SENATE BILL 625 (LRB -4248)

An Act to renumber 77.52 (14) (am) and 77.53 (11) (b); to renumber and amend 77.522 (1) (c) and 77.59 (9); to amend 77.51 (10m) (a) 3. a., 77.51 (11d), 77.52 (2) (a) 5. am., 77.54 (18), 77.58 (3) (a), 77.58 (4), 77.585 (1) (a), 77.585 (1) (d), 77.982 (2), 77.991 (2), 77.9951 (2) and 77.9972 (2); to repeal and recreate 77.98; and to create 77.51 (1ag), 77.51 (9r), 77.52 (14) (am) 2., 77.52 (14) (am) 3., 77.522 (1) (c) 2., 77.522 (1) (c) 3., 77.522 (1) (c) 4., 77.53 (11) (b) 2., 77.53 (11) (b) 3., 77.58 (2) (d) and 77.59 (9) (b) of the statutes; relating to: streamlined sales and use tax agreement changes. (FE)

2010

03-17.	S.	Introduced by Senator **Jauch**; cosponsored by Representative **Sherman**.	
03-17.	S.	Read first time and referred to committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue	641
03-25.	S.	Withdrawn from committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue and rereferred to joint committee on Finance, pursuant to Senate Rule 46 (2)(c)	657
03-25.	S.	Fiscal estimate received.	
04-07.	S.	Executive action taken.	
04-09.	S.	Report passage recommended by joint committee on Finance, Ayes 11, Noes 4	689
04-09.	S.	Available for scheduling.	
04-14.	S.	Public hearing requirement waived by committee on Senate Organization, pursuant to Senate Rule 18 (1m)	712
04-14.	S.	Placed on calendar 4-15-2010 pursuant to Senate Rule 18(1)	712
04-15.	S.	Read a second time.	
04-15.	S.	Ordered to a third reading.	
04-15.	S.	Rules suspended.	
04-15.	S.	Read a third time and **passed**, Ayes 18, Noes 15.	
04-15.	S.	Ordered immediately messaged.	
04-16.	A.	Received from Senate	879
04-16.	A.	Read first time and referred to committee on Rules	880
04-20.	A.	Made a special order of business at 11:59 A.M. on 4-22-2010 pursuant to Assembly Resolution 26.	
04-22.	A.	Read a second time.	
04-22.	A.	Ordered to a third reading.	
04-22.	A.	Rules suspended.	
04-22.	A.	Read a third time and **concurred in**, Ayes 53, Noes 44.	
04-22.	A.	Ordered immediately messaged.	
04-23.	S.	Received from Assembly concurred in.	

gmB

2009
ENROLLED BILL

09en S B-625

ADOPTED DOCUMENTS:

☒ Orig ☐ Engr ___ SubAmdt ___ 09-4248/1

Amendments to above (if none, write "NONE"): None

Corrections - show date (if none, write "NONE"): None

Topic Rel

4-27-10
Date

Enrolling Drafter

State of Wisconsin
2009 – 2010 LEGISLATURE

LRB–4248/1
JK:kjf:jf

2009 SENATE BILL 625

March 17, 2010 – Introduced by Senator JAUCH, cosponsored by Representative SHERMAN. Referred to Committee on Health, Health Insurance, Privacy, Property Tax Relief, and Revenue.

AN ACT ***to renumber*** 77.52 (14) (am) and 77.53 (11) (b); ***to renumber and amend*** 77.522 (1) (c) and 77.59 (9); ***to amend*** 77.51 (10m) (a) 3. a., 77.51 (11d), 77.52 (2) (a) 5. am., 77.54 (18), 77.58 (3) (a), 77.58 (4), 77.585 (1) (a), 77.585 (1) (d), 77.982 (2), 77.991 (2), 77.9951 (2) and 77.9972 (2); ***to repeal and recreate*** 77.98; and ***to create*** 77.51 (1ag), 77.51 (9r), 77.52 (14) (am) 2., 77.52 (14) (am) 3., 77.522 (1) (c) 2., 77.522 (1) (c) 3., 77.522 (1) (c) 4., 77.53 (11) (b) 2., 77.53 (11) (b) 3., 77.58 (2) (d) and 77.59 (9) (b) of the statutes; **relating to:** streamlined sales and use tax agreement changes.

Analysis by the Legislative Reference Bureau

This bill makes technical corrections to the administration of sales and use taxes, consistent with the streamlined sales and use tax agreement.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 77.51 (1ag) of the statutes is created to read:

2 77.51 **(1ag)** "Advertising and promotional direct mail" means direct mail that
3 has the primary purpose of attracting public attention to a product, person, business,
4 or organization or to attempt to sell, popularize, or secure financial support for a
5 product, person, business, or organization.

6 **SECTION 2.** 77.51 (9r) of the statutes is created to read:

7 77.51 **(9r)** (a) "Other direct mail" means any direct mail that is not advertising
8 and promotional direct mail, regardless of whether advertising and promotional
9 direct mail is included in the same mailing. "Other direct mail" includes all of the
10 following:

11 1. Transactional direct mail that contains personal information specific to the
12 addressee, including invoices, bills, account statements, and payroll advices.

13 2. Any legally required mailings, including privacy notices, tax reports, and
14 stockholder reports.

15 3. Other nonpromotional direct mail, including newsletters and informational
16 pieces, that is delivered to existing or former shareholders, customers, employees, or
17 agents.

18 (b) "Other direct mail" does not include printed materials that result from
19 developing billing information or providing any data processing service that is more
20 than incidental, as defined in sub. (5), to producing the other direct mail.

21 **SECTION 3.** 77.51 (10m) (a) 3. a. of the statutes, as created by 2009 Wisconsin
22 Act 2, is amended to read:

23 77.51 **(10m)** (a) 3. a. The utensils are available to purchasers and the retailer's
24 sales of prepared food under subds. 1. ~~and~~, 2., ~~soft drinks, and alcoholic beverages~~
25 ~~at an establishment~~ and 4., and food for which plates, bowls, glasses, or cups are

1 necessary to receive the food, are more than 75 percent of the retailer's total sales ~~at~~
2 ~~that establishment~~ of all food and food ingredients, as determined under par. (c).
3 **SECTION 4.** 77.51 (11d) of the statutes, as created by 2009 Wisconsin Act 2, is
4 amended to read:
5 77.51 **(11d)** For purposes of subs. (1ag), (1f), (3pf), and (9p) and ss. 77.52 (20)
6 and (21), 77.522, and 77.54 (51) and (52), "product" includes tangible personal
7 property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), and
8 services.
9 **SECTION 5.** 77.52 (2) (a) 5. am. of the statutes, as created by 2009 Wisconsin Act
10 2, is amended to read:
11 77.52 **(2)** (a) 5. am. The sale of prepaid calling services and intrastate,
12 interstate, and international telecommunications services, except interstate 800
13 services.
14 **SECTION 6.** 77.52 (14) (am) of the statutes, as created by 2009 Wisconsin Act
15 2, is renumbered 77.52 (14) (am) 1.
16 **SECTION 7.** 77.52 (14) (am) 2. of the statutes is created to read:
17 77.52 **(14)** (am) 2. An exemption certificate is received by the seller in good faith
18 if the certificate claims an exemption for which all of the following apply:
19 a. It was an exemption authorized by law on the date of the transaction in the
20 jurisdiction where the transaction is sourced.
21 b. It could be applicable to the property, item, good, or service being purchased.
22 c. It is reasonable for the purchaser's type of business.
23 **SECTION 8.** 77.52 (14) (am) 3. of the statutes is created to read:
24 77.52 **(14)** (am) 3. If the seller obtains the information described in subd. 2., the
25 seller is relieved of any liability for the tax on the transaction unless it is discovered

through the audit process that the seller had knowledge, or had reason to know, at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. In order to enforce this subdivision, the state must establish that the seller had knowledge, or had reason to know, at the time the information was provided that the information was materially false.

SECTION 9. 77.522 (1) (c) of the statutes, as created by 2009 Wisconsin Act 2, is renumbered 77.522 (1) (c) 1. and amended to read:

77.522 **(1)** (c) 1. ~~The~~ Except as provided in subd. 3., the sale of advertising and promotional direct mail, including a sale characterized under the laws of this state as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of advertising and promotional direct mail, is sourced to the location from which the advertising and promotional direct mail is shipped, if the purchaser does not provide to the seller a direct pay permit, an exemption certificate claiming direct mail, or other information that indicates the appropriate taxing jurisdiction to which the advertising and promotional direct mail is delivered to the ultimate recipients. If the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sales to the jurisdictions to which the advertising and promotional direct mail is delivered to the recipients and pay or remit, as appropriate, to the department the tax imposed under s. 77.53 on all purchases for which the tax is due and the seller, in the absence of bad faith, is relieved ~~from liability for collecting such~~ of all obligation to collect, pay, or remit the tax on any transaction to which the direct pay permit or exemption certificate

applies. If the purchaser provides delivery information indicating the jurisdictions to which the advertising and promotional direct mail is to be delivered to the recipients, the seller shall source the sale to those jurisdictions and collect and remit the tax according to the delivery information provided by the purchaser and, in the absence of bad faith, the seller shall be relieved of any further obligation to collect tax on ~~any transaction~~ the sale of advertising and promotional direct mail for which the seller has sourced the sale and collected tax pursuant to the delivery information provided by the purchaser. ~~An exemption certificate claiming direct mail provided to a seller under this paragraph shall remain effective for all sales by the seller who received the exemption certificate to the purchaser who provided the exemption certificate, unless the purchaser revokes the exemption certificate in writing and provides such revocation to the seller.~~ If a transaction is a bundled transaction that includes advertising and promotional direct mail, this subdivision only applies if the primary purpose of the transaction is the sales of products or services that meet the definition of advertising and promotional direct mail.

SECTION 10. 77.522 (1) (c) 2. of the statutes is created to read:

77.522 **(1)** (c) 2. The sale of other direct mail, including a sale characterized under the laws of this state as the sale of a service when that service is an integral part of the production and distribution of printed material that meets the definition of other direct mail, is sourced under par. (b) 3. if the purchaser does not provide to the seller a direct pay permit or an exemption certificate claiming direct mail. If the purchaser provides an exemption certificate claiming direct mail or direct pay permit to the seller, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to the recipients and the purchaser shall pay or remit, as appropriate, to the department the tax imposed under s. 77.53 on all purchases

for which the tax is due and the seller, in the absence of bad faith, is relieved of all obligation to collect, pay, or remit tax on any transaction to which the direct pay permit or exemption certificate claiming direct mail applies.

SECTION 11. 77.522 (1) (c) 3. of the statutes is created to read:

77.522 **(1)** (c) 3. If advertising and promotional direct mail and other direct mail are included in a single mailing, the sale of that mailing is sourced the same as a sale of other direct mail.

SECTION 12. 77.522 (1) (c) 4. of the statutes is created to read:

77.522 **(1)** (c) 4. Transactions that include the development of billing information or the provision of a data processing service that is more than incidental to producing direct mail are not direct mail and are sourced under par. (b), but transactions that include incidental data processing services are direct mail and are sourced under this paragraph. For purposes of this subdivision, "incidental" has the meaning given in s. 77.51 (5).

SECTION 13. 77.53 (11) (b) of the statutes, as created by 2009 Wisconsin Act 2, is renumbered 77.53 (11) (b) 1.

SECTION 14. 77.53 (11) (b) 2. of the statutes is created to read:

77.53 **(11)** (b) 2. An exemption certificate is received by the seller in good faith if the certificate claims an exemption for which all of the following apply:

a. It was an exemption authorized by law on the date of the transaction in the jurisdiction where the transaction is sourced.

b. It could be applicable to the property, item, good, or service being purchased.

c. It is reasonable for the purchaser's type of business.

SECTION 15. 77.53 (11) (b) 3. of the statutes is created to read:

77.53 **(11)** (b) 3. If the seller obtains the information described in subd. 2., the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge, or had reason to know, at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction. In order to enforce this subdivision, the state must establish that the seller had knowledge, or had reason to know, at the time the information was provided that the information was materially false.

SECTION 16. 77.54 (18) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

77.54 **(18)** When the sale of a service or tangible personal property, ~~including~~ or items, property, and goods under s. 77.52 (1) (b), (c), and (d), that was previously exempt or not taxable under this subchapter becomes taxable, and the service or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) is furnished under a written contract by which the seller is unconditionally obligated to provide the service or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) for the amount fixed under the contract, the seller is exempt from sales or use tax on the sales price for services or tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d) provided until the contract is terminated, extended, renewed or modified. However, from the time the service or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) becomes taxable until the contract is terminated, extended, renewed or modified the user is subject to use tax, measured by the purchase price, on the service or

tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) purchased under the contract.

SECTION 17. 77.58 (2) (d) of the statutes is created to read:

77.58 **(2)** (d) Except for a seller who uses a certified service provider, a seller who registers through the streamlined sales tax governing board's central registration system and indicates at the time of registration that it anticipates making no sales into this state is not required to file a return in this state until such time as it makes a taxable sale that is sourced to this state under s. 77.522. Once a seller to which this provision applies makes a taxable sale that is sourced to this state under s. 77.522, that seller is required to file a return that is due by the last day of the month following the last day of the calendar quarter in which the sale occurred and shall continue to file returns by the last day of the month following the last day of each calendar quarter thereafter, unless the seller is notified in writing by the department of a different filing frequency.

SECTION 18. 77.58 (3) (a) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

77.58 **(3)** (a) ~~For~~ Except as provided in sub. (2) (d), for purposes of the sales tax a return shall be filed by every seller. ~~For~~ Except as provided in sub. (2) (d), for purposes of the use tax a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services, the storage, use or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. If a qualified subchapter S subsidiary is not regarded as a separate entity under ch. 71, the owner of that subsidiary shall elect to either include the information for that subsidiary on the owner's return or file a

separate electronic return for that entity. If a single–owner entity is disregarded as a separate entity under ch. 71, the owner shall elect to either include the information from the entity on the owner's return or file a separate electronic return for that entity. If an owner that owns more than one entity that is disregarded as a separate entity under ch. 71 elects to file a separate return for one of its disregarded entities, the owner shall file separate returns for all of its disregarded entities. Returns filed under this paragraph shall be signed by the person required to file the return or by a duly authorized agent but need not be verified by oath.

SECTION 19. 77.58 (4) of the statutes is amended to read:

77.58 **(4)** The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the department or such other place as the department designates <u>in the manner and form prescribed by the department</u>.

SECTION 20. 77.585 (1) (a) of the statutes, as created by 2009 Wisconsin Act 2, is amended to read:

77.585 **(1)** (a) In this subsection, "bad debt" means the portion of the sales price or purchase price that the seller has <u>previously</u> reported as taxable under this subchapter<u>, and for which the seller has paid the tax,</u> and that the seller may claim as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) that remain in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and repossessed property or items.

1 **SECTION 21.** 77.585 (1) (d) of the statutes, as created by 2009 Wisconsin Act 2,
2 is amended to read:

3 77.585 **(1)** (d) A seller may obtain a refund of the tax ~~collected on~~ reported for
4 any bad debt amount deducted under par. (b) that exceeds the amount of the seller's
5 taxable sales as provided under s. 77.59 (4), except that the period for making a claim
6 as determined under s. 77.59 (4) begins on the date on which the return on which the
7 bad debt could be claimed would have been required to be submitted to the
8 department under s. 77.58.

9 **SECTION 22.** 77.59 (9) of the statutes, as affected by 2009 Wisconsin Act 2, is
10 renumbered 77.59 (9) (a) and amended to read:

11 77.59 **(9)** (a) ~~If~~ Except as provided in par. (b), if any person fails to file a return,
12 the department shall make an estimate of the amount of the sales price of the
13 person's sales, or, as the case may be, of the amount of the total purchase price of
14 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
15 (d), or taxable service sold or purchased by the person, the sale by or the storage, use,
16 or other consumption of which in this state is subject to sales or use tax. The estimate
17 shall be made for the period in respect to which the person failed to make a return
18 and shall be based upon any information which is in the department's possession or
19 may come into its possession. Upon the basis of this estimate the department shall
20 compute and determine the amount required to be paid to the state, adding to the
21 sum thus arrived at a penalty equal to 25% thereof. One or more such determinations
22 may be made for one or for more than one period. When a business is discontinued
23 a determination may be made at any time thereafter, within the periods specified in
24 sub. (3), as to liability arising out of that business.

25 **SECTION 23.** 77.59 (9) (b) of the statutes is created to read:

77.59 **(9)** (b) If a seller is not required to register and obtain a permit under s. 77.52 (7) or 77.53 (9), but has registered and obtained a permit under s. 77.52 (7) or 77.53 (9) and has failed to timely file a return that is due, the department shall notify the seller of the failure to file and provide the seller at least 30 days to file the return prior to making the estimate described in par. (a), except that if the seller has a history of not filing returns, or filing returns late, the department may make the estimate under par. (a) without providing such notice.

SECTION 24. 77.98 of the statutes, as affected by 2009 Wisconsin Act 2, is repealed and recreated to read:

77.98 Imposition. (1) A local exposition district under subch. II of ch. 229 may impose a tax on the retail sale, except sales for resale, within the district's jurisdiction under s. 229.43 of all of the following:

(a) Alcoholic beverages, as defined in s. 77.51 (1b), if the alcoholic beverages are for consumption on the seller's premises.

(b) Candy, as defined in s. 77.51 (1fm).

(c) Prepared food, as defined in s. 77.51 (10m).

(d) Soft drinks, as defined in s. 77.51 (17w).

(2) The items described under sub. (1) (a) to (d) are not subject to tax if they qualify for an exemption from the sales tax under s. 77.54 (1), (4), (7) (a), (7m), (9), (9a), (20n) (b) or (c), or (20r).

(3) For purposes of sub. (1) (a), "premises" shall be broadly construed and shall include the lobby, aisles, and auditorium of a theater or the seating, aisles, and parking area of an arena, a rink, or a stadium, or the parking area of a drive–in or an outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where served.

1 **SECTION 25.** 77.982 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is
2 amended to read:

3 77.982 **(2)** Sections 77.51 (1f), (3pf), (9p), (12m), (14), (14g), (15a), and (15b),
4 77.52 (1b), (3), (4), (5), (13), (14), and (18)~~, and (19)~~ to (23), 77.54 (51) and (52), 77.58
5 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and
6 (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the tax
7 under this subchapter. Section 77.73, as it applies to the taxes under subch. V,
8 applies to the tax under this subchapter.

9 **SECTION 26.** 77.991 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is
10 amended to read:

11 77.991 **(2)** Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (4),
12 (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60,
13 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under
14 subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the
15 taxes under subch. V, applies to the tax under this subchapter. The renter shall
16 collect the tax under this subchapter from the person to whom the passenger car is
17 rented.

18 **SECTION 27.** 77.9951 (2) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

20 77.9951 **(2)** Sections 77.51 (3r), (12m), (14), (14g), (15a), and (15b), 77.52 (1b),
21 (3), (4), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585,
22 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to
23 the taxes under subch. III, apply to the fee under this subchapter. The renter shall
24 collect the fee under this subchapter from the person to whom the vehicle is rented.

1 **SECTION 28.** 77.9972 (2) of the statutes, as affected by 2009 Wisconsin Act 2,
2 is amended to read:
3 77.9972 **(2)** Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3),
4 (4), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59,
5 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes
6 under subch. III, apply to the fee under this subchapter. Section 77.73, as it applies
7 to the taxes under subch. V, applies to the fee under this subchapter. The renter shall
8 collect the fee under this subchapter from the person to whom the passenger car is
9 rented.
10 **SECTION 29. Initial applicability.**
11 (1) The treatment of section 77.98 of the statutes first applies retroactively to
12 sales occurring on October 1, 2009.
13 **SECTION 30. Effective date.**
14 (1) The treatment of section 77.98 of the statutes takes effect retroactively on
15 October 1, 2009.
16 **(END)**