



State of Wisconsin • DEPARTMENT OF REVENUE

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Scott Walker
Governor

Richard G. Chandler
Secretary of Revenue

November 11, 2014

Representative Adam Neylon
P.O. Box 8953
Madison, WI 53708

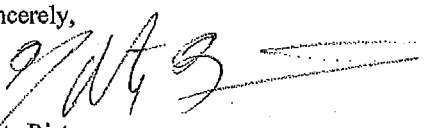
Dear Representative Neylon,

Thank you for writing to Secretary Chandler regarding the Subcommittee on Obsolete Misdemeanors' work. He has asked that I respond on behalf of the Department of Revenue. The department has identified three misdemeanors that the Subcommittee may consider repealing.

- Wis. Stat. § 70.40 (2) prohibits the willful failure or refusal by any person on whom an occupational iron ore concentrate tax is imposed to furnish a true list or statement of all iron ore concentrates received or handled. There are currently no municipalities in Wisconsin reporting a collection of iron ore occupational taxes. Imposition by a city of a tax under s. 70.40 was precluded by federal law. *Burlington Northern v. City of Superior*, 932 F.2d 1185 (1991). This misdemeanor associated with an unconstitutional provision is obsolete.
- Wis. Stat. § 77.53 (7) requires retailers to display the sales tax separately from the list price on a receipt. DOR administrative rule Tax 11.32 (4) does not require businesses that include sales tax in the list price to list the sales tax separately on the receipt under circumstance where the inclusion of the sales tax in the price is clearly delineated by the business. The administrative rule provides three acceptable methods for notification to the purchaser. A related provision, Wis. Stat. § 77.53 (3), requires that retailers provide a receipt to the purchaser "in the manner and form prescribed by the department." This statute provides sufficient protection for consumers, and Wisconsin businesses require flexibility that the department's administrative rules provide. Wis. Stat. 77.53 (7) is burdensome and unnecessary.
- Wis. Stat. § 139.95 (4) prohibits DOR from disclosing information obtained through the administration of the tax on controlled substances. Wis. Stats. §§ 139.87 – 139.96 were deemed unconstitutional by the 7th U.S. Circuit Court of Appeals in 2004 because the tax was so punitive in purpose and effect that it constituted a criminal punishment and violated the double jeopardy clause. *Dye v. Frank*, 355 F.2d 1102 (7th Cir. 2004). As a result, DOR no longer implements the tax. The misdemeanor associated with this unconstitutional and unenforceable tax is obsolete.

Thank you again for the opportunity to assist the Subcommittee in this important project. If you have additional questions, please contact me at (608) 266-7817 or nate.ristow@revenue.wi.gov.

Sincerely,


Nate Ristow
Legislative Advisor
Wisconsin Department of Revenue

cc: Michael Queensland, Wisconsin Legislative Council