

2003 DRAFTING REQUEST

Bill

Received: **09/30/2003**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB: **03-2028/8**

For: **Ronald Brown (608) 266-8546**

By/Representing:

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

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax - sales**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Brown@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Streamlined sales tax project

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			pgreensl 09/30/2003	_____	Inorthro 09/30/2003	Inorthro 09/30/2003	

FE Sent For:

↳ At Intro

<END>

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FOR SEN. BROWN

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JRK

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1?	jkreye	1-9/30 King	9/30 ps	9/30 Blch			

FE Sent For:

<END>

ye, Joseph

From: Barman, Mike
Sent: Tuesday, September 30, 2003 9:06 AM
To: Hardt, Diane L
Cc: Kreye, Joseph
Subject: RE: SSTP Bill

Thanks Diane

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

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

From: Hardt, Diane L
Sent: Tuesday, September 30, 2003 9:05 AM
To: Barman, Mike
Cc: Rep.LehmanM
Subject: SSTP Bill

Mike:

Per our telephone conversation this morning, please send the jacketed SSTP bill to Rep. Michael Lehman and then have a companion bill drafted for Senator Ron Brown. Thank you.

Diane L. Hardt
Administrator, Division of Income, Sales & Excise
Wisconsin Department of Revenue
P.O. Box 8933
Madison, WI 53708-8933
(608) 266-6798
Fax (608) 261-6240
E-mail: dhardt@dor.state.wi.us

Barman, Mike

From: Barman, Mike
Sent: Tuesday, September 30, 2003 9:06 AM
To: Hardt, Diane L
Cc: Kreye, Joseph
Subject: RE: SSTP Bill

Thanks Diane

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Joe - have companion bill
Jacketed for
the Senate
& sent to
Senator Brown
Thanks
MB

03-2028/8

3995/1
stays

2003 BILL

D-N

in 9-30-03
due filed 10-1-03

*no change to
underlying draft
joe

Gen. Cat -

1 AN ACT ~~to repeal~~ 20.435 (3) (bm), 46.513, 77.51 (4), 77.51 (14) (d), 77.51 (14) (i),
2 77.51 (14) (k), 77.51 (14) (L), 77.51 (14r), 77.51 (15), 77.52 (6), 77.52 (14) (a) 2.,
3 77.523 (title), 77.53 (4), 77.54 (14g), 77.54 (14s), 77.54 (20), 77.54 (20m), 77.54
4 (22), 77.54 (40), 77.61 (3), 77.65 (2) (c), 77.72 (title) and 77.72 (2) and (3); **to**
5 **renumber** 77.51 (1), 77.51 (14) (g), 77.524 (1) (a), 77.524 (1) (b) and 77.53 (9m);
6 **to renumber and amend** 77.52 (1), 77.523, 77.61 (2), 77.72 (1) and 77.77 (1);
7 **to consolidate, renumber and amend** 77.52 (14) (a) (intro.) and 1. and (b);
8 **to amend** 66.0615 (1m) (f) 2., 70.111 (23), 73.03 (50) (d), 76.07 (4g) (b) 8., 77.51
9 (5), 77.51 (13) (o), 77.51 (14) (intro.), 77.51 (14) (a), 77.51 (14) (j), 77.51 (17),
10 77.51 (20), 77.51 (21), 77.52 (2) (intro.), 77.52 (2) (a) 10., 77.52 (7), 77.52 (13),
11 77.52 (15), 77.524 (1) (intro.), 77.53 (1), 77.53 (9), 77.53 (10), 77.53 (11), 77.53
12 (16), 77.53 (17), 77.53 (17m), 77.53 (17r) (a), 77.53 (18), 77.54 (1), 77.54 (2), 77.54
13 (2m), 77.54 (3) (a), 77.54 (3m) (intro.), 77.54 (4), 77.54 (5) (intro.), 77.54 (6)
14 (intro.), 77.54 (8), 77.54 (9), 77.54 (9a) (intro.), 77.54 (10), 77.54 (11), 77.54 (12),

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1 77.54 (13), 77.54 (14) (intro.), 77.54 (14) (a), 77.54 (14) (b), 77.54 (14) (f), 77.54
2 (15), 77.54 (16), 77.54 (17), 77.54 (18), 77.54 (21), 77.54 (23m), 77.54 (25), 77.54
3 (26), 77.54 (26m), 77.54 (27), 77.54 (28), 77.54 (29), 77.54 (30) (a) (intro.), 77.54
4 (30) (c), 77.54 (31), 77.54 (32), 77.54 (33), 77.54 (34), 77.54 (35), 77.54 (36), 77.54
5 (37), 77.54 (38), 77.54 (39), 77.54 (41), 77.54 (42), 77.54 (43), 77.54 (44), 77.54
6 (45), 77.54 (46), 77.54 (46m), 77.55 (1) (intro.), 77.55 (2), 77.55 (2m), 77.55 (3),
7 77.56 (1), 77.57, 77.58 (3) (b), 77.58 (6), 77.59 (9), 77.61 (1) (b), 77.61 (1) (c), 77.61
8 (4) (c), 77.65 (2) (e), 77.70, 77.705, 77.706, 77.707 (1), 77.707 (2), 77.71 (1), 77.71
9 (2), 77.71 (3), 77.71 (4), 77.73 (2), 77.785 (1), 77.785 (2), 77.98, 77.981, 77.982
10 (2), 77.99, 77.991 (2), 77.994 (1) (intro.), 77.9941 (4), 77.995 (2), 77.9951 (2),
11 86.195 (3) (b) 3. and 218.0171 (2) (cq); **to repeal and recreate** 77.51 (7), 77.51
12 (17m) and 77.63; and **to create** 73.03 (50b), 73.03 (61), 77.51 (1b), 77.51 (1e),
13 77.51 (1n), 77.51 (1p), 77.51 (2k), 77.51 (2m), 77.51 (3p), 77.51 (3pd), 77.51 (3pj),
14 77.51 (3pm), 77.51 (3pp), 77.51 (3t), 77.51 (7m), 77.51 (10m), 77.51 (10n), 77.51
15 (10r), 77.51 (11m), 77.51 (12m), 77.51 (12p), 77.51 (13s), 77.51 (15a), 77.51
16 (15b), 77.51 (17w), 77.51 (21p), 77.51 (22) (bm), 77.52 (1) (b), 77.52 (1) (c), 77.52
17 (7b), 77.522, 77.524 (1) (ag), 77.53 (9m) (b), 77.53 (9m) (c), 77.54 (14b), 77.54
18 (20n), 77.54 (20r), 77.54 (22b), 77.58 (6m), 77.58 (9a), 77.585, 77.59 (2m), 77.59
19 (9n), 77.59 (9p) (b), 77.59 (9r), 77.60 (13), 77.61 (2) (b), 77.61 (3m), 77.61 (5m),
20 77.61 (16), 77.67, 77.73 (3) and 77.77 (1) (b) of the statutes; **relating to:** the
21 Uniform Sales and Use Tax Administration Act, granting rule-making
22 authority, making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill adopts the substantive provisions of the streamlined sales and use tax agreement (agreement) for purposes of administering and collecting state, county,

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and stadium district sales and use taxes. The agreement is intended to simplify and modernize sales and use tax administration for the states that enter into the agreement and to encourage out-of-state retailers to collect the state, county, and stadium district sales and use taxes voluntarily. Under current federal law, generally, an out-of-state retailer who sells goods or services to customers in this state is not required to collect the sales tax or use tax imposed on such sales, if the retailer has no physical presence in this state. See *Quill v. North Dakota*, 504 U.S. 298; 112 S.Ct. 1904 (1992).

States that wish to enter into the agreement must adopt uniform definitions related to the administration of sales and use taxes and uniform policies related to sourcing sales of goods and services, bad debt allowances, refunds, and, to some extent, exemptions. Under the agreement, DOR may act jointly with other states that are signatories to the agreement to establish standards for certifying service providers and automated systems to aid out-of-state retailers with the collection of state sales and use taxes.

Under current law, “gross receipts” refers to the measure of the sales tax, and “sales price” refers to the measure of the use tax. Under the bill, “sales price” refers to the measure of the sales tax, and “purchase price” refers to the measure of the use tax.

The bill creates definitions for “alcohol beverages,” “candy,” “delivery charges,” “dietary supplement,” “food and food ingredients,” “prepared food,” and “soft drink.”

The agreement provides that a state that is a signatory to the agreement may choose to tax or not tax all articles that are covered by one definition, but a state may not exempt from sales tax or use tax a particular item that is included in a definition. The members of the project working on the agreement approved a definition for “clothing.” Therefore, in order to comply with the agreement, a state may either tax all clothing or exempt all clothing, but a state may not exempt certain items of clothing and tax others. This bill, therefore, eliminates the sales tax and use tax exemptions for cloth diapers and antiembolism hose.

This bill creates definitions for “durable medical equipment,” “mobility-enhancing equipment,” and “prosthetic device.” Under the bill, the sale of such equipment and devices is exempt from the sales tax and the use tax.

Under the bill, generally, for purposes of determining which jurisdiction may impose a sales tax or use tax on a sale, if a purchaser receives a product at the seller’s business location, the sale of that product occurs at the seller’s business location. If a purchaser does not receive the product at a seller’s business location, the sale occurs at the location where the purchaser receives the product. If the location of the sale cannot be so determined, the sale occurs at the purchaser’s address, as indicated by the seller’s business records. If the address cannot be determined from the business records, the sale occurs at the purchaser’s address, as obtained during the consummation of the sale, including the address indicated on the purchaser’s check. Finally, if the location of a sale cannot be determined in any other way, the sale of tangible personal property occurs at the location from which the tangible personal property is shipped. Under the bill, if the item sold is a digital good or computer software, and the digital good or computer software is delivered electronically, the

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sale occurs at the location from which the digital good or computer software was first available for transmission by the seller.

Under the bill, generally, the sale of a telecommunications service occurs at a location that is determined to be consistent with the provisions of the federal Mobile Telecommunications Sourcing Act.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

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

1 **SECTION 1.** 20.435 (3) (bm) of the statutes is repealed.

2 **SECTION 2.** 46.513 of the statutes is repealed.

3 **SECTION 3.** 66.0615 (1m) (f) 2. of the statutes is amended to read:

4 66.0615 **(1m)** (f) 2. Sections 77.51 (12m), (14) (~~e~~), (~~f~~) and (~~j~~) and, (14g), (15a),
5 and (15b), 77.52 (3), (3m), (4), (~~6~~) and (13), (14), (18), and (19), 77.522, 77.58 (1) to (5),
6 (6m), and (7), 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9) and, (12) to (14), and
7 (15), and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the tax
8 described under subd. 1.

9 **SECTION 4.** 70.111 (23) of the statutes is amended to read:

10 70.111 **(23)** VENDING MACHINES. All machines that automatically dispense soda
11 water beverages, ~~as defined in s. 97.29 (1) (i), and items included as a food or beverage~~
12 ~~under s. 77.54 (20) (a) and (b)~~ food and food ingredient, as defined in s. 77.51 (3t),
13 upon the deposit in the machines of specified coins or currency, or insertion of a credit
14 card, in payment for the ~~soda water beverages, food or beverages~~ food and food
15 ingredient, as defined in s. 77.51 (3t).

16 **SECTION 5.** 73.03 (50) (d) of the statutes is amended to read:

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1 73.03 (50) (d) In the case of a sole proprietor, signs the form or, in the case of
2 other persons, has an individual who is authorized to act on behalf of the person sign
3 the form, or, in the case of a single-owner entity that is disregarded as a separate
4 entity under section 7701 of the Internal Revenue Code, the person is the owner. Any
5 person who may register under this subsection may designate an agent, as defined
6 in s. 77.524 (1) (ag), to register with the department under this subsection in the
7 manner prescribed by the department. In this paragraph, "sign" has the meaning
8 given in s. 77.51 (17r).

9 **SECTION 6.** 73.03 (50b) of the statutes is created to read:

10 73.03 (50b) To waive the fee established under sub. (50) for applying for and
11 renewing the business tax registration certificate, if the person who is applying for
12 or renewing the certificate is not required for purposes of ch. 77 to hold such a
13 certificate.

14 **SECTION 7.** 73.03 (61) of the statutes is created to read:

15 73.03 (61) To do all of the following related to the Uniform Sales and Use Tax
16 Administration Act:

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

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

21 (c) Consistent with the agreement, as defined in s. 77.65 (2) (a), establish
22 performance standards and eligibility criteria for a seller that sells tangible personal
23 property or taxable services in at least 5 states that are signatories to the agreement,
24 as defined in s. 77.65 (2) (a); that has total annual sales revenue of at least
25 \$500,000,000; that has a proprietary system that calculates the amount of tax owed

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1 to each taxing jurisdiction in which the seller sells tangible personal property or
2 taxable services; and that has entered into a performance agreement with the states
3 that are signatories to the agreement, as defined in s. 77.65 (2) (a). For purposes of
4 this paragraph, “seller” includes an affiliated group of sellers using the same
5 proprietary system to calculate the amount of tax owed in each taxing jurisdiction
6 in which the sellers sell tangible personal property or taxable services.

7 (d) Issue a tax identification number to a person who claims an exemption
8 under subch. III or V of ch. 77 and who is not required to register with the department
9 for the purposes of subch. III or V of ch. 77 and establish procedures for the
10 registration of such a person.

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

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

19 (g) Set forth the information that the seller shall provide to the department for
20 tax exemptions claimed by purchasers and establish the manner in which a seller
21 shall provide such information to the department.

22 (h) Provide monetary allowances, in addition to the retailer’s discount provided
23 under s. 77.61 (4) (c), to certified service providers, as defined in s. 77.51 (1g), and
24 sellers that use certified automated systems, as defined in s. 77.524 (1) (am), or
25 proprietary systems, pursuant to the agreement as defined in s. 77.65 (2) (a).

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

2 76.07 **(4g)** (b) 8. Determine transport-related revenue by adding public service
3 revenue allocated to this state on the basis of routes for which the company is
4 authorized to receive subsidy payments, mutual aid allocated to this state on the
5 basis of the ratio of transport revenues allocated to this state to transport revenues
6 everywhere in the previous year, in-flight sales allocated to this state as they are
7 allocated under s. ~~77.51 (14r)~~ 77.522 and all other transport-related revenues from
8 sales made in this state.

9 **SECTION 9.** 77.51 (1) of the statutes is renumbered 77.51 (1d).

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

11 77.51 **(1b)** “Alcohol beverage” means a beverage that is suitable for human
12 consumption and that contains 0.5 percent or more of alcohol by volume.

13 **SECTION 11.** 77.51 (1e) of the statutes is created to read:

14 77.51 **(1e)** “Candy” means a preparation of sugar, honey, or other natural or
15 artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or
16 flavorings in the form of bars, drops, or pieces. “Candy” does not include a
17 preparation that contains flour or that requires refrigeration.

18 **SECTION 12.** 77.51 (1n) of the statutes is created to read:

19 77.51 **(1n)** “Computer” means an electronic device that accepts information in
20 digital or similar form and that manipulates such information to achieve a result
21 based on a sequence of instructions.

22 **SECTION 13.** 77.51 (1p) of the statutes is created to read:

23 77.51 **(1p)** “Computer software” means a set of coded instructions designed to
24 cause a computer or automatic data processing equipment to perform a task.

25 **SECTION 14.** 77.51 (2k) of the statutes is created to read:

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1 77.51 (2k) “Delivered electronically” means delivered to a purchaser by means
2 other than by tangible storage media.

3 **SECTION 15.** 77.51 (2m) of the statutes is created to read:

4 77.51 (2m) “Delivery charges” means charges by a seller to prepare and deliver
5 tangible personal property or services to a location designated by the purchaser of
6 the tangible personal property or services, including charges for transportation,
7 shipping, postage, handling, crating, and packing.

8 **SECTION 16.** 77.51 (3p) of the statutes is created to read:

9 77.51 (3p) “Dietary supplement” means a product, other than tobacco, that is
10 intended to supplement a person’s diet, if all of the following apply:

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

13 1. A vitamin.

14 2. A mineral.

15 3. An herb or other botanical.

16 4. An amino acid.

17 5. A dietary substance that is intended for human consumption to supplement
18 the diet by increasing total dietary intake.

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

20 (b) The product is intended for ingestion in tablet, capsule, powder, soft-gel,
21 gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not
22 represented as conventional food and is not represented for use as the sole item of
23 a meal or diet.

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

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1 **SECTION 17.** 77.51 (3pd) of the statutes is created to read:

2 **77.51 (3pd)** “Direct mail” means printed material that is delivered by the U.S.
3 postal service or other delivery service to a mass audience or to addressees on a
4 mailing list provided by or at the direction of the purchaser of the printed material,
5 if the cost of the printed material or any tangible personal property included with the
6 printed material is not billed directly to the recipients of the printed material.
7 “Direct mail” includes any tangible personal property provided directly or indirectly
8 by the purchaser of the printed material to the seller of the printed material for
9 inclusion in any package containing printed material. “Direct mail” does not include
10 multiple items of printed material delivered to a single address.

11 **SECTION 18.** 77.51 (3pj) of the statutes is created to read:

12 **77.51 (3pj)** “Drug” means a compound, substance, or preparation, or any
13 component of them, other than food and food ingredients, dietary supplements, or
14 alcoholic beverages, to which any of the following applies:

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

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

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

21 **SECTION 19.** 77.51 (3pm) of the statutes is created to read:

22 **77.51 (3pm)** “Durable medical equipment” means equipment, including the
23 repair parts and replacement parts for the equipment, that is for use in a person’s
24 home; that is primarily and customarily used for a medical purpose related to a
25 person; that can withstand repeated use; that is not generally useful to a person who

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1 is not ill or injured; and that is not placed in or worn on the body. “Durable medical
2 equipment” does not include mobility-enhancing equipment.

3 **SECTION 20.** 77.51 (3pp) of the statutes is created to read:

4 77.51 (3pp) “Electronic” means relating to technology having electrical,
5 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

6 **SECTION 21.** 77.51 (3t) of the statutes is created to read:

7 77.51 (3t) “Food and food ingredient” means a substance in liquid,
8 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
9 for chewing, by humans and that is ingested or chewed for its taste or nutritional
10 value. “Food and food ingredient” does not include alcohol beverages or tobacco.

11 **SECTION 22.** 77.51 (4) of the statutes, as affected by 2003 Wisconsin Act 48, is
12 repealed.

13 **SECTION 23.** 77.51 (5) of the statutes is amended to read:

14 77.51 (5) For purposes of subs. (13) (e) and (f) and ~~(14) (L)~~ (15a) and s. 77.52
15 (2m), “incidental” means depending upon or appertaining to something else as
16 primary; something necessary, appertaining to, or depending upon another which is
17 termed the principal; something incidental to the main purpose of the service.
18 Tangible personal property transferred by a service provider is incidental to the
19 service if the purchaser’s main purpose or objective is to obtain the service rather
20 than the property, even though the property may be necessary or essential to
21 providing the service.

22 **SECTION 24.** 77.51 (7) of the statutes is repealed and recreated to read:

23 77.51 (7) (a) “Lease or rental” means any transfer of possession or control of
24 tangible personal property for a fixed or indeterminate term and for consideration
25 and includes:

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1 1. A transfer that includes future options to purchase or extend.

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

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

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

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

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

19 (c) 1. Transfers described under par. (a) are considered a lease or rental,
20 regardless of whether such transfer is considered a lease or rental under generally
21 accepted accounting principles, or any provision of federal or local law, or any other
22 provision of state law.

23 2. Transfers described under par. (b) are not considered a lease or rental,
24 regardless of whether such transfer is considered a lease or rental under generally

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1 accepted accounting principles, or any provision of federal or local law, or any other
2 provision of state law.

3 **SECTION 25.** 77.51 (7m) of the statutes is created to read:

4 77.51 (7m) "Mobility-enhancing equipment" means equipment, including the
5 repair parts and replacement parts for the equipment, that is primarily and
6 customarily used to provide or increase the ability of a person to move from one place
7 to another; that may be used in a home or motor vehicle; and that is generally not
8 used by a person who has normal mobility. "Mobility-enhancing equipment" does
9 not include a motor vehicle or any equipment on a motor vehicle that is generally
10 provided by a motor vehicle manufacturer.

11 **SECTION 26.** 77.51 (10m) of the statutes is created to read:

12 77.51 (10m) (a) "Prepared food" means:

13 1. Food and food ingredients sold in a heated state.

14 2. Food and food ingredients heated by the retailer, except as provided in par.

15 (b).

16 3. Food and food ingredients sold with eating utensils that are provided by the
17 retailer of the food and food ingredients, including plates, knives, forks, spoons,
18 glasses, cups, napkins, and straws. In this subdivision, "plate" does not include a
19 container or packaging used to transport food and food ingredients.

20 4. Except as provided in par. (b), 2 or more food ingredients mixed or combined
21 by a retailer for sale as a single item.

22 (b) "Prepared food" under par. (a) 2. and 4. does not include:

23 1. Two or more food ingredients mixed or combined by a retailer for sale as a
24 single item, if the retailer's primary classification in the 1997 North American
25 Industry Classification System, published by the federal office of management and

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1 budget, is manufacturing under sectors 31 to 33, not including bakeries and tortilla
2 manufacturing under industry group number 3118.

3 2. Two or more food ingredients mixed or combined by a retailer for sale as a
4 single item, sold unheated, and sold by volume or weight.

5 3. Bakery items made by a retailer, including breads, rolls, pastries, buns,
6 biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,
7 cookies, and tortillas.

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

10 5. Eggs, fish, meat, and poultry, and foods containing any of them in raw form,
11 that require cooking by the consumer, as recommended by the food and drug
12 administration in chapter 3, part 401.11 of its food code to prevent food-borne
13 illnesses.

14 **SECTION 27.** 77.51 (10n) of the statutes is created to read:

15 77.51 (10n) "Prescription" means an order, formula, or recipe that is issued by
16 any oral, written, electronic, or other means of transmission and by a person who is
17 authorized by the laws of this state to issue such an order, formula, or recipe.

18 **SECTION 28.** 77.51 (10r) of the statutes is created to read:

19 77.51 (10r) "Prewritten computer software" means any of the following:

20 (a) Computer software that is not designed and developed by the author or
21 creator of the software according to a specific purchaser's specifications.

22 (b) Computer software upgrades that are not designed and developed by the
23 author or creator of the software according to a specific purchaser's specifications.

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1 (c) Computer software that is designed and developed by the author or creator
2 of the software according to a specific purchaser's specifications and that is sold to
3 another purchaser.

4 (d) Any combination of computer software under pars. (a) to (c), including any
5 combination with any portion of such software.

6 (e) Computer software as described under pars. (a) to (d), and any portion of
7 such software, that is modified or enhanced by any degree to a specific purchaser's
8 specifications, except such modification or enhancement that is reasonably and
9 separately indicated on an invoice, or other statement of the price, provided to the
10 purchaser.

11 **SECTION 29.** 77.51 (11m) of the statutes is created to read:

12 77.51 (11m) "Prosthetic device" means a device, including the repair parts and
13 replacement parts for the device, that is placed in or worn on the body to artificially
14 replace a missing portion of the body; to prevent or correct a physical deformity or
15 malfunction; or to support a weak or deformed portion of the body.

16 **SECTION 30.** 77.51 (12m) of the statutes is created to read:

17 77.51 (12m) (a) "Purchase price" means the total amount of consideration,
18 including cash, credit, property, and services, for which tangible personal property
19 or services are sold, leased, or rented, valued in money, whether paid in money or
20 otherwise, without any deduction for the following:

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

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

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

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

4 5. Installation charges.

5 6. The value of exempt tangible personal property, if the exempt tangible
6 personal property is bundled with taxable tangible personal property and sold by the
7 seller as a single product or piece of merchandise.

8 (b) "Purchase price" does not include:

9 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
10 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

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

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

18 4. Delivery charges for direct mail.

19 5. In all transactions in which an article of tangible personal property is traded
20 toward the purchase of an article of greater value, the amount of the purchase price
21 that represents the amount allowed for the article traded, except that this
22 subdivision does not apply to any transaction to which subd. 7. or 8. applies.

23 6. If a person who purchases a motor vehicle presents a statement issued under
24 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
25 statement to the seller within 60 days from the date of receiving a refund under s.

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1 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
2 s. 218.0171 (2) (cq), but not to exceed the purchase price from the sale of the motor
3 vehicle. This subdivision applies only to the first motor vehicle purchased by a
4 person after receiving a refund under s. 218.0171 (2) (b) 2. b.

5 7. Thirty-five percent of the purchase price, excluding trade-ins, of a new
6 mobile home, as defined in s. 340.01 (29), that is a primary housing unit or of a new
7 mobile home, as defined in s. 340.01 (29), that is transported in 2 unattached sections
8 if the total size of the combined sections, not including additions and attachments,
9 is at least 984 square feet measured when the sections are ready for transport. This
10 subdivision does not apply to a lease or rental.

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

17 **SECTION 31.** 77.51 (12p) of the statutes is created to read:

18 77.51 (12p) "Purchaser" means a person to whom a sale of tangible personal
19 property is made or to whom a service is furnished.

20 **SECTION 32.** 77.51 (13) (o) of the statutes is amended to read:

21 77.51 (13) (o) A person selling medicine drugs for animals to a veterinarian.
22 As used in this paragraph, "animal" includes livestock, pets and poultry.

23 **SECTION 33.** 77.51 (13s) of the statutes is created to read:

24 77.51 (13s) "Retail sale" or "sale at retail" means any sale, lease, or rental for
25 any purpose other than resale, sublease, or subrent.

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1 **SECTION 34.** 77.51 (14) (intro.) of the statutes is amended to read:

2 77.51 (14) (intro.) “Sale”, ~~“sale, lease or rental”, “retail sale”, “sale at retail”, or~~
3 ~~equivalent terms include~~ includes any ~~one or all~~ of the following: the transfer of the
4 ownership of, title to, possession of, or enjoyment of tangible personal property or
5 services for use or consumption but not for resale as tangible personal property or
6 services and includes:

7 **SECTION 35.** 77.51 (14) (a) of the statutes is amended to read:

8 77.51 (14) (a) Any sale at an auction in respect to tangible personal property
9 which is sold to a successful bidder. ~~The proceeds from, except~~ the sale of property
10 sold at auction which is bid in by the seller and on which title does not pass to a new
11 purchaser ~~shall be deducted from the gross proceeds of the sale and the tax paid only~~
12 ~~on the net proceeds.~~

13 **SECTION 36.** 77.51 (14) (d) of the statutes is repealed.

14 **SECTION 37.** 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4.

15 **SECTION 38.** 77.51 (14) (i) of the statutes is repealed.

16 **SECTION 39.** 77.51 (14) (j) of the statutes is amended to read:

17 77.51 (14) (j) The granting of possession of tangible personal property by a
18 lessor to a lessee, or to another person at the direction of the lessee. Such a
19 transaction is deemed a continuing sale in this state ~~by the lessor for the duration~~
20 ~~of the lease as respects any period of time the leased property is situated in this state,~~
21 ~~irrespective of the time or place of delivery of the property to the lessee or such other~~
22 ~~person.~~

23 **SECTION 40.** 77.51 (14) (k) of the statutes is repealed.

24 **SECTION 41.** 77.51 (14) (L) of the statutes is repealed.

25 **SECTION 42.** 77.51 (14r) of the statutes is repealed.

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1 **SECTION 43.** 77.51 (15) of the statutes, as affected by 2003 Wisconsin Act 48,
2 is repealed.

3 **SECTION 44.** 77.51 (15a) of the statutes is created to read:

4 **77.51 (15a)** (a) “Sales, lease, or rental for resale, sublease, or subrent” includes
5 transfers of tangible personal property to a service provider that the service provider
6 transfers in conjunction with but not incidental to the selling, performing, or
7 furnishing of any service, and transfers of tangible personal property to a service
8 provider that the service provider physically transfers in conjunction with the
9 selling, performing, or furnishing services under s. 77.52 (2) (a) 7., 10., 11., or 20. This
10 paragraph does not apply to sub. (2).

11 (b) “Sales, lease, or rental for resale, sublease, or subrent” does not include any
12 of the following:

13 1. The sale of building materials, supplies, and equipment to owners,
14 contractors, subcontractors, or builders for use in real property construction
15 activities or the alteration, repair, or improvement of real property, regardless of the
16 quantity of such materials, supplies, and equipment sold.

17 2. Any sale of tangible personal property to a purchaser even though such
18 property may be used or consumed by some other person to whom such purchaser
19 transfers the tangible personal property without valuable consideration, such as
20 gifts, and advertising specialties distributed gratis apart from the sale of other
21 tangible personal property or service.

22 3. Transfers of tangible personal property to a service provider that the service
23 provider transfers in conjunction with the selling, performing, or furnishing of any
24 service, if the tangible personal property is incidental to the service, unless the

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1 service provider is selling, performing, or furnishing services under s. 77.52 (2) (a)
2 7., 10., 11., or 20.

3 **SECTION 45.** 77.51 (15b) of the statutes is created to read:

4 **77.51 (15b) (a)** “Sales price” means the total amount of consideration, including
5 cash, credit, property, and services, for which tangible personal property or services
6 are sold, leased, or rented, valued in money, whether received in money or otherwise,
7 without any deduction for the following:

8 1. The seller’s cost of the property sold.

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

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

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

15 5. Installation charges.

16 6. The value of exempt tangible personal property, if the exempt tangible
17 personal property is bundled with taxable tangible personal property and sold by the
18 seller as a single product or piece of merchandise.

19 (b) “Sales price” does not include:

20 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
21 3rd party; that are allowed by a seller; and that are taken by a purchaser on a sale.

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

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

4 4. Delivery charges for direct mail.

5 5. In all transactions in which an article of tangible personal property is traded
6 toward the purchase of an article of greater value, the amount of the sales price that
7 represents the amount allowed for the article traded, except that this subdivision
8 does not apply to any transaction to which subd. 7. or 8. applies.

9 6. If a person who purchases a motor vehicle presents a statement issued under
10 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
11 statement to the seller within 60 days from the date of receiving a refund under s.
12 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
13 s. 218.0171 (2) (cq), but not to exceed the sales price from the sale of the motor vehicle.
14 This subdivision applies only to the first motor vehicle purchased by a person after
15 receiving a refund under s. 218.0171 (2) (b) 2. b.

16 7. Thirty-five percent of the sales price, excluding trade-ins, of a new mobile
17 home, as defined in s. 340.01 (29), that is a primary housing unit or of a new mobile
18 home, as defined in s. 340.01 (29), that is transported in 2 unattached sections if the
19 total size of the combined sections, not including additions and attachments, is at
20 least 984 square feet measured when the sections are ready for transport. This
21 subdivision does not apply to a lease or rental.

22 8. At the retailer's option; except that after the retailer chooses an option the
23 retailer may not use the other option for other sales without the department's written
24 approval; either 35 percent of the sales price of a manufactured building, as defined
25 in s. 101.71 (6), or an amount equal to the sales price of the manufactured building

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1 minus the cost of materials that become an ingredient or component part of the
2 building.

3 **SECTION 46.** 77.51 (17) of the statutes is amended to read:

4 77.51 (17) "Seller" includes every person selling, leasing or renting tangible
5 personal property or selling, performing or furnishing services of a kind the gross
6 receipts sales price from the sale, lease, rental, performance or furnishing of which
7 ~~are~~ is required to be included in the measure of the sales tax.

8 **SECTION 47.** 77.51 (17m) of the statutes is repealed and recreated to read:

9 77.51 (17m) "Service address" means any of the following:

10 (a) The location of the telecommunications equipment to which a customer's
11 telecommunications service is charged and from which the telecommunications
12 service originates or terminates, regardless of where the telecommunications service
13 is billed or paid.

14 (b) If the location described under par. (a) is not known by the seller who sells
15 the telecommunications service, the location where the signal of the
16 telecommunications service originates, as identified by the seller's
17 telecommunications system or, if the signal is not transmitted by the seller's
18 telecommunications system, by information that the seller received from the seller's
19 service provider.

20 (c) If the locations described under pars. (a) and (b) are not known by the seller
21 who sells the telecommunications service, the customer's place of primary use.

22 **SECTION 48.** 77.51 (17w) of the statutes is created to read:

23 77.51 (17w) "Soft drink" means a beverage that contains less than 0.5 percent
24 of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not

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1 include a beverage that contains milk or milk products; soy, rice, or similar milk
2 substitutes; or more than 50 percent vegetable or fruit juice by volume.

3 **SECTION 49.** 77.51 (20) of the statutes is amended to read:

4 77.51 (20) "Tangible personal property" means ~~all tangible~~ personal property
5 ~~of every kind and description that can be seen, weighed, measured, felt, or touched,~~
6 ~~or that is in any other manner perceptible to the senses,~~ and includes electricity,
7 natural gas, steam and, water, and also leased property affixed to realty if the lessor
8 has the right to remove the property upon breach or termination of the lease
9 agreement, unless the lessor of the property is also the lessor of the realty to which
10 the property is affixed. "Tangible personal property" also includes coins and stamps
11 of the United States sold or traded as collectors' items above their face value and
12 computer programs except custom prewritten computer programs software.

13 **SECTION 50.** 77.51 (21) of the statutes is amended to read:

14 77.51 (21) "Taxpayer" means the person who is required to pay, collect, or
15 account for or who is otherwise directly interested in the taxes imposed by this
16 subchapter, including a certified service provider.

17 **SECTION 51.** 77.51 (21p) of the statutes is created to read:

18 77.51 (21p) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco,
19 and any other item that contains tobacco.

20 **SECTION 52.** 77.51 (22) (bm) of the statutes is created to read:

21 77.51 (22) (bm) In this subsection, "exercise of any right or power over tangible
22 personal property or taxable services" includes distributing, selecting recipients,
23 determining mailing schedules, or otherwise directing the distribution,
24 dissemination, or disposal of tangible personal property or taxable services,

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1 regardless of whether the purchaser of such property or services owns or physically
2 possesses, in this state, the property or services.

3 **SECTION 53.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a) and amended
4 to read:

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

11 **SECTION 54.** 77.52 (1) (b) of the statutes is created to read:

12 77.52 (1) (b) For the privilege of selling at retail coins and stamps of the United
13 States that are sold or traded as collectors' items above their face value, a tax is
14 imposed on all retailers at the rate of 5 percent of the sales price from the sale of such
15 coins and stamps.

16 **SECTION 55.** 77.52 (1) (c) of the statutes is created to read:

17 77.52 (1) (c) For the privilege of leasing property that is affixed to real property,
18 a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease
19 of such property, if the lessor has the right to remove the leased property upon breach
20 or termination of the lease agreement, unless the lessor of the leased property is also
21 the lessor of the real property to which the leased property is affixed.

22 **SECTION 56.** 77.52 (2) (intro.) of the statutes is amended to read:

23 77.52 (2) (intro.) For the privilege of selling, licensing, performing or furnishing
24 the services described under par. (a) at retail in this state to consumers or users, a
25 tax is imposed upon all persons selling, licensing, performing or furnishing the

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

3 **SECTION 57.** 77.52 (2) (a) 10. of the statutes is amended to read:

4 77.52 (2) (a) 10. Except for installing or applying tangible personal property
5 which, when installed or applied, will constitute an addition or capital improvement
6 of real property, the repair, service, alteration, fitting, cleaning, painting, coating,
7 towing, inspection, and maintenance of all items of tangible personal property
8 unless, at the time of such repair, service, alteration, fitting, cleaning, painting,
9 coating, towing, inspection, or maintenance, a sale in this state of the type of property
10 repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or
11 maintained would have been exempt to the customer from sales taxation under this
12 subchapter, other than the exempt sale of a motor vehicle or truck body to a
13 nonresident under s. 77.54 (5) (a) and other than nontaxable sales outside this state
14 under s. ~~77.51 (14r)~~ 77.522. For purposes of this paragraph, the following items shall
15 be considered to have retained their character as tangible personal property,
16 regardless of the extent to which any such item is fastened to, connected with, or built
17 into real property: furnaces, boilers, stoves, ovens, including associated hoods and
18 exhaust systems, heaters, air conditioners, humidifiers, dehumidifiers,
19 refrigerators, coolers, freezers, water pumps, water heaters, water conditioners and
20 softeners, clothes washers, clothes dryers, dishwashers, garbage disposal units,
21 radios and radio antennas, incinerators, television receivers and antennas, record
22 players, tape players, jukeboxes, vacuum cleaners, furniture and furnishings,
23 carpeting and rugs, bathroom fixtures, sinks, awnings, blinds, gas and electric logs,
24 heat lamps, electronic dust collectors, grills and rotisseries, bar equipment,
25 intercoms, recreational, sporting, gymnasium and athletic goods and equipment

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1 including by way of illustration but not of limitation bowling alleys, golf practice
2 equipment, pool tables, punching bags, ski tows, and swimming pools; equipment in
3 offices, business facilities, schools, and hospitals but not in residential facilities
4 including personal residences, apartments, long-term care facilities, as defined
5 under s. 16.009 (1) (em), state institutions, as defined under s. 101.123 (1) (i), Type
6 1 secured correctional facilities, as defined in s. 938.02 (19), or similar facilities
7 including, by way of illustration but not of limitation, lamps, chandeliers, and fans,
8 venetian blinds, canvas awnings, office and business machines, ice and milk
9 dispensers, beverage-making equipment, vending machines, soda fountains, steam
10 warmers and tables, compressors, condensing units and evaporative condensers,
11 pneumatic conveying systems; laundry, dry cleaning, and pressing machines, power
12 tools, burglar alarm and fire alarm fixtures, electric clocks and electric signs.
13 “Service” does not include services performed by veterinarians. The tax imposed
14 under this subsection applies to the repair, service, alteration, fitting, cleaning,
15 painting, coating, towing, inspection, or maintenance of items listed in this
16 subdivision, regardless of whether the installation or application of tangible
17 personal property related to the items is an addition to or a capital improvement of
18 real property, except that the tax imposed under this subsection does not apply to the
19 original installation or the complete replacement of an item listed in this subdivision,
20 if such installation or replacement is a real property construction activity under s.
21 77.51 (2).

22 **SECTION 58.** 77.52 (6) of the statutes is repealed.

23 **SECTION 59.** 77.52 (7) of the statutes is amended to read:

24 77.52 (7) Every person desiring to operate as a seller within this state who
25 holds a valid certificate under s. 73.03 (50) shall file with the department an

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1 application for a permit for each place of operations. Every application for a permit
2 shall be made upon a form prescribed by the department and shall set forth the name
3 under which the applicant intends to operate, the location of the applicant's place of
4 operations, and the other information that the department requires. ~~The~~ Except as
5 provided in sub. (7b), the application shall be signed by the owner if a sole proprietor;
6 in the case of sellers other than sole proprietors, the application shall be signed by
7 the person authorized to act on behalf of such sellers. A nonprofit organization that
8 has ~~gross receipts~~ a sales price taxable under s. 77.54 (7m) shall obtain a seller's
9 permit and pay taxes under this subchapter on all taxable ~~gross receipts~~ sales prices
10 received after it is required to obtain that permit. If that organization becomes
11 eligible later for the exemption under s. 77.54 (7m) except for its possession of a
12 seller's permit, it may surrender that permit.

13 **SECTION 60.** 77.52 (7b) of the statutes is created to read:

14 **77.52 (7b)** Any person who may register under sub. (7) may designate an agent,
15 as defined in s. 77.524 (1) (ag), to register with the department under sub. (7), in the
16 manner prescribed by the department.

17 **SECTION 61.** 77.52 (13) of the statutes is amended to read:

18 **77.52 (13)** For the purpose of the proper administration of this section and to
19 prevent evasion of the sales tax it shall be presumed that all receipts are subject to
20 the tax until the contrary is established. The burden of proving that a sale of tangible
21 personal property or services is not a taxable sale at retail is upon the person who
22 makes the sale unless that person takes from the purchaser ~~an electronic or paper~~
23 certificate, in a manner prescribed by the department, to the effect that the property
24 or service is purchased for resale or is otherwise exempt; ~~except that no certificate~~
25 ~~is required for sales of cattle, sheep, goats, and pigs that are sold at a livestock~~

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1 ~~market, as defined in s. 95.68 (1) (e), and no certificate is required for sales of~~
2 ~~commodities, as defined in 7 USC 2, that are consigned for sale in a warehouse in or~~
3 ~~from which the commodity is deliverable on a contract for future delivery subject to~~
4 ~~the rules of a commodity market regulated by the U.S. commodity futures trading~~
5 ~~commission if upon the sale the commodity is not removed from the warehouse the~~
6 ~~sale of tangible personal property that is exempt under s. 77.54 (7), (7m), (8), (10),~~
7 ~~(11), (14), (14b), (15), (17), (20n), (21), (22b), (30), (31), (32), (35), (36), (37), (42), (44),~~
8 ~~(45), and (46), except as provided in s. 77.54 (30) (e) and (f).~~

9 **SECTION 62.** 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are consolidated,
10 renumbered 77.52 (14) and amended to read:

11 77.52 (14) The certificate referred to in sub. (13) relieves the seller from the
12 burden of proof only if any of the following is true: 1. ~~The the certificate is taken in~~
13 ~~good faith from a person who is engaged as a seller of tangible personal property or~~
14 ~~taxable services and who holds the permit provided for in sub. (9) and who, at the~~
15 ~~time of purchasing that the person purchases the tangible personal property or~~
16 ~~services, intends to sell it in the regular course of operations or is unable to ascertain~~
17 ~~at the time of purchase whether the property or service will be sold or will be used~~
18 ~~for some other purpose. (b). The certificate under sub. (13) shall not relieve the seller~~
19 ~~of the burden of proof if the seller fraudulently fails to collect sales tax or solicits the~~
20 ~~purchaser to claim an unlawful exemption. The certificate referred to in sub. (13)~~
21 ~~shall be signed by and bear the name and address of provide information that~~
22 ~~identifies the purchaser, and shall indicate the general character of the tangible~~
23 ~~personal property or service sold by the purchaser and the basis for the claimed~~
24 ~~exemption and a paper certificate shall be signed by the purchaser. The certificate~~
25 ~~shall be in such form as the department prescribes by rule.~~

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1 SECTION 63. 77.52 (14) (a) 2. of the statutes is repealed.

2 SECTION 64. 77.52 (15) of the statutes is amended to read:

3 77.52 (15) If a purchaser who ~~gives a resale certificate~~ purchases tangible
4 personal property or taxable services without paying a sales tax or use tax on such
5 purchase because such property or services were for resale makes any use of the
6 property or services other than retention, demonstration or display while holding ~~it~~
7 the property or services for sale, lease or rental in the regular course of the
8 purchaser's operations, the use shall be taxable to the purchaser under s. 77.53 as
9 of the time that the property is or services are first used by the purchaser, and the
10 sales purchase price of the property or services to the purchaser shall be the measure
11 of the tax. ~~Only when there is an unsatisfied use tax liability on this basis because~~
12 ~~the seller has provided incorrect information about that transaction to the~~
13 ~~department shall the seller be liable for sales tax with respect to the sale of the~~
14 ~~property to the purchaser.~~

15 SECTION 65. 77.522 of the statutes is created to read:

16 77.522 Sourcing. (1) GENERAL. (a) In this section:

17 1. "Direct mail form" means a form for direct mail prescribed by the
18 department.

19 2. "Multiple-points-of-use exemption form" means the
20 multiple-points-of-use exemption form, as prescribed by the department.

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

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

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1 5. “Transportation equipment” means all of the following:

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

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

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

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

14 (b) Except as provided in pars. (c) to (d) and subs. (2), (3), (4), and (5), the
15 location of a sale is determined as follows:

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

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

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

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

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

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

9 b. If the item sold is a digital good, or computer software delivered
10 electronically, the sale occurs at the location from which the digital good or computer
11 software was first available for transmission by the seller.

12 c. If a service is sold, the sale occurs at the location from which the service was
13 provided.

14 (c) The sale of direct mail occurs at the location from which the direct mail is
15 shipped, if the purchaser does not provide to the seller a direct pay permit, a direct
16 mail form, or other information that indicates the appropriate taxing jurisdiction to
17 which the direct mail is delivered to the ultimate recipients. If the purchaser
18 provides a direct mail form to the seller, the purchaser shall pay or remit, as
19 appropriate, to the department the tax imposed under s. 77.53 (1) on all purchases
20 for which the tax is due and the seller is relieved from liability for collecting such tax.

21 (d) 1. If the service, digital good, or computer software is delivered
22 electronically, a business purchaser who purchases a service, digital good, or
23 computer software who does not hold a direct pay permit under s. 77.52 (17m), and
24 who knows at the time that the purchaser purchases such service, good, or software
25 that the service, good, or software will be concurrently available for use in more than

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1 one taxing jurisdiction shall provide a multiple-points-of-use exemption form to the
2 seller, in conjunction with the purchase, and shall pay or remit, as appropriate, to the
3 department the tax imposed under s. 77.53 (1) on all purchases for which the tax is
4 due.

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

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

13 4. If the service, digital good, or computer software is delivered electronically,
14 a business purchaser who purchases a service, digital good, or computer software,
15 who holds a direct pay permit under s. 77.52 (17m), and who knows at the time that
16 the purchaser purchases such service, good, or software that the service, good, or
17 software will be concurrently available for use in more than one taxing jurisdiction
18 is not required to provide a multiple-points-of-use exemption form to the seller, but
19 shall collect, pay, or remit, as appropriate, to the department the tax imposed under
20 s. 77.53 (1) and shall use the apportionment method described under par. (b) to
21 apportion the tax due multiple taxing jurisdictions.

22 5. A seller who receives a multiple-points-of-use exemption form under this
23 paragraph is relieved from liability for collecting the tax imposed under s. 77.53 (1)
24 on purchases related to the multiple-points-of-use exemption form.

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1 **(2) LEASE OR RENTAL.** (a) Except as provided in pars. (b) and (c), with regards
2 to the first or only payment on the lease or rental, the lease or rental of tangible
3 personal property occurs at the location determined under sub. (1) (b) 1. If the
4 property is moved from the place where the property was initially delivered, the
5 subsequent periodic payments on the lease or rental occur at the property's primary
6 location as indicated by an address for the property that is provided by the lessee and
7 that is available to the lessor in records that the lessor maintains in the ordinary
8 course of the lessor's business, if the use of such an address does not constitute bad
9 faith. The location of a lease or rental as determined under this paragraph shall not
10 be altered by any intermittent use of the property at different locations.

11 (b) The lease or rental of motor vehicles, semitrailers, and aircraft, that are not
12 transportation equipment, occurs at the primary location of such motor vehicles,
13 semitrailers, or aircraft as indicated by an address for the property that is provided
14 by the lessee and that is available to the lessor in records that the lessor maintains
15 in the ordinary course of the lessor's business, if the use of such an address does not
16 constitute bad faith. The location of a lease or rental as determined under this
17 paragraph shall not be altered by any intermittent use of the property at different
18 locations.

19 (c) The lease or rental of transportation equipment occurs at the location
20 determined under sub. (1) (b) 1.

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

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

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1 2. “Call-by-call basis” means any method of charging for telecommunications
2 services by which the price of such services is measured by individual calls.

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

6 4. “Customer” means a person who enters into a contract with a seller of
7 telecommunications services or, in any transaction for which the end user is not the
8 person who entered into a contract with the seller of telecommunications services,
9 the end user of the telecommunications services. “Customer” does not include a
10 person who resells telecommunications services or, for mobile telecommunications
11 services, a serving carrier under an agreement to serve a customer outside the home
12 service provider’s licensed service area.

13 5. “Customer channel termination point” means the location where a customer
14 inputs or receives communications.

15 6. “End user” means an individual who uses a telecommunications service.

16 7. “Home service provider” means a home service provider under section 124
17 (5) of P.L. 106–252.

18 8. “Mobile telecommunications service” means a mobile telecommunications
19 service under 4 USC 116 to 126, as amended by P.L. 106–252.

20 9. “Place of primary use” means place of primary use, as determined under 4
21 USC 116 to 126, as amended by P.L. 106–252.

22 10. “Postpaid calling service” means a telecommunications service that is
23 obtained by paying for it on a call-by-call basis using a bankcard, travel card, credit
24 card, debit card, or similar method, or by charging it to a telephone number that is
25 not associated with the location where the telecommunications service originates or

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1 terminates. "Postpaid calling service" includes a service that would otherwise be a
2 prepaid calling service except that the service provided to the customer is not
3 exclusively a telecommunications service.

4 11. "Prepaid calling service" means the right to access services that are
5 exclusively telecommunications services, if that right is paid for in advance of
6 providing such services, requires using an access number or authorization code to
7 originate calls, and is sold in predetermined units or dollars that decrease with use
8 in a known amount.

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

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

18 14. "Radiotelegraph service" means transmitting messages from one place to
19 another by means of radio.

20 15. "Radiotelephone service" means transmitting sound from one place to
21 another by means of radio.

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

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1 jurisdiction for sales and use tax purposes where the call originates or terminates
2 and where the service address is located.

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

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

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

14 (f) The sale of a prepaid calling service occurs at the location determined under
15 sub. (1) (b), except that, if the service is a mobile telecommunications service and the
16 location cannot be determined under sub. (1) (b) 1. to 4., the prepaid calling service
17 occurs at the location determined under sub. (1) (b) 5. c. or at the location associated
18 with the mobile telephone number, as determined by the seller.

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

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