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May 29, 2013 Joint Committee on Finance Paper #299

Exemption Certificate Reporting for Sales and Use Taxes (General Fund Taxes -- Sales and Excise Taxes)

[LFB 2013-15 Budget Summary: Page 186, #9]

CURRENT LAW

The 5% state sales and use tax is generally imposed on the sale, use, or other consumption of items, property, or taxable services in Wisconsin. Current law provides exemptions from the tax for certain entities and provides exemptions that are based on how a taxable item or service is used after being purchased. If a purchaser is an exempt entity or is using the taxable item or service in a manner provided a use-based exemption, the purchaser may present a retailer with a fully completed exemption certificate, which would generally exempt the purchase from the tax and relieve the seller's obligation to remit the tax to the state. A retailer who receives an exemption certificate after reporting a sale as taxable may claim a refund of the tax paid by filing an amended return for the period in which the transaction was originally reported.

GOVERNOR

Specify that, for laws governing return adjustments under the general sales and use tax, a retailer who receives an exemption certificate after reporting a sale as taxable may choose to either: (a) claim a deduction for the tax amount on a subsequent return; or (b) file an amended return for the period in which the transaction was originally reported. The Department of Revenue (DOR) anticipates that this provision would have a minimal impact on the general fund.

MODIFICATION

Modify the Governor's proposal to specify that a retailer may claim a deduction on a subsequent sales tax return if the retailer receives an exemption certificate from a purchaser and:

(a) the deduction is claimed in the same reporting period in which the retailer received the exemption certificate; (b) the exemption certificate was received in the same taxable year of the retailer as the reporting period in which the tax was paid; (c) the sales price or purchase price was previously reported as taxable and the retailer previously paid the tax to DOR; and (d) the retailer has returned to the buyer, in cash or in credit, all tax previously paid by the buyer.

Explanation: The administration indicates that this modification would better reflect the Governor's intent. There are two substantive modifications to the Governor's proposal. First, a retailer could only claim a deduction from the tax for an exemption certificate if the deduction was claimed in the same reporting period in which the exemption certificate was received. Second, the deduction could only be claimed if the retailer received the exemption certificate in the same taxable year as the reporting period in which the tax was previously paid. These two limitations were not included in the Governor's original proposal. If these conditions are not met and a retailer receives an exemption certificate after sales tax was remitted to the state, current law permits a retailer to file an amended return for the reporting period in which the tax was paid and the retailer may claim a refund for the amount of tax previously paid. The modification is not anticipated to have a fiscal impact.

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