

**2001 DRAFTING REQUEST**

**Bill**

Received: 11/08/2000

Received By: jkreye

Wanted: As time permits

Identical to LRB: 99AB572

For: Christine Sinicki (608) 266-8588

By/Representing: jan

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - sales

Extra Copies:

**Pre Topic:**

No specific pre topic given

**Topic:**

Sales and use tax on tips and gratuities

**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 11/08/2000	gilfokm 11/22/2000		_____			S&L
/1			pgreensl 11/27/2000	_____	lrb_docadmin 11/27/2000	lrb_docadmin 01/19/2001	

FE Sent For:

<END>

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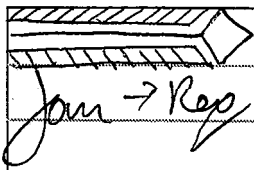
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1?	jkreye	1-11/22 King	11/27 PG	11/27 PG/RS			

FE Sent For:

<END>

11-8-00



Jan → Rep Sindi 6-8588

re-introduce

LKB - 3296/3

▷ gratuity tax issue

0951/1  
JK: King.

# 1999 ASSEMBLY BILL 572

in 11-8-00

November 3, 1999 – Introduced by Representatives SINICKI, F. LASEE, PLALE, KRUG, HASENOHRL, MUSSER, STASKUNAS, GUNDERSON, J. LEHMAN, UNDERHEIM, SERATTI and M. LEHMAN, cosponsored by Senators GROBSCHMIDT, BURKE, FARROW and A. LASEE. Referred to Committee on Ways and Means.

- 1 AN ACT *re-gen* to amend 77.51 (4) (c) 2. and 77.51 (15) (c) 1.; and to create 77.51 (4) (b)
- 2 2m. and 77.51 (15) (b) 2m. of the statutes; relating to: the sales tax and the use
- 3 tax on tips and gratuities.

a purchaser without paying the appropriate sales tax

### Analysis by the Legislative Reference Bureau

Under current law, the state imposes a sales tax on all retailers at the rate of 5% of the gross receipts from the sale, lease, or rental of tangible personal property and the sale of services. Under current law, retailers generally pass on all sales taxes to the consumer.

Under current law, for purposes of imposing a sales tax, gross receipts include any addition to the sales price of tangible personal property that is charged to a customer in lieu of a tip or a gratuity. Under this bill, for purposes of imposing a sales tax, gross receipts do not include any addition to the sales price of tangible personal property that is charged to a customer in lieu of a tip or a gratuity.

Under current law, the state imposes a use tax on all consumers, at the rate of 5% of the sales price, for the consumption, use, or storage of goods in this state that the consumer purchases from an out-of-state retailer and the consumption or use of services in this state that the consumer purchases from an out-of-state retailer.

Under current law, for purposes of imposing a use tax, the sales price of tangible personal property includes any addition to the sales price that is charged to a customer in lieu of a tip or a gratuity. Under this bill, for purposes of imposing a use tax, the sales price of tangible personal property does not include any addition to the sales price of tangible personal property that is charged to a customer in lieu of a tip or a gratuity.

a purchaser without paying the appropriate sales tax

**ASSEMBLY BILL 572**

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:*

1           **SECTION 1.** 77.51 (4) (b) 2m. of the statutes is created to read:

2           77.51 (4) (b) 2m. Any services that are a part of the sale of tangible personal  
3 property, including any fee, service charge, labor charge<sup>✓</sup> or other addition to the price  
4 charged a customer by the retailer that represents or is in lieu of a tip or gratuity.

5           **SECTION 2.** 77.51 (4) (c) 2. of the statutes is amended to read:

6           77.51 (4) (c) 2. ~~Any~~ For taxes imposed under subch. V, any services that are  
7 a part of the sale of tangible personal property, including any fee, service charge,  
8 labor charge<sup>✓</sup> or other addition to the price charged a customer by the retailer which  
9 represents or is in lieu of a tip or gratuity.

P.W.F. {

10          **SECTION 3.** 77.51 (15) (b) 2m. of the statutes is created to read:

11          77.51 (15) (b) 2m. Any services that are a part of the sale of tangible personal  
12 property, including any fee, service charge, labor charge<sup>✓</sup> or other addition to the price  
13 charged a customer by the retailer that represents or is in lieu of a tip or gratuity.

14          **SECTION 4.** 77.51 (15) (c) 1. of the statutes is amended to read:

15          77.51 (15) (c) 1. ~~Any~~ For taxes imposed under subch. V, any services that are  
16 a part of the sale of tangible personal property, including any fee, service charge,  
17 labor charge<sup>✓</sup> or other addition to the price charged a customer by the retailer which  
18 represents or is in lieu of a tip or gratuity.

P.W.F. {

19          **SECTION 5.** 77.52 (5m) of the statutes is created to read:



**Barman, Mike**

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**From:** Kreye, Joseph  
**Sent:** Friday, January 19, 2001 11:27 AM  
**To:** Barman, Mike  
**Subject:** 01-0951

Hi Mike,  
I received a call from Jan in Rep. Sinicki's office to jacket 01-0951 (she misplaced the sheet). Thank you.

*Joseph T. Kreye*, Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263  
*joseph.kreye@legis.state.wi.us*





# State of Wisconsin

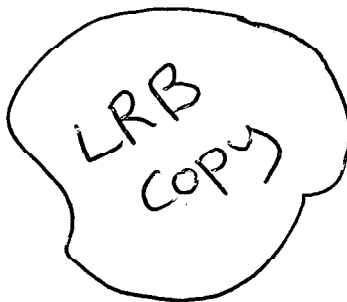
## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
REFERENCE SECTION: (608) 266-0341  
FAX: (608) 266-5648

STEPHEN R. MILLER  
CHIEF

February 27, 2001



## MEMORANDUM

**To:** Representative Sinicki

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

**Subject:** Technical Memorandum to **2001 AB-64** (LRB 01-0951/1)

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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

February 27, 2001

**TO:** Joseph Kreye  
Legislative Reference Bureau

**FROM:** Yeang-Eng Braun <sup>YEB</sup>  
Department of Revenue

**SUBJECT:** Technical Memorandum on AB 64 – Exempt from State Sales and Use Taxes  
Any Service Charge Related to the Sale of Tangible Personal Property

The apparent intent of this bill is to exclude from the sales tax base service charges made by a retailer in lieu of a tip or gratuity. In the Department's view, it may not achieve that result because of a conflict with existing statutory language, may in fact exempt charges other than those intended, and creates different treatment of service charges for different types of taxes.

Proposed sec. 77.51 (4)(b)2m, created by Section 1 of the bill, would exclude from gross receipts "any services that are a part of the sale of tangible personal property." This language would conflict with existing sec. 77.51 (4)(a)1, Wis. Stats., which provides that gross receipts may not be reduced for labor or service costs. If this existing language controls, tips and gratuities, which are charges for labor and service costs, would remain taxable when included in the bill by the retailer.

At the same time, it may allow retailers to reduce the amount of their gross receipts subject to tax by charging a separate fee for services that are not a labor or service cost. An example might be a charge for the set-up of a computer, whenever the seller does not incur any cost for the set-up in terms of payment to an employee or outside contractor. Further, services that are part of a sale of tangible personal property could be broadly interpreted so that any portion of gross receipts attributable to any service is excluded. At the extreme, the bill could limit gross receipts to the portion of the sales price attributable to raw materials used in the property, for example, a motor vehicle, while the portion attributable to services, such as designing, assembling and transporting the vehicle, would not be taxable.

The exclusion from gross receipts would apply for purposes of the state sales and use tax, but not for other taxes. Section 2 of the bill provides the services excluded from gross receipts under Section 1 of the bill would be included in gross receipts for taxes under Subchapter V of Chapter 77. These are the county, baseball park and football stadium sales and use taxes; in addition, these services would be included in gross receipts for the premier resort tax, since its statutory provisions, specifically sec. 77.9941 (4), refer to sec. 77.79 in Subchapter V.

These service charges also remain in gross receipts for the local food and beverage, local rental car, local room or state rental vehicle fee taxes because the appropriate provisions for those taxes were not amended to reference proposed sec. 77.51 (4)(b)2m, created by Section 1 of the bill.

Because of these differences in tax bases, a retailer would have to keep track of charges made for tips and gratuities, excluding them when determining state sales and use tax liability, but including them when determining other tax liability. This will impose considerable compliance costs on retailers. In addition, the Department would need to redesign reporting forms and computer programs to properly collect and allocate local sales, exposition district and premier resort area taxes.

Further, the bill conflicts with a key feature of the Streamlined Sales Tax Project, in which Wisconsin is cooperating with more than 30 other states. The feature is common tax bases for state and local taxes. The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax administration. Different treatment of transactions for state and local transactions-based taxes would create new complexity contrary to states' efforts to achieve simplification.

The Department has two other concerns with the bill. The first is that it creates a conflict in the definitions of gross receipts and sales price for the local food and beverage taxes and local car rental tax and the state rental vehicle fee. Section 2 of the bill includes service charges in gross receipts by amending sec. 77.51 (4)(c)2, Wis. Stats., and Section 4 of the bill includes them in the definition of sales prices. Existing provisions for the food and beverage, car rental and rental vehicle taxes refer to the amended section relating to gross receipts, but not to the amended section relating to sales price. Thus, the conflict results.

The second concern is that the bill requires the amount of a service charge to be stated separately, but only for the sales of services. It would not require, for example, a restaurant to state separately a 15% gratuity on the sale of a meal. In addition, there are no consequences for non-compliance with this requirement to report service charges separately.

The Department recommends the following changes be made to the bill in order to limit the excluded charges to tips and gratuities related to the sales of meals and beverages and to exclude such tips and gratuities from gross receipts for purposes of local sales and use, premier resort and exposition district taxes as well as the state sales tax.

1. Proposed sec. 77.51 (4)(b)2m, as created by Section 1 of the bill, should exclude from gross receipts any fees or service or labor charges for the sales of meals, food, food products and beverages made in lieu of a tip and stated separately on the bill.
2. Sec. 77.51 (4)(a)2 and (c)2, Wis. Stats., should be amended to provide an exception for proposed sec. 77.51 (4)(b)2m. (There should be no reference to Subchapter V, as in the current draft.)
3. Proposed sec. 77.51 (15)(b)2m, as created by Section 3 of the bill, should exclude from sales price any fees or service or labor charges for the sales of meals, food, food products and beverages made in lieu of a tip and stated separately on the bill.
4. Sec. 77.51 (15)(a)2 and (c)1, Wis. Stats., should be amended to provide an exception for proposed sec. 77.51 (15)(b)2m. (There should be no reference to Subchapter V, as in the current draft.)

YEB  
2/27/01

5. Section 5 of the bill should be deleted.
6. Sec. 77.982 (2), Wis. Stats., should be amended to refer to proposed sec. 77.51 (4)(b)2m.

If you have questions regarding this technical memorandum, please contact Dennis Collier at 266-5773.

YEB:DC:ds  
l:\fsn01-02\dclab64.tec

YEB  
2/27/01