



News & Views

A Monthly Publication Dedicated to the Feed, Seed, Grain and Farm Supply Industries of Wisconsin

Annual Dues Notices ■

We're getting dues renewals in at a healthy clip. Thank you for your support and it is appreciated. If you have any questions or comments on any issue, please let us know so we may help you.

Somebody Asked ■

Q.: My accountant heard that in the state budget bill there is a change in how my wholly-owned trucking company, which exclusively serves our feed and grain operation, will be viewed in terms of sales tax? Is this true and what exactly is going on regarding this?

A.: Your accountant is correct. There is a provision in the state budget bill which makes wholly-owned, but separate businesses subject to sales taxes from which they are currently exempt. The language changing this handling of sales was very simple and buried in the budget bill. "77.61 (16m) of the statutes is created to read: 77.61 (16m) A single owner entity that is disregarded as an entity under chap.71 is disregarded as a separate entity for the purposes of this chapter." That's it and it carries a powerful wallop that is going to result in an estimated \$30 million dollars in new taxes being paid over the next two years for businesses.

To explain this we will reference an explanatory paper that was written by the legislative Fiscal Bureau.

A disregarded entity is a separate entity from its owner, but the disregarded entity and its owner are treated as a single entity for income or franchise tax purposes. Businesses may establish separate entities from their owners, such as single-member limited liability companies (LLCs), for liability reasons; so that if the business is sued, the owner would not be liable for the

lawsuit. The owner then chooses to disregard these separate entities for the purposes of the business owner's income or franchise tax return. Under current law, the owner of a single-owner entity that is disregarded as a separate entity for purposes of the income or franchise tax is regarded as a separate entity for purposes of the sales and use tax.

(A typical example and one common to WASA members would be:) an owner entity may create a separate transportation company solely to haul products for the owner. In the absence of the separate company, the owner would owe sales or use tax on its purchases of trucks, trailers, and other hauling equipment. However, the separate transportation company would qualify for the sales tax exemption for vehicles purchased by common or contract carriers.

According to the Department of Revenue, separate entity treatment under the sales and use tax for disregarded entities has encouraged some businesses to engage in a number of tax avoidance strategies, some of which have become common practice.

This means feed mills and grain elevators that have set up separate transportation companies, which currently don't pay sales tax on their equipment purchases will now be liable for that tax. Typically the legislature does not rescind tax exemption that a prior legislature has granted; but this is a different year in several ways. Of course, we have the state budget deficit, which has everyone in government looking for any pot of money lying around; witness the raid on the Ag Chem Cleanup Fund once again. In addition, we have one party rule and the budget is largely the one the Governor proposed and it is being passed in record time, compared to past years. The only chance of getting this changed is for the Governor to veto it. And that is a very remote

possibility given that he recommended the change in the first place.

We strongly urge any members that may be affected by this change in the treatment of a disregarded entity to contact their accountant as soon as possible. *Our thanks to Clifton Gunderson LLP for their help in the writing of this article.*

Food & Feed Safety Legislation

Earlier this week, the US House Energy and Commerce Committee passed legislation which would broaden the Food and Drug Administration's (FDA) authority to regulate the entire food production system from the farm to the table. The Food Safety Enhancement Act, H.R. 2749, is the result of several food-borne illnesses and deaths which have raised the notion in some quarters that current FDA regulations are both too lax and don't provide the necessary authority with which to respond to these situations. Think of the issues surrounding the recent peanut contamination case and you see the impetus for the changes.

That said, the bill, which dramatically increases the Food and Drug Administration's regulatory authority raises a number of serious concerns among the feed and grain industries, farm groups, and food processors regarding the vastly increased costs of compliance, record keeping and prevention controls. *The bill would impact every entity which registered under the FDA Bioterrorism Act, which includes every single commercial feed mill and grain elevator in the country.*

The following is an examination of the bill's most troublesome aspects. This is by no means an exhaustive list, but instead is intended to give you a perspective on the breadth of the proposals.

User Fees: The bill requires FDA to impose several fees to help fund the agency's mission, but provides no basis to justify the level of user fees. The current proposed level is a flat fee of \$500 for each and every registered *location* under the FDA Bioterrorism Act. This means, for example, a \$500 fee for Miller Brewing in Milwaukee and \$500 for each and every grain elevator or feed mill location. The current version of the bill makes no

differentiation among types or sizes or registered facilities. It's \$500 each.

Funds generated from the user fees are directed into FDA's general revenues rather than to a dedicated account to pay for FDA's food/feed safety functions. We also believe a flat facility registration fee applicable to all types and sizes of facilities poses questions of equity, particularly for small businesses that consume a negligible share of FDA resources.

Standards for Raw Commodities: The bill requires FDA to implement regulations setting standards for safe growing, harvesting and storage of raw agricultural commodities, including on-farm regulation if required to minimize the risk of serious adverse health consequences or death to humans or animals. This is a direct result of the recent contamination of raw spinach.

The bill specifically references naturally occurring hazards, such as mycotoxins in corn. The bill also specifically cites manure, water quality, employee hygiene, sanitation, animal controls and temperature controls that FDA determines to be "reasonably necessary." Such standards, if promulgated, should be commodity-specific (such as foods directly consumed by humans) and should be limited to those that FDA determines, based on scientific risk-assessment and risk-management principles, are necessary to minimize the risk of serious adverse health consequences.

Authorizing FDA to Dictate Facility-Specific Product Safety Standards: The bill would authorize FDA to establish (by either regulation or guidance) facility-specific preventive controls or elements of a written food safety plan. This would undermine facilities' ability to devise their own food/feed safety plans, and would allow FDA to leapfrog the notice-and-comment rulemaking process, including requirements to respond to public comments and conduct economic impact analyses. These provisions are made even more troublesome by the bill's provisions that would delegate the authority to issue such directives to the FDA District Office level; those offices frequently issue and

implement inconsistent and varying interpretations of even existing FDA regulations and policies.

Suspension of Facility Registration: The bill would require facilities to register annually with FDA, and update changes in registration information within 30 days, including changes in contact information at the facility. (Currently, facilities are only required to register once, unless ownership/management of the facility or contact information changes.) The bill also empowers FDA to suspend the registration of facilities for violations that could result in serious adverse health consequences or death to humans or animals. Allowing FDA to shut down a business (by suspending a facility's registration) based on a supposition that its products could result in serious adverse effects is unacceptable. For example, if a facility were to have its registration suspended, any products produced by that facility would be deemed misbranded and the products that were made by that facility or used in the manufacture of subsequent products by another facility would be subject to recall.

FDA Access to Records: The bill dramatically expands FDA's access to facility records and expressly encompasses farms in the records-access requirement. The inspector would merely need to present appropriate credentials and would not need to have any indication that a food/feed safety issue may exist as a precondition to accessing or photocopying records. In fact, the bill would expressly delete the Bioterrorism Act limitation on records-access which requires FDA to first have a "reasonable belief" that a product is adulterated and presents a threat of serious adverse health consequences or death to humans or animals.

The bill also authorizes FDA to promulgate regulations mandating the types of records required and requiring that records be kept in a standardized electronic format and be retained for up to three years. The importance of FDA access to commercial facility records that pertain to the safe storage, handling, manufacture and distribution of products is obvious. However, FDA should only have access to records that directly bear upon product safety. It is

important to include these qualifiers to prevent unwarranted and unreasonable "fishing expeditions" by the agency.

Product-Tracing: The bill would require that FDA implement a product-tracing system capable of identifying, within two business days, each person who grows, produces, manufactures, processes, packs, transports, stores or sells agricultural commodities, food, feed or feed ingredients associated with a product-safety incident. This would far exceed the Bioterrorism Act's requirement that facilities maintain records sufficient within 24 hours to identify the immediate previous source of the agricultural products and ingredients they receive and the next subsequent recipient to which they ship – the so-called "one-step-forward/one-step-back" requirement. The costs of an individual business complying with this requirement are literally mind-boggling.

FDA Recall, Cease-Distribution and Quarantine Authorities: The Bioterrorism Act requires FDA to detain a product if FDA has credible evidence or information indicating a product is adulterated and presents a threat of serious adverse health consequences or death to humans or animals. This bill would lower that threshold that requires that FDA only have a "reason to believe" that a product is adulterated, misbranded or otherwise in violation of the bill.

We are working with a broad coalition of groups to develop strategies to address a response to this legislation. One bet that is almost for certain: there will be some level of new fees associated with the bill and additional recordkeeping requirements in the final law. Everything else is potentially negotiable.

Source: NGFA

Looking Down the Road ■

Sep. 10

**WASA Golf Outing
Northern Bay Golf Resort, Arkdale**

Route:

- General Manager
- Feed Department
- Grain Department
- Agronomy
- Safety Director
- Personnel
- _____

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