Sales and Use Tax

Informational
Paper

6

Wisconsin Legislative Fiscal Bureau
January, 2005

Sales and Use Tax

Prepared by

Faith Russell

Wisconsin Legislative Fiscal Bureau
One East Main, Suite 301
Madison, WI 53703

Sales and Use Tax

Historical Development of State Sales Taxation in the U.S.

State sales taxes in the United States developed independently of similar taxes in other countries. The sales tax originated in the occupation taxes that some states imposed on certain business activities in the nineteenth and early twentieth centuries. Beginning in the 1930s, the occupational taxes evolved into the world's first significant retail sales taxes.

The first state retail sales tax was enacted by Mississippi in 1932, replacing a broad business occupation tax. As with other business occupation taxes, the Mississippi tax had been imposed on the receipts of each taxable business. Therefore, a product making its way through the distribution chain was taxed at each stage of production. With conversion to a retail sales tax, only the final sale was taxed, which necessitated raising the tax rate to generate the same amount of revenue. The sales tax was attractive to other states because of its relative administrative simplicity and its productivity as a revenue source, particularly in a time of economic depression. The tax allowed states to design a selective tax on nonessential goods and avoid imposing additional taxes directly on business. Prior to World War II, 22 states joined Mississippi in enacting permanent sales taxes; another six enacted taxes that expired within two years.

The second wave of sales tax activity began in 1947 with enactment of a tax by Tennessee. By 1960, another 12 states (and the District of Columbia) had enacted or reenacted sales taxes. By 1969, an additional 11 states had done so (including Wisconsin in 1962), bringing the total number of states with sales taxes to the current 45. The five states that do not have a sales tax (Alaska, Delaware, Montana, New Hampshire, and Oregon) have relatively small populations, reducing the revenue potential of the tax. However, Alaska makes broad use of local sales taxes. Thus, while 90% of the states impose a sales tax, 98% of the U.S. population lives in states with a sales tax.

The Nature of Sales Taxation

The most common sales tax structure in use by the states is a single-stage retail sales tax on gross receipts from the sales of certain personal property. However, there is significant variation in the nature and extent of state sales taxes. For purposes of this discussion, a distinction is made between narrow-based, product-specific excise taxes, and broad-based taxes; the discussion will be limited to broad-based taxes.

Within the broad-based category, there can be two basic types of tax imposed: a general sales tax with a broadly-defined tax base and specifically-identified exemptions, or a selective tax imposed only on the sales of those products listed in the statutes. These approaches can be combined within a state. For example, Wisconsin imposes a general sales tax on goods and a selective tax on services. Furthermore, the tax can be imposed on only retail sales. Retail sales are generally those sales made to private consumers, but also may include some purchases of certain property to be used, but not resold, in a trade or business.

As state sales taxes have developed over the years, standards have evolved for evaluating tax structures for their efficiency, equity, administration, and compliance. Due and Mikesell summarize the following sales tax structure guidelines in Sales Taxation: State and Local Structure and Administration:

1. As a uniform tax on consumer expenditures, the sales tax should be designed to facilitate shifting to the ultimate consumer, apply at a uniform rate to all except justifiably-exempt consumption expenditures, and be based on the final consumer price paid.

2. The tax structure should attempt to minimize regressivity in the distribution of the tax burden, based on accepted principles of equity.

3. The tax structure should not impede economic efficiency by indirectly favoring certain types of distribution channels, methods of business operation, or forms of business organization.

4. The tax structure should facilitate administration and compliance.

As tax policy goals, these principles find widely varying degrees of adherence among state sales tax structures. Two main problems with sales tax structure are the regressive nature of the tax and the use of exemptions from the tax base.

Regressivity of the Sales Tax

The sales tax has generally been thought to be inherently regressive because the proportion of an individual's or family's income devoted to consumption declines as income increases. Persons at the lower income levels, therefore, tend to pay a larger share of their income in sales tax. The sales tax base and exemptions, however, have a significant impact on the degree of sales tax regressivity. In Wisconsin, the exemption of food, drugs, and certain other items, and the imposition of the tax on certain services, offsets part of the regressive effect.

In 1979, the Wisconsin Department of Revenue (DOR) published the Wisconsin Tax Burden Study, a comprehensive study of the incidence of major Wisconsin taxes. This study found that the sales tax was regressive for persons with total economic income up to $6,000, but closer to proportional for incomes between $6,000 and $40,000. The results for incomes greater than $40,000 varied with the assumptions used and the particular income level, but tended towards regressivity. A more recent tax burden study by DOR, the 2004 Wisconsin Tax Incidence Study, was released in December, 2004. The focus of the 2004 study was the burden of Wisconsin state and local taxes in tax year 2001. As was the case with the 1979 study, the recent study examined the sales tax burden under a variety of assumptions. Under each set of assumptions, the sales and use tax was found to be regressive over all income groups in 2001, with the poorest 20% of households paying between 3.3% and 4.0% of income in sales and use tax and the top 1% of households paying between 1.5% and 1.9%.

A 1992 study conducted by Gilbert Metcalf challenged the notion that the sales tax is inherently regressive. Metcalf computed the lifetime incidence of the major state and local taxes used during the 1980s and concluded that the incidence of a general sales tax is not regressive when viewed over a consumer's lifetime purchases. In fact, he contends that the sales tax is as progressive as the income tax when viewed with a lifetime perspective for the following three reasons: (1) the variation in income due to "life cycle effects" is eliminated with a lifetime perspective as a cause of variations in tax incidence which would tend to make the sales tax look less regressive and the income tax less progressive; (2) federal tax deductibility of the income tax tends to make the sales tax more progressive and the income tax less progressive; and (3) exemptions for items with low elasticities (such as food for home consumption) in a majority of states tend to increase the progressivity of the sales tax.

Metcalf argues that the sales tax may seem regressive if sales tax is computed as a percentage of a household's income in any given year, even considering exemptions for food, prescription drugs, and other necessities. However, he contends, many households at the low end of the income distribution are not poor. Rather, they are spending income from the past or future. For example, some young people who will eventually make a good living borrow to buy now and some retired people live off of savings. Thus, lower-income people may consume more than they earn and may appear very different when viewed with a lifetime income perspective. The Tax Incidence Study also notes that an analysis over a given year may overstate the lifetime burden for lower--income households and therefore overstate the long-term regressivity of the sales tax.

The regressivity of the sales tax is also impacted by whether individual consumers or businesses pay the tax. Sales taxes paid by businesses on their taxable purchases represent business costs that ultimately are reflected in market prices or reduced after-tax profits. If the tax is reflected in higher prices that consumers pay for the products of business, then the tax is shifted forward to consumers. If it is reflected in reduced profits or dividends, then it is borne by the stockholders or owners of the business. A tax tends to be more regressive if consumers ultimately bear the sales tax than if stockholders ultimately bear the tax. This is because consumption expenditures account for a larger proportion of incomes of lower-income families than for higher-income families, while a larger proportion of stock-ownership is in the hands of higher-income families.

A 1981 study by the Advisory Commission on Intergovernmental Relations estimated that the average state received 35% of its sales tax revenues from businesses. The 1979 Tax Burden Study had estimated that individuals paid 55% and businesses paid 45% of the sales tax. A 1999 study by Raymond Ring, Jr., published by the *National Tax Journal*, utilized state sales tax data from two years, 1979 and 1989. Ring reported that, on average, approximately 59% of the sales tax was paid by in-state consumers and 41% was paid by businesses and tourists. The Ring study estimated that, in Wisconsin, in-state consumers paid 62% of the state sales tax, while businesses and tourists paid the remaining 38%. The most recent study of the Wisconsin tax burden, The Wisconsin Tax Incidence Study, estimated that individuals paid 67% and businesses paid 33% of sales taxes in tax year 2001.

Exemptions from Sales Tax Base

As noted, most states provide a number of sales tax exemptions, which can have two very different effects. On one hand, exemptions narrow the tax base (which puts a greater burden on the purchasers of goods remaining taxable), impede economic efficiency, create inequities between types of businesses, and complicate administration and compliance of the tax. On the other hand, when enacted in the context of a generally broad-based tax, exemptions can be used selectively to lessen the regressivity of the tax.

It is generally agreed that a strong case for an exemption can be made for food for home consumption. If food is exempt from an otherwise general sales tax, the tax tends to become proportional over the middle range of income levels, although remaining regressive as to the highest and lowest income levels. A strong case can also be made for an exemption for prescription drugs. Most states exempt food and prescription drugs from the sales tax.

One of the broadest exemptions in many states applies to personal and business services. Unlike most consumer expenditures, spending on services tends to increase as income rises. Therefore, imposing the sales tax on most services could reduce the regressivity of the tax.

Providing even a limited number of exemptions tends to decrease the simplicity and administrative efficiency of an otherwise general sales tax. For this reason, use of an income tax credit approximating a portion of sales taxes paid (for example average sales taxes paid on food and other essential items) is frequently suggested, and is used in some states, to introduce a more directly progressive element into the sales tax. Such a credit would be most effective if made refundable and thus available to persons with no income tax liability. It could be structured as a flat credit amount limited to persons below a certain income level, or as a declining amount as income rises. Alternative approaches for income tax reductions based on sales taxes paid include an increase in the standard deduction or an increase in the allowable personal exemption credits. With each of these proposals, the initial problem is determining the appropriate amount of relief or credit. Unlike property tax relief credits, such as Wisconsin's homestead credit, there is no convenient measure of the amount of tax actually paid for use in determining the appropriate amount of relief. For this reason, limiting the overall cost of the credit is frequently the dominant issue debated.

Temporary Tax Holidays and Rebates

Sales tax holidays and rebates are two mechanisms states have utilized in recent years to provide targeted tax relief to their residents. From a fiscal standpoint, both have the virtue of being limited in scope. Holidays are limited in that tax is waived only for certain goods and because they are in effect only during specified days of the year. In addition, most holidays utilize price thresholds above which the tax-free treatment does not apply. Rebates are limited in that they generally are enacted on a one-time basis, typically in times of strong economic growth.

The State of New York implemented the first sales tax holiday, suspending taxation of all clothing and footwear priced under $500 purchased during the first week of January, 1997. Subsequently, New York created a permanent sales tax exemption for clothing and footwear selling for less than $110. However, the exemption has since been suspended through May 31, 2005.

In 2004, twelve states and the District of Columbia held sales tax holidays. The details of the holiday held in each taxing jurisdiction are presented in Table 1. A relatively recent development in sales tax holidays is the inclusion of computers among the goods afforded tax-free treatment. Holidays traditionally have targeted clothing, including footwear, and school supplies.

Proponents of sales tax holidays emphasize the ability to give money back to taxpayers without creating permanent exemptions. Opponents have argued that sales tax holidays place an administrative burden on retailers and require consumers to spend money in order to benefit from tax relief. Finally, as with other sales tax exemptions, sales tax holidays decrease the simplicity and administrative efficiency of a general sales tax.

A second measure for providing a temporary tax break is a tax rebate. Since the late 1990s, Colorado, Connecticut, Minnesota, and Wisconsin have used a sales tax rebate to return revenue surpluses to taxpayers. Unlike a sales tax holiday, a sales tax rebate requires a delivery mechanism and a method to determine the size of the rebate. Connecticut's rebate in 1998 was $50 per qualified citizen. Colorado issued rebates in 1998, 1999, and 2000 that were based on a person's income. Minnesota, which provided sales tax rebates in 1999, 2000, and 2001, and Wisconsin, with a rebate in 2000, also based their rebates on a person's income. Among other sources, Colorado, Minnesota, and Wisconsin made use of the state income tax form as a primary method of determining eligibility for, and the amount of, the rebate. Wisconsin's 2000 sales tax rebate is described in greater detail below.

Table 1: Sales Tax Holidays Held in 2004

State	Items Included	Maximum Cost	2004 Dates
Connecticut	Clothing*	$300	Aug. 15-21
District of Columbia	Clothing and school supplies	$100	Aug. 7-15
Florida	Clothing and school supplies	Clothing, $50 School supplies, $10	July 24 - Aug. 1
Georgia	Clothing, school supplies, computers	Clothing, $100 School Supplies, $20 Computers, $1,500	July 29 - Aug. 1
Iowa	Clothing	$100	Aug. 6-7
Massachusetts	All retail items	Clothing, $175 Other, $2,500	Aug. 14
Missouri	Clothing, school supplies, computers	Clothing, $100 School supplies, $50 Computers, $2,000 Computer software, $100	Aug. 13-15
New York	Clothing	No limit	Aug. 31 - Sept. 6
North Carolina	Clothing, school supplies, computers, other	Clothing, $100 Sports equipment, $50 Computers, $3,500	Aug. 6-8
South Carolina	Clothing, school supplies	No limit	Aug. 6-8
Texas	Clothing	$100	Aug. 6-8
West Virginia	Clothing, school supplies, computers	Clothing, school supplies, $100 Computers, $750 Computer accessories, $100	Aug. 6-8
Vermont	Computers	$4,000	Aug. 7-9; Oct. 9-11

*As used in this table, the term "clothing" includes shoes.
Sources: Federation of Tax Administrators; state revenue departments.

Use Tax

In general, a sales tax is imposed on the gross receipts from the sale, lease, or rental of tangible personal property and services identified by state law. A companion 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 if the property or services had been purchased in the state. A credit is allowed for sales tax paid in the other state. All states that impose a sales tax also impose a corresponding use tax.

The use tax is imposed as a complement to the sales tax in order to prevent consumers from avoiding tax by purchasing taxable goods in other states and to allow state merchants to compete on an equal basis with sellers in other states that have lower sales tax rates or no sales tax. An enforceable use tax assures the equal taxation of all purchases by state residents and gives no competitive advantage to either resident or nonresident sellers.

The sales tax is generally a tax on retailers for the privilege of making taxable sales and is usually passed on by a retailer to its customers. The retailers collect the sales tax from their customers and remit the tax to the state. Unlike the sales tax, the use tax is imposed on the buyer. A buyer may be required to file its own tax return and pay the use tax to the state. (In Wisconsin, consumers have the option of including their use tax on their individual income tax returns.) Under some circumstances, however, out-of-state sellers are required to collect the use tax from the buyer and remit the tax to the state in which the buyer is located. For example, a mail order catalog business located in Illinois may have sufficient presence or connection (nexus) to Wisconsin that it is required to collect the use tax from sales to its Wisconsin customers and remit those collections to the Wisconsin Department of Revenue. As of September, 2004, there were 10,112 out-of-state use tax registrants (retailers who collect use tax on their sales to Wisconsin residents) and 4,489 active consumer use tax registrants (generally businesses that purchase taxable goods from out-of-state sellers and pay use tax directly to DOR).

The Historical Development of the Wisconsin Sales Tax

The Wisconsin sales tax was first enacted with Chapter 620, Laws of 1961. It was effective in 1962 as a 3% selective tax on designated categories of goods and services. As a companion to the sales tax, a 3% use tax was imposed on items purchased out-of-state but used in Wisconsin, if those items would have been taxable if purchased in the state. Among the major taxable goods were alcoholic beverages and tobacco, motor vehicles, household furnishings, and recreational equipment. Taxable services included restaurant meals, hotel rooms, telephone service, and admissions to entertainment. Although the tax was only imposed selectively, various exemptions were specified. Definitional exemptions included sales for resale, sales prohibited from taxation under federal law, and sales of property for export. Other exemptions included farm vehicles, purchases by governmental and charitable organizations, and certain occasional sales.

The original sales tax law also included various provisions to facilitate administration and enforcement. Businesses were required to obtain sellers' permits and make monthly reports and tax payments. The Department of Revenue was authorized to conduct audits and adopt administrative rules regarding a bracket system for tax collections and other matters. A retailers' discount was established to allow sellers to retain 2% of monthly tax collections as compensation for administrative costs.

The 1962 sales tax required that $55 million of annual collections be paid to towns, villages, and cities for distribution to taxpayers, according to a formula based in part on a formula then in use for distribution of certain utility tax revenues. The dollar amount of this distribution was modified in subsequent years; in 1971 these provisions were eliminated from the sales tax statutes and made part of the shared revenue statutes.

The sales tax rate was raised to 4% in 1969 and the selective tax on property and services was converted to a general tax on property, with an expanded list of specific exemptions and taxable services. The tax rate was increased again with Chapter 317, Laws of 1981; effective May 1, 1982, the tax rate increased from 4% to 5%. As with the 1961 law that first enacted the sales tax, the 1982 increase in the sales tax was enacted in the context of increased property tax relief. Amounts collected after June 30, 1983, were to be distributed as a supplement to the Wisconsin State Property Tax Relief (WSPTR) credit. As passed by the Legislature, the provision for use of the one cent sales tax increase for property tax relief was contingent on the Legislature adopting and placing on the April, 1983, referendum ballot a constitutional amendment earmarking a portion of sales tax revenues for school property tax relief and on approval of the amendment by the voters. The Governor vetoed the language that tied the additional property tax relief to future passage and voter approval of the constitutional amendment. Thus, the vetoes established the increase in the property tax credit, but left the continuation of the sales tax rate at 5% past July 1, 1983, contingent upon adoption of the constitutional amendment. However, in January, 1983, faced with a severe general fund deficit, the Legislature permanently extended the sales tax at a 5% rate and eliminated, for the 1984 distribution and thereafter, the property tax supplement created in 1981.

The tax base has frequently been modified since the sales tax was enacted to impose the tax on additional services or to exempt certain items of tangible personal property. A list of the currently taxed services and examples of the sales tax exemptions are provided under the following section on current law. A more detailed list of the sales and use tax exemptions is provided in the Appendix.

The retailers' discount, originally established as 2% of the sales and use tax payable, was reduced to 1% in 1963. The discount was changed again in 1981 from a flat 1% to a three-tiered system: 2% on the first $10,000 of tax collected annually; 1% on the second $10,000; and 0.5% on collections over $20,000. The three-tiered system was eliminated in 1991 in favor of a flat 0.5% of sales and use tax payable. In 1995, the retailers' discount was modified to be the greater of $10 or 0.5% of sales and use tax payable per reporting period, not to exceed the amount of tax actually payable.

Under 1999 Wisconsin Act 9, the Department of Revenue was authorized to enter into voluntary agreements with certain out-of-state direct marketers to collect Wisconsin sales and use tax from Wisconsin customers. Such agreements could be used to encourage out-of-state direct marketers that do not have nexus with the state and are not required to collect Wisconsin sales and use taxes to voluntarily collect such taxes. As an incentive for direct marketers to collect the taxes, Act 9 provided that participating direct marketers may retain 5% of the first $1 million of such tax collected in a calendar year and 6% of any additional amounts collected in the remainder of the same year. However, no agreements with direct marketers to voluntarily collect use tax have been signed under these provisions.

In 1991, the penalties for failing to comply with the sales tax law were increased. Any person who intentionally fails to remit both the county and state sales taxes collected to the state, or who fraudulently withholds, uses, or spends sales tax receipts is guilty of criminal theft. The monetary penalty for failure to file a sales tax return was also increased from 10% to 25% of the sales and use tax due, as estimated by DOR.

Sales Tax Rebate

A one-time sales tax rebate totaling $688.2 million was provided to 2.5 million households in calendar year 2000. The rebate amount was based on filing status and Wisconsin adjusted gross income as reported in 1998 state individual income tax returns and ranged from $184 to $267 ($360 to $534 for married couples filing jointly). Wisconsin residents who did not file a state income tax return or homestead credit claim in 1998 were eligible for the rebate upon filing a form with the Department of Revenue. In addition, nonresidents were allowed to claim a rebate for documented sales taxes paid in 1998. The rebate was authorized under 1999 Wisconsin Act 10.

Current Law

Wisconsin imposes a 5% general sales tax on the gross receipts from the sale and rental of personal property and selected services; counties have the option of imposing an additional 0.5% local sales tax. The tax is imposed on the sale, lease, or rental of all personal property not specifically exempted. This contrasts with the treatment of services, where the tax is imposed only on those services specifically listed in the statutes.

A use tax at the same rate is imposed on goods or services purchased out-of-state and used in Wisconsin, if the good or service would be taxable if purchased in Wisconsin. In computing the use tax liability, a credit is provided for sales tax paid in the state in which the good or service was purchased.

Taxable Services

Under current law, the following twelve service categories are taxable:

- hotel, motel, and other lodgings

- admissions to amusement, athletic, and entertainment events (admissions to county fairs are exempt)

- wire-based telecommunications services that originate or terminate in Wisconsin and are charged to a service address in this state (excluding services that are obtained by means of a toll-free number that originate outside the state and terminate in the state), including the rights to purchase telecommunications services (pre-paid calling cards and authorization numbers) and including access services to the Internet

- mobile telecommunications services utilized by customers whose residential or primary business street address is in Wisconsin, regardless of where such services originate, terminate, or pass through

- telephone answering services

- laundry and dry cleaning services, except for coin-operated and diaper services

- photographic services

- parking and docking of motor vehicles, aircraft, and boats

- installation, repair, maintenance, and related services to personal property, other than real property improvements (unless the property being installed or repaired is exempt when sold)

- producing, fabricating, processing, printing, and imprinting services for consumers who furnish the materials, except for printed advertising services that will be transported and used solely outside the state

- cable television services, including installation

- landscaping and lawn maintenance services

Prior to enactment of 1999 Act 9, transfers of time-share property were subject to the sales tax on short-term lodging if they were on a "flex-time" basis. (A "flex-time" time-share transfer is one in which the use of the rooms or lodging is not fixed at the time of the sale as to the starting date or lodging unit.) If a transfer was on a "fixed-time" basis, in which the use of the rooms or lodging was fixed at the time of the sale as to the starting date or lodging unit, the transfer was generally subject to the real estate transfer fee and not the sales tax. Under Act 9, effective December 1, 1999, all transfers of time-share property are subject to the real estate transfer fee rather than the sales tax. [This provision was further clarified under 2003 Wisconsin Act 33.]

Sales Tax Exemptions

Exemptions from the general sales tax are provided for specified types of personal property, transactions, and entities. In some cases, exemptions are provided for items used in the course of business such as manufacturing machinery and equipment, property that becomes an ingredient in the manufacturing process, farm tractors and machines, seeds, and various other farming supplies. In other cases, the exemptions relate to personal and family needs such as food for home consumption, prescription drugs, and water delivered through mains. In addition, exemptions are provided for sales to governmental, educational, and charitable organizations and for specified sales by such organizations. More detailed information about exemptions from the general sales and use tax is provided in the Appendix.

Administration

Sellers of taxable property and services must obtain a business tax registration certificate and a permit for each location from the Department of Revenue (and may be required to make a security deposit not to exceed $15,000) and periodically file a sales tax return and make payment of tax due. Returns and payment are generally due on a quarterly basis, but the Department may require sellers with a quarterly liability exceeding $600 to report monthly, due on the last day of the next month; sellers with a quarterly liability exceeding $3,600 may be required to report monthly, due on the 20th day of the next month. Retailers with a sales and use tax of $300 or less have the option of filing annually. The Department may also permit a different reporting period.

Sellers may deduct the retailers' discount from taxes due, as compensation for administrative costs, equal to the greater of $10 or 0.5% of the tax liability per reporting period, but not more than the amount of tax actually payable. If reports and payments are delinquent, this discount is forfeited. In addition, a $20 late filing fee is assessed and the delinquent taxes bear monthly interest of 1.5% until paid. Further penalties are imposed for incorrect returns filed due to neglect or fraud. Late, nondelinquent payments bear annual interest of 12%, while refunds of overpaid taxes receive interest of 9%.

Under 2003 Act 33, out-of-state vendors and their affiliates doing business with the State of Wisconsin are required to register and collect sales and use tax on all of their Wisconsin sales. If a vendor (or its affiliates) fails to collect sales or use taxes on taxable sales to Wisconsin residents, the Department of Revenue is required to place the vendor's name on a list that is certified and sent to the Department of Administration. The state is prohibited from doing business with a vendor whose name appears on the list.

Sales and Use Tax Collections

Wisconsin's sales and use tax has been a significant source of state revenue since its enactment. As shown in Table 2, since 1993-94, annual growth in sales tax collections has ranged from a low of 1.1% in 2002-03 to a high of 7.8% in 1998-99. The average annual growth rate has been 4.9% over the period. As Table 2 also indicates, revenue from the sales tax has constituted approximately one-third of total general fund revenues for most of the period shown. Late in the period this ratio trended upward somewhat, due primarily to income tax rate reductions that were implemented in fiscal year 2000-01.

Table 3 provides a breakdown of sales and use tax collections by type of business for calendar year 2003. Table 4 provides similar information in greater detail for retail businesses. The data for these tables are derived from DOR compilations of sales and use tax reports according to the North American Industry Classification System (NAICS) category to which each business is assigned. [Use of NAICS replaces the Standard Industrial Classification System (SIC), which had previously been used.] Although this data provides the best available indication of the number of establishments and volume of retail sales by each type of business, its reliability is limited because DOR determines the business classifications based on a brief description of the seller's principal business and merchandise that is part of the application for a seller's permit. In the case of a business with sales in a variety of areas or with products that have changed over a period of time, the coding may not accurately reflect the extent and nature of sales by the business. In addition, DOR implemented a new sales tax processing system in 2002, at which time existing businesses were converted from SIC to the new NAICS classification system based on conversion tables published by the U.S. Office of Management and Budget. Since the NAICS classifications are not identical to SIC codes, a business may have been misclassified in the conversion from SIC to NAICS.

Table 2: Wisconsin Sales and Use Tax Collections 1993-94 through 2003-04 ($ In Millions)

	Sales & Use Tax Collections		Sales & Use Tax as % of
	Amount	Percent Change	General Fund Collections
1993-94	$2,427.9	7.4%	33.3%
1994-95	2,571.2	5.9	32.9
1995-96	2,704.2	5.2	32.8
1996-97	2,864.4	5.9	32.5
1997-98	3,047.4	6.4	32.0
1998-99	3,284.7	7.8	33.0
1999-00	3,501.7	6.6	32.0
2000-01	3,609.9	3.1	35.9
2001-02	3,695.8	2.4	36.9
2002-03	3,737.9	1.1	36.7
2003-04	3,899.3	4.3	36.3

The "Other Store Retail" category in Table 4 is comprised of businesses that do not clearly fall into another category. "Other Store Retail" in calendar year 2003 generated only 12.8% of tax collections even though it accounted for 44.4% of all retail establishments. The automobile and other motor vehicle sector, on the other hand, generated 21.2% of collections, yet made up only 5.3% of the number of establishments. These distinctions reflect differences in the nature and cost of products sold, the amount of taxable sales as a percent of total sales, and the average size of establishments in a given category of retailers, as measured by sales volume.

Table 3: State Sales and Use Tax Reported in Calendar Year 2003 by Type of Industry ($ In Millions)

	Establishments		Sales Tax	
Type of Industry	Number	Percent	Amount	Percent
Agricultural, Forestry, Hunting, and Fishing	603	0.4%	$3.4	0.1%
Construction	4,698	3.3	86.4	2.3
Utilities and Other Fuel Dealers	253	0.2	223.1	6.0
Information and Communications	1,762	1.2	235.1	6.3
Manufacturing	6,228	4.3	129.7	3.5
Retail Trade	75,687	52.6	2,264.3	61.1
Services	47,092	32.8	479.2	12.9
Wholesale Trade	4,596	3.2	180.2	4.9
Transportation	434	0.3	5.4	0.1
Miscellaneous and Unclassified	2,432	1.7	96.7	2.6
TOTAL	143,785	100.0%	$3,703.5	100.0%

Finally, Table 5 shows tax collections by taxable receipts for calendar year 2001. As noted above, the Department of Revenue implemented a new sales tax processing system in 2002. At this time, DOR is still refining the new system and some of the data that had been generated in the past is not yet available. Therefore, Table 5 has not been updated beyond calendar year 2001. However, it is anticipated that such information will again be available in future years.

As shown in Table 5, most collections in 2001 were from businesses with higher taxable receipts. Such establishments would include large, high-volume businesses (for example, department stores) and smaller businesses selling high-cost items such as automobiles. The 57.8% of registered businesses that had taxable receipts of $25,000 or less paid only 0.6% of the total tax. At the opposite

Table 4: State Sales and Use Tax in Calendar Year 2003 from Retail Business ($ In Millions)

	Establishments		Sales Tax	
Type of Store	Number	% of Total	Amount	% of Total
Food Services & Drinking Places	13,773	18.2%	$284.8	12.6%
Performing Arts, Spectator Sports, and Related Industries	665	0.9	17.2	0.8
Amusement, Gambling, and Recreation Industries	1,289	1.7	19.5	0.9
Automobiles and Other Motor Vehicles	4,023	5.3	480.8	21.2
Gasoline Stations (Including Convenience Stores with Gas)	1,744	2.3	57.3	2.5
Clothing and Accessories Stores	2,556	3.4	116.1	5.1
Electronic and Appliance Stores	1,171	1.5	70.4	3.1
Food and Beverage Stores	3,205	4.2	168.1	7.4
Furniture and Home Furnishings Stores	5,349	7.1	290.2	12.8
Health and Personal Care Stores	597	0.8	30.3	1.3
Sporting Goods, Hobby, Book, and Music Stores	3,343	4.4	52.2	2.3
General Merchandise Stores	1,311	1.7	362.0	16.0
Other Store Retailers	33,594	44.4	288.8	12.8
Nonstore Retailers	3,067	4.1	26.6	1.2
TOTAL	75,687	100.0%	$2,264.3	100.0%

Table 5: Collections in Calendar Year 2001 by Taxable Receipts of Business ($ In Millions)

	Establishments		Sales Tax	
Taxable Receipts	Number	Percent	Amount	Percent
Zero	15,397	10.0%	--	0.0%
$1 -25,000	73,469	47.8	$20.6	0.6
25,001 -50,000	12,786	8.3	23.1	0.7
50,001 -100,000	13,051	8.5	46.9	1.4
100,001 - 500,000	25,336	16.5	294.1	9.0
500,001 - 1,000,000	6,179	4.0	215.5	6.6
1,000,001 - 2,500,000	4,254	2.8	328.6	10.1
2,500,001 - 5,000,000	1,519	1.0	262.9	8.1
over 5,000,000	1,659	1.1	2,070.3	63.9
TOTAL	153,650	100.0%	$3,262.1	100.0%

end of the spectrum, the 1.1% of businesses with over $5 million in taxable receipts accounted for 63.9% of total tax collections. Overall, only 8.9% of businesses had taxable receipts in 2001 of over $500,000, but they collected 88.7% of the tax.

Local Sales Taxes

Several types of local sales taxes are levied in Wisconsin. Wisconsin counties are permitted to impose a 0.5% county sales tax. As of October, 2004, 58 of the state's 72 counties had such a tax in place. The other types of local sales taxes levied in the state are local exposition district taxes, local professional baseball park district taxes, local professional football stadium district taxes, and premier resort area taxes. Detailed information regarding all the local sales taxes can be found in the Legislative Fiscal Bureau's informational paper entitled, "Local Government Revenue Options."

Tax Rate Comparison with Other States

A total of 45 states and the District of Columbia impose a sales tax. The five states that do not have a sales tax are Alaska, Delaware, Montana, New Hampshire, and Oregon, although Delaware imposes a merchants' and manufacturers' license tax and a use tax on leases.

As of November, 2004, sales tax rates ranged from 2.9% (Colorado) to 7% (Mississippi, Rhode Island, Tennessee), exclusive of optional local sales taxes. Compared to nearby states, Wisconsin's 5% rate is lower than Minnesota's 6.5%, Illinois' 6.25%, and Indiana's and Michigan's 6%. Iowa also has a 5% rate. Sales tax rates and the treatment of commonly exempt items by the states appear in Table 6.

Among the major factors in determining the relative fiscal role of the sales tax in the states are the definition of tax base, or taxable sales, and the tax rate. Tax rate increases are, administratively, the simplest means of increasing revenue. Throughout most of the 1990s, the revenue situation in the states was a very favorable one, with most states realizing substantial year-over-year revenue gains from their primary taxes, including the sales tax. Early in 2001, however, this trend began to reverse as an economic recession took hold. Many states responded to the declining fiscal environment by, among other measures, raising their sales tax rates. Since early 2001, almost one-third of the states enacted increases in their sales tax rates, sometimes on a temporary basis. The states that increased their rates during this four-year period were Arizona, Arkansas, California, Idaho, Indiana, Kansas, Nebraska, New York, North Carolina, Ohio, Tennessee, Utah, Vermont, and Virginia.

Only one state, Colorado, has reduced its sales tax rate since this start of the decade. Of the 14 states with tax rate increases, seven states (Arkansas, California, Idaho, New York, Ohio, Vermont, and Virginia) have increased their rates since this paper was last updated in January, 2003. Of these states, Idaho, New York, and Ohio adopted temporary increases. During this same time period, two states that had previously adopted temporary increases, Nebraska and North Carolina, have since made them permanent, while another state, Kansas, has changed the date that its rate will revert to the previous rate from July 1, 2005, to July 1, 2006.

Tax Base Comparison with Other States

The sales tax base varies widely among the states, particularly with regard to services. Most of the 45 states (and the District of Columbia) with a sales tax impose the tax on personal property generally, subject to various exclusions and exemptions. Since the tax is in principle imposed on final sales or consumer purchases, most states, like Wisconsin, exclude sales for resale. Also commonly excluded are sales of property that is consumed in the production of, or becomes an ingredient of, other property for sale; many states also exclude or exempt some goods used in the production of property that are not consumed in the process. A number of states exempt machinery used in the production process, and most states exempt agricultural supplies and equipment used directly in farming.

As shown in Table 6, exemptions for property for personal consumption also vary widely. The most common exemptions are for goods which are considered essential: food for home consumption, exempted in 29 states; prescription drugs, exempted in every state that has a sales tax except Illinois, which taxes drugs at a reduced rate; and residential energy (fuel, electricity, gas), exempted in whole or in part by 33 states. Clothing, considered a necessity to a certain extent, is exempted in whole or in part by only seven states, reflecting the problematic nature of the good as an exemption (although, as noted previously, a number of states

Table 6: State Sales Tax Rates and Treatment of Commonly Exempt Items

		Sales Tax Exemptions					
State	Tax Rate	Food	Prescription Drugs	Clothing	Residential Energy	News-papers	Gasoline
Alabama	4.000%*•	T	E	T	E	T	E
Alaska	NA*	NA	NA	NA	NA	NA	NA
Arizona	5.600*•	E	E	T	T	T	E
Arkansas	6.000*•	T	E	T	E	E	E
California	6.250*	E	E	T	E	T	T
Colorado	2.900*	E	E	T	E	E	E
Connecticut	6.000•	E	E	E	E	E	E
Delaware	NA	NA	NA	NA	NA	NA	NA
District of Columbia	5.750•	E	E	T	E	T	E
Florida	6.000*•	E	E	T	E	T	T
Georgia	4.000*	E	E	T	T	T	T
Hawaii	4.000*•	T	E	T	T	T	T
Idaho	6.000*	T	E	T	E	T	E
Illinois	6.250*•	T	T	T	T	E	T
Indiana	6.000•	E	E	T	T	E	T
Iowa	5.000*	E	E	T	T	E	E
Kansas	5.300*	T	E	T	E	T	E
Kentucky	6.000*	E	E	T	E	T	E
Louisiana	4.000*•	E	E	T	E	T	E
Maine	5.000•	E	E	T	E	E	E
Maryland	5.000•	E	E	T	E	T	E
Massachusetts	5.000	E	E	E	E	E	E
Michigan	6.000•	E	E	T	T	E	T
Minnesota	6.500*•	E	E	E	E	E	E
Mississippi	7.000•	T	E	T	E	E	E
Missouri	4.225*•	T	E	T	E	T	E
Montana	NA*	NA	NA	NA	NA	NA	NA
Nebraska	5.500*	E	E	T	T	E	E
Nevada	6.500*•	E	E	T	E	E	E
New Hampshire	NA	NA	NA	NA	NA	NA	NA
New Jersey	6.000*	E	E	E	T	E	E
New Mexico	5.000•	T	E	T	E	E	E
New York	4.250*•	E	E	T	E	E	T
North Carolina	4.500*•	E	E	T	T	E	E
North Dakota	5.000*•	E	E	T	E	E	E
Ohio	6.000*	E	E	T	E	E	E
Oklahoma	4.500*•	T	E	T	E	E	E
Oregon	NA*	NA	NA	NA	NA	NA	NA
Pennsylvania	6.000*	E	E	E	E	E	E
Rhode Island	7.000	E	E	E	E	E	E
South Carolina	5.000*•	T	E	T	E	E	E
South Dakota	4.000*•	T	E	T	T	T	E
Tennessee	7.000*•	T	E	T	E	E	E
Texas	6.250*•	E	E	T	E	E	E
Utah	4.750*•	T	E	T	T	E	E
Vermont	6.000*•	E	E	E	E	E	E
Virginia	4.000*•	T	E	T	E	E	E
Washington	6.500*•	E	E	T	E	E	E
West Virginia	6.000•	T	E	T	E	E	E
WISCONSIN	5.000*	E	E	T	E	E	E
Wyoming	4.000*•	T	E	T	T	E	E

*Additional local sales taxes may apply.
•Variable tax rates for select items.
For Exemptions: T--Taxable; E--Fully or Partially Exempt (Consult sources identified at bottom for more detailed information.)

Notes: Delaware: Imposes a merchants and manufacturers license tax and a use tax on leases.
Wyoming: The rate is reduced to 3.5% on July 1 of any year in which the unappropriated general fund balance at the end of the current budget period exceeds $35 million.

In addition, the following rate changes are scheduled: Idaho -- 5.0%, July 1, 2005; Kansas -- 5.0%, July 1, 2006; Missouri -- 4.125%, November 8, 2008; New York -- 4.0%, May 1, 2005; North Carolina -- 4.0%, July 1, 2005; and Ohio -- 5.0%, July 1, 2005.

Sources: Commerce Clearing House, State Tax Guide, Table of Rates, November, 2004, and 2004 U.S. Master Sales and Use Tax Guide; Wisconsin Department of Transportation.

have recently offered sales tax holidays for some clothing items). Other common exemptions are newspapers and / or periodicals (32 states), and certain goods subject to separate excise taxation (primarily gasoline, exempt in 38 states).

A number of states provide a partial exemption for items shown in Table 6. For example, Wisconsin provides an exemption for residential sales of natural gas and electricity only during the months of November through April. For more detailed information regarding the sales tax structures in other states, see the State Tax Guide, published by the Commerce Clearing House.

The first sales taxes enacted by states extended only to certain personal property. The overall tax base was fairly limited, and it was generally believed that restricting the tax to goods facilitated administration and avoided taxing labor. There has been a gradual inclusion of some services in the sales tax base as the tax is increasingly perceived as being passed on to consumers, like the tax on goods, as opposed to being a tax on labor. More important in the broadening of the tax base, however, has been the fact that, as the base has broadened to include many goods, continuing to exempt services has become more of an administrative hindrance than an aid. State revenue needs also have given impetus to this movement. When Wisconsin enacted its selective sales tax on services in 1961, it included several of the services most frequently taxed in other states and has added other services since then.

In most states, the sales tax is imposed on the retail sales of tangible personal property; only services that are explicitly listed are also taxed. Thus, charges for services such as cleaning, laundering, or barbering, if not specifically listed as taxable, are tax-free. However, in such cases, materials used or consumed in the performance of a tax-free service are generally taxable when sold to the service provider. Some states specify that if a sale of a service involves the inconsequential transfer of property, the transfer of that property is not taxed to the consumer. On the other hand, if the service is inconsequential to the transfer of property, the entire transaction is taxed.

Table 7 shows the taxability of certain services in each state and the District of Columbia. Professional and personal services include, but are not limited to, services provided by attorneys, accountants, architects, barbers, beauticians, and laundries. General treatment indicates the overall approach the state takes to imposing the sales tax on services.

In contrast to states that tax services selectively, the states of Hawaii, Mississippi, New Mexico, South Dakota, and West Virginia impose a general sales tax on services as well as on goods, with specific exemptions provided. Hawaii imposes an excise tax on the gross receipts of businesses, which is passed on to consumers like a sales tax. Certain entities are exempt from the tax, including public utilities owned by the state, certain charitable and nonprofit organizations, and hospitals. Mississippi imposes a privilege tax on the privilege of engaging in business, as measured by the gross proceeds of sales. While there are specific exemptions, in general, a person engaged in the business of selling any tangible personal property or in rendering taxable services is subject to the tax. The New Mexico tax is structured as a gross receipts tax on business. The tax is generally imposed on receipts from all property sold or leased and services performed, with specific exemptions or deductions provided for a number of items (for example, certain agricultural services, financial services, fraternal and related organization dues, and construction and manufacturing-related services). South Dakota generally imposes a retail sales tax on sales of property and services, and provides exemptions such as membership organization dues and charges, health, educational and social, agricultural, and certain financial and construction services. Finally, West Virginia imposes a general consumer sales and service tax on the privilege of selling tangible personal property and all services except professional or personal services and those

Table 7: State Sales Tax Treatment of Select Services

State	Medical Services	Personal / Professional	Transportation	Repair	General Treatment
Alabama	E	E	E	E	NT
Alaska	NA	NA	NA	NA	NA
Arizona	E	E	T	E	MT
Arkansas	E	E	E	T	MT
California	E	E	E	E	NT
Colorado	E	E	E	E	NT
Connecticut	E	T	E	T	MT
Delaware	NA	NA	NA	NA	NA
District of Columbia	E	E*	E	T	MT
Florida	E	E*	E	E	MT
Georgia	E	E	T	E	NT
Hawaii	T	T	T	T	GT
Idaho	E	E	T	E	NT
Illinois	E	E	E	E	NT
Indiana	E	E	E	E	NT
Iowa	E	T	E	T	MT
Kansas	E	E	T	T	MT
Kentucky	E	E	E	E	NT
Louisiana	E	E	E	T	NT
Maine	E	E	E	E	NT
Maryland	E	E*	E	E	NT
Massachusetts	E	E	E	E	NT
Michigan	E	E	E	E	NT
Minnesota	E	E*	T	E	MT
Mississippi	E	E*	E	T	GT
Missouri	E	E	T	E	NT
Montana	NA	NA	NA	NA	NA
Nebraska	E	E*	E	T	NT
Nevada	E	E	E	E	NT
New Hampshire	NA	NA	NA	NA	NA
New Jersey	E	E	E	T	NT
New Mexico	T	T	T	T	GT
New York	E	E*	E	T	MT
North Carolina	E	E	E	E	NT
North Dakota	E	E	E	E	NT
Ohio	E	E*	E	T	MT
Oklahoma	E	E	T	E	MT
Oregon	NA	NA	NA	NA	NA
Pennsylvania	E	E*	E	T	MT
Rhode Island	E	E	E	E	NT
South Carolina	E	E	E	E	NT
South Dakota	E	T	T	T	GT
Tennessee	E	E	T	T	NT
Texas	E	E*	T	T	MT
Utah	E	E	T	T	MT
Vermont	E	E	E	E	NT
Virginia	E	E	E	E	NT
Washington	E	E*	T	T	MT
West Virginia	E	E*	E	T	GT
WISCONSIN	E	E*	E	T	MT
Wyoming	E	E	T	T	NT

T -- Taxable
E -- Fully or Partially Exempt (More detailed information regarding exemptions may be found in the source identified below.)
GT -- Services are generally taxable, with specified exemptions.
MT -- Many services are taxable. They are specifically identified.
NT -- Not many services are taxable. They are listed.
* A limited number of services are taxable.

Source: Commerce Clearing House, 2004 U.S. Master Sales and Use Tax Guide furnished by corporations subject to the Public Service Commission.

Electronic Commerce and Remote Sales

Federal Internet Tax Prohibitions

On December 3, 2004, President Bush signed into law the Internet Tax Nondiscrimination Act. This act extended, through November 1, 2007, a moratorium on taxation of charges for Internet access services that had been enacted under two prior federal laws, the 2001 Internet Tax Nondiscrimination Act and the 1998 Internet Tax Freedom Act.

Under the two prior federal laws, existing state and local taxes on Internet-access charges that were authorized by statute and "generally imposed and actually enforced" prior to October 1, 1998, received grandfather protection and were exempted from the moratorium. However, the 2004 Internet Tax Nondiscrimination Act eliminates the exemption from the moratorium, effective as of November 1, 2005, November 1, 2006, or November 1, 2007, depending on when the state imposed its tax on Internet access.

Wisconsin is one of nine states that received grandfather protection for state taxes on Internet access under the 1998 and 2001 federal laws. Wisconsin law imposes the 5% state sales and use tax, as well as county and stadium district sales and use taxes, on telecommunications services. DOR has interpreted the general statute imposing the sales tax on telecommunications services to include Internet access charges. Administrative rules relating to the sales tax on telecommunications services enumerate fifteen taxable telecommunications services, including Internet access services. Wire-based telecommunications services are taxable if they originate or terminate in this state and are charged to a Wisconsin service address. Other Internet-related services, such as web-site advertising, are not telecommunications or other taxable services and are not subject to Wisconsin sales tax.

Under the Internet Tax Nondiscrimination Act of 2004, it appears that legislative intent was to eliminate Wisconsin's exemption from the moratorium on taxation of Internet access services, effective November 1, 2006. However, as drafted, the actual language in the new federal law could be interpreted as meaning that Wisconsin's exemption from the moratorium will continue to apply until November 1, 2007 (which is the same date that the federal moratorium expires). Under this interpretation of federal law and absent future federal legislation, Wisconsin could continue to impose the sales tax on Internet access services indefinitely.

In addition to the moratorium on state taxation of Internet access charges, all three federal Internet tax prohibition laws imposed a moratorium on "multiple and discriminatory taxes" on electronic commerce. With certain exceptions, this provision prohibited taxation of a single transaction by more than one state or political subdivision of a state. In addition, the provision limited the taxes on electronic commerce to taxes that would be imposed on the same products and services sold by other means.

The federal ban on taxation of Internet-access charges has sometimes been mistakenly understood to apply to all taxes on Internet sales. However, the prohibition against multiple and discriminatory taxation of a single transaction does not negate existing state sales and use tax laws. Goods and services purchased by Wisconsin residents over the Internet are subject to the Wisconsin sales and use tax in the same manner that they would be if they were purchased through other means (such as through a mail-order catalog). As with other sales, Wisconsin vendors selling over the Internet to Wisconsin customers are required to collect the sales tax on taxable goods and services. It is the buyer's responsibility to pay the Wisconsin use tax if the seller is an out-of-state seller that is not required to collect use tax on sales to its Wisconsin customers (that is, the seller lacks nexus, or business connection, with the state).

The U.S. Supreme Court has held that when nexus is absent, states' efforts to collect taxes on remote sales place an undue burden on interstate commerce and thereby violate the U.S. Constitution. The Court found that requiring vendors to collect and remit sales taxes on out-of-state purchases would subject firms to the undue burden of calculating taxes--for thousands of taxing jurisdictions nationwide--that differ in their rates, in the categories included in their tax bases, and in the definitions of goods within those categories. (Current estimates place the number of taxing jurisdictions between 7,000 and 8,000, including cities, counties, states, and other jurisdictions that impose a sales tax.) As a result, states have no authority to impose the collection responsibility for the sales and use tax on out-of-state sellers that lack nexus with the state. In its decision, however, the Supreme Court concluded that, if Congress so wished, it could give states the authority to require vendors to collect and remit sales tax on remote purchases.

Estimates of Revenue Losses from Remote Sales

The inability of states to enforce a use tax collection obligation on out-of-state sellers that do not possess nexus to the state has resulted in substantial amounts of foregone revenues. Using e-commerce data collected by the U.S. Census Bureau in recent years and estimates of Wisconsin's share of total households with Internet access, the Wisconsin Department of Revenue has analyzed the fiscal effect of sales tax revenues lost in Wisconsin as a result of e-commerce and other remote sales. In 2003, the Department estimated the revenue losses to this state in 2005 at approximately $50 million from retail e-commerce sales (retail sales completed via computer) and $80 million from other remote retail sales (primarily mail order and telephone sales), for a total projected loss in sales and use tax collections from retail e-commerce and other remote retail sales in 2005 of approximately $130.0 million.

Various estimates of the magnitude of tax revenue losses from e-commerce were developed in the late 1990s. Among them were estimates by the University of Tennessee economists Donald Bruce and William F. Fox. The Bruce and Fox estimates, which include state and local sales tax losses, have been recently updated and include projections under both low-growth and high-growth assumptions. Bruce and Fox have estimated the loss in Wisconsin state and local sales tax revenues as a result of e-commerce (defined as sales made via the Internet both on goods that otherwise would have been purchased over-the-counter plus projected new Internet sales) at $139 million to $145 million in 2003. Such losses are projected to rise to $200 million to $303 million in 2008. Bruce and Fox note in their analysis that the trend toward increased use of remote sales (Internet sales, catalog and telephone sales, and cross-state shopping) is a major contributing factor to the narrowing, over time, of state sale tax bases relative to total state personal income. Other factors that serve to bring about the same end, according to Bruce and Fox, are a shift in purchase patterns toward greater consumption of services instead of goods (services are taxed to a significantly lesser degree than goods) and the continued use of legislated sales tax exemptions.

Streamlined Sales Tax Project

The Streamlined Sales Tax Project (SSTP) is a multi-state initiative intended to simplify and modernize the collection and administration of sales and use tax nationwide. Although the SSTP aims to improve sales and use tax administration for all types of commerce, a pivotal goal of the project to is simplify the sales and use tax structure to such an extent that sellers will participate by (among other steps) voluntarily collecting tax on their remote sales. The primary impetus behind the

SSTP came from state governments, with significant input from the private sector and local governments. Among the key outcomes envisioned by the Project are:

- uniform definitions of taxable and exempt items

- simplification (limiting the number of different rates that may apply in a state)

- uniform guidelines by which transactions can be sourced (thereby settling any uncertainties that may exist regarding which jurisdiction has the authority to tax a given transaction)

- limits on variations in the tax base within a state

- one-stop registration that would allow a seller to register in all participating states

- uniform sales tax returns

- elimination of caps on tax amounts due and thresholds on the application of sales tax

- state-level administration of sales and use tax collections

- automated systems designed to calculate the tax imposed by each jurisdiction on a transaction, determine the amount to remit to the appropriate state, and maintain a record of the transaction.

As of November, 2004, thirty-seven states (including Wisconsin) were actively participating in the effort to ultimately arrive at a simplified sales and use tax system. In mid-November, states gave formal approval to the Streamlined Sales and Use Tax (SSUT) Agreement, the document that spells out the specific simplification measures. This agreement has served as the basis for legislative proposals in the various states that, if enacted, will implement the simplification actions. However, under the SSTP's governance provisions, the Agreement will not become binding nor take effect until 10 states that comprise at least 20% of the total population of states with a sales tax have approved it and have been found to be in compliance with the Agreement by the Agreement's governing board.

Currently, 45 states and the District of Columbia impose a sales and use tax. Forty-two states (including Wisconsin) and the District of Columbia are voting members in the SSTP. As of the time of this writing, 18 states had passed legislation conforming to the terms of the SSUT Agreement, including: Arkansas, Iowa, Indiana, Kansas, Kentucky, Michigan, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming. These states represent 22.3% of the total population of states with a sales tax. In addition, Minnesota, Texas, Washington, and Maryland have passed legislation close to conformance with the Agreement. These states represent an additional 13.4% of the population. The SSTP is currently developing the process by which each state's provisions will be evaluated to assess compliance with the SSUT provisions. While the certificates of compliance have not yet been issued, it is expected that the certification process will result in enough states being found to be in compliance with the SSUT Agreement that the minimum numbers required by the SSTP's governance provisions (in order for the Agreement to become binding on participating states) will have been met.

Under the SSUT provisions, one of the technology models a seller can select for calculating the appropriate sales and use tax involves use of a certified service provider (CSP), compensated by the states, to perform the seller's sales and use tax functions. On November 1, 2004, the SSTP issued a request for proposals for CSPs. The Project anticipates having this and other technology in place to implement the SSUT Agreement in June, 2005, and expects to have the Agreement in effect on October 1, 2005.

Wisconsin does not currently conform to the terms of the SSUT Agreement. However, in October, 2003, companion bills were introduced (Assembly Bill 547 and Senate Bill 267) that would have modified state statutes to comply with the provisions of the Agreement. The bills failed to pass during the 2003-2005 Legislative session. DOR has included a proposal to conform to the SSUT Agreement in its 2005-07 budget request.

APPENDIX

Wisconsin Sales Tax Exemptions

Exemptions from the general sales and use tax are provided for the following types of personal property or sales:

Business Enterprises

- property that becomes an ingredient or component or that is consumed or destroyed in the manufacturing process, except for fuel and electricity consumed in the manufacturing process and sold prior to January 1, 2006 (however, an income tax credit is available for sales taxes paid on such fuel and electricity used in manufacturing)
- fuel and electricity sold on or after January 1, 2006, and consumed in manufacturing tangible personal property in Wisconsin
- property that becomes an ingredient or component or is consumed or destroyed in the production of newspapers, periodicals, or shoppers guides
- mobile units for mixing and processing
- manufacturing machinery and equipment, including safety attachments
- 35% of the sales price of certain manufactured homes or the sales price minus the cost of materials that became component parts of a building being sold
- packing and shipping materials and containers
- fuels used by utilities to generate power
- aircraft, including parts and fuel, for use in interstate commerce
- motor vehicles, including parts, sold to common or contract carriers
- motor vehicles not required to be licensed and used for recycling or waste reduction activities
- motion picture film and related advertising materials for commercial purposes
- printed advertising material for out-of-state use
- property that becomes a component part of a waste treatment facility
- equipment and parts used exclusively for waste reduction or recycling
- equipment used in maple syrup production
- certain equipment used in logging
- wood residue used as fuel in a business activity
- commercial boats and barges and fuel
- building materials used to construct, develop, or renovate a home stadium for any professional athletic team participating in a multistate league
- railroad cars including parts and fuel

- raw materials incorporated into printed material for out-of-state use
- live game birds and clay pigeons sold to bird hunting preserves

Farms

- farm tractors and machines, including parts
- seeds, plants, feed, fertilizer, pesticides and related chemicals, fuel, livestock, wire and twine, animal bedding, milkhouse supplies, plastic sheeting, and certain containers used in farming
- medicine used on farm livestock, not including workstock
- animal tags and standard milk samples sold by the Department of Agriculture, Trade and Consumer Protection
- livestock semen used for artificial insemination
- electricity sold for farm use
- fuel sold for use in farming

Exempt Entities

- sales prohibited from taxation under federal law or the state constitution
- sales to governmental, educational, and charitable organizations
- admission fees to state parks and forests and state park camping fees
- sales by elementary and secondary schools
- admission to Circus World Museum and to county fairs
- sales of tickets, admissions, and property by American Legion baseball teams
- tickets or admissions to elementary and secondary school activities
- volunteer fire department equipment
- copies of public records
- sales to U.S. government agencies and U.S. government-owned corporations
- charges for countywide "911" emergency phone systems

Medical Supplies

- prescription medicines, including drugs furnished free of charge to health care providers
- equipment used to administer oxygen for medical purposes
- prosthetic devices, including prescription eye glasses, antiembolism elastic hose, and adaptive equipment for the operation of motor vehicles
- crutches, wheelchairs, and scooters for the disabled
- equipment for insulin injection and the treatment of diabetes and supplies used to determine the blood sugar level

Family Purchases

- motor vehicle sales to family members
- 35% of purchase price of new, and total purchase price of used, primary housing mobile homes and the rental of a mobile home for use as a residence
- food for home consumption, not including the following: soda water beverages and related products; beer; liquor; over-the-counter medicines; and vitamins
- food sold through vending machines that would be exempt if sold in a grocery store
- pre-packaged meals if 50% or more of the sales price of the package is attributable to exempt goods
- caskets and burial vaults
- electricity and natural gas sold for residential purposes from November through April
- coal, fuel oil, propane, steam, peat fuel cubes produced from solid waste, and wood sold for residential fuel (applies throughout the year)
- cloth diapers and charges by diaper services

Other Sales Tax Exemptions

- United States flag and the flag of the State of Wisconsin
- newspapers, shoppers guides, and periodicals sold by subscription or transferred without charge to the recipient
- water delivered through mains
- sales of property and services under a contract entered into prior to such property being made taxable (however, purchaser is subject to use tax)
- snowmobile trail grooming equipment sold to snowmobile clubs
- separately stated interest, finance, and insurance charges
- motor vehicle, aviation, and alternate fuel
- aircraft and motor vehicles for use outside the state
- occasional sales, except for bingo receipts and most motor vehicle sales
- sale of meals at community-based residential facilities, hospitals, sanatoriums, and nursing homes
- sale of meals provided to students or National Football League teams under contract with higher education institutions
- meals and disposable products transferred with meals provided by restaurants to employees during work hours
- sales to common or contract carriers, if the property is delivered out-of-state
- sales to a purchaser who takes delivery outside the U.S.
- public benefits fees charged by electric utilities and electric cooperatives

- a license or right to purchase admission to professional football games at the Green Bay Packer stadium, which entitles the purchaser to purchase admission to at least three professional football games in a single football season.

Use Tax Exemptions

- receipts from the sale of property, if such receipts are included in receipts subject to the sales tax
- automobile dealer loan of a motor vehicle to a school driver education program
- aircraft based in Wisconsin that was purchased out-of-state by a nonresident
- household goods, boats, and various vehicles brought into the state with owners who move to Wisconsin
- donations of inventory to government units and nonprofit organizations
- state and federal motor fuel taxes that are refunded to exempt purchasers of fuel

Exemptions Arrived at Through the Definition of Taxable Sales

- sales for resale (that is, wholesale sales are generally exempt, but retail sales made by a wholesaler are taxable)
- the trade-in value allowed as part of a purchase
- certain transfers of property to or from a corporation, limited liability company, or partnership; cash discounts; cash or credit refunds on returned property
- separately-stated transportation charges, when transportation occurs after completion of the sale
- certain transfers of transmission facilities to an electric transmission company
- surcharges imposed on wireless telephone customers related to the cost of tracking emergency calls made on wireless telephones