



State of Wisconsin

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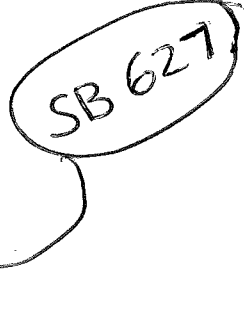
January 11, 2016

MEMORANDUM

To: Senator LeMahieu

From: Joseph T. Kreye, Legal Section Administrator, (608) 266-2263

Subject: Technical Memorandum to **2015 un-introduced** (LRB-4128/2) **by DOR**

A handwritten note in a speech bubble shape, containing the text "SB 627". An arrow points from the bubble to the word "un-introduced" in the subject line.

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

January 7, 2016

TO: Joe Kreye
Legislative Reference Bureau

FROM: Travis Arthur
Department of Revenue

SUBJECT: Technical Memorandum on LRB-4128/2 – relating to a sales tax holiday in August.

The department has the following concerns with the bill:

1. The Streamlined Sales and Use Tax Agreement (SSUTA) requires member states to provide notice of a temporary exemption period at least 60 days prior to the first day of the calendar quarter in which the exemption period will begin. The department needs an additional 30 days to prepare and distribute the notice to retailers. Depending on when the bill is enacted, the department may not have sufficient time to provide the required notice to retailers for sales tax holidays during 2016. The department suggests the bill first apply to August 2017 if enacted after April 1, 2016.
2. The Streamlined Sales and Use Tax Agreement (SSUTA) states that member states may not require a seller to obtain an exemption certificate from purchasers of items to be exempted during a sales tax holiday. The department suggests the author revise the bill to amend secs. 77.52(13) and 77.53(10), Wis. Stats., to include references to the newly created sec. 77.54(63), Wis. Stats.
3. The bill does not provide procedural requirements for certain transactions that may occur during the exemption periods, such as layaway sales, bundled sales, splitting of items normally sold together, rain checks, exchanges, delivery charges, order dates, returns, coupons, and other discounts. The department suggests that the bill be modified to incorporate the procedural requirements listed in Section 322.C of the SSUTA.
4. The SSUTA definitions for "clothing, "clothing accessories or equipment," "sport and recreational equipment" and "protective equipment" specify that the definitions are mutually exclusive. Of these product categories, the bill only provides an exemption for clothing. In order to comply with the streamlined requirement of mutually exclusive definitions and to clarify the tax treatment of products that may be interpreted to fall under multiple definitions (including, for example, waders and cleated shoes), the department suggests the bill be modified to include the mutually exclusive definitions for "clothing, "clothing accessories or equipment," "sport and recreational equipment" and "protective equipment" used in the SSUTA Library of Definitions.

5. If Wisconsin does not conform to the SSUTA and consequently loses its membership, out-of-state retailers that voluntarily registered through Streamlined would no longer be obligated to collect Wisconsin sales and use tax.
6. The bill gives DOR the authority to prohibit the sales tax holidays if DOR determines that allowing the sales tax holidays would be "imprudent". The author of the bill may wish to give the department additional guidance for the exercise of this authority, or alternatively, provide the Joint Committee on Finance with passive review authority over the department's determination.
7. The bill creates complexity for retailers because of the various price caps for the exemption. Retailers will have to know which products are eligible for the exemption based on product type and sales price.

The department developed drafting language to address the issues listed in this technical memo. See the addendum on the next page.

If you have questions regarding this technical memorandum, please contact Travis Arthur at (608) 266-8565 or travis.arthur@revenue.wi.gov.

Sales Tax Holiday Recommendations to LRB 4128/2

Amend 77.52(13)

(13) For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser an electronic or a paper certificate, in a manner prescribed by the department, to the effect that the property, item, good, or service is purchased for resale or is otherwise exempt, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services that are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), ~~and (52), and (63).~~

Amend 77.53(10)

(10) For the purpose of the proper administration of this section and to prevent evasion of the use tax and the duty to collect the use tax, it is presumed that tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services sold by any person for delivery in this state is sold for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless that person takes from the purchaser an electronic or paper certificate, in a manner prescribed by department, to the effect that the property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise exempt from the tax, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services that are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), ~~and (52), and (63).~~

Amend Section 1 of LRB 4128/2

Page 2, Lines 2-3 - Amend newly created 77.54(63)(a)1.

1. "Clothing" means any wearing apparel for humans that is suitable for general use, ~~not including all.~~ "Clothing" does not include "clothing accessories or equipment," "protective equipment," and "sport or recreational equipment," and "clothing" does not include any of the following:

Page 2, Lines 12-13 - Amend newly created 77.54(63)(a)2.

"Clothing accessories or equipment" means incidental items worn on a person or in conjunction with clothing, ~~including.~~ "Clothing accessories or equipment" does not include apparel within the definition of "clothing," "sport or recreational equipment," or "protective equipment." "Clothing accessories or equipment" includes all of the following:

Insert after Page 3, Line 4 - Create 77.54(63)(a)3. through 7., and renumber newly created 77.54(63)(a)3., 4., and 5. to 77.54(63)8., 9., and 10., as indicated

3. "Eligible property" means an item of a type that qualifies for exemption under this subsection.

4. "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

5. "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use. "Protective equipment" does not include apparel within the definition of "clothing," "clothing accessories or equipment," or "sport or recreational equipment." "Protective equipment" includes:

- a. Breathing masks.
- b. Clean room apparel and equipment.
- c. Ear and hearing protectors.
- d. Face shields.
- e. Hard hats.
- f. Helmets.
- g. Paint or dust respirators.
- h. Protective gloves.
- i. Safety glasses and goggles.
- j. Safety belts.
- k. Tool belts.
- l. Welders gloves and masks.

6. "Rain check" means the seller allows a purchaser to purchase an item at a certain price at a later time because the particular item was out of stock.

7. "School art supply" means any of the following items that are commonly used by a student in a course of study for artwork, but does not include a "school computer supply," a "school supply," or "school instructional material":

- a. Clay and glazes.
- b. Paints; acrylic, tempora, and oil.
- c. Paintbrushes for artwork.
- d. Sketch and drawing pads.
- e. Watercolors.

Renumber Page 3, Line 5 from 3. to 8. and Amend the newly created 77.54(63)(a)8. (as renumbered)

~~3.~~ 8. "School computer supply" means any of the following items that are commonly used by a student in a course of study in which a computer is used, but does not include a "school art supply," a "school supply," or "school instructional material":

Renumber Page 3, Line 12 from 4. to 9. and Amend the newly created 77.54(63)(a)9. (as renumbered)

4. 9. "School instructional material" means any of the following that is commonly used by a student in a course of study as a reference and to learn the subject being taught, but does not include a "school art supply," a "school computer supply," or a "school supply":

Renumber Page 3, Line 19 from 5. to 10. and Amend newly created 77.54(63)(a)10. (as renumbered)

5. 10. "School supply" means any of the following items that are commonly used by a student in a course of study, but does not include a "school art supply," a "school computer supply," or "school instructional material":

Amend newly created 77.54(63)(a)10.j (as renumbered)

j. Folders. Expandable folders, pocket folders, plastic folders, and manila folders.

Insert after Page 4, Line 23 - Create 77.54(63)(a)11.

11. "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or recreational equipment" does not include "clothing," "clothing accessories or equipment," or "protective equipment." "Sport or recreational equipment" includes:

- a. Ballet and tap shoes.
- b. Cleated or spiked athletic shoes.
- c. Gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf.
- d. Goggles.
- e. Hand and elbow guards.
- f. Life preservers and vests.
- g. Mouth guards.
- h. Roller and ice skates.
- i. Shin guards.
- j. Shoulder pads.
- k. Ski boots.
- l. Waders.
- m. Wetsuits and fins.

Insert after Page 5, Line 11 - Create 77.54(63)(c) and renumber newly created 77.54(63)(c) to 77.54(63)(d)

(c) The exemption under this subsection shall be administered as follows:

1. A sale of eligible property under a layaway sale qualifies for exemption if either of the following apply:

- a. Final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period.
- b. The purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

2. The provisions for bundled transactions in ss. 77.51(1f) and (3pf), 77.52(20), (21), (22), and (23), and 77.54(51) and (52), apply in the same manner during the period of exemption under this subsection as they apply in other periods.

3. A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within the price threshold in paragraph (b). A coupon that reduces the sales price is treated as a discount if the seller is not reimbursed for the coupon amount by a third-party. If a discount applies to the total amount paid by a purchaser rather than to the sales price of a particular item and the purchaser has purchased both eligible property and taxable property, the seller shall allocate the discount based on the total sales prices of the taxable property compared to the total sales prices of all property sold in that same transaction.

4. Articles that are normally sold as a single unit shall continue to be sold in that manner. Such products shall not be priced separately and sold as individual items in order to obtain the exemption.

5. Eligible property that is purchased during the exemption period with use of a rain check will qualify for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period will not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

6. The procedure for an exchange in regards to the exemption under this subsection is as follows:

- a. If a purchaser purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due even if the exchange is made after the exemption period.
- b. If a purchaser purchases an item of eligible property during the exemption period, but after the exemption period has ended, the purchaser returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item.
- c. If a purchaser purchases an item of eligible property before the exemption period, but during the exemption period the purchaser returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item if the sale of the new item is purchased during the exemption period.

7. Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property. For the purpose of determining the price threshold in paragraph (b), if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the price threshold prescribed in paragraph (b), then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold in paragraph (b) is exceeded. The shipment will be considered a sale of eligible products. If the shipment includes eligible property and taxable property, including an eligible item with a sales price in excess of the price threshold, the seller shall allocate the delivery, handling, and service charge by using one of the following methods:

- a. A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment.
- b. A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment.

The seller shall tax the percentage of the delivery, handling, and service charge allocated to the taxable property but does not have to tax the percentage of the delivery, handling, and service charge allocated to the eligible property.

8. Eligible property qualifies for exemption if either of the following apply:

- a. The item is both delivered to and paid for by the customer during the exemption period.
- b. The purchaser orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

9. For a 60-day period immediately after the period of exemption under this subsection, when a purchaser returns an item that would qualify for the exemption under this subsection, no credit for or refund of sales tax shall be given unless the purchaser provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item.

10. The time zone of the seller's location determines the authorized time period for the exemption under this subsection when the retailer and purchaser are located in different time zones.

Renumber Page 5, Line 12 from (c) to (d)