Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

June 8, 2007 Joint Committee on Finance Paper #332

Streamlined Sales and Use Tax
(General Fund Taxes – General Sales and Use Tax)

Bill Agency

[LFB 2007-09 Budget Summary: Page 176, #3]

CURRENT LAW

Under current law, Wisconsin imposes a 5% general sales tax on 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 used 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 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 imposed on the purchaser.

Sellers of taxable property and services must obtain a business tax registration certificate and a permit for each location from the Department of Revenue (DOR) [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.

Sellers may deduct a retailer's 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, 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 to Wisconsin residents. 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 by state residents. 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.

GOVERNOR

Modify Wisconsin's sales and use tax laws to conform to the provisions of the multi-state Streamlined Sales and Use Tax Agreement (SSUTA), effective January 1, 2008. In addition, create a sum sufficient PR appropriation for the purpose of paying associated annual fees and provide funding of $20,000 in 2007-08 and $40,000 in 2008-09 for such fees.

The bill would provide for certain modifications to Wisconsin's current tax base in order to comply with uniform definitions required under the SSUTA. In addition, the bill would include provisions related to the treatment of drop-shipments, sourcing rules, agreements with direct marketers, retailers' compensation, amnesty, and additional issues related to conforming to the SSUT Agreement. The bill would also convert the current sales tax exemption for Internet equipment used in the broadband market, for which certain limitations in total exemptions that may be taken apply, to a sales tax deduction in order to comply with the SSUTA approach that does not permit caps with respect to sales tax exemptions.

The main components of the SSUTA provisions are described in Attachment 1 to this paper. In addition, a memorandum from the Legislative Fiscal Bureau to Members of the Joint

Committee on Finance dated May 9, 2007, and entitled "Senate Bill 40: Streamlined Sales and Use Tax Provisions" provides a detailed description of the Governor's budget recommendations with respect to the SSUTA proposal. This memorandum is available on the Legislative Fiscal Bureau's website at: www.legis.state.wi.us/lfb under "Recent Publications."

The administration has estimated that the modifications in product definitions to comply with the SSUTA would result in a reduction in state sales tax revenues of $1.9 million in 2007-08 and $3.5 million in 2008-09. However, the administration also estimates that sales tax revenues would increase by $3.2 million in 2007-08 and $7.0 million 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 $1.3 million in 2007-08 and $3.5 million 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 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. The cost of this provision could be considerable if significant use were made of certified service providers, certified automated systems, and proprietary systems for the purpose of collecting and remitting sales tax. To date, only a small number of voluntary sellers under the Agreement have made use of CSPs or such systems.

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.

DISCUSSION POINTS

1. 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. Governor Thompson authorized Wisconsin's participation in the SSTP in early 2000.

2. 2001 Wisconsin Act 16 authorized Wisconsin to become an implementing state of the SSTP, which gave the state the right to approve and amend the SSUTA. The SSUTA was developed by implementing 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 about 600 sellers had voluntarily registered under the SSUTA to collect and remit sales and use tax in those states. As of the end of February, 2007, there were over 1,000 voluntary sellers. In addition, another state, the State of Washington applied for membership in the SSUTA on April 21, 2007. Attachment 2 provides a listing of the member states. Of Wisconsin's neighboring states, Iowa, Michigan, and Minnesota are member states, while Illinois is not.

3. The purpose of the SSUTA is two-fold. First, the Agreement is an attempt to streamline the administration of state sales and use taxes, generally, in the hope that sellers will voluntarily agree to collect the tax on remote sales. Second, it is hoped that, as a result of the simplification under the Agreement, Congress will be persuaded to pass legislation permitting states to require additional out-of-state sellers to collect and remit taxes.

4. Supporters of the SSTP believe that such results would help stem the increasing loss of state tax revenues due to unpaid use taxes on taxable purchases over the Internet and through other remote means, and would help provide equity between brick and mortar stores, where collection of state taxes is required, and other types of retailers.

5. The SSUTA provisions would not increase the legal obligation to pay taxes on taxable items sold to Wisconsin residents. Rather, the proposal is an attempt to enhance collection of the taxes imposed under current law. In fact, the net effect of the changes in the sales tax base under the SSUTA provisions (which are needed to comply with the terms of the SSUTA) is estimated by the administration as a reduction in state tax revenues of $1.9 million in 2007-08 and $3.5 million in 2008-09.

6. In recent years, the United States Census Bureau has issued quarterly and annual reports providing estimates of e-commerce and total retail sales in the U.S. In the most recent reports available, national e-commerce sales for 2006 were estimated at $108.7 billion, which represents an increase of 23.5% over 2005. Total retail sales were estimated to have increased 5.8% for the same period.

7. A Census Bureau report comparing estimates of quarterly U.S. retail e-commerce sales as a percent of total quarterly retail sales from the fourth quarter of 1999 through the fourth quarter of 2006 attributes a steadily increasing proportion of all retail sales to e-commerce; whereas an estimated 0.6% of all U.S. retail sales in the fourth quarter of 1999 were from e-commerce, that percentage had risen to 3.0% in the fourth quarter of 2006.

8. As indicated by this data, an increasing proportion of retail sales is occurring through remote means. This shift is affecting states' abilities to enforce compliance with sales and use tax laws. A study in the Journal of State Taxation, published by CCH Incorporated in the Winter, 2005, issue refers to the growth in business-to-consumer e-commerce, mail order, and home

shopping retail activity as a significant problem for the collection of state and local governments' sales and use tax revenue.

9. The first part of the two-fold purpose of the Agreement referred to above is to streamline the administration of state sales and use taxes in the hope that sellers will voluntarily agree to collect state taxes on remote sales. As part of this effort, states participating in the SSUTA would be required to use certain uniform definitions in establishing their tax bases (states would not, however, be required to have identical tax bases). In addition, participating states would jointly certify sales tax service providers and automated systems to simplify tax administration. Retailers could contract with certified service providers to assume the seller's sales and use tax responsibilities or use certified automated systems for tax calculation and record-keeping purposes. Participating states would be required to maintain databases that retailers could use to determine whether a transaction is taxable and the appropriate tax rate. It is believed that these mechanisms would, to a large extent, eliminate the burden on remote sellers of collecting state sales or use taxes. These modifications are also intended to ease the administrative burden for traditional retailers.

10. In addition to making it easier for sellers to collect such taxes, the Agreement (to which SB 40 would conform) offers two additional inducements to remote sellers that do not have nexus with the state to voluntarily collect tax for participating states.

11. The first additional inducement is amnesty. 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 SSUT Agreement. 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.

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. [It should be noted that, as drafted, the bill would specify that one of the necessary conditions for a seller to receive amnesty would be that 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. However, this language does not accurately reflect the SSUTA provisions on amnesty, which specify that amnesty is not available to a seller who has received a notice of commencement of an audit unless such an audit has been finally resolved at the time the seller registers. The administration has requested a modification to the amnesty provisions under the bill to reflect the SSUTA in this respect.]

In theory, any amount of tax for past years that the state did not receive as a result of the amnesty provisions would represent a loss in tax revenue to the state. However, as is generally the case with offers of amnesty related to tax provisions, the administration expects that any of such losses would be more than compensated for with higher tax collections in subsequent years.

12. The second additional inducement to remote sellers relates to monetary allowances. As described under "Current Law," sellers may currently deduct the retailer's discount (equal to 0.5% of the tax liability per reporting period, with a $10 minimum) from taxes due as compensation for administrative costs. The bill would remove certified service providers (or rather, as requested by the administration as a correction to the bill, retailers using certified service providers who receive compensation under the SSUTA) 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 certified service provider (who 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 certified automated system 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.

13. The second component of the two-fold purpose of the SSUTA is the hope that Congress will be persuaded to pass legislation permitting states to require additional out-of-state sellers to collect and remit taxes. One reason that federal law prohibits states from requiring remote sellers to collect state taxes is the burden that such requirements would place on sellers. The Agreement is intended to demonstrate, through the use of uniform definitions, databases maintained by the states, and the availability of certified service providers to assume a seller's sales and use tax responsibilities or certified automated systems to ease tax calculation and record-keeping, that requiring remote sellers to collect state taxes would not be onerous.

14. In keeping with the possibility that Congress would relax the nexus standards in

response to anticipated results of the SSUTA, SB 40 would modify the state's current nexus provisions to automatically conform to any changes in the federal nexus standards. At present, the statutes 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).

15. The administration has requested a number of amendments to the SSUTA provisions included in SB 40, most of which are technical in nature. In most cases, the requested modifications are to correct errors made in converting current law provisions into a format and terminology consistent with the SSUTA. The Department's description of these items are described in Attachment 3. In addition, certain items included on DOR's description are also outlined below.

Sourcing Rules for Florists. Under the bill, the general destination-based sourcing rules for sales of tangible personal property would also apply in the case of florists. Initially, the SSUTA provided an exception to use of the general sourcing provisions for florists to allow those states that sourced sales by florists on a point-of-origin basis to continue to do so through December 31, 2007. It appears that the SSUTA may be modified to extend this exception. In order to provide flexibility to allow Wisconsin to comply with such an extension, should it be approved, DOR has suggested that the bill be modified to specify that sales by a retail florist would be sourced in accordance with an administrative rule promulgated by the Department of Revenue.

Definition of "Agreement." The current sales and use tax statutes define the "Agreement" as the Streamlined Sales and Use Tax Agreement. However, the SSUTA continues to be clarified and amended in order to resolve issues raised by member states and the business community. In order to eliminate any question as to whether "Agreement," as used in Wisconsin statutes, refers to the SSUTA as it existed on the effective date of the legislation that created the definition or to the current SSUTA, DOR has requested a modification to clarify that the intention is that the term refers to the SSUTA as amended. It should be noted, however, that such a modification would not negate the need for future amendments to Wisconsin statutes in order to stay in compliance with the SSUTA. If amendments or interpretations to the SSUTA were not consistent with Wisconsin law, state law would control. The proposed modification would, however, avoid the necessity of continually updating the definition to refer to the current version of the SSUTA.

Effective Date for Tax Rate Changes. The SSUTA requires states to provide specific language with respect to the effective date for state tax rate changes, which would not be provided under the bill. To be in compliance with this requirement under the SSUTA, the administration requests an amendment to specify that an increase in the state tax rate would first apply to the first billing period starting on or after the effective date of the rate increase and that a decrease in the state rate would first apply to bills rendered on or after the effect date of the rate decrease. Such a modification is required to comply with the SSUTA, even though the bill would not modify the state's current sales and use tax rate.

Telecommunications Internet Access Services. Under current law, Internet access services are subject to the sales tax as a telecommunications service (as defined under the administrative

code). In order to conform to the SSUTA definition of "telecommunications services," the bill would create a separate definition for "telecommunications Internet access services," and would specifically impose the tax on telecommunications and telecommunications Internet access services. DOR has requested a number of modifications to ensure that the intended continuation of the current tax treatment of Internet access services would conform both to provisions under federal law and to the required definitions under the SSUTA.

To clarify the current tax treatment of Internet access services, DOR has requested that the title used in the current law definition of "telecommunications services" be modified to add "telecommunications and Internet access services." A similar change would be made to the current provisions that impose the tax on telecommunications services. These provisions would take effect on the bill's general effective date.

Subsequently, the definition and imposition language related to "telecommunications and Internet access services" (as modified under DOR's request, described above) would be further amended as part of the general conformance of current law with the SSUTA. Under this part of DOR's request, in order to clearly comply with the SSUTA definition of telecommunications services, "telecommunications services" and "Internet access services" would be separately stated in both the definition and tax imposition language (rather than using the bill's current language of "telecommunications services" and "telecommunications Internet access services"). These modifications would take effect on the same date as the rest of the SSUTA proposal, which would be January 1, 2008.

Additional modifications are requested to include requirements that DOR receive notification of the imposition of baseball and football stadium district taxes, and effective date and notification requirements for local exposition district taxes (for ease of administering related requirements under the SSUTA or, in the case of local exposition district taxes, for consistency with similar provisions).

16. The requested modifications to the bill would not be expected to affect the estimated fiscal effect that the SSUTA provisions would result in net increases in sales and use tax revenues of $1.3 million in 2007-08 and $3.5 million in 2008-09. These net effects are based on the combined effects of: (a) anticipated decreases in revenue from modifications to product definitions for food and durable medical equipment; (b) estimated increases in revenue from a modification that would impose the tax on property sold by an out-of-state, non-nexus seller to a Wisconsin purchaser and distributed directly by the seller by common carrier or U.S. mail to the purchaser’s Wisconsin consumers; (c) anticipated increases in revenues as a result of the amnesty provisions; and (d) anticipated increases in revenue based on voluntary collections. The following table provides the administration’s estimates of the fiscal effect of each of these components.

Estimated 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

17. In addition to the short-term estimated revenue changes shown in the table, it is possible that passage of the SSUTA proposal, 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 SSUTA resulted in more 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.

18. As indicated in the table, under the bill, it is estimated that there would be a net increase in state sales tax revenues as a result of proposed modifications related to items shipped by non-nexus sellers. Under the bill, 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 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. As shown in the table, this provision, which would apply to items such as candy and printed materials, would increase state sales taxes by an estimated $0.5 million in 2007-08 and $1.1 million in 2008-09.

It should be noted, however, that under 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 adopted the SSUTA proposal included in the bill. As a result of an interaction between these two items, if both the SSUTA proposal (which would take effect January 1, 2008, and estimates increased revenues associated with certain sales of catalogs) and the proposed catalog exemption (which would take effect January 1, 2009) were approved, state tax revenues from the sales and use tax would have to be reduced, compared to the bill, by $300,000 in 2008-09.

19. The bill would create a sum sufficient PR appropriation for the purpose of paying annual fees associated with participation in the SSUTA and estimate the cost of such fees at $20,000 in 2007-08 and $40,000 in 2008-09 for such fees. The second-year figure represents the ongoing, annualized estimate of the cost of membership, in 2008-09 dollars. Annual membership fees are based on a formula that distributes one-half of the shared costs of the SSUTA evenly among all member states and the other half based on the proportion of each state's percentage share of sales and use tax collections compared to total collections of such taxes by all member states. The estimates included in the bill were based on the most recent annual fees assessed on member states.

20. The estimated fiscal effects described above do not include the potential effect of a decision issued by the Court of Appeals on January 25, 2007, in the case Wisconsin Department of Revenue v. Menasha Corporation, with respect to the taxability of computer software. Under state law, while prewritten computer software is subject to the state sales tax on tangible personal property, sales of custom computer software are exempt. In 1998, Menasha Corporation filed a refund claim with the Department of Revenue for sales taxes paid on certain computer software that the company believed was custom software. DOR denied the refund claim, and Menasha Corporation appealed to the Tax Appeals Commission, which decided in favor of Menasha Corporation on December 1, 2003. The decision broadened the DOR interpretation of what computer software is to be considered nontaxable custom software. The case was appealed to the Circuit Court, which reversed the Tax Appeals Commission decision on October 26, 2004, and ruled that DOR was correct in collecting sales tax on the computer software in question. Menasha Corporation appealed the Circuit Court's decision to the Court of Appeals, which decided in favor of Menasha Corporation. DOR has appealed the Appeals Court decision, and the Supreme Court has agreed to hear the case.

The bill would modify the statutory definition of "tangible personal property" to specifically include prewritten computer software. Based on the definition of prewritten computer software under the SSUTA, the bill would, as a result, impose the sales and use tax on the software at issue in the Menasha case. Therefore, under the bill, the tax would apply effective January 1, 2008, regardless of the final resolution of the Menasha case.

The SSUTA requires states to use uniform definitions in establishing their tax bases, including the definition of prewritten computer software. A state could choose either to impose the tax on or provide an exemption for prewritten computer software, but could not modify the definition to partially exclude software that falls under the SSUTA definition.

Currently, all 21 members of the SSUTA impose the sales and use tax on prewritten

computer software as defined under the Agreement. All 45 states with a sales and use tax impose the tax on prewritten computer software. (For such states that are not SSUTA members, the definition of prewritten computer software varies). DOR has estimated that, should the state decide to completely exempt prewritten computer software, the fiscal effect would be to reduce state sales and use tax revenues by approximately $60 million on an annualized basis.

While member states may not modify the definition of prewritten computer software to carve out specific exemptions within the larger definition, a number of other options exist, such as providing a use-based exemption for certain prewritten computer software or allowing purchasers of certain prewritten computer software to file a refund claim for the sales and use tax paid on such software. Alternatively, a tax benefit for certain purchases of prewritten computer software could be offered through the individual and corporate income tax structures. Any such options would require careful crafting in order to arrive at a clear and administratively feasible result.

In summary, under the bill, the type of computer software at issue in the Menasha case would be subject to the sales and use tax. As the Menasha case has not been finally determined, no fiscal effect has been included in the bill related to the treatment of prewritten computer software, compared to current law. If the state were to become a member state, as provided under the bill, the state could not modify the definition of prewritten computer software provided under the SSUTA. However, options would still exist for specifying an alternative treatment for a prescribed subset of prewritten computer software.

ALTERNATIVES TO BILL

1. Approve the Governor's proposal with the administration's requested modifications.

ALT 1	Change to Bill		Change to Base	
	Revenue	Funding	Revenue	Funding
GPR	$0	$0	$4,800,000	$60,000

2. Delete provisions.

ALT 2	Change to Bill		Change to Base	
	Revenue	Funding	Revenue	Funding
GPR	- $4,800,000	- $60,000	$0	$0

Prepared by: Faith Russell
Attachments

ATTACHMENT 1

Summary of Proposal to Conform to the Streamlined Sales and Use Tax Agreement

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 artificial sweeteners).

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 (or rather, as requested by the administration as a correction to the bill, retailers using certified service providers who receive compensation under the SSUTA) 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 (who 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. [It should be noted that, as drafted, the bill would specify that one of the necessary conditions for a seller to receive amnesty would be that 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. However, this language does not accurately reflect the SSUTA provisions on amnesty, which specify that amnesty is not available to a seller who has received a notice of commencement of an audit unless such an audit has been finally resolved at the time the seller registers. The administration has requested a modification to the amnesty provisions under the bill to reflect the SSUTA in this respect.]

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 a memorandum from the Legislative Fiscal Bureau to Members of the Joint Committee on Finance dated May 9, 2007, and entitled "Senate Bill 40: Streamlined Sales and Use Tax Provisions." This memorandum, which provides a detailed description of the Governor's budget recommendations with respect to the SSUTA proposal, is available on the Legislative Fiscal Bureau's website at: www.legis.state.wi.us/lfb under "Recent Publications."

ATTACHMENT 2

Streamlined Sales Tax Project Member States

Arkansas
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Nebraska
Nevada
New Jersey
North Carolina
North Dakota
Ohio
Oklahoma
Rhode Island
South Dakota
Tennessee
Utah
Vermont
West Virginia
Wyoming

ATTACHMENT 3

Technical Modifications Recommended by the Department of Revenue

1. Section 1983 – Pg. 905 – Internet Equipment Used in the Broadband Market

Problem: Section 71.07 (5e)(b), as drafted, allows a credit for "…the amount certified by the department of commerce that the claimant claimed as an exemption under s. 77.54(48)." Due to the fact that the credit and exemption are capped at $7,500,000, the statute as written is not allowed under SSUTA. In order to correct the problem, a change was made to repeal the sales tax exemption and instead allow the purchaser to claim a deduction for the amount of sales or use tax they paid on their purchase of the Internet equipment used in the broadband market. However, when this language was drafted, it was drafted in such a manner that the effect is to allow the purchaser an income tax credit for the entire purchase price of the Internet equipment used in the broadband market, rather than just the sales or use tax on the equipment.

Recommendations: Change Section 1983 (pg. 905), so that it reads as follows: "71.07(5e)(b) *Filing claims.* Subject to the limitations provided in this subsection and subject to 2005 Wisconsin Act 479, section 17, beginning in the first taxable year following the taxable year in which the claimant claims ~~an exemption~~ a deduction under s. ~~77.54 (48)~~ 77.585 (9), a claimant may claim as a credit against the taxes imposed under ss. 71.02 and 71.08, up to the amount of those taxes, in each taxable year for 2 years, the amount of sales or use tax certified by the department of commerce that resulted from the claimant ~~claimed~~ claiming ~~as an exemption~~ a deduction under s. ~~77.54 (48)~~ 77.585 (9)."

Change Section 1985 (pg. 905) so that it reads as follows: "The total amount of the credits and ~~exemptions~~ sales and use tax resulting from the deductions claimed under s. 77.585(9), that may be claimed by all claimants…"

(Note: The changes described above for sections 1983 and 1985 must also be made in sections 2053 and 2055, 2109 and 2111.)

The following example illustrates how this language would apply.

Example:

- Company A purchases $100,000 worth of Internet equipment used in the broadband market.
- Company A had received the proper approvals/certifications from Department of Commerce, as required by 2005 Wisconsin Act 479, to entitle Company A to a credit.
- State sales and use tax of $5,000 ($100,000 x 5% = $5,000), would normally be due on this type of purchase, except that a sales and use tax exemption has been adopted to exempt this sale from any Wisconsin sales or use tax as part of 2005 Wisconsin Act 479.

Based on these facts, the amount of credit that Company A would be entitled to relating to this purchase would be the $5,000 (as opposed to the $100,000).

2. Section 2209 – Definition of Mobility-Enhancing Equipment

Problem: The definitions of "mobility-enhancing equipment" and "durable medical equipment" contained in the SSUTA, each specifically exclude the other from its definition. Wisconsin's bill, however, only contains this exclusion in its definition of "durable medical equipment." This same type of exclusion is also needed in the definition of "mobility-enhancing equipment."

Recommendation: Amend sec. 77.51(7m) to provide that "mobility-enhancing equipment" does not include "durable medical equipment." This can be accomplished by adding the phrase "durable medical equipment," between "include" and "a" in the sec. 77.51(7m).

3. Section 2213 – Definition of "One nonitemized price"

Problem: The definition of "one nonitemized price" in the SSUTA contains the phrase "including, but not limited to" when describing certain sales documents relating to bundled transactions. The Wisconsin definition does not contain the phrase ", but not limited to" and it is possible that this may mean something different than the language contained in the SSUTA.

Recommendation: Amend sec. 77.51(9p) to add the phrase ", but not limited to" between the words "including" and "an" in Section 2213 of the budget bill.

4. Section 2218 – Pgs. 1084 – 1085 – Prepared Food Definition

Problem: To be in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA), the definitions of terms contained in Ch. 77 of the Wisconsin Statutes must be consistent with the definitions contained in the SSUTA. The definition of "prepared food" contained in the bill is different than the definition contained in the SSUTA.

Recommendation: To be consistent with the definition of "prepared food" contained in the SSUTA, the bill should provide that secs. 77.51(10m)(b)4. and 5. are only exceptions to sec. 77.51(10m)(a)4., rather than an exception to both secs. 77.51(10m)(a)2. and 4. (See pgs. 94-95 of the SSUTA amended as of December 14, 2006 for the SSUTA definition of "prepared food".)

5. Section 2222 – Pg. 1089 – Definition of "Product"

Problem: The definition of "product" may not include items which are subject to tax under sec. 77.52(1)(b) and (c). Since there is a separate and distinct imposition of tax on sales of certain coins and stamps (sec. 77.52(1)(b)) and certain leased property (sec. 77.52(1)(c)), these types of items should also be added to the definition of "product". It is important that these additional items fall within the definition of "product" because the transaction sourcing rules in sec. 77.522 use the term "product" in determining the proper sourcing of transactions involving these types of items.

Recommendation: Add the phrase "coins and stamps of the United States that are sold or traded as collector's items above their face value, leased property that is affixed to real property if the lessor has the right to remove the leased property upon breach or termination of the lease agreement unless the lessor of the leased property is also the lessor of the real property to which the leased property is attached, between the "," and "specified".

This change will make it clear that "coins and stamps…leased property…" fall within the definition of "product" so that the sourcing rules in sec. 77.522 apply to these items in the same manner as they apply to tangible personal property, specified digital goods, etc.

6. Section 2226 – Pgs. 1089 - 1092 – Definition of "Purchase Price"

Problem: To be in compliance with the Streamlined Sales and Use Tax Agreement (SSUTA), the definitions of terms contained in Ch. 77 of the Wisconsin Statutes must be consistent with the definitions contained in the SSUTA. The definition of "purchase price" contained in the bill is different than the definition contained in the SSUTA. Under SSUTA, the definition of "purchase price" has the same meaning as "sales price" (See pg 85 of the SSUTA).

Recommendation: To be consistent with the definition contained in the SSUTA for "purchase price" (or "sales price"), sec. 77.51(12m)(c)4. through 6. need to be renumbered 4.a., 4.b. and 4.c. An intro. to sec. 77.51(12m)(c)4. also needs to be added which states "Any of the following applies:" When the above changes are made, 77.51(12m)(c)4. should read as follows (consistent with what is included in 77.51(15b)(c)4.):

"4. Any of the following also applies:

a. The purchaser presents a coupon, certificate, or other documentation to the seller to claim the price reduction or discount, if the coupon, certificate, or other documentation is authorized, distributed, or granted by the 3rd party with the understanding that the 3rd party will reimburse the seller for the amount of the price reduction or discount.

b. The purchaser identifies himself or herself to the seller as a member of a group or organization that may claim the price reduction or discount.

c. The seller provides an invoice to the purchaser, or the purchaser presents a coupon, certificate, or other documentation to the seller, that identifies the price reduction or discount as a 3rd-party price reduction or discount."

7. Section 2243 – Pg. 1096 – Definition of "Sale"

Problem: In the introduction section of sec. 77.51(14), reference is only made to sales of "tangible personal property, specified digital goods, additional digital goods, or services…" Similar to the change needed with respect to the definition of "product" described in 3. above, the definition of "sale" should also refer to "coins and stamps…leased property…is attached" to make it clear that these items fall within the definition of what is a "sale."

Recommendation: Add the phrase "coins and stamps of the United States that are sold or traded as collector's items above their face value, leased property that is affixed to real property if the lessor has the right to remove the leased property upon breach or termination of the lease agreement unless the lessor of the leased property is also the lessor of the real property to which the leased property is attached", between the "," and "specified" in both places of this section.

This change will make it clear that "coins and stamps…leased property…" fall within the definition of "sale" so that the sourcing rules in sec. 77.522 apply to these items in the same manner as they apply to tangible personal property, specified digital goods, etc.

8. Section 2276, 2291, 2292, 2293 – Telecommunication and Internet Access Services

Problem: Under the Internet Tax Freedom Act (ITFA), Wisconsin may not impose or enact a new tax on Internet access services. However, Wisconsin can continue to tax Internet access services, as it has done since the early 1990s, due to the grandfathering provision contained in the ITFA.

Since the SSUTA requires conformity in terminology and the SSUTA specifically defines "telecommunications services" differently than the current Wisconsin definition of "telecommunications services," Wisconsin must change the title of its existing definition of "telecommunications services" to "Internet access services" to continue to tax these services and also be in conformity with the SSUTA.

While the language in SB 40 as introduced does continue Wisconsin's existing tax on Internet access, the changes recommended below will provide more clarity in the continuation of that tax.

Listed below are the affected sections and the recommended changes to the budget bill relating to this issue.

Recommendation:

(1) Rename the definition of "telecommunication services" in sec. 77.51(21m) to read "Telecommunications and Internet access services" while leaving the remaining text of the definition itself unchanged, except that the reference to the term "telecommunications services" in the last sentence will need to be changed to add the phrase "and Internet access" so it is consistent with the title change.

(2) Amend sec. 77.52(2)(a)5.a. as it already exists in the Wisconsin Statutes to read "The sale of telecommunications and Internet access services, except…"

(Note: The 2 changes above should be made with an effective date prior to the Streamlined changes effective dates – even if only effective one day prior to the Streamline effective date. That way, since this would only be a renaming and not a substantive change (the definition itself is unchanged), this would make it clear that the imposition language itself is unchanged.)

After the above 2 changes are made, the following changes should be made:

(3) Amend sec. 77.51(21m) (after it was changed as indicated in "1" above) to read "'~~Telecommunication and~~ Internet access services' means sending…or similar facilities.

'~~Telecommunications and~~ Internet access services' does not include ~~sending collect telecommunications that are received outside of the state~~ 'telecommunications services' to the extent they are taxable under sec. 77.52(2)(a)5.am."

(4) Create sec. 77.51(21n) as it is currently drafted in Section 2277 of the budget bill, except change sec. 77.51(21n)(f) to read as follows: "(f) ~~Telecommunications~~ Internet access service**s**."

(5) Amend sec. 77.52(2)(a)5.a. so that it reads as follows: "The sale of ~~telecommunications~~ Internet access services ~~except services subject to 4 USC 116 to 126, as amended by P.L. 106−252, that either originate or terminate in this state; except services that are obtained by means of a toll−free number, that originate outside this state and that terminate in this state; and are charged to a service address in this state, regardless of the location where that charge is billed or paid; and the sale of the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code, except sales that are subject to subd. 5. b~~.

(6) Create sec. 77.52(2)(a)5.am. so that it reads as follows: "The sale of intrastate, interstate, and international telecommunications services, except interstate 800 services."

(7) Create sec. 77.52(2)(a)5.bm. so that it reads as follows: "The sale of ancillary services, except detailed telecommunications billing services."

9. Section 2268 – Definition of "Sales Price" – Allocation of Delivery Charges

Problem: The SSUTA provides in the definition of "delivery charges" that when a shipment contains taxable and nontaxable items shipped together, the seller should determine the allocation of the delivery charges between the taxable and nontaxable items and apply the tax to the taxable portion of the delivery charges. Wisconsin's definitions of "sales price" and "purchase price" are silent as to who should make this allocation. To be consistent with the SSUTA, an indication that the seller should make this allocation is needed. (Note: With respect to the definition of "purchase price" the tax measured by the purchase price may either be (1) tax that an out-of-state retailer is collecting from the purchaser under sec. 77.53(3), in which case the seller should make the allocation; or (2) the tax that a purchaser is self-assessing under sec. 77.53(1), in which case the purchaser, rather than the seller should make this allocation.)

Recommendation: Amend sec. 77.51(15b)(a)4.b. to add the phrase "the seller should allocate" between the "," and "the" and the word "allocated" should be deleted. This will make it clear that with respect to determining the proper "sales price" it is the seller that needs to make the allocation of the delivery charge between the taxable and nontaxable items using the methods contained in the statutes.

A similar change should also be made to sec. 77.51(12m)(a)4.b. (definition of "purchase price"). However, an additional amendment should also be made at the end of sec. 77.51(12m)(a)4.b. to indicate that if the seller does not make this allocation, the purchaser is responsible for making the allocation in accordance with the methods described in sec. 77.51(12m)(a)4.b.

10. **Section 2274 – Pg. 1105 – Definition of "Tangible Personal Property"**

Problem: "Additional digital goods" should not be within the definition of "tangible personal property".

Recommendation: Add the phrase "or additional digital goods" after "specified digital goods" to remove these items from the definition of "tangible personal property".

11. **Section 2308 – Pgs. 1115 – 1116 – Exemptions upon which exemption certificates are not required to be provided**

Problem: Section 77.52(13) provides a list of various exemptions upon which an exemption certificate is not required in order for the transaction to qualify for exemption from Wisconsin sales and use tax. The list of exemption statutes contained in this section is not complete.

Recommendation: Add the following sections to this list: secs. 77.54 (51) and (52).

12. **Section 2309 – Pg. 1116 – Exemption Certificate**

Problem: The language of the SSUTA indicates that if the seller accepts a fully completed exemption certificate from the purchaser, the seller is relieved of the tax otherwise applicable to the transaction. Section 77.52(14)(a), Wis. Stats. uses the phrase "from the burden of proof" rather than specifically stating that it relieves the seller from the tax that would otherwise be due. Another problem is that Wisconsin's statute contains the phrase "or the information required to prove the exemption" whereas the SSUTA contains the phrase "or captures the relevant data elements." The Wisconsin statutes do not specifically indicate what the "other information" or relevant data elements" are.

Recommendation: Amend sec. 77.52(14)(a) to replace the phrase "from the burden of proof" with "of the tax otherwise applicable" to make Wisconsin's language consistent with the SSUTA. Also add the phrase "as provided in an administrative rule promulgated by the department." This will give the Department statutory authority to draft an administrative rule that sets forth the specific guidelines as to what "other information" may be acceptable to prove an exemption.

(Note: These same wording changes also need to be made in Section 2335 of the budget bill (sec. 77.53(11)(a).)

13. **Section 2318 – Pg. 1120 – Bundled Transactions (Services)**

Problem: This section relates to a transaction that involves 2 services, rather than a transaction that includes a service and property or goods. Therefore the phrase "property or goods" is not needed, but a reference to the "secondary" service is needed.

Recommendation: Change the words "property or goods" to "service that is essential to the use or receipt of the other service." on line 5 of page 1120.

14. Section 2319 – Pg. 1122 - Sourcing

Problem: When revisions were made to the last LRB draft containing the Streamlined related changes, secs. 77.522(1)(e) and (f) (which related to the MPU provisions), were deleted. However, the reference to those deleted sections contained on pg. 1122, line 10 were not removed.

Recommendation: Remove the phrase "or that satisfy the requirements under par. (e) or (f)" on line 10, pg. 1122.

15. Section 2319 – Pgs. 1120 - 1127 – Sourcing for "Florists"

Problem: Under the Streamlined Sales and Use Tax Agreement (SSUTA), destination based sourcing is generally used. However, an exception was written into the SSUTA with respect to the sourcing requirements for florists (Sec. 309 B.4. of the SSUTA). This exception was allowed so that states could continue to tax sales by florists in a manner consistent with agreements worked out between numerous states and the industry many years ago. Although the provision providing the exception for sourcing by florists is set to expire for sales made after December 31, 2007, it appears that the SSUTA may be amended and this date will be extended. If this happens, Wisconsin may not be in compliance with the SSUTA.

Recommendation: In order to provide flexibility and allow Wisconsin to stay in compliance with the SSUTA with respect to the sourcing provisions as they relate to florists, the following change to sec. 77.522(4) is recommended:

Remove secs. 77.522(4)(b) and (c) as currently written and provide the following: "Sales by a retail florist shall be sourced in accordance with an administrative rule promulgated by the Department of Revenue."

16. Section 2326 - Use Tax on Coins, Stamps, Leased Property

Problem: Section 77.53(1) imposes use tax on the use or other consumption of "taxable services" and on the storage, use or consumption of "tangible personal property". This bill changes the definition of "tangible personal property" (see Section 2274 of this bill), to make it consistent with what is required under the SSUTA. This change removes certain items from the "old" definition of "tangible personal property" (i.e., certain coins and stamps and certain leased property). The bill then separately imposes Wisconsin sales tax on the items removed from the definition of tangible personal property in secs. 77.52(1)(b) and (c). Since it was determined that separate sales tax imposition statutes were needed for Wisconsin to continue to impose Wisconsin sales tax on these items, it follows that the use tax imposition statutes must also be amended to specifically impose use tax on the same types of items subject to sales tax under secs. 77.52(1)(b) and (c). Without this separate imposition or indication that use tax applies to the items subject to tax under secs. 77.52(1)(b) and (c), there is a question as to whether or not the items subject to sales tax under secs. 77.52(1)(b) and (c) would also be subject to use tax.

Recommendation: There are 2 possible alternatives to remedy this problem. Alternative 1 would be to add the phrase ", coins and stamps of the United States that are sold or traded as collector's

items above their face value and leased property that is affixed to real property if the lessor has the right to remove the leased property upon breach or termination of the lease agreement unless the lessor of the leased property is also the lessor of the real property to which the leased property is attached", between "property" and "purchased" to sec. 77.53(1).

If this alternative is followed, this or similar language will also need to be added to the various sections of the Wisconsin Statutes identified on the attached listing to make it clear that the treatment of "coins and stamps…leased property…" is no different than the treatment afforded tangible personal property, specified digital goods, etc. (See Attachment 1 for the listing. This is similar to what was done with respect to "specified digital goods and additional digital goods.")

Alternative 2 - Rather than going through and adding language to each of the 75 plus sections of the Wisconsin Statutes that would be affected by this change, this alternative would be to add a section in the administrative provisions contained in sec. 77.61 which indicates that all of the provisions in subchs. III and V of ch. 77 that apply to transactions involving tangible personal property also apply to transactions involving coins, stamps and certain leased property. Suggested language to consider if this method is followed would be: "The provisions of subchs. III and V of ch. 77, as they apply to transactions involving tangible personal property also apply to transactions involving coins and stamps of the United States that are sold or traded as collector's items above their face value and leased property that is affixed to real property if the lessor has the right to remove the leased property upon breach or termination of the lease agreement unless the lessor of the leased property is also the lessor of the real property to which the leased property is attached, in a consistent manner." If this alternative is followed, similar language could also be added relating to specified digital goods and additional digital goods, rather than listing them separately in each of the sections of the statutes.

17. Section 2334 – Pgs. 1131 - 1132 - Exemptions upon which exemption certificates are not required to be provided

Problem: Section 77.53(10) provides a list of various exemptions upon which an exemption certificate is not required in order for the transaction to qualify for exemption from Wisconsin sales and use tax. The list of exemption statutes contained in this section is not complete.

Recommendation: Add the following sections to this list: secs. 77.54 (51) and (52).

18. Section 2335 – Pgs. 1132 - 1133 – Exemption certificate and information required to prove the exemption

Problem: The word "purchases" was incorrectly placed in this section and it makes no sense as written.

Recommendation: The word "purchases" should be changed to "the purchaser" on line 3 of page 1133.

19. Section 2339 – Use Tax – Presumption of Storage or Use in Wisconsin if Sold to Wisconsin Resident

Problem: The sourcing provisions contained in the SSUTA source a transaction to a particular location based a particular hierarchy that does not allow a state to make a presumption and source a sale to their state just because the product is sold to a resident of their state. The hierarchy contained in sec. 77.522 (Section 2319 of the budget bill) is used to determine the proper sourcing. Section 77.53(15) presumes that an item is for storage, use or consumption in Wisconsin if the item is sold by a retailer to a Wisconsin resident, without regard to the sourcing provisions in sec. 77.522. This could lead to inconsistent (and incorrect) sourcing of transactions where a registered retailer sells to a Wisconsin resident, but delivers the property to that resident at a location outside Wisconsin.

Recommendation: Amend sec. 77.53(15) so that it reads as follows: "It is presumed that tangible personal property, specified digital goods, additional digital goods or taxable services delivered outside this state to ~~a purchaser known by the retailer to be~~ a resident of this state ~~were~~ was purchased from a retailer for the storage, use, or other consumption in this state and stored, used, or otherwise consumed in this state. ~~This presumption may be controverted by a written statement, signed by the purchaser or an authorized representative, and retained by the seller that the property, digital good, or service was purchased for use at a designated point outside this state.~~ This presumption may ~~also~~ be controverted by ~~other~~ evidence satisfactory to the department that the property, digital good or service was not purchased for storage, use, or other consumption in this state." This change would make it so that sec. 77.53(15) would only apply to a purchaser and will not affect the sourcing of a transaction by a seller as is required under sec. 77.522. The reason this presumption is important is because without it, any time a resident of Wisconsin purchased an item and took delivery of it outside the state, the state would then have the burden of proving that the item actually came back into Wisconsin, before use tax could be imposed on the purchaser. This would be nearly impossible to administer if this presumption were not included in the statutes.

20. Sections 2375 (77.54(20p)) and 2380 (77.54(22c)) – Bundled Transactions

Problem: The transactions that would qualify for exemption from Wisconsin sales and use tax under the first sentence in both secs. 77.54(20p) and (22c), also qualify for exemption under sec. 77.54(52). In addition, the transactions which are considered to be taxable based on the second sentence in secs. 77.54(20p) and (22c) are already taxable based on the language contained in sec. 77.52(20). Therefore, the language in secs. 77.54(20p) and (22c) is superfluous and can be eliminated.

Recommendation: Delete the language in Sections 2375 and 2380 in its entirety.

21. Sections 2381 and 2382 – Pg. 1145 – Change "gross receipts" to "sales price"

Problem: Section 77.54(23m) provides an exemption for certain motion picture film and tape. That exemption is being proposed to be revised in the current budget bill. However, in addition to the revision being made to the exemption language, in order to be in compliance with the SSUTA, the term "gross receipts" also needs to be changed to "sales price." The way the bill is currently drafted, it appears that the revision to sec. 77.54(23m) in Section 2382 of the bill would only be made AFTER the

exemption is revised. The concern is that if the exemption revision is not passed by the legislature, they may also not change the term "gross receipts" to "sales price".

Recommendation: First amend the current sec.77.54(23m) to change the term "gross receipts" to "sales price" and then make the amendment that is currently identified in Section 2381 of the budget bill.

22. Section 2381 – Pg. 1145 – Exemption for Motion Picture Film or Tape, Radio Programs, TV Programs, etc.

Problem: The amendment to the language in sec. 77.54(23m), Wis. Stats. failed to include the word "license".

Recommendation: Add the word "license," between "sale," and "lease". This will make the exemption language consistent with the imposition language contained in secs. 77.52(1)(a) and (d).

23. Section 2417 – Pg. 1154 – Exemption for Biotechnology

Problem: The term "medicines" is not defined in ch. 77. Under SSUTA, the term "drug" is a defined term and would include those items that are "medicines". A change is needed to use terminology that is consistent with the SSUTA.

Recommendation: Change the word "medicines" on line 18 to "drugs".

24. Section 2448 – Pg. 1170 – Retailer's Discount Clarification

Problem: Section 77.61(4)(c) provides a retailer's discount for collecting and reporting the sales and use tax. At the time this section was changed to provide for a $10 minimum discount (unless the total sales or use tax due was less than $10), a reference was made to "…the amount of the sales or use taxes that is payable under ss. 77.52(1) and 77.53(3)…" Section 77.52(1) is only the tax imposed on sales of tangible personal property. Section 77.52(2) imposes the sales tax on services and should have been included in the computation of the retailer's discount.

Recommendation: Remove the "(1)" after "77.52" on pg. 1170, line 7 to make it clear that the discount is to be computed on the total amount of sales tax collected under sec. 77.52 and sec. 77.53(3).

25. Section 2448 – Pg. 1170 – Retailer's Discount

Problem: Section 77.61(4)(c), Wis. Stats. needs to be clarified to make it clear that any retailer, other than a retailer that uses a certified service provider that receives compensation under sec. 73.03(61)(h), Stats. is entitled to the 0.5% retailers discount.

Recommendation: Amend sec. 77.61(4)(c) to read as follows: "For reporting the sales tax and collecting and reporting the use tax…retailers, not including retailers that use certified service providers

that receive compensation under sec. 73.03(61)(h), may deduct 0.5% of those taxes…is not delinquent." This change is needed to make it clear that if a retailer chooses to use a certified service provider the retailer is still entitled to the retailer's discount, as long as the certified service provider is not receiving compensation from under sec. 73.03(61)(h).

26. Section 2453.1 (New section inserted) Pg. 1172 – Increases or Decreases in Tax Rates

Problem: Section 329 of the SSUTA requires that states provide specific language with respect to the effective date for state tax rate changes as it relates to the imposition of tax on services. The Wisconsin sales and use tax statutes are currently silent with respect to the effective date of state rate changes.

Recommendation: To be in compliance with the SSUTA, a new section in sec. 77.61 should be created to read as follows:

"With respect to services subject to the tax under sec. 77.52(2) or the lease, rental or license of tangible personal property and property and items specified under sec. 77.52(1)(b) to (d), an increase in the state tax rate shall apply to the first billing period starting on or after the effective date of the rate increase and a decrease in the state tax rate shall apply to bills rendered on or after the effective date of the rate decrease."

27. Section 2454.1 (New section to be inserted) Definition of "Agreement"

Problem: The current definition of "agreement" in sec. 77.65(2)(a) provides that "'Agreement' means the streamlined sales and use tax agreement." The streamlined sales and use tax agreement is continuing to evolve as new issues are discussed and resolved between the various member states and business community. In addition, interpretations are being made with respect to the Agreement and added on to the end of the Agreement. Therefore, in order to eliminate any question as to whether any references to the Agreement in the Wisconsin Statutes relate to the Agreement as it existed on the effective date of this legislation or to the Agreement as it exists at the time a question comes up, a change should be made to indicate that the intention is that the term "Agreement" means the Agreement as it is amended and evolves. It should also be noted that many of the amendments to the Agreement will also require amendments to the Wisconsin Statutes by the Wisconsin Legislature if Wisconsin wants to stay in compliance with the SSUTA.

Recommendation: Amend sec. 77.65(2)(a) to read as follows: "'Agreement' means the streamlined sales and use tax agreement, as amended." Although this would result in questions always being answered by the most recently amended version of the SSUTA, it should be pointed out that if there are amendments or interpretations to the Agreement that are not consistent with Wisconsin law, state law would still ultimately control. In other words, the amendments to the Agreement would not take precedent over state law and if there was an inconsistency between state law and the Agreement, state law would control.

28. Section 2460 – Amnesty for New Registrants

Problem: A seller must meet certain criteria to be eligible for amnesty under Streamlined, as provided in section 402 of the SSUTA. One of the criteria that would prevent the seller from being eligible for amnesty under Streamlined is that the seller received notice of commencement of an audit and the audit has not been finally resolved. When sec. 77.67(1)(d) was drafted, it was drafted in such a way to outline all the criteria that must be met in order for a seller to qualify for amnesty. However, when this particular provision was drafted it does not appear to have correctly interpreted section 402.B. of the SSUTA. Section 402.B. of the SSUTA provides that "The amnesty is not available to a seller with respect to any matter or matters 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." The way sec. 77.67(1)(d) is currently drafted, it indicates that a seller will qualify for amnesty if the seller received notice of commencement of an audit and if the audit has not been fully resolved.

Recommendation: Change sec. 77.67(1)(d), so that it reads as follows: "The seller has not received a notice of commencement of an audit from the department, or if the seller received a notice of commencement of an audit from the department, that audit has been fully resolved, including any related administrative and judicial processes, at the time the seller registers under par. (a)."

29. Include Notification Requirements for the Imposition of Baseball and Football Stadium District Taxes

There are no requirements that a baseball or football stadium district notify the Department of Revenue of the imposition of a baseball or football stadium district tax.

The bill provides requirements that the resolution to adopt the baseball and football stadium district taxes in secs. 77.705 and 77.706 (Section 2462, page 1176, line 13 and Section 2463, page 1176, lines 23 and 24, respectively) become effective "on the first January 1, April 1, July 1, or October 1 that begins at least 120 days…" after the adoption or certification of approval of the resolution. However, the bill does not provide notification requirements for if or when the Department of Revenue must be notified by such imposition. For example, the similar county tax language states, in part, in sec. 77.70, that "(a) certified copy of that ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date."

The following is recommended:

- Include language in sec. 77.705 (Section 2462, page 1176) to state that a certified copy of the resolution "shall be delivered to the secretary of revenue at least 120 days prior to its effective date" (baseball stadium district tax).

- Include language in sec. 77.706 (Section 2463, page 1176) to state that a certified copy of the resolution "shall be delivered to the secretary of revenue at least 120 days prior to its effective date" (football stadium district tax).

30. Include Effective Date and Notification Requirements for Local Exposition Taxes

The law currently does not provide effective date requirements and/or notification requirement to the Department of Revenue for the imposition of the local exposition taxes. Currently, the Milwaukee Center District is the only local exposition district that imposes such taxes; however, it is likely that another exposition district may be created and impose such taxes in the future.

The bill provides effective date requirements for the imposition of baseball and football stadium taxes in secs. 77.705 and 77.706 (Section 2462, page 1176, line 13 and Section 2463, page 1176, line 23 and 24, respectively) to make such effective date requirements consistent with the requirements for the imposition of county and premier resort area taxes in secs. 77.70 and 77.9941(1), respectively. The new requirement states that the tax shall be effective "on the first January 1, April 1, July 1, or October 1 that begins at least 120 days after the adoption…" The bill *does not*, however, provide such consistent language for the local rental car taxes, nor does it provide notification requirements to the Department of Revenue for any of the local exposition taxes.

The following is recommended:

- Add language to Ch. 77, Subchapter VIII (local food and beverage tax), to state that:
  - A certified copy of the resolution or ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date.
- Add language to Ch. 77, Subchapter IX (local rental car tax), to state that:
  - The resolution or ordinance shall be effective on the first day of January, the first day of April, the first day of July or the first day of October; and
  - A certified copy of the resolution or ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date; and
- Add language to Ch. 66, Section 66.0615(1m)(e) (local room tax), to state that:
  - A certified copy of the resolution or ordinance shall be delivered to the secretary of revenue at least 120 days prior to its effective date.