

**2009 DRAFTING REQUEST**

**Bill**

Received: **02/02/2010**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Jauch (608) 266-3510**

By/Representing: **sarah**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - sales**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Jauch@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Streamlined sales and use tax agreement changes

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**Instructions:**

See attached

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**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>
/P1	jkreye 02/03/2010	kfollett 02/17/2010	rschluet 02/17/2010	_____	lparisi 02/17/2010		
/P2	jkreye 02/19/2010	kfollett 02/19/2010	mduchek 02/23/2010	_____	lparisi 02/23/2010		S&L
/P3	jkreye 02/23/2010	kfollett 02/24/2010	jfrantze 02/24/2010	_____	sbasford 02/24/2010		S&L
/P4	jkreye	kfollett	rschluet	_____	cduerst		S&L

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	03/08/2010	03/10/2010	03/10/2010	_____	03/10/2010		
/P5	jkreye 03/10/2010	kfollett 03/10/2010	jfrantze 03/11/2010	_____	sbasford 03/11/2010		S&L
/1	jkreye 03/12/2010	kfollett 03/12/2010	jfrantze 03/12/2010	_____	sbasford 03/12/2010	sbasford 03/12/2010	S&L

FE Sent For: "/1" @ intro. 3/17/10

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Carbon copy (CC:) to:

*Please jacket  
for Sen.  
Jauch  
JK*

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Wanted: **As time permits**

Identical to LRB:

For: **Revenue**

By/Representing: **sherrie**

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - sales**

Extra Copies:

Submit via email: **YES**

Requester's email: **sgateshe@dor.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

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*3/10*  
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*2/24*      *2/24* *2/24*  
*pay* *2/24*  
**<END>**

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*1 P2 kjf*  
*2/19*  
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*-kjf*  
*END>*

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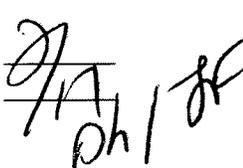
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/P1	jkreye	1/15/10 2/1/10					

FE Sent For:

<END>

**Kreye, Joseph**

---

**From:** Gates-Hendrix, Sherrie L - DOR [Sherrie.GatesHendrix@revenue.wi.gov]  
**Sent:** Tuesday, February 02, 2010 12:04 PM  
**To:** Kreye, Joseph  
**Subject:** DOR drafting request - HIGH PRIORITY - SST Updates

**Attachments:** Streamlined Related Changes - Proposed Language.doc

Hi Joe --Could you draft this for DOR? It's a high priority draft for the agency.

Thanks very much

Sherrie

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### **Updates and Changes Needed to Remain in Compliance with the Requirements of the Streamlined Sales and Use Tax Agreement**

During 2009, several amendments were made to the Streamlined Sales and Use Tax Agreement (SSUTA). The amendments made to the SSUTA during 2009 include new definitions related to direct mail, exemption certificates and the good faith requirement, registration options available to sellers, return contents and reporting requirements, and a provision related to nonfiler notices required to be sent to persons who have no legal requirement to register prior to an estimated assessment being issued.

In addition, technical corrections were also identified that are needed in order to remain in compliance with the requirements of the SSUTA.

Wisconsin must comply with these amendments by early 2011 or face possible sanctions from the Streamlined Sales Tax Governing Board.

The changes to the SSUTA which are being recommended were developed with significant input from the business community and should result in laws that can be fairly and equitably administered.

### **FISCAL EFFECT**

None

### **DRAFTING INSTRUCTIONS**

See attached document titled "Proposed Streamlined Related Changes" for the proposed statutory language.



Streamlined Related  
Changes - ...

### **EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

First day of third month after publication.

### **DOR CONTACT PERSON**

Craig Johnson, Staff Specialist  
(608) 634-6794  
January 22, 2010

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## Proposed Streamlined Related Changes

- **Direct mail changes needed because of amendments to the Streamlined Sales and Use Tax Agreement (Sourcing provisions in sec. 77.522 and definitions in 77.51)**

Adopt a new provision which provides a definition of "advertising and promotional direct mail" as follows: "'Advertising and promotional direct mail' means direct mail, as defined in sec. 77.51 (3pd), Stats., whose primary purpose is to attract public attention to a product, person, business, or organization, or to attempt to sell, popularize, or secure financial support for a product, person, business, or organization."

Adopt a new provision which provides a definition of "other direct mail" as follows: "'Other direct mail' means any direct mail that is not 'advertising and promotional direct mail' regardless of whether 'advertising and promotional direct mail' is included in the same mailing and includes:

1. Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;
2. Any legally required mailings including, but not limited to, privacy notices, tax reports, and stockholder reports; and
3. Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

'Other direct mail' does not include printed materials that result from the development of billing information or the provision of any data processing service that is more than incidental to the production of the other direct mail.'

Amend sec. 77.51(11d), Wis. Stats., to provide that the definition of the word "product" contained in 77.51(11d) also applies to the word "product" as it is used in the definition of "advertising and promotional direct mail."

Amend sec. 77.522(1)(c), Wis. Stats., to read as follows: 77.522(1)(c) 1.a. Except as provided in subd. 3., the sale of advertising and promotional direct mail, including a sale characterized under Wisconsin law 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 sale to the jurisdictions to which the advertising and promotion direct mail is delivered to the recipients and 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 from liability for of all obligation to collecting, pay, or remit such 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.

b. If a transaction is a "bundled transaction" as defined in sec. 77.51(1f), Stats., that includes 'advertising and promotional direct mail,' this section only applies if the primary purpose of the transaction is the sale of products or services that meet the definition of 'advertising and promotional direct mail.'

2. The sale of "other direct mail," including a sale characterized under Wisconsin law 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 in accordance with sec. 77.522(1)(b)3, Stats., 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 apply.

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'."

4. Transactions that include the development of billing information or the provision of a data processing service that is more than incidental are not direct mail and are sourced under sec. 77.522(1)(b), Stats., but transactions that include incidental data processing services are direct mail and are sourced under this section."

- **Filing requirements/registration/estimated assessment changes needed because of amendments made to the SSUTA (Filing requirements in 77.58 and estimated assessments in 77.59)**

(1) Create Section 77.58(2)(d), Wis. Stats. to read as follows: "(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 Wisconsin is not required to file a return in Wisconsin until such time as it makes a taxable sale that is sourced to Wisconsin under sec. 77.522, Stats. Once a seller to which this provision applies makes a taxable sale that is sourced to Wisconsin under sec. 77.522, Stats., 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 must 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 Revenue of a different filing frequency."

As a result of the above change, sec. 77.58(3)(a) also needs to be amended to read as follows: "Except as provided in s. 77.58(2)(d), Ffor purposes of the sales tax a

return shall be filed by every seller. Except as provided in s. 77.58(2)(d), For purposes of the use tax a return shall be filed by every retailer engaged in business in this state...

(2) Amend sec. 77.59(9), Wis. Stats., so that it reads as follows: 77.59(9)(a) "Except as provided in par. (b), If any person fails to file a return, the department shall make an estimate of the amount of the sales price of the person's sales... as to liability arising out of that business.

(b) If a seller that has no legal requirement to register and obtain a permit under s. 77.52 (7) or s. 77.53 (9), has registered and obtained a permit under s. 77.52 (7) or s. 77.53 (9) and has failed to timely file a return that is due, the Department of Revenue 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). However, if the seller has a history of nonfiling or late filing, the Department of Revenue may make the estimate under par. (a) without providing such notice."

(3) Amend sec. 77.58(4), Wis. Stats., to read as follows: "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, in the manner and form as prescribed by the Department."

- **Exemption Certificates – Good faith – 77.52(14)(am) and 77.53(11)(b)**

Amend sec. 77.52(14)(am) Wis. Stats. so that it reads as follows: "1. If the seller has not obtained a fully completed exemption certificate or the information required to prove the exemption, as provided in par. (a), the seller may, no later than 120 days after the department requests that the seller substantiate the exemption, either provide proof of the exemption to the department by other means or obtain, in good faith, a fully completed exemption certificate from the purchaser.

2. An exemption certificate is received by the seller in good faith if the certificate claims an exemption that:

a. was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced;

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

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

3. If the seller obtains the information described in subd. 2 of this section, 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. 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."

Amend sec. 77.53(11)(b), Wis. Stats., so that it reads as follows: "1. If the seller has not obtained a fully completed exemption certificate or the information required to prove the exemption, as provided in par. (a), the seller may, no later than 120 days after the department requests that the seller substantiate the exemption, either provide proof of the exemption to the department by other means or obtain, in good faith, a fully completed exemption certificate from the purchaser.

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

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- **Prepaid calling services - 77.52(2)(a)5.am**

Section 77.52(2)(a)5.am, Wis. Stats., should be amended to read as follows: "The sale of prepaid calling services and intrastate, interstate, and international telecommunications services, except interstate 800 services."

This will make it clear that prepaid calling services are taxable in Wisconsin.

- **Prepared foods – 75% calculation – 77.51(10m)(a)3.a.**

Section 77.51(10m)(a)3.a., Wis. Stats. should be amended to read as follows: "The utensils are available to purchasers and the retailer's sales of prepared food under subs. 1., and 2., and 4., and food for which plates, bowls, glasses, or cups are necessary to receive the food ~~soft drinks, and alcoholic beverages at an establishment~~ are more than 75 percent of the retailer's total sales of all food and food ingredients at that establishment, as determined under par. (c)."

This will make the language consistent with sec. 77.51(10m)(c)1.a., Wis. Stats.

- **Inadvertent omission of the phrase "items, property, and goods" – 77.54(18) – Pg. 5**

Section 77.54(18), Wis. Stats., should be amended to read as follows: "When the sale of a service or property, including 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 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 property or item, property, or good under s. 77.52 (1) (b), (c), and (d) for the amount fixed under the contract, the seller is exempt from sales or use tax on the sales price for services or 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 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 property or item, property, or good under s. 77.52 (1) (b), (c), or (d) purchased under the contract."

- **Bad debts – Require that the tax on the bad debt claimed must have previously been paid to DOR before the deduction is allowed - 77.585(1)(a) and (d)**

Section 77.585(1)(a), Wis. Stats. should be amended to read as follows: "In this subsection, "bad debt" means the portion of the sales price or purchase price that the seller has previously reported as taxable and paid the tax thereon under this subchapter..." *or must portion*

In addition, sec. 77.585 (1)(d), Wis. Stats., should be amended to read as follows: "A seller may obtain a refund of the tax collected reported on for any bad debt amount deducted under par. (b) that exceeds the amount of the seller's taxable sales..."

- **Add cross-references in local expo food and beverage statutes relating to bundling provisions in 77.51(1f), (3pf), (9p), 77.52(20), (21), (22), (23) and 77.54(51) and (52) – 77.982(2)**

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

- **Add cross-references in local expo food and beverage and rental car tax, and state rental vehicle fee statutes relating to the notice requirements and sourcing rules contained in sec. 77.52(5) and sec. 77.522 – 77.982(2), 77.991(2), 77.9951(2) and 77.9972(2)**

Section 77.982(2), Wis. Stats., should be amended (in addition to the other amendment to this section above relating to bundled transactions) to read as follows: "Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), ~~(4)~~, to (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9),

and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the tax under this subchapter."

Section 77.991(2), Wis. Stats., should be amended to read as follows: "Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), ~~(4)~~, to (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the taxes under subch. V, 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."

Section 77.9951(2), Wis. Stats., should be amended to read as follows: "Sections 77.51 (3r), ~~(12m)~~, (14), (14g), (15a), and (15b), 77.52 (1b), (3), ~~(4)~~, to (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the fee under this subchapter. The renter shall collect the fee under this subchapter from the person to whom the vehicle is rented."

Section 77.9972(2), Wis. Stats., should be amended to read as follows: "Sections 77.51 (12m), ~~(14)~~, (14g), (15a), and (15b), 77.52 (1b), (3), ~~(4)~~, to (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the fee under this subchapter. Section 77.73, as it applies to the taxes under subch. V, applies to the fee under this subchapter. The renter shall collect the fee under this subchapter from the person to whom the passenger car is rented."

If you have any questions regarding these changes, please contact Craig Johnson at (608) 634-6794.



*Today*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*in 2-3-10*

*Gen*

1 **AN ACT ...; relating to:** streamlined sales and use tax agreement changes.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a later version.

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

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

3 77.51 (1ag) "Advertising and promotional direct mail" means direct mail which  
4 is intended, as its primary purpose, to attract public attention to a product, person,  
5 business, or organization or to attempt to sell, popularize, or secure financial support  
6 for a product, person, business, or organization.

~~X~~ **\*\*\*\*NOTE:** I had to rework the language of this definition because I can<sup>put</sup> use "whose"  
to refer to a thing. Is there another way you want me to put this or is this OK? ←

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

8 77.51 (9r) (a) "Other direct mail" means any direct mail that is not advertising  
9 and promotional direct mail, regardless of whether advertising and promotional

1 direct mail is included in the same mailing. "Other direct mail" includes all of the  
2 following:

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

\*\*\*\*NOTE: "Transactional direct mail" is not a defined term. Should it be? Also, "payroll advices" is an awkward term, because "advice" isn't typically used as a noun. Is there a better way to put this?

5 2. Any legally required mailings, including privacy notices, tax records, and  
6 stockholder reports.

7 3. Other non-promotional direct mail, including newsletters and informational  
8 pieces, that is delivered to existing or former shareholders, customers, employees, or  
9 agents.

10 (b) "Other direct mail" does not include printed materials that result from  
11 developing billing information or providing any data processing service that is more  
12 than incidental to producing the other direct mail.

\*\*\*\*NOTE: This is a very confusing sentence. Does "more than incidental" refer only to providing a data processing service or also to developing billing information? Or does it refer to the printed materials? What is this provision supposed to mean? Also, should "incidental" have the meaning given in s. 77.51 (5)?

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

15 77.51 (10m) (a) 3. a. The utensils are available to purchasers and the retailer's  
16 sales of prepared food under subds. 1. and 2., ~~soft drinks, and alcoholic beverages~~  
17 at an establishment and 4., and food for which plates, bowls, glasses, or cups are  
18 necessary to receive the food, are more than 75 percent of the retailer's total sales at  
19 that establishment of all food and food ingredients, as determined under par. (c).

**History:** 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; s. 13.92 (1) (bm) 2.

1 SECTION 4. 77.51 (11d) of the statutes, as created by 2009 Wisconsin Act 2, is  
2 amended to read:

3 77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), and (9p) and ss. 77.52 (20)  
4 and (21), 77.522, and 77.54 (51) and (52), "product" includes tangible personal  
5 property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), and  
6 services.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12; 2009 a. 28 ss. 1830b to 1836h, 1844 to 1846; s. 13.92 (1) (bm) 2.

7 SECTION 5. 77.52 (2) (a) 5. am. of the statutes, as created by 2009 Wisconsin Act  
8 2, is amended to read:

9 77.52 (2) (a) 5. am. The sale of prepaid calling services and intrastate,  
10 interstate, and international telecommunications services, except interstate 800  
11 services.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109; 2003 a. 33, 321; 2005 a. 149, 327, 344; 2007 a. 11, 20, 42, 97; 2009 a. 2, 12, 18.

12 SECTION 6. 77.52 (14) (am) of the statutes, as created by 2009 Wisconsin Act  
13 2, is renumbered 77.52 (14) (am) 1.

14 SECTION 7. 77.52 (14) (am) 2. of the statutes is created to read:

15 77.52 (14) (am) 2. An exemption certificate is received by the seller in good faith  
16 if the certificate claims an exemption for which all of the following apply:

17 a. It was statutorily available on the date of the transaction in the jurisdiction  
18 where the transaction is sourced.

\*\*\*\*NOTE: The term "statutorily available" is odd and subject to interpretation.  
Why not just say that the exemption was an exemption authorized by law on the date of  
the transaction, etc?

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

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

21 SECTION 8. 77.52 (14) (am) 3. of the statutes is created to read:

1 77.52 (14) (am) 3. If the seller obtains the information described in subd. 2, the  
2 seller is relieved of any liability for the tax on the transaction unless it is discovered  
3 through the audit process that the seller had knowledge, or had reason to know, at  
4 the time such information was provided that the information relating to the  
5 exemption claimed was materially false or the seller otherwise knowingly  
6 participated in activity intended to purposefully evade the tax that is properly due  
7 on the transaction. In order to enforce this subdivision, the state must establish that  
8 the seller had knowledge, or had reason to know, at the time the information was  
9 provided that the information was materially false.

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

12 77.522 (1) (c) 1. The Except as provided in subd. 3., the sale of advertising and  
13 promotional direct mail, including a sale characterized under the laws of this state  
14 as the sale of a service when that service is an integral part of the production and  
15 distribution of printed material that meets the definition of advertising and  
16 promotional direct mail, is sourced to the location from which the advertising and  
17 promotional direct mail is shipped, if the purchaser does not provide to the seller a  
18 direct pay permit, an exemption certificate claiming direct mail, or other information  
19 that indicates the appropriate taxing jurisdiction to which the advertising and  
20 promotional direct mail is delivered to the ultimate recipients. If the purchaser  
21 provides an exemption certificate claiming direct mail or direct pay permit to the  
22 seller, the purchaser shall source the sales to the jurisdictions to which the  
23 advertising and promotional direct mail is delivered to the recipients and pay or  
24 remit, as appropriate, to the department the tax imposed under s. 77.53 on all  
25 purchases for which the tax is due and the seller, in the absence of bad faith, is

1 relieved from liability for collecting such of all obligation to collect, pay, or remit the  
2 tax on any transaction to which the direct pay permit or exemption certificate  
3 applies. If the purchaser provides delivery information indicating the jurisdictions  
4 to which the advertising and promotional direct mail is to be delivered to the  
5 recipients, the seller shall source the sale to those jurisdictions and collect and remit  
6 the tax according to the delivery information provided by the purchaser and, in the  
7 absence of bad faith, the seller shall be relieved of any further obligation to collect  
8 tax on any transaction the sale of advertising and promotional direct mail for which  
9 the seller has sourced the sale and collected tax pursuant to the delivery information  
10 provided by the purchaser. An exemption certificate claiming direct mail provided  
11 to a seller under this paragraph shall remain effective for all sales by the seller who  
12 received the exemption certificate to the purchaser who provided the exemption  
13 certificate, unless the purchaser revokes the exemption certificate in writing and  
14 provides such revocation to the seller. If a transaction is a bundled transaction that  
15 includes advertising and promotional direct mail, this subdivision only applies if the  
16 primary purpose of the transaction is the sales of products or services that meet the  
17 definition of advertising and promotional direct mail.

18 History: 2009 a. 2, 28.

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

19 77.522 (1) (c) 2. The sale of other direct mail, including a sale characterized  
20 under the laws of this state as the sale of a service when that service is an integral  
21 part of the production and distribution of printed material that meets the definition  
22 of other direct mail, is sourced under par. (b) 3. if the purchaser does not provide to  
23 the seller a direct pay permit or an exemption certificate claiming direct mail. If the  
24 purchaser provides an exemption certificate claiming direct mail or direct pay permit

1 to the seller, the purchaser shall source the sale to the jurisdictions to which the other  
 2 direct mail is to be delivered to the recipients and the purchaser shall pay or remit,  
 3 as appropriate, to the department the tax imposed under s. 77.53 on all purchases  
 4 for which the tax is due and the seller, in the absence of bad faith, is relieved of all  
 5 obligation to collect, pay, or remit tax on any transaction to which the direct pay  
 6 permit or exemption certificate claiming direct mail applies.

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

8 77.522 (1) (c) 3. If advertising and promotional direct mail and other direct mail  
 9 are included in a single mailing, the sale of that mailing is sourced the same as a sale  
 10 of other direct mail.

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

12 77.522 (1) (c) 4. Transactions that include the development of billing  
 13 information or the provision of a data processing service that is more than incidental  
 14 are not direct mail and are sourced under par. (b), but transactions that include  
 15 incidental data processing services are direct mail and are sourced under this  
 16 paragraph.

\*\*\*\*NOTE: Incidental to what? Shouldn't the sentence read "Transactions that include the development of billing information or the provision of a data processing service that is more than incidental to the transactions ..."?

✕

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

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

20 77.53 (11) (b) 2. An exemption certificate is received by the seller in good faith  
 21 if the certificate claims an exemption for which all of the following apply:

22 a. It was statutorily available on the date of the transaction in the jurisdiction  
 23 where the transaction is sourced.

X  
\*\*\*\*NOTE: The term "statutorily available" is odd and subject to interpretation. Why not just say that the exemption was an exemption authorized by law on the date of the transaction, etc?

n

- 1 b. It could be applicable to the property, item, good, or service being purchased.
- 2 c. It is reasonable for the purchaser's type of business.

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

4 77.53 (11) (b) 3. If the seller obtains the information described in subd. 2, the  
 5 seller is relieved of any liability for the tax on the transaction unless it is discovered  
 6 through the audit process that the seller had knowledge, or had reason to know, at  
 7 the time such information was provided that the information relating to the  
 8 exemption claimed was materially false or the seller otherwise knowingly  
 9 participated in activity intended to purposefully evade the tax that is properly due  
 10 on the transaction. In order to enforce this subdivision, the state must establish that  
 11 the seller had knowledge, or had reason to know, at the time the information was  
 12 provided that the information was materially false.

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

15 77.54 (18) When the sale of a service or property, including items, property, and  
 16 goods under s. 77.52 (1) (b), (c), and (d), that was previously exempt or not taxable  
 17 under this subchapter becomes taxable, and the service or tangible personal  
 18 property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) is furnished under  
 19 a written contract by which the seller is unconditionally obligated to provide the  
 20 service or tangible personal property, or item, property, or good under s. 77.52 (1) (b),  
 21 (c), or (d) for the amount fixed under the contract, the seller is exempt from sales or  
 22 use tax on the sales price for services or tangible personal property, or items,  
 23 property, or goods under s. 77.52 (1) (b), (c), or (d) provided until the contract is

1 terminated, extended, renewed or modified. However, from the time the service or  
 2 tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d)  
 3 becomes taxable until the contract is terminated, extended, renewed or modified the  
 4 user is subject to use tax, measured by the purchase price, on the service or tangible  
 5 personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) purchased  
 6 under the contract.

**History:** 1971 c. 64, 154, 215, 311; 1973 c. 90, 156, 240; 1975 c. 39, 96, 102, 146, 200; 1977 c. 29; 1977 c. 83 ss. 13, 26; 1977 c. 250, 368, 418; 1979 c. 1, 34, 87, 174; 1981 c. 20; 1981 c. 79 s. 18; 1981 c. 96 s. 67; 1981 c. 264; 1981 c. 282 s. 47; 1981 c. 317; 1983 a. 27 ss. 1284d to 1284np, 2202 (38); 1983 a. 189 ss. 101, 106, 329 (5), (12), (13); 1983 a. 192, 287, 405, 426, 498, 510, 538, 544; 1985 a. 29, 149, 332; 1987 a. 27; 1987 a. 312 s. 17; 1987 a. 399; 1989 a. 31, 238, 270, 335, 359; 1991 a. 37, 39, 269, 316; 1993 a. 16, 263, 332; 1995 a. 27, 125, 225, 227; 1997 a. 27, 35, 41, 184, 237, 291; 1999 a. 9, 65, 83; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 16, 103, 109; 2003 a. 99, 128; 2005 a. 25, 74, 141, 149, 335, 366, 479; 2007 a. 11, 19, 20, 97, 130; 2009 a. 2, 28.

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

8 77.58 (2) (d) Except for a seller who uses a certified service provider, a seller  
 9 who registers through the streamlined sales tax governing board's central  
 10 registration system and indicates at the time of registration that it anticipates  
 11 making no sales into this state, is not required to file a return in this state until such  
 12 time as it makes a taxable sale that is sourced to this state under s. 77.522. Once a  
 13 seller to which this provision applies makes a taxable sale that is sourced to this state  
 14 under s. 77.522, that seller is required to file a return that is due by the last day of  
 15 the month following the last day of the calendar quarter in which the sale occurred  
 16 and shall continue to file returns by the last day of the month following the last day  
 17 of each calendar quarter thereafter, unless the seller is notified in writing by the  
 18 department of a different filing frequency.

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

21 77.58 (3) (a) ~~For~~ Except as provided in sub. (2) (d), for purposes of the sales tax  
 22 a return shall be filed by every seller. ~~For~~ Except as provided in sub. (2) (d), for  
 23 purposes of the use tax a return shall be filed by every retailer engaged in business

1 in this state and by every person purchasing tangible personal property, or items,  
2 property, or goods under s. 77.52 (1) (b), (c), or (d), or services, the storage, use or other  
3 consumption of which is subject to the use tax, who has not paid the use tax due to  
4 a retailer required to collect the tax. If a qualified subchapter S subsidiary is not  
5 regarded as a separate entity under ch. 71, the owner of that subsidiary shall elect  
6 to either include the information for that subsidiary on the owner's return or file a  
7 separate electronic return for that entity. If a single-owner entity is disregarded as  
8 a separate entity under ch. 71, the owner shall elect to either include the information  
9 from the entity on the owner's return or file a separate electronic return for that  
10 entity. If an owner that owns more than one entity that is disregarded as a separate  
11 entity under ch. 71 elects to file a separate return for one of its disregarded entities,  
12 the owner shall file separate returns for all of its disregarded entities. Returns filed  
13 under this paragraph shall be signed by the person required to file the return or by  
14 a duly authorized agent but need not be verified by oath.

15 History: 1971 c. 316; 1975 c. 39, 199; 1977 c. 29, 142; 1979 c. 1, 174, 221, 355; 1981 c. 20; 1983 a. 405; 1991 a. 316; 1995 a. 27; 1997 a. 27; 2009 a. 2, 28.

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

16 77.58 (4) The person required to file the return shall deliver the return together  
17 with a remittance of the amount of the tax due to the office of the department or such  
18 other place as the department designates in the manner and form prescribed by the  
19 department.

20 History: 1971 c. 316; 1975 c. 39, 199; 1977 c. 29, 142; 1979 c. 1, 174, 221, 355; 1981 c. 20; 1983 a. 405; 1991 a. 316; 1995 a. 27; 1997 a. 27; 2009 a. 2, 28.

**SECTION 20.** 77.585 (1) (a) of the statutes, as created by 2009 Wisconsin Act 2,

21 is amended to read:

22 77.585 (1) (a) In this subsection, "bad debt" means the portion of the sales price  
23 or purchase price that the seller has previously reported as taxable under this  
24 subchapter, and for which the seller has paid the tax, and that the seller may claim

1 as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not  
2 include financing charges or interest, sales or use taxes imposed on the sales price  
3 or purchase price, uncollectible amounts on tangible personal property or items,  
4 property, or goods under s. 77.52 (1) (b), (c), or (d) that remain in the seller's  
5 possession until the full sales price or purchase price is paid, expenses incurred in  
6 attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and  
7 repossessed property or items.

History: 2009 a. 2 ss. 473, 474, 492; 2009 a. 28. ✓

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

10 77.585 (1) (d) A seller may obtain a refund of the tax ~~collected on~~ reported for  
11 any bad debt amount deducted under par. (b) that exceeds the amount of the seller's  
12 taxable sales as provided under s. 77.59 (4), except that the period for making a claim  
13 as determined under s. 77.59 (4) begins on the date on which the return on which the  
14 bad debt could be claimed would have been required to be submitted to the  
15 department under s. 77.58.

History: 2009 a. 2 ss. 473, 474, 492; 2009 a. 28. ✓

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

18 77.59 (9) (a) If Except as provided in par. (b), if any person fails to file a return,  
19 the department shall make an estimate of the amount of the sales price of the  
20 person's sales, or, as the case may be, of the amount of the total purchase price of  
21 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or  
22 (d), or taxable service sold or purchased by the person, the sale by or the storage, use,  
23 or other consumption of which in this state is subject to sales or use tax. The estimate  
24 shall be made for the period in respect to which the person failed to make a return

1 and shall be based upon any information which is in the department's possession or  
2 may come into its possession. Upon the basis of this estimate the department shall  
3 compute and determine the amount required to be paid to the state, adding to the  
4 sum thus arrived at a penalty equal to 25% thereof. One or more such determinations  
5 may be made for one or for more than one period. When a business is discontinued  
6 a determination may be made at any time thereafter, within the periods specified in  
7 sub. (3), as to liability arising out of that business.

**History:** 1975 c. 186; 1979 c. 174, 203, 221; 1981 c. 20; 1983 a. 27; 1985 a. 29; 1985 a. 261 ss. 13g, 13m, 13t; 1987 a. 312 s. 17; 1991 a. 39, 269; 1993 a. 308, 437; 1995 a. 404; 2003 a. 33; 2005 a. 49; 2007 a. 20; 2009 a. 2 ss. 386, 493 to 498; 2009 a. 28.

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

9 77.59 (9) (b) If a seller is not required to register and obtain a permit under s.  
10 77.52 (7) or 77.53 (9), but has registered and obtained a permit under s. 77.52 (7) or  
11 77.53 (9) and has failed to timely file a return that is due, the department shall notify  
12 the seller of the failure to file and provide the seller at least 30 days to file the return  
13 prior to making the estimate described in par. (a), except that if the seller has a  
14 history of not filing returns, or filing returns late, the department may make the  
15 estimate under par. (a) without providing such notice.

16 **SECTION 24.** 77.982 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is  
17 amended to read:

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

**History:** 1993 a. 263, 491; 1999 a. 9; 2003 a. 203; 2007 a. 20; 2009 a. 2.

1           **SECTION 25.** 77.991 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is  
2 amended to read:

3           ✓ 77.991 (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, 77.60,  
5 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under  
6 subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the  
7 taxes under subch. V, applies to the tax under this subchapter. The renter shall  
8 collect the tax under this subchapter from the person to whom the passenger car is  
9 rented.

10 History: 1993 a. 263; 1999 a. 9; 2003 a. 203; 2007 a. 20; 2009 a. 2.

10           **SECTION 26.** 77.9951 (2) of the statutes, as affected by 2009 Wisconsin Act 2,  
11 is amended to read:

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

17 History: 1997 a. 27; 2007 a. 20; 2009 a. 2, 28.

17           **SECTION 27.** 77.9972 (2) of the statutes, as affected by 2009 Wisconsin Act 2,  
18 is amended to read:

19           77.9972 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3),  
20 (4), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59,  
21 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes  
22 under subch. III, apply to the fee under this subchapter. Section 77.73, as it applies  
23 to the taxes under subch. V, applies to the fee under this subchapter. The renter shall

1 collect the fee under this subchapter from the person to whom the passenger car is  
2 rented.

History: 2005 a. 25; 2007 a. 20; 2009 a. 2, 28.

3 (END)

**Kreye, Joseph**

**From:** Gates-Hendrix, Sherrie L - DOR [Sherrie.GatesHendrix@revenue.wi.gov]  
**Sent:** Friday, February 19, 2010 7:57 AM  
**To:** Kreye, Joseph  
**Subject:** LRB 09-4248/P1 Streamlined sales and use tax agreement changes  
**Attachments:** LRB-4248\_P1.pdf

Hi Joe -- Craig Johnson has identified a few changes we'd like for this draft. Feel free to call Craig with any questions.

(608) 634-6794 in LaCrosse

thanks again

Sherrie

- ✓ Page 1, lines 10 and 11 – Change the phrase “...direct mail which is intended, as its primary purpose, to attract public attention...” to “...direct mail that has the primary purpose of attracting public...”
- ✓ Response to drafter’s note between lines 9 and 10 on page 2 – Transactional mail is not a streamlined defined term and should not be defined here. A “payroll advice” is the term used in the SSUTA and although it may be somewhat awkward should be left as it is to make sure our law is not interpreted differently than other SSTP states’ laws.
- ✓ Page 2, line 10 – The word “records” should be changed to “reports” to be consistent with the language used in the SSUTA.
- ✓ Response to drafter’s note between lines 17 and 18 on page 2 – The phrase “more than incidental” refers to both data processing service and developing billing information. It does not refer to printed materials. The term incidental should have the meaning provided in s. 77.51 (5).
- ✓ Page 3, line 22 – Change the phrase “It was statutorily available...” to “It was an exemption authorized by law...”
- ✓ Response to drafters note between lines 18 and 19 on page 6 – The development of the billing information or the provision of a data processing service has to be more than incidental to the producing of the direct mail. Therefore, it is suggested that the phrase “to the production of the direct mail” be inserted between the words “incidental” at the end of line 15, page 6 and “are” at the beginning of line 16 on page 6.
- ✓ Page 7, line 1 – Change the phrase “It was statutorily available...” to “It was an exemption authorized by law...”
- ✓ Page 7, line 17 – Change the phrase “When the sale of a service or property, including items...” to “When the sale of a service or tangible personal property or items...” This

needs to be done to make the language consistent throughout that section.

---

**From:** Parisi, Lori [mailto:Lori.Parisi@legis.wisconsin.gov]  
**Sent:** Wednesday, February 17, 2010 11:26 AM  
**To:** Gates-Hendrix, Sherrie L - DOR  
**Subject:** Draft review: LRB 09-4248/P1 Topic: Streamlined sales and use tax agreement changes

**Following is the PDF version of draft LRB 09-4248/P1.**

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R2  
RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

in En. 2-19-10  
due En. 2-26  
Regen

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

1 AN ACT to renumber 77.52 (14) (am) and 77.53 (11) (b); to renumber and  
2 amend 77.522 (1) (c) and 77.59 (9); to amend 77.51 (10m) (a) 3. a., 77.51 (11d),  
3 77.52 (2) (a) 5. am., 77.54 (18), 77.58 (3) (a), 77.58 (4), 77.585 (1) (a), 77.585 (1)  
4 (d), 77.982 (2), 77.991 (2), 77.9951 (2) and 77.9972 (2); and to create 77.51 (1ag),  
5 77.51 (9r), 77.52 (14) (am) 2., 77.52 (14) (am) 3., 77.522 (1) (c) 2., 77.522 (1) (c)  
6 3., 77.522 (1) (c) 4., 77.53 (11) (b) 2., 77.53 (11) (b) 3., 77.58 (2) (d) and 77.59 (9)  
7 (b) of the statutes; relating to: streamlined sales and use tax agreement  
8 changes.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

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

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

77.51 (1ag) "Advertising and promotional direct mail" means direct mail which is intended, as its primary purpose, to attract public attention to a product, person,

has that has the

of attracting

10  
11

1 business, or organization or to attempt to sell, popularize, or secure financial support  
2 for a product, person, business, or organization.

\*\*\*\*NOTE: I had to rework the language of this definition because I cannot use "whose" to refer to a thing. Is there another way you want me to put this or is this OK?

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

4 77.51 (9r) (a) "Other direct mail" means any direct mail that is not advertising  
5 and promotional direct mail, regardless of whether advertising and promotional  
6 direct mail is included in the same mailing. "Other direct mail" includes all of the  
7 following:

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

\*\*\*\*NOTE: "Transactional direct mail" is not a defined term. Should it be? Also, "payroll advices" is an awkward term, because "advice" isn't typically used as a noun. Is there a better way to put this?

10 2. Any legally required mailings, including privacy notices, tax records, and  
11 stockholder reports.

reports

12 3. Other nonpromotional direct mail, including newsletters and informational  
13 pieces, that is delivered to existing or former shareholders, customers, employees, or  
14 agents.

, as defined in sub. (5),

15 (b) "Other direct mail" does not include printed materials that result from  
16 developing billing information or providing any data processing service that is more  
17 than incidental to producing the other direct mail.

\*\*\*\*NOTE: This is a very confusing sentence. Does "more than incidental" refer only to providing a data processing service or also to developing billing information? Or does it refer to the printed materials? What is this provision supposed to mean? Also, should "incidental" have the meaning given in s. 77.51 (5)?

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

1           77.51 (10m) (a) 3. a. The utensils are available to purchasers and the retailer's  
2 sales of prepared food under subds. 1. and 2., ~~soft drinks, and alcoholic beverages~~  
3 ~~at an establishment and 4., and food for which plates, bowls, glasses, or cups are~~  
4 ~~necessary to receive the food~~, are more than 75 percent of the retailer's total sales at  
5 ~~that establishment of all food and food ingredients~~, as determined under par. (c).

6           SECTION 4. 77.51 (11d) of the statutes, as created by 2009 Wisconsin Act 2, is  
7 amended to read:

8           77.51 (11d) For purposes of subs. (1ag), (1f), (3pf), and (9p) and ss. 77.52 (20)  
9 and (21), 77.522, and 77.54 (51) and (52), "product" includes tangible personal  
10 property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), and  
11 services.

12           SECTION 5. 77.52 (2) (a) 5. am. of the statutes, as created by 2009 Wisconsin Act  
13 2, is amended to read:

14           77.52 (2) (a) 5. am. The sale of prepaid calling services and intrastate,  
15 interstate, and international telecommunications services, except interstate 800  
16 services.

17           SECTION 6. 77.52 (14) (am) of the statutes, as created by 2009 Wisconsin Act  
18 2, is renumbered 77.52 (14) (am) 1.

19           SECTION 7. 77.52 (14) (am) 2. of the statutes is created to read:

20           77.52 (14) (am) 2. An exemption certificate is received by the seller in good faith  
21 if the certificate claims an exemption for which all of the following apply:

22           a. It was statutorily available on the date of the transaction in the jurisdiction  
23 where the transaction is sourced.

\*\*\*NOTE: The term "statutorily available" is odd and subject to interpretation.  
Why not just say that the exemption was an exemption authorized by law on the date of  
the transaction, etc.?

*an exemption authorized by law*

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

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

3 **SECTION 8.** 77.52 (14) (am) 3. of the statutes is created to read:

4 77.52 (14) (am) 3. If the seller obtains the information described in subd. 2., the  
5 seller is relieved of any liability for the tax on the transaction unless it is discovered  
6 through the audit process that the seller had knowledge, or had reason to know, at  
7 the time such information was provided that the information relating to the  
8 exemption claimed was materially false or the seller otherwise knowingly  
9 participated in activity intended to purposefully evade the tax that is properly due  
10 on the transaction. In order to enforce this subdivision, the state must establish that  
11 the seller had knowledge, or had reason to know, at the time the information was  
12 provided that the information was materially false.

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

15 77.522 (1) (c) 1. The Except as provided in subd. 3., the sale of advertising and  
16 promotional direct mail, including a sale characterized under the laws of this state  
17 as the sale of a service when that service is an integral part of the production and  
18 distribution of printed material that meets the definition of advertising and  
19 promotional direct mail, is sourced to the location from which the advertising and  
20 promotional direct mail is shipped, if the purchaser does not provide to the seller a  
21 direct pay permit, an exemption certificate claiming direct mail, or other information  
22 that indicates the appropriate taxing jurisdiction to which the advertising and  
23 promotional direct mail is delivered to the ultimate recipients. If the purchaser  
24 provides an exemption certificate claiming direct mail or direct pay permit to the  
25 seller, the purchaser shall source the sales to the jurisdictions to which the

1 advertising and promotional direct mail is delivered to the recipients and pay or  
2 remit, as appropriate, to the department the tax imposed under s. 77.53 on all  
3 purchases for which the tax is due and the seller, in the absence of bad faith, is  
4 relieved from liability for collecting such of all obligation to collect, pay, or remit the  
5 tax on any transaction to which the direct pay permit or exemption certificate  
6 applies. If the purchaser provides delivery information indicating the jurisdictions  
7 to which the advertising and promotional direct mail is to be delivered to the  
8 recipients, the seller shall source the sale to those jurisdictions and collect and remit  
9 the tax according to the delivery information provided by the purchaser and, in the  
10 absence of bad faith, the seller shall be relieved of any further obligation to collect  
11 tax on any transaction the sale of advertising and promotional direct mail for which  
12 the seller has sourced the sale and collected tax pursuant to the delivery information  
13 provided by the purchaser. ~~An exemption certificate claiming direct mail provided~~  
14 ~~to a seller under this paragraph shall remain effective for all sales by the seller who~~  
15 ~~received the exemption certificate to the purchaser who provided the exemption~~  
16 ~~certificate, unless the purchaser revokes the exemption certificate in writing and~~  
17 ~~provides such revocation to the seller.~~ If a transaction is a bundled transaction that  
18 includes advertising and promotional direct mail, this subdivision only applies if the  
19 primary purpose of the transaction is the sales of products or services that meet the  
20 definition of advertising and promotional direct mail.

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

22 77.522 (1) (c) 2. The sale of other direct mail, including a sale characterized  
23 under the laws of this state as the sale of a service when that service is an integral  
24 part of the production and distribution of printed material that meets the definition  
25 of other direct mail, is sourced under par. (b) 3. if the purchaser does not provide to

1 the seller a direct pay permit or an exemption certificate claiming direct mail. If the  
2 purchaser provides an exemption certificate claiming direct mail or direct pay permit  
3 to the seller, the purchaser shall source the sale to the jurisdictions to which the other  
4 direct mail is to be delivered to the recipients and the purchaser shall pay or remit,  
5 as appropriate, to the department the tax imposed under s. 77.53 on all purchases  
6 for which the tax is due and the seller, in the absence of bad faith, is relieved of all  
7 obligation to collect, pay, or remit tax on any transaction to which the direct pay  
8 permit or exemption certificate claiming direct mail applies.

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

10 77.522 (1) (c) 3. If advertising and promotional direct mail and other direct mail  
11 are included in a single mailing, the sale of that mailing is sourced the same as a sale  
12 of other direct mail.

*to producing direct mail*

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

14 77.522 (1) (c) 4. Transactions that include the development of billing  
15 information or the provision of a data processing service that is more than incidental  
16 are not direct mail and are sourced under par. (b), but transactions that include  
17 incidental data processing services are direct mail and are sourced under this  
18 paragraph.

*\*\*\*\*NOTE: Incidental to what? Shouldn't the sentence read "Transactions that include the development of billing information or the provision of a data processing service that is more than incidental to the transactions...?"*

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

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

22 77.53 (11) (b) 2. An exemption certificate is received by the seller in good faith  
23 if the certificate claims an exemption for which all of the following apply:

7  
*an exemption authorized by law*

1 a. It was statutorily available on the date of the transaction in the jurisdiction  
2 where the transaction is sourced.

\*\*\*\*NOTE: The term "statutorily available" is odd and subject to interpretation.  
Why not just say that the exemption was an exemption authorized by law on the date of  
the transaction, etc.?

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

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

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

6 77.53 (11) (b) 3. If the seller obtains the information described in subd. 2., the  
7 seller is relieved of any liability for the tax on the transaction unless it is discovered  
8 through the audit process that the seller had knowledge, or had reason to know, at  
9 the time such information was provided that the information relating to the  
10 exemption claimed was materially false or the seller otherwise knowingly  
11 participated in activity intended to purposefully evade the tax that is properly due  
12 on the transaction. In order to enforce this subdivision, the state must establish that  
13 the seller had knowledge, or had reason to know, at the time the information was  
14 provided that the information was materially false.

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

17 77.54 (18) When the sale of a service or property, ~~including~~ items, property, and  
18 goods under s. 77.52 (1) (b), (c), and (d), that was previously exempt or not taxable  
19 under this subchapter becomes taxable, and the service or tangible personal  
20 property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) is furnished under  
21 a written contract by which the seller is unconditionally obligated to provide the  
22 service or tangible personal property, or item, property, or good under s. 77.52 (1) (b),  
23 (c), or (d) for the amount fixed under the contract, the seller is exempt from sales or

*tangible personal or*

1 use tax on the sales price for services or tangible personal property, or items,  
2 property, or goods under s. 77.52 (1) (b), (c), or (d) provided until the contract is  
3 terminated, extended, renewed or modified. However, from the time the service or  
4 tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d)  
5 becomes taxable until the contract is terminated, extended, renewed or modified the  
6 user is subject to use tax, measured by the purchase price, on the service or tangible  
7 personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d) purchased  
8 under the contract.

9 **SECTION 17.** 77.58 (2) (d) of the statutes<sup>✓</sup> is created to read:

10 77.58 (2) (d) Except for a seller who uses a certified service provider, a seller  
11 who registers through the streamlined sales tax governing board's central  
12 registration system and indicates at the time of registration that it anticipates  
13 making no sales into this state is not required to file a return in this state until such  
14 time as it makes a taxable sale that is sourced to this state under s. 77.522. Once a  
15 seller to which this provision applies makes a taxable sale that is sourced to this state  
16 under s. 77.522, that seller is required to file a return that is due by the last day of  
17 the month following the last day of the calendar quarter in which the sale occurred  
18 and shall continue to file returns by the last day of the month following the last day  
19 of each calendar quarter thereafter, unless the seller is notified in writing by the  
20 department of a different filing frequency.

21 **SECTION 18.** 77.58 (3) (a) of the statutes<sup>✓</sup>, as affected by 2009 Wisconsin Act 28,  
22 is amended to read:

23 77.58 (3) (a) ~~For~~ Except as provided in sub. (2) (d), for purposes of the sales tax  
24 a return shall be filed by every seller. ~~For~~ Except as provided in sub. (2) (d), for  
25 purposes of the use tax a return shall be filed by every retailer engaged in business

1 in this state and by every person purchasing tangible personal property, or items,  
2 property, or goods under s. 77.52 (1) (b), (c), or (d), or services, the storage, use or other  
3 consumption of which is subject to the use tax, who has not paid the use tax due to  
4 a retailer required to collect the tax. If a qualified subchapter S subsidiary is not  
5 regarded as a separate entity under ch. 71, the owner of that subsidiary shall elect  
6 to either include the information for that subsidiary on the owner's return or file a  
7 separate electronic return for that entity. If a single-owner entity is disregarded as  
8 a separate entity under ch. 71, the owner shall elect to either include the information  
9 from the entity on the owner's return or file a separate electronic return for that  
10 entity. If an owner that owns more than one entity that is disregarded as a separate  
11 entity under ch. 71 elects to file a separate return for one of its disregarded entities,  
12 the owner shall file separate returns for all of its disregarded entities. Returns filed  
13 under this paragraph shall be signed by the person required to file the return or by  
14 a duly authorized agent but need not be verified by oath.

15 **SECTION 19.** 77.58 (4) of the statutes<sup>✓</sup> is amended to read:

16 77.58 (4) The person required to file the return shall deliver the return together  
17 with a remittance of the amount of the tax due to the office of the department or such  
18 other place as the department designates in the manner and form prescribed by the  
19 department.

20 **SECTION 20.** 77.585 (1) (a) of the statutes<sup>✓</sup>, as created by 2009 Wisconsin Act 2,  
21 is amended to read:

22 77.585 (1) (a) In this subsection, "bad debt" means the portion of the sales price  
23 or purchase price that the seller has previously reported as taxable under this  
24 subchapter, and for which the seller has paid the tax, and that the seller may claim  
25 as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not

1 include financing charges or interest, sales or use taxes imposed on the sales price  
2 or purchase price, uncollectible amounts on tangible personal property or items,  
3 property, or goods under s. 77.52 (1) (b), (c), or (d) that remain in the seller's  
4 possession until the full sales price or purchase price is paid, expenses incurred in  
5 attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and  
6 repossessed property or items.

7 **SECTION 21.** 77.585 (1) (d) of the statutes, <sup>✓</sup> as created by 2009 Wisconsin Act 2,  
8 is amended to read:

9 77.585 (1) (d) A seller may obtain a refund of the tax ~~collected on~~ reported for  
10 any bad debt amount deducted under par. (b) that exceeds the amount of the seller's  
11 taxable sales as provided under s. 77.59 (4), except that the period for making a claim  
12 as determined under s. 77.59 (4) begins on the date on which the return on which the  
13 bad debt could be claimed would have been required to be submitted to the  
14 department under s. 77.58.

15 **SECTION 22.** 77.59 (9) of the statutes, <sup>✓</sup> as affected by 2009 Wisconsin Act 2, is  
16 renumbered 77.59 (9) (a) and amended to read:

17 77.59 (9) (a) If Except as provided in par. (b), if any person fails to file a return,  
18 the department shall make an estimate of the amount of the sales price of the  
19 person's sales, or, as the case may be, of the amount of the total purchase price of  
20 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or  
21 (d), or taxable service sold or purchased by the person, the sale by or the storage, use,  
22 or other consumption of which in this state is subject to sales or use tax. The estimate  
23 shall be made for the period in respect to which the person failed to make a return  
24 and shall be based upon any information which is in the department's possession or  
25 may come into its possession. Upon the basis of this estimate the department shall

1 compute and determine the amount required to be paid to the state, adding to the  
2 sum thus arrived at a penalty equal to 25% thereof. One or more such determinations  
3 may be made for one or for more than one period. When a business is discontinued  
4 a determination may be made at any time thereafter, within the periods specified in  
5 sub. (3), as to liability arising out of that business.

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

7 77.59 (9) (b) If a seller is not required to register and obtain a permit under s.  
8 77.52 (7) or 77.53 (9), but has registered and obtained a permit under s. 77.52 (7) or  
9 77.53 (9) and has failed to timely file a return that is due, the department shall notify  
10 the seller of the failure to file and provide the seller at least 30 days to file the return  
11 prior to making the estimate described in par. (a), except that if the seller has a  
12 history of not filing returns, or filing returns late, the department may make the  
13 estimate under par. (a) without providing such notice.

14 **SECTION 24.** 77.982 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is  
15 amended to read:

16 77.982 (2) Sections 77.51 (1f), (3pf), (9p), (12m), (14), (14g), (15a), and (15b),  
17 77.52 (1b), (3), (4), (5), (13), (14), and (18), and (19) to (23), 77.54 (51) and (52), 77.58  
18 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and  
19 (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the tax  
20 under this subchapter. Section 77.73, as it applies to the taxes under subch. V,  
21 applies to the tax under this subchapter.

22 **SECTION 25.** 77.991 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is  
23 amended to read:

24 77.991 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (4),  
25 (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60,

1 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under  
2 subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the  
3 taxes under subch. V, applies to the tax under this subchapter. The renter shall  
4 collect the tax under this subchapter from the person to whom the passenger car is  
5 rented.

6 **SECTION 26.** 77.9951 (2) of the statutes, as affected by 2009 Wisconsin Act 28,  
7 is amended to read:

8 77.9951 (2) Sections 77.51 (3r), (12m), (14), (14g), (15a), and (15b), 77.52 (1b),  
9 (3), (4), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585,  
10 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to  
11 the taxes under subch. III, apply to the fee under this subchapter. The renter shall  
12 collect the fee under this subchapter from the person to whom the vehicle is rented.

13 **SECTION 27.** 77.9972 (2) of the statutes, as affected by 2009 Wisconsin Act 2,  
14 is amended to read:

15 77.9972 (2) Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3),  
16 (4), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59,  
17 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes  
18 under subch. III, apply to the fee under this subchapter. Section 77.73, as it applies  
19 to the taxes under subch. V, applies to the fee under this subchapter. The renter shall  
20 collect the fee under this subchapter from the person to whom the passenger car is  
21 rented.

22 (END)

**Kreye, Joseph**

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**From:** Gates-Hendrix, Sherrie L - DOR [Sherrie.GatesHendrix@revenue.wi.gov]  
**Sent:** Tuesday, February 23, 2010 4:18 PM  
**To:** Kreye, Joseph  
**Subject:** FW: Draft review: LRB 09-4248/P2 Topic: Streamlined sales and use tax agreement changes  
**Attachments:** LRB-4248\_P2.pdf

Hi Joe -- Craig suggests one minor change to this. Thank you very much for getting this done so quickly.

Sherrie

- Page 6, end of line 13 – A sentence should be added which provides that “Incidental,’ as used in this subd. has the meaning provided in s. 77.51(5).” so that it is clear that the word “incidental” has the same meaning in s. 77.522(1)(c)4. as it does in s. 77.51(9r)(b).

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**From:** Parisi, Lori [mailto:Lori.Parisi@legis.wisconsin.gov]  
**Sent:** Tuesday, February 23, 2010 11:34 AM  
**To:** Gates-Hendrix, Sherrie L - DOR  
**Subject:** Draft review: LRB 09-4248/P2 Topic: Streamlined sales and use tax agreement changes

**Following is the PDF version of draft LRB 09-4248/P2.**

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