



STATE REPRESENTATIVE

KATHY BERNIER

January 21, 2016

**Assembly Committee on Ways and Means –
Testimony on Assembly Bill 629**

Good afternoon, Chairman Spiros and committee members. Thank you for scheduling AB 629 for this public hearing and allowing me time to present testimony in favor of the bill.

As a result of a recent Department of Revenue (DOR) interpretation of the Streamlined Sales Tax agreement, approved as part of 2009 Wis. Act 2, certain heavy duty trucks and trailers have a 12% federal excise tax (FET) included in the amount subject to the state sales tax, *which in effect is a tax on a tax*.

My constituents, Mike and Sherry Glasner, operate Lake Region Trailers in Lake Hallie and brought this issue to my attention nearly two years ago. At that time it was DOR's interpretation that a change would be required in the federal tax code to address the double taxation issue. I notified Congressman Duffy's office of the problem and offered assistance in resolving the situation.

Let me give you an example of how this double taxation works. If a truck and trailer retailed at \$100,000, the 12% FET would add \$12,000 making the total \$112,000. DOR's prior interpretation of the 2009 agreement would make the full \$112,000 subject to the state sales tax. Historically, the sales tax has been subject only to the retail price of \$100,000, not the full \$112,000 with FET added.

Since my initial inquiry last session, this issue has been re-examined. DOR, business owners, and trade groups have worked to get further clarification regarding the issue we are addressing in AB 629, which is to clarify that the FET should not be included in the total cost of the vehicle that is subject to the sales tax.

This legislation simply excludes the FET on heavy trucks and trailers from the statutory definition of "purchase price", which definitively exempts the FET from the state sales tax.

Again, thank you Mr. Chairman and committee members for your interest in this bill and for holding this hearing. I am happy to answer any questions you may have.

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January 21, 2015

Testimony to the Assembly Committee on Ways and Means on Assembly Bill 629

Chairman Spiros and members of the committee, thank you for the opportunity to testify on Assembly Bill 629, which provides that sales price subject to state sales tax does not include the federal excise tax on heavy trucks and trailers sold at retail.

We appreciate the authors and supporters of this bill working with us to draft language that would allow the department to return to our prior treatment of the federal excise tax on heavy trucks.

In September of 2014, a department rule change went into effect which moved the federal excise tax on heavy trucks from the list of taxes excluded from sales price to the list of taxes included in sales price. This rule change was pursuant to a 2011 determination by the Streamlined Sales and Use Tax Governing Board (SSUTGB) that the definition of sales price as adopted by the 24 streamlined sales tax states, including Wisconsin, required inclusion of the federal excise tax on heavy trucks in the taxable sales price.

Wis. Stat. § 77.51(15b), which mirrors the streamlined definition of "sales price" as required by the Streamlined Sales and Use Tax Agreement (SSUTA), states that taxes imposed on the seller may be excluded from sales price if they are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser and the statute imposing the tax provides that a seller may pass the tax on to the consumer. Section 4051 of the Internal Revenue Code imposing the federal excise tax on heavy trucks does not provide that the seller may pass the tax onto the purchaser. Had Wisconsin's treatment remained inconsistent with the SSUTGB's determination, Wisconsin would have been at risk of being found out of compliance with the SSUTA, putting \$6 million in annual voluntary collections from out-of-state retailers at risk.

In August 2015, the SSUTA was changed to allow states the option of excluding some federal excise taxes, including the federal excise tax on heavy trucks, if the exclusion references the specific federal law. The bill's modification to the current statute would allow our treatment of the federal excise tax on heavy trucks to return to the same treatment Wisconsin gave it prior to September 1, 2014.

Thank you again for the opportunity to discuss AB 629.

Federal Excise Tax on Heavy Trucks and Trailers

Challenge

When Wisconsin adopted Streamlined Sales Tax, the tax was changed from a tax on **gross receipts** to a tax on the **sales price of items sold**. While this might not seem to be a significant change, one implication of this change was that if another tax was included in sales price, that other tax could be subject to the sales tax. So, if a retailer is selling something for \$1,000 and there is a \$100 excise tax that is included in the sales price, the sales tax could apply to the \$1,100 total sale price. In other words, the sales tax can be a tax on a tax.

A few years ago, the Legislature clarified that in a transaction where an excise or similar tax is imposed on the seller and these taxes are separately stated on the invoice, then the sales tax is not imposed on the excise tax – provided that the law imposing or authorizing the tax provides that the seller may, but is not required to, pass on to and collect the tax from the user or consumer. The statute is found in Section 77.51(15b)(b)3m. The Department of Revenue (DOR) has interpreted this statute to apply only to taxes where the law actually says that the retailer is not required to pass this tax on to the consumer.

Therefore the DOR promulgated an administrative rule in 2014 to require collection of sales tax on the amount of federal tax for a range of sales, including the amount of federal excise tax assessed on the purchase of new heavy trucks and truck trailers.

The issue of this new sales tax being applied was first raised among the business community when assessments of this new tax were received in the summer of 2015, much to the surprise of those receiving the assessment. To the best of their knowledge, the amount of federal excise tax charged for these truck and trailer purchases continued to be exempt from sales tax.

Assembly Bill 629

In consultation with the Department of Revenue, Assembly Bill 629 and companion Senate Bill 506 were developed to restore the status of the portion of these truck sales of being exempt from the sales tax.

In addition, the bill makes this change retroactive to when the sales tax was first applied to these heavy truck sales on September 1, 2014. Adding this retroactivity ensures that companies which purchased new trucks or trailers will not be surprised by a new tax assessment for something which they have long been told is exempt from sales tax.

WMC Policy Position

WMC supports passage of Assembly Bill 629.