



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

May 27, 2009

MEMORANDUM

To: Senator Plale

From: Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2009 SB 176** (LRB-2705/1) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

May 20, 2009

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on SB 176 – Sales Tax Exemption for Nonprescription Drugs

The Department of Revenue recommends that the bill be amended to comply with the Streamlined Sales and Use Tax Agreement (SSUTA). In addition, the author of the bill may wish to exclude grooming and hygiene products from the exemption to clarify the scope of the exemption for both retailers and consumers.

Wisconsin adopted the provisions of the SSUTA in 2009 Wisconsin Act 2. Under the agreement, Wisconsin must use standard definitions for sales tax purposes. In addition, for a product-based exemption, all products within a product definition must be exempted unless specifically allowed under the agreement.

To comply with these requirements, the bill could refer to nonprescription drugs by the SSUTA definition for "over-the-counter-drugs". In addition, as permitted by the agreement, "grooming and hygiene products" may be excluded from "over-the-counter-drugs". Wisconsin has already adopted the SSUTA definition of "drug".

As defined under the SSUTA, "over-the-counter-drug" means a drug that contains a "Drug Facts" or "active ingredients" label that identifies the product as a drug as required by the Code of Federal Regulations. "Grooming and hygiene products," are defined as "soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of 'over-the-counter-drugs.'"

As indicated by the definition of "grooming and hygiene products", some, but not all of such products may also be considered "over-the-counter-drugs". As a result, retailers and consumers may find the bill's exemption confusing in that some medicated soaps and shampoos (e.g. dandruff shampoos) would be exempt while others would remain taxable. Excluding "grooming and hygiene products" from the bill's exemption would avoid this concern.

The author of the bill may consider the following specific changes to the bill to exempt nonprescription drugs while maintaining compliance with the SSUTA:

1. Define "over-the-counter-drug" by the SSUTA definition.
2. Exclude from taxable sales "the sale of and the storage, use, or other consumption of over-the-counter drugs sold for human beings" to exempt all products under the SSUTA definition and create parallel language to the existing exemption for prescription drugs.
3. If desired, define "grooming and hygiene products" using the SSUTA definition and exclude these products from the exemption.

If you have questions regarding this memo, please contact Jacek Cianciara at 266-8133.

cc: Senator Plale