

1993 Assembly Bill 1096

Date of enactment: **April 14, 1994**
Date of publication*: **April 28, 1994**

1993 WISCONSIN ACT 308

AN ACT to repeal 125.20; to amend 70.03, 77.52 (10) (b), 77.52 (10) (c) and 77.52 (15); and to create 77.59 (9m) of the statutes, relating to: sellers' liability for use taxes; allowing the department of revenue to assess sales and use taxes in the alternative; the taxes that must be paid before a seller's permit is renewed; renewal of seller's permits; and permits to set up coin-operated cigarette machines, jukeboxes and amusement devices on premises covered by an alcohol beverages license or permit.

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

SECTION 1. 70.03 of the statutes is amended to read:

70.03 Definition real property. The terms "real property", "real estate" and "land", when used in chs. 70 to 76, 78 and 79, shall include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto, except that for the purpose of time-share property, as defined in s. 707.02 (32), real property does not include recurrent exclusive use and occupancy on a periodic basis or other rights, including, but not limited to, membership rights, vacation services and club memberships.

SECTION 4. 77.52 (10) (b) of the statutes is amended to read:

77.52 (10) (b) Permits which expire under par. (a) are automatically renewable and the department shall issue a new permit unless, on the date the permit expires, the permittee has a delinquent liability in respect to any tax, fee or surcharge under ch. 71, 72, 76, 77, 78 or 139, including costs, penalties and interest thereon, of \$400 or more, any part of which is delinquent for 5 months or longer. Thirty days prior to the expiration date, the department shall notify in writing any permittee who has such liability on the department's records at that time that the department may refuse to renew the permit. A person receiving such notice may petition the department for a hearing under sub. (11) (b).

SECTION 5. 77.52 (10) (c) of the statutes is amended to read:

77.52 (10) (c) After payment of all delinquent sales and use taxes, including costs, penalties and interest thereon, amounts due under this chapter and chs. 72, 76, 78 and 139 and of all delinquent amounts due under ch. 71 that relate to the trade or business for which the permit was issued and after compliance with subs. (7) and (8) and s. 77.61 (2), a person who has been refused renewal of a permit shall be issued a permit.

SECTION 6. 77.52 (15) of the statutes is amended to read:

77.52 (15) If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it 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 the property is first used by the purchaser, and the sales price of the property to the purchaser shall be the measure of the tax. Only when there is an unsatisfied use tax liability on this basis because the seller has provided incorrect information about that transaction to the department shall the seller be liable for sales tax with respect to the sale of the property to the purchaser.

SECTION 7. 77.59 (9m) of the statutes is created to read:

77.59 (9m) If the department determines that a liability exists under this subchapter and that the liability may be owed by more than one person, the department may

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assess the entire amount to each person, specifying that it is assessing in the alternative. If the department determines that a liability exists under this subchapter and that the liability may be for either sales taxes or use taxes, the department may make an assessment for both taxes, specifying that it is assessing in the alternative.

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SECTION 8. 125.20 of the statutes is repealed.

SECTION 10. Effective dates. This act takes effect on the day after publication, except as follows:

(1) SELLER'S PERMITS. The treatment of section 77.52 (10) (b) and (c) of the statutes takes effect on the first day of the 3rd month beginning after publication.