Legislative Fiscal Bureau

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February 19, 2018

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 944, Senate Bill 799, and Senate Bill 798: One-Time Sales Tax Rebate and Sales Tax Holiday

This memorandum describes AB 944/SB 799, which would create a one-time sales tax rebate and sales tax holiday. Another Senate bill, SB 798, would create a sales tax rebate but not the sales tax holiday.

BACKGROUND

A 5.0% sales tax is generally imposed on the purchase price from the sale, lease, or rental of tangible personal property and on services specifically identified by state law. A companion 5.0% use tax is imposed on the storage, use, or other consumption of the property or services purchased from out-of-state retailers if the sale would have been taxable had the property or services been purchased in the state. In addition, counties may impose local sales tax of up to 0.5% on the purchase price. In limited circumstances other taxes may apply (such as stadium district or room tax).

In 2017, 16 states held 25 different sales tax holidays. The most common sales tax holidays applied to clothing and footwear (15 states), school supplies (10 states), computers (six states), and energy efficient products (four states). Louisiana offered a general holiday (with specified exceptions) for single items of tangible personal property costing $2,500 or less. Wisconsin has never held a sales tax holiday.

Previously, Wisconsin offered a one-time rebate of nonbusiness consumer sales tax paid by individuals. The rebate was authorized by 1999 Wisconsin Act 10 and totaled $699.7 million in 1999-00. The rebate was paid automatically to individuals who were residents of the state and filed a 1998 state income tax return or homestead tax credit claim. Rebates ranged from $184 to $534 and were based on filing status and income level. Wisconsin residents who did not file a return or claim and nonresidents who could document that they paid Wisconsin nonbusiness consumer sales tax could file claims to receive rebates.

SUMMARY OF AB 944/SB 799

One-Time Sales and Use Tax Rebate

The bills would authorize a one-time sales and use tax rebate for individuals with children, to be administered by the Department of Revenue (DOR). A rebate of $100 per qualified child would be available to individuals who file a claim with DOR by submitting an online application. The rebate would represent an approximation of the nonbusiness Wisconsin sales and use tax paid during 2017 for raising children and be based on each child who is under the age of 18 for all of 2017, is both the claimant's child and dependent for purposes of the federal income tax, is a United States citizen, and was a resident of Wisconsin on December 31, 2017. To claim the rebate, an individual would be required to be a full-year resident, nonresident, or part-year resident of the state who has an eligible child and files a claim with DOR by June 30, 2018. The bills would limit each qualified child to being claimed by only one claimant. On the DOR form, claimants would be allowed to designate their rebates to be donated to any of the eight programs currently included as state income tax donation checkoffs or to the state general fund. (Those eight checkoffs are for endangered resources programs, cancer research, the veterans trust fund, the military family relief fund, Second Harvest food banks, the American Red Cross, Special Olympics Wisconsin, Inc, and multiple sclerosis programs.) The spouse of a married claimant would be allowed to receive 50% of the claimant's joint rebate, if the request is made after the rebate is issued, but before the check, share draft, or other draft is cashed.

DOR would be required to prescribe the form for making claims and certify claim amounts to the Department of Administration (DOA), which would make rebate payments to claimants by check, share draft, or other draft by September 1, 2018, from a GPR, sum sufficient appropriation created by the bills. Full-year residents, defined as individuals who were residents of Wisconsin for all of 2017, would receive rebates equal to $100 per qualifying child. The bills direct DOR to require nonresidents, defined as individuals who were not residents of Wisconsin for any part of 2017, and part-year residents, defined as individuals who were residents of Wisconsin for some part of 2017, to verify their amount of nonbusiness Wisconsin sales or use tax paid in 2017. To receive a rebate, those individuals would be required to document at least $100 in tax, per qualified child. DOR would be authorized to request that claimants verify their eligibility and the eligibility of any children by submitting vital records information or other information requested by DOR. In addition, the bills require the Department of Health Services to supply vital records information, without charge, to DOR.

The bills would extend current law provisions related to the general administration of state tax laws to the one-time rebate with regard to crediting overpayments on individual or separate tax returns or on joint returns against certain tax and debt amounts, as well as certain delinquent payments certified by state agencies. DOR would be authorized to enforce the rebate using current law provisions related to state income and franchise taxes, including those relating to assessments, refunds, appeals, collection, interest, and penalties. Any claim to a rebate would lapse on

December 31, 2018, if DOR is unable to locate an eligible claimant or if eligible claimants fail to cash an issued check, share draft, or other draft. For claims filed by individuals who become deceased, rebates would be issued to the claimant's estate.

The bills would direct state agencies to not consider the rebate to be income or an asset of an individual with regard to determining eligibility for state means-tested programs and specifies that this directive be broadly construed. The bills further direct state agencies to disregard receipt of the rebate in determining eligibility for federal means-tested programs administered by the state, to the extent permitted by federal law. The Department of Health Services would be required, by July 1, 2018, to request a waiver, from the U.S. Department of Health and Human Services, of federal income counting rules, to the extent permitted under federal law, to allow the Department to disregard receipt by an individual of the rebate when determining income for eligibility for medical assistance. The Department would also be required to amend the state Medicaid plan to reflect that change to income counting rules.

Except for the enforcement provisions noted above, these provisions would sunset on December 31, 2018.

Sales Tax Holiday

The bills would create a general exemption from the state sales and use tax for certain purchases made during the two-day period beginning on the first Saturday in August, 2018 (August 4), and ending on the following Sunday (the holiday). The time zone of the seller's location would determine when the holiday begins and ends.

The exemption would generally apply to all sales of taxable goods having a sales price of no more than $100. However, the exemption would not apply to the sale of taxable services, prepared food, candy, soft drinks, dietary supplements, alcoholic beverages, cigarettes, tobacco products, pornographic material, motor vehicles, motor vehicle parts and accessories, tangible or intangible property used to access certain telecommunications services (such as an internet router or modem), tangible or intangible property provided by a utility, or to tangible personal property transferred with certain services (such as photographic services and landscaping).

For purposes of determining eligibility, any single item having a sales price greater than the eligibility limit of $100 would not be entitled to the exemption. Items normally sold as a single unit could not be divided into multiple parts in order to obtain the exemption. Discounts and coupons would apply to the sales price for purposes of determining eligibility, so long as the seller is not reimbursed for the decrease in price (such as via a manufacturer's rebate) and the discount is proportionally applied to all purchased items where the discount is not specific to the purchase of an eligible item.

For purposes of determining the price threshold for eligibility, service fees for delivery (including shipping, handling, and other service charges) would not be included in the price. However, service fees would be considered part of the sales price for purposes of determining sales tax. If the shipment includes both eligible property and taxable property, then the seller would have to proportionally allocate the service fees to the final price of all items in a shipment by: (a) a percentage based on the total sales price of the taxable property compared to the total sales price of all property in the shipment; or (b) a percentage based on the total weight of the taxable property compared to the total weight of all the property in the shipment. Tax would apply to the service charges allocated to the taxable items. In cases where each individual item in a shipment qualifies as eligible property, then the shipment itself would be considered a sale of eligible property and the price of the service fees would not have to be allocated to the individual items for purposes of sales tax.

An eligible item would qualify for the exemption if: (a) delivered to and paid for by the purchaser during the holiday; or (b) the purchaser orders and pays for the item during the holiday and the seller accepts the order for immediate shipment, even where delivery occurs after the holiday. A seller would be considered to accept an order by taking action to fill the order for immediate shipment. Actions to fill an order include placement of an in-date stamp on a mail order or assignment of an order number to a telephone order. An order would be considered for immediate shipment when the customer does not request delayed shipment and regardless of whether the shipment is delayed for reasons of a backlog of orders or because stock is currently unavailable or on back order.

Layaway sales of eligible items would qualify for the exemption if the buyer selects and the retailer sets aside the product during the holiday or if the final payment is made during the holiday. Eligible items purchased via rain check during the holiday would qualify; however, items purchased after the holiday via a rain check issued during the holiday would not. A "layaway sale" would be defined as a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the sales price over time, and receives the property at the end of the payment period. The seller would be defined as accepting an order for layaway when removing the property from inventory or clearly identifying the property as sold to the purchaser.

For the 60-day period immediately following the holiday, the bills would not permit a seller to give a credit or refund of sales tax from the return of an eligible item unless the purchaser provides proof that the item was not purchased during the holiday. An eligible item purchased during the holiday could be exchanged after the holiday for a similar eligible item without payment of sales tax, even if the item differs in size, color, or another feature. However, sales tax would apply if a credit were issued and used to buy a different item after the tax holiday, whether eligible or not.

A retailer who collects tax in error on eligible items would be required to return the tax (along with any refund interest paid by DOR) to the purchaser within 60 days, including when the error is discovered upon audit by DOR. DOR would not be able to refund any tax paid by the seller if the seller cannot identify or locate the purchasers to return such tax and interest.

The effective date of these provisions would be the date after publication of the bills. The sales tax holiday would not apply in 2019 or any year thereafter.

FISCAL EFFECT OF AB 944/SB 799

One-Time Sales and Use Tax Rebate

The rebate would distribute an estimated $122.1 million GPR in 2018-19, according to DOR. The DOR estimate uses data from 2016 state individual income tax returns regarding number of dependents and from the U.S. Bureau of the Census regarding number of people in Wisconsin by age. The DOR estimate assumes there would be approximately 1,221,000 eligible children and 671,000 rebate recipients (households). According to the Census Bureau's most recent American Community Survey, there are 2.327 million households in Wisconsin, so approximately 1.656 million Wisconsin households would not receive a rebate. Distributional data regarding the rebate is shown in the Attachment to this memorandum.

The bills would provide $477,000 GPR in 2017-18 and $346,200 in 2018-19 to DOR for administration of the sales tax rebate. Of those funds, $421,200 would be used to hire limited-term employees during the rebate period to: (a) answer phone calls and emails from households regarding the rebate; (b) process unmatched returns and match filers with those returns; (c) research addresses and re-mail undeliverable checks; (d) offset rebates against unpaid debts owed to state agencies, and answer phone calls regarding such offsets; and (e) investigate possible fraud. DOR estimates that $386,900 of the funds would be used for mailing postcards to households about the rebate program, printing and mailing checks to households, establishing a post office box for returned checks, and resending checks to households that are undeliverable or for which direct deposit fails. The remaining $15,100 would be used to pay existing full-time employees for overtime costs to supervise limited term employees during the expanded hours and during after-hours IT testing.

Sales Tax Holiday

Based on sales tax returns, collections were approximately $455.7 million in August, 2017. DOR estimates that approximately $151.9 million of the sales tax collected would potentially be eligible for the sales tax holiday. This estimate accounts for the excluded products under the bills and assumes that 95% of the sales occurring in non-retail industries (and 80% of wholesale trade) would not be eligible because the sales would mostly not be for personal consumption and because the timing of purchase would be difficult, if not impossible, to shift into the holiday period. As a result, DOR estimates that the daily average of eligible tax collections would be $4.9 million ($151.9 million divided by 31 days).

Assuming that the two-day sales tax holiday period is equivalent to 14 average days of sales tax collections and that 75% of the taxable sales volume would be from products less than the $100 eligibility limit, DOR estimates that the sales tax holiday under the bills would reduce tax collections by approximately $51.5 million in 2018-19 (14 days multiplied by the average day's collection of $4.9 million multiplied by 75%).

SENATE BILL 798

As noted, SB 798 would create a sales tax rebate, but not the sales tax holiday. The sales tax rebate provisions of SB 798 are identical to those described above with two exceptions: (a) SB 798 does not include the provision regarding donations of the rebate to programs that currently have income tax checkoffs; and (b) funding of $506,400 GPR would be provided to DOR in 2017-18 (instead of $477,000 GPR in 2017-18 and $346,200 GPR in 2018-19 under the other two bills). As previously noted, DOR estimates one-time expenses of $823,200 to administer the sales tax rebate.

Prepared by: Rick Olin, Sean Moran, and John Gentry
Attachment

ATTACHMENT

Distribution of Proposed Sales and Use Tax Rebate

	Count of Recipients	Percent	Amount of Rebate	Percent	Average Rebate
Less than $10,000	52,454	7.8%	$8,832,300	7.2%	$168
$10,000 to 20,000	71,018	10.6	11,923,600	9.8	168
20,000 to 30,000	77,793	11.6	13,665,700	11.2	176
30,000 to 40,000	66,195	9.9	12,057,600	9.9	182
40,000 to 50,000	51,030	7.6	9,454,900	7.7	185
50,000 to 60,000	43,682	6.5	8,062,200	6.6	185
60,000 to 70,000	41,040	6.1	7,575,400	6.2	185
70,000 to 80,000	39,187	5.8	7,248,300	5.9	185
80,000 to 90,000	35,759	5.3	6,668,100	5.5	186
90,000 to 100,000	32,099	4.8	6,008,300	4.9	187
100,000 to 150,000	97,203	14.5	18,292,400	15.0	188
150,000 to 200,000	31,597	4.7	6,011,500	4.9	190
Over 200,000	31,858	4.7	6,324,900	5.2	199
	670,915	100.0%	$122,125,200	100.0%	$182

Source: Department of Revenue