

**2001 DRAFTING REQUEST**

**Bill**

Received: 09/26/2000

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Administration-Budget 6-8593

By/Representing: Holden

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Alt. Drafters:

Subject: Tax - sales

Extra Copies:

**Pre Topic:**

DOA:.....Holden -

**Topic:**

The repair of tangible personal property for sales and use tax purposes

**Instructions:**

See Attached; 99-5027/P1

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 09/28/2000	jdyer 10/02/2000		_____			S&L
/1			pgreensl 10/03/2000	_____	gretskl 10/03/2000		

FE Sent For:

<END>

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Bill 1

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1?	jkreye	1 10/2 jld	10/3 ps	10/3 ps kp			

FE Sent For:

<END>

TOMMY G. THOMPSON  
GOVERNOR

GEORGE LIGHTBOURN  
SECRETARY



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Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1736  
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**Date:** September 25, 2000

**To:** Steve Miller, LRB

**From:** Kerry Holden, DOA KH  
266-8593

**Subject:** DOR Statutory Language Requests

0540

I'm forwarding statutory language changes submitted with its budget by the Department of Revenue that pertain to corporate income and franchise tax, sales and use tax, and utility and special taxes.

*Corporate Income and Franchise Tax:*

1. Clarify the treatment of corporations that are members of LLCs or partners of partnerships, taxed as corporations. See Attachment 1.

*Sales and Use Tax:*

2. Revise definition of tangible personal property for purposes of property affixed to real estate (trade fixtures). See Attachment 2.
3. [REDACTED] See Attachment 3.
4. Clarify definition of tangible personal property for information or data transferred in tangible form. See Attachment 4.
5. Provide exemption for construction materials sold to contractors for use in school projects. See Attachment 5.

*Utility and Special Taxes:*

6. Revisions to manufacturing assessment laws. See Attachment 6.
7. Classify multi-use telephone company buildings based on predominant use (instead of requiring multi-jurisdictional assessment). See Attachment 7.
8. Eliminate waste treatment exemption application. See Attachment 8.

Please feel free to call me if you have any questions or concerns. Thank you!

Legislative Proposal Summary  
Wisconsin Department of Revenue  
IS&E Division

S2

June 2, 2000

## TITLE

Clarify Property Deemed to be Tangible Personal Property for Repair Purposes/Certain Property Affixed to Realty: Installations, Replacements and Servicing (Hartlaub)

**SUMMARY OF RECOMMENDATION:**

Clarify the definition of property that is deemed to be TPP for service and repair purposes (specifically with respect to property affixed to real property, for purposes of installations, replacements and servicing). Current law provides that sales tax applies to specific services when they are performed to TPP. Adopting this proposal will significantly reduce the likelihood of costly litigation.

## DESCRIPTION OF CURRENT LAW AND PROBLEM

- 1) Section 77.52(2)(a)10, Wis. Stats. (1997-98), provides that sales tax applies to specific services (including service and repairs) when performed to tangible personal property. Further, certain items are deemed to retain their character as tangible personal property regardless of the extent to which they are attached to real property.

Among these items are "office, restaurant, and tavern type equipment," and several examples are listed. The problem is the possibly limiting nature of the phrase "office, restaurant, and tavern type." The department currently treats any of the listed items following this phrase as tangible personal property when in a commercial building.

- 2) Section 77.52(2)(a)10, Wis. Stats. (1997-98), provides that the following services are subject to Wisconsin sales tax:

"Except for installing or applying tangible personal property which, when installed or applied, will constitute an addition or capital improvement of real property, the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection and maintenance of all items of tangible personal property unless, at the time of such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance, a sale in this state of the type of property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected or maintained would have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54(5)(a) and other than nontaxable sales under s. 77.51(14r). For purposes of this paragraph, the following items shall be deemed to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with or built into real property: furnaces, boilers, stoves, ovens, including associated

hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by way of illustration but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows and swimming pools; office, restaurant and tavern type equipment including by way of illustration but not of limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage-making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs. "Service" does not include services performed by veterinarians."

The Department's long standing position has been that the repair, service, alternation, fitting, cleaning, painting, coating, towing, inspection, and maintenance of tangible personal property, including those items deemed by sec. 77.52(2)(a)10, Wis. Stats. (1997-98), to retain their character as tangible personal property, are subject to Wisconsin sales and use tax, even though such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance may arguably result in an addition to or capital improvement of real property. However, the original installation or complete replacement of an item which results in an addition to or capital improvement of real property is not subject to Wisconsin sales and use tax, since these items would fall within the "except" clause of sec. 77.52(2)(a)10, Wis. Stats. (1997-98).

Some persons have a difficult time understanding that law as it is currently written. In addition, some taxable services may arguably be claimed to be exempt installations or applications. This is evidenced by the case of *Thaddeus Hartlaub d/b/a Worldwide Refinishing Systems v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission (November 6, 1996). In this case the taxpayer argued that he was applying tangible personal property - a resin surface - which constituted a capital improvement of real property and was therefore not subject to Wisconsin sales tax. The Department argued that the taxpayer was repairing the worn, discolored, or undesired colored bathtub. In addition, the Department presented expert testimony that the refinishing of a bathtub did not increase the value of the property. The Commission concluded that the taxpayer was liable for sales tax because he failed to show that his service resulted in a capital improvement of real property and therefore was not clearly within the "except" clause of sec. 77.52(2)(a)10, Wis. Stats. (1997-98).

Although this case was decided in the department's favor, the decision indicated that the Department's long standing position with respect to this statute is in question. An overturning of this position could result in a significant loss of revenue to the State of Wisconsin.

See Attachment 1, beginning on page 4, for examples of how the current law applies to repair and replacement services and how the statute, as currently written, could be misinterpreted.

#### **FISCAL EFFECT**

If a case is decided against the department with respect to this issue, this could result in a substantial revenue loss to the State of Wisconsin in addition to a large amount of refund claims.

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#### **ADMINISTRATIVE IMPACT**

This proposal would clarify the long standing position of the department with respect to sec. 77.52(2)(a)10, Wis. Stats.

#### **DRAFTING INSTRUCTIONS**

(See Attachment 2, beginning on page 9)

#### **EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

Day after publication.

#### **DOR CONTACT PERSON**

Mike Hinnendael  
Staff Specialist  
267-5022

#### **PREPARED BY**

Mike Hinnendael  
Craig Johnson

**Examples of Sales and Use Tax Treatment of Items Deemed to Retain  
Their Character as Tangible Personal Property Under  
Sec. 77.52(2)(a)10, Wis. Stats. (1997-98)**

**I. Repairs of Items Deemed to Retain Their Character as Tangible Personal Property**

**Example 1a.** *(Current law, as interpreted by the department)* Company A charges Customer B \$900 (\$500 parts and \$400 labor) to replace a blower motor in a furnace in Customer B's residence. Company A's cost of the blower motor and other parts it uses in the repair is \$300.

Company A has provided a taxable service - the service of repairing tangible personal property (Section 77.52(2)(a)10, Wis. Stats. (1997-98)). Company A's charge is subject to Wisconsin sales tax because the charge is for the repair of the furnace, an item that retains its character as tangible personal property, regardless of its attachment to real property. Further, since the furnace is being repaired, the potential real property value increase is not relevant. Therefore, Company A must collect sales tax on its total charge (\$900) for parts and labor. The sales tax due on this transaction is \$45 ( $\$900 \times 5\% = \$45$ ).

**Example 1b.** *(Potential misinterpretation of current law)* Company A charges Customer B \$900 (\$500 parts and \$400 labor) to replace a blower motor in a furnace in Customer B's residence. Company A's cost of the blower motor and other parts it uses in the repair is \$300.

Current law may be misinterpreted to mean that Company A is providing a nontaxable real property improvement when repairing the furnace and therefore is not required to collect Wisconsin sales and use tax on the \$900 charge to Customer B. Company A may misinterpret this law if Company A concludes that by replacing a blower motor in a furnace, it has in some way increased the overall value of the home (i.e., it might be argued that a home with a working furnace is worth more than a home without a working furnace, whether or not such a proposition is true).

Rather than remitting the Wisconsin sales tax on its total charge to Customer B for this repair, Company A may conclude that it only owes tax on its purchase price of the blower and other parts used in the repair (\$300). This would result in Company A only paying Wisconsin sales (or use) tax on this transaction totaling \$15 ( $\$300 \times 5\% = \$15$ ).

**Example 1c.** *(Under this proposal)* No change from current law as interpreted by the department.

**Example 2a.** *(Current law, as interpreted by the department)* Company C charges Customer D \$1,500 (\$1,000 parts and \$500 labor) to replace a blower motor in a furnace in Customer D's office building. The furnace provides heat for

the office building. Company C's cost of the blower motor and other parts it uses in the repair is \$800.

Company C has provided a taxable service - the service of repairing tangible personal property (Section 77.52(2)(a)10, Wis. Stats. (1997-98)). Company C's charge is subject to Wisconsin sales tax because the charge is for the repair of the furnace, an item that retains its character as tangible personal property, regardless of its attachment to real property. Further, since the furnace is being repaired by the installation of a new motor, the potential real property value increase is not relevant. Therefore, Company C must collect sales tax on its total charge (\$1,500) for parts and labor. The sales tax due on this transaction is \$75 ( $\$1,500 \times 5\% = \$75$ ).

**Example 2b.** (*Potential misinterpretation of current law*) Company C charges Customer D \$1,500 (\$1,000 parts and \$500 labor) to replace a blower motor in a furnace in Customer D's office building. The furnace provides heat for the office building. Company C's cost of the blower motor and other parts it uses in the repair is \$800.

**Current law may be misinterpreted** to mean that Company C is providing a nontaxable real property improvement when repairing the furnace and therefore is not required to collect Wisconsin sales and use tax on the \$1,500 charge to Customer D. Company C may misinterpret this law if Company C concludes that by replacing a blower motor in a furnace, it has in some way increased the overall value of the office building (i.e., it might be argued that an office building with a working furnace is worth more than an office building without a working furnace whether or not such a proposition is true).

Rather than remitting the Wisconsin sales tax on its total charge to Customer D for this repair, Company C may conclude that it only owes tax on its purchase price of the blower and other parts used in the repair (\$800). This would result in Company C only paying Wisconsin sales (or use) tax on this transaction totaling \$40 ( $\$800 \times 5\% = \$40$ ).

**Example 2c.** (*Under the proposal*) No change from current law as interpreted by the department.

**Example 3a.** (*Current law, as interpreted by the department*) Company E charges Customer F \$5,000 (\$3,000 parts and \$2,000 labor) to replace a blower motor in a furnace in Customer F's factory. The furnace is used to heat a storage room where raw materials must be kept at a higher temperature than the rest of the factory. Company E's cost of the blower motor and other parts it uses in the repair is \$2,500.

Company E has provided a taxable service - the service of repairing tangible personal property (Section 77.52(2)(a)10, Wis. Stats. (1997-98)). Therefore, Company E must collect sales tax on its total charge (\$5,000) for parts and labor. Company E's charge is subject to Wisconsin sales tax because the charge is for the repair of the furnace, an item that retains its character as tangible personal property, regardless of its attachment to real property. Further, since the furnace is being repaired, the potential real property value increase is not relevant.

Therefore, Company E must collect sales tax on its total charge (\$5,000) for parts and labor. The sales tax due on this transaction is \$250 ( $\$5,000 \times 5\% = \$250$ ).

**Example 3b.** (*Potential misinterpretation of current law*) Company E charges Customer F \$5,000 (\$3,000 parts and \$2,000 labor) to replace a blower motor in a furnace in Customer F's factory. The furnace is used to heat a storage room where raw materials must be kept at a higher temperature than the rest of the factory. Company E's cost of the blower motor and other parts it uses in the repair is \$2,500.

**Current law may be misinterpreted** to mean that Company E is providing a nontaxable real property improvement when repairing the furnace and, therefore, is not required to collect Wisconsin sales and use tax on the \$1,500 charge to Customer F. Company E may misinterpret this law if Company E concludes that by replacing a blower motor in a furnace, it has in some way increased the overall value of the factory (i.e., it might be argued that a factory with a working furnace is worth more than a factory without a working furnace whether or not such a proposition is true).

Rather than remitting the Wisconsin sales tax on its total charge to Customer F for this repair, Company E may conclude that it only owes tax on its purchase price of the blower and other parts used in the repair (\$2,500). This would result in Company E only paying Wisconsin sales (or use) tax on this transaction totaling \$125 ( $\$2,500 \times 5\% = \$125$ ).

**Example 3c.** (*Under this proposal*) No change from current law as interpreted by the department.

**Example 4a.** (*Current law, as interpreted by the department*) Company G charges Customer H \$300 to replace a compressor in a refrigerator in Customer H's residence. Company G's cost of the compressor and other parts it uses in the repair is \$150.

Regardless of whether the refrigerator is free standing or built-in, Company G's charge is subject to Wisconsin sales tax because the charge is for the repair of the refrigerator, an item that retains its character as tangible personal property, regardless of its attachment to real property. Further, since the refrigerator is being repaired, the potential real property value increase is not relevant. Therefore, Company G must collect sales tax on its total charge (\$300) for parts and labor. The sales tax due on this transaction is \$15 ( $\$300 \times 5\% = \$15$ ).

**Example 4b.** (*Potential misinterpretation of current law*) Company G charges Customer H \$300 to replace a compressor in a refrigerator in Customer H's residence. Company G's cost of the compressor and other parts it uses in the repair is \$150.

**Current law may be misinterpreted** to mean that Company G is providing a nontaxable real property improvement when repairing a built-in refrigerator and, therefore, is not required to collect Wisconsin sales tax on the \$300 charge to Customer H. Company G may misinterpret this law if Company G concludes that

by replacing a compressor in a built-in refrigerator, it is in some way increasing the overall value of the home (i.e., it might be argued that a home with a built-in refrigerator with a new compressor is worth more than a home with a built-in refrigerator with a compressor that does not work, whether or not such a proposition is true).

Rather than remitting the Wisconsin sales tax on its total charge to Customer H for this repair, Company G may conclude that it only owes tax on its purchase price of the compressor and other parts used in the repair (\$150). This would result in Company G only paying Wisconsin sales (or use) tax on this transaction totaling \$7.50 ( $\$150 \times 5\% = \$7.50$ ),

**Example 4c.** *(Under this proposal)* No change from current law.

**Example 5a.** *(Current law, as interpreted by the department)* Company I charges Customer J \$300 to replace a compressor in a refrigerator in Customer J's tavern. Company I's cost of the compressor and other parts it uses in the repair is \$150.

Regardless of whether the refrigerator is free standing or built-in, Company I's charge is subject to Wisconsin sales tax because the charge is for the repair of the refrigerator, an item that retains its character as tangible personal property, regardless of its attachment to real property. Further, since the refrigerator is being repaired, the potential real property value increase is not relevant. Therefore, Company I must collect sales tax on its total charge (\$300) for parts and labor. The sales tax due on this transaction is \$15 ( $\$300 \times 5\% = \$15$ ).

**Example 5b.** *(Potential misinterpretation of current law)* Company I charges Customer J \$300 to replace a compressor in a refrigerator in Customer J's tavern. Company I's cost of the compressor and other parts it uses in the repair is \$150.

**Current law may be misinterpreted** to mean that Company I is providing a nontaxable real property improvement when repairing a built-in refrigerator and therefore is not required to collect Wisconsin sales tax on the \$300 charge to Customer J. Company I may misinterpret this law if Company I concludes that by replacing a compressor in a built-in refrigerator, it is in some way increasing the overall value of the tavern. (i.e., it might be argued that a tavern with a built-in refrigerator with a new compressor is worth more than a tavern with a built-in refrigerator with a compressor that does not work, whether or not such a proposition is true).

**Example 5c.** *(Under this proposal)* No change from current law as interpreted by the department.

II. **Original Installation and Complete Replacement of Item Deemed to Retain Its Character as Tangible Personal Property Which Results in an Addition to or Capital Improvement of Real Property**

**Example 1a.** *(Current law, as interpreted by the department)* Company K sells a new furnace to Customer L, charging Customer L a total of \$2,000 for the new

furnace, removal of Customer L's old furnace and installation of the new furnace in Customer L's residence. Company K's cost of the new furnace and other parts (sheet metal, screws, etc.) which it uses in the installation of the furnace is \$1,000. Because Company K provides a nontaxable real property improvement when replacing the furnace in Customer L's residence (as contrasted with the furnace repair illustrated in the Part I Examples), Company K is only liable for \$50 of sales and use tax (tax on its cost of the furnace and parts only) ( $\$1,000 \times 5\% = \$50$ ).

(Note: The above example would also apply to the complete replacement of a furnace in a commercial building which serves the building.)

**Example 1b.** (*Current law may be misinterpreted*) Company M sells a new furnace to Customer N, charging Customer N a total of \$3,000 for the new furnace, removal of Customer N's old furnace and installation of the new furnace in Customer N's factory. The furnace serves the process being performed in Customer N's factory rather than the building itself. Company M's cost of the new furnace and other parts (sheet metal, screws, etc.) which it uses in the installation of the furnace is \$1,500. Because the furnace serves the process rather than the building, Company M is liable for \$150 of sales and use tax (tax on its total charge for the sales and installation of the furnace) ( $\$3,000 \times 5\% = \$150$ ).

**Example 1c.** (*Under this proposal*) No change from current law, as interpreted by the department.

### **III. Original Installation and Complete Replacement of Item Deemed to Retain Its Character as Tangible Personal Property Which Does NOT Result in Capital Improvement of Real Property**

**Example 1a.** (*Current law, as interpreted by the department*) Company M sells a new clothes dryer to Customer N for \$400. The \$400 charge is for the new clothes dryer, delivery and setup of the new clothes dryer and the removal of the old clothes dryer. Because the new clothes dryer remains tangible personal property (rather than becoming an addition to or capital improvement of real property) after the sale to Customer N, Company M is liable for \$20 of sales tax on this sale ( $\$400 \times 5\% = \$20$ ).

(Note: The above example would apply to complete replacements in both residential and commercial buildings.)

**Example 1b.** (*Under this proposal*) No change from current law as interpreted by the department.

TITLE: Clarify Property Deemed to be Tangible Personal Property for Repair Purposes/Certain Property Affixed to Realty: Installations, Replacements and Servicings (Hartlaub)

DRAFTING INSTRUCTIONS

- 1) In sec. 77.52(2)(a)10, Wis. Stats. (1997-98), replace "office, restaurant, and tavern type equipment" with "equipment in offices, business facilities, schools and hospitals but not in residential facilities including personal residences, apartments, long-term care facilities, state institutions under s.101.123(1)(i), similar residential facilities."

The term "business" is defined in sec. 77.51(1), Wis. Stats. (1997-98), and would include restaurants and taverns previously mentioned in sec. 77.52(2)(a) 10, Wis. Stats. (1997-98), as well as industrial and commercial buildings. The term "office" is intended to cover those buildings where activities are not for profit, such as offices of nonprofit organizations.

- 2) Revise the law to provide the sales and use tax treatment described in the following summary.

A. Non-Residential Property - Property that is affixed to the premises of offices, businesses, schools, hospitals, and government facilities.

1. Work involving property that is not directly used more than 50% to carry on a trade, business, school, hospital or government function.

- a. Original Installation or Complete Replacement. Tax applies to seller's purchases of materials. (Item becomes real property when installed under IS&E legislative proposal titled "Revise Definition of Tangible Personal Property for Trade Fixtures" ("Trade Fixtures Proposal"). No tax on seller's charge to customer (materials or labor).

Example. Heating contractor installs a space heating furnace in a restaurant (complete replacement of furnace). Heating contractor owes sales or use tax on its purchase of the furnace. No tax on the charge by the heating contractor to the restaurant.

- b. "Repair, Service, Alteration...". Charges by seller (materials and labor) are taxable if:

- (1) item repaired, serviced, etc. is listed in sec. 77.52(2)(a)10, Wis. Stats., regardless of the extent to which the item is fastened to, connected with, or built into real property.

- (2) item repaired, serviced, etc. is tangible personal property under Trade Fixtures Proposal.

Charges by seller are not taxable if the item repaired, serviced, etc. is real property under Trade Fixtures Proposal and is not an item listed in sec. 77.52(2)(a)10, Wis. Stats.

2. Work involving property that is directly used more than 50% to carry on a trade, business, school, hospital, or government function. The Department of Revenue calls these "trade fixtures". These items can never become real property for sales and use tax purposes.

- a. **Original Installation or Complete Replacement.** Tax applies to seller's total charge (materials and labor). Seller may buy materials exempt from tax, for resale, if materials are transferred to the customer.

Example. Contractor installs a garbage disposal in a restaurant. Contractor buys garbage disposal exempt from tax, for resale. Contractor owes tax on its total charge to the restaurant.

- b. **"Repair, Service, Alteration ...."** Charges by seller are taxable, even if the item repaired, serviced, etc., is not listed in sec. 77.52(2)(a)10, Wis. Stats. Seller may buy materials exempt from tax, for resale, if materials are transferred to the customer.

- B. **Residential Property -** Property that is affixed to the premises of personal residences, apartment buildings and long-term care facilities, and property that is affixed on the premises of any other facility which primarily provides living quarters to a person for a duration of 30 or more consecutive days.

1. **Original Installation or Complete Replacement.**

- a. **Item Becomes Real Property.** Tax applies to seller's purchase of materials, if item becomes real property when installed under Trade Fixtures Proposal. No tax on seller's charge to customer (materials or labor).

Example. Heating contractor installs a space heating furnace in a personal residence (complete replacement of furnace). Heating contractor owes sales or use tax on its purchase of the furnace. No tax on the charge by the heating contractor to the customer.

- b. **Item Remains Tangible Personal Property.** Charge by seller (materials and labor) is taxable if item remains tangible personal property after installation. Seller may buy materials exempt from tax, for resale, if materials are transferred to the customer.

Example. Appliance store sells and installs a clothes dryer in a personal residence. Appliance store owes sales tax on its charge for the dryer and installation. Appliance store may buy the dryer exempt from tax, for resale.

2. "Repair, Service, Alteration ...."

- a. Item Deemed Tangible Personal Property. Charges by seller are taxable if the item repaired, serviced, etc., is listed in sec. 77.52(2)(a)10, Wis. Stats. (1997-98). Seller may buy materials exempt from tax, for resale, if materials are transferred to the customer.
  - b. Item is Real Property. For items affixed other than those listed in sec. 77.52(2)(a)10, Wis. Stats. (1997-98), which are real property under Trade Fixtures Proposal, charge by seller is not taxable. Purchases of materials are taxable.
  - c. Item is Tangible Personal Property. For items affixed other than those listed in sec. 77.52(2)(a)10, Wis. Stats. (1997-98), which are tangible personal property when installed under Trade Fixtures Proposal, charge by seller (materials and labor) is taxable. Seller may buy materials exempt from tax, for resale, if materials are transferred to the customer.
- C. For additional information, see Publication 207, *Sales and Use Tax Information for Contractors*. The Department of Revenue's goal is legislation consistent with the above summary and consistent with Publication 207.

To accomplish the Department of Revenue goal, the statutes must be arbitrary in several respects:

1. "Residential" must be in terms of length, without regard to intent-case law may not support a prison as being residential since the occupancy is involuntary.
2. An "installation or addition" must be of the entire item, not just a component of the item. For example, the replacement of a reflector in a lighting fixture is to be treated as a "repair, service, alteration ...", but the original installation of the light fixture may qualify as an "installation or addition". On the other hand, the original installation of a humidifier on a furnace would qualify as an "installation or addition", but the replacement of a water wheel in the same humidifier would not.

Any work which can be characterized as both an "installation or addition" and a "repair, service, alteration ..." is to be taxed as a repair, service, alteration, etc. For example, the restoration of a bathtub surface by the installation or addition of a new plastic surface is to be treated as a "repair, service, alteration ...", but the original installation of the bathtub or its complete replacement by a new tub may qualify as an "installation or addition".

e:Mike/Leg prop, tpp for repair purposes(Hartlaub) 6-2-00

## Kreye, Joseph

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**From:** Gates-Hendrix, Sherrie  
**Sent:** Friday, September 08, 2000 4:09 PM  
**To:** Kreye, Joseph  
**Subject:** LRB 5027 - Hartlaub Proposal

Joe - Here's a memo from Mike Hinnendael and Bob Stellick (legal counsel) on LRB 5027/P1. It's a complicated issue, but I think this should help clarify their concerns/issues:



Leg

prop-LRB-5027-P1 dn, Hartla...

On another note, I have a briefing paper for you from the streamlined sales tax briefing on Wednesday and I'll inter-d it. I believe Bill Ford will be working on the group that is developing a model for state legislation to participate in the pilot streamlined taxation project. They will be working on that in October, and plan to be done by December. I'm sure he's got a lot more info if you're interested.

S.

**Date:** September 8, 2000  
**To:** Sherrie Gates-Hendrix  
**From:** Robert C. Stellick, Jr.  
Mike Hinnendael  
**Subject:** LRB-5027/P1; Property Deemed to be Tangible Personal Property for Repair Purposes/Certain Property Affixed to Realty: Installations, Replacements and Service (Hartlaub)

LRB-5027/P1 does not correct the Hartlaub problem.

**Problem with Current Law #1 - Hartlaub**

*Questions and Answers:*

The first question Joe Kreye asked in his August 28, 2000 memo was: *If tangible personal property is used less than 50% of the time for a trade, business, school, hospital or government function, do you want all work performed on that property to be an addition to or a capital improvement of real property for sales and use tax purposes?*

The answer is no. If work is performed on tangible personal property, we want such work to be taxable, if the work is one of the services specified in sec. 77.52(2)(a)10., Wis. Stats., (repair, service, etc.).

However, work is often performed on items that may or may not be tangible personal property for purposes of the original installation of the item, and these items are attached or installed into real property when the work is performed. It may be helpful to rephrase Joe Kreye's question and answer it: *If an **item** is used less than 50% of the time for a trade, business, school, hospital or government function, do you want all work performed on that property to be **taxed as if it were** a capital improvement of real property for sales and use tax purposes?*

The answer is no, if (1) the work performed is one of the services listed in sec. 77.52(2)(a)10., Wis. Stats. (repair, service, etc.), **and** the item on which the work is performed is one of the items deemed by sec. 77.52(2)(a)10., Wis. Stats., to be tangible personal property (furnaces, boilers, stoves, etc.); or (2) the item is not attached or affixed to real property.

Joe Kreye also asked about how the recommended language would have affected the outcome in Hartlaub. Under the department's original recommendation, bathtub refinishing work would be a taxable repair to a bathroom fixture, without regard to whether there was an "application of tangible personal property which...will constitute an addition or capital improvement of real property."

*Drafting Instructions:*

One way to approach the legislation is to remove the introductory "Except for installing..." clause. Hartlaub might still be able to claim that he was doing real property construction work under sec. 77.51(2), Wis. Stats., in repairing a damaged/discoled bathtub. However, we would at least get rid of the supposed standard of "addition or capital improvement" and have instead the gap between real property construction contractors and repairperson activities. In addition, where any work can be characterized as both an "addition/capital improvement" and a

"repair," the statutes treat it as a "repair," although we do not know how that would be done legislatively.

The portion of the drafting instructions provided with this proposal (Attachment 2 of the June 2, 2000 legislative proposal summary) that relates to direct use of more than 50% to carry on a trade, business, school, hospital, or government function may be disregarded for purposes of this proposal, provided these changes are made as a part of the "trade fixtures" proposal, LRB-2618/5. Since it is in both in this proposal (LRB-5027/P1) and LRB 2618/5, this "trade fixture" portion of the drafting instructions is redundant. Also, it is inaccurate to characterize this portion of the proposal as necessary to address the Hartlaub concerns.

### **Problem with Current Law #2-"Office, Restaurant and Tavern Type Equipment"**

A separate problem that we are seeking legislative remedy for is the limiting nature of the phrase "office, restaurant and tavern type equipment." The changes made on lines 17 to 20 of page two of LRB-5027/P1 may be too expansive in that they do not address all residential facilities (e.g., houses). Lines 17 to 20 should be revised to provide that equipment in all residential facilities is not included.



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-0540/1

JK:...

JLB

SOON

DOA:.....Holden – The repair of tangible personal property for sales and use tax purposes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

✓ TAXATION  
✓ OTHER TAXATION

\* Under current law, generally, the repair, service, or maintenance of tangible personal property is subject to the sales tax or the use tax. Installing or applying tangible personal property is also subject to the sales tax or the use tax, unless installing or applying the tangible personal property is an addition or improvement to real property.

Under current law, certain items of tangible personal property remain tangible personal property, for sales tax and use tax purposes, regardless of the extent to which those items are attached to real property. Such items include office, restaurant, and tavern equipment.

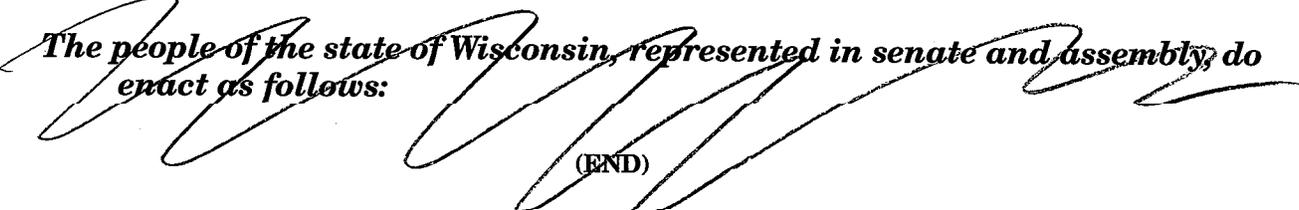
\* Under this bill, installing or applying tangible personal property is subject to the sales tax or the use tax, regardless of whether installing or applying the tangible personal property is an addition or improvement to real property. Under the bill, items that remain tangible personal property, regardless of the extent to which those items are attached to real property, include equipment in offices, business facilities, schools, and hospitals.

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

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

(END)



~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1 ~~AN ACT to amend 77.52 (2) (a) 10. of the statutes; relating to: the repair or~~  
2 ~~service of tangible personal property for sales tax and use tax purposes.~~

*Analysis by the Legislative Reference Bureau*

~~This is a preliminary draft. An analysis will be provided in a later version.~~

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

SECTION 1. 77.52 (2) (a) 10. of the statutes is amended to read:

77.52 (2) (a) 10. ~~Except for installing or applying tangible personal property~~  
~~which, when installed or applied, will constitute an addition or capital improvement~~  
~~of real property, the~~ repair, service, alteration, fitting, cleaning, painting, coating,  
towing, inspection and maintenance of all items of tangible personal property unless,  
at the time of such repair, service, alteration, fitting, cleaning, painting, coating,  
towing, inspection or maintenance, a sale in this state of the type of property  
repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected or

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1 maintained would have been exempt to the customer from sales taxation under this  
2 subchapter, other than the exempt sale of a motor vehicle or truck body to a  
3 nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.51  
4 (14r). For purposes of this paragraph, the following items shall be deemed to have  
5 retained their character as tangible personal property, regardless of the extent to  
6 which any such item is fastened to, connected with or built into real property:  
7 furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems,  
8 heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers,  
9 water pumps, water heaters, water conditioners and softeners, clothes washers,  
10 clothes dryers, dishwashers, garbage disposal units, radios and radio antennas,  
11 incinerators, television receivers and antennas, record players, tape players,  
12 jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs,  
13 bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps,  
14 electronic dust collectors, grills and rotisseries, bar equipment, intercoms,  
15 recreational, sporting, gymnasium and athletic goods and equipment including by  
16 way of illustration but not of limitation bowling alleys, golf practice equipment, pool  
17 tables, punching bags, ski tows and swimming pools; ~~office, restaurant and tavern~~  
18 type equipment in offices, business facilities, schools, and hospitals but not in  
19 apartments, long-term care facilities, as defined under s. 16.009 (1) (em), state  
20 institutions, as defined under s. 101.123 (1) (i), or similar facilities including by way  
21 of illustration but not of limitation lamps, chandeliers, and fans, venetian blinds,  
22 canvas awnings, office and business machines, ice and milk dispensers,  
23 beverage-making equipment, vending machines, soda fountains, steam warmers  
24 and tables, compressors, condensing units and evaporative condensers, pneumatic  
25 conveying systems; laundry, dry cleaning, and pressing machines, power tools,

*residential facilities including personal residences,*

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③

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burglar alarm and fire alarm fixtures, electric clocks and electric signs. "Service" does not include services performed by veterinarians.

③ Fix component SECTION 2. Effective date. ③; Revenue

(1) ~~This act~~ takes effect on the first day of the 2nd month beginning after publication.

(END)

CS → SALES TAX ON REPAIRS AND SERVICES.

The treatment of section 77.52(2)(a) 10. of the statutes



DOA:.....Holden – The repair of tangible personal property for sales and use tax purposes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

Under current law, generally, the repair, service, or maintenance of tangible personal property is subject to the sales tax or the use tax. Installing or applying tangible personal property is also subject to the sales tax or the use tax, unless installing or applying the tangible personal property is an addition or improvement to real property.

Under current law, certain items of tangible personal property remain tangible personal property, for sales tax and use tax purposes, regardless of the extent to which those items are attached to real property. Such items include office, restaurant, and tavern equipment.

Under this bill, installing or applying tangible personal property is subject to the sales tax or the use tax, regardless of whether installing or applying the tangible personal property is an addition or improvement to real property. Under the bill, items that remain tangible personal property, regardless of the extent to which those items are attached to real property, include equipment in offices, business facilities, schools, and hospitals.

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

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

1           **SECTION 1.** 77.52 (2) (a) 10. of the statutes is amended to read:

2           77.52 (2) (a) 10. ~~Except for installing or applying tangible personal property~~  
3 ~~which, when installed or applied, will constitute an addition or capital improvement~~  
4 ~~of real property, the~~ The repair, service, alteration, fitting, cleaning, painting,  
5 coating, towing, inspection and maintenance of all items of tangible personal  
6 property unless, at the time of such repair, service, alteration, fitting, cleaning,  
7 painting, coating, towing, inspection or maintenance, a sale in this state of the type  
8 of property repaired, serviced, altered, fitted, cleaned, painted, coated, towed,  
9 inspected or maintained would have been exempt to the customer from sales taxation  
10 under this subchapter, other than the exempt sale of a motor vehicle or truck body  
11 to a nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.51  
12 (14r). For purposes of this paragraph, the following items shall be deemed to have  
13 retained their character as tangible personal property, regardless of the extent to  
14 which any such item is fastened to, connected with or built into real property:  
15 furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems,  
16 heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers,  
17 water pumps, water heaters, water conditioners and softeners, clothes washers,  
18 clothes dryers, dishwashers, garbage disposal units, radios and radio antennas,  
19 incinerators, television receivers and antennas, record players, tape players,  
20 jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs,  
21 bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps,

1 electronic dust collectors, grills and rotisseries, bar equipment, intercoms,  
2 recreational, sporting, gymnasium and athletic goods and equipment including by  
3 way of illustration but not of limitation bowling alleys, golf practice equipment, pool  
4 tables, punching bags, ski tows and swimming pools; ~~office, restaurant and tavern~~  
5 ~~type~~ equipment in offices, business facilities, schools, and hospitals but not in  
6 residential facilities including personal residences, apartments, long-term care  
7 facilities, as defined under s. 16.009 (1) (em), state institutions, as defined under s.  
8 101.123 (1) (i), or similar facilities, including by way of illustration but not of  
9 limitation lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and  
10 business machines, ice and milk dispensers, beverage-making equipment, vending  
11 machines, soda fountains, steam warmers and tables, compressors, condensing units  
12 and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning,  
13 and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric  
14 clocks and electric signs. “Service” does not include services performed by  
15 veterinarians.

16 **SECTION 9444. Effective dates; revenue**

17 (1) SALES TAX ON REPAIRS AND SERVICES. The treatment of section 77.52 (2) (a) 10.  
18 of the statutes takes effect on the first day of the 2nd month beginning after  
19 publication.

20 (END)