



LEE NERISON
96TH ASSEMBLY DISTRICT

Remarks of Representative Lee Nerison
on Assembly Bill 541
Assembly Committee on Agriculture
December 10, 2013

Good morning, fellow committee members. I testify today in support of Assembly Bill 541 and its companion bill which I have authored with Senator Terry Moulton.

Capitol:

Post Office Box 8953
Madison, WI 53708-8953
(608) 266-3534

Toll-Free: (888) 534-0096

Fax: (608) 282-3696

Rep.Nerison@legis.wi.gov

District:

S3035 CTH B
Westby, WI 54667
(608) 634-4562

I authored this legislation after one of the agribusinesses in my district brought to my attention its concerns with a Wisconsin Department of Revenue (DOR) audit performed on the business. Historically, feed production, fertilizer blending, and grain drying machinery and equipment used by these agribusinesses have always been considered part of a manufacturing process that is exempt from sales tax in the State of Wisconsin. This long-standing exemption was not what this agribusiness incurred in its audit.

To give you some background, this particular feed mill rebuilt its operation with state-of-the-art technology after a fire. The facility has 28 holding structures – 7 are on the outside of the building and 21 are inside. The DOR auditor determined that the 7 on the outside of the facility are real estate and not eligible for the exemption, even though all 28 structures perform the same function. It seems logical that all 28 structures should be taxed the same way because they perform the same function, but current law is unclear on this interpretation.

This legislation before the committee today aims to clarify long-standing interpretations of Wisconsin's tax code to ensure that specific agribusiness processing equipment used in feed production, fertilizer blending, and grain drying is exempt from sales and use tax, regardless of where that equipment is located and whether it is in some way connected to real property.

We have worked with the Wisconsin Department of Revenue and stakeholders to ensure that the language in this bill is narrow enough to address the problems which agribusinesses have encountered, without broadly affecting the sales and use tax exemption.

I encourage you to support this legislation because it clarifies how Wisconsin's tax code will affect agribusinesses looking to expand or relocate in our state. We must continue to grow Wisconsin's nearly \$60 billion yearly agriculture industry and this is a valuable tool to accomplish this goal.

Thank you for your time and consideration of this proposal.



2801 International Lane, Suite 105
Madison, WI 53704

Phone: (608) 223-1111
Fax: (608) 223-1147

Chairman Moulton, Chairman Nerison, Members of the Senate Agriculture, Small Business and Tourism Committee, Members of the Assembly Agriculture Committee, Guests and Friends, my name is Tom Bressner and I am the Executive Director of the Wisconsin Agri-Business Association located here in Madison. WABA's membership consists of over 300 agribusiness companies that do business in Wisconsin consisting of grain elevators, feed mills, seed developers and dealers, fertilizer and farm chemical manufacturers, retailers and service providers, crop consultants, equipment dealerships, farm stores, ethanol plants, and many other agribusiness marketers and service providers.

With me today, is the Board of Directors of the Wisconsin Agri-Business Association, which not only represents the industries I just mentioned, but have come in support today from locations of Ashland to Monroe and all across the great State of Wisconsin.

The issue that this legislation is attempting to solve has already been described in the proposed legislative language and through the testimony of Representative Nerison. I would simply like to share another example of why this legislation is so important. On the back page of my testimony is a picture of a fertilizer plant located in Auburndale, Wisconsin, owned by Central Wisconsin Coop. In years past, when you drove past a fertilizer plant, warehouse buildings like the one pictured were very common sights. However, the blending and mixing tower as pictured here, was not.

In the past, fertilizer dealers used a front-end loader to drop fertilizer ingredients into a scale hopper, then augered it into a mixer, then augered it again out of the mixer into the transport vehicle to take it to the field. With the technologies of the new blending towers, the fertilizer blending process is much more efficient. While you still use the front-end loader to pull the ingredients out of storage, the products are elevated into one or more of the eight ingredient bins in the top of this tower. The ingredients are then dropped by gravity into the scale and mixer, which are both located within the tower, and then dropped by gravity directly on to the transport vehicle.

While the new technologies make the fertilizer blending process much quicker, more efficient, and less expensive, the structure does not meet the definition currently used by the Department of Revenue as to being personal property. They consider it real property, which is not eligible for sales tax exemptions. That is why the language in this proposed legislation clearly states, "This bill provides a sales and use tax exemption for specific processing equipment used in a fertilizer blending, feed milling, or grain drying operation... regardless of whether such items become an addition to, a component of, or a capital improvement of real property." The fact of the matter is, the new technologies are still manufacturing equipment that still serves the same purposes as the equipment that has been exempt from sales tax for years.

This is just one more example of the real world applications this legislation will fix, by restoring the sales tax exemption. Without this legislation, current tax rules will discourage the use of new technologies in agribusiness that add value to the growing agricultural industries of Wisconsin.

The two agribusiness companies that Representative Nerison and I have used as examples, are the first two, and to date, the only two that we are aware of that have been effected by this sales tax issue. And while we do not expect a large snowball effect in the future, it is safe to predict that there will be more. Please, let's fix the issue now, and support the growth of agribusiness in the future, in the same way we have in the past.

In closing, I want to emphasize two very important points. First, this legislation does not add any new tax breaks to anyone. It simply restores the agriculturally related manufacturing tax exemptions that have been in place for years. Second, in the process of writing this proposed language, we have by-passed no one. This language has been drafted jointly and has been agreed to by leadership from the Department of Revenue, both authors of this language, Senator Moulton and Representative Nerison, Wisconsin Manufacturing and Commerce, and the Wisconsin Agri-Business Association. All of these have agreed to this proposed language. We need you to agree to this important bill as well.

Thank you for your consideration in supporting this very important initiative.





Scott Walker
Governor

Richard G. Chandler
Secretary of Revenue

December 10, 2013

**Testimony to the Senate Committee on Agriculture, Small Business, and Tourism
and Assembly Committee on Agriculture on LRB 2927/5**

Thank you for the opportunity to testify on LRB 2927/5, which provides a sales and use tax exemption for fertilizer blending, feed milling, or grain drying equipment, regardless of whether such items become a part of real property. The bill also creates an exemption for building materials used to construct or repair certain holding structures used in a fertilizer blending, feed milling, or grain drying operation.

Relying on long-standing precedent from the Wisconsin Supreme Court and other case law, the Department of Revenue has the following tests for determining if property is real property:

- The extent to which the property is physically attached to the land, foundation, or building.
- If the property is specifically adapted to the particular real estate.
- Whether the property would be considered by a reasonable person to be a permanent addition to the real estate.

Based on these tests, equipment that functions as a structural part of a building or an external wall is considered to be part of the building and real property.

The sales and use tax exemption found in Wis. Stat. § 77.54(6)(a) applies to machines and specific processing equipment exclusively and directly used by a manufacturer in manufacturing tangible personal property. However, materials used to construct real property, as determined by these tests, are subject to sales and use tax. DOR regularly makes these determinations in sales and use tax audits.

LRB 2927/5 states that holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer, wet corn holding bins, grain dryers, mixers, conveying equipment, and grinding, mixing, and saturation bins (and the repair parts, replacements, and safety attachments) are exempt from sales and use tax regardless of whether they become a capital improvement of real property. The bill also specifies that the materials used to construct holding structures for dropping feed or fertilizer ingredients would be exempt.

The exemption provided under LRB 2927/5 would apply to persons primarily engaged in fertilizer blending, feed milling, or grain handling operations, or any combination thereof. The

Page 2
December 10, 2013

exemption would also allow contractors to purchase without tax the materials used to construct the property described above regardless of whether the property becomes a capital improvement of real property.

Thank you again for the opportunity to discuss LRB 2927/5.