



## Legislative Fiscal Bureau

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TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Substitute Amendment 1 to Assembly Bill 892 and Senate Substitute Amendment 1 to Senate Bill 483: Sales and Use Tax Exemption for Internet Equipment Used in the Broadband Market

Assembly Bill 892 and Senate Bill 483 are identical companion bills that would provide a nonrefundable credit against the individual income tax for sales tax paid on certain Internet equipment used in the broadband market. AB 892 was introduced on December 22, 2005, and referred to the Assembly Committee on Energy and Utilities. That Committee recommended passage of Assembly Substitute Amendment 1 to AB 892 on February 7, 2006, on a vote of 10 to 1. The substitute amendment would provide a sales tax exemption rather than an income tax credit for certain Internet equipment. The bill, as amended by the substitute amendment, was then referred to the Joint Committee on Finance.

SB 483 was introduced on December 22, 2005, and referred to the Senate Committee on Job Creation, Economic Development, and Consumer Affairs. That Committee recommended passage of Senate Substitute Amendment 1 to SB 483 on February 14, 2006, on a vote of 3 to 1. The Senate Substitute Amendment is identical to ASA 1 to AB 892.

### **CURRENT LAW**

Wisconsin imposes a 5% general sales and use tax on the gross receipts from the sale and rental of tangible personal property, unless specifically exempted, and on sales of certain services identified in the statutes. There are currently no sales and use tax exemptions for Internet equipment.

## SUMMARY OF SUBSTITUTE AMENDMENTS

ASA 1 to AB 892 and SSA 1 to SB 483 would provide, for a limited term, a sales and use tax exemption for certain Internet equipment used in the broadband market to provide Internet availability in areas of the state where there is no Internet service provider, as determined by the Department of Commerce (Commerce).

The substitute amendments would define "Internet equipment used in the broadband market" to mean equipment that is capable of transmitting data packets or Internet signals at speeds of at least 200 kilobits per second in either direction. To be eligible for the exemption, the purchaser would be required to certify to Commerce, in the manner prescribed by the Department, that the purchaser will, within 24 months of the effective date of the provisions, make an investment that is reasonably calculated to increase broadband Internet availability in the state. In addition, the purchaser would have to certify to Commerce that the investment will be in an amount equal to at least 20% of the amount the purchaser would have paid in sales and use taxes for Internet equipment used in the broadband market during the 12-month period beginning on the effective date of these provisions. Within 60 days after the end of the year in which an eligible investment in Internet equipment was made, the purchaser would be required to file a report with Commerce providing a detailed description of the investment, including the amount invested. Commerce would be required to provide copies of the report to the Department of Administration, the Department of Revenue (DOR), and the Public Service Commission.

Commerce would also be required to implement a program for certifying businesses as eligible for the proposed sales and use tax exemption within 30 days of the effective date of these provisions. If Commerce certified a business's eligibility, the Department would have to determine the maximum amount of exemption the business could claim, subject to certain requirements described below. Commerce would not be permitted to allocate tax exemptions to a business unless the allocation of the exemptions would be likely to increase the availability of broadband Internet service in areas of this state that are not served by a broadband Internet service provider or are served by not more than one broadband Internet service provider, as determined by the Department. The aggregate total amount of tax exemptions that Commerce would be permitted to allocate to all eligible businesses would be limited to \$7.5 million. The Department would be required to complete the certifications and determinations described above not later than the first day of the seventh month after the effective date of the provisions.

Not later than 10 days after Commerce completed such certifications and determinations, the Department would be required to submit to the Joint Committee on Finance a report identifying the businesses so certified and the maximum amount of tax exemptions each business could claim. The substitute amendments specify that if the Co-Chairs of the Finance Committee do not notify Commerce within 14 working days after such a report has been submitted that the Committee has scheduled a meeting to review the certifications and determinations, then Commerce is to notify DOR of such certifications and determinations. However, if the Co-Chairs notified Commerce within 14 working days after a report had been submitted that the Committee had scheduled a

meeting to review the certifications and determinations, then Commerce could not notify DOR of such certifications and determinations unless: (a) the Committee approved Commerce's certifications and determinations; or (b) the Committee did not hold a meeting to review Commerce's certifications and determinations within 30 days after the Co-Chairs notified Commerce that a meeting had been scheduled.

The substitute amendments would authorize Commerce to promulgate emergency rules necessary to administer the provisions for certifying and determining the proposed tax exemptions. The rules would remain in effect until Commerce notified DOR of Commerce's certifications and determinations, or the first day of the 13<sup>th</sup> month after the effective date of the provisions, whichever was sooner. Commerce would not be required to provide evidence that promulgating a rule under these provisions is necessary for the preservation of the public peace, health, safety, or welfare and would not be required to provide a finding of emergency for promulgating a rule.

The substitute amendments would take effect on the first day of the second month beginning after publication.

There are two technical modifications that should be made to the substitute amendments. The first would be to clarify that a reference to the "Department" with respect to the proposed certification process is to the Department of Commerce (the sales tax statutes generally define "Department" to mean the Department of Revenue). The second modification would be to clarify that the \$7.5 million cap in aggregate sales and use tax exemptions is intended to apply to such taxes otherwise imposed by the state, rather than to the sum of state taxes and any county or special district taxes.

In addition, it should be noted that the meaning and effect of the requirement that the purchaser certify to Commerce that the purchaser will make an investment that will be in an amount equal to at least 20% of the amount the purchaser would have paid in sales and use taxes for Internet equipment used in the broadband market during the 12-month period beginning on the effective date of these provisions is unclear. However, because the purchaser would be required to certify to Commerce that the purchaser would, within 24 months of the effective date of the provisions, make an investment that is reasonably calculated to increase broadband Internet availability in the state, the provisions linking the investment to at least 20% of the amount that the purchaser would otherwise have paid in sales and use taxes for Internet equipment could be deleted.

## **FISCAL EFFECT**

As noted, the substitute amendments would cap the Internet equipment sales and use tax exemptions at \$7.5 million, an amount that would imply eligible investments in Internet equipment of \$150 million. The effect of the provisions by fiscal year would depend on the timing of the investments and the use of the exemptions. While the substitute amendments would require eligible businesses to certify to Commerce that the investment in broadband equipment would be made

within 24 months of the effective date of the exemption, the actual period during which such investment would be made is unknown. However, based on information provided by DOR about amounts invested in central office equipment and antennas (which would include broadband equipment) and on sales taxes paid by telecommunications companies in recent years, it is assumed that the \$7.5 million in sales and use tax exemptions would be claimed during 2006-07. Therefore, it is estimated that general fund tax revenues from the sales and use tax would be reduced by \$7.5 million in 2006-07. In addition, it is estimated that county and stadium sales tax collections would be reduced by approximately \$580,000 in the same period.

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