

2013 DRAFTING REQUEST

Bill

Received: **10/11/2012** Received By: **jkreye**
Wanted: **As time permits** Companion to LRB:
For: **Administration-Budget** By/Representing: **Ley**
May Contact: Drafter: **jkreye**
Subject: **Tax, Other - sales** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**

Pre Topic:

DOA:.....Ley, BB0069 -

Topic:

Sales tax on property provided with services

Instructions:

See attached

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 10/15/2012			_____			
/P1		kfollett 10/18/2012	10/18/2012	_____	srose 10/18/2012		

FE Sent For:

<END>

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/?	jkreye	1P/15f 10/18	10 TV Ph	_____	_____	_____	_____
FE Sent For:							

<END>

Hanaman, Cathlene

0361

To: Kreye, Joseph; Shovers, Marc
Subject: FW: [Possible SPAM] Statutory Language Drafting Request
Attachments: 7011 Clarify Tax Treatment of Property Provided with Services.docx

Importance: Low

From: Emily.Ley@wisconsin.gov [<mailto:Emily.Ley@wisconsin.gov>]
Sent: Monday, October 01, 2012 5:26 PM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Frederick, Caitlin - DOA; Ley, Emily A - DOA
Subject: [Possible SPAM] Statutory Language Drafting Request
Importance: Low

Biennial Budget: 2013-15

Topic: Clarify the Tax Treatment of Property Provided with Services

Tracking Code: BB0069

SBO Team: TLGED

SBO Analyst: Ley, Emily - DOA
Phone: 608-266-7597
E-mail: Emily.Ley@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: Medium

Intent: Amend the statutes to clarify that sec. 77.52(21)(b), Stats., does not apply to property that is transferred incidentally with a taxable service that is not a service listed in sec. 77.52(2)(a)7., 10., 11., or 20., Wis. Stats.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

TITLE: CLARIFY TAX TREATMENT OF PROPERTY PROVIDED WITH SERVICES

DESCRIPTION OF CURRENT LAW AND PROBLEM

Current Law:

Section 77.51(11d), Wis. Stats. (2009-10), provides that "For purposes of subs. (1ag), (1f), (3pf), and (9p) and ss. 77.52(20) and (21), 77.522, and 77.54(51) and (52), 'product' includes tangible personal property, and items, property, and goods under s. 77.52(1)(b), (c), and (d), and services."

Section 77.51(13)(e), Wis. Stats. (2009-10), provides, in part, that "retailer" includes "A person selling tangible personal property or items, property, or goods under s. 77.52(1)(b), (c), or (d) to a service provider who transfers the property, items, or goods in conjunction with the selling, performing or furnishing of any service and the property, items, or goods are incidental to the service, unless the service provider is selling, performing or furnishing the services under s. 77.52(2)(a) 7., 10., 11. and 20. ..."

Section 77.52(2m)(a), Wis. Stats. (2009-10), provides that "With respect to the services subject to tax under sub. (2), no part of the charge for the service may be deemed a sale or rental of tangible personal property or items, property, or goods under sub. (1)(b), (c), or (d) if the property, items, or goods transferred by the service provider are incidental to the selling, performing or furnishing of the service, except as provided in par. (b)."

Section 77.52(21)(b), as created by 2011 Wis. Act 32, effective September 1, 2011, provides that "A person who provides a product that is not distinct and identifiable because it is provided free of charge to a purchaser who must also purchase another product that is subject to the tax imposed under this subchapter from that person in the same transaction may purchase the product provided free of charge without tax, for resale."

Although a service provider is liable for the payment of sales or use tax on purchases of property that it provides to customers incidentally with taxable services (i.e., the property is not resold to the customer if it transferred incidentally with the service - sec. 77.52(2m)(a), Stats.), it may be argued that service providers may purchase such property without tax for resale under sec. 77.52(21)(b), Stats. (Note: "Product," as used in sec. 77.52(21)(b), Stats., includes services.)

RECOMMENDATION FOR ACTION

The statutes should be amended to clarify that sec. 77.52(21)(b), Stats., does not apply to property that is transferred incidentally with a taxable service that is not a service listed in sec. 77.52(2)(a)7., 10., 11., or 20., Stats.

IMPACT ON JOB CREATION

No significant effect on job creation is anticipated.

FISCAL EFFECT

None. Purchases of property transferred by the purchaser incidentally with taxable services, other than services subject to tax under sec. 77.52(2)(a)7., 10., 11., and 20, Stats., have been subject to sales or use tax and will continue to be taxable under this amendment. Attachment 1 displays the estimated sales and use taxes collected on certain items provided with the purchase of a taxable service. The amounts in Attachment 1 represent potential sales and use tax losses if the items are interpreted or determined to be exempt from sales tax.

DRAFTING INSTRUCTIONS

Amend section 77.52(21)(b), Stats., as follows:

"-A Except as provided in sub. (2m)(a), a person who provides a product that is not distinct and identifiable because it is provided free of charge to a purchaser who must also purchase another product that is subject to the tax imposed under this subchapter from that person in the same transaction may purchase the product provided free of charge without tax, for resale."

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Day after publication.

INTERESTED/AFFECTED PARTIES

Service providers who transfer tangible personal property incidentally with taxable services, other than services subject to tax under sec. 77.52(2)(a)7., 10., 11., and 20, Stats., may oppose this proposal.

Attachment 1

The table below provides estimated sales tax amounts on examples of personal property provided along with a taxable service. This list is not exhaustive, and depending on the interpretation of the exemption, the fiscal effect could increase significantly. The total fiscal effect is unknown. This list includes items that are transferred to customers on both a temporary and permanent basis.

**Estimated State Sales Tax On Tangible Personal Property
Provided Along With A Taxable Service, 2011**

Taxable Tangible Personal Property	State Sales Tax
Hotel Soap, Shampoo, Conditioner	\$ 377,000
Cable and Satellite TV Equipment	1,078,000
Ticket Stock (Movies, Sporting Events, Other)	40,000
Sporting Events Promotional Items	268,000
Hotel Room Furnishings	2,809,000
Movie Theater Seats	389,000
Golf Scorecards and Pencils	49,000
Dry Cleaner Hangers, Bags, Tickets	164,000
Total Identified	\$ 5,175,000

Additional examples of tangible personal property provided along with a taxable service include (this list is also not exhaustive):

- Exercise equipment at health clubs and hotels
- Free concert and performing arts programs
- Office supplies, such as cash register paper (receipts)
- Driving range golf balls
- Bowling pins, pin-setting equipment, lanes
- Miniature golf putters, balls, scorecards and pencils
- Tokens for arcade video games
- Towing equipment at ski hills
- Picnic tables and waste receptacles at campsites

While the state sales tax loss from exempting the list of items identified in the table above would reduce state revenues by \$5.2 million annually, the total revenue loss may be substantially higher when the full impact of the exemption is considered.

County and stadium district sales taxes were 8.2% of state sales tax revenues in FY11. Assuming this percentage does not change, the items identified in the table above would reduce county and stadium district sales taxes by \$426,000.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0361/P1

JK: EKF

EKF

DOA:.....Ley, BB0069 – Sales tax on property provided with services

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

in 10-15-12

D-N

Don't Gen.

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

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, for sales and use tax purposes, a person who provides a product free to a purchaser who must also purchase another product that is subject to the sales tax may purchase the product provided free of charge without tax, for resale. Under the bill, this provision does not apply to products that are incidental to providing certain services.

X

are

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

2 **SECTION 1.** 77.52 (21) (b) of the statutes is amended to read:

3 77.52 (21) (b) ~~A~~ Except as provided in sub. (2m) (a), a person who provides a
4 product that is not distinct and identifiable because it is provided free of charge to
5 a purchaser who must also purchase another product that is subject to the tax

3

1 imposed under this subchapter from that person in the same transaction may
2 purchase the product provided free of charge without tax, for resale.

History: 1973 c. 156; 1975 c. 39; 1977 c. 29, 142, 418; 1979 c. 174, 221; 1981 c. 20, 317; 1983 a. 2, 27; 1983 a. 189 ss. 99, 103, 107, 329 (12); 1983 a. 341, 510, 544; 1985 a. 29, 149; 1987 a. 27, 399; 1989 a. 31, 335; 1991 a. 39, 316; 1993 a. 112, 213, 308, 437; 1995 a. 27, 225, 351; 1997 a. 27, 237, 291; 1999 a. 9, 83; 1999 a. 150 s. 672; 2001 a. 16, 104, 109; 2003 a. 33, 321; 2005 a. 149, 327, 344; 2007 a. 11, 20, 42, 97; 2009 a. 2, 12, 28, 330; 2011 a. 18, 32.

3 (END)

O-Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0361/P1dn

JK: *gf*

Date

Emily:

I followed DOR's recommendation regarding this draft, but I have to admit that I don't know what this proposal does. In other words, I don't understand how s. 77.52 (2m) (a) works in conjunction with s. 77.52 (21) (b).

Joseph T. Kreye
Senior Legislative Attorney
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0361/P1dn
JK:kjf:ph

October 18, 2012

Emily:

I followed DOR's recommendation regarding this draft, but I have to admit that I don't know what this proposal does. In other words, I don't understand how s. 77.52 (2m) (a) works in conjunction with s. 77.52 (21) (b).

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3 (END)