



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #351

Sales Tax Enforcement -- Vendors Doing Business With the State of Wisconsin (General Fund Taxes)

[LFB 2003-05 Budget Summary: Page 180, #1]

CURRENT LAW

Wisconsin imposes a 5% general sales tax on the gross receipts from the sale and rental of tangible personal property and selected services. A companion use tax at the same rate is imposed on goods or services purchased out-of-state and used in Wisconsin, if the good or service would be taxable if purchased in Wisconsin. A credit is allowed for sales tax paid in the other state.

Counties have the option of imposing an additional 0.5% local sales and use tax. Currently, 57 counties impose the optional tax county tax. Other types of local sales and use taxes levied in the state are local exposition district taxes, local professional baseball park district taxes, local professional football stadium district taxes, and premier resort area taxes.

An out-of-state seller with sufficient business connection (nexus) to Wisconsin is required to collect the use tax from sales to its Wisconsin customers. A variety of factors establish nexus with the state, including (but not limited to) when a retailer: (a) owns real property in the state; (b) leases or rents tangible personal property in the state; (c) occupies an office or place of distribution in the state; or (d) has a representative or salesperson operating in the state.

An out-of-state seller that is not required to collect Wisconsin use tax may voluntarily obtain a business tax registration certificate from the Department of Revenue (DOR) and thereby be authorized and required to collect the use tax from its Wisconsin customers.

State agencies and authorities sometimes enter into contracts or orders for the purchase of materials, supplies, equipment, or contractual services with out-of-state businesses. Most orders

and contracts of state agencies are required to be awarded to the person submitting the lowest responsible bid or the most advantageous competitive sealed proposal. In awarding the orders or contracts, current law does not provide consideration as to whether or not the proposed vendor collects sales or use taxes on its taxable sales in Wisconsin.

GOVERNOR

Require the Secretary of the Department of Revenue (DOR) to determine and periodically certify to the Secretary of the Department of Administration (DOA) the names of persons, and affiliates of those persons, who refuse to collect and remit sales and use taxes on their sales delivered to Wisconsin. Further, prohibit the following state agencies and authorities from entering into any contract or order for the purchase of materials, supplies, equipment, or contractual services with a person whose name [or name of an affiliate of the person] appears on the list: (a) DOA; (b) any purchasing agent designated by DOA; (c) any agency making purchases under the state's legislative and judicial branch procurement provisions; and (d) the University of Wisconsin System and any other state authority. These provisions would apply to local sales and use taxes in addition to state sales and use taxes.

Create the following definitions for purposes of this provision: (a) "affiliate" would mean an individual or business that controls, is controlled by, or is under common control with another individual or business; (b) "business" would mean a corporation, partnership, limited liability company, association, or sole proprietorship operated for profit; (c) "control" would mean to own, directly or indirectly, more than 10 percent of the interest in, or voting securities of, a business; and (d) "voting securities" would mean securities that confer upon the holder the right to vote for the election of members of the board of directors or similar governing body of a business, or are convertible into, or entitle the holder to receive upon their exercise, securities that confer such a right to vote.

The administration estimates that adoption of this measure would result in additional state sales tax revenues of \$5,400,000 in 2003-04 and \$7,200,000 in 2004-05.

DISCUSSION POINTS

1. Under the Governor's proposal, out-of-state vendors doing business with the State of Wisconsin would be required to register and collect sales and use tax on all of their Wisconsin sales. Any affiliates of an out-of-state vendor doing business with the state would also be required to collect Wisconsin sales and use taxes. If the vendor or its affiliates did not collect sales or use taxes on taxable sales to Wisconsin residents, the vendor's name would be placed on a list certified by DOR to DOA and the state would not be permitted to do business with the vendor.

2. A similar sales tax enforcement mechanism was adopted by the State of North Carolina, effective with calendar year 2001. The estimated increases in sales tax revenue included in the bill are based on the actual increases experienced by North Carolina, adjusted for differences in the two states' economies and tax codes. At this date, there are no other states known to have adopted similar legislation.

3. The Department of Revenue has requested the following modifications to the proposed language under the sales tax enforcement provisions.

Delete "Individual or Business" and Replace with "Person"

4. Remove references to "individual or business" from the proposed definition of "affiliate." Instead, refer to a "person" as defined in s. 77.51(10) of the sales tax statutes, which defines "person" to include individuals and businesses. Accepting this modification would make the language under the proposal consistent with terms used for sales tax provisions under current law.

In addition, delete the definition of "business," as a business would already be included as a "person" under the proposed modification.

Revise References to "Refusal to Collect Taxes"

5. Modify the proposed language related to refusal to collect and remit sales and use tax. The Department of Revenue believes that the word "refuse" may not correctly reflect a person's obligation to collect and remit sales or use taxes. DOR would prefer to address collection responsibilities with reference to existing requirements to register and remit. Therefore, the Department recommends the following changes in the proposed language:

a. Delete the heading "Refusal to collect taxes; certification" and replace it with "Certification for collection of sales and use tax."

b. In addition, delete a description of persons who "refuse to collect and remit taxes imposed under ss. 77.52 and 77.53 on their sales delivered to this state" and refer, instead, to persons who "make sales of tangible personal property and taxable services that are subject to the taxes imposed under this subchapter but are not registered to collect and remit such taxes to the Department, or if registered, do not collect and remit such taxes."

6. The modifications recommended by the Department of Revenue would have no fiscal effect on the proposal.

ALTERNATIVES

1. Approve the Governor's proposal with the language changes suggested by the Department of Revenue, as described above.

2. Delete provision.

Alternative 2	GPR
2003-05 REVENUE (Change to Bill)	- \$12,600,000

Prepared by: Faith Russell