State of Wisconsin
2005 – 2006 LEGISLATURE

LRB–0303/5
JK:jld:pg

DOA:.....Koskinen, BB0070 – Streamlined sales and use tax provisions

FOR 2005–07 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; **relating to:** the Uniform Sales and Use Tax Administration Act,
2 granting rule–making authority, making an appropriation, and providing a
3 penalty.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill adopts the substantive provisions of the streamlined sales and use tax agreement (agreement) for purposes of administering and collecting state, county, and stadium district sales and use taxes. The agreement is intended to simplify and modernize sales and use tax administration for the states that enter into the agreement and to encourage out–of–state retailers to collect the state, county, and stadium district sales and use taxes voluntarily. Under current federal law, generally, an out–of–state retailer who sells goods or services to customers in this state is not required to collect the sales tax or use tax imposed on such sales, if the retailer has no physical presence in this state. See *Quill v. North Dakota,* 504 U.S. 298; 112 S.Ct. 1904 (1992).

States that wish to enter into the agreement must adopt uniform definitions related to the administration of sales and use taxes and uniform policies related to sourcing sales of goods and services, bad debt allowances, refunds, and, to some extent, exemptions. Under the agreement, DOR may act jointly with other states

that are signatories to the agreement to establish standards for certifying service providers and automated systems to aid out–of–state retailers with the collection of state sales and use taxes.

Under current law, "gross receipts" refers to the measure of the sales tax, and "sales price" refers to the measure of the use tax. Under the bill, "sales price" refers to the measure of the sales tax, and "purchase price" refers to the measure of the use tax.

The bill creates definitions for "alcohol beverages," "candy," "delivery charges," "dietary supplement," "food and food ingredients," "prepared food," and "soft drink."

The agreement provides that a state that is a signatory to the agreement may choose to tax or not tax all articles that are covered by one definition, but a state may not exempt from sales tax or use tax a particular item that is included in a definition. The members of the project working on the agreement approved a definition for "clothing." Therefore, in order to comply with the agreement, a state may either tax all clothing or exempt all clothing, but a state may not exempt certain items of clothing and tax others. This bill, therefore, eliminates the sales tax and use tax exemptions for cloth diapers and antiembolism hose.

This bill creates definitions for "durable medical equipment," "mobility–enhancing equipment," and "prosthetic device." Under the bill, the sale of such equipment and devices is exempt from the sales tax and the use tax.

Under the bill, generally, for purposes of determining which jurisdiction may impose a sales tax or use tax on a sale, if a purchaser receives a product at the seller's business location, the sale of that product occurs at the seller's business location. If a purchaser does not receive the product at a seller's business location, the sale occurs at the location where the purchaser receives the product. If the location of the sale cannot be so determined, the sale occurs at the purchaser's address, as indicated by the seller's business records. If the address cannot be determined from the business records, the sale occurs at the purchaser's address, as obtained during the consummation of the sale, including the address indicated on the purchaser's check. Finally, if the location of a sale cannot be determined in any other way, the sale of tangible personal property occurs at the location from which the tangible personal property is shipped. Under the bill, if the item sold is a digital good or computer software, and the digital good or computer software is delivered electronically, the sale occurs at the location from which the digital good or computer software was first available for transmission by the seller.

Under the bill, generally, the sale of a telecommunications service occurs at a location that is determined to be consistent with the provisions of the federal Mobile Telecommunications Sourcing Act.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this 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.** 20.435 (3) (bm) of the statutes is repealed.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

2 **SECTION 2.** 46.513 of the statutes is repealed.

3 **SECTION 3.** 66.0615 (1m) (f) 2. of the statutes is amended to read:

4 66.0615 **(1m)** (f) 2. Sections 77.51 (12m), (14) ~~(c), (f) and (j) and~~, (14g), (15a),
5 and (15b), 77.52 (3), (3m), (4), ~~(6) and~~ (13), (14), (18), and (19), 77.522, 77.58 (1) to (5),
6 (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9) ~~and~~, (12) to (14), and
7 (15), and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax
8 described under subd. 1.

9 **SECTION 4.** 70.111 (23) of the statutes is amended to read:

10 70.111 **(23)** VENDING MACHINES. All machines that automatically dispense ~~soda~~
11 ~~water beverages, as defined in s. 97.29 (1) (i), and items included as a food or beverage~~
12 ~~under s. 77.54 (20) (a) and (b)~~ food and food ingredient, as defined in s. 77.51 (3t),
13 upon the deposit in the machines of specified coins or currency, or insertion of a credit
14 card, in payment for the ~~soda water beverages, food or beverages~~ food and food
15 ingredient, as defined in s. 77.51 (3t).

16 **SECTION 5.** 73.03 (50) (d) of the statutes is amended to read:

17 73.03 **(50)** (d) In the case of a sole proprietor, signs the form or, in the case of
18 other persons, has an individual who is authorized to act on behalf of the person sign
19 the form, or, in the case of a single–owner entity that is disregarded as a separate
20 entity under section 7701 of the Internal Revenue Code, the person is the owner. Any

1 person who may register under this subsection may designate an agent, as defined
2 in s. 77.524 (1) (ag), to register with the department under this subsection in the
3 manner prescribed by the department. In this paragraph, "sign" has the meaning
4 given in s. 77.51 (17r).

5 **SECTION 6.** 73.03 (50b) of the statutes is created to read:

6 73.03 **(50b)** To waive the fee established under sub. (50) for applying for and
7 renewing the business tax registration certificate, if the person who is applying for
8 or renewing the certificate is not required for purposes of ch. 77 to hold such a
9 certificate.

10 **SECTION 7.** 73.03 (61) of the statutes is created to read:

11 73.03 **(61)** To do all of the following related to the Uniform Sales and Use Tax
12 Administration Act:

13 (a) Certify compliance with the agreement, as defined in s. 77.65 (2) (a).

14 (b) Pursuant to the agreement, as defined in s. 77.65 (2) (a), certify certified
15 service providers, as defined in s. 77.51 (1g), and certified automated systems, as
16 defined in s. 77.524 (1) (am).

17 (c) Consistent with the agreement, as defined in s. 77.65 (2) (a), establish
18 performance standards and eligibility criteria for a seller that sells tangible personal
19 property or taxable services in at least 5 states that are signatories to the agreement,
20 as defined in s. 77.65 (2) (a); that has total annual sales revenue of at least
21 $500,000,000; that has a proprietary system that calculates the amount of tax owed
22 to each taxing jurisdiction in which the seller sells tangible personal property or
23 taxable services; and that has entered into a performance agreement with the states
24 that are signatories to the agreement, as defined in s. 77.65 (2) (a). For purposes of
25 this paragraph, "seller" includes an affiliated group of sellers using the same

1 proprietary system to calculate the amount of tax owed in each taxing jurisdiction
2 in which the sellers sell tangible personal property or taxable services.
3 (d) Issue a tax identification number to a person who claims an exemption
4 under subch. III or V of ch. 77 and who is not required to register with the department
5 for the purposes of subch. III or V of ch. 77 and establish procedures for the
6 registration of such a person.
7 (e) Maintain a database that is accessible to sellers and certified service
8 providers, as defined in s. 77.51 (1g), that indicates whether items defined in
9 accordance with the Uniform Sales and Use Tax Administration Act are taxable or
10 nontaxable.
11 (f) Maintain a database that is accessible to sellers and certified service
12 providers, as defined in s. 77.51 (1g), that indicates tax rates, taxing jurisdiction
13 boundaries, and zip code or address assignments related to the administration of
14 taxes imposed under subchs. III and V of ch. 77.
15 (g) Set forth the information that the seller shall provide to the department for
16 tax exemptions claimed by purchasers and establish the manner in which a seller
17 shall provide such information to the department.
18 (h) Provide monetary allowances, in addition to the retailer's discount provided
19 under s. 77.61 (4) (c), to certified service providers, as defined in s. 77.51 (1g), and
20 sellers that use certified automated systems, as defined in s. 77.524 (1) (am), or
21 proprietary systems, pursuant to the agreement as defined in s. 77.65 (2) (a).
22 **SECTION 8.** 76.07 (4g) (b) 8. of the statutes is amended to read:
23 76.07 **(4g)** (b) 8. Determine transport–related revenue by adding public service
24 revenue allocated to this state on the basis of routes for which the company is
25 authorized to receive subsidy payments, mutual aid allocated to this state on the

basis of the ratio of transport revenues allocated to this state to transport revenues everywhere in the previous year, in–flight sales allocated to this state as they are allocated under s. ~~77.51 (14r)~~ 77.522 and all other transport–related revenues from sales made in this state.

SECTION 9. 77.51 (1b) of the statutes is created to read:

77.51 **(1b)** "Alcohol beverage" means a beverage that is suitable for human consumption and that contains 0.5 percent or more of alcohol by volume.

SECTION 10. 77.51 (1e) of the statutes is created to read:

77.51 **(1e)** "Candy" means a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include a preparation that contains flour or that requires refrigeration.

SECTION 11. 77.51 (1n) of the statutes is created to read:

77.51 **(1n)** "Computer" means an electronic device that accepts information in digital or similar form and that manipulates such information to achieve a result based on a sequence of instructions.

SECTION 12. 77.51 (1p) of the statutes is created to read:

77.51 **(1p)** "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

SECTION 13. 77.51 (2k) of the statutes is created to read:

77.51 **(2k)** "Delivered electronically" means delivered to a purchaser by means other than by tangible storage media.

SECTION 14. 77.51 (2m) of the statutes is created to read:

77.51 **(2m)** "Delivery charges" means charges by a seller to prepare and deliver tangible personal property or services to a location designated by the purchaser of

the tangible personal property or services, including charges for transportation, shipping, postage, handling, crating, and packing.

SECTION 15. 77.51 (3p) of the statutes is created to read:

77.51 **(3p)** "Dietary supplement" means a product, other than tobacco, that is intended to supplement a person's diet, if all of the following apply:

(a) The product contains any of the following ingredients or any combination of any of the following ingredients:

1. A vitamin.

2. A mineral.

3. An herb or other botanical.

4. An amino acid.

5. A dietary substance that is intended for human consumption to supplement the diet by increasing total dietary intake.

6. A concentrate, metabolite, constituent, or extract.

(b) The product is intended for ingestion in tablet, capsule, powder, soft–gel, gel–cap, or liquid form, or, if not intended for ingestion in such forms, is not represented as conventional food and is not represented for use as the sole item of a meal or diet.

(c) The product is required to be labeled as a dietary supplement as required under 21 CFR 101.36.

SECTION 16. 77.51 (3pd) of the statutes is created to read:

77.51 **(3pd)** "Direct mail" means printed material that is delivered by the U.S. postal service or other delivery service to a mass audience or to addressees on a mailing list provided by or at the direction of the purchaser of the printed material, if the cost of the printed material or any tangible personal property included with the

1 printed material is not billed directly to the recipients of the printed material.
2 "Direct mail" includes any tangible personal property provided directly or indirectly
3 by the purchaser of the printed material to the seller of the printed material for
4 inclusion in any package containing printed material. "Direct mail" does not include
5 multiple items of printed material delivered to a single address.

6 **SECTION 17.** 77.51 (3pj) of the statutes is created to read:

7 77.51 **(3pj)** "Drug" means a compound, substance, or preparation, or any
8 component of them, other than food and food ingredients, dietary supplements, or
9 alcoholic beverages, to which any of the following applies:

10 (a) It is listed in the United States Pharmacopoeia, Homeopathic
11 Pharmacopoeia of the United States, or National Formulary, or any supplement to
12 any of them.

13 (b) It is intended for use in diagnosing, curing, mitigating, treating, or
14 preventing a disease.

15 (c) It is intended to affect a function or structure of the body.

16 **SECTION 18.** 77.51 (3pm) of the statutes is created to read:

17 77.51 **(3pm)** "Durable medical equipment" means equipment, including the
18 repair parts and replacement parts for the equipment that is primarily and
19 customarily used for a medical purpose related to a person; that can withstand
20 repeated use; that is not generally useful to a person who is not ill or injured; and that
21 is not placed in or worn on the body. "Durable medical equipment" does not include
22 mobility–enhancing equipment.

23 **SECTION 19.** 77.51 (3pp) of the statutes is created to read:

24 77.51 **(3pp)** "Electronic" means relating to technology having electrical,
25 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

1 **SECTION 20.** 77.51 (3t) of the statutes is created to read:

2 77.51 **(3t)** "Food and food ingredient" means a substance in liquid,
3 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
4 for chewing, by humans and that is ingested or chewed for its taste or nutritional
5 value. "Food and food ingredient" does not include alcohol beverages or tobacco.

6 **SECTION 21.** 77.51 (4) of the statutes is repealed.

7 **SECTION 22.** 77.51 (5) of the statutes is amended to read:

8 77.51 **(5)** For purposes of subs. (13) (e) and (f) and ~~(14) (L)~~ (15a) and s. 77.52
9 (2m), "incidental" means depending upon or appertaining to something else as
10 primary; something necessary, appertaining to, or depending upon another which is
11 termed the principal; something incidental to the main purpose of the service.
12 Tangible personal property transferred by a service provider is incidental to the
13 service if the purchaser's main purpose or objective is to obtain the service rather
14 than the property, even though the property may be necessary or essential to
15 providing the service.

16 **SECTION 23.** 77.51 (7) of the statutes is repealed and recreated to read:

17 77.51 **(7)** (a) "Lease or rental" means any transfer of possession or control of
18 tangible personal property for a fixed or indeterminate term and for consideration
19 and includes:

20 1. A transfer that includes future options to purchase or extend.

21 2. Agreements related to the transfer of possession or control of motor vehicles
22 or trailers, if the amount of any consideration may be increased or decreased by
23 reference to the amount realized on the sale or other disposition of such motor
24 vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

25 (b) "Lease or rental" does not include any of the following:

1. A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property after making all required payments.

2. A transfer of possession or control of tangible personal property under any agreement that requires transferring title to the tangible personal property after making all required payments and after paying an option price that does not exceed the greater of $100 or 1 percent of the total amount of the required payments.

3. Providing tangible personal property along with an operator, if the operator is necessary for the tangible personal property to perform in the manner for which it is designed and if the operator does more than maintain, inspect, or set up the tangible personal property.

(c) 1. Transfers described under par. (a) are considered a lease or rental, regardless of whether such transfer is considered a lease or rental under generally accepted accounting principles, or any provision of federal or local law, or any other provision of state law.

2. Transfers described under par. (b) are not considered a lease or rental, regardless of whether such transfer is considered a lease or rental under generally accepted accounting principles, or any provision of federal or local law, or any other provision of state law.

SECTION 24. 77.51 (7m) of the statutes is created to read:

77.51 **(7m)** "Mobility–enhancing equipment" means equipment, including the repair parts and replacement parts for the equipment, that is primarily and customarily used to provide or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not

1 used by a person who has normal mobility. "Mobility–enhancing equipment" does
2 not include a motor vehicle or any equipment on a motor vehicle that is generally
3 provided by a motor vehicle manufacturer.

4 **SECTION 25.** 77.51 (10m) of the statutes is created to read:

5 77.51 **(10m)** (a) "Prepared food" means:

6 1. Food and food ingredients sold in a heated state.

7 2. Food and food ingredients heated by the retailer, except as provided in par.
8 (b).

9 3. Food and food ingredients sold with eating utensils that are provided by the
10 retailer of the food and food ingredients, including plates, knives, forks, spoons,
11 glasses, cups, napkins, or straws. In this subdivision, "plate" does not include a
12 container or packaging used to transport food and food ingredients.

13 4. Except as provided in par. (b), 2 or more food ingredients mixed or combined
14 by a retailer for sale as a single item.

15 (b) "Prepared food" under par. (a) 2. and 4. does not include:

16 1. Two or more food ingredients mixed or combined by a retailer for sale as a
17 single item, if the retailer's primary classification in the 1997 North American
18 Industry Classification System, published by the federal office of management and
19 budget, is manufacturing under sectors 31 to 33, not including bakeries and tortilla
20 manufacturing under industry group number 3118.

21 2. Two or more food ingredients mixed or combined by a retailer for sale as a
22 single item, sold unheated, and sold by volume or weight.

23 3. Bakery items made by a retailer, including breads, rolls, pastries, buns,
24 biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,
25 cookies, and tortillas.

1 4. Food and food ingredients that are only sliced, repackaged, or pasteurized
2 by a retailer.
3 5. Eggs, fish, meat, and poultry, and foods containing any of them in raw form,
4 that require cooking by the consumer, as recommended by the food and drug
5 administration in chapter 3, part 401.11 of its food code to prevent food–borne
6 illnesses.
7 **SECTION 26.** 77.51 (10n) of the statutes is created to read:
8 77.51 **(10n)** "Prescription" means an order, formula, or recipe that is issued by
9 any oral, written, electronic, or other means of transmission and by a person who is
10 authorized by the laws of this state to issue such an order, formula, or recipe.
11 **SECTION 27.** 77.51 (10r) of the statutes is created to read:
12 77.51 **(10r)** "Prewritten computer software" means any of the following:
13 (a) Computer software that is not designed and developed by the author or
14 creator of the software according to a specific purchaser's specifications.
15 (b) Computer software upgrades that are not designed and developed by the
16 author or creator of the software according to a specific purchaser's specifications.
17 (c) Computer software that is designed and developed by the author or creator
18 of the software according to a specific purchaser's specifications and that is sold to
19 another purchaser.
20 (d) Any combination of computer software under pars. (a) to (c), including any
21 combination with any portion of such software.
22 (e) Computer software as described under pars. (a) to (d), and any portion of
23 such software, that is modified or enhanced by any degree to a specific purchaser's
24 specifications, except such modification or enhancement that is reasonably and

separately indicated on an invoice, or other statement of the price, provided to the purchaser.

SECTION 28. 77.51 (11m) of the statutes is created to read:

77.51 **(11m)** "Prosthetic device" means a device, including the repair parts and replacement parts for the device, that is placed in or worn on the body to artificially replace a missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.

SECTION 29. 77.51 (12m) of the statutes is created to read:

77.51 **(12m)** (a) "Purchase price" means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether paid in money or otherwise, without any deduction for the following:

1. The seller's cost of the property sold.

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller.

3. Charges by the seller for any services necessary to complete a sale, not including delivery and installation charges.

4. a. Delivery charges, except as provided in par. (b) 4.

b. If a shipment includes property that is subject to tax under this subchapter and property that is not subject to tax under this subchapter, the amount of the delivery charge allocated to the property that is subject to tax under this subchapter based on the total purchase price of the property that is subject to tax under this subchapter as compared to the total purchase price of all the property or on the total

1 weight of the property that is subject to tax under this subchapter as compared to the
2 total weight of all the property.
3 5. Installation charges.
4 6. The value of exempt tangible personal property, if the exempt tangible
5 personal property is bundled with taxable tangible personal property and sold by the
6 seller as a single product or piece of merchandise.
7 (b) "Purchase price" does not include:
8 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
9 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.
10 2. Interest, financing, and carrying charges from credit that is extended on a
11 sale of personal property or services, if the amount of the interest, financing, or
12 carrying charges is separately stated on the invoice, bill of sale, or similar document
13 that the seller gives to the purchaser.
14 3. Any taxes legally imposed directly on the purchaser that are separately
15 stated on the invoice, bill of sale, or similar document that the seller gives to the
16 purchaser.
17 4. Delivery charges for direct mail.
18 5. In all transactions in which an article of tangible personal property is traded
19 toward the purchase of an article of greater value, the amount of the purchase price
20 that represents the amount allowed for the article traded, except that this
21 subdivision does not apply to any transaction to which subd. 7. or 8. applies.
22 6. If a person who purchases a motor vehicle presents a statement issued under
23 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
24 statement to the seller within 60 days from the date of receiving a refund under s.
25 218.0171 (2) (b) 2. b., the trade–in amount specified in the statement issued under

s. 218.0171 (2) (cq), but not to exceed the purchase price from the sale of the motor vehicle. This subdivision applies only to the first motor vehicle purchased by a person after receiving a refund under s. 218.0171 (2) (b) 2. b.

7. Thirty–five percent of the purchase price, excluding trade–ins, of a new mobile home, as defined in s. 340.01 (29), that is a primary housing unit or of a new mobile home, as defined in s. 340.01 (29), that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transport. This subdivision does not apply to a lease or rental.

8. At the retailer's option; except that after the retailer chooses an option the retailer may not use the other option for other sales without the department's written approval; either 35 percent of the purchase price of a manufactured building, as defined in s. 101.71 (6), or an amount equal to the purchase price of the manufactured building minus the cost of materials that become an ingredient or component part of the building.

SECTION 30. 77.51 (12p) of the statutes is created to read:

77.51 **(12p)** "Purchaser" means a person to whom a sale of tangible personal property is made or to whom a service is furnished.

SECTION 31. 77.51 (13) (o) of the statutes is amended to read:

77.51 **(13)** (o) A person selling ~~medicine~~ drugs for animals to a veterinarian. As used in this paragraph, "animal" includes livestock, pets and poultry.

SECTION 32. 77.51 (13g) (intro.) of the statutes is amended to read:

77.51 **(13g)** (intro.) Except as provided in sub. (13h), "retailer engaged in business in this state", ~~unless otherwise limited by federal statute,~~ for purposes of the use tax, means any of the following:

1 **SECTION 33.** 77.51 (13g) (c) of the statutes is created to read:

2 77.51 **(13g)** (c) Any retailer selling tangible personal property or taxable
3 services for storage, use, or other consumption in this state, unless otherwise limited
4 by federal law.

5 **SECTION 34.** 77.51 (13s) of the statutes is created to read:

6 77.51 **(13s)** "Retail sale" or "sale at retail" means any sale, lease, or rental for
7 any purpose other than resale, sublease, or subrent.

8 **SECTION 35.** 77.51 (14) (intro.) of the statutes is amended to read:

9 77.51 **(14)** (intro.) "Sale"~~, "sale, lease or rental", "retail sale", "sale at retail", or~~
10 ~~equivalent terms include~~ includes any ~~one or all~~ of the following: the transfer of the
11 ownership of, title to, possession of, or enjoyment of tangible personal property or
12 services for use or consumption but not for resale as tangible personal property or
13 services and includes:

14 **SECTION 36.** 77.51 (14) (a) of the statutes is amended to read:

15 77.51 **(14)** (a) Any sale at an auction in respect to tangible personal property
16 which is sold to a successful bidder~~. The proceeds from,~~ except the sale of property
17 sold at auction which is bid in by the seller and on which title does not pass to a new
18 purchaser ~~shall be deducted from the gross proceeds of the sale and the tax paid only~~
19 ~~on the net proceeds~~.

20 **SECTION 37.** 77.51 (14) (d) of the statutes is repealed.

21 **SECTION 38.** 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4.

22 **SECTION 39.** 77.51 (14) (i) of the statutes is repealed.

23 **SECTION 40.** 77.51 (14) (j) of the statutes is amended to read:

24 77.51 **(14)** (j) The granting of possession of tangible personal property by a
25 lessor to a lessee, or to another person at the direction of the lessee. Such a

transaction is deemed a continuing sale in this state ~~by the lessor for the duration of the lease as respects any period of time the leased property is situated in this state, irrespective of the time or place of delivery of the property to the lessee or such other person~~.

SECTION 41. 77.51 (14) (k) of the statutes is repealed.

SECTION 42. 77.51 (14) (L) of the statutes, as affected by 2005 Wisconsin Act .... (this act), is repealed.

SECTION 43. 77.51 (14r) of the statutes is repealed.

SECTION 44. 77.51 (15) of the statutes is repealed.

SECTION 45. 77.51 (15a) of the statutes is created to read:

77.51 **(15a)** (a) "Sales, lease, or rental for resale, sublease, or subrent" includes transfers of tangible personal property, audiovisual works, finished artwork, literary works, and audio works to a service provider that the service provider transfers in conjunction with but not incidental to the selling, performing, or furnishing of any service, and transfers of tangible personal property, audiovisual works, finished artwork, literary works, and audio works to a service provider that the service provider physically transfers in conjunction with the selling, performing, or furnishing services under s. 77.52 (2) (a) 7., 10., 11., or 20. This paragraph does not apply to sub. (2).

(b) "Sales, lease, or rental for resale, sublease, or subrent" does not include any of the following:

1. The sale of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for use in real property construction activities or the alteration, repair, or improvement of real property, regardless of the quantity of such materials, supplies, and equipment sold.

1 2. Any sale of tangible personal property to a purchaser even though such
2 property may be used or consumed by some other person to whom such purchaser
3 transfers the tangible personal property without valuable consideration, such as
4 gifts, and advertising specialties distributed gratis apart from the sale of other
5 tangible personal property or service.

6 3. Transfers of tangible personal property, audiovisual works, finished
7 artwork, literary works, and audio works to a service provider that the service
8 provider transfers in conjunction with the selling, performing, or furnishing of any
9 service, if the tangible personal property, audiovisual work, finished artwork,
10 literary work, and audio work is incidental to the service, unless the service provider
11 is selling, performing, or furnishing services under s. 77.52 (2) (a) 7., 10., 11., or 20.

12 **SECTION 46.** 77.51 (15b) of the statutes is created to read:

13 77.51 **(15b)** (a) "Sales price" means the total amount of consideration, including
14 cash, credit, property, and services, for which tangible personal property or services
15 are sold, leased, or rented, valued in money, whether received in money or otherwise,
16 without any deduction for the following:

17 1. The seller's cost of the property sold.

18 2. The cost of materials used, labor or service cost, interest, losses, all costs of
19 transportation to the seller, all taxes imposed on the seller, and any other expense
20 of the seller.

21 3. Charges by the seller for any services necessary to complete a sale, not
22 including delivery and installation charges.

23 4. a. Delivery charges, except as provided in par. (b) 4.

24 b. If a shipment includes property that is subject to tax under this subchapter
25 and property that is not subject to tax under this subchapter, the amount of the

1 delivery charge allocated to the property that is subject to tax under this subchapter
2 based on the total sales price of the property that is subject to tax under this
3 subchapter as compared to the total sales price of all the property or on the total
4 weight of the property that is subject to tax under this subchapter as compared to the
5 total weight of all the property.

6 5. Installation charges.

7 6. The value of exempt tangible personal property, if the exempt tangible
8 personal property is bundled with taxable tangible personal property and sold by the
9 seller as a single product or piece of merchandise.

10 (b) "Sales price" does not include:

11 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
12 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

13 2. Interest, financing, and carrying charges from credit that is extended on a
14 sale of tangible personal property or services, if the amount of the interest, financing,
15 or carrying charges is separately stated on the invoice, bill of sale, or similar
16 document that the seller gives to the purchaser.

17 3. Any taxes legally imposed directly on the purchaser that are separately
18 stated on the invoice, bill of sale, or similar document that the seller gives to the
19 purchaser.

20 4. Delivery charges for direct mail.

21 5. In all transactions in which an article of tangible personal property is traded
22 toward the purchase of an article of greater value, the amount of the sales price that
23 represents the amount allowed for the article traded, except that this subdivision
24 does not apply to any transaction to which subd. 7. or 8. applies.

6. If a person who purchases a motor vehicle presents a statement issued under s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the statement to the seller within 60 days from the date of receiving a refund under s. 218.0171 (2) (b) 2. b., the trade–in amount specified in the statement issued under s. 218.0171 (2) (cq), but not to exceed the sales price from the sale of the motor vehicle. This subdivision applies only to the first motor vehicle purchased by a person after receiving a refund under s. 218.0171 (2) (b) 2. b.

7. Thirty–five percent of the sales price, excluding trade–ins, of a new mobile home, as defined in s. 340.01 (29), that is a primary housing unit or of a new mobile home, as defined in s. 340.01 (29), that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transport. This subdivision does not apply to a lease or rental.

8. At the retailer's option; except that after the retailer chooses an option the retailer may not use the other option for other sales without the department's written approval; either 35 percent of the sales price of a manufactured building, as defined in s. 101.71 (6), or an amount equal to the sales price of the manufactured building minus the cost of materials that become an ingredient or component part of the building.

SECTION 47. 77.51 (17) of the statutes is amended to read:

77.51 **(17)** "Seller" includes every person selling, leasing or renting tangible personal property or selling, performing or furnishing services of a kind the ~~gross receipts~~ sales price from the sale, lease, rental, performance or furnishing of which ~~are~~ is required to be included in the measure of the sales tax.

SECTION 48. 77.51 (17m) of the statutes is repealed and recreated to read:

77.51 **(17m)** "Service address" means any of the following:

(a) The location of the telecommunications equipment to which a customer's telecommunications service is charged and from which the telecommunications service originates or terminates, regardless of where the telecommunications service is billed or paid.

(b) If the location described under par. (a) is not known by the seller who sells the telecommunications service, the location where the signal of the telecommunications service originates, as identified by the seller's telecommunications system or, if the signal is not transmitted by the seller's telecommunications system, by information that the seller received from the seller's service provider.

(c) If the locations described under pars. (a) and (b) are not known by the seller who sells the telecommunications service, the customer's place of primary use.

SECTION 49. 77.51 (17w) of the statutes is created to read:

77.51 **(17w)** "Soft drink" means a beverage that contains less than 0.5 percent of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50 percent vegetable or fruit juice by volume.

SECTION 50. 77.51 (20) of the statutes is amended to read:

77.51 **(20)** "Tangible personal property" means ~~all tangible~~ personal property ~~of every kind and description~~ <u>that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses,</u> and includes electricity, ~~natural~~ gas, steam ~~and~~, water, and ~~also leased property affixed to realty if the lessor has the right to remove the property upon breach or termination of the lease agreement, unless the lessor of the property is also the lessor of the realty to which~~

1 ~~the property is affixed. "Tangible personal property" also includes coins and stamps~~
2 ~~of the United States sold or traded as collectors' items above their face value and~~
3 ~~computer programs except custom~~ prewritten computer ~~programs~~ software.

4 **SECTION 51.** 77.51 (21) of the statutes is amended to read:

5 77.51 **(21)** "Taxpayer" means the person who is required to pay, collect, or
6 account for or who is otherwise directly interested in the taxes imposed by this
7 subchapter, including a certified service provider.

8 **SECTION 52.** 77.51 (21p) of the statutes is created to read:

9 77.51 **(21p)** "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco,
10 and any other item that contains tobacco.

11 **SECTION 53.** 77.51 (22) (bm) of the statutes is created to read:

12 77.51 **(22)** (bm) In this subsection, "exercise of any right or power over tangible
13 personal property or taxable services" includes distributing, selecting recipients,
14 determining mailing schedules, or otherwise directing the distribution,
15 dissemination, or disposal of tangible personal property or taxable services,
16 regardless of whether the purchaser of such property or services owns or physically
17 possesses, in this state, the property or services.

18 **SECTION 54.** 77.52 (1) (a) of the statutes, as affected by 2005 Wisconsin Act ....
19 (this act), is amended to read:

20 77.52 **(1)** (a) For the privilege of selling, licensing, leasing or renting tangible
21 personal property, including accessories, components, attachments, parts, supplies
22 and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the
23 ~~gross receipts~~ sales price from the sale, license, lease or rental of tangible personal
24 property, including accessories, components, attachments, parts, supplies and
25 materials, sold, leased or rented at retail in this state.

1 **SECTION 55.** 77.52 (1) (c) of the statutes is created to read:

2 77.52 **(1)** (c) For the privilege of selling at retail coins and stamps of the United
3 States that are sold or traded as collectors' items above their face value, a tax is
4 imposed on all retailers at the rate of 5 percent of the sales price from the sale of such
5 coins and stamps.

6 **SECTION 56.** 77.52 (1) (d) of the statutes is created to read:

7 77.52 **(1)** (d) For the privilege of leasing property that is affixed to real property,
8 a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease
9 of such property, if the lessor has the right to remove the leased property upon breach
10 or termination of the lease agreement, unless the lessor of the leased property is also
11 the lessor of the real property to which the leased property is affixed.

12 **SECTION 57.** 77.52 (2) (intro.) of the statutes is amended to read:

13 77.52 **(2)** (intro.) For the privilege of selling, licensing, performing or furnishing
14 the services described under par. (a) at retail in this state to consumers or users, a
15 tax is imposed upon all persons selling, licensing, performing or furnishing the
16 services at the rate of 5% of the ~~gross receipts~~ sales price from the sale, license,
17 performance or furnishing of the services.

18 **SECTION 58.** 77.52 (2) (a) 5. a. of the statutes is amended to read:

19 77.52 **(2)** (a) 5. a. The sale of telecommunications services, except services
20 subject to 4 USC 116 to 126, as amended by P.L. 106–252, that either originate or
21 terminate in this state; except services that are obtained by means of a toll–free
22 number, that originate outside this state and that terminate in this state; and are
23 charged to a service address in this state, regardless of the location where that charge
24 is billed or paid; and the sale of ~~the rights to purchase telecommunications services,~~
25 ~~including purchasing reauthorization numbers, by paying in advance and by using~~

1 ~~an access number and authorization code~~ a prepaid calling service as defined in s.
2 77.522 (3) (a) 11., except sales that are subject to subd. 5. b.

3 **SECTION 59.** 77.52 (2) (a) 10. of the statutes is amended to read:

4 77.52 **(2)** (a) 10. Except for installing or applying tangible personal property
5 which, when installed or applied, will constitute an addition or capital improvement
6 of real property, the repair, service, alteration, fitting, cleaning, painting, coating,
7 towing, inspection, and maintenance of all items of tangible personal property
8 unless, at the time of such repair, service, alteration, fitting, cleaning, painting,
9 coating, towing, inspection, or maintenance, a sale in this state of the type of property
10 repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or
11 maintained would have been exempt to the customer from sales taxation under this
12 subchapter, other than the exempt sale of a motor vehicle or truck body to a
13 nonresident under s. 77.54 (5) (a) and other than nontaxable sales outside this state
14 under s. ~~77.51 (14r)~~ 77.522 or unless the repair, service, alteration, fitting, cleaning,
15 painting, coating, towing, inspection, or maintenance is provided under a contract
16 that is subject to tax under subd. 13m. For purposes of this paragraph, the following
17 items shall be considered to have retained their character as tangible personal
18 property, regardless of the extent to which any such item is fastened to, connected
19 with, or built into real property: furnaces, boilers, stoves, ovens, including associated
20 hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers,
21 refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and
22 softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units,
23 radios and radio antennas, incinerators, television receivers and antennas, record
24 players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings,
25 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; equipment in offices, business facilities, schools, and hospitals but not in residential facilities including personal residences, apartments, long–term care facilities, as defined under s. 16.009 (1) (em), state institutions, as defined under s. 101.123 (1) (i), Type 1 secured correctional facilities, as defined in s. 938.02 (19), or similar facilities 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 tax imposed under this subsection applies to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed in this subdivision, regardless of whether the installation or application of tangible personal property related to the items is an addition to or a capital improvement of real property, except that the tax imposed under this subsection does not apply to the original installation or the complete replacement of an item listed in this subdivision, if such installation or replacement is a real property construction activity under s. 77.51 (2).

SECTION 60. 77.52 (2) (a) 13m. of the statutes is created to read:

77.52 **(2)** (a) 13m. The sale of contracts, including service contracts, maintenance agreements, and warranties, that provide, in whole or in part, for the future performance of or payment for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of tangible personal property, unless the sale, lease, or rental in this state of the property to which the contract relates is or was exempt, to the purchaser of the contract, from taxation under this subchapter.

SECTION 61. 77.52 (3m) of the statutes is repealed.

SECTION 62. 77.52 (6) of the statutes is repealed.

SECTION 63. 77.52 (7) of the statutes is amended to read:

77.52 **(7)** Every person desiring to operate as a seller within this state who holds a valid certificate under s. 73.03 (50) shall file with the department an application for a permit for each place of operations. Every application for a permit shall be made upon a form prescribed by the department and shall set forth the name under which the applicant intends to operate, the location of the applicant's place of operations, and the other information that the department requires. ~~The~~ Except as provided in sub. (7b), the application shall be signed by the owner if a sole proprietor; in the case of sellers other than sole proprietors, the application shall be signed by the person authorized to act on behalf of such sellers. A nonprofit organization that has ~~gross receipts~~ a sales price taxable under s. 77.54 (7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable ~~gross receipts~~ sales prices received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54 (7m) except for its possession of a seller's permit, it may surrender that permit.

SECTION 64. 77.52 (7b) of the statutes is created to read:

77.52 **(7b)** Any person who may register under sub. (7) may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under sub. (7), in the manner prescribed by the department.

SECTION 65. 77.52 (13) of the statutes 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 services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser ~~a~~ an electronic or paper certificate, in a manner prescribed by the department, to the effect that the property or service is purchased for resale or is otherwise exempt~~;~~, except that no certificate is required for ~~sales of cattle, sheep, goats, and pigs that are sold at an animal market, as defined in s. 95.68 (1) (ag), and no certificate is required for sales of commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse~~ the sale of tangible personal property that is exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (14b), (15), (17), (20n), (21), (22b), (30), (31), (32), (35), (36), (37), (42), (44), (45), and (46), except as provided in s. 77.54 (30) (e) and (f).

SECTION 66. 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are consolidated, renumbered 77.52 (14) and amended to read:

77.52 **(14)** The certificate referred to in sub. (13) relieves the seller from the burden of proof only if ~~any of the following is true: 1. The~~ the certificate is taken ~~in good faith~~ from a person ~~who is engaged as a seller of tangible personal property or~~

~~taxable services and who holds the permit provided for in sub. (9) and who,~~ at the time ~~of purchasing~~ that the person purchases the tangible personal property or services~~, intends to sell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose. (b)~~. The certificate under sub. (13) shall not relieve the seller of the burden of proof if the sale is sourced to this state under s. 77.522 (1) (b) 1. and the claimed exemption is not provided for under this subchapter or if the seller fraudulently fails to collect sales tax or solicits the purchaser to claim an unlawful exemption. The certificate referred to in sub. (13) shall ~~be signed by and bear the name and address of~~ provide information that identifies the purchaser~~,~~ and shall indicate ~~the general character of the tangible personal property or service sold by the purchaser and~~ the basis for the claimed exemption and a paper certificate shall be signed by the purchaser. The certificate shall be in such form as the department prescribes by rule.

SECTION 67. 77.52 (14) (a) 2. of the statutes is repealed.

SECTION 68. 77.52 (15) of the statutes is amended to read:

77.52 **(15)** If a purchaser who ~~gives a resale certificate~~ purchases tangible personal property or taxable services without paying a sales tax or use tax on such purchase because such property or services were for resale makes any use of the property or services other than retention, demonstration or display while holding ~~it~~ the property or services for sale, lease or rental in the regular course of the purchaser's operations, the use shall be taxable to the purchaser under s. 77.53 as of the time that the property ~~is~~ or services are first used by the purchaser, and the ~~sales~~ purchase price of the property or services to the purchaser shall be the measure of the tax. ~~Only when there is an unsatisfied use tax liability on this basis because~~

1 ~~the seller has provided incorrect information about that transaction to the~~
2 ~~department shall the seller be liable for sales tax with respect to the sale of the~~
3 ~~property to the purchaser.~~

4 **SECTION 69.** 77.522 of the statutes is created to read:

5 **77.522 Sourcing. (1)** GENERAL. (a) In this section:

6 1. "Direct mail form" means a form for direct mail prescribed by the
7 department.

8 2. "Multiple–points–of–use exemption form" means the
9 multiple–points–of–use exemption form, as prescribed by the department.

10 3. "Product" includes tangible personal property, digital goods, and services.

11 4. "Receive" means taking possession of tangible personal property; making
12 first use of services; or taking possession or making first use of digital goods,
13 whichever comes first. "Receive" does not include a shipping company taking
14 possession of tangible personal property on a purchaser's behalf.

15 5. "Transportation equipment" means all of the following:

16 a. Locomotives and railcars that are used to carry persons or property in
17 interstate commerce.

18 b. Trucks and truck tractors that have a gross vehicle weight rating of 10,001
19 pounds or greater, trailers, semitrailers, and passenger buses, if such vehicles are
20 registered under the International Registration Plan and operated under the
21 authority of a carrier that is authorized by the federal government to carry persons
22 or property in interstate commerce.

23 c. Aircraft that is operated by air carriers that are authorized by the federal
24 government or a foreign authority to carry persons or property in interstate or
25 foreign commerce.

1 d. Containers that are designed for use on the vehicles described in subd. 5. a.
2 to c. and component parts attached to or secured on such vehicles.
3 (b) Except as provided in pars. (c) to (d) and subs. (2), (3), and (4), the location
4 of a sale is determined as follows:
5 1. If a purchaser receives the product at a seller's business location, the sale
6 occurs at that business location.
7 2. If a purchaser does not receive the product at a seller's business location, the
8 sale occurs at the location where the purchaser, or the purchaser's designated donee,
9 receives the product, including the location indicated by the instructions known to
10 the seller for delivery to the purchaser or the purchaser's designated donee.
11 3. If the location of a sale of a product cannot be determined under subds. 1. and
12 2., the sale occurs at the purchaser's address as indicated by the seller's business
13 records, if the records are maintained in the ordinary course of the seller's business
14 and if using that address to establish the location of a sale is not in bad faith.
15 4. If the location of a sale of a product cannot be determined under subds. 1. to
16 3., the sale occurs at the purchaser's address as obtained during the consummation
17 of the sale, including the address indicated on the purchaser's payment instrument,
18 if no other address is available and if using that address is not in bad faith.
19 5. If the location of a sale of a product cannot be determined under subds. 1. to
20 4., the location of the sale is determined as follows:
21 a. If the item sold is tangible personal property, the sale occurs at the location
22 from which the tangible personal property is shipped.
23 b. If the item sold is a digital good, or computer software delivered
24 electronically, the sale occurs at the location from which the digital good or computer
25 software was first available for transmission by the seller.

1 c. If a service is sold, the sale occurs at the location from which the service was
2 provided.
3 (c) The sale of direct mail occurs at the location from which the direct mail is
4 shipped, if the purchaser does not provide to the seller a direct pay permit, a direct
5 mail form, or other information that indicates the appropriate taxing jurisdiction to
6 which the direct mail is delivered to the ultimate recipients. If the purchaser
7 provides a direct mail form or direct payment to the seller, the purchaser shall pay
8 or remit, as appropriate, to the department the tax imposed under s. 77.53 (1) on all
9 purchases for which the tax is due and the seller is relieved from liability for
10 collecting such tax. A direct mail form provided to a seller under this paragraph shall
11 remain effective for all sales by the seller who received the form to the purchaser who
12 provided the form, unless the purchaser revokes the form in writing and provides
13 such revocation to the seller.
14 (d) 1. A business purchaser who purchases a service, digital good, or computer
15 software that is delivered electronically, who does not hold a direct pay permit under
16 s. 77.52 (17m), and who knows at the time of purchase that the service, good, or
17 software will be concurrently available for use in more than one taxing jurisdiction
18 shall provide a multiple–points–of–use exemption form to the seller, in conjunction
19 with the purchase, and shall pay or remit, as appropriate, to the department the tax
20 imposed under s. 77.53 (1) on all purchases for which the tax is due.
21 2. To apportion the amount of the tax due multiple taxing jurisdictions, a
22 purchaser who provides an exemption form under subd. 1. shall use any reasonable,
23 consistent, and uniform apportionment method supported by the purchaser's
24 business records that exist at the time of the sale.

1 3. An exemption form provided under subd. 1. shall remain effective for all sales
2 by the seller who received the form to the purchaser who provided the form, unless
3 the purchaser revokes the form in writing and provides such a revocation to the
4 seller.

5 4. A business purchaser who purchases a service, digital good, or computer
6 software that is delivered electronically, who holds a direct pay permit under s. 77.52
7 (17m), and who knows at the time of purchase that the service, good, or software will
8 be concurrently available for use in more than one taxing jurisdiction is not required
9 to provide a multiple–points–of–use exemption form to the seller, but shall collect,
10 pay, or remit, as appropriate, to the department the tax imposed under s. 77.53 (1)
11 and shall use the apportionment method described under subd. 2. to apportion the
12 tax due multiple taxing jurisdictions.

13 5. A seller who receives a multiple–points–of–use exemption form under this
14 paragraph is relieved from liability for collecting the tax imposed under s. 77.53 (1)
15 on purchases related to the multiple–points–of–use exemption form.

16 **(2)** LEASE OR RENTAL. (a) Except as provided in pars. (b) and (c), with regards
17 to the first or only payment on the lease or rental, the lease or rental of tangible
18 personal property occurs at the location determined under sub. (1) (b). If the property
19 is moved from the place where the property was initially delivered, the subsequent
20 periodic payments on the lease or rental occur at the property's primary location as
21 indicated by an address for the property that is provided by the lessee and that is
22 available to the lessor in records that the lessor maintains in the ordinary course of
23 the lessor's business, if the use of such an address does not constitute bad faith. The
24 location of a lease or rental as determined under this paragraph shall not be altered
25 by any intermittent use of the property at different locations.

1 (b) The lease or rental of motor vehicles, trailers, semitrailers, and aircraft,
2 that are not transportation equipment, occurs at the primary location of such motor
3 vehicles, trailers, semitrailers, or aircraft as indicated by an address for the property
4 that is provided by the lessee and that is available to the lessor in records that the
5 lessor maintains in the ordinary course of the lessor's business, if the use of such an
6 address does not constitute bad faith, except that a lease or rental under this
7 paragraph that requires only one payment occurs at the location determined under
8 sub. (1) (b). The location of a lease or rental as determined under this paragraph shall
9 not be altered by any intermittent use of the property at different locations.
10 (c) The lease or rental of transportation equipment occurs at the location
11 determined under sub. (1) (b).
12 (d) A license of tangible personal property shall be treated as a lease or rental
13 of tangible personal property under this subsection.
14 **(3)** TELECOMMUNICATIONS. (a) In this subsection:
15 1. "Air–to–ground radiotelephone service" means a radio service in which
16 common carriers are authorized to offer and provide radio telecommunications
17 service for hire to subscribers in aircraft.
18 2. "Call–by–call basis" means any method of charging for telecommunications
19 services by which the price of such services is measured by individual calls.
20 3. "Communications channel" means a physical or virtual path of
21 communications over which signals are transmitted between or among customer
22 channel termination points.
23 4. "Customer" means a person who enters into a contract with a seller of
24 telecommunications services or, in any transaction for which the end user is not the
25 person who entered into a contract with the seller of telecommunications services,

1 the end user of the telecommunications services. "Customer" does not include a
2 person who resells telecommunications services or, for mobile telecommunications
3 services, a serving carrier under an agreement to serve a customer outside the home
4 service provider's licensed service area.

5 5. "Customer channel termination point" means the location where a customer
6 inputs or receives communications.

7 6. "End user" means an individual who uses a telecommunications service.

8 7. "Home service provider" means a home service provider under section 124
9 (5) of P.L. 106–252.

10 8. "Mobile telecommunications service" means a mobile telecommunications
11 service under 4 USC 116 to 126, as amended by P.L. 106–252.

12 9. "Place of primary use" means place of primary use, as determined under 4
13 USC 116 to 126, as amended by P.L. 106–252.

14 10. "Postpaid calling service" means a telecommunications service that is
15 obtained by paying for it on a call–by–call basis using a bankcard, travel card, credit
16 card, debit card, or similar method, or by charging it to a telephone number that is
17 not associated with the location where the telecommunications service originates or
18 terminates. "Postpaid calling service" includes a service that would otherwise be a
19 prepaid calling service except that the service provided to the customer is not
20 exclusively a telecommunications service.

21 11. "Prepaid calling service" means the right to access services that are
22 exclusively telecommunications services, if that right is paid for in advance of
23 providing such services, requires using an access number or authorization code to
24 originate calls, and is sold in predetermined units or dollars that decrease with use
25 in a known amount.

12. "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of communications channels, regardless of the manner in which the communications channel or group of communications channels is connected, and includes switching capacity, extension lines, stations, and other associated services that are provided in connection with the use of such channel or channels.

13. "Radio service" means a communication service provided by the use of radio, including radiotelephone, radiotelegraph, paging, and facsimile service.

14. "Radiotelegraph service" means transmitting messages from one place to another by means of radio.

15. "Radiotelephone service" means transmitting sound from one place to another by means of radio.

(b) Except as provided in pars. (d) to (g), the sale of a telecommunications service that is sold on a call–by–call basis occurs in the taxing jurisdiction for sales and use tax purposes where the call originates and terminates, in the case of a call that originates and terminates in the same such jurisdiction, or the taxing jurisdiction for sales and use tax purposes where the call originates or terminates and where the service address is located.

(c) Except as provided in pars. (d) to (g), the sale of a telecommunications service that is sold on a basis other than a call–by–call basis occurs at the customer's place of primary use.

(d) The sale of a mobile telecommunications service, except an air–to–ground radiotelephone service and a prepaid calling service, occurs at the customer's place of primary use.

1 (e) The sale of a postpaid calling service occurs at the location where the signal
2 of the telecommunications service originates, as first identified by the seller's
3 telecommunications system or, if the signal is not transmitted by the seller's
4 telecommunications system, by information that the seller received from the seller's
5 service provider.

6 (f) The sale of a prepaid calling service occurs at the location determined under
7 sub. (1) (b), except that, if the service is a mobile telecommunications service and the
8 location cannot be determined under sub. (1) (b) 1. to 4., the prepaid calling service
9 occurs at the location determined under sub. (1) (b) 5. c. or at the location associated
10 with the mobile telephone number, as determined by the seller.

11 (g) 1. The sale of a private communication service for a separate charge related
12 to a customer channel termination point occurs at the location of the customer
13 channel termination point.

14 2. The sale of a private communication service in which all customer channel
15 termination points are located entirely in one taxing jurisdiction for sales and use
16 tax purposes occurs in the taxing jurisdiction in which the customer channel
17 termination points are located.

18 3. If the segments are charged separately, the sale of a private communication
19 service that represents segments of a communications channel between 2 customer
20 channel termination points that are located in different taxing jurisdictions for sales
21 and use tax purposes occurs in an equal percentage in both such jurisdictions.

22 4. If the segments are not charged separately, the sale of a private
23 communication service for segments of a communications channel that is located in
24 more than one taxing jurisdiction for sales and use tax purposes occurs in each such
25 jurisdiction in a percentage determined by dividing the number of customer channel

1 termination points in that jurisdiction by the number of customer channel
2 termination points in all jurisdictions where segments of the communications
3 channel are located.

4 **(4)** FLORISTS. (a) For purposes of this subsection, "retail florist" means a person
5 engaged in the business of selling cut flowers, floral arrangements, and potted plants
6 and who prepares such flowers, floral arrangements, and potted plants. "Retail
7 florist" does not include a person who sells cut flowers, floral arrangements, and
8 potted plants primarily by mail or via the Internet.

9 (b) The sale of tangible personal property by a retail florist who takes an order
10 from a purchaser occurs at the location where the retail florist takes the order, if the
11 retail florist forwards the order to another retail florist who is at a location other than
12 the location of the florist who takes the order and who transfers the tangible personal
13 property to a person identified by the purchaser.

14 (c) This subsection does not apply to sales occurring on or after January 1, 2006.

15 **SECTION 70.** 77.523 (title) of the statutes is repealed.

16 **SECTION 71.** 77.523 of the statutes is renumbered 77.59 (9p) (a) and amended
17 to read:

18 77.59 **(9p)** (a) If a customer purchases a service that is subject to 4 USC 116
19 to 126, as amended by P.L. 106–252, and if the customer believes that the amount
20 of the tax assessed for the service under this subchapter or the place of primary use
21 or taxing jurisdiction assigned to the service is erroneous, the customer may request
22 that the service provider correct the alleged error by sending a written notice to the
23 service provider. The notice shall include a description of the alleged error, the street
24 address for the customer's place of primary use of the service, the account name and
25 number of the service for which the customer seeks a correction, and any other

information that the service provider reasonably requires to process the request. Within 60 days from the date that a service provider receives a request under this ~~section~~ paragraph, the service provider shall review its records to determine the customer's taxing jurisdiction. If the review indicates that there is no error as alleged, the service provider shall explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the service provider shall correct the error and shall refund or credit the amount of any tax collected erroneously, along with the related interest, as a result of the error from the customer in the previous 48 months, consistent with s. 77.59 (4). A customer may take no other action, or commence any action, to correct an alleged error in the amount of the tax assessed under this subchapter on a service that is subject to 4 USC 116 to 126, as amended by P.L. 106–252, or to correct an alleged error in the assigned place of primary use or taxing jurisdiction, unless the customer has exhausted his or her remedies under this ~~section~~ paragraph.

SECTION 72. 77.524 (1) (a) of the statutes is renumbered 77.524 (1) (am).

SECTION 73. 77.524 (1) (ag) of the statutes is created to read:

77.524 **(1)** (ag) "Agent" means a person appointed by a seller to represent the seller before the states that are signatories to the agreement, as defined in 77.65 (2) (a).

SECTION 74. 77.524 (1) (b) of the statutes is renumbered 77.51 (1g).

SECTION 75. 77.53 (1) of the statutes, as affected by 2005 Wisconsin Act .... (this act), is repealed and recreated to read:

77.53 **(1)** Except as provided in sub. (1m), an excise tax is levied and imposed on the use or consumption in this state of coins, stamps, leased property, and taxable services under s. 77.52 purchased from any retailer, at the rate of 5% of the purchase

price of such coins, stamps, leased property, and services; on the storage, use or other consumption in this state of tangible personal property purchased from any retailer, at the rate of 5% of the purchase price of that property; on the storage, use, or other consumption of audiovisual works, finished artwork, literary works, and audio works purchased from any retailer and delivered electronically to the purchaser, at the rate of 5% of the purchase price of such items; and on the storage, use or other consumption of tangible personal property manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of 5% of the purchase price of that material.

****NOTE: This is reconciled s. 77.53 (1). This SECTION has been affected by LRB–1796/1.

SECTION 76. 77.53 (3) of the statutes is amended to read:

77.53 **(3)** Every retailer engaged in business in this state and making sales of tangible personal property or taxable services ~~for delivery into this state or with knowledge directly or indirectly that the property or service is intended for storage, use or other consumption in~~ <u>that are sourced to</u> this state <u>under s. 77.522</u>, shall, at the time of making the sales ~~or, if the storage, use or other consumption of the tangible personal property or taxable service is not then taxable under this section, at the time the storage, use or other consumption becomes taxable~~, collect the tax from the purchaser and give to the purchaser a receipt in the manner and form prescribed by the department.

SECTION 77. 77.53 (4) of the statutes is repealed.

SECTION 78. 77.53 (9) of the statutes is amended to read:

77.53 **(9)** Every retailer selling tangible personal property or taxable services for storage, use or other consumption in this state shall register with the department and obtain a certificate under s. 73.03 (50) and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, the standard industrial code classification of each place of business in this state and the other information that the department requires. Any person who may register under this subsection may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under this subsection, in the manner prescribed by the department.

SECTION 79. 77.53 (9m) of the statutes is renumbered 77.53 (9m) (a).

SECTION 80. 77.53 (9m) (b) of the statutes is created to read:

77.53 **(9m)** (b) Any person who may register under par. (a) may designate an agent, as defined in s. 77.524 (1) (ag), to register with the department under par. (a), in the manner prescribed by the department.

SECTION 81. 77.53 (9m) (c) of the statutes is created to read:

77.53 **(9m)** (c) The registration under par. (a) by a person who is not otherwise required to collect any tax imposed by this subchapter shall not be used as a factor in determining whether the seller has nexus with this state for any tax at any time.

SECTION 82. 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 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 ~~a~~ an electronic or paper certificate,

in a manner prescribed by department, to the effect that the property or taxable service is purchased for resale, or otherwise exempt from the tax~~;~~, except that no certificate is required for ~~sales of cattle, sheep, goats, and pigs that are sold at an animal market, as defined in s. 95.68 (1) (ag), and no certificate is required for sales of commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse~~ the sale of tangible personal property that is exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (14b), (15), (17), (20n), (21), (22b), (30), (31), (32), (35), (36), (37), (42), (44), (45), and (46), except as provided in s. 77.54 (30) (e) and (f).

SECTION 83. 77.53 (11) of the statutes is amended to read:

77.53 **(11)** The certificate referred to in sub. (10) relieves the person selling the property or service from the burden of proof only if taken ~~in good faith~~ from a person ~~who is engaged as a seller of tangible personal property or taxable services and who holds the permit provided for by s. 77.52 (9) and who,~~ at the time ~~of purchasing~~ that the person purchases the tangible personal property or taxable service~~, intends to sell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose, or if taken in good faith from a person claiming exemption~~. The certificate under sub. (10) shall not relieve the seller of the burden of proof if the sale is sourced to this state under s. 77.522 (1) (b) 1. and the claimed exemption is not provided for under this subchapter or if the seller fraudulently fails to collect sales tax or solicit the purchaser to claim an unlawful exemption. The certificate shall ~~be signed by and bear the name and address of~~ provide information that identifies the purchaser and

shall indicate ~~the number of the permit issued to the purchaser, the general character of tangible personal property or taxable service sold by the purchaser and~~ the basis for the claimed exemption and a paper certificate shall be signed by the purchaser. The certificate shall be substantially in the form that the department prescribes by rule.

SECTION 84. 77.53 (16) of the statutes is amended to read:

77.53 **(16)** If the purchase, rental or lease of tangible personal property or service subject to the tax imposed by this section was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid the other state shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section, except no credit may be applied against and deducted from a sales tax paid on the purchase of direct mail, if the direct mail purchaser did not provide to the seller a direct pay permit, a direct mail form, or other information that indicates the appropriate taxing jurisdiction to which the direct mail is delivered to the ultimate recipients. In this subsection "sales tax" includes a use or excise tax imposed on the use of tangible personal property or taxable service by the state in which the sale occurred and "state" includes the District of Columbia but does not include the commonwealth of Puerto Rico or the several territories organized by congress.

SECTION 85. 77.53 (17) of the statutes is amended to read:

77.53 **(17)** This section does not apply to tangible personal property purchased outside this state, as determined under s. 77.522, other than motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all–terrain vehicles and airplanes registered or titled or required to be registered or titled in this state, which is brought into this state by a nondomiciliary for the

person's own storage, use or other consumption while temporarily within this state when such property is not stored, used or otherwise consumed in this state in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

SECTION 86. 77.53 (17m) of the statutes is amended to read:

77.53 **(17m)** This section does not apply to a boat purchased in a state contiguous to this state, as determined under s. 77.522, by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made.

SECTION 87. 77.53 (17r) (a) of the statutes is amended to read:

77.53 **(17r)** (a) It is purchased in another state, as determined under s. 77.522.

SECTION 88. 77.53 (18) of the statutes is amended to read:

77.53 **(18)** This section does not apply to the storage, use or other consumption in this state of household goods for personal use or to aircraft, motor vehicles, boats, snowmobiles, mobile homes, trailers, semitrailers and all–terrain vehicles, for personal use, purchased by a nondomiciliary of this state outside this state, as determined under s. 77.522, 90 days or more before bringing the goods or property into this state in connection with a change of domicile to this state.

SECTION 89. 77.54 (1) of the statutes is amended to read:

77.54 **(1)** The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption in this state of tangible personal property and services the ~~gross receipts~~ sales price from the sale of which, or the storage, use or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.