

2007 DRAFTING REQUEST

Bill

Received: **11/20/2007**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Robert Jauch (608) 266-3510**

By/Representing: **carrie & dan**

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

Drafter: **jkreye**

May Contact:

Adtl. Drafters:

Subject: **Tax, Other - sales**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Jauch@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Streamlined sales and use tax provisions

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>
/?	jkreye 11/28/2007	wjackson 12/04/2007		_____			S&L Tax
/1	jkreye 01/30/2008	lkunkel 01/30/2008	pgreensl 12/05/2007	_____	cduerst 12/05/2007		S&L Tax
/2		lkunkel 02/01/2008	pgreensl 01/31/2008 jfrantze 02/01/2008	_____	cduerst 02/01/2008	mbarman 02/01/2008	

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intro*

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1 WLJ 12/4

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ps

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11-20-07

Sen Jauch:

(Carrie Cahn & Dan Kammiller)

redraft streamlined rules draft as a
separate bill

0728/7
2498/1 + 20248/3



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/?	jkreye			_____			

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State of Wisconsin
2007 - 2008 LEGISLATURE

3500/1

LRB-0728/7
JK:lmk/wj/kf:jf
↑↑↑
stays

DOA:.....Easton, BB0171 - Streamlined sales and use tax agreement provisions

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 11-28-07

Gen Cat

the streamlined sales and use tax agreement

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

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill adopts the substantive provisions of the streamlined sales and use tax agreement (agreement) for purposes of administering and collecting state, county, and stadium district sales and use taxes. The agreement is intended to 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 tangible personal property 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).

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. 20.566 (1) (ho) of the statutes is created to read:

3 20.566 (1) (ho) *Collections under multistate streamlined sales tax project.* From
4 moneys collected under the multistate streamlined sales tax project as provided
5 under s. 73.03 (28e), a sum sufficient to pay the dues necessary to participate in the
6 governing board of the multistate streamlined sales tax project.

7 SECTION 3. 46.513 of the statutes is repealed.

8 SECTION 4. 66.0615 (1m) (f) 2. of the statutes is amended to read:

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

14 SECTION 5. 70.111 (23) of the statutes is amended to read:

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

21 SECTION 6. 71.07 (5e) (b) of the statutes is amended to read:

22 71.07 (5e) (b) *Filing claims.* Subject to the limitations provided in this
23 subsection and subject to 2005 Wisconsin Act 479, section 17, beginning in the first
24 taxable year following the taxable year in which the claimant claims an exemption
25 a deduction under s. 77.54 (48) 77.585 (9), a claimant may claim as a credit against

claiming

resulted from

1 the taxes imposed under ss. 71.02 and 71.08, up to the amount of those taxes, in each
2 taxable year for 2 years, the amount certified by the department of commerce that
3 the claimant ~~claimed as an exemption~~ a deduction under s. 77.54 (48) 77.585 (9).

4 SECTION 7. 71.07 (5e) (c) 1. of the statutes is amended to read:

5 71.07 (5e) (c) 1. No credit may be allowed under this subsection unless the
6 claimant satisfies the requirements under s. 77.54 (48) 77.585 (9).

the sales and use tax resulting from

7 SECTION 8. 71.07 (5e) (c) 3. of the statutes is amended to read:

8 71.07 (5e) (c) 3. The total amount of the credits and ~~exemptions~~ deductions that
9 may be claimed by all claimants under this subsection and ss. 71.28 (5e), 71.47 (5e),
10 and 77.54 (48) 77.585 (9) is \$7,500,000, as determined by the department of
11 commerce.

claimed under
77.585 (9)

12 SECTION 9. 71.28 (5e) (b) of the statutes is amended to read:

13 71.28 (5e) (b) *Filing claims.* Subject to the limitations provided in this
14 subsection and subject to 2005 Wisconsin Act 479, section 17, beginning in the first
15 taxable year following the taxable year in which the claimant claims ~~an exemption~~
16 a deduction under s. 77.54 (48) 77.585 (9), a claimant may claim as a credit against
17 the taxes imposed under s. 71.23, up to the amount of those taxes, in each taxable
18 year for 2 years, the amount certified by the department of commerce that the
19 claimant ~~claimed as an exemption~~ a deduction under s. 77.54 (48) 77.585 (9).

resulted from

20 SECTION 10. 71.28 (5e) (c) 1. of the statutes is amended to read:

21 71.28 (5e) (c) 1. No credit may be allowed under this subsection unless the
22 claimant satisfies the requirements under s. 77.54 (48) 77.585 (9).

the sales and use tax resulting from the

23 SECTION 11. 71.28 (5e) (c) 3. of the statutes is amended to read:

24 71.28 (5e) (c) 3. The total amount of the credits and ~~exemptions~~ deductions that
25 may be claimed by all claimants under this subsection and ss. 71.07 (5e), 71.47 (5e),

claimed under
77.585 (9)

1 and ~~77.54 (48)~~ 77.585 (9) is \$7,500,000, as determined by the department of
2 commerce.

3 SECTION 12. 71.47 (5e) (b) of the statutes is amended to read:

4 71.47 (5e) (b) *Filing claims.* Subject to the limitations provided in this
5 subsection and subject to 2005 Wisconsin Act 479, section 17, beginning in the first
6 taxable year following the taxable year in which the claimant claims ~~an exemption~~
7 a deduction under s. ~~77.54 (48)~~ 77.585 (9), a claimant may claim as a credit against
8 the taxes imposed under s. 71.43, up to the amount of those taxes, in each taxable
9 year for 2 years, the amount certified by the department of commerce that the
10 claimant ~~claimed as an exemption~~ ^{claiming} a deduction under s. ~~77.54 (48)~~ 77.585 (9).

resulted from

11 SECTION 13. 71.47 (5e) (c) 1. of the statutes is amended to read:

12 71.47 (5e) (c) 1. No credit may be allowed under this subsection unless the
13 claimant satisfies the requirements under s. ~~77.54 (48)~~ 77.585 (9). *the sales and use tax*
resulting from the

14 SECTION 14. 71.47 (5e) (c) 3. of the statutes is amended to read:

15 71.47 (5e) (c) 3. The total amount of the credits and ~~exemptions~~ deductions that
16 may be claimed by all claimants under this subsection and ss. 71.07 (5e), 71.28 (5e),
17 and ~~77.54 (48)~~ 77.585 (9) is \$7,500,000, as determined by the department of
18 commerce. *claimed under s. 77.585 (9)*

19 SECTION 15. 73.03 (28e) of the statutes is created to read:

20 73.03 (28e) To participate as a member state of the streamlined sales tax
21 governing board which administers the agreement, as defined in s. 77.65 (2) (a), and
22 includes having the governing board enter into contracts that are necessary to
23 implement the agreement on behalf of the member states, and to allocate a portion
24 of the amount collected under ch. 77 through the agreement to the appropriation
25 under s. 20.566 (1) (ho) to pay the dues necessary to participate in the governing

1 board. The department shall allocate the remainder of such collections to the general
2 fund.

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

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

12 **SECTION 17.** 73.03 (50b) of the statutes is created to read:

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

17 **SECTION 18.** 73.03 (61) of the statutes is created to read:

18 73.03 (61) To do all of the following related to the Uniform Sales and Use Tax
19 Administration Act:

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

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

24 (c) Consistent with the agreement, as defined in s. 77.65 (2) (a), establish
25 performance standards and eligibility criteria for a seller that sells tangible personal

items or property under § 77.52(1)(b) a(c)

1 property or taxable services in at least 5 states that are signatories to the agreement,
 2 as defined in s. 77.65 (2) (a); that has total annual sales revenue of at least
 3 \$500,000,000; that has a proprietary system that calculates the amount of tax owed
 4 to each taxing jurisdiction in which the seller sells tangible personal property or
 5 taxable services; and that has entered into a performance agreement with the states
 6 that are signatories to the agreement, as defined in s. 77.65 (2) (a). For purposes of
 7 this paragraph, "seller" includes an affiliated group of sellers using the same
 8 proprietary system to calculate the amount of tax owed in each taxing jurisdiction
 9 in which the sellers sell tangible personal property or taxable services.

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

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

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

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

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

5 SECTION 19. 76.07 (4g) (b) 8. of the statutes is amended to read:

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

13 SECTION 20. 77.51 (1) of the statutes is renumbered 77.51 (1fd) and amended
14 to read:

15 77.51 (1fd) "Business" includes any activity engaged in by any person or caused
16 to be engaged in by any person with the object of gain, benefit or advantage, either
17 direct or indirect, and includes also the furnishing and distributing of tangible
18 personal property, specified digital goods, additional digital goods, or taxable
19 services for a consideration by social clubs and fraternal organizations to their
20 members or others.

****NOTE: This is reconciled s.77.51 (1) . This SECTION has been affected by drafts
with the following LRB numbers: 0725 and 0728.

21 SECTION 21. 77.51 (1a) of the statutes is created to read:

22 77.51 (1a) "Additional digital goods" means video greeting cards sent by
23 electronic mail, finished artwork, periodicals, and video or electronic games. For

items or property under so 77.52(1)(b) or (c)

1 purposes of this subchapter, the sale of or the storage, use, or other consumption of
2 a digital code is treated the same as the sale of or the storage, use, or other
3 consumption of any additional digital goods for which the digital code relates.

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

5 77.51 (1b) "Alcoholic beverage" means a beverage that is suitable for human
6 consumption and that contains 0.5 percent or more of alcohol by volume.

7 **SECTION 23.** 77.51 (1ba) of the statutes is created to read:

8 77.51 (1ba) "Ancillary services" means services that are associated with or
9 incidental to providing telecommunications services, including detailed
10 telecommunications billing, directory assistance, vertical service, and voice mail
11 services, but not including specified digital goods.

12 **SECTION 24.** 77.51 (1f) of the statutes is created to read:

13 77.51 (1f) "Bundled transaction" means the retail sale of 2 or more products,
14 not including real property and services to real property, if the products are distinct
15 and identifiable products and sold for one nonitemized price. "Bundled transaction"
16 does not include any of the following:

17 (a) The sale of any products for which the sales price varies or is negotiable
18 based on the purchaser's selection of the products included in the transaction.

19 (b) 1. The retail sale of tangible personal property and a service, if the tangible
20 personal property is essential to the use of the service, and provided exclusively in
21 connection with the service, and if the true object of the transaction is the service.

22 2. The retail sale of a service and specified digital goods or additional digital
23 goods, if such goods are essential to the use of the service, and provided exclusively
24 in connection with the service, and if the true object of the transaction is the service.

7 - INSERT
8-24

or items or property under 77.52(1)(c)

1 (c) The retail sale of services, if one of the services is essential to the use or
2 receipt of another service, and provided exclusively in connection with the other
3 service, and if the true object of the transaction is the other service.

4 (d) A transaction that includes taxable and nontaxable products, if the seller's
5 purchase price or the sales price of the taxable products is no greater than 10 percent
6 of the seller's total purchase price or sales price of all the bundled products, as
7 determined by the seller using either the seller's purchase price or sales price, but
8 not a combination of both, or, in the case of a service contract, the full term of the
9 service contract.

10 (e) The retail sale of taxable tangible personal property and tangible personal
11 property that is exempt from the taxes imposed under this subchapter, if the
12 transaction includes food and food ingredients, drugs, durable medical equipment,
13 mobility-enhancing equipment, prosthetic devices, or medical supplies and if the
14 seller's purchase price or the sales price of the taxable tangible personal property is
15 no greater than 50 percent of the seller's total purchase price or sales price of all the
16 tangible personal property included in what would otherwise be a bundled
17 transaction, as determined by the seller using either the seller's purchase price or
18 the sales price, but not a combination of both.

19 **SECTION 25.** 77.51 (1fm) of the statutes is created to read:

20 77.51 (1fm) "Candy" means a preparation of sugar, honey, or other natural or
21 artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or
22 flavorings in the form of bars, drops, or pieces. "Candy" does not include a
23 preparation that contains flour or that requires refrigeration.

24 **SECTION 26.** 77.51 (1n) of the statutes is created to read:

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

4 **SECTION 27.** 77.51 (1p) of the statutes is created to read:

5 77.51 (1p) "Computer software" means a set of coded instructions designed to
6 cause a computer or automatic data processing equipment to perform a task.
7 "Computer software" does not include specified digital goods.

8 **SECTION 28.** 77.51 (1r) of the statutes is created to read:

9 77.51 (1r) "Conference bridging service" means an ancillary service that links
10 2 or more participants of an audio or video conference call and may include providing
11 a telephone number, but does not include the telecommunications services used to
12 reach the conference bridge.

13 **SECTION 29.** 77.51 (2k) of the statutes is created to read:

14 77.51 (2k) "Delivered electronically" means delivered to a purchaser by means
15 other than by tangible storage media.

16 **SECTION 30.** 77.51 (2m) of the statutes is created to read:

17 77.51 (2m) "Delivery charges" means charges by a seller to prepare and deliver
18 tangible personal property or services to a location designated by the purchaser of
19 the tangible personal property or services, including charges for transportation,
20 shipping, postage, handling, crating, and packing.

21 **SECTION 31.** 77.51 (3c) of the statutes is created to read:

22 77.51 (3c) "Detailed telecommunications billing service" means an ancillary
23 service that separately indicates information pertaining to individual calls on a
24 customer's billing statement.

25 **SECTION 32.** 77.51 (3n) of the statutes is created to read:

1 77.51 (3n) "Dietary supplement" means a product, other than tobacco, that is
2 intended to supplement a person's diet, if all of the following apply:

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

5 1. A vitamin.

6 2. A mineral.

7 3. An herb or other botanical.

8 4. An amino acid.

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

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

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

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

18 **SECTION 33.** 77.51 (3p) of the statutes is created to read:

19 77.51 (3p) "Digital audio works" means works that result from the fixation of
20 a series of musical, spoken, or other sounds that are transferred electronically,
21 including prerecorded or live music, prerecorded or live readings of books or other
22 written materials, prerecorded or live speeches, or ringtones, but not including audio
23 greeting cards sent by electronic mail.

24 **SECTION 34.** 77.51 (3pa) of the statutes is created to read:

1 77.51 (3pa) “Digital audiovisual works” means a series of related images that,
2 when shown in succession, impart an impression of motion, along with
3 accompanying sounds, if any, that are transferred electronically. “Digital
4 audiovisual works” includes motion pictures, musical videos, news programs, and
5 live events, but does not include video greeting cards sent by electronic mail or video
6 or electronic games.

7 **SECTION 35.** 77.51 (3pb) of the statutes is created to read:

8 77.51 (3pb) “Digital books” means works that are generally recognized as
9 books and are transferred electronically. “Digital books” includes novels, nonfiction
10 works, and short stories, but does not include newspapers, periodicals, chat room
11 discussions, or blogs.

12 **SECTION 36.** 77.51 (3pc) of the statutes is created to read:

13 77.51 (3pc) “Digital code” means a code that provides the person who holds the
14 code a right to obtain an additional digital good, a digital audiovisual work, digital
15 audio work, or digital book and that may be obtained by any means, including
16 tangible forms and electronic mail, regardless of whether the code is designated as
17 song code, video code, or book code. “Digital code” includes codes used to access or
18 obtain any specified digital goods, or any additional digital goods that have been
19 previously purchased, and promotion cards or codes that are purchased by a retailer
20 or other business entity for use by the retailer’s or entity’s customers. “Digital code”
21 does not include the following:

22 1. A code that represents any redeemable card, gift card, or gift certificate that
23 entitles the holder of such card or certificate to select any specified digital goods or
24 additional digital goods at the cash value indicated by the card or certificate.

or items or property under 77.52 (1)(b) or (c)

1 2. Digital cash that represents a monetary value that a customer may use to
2 pay for a future purchase.

3 **SECTION 37.** 77.51 (3pd) of the statutes is created to read:

4 77.51 (3pd) "Direct mail" means printed material that is delivered by the U.S.
5 postal service or other delivery service to a mass audience or to addressees on a
6 mailing list provided by or at the direction of the purchaser of the printed material,
7 if the cost of the printed material or any tangible personal property included with the
8 printed material is not billed directly to the recipients of the printed material.

9 "Direct mail" includes any tangible personal property provided directly or indirectly
10 by the purchaser of the printed material to the seller of the printed material for
11 inclusion in any package containing the printed material, including billing invoices,
12 return envelopes, and additional marketing materials. "Direct mail" does not
13 include multiple items of printed material delivered to a single address.

14 **SECTION 38.** 77.51 (3pe) of the statutes is created to read:

15 77.51 (3pe) "Directory assistance" means an ancillary service that provides
16 telephone numbers or addresses.

17 **SECTION 39.** 77.51 (3pf) of the statutes is created to read:

18 77.51 (3pf) "Distinct and identifiable product" does not include any of the
19 following:

20 (a) Packaging, including containers, boxes, sacks, bags, bottles, and envelopes;
21 and other materials, including wrapping, labels, tags, and instruction guides; that
22 accompany, and are incidental or immaterial to, the retail sale of any product.

23 (b) A product that is provided free of charge to the consumer in conjunction with
24 the purchase of another product, if the sales price of the other product does not vary

1 depending on whether the product provided free of charge is included in the
2 transaction.

3 (c) Any items specified under sub. (12m) (a) or (15b) (a).

4 **SECTION 40.** 77.51 (3pj) of the statutes is created to read:

5 77.51 (3pj) "Drug" means a compound, substance, or preparation, or any
6 component of them, other than food and food ingredients, dietary supplements, or
7 alcoholic beverages, to which any of the following applies:

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

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

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

14 **SECTION 41.** 77.51 (3pm) of the statutes is created to read:

15 77.51 (3pm) "Durable medical equipment" means equipment, including the
16 repair parts and replacement parts for the equipment that is primarily and
17 customarily used for a medical purpose related to a person; that can withstand
18 repeated use; that is not generally useful to a person who is not ill or injured; and that
19 is not placed in or worn on the body. "Durable medical equipment" does not include
20 mobility-enhancing equipment.

21 **SECTION 42.** 77.51 (3pn) of the statutes is created to read:

22 77.51 (3pn) "Eight hundred service" means a telecommunications service that
23 allows a caller to dial a toll-free number without incurring a charge for the call and
24 is marketed under "800," "855," "866," "877," or "888" toll-free calling, or any other
25 number designated as toll-free by the federal communications commission.

1 **SECTION 43.** 77.51 (3po) of the statutes is created to read:

2 77.51 (3po) "Electronic" means relating to technology having electrical, digital,
3 magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

5 77.51 (3pq) "Finished artwork" means the final art used for actual
6 reproduction by photomechanical or other processes or for display purposes.
7 "Finished artwork" also includes all of the following items regardless of whether such
8 items are reproduced:

9 (a) Drawings.

10 (b) Paintings.

11 (c) Designs.

12 (d) Photographs.

13 (e) Lettering.

14 (f) Paste-ups.

15 (g) Mechanicals.

16 (h) Assemblies.

17 (i) Charts.

18 (j) Graphs.

19 (k) Illustrative materials.

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

21 77.51 (3rm) "Fixed wireless service" means a telecommunications service that
22 provides radio communication between fixed points.

23 **SECTION 46.** 77.51 (3t) of the statutes is created to read:

24 77.51 (3t) "Food and food ingredient" means a substance in liquid,
25 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or

is affected by 2007 Wisconsin Acts 11 and 20

1 for chewing, by humans and that is ingested or chewed for its taste or nutritional
2 value. "Food and food ingredient" does not include alcoholic beverages or tobacco.

3 **SECTION 47.** 77.51 (4) of the statutes is repealed.

4 **SECTION 48.** 77.51 (5) of the statutes is amended to read:

5 77.51 (5) For purposes of subs. (13) (e) and (f) and ~~(14) (L)~~ (15a) and s. 77.52
6 (2m), "incidental" means depending upon or appertaining to something else as
7 primary; something necessary, appertaining to, or depending upon another which is
8 termed the principal; something incidental to the main purpose of the service.

9 Tangible personal property, specified digital goods, or additional digital goods
10 transferred by a service provider is incidental to the service if the purchaser's main
11 purpose or objective is to obtain the service rather than the property or goods, even
12 though the property or goods may be necessary or essential to providing the service.

13 **SECTION 49.** 77.51 (5d) of the statutes is created to read:

14 77.51 (5d) "International telecommunications services" means
15 telecommunications services that originate or terminate in the United States,
16 including the District of Columbia and any U.S. territory or possession and originate
17 or terminate outside of the United States, including the District of Columbia and any
18 U.S. territory or possession.

19 **SECTION 50.** 77.51 (5n) of the statutes is created to read:

20 77.51 (5n) "Interstate telecommunications services" means
21 telecommunications services that originate in one state or U.S. territory or
22 possession and terminate in a different state or U.S. territory or possession.

23 **SECTION 51.** 77.51 (5r) of the statutes is created to read:

items or property under so 77.52 (1)(b) or (c)

1 77.51 (5r) “Intrastate telecommunications services” means
2 telecommunications services that originate in one state or U.S. territory or
3 possession and terminate in the same state or U.S. territory or possession.

4 **SECTION 52.** 77.51 (6m) of the statutes is renumbered 77.51 (5m).

5 **SECTION 53.** 77.51 (7) of the statutes is repealed and recreated to read:

6 77.51 (7) (a) “Lease or rental” means any transfer of possession or control of
7 tangible personal property for a fixed or indeterminate term and for consideration
8 and includes:

- 9 1. A transfer that includes future options to purchase or extend.
- 10 2. Agreements related to the transfer of possession or control of motor vehicles
11 or trailers, if the amount of any consideration may be increased or decreased by
12 reference to the amount realized on the sale or other disposition of such motor
13 vehicles or trailers, consistent with section 7701 (h) (1) of the Internal Revenue Code.

14 (b) “Lease or rental” does not include any of the following:

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

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

23 3. Providing tangible personal property along with an operator, if the operator
24 is necessary for the tangible personal property to perform in the manner for which

1 it is designed and if the operator does more than maintain, inspect, or set up the
2 tangible personal property.

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

7 2. Transfers described under par. (b) are not considered a lease or rental,
8 regardless of whether such transfer is considered a lease or rental under generally
9 accepted accounting principles, or any provision of federal or local law, or any other
10 provision of state law.

11 **SECTION 54.** 77.51 (7g) of the statutes is created to read:

12 77.51 (7g) "Load-and-leave" means delivery to a purchaser by using a tangible
13 storage media that is not physically transferred to the purchaser.

14 **SECTION 55.** 77.51 (7k) of the statutes is created to read:

15 77.51 (7k) "Mobile wireless service" means a telecommunications service for
16 which the origination or termination points of the service's transmission,
17 conveyance, or routing are not fixed, regardless of the technology used to transmit,
18 convey, or route the service. "Mobile wireless service" includes a telecommunications
19 service provided by a commercial mobile radio service provider.

20 **SECTION 56.** 77.51 (7m) of the statutes is created to read:

21 77.51 (7m) "Mobility-enhancing equipment" means equipment, including the
22 repair parts and replacement parts for the equipment, that is primarily and
23 customarily used to provide or increase the ability of a person to move from one place
24 to another; that may be used in a home or motor vehicle; and that is generally not
25 used by a person who has normal mobility. "Mobility-enhancing equipment" does

1 not include a motor vehicle or any equipment on a motor vehicle that is generally
2 provided by a motor vehicle manufacturer. ^{Not} INSERT 19-2 ✓

3 SECTION 57. 77.51 (8m) of the statutes is created to read:

4 77.51 (8m) "Nine hundred service" means an inbound toll telecommunications
5 service purchased by a subscriber that allows the subscriber's customers to call the
6 subscriber's prerecorded announcement or live service. "Nine hundred service" does
7 not include any charge for collection services provided by the seller of the
8 telecommunications services to the subscriber or for any product or service the
9 subscriber sells to the subscriber's customers. A "nine hundred service" is
10 designated with the "900" number or any other number designated by the federal
11 communications commission.

12 SECTION 58. 77.51 (9) (a) of the statutes is amended to read:

13 77.51 (9) (a) Isolated and sporadic sales of tangible personal property, specified
14 digital goods, additional digital goods, or taxable services where the infrequency, in
15 relation to the other circumstances, including the sales price and the gross profit,
16 support the inference that the seller is not pursuing a vocation, occupation or
17 business or a partial vocation or occupation or part-time business as a vendor of
18 personal property, specified digital goods, additional digital goods, or taxable
19 services. No sale of any tangible personal property, specified digital goods, additional
20 digital goods, or taxable service may be deemed an occasional sale if at the time of
21 such sale the seller holds or is required to hold a seller's permit, except that this
22 provision does not apply to an organization required to hold a seller's permit solely
23 for the purpose of conducting bingo games and except as provided in par. (am).

24 SECTION 59. 77.51 (9) (am) of the statutes is amended to read:

items or property under 77.52(1)(b) or (c)

items or property under 77.52 (1)(b) or (c)

1 77.51 (9) (am) The sale of personal property, other than inventory held for sale,
2 previously used by a seller to conduct its trade or business at a location after that
3 person has ceased actively operating in the regular course of business as a seller of
4 tangible personal property, specified digital goods, additional digital goods, or
5 taxable services at that location, even though the seller holds a seller's permit for one
6 or more other locations.

7 SECTION 60. 77.51 (9p) of the statutes is created to read:

8 77.51 (9p) "One nonitemized price" does not include a price that is separately
9 identified by product on a binding sales document, or other sales-related document,
10 that is made available to the customer in paper or electronic form, including an
11 invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement,
12 a periodic notice of rates and services, a rate card, or a price list.

13 SECTION 61. 77.51 (9s) of the statutes is created to read:

14 77.51 (9s) "Paging service" means a telecommunications service that transmits
15 coded radio signals to activate specific pagers and may include messages or sounds.

16 SECTION 62. 77.51 (10) of the statutes is amended to read:

17 77.51 (10) "Person" includes any natural person, firm, partnership, limited
18 liability company, joint venture, joint stock company, association, public or private
19 corporation, the United States, the state, including any unit or division of the state,
20 any county, city, village, town, municipal utility, municipal power district or other
21 governmental unit, cooperative, unincorporated cooperative association, estate,
22 trust, receiver, personal representative, any other fiduciary, any other legal entity,
23 and any representative appointed by order of any court or otherwise acting on behalf
24 of others. "Person" also includes the owner of a single-owner entity that is
25 disregarded as a separate entity under ch. 71.

1 **SECTION 63.** 77.51 (10d) of the statutes is created to read:

2 **77.51 (10d)** "Prepaid calling service" means the right to exclusively access
3 telecommunications services, if that right is paid for in advance of providing such
4 services, requires using an access number or authorization code to originate calls,
5 and is sold in predetermined units or dollars that decrease with use in a known
6 amount.

7 **SECTION 64.** 77.51 (10f) of the statutes is created to read:

8 **77.51 (10f)** "Prepaid wireless calling service" means a telecommunications
9 service that provides the right to utilize mobile wireless service as well as other
10 nontelecommunications services, including the download of digital products
11 delivered electronically, content, and ancillary services, and that is paid for prior to
12 use and sold in predetermined dollar units whereby the number of units declines
13 with use in a known amount.

14 **SECTION 65.** 77.51 (10m) of the statutes is created to read:

15 **77.51 (10m) (a)** "Prepared food" means:

- 16 1. Food and food ingredients sold in a heated state.
17 2. Food and food ingredients heated by the retailer, except as provided in par.
18 (b).

19 3. Food and food ingredients sold with eating utensils that are provided by the
20 retailer of the food and food ingredients, including plates, knives, forks, spoons,
21 glasses, cups, napkins, or straws. In this subdivision, "plate" does not include a
22 container or packaging used to transport food and food ingredients. For purposes of
23 this subdivision, a retailer provides utensils if any of the following applies:

- 24 a. The utensils are available to purchasers and the retailer's sales of prepared
25 food under subs. 1. and 2., soft drinks, and alcoholic beverages at an establishment

For purposes of par (a) 2 and 4

1 are more than 75 percent of the retailer's total sales at that establishment, as
2 determined under par. (c).

3 b. For retailers not described under subd. 3. a., the retailer's customary practice
4 is to physically give or hand the utensils to the purchaser, not including plates,
5 glasses, or cups that are necessary for the purchaser to receive the food and food
6 ingredients and that the retailer makes available to the purchaser.

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

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

10 1. ~~Two~~ or more food ingredients mixed or combined by a retailer for sale as a
11 single item, if the retailer's primary classification in the 2002 North American
12 Industry Classification System, published by the federal office of management and
13 budget, is manufacturing under subsector 311, not including bakeries and tortilla
14 manufacturing under industry group number 3118.

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

17 3. ~~Bakery~~ items made by a retailer, including breads, rolls, pastries, buns,
18 biscuits, bagels, croissants, donuts, danish, cakes, tortes, pies, tarts, muffins, bars,
19 cookies, and tortillas. *For purposes of par (a) 4*

20 4. ~~Food~~ and food ingredients that are only sliced, repackaged, or pasteurized
21 by a retailer. *For purposes of par (a) 4*

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

For purposes of par (a) 2 and 4

1 (c) 1. The percentage specified under par. (a) 3. a. shall be determined using the
2 following:

3 a. A numerator that includes sales of prepared food, as defined in par. (a) 1. and
4 2. and food for which plates, bowls, glasses, or cups are necessary to receive the food,
5 but not including alcoholic beverages.

6 b. A denominator that includes all food and food ingredients, including
7 prepared food, candy, dietary supplements, and soft drinks, but not including
8 alcoholic beverages.

9 2. a. If the percentage determined under subd. 1. is 75 percent or less, utensils
10 are considered to be provided by the retailer if the retailer's customary practice is to
11 physically give or hand the utensils to the purchaser or, in the case of plates, bowls,
12 glasses, or cups that are necessary to receive the food, to make such items available
13 to the purchaser.

14 b. If the percentage determined under subd. 1. is greater than 75 percent,
15 utensils are considered to be provided by the retailer if the utensils are made
16 available to the purchaser.

17 3. For a retailer whose percentage determined under subd. 1. is greater than
18 75 percent, an item sold by the retailer that contains 4 or more servings packaged
19 as 1 item and sold for a single price does not become prepared food simply because
20 the retailer makes utensils available to the purchaser of the item, but does become
21 prepared food if the retailer physically gives or hands utensils to the purchaser of the
22 item. For purposes of this subdivision 3. a., serving sizes are based on the
23 information contained on the label of each item sold, except that, if the item has no
24 label, the serving size is based on the retailer's reasonable determination.

1 4. a. Except as provided in subd. 4. b., if a retailer sells food items that have a
2 utensil placed in a package by a person other than the retailer, the utensils are
3 considered to be provided by the retailer.

4 b. Except as provided in subds. 2. and 3., if a retailer sells food items that have
5 a utensil placed in a package by a person other than the retailer and the person's
6 primary classification in the 2002 North American Industry Classification System,
7 published by the federal office of management and budget, is manufacturing under
8 subsector 311, the utensils are not considered to be provided by the retailer.

9 5. For purposes of par. (a) 3., a retailer shall determine the percentage for the
10 retailer's tax year or business fiscal year, based on the retailer's data from the
11 retailer's prior tax year or business fiscal year, as soon as practical after the retailer's
12 accounting records are available, but not later than 90 days after the day on which
13 the retailer's tax year or business fiscal year begins. For retailer's with more than
14 one establishment in this state, a single determination under subd. 1. that combines
15 the information for all of the retailer's establishments in this state shall be made
16 annually, as provided in this subdivision, and apply to each of the retailer's
17 establishments in this state. A retailer that has no prior tax year or business fiscal
18 year shall make a good faith estimate of its percentage for purposes of par. (a) 3. for
19 the retailer's first tax year or business fiscal year and shall adjust the estimate
20 prospectively after the first 3 months of the retailer's operations if the actual
21 percentage is materially different from the estimated percentage.

22 **SECTION 66.** 77.51 (10n) of the statutes is created to read:

23 **77.51 (10n)** "Prescription" means an order, formula, or recipe that is issued by
24 any oral, written, electronic, or other means of transmission and by a person who is
25 authorized by the laws of this state to issue such an order, formula, or recipe.

1 **SECTION 67.** 77.51 (10r) of the statutes is created to read:

2 77.51 (10r) "Prewritten computer software" means any of the following:

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

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

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

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

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

17 **SECTION 68.** 77.51 (10s) of the statutes is created to read:

18 77.51 (10s) "Private communication service" means a telecommunications
19 service that entitles the customer to exclusive or priority use of a communications
20 channel or group of communications channels, regardless of the manner in which the
21 communications channel or group of communications channels is connected, and
22 includes switching capacity, extension lines, stations, and other associated services
23 that are provided in connection with the use of such channel or channels.

24 **SECTION 69.** 77.51 (11d) of the statutes is created to read:

SECTION 69

items or property (so 77052(1)(b) and (c),
under)

1 77.51 (11d) "Product" includes tangible personal property, specified digital
2 goods, additional digital goods, and services.

3 **SECTION 70.** 77.51 (11m) of the statutes is created to read:

4 77.51 (11m) "Prosthetic device" means a device, including the repair parts and
5 replacement parts for the device, that is placed in or worn on the body to artificially
6 replace a missing portion of the body; to prevent or correct a physical deformity or
7 malfunction; or to support a weak or deformed portion of the body.

8 **SECTION 71.** 77.51 (12) (a) of the statutes is amended to read:

9 77.51 (12) (a) Any transfer of title, possession, ownership, enjoyment, or use
10 by: cash or credit transaction, exchange, barter, lease or rental, conditional or
11 otherwise, in any manner or by any means whatever of tangible personal property,
12 specified digital goods, or additional digital goods for a consideration;

INJECT
26-12

13 **SECTION 72.** 77.51 (12) (b) of the statutes is amended to read:

14 77.51 (12) (b) A transaction whereby the possession of property, specified
15 digital goods, or additional digital goods is transferred but the seller retains the title
16 as security for the payment of the price.

17 **SECTION 73.** 77.51 (12m) of the statutes is created to read:

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

23 1. The seller's cost of the property, specified digital goods, or additional digital
24 goods sold.

items or property under
so 77052(1)(b) or (c),
under

items or property under
so 77052(1)(b) or (c)

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

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

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

7 b. If a shipment includes property that is subject to tax under this subchapter
8 and property that is not subject to tax under this subchapter, the amount of the
9 delivery charge ~~allocated~~ ^{that the seller allocates} to the property that is subject to tax under this subchapter
10 based on the total purchase price of the property that is subject to tax under this
11 subchapter as compared to the total purchase price of all the property or on the total
12 weight of the property that is subject to tax under this subchapter as compared to the
13 total weight of all the property. ^{Not} INSERT 27-13

14 5. Installation charges.

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

16 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
17 3rd party, except as provided in par. (c); that are allowed by a seller; and that are
18 taken by a purchaser on a sale.

19 2. Interest, financing, and carrying charges from credit that is extended on a
20 sale of ^{tangible} personal property, specified digital goods, additional digital goods, or services,
21 if the amount of the interest, financing, or carrying charges is separately stated on
22 the invoice, bill of sale, or similar document that the seller gives to the purchaser.

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

items or property under § 7052 (1)(b) or (c)

1 4. Delivery charges for direct mail.

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

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

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

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

1 (c) "Purchase price" includes consideration received by the seller from a 3rd
2 party, if:

3 1. The seller actually receives consideration from a 3rd party, other than the
4 purchaser, and the consideration is directly related to a price reduction or discount
5 on a sale.

6 2. The seller is obliged to pass the price reduction or discount to the purchaser.

7 3. The amount of the consideration that is attributable to the sale is a fixed
8 amount and the seller is able to determine that amount at the time of the sale to the
9 purchaser.

Not any of the following also applies!

10 4. The purchaser presents a coupon, certificate, or other documentation to the
11 seller to claim the price reduction or discount, if the coupon, certificate, or other
12 documentation is authorized, distributed, or granted by the 3rd party with the
13 understanding that the 3rd party will reimburse the seller for the amount of the price
14 reduction or discount.

15 5. The purchaser identifies himself or herself to the seller as a member of a
16 group or organization that may claim the price reduction or discount.

17 6. The seller provides an invoice to the purchaser, or the purchaser presents a
18 coupon, certificate, or other documentation to the seller, that identifies the price
19 reduction or discount as a 3rd-party price reduction or discount.

20 **SECTION 74.** 77.51 (12p) of the statutes is created to read:

21 77.51 (12p) "Purchaser" means a person to whom a sale of tangible personal
22 property is made or to whom a service is furnished.

23 **SECTION 75.** 77.51 (13) (a) of the statutes is amended to read:

Items or property under s. 77.52 (1) (b) or (c)

1 77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale
2 is mercantile in nature, of tangible personal property, specified digital goods, or
3 additional digital goods, or a service specified under s. 77.52 (2) (a).

4 SECTION 76. 77.51 (13) (b) of the statutes is amended to read:

5 77.51 (13) (b) Every person engaged in the business of making sales of tangible
6 personal property, specified digital goods, or additional digital goods for storage, use
7 or consumption or in the business of making sales at auction of tangible personal
8 property, specified digital goods, or additional digital goods owned by the person or
9 others for storage, use or other consumption.

10 SECTION 77. 77.51 (13) (c) of the statutes is amended to read:

11 77.51 (13) (c) When the department determines that it is necessary for the
12 efficient administration of this subchapter to regard any salespersons,
13 representatives, peddlers or canvassers as the agents of the dealers, distributors,
14 supervisors or employers under whom they operate or from whom they obtain the
15 tangible personal property, specified digital goods, or additional digital goods sold by
16 them, irrespective of whether they are making the sales on their own behalf or on
17 behalf of such dealers, distributors, supervisors or employers, the department may
18 so regard them and may regard the dealers, distributors, supervisors or employers
19 as retailers for purposes of this subchapter.

20 SECTION 78. 77.51 (13) (d) of the statutes is amended to read:

21 77.51 (13) (d) Every wholesaler to the extent that the wholesaler sells tangible
22 personal property, specified digital goods, or additional digital goods to a person
23 other than a seller as defined in sub. (17) provided such wholesaler is not expressly
24 exempt from the sales tax on such sale or from collecting the use tax on such sale.

25 SECTION 79. 77.51 (13) (e) of the statutes is amended to read:

items or property under s. 77.52(1)(b) or (c)

1 77.51 (13) (e) A person selling tangible personal property, specified digital
2 goods, or additional digital goods to a service provider who transfers the property in
3 conjunction with the selling, performing or furnishing of any service and the
4 property is or goods are incidental to the service, unless the service provider is
5 selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20.
6 This subsection does not apply to sub. (2).

7 SECTION 80. 77.51 (13) (f) of the statutes is amended to read:

8 77.51 (13) (f) A service provider who transfers tangible personal property,
9 specified digital goods, or additional digital goods in conjunction with but not
10 incidental to the selling, performing or furnishing of any service and a service
11 provider selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11.
12 and 20. This subsection does not apply to sub. (2).

13 SECTION 81. 77.51 (13) (k) of the statutes is amended to read:

14 77.51 (13) (k) ~~As respects~~ With respect to a lease, any person deriving rentals
15 from a lease of tangible personal property, specified digital goods, or additional
16 digital goods situated in this state.

17 SECTION 82. 77.51 (13) (m) of the statutes is amended to read:

18 77.51 (13) (m) A person selling tangible personal property, specified digital
19 goods, or additional digital goods to a veterinarian to be used or furnished by the
20 veterinarian in the performance of services in some manner related to domestic
21 animals, including pets or poultry.

22 SECTION 83. 77.51 (13) (n) of the statutes is amended to read:

23 77.51 (13) (n) A person selling household furniture, furnishings, equipment,
24 appliances or other items of tangible personal property, specified digital goods, or

1 additional digital goods to a landlord for use by tenants in leased or rented living
2 quarters.

3 **SECTION 84.** 77.51 (13) (o) of the statutes is amended to read:

4 77.51 (13) (o) A person selling medicine drugs for animals to a veterinarian.

5 As used in this paragraph, "animal" includes livestock, pets and poultry.

6 **SECTION 85.** 77.51 (13g) (intro.) of the statutes is amended to read:

7 77.51 (13g) (intro.) Except as provided in sub. (13h), "retailer engaged in
8 business in this state", ~~unless otherwise limited by federal statute~~, for purposes of
9 the use tax, means any of the following:

10 **SECTION 86.** 77.51 (13g) (c) of the statutes is created to read:

11 77.51 (13g) (c) Any retailer selling tangible personal property or taxable
12 services for storage, use, or other consumption in this state, unless otherwise limited
13 by federal law.

14 **SECTION 87.** 77.51 (13r) of the statutes is amended to read:

15 77.51 (13r) Any person purchasing from a retailer as defined in sub. (13) shall
16 be deemed the consumer of the tangible personal property, specified digital goods,
17 additional digital goods, or services purchased.

18 **SECTION 88.** 77.51 (13rm) of the statutes is created to read:

19 77.51 (13rm) "Retail sale" or "sale at retail" means any sale, lease, or rental
20 for any purpose other than resale, sublease, or subrent.

21 **SECTION 89.** 77.51 (13rn) of the statutes is created to read:

22 77.51 (13rn) "Ringtones" means digitized sound files that are downloaded onto
23 a device and that may be used to alert the customer with regard to a communication.
24 "Ringtones" includes MP3 or musical tones, polyphonic tones, and synthetic music
25 mobile application format tones, but does not include ring-back tones.

^ items or property under 77.52(1)(b) or (c)

items or property under so 77052(1)(b) or (c)

1 SECTION 90. 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,
5 specified digital goods, additional digital goods, or services for use or consumption
6 but not for resale as tangible personal property, specified digital goods, additional
7 digital goods, or services and includes:

8 SECTION 91. 77.51 (14) (a) of the statutes is amended to read:

9 77.51 (14) (a) Any sale at an auction ~~in~~ with respect to tangible personal
10 property, specified digital goods, or additional digital goods which ~~is~~ are sold to a
11 successful bidder. ~~The proceeds from, except the sale of property~~ ^{*items,*} or goods sold at
12 auction which ~~is~~ are bid in by the seller and on which title does not pass to a new
13 purchaser shall be deducted from the gross proceeds of the sale and the tax paid only
14 on the net proceeds.

15 SECTION 92. 77.51 (14) (b) of the statutes is amended to read:

16 77.51 (14) (b) The furnishing or distributing of tangible personal property,
17 specified digital goods, additional digital goods, or taxable services for a
18 consideration by social clubs and fraternal organizations to their members or others.

19 SECTION 93. 77.51 (14) (c) of the statutes is amended to read:

20 77.51 (14) (c) A transaction whereby the possession of tangible personal
21 property ~~is~~ specified digital goods, or additional digital goods are transferred but the
22 seller retains the title as security for the payment of the price.

23 SECTION 94. 77.51 (14) (d) of the statutes is repealed.

24 SECTION 95. 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4.

25 SECTION 96. 77.51 (14) (h) of the statutes is amended to read:

Items or property under 77.52(1)(b) or (c)

1 77.51 (14) (h) A transfer for a consideration of the title or possession of tangible
2 personal property, specified digital goods, or additional digital goods which has ~~has~~ have
3 been produced, fabricated, or printed to the special order of the customer or of any
4 publication.

5 **SECTION 97.** 77.51 (14) (i) of the statutes is repealed.

6 **SECTION 98.** 77.51 (14) (j) of the statutes is amended to read:

7 77.51 (14) (j) The granting of possession of tangible personal property, specified
8 digital goods, or additional digital goods by a lessor to a lessee, or to another person
9 at the direction of the lessee. Such a transaction is deemed a continuing sale in this
10 state by the lessor for the duration of the lease as respects any period of time the
11 leased property is situated in this state, irrespective of the time or place of delivery
12 of the property to the lessee or such other person.

13 **SECTION 99.** 77.51 (14) (k) of the statutes is repealed.

14 **SECTION 100.** 77.51 (14) (L) of the statutes is repealed.

15 **SECTION 101.** 77.51 (14g) (a) of the statutes is amended to read:

16 77.51 (14g) (a) The transfer of property, specified digital goods, or additional
17 digital goods to a corporation upon its organization solely in consideration for the
18 issuance of its stock;

19 **SECTION 102.** 77.51 (14g) (b) of the statutes is amended to read:

20 77.51 (14g) (b) The contribution of property, specified digital goods, or
21 additional digital goods to a newly formed partnership solely in consideration for a
22 partnership interest therein;

23 **SECTION 103.** 77.51 (14g) (bm) of the statutes is amended to read:

items or property under 77.52 (1)(b) a(c)

1 77.51 (14g) (bm) The contribution of property, specified digital goods, or
2 additional digital goods to a limited liability company upon its organization solely in
3 consideration for a membership interest;

4 **SECTION 104.** 77.51 (14g) (c) of the statutes is amended to read:

5 77.51 (14g) (c) The transfer of property, specified digital goods, or additional
6 digital goods to a corporation, solely in consideration for the issuance of its stock,
7 pursuant to a merger or consolidation;

8 **SECTION 105.** 77.51 (14g) (cm) of the statutes is amended to read:

9 77.51 (14g) (cm) The transfer of property, specified digital goods, or additional
10 digital goods to a limited liability company, solely in consideration for a membership
11 interest, pursuant to a merger;

12 **SECTION 106.** 77.51 (14g) (d) of the statutes is amended to read:

13 77.51 (14g) (d) The distribution of property, specified digital goods, or
14 additional digital goods by a corporation to its stockholders as a dividend or in whole
15 or partial liquidation;

16 **SECTION 107.** 77.51 (14g) (e) of the statutes is amended to read:

17 77.51 (14g) (e) The distribution of property, specified digital goods, or
18 additional digital goods by a partnership to its partners in whole or partial
19 liquidation;

20 **SECTION 108.** 77.51 (14g) (em) of the statutes is amended to read:

21 77.51 (14g) (em) The distribution of property, specified digital goods, or
22 additional digital goods by a limited liability company to its members in whole or
23 partial liquidation;

24 **SECTION 109.** 77.51 (14g) (f) of the statutes is amended to read:

items or property under 77052(1)(b) or (c)

1

77.51 (14g) (f) Repossession of property, specified digital goods, or additional digital goods by the seller from the purchaser when the only consideration is cancellation of the purchaser's obligation to pay the remaining balance of the purchase price;

5

SECTION 110. 77.51 (14g) (g) of the statutes is amended to read:

6

77.51 (14g) (g) The transfer of property, specified digital goods, or additional digital goods in a reorganization as defined in section 368 of the internal revenue code in which no gain or loss is recognized for franchise or income tax purposes; or

9

SECTION 111. 77.51 (14g) (h) of the statutes is amended to read:

10

77.51 (14g) (h) Any transfer of all or substantially all the property, specified digital goods, or additional digital goods held or used by a person in the course of an activity requiring the holding of a seller's permit, if after the transfer the real or ultimate ownership of the property ^{*items*} or goods is substantially similar to that which existed before the transfer. For the purposes of this section, stockholders, bondholders, partners, members or other persons holding an interest in a corporation or other entity are regarded as having the real or ultimate ownership of the property ^{*items*} or goods of the corporation or other entity. In this paragraph, "substantially similar" means 80% or more of ownership.

19

SECTION 112. 77.51 (14r) of the statutes is repealed.

20

SECTION 113. 77.51 (15) of the statutes ^{*as affected by 2007 Wisconsin Act 11*} is repealed.

21

SECTION 114. 77.51 (15a) of the statutes is created to read:

22

77.51 (15a) (a) "Sales, lease, or rental for resale, sublease, or subrent" includes transfers of tangible personal property, specified digital goods, or additional digital goods to a service provider that the service provider transfers in conjunction with but not incidental to the selling, performing, or furnishing of any service, and transfers

23

24

25

items or property under 77052(1)(b) or (c)

items or property under s. 77.52(1)(b) or (c)

1 of tangible personal property, specified digital goods, or additional digital goods to
2 a service provider that the service provider physically transfers in conjunction with
3 the selling, performing, or furnishing services under s. 77.52 (2) (a) 7., 10., 11., or 20.
4 This paragraph does not apply to sub. (2).

5 (b) "Sales, lease, or rental for resale, sublease, or subrent" does not include any
6 of the following:

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

11 2. Any sale of tangible personal property, specified digital goods, or additional
12 digital goods to a purchaser even though such property ^{*items*} or goods may be used or
13 consumed by some other person to whom such purchaser transfers the ~~tangible~~
14 ~~personal property~~ ^{*items*} or goods without valuable consideration, such as gifts, and
15 advertising specialties distributed at no charge and apart from the sale of other
16 tangible personal property, specified digital goods, additional digital goods, or
17 service.

18 3. Transfers of tangible personal property, specified digital goods, or additional
19 digital goods to a service provider that the service provider transfers in conjunction
20 with the selling, performing, or furnishing of any service, if the tangible personal
21 property, specified digital goods, or additional digital goods are incidental to the
22 service, unless the service provider is selling, performing, or furnishing services
23 under s. 77.52 (2) (a) 7., 10., 11., or 20.

24 **SECTION 115.** 77.51 (15b) of the statutes is created to read:

items or property under 5077052(1)(b) or (c)

1 77.51 (15b) (a) "Sales price" means the total amount of consideration, including
2 cash, credit, property, and services, for which tangible personal property, specified
3 digital goods, additional digital goods, or services are sold, leased, or rented, valued
4 in money, whether received in money or otherwise, without any deduction for the
5 following:

6 1. The seller's cost of the property, specified digital goods, or additional digital
7 goods sold.

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

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

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

14 b. If a shipment includes property that is subject to tax under this subchapter
15 and property that is not subject to tax under this subchapter, the amount of the
16 delivery charge ~~allocated~~ *that the seller allocates* to the property that is subject to tax under this subchapter
17 based on the total sales price of the property that is subject to tax under this
18 subchapter as compared to the total sales price of all the property or on the total
19 weight of the property that is subject to tax under this subchapter as compared to the
20 total weight of all the property.

21 5. Installation charges.

22 (b) "Sales price" does not include:

23 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
24 3rd party, except as provided in par. (c); that are allowed by a seller; and that are
25 taken by a purchaser on a sale.

items or property under so 77052 (1)(b) or (c)

1 2. Interest, financing, and carrying charges from credit that is extended on a
2 sale of tangible personal property, specified digital goods, additional digital goods,
3 or services, if the amount of the interest, financing, or carrying charges is separately
4 stated on the invoice, bill of sale, or similar document that the seller gives to the
5 purchaser.

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

9 4. Delivery charges for direct mail.

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

14 6. If a person who purchases a motor vehicle presents a statement issued under
15 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
16 statement to the seller within 60 days from the date of receiving a refund under s.
17 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
18 s. 218.0171 (2) (cq), but not to exceed the sales price from the sale of the motor vehicle.
19 This subdivision applies only to the first motor vehicle purchased by a person after
20 receiving a refund under s. 218.0171 (2) (b) 2. b.

21 7. Thirty-five percent of the sales price, excluding trade-ins, of a new mobile
22 home, as defined in s. 340.01 (29), that is a primary housing unit or of a new mobile
23 home, as defined in s. 340.01 (29), that is transported in 2 unattached sections if the
24 total size of the combined sections, not including additions and attachments, is at

1 least 984 square feet measured when the sections are ready for transport. This
2 subdivision does not apply to a lease or rental.

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

9 (c) "Sales price" includes consideration received by the seller from a 3rd party,
10 if:

11 1. The seller actually receives consideration from a 3rd party, other than the
12 purchaser, and the consideration is directly related to a price reduction or discount
13 on a sale.

14 2. The seller is obliged to pass the price reduction or discount to the purchaser.

15 3. The amount of the consideration that is attributable to the sale is a fixed
16 amount and the seller is able to determine that amount at the time of the sale to the
17 purchaser.

18 4. Any of the following also applies:

19 a. The purchaser presents a coupon, certificate, or other documentation to the
20 seller to claim the price reduction or discount, if the coupon, certificate, or other
21 documentation is authorized, distributed, or granted by the 3rd party with the
22 understanding that the 3rd party will reimburse the seller for the amount of the price
23 reduction or discount.

24 b. The purchaser identifies himself or herself to the seller as a member of a
25 group or organization that may claim the price reduction or discount.

1 c. The seller provides an invoice to the purchaser, or the purchaser presents a
2 coupon, certificate, or other documentation to the seller, that identifies the price
3 reduction or discount as a 3rd-party price reduction or discount.

4 ~~SECTION 116. 77.51 (17) of the statutes is amended to read:~~

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

10 SECTION 117. 77.51 (17m) of the statutes is repealed and recreated to read:

11 77.51 (17m) "Service address" means any of the following:

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

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

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

24 SECTION 118. 77.51 (17w) of the statutes is created to read:

INSERT
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items or property under 77052(1)(b) or (c)

1 77.51 (17w) "Soft drink" means a beverage that contains less than 0.5 percent
2 of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not
3 include a beverage that contains milk or milk products; soy, rice, or similar milk
4 substitutes; or more than 50 percent vegetable or fruit juice by volume.

5 **SECTION 119.** 77.51 (17x) of the statutes is created to read:

6 77.51 (17x) "Specified digital goods" means digital audio works, digital
7 audiovisual works, and digital books. For purposes of this subchapter, the sale of or
8 the storage, use, or other consumption of a digital code is treated the same as the sale
9 of or the storage, use, or other consumption of any specified digital goods for which
10 the digital code relates.

11 **SECTION 120.** 77.51 (18) of the statutes is amended to read:

12 77.51 (18) "Storage" includes any keeping or retention in this state of tangible
13 personal property, specified digital goods, or additional digital goods purchased from
14 a retailer for any purpose except sale in the regular course of business.

15 **SECTION 121.** 77.51 (20) of the statutes is amended to read:

16 77.51 (20) "Tangible personal property" means all tangible personal property
17 of every kind and description that can be seen, weighed, measured, felt, or touched,
18 or that is in any other manner perceptible to the senses, and includes electricity,
19 natural gas, steam and, water, and also leased property affixed to realty if the lessor
20 ~~has the right to remove the property upon breach or termination of the lease~~
21 ~~agreement, unless the lessor of the property is also the lessor of the realty to which~~
22 ~~the property is affixed.~~ "Tangible personal property" also includes coins and stamps
23 of the United States sold or traded as collectors' items above their face value and
24 computer programs except custom computer programs prewritten computer
25 software, but does not include specified digital goods.

for additional digital goods

items or property under 77052(1)(b) or (c);

1 **SECTION 122.** 77.51 (21) of the statutes is amended to read:

2 77.51 (21) "Taxpayer" means the person who is required to pay, collect, or
3 account for or who is otherwise directly interested in the taxes imposed by this
4 subchapter, including a certified service provider.

5 **SECTION 123.** 77.51 (21m) of the statutes is amended to read:

6 77.51 (21m) "~~Telecommunications~~ Internet access services" means sending
7 messages and information transmitted through the use of local, toll and wide-area
8 telephone service; channel services; telegraph services; teletypewriter; computer
9 exchange services; cellular mobile telecommunications service; specialized mobile
10 radio; stationary two-way radio; paging service; or any other form of mobile and
11 portable one-way or two-way communications; or any other transmission of
12 messages or information by electronic or similar means between or among points by
13 wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.
14 "Telecommunications services" does not include sending collect telecommunications
15 that are received outside of the state. No ff INSERT 43-15 ↓

16 **SECTION 124.** 77.51 (21n) of the statutes is created to read:

17 77.51 (21n) "Telecommunications services" means electronically transmitting,
18 conveying, or routing voice, data, audio, video, or other information or signals to a
19 point or between or among points. "Telecommunications services" includes the
20 transmission, conveyance, or routing of such information or signals in which
21 computer processing applications are used to act on the content's form, code, or
22 protocol for transmission, conveyance, or routing purposes, regardless of whether
23 the service is referred to as a voice over Internet protocol service or classified by the
24 federal communications commission as an enhanced or value-added service.
25 "Telecommunications services" does not include any of the following:

1 (a) Data processing and information services that allow data to be generated,
2 acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic
3 transmission, if the purchaser's primary purpose for the underlying transaction is
4 the processed data.

5 (b) Installing or maintaining wiring or equipment on a customer's premises.

6 (c) Tangible personal property.

7 (d) Advertising, including directory advertising.

8 (e) Billing and collection services provided to 3rd parties.

9 (f) ~~Telecommunications~~ Internet access service.

10 (g) Radio and television audio and video programming services, regardless of
11 the medium in which the services are provided, including cable service, as defined
12 in 47 USC 522 (6), audio and video programming services delivered by commercial
13 mobile radio service providers, as defined in 47 CFR 20.3, and the transmitting,
14 conveying, or routing of such services by the programming service provider.

15 (h) Ancillary services.

16 (i) Digital products delivered electronically, including software, music, video,
17 reading materials, or ringtones.

18 **SECTION 125.** 77.51 (21p) of the statutes is created to read:

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

21 **SECTION 126.** 77.51 (21q) of the statutes is created to read:

22 77.51 (21q) "Transferred electronically" means accessed or obtained by the
23 purchaser by means other than tangible storage media.

24 **SECTION 127.** 77.51 (22) (a) of the statutes is amended to read:

items or property under s. 77.52(1)(b) or (c)

1 77.51 (22) (a) "Use" includes the exercise of any right or power over tangible
2 personal property, specified digital goods, additional digital goods, or taxable
3 services incident to the ownership, possession or enjoyment of the property, goods,
4 or services, or the results produced by the services, including installation or
5 affixation to real property and including the possession of, or the exercise of any right
6 or power over tangible personal property, specified digital goods, or additional digital
7 goods by a lessee under a lease, except that "use" does not include the activities under
8 sub. (18).

items or property under s. 77.52(1)(b) or (c)

9 SECTION 128. 77.51 (22) (b) of the statutes is amended to read:

10 77.51 (22) (b) In this subsection "enjoyment" includes a purchaser's right to
11 direct the disposition of property, specified digital goods, or additional digital goods,
12 whether or not the purchaser has possession of the property or goods. "Enjoyment"
13 also includes, but is not limited to, having shipped into this state by an out-of-state
14 supplier printed material which is designed to promote the sale of property, specified
15 digital goods, additional digital goods, or services, or which is otherwise related to
16 the business activities, of the purchaser of the printed material or printing service.

17 SECTION 129. 77.51 (22) (bm) of the statutes is created to read:

18 77.51 (22) (bm) In this subsection, "exercise of any right or power over tangible
19 personal property, specified digital goods, additional digital goods, or taxable
20 services" includes distributing, selecting recipients, determining mailing schedules,
21 or otherwise directing the distribution, dissemination, or disposal of tangible
22 personal property, specified digital goods, additional digital goods, or taxable
23 services, regardless of whether the purchaser of such property, goods, or services
24 owns or physically possesses, in this state, the property, goods, or services.

25 SECTION 130. 77.51 (24) of the statutes is created to read:

items,

items or property under s. 77.52(1)(b) or (c)

1 77.51 (24) "Value-added non-voice data service" means a service in which
2 computer processing applications are used to act on the form, content, code, or
3 protocol of the data provided by the service and are used primarily for a purpose other
4 than for transmitting, conveying, or routing data.

5 **SECTION 131.** 77.51 (25) of the statutes is created to read:

6 77.51 (25) "Vertical service" means an ancillary service that is provided with
7 one or more telecommunications services and allows customers to identify callers
8 and to manage multiple calls and call connections, including conference bridging
9 services.

10 **SECTION 132.** 77.51 (26) of the statutes is created to read:

11 77.51 (26) "Voice mail service" means an ancillary service that allows a
12 customer to store, send, or receive recorded messages, not including any vertical
13 service that the customer must have to use the voice mail service.

14 **SECTION 133.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a) and amended
15 to read:

16 77.52 (1) (a) For the privilege of selling, licensing, leasing or renting tangible
17 personal property, including accessories, components, attachments, parts, supplies
18 and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the
19 ~~gross receipts~~ sales price from the sale, license, lease or rental of tangible personal
20 property, including accessories, components, attachments, parts, supplies and
21 materials, sold, leased or rented at retail in this state, as determined under s. 77.522.

22 **SECTION 134.** 77.52 (1) (b) of the statutes is created to read:

23 77.52 (1) (b) For the privilege of selling at retail coins and stamps of the United
24 States that are sold or traded as collectors' items above their face value, a tax is

1 imposed on all retailers at the rate of 5 percent of the sales price from the sale of such
2 coins and stamps.

3 SECTION 135. 77.52 (1) (c) of the statutes is created to read:

4 77.52 (1) (c) For the privilege of leasing property that is affixed to real property,
5 a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease
6 of such property, if the lessor has the right to remove the leased property upon breach
7 or termination of the lease agreement, unless the lessor of the leased property is also
8 the lessor of the real property to which the leased property is affixed.

9 SECTION 136. 77.52 (1) (d) of the statutes is created to read:

10 77.52 (1) (d) For the privilege of selling, licensing, leasing, or renting specified
11 digital goods or additional digital goods at retail, regardless of whether the
12 purchaser has the right to permanently use such goods or whether the purchaser's
13 right to access or retain such goods is not permanent, a tax is imposed upon all
14 retailers at the rate of 5 percent of the sales price from the sale, license, lease or rental
15 of such goods.

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16 SECTION 137. 77.52 (2) (intro.) of the statutes is amended to read:

17 77.52 (2) (intro.) For the privilege of selling, licensing, performing or furnishing
18 the services described under par. (a) at retail in this state, as determined under s.
19 77.522, to consumers or users, a tax is imposed upon all persons selling, licensing,
20 performing or furnishing the services at the rate of 5% of the gross receipts sales price
21 from the sale, license, performance or furnishing of the services.

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22 SECTION 138. 77.52 (2) (a) 5. a. of the statutes is ~~renumbered~~ 77.52 (2) (a) 5.

23 (intro.) and amended to read:

repealed and recreated

24 77.52 (2) (a) 5. (intro) The sale of ~~all of the following:~~ internet access
services

1 am. Intrastate, interstate, and international telecommunications services,
 2 except services subject to 4 USC 116 to 126, as amended by P.L. 106-252, that either
 3 originate or terminate in this state; except services that are obtained by means of a
 4 toll-free number, that originate outside this state and that terminate in this state;
 5 and are charged to a service address in this state, regardless of the location where
 6 that charge is billed or paid; and the sale of the rights to purchase
 7 telecommunications services, including purchasing reauthorization numbers, by
 8 paying in advance and by using an access number and authorization code, except
 9 sales that are subject to subd. 5. b interstate 800 services.

7
 10 INSERT
 48-9

10 **SECTION 139.** 77.52 (2) (a) 5. b. of the statutes is repealed.

11 **SECTION 140.** 77.52 (2) (a) 5. bm. of the statutes is created to read:
 12 77.52 (2) (a) 5. bm. Telecommunications Internet access services.

13 **SECTION 141.** 77.52 (2) (a) 5. c. of the statutes is created to read:

14 ^{The Sale of a} 77.52 (2) (a) 5. c. Ancillary services, except detailed telecommunications billing
 15 services.

16 **SECTION 142.** 77.52 (2) (a) 5m. of the statutes is amended to read:

17 77.52 (2) (a) 5m. The sale of services that consist of recording
 18 telecommunications messages and transmitting them to the purchaser of the service
 19 or at that purchaser's direction, but not including those services if they are merely
 20 an that are taxable under subd. 5. or services that are incidental, as defined in s.
 21 77.51 (5), element of to another service that is not taxable under this subchapter and
 22 sold to that the purchaser of the incidental service and is not taxable under this
 23 subchapter.

24 **SECTION 143.** 77.52 (2) (a) 10. of the statutes is amended to read:

items or property under s. 77.52 (1) (b) or (c)

1 77.52 (2) (a) 10. Except for services provided by veterinarians and except for
2 installing or applying tangible personal property that, subject to par. (ag), when
3 installed or applied, will constitute an addition or capital improvement of real
4 property, the repair, service, alteration, fitting, cleaning, painting, coating, towing,
5 inspection, and maintenance of all items of tangible personal property, specified
6 digital goods, and additional digital goods, unless, at the time of that the repair,
7 service, alteration, fitting, cleaning, painting, coating, towing, inspection, or
8 maintenance, a sale in this state of the type of property repaired, serviced, altered,
9 fitted, cleaned, painted, coated, towed, inspected, or maintained would have been
10 exempt to the customer from sales taxation under this subchapter, other than the
11 exempt sale of a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a)
12 and other than nontaxable sales under s. 77.51 (14r) juvenile 77.522 or unless the
13 repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or
14 maintenance is provided under a contract that is subject to tax under subd. 13m. The
15 tax imposed under this subsection applies to the repair, service, alteration, fitting,
16 cleaning, painting, coating, towing, inspection, or maintenance of items listed in par.
17 (ag), regardless of whether the installation or application of tangible personal
18 property, specified digital goods, or additional digital goods related to the items is an
19 addition to or a capital improvement of real property, except that the tax imposed
20 under this subsection does not apply to the original installation or the complete
21 replacement of an item listed in par. (ag), if that the installation or replacement is
22 a real property construction activity under s. 77.51 (2).

SECTION 144. 77.52 (2) (a) 13m. of the statutes is created to read:

23 77.52 (2) (a) 13m. The sale of contracts, including service contracts,
24 maintenance agreements, and warranties, that provide, in whole or in part, for the
25

items or property under ~~77.52(1)(b) or (c)~~^{sub}

1 future performance of or payment for the repair, service, alteration, fitting, cleaning,
2 painting, coating, towing, inspection, or maintenance of tangible personal property,
3 unless the sale, lease, or rental in this state of the property to which the contract
4 relates is or was exempt, to the purchaser of the contract, from taxation under this
5 subchapter.

6 **SECTION 145.** 77.52 (2m) (a) of the statutes is amended to read:

7 77.52 (2m) (a) With respect to the services subject to tax under sub. (2), no part
8 of the charge for the service may be deemed a sale or rental of tangible personal
9 property, specified digital goods, or additional digital goods, if the property ^{*items*} or digital
10 goods transferred by the service provider is are incidental to the selling, performing
11 or furnishing of the service, except as provided in par. (b).

12 **SECTION 146.** 77.52 (2m) (b) of the statutes is amended to read:

13 77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7.,
14 10., 11. and 20., all property, specified digital goods, or digital additional goods,
15 physically transferred, or transferred electronically, to the customer in conjunction
16 with the selling, performing or furnishing of the service is a sale of tangible personal
17 property, specified digital goods, or additional digital goods separate from the selling,
18 performing or furnishing of the service.

19 **SECTION 147.** 77.52 (3m) of the statutes is repealed.

20 **SECTION 148.** 77.52 (3n) of the statutes is repealed.

21 **SECTION 149.** 77.52 (4) of the statutes is amended to read:

22 77.52 (4) It is unlawful for any retailer to advertise or hold out or state to the
23 public or to any customer, directly or indirectly, that the tax or any part thereof will
24 be assumed or absorbed by the retailer or that it will not be added to the selling price
25 of the property, specified digital goods, or additional digital goods sold or that if added

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1 it, or any part thereof, will be refunded. Any person who violates this subsection is
2 guilty of a misdemeanor.

3 **SECTION 150.** 77.52 (6) of the statutes is repealed.

4 **SECTION 151.** 77.52 (7) of the statutes is amended to read:

5 77.52 (7) Every person desiring to operate as a seller within this state who
6 holds a valid certificate under s. 73.03 (50) shall file with the department an
7 application for a permit for each place of operations. Every application for a permit
8 shall be made upon a form prescribed by the department and shall set forth the name
9 under which the applicant intends to operate, the location of the applicant's place of
10 operations, and the other information that the department requires. The Except as
11 provided in sub. (7b), the application shall be signed by the owner if a sole proprietor;
12 in the case of sellers other than sole proprietors, the application shall be signed by
13 the person authorized to act on behalf of such sellers. A nonprofit organization that
14 has ~~gross receipts~~ a sales price taxable under s. 77.54 (7m) shall obtain a seller's
15 permit and pay taxes under this subchapter on all taxable ~~gross receipts~~ sales prices
16 received after it is required to obtain that permit. If that organization becomes
17 eligible later for the exemption under s. 77.54 (7m) except for its possession of a
18 seller's permit, it may surrender that permit.

19 **SECTION 152.** 77.52 (7b) of the statutes is created to read:

20 77.52 (7b) Any person who may register under sub. (7) may designate an agent,
21 as defined in s. 77.524 (1) (ag), to register with the department under sub. (7), in the
22 manner prescribed by the department.

23 **SECTION 153.** 77.52 (12) of the statutes is amended to read:

24 77.52 (12) A person who operates as a seller in this state without a permit or
25 after a permit has been suspended or revoked or has expired, unless the person has

Items or property under 77.52 (1) (b) a (c)

1 a temporary permit under sub. (11), and each officer of any corporation, partnership
 2 member, limited liability company member, or other person authorized to act on
 3 behalf of a seller who so operates, is guilty of a misdemeanor. Permits shall be held
 4 only by persons actively operating as sellers of tangible personal property, specified
 5 digital goods, additional digital goods, or taxable services. Any person not so
 6 operating shall forthwith surrender that person's permit to the department for
 7 cancellation. The department may revoke the permit of a person found not to be
 8 actively operating as a seller of tangible personal property, specified digital goods,
 9 additional digital goods, or taxable services.

SECTION 154. 77.52 (13) of the statutes is amended to read:

10
 11 77.52 (13) For the purpose of the proper administration of this section and to
 12 prevent evasion of the sales tax it shall be presumed that all receipts are subject to
 13 the tax until the contrary is established. The burden of proving that a sale of tangible
 14 personal property, specified digital goods, additional digital goods, or services is not
 15 a taxable sale at retail is upon the person who makes the sale unless that person
 16 takes from the purchaser ~~a~~ an electronic or a paper certificate, in a manner
 17 prescribed by the department, to the effect that the property, digital good or service
 18 is purchased for resale or is otherwise exempt; except that no certificate is required
 19 for sales of cattle, sheep, goats, and pigs that are sold at an animal market, as defined
 20 in s. 95.68 (1) (ag), and no certificate is required for sales of commodities, as defined
 21 in 7 USC 2, that are consigned for sale in a warehouse in or from which the
 22 commodity is deliverable on a contract for future delivery subject to the rules of a
 23 commodity market regulated by the U.S. commodity futures trading commission if
 24 upon the sale the commodity is not removed from the warehouse the sale of tangible
 25 personal property, specified digital goods, additional digital goods, and services that

Item 153

of the tax otherwise applicable

tax otherwise applicable

1 are exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (15), (17), (20n), (21), (22b),
2 (30), (31), (32), (35), (36), (37), (42), (44), (45), and (46), except as provided in s. 77.54
3 (30) (e) and (f). *(51), and (52)^*

4 **SECTION 155.** 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are
5 consolidated, renumbered 77.52 (14) (a) and amended to read:

6 77.52 (14) (a) The certificate referred to in sub. (13) relieves the seller ~~from the~~
7 ~~burden of proof~~ only if any of the following is true: 1. The certificate is taken in good
8 faith the seller obtains a fully completed exemption certificate, or the information
9 required to prove the exemption, from a person who is engaged as a seller of tangible
10 personal property or taxable services and who holds the permit provided for in sub.
11 (9) and who, at the time of purchasing purchaser no later than 90 days after the date
12 of the sale of the tangible personal property, specified digital goods, additional digital
13 goods, or services, intends to sell it in the regular course of operations or is unable
14 to ascertain at the time of purchase whether the property or service will be sold or
15 will be used for some other purpose. (b) except as provided in par. (am). The
16 certificate under sub. (13) shall not relieve the seller of the burden of proof if the seller
17 fraudulently fails to collect sales tax, solicits the purchaser to claim an unlawful
18 exemption, accepts an exemption certificate from a purchaser who claims to be an
19 entity that is not subject to the taxes imposed under this subchapter, if the subject
20 of the transaction sought to be covered by the exemption certificate is received by the
21 purchaser at a location operated by the seller in this state and the exemption
22 certificate clearly and affirmatively indicates that the claimed exemption is not
23 available in this state. The certificate referred to in sub. (13) shall be signed by and
24 bear the name and address of provide information that identifies the purchaser, and
25 shall indicate the general character of the tangible personal property or service sold

items or property under ^{subo} s. 77.54 (1)(b) or (c)

items or property under s. 77.54 (1)(b) or (c)

1 ~~by the purchaser and the basis for the claimed exemption and a paper certificate~~
2 shall be signed by the purchaser. The certificate shall be in such form as the
3 department prescribes by rule.

4 **SECTION 156.** 77.52 (14) (a) 2. of the statutes is repealed.

5 **SECTION 157.** 77.52 (14) (am) of the statutes is created to read:

6 77.52 (14) (am) If the seller has not obtained a fully completed exemption
7 certificate or the information required to prove the exemption, as provided in par. (a),
8 the seller may, no later than 120 days after the department requests that the seller
9 substantiate the exemption, either provide proof of the exemption to the department
10 by other means or obtain, in good faith, a fully completed exemption certificate from
11 the purchaser.

12 **SECTION 158.** 77.52 (15) of the statutes is amended to read:

13 77.52 (15) If a purchaser who ~~gives a resale certificate~~ purchases tangible
14 personal property, specified digital goods, additional digital goods, or taxable
15 services without paying a sales tax or use tax on such purchase because such
16 property, ^{items} goods, or services were for resale makes any use of the property, ^{items} goods, or
17 services other than retention, demonstration or display while holding it the property,
18 goods, or services for sale, lease or rental in the regular course of the purchaser's
19 operations, the use shall be taxable to the purchaser under s. 77.53 as of the time that
20 the property is, goods, or services are first used by the purchaser, and the sales
21 purchase price of the property, goods, or services to the purchaser shall be the
22 measure of the tax. Only when there is an unsatisfied use tax liability on this basis
23 because the seller has provided incorrect information about that transaction to the
24 department shall the seller be liable for sales tax with respect to the sale of the
25 property to the purchaser.

System or property under s. 77.52 (1)(b) or (c)

1 **SECTION 159.** 77.52 (16) of the statutes is amended to read:

2 77.52 (16) Any person who gives a resale certificate for property, specified
3 digital goods, additional digital goods, or services which that person knows at the
4 time of purchase is not to be resold by that person in the regular course of that
5 person's operations as a seller for the purpose of evading payment to the seller of the
6 amount of the tax applicable to the transaction is guilty of a misdemeanor. Any
7 person certifying to the seller that the sale of property, specified digital goods,
8 additional digital goods, or taxable service is exempt, knowing at the time of
9 purchase that it is not exempt, for the purpose of evading payment to the seller of the
10 amount of the tax applicable to the transaction, is guilty of a misdemeanor.

11 **SECTION 160.** 77.52 (19) of the statutes is amended to read:

12 77.52 (19) The department shall by rule provide for the efficient collection of
13 the taxes imposed by this subchapter on sales of property, specified digital goods,
14 additional digital goods, or services by persons not regularly engaged in selling at
15 retail in this state or not having a permanent place of business, but who are
16 temporarily engaged in selling from trucks, portable roadside stands, concessions at
17 fairs and carnivals, and the like. The department may authorize such persons to sell
18 property, specified digital goods, or additional digital goods or sell, perform, or
19 furnish services on a permit or nonpermit basis as the department by rule prescribes
20 and failure of any person to comply with such rules constitutes a misdemeanor.

21 **SECTION 161.** 77.52 (20) of the statutes is created to read:

22 77.52 (20) (a) Except as provided in par. (b), the entire sales price of a bundled
23 transaction is subject to the tax imposed under this subchapter.

24 (b) At the retailer's option, if the retailer can identify, by reasonable and
25 verifiable standards from the retailer's books and records that are kept in the

1 ordinary course of its business for other purposes, including purposes unrelated to
2 taxes, the portion of the price that is attributable to products that are not subject to
3 the tax imposed under this subchapter, that portion of the sales price is not taxable
4 under this subchapter. This paragraph does not apply to a bundled transaction that
5 contains food and food ingredients, drugs, durable medical equipment, mobility
6 enhancing equipment, prosthetic devices, or medical supplies.

7 **SECTION 162.** 77.52 (21) of the statutes is created to read:

8 77.52 (21) A person who provides a product that is not a distinct and
9 identifiable product because it is provided free of charge, as provided in s. 77.51 (3pf)
10 (b), is the consumer of that product and shall pay the tax imposed under this
11 subchapter on the purchase price of that product.

12 **SECTION 163.** 77.52 (22) of the statutes is created to read:

13 77.52 (22) With regard to transactions described in s. 77.51 (1f) (b), the service
14 provider is the consumer of the tangible personal property, specified digital goods,
15 or additional digital goods and shall pay the tax imposed under this subchapter on
16 the purchase price of the property or goods.

17 **SECTION 164.** 77.52 (23) of the statutes is created to read:

18 77.52 (23) With regard to transactions described in s. 77.51 (1f) (c), the service
19 provider is the consumer of the service that is essential to the use or receipt of the
20 other service and shall pay the tax imposed under this subchapter on the purchase
21 price of the ~~property or goods~~ (Not) INSERT 56-21 ✓

22 **SECTION 165.** 77.522 of the statutes is created to read:

23 **77.522 Sourcing. (1) GENERAL.** (a) In this section:

24 1. "Direct mail form" means a form for direct mail prescribed by the
25 department.

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

5 3. "Transportation equipment" means any of the following:

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

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

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

16 d. Containers that are designed for use on the vehicles described in subd. 4. a.
17 to c. and component parts attached to or secured on such vehicles.

18 (b) Except as provided in par. (c) and subs. (2), (3), and (4), the location of a sale
19 is determined as follows:

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

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

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

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

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

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

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

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

18 (c) The sale of direct mail occurs at the location from which the direct mail is
19 shipped, if the purchaser does not provide to the seller a direct pay permit, a direct
20 mail form, or other information that indicates the appropriate taxing jurisdiction to
21 which the direct mail is delivered to the ultimate recipients. If the purchaser
22 provides a direct mail form or direct pay permit to the seller, the purchaser shall pay
23 or remit, as appropriate, to the department the tax imposed under s. 77.53 on all
24 purchases for which the tax is due and the seller is relieved from liability for
25 collecting such tax ~~or that satisfy the requirements under par. (e) or (f).~~ A direct mail

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

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

14 (b) The lease or rental of motor vehicles, trailers, semitrailers, and aircraft,
15 that are not transportation equipment, occurs at the primary location of such motor
16 vehicles, trailers, semitrailers, or aircraft as indicated by an address for the property
17 that is provided by the lessee and that is available to the lessor in records that the
18 lessor maintains in the ordinary course of the lessor's business, if the use of such an
19 address does not constitute bad faith, except that a lease or rental under this
20 paragraph that requires only one payment occurs at the location determined under
21 sub. (1) (b). The location of a lease or rental as determined under this paragraph shall
22 not be altered by any intermittent use of the property at different locations.

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

*items or property under so 77.52(1)
(b) or (c)^*

1 (d) A license of tangible personal property, specified digital goods, or additional
2 digital goods shall be treated as a lease or rental of tangible personal property under
3 this subsection.

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

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

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

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

13 4. "Customer" means a person who enters into a contract with a seller of
14 telecommunications services or, in any transaction for which the end user is not the
15 person who entered into a contract with the seller of telecommunications services,
16 the end user of the telecommunications services. "Customer" does not include a
17 person who resells telecommunications services or, for mobile telecommunications
18 services, a serving carrier under an agreement to serve a customer outside the home
19 service provider's licensed service area.

20 5. "Customer channel termination point" means the location where a customer
21 inputs or receives communications.

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

23 7. "Home service provider" means a home service provider under section 124
24 (5) of P.L. 106-252.

1 8. "Mobile telecommunications service" means a mobile telecommunications
2 service under 4 USC 116 to 126, as amended by P.L. 106-252.

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

5 10. "Postpaid calling service" means a telecommunications service that is
6 obtained by paying for it on a call-by-call basis using a bankcard, travel card, credit
7 card, debit card, or similar method, or by charging it to a telephone number that is
8 not associated with the location where the telecommunications service originates or
9 terminates. "Postpaid calling service" includes a telecommunications service, not
10 including a prepaid wireless calling service, that would otherwise be a prepaid
11 calling service except that the service provided to the customer is not exclusively a
12 telecommunications service.

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

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

17 16. "Radiotelephone service" means transmitting sound from one place to
18 another by means of radio.

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

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

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

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

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

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

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

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

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

12 (h) The sale of ~~a telecommunications~~ Internet access service occurs at the
13 customer's place of primary use.

14 (i) The sale of ancillary services occurs at the customer's place of primary use.

15 (j) If the location of the customer's service address, channel termination point,
16 or place of primary use is not known, the location where the seller receives or hands
17 off the signal shall be considered, for purposes of this section, the customer's service
18 address, channel termination point, or place of primary use.

19 **(4) FLORISTS.** (a) For purposes of this subsection, "retail florist" means a person
20 engaged in the business of selling cut flowers, floral arrangements, and potted plants
21 and who prepares such flowers, floral arrangements, and potted plants. "Retail
22 florist" does not include a person who sells cut flowers, floral arrangements, and
23 potted plants primarily by mail or via the Internet.

24 (b) The sale of tangible personal property by a retail florist who takes an order
25 from a purchaser occurs at the location where the retail florist takes the order, if the

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1 retail florist forwards the order to another retail florist who is at a location other than
2 the location of the florist who takes the order and who transfers the tangible personal
3 property to a person identified by the purchaser.

4 (c) This subsection does not apply to sales occurring on or after January 1, 2008

2010

5 SECTION 166. 77.523 (title) of the statutes is repealed.

6 SECTION 167. 77.523 of the statutes is renumbered 77.59 (9p) (a) and amended
7 to read:

8 77.59 (9p) (a) If a customer purchases a service that is subject to 4 USC 116
9 to 126, as amended by P.L. 106-252, and if the customer believes that the amount
10 of the tax assessed for the service under this subchapter or the place of primary use
11 or taxing jurisdiction assigned to the service is erroneous, the customer may request
12 that the service provider correct the alleged error by sending a written notice to the
13 service provider. The notice shall include a description of the alleged error, the street
14 address for the customer's place of primary use of the service, the account name and
15 number of the service for which the customer seeks a correction, and any other
16 information that the service provider reasonably requires to process the request.
17 Within 60 days from the date that a service provider receives a request under this
18 section paragraph, the service provider shall review its records to determine the
19 customer's taxing jurisdiction. If the review indicates that there is no error as
20 alleged, the service provider shall explain the findings of the review in writing to the
21 customer. If the review indicates that there is an error as alleged, the service
22 provider shall correct the error and shall refund or credit the amount of any tax
23 collected erroneously, along with the related interest, as a result of the error from the
24 customer in the previous 48 months, consistent with s. 77.59 (4). A customer may
25 take no other action against the service provider, or commence any action, to correct

1 an alleged error in the amount of the tax assessed under this subchapter on a service
2 that is subject to 4 USC 116 to 126, as amended by P.L. 106-252, or to correct an
3 alleged error in the assigned place of primary use or taxing jurisdiction, unless the
4 customer has exhausted his or her remedies under this ~~section~~ paragraph.

5 **SECTION 168.** 77.524 (1) (a) of the statutes is renumbered 77.524 (1) (am).

6 **SECTION 169.** 77.524 (1) (ag) of the statutes is created to read:

7 77.524 (1) (ag) "Agent" means a person appointed by a seller to represent the
8 seller before the states that are signatories to the agreement, as defined in s. 77.65
9 (2) (a).

10 **SECTION 170.** 77.524 (1) (b) of the statutes is renumbered 77.51 (1g) and
11 amended to read:

12 77.51 (1g) "Certified service provider" means an agent that is certified jointly
13 by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and
14 that performs all of a seller's sales tax and use tax functions related to the seller's
15 retail sales, except that a certified service provider is not responsible for a retailer's
16 obligation to remit tax on the retailer's own purchases.

17 **SECTION 171.** 77.525 of the statutes is amended to read:

18 **77.525 Reduction to prevent double taxation.** Any person who is subject
19 to the tax under s. 77.52 (2) (a) 5. ~~a.~~ on telecommunications services that terminate
20 in this state and who has paid a similar tax on the same services to another state may
21 reduce the amount of the tax remitted to this state by an amount equal to the similar
22 tax properly paid to another state on those services or by the amount due this state
23 on those services, whichever is less. That person shall refund proportionally to the
24 persons to whom the tax under s. 77.52 (2) (a) 5. ~~a.~~ was passed on an amount equal
25 to the amounts not remitted.