

**1999 DRAFTING REQUEST**

**Bill**

Received: 10/22/98

Received By: **shoveme**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-8593**

By/Representing: **Holden**

This file may be shown to any legislator: **NO**

Drafter: **dykmapj**

May Contact:

Alt. Drafters:

Subject: **Tax - sales**

Extra Copies: **MES  
JK**

**Topic:**

DOA:.....Holden - Tax treatment of sales of time-share properties

**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>
/P1	shoveme 11/10/98			_____			S&L
/P2	dykmapj 02/1/99			_____			S&L
/P3		gilfokm 02/1/99	ismith 02/1/99	_____	lrb_docadmin 02/2/99		S&L Tax
/1	dykmapj 02/3/99	gilfokm 02/3/99	lpaasch 02/3/99	_____	lrb_docadmin 02/3/99		S&L Tax

FE Sent For:

<END>

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/P1	shoveme	/P3-21-99 King	IS 2/4/99	25/HH 2/1/99			

FE Sent For:

<END>

Wisconsin Department of Revenue  
Division of Research and Analysis  
Bureau of State Tax Policy

July 20, 1998

TITLE: Sales and Use Tax – Treatment of Sales of Timeshare

#### DESCRIPTION OF CURRENT LAW AND PROBLEM

Wisconsin distinguishes between fixed-time and flex-time timeshare properties for tax purposes. Timeshare property in which the date of occupancy and the specific lodging unit are fixed in the deed of sale are considered real estate and thus are subject to the 0.3% real estate transfer fee. However, flex-time timeshares, because of their flexible arrangement, are considered transient lodging, and sales of them and any charges associated with them, such as maintenance fees, are subject to the 5% state sales tax, and 0.5% county and 0.1% stadium sales taxes where applicable.

The distinction results in an inequitable tax treatment. First, there are few, if any, physical differences between the two types of timeshares. In fact, resort owners frequently use the same property for both fixed-time timeshares and flex-time timeshares. In addition, many resort owners convert fixed-time timeshares into flex-time timeshares through legal side agreements that allow changes in lodging units and starting occupancy dates. Therefore, the differences between the two types of timeshares may be indistinguishable to consumers even though a legal distinction exists.

In addition, the inequitable tax treatment of timeshare properties encourages tax avoidance. Resort owners prefer paying the lower real estate transfer fee rather than the sales tax. However, consumers frequently seek flexibility in scheduling their vacations and resort owners often need flexibility to utilize their resort space. Therefore, resort owners sell fixed-time timeshares to pay a lower tax and provide flexibility through side agreements. Although these agreements are legal, there has been some confusion among resort owners as to what exactly constitutes a fixed-time timeshare when side agreements are used. Consequently, the issue has resulted in costly litigation.

These problems can be resolved by eliminating the real estate transfer fee that is imposed on fixed-time timeshares and replacing it with the sales tax. Tax equity will be achieved because both types of timeshares will be subject to the sales tax. In addition, these changes will resolve the inequitable tax treatment of lodging within the hotel and resort industry, and eliminate the problem of tax avoidance. Expanding the sales tax to fixed-time timeshares will also reduce the number of legal questions regarding the distinction between the two types of timeshares and prevent further litigation. Finally, resort owners have established point systems that allow resort owners to exchange the points they acquire for time at a timeshare unit, indicating that timeshare sales are becoming more like lodging services and less like real estate. This suggests that the appropriate tax treatment is that which applies to other sales of lodging services.

**RECOMMENDATION FOR ACTION**

Impose the sales tax on fixed-time timeshares and repeal the real estate transfer fee that currently affects these sales.

**FISCAL/ADMINISTRATIVE IMPACT**

	<u>FY 1999</u>	<u>FY 2000</u>
<b>State Effect</b>		
Sales Tax	\$1.50 million	\$1.50 million
Real Est. Transfer Fee	<u>- .06 million</u>	<u>- .06 million</u>
	\$1.44 million	\$1.44 million
<b>Local Effect</b>		
Sales Tax	\$ .15 million	\$ .15 million
Real Est. Transfer Fee	<u>- .02 million</u>	<u>- .02 million</u>
	\$ .13 million	\$ .13 million

**DRAFTING INSTRUCTIONS**

Amend sec. 77.52 (2)(a)1 by eliminating all language that limits the sales tax to flex-time timeshares; amend all relevant definitions in sec. 707.02.

**EFFECTIVE DATE OR INITIAL APPLICABILITY**

First day of the second month following publication.

PERSON TO CONTACT: Craig Kammholz, 261-8984

CDK:dls  
t:\bud\ck\timeshare.bud.doc



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0623/P3

PJD.....

king

DOA:.....Holden - Tax treatment of sales of timeshare properties

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

Now

1

AN ACT relating to: the budget.

Don't  
Green Cat

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**PROPERTY TAXATION**

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

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:*

2

**SECTION 1.** 77.25 (21) of the statutes is created to read:

3

77.25 (21) Of a time-share property, as defined in s. 707.02 (32). ✓

4

**SECTION 2.** 77.255 of the statutes is amended to read:

5

**77.255 Exemptions from return.** No return is required with respect to

6

conveyances exempt under s. 77.25 (1), (2r), (4) <sup>JA</sup> or, (11) <sup>✓</sup> or (21) from the fee imposed

1 under s. 77.22. No return is required with respect to conveyances exempt under s.  
2 77.25 (2) unless the transferor is also a lender for the transaction.

History: 1983 a. 27; 1987 a. 27; 1991 a. 39.

3 **SECTION 3.** 77.51 (4) (c) 6. of the statutes is amended to read:

4 77.51 (4) (c) 6. Charges associated with time-share property that is taxable,  
5 or that at the time of the charges would be taxable, under s. 77.52 (2) (a) 1. or 2.

History: 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237.

WJ/6

**SECTION 4.** 77.52 (2) (a) 1. of the statutes is amended to read:

7 77.52 (2) (a) 1. The furnishing of rooms or lodging to transients by hotelkeepers,  
8 motel operators and other persons furnishing accommodations that are available to  
9 the public, irrespective of whether membership is required for use of the  
10 accommodations, including the furnishing of rooms or lodging through the sale of a  
11 time-share property, as defined in s. 707.02 (32), ~~if the use of the rooms or lodging~~  
12 ~~is not fixed at the time of sale as to the starting day or the lodging unit.~~ In this  
13 subdivision, "transient" means any person residing for a continuous period of less  
14 than one month in a hotel, motel or other furnished accommodations available to the  
15 public. In this subdivision, "hotel" or "motel" means a building or group of buildings  
16 in which the public may obtain accommodations for a consideration, including,  
17 without limitation, such establishments as inns, motels, tourist homes, tourist  
18 houses or courts, lodging houses, rooming houses, summer camps, apartment hotels,  
19 resort lodges and cabins and any other building or group of buildings in which  
20 accommodations are available to the public, ~~except accommodations~~, including  
21 mobile homes as defined in s. 66.058 (1) (d), ~~rented~~ for a continuous period of more  
22 than ~~one month~~ and accommodations furnished by any hospitals, sanatoriums, or  
23 nursing homes, or by corporations or associations organized and operated

1 exclusively for religious, charitable or educational purposes provided that no part of  
2 the net earnings of such corporations and associations inures to the benefit of any  
3 private shareholder or individual. In this subdivision, "one month" means a calendar  
4 month or 30 days, whichever is less, counting the first day of the rental and not  
5 counting the last day of the rental.

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.

\*\*\*\*NOTE: The qualifier that is stricken is part of an inclusion statement, not in the basic coverage of the statute. By cross-referencing s.707.02 (32), it does not include time-share property with fewer than 4 periods or over less than ~~four~~ years. Does the main phrase include time-share property with fewer than 4 periods or over less than ~~four~~ years?

Handwritten notes: A circled "4" with a checkmark, and a circled "4" with a question mark and a checkmark.

6 SECTION 5. 709.01 (1) of the statutes is amended to read:

7 709.01 (1) Except as provided in sub. (2), all persons who transfer real property  
8 located in this state, including a condominium unit, as defined in s. 703.02 (15) ~~and~~  
9 ~~time-share property, as defined in s. 707.02 (32),~~ but excluding property that has not  
10 been inhabited, that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale,  
11 exchange or land contract, unless the transfer is exempt from the real estate transfer  
12 fee under s. 77.25, shall comply with ss. 709.02 to 709.04 and 709.06.

Handwritten note: A circled "4" with a checkmark.

History: 1991 a. 162; 1995 a. 180.

13 SECTION 6. 799.01 (1) (am) of the statutes is amended to read:

14 799.01 (1) (am) *Return of earnest money.* Actions for the return of earnest  
15 money tendered pursuant to a contract for purchase of real property, including a  
16 condominium unit, as defined in s. 703.02 (15), ~~and time-share property, as defined~~  
17 ~~in s. 707.02 (32),~~ that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale,  
18 exchange or land contract unless the transfer is exempt from the real estate transfer  
19 fee under s. 77.25 regardless of the amount claimed.

Handwritten note: A circled "4" with a checkmark.

History: Sup. Ct. Order, 67 W (2d) 585, 776 (1975); 1975 c. 325, 365, 422; 1977 c. 449 s. 497; 1979 c. 32 ss. 66, 92 (16); 1979 c. 175 s. 53; Stats. 1979 s. 799.01; 1983 a. 228; 1987 a. 208, 378, 403; 1989 a. 31, 359; 1991 a. 163; 1993 a. 80, 181; 1995 a. 27.

20 SECTION 9443. Effective dates; revenue.



1 (1)✓ TAX TREATMENT OF SALES OF TIME-SHARE PROPERTIES. The treatment of sections  
2 77.25 (21)✓, 77.255✓, 77.51 (4) (c) 6.✓, 77.52 (2) (a) 1.✓, 709.01 (1)✓ and 799.01 (1) (am)✓ of  
3 the statutes takes effect on the first day of the 2nd month commencing after  
4 publication.

5 (END)

1999-2000 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0623/P3ins  
PJD.....

Under current law, the sale of time-share property is subject to the real estate transfer fee. This bill exempts from real estate transfer fees conveyances of those time-share properties that give the owner the right to use or occupy the real property during at least 4 separated periods of less than one month over at least 4 years. Under current law, some, but not all, conveyances that are exempt from the real estate transfer fee are also exempt from the requirement of filing a real estate transfer return. The bill exempts from the requirement of filing a real estate transfer return these conveyances of time-share property.

The furnishing of rooms or lodging through the sale of time-share properties exempted from the real estate transfer fee by this bill ~~are~~ currently subject to the sales tax only if the use of the rooms or lodging is not fixed at the time of sale as to the starting date or the lodging unit. This bill subjects to the sales tax all sales of time-share properties that are exempted from the real estate transfer fee by this bill, whether or not the use of the rooms or lodging is fixed at the time of the sale.

The bill also subjects to the sales tax those charges associated with time-share property that at the time of the charges would be subject to the sales tax.

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.

**Dykman, Peter**

---

**From:** Collier, Dennis  
**Sent:** Tuesday, February 02, 1999 4:49 PM  
**To:** Dykman, Peter  
**Cc:** Holden, Kerry; Gibbons, Vicki  
**Subject:** RE: Timeshare taxation

Thanks for sending the draft. Our intention is to impose the sales tax on the sale of all time-share property to transients. To ensure this, we suggest that the first sentence of sec. 77.52 (2)(a)1. read as follows:

"The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations, including the furnishing of rooms or lodging through the sale of all time-share property, including that defined in s. 707.02 (32)."

Please let me know if you have any questions.

-----Original Message-----

**From:** Peter Dykman  
**Sent:** Tuesday, February 02, 1999 2:19 PM  
**To:** Collier, Dennis J  
**Cc:** Kerry Holden  
**Subject:** Timeshare taxation

~~~~~  
¶

Here is the latest draft on time-share property. It still is preliminary because of one imbedded note.

Attorney Peter Dykman  
Wisconsin Legislative Reference Bureau  
100 N. Hamilton Street, Fifth Floor  
P.O. Box 2037  
Madison, Wisconsin 53701-2037  
Tel: (608) 266-7098  
Fax: (608) 264-8522  
Email: Peter.Dykman@legis.state.wi.us

*weight*  
*run*

DOA:.....Holden - Tax treatment of sales of time-share properties

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

*Wed Aug*

*They are for less than one month whether or not they*

1 AN ACT <sup>*Don't Gen. Cat.*</sup> relating to: the budget.

*for*  
**Analysis by the Legislative Reference Bureau**

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**PROPERTY TAXATION**

*and is less than one month*

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*and*

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*and whether*

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

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16 time-share property, ~~as defined in s. 707.02 (32), if the use of the rooms or lodging~~ <sup>including that a</sup>  
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8 publication.

9 (END)



State of Wisconsin  
1999 - 2000 LEGISLATURE

LRB-0623/1  
PJD:kmg:lp

DOA:.....Holden – Tax treatment of sales of time–share properties  
FOR 1999–01 BUDGET — NOT READY FOR INTRODUCTION

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

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*Analysis by the Legislative Reference Bureau*

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Under current law, the sale of time–share property is subject to the real estate transfer fee. This bill exempts from real estate transfer fees conveyances of those time–share properties that give the owner the right to use or occupy the real property during at least four separated periods over at least four years. Under current law, some, but not all, conveyances that are exempt from the real estate transfer fee are also exempt from the requirement of filing a real estate transfer return. The bill exempts from the requirement of filing a real estate transfer return these conveyances of time–share property.

The furnishing of rooms or lodging through the sale of time–share properties exempted from the real estate transfer fee by this bill is currently subject to the sales tax only if the use of the rooms or lodging is not fixed at the time of sale as to the starting date or the lodging unit and is for less than one month. This bill subjects to the sales tax all sales of time–share properties that are for less than one month, whether or not they are exempted from the real estate transfer fee by this bill, and whether or not the use of the rooms or lodging is fixed at the time of the sale.

The bill also subjects to the sales tax those charges associated with time–share property that at the time of the charges would be subject to the sales tax.

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.



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19 fee under s. 77.25, shall comply with ss. 709.02 to 709.04 and 709.06.

20 **SECTION 6.** 799.01 (1) (am) of the statutes is amended to read:

21 799.01 (1) (am) *Return of earnest money.* Actions for the return of earnest  
22 money tendered pursuant to a contract for purchase of real property, including a  
23 condominium unit, as defined in s. 703.02 (15), and ~~time share property, as defined~~  
24 ~~in s. 707.02 (32),~~ that includes 1 to 4 dwelling units, as defined in s. 101.61 (1), by sale,

1 exchange or land contract unless the transfer is exempt from the real estate transfer  
2 fee under s. 77.25 regardless of the amount claimed.

3 **SECTION 9443. Effective dates; revenue.**

4 (1) TAX TREATMENT OF SALES OF TIME-SHARE PROPERTIES. The treatment of sections  
5 77.25 (21), 77.255, 77.51 (4) (c) 6., 77.52 (2) (a) 1., 709.01 (1) and 799.01 (1) (am) of  
6 the statutes takes effect on the first day of the 2nd month commencing after  
7 publication.

8 (END)