wisconsin resident.

After the 2018 SCOTUS decision in *South Dakota v. Wayfair*, Wisconsin began the process of passing laws to ensure sales tax was collected on remote sales. Unfortunately, Wisconsin has not addressed excise tax collections in the same way.

Representatives from the cigar industry reached out last year explaining this issue and hoping for legislation that would bring clarity to when a state's excise taxes become tied to a product that is sold to an individual in another state.

Other states have also been addressing this issue, with similar legislation passed in Colorado, Indiana, Maine, Maryland, Michigan, North Carolina and Virginia. So this is not an issue that is totally unique to Wisconsin.

We have been in ongoing talks with the Wisconsin Department of Revenue and stakeholders to make this bill work for all involved. The current draft includes many of the changes we discussed last year, but it is my understanding that the department may still have additional concerns. We are more than willing to continue to work with DOR to make sure that we come to a consensus on this issue.

Coming up, you will hear from additional subject matter experts who can go into greater detail on the specifics of the tax law and why this bill is so critically necessary. But, the main point is: we have retailers who are ready and willing to comply with Wisconsin tax policy, they just need the clarity to know how.

With that I am happy to answer any questions you might have.



Tony Evers
Governor

Peter W. Barca
Secretary of Revenue

Information Only Testimony on Assembly Bill 910
January 24, 2024
Peter Barca, Secretary of the Department of Revenue

Good morning, Chairman Gundrum, ranking member Ohnstad and members of the Assembly Committee on Jobs, Economy and Small Business Development. I would like to thank Representative Swearingen and Senator Feyen for sponsoring this piece of legislation. I appreciate the opportunity to provide written testimony for information only on Assembly Bill 910, legalizing the remote sale of cigars and pipe tobacco.

The Department appreciates the bill authors and stakeholders for their collaboration in the drafting process of the bill. There were several issues with the initial bill draft, which were mostly resolved to the Department's satisfaction.

However, the Department still has tax equity concerns about two provisions in the bill that put **Wisconsin brick-and-mortar cigar shops at a significant disadvantage compared to on-line cigar sellers, many of whom are out of state.**

First, the bill allows remote cigar shippers to avoid collecting Wisconsin sales taxes until their "annual gross sales into Wisconsin exceed \$100,000 in the previous calendar year." Brick-and-mortar cigar sellers in Wisconsin would still be required to remit sales taxes on their first sale, making it appear as though the out-of-state seller's prices are lower.

Second, **the bill would apply different tax bases depending on whether a product was sold on-line or at a brick-and-mortar store.** The bill imposes the tax on the "actual cost" of cigars and pipe tobacco when a remote sale is made, whereas current law taxes Wisconsin cigar retailers based on the "established manufacturers list price." This causes confusion for taxpayers and businesses alike because the same product could be taxed on differing bases depending on whether it's sold at a Wisconsin store or through an out-of-state online retailer. In fact, under the bill, the same product could be taxed differently even when sold by the same Wisconsin retailer, depending on whether the cigar is sold at their physical location or remotely.

To resolve this issue, DOR recommends establishing a uniform tax base by maintaining the current law definition of "manufacturer's established list price" for determining the excise tax imposed on cigars and pipe tobacco, regardless of the method of sale.

Lastly, some terms used in the bill aren't clear or are used interchangeably. These terms include "annual gross sales," "buyer," "consumer" and "ultimate consumer." DOR recommends adding definitions for these terms and clarifying that remote retail sales are to end consumers, not permitted or licensed businesses.

Thanks again for your consideration. As always, I'm available for any questions.