



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-5461/1
JK:wlj&amn

2017 ASSEMBLY BILL 944

February 9, 2018 - Introduced by Representatives PETERSEN, MACCO and STAFSHOLT. Referred to Committee on Ways and Means.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to amend* 77.52 (13) and 77.53 (10); and *to create* 20.835 (2) (cb), 77.54
2 (67) and 77.68 of the statutes; **relating to:** a sales and use tax rebate for certain
3 dependent children, a sales tax holiday in August 2018, and making an
4 appropriation.

Analysis by the Legislative Reference Bureau

This bill creates a onetime sales and use tax rebate to be paid by September 1, 2018, as an approximation of nonbusiness Wisconsin sales tax paid in 2017 for raising children. An individual may claim a rebate equal to \$100 for each qualifying child of the individual. For purposes of claiming the rebate, a qualified child is an individual who is under 18 years of age for the entire year of 2017, a United States citizen, a resident of this state on December 31, 2017, and the claimant's dependent, as determined under the Internal Revenue Code. An individual who is a full-year resident, nonresident, or part-year resident is eligible to claim the rebate if he or she completes an online application for the rebate on a form prepared by the Department of Revenue. A nonresident or part-year resident may claim the rebate if the claimant verifies his or her nonbusiness Wisconsin sales taxes paid in 2017, and the verified amount is at least \$100 for each qualified child.

The bill also creates a sales tax holiday in 2018. For the two-day period beginning on the first Saturday in August 2018 and ending on the following Sunday, the sale of any product sold at retail for which the sales price is no more than \$100 is exempt from the sales and use tax. The exemption does not apply to the sale of taxable services, prepared food, candy, soft drinks, dietary supplements, alcoholic

ASSEMBLY BILL 944

beverages, cigarettes, tobacco products, pornographic material, motor vehicles, motor vehicle parts, tangible or intangible property used to access telecommunications services, or tangible or intangible property provided by a utility.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.835 (2) (cb) of the statutes is created to read:

2 20.835 (2) (cb) *Qualified child sales and use tax rebate for 2018.* A sum
3 sufficient to pay the claims approved under s. 77.68.

4 **SECTION 2.** 77.52 (13) of the statutes, as affected by 2017 Wisconsin Act 59, is
5 amended to read:

6 77.52 (13) For the purpose of the proper administration of this section and to
7 prevent evasion of the sales tax it shall be presumed that all receipts are subject to
8 the tax until the contrary is established. The burden of proving that a sale of tangible
9 personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services
10 is not a taxable sale at retail is upon the person who makes the sale unless that
11 person takes from the purchaser an electronic or a paper certificate, in a manner
12 prescribed by the department, to the effect that the property, item, good, or service
13 is purchased for resale or is otherwise exempt, except that no certificate is required
14 for the sale of tangible personal property, or items, property, or goods under sub. (1)
15 (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10),
16 (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46),
17 (51), (52), and (66), and (67).

18 **SECTION 3.** 77.53 (10) of the statutes is amended to read:

ASSEMBLY BILL 944

1 77.53 (10) For the purpose of the proper administration of this section and to
2 prevent evasion of the use tax and the duty to collect the use tax, it is presumed that
3 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
4 (d), or taxable services sold by any person for delivery in this state is sold for storage,
5 use, or other consumption in this state until the contrary is established. The burden
6 of proving the contrary is upon the person who makes the sale unless that person
7 takes from the purchaser an electronic or paper certificate, in a manner prescribed
8 by department, to the effect that the property, or items, property, or goods under s.
9 77.52 (1) (b), (c), or (d), or taxable service is purchased for resale, or otherwise exempt
10 from the tax, except that no certificate is required for the sale of tangible personal
11 property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services that
12 are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b),
13 (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), ~~and (52), and (67).~~

14 **SECTION 4.** 77.54 (67) of the statutes is created to read:

15 77.54 (67) (a) In this subsection:

16 1. “Eligible property” means an item that qualifies for exemption under this
17 subsection.

18 2. “Layaway sale” means a transaction in which property is set aside for future
19 delivery to a customer who makes a deposit, agrees to pay the balance of the sales
20 price over time, and, at the end of the payment period, receives the property. An order
21 is accepted for layaway by the seller when the seller removes the property from
22 inventory or clearly identifies the property as sold to the purchaser.

23 (b) For the 2-day period beginning on the first Saturday in August 2018 and
24 ending on the following Sunday, the sales price from the sale of and the storage, use,
25 or other consumption of any item of tangible personal property or an item described

ASSEMBLY BILL 944**SECTION 4**

1 under s. 77.52 (1) (b) or (d), but not lease, licenses, or rentals of tangible personal
2 property, sold at retail to a consumer for the consumer's personal use for which the
3 sales price is no more than \$100. This paragraph does not apply to the sale, storage,
4 use, or other consumption of the following:

5 1. Services described under s. 77.52 (2).

6 2. Prepared food, candy, soft drinks, and dietary supplements.

7 3. Alcoholic beverages, cigarettes, and tobacco products.

8 4. Motor vehicles, motor vehicle parts, attachments, accessories, and supplies.

9 5. Tangible or intangible property used to access telecommunications services
10 described under s. 77.52 (2) (a) 5. or 5m.

11 6. Tangible or intangible property provided by a utility.

12 7. Tangible personal property transferred with a service described under s.
13 77.52 (2) (a) 7., 10., 11., or 20.

14 8. Pornographic material.

15 (c) The exemption under this subsection shall be administered as follows:

16 1. A sale of eligible property under a layaway sale qualifies for exemption if
17 either of the following applies:

18 a. Final payment on a layaway order is made by, and the property is given to,
19 the purchaser during the exemption period.

20 b. The purchaser selects the property and the retailer accepts the order for the
21 item during the exemption period, for immediate delivery upon full payment, even
22 if delivery is made after the exemption period.

23 2. The bundled transaction provisions under subs. (51) and (52) and ss. 77.51
24 (1f) and (3pf) and 77.52 (20), (21), (22), and (23) apply in the same manner during the
25 exemption period under this subsection as they apply in other periods.

ASSEMBLY BILL 944

1 3. A discount by the seller reduces the sales price of the property, and the
2 discounted sales price determines whether the sales price is within the price
3 threshold under par. (b). A coupon that reduces the sales price is treated as a
4 discount if the seller is not reimbursed for the coupon amount by a 3rd party. If a
5 discount applies to the total amount paid by a purchaser rather than to the sales
6 price of a particular item and the purchaser has purchased both eligible property and
7 taxable property, the seller shall allocate the discount based on the total sales prices
8 of the taxable property compared to the total sales prices of all property sold in that
9 same transaction.

10 4. Products that are normally sold as a single unit shall be sold in that manner
11 and may not be divided into multiple units and sold as individual items in order to
12 obtain the exemption under this subsection.

13 5. Eligible property that is purchased during the exemption period with the use
14 of a rain check qualifies for the exemption regardless of when the rain check was
15 issued. Items purchased after the exemption period with the use of a rain check are
16 not eligible property under this subsection even if the rain check was issued during
17 the exemption period.

18 6. The procedure for an exchange with regard to the exemption under this
19 subsection is as follows:

20 a. If a purchaser purchases an item of eligible property during the exemption
21 period, but later exchanges the item for a similar item of eligible property, even if
22 different in size, color, or another feature, no additional tax is due even if the
23 exchange is made after the exemption period.

24 b. If a purchaser purchases an item of eligible property during the exemption
25 period, but after the exemption period has ended, the purchaser returns the item and

ASSEMBLY BILL 944**SECTION 4**

1 receives credit on the purchase of a different item, the appropriate sales tax is due
2 on the sale of the different item.

3 c. If a purchaser purchases an item of eligible property before the exemption
4 period, but during the exemption period the purchaser returns the item and receives
5 credit on the purchase of a different item of eligible property, no sales tax is due on
6 the sale of the new item if the new item is purchased during the exemption period.

7 7. Delivery charges, including shipping, handling, and service charges, are part
8 of the sales price of eligible property. For the purpose of determining the price
9 threshold under par. (b), if all the property in a shipment qualifies as eligible
10 property and the sales price for each item in the shipment is within the price
11 threshold under par. (b), the shipment is considered a sale of eligible property and
12 the seller does not have to allocate the delivery, handling, or service charge to
13 determine if the price threshold under par. (b) is exceeded. If the shipment includes
14 eligible property and taxable property, including an item of eligible property with a
15 sales price in excess of the price threshold under par. (b), the seller shall allocate the
16 delivery, handling, and service charge by using one of the following methods and
17 shall apply the tax to the percentage of the delivery, handling, and service charge
18 allocated to the taxable property:

19 a. A percentage based on the total sales price of the taxable property compared
20 to the total sales price of all property in the shipment.

21 b. A percentage based on the total weight of the taxable property compared to
22 the total weight of all property in the shipment.

23 8. Eligible property qualifies for exemption under this subsection if either of
24 the following applies:

ASSEMBLY BILL 944

1 a. The item is both delivered to and paid for by the customer during the
2 exemption period.

3 b. The purchaser orders and pays for the item and the seller accepts the order
4 during the exemption period for immediate shipment, even if delivery is made after
5 the exemption period. For purposes of this subd. 8. b., the seller accepts an order
6 when the seller has taken action to fill the order for immediate shipment. Actions
7 to fill an order include placement of a date stamp on a mail order or assignment of
8 an order number to a telephone order. For purposes of this subd. 8. b., an order is
9 for immediate shipment when the customer does not request delayed shipment and
10 regardless of whether the shipment is delayed because of a backlog of orders or
11 because stock is currently unavailable, or on back order, by the seller.

12 9. For a 60-day period immediately after the exemption period, when a
13 purchaser returns an item that would qualify for the exemption, no credit for or
14 refund of sales tax shall be given unless the purchaser provides a receipt or invoice
15 that shows tax was paid or the seller has sufficient documentation to show that tax
16 was paid on the specific item.

17 10. The time zone of the seller's location determines the authorized exemption
18 period when the retailer and purchaser are located in different time zones.

19 11. A retailer who collects tax in error on an eligible item is required to return
20 the tax, and any refund interest paid by the department, to the purchaser within 60
21 days, including when the error is discovered upon audit by the department. The
22 department shall not refund any tax paid by the seller if the seller cannot identify
23 or locate the purchasers to return such tax and interest.

24 (d) This subsection does not apply in 2019 or in any year thereafter.

25 **SECTION 5.** 77.68 of the statutes is created to read:

ASSEMBLY BILL 944**SECTION 5****77.68 Qualified child sales and use tax rebate for 2018. (1) DEFINITIONS.**

In this section:

(a) "Claimant" means an individual who is eligible under sub. (3) to claim a rebate under this section.

(b) "Department" means the department of revenue.

(c) "Full-year resident" means an individual who was a resident of this state for the entire year of 2017.

(d) "Nonresident" means an individual who was not a resident of this state for any part of 2017.

(e) "Part-year resident" means an individual who was a resident of this state for some part of 2017.

(f) "Qualified child" means an individual to whom all of the following apply:

1. The individual is under 18 years of age for the entire year of 2017.

2. The individual is the claimant's child and the claimant's dependent, as defined under section 152 of the Internal Revenue Code.

3. The individual is a United States citizen.

4. The individual was a resident of this state on December 31, 2017.

(2) CLAIMS. (a) Subject to the limitations and conditions under sub. (4), a claimant may claim, as an approximation of the nonbusiness Wisconsin sales or use tax paid in 2017 for raising children, a rebate equal to \$100 for each qualified child of the claimant. An eligible claimant may claim the rebate by submitting an online application, as prescribed by the department. The department may request that the claimant verify the eligibility of the claimant or child by submitting to the department vital records information or any other information requested by the

ASSEMBLY BILL 944

1 department. For purposes of this paragraph, the department of health services shall
2 supply, without charge, vital records information to the department of revenue.

3 (b) For each approved claim described under par. (a), the department shall
4 certify the allowable amount of the claim to the department of administration for
5 payment to the claimant by check, share draft, or other draft drawn from the
6 appropriation account under s. 20.835 (2) (cb) by September 1, 2018.

7 (c) The online application form shall allow an eligible claimant to designate
8 that all of the amount of his or her rebate be donated as provided under s. 71.10 (5),
9 (5f), (5g), (5i), (5j), (5k), (5km), or (5m) or to the general fund.

10 **(3) ELIGIBILITY.** (a) An individual who is a full-year resident, nonresident, or
11 part-year resident and who has a qualified child is eligible to receive a rebate under
12 sub. (2) if the individual files a claim for the rebate with the department not later
13 than June 30, 2018. The claim shall be filed by submitting an online application
14 prescribed by the department. The department shall require a nonresident, or a
15 part-year resident who was not a resident on December 31, 2017, to verify his or her
16 nonbusiness Wisconsin sales or use taxes paid in 2017, and the verified amount must
17 be at least \$100 for each qualified child of the claimant to be eligible to receive a
18 rebate under sub. (2).

19 (b) A qualified child may be claimed for the rebate under sub. (2) by only one
20 claimant.

21 **(4) LIMITATIONS AND CONDITIONS.** (a) Section 71.80 (3) and (3m), as it applies to
22 income tax refunds, applies to a sales and use tax rebate under this section.

23 (b) The department may enforce the rebate under this section and may take any
24 action, conduct any proceeding, and proceed as it is authorized with respect to taxes

ASSEMBLY BILL 944**SECTION 5**

1 under ch. 71. The income tax provisions in ch. 71 relating to assessments, refunds,
2 appeals, collection, interest, and penalties apply to the rebate under this section.

3 (c) After a rebate has been issued under sub. (2) but before the check, share
4 draft, or other draft has been cashed, the spouse of a married claimant may request
5 a separate check, share draft, or other draft for 50 percent of the joint rebate.

6 (d) If the department is unable to locate an eligible claimant who claimed a
7 rebate under sub. (2) by December 31, 2018, or, notwithstanding s. 20.912 (1), (2), and
8 (3), if an eligible claimant who is issued a check, share draft, or other draft does not
9 cash the check, share draft, or other draft by December 31, 2018, the right to the
10 rebate lapses.

11 (e) If a claimant becomes deceased after he or she filed his or her claim for a
12 rebate under sub. (2), the amount of the rebate for which the claimant is eligible shall
13 be paid to the claimant's estate.

14 **(5) SUNSET.** Except as provided in sub. (4) (b), this section does not apply after
15 December 31, 2018.

16 **SECTION 6. Nonstatutory provisions.**

17 (1) DETERMINATIONS OF ELIGIBILITY OR EXTENT OR AMOUNT OF CERTAIN BENEFITS.

18 (a) In this subsection, "state agency" has the meaning given in section 16.417
19 (1) (a) of the statutes.

20 (b) Notwithstanding any other provision of state law that relates to
21 determining, based on an individual's personal income or assets, that individual's
22 eligibility for a state-funded grant, loan, monetary assistance, or other benefit or the
23 amount or extent of that grant, loan, monetary assistance, or other benefit, a state
24 agency may not consider receipt of a onetime rebate of nonbusiness Wisconsin sales
25 or use tax under section 77.68 of the statutes to be income or an asset of the

ASSEMBLY BILL 944

1 individual. This paragraph shall be broadly construed to avoid determinations of
2 ineligibility for a state-funded grant, loan, monetary assistance, or other benefit.

3 (c) By July 1, 2018, the department of health services shall request a waiver,
4 to the extent permitted under federal law, from the secretary of the federal
5 department of health and human services under 42 USC 1396n (c), and shall amend
6 the state plan for services under 42 USC 1396, to authorize the department of health
7 services to disregard receipt by an individual of a onetime rebate of nonbusiness
8 Wisconsin sales or use tax under section 77.68 of the statutes in determining the
9 individual's eligibility for medical assistance under section 49.46 (1), 49.465, or 49.47
10 (4) of the statutes.

11 (d) To the extent permitted under federal law, a state agency shall disregard
12 receipt by an individual of a onetime rebate of nonbusiness Wisconsin sales or use
13 tax under section 77.68 of the statutes in determining the individual's eligibility for
14 a federally funded grant, loan, monetary assistance, or other benefit or in
15 determining the amount or extent of that grant, loan, monetary assistance, or other
16 benefit.

17 **SECTION 7. Fiscal changes.**

18 (1) GENERAL PROGRAM OPERATIONS. In the schedule under section 20.005 (3) of
19 the statutes for the appropriation to the department of revenue under section 20.566
20 (1) (a) of the statutes, the dollar amount for fiscal year 2017-18 is increased by
21 \$477,000 due to increased program costs associated with the onetime individual
22 nonbusiness Wisconsin sales and use tax rebate under section 77.68 of the statutes
23 and the dollar amount for fiscal year 2018-19 is increased by \$346,200 for the same
24 purpose.

25 (END)