



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #378

Sales Tax Exemption for Native American Purchases (General Fund Taxes -- General Sales and Use Tax)

[LFB 2009-11 Budget Summary: Page 283, #8]

CURRENT LAW

Under current law, purchases made by the federal government, the state, counties, cities, villages, towns, school districts, or any other unit of government in this state, are exempt from the sales and use tax. Purchases made by Native American tribes are subject to the sales and use tax.

GOVERNOR

Create an exemption from the sales and use tax for purchases made by any federally recognized American Indian tribe or band in this state. This provision would take effect on the first day of the second month beginning after publication of the bill, and is estimated to reduce sales tax revenues by a minimal amount.

DISCUSSION POINTS

1. According to the Department of Revenue (DOR), the sales and use tax is imposed on sales to tribes and tribal members purchasing taxable sales off of the buyer's tribal reservation. Federal law does not permit a state to impose a sales, use, or excise tax for purchases made by a tribe or tribal member on the buyer's tribal reservation.

2. According to the Department of Administration's Division of Intergovernmental Relations, the total Native American population in Wisconsin is 69,386 (1.29% of the total Wisconsin population), of which 16,065 reside on reservation or trust land. 21,211 non-Native

Americans reside on Native American reservation or trust land in this state.

3. The Governor's proposed sales tax exemption would extend to purchases made by any of the 11 federally recognized tribes in Wisconsin. All federally recognized tribes in this state have elected or appointed tribal governments.

4. The proposed exemption from the sales tax would apply to any federally recognized American Indian tribe in this state purchasing goods or services that would otherwise be subject to the sales and use tax. According to DOR, the exemption would mainly apply to purchases made by tribal employees conducting tribal business off of tribal lands, such as sales tax that would become exempt on meals and lodging expenses. The proposed exemption would not extend to purchases for personal use by tribal members or employees.

5. The proposal would exempt purchases of goods and services by Native American tribes in this state similar to how the state currently treats purchases made by an exempt governmental unit, such as a county, city, village, or school district in this state. The Governor has issued an executive order directing cabinet agencies to accord tribal governments the same respect accorded other governments within the scope of current law. The requested provisions would change current law to provide tribal governments the same exemption from the sales tax as provided to other units of governments in this state.

6. According to the Department of Revenue, tribes have argued that the sales and use tax exemption for "any other unit of government" applies to the tribes. DOR does not agree that the exemption for "any other unit of government in this state" includes tribes, because it is not expressly stated in the statutes.

7. An argument could be made that the current sales tax exemption for purchases made by counties and municipalities is not similar to the proposed exemption for tribal purchases. Many functions performed by local units of government are required by state law, and county and municipal governments and school districts receive significant amounts of revenue from the state to help fund their operations and provide property tax relief. Imposing the state sales tax on local units of government would result in a payment of local revenues to the state treasury, but would not result in a net increase in state and local revenues. The current sales tax exemption for local units of government prevents this type of unnecessary revenue shifting. Tribal governments do not have this type of coordinated relationship with the state.

8. Other states have implemented a variety of policies with regards to sales and use tax collections involving Native American Tribes. Of the surrounding states, both Minnesota and Michigan have entered into sales and use tax revenue sharing agreements with tribes located in their state; however, neither state provides an exemption from the sales and use tax to tribes that have not entered into such agreements. Minnesota provides an exemption from the sales tax for tribes that have entered into such agreements. Michigan provides a similar exemption for tribes conducting tribal business, as well as a refund for the amount of state sales and use tax paid by each tribal member to Michigan.

ALTERNATIVES

1. Approve the Governor's proposal.
2. Delete provision.

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