Informational Paper 6

Sales and Use Tax

Wisconsin Legislative Fiscal Bureau

January, 2009

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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 <u>Sales</u>

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 contended 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 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 2004 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.

In 2008, 16 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. The most common sales tax holidays apply to clothing and footwear, school supplies, computers, and energy efficient products. Georgia and Virginia held sales tax holidays for water efficient products, while Louisiana and Virginia used a sales tax holiday for hurricane preparedness items. Louisiana and Massachusetts offered a general holiday (with specified exceptions) for single items of tangible personal property costing $2,500 or less, while Vermont held a similar sales tax holiday for items $2,000 or less. South Carolina held a sales tax holiday for handguns, shotguns, and rifles.

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. For tax year 2005, Colorado issued a rebate of $15 ($30 for married-joint filers). 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 in this paper under the section describing the historical development of Wisconsin's sales tax.

Table 1: Sales Tax Holidays Held in 2008

State	Items Included	Maximum Cost	2008 Dates
Alabama	Clothing*, computers, school supplies, books	Clothing, $100 Computers, $750 School supplies, $50 Books, $30	Aug. 1-3
Connecticut	Clothing	$300	Aug. 17-23
District of Columbia	Clothing, accessories, and school supplies Clothing and accessories	$100 $100	Aug. 2-10 Nov. 21-Dec. 7
Georgia	Clothing, school supplies, and computers	Clothing, $100 School supplies, $20 Computers, $1,500	July 31-Aug. 3
	Energy and water efficient products	$1,500	Oct. 2-5
Iowa	Clothing	$100	Aug. 1-2
Louisiana	Hurricane preparedness items	$1,500	May 24-25
	All retail items	$2,500	Aug. 1-3
Massachusetts	All retail items	$2,500	Aug. 16-17
Missouri	Clothing, school supplies, computers, and computer software	Clothing, $100 School supplies, $50 Computers, $3,500 Computer software, $350	Aug. 1-3
New Mexico	Clothing, school supplies, computers, and computer accessories	Clothing, $100 School supplies, $15 Computers, $1,000 Computer accessories, $500	Aug. 1-3
North Carolina	Clothing, school supplies, computers, specific computer supplies, sports and recreational equipment	Clothing, $100 Sports equipment, $50 Computers, $3,500 Computer supplies, $250 School instruction material, $300	Aug. 1-3
Oklahoma	Clothing	$100	Aug. 1-3
South Carolina	Clothing, school supplies, computers, certain bedroom and bathroom items Hand guns, shotguns, and rifles	No limit No limit	Aug. 1-3 Nov. 28-29
Tennessee	Clothing, school supplies, computers	Clothing, school supplies, $100 Computers, $1,500	Apr. 25-27 & Aug. 1-3
Texas	Clothing, school backpacks Energy Star appliances	$100 Air conditioners, $6,000 Other Appliances, $2,000	Aug. 15-17 May 25-27
Virginia	Clothing, school supplies	Clothing, $100 School supplies, $20	Aug. 4-6
	Hurricane preparedness items	Portable generators, $1,000 Hurricane preparedness items, $60	May 25-31
	Energy Star and WaterSense products	$2,500	Oct. 10-13
Vermont	All retail items Energy Star appliances	$2,000 $2,000	July 12-13 July 12-18
West Virginia	Energy Star products	$2,500	Sep. 1-7

*As used in this table, the term "clothing" includes footwear.
Sources: Federation of Tax Administrators; Commerce Clearing House, 2008 U.S. Master Sales and Use Tax Guide; 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 , rather than the sales tax, is also imposed on private-party transactions of certain registered items, such as boats and automobiles.

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 December, 2008, there were 9,963 active out-of-state use tax registrants (retailers who collect use tax on their sales to Wisconsin residents) and 4,305 active consumer use tax registrants (businesses and other purchasers that regularly pay use tax). In addition, 613 nonregistered consumers filed a use tax return in calendar year 2008.

The Department of Transportation and the Department of Natural Resources received 582,231 and 122,821 use tax returns for registered items, respectively, in calendar year 2008.

Use tax may also be reported and paid by individual income tax filers through the Wisconsin individual income tax form. For tax year 2007, approximately 29,200 individual income tax filers in Wisconsin paid a total of $1.7 million in use tax through the individual income tax form. The average use tax payment for such taxpayers was $59.

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 tangible 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 not exceeding one continuous month

- admissions to amusement, athletic, and entertainment events and access to amusement, entertainment, or recreational devices or facilities (admissions to county fairs as well as admissions and memberships to non-profit gun clubs that provide safety classes to at least 25 individuals in a year are exempt.)

- telecommunications services, other than mobile 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

- telecommunication messaging services

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

- photographic services

- parking and docking of motor vehicles, aircraft, and boats and also storage of 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 materials, catalogs, and envelopes that are exempt from the sales tax

- cable television or video services, including installation

- landscaping and lawn maintenance services

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 other tangible personal property used in farming. 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 certain 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.

Taxation of Computer Software

Under current law, computer programs, except for custom programs, are considered "tangible personal property" and are subject to the state sales tax. Sales of custom computer programs are exempt from the sales tax. Current administrative rules define "custom programs" as utility and application software designed to accommodate the specific processing needs of the customer. The Department of Revenue determines whether a computer program is considered a custom program per administrative rules based on all the facts and circumstances, such as (but not limited to) the extent to which the use of the software requires substantial training of the customer's personnel and substantial written documentation, whether the program is loaded into the customer's computer by the vendor, and the extent to which the installed program must be tested against the program's specifications.

On July 11, 2008, the Wisconsin Supreme Court expanded the Department of Revenue's definition of custom computer software to include customizable prewritten software in the case Wisconsin Department of Revenue vs. Menasha Corporation. The Department collected the sales and use tax on customizable prewritten modular software sold in the state. This expanded definition of the exemption for custom computer software is estimated to reduce state sales tax collections by $28 million annually, beginning in 2008-09. The Department estimates refunds resulting from the Menasha Corporation decision will cost the state an additional $21 million in 2008-09, $212 million in 2009-10, and $37 million in 2010-11.

DOR has included a proposal to reverse the effects of the *Menasha* decision in its 2009-11 budget request. The requested changes would increase annual state revenue by $28 million; however, the state would still lose revenue from refunds over the next few years.

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%.

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. As of November 10, 2008, there were 35 vendors on the list published by DOR.

Sales and Use Tax Collections

Wisconsin's sales and use tax has been a significant source of state revenue since its enactment. As

Table 2: Wisconsin Sales and Use Tax Collections 1997-98 through 2007-08 ($ In Millions)

	Sales & Use Tax Collections		Sales & Use Tax as % of
	Amount	Percent Change	General Fund Collections
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
2004-05	4,038.7	3.6	35.4
2005-06	4,127.6	2.2	34.3
2006-07	4,158.6	0.8	33.0
2007-08	4,268.0	2.6	32.7

shown in Table 2, since 1997-98, annual growth in sales tax collections has ranged from a low of 0.8% in 2006-07 to a high of 7.8% in 1998-99. The average annual growth rate has been 3.4% 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.

Table 3 provides a breakdown of sales and use tax collections by type of business for calendar year 2006. 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

Table 3: State Sales and Use Tax Reported in Calendar Year 2006 by Type of Industry ($ In Millions)

	Establishments		Sales Tax	
Type of Industry	Number	Percent	Amount	Percent
Agricultural, Forestry, Hunting, and Fishing	1,561	1.0%	$5.3	0.1%
Construction	7,286	4.8	114.5	2.9
Utilities and Other Fuel Dealers	275	0.2	206.2	5.3
Information and Communications	1,831	1.2	300.4	7.7
Manufacturing	7,082	4.7	150.2	3.8
Retail Trade	75,419	50.0	2,384.7	60.7
Services	51,311	34.0	523.0	13.3
Wholesale Trade	4,979	3.3	230.2	5.9
Transportation	1,056	0.7	11.7	0.3
Total*	150,800	100.0%	$3,926.1	100.0%

*An additional $133.8 million was remitted in 2006 under NAICS codes for miscellaneous, unknown, and unclassified. It is assumed that a large share of such collections is from occasional sales, rather than from industry "establishments." As a result, these collections have not been categorized by industry type and have been omitted from the table.

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.

The "Other Store Retailers" category in Table 4 is comprised of businesses that do not clearly fall into another category. "Other Store Retailers" in calendar year 2006 generated 14.7% of tax collections and accounted for 38.1% of all retail establishments. The automobile and other motor vehicle sector, on the other hand, generated 18.2% of collections, yet made up only 5.6% of the number of establishments. These distinctions reflect differences in the nature and cost of products sold, the

Table 4: State Sales and Use Tax in Calendar Year 2006 from Retail Business ($ In Millions)

	Establishments		Sales Tax	
Type of Store	Number	% of Total	Amount	% of Total
Food Services & Drinking Places	14,814	19.6%	$330.5	13.9%
Performing Arts, Spectator Sports, and Related Industries	1,228	1.6	19.1	0.8
Amusement, Gambling, and Recreation Industries	1,441	1.9	23.7	1.0
Automobiles and Other Motor Vehicles	4,199	5.6	432.9	18.2
Gasoline Stations (Including Convenience Stores with Gas)	1,761	2.3	59.5	2.5
Clothing and Accessories Stores	2,594	3.4	124.4	5.2
Electronic and Appliance Stores	1,168	1.5	74.0	3.1
Food and Beverage Stores	3,262	4.3	150.8	6.3
Furniture and Home Furnishings Stores	5,163	6.8	319.3	13.4
Health and Personal Care Stores	710	0.9	35.9	1.5
Sporting Goods, Hobby, Book, and Music Stores	3,290	4.4	61.1	2.6
General Merchandise Stores	1,428	1.9	363.6	15.2
Other Store Retailers	28,716	38.1	351.5	14.7
Nonstore Retailers	5,645	7.5	38.6	1.6
Total	75,419	100.0%	$2,384.7	100.0%

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.

Most collections are from businesses with higher taxable receipts. Such establishments include large, high-volume businesses (for example, department stores) and smaller businesses selling high-cost items such as automobiles. In 2005, the 58.8% of sales and use tax registrants that had taxable receipts of $25,000 or less paid only 1.9% of the total tax. At the opposite end of the spectrum, the 1.1% of businesses with over $5 million in taxable receipts accounted for 63.5% of total tax collections. Overall, only 8.9% of businesses had taxable receipts in 2005 of over $500,000, but they collected 87.1% 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. Currently, 61 of the state's 72 counties have 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, 2008, sales tax rates ranged from 2.9% (Colorado) to 7% (Indiana, Mississippi, New Jersey, Rhode Island, and Tennessee), exclusive of optional local sales taxes. Wisconsin has the lowest sales and use tax rate at 5% as compared to nearby state rates of Indiana's 7%, Minnesota's 6.5%, Illinois' 6.25%, and Michigan's and Iowa's 6%. Additionally, Minnesota's rate is scheduled to increase to 6.875% effective July 1, 2009. Sales tax rates and the treatment of commonly exempt items by the states appear in Table 5.

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. Between early 2001 and 2007, almost one-third of the states had enacted increases in their sales tax rates, sometimes on a temporary basis. Since this paper was last updated in January, 2007, only Utah's tax rate had been reduced, from 4.75% to 4.65%; however, Utah has since scheduled a rate increase from 4.65% to 4.70% effective January 1, 2009. Six states, Indiana, Iowa, Maryland, Minnesota, North Carolina, and South Carolina, have increased their rates. Indiana, Iowa, Maryland, and South Carolina enacted 1% increases in their tax rates, while North Carolina enacted a 0.25% increase. Minnesota's increase of 3/8 of a percent, from 6.5% to 6.875%, will take effect July 1, 2009. The scheduled changes in sales tax rates have been noted in the footnote to Table 5.

Table 5: State Sales Tax Rates and Treatment of Commonly Exempt Items, as of November 2008

		Sales Tax Exemptions					
State	Tax Rate	Grocery Food	Non-Prescription Drugs	Clothing	Residential Energy	News-papers	Gasoline
Alabama	4.000%*•	T	T	T	E	T	E
Alaska	NA*	NA	NA	NA	NA	NA	NA
Arizona	5.600*•	E	T	T	T	T	E
Arkansas	6.000*•	T	T	T	T	E	E
California	6.250*	E	T	T	E	E	T
Colorado	2.900*	E	T	T	E	E	E
Connecticut	6.000•	E	T	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	T	T	E	T	T
Georgia	4.000*	E	T	T	T	T	T
Hawaii	4.000*•	T	T	T	E	T	T
Idaho	6.000*	T	T	T	E	T	E
Illinois	6.250*•	T	T#	T	T	E	T
Indiana	7.000	E	T	T	T	E	T
Iowa	6.000*	E	T	T	E	E	E
Kansas	5.300*	T	T	T	E	T	E
Kentucky	6.000	E	T	T	E	T	E
Louisiana	4.000*•	E	T	T	E	E	E
Maine	5.000•	E	T	T	E	E	E
Maryland	6.000•	E	E	T	E	T	E
Massachusetts	5.000	E	T	E	E	E	E
Michigan	6.000•	E	T	T	T	E	T
Minnesota	6.500*•	E	E	E	E	E	E
Mississippi	7.000	T	T	T	T	E	E
Missouri	4.225*•	T	T	T	E	T	E
Montana	NA	NA	NA	NA	NA	NA	NA
Nebraska	5.500*	E	T	T	T	E	E
Nevada	6.500*	E	T	T	E	E	E
New Hampshire	NA	NA	NA	NA	NA	NA	NA
New Jersey	7.000*	E	E	E	T	E	E
New Mexico	5.000*	E	T	T	T	E	E
New York	4.000*•	E	E	E	E	E	T
North Carolina	4.500*•	E	T	T	T	E	E
North Dakota	5.000*•	E	T	T	E	E	E
Ohio	5.500*	E	T	T	E	E	E
Oklahoma	4.500*	T	T	T	E	T	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	6.000*•	E	T	T	E	E	E
South Dakota	4.000*•	T	T	T	T	T	E
Tennessee	7.000*•	T	T	T	E	E	E
Texas	6.250*	E	E	T	E	E	E
Utah	4.650*•	T	T	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	T	T	E	E	E
West Virginia	6.000•	T	T	T	E	E	T
WISCONSIN	5.000*	E	T	T	E	E	E
Wyoming	4.000*	E	T	T	T	E	E

*Additional local sales taxes may apply.
•Variable tax rates for select items.
Illinois is the only state to also tax prescription drugs.
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: Minnesota -- 6.875%, July 1, 2009; and Utah -- 4.70%, January 1, 2009

Sources: Commerce Clearing House, State Tax Guide, Table of Rates, November, 2008, and 2008 U.S. Master Sales and Use Tax Guide; Wisconsin Department of Transportation.

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 5, exemptions for property sold for personal consumption also vary widely. The most common exemptions are for goods which are considered essential: food for home consumption, exempted in 32 states; newspapers and/or periodicals (33 states), residential energy (fuel, electricity, gas), exempted in whole or in part by 32 states, and certain goods subject to separate excise taxation (primarily gasoline, exempt in 37 states). Some other exempt goods are non-prescription drugs, exempted in ten states (every state that has a sales tax exemption for prescription drugs except Illinois, which taxes drugs at a reduced rate), and clothing, considered a necessity to a certain extent, exempted in whole or in part by eight states (although, as noted previously, a number of states offer sales tax holidays for some clothing items).

A number of states provide a partial exemption for items shown in Table 5. 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 6 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.

Table 6: State Sales Tax Treatment of Select Services, as of November 2008

State	Cleaning Services	Medical Services	Personal/ Professional	Repair	Transportation	General Treatment
Alabama	E	E	E	E	E*	NT
Alaska	NA	NA	NA	NA	NA	NA
Arizona	E	E	E	E*	T	MT
Arkansas	T	E	E*	T	E	MT
California	E	E	E	E	E	NT
Colorado	E	E	E	E	E	NT
Connecticut	T	E	T	T	E	MT
Delaware	NA	NA	NA	NA	NA	NA
District of Columbia	T	E	E*	T	E	MT
Florida	T	E	E*	E	E	MT
Georgia	E	E	E	E	T	NT
Hawaii	T	T	T	T	T	GT
Idaho	E	E	E	E	T	NT
Illinois	E	E	E	E	E	NT
Indiana	E	E	E	E	E	NT
Iowa	T	E	T	T	E*	MT
Kansas	E	E	E	T	E	MT
Kentucky	E	E	E	E	E	NT
Louisiana	E*	E	E	T	E	NT
Maine	E	E	E	E	E	NT
Maryland	T	E	E*	E	E	NT
Massachusetts	E	E	E	E	E	NT
Michigan	E	E	E	E	E	NT
Minnesota	T	E	E*	E	E	MT
Mississippi	E	E	E*	T	E	GT
Missouri	E	E	E	E	T	NT
Montana	NA	NA	NA	NA	NA	NA
Nebraska	T	E	E*	T	E	NT
Nevada	E	E	E	E	E	NT
New Hampshire	NA	NA	NA	NA	NA	NA
New Jersey	T	E	E*	T	E*	MT
New Mexico	T	T	T	T	T	GT
New York	T	E	E*	T	E	MT
North Carolina	E	E	E	E	E	NT
North Dakota	E	E	E	E	E	NT
Ohio	T	E	E*	T	T	MT
Oklahoma	E	E	E	E	T	MT
Oregon	NA	NA	NA	NA	NA	NA
Pennsylvania	T	E	E*	T	E	MT
Rhode Island	E	E	E	E	E	NT
South Carolina	E	E	E	E	E	NT
South Dakota	T	E	T	T	T	GT
Tennessee	E*	E	E	T	E	NT
Texas	T	E	T	T	E	MT
Utah	E*	E	E	T	T	MT
Vermont	E	E	E	E	E	NT
Virginia	E	E	E	E	E	NT
Washington	E	E	E*	T	E*	MT
West Virginia	T	E	E*	T	T	GT
WISCONSIN	E*	E	E*	T	E	MT
Wyoming	E	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, 2008 U.S. Master Sales and Use Tax Guide

As shown in Table 6, services industries subject to the sales and use tax vary widely across the states. Some of the more common taxed services are: repair services, taxed in 22 states, and cleaning services, taxed in 17 states. Some other taxable services are transportation, taxed in 12 states, personal/professional, taxed in six states, and medical, taxed in only two states. Several states tax a limited number of services within these service industries. An additional 14 states tax some personal/professional services, four states tax some cleaning services, four states tax some transportation services, and only one other state taxes some repair 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 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 furnished by corporations subject to the Public Service Commission.

Electronic Commerce and Remote Sales

Federal Internet Tax Prohibitions

On October 31, 2007, President Bush signed into law the Internet Tax Nondiscrimination Amendment Act of 2007. This act extended, through November 1, 2014, a moratorium on taxation of charges for internet access services that had been enacted under three prior federal laws, the 2004 Internet Nondiscrimination Act, the 2001 Internet Tax Nondiscrimination Act, and the 1998 Internet Tax Freedom Act.

Wisconsin is one of nine states that received grandfather protection for state taxes on internet access under the prior federal laws, exempting states which actually imposed and enforced a tax on internet access services prior to October 1, 1998, from the moratorium. 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 had 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.

In addition to the moratorium on state taxation of internet access charges, all four 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 with 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 national estimates regarding mail order and other remote sales, the Wisconsin Department of Revenue has estimated a state revenue loss of $156 million from uncollected use tax in calendar year 2008.

Various other 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, were updated in 2003 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 $200 million to $300 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 is to 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 and a single state and local tax base within a state

- a single state and local tax rate per taxing jurisdiction, with the exception that a state (not a locality) may have a second rate for food and drugs

- 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)

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

- uniform sales tax returns, uniform rounding rules, and uniform rules for bad debt reduction

- limitations on sales tax holidays

- 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, maintain a record of the transaction, and enable direct pay authority for retailers.

These and other provisions are formalized in the Project's Streamlined Sales and Use Tax Agreement (SSUTA). The SSUTA was developed by participating states (those having approval by their own state to participate in the SSTP), 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 effective 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 December 1, 2008, there are 22 member states. To date, about 1,100 sellers have voluntarily registered under the SSUTA to collect and remit sales and use tax in member states.

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 in order to conform to the terms of the Agreement. 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, if Wisconsin were to modify its laws to conform to 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).

Conforming to the SSUTA would also mean conforming with its administrative provisions, including, for example, certain database requirements, monetary compensation for certain 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. Legislation to bring the state into conformance with the SSUTA has been introduced in each of the last three legislative sessions. DOR has included a proposal to conform to the SSUTA in its 2009-11 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 process of manufacturing tangible personal property that is subsequently sold
- fuel and electricity 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 and repair parts
- 35% of the sales price of certain modular homes or the sales price minus the cost of materials that became component parts of a building being sold
- 35% of the sales price for a new manufactured home
- packing and shipping materials and containers used to transfer merchandise to customers or to pack or ship meat products
- fuels used by utilities to generate power and the portion of fuel converted to steam for the purpose of resale by persons other than utilities
- aircraft, including parts and fuel, for use in interstate or foreign 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 or tape, motion pictures, radio, or television programs for listening, viewing, or broadcast, and related advertising materials for commercial purposes
- printed advertising material for out-of-state use
- catalogs, and the envelopes in which the catalogs are mailed, designed to advertise and promote the sale of merchandise of individual business firms (effective April 1, 2009)
- 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

- a product, other than an uninterruptible power source for computers, and any electricity or energy produced from such a product whose power source is wind energy, direct radiant energy received from the sun, or gas generated from anaerobic digestion of animal manure other than agricultural waste, if the product produces at least 200 watts of alternating current or 600 British thermal units per day, (effective July 1, 2009)
- 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 and clay pigeons sold to certain trapshooting facilities
- clay pigeons sold to nonprofit gun clubs that provide gun safety classes to at least 25 individuals in a calendar year or whose admission qualifies as an occasional sale, or to a gun club whose gross receipts for admissions are taxable
- certain sales of tangible personal property or taxable services to business affiliates
- certain Internet equipment used in the broadband market if the purchaser makes investments that will increase broadband availability

Farms

- farm tractors and machines, including parts, lubricants, nonpowered equipment, and other tangible personal property used or consumed in the business of farming
- 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 certain governmental, educational, and charitable organizations
- sales to certain nonprofit cemeteries (effective July 1, 2009)
- admission fees to state parks and forests and state park camping fees
- sales of tangible personal property 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
- charges imposed by an authority for copies of public records
- sales to U.S. government agencies and U.S. government-owned corporations
- sales by a home exchange service that is operated by the Department of Veterans Affairs
- charges for countywide "911" emergency phone systems
- admissions or membership fees to nonprofit gun clubs that provide safety classes to at least 25 individuals per year

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 ill or disabled
- artificial teeth sold by a dentist
- insulin, equipment for insulin injection, and the treatment of diabetes and supplies used to determine the blood sugar level

Family Purchases

- motor vehicle sales to certain family members
- purchase of used mobile homes and used manufactured homes 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, biomass, peat fuel cubes produced from solid waste, and wood sold for residential fuel (applies throughout the year) for use in a person's permanent, principal residence
- 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 subject to Wisconsin excise tax
- 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, retirement homes, daycare centers, 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.
- low-income assistance 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.
- sales of railroad crossties to common or contract carriers shipped to a point outside the state

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 for which sales and use tax has been paid in the state of purchase
- household goods, boats, and various vehicles brought into the state with owners who move to Wisconsin
- donations of inventory to certain 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 the purchase of a motor vehicle or other personal property
- 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
- gross receipts from the rental of a mobile or manufactured home for longer than one month
- custom computer software