



BB0070

2003-05 Budget Bill Statutory Language Drafting Request

- Topic: Conform sales and use tax to streamlined sales tax provisions
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05-303

**Statutory Language Request
Wisconsin Department of Revenue**

**TITLE: CONFORM SALES AND USE TAX LAW TO PROVISIONS OF THE
STREAMLINED SALES AND USE TAX AGREEMENT**

DESCRIPTION OF CURRENT LAW AND PROBLEM

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 collection and administration. The Project's proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection.

The Project proposes that states change their sales and use tax laws to conform with the simplifications as adopted by the Project in the Streamlined Sales and Use Tax Agreement. The simplifications would apply to all sellers. Sellers who do not have a physical presence or "nexus" are not required to collect sales and use taxes unless Congress chooses to require collection from all sellers for all types of commerce. Sellers without a physical presence can volunteer to collect under the proposed simplifications.

Wisconsin must amend or modify its sales and use tax laws to achieve the simplifications and uniformity required by Streamlined Sales and Use Tax Agreement ("Agreement") that was adopted by the Projects participating states in November 2002 and amended in November 2003. The interstate Agreement will become effective upon at least 10 states representing 20% of the population conforming their laws to the provision of the Agreement. It is expected that will happen by October 1, 2005.

A governing board will be comprised of representatives of each member state of the Agreement. Each member state is entitled to one vote on the governing board. The governing board is responsible for interpretations of the Agreement, amendments to the Agreement, and issue resolution.

If Wisconsin does not conform its law to the Agreement it would not:

- Provide simplifications and uniformity necessary to ease retailers' administrative burdens in collecting sales or use tax as is being done by many other states.
- Have a vote on changes to the Agreement to add or amend uniform definitions and other simplifications.
- Be entitled to collect tax from voluntary registrants under the Agreement who are currently not collecting Wisconsin sales or use tax.
- Be able to require out-of-state retailers to collect tax on sales in Wisconsin if federal government authorizes collection only for those states that are in compliance with the Agreement. Legislation is currently pending before Congress that would give a state authority to require out-of-state retailers to collect the state's sales or use tax provided certain requirements are met by the state. One of those requirements is for a state to conform its sales and use tax laws to provisions of the Agreement.

RECOMMENDATION FOR ACTION

Amend Wisconsin's sales and use tax laws to conform to provisions within the Streamlined Sales and Use Tax Agreement.

See Attachment 1 for summary of the required changes.

ADMINISTRATIVE IMPACT

There will be a large number of changes to the sales and use tax law, one or more of which will affect all registered retailers. In the short term, the department will have to expend a significant amount of resources for education and taxpayer assistance and revise all forms and publications to address the changes. However, in the long-term, the changes made should significantly reduce a seller's administrative burdens in collecting sales and use tax. Laws will be more uniform among states making sales tax collection simpler for multistate businesses and definitions will be clearer for all retailers who must determine whether products they sell are taxable or not.

FAIRNESS /TAX EQUITY

The benefits of conforming Wisconsin's sales and use tax law to the Agreement provisions are as follows.

- **Making Tax Administration & Collection Easier:** The project's goal is to make it easy for merchants to calculate and remit sales and use tax to the states. The administrative and cost burdens on merchants will be substantially reduced or eliminated under SST. New technology will make many improvements possible. Merchants will even have the option of using private, state-sanctioned providers to collect and remit sales taxes.
- **Developing Common Definitions:** SST has developed common definitions for key items in the tax base like food and clothing; states are being asked to adopt those definitions in their statutes. Legislatures would still decide what's taxable, but states would use common definitions for items (for example, what percentage of fruit juice a drink can contain and still be considered soft drink --- and thus taxable). The goal is some measure of uniformity among states, making tax collection more simple for merchants nationwide.
- **Leveling the Playing Field:** Equity between businesses that now collect sales tax (small main street businesses or any business with physical presence in many states) and those who don't (large Internet or mail-order businesses without physical presence in most states).

IMPACT ON ECONOMIC DEVELOPMENT

Unknown.

FISCAL EFFECT

See Attachment 2.

DRAFTING INSTRUCTIONS

See 2003 Assembly Bill 547, which is marked up to make changes for Agreement amendments and clarifications that have taken place since the bill was introduced (Attachment 3).

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

October 1, 2005

INTERESTED/AFFECTED PARTIES

It is expected that all businesses will be affected in some way since there are so many changes.

See Attachment 4 for supporters of the Project in general.

Many positive comments have been made regarding:

- The relaxing the good faith requirements for seller's taking exemption certificates.
- Clearer definitions for food exemptions.
- Repeal of Wisconsin's drop shipment requirements.

Negative comments made include:

- It is likely that the more states that conform their laws to the Agreement and simplify will influence Congress to authorize states to require collection from retailers who currently collect sales tax in a limited number of states.
- A significant tax increase will result from the uniform treatment of computer software if the department is unsuccessful in its appeal of the *Menasha Corp.* decision by Wisconsin Tax Appeals Commission decision.
- Changes to definitions of will result in some products becoming taxable that were previously exempt (e.g., sweetened teas, cloth diapers). However, more items become exempt (powdered drink mixes, durable medical equipment) under the definitions changes.

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ATTACHMENTS



"ISE SSTP
Attachment 1.doc"



"ISE SSTP
Attachment 2.pdf"



"ISE SST Attachment
3 (Bill LRB2028-8).pd



"ISE SSTP
Attachment 4.doc"

Streamlined Sales and Use Tax Agreement Provisions Wisconsin 2003 AB 547 and SB 267 Summary

A. Local Rate and Boundary Changes – Notification and Databases

- 120 days notice prior to first day of a calendar quarter for all local sales taxes.
- Downloadable database of tax rate and jurisdiction by 9-digit zip code.
- Web application will allow user to key in street address to arrive at 9-digit zip code, proper rate and jurisdiction.
- If unable to find 9-digit zip code (P.O. Box or rural address), defaults to the lowest rate of jurisdiction using 5-digit zip code

B. Uniform Sourcing

1. Current Law

State Tax

- Section 77.51(14r), Wis. Stats. (2001-02) – Only sources sales of tangible personal property where there is a transfer of ownership. Generally destination (i.e., where the purchaser gets possession of the property).
- Section 77.51(14)(j), Wis. Stats. (2001-02) – Sources leases of tangible personal property to where property is located.
- There is no statute that addresses the sourcing of services except for telecommunications (sec. 77.51(17m), 77.52(2)(a)5., and 77.52(3m), Wis. Stats.). Common practice by the department is to source based on the provisions for county tax below.
- Through administrative agreement, florists source wire orders based on the location where the order is taken (origin).

County and Stadium Tax

Section 77.72, Wis. Stats., sources as follows:

- Tangible personal property sales – same as state tax.
- Leases of motor vehicles – where customarily kept (with exceptions for drive-it-yourself vehicles and equipment used one-way or for less than one month).
- Leases of other moving property (boats, aircraft, etc.) – where primarily used or usually kept when not in use.
- Leases of other tangible personal property – where property is located.
- Communications (collect or paid by credit card) – where billed.

- Towing – where the vehicle is delivered.
- Other services to tangible personal property – where purchaser takes possession of serviced property.
- Telecommunications services (except communications noted above) – same as state tax.
- Remaining services – where furnished.

2. SSTP Sourcing

These provisions only determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. These provisions do not affect the obligation of a purchaser to remit tax on the use of the product to the taxing jurisdictions where the storage, use or consumption.

Note: For purposes of the following, sourcing for state tax purposes under the bill is the same as sourcing for county and stadium taxes with one exception:

Exception: For county and stadium taxes, sales of motor vehicles, boats, mobile homes not exceeding 45 feet in length, and aircraft, will be sourced in the same manner as they are sourced today (i.e., where they are customarily kept).

Sales of Tangible Personal Property (Except Direct Mail and Florist Wire Orders) and Leases of Transportation Equipment

The following hierarchy applies when determining to which taxing jurisdiction to source. If the first condition does not apply (possession does not transfer at the seller's place of business), then you move to the second condition (location where property is shipped to). If the second condition does not apply because the seller does not know whether the property is being shipped (e.g., the purchaser hires the carrier and does not inform the seller of the destination), then the third condition is applied, and so on. The following are the five conditions

- a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
- c. When a. and b. do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

- d. When a., b., and c. do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- e. When none of the previous rules apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped.

The sourcing of sales of tangible personal property, except direct mail, under current law leads to the same result as the SSTP sourcing rules with the following exceptions:

- a. Under current law, if the purchaser hires a common carrier and the seller does not know where the purchaser is having the property shipped, the law still requires sourcing to where shipped. For practical purposes, if the seller did not know where the product was shipped, the seller would most likely source to the "Bill to" address (Condition 3) or the seller's own location (Condition 5).
- b. Under current law, if the purchaser hires a contract carrier, the seller must source the sale to the seller's location (Condition e) rather than the purchaser's "Bill to" address (Condition c) under the bill.

With respect to the lease of transportation equipment (e.g., railroad rolling stock, trucks and tractors used by common or contract carriers, aircraft used as a certified air carrier), such leases are currently exempt for Wisconsin sales and use tax purposes (sec. 77.54(5)(a) and (b) and (12), Wis. Stats. Therefore, how these items are sourced has little, if any, impact in Wisconsin.

Sales of Direct Mail

- The sourcing of direct mail under the regular SSTP sourcing rules would present a challenge to printers. Sourcing on a destination basis is very difficult as the mailing lists used to print addresses are highly confidential and proprietary, and purchasers mandate that these lists be returned or destroyed after the printing job is complete. Therefore, even if the printers *could* extract the necessary data from these lists for collecting tax at the time of sale, they would have nothing in their files to support their determination of sales tax during a subsequent sales tax audit. Additionally, printers are sometimes provided pre-printed address labels for a printing job. In such cases have no feasible way to determine sales tax on a destination basis.

- For those reasons, the following sourcing rules apply to sellers of direct mail:
 - a. Purchasers can give the printer a direct mail exemption form relieving the printer of collecting and remitting tax on the sale. The purchasers who give such a form must self-assess use tax directly in the jurisdiction where the direct mail is stored, used, or consumed.
 - b. Purchasers can give the printer the proper jurisdiction information for each piece of direct mail and have the printer collect and remit the sales or use tax to the appropriate jurisdictions on a destination basis. The purchaser would have to allow the printer to retain this distribution list with its records and states would have to accept the list's validity upon an audit of the printer.
 - c. If the purchaser provides neither a direct mail exemption form nor a distribution list, then the printer is obligated to collect tax on the entire invoice based upon the location of the facility from which the material was shipped. This default would not eliminate the purchaser's obligation to self-assess use tax in jurisdictions where the direct mail is ultimately stored, used, or consumed. The tax paid to the "ship-from" state could not be credited against tax due where the direct mail is stored, used, or consumed. The Project's intention is to make Alternatives 1 and 2 mandatory. Consequently, the default rule (Alternative 3) is intentionally less favorable to the purchaser.
- In order to collect use tax from purchasers, the bill reverses the effect of the *J.C. Penney* decision.

Sales by Wire by Florists

Under the bill, wire orders by retail florists, as opposed to online florists with no true store location, will continue to be sourced to the location where the order is placed until January 1, 2006. As of January 1, 2006, wire orders will be sourced in the same manner as all other tangible personal property (destination).

Leases of Motor Vehicles, Semi Trailers, and Aircraft (Except Transportation Equipment or One Payment Leases)

- The bill sources all payments to the primary location of the property. This is generally the same as current state law with the exception of use of the word "primary," which would limit sourcing to new locations when property is used insignificantly in other locations.
- For county and stadium tax purposes, the result is generally the same. Primary location is similar to where customarily kept.

Leases of Tangible Personal Property (Except Motor Vehicles, Semi Trailers, Aircraft and Transportation Equipment Leased for Multiple Payments)

- The bill sources the first payment of such leases under the hierarchy for sales of such property described previously. Therefore, the first payment will be sourced to where possession transfers from the seller or a carrier to the purchaser. This is different than current state and local treatment, which requires sourcing to the location of the property, with exceptions for certain one-way leases or short-term leases.
- All subsequent payments, are sourced under the bill to the primary location of the property per the books of the lessor. This is the same as current state law, but creates some minor differences for local taxes.

Sales of Services, Except Telecommunications

- Under the bill, sales of services are sourced under the same hierarchy as sales of tangible personal property. Where a service is received by a purchaser is where the purchaser gets first benefit or use of the service.
- That means services will continue to be sourced under the bill in the same manner as today with a few minor exceptions:
 - a. Towing services will be sourced where the vehicle is picked up rather than to the location to where it is delivered.
 - b. Admissions to in-state events, rather than being sourced to the location where the offer is accepted by the seller, will generally be sourced to the location of the event.
- Services to tangible personal property (photography, repairs, printing, fabricating, laundry and dry cleaning) will generally still be sourced to the location where purchaser takes possession of serviced property.
- Lodging will still be sourced to the location of the lodging provider.
- Landscaping and parking will still be sourced to the location where performed (real estate location).
- Cable television will continue to be sourced at the location of the equipment from which the purchaser receives the service.
- Still some question as to the sourcing of telecommunications messaging.

Telecommunications Services

- Call by call – Under the bill, they will be sourced to the location where originated and terminated. If the origination and termination points are in different jurisdictions, the call is sourced to the location of the service address, which is defined more specifically under the bill than under current law. Generally this sourcing is the same as under current law.
- Monthly service – Under the bill, this service is sourced to the purchaser's place of primary use. This is similar to current law, which sources to the service address (the location of the equipment from which the service is received by the purchaser).
- Mobile service – Sourcing remains the same as under the Mobile Sourcing Act that was adopted by Wisconsin in August 2002. There are additional rules for air to ground radiotelephone service and prepaid mobile service is sourced in the same manner as of other prepaid service.
- Post paid call service (call by call charged to credit card, etc.). – Sourced to the location where call originates as first identified by the seller's system or from provider if not using seller's system. This is a change because, under current law, such calls are sourced to location where billed.
- Prepaid calling services are sourced in the bill the same as sourced under sec. 77.52(3m), Wis. Stats. (i.e., where prepaid card is transferred and, if no card, where billed to purchaser).
- Private telecommunication services are sourced to the termination points equally. This is consistent with the current treatment provided in sec. Tax 11.66(3), Wis. Adm. Code.

Multiple Points of Use

- Under the bill, the purchaser of a digital good, computer software delivered electronically, or a service that is concurrently available for use in more than one jurisdiction will deliver to the seller a form disclosing this fact and the seller will be relieved from collecting and paying the tax.
- The purchaser will report use tax based where the digital good is used concurrently.
- At this time, it appears the only impact this provision has in Wisconsin is for software delivered electronically and cable television services, both of which could concurrently be used by a single purchaser at multiple locations.

Example: Software that is delivered electronically to a server in Wisconsin for downloading at multiple locations is currently sourced to Wisconsin in its entirety. However, if the software were delivered to a server outside Wisconsin, the sale would not be sourced to Wisconsin. The purchaser would be subject to use tax on the software only if used at a location in Wisconsin, with credit given for tax properly paid to the other state where the server is located.

C. Uniform Exemption Administration

- Good faith requirement relaxed if seller takes required exemption information at time of sale. Time of sale will be interpreted broadly to allow certificate to be provided as late as payment.
- If over the counter sale, seller can only grant an exemption that applies in Wisconsin. However, a seller need not police the state specific requirements of an exemption for common exemptions (e.g., farming, manufacturing).
- Uniform exemption certificate for all states. Electronic certificate could be tailored to Wisconsin exemptions.
- Exemptions not requiring an exemption certificate will be provided by statute.
- Wisconsin will take on more of the burden of determining whether purchasers have claimed exemptions incorrectly. Sellers may be required to provide electronic exemption information not more than twice each year.
- Penalty on purchasers for furnishing exemption certificate to claim invalid exemption.
- Repeal Wisconsin drop shipment provision. This would allow a Wisconsin drop shipper to accept a resale exemption from a seller who is not registered in Wisconsin. The purchaser would be the only party liable for tax where the seller is not required to be registered.

D. Simplified Returns, Remittances, and Registration

- Provides for a payment coupon with jurisdiction information; additional return information may be required by state not more than two times each year. At this time, the department will provide the simplified return for use by voluntary sellers. Other sellers could continue to use current Form ST-12.
- Online simplified registration for voluntary sellers at a single location for all states, with much fewer data elements than current BTR-101. If nexus with Wisconsin, Wisconsin would require that its more detailed registration information be provided.
- Amnesty for prior periods for voluntary sellers.
- State must provide for electronic filing and electronic funds transfer for payment of tax collected.

E. Uniform Tax Procedures

- Bad debts recovery - federal definition, deduction, collection allocation.
- Rounding - current tax treatment, except retail may compute tax on a per item or per invoice basis.

F. Uniform Customer Refund Procedures

- Must go to seller first and let seller act appropriately – then follow legal channels.
- This extends to all sales provisions that were included in the Mobile Telecommunications Sourcing Act that were incorporated into Wisconsin law in August 2002.
- Intention is to protect seller's from class action lawsuits as a result of their collections of sales tax in error that has been remitted to the state

G. Taxability Matrix

- Database of tax treatment of defined items and services by state must be posted in one place and be available in a downloadable format.
- Sellers relieved if tax treatment listed is incorrect.

H. Uniform Definitions

1. Sales price and purchase price

- "Gross receipts" changed to "sales price" and "sales price" changed to "purchase price."
- No change in treatment of rebates or discounts.
- No change for trade-ins.
- No changes for interest, financing, or insurance.
- Only taxes legally imposed directly on the consumer, that are separately stated, may be removed from sales price.
- Fair market value not allowed as measure of tax when property is converted from exempt use to taxable use (sec. 77.57, Wis. Stats.).
- Wisconsin will keep special measure of tax for motor vehicles used by motor vehicle dealers.
- Wisconsin will keep special exclusion for mobile and manufactured homes.
- A bundle of taxable tangible personal property with exempt tangible personal property for single price requires tax on entire bundle (sold as a single item).

2. Delivery charges

Replaces "transportation," however, tax treatment is unchanged. Delivery charges for direct mail will be excluded from delivery charges that are subject Wisconsin sales or use tax.

3. Direct mail

- This definition is used for both sourcing and in the definitions of delivery charges that are included in sales price and purchase price.
- Means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients.
- "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.
- "Direct mail" does not include multiple items of printed material delivered to a single address.

4. Lease or rental

Current Law

- Section 77.51(7), Wis. Stats. (2001-02), defines "lease" to include rental, license, or hire.
- Section 77.51(14)(j), Wis. Stats. (2001-02), further provides that the granting of possession of tangible personal property by a lessor to a lessee or to another person at the direction of the lessee is a continuing sale in Wisconsin.

SSTP definition

- "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term and for consideration and includes:
 - a. A transfer that includes future options to purchase or extend.
 - b. Agreements related to the transfer of possession or control of motor vehicles or trailers, if the amount of any consideration may be increased or decreased by reference to the amount realized on the sale or other disposition of such motor vehicles or trailers, consistent with section 7701(h)(1) of the Internal Revenue Code (TRAC leases).

- “Lease or rental” does not include any of the following:
 - a. A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property after making all required payments.
 - b. A transfer of possession or control of tangible personal property under any agreement that requires transferring title to the tangible personal property after making all required payments and after paying an option price that does not exceed the greater of \$100 or 1 percent of the total amount of the required payments.

This is somewhat similar to the department’s current administrative treatment of conditional sale versus lease. However, we have followed a IRS Revenue procedure, which has different tolerances.

- c. Providing tangible personal property along with an operator, if the operator is necessary for the tangible personal property to perform in the manner for which it is designed and if the operator does more than maintain, inspect, or set up the tangible personal property.

Note: This treatment of equipment provided with an operator is different than what Wisconsin does today. Our tax treatment is set forth in Tax 11.29(4)(a) and (b), Wis. Adm. Code., and reflects case law (*Reynolds Transfer & Storage Co., Inc. v. Wisconsin Department of Revenue*, Wisconsin Circuit Court, Dane County, March 24, 1975, CCH 201-141). We currently look to who has control over the operator to determine whether there is a lease of tangible personal property that is taxable or a service (which may or may not be taxable). That degree of control is of no consequence in the definition above. If an operator is required and provided, it is a service. The service may or may not be taxable.

5. Tangible personal property

- “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. “Tangible personal property” includes electricity, water, gas, steam, and prewritten computer software.
- While there is major change in wording, there is no significant change in application.
- Items in current definition, but not SSTP definition, are moved to a specific imposition section (e.g., stamps and coins sold above face value).

6. Prewritten computer software

- Instead of “computer software, except custom software” being in definition of tangible personal property, uses “prewritten computer software.”
- Prewritten computer software that is modified will be taxed at the retail level. Modifications will still remain nontaxable. See Appendix 1.
- “Prewritten computer software” means any of the following:
 - a. Computer software that is not designed and developed by the author or creator of the software according to a specific purchaser’s specifications.
 - b. Computer software upgrades that are not designed and developed by the author or creator of the software according to a specific purchaser’s specifications.
 - c. Computer software that is designed and developed by the author or creator of the software according to a specific purchaser’s specifications and that is sold to another purchaser.
 - d. Any combination of computer software under pars. (a) to (c), including any combination with any portion of such software.
 - e. Computer software as described under pars. (a) to (d), and any portion of such software, that is modified or enhanced by any degree to a specific purchaser’s specifications, except such modification or enhancement that is reasonably and separately indicated on an invoice, or other statement of the price, provided to the purchaser.
- Note: Prewritten software is deemed to be tangible personal property regardless of the form in which it is transferred. The sale, lease, or license of tangible personal property is taxable in Wisconsin, unless an exemption applies.

7. Food

Definitions

- “Food and food ingredient” means a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. “Food and food ingredient” does not include alcohol beverages or tobacco.
- “Alcohol beverage” means a beverage that is suitable for human consumption and that contains 0.5% or more of alcohol by volume.

- “Tobacco” means cigarettes, cigars, chewing tobacco, pipe tobacco, and any other item that contains tobacco.
- “Candy” means a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” does not include a preparation that contains flour or that requires refrigeration.
- “Soft drink” means a beverage that contains less than 0.5% of alcohol and that contains natural or artificial sweeteners. “Soft drink” does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50% vegetable or fruit juice by volume.
- “Dietary supplement” means a product, other than tobacco, that is intended to supplement a person’s diet, if all of the following apply:
 - a. The product contains any of the following ingredients or any combination of any of the following ingredients:
 1. A vitamin.
 2. A mineral
 3. An herb or other botanical.
 4. An amino acid.
 5. A dietary substance that is intended for human consumption to supplement the diet by increasing total dietary intake.
 6. A concentrate, metabolite, constituent, or extract.
 - b. The product is intended for ingestion in tablet, capsule, powder, soft gel, gel cap or liquid form, or, if not intended for ingestion in such forms, is not represented as conventional food and is not represented for use as the sole item of a meal or diet.
 - c. The product is required to be labeled as a dietary supplement as required under 21 CFR 101.36.
- “Prepared food” means:
 - a. Food and food ingredients sold in a heated state.
 - b. Food and food ingredients heated by the retailer, except as provided in a. through e. below.

- c. Food and food ingredients sold with eating utensils that are provided by the retailer of the food and food ingredients, including plates, knives, forks, spoons, glasses, cups, napkins, or straws, but a plate does not include a container or packaging used to transport food and food ingredients.
- d. Except as provided in a. through e. below, 2 or more food ingredients mixed or combined by a retailer for sale as a single item.

“Prepared food” under b. and d. does not include:

- a. Two or more food ingredients mixed or combined by a retailer for sale as a single item, if the retailer’s primary classification in the 1997 North American Industry Classification System, published by the federal office of management and budget, is manufacturing under sectors 31 to 33, not including bakeries and tortilla manufacturing under industry group number 3118.
- b. Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated, and sold by volume or weight
- c. Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- d. Food and food ingredients that are only sliced, repackaged, or pasteurized by a retailer.
- e. Eggs, fish, meat, and poultry, and foods containing any of them in raw form, that require cooking by the consumer, as recommended by the food and drug administration in chapter 3, part 401.11 of its food code to prevent food-borne illnesses.

Exemptions

- The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, except candy, soft drinks, dietary supplements, and prepared food.
- The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, except soft drinks, sold by hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities, as defined in s. 50.01 (1g), or day care centers registered under ch. 48, including prepared food that is sold to the elderly or handicapped by persons providing mobile meals on wheels. In this paragraph, “retirement home” means a

nonprofit residential facility where 3 or more unrelated adults or their spouses have their principal residence and where support services, including meals from a common kitchen, are available to residents.

- The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, furnished in accordance with any contract or agreement or paid for to such institution through the use of an account of such institution, by a public or private institution of higher education to any of the following:
 - a. An undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at the public or private institution of higher education and if the food and food ingredients are consumed by the student.
 - b. A national football league team.

Other

- Same base (taxable and exempt) for local exposition district tax on food products, with exception of dietary supplements.
- Limit exemption for food transferred by restaurants to employees to food that is given to employees only. The exemption would no longer apply to food sold to employees during their work hours.

See Appendix 2.

8. Medicine

- Term medicine is changed to drug with no substantive change in treatment.
- "Drug" means a compound, substance, or preparation, or any component of them, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:
 - a. It is listed in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to any of them.
 - b. It is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease.
 - c. It is intended to affect a function or structure of the body.

- Drug definition extends to animals and does not include food. Animal food that is currently considered a "medicine" will be taxed when sold at retail by a veterinarian rather than the veterinarian paying taxed on the purchase.

9. Medical Devices

Current Exemptions

- a. Artificial devices designed, constructed or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual.
- b. Artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for any functioning portion of the body.
- c. Artificial teeth sold by a dentist.
- d. Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist or optometrist for the personal use of the owner or purchaser.
- e. Crutches and wheelchairs including motorized wheelchairs and scooters for the use of persons who are ill or disabled.
- f. Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer.
- g. Adaptive equipment that makes it possible for handicapped persons to enter, operate or leave a vehicle, as defined in sec. 27.01 (7) (a) 2., if that equipment is purchased by the individual who will use it, a person acting directly on behalf of that individual or a nonprofit organization.
- h. Equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a person authorized to prescribe oxygen.
- i. Apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar levels

Streamlined Exemptions

- a. "Mobility-enhancing equipment" means equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally

not used by a person who has normal mobility. "Mobility-enhancing equipment" does not include a motor vehicle or any equipment on a motor vehicle that is generally provided by a motor vehicle manufacturer. Exemption extends to accessories.

- b. "Prosthetic device" means a device, including the repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body. Exemption extends to accessories.

This is an expanded exemption as the definition includes braces and supports that are not individually designed.

- c. "Durable medical equipment" means equipment, including the repair parts and replacement parts for the equipment, that is for use in a person's home; that is primarily and customarily used for a medical purpose related to a person; that can withstand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body. "Durable medical equipment" does not include mobility-enhancing equipment. Exemption extends to accessories.

Alternating pressure pads	Patient lifts
Bed rails	Patient lifts slings
Bedside commodes	Posture back supports
Bone fracture therapy devices	Respiratory therapy equipment not used to administer oxygen
Continuous passive motion devices	Restraints
Decubitus bed pads	Sitz baths
Foam seating pads not for wheelchairs	Specialized seating, desks, workstations
Foam wedges not for wheelchairs	Standing frames, devices and accessories
Hospital beds	Stethoscopes
Hydro-collators	Toilet safety frames
Hydro-therm heating pads	Traction stands, pulleys, etc.
I.V. stands	Trapeze bars/bar stands
Leg weights (rehab. related)	Ultraviolet cabinets
Lift recliners	Urinals
Muscle stimulators	Ventilators not administering oxygen
Overbed tables	Whirlpool bath equipment
Paraffin baths	
Patient transport devices, boards	

- d. The sales price from the sales of and the storage, use, or other consumption of bandages, dressings, syringes, and similar items that are bundled together with drugs that are exempt under sub. (14) for sale by the seller as a single product or piece of merchandise.

- e. Supplies used to determine blood sugar levels.

Exemption for anitembolism hose is repealed.

10. Retail sale

- "Retail sale or sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.
- To accommodate the shorter definition, provisions previously in sec. 77.51(14) are moved to a definition of sale or resale.

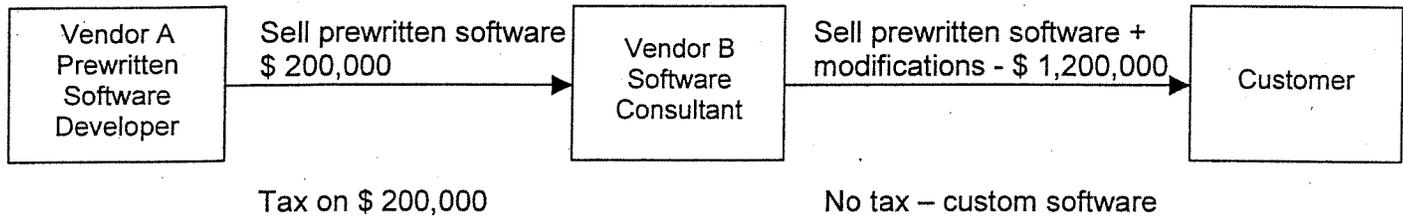
I. Miscellaneous

- Retailers registered to collect tax will collect on sales of registered items, even though not a licensed dealer.
- Repeal exemption for cloth diapers.

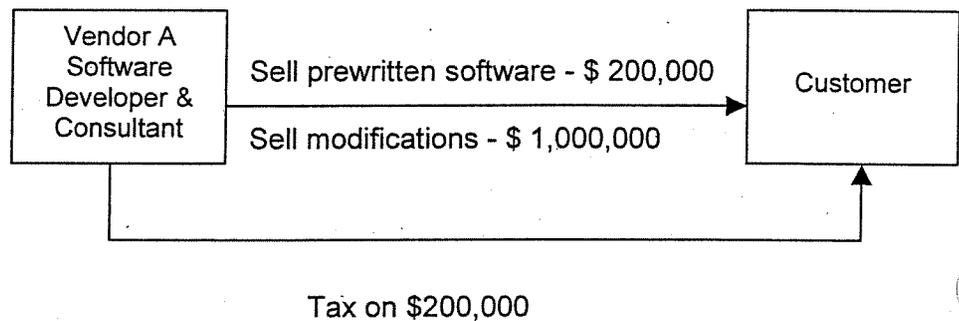
J. Technology Models and Monetary Compensation

Treatment of Modified Prewritten Computer Software – Current Law

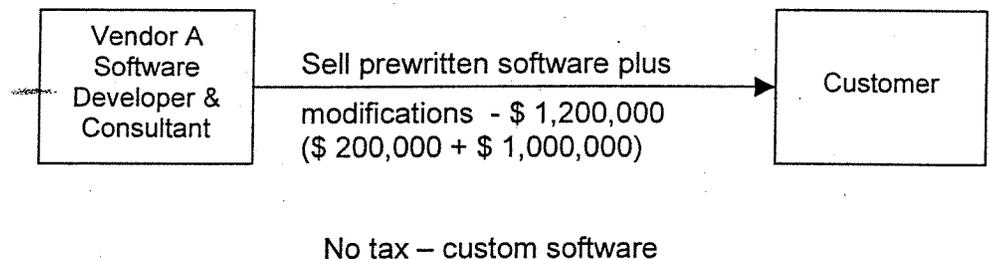
Scenario 1 – Third Party (Not Software Developer) Modifies Prewritten Software



Scenario 2 – Software Developer Modifies Prewritten Software Under Separate Contract



Scenario 3 – Software Developer Sells and Modifies Prewritten Software in a Single Transaction



Treatment of Modified Prewritten Computer Software – Under SSTP Bill

Scenarios 1, 2, and 3

The transfer to the Customer of the prewritten software for \$200,000 is taxable. There is no tax in Scenario 1 for the transfer of the prewritten software to Vendor B because it is for resale.

Current Food Exemptions Compared With Exemptions Proposed Under SSTP

August 25, 2003

Food Item	Current Treatment	Streamlined Treatment
Soda, pop	Taxable	Taxable
Bottled water, carbonated, sweetened	Taxable	Taxable
Bottled water, non-carbonated, sweetened	Taxable	Taxable
Bottled water, carbonated, non-sweetened	Taxable	Exempt
Bottled water, non-carbonated, non-sweetened	Exempt	Exempt
YoJo and other milk product/fruit drink combos	Taxable	Exempt
Powdered fruit drinks	Taxable	Exempt
Liquid 100% fruit juice	Exempt	Exempt
Liquid 51% - 99% fruit juice	Taxable	Exempt
Liquid 1%-50% fruit juice	Taxable	Taxable
Frozen fruit juice	Exempt, except if less than 100% juice	Exempt
Bottled tea, sweetened	Exempt	Taxable
Bottled tea, unsweetened	Exempt	Exempt
Slimfast, Ensure, and other meal replacements (nutrition facts on label)	Exempt	Exempt
Dietary supplements, vitamins (supplements facts on label)	Taxable	Taxable
Alcoholic beverages (0.5% or more alcohol by volume) – beer, drinking wine, etc.	Taxable	Taxable
Cooking wine	Exempt	Exempt (although may be more than 0.5% alcohol by volume, it is not intended as a beverage and, therefore, not an alcohol beverage)
Toothpaste	Taxable	Taxable (not sold for ingestion)
Nonalcoholic beer	Taxable	Exempt, unless sweetened
Nonalcoholic champagne	Taxable (fruit drink not 100% juice)	Exempt, unless sweetened
Cookies	Exempt	Exempt
Candy containing flour (e.g., KitKat, Twix, Licorice)	Taxable	Exempt

Food Item	Current Treatment	Streamlined Treatment
Marshmallows	Exempt	Taxable
Chocolate chips	Exempt	Taxable
Chewing gum	Taxable	Taxable
Popcorn, unpopped	Taxable	Exempt
Popcorn, popped	Taxable	Exempt, unless prepared by retailer, retailer is not primarily a manufacturer, and not sold by weight or volume.
Ice cream novelties (e.g., ice cream cone, Popsicle)	Taxable	Exempt, unless prepared by retailer and retailer is not primarily a manufacturer and not sold by weight or volume
Restaurant meals	Taxable	Taxable
Bakery products sold by bakeries and grocery stores	Exempt, unless for consumption on seller's premises	Exempt, unless provided with utensils (plates, forks, knives, etc.)
Deli combination platters prepared by seller	Exempt, unless a meal or sandwich	Exempt if sold by weight or volume
Deli food sold by weight (e.g., potato salad, fruit salad, sliced deli meat)	Exempt, unless for consumption on the seller's premises	Exempt unless provided with utensils (plates, forks, knives, etc.)
Deli salad bar (self-service, utensils provided)	Taxable, if for on premises consumption	Taxable
Rotisserie chicken (sold heated)	Taxable	Taxable, unless sold by weight or volume
Manufactured food sold at manufacturer's (seller's) outlet (for consumption off the premises)	Exempt, unless sandwich, ready to eat meal, candy, soft drink, dietary supplement, popcorn, or alcohol beverage	Exempt, unless utensils provided, candy, soft drink, dietary supplement, or alcoholic beverage
Sandwich prepared by grocer not sold by weight or volume	Taxable, unless frozen	Taxable

Fiscal Estimate - 2003 Session

Original Updated Corrected Supplemental

LRB Number 03-2028/8	Introduction Number AB-547	
Subject Streamlined sales and use tax provisions		
Fiscal Effect		
State: <input type="checkbox"/> No State Fiscal Effect <input type="checkbox"/> Indeterminate <input checked="" type="checkbox"/> Increase Existing Appropriations <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriations <input checked="" type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriations <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs		
Local: <input type="checkbox"/> No Local Government Costs <input type="checkbox"/> Indeterminate 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input checked="" type="checkbox"/> Decrease Revenue <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory <div style="margin-top: 10px;"> 5. Types of Local Government Units Affected <input type="checkbox"/> Towns <input type="checkbox"/> Village <input type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input checked="" type="checkbox"/> Others <input type="checkbox"/> Stadium & Expo districts <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts </div>		
Fund Sources Affected Affected Ch. 20 Appropriations <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS 20.435 (3) (bm) and 20.566 (1) (a)		
Agency/Prepared By DOR/ Blair Kruger (608) 266-1310	Authorized Signature Yeang-Eng Braun (608) 266-2700	Date 10/6/2003

Fiscal Estimate Narratives
DOR 10/6/2003

LRB Number 03-2028/8	Introduction Number AB-547	Estimate Type Original
Subject		
Streamlined sales and use tax provisions		

Assumptions Used in Arriving at Fiscal Estimate

Current Law

Under current law, a 5% sales tax is imposed on sales of tangible personal property and selected services. A compensating 5% use tax is imposed on purchases of tangible personal property and services that would be subject to sales tax if sold in Wisconsin. In addition, using the same tax base as the state sales and use tax, a 0.5% sales and use tax is imposed in 57 counties, a 0.1% baseball park tax is imposed in 5 counties, and a 0.5% football stadium tax is imposed in Brown County.

Overview

The bill adopts the provisions of the Streamlined Sales and Use Tax Agreement (the Agreement), a multistate agreement designed to simplify state and local sales and use tax systems and encourage out-of-state retailers to voluntarily register to collect sales and use tax. The Agreement requires states to adopt uniform definitions and uniform administrative procedures. Adoption of uniform definitions and administrative procedures by the Streamlined states is expected to reduce the businesses' costs of compliance with the tax laws of the states in which they operate. The bill would take effect July 1, 2004 (FY05).

In general, the fiscal estimate of the bill was developed based on nationwide sales of each affected product and the assumption that Wisconsin sales of the product are 1.83% of nationwide sales, the same percentage as Wisconsin's share of US disposable personal income in 2002. In general, Global Insight, Inc.'s forecasts of future economic activity were applied to adjust the estimates to FY05. The estimates also assume a compliance rate of 90%. Additional factors and assumptions regarding each estimate are noted as appropriate. A summary table showing the fiscal effects of the bill is attached.

Fiscal Effects of General Provisions

1. In anticipation of the Agreement, several national retailers voluntarily began collecting and remitting sales taxes to a number of states, including Wisconsin, in February 2003. Since these retailers sell a wide variety of products, taxes on their sales are assumed to increase at the same rates as sales taxes projected for 2003-2005 biennial budget purposes. Under this assumption, these retailers would remit about \$2.02 million in state sales taxes and about \$0.15 million in county and stadium district sales taxes in FY05.

2. The bill amends the sales tax statutes to define and incorporate certain general tax terms, including "sales price", "purchase price", "lease or rental", "delivery charge", "purchaser", "seller", "retail sale", "tangible personal property", and "taxpayer".

a) 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" would refer to the measure of the sales tax and "purchase price" would refer to the measure of the use tax. These definitions would make Wisconsin's terminology consistent with the agreement and may result in the following minor increase in sales taxes.

b) Under current law, if a purchaser certifies to a seller that a purchase of otherwise taxable property is exempt from sales tax but subsequently converts the property to a taxable use, the purchaser is liable for the sales tax on the property. For example, a manufacturer may purchase a forklift for use in manufacturing (an exempt use) but later use the forklift for shipping (a taxable use). If the conversion to a taxable use occurs more than 6 months after the purchase, the purchaser has the option of using either the sales price or the fair market value in computing the tax due. Under the bill, purchasers would be required to use the sales price of the property to compute the tax liability. To the extent the fair market value of converted property is less than the sales price and assuming purchasers use the lower value to calculate their tax liability, sales taxes would increase by the amount of tax on the difference between the sales price and the fair market value. Data are not available to reliably estimate the fiscal effect of this provision but it is likely to be minimal.

c) Under current law, the term "lease" is defined to include license; hence, licensing tangible personal property is a taxable use of such property. The bill specifies that licensing tangible personal property is subject to sales and use taxes, along with selling, leasing and renting such property. This provision makes Wisconsin's terminology consistent with the agreement and does not have a fiscal effect.

d) Under current law, equipment leased with an operator is a lease of tangible personal property or a service depending on whether the lessor or the lessee controls the operator. In general, leasing companies' purchases of equipment are exempt purchases for resale while charges for the use of leased equipment generally are taxable. Also under current law, the entire charge for equipment leased with an operator is a taxable service if the service is performed on personal property (if the service is performed on real property, the entire charge is exempt). Under the bill, equipment leased with an operator will always be a service. Purchases of equipment would be taxable but the charges for the service may or may not be taxable depending on the type of service performed. The revenue increase from taxing purchases of equipment that is leased with an operator and charges for taxable services is expected to largely offset the revenue decrease from exempting the charges for equipment leased with an operator such that the net fiscal effect is minor.

3. Under current law, sales are sourced for sales tax purposes to the destination at which the product is received or the service first used. The bill provides a hierarchy of rules for sourcing sales of tangible personal property and services to locations for tax purposes. In general, sales are sourced to the location at which the purchaser receives a product or service. Since the state already sources to destination, the provision does not have a fiscal effect on state sales taxes. However, counties and stadium districts may experience minor fiscal effects; local fiscal effects are discussed in the section on County, Stadium and Exposition District Fiscal Effects.

Food-related Fiscal Effects

Under current law, sales of food for off-premises consumption are generally exempt from sales tax while sales of food for on-premises consumption are taxable. However, sales for off-premises consumption of meals and sandwiches, heated foods and beverages, candy, confections and popcorn are taxable. Food does not include alcoholic beverages, soft drinks, vitamins or medicines – sales of these products are taxable sales of tangible personal property. The statutes and administrative code provide extensive clarification, including examples, of both taxable and exempt foods.

1. Under current law, sales of candy are taxable and would remain so under the bill. Under the bill, "candy" is defined as a preparation of sugar, honey or other sweeteners combined with chocolate, fruit or other ingredients in the form of bars, drops or pieces. The bill also provides that "candy" does not include a preparation that contains flour or that requires refrigeration; these distinctions provide sellers with a bright-line test to determine whether a product is an exempt food or a taxable candy. Under the bill, the taxability of the of the following products would change:

a) Candy that contains flour, such as Kit Kat bars, would be exempt "food" under the bill. Based on 1997 Economic Census data on grocery, convenience and specialty store sales of candy and assuming that 10% of candy contains flour, sales taxes would decrease by about \$0.64 million in FY05 under the bill.

b) Under current law, frozen novelties (separately packaged, single servings of a frozen dessert such as popsicles) are subject to sales tax. Since frozen novelties require refrigeration, they would be exempt "food" under the bill. According to the International Dairy Foods Association, US sales of frozen novelties were about \$2.1 billion in 2001. Assuming Wisconsin sales are the same percentage as the state's share of personal income, sales taxes would decrease by about \$2.20 million in FY05 under the bill.

c) Under current law, chocolate chips, baking chocolate and marshmallows are exempt food. Since they contain chocolate and sweeteners, these products would be taxable "candy" under the bill. According to Marketresearch.com, chocolate chips and baking chocolate are about 8% of nationwide total chocolate sales, estimated to increase to about \$17.48 billion in 2005. Assuming these sales are distributed in the same proportion as personal income, sales taxes would increase by about \$1.12 million in FY05 under the bill. Data regarding marshmallow sales are not available, however, the increase in sales taxes due to taxing sales of marshmallows is expected to be minor.

d) Under current law, sales of packaged ice are taxable sales of tangible personal property. Under the bill, sales of ice cubes would be exempt sales of "food" while sales of ice for commercial or industrial purposes generally would remain taxable. According to the International Packaged Ice Association, total US sales of ice were about \$2 - 2.5 billion in 2002. Assuming 50% of sales would be taxable commercial or industrial ice and 50% would be sales of exempt food, and that the sales were distributed in the same proportion as

- personal income, sales taxes would decrease by about \$1.01 million in FY05.
2. Under current law, sales of popcorn are taxable. Under the bill, sales of popcorn for home consumption would be exempt sales of "food". Based on data from the US Popcorn Board and the Snack Food Association, sales of popcorn for home consumption are estimated at about \$1,273 million in 2001. Assuming these sales are distributed in the same proportion as personal income, sales taxes would decrease by about \$1.25 million in FY05.
 3. Under current law, sales of fruit drinks containing less than 100% juice are taxable. The bill defines "soft drink" and provides that a soft drink does not include a beverage that contains more than 50% vegetable or fruit juice. Thus, under the bill, beverages containing more than 50% but less than 100% juice would be exempt. According to beverageworld.com, total receipts from sales of juice drinks were \$7.4 billion in 2001. Assuming 20% of sales of juice drinks contain more than 50% but less than 100% juice, and that sales of such drinks are distributed in the same proportion as personal income, sales taxes would decrease by about \$1.31 million in FY05.
 4. Under current law, sales of powdered soft or fruit drink mixes are taxable. Under the bill, sales of powdered soft or fruit drink mixes would be exempt sales of "food". According to the trade publication "Beverage Industry", total receipts from sales of powdered drink mixes were \$625 million in 2001. Assuming these sales are distributed in the same proportion as personal income, sales taxes would decrease by about \$0.52 million in FY05.
 5. Under current law, sales of non-alcoholic beer are taxable. Under the bill, sales of non-alcoholic beer would be exempt sales of "food". According to the trade publication "Supermarket News", total receipts from sales of non-alcoholic beer were \$514 million in 1998. According to industry reports, non-alcoholic beer sales have been flat for several years and are assumed to remain so. Assuming sales are distributed in the same proportion as personal income, sales taxes would decrease by about \$0.42 million in FY05.
 6. Under current law, sales of tea are exempt. Under the bill, sales of ready-to-drink (RTD) tea (e.g., Arizona, SoBe) would be taxable sales of "soft drinks" since they are sweetened. According to the trade publication "Beverage Digest", total receipts from sales of RTD teas were \$3.310 billion in 2001. Total receipts are reduced by 33% to adjust for sales whose tax status would not change under the bill, such as taxable restaurant sales and exempt sales of unsweetened herbal teas. Assuming sales are distributed in the same proportion as personal income, sales taxes would increase by about \$2.54 million in FY05.
 7. Under current law, sales of carbonated, unsweetened water (e.g., club soda, seltzer) are taxable. Under the bill, sales of carbonated, unsweetened water would be exempt sales of "food". According to the trade publication "Beverage World", total receipts from sales of carbonated, unsweetened water in the Midwest were \$391 million in 1998. According to industry reports, sales of carbonated, unsweetened water have been flat for several years and are assumed to remain so. Assuming sales are distributed in the same proportion as personal income in the Midwest, sales taxes would decrease by about \$0.08 million in FY05.
 8. Under current law, sales of meals, sandwiches, and party platters that could be considered meals or sandwiches sold by weight or volume and without cutlery are taxable. Under the bill, sales of products sold by weight or volume and without cutlery would be exempt sales of "food". According to the 1997 Economic Census, meals, unpackaged snacks, sandwiches, and nonalcoholic beverages sold by grocery stores, convenience stores and specialty food stores totaled \$2.78 billion in 1997. Assuming 10% of such sales would become exempt under the bill, sales taxes would decrease by about \$0.33 million in FY05.
 9. Under current law, sales of take-out salad bars that do not offer heated items are exempt. Under the bill, salad bars would be taxable "prepared food" because the retailer would provide utensils such as plates, forks, knives and napkins. Data are not available regarding these sales, however, the provision is expected to result in a minor increase in sales taxes.
 10. Under current law, food, soft drinks, soda fountain items, candy popcorn, and disposable products transferred with such items provided by a restaurant to its employees during work hours are exempt. The bill repeals the part of the exemption which applies to food sold by the restaurant. The exemption for food purchased by the restaurant and given to employees remains exempt. Data are not available regarding these products, however, the provision is expected to result in a minimal increase in sales taxes.
 11. Under current law, sales of food, food products or beverages and other goods are exempt if they are packaged together by a person other than the retailer and if more than 50% of the price is attributable to goods that are exempt. Although the bill repeals the exemption, its effect is retained, with one exception; by excluding such sales from the definition of prepared food. The exception would apply when the product is

sold directly by the producer to the end user (at retail) and provided with utensils in the package. If the producer's outlet store is a separate entity from the factory, there is no fiscal effect. There are likely to be few sales that would be affected by the bill and, therefore, the increase in sales tax is minor.

12. Under current law, pet food is generally taxable. However, if pet food falls within the definition of medicine, as occurs with pet food sold by veterinarians, the veterinarian pays tax on the purchase of the pet food but does not charge tax to the customer. Under the bill, "drug" excludes food and so the veterinarian would purchase the food without tax for resale and charge the customer sales tax unless an exemption applies. Thus, under the bill, the veterinarian's mark-up would become subject to sales tax. According to Pet Food Industry Online, US pet food sales were about \$12.4 billion in 2002 and, according to the Pet Food Institute, veterinarians sell about 4% of pet food or about \$496 million. Assuming veterinarians mark up pet food 100%, sales taxes would increase by about \$0.23 million under the bill.

Medical-Related Fiscal Effects

Current law lists prescription medicines and specific medical devices that are exempt from sales and use tax. Exempt sales include individually designed prosthetics, equipment used to administer oxygen for medical purposes, artificial limbs, artificial teeth, hearing aids, prescription eyeglasses, crutches, wheelchairs, prescription antiembolism hose and stockings, and adaptive equipment that enables a handicapped person to enter a motor vehicle.

Under the bill, these products would continue to be exempt, except that prescription antiembolism hose and stockings would become taxable as would equipment used to administer oxygen and diabetes testing equipment that is purchased by a for-profit hospital or clinic. In addition, the bill creates an exemption for durable medical equipment for home use, which retains the exemption for equipment used to administer oxygen and diabetes testing equipment that is purchased by individual.

1. Under the bill "durable medical equipment" (DME) is defined as equipment for home use that is primarily and customarily used for a medical purpose related to a person, that is not generally useful to a person who is not ill or injured and is not placed in or worn on the body. The US Department of Health and Human Services publishes DME expenditures by state through 1998 and a 10-year forecast of national DME expenditures. The federal definition of DME includes products that are exempt from sales tax under current law and the bill, including prescription eyeglasses and hearing aids, equipment for administering home oxygen, wheelchairs and other mobility enhancement equipment. Also, purchases of DME by Medicare and other federal and Wisconsin governmental agencies and certain nonprofit agencies are exempt from Wisconsin sales tax. Assuming DME expenditures in Wisconsin increase at the same rate as nationally and that Medicare and other agencies pay for 28.3% of DME, and deducting DME that is currently exempt in Wisconsin, and estimated expenditures for DME in Wisconsin in FY05 are estimated at about \$55.8 million. Therefore, the exemption for DME under the bill would decrease sales taxes by about \$2.79 million in FY05.

2. Under current law, sales of antiembolism hose and stockings are exempt from sales and use tax. Under the bill, antiembolism hose and stockings fall within the definition of "clothing" which is taxable under both current law and the bill. The bill repeals the exemption for sales of antiembolism hose and stockings and is expected to result in a minimal increase in sales taxes.

Miscellaneous Fiscal Effects

1. The bill creates clothing-related definitions, including "clothing", "clothing accessories", "sport or recreational equipment", and "protective equipment". Under current law and the bill, clothing would be taxable. In addition to prescription antiembolism hose and stockings, currently exempt cloth diapers would become taxable.

Under current law, sales of cloth diapers and diaper services are exempt from sales and use tax. Under the Streamlined Agreement, "diapers" are defined as "clothing". Since clothing is taxable under both current law and the bill, the bill repeals the diaper exemption. The diaper exemption was created as an incentive to use cloth diapers rather than taxable disposable diapers, which were perceived to have adverse environmental effects on landfills. Based on U.S. Bureau of the Census data on sales of diaper services, sales taxes may increase by about \$0.05 million annually under the bill.

2. The bill creates computer-related definitions, including "computer", "computer software", "prewritten computer software", "electronic", and "delivered electronically". Under current law, prewritten software is included within the definition of tangible personal property and is taxable. Custom software is treated as an exempt service. The terms "prewritten program" and "custom program" are defined by administrative rule. Under the bill, "prewritten software" is defined and included within the definition of tangible personal property. Since modifications of prewritten software would be taxable unless separately invoiced to the

customer, the bill may result in a minor increase in sales taxes.

3. Under current law, purchases of items from out of state sellers (e.g., catalogs and directories) shipped by the seller to persons other than the purchaser are not subject to Wisconsin use tax. Under the bill, such purchases would be taxable if delivered into Wisconsin even though the purchaser did not have possession. This provision would have the effect of reversing the 1982 Wisconsin Department of Revenue v. JC Penney decision holding that a retailer's catalogs published by a printer located outside Wisconsin that did not have nexus in Wisconsin, and shipped directly to the retailer's customers in Wisconsin by mail or common carrier, were not subject to Wisconsin use tax. According to the 1997 Economic Census, total US sales of catalog printing were \$5.933 billion. Since printing is a major industry in this state, it is assumed that 75% of the catalogs distributed in Wisconsin are printed in Wisconsin. Under this assumption, sales taxes would increase by about \$1.24 million in FY05 under the bill.

4. Under current law, a registered drop shipper (e.g., a manufacturer or distributor) is required to collect tax on deliveries into Wisconsin on sales by an unregistered out-of-state retailer. The drop shipper collects the tax and remits it to the state. Under the Agreement, drop shipments would continue to be taxable but, instead of the drop shipper collecting the tax on behalf of the out-of-state retailer, the out-of-state retailer would remit sales tax if registered or the purchaser would remit use tax.

5. Under current law, when exempt goods are bundled with taxable goods as a single product, such as a gift basket, the single product is exempt or the price may be allocated taxable portion. Under the bill, such bundled goods would be taxable if combined by the retailer. Thus, under the bill, the sales tax on certain gift baskets would increase by the amount of tax on the portion that would have been exempt under current law. This provision is expected to apply to very few bundled goods for a minor increase in sales taxes.

6. Under current law, the Department of Revenue may negotiate agreements to collect sales tax with out-of-state direct marketers that are not required to collect sales tax. One-eleventh of the tax collected from out-of-state direct marketers is appropriated to the Department of Health and Family Services to fund grants to counties for child and family services. The bill repeals the Department of Revenue's authority to negotiate agreements and the appropriation to Health and Family Services. The provision does not have a fiscal effect since no agreements with direct marketers were negotiated and no grants were awarded.

County, Stadium and Exposition District Fiscal Effects

1. County and stadium sales and use taxes were about 7.25% of state sales and use taxes in FY03. Estimated fiscal effects of the bill on these local sales and use taxes are calculated as 7.25% of the corresponding state effect.

2. Under current law, county and stadium sales tax on sales of property that is licensed is sourced to the jurisdiction in which the property is licensed. Under the bill, sales of snowmobiles, trailers, semi-trailers and all-terrain vehicles (ATVs) would be sourced to the jurisdiction where they are received by the buyer. The bill mitigates the tax incentive for purchasers of such vehicles to shop in jurisdictions that do not impose a local sales tax – the bill allows the jurisdiction where the snowmobile, trailer, semi-trailer or ATV is customarily kept to impose use tax on the purchase of the vehicle if the vehicle was purchased in a jurisdiction without a local tax. The bill continues to treat sales of motor vehicles and airplanes as under current law and so there is no fiscal effect.

3. Under current law, only retailers that are engaged in business in a county or stadium district are required to collect and remit that county's or district's tax. Under the bill, a county or special district may impose sales taxes on retailers that are not required to collect sales taxes but voluntarily register to collect sales taxes. A retailer so registered is required to collect and remit to the department sales taxes for all counties and special districts that have impose a sales tax.

4. Under current law, county and stadium sales tax on leases of property that is delivered is sourced to the jurisdiction in which the property is delivered and customarily used. Under the bill, the first or only payment on a lease is sourced to the location where the sales is made; subsequent payments on the lease are sourced to the location where the property is licensed or delivered and customarily kept. The provision may shift county sales taxes on first or only lease payments among counties but is not expected to have a net county or stadium district fiscal effect.

5. Under current law, collect or credit card telecommunications services are generally sourced to the jurisdiction where the customer is billed. Under the bill, postpaid telecommunications services would be sourced to the jurisdiction in which the telecommunications provider first identifies the signal. This provision may shift taxes among counties but the provision is not expected to have a net county or stadium district fiscal effect.

6. Under current law, exposition district sales taxes are levied on most food products that are subject to the state sales tax. However, exposition district sales taxes are not levied on soft drinks sold in cans or bottles for off-premises consumption. Although not required under the Agreement, for ease in administration of the tax by retailers who must also collect sales tax, the new definitions for food and food ingredient, soft drink, candy, and prepared food are extended to the local exposition district tax. The expansion of the exposition district tax base under the bill would increase exposition district sales taxes by about \$0.25 million in FY05.

Administrative Costs and Fiscal Effects

1. Under current law, retailers may deduct the greater of 0.5% of taxes payable or \$10 per reporting period as compensation for the costs of collecting and remitting sales and use taxes. Under the bill, in addition to the retailer's discount under current law, the Department would provide monetary allowances to sellers that use certified automated systems or proprietary systems. The monetary allowance has not yet been negotiated under the Agreement and, therefore, a reliable estimate is not feasible.

2. Administration of the Agreement is funded by the participating states. The department's administrative costs related to the Agreement are expected to be \$25,000 in FY05. The bill increases the department's appropriation by \$25,000 to enable the department to fulfill the following requirements:

Certify that the state is in compliance with the Agreement.

Certify certified service providers and certified automated systems.

Establish performance standards for sellers of tangible personal property that (a) operate in at least 5 states that are signatories to the Agreement, (b) have total annual sales of at least \$500 million, (c) have a proprietary system that calculates the amount of tax owed to each taxing jurisdiction, and (d) have entered a performance agreement with the signatory states.

Issue a tax identification number for persons who claim a sales or use tax exemption but are not required to register with the state for sales tax purposes.

Maintain a database that is accessible to sellers and certified service providers that indicates whether items defined in accordance with the Agreement are taxable or exempt.

Maintain a database that is accessible to sellers and certified service providers that indicates taxes rates, taxing jurisdiction boundaries, and zip codes or address assignments related to the administration of taxes under the Agreement.

Inform sellers procedures for reporting to the Department purchasers claiming exemption from tax.

3. Under the bill, the department may waive the \$20 business tax registration fee if the person applying for or renewing a business tax registration certificate is not required to hold such a certificate for sales tax purposes. Data regarding the number of applicants for fee waivers cannot be reliably determined. Nonetheless, the number of applicants is expected to be small.

4. Current law provides penalties for not filing sales tax returns or filing incorrect returns. In addition to the penalties under current law, the bill provides that a person who misuses an exemption certificate, a direct pay permit, a direct mail form or a multiple-points-of-use exemption form, or provides incorrect information to a seller or a certified service provider would be subject to a \$250 penalty for each invoice or bill of sale related to the prohibited use or incorrect information. Data are not available to reliably estimate the number of penalties that would be imposed under the bill.

5. The bill provides an amnesty for uncollected and unpaid sales taxes, including penalties and interest, on sales made to purchasers in this state before the seller registers to collect sales tax under certain conditions. Data are not available to reliably estimate the fiscal effect, if any, of the amnesty under the bill.

Long-Range Fiscal Implications

**SUMMARY OF FISCAL EFFECTS OF THE STREAMLINED SALES TAX AGREEMENT UNDER
AB 547, FY2005
(\$ millions)**

	State Sales Tax	County & Stadium Taxes*
<u>FOOD</u>		
Candy with Flour	(0.64)	(0.05)
Frozen Novelties	(2.2)	(0.16)
Chocolate Chips/Baking Chocolate	1.12	0.08
Packaged Ice	(1.01)	(0.07)
Popcorn	(1.25)	(0.09)
Fruit Drinks with 51-99% Juice	(1.31)	(0.09)
Powdered Soft Drink or Fruit Drink Mix	(0.52)	(0.04)
Non-alcoholic Beer	(0.42)	(0.03)
Ready-To-Drink Tea	2.54	0.18
Carbonated, Unsweetened Water (soda water, club soda, etc)	(0.08)	(0.01)
Meals and Sandwiches Sold by Weight or Volume and Without Utensils	(0.33)	(0.02)
Take Out Salad Bars That Do Not Offer Heated Items	minor +	minor +
Factory Outlet Sales of Prepackaged Food	minor -	minor -
Sales of Pet Food by Veterinarians	0.23	.02
SUBTOTAL - FOOD	(\$3.87)	(\$0.28)
<u>MEDICAL</u>		
Durable Medical Equipment for Home Use	(2.79)	(0.20)
Antiembolism Elastic Hose	minor +	minor +
SUBTOTAL - MEDICAL	(\$2.79)	(\$0.20)
<u>MISCELLANEOUS</u>		
Cloth Diapers & Cloth Diaper Services	0.05	0.00
Custom/Prewritten Software	minor +	minor +
Catalogs & Directories Printed & Shipped by Non-Nexus Printers	\$1.24	\$0.09
Change Liability for Drop Shipments	none	none
Exempt Purchases Converted to Taxable Use	minor +	minor +
Leasing Company Equipment Purchases	minor +/-	minor +/-
Lease & Rental Sourcing	none	none
Collect Telecommunications Services - Local Sourcing	none	none
SUBTOTAL - MISCELLANEOUS	\$1.29	\$0.09
GRAND TOTAL	(\$5.37)	(\$0.39)
<u>OTHER FISCAL EFFECTS</u>		
<u>Revenue Increases:</u>		
Voluntary Collections by Large Multi-State Retailers	\$2.02	\$0.15
Exposition District Taxes		\$0.25
<u>State Costs:</u>		
State Cost of SSTP Administrative Fees	\$0.03	
Retailer's Discount & CSP-certified Software Payments (24 mo. limit)	unknown +	
NET FISCAL EFFECT	(\$3.32)	(\$0.24)**

* Calculated as 7.25% of state fiscal effect.

** Excludes Exposition District Taxes

Fiscal Estimate Worksheet - 2003 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 03-2028/8		Introduction Number AB-547	
Subject			
Streamlined sales and use tax provisions			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes (FTE Position Changes)		\$	
State Operations - Other Costs	25,000		
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category	\$25,000		\$
B. State Costs by Source of Funds			
GPR	25,000		
FED			
PRO/PRS			
SEG/SEG-S			
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
	Increased Rev	Decreased Rev	
GPR Taxes	\$	\$-3,350,000	
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues	\$	\$-3,350,000	
NET ANNUALIZED FISCAL IMPACT			
	State	Local	
NET CHANGE IN COSTS	\$25,000	\$	
NET CHANGE IN REVENUE	\$-3,350,000	\$-240,000	
Agency/Prepared By		Authorized Signature	Date
DOR/ Blair Kruger (608) 266-1310		Yeang-Eng Braun (608) 266-2700	10/6/2003

2003 BILL

1 AN ACT *to repeal* 20.435 (3) (bm), 46.513, 77.51 (4), 77.51 (14) (d), 77.51 (14) (i),
2 77.51 (14) (k), 77.51 (14) (L), 77.51 (14r), 77.51 (15), 77.52 (6), 77.52 (14) (a) 2.,
3 77.523 (title), 77.53 (4), 77.54 (14g), 77.54 (14s), 77.54 (20), 77.54 (20m), 77.54
4 (22), 77.54 (40), 77.61 (3), 77.65 (2) (c), 77.72 (title) and 77.72 (2) and (3); *to*
5 *renumber* 77.51 (1), 77.51 (14) (g), 77.524 (1) (a), 77.524 (1) (b) and 77.53 (9m);
6 *to renumber and amend* 77.52 (1), 77.523, 77.61 (2), 77.72 (1) and 77.77 (1);
7 *to consolidate, renumber and amend* 77.52 (14) (a) (intro.) and 1. and (b);
8 *to amend* 66.0615 (1m) (f) 2., 70.111 (23), 73.03 (50) (d), 76.07 (4g) (b) 8., 77.51
9 (5), 77.51 (13) (o), 77.51 (14) (intro.), 77.51 (14) (a), 77.51 (14) (j), 77.51 (17),
10 77.51 (20), 77.51 (21), 77.52 (2) (intro.), 77.52 (2) (a) 10., 77.52 (7), 77.52 (13),
11 77.52 (15), 77.524 (1) (intro.), 77.53 (1), 77.53 (9), 77.53 (10), 77.53 (11), 77.53
12 (16), 77.53 (17), 77.53 (17m), 77.53 (17r) (a), 77.53 (18), 77.54 (1), 77.54 (2), 77.54
13 (2m), 77.54 (3) (a), 77.54 (3m) (intro.), 77.54 (4), 77.54 (5) (intro.), 77.54 (6)
14 (intro.), 77.54 (8), 77.54 (9), 77.54 (9a) (intro.), 77.54 (10), 77.54 (11), 77.54 (12).

BILL

1 77.54 (13), 77.54 (14) (intro.), 77.54 (14) (a), 77.54 (14) (b), 77.54 (14) (f), 77.54
 2 (15), 77.54 (16), 77.54 (17), 77.54 (18), 77.54 (21), 77.54 (23m), 77.54 (25), 77.54
 3 (26), 77.54 (26m), 77.54 (27), 77.54 (28), 77.54 (29), 77.54 (30) (a) (intro.), 77.54
 4 (30) (c), 77.54 (31), 77.54 (32), 77.54 (33), 77.54 (34), 77.54 (35), 77.54 (36), 77.54
 5 (37), 77.54 (38), 77.54 (39), 77.54 (41), 77.54 (42), 77.54 (43), 77.54 (44), 77.54
 6 (45), 77.54 (46), 77.54 (46m), 77.55 (1) (intro.), 77.55 (2), 77.55 (2m), 77.55 (3),
 7 77.56 (1), 77.57, 77.58 (3) (b), 77.58 (6), 77.59 (9), 77.61 (1) (b), 77.61 (1) (c), 77.61
 8 (4) (c), 77.65 (2) (e), 77.70, 77.705, 77.706, 77.707 (1), 77.707 (2), 77.71 (1), 77.71
 9 (2), 77.71 (3), 77.71 (4), 77.73 (2), 77.785 (1), 77.785 (2), 77.98, 77.981, 77.982
 10 (2), 77.99, 77.991 (2), 77.994 (1) (intro.), 77.9941 (4), 77.995 (2), 77.9951 (2),
 11 86.195 (3) (b) 3. and 218.0171 (2) (cq); *to repeal and recreate* 77.51 (7), 77.51
 12 (17m) and 77.63; and *to create* 73.03 (50b), 73.03 (61), 77.51 (1b), 77.51 (1e),
 13 77.51 (1n), 77.51 (1p), 77.51 (2k), 77.51 (2m), 77.51 (3p), 77.51 (3pd), 77.51 (3pj),
 14 77.51 (3pm), 77.51 (3pp), 77.51 (3t), 77.51 (7m), 77.51 (10m), 77.51 (10n), 77.51
 15 (10r), 77.51 (11m), 77.51 (12m), 77.51 (12p), 77.51 (13s), 77.51 (15a), 77.51
 16 (15b), 77.51 (17w), 77.51 (21p), 77.51 (22) (bm), 77.52 (1) (b), 77.52 (1) (c), 77.52
 17 (7b), 77.522, 77.524 (1) (ag), 77.53 (9m) (b), 77.53 (9m) (c), 77.54 (14b), 77.54
 18 (20n), 77.54 (20r), 77.54 (22b), 77.58 (6m), 77.58 (9a), 77.585, 77.59 (2m), 77.59
 19 (9n), 77.59 (9p) (b), 77.59 (9r), 77.60 (13), 77.61 (2) (b), 77.61 (3m), 77.61 (5m),
 20 77.61 (16), 77.67, 77.73 (3) and 77.77 (1) (b) of the statutes; **relating to:** the
 21 Uniform Sales and Use Tax Administration Act, granting rule-making
 22 authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill adopts the substantive provisions of the streamlined sales and use tax agreement (agreement) for purposes of administering and collecting state, county,

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and stadium district sales and use taxes. The agreement is intended to simplify and modernize sales and use tax administration for the states that enter into the agreement and to encourage out-of-state retailers to collect the state, county, and stadium district sales and use taxes voluntarily. Under current federal law, generally, an out-of-state retailer who sells goods or services to customers in this state is not required to collect the sales tax or use tax imposed on such sales, if the retailer has no physical presence in this state. See *Quill v. North Dakota*, 504 U.S. 298; 112 S.Ct. 1904 (1992).

States that wish to enter into the agreement must adopt uniform definitions related to the administration of sales and use taxes and uniform policies related to sourcing sales of goods and services, bad debt allowances, refunds, and, to some extent, exemptions. Under the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for certifying service providers and automated systems to aid out-of-state retailers with the collection of state sales and use taxes.

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 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."

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, 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 project working on 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. This bill, therefore, eliminates the sales tax and use tax exemptions for cloth diapers and antiembolism hose.

This bill creates definitions for "durable medical equipment," "mobility-enhancing equipment," and "prosthetic device." Under the bill, the sale of such equipment and devices is exempt from the sales tax and the use tax.

Under the bill, generally, 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. Under the bill, if the item sold is a digital good or computer software, and the digital good or computer software is delivered electronically, the

BILL

sale occurs at the location from which the digital good or computer software was first available for transmission by the seller.

Under the bill, generally, the sale of a telecommunications service occurs at a location that is determined to be consistent with the provisions of the federal Mobile Telecommunications Sourcing Act.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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. 20.435 (3) (bm) of the statutes is repealed.

2 SECTION 2. 46.513 of the statutes is repealed.

3 SECTION 3. 66.0615 (1m) (f) 2. of the statutes is amended to read:

4 66.0615 (1m) (f) 2. Sections 77.51 ~~(12m)~~, (14) ~~(e), (f) and (j)~~ and (14g), (15a),
5 and (15b), 77.52 (3), (3m), (4), ~~(6)~~ and (13), (14), (18), and (19), 77.522, 77.58 (1) to (5),
6 (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9) and (12) to (14), and
7 (15), and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax
8 described under subd. 1.

9 SECTION 4. 70.111 (23) of the statutes is amended to read:

10 70.111 (23) VENDING MACHINES. All machines that automatically dispense soda
11 ~~water beverages, as defined in s. 97.29 (1) (i), and items included as a food or beverage~~
12 ~~under s. 77.54 (20) (a) and (b)~~ food and food ingredient, as defined in s. 77.51 (3t),
13 upon the deposit in the machines of specified coins or currency, or insertion of a credit
14 card, in payment for the ~~soda water beverages, food or beverages~~ food and food
15 ingredient, as defined in s. 77.51 (3t).

16 SECTION 5. 73.03 (50) (d) of the statutes is amended to read:

BILL

1 73.03 (50) (d) In the case of a sole proprietor, signs the form or, in the case of
2 other persons, has an individual who is authorized to act on behalf of the person sign
3 the form, or, in the case of a single-owner entity that is disregarded as a separate
4 entity under section 7701 of the Internal Revenue Code, the person is the owner. Any
5 person who may register under this subsection may designate an agent, as defined
6 in s. 77.524 (1) (ag), to register with the department under this subsection in the
7 manner prescribed by the department. In this paragraph, "sign" has the meaning
8 given in s. 77.51 (17r).

9 SECTION 6. 73.03 (50b) of the statutes is created to read:

10 73.03 (50b) To waive the fee established under sub. (50) for applying for and
11 renewing the business tax registration certificate, if the person who is applying for
12 or renewing the certificate is not required for purposes of ch. 77 to hold such a
13 certificate.

14 SECTION 7. 73.03 (61) of the statutes is created to read:

15 73.03 (61) To do all of the following related to the Uniform Sales and Use Tax
16 Administration Act:

17 (a) Certify compliance with the agreement, as defined in s. 77.65 (2) (a).

18 (b) Pursuant to the agreement, as defined in s. 77.65 (2) (a), certify certified
19 service providers, as defined in s. 77.51 (1g), and certified automated systems, as
20 defined in s. 77.524 (1) (am).

21 (c) Consistent with the agreement, as defined in s. 77.65 (2) (a), establish
22 performance standards and eligibility criteria for a seller that sells tangible personal
23 property or taxable services in at least 5 states that are signatories to the agreement,
24 as defined in s. 77.65 (2) (a); that has total annual sales revenue of at least
25 \$500,000,000; that has a proprietary system that calculates the amount of tax owed

BILL

1 to each taxing jurisdiction in which the seller sells tangible personal property or
2 taxable services; and that has entered into a performance agreement with the states
3 that are signatories to the agreement, as defined in s. 77.65 (2) (a). For purposes of
4 this paragraph, "seller" includes an affiliated group of sellers using the same
5 proprietary system to calculate the amount of tax owed in each taxing jurisdiction
6 in which the sellers sell tangible personal property or taxable services.

7 (d) Issue a tax identification number to a person who claims an exemption
8 under subch. III or V of ch. 77 and who is not required to register with the department
9 for the purposes of subch. III or V of ch. 77 and establish procedures for the
10 registration of such a person.

11 (e) Maintain a database that is accessible to sellers and certified service
12 providers, as defined in s. 77.51 (1g), that indicates whether items defined in
13 accordance with the Uniform Sales and Use Tax Administration Act are taxable or
14 nontaxable.

15 (f) Maintain a database that is accessible to sellers and certified service
16 providers, as defined in s. 77.51 (1g), that indicates tax rates, taxing jurisdiction
17 boundaries, and zip code or address assignments related to the administration of
18 taxes imposed under subchs. III and V of ch. 77.

19 (g) Set forth the information that the seller shall provide to the department for
20 tax exemptions claimed by purchasers and establish the manner in which a seller
21 shall provide such information to the department.

22 (h) Provide monetary allowances, in addition to the retailer's discount provided
23 under s. 77.61 (4) (c), to certified service providers, as defined in s. 77.51 (1g), and
24 sellers that use certified automated systems, as defined in s. 77.524 (1) (am), or
25 proprietary systems, pursuant to the agreement as defined in s. 77.65 (2) (a).

ASSEMBLY BILL 547

1 **SECTION 8.** 76.07 (4g) (b) 8. of the statutes is amended to read:

2 76.07 (4g) (b) 8. Determine transport-related revenue by adding public service
3 revenue allocated to this state on the basis of routes for which the company is
4 authorized to receive subsidy payments, mutual aid allocated to this state on the
5 basis of the ratio of transport revenues allocated to this state to transport revenues
6 everywhere in the previous year, in-flight sales allocated to this state as they are
7 allocated under s. ~~77.51 (14r)~~ 77.522 and all other transport-related revenues from
8 sales made in this state.

9 **SECTION 9.** 77.51 (1) of the statutes is renumbered 77.51 (1d).

10 **SECTION 10.** 77.51 (1b) of the statutes is created to read:

11 77.51 (1b) "Alcohol beverage" means a beverage that is suitable for human
12 consumption and that contains 0.5 percent or more of alcohol by volume.

13 **SECTION 11.** 77.51 (1e) of the statutes is created to read:

14 77.51 (1e) "Candy" means a preparation of sugar, honey, or other natural or
15 artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or
16 flavorings in the form of bars, drops, or pieces. "Candy" does not include a
17 preparation that contains flour or that requires refrigeration.

18 **SECTION 12.** ~~77.51 (1n)~~ 77.51 (1n) of the statutes is created to read:

19 77.51 (1n) "Computer" means an electronic device that accepts information in
20 digital or similar form and that manipulates such information to achieve a result
21 based on a sequence of instructions.

22 **SECTION 13.** 77.51 (1p) of the statutes is created to read:

23 77.51 (1p) "Computer software" means a set of coded instructions designed to
24 cause a computer or automatic data processing equipment to perform a task.

25 **SECTION 14.** 77.51 (2k) of the statutes is created to read:

ASSEMBLY BILL 547

1 77.51 (2k) "Delivered electronically" means delivered to a purchaser by means
2 other than by tangible storage media.

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

4 77.51 (2m) "Delivery charges" means charges by a seller to prepare and deliver
5 tangible personal property or services to a location designated by the purchaser of
6 the tangible personal property or services, including charges for transportation,
7 shipping, postage, handling, crating, and packing.

8 SECTION 16. 77.51 (3p) of the statutes is created to read:

9 77.51 (3p) "Dietary supplement" means a product, other than tobacco, that is
10 intended to supplement a person's diet, if all of the following apply:

11 (a) The product contains any of the following ingredients or any combination
12 of any of the following ingredients:

- 13 1. A vitamin.
- 14 2. A mineral.
- 15 3. An herb or other botanical.
- 16 4. An amino acid.
- 17 5. A dietary substance that is intended for human consumption to supplement
18 the diet by increasing total dietary intake.
- 19 6. A concentrate, metabolite, constituent, or extract.

20 (b) The product is intended for ingestion in tablet, capsule, powder, soft-gel,
21 gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not
22 represented as conventional food and is not represented for use as the sole item of
23 a meal or diet.

24 (c) The product is required to be labeled as a dietary supplement as required
25 under 21 CFR 101.36.

BILL

1 SECTION 17. 77.51 (3pd) of the statutes is created to read:

2 77.51 (3pd) "Direct mail" means printed material that is delivered by the U.S.
3 postal service or other delivery service to a mass audience or to addressees on a
4 mailing list provided by or at the direction of the purchaser of the printed material,
5 if the cost of the printed material or any tangible personal property included with the
6 printed material is not billed directly to the recipients of the printed material.
7 "Direct mail" includes any tangible personal property provided directly or indirectly
8 by the purchaser of the printed material to the seller of the printed material for
9 inclusion in any package containing printed material. "Direct mail" does not include
10 multiple items of printed material delivered to a single address.

11 SECTION 18. 77.51 (3pj) of the statutes is created to read:

12 77.51 (3pj) "Drug" means a compound, substance, or preparation, or any
13 component of them, other than food and food ingredients, dietary supplements, or
14 alcoholic beverages, to which any of the following applies:

15 (a) It is listed in the United States Pharmacopoeia, Homeopathic
16 Pharmacopoeia of the United States, or National Formulary, or any supplement to
17 any of them.

18 (b) It is intended for use in diagnosing, curing, mitigating, treating, or
19 preventing a disease.

20 (c) It is intended to affect a function or structure of the body.

21 SECTION 19. 77.51 (3pm) of the statutes is created to read:

22 77.51 (3pm) "Durable medical equipment" means equipment, including the
23 repair parts and replacement parts for the equipment, ~~that is for use in a person's~~
24 ~~home~~; that is primarily and customarily used for a medical purpose related to a
25 person; that can withstand repeated use; that is not generally useful to a person who

BILL

1 is not ill or injured; and that is not placed in or worn on the body. "Durable medical
2 equipment" does not include mobility-enhancing equipment.

3 SECTION 20. 77.51 (3pp) of the statutes is created to read:

4 77.51 (3pp) "Electronic" means relating to technology having electrical,
5 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

6 SECTION 21. 77.51 (3t) of the statutes is created to read:

7 77.51 (3t) "Food and food ingredient" means a substance in liquid,
8 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
9 for chewing, by humans and that is ingested or chewed for its taste or nutritional
10 value. "Food and food ingredient" does not include alcohol beverages or tobacco.

11 SECTION 22. 77.51 (4) of the statutes, as affected by 2003 Wisconsin Act 48, is
12 repealed.

13 SECTION 23. 77.51 (5) of the statutes is amended to read:

14 77.51 (5) For purposes of subs. (13) (e) and (f) and ~~(14)-(L)~~ (15a) and s. 77.52
15 (2m), "incidental" means depending upon or appertaining to something else as
16 primary; something necessary, appertaining to, or depending upon another which is
17 termed the principal; something incidental to the main purpose of the service.
18 Tangible personal property transferred by a service provider is incidental to the
19 service if the purchaser's main purpose or objective is to obtain the service rather
20 than the property, even though the property may be necessary or essential to
21 providing the service.

22 SECTION 24. 77.51 (7) of the statutes is repealed and recreated to read:

23 77.51 (7) (a) "Lease or rental" means any transfer of possession or control of
24 tangible personal property for a fixed or indeterminate term and for consideration
25 and includes:

BILL

1 1. A transfer that includes future options to purchase or extend.

2 2. Agreements related to the transfer of possession or control of motor vehicles
3 or trailers, if the amount of any consideration may be increased or decreased by
4 reference to the amount realized on the sale or other disposition of such motor
5 vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

6 (b) "Lease or rental" does not include any of the following:

7 1. A transfer of possession or control of tangible personal property under a
8 security agreement or deferred payment plan, if such agreement or plan requires
9 transferring title to the tangible personal property after making all required
10 payments.

11 2. A transfer of possession or control of tangible personal property under any
12 agreement that requires transferring title to the tangible personal property after
13 making all required payments and after paying an option price that does not exceed
14 the greater of \$100 or 1 percent of the total amount of the required payments.

15 3. Providing tangible personal property along with an operator, if the operator
16 is necessary for the tangible personal property to perform in the manner for which
17 it is designed and if the operator does more than maintain, inspect, or set up the
18 tangible personal property.

19 (c) 1. Transfers described under par. (a) are considered a lease or rental,
20 regardless of whether such transfer is considered a lease or rental under generally
21 accepted accounting principles, or any provision of federal or local law, or any other
22 provision of state law.

23 2. Transfers described under par. (b) are not considered a lease or rental,
24 regardless of whether such transfer is considered a lease or rental under generally

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1 accepted accounting principles, or any provision of federal or local law, or any other
2 provision of state law.

3 SECTION 25. 77.51 (7m) of the statutes is created to read:

4 77.51 (7m) "Mobility-enhancing equipment" means equipment, including the
5 repair parts and replacement parts for the equipment, that is primarily and
6 customarily used to provide or increase the ability of a person to move from one place
7 to another; that may be used in a home or motor vehicle; and that is generally not
8 used by a person who has normal mobility. "Mobility-enhancing equipment" does
9 not include a motor vehicle or any equipment on a motor vehicle that is generally
10 provided by a motor vehicle manufacturer.

11 SECTION 26. 77.51 (10m) of the statutes is created to read:

12 77.51 (10m) (a) "Prepared food" means:

13 1. Food and food ingredients sold in a heated state.

14 2. Food and food ingredients heated by the retailer, except as provided in par.

15 (b).

16 3. Food and food ingredients sold with eating utensils that are provided by the
17 retailer of the food and food ingredients, including plates, knives, forks, spoons,
X 18 glasses, cups, napkins, ^{or} and straws. In this subdivision, "plate" does not include a
19 container or packaging used to transport food and food ingredients.

20 4. Except as provided in par. (b), 2 or more food ingredients mixed or combined
21 by a retailer for sale as a single item.

22 (b) "Prepared food" under par. (a) 2. and 4. does not include:

23 1. Two or more food ingredients mixed or combined by a retailer for sale as a
24 single item, if the retailer's primary classification in the 1997 North American
25 Industry Classification System, published by the federal office of management and

BILL

1 budget, is manufacturing under sectors 31 to 33, not including bakeries and tortilla
2 manufacturing under industry group number 3118.

3 2. Two or more food ingredients mixed or combined by a retailer for sale as a
4 single item, sold unheated, and sold by volume or weight.

5 3. Bakery items made by a retailer, including breads, rolls, pastries, buns,
6 biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,
7 cookies, and tortillas.

8 4. Food and food ingredients that are only sliced, repackaged, or pasteurized
9 by a retailer.

10 5. Eggs, fish, meat, and poultry, and foods containing any of them in raw form,
11 that require cooking by the consumer, as recommended by the food and drug
12 administration in chapter 3, part 401.11 of its food code to prevent food-borne
13 illnesses.

14 SECTION 27. 77.51 (10n) of the statutes is created to read:

15 77.51 (10n) "Prescription" means an order, formula, or recipe that is issued by
16 any oral, written, electronic, or other means of transmission and by a person who is
17 authorized by the laws of this state to issue such an order, formula, or recipe.

18 SECTION 28. 77.51 (10r) of the statutes is created to read:

19 77.51 (10r) "Prewritten computer software" means any of the following:

20 (a) Computer software that is not designed and developed by the author or
21 creator of the software according to a specific purchaser's specifications.

22 (b) Computer software upgrades that are not designed and developed by the
23 author or creator of the software according to a specific purchaser's specifications.

BILL

1 (c) Computer software that is designed and developed by the author or creator
2 of the software according to a specific purchaser's specifications and that is sold to
3 another purchaser.

4 (d) Any combination of computer software under pars. (a) to (c), including any
5 combination with any portion of such software.

6 (e) Computer software as described under pars. (a) to (d), and any portion of
7 such software, that is modified or enhanced by any degree to a specific purchaser's
8 specifications, except such modification or enhancement that is reasonably and
9 separately indicated on an invoice, or other statement of the price, provided to the
10 purchaser.

11 **SECTION 29.** 77.51 (11m) of the statutes is created to read:

12 77.51 (11m) "Prosthetic device" means a device, including the repair parts and
13 replacement parts for the device, that is placed in or worn on the body to artificially
14 replace a missing portion of the body; to prevent or correct a physical deformity or
15 malfunction; or to support a weak or deformed portion of the body.

16 **SECTION 30.** 77.51 (12m) of the statutes is created to read:

17 77.51 (12m) (a) "Purchase price" means the total amount of consideration,
18 including cash, credit, property, and services, for which tangible personal property
19 or services are sold, leased, or rented, valued in money, whether paid in money or
20 otherwise, without any deduction for the following:

- 21 1. The seller's cost of the property sold.
- 22 2. The cost of materials used, labor or service cost, interest, losses, all costs of
23 transportation to the seller, all taxes imposed on the seller, and any other expense
24 of the seller.

ASSEMBLY BILL 547

1 3. Charges by the seller for any services necessary to complete a sale, not
2 including delivery and installation charges.

3 4. Delivery charges, except as provided in par. (b) 4. *Insert 1*

4 5. Installation charges.

5 6. The value of exempt tangible personal property, if the exempt tangible
6 personal property is bundled with taxable tangible personal property and sold by the
7 seller as a single product or piece of merchandise.

8 (b) "Purchase price" does not include:

9 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
10 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

11 2. Interest, financing, and carrying charges from credit that is extended on a
12 sale of personal property or services, if the amount of the interest, financing, or
13 carrying charges is separately stated on the invoice, bill of sale, or similar document
14 that the seller gives to the purchaser.

15 3. Any taxes legally imposed directly on the purchaser that are separately
16 stated on the invoice, bill of sale, or similar document that the seller gives to the
17 purchaser.

18 4. Delivery charges for direct mail.

19 5. In all transactions in which an article of tangible personal property is traded
20 toward the purchase of an article of greater value, the amount of the purchase price
21 that represents the amount allowed for the article traded, except that this
22 subdivision does not apply to any transaction to which subd. 7. or 8. applies.

23 6. If a person who purchases a motor vehicle presents a statement issued under
24 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
25 statement to the seller within 60 days from the date of receiving a refund under s.

ASSEMBLY BILL 547

1 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
2 s. 218.0171 (2) (cq), but not to exceed the purchase price from the sale of the motor
3 vehicle. This subdivision applies only to the first motor vehicle purchased by a
4 person after receiving a refund under s. 218.0171 (2) (b) 2. b.

5 7. Thirty-five percent of the purchase price, excluding trade-ins, of a new
6 mobile home, as defined in s. 340.01 (29), that is a primary housing unit or of a new
7 mobile home, as defined in s. 340.01 (29), that is transported in 2 unattached sections
8 if the total size of the combined sections, not including additions and attachments,
9 is at least 984 square feet measured when the sections are ready for transport. This
10 subdivision does not apply to a lease or rental.

11 8. At the retailer's option; except that after the retailer chooses an option the
12 retailer may not use the other option for other sales without the department's written
13 approval; either 35 percent of the purchase price of a manufactured building, as
14 defined in s. 101.71 (6), or an amount equal to the purchase price of the manufactured
15 building minus the cost of materials that become an ingredient or component part
16 of the building.

17 **SECTION 31.** 77.51 (12p) of the statutes is created to read:

18 77.51 (12p) "Purchaser" means a person to whom a sale of tangible personal
19 property is made or to whom a service is furnished.

20 **SECTION 32.** 77.51 (13) (o) of the statutes is amended to read:

21 77.51 (13) (o) A person selling medicine drugs for animals to a veterinarian.
22 As used in this paragraph, "animal" includes livestock, pets and poultry.

23 **SECTION 33.** 77.51 (13s) of the statutes is created to read:

24 77.51 (13s) "Retail sale" or "sale at retail" means any sale, lease, or rental for
25 any purpose other than resale, sublease, or subrent.

BILL

1 SECTION 34. 77.51 (14) (intro.) of the statutes is amended to read:

2 77.51 (14) (intro.) "Sale", ~~"sale, lease or rental", "retail sale", "sale at retail", or~~
3 ~~equivalent terms include~~ includes any one or all of the following: the transfer of the
4 ownership of, title to, possession of, or enjoyment of tangible personal property or
5 services for use or consumption but not for resale as tangible personal property or
6 services and includes:

7 SECTION 35. 77.51 (14) (a) of the statutes is amended to read:

8 77.51 (14) (a) Any sale at an auction in respect to tangible personal property
9 which is sold to a successful bidder. ~~The proceeds from, except~~ the sale of property
10 sold at auction which is bid in by the seller and on which title does not pass to a new
11 purchaser shall be deducted from the gross proceeds of the sale and the tax paid only
12 on the net proceeds.

13 SECTION 36. 77.51 (14) (d) of the statutes is repealed.

14 SECTION 37. 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4.

15 SECTION 38. 77.51 (14) (i) of the statutes is repealed.

16 SECTION 39. 77.51 (14) (j) of the statutes is amended to read:

17 77.51 (14) (j) The granting of possession of tangible personal property by a
18 lessor to a lessee, or to another person at the direction of the lessee. Such a
19 transaction is deemed a continuing sale in this state by the lessor for the duration
20 of the lease as respects any period of time the leased property is situated in this state,
21 irrespective of the time or place of delivery of the property to the lessee or such other
22 person.

23 SECTION 40. 77.51 (14) (k) of the statutes is repealed.

24 SECTION 41. 77.51 (14) (L) of the statutes is repealed.

25 SECTION 42. 77.51 (14r) of the statutes is repealed.

BILL

1 SECTION 43. 77.51 (15) of the statutes, as affected by 2003 Wisconsin Act 48,
2 is repealed.

3 SECTION 44. 77.51 (15a) of the statutes is created to read:

4 77.51 (15a) (a) "Sales, lease, or rental for resale, sublease, or subrent" includes
5 transfers of tangible personal property to a service provider that the service provider
6 transfers in conjunction with but not incidental to the selling, performing, or
7 furnishing of any service, and transfers of tangible personal property to a service
8 provider that the service provider physically transfers in conjunction with the
9 selling, performing, or furnishing services under s. 77.52 (2) (a) 7., 10., 11., or 20. This
10 paragraph does not apply to sub. (2).

11 (b) "Sales, lease, or rental for resale, sublease, or subrent" does not include any
12 of the following:

13 1. The sale of building materials, supplies, and equipment to owners,
14 contractors, subcontractors, or builders for use in real property construction
15 activities or the alteration, repair, or improvement of real property, regardless of the
16 quantity of such materials, supplies, and equipment sold.

17 2. Any sale of tangible personal property to a purchaser even though such
18 property may be used or consumed by some other person to whom such purchaser
19 transfers the tangible personal property without valuable consideration, such as
20 gifts, and advertising specialties distributed gratis apart from the sale of other
21 tangible personal property or service.

22 3. Transfers of tangible personal property to a service provider that the service
23 provider transfers in conjunction with the selling, performing, or furnishing of any
24 service, if the tangible personal property is incidental to the service, unless the

BILL

1 service provider is selling, performing, or furnishing services under s. 77.52 (2) (a)
2 7., 10., 11., or 20.

3 SECTION 45. 77.51 (15b) of the statutes is created to read:

4 77.51 (15b) (a) "Sales price" means the total amount of consideration, including
5 cash, credit, property, and services, for which tangible personal property or services
6 are sold, leased, or rented, valued in money, whether received in money or otherwise,
7 without any deduction for the following:

8 1. The seller's cost of the property sold.

9 2. The cost of materials used, labor or service cost, interest, losses, all costs of
10 transportation to the seller, all taxes imposed on the seller, and any other expense
11 of the seller.

12 3. Charges by the seller for any services necessary to complete a sale, not
13 including delivery and installation charges.

14 4. Delivery charges, except as provided in par. (b) 4.

15 5. Installation charges.

16 6. The value of exempt tangible personal property, if the exempt tangible
17 personal property is bundled with taxable tangible personal property and sold by the
18 seller as a single product or piece of merchandise.

19 (b) "Sales price" does not include:

20 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
21 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

22 2. Interest, financing, and carrying charges from credit that is extended on a
23 sale of tangible personal property or services, if the amount of the interest, financing,
24 or carrying charges is separately stated on the invoice, bill of sale, or similar
25 document that the seller gives to the purchaser.

BILL

1 3. Any taxes legally imposed directly on the purchaser that are separately
2 stated on the invoice, bill of sale, or similar document that the seller gives to the
3 purchaser.

4 4. Delivery charges for direct mail.

5 5. In all transactions in which an article of tangible personal property is traded
6 toward the purchase of an article of greater value, the amount of the sales price that
7 represents the amount allowed for the article traded, except that this subdivision
8 does not apply to any transaction to which subd. 7. or 8. applies.

9 6. If a person who purchases a motor vehicle presents a statement issued under
10 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
11 statement to the seller within 60 days from the date of receiving a refund under s.
12 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
13 s. 218.0171 (2) (cq), but not to exceed the sales price from the sale of the motor vehicle.
14 This subdivision applies only to the first motor vehicle purchased by a person after
15 receiving a refund under s. 218.0171 (2) (b) 2. b.

16 7. Thirty-five percent of the sales price, excluding trade-ins, of a new mobile
17 home, as defined in s. 340.01 (29), that is a primary housing unit or of a new mobile
18 home, as defined in s. 340.01 (29), that is transported in 2 unattached sections if the
19 total size of the combined sections, not including additions and attachments, is at
20 least 984 square feet measured when the sections are ready for transport. This
21 subdivision does not apply to a lease or rental.

22 8. At the retailer's option; except that after the retailer chooses an option the
23 retailer may not use the other option for other sales without the department's written
24 approval; either 35 percent of the sales price of a manufactured building, as defined
25 in s. 101.71 (6), or an amount equal to the sales price of the manufactured building

BILL

1 minus the cost of materials that become an ingredient or component part of the
2 building.

3 SECTION 46. 77.51 (17) of the statutes is amended to read:

4 77.51 (17) "Seller" includes every person selling, leasing or renting tangible
5 personal property or selling, performing or furnishing services of a kind the gross
6 receipts sales price from the sale, lease, rental, performance or furnishing of which
7 are is required to be included in the measure of the sales tax.

8 SECTION 47. 77.51 (17m) of the statutes is repealed and recreated to read:

9 77.51 (17m) "Service address" means any of the following:

10 (a) The location of the telecommunications equipment to which a customer's
11 telecommunications service is charged and from which the telecommunications
12 service originates or terminates, regardless of where the telecommunications service
13 is billed or paid.

14 (b) If the location described under par. (a) is not known by the seller who sells
15 the telecommunications service, the location where the signal of the
16 telecommunications service originates, as identified by the seller's
17 telecommunications system or, if the signal is not transmitted by the seller's
18 telecommunications system, by information that the seller received from the seller's
19 service provider.

20 (c) If the locations described under pars. (a) and (b) are not known by the seller
21 who sells the telecommunications service, the customer's place of primary use.

22 SECTION 48. 77.51 (17w) of the statutes is created to read:

23 77.51 (17w) "Soft drink" means a beverage that contains less than 0.5 percent
24 of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not

BILL

1 include a beverage that contains milk or milk products; soy, rice, or similar milk
2 substitutes; or more than 50 percent vegetable or fruit juice by volume.

3 SECTION 49. 77.51 (20) of the statutes is amended to read:

4 77.51 (20) "Tangible personal property" means all ~~tangible personal property~~
5 ~~of every kind and description that can be seen, weighed, measured, felt, or touched,~~
6 ~~or that is in any other manner perceptible to the senses,~~ and includes electricity,
7 natural gas, steam and water, and also leased property affixed to realty if the lessor
8 has the right to remove the property upon breach or termination of the lease
9 agreement, unless the lessor of the property is also the lessor of the realty to which
10 the property is affixed. "Tangible personal property" also includes coins and stamps
11 of the United States sold or traded as collectors' items above their face value and
12 computer programs except custom prewritten computer programs software.

13 SECTION 50. 77.51 (21) of the statutes is amended to read:

14 77.51 (21) "Taxpayer" means the person who is required to pay, collect, or
15 account for or who is otherwise directly interested in the taxes imposed by this
16 subchapter, including a certified service provider.

17 SECTION 51. ~~77.51 (21p)~~ of the statutes is created to read:

18 77.51 (21p) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco,
19 and any other item that contains tobacco.

20 SECTION 52. 77.51 (22) (bm) of the statutes is created to read:

21 77.51 (22) (bm) In this subsection, "exercise of any right or power over tangible
22 personal property or taxable services" includes distributing, selecting recipients,
23 determining mailing schedules, or otherwise directing the distribution,
24 dissemination, or disposal of tangible personal property or taxable services.

BILL

1 regardless of whether the purchaser of such property or services owns or physically
2 possesses, in this state, the property or services.

3 SECTION 53. 77.52 (1) of the statutes is renumbered 77.52 (1) (a) and amended
4 to read:

5 77.52 (1) (a) For the privilege of selling, ~~licensing~~, leasing or renting tangible
6 personal property, including accessories, components, attachments, parts, supplies
7 and materials, at retail a tax is imposed upon all retailers at the rate of 5 percent of
8 the ~~gross receipts~~ sales price from the sale, ~~license~~, lease or rental of tangible
9 personal property, including accessories, components, attachments, parts, supplies
10 and materials, sold, leased or rented at retail in this state.

11 SECTION 54. 77.52 (1) (b) of the statutes is created to read:

12 77.52 (1) (b) For the privilege of selling at retail coins and stamps of the United
13 States that are sold or traded as collectors' items above their face value, a tax is
14 imposed on all retailers at the rate of 5 percent of the sales price from the sale of such
15 coins and stamps.

16 SECTION 55. 77.52 (1) (c) of the statutes is created to read:

17 77.52 (1) (c) For the privilege of leasing property that is affixed to real property,
18 a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease
19 of such property, if the lessor has the right to remove the leased property upon breach
20 or termination of the lease agreement, unless the lessor of the leased property is also
21 the lessor of the real property to which the leased property is affixed.

22 SECTION 56. 77.52 (2) (intro.) of the statutes is amended to read:

23 77.52 (2) (intro.) For the privilege of selling, ~~licensing~~, performing or furnishing
24 the services described under par. (a) at retail in this state to consumers or users, a
25 tax is imposed upon all persons selling, ~~licensing~~, performing or furnishing the

BILL

1 services at the rate of 5% of the ~~gross receipts~~ sales price from the sale, license,
2 performance or furnishing of the services.

3 SECTION 57. 77.52 (2) (a) 10. of the statutes is amended to read:

4 77.52 (2) (a) 10. Except for installing or applying tangible personal property
5 which, when installed or applied, will constitute an addition or capital improvement
6 of real property, the repair, service, alteration, fitting, cleaning, painting, coating,
7 towing, inspection, and maintenance of all items of tangible personal property
8 unless, at the time of such repair, service, alteration, fitting, cleaning, painting,
9 coating, towing, inspection, or maintenance, a sale in this state of the type of property
10 repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or
11 maintained would have been exempt to the customer from sales taxation under this
12 subchapter, other than the exempt sale of a motor vehicle or truck body to a
13 nonresident under s. 77.54 (5) (a) and other than nontaxable sales outside this state
14 under s. ~~77.51 (14)~~ 77.522. For purposes of this paragraph, the following items shall
15 be considered to have retained their character as tangible personal property,
16 regardless of the extent to which any such item is fastened to, connected with, or built
17 into real property: furnaces, boilers, stoves, ovens, including associated hoods and
18 exhaust systems, ~~heaters~~, air conditioners, humidifiers, dehumidifiers,
19 refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and
20 softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units,
21 radios and radio antennas, incinerators, television receivers and antennas, record
22 players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings,
23 carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs,
24 heat lamps, electronic dust collectors, grills and rotisseries, bar equipment,
25 intercoms, recreational, sporting, gymnasium and athletic goods and equipment

BILL

1 including by way of illustration but not of limitation bowling alleys, golf practice
2 equipment, pool tables, punching bags, ski tows, and swimming pools; equipment in
3 offices, business facilities, schools, and hospitals but not in residential facilities
4 including personal residences, apartments, long-term care facilities, as defined
5 under s. 16.009 (1) (em), state institutions, as defined under s. 101.123 (1) (i), Type
6 1 secured correctional facilities, as defined in s. 938.02 (19), or similar facilities
7 including, by way of illustration but not of limitation, lamps, chandeliers, and fans,
8 venetian blinds, canvas awnings, office and business machines, ice and milk
9 dispensers, beverage-making equipment, vending machines, soda fountains, steam
10 warmers and tables, compressors, condensing units and evaporative condensers,
11 pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power
12 tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs.
13 "Service" does not include services performed by veterinarians. The tax imposed
14 under this subsection applies to the repair, service, alteration, fitting, cleaning,
15 painting, coating, towing, inspection, or maintenance of items listed in this
16 subdivision, regardless of whether the installation or application of tangible
17 personal property related to the items is an addition to or a capital improvement of
18 real property, except that the tax imposed under this subsection does not apply to the
19 original installation or the complete replacement of an item listed in this subdivision,
20 if such installation or replacement is a real property construction activity under s.
21 77.51 (2).

22 SECTION 58. 77.52 (6) of the statutes is repealed.

23 SECTION 59. 77.52 (7) of the statutes is amended to read:

24 77.52 (7) Every person desiring to operate as a seller within this state who
25 holds a valid certificate under s. 73.03 (50) shall file with the department an

BILL

1 application for a permit for each place of operations. Every application for a permit
2 shall be made upon a form prescribed by the department and shall set forth the name
3 under which the applicant intends to operate, the location of the applicant's place of
4 operations, and the other information that the department requires. ~~The~~ Except as
5 provided in sub. (7b), the application shall be signed by the owner if a sole proprietor;
6 in the case of sellers other than sole proprietors, the application shall be signed by
7 the person authorized to act on behalf of such sellers. A nonprofit organization that
8 has ~~gross receipts~~ a sales price taxable under s. 77.54 (7m) shall obtain a seller's
9 permit and pay taxes under this subchapter on all taxable ~~gross receipts~~ sales prices
10 received after it is required to obtain that permit. If that organization becomes
11 eligible later for the exemption under s. 77.54 (7m) except for its possession of a
12 seller's permit, it may surrender that permit.

13 SECTION 60. 77.52 (7b) of the statutes is created to read:

14 77.52 (7b) Any person who may register under sub. (7) may designate an agent,
15 as defined in s. 77.524 (1) (ag), to register with the department under sub. (7), in the
16 manner prescribed by the department.

17 SECTION 61. 77.52 (13) of the statutes is amended to read:

18 77.52 (13) For the purpose of the proper administration of this section and to
19 prevent evasion of the sales tax it shall be presumed that all receipts are subject to
20 the tax until the contrary is established. The burden of proving that a sale of tangible
21 personal property or services is not a taxable sale at retail is upon the person who
22 makes the sale unless that person takes from the purchaser ~~a~~ an electronic or paper
23 certificate, in a manner prescribed by the department, to the effect that the property
24 or service is purchased for resale or is otherwise exempt; ~~except that no certificate~~
25 ~~is required for sales of cattle, sheep, goats, and pigs that are sold at a livestock~~

BILL

547.

1 ~~market, as defined in s. 95.68 (1) (e), and no certificate is required for sales of~~
 2 ~~commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or~~
 3 ~~from which the commodity is deliverable on a contract for future delivery subject to~~
 4 ~~the rules of a commodity market regulated by the U.S. commodity futures trading~~
 5 ~~commission if upon the sale the commodity is not removed from the warehouse the~~
 6 ~~sale of tangible personal property that is exempt under s. 77.54 (7), (7m), (8), (10),~~
 7 ~~(11), (14), (14b), (15), (17), (20n), (21), (22b), (30), (31), (32), (35), (36), (37), (42), (44),~~
 8 ~~(45), and (46), except as provided in s. 77.54 (30) (e) and (f).~~

9 SECTION 62. 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are consolidated,
 10 renumbered 77.52 (14) and amended to read:

11 77.52 (14) The certificate referred to in sub. (13) relieves the seller from the
 12 burden of proof only if any of the following is true:—1. ~~The the certificate is taken in~~
 13 ~~good faith from a person who is engaged as a seller of tangible personal property or~~
 14 ~~taxable services and who holds the permit provided for in sub. (9) and who, at the~~
 15 ~~time of purchasing that the person purchases the tangible personal property or~~
 16 ~~services, intends to sell it in the regular course of operations or is unable to ascertain~~
 17 ~~at the time of purchase whether the property or service will be sold or will be used~~
 18 ~~for some other purpose. (b). The certificate under sub. (13) shall not relieve the seller~~
 19 ~~of the burden of proof if the seller fraudulently fails to collect sales tax or solicits the~~
 20 ~~purchaser to claim an unlawful exemption. The certificate referred to in sub. (13)~~
 21 ~~shall be signed by and bear the name and address of provide information that~~
 22 ~~identifies the purchaser, and shall indicate the general character of the tangible~~
 23 ~~personal property or service sold by the purchaser and the basis for the claimed~~
 24 ~~exemption and a paper certificate shall be signed by the purchaser. The certificate~~
 25 ~~shall be in such form as the department prescribes by rule.~~

Stats,
 the sale is sourced to this state under 77.522(1)(b) and the claimed
 exemption is not provided for under this subchapter or