

2013 DRAFTING REQUEST

Bill

Received: 10/9/2012 Received By: jkreye
Wanted: As time permits Same as LRB:
For: Administration-Budget By/Representing: Ley
May Contact: Drafter: jkreye
Subject: Tax, Other - sales Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to: joseph.kreye@legis.wisconsin.gov

Pre Topic:

DOA:.....Ley, BB0067 -

Topic:

Sales price and purchase price definitions for taxes imposed on retailers which may be passed on to consumers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 10/12/2012			_____			
/P1	jkreye 1/15/2013	csicilia 10/17/2012	rschlue 10/17/2012	_____	lparisi 10/17/2012		State S&L
/P2		csicilia 1/15/2013	jfrantze 1/15/2013	_____	mbarman 1/15/2013		State S&L

FE Sent For:

<END>

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1/P2 cjs 1/15 JB 1/15
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/?	jkreye	PI cjs 10/17		==			
		12					

FE Sent For:

<END>

Kreye, Joseph

0269

From: Hanaman, Cathlene
Sent: Monday, October 08, 2012 8:38 AM
To: Kreye, Joseph; Shovers, Marc
Subject: FW: Statutory Language Drafting Request
Attachments: 7008 Clarify Definition of Sales Price and Purchase Price.doc

From: Emily.Ley@wisconsin.gov [<mailto:Emily.Ley@wisconsin.gov>]
Sent: Monday, October 01, 2012 4:41 PM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Frederick, Caitlin - DOA; Ley, Emily A - DOA
Subject: Statutory Language Drafting Request

Biennial Budget: 2013-15

Topic: Clarify Definition of "Sales Price" and "Purchase Price" for Taxes Imposed on Retailer which may be passed on to Consumer

Tracking Code: BB0067

SBO Team: TLGED

SBO Analyst: Ley, Emily - DOA
Phone: 608-266-7597
E-mail: Emily.Ley@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: Medium

Intent:

Modify ss. 77.51(12m), 77.51(12m)(b)3, 77.51(15b), and 77.51(15b)(b)3 to clarify that the definition of "sales price" and "purchase price" do not include taxes that are imposed on the seller if those taxes are separately stated on the invoice, bill of sale, or similar document given to the purchaser and if the statutes authorizing or imposing those taxes provide that those taxes may, but are not required to be, passed on to and collected from the purchaser.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

TITLE: CLARIFY DEFINITION OF "SALES PRICE" AND "PURCHASE PRICE" – TAXES IMPOSED ON RETAILER WHICH MAY BE PASSED ON TO CONSUMER

DESCRIPTION OF CURRENT LAW AND PROBLEM

Current Law:

Section 77.51(12m), Wis. Stats. (2009-10), provides the definition of "purchase price."
Section 77.51(12m)(a)2., Wis. Stats. (2009-10), specifically provides that "purchase price" includes, among other things, "...all taxes imposed on the seller..."

Section 77.51(12m)(b)3., Wis. Stats. (2009-10), specifically provides that "purchase price" does not include, among other things, "Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser."

Section 77.51(15b), Wis. Stats. (2009-10), provides the definition of "sales price."
Section 77.51(15b)(a)2., Wis. Stats. (2009-10), specifically provides that "sales price" includes, among other things, "...all taxes imposed on the seller..."

Section 77.51(15b)(b)3., Wis. Stats. (2009-10), specifically provides that "sales price" does not include, among other things, "Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser."

Wisconsin has several taxes imposed on the seller which may, at the seller's option, be passed on to the purchaser. Based on the definition of "sales price" contained in the Wisconsin Statutes, it is not clear which of these types of taxes may be excluded and which of these types of taxes must be included in the measure upon which sales tax is imposed. (Note: An amendment was made to the SSUTA and a corresponding rule was also adopted by the Streamlined Sales Tax Governing Board (SSTGB) setting forth clear rules the member states must follow if the member state wants to exclude certain types of taxes from the measure upon which the state, county, and stadium sales and use tax is computed.) This legislative proposal would allow Wisconsin to continue doing what it has been doing in the past in this area, be in compliance with the SSUTA, and provide clear guidance for Wisconsin retailers.

RECOMMENDATION FOR ACTION

The statutes should be amended to clarify that the definition of "sales price" and "purchase price" do not include taxes that are imposed on the seller if those taxes are separately stated on the invoice, bill of sale, or similar document given to the purchaser and if the statutes authorizing or imposing those taxes provide that those taxes may, but are not required to be, passed on to and collected from the purchaser. This amendment will make it clearer and easier for retailers, purchasers and Department personnel to know when a separately stated tax should or should not be included in the measure subject to sales or use tax. See Attachment 1 for a list of the Wisconsin taxes and fees that are imposed, how they are currently treated and how they would be treated depending on whether or not this amendment is adopted in its entirety. The items highlighted in yellow in Attachment 1 indicate changes that would result if this amendment is not adopted in its entirety. The items highlighted in ■ are items that may

result in Wisconsin being found out of compliance with the requirements of the SSUTA if this amendment is not adopted in its entirety.

IMPACT ON JOB CREATION

None.

FISCAL EFFECT

None. These changes will allow Wisconsin to continue to exclude certain taxes from the measure upon which the sales and use tax is currently imposed and remain in compliance with the requirements of the SSUTA.

However, if these amendments are not adopted, it will either result in (1) an increase in the measure subject to sales and use tax equal to the amount of other taxes, such as room taxes and local exposition district taxes, that are imposed on certain retail sales, or (2) Wisconsin will not be in compliance with the requirements of the SSUTA. If Wisconsin is found to be out of compliance with the requirements of the SSUTA, this will result in a reduction in the sales tax revenues that Wisconsin is collecting of approximately \$2 million per year from retailers who have volunteered to collect and remit Wisconsin taxes on their remote sales that are sourced to Wisconsin.

DRAFTING INSTRUCTIONS

See Attachment 2.

EFFECTIVE DATE

Day after publication.

INTERESTED/AFFECTED PARTIES

Any person providing lodging services, including hotels, motels and bed and breakfasts, any retailers selling items subject to the local exposition district taxes, premier resort area taxes, local rental car tax, state rental vehicle fee, any retailers collecting the state universal service fund fee, retailers charging PEG transport fees under sec. 66.0420(5), Stats., persons charging video service provider fees under sec. 66.0420(7), Stats.

Wisconsin Taxes Potentially Affected by Sales Price Amendment

Name of Tax or Fee Imposed	Statutory Reference	Covered by SSUTA?	Is Tax/Fee Required, May Be, or Prohibited by Statute from Being Passed on to Customer?	Currently Included or Excluded from Sales Price?	Treatment under Proposed Rule if Amendment NOT Adopted by WI	Treatment under Proposed Rule if Amendment Adopted by WI
County tax	77.70	Y	May Be	Excluded	Excluded – Tax covered by SSUTA	Excluded
Stadium Tax	77.705 & 77.706	Y	May Be	Excluded	Excluded- Tax covered by SSUTA	Excluded
Local Expo Food and Beverage Tax	77.98	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
Local Expo Room Tax	66.0615(1 m)	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
						
Premier Resort Area Tax	77.994	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
Local Rental Car Tax	77.99	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
State Rental Vehicle Fee	77.995	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
Dry Cleaning Fee	77.9961	N	Silent	Included	Included	Included
						

Public Benefits Fee	16.957(4) & (5)	N	Shall	Excluded	Excluded – Required to be collected from consumer	Excluded
Wireless 911 Fee	256.35(3m)	N	Shall	Excluded	Excluded – Required to be collected from consumer	Excluded
Landline 911 Fee	256.35(3)	N	User liable for tax	Excluded	Excluded	Excluded
State USF fee	196.218	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
PUC Fee	196.85	N	Silent	Included	Included	Included
Telephone Relay Service Surcharge	196.858	N	Prohibited	Included	Included	Included
Telecom Trade practices	196.859	N	Prohibited	Included	Included	Included
PEG Transport Fees (Video)	66.0420(5)	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
Video Service Provider Fee	66.0420(7)	N	May Be	Excluded	Included – Not covered by SSUTA	Excluded
State Issued Franchise Fee (Video)	66.0420(3)	N	Silent	Included	Included	Included
Fermented Malt Beverage Tax	139.02(1)	N	Silent	Included – Not imposed on retail sale	Included – Not imposed on retail sale	Included – Not imposed on retail sale
Liquor Tax	139.03	N	Silent	Included – Not imposed on retail sale	Included – Not imposed on retail sale	Included – Not imposed on retail sale
Cigarette Tax	139.31	N	Shall	Included – Not imposed on retail sale	Included – Not imposed on retail sale	Included – Not imposed on retail sale
Petroleum Inspection Fee	168.12	N	Silent	Included – Not imposed on retail sale	Included – Not imposed on retail sale	Included – Not imposed on retail sale
Motor Fuel Taxes	78.01	N	Shall	Included – Not imposed on retail sale	Included – Not imposed on retail sale	Included – Not imposed on retail sale

Drafting Instructions

Amend section 77.51(12m)(a)^{2,} Stats., as follows:

"2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller except as provided in par. (b)3m., and any other expense of the seller."

Create section 77.51(12m)(b)3m., Stats., to read as follows:

"3m. Taxes imposed on the seller that are separately stated on the invoice, bill of sale, or similar document given to the purchaser if the state statute imposing or authorizing the tax provides that the seller may, but is not required to, pass on and collect the tax from the user or consumer."

Amend section 77.51(15b)(a), Stats., as follows:

"2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller except as provided in par. (b)3m., and any other expense of the seller."

Create section 77.51(15b)(b)3m., Stats., to read as follows:

"3m. Taxes imposed on the seller that are separately stated on the invoice, bill of sale, or similar document given to the purchaser if the state statute imposing or authorizing the tax provides that the seller may, but is not required to, pass on and collect the tax from the user or consumer."

Amend section 66.0615(1m)(a), Stats. to read as follows:

"The governing body of a municipality may enact an ordinance, and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege of furnishing, at retail, except sales for resale, rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations. A tax imposed under this paragraph may be collected from the consumer or user, but is not subject to the selective sales tax imposed by s. 77.52 (2) (a) 1. and may not be imposed on sales to the federal government and persons listed under s. 77.54 (9a). A tax imposed under this paragraph by a municipality shall be paid to the municipality and may be forwarded to a commission if one is created under par. (c), as provided in par. (d). Except as provided in par. (am), a tax imposed under this paragraph by a municipality may not exceed 8%. Except as provided in par. (am), if a tax greater than 8% under this paragraph is in effect on May 13, 1994, the municipality imposing the tax shall reduce the tax to 8%, effective on June 1, 1994. "



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0269/P1

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DOA:.....Ley, BB0067 – Sales price and purchase price definitions for taxes imposed on retailers which may be passed on to consumers

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under this bill, for sales and use tax purposes, the definition of “purchase price” and “sales price” does not include taxes imposed on the seller that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser if the law imposing or authorizing the tax provides that the seller may, but is not required to, pass on to and collect the tax from the user or consumer.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 66.0615 (1m) (a) of the statutes is amended to read:

3 66.0615 (1m) (a) The governing body of a municipality may enact an ordinance,

4 and a district, under par. (e), may adopt a resolution, imposing a tax on the privilege

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 10 a tax imposed under this paragraph by a municipality may not exceed 8%. Except
 11 as provided in par. (am), if a tax greater than 8% under this paragraph is in effect
 12 on May 13, 1994, the municipality imposing the tax shall reduce the tax to 8%,
 13 effective on June 1, 1994.

History: 1983 a. 189, 514; 1993 a. 263, 467, 491; 1999 a. 9; 1999 a. 150 ss. 565 to 567; Stats. 1999 s. 66.0615; 2003 a. 203; 2005 a. 135; 2007 a. 20; 2009 a. 2; 2011 a. 18,
 32.

14 **SECTION 2.** 77.51 (12m) (a) 2. of the statutes is amended to read: X

15 77.51 (12m) (a) 2. The cost of materials used, labor or service cost, interest,
 16 losses, all costs of transportation to the seller, all taxes imposed on the seller, except
 17 as provided in par. (b) 3m., and any other expense of the seller.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27;
 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a.
 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009
 a. 28 ss. 1830b to 1836h, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208.

18 **SECTION 3.** 77.51 (12m) (b) 3m. of the statutes is created to read: X

19 77.51 (12m) (b) 3m. Taxes imposed on the seller that are separately stated on
 20 the invoice, bill of sale, or similar document that the seller gives to the purchaser if
 21 the law imposing or authorizing the tax provides that the seller may, but is not
 22 required to, pass on to and collect the tax from the user or consumer.

23 **SECTION 4.** 77.51 (15b) (a) 2. of the statutes is amended to read:



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23 **SECTION 4.** 77.51 (15b) (a) 2. of the statutes is amended to read:



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0269/P2

JK:cjs:jf

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