



Amy Loudenbeck

REPRESENTING WISCONSIN'S 31ST ASSEMBLY DISTRICT

Testimony before Assembly Committee on Ways and Means

Assembly Bill 46

Rep. Amy Loudenbeck

March 28, 2019

Thank you, Mr. Chairman and committee members for the opportunity to testify in favor of Assembly Bill 46.

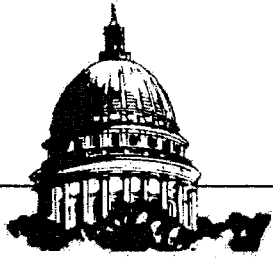
The changes in this bill are common sense changes that will allow the Department of Revenue (DOR) to disclose tax liability to a business owner who is looking to purchase a business or inventory from a business that is closing.

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. She is here with me today, and will be sharing her story with you.

After she contacted my office with her issue, 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. This bill reflects 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.

Thank you for your time today, I would be happy to answer any questions at this time.



DALE KOOYENGA
WISCONSIN STATE SENATOR

State Capitol · P.O. Box 7882 · Madison, WI 53707-7882 · (608) 266-2512

March 28, 2019

TO: Members of the Assembly Committee on Ways and Means
FR: Senator Dale Kooyenga
RE: Assembly Bill 46

Thank you for holding a public hearing on Assembly Bill 46, which would 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 closing business.

Under current law, the Department of Revenue is generally prohibited from divulging information about a retailer that is included in the sales tax returns filed by the retailer. However, DOR may allow certain individuals to examine the returns for purposes of administration and enforcement. Unfortunately, the allowances are limited to a successor, guarantor, or surety. It does not allow a business to examine such records if they are looking to acquire the business's inventory or equipment.

This issue stems from a local small business owner who purchased inventory and equipment from a store that was closing. The business owner was not aware that the business selling its inventory and equipment had failed to pay its sales tax. In fact, the DOR had been allowing this business to operate in a sales tax delinquent status for ten years without any attempt to seize inventory, equipment, or real estate assets. When the inventory and equipment was eventually sold, DOR assessed the acquiring business for all of the prior owner's delinquent sales taxes and penalties, costing the acquirer thousands of dollars.

Under Senate Bill 54, if a person provides evidence to DOR that they intend to purchase a retailer's business or inventory, they may examine the retailer's sales tax returns, exhibits, and audit reports for the purpose of identifying the retailer's outstanding sales tax liability. I believe it is a common sense reform that will simply allow the purchaser of a business to obtain information on potential successor liability and prevent small business owners from being penalized for the failure of another business.

The bill promotes full transparency and accountability between seller and purchaser, fixes the flaws of current law, and provides DOR the tools it needs to best serve and protect small businesses.

Thank you again for hearing AB 46 and I respectfully ask for your support.

Meeting with Assembly Committee on Ways and Means March 28, 2019

Hello and thank you for inviting me to come and share my story with you regarding my business Main Street Lettering & Apparel and the Successor Liability Law.

I understand that the law may be changing so that the tax liability would be disclosed to a buyer so that they would know what they are walking into rather than finding out about Successor Liability the hard way like I did.

I first rented from Larry Ulrich when I opened my business Paws & Claws Pet Grooming on October 13, 2014.

Larry Ulrich's business, "Kim's Lettering, was shut down by the state in September of 2016. After it was closed for a few months my husband and I decided that it was a shame for this important business that had been in our community for years to be closed, so we decided to start our own business.

Larry Ulrich accepted our offer to buy the inventory and machines, and we got our loan through Gateway Bank. Larry supplied us with a list of his debts owed which were to suppliers and utilities. He did not have the State listed as a debt. We did not assume these debts as our own. The past due amount of one supplier was paid that we would be using and was deducted from his amount he received from the bank. The rest he was still responsible for.

We opened Main Street Lettering on January 3, 2017 with paying our rent to Larry.

In February of 2017 I was told by the State that I needed to send all my rent payments from now on to the State against Larry Ulrich's Levy, not to Larry.

I received a Notice dated October 19, 2017 from the State for Sales Related Liability for the Tax period August 31, 2016 to December 31, 2016 in the amount due of \$4000. Kim's Lettering was closed September 27, 2016.

I emailed Melissa Cota mentioning this notice and explaining that I looked back on Larry Ulrich's delinquent taxes and saw that he had a lot of them and that in 2003 he had one alone that was \$68,000. Asking why the State didn't act on him then rather than let him keep accumulating his debt for over 15 years for over \$850,000. I told her I didn't think it was fair to come after me, and to please help me with this matter.

I received an email from Melissa on the next day telling me that she included Maia Pearson in the email reply and that she would reply separate to my questions, however I don't see that I every received anything from her.

Melissa told me that even if I had purchased some inventory from Larry and moved it into a new location for the business, I would still be liable for part of his debt.

I sent an Appeal of Notice Received to the State on November 7, 2017 explaining that this debt was Larry Ulrich's and not mine, that I did not buy his business, so shouldn't have his debt. I also noted that for Successor Liability I found "a buyer that purchases asset can be accountable for seller's debts where:"

1. There is an express or implied agreement of assumption.
2. The transaction amounts are a de facto consolidation or merger of the buyer or seller corp.
3. The purchases is merely a continuation of the seller, or
4. The transaction is for the fraudulent purpose of escaping liability for the seller's obligations.

As I stated in my letter, none of the above apply to me, we did not assume any of his liability.

I expressed that it just doesn't seem fair to me, a small business owner, to be penalized for his fraudulent activity with the state. I thought the State stood behind small business owners.

Melissa Cota called and explained to me that it was our responsibility to contact the State before getting our loan to start our business and to check and see if Larry had any debts to the State. I don't know how they think we should know that we need to do this. I contacted the bank that we got our loan from and the loan officer had no idea what Successor Liability was. I contacted a lawyer that I had my will done by and he said that he didn't even know that Successor Liability was still even a law as he hadn't heard it being used in over 25 years. How does the State expect me to know this when they don't even require Loan Officers to know what it is when checking on seller's debts?

December 12, 2017, I received notice that my file was referred to Robert Kennedy. I spoke to Mr. Kennedy on the phone for quite some time explaining everything. I understood what he was telling me about Successor Liability and I expressed to him how the State failed to stop Larry's business for over 15 years and that it is unfair to come after me for money he owed when they are the ones that let his debts slip through the cracks for so long. I told him as a new business with starting expenses I was unable to pay anything to them as I was just able to take care of my own responsibilities.

Mr. Kennedy was very understanding and sympathetic with me and I truly felt he cared.

He told me he would do a little more research and talk to the accountant on the case and would get back to me. It was a very long week waiting for a reply.

On the Friday of that week Mr. Kennedy called and said he wanted to let me know before the weekend that they decided to have my rent check diverted toward the \$4000 until paid in full, and then the rent payment would go back to the original Levy.

While I feel this arrangement was a blessing to me, I still feel that the Successor Liability did not pertain to me and I should not have been held accountable for his debt as I did not meet any of the basis that are listed for Successor Liability that I have listed previously.

I can see where Successor Liability would be helpful when fraudulent purposes to escape liability is suspected in a sale.

~~I don't think that a new small business owner should be held liable for a previous owner's~~ debts, especially when the sale was done legally and with all good intentions. Small business owners have a hard-enough time getting their businesses started and continuing to grow over the first several years without having to be burdened with this type of law as well.

The State coming after me with Successor Liability in order to get something from Larry Ulrich that they were not able to get from him involved a very stressful and emotional time for me. I have told you my story today in the hopes that it will help change the law for future new business owners so that they would not be blindsided by this law as I was.

I also hope that if this law is kept, that the State would at least change it to require Loan Officers be aware and know what this Law means when they are working with individuals for a small business loan and can inform them of what could happen.

Thank you for your time.