



TODD NOVAK

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Testimony In Support of Assembly Bill 608/Senate Bill 443
Committee on Ways and Means

January 21, 2016

Thank you Chairman Spiros and fellow members of the committee for holding a hearing on AB608. I am introducing this bipartisan bill with Representative Mark Spreitzer and Senators Howard Marklein, and Janis Ringhand to clarify sales tax exemption for services rendered to restore native landscapes to improve land, soil or water quality, and other ecosystem functions.

The need for this clarification was brought to our attention as a result of a DOR audit. Current Department of Revenue (DOR) policy does not adequately distinguish between the highly scientific and detailed projects designed by ecological consulting firms and plans created by traditional landscape companies at the request of homeowners, local governments and businesses.

Thank You,

A handwritten signature in black ink that reads "TODD NOVAK". The signature is stylized and cursive.

Todd Novak
State Representative
51st Assembly District



Testimony on Assembly Bill 608

Chairman Spiros and members of the Assembly Committee on Ways and Means,

Thank you for taking the time to give AB 608 a public hearing today. I'd like to thank Senator Marklein, Representative Novak, and Senator Ringhand for their leadership in authoring this legislation and working to address this important issue. We have brought this bill forward based on the experience of a business in our area, Applied Ecological Services- or AES.

AES is an ecological restoration business located in Brodhead, in my district, and has been in business for 39 years. AES, and many other ecological restoration businesses in this state, provide professional services to restore land and water to its more natural state. While AES does maintain a nursery to sell native plants to the public, and charges sales tax on these sales, the bulk of their business is ecological restoration using native plants.

AES has been involved in the restoration of Wisconsin ecosystems, both land and river, for public and private entities. Unlike landscape services, which are primarily aesthetic in nature, the professional services AES provides are much more complex, using highly trained engineers and scientists for environmental remediation that often requires AES to obtain government permits.

Recently, DOR audited AES and determined that their services should be classified as lawn and landscaping services and should have been subject to sales tax. Current law states that landscaping and lawn maintenance services are subject to sales tax for their design services and the plants they install. Under this interpretation, not only would this subject AES to a significant fine and risk the layoff of employees, it would put AES at a competitive disadvantage going forward. AES has contacted other similar businesses in Wisconsin that said they have not been charged sales tax. It is clear that more legal guidance is needed on this issue than what is in current law.

This bill seeks to provide that guidance so that both DOR and businesses like AES know what services are and are not subject to the sales tax. This bill clarifies that ecological restoration services are distinct from landscaping and lawn maintenance services and thus not subject to the state sales tax. To qualify for this exemption, the service must use native plants as part of a restoration of 10 or more acres of Wisconsin ecosystems. This bill was drafted in consultation with DOR.

Thank you again for the opportunity to testify today and I'm happy to take any questions.

45TH ASSEMBLY DISTRICT

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APPLIED ECOLOGICAL SERVICES

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To: Rep. John Spiros
State of Wisconsin

cc: Patrick Walsh, Legislative Aide
Office of State Senator Janis Ringhand

From: Steven I. Apfelbaum, Chairman/Senior Ecologist
Applied Ecological Services, Inc.
Brodhead, WI 53520

Date: January 20, 2016

Re: Testimony/Notes for Public Hearing: Assembly Bill 608 – Sales tax imposed on ecosystem restoration services.

“Land, Water and Wetlands restoration or reclamation of disturbed lands including but not limited to planning, ecological design, engineering, permitting, construction, and construction oversight, compliance and installation of plants and seeds, and soil management are considered a professional service. “

Thanks, I am Steven Apfelbaum, the Chairman of Applied Ecological Services, Inc. We employ over 125 staff in WI, our main office is located south of Brodhead, WI and its one of 12 offices around the USA. We have two others offices in WI. We have been in business since 1975.

1. AES is a professional service company with scientists, engineers, landscape architects, ecosystem restoration practitioners, construction operations that do restoration, land reclamation on mines, landfills, conservation projects, etc.
2. In all states we have worked (47 states), AES is and our services are classified as professional services and not subject to state sales tax.
3. In WI, during a recent Department of Revenue audit, because we use trigger words, such as landscaping, soil management, soil erosion control, some of the AES restoration and reclamation projects have been classified as falling under a definition of “Landscape” or landscaping” and as such under current regulations, we were told we have to charge sales tax.
4. Our projects typically involve very highly trained specialists (PhD's) such as mined land specialists, mining engineers, wetland scientists, etc) and almost always involve federal, often state, and local permits, our projects are not considered landscaping projects.

5. The legislative change is proposed to relieve confusion regarding our classification and the classification of our projects, and to reduce the risk of an added sales tax burden creating a cost disadvantage on projects, especially during these highly competitive times, when a difference of very few additional dollars may cause us to not win a project. IF we have to add sales tax and other professional firms do not (which is the case in WI), then our small firm is disadvantaged.
6. We have documented for the WI Department of Revenue that we checked with other WI firms providing the same services as our firm, and they do not charge sales tax for their services.