



State of Wisconsin
2007 - 2008 LEGISLATURE

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stays

2007 BILL

Repeal

Vt

1 AN ACT *to repeal* 46.513, 77.51 (4), 77.51 (14) (d), 77.51 (14) (i), 77.51 (14) (k),
2 77.51 (14) (L), 77.51 (14r), 77.51 (15), 77.52 (2) (a) 5. b., 77.52 (3m), 77.52 (3n),
3 77.52 (6), 77.52 (14) (a) 2., 77.523 (title), 77.53 (4), 77.54 (14g), 77.54 (14s), 77.54
4 (20), 77.54 (20m), 77.54 (22), 77.54 (40), 77.61 (3), 77.65 (2) (c), 77.72 (title),
5 77.72 (2) and (3) and 77.77 (2); *to renumber* 77.51 (6m), 77.51 (14) (g), 77.524
6 (1) (a) and 77.54 (48) (b); *to renumber and amend* 77.51 (1), 77.52 (1), 77.523,
7 77.524 (1) (b), 77.53 (9m), 77.53 (11), 77.54 (48) (a), 77.61 (2), 77.72 (1) and 77.77
8 (1); *to consolidate, renumber and amend* 77.52 (14) (a) (intro.) and 1. and
9 (b); *to amend* 66.0615 (1m) (f) 2., 70.111 (23), 71.07 (5e) (b), 71.07 (5e) (c) 1.,
10 71.07 (5e) (c) 3., 71.28 (5e) (b), 71.28 (5e) (c) 1., 71.28 (5e) (c) 3., 71.47 (5e) (b),
11 71.47 (5e) (c) 1., 71.47 (5e) (c) 3., 73.03 (50) (d), 76.07 (4g) (b) 8., 77.51 (5), 77.51
12 (9) (a), 77.51 (9) (am), 77.51 (10), 77.51 (12) (b), 77.51 (13) (a), 77.51 (13) (b),
13 77.51 (13) (c), 77.51 (13) (d), 77.51 (13) (e), 77.51 (13) (f), 77.51 (13) (k), 77.51 (13)
14 (m), 77.51 (13) (n), 77.51 (13) (o), 77.51 (13g) (intro.), 77.51 (13r), 77.51 (14)

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1 (intro.), 77.51 (14) (a), 77.51 (14) (b), 77.51 (14) (c), 77.51 (14) (h), 77.51 (14) (j),
2 77.51 (14g) (a), 77.51 (14g) (b), 77.51 (14g) (bm), 77.51 (14g) (c), 77.51 (14g) (cm),
3 77.51 (14g) (d), 77.51 (14g) (e), 77.51 (14g) (em), 77.51 (14g) (f), 77.51 (14g) (g),
4 77.51 (14g) (h), 77.51 (17) (intro.), 77.51 (18), 77.51 (20), 77.51 (21), 77.51 (21m),
5 77.51 (22) (a), 77.51 (22) (b), 77.52 (2) (intro.), 77.52 (2) (a) 5m., 77.52 (2) (a) 10.,
6 77.52 (2m) (a), 77.52 (2m) (b), 77.52 (4), 77.52 (7), 77.52 (12), 77.52 (13), 77.52
7 (15), 77.52 (16), 77.52 (19), 77.525, 77.53 (1), 77.53 (2), 77.53 (3), 77.53 (9), 77.53
8 (10), 77.53 (12), 77.53 (14), 77.53 (15), 77.53 (16), 77.53 (17), 77.53 (17m), 77.53
9 (17r) (a), 77.53 (18), 77.54 (1), 77.54 (2), 77.54 (2m), 77.54 (3) (a), 77.54 (3m)
10 (intro.), 77.54 (4), 77.54 (5) (intro.), 77.54 (6) (intro.), 77.54 (7m), 77.54 (8), 77.54
11 (9), 77.54 (9a) (intro.), 77.54 (10), 77.54 (11), 77.54 (12), 77.54 (13), 77.54 (14)
12 (intro.), 77.54 (14) (a), 77.54 (14) (b), 77.54 (14) (f) (intro.), 77.54 (15), 77.54 (16),
13 77.54 (17), 77.54 (18), 77.54 (21), 77.54 (23m), 77.54 (25), 77.54 (25m), 77.54
14 (26), 77.54 (26m), 77.54 (27), 77.54 (28), 77.54 (29), 77.54 (30) (a) (intro.), 77.54
15 (30) (c), 77.54 (31), 77.54 (32), 77.54 (33), 77.54 (35), 77.54 (36), 77.54 (37), 77.54
16 (38), 77.54 (39), 77.54 (41), 77.54 (42), 77.54 (43), 77.54 (44), 77.54 (45), 77.54
17 (46), 77.54 (46m), 77.54 (47) (intro.), 77.54 (47) (b) 1., 77.54 (47) (b) 2., 77.54 (49),
18 77.54 (54), 77.54 (56), 77.55 (1) (intro.), 77.55 (2), 77.55 (2m), 77.55 (3), 77.56
19 (1), 77.57, 77.58 (3) (a), 77.58 (3) (b), 77.58 (6), 77.59 (5m), 77.59 (9), 77.61 (1)
20 (b), 77.61 (1) (c), 77.61 (4) (a), 77.61 (4) (c), 77.61 (11), 77.65 (2) (a), 77.65 (2) (e),
21 77.65 (2) (f), 77.66, 77.70, 77.705, 77.706, 77.707 (1), 77.707 (2), 77.71 (1), 77.71
22 (2), 77.71 (3), 77.71 (4), 77.73 (2), 77.75, 77.785 (1), 77.785 (2), 77.98, 77.981,
23 77.99, 77.991 (2), 77.994 (1) (intro.), 77.9941 (4), 77.995 (2), 77.996 (6), 86.195
24 (3) (b) 3., 218.0171 (2) (cq), 229.68 (15) and 229.824 (15); **to repeal and**
25 **recreate** 77.51 (7), 77.51 (12) (a), 77.51 (17m), 77.52 (1b), 77.52 (2) (a) 5. a.,

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1 77.52 (2n), 77.53 (1b), 77.63, 77.982 (2), 77.9951 (2) and 77.9972 (2); and **to**
2 **create** 20.566 (1) (ho), 73.03 (28e), 73.03 (50b), 73.03 (61), 77.51 (1b), 77.51
3 (1ba), 77.51 (1f), 77.51 (1fm), 77.51 (1n), 77.51 (1p), 77.51 (1r), 77.51 (2k), 77.51
4 (2m), 77.51 (3c), 77.51 (3n), 77.51 (3pd), 77.51 (3pe), 77.51 (3pf), 77.51 (3pj),
5 77.51 (3pm), 77.51 (3pn), 77.51 (3po), 77.51 (3rm), 77.51 (3t), 77.51 (5d), 77.51
6 (5n), 77.51 (5r), 77.51 (7g), 77.51 (7k), 77.51 (7m), 77.51 (8m), 77.51 (9p), 77.51
7 (9s), 77.51 (10d), 77.51 (10f), 77.51 (10m), 77.51 (10n), 77.51 (10r), 77.51 (10s),
8 77.51 (11d), 77.51 (11m), 77.51 (12m), 77.51 (12p), 77.51 (13g) (c), 77.51 (13rm),
9 77.51 (13rn), 77.51 (15a), 77.51 (15b), 77.51 (17w), 77.51 (21n), 77.51 (21p),
10 77.51 (21q), 77.51 (22) (bm), 77.51 (24), 77.51 (25), 77.51 (26), 77.52 (1) (b), 77.52
11 (1) (c), 77.52 (2) (a) 5. am., 77.52 (2) (a) 5. c., 77.52 (2) (a) 13m., 77.52 (7b), 77.52
12 (14) (am), 77.52 (20), 77.52 (21), 77.52 (22), 77.52 (23), 77.522, 77.524 (1) (ag),
13 77.53 (9m) (b), 77.53 (9m) (c), 77.53 (11) (b), 77.54 (20n), 77.54 (20r), 77.54 (22b),
14 77.54 (51), 77.54 (52), 77.58 (6m), 77.58 (9a), 77.585, 77.59 (2m), 77.59 (9n),
15 77.59 (9p) (b), 77.59 (9r), 77.60 (13), 77.61 (2) (b), 77.61 (3m), 77.61 (5m), 77.61
16 (16), 77.61 (17), 77.65 (4) (fm), 77.67, 77.73 (3) and 77.77 (1) (b) of the statutes;
17 **relating to:** the streamlined sales and use tax agreement.

Analysis by the Legislative Reference Bureau

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

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

For further information see the *state 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.** 20.566 (1) (ho) of the statutes is created to read:

2 20.566 (1) (ho) *Collections under multistate streamlined sales tax project.* From
3 moneys collected under the multistate streamlined sales tax project as provided
4 under s. 73.03 (28e), a sum sufficient to pay the dues necessary to participate in the
5 governing board of the multistate streamlined sales tax project.

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

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

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

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

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

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

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1 71.07 (5e) (b) *Filing claims.* Subject to the limitations provided in this
2 subsection and subject to 2005 Wisconsin Act 479, section 17, beginning in the first
3 taxable year following the taxable year in which the claimant claims ~~an exemption~~
4 a deduction under s. ~~77.54 (48)~~ 77.585 (9), a claimant may claim as a credit against
5 the taxes imposed under ss. 71.02 and 71.08, up to the amount of those taxes, in each
6 taxable year for 2 years, the amount certified by the department of commerce that
7 resulted from the claimant claimed as an exemption claiming a deduction under s.
8 ~~77.54 (48)~~ 77.585 (9).

9 **SECTION 6.** 71.07 (5e) (c) 1. of the statutes is amended to read:

10 71.07 (5e) (c) 1. No credit may be allowed under this subsection unless the
11 claimant satisfies the requirements under s. ~~77.54 (48)~~ 77.585 (9).

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

13 71.07 (5e) (c) 3. The total amount of the credits and ~~exemptions~~ the sales and
14 use tax resulting from the deductions claimed under s. 77.585 (9) that may be claimed
15 by all claimants under this subsection and ss. 71.28 (5e), 71.47 (5e), and ~~77.54 (48)~~
16 77.585 (9) is \$7,500,000, as determined by the department of commerce.

17 **SECTION 8.** 71.28 (5e) (b) of the statutes is amended to read:

18 71.28 (5e) (b) *Filing claims.* Subject to the limitations provided in this
19 subsection and subject to 2005 Wisconsin Act 479, section 17, beginning in the first
20 taxable year following the taxable year in which the claimant claims ~~an exemption~~
21 a deduction under s. ~~77.54 (48)~~ 77.585 (9), a claimant may claim as a credit against
22 the taxes imposed under s. 71.23, up to the amount of those taxes, in each taxable
23 year for 2 years, the amount certified by the department of commerce that resulted
24 from the claimant claimed as an exemption claiming a deduction under s. ~~77.54 (48)~~
25 77.585 (9).

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1 **SECTION 9.** 71.28 (5e) (c) 1. of the statutes is amended to read:

2 71.28 (5e) (c) 1. No credit may be allowed under this subsection unless the
3 claimant satisfies the requirements under s. ~~77.54 (48)~~ 77.585 (9).

4 **SECTION 10.** 71.28 (5e) (c) 3. of the statutes is amended to read:

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

9 **SECTION 11.** 71.47 (5e) (b) of the statutes is amended to read:

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

18 **SECTION 12.** 71.47 (5e) (c) 1. of the statutes is amended to read:

19 71.47 (5e) (c) 1. No credit may be allowed under this subsection unless the
20 claimant satisfies the requirements under s. ~~77.54 (48)~~ 77.585 (9).

21 **SECTION 13.** 71.47 (5e) (c) 3. of the statutes is amended to read:

22 71.47 (5e) (c) 3. The total amount of the credits and ~~exemptions~~ the sales and
23 use tax resulting from the deductions claimed under s. 77.585 (9) that may be claimed
24 by all claimants under this subsection and ss. 71.07 (5e), 71.28 (5e), and ~~77.54 (48)~~
25 77.585 (9) is \$7,500,000, as determined by the department of commerce.

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1 **SECTION 14.** 73.03 (28e) of the statutes is created to read:

2 73.03 (28e) To participate as a member state of the streamlined sales tax
3 governing board which administers the agreement, as defined in s. 77.65 (2) (a), and
4 includes having the governing board enter into contracts that are necessary to
5 implement the agreement on behalf of the member states, and to allocate a portion
6 of the amount collected under ch. 77 through the agreement to the appropriation
7 under s. 20.566 (1) (ho) to pay the dues necessary to participate in the governing
8 board. The department shall allocate the remainder of such collections to the general
9 fund.

10 **SECTION 15.** 73.03 (50) (d) of the statutes is amended to read:

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

19 **SECTION 16.** 73.03 (50b) of the statutes is created to read:

20 73.03 (50b) To waive the fee established under sub. (50) for applying for and
21 renewing the business tax registration certificate, if the person who is applying for
22 or renewing the certificate is not required for purposes of ch. 77 to hold such a
23 certificate.

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

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1 73.03 (61) To do all of the following related to the Uniform Sales and Use Tax
2 Administration Act:

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

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

7 (c) Consistent with the agreement, as defined in s. 77.65 (2) (a), establish
8 performance standards and eligibility criteria for a seller that sells tangible personal
9 property, items or property under s. 77.52 (1) (b) or (c), or taxable services in at least
10 5 states that are signatories to the agreement, as defined in s. 77.65 (2) (a); that has
11 total annual sales revenue of at least \$500,000,000; that has a proprietary system
12 that calculates the amount of tax owed to each taxing jurisdiction in which the seller
13 sells tangible personal property or taxable services; and that has entered into a
14 performance agreement with the states that are signatories to the agreement, as
15 defined in s. 77.65 (2) (a). For purposes of this paragraph, "seller" includes an
16 affiliated group of sellers using the same proprietary system to calculate the amount
17 of tax owed in each taxing jurisdiction in which the sellers sell tangible personal
18 property or taxable services.

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

23 (e) Maintain a database that is accessible to sellers and certified service
24 providers, as defined in s. 77.51 (1g), that indicates whether items defined in

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1 accordance with the Uniform Sales and Use Tax Administration Act are taxable or
2 nontaxable.

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

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

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

15 **SECTION 18.** 76.07 (4g) (b) 8. of the statutes is amended to read:

16 76.07 (4g) (b) 8. Determine transport-related revenue by adding public service
17 revenue allocated to this state on the basis of routes for which the company is
18 authorized to receive subsidy payments, mutual aid allocated to this state on the
19 basis of the ratio of transport revenues allocated to this state to transport revenues
20 everywhere in the previous year, in-flight sales allocated to this state as they are
21 allocated under s. ~~77.51 (14r)~~ 77.522 and all other transport-related revenues from
22 sales made in this state.

23 **SECTION 19.** 77.51 (1) of the statutes is renumbered 77.51 (1fd) and amended
24 to read:

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1 77.51 (1fd) "Business" includes any activity engaged in by any person or caused
2 to be engaged in by any person with the object of gain, benefit or advantage, either
3 direct or indirect, and includes also the furnishing and distributing of tangible
4 personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services
5 for a consideration by social clubs and fraternal organizations to their members or
6 others.

7 **SECTION 20.** 77.51 (1b) of the statutes is created to read:

8 77.51 (1b) "Alcoholic beverage" means a beverage that is suitable for human
9 consumption and that contains 0.5 percent or more of alcohol by volume.

10 **SECTION 21.** 77.51 (1ba) of the statutes is created to read:

11 77.51 (1ba) "Ancillary services" means services that are associated with or
12 incidental to providing telecommunications services, including detailed
13 telecommunications billing, directory assistance, vertical service, and voice mail
14 services.

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

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

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

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

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1 2. The retail sale of a service and items or property under s. 77.52 (1) (b) or (c),
2 if such property or items are essential to the use of the service, and provided
3 exclusively in connection with the service, and if the true object of the transaction
4 is the service.

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

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

14 (e) The retail sale of taxable tangible personal property or items or property
15 under s. 77.52 (1) (b) or (c) and tangible personal property or items or property under
16 s. 77.52 (1) (b) or (c) that is exempt from the taxes imposed under this subchapter,
17 if the transaction includes food and food ingredients, drugs, durable medical
18 equipment, mobility-enhancing equipment, prosthetic devices, or medical supplies
19 and if the seller's purchase price or the sales price of the taxable tangible personal
20 property or items or property under s. 77.52 (1) (b) or (c) is no greater than 50 percent
21 of the seller's total purchase price or sales price of all the tangible personal property
22 or items or property under s. 77.52 (1) (b) or (c) included in what would otherwise be
23 a bundled transaction, as determined by the seller using either the seller's purchase
24 price or the sales price, but not a combination of both.

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

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

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

6 77.51 (1n) "Computer" means an electronic device that accepts information in
7 digital or similar form and that manipulates such information to achieve a result
8 based on a sequence of instructions.

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

10 77.51 (1p) "Computer software" means a set of coded instructions designed to
11 cause a computer or automatic data processing equipment to perform a task.

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

13 77.51 (1r) "Conference bridging service" means an ancillary service that links
14 2 or more participants of an audio or video conference call and may include providing
15 a telephone number, but does not include the telecommunications services used to
16 reach the conference bridge.

17 **SECTION 27.** 77.51 (2k) of the statutes is created to read:

18 77.51 (2k) "Delivered electronically" means delivered to a purchaser by means
19 other than by tangible storage media.

20 **SECTION 28.** 77.51 (2m) of the statutes is created to read:

21 77.51 (2m) "Delivery charges" means charges by a seller to prepare and deliver
22 tangible personal property or services to a location designated by the purchaser of
23 the tangible personal property or services, including charges for transportation,
24 shipping, postage, handling, crating, and packing.

25 **SECTION 29.** 77.51 (3c) of the statutes is created to read:

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1 77.51 (3c) "Detailed telecommunications billing service" means an ancillary
2 service that separately indicates information pertaining to individual calls on a
3 customer's billing statement.

4 **SECTION 30.** 77.51 (3n) of the statutes is created to read:

5 77.51 (3n) "Dietary supplement" means a product, other than tobacco, that is
6 intended to supplement a person's diet, if all of the following apply:

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

9 1. A vitamin.

10 2. A mineral.

11 3. An herb or other botanical.

12 4. An amino acid.

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

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

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

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

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

23 77.51 (3pd) "Direct mail" means printed material that is delivered by the U.S.
24 postal service or other delivery service to a mass audience or to addressees on a
25 mailing list provided by or at the direction of the purchaser of the printed material,

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1 if the cost of the printed material or any tangible personal property or items or
2 property under s. 77.52 (1) (b) or (c) included with the printed material is not billed
3 directly to the recipients of the printed material. "Direct mail" includes any tangible
4 personal property or items or property under s. 77.52 (1) (b) or (c) provided directly
5 or indirectly by the purchaser of the printed material to the seller of the printed
6 material for inclusion in any package containing the printed material, including
7 billing invoices, return envelopes, and additional marketing materials. "Direct mail"
8 does not include multiple items of printed material delivered to a single address.

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

10 77.51 (3pe) "Directory assistance" means an ancillary service that provides
11 telephone numbers or addresses.

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

13 77.51 (3pf) "Distinct and identifiable product" does not include any of the
14 following:

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

18 (b) A product that is provided free of charge to the consumer in conjunction with
19 the purchase of another product, if the sales price of the other product does not vary
20 depending on whether the product provided free of charge is included in the
21 transaction.

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

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

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1 77.51 (3pj) "Drug" means a compound, substance, or preparation, or any
2 component of them, other than food and food ingredients, dietary supplements, or
3 alcoholic beverages, to which any of the following applies:

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

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

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

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

11 77.51 (3pm) "Durable medical equipment" means equipment, including the
12 repair parts and replacement parts for the equipment that is primarily and
13 customarily used for a medical purpose related to a person; that can withstand
14 repeated use; that is not generally useful to a person who is not ill or injured; and that
15 is not placed in or worn on the body. "Durable medical equipment" does not include
16 mobility-enhancing equipment.

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

18 77.51 (3pn) "Eight hundred service" means a telecommunications service that
19 allows a caller to dial a toll-free number without incurring a charge for the call and
20 is marketed under "800," "855," "866," "877," or "888" toll-free calling, or any other
21 number designated as toll-free by the federal communications commission.

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

23 77.51 (3po) "Electronic" means relating to technology having electrical, digital,
24 magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

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1 77.51 (3rm) "Fixed wireless service" means a telecommunications service that
2 provides radio communication between fixed points.

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

4 77.51 (3t) "Food and food ingredient" means a substance in liquid,
5 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
6 for chewing, by humans and that is ingested or chewed for its taste or nutritional
7 value. "Food and food ingredient" does not include alcoholic beverages or tobacco.

8 **SECTION 40.** 77.51 (4) of the statutes, as affected by 2007 Wisconsin Acts 11 and
9 20, is repealed.

10 **SECTION 41.** 77.51 (5) of the statutes is amended to read:

11 77.51 (5) For purposes of subs. (13) (e) and (f) and ~~(14) (L)~~ (15a) and s. 77.52
12 (2m), "incidental" means depending upon or appertaining to something else as
13 primary; something necessary, appertaining to, or depending upon another which is
14 termed the principal; something incidental to the main purpose of the service.
15 Tangible personal property or items or property under s. 77.52 (1) (b) or (c)
16 transferred by a service provider is incidental to the service if the purchaser's main
17 purpose or objective is to obtain the service rather than the property or items, even
18 though the property or items may be necessary or essential to providing the service.

19 **SECTION 42.** 77.51 (5d) of the statutes is created to read:

20 77.51 (5d) "International telecommunications services" means
21 telecommunications services that originate or terminate in the United States,
22 including the District of Columbia and any U.S. territory or possession and originate
23 or terminate outside of the United States, including the District of Columbia and any
24 U.S. territory or possession.

25 **SECTION 43.** 77.51 (5n) of the statutes is created to read:

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1 77.51 (5n) “Interstate telecommunications services” means
2 telecommunications services that originate in one state or U.S. territory or
3 possession and terminate in a different state or U.S. territory or possession.

4 **SECTION 44.** 77.51 (5r) of the statutes is created to read:

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

8 **SECTION 45.** 77.51 (6m) of the statutes is renumbered 77.51 (5m).

9 **SECTION 46.** 77.51 (7) of the statutes is repealed and recreated to read:

10 77.51 (7) (a) “Lease or rental” means any transfer of possession or control of
11 tangible personal property for a fixed or indeterminate term and for consideration
12 and includes:

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

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

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

- 23 2. A transfer of possession or control of tangible personal property under any
24 agreement that requires transferring title to the tangible personal property after

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1 making all required payments and after paying an option price that does not exceed
2 the greater of \$100 or 1 percent of the total amount of the required payments.

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

7 (c) 1. Transfers described under par. (a) are 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 2. Transfers described under par. (b) are not considered a lease or rental,
12 regardless of whether such transfer is considered a lease or rental under generally
13 accepted accounting principles, or any provision of federal or local law, or any other
14 provision of state law.

15 **SECTION 47.** 77.51 (7g) of the statutes is created to read:

16 77.51 (7g) "Load-and-leave" means delivery to a purchaser by using a tangible
17 storage media that is not physically transferred to the purchaser.

18 **SECTION 48.** 77.51 (7k) of the statutes is created to read:

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

24 **SECTION 49.** 77.51 (7m) of the statutes is created to read:

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1 77.51 (7m) "Mobility-enhancing equipment" means equipment, including the
2 repair parts and replacement parts for the equipment, that is primarily and
3 customarily used to provide or increase the ability of a person to move from one place
4 to another; that may be used in a home or motor vehicle; and that is generally not
5 used by a person who has normal mobility. "Mobility-enhancing equipment" does
6 not include a motor vehicle or any equipment on a motor vehicle that is generally
7 provided by a motor vehicle manufacturer. "Mobility-enhancing equipment" does
8 not include durable medical equipment.

9 **SECTION 50.** 77.51 (8m) of the statutes is created to read:

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

18 **SECTION 51.** 77.51 (9) (a) of the statutes is amended to read:

19 77.51 (9) (a) Isolated and sporadic sales of tangible personal property, items or
20 property under s. 77.52 (1) (b) or (c), or taxable services where the infrequency, in
21 relation to the other circumstances, including the sales price and the gross profit,
22 support the inference that the seller is not pursuing a vocation, occupation or
23 business or a partial vocation or occupation or part-time business as a vendor of
24 personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services.
25 No sale of any tangible personal property, items or property under s. 77.52 (1) (b) or

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1 (c), or taxable service may be deemed an occasional sale if at the time of such sale the
2 seller holds or is required to hold a seller's permit, except that this provision does not
3 apply to an organization required to hold a seller's permit solely for the purpose of
4 conducting bingo games and except as provided in par. (am).

5 **SECTION 52.** 77.51 (9) (am) of the statutes is amended to read:

6 77.51 (9) (am) The sale of personal property, other than inventory held for sale,
7 previously used by a seller to conduct its trade or business at a location after that
8 person has ceased actively operating in the regular course of business as a seller of
9 tangible personal property, items or property under s. 77.52 (1) (b) or (c), or taxable
10 services at that location, even though the seller holds a seller's permit for one or more
11 other locations.

12 **SECTION 53.** 77.51 (9p) of the statutes is created to read:

13 77.51 (9p) "One nonitemized price" does not include a price that is separately
14 identified by product on a binding sales document, or other sales-related document,
15 that is made available to the customer in paper or electronic form, including an
16 invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement,
17 a periodic notice of rates and services, a rate card, or a price list.

18 **SECTION 54.** 77.51 (9s) of the statutes is created to read:

19 77.51 (9s) "Paging service" means a telecommunications service that transmits
20 coded radio signals to activate specific pagers and may include messages or sounds.

21 **SECTION 55.** 77.51 (10) of the statutes is amended to read:

22 77.51 (10) "Person" includes any natural person, firm, partnership, limited
23 liability company, joint venture, joint stock company, association, public or private
24 corporation, the United States, the state, including any unit or division of the state,
25 any county, city, village, town, municipal utility, municipal power district or other

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1 governmental unit, cooperative, unincorporated cooperative association, estate,
2 trust, receiver, personal representative, any other fiduciary, any other legal entity,
3 and any representative appointed by order of any court or otherwise acting on behalf
4 of others. "Person" also includes the owner of a single-owner entity that is
5 disregarded as a separate entity under ch. 71.

6 **SECTION 56.** 77.51 (10d) of the statutes is created to read:

7 77.51 (10d) "Prepaid calling service" means the right to exclusively access
8 telecommunications services, if that right is paid for in advance of providing such
9 services, requires using an access number or authorization code to originate calls,
10 and is sold in predetermined units or dollars that decrease with use in a known
11 amount.

12 **SECTION 57.** 77.51 (10f) of the statutes is created to read:

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

19 **SECTION 58.** 77.51 (10m) of the statutes is created to read:

20 77.51 (10m) (a) "Prepared food" means:

- 21 1. Food and food ingredients sold in a heated state.
- 22 2. Food and food ingredients heated by the retailer, except as provided in par.

23 (b).

- 24 3. Food and food ingredients sold with eating utensils that are provided by the
25 retailer of the food and food ingredients, including plates, knives, forks, spoons,

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1 glasses, cups, napkins, or straws. In this subdivision, "plate" does not include a
2 container or packaging used to transport food and food ingredients. For purposes of
3 this subdivision, a retailer provides utensils if any of the following applies:

4 a. The utensils are available to purchasers and the retailer's sales of prepared
5 food under subds. 1. and 2., soft drinks, and alcoholic beverages at an establishment
6 are more than 75 percent of the retailer's total sales at that establishment, as
7 determined under par. (c).

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

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

14 (b) "Prepared food" does not include:

15 1. For purposes of par. (a) 2. and 4., 2 or more food ingredients mixed or
16 combined by a retailer for sale as a single item, if the retailer's primary classification
17 in the 2002 North American Industry Classification System, published by the federal
18 office of management and budget, is manufacturing under subsector 311, not
19 including bakeries and tortilla manufacturing under industry group number 3118.

20 2. For purposes of par. (a) 2. and 4., 2 or more food ingredients mixed or
21 combined by a retailer for sale as a single item, sold unheated, and sold by volume
22 or weight.

23 3. For purposes of par. (a) 2. and 4., 2 bakery items made by a retailer, including
24 breads, rolls, pastries, buns, biscuits, bagels, croissants, donuts, danish, cakes,
25 tortes, pies, tarts, muffins, bars, cookies, and tortillas.

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1 4. For purposes of par. (a) 4., food and food ingredients that are only sliced,
2 repackaged, or pasteurized by a retailer.

3 5. For purposes of par. (a) 4., eggs, fish, meat, and poultry, and foods containing
4 any of them in raw form, that require cooking by the consumer, as recommended by
5 the food and drug administration in chapter 3, part 401.11 of its food code to prevent
6 food-borne illnesses.

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

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

12 b. A denominator that includes all food and food ingredients, including
13 prepared food, candy, dietary supplements, and soft drinks, but not including
14 alcoholic beverages.

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

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

23 3. For a retailer whose percentage determined under subd. 1. is greater than
24 75 percent, an item sold by the retailer that contains 4 or more servings packaged
25 as 1 item and sold for a single price does not become prepared food simply because

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1 the retailer makes utensils available to the purchaser of the item, but does become
2 prepared food if the retailer physically gives or hands utensils to the purchaser of the
3 item. For purposes of this subdivision 3. a., serving sizes are based on the
4 information contained on the label of each item sold, except that, if the item has no
5 label, the serving size is based on the retailer's reasonable determination.

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

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

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

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1 prospectively after the first 3 months of the retailer's operations if the actual
2 percentage is materially different from the estimated percentage.

3 **SECTION 59.** 77.51 (10n) of the statutes is created to read:

4 77.51 (10n) "Prescription" means an order, formula, or recipe that is issued by
5 any oral, written, electronic, or other means of transmission and by a person who is
6 authorized by the laws of this state to issue such an order, formula, or recipe.

7 **SECTION 60.** 77.51 (10r) of the statutes is created to read:

8 77.51 (10r) "Prewritten computer software" means any of the following:

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

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

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

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

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

23 **SECTION 61.** 77.51 (10s) of the statutes is created to read:

24 77.51 (10s) "Private communication service" means a telecommunications
25 service that entitles the customer to exclusive or priority use of a communications

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1 channel or group of communications channels, regardless of the manner in which the
2 communications channel or group of communications channels is connected, and
3 includes switching capacity, extension lines, stations, and other associated services
4 that are provided in connection with the use of such channel or channels.

5 **SECTION 62.** 77.51 (11d) of the statutes is created to read:

6 77.51 (11d) "Product" includes tangible personal property, items or property
7 under s. 77.52 (1) (b) and (c), and services.

8 **SECTION 63.** 77.51 (11m) of the statutes is created to read:

9 77.51 (11m) "Prosthetic device" means a device, including the repair parts and
10 replacement parts for the device, that is placed in or worn on the body to artificially
11 replace a missing portion of the body; to prevent or correct a physical deformity or
12 malfunction; or to support a weak or deformed portion of the body.

13 **SECTION 64.** 77.51 (12) (a) of the statutes, as affected by 2007 Wisconsin Act 20,
14 is repealed and recreated to read:

15 77.51 (12) (a) Any transfer of title, possession, ownership, enjoyment, or use
16 by: cash or credit transaction, exchange, barter, lease or rental, conditional or
17 otherwise, in any manner or by any means whatever of tangible personal property
18 or items or property under s. 77.52 (1) (b) or (c) for a consideration, including any
19 transaction for which a person's books and records show the transaction created,
20 with regard to the transferee, an obligation to pay a certain amount of money or an
21 increase in accounts payable or, with regard to the transferor, a right to receive a
22 certain amount of money or an increase in accounts receivable;

23 **SECTION 65.** 77.51 (12) (b) of the statutes is amended to read:

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1 77.51 (12) (b) A transaction whereby the possession of property or items or
2 property under s. 77.52 (1) (b) or (c) is transferred but the seller retains the title as
3 security for the payment of the price.

4 **SECTION 66.** 77.51 (12m) of the statutes is created to read:

5 77.51 (12m) (a) "Purchase price" means the total amount of consideration,
6 including cash, credit, property, and services, for which tangible personal property,
7 items or property under s. 77.52 (1) (b) or (c), or services are sold, leased, or rented,
8 valued in money, whether paid in money or otherwise, without any deduction for the
9 following:

10 1. The seller's cost of the property or items or property under s. 77.52 (1) (b) or
11 (c) sold.

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

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

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

18 b. If a shipment includes property that is subject to tax under this subchapter
19 and property that is not subject to tax under this subchapter, the amount of the
20 delivery charge that the seller allocates to the property that is subject to tax under
21 this subchapter based on the total purchase price of the property that is subject to
22 tax under this subchapter as compared to the total purchase price of all the property
23 or on the total weight of the property that is subject to tax under this subchapter as
24 compared to the total weight of all the property, except that if the seller does not make

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1 the allocation under this subd. 4. b., the purchaser shall allocate the delivery charge
2 amount, consistent with this subd. 4. b.

3 5. Installation charges.

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

5 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
6 3rd party, except as provided in par. (c); that are allowed by a seller; and that are
7 taken by a purchaser on a sale.

8 2. Interest, financing, and carrying charges from credit that is extended on a
9 sale of tangible personal property, items or property under s. 77.52 (1) (b) or (c), or
10 services, if the amount of the interest, financing, or carrying charges is separately
11 stated on the invoice, bill of sale, or similar document that the seller gives to the
12 purchaser.

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

16 4. Delivery charges for direct mail.

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

21 6. If a person who purchases a motor vehicle presents a statement issued under
22 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the
23 statement to the seller within 60 days from the date of receiving a refund under s.
24 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
25 s. 218.0171 (2) (cq), but not to exceed the purchase price from the sale of the motor

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1 vehicle. This subdivision applies only to the first motor vehicle purchased by a
2 person after receiving a refund under s. 218.0171 (2) (b) 2. b.

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

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

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

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

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

21 3. The amount of the consideration that is attributable to the sale is a fixed
22 amount and the seller is able to determine that amount at the time of the sale to the
23 purchaser.

24 4. Any of the following also applies:

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

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

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

11 **SECTION 67.** 77.51 (12p) of the statutes is created to read:

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

14 **SECTION 68.** 77.51 (13) (a) of the statutes is amended to read:

15 77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale
16 is mercantile in nature, of tangible personal property, items or property under s.
17 77.52 (1) (b) or (c), or a service specified under s. 77.52 (2) (a).

18 **SECTION 69.** 77.51 (13) (b) of the statutes is amended to read:

19 77.51 (13) (b) Every person engaged in the business of making sales of tangible
20 personal property or items or property under s. 77.52 (1) (b) or (c) for storage, use or
21 consumption or in the business of making sales at auction of tangible personal
22 property or items or property under s. 77.12 (1) (b) or (c) owned by the person or others
23 for storage, use or other consumption.

24 **SECTION 70.** 77.51 (13) (c) of the statutes is amended to read:

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1 77.51 (13) (c) When the department determines that it is necessary for the
2 efficient administration of this subchapter to regard any salespersons,
3 representatives, peddlers or canvassers as the agents of the dealers, distributors,
4 supervisors or employers under whom they operate or from whom they obtain the
5 tangible personal property or items or property under s. 77.52 (1) (b) or (c) sold by
6 them, irrespective of whether they are making the sales on their own behalf or on
7 behalf of such dealers, distributors, supervisors or employers, the department may
8 so regard them and may regard the dealers, distributors, supervisors or employers
9 as retailers for purposes of this subchapter.

10 **SECTION 71.** 77.51 (13) (d) of the statutes is amended to read:

11 77.51 (13) (d) Every wholesaler to the extent that the wholesaler sells tangible
12 personal property or items or property under s. 77.52 (1) (b) or (c) to a person other
13 than a seller as defined in sub. (17) provided such wholesaler is not expressly exempt
14 from the sales tax on such sale or from collecting the use tax on such sale.

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

16 77.51 (13) (e) A person selling tangible personal property or items or property
17 under s. 77.52 (1) (b) or (c) to a service provider who transfers the property in
18 conjunction with the selling, performing or furnishing of any service and the
19 property is or items are incidental to the service, unless the service provider is
20 selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20.
21 This subsection does not apply to sub. (2).

22 **SECTION 73.** 77.51 (13) (f) of the statutes is amended to read:

23 77.51 (13) (f) A service provider who transfers tangible personal property or
24 items or property under s. 77.52 (1) (b) or (c) in conjunction with but not incidental
25 to the selling, performing or furnishing of any service and a service provider selling,

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1 performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11. and 20. This
2 subsection does not apply to sub. (2).

3 **SECTION 74.** 77.51 (13) (k) of the statutes is amended to read:

4 77.51 (13) (k) ~~As respects~~ With respect to a lease, any person deriving rentals
5 from a lease of tangible personal property or items or property under s. 77.52 (1) (b)
6 or (c) situated in this state.

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

8 77.51 (13) (m) A person selling tangible personal property or items or property
9 under s. 77.52 (1) (b) or (c) to a veterinarian to be used or furnished by the
10 veterinarian in the performance of services in some manner related to domestic
11 animals, including pets or poultry.

12 **SECTION 76.** 77.51 (13) (n) of the statutes is amended to read:

13 77.51 (13) (n) A person selling household furniture, furnishings, equipment,
14 appliances or other items of tangible personal property or items or property under
15 s. 77.52 (1) (b) or (c) to a landlord for use by tenants in leased or rented living
16 quarters.

17 **SECTION 77.** 77.51 (13) (o) of the statutes is amended to read:

18 77.51 (13) (o) A person selling ~~medicine~~ drugs for animals to a veterinarian.
19 As used in this paragraph, "animal" includes livestock, pets and poultry.

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

21 77.51 (13g) (intro.) Except as provided in sub. (13h), "retailer engaged in
22 business in this state", ~~unless otherwise limited by federal statute,~~ for purposes of
23 the use tax, means any of the following:

24 **SECTION 79.** 77.51 (13g) (c) of the statutes is created to read:

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1 77.51 (13g) (c) Any retailer selling tangible personal property or taxable
2 services for storage, use, or other consumption in this state, unless otherwise limited
3 by federal law.

4 **SECTION 80.** 77.51 (13r) of the statutes is amended to read:

5 77.51 (13r) Any person purchasing from a retailer as defined in sub. (13) shall
6 be deemed the consumer of the tangible personal property, items or property under
7 s. 77.52 (1) (b) or (c), or services purchased.

8 **SECTION 81.** 77.51 (13rm) of the statutes is created to read:

9 77.51 (13rm) "Retail sale" or "sale at retail" means any sale, lease, or rental
10 for any purpose other than resale, sublease, or subrent.

11 **SECTION 82.** 77.51 (13rn) of the statutes is created to read:

12 77.51 (13rn) "Ringtones" means digitized sound files that are downloaded onto
13 a device and that may be used to alert the customer with regard to a communication.
14 "Ringtones" includes MP3 or musical tones, polyphonic tones, and synthetic music
15 mobile application format tones, but does not include ring-back tones.

16 **SECTION 83.** 77.51 (14) (intro.) of the statutes is amended to read:

17 77.51 (14) (intro.) "~~Sale~~", "~~sale, lease or rental~~", "~~retail sale~~", "~~sale at retail~~", or
18 ~~equivalent terms include~~ includes any one or all of the following: the transfer of the
19 ownership of, title to, possession of, or enjoyment of tangible personal property, items
20 or property under s. 77.52 (1) (b) or (c), or services for use or consumption but not for
21 resale as tangible personal property, items or property under s. 77.52 (1) (b) or (c),
22 or services and includes:

23 **SECTION 84.** 77.51 (14) (a) of the statutes is amended to read:

24 77.51 (14) (a) Any sale at an auction ~~in~~ with respect to tangible personal
25 property or items or property under s. 77.52 (1) (b) or (c) which ~~is~~ are sold to a

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1 successful bidder. ~~The proceeds from, except the sale of property or items sold at~~
2 auction which is are bid in by the seller and on which title does not pass to a new
3 purchaser ~~shall be deducted from the gross proceeds of the sale and the tax paid only~~
4 ~~on the net proceeds.~~

5 **SECTION 85.** 77.51 (14) (b) of the statutes is amended to read:

6 77.51 (14) (b) The furnishing or distributing of tangible personal property,
7 items or property under s. 77.52 (1) (b) or (c), or taxable services for a consideration
8 by social clubs and fraternal organizations to their members or others.

9 **SECTION 86.** 77.51 (14) (c) of the statutes is amended to read:

10 77.51 (14) (c) A transaction whereby the possession of tangible personal
11 property is or items or property under s. 77.52 (1) (b) or (c), items or property under
12 s. 77.52 (1) (b) or (c) are transferred but the seller retains the title as security for the
13 payment of the price.

14 **SECTION 87.** 77.51 (14) (d) of the statutes is repealed.

15 **SECTION 88.** 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4.

16 **SECTION 89.** 77.51 (14) (h) of the statutes is amended to read:

17 77.51 (14) (h) A transfer for a consideration of the title or possession of tangible
18 personal property or items or property under s. 77.52 (1) (b) or (c) which has have
19 been produced, fabricated, or printed to the special order of the customer or of any
20 publication.

21 **SECTION 90.** 77.51 (14) (i) of the statutes is repealed.

22 **SECTION 91.** 77.51 (14) (j) of the statutes is amended to read:

23 77.51 (14) (j) The granting of possession of tangible personal property or items
24 or property under s. 77.52 (1) (b) or (c) by a lessor to a lessee, or to another person at
25 the direction of the lessee. Such a transaction is deemed a continuing sale in this

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1 state by the lessor for the duration of the lease as respects any period of time the
2 leased property is situated in this state, irrespective of the time or place of delivery
3 of the property to the lessee or such other person.

4 **SECTION 92.** 77.51 (14) (k) of the statutes is repealed.

5 **SECTION 93.** 77.51 (14) (L) of the statutes is repealed.

6 **SECTION 94.** 77.51 (14g) (a) of the statutes is amended to read:

7 77.51 (14g) (a) The transfer of property or items or property under s. 77.52 (1)
8 (b) or (c) to a corporation upon its organization solely in consideration for the issuance
9 of its stock;

10 **SECTION 95.** 77.51 (14g) (b) of the statutes is amended to read:

11 77.51 (14g) (b) The contribution of property or items or property under s. 77.52
12 (1) (b) or (c) to a newly formed partnership solely in consideration for a partnership
13 interest therein;

14 **SECTION 96.** 77.51 (14g) (bm) of the statutes is amended to read:

15 77.51 (14g) (bm) The contribution of property or items or property under s.
16 77.52 (1) (b) or (c) to a limited liability company upon its organization solely in
17 consideration for a membership interest;

18 **SECTION 97.** 77.51 (14g) (c) of the statutes is amended to read:

19 77.51 (14g) (c) The transfer of property or items or property under s. 77.52 (1)
20 (b) or (c) to a corporation, solely in consideration for the issuance of its stock,
21 pursuant to a merger or consolidation;

22 **SECTION 98.** 77.51 (14g) (cm) of the statutes is amended to read:

23 77.51 (14g) (cm) The transfer of property or items or property under s. 77.52
24 (1) (b) or (c) to a limited liability company, solely in consideration for a membership
25 interest, pursuant to a merger;

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1 **SECTION 99.** 77.51 (14g) (d) of the statutes is amended to read:

2 77.51 (14g) (d) The distribution of property or items or property under s. 77.52
3 (1) (b) or (c) by a corporation to its stockholders as a dividend or in whole or partial
4 liquidation;

5 **SECTION 100.** 77.51 (14g) (e) of the statutes is amended to read:

6 77.51 (14g) (e) The distribution of property or items or property under s. 77.52
7 (1) (b) or (c) by a partnership to its partners in whole or partial liquidation;

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

9 77.51 (14g) (em) The distribution of property or items or property under s.
10 77.52 (1) (b) or (c) by a limited liability company to its members in whole or partial
11 liquidation;

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

13 77.51 (14g) (f) Repossession of property or items or property under s. 77.52 (1)
14 (b) or (c) by the seller from the purchaser when the only consideration is cancellation
15 of the purchaser's obligation to pay the remaining balance of the purchase price;

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

17 77.51 (14g) (g) The transfer of property or items or property under s. 77.52 (1)
18 (b) or (c) in a reorganization as defined in section 368 of the internal revenue code
19 in which no gain or loss is recognized for franchise or income tax purposes; or

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

21 77.51 (14g) (h) Any transfer of all or substantially all the property or items or
22 property under s. 77.52 (1) (b) or (c) held or used by a person in the course of an
23 activity requiring the holding of a seller's permit, if after the transfer the real or
24 ultimate ownership of the property or items is substantially similar to that which
25 existed before the transfer. For the purposes of this section, stockholders,

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1 bondholders, partners, members or other persons holding an interest in a
2 corporation or other entity are regarded as having the real or ultimate ownership of
3 the property or items of the corporation or other entity. In this paragraph,
4 “substantially similar” means 80% or more of ownership.

5 **SECTION 105.** 77.51 (14r) of the statutes is repealed.

6 **SECTION 106.** 77.51 (15) of the statutes, as affected by 2007 Wisconsin Act 11,
7 is repealed.

8 **SECTION 107.** 77.51 (15a) of the statutes is created to read:

9 77.51 (15a) (a) “Sales, lease, or rental for resale, sublease, or subrent” includes
10 transfers of tangible personal property or items or property under s. 77.52 (1) (b) or
11 (c), specified digital goods to a service provider that the service provider transfers in
12 conjunction with but not incidental to the selling, performing, or furnishing of any
13 service, and transfers of tangible personal property or items or property under s.
14 77.52 (1) (b) or (c) to a service provider that the service provider physically transfers
15 in conjunction with the selling, performing, or furnishing services under s. 77.52 (2)
16 (a) 7., 10., 11., or 20. This paragraph does not apply to sub. (2).

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

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

23 2. Any sale of tangible personal property or items or property under s. 77.52
24 (1) (b) or (c) to a purchaser even though such property or items may be used or
25 consumed by some other person to whom such purchaser transfers the property or

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1 items without valuable consideration, such as gifts, and advertising specialties
2 distributed at no charge and apart from the sale of other tangible personal property,
3 items or property under s. 77.52 (1) (b) or (c) or service.

4 3. Transfers of tangible personal property or items or property under s. 77.52
5 (1) (b) or (c) to a service provider that the service provider transfers in conjunction
6 with the selling, performing, or furnishing of any service, if the tangible personal
7 property or items or property under s. 77.52 (1) (b) or (c) are incidental to the service,
8 unless the service provider is selling, performing, or furnishing services under s.
9 77.52 (2) (a) 7., 10., 11., or 20.

10 **SECTION 108.** 77.51 (15b) of the statutes is created to read:

11 77.51 (15b) (a) "Sales price" means the total amount of consideration, including
12 cash, credit, property, and services, for which tangible personal property, items or
13 property under s. 77.52 (1) (b) or (c), or services are sold, leased, or rented, valued in
14 money, whether received in money or otherwise, without any deduction for the
15 following:

16 1. The seller's cost of the property or items or property under s. 77.52 (1) (b) or
17 (c) sold.

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

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

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

24 b. If a shipment includes property that is subject to tax under this subchapter
25 and property that is not subject to tax under this subchapter, the amount of the

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1 delivery charge that the seller allocates to the property that is subject to tax under
2 this subchapter based on the total sales price of the property that is subject to tax
3 under this subchapter as compared to the total sales price of all the property or on
4 the total weight of the property that is subject to tax under this subchapter as
5 compared to the total weight of all the property.

6 5. Installation charges.

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

8 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a
9 3rd party, except as provided in par. (c); that are allowed by a seller; and that are
10 taken by a purchaser on a sale.

11 2. Interest, financing, and carrying charges from credit that is extended on a
12 sale of tangible personal property, items or property under s. 77.52 (1) (b) or (c), or
13 services, if the amount of the interest, financing, or carrying charges is separately
14 stated on the invoice, bill of sale, or similar document that the seller gives to the
15 purchaser.

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

19 4. Delivery charges for direct mail.

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

24 6. If a person who purchases a motor vehicle presents a statement issued under
25 s. 218.0171 (2) (cq) to the seller at the time of purchase, and the person presents the

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1 statement to the seller within 60 days from the date of receiving a refund under s.
2 218.0171 (2) (b) 2. b., the trade-in amount specified in the statement issued under
3 s. 218.0171 (2) (cq), but not to exceed the sales price from the sale of the motor vehicle.
4 This subdivision applies only to the first motor vehicle purchased by a person after
5 receiving a refund under s. 218.0171 (2) (b) 2. b.

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

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

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

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

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

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

4 4. Any of the following also applies:

5 a. The purchaser presents a coupon, certificate, or other documentation to the
6 seller to claim the price reduction or discount, if the coupon, certificate, or other
7 documentation is authorized, distributed, or granted by the 3rd party with the
8 understanding that the 3rd party will reimburse the seller for the amount of the price
9 reduction or discount.

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

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

15 **SECTION 109.** 77.51 (17) (intro.) of the statutes, as affected by 2007 Wisconsin
16 Act 20, is amended to read:

17 77.51 (17) (intro.) "Seller" includes every person selling, leasing, or renting
18 tangible personal property or items or property under s. 77.52 (1) (b) or (c) or selling,
19 performing, or furnishing services of a kind the ~~gross receipts~~ sales price from the
20 sale, lease, rental, performance, or furnishing of which ~~are~~ is required to be included
21 in the measure of the sales tax, regardless of all of the following:

22 **SECTION 110.** 77.51 (17m) of the statutes is repealed and recreated to read:

23 77.51 (17m) "Service address" means any of the following:

24 (a) The location of the telecommunications equipment to which a customer's
25 telecommunications service is charged and from which the telecommunications

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1 service originates or terminates, regardless of where the telecommunications service
2 is billed or paid.

3 (b) If the location described under par. (a) is not known by the seller who sells
4 the telecommunications service, the location where the signal of the
5 telecommunications service originates, as identified by the seller's
6 telecommunications system or, if the signal is not transmitted by the seller's
7 telecommunications system, by information that the seller received from the seller's
8 service provider.

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

11 **SECTION 111.** 77.51 (17w) of the statutes is created to read:

12 77.51 (17w) "Soft drink" means a beverage that contains less than 0.5 percent
13 of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not
14 include a beverage that contains milk or milk products; soy, rice, or similar milk
15 substitutes; or more than 50 percent vegetable or fruit juice by volume.

16 **SECTION 112.** 77.51 (18) of the statutes is amended to read:

17 77.51 (18) "Storage" includes any keeping or retention in this state of tangible
18 personal property or items or property under s. 77.52 (1) (b) or (c) purchased from a
19 retailer for any purpose except sale in the regular course of business.

20 **SECTION 113.** 77.51 (20) of the statutes is amended to read:

21 77.51 (20) "Tangible personal property" means ~~all tangible personal property~~
22 ~~of every kind and description that can be seen, weighed, measured, felt, or touched,~~
23 ~~or that is in any other manner perceptible to the senses,~~ and includes electricity,
24 natural gas, steam and, water, and also leased property affixed to realty if the lessor
25 ~~has the right to remove the property upon breach or termination of the lease~~

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1 agreement, unless the lessor of the property is also the lessor of the realty to which
2 the property is affixed. ~~“Tangible personal property” also includes coins and stamps~~
3 ~~of the United States sold or traded as collectors’ items above their face value and~~
4 ~~computer programs except custom computer programs~~ prewritten computer
5 software, but does not include items or property under s. 77.52 (1) (b) or (c).

6 **SECTION 114.** 77.51 (21) of the statutes is amended to read:

7 77.51 (21) “Taxpayer” means the person who is required to pay, collect, or
8 account for or who is otherwise directly interested in the taxes imposed by this
9 subchapter, including a certified service provider.

10 **SECTION 115.** 77.51 (21m) of the statutes is amended to read:

11 77.51 (21m) “Telecommunications Internet access services” means sending
12 messages and information transmitted through the use of local, toll and wide-area
13 telephone service; channel services; telegraph services; teletypewriter; computer
14 exchange services; cellular mobile telecommunications service; specialized mobile
15 radio; stationary two-way radio; paging service; or any other form of mobile and
16 portable one-way or two-way communications; or any other transmission of
17 messages or information by electronic or similar means between or among points by
18 wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.
19 “Telecommunications services” ~~does not include sending collect telecommunications~~
20 ~~that are received outside of the state.~~ “Internet access services” does not include
21 telecommunications services to the extent that such services are taxable under s.
22 77.52 (2) (a) 5. am.

23 **SECTION 116.** 77.51 (21n) of the statutes is created to read:

24 77.51 (21n) “Telecommunications services” means electronically transmitting,
25 conveying, or routing voice, data, audio, video, or other information or signals to a

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1 point or between or among points. "Telecommunications services" includes the
2 transmission, conveyance, or routing of such information or signals in which
3 computer processing applications are used to act on the content's form, code, or
4 protocol for transmission, conveyance, or routing purposes, regardless of whether
5 the service is referred to as a voice over Internet protocol service or classified by the
6 federal communications commission as an enhanced or value-added service.

7 "Telecommunications services" does not include any of the following:

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

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

13 (c) Tangible personal property.

14 (d) Advertising, including directory advertising.

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

16 (f) Internet access service.

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

22 (h) Ancillary services.

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

25 **SECTION 117.** 77.51 (21p) of the statutes is created to read:

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1 77.51 (21p) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco,
2 and any other item that contains tobacco.

3 **SECTION 118.** 77.51 (21q) of the statutes is created to read:

4 77.51 (21q) "Transferred electronically" means accessed or obtained by the
5 purchaser by means other than tangible storage media.

6 **SECTION 119.** 77.51 (22) (a) of the statutes is amended to read:

7 77.51 (22) (a) "Use" includes the exercise of any right or power over tangible
8 personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services
9 incident to the ownership, possession or enjoyment of the property, items, or services,
10 or the results produced by the services, including installation or affixation to real
11 property and including the possession of, or the exercise of any right or power over
12 tangible personal property or items or property under s. 77.52 (1) (b) or (c) by a lessee
13 under a lease, except that "use" does not include the activities under sub. (18).

14 **SECTION 120.** 77.51 (22) (b) of the statutes is amended to read:

15 77.51 (22) (b) In this subsection "enjoyment" includes a purchaser's right to
16 direct the disposition of property or items or property under s. 77.52 (1) (b) or (c),
17 whether or not the purchaser has possession of the property or items. "Enjoyment"
18 also includes, but is not limited to, having shipped into this state by an out-of-state
19 supplier printed material which is designed to promote the sale of property, items or
20 property under s. 77.52 (1) (b) or (c), or services, or which is otherwise related to the
21 business activities, of the purchaser of the printed material or printing service.

22 **SECTION 121.** 77.51 (22) (bm) of the statutes is created to read:

23 77.51 (22) (bm) In this subsection, "exercise of any right or power over tangible
24 personal property, items or property under s. 77.52 (1) (b) or (c), or taxable services"
25 includes distributing, selecting recipients, determining mailing schedules, or

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1 otherwise directing the distribution, dissemination, or disposal of tangible personal
2 property, items or property under s. 77.52 (1) (b) or (c), or taxable services, regardless
3 of whether the purchaser of such property, items, goods, or services owns or
4 physically possesses, in this state, the property, items, or services.

5 **SECTION 122.** 77.51 (24) of the statutes is created to read:

6 77.51 (24) "Value-added non-voice data service" means a service in which
7 computer processing applications are used to act on the form, content, code, or
8 protocol of the data provided by the service and are used primarily for a purpose other
9 than for transmitting, conveying, or routing data.

10 **SECTION 123.** 77.51 (25) of the statutes is created to read:

11 77.51 (25) "Vertical service" means an ancillary service that is provided with
12 one or more telecommunications services and allows customers to identify callers
13 and to manage multiple calls and call connections, including conference bridging
14 services.

15 **SECTION 124.** 77.51 (26) of the statutes is created to read:

16 77.51 (26) "Voice mail service" means an ancillary service that allows a
17 customer to store, send, or receive recorded messages, not including any vertical
18 service that the customer must have to use the voice mail service.

19 **SECTION 125.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a) and amended
20 to read:

21 77.52 (1) (a) For the privilege of selling, licensing, leasing or renting tangible
22 personal property, including accessories, components, attachments, parts, supplies
23 and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the
24 ~~gross receipts~~ sales price from the sale, license, lease or rental of tangible personal

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1 property, including accessories, components, attachments, parts, supplies and
2 materials, sold, leased or rented at retail in this state, as determined under s. 77.522.

3 **SECTION 126.** 77.52 (1) (b) of the statutes is created to read:

4 77.52 (1) (b) For the privilege of selling at retail coins and stamps of the United
5 States that are sold or traded as collectors' items above their face value, a tax is
6 imposed on all retailers at the rate of 5 percent of the sales price from the sale of such
7 coins and stamps.

8 **SECTION 127.** 77.52 (1) (c) of the statutes is created to read:

9 77.52 (1) (c) For the privilege of leasing property that is affixed to real property,
10 a tax is imposed on all retailers at the rate of 5 percent of the sales price from the lease
11 of such property, if the lessor has the right to remove the leased property upon breach
12 or termination of the lease agreement, unless the lessor of the leased property is also
13 the lessor of the real property to which the leased property is affixed.

14 **SECTION 128.** 77.52 (1b) of the statutes, as created by 2007 Wisconsin Act 20,
15 is repealed and recreated to read:

16 77.52 (1b) All sales, leases, or rentals of tangible personal property or items
17 or property under sub. (1) (b) or (c), specified digital goods at retail in this state are
18 subject to the tax imposed under sub. (1) unless an exemption in this subchapter
19 applies.

20 **SECTION 129.** 77.52 (2) (intro.) of the statutes is amended to read:

21 77.52 (2) (intro.) For the privilege of selling, licensing, performing or furnishing
22 the services described under par. (a) at retail in this state, as determined under s.
23 77.522, to consumers or users, a tax is imposed upon all persons selling, licensing,
24 performing or furnishing the services at the rate of 5% of the gross receipts sales price
25 from the sale, license, performance or furnishing of the services.

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1 **SECTION 130.** 77.52 (2) (a) 5. a. of the statutes is repealed and recreated to read:

2 77.52 (2) (a) 5. a. The sale of Internet access services.

3 **SECTION 131.** 77.52 (2) (a) 5. am. of the statutes is created to read:

4 77.52 (2) (a) 5. am. The sale of intrastate, interstate, and international
5 telecommunications services, except interstate 800 services.

6 **SECTION 132.** 77.52 (2) (a) 5. b. of the statutes is repealed.

7 **SECTION 133.** 77.52 (2) (a) 5. c. of the statutes is created to read:

8 77.52 (2) (a) 5. c. The sale of ancillary services, except detailed
9 telecommunications billing services.

10 **SECTION 134.** 77.52 (2) (a) 5m. of the statutes is amended to read:

11 77.52 (2) (a) 5m. The sale of services that consist of recording
12 telecommunications messages and transmitting them to the purchaser of the service
13 or at that purchaser's direction, but not including those services if they are merely
14 ~~an~~ that are taxable under subd. 5. or services that are incidental, as defined in s.
15 77.51 (5), ~~element of to~~ another service that is not taxable under this subchapter and
16 ~~sold to that~~ the purchaser of the incidental service and is not taxable under this
17 ~~subchapter.~~

18 **SECTION 135.** 77.52 (2) (a) 10. of the statutes is amended to read:

19 77.52 (2) (a) 10. Except for services provided by veterinarians and except for
20 installing or applying tangible personal property that, subject to par. (ag), when
21 installed or applied, will constitute an addition or capital improvement of real
22 property, the repair, service, alteration, fitting, cleaning, painting, coating, towing,
23 inspection, and maintenance of all items of tangible personal property or items or
24 property under sub. (1) (b) or (c), unless, at the time of that ~~the~~ repair, service,
25 alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance,

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1 a sale in this state of the type of property repaired, serviced, altered, fitted, cleaned,
2 painted, coated, towed, inspected, or maintained would have been exempt to the
3 customer from sales taxation under this subchapter, other than the exempt sale of
4 a motor vehicle or truck body to a nonresident under s. 77.54 (5) (a) and other than
5 nontaxable sales under s. ~~77.51 (14r) juvenile~~ 77.522 or unless the repair, service,
6 alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance is
7 provided under a contract that is subject to tax under subd. 13m. The tax imposed
8 under this subsection applies to the repair, service, alteration, fitting, cleaning,
9 painting, coating, towing, inspection, or maintenance of items listed in par. (ag),
10 regardless of whether the installation or application of tangible personal property or
11 items or property under sub. (1) (b) or (c) related to the items is an addition to or a
12 capital improvement of real property, except that the tax imposed under this
13 subsection does not apply to the original installation or the complete replacement of
14 an item listed in par. (ag), if that ~~the~~ installation or replacement is a real property
15 construction activity under s. 77.51 (2).

16 **SECTION 136.** 77.52 (2) (a) 13m. of the statutes is created to read:

17 77.52 (2) (a) 13m. The sale of contracts, including service contracts,
18 maintenance agreements, and warranties, that provide, in whole or in part, for the
19 future performance of or payment for the repair, service, alteration, fitting, cleaning,
20 painting, coating, towing, inspection, or maintenance of tangible personal property,
21 unless the sale, lease, or rental in this state of the property to which the contract
22 relates is or was exempt, to the purchaser of the contract, from taxation under this
23 subchapter.

24 **SECTION 137.** 77.52 (2m) (a) of the statutes is amended to read:

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1 77.52 (2m) (a) With respect to the services subject to tax under sub. (2), no part
2 of the charge for the service may be deemed a sale or rental of tangible personal
3 property or items or property under sub. (1) (b) or (c) if the property or items
4 transferred by the service provider is are incidental to the selling, performing or
5 furnishing of the service, except as provided in par. (b).

6 **SECTION 138.** 77.52 (2m) (b) of the statutes is amended to read:

7 77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7.,
8 10., 11. and 20., all property or items or property under sub. (1) (b) or (c) physically
9 transferred, or transferred electronically, to the customer in conjunction with the
10 selling, performing or furnishing of the service is a sale of tangible personal property
11 or items or property under sub. (1) (b) or (c) separate from the selling, performing or
12 furnishing of the service.

13 **SECTION 139.** 77.52 (2n) of the statutes, as created by 2007 Wisconsin Act 20,
14 is repealed and recreated to read:

15 77.52 (2n) The selling, licensing, performing, or furnishing of the services
16 described under sub. (2) (a) at retail in this state, as determined under s. 77.522, is
17 subject to the tax imposed under sub. (2) unless an exemption in this subchapter
18 applies.

19 **SECTION 140.** 77.52 (3m) of the statutes is repealed.

20 **SECTION 141.** 77.52 (3n) of the statutes is repealed.

21 **SECTION 142.** 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 or items or property under sub. (1) (b) or (c) sold or that if added it,

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

3 **SECTION 143.** 77.52 (6) of the statutes is repealed.

4 **SECTION 144.** 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 145.** 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 146.** 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

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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, items or
5 property under sub. (1) (b) or (c), or taxable services. Any person not so operating
6 shall forthwith surrender that person's permit to the department for cancellation.
7 The department may revoke the permit of a person found not to be actively operating
8 as a seller of tangible personal property, items or property under sub. (1) (b) or (c),
9 or taxable services.

10 **SECTION 147.** 77.52 (13) of the statutes is amended to read:

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, items or property under sub. (1) (b) or (c), or services is not a
15 taxable sale at retail is upon the person who makes the sale unless that person takes
16 from the purchaser ~~a~~ an electronic or a paper certificate, in a manner prescribed by
17 the department, to the effect that the property, item, or service is purchased for resale
18 or is otherwise exempt, except that no certificate is required for sales of cattle, sheep,
19 goats, and pigs that are sold at an animal market, as defined in s. 95.68 (1) (ag), and
20 no certificate is required for sales of commodities, as defined in 7 USC 2, that are
21 consigned for sale in a warehouse in or from which the commodity is deliverable on
22 a contract for future delivery subject to the rules of a commodity market regulated
23 by the U.S. commodity futures trading commission if upon the sale the commodity
24 is not removed from the warehouse the sale of tangible personal property, items or
25 property under sub. (1) (b) or (c), and services that are exempt under s. 77.54 (7), (7m),

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

3 **SECTION 148.** 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are
4 consolidated, renumbered 77.52 (14) (a) and amended to read:

5 77.52 (14) (a) The certificate referred to in sub. (13) relieves the seller from the
6 burden of proof of the tax otherwise applicable only if any of the following is true:

7 1. The certificate is taken in good faith the seller obtains a fully completed exemption
8 certificate, or the information required to prove the exemption, from a person who

9 is engaged as a seller of tangible personal property or taxable services and who holds
10 the permit provided for in sub. (9) and who, at the time of purchasing purchaser no

11 later than 90 days after the date of the sale of the tangible personal property, items
12 or property under sub. (1) (b) or (c), or services, intends to sell it in the regular course

13 of operations or is unable to ascertain at the time of purchase whether the property
14 or service will be sold or will be used for some other purpose. (b) except as provided

15 in par. (am). The certificate under sub. (13) shall not relieve the seller of the tax
16 otherwise applicable if the seller fraudulently fails to collect sales tax, solicits the

17 purchaser to claim an unlawful exemption, accepts an exemption certificate from a
18 purchaser who claims to be an entity that is not subject to the taxes imposed under

19 this subchapter, if the subject of the transaction sought to be covered by the
20 exemption certificate is received by the purchaser at a location operated by the seller

21 in this state and the exemption certificate clearly and affirmatively indicates that
22 the claimed exemption is not available in this state. The certificate referred to in sub.

23 (13) shall be signed by and bear the name and address of provide information that
24 identifies the purchaser; and shall indicate the general character of the tangible

25 personal property or service sold by the purchaser and the basis for the claimed

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

3 **SECTION 149.** 77.52 (14) (a) 2. of the statutes is repealed.

4 **SECTION 150.** 77.52 (14) (am) of the statutes is created to read:

5 77.52 (14) (am) If the seller has not obtained a fully completed exemption
6 certificate or the information required to prove the exemption, as provided in par. (a),
7 the seller may, no later than 120 days after the department requests that the seller
8 substantiate the exemption, either provide proof of the exemption to the department
9 by other means or obtain, in good faith, a fully completed exemption certificate from
10 the purchaser.

11 **SECTION 151.** 77.52 (15) of the statutes is amended to read:

12 77.52 (15) If a purchaser who ~~gives a resale certificate~~ purchases tangible
13 personal property, items or property under sub. (1) (b) or (c), or taxable services
14 without paying a sales tax or use tax on such purchase because such property, items,
15 or services were for resale makes any use of the property, items, or services other than
16 retention, demonstration or display while holding it the property, items, or services
17 for sale, lease or rental in the regular course of the purchaser's operations, the use
18 shall be taxable to the purchaser under s. 77.53 as of the time that the property is,
19 items, or services are first used by the purchaser, and the sales purchase price of the
20 property, items, or services to the purchaser shall be the measure of the tax. Only
21 ~~when there is an unsatisfied use tax liability on this basis because the seller has~~
22 ~~provided incorrect information about that transaction to the department shall the~~
23 ~~seller be liable for sales tax with respect to the sale of the property to the purchaser.~~

24 **SECTION 152.** 77.52 (16) of the statutes is amended to read:

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1 77.52 (16) Any person who gives a resale certificate for property, items or
2 property under sub. (1) (b) or (c), or services which that person knows at the time of
3 purchase is not to be resold by that person in the regular course of that person's
4 operations as a seller for the purpose of evading payment to the seller of the amount
5 of the tax applicable to the transaction is guilty of a misdemeanor. Any person
6 certifying to the seller that the sale of property, items or property under sub. (1) (b)
7 or (c), or taxable service is exempt, knowing at the time of purchase that it is not
8 exempt, for the purpose of evading payment to the seller of the amount of the tax
9 applicable to the transaction, is guilty of a misdemeanor.

10 **SECTION 153.** 77.52 (19) of the statutes is amended to read:

11 77.52 (19) The department shall by rule provide for the efficient collection of
12 the taxes imposed by this subchapter on sales of property, items or property under
13 sub. (1) (b) or (c), or services by persons not regularly engaged in selling at retail in
14 this state or not having a permanent place of business, but who are temporarily
15 engaged in selling from trucks, portable roadside stands, concessions at fairs and
16 carnivals, and the like. The department may authorize such persons to sell property
17 or items or property under sub. (1) (b) or (c) or sell, perform, or furnish services on
18 a permit or nonpermit basis as the department by rule prescribes and failure of any
19 person to comply with such rules constitutes a misdemeanor.

20 **SECTION 154.** 77.52 (20) of the statutes is created to read:

21 77.52 (20) (a) Except as provided in par. (b), the entire sales price of a bundled
22 transaction is subject to the tax imposed under this subchapter.

23 (b) At the retailer's option, if the retailer can identify, by reasonable and
24 verifiable standards from the retailer's books and records that are kept in the
25 ordinary course of its business for other purposes, including purposes unrelated to

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

6 **SECTION 155.** 77.52 (21) of the statutes is created to read:

7 77.52 (21) A person who provides a product that is not a distinct and
8 identifiable product because it is provided free of charge, as provided in s. 77.51 (3pf)
9 (b), is the consumer of that product and shall pay the tax imposed under this
10 subchapter on the purchase price of that product.

11 **SECTION 156.** 77.52 (22) of the statutes is created to read:

12 77.52 (22) With regard to transactions described in s. 77.51 (1f) (b), the service
13 provider is the consumer of the tangible personal property and shall pay the tax
14 imposed under this subchapter on the purchase price of the property.

15 **SECTION 157.** 77.52 (23) of the statutes is created to read:

16 77.52 (23) With regard to transactions described in s. 77.51 (1f) (c), the service
17 provider is the consumer of the service that is essential to the use or receipt of the
18 other service and shall pay the tax imposed under this subchapter on the purchase
19 price of the service that is essential to the use or receipt of the other service.

20 **SECTION 158.** 77.522 of the statutes is created to read:

21 **77.522 Sourcing.** (1) GENERAL. (a) In this section:

22 1. "Direct mail form" means a form for direct mail prescribed by the
23 department.

24 2. "Receive" means taking possession of tangible personal property; making
25 first use of services; or taking possession or making first use of digital goods,

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1 whichever comes first. "Receive" does not include a shipping company taking
2 possession of tangible personal property on a purchaser's behalf.

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

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

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

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

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

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

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

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

24 3. If the location of a sale of a product cannot be determined under subs. 1. and
25 2., the sale occurs at the purchaser's address as indicated by the seller's business

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1 records, if the records are maintained in the ordinary course of the seller's business
2 and if using that address to establish the location of a sale is not in bad faith.

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

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

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

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

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

16 (c) The sale of direct mail occurs at the location from which the direct mail is
17 shipped, if the purchaser does not provide to the seller a direct pay permit, a direct
18 mail form, or other information that indicates the appropriate taxing jurisdiction to
19 which the direct mail is delivered to the ultimate recipients. If the purchaser
20 provides a direct mail form or direct pay permit to the seller, the purchaser shall pay
21 or remit, as appropriate, to the department the tax imposed under s. 77.53 on all
22 purchases for which the tax is due and the seller is relieved from liability for
23 collecting such tax. A direct mail form provided to a seller under this paragraph shall
24 remain effective for all sales by the seller who received the form to the purchaser who

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1 provided the form, unless the purchaser revokes the form in writing and provides
2 such revocation to the seller.

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

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

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

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1 (d) A license of tangible personal property or items or property under s. 77.52
2 (1) (b) or (c) 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.

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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.

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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.

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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 an Internet access service occurs at the customer's place of
13 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) FLOLISTS.** (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) Sales by a retail florist occur at the location determined by rule by the
25 department.

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1 (c) This subsection does not apply to sales occurring on or after January 1, 2010.

2 **SECTION 159.** 77.523 (title) of the statutes is repealed.

3 **SECTION 160.** 77.523 of the statutes is renumbered 77.59 (9p) (a) and amended
4 to read:

5 77.59 (9p) (a) If a customer purchases a service that is subject to 4 USC 116
6 to 126, as amended by P.L. 106-252, and if the customer believes that the amount
7 of the tax assessed for the service under this subchapter or the place of primary use
8 or taxing jurisdiction assigned to the service is erroneous, the customer may request
9 that the service provider correct the alleged error by sending a written notice to the
10 service provider. The notice shall include a description of the alleged error, the street
11 address for the customer's place of primary use of the service, the account name and
12 number of the service for which the customer seeks a correction, and any other
13 information that the service provider reasonably requires to process the request.
14 Within 60 days from the date that a service provider receives a request under this
15 section paragraph, the service provider shall review its records to determine the
16 customer's taxing jurisdiction. If the review indicates that there is no error as
17 alleged, the service provider shall explain the findings of the review in writing to the
18 customer. If the review indicates that there is an error as alleged, the service
19 provider shall correct the error and shall refund or credit the amount of any tax
20 collected erroneously, along with the related interest, as a result of the error from the
21 customer in the previous 48 months, consistent with s. 77.59 (4). A customer may
22 take no other action against the service provider, or commence any action, to correct
23 an alleged error in the amount of the tax assessed under this subchapter on a service
24 that is subject to 4 USC 116 to 126, as amended by P.L. 106-252, or to correct an

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1 alleged error in the assigned place of primary use or taxing jurisdiction, unless the
2 customer has exhausted his or her remedies under this section paragraph.

3 **SECTION 161.** 77.524 (1) (a) of the statutes is renumbered 77.524 (1) (am).

4 **SECTION 162.** 77.524 (1) (ag) of the statutes is created to read:

5 77.524 (1) (ag) "Agent" means a person appointed by a seller to represent the
6 seller before the states that are signatories to the agreement, as defined in s. 77.65
7 (2) (a).

8 **SECTION 163.** 77.524 (1) (b) of the statutes is renumbered 77.51 (1g) and
9 amended to read:

10 77.51 (1g) "Certified service provider" means an agent that is certified jointly
11 by the states that are signatories to the agreement, as defined in s. 77.65 (2) (a), and
12 that performs all of a seller's sales tax and use tax functions related to the seller's
13 retail sales, except that a certified service provider is not responsible for a retailer's
14 obligation to remit tax on the retailer's own purchases.

15 **SECTION 164.** 77.525 of the statutes is amended to read:

16 **77.525 Reduction to prevent double taxation.** Any person who is subject
17 to the tax under s. 77.52 (2) (a) 5. ~~a.~~ on telecommunications services that terminate
18 in this state and who has paid a similar tax on the same services to another state may
19 reduce the amount of the tax remitted to this state by an amount equal to the similar
20 tax properly paid to another state on those services or by the amount due this state
21 on those services, whichever is less. That person shall refund proportionally to the
22 persons to whom the tax under s. 77.52 (2) (a) 5. ~~a.~~ was passed on an amount equal
23 to the amounts not remitted.

24 **SECTION 165.** 77.53 (1) of the statutes is amended to read:

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1 77.53 (1) Except as provided in sub. (1m), an excise tax is levied and imposed
2 on the use or consumption in this state of taxable services under s. 77.52 purchased
3 from any retailer, at the rate of 5% of the sales purchase price of those services; on
4 the storage, use or other consumption in this state of tangible personal property and
5 items or property under s. 77.52 (1) (b) or (c) purchased from any retailer, at the rate
6 of 5% of the sales purchase price of that the property or items; and on the storage,
7 use or other consumption of tangible personal property manufactured, processed or
8 otherwise altered, in or outside this state, by the person who stores, uses or consumes
9 it, from material purchased from any retailer, at the rate of 5% of the sales purchase
10 price of that material.

11 **SECTION 166.** 77.53 (1b) of the statutes, as created by 2007 Wisconsin Act 20,
12 is repealed and recreated to read:

13 77.53 (1b) The storage, use, or other consumption in this state of tangible
14 personal property or items or property under s. 77.52 (1) (b) or (c), and the use or other
15 consumption in this state of a taxable service, purchased from any retailer is subject
16 to the tax imposed in this section unless an exemption in this subchapter applies.

17 **SECTION 167.** 77.53 (2) of the statutes is amended to read:

18 77.53 (2) Every person storing, using, or otherwise consuming in this state
19 tangible personal property, items or property specified under s. 77.52 (1) (b) or (c), or
20 taxable services purchased from a retailer is liable for the tax imposed by this section.
21 The person's liability is not extinguished until the tax has been paid to this state, but
22 a receipt with the tax separately stated from a retailer engaged in business in this
23 state or from a retailer who is authorized by the department, under such rules as it
24 prescribes, to collect the tax and who is regarded as a retailer engaged in business
25 in this state for purposes of the tax imposed by this section given to the purchaser

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1 under sub. (3) relieves the purchaser from further liability for the tax to which the
2 receipt refers.

3 **SECTION 168.** 77.53 (3) of the statutes is amended to read:

4 77.53 (3) Every retailer engaged in business in this state and making sales of
5 tangible personal property, items or property under s. 77.52 (1) (b) or (c), or taxable
6 services for delivery into this state or with knowledge directly or indirectly that the
7 property or service is intended for storage, use or other consumption in that are
8 sourced to this state under s. 77.522, shall, at the time of making the sales or, if the
9 storage, use or other consumption of the tangible personal property or taxable service
10 is not then taxable under this section, at the time the storage, use or other
11 consumption becomes taxable, collect the tax from the purchaser and give to the
12 purchaser a receipt in the manner and form prescribed by the department.

13 **SECTION 169.** 77.53 (4) of the statutes is repealed.

14 **SECTION 170.** 77.53 (9) of the statutes is amended to read:

15 77.53 (9) Every retailer selling tangible personal property, items or property
16 under s. 77.52 (1) (b) or (c), or taxable services for storage, use or other consumption
17 in this state shall register with the department and obtain a certificate under s. 73.03
18 (50) and give the name and address of all agents operating in this state, the location
19 of all distribution or sales houses or offices or other places of business in this state,
20 the standard industrial code classification of each place of business in this state and
21 the other information that the department requires. Any person who may register
22 under this subsection may designate an agent, as defined in s. 77.524 (1) (ag), to
23 register with the department under this subsection, in the manner prescribed by the
24 department.