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March 19, 2008

TO: Members
Senate Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Amendment 1 to Engrossed Special Session Assembly Bill 1: 2007-09 Budget Adjustment

This memorandum describes the provisions of Senate Amendment (SA) 1 to Engrossed Special Session (SS) Assembly Bill 1 (the 2007-09 budget adjustment bill as passed by the Assembly).

The bill, as passed by the Assembly, contained the following four items.

1. $55 million of the amount in the budget stabilization fund would be transferred to the general fund in 2007-08. SA 1 would not modify this provision.

2. $125 million of the June, 2008, general school aid payment would be made in July, 2008. SA 1 would not modify this provision.

3. The statutory balance would be reduced from $65 million to $20 million. SA 1 would amend this provision to reduce the statutory balance from $65 million to $55 million.

4. $250 million of GPR appropriations and/or compensation reserves would be required to be lapsed in the 2007-09 and 2009-11 biennia to the general fund. SA 1 would require a lapse of $40 million in the two biennia and would exempt certain appropriations from the lapse requirement.

Also, although not specified in the language of the bill, the Assembly's version includes the $111 million lapse requirement under s. 16.50(2) of the statutes indicated by the Secretary of the Department of Administration in his letter of February 12, 2008. SA 1 assumes that this lapse provision does not take effect.

Following is a 2007-09 general fund condition statement and an identification of the effect of provisions of SS AB 1 as amended by SA 1. After these tables is a summary of each of the provisions of SA 1 to SS AB 1 and fiscal effect, if any, as a change to current law.

Engrossed SS AB 1 As Amended by SA 1

2007-09 General Fund Condition Statement

	2007-08	2008-09
Revenues		
Opening Balance, July 1	$66,288,000	$139,345,100
Estimated Taxes	12,868,300,000	13,398,100,000
Departmental Revenues		
Tribal Gaming Revenues	96,731,600	46,250,700
Other	498,909,000	446,359,900
Total Available	$13,530,228,600	$14,030,055,700
Appropriations and Reserves		
Gross Appropriations	$13,596,410,400	$14,079,815,100
Compensation Reserves	62,759,600	156,617,900
Less Lapses	-268,286,500	-264,286,400
Net Appropriations	$13,390,883,500	$13,972,146,600
Balances		
Gross Balance	$139,345,100	$57,909,100
Less Required Statutory Balance	-55,000,000	-55,000,000
Net Balance, June 30	$84,345,100	$2,909,100

General Fund Effect on the Projected 2007-09 Deficit
(In Millions)

	Item	Net Balance
February 13, 2008, Projection		-$652.3
Administrative Action		
Rollover Short-Term Borrowing	$125.4	-526.9
Lapses Under s. 16.50(2)	111.0	-415.9
SS AB 1 as Amended by SA 1		
Delete Lapses Under 16.50(2)	-111.0	-526.9
Combined Reporting	130.5	-396.4
Hospital Assessment	125.0	-271.4
School Aid Payment Delay	125.0	-146.4
Budget Stabilization Fund Transfer	55.0	-91.4
Lapses to General Fund	40.0	-51.4
Permanent Endowment Fund to Medical Assistance	36.0	-15.4
Transfer REAL ID Reserve to General Fund	22.0	6.6
Universal Service Fund to Library Aid	11.3	17.9
Reduce Statutory Balance	10.0	27.9
Streamlined Sales Tax	1.3	29.2
Child Care	-18.6	10.6
Corporate Tax Rate Reduction	-5.2	5.4
Supplements to Rural Hospitals and IMDs	-2.5	2.9

Summary of Provisions

1. DOA SECRETARY AUTHORITY TO LAPSE OR TRANSFER FUNDS TO THE GENERAL FUND

Change to Current Law	
GPR-REV	$40,000,000

Require the Secretary of the Department of Administration (DOA) to lapse or transfer $40,000,000 biennially to the general fund from the unencumbered balances of appropriations of executive branch state agencies, other than sum sufficient appropriations and federal appropriations, during each of the 2007-09 and 2009-11 fiscal biennia. This $40,000,000 lapse or transfer requirement would be in addition to the similar $200,000,000 biennial lapse or transfer requirement under 2007 Act 20. These moneys would be treated as revenue (GPR-Earned) to the general fund.

Specify that the DOA Secretary could not lapse or transfer moneys if the lapse or transfer would: (a) violate a condition imposed by the federal government on the expenditure of the moneys; or (b) violate the federal or state constitution. In addition, specify that no amounts could be lapsed or transferred from appropriations to the Department of Transportation, Department of Revenue, Wisconsin Technical College System, or general and categorical elementary and secondary school aids.

2. STATUTORY BALANCE

Change to Current Law	
Req. Statutory Balance	- $10,000,000

Reduce the required statutory balance from $65 million to $55 million.

3. LIMIT ON INTERFUND CASHFLOW BORROWING

Increase the limit on interfund borrowing to support the general fund's cashflow from 8% of GPR appropriations in that fiscal year to, instead, be 13% of GPR appropriations for that year. Specify that this increase would no longer apply after June 30, 2009.

The state uses the state investment fund as an investment pool for portions of retirement trust assets and cash balances of the state's various funds. In addition, local governments can elect to invest their cash balances in the fund. The state investment fund, which is managed by the State of Wisconsin Investment Board, had approximately $7.1 billion in assets during February, 2008.

The Secretary of DOA is authorized to temporarily reallocate to the general fund an amount equal to 5% of total GPR appropriations in order to support the general fund's cashflow (approximately $689 million in 2007-08 and $709 million in 2008-09). The bill would increase this 5% limit to be 10% in the 2007-09 biennium, which would allow additional temporary

reallocations in 2007-09. Under current law, the Secretary may permit an additional 3% to be used for temporary reallocations to the general fund for a period not to exceed 30 days (approximately $413 million in 2007-08 and $425 million in 2008-09). Reallocations of the additional 3% may not be made for consecutive periods. In total, under current law, 8% of GPR appropriations ($1,102 million in 2007-08 and $1,134 million in 2008-09) may be allocated to the general fund on a temporary basis. Under the bill, these aggregate limits would be $1,781 million in 2007-08 and $1,830 million in 2008-09. No limit applies to temporary reallocations from the budget stabilization fund to the general fund. The following table compares the limits under the proposal with current law.

Limits on Temporary Reallocations to Support the General Fund's Casfhlow
($ in Millions)

	Current Law			Proposal	
Limit	2007-08	2008-09	Limit	2007-08	2008-09
5%	$689	$709	10%	$1,370	$1,408
3% (30-day limit)	413	425	3% (30-day limit)	411	422
Total	$1,102	$1,134	Total	$1,781	$1,830

For funds other than the general fund, up to $400 million can be reallocated between the general fund, certain segregated funds, and the local government investment pool.

Funds that borrow money through temporary reallocations are charged interest at the earnings rate of the state investment fund. No interest is charged to the general fund if it borrows from the budget stabilization fund. In no case can moneys be borrowed from retirement trust assets or from several specific segregated funds. DOA estimates that the state investment fund had $1.9 billion of moneys available for temporary reallocations in January, 2008.

In a report to the Co-Chairs of the Joint Committee on Finance dated January 30, 2008, DOA indicated that the general fund could have a worst day cash balance of -$944 million in June, 2008. Although this was a preliminary cash forecast, it is within $158 million of the current statutory limit of $1,102 million.

The state also can issue operating notes to support the general fund's cashflow. The state issued $600 million of such notes in 2007-08, which will be repaid by the end of the fiscal year. These notes allow the state to borrow externally at tax exempt rates to support its cashflow. However, because operating notes have to be repaid in the same fiscal year of issuance, they have not been used to address a cashflow problem in June.

4. PUBLIC LIBRARY SYSTEM AID FROM THE UNIVERSAL SERVICE FUND

Change to Current Law	
SEG-REV	$11,297,400
GPR	- $11,297,400
SEG	11,297,400
Net	$0

Delete $11,297,400 GPR and provide $11,297,400 SEG from the universal service fund (USF) in 2008-09 for public library system aid. Require the Public Service Commission (PSC) to determine the difference between the total contributions to the USF for library aid and $5,486,100 ($11,297,400 in 2008-09) and prohibit telecommunications utilities from recovering any assessment resulting from that calculation from its customers or by adjusting its local exchange rates. Public library system aid under 2007 Act 20 totals $16,138,000 ($2,097,400 GPR and $14,040,600 SEG) in 2007-08 and $16,783,500 ($11,297,400 GPR and $5,486,100 SEG) in 2008-09. The segregated revenue is from the universal service fund, which receives its funding through assessments on annual gross operating revenues from intrastate telecommunications providers. The effect of this recommendation would be to replace all general fund supported library aids with funds from the USF in 2008-09. The amounts that the PSC would assess telecommunications providers related to the USF would increase by $11,297,400 (from a total of $32,038,400 to $43,335,800) in 2008-09.

5. TRANSFER REAL ID IMPLEMENTATION FUNDS TO THE GENERAL FUND

Change to Current Law	
GPR-REV	$21,989,300
SEG-Lapse	$21,989,300
SEG-Transfer	$21,989,300

Prohibit the Joint Committee on Finance from providing an appropriation supplement to the Department of Transportation for the cost of implementing provisions of the federal Real ID Act. Increase estimated transportation fund appropriation lapses by $9,805,300 in 2007-08 and $12,184,000 in 2008-09 to reflect this provision. Transfer $9,805,300 in 2007-08 and $12,184,000 in 2008-09 from the transportation fund to the general fund.

Act 20 provided $9,805,300 SEG in 2007-08 and $12,184,000 SEG in 2008-09 (transportation fund) for the implementation of changes needed to comply with the federal Real ID Act. These amounts were placed in the Joint Committee on Finance's supplemental appropriation since the actual costs of implementation were unknown during budget deliberations. This item would lapse these amounts to the transportation fund and then transfer the amounts to the general fund. Consequently, DOT would have to pay for any implementation costs associated with the Real ID Act during the 2007-09 biennium from base resources within its appropriation for the Division of Motor Vehicles.

The final federal rules for the Real ID Act allow states to request an extension to the original May 11, 2008, deadline (to December 31, 2009), something that most states, including Wisconsin, have requested and been granted. However, the Department indicates that it expects to begin implementation activities during the 2007-09 biennium in order to be in compliance with the federal requirements by the new deadline.

6. LIMITATION ON LAPSE FROM THE DEPARTMENT OF TRANSPORTATION; GENERAL FUND SUPPORTED BONDS FOR STATE HIGHWAY REHABILITATION

Change to Current Law	
BR	$50,000,000

Specify that not more than $50,000,000 may be lapsed or transferred to the general fund in the 2007-09 biennium from the Department of Transportation appropriations under a provision of Act 20 that requires total lapses and transfers to the general fund of $200,000,000 from executive branch agencies during the 2007-09 biennium. Specify that any lapse from the Department of Transportation's appropriation must be made from the Department's SEG appropriation for state highway rehabilitation. Specify that if any lapse has been made from DOT appropriations prior to the effective date of the bill that violates these restrictions, the Secretary of the Department of Administration shall make subsequent adjustments so that any lapses comply with these provisions.

Authorize $50,000,000 in general fund-supported, general obligation bonds for the state highway rehabilitation program. This authorization would be added to an existing authorization, provided by 2005 Act 25, of $250,000,000 for the program. These bonds were issued during the 2005-07 biennium. Once all of the new bonds are issued, general fund debt service payments could be expected to be about $5.4 million per year.

Under a provision of Act 20, the Secretary of the Department of Administration is required to lapse a total of $200,000,000 in the 2007-09 biennium from appropriations in executive branch agencies to the general fund. Under the initial plan for 2007-08, $25,000,000 would have been lapsed from DOT appropriations, including $22,500,000 from highway program appropriations and $2,500,000 from other appropriations. If this plan were used for both years of the biennium, DOT would be responsible for $50,000,000 of the $200,000,000 lapse. This item would limit the total lapse to $50,000,000, but would replace that amount with general fund-supported bonds. Consequently, relative to current law, this item would effectively increase usable appropriations for state highway programs by $45,000,000 and for other DOT appropriations that are affected by the lapse, by a total of $5,000,000.

7. ALLOCATION OF ADDITIONAL FEDERAL HIGHWAY AID

Change to Current Law	
FED	$76,967,500

Provide increases of $20,000,000 in 2007-08 for the major highway development program and $56,967,500 in 2007-08 for the state highway rehabilitation program.

The amount of federal highway aid that the state received in federal fiscal year 2008 exceeded the amount assumed by Act 20 by $76,967,500. This item would allocate this amount among the state highway rehabilitation and major highway development programs.

8. KENOSHA-RACINE-MILWAUKEE COMMUTER RAIL EXTENSION

Change to Current Law	
SEG-Lapse	$800,000
SEG	$800,000

Lapse $800,000 SEG provided under 2007 Act 20 in 2007-08 to the Joint Committee on Finance's supplemental appropriation for the Kenosha-Racine-Milwaukee commuter rail project in Southeastern Wisconsin. Instead, provide $800,000 SEG in 2007-08 to DOT's commuter rail system development grant program appropriation for the project. Under this provision, the Department would no longer have to request that the Joint Committee on Finance transfer the $800,000 to DOT's grant appropriation.

Provide the Southeastern Wisconsin Regional Transit Authority (RTA) the responsibility to sponsor, develop, construct, and operate a commuter rail transit system connecting the cities of Kenosha, Racine, and Milwaukee, known as the KRM commuter rail link, and the following authority: (a) to levy a vehicle rental fee of up to $15 per transaction in the three-county region (currently $2 per rental transaction); (b) to expend funds to develop and construct the KRM commuter rail link; and (c) to issue up to $50 million in bonds, excluding refunding bonds, for the anticipated local funding share required for initiating KRM commuter rail link service.

Specify the following relative to the bonds issued by the RTA: (a) the RTA could secure the bonds by a pledge of any income or revenues from any operations, rent, aids, grants, subsidies, contributions, or other source of funds; (b) neither the governing body of the RTA nor any person executing the bonds would be personally liable on the bonds by reason of the issuance of the bonds; (c) the bonds would not be debt of the counties that created the RTA and neither the counties nor the state would be liable for the payment of the bonds; (d) the bonds would only be payable out of funds or properties of the authority; and (e) these restrictions would have to be stated on the face of the bonds;

In addition, specify the following relative to RTA bonds, including refunding bonds: (a) the bonds would have to be authorized by resolution of the RTA's governing body; (b) the bonds could be issued under a resolution or under a trust indenture or other security instrument; (c) the bonds could be issued in one or more series and could be in the form of coupon bonds or registered bonds; (d) the bonds would have to bear the dates, mature at the times, bear interest at the rates, be in the denominations, have the rank or priority, be executed in the manner, be payable in the medium of payment and at the places, and be subject to the terms of redemption, with or without premium, as the resolution, trust indenture, or other security instrument provides; (e) the bonds would be issued for an essential public and governmental purpose and are public instrumentalities and, together with interest and income, are exempt from taxes; (f) the bonds could be sold by the RTA at public or private sales at the price or prices determined by the RTA; and (g) if any member of the RTA governing body whose signature appears on the bonds ceases to be member of the RTA governing body before the bonds are delivered, the signature would remain valid.

Provide the RTA the authority to issue refunding bonds for the purpose of paying any of its bonds at or prior to the maturity or upon acceleration or redemption. Specify that the RTA may issue refunding bonds at such time prior to the maturity or redemption of the refunded

bonds as the authority deems to be in the public interest. Provide that the refunding bonds may be issued in sufficient amounts to pay or provide the following: (a) the principal of the refunded bonds together with any redemption premium on the bonds and any interest accrued or to accrue to the date of payment of the bonds; (b) the expenses to issue refunding bonds; (c) the expenses of redeeming the bonds being refunded; and (d) such reserves for debt service or other capital or current expenses from the proceeds of the refunding bonds as may be required by the resolution or under a trust indenture or other security instrument.

Delete the current law provision that the RTA's report to the Legislature, which is due by November 15, 2008, must include a recommendation as to whether the responsibilities of the authority should be limited to collection and distribution of regional transit funding or should also include operation of transit service. Also, delete the requirement that the RTA's report must recommend whether the RTA should continue in existence beyond September 30, 2009.

Require the Southeastern Wisconsin Regional Transit Authority to conduct the following studies related to the Kenosha-Racine-Milwaukee commuter rail project: (a) a study on the feasibility of extending any proposed commuter rail project through the 30th Street corridor in the City of Milwaukee to the northern Milwaukee County line; and (b) a study on the feasibility of adding a commuter rail stop and station at points where any proposed commuter rail route would intersect National Avenue and/or Greenfield Avenue in the City of Milwaukee. Specify that the studies be included as part of the report to the Governor and Legislature that is required under current law.

9. TOBACCO SECURITIZATION

Change to Current Law	
SEG-REV	$36,000,000
GPR	- $36,000,000
SEG	36,000,000
Total	$0

Increase the transfer from the permanent endowment fund to the medical assistance (MA) trust fund by $18 million annually (from $50 million annually under Act 20 to $68 million annually) associated with additional tobacco bond proceeds from a tobacco securitization transaction to be carried out by the Badger Tobacco Asset Corporation (BTASC).

Reduce funding for MA and BadgerCare Plus benefits by $18 million GPR annually and increase SEG funding from the MA trust fund by corresponding amounts to reflect the availability of the transferred revenues to support MA and BadgerCare benefits costs in the 2007-09 biennium.

Under this proposal, $18 million in additional annual revenues to the permanent endowment fund would be generated by BTASC carrying out another tobacco securitization transaction, which would be different than the securitization transaction envisioned during legislative deliberations on 2007 Act 20. Under Act 20, $50 million annually is to be transferred from the permanent endowment fund to the medical assistance trust fund associated with a securitization transaction that DOA identified at that time.

Under 2001 Act 16 (the 2001-03 budget), the DOA Secretary was authorized to securitize

the state's rights to its tobacco settlement payments. Using this authority, the DOA Secretary assigned the rights to the state's tobacco settlements to BTASC on April 18, 2002. BTASC, after receiving the rights to the state's tobacco settlement payments, used the newly-acquired revenue stream to back the issuance of $1.59 billion in revenue bonds. Under federal tax law, these bonds may only be refinanced once. In return for the rights to the state's tobacco settlement payment revenues, BTASC provided the state with the net proceeds from those bonds. The securitization transaction resulted in $1.275 billion in net bond proceeds being available to the state.

Under the 2002 securitization transaction, the state assigned the rights to the next 30 years of its tobacco settlement payments to BTASC. However, as indicated in the offering circular on the bonds, fewer years of the state's settlement payments are expected to be needed to retire those bonds. The repayment requirements associated with most of the bonds that were issued require that any excess, annual tobacco settlement revenues, after all the scheduled, annual debt service payments are made, must be used to prepay the outstanding principal on the BTASC bonds. Therefore, according to the offering circular, using a conservative, independent forecast of the annual tobacco settlement revenues to be received by BTASC, it is projected that all of BTASC's outstanding tobacco bonds will be paid off by 2018. Therefore, beginning during 2018 tobacco settlement revenues currently assigned to BTASC, will again flow to the state. In 2019, the state expects to regain access to the full annual amount of tobacco settlement revenues.

The proposed securitization transaction is similar to the securitization transaction proposed under the Governor's 2007-09 budget adjustment bill. According to information provided by the Department of Administration, this second securitization transaction, which could be implemented under current law, would involve BTASC issuing $1.5 billion in new bonds to pay off their outstanding bonds. Under the proposal, BTASC would use its one opportunity to refinance the existing BTASC bonds by issuing the new bonds at rates similar to the rates currently being paid on the existing BTASC bonds. However, the repayment of the new BTASC bonds would be structured in a way that would significantly lower the annual amount of tobacco settlement revenues needed to retire the obligations compared to the old BTASC bonds. The lower annual debt service costs would primarily be the result of extending the expected repayment date on the bonds from 2018 to 2027. Based on cashflow projections prepared for the administration, extending the expected repayment schedule for the new bonds through 2027 would lower the required annual debt service amount needed to retire the bonds by approximately $68 million annually through 2020. This $68 million in annual tobacco settlement revenues would be deposited to the permanent endowment fund each year and then transferred under the bill to the medical assistance trust fund and be available for medical assistance expenditures.

10. HOSPITAL ASSESSMENT, RATE INCREASE, AND MA BENEFITS FUNDING CHANGE

Change to Current Law	
SEG-REV	$416,259,300
PR-REV	- 1,500,000
GPR	- $122,500,000
FED	408,339,200
PR	- 1,500,000
SEG	416,259,300
Total	$700,598,500

Provide $338,381,100 (-$60,000,000 GPR, $194,848,300 FED, and $203,532,800 SEG) in 2007-08 and $362,217,400 (-$62,500,000 GPR, $213,490,900 FED, -$1,500,000 PR and $212,726,500 SEG in 2008-09) to reflect the net fiscal effect of: (a) creating an assessment on hospitals' gross patient revenue; (b) allocating a portion of the SEG revenue from the assessment to support the state's share of the costs of increasing reimbursement for inpatient and outpatient services hospitals provide to medical assistance (MA) and BadgerCare Plus recipients; (c) allocating the balance of the SEG revenue from the assessment to replace GPR funds currently budgeted to support MA and BadgerCare Plus benefits in the 2007-09 biennium; and (d) increasing GPR-funded reimbursement to rural hospitals and psychiatric hospitals. Authorize the Department of Health and Family Services (DHFS) to assess hospitals up to $203,532,800 SEG in 2007-08 and $212,726,500 SEG in 2008-09 for these purposes. Estimate a reduction of revenue from the current hospital assessment by $1,500,000 PR in 2008-09.

Assessment. DHFS would assess all hospitals, other than critical access hospitals (CAHs) and institutions for mental diseases (IMDs), that conduct business in the state, an annual amount, based on each hospital's gross patient revenue. Each hospital would be required to pay the total 2007-08 assessment by June 1, 2008, and, for 2008-09 and each subsequent year, hospitals would make quarterly payments by September 1, December 1, March 1, and June 1. All revenue from the assessment would be deposited to a segregated fund, the hospital assessment fund, which would be created in the amendment.

At the discretion of DHFS, a hospital that is unable to make a timely payment by the statutory dates could be allowed to make a delayed payment. A determination by DHFS that a hospital may not make a delayed payment would be final and would not be subject to an administrative review under Chapter 227 of the statutes.

The amount of each hospital's assessment would be based on the information that is currently provided to DHFS under Chapter 153 of the statutes, or would be based on any other source that is approved in the MA state plan.

DHFS would be required to verify the amount of each hospital's gross patient revenue and determine the amount of the assessment owed by each hospital based on a uniform rate that is applicable to total gross patient revenue that DHFS estimates will yield the amounts that would be budgeted for increases in hospital reimbursement under the new appropriation and to replace GPR funding currently budgeted for MA and BadgerCare Plus benefits costs.

DHFS would levy, enforce, and collect the assessments and develop and distribute forms necessary for these purposes. If DHFS determined that any portion of the revenue needed to provide MA payment increases for inpatient and outpatient hospital services as fee for service or through health maintenance organizations (HMOs) is not eligible for federal MA matching funds, DHFS would be required to refund the amount of the revenue to hospitals in proportion to each

hospital's payment of the assessment.

Repeal Current Hospital Assessment. The amendment would repeal the current hospital assessment administered by DHFS, the appropriation supported by the assessment, and all related statutory references to the assessment. Currently, DHFS is required to annually assess hospitals a total of $1.5 million. Revenue from the assessment is credited to a program revenue (PR) appropriation that supports MA and BadgerCare Plus benefits costs. However, DHFS has already collected and expended this revenue from hospitals in 2007-08. Consequently, these provisions would first affect revenue and expenditures in 2008-09, although this is not specified in the amendment. A reduction of $1,500,000 in state-funded MA benefits would reduce estimated federal matching funds by approximately $2,153,200 FED in 2008-09.

Use of the Assessment Revenues. DHFS would be authorized to assess hospitals a total of $203,532,800 in 2007-08 and $212,726,500 in 2008-09 to: (a) fund the state's share of the costs to increase reimbursement to hospitals for inpatient and outpatient services they provide to MA and BadgerCare Plus recipients ($145,032,800 SEG in 2007-08 and $147,726,500 SEG in 2008-09); and (b) increase funding for MA and BadgerCare Plus benefits by $58,500,000 SEG in 2007-08 and $65,000,000 SEG in 2008-09 and reduce GPR funding by a corresponding amount. A biennial, sum-certain SEG appropriation would be created under the amendment to provide the amounts identified under (b).

Funding for hospital rate increases would be provided from the hospital assessment fund by means of a second biennial sum certain SEG appropriation that would be created in the amendment. The appropriation would fund: (a) increases in inpatient and outpatient hospital reimbursement provided on a fee-for-service basis; and (b) increases in capitation payments to HMOs, which pay hospitals for services their MA and BadgerCare Plus enrollees receive. The Joint Committee on Finance would be prohibited from transferring moneys from any of these three appropriations to other appropriations under its current authority under s. 13.101 of the statutes.

Rate Adjustment for Rural Hospitals. The amendment would provide $3,044,300 ($1,250,000 GPR and $1,794,300 FED) in 2008-09 to increase reimbursement for rural hospitals. Under the current MA state plan for inpatient hospital services, certain rural hospitals qualify for an upward adjustment to their rates if they meet certain criteria. DHFS would both increase the number of rural hospitals that would qualify for the adjustment, and increase the amount of the adjustment.

Rate Adjustment for Institutions for Mental Diseases (IMDs). The amendment would provide $3,044,300 ($1,250,000 GPR and $1,794,300 FED) in 2008-09 to increase reimbursement for institutions for mental diseases, which are defined under federal law as facilities established and maintained primarily for the care and treatment of individuals with mental diseases. These facilities would be exempt from the hospital assessment.

Statutory Change Relating to the Rural Hospital Adjustment. Beginning in 2007-08, the amendment would increase, from $2,256,000 to $5,256,000 (all funds), the maximum amount DHFS could provide annually to support supplemental funds (in the form of adjustments to

payment rates) to rural hospitals that, as determined by DHFS, have a high utilization of inpatient services by patients whose care is provided from governmental sources. In addition, the amendment would delete references to CAHs as hospitals that are eligible for these supplemental payments. (The MA program currently reimburses hospitals that are certified as CAHs for their reasonable costs for both inpatient and outpatient services. Consequently, these hospitals do not currently receive supplemental rural hospital payments.)

HMO Payments to Hospitals. The amendment would direct DHFS to develop a methodology for calculating rate increases for inpatient and outpatient hospital services in connection with the hospital assessment. The methodology would incorporate encounter data provided by HMOs and information that DHFS uses to calculate the capitated rates that DHFS pays HMOs for providing services to MA recipients. DHFS would be required to publicly disclose the methodology, and review the methodology every 12 months.

DHFS would be directed to require HMOs to do all of the following, as a term of the contracts DHFS makes with the HMOs:

1. Make monthly prospective payments, calculated using the methodology described above, to hospitals that serve MA recipients who are enrolled in the HMO.

2. Calculate the amounts that result from applying the rate increases that are derived using the methodology described above, for services for MA recipients for which hospitals submit claims to the HMO;

3. Within 90 days after the end of each six-month period, compare the amounts that the HMO paid under (1) for the six-month period with the amounts calculated under (2) for services provided during the same period and, if the amount under (2) exceeds the amount of the payments under (1), pay hospitals the difference within 90 days.

If the total payments that a HMO made to the hospital under (1) for a six-month period exceed the amount calculated under (2) for services provided during that same period, hospitals would be required to pay the HMO the difference within 90 days after the comparison is completed.

If DHFS determines that an HMO has not complied with payment condition as described above, DHFS would be directed to require the HMO to comply with the condition within 15 days after DHFS' determination. DHFS could terminate a contract with an HMO for failure to comply with the conditions described above. DHFS would be required to audit HMOs to determine whether they have complied with these conditions.

If an HMO and hospital cannot resolve the amount the HMO owes a hospital, or the amount a hospital owes an HMO, and either the HMO or the hospital, within six months after the end of the time period to which the disputed amounts relates, requests that DHFS determine the amount owed, DHFS would be required to determine the amount within 90 days after the request is made. The HMO or hospital would be, upon request, entitled to a contested case hearing under Chapter 227 on the DHFS determination.

Report to the Joint Committee on Finance. Beginning in 2008, by December 31 of each year, DHFS would be required to report to the Joint Committee on Finance all of the following information for the previous state fiscal year: (a) the total amount of assessments collected; (b) the total amount of assessments collected from each hospital; (c) the total amounts DHFS determines were paid to HMOs for increased MA payments to hospitals under the provisions of the bill; (d) the total amount of payments made to each hospital by HMOs; (e) the total amount of MA payments made to each hospital and the portion of the MA capitated payments made to HMOs for inpatient and outpatient hospital services from GPR appropriations; (f) the total amounts, including the amounts specified under (c), that DHFS determines were paid to HMOs for MA payments to hospitals; and (g) the results of any audits conducted by DHFS regarding payments by HMOs to hospitals, and any actions taken by DHFS as a result of these audits.

Supplemental Funding for Hospitals Participating in the Relief Block Grant Program. The amendment would modify a provision in current law that requires DHFS to provide supplemental payments to hospitals that enter into a contract to provide health care services funded under the relief block grant program. Under the amendment, DHFS would be permitted, but not required, to provide supplemental payments for this purpose.

Effective Date. All of the provisions would take effect on the bill's general effective date.

Fiscal Effect. The amendment would authorize DHFS to collect $203,532,800 in 2007-08 and $212,726,500 in 2008-09 in assessment revenue from hospitals. DHFS would use this revenue to: (a) fund the state's share of the costs to increase reimbursement to hospitals for inpatient and outpatient services they provide to MA and BadgerCare Plus recipients ($145,032,800 SEG in 2007-08 and $147,726,500 SEG in 2008-09; and (b) provide $58,500,000 SEG in 2007-08 and $65,000,000 SEG from the hospital assessment fund to support MA and BadgerCare Plus benefits costs to replace base GPR funding for the program.

Because the amendment would increase the state's share of MA payments to hospitals by $145,032,800 SEG in 2007-08 and $150,226,500 ($147,726,500 SEG and $2,500,000 GPR) in 2008-09, this funding would be matched with additional federal MA matching funds totaling $196,884,600 FED in 2007-08 (based on an estimated matching rate of 57.5825% in 2007-08) and $215,644,100 in 2008-09 (based on an estimated matching rate of 58.94% in 2008-09).

In 2007-08, hospitals would pay increased assessments totaling $203,532,800, but MA payments to hospitals would increase by an estimated $341,917,400, resulting in a net increase in revenues to hospitals of $138,384,600.

In 2008-09, hospitals would pay $212,726,500 under the new assessment, but would no longer pay $1,500,000 under the current assessment, for a net increase in assessments totaling $211,226,500. MA payments to hospitals would increase by an estimated $365,870,600, resulting in a net increase in revenue to hospitals of $154,644,100.

However, this net increase in funding available for hospitals would have distributional effects -- not all hospitals would receive more in increased MA reimbursement than they would pay in assessments.

The following tables summarize the funding and revenue changes relating to this proposal.

Summary of Fiscal Effect of Hospital Assessment and Rate Increase Proposal
Senate Amendment 1 to SS AB 1

State Fiscal Year 2007-08

	MA Benefits (GPR)	Hospital Revenue (SEG)	Current Assessment (PR)	MA Matching Funds (FED)	Total (All Funds)
Changes in Payments to Hospitals					
General Hospital Rate Increase	$0	$145,032,800	$0	$196,884,600	$341,917,400
Supplements for Rural Hospitals	0	0	0	0	0
Supplements for IMDs	0	0	0	0	0
Subtotal	0	$145,032,800	$0	$196,884,600	$341,917,400
MA Base Funding Changes					
Provide SEG Funding to from the Hospital Assessment Fund	-$60,000,000	$58,500,000	$0	-$2,036,300	-$3,536,300
Total Fiscal Effect on State Budget	-$60,000,000	$203,532,800	$0	$194,848,300	$338,381,100
Effect on Hospitals					
Net Change in Hospital Assessments		$203,532,800			
Aggregate Rate Increase for Hospitals (All Funds)		$341,917,400			
Net (Aggregate) Gain for Hospitals		$138,384,600			

State Fiscal Year 2008-09

Changes in Payments to Hospitals					
General Hospital Rate Increase	$0	$147,726,500	$0	$212,055,500	$359,782,000
Supplements for Rural Hospitals	1,250,000	0	0	1,794,300	3,044,300
Supplements for IMDs	1,250,000	0	0	1,794,300	3,044,300
Subtotal	$2,500,000	$147,726,500	$0	$215,644,100	$365,870,600
MA Base Funding Changes					
Provide SEG Funding from the Hospital Assessment Fund	-$65,000,000	$65,000,000	$0	$0	$0
Repeal Current PR Assessment	0	0	-1,500,000	-2,153,200	-3,653,200
Total Fiscal Effect on State Budget	-$62,500,000	$212,726,500	-$1,500,000	$213,490,900	$362,217,400
Effect on Hospitals					
Hospital Total Assessment (New Assessment)		$212,726,500			
Elimination of Current Assessment		-1,500,000			
Net Change in Hospital Assessments		$211,226,500			
Aggregate Rate Increase for Hospitals (All Funds)		$365,870,600			
Net (Aggregate) Gain for Hospitals		$154,644,100			

11. CHILD CARE SUBSIDIES

Change to Current Law	
GPR	$18,600,000

Provide $18,600,000 in 2007-08 for direct child care subsidies under the Wisconsin Shares program, including funding for child care subsidies, local administration, on-site child care at job centers and counties, and migrant child care. The additional funds would address an anticipated shortfall in the Wisconsin Shares program of $18.6 million in 2007-08. Expenditures for Wisconsin Shares are now expected to total $359,201,800 in 2007-08. Act 20 provides $340,601,800 in 2007-08 for child care subsidies.

In addition, except as provided below, require a child care administrative agency to authorize payment for licensed child care providers based on authorized units of service for a child to attend and not on the actual units attended by a child. A child care administrative agency is an agency that has a contract with the Department of Workforce Development (DWD) or the Department of Children and Families (DCF) to administer child care funds or an agency that has a subcontract to administer child care funds with an agency that has a contract with DWD or DCF. However, permit the agency to authorize payment to licensed child care providers based on actual units of service attended by each child, up to the maximum number of authorized hours, if: (a) the schedule of child care to be used is expected to vary widely (with the reimbursement rate increased by 10% to account for absent days); or (b) the agency has documented three separate occasions where the provider significantly overreported the attendance of a child.

Also, require a child care administrative agency to authorize payment for certified child care providers for actual units of service attended by each child, up to the maximum number of authorized units, unless payment is made to the certified child care provider to hold a slot for a child whose parent has a temporary break in employment.

Finally, permit a child care administrative agency to authorize payment to a licensed or certified child care provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. Limit such payments to six weeks if the absence is due to a medical reason and is documented by a physician, or to four weeks for other reasons. Provide that payment for a temporary absence could not be considered an overpayment if the parent intended to return to work but does not actually return.

These statutory changes are identical to current administrative rules governing the payment of child care providers and are intended to prevent DWD or DCF from implementing an emergency rule to change the payment policy for licensed child care providers to an attendance based policy. Pursuant to an emergency rule, from April, 2007, through October, 2007, DWD had implemented an attendance based reimbursement policy such that Wisconsin Shares no longer paid licensed child care providers for absences in child care when attendance was less than half the number of authorized hours per week.

12. CORPORATE INCOME/FRANCHISE TAX RATE REDUCTION

Change to Current Law	
GPR-REV	- $5,200,000

Reduce the corporate income/franchise tax rate from 7.9% to 7.8% starting with tax years that begin on or after January 1, 2009. Under the combined reporting provisions included in the amendment, this would reduce state corporate income and franchise tax revenues by an estimated $5,200,000 in 2008-09, and $11,500,000 in 2009-10, and annually thereafter.

13. COMBINED REPORTING

Change to Current Law	
GPR-REV	$130,500,000

Require that, beginning with tax year 2008, corporations that are subject to the state corporate income and franchise tax, and that are engaged in a unitary business, would file a combined report for state income and franchise taxes. The specific provisions for filing combined reports would include the following:

Definitions

"Person" would include corporations, unless the context required otherwise. "Person" could also include, as determined by Department of Revenue (DOR), any individual, partnership, general partner of a partnership, limited liability company (LLC), registered limited liability partnership, foreign limited liability partnership, syndicate, estate, trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee, or organization.

"Combined group" would mean the group of all persons whose income and apportionment factors are required to be taken into account pursuant to filing a combined report in determining the taxpayer's share of the net business income or loss apportionable to this state.

"Combined report" would be defined as a tax return under state law on a form prescribed by DOR that specified the income, credits, and tax of each taxpayer member of a commonly controlled group operating as a unitary business.

"Commonly controlled group" would be defined to mean any of the following:

(a) A parent corporation and any one or more corporations or chains of corporations that are connected to the parent corporation by direct or indirect ownership by the parent corporation, if the parent corporation owns stock representing more than 50% of the voting power of at least one of the connected corporations, or if the parent corporation or any of the connected corporations owns stock that cumulatively represents more than 50% of the voting power of each of the connected corporations.

(b) Any two or more corporations, if a common owner, regardless of whether or not the owner is a corporation, directly or indirectly, owns stock representing more than 50% of the voting power of the corporations or connected corporations.

(c) Any two or more corporations, if stock representing more than 50% of the voting

power in each corporation are interests that cannot be separately transferred.

(d) Any two or more corporations, if stock representing more than 50% of the voting power in each corporation is directly owned by, or for the benefit of, family members. "Family member" would mean an individual related by blood, marriage, or adoption within the second degree of kinship as computed under state law, or the spouse of such an individual.

"Corporation" would mean any corporation as defined under state law, wherever located, which, if it were doing business in this state, would be subject to the state corporate income and franchise tax. The business conducted by a pass-through entity which is directly or indirectly held by a corporation would be considered the business of the corporation to the extent of the corporation's distributive share of the income of the pass-through entity. "Corporation" would not include a tax-option corporation.

"Internal Revenue Code (IRC)" would mean the IRC as defined under state law including any provision of a federal tax treaty that expressly applies to the U.S., but not including any other application of a federal tax treaty.

"Pass-through entity" would be defined as a general or limited partnership, organization of any kind treated as a partnership for tax purposes under state law, a real estate investment trust, regulated investment company, real estate mortgage investment conduit, financial asset securitization investment trust, trust, or estate.

"Tax haven" would mean a jurisdiction that, for any tax year, is identified by the Organization for Economic Co-operation and Development (OECD) as a tax haven or as having a harmful, preferential tax regime; or has no or nominal effective tax on the relevant income and all of the following apply:

(a) The jurisdiction has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime.

(b) The details of the legislative, legal, or administrative provisions of the jurisdiction's tax regime are not publicly available and apparent, or are not consistently applied among similarly situated taxpayers, or the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available.

(c) The jurisdiction facilitates the establishment of foreign-owned entities without the need for a local substantive presence, or prohibits these entities from having any commercial impact on the local economy.

(d) The tax regime explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits, or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market.

(e) The jurisdiction has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy.

"Taxpayer member" would mean a corporation that is subject to the state corporate income and franchise tax, that is a member of a combined group.

"Unitary business" would be defined as a single economic enterprise that consisted of separate parts of a single business entity, or of a commonly controlled group of business entities that are sufficiently interdependent, integrated, and interrelated by their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. Two or more business entities would be considered a unitary business if the businesses had unity of ownership, operation, and use, as indicated by a centralized management or a centralized executive force; centralized purchasing, advertising, or accounting; intercorporate sales or leases; intercorporate services; intercorporate debts; intercorporate use of proprietary materials; interlocking directorates; or interlocking corporate officers. Any business conducted by a pass-through entity that was owned directly or indirectly by a corporation would be considered conducted by the corporation, to the extent of the corporation’s distributive share of the pass-through entity's income, regardless of the percentage of the corporation's ownership interest. A business conducted directly or indirectly by one corporation would be unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a pass-through entity, if the corporations are sufficiently interdependent, integrated, and interrelated by their activities so as to provide a synergy of value among them and a significant flow of value to the separate parts, and the two corporations are members of the same commonly controlled group.

Corporations Required to Use Combined Reporting

A corporation engaged in a unitary business with any other corporation would be required to file a combined report which included the income, determined under combined reporting, and apportionment factor, determined under current law and combined reporting provisions, of the following members of the unitary business:

(a) Any member incorporated in the United States, including the District of Columbia and any territory or possession of the U.S., or formed under the laws of any state, the District of Columbia, or any territory or possession of the United States.

(b) Any member, regardless of where the entity is incorporated or formed, if the average of the following ratios was 20% or more:

1. The value of the member's real and tangible personal property located in the United States, including the District of Columbia and any territory or possession of the U.S., not including property that is used to produce nonapportionable income, divided by the value of all the member's real property and tangible personal property, not including property that is used to produce nonapportionable income. Property that the member rents would be valued at

the net annual rental amount for the property, multiplied by eight.

2. The amount of the member's payroll paid in the United States, including the District of Columbia and any territory or possession of the U.S., divided by the member's total payroll. "Payroll" would include compensation paid to employees, but would not include payroll used to produce nonapportionable income. The payroll paid in the United States would be determined in the same manner as determined for payroll paid in Wisconsin under current law.

3. The member's sales in the United States, including the District of Columbia and any possession or territory of the U.S., divided by the member's total sales. Sales would include items identified in the current law definition of sales, but not items excluded under current law, and the situs of a sale would be determined in the same manner as for Wisconsin sales under current law, except that throw-back provisions would not apply.

(c) Any member that was a domestic international sales corporation as described in the IRC; a foreign sales corporation as described in the IRC; or any member which is an export trade corporation, as described in the IRC.

(d) Any member that was a "controlled foreign corporation," as defined in the IRC, to the extent of the income of that member that is defined in the Internal Revenue Code, including any lower-tier subsidiaries' distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income; any item of income received by a controlled foreign corporation would be excluded if such income was subject to an effective tax rate imposed by a foreign country greater than 90% of the maximum rate of tax specified in the IRC.

(e) Any member that earned more than 20% of its income, directly or indirectly, from intangible property or service related activities that are deductible against the business income of other members of the combined group, to the extent of that income and the apportionment factors related to that income.

(f) Any member that was doing business in a tax haven, if the member is engaged in an activity that was sufficient for that tax haven jurisdiction to impose a tax under federal law. If the member's business activity within a tax haven was entirely outside the scope of the laws and practices that cause the jurisdiction to be a tax haven, the member's business activity would not be considered to be conducted in a tax haven.

(g) Any member not described in (a) through (f) above to the extent its income was derived from, or attributable to, sources within the United States including the District of Columbia and any possession or territory of the U.S., as determined under the Internal Revenue Code, without regard to federal treaties, and by its apportionment factors related to that income.

DOR could require the combined report that was filed to include the income and associated apportionment factor of any persons that were not described under the combined

reporting provisions, but that were members of a unitary business, to reflect proper apportionment of income of the entire unitary business, including persons that are not, or would not be, subject to state income and franchise taxes if doing business in this state.

Components of Income Subject to Taxation

Each taxpayer member would be responsible for tax based on its taxable income or loss that would be apportioned or allocated to Wisconsin, and which would include:

(a) Its share of any business income apportionable to this state of each of the combined groups of which it is a member, determined under combined reporting provisions.

(b) Its share of any business income apportionable to this state of a distinct business activity conducted within and without the state wholly by the taxpayer member, determined under current law provisions.

(c) Its income from a business conducted wholly by the taxpayer member entirely within the state.

(d) Its income sourced to this state from the sale or exchange of capital or assets, and from involuntary conversions, as determined under combined reporting provisions.

(e) Its nonbusiness income or loss allocable to this state.

(f) Its income or loss allocated or apportioned in an earlier year, that was state source income during the income year, other than a net business loss carryforward.

(g) Its net business loss carryforward. If the taxable income computed under combined reporting provisions resulted in a loss for a taxpayer member of the combined group, that taxpayer member would have a net business loss, subject to the net business loss limitations and carryforward provisions under current law. The business loss would be applied as a deduction in a subsequent year only if that taxpayer member had net income sourced to this state, regardless of whether the taxpayer was a member of a combined group in the subsequent year.

Determining Business Income of the Combined Group

The business income of a combined group would be determined as follows:

(a) Compute the sum of the income of each member of the combined group determined under federal income tax laws as if the members were not consolidated for federal purposes, and modified for state purposes.

The income of each member of the combined group would be determined as follows:

(1) For any member incorporated in the United States, including the District of Columbia and any territory or possession of the U.S., or included in a consolidated federal

corporate income tax return, the income to be included in the total income of the combined group would be the taxable income for the corporation as determined under current law.

(2) Except as provided under (3) below, and for any member not included under (1) above, the income to be included in the total income of the combined group would be determined as follows:

a. Each foreign branch or foreign corporation would prepare a profit and loss statement in the currency in which the books of account of the branch or corporation are regularly maintained.

b. The member would adjust the profit and loss statement to conform it to the accounting principles generally accepted in the United States for the preparation of such statements.

c. The member would adjust the profit and loss statement to conform it to the tax accounting standards required under state income and franchise tax provisions.

d. Each member would translate the profit and loss statement and the related apportionment factors into the currency in which the parent company maintains its books and records.

e. Each member would express income apportioned to this state in United States dollars.

(3) If DOR determined that the income determination reasonably approximated income as computed under current law, any member not included in determining the total income of the combined group could determine its income on the basis of the consolidated profit and loss statement that included the member, and that was prepared for filing with the Securities and Exchange Commission by related corporations. If the member was not required to file with the Securities and Exchange Commission, DOR could allow the use of the consolidated profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor. If the above statements did not reasonably approximate income as determined under current law provisions, the Department could accept those statements with appropriate adjustments, as determined by DOR, to approximate that income.

(4) If a unitary business included income from a pass-through entity, the total income of the combined group would have to include the member of the combined group's direct and indirect distributive share of the pass-through entity's unitary business income.

(5) All dividends paid by one member to another would not be included in the recipient's income, if the dividends were paid out of earnings and profits of the unitary business in the current tax year or an earlier tax year. This provision would not apply to dividends received from members of the unitary business which were not a part of the combined group.

(6) Except as provided by DOR, by rule, business income or loss from an intercompany transaction between members of the same combined group would be deferred in a manner similar to that provided under federal regulations. Upon the occurrence of any of the following events, deferred business income or loss resulting from an intercompany transaction between members of a combined group, would be required to be included in the income of the seller, and be apportioned as business income earned immediately before the event:

a. The object of the deferred intercompany transaction was sold by the buyer to an entity that was not a member of the combined group.

b. The object of the deferred intercompany transaction was sold by the buyer to an entity that was a member of the combined group for use outside the unitary business in which the buyer and seller were engaged.

c. The object of the deferred intercompany transaction was converted by the buyer to a use outside the unitary business in which the buyer and seller were engaged.

d. The buyer and seller were no longer members of the same combined group, regardless of whether the members remain unitary.

(7) A charitable expense incurred by a member of a combined group would, to the extent allowable as a deduction under the IRC, be subtracted first from the business income of the combined group, subject to the income limitations of the IRC applied to the entire business income of the group, and any remaining amount would be treated as a nonbusiness expense allocable to the member that incurred the expense, subject to the income limitations of the IRC applied to the nonbusiness income of that specific member. Any charitable deduction described under this provision, but allowed as a carryover deduction in a subsequent year, would be considered to be originally incurred in the subsequent year by the same member, and the rules of this provision would apply in the subsequent year in determining the allowable deduction in that year.

(8) Gain or loss from the sale or exchange of capital assets, property subject to special rules for capital gains and losses under the IRC, and property subject to an involuntary conversion, would be removed from the total separate net income of each member of a combined group and would be apportioned and allocated as follows:

a. For short term capital gains or losses, long term capital gains or losses, gains or losses subject to IRC special rules, and involuntary conversions, the business gain and loss of all members would be combined within each class of net business gain or loss, and each such class separately apportioned to each member using the member's apportionment percentage determined under the provisions described below.

b. Each taxpayer member would net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member's nonbusiness gain and loss for all classes allocated to this state, as provided under the Internal Revenue Code, without regard to any of the taxpayer member's

gains or losses from the sale or exchange of capital assets, IRC special rules property, and involuntary conversions which are nonbusiness items allocated to another state.

c. Any resulting state source income or loss, if the loss was not subject to the IRC limitations on capital losses, of a taxpayer member produced by the application of the preceding subsections would then be applied to all other state source income or loss of that member.

d. Any resulting state source loss of a member that is subject to the IRC limitations would be carried forward or carried back by that member, and would be treated as a state source short-term capital loss incurred by that member for the year for which the carryforward or carryback applies.

(9) Any expense of one member of the unitary group which was directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary business would be allocated to that other member as a corresponding nonbusiness or exempt expense, as appropriate.

(b) From the total income of the combined group, determined under (a) above, subtract any nonbusiness income, and add any nonbusiness expense or loss, other than the business income, expense or loss of the combined group.

Taxpayer's Share of the Business Income of the Combined Group (Apportionment)

The taxpayer's share of the business income apportionable to this state of each combined group of which it was a member, would be the product of the business income of the combined group as determined under the combined reporting business income provisions above, and the taxpayer member's sales factor percentage, determined under state law provisions, modified in the following ways:

(a) Include in the numerator the taxpayer member's sales associated with the combined group's unitary business in this state.

(b) Include in the numerator the taxpayer member's sales associated with the combined group's unitary business in another state in which the taxpayer member is not engaged in business, regardless of whether another member of the combined group is engaged in business in the other state.

(c) Include in the denominator the sales of all members of the combined group, including the taxpayer, which sales are associated with the combined group's unitary business regardless of where the business is located.

(d) Include sales of a pass-through entity owned directly or indirectly by a corporation in proportion to a ratio the numerator of which is the amount of the corporation's distributive share of the pass-through entity's unitary income included in the income of the combined group in accordance with (4) above, and the denominator of which is the amount of the pass-

through entity's total unitary income.

(e) Exclude sales between members of the combined group.

(f) If a member of a combined group was not subject to the state corporate income and franchise tax because it was not engaged in business in Wisconsin, the numerator of that member's sales factor is zero.

Credits and Post-Apportionment Deductions

No tax credit or post-apportionment deduction earned by one member of the combined group, but not completed, used by, or allowed to that member, could be used in whole or in part by another member of the combined group, or applied in whole or in part against the total income of the combined group.

Designated Agent

Each combined group would be required to appoint a sole designated agent. The designated agent would be the parent corporation of the combined group, if such parent corporation was a taxpayer member of the combined group and the income of the parent corporation was included in the combined report. If there was no such parent, the designated agent could be appointed by the taxpayer members. If there was no such parent and no taxpayer member was appointed, the designated agent would be the taxpayer member that had the most significant operations in this state on a recurring basis, as determined by the Department. The designated agent would change only when the designated agent was no longer subject to the state corporate income and franchise tax, in which case, the combined group would be required to notify DOR of such a change in a manner prescribed by the Department.

The designated agent would be responsible for acting on behalf of the taxpayer members of the combined group and would do all of the following:

(a) File with the Department a combined report.

(b) File any extensions.

(c) File any amended combined reports and claims for refund or credit.

(d) Send and receive all correspondence with the Department regarding the combined report.

(e) Remit all taxes, including estimated taxes, to DOR. For purposes of computing interest on late payments, all payments remitted would be considered to be made on a proportionate basis by all taxpayer members of the combined group, unless otherwise specified by the designated agent.

(f) Participate on behalf of the combined group members in any investigation or

hearing requested by DOR regarding a combined report, produce all information requested by the Department regarding the combined report, and file any appeal related to a combined report. Any appeal filed by the designated agent would be considered as filed by all members of the combined group.

(g) Execute waivers, closing agreements, power of attorney, or other documents regarding the combined report filed. Any waiver, agreement, or document executed by the designated agent would be considered as executed by all members of the combined group.

(h) Receive notices regarding the combined report. Any such notice the Department sent to the designated agent would be considered as sent to all taxpayer members of the combined group.

(i) Receive refunds regarding the combined report. Any such refund would be paid to, and in the name of, the designated agent and would discharge any liability of the state to any member of the combined group regarding the refund.

DOR could relieve the designated agent from any of the duties described, to the extent the duties relate to income, expense, or loss that is not includable in the business income of the combined group. Unless the Department provided for such relief by rule, a designated agent would be required to obtain written approval from the Department to be relieved of any such duties.

Tax Year of the Combined Group

The combined group's tax year would be the designated agent's tax year. If a member's tax year was different from the combined group's tax year, the designated agent could elect to determine the portion of that member's income to be included in the combined report either from a separate income statement from each member prepared from the books and records for the months included in the combined group's taxable year, or by including all of the income for the year that ends during the combined group's tax year.

If two or more members of a combined group filed a federal consolidated return, the combined group's tax year would be the tax year of the federal consolidated group.

Any election made under these provisions would remain in effect for subsequent years unless the designated agent submitted a request to change the election to DOR, and DOR approved the change in writing.

Part-Year Members of a Combined Group

If a corporation became a member of a combined group or ceased to be a member of a combined group after the beginning of the tax year of the combined group, the corporation's income would be determined as provided under combined reporting provisions, for the portion of the year in which the corporation was a member of the combined group, and the income would be included in the combined report. The income for the remaining short period would

be reported on a separate return or separate combined report.

Presumptions and Burden of Proof

A commonly controlled group would be presumed to be engaged in a unitary business and all of the income of the unitary business would be presumed to be apportionable business income under these provisions. A corporation would have the burden of proving that it was not a member of a combined group that was subject to these provisions.

IRC sections related to consolidated returns would not apply for state purposes under the combined reporting provisions, except for U. S. Treasury regulations relating to deferred gain or loss from an intercompany transaction.

Effective Date

These provisions would first apply to taxable years beginning on or after January 1, 2008.

Fiscal Effect

The Department of Revenue estimates that this proposed method of combined reporting would increase corporate income and franchise tax revenues by $90,000,000 in 2008-09 and thereafter. In addition, there would be a one-time revenue increase of $40,500,000 to reflect reconciliation of tax year and fiscal year collections.

14. STREAMLINED SALES AND USE TAX

Change to Current Law	
GPR-REV	$1,300,000
PR	$20,000

Modify Wisconsin's sales and use tax laws to conform to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA), effective January 1, 2009. In addition, create a sum sufficient PR appropriation for the purpose of paying associated annual fees and provide funding of $20,000 PR in 2008-09 for such fees.

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 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.

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.

One of the principal aims of the SSUTA is to make sales and use taxes more uniform across states and local taxing jurisdictions. In addition, in order to streamline administration of the tax, states participating in the Agreement 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 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 Agreement also includes an "amnesty" provision that forgives back taxes for sellers that agree to collect and remit taxes.

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 March 1, 2008, there were 22 member states. To-date, about 1,100 sellers have voluntarily registered to collect and remit sales and use tax under the SSUTA.

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 be taxable (for example, ready-to-drink tea).

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 the proposal to conform state sales and use tax statutes to the provisions of the SSUTA.

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 proposal 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 proposal 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 proposal 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 proposal, DOR would be authorized to certify compliance with the SSUTA and, pursuant to the Agreement, certify certified service providers and certified automated systems. The proposal 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 proposal 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 proposal 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 proposal 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 proposal would eliminate the current exemption for antiembolism elastic hose.

- 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 proposal 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 proposal 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 proposal 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 proposal, 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 by common carrier or U.S. mail to Wisconsin residents without the purchaser ever taking 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 proposal 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 Agreement.

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 proposal would create a separate definition for "telecommunications Internet access services," and would specifically impose the tax on telecommunications and telecommunications Internet access services. The proposal would include a number of related 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.

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 proposal 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 Wisconsin "drop-shipment" occurs when a purchaser located in Wisconsin orders an item from an out-of-state retailer not registered to collect Wisconsin sales or use tax and the product is delivered to the customer directly from a Wisconsin manufacturer, without the retailer taking possession. Under current law, the Wisconsin manufacturer is required to collect the sales tax from the purchaser on such transactions. Under the proposal, Wisconsin manufacturers would no longer be liable for the sales tax on drop-shipments to Wisconsin purchasers. Instead, the purchaser would be liable for use tax.

Sourcing

The proposal 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 this information. Other sourcing changes involve towing services, admissions, certain sales by florists, 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.

The proposal would repeal the current provisions regarding agreements with direct marketers. Instead, the following persons could retain a portion of sales and use taxes collected on retail sales in an amount determined by DOR and by contracts that the Department enters into pursuant to the SSUTA: (a) certified service providers; (b) sellers that use a certified automated system; and (c) large, multi-state sellers that have a proprietary system that calculates the amount of tax owed to each taxing jurisdiction. Under the compensation formulas currently in use, a CSP would be permitted to retain from 2% to 8% of taxes collected on behalf of voluntary sellers, depending on the total volume of such taxes collected. A CSP would not be eligible for the retailer's compensation. A seller using a CAS would be eligible for the retailer's discount. In addition, to help compensate for the investment in software to assist the retailer in voluntarily collecting taxes in non-nexus states, such sellers would 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. Additional compensation for large, multi-state sellers with proprietary systems ("c", above) has not yet been determined.

Under the proposal, there would be no statutory limit on the amount of compensation paid to the persons described under "a" through "c," 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 conditions applicable to the persons described under "a" through "c." Sellers that do not meet the above criteria would continue to receive the regular 0.5% retailer's discount.

"Amnesty" Provision

Under the proposal, 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 by DOR; or (c) sellers that have committed or been involved in a fraud or an intentional misrepresentation of a material fact.

Erroneous Collection of Tax

The proposal 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 proposal is intended to provide a more efficient dispute resolution process.

Rounding

The proposal 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 proposal 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 proposal 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 proposal 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 proposal 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 proposal, 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 proposal would repeal this provision so that an exemption certificate would be required for such sales.

Sales Tax Exemption and Income and Franchise Tax Credits for Certain Broadband Equipment

As provided under 2005 Act 479, current law provides a sales and use tax exemption for certain purchases of Internet equipment used in the broadband market. 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 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 proposal 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 for such taxes on a sales and use tax return filed by the purchaser with DOR. The proposal 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 proposal 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 proposal would authorize DOR to require a larger amount of security from certified service providers.

The proposal 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 proposal 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 the a county or special district that does. The proposal would provide that this provision does not apply in the case of snowmobiles, trailers, semitrailers, and all-terrain vehicles.

The proposal 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 proposal would 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). The proposal would also 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, 2009. The administration estimates a cost of $20,000 PR in 2008-09 (and $40,000 PR annually in subsequent years) for dues to participate in the SSTP governing board. The dues would be paid through the sum sufficient appropriation that the proposal would create for this purpose.

Based on the administration's annualized estimates of the modifications in product definitions to comply with the SSUTA, it is projected that the proposal would result in a reduction in state sales tax revenues of $2,200,000 in 2008-09. However, it is further projected that sales tax revenues would increase by $3,500,000 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 2008-09. The net, annualized fiscal effect in subsequent years is projected as an increase in state sales tax revenues of $2,700,000 (the net effect of an estimated annualized reduction of $4,300,000 in sales tax revenues from the proposed changes in product definitions and an annualized increase in voluntary collections of $7,000,000).

In the aggregate, it is estimated that county and stadium sales and use tax collections would increase by $100,000 in 2008-09 and by $200,000 annually thereafter, and that exposition district taxes would increase by the same amounts. The sourcing provisions under the proposal 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 (described previously). 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 proposal, 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.