State of Wisconsin
2003 – 2004 LEGISLATURE

6

LRB–0646/~~P1~~ P2
JK:kmg:pg

PM not R

DOA:.....Koskinen – BB0368, Streamlined sales tax

FOR 2003–05 BUDGET — NOT READY FOR INTRODUCTION

in 1-21-03

LPS: bring all questions on this draft to KMG.

AN ACT ...; **relating to:** the Uniform Sales and Use Tax Administration Act, granting rule–making authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

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

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

SECTION 1. 66.0615 (1m) (f) 2. of the statutes is amended to read:

66.0615 **(1m)** (f) 2. Sections 77.51 (14) (c)~~,~~ <u>and</u> (f) ~~and (j)~~ and (14g), 77.52 (3), (4), ~~(6)~~ and (18), <u>77.522,</u> 77.58 (1) to (5) and (7), 77.59, 77.60, 77.61 (2), (5), (8), (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax described under subd. 1.

State of Wisconsin
2003 – 2004 LEGISLATURE

LRB–0646/P1 12
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RM not R

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ..., DON'T GEN. CAT. **relating to:** the Uniform Sales and Use Tax Administration Act, granting rule–making authority, making an appropriation, and providing a penalty.

INSERT A

Analysis by the Legislative Reference Bureau

TAXATION

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

SECTION 1. 66.0615 (1m) (f) 2. of the statutes is amended to read:

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SECTION 2. 70.111 (23) of the statutes is amended to read:

70.111 **(23)** VENDING MACHINES. All machines that automatically dispense soda water beverages, as defined in s. 97.29 (1) (i), and items ~~included~~ defined as a food ~~or beverage under s. 77.54 (20) (a) and (b)~~ and food ingredient under s. 77.51 (3t) upon the deposit in the machines of specified coins or currency, or insertion of a credit card, in payment for the soda water beverages, food or beverages.

SECTION 3. 73.03 (50) (d) of the statutes is amended to read:

73.03 **(50)** (d) In the case of a sole proprietor, signs the form or, in the case of other persons, has an individual who is authorized to act on behalf of the person sign the form, or, in the case of a single–owner entity that is disregarded as a separate entity under section 7701 of the Internal Revenue Code, the person is the owner. Any person who may register under this subsection may designate ~~an agent in writing~~ a certified service provider to register with the department under this subsection ~~subject to the department's approval~~ in the manner prescribed by the department. In this paragraph, "sign" has the meaning given in s. 77.51 (17r).

~~****NOTE: By using the definition of "sign" under s. 77.51 (17r), the department may require another method of authentication other than a written signature.~~

SECTION 4. 73.03 (50b) of the statutes is created to read:

73.03 **(50b)** To waive the fee established under sub. (50) for applying for and renewing the business tax registration certificate, if the person who is applying for or renewing the certificate is not required for purposes of ch. 77 to hold such a certificate.

SECTION 5. 73.03 (59) of the statutes is created to read:

73.03 **(59)** To do all of the following related to the Uniform Sales and Use Tax Administration Act:

(a) Certify compliance with the agreement, as defined in s. 77.65 (2) (a).

(b) Pursuant to the agreement, as defined in s. 77.65 (2) (a), certify certified service providers, as defined in s. 77.51 (1g), and certified automated systems, as defined in s. 77.524 (1) (a).

(c) Issue a tax identification number to a person who claims an exemption under subch. III or V of ch. 77 and who is not required to register with the department for the purposes of subch. III or V of ch. 77.

(d) Maintain a database that is accessible to sellers and certified service providers, as defined in s. 77.51 (1g), that indicates whether items defined in accordance with the Uniform Sales and Use Tax Administration Act are taxable or nontaxable.

(e) Maintain a database that is accessible to sellers and certified service providers, as defined in s. 77.51 (1g), that indicates tax rates, taxing jurisdiction boundaries, and zip code or address assignments related to the administration of taxes imposed under subchs. III and V of ch. 77.

****NOTE: The provisions of the agreement adopted on November 12 relating to the issues identified under s. 73.03 (59), as created above, require the governing board or member states to do certain things. Obviously, this state has no jurisdiction over the governing board or the member states. Therefore, it would be nonsensical to have the statutes direct such entities. Consequently, I have given the department broad authority in these areas so that the department may comply with the agreement. Also, please note that, under current law, the department already has broad authority to act in accordance with the streamlined sales and use tax agreement. See s. 77.65 (3).

SECTION 6. 76.07 (4g) (b) 8. of the statutes is amended to read:

76.07 **(4g)** (b) 8. Determine transport–related revenue by adding public service revenue allocated to this state on the basis of routes for which the company is authorized to receive subsidy payments, mutual aid allocated to this state on the basis of the ratio of transport revenues allocated to this state to transport revenues everywhere in the previous year, in–flight sales allocated to this state as they are

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allocated under ~~s. 77.51 (14r)~~ 77.522 and all other transport–related revenues from sales made in this state.

SECTION 7. 77.51 (1) of the statutes is renumbered 77.51 (1d).

SECTION 8. 77.51 (1b) of the statutes is created to read:

77.51 **(1b)** "Alcohol beverage" means a beverage that is suitable for human consumption and that contains 0.5% or more of alcohol by volume.

SECTION 9. 77.51 (1e) of the statutes is created to read:

77.51 **(1e)** "Candy" means a preparation of sugar, honey, or other natural or artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include a preparation that contains flour or that requires refrigeration.

SECTION 10. 77.51 (1n) of the statutes is created to read:

77.51 **(1n)** "Computer" means an electronic device that accepts information in digital or similar form and that manipulates such information to achieve a result based on a sequence of instructions.

SECTION 11. 77.51 (1p) of the statutes is created to read:

77.51 **(1p)** "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

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SECTION 12. 77.51 (2m) of the statutes is created to read:

77.51 **(2m)** "Delivery charges" means charges by a seller to prepare and deliver tangible personal property or services to a location designated by the purchaser of the property or services, including charges for transportation, shipping, postage, handling, crating, and packing.

SECTION 13. 77.51 (3p) of the statutes is created to read:

tangible personal

INSERT 4-19

other than ~~except~~ tobacco,

77.51 **(3p)** "Dietary supplement" means a product that is intended to supplement a person's diet, if all of the following apply:

(a) The product contains any of the following ingredients or any combination of any of the following ingredients:

1. A vitamin.

2. A mineral.

3. An herb or other botanical.

4. An amino acid.

5. A substance, other than an ingredient under subds. 1. to 4., that is intended for human consumption and that increases total dietary intake.

6. A concentrate, metabolite, constituent, or extract.

(b) The product is intended for ingestion in tablet, capsule, powder, or liquid form, or, if not intended for ingestion in such forms, is not represented as food or a food ingredient and is not represented for use as the sole item of a meal or diet.

(c) The product is required to be labeled as a dietary supplement as required under 21 CFR 101.36.

SECTION 14. 77.51 (3pd) of the statutes is created to read:

77.51 **(3pd)** "Direct mail" means ~~a service whereby~~ printed material that is delivered by the U.S. postal service or other delivery service to a mass audience or to addresses on a mailing list provided by or at the direction of the purchaser of the ~~service~~ printed material, if the cost of the printed material or any tangible personal property included with the printed material is not billed directly to the recipients of the printed material. "Direct mail" includes any tangible personal property provided directly or indirectly by the purchaser of the ~~service~~ printed material to the seller of the ~~service~~ printed material for inclusion in

any package containing printed material. "Direct mail" does not include multiple items of printed material delivered to a single address or any combination of them,

SECTION 15. 77.51 (3pj) of the statutes is created to read:

77.51 (3pj) "Drug" means a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages, to which any of the following applies:

(a) It is listed in the United States Pharmacopoeia, Homeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to any of them.

(b) It is intended for use in diagnosing, curing, mitigating, treating, or preventing a disease.

(c) It is intended to affect a function or structure of the body.

SECTION 16. 77.51 (3pm) of the statutes is created to read:

77.51 (3pm) "Durable medical equipment" means equipment, including the repair or and replacement parts for the equipment, that is primarily used for a medical purpose related to a person; that can withstand repeated use; that is not generally useful to a person who is not ill or injured; and that is not placed in or worn on the body. "Durable medical equipment" does not include mobility-enhancing equipment as defined in sub. (7m).

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that is for use in a person's home;

and customarily

SECTION 17. 77.51 (3t) of the statutes is created to read:

77.51 (3t) "Food and food ingredient" means a substance in liquid, concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or for chewing, by humans and that is ingested or chewed for its taste or nutritional value. "Food and food ingredient" does not include alcohol beverages or tobacco.

SECTION 18. 77.51 (4) of the statutes is repealed.

SECTION 19. 77.51 (7) of the statutes is repealed and recreated to read:

INSERT 6-18

77.51 **(7)** (a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term and for consideration, including a transfer that includes future options to purchase or extend, regardless of whether such transfer is considered a lease or rental under generally accepted accounting principles, or any provision of federal or state law.

(b) "Lease or rental" does not include any of the following:

1. A transfer of possession or control of tangible personal property under a security agreement or deferred payment plan, if such agreement or plan requires transferring title to the tangible personal property after making all required payments.

2. A transfer of possession or control of tangible personal property under any agreement that requires transferring title to the tangible personal property after making all required payments and after paying an option price that does not exceed the greater of $100 or 1% of the total amount of the required payments.

3. Providing tangible personal property along with an operator, if the operator is necessary for the tangible personal property to perform in the manner for which it is designed and if the operator does more than maintain, inspect, or set up the tangible personal property.

4. Agreements related to the transfer of possession or control of motor vehicles or trailers, if the amount of any consideration may be increased or decreased by reference to the amount realized on the sale or other disposition of such motor vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

SECTION 20. 77.51 (7m) of the statutes is created to read:

77.51 **(7m)** "Mobility–enhancing equipment" means equipment, including the repair ~~of~~ e and replacement parts for the equipment, that is primarily and customarily used to provide

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or increase the ability of a person to move from one place to another; that may be used in a home or motor vehicle; and that is generally not used by a person who has normal mobility. "Mobility–enhancing equipment" does not include a motor vehicle or any equipment on a motor vehicle that is generally provided by ~~the~~ a motor vehicle manufacturer.

SECTION 21. 77.51 (10m) of the statutes is created to read:

77.51 **(10m)** (a) "Prepared food" means:

1. Food and food ingredients sold heated.

2. Food and food ingredients heated by the retailer.

~~2.~~ 3. Food and food ingredients sold with eating utensils that are provided by the retailer of the food and food ingredients, including plates, knives, forks, spoons, glasses, cups, napkins, and straws, but not including a container or packaging used to transport food and food ingredients.

~~3.~~ 4. Except as provided in par. (b) 1. to 3., 2 or more food ingredients mixed or combined by a retailer for sale as a single item ~~that requires no further preparation by the consumer.~~ and par. (a) 2. and 4.

(b) "Prepared food" does not include:

1. Two or more food ingredients mixed or combined by a retailer for sale as a single item, if the retailer's primary classification in the 1997 North American Industry Classification System, published by the federal office of management and budget, is manufacturing under sectors 31 to 33, not including bakeries and tortilla manufacturing under industry group number 3118, unless sold as provided in par. (a) 2. ~~and~~ 4 or

2. Two or more food ingredients mixed or combined by a retailer for sale as a single item, sold unheated, and sold by volume or weight, unless the ingredients are sold as provided in par. (a) 2. ~~and~~ 4. or

3. Bakery items made by a retailer, including breads, rolls, pastries, buns, biscuits, bagels, donuts, croissants, cakes, danish, pies, cookies, and tortillas, unless the items are sold as provided in par. (a) 2. or 4.

tortes, torte, tarts, tarts, muffins, bars,

INSERT 9-2

4. Food and food ingredients that are only sliced, repackaged, or pasteurized by a retailer.

~~SECTION 22. 77.51 (10p) of the statutes is created to read:~~

~~77.51 (10p) "Prewritten computer software" means computer software that is not designed according to a specific purchaser's specification and computer software that is designed according to a prospective purchaser's specification, but sold to a different purchaser. "Prewritten computer software" includes computer software that is modified according to a specific purchaser's specification, unless the sales price of the modification is provided to the purchaser on an invoice or other statement as a reasonable, separately stated charge.~~

SECTION 23. 77.51 (11m) of the statutes is created to read:

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parts

77.51 (11m) "Prosthetic device" means a device, including the repair of and replacement parts for the device, that is placed in or worn on the body to replace a artificially missing portion of the body; to prevent or correct a physical deformity or malfunction; or to support a weak or deformed portion of the body.

SECTION 24. 77.51 (12m) of the statutes is created to read:

77.51 (12m) (a) "Purchase price" means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

1. The seller's cost of the property sold.

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller.

3. Charges by the seller for any services necessary to complete a sale, not including delivery and installation charges.

4. Delivery charges, except as provided in par. (b) 4.

5. Installation charges.

6. The value of exempt personal property, except drugs that are exempt under s. 77.54(14), that is given to the purchaser of the property, if the exempt personal property is bundled with taxable personal property and sold by the seller as a single product or piece of merchandise.

~~7. The value of coins and stamps of the United States that are sold or traded as collectors' items above their face value.~~

~~8. The value of leased property that is affixed to real property if the lessor has the right to remove the leased property upon breach or termination of the lease agreement, unless the lessor of the leased property is also the lessor of the real property to which the leased property is affixed.~~

(b) "Purchase price" does not include:

1. Discounts, including cash, terms, or coupons, that are not reimbursed by a 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

2. Interest, financing, and carrying charges from credit that is extended on a sale of personal property or services, if the amount of the interest, financing, or carrying charges is separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

3. Any taxes legally imposed directly on the purchaser that are separately stated on the invoice, bill of sale, or similar document that the seller gives to the purchaser.

4. Delivery charges for direct mail.

5. In all transactions in which an article of tangible personal property is traded toward the purchase of an article of greater value, the amount of the purchase price that represents the amount allowed for the article traded, except that this subdivision does not apply to any transaction to which ~~sub. (2) (a)~~ applies. subd. 8.

6. If a person who purchases a motor vehicle presents a statement issued under s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the statement to the seller within 60 days from the date of receiving a refund under s. 218.0171 (2) (b) 2. b., the trade–in amount specified in the statement issued under s. 218.0171 (2) (cq), but not to exceed the purchase price from the sale of the motor vehicle. This subdivision applies only to the first motor vehicle purchased by a person after receiving a refund under s. 218.0171 (2) (b) 2. b.

INDEX(2) 11-11

SECTION 25. 77.51 (13) (o) of the statutes is amended to read:

77.51 **(13)** (o) A person selling ~~medicine~~ drugs for animals to a veterinarian. As used in this paragraph, "animal" includes livestock, pets and poultry.

SECTION 26. 77.51 (13s) of the statutes is created to read:

77.51 **(13s)** "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than resale ~~or~~, sublease, or subrent

SECTION 27. 77.51 (14) (intro.) of the statutes is amended to read:

77.51 **(14)** (intro.) "Sale" ~~, "sale, lease or rental", "retail sale", "sale at retail", or equivalent terms include~~ includes any ~~one or all~~ of the following: the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption but not for resale as tangible personal property or services and includes:

SECTION 28. 77.51 (14) (d) of the statutes is repealed.

SECTION 29. 77.51 (14) (j) of the statutes is repealed.

**** NOTE: Please note that because "subrent" is not defined, and is not in the dictionary, DOR may need to define this term by rule.
a word

SECTION 30. 77.51 (14r) of the statutes is ~~amended to read:~~ repealed.

~~77.51 (14r) A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent, except that for purposes of this subsection a common carrier or the U.S. postal service shall be deemed the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.~~

SECTION 31. 77.51 (15) of the statutes is repealed.

SECTION 32. 77.51 (15a) of the statutes is created to read:

77.51 **(15a)** (a) "Sales price" means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

1. The seller's cost of the property sold.

2. The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller.

3. Charges by the seller for any services necessary to complete a sale, not including delivery and installation charges.

4. Delivery charges, except as provided in par. (b) 4.

5. Installation charges.

6. The value of exempt personal property, except drugs that are exempt under s. 77.54(14), that is given to the purchaser of the property, if the exempt personal property is bundled with taxable personal property and sold by the seller as a single product or piece of merchandise.

1 ~~7. The value of coins and stamps of the United States that are sold or traded~~
2 ~~as collectors' items above their face value.~~
3 ~~8. The value of leased property that is affixed to real property if the lessor has~~
4 ~~the right to remove the leased property upon breach or termination of the lease~~
5 ~~agreement, unless the lessor of the leased property is also the lessor of the real~~
6 ~~property to which the leased property is affixed.~~
7 (b) "Sales price" does not include:
8 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
9 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.
10 2. Interest, financing, and carrying charges from credit that is extended on a
11 sale of personal property or services, if the amount of the interest, financing, or
12 carrying charges is separately stated on the invoice, bill of sale, or similar document
13 that the seller gives to the purchaser.
14 3. Any taxes legally imposed directly on the purchaser that are separately
15 stated on the invoice, bill of sale, or similar document that the seller gives to the
16 purchaser.
17 4. Delivery charges for direct mail.
18 5. In all transactions in which an article of tangible personal property is traded
19 toward the purchase of an article of greater value, the amount of the sales price that
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INSERT 14-3

s. 218.0171 (2) (cq), but not to exceed the sales price from the sale of the motor vehicle. This subdivision applies only to the first motor vehicle purchased by a person after receiving a refund under s. 218.0171 (2) (b) 2. b.

SECTION 33. 77.51 (17) of the statutes is amended to read:

77.51 **(17)** "Seller" includes a certified service provider and every person selling, leasing or renting tangible personal property or selling, performing or furnishing services of a kind the ~~gross receipts~~ sales price from the sale, lease, rental, performance or furnishing of which ~~are~~ is required to be included in the measure of the sales tax.

SECTION 34. 77.51 (17w) of the statutes is created to read:

77.51 **(17w)** "Soft drink" means a beverage that contains less than 0.5% of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not include a beverage that contains milk or milk products; soy, rice, or similar milk substitutes; or more than 50% vegetable or fruit juice by volume.

SECTION 35. 77.51 (20) of the statutes is amended to read:

77.51 **(20)** "Tangible personal property" means ~~all tangible~~ personal property ~~of every kind and description~~ that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses, and includes electricity, natural gas, steam ~~and~~, water, and ~~also leased property affixed to realty if the lessor has the right to remove the property upon breach or termination of the lease agreement, unless the lessor of the property is also the lessor of the realty to which the property is affixed. "Tangible personal property" also includes coins and stamps of the United States sold or traded as collectors' items above their face value and computer programs except custom~~ prewritten computer ~~programs~~ software.

SECTION 36. 77.51 (21) of the statutes is amended to read:

77.51 **(21)** "Taxpayer" means the person who is required to pay, collect, or account for or who is otherwise directly interested in the taxes imposed by this subchapter, including a certified service provider.

SECTION 37. 77.51 (21p) of the statutes is created to read:

77.51 **(21p)** "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco, and any other item that contains tobacco.

SECTION 38. 77.51 (22) (bm) of the statutes is created to read:

77.51 **(22)** (bm) In this subsection, "exercise of any right or power over tangible personal property or taxable services" includes selecting recipients, determining mailing schedules, or otherwise directing the distribution, dissemination, or disposal of tangible personal property or taxable services, regardless of whether the purchaser of such property or services owns or physically possesses in this state, the property or services.

~~****NOTE: Should the concept of owning or possessing the taxable service be included at the end of this subsection? If not, why not?~~

SECTION 39. 77.52 (1) of the statutes is renumbered 77.52(1)(a) and amended to read:

77.52 **(1)** (a) For the privilege of selling, licensing, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the ~~gross receipts~~ sales price from the sale, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state.

SECTION 40. 77.52 (2) (intro.) of the statutes is amended to read:

77.52 **(2)** (intro.) For the privilege of selling, licensing, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the

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rate of 5% of the ~~gross receipts~~ sales price from the sale, performance or furnishing of the services.

SECTION 41. 77.52 (2) (a) 10. of the statutes is amended to read:

77.52 **(2)** (a) 10. Except for installing or applying tangible personal property which, when installed or applied, will constitute an addition or capital improvement of real property, the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property unless, at the time of such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in this state of the type of property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation under this subchapter, other than the exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a) and other than nontaxable sales outside this state under ~~s. 77.51 (14r)~~ 77.522. For purposes of this paragraph, the following items shall be considered to have retained their character as tangible personal property, regardless of the extent to which any such item is fastened to, connected with, or built into real property: furnaces, boilers, stoves, ovens, including associated hoods and exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers, refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units, radios and radio antennas, incinerators, television receivers and antennas, record players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings, carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs, heat lamps, electronic dust collectors, grills and rotisseries, bar equipment, intercoms, recreational, sporting, gymnasium and athletic goods and equipment including by

way of illustration but not of limitation bowling alleys, golf practice equipment, pool tables, punching bags, ski tows, and swimming pools; equipment in offices, business facilities, schools, and hospitals but not in residential facilities including personal residences, apartments, long–term care facilities, as defined under s. 16.009 (1) (em), state institutions, as defined under s. 101.123 (1) (i), Type 1 secured correctional facilities, as defined in s. 938.02 (19), or similar facilities including, by way of illustration but not of limitation, lamps, chandeliers, and fans, venetian blinds, canvas awnings, office and business machines, ice and milk dispensers, beverage–making equipment, vending machines, soda fountains, steam warmers and tables, compressors, condensing units and evaporative condensers, pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs. "Service" does not include services performed by veterinarians. The tax imposed under this subsection applies to the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed in this subdivision, regardless of whether the installation or application of tangible personal property related to the items is an addition to or a capital improvement of real property, except that the tax imposed under this subsection does not apply to the original installation or the complete replacement of an item listed in this subdivision, if such installation or replacement is a real property construction activity under s. 77.51 (2).

~~SECTION 42. 77.52 (3p) of the statutes is created to read:~~

~~77.52 (3p) If a lessor of tangible personal property has reimbursed the vendor for the sales tax on the sale of the property by the vendor to the lessor, the tax due from the lessor on the rental receipts may be offset by a credit equal to the tax otherwise due on the rental receipts from the property for the reporting period. The~~

1 credit shall expire when the cumulative rental receipts equal the sales price upon
2 which the vendor paid sales taxes to this state. If a purchaser of tangible personal
3 property has reimbursed the vendor of the property for the sales tax on the sale and
4 subsequently, before making any use of the property other than retention,
5 demonstration, or display while holding it for sale or rental, makes a taxable sale of
6 the property, the tax due on the taxable sale may be offset by the tax reimbursed.

7 **SECTION 43.** 77.52 (5m) of the statutes is created to read:

8 **77.52 (5m)** The department may, in cases where it is satisfied that an undue
9 hardship would otherwise result, permit the reporting of a sales price on some basis
10 other than the accrual basis.

11 **SECTION 44.** 77.52 (6) of the statutes is repealed.

12 **SECTION 45.** 77.52 (7) of the statutes is amended to read:

13 **77.52 (7)** Every person desiring to operate as a seller within this state who
14 holds a valid certificate under s. 73.03 (50) shall file with the department an
15 application for a permit for each place of operations. Every application for a permit
16 shall be made upon a form prescribed by the department and shall set forth the name
17 under which the applicant intends to operate, the location of the applicant's place of
18 operations, and the other information that the department requires. ~~The~~ Except as
19 provided in sub. (7b), the application shall be signed by the owner if a sole proprietor;
20 in the case of sellers other than sole proprietors, the application shall be signed by
21 the person authorized to act on behalf of such sellers. A nonprofit organization that
22 has ~~gross receipts~~ a sales price taxable under s. 77.54 (7m) shall obtain a seller's
23 permit and pay taxes under this subchapter on all taxable ~~gross receipts~~ sales prices
24 received after it is required to obtain that permit. If that organization becomes

eligible later for the exemption under s. 77.54 (7m) except for its possession of a seller's permit, it may surrender that permit.

SECTION 46. 77.52 (7b) of the statutes is created to read:

77.52 **(7b)** Any person who may register under sub. (7) may designate a certified service provider ~~an agent~~ ~~in writing~~, to register with the department under sub. (7), ~~subject to~~ the department's ~~approval~~ in the manner prescribed by

~~**SECTION 47.** 77.52 (13) of the statutes is amended to read:~~

~~77.52 **(13)** For the purpose of the proper administration of this section and to prevent evasion of the sales tax it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property or services is not a taxable sale at retail is upon the person who makes the sale unless that person takes from the purchaser a certificate or obtains information prescribed by rule by the department to the effect that the property or service is purchased for resale or is otherwise exempt; except that no certificate is required for sales of cattle, sheep, goats, and pigs that are sold at a livestock market, as defined in s. 95.68 (1) (e), and no certificate is required for sales of commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the U.S. commodity futures trading commission if upon the sale the commodity is not removed from the warehouse.~~

INSERT 19-20

SECTION 48. 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are consolidated, renumbered 77.52 (14) and amended to read:

77.52 **(14)** The certificate ~~referred to in~~ or information prescribed by rule under sub. (13) relieves the seller from the burden of proof only if ~~any of the following is true: 1. The~~ the certificate or information is taken ~~in good faith from a person who is engaged as a seller of tangible personal property or~~

The certificate or information prescribed by rule by the department under sub. (13) shall not relieve the seller of the burden of proof if the seller fraudulently fails to collect sales tax or solicits the purchaser to claim an unlawful exemption.

~~taxable services and who holds the permit provided for in sub. (9) and who,~~ at the time ~~of purchasing~~ that the person purchases the tangible personal property or services~~, intends to sell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose. (b).~~ The certificate ~~referred to in sub. (13)~~ shall ~~be signed by and bear the name and address of~~ provide information that identifies the purchaser~~,~~ and shall indicate ~~the general character of the tangible personal property or service sold by the purchaser and~~ the basis for the claimed exemption. The certificate shall be in such form as the department prescribes by rule.

SECTION 49. 77.52 (14) (a) 2. of the statutes is repealed.

SECTION 50. 77.52 (15) of the statutes is amended to read:

77.52 **(15)** If a purchaser who purchases tangible personal property or taxable services without paying a sales tax or use tax on such purchase because such property or services were for resale ~~gives a resale certificate~~ makes any use of the property or services other than retention, demonstration or display while holding the property or services ~~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 that the property or services ~~is~~ are first used by the purchaser, and the ~~sales~~ purchase price of the property or services 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~~ This subsection does not apply to candy, soft drinks, and prepared food; or to disposable products that are transferred with candy, soft drinks, and prepared food; that a restaurant provides to the restaurant's employees during the work hours of the employees.

SECTION 51. 77.522 of the statutes is created to read:

77.522 Sourcing. (1) SALES. (a) In this section:

This subsection does not apply to the sale of tangible personal property that is exempt under s. 77.54 (7), (11), (14), (15), (17), (20n), (21), (22b), (30), (32), (42), and (44).

Multiple-points-of-use

1. ~~"Direct mail form" means a form prescribed by the department.~~

2. "~~Exemption form~~" means the multiple–points–of–use exemption form, as prescribed by the department.

3. "Product" includes tangible personal property, digital goods, and services.

4. "Receive" means taking possession of tangible personal property; making first use of services; or taking possession or making first use of digital goods, whichever comes first. "Receive" does not include a shipping company taking possession of tangible personal property on a purchaser's behalf.

5. "Transportation equipment" means all of the following:

a. Locomotives and railcars that are used to carry persons or property in interstate commerce.

b. Trucks and truck tractors that have a gross vehicle weight rating of 10,001 pounds or greater, trailers, semitrailers, and passenger buses, if such vehicles are registered under the International Registration Plan and operated under the authority of a carrier that is authorized by the federal government to carry persons or property in interstate commerce.

c. Aircraft that is operated by air carriers that are authorized by the federal government or a foreign authority to carry persons or property in interstate commerce.

d. Containers that are designed for use on the vehicles described in subd. 5. a. to c. and component parts attached to or secured on such vehicles.

(b) Except as provided in pars. (c) to (f) and subs. (2) and (3), ~~to determine which jurisdiction may impose a sales tax or a use tax on a sale~~, the location of a sale is determined as follows:

1. If a purchaser receives the product at a seller's business location, the sale occurs at that business location.

2. If a purchaser does not receive the product at a seller's business location, the sale occurs at the location where the purchaser, or the purchaser's designated donee, receives the product, including the location indicated by the instructions known to the seller for delivery to the purchaser or the purchaser's designated donee.

3. If the location of a sale cannot be determined under subds. 1. and 2., the sale occurs at the purchaser's address as indicated by the seller's business records, if the records are maintained in the ordinary course of the seller's business and if using that address to establish the location of a sale is not in bad faith.

4. If the location of a sale cannot be determined under subds. 1. to 3., the sale occurs at the purchaser's address as obtained during the consummation of the sale, including the address indicated on the purchaser's payment instrument, if no other address is available and if using that address is not in bad faith.

5. If the location of a sale cannot be determined under subds. 1. to 4., the location of the sale is determined as follows:

a. If the item sold is tangible personal property, the sale occurs at the location from which the tangible personal property is shipped.

b. If the item sold is a digital good, ~~digital service,~~ or ~~prewritten~~ computer software, and such good or software is delivered electronically ~~such good, service, or software is concurrently available for use in more than one taxing jurisdiction,~~ the sale occurs at the location from which the digital good, ~~digital service,~~ or ~~prewritten~~ computer software was first available for transmission by the seller.

c. If a service, other than a digital service, is sold, the sale occurs at the location from which the service was provided.

(c) The sale of direct mail occurs at the location ~~specified in the direct mail form that the purchaser of the service provides to the seller at the time of sale or, if the purchaser does not provide a direct mail form, the location~~ from which the direct mail

if the purchaser does not provide to the seller a direct pay permit, a direct mail form, or other information that indicates the appropriate taxing jurisdiction to which the direct mail is delivered to the ultimate recipients

is shipped. If the purchaser provides a direct mail form to the seller, the purchaser shall pay or remit, as appropriate, to the department the tax imposed under s. 77.53 (1) on all purchases for which the tax is due and the seller is relieved from liability for collecting such tax.

***NOTE: The October 2002 issue paper related to this idea provides contrary instructions. The paper, on one hand, requires the purchaser to provide a direct mail form for a direct mail purchase, yet, on the other hand, provides a sourcing option in the event that no form is provided. I have chosen to incorporate both ideas into the draft by making the provision of a direct mail form voluntary. Is that consistent with the intent? If not, then I suggest either eliminating the other sourcing option or creating, as a compliance incentive, a penalty for not providing the form.

(d) 1. If the service, digital good, or computer software is delivered electronically, a business purchaser who purchases a digital good, ~~digital~~ service, or ~~prewritten~~ computer software who does not hold a direct pay permit under s. 77.52 (17m), and who knows at the time that the purchaser purchases such good, service, or software that the good, service, or software will be concurrently available for use in more than one taxing jurisdiction shall provide ~~an~~ a multiple-point-of-use exemption form to the seller, in conjunction with the purchase, and shall pay or remit, as appropriate, to the department the tax imposed under s. 77.53 (1) on all purchases for which the tax is due.

2. To apportion the amount of the tax due multiple taxing jurisdictions, a purchaser who provides an exemption form under subd. 1. shall use any reasonable, consistent, and uniform apportionment method supported by the purchaser's business records that exist at the time of the sale.

3. An exemption form provided under subd. 1. shall remain effective for all sales by the seller who received the form to the purchaser who provided the form, unless the purchaser revokes the form in writing and provides such a revocation to the seller.

4. If the service, digital good, or computer software is delivered electronically, a business purchaser who purchases a digital good, ~~digital~~ service, or ~~prewritten~~ computer software, who holds a direct pay permit under s. 77.52 (17m), and who knows at the time that the purchaser purchases such good, service, or software that

the good, service, or software will be concurrently available for use in more than one taxing jurisdiction is not required to provide a multiple-points-of-use exemption form to the seller, but shall collect, pay, or remit, as appropriate, to the department the tax imposed under s. 77.53 (1) and shall use the apportionment method described under par. (b) to apportion the tax due multiple taxing jurisdictions.

~~(e) The sale of transportation equipment occurs at the location where the transportation equipment is delivered.~~

~~(f) This subsection does not apply to sales or use taxes imposed under this subchapter and subch. V on the sale of telecommunications services and use taxes imposed under subch. V on the sale of motor vehicles, aircraft, or watercraft.~~

~~**(2)** LEASE OR RENTAL. (a) Except as provided in pars. (b) and (c), with regards to the first payment on the lease or rental, the lease or rental of tangible personal property occurs at the location where the property is delivered. If the property is moved from the place where the property was initially delivered, the subsequent periodic payments on the lease or rental occur at the property's location.~~

~~(b) The lease or rental of vehicles and aircraft occurs at the location where the vehicles or aircraft are kept.~~

~~(c) The lease or rental of transportation equipment occurs at the location where the transportation equipment is delivered.~~

(3) TELECOMMUNICATIONS. (a) In this subsection:

1. "Air–to–ground radiotelephone service" means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

~~***NOTE: This is the definition of "air–to–ground radiotelephone service" under 47 CFR, part 22.99.~~

INSERT 24-19

2. "Call–by–call basis" means any method of charging for telecommunications services by which the price of such services is measured by individual calls.

3. "Customer channel termination point" means the location from which a customer inputs or receives communications.

4. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

5. "Customer" means a person who enters into a contract with a seller of telecommunications services or, in any transaction for which the end user is not the person who entered into a contract with the seller of telecommunications services, the end user of the telecommunications services. "Customer" does not include a person who resells telecommunications services.

6. "End user" means an individual who uses a telecommunications service.

7. "Mobile telecommunications service" means a mobile telecommunications service under 4 USC 116 to 126, as amended by P.L. 106–252.

8. "Place of primary use" means place of primary use, as determined under 4 USC 116 to 126, as amended by P.L. 106–252.

9. "Postpaid calling service" means a telecommunications service that is obtained by paying for it on a call–by–call basis using a bankcard, travel card, credit card, debit card, or similar method, or by charging ~~the payment~~ it to a telephone number that is not associated with the location where the telecommunications service originates or terminates. "Postpaid calling service" includes a service that would otherwise be a prepaid calling service except that the service provided to the customer is not exclusively a telecommunications service.

**** NOTE: The last sentence refers to "units or dollars that decrease with use in a known amount." Known by whom?

10. "Prepaid calling service" means the right to access ~~a~~ service, that ~~is~~ are exclusively ~~a~~ telecommunications service, that ~~is~~ are paid for in advance of providing such ~~a~~ service, that require~~s~~ using an access number or authorization code to originate calls; and that ~~is~~ are sold in predetermined units or dollars that decrease with use in a known amount.

11. "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of communications channels between or among termination points, regardless of the manner in which the communications channel or group of communications channels is connected, and includes ~~provides~~ switching capacity, extension lines, stations, and other ~~similar~~ associated services that are provided in connection with the use of such channel or channels.

12. "Radio service" means a communication service provided by the use of radio, including radiotelephone, radiotelegraph, paging, and facsimile service.

~~****NOTE: This is the definition of "radio service" under 47 CFR, part 22.99 and is included in this draft because it is necessary to understand the definition of "air-to-ground radiotelephone service" created under subd. 1.~~

13. "Radiotelegraph service" means transmitting messages from one place to another by means of radio.

14. "Radiotelephone service" means transmitting sound from one place to another by means of radio.

~~****NOTE: The definitions under subds. 13 and 14 are terms used to define "radio service" under subd. 12.~~

15. "Service address" means any of the following:

a. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

b. If the location described under subd. 15. a. cannot be determined, the location where the signal of the telecommunications service originates, as identified by the seller's telecommunications system or, if the signal is not transmitted from the seller's telecommunications system, by information that the seller received from the seller's service provider.

c. If the location described under subd. 15. a. and b., cannot be determined, the customer's place of primary use.

(b) Except as provided in pars. (d) to (g), the sale of a telecommunications service that is sold on a call–by–call basis occurs in the taxing jurisdiction for sales and use tax purposes where the call originates and terminates, in the case of a call that originates and terminates in the same such jurisdiction, or the taxing jurisdiction for sales and use tax purposes where the call originates or terminates and where the service address is located.

(c) Except as provided in pars. (d) to (g), the sale of a telecommunications service that is sold on a basis other than a call–by–call basis occurs at the customer's place of primary use.

(d) The sale of a mobile telecommunications service, except an air–to–ground radiotelephone service and a prepaid calling service, occurs at the customer's place of primary use.

(e) The sale of a postpaid calling service occurs at the location where the signal of the telecommunications service originates, as first identified by the seller's telecommunications system or, if the signal is not transmitted from the seller's telecommunications system, by information that the seller received from the seller's service provider.

determined under sub. (1)(b) 1.

(f) The sale of a prepaid calling service occurs at the location ~~from which the service was provided~~ or, if the service is a mobile telecommunications service, the location associated with the mobile telephone number, if the location cannot be determined under sub. (1)(b) 1. to 4

(g) 1. The sale of a private communication service ~~that represents~~ for a separate charge related to a customer channel termination point occurs at the location of the customer channel termination point.

2. The sale of a private communication service in which all customer channel termination points are located entirely in one taxing jurisdiction for sales and use tax purposes occurs in the taxing jurisdiction ~~for sales and use tax purposes~~ in which the customer channel termination points are located.

3. If the segments are charged separately, the sale of a private communication service that represents segments of a communications channel between 2 customer channel termination points that are located in different taxing jurisdictions for sales and use tax purposes occurs in an equal percentage in both such jurisdictions.

4. If the segments are not charged separately, the sale of a private communication service ~~that represents~~ for segments of a communications channel that is located in more than one taxing jurisdiction for sales and use tax purposes occurs in each such jurisdiction in a percentage determined by dividing the number of customer channel termination points in that jurisdiction by the number of customer channel termination points in all jurisdictions where segments of the communications channel are located.

SEC. #. 77.523(title) of the statutes is repealed.

SECTION 52. 77.523 of the statutes is renumbered ~~77.523(1)~~ 77.59 (9p)(a) and amended to read:

~~77.523 (1)~~ 77.59 (9p)(a) ~~CUSTOMER REMEDY.~~ If a customer purchases a service that is subject to 4 USC 116 to 126, as amended by P.L. 106–252, and if the customer believes that

the amount of the tax assessed for the service under this subchapter or the place of primary use or taxing jurisdiction assigned to the service is erroneous, the customer may request that the service provider correct the alleged error by sending a written notice to the service provider. The notice shall include a description of the alleged error, the street address for the customer's place of primary use of the service, the account name and number of the service for which the customer seeks a correction, and any other information that the service provider reasonably requires to process the request. Within 60 days from the date that a service provider receives a request under this ~~section~~ ~~subsection~~ paragraph, the service provider shall review its records to determine the customer's taxing jurisdiction. If the review indicates that there is no error as alleged, the service provider shall explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the service provider shall correct the error and shall refund or credit the amount of any tax collected erroneously, along with the related interest, as a result of the error from the customer in the previous 48 months, consistent with s. 77.59 (4). A customer may take no other action, or commence any action, to correct an alleged error in the amount of the tax assessed under this subchapter on a service that is subject to 4 USC 116 to 126, as amended by P.L. 106–252, or to correct an alleged error in the assigned place of primary use or taxing jurisdiction, unless the customer has exhausted his or her remedies under this ~~section~~ ~~subsection~~ paragraph.

SORT
move sec. 53 to 0524

77.59(9p)(b)

SECTION 53. ~~77.52(12)~~ of the statutes is created to read:

~~77.52(12)~~ If a customer purchases a service that is not subject to 4 USC 116 to 126, as amended by P.L. 106–252, or tangible personal property, and if the customer believes that the amount of the tax assessed for the sale of the service or property under this subchapter is erroneous, the customer may request that the

77.59(9p)(b)

Move Sec. 53 to p. 50 line 4

seller correct the alleged error by sending a written notice to the seller. The notice shall include a description of the alleged error and any other information that the seller reasonably requires to process the request. Within 60 days from the date that a seller receives a request under this ~~subsection~~ paragraph, the seller shall review its records to determine the validity of the customer's claim. If the review indicates that there is no error as alleged, the seller shall explain the findings of the review in writing to the customer. If the review indicates that there is an error as alleged, the seller shall correct the error and shall refund the amount of any tax collected erroneously, along with the related interest, as a result of the error from the customer ~~in the previous 48 months~~ consistent with s. 77.59 (4). A customer may take no other action, or commence any action, to correct an alleged error in the amount of the tax assessed under this subchapter on a service that is not subject to 4 USC 116 to 126, as amended by P.L. 106–252, or tangible personal property, unless the customer has exhausted his or her remedies under this ~~subsection~~ paragraph.

SECTION 54. 77.524 (1) (b) of the statutes is renumbered 77.51 (1g).

SECTION 55. 77.53 (1) of the statutes is amended to read:

77.53 **(1)** Except as provided in sub. (1m), an excise tax is levied and imposed on the use or consumption in this state of coins, stamps, leased property, and taxable services under s. 77.52 purchased from any retailer, at the rate of 5% of the ~~sales~~ purchase price of ~~those~~ such coins, stamps, leased property, and services; on the storage, use or other consumption in this state of tangible personal property purchased from any retailer, at the rate of 5% of the ~~sales~~ purchase price of that property; and on the storage, use or other consumption of tangible personal property manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of 5% of the ~~sales~~ purchase price of that material.

SECTION 56. 77.53 (4) of the statutes is repealed.

SECTION 57. 77.53 (9) of the statutes is amended to read:

77.53 (9) Every retailer selling tangible personal property or taxable services for storage, use or other consumption in this state shall register with the department and obtain a certificate under s. 73.03 (50) and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, the standard industrial code classification of each place of business in this state and the other information that the department requires. Any person who may register under this subsection may designate ~~an agent, in writing,~~ a certified service provider to register with the department under this subsection, ~~subject to~~ in the manner prescribed by the department's ~~approval.~~

SECTION 58. 77.53 (9m) of the statutes is amended to read:

77.53 (9m) Any person who is not otherwise required to collect any tax imposed by this subchapter and who makes sales to persons within this state of tangible personal property or taxable services the use of which is subject to tax under this subchapter may register with the department under the terms and conditions that the department imposes and shall obtain a valid certificate under s. 73.03 (50) and thereby be authorized and required to collect, report and remit to the department the use tax imposed by this subchapter. Any person who may register under this subsection may designate ~~an agent, in writing,~~ a certified service provider to register with the department under this subsection, ~~subject to~~ in the manner prescribed by the department's ~~approval.~~

INSERT 31-2

SECTION 59. 77.53 (11) of the statutes is amended to read:

77.53 (11) The certificate ~~referred to in~~ sub. (10) relieves the person selling the property or service from the burden of proof only if taken ~~in good faith~~ from a person ~~who is engaged as a seller of tangible personal property or taxable services and who~~ or information prescribed by rule by the department under

• The certificate or information prescribed by rule by the department under sub. (10) shall not relieve the seller of the burden of proof if the seller fraudulently fails to collect sales tax or solicit the purchaser to claim an unlawful exemption

~~holds the permit provided for by s. 77.52 (9) and who,~~ at the time ~~of purchasing~~ that the person purchases the tangible personal property or taxable service~~, intends to sell it in the regular course of operations or is unable to ascertain at the time of purchase whether the property or service will be sold or will be used for some other purpose, or if taken in good faith from a person claiming exemption.~~ The certificate shall ~~be signed by and bear the name and address of~~ provide information that identifies the purchaser and shall indicate ~~the number of the permit issued to the purchaser, the general character of tangible personal property or taxable service sold by the purchaser and~~ the basis for the claimed exemption. The certificate shall be substantially in the form that the department prescribes.

INSERT 32-10

SECTION 60. 77.53 (17) of the statutes is amended to read:

77.53 **(17)** This section does not apply to tangible personal property purchased outside this state, as determined under s. 77.522, other than motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all–terrain vehicles and airplanes registered or titled or required to be registered or titled in this state, which is brought into this state by a nondomiciliary for the person's own storage, use or other consumption while temporarily within this state when such property is not stored, used or otherwise consumed in this state in the conduct of a trade, occupation, business or profession or in the performance of personal services for wages or fees.

SECTION 61. 77.53 (17m) of the statutes is amended to read:

77.53 **(17m)** This section does not apply to a boat purchased in a state contiguous to this state, as determined under s. 77.522, by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the

domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made.

SECTION 62. 77.53 (17r) (a) of the statutes is amended to read:

77.53 **(17r)** (a) It is purchased in another state, as determined under s. 77.522.

SECTION 63. 77.53 (18) of the statutes is amended to read:

77.53 **(18)** This section does not apply to the storage, use or other consumption in this state of household goods for personal use or to aircraft, motor vehicles, boats, snowmobiles, mobile homes, trailers, semitrailers and all–terrain vehicles, for personal use, purchased by a nondomiciliary of this state outside this state, as determined under s. 77.522, 90 days or more before bringing the goods or property into this state in connection with a change of domicile to this state.

SECTION 64. 77.54 (1) of the statutes is amended to read:

77.54 **(1)** The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption in this state of tangible personal property and services the ~~gross receipts~~ sales price from the sale of which, or the storage, use or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

~~**SECTION 65.** 77.54 (1b) of the statutes is created to read:~~

~~77.54 **(1b)** The part of the sales price or purchase price that the seller refunds in cash or credit as a result of returned property or adjustments in the sales price or purchase price after the sale has been completed, if the seller has included the refunded price in a prior return made by the seller and has paid the tax on such price, and if the seller has returned to the purchaser in cash or in credit all tax previously paid by the purchaser on the amount of the refund at the time of the purchase.~~

~~**SECTION 66.** 77.54 (1c) of the statutes is created to read:~~

1 77.54 (1e) Thirty–five percent of the sales price or purchase price, excluding
2 trade–ins, of a new mobile home, as defined in s. 340.01 (29), that is a primary
3 housing unit or of a new mobile home, as defined in s. 340.01 (29), that is transported
4 in 2 unattached sections if the total size of the combined sections, not including
5 additions and attachments, is at least 984 square feet measured when the sections
6 are ready for transport.

7 **SECTION 67.** 77.54 (1g) of the statutes is created to read:

8 77.54 **(1g)** At the retailer's option; except that after the retailer chooses an
9 option the retailer may not use the other option for other sales without the
10 department's written approval; either 35% of the sales price or purchase price of a
11 manufactured building, as defined in s. 101.71 (6), or an amount equal to the sales
12 price or purchase price of the manufactured building minus the cost of materials that
13 become an ingredient or component part of the building.

14 **SECTION 68.** 77.54 (2) of the statutes is amended to read:

15 77.54 **(2)** The ~~gross receipts~~ sales price from sales of and the storage, use or
16 other consumption of tangible personal property becoming an ingredient or
17 component part of an article of tangible personal property or which is consumed or
18 destroyed or loses its identity in the manufacture of tangible personal property in
19 any form destined for sale, but this exemption shall not include fuel or electricity.

20 **SECTION 69.** 77.54 (2m) of the statutes is amended to read:

21 77.54 **(2m)** The ~~gross receipts~~ sales price from the sales of and the storage, use
22 or other consumption of tangible personal property or services that become an
23 ingredient or component of shoppers guides, newspapers or periodicals or that are
24 consumed or lose their identity in the manufacture of shoppers guides, newspapers
25 or periodicals, whether or not the shoppers guides, newspapers or periodicals are

1 transferred without charge to the recipient. In this subsection, "shoppers guides",
2 "newspapers" and "periodicals" have the meanings under sub. (15). The exemption
3 under this subdivision does not apply to advertising supplements that are not
4 newspapers.

5 **SECTION 70.** 77.54 (3) (a) of the statutes is amended to read:

6 77.54 **(3)** (a) The ~~gross receipts~~ sales price from the sales of and the storage, use
7 or other consumption of tractors and machines, including accessories, attachments
8 and parts therefor, used exclusively and directly in the business of farming, including
9 dairy farming, agriculture, horticulture, floriculture and custom farming services,
10 but excluding automobiles, trucks, and other motor vehicles for highway use;
11 excluding personal property that is attached to, fastened to, connected to or built into
12 real property or that becomes an addition to, component of or capital improvement
13 of real property and excluding tangible personal property used or consumed in the
14 erection of buildings or in the alteration, repair or improvement of real property,
15 regardless of any contribution that that personal property makes to the production
16 process in that building or real property and regardless of the extent to which that
17 personal property functions as a machine.

18 **SECTION 71.** 77.54 (3m) (intro.) of the statutes is amended to read:

19 77.54 **(3m)** (intro.) The ~~gross receipts~~ sales price from the sale of and the
20 storage, use or other consumption of the following items if they are used exclusively
21 by the purchaser or user in the business of farming; including dairy farming,
22 agriculture, horticulture, floriculture and custom farming services:

23 **SECTION 72.** 77.54 (4) of the statutes is amended to read:

24 77.54 **(4)** ~~Gross receipts~~ The sales price from the sale of tangible personal
25 property, and the storage, use or other consumption in this state of tangible personal

INSERT 36-9

property which is the subject of any such sale, by any elementary school or secondary school, exempted as such from payment of income ~~or~~ franchise tax under ch. 71, whether public or private.

SECTION 73. 77.54 (5) (intro.) of the statutes is amended to read:

77.54 **(5)** (intro.) The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption of:

SECTION 74. 77.54 (6) (intro.) of the statutes is amended to read:

77.54 **(6)** (intro.) The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption of:

SECTION 75. 77.54 (9) of the statutes is amended to read:

77.54 **(9)** The ~~gross receipts~~ sales price from sales of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious or charitable purposes.

SECTION 76. 77.54 (9a) (intro.) of the statutes is amended to read:

77.54 **(9a)** (intro.) The ~~gross receipts~~ sales price from sales to, and the storage by, use by or other consumption of tangible personal property and taxable services by:

SECTION 77. 77.54 (10) of the statutes is amended to read:

77.54 **(10)** The ~~gross receipts~~ sales price from the sale of all admission fees, admission stickers or camping fees under s. 27.01 (7) to (11) and all admission fees to any museum operated by a nonprofit corporation under a lease agreement with the state historical society.

SECTION 78. 77.54 (11) of the statutes is amended to read:

77.54 **(11)** The ~~gross receipts~~ sales price from the sales of and the storage, use or other consumption in this state of motor vehicle fuel, general aviation fuel or

alternate fuel, subject to taxation under ch. 78, unless the motor vehicle fuel or alternate fuel tax is refunded under s. 78.75 because the buyer does not use the fuel in operating a motor vehicle upon the public highways.

SECTION 79. 77.54 (12) of the statutes is amended to read:

77.54 **(12)** The ~~gross receipts~~ sales price from the sales of and the storage, use or other consumption in this state of rail freight or passenger cars, locomotives or other rolling stock used in railroad operations, or accessories, attachments, parts, lubricants or fuel therefor.

SECTION 80. 77.54 (13) of the statutes is amended to read:

77.54 **(13)** The ~~gross receipts~~ sales price from the sales of and the storage, use or other consumption in this state of commercial vessels and barges of 50–ton burden or over primarily engaged in interstate or foreign commerce or commercial fishing, and the accessories, attachments, parts and fuel therefor.

SECTION 81. 77.54 (14) (intro.) of the statutes is amended to read:

77.54 **(14)** (intro.) The gross receipts from the sales of and the storage, use, or other consumption in this state of ~~medicines~~ drugs that are any of the following:

SECTION 82. 77.54 (14) (a) of the statutes is amended to read:

77.54 **(14)** (a) Prescribed for the treatment of a human being by a person authorized to prescribe the ~~medicines~~ drugs, and dispensed on prescription filled by a registered pharmacist in accordance with law.

SECTION 83. 77.54 (14) (f) of the statutes is amended to read:

77.54 **(14)** (f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist who is licensed under ch. 447, podiatrist who is licensed under ch. 448, or optometrist who is licensed under ch. 449 if the ~~medicine~~ drug may not be dispensed without a prescription.

INSERT 37-20

1 **SECTION 84.** 77.54 (14g) of the statutes is repealed.

2 **SECTION 85.** 77.54 (14s) of the statutes is repealed.

3 **SECTION 86.** 77.54 (15) of the statutes is amended to read:

4 77.54 **(15)** The ~~gross receipts~~ sales price from the sale of and the storage, use
5 or other consumption of all newspapers, of periodicals sold by subscription and
6 regularly issued at average intervals not exceeding 3 months, or issued at average
7 intervals not exceeding 6 months by an educational association or corporation sales
8 to which are exempt under sub. (9a) (f), of controlled circulation publications sold to
9 commercial publishers for distribution without charge or mainly without charge or
10 regularly distributed by or on behalf of publishers without charge or mainly without
11 charge to the recipient and of shoppers guides which distribute no less than 48 issues
12 in a 12–month period. In this subsection, "shoppers guide" means a community
13 publication delivered, or attempted to be delivered, to most of the households in its
14 coverage area without a required subscription fee, which advertises a broad range
15 of products and services offered by several types of businesses and individuals. In
16 this subsection, "controlled circulation publication" means a publication that has at
17 least 24 pages, is issued at regular intervals not exceeding 3 months, that devotes
18 not more than 75% of its pages to advertising and that is not conducted as an
19 auxiliary to, and essentially for the advancement of, the main business or calling of
20 the person that owns and controls it.

21 **SECTION 87.** 77.54 (16) of the statutes is amended to read:

22 77.54 **(16)** The ~~gross receipts~~ sales price from the sale of and the storage, use
23 or other consumption of fire trucks and fire fighting equipment, including
24 accessories, attachments, parts and supplies therefor, sold to volunteer fire
25 departments.

SECTION 88. 77.54 (17) of the statutes is amended to read:

77.54 **(17)** The ~~gross receipts~~ sales price from the sales of and the storage, use or other consumption of water when delivered through mains.

SECTION 89. 77.54 (18) of the statutes is amended to read:

77.54 **(18)** When the sale, lease or rental of a service or property that was previously exempt or not taxable under this subchapter becomes taxable, and the service or property is furnished under a written contract by which the seller is unconditionally obligated to provide the service or property for the amount fixed under the contract, the seller is exempt from sales or use tax on the ~~gross receipts~~ sales price for services or property provided until the contract is terminated, extended, renewed or modified. However, from the time the service or property becomes taxable until the contract is terminated, extended, renewed or modified the user is subject to use tax, measured by the ~~sales~~ purchase price, on the service or property purchased under the contract.

SECTION 90. 77.54 (20) of the statutes is repealed.

SECTION 91. 77.54 (20m) of the statutes is repealed.

SECTION 92. 77.54 (20n) of the statutes is created to read:

77.54 **(20n)** (a) The sales price from the sale of and the storage, use, or other consumption of food and food ingredients, except candy, soft drinks, dietary supplements, and prepared food.

SECTION 93. 77.54 (21) of the statutes is amended to read:

77.54 **(21)** The ~~gross receipts~~ sales price from the sales of and the storage, use or other consumption of caskets and burial vaults for human remains.

SECTION 94. 77.54 (22) of the statutes is repealed.

SECTION 95. 77.54 (22b) of the statutes is created to read:

INSERT 39-20

77.54 **(22b)** The sales price from the sale of and the storage, use, or other consumption of durable medical equipment, mobility–enhancing equipment, and prosthetic devices.

SECTION 96. 77.54 (23m) of the statutes is amended to read:

77.54 **(23m)** The ~~gross receipts~~ sales price from the sale, lease or rental of or the storage, use or other consumption of motion picture film or tape, and advertising materials related thereto, sold, leased or rented to a motion picture theater or radio or television station.

SECTION 97. 77.54 (25) of the statutes is amended to read:

77.54 **(25)** The ~~gross receipts~~ sales price from the sale of and the storage of printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which printed material is purchased and stored for the purpose of subsequently transporting it outside the state by the purchaser for use thereafter solely outside the state.

SECTION 98. 77.54 (26) of the statutes is amended to read:

77.54 **(26)** The ~~gross receipts~~ sales price from the sales of and the storage, use, or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt under s. 70.11 (21) (a) or that would be exempt under s. 70.11 (21) (a) if the property were taxable under ch. 70, or tangible personal property which becomes a component part of a waste treatment facility of this state or any agency thereof, or any political subdivision of the state or agency thereof as provided in s. 40.02 (28). The exemption includes replacement parts therefor, and also applies to chemicals and supplies used or consumed in operating a waste treatment facility and to purchases of tangible personal property made by construction contractors who transfer such property to their customers in

fulfillment of a real property construction activity. This exemption does not apply to tangible personal property installed in fulfillment of a written construction contract entered into, or a formal written bid made, prior to July 31, 1975.

SECTION 99. 77.54 (26m) of the statutes is amended to read:

77.54 **(26m)** The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption of waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities.

SECTION 100. 77.54 (27) of the statutes is amended to read:

77.54 **(27)** The ~~gross receipts~~ sales price from the sale of semen used for artificial insemination of livestock.

SECTION 101. 77.54 (28) of the statutes is repealed.

SECTION 102. 77.54 (29) of the statutes is amended to read:

77.54 **(29)** The ~~gross receipts~~ sales price from the sales of and the storage, use or other consumption of equipment used in the production of maple syrup.

SECTION 103. 77.54 (30) (a) (intro.) of the statutes is amended to read:

77.54 **(30)** (a) (intro.) The ~~gross receipts~~ sales price from the sale of:

1 **SECTION 104.** 77.54 (30) (c) of the statutes is amended to read:

2 77.54 **(30)** (c) If fuel or electricity is sold partly for a use exempt under this
3 subsection and partly for a use which is not exempt under this subsection, no tax
4 shall be collected on that percentage of the ~~gross receipts~~ sales price equal to the
5 percentage of the fuel or electricity which is used for an exempt use, as specified in
6 an exemption certificate provided by the purchaser to the seller.

7 **SECTION 105.** 77.54 (31) of the statutes is amended to read:

8 77.54 **(31)** The ~~gross receipts~~ sales price from the sale of and the storage, use
9 or other consumption in this state, but not the lease or rental, of used mobile homes
10 that are primary housing units under s. 340.01 (29).

11 **SECTION 106.** 77.54 (32) of the statutes is amended to read:

12 77.54 **(32)** The ~~gross receipts~~ sales price from charges, including charges for a
13 search, imposed by an authority, as defined in s. 19.32 (1), for copies of a public record
14 that a person may examine and use under s. 16.61 (12) or for copies of a record under
15 s. 19.35 (1).

16 **SECTION 107.** 77.54 (33) of the statutes is amended to read:

17 77.54 **(33)** The ~~gross receipts~~ sales price from sales of and the storage, use or
18 other consumption of ~~medicines~~ drugs used on farm livestock, not including
19 workstock.

20 **SECTION 108.** 77.54 (34) of the statutes is amended to read:

21 77.54 **(34)** The ~~gross receipts~~ sales price from the sale of and the storage, use
22 or other consumption of milk house supplies used exclusively in producing and
23 handling milk on dairy farms.

24 **SECTION 109.** 77.54 (35) of the statutes is amended to read:

1 77.54 **(35)** The ~~gross receipts~~ sales price from the sales of tangible personal
2 property, tickets or admissions by any baseball team affiliated with the Wisconsin
3 Department of American Legion baseball.

4 **SECTION 110.** 77.54 (36) of the statutes is amended to read:

5 77.54 **(36)** The ~~gross receipts~~ sales price from the rental for a continuous period
6 of one month or more of a mobile home, as defined in s. 66.0435 (1) (d), that is used
7 as a residence. In this subsection, "one month" means a calendar month or 30 days,
8 whichever is less, counting the first day of the rental and not counting the last day
9 of the rental.

10 **SECTION 111.** 77.54 (37) of the statutes is amended to read:

11 77.54 **(37)** The ~~gross receipts~~ sales price from revenues collected under s.
12 146.70 (3).

13 **SECTION 112.** 77.54 (38) of the statutes is amended to read:

14 77.54 **(38)** The ~~gross receipts~~ sales price from the sale of and the storage, use
15 or other consumption of snowmobile trail groomers and attachments for them that
16 are purchased, stored, used or consumed by a snowmobile club that meets at least
17 3 times a year, that has at least 10 members, that promotes snowmobiling and that
18 participates in the department of natural resources' snowmobile program under s.
19 350.12 (4) (b).

20 **SECTION 113.** 77.54 (39) of the statutes is amended to read:

21 77.54 **(39)** The ~~gross receipts~~ sales price from the sale of and the storage, use
22 or other consumption of off–highway, heavy mechanical equipment such as feller
23 bunchers, slashers, delimbers, chippers, hydraulic loaders, loaders,
24 skidder–forwarders, skidders, timber wagons and tractors used exclusively and
25 directly in the harvesting or processing of raw timber products in the field by a person

in the logging business. In this subsection, "heavy mechanical equipment" does not include hand tools such as axes, chains, chain saws and wedges.

SECTION 114. 77.54 (40) of the statutes is repealed.

SECTION 115. 77.54 (41) of the statutes is amended to read:

77.54 **(41)** The ~~gross receipts~~ sales price from the sale of building materials, supplies and equipment to; and the storage, use or other consumption of those kinds of property by; owners, contractors, subcontractors or builders if that property is acquired solely for or used solely in, the construction, renovation or development of property that would be exempt under s. 70.11 (36).

SECTION 116. 77.54 (42) of the statutes is amended to read:

77.54 **(42)** The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption of animal identification tags provided under s. 93.06 (1h) and standard samples provided under s. 93.06 (1s).

SECTION 117. 77.54 (43) of the statutes is amended to read:

77.54 **(43)** The ~~gross receipts~~ sales price from the sale of and the storage, use or other consumption of raw materials used for the processing, fabricating or manufacturing of, or the attaching to or incorporating into, printed materials that are transported and used solely outside this state.

SECTION 118. 77.54 (44) of the statutes is amended to read:

77.54 **(44)** The ~~gross receipts~~ sales price from the collection of public benefits fees that are charged under s. 16.957 (4) (a) or (5) (a).

SECTION 119. 77.54 (45) of the statutes is amended to read:

77.54 **(45)** The ~~gross receipts~~ sales price from the sale of and the use or other consumption of a onetime license or similar right to purchase admission to professional football games at a football stadium, as defined in s. 229.821 (6), that

is granted by a municipality; a local professional football stadium district; or a professional football team or related party, as defined in s. 229.821 (12); if the person who buys the license or right is entitled, at the time the license or right is transferred to the person, to purchase admission to at least 3 professional football games in this state during one football season.

SECTION 120. 77.54 (46) of the statutes is amended to read:

77.54 **(46)** The ~~gross receipts~~ sales price from the sale of and the storage, use, or other consumption of the U.S. flag or the state flag. This subsection does not apply to a representation of the U.S. flag or the state flag.

SECTION 121. 77.54 (46m) of the statutes is amended to read:

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

SECTION 122. 77.55 (1) (intro.) of the statutes is amended to read:

77.55 **(1)** (intro.) There ~~are~~ is exempted from the computation of the amount of the sales tax the ~~gross receipts~~ sales price from the sale of any tangible personal property or services to:

SECTION 123. 77.55 (2) of the statutes is amended to read:

77.55 **(2)** There ~~are~~ is exempted from the computation of the amount of the sales tax the ~~gross receipts~~ sales price from sales of tangible personal property to a common or contract carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight

charges collect, to a point outside this state and the property is actually transported to the out–of–state destination for use by the carrier in the conduct of its business as a carrier.

SECTION 124. 77.55 (2m) of the statutes is amended to read:

77.55 **(2m)** There ~~are~~ is exempted from the computation of the amount of sales tax the ~~gross receipts~~ sales price from sales of railroad crossties to a common or contract carrier, shipped wholly or in part by way of the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this state if the property is transported to the out–of–state destination for use by the carrier in the conduct of its business as a carrier. Interruption of the shipment for storage, drying, processing or creosoting of the railroad crossties in this state does not invalidate the exemption under this subsection.

SECTION 125. 77.55 (3) of the statutes is amended to read:

77.55 **(3)** There ~~are~~ is exempted from the computation of the amount of the sales tax the ~~gross receipts~~ sales price from sales of tangible personal property purchased for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof.

SECTION 126. 77.56 (1) of the statutes is amended to read:

77.56 **(1)** The storage, use or other consumption in this state of property, the ~~gross receipts~~ sales price from the sale of which ~~are~~ is reported to the department in the measure of the sales tax, is exempted from the use tax.

~~**SECTION 127.** 77.57 of the statutes is repealed.~~

INSERT 46 – 24