

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

JUL 12 REC'D

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-101**

AN ORDER to repeal Tax 11.66 (3) (d) and (4) (e); to renumber Tax 11.66 (2) (intro.) and (b) (intro.) and 1. to 5., (3) (b), (c) and (e) to (m), (4) (f) and (5); to renumber and amend Tax 11.66 (2) (a) and (3) (a); to amend Tax 11.66 (title), (3) (title) and (intro.) and (4) (intro.), (a) and (c); to repeal and recreate Tax 11.66 (4) (d); and to create Tax 11.66 (2) (intro.), (a) (title) and (b), (3) (a) (intro.) and (b), (5) and (6), relating to communication services.

Submitted by **DEPARTMENT OF REVENUE**

06-15-99 RECEIVED BY LEGISLATIVE COUNCIL.

07-02-99 REPORT SENT TO AGENCY.

RS:WF:jal

JUL 9 1999

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE  
REPEALING, RENUMBERING, RENUMBERING AND AMENDING,  
AMENDING, REPEALING AND RECREATING AND CREATING RULES**

The Wisconsin Department of Revenue proposes an order to: repeal Tax 11.66(3)(d) and (4)(e); renumber Tax 11.66(2)(intro.) and (b)(intro.) and 1. to 5., (3)(b), (c) and (e) to (m), (4)(f) and (5); renumber and amend Tax 11.66(2)(a) and (3)(a); amend Tax 11.66(title), (3)(title) and (intro.) and (4)(intro.), (a) and (c); repeal and recreate Tax 11.66(4)(d); and create Tax 11.66(2)(intro.), (a)(title) and (b), (3)(a)(intro.) and (b), (5) and (6), relating to communication services.

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***Analysis by the Department of Revenue***

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(17m) and (21m), 77.52(2)(a)5. and 5m., (2m) and (3m) and 77.525, Stats.

SECTION 1. Tax 11.66(title) is revised, to remove cable television system services and to clarify that the section applies to telecommunications services and telecommunications message services.

SECTIONS 2 TO 5. Tax 11.66(2)(intro.), (a) and (b)(intro.) and 1. to 5. are renumbered Tax 11.66(2)(a)(intro.), 1. and 2.(intro.) and a. to e. and new sub. (2)(intro.), (a)(title) and (b) are created, to clarify the content of sub. (2) and list the types of services discussed in Tax 11.66.

Tax 11.66(2)(a)1. as renumbered is revised and examples are added, to reflect the tax treatment of certain telecommunications services which originate or terminate in Wisconsin, as a result of the amendment to s. 77.52(2)(a)5., Stats., by 1997 Wis. Act 27.

SECTIONS 6 TO 11. Tax 11.66(3)(title) and (intro.) are revised, sub. (3)(d) is repealed, sub. (3)(a), (b), (c) and (e) to (m) are renumbered sub. (3)(a)1., 2., 3. and 4. to 12. and sub. (3)(a)(intro.) is created, to clarify the content of sub. (3) and to remove cable television system services from Tax 11.66 because they are taxed separately from telecommunications services.

Tax 11.66(3)(a)1. as renumbered and the example are revised, to reflect the tax treatment of certain telecommunications services which originate or terminate in Wisconsin, as a result of the amendment to s. 77.52(2)(a)5., Stats., by 1997 Wis. Act 27.

SECTION 12. Tax 11.66(3)(b) is created, to list telecommunications message services as taxable services, as a result of the creation of s. 77.52(2)(a)5m., Stats., by 1997 Wis. Act 27.

SECTIONS 13 AND 14. Tax 11.66(4)(intro.) and (c) are revised, to correct grammar and punctuation in conformity with Legislative Council Rules Clearinghouse standards.

Tax 11.66(4)(a) is revised and sub. (4)(d) is repealed and recreated, and the example at the end of sub. (4)(d) is removed, to reflect the tax treatment of certain telecommunications services which originate or terminate in Wisconsin, as a result of the amendment to s. 77.52(2)(a)5., Stats., by 1997 Wis. Act 27.

SECTIONS 15 TO 17. Tax 11.66(4)(e) is repealed and sub. (4)(f) is renumbered sub. (4)(e), to remove nonmechanical telephone answering services from the listing of nontaxable services, as a result of the creation of s. 77.52(2)(a)5m., Stats., by 1997 Wis. Act 27.

Tax 11.66(5) is renumbered Tax 11.66(7) and new sub. (5) is created, to reflect the tax treatment of prepaid telephone calling cards and authorization numbers, as a result of the amendment to s. 77.52(2)(a)5., Stats., and the creation of s. 77.52(3m), Stats., by 1997 Wis. Act 237.

Tax 11.66(6) is created, to reflect the credit for taxes paid to other states, as a result of the creation of s. 77.525, Stats., by 1997 Wis. Act 27. 1.5t

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SECTION 1. Tax 11.66(title) is amended to read:

Tax 11.66(title) **Telecommunications and CATV telecommunications message services.**

SECTION 2. Tax 11.66(2)(intro.) and (a) are renumbered Tax 11.66(2)(a)(intro.) and 1. and Tax 11.66(2)(a)1. as renumbered is amended to read:

Tax 11.66(2)(a)1. The service originates or terminates in Wisconsin.

**Note to Revisor:** Add the following examples at the end of Tax 11.66(2)(a)1. as renumbered:

**Examples:** 1) Mary Jones places a telephone call from her home in Wisconsin to Bill Jones in Illinois. The call originated in Wisconsin since it was placed from a telephone in Wisconsin.

2) Mary Jones receives a collect call at her home in Wisconsin. The call was placed by Bill Jones from a telephone in Illinois. The call terminated in Wisconsin since it was received in Wisconsin.

SECTION 3. Tax 11.66(2)(intro.) and (a)(title) are created to read:

Tax 11.66(2)(intro.) GENERAL. This subsection describes the conditions under which telecommunications services and telecommunications message services are taxable. The conditions are as follows:

(a)(title) *Telecommunications services.*

SECTION 4. Tax 11.66(2)(b)(intro.) and 1. to 5. are renumbered Tax 11.66(2)(a)2.(intro.) and a. to e.

SECTION 5. Tax 11.66(2)(b) is created to read:

Tax 11.66(2)(b) *Telecommunications message services.* Telecommunications message services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser's direction are taxable, except that those services are not taxable if they are merely an incidental element of another service that is sold to the purchaser and is not taxable.

SECTION 6. Tax 11.66(3)(title) and (intro.) are amended to read:

Tax 11.66(3)(title) TAXABLE TELECOMMUNICATIONS SERVICES.

(intro.) ~~Telecommunications services~~ Gross receipts which are subject to Wisconsin sales or use tax include gross receipts from the sale of the following services:

SECTION 7. Tax 11.66(3)(a) is renumbered Tax 11.66(3)(a)1. and amended to read:

Tax 11.66(3)(a)1. Local and toll service and Wide-Area Telecommunications Service, or WATS, including intrastate private line service.

**Note to Revisor:** Replace the example at the end of sub. (3)(a)1. as renumbered with the following:

**Example:** Company JKL, headquartered in Milwaukee, has branch offices in Madison, Green Bay, Chicago and Minneapolis. Company JKL contracts with a telecommunications company for private line telecommunications service between its Milwaukee office and each branch office. The charges by the telecommunications company to Company JKL for private line service are subject to Wisconsin sales or use tax. A credit may be allowed, against the Wisconsin sales or use tax, for tax paid to Illinois or Minnesota. See sub. (6).

SECTION 8. Tax 11.66(3)(a)(intro.) is created to read:

Tax 11.66(3)(a)(intro.) Telecommunications services, including:

SECTION 9. Tax 11.66(3)(b) and (c) are renumbered Tax 11.66(3)(a)2. and 3.

SECTION 10. Tax 11.66(3)(d) is repealed.

SECTION 11. Tax 11.66(3)(e) to (m) are renumbered Tax 11.66(3)(a)4. to 12.

**Note to Revisor:** Add the following note at the end of Tax 11.66(3)(a)12. as renumbered:

**Note:** Refer to sub. (5) regarding the sale of rights to purchase telecommunications services.

SECTION 12. Tax 11.66(3)(b) is created to read:

Tax 11.66(3)(b) Telecommunications message services, including:

1. Nonmechanical telephone answering services.

**Examples:** 1) A real estate business, whose employees spend considerable periods of time away from its office, contracts with Company A to answer incoming telephone calls during periods when employees are not available to answer the telephone. Employees of Company A receive the calls to the real estate office by telephone, take messages from incoming callers and transmit the messages to the real estate company or particular employees in that company. The service provided by Company A is not an incidental element of another service that is sold to the real estate company and is nontaxable. Company A's charge for this service is subject to Wisconsin sales or use tax.

2) Company B employs an office management service that provides receptionist, typing, filing, scheduling, bookkeeping and similar services. Employees of the office management service also answer and route incoming telephone calls. When calls cannot be routed, the office management service takes and transmits messages to the appropriate person. This answering service is only a small part of the total services provided.

The telephone answering service provided as a part of the office management service is not subject to Wisconsin sales or use tax because it is incidental to the office management service provided and that office management service is not taxable.

2. Burglar alarm and similar security monitoring services.

3. Electronic mail services.

4. Mechanical or electronic voice messaging and telephone answering services.

**Example:** Company A provides its customers access to an office message system computer through which a customer can deposit or retrieve telephone messages using a touch-tone telephone. The service may be used as a message center, a call forwarding service or an answering service. Messages are stored in the computer, and the customer may send or retrieve messages, reply to a message directly, reroute messages to others, broadcast messages to a wider group, save selected messages and cancel messages no longer needed. The service is available 24 hours a day, and the customer accesses the computer either through a toll-free telephone number or a local telephone number. The service provided by Company A is not an incidental element of another service that is sold to the customer and is nontaxable. Company A's charges for this service are subject to Wisconsin sales or use tax.

SECTION 13. Tax 11.66(4)(intro.), (a) and (c) are amended to read:

Tax 11.66(4)(intro.) Gross receipts from the sale of or charge for the following services are not taxable:

(a) Interstate or international telecommunications service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a service address in another state or country.

(c) Access services, Measured Toll Service, or MTS, and Wide-Area Telecommunications Service, or WATS, services resellers purchase, repackage, and resell to customers.

SECTION 14. Tax 11.66(4)(d) is repealed and recreated to read:

Tax 11.66(4)(d) Services that are obtained by means of a toll-free number, that originate outside Wisconsin and terminate in Wisconsin.

**Note to Revisor:** Remove the example that followed sub. (4)(d) before its repeal.

SECTION 15. Tax 11.66(4)(e) is repealed.

SECTION 16. Tax 11.66(4)(f) and (5) are renumbered Tax 11.66(4)(e) and (7).

SECTION 17. Tax 11.66(5) and (6) are created to read:

Tax 11.66(5) PREPAID TELEPHONE CALLING CARDS AND AUTHORIZATION

NUMBERS. (a) The sale of rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code, is subject to Wisconsin sales or use tax.

(b) The situs of the sale of the rights to purchase telecommunications services is as follows:

1. If the sale takes place at a retailer's place of business, the situs of the sale is that place of business.

2. If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services, such as a calling card, is shipped, the situs of the sale is the customer's shipping address.

3. If the sale does not take place at a retailer's place of business and no item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's billing address.

(6) CREDIT FOR TAX PAID TO ANOTHER STATE. Any person who is subject to the tax under s. 77.52(2)(a)5., Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under s. 77.52(2)(a)5., Stats., was passed on an amount equal to the amounts not remitted.

**Note to Revisor:** 1) Replace the first note at the end of Tax 11.66 with the following:

**Note:** Section Tax 11.66 interprets ss. 77.51(17m) and (21m), 77.52(2)(a)5. and 5m., (2m) and (3m) and 77.525, Stats.

2) In the 3<sup>rd</sup> note at the end of Tax 11.66: remove part (b); renumber parts (c) to (h) to be parts (b) to (g); remove the word "and" before part (g) as renumbered; and add the following to the end of the note:

; (h) Certain telecommunications message services became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (i) Telecommunications services originating outside Wisconsin, terminating in Wisconsin and charged to a service address in Wisconsin, except certain services obtained by means of a toll-free number, became taxable December 1, 1997, pursuant to 1997 Wis. Act 27; (j) Credit for sales tax properly paid to another state on interstate telecommunications services became effective October 14, 1997, pursuant to 1997 Wis. Act 27; and (k) Sales of rights to purchase telecommunications services became taxable August 1, 1998, pursuant to 1997 Wis. Act 237.

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The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

**Initial Regulatory Flexibility Analysis**

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

6-12-97

By: \_\_\_\_\_



Cate Zeuske  
Secretary of Revenue

e:\rule\1166 Proposed Order