1999 SENATE BILL 387

February 16, 2000 – Introduced by Senator ERPENBACH, cosponsored by Representatives MILLER, STASKUNAS, J. LEHMAN and BOYLE. Referred to Privacy, Electronic Commerce and Financial Institutions.

1 AN ACT *to amend* 77.51 (20) and 77.54 (32); and *to create* 77.51 (2m) of the

2 statutes; **relating to:** the sales tax on sales of lists.

Analysis by the Legislative Reference Bureau

Under current law, a sales tax is imposed on the sale of tangible personal property. Under current law, the definition of tangible personal property, for sales tax purposes, does not specify that a list of names and addresses is tangible personal property. The tax appeals commission has determined that a list of such information that is stored in machine–readable form is not tangible personal property and, therefore, the sale of that list in machine-readable form is not subject to the sales tax. See *A-K Corporation and Profile Publishing Co. v. Wisconsin Dept. of Revenue* (January 15, 1987). Courts in other states have also limited the application of a sales tax with regards to the sales of a list. For example, the Minnesota Supreme Court has held that a written or printed list of names and addresses is not tangible personal property and, therefore, not subject to a sales tax, unless the state law specifies that a written or printed list of names and addresses is tangible personal property for sales tax purposes. See *Fingerhut Products Co. et al. v. Commissioner of Revenue*, 258 N.W. 2d 606 (1977).

Under this bill, a data list that contains information about individuals, including names and addresses, and that is used to circulate material or used for commercial purposes is tangible personal property and, therefore, the sale of a data list is subject to the sales tax. Under the bill, for sales tax purposes, a data list includes a written or printed list of names and addresses; a list that is stored in a machine–readable form; a list that is stored or transferred in an intangible form; and

a list of information about individuals that is sold by the department of transportation.

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. 77.51 (2m) of the statutes is created to read:

2   77.51 **(2m)** "Data list" means a list of information about individuals that is used

3   to circulate materials or used for commercial purposes, including a written or printed

4   list of names or addresses or both, a list that is stored in a machine–readable form,

5   a list that is stored or transferred in an intangible form, and a registration list as

6   provided under s. 341.17 (6).

7   SECTION 2. 77.51 (20) of the statutes is amended to read:

8   77.51 **(20)** "Tangible personal property" means all tangible personal property

9   of every kind and description and includes electricity, natural gas, steam and water

10   and also leased property affixed to realty if the lessor has the right to remove the

11   property upon breach or termination of the lease agreement, unless the lessor of the

12   property is also the lessor of the realty to which the property is affixed. "Tangible

13   personal property" also includes a data list, coins and stamps of the United States

14   sold or traded as collectors' items above their face value and computer programs

15   except custom computer programs.

16   SECTION 3. 77.54 (32) of the statutes is amended to read:

17   77.54 **(32)** The gross receipts from charges, including charges for a search,

18   imposed by an authority, as defined in s. 19.32 (1), for copies of a public record that

19   a person may examine and use under s. 16.61 (12) or for copies of a record under s.

20   19.35 (1), except this subsection does not apply to the sale of a data list.

1   **SECTION 4. Effective date.**

2   (1) DATA LIST. This act takes effect on the first day of the 2nd month beginning

3   after publication.

4   **(END)**