



Legislative Fiscal Bureau

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April 1, 2021

TO: Representative Mark Born
Room 308 East, State Capitol

FROM: Sydney Emmerich, Fiscal Analyst

SUBJECT: LRB 2850/1: Sales Tax Holiday for the Summer of 2021

At your request, I am providing information regarding LRB 2850/1. Under current law, Wisconsin imposes a general sales and use tax on retail sales of tangible personal property, certain digital goods, and selected services. State sales and use taxes are currently estimated at \$5,915 million for 2020-21 and \$6,310 million for 2021-22.

The bill would create a three-month holiday from the 5.0% state sales and use tax, the 0.5% county sales and use tax, certain local exposition district taxes, and the premier resort tax for all sales made by any establishment that has classified its primary business activity with the Department of Revenue (DOR) under one of the following 2017 North American Industry Classification System (NAICS) codes: (a) 512131 - motion picture theaters; (b) 512132 - drive-in motion picture theaters; (c) 7131 - amusement parks and arcades; (d) 7223 - special food services; (e) 7224 - drinking places; or (f) 7225 - restaurants and other eating places. The sales tax holiday would also apply to any establishment that holds a valid brewpub permit issued by DOR. Under the bill, the tax holiday would begin on June 1, 2021, and end on August 31, 2021. While the exemption would apply to all sales made by the business entities specified above, tax exempt ticket or admission sales would be limited to events and activities occurring during the three-month period. The bill would specify that an establishment that did not classify itself as an establishment specified above on or before March 1, 2021, could apply to DOR, in the manner determined by the Department, to be classified as such an establishment.

In administering the proposed holiday, DOR would have to comply with the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The bill would specify that the proposed sales tax holiday is in response to the economic impacts resulting from the state of emergency declared by the federal government and is intended to minimize the administrative burden on sellers affected by the state of emergency.

Under s. 16.47 (2), no bill containing an appropriation or increasing or decreasing state

revenues in an annual amount exceeding \$10,000 can be passed by the Senate or the Assembly until the budget bill has passed both houses, unless an emergency statement is attached to the bill. The bill would specify that this provision would not apply to the actions of the Legislature in enacting LRB 2850/1.

As the sales tax holiday would only apply to businesses primarily engaged in the specified activities, as determined by the businesses' NAICS code classification, the holiday would create situations in which the same goods or services are exempt from tax at one location, but taxable at another. For example, a grocery store or gas station with its own restaurant would likely not classify itself under one of the 722 NAICS codes. Therefore, sales made at its restaurant could be subject to the sales tax, but sales made at a stand-alone restaurant next door could qualify for the tax holiday. It should be noted that businesses self-report their NAICS code to DOR, and can change that code at any time. Such industry classification is not currently regulated or monitored by DOR. Based on information provided by DOR, estimated sales tax collections from taxable sales occurring in June, July, and August by businesses that self-identified under the specified NAICS codes totaled \$137 million in 2018, \$141 million in 2019, and \$111 million in 2020.

Consumers would likely delay or accelerate some purchases to forego paying the sales tax; therefore, it is assumed that some purchases that would have occurred on dates outside the sales tax holiday would shift to the months in which the tax holiday applies. For example, a family planning a weekend vacation to an amusement park in September may choose to move their vacation to a weekend in August in response to the sales tax holiday. Additionally, it is assumed that some businesses that previously registered with DOR under an incorrect NAICS code classification would reclassify themselves with DOR to make tax exempt sales in response to the sales tax holiday. Based upon these assumptions, the growth forecast by IHS Markit, and historical tax collection patterns, it is estimated that the proposed three-month holiday from the state sales and use tax would reduce general fund tax revenues by \$55 million in 2020-21 and \$105 million in 2021-22.

Under the bill, the sales tax holiday would also apply to the 0.5% county sales and use tax, certain taxes imposed by a local exposition authority (food and beverage tax and car rental tax), and the premier resort area tax. County sales taxes were 7.9% of state sales taxes in 2019-20. Applying this percentage, it is estimated that the sales tax holiday would reduce county sales and use tax revenues by \$4.3 million in 2020-21 and \$8.3 million in 2021-22. Milwaukee's local exposition district and municipalities with a premier resort district would also experience a decline in revenues. However, because the proposed sales tax holiday would only apply to a narrow portion of the set of products and services to which the local exposition center and premier resort area taxes apply, and the amount of those products and services in each of these areas is not known, the decline in revenues to these areas due to the proposed sales tax holiday is indeterminate.

You also requested information on the number of entities that currently self-identify under each of the specified NAICS codes. The table below shows the count of businesses that remitted sales tax to DOR in December 2019 and 2020, for each NAICS code. December was used because that month includes sales tax returns due for all monthly, quarterly, and annual filers.

**Count of Businesses Remitting Tax to DOR by NAICS Code,
December 2019 and 2020**

	<u>December 2019</u>	<u>December 2020</u>
512131/512132 - Motion Picture Theaters and Drive-ins	55	48
7131 - Amusement Parks and Arcades	65	58
7223 - Special Food Services	712	542
7224 - Drinking Places	4,210	3,766
7225 - Restaurants and Other Eating Places	<u>7,224</u>	<u>6,746</u>
Total	12,266	11,160

It should be noted that the proposed sales tax holiday could present certain administrative issues. For the duration of the holiday, eligible businesses would be required by law to change their point of sale systems and adjust their practices. Additionally, DOR would have to provide guidance to businesses on whether they are eligible for the sales tax holiday based on the NAICS code DOR has on file for that business. As mentioned previously, it is possible that the NAICS codes on record with the Department for some businesses do not accurately represent their primary business operations. To the extent that this applies and is not addressed by businesses prior to the holiday, it could result in the over- or under-payment of sales tax, creating issues in future audits and assessments.

Effective October 1, 2009, Wisconsin entered the Streamlined Sales and Use Tax Agreement, which requires some uniformity in tax administration among member states. However, a recent amendment to the Agreement allows member states to take temporary legislative or executive actions that do not follow the provisions of SSUTA, provided that action is specifically related to a federally declared state of emergency, such as the COVID-19 pandemic. These actions can be taken during and up to one year after the state of emergency declared ends. This provision requires that the state provide at least 30 days between the enactment of the legislative or executive action and the effective date of such action. The Agreement also encourages states to follow as many SSUTA provisions as possible and to try to minimize any burdens imposed on sellers when taking these temporary actions. For example, under SSUTA, a sales tax holiday may be held only if notice of the holiday is provided to retailers at least 60 days prior to the first day of the calendar month in which the proposed holiday will begin. However, given that the sales tax holiday could be considered an action specifically related to the state of emergency, 30 days' notice would instead be required. As a result, in order for the proposed sales tax holiday to begin on June 1, 2021, to be in compliance with the provisions of SSUTA, the proposal would need to be enacted with notice to retailers on or before May 1, 2021.

Under s. 16.518 (3) of the statutes, if actual tax collections exceed the amounts estimated in the state's biennial budget act, one-half of such excess is deposited into the budget stabilization fund. Based on the general fund tax projections prepared by this office on January 26, 2021, modified to reflect subsequent tax law changes, it is estimated that \$83.9 million would transfer into the budget stabilization fund in 2020-21, which would increase the total fund balance to \$846.2 million. Thus, the estimated effect of LRB 2850/1 on the budget stabilization fund would be a decrease in the

estimated stabilization fund transfer of \$27.5 million in 2020-21. The \$27.5 million would remain in the general fund.

Under the American Rescue Plan Act of 2021, an estimated \$3.2 billion is allocated to the State of Wisconsin. States and territories are prohibited from using these funds to, either directly or indirectly, offset a reduction in the net tax revenue resulting from a change in law, regulation, or administrative interpretation occurring after March 3, 2021. The Act requires the state or territory to repay to the Secretary of the U.S. Treasury an amount equal to the amount of funds used to directly or indirectly offset a reduction in net tax revenue. Additional guidance from the U.S. Treasury is needed to determine whether state enactment of LRB 2850/1 would trigger this federal recoupment provision.

I hope this information is helpful. Please let me know if you have any further questions.

SE/lb