



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200  
P. O. BOX 2037  
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561  
REFERENCE SECTION: (608) 266-0341  
FAX: (608) 264-6948

STEPHEN R. MILLER  
CHIEF

January 28, 2008

## MEMORANDUM

**To:** Representative Jorgensen

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

**Subject:** Technical Memorandum to **2007 AB 659** (LRB-3419/1) by **DOR**

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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

January 14, 2008

**TO:** Joe Kreye  
Legislative Reference Bureau

**FROM:** Paul Ziegler  
Department of Revenue

**SUBJECT:** Technical Memorandum on 2007 AB 659 – Income Tax Credit for Sales Tax Paid on Nonprescription Drugs

The department has the following concerns regarding the bill:

1. Taxpayers may be confused as to which products are eligible for the credit. For example, a product eligible for the credit may be a cleanser, a drug, or both a cleanser and a drug. According to the US Federal Food and Drug Administration (FDA), a product is regulated as a drug, rather than a cleanser, if it (1) consists of detergents or (2) consists primarily of alkali salts of fatty acids 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. Therefore, medicated soaps and medicated shampoos (for example, Head and Shoulders) are considered by the FDA to be drugs and must adhere to the FDA drug label requirements. Not only would it be difficult for taxpayers to determine which soaps and cleansers are considered “drugs,” but they will have the same problem with cosmetics and other hygiene products. For example, toothpaste with fluoride is a drug, while other toothpastes are not. In addition, consumers may not know whether a product is “labeled in accordance with the requirements of state and federal laws” as required by the bill.
2. The record keeping requirements will be a burden to taxpayers. Every receipt will have to be saved in order to determine the amount of state sales tax paid and for substantiation of the credit amount. Also, since the credit does not apply to county or stadium sales taxes, claimants will have to exclude those local taxes from their claims for the new credit.
3. This bill is effective for taxable years beginning on January 1, 2006. Most people will generally not have retained receipts from 2006 and 2007 to enable them to go back and claim the credit for those years. It is recommended that the bill first apply to taxable years beginning on January 1, 2008, except that if enacted after July 31, 2008, it would first apply to taxable years beginning after the date of enactment.

If you have any questions regarding this technical memorandum, please contact Blair Kruger at 266-1310.

cc: Representative Jorgensen