

2009 DRAFTING REQUEST

Bill

Received: **09/23/2008**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

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Subject: **Tax, Other - sales**

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Pre Topic:

DOA:.....Lillethun, BB0104 -

Topic:

Implementing the Main Street Equity Act

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
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By/Representing: **Lillethun**

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Topic:

Implementing the Main Street Equity Act

Instructions:

See attached

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2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Mainstreet Equity Act
- Tracking Code: B88104
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
 - Phone: 266-7597
 - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): High

Intent:

Adopt the provisions of the Streamlined Sales Tax Agreement for purposes of administering and collecting state, county and stadium district sales and use taxes. (See attached description and drafting instructions.)

**2009-2011 Legislative Proposal
Wisconsin Department of Revenue
Income Sales and Excise Tax Division**

Date: September 15, 2008

PROPOSAL 9: Mainstreet Equity Act

DESCRIPTION OF CURRENT LAW AND PROBLEM

The Streamlined Sales Tax (SST) 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 Mainstreet Equity Act would enact the provisions of the SST Project in Wisconsin.

The Project proposes that states change their sales and use tax laws to conform to the simplifications as adopted by the Project in the Streamlined Sales and Use Tax Agreement (SSUTA). 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 the SSUTA that was originally adopted by the Project's participating states in November 2002 and amended several times since. The SSUTA became effective on October 1, 2005 at which time 18 states representing over 20% of the population originally became members by conforming their laws to the provisions of the SSUTA. There are a total of 22 member states. (See Attachment 1 for the list of member states.) In addition, nearly 1,100 sellers have voluntarily registered under the SSUTA to collect and remit the appropriate sales or use tax in the member states.

If Wisconsin adopts the Mainstreet Equity Act (SSUTA), it will:

- 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 SSUTA to add or amend uniform definitions and other simplifications.
- Be entitled to collect tax from voluntary registrants under the SSUTA who are currently not collecting Wisconsin sales or use tax. As stated previously there are nearly 1,100 retailers that have voluntarily registered to collect tax in the member states.
- 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 SSUTA. 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 SSUTA.

RECOMMENDATION FOR ACTION

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

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. Initially, the department will expend a significant amount of resources for education and taxpayer assistance and to 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 SSUTA 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, clothing and telecommunication services; states are being asked to adopt those definitions in their statutes. Legislatures would still decide what is 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 simpler 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 do not (large Internet or mail-order businesses without physical presence in most states).
- **Reducing Purchaser's Self-Assessed Use Tax Liability:** It is anticipated that many out-of-state retailers who are not currently required to collect Wisconsin sales or use taxes will voluntarily register to collect and remit the appropriate Wisconsin taxes. This will help reduce the burden placed on Wisconsin purchasers for self-assessing the appropriate Wisconsin use tax on purchases they make from currently unregistered out-of-state retailers, because it is anticipated that many of these currently unregistered out-of-state retailers will voluntarily register to collect and remit the appropriate Wisconsin sales or use tax on sales they make to Wisconsin purchasers. If the retailer collects the appropriate sales or use tax from the purchaser at the time of the sale, this eliminates the need for the Wisconsin purchaser to keep track of and self-assess the Wisconsin use tax that would have been due on these purchases.

IMPACT ON ECONOMIC DEVELOPMENT

By adopting standard product definitions and modernizing the state sales tax law, the Mainstreet Equity Act may encourage additional businesses without nexus in Wisconsin to collect Wisconsin sales and use taxes. Consequently, some sales that are currently made to out-of-state businesses may be redirected back to Wisconsin's "brick and mortar" businesses.

Use of standard definitions for sales tax purposes will also reduce tax compliance costs for businesses – making the state more "user-friendly" as a place for economic transactions.

Easing administrative burdens on merchants could result in cost savings that would then be available to those merchants for business investments. Those investments could have a positive impact on Wisconsin's economy.

FISCAL EFFECT

Assuming a January 1, 2010 effective date, the proposal is estimated to increase state sales tax revenues by \$15.5 million in FY10 and \$31.0 million in FY11. Local sales taxes (county, stadium, and local exposition district taxes) are estimated to increase by \$1.3 million in FY10 and \$2.7 million in FY11.

The annualized FY11 state estimate of \$31.0 million is composed of a \$28.3 million sales tax increase created by adoption of the SSUTA definition of "prewritten computer software" (which would reverse the state revenue loss created by the Wisconsin's Supreme Court's *Menasha* decision), other definitional changes producing a net \$5.2 million sales tax reduction, and additional state revenues of \$8.0 million from businesses expected to collect Wisconsin's sales tax once the state becomes a member of the SSUTA.

Attachment 2 summarizes the fiscal impacts of the proposal.

DRAFTING INSTRUCTIONS

See 2007 LRB-4312/2.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

January 1, 2010

INTERESTED/AFFECTED PARTIES

It is expected that all businesses will be affected in some way since this legislation would result in many changes to the existing sales and use tax statutes. In addition, significant changes would affect businesses such as grocers, telecommunication service providers, medical supply companies, convenience stores, department stores and leasing companies.

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Attachment 1

Streamlined Sales Tax Project Member States

Arkansas
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Nebraska
Nevada
New Jersey
North Carolina
North Dakota
Ohio
Oklahoma
Rhode Island
South Dakota
Tennessee
Utah
Vermont
Washington
West Virginia
Wyoming

Attachment 2

SUMMARY OF FISCAL EFFECTS OF THE STREAMLINED SALES TAX AGREEMENT
(\$ millions)

| | State Sales Tax | | Local Sales Tax * | |
|--|-----------------|--------------|-------------------|--------------|
| | FY10 | FY11 | FY10 | FY11 |
| FOOD | | | | |
| Candy with Flour | (0.5) | (1.0) | (0.0) | (0.1) |
| Frozen Novelties | (1.2) | (2.4) | (0.1) | (0.2) |
| Chocolate Chips/Baking Chocolate | 0.5 | 1.1 | 0.0 | 0.1 |
| Packaged Ice | (0.4) | (0.8) | (0.0) | (0.1) |
| Popcorn | (0.7) | (1.5) | (0.1) | (0.1) |
| Fruit Drinks with 51-99% Juice | (0.5) | (1.1) | (0.0) | (0.1) |
| Powdered Soft Drink or Fruit Drink Mix | (0.3) | (0.5) | (0.0) | (0.0) |
| Non-alcoholic Beer | (0.1) | (0.2) | (0.0) | (0.0) |
| Ready-To-Drink Tea | 2.5 | 4.5 | 0.2 | 0.3 |
| Carbonated, Unsweetened Water (soda water, club soda) | (0.0) | (0.1) | (0.0) | (0.0) |
| Meals and Sandwiches Sold by Weight or Volume and Without Utensils | (0.2) | (0.4) | (0.0) | (0.0) |
| Take Out Salad Bars That Do Not Offer Heated Items | minor + | minor + | minor + | minor + |
| Factory Outlet Sales of Prepackaged Food | minor - | minor - | minor - | minor - |
| Sales of Pet Food by Veterinarians | 0.1 | 0.3 | 0.0 | 0.0 |
| Marshmallows | minor + | minor + | minor + | minor + |
| SUBTOTAL - FOOD | (0.8) | (2.2) | (0.1) | (0.2) |
| MEDICAL | | | | |
| Durable Medical Equipment for Home Use | (1.5) | (3.0) | (0.1) | (0.2) |
| SUBTOTAL - MEDICAL | (1.5) | (3.0) | (0.1) | (0.2) |
| MISCELLANEOUS | | | | |
| Cloth Diapers & Cloth Diaper Services | minor + | minor + | minor + | minor + |
| Custom/Prewritten Software | 14.2 | 28.3 | 1.1 | 2.2 |
| Change Liability for Drop Shipments | minor - | minor - | minor - | minor - |
| Leasing Company Equipment Purchases | minor +/- | minor +/- | minor +/- | minor +/- |
| Lease & Rental Sourcing | none | none | none | none |
| Collect Telecommunications Services - Local Sourcing | none | none | none | none |
| Sales of Food to Employees | minor + | minor + | minor + | minor + |
| SUBTOTAL - MISCELLANEOUS | 14.2 | 28.3 | 1.1 | 2.2 |
| SUBTOTAL - PRODUCT DEFINITIONS | 11.9 | 23.0 | 0.9 | 1.8 |

| SUMMARY CONTINUED | State Sales Tax | State Sales Tax | Local Sales Tax * | Local Sales Tax * |
|--|------------------|------------------|-------------------|-------------------|
| | FY10 | FY11 | FY10 | FY11 |
| OTHER FISCAL EFFECTS | | | | |
| Amnesty/Adoption of Streamlined CSP Distributions | 3.7 unknown + | 8.0 unknown + | 0.3 unknown + | 0.6 unknown + |
| NET FISCAL EFFECT | 15.5 | 31.1 | 1.2 | 2.4 |
| ADMINISTRATIVE | | | | |
| State Cost of SSTP Administrative Fees | 0.02 | 0.04 | 0.0 | 0.0 |
| Retailer's Discount & CSP-certified Software Payments (24 mo. limit) | unknown + | unknown + | unknown + | unknown + |
| Local Exposition Taxes | ----- | ----- | 0.1 | 0.3 |
| GRAND TOTAL | 15.5 | 31.0 | 1.3 | 2.7 |

Subtotals may not add to totals due to rounding.

* Calculated as 7.70% of state fiscal effect.

PWF

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vk:lgf

DOA:.....Lillethun, BB0104 - Implementing the Main Street Equity Act
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

See aff'd
x-ref

in 9-23-08

Don't Gen

1 AN ACT ...; relating to: ~~the budget~~

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

(END)

[Handwritten mark]