

**2003 DRAFTING REQUEST**

**Senate Amendment (SA-SB44)**

Received: **06/04/2003**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Legislative Fiscal Bureau**

By/Representing: **Russell**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax - sales**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

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**Pre Topic:**

LFB:.....Russell -

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**Topic:**

Sales tax on short-term lodging

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**Instructions:**

See Attached

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**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>
/1	jkreye 06/04/2003	kgilfoy 06/04/2003	jfrantze 06/05/2003	_____	lemery 06/05/2003		

FE Sent For:

<END>

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/1	jkreye	1 - 6/4 Kmg	6/6/4	3/6/4 6/4			

FE Sent For:

<END>



**Legislative Fiscal Bureau**

One East Main, Suite 301 o Madison, WI 53703 o (608) 266-3847 • Fax: (608) 267-6873

**Date: June 4, 2003**

**DELIVER TO:** Joe Kreye  
Legislative Reference Bureau

**Addressee Fax #:** 4-6948

**Addressee Phone #:** 6-2263

**# of Pages, Including Cover:** 4

**Sender's Initials:** FR

**From:** Faith Russell

**Joe,**

**As per our conversation, here are the materials for JFC's actions on s. 77.52(2)(a)1. Let me know if you have any questions.**

**Faith**

Senator Darling  
Representative Kaufert

## GENERAL FUND TAXES

### Sales Tax on Short-Term Lodging – Technical Amendment

**Motion:**

Move to delete the phrase "if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit" from s. 77.52(2)(a)1 of the statutes, which imposes the sales tax on short-term lodging. Specify that the provision would first apply to sales made on or after December 1, 1999, regardless of whether the sales occurred before the effective date of the budget bill.

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**Note:**

Under current law, the state and local sales taxes are imposed on twelve categories of services, which are identified in the statutes, including hotel, motel, and other lodging. Prior to December 1, 1999, the sales tax on short-term lodging also applied in the case of the sale of a time-share property if the use of the rooms or lodging was for continuous periods of less than one month and was not fixed at the time of the sale as to the starting date or lodging unit. Under 1999 Wisconsin Act 9, the 2001-03 biennial budget act, the sales tax on such time-share properties was deleted and replaced with the real estate transfer fee. However, when the sales tax statutes were amended, the amendment incorrectly failed to delete a portion of the sales tax statutes that had been related to such time-shares and should have been deleted. As a result of this error, the statutes currently imply that the sales tax does not apply to lodging furnished for a period of less than one month if the use of the rooms or lodging is fixed at the time of sale as to the starting day or lodging unit (which could be considered to be the case for most short-term lodging). The motion would delete the obsolete language described above and would specify that the motion first applies to sales of short-term lodging starting on December 1, 1999.

There would be no fiscal effect of the motion, as it clarifies current practice. However, the Department of Revenue has estimated that, in the absence of the amendment, there is a potential loss of \$40 million of sales taxes collections from tax on hotel, motel, and other lodging each year.

FR



State of Wisconsin • DEPARTMENT OF REVENUE

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Jim Doyle  
Governor

Michael L. Morgan  
Secretary of Revenue

MEMORANDUM

May 29, 2003

TO: The Honorable Alberta Darling, Co-Chair  
The Honorable Dean Kaufert, Co-Chair  
Joint Committee on Finance

FROM: Michael L. Morgan *MLM*  
Secretary of Revenue

SUBJECT: Sales Tax on Lodging

I would like to request that the Joint Committee on Finance amend Senate Bill 44 to adopt a technical clarification regarding sales tax on lodging.

Under current law, lodging (provided hotels, motels, bed and breakfasts, etc.) is subject to Wisconsin's sales tax. Section 77.52(2)(a)1 of Wisconsin's statutes was amended in a biennial budget bill several years ago (1999 Act 9) to remove the imposition of sales tax on lodging furnished through the sale of timeshare property. This change was effective December 1, 1999.

The amendment was inadvertently drafted in a way that may imply that any lodging furnished for a period of less than one month is exempt from sales tax. Although the legislative intent of the initial change clearly applied only to timeshare property, my legal staff believe it would be helpful to have a technical change made to the statutes to clarify that Wisconsin sales tax is imposed on lodging.

I have provided detailed drafting instructions to the Legislative Fiscal Bureau on this matter. Please contact me if you have any questions or would like additional information.

Thank you.

cc: Bob Lang, Legislative Fiscal Bureau

*from table tax*

*By Fiscal Bureau were amended to clarify that 1999 Act 109 eliminated tax on timeshare*

## Remove Remaining Time-Share Language From Statute Imposing Tax on Lodging Services

### Background

Section 77.52(2)(a)1, Wis. Stats., was amended effective December 1, 1999, to remove the imposition of sales tax on lodging furnished through the sale of timeshare property. Previously tax was imposed on the sale of lodging furnished through a timeshare if the use of the room or lodging was not fixed at the time of sale as to the starting day or lodging unit.

When sec. 77.52(2)(a)1, Wis. Stats., was amended, a portion of the statute that was specific to timeshares was not removed leaving language that implies that any lodging furnished for a period of less than one month is not subject to Wisconsin sales tax if the use of the rooms or lodging is fixed at the time of sale as to the starting day or lodging unit. A sale of lodging does not take place until the lodging is furnished. Therefore, the starting day and lodging unit are always fixed at the time of sale of lodging services.

### Drafting Instructions

Amend sec. 77.52(2)(a)1., Wis. Stats. (2001-02), as follows:

" 77.52(2)(a)1 The furnishing of 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, ~~if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit.~~ In this subdivision, . . ."

An initial applicability date should be created as well:

"This provision first applies to sales made on or after of December 1, 1999, regardless of whether the sales occurred before the effective date of this Act."

Note: The applicability language in addition to the actual date is necessary for the Legislature to affirm the retroactive application as provided in *Andrew K. Morris v. Wisconsin Department of Revenue* (CCH 202-256, September 26, 1983) and *Alan Marcuvitz et al. v. Wisconsin Department of Revenue* (CCH 201-451, November 30, 1977).

### Fiscal Impact

More than \$40 million of sales taxes collected each year is at risk if the statutory change suggested is not made.

(Sales tax collected from lodging facilities is estimated at approximately \$60 million per year. The \$60 million figure was reduced to account for lodging facilities' taxable sales of food, parking, dry cleaning, and rentals of tangible personal to arrive at sales tax collected on lodging only.)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0369/1

JK: /...  
*King*

LFB:.....Russell – Sales tax on short-term lodging

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 44

*in 6-4-03*  
*SDOW*

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 719, line 4: after that line insert:

3 “SECTION 1647m. 77.52 (2) (a) 1. of the statutes is amended to read:

4 77.52 (2) (a) 1. The furnishing of rooms or lodging to transients by hotelkeepers,  
5 motel operators and other persons furnishing accommodations that are available to  
6 the public, irrespective of whether membership is required for use of the  
7 accommodations, ~~if the use of the rooms or lodging is not fixed at the time of sale as~~  
8 ~~to the starting day or the lodging unit.~~ In this subdivision, “transient” means any  
9 person residing for a continuous period of less than one month in a hotel, motel or  
10 other furnished accommodations available to the public. In this subdivision, “hotel”  
11 or “motel” means a building or group of buildings in which the public may obtain  
12 accommodations for a consideration, including, without limitation, such

1 establishments as inns, motels, tourist homes, tourist houses or courts, lodging  
 2 houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins  
 3 and any other building or group of buildings in which accommodations are available  
 4 to the public, except accommodations, including mobile homes as defined in s.  
 5 66.0435 (1) (d), rented for a continuous period of more than one month and  
 6 accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by  
 7 corporations or associations organized and operated exclusively for religious,  
 8 charitable or educational purposes provided that no part of the net earnings of such  
 9 corporations and associations inures to the benefit of any private shareholder or  
 10 individual. In this subdivision, "one month" means a calendar month or 30 days,  
 11 whichever is less, counting the first day of the rental and not counting the last day  
 12 of the rental."

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109.

13 ✓ 2. Page 1122, line 21: after that line insert:

14 (14) <sup>3x</sup> (1) SALES TAX ON SHORT-TERM LODGING. The treatment of sections 77.52 (2) (a)  
 15 ✓ 1. of the statutes first applies retroactively to sales made after November 30, 1999,  
 16 regardless of whether the sales occurred before the effective date of this ~~law~~ <sup>subsection</sup>."

17 (END)

*subsection*





State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBb0369/1  
JK:kmgjf

LFB:.....Russell – Sales tax on short-term lodging

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION  
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11 or “motel” means a building or group of buildings in which the public may obtain  
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15 1. of the statutes first applies retroactively to sales made after November 30, 1999,  
16 regardless of whether the sales occurred before the effective date of this subsection.”.

17 (END)