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May 9, 2007

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 40: Streamlined Sales and Use Tax Provisions

Included in the Governor's 2007-09 budget recommendations (SB 40) is a proposal that would amend Wisconsin's sales and use tax statutes so that they conform to the provisions of the multi-state Streamlined Sales and Use Tax Agreement (SSUTA).

A description of the SB 40 provisions is presented on page 176 of the Legislative Fiscal Bureau's March, 2007, summary of the Governor's budget recommendations.

This document has been prepared to provide greater detail on the Streamlined Sales and Use Tax Agreement and the provisions contained in the Governor's budget recommendations.

This document is written in five parts:

•**PART 1** provides an executive summary of the provisions.

•**PART 2** is a comprehensive summary of each provision under the proposal.

•**PART 3** presents information regarding the fiscal effects of the provisions.

•**PART 4** includes two attachments relating to the treatment of food and beverages and medical equipment under the proposal.

•**PART 5** is an appendix, which summarizes the Streamlined Sales and Use Tax Agreement.

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PART 1

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

BACKGROUND

Under current federal law and U.S. Supreme Court decisions, a state may not require a seller to collect and remit sales and use taxes unless the seller has a sufficient business connection (or "nexus") with the state, which is established by the seller having a physical presence in the state. In Wisconsin, a seller has nexus if it does any of the following: (a) owns real property in this state; (b) leases or rents out tangible personal property located in this state; (c) maintains, occupies, or uses a place of business in this state; (d) has any representative or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any tangible personal property or taxable services; (e) services, repairs, or installs equipment or other tangible personal property in Wisconsin; (f) delivers goods into this state in company operated vehicles; or (g) performs construction activities in this state.

Sellers that do not have nexus with Wisconsin can voluntarily agree to collect and remit the tax on their sales delivered to purchasers in Wisconsin. Such agreements also are permitted in other states. In Wisconsin and other states, if a seller does not have nexus and has not voluntarily agreed to collect the tax, the state imposes a use tax on taxable purchases from the seller that are to be stored, used, or consumed by a purchaser in Wisconsin. However, collecting the use tax from individual purchasers presents a very difficult enforcement issue. Multi-state retailers have long resisted efforts by the states, and legislation introduced in Congress, to compel use tax collection, citing the high costs and difficulty of complying with numerous, disparate state and local sales tax systems.

The SSUTA is a multi-state agreement that is the product of the Streamlined Sales Tax Project (SSTP), an effort begun by state revenue departments in March, 2000. The Project's goal is to simplify and modernize sales and use tax administration in the hope that out-of-state businesses without a requirement to collect sales tax will, as a result, voluntarily agree to collect the tax. An additional goal of the Project is to persuade Congress to pass legislation permitting states to require additional out-of-state sellers to collect and remit taxes for the states into which their products are being delivered.

One of the principal aims of the SSUTA is to make sales and use taxes more uniform across the states and local taxing jurisdictions. In addition, in order to streamline administration of the tax, states whose laws are in compliance with the SSUTA jointly certify sales tax service providers and automated systems. Retailers may contract with certified service providers (CSPs) to assume the seller's sales and use tax reporting and record-keeping responsibilities or use certified automated systems (CASs) for tax calculation and record-keeping purposes. Participating states must also maintain databases that retailers use to determine whether a transaction is taxable and the appropriate tax rate. The SSUTA also includes an "amnesty" provision that forgives back taxes for sellers that agree to voluntarily collect and remit taxes for at least a 36-month period of time after registering under the SSUTA.

Wisconsin was authorized to participate in the development of the SSUTA under 2001 Wisconsin Act 16. The SSUTA was developed by participating states with involvement of various members of the business community. Under the terms of the SSUTA, which was adopted by the participating states in November, 2002, and which has been amended several times since then, the Agreement would become binding when at least 10 states comprising at least 20% of the total population of all states imposing a state sales tax had petitioned for membership and been found to be in compliance with the Agreement's requirements by the Agreement's governing board. The SSUTA became effective on October 1, 2005. At that time, there were 18 member states. As of January 1, 2007, there were 21 member states, and over 1,000 sellers had voluntarily registered under the SSUTA to collect and remit sales and use tax in those states.

In order to become a member state and to collect tax from voluntary registrants under the SSUTA, Wisconsin would have to modify certain aspects of its sales and use tax laws, including provisions related to uniformity with other states as well as provisions related to sales tax administration. The SSUTA does not require participating states to have identical tax bases. However, the Agreement does require states to use uniform definitions in establishing their tax bases and also requires uniform treatment of certain items such as sourcing and treatment of drop-shipments. As a result of such uniformity provisions, under the SSUTA, certain items that are currently taxable would be exempt (for example, fruit drink with 51% to 99% juice) and certain sales that are currently exempt would become taxable (for example, ready-to-drink tea that contains natural or artifical sweetners).

In terms of the administrative requirements under the SSUTA, examples include certain database requirements, monetary compensation to sellers voluntarily registering to collect and remit tax, the use of uniform rounding rules and uniform tax returns, and tax amnesty (under specified conditions) for sellers registering to collect tax under the SSUTA.

The following summary highlights the most significant changes to state law under SB 40 to conform state sales and use tax statutes to the provisions of the SSUTA. The provisions would take effect January 1, 2008.

DUTIES AND RESPONSIBILITIES OF THE DEPARTMENT OF REVENUE

2001 Act 16 authorized DOR to enter into the Streamlined Sales and Use Tax Agreement to simplify and modernize sales and use tax administration in order to reduce the tax compliance burden for all sellers and all types of commerce. DOR may promulgate rules to administer the provisions, procure goods and services jointly with other states that are signatories to the Agreement in furtherance of the Agreement, and take other actions reasonably required to implement these provisions.

Current law also authorizes the Department to act jointly with other states that are signatories to the Agreement to establish standards for the certification of certified service providers and certified automated systems and to establish performance standards for multi-state sellers. A

"certified service provider" is an agent that is certified by the signatory states to perform all of a seller's sales tax and use tax functions related to the seller's retail sales. A "certified automated system" is software that is certified by the signatory states and that is used to calculate state and local sales and use taxes on transactions by each appropriate jurisdiction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

Current law provides that a certified service provider is the agent of the seller with whom the provider has contracted and is liable for the sales and use taxes that are due the state on all sales transactions that the CSP processes for a seller, except in cases of fraud or misrepresentation by the seller. A person that provides a certified automated system is responsible for the system's proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system's functioning. A seller that uses a CAS is responsible and liable to this state for reporting and remitting sales and use tax. A seller that has a proprietary system for determining the amount of tax due and that has signed an agreement with the signatory states establishing a performance standard for the system is liable for the system's failure to meet the performance standard.

Current state law also provides that no law of this state, or the application of such law, may be declared invalid on the ground that the law, or the application of such law, is inconsistent with the SSUTA. No provision of the Agreement in whole or in part invalidates or amends any law of this state and the state becoming a signatory to the Agreement does not amend or modify any law of this state.

The bill would require and authorize DOR to participate as a member state of the SSTP governing board, which administers the SSUTA and enters into contracts that are necessary to implement the Agreement on behalf of the member states, and to pay the dues necessary to participate in the governing board of the multistate SSTP. The bill would create a sum sufficient PR appropriation in DOR to pay such dues, which would be funded with a portion of the sales and use tax revenues collected under the Agreement. The remaining collections would be deposited into the general fund.

Under current law, DOR may not enter into the SSUTA unless the Agreement requires signatory states to meet certain requirements. The bill would add the requirement that signatory states must provide that a seller who registers with the Agreement's central electronic registration system may cancel the registration at any time, as provided under uniform procedures adopted by the governing board of the states that are signatories to the Agreement, but is required to remit any Wisconsin taxes collected pursuant to the Agreement to DOR.

Under the bill, DOR would be authorized to certify compliance with the SSUTA and, pursuant to the Agreement, certify certified service providers and certified automated systems. The bill would modify the current law definition of a CSP to provide that a CSP is not responsible for a retailer's obligation to remit tax on the retailer's own purchases. The Department would also be authorized to maintain databases that indicate: (a) whether specific items are taxable or nontaxable; and (b) tax rates, taxing jurisdiction boundaries, and zip code or address assignments related to the administration of state and local taxes imposed in Wisconsin. These databases would have to be

accessible to sellers and CSPs and the databases referred to in (b) would have to be available in a downloadable format.

The bill would also specifically permit DOR to audit (or authorize others to audit) sellers and certified service providers who are registered with the Department pursuant to the SSUTA.

MODIFICATIONS TO THE TAX BASE

The sales tax base is the array of goods, services, and transactions that are subject to the tax. The SSUTA does not require participating states to have identical tax bases. However, the Agreement does require states to use uniform definitions in establishing their tax bases. The bill includes the following changes to the current sales and use tax base in Wisconsin:

- Most types of food sales would be treated the same as under current law. However, some food sales that are now exempt would become taxable and certain sales that are now taxable would become exempt.

- The bill would expand the types of medical equipment that are exempt from tax to include items such as hospital beds, patient lifts, and I.V. stands that are purchased for in-home use.

- The current exemptions for equipment used in the treatment of diabetes and equipment used to administer oxygen would be limited to equipment purchased for in-home use.

- The bill would repeal the current exemption for cloth diapers.

- Certain currently exempt sales of pre-written computer software that is customized for a specific purchaser would become taxable.

- The bill would generally impose the tax on the entire sales price of products comprised of exempt items that are bundled with taxable items by the seller. However, if the retailer can identify, by reasonable and verifiable standards from the retailer's books and records, the portion of the price that is attributable to nontaxable products, that portion of the sales price would not be taxable. Currently, the seller is not required to pay tax on the value of the nontaxable items. Certain exceptions would apply to the general treatment of bundled transactions, such as an exception for transactions in which the value of the taxable products is no greater than 10% of the value of all the bundled products. The bill would also exclude from treatment as bundled transactions certain goods packaged and sold together containing food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies if the value of the nontaxable items is at least 50% of the value of all of the tangible personal property included (in what would otherwise be a taxable, bundled transaction). In such cases, the entire bundle of goods would be exempt from tax. This treatment is similar to the treatment of certain combinations of nontaxable food, food products, and beverages with taxable items under current law.

• Under the bill, if tangible personal property (such as a construction crane) is provided along with an operator, the transaction would be considered a service (which may or may not be taxable) rather than a lease (which generally is taxable) as long as the operator is necessary for the property to perform in the manner for which it is designed and the operator does more than maintain, inspect, or set up the property. Under current law, the determination of whether such transactions are a lease of property or a service depends upon the amount of control maintained by the operator and the degree of responsibility for completion of the work assumed by the operator.

• Purchases of items (such as telephone directories or candy) that are sold by an out-of-state seller to a Wisconsin purchaser and distributed directly by the seller via common carrier or U.S. mail, as directed by the purchaser, to Wisconsin consumers without the purchaser ever taking physical possession of the items would become taxable regardless of whether or not the out-of-state seller has nexus with Wisconsin. Under current law, as interpreted by the courts, such sales are not subject to the sales or use tax if the seller is located out-of-state and does not have nexus with Wisconsin.

• The bill would define a "prepaid wireless calling service" as a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, and that is paid for prior to use and sold in predetermined dollar units whereby the number of units declines with use in a known amount. Based on this definition, if an otherwise nontaxable nontelecommunications service were purchased through a prepaid wireless calling service and sourced to this state under the sourcing rules, then the service would be subject to the tax imposed on a prepaid wireless calling service.

According to DOR, all of these modifications are required in order to conform to the terms of the SSUTA.

DEFINITION OF "RETAILER ENGAGED IN BUSINESS IN THIS STATE"

The bill would modify the definition of "retailer engaged in business in this state" in order to automatically conform to any future federal changes that could lessen the physical presence standards for requiring a retailer to collect Wisconsin sales and use taxes.

NON-EXEMPT USE OF PROPERTY AFTER PURCHASE

Currently, if a purchaser certifies that the items purchased will be used in a manner entitling the sale to be exempt from tax and the purchaser subsequently uses the property in some other manner, the purchaser is liable for payment of the sales tax. The tax is measured by the sales price of the property to the purchaser unless the taxable use first occurs more than six months after the sale. In that case, the purchaser may base the tax either on that sales price or on the fair market value of the property at the time the taxable use first occurs. The bill would eliminate the option to

base the tax on fair market value if the taxable use first occurs more than six months after the purchase, so that the tax would always be based on the sales price to the purchaser.

TREATMENT OF DROP-SHIPMENTS

A "drop-shipment" occurs when a purchaser orders an item from a retailer and the retailer arranges for the manufacturer to deliver the item to the purchaser directly, without the retailer taking possession. A drop-shipment may involve a Wisconsin manufacturer making a delivery to a Wisconsin purchaser on behalf of an out-of-state retailer who is not registered to collect Wisconsin sales or use tax. Under current law, the Wisconsin manufacturer is required to collect the sales tax from the purchaser on such transactions. Under the bill, Wisconsin manufacturers would no longer be liable for the sales tax on drop-shipments to Wisconsin purchasers. Instead, either the retailer would be liable for collecting and remitting the sales tax or the purchaser would be liable for remitting the use tax.

SOURCING

The bill includes detailed provisions for determining the taxing jurisdiction in which a sale or lease of property or services occurs (sourcing). In general, the sourcing rules under these provisions are destination-based, which is consistent with the current sourcing provisions in Wisconsin. However, the Department of Revenue has identified several situations where the SSUTA provisions would differ from current law and practice. The most significant change would be to relieve sellers (printers) of direct mail of the burden of determining the destination of each piece of mail for tax purposes if the purchaser does not provide the taxing jurisdiction information. Other sourcing changes involve towing services, admissions, leases, software and services (such as cable television) delivered electronically, and certain telecommunications services.

AGREEMENTS WITH DIRECT MARKETERS; RETAILER'S COMPENSATION

Under current law, sellers may deduct the retailer's discount from taxes due as compensation for administrative costs. The retailer's discount is equal to 0.5% of the tax liability per reporting period, with a $10 minimum. Also, under current law, DOR may enter into agreements with out-of-state direct marketers to collect state and local sales and use taxes. An out-of-state direct marketer that collects such taxes may retain 5% of the first $1 million of the taxes collected in a year and 6% of the taxes collected in excess of $1 million in a year. This provision does not apply to direct marketers who are required to collect sales and use taxes in Wisconsin because they have nexus with this state. To date, no agreements have been entered into under this provision.

The bill would repeal the current provisions regarding agreements with direct marketers outlined above. The bill would also remove certified service providers from eligibility for the current retailer's discount and would permit them, as well as sellers that use certified automated

systems and large, multi-state sellers that have proprietary systems that calculate the amount of tax owed to each taxing jurisdiction, to retain a portion of sales and use taxes collected on retail sales. The amount of tax that could be retained would be determined by DOR and by contracts that the Department enters into with other states as a member state of the Streamlined Sales Tax Governing Board pursuant to the SSUTA.

Under the compensation formulas currently in use, a CSP (which would not be eligible for the current retailer's discount) could retain from 2% to 8% of taxes collected on behalf of voluntary sellers, depending on the total volume of such taxes collected. A seller using a CAS would be eligible for the retailer's discount. However, to help compensate for the investment in software to assist the retailer in voluntarily collecting taxes in non-nexus states, such sellers would also be permitted to retain 1.5% of the first $10,000 in taxes collected per year for each non-nexus state for a period of two years. Large, multi-state sellers with proprietary systems would be eligible for the retailer's discount. While the SSUTA authorizes additional compensation for such sellers, no amounts have been specified under the SSUTA to-date.

Under the bill, there would be no statutory limit on the amount of compensation paid under the provisions described above. Also, such compensation could be paid to any in-state sellers, out-of-state sellers that have nexus with Wisconsin, and out-of-state sellers that do not have nexus, as long as such sellers satisfied the required conditions. However, DOR indicates that, under the Agreement and based on contracts entered into by the Streamlined Sales Tax Governing Board to date, only non-nexus sellers that voluntarily agree to collect taxes would receive additional compensation under these provisions. Sellers that do not meet such criteria would continue to receive the regular 0.5% retailer's discount.

"AMNESTY" PROVISION

Under the bill, a seller would not be liable for uncollected and unpaid state and local sales and use taxes (including penalties and interest) on previous sales made to Wisconsin purchasers if the seller registers with DOR to collect and remit state and local sales and use taxes on such sales in accordance with the SSUTA. In order to receive amnesty, the seller would have to: (a) register within one year after the effective date of this state's participation in the Agreement; and (b) collect and remit state and local sales and use taxes on sales to purchasers in this state for at least three consecutive years after the date on which the seller registers.

The amnesty would not be available to: (a) sellers that were already registered with DOR during the year immediately preceding the effective date of Wisconsin's participation in the Agreement; (b) sellers that are being audited, have received notice of an audit, or are in the process of resolving an audit by DOR; or (c) sellers that have committed or been involved in a fraud or an intentional misrepresentation of a material fact.

ERRONEOUS COLLECTION OF TAX

The bill would establish a procedure to settle disputes between purchasers and sellers regarding erroneous collections of sales or use tax. Under this procedure, customers who believe that the amount of sales or use tax assessed on a sale is erroneous could send a written notice to the seller requesting that the alleged error be corrected. The seller would have to review its records within 60 days to determine the validity of the customer's claim. If the review indicates that there is no error as alleged, the seller would have to explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the seller would have to correct the error and refund the amount of any tax collected erroneously, along with the related interest. A customer could take no other action against the seller, or commence any action against the seller, to correct an alleged error in the amount of sales or use tax assessed unless the customer has exhausted his or her remedies through this review process.

Under current law, such disputes are handled through the court system. The procedure under the bill is intended to provide a more efficient dispute resolution process.

ROUNDING

The bill would modify the rounding rules used by retailers so that sellers would be allowed to compute the amount of tax to be collected based on each invoice (including numerous items) or on each item included in the sale. Under current law, the amount of tax collected must be calculated by multiplying the tax rate by the total transaction price, not by the prices of individual items. These provisions do not affect the amount of tax due to the state from the retailer, only how the retailer may calculate the amount of tax collected from purchasers.

SSUTA AGENTS

The bill would authorize sellers to appoint an agent to represent the seller before the states that are signatories to the SSUTA. Under these provisions, sellers could designate such agents to: (a) register with DOR for a business tax registration certificate; (b) file an application with DOR for a permit for each place of operations; and (c) remit taxes and file returns under the sales and use tax statutes.

BUSINESS TAX REGISTRATION

Under current law, any person who is not otherwise required to collect Wisconsin sales and use taxes (because of a lack of nexus) and who makes sales to persons within this state of taxable property or services may register with DOR to voluntarily collect the tax. Sellers who register with DOR must obtain a business tax registration certificate, which authorizes and requires the person to collect, report, and remit the state use tax. The bill would specify that registration with DOR under this provision could not be used as a factor in determining whether the seller has nexus with this state for any tax at any time.

In addition, the bill would specify that registration under the above provision would authorize and require the retailer to collect, report, and remit local use taxes, and local jurisdictions would be specifically authorized to impose the tax on such sellers. Under current law, voluntary registration only obligates out-of-state retailers to collect state use taxes, not local taxes.

The bill would also authorize DOR to waive the business tax registration fee for sellers that voluntarily register to collect sales and use taxes.

EXEMPTION CERTIFICATES

Under current law, it is presumed that all receipts are subject to the sales tax until the contrary is established. The burden of proving that a sale is not taxable is upon the person who makes the sale unless that person takes from the purchaser a certificate to the effect that the property or service is purchased for resale or is otherwise exempt.

An exemption certificate relieves the seller from the burden of proof only if either of the following is true:

a. The certificate is taken in good faith from a person who is engaged as a seller of tangible personal property or taxable services and who holds a seller's permit and who, at the time of purchasing the property or services, intends to resell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose.

b. The certificate is taken in good faith from a person claiming exemption.

The exemption certificate must be signed by, and bear the name and address of, the purchaser, and indicate the general character of the tangible personal property or service sold by the purchaser and the basis for the claimed exemption. The certificate must be in such form as DOR prescribes.

If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of the purchaser's operations, the use is taxable to the purchaser as of the time the property is first used by the purchaser, and the sales price of the property to the purchaser is the measure of the tax. Only when there is an unsatisfied use tax liability on this basis because the seller has provided incorrect information about that transaction to DOR will the seller be liable for sales tax with respect to the sale of the property to the purchaser.

Under the bill, an exemption certificate could be an electronic or a paper certificate. An exemption certificate would relieve the seller from the burden of proof only if the seller obtains a fully completed exemption certificate, or the information required to prove the exemption, from a purchaser no later than 90 days after the date of the sale, except as provided below. The certificate would not relieve the seller of the burden of proof if the seller fraudulently fails to collect sales tax, solicits the purchaser to claim an unlawful exemption, accepts an exemption certificate from a

purchaser who claims to be an entity that is not subject to the sales tax, if the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller in this state and the exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in this state. The certificate would have to provide information that identifies the purchaser and indicate the basis for the claimed exemption, and a paper certificate would have to be signed by the purchaser. The certificate would have to be in such form as DOR prescribes by rule.

If the seller has not obtained a fully completed exemption certificate or the information required to prove the exemption, the seller could, no later than 120 days after DOR requests that the seller substantiate the exemption, either provide proof of the exemption by other means or obtain, in good faith, a fully completed exemption certificate from the purchaser.

If a purchaser who purchases taxable items without paying a sales or use tax on such purchase because such items were for resale makes any use of the items other than retention, demonstration or display while holding the items for sale, lease or rental in the regular course of the purchaser's operations, the use would be taxable to the purchaser as of the time that the items are first used by the purchaser, and the purchase price of the items to the purchaser would be the measure of the tax. The current provision making the seller liable for the tax under certain circumstances would be deleted.

Under current law, no certificate is required for certain types of tax-exempt livestock sales. The bill would repeal this provision so that an exemption certificate would be required for such sales.

PROGRAM FOR CHILDREN AND FAMILIES

Under current law, the Department of Health and Family Services has a GPR appropriation for grants to counties for services for children and families. The amount of the appropriation is equal to one-eleventh of the amount of sales tax collected from out-of-state direct marketers who have entered into agreements with DOR, under which the sellers receive compensation over and above the normal 0.5% retailer's discount (described above). The bill would repeal this appropriation and the statutory language relating to the grants. The program was created in 1999 Wisconsin Act 9. To date, no funding has been provided for the program because no agreements with direct marketers have been entered into.

SALES TAX EXEMPTION AND INCOME AND FRANCHISE TAX CREDITS FOR CERTAIN INTERNET BROADBAND EQUIPMENT

As provided under 2005 Act 479, current law allows a sales and use tax exemption for certain purchases of Internet equipment used in the broadband market, which takes effect July 1, 2007. Current law also provides an income and franchise tax credit based on the value of the sales tax exemption. Claimants of the sales tax exemption and income/franchise tax credit must be

certified by the Department of Commerce. The total amount of exemptions and credits that may be awarded is limited to $7.5 million.

The SSUTA does not generally permit caps with respect to sales tax exemptions. In order to comply with this aspect of SSUTA, the bill would convert the sales tax exemption (under Chapter 77) for Internet equipment used in the broadband market to a sales tax deduction, and would change applicable references in the income and franchise tax statutes (Chapter 71) from "exemption" to "deduction". Based on these provisions, the purchaser of the Internet equipment used in the broadband market would pay the sales tax at the time of purchase. The purchaser would subsequently claim a deduction equal to the purchase price of the Internet equipment on a sales and use tax return filed by the purchaser with DOR. The net result would be that the purchaser of the qualifying equipment does not pay any sales or use tax on the equipment. The bill would specify that the deduction must be claimed in the same reporting period as the period in which the purchaser paid the sales and use tax on the purchase of the Internet equipment.

OTHER PROVISIONS

The bill would eliminate specific requirements relating to the content of sales and use tax returns and, instead, provide that the return must show the amount of taxes due for the period covered by the return and such other information as DOR deems necessary. This modification is intended to provide DOR with flexibility to simplify sales tax returns and make the returns conform to standards required under the SSUTA.

Under current law, in order to protect the revenue of the state, DOR may require sellers to provide security in an amount determined by the Department, but not more than $15,000. The bill would authorize DOR to require a larger amount of security from certified service providers.

The bill would restrict the use of personally identifiable information obtained by certified service providers from purchasers, and require CSPs to provide consumers clear and conspicuous notice of their practices regarding such information. CSPs would also have to provide sufficient technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure.

The bill would require the state to provide to consumers public notice of the state's practices related to collecting, using, and retaining personally identifiable information for sales tax purposes. The state would be prohibited from retaining personally identifiable information obtained for purposes of administering the sales tax unless the state is otherwise required to retain the information by law or as provided under the agreement. The state would be required to provide an individual reasonable access to that individual's personally identifiable information and the right to correct any inaccurately recorded information. If any person, other than another state that is a signatory to the SSUTA or a person authorized under state law to access the information, requests access to an individual's personally identifiable information, the state would be required to make a reasonable and timely effort to notify the individual of the request.

Current law specifies that counties and special districts do not have jurisdiction to impose county and special district taxes in regard to tangible personal property purchased in another county or special district that does not impose such taxes and later brought into a county or special district that does. The bill would provide that this provision does not apply in the case of snowmobiles, trailers, semitrailers, and all-terrain vehicles.

The bill would specify that counties and special districts would have jurisdiction to impose local sales taxes on Wisconsin sellers and retailers who have filed an application to operate as a seller in Wisconsin as well as out-of-state retailers who voluntarily register with DOR to collect use taxes, regardless of whether such retailers are engaged in business in the county or special district. Such retailers would be required to collect, report, and remit sales taxes to DOR for all counties and special districts that have an ordinance or resolution imposing a local sales tax.

The bill would require additional notice (120 days) of repeal of a county sales tax or cessation of local baseball park or football stadium taxes.

FISCAL EFFECT

Under these provisions, Wisconsin would conform to the SSUTA effective January 1, 2008. The administration estimates a cost of $20,000 PR in the first year and $40,000 PR in the second year for dues to participate in the SSTP governing board. The dues would be paid through the sum sufficient appropriation that the bill would create for this purpose.

The administration estimates that the modifications in product definitions to comply with the SSUTA would result in a reduction in state sales tax revenues of $1,900,000 in 2007-08 and $3,500,000 in 2008-09. However, the administration also estimates that sales tax revenues would increase by $3,200,000 in 2007-08 and $7,000,000 in 2008-09 as a result of voluntary collections, including those volunteering in order to take advantage of the amnesty provisions. The net effect of these provisions would be an increase in state sales tax revenues of $1,300,000 in 2006-07 and $3,500,000 in 2008-09.

In the aggregate, the administration estimates that county and stadium sales and use tax collections would increase, as a result of these provisions, by $100,000 in 2007-08 and by $300,000 in 2008-09, and that exposition district taxes would increase by the same amounts. The sourcing provisions under the bill could also result in some tax shifting across counties.

In addition, the component of these provisions that would allow a higher rate of retailer's compensation in certain cases would result in a state revenue decrease. At this time, it is not possible to reliably estimate the cost of the higher retailer's compensation, because the number and sales volume of voluntary sellers that would use a system to which such higher compensation would apply is not known. To-date, a small number of voluntary sellers under the Agreement have made use of CSPs or CASs. The cost of this provision could be considerable if significant use were made of certified service providers, certified automated systems, and proprietary systems (described previously) and significant amounts of tax were collected by voluntary sellers making use of one of

these methods for voluntarily collecting and remitting tax.

It is also possible that the passage of the bill, along with similar laws in other states, could result in a significant increase in sales and use tax collections from remote sales in future years. This could occur if the provisions resulted in additional retailers voluntarily agreeing to collect and remit use taxes to Wisconsin or if Congress were persuaded to pass federal legislation allowing states to require out-of-state sellers to collect and remit the tax.

More detailed information about the fiscal impacts is presented in Part 3 of this memorandum.

PART 2

COMPREHENSIVE SUMMARY OF SSUTA PROPOSAL

COMPREHENSIVE SUMMARY OF SSUTA PROPOSAL

INTRODUCTION

The Streamlined Sales and Use Tax Proposal included in the Governor's 2007-09 Executive Budget would amend Wisconsin's sales and use tax statutes so that they conform to the provisions of the multi-state Streamlined Sales and Use Tax Agreement (SSUTA). The following sections present a general overview of Wisconsin's sales and use tax under current law and a detailed description of the provisions under the bill.

OVERVIEW OF CURRENT LAW

Under current law, Wisconsin imposes a 5% general sales tax on the gross receipts from the sale and rental of personal property and selected services; counties have the option of imposing an additional 0.5% local sales tax. Other local sales taxes are imposed by professional football and baseball stadium districts, local exposition districts, and premier resort areas. The tax is imposed on the sale, lease, or rental of all tangible personal property not specifically exempted. This contrasts with the treatment of services, where the tax is imposed only on those services specifically listed in the statutes.

A use tax at the same rate is imposed on goods or services purchased out-of-state and stored, used, or consumed in Wisconsin, if the good or service would be taxable if purchased in Wisconsin. In computing the use tax liability, a credit is provided for sales tax properly paid in the state in which the good or service was purchased.

Although it is usually collected from the purchaser at the time of purchase, the sales tax is legally imposed on the gross receipts of the seller. In contrast, the use tax is generally imposed on the purchaser.

Wisconsin taxes a limited number of services, which include: (a) hotel and other short-term lodgings; (b) admissions to amusement, athletic, and entertainment events; (c) certain telecommunications services and telephone answering services; (d) laundry and dry cleaning services, except for coin-operated and diaper services; (e) photographic services; (f) parking and docking of motor vehicles, aircraft, and boats; (g) installation, repair, maintenance, and related services to personal property, other than real property improvements (unless the property being installed or repaired is exempt when sold); (h) producing, fabricating, processing, printing, and imprinting services for consumers who furnish the materials, except for printed advertising services that will be transported and used solely outside the state; (i) cable television services, including installation; and (j) landscaping and lawn maintenance services.

A number of exemptions from the general sales tax are provided for specified types of personal property, transactions, and entities. In some cases, exemptions are provided for items used in the course of business such as manufacturing machinery and equipment, property that becomes an ingredient in the manufacturing process, farm tractors and machines, seeds, and various other farming supplies. In other cases, the exemptions relate to personal and family needs such as food for human consumption, prescription drugs, and water delivered through mains. In addition, exemptions are provided for sales to governmental, educational, and charitable organizations and for specified sales by such organizations.

Sellers of taxable property and services must obtain a business tax registration certificate and a permit for each location from the Department of Revenue (and may be required to make a security deposit not to exceed $15,000) and periodically file a sales tax return and make payment of tax due. Returns and payment are generally due on a quarterly basis, but the Department may require larger retailers to report monthly and allow smaller retailers to report annually.

Sellers may deduct the retailers' discount from taxes due, as compensation for administrative costs, equal to the greater of $10 or 0.5% of the tax liability per reporting period, but not more than the amount of tax actually payable.

Under current federal law and U.S. Supreme Court decisions, states may not require sellers to collect and remit sales and use taxes unless the seller has a sufficient business connection (or "nexus") with the state. Nexus is established by the seller having property or personnel in the state. Sellers that do not have nexus may voluntarily agree to collect and remit the tax on their sales delivered to Wisconsin locations. If a Wisconsin customer purchases a taxable good or service from a seller that does not have nexus and has not voluntarily agreed to collect the tax, the purchaser is responsible for paying the use tax.

UNIFORM SALES AND USE TAX ADMINISTRATION ACT -- DUTIES AND AUTHORITY OF DOR

Current Law

Under 2001 Wisconsin Act 16 (the 2001-03 biennial budget act), the Department of Revenue was authorized to enter into the Streamlined Sales and Use Tax Agreement to simplify and modernize sales tax and use tax administration in order to substantially reduce the tax compliance burden for all sellers and for all types of commerce. The Department may act jointly with other states that are signatories to the Agreement to establish standards for the certification of a certified service provider and certified automated system and to establish performance standards for multi-state sellers. DOR also may promulgate rules to administer these provisions, may procure jointly with other states that are signatories to the Agreement goods and services in furtherance of the Agreement, and may take other actions reasonably required to implement these provisions. The Secretary of Revenue or the Secretary's designee may represent this state before the states that are signatories to the Agreement.

The Department may not enter into the SSUTA unless the Agreement requires that a state that is a signatory to the Agreement do all of the following: (a) limit the number of state sales and use tax rates; (b) limit the application of any maximums on the amount of state sales and use tax that is due on a transaction; (c) limit thresholds on the application of sales and use tax; (d) establish uniform standards for the sourcing of transactions to the appropriate taxing jurisdictions, for administering exempt sales, and for sales and use tax returns and remittances; (e) develop and adopt uniform definitions related to sales and use tax.; (f) provide, with all states that are signatories to the Agreement, a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all states that are signatories to the Agreement; (g) provide that the state may not use a seller's registration with the central electronic registration system, and the subsequent collection and remittance of sales and use taxes in the states that are signatories to the Agreement, to determine whether the seller has sufficient connection with the state for the purpose of imposing any tax; (h) restrict variances between the state tax bases and local tax bases; (i) administer all sales and use taxes imposed by local jurisdictions within the state so that sellers who collect and remit such taxes are not required to register with, or submit returns or taxes to, local jurisdictions and are not subject to audits by local jurisdictions; (j) restrict the frequency of changes in any local sales and use tax rates and provide notice of any such changes; (k) establish effective dates for the application of local jurisdictional boundary changes to local sales and use tax rates and provide notice of any such changes; (l) provide monetary allowances to sellers and certified service providers as outlined in the Agreement; (m) certify compliance with the Agreement before entering into the Agreement and maintain compliance with the Agreement; (n) adopt a uniform policy, with the states that are signatories to the Agreement, for certified service providers that protects a consumer's privacy and maintains tax information confidentiality; and (o) appoint, with the states that are signatories to the Agreement, an advisory council to consult with in administering the Agreement. The advisory council must consist of private sector representatives and representatives from states that are not signatories to the Agreement.

The current statutes state that the SSUTA "is an accord among cooperating states to further their governmental functions and provides a mechanism among the cooperating states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes that are imposed by each state that is a signatory to the agreement."

The SSUTA binds, and inures to the benefit of, only the states that are signatories to the Agreement. Any benefit that a person may receive from the Agreement is established by this state's law and not by the terms of the Agreement. No person may have any cause of action or defense under the Agreement or because of the Department entering into the Agreement. No person may challenge any action or inaction by any department, agency, other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the Agreement.

Current state law also provides that no law of this state, or the application of such law, may be declared invalid on the ground that the law, or the application of such law, is inconsistent with the Agreement. No provision of the Agreement in whole or in part invalidates or amends any law of this state and the state becoming a signatory to the Agreement does not amend or modify any law

of this state.

These current law provisions are known as the "Uniform Sales and Use Tax Administration Act."

Separate provisions of current law govern certified automated systems and certified service providers. A "certified automated system" is software that is certified jointly by the states that are signatories to the SSUTA and that is used to calculate state and local sales and use taxes on transactions by each appropriate taxing jurisdiction, to determine the amount of tax to remit to the appropriate state and/or local jurisdiction, and to maintain a record of the transaction. A "certified service provider" is an agent that is certified jointly by the states that are signatories to the Agreement and that performs all of a seller's sales and use tax functions related to the seller's retail sales.

Current law provides that a certified service provider is the agent of the seller with whom the provider has contracted and is liable for the sales and use taxes that are due the state on all sales transactions that the provider processes for a seller, except in cases of fraud or misrepresentation by the seller, as described in the following paragraph.

A seller that contracts with a certified service provider is not liable for sales and use taxes that are due the state on transactions that the provider processed, unless the seller has misrepresented the type of items that the seller sells or has committed fraud. The seller is subject to an audit on transactions that the certified service provider processed only if there is probable cause to believe that the seller has committed fraud or made a material misrepresentation. The seller is subject to an audit on transactions that the certified service provider does not process. The states that are signatories to the Agreement may jointly check the seller's business system and review the seller's business procedures to determine if the certified service provider's system is functioning properly and to determine the extent to which the seller's transactions are being processed by the certified service provider.

A person that provides a certified automated system is responsible for the system's proper functioning and is liable to this state for tax underpayments that are attributable to errors in the system's functioning. A seller that uses a certified automated system is responsible and liable to this state for reporting and remitting sales and use tax.

A seller that has a proprietary system for determining the amount of tax that is due on transactions and that has signed an agreement with the states that are signatories to the SSUTA establishing a performance standard for the system is liable for the system's failure to meet the performance standard.

Provisions Under the Bill

The bill would require and authorize DOR to participate as a member state of the SSTP governing board, which administers the SSUTA and enters into contracts that are necessary to

implement the Agreement on behalf of the member states, and to pay the dues necessary to participate in the governing board of the multistate SSTP. The bill would create a sum sufficient PR appropriation in DOR to pay such dues, which would be funded with a portion of the sales and use tax revenues collected under the Agreement. The remaining collections would be deposited into the general fund.

As noted above, under current law, DOR may not enter into the SSUTA unless the Agreement requires signatory states to meet certain requirements. The bill would add the requirement that signatory states must provide that a seller who registers with the Agreement's central electronic registration system may cancel the registration at any time, as provided under uniform procedures adopted by the governing board of the states that are signatories to the Agreement, but is required to remit any Wisconsin taxes collected pursuant to the Agreement to DOR.

Under the bill, DOR would be authorized to do all of the following related to the Uniform Sales and Use Tax Administration Act:

a. Certify compliance with the SSUTA.

b. Pursuant to the Agreement, certify certified service providers and certified automated systems. [The bill would also modify the definition of "taxpayer" to include certified service providers.]

c. Consistent with the Agreement, establish performance standards and eligibility criteria for a seller that sells tangible personal property or taxable services in at least five states that are signatories to the Agreement; that has total annual sales revenue of at least $500 million; that has a proprietary system that calculates the amount of tax owed to each taxing jurisdiction in which the seller sells tangible personal property or taxable services; and that has entered into a performance agreement with the states that are signatories to the Agreement. For purposes of this provision, "seller" would include an affiliated group of sellers using the same proprietary system to calculate the amount of tax owed in each taxing jurisdiction in which the sellers sell tangible personal property or taxable services.

d. Issue a tax identification number to a person who claims a sales tax exemption and who is not required to register with DOR for sales tax purposes and establish procedures for the registration of such a person.

e. Maintain a database that is accessible to sellers and certified service providers that indicates whether items defined in accordance with the Uniform Sales and Use Tax Administration Act are taxable or nontaxable.

f. Maintain a database that is available in a downloadable format and is accessible to sellers and certified service providers and that indicates tax rates, taxing jurisdiction boundaries, and zip code or address assignments related to the administration of state and local taxes imposed in

Wisconsin.

g. Set forth the information that the seller must provide to DOR for tax exemptions claimed by purchasers, and establish the manner in which a seller must provide such information.

h. Provide monetary allowances, in addition to the retailer's discount, to certified service providers and sellers that use certified automated systems or proprietary systems, pursuant to the Agreement.

The bill would modify the current law definition of a CSP to provide that a CSP is not responsible for a retailer's obligation to remit tax on the retailer's own purchases. The bill would also specifically authorize DOR to audit (or authorize others to audit) sellers and certified service providers who are registered with the Department pursuant to the SSUTA.

Finally, as required by the Agreement, the bill would provide that no seller or certified service provider would be liable for tax, interest, or penalties imposed on a transaction under the sales and use tax statutes that is the result of the seller or certified service provider relying on erroneous information contained in the sales and use tax databases maintained by DOR under items (e) and (f) or as a result of information certified by DOR under the SSUTA or under certain other circumstances related to exemption certificates as required under the SSUTA. Similarly, the bill would relieve a purchaser from liability for the tax, interest, or penalties imposed under the sales and use tax statutes as the result of the purchaser or seller having relied on similar erroneous information, as required under the SSUTA for purchasers on and after January 1, 2009.

DEFINITION OF TAXABLE "TANGIBLE PERSONAL PROPERTY"

General Definition of Tangible Personal Property

Under current law, "tangible personal property" generally means all tangible personal property of every kind and description. Under the bill, consistent with the Agreement, "tangible personal property" would mean personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. According to DOR, this change would adopt the common law definition of tangible personal property and would not be a substantive modification to current law.

In addition, the definition of tangible personal property would no longer specifically mention coins and stamps sold above face value and certain leased property affixed to real estate. Instead, the bill would specifically impose the state and local sales and use tax on these items, resulting in the same treatment as current law.

Computer Software

Under current law, "tangible personal property" that is subject to the sales tax includes

computer programs, except custom computer programs. The creation of custom computer programs is an exempt service under current law.

Administrative rules define "custom programs" as utility and application software that accommodate the special processing needs of the customer. The determination of whether a program is a custom program is based upon all the facts and circumstances, including the following: (a) the extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user's requirements and system; (b) whether the program is loaded into the customer's computer by the vendor and the extent to which the installed program must be tested against the program's specifications; (c) the extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation; (d) the extent to which enhancement and maintenance support by the vendor is needed for continued usefulness; (e) there is a rebuttable presumption that any program with a cost of $10,000 or less is not a custom program; (f) custom programs do not include basic operational programs or prewritten programs; and (g) if an existing program is selected for modification, there must be a significant modification of that program by the vendor so that it may be used in the customer's specific hardware and software environment.

Taxable basic operational programs (commonly referred to as "systems software") are programs that perform overall control and direction of the computer system and permit it to do the functions basic to the operation of a computer, and permit it to execute the instructions contained in utility software and applications software programs. Taxable prewritten programs (often referred to as "canned programs") are programs prepared, held, or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease.

The bill would modify the statutory definition of "tangible personal property" to specifically include prewritten computer software, which includes by definition the following:

a. Computer software that is not designed and developed by the author or creator of the software according to a specific purchaser’s specifications.

b. Computer software upgrades that are not designed and developed by the author or creator of the software according to a specific purchaser’s specifications.

c. Computer software that is designed and developed by the author or creator of the software according to a specific purchaser’s specifications and that is sold to another purchaser.

d. Any combination of computer software under (a) to (c), including any combination with any portion of such software.

e. Computer software as described above and any portion of such software, that is modified or enhanced by any degree to a specific purchaser’s specifications, except such modification or enhancement that is reasonably and separately indicated on an invoice, or other

statement of the price, provided to the purchaser.

"Computer software" would mean a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. "Computer" would mean an electronic device that accepts information in digital or similar form and that manipulates such information to achieve a result based on a sequence of instructions.

As under current law, sales of custom computer programs that do not meet the definition of "prewritten computer software" outlined above would be exempt from tax.

The proposed statutory definitions are consistent with definitions required by the Agreement, and DOR indicates that the new definitions would be interpreted as identical to the current provisions of the administrative rule for most transactions. However, the Department has identified two situations where the tax would be imposed differently under the bill.

The first situation involves cases where one vendor sells taxable prewritten software to another vendor who, in turn, sells the prewritten software, along with modifications programmed by the second vendor, to the end-user. Under current law, the initial sale of the software from the first vendor to the second vendor would be taxable, and the subsequent sale of the modified software would not be subject to tax, assuming it resulted in a custom computer program. Under the bill, the first sale of the software would be exempt as a sale for resale, but the tax would be imposed on the prewritten software, less any separately-stated charges for program modifications, in the second sale to the end-user. The charges for the modifications would not be taxed under current law and would not be taxed under the bill as long as they were separately stated on the invoice to the purchaser.

The second situation involves cases where, in a single transaction, a vendor has developed prewritten software that must be modified by the vendor for use by the final customer. Under current law, the entire amount of the sale to the customer would be exempt, assuming the modifcations resulted in a custom computer program. Under the bill, the tax would be imposed on the proceeds of the final sale, less any separately-stated charges for programmed modifications. As in the first example, the charges for the modifications to the software would not be taxed under current law and would not be taxed under the bill as long as they were separately stated on the invoice to the purchaser.

It should be noted that DOR's interpretation of pre-written software under current law has been the subject of recent litigation (*Menasha Corporation vs. Wisconsin Department of Revenue).* Following a decision by the Court of Appeals on January 25, 2007, in favor of the taxpayer's position that the software in question was nontaxable custom software (rather than taxable, prewritten software), the Department has filed a petition with the Wisconsin Supreme Court asking it to review the decision. The final resolution of the case could affect the degree to which the definitions under the SSUTA would represent a change from the current law.

ANIMAL MEDICINE

According to DOR, the new definition of "drug" under the bill (described below) would change how animal foods that may be considered medicines under current law sold by veterinarians are taxed. Under present law, veterinarians pay the sales tax on their purchases of animal food that would meet the definition of "medicine" (because it prevents disease, for example), and the tax is not imposed when the food is sold to the customer. Under the bill, the purchase of animal food sold by the veterinarian apart from the provision of veterinary services would be an exempt sale for resale and the final sale to the customer would be taxable, unless the customer could claim an exemption (because the food is for farm livestock, for example).

DEFINITIONS OF "GROSS RECEIPTS," "SALES PRICE," AND "PURCHASE PRICE"

Current law includes a detailed definition of "gross receipts", which is referenced in the statutes imposing the sales tax, the statutory exemptions, and other provisions. Current law also includes a similar definition of "sales price", which is referenced in the use tax statutes.

The bill would repeal the definition of "gross receipts" and, instead, refer to a new definition of "sales price" in the language imposing the sales tax and in the exemption statutes. The bill would also create a definition for the term "purchase price", which would be identical to the new definition of "sales price." The term "purchase price" would be used in the use tax statutes. The bill would also provide detailed information as to the conditions under which "sales price" and "purchase price" include consideration from a third party, as provided under the SSUTA. These provisions are described in the Appendix, where the terms of the SSUTA are summarized. The bill would also move certain provisions that are incorporated in the existing definitions of "gross receipts" and "sales price" to the section of the statutes relating to sales tax return adjustments and to other areas of the statutes. These provisions are described in this document under "Return Adjustments."

Although the bill contains numerous statutory modifications relating to these definitions, the Department of Revenue indicates that most of the new provisions would be consistent with the current statutes, rules, and administrative practice. However, these definitional provisions would make one substantive change relating to bundled property and would provide an additional option for allocating delivery charges between taxable and nontaxable items that are shipped together by a seller to a consumer. These items are discussed below.

BUNDLED PROPERTY

Under current law, if exempt tangible personal property is bundled with taxable tangible personal property by a seller and sold as a single product or piece of merchandise (such as a fruit basket that includes candy, or a cheese tray that includes a cutting board and knife), the seller is not

required to collect tax on the value of the nontaxable items. In addition, current law provides an exemption for food, food products, or beverages and other goods that are packaged together by a person other than a retailer before the sale to the final consumer if 50% or more of the sales price of the package is attributable to goods that are exempt.

The bill would specify that, in general, the entire sales price of a bundled transaction would be subject to the sales tax. However, if the retailer can identify, by reasonable and verifiable standards from the retailer's books and records that are kept in the ordinary course of its business for other purposes, including purposes unrelated to taxes, the portion of the price that is attributable to nontaxable products, that portion of the sales price would not be taxable. This provision would not apply to a bundled transaction that contains food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies.

Under the bill, a person who provides a product that is not a distinct and identifiable product because it is provided free of charge would be considered the consumer of that product and required to pay the sales tax on the purchase price of that product.

The bill would create an exemption for products sold in a transaction that would be a bundled transaction, except that it contains taxable and nontaxable products as described in "e" below. In such cases, the first person combining the products or creating the bundle would have to pay the tax on the person's purchase price of the taxable items.

The bill would also create an exemption for products sold in a transaction that would be a bundled transaction, except that the transaction meets the conditions described in "f" below. The current exemption for certain packages of nontaxable food items with taxable items in which the nontaxable portion is 50% or more of the total sales price of the package, described above, would be repealed because it would be covered under this new exemption.

"Bundled transaction" would mean the retail sale of two or more products, not including real property and services to real property, if the products are distinct and identifiable products and sold for one nonitemized price. "Bundled transaction" would not include any of the following:

a. The sale of any products for which the sales price varies or is negotiable based on the purchaser's selection of the products included in the transaction.

b. The retail sale of tangible personal property and a service, if the tangible personal property is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service.

c. The retail sale of a service and specified digital goods or additional digital goods, if such goods are essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service. [Digital goods are exempt from the sales tax under current law, but would become taxable under a separate provision of SB 40.]

d. The retail sale of services, if one of the services is essential to the use or receipt of another service, and provided exclusively in connection with the other service, and if the true object of the transaction is the other service.

e. A transaction that includes taxable and nontaxable products, if the seller's purchase price or the sales price of the taxable products is no greater than 10% of the seller's total purchase price or sales price of all the bundled products, as determined by the seller using either the seller's purchase price or sales price, but not a combination of both, or, in the case of a service contract, the full term of the service contract.

f. The retail sale of taxable and nontaxable tangible personal property if the transaction includes food and food ingredients, drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies and if the seller's purchase price or the sales price of the taxable tangible personal property is no greater than 50% of the seller's total purchase price or sales price of all the tangible personal property included in what would otherwise be a bundled transaction, as determined by the seller using either the seller's purchase price or the sales price, but not a combination of both.

With regard to transactions described in parts "b" and "c" of the definition of bundled transactions, the service provider would be considered the consumer of the property or goods and pay the sales tax on the purchase price of the property or goods.

With regard to transactions described in part "d" of the definition of bundled transactions, the service provider would be considered the consumer of the service that is essential to the use or receipt of the other service and pay the sales tax on the purchase price of the service (the bill should be amended to correctly state this provision).

"Distinct and identifiable product" would not include any of the following:

a. Packaging, including containers, boxes, sacks, bags, bottles, and envelopes; and other materials, including wrapping, labels, tags, and instruction guides; that accompany, and are incidental or immaterial to, the retail sale of any product.

b. A product that is provided free of charge to the consumer in conjunction with the purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction.

c. Any items specified under the definitions of "purchase price" and "sales price."

"One nonitemized price" would not include a price that is separately identified by product on a binding sales document, or other sales-related document, that is made available to the customer in paper or electronic form, including an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card, or a price list

DELIVERY CHARGES

Under current law, if a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation charge, is subject to the sales or use tax. As described in the administrative code related to such provisions, if a shipment includes both taxable and nontaxable property, the seller is required to indicate on the invoice the portion of the delivery charge "reasonably allocated" to the taxable property. That portion of the delivery charge is taxable. If no allocation is made, the entire delivery charge is taxable. The bill would specify that the allocation of such delivery charges between taxable and nontaxable items could be made on the basis of either price or weight.

DEFINITION OF "LEASE OR RENTAL"

Under current law, the state and local sales taxes are imposed on the privilege of selling, leasing, or renting tangible personal property and selling, performing, or furnishing taxable services. The current definition of "lease" includes rental, hire, and license. The bill would repeal this definition and, instead, create a more detailed definition of "lease or rental" that conforms to the requirements of the SSUTA.

Under the bill, "lease or rental" would mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term and for consideration, including: (a) a transfer that includes future options to purchase or extend; and (b) agreements related to the transfer of possession or control of motor vehicles or trailers, if the amount of any consideration may be increased or decreased by reference to the amount realized on the sale or other disposition of such motor vehicles or trailers, consistent with federal provisions regarding the taxation of motor vehicle operating leases.

Such transfers would be considered a lease or rental, regardless of whether the transfer is considered a lease or rental under generally accepted accounting principles, or any provision of federal or local law, or any other provision of state law.

"Lease or rental" would not include any of the following: (a) a transfer of possession or control of tangible personal property under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property after making all required payments; (b) a transfer of possession or control of tangible personal property under any agreement that requires transferring title to the tangible personal property after making all required payments and after paying an option price that does not exceed the greater of $100 or 1% of the total amount of the required payments; or (c) providing tangible personal property along with an operator, if the operator is necessary for the tangible personal property to perform in the manner for which it is designed and if the operator does more than maintain, inspect, or set up the tangible personal property.

These types of transfers would not be considered a lease or rental, regardless of whether such

transfer is considered a lease or rental under generally accepted accounting principles, or any provision of federal or local law, or any other provision of state law.

Equipment Provided with an Operator

According to the Department of Revenue, the most significant change under the new leasing provisions would be for transactions involving the use of equipment that is provided with an operator, such as cranes and other construction equipment.

Under current administrative rules, which are based on case law, the determination of whether such transactions are services (which may or may not be taxable) or leases of tangible personal property (which generally are taxable) depends upon how much control the lessor has over the operator's work and whether the customer or the lessor is responsible for satisfactory completion of the work. Specifically, under the current rule, a person who uses his or her own equipment to perform a job and who assumes responsibility for its satisfactory completion is considered to be performing a service. In contrast, if equipment is furnished with an operator to perform a job and the customer supervises and is responsible for the satisfactory completion of the work, the transaction is considered a lease of the equipment. If the transaction is a lease and it is customary or mandatory that the lessee accept an operator with leased equipment, the entire charge is subject to the tax. However, the operator's services are not taxable if billed separately and if a lessor customarily gives a lessee the option of taking the equipment without the operator.

Under the bill, any time tangible personal property is provided along with an operator the transaction would be considered a service rather than a lease as long as: (a) the operator is necessary for the property to perform in the manner for which it is designed; and (b) the operator does more than maintain, inspect, or set up the tangible personal property. The amount of control maintained by the lessor and the degree of responsibility for completion of the work assumed by the lessor or customer would no longer be considered in determining whether such transactions are leases or services.

Licensing Transactions

Because the SSUTA definition of lease is silent as to licenses, the bill would specifically impose state and local sales taxes on the privilege of licensing tangible personal property and taxable services. These changes would ensure that the definition of "lease" conforms to the SSUTA and that the licensing of computer software would remain taxable. According to DOR, these would not be substantive changes to current law.

Bargain Purchase Option Leases

The bill would specify that "lease or rental" would not include transfers of possession or control of tangible personal property under agreements that require transferring title to the property after making all required payments and after paying an option price that does not exceed the greater of $100 or 1% of the total amount of the required payments (bargain purchase option leases).

Instead, such transactions would be considered sales of property. Currently, the determination of whether such transactions are leases or sales is made based on federal guidelines set forth in an IRS Revenue Ruling. The federal guidelines consider a number of factors regarding the transaction, such as the lessor's investment in the property, lease term and renewal options, and whether the lessee has the option to purchase the property at less than market value. The proposed modification under the bill would streamline such determinations and would not affect the amount of tax owed on such transactions. However, the timing of when the tax is due would be affected in certain cases if a transaction is deemed to be a sale rather than a lease or vice-versa.

The remaining provisions would be consistent with DOR's current practice regarding the taxation of leases and rentals.

DEFINITION OF "RETAIL SALE"

The bill would define "retail sale" or "sale at retail" to mean any sale, lease, or rental for any purpose other than resale, sublease, or subrent. This modification was required in order to conform to the SSUTA, and is considered to be non-substantive by the Department.

DEFINITION OF "RETAILER ENGAGED IN BUSINESS IN THIS STATE"

Currently, for purposes of the use tax, a "retailer engaged in business in this state" means any retailer: (a) owning real property in the state or leasing or renting out any tangible personal property in this state or maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state; or (b) having a representative, agent, salesperson, canvasser, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any tangible personal property or taxable services. Certain exceptions apply with respect to out-of-state publishers.

Currently, the statutes specify that these provisions apply unless otherwise limited by federal statute. The bill would delete this provision and, instead, specify that a "retailer engaged in business in this state" also includes any retailer selling tangible personal property or taxable services for storage, use, or other consumption in this state, unless otherwise limited by federal law. The statutes currently encode physical presence standards for a retailer to be considered "a retailer engaged in business in this state" (and, therefore, required to collect Wisconsin sales and use tax on Wisconsin sales). Under the proposed modification, if the physical presence standards under federal law were revised, the state would automatically conform to the federal changes.

DEFINITION OF "SALE" AND SIMILAR TERMS

Under current law, the general definition of the terms "sale," "sale, lease or rental," "retail

sale," "sale at retail," or equivalent terms includes any one or all of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property or services. Under the bill, this general definition would be retained but would only apply to the term "sale." This would not be a substantive change.

The current definition of "sale" also incorporates a number of specific provisions regarding the taxation of drop-shipments, certain leases where possession is granted by the lessor to the lessee or another person at the direction of the lessee, auction sales, sales to contractors, and other transactions. The bill would make a substantive change regarding drop-shipments, which is described below. The other provisions would be moved from the definition of sale to other sections of the statutes or modified slightly in order to conform to the SSUTA. DOR indicates that these would not be substantive changes to current law.

DEFINITION OF "SALE FOR RESALE" AND SIMILAR TERMS

The bill would specify that "sales, lease, or rental for resale, sublease, or subrent" includes transfers of tangible personal property to a service provider that the service provider transfers in conjunction with, but not incidental to, the selling, performing, or furnishing of any service, and transfers of tangible personal property to a service provider that the service provider physically transfers in conjunction with the selling, performing, or furnishing of photographic, repair, fabricating and printing, and landscaping services. This provision would not apply to sales to contractors engaged in real property construction.

"Sales, lease, or rental for resale, sublease, or subrent" would not include any of the following: (a) the sale of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for use in real property construction activities or the alteration, repair, or improvement of real property, regardless of the quantity of such materials, supplies, and equipment sold; (b) any sale of tangible personal property to a purchaser even though such property may be used or consumed by some other person to whom such purchaser transfers the tangible personal property without valuable consideration, such as gifts, and advertising specialties distributed at no charge apart from the sale of other tangible personal property or service; (c) transfers of tangible personal property to a service provider that the service provider transfers in conjunction with the selling, performing, or furnishing of any service, if the tangible personal property is incidental to the service, unless the service provider is selling, performing, or furnishing photographic, repair, fabricating and printing, and landscaping service; and (d) sales of tangible personal property to a contractor or subcontractor for use in the performance of contracts with the U.S. or its instrumentalities for the construction of improvements on or to real property.

According to DOR, these provisions would be consistent with the current statutes and administrative practice.

DROP-SHIPMENTS

A "drop-shipment" occurs when a purchaser orders an item from a retailer and the retailer arranges for the manufacturer to deliver the item directly to the purchaser, without the retailer taking possession. A drop-shipment may involve a Wisconsin manufacturer making a delivery to a Wisconsin purchaser on behalf of an out-of-state retailer who is not registered to collect Wisconsin sales or use tax. Under current law (through the definition of "sale"), the Wisconsin manufacturer is required to collect the sales tax from the purchaser on such transactions, unless the purchaser can claim a valid exemption. Specifically, under current law, taxable sales include the delivery in this state of property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state. The person making the delivery must include the retail selling price of the property in that person's gross receipts and pay the sales tax on those receipts.

The bill would repeal these current provisions. As a result, Wisconsin manufacturers would no longer be liable for the sales tax on drop-shipments to Wisconsin purchasers. The manufacturer could accept an exemption certificate claiming resale from the unregistered seller, and the purchaser would be liable for use tax.

TREATMENT OF SERVICE CONTRACTS AND WARRANTIES

As described in this document under the "Overview of Current Law," the state sales and use tax is currently imposed on the service of installation, repair, maintenance, and related services to personal property, other than real property improvements (unless the property being installed or repaired is exempt when sold). Currently, service contracts and warranties related to tangible personal property are also subject to tax under this provision. The bill would exclude from coverage under this provision such services provided under a warranty or service contract and would, instead, specifically impose the tax on these services provided under a warranty or service contract in a new section of the statutes. According to DOR, there would be no substantive effect of the proposed modification.

EXEMPTIONS FOR FOOD AND BEVERAGES

Current Law

General Exemption for Off-Premises Consumption

Under current law, an exemption is provided for food, food products, and beverages for off-premises human consumption. "Food," "food products," and "beverages" include, by way of illustration and not of limitation, items commonly thought of as food (such as milk, meat, poultry, fish, fruit, fruit juices, vegetables, and condiments) and the following: (a) bottled water that is for

human consumption and that is not carbonated or sweetened or flavored; (b) coffee, coffee substitutes, tea, and cocoa; (c) spices and flavoring; and (d) dietary foods and health supplements.

"Food," "food products," and "beverages" do not include: (a) medicines, tonics, vitamins, and medicinal preparations in any form; (b) fermented malt beverages (beer) and intoxicating liquors; or (c) soda water beverages, bases, concentrates, and powders intended to be reconstituted by consumers to produce soft drinks, and fruit drinks and ades not defined as fruit juices.

Taxable Food Sales

Sales of meals, food, food products, and beverages for direct consumption on the premises are generally taxable. In addition, sales of the following items for off-premises consumption are taxable: (a) meals and sandwiches, whether heated or not; (b) heated food or heated beverages; (c) soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas; and (d) candy, chewing gum, lozenges, popcorn, and confections.

For purposes of this provision, "meal" includes, but is not limited to, a diversified selection of food, food products, or beverages that are customarily consumed as a breakfast, lunch, or dinner, that may not easily be consumed without an article of tableware and that may not conveniently be consumed while standing or walking; except that "meal" does not include frozen items that are sold to a consumer, items that are customarily heated or cooked after the retail sale and before they are consumed, or a diversified selection of food, food products, and beverages that is packaged together by a person other than the retailer before the sale to the consumer. Current law also includes a definition of "sandwich."

For on-premises sales, taxable gross receipts include cover, minimum, entertainment, service, or other charges made to patrons or customers.

Other Non-Taxable Food Sales

The following sales of food and beverages are also exempt from tax:

a. Meals, food, food products, or beverages sold by, and served at, hospitals, sanatoriums, nursing homes, retirement homes, community-based residential facilities, or registered day care centers.

b. Meals, food, food products, or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels."

c. Otherwise taxable food and beverage items, or disposable products that are transferred with such items, that are provided by a restaurant to the restaurant's employee during the employee's work hours.

d. Meals, food, food products, or beverages, furnished in accordance with any contract or

agreement or paid for to such institution through the use of an account of such institution, by a public or private institution of higher education to an undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at that institution and if the goods are consumed by that student and meals, food, food products, or beverages furnished to a National Football League team under a contract or agreement.

e. Food, food products, or beverages and other goods that are packaged together by a person other than a retailer before the sale to the final consumer if 50% or more of the sales price of the package is attributable to goods that are exempt.

For purposes of these provisions "premises" is construed broadly, and, by way of illustration but not limitation, includes the lobby, aisles, and auditorium of a theater or the seating, aisles, and parking area of an arena, rink, or stadium or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages is the place where served. Sales from a vending machine are considered sales for off-premises consumption.

Provisions of Governor's Proposal

The bill would repeal all of the existing provisions regarding sales of food and, instead, create new exemptions for:

a. Food and food ingredients, except candy, soft drinks, dietary supplements, and prepared food. "Food and food ingredient" would mean a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. "Food and food ingredient" would not include alcohol beverages or tobacco. The bill would also include definitions for "candy," "soft drinks," "dietary supplements," "prepared food," "alcoholic beverages," and "tobacco," which are outlined below. These definitions are consistent with the Agreement.

b. Food and food ingredients, except soft drinks, sold by hospitals, sanatoriums, nursing homes, retirement homes, community–based residential facilities, or registered day care centers, including prepared food that is sold to the elderly or handicapped by persons providing mobile meals on wheels.

c. Food and food ingredients furnished in accordance with any contract or agreement or paid for to such institution through the use of an account of such institution, by a public or private institution of higher education to any of the following: (1) an undergraduate student, a graduate student, or a student enrolled in a professional school if the student is enrolled for credit at the public or private institution of higher education and if the food and food ingredients are consumed by the student; or (2) a National Football League team.

In addition, as described in this document under "Bundled Property," the current exemption for food, food products, or beverages and other goods that are packaged together by a person other than a retailer before the sale to the final consumer if 50% or more of the sales price of the package

is attributable to goods would be repealed. Instead, an exemption would be provided for transactions involving certain types of goods packaged and sold together, including (but not limited to) food and food ingredients, if the seller's purchase price or the sales price of the taxable tangible personal property is no greater than 50% of the seller's total purchase price or sales price of all the tangible personal property included in what would otherwise be a bundled transaction.

Similar to current law, these provisions would also exempt candy, soft drinks, dietary supplements, and prepared foods, and disposable products that are transferred with such items, furnished by a restaurant to the restaurant's employee during the employee's work hours. However, the bill would limit this exemption to only include such items that are furnished for no consideration by restaurants to their employees.

"Prepared food" would mean the following:

(a) Food and food ingredients sold in a heated state.

(b) Food and food ingredients heated by the retailer, except for the following: (1) two or more food ingredients mixed or combined by a retailer for sale as a single item, if the retailer's primary classification in the 2002 North American Industry Classification System (NAICS) is manufacturing under subsector 311, not including bakeries and tortilla manufacturing under industry group number 3118; (2) two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated, and sold by volume or weight; (3) bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas; (4) food and food ingredients that are only sliced, repackaged, or pasteurized by a retailer; or (5) eggs, fish, meat, and poultry, and foods containing any of them in raw form, that require cooking by the consumer, as recommended by the federal Food and Drug Administration (FDA) to prevent food-borne illnesses.

(c) Two or more food ingredients mixed or combined by a retailer for sale as a single item, with all of the same exceptions as under "b", above. However, it was intended that that the exception to "b" for food and food ingredients that are only sliced, repackaged, or pasteurized by a retailer would not apply as an exception to "c". The bill should be amended to accomplish this intent, in order to comply with the definitions under the SSUTA .

(d) Food and food ingredients sold with eating utensils that are provided by the retailer, including plates, knives, forks, spoons, glasses, cups, napkins, and straws ("plate" would not include a container or packaging used to transport food and food ingredients). For purposes of this provision, a retailer is considered to provide utensils if either of the following applies: (1) the utensils are available to purchasers and the retailer's sales of prepared food (under "a" and "b"), soft drinks, and alcoholic beverages at an establishment are more than 75% of the retailer's total sales at that establishment; or (2) for retailers not described under "1", the retailer's customary practice is to physically give or hand the utensils to the purchaser, not including plates, glasses, or cups that are necessary for the purchaser to receive the food and food ingredients and that the retailer makes available to the purchaser.

The 75% threshold under (d) would be determined using the following:

a. A numerator that includes sales of prepared food and food for which plates, bowls, glasses, or cups are necessary to receive the food, but not including alcoholic beverages.

b. A denominator that includes all food and food ingredients, including prepared food, candy, dietary supplements, and soft drinks, but not including alcoholic beverages.

If the percentage is 75% or less, utensils are considered to be provided by the retailer if the retailer's customary practice is to physically give or hand the utensils to the purchaser or, in the case of plates, bowls, glasses, or cups that are necessary to receive the food, to make such items available to the purchaser.

If the percentage is greater than 75%, utensils are considered to be provided by the retailer if the utensils are made available to the purchaser.

For a retailer whose percentage is greater than 75%, an item sold by the retailer that contains four or more servings packaged as one item and sold for a single price would not become prepared food simply because the retailer makes utensils available to the purchaser of the item, but would become prepared food if the retailer physically gives or hands utensils to the purchaser of the item. For purposes of this provision, serving sizes would be based on the information contained on the label of each item sold, except that, if the item has no label, the serving size would be based on the retailer's reasonable determination.

If a retailer sells food items that have a utensil placed in a package by a person other than the retailer, the utensils would be considered to be provided by the retailer. However, if a retailer sells food items that have a utensil placed in a package by a person other than the retailer and the person's primary 2002 NAICS classification is manufacturing under subsector 311, the utensils would not be considered to be provided by the retailer.

For purposes of the 75% provision, a retailer would have to determine the percentage for the retailer's tax year or business fiscal year, based on the retailer's data from the retailer's prior tax year or business fiscal year, as soon as practical after the retailer's accounting records are available, but not later than 90 days after the day on which the retailer's tax year or business fiscal year begins. For retailers with more than one establishment in this state, a single determination that combines the information for all of the retailer's establishments in this state would have to be made annually and apply to each of the retailer's establishments in this state. A retailer that has no prior tax year or business fiscal year would have to make a good faith estimate of its percentage for the retailer's first tax year or business fiscal year and adjust the estimate prospectively after the first three months of the retailer's operations if the actual percentage is materially different from the estimated percentage.

"Candy" would mean a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops,

or pieces. "Candy" would not include a preparation that contains flour or that requires refrigeration.

"Dietary supplement" would mean a product, other than tobacco, that is intended to supplement a person's diet, if all of the following apply:

a. The product contains any of the following ingredients or any combination of any of the following ingredients: (1) a vitamin; (2) a mineral; (3) an herb or other botanical; (4) an amino acid; (5) a dietary substance that is intended for human consumption to supplement the diet by increasing total dietary intake; or (6) a concentrate, metabolite, constituent, or extract.

b. The product is intended for ingestion in tablet, capsule, powder, soft-gel, gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not represented as conventional food and is not represented for use as the sole item of a meal or diet.

c. The product is required to be labeled as a dietary supplement under federal regulations.

"Soft drink" would mean a beverage that contains less than 0.5% of alcohol and that contains natural or artificial sweeteners. "Soft drink" would not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50% vegetable or fruit juice by volume.

"Alcoholic beverage" would mean a beverage that is suitable for human consumption and that contains 0.5% or more of alcohol by volume.

"Tobacco" would mean cigarettes, cigars, chewing tobacco, pipe tobacco, and any other item that contains tobacco.

Net Impact of the Provisions

With the above modifications, most sales of food would be treated the same as under current law. Most sales of food for off-premises consumption would remain exempt; restaurant meals, alcohol, tobacco, and soda would continue to be taxable; and the current exemptions for institutional sales of meals and food (including "meals on wheels") would be retained. However, as noted, the exemption for food and disposable utensils that are provided by restaurants to their employees would apply only if such items were furnished for no consideration. Also, exempt food or beverages and other taxable goods that are packaged together by a person other than a retailer before the sale to the final consumer ("lunchables" for example) would be exempt, unless the transaction met the definition of a "bundled transaction". Currently, these products are exempt only if 50% or more of the sales price of the package is attributable to goods that are exempt.

In addition to these changes, the Department of Revenue has identified a number of other types of food products that would be taxed differently under the new provisions. For example, chocolate chips and marshmallows, which are currently exempt, would be taxable under the bill,

while unpopped popcorn, which is currently taxable, would be exempt. Attachment 1 presents a list of examples of food items whose tax treatment would be modified under these provisions.

EXEMPTION FOR PRESCRIPTION DRUGS

Under current law, a sales and use tax exemption is provided for medicines that are any of the following: (a) prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law; (b) furnished by a licensed physician, surgeon, podiatrist, or dentist to a patient for treatment of the patient; (c) furnished by a hospital for treatment of any person pursuant to the order of a licensed physician, surgeon, podiatrist, or dentist; (d) sold to a licensed physician, surgeon, podiatrist, dentist, or hospital for the treatment of a human being; (e) sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; (f) furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof; or (g) furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, or to any licensed dentist, podiatrist, or optometrist if the medicine may not be dispensed without a prescription.

The bill would replace the word "medicine" with "drug" in the statute relating to this exemption and clarify that such drugs must be for a human being.

Under the current exemption statutes, "medicines," means any substance or preparation that is intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and that is commonly recognized as a substance or preparation intended for such use; but "medicines" do not include any of the following: (a) any auditory, prosthetic, ophthalmic, or ocular device or appliance; (b) articles that are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical, or physical equipment or articles, or the component parts or accessories thereof; or (c) any alcohol beverage the manufacture, sale, purchase, possession, or transportation of which is licensed or regulated under the laws of this state.

The bill would repeal this definition. Instead, consistent with the SSUTA, "drug" would be defined as a compound, substance, or preparation, or any component of them, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:

a. It is listed in the US Pharmacopoeia, Homeopathic Pharmacopoeia of the US, or National Formulary, or any supplement to any of them.

b. It is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease.

c. It is intended to affect a function or structure of the body.

The bill would also create a definition of "prescription", which would mean an order, formula, or recipe that is issued by any oral, written, electronic, or other means of transmission and by a person who is authorized by the laws of this state to issue such an order, formula, or recipe. The definitions of "food and food ingredients," "dietary supplements," and "alcoholic beverages" are included in the previous section regarding the taxation of food.

The bill would also create a new exemption for a package in which bandages, dressings, syringes, and similar items that are combined with exempt drugs for sale by the seller as a single product or piece of merchandise, if such a package meets certain requirements. This exemption would also apply only to items used on human beings.

The Department indicates that the new definition of "drug" is consistent with how it interprets the current statute regarding this exemption. The new exemption for certain packages including bandages and similar items and exempt drugs would be consistent with the Department's current practice in administering the exemption for medicine, although there is no statute or rule regarding these items under present law. The proposed definitions of "dietary supplement" and "prescription" are consistent with the Agreement.

MEDICAL EQUIPMENT EXEMPTION

Current law provides an exemption for the following property, including parts and accessories:

a. Artificial devices individually designed, constructed, or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction, or substitute for the bodily structure including the extremities of the individual.

b. Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.

c. Artificial teeth sold by a dentist.

d. Eye glasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.

e. Crutches and wheelchairs including motorized wheelchairs and scooters for the use of persons who are ill or disabled.

f. Antiembolism elastic hose and stockings that are prescribed by a physician and sold to the ultimate consumer.

g. Adaptive equipment that makes it possible for handicapped persons to enter, operate, or leave a vehicle, if that equipment is purchased by the individual who will use it, a person acting

directly on behalf of that individual, or a nonprofit organization.

The bill would repeal these exemptions and, instead, create exemptions for durable medical equipment, mobility-enhancing equipment, and prosthetic devices, and accessories for such equipment or devices, if the equipment or devices are used for a human being. In addition, as described in this document under "Bundled Property," an exemption would be provided for transactions involving certain types of goods packaged and sold together, including (but not limited to) drugs, durable medical equipment, mobility-enhancing equipment, prosthetic devices, and medical supplies, if the seller's purchase price or the sales price of the taxable tangible personal property is no greater than 50% of the seller's total purchase price or sales price of all the tangible personal property included in what would otherwise be a bundled transaction.

The bill would create the following definitions for these items, which are consistent with the definitions required by the Agreement:

"Durable medical equipment" would mean equipment (including repair parts and replacement parts) that is for use in a person's home; that is primarily and customarily used for a medical purpose related to a person; that can withstand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body. "Durable medical equipment" would not include mobility–enhancing equipment.

"Mobility-enhancing equipment" would mean equipment (including repair parts and replacement parts) that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not used by a person who has normal mobility. "Mobility-enhancing equipment" would not include a motor vehicle or any equipment on a motor vehicle that is generally provided by a motor vehicle manufacturer.

"Prosthetic device" would mean a device (including repair parts and replacement parts) that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body. According to DOR, "prosthetic device" would include antiembolism elastic hose.

Current law also provides a separate exemption for the ultimate consumer of apparatus or equipment for the injection of insulin or the treatment of diabetes and supplies used to determine blood sugar level. The bill would limit this exemption to only supplies used to determine blood sugar level. However, apparatus and equipment for the injection of insulin or the treatment of diabetes would still be exempt as durable medical equipment, but only for home use.

In addition, current law provides an exemption for equipment used to administer oxygen for medical purposes by a person who has a prescription for oxygen written by a person authorized to prescribe oxygen. The bill would repeal this specific exemption. Instead, such equipment would be exempt as durable medical equipment, but only for home use.

The net result of the modifications under the bill would be an expansion of the types of medical equipment that would be exempt from tax to include items such as hospital beds, patient lifts, and I.V. stands that are purchased for home use. However, as noted, while current law exempts equipment used in the treatment of diabetes and equipment used to administer oxygen, the bill would require such equipment to be for home use in order to be eligible for the exemption. A more detailed list with examples of items that would become exempt under these provisions is provided in Attachment 2.

EXEMPTION FOR CLOTH DIAPERS

The bill would repeal the current exemption for cloth diapers. This change is necessary to conform to the Agreement, which includes cloth diapers in the definition of clothing.

EXEMPTION FOR WATER SOLD THROUGH MAINS

Under current law, an exemption is provided for water delivered through mains. The bill would specify that this exemption would only apply to water that is not food or a food ingredient. According to DOR, this is a nonsubstantive change required to conform to the definitions required under the Agreement.

EXEMPTION CERTIFICATES

General Requirements

Under current law, it is presumed that all receipts are subject to the sales and use tax until the contrary is established. The burden of proving that a sale is not taxable is upon the seller unless the seller takes from the purchaser a certificate to the effect that the property or service is purchased for resale or is otherwise exempt. However, no certificate is required for sales of cattle, sheep, goats, and pigs that are sold at an animal market, and no certificate is required for sales of commodities, that are consigned for sale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the U.S. Commodity Futures Trading Commission if upon the sale the commodity is not removed from the warehouse.

The bill would modify this provision in three ways. First, the exemption certificate could be an electronic or paper certificate taken by the seller in a manner prescribed by DOR ["Electronic" would mean relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.] Second, the provision specifying that no certificate would be required for sales of livestock or commodities would be repealed; therefore, an exemption certificate would be required for such sales. Third, the bill would specify that no exemption certificate would be needed for the following items: occasional sales; separately-stated insurance

charges; admission to Circus World Museum; state park fees; motor vehicle fuel; prescription drugs and associated bandages, dressings, syringes and similar items; newspapers; magazines sold by subscription; water delivered through mains; food; caskets and burial vaults for human remains; certain medical equipment; mobility-enhancing equipment; prosthetic devices; fuel and electricity; used primary-housing mobile homes; fees to obtain copies of certain public records; sales by American Legion baseball teams; long-term rentals of mobile homes; 911 calls; animal ID tags issued by the Department of Agriculture, Trade and Consumer Protection; utility low income assistance fees; one-time licenses to purchase tickets to certain athletic events; and flags. According to DOR, not requiring an exemption certificate for these types of transactions would conform to the Department's current administration of the tax, which is done through publications but is not specified in the statutes or rules.

Seller's Burden of Proof

Under current law, an exemption certificate relieves the seller from the burden of proving that a sale is not taxable only if the certificate is taken in good faith from another seller who is purchasing the items for resale or from a person claiming exemption. The exemption certificate must be signed by and bear the name and address of the purchaser, and indicate the general character of the property or service sold by the purchaser and the basis for the claimed exemption. The certificate must be in such form as DOR prescribes.

Under the bill, an exemption certificate would relieve the seller from the burden of proof only if the seller obtains a fully completed exemption certificate, or the information required to prove the exemption, from a purchaser no later than 90 days after the date of the sale, except as provided below. The certificate would not relieve the seller of the burden of proof if the seller fraudulently fails to collect sales tax, solicits the purchaser to claim an unlawful exemption, accepts an exemption certificate from a purchaser who claims to be an entity that is not subject to the sales tax, if the subject of the transaction sought to be covered by the exemption certificate is received by the purchaser at a location operated by the seller in this state and the exemption certificate clearly and affirmatively indicates that the claimed exemption is not available in this state. The certificate would have to provide information that identifies the purchaser and indicate the basis for the claimed exemption, and a paper certificate would have to be signed by the purchaser. The certificate would have to be in such form as DOR prescribes by rule (no rule is required currently, but does exist). The "good faith" requirement would be deleted.

If the seller has not obtained a fully completed exemption certificate or the information required to prove the exemption, the seller could, no later than 120 days after DOR requests that the seller substantiate the exemption, either provide proof of the exemption by other means or obtain, in good faith, a fully completed exemption certificate from the purchaser.

If a purchaser who purchases taxable items without paying a sales or use tax on such purchase because such items were for resale makes any use of the items other than retention, demonstration or display while holding the items for sale, lease, or rental in the regular course of the purchaser's operations, the use would be taxable to the purchaser as of the time that the items are first used by the purchaser, and the purchase price of the items to the purchaser would be the

measure of the tax. The current provision making the seller liable for the tax under certain circumstances would be deleted.

The provisions described above would apply with respect to the sales tax. Similar provisions would be provided relating to exemption certificates and the use tax. However, the use tax provisions would also specify that an exemption certificate would not be required in the case of certain packages containing at least 50% of nontaxable food, drugs, or certain medical equipment for which an exemption would be provided under the bill. The administration indicates that the bill should be amended to include this exception in the case of exemption certificates for the sales tax as well.

Goods or Services Purchased for Resale

Under current law, if a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of the purchaser's operations, the use is subject to the use tax as of the time the property is first used by the purchaser, based on the sales price of the property to the purchaser. The seller is liable for sales tax with respect to the sale of the property to the purchaser only when there is an unsatisfied use tax liability under this provision because the seller has provided incorrect information about the transaction to DOR.

The bill would delete the reference to "resale certificates", which are no longer used, and apply the existing provision to sales of services as well as property. In addition, the provision making the seller liable for sales tax in cases where the seller has provided incorrect information about the transaction to DOR would be eliminated. According to DOR, these modifications would make the statutes conform to its current administrative practice.

NON-EXEMPT USE OF PROPERTY AFTER PURCHASE

Under current law, if a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the sale as exempt from tax and the purchaser subsequently uses the property in some other manner or for some other purpose, the purchaser is liable for payment of the sales tax. The tax is measured by the sales price of the property to the purchaser, but if the taxable use first occurs more than six months after the sale, the purchaser may base the tax either on that sales price or on the fair market value of the property at the time the taxable use first occurs.

The bill would eliminate the option to base the tax on fair market value if the taxable use first occurs more than six months after the purchase so that the tax would always be based on the sales price to the purchaser. According to DOR, this change is needed to conform to the definitions of "purchase price" and "sales price" under the Agreement.

SOURCING PROVISIONS

The bill includes detailed provisions for determining the taxing jurisdiction in which a sale or lease of property or services occurs (sourcing). In general, the sourcing rules under the bill are destination-based, rather than origin-based, which is consistent with the current sourcing provisions in Wisconsin. However, the Department of Revenue has identified several situations where the SSUTA provisions would differ from current law and practice. The most significant change would be for direct mail transactions; other changes involve towing services, admissions, leases, software and services (such as cable television) delivered electronically, and post-paid telecommunications services. The following sections describe the current sourcing provisions and the provisions of the bill, and highlight areas where there would be a substantive change to current practice. However, the sourcing rules specific to telecommunications are described under a separate section of the paper in which modifications to both telecommunications definitions and sourcing under the SSUTA are reviewed.

Current Sourcing Rules

General Rule

Current law provides that a sale or purchase involving the transfer of ownership of property is deemed to have been completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. A common carrier or the U.S. postal service is deemed the agent of the seller, regardless of any free on board (FOB) point and regardless of the method by which freight or postage is paid. This provision generally applies to both state and local sales taxes. However, for local tax purposes, sales of motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semi-trailers, all-terrain vehicles, and aircraft are taxed by the county and/or stadium district in which the property is customarily kept.

Rentals and Leases

Rentals and leases of property, except as provide below, have a situs at the location of that property. "Situs" identifies which jurisdiction may impose a sales or use tax on a transaction.

Leased or rented motor vehicles and other equipment used principally on the highway at normal highway speeds are located in the county in which they are customarily kept, except that drive-it-yourself motor vehicles and equipment used principally on the highway at normal highway speeds, if those vehicles or that equipment are used for one-way trips or leased for less than one month, are located in the county in which they come into the lessee's possession.

Except for motor vehicles and equipment described above, leased or rented property that characteristically is moving property, including but not limited to aircraft and boats, is located in a county if it is used primarily in that county or it is usually kept in that county when it is not in use.

For purposes of the sourcing provisions, a license of tangible personal property is treated as a lease or rental of such property.

Services

In general, services have a situs at the location where they are furnished. However, a telecommunication service has a situs where the customer is billed for the service if the customer calls collect or pays by credit card. Mobile telecommunication services subject to the federal Mobile Telecommunications Sourcing Act have a situs at the customer's place of primary use of the services, as determined under federal law. Towing services have a situs at the location to which the vehicle is delivered. Services performed on tangible personal property have a situs at the location where the property is delivered to the buyer.

Florists

Through administrative agreement, florists source wire orders based on the location where the order is taken rather than where the delivery is to occur.

Sourcing Provisions Under the Bill

The bill would repeal the existing provisions described above and create the following new provisions related to sourcing of transactions for sales tax purposes.

General Rules

Except as provided below, the location of a sale would be determined as follows:

a. If a purchaser receives the product at a seller's business location, the sale occurs at that business location. ["Receive" would mean taking possession of tangible personal property; making first use of services; or taking possession or making first use of digital goods, whichever comes first. "Receive" would not include a shipping company taking possession of tangible personal property on a purchaser's behalf. "Product" would include tangible personal property, digital goods, and services.]

b. If a purchaser does not receive the product at a seller's business location, the sale occurs at the location where the purchaser, or the purchaser's designated donee, receives the product, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

c. If the location of a sale of a product cannot be determined under (a) or (b), the sale occurs at the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of a sale is not in bad faith.

d. If the location of a sale cannot be determined under (a) through (c), the sale occurs at the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using that address is not in bad faith.

e. If the location of a sale cannot be determined under (a) through (d), the location of the sale is determined as follows: (1) if the item sold is tangible personal property, the sale occurs at the location from which the tangible personal property is shipped; (2) if the item sold is a digital good, or computer software delivered electronically, the sale occurs at the location from which the digital good or computer software was first available for transmission by the seller; and (3) if a service is sold, the sale occurs at the location from which the service was provided.

According to DOR, with four exceptions, the proposed general sourcing provisions would result in the same treatment as current law for sales of tangible personal property and services (other than telecommunications, which would have special sourcing rules described below). The four exceptions are as follows:

a. Under present law, if a purchaser hires a common carrier and the seller does not know where the person is having the property shipped, the law still requires sourcing to the location to which the property is shipped (because common carriers are always deemed to be agents of the seller). Under the bill, such sales would typically be sourced to either the purchaser's address as indicated by the seller's records [under (c) above] or to the seller's location [under (e) above] if the seller did not have an address for the purchaser.

b. Under current law, if the purchaser hires a contract carrier, the seller must source the sale to the seller's location (because the contract carrier is deemed to be the agent of the purchaser in such transactions). Under the bill, such sales would be sourced to the purchaser's address as indicated by the seller's records [under (c) above], assuming the seller does not have knowledge of where the item is shipped.

c. Towing services would be sourced to the location where the vehicle is picked up rather than the location to which it is delivered.

d. Admissions to in-state events would be sourced to the location of the event rather than to the location where the offer is accepted by the seller.

Direct Mail

Under current law, the general sourcing rules for tangible personal property apply to sales of direct mail. Therefore, the seller (printer) is required to determine the destination of each piece of direct mail and source a portion of the total charges for the transaction to each jurisdiction to which the mail is shipped based on the proportion of the total shipment going to that jurisdiction. For example, if half of the items shipped were mailed to Wisconsin addresses, then half of the printer's charges for the mailing would be sourced to Wisconsin.

Under the bill, the sourcing of a sale of direct mail would depend upon whether or not the purchaser provides the seller with a direct pay permit, a direct mail form, or other information that indicates the appropriate taxing jurisdiction to which the direct mail is delivered to the ultimate recipients:

a. If the purchaser provides a direct pay permit or a direct mail form to the seller, the purchaser would have to pay or remit, as appropriate, to DOR the use tax on all purchases for which the tax is due and the seller would be relieved from liability for collecting such tax. Under this provision, the tax would be due to the jurisdiction in which the direct mail is stored, used, or consumed. A direct mail form provided to a seller under these provisions would remain effective for all sales by the seller to the purchaser unless revoked in writing by the purchaser and provided to the seller.

b. If the purchaser provides the seller with other information that indicates the appropriate taxing jurisdiction to which the direct mail is delivered to the ultimate recipients, the general sourcing provisions under the bill would apply and the printer would be required to collect and remit the sales or use tax to the appropriate jurisdictions on a destination basis.

c. If the purchaser does not provide a direct pay permit, direct mail form, or other information that indicates the appropriate taxing jurisdiction, the sale would occur at the location from which the mail is shipped. Under this provision, the seller would remit the sales tax to the jurisdiction from which the material was shipped.

Regarding item (c), under current law, if a taxable purchase was subject to sales tax by another state in which the purchase was made, the amount of tax paid to the other state is applied as a credit against the amount of use tax due Wisconsin. Under the bill, however, no credit could be applied against a sales tax paid on the purchase of direct mail, if the direct mail purchaser did not provide to the seller a direct pay permit, a direct mail form, or other information that indicates the appropriate taxing jurisdiction to which the direct mail is delivered to the ultimate recipients. Therefore, under the provisions of item (c), payment of the tax by the seller would not eliminate the purchaser's obligation to pay use tax in jurisdictions where the direct mail is ultimately stored, used, or consumed. DOR indicates that the refusal of a credit for taxes paid in another state is intended to provide an incentive for purchasers of direct mail to provide a direct pay permit, direct mail form, or other information that indicates the appropriate taxing jurisdiction.

A direct pay permit would allow a purchaser (typically a business purchaser) to pay tax directly to the state rather than to the seller. "Direct mail form" would mean a form for direct mail prescribed by the Department. "Direct mail" would mean printed material that is delivered by the U.S. postal service or other delivery service to a mass audience or to addressees on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material or any tangible personal property included with the printed material is not billed directly to the recipients of the printed material. "Direct mail" would include any tangible personal property provided directly or indirectly by the purchaser of the printed material to the seller of the printed material for inclusion in any package containing the printed material, including billing invoices,

return envelopes, and additional marketing materials. It would not include multiple items of printed material delivered to a single address.

Leases and Rentals

General Rules. Except as provided below, with regards to the first or only payment on a lease or rental, the lease or rental of tangible personal property would occur at the seller's business location or, if delivered, the delivery location. If the property is moved from the place where the property was initially delivered, the subsequent periodic payments on the lease or rental would occur at the property's primary location as indicated by an address for the property that is provided by the lessee and that is available to the lessor in records that the lessor maintains in the ordinary course of business, if the use of such an address does not constitute bad faith. The location of a lease or rental as determined under this provision would not be altered by any intermittent use of the property at different locations.

These provisions differ from current law in that current law generally does not source the first payment to the seller's location. In addition, current law sources subsequent lease payments to the actual location of the property at the time of payment, rather than to the primary location of the property per the lessor's records. DOR indicates that the proposed provisions for subsequent payment would be consistent with current practice regarding the state sales tax, but some lease payments could be sourced differently for local sales tax purposes.

In addition to the modifications described above, and consistent with provisions that would specifically impose state and local taxes on the privilege of licensing tangible personal property and taxable services, the bill would provide that a license of tangible personal property would be sourced in the same manner as a lease or rental of such property.

Vehicles. The lease or rental of motor vehicles, trailers, semitrailers, and aircraft, that are not transportation equipment (as defined below), would occur at the primary location of such property as indicated by an address for the property that is provided by the lessee and that is available to the lessor in records that the lessor maintains in the ordinary course of the lessor's business, if the use of such an address does not constitute bad faith. The location of a lease or rental as determined under this provision would not be altered by any intermittent use of the property at different locations. This provision is generally the same as current law, except that the SSUTA provision would specify that the sourcing would occur at the property's primary location.

Transportation Equipment. The lease or rental of transportation equipment would occur at the seller's business location or, if delivered, the delivery location. "Transportation equipment" would mean all of the following:

a. Locomotives and railcars that are used to carry persons or property in interstate commerce.

b. Trucks and truck tractors that have a gross vehicle weight rating of 10,001 pounds or

greater, trailers, semitrailers, and passenger buses, if such vehicles are registered under the International Registration Plan and operated under the authority of a carrier that is authorized by the federal government to carry persons or property in interstate commerce.

c. Aircraft that is operated by air carriers that are authorized by the federal government or a foreign authority to carry persons or property in interstate for foreign commerce.

d. Containers that are designed for use on the vehicles described above and component parts attached to or secured on such vehicles.

These provisions are included in the bill in order to conform to the SSUTA sourcing rules. However, sales and leases of the types of transportation equipment identified above are typically exempt from tax under current law and would remain exempt under the bill.

Florists

Under current administrative practice, wire order sales by Wisconsin retail florists are taxed using origin-based sourcing; that is, the sale is considered to have occurred in Wisconsin regardless of the location to which the goods are shipped. This is in contrast to the general sourcing rules outlined above (under current law and the bill), which are destination-based.

Under the bill, beginning in 2008, the general sourcing rules for sales of tangible personal property would also apply to florists.

"Retail florist" would mean a person engaged in the business of selling cut flowers, floral arrangements, and potted plants and who prepares such flowers, floral arrangements, and potted plants. "Retail florist" would not include a person who sells cut flowers, floral arrangements, and potted plants primarily by mail or via the Internet.

Sourcing of Vehicles, Boats, and Aircraft for Local Sales Tax Purposes

Under the bill, the sourcing provisions described above would generally apply for both state and local sales tax purposes, except that, for local tax purposes, sales of motor vehicles, aircraft, boats, and mobile homes not exceeding 45 feet in length would continue to be sourced to the location where they are customarily kept.

As a result, for local tax purposes, retail sales of snowmobiles, trailers, semi-trailers, and all-terrain vehicles would be sourced in the same manner as other sales of tangible personal property, rather than to the location where they are customarily kept. However, as under current law, the bill would provide that if the sale of a snowmobile, trailer, semi-trailer, or all-terrain vehicle is sourced to a county that does not impose a local sales tax, the purchaser would owe the local use tax if the property is later kept in a county that has a tax.

When a Sale Occurs

As under current law, a sale or purchase involving the transfer of ownership of property would be considered to be completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. A common carrier or the U.S. postal service would be considered the agent of the seller, regardless of any FOB point and regardless of the method by which freight or postage is paid.

TELECOMMUNICATIONS

Current Law

Under current law, the sales tax is imposed on the sale of telecommunications services, other than mobile telecommunications services, that either originate or terminate in this state and are charged to a service address in this state (excluding services that are obtained by means of a toll-free number, that originate outside this state and that terminate in this state), including the rights to purchase telecommunications services [pre-paid calling cards and authorization numbers, and including access services to the Internet (based on DOR's interpretation of the definition of "telecommunications")]. In regard to the sale of the rights to purchase telecommunications services, if the sale takes place at a retailer's place of business, the situs of the sale is determined as follows: (a) if the sale takes place at a retailer's place of business, the retailer's place of business; (b) if the sale does not take place at the retailer's place of business and an item that will implement the right to purchase telecommunications services is shipped, the customer's shipping address; and (c) if neither "a" nor "b" apply, the customer's billing address.

The tax is also imposed on mobile telecommunications services utilized by customers whose place of primary use of the services is in this state, as determined under federal law, regardless of where such services, originate, terminate, or pass through.

The tax also applies to the sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including those services if they are merely an incidental element of another service that is sold to that purchaser and is not taxable.

"Telecommunications services" means sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. "Telecommunications services" does not include sending collect telecommunications that are received outside of the state.

Proposal

The bill includes a number of detailed statutory provisions regarding the definition and sourcing of various types of telecommunications services. According to DOR, these provisions are generally consistent with the current statutes, rules, and administrative practice, with the exception of two sourcing provisions, as described below.

Imposition of Sales Tax on Telecommunications Services

With respect to the imposition of the sales tax on telecommunications services, the bill would impose the tax on the sale of: (a) intrastate, interstate, and international telecommunications services except interstate 800 services; (b) telecommunications Internet access services; and (c) ancillary services, as defined below, except detailed telecommunications billing services.

The tax would continue to apply to the sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction, but not including services that are incidental to another nontaxable service and sold to the purchaser of the incidental service.

"Telecommunications services" would mean electronically transmitting, conveying, or routing voice, data, audio, video, or other information or signals to a point or between or among points. "Telecommunications services" would include the transmission, conveyance, or routing of such information or signals in which computer processing applications are used to act on the content's form, code, or protocol for transmission, conveyance, or routing purposes, regardless of whether the service is referred to as a voice over Internet protocol service or classified by the Federal Communications Commission (FCC) as an enhanced or value-added service.

"Telecommunications services" would not include any of the following:

a. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic transmission, if the purchaser's primary purpose for the underlying transaction is the processed data.

b. Installing or maintaining wiring or equipment on a customer's premises.

c. Tangible personal property.

d. Advertising, including directory advertising.

e. Billing and collection services provided to third parties.

f. Telecommunications Internet access service, as defined below.

g. Radio and television audio and video programming services, regardless of the medium

in which the services are provided, including cable service, as defined under federal law, audio and video programming services delivered by commercial mobile radio service providers, as defined in federal law, and the transmitting, conveying, or routing of such services by the programming service provider.

h. Ancillary services.

i. Digital products delivered electronically, including software, music, video, reading materials, or ringtones.

"Telecommunications Internet access services" would be defined as sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.

"Ancillary services" would mean services that are associated with or incidental to providing telecommunications services, including detailed telecommunications billing, directory assistance, vertical service, and voice mail services, but not including specified digital goods.

"Conference bridging service" would mean an ancillary service that links two or more participants of an audio or video conference call and may include providing a telephone number, but does not include the telecommunications services used to reach the conference bridge.

"Detailed telecommunications billing service" would mean an ancillary service that separately indicates information pertaining to individual calls on a customer's billing statement.

"Directory assistance" would mean an ancillary service that provides telephone numbers or addresses.

"800 service" would mean a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call and is marketed under "800," "855," "866," "877," or "888" toll-free calling, or any other number designated as toll-free by the FCC.

"Fixed wireless service" would mean a telecommunications service that provides radio communication between fixed points.

"International telecommunications services" would mean telecommunications services that originate or terminate in the U.S., including the District of Columbia, and any U.S. territory or possession and originate or terminate outside of the U.S., including the District of Columbia, and any U.S. territory or possession.

"Interstate telecommunications services" would mean telecommunications services that originate in one state or U.S. territory or possession and terminate in a different state or U.S. territory or possession.

"Intrastate telecommunications services" would mean telecommunications services that originate in one state or U.S. territory or possession and terminate in the same state or U.S. territory or possession.

"Mobile wireless service" would mean a telecommunications service for which the origination or termination points of the service's transmission, conveyance, or routing are not fixed, regardless of the technology used to transmit, convey, or route the service. "Mobile wireless service" would include a telecommunications service provided by a commercial mobile radio service provider.

"900 service" would mean an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call the subscriber's prerecorded announcement or live service. "900 service" would not include any charge for collection services provided by the seller of the telecommunications services to the subscriber or for any product or service the subscriber sells to the subscriber's customers. A "900 service" is designated with the "900" number or any other number designated by the FCC.

"Paging service" would mean a telecommunications service that transmits coded radio signals to activate specific pagers and may include messages or sounds.

"Prepaid calling service" would mean the right to exclusively access telecommunications services, if that right is paid for in advance of providing such services, requires using an access number or authorization code to originate calls, and is sold in predetermined units or dollars that decrease with use in a known amount.

"Prepaid wireless calling service" would mean a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, and that is paid for prior to use and sold in predetermined dollar units whereby the number of units declines with use in a known amount.

"Private communication service" would mean a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of communications channels, regardless of the manner in which the channel or group of channels is connected, and includes switching capacity, extension lines, stations, and other associated services that are provided in connection with the use of such channel or channels.

"Ringtones" would mean digitized sound files that are downloaded onto a device and that may be used to alert the customer with regard to a communication. "Ringtones" would include MP3 or musical tones, polyphonic tones, and synthetic music mobile application format tones, but would

not include ring-back tones.

"Value-added non-voice data service" would mean a service in which computer processing applications are used to act on the form, content, code, or protocol of the data provided by the service and are used primarily for a purpose other than for transmitting, conveying, or routing data.

"Vertical service" would mean an ancillary service that is provided with one or more telecommunications services and allows customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

"Voice mail service" would mean an ancillary service that allows a customer to store, send, or receive recorded messages, not including any vertical service that the customer must have to use the voice mail service.

Sourcing Rules for Telecommunications Services

The current sourcing provisions related to telecommunications services would be repealed and replaced with rules consistent with the SSUTA provisions. According to DOR, the new sourcing provisions are generally consistent with the current provisions except for the following: (a) post-paid calling services (paid for on a call-by-call basis with a credit card or similar method of payment) for local tax purposes would be sourced to the location where the call originates rather than to the location where the purchaser is billed for the call; and (b) certain nontelecommunications services that would otherwise be nontaxable would be taxable if purchased through a prepaid wireless calling service (this provision is further described below).

The bill would provide the following definitions with respect to the sourcing rules for telecommunications services.

"Air-to-ground radiotelephone service" would mean a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

"Call-by-call basis" would mean any method of charging for telecommunications services by which the price of such services is measured by individual calls.

"Communications channel" would mean a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

"Customer" would mean a person who enters into a contract with a seller of telecommunications services or, in any transaction for which the end user is not the person who entered into a contract with the seller of telecommunications services, the end user of the telecommunications services. "Customer" would not include a person who resells telecommunications services or, for mobile telecommunications services, a serving carrier under an agreement to serve a customer outside the home service provider’s licensed service area.

"Customer channel termination point" would mean the location where a customer inputs or receives communications.

"End user" would mean an individual who uses a telecommunications service.

"Home service provider" would mean a home service provider as defined under the federal Mobile Telecommunications Sourcing Act.

"Mobile telecommunications service" would mean a mobile telecommunications service as defined under the federal Mobile Telecommunications Sourcing Act.

"Place of primary use" would mean place of primary use, as determined under the federal Mobile Telecommunications Sourcing Act.

"Postpaid calling service" would mean a telecommunications service that is obtained by paying for it on a call-by-call basis using a bankcard, travel card, credit card, debit card, or similar method, or by charging it to a telephone number that is not associated with the location where the telecommunications service originates or terminates. "Postpaid calling service" would include a service that would otherwise be a prepaid calling service except that the service provided to the customer is not exclusively a telecommunications service.

"Radio service" would mean a communication service provided by the use of radio, including radiotelephone, radiotelegraph, paging, and facsimile service. "Radiotelegraph service" would mean transmitting messages from one place to another by means of radio, and "radiotelephone service" would mean transmitting sound from one place to another by means of radio.

Under current law, "service address" means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location; as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like; "service address" means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code, or location where bills are sent.

Under the bill, "service address" would mean any of the following:

a. The location of the telecommunications equipment to which a customer’s telecommunications service is charged and from which the telecommunications service originates or terminates, regardless of where the telecommunications service is billed or paid.

b. If the location described under (a) is not known by the seller of the telecommunications service, the location where the signal of the telecommunications service originates, as identified by the seller’s telecommunications system or, if the signal is not transmitted by the seller’s telecommunications system, by information that the seller received from the seller’s service provider

c. If the locations described under (a) and (b) are not known by the seller of the telecommunications service, the customer's place of primary use.

According to DOR, the proposed SSUTA definitions reflect current practice, with the exception that the language relating to mobile services under current law may appear to give the seller a choice in how to source the mobile service rather than using the hierarchy provided under the bill.

Except as provided below, the sale of a telecommunications service that is sold on a call-by-call basis would occur in the taxing jurisdiction for sales and use tax purposes where the call originates and terminates, in the case of a call that originates and terminates in the same such jurisdiction, or the taxing jurisdiction where the call originates or terminates and where the service address is located. Except as provided below, the sale of a telecommunications service that is sold on a basis other than a call-by-call basis would occur at the customer's place of primary use. The following specific sourcing rules would apply:

Mobile Telecommunications. The sale of a mobile telecommunications service, except an air-to-ground radiotelephone service and a prepaid calling service, would occur at the customer's place of primary use.

Postpaid Calling Services. The sale of a postpaid calling service would occur at the location where the signal of the telecommunications service originates, as first identified by the seller's telecommunications system or, if the signal is not transmitted by the seller's telecommunications system, by information that the seller received from the seller's service provider. As noted, this is a change from current law for local tax purposes. Under present law, such services are sourced to the location where the purchaser is billed for the call.

Prepaid Calling Services and Prepaid Wireless Calling Services. The sale of a prepaid calling service or a prepaid wireless calling service would occur at the location determined under the general sourcing rules (the sourcing rules for all types of sales, not just telecommunications services), except that, if the service is a prepaid wireless calling service and the location of the sale cannot be determined under the general provisions, the prepaid wireless calling service would occur at the location from which the service was provided or at the location associated with the mobile telephone number, as determined by the seller. Based on this definition, if an otherwise nontaxable nontelecommunications service were purchased through a prepaid wireless calling service and sourced to this state under the sourcing rules, then the service would be subject to the tax imposed on a prepaid wireless calling service.

Private Communications Services. The sale of a private communication service for a separate charge related to a customer channel termination point would occur at the location of the customer channel termination point.

The sale of a private communication service in which all customer channel termination points are located entirely in one taxing jurisdiction for sales and use tax purposes would occur in the

taxing jurisdiction in which the customer channel termination points are located.

If the segments are charged separately, the sale of a private communication service that represents segments of a communications channel between two customer channel termination points that are located in different taxing jurisdictions would occur in an equal percentage in both such jurisdictions.

If the segments are not charged separately, the sale of a private communication service for segments of a communications channel that is located in more than one taxing jurisdiction would occur in each such jurisdiction in a percentage determined by dividing the number of customer channel termination points in that jurisdiction by the number of customer channel termination points in all jurisdictions where segments of the communications channel are located.

Internet Access Services. The sale of telecommunications Internet access services would occur at the customer's place of primary use.

Ancillary Services. The sale of ancillary services would occur at the customer's place of primary use.

In addition to the sourcing rules described above, if the location of the customer's service address, channel termination point, or place of primary use is not known, the location where the seller receives or hands off the signal would be considered the customer's service address, channel termination point, or place of primary use.

AGREEMENTS WITH DIRECT MARKETERS; RETAILER'S COMPENSATION

Current Law

Under current law, sellers may deduct the retailer's discount from taxes due as compensation for administrative costs. The retailer's discount is the greater of $10 or 0.5% of the tax liability per reporting period, but not more than the amount of tax actually payable.

Also, under current law, DOR may enter into agreements with out-of-state direct marketers to collect state and local sales and use taxes. An out-of-state direct marketer that collects such taxes may retain 5% of the first $1 million of the taxes collected in a year and 6% of the taxes collected in excess of $1 million in a year. This provision does not apply to an out-of-state direct marketer who is required to collect sales and use taxes in Wisconsin (because the seller has nexus with Wisconsin). The Department may negotiate payment schedules and audit procedures with out-of-state direct marketers, and the regular retailer's discount does not apply to agreements under this provision.

Each year DOR must certify to the Department of Health and Family Services an amount equal to one-eleventh of the taxes collected under this provision for grants to counties for services

for children and families. This provision was enacted in 1999 Wisconsin Act 9 (the 1999-01 biennial budget); to date, no agreements have been entered into by DOR with direct marketers under this provision.

Provisions Under the Bill

The bill would repeal the current provisions regarding agreements with direct marketers outlined above. The bill would also remove certified service providers from eligibility for the current retailer's discount and would permit them, as well as sellers that use certified automated systems and large, multi-state sellers that have proprietary systems that calculate the amount of tax owed to each taxing jurisdiction, to retain a portion of the sales and use taxes collected on retail sales. The amount of tax that could be retained would be determined by DOR and by contracts that the Department enters into with other states as a member state of the Streamlined Sales Tax Governing Board pursuant to the SSUTA.

Under the compensation formulas currently in use, a CSP (which would not be eligible for the current retailer's discount) could retain from 2% to 8% of taxes collected on behalf of voluntary sellers, depending on the total volume of such taxes collected. A seller using a CAS would be eligible for the retailer's discount. However, to help compensate for the investment in software to assist the retailer in voluntarily collecting taxes in non-nexus states, such sellers would also be permitted to retain 1.5% of the first $10,000 in taxes collected per year for each non-nexus state for a period of two years. Large, multi-state sellers with proprietary systems would be eligible for the retailer's discount. While the SSUTA authorizes additional compensation for such sellers, no amounts have been specified under the SSUTA to-date.

Under the bill, there would be no statutory limit on the amount of compensation paid under the provisions described above. Also, such compensation could be paid to any in-state sellers, out-of-state sellers that have nexus with Wisconsin, and out-of-state sellers that do not have nexus, as long as such sellers satisfied the required conditions. Sellers that do not meet such criteria would continue to receive the regular 0.5% retailer's discount.

"AMNESTY" PROVISION

Under the bill, a seller would not be liable for uncollected and unpaid state and local sales and use taxes, including penalties and interest, on sales made to purchasers in this state before the seller registers with DOR, if all of the following apply:

a. The seller registers with DOR, in a manner that the Department prescribes, to collect and remit the state and local sales and use taxes on sales to purchasers in this state in accordance with the SSUTA.

b. The registration occurs no later than 365 days after the effective date of this state’s participation in the Agreement, as determined by DOR.

c. The seller was not registered to collect and remit state and local sales and use taxes during the 365 consecutive days immediately before the effective date of this state's participation in the Agreement, as determined by the Department.

d. The seller has not received a notice of the commencement of an audit from DOR or, if the seller has received an audit notice, the audit has not been resolved by any means, including any related administrative and judicial processes, at the time that the seller registers.

e. The seller has not committed or been involved in a fraud or an intentional misrepresentation of a material fact.

f. The seller collects and remits state and local sales and use taxes on sales to purchasers in this state for at least three consecutive years after the date on which the seller's collection obligation begins.

These provisions would not apply to state and local sales and use taxes that are due from the seller for purchases made by the seller.

RETURN ADJUSTMENTS

Deduction for Bad Debt

Currently, a retailer is relieved from liability for sales tax insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income or franchise tax purposes. If the retailer has previously paid the tax, the retailer may, under rules prescribed by DOR, take as a deduction from the measure of the tax the amount found worthless and charged off for income or franchise tax purposes. If any such accounts are thereafter collected in whole or in part by the retailer, the amount collected must be included in the first sales tax return filed after such collection and the tax must be paid with the return.

Under the bill, a seller could claim as a deduction on a sales and use tax return the amount of any bad debt that the seller writes off as uncollectible in the seller's books and records and that is eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the seller is required to file a federal income tax return. Bad debt deductions would have to be claimed on the sales and use tax return that is submitted for the period in which the seller writes off the amount of the deduction as uncollectible in the seller's books and records. If the seller subsequently collects in whole or in part any bad debt for which a deduction is claimed, the seller would have to include the amount collected in the return filed for the period in which the amount is collected and pay the tax with the return.

"Bad debt" would be defined as the portion of the sales price or purchase price that the seller has reported as subject to the sales or use tax and that the seller may claim as a deduction for federal income tax purposes. "Bad debt" would not include financing charges or interest, sales

or use taxes imposed on the sales price or purchase price, uncollectible amounts on property that remains in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to third parties for collection, and repossessed property.

For purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payment made on a debt or on an account would be applied first to the price of the property or service sold, and the proportionate share of the sales tax on that property or service, and then to interest, service charges, and other charges related to the sale.

A seller could obtain a refund of the tax collected on any bad debt amount deducted under this provision that exceeds the amount of the seller's taxable sales. The period for making such a claim would begin on the date when the return on which the bad debt could be claimed would have been required to be submitted to DOR.

According to DOR, these provisions would modify the statutes to conform to the current rules and administrative practices. The bill would also create two new provisions in order to conform to the SSUTA:

First, if a seller is using a certified service provider, the CSP could claim a bad debt deduction on the seller's behalf if the seller has not claimed and will not claim the same deduction. A certified service provider that receives a bad debt deduction under this provision would have to credit that deduction to the seller and a CSP that receives a refund would have to submit that refund to the seller.

Second, if a bad debt relates to retail sales of tangible personal property or taxable services that occurred in this state and in one or more other states, the total amount of such bad debt would have to be apportioned among the states in which the underlying sales occurred in a manner prescribed by DOR to arrive at the amount of the deduction.

Other Return Adjustments

The current definition of "gross receipts" allows deductions or credits for: (a) the sales tax on rental receipts if the property is purchased by the lessor and the lessor pays sales tax on the purchase; (b) the sales tax on tangible personal property for which a purchaser reimbursed a vendor after the purchaser subsequently, prior to making use of the property, made a taxable sale; (c) such part of the sales price as is refunded in cash or credit as a result of property returned or adjustments in the sales price after the sale has been completed; (d) refunds or worthless accounts resulting from property being repossessed; (e) sales tax that has been included in the purchase price and absorbed by the retailer; and (f) motor fuel taxes refunded by the state or federal governments. The bill would retain these provisions but move them to a new statutory section relating to return adjustments.

In addition, the bill would specify in the statutes that a deduction for refunded sales taxes in

cases of returned property or adjustments in the sales price [item (c) above] would have to be claimed on the return for the period in which the refund is paid. According to DOR, this modification would be consistent with its current administrative practice.

ERRONEOUS COLLECTION OF TAX

Under the bill, if a customer purchases a taxable service, or tangible personal property, and if the customer believes that the amount of sales or use tax assessed is erroneous, the customer could request that the seller correct the alleged error by sending a written notice to the seller. The notice would have to include a description of the alleged error and any other information that the seller reasonably requires to process the request. Within 60 days from the date that a seller receives a request under this provision, the seller would have to review its records to determine the validity of the customer's claim. If the review indicates that there is no error as alleged, the seller would have to explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the seller would have to correct the error and refund the amount of any tax collected erroneously, along with the related interest, as a result of the error. A customer could take no other action against the seller, or commence any action against the seller, to correct an alleged error in the amount of sales or use tax assessed unless the customer has exhausted his or her remedies under this provision. Under current law, such disputes are handled through the court system. The procedure under the bill is intended to provide a more efficient dispute resolution process.

As under current law, special provisions would apply to disputes involving mobile telecommunications services under the federal Mobile Telecommunications Sourcing Act.

The bill further provides that, with regard to a purchaser's request for a refund of taxes, a seller would be presumed to have reasonable business practices if the seller uses a certified service provider, a certified automated system, or a certified proprietary system to collect sales and use taxes and if the seller has remitted to DOR all sales and use taxes collected, less any deductions, credits, or allowances.

ROUNDING

Current law requires DOR to provide a bracket system to be used by retailers in collecting the amount of sales and use tax from their customers, but the use of such brackets does not relieve the retailer from liability for payment of the full amount of the tax.

Administrative rules also permit sellers to use a mathematical computation to determine the amount of tax due on a transaction. Under this computation, the amount of tax to be collected is equal to the applicable tax rate multiplied by the aggregate sales price of all taxable items sold in the transaction (rather than multiplying the tax rate by the sales price of each item and then summing the individual tax amounts). Tax amounts must be rounded to the nearest cent, with

amounts less than 0.5 cent rounded down and amounts equal to or greater than 0.5 cent rounded up.

The bill would repeal the current provisions regarding the bracket system and require retailers to use a straight mathematical computation to determine the amount of the tax that the retailer may collect from its customers. The tax amount would be calculated by multiplying the applicable combined state and local tax rate by the sales price or purchase price of each item or invoice, as appropriate. The tax amount would have to be calculated to the third decimal place, disregarding tax amounts of less than 0.5 cent, and considering tax amounts of at least 0.5 cent but less than 1 cent to be an additional cent. The use of this computation would not relieve the retailer from liability for payment of the full amount of the tax levied. These rounding requirements are required under the Agreement.

The new calculation would differ from the current rounding rule in that sellers would be allowed to compute the amount of tax collected based on each invoice (including numerous items) or on each item. Under current law, the amount of tax collected must be calculated by multiplying the tax rate by the total transaction price, not by the prices of individual items. These provisions do not affect the amount of tax due to the state from the retailer, only how the retailer may calculate the amount of tax collected from purchasers.

SSUTA AGENTS

The bill would authorize sellers to appoint an agent to represent the seller before the states that are signatories to the SSUTA. Under the bill, sellers could designate such agents to:

a. Register with DOR for a business tax registration certificate in the manner prescribed by the Department.

b. File an application with DOR for a permit for each place of operations.

c. Remit taxes and file returns under the sales and use tax statutes in a manner prescribed by DOR.

BUSINESS TAX REGISTRATION

Under current law, any person who is not otherwise required to collect Wisconsin sales and use taxes (because of a lack of nexus) and who makes sales to persons within this state of taxable property or services may register with DOR and must obtain a business tax registration certificate and thereby be authorized and required to collect, report, and remit the state use tax. The bill would specify that the registration with DOR under this provision could not be used as a factor in determining whether the seller has nexus with this state for any tax at any time. This provision is required by the SSUTA; DOR does not view it as a substantive change since the courts would be unlikely to consider voluntary use tax registration as a factor in determining nexus.

The bill would also specify that registration under the above provision would authorize and require the retailer to collect, report, and remit local use taxes. In addition, local jurisdictions would be specifically authorized to impose the tax on such registrants, as well as on Wisconsin sellers and retailers who have filed an application to operate as a seller in Wisconsin. Local jurisdictions would have taxing jurisdiction over all of the retailers described above regardless of whether such retailers are engaged in business in the local jurisdiction. Under current law, voluntary registration only obligates out-of-state retailers to collect state use taxes, not local taxes.

These provisions would also authorize DOR to waive the business tax registration fee if the person who is applying for or renewing the certificate is not required to hold such a certificate for sales and use tax purposes. This provision is required by the SSUTA, which specifies that member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which it has no legal requirement to register. The current initial registration fee is $20 and the fee to renew the certificate is $10 every two years.

The bill would also add a definition of "sign" in the business tax registration statutes, based on the current definition used in the sales tax statutes, which means to write one's signature or use another method of authenticating prescribed by DOR.

ITEMS PURCHASED FROM OUT-OF-STATE SELLERS AND DELIVERED DIRECTLY TO END-USERS IN WISCONSIN

Under current law, the use tax is imposed on the use or consumption in this state of taxable property or services purchased from an out-of-state retailer. A credit is provided for the amount of any sales tax paid in the state where the good or service was purchased. "Use" includes, in part, the exercise of any right or power over tangible personal property or taxable services incident to the ownership, possession, or enjoyment of the property or services. "Enjoyment" includes a purchaser's right to direct the disposition of property, whether or not the purchaser has possession of the property. "Enjoyment" also includes, but is not limited to, having shipped into this state by an out-of-state supplier printed material which is designed to promote the sale of property or services, or which is otherwise related to the business activities, of the purchaser of the printed material or printing service.

The bill would specify that the phrase "exercise of any right or power over tangible personal property or taxable services" in the definition of taxable "use" would include distributing, selecting recipients, determining mailing schedules, or otherwise directing the distribution, dissemination, or disposal of tangible personal property or taxable services, regardless of whether the purchaser of such property or services owns or physically possesses, in this state, the property or services.

This provision would be expected to reverse case law regarding the imposition of the use tax on the purchaser of materials (such as candy, catalogs, and telephone directories) that are sold by an out-of-state seller to a purchaser and distributed directly by the seller by common carrier or U.S. mail to Wisconsin residents without the purchaser of the materials ever taking possession. Under

current law, as interpreted by the courts, the taxation of such transactions depends upon the characteristics of the seller (usually a printer):

a. If the seller is located in Wisconsin, the cost of the material is subject to the sales tax, which may be collected from the seller or the purchaser.

b. If the seller is located out-of-state but has nexus with Wisconsin, the cost of the material is subject to the use tax, which may be collected only from the seller.

c. If the seller is located out-of-state and does not have nexus with Wisconsin, the cost of the material is not subject to either the sales tax or use tax.

The bill's provisions are intended to ensure that the sales tax or use tax would be imposed on all such transactions. Specifically, under the bill, in the transaction described under (b) above (where the out-of-state seller has nexus with Wisconsin), the use tax could be collected from either the seller or the in-state purchaser, rather than just from the seller. In the transaction described under (c) above (where the out-of-state seller does not have nexus), the purchaser would be subject to the use tax (as opposed to no sales or use tax under current law). The taxation of the transactions under (a) involving an in-state seller would not be modified.

Although the case law on this issue involved printed materials, the bill's provisions would affect other types of products, such as candy delivered from an out-of-state seller to a purchaser's customers in Wisconsin. [It should be noted that, in a separate provision, the bill would provide a sales and use tax exemption for catalogs and the envelopes in which catalogs are mailed. If that provision were adopted, such items purchased from an out-of-state printer and delivered directly to end-users in Wisconsin would be exempt from the sales and use tax, regardless of whether or not the state chose to conform to the SSUTA.]

CONTENT OF SALES AND USE TAX RETURNS; INFORMATION REQUIREMENTS

Under current law, the sales tax return must show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return must show the total sales price of the property or taxable services sold, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period. In the case of a sales or use tax return filed by a purchaser, the return must show the total sales price of the property and taxable services purchased, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period. The return must also show the amount of the taxes for the period covered by the return and such other information as DOR deems necessary for the proper administration of the sales and use tax statutes. Current law imposes similar information requirements with respect to reporting on county or special district taxes.

The bill would modify these provisions to delete the specific requirements relating to sales and use tax returns and reports of county and special district taxes and require, instead, the amount

of taxes due for the period covered and such other information as DOR deems necessary. These modifications are intended to provide DOR with flexibility to simplify sales tax returns and make the returns conform to standards required under the Agreement.

Current law also requires a person subject to county or special district sales and use taxes to file a report showing separately the taxable sales made in the county or special district and the sales and use taxes due on such sales. The bill would modify this provision to require reports of county or special district sales and use taxes as prescribed by DOR. Similar to the modification of the information requirements with respect to the state sales and use tax, this modification is intended to provide DOR with flexibility to simplify the reports and to conform to standards required under the Agreement.

Under the bill, in addition to filing a sales and use tax return, sellers that contract with a certified service provider, persons that provide certified automated systems to sellers, and sellers that have a proprietary system for determining the amount of tax due would have to provide to DOR any information that the Department considers necessary for the administration of the sales and use tax. Such information would have to be provided in the manner prescribed by DOR, except that the Department could not require that the person provide such information more than once every 180 days.

PENALTIES FOR MISUSING DOCUMENTS

The bill would provide that a person who uses any of the following documents in a manner that is prohibited by or inconsistent with the sales tax statutes, or provides incorrect information to a seller or certified service provider related to the use of such documents or regarding a sales or use tax exemption, would have to pay a penalty of $250 for each invoice or bill of sale related to the prohibited or inconsistent use or incorrect information: (a) an exemption certificate; (b) a direct pay permit; or (c) a direct mail form. The new penalties would apply to improper use of these documents by purchasers as well as sellers.

SURETY BOND FOR CERTIFIED SERVICE PROVIDERS

Under current law, in order to protect the revenue of the state, DOR may require any person who is or will be liable to it for the sales and use taxes to place with it security in an amount determined by the Department, but not more than $15,000.

The bill would require certified service providers who have contracted with sellers for the collection of sales and use taxes to submit a surety bond to DOR to guarantee the payment of sales and use taxes, including any penalty and interest on such payment. The Department would have to approve the form and contents of such bonds and determine the amount of such bonds. The surety bond would have to be submitted within 60 days after the date on which DOR notifies the CSP that the provider is registered to collect sales and use taxes. If the Department determines, with regards

to any one CSP, that no bond is necessary to protect the tax revenues of this state, the Secretary of Revenue or the Secretary's designee could waive the bond requirement with regard to that provider. Any bond submitted under this provision would remain in force until the Secretary of Revenue or the Secretary's designee releases the liability under the bond.

This provision would authorize DOR to require a larger amount of security from certified service providers. The Department desires this authority because CSPs would likely be responsible for paying taxes on behalf of a number of retailers.

USE OF PERSONALLY IDENTIFIABLE INFORMATION BY CERTIFIED SERVICE PROVIDERS AND BY DOR

Under the bill, and as required by the SSUTA, a certified service provider could use personally identifiable information as necessary only for the administration of its system to perform a seller's sales and use tax functions and would have to provide consumers clear and conspicuous notice of its practice regarding such information, including what information it collects, how it collects the information, how it uses the information, how long (if at all) it retains the information, and under what circumstances it discloses the information to states participating in the SSUTA. "Personally identifiable information" would mean any information that identifies a person.

A CSP could collect, use, and retain personally identifiable information only to verify exemption claims, to investigate fraud, and to ensure its system's reliability. A certified service provider would have to provide sufficient technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure.

For purposes of the sales and use tax statutes, the bill would also specify that the state would: (a) have to provide to consumers public notice of the state's practices relating to collecting, using, and retaining personally identifiable information; (b) be prohibited from retaining personally identifiable information obtained for the purposes of administering the sales and use tax statutes unless the state is otherwise required to retain the information by law or as provided under the SSUTA; (c) be required to provide an individual reasonable access to that individual's personally identifiable information and the right to correct any inaccurately recorded information. In addition, if a person other than another state that is a signatory to the SSUTA, or a person authorized under state law to access the information, requested access to an individual's personally identifiable information, the state would be required to make a reasonable and timely effort to notify the individual of the request.

VEHICLE, VESSEL, AND AIRCRAFT SALES BY RETAILERS WHO ARE NOT DEALERS

Current law specifies that no motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles, or aircraft may be registered or titled in

this state unless the registrant presents proof that the state sales or use tax has been paid. In the case of a motor vehicle purchased from a licensed Wisconsin motor vehicle dealer, the registrant must present proof that the tax has been paid to such a dealer. The bill would expand this provision to also include, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles, and aircraft. In addition, the reference to a purchase from a licensed Wisconsin motor vehicle dealer would be replaced with a reference to a purchase from a "retailer." These modifications would require all retailers (rather than just Wisconsin motor vehicle dealers) that sell the items listed above (rather than just motor vehicles) to collect and remit the sales tax.

In addition, current law provides that, in the case of motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles, or aircraft registered or titled, or required to be registered or titled, in this state purchased from persons who are not Wisconsin dealers, the purchaser must file a sales tax return and pay the tax prior to registering or titling the property in this state. The bill would modify this provision to refer to purchases from persons who are not "retailers" rather than persons who are not "dealers." This modification would require all retailers that sell the above items to collect and remit the sales tax, rather than just licensed dealers.

ADMINISTRATION OF LOCAL TAXES

Vehicle, Vessel, and Aircraft Sales By Retailers Who Are Not Dealers

Under current law, for purposes of county and special districts sales and use taxes, a dealer of motor vehicles, boats, snowmobiles, mobile homes, trailers, semitrailers, all-terrain vehicles, or aircraft is required to collect, prior to registration or titling, the applicable county and special districts' sales and use taxes on sales of motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles, or aircraft stored, used, or otherwise consumed in the county or special district. A dealer is required to remit such taxes to DOR along with the state sales and use tax.

Similar to the provisions described above with respect to the state sales and use tax on such items, the bill would modify this provision to refer to purchases from "retailers," rather than persons who are "dealers." In addition, for consistency with the sourcing provisions related to snowmobiles, all-terrain vehicles, trailers, and semi-trailers, such items would be deleted from this provision.

Notice of Repeal of County Sales Tax

Under current law, a certified copy of a repeal of an ordinance authorizing a 0.5% county sales tax must be delivered to the Secretary of Revenue at least 60 days before the effective date of the repeal. Under the bill, the delivery would have to occur at least 120 days before the repeal's effective date.

Baseball Park District Tax

Under current law, a local professional baseball park district, by resolution, may impose a sales and use tax at a rate of no more than 0.1%. The resolution is effective on the first day of the first month that begins at least 30 days after the adoption of the resolution. Under the bill, the resolution would be effective on the first January 1, April 1, July 1, or October 1 that begins at least 120 days after the adoption of the resolution. In addition, the bill would provide that any moneys transferred from DOR's appropriation for administration of special district taxes to the appropriation under shared revenue and tax relief for special district taxes are to be used exclusively to retire the district's debt.

Football Stadium District Tax Resolution

Under current law, a local professional football stadium district, by resolution, may impose a sales and use tax of 0.5%. The imposition of the taxes is effective on the first day of the first month that begins at least 30 days after the certification of the approval of the resolution by the electors in the district's jurisdiction. Under the bill, imposition of the taxes would be effective on the first January 1, April 1, July 1, or October 1 that begins at least 120 days after approval by the electors is certified. In addition, the bill would provide that any moneys transferred from DOR's appropriation for administration of local professional football stadium districts to the appropriation under shared revenue and tax relief for local professional football stadium district taxes are to be used exclusively to retire the district's debt.

Notice of Cessation of Baseball Park and Football Stadium Taxes

Under current law, retailers and DOR may not collect a sales or use tax for any local professional baseball park district after the calendar quarter during which the district board makes a certification to DOR that adequate revenues have been collected to retire all stadium bonds and provide sufficient funding for future maintenance of the stadium. However, DOR may collect from retailers taxes that accrued before that calendar quarter and fees, interest, and penalties that relate to those taxes. Similar provisions apply with respect to the professional football stadium district sales tax

Under the bill, the tax could no longer be collected after the last day of the calendar quarter that is at least 120 days from the date on which the district board makes its certification to DOR. The Department could continue to collect back-due taxes that accrued before the day after the last day of that calendar quarter, along with fees, interest, and penalties. The same modification would also be made for the professional football stadium district sales tax.

Local Rate Changes

Under current law, the gross receipts from taxable services are not subject to local sales taxes, and the incremental amount of tax caused by a local tax rate increase applicable to those services is not due, if those services are billed to the customer and paid for before the effective date of the

county ordinance or special district resolution imposing the tax or rate increase, regardless of whether the service is furnished to the customer before or after that date.

Under a separate provision, current law provides that leases or rental receipts from tangible personal property that the lessor is obligated to furnish at a fixed price under a contract entered into before the effective date of a county ordinance or special district resolution are subject to the local tax on the effective date of the ordinance or resolution. However, if the seller was unconditionally obligated to provide the service or property for the amount fixed under the contract, the seller is exempt from the additional tax but the user is obligated to pay the use tax.

The bill would combine and modify these provisions to specify that the local tax would be due on taxable services and on the lease, rental, or license of tangible personal property and other property and items (which includes coins and stamps sold above face value and certain leased property affixed to real estate that the bill would exclude from the definition of tangible personal property and upon which the bill would specifically impose the sales and use tax) beginning with the first billing period starting on or after the effective date of the ordinance, resolution, or rate increase, regardless of whether the service is furnished or the property is leased, rented, or licensed to the customer before or after that date.

The bill would also specify that the sales price for taxable services and for the lease, rental, or license of tangible personal property and other property and items would not be subject to local sales and use taxes, and a decrease in a local tax rate would first apply, beginning with bills rendered on or after the effective date of the repeal or sunset of the county ordinance or special district resolution imposing the tax or other rate decrease, regardless of whether the service or property is furnished to the customer before or after that date.

According to DOR, these modifications are necessary to comply with the SSUTA.

Administration of Local Taxes

The bill would also change cross references to definitions and administrative provisions regarding the local rooms tax, local food and beverage tax, local rental car tax, premier resort area tax, regional transit authority fee, state vehicle rental fee, and dry cleaning fees. The bill would also modify language in the statutes on dry cleaning fees for changes in the definition of gross receipts under these provisions.

Local Exposition District Tax -- Local Food and Beverage Tax

Currently, a local exposition district may impose a tax on retail sales within the district's jurisdiction of taxable meals and food products. Such taxable items include: (a) meals, food, food products, and beverages sold for direct consumption on the premises; (b) sales for off-premises consumption of meals and sandwiches (whether heated or not), heated food or heated beverages, soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas, and candy, chewing gum, lozenges, popcorn, and confections. Taxable gross receipts include cover, minimum,

entertainment, service, or other charges made to patrons or customers.

Under the bill, the local exposition district tax on local food and beverages could be imposed on candy, prepared food, and soft drinks, using the new definitions of these items outlined above. This modification would make the tax base for the exposition district tax consistent with the taxable food products under the state sales tax, with the exception of dietary supplements. According to DOR, the same modifications regarding taxable food described above for the state sales tax would also apply to the local exposition district tax. In addition, canned soft drinks would become taxable.

LANGUAGE AND CROSS REFERENCE CHANGES IN OTHER PROGRAMS

The bill would adopt the new definition of "food and food ingredient" in the definition of vending machines that are exempt from personal property taxes. The bill would also modify a provision under Chapter 86, "Miscellaneous Highway Provisions," related to signs offering food as a service to motorists, in order to be consistent with the definition under these provisions of "food and food ingredient" and the use of "sales" in place of "gross receipts." The bill would also update certain cross references to sales and use tax definitions under Chapter 218, "Auto Dealers - Finance Companies."

Under current provisions related to the ad valorem tax on air carriers, DOR must determine in-flight sales allocated to this state based on the sales tax rules, which specify that a sale or purchase involving transfer of ownership of property is deemed to have been completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent, except that a common carrier or the U.S. postal service is deemed the agent of the seller, regardless of any FOB point and regardless of the method by which freight or postage is paid. Under the bill, the reference to the current sales tax provision would be replaced with a reference to the new sales tax sourcing provisions.

PROGRAM FOR CHILDREN AND FAMILIES

Under current law, the Department of Health and Family Services has a GPR sum sufficient appropriation for grants to counties for services for children and families. The amount of the appropriation is equal to one-eleventh of the amount of sales tax collected from out-of-state direct marketers who have entered into agreements with DOR, under which the sellers receive compensation over and above the normal 0.5% retailer's discount. The bill would repeal this appropriation and the statutory language relating to the grants. The program was created in 1999 Wisconsin Act 9. To date, no funding has been provided for the program because no agreements with direct marketers have been entered into.

SALES TAX EXEMPTION AND INCOME AND FRANCHISE TAX CREDITS FOR CERTAIN INTERNET BROADBAND EQUIPMENT

As provided under 2005 Act 479, current law allows a sales and use tax exemption for certain purchases of Internet equipment used in the broadband market, which takes effect July 1, 2007. Current law also provides an income and franchise tax credit based on the value of the sales tax exemption. Claimants of the sales tax exemption and income/franchise tax credit must be certified by the Department of Commerce. The total amount of exemptions and credits that may be awarded is limited to $7.5 million.

The SSUTA does not generally permit caps with respect to sales tax exemptions. In order to comply with this aspect of SSUTA, the bill would convert the sales tax exemption (under Chapter 77) for Internet equipment used in the broadband market to a sales tax deduction, and would change applicable references in the income and franchise tax statutes (Chapter 71) from "exemption" to "deduction". (However, a technical amendment would be needed to clarify the intended change to the income tax provisions). Based on these provisions, the purchaser of the Internet equipment used in the broadband market would pay the sales tax at the time of purchase. The purchaser would subsequently claim a deduction, equal to the purchase price of the qualifying equipment when filing a sales and use tax return. The net result would be that the purchaser of the qualifying equipment does not end up paying any sales or use tax on the equipment, because the sales tax they paid on the purchase would be refunded to them through this deduction. The bill would specify that the deduction must be claimed in the same reporting period as the period in which the purchaser paid the sales and use tax on the purchase of the Internet equipment.

EFFECTIVE DATE

The bill would take effect on January 1, 2008.

PART 3

FISCAL EFFECT

FISCAL EFFECT

A number of provisions under the proposal would have a fiscal effect. The following sections identify these provisions and provide information about their fiscal implications, based on information prepared by the Department of Revenue. With the effective date of January 1, 2008, the estimated fiscal effect for 2008-09 is representative of the ongoing, annualized effect in 2008-09 dollars.

Pre-Written Software. Certain currently exempt sales of pre-written computer software that is customized for a specific purchaser would become taxable. This provision is estimated to result in a minimal increase in tax revenues.

Bundled Items. The sales tax would generally be imposed on the entire sales price of products comprised of exempt items that are bundled with taxable items by the seller. Currently, the seller is not required to pay tax on the value of the nontaxable items. The fiscal effect of this modification is also estimated to be a minimal revenue increase.

Property Provided with an Operator. Under the bill, if tangible personal property is provided along with an operator, the transaction would be considered a service (which may or may not be taxable) rather than a lease (which generally is taxable) as long as the operator is necessary for the property to perform in the manner for which it is designed and the operator does more than maintain, inspect, or set up the property. Under current law, the determination of whether such transactions represent a property lease or a service depends upon the amount of control maintained by the operator and the degree of responsibility for completion of the work assumed by the operator. For individual taxpayers, this modification could result in a larger or smaller tax liability than current law, depending upon the specific circumstances of the transaction. The net fiscal effect is estimated to be minimal.

Food and Beverages. As shown in Attachment 1, certain food sales that are now exempt would become taxable and certain sales that are now taxable would become exempt. In addition, the treatment of pet food sold by veterinarians would be modified. In total, these modifications are estimated to decrease state tax revenues by $1,100,000 in 2007-08 and by $1,800,000 in 2008-09. In addition, county and stadium sales tax revenues are estimated to decrease by approximately $100,000 in each year. The largest revenue impacts relate to the treatment of: (a) ready-to-drink tea ($1,900,000 in 2007-08 and $4,100,000 in 2008-09); (b) frozen novelties (-$1,100,000 in 2007-08 and -$2,200,000 in 2008-09); (c) fruit drinks with 50% to 99% juice (-$500,000 in 2007-08 and -$1,100,000 in 2008-09); (d) popcorn (-$700,000 in 2007-08 and -$1,500,000 in 2008-09); (e) chocolate chips and baking chocolate ($500,000 in 2007-08 and $1,100,000 in 2008-09); and (f) packaged ice (-$300,000 in 2007-08 and -$700,000 in 2008-09). Exposition district tax revenues would increase by an estimated $100,000 in 2007-08 and by $300,000 in 2008-09.

Medical Equipment. The bill would expand the types of medical equipment that are exempt

from tax. In addition, the current exemptions for equipment used in the treatment of diabetes and equipment used to administer oxygen would be limited to equipment purchased for in-home use. The additional exemptions for durable medical equipment are estimated to reduce state sales tax collections by $1,300,000 in 2007-08 and by $2,800,000 in 2008-09 and reduce county and stadium sales tax collections by $100,000 in 2007-08 and by $200,000 in 2008-09. The other modifications would have a minimal fiscal effect.

Cloth Diapers. The current exemption for cloth diapers would be eliminated. The estimated fiscal effect is a minimal increase in state and local revenues in each year.

Property Purchased from Out-of-State Sellers and Delivered Directly to Wisconsin Consumers. Purchases of items that are sold by an out-of-state seller to a Wisconsin purchaser and distributed directly by the seller by common carrier or U.S. mail to Wisconsin consumers without the purchaser ever taking possession of the items would become taxable regardless of whether or not the out-of-state seller has nexus with Wisconsin. Currently, such sales are not subject to the sales or use tax if the seller is located out-of-state and does not have nexus with Wisconsin. This provision would increase state sales taxes by an estimated $500,000 in 2007-08 and $1,100,000 in 2008-09 and increase county and stadium taxes by a minimal amount in 2007-08 and by $100,000 in 2008-09.

Non-Exempt Use After Purchase. Currently, if a purchaser certifies that the items purchased will be used in a manner entitling the sale to be exempt from tax and the purchaser subsequently uses the property in some other manner, the purchaser is liable for payment of the sales tax. The tax is measured by the sales price of the property to the purchaser, but if the taxable use first occurs more than six months after the sale, the purchaser may base the tax either on that sales price or on the fair market value of the property at the time the taxable use first occurs. The bill would eliminate the option to base the tax on fair market value if the taxable use first occurs more than six months after the purchase, so that the tax would always be based on the sales price to the purchaser. This provision is estimated to result in a minimal revenue increase.

Drop-Shipments. Under the bill, Wisconsin manufacturers would no longer be liable for the sales tax on drop-shipments to Wisconsin purchasers. Instead, the purchaser would be liable for use tax. The fiscal effect of this change is estimated to be a minimal revenue loss.

Sourcing. DOR has identified several situations where the bill's sourcing provisions would differ from current law and practice. The most significant change would be to relieve sellers (printers) of direct mail of the burden of determining the destination of each piece of mail for tax purposes. Other sourcing changes involve towing services, admissions, leases, software and services (such as cable television) delivered electronically, post-paid telecommunications services, and certain otherwise nontaxable telecommunications services purchased through a prepaid wireless calling service. These changes are estimated to have a minimal fiscal impact at the state level and in the aggregate for counties and other local taxing jurisdictions. However, the new provisions could result in an unknown amount of tax shifting among individual local taxing jurisdictions.

Retailer's Compensation. The bill would remove certified service providers that report and remit sales and use taxes on behalf of volunteer sellers from eligibility for the retailer's discount under current law and would permit them, as well as sellers that use a certified automated system and large, multi-state sellers that have a proprietary system that calculates the amount of tax owed to each taxing jurisdiction, to retain a portion of sales and use taxes collected on retail sales. The amount that could be retained would be determined by DOR and by contracts that the Department enters into with other states as a member state of the Streamlined Sales Tax Governing Board pursuant to the SSUTA.

Under the compensation formulas currently in use, a CSP (which would not be eligible for the current retailer's discount) could retain from 2% to 8% of taxes collected and remitted on behalf of voluntary sellers, depending on the total volume of such taxes collected. A seller using a CAS would be eligible for the retailer's discount. However, to help compensate for the investment in software to assist the retailer in voluntarily collecting taxes in non-nexus states, such sellers would also be permitted to retain 1.5% of the first $10,000 in taxes collected per year for each non-nexus state for a period of two years. Large, multi-state sellers with proprietary systems would be eligible for the retailer's discount. While the SSUTA authorizes additional compensation for such sellers, no amounts have been specified under the SSUTA to-date.

Under the bill, there would be no statutory limit on the amount of compensation paid under the provisions described above. Also, such compensation could be paid to any in-state sellers, out-of-state sellers that have nexus with Wisconsin, and out-of-state sellers that do not have nexus, as long as such sellers satisfied the required conditions. To date, contracts entered into by the Streamlined Sales Tax Governing Board have only allowed this additional compensation based on the sales and use taxes remitted by or on behalf of voluntary sellers that register with the member states. Sellers that do not meet such criteria would continue to receive the regular 0.5% retailer's discount.

At this time, it is not possible to reliably estimate the cost of these provisions.

"Amnesty" Provision. Under the bill, a seller would not be liable for uncollected and unpaid state and local sales and use taxes (including penalties and interest) on previous sales made to Wisconsin purchasers if the seller registers with DOR to collect and remit state and local sales and use taxes on such sales in accordance with the SSUTA. In order to receive amnesty, the seller would have to: (a) register within one year after the effective date of this state’s participation in the Agreement; and (b) collect and remit state and local sales and use taxes on sales to purchasers in this state for at least three consecutive years after the date on which the seller registers. The amnesty would not be available to: (a) sellers that were already registered with DOR during the year immediately preceding the effective date of Wisconsin’s participation in the Agreement; (b) sellers that are being audited by DOR; or (c) sellers that have committed or been involved in a fraud or an intentional misrepresentation of a material fact. The administration has estimated that the amnesty provision will result in increased state sales and use tax revenues of $1,500,000 in 2007-08 and $3,600,000 in 2008-09, and additional local collections of $100,000 in 2007-08 and $300,000 in 2008-09.

Business Tax Registration Fee. The bill would permit DOR to waive the business tax registration fee if the person who is applying for or renewing the certificate is not required to hold such a certificate for sales and use tax purposes. This would result in a minimal loss of fee revenue.

County Grants for Children and Family Services. Under current law, the Department of Health and Family Services has a GPR appropriation for grants to counties for services for children and families equal to one-eleventh of the amount of sales tax collected from out-of-state direct marketers who have entered into agreements with DOR, under which the sellers receive compensation over and above the normal 0.5% retailer's discount. The bill would repeal this appropriation and the statutory language relating to the grants. The program was created in 1999 Wisconsin Act 9. To date, no funding has been provided for the program because no agreements with direct marketers have been entered into; therefore there is no estimated fiscal effect.

Penalties. The bill would create a $250 penalty for using sales tax documents in a manner that is prohibited by or inconsistent with the statutes, or providing incorrect information to a seller or CSP related to the use of such documents or regarding a sales or use tax exemption. These penalties would result in an unknown, but small, revenue increase.

Voluntary Collections. The administration estimates increased state revenues of $1,700,000 in 2007-08 and $3,400,000 in 2008-09 from retailers voluntarily agreeing to collect and remit sales and use taxes if the provisions of the SSUT proposal were adopted. Based on these figures, county and stadium tax revenues would be expected to increase by $100,000 in 2007-08 and $300,000 in 2008-09.

The estimated fiscal effects of the SSUT proposal are summarized in Table 1. These estimates reflect the figures included in the Governor's budget provisions. As shown in the table, the proposal is projected to increase state tax revenues by $1.3 million in 2007-08 and by $3.5 million in 2008-09. In aggregate, county and stadium district revenues would increase by an estimated $100,000 in 2007-08 and $300,000 in 2008-09. The administration estimates that local exposition district tax collections would also increase by $100,000 in 2007-08 and $300,000 in 2008-09.

TABLE 1

Estimated Fiscal Effects

Revenue Changes -- State, County, and Stadium Taxes

	2007-08	2008-09
Food and Beverages	-$1,100,000	-$1,800,000
Durable Medical Equipment	-1,300,000	-2,800,000
Items Shipped by Non-Nexus Sellers	500,000	1,100,000
Amnesty	1,500,000	3,600,000
Voluntary Collections	1,700,000	3,400,000
Total Revenue Changes*	$1,300,000	$3,500,000
County and Stadium District Tax Increases	$100,000	$300,000
Exposition District Tax Increase	$100,000	$300,000

*The revenue changes exclude the impact of providing additional retailer's compensation for certain sellers. The fiscal effect of this provision is unknown, but it could result in decreases in state tax revenues.

Source: Department of Revenue

In addition to the short-term fiscal effects outlined above, it is possible that the passage of the bill, along with similar laws in other states, could result in significant additional increases in sales and use tax collections from remote sales in future years. This could occur if the bill's provisions result in more retailers voluntarily agreeing to collect and remit use taxes to Wisconsin or if Congress is persuaded to pass federal legislation allowing states to require out-of-state sellers to collect and remit the tax.

PART 4

ATTACHMENTS

ATTACHMENT 1

Modifications Relating to Food and Beverages

Food Item	Current Treatment	Proposed Treatment
Bakery products sold by bakeries and grocery stores	Exempt, unless for consumption on seller's premises	Exempt, unless provided with utensils (such as plates, forks, knives) or sold heated
Bottled tea, sweetened	Exempt	Taxable
Bottled water, carbonated, non-sweetened	Taxable	Exempt
Candy containing flour (such as KitKat, Twix, and Licorice)	Taxable	Exempt
Chocolate Chips	Exempt	Taxable
Deli combination platters prepared by seller	Exempt, unless a meal or sandwich	Exempt if sold by weight or volume, unless provided with utensils or heated
Deli food sold by weight (such as potato salad, fruit salad, sliced deli meat)	Exempt, unless for consumption on the seller's premises	Exempt unless provided with utensils (such as plates, forks, knives)
Deli salad bar (self-service, utensils provided)	Taxable, if for on-premises consumption	Taxable
Frozen fruit juice	Exempt, except if less than 100% juice	Exempt
Ice cream novelties (such as ice cream cone, Popsicle)	Taxable	Exempt, unless prepared by retailer and retailer is not primarily a manufacturer and not sold by weight or volume
Liquid 51% - 99% fruit juice	Taxable	Exempt
Manufactured food sold at manufacturer's (seller's) outlet (for consumption off the premises)	Exempt, unless sandwich, ready-to-eat meal, candy, soft drink, dietary supplement, popcorn, or alcohol beverage	Exempt, unless utensils provided, candy, soft drink, dietary supplement, or alcoholic beverage

Food Item	Current Treatment	Proposed Treatment
Marshmallows	Exempt	Taxable
Nonalcoholic beer	Taxable	Exempt, unless sweetened
Nonalcoholic champagne	Taxable (fruit drink not 100% juice)	Exempt, unless sweetened
Popcorn, popped	Taxable	Exempt, unless prepared by retailer, retailer is not primarily a manufacturer, and not sold by weight or volume or as candy
Popcorn, unpopped	Taxable	Exempt
Powdered fruit drinks	Taxable	Exempt
Sandwich prepared by grocer not sold by weight or volume	Taxable, unless frozen	Taxable

Source: Department of Revenue, January, 2007

ATTACHMENT 2

Examples of Durable Medical Equipment (DME) for Home Use, Mobility Enhancing Equipment (MEE), and Prosthetic Devices (PD) That Would be Newly Exempt from Sales Tax under the Bill

Alternating pressure pads (DME)
Bedside commodes (MEE)
Bone fracture therapy devices (DME)
Continuous passive motion devices (DME)

Hospital beds (DME)
Hospital bed rails (DME)

Hydro-therm heating pads (DME)
I.V. stands (DME)
Leg weights -- rehab-related (DME)
Lift recliners (MEE)
Muscle stimulators -- not worn (DME)
Muscle stimulators -- worn (MEE)

Overbed tables (DME)
Patient transport devices, boards (DME)
Patient lifts (MEE)
Patient lift slings (MEE)

Respiratory therapy equipment not used to administer oxygen (DME)

Standing frames, devices, and accessories (DME)
Stethoscopes (DME)
Toilet safety frames (DME)
Traction stands, pulleys, etc. (DME)
Trapeze bars/bar stands (MEE)

Ultraviolet cabinets -- billie lights (DME)
Urinals (DME)
Ventilators not administering oxygen (DME)
Whirlpool bath equipment specifically manufactured for medical purposes (DME)

Source: Department of Revenue, January, 2007

PART 5

APPENDIX

SUMMARY OF THE STREAMLINED SALES TAX AND USE TAX AGREEMENT

APPENDIX

Summary of the Streamlined Sales Tax and Use Tax Agreement

FUNDAMENTAL PURPOSE

The purpose of the Streamlined Sales and Use Tax Agreement is to simplify and modernize sales and use tax administration in the member states in order to reduce the burden of tax compliance. The Agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce through state level administration, uniformity in the state and local tax bases and major definitions, a central, electronic seller registration system for all member states, uniform sourcing rules, and other simplification efforts.

TAXING AUTHORITY PRESERVED

The Agreement is not intended to influence a member state to impose a tax on or provide an exemption from tax for any item or service. However, if a member state chooses to tax an item or exempt an item from tax, that state must adhere to the Agreement's provisions concerning definitions.

REQUIREMENTS EACH STATE MUST ACCEPT TO PARTICIPATE

State and Local Tax Rates

Member states may not have multiple state sales and use tax rates on items of personal property or services, except that a member state could impose a single additional rate, which may be zero, on food and food ingredients and drugs as defined by state law pursuant to the Agreement. In addition, if federal law prohibits the imposition of local tax on a product that is subject to the state tax, the state may impose an additional rate on such product, provided such rate achieves tax parity for similar products.

Member states that have local jurisdictions that levy a sales or use tax could not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates must be identical.

These provisions do not apply to sales or use taxes levied on electricity, piped natural or artificial gas, or other heating fuels delivered by the seller, or the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

State and Local Tax Bases

After December 31, 2005, the tax base for local jurisdictions must be identical to the state tax base unless otherwise prohibited by federal law. These requirements do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Seller Registration

Each member state must participate in an on-line sales and use tax registration system in cooperation with the other member states. Among other provisions, under this system: (a) a seller registering under the Agreement is registered in each of the member states; (b) the member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register; and (c) a seller may cancel its registration at any time under uniform procedures adopted by the Agreement's governing board. Cancellation would not relieve the seller of its liability for remitting to the proper states any taxes collected.

Notice for State Tax Changes

Each member state must lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following: (a) provide sellers with as much advance notice as practicable of a rate change; (b) limit the effective date of a rate change to the first day of a calendar quarter; and (c) notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.

Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change would not relieve the seller of its obligation to collect sales or use taxes for that member state.

Local Rate and Boundary Changes

Each member state that has local jurisdictions that levy a sales or use tax must:

a. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum of 60 days' notice to sellers.

b. Apply local sales tax rate changes to purchases from printed catalogs wherein the purchaser computed the tax based upon local tax rates published in the catalog only on the first day of a calendar quarter after a minimum of 120 days' notice to sellers.

c. For sales and use tax purposes only, apply local jurisdiction boundary changes only on the first day of a calendar quarter after a minimum of 60 days' notice to sellers.

d. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database must include a description of the change and the effective date of the change for sales and use tax purposes.

e. Provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state.

f. Provide and maintain a database that assigns each five-digit and nine-digit zip code within a member state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or CSP is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or CSP may apply the rate for the five-digit zip code area. For the purposes of this provision, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the nine-digit zip code designation by utilizing software approved by the Agreement's governing board that makes this designation from the street address and the five-digit zip code applicable to a purchase.

g. In addition, member states have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates. The database records must be in the same approved format as the database records described under (f) and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act. The governing board may allow a member state to require sellers that register under the Agreement to use an address-based system provided by that member state. If any member state develops address-based assignment database records pursuant to the Agreement, a seller or CSP may use those database records in place of the database records provided for in (f) above. If a seller or CSP is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or CSP may proceed as described under (f) with respect to the application of zip-codes. For the purposes of this provision, there is a rebuttable presumption that a seller or CSP has exercised due diligence if the seller or CSP has attempted to determine the tax rate and assignment from the address and zip code information applicable to the purchase.

h. States that have met the requirements under (f) may also elect to certify vendor-provided address-based databases for assigning tax rates and jurisdictions. The database records must be in the same approved format as the database records described under (g) and must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act. If a state certifies a vendor-provided address-based databases for assigning tax rates and jurisdictions, a seller or CSP may use that database in place of the database provided for in (f) or (g) above. Vendors providing address-based databases may request certification of their databases from the governing board. Certification by the governing board does not replace the requirement that the databases be certified by the states individually.

Relief from Certain Liability

Each member must relieve sellers and certified service providers using databases under (f), (g), or (h), above, from liability to the member state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based database for assigning taxing jurisdictions pursuant to section (g) or (h) above may cease providing liability relief for errors resulting from the reliance on the database provided by the member state under the provisions of section (f) above. If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, a member state and the governing board may extend the relief from the liability to such seller for a designated period of time.

Sourcing

Each member state must agree to require sellers to source the retail sale of a product in accordance with the sourcing rules set forth in the Agreement. The sourcing provisions only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's retail sale of a product. The sourcing provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions of that use.

The Agreement's sourcing provisions do not apply to sales or use taxes levied on sales of watercraft, modular homes, manufactured homes, mobile homes, motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment. The retail sale of these items must be sourced according to the requirements of each member state (however, the lease or rental of these items must be sourced as provided for in the Agreement).

Under the Agreement, states must use destination-based sourcing rather than origin-based sourcing. With destination-based sourcing, a sale is considered to occur in the jurisdiction where the purchaser resides or uses the property or service, rather than in the jurisdiction where the seller is located. The Agreement includes a number of detailed provisions for sourcing specific types of transactions.

Enactment of Exemptions

A member state may enact a product-based exemption without restriction if the Agreement does not have a definition for the product. A member state may enact a product-based exemption for a product if the Agreement has a definition for the product and the member state utilizes in the exemption the product definition in a manner consistent with the Agreement. If the Agreement has a definition of the product and if the member state utilizes in the exemption the product definition in a manner consistent with the Agreement, a member state may enact an exemption for the product. A member state may enact a product-based exemption exempting all items included within the definition under the SSUTA but may not exempt specific items

included with the product definition unless the product definition sets out an exclusion for such item.

A member state may enact an entity-based or a use-based exemption without restriction if the Agreement does not have a definition for the product. A member state may enact an entity-based or a use-based exemption for a product if the Agreement has a definition for the product and the member state utilizes in the exemption the product definition in a manner consistent with the Agreement. A member state may enact an entity-based exemption for an item if the Agreement does not have a definition for the item but has a definition for a product that includes the item. A member state may not enact a use-based exemption for an item which effectively constitutes a product-based exemption if the Agreement has a definition for a product that includes the item. A member state may enact a use-based exemption for an item if the Agreement has a definition for a product that includes the item if consistent with the definition of the product under the Agreement and not prohibited by the Agreement.

Administration of Exemptions

The Agreement includes a number of provisions that must be observed by member states when a purchaser claims an exemption. For example, the seller must obtain identifying information of the purchaser and the reason for claiming a tax exemption and maintain proper records of exempt transactions and provide them to a member state when requested.

Each member state must relieve sellers that follow the Agreement's requirements from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption, and to hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply to a seller who fraudulently fails to collect the tax, solicits purchasers to participate in the unlawful claim of an exemption, or inappropriately accepts an exemption certificate when the purchaser claims an entity based exemption under certain, specified conditions.

In addition, each state must relieve a seller of the tax otherwise applicable if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Agreement within 90 days subsequent to the sales or satisfies certain other conditions as specified in the Agreement.

Uniform Returns, Rules for Remittances of Funds, and Recovery of Bad Debts

The Agreement requires member states to abide by a number of uniform rules regarding sales and use tax returns, remittance of funds by sellers, and recovery of sales tax on bad debts.

Confidentiality and Privacy Protections Under Model 1

A "Model 1" seller is a retailer who has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

The member states agree that a fundamental precept in Model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, CSPs would be required to perform their tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers. Under the Agreement, "personally identifiable information" means information that identifies a person.

The Agreement's governing board could certify a CSP only if the CSP certifies that:

a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected.

b. Personally identifiable information is only used and retained to the extent necessary for the administration of Model 1 with respect to exempt purchasers.

c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice would be satisfied by a written privacy policy statement accessible by the public on the official web site of the CSP.

d. Its collection, use, and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased.

e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

Each member state would have to provide public notification to consumers, including their exempt purchasers, of the state’s practices relating to the collection, use, and retention of personally identifiable information.

When any personally identifiable information that has been collected and retained is no longer required for sales tax purposes, such information could no longer be retained by the member states.

When personally identifiable information regarding an individual is retained by or on behalf of a member state, the state would have to provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

If anyone other than a member state, or a person authorized by that state’s law or the Agreement, seeks to discover personally identifiable information, the state from which the information is sought would have to make a reasonable and timely effort to notify the individual of such request.

This privacy policy would be subject to enforcement by member states' attorneys general or other appropriate state government authority.

Each member state's laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the Agreement does not enlarge or limit the member states' authority to: (a) conduct audits or other review as provided under the Agreement and state law; (b) provide records pursuant to a member state's Freedom of Information Act, disclosure laws with governmental agencies, or other regulations; (c) prevent, consistent with state law, disclosures of confidential taxpayer information; (d) prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; or (e) collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes. "Confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges. "Anonymous data" means information that does not identify a person.

This privacy policy does not preclude the Agreement's governing board from certifying a CSP whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the Agreement.

Sales Tax Holidays

The Agreement would permit states to implement temporary exemption periods, commonly referred to as sales tax holidays, subject to a number of restrictions regarding the use of uniform definitions, notice, price thresholds, and the treatment of special transactions (such as layaway sales, coupons, discounts, rain-checks, and exchanges).

The Agreement would require member states to use the following procedures in administering a sales tax holiday exemption:

Layaway Sales. A sale of eligible property under a layaway sale qualifies for exemption if: (a) final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or (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.

Bundled Sales. Member states are required to follow the same procedure during the sales tax holiday as agreed upon for handling a bundled sale at other times.

Coupons and Discounts. A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold of a member state. 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 is required to 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.

Splitting Of Items Normally Sold Together. Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, a pair of shoes cannot have each shoe sold separately so that the sales price of each shoe is within a sales tax holiday price threshold.

Rain Checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check qualifies for the exemption regardless of when the rain check was issued. Issuance of a rain check during the exemption period does not qualify eligible property for the exemption if the property is actually purchased after the exemption period.

Exchanges. With respect to exchanges, the following provisions apply: (a) if a customer 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 customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer 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; and (c) if a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer 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 new item is purchased during the exemption period.

Delivery Charges. Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property unless a member state defines "sales price" to exclude such charges. For the purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. In such a case, the shipment is 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 must allocate the delivery charge by using: (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; or (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 must tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the eligible property.

Order Date and Back Orders. For the purpose of a sales tax holiday, eligible property qualifies for exemption if: (a) the item is both delivered to and paid for by the customer during the exemption period; or (b) the customer 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.

Returns. For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax is to be given unless the customer 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. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

Different Time Zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and a seller is located in another.

In addition to these provisions, the Agreement includes a number of definitions that are only applicable for the purpose of administration of a sales tax holiday.

Caps and Thresholds

Member states could not: (a) have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005; or (b) have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.

Member states that have local jurisdictions that levy a sales or use tax could not place caps or thresholds on the application of local tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005.

These restrictions do not apply to taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances where the burden of administration has been shifted from the retailer.

Rounding

The Agreement includes a uniform rounding rule to be used by retailers in calculating the amount of tax to be collected from purchasers.

Customer Refund Procedures

The Agreement includes customer refund procedures that apply when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller. These procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. Under these provisions, a cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had 60 days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller would be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller: (a) uses either a provider or a system, including a proprietary system, that is certified by the state; and (b) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

None of these provisions would either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. None of these provisions would operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.

Direct Pay Permits

Each member state would have to provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit would have to make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each state can set its own limits and requirements for the direct pay permit. The governing board will advise member states when setting state direct pay limits and requirements.

Library of Definitions; Taxability Matrix

Each member state would be required to utilize common definitions as set out in the Agreement's Library of Definitions. Member states would have to adhere to the following principles:

a. If a term defined in the Library of Definitions appears in a member state’s sales and use tax statutes or administrative rules or regulations, the member state must enact or adopt the Library definition of the term in its statutes or administrative rules or regulations in substantially the same language as the Library definition.

b. Member states may not use a Library definition in their sales or use tax statutes or administrative rules or regulations that is contrary to the meaning of the Library definition.

c. Except as specifically provided in the Agreement's provisions regarding the enactment of exemptions and the Library of Definitions, member states must impose a sales or use tax on all products or services included within each definition or exempt from sales or use tax all products or services within each definition.

To ensure uniform application of terms defined in the Library of Definitions, each member state must complete a taxability matrix adopted by the Agreement's governing board. The member state's entries in the matrix must be provided and maintained in a database that is in a downloadable format approved by the Agreement's governing board. Member states must provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.

Member states must relieve sellers and CSPs from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or CSP relying on erroneous data provided by the member state in the taxability matrix.

To date, the Agreement's Library of Definitions includes a number of definitions of core terms that apply in imposing and administering sales and use taxes. The Agreement also includes product definitions to be used in identifying each state's tax base.

The current Library includes administrative definitions for "lease or rental," "purchase price," "sales price," "tangible personal property," and other general definitions. Current product definitions under the Agreement relate to clothing, computers, food, health care products and services, and terms related to sales tax holidays.

Effective Date for Rate Changes

Each member state would have to provide that the effective date of rate changes for services covering a period starting before and ending after the statutory effective date would be as follows: (a) for a rate increase, the new rate would apply to the first billing period starting on or after the effective date; and (b) for a rate decrease, the new rate would apply to bills rendered on or after the effective date.

Bundled Transactions

A member state must adopt and utilize the definition of a bundled transaction as provided under the Agreement. Member states are not restricted in their tax treatment of bundled transactions, except as otherwise provided in the Agreement. Member states are not restricted in their ability to treat some bundled transactions differently from other bundled transactions. However, in the case of a bundled transaction that includes a telecommunications service, ancillary service, Internet access, or audio or video programming service, the following provisions apply:

a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

b. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

c. These provisions must apply unless otherwise provided by federal law.

Relief from Certain Liability for Purchasers

A member state must relieve a purchaser from liability for penalty to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the following circumstances:

a. A purchaser's seller or CSP, or a purchaser holding a direct pay permit, relied on erroneous data provided by that member state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by that member state.

b. A purchaser relied on erroneous data provided by that member state in the taxability matrix.

c. A purchaser using a database authorized under the Agreement relied on erroneous data provided by that member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, a member state that provides an address-based database for assigning taxing jurisdictions may cease providing liability relief for errors resulting from the reliance on the zip-code based database provided by the member state.

Except were prohibited by a member state's constitution, a member state must also relieve a purchaser from liability for tax and interest to that member state and its local jurisdictions for having failed to pay the correct amount of sales or use tax under the conditions described above, provided that, with respect to reliance on the taxability matrix completed by the member state, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Agreement's definitions as "taxable" or "exempt" "included in sales price" or "excluded from sales price," or "included in the definition" or "excluded from the definition."

Under these provisions, the term "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional, which is in addition to the correct amount of sales or use

tax and interest. A member state may allow relief on terms and conditions more favorable to a purchaser than the terms required by the Agreement.

These provisions are effective on and after January 1, 2009. However, to the extent that any relief under this section does not require a legislative change in a member state, such relief must be granted immediately.

Seller Participation

The member states must provide an online registration system that allows sellers to register in all the member states. By registering, the seller would agree to collect and remit sales and use taxes for all taxable sales into the member states, including member states joining after the seller's registration. Withdrawal or revocation of a member state would not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.

In member states where the seller has a requirement to register prior to registering under the Agreement, the seller may be required to provide additional information to complete the registration process or the seller may choose to register directly with those states.

A member state or a state that has withdrawn or been expelled may not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has nexus with that state for any tax at any time.

Amnesty for Registration

Member states must provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the Agreement, provided that the seller was not so registered in that state in the 12-month period preceding the effective date of the state's participation in the Agreement.

The amnesty must preclude assessment for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in the state, provided registration occurs within 12 months of the effective date of the state's participation.

Amnesty must also be provided by any additional state that joins the Agreement after the seller has registered.

The amnesty is not available: (a) to a seller with respect to any matter for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes; or (b) for sales or use taxes already paid or remitted to the state or to taxes collected by the seller.

The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least 36 months. Each member state must toll its statute of limitations applicable to asserting a tax liability during this 36-month period.

The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

A member state may allow amnesty on terms and conditions more favorable to a seller than the terms required by the Agreement.

Method of Remittance

When registering, the seller may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected: (a) Model 1, wherein a seller selects a CSP as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases; (b) Model 2, wherein a seller uses a certified automated system to calculate the amount of tax due on a transaction; or (c) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a CAS.

Certification of Service Providers and Automated Systems

The Agreement's governing board would be required to certify automated systems and service providers.

The board could certify a person as a CSP if the person: (a) uses a CAS; (b) integrates its CAS with the system of a seller for whom the person collects tax so that the tax due on a sale is determined at the time of the sale; (c) agrees to remit the taxes it collects at the time and in the manner specified by the member states; (d) agrees to file returns on behalf of the sellers for whom it collects tax; (e) agrees to protect the privacy of tax information it obtains in accordance with the Agreement; and (f) enters into a contract with the member states and agrees to comply with the terms of the contract.

The governing board could certify a software program as a CAS if the governing board determines that the program: (a) determines the applicable state and local sales and use tax rate for a transaction, in accordance with the requirements of the Agreement; (b) determines whether or not an item is exempt from tax; (c) determines the amount of tax to be remitted for each taxpayer for a reporting period; (d) can generate reports and returns as required by the governing board; and (e) can meet any other requirement set by the governing board.

The governing board may establish one or more sales tax performance standards for Model 3 sellers that meet the eligibility criteria set by the board and that developed a proprietary system to determine the amount of sales and use tax due on transactions.

State Review and Approval of Certified Automated System Software and Certain Liability Relief

Each member state must review software submitted to the governing board for certification as a CAS. The review must include a review to determine that the program adequately classifies the state's product-based exemptions. Upon completion of the review, the state must certify to the governing board its acceptance of the classifications made by the system.

Each member state must relieve CSPs and Model 2 sellers (described below) from liability to the member state and local jurisdictions for not collecting sales or use taxes resulting from the CSP or Model 2 seller relying on the certification provided by the member state. In addition, each member state must provide relief from liability to CSPs for not collecting sales and use taxes in the same manner as provided to seller under the Agreement.

The governing board and the member states are not responsible for classification by a CSP or Model 2 seller of an item or transaction within the product-based exemptions certified. The relief from liability under these provisions is not available to a CSP or Model 2 seller that has incorrectly classified an item or transaction into a product-based exemption certified by a member state.

A member state is required to notify a CSP or Model 2 seller of an incorrect classification as to the taxability of an item. The CSP or Model 2 seller has ten days to revise the classification, after which the CSP or Model 2 seller is liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

MONETARY ALLOWANCES FOR NEW TECHNOLOGICAL MODELS FOR SALES TAX COLLECTION

Model 1 Sellers

Each member state must provide a monetary allowance to a CSP in Model 1 in accordance with the terms of the contract between the governing board and the CSP. The details of the monetary allowance will be provided through the contract process. The governing board must require such allowance to be funded entirely from money collected in Model 1.

The contract between the governing board and a CSP may base the monetary allowance on one or more of the following: (a) a base rate that applies to taxable transactions processed by the CSP; or (b) for a period not to exceed 24 months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

Model 2 Sellers

The Agreement states that the member states initially anticipate that they will provide a monetary allowance to sellers under Model 2 based on the following:

a. All sellers will receive a base rate for a period not to exceed 24 months following the commencement of participation by a seller. The base rate will be set after the base rate has been established for Model 1. This allowance will be in addition to any discount afforded by each member state at the time.

b. The member states anticipate a monetary allowance to a Model 2 seller based on the following: (1) for a period not to exceed 24 months following a voluntary seller's registration through the Agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax; and (2) following the conclusion of the 24-month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.

Model 3 Sellers and Other Sellers

The member states anticipate that they will provide a monetary allowance to sellers under Model 3 and to all other sellers that are not under Models 1 or 2 based on the following: (a) for a period not to exceed 24 months following a voluntary seller's registration through the central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax; and (b) vendor discounts afforded under each member state's law.

AGREEMENT ORGANIZATION

Effective Date

The Agreement specifies that the Agreement is to become binding and take effect when at least ten states comprising at least 20% of the total population of all states imposing a state sales tax as of October 1, 2005, have petitioned for membership and have been found to be either in compliance with the Agreement's requirements for full membership or have been found to be an associate member under the Agreement. The Agreement will take effect on the first day of a calendar quarter at least 60 days after the tenth state is found in compliance.

These conditions were satisfied and the Agreement took effect on October 1, 2005.

Approval of Initial States

Prior to the effective date of the Agreement, a state may seek membership by forwarding a

petition for membership and certificate of compliance to the Co-Chairs of the Streamlined Sales Tax implementing states. The certificate of compliance must meet the requirements of the Agreement. If some changes to a state's statutes, rules, regulations, or other authorities have been adopted, but are not yet in effect, the petition for membership must include the date on which those changes will be effective. A petitioning state must also provide a copy of its petition for membership and its certificate of compliance to each of the implementing states. A petitioning state must also post a copy of its petition for membership and certificate of compliance on that state's web site.

Upon receipt of the requisite number of petitions, the Co-Chairs will convene and preside over a meeting of the petitioning states for the purpose of determining if the petitioning states are in compliance with the Agreement. The meeting must be convened as soon as practicable after receipt of the requisite number of petitions, but may not be earlier than the date that the relevant statutes, rules, regulations, or other authorities of the requisite number of petitioning states are effective. An affirmative vote of three-fourths of the other petitioning states is necessary for a petitioning state to be found in compliance with the Agreement. A petitioning state may not vote on its own petition for membership.

The Co-Chairs are required to provide the public with an opportunity to comment prior to any vote on a state's petition for membership.

Streamlined Sales Tax Implementing States

From the time of ratification of the Agreement until the provisions take effect, the Streamlined Sales Tax implementing states must maintain responsibility for the Agreement, including the disposition of all proposed amendments to the Agreement in the manner provided under the Agreement (described below). If the provisions of the Agreement have been met with the use of associate members, the implementing states must be responsible for the disposition of all proposed amendments to and interpretations of the Agreement until such time as the provisions of the Agreement have been met without the use of associates members. For a period of not less than six months nor longer than one year after the provisions of the Agreement are met without the use of Associate members, the implementing states must provide advice to the governing board of the Agreement and must be consulted by the governing board before amending the Agreement.

Upon the expiration of the duties of the implementing states, any state that previously held implementing state status shall become an advisor state to the governing board. Advisor states will serve in an *ex officio* capacity on the Governing Board, with non-voting status, but may speak to any matter presented to the Governing Board for consideration. In addition to this provision, the Agreement details other provisions on the role of advisor states, including a process for a state that was not previously an implementing state to qualify as an advisor state.

Consideration of Petitions

Under the Agreement, a petitioning state that is found to be in compliance with the

Agreement and whose changes to its statutes, rules, regulations, or other authorities necessary to bring the state into compliance are in effect will be designated a member state.

A petitioning state that is found to be in compliance but whose changes to its statutes, rules, regulations, or other authorities necessary to bring the state into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008, will be designated an associate member. Provided that such a state's statutes, rules, regulations, or other authorities remain in effect, the state will automatically become a member state upon the effective date of the conforming legislation.

A petitioning state that fails to receive an affirmative vote of three-fourths of the petitioning states, as required under the Agreement, may request associate membership. The petitioning states may grant such membership by majority vote upon a finding that the state has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008. A state that is granted associate membership will be required to re-petition for full membership under the requirements of the Agreement.

Associate Membership

An associate member will have all the rights and privileges of a member state except that an associate member may not vote on amendments to or interpretations of the Agreement when the provisions related to the effective date of the Agreement have been met without the use of associate members. Associate members may vote on amendments to or interpretations of the Agreement as an implementing state.

An associate member is to retain such status until the governing board finds such state to be in compliance with the Agreement or December 31, 2007, whichever is earlier, without regard to whether the population requirement under the Agreement has been met. Any associate member that has not been found in compliance by December 31, 2007, must forfeit its status as an associate member, and no state may be an associate member after that date. The co-chairs of the Streamlined Sales Tax implementing states must provide an associate member state with the reasons why the state is not in compliance with the Agreement.

A seller may, but is not required to, collect sales or use tax on sales into an associate member state unless the seller is otherwise required to collect such taxes under applicable law. A seller that volunteers to collect tax in an associate member state is not required to collect tax in any other associate member state. An associate member will be responsible for payment of costs as provided under the Agreement for those sellers that volunteer to collect tax in an associate member state.

Neither the governing board nor a member state may share or grant access to an associate member state any seller information from the seller's registration under the Agreement. Neither the governing board nor a member state may share or grant access to an associate member state any seller information from an audit conducted by the governing board or a member state on behalf of the governing board unless the associate member is a party to the audit.

An associate member will be responsible for the payment of the petition fee and the annual cost allocation as determined by the implementing states or the governing board. An associate member state must provide amnesty as required under the Agreement, provided the amnesty will be in effect from the date the associate member status is attained until 12 months after the associate member state has been found to be in compliance with the Agreement.

STATE ENTRY AND WITHDRAWAL

Entry Into Agreement

After the effective date of the Agreement, a state may apply to become a party to the Agreement by submitting a petition for membership and certificate of compliance to the governing board. The petition must include the state's proposed date of entry, which must be on the first day of a calendar quarter. The proposed date of entry must also be a date on which all provisions necessary for the state to be in compliance with the Agreement are in place and effective.

The petitioning state must provide a copy of its petition for membership and the certificate of compliance to each member state. A petitioning state must also post a copy of its petition for membership and certificate of compliance on its web site.

Certificate of Compliance

The certificate of compliance must be signed by the chief executive of the state's tax agency, and must document compliance with the provisions of the Agreement and cite applicable statutes, rules, regulations, or other authorities evidencing such compliance.

Annual Re-Certification of Member States

Each member state must re-certify that it is in compliance with the Agreement by August 1 of each year. In its annual re-certification, the state must include any changes in its statutes, rules, regulations, or other authorities that could affect its compliance with the terms of the Agreement. The re-certification must be signed by the chief executive of the state's tax agency.

A member state that cannot re-certify its compliance would have to submit a statement of non-compliance to the governing board identifying any action or decision that takes such state out of compliance with the Agreement and the steps it will take to return to compliance. The governing board is required to promulgate rules and procedures to respond to statements of noncompliance.

Annual re-certifications and statements of non-compliance must be posted on the state's web site.

Requirements for Membership Approval

The governing board will determine if a petitioning state is in compliance with the Agreement, and a three-fourths vote of the entire board is required to approve a state's petition for membership. The board must provide public notice and opportunity for comment prior to voting on a state's petition for membership. A state's membership is effective on the proposed date of entry in its petition for membership or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least 60 days after its petition is approved.

Compliance

A state is in compliance with the Agreement if the effect of the state's laws, rules, regulations, and policies is substantially compliant with each of the requirements set forth in the Agreement.

Agreement Administration

Authority to administer the Agreement rests with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the board. The representatives must be members of the executive or legislative branches of the state. Each member state is entitled to one vote on the governing board. Except as otherwise provided in the Agreement, all actions taken by the governing board require an affirmative vote of a majority of the governing board present and voting. The governing board will determine its meeting schedule, but must meet at least once annually. The governing board must provide a public comment period at each meeting to provide members of the public an opportunity to address the board on matters relevant to the administration or operation of the Agreement. The governing board must provide public notice of its meetings at least 30 days in advance of such meetings. As required by the Agreement, the governing board has promulgated rules establishing the public notice requirements for holding emergency meetings on less than 30 day's notice. The governing board may meet electronically.

The governing board is responsible for the administration and operation of the Agreement, including the appointment of all manner of committees. The governing board may employ staff, advisors, consultants, or agents. The governing board may issue interpretive opinions and promulgate such rules it deems necessary to carry out its responsibilities. Rules may take one of two forms: procedural rules, which require an affirmative vote of a majority of the governing board present and voting to adopt; and interpretative rules, which require an affirmative vote of three-fourths of the entire governing board to adopt. The governing board may take any action that is necessary and proper to fulfill the purposes of the Agreement. The board may allocate the cost of administration of the Agreement among the member states.

Open Meetings

Each meeting of the governing board and the minutes thereof must be open to the public except as provided below.

Meetings may be closed only for one or more of the following:

a. Personnel issues.

b. Information required by the laws of any member state to be protected from public disclosure. In the meeting, the governing board must excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

c. Proprietary information requested by any business to be protected from disclosure.

d. The consideration of issues incident to competitive bidding, requests for information, or certification, the disclosure of which would defeat the public interest in a fair and competitive process.

e. The consideration of pending litigation in a member state the discussion of which in a public session would, in the judgment of the member state engaged in the litigation, adversely affect its interests. In the meeting, the governing board must excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

f. The consideration of pending litigation in which the governing board is a party the discussion of which in a public session would, in the judgment of the governing board, adversely affect its interests. In the meeting, the governing board must excuse any attendee to whom confidential taxpayer information cannot be disclosed under the law of any member state.

In addition, a closed session of the board may be convened by the chair or by a majority vote of the board. When a closed session is convened, the reason for the closed session must be noted in a public session. Any actions taken in the closed session must be reported immediately upon the reconvening of a public session.

Withdrawal of Membership or Expulsion of a Member

With respect to each member state, the Agreement will continue in full force and effect until the state withdraws its membership or is expelled. A state's withdrawal or expulsion cannot be effective until the first day of a calendar quarter after a minimum of 60 days' notice. A member state must submit notice of its intent to withdraw to the governing board and the chief executive of each member state's tax agency. The member state must also provide public notice of its intent to withdraw and post its notice of intent to withdraw on its web site.

The withdrawal by or expulsion of a state does not affect the validity of the Agreement among other member states. A state that withdraws or is expelled from the Agreement remains liable for its share of any financial or contractual obligations that were incurred by the governing board prior to the effective date of that state's withdrawal or expulsion. The appropriate share of any financial or contractual obligation will be determined by the state and the governing board in good faith based on the relative benefits received and burdens incurred by the parties.

Sanction of Member States

If a member state is found to be out of compliance, the governing board may consider sanctions against the state. Potential sanctions include expulsion from the Agreement, or other penalties as determined by the governing board. The adoption of a resolution to sanction a member state for noncompliance requires the affirmative vote of three-fourths of the entire governing board, excluding the state that is the subject of the resolution. The member state that is the subject of the resolution may not vote on such resolution. Resolutions seeking sanctions must be acted upon by the board within a reasonable period of time as set forth in the board's rules. The board must provide an opportunity for public comment prior to action on a proposed sanction.

No member state may be sanctioned for failing to comply with any amendment to the Agreement or interpretation or interpretive rule adopted, if compliance with the amendment, interpretation, or interpretive rule requires the state to make a statutory change, until the later of the first day of January at least two years after the adoption of the amendment or interpretive rule or the first day of a calendar quarter following the end of one full session of the state's legislature.

No member state may be sanctioned for failing to be in compliance with any term of the Agreement that the state has adopted, in substantially identical form, in its statutes if its noncompliance is a result of a judicial ruling in that state that interprets that term of the Agreement in a manner inconsistent with an interpretation by, or interpretive rule of, the governing board and the member state comes into compliance with the governing board's interpretation by amending its statutes before the later of the first day of January at least two years after the adoption of the amendment or interpretive rule or the first day of a calendar quarter following the end of one full session of the state's legislature.

Advisory Councils

As required by the Agreement, the governing board has created a State and Local Government Advisory Council and a Business Advisory Council from the private sector to advise it on matters pertaining to the administration of the Agreement. The membership of the Government Advisory Council must include at least one representative from each state that is a participating member of the Streamlined Sales Tax Project. In addition, the governing board is required to appoint local government officials to the Council, and the board may appoint other state officials as it deems appropriate. The Agreement does not specify the membership of the Business Advisory Council. These Councils are required to advise and assist each other in performing their duties.

AMENDMENTS AND INTERPRETATIONS

Amendments to the Agreement

Amendments to the Agreement may be brought before the governing board by any member state. The Agreement may be amended by a three-fourths vote of the entire governing board. The governing board must give the Governor and presiding officer of each legislative house of each member state notice of proposed amendments at least 60 days prior to consideration. The governing board must also give public notice of proposed amendments at least 60 days prior to consideration, and provide an opportunity for public comment prior to action on an amendment.

Interpretations of Agreement

Matters involving interpretation of the Agreement may be brought before the governing board by any member state or by any other person. Interpretations may take the form of interpretive opinions, or interpretive rules. An interpretive opinion is issued when the requester submits specific facts and asks how certain provisions in the Agreement would apply to those facts, similar to a private letter ruling. An interpretive rule is issued to clarify language in the Agreement and applies more generally, similar to rules and regulations issued to clarify statutory language. Both forms of interpretations require a three-fourths vote of the entire governing board. The governing board must publish all interpretations issued under these provisions, which are considered part of the Agreement and have the same effect as the Agreement. The governing board must act on interpretation requests within a reasonable period of time and under guidelines and procedures as set forth in the board's rules. The board may determine that it will not issue an interpretation. The governing board must provide an opportunity for public comment prior to issuing an interpretation. The governing board must give notice of a proposed interpretive rule to the member states and the public at least 30 days prior to consideration.

Definition Requests

Any member state or any other person may make requests for additional definitions or for interpretations on how an individual product or service fits within a definition. Such requests will be referred to the State and Local Government Advisory Council or other group under guidelines and procedures as set forth in the governing board's rules. The entity to which the request was referred must post notice of the request and provide for input from the public and the member states as directed by the governing board. Within 180 days after receiving the request, they would have to report to the governing board one of the following recommendations: (a) that no action be taken on the request; (b) that a proposed amendment to the Library be submitted; (c) that an interpretation request be submitted; or (d) that additional time is needed to review the request.

If either an amendment or an interpretation is recommended, the entity to which the request was referred would have to provide the appropriate language as required by the governing board. The governing board would have to take action on the recommendation at the next board meeting. Action by the governing board to approve a recommendation for no action would be considered the

final disposition of the request. These provisions do not prohibit a state from directly submitting a proposed amendment or an interpretation request to the governing board.

ISSUE RESOLUTION PROCESS

The governing board must promulgate rules creating an issue resolution process. The rules must govern the conduct of the process, including the participation by any petitioner, affected state, and other interested party, the disposition of a petition to invoke the process, the allocation of costs for participating in the process, the possible involvement of a neutral third party or non-binding arbitration, and such further details as the board determines necessary and appropriate. Currently, such the rules have been partially completed.

Any member state or person may petition the governing board to invoke the issue resolution process to resolve matters of: (a) membership of a state; (b) matters of compliance; (c) possibilities of sanctions of a member state; (d) amendments to the Agreement; (e) interpretation issues, including differing interpretations among the member states; or (f) other matters at the discretion of the board.

The governing board must consider any recommendations resulting from the issue resolution process before making its decision, which would be final and not subject to further review.

None of these provisions may be construed to substitute for, stay or extend, limit, expand, or otherwise affect, in any manner, any right or duty that any person or governmental body has under the laws of any member state or local government body.

RELATIONSHIP OF AGREEMENT TO MEMBER STATES AND PERSONS

The Agreement states that it is among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

No provision of the Agreement in whole or part invalidates or amends any provision of the law of a member state. Adoption of the Agreement by a member state does not amend or modify any law of the state. Implementation of any condition of the Agreement in a member state, whether adopted before, at, or after membership of a state, must be by the action of the member state.

The Agreement binds and inures only to the benefit of the member states, and no person, other than a member state, is an intended beneficiary of the Agreement. Any benefit to a person other than a state is established by the laws of the member states and not by the terms of the Agreement.

No person may have any cause of action or defense under the Agreement or by virtue of a member state's approval of the Agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of any member state, or any political subdivision of a member state on the ground that the action or inaction is inconsistent with the Agreement. In addition, no law of a member state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement.

The determinations pertaining to the Agreement that are made by the member states are final when rendered and are not subject to any protest, appeal, or review.

REVIEW OF COSTS AND BENEFITS ASSOCIATED WITH THE AGREEMENT

The governing board is required to review the costs and benefits of administration and collection of sales and use taxes incurred by states and sellers under the proposed Streamlined Sales Tax Agreement and the existing sales and use tax laws at the time of adoption of the Agreement. Currently, the review has been partially completed.

TREATMENT OF VENDING MACHINES

The provisions of the Agreement do not apply to vending machines sales and the Agreement does not restrict how member states tax vending machine sales.