

1985 Senate Bill 376

Date of enactment: **October 30, 1985**
Date of publication: **November 7, 1985**

1985 Wisconsin Act 41

AN ACT to repeal 20.835 (4) (f); to renumber and amend 77.76 (3) and 77.76 (4); to amend chapter 77 (title), subchapter V (title) of chapter 77, 20.566 (1) (g), 20.835 (4) (title), 77.61 (4) (c), 77.70, 77.75 and 77.76 (1) and (2); to repeal and recreate 77.71, 77.72, 77.73 and 77.77; and to create 20.835 (4) (g), 77.78, 77.785 and 77.79 of the statutes, relating to the administration of the county sales and use taxes and making an appropriation.

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

SECTION 1. 20.566 (1) (g) of the statutes is amended to read:

20.566 (1) (g) (title) *Administration of county sales and use taxes.* ~~The amounts in the schedule From moneys received from the appropriation under s. 20.835 (4) (g), the amounts in the schedule for the purpose of administering the local sales tax. Three percent county taxes under subch. V of ch. 77. The balance of all taxes collected under subch. V of ch. 77, after the distribution under s. 77.76 (3), shall be credited to this appropriation.~~

SECTION 2. 20.835 (4) (title) of the statutes, as affected by 1985 Wisconsin Act 29, is amended to read:

20.835 (4) (title) COUNTY TAXES.

SECTION 3. 20.835 (4) (f) of the statutes, as affected by 1985 Wisconsin Act 29, is repealed.

SECTION 4. 20.835 (4) (g) of the statutes is created to read:

20.835 (4) (g) *County taxes.* All moneys received from the taxes imposed under subch. V of ch. 77 for distribution to the counties that enact an ordinance imposing taxes under that subchapter and for interest payments on refunds under s. 77.76 (3), except that 3% of those tax revenues collected under that subchapter shall be credited to the appropriation under s. 20.566 (1) (g).

SECTION 5. Chapter 77 (title) of the statutes is amended to read:

CHAPTER 77
TAXATION OF FOREST CROPLANDS;
REAL ESTATE TRANSFER FEES; SALES
AND USE TAXES; PROPERTY TAX DEFERRAL;
LOCAL COUNTY SALES TAX
AND USE TAXES

SECTION 6. 77.61 (4) (c) of the statutes is amended to read:

77.61 (4) (c) For sales and use taxes payable on returns filed for calendar or fiscal years beginning on or after January 1, 1983, for reporting the sales tax and collecting and reporting the use tax imposed on the retailer under s. 77.53 (3) and the accounting connected with it, retailers may deduct 2% of the first \$10,000 of sales and use tax payable each year, one percent of the 2nd \$10,000 of sales and use tax payable each year and 0.5% of the sales and use tax in excess of \$20,000 payable each year as administration expenses if the payment of the taxes is not delinquent. For purposes of calculating the retailer's discount under this paragraph, the taxes on retail sales reported by retailers under subch. V, including taxes collected and remitted as required under s. 77.785, shall be included if the payment of those taxes is not delinquent.

SECTION 7. Subchapter V (title) of chapter 77 of the statutes is amended to read:

CHAPTER 77
SUBCHAPTER V
COUNTY SALES AND USE TAXES

SECTION 8. 77.70 of the statutes is amended to read:

77.70 Adoption by county ordinance. Any county desiring to impose a ~~local~~ county sales tax and use taxes under this subchapter may do so by the adoption of an ordinance, stating its purpose and referring to this subchapter. Such The county sales and use taxes may be imposed only for the purpose of directly reducing the property tax levy and only in their entirety as provided in this subchapter. That ordinance shall be effective on the first day of April of the succeeding calendar year. A certified copy of ~~such~~ that ordinance must shall be delivered to the secretary of revenue at least 60 120 days prior to ~~the its~~ effective date ~~thereof~~. The repeal of any such ordinance shall be effective on the last day of the calendar year ~~first occurring after such of the~~ repeal. A certified copy of a repeal ordinance ~~must shall~~ be delivered to the secretary of revenue at least 60 days or more prior to before the effective date of ~~such the~~ repeal.

SECTION 9. 77.71 of the statutes is repealed and recreated to read:

77.71 Imposition of county sales and use taxes. Whenever a county sales and use tax ordinance is adopted under s. 77.70, the following taxes are imposed:

(1) For the privilege of selling, leasing or renting tangible personal property and for the privilege of selling, performing or furnishing services a sales tax is imposed upon retailers at the rate of 0.5% of the gross receipts from the sale, lease or rental of tangible personal property, except property taxed under sub. (4), sold, leased or rented at retail in the county or from selling, performing or furnishing services described under s. 77.52 (2) in the county.

(2) An excise tax is imposed at the rate of 0.5% of the sales price upon every person storing, using or otherwise consuming in the county tangible personal property or services if the property or service is subject to the state use tax under s. 77.53, except that a receipt indicating that the tax under sub. (1), (3) or (4) has been paid relieves the buyer of liability for the tax under this subsection and except that if the buyer has paid a similar local tax in another state on a purchase of the same property or services that tax shall be credited against the tax under this subsection.

(3) An excise tax is imposed upon a contractor engaged in construction activities within the county, at the rate of 0.5% of the sales price of tangible personal property that is used in constructing, altering, repairing or improving real property and that becomes a component part of real property in that county, unless the contractor has paid the sales tax of a county in this state on that property.

(4) An excise tax is imposed at the rate of 0.5% of the sales price upon every person storing, using or otherwise consuming a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft, if that property must be registered or titled with this

state and if that property is to be customarily kept in a county that has in effect an ordinance under s. 77.70.

SECTION 10. 77.72 of the statutes is repealed and recreated to read:

77.72 Situs. (1) **GENERAL RULE FOR PROPERTY.** For the purposes of this subchapter, all retail sales of tangible personal property are completed at the time when, and the place where, the seller or the seller's agent transfers possession to the buyer or the buyer's agent. In this subsection, a common carrier or the U.S. postal service is the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid. Rentals and leases of property, except property under sub. (2), have a situs at the location of that property.

(2) **LEASED OR RENTED MOVING PROPERTY.** (a) *Motor vehicles.* Leased or rented motor vehicles and other equipment used principally on the highway at normal highway speeds are located in the county in which they are customarily kept, except that drive-it-yourself motor vehicles and equipment used principally on the highway at normal highway speeds, if those vehicles or that equipment are used for one-way trips or leased for less than one month, are located in the county in which they come into the lessee's possession.

(b) *Other moving property.* Except for motor vehicles and equipment described in par. (a), leased or rented property that characteristically is moving property, including but not limited to aircraft and boats, is located in a county if it is used primarily in that county or it is usually kept in that county when it is not in use.

(3) **SERVICES.** (a) *General rule.* Except as provided in par. (b), services have a situs at the location where they are furnished.

(b) *Exceptions.* Communication service has a situs where the customer is billed for the service if the customer calls collect or pays by credit card. Towing services have a situs at the location to which the vehicle is delivered. Services performed on tangible personal property have a situs at the location where the property is delivered to the buyer.

SECTION 11. 77.73 of the statutes is repealed and recreated to read:

77.73 Jurisdiction to tax. (1) Retailers making deliveries in their company-operated vehicles of tangible personal property, or of property on which taxable services were performed, to purchasers in a county are doing business in that county, and that county has jurisdiction to impose the taxes under this subchapter on them.

(2) Counties do not have jurisdiction to impose the tax under s. 77.71 (2) in regard to tangible personal property purchased in a sale that is consummated in another county in this state that does not have in effect an ordinance imposing the taxes under this subchapter and later brought by the buyer into the county that has imposed a tax under s. 77.71 (2).

SECTION 12. 77.75 of the statutes is amended to read:

77.75 Reports. Every ~~retailer~~ person subject to a ~~local sales tax~~ county sales and use taxes shall, for each reporting period, record ~~his~~ that person's sales made in the enacting county separately from sales made elsewhere in this state and report ~~such~~ the measure of the county sales and use taxes and the tax due thereon separately to the department of revenue on forms to be provided by the department.

SECTION 13. 77.76 (1) and (2) of the statutes are amended to read:

77.76 (1) The department of revenue shall have full power to levy, enforce and collect ~~such local county sales tax and use taxes~~ and may take any action, conduct any proceeding, impose interest and penalties and in all respects proceed as it is authorized to proceed ~~in respect of~~ for the taxes imposed by subch. III.

(2) Judicial and administrative review of departmental determinations shall be as provided in subch. III for state sales and use taxes, and no county may intervene in any matter related to the levy, enforcement and collection of ~~such taxes~~ the taxes under this subchapter.

SECTION 14. 77.76 (3) of the statutes is renumbered 77.76 (4) and amended to read:

77.76 (4) There shall be retained by the state 3% of the taxes, ~~interest and penalties collected by it~~ collected under this subchapter to cover costs incurred by the state in administering, enforcing and collecting the tax. All interest and penalties collected shall be deposited and retained by this state in the general fund.

SECTION 15. 77.76 (4) of the statutes, as affected by 1985 Wisconsin Act 29, is renumbered 77.76 (3) and amended to read:

77.76 (3) ~~After deducting the amounts retained under sub. (3),~~ From the appropriation under s. 20.835 (4) (g) the department shall distribute 97% of the local sales tax collections from county taxes reported for each enacting county, minus the county portion of the retailers' discounts, to the county and shall indicate the taxes reported by each taxpayer, no later than the end of the 3rd month following the end of the calendar quarter in which such amounts were collected by the state reported. In this subsection, the "county portion of the retailers' discount" is the amount determined by multiplying the total retailers' discount by a fraction the numerator of which is the gross county sales and use taxes payable and the denominator of which is the sum of the gross state and county sales and use taxes payable. The county taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments and all other adjustments of the county taxes previously distributed. Interest paid on refunds of county sales and use taxes shall be paid from the appropriation under s. 20.835 (4) (g) at the rate paid by this state under s. 77.60 (1) (a). The county may retain the amount it

receives or it may distribute all or a portion of the amount it receives to the towns, villages, cities and school districts in the county. Any county receiving a report under this subsection is subject to the duties of confidentiality to which the department of revenue is subject under s. 77.61 (5).

SECTION 16. 77.77 of the statutes is repealed and recreated to read:

77.77 Transitional provisions. (1) The gross receipts from services subject to the tax under s. 77.52 (2) are not subject to the county taxes, and the incremental amount of tax caused by a rate increase applicable to those services is not due, if those services are billed to the customer and paid for before the effective date of the county ordinance or rate increase, whether the service is furnished to the customer before or after that date.

(2) Lease or rental receipts from tangible personal property that the lessor is obligated to furnish at a fixed price under a contract entered into before the effective date of a county ordinance are subject to the county taxes on the effective date of the ordinance, as provided for the state sales tax under s. 77.54 (18).

(3) The sale of building materials to contractors engaged in the business of constructing, altering, repairing or improving real estate for others is not subject to the county taxes, and the incremental amount of tax caused by the rate increase applicable to those materials is not due, if the materials are affixed and made a structural part of real estate, and the amount payable to the contractor is fixed without regard to the costs incurred in performing a written contract that was irrevocably entered into prior to the effective date of the county ordinance or rate increase or that resulted from the acceptance of a formal written bid accompanied by a bond or other performance guaranty that was irrevocably submitted before that date.

SECTION 17. 77.78 of the statutes is created to read:

77.78 Registration. No motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length, trailer, semitrailer, all-terrain vehicle or aircraft that is required to be registered by this state may be registered or titled by this state unless the registrant files a sales and use tax report and pays the county tax at the time of registering or titling to the state agency that registers or titles the property. That state agency shall transmit those tax revenues to the department of revenue.

SECTION 18. 77.785 of the statutes is created to read:

77.785 Duties of retailers. (1) All retailers shall collect and report the taxes under this subchapter on the gross receipts from leases and rentals of property under s. 77.71 (4).

(2) Prior to registration or titling, boat, all-terrain vehicle, trailer and semi-trailer dealers and licensed aircraft, motor vehicle, mobile home and snowmobile

dealers shall collect the taxes under this subchapter on sales of items under s. 77.71 (4) and remit those taxes to the state agency that registers or titles that property.

SECTION 19. 77.79 of the statutes is created to read:

77.79 Relation to subchapter III. The provisions of subch. III; including those related to exemptions, exceptions, exclusions and the retailers' discount; that are consistent with this subchapter, as they apply to the taxes under that subchapter, apply to the taxes under this subchapter.

SECTION 20. Program responsibility changes. In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(1) COUNTY TAXES.

(a) *Natural resources.*

A	B	C
Statute Sections	References Deleted	References Inserted
15.341 (intro.)	none	77.78

(b) *Transportation.*

A	B	C
Statute Sections	References Deleted	References Inserted
15.461 (intro.)	none	77.78

SECTION 21. **Effective dates.** (1) Except as provided in subsection (2), this act takes effect on the day following publication.

(2) The treatment of section 20.835 (4) (title) and (f) of the statutes takes effect on January 1, 1986.

