

To: Legislative Colleagues

From: Representative Amy Loudenbeck and Senator Dale Kooyenga

Date: February 5, 2019

Re: Co-sponsorship of LRB-1297/1 and LRB-1353/1 relating to: the disclosure of a retailer's sales tax liability to a successor.

**Deadline: Thursday, February 14, 2019 at 5pm**

Dear Colleagues,

The changes in LRB-1297/1 and LRB-1353/1 are common sense changes that will allow the Department of Revenue (DOR) to disclose tax liability to a business owner who is looking to purchase a business or inventory from a business that is closing.

This issue was brought to our attention by a local small business owner who purchased inventory and equipment from a shop that was closing. As a new small business owner, she was dismayed to receive an assessment from DOR for thousands of dollars in delinquent sales tax that the owner of the company she bought the inventory from had failed to pay. It's important to note, she did not buy the business that was closing, she simply bought inventory and equipment. The DOR had been allowing the prior business to operate in a sales tax delinquent status for 10 years without any attempt to seize the inventory, equipment or real estate assets. But somehow, when the inventory was sold they were able to use their power under current successor liability statutes to assess her for all of the prior owner's delinquent sales taxes and penalties.

We were able to work with DOR to understand where the flaws were in current law and what statutory changes would be needed to make sure that someone purchasing a business or inventory would be able to obtain information on potential successor liability. LRB-1297/1 and LRB-1353/1 reflect DOR's drafting recommendations.

This bill will help prevent this from happening to other small business owners in the future, just because they buy inventory or equipment from a business that has failed to pay taxes.

If you are interested in co-sponsoring LRB-1297/1 and LRB-1353/1, please call Rep. Loudenbeck's office at 266-9967 or Senator Kooyenga's office at 266-2512. All co-sponsors to both versions unless otherwise requested.

***Analysis by the Legislative Reference Bureau***

*Current law generally prohibits the Department of Revenue from divulging information about a retailer that is included in the sales tax returns filed by the retailer. DOR is also prohibited from disclosing information about a retailer included in an audit or investigation of its sales tax liability. However, DOR may allow certain persons to examine the returns, and related schedules, exhibits, and audit reports, for purposes of administration and enforcement. Such persons include the secretary of revenue and DOR officers, agents, and employees; the attorney general and department of justice employees; public officers of the federal government or other state governments, to the extent that those governments afford similar rights of examination to Wisconsin state officials; and any person against whom DOR asserts a sales tax liability, including a successor, guarantor or surety.*

*Under this bill, if a person provides evidence to DOR that the person intends to purchase or has purchased a retailer's business or inventory or that the retailer is quitting the business and the person will be the retailer's successor or assignee, that person may examine the retailer's sales tax returns, and related schedules, exhibits, and audit reports, for the purpose of determining whether the retailer is liable for any amount of sales tax and obtaining the amount of its outstanding liability. Current law requires the purchaser of a retailer's business or inventory to withhold the amount of the purchase price sufficient to pay the retailer's outstanding sales tax liability. If the purchaser does not withhold the required amount, the purchaser becomes personally liable for payment of that amount to DOR.*