

Richard A. Champagne, Chief and General Counsel
Legal 608-266-3561 • Information 608-266-0341



One East Main Street, Suite 200 • P.O. Box 2037
Madison, WI 53701-2037 • www.legis.state.wi.us/lrb

MEMORANDUM

DATE January 31, 2018

SUBJECT Technical memorandum to **2017 AB 856 (LRB-4985/1) by DOR**

TO Representative Krug

FROM Joseph Kreye, Legal Services Manager, (608) 266-2263

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 29, 2018

TO: Joe Kreye
Legislative Reference Bureau

FROM: Travis Arthur
Department of Revenue

SUBJECT: Technical Memorandum on AB-856 – relating to a sales and use tax exemption for diapers and undergarments for incontinence.

The department has the following concerns with the bill:

- Wisconsin is a member of the Streamlined Sales and Use Tax Agreement (SSUTA). In order to remain in compliance with the SSUTA, member states must utilize definitions provided in the agreement. Since the agreement provides a definition of "diaper," Wisconsin must use the SSUTA definition to remain in compliance. Noncompliance could result in an annual revenue decrease of \$11 million as the state could lose collections from voluntary filers who registered to collect taxes in streamlined states.

The department recommends the following language to avoid noncompliance:

Create sec. 77.51(3h), Stats., to read:

"Diaper" means an absorbent garment worn by individuals who are incapable of, or have difficulty, controlling their bladder or bowel movements.

Amend the proposed sec. 77.54(67), to read:

The sales price from the sale of and the storage, use, or other consumption of diapers and undergarments for incontinence.

- Since the recommended exemption is a product-based exemption, the bill should provide that sellers are not required to obtain exemption certificates from purchasers to claim the exemption.

Amend sec. 77.52(13), Stats., as follows:

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 (5) (a) 3., (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), ~~and (66), and (67).~~

Amend sec. 77.53(10), Stats., as follows:

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 (67).~~

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

CC: Representative Krug