State of Wisconsin
2017 - 2018 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT 2,

TO SENATE BILL 798

March 20, 2018 – Offered by Senator FITZGERALD.

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

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

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

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

SECTION 1b. 77.52 (13) of the statutes, as affected by 2017 Wisconsin Act 59, is amended to read:

77.52 **(13)** For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to

the tax until the contrary is established. The burden of proving that a sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser an electronic or a paper certificate, in a manner prescribed by the department, to the effect that the property, item, good, or service is purchased for resale or is otherwise exempt, except that no certificate is required for the sale of tangible personal property, or items, property, or goods under sub. (1) (b), (c), or (d), or services that are exempt under s. 77.54 (5) (a) 3., (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b), (31), (32), (35), (36), (37), (42), (44), (45), (46), (51), (52), ~~and~~ (66)<u>, and (67)</u>.

SECTION 1d. 77.53 (10) of the statutes is amended to read:

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

SECTION 1f. 77.54 (67) of the statutes is created to read:

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

1. "Clothing" means any wearing apparel for humans that is suitable for general use, not including all of the following:

a. Belt buckles sold separately.

b. Costume masks sold separately.

c. Patches and emblems sold separately.

d. Sewing equipment and supplies, including knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles.

e. Sewing materials that become part of clothing, including buttons, fabric, lace, thread, yarn, and zippers.

f. Clothing accessories or equipment.

g. Protective equipment.

h. Sport or recreational equipment.

2. "Clothing accessories or equipment" means incidental items worn on a person or in conjunction with clothing, not including clothing, protective equipment, or sport or recreational equipment, but including all of the following:

a. Briefcases.

b. Cosmetics.

c. Hair notions, including barrettes, hair bows, and hairnets.

d. Handbags.

e. Handkerchiefs.

f. Jewelry.

g. Nonprescription sunglasses.

h. Umbrellas.

i. Wallets.

j. Watches.

k. Wigs.

L. Hairpieces.

3. "Computer" means a personal computer such as a laptop or desktop computer or a tablet, but not including a phone.

4. "Eligible property" means an item that qualifies for exemption under this subsection.

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

6. "Protective equipment" means items for human wear that are designed to protect the wearer against injury or disease or to protect property or other persons from damage or injury. "Protective equipment" does not include items suitable for general use, clothing, clothing accessories or equipment, or sport or recreational equipment. "Protective equipment" includes:

a. Breathing masks.

b. Clean room apparel and equipment.

c. Ear and hearing protectors.

d. Face shields.

e. Hard hats.

f. Helmets.

g. Paint or dust respirators.

h. Protective gloves.

i. Safety glasses and goggles.

j. Safety belts.

k. Tool belts.

L. Welders gloves and masks.

7. "Rain check" means a seller allowing a purchaser to purchase an item at a certain price at a later time because the item was out of stock.

8. "School art supply" means any of the following items that are commonly used by a student in a course of study for artwork, but not including a school computer supply, school supply, or school instructional material:

a. Clay and glazes.

b. Acrylic, tempera, and oil paints.

c. Paintbrushes.

d. Sketch and drawing pads.

e. Watercolors.

9. "School computer supply" means any of the following items that are commonly used by a student in a course of study in which a computer is used, but not including a school art supply, school supply, or school instructional material:

a. Computer storage media, diskettes, and compact discs.

b. Handheld electronic schedulers, not including cellular phones.

c. Personal digital assistants, not including cellular phones.

d. Computer printers.

e. Printer supplies for computers, printer paper, and printer ink.

10. "School instructional material" means any of the following that is commonly used by a student in a course of study as a reference and to learn the

subject being taught, but not including a school art supply, school computer supply, or school supply:

a. Reference books.

b. Reference maps and globes.

c. Textbooks.

d. Workbooks.

11. "School supply" means any of the following items that are commonly used by a student in a course of study, but not including a school art supply, school computer supply, or school instructional material:

a. Binders.

b. Book bags.

c. Calculators.

d. Cellophane tape.

e. Blackboard chalk.

f. Compasses.

g. Composition books.

h. Crayons.

i. Erasers.

j. Folders.

k. Glue, paste, and paste sticks.

L. Highlighters.

m. Index cards.

n. Index card boxes.

o. Legal pads.

p. Lunch boxes.

q. Markers.

r. Notebooks.

s. Loose–leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper.

t. Pencil boxes and other school supply boxes.

u. Pencil sharpeners.

v. Pencils.

w. Pens.

x. Protractors.

y. Rulers.

z. Scissors.

za. Writing tablets.

12. "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity. "Sport or recreational equipment" does not include items suitable for general use, clothing, clothing accessories or equipment, or protective equipment. "Sport or recreational equipment" includes:

a. Ballet and tap shoes.

b. Athletic shoes with cleats or spikes.

c. Gloves.

d. Goggles.

e. Hand and elbow guards.

f. Life preservers and vests.

g. Mouth guards.

h. Roller skates.

i. Ice skates.

j. Shin guards.

k. Shoulder pads.

L. Ski boots.

m. Waders.

n. Wetsuits and fins.

(b) For the 2–day period beginning on the first Saturday in August and ending on the following Sunday, the sales price from the sale of and the storage, use, or other consumption of the following:

1. Clothing, if the sales price of any single item is no more than $75.

2. A computer purchased by the consumer for the consumer's personal use, if the sales price of the computer is no more than $750.

3. School computer supplies purchased by the consumer for the consumer's personal use, if the sales price of any single item is no more than $250.

4. School supplies, if the sales price of any single item is no more than $75.

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

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

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

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

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

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

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

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

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

a. If a purchaser purchases an item of eligible property during the exemption period but later exchanges the item for a similar item of eligible property, even if

different in size, color, or another feature, no additional tax is due even if the exchange is made after the exemption period.

b. If a purchaser purchases an item of eligible property during the exemption period, but after the exemption period has ended, the purchaser returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the different item.

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

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

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

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

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

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

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

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

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

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

SECTION 2. 77.68 of the statutes is created to read:

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

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

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

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

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

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

(b) The department may enforce the rebate under this section and may take any action, conduct any proceeding, and proceed as it is authorized with respect to taxes under ch. 71. The income tax provisions in ch. 71 relating to assessments, refunds, appeals, collection, interest, and penalties apply to the rebate under this section.

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

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

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

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

SECTION 3. Nonstatutory provisions.

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

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

(b) Notwithstanding any other provision of state law that relates to determining, based on an individual's personal income or assets, that individual's eligibility for a state–funded grant, loan, monetary assistance, or other benefit or the amount or extent of that grant, loan, monetary assistance, or other benefit, a state agency may not consider receipt of a onetime rebate of nonbusiness Wisconsin sales or use tax under section 77.68 of the statutes to be income or an asset of the individual. This paragraph shall be broadly construed to avoid determinations of ineligibility for a state–funded grant, loan, monetary assistance, or other benefit.

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

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

SECTION 4. Fiscal changes.

(1) GENERAL PROGRAM OPERATIONS. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of revenue under section 20.566 (1) (a) of the statutes, the dollar amount for fiscal year 2017–18 is increased by $506,400 due to increased program costs associated with the onetime individual nonbusiness Wisconsin sales and use tax rebate under section 77.68 of the statutes.

(END)