

2001 DRAFTING REQUEST

Bill

Received: **03/13/2001**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Revenue 7-1262**

By/Representing: **sherrie**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax - sales**

Extra Copies:

Submit via email: **NO**

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Uniform sales tax and use tax administration act

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 03/29/2001	csicilia 03/29/2001		_____			State
/1	jkreye 03/30/2001	csicilia 04/02/2001	martykr 03/29/2001	_____	lrb_docadmin 03/29/2001		State
/2	jkreye 04/02/2001	csicilia 04/02/2001	pgreensl 04/02/2001	_____	lrb_docadmin 04/02/2001		State

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/3

jfrantze _____
04/02/2001 _____

lrb_docadmin
04/02/2001

lrb_docadmin
04/04/2001

FE Sent For:

<END>

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Handwritten notes:
 /3 cjs 4/2/01
 4/2
 4/2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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<END>

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Pre Topic:

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/?	jkreye 03/29/2001	csicilia 03/29/2001					State
/1		1/2 cjs 3/30 01	martykr 03/29/2001 4/12 ps	4/12 ps/JF	lrb_docadmin 03/29/2001		

FE Sent For: <END>

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1/?	jkreye	11 cjs 3/29	km 3/29	cb 3 km 29			

FE Sent For:

<END>

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Tuesday, March 13, 2001 12:23 PM
To: Kreye, Joseph
Subject: SST

Joe - could you draft the SST language with just the "act" part and without all of the changes necessitated by the agreement? This would be a separate draft from the one that's in editing now --- just a back up if we don't have much success with the full-blown version.

Thanks.

S.

Handwritten initials and scribbles in the top right corner.

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

in 3-29-01

TODAY
PLEASE

INSERT B

gen cat.

INSERT A

1 AN ACT ~~...~~; relating to: ~~...~~

Analysis by the Legislative Reference Bureau

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

2

(END)

FE-S

INSERT C

1 77.55 (3), 77.56 (1), 77.57, 77.58 (3) (b), 77.58 (6), 77.59 (9), 77.61 (1) (b), 77.61
 2 (1) (c), 77.70, 77.705, 77.706, 77.707 (1), 77.707 (2), 77.71 (2), 77.71 (3), 77.71 (4),
 3 77.72 (1), 77.72 (2), 77.77 (1), 77.785 (1), 77.785 (2), 77.981, 77.982 (2), 77.99,
 4 77.991 (2), 77.994 (1) (intro.), 77.9941 (4), 77.995 (2) and 77.9951 (2); and **to**
 5 **create** 77.51 (1b), 77.51 (1e), 77.51 (1f), 77.51 (1g), 77.51 (2m), 77.51 (3p), 77.51
 6 (3t), 77.51 (10m), 77.51 (12m), 77.51 (13m), 77.51 (15a), 77.51 (17w), 77.51
 7 (21p), 77.52 (2) (a) 5. b., 77.52 (3p), 77.52 (5m), 77.523, 77.524, 77.54 (1b), 77.54
 8 (1d), 77.54 (1e), 77.54 (1g), 77.54 (20n), 77.61 (1) (ag), 77.61 (3m), 77.61 (5m),
 9 77.65 and 77.66 of the statutes; **relating to:** the Uniform Sales and Use Tax
 10 Administration Act and granting rule-making authority.

INSERT
A

INSERT
B

Analysis by the Legislative Reference Bureau

This bill creates the Uniform Sales and Use Tax Administration Act (uniform act). The uniform act permits the department of revenue (DOR) to enter into the agreement approved by members of the streamlined sales tax project (project) on December 22, 2000 (agreement). The agreement is intended to simplify and modernize sales tax and use tax administration for the states that enter into the agreement. If DOR enters into the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for the certification of service providers and automated systems to aid out-of-state sellers with the collection of state sales and use taxes. DOR may not enter into the agreement unless the agreement requires that a state that is a signatory to the agreement fulfill certain requirements, including: 1) developing and adopting uniform definitions related to sales tax and use tax; 2) providing, with all states that are signatories to the agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the agreement; 3) restricting the frequency of changes in any local sales tax and use tax rates and providing notice of any such changes; and 4) adopting a uniform policy, with the states that are signatories to the agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality.

~~For purposes of the sales tax and use tax, and consistent with the agreement, the bill also makes certain changes to current law related to definitions, sourcing, and exemptions.~~

~~Under current law, "gross receipts" refers to the measure of the sales tax, and "sales price" refers to the measure of the use tax. Under the bill, "sales price" refers~~

INJERTIC

1 that is a signatory to the agreement, as defined in s. 77.65(2) (b), requests access to
2 an individual's personally identifiable information, the certified service provider
3 shall make a reasonable and timely effort to notify the individual of the request.

4 (d) A certified service provider shall provide sufficient technical, physical, and
5 administrative safeguards to protect personally identifiable information from
6 unauthorized access and disclosure.

7 SECTION ~~116~~. 77.65 of the statutes is created to read:

8 **77.65 Uniform sales and use tax administration.** (1) SHORT TITLE. This
9 section shall be known as the "Uniform Sales and Use Tax Administration Act."

10 (2) DEFINITIONS. In this section:

11 (a) "Agent" means a person designated by a seller to represent the seller.

12 (b) "Agreement" means the streamlined sales and use tax agreement approved
13 by the participants in the streamlined sales tax project on December 22, 2000.

14 (c) "Department" means the department of revenue.

15 (d) "Person" means an individual, trust, estate, fiduciary, partnership, limited
16 liability company, limited liability partnership, corporation, or any other legal entity.

17 (e) "Sales tax" means the tax imposed under ss. 77.52 and 77.71 (1).

18 (f) "Seller" means any person who sells, leases, or rents personal property or
19 services.

20 (g) "State" means any state of the United States and the District of Columbia.

21 (h) "Use tax" means the tax imposed under ss. 77.53 and 77.71 (2), (3), and (4).

22 (3) DEPARTMENT AUTHORITY. The department may enter into the agreement to
23 simplify and modernize sales tax and use tax administration in order to
24 substantially reduce the tax compliance burden for all sellers and for all types of
25 commerce. The department may act jointly with other states that are signatories to



1 the agreement to establish standards for the certification of a certified service
2 provider and certified automated system and to establish performance standards for
3 multistate sellers. The department may promulgate rules to administer this section
4 and may procure jointly with other states that are signatories to the agreement goods
5 and services in furtherance of the agreement. The secretary of revenue or the
6 secretary's designee may represent this state before the states that are signatories
7 to the agreement.

8 (4) AGREEMENT REQUIREMENTS. The department may not enter into the
9 agreement unless the agreement requires that a state that is a signatory to the
10 agreement do all of the following:

11 (a) Limit the number of sales and use tax rates.

12 (b) Limit the application ^{of} any maximums that are due on the amount of state
13 sales and use tax that is due on a transaction.

14 (c) Limit the application of sales and use tax.

15 (d) Establish uniform standards for the sourcing of transactions to the
16 appropriate taxing jurisdictions, for administering exempt sales, and for sales and
17 use tax returns and remittances.

18 (e) Develop and adopt uniform definitions related to sales and use tax.

19 (f) Provide, with all states that are signatories to the agreement, a central
20 electronic registration system that allows a seller to register to collect and remit sales
21 and use taxes for all states that are signatories to the agreement.

22 (g) Provide that the state shall not use a seller's registration with the central
23 electronic registration system under par. (f), and the subsequent collection and
24 remittance of sales and use taxes in the states that are signatories to the agreement,

INSERT
C.

1 to determine whether the seller has sufficient connection with the state for the
2 purpose of imposing any tax.

3 (h) Restrict variances between the state tax bases and local tax bases.

4 (i) Administer all sales and use taxes imposed by local jurisdictions within the
5 state so that sellers who collect such taxes are not required to register with, or submit
6 returns or taxes to, local jurisdictions and are not subject to audits by local
7 jurisdictions.

8 (j) Restrict the frequency of changes in any local sales and use tax rates and
9 provide notice of any such changes.

10 (k) Establish effective dates for the application of local jurisdictional boundary
11 changes to local sales and use tax rates and provide notice of any such changes.

12 (L) Provide monetary allowances to sellers and certified service providers as
13 outlined in the agreement.

14 (m) Certify compliance with the agreement before entering into the agreement
15 and maintain compliance with the agreement.

16 (n) Adopt a uniform policy, with the states that are signatories to the
17 agreement, for certified service providers that protects a consumer's privacy and
18 maintains tax information confidentiality.

19 (o) Appoint, with the states that are signatories to the agreement, an advisory
20 council to consult with in administering the agreement. The advisory council shall
21 consist of private sector representatives and representatives from states that are not
22 signatories to the agreement.

23 (5) COOPERATING STATES. The agreement entered into under this section is an
24 accord among cooperating states to further their governmental functions and
25 provides a mechanism among the cooperating states to establish and maintain a

✓

INSERT
C

1 cooperative, simplified system for the application and administration of sales and
2 use taxes that are imposed by each state that is a signatory to the agreement.

3 (6) LIMITED BINDING AND BENEFICIAL EFFECT. (a) The agreement entered into
4 under this section binds, and inures to the benefit of, only the states that are
5 signatories to the agreement. Any benefit that a person may receive from the
6 agreement is established by this state's law and not by the terms of the agreement. ✓

7 (b) No person shall have any cause of action or defense under the agreement
8 or because of the department entering into the agreement. No person may challenge
9 any action or inaction by any department, agency, other instrumentality of this state,
10 or any political subdivision of this state on the ground that the action or inaction is
11 inconsistent with the agreement.

12 (c) No law of this state, or the application of such law, may be declared invalid
13 on the ground that the law, or the application of such law, is inconsistent with the
14 agreement.

END OF INSERT C

15 ~~SECTION 117. 77.66 of the statutes is created to read.~~

16 ~~77.66 Amnesty for new registrants. (1) A seller is not liable for uncollected
17 and unpaid taxes, including penalties and interest, imposed under this subchapter
18 and subch. V on sales made to purchasers in this state before the seller registers
19 under par. (a), if all of the following apply:~~

20 ~~(a) The seller registers with the department, in a manner that the department
21 prescribes, to collect and remit the taxes imposed under this subchapter and subch.
22 V on sales to purchasers in this state in accordance with the agreement, as defined
23 in s. 77.65 (2) (b).~~

24 ~~(b) The seller registers under par. (a) within 365 days after the effective date
25 of this paragraph [revisor inserts date].~~

Barman, Mike

From: Barman, Mike
Sent: Thursday, March 29, 2001 11:59 AM
To: Sherrie Gates-Hendrix
Subject: Attached ... LRB-2842/1

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin

Legislative Reference Bureau - Legal Section - Front Office

100 N. Hamilton Street - 5th Floor

Madison, WI 53703

FACSIMILE COVER SHEET

State of Wisconsin
Department of Revenue

P.O Box 8933
Madison, WI 53708-8933

FAX
264 8522

FAX Number: 608-266-5718

FAX Operator: 608-266-8085

Number of pages attached, including this cover sheet: 8

If all pages are not received or are illegible, please call:

DELIVER TO: Joe Kreye 6-2263
Addressee Addressee's Phone Number

FROM: Sherie Gates-Hendrix 7-1262
Sender Sender's Phone Number

Additional Information:

2001 - 2002 LEGISLATURE

LRB-2842/1

JK:cjs:km

2001 BILL

Comments to Sherri 3/30/01

- 1 AN ACT to create 77.65 of the statutes; relating to: the Uniform Sales and Use
- 2 Tax Administration Act and granting rule-making authority.

Analysis by the Legislative Reference Bureau

With other states

Streamlined
Sales and
Use Tax
Agreement

This will be an
ongoing agreement
and we will not
want this statute
amended every
time something is changed

This bill creates the Uniform Sales and Use Tax Administration Act (uniform act). The uniform act permits the department of revenue (DOR) to enter into the agreement approved by members of the streamlined sales tax project (project) on December 22, 2000 (agreement). The agreement is intended to simplify and modernize sales tax and use tax administration for the states that enter into the agreement. If DOR enters into the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for the certification of service providers and automated systems to aid out-of-state sellers with the collection of state sales and use taxes. DOR may not enter into the agreement unless the agreement requires that a state that is a signatory to the agreement fulfill certain requirements, including: 1) developing and adopting uniform definitions related to sales tax and use tax; 2) providing, with all states that are signatories to the agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the agreement; 3) restricting the frequency of changes in any local sales tax and use tax rates and providing notice of any such changes; and 4) adopting a uniform policy, with the states that are signatories to the agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality.

2001 - 2002 Legislature

- 2 -

LRB-2842/1
JK:cjs:km

BILL

For further information see the *state* 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. 77.65 of the statutes is created to read:

2 77.65 Uniform sales and use tax administration. (1) SHORT TITLE. This
3 section shall be known as the "Uniform Sales and Use Tax Administration Act."

4 (2) DEFINITIONS. In this section:

5 (a) "Agent" means a person designated by a seller to represent the seller

From agreement

6 (b) "Agreement" means the streamlined sales and use tax agreement approved

7 by the participants in the streamlined sales tax project on December 22, 2000.

Same as comment on page 1

8 (c) "Department" means the department of revenue.

9 (d) "Person" means an individual, trust, estate, fiduciary, partnership, limited
10 liability company, limited liability partnership, corporation, or any other legal entity.

11 (e) "Sales tax" means the tax imposed under ss. 77.52^{77.51} and 77.71 (1).

12 (f) "Seller" means any person who sells, leases, or rents personal property or
13 services.

14 (g) "State" means any state of the United States and the District of Columbia.

15 (h) "Use tax" means the tax imposed under ss. 77.53 and 77.71 (2), (3), and (4).

16 (3) DEPARTMENT AUTHORITY. The department may enter into the agreement to
17 simplify and modernize sales tax and use tax administration in order to
18 substantially reduce the tax compliance burden for all sellers and for all types of
19 commerce. The department may act jointly with other states that are signatories to
20 the agreement to establish standards for the certification of a certified service
21 provider and certified automated system and to establish performance standards for

2001 - 2002 Legislature

- 3 -

LRB-2842/1

JK:cjs:km

SECTION 1

BILL

X 1 *take other actions reasonably required to implement provisions in*
 multistate sellers. The department may ^Apromulgate rules to administer this section *this section,*
 2 and may procure jointly with other states that are signatories to the agreement goods *including*
 3 and services in furtherance of the agreement. The secretary of revenue or the
 4 secretary's designee may represent this state before the states that are signatories
 5 to the agreement.

6 (4) AGREEMENT REQUIREMENTS. The department may not enter into the
 7 agreement unless the agreement requires that a state that is a signatory to the
 8 agreement do all of the following:

X 9 (a) Limit the number of ^{state} sales and use tax rates.
 X 10 (b) Limit the application of any maximums that are due on the amount of state
 11 sales and use tax that is due on a transaction.

X 12 (c) Limit the application ^{thresholds on the application} of sales and use tax.

13 (d) Establish uniform standards for the sourcing of transactions to the
 14 appropriate taxing jurisdictions, for administering exempt sales, and for sales and
 15 use tax returns and remittances.

16 (e) Develop and adopt uniform definitions related to sales and use tax.

17 (f) Provide, with all states that are signatories to the agreement, a central
 18 electronic registration system that allows a seller to register to collect and remit sales
 19 and use taxes for all states that are signatories to the agreement.

20 (g) Provide that the state shall not use a seller's registration with the central
 21 electronic registration system under par. (f), and the subsequent collection and
 22 remittance of sales and use taxes in the states that are signatories to the agreement,
 23 to determine whether the seller has sufficient connection with the state for the
 24 purpose of imposing any tax.

25 (h) Restrict variances between the state tax bases and local tax bases.

2001 - 2002 Legislature

- 4 -

LRB-2842/1

JK:cjs:km

SECTION 1

BILL

X 1 (i) Administer all sales and use taxes imposed by local jurisdictions within the
2 state so that sellers who collect such taxes ^{and remit} are not required to register with, or submit
3 returns or taxes to, local jurisdictions and are not subject to audits by local
4 jurisdictions.

5 (j) Restrict the frequency of changes in any local sales and use tax rates and
6 provide notice of any such changes.

7 (k) Establish effective dates for the application of local jurisdictional boundary
8 changes to local sales and use tax rates and provide notice of any such changes.

9 (L) Provide monetary allowances to sellers and certified service providers as
10 outlined in the agreement.

11 (m) Certify compliance with the agreement before entering into the agreement
12 and maintain compliance with the agreement.

13 (n) Adopt a uniform policy, with the states that are signatories to the
14 agreement, for certified service providers that protects a consumer's privacy and
15 maintains tax information confidentiality.

16 (o) Appoint, with the states that are signatories to the agreement, an advisory
17 council to consult with in administering the agreement. The advisory council shall
18 consist of private sector representatives and representatives from states that are not
19 signatories to the agreement.

20 (5) COOPERATING STATES. The agreement entered into under this section is an
21 accord among cooperating states to further their governmental functions and
22 provides a mechanism among the cooperating states to establish and maintain a
23 cooperative, simplified system for the application and administration of sales and
24 use taxes that are imposed by each state that is a signatory to the agreement.

2001 - 2002 Legislature

- 5 -

LRB-2842/1
JK:cjs:km
SECTION 1

BILL

1 (6) LIMITED BINDING AND BENEFICIAL EFFECT. (a) The agreement entered into
2 under this section binds, and inures to the benefit of, only the states that are
3 signatories to the agreement. Any benefit that a person may receive from the
4 agreement is established by this state's law and not by the terms of the agreement.

5 (b) No person shall have any cause of action or defense under the agreement
6 or because of the department entering into the agreement. No person may challenge
7 any action or inaction by any department, agency, other instrumentality of this state,
8 or any political subdivision of this state on the ground that the action or inaction is
9 inconsistent with the agreement.

10 (c) No law of this state, or the application of such law, may be declared invalid
11 on the ground that the law, or the application of such law, is inconsistent with the
12 agreement.

From Section 13 (7) No provision of (END) the agreement in whole or
5 of part invalidates or amends any provision of law of this
the Act state. Becoming a signatory to the agreement does not
(missed) amend or modify any law of this state.

also { Insert what was 77.524 in Agreement
package with changes noted on text
attached. Section 9 of Act.

2001 - 2002 Legislature

- 19 -

LRB-2416/P1
JK:kmg:jf
SECTION 37

1 SECTION 37. 77.524 of the statutes is created to read:

2 77.524 Seller and 3rd-party liability. (1) A certified service provider is the
3 agent of the seller with whom the certified service provider has contracted. The
4 certified service provider is liable for the sales and use taxes that are due the state
5 on all sales transactions that the provider processes for the seller, except as provided
6 in sub. (2).

7 (2) A seller that contracts with a certified service provider is not liable for sales
8 and use taxes that are due the state on transactions that the provider processed,
9 unless the seller has misrepresented ^{to} ~~(to the provider or the state)~~ the type of items that
10 the seller sells or has committed fraud ~~related to transactions that the provider~~
11 ~~processed~~. The seller is subject to an audit on transactions that the certified service
12 provider processed only if there is probable cause to believe that the seller has
13 committed fraud or made a material misrepresentation ~~related to the transactions~~
14 ~~that the provider processed~~. The seller is subject to an audit on transactions that the
15 certified service provider does not process. The states that are signatories to the
16 agreement, as defined in s. 77.65 (2) (b), may jointly check the seller's system and
17 review the seller's procedures to determine if the certified service provider's system
18 is functioning properly and to determine the extent to which the seller's transactions
19 are being processed by the certified service provider.

20 (3) A person that provides a certified automated system is responsible for the
21 system's proper functioning and is liable to this state for tax underpayments that are
22 attributable to errors in the system's functioning. A seller that uses a certified
23 automated system is responsible and liable to this state for reporting and remitting
24 sales and use tax.

2001 - 2002 Legislature

- 20 -

LRB-2416/P1
JK:kmg:jf
SECTION 37

1 (4) A seller that has a proprietary system for determining the amount of tax
2 that is due on transactions and that has signed an agreement establishing a
3 performance standard for the system is liable for the system's failure to meet the
4 performance standard.

5 ~~(5) Sellers and certified service providers are not liable for tax underpayments~~
6 ~~that result from relying on erroneous data that the state provided relating to tax~~
7 ~~rates, boundaries, or taxing jurisdictions. Sellers that use an electronic database as~~
8 ~~provided under P.L. 106-252 are not liable for tax underpayments that result from~~
9 ~~erroneous data contained in the electronic database.~~

10 SECTION 38. 77.525 of the statutes is amended to read:

11 77.525 **Reduction to prevent double taxation.** Any person who is subject
12 to the tax under s. 77.52 (2) (a) 5. a, on telecommunications services that terminate
13 in this state and who has paid a similar tax on the same services to another state may
14 reduce the amount of the tax remitted to this state by an amount equal to the similar
15 tax properly paid to another state on those services or by the amount due this state
16 on those services, whichever is less. That person shall refund proportionally to the
17 persons to whom the tax under s. 77.52 (2) (a) 5. a, was passed on an amount equal
18 to the amounts not remitted.

19 SECTION 39. 77.53 (1) of the statutes is amended to read:

20 77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed
21 on the use or consumption in this state of taxable services under s. 77.52 purchased
22 from any retailer, at the rate of 5% of the sales purchase price of those services; on
23 the storage, use or other consumption in this state of tangible personal property
24 purchased from any retailer, at the rate of 5% of the sales purchase price of that
25 property; and on the storage, use or other consumption of tangible personal property



↑ stays

m 3-30-01

2001 BILL

streamlined sales and use tax

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- 1 AN ACT to create 77.65 of the statutes; relating to: the Uniform Sales and Use
- 2 Tax Administration Act and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates the Uniform Sales and Use Tax Administration Act (uniform act). The uniform act permits the department of revenue (DOR) to enter into the agreement ~~approved by members of the streamlined sales tax project (project) on December 22, 2000~~ (agreement). The agreement is intended to simplify and modernize sales tax and use tax administration for the states that enter into the agreement. If DOR enters into the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for the certification of service providers and automated systems to aid out-of-state sellers with the collection of state sales and use taxes. DOR may not enter into the agreement unless the agreement requires that a state that is a signatory to the agreement fulfill certain requirements, including: 1) developing and adopting uniform definitions related to sales tax and use tax; 2) providing, with all states that are signatories to the agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the agreement; 3) restricting the frequency of changes in any local sales tax and use tax rates and providing notice of any such changes; and 4) adopting a uniform policy, with the states that are signatories to the agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality.

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For further information see the *state* 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:

INSERT
2-1

1 SECTION 1. 77.65 of the statutes is created to read:

2 **77.65 Uniform sales and use tax administration.** (1) SHORT TITLE. This
3 section shall be known as the "Uniform Sales and Use Tax Administration Act."

4 (2) DEFINITIONS. In this section:

5 (a) "Agent" means a person designated by a seller to represent the seller.

6 (b) "Agreement" means the streamlined sales and use tax agreement approved
7 by the participants in the streamlined sales tax project on December 22, 2000.

8 (c) "Department" means the department of revenue.

9 (d) "Person" means an individual, trust, estate, fiduciary, partnership, limited
10 liability company, limited liability partnership, corporation, or any other legal entity.

11 (e) "Sales tax" means the tax imposed under ss. 77.52 and 77.71 (1).

12 (f) "Seller" means any person who sells, leases, or rents personal property or
13 services.

14 (g) "State" means any state of the United States and the District of Columbia.

15 (h) "Use tax" means the tax imposed under ss. 77.53 and 77.71 (2), (3), and (4).

16 (3) DEPARTMENT AUTHORITY. The department may enter into the agreement to
17 simplify and modernize sales tax and use tax administration in order to
18 substantially reduce the tax compliance burden for all sellers and for all types of
19 commerce. The department may act jointly with other states that are signatories to
20 the agreement to establish standards for the certification of a certified service
21 provider and certified automated system and to establish performance standards for

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may
and take other actions reasonably required to implement this section

1 multistate sellers. The department may promulgate rules to administer this section
2 ~~and~~ may procure jointly with other states that are signatories to the agreement goods
3 and services in furtherance of the agreement. The secretary of revenue or the
4 secretary's designee may represent this state before the states that are signatories
5 to the agreement.

6 (4) AGREEMENT REQUIREMENTS. The department may not enter into the
7 agreement unless the agreement requires that a state that is a signatory to the
8 agreement do all of the following:

9 (a) Limit the number of sales and use tax rates. ✓

10 (b) Limit the application of any maximums ~~that are due~~ on the amount of state
11 sales and use tax that is due on a transaction.

12 (c) Limit *thresholds on* the application of sales and use tax.

13 (d) Establish uniform standards for the sourcing of transactions to the
14 appropriate taxing jurisdictions, for administering exempt sales, and for sales and
15 use tax returns and remittances.

16 (e) Develop and adopt uniform definitions related to sales and use tax.

17 (f) Provide, with all states that are signatories to the agreement, a central
18 electronic registration system that allows a seller to register to collect and remit sales
19 and use taxes for all states that are signatories to the agreement.

20 (g) Provide that the state shall not use a seller's registration with the central
21 electronic registration system under par. (f), and the subsequent collection and
22 remittance of sales and use taxes in the states that are signatories to the agreement,
23 to determine whether the seller has sufficient connection with the state for the
24 purpose of imposing any tax.

25 (h) Restrict variances between the state tax bases and local tax bases.

BILL

1 (i) Administer all sales and use taxes imposed by local jurisdictions within the
2 state so that sellers who collect ^{and remit} such taxes are not required to register with, or submit
3 returns or taxes to, local jurisdictions and are not subject to audits by local
4 jurisdictions.

5 (j) Restrict the frequency of changes in any local sales and use tax rates and
6 provide notice of any such changes.

7 (k) Establish effective dates for the application of local jurisdictional boundary
8 changes to local sales and use tax rates and provide notice of any such changes.

9 (L) Provide monetary allowances to sellers and certified service providers as
10 outlined in the agreement.

11 (m) Certify compliance with the agreement before entering into the agreement
12 and maintain compliance with the agreement.

13 (n) Adopt a uniform policy, with the states that are signatories to the
14 agreement, for certified service providers that protects a consumer's privacy and
15 maintains tax information confidentiality.

16 (o) Appoint, with the states that are signatories to the agreement, an advisory
17 council to consult with in administering the agreement. The advisory council shall
18 consist of private sector representatives and representatives from states that are not
19 signatories to the agreement.

20 (5) COOPERATING STATES. The agreement entered into under this section is an
21 accord among cooperating states to further their governmental functions and
22 provides a mechanism among the cooperating states to establish and maintain a
23 cooperative, simplified system for the application and administration of sales and
24 use taxes that are imposed by each state that is a signatory to the agreement.

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1 **(6) LIMITED BINDING AND BENEFICIAL EFFECT.** (a) The agreement entered into
2 under this section binds, and inures to the benefit of, only the states that are
3 signatories to the agreement. Any benefit that a person may receive from the
4 agreement is established by this state's law and not by the terms of the agreement.

5 (b) No person shall have any cause of action or defense under the agreement
6 or because of the department entering into the agreement. No person may challenge
7 any action or inaction by any department, agency, other instrumentality of this state,
8 or any political subdivision of this state on the ground that the action or inaction is
9 inconsistent with the agreement.

10 (c) No law of this state, or the application of such law, may be declared invalid
11 on the ground that the law, or the application of such law, is inconsistent with the
12 agreement.

13

(END)

¶ (7) RELATIONSHIP TO STATE LAW.^(c)

No provision of the agreement in whole or in part invalidates or amends any law of this state and becoming a signatory to the agreement shall not amend or modify any law of this state.

the state

to the measure of the sales tax, and “purchase price” refers to the measure of the use tax.

The bill creates definitions for “alcohol beverages,” “candy,” “delivery charges,” “dietary supplement,” “food and food ingredients,” “prepared food,” and “soft drink.”

This bill eliminates the sales tax and use tax exemptions for cloth diapers and antiembolism hose. The agreement provides that a state that is a signatory to the agreement may choose to tax or not tax all articles that are covered by one definition, as approved by the members of the project, but a state may not exempt from sales tax or use tax a particular item that is included in a definition. The members of the agreement approved a definition for “clothing.” Therefore, in order to comply with the agreement, a state may either tax all clothing or exempt all clothing, but a state may not exempt certain items of clothing and tax others.

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The bill creates definitions for “certified automated system” and “certified service provider.” “Certified automated system” means software that is certified jointly by the states that are signatories to the agreement and that is used to calculate the sales tax and use tax imposed on a transaction by each appropriate jurisdiction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction. “Certified service provider” means an agent that is certified jointly by the states that are signatories to the agreement and that performs all of a seller’s sales tax and use tax functions. A certified service provider is, generally, liable for the sales tax and use tax that are due the state on all sales transactions that the provider processes for a seller. However, a seller is liable for sales tax and use tax due the state on transactions that the provider processed, if the seller has misrepresented to the provider, or to the state, the type of items that the seller sells, or has committed fraud related to transactions that the provider processed. A person that provides a certified automated system is responsible for the system’s proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system’s functioning. A seller that uses a certified automated system is responsible and liable to this state for reporting and remitting sales tax and use tax.

Under the bill, for purposes of determining which jurisdiction may impose a sales tax or use tax on a sale, if a purchaser receives a product at the seller’s business location, the sale of that product occurs at the seller’s business location. If a purchaser does not receive the product at a seller’s business location, the sale occurs at the location where the purchaser receives the product. If the location of the sale cannot be so determined, the sale occurs at the purchaser’s address, as indicated by the seller’s business records. If the address cannot be determined from the business records, the sale occurs at the purchaser’s address, as obtained during the consummation of the sale, including the address indicated on the purchaser’s check. Finally, if the location of a sale cannot be determined in any other way, the sale of tangible personal property occurs at the location from which the tangible personal property is shipped; the sale of a digital good or digital service occurs at the location from which the digital good or digital service was first available for transmission by the seller; and the sale of a service, other than a digital service, occurs at the location from which the service was provided.

Insert B

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1 (1) In this subsection:

2 (a) "Agent" means a person designated by a seller to represent the seller. (a)

3 (b) "Certified automated system" means software that is certified jointly by the
4 states that are signatories to the agreement, as defined in s. 77.65 (2) (b), and that
5 is used to calculate the sales tax and use tax imposed under this subchapter and
6 subch. V on a transaction by each appropriate jurisdiction, to determine the amount
7 of tax to remit to the appropriate state, and to maintain a record of the transaction. (a)

8 (c) "Certified service provider" means an agent that is certified jointly by the
9 states that are signatories to the agreement, as defined in s. 77.65 (2) (b), and that
10 performs all of a seller's sales tax and use tax functions related to the seller's retail
11 sales.

12 (d) "Seller" has the meaning given in s. 77.65 (2) (e).

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INSERT B

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SECTION 37. 77.524 of the statutes is created to read:

77.524 Seller and 3rd-party liability. (1) A ~~certified service provider is the~~

~~agent of the seller with whom the certified service provider has contracted. The~~

certified service provider is liable for the sales and use taxes that are due the state on all sales transactions that the provider processes for ^athe seller, except as provided in sub. (2). ³

(2) A seller that contracts with a certified service provider is not liable for sales and use taxes that are due the state on transactions that the provider processed, unless the seller has misrepresented ^{to the provider or the state} the type of items that the seller sells or has committed fraud ^{related to transactions that the provider processed.} The seller is subject to an audit on transactions that the certified service provider processed only if there is probable cause to believe that the seller has committed fraud or made a material misrepresentation ^{related to the transactions}

^{that the provider processed.} The seller is subject to an audit on transactions that the certified service provider does not process. The states that are signatories to the agreement, as defined in s. 77.65 (2) (b), may jointly check the seller's ^{business} system and review the seller's ^{business} procedures to determine if the certified service provider's system is functioning properly and to determine the extent to which the seller's transactions are being processed by the certified service provider.

(3) ⁴A person that provides a certified automated system is responsible for the system's proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system's functioning. A seller that uses a certified automated system is responsible and liable to this state for reporting and remitting sales and use tax.

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5 *with the states that are signatories ✓
to the agreement as defined in 77.65(2)(a),*

1 (4) A seller that has a proprietary system for determining the amount of tax
2 that is due on transactions and that has signed an agreement establishing a
3 performance standard for the system is liable for the system's failure to meet the
4 performance standard.

END OF INSERT 2-1

5 ~~(5) Sellers and certified service providers are not liable for tax underpayments~~
6 ~~that result from relying on erroneous data that the state provided relating to tax~~
7 ~~rates, boundaries, or taxing jurisdictions. Sellers that use an electronic database as~~
8 ~~provided under P.L. 106-252 are not liable for tax underpayments that result from~~
9 ~~erroneous data contained in the electronic database.~~

10 SECTION 38. 77.525 of the statutes is amended to read:

11 **77.525 Reduction to prevent double taxation.** Any person who is subject
12 to the tax under s. 77.52 (2) (a) 5. a. on telecommunications services that terminate
13 in this state and who has paid a similar tax on the same services to another state may
14 reduce the amount of the tax remitted to this state by an amount equal to the similar
15 tax properly paid to another state on those services or by the amount due this state
16 on those services, whichever is less. That person shall refund proportionally to the
17 persons to whom the tax under s. 77.52 (2) (a) 5. a. was passed on an amount equal
18 to the amounts not remitted.

19 SECTION 39. 77.53 (1) of the statutes is amended to read:

20 77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed
21 on the use or consumption in this state of taxable services under s. 77.52 purchased
22 from any retailer, at the rate of 5% of the sales purchase price of those services; on
23 the storage, use or other consumption in this state of tangible personal property
24 purchased from any retailer, at the rate of 5% of the sales purchase price of that
25 property; and on the storage, use or other consumption of tangible personal property

2842/2dn
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Sherrice Gates-Hendrix:

1. Regarding Vicki's suggestion for changing the analysis, the analysis already ^{indicates that} the other states may enter into the agreement and that the states that are signatories to the agreement may act jointly to fulfill the agreement's requirements. Therefore, I did not add "with other states" as suggested.

2. I kept the seller and ^{third} ~~3rd~~-party liability provisions under ^{proposed} ~~section~~ 77.524 ^{S.} ~~of the statutes, as~~ ~~created by the bill~~, because, unlike the uniform act, the seller and ^{third} ~~3rd~~-party liability provisions are a substantive change.

[Signature]

✓
→

3. The bill includes definitions for "agent",
"certified automated system", "certified service
provider," and "seller" because they are
terms used in proposed s. 77.524.

Please note that in proposed s. 77.524(3)

I used the term "business system" to distinguish
that system from the other systems mentioned
in proposed s. 77.524. Also, the term "proprietary
system" in proposed s. 77.524(5) is undefined.

4. Rather than follow Vicki's suggestion for
defining "agreement," I simply removed the
date from that definition. Is that okay?

Jk

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2842/2dn

JK:cjs:pg

April 2, 2001

Sherrie Gates-Hendrix:

1. Regarding Vicki's suggestion for changing the analysis, the analysis already indicates that other states may enter into the agreement and that the states that are signatories to the agreement may act jointly to fulfill the agreement's requirements. Therefore, I did not add "with other states" as suggested.
2. I kept the seller and third-party liability provisions under proposed s. 77.524 because, unlike the uniform act, the seller and third-party liability provisions are a substantive change.
3. The bill includes definitions for "agent," "certified automated system," "certified service provider," and "seller" because they are terms used in proposed s. 77.524. Please note that proposed in s. 77.524 (3) I used the term "business system" to distinguish that system from the other systems mentioned in proposed s. 77.524. Also, the term "proprietary system" in proposed s. 77.524 (5) is undefined.
4. Rather than follow Vicki's suggestion for defining "agreement," I simply removed the date from that definition. Is that okay?

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

Barman, Mike

From: Barman, Mike

Sent: Monday, April 02, 2001 10:49 AM

To: Sherrie Gates-Hendrix

Subject: LRB-2842/2 (attached)

Barman, Mike

From: Smith, Irma
Sent: Friday, March 30, 2001 2:17 PM
To: Irma Smith; Karen Gretschman; Landon Williams; Mike Barman; Shelly Herritz
Cc: Hanaman, Cathlene
Subject: LRB-2842

Expires: Friday, March 30, 2001 5:00 PM

Just for today (Friday, March 30, 2001) when LRB-2842 comes out of typing, please send a copy via e-mail to Tom Ourada as well as Sherrie Gates-Hendrix at DOR.

Thank you, Irma

Barman, Mike

From: Barman, Mike
Sent: Monday, April 02, 2001 10:58 AM
To: Ourada, Thomas D
Subject: LRB-2842/2 (attached)

FACSIMILE COVER SHEET

State of Wisconsin
Department of Revenue

P.O Box 8933
Madison, WI 53708-8933

FAX
4-8522

FAX Number: 608-266-5718

FAX Operator: 608-266-8085

Number of pages attached, including this cover sheet: 9

If all pages are not received or are illegible, please call:

DELIVER TO: Joe Krue -LRB 6-2263
Addressee Addressee's Phone Number

FROM: Shemie Gates-Hendrix 7-1262
Sender Sender's Phone Number

Additional Information:

Any possibility of having a
redraft by Tues @ 10 ?

2001 - 2002 LEGISLATURE

LRB-2842/2

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2001 BILL

- 1 **AN ACT to create 77.524 and 77.65 of the statutes; relating to: the Uniform**
2 **Sales and Use Tax Administration Act and granting rule-making authority.**

Analysis by the Legislative Reference Bureau

This bill creates the Uniform Sales and Use Tax Administration Act (uniform act). The uniform act permits the department of revenue (DOR) to enter into the streamlined sales and use tax agreement (agreement). The agreement is intended to simplify and modernize sales tax and use tax administration for the states that enter into the agreement. If DOR enters into the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for the certification of service providers and automated systems to aid out-of-state sellers with the collection of state sales and use taxes. DOR may not enter into the agreement unless the agreement requires that a state that is a signatory to the agreement fulfill certain requirements, including: 1) developing and adopting uniform definitions related to sales tax and use tax; 2) providing, with all states that are signatories to the agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the agreement; 3) restricting the frequency of changes in any local sales tax and use tax rates and providing notice of any such changes; and 4) adopting a uniform policy, with the states that are signatories to the agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality.

The bill creates definitions for "certified automated system" and "certified service provider." "Certified automated system" means software that is certified

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jointly by the states that are signatories to the agreement and that is used to calculate the sales tax and use tax imposed on a transaction by each appropriate jurisdiction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction. "Certified service provider" means an agent that is certified jointly by the states that are signatories to the agreement and that performs all of a seller's sales tax and use tax functions. A certified service provider is, generally, liable for the sales tax and use tax that are due the state on all sales transactions that the provider processes for a seller. However, a seller is liable for sales tax and use tax due the state on transactions that the provider processed, if the seller has misrepresented to the provider, or to the state, the type of items that the seller sells, or has committed fraud related to transactions that the provider processed. A person that provides a certified automated system is responsible for the system's proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system's functioning. A seller that uses a certified automated system is responsible and liable to this state for reporting and remitting sales tax and use tax.

For further information see the *state* 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:

Not part of
the agreement
so remove.

SECTION 1. 77.524 of the statutes is created to read:

77.524 Seller and 3rd-party liability. (1) In this subsection:

(a) "Agent" means a person designated by a seller to represent the seller.

(b) "Certified automated system" means software that is certified jointly by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that is used to calculate the sales tax and use tax imposed under this subchapter and subch. V on a transaction by each appropriate jurisdiction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

(c) "Certified service provider" means an agent that is certified jointly by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that performs all of a seller's sales tax and use tax functions related to the seller's retail sales.

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SECTION 1

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1 (d) "Seller" has the meaning given in s. 77.65 (2) (e).
 2 A certified service provider is the agent of the seller with whom
 3 (2) A certified service provider is liable for the sales and use taxes that are due the state on all sales transactions that the provider processes for a seller, except as the certified
 4 provided in sub. (3). service provider has

5 (3) A seller that contracts with a certified service provider is not liable for sales contracts
 6 and use taxes that are due the state on transactions that the provider processed,
 7 unless the seller has misrepresented the type of items that the seller sells or has
 8 committed fraud. The seller is subject to an audit on transactions that the certified
 9 service provider processed only if there is probable cause to believe that the seller has
 10 committed fraud or made a material misrepresentation. The seller is subject to an
 11 audit on transactions that the certified service provider does not process. The states
 12 that are signatories to the agreement, as defined in s. 77.65 (2) (a), may jointly check
 13 the seller's business system and review the seller's business procedures to determine
 14 if the certified service provider's system is functioning properly and to determine the
 15 extent to which the seller's transactions are being processed by the certified service
 16 provider.

17 (4) A person that provides a certified automated system is responsible for the
 18 system's proper functioning and is liable to this state for tax underpayments that are
 19 attributable to errors in the system's functioning. A seller that uses a certified
 20 automated system is responsible and liable to this state for reporting and remitting
 21 sales and use tax.

22 (5) A seller that has a proprietary system for determining the amount of tax
 23 that is due on transactions and that has signed an agreement with the states that
 24 are signatories to the agreement as defined in 77.65 (2) (a), establishing a

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SECTION 1

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1 performance standard for the system is liable for the system's failure to meet the
2 performance standard.

3 SECTION 2. 77.65 of the statutes is created to read:

4 **77.65 Uniform sales and use tax administration.** (1) SHORT TITLE. This
5 section shall be known as the "Uniform Sales and Use Tax Administration Act."

6 (2) DEFINITIONS. In this section:

7 (a) "Agreement" means the streamlined sales and use tax agreement approved
8 by the participants in the streamlined sales tax project.

may be taken from the project once X # of states sign on & project will cease to exist

9 (b) "Department" means the department of revenue.

10 (c) "Person" means an individual, trust, estate, fiduciary, partnership, limited
11 liability company, limited liability partnership, corporation, or any other legal entity.

12 (d) "Sales tax" means the tax imposed under ss. 77.52, 77.57, and 77.71 (1).

13 (e) "Seller" means any person who sells, leases, or rents personal property or
14 services.

15 (f) "State" means any state of the United States and the District of Columbia.

16 (g) "Use tax" means the tax imposed under ss. 77.53 and 77.71 (2), (3), and (4).

17 (3) DEPARTMENT AUTHORITY. The department may enter into the agreement to
18 simplify and modernize sales tax and use tax administration in order to
19 substantially reduce the tax compliance burden for all sellers and for all types of
20 commerce. The department may act jointly with other states that are signatories to
21 the agreement to establish standards for the certification of a certified service
22 provider and certified automated system and to establish performance standards for
23 multistate sellers. The department may promulgate rules to administer this section,
24 may procure jointly with other states that are signatories to the agreement goods and
25 services in furtherance of the agreement, and may take other actions reasonably

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SECTION 2

BILL

1 required to implement this section. The secretary of revenue or the secretary's
2 designee may represent this state before the states that are signatories to the
3 agreement.

4 (4) AGREEMENT REQUIREMENTS. The department may not enter into the
5 agreement unless the agreement requires that a state that is a signatory to the
6 agreement do all of the following:

X 7 (a) Limit the number of ^{state} sales and use tax rates. (as opposed to local)

8 (b) Limit the application of any maximums on the amount of state sales and
9 use tax that is due on a transaction.

10 (c) Limit thresholds on the application of sales and use tax.

11 (d) Establish uniform standards for the sourcing of transactions to the
12 appropriate taxing jurisdictions, for administering exempt sales, and for sales and
13 use tax returns and remittances.

14 (e) Develop and adopt uniform definitions related to sales and use tax.

15 (f) Provide, with all states that are signatories to the agreement, a central
16 electronic registration system that allows a seller to register to collect and remit sales
17 and use taxes for all states that are signatories to the agreement.

18 (g) Provide that the state shall not use a seller's registration with the central
19 electronic registration system under par. (f), and the subsequent collection and
20 remittance of sales and use taxes in the states that are signatories to the agreement,
21 to determine whether the seller has sufficient connection with the state for the
22 purpose of imposing any tax.

23 (h) Restrict variances between the state tax bases and local tax bases.

24 (i) Administer all sales and use taxes imposed by local jurisdictions within the
25 state so that sellers who collect and remit such taxes are not required to register with,

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SECTION 2

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1 or submit returns or taxes to, local jurisdictions and are not subject to audits by local
2 jurisdictions.

3 (j) Restrict the frequency of changes in any local sales and use tax rates and
4 provide notice of any such changes.

5 (k) Establish effective dates for the application of local jurisdictional boundary
6 changes to local sales and use tax rates and provide notice of any such changes.

7 (L) Provide monetary allowances to sellers and certified service providers as
8 outlined in the agreement.

9 (m) Certify compliance with the agreement before entering into the agreement
10 and maintain compliance with the agreement.

11 (n) Adopt a uniform policy, with the states that are signatories to the
12 agreement, for certified service providers that protects a consumer's privacy and
13 maintains tax information confidentiality.

14 (o) Appoint, with the states that are signatories to the agreement, an advisory
15 council to consult with in administering the agreement. The advisory council shall
16 consist of private sector representatives and representatives from states that are not
17 signatories to the agreement.

18 (5) COOPERATING STATES. The agreement entered into under this section is an
19 accord among cooperating states to further their governmental functions and
20 provides a mechanism among the cooperating states to establish and maintain a
21 cooperative, simplified system for the application and administration of sales and
22 use taxes that are imposed by each state that is a signatory to the agreement.

23 (6) LIMITED BINDING AND BENEFICIAL EFFECT. (a) The agreement entered into
24 under this section binds, and inures to the benefit of, only the states that are

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SECTION 2

BILL

1 signatories to the agreement. Any benefit that a person may receive from the
2 agreement is established by this state's law and not by the terms of the agreement.

3 (b) No person shall have any cause of action or defense under the agreement
4 or because of the department entering into the agreement. No person may challenge
5 any action or inaction by any department, agency, other instrumentality of this state,
6 or any political subdivision of this state on the ground that the action or inaction is
7 inconsistent with the agreement.

8 (c) No law of this state, or the application of such law, may be declared invalid
9 on the ground that the law, or the application of such law, is inconsistent with the
10 agreement.

11 (7) RELATIONSHIP TO STATE LAW. No provision of the agreement in whole or in part
12 invalidates or amends any law of this state and the state becoming a signatory to the
13 agreement shall not amend or modify any law of this state.

14 (END)



3

2001 BILL

m 4-2-01

NOW

- 1 **AN ACT** *to create* 77.524 and 77.65 of the statutes; **relating to:** the Uniform
2 Sales and Use Tax Administration Act and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates the Uniform Sales and Use Tax Administration Act (uniform act). The uniform act permits the department of revenue (DOR) to enter into the streamlined sales and use tax agreement (agreement). The agreement is intended to simplify and modernize sales tax and use tax administration for the states that enter into the agreement. If DOR enters into the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for the certification of service providers and automated systems to aid out-of-state sellers with the collection of state sales and use taxes. DOR may not enter into the agreement unless the agreement requires that a state that is a signatory to the agreement fulfill certain requirements, including: 1) developing and adopting uniform definitions related to sales tax and use tax; 2) providing, with all states that are signatories to the agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the agreement; 3) restricting the frequency of changes in any local sales tax and use tax rates and providing notice of any such changes; and 4) adopting a uniform policy, with the states that are signatories to the agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality.

The bill creates definitions for "certified automated system" and "certified service provider." "Certified automated system" means software that is certified

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jointly by the states that are signatories to the agreement and that is used to calculate the sales tax and use tax imposed on a transaction by each appropriate jurisdiction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction. "Certified service provider" means an agent that is certified jointly by the states that are signatories to the agreement and that performs all of a seller's sales tax and use tax functions. A certified service provider is, generally, liable for the sales tax and use tax that are due the state on all sales transactions that the provider processes for a seller. However, a seller is liable for sales tax and use tax due the state on transactions that the provider processed, if the seller has misrepresented to the provider, or to the state, the type of items that the seller sells, or has committed fraud related to transactions that the provider processed. A person that provides a certified automated system is responsible for the system's proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system's functioning. A seller that uses a certified automated system is responsible and liable to this state for reporting and remitting sales tax and use tax.

For further information see the *state* 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.** 77.524 of the statutes is created to read:

2 **77.524 Seller and 3rd-party liability.** (1) In this subsection:

3 ~~(a) "Agent" means a person designated by a seller to represent the seller.~~

4 ^a(b) "Certified automated system" means software that is certified jointly by the
5 states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that
6 is used to calculate the sales tax and use tax imposed under this subchapter and
7 subch. V on a transaction by each appropriate jurisdiction, to determine the amount
8 of tax to remit to the appropriate state, and to maintain a record of the transaction.

9 ^b(c) "Certified service provider" means an agent that is certified jointly by the
10 states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and that
11 performs all of a seller's sales tax and use tax functions related to the seller's retail
12 sales.

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is the agent of the seller with whom the certified service provider has contracted and

1 (d) "Seller" has the meaning given in s. 77.65 (2) (e).

2 (2) A certified service provider is liable for the sales and use taxes that are due
3 the state on all sales transactions that the provider processes for a seller, except as
4 provided in sub. (3).

5 (3) A seller that contracts with a certified service provider is not liable for sales
6 and use taxes that are due the state on transactions that the provider processed,
7 unless the seller has misrepresented the type of items that the seller sells or has
8 committed fraud. The seller is subject to an audit on transactions that the certified
9 service provider processed only if there is probable cause to believe that the seller has
10 committed fraud or made a material misrepresentation. The seller is subject to an
11 audit on transactions that the certified service provider does not process. The states
12 that are signatories to the agreement, as defined in s. 77.65 (2) (a), may jointly check
13 the seller's business system and review the seller's business procedures to determine
14 if the certified service provider's system is functioning properly and to determine the
15 extent to which the seller's transactions are being processed by the certified service
16 provider.

17 (4) A person that provides a certified automated system is responsible for the
18 system's proper functioning and is liable to this state for tax underpayments that are
19 attributable to errors in the system's functioning. A seller that uses a certified
20 automated system is responsible and liable to this state for reporting and remitting
21 sales and use tax.

22 (5) A seller that has a proprietary system for determining the amount of tax
23 that is due on transactions and that has signed an agreement with the states that
24 are signatories to the agreement as defined in 77.65 (2) (a), establishing a

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1 performance standard for the system is liable for the system's failure to meet the
2 performance standard.

3 **SECTION 2.** 77.65 of the statutes is created to read:

4 **77.65 Uniform sales and use tax administration.** (1) SHORT TITLE. This
5 section shall be known as the "Uniform Sales and Use Tax Administration Act."

6 (2) DEFINITIONS. In this section:

7 (a) "Agreement" means the streamlined sales and use tax agreement ~~approved~~
8 ~~by the participants in the streamlined sales tax project.~~

9 (b) "Department" means the department of revenue.

10 (c) "Person" means an individual, trust, estate, fiduciary, partnership, limited
11 liability company, limited liability partnership, corporation, or any other legal entity.

12 (d) "Sales tax" means the tax imposed under ss. 77.52, 77.57, and 77.71 (1).

13 (e) "Seller" means any person who sells, leases, or rents personal property or
14 services.

15 (f) "State" means any state of the United States and the District of Columbia.

16 (g) "Use tax" means the tax imposed under ss. 77.53 and 77.71 (2), (3), and (4).

17 (3) DEPARTMENT AUTHORITY. The department may enter into the agreement to
18 simplify and modernize sales tax and use tax administration in order to
19 substantially reduce the tax compliance burden for all sellers and for all types of
20 commerce. The department may act jointly with other states that are signatories to
21 the agreement to establish standards for the certification of a certified service
22 provider and certified automated system and to establish performance standards for
23 multistate sellers. The department may promulgate rules to administer this section,
24 may procure jointly with other states that are signatories to the agreement goods and
25 services in furtherance of the agreement, and may take other actions reasonably

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1 required to implement this section. The secretary of revenue or the secretary's
2 designee may represent this state before the states that are signatories to the
3 agreement.

4 (4) AGREEMENT REQUIREMENTS. The department may not enter into the
5 agreement unless the agreement requires that a state that is a signatory to the
6 agreement do all of the following:

7 (a) Limit the number of ^{state} sales and use tax rates.

8 (b) Limit the application of any maximums on the amount of state sales and
9 use tax that is due on a transaction.

10 (c) Limit thresholds on the application of sales and use tax.

11 (d) Establish uniform standards for the sourcing of transactions to the
12 appropriate taxing jurisdictions, for administering exempt sales, and for sales and
13 use tax returns and remittances.

14 (e) Develop and adopt uniform definitions related to sales and use tax.

15 (f) Provide, with all states that are signatories to the agreement, a central
16 electronic registration system that allows a seller to register to collect and remit sales
17 and use taxes for all states that are signatories to the agreement.

18 (g) Provide that the state shall not use a seller's registration with the central
19 electronic registration system under par. (f), and the subsequent collection and
20 remittance of sales and use taxes in the states that are signatories to the agreement,
21 to determine whether the seller has sufficient connection with the state for the
22 purpose of imposing any tax.

23 (h) Restrict variances between the state tax bases and local tax bases.

24 (i) Administer all sales and use taxes imposed by local jurisdictions within the
25 state so that sellers who collect and remit such taxes are not required to register with,

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1 or submit returns or taxes to, local jurisdictions and are not subject to audits by local
2 jurisdictions.

3 (j) Restrict the frequency of changes in any local sales and use tax rates and
4 provide notice of any such changes.

5 (k) Establish effective dates for the application of local jurisdictional boundary
6 changes to local sales and use tax rates and provide notice of any such changes.

7 (L) Provide monetary allowances to sellers and certified service providers as
8 outlined in the agreement.

9 (m) Certify compliance with the agreement before entering into the agreement
10 and maintain compliance with the agreement.

11 (n) Adopt a uniform policy, with the states that are signatories to the
12 agreement, for certified service providers that protects a consumer's privacy and
13 maintains tax information confidentiality.

14 (o) Appoint, with the states that are signatories to the agreement, an advisory
15 council to consult with in administering the agreement. The advisory council shall
16 consist of private sector representatives and representatives from states that are not
17 signatories to the agreement.

18 (5) COOPERATING STATES. The agreement entered into under this section is an
19 accord among cooperating states to further their governmental functions and
20 provides a mechanism among the cooperating states to establish and maintain a
21 cooperative, simplified system for the application and administration of sales and
22 use taxes that are imposed by each state that is a signatory to the agreement.

23 (6) LIMITED BINDING AND BENEFICIAL EFFECT. (a) The agreement entered into
24 under this section binds, and inures to the benefit of, only the states that are

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1 signatories to the agreement. Any benefit that a person may receive from the
2 agreement is established by this state's law and not by the terms of the agreement.

3 (b) No person shall have any cause of action or defense under the agreement
4 or because of the department entering into the agreement. No person may challenge
5 any action or inaction by any department, agency, other instrumentality of this state,
6 or any political subdivision of this state on the ground that the action or inaction is
7 inconsistent with the agreement.

8 (c) No law of this state, or the application of such law, may be declared invalid
9 on the ground that the law, or the application of such law, is inconsistent with the
10 agreement.

11 (7) RELATIONSHIP TO STATE LAW. No provision of the agreement in whole or in part
12 invalidates or amends any law of this state and the state becoming a signatory to the
13 agreement shall not amend or modify any law of this state.

14 (END)

Barman, Mike

From: Barman, Mike

Sent: Monday, April 02, 2001 1:57 PM

To: Sherrie Gates-Hendrix

Subject: LRB-2842/3 (attached)