



State of Wisconsin

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February 20, 2008

MEMORANDUM

To: Senator Jauch

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

Subject: Technical Memorandum to **2007 SB 446** (LRB-3500/2) 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

February 18, 2008

TO: Joseph T. Kreye, Senior Attorney
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on SB 446 – Streamlined Sales Tax

The Department of Revenue has several concerns with the bill:

Internet access charges. Sections 115, 116, 130, 131, 132, 133 & 134

Under the Internet Tax Freedom Act, a state may not impose or enact a new tax on Internet access charges. However, certain states, including Wisconsin, are allowed to continue to tax Internet access charges since their statutes imposing the tax on Internet access meet certain requirements. As drafted, it may appear to some that Wisconsin is imposing a “new” tax on Internet access since the current imposition statute is being repealed and recreated.

Recommendation: Retain the imposition of Wisconsin sales and use tax on Internet access services and also adopt the definition of “telecommunications services” as required by the SSUTA. Accomplish this goal by avoiding any changes that appear to be a “new” imposition or creation of tax on Internet access (even if it can be traced to a prior imposition).

The above recommendation can be accomplished by taking the following steps:

1. (Section 115 – pg 43) - Rename the existing definition of “telecommunication services” in sec. 77.51(21m) to read “Telecommunications and Internet access services” while leaving the remaining text of the definition itself unchanged, except that the reference to the term “telecommunications services” in the last sentence will need to be changed to add the phrase “and Internet access” so it is consistent with the title change.
2. Amend sec. 77.52(2)(a)5.a. (Section 130) as it currently exists in the Wisconsin Statutes to read “The sale of telecommunications and Internet access services, except...”

(Note: The 2 changes above should be made with an effective date prior to the rest of the Streamlined changes effective dates – even if only effective one day prior to the Streamline effective date. That way, since this would only be a renaming and not a substantive change (the definition itself is unchanged), this should satisfy even skeptics that the imposition itself is unchanged.)

After the two changes above are included, the following changes will then be necessary:

3. Amend sec. 77.51(21m) (after it was changed as indicated in 1. above) to read "~~Telecommunication and Internet access services~~' means sending...or similar facilities. ~~'Telecommunications and Internet access services'~~ does not include ~~sending collect telecommunications that are received outside of the state~~ 'telecommunications services' to the extent they are taxable under sec. 77.52(2)(a)5.am." (This is very similar to how Section 115 of LRB 3500/1 currently reads.)

4. Create sec. 77.51(21n) as it is currently drafted in Section 116 of LRB 3500/1, except change sec. 77.51(21n)(f) to read as follows: "(f) Internet access services."

5. Amend sec. 77.52(2)(a)5.a. so that it reads as follows: "The sale of ~~telecommunications~~ Internet access services ~~except services subject to 4 USC 116 to 126, as amended by P.L. 106 252, that either originate or terminate in this state; except services that are obtained by means of a toll-free number, that originate outside this state and that terminate in this state; and are charged to a service address in this state, regardless of the location where that charge is billed or paid; and the sale of the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code, except sales that are subject to subd. 5. b.~~ (This is currently how it reads in Section 130 of LRB 3500/1.)

6. Create sec. 77.52(2)(a)5.am. so that it reads as follows: "The sale of intrastate, interstate, and international telecommunications services, except interstate 800 services." (as it reads in Section 131 of LRB 3500/1).

7. Create sec. 77.52(2)(a)5.bm. so that it reads as follows: "The sale of ancillary services, except detailed telecommunications billing services." (as it reads in Section 133 of LRB 3500/1).

Other changes – Sorted by Section

Section 28 – (pg. 12, line 22) – sec. 77.51(2m) - Insert "or items or property under s. 77.52(1)(b) or (c)" between "property" and "or"

Section 58 – (page 22, line 23) - 77.51(10m)(b)3 - delete the "2" between the "," and "bakery"

Section 66 (pg. 27, lines 18 – 24) – sec. 77.52(12m) – Insert "or items" after "property" on lines 18 and 19 and insert "and items" after "property" on lines 20, 21, 22, 23 and 24 and replace "is" with "are" on lines 18, 19, 20, 21 and 22. Also insert "is" between "subchapter" and "based" on line 12 and insert "either" between "on" and "the" on line 21.

Section 66 (pg. 28, line 17) – sec. 77.52(12m) – Insert "or item under s. 77.52 (2) (b) or (c)" between "property" and "is"

Section 66 (pg. 29, lines 4 – 7) – sec. 77.52(12m) – Delete "mobile home...for transport" on lines 4 – 7 and insert "manufactured home, as defined in s. 101.91 (11)" in its place. (Change needed because of 2007 Act 11)

Section 66 (pg. 29, lines 11 – 13) – sec. 77.52(12m) – Replace "manufactured building" with "modular home" on lines 11 and 12 – 13. (Change needed because of 2007 Act 11.)

Section 66 (pg. 29, lines 19 and 20) – sec. 77.52(12m) – Replace the “.” at the end of lines 19 and 20 with a “;”

Section 66 (pg. 29, lines 23 and 24) – sec. 77.52(12m) - Replace the “. “ at the end of line 23 with “and ;” and on line 24 replace “Any” with “one”

Section 66 (pg. 30, lines 5 and 7) – sec. 77.52(12m) – Replace the “.” at the end of line 5 with a “;” and replace the “.” at the end of line 7 with a “; or”

Section 69 – pg. 30, line 22 – change the “77.12” to “77.52”

Section 78 – 1 (pg. 32, line 23.5) – Insert the following: “77.51 (13g) (a) Any retailer owning any real property in this state or leasing or renting out any tangible personal property, or items or property under s. 77.52(1)(b) or (c) located in this state...of business in this state.”

Section 78-2 (pg. 32, line 23.5) – Insert the following: “77.51 (13g) (b) Any retailer having any representative, agent...for any tangible personal property, items or property under s. 77.52(1)(b) or (c), or taxable services.”

Section 79 (pg. 33, line 1) Insert the following: “, items or property under s. 77.52(1)(b) or (c),” between “property” and “or”

Section 108 (pg. 38 lines 23 – 25 and pg. 39, lines 1 - 4) – Insert “or items” after “property” on lines 23 and 24 and insert “and items” after “property” on lines 25, 1, 2, 3 and 4 and replace “is” with “are” on lines 23, 24, 25, 1 and 3. Also insert “is” between “subchapter” and “based” on line 1 and insert “either” between “on” and “the” on line 1.

Section 108 (pg. 39, line 19) – Insert “or item under s. 77.52 (2) (b) or (c)” between “property” and “is”

Section 108 (pg. 40, lines 5 – 9) – Delete “mobile home...for transport” on lines 5 – 9 and insert “manufactured home, as defined in s. 101.91 (11)” in its place. (Change needed because of 2007 Act 11.)

Section 108 (pg. 40, lines 13 – 14) – Replace “manufactured building” with “modular home” on lines 13 and 14. (Change needed because of 2007 Act 11.)

Section 108 (pg. 40, lines 21 and 22) – Replace the “.” at the end of lines 21 and 22 with a “;”

Section 108 (pg. 40, line 25 and pg. 41, line 1) - Replace the “. “ at the end of line 25 with “and ;” and on line 1 replace “Any” with “One”

Section 108 (pg. 41, lines 6 and 8) – Replace the “.” at the end of line 6 with a “;” and replace the “.” at the end of line 8 with a “; or”

Section 135 – (pg. 48, line 23) - Insert “or item” after “property” on page 48, line 23

Section 135 -1 – (Insert on page 49, line 12.5) - Amend sec. 77.52(2)(a)11. to insert “or items and property under sub. (1)(b) and (c)” after the word “property” in 2 places in this section (see Sections 2297m and 2297p of LRB s0102/1)

Section 136 - (pg. 49, lines 17 and 18) – Insert “or items and property under sub. (1)(b) and (c)” after the word “property” on page 49, line 17 and insert “or items” after the word “property” on page 49, line 18.

Section 156 – (pg. 56, lines 10 and 11) - Insert “or items or property under sub. (1) (b) or (c)” after “property” on page 56, line 10 and replace “goods” with “items” on page 56, line 11 after “property”.

Section 158 – (pg. 56, lines 21 and 24) - Insert “or items or property under sub. (1) (b) or (c)” after “property” on page 56, lines 21 and 24.

Section 158 – (pg. 58, lines 7 – 8) - Insert “or items or property under sub. (1) (b) or (c)” after “property” on page 58, line 7 and insert “or item or property” after “property” on page 58, line 8.

Section 158 – (pg. 59, line 3) - Insert “or items or property under sub. (1) (b) or (c)” between “property” and “occurs” on page 59, line 3 and insert “or item” after “property” on page 59, at the end of line 3.

Section 158 – (pg. 59, lines 4 – 10) - Insert “or item’ after “property” on page 59, lines 4, 6 and 10 and insert “or item’s” after “property’s” on page 59, line 5.

Section 158 – (pg. 63, line 22) - Delete (c) in its entirety, which is all of line 22 on page 63.

Section 165 – (pg. 66, line 2) - Insert “and items or property under sub. (1) (b) or (c)” after “property” on page 66, line 2.

Section 265 (pg. 94, line 21) – Insert “or items” after “property”

Section 317 (pg. 118, lines 12 - 18) – This section should read as follows: “77.991 **(2)** Sections 77.51 ~~(4) (a), (b) 1., 2. and 4., (c) 1. to 3. and (d) and (12m), (14) (a) to (f), (j) and (k), (14g), (15a), and (15b), 77.52 (3), (4), (6), (13), (14) and (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (14)-(15), and 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter. Sections 77.72 (1) and (2) (a) and Section 77.73, as they apply it applies to the taxes under subch. V, apply applies to the tax under this subchapter. The renter shall collect the tax under this subchapter from the person to whom the passenger car is rented.~~

If you have any questions regarding this technical memorandum, please contact me at 266-5773.

cc: Senator Jauch