State of Wisconsin

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STEPHEN R. MILLER
CHIEF

July 6, 2007

MEMORANDUM

To: Representative Jorgensen

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

Subject: Technical Memorandum to **2007 AB 430** (LRB–2159/1) **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

July 2, 2007

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on AB 430 Regarding a Sales Tax Exemption for Nonprescription Drugs

The Department has the following concerns with the bill:

1. The exemption may be costly and confusing to retailers and purchasers because "drug" is not defined and it is not clear what products would be exempt under the bill. For example, a product that may be a cleanser, a drug, or both a cleanser and a drug. The US Food and Drug Administration (FDA) regulates a product as a drug if it consists of (1) detergents or (2) alkali salts of fatty acids primarily, and (3) is intended not only for cleansing but also to cure, treat, or prevent disease or to affect the structure or any function of the human body. Thus, the FDA considers medicated soaps and shampoos (e.g., dandruff shampoos) to be drugs and must comply with the FDA drug label requirements. Non-medicated soaps and shampoos are not drugs and do not require an FDA drug label. Thus, depending on the product, federal law allows for both labeled and unlabeled products, and retailers and purchasers may be unsure whether a specific product is an exempt nonprescription drug or a taxable grooming aid.

2. The Main Street Equity Act (MEA), implementing the Streamlined Sales and Use Tax Agreement, is a provision of the Governor's proposed 2007-09 budget (SB 40). The Streamlined Agreement provides definitions of "drug" and "over-the-counter drug" that are currently in use in other states. Regardless of whether the MEA is enacted into law, the author might consider the definition of "over-the-counter drug" in the Streamlined Agreement. Under the SSUTA:

   > "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. A member state may exclude 'grooming and hygiene products' from this definition. The 'over-the-counter-drug' label includes:
   >
   > a. A 'Drug Facts' panel; or
   >
   > b. A statement of the 'active ingredient(s)' with a list of those ingredients contained in the compound, substance or preparation.

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

cc: Representative Jorgensen