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

May 27, 2009 Joint Committee on Finance Paper #379

# Streamlined Sales and Use Tax Agreement Modifications (General Fund Taxes -- General Sales and Use Tax)

## CURRENT LAW

2009 Wisconsin Act 2 provided enabling legislation to conform Wisconsin's sales and use tax statutes to the requirements of the Streamlined Sales and Use Tax Agreement (SSUTA). Act 2 also imposed the sales and use tax on certain digital products which are subject to the sales tax if furnished in tangible form. Most of those provisions will become effective on October 1, 2009.

## GOVERNOR

No provision.

## DISCUSSION

The Department of Revenue (DOR) has requested a number of modifications to current law sales and use tax provisions to clarify the enabling legislation passed in 2009 Act 2 for entrance into the SSUTA and the taxation of digital goods. The proposed modifications would ensure that Wisconsin is in conformance with the requirements of the SSUTA, and would correct and clarify a number of sales tax provisions adopted in Act 2. The following sections briefly describe the modifications requested by DOR. More detailed information from DOR is attached to this paper. [The material submitted by DOR relating to regional transit authorities (RTAs) requested changes to the AB 75 provisions to conform to the SSUTA, as well as an increase in administrative funding and a change relating to the existing Southeastern Wisconsin RTA (referred to as the Kenosha-Racine-Milwaukee (KRM) RTA in the attachment). This paper addresses the changes necessary to conform to the SSUTA.]

### Digital Goods Modifications

DOR has requested several changes to the statutes relating to the imposition of the sales

and use tax on digital products, as provided in Act 2. The Department has requested the following technical changes relating to digital goods: (a) clarify that any publication provided in digital form is subject to the sales tax if subject to the tax if provided in tangible form; (b) clarify that a "web site or a home page design" would not become newly subject to the tax under the definition of "finished artwork;" (c) clarify that the lease or rental of a digital good to a consumer in this state does not extend nexus to the out-of-state seller of a digital good; and (d) clarify that sourcing of digital goods (in terms of where the sale occurred) would be subject to the same sourcing provisions as other tangible personal property and delete duplicative and extraneous language providing separate sourcing provisions for digital goods.

Additionally, the Department has requested new language to clarify the exact time when a digital good is transferred, as well as when a digital good or other product transferred electronically is transferred when sold by subscription. Under current law, a sale or purchase involving a transfer of ownership of tangible personal property, items, property, or goods is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. For purposes of this provision, a common carrier or the U.S. postal service is considered the agent of the seller. Under the modification requested by DOR, the sourcing of digital goods would be separated from this provision and would be considered completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent, or when the digital good is first used, whichever comes first. Additionally, a sale or purchase of a product transferred electronically (including a digital good) that is sold by subscription would be considered completed at the time when the payment for the subscription is due to the seller. "Subscription" would mean an agreement with the seller that grants the consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both.

**Licenses, Leases, and Rentals**

The Department has requested several changes throughout the sales tax statutes to clarify that the tax applies to the sale, lease, rental, or licensing of taxable property, services, or items. In addition, the requested changes would clarify that the new definition of "lease or rental" created in Act 2 would not apply to existing lease or rental contracts until the contract is renewed, extended, or modified on or after October 1, 2009 (the effective date of the SSUTA provisions in Act 2).

**Regional Transit Authority**

DOR is requesting changes to the provisions in AB 75 that would allow the creation of RTAs so that the RTA provisions do not conflict with the requirements of the SSUTA. The modifications would require that if a county or municipality adopts a resolution to join, withdraw, or amend the jurisdictional boundaries of an RTA, the resolution could become effective no sooner than the first day of the first calendar quarter that begins at least 120 days after the Department of Revenue is provided with a certified copy of the resolution identifying the boundaries of the authority's jurisdictional area. If the jurisdictional area would be other than

county lines on all sides of the jurisdictional area, the authority would have to provide, with the resolution, all of the street addresses and nine-digit zip codes of all addresses within its jurisdictional area. These requirements are being requested to comply with the SSUTA, to accumulate an address-based database for all addresses within an authority, to allow the Department adequate time to notify affected taxpayers, and to provide sellers and purchasers adequate time to prepare their accounting systems to properly collect and report the tax.

**Premier Resort Area Tax**

The Department has requested that, for the purposes of the premier resort area tax, no seller or certified service provider would be liable for the tax, interest, or penalties imposed on a transaction in which the seller or certified service provider charged and collected the incorrect amount of tax on the sale of a product that was shipped to the purchaser's location within a premier resort area, until such time as a database identifying the addresses subject to each premier resort area tax is available to all sellers and certified service providers. However, the relief from liability would not apply to transactions if the purchaser receives the product at the seller's business location, which is properly sourced to the seller's place of business. DOR has requested this provision to conform to the requirements of the SSUTA. [A certified service provider is an entity that contracts with a seller to administer the seller's sales tax obligations.]

**Additional Provisions to Conform to the SSUTA**

DOR has requested the following changes to provide conformity in Wisconsin's statutes with the SSUTA:

a. Extend the authority of county and special district taxing jurisdictions to impose a sales tax on retailers who "are required to file" an application for a permit for each place of business operation in this state, as well as on retailers who "are required to be registered" with the Department and obtain a certificate to operate or make sales in this state. Under current law, counties and special districts have jurisdiction over those who "file" an application for a permit or "register" with the Department and obtain a certificate to operate or make sales in this state. This language is being requested because, under current law, a person who does not file with the state would technically not be responsible for the county and stadium taxes until such time as they either file an application or register to collect the tax.

b. Clarify that if a particular product were subject to the sales and use tax under two or more separate statutes imposing the tax, the same item could not be subject to the tax more than once.

c. Clarify that a seller cannot claim that a transaction involving the sale of a product to a purchaser that takes place at the seller's business location is not subject to tax because the rates and boundary database contained incorrect information. Sellers know the taxing jurisdiction in which their business locations are located and are responsible for properly collecting all of those applicable taxes.

d. Provide that out-of-state retailers registered in accordance with the SSUTA could

hold a Wisconsin seller's permit even if the retailer is not actively operating as a seller in this state. DOR has requested this change because one of the requirements of the SSUTA is that a retailer must register in all of the member states, even if the retailer does not have taxable sales in each of the state.

**Other Modifications**

The Department has requested the following three provisions to correct unaddressed concerns following the enactment of Act 2: (a) modify the definition of "contractors" and "subcontractors" to ensure that affixing property which had been subject to the sales and use tax to real property, or affixing property to other tangible personal property, would not subject the affixed property to double taxation; (b) clarify that prewritten computer software is taxable regardless of the method in which it is delivered to the purchaser to continue the current tax treatment of such software; and (c) clarify that "value-added nonvoice data service" is taxable only if the service meets the definition of taxable telecommunication services, as opposed to some other type of service.

DOR has also requested a number of technical changes to the statutes to provide consistent wording as to the taxation or exemption of tangible personal property, items, property, and goods and provide appropriate cross references in the statutes. DOR has requested these changes so that the appropriate cross references would apply throughout the statutes where the cross references were omitted in Act 2 legislation, and to correct the current drafting of AB 75 where the provisions would conflict with statutory changes in Act 2.

**Fiscal Implications**

If the Committee elected not to adopt these modifications and the result was that Wisconsin's application to join the SSUTA were denied, Wisconsin would not collect revenue from voluntary out-of-state sellers collecting and remitting taxes through the Agreement. If Wisconsin's application were rejected, sales tax revenue would potentially be reduced by an estimated $6,000,000 in 2009-10 and by $8,000,000 in 2010-11. The modifications, as recommended by the Department of Revenue, would help ensure that Wisconsin's sales and use tax statutes met the requirements of the SSUTA and that the state's application to become a member of the SSUTA was accepted

**ALTERNATIVES**

1. Adopt the modifications to the sales and use tax statutes requested by DOR, except those relating to increased administrative funding and the existing Southeastern Wisconsin RTA.

2. Maintain current law.

Prepared by: Sean Moran
Attachments

**DEPARTMENT OF REVENUE**
**PROPOSAL TO CHANGE OR CORRECT**
**2009-2011 BUDGET ADJUSTMENT BILL (SB 62 – 2009 Wisconsin Act 2)**

**TOPIC: Main Street Equity Act**

**BUDGET VERSION:**
(original budget, amended version?)
Budget Adjustment Bill – Senate Bill 62, which became Wisconsin Act 2

**PROBLEM DESCRIPTION**:

Numerous changes were suggested to the last LRB draft reviewed by the Department of Revenue (LRB 377-P14). These changes were not reflected in the final bill that was passed. In addition, upon review of the bill a couple more technical changes were also identified to make sure we are in compliance with the requirements of the Streamlined Sales and Use Tax Agreement.

**PROPOSED CHANGE AND ITS EFFECT**:

Attached is a document with references to the specific section numbers that need to be corrected or clarified.

**RATIONALE FOR CHANGE:**

See attached document describing the changes. The changes/corrections are being made to make sure we are in compliance with the requirements of the Streamlined Sales and Use Tax Agreement.

**FISCAL EFFECT OF CHANGE**:

Unknown, but the changes are to make the language consistent with the results intended at the time the proposals were originally prepared.

**PROPONENTS AND OPPONENTS OF CHANGE**:

Unknown.

**SECTIONS OF BILL AFFECTED**:

See attached document describing the changes by Section number.

**ANALYST**: Craig Johnson

**DIVISION**: IS&E

**DATE**: April 9, 2009

**Changes Needed to SB 62 – which became Wisconsin Act 2**

Most of the items listed below were previously identified as changes needed to be made to LRB 0377-P14. However, these changes were not made or reflected in Senate Bill 62 (LRB 1999/2), which has now become Wisconsin Act 2. Therefore, they are needed as technical corrections, in many cases to maintain the current tax treatment of these items. I have referenced each bullet point to the specific section numbers contained in Wisconsin Act 2, as well as the statute number itself.

- Section 226 - 77.51(1a)(a) – add a new subdivision within this paragraph that reads as follows: "Newspapers or other news or information products."

  This change is needed to be able to clearly impose tax on owner's manuals and similar products that are received electronically. The reason this is needed is because the definition of digital books, as contained in this bill and the SSUTA specifically provides that "digital books" does not include "…newspapers or other news or information products…" Without this change, a person could claim, for example, that the sale of an electronically transferred owner's manual is not subject to tax because it is an "other information product", which is specifically excluded from the definition of a digital book and may not fall clearly within the definition of "additional digital goods." The intention of the adoption of the imposition of tax on digital goods was to impose tax on the same types of products delivered electronically that would have been taxable if sold in a tangible form. Owners manuals sold in a tangible form would clearly have been taxable. It should also be noted that this change will not impose tax on any digitally formatted product if the same product sold in a tangible form is exempt from tax (sec. 77.54(50)).

- Section 226 – 77.51(1a)(b) – insert "license, lease or rental" after "sale" in 2 places in this section to make this language consistent with the imposition language related to digital goods contained in s. 77.52(1)(d) and the exemption language contained in s. 77.54(50).

  This change is being recommended so that the imposition and exemption language is exactly the same to prevent any confusion on what is taxable or exempt when it comes to digital goods.

- Section 235 - 77.51(2) - remove the first "<u>, property,</u>" and "<u>, (c),</u>"; remove the second "<u>, property,</u>" and "<u>, (c),</u>"; remove the third "<u>, property,</u>" and "<u>, (c),</u>"; remove the fourth "<u>, property,</u>" and "<u>, (c),</u>"; remove the fifth "<u>, property,</u>" and "<u>, (c),</u>"; and change the last sentence of this section to read as follows: "In this subsection, "real property construction activities" does not include affixing property subject to tax under s. 77.52(1) (c) to real property or affixing to real property tangible personal property that remains tangible personal property after it is affixed."

  (Example to explain above change – Lessor A hires Contractor B to furnish and install a water softener in a house owned by Individual C. Lessor A will lease the water softener to Individual C. The lease of the water softener is subject to tax under sec. 77.52(1)(c) because it is leased property affixed to real property and the lessor does not own both the

leased property and the real property to which it is affixed. Lessor A should be able to furnish a resale certificate when purchasing the installed water heater from Contractor B because Lessor A's receipts from leasing the water softener to Individual C will be subject to tax. Without this correction, Contractor B would be deemed the consumer of the water softener and would have to pay Wisconsin sales or use tax on his purchase of it and Lessor A would also have to charge Wisconsin sales tax on his lease receipts from Individual C based on the imposition language contained in 77.52(1)(c). This would be a type of double taxation that can be prevented with the changes described above.)

- Section 251 – 77.51(3rm) – Insert, "Except as provided in (b) below, " before ""Finished artwork"" at the beginning of this section and then renumber (a) through (k) and put them in alphabetical order. After the existing "(k) Illustrative materials") insert "(b) "Finished artwork" does not include web site and home page designs."

  This change is needed to maintain the existing tax treatment of web site designs and home page designs that are transferred electronically to the purchaser. They have not been taxed in the past and were not intended to be taxed under this bill either. If this change is not made, since web site designs and home page designs are a type of "design" it would appear that sales tax would now be due on these types of designs and would be an unintended result of this bill.

- Section 290 - 77.51(13)(k) - change "situated in this state" to "sourced to this state under sec. 77.522"

  This change is needed to prevent possible conflicts with the sourcing requirements of the Streamlined Sales and Use Tax Agreement.

- Section 295 - 77.51(13g)(a) - replace the "," between "items" and "property" with "or" and delete ", or goods" and replace the "," between "(b)" and "(c)" with "or" and delete "or (d),"

  This change is needed because an out-of-state retailer that just leases digital goods in Wisconsin would not be considered to be engaged in business in Wisconsin.

- Section 309 - 77.51(14)(j) - delete "involving tangible personal property" and "in this state".

  This is being done because without removing the reference to "in this state" this provision could conflict with the sourcing provisions contained in sec. 77.522.

- Section 330 – 77.51(17x) – insert "license, lease or rental" after each "sale" (2 places) to make this language consistent with the imposition language related to digital goods contained in s. 77.52(1)(d) and the exemption language contained in s. 77.54(50).

  This change is being recommended so that the imposition and exemption language is exactly the same to prevent any confusion on what is taxable or exempt when it comes to digital goods.

- Section 333 - 77.51(20) - insert ", regardless of how it is delivered to the purchaser" after "software".

  This change is being recommended because the initial amendment to the definition of "tangible personal property" (see Section 332 of Act 2) contained this language and by removing it in this section may lead a person to think that the method in which the software is delivered to the purchaser has an effect on the taxability of the software. Prewritten computer software is taxable regardless of the method in which it is delivered to the purchaser and this change will make that clear to taxpayers in Wisconsin.

- Section 343 – 77.51(24) – after the second "service" insert the phrase ", that otherwise meets the definition of telecommunications services," so that it reads "…means a service, that otherwise meets the definition of telecommunications services, in which computer…"

  This change is being made to make it clear that this definition only applies to a service that otherwise meets the definition of telecommunications services as opposed to some other type of service that could somehow also fall within this definition.

- Section 346 - 77.52(1)(a) – insert "licensed," between "sold," and "leased"

  This change is being recommended because the word "licensed" was inadvertently omitted during the drafting process. It was included in other places but was missed here.

- Section 347 – 77.52(1)(b) – after "selling" insert "licensing, leasing or renting" and after the second "sale" insert ", license, lease or rental" so that the imposition language is consistent with 77.52(1)(a).

  This change is being made since it is possible that collector's coins or stamps that would be sold above their face value could be licensed, leased or rented by the owner of the coins or stamps to a third party for the third party to use. For example, a person may want to display some rare coins at a coin show to attract people to attend the event. The owner of the rare coins may charge a fee to the person that wants to display them. With this change, the lease or rental of those coins would not be subject to tax and would be a change from the existing treatment, which was not intended.

- Section 358 - 77.52(2)(a)10 - insert "or items or goods under s. 77.52(1) (b) or (d)" after the first "property"

  This change is being recommended because this phrase was inadvertently omitted during the drafting process. It was included in numerous other places in the bill but was missed here.

- Section 369 – 77.52(12) –insert "Except for persons that are registered in accordance with the agreement, as defined in s. 77.65 (2) (a)," after the first sentence and before the word "Permits" and then change the "P" in "Permits" to a lower case "p".

This change is being recommended because one of the requirements of the SSUTA is that a retailer registers in all of the member states, even if the retailer does not have taxable sales in each of the states. By making this change, a retailer registered under the SSUTA will be able to hold a permit for Wisconsin even if they don't have any taxable sales.

- Section 384 - 77.522(1)(b)5.b. - insert "digital good or" between "the" and "computer"

  This change is being recommended along with the next change because when the Main Street Equity Act portion of the bill was merged with the digital goods portion of the bill, the sourcing provisions were intended to be combined all together instead of having two separate sourcing provisions with one covering everything except digital goods and the other just covering digital goods. Once this change is made, the language contained in the next bullet point will be duplicative and needs to be removed to eliminate any confusion.

- Section 384 - 77.522(2)(a) and (b) only – delete in their entirety since it is duplicative language. (Note: 77.522(2)(a) is duplicative with 77.522(1)(b)5.b. and 77.522(2)(b)1. and 2. is duplicative with 77.522(3)(a) when taking into account 77.522(3)(d) and the change being made to that section as described in the next bullet point. This will also result in some renumbering.)

  See note related to previous bullet point.

- Section 384 - 77.522(3)(d) – replace the second "or" with a "," and insert ", or goods" after the second "property" and then remove the next "or" and after "(c)" insert ", or (d)"

  This change is being recommended because when the Main Street Equity Act portion of the bill was merged with the digital goods portion of the bill, the sourcing provisions were intended to be combined all together instead of having two separate sourcing provisions with one covering everything except digital goods and the other just covering digital goods. By combining provisions and making the above change, the sourcing provisions will all be consistent with the requirements of the SSUTA.

- Section 391 – 77.53(1) – change "<u>sales price</u>" to "<u>purchase price</u>" to make it consistent with the rest of the provisions of 77.53(1).

  This change is being recommended - partially because of the merging of the Main Street Equity Act portion of the bill and the digital goods portion of the bill - because when these separate LRBs were merged different terminology was contained in each of the drafts and it was intended that the terminology required by the Streamlined Sales and Use Tax Agreement would be used. In this case the phrase "purchase price" should be used instead of "sales price."

- This suggested change applies to all of the exemptions contained in sec. 77.54, 77.55 and 77.56 – Since the imposition statutes contained in sec. 77.52(1) impose the tax on the "selling, **licensing, leasing or renting**" or the "sale, **license, lease or rental**" of the

tangible personal property, digital good, etc., the language contained in the exemption statutes need to be changed so that they also exempt the "sale, **license, lease or rental**" of the tangible personal property, digital good, etc. As the statutes are currently drafted, only the "sale" or "sales" of the particular items are identified as being exempt, when the intention of the statutes is to exempt not only the "sales" of the particular items, but also the "license, lease or rental" of those same items. In other words, the words "license, lease or rental" are missing from each of the exemption statutes and therefore the exemption statutes could be construed to only be allowing exemption on the "sale" of the particular item as opposed to the "sale, license, lease or rental".

I see 2 options on how to correct this inconsistency. Option 1 would be to add a new section to the statutes (preferably in the definitions area (77.51) which would provide that the word "sale" as used in secs. 77.54, 77.55 and 77.56 also includes "licenses, leases and rentals". (Note: If Option 1 is followed, the words "license, lease or rental" can be removed from sec. 77.54(50).) Option 2 would be to add the words (or the appropriate tense of the words) "license, lease or rental" to each of the exemption provisions contained in secs. 77.54. 77.55 and 77.56.

Under existing law, the words "license, lease or rental" are not needed in each of the exemption statutes because of how "sale" is defined in sec. 77.51(14). However, because of changes in the definition of the term "sale" and the addition of the separate imposition of tax on "licensing" this change is needed to maintain the State's current treatment of sales, licenses, leases and rentals of tangible personal property, etc., that qualify for exemption.

- Section 476 – 77.54(50) –insert "or not subject to" between "from" and "taxation"

  This change is being recommended because it needs to be clear that if an item sold in a tangible form was just "not subject to tax", as opposed to qualifying for some "exemption" that the intent of this provision in either case is that the digital form would also be exempt or not subject to tax. Without this change a person could argue that something that is "not subject to tax" is different from something that is "exempt from tax." This change is intended to remove that argument.

- Section 489 – 77.58(6) – insert "licenses, " between "from" and "rentals"

  This change is being recommended because digital goods many times are "licensed" instead of "leased" or "rented."

- Section 492 – 77.585(8) – rewrite this so that it reads:

  "(8) (a) A sale or purchase involving transfer of ownership of tangible personal property or items or property under s. 77.52(1)(b) or (c) is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent, except that for purposes of sub. (1) a common carrier or the U.S. postal service shall be considered the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

(b) 1. Except as provide in subd. 2., a sale or purchase involving a digital good under s. 77.52 (1) (d) is completed at the time when possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent or when the digital good is first used, whichever comes first.

2. A sale or purchase of a product transferred electronically, including a digital good under s. 77.52(1)(d), that is sold by subscription, is completed at the time when the payment for the subscription is due to the seller. For purposes of this subd., "subscription" means an agreement with a seller that grants the consumer the right to obtain products transferred electronically from within one or more product categories having the same tax treatment, in a fixed quantity or for a fixed period of time, or both."

This change is being recommended to make it clear the exact time when a sale takes place. The sourcing provisions contained in sec. 77.522 make the location of the sale clear, but do not address the time the sale takes place.

- Section 496 – 77.59(9n) – after 77.59(9n)(c) insert "(d) The relief from liability for sellers, CSPs and purchasers that relied on the information contained in the database provided under s. 73.03(61)(f) does not apply to transactions where the product is received by the purchaser at the business location of the seller."

  This change is consistent with Section 307.B. of the SSUTA and is needed to make it clear that a seller cannot claim that a transaction involving the sale of a product to a purchaser that takes place at the seller's business location is not subject to tax because the rates and boundary database contained incorrect information. A seller knows the taxing jurisdictions in which their business locations are located and is responsible for properly collecting all of those applicable taxes.

- Section 534 – 77.73(3) – after the word "file" insert "or are required to file" and after the word "register" insert "or are required to be registered". In addition, after the word "files" insert "or is required to file" and after the word "registers" insert "or is required to be registered"

  This change is being made to make it clear that if a person should have filed an application or should have been registered but was not, the counties and special districts still have jurisdiction to require those retailers to collect and remit the county and stadium taxes. This language is needed or else a person who is a nonfiler would technically not be responsible for the county and stadium taxes until such time as they either file an application or register to collect the tax. That would have been an unintended consequence.

- Add a provision, possibly a nonstatutory provision, to make it clear that if a particular product may possibly be taxed under two or more separate imposition statutes (i.e., cable tv may be taxable as a digital good or under the specific imposition language contained in sec. 77.52(2)(a)12., Wis. Stats.), there is no intent to impose tax on the same item more than once and the laws will be administered to only impose the tax on the item one time.

This change or clarification is being requested because members of the business community have raised concerns where a particular item that is being sold could possibly fall under 2 or more imposition statutes and they are looking for definite assurance that the state does not intend to impose tax on the same item twice. Wisconsin never has imposed sales or use tax on the same item involved in the same transaction more than once and there is no intention to do that now.

(The explanation below applies to all of the changes identified from here to the end of this document.)

Section 77.54(50), as created by the bill, provides an exemption from Wisconsin sales and use tax for any "…sale, license, lease, or rental of and the storage, use, or other consumption of specified digital goods or additional digital goods, if the sale, license, lease, or rental of and the storage, use, or other consumption of such goods sold in a tangible form is exempt from taxation under this subchapter." The practical (and intended) effect of this is that any product that is exempt from tax when sold in a tangible form will be exempt from tax when sold in a digital form. The proposed statutory language related to the exemptions provided in secs. 77.54 – 77.56 contains references to digital goods in some places but not in others – partially because of the merging of the Main Street Equity Act portion of the bill and the digital goods portion of the bill. A complete review of the exemptions provided in sec. 77.54 – 77.56 was completed to determine exactly where references to digital goods, etc. are needed and where they are not needed in order to help eliminate possible confusion by taxpayers. With the above in mind and based on this review, the following changes are needed:

- Section 411 - 77.54(1) - the phrase "<u>, and items, property, and goods under s. 77.52 (1) (b), (c), and (d),</u>" should be changed to "<u>and items and property under s. 77.52 (1) (b) and (c),</u>"

- Section 412 - 77.54(2) – after the first "property" insert "<u>or item under s. 77.52 (1) (b)</u>" (Note: Reference to 77.52(1)(c) is not needed in this section because it would not be possible for leased property affixed to realty to become an ingredient or component part of an article of tangible personal property, etc. being manufactured.)

- Section 412 - 77.54(2) – after the second "property" insert "<u>or item or property under s. 77.52 (1) (b) or (c),</u>"

- Section 412 - 77.54(2) – after the third "property" insert "<u>or items or property under s. 77.52 (1) (b) or (c)</u>"

(Note: Change not needed to (2m) since an item or property under s. 77.52 (1)(b) or (c) by their very nature could not become an ingredient or component of a newspaper, periodical, etc.)

- Section 414 - 77.54(3)(a) – after the first "property" insert "<u>or items or property under s. 77.52 (1) (b) or (c)</u>"

- Section 414 - 77.54(3)(a) – after the fifth "property" insert "or item or property under s. 77.52 (1) (b) or (c)"

- Section 414 - 77.54(3)(a) – after the seventh "property" insert "or item or property under s. 77.52 (1) (b) or (c)"

- Section 414 - 77.54(3)(a) – after the ninth "property" insert "or item or property under s. 77.52 (1) (b) or (c)"

- Section 416 - 77.54(4) - the phrase "and items, property, and goods under s. 77.52 (1) (b), (c), and (d)," should be changed to "and items and property under s. 77.52 (1) (b) and (c)," in 2 places in this section

- After Section 418 - 77.54(6)(a) – Insert a new section that amends s. 77.54(6)(a) to read "Machines and specific processing equipment and repair parts of replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property or items or property under s. 77.52 (1) (b) or (c), and safety attachments for those machines and equipment."

- After Section 418 and the bullet point above - 77.54(6)(b) – insert a new section that amends s. 77.54(6)(b) to read "Containers, labels, sacks…or shipping tangible personal property or items or property under s. 77.52 (1) (b) or (c), if such items…"

- After Section 418 and the above 2 bullet points - 77.54(7)(a) – insert a new section that amends s. 77.54(7)(a) to read "Except as provided in…tangible personal property and items and property under s. 77.52 (1) (b) and (c) and services and the storage, use…of tangible personal property and items and property under s. 77.52 (1) (b) and (c) the transfer…"

- Section 419 - 77.54(7m) - the phrase ", or items, property, or goods under s. 77.52 (1) (b), (c), and (d)," should be changed to "or items or property under s. 77.52 (1) (b) or (c)," (Note: the same phrase later on in this section should NOT be changed based on the context in which it is used.)

- Section 422 - 77.54(9a)(intro.) - the phrase ", and items, property, and goods under s. 77.52 (1) (b), (c), and (d)," should be changed to "and items and property under s. 77.52 (1) (b) and (c),

- After Section 452 - 77.54(30)(a)6. - insert a new section which reads "6. Fuel and electricity consumed in manufacturing tangible personal property, or items or property under s. 77.52 (1) (b) or (c)."

- Section 457 - 77.54(35) - the phrase ", or items, property, or goods under s. 77.52 (1) (b), (c), or (d)," should be changed to "or items or property under s. 77.52 (1) (b) or (c),"

- Section 475 - 77.54(49) - the phrase "or items, property, or goods under s. 77.52 (1) (b), (c), or (d)," should be changed to "or items or property under s. 77.52 (1) (b) or (c),"

- Section 475 - 77.54(49) – change the phrase "services and property, item or good" to read "services and property or item"

- Section 479 - 77.54(54) - the phrase ", and items, property, and goods under s. 77.52 (1) (b), (c), and (d)," should be changed to "and items and property under s. 77.52 (1) (b) and (c),"

- Section 481 - 77.55(1)(intro) - the phrase ", or items, property, or goods under s. 77.52 (1) (b), (c), and (d)," should be changed to "or items or property under s. 77.52 (1) (b) or (c),"

- Section 482 - 77.55(2) - the phrase ", and items, property, and goods under s. 77.52 (1) (b), (c), and (d)," should be changed to "and items and property under s. 77.52 (1) (b) and (c),"

- Section 482 - 77.55(2) – the phrase ", item, or good" should be changed to "or item"

- Section 484 - 77.55(3) - the phrase ", and items, property, and goods under s. 77.52 (1) (b), (c), and (d)," should be changed to "and items and property under s. 77.52 (1) (b) and (c),"

- Section 485 – insert "tangible personal" before "property"

- Section 485 - 77.56(1) - the word "including" should be changed to "and"

- Section 547 - 77.994(1)(intro.) – change the phrase "goods or services" to "property, items, goods or services"

If you have any questions regarding these changes, please contact Craig Johnson at (608) 634-6794.

**DEPARTMENT OF REVENUE**
**PROPOSAL TO CHANGE OR CORRECT**
**2009-2011 BUDGET ADJUSTMENT BILL (2009 Wisconsin Act 2)**

**TOPIC: Main Street Equity Act**

**BUDGET VERSION:**
(original budget, amended version?)
Budget Adjustment Bill – Senate Bill 62, which became Wisconsin Act 2

**PROBLEM DESCRIPTION**:

The Business Advisory Council that was involved in reviewing Wisconsin's compliance with the SSUTA raised a concern relating to the Premier Resort Area Tax. Remote retailers are concerned that they may be required to collect the premier resort area tax even though there is no database available to help them determine which addresses are within a premier resort area. This proposal provides for a hold harmless provision for those sales that do not take place at the retailer's business location.

The Business Advisory Council also raised a concern over some inconsistent language used in the state sales tax imposition statutes and the county sales tax imposition statutes. This proposal removes that inconsistency.

The Business Advisory Council also raised a concern that our law did not specifically provide that the new definition of "lease or rental" does not apply retroactively to existing leases and rentals. This proposal addresses that concern.

**PROPOSED CHANGE AND ITS EFFECT**:

See attached document.

**RATIONALE FOR CHANGE:**

See attached document describing the changes. The changes/corrections are being made to make sure we are in compliance with the requirements of the Streamlined Sales and Use Tax Agreement.

**FISCAL EFFECT OF CHANGE**:

Unknown.

**PROPONENTS AND OPPONENTS OF CHANGE**:

Unknown.

**SECTIONS OF BILL AFFECTED**:

Sections 260 and 346 of 2009 Wisconsin Act 2 and a new section to be added to sec. 77.994.

**ANALYST**: Craig Johnson

**DIVISION**: IS&E

**DATE**: April 8, 2009

Suggested Changes based on BAC Comments and Review

- Add section 77.994(3) to provide the following:

  "(a) Except as provided in par. (b), no seller or certified service provider is liable for the tax, interest or penalties imposed under this subchapter on a transaction in which the seller or certified service provider charged and collected the incorrect amount of tax imposed under this subchapter on the sale of a product that was shipped to the purchaser's location within a premier resort area, until such time as a database identifying the addresses subject to each premier resort area tax is available to all sellers and certified service providers.

  (b) The relief from liability described in par. (a) above does not apply to transactions which are properly sourced to the seller's place of business under s. 77.522(1)(b)1., Stats."

  The above change is being recommended to satisfy the concerns of the reviewers of Wisconsin's Streamlined legislation and the need for a hold harmless provision with respect to retailers collecting the wrong tax rate on items delivered into premier resort areas since there is no database currently available to assist them in determining the proper taxing jurisdiction.

- Amend sec. 77.52(1)(a), Wis. Stats. as amended by Wisconsin Act 2 to remove the phrase "including accessories, components, attachments, pats, supplies and materials".

  This change is being recommended to be made to satisfy the requirement that the state and county sales and use tax be imposed on the same thing. The reason these words are being recommended for removal from 77.52(1)(a) is because the imposition language in subch. V of ch. 77 does not include them. Although this will not change what is and what is not subject to tax, it is a change being recommended by the reviewers of Wisconsin's Streamlined legislation.

- Create sec. 77.51(7)(d), Wis. Stats. as repealed and recreated by 2009 Wisconsin Act 2 to provide the following:

  "The definition of "lease or rental" as created in this section by 2009 Wisconsin Act 2 shall only apply to lease and rental contracts entered into on and after October 1, 2009 and shall have no affect on an existing lease or rental contract until such lease or rental contract is renewed, extended or modified on or after October 1, 2009."

  This change is being made at the request of the Business Advisory Council members that reviewed Wisconsin's petition for membership to make it clear that the new definition of lease or rental that becomes effective October 1, 2009 does not have any impact on existing leases or rentals.

**DEPARTMENT OF REVENUE**
**PROPOSAL TO CHANGE OR CORRECT**
**2009-2011 BIENNIAL BUDGET BILL**

**TOPIC: Regional Transit Authorities – KRM, Main Street Equity Act Compliance and WINPAS masterlease funding**

**BUDGET VERSION:** LRB – 1881/1

**PROBLEM DESCRIPTION**:
1. Under section 1449 of the bill, the existing KRM RTA is scheduled to terminate on the first day of the 3rd month beginning after the effective date of Section 1449 of the bill. The bill provides that the LRB is to insert the effective date. Thus, the effective date is not known at this time.

Section 1891 of the bill appears to remove the authority of the existing KRM RTA to impose the fee under sec. 77.9971, Wis. Stats., as of the effective date of the bill (the later of July 1, 2009 or the day after publication), while also authorizing the SE RTA created under proposed sec. 66.1039(2)(a), Wis. Stats., of the bill to impose the fee. The SE RTA may begin to impose the fee on the first day of the first month that begins at least 90 days after the SE RTA approves the fee and notifies the department of revenue.

It appears that the existing KRM RTA will exist for a period of time after the effective date of the bill, during which time it will not be allowed to impose the fee under sec. 77.9971, Wis. Stats., because its authority to impose the fee terminates as of the effective date of the bill. At the same time, the SE RTA will not be able to impose the fee during this period either, due to the waiting period prescribed in sec. 77.9971, Wis. Stats.

The actual intent of this proposal is not known.

2. There are numerous provisions contained in AB 75 relating to the RTA that must be drafted in a manner that is consistent with the requirements of the Streamlined Sales and Use Tax Agreement. The attached sheets identify those provisions in which changes are needed to maintain compliance with the SSUTA.

3. Funding is needed for WINPAS for future masterlease debt expenses is $20,000 in FY10 and $66,800 in FY11 (ongoing $66,800)

**PROPOSED CHANGE AND ITS EFFECT**:
1. If the intent is to allow the existing KRM RTA to impose and collect the fee under sec. 77.9971 for the entire period it remains in existence and the new SE RTA cannot impose the fee, it is recommended that some change be made to clearly state this in the bill. The concern is that the proposed change in the language under section 1891 of the bill, removes the authority of the KRM RTA to impose the fee under sec. 77.9971, Wis. Stats., as of the effective date of the bill.

2. See the attached sheets for the proposed changes and their effects.

3. WINPAS funding is needed to include RTA in Rollout 7.

**RATIONALE FOR CHANGE:**
1. Conform the proposal, if necessary, to reflect desired intent.

2. See the attached sheets.

3. IT funding is necessary for implementation of the proposal.

**FISCAL EFFECT OF CHANGE**:
1 and 2. None.

**PROPONENTS AND OPPONENTS OF CHANGE**:
1. This change is proposed as a clarification only.

2.Proponents are those that support conformity with the SSUTA. Opponents are those that are against conformity with the SSUTA.

**SECTIONS OF BILL AFFECTED**:

1. Section 1891.

2. See attached sheets for the numerous sections of the bill that are affected.

**ANALYST**: Bob Kennedy (608) 261-5167 and Craig Johnson (608) 634-6794

**DIVISION**: IS&E

**DATE**: 03/06/2009, revised 3/23/2009, revised 3/26/09 (Carrie Templeton)

**Changes Needed to AB75 –relating to RTA Provisions that also affect the Main Street Equity Act requirements (Streamlined Sales and Use Tax Agreement)**

- Section 1488, pages 741 and 742 – 66.1039(2)(a), (b) and (c) – On page 741 after line 13, on page 742 after line 5 and on page 742 after line 21 – insert another subdivision which provides that if a county or municipality joins an authority, the date their joining becomes effective can only be on the first day of a calendar quarter that begins at least 120 days after the Department of Revenue is provided with a certified copy of the resolution.

  This is needed to be in compliance with the Streamlined Sales and Use Tax Agreement, to allow the Department of Revenue adequate time to notify affected taxpayers and to give sellers and purchasers adequate time to get their accounting systems ready to properly account for the collecting and reporting of this tax.

- Section 1488, page 749, lines 1 – 7 – 66.1039(4)(s) – Insert a requirement that the certified copy of the resolution that the authority must deliver to the Department of Revenue must identify the authority's jurisdictional area and if the boundaries of the jurisdictional area are other than county lines on all sides of the jurisdictional area, the authority must provide all of the street addresses and 9-digit zip codes of all of the addresses within their jurisdictional area. This information must be provided to the Department of Revenue and like the imposition of the tax itself, is only effective on the first day of the calendar quarter that begins at least 120 days after the Department of Revenue is provided with the information.

  With respect to changes in the jurisdictional areas or rates, a certified copy of the resolution making the changes must be delivered to the Department of Revenue at least 120 days prior to the date the change takes effect or sellers and purchasers subject to the tax will not be responsible for the tax. The changes, like the imposition of the tax itself, can only be effective on the first day of the calendar quarter that begins at least 120 days after the Department of Revenue is notified in writing by the authority of the change.

  These changes are needed to maintain compliance with the Streamlined Sales and Use Tax Agreement, to allow the Department of Revenue adequate time to notify affected taxpayers and to give sellers and purchasers adequate time to get their accounting systems ready to properly account for the collecting and reporting of this tax.

- Section 1488, page 755 line 17 through page 756, line 3 - 66.1039(13) – add an additional requirement that the withdrawal of a participating political subdivision from an authority can only be effective on the first day of the calendar quarter that begins at least 120 days after the Department of Revenue receives a certified copy of the resolution that approves the withdrawal of the political subdivision from the authority. If the withdrawal of the political subdivision results in the boundaries of the authority's jurisdictional area being other than county lines on all sides of their

jurisdictional area, the authority must provide all of the street addresses and 9-digit zip codes of all of the addresses within their jurisdictional area to the Department and those changes can only be effective on the first day of a calendar quarter that is at least 120 days after the Department is provided with the information.

This change is needed to maintain compliance with the Streamlined Sales and Use Tax Agreement, to allow the Department of Revenue adequate time to notify affected taxpayers and to give sellers and purchasers adequate time to get their accounting systems changed to stop collecting and reporting this tax.

- Section 1858, page 1054, line 21 – 77.708 – after "resolution" insert "as provided in s. 66.1039(4)(s)"

  This change is being recommended to make it clear that the authority must provide a certified copy of the resolution to the Department of Revenue.

All of the sections below were affected by 2009 Wisconsin Act 2, which in most cases is effective on October 1, 2009. Therefore, for the period from the date this bill is passed through September 30, 2009, the language contained in these sections does not impact compliance with the Streamlined Sales and Use Tax Agreement. However, effective October 1, 2009, the language in all of the sections below will need to be changed so that it is consistent with the language in 2009 Act 2 as well as this bill.

- Section 1860, page 1055 – 77.71(1)
- Section 1861, page 1055 – 77.71(2)
- Section 1862, page 1056 – 77.71(3)
- Section 1863, page 1056 – 77.71(4)
- Section 1864, page 1057 - 77.73(2)
- Section 1865, page 1057 – 77.75
- Section 1871, page 1060 – 77.77(1)
- Section 1874, page 1062 – 77.994(1)(intro.)
- Section 1889, page 1063 – 77.9951(2)

If you have any questions regarding these changes, please contact Craig Johnson at (608) 634-6794.