

2001 ASSEMBLY BILL 525

October 2, 2001 – Introduced by Representatives M. LEHMAN, AINSWORTH, JESKEWITZ, LIPPERT, MEYERHOFER, MUSSER, OLSEN and STONE, cosponsored by Senator JAUCH. Referred to Committee on Ways and Means. Referred to Joint survey committee on Tax Exemptions.

1 **AN ACT** *to renumber and amend* 77.52 (2) (a) 5.; *to amend* 77.52 (3m) (intro.),
2 77.525 and 77.72 (3) (b); and *to create* 77.52 (2) (a) 5. b., 77.52 (3n) and 77.54
3 (46m) of the statutes; **relating to:** the sales tax imposed on the sale of mobile
4 telecommunications services.

Analysis by the Legislative Reference Bureau

Under current law, the sale of a mobile telecommunications service is subject to the sales tax if, generally, the service either originates or terminates in this state. Under this bill, for customer bills issued after August 1, 2002, the sale of a mobile telecommunications service is subject to the sales tax if the customer's place of primary use of the service is in this state, regardless of where the service originates or terminates, as determined under the federal Mobile Telecommunications Sourcing Act (act). Under the act, a mobile telecommunications service provider is responsible for determining the customer's place of primary use, but may rely on an electronic database of addresses and taxing jurisdictions to make such a determination. Either this state or a designated database provider maintains the electronic database.

Under current law, telephone services obtained by using a prepaid telephone calling card are exempt from the sales tax and the use tax, if the sales tax or use tax was paid on the purchase of the prepaid telephone calling card. This bill clarifies current law by creating a sales and use tax exemption on telephone services obtained by using a prepaid telephone calling card, if the sales tax or use tax was paid on the purchase of the prepaid telephone calling card.

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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* 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:

1 **SECTION 1.** 77.52 (2) (a) 5. of the statutes is renumbered 77.52 (2) (a) 5. a. and
2 amended to read:

3 77.52 **(2)** (a) 5. a. The sale of telecommunications services, except services
4 subject to 4 USC 116 to 126, as amended by P.L. 106-252, that either originate or
5 terminate in this state; except services that are obtained by means of a toll-free
6 number, that originate outside this state and that terminate in this state; and are
7 charged to a service address in this state, regardless of the location where that charge
8 is billed or paid; and the sale of the rights to purchase telecommunications services,
9 including purchasing reauthorization numbers, by paying in advance and by using
10 an access number and authorization code, except sales that are subject to subd. 5. b.

11 **SECTION 2.** 77.52 (2) (a) 5. b. of the statutes is created to read:

12 77.52 **(2)** (a) 5. b. The sale of services subject to 4 USC 116 to 126, as amended
13 by P.L. 106-252, if the customer's place of primary use of the services is in this state,
14 as determined under 4 USC 116 to 126, as amended by P.L. 106-252. For purposes
15 of this subd. 5. b., all of the provisions of 4 USC 116 to 126, as amended by P.L.
16 106-252, are adopted, except that if 4 USC 116 to 126, as amended by P.L. 106-252,
17 or the application of 4 USC 116 to 126, as amended by P.L. 106-252, is found
18 unconstitutional the sale of telecommunications services is subject to the tax
19 imposed under this section as provided in subd. 5. a.

20 **SECTION 3.** 77.52 (3m) (intro.) of the statutes is amended to read:

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1 77.52 **(3m)** (intro.) In regard to the sale of the rights to purchase
2 telecommunications services under sub. (2) (a) 5. a.:

3 **SECTION 4.** 77.52 (3n) of the statutes is created to read:

4 77.52 **(3n)** In regard to the sale of the rights to purchase telecommunications
5 services under sub. (2) (a) 5. b., the situs of the sale is as determined under 4 USC
6 116 to 126, as amended by P.L. 106–252.

7 **SECTION 5.** 77.525 of the statutes is amended to read:

8 **77.525 Reduction to prevent double taxation.** Any person who is subject
9 to the tax under s. 77.52 (2) (a) 5. a. on telecommunications services that terminate
10 in this state and who has paid a similar tax on the same services to another state may
11 reduce the amount of the tax remitted to this state by an amount equal to the similar
12 tax properly paid to another state on those services or by the amount due this state
13 on those services, whichever is less. That person shall refund proportionally to the
14 persons to whom the tax under s. 77.52 (2) (a) 5. a. was passed on an amount equal
15 to the amounts not remitted.

16 **SECTION 6.** 77.54 (46m) of the statutes is created to read:

17 77.54 **(46m)** The gross receipts from the sale of and the storage, use, or other
18 consumption of telecommunications services, if the telecommunications services are
19 obtained by using the rights to purchase telecommunications services, including
20 purchasing reauthorization numbers, by paying in advance and by using an access
21 number and authorization code; and if the tax imposed under s. 77.52 or 77.53 was
22 previously paid on the sale or purchase of such rights.

23 **SECTION 7.** 77.72 (3) (b) of the statutes is amended to read:

24 77.72 **(3) (b) Exceptions.** ~~Communication~~ A communication service has a situs
25 where the customer is billed for the service if the customer calls collect or pays by

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1 credit card. Services subject to s. 77.52 (2) (a) 5. b. have a situs at the customer's place
2 of primary use of the services, as determined under 4 USC 116 to 126, as amended
3 by P.L. 106-252. Towing services have a situs at the location to which the vehicle is
4 delivered. Services performed on tangible personal property have a situs at the
5 location where the property is delivered to the buyer.

6 **SECTION 8. Initial applicability.**

7 (1) This act first applies to customer bills issued after August 1, 2002.

8 (END)