



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #688

### **Sales Tax Paper Return Filing Fee (DOR -- Tax Administration)**

#### *Bill Agency*

[LFB 2007-09 Budget Summary: Page 491, #8]

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#### **CURRENT LAW**

Individuals or businesses that hold a seller's permit, use tax certificate, or consumer's use tax certificate must file a Wisconsin sales and use tax return for each reporting period, even if no tax is due for that period. The taxpayer's reporting period will be either monthly, quarterly, or annually as determined by the Department of Revenue (DOR).

#### **GOVERNOR**

Authorize DOR to impose a filing fee on sales tax returns that are filed on paper. The fee could first be imposed on returns that were filed for the calendar quarter ending on September 30, 2007. According to the administration, the filing fee would be \$5.00 on a paper return and would generate an estimated \$2.8 million in GPR-REV annually.

#### **DISCUSSION POINTS**

1. A seller's permit is required for every individual, partnership, corporation, or other organization making retail sales, leases, or rentals of tangible personal property or taxable services in Wisconsin, unless all sales are exempt from the sales or use tax.

A consumer's use tax certificate is required for every business that regularly purchases or leases taxable property or services for storage, use, or consumption in Wisconsin upon which a sales or use tax was not paid. This certificate is not required if a business already holds a seller's permit

A use tax certificate is required for every out-of-state retailer that is not required to hold a seller's permit, but is engaged in business in Wisconsin and making retail sales, leases, or rentals of tangible personal property or providing taxable services in Wisconsin.

2. Businesses applying for a seller's permit, a consumer's use tax certificate, or a use tax certificate, must obtain a business tax registration certificate and a permit for each location from the Department of Revenue (and may be required to make a security deposit not to exceed \$15,000). A \$20 registration fee is imposed and applies for a two-year period for all business locations. At the end of the two-year initial registration period, a \$10 renewal fee is required for each subsequent two-year period. A business that only applies for a consumer's use tax certificate is not subject to a registration fee.

3. Sales and use tax returns and payments are generally due on a quarterly basis, but the Department may require sellers with a quarterly liability exceeding \$600 to report monthly, due on the last day of the next month; sellers with a quarterly liability exceeding \$3,600 may be required to report monthly, due on the 20th day of the next month. Retailers with sales and use tax of \$300 or less have the option of filing annually. The Department may also permit a different reporting period.

4. Sales and use tax returns are required to be filed by: (a) mailing the returns to the Department; (b) delivering the returns to the Department; or (c) filing the returns electronically via the Department's sales Internet process, or by some other electronic means prescribed by the Department. DOR may require a person to file a sales and use tax return by electronic means, by notifying the person at least 90 days prior to the due date of the first sales and use tax return required to be filed by electronic means. However, the Department may waive the requirement in cases that would cause undue hardship to the taxpayer.

5. DOR currently has three options for electronic filing of sales and use tax returns:

*File Transmission.* File transmission is a secure process developed by the Department that provides taxpayers and/or their representatives to transmit their sales and use tax return data to DOR via an electric file over the Internet. Sales tax payments must be made by electronic funds transfer (EFT). Participants in the electronic file transmission program can include: (a) the sales and use tax registrant (taxpayer) that transmits the return data; (b) a tax practitioner that prepares, produces, and transmits the electronic return for the taxpayer; (c) a firm, organization, or individual that transmits electronic returns (transmitter) on behalf of the taxpayer; and (d) a software developer that designs software for the purpose of formatting returns in accordance with Wisconsin's electronic return specifications, and may transmit electronic returns to DOR on behalf of the taxpayer.

*Sales Tax Internet Process.* Taxpayers can file Wisconsin sales and use tax returns via the Internet through the Sales Internet Process (SIP) program. SIP is a free, secure Internet-based system through which the taxpayer, or a tax practitioner filing for the taxpayer, keys in return data and the system performs calculations, provides a history of the taxpayer's electronically filed returns, provides a receipt, and allows payment by EFT or by mailing a payment voucher.

*Sales TeleFile.* The Sales TeleFile program is an interactive voice response system that allows taxpayers to file state sales and use tax returns using a touch-tone phone. Taxpayers generally complete a TeleFile worksheet as a reference before calling. During the call the taxpayer is prompted to enter data using the touch-tone keys. Tax payments may be made by direct withdrawal from checking or savings accounts, EFT, credit card, or paper check or money order. The Sales TeleFile program does not require a personal computer.

6. The costs of electronic filing vary depending on the method used by the taxpayer. No special software or fee is required for the taxpayer to file using SIP and Sales TeleFile. Many tax practitioners prefer electronic filing and do not charge clients an extra fee for the service. Other tax practitioners incorporate an electronic filing fee into their overall service charges, which can range from \$35 to \$100 a return. Off-the-shelf software can vary in price from \$150 to \$700. Private firms may charge between \$1 and \$3 per filing to transmit pre calculated returns to DOR.

7. According to DOR, the number of businesses that file sales and use tax returns electronically appears to have stabilized. The table below provides a two-year comparison of electronic filing of sales and use tax returns for fiscal years 2004-05 and 2005-06. The table shows that the percentage of electronically filed sales and use tax returns was below 43% in both years.

**Electronic Filing of Sales Tax Returns**

|         | <u>Total Returns</u> | <u>E-Filed</u> | <u>% of Total</u> |
|---------|----------------------|----------------|-------------------|
| 2004-05 | 880,067              | 377,205        | 42.9%             |
| 2005-06 | 947,734              | 396,707        | 41.9              |

8. The methods of electronic filing of individual income tax returns include professionally prepared electronic returns, online filing, Wisconsin Free-File, and TeleFile. The individual taxpayer can provide the necessary information to a tax practitioner who then prepares the return and transmits it to DOR and the internal Revenue Service (IRS). If the taxpayer has access to a computer with a modem or Internet connection, he or she can purchase off-the-shelf software that includes an option for electronic filing. Alternatively, the individual taxpayer can access the website of a company that transmits tax returns and have the company's software prepare and then transmit the return.

Certain individual income taxpayers can file free through the Internet using Wisconsin Free-File, or by using a touch-tone phone through TeleFile. However, TeleFile and Free-File can only be used by taxpayers that meet certain requirements. For example, eligible filers cannot file certain schedules, claim certain tax credits, and have some types of business income.

The table below shows the number of electronically filed individual income tax returns, compared to total returns filed, for 2001-02 through 2005-06. The table shows that the percentage of individual income tax returns that are filed has increased substantially, from about 35% in 2001-02

to almost 61% in 2005-06.

### Electronic Filing of Individual Income Tax Returns

|         | <u>Total Returns</u> | <u>E-Filed</u> | <u>% of Total</u> |
|---------|----------------------|----------------|-------------------|
| 2001-02 | 2,700,784            | 944,027        | 34.9%             |
| 2002-03 | 2,693,052            | 1,273,841      | 47.3              |
| 2003-04 | 2,696,678            | 1,454,861      | 53.9              |
| 2004-05 | 2,668,385            | 1,570,830      | 58.9              |
| 2005-06 | 2,739,753            | 1,668,784      | 60.9              |

9. Wisconsin corporate income and franchise tax returns can be filed with the federal corporate income tax return in a single transmission. Corporate income taxpayers and corporate tax practitioners can prepare federal and state returns using approved vendor software. The federal and state returns are first transmitted through a secure site to the IRS, and then the state returns are forwarded to DOR for processing. Under federal regulations, corporations with total assets of \$10 million or more and that file at least 250 returns in the year, including income, excise, and employment tax returns, must file federal corporate income tax returns electronically. Wisconsin corporate income and franchise tax returns can also be separately e-filed. Electronic filing of corporate income and franchise tax returns was first available to corporate taxpayers for tax year 2005. As a result, only 681 of 128,149 (0.05%) corporate income and franchise tax returns were electronically filed in fiscal year 2005-06.

10. DOR indicates that the Department would impose the sales tax paper return fee by requiring that the \$5.00 be included with each return. The fee would be non-appealable and self-assessed. However, the Department would not issue a tax bill only for unpaid fee amounts. In addition, there are no statutory provisions included in the bill for administering the fee, or for establishing the amount of the fee. The Department estimates that, initially, the fee would be imposed on 550,000 paper sales and use tax returns annually, and would generate an estimated \$2,800,000 annually in GPR-REV.

11. DOR believes the fee would provide an incentive for businesses to use electronic filing at a rate that is more comparable to that for individual income tax returns. The benefits of electronic filing to retail businesses would include more accurate returns, greater security for the information included on the return, and a more efficient method of making sales tax payments to DOR. Electronic filing makes tax return processing more efficient and reduces DOR administrative costs. The Department does not expect the fee to impose a financial hardship on most businesses currently filing paper returns, in part, because sales and use tax returns can be filed at no additional cost through SIP and Sales TeleFile. Firms that do not have computer capabilities can file using the telephone through TeleFile. Revenues from the fee would decrease in future years if more retailers use electronic filing.

12. Under the state sales and use tax, sellers may deduct the retailers' discount from

taxes due, as compensation for administrative costs, equal to the greater of \$10 or 0.5% of the tax liability per reporting period, but not more than the amount of tax actually payable. Imposing the paper return filing fee would offset a portion of the retailer's discount and increase administrative costs the discount is designed to reduce. Businesses that must obtain sellers permits already pay an initial \$20 business tax registration fee, and the \$10 renewal fee every two years. Businesses filing paper returns might be forced to purchase software or other filing services from private vendors. A 2005 study of small businesses conducted by the National Federation of Independent Business ("NFIB National Small Business Poll, The State of Technology") indicated that 32% of respondents did not employ high-speed Internet in their business. The study notes that "the data suggest that most small businesses have relatively limited technological capabilities." Finally, paper returns filed by individuals and businesses for any of the other state taxes, including individual income, corporate income and franchise, excise, and utility taxes are not subject to a fee.

13. If the Committee chooses to approve the Governor's recommendation, it may wish to require the Department to promulgate rules for administering the fee, and that the rules limit the fee to \$5 per return.

**ALTERNATIVES TO BILL**

1. Adopt the Governor's recommendation to authorize DOR to impose a filing fee on sales tax returns that are filed on paper beginning for returns that were filed for the calendar quarter ending on September 30, 2007.

| <b>ALT 1</b> | <b>Change to Bill<br/>Revenue</b> | <b>Change to Base<br/>Revenue</b> |
|--------------|-----------------------------------|-----------------------------------|
| GPR          | \$0                               | \$5,600,000                       |

2. Adopt the Governor's recommendation, but require the Department to promulgate administrative rules for administering the sales and use tax paper return fee, and that such rules limit the fee to \$5 per return.

| <b>ALT 2</b> | <b>Change to Bill<br/>Revenue</b> | <b>Change to Base<br/>Revenue</b> |
|--------------|-----------------------------------|-----------------------------------|
| GPR          | \$0                               | \$5,600,000                       |

3. Delete provision.

| <b>ALT 3</b> | <b>Change to Bill<br/>Revenue</b> | <b>Change to Base<br/>Revenue</b> |
|--------------|-----------------------------------|-----------------------------------|
| GPR          | -\$5,600,000                      | \$0                               |

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