



State of Wisconsin

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STEPHEN R. MILLER
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April 17, 2007

MEMORANDUM

To: Representative Zipperer

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

Subject: Technical Memorandum to **2007 AB 223** (LRB-2108/1) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

April 16, 2007

TO: Joe Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on AB 223 Exempting Internet Access Services from Sales and Use Tax

1. The bill may affect the state's sales and use tax revenues on telecommunications services if telecommunications services are included in a package of services bundled with Internet access. In addition, it is not clear that the state would be in compliance with federal law if the federal prohibition on Internet access were to apply to Wisconsin. To avoid these issues, the bill should be amended to parallel federal law as follows:
 - Revise section 2 of the bill to state that the term "Internet access service" does not include telecommunications services, except to the extent such services are purchased, used, or sold by a provider of Internet access to provide Internet access. This is the same exclusion from the definition of "Internet access service" that is contained in section 2(c)(1) of the Internet Tax Nondiscrimination Act (P.L. 108-435, amending the Internet Tax Freedom Act, 47 U.S.C. 151 note).
 - Revise the bill to exclude voice services over the Internet from the exemption (i.e., maintain the taxability of voice services) as provided in federal law. Section 6 of P.L. 108-435, states, in part:

Nothing in this [Internet Tax Nondiscrimination] Act shall be construed to affect the imposition of tax on a charge for voice or similar service utilizing Internet Protocol or any successor protocol. This section shall not apply to any services that are incidental to Internet access, such as voice-capable e-mail or instant messaging.
 - Revise the bill to use the same definitions of "Internet" and "Internet access service" that are used in federal law to prevent uncertainty as to whether Wisconsin meets its obligations, in the event the federal prohibition on the taxation of Internet access were to apply to Wisconsin.
2. E-mail services may remain subject to tax as telecommunications message services under s. 77.52 (2) (a) 5m. If the bill is intended to exempt Internet access services, including e-mail services, from sales tax, it is recommended that the bill be revised to provide such an

exemption rather than excluding Internet access services from the definition of telecommunications services.

If you have any questions regarding this technical memorandum, please contact Blair Kruger at 266-1310 or bkruger@dor.state.wi.us.

cc: Representative Zipperer