



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0728/3

JK:lmk:rs

RMK TWJ

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 1-28-09

LPS: Please gen cat, cut it, and paste it into the eff. date provision. Thanks.

DO NOT GEN

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

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

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

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

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

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

1 SECTION 1. 20.435 (3) (bm) of the statutes is repealed.

2 SECTION 2. 20.566 (1) (ho) of the statutes is created to read:

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

7 SECTION 3. 46.513 of the statutes is repealed.

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

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

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

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

21 SECTION 6. 73.03 (28e) of the statutes is created to read:

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

*and includes having the governing board*

*INSERT 2-20*

*(23)*

1 the agreement to the appropriation under s. 20.566 (1) (ho) to pay the dues necessary  
2 to participate in the governing board. The department shall allocate the remainder  
3 of such collections to the general fund.

4 **SECTION 7.** 73.03 (50) (d) of the statutes is amended to read:

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

13 **SECTION 8.** 73.03 (50b) of the statutes is created to read:

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

18 **SECTION 9.** 73.03 (61) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

8 **SECTION 10.** 76.07 (4g) (b) 8. of the statutes is amended to read:

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

16 **SECTION 11.** 77.51 (1) of the statutes is renumbered 77.51 (1d) and amended  
17 to read:

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

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

1           77.51 (1a) "Additional digital goods" means video greeting cards sent by  
2 electronic mail, finished artwork, periodicals, and video or electronic games. For  
3 purposes of this subchapter, the sale of or the storage, use, or other consumption of  
4 a digital code is treated the same as the sale of or the storage, use, or other  
5 consumption of any additional digital goods for which the digital code relates.

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

7           77.51 (1b) "Alcoholic beverage" means a beverage that is suitable for human  
8 consumption and that contains 0.5 percent or more of alcohol by volume.

9           **SECTION 14.** 77.51 (1bd) of the statutes is created to read:

10          77.51 (1bd) "Ancillary services" means services that are associated with or  
11 incidental to providing telecommunications services, including detailed  
12 telecommunications billing, directory assistance, vertical service, and voice mail  
13 services, but not including digital books *specified goods* ✓

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

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

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

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

1 2. The retail sale of <sup>a service and</sup> specified digital goods or additional digital goods, if such  
2 goods are essential to the use of the service, and provided exclusively in connection  
3 with the service, and if the true object of the transaction is the service.

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

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

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

21 **SECTION 16.** 77.51 (1e) of the statutes is created to read:

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

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

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

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

6           77.51 (1p) "Computer software" means a set of coded instructions designed to  
7 cause a computer or automatic data processing equipment to perform a task.

8           "Computer software" does not include digital ~~books~~ *specified goods*

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

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

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

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

17          **SECTION 21.** 77.51 (2m) of the statutes is created to read:

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

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

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



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

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

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

6           1. A vitamin.

7           2. A mineral.

8           3. An herb or other botanical.

9           4. An amino acid.

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

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

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

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

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

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

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

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

7           **SECTION 26.** 77.51 (3pb) of the statutes is created to read:

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

12          **SECTION 27.** 77.51 (3pc) of the statutes is created to read:

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

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

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

1           **SECTION 28.** 77.51 (3pe) of the statutes is created to read:

2           77.51 (3pe) "Directory assistance" means an ancillary service that provides  
3 telephone numbers or addresses.

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

5           77.51 (3pf) "Distinct and identifiable product" does not include any of the  
6 following:

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

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

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

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

16           77.51 (3pj) "Drug" means a compound, substance, or preparation, or any  
17 component of them, other than food and food ingredients, dietary supplements, or  
18 alcoholic beverages, to which any of the following applies:

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

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

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

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

1           77.51 (3pm) "Durable medical equipment" means equipment, including the  
2 repair parts and replacement parts for the equipment that is primarily and  
3 customarily used for a medical purpose related to a person; that can withstand  
4 repeated use; that is not generally useful to a person who is not ill or injured; and that  
5 is not placed in or worn on the body. "Durable medical equipment" does not include  
6 mobility-enhancing equipment.

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

8           77.51 (3pn) "Eight hundred service" means a telecommunications service that  
9 allows a caller to dial a toll-free number without incurring a charge for the call and  
10 is marketed under "800," "855," "866," "877," or "888" toll-free calling, or any other  
11 number designated as toll-free by the federal communications commission.

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

13           77.51 (3pp) "Electronic" means relating to technology having electrical,  
14 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

16           77.51 (3pq) "Finished artwork" means the final art used for actual  
17 reproduction by photomechanical or other processes or for display purposes.  
18 "Finished artwork" also includes all of the following items regardless of whether such  
19 items are reproduced:

20           (a) Drawings.

21           (b) Paintings.

22           (c) Designs.

23           (d) Photographs.

24           (e) Lettering.

25           (f) Paste-ups.

1 (g) Mechanicals.

2 (h) Assemblies.

3 (i) Charts.

4 (j) Graphs.

5 (k) Illustrative materials.

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

7 77.51 (3q) "Direct mail" means printed material that is delivered by the U.S.  
8 postal service or other delivery service to a mass audience or to addressees on a  
9 mailing list provided by or at the direction of the purchaser of the printed material,  
10 if the cost of the printed material or any tangible personal property included with the  
11 printed material is not billed directly to the recipients of the printed material.  
12 "Direct mail" includes any tangible personal property provided directly or indirectly  
13 by the purchaser of the printed material to the seller of the printed material for  
14 inclusion in any package containing the printed material, including billing invoices,  
15 return envelopes, and additional marketing materials. "Direct mail" does not  
16 include multiple items of printed material delivered to a single address.

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

18 77.51 (3rm) "Fixed wireless service" means a telecommunications service that  
19 provides radio communication between fixed points.

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

21 77.51 (3t) "Food and food ingredient" means a substance in liquid,  
22 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or  
23 for chewing, by humans and that is ingested or chewed for its taste or nutritional  
24 value. "Food and food ingredient" does not include alcoholic beverages or tobacco.

25 **SECTION 38.** 77.51 (4) of the statutes is repealed.

1 SECTION 39. 77.51 (5) of the statutes is amended to read:

2 77.51 (5) For purposes of subs. (13) (e) and (f) and ~~(14) (L)~~ (15a) and s. 77.52  
3 (2m), "incidental" means depending upon or appertaining to something else as  
4 primary; something necessary, appertaining to, or depending upon another which is  
5 termed the principal; something incidental to the main purpose of the service.  
6 Tangible personal property, specified digital goods, or additional digital goods  
7 transferred by a service provider is incidental to the service if the purchaser's main  
8 purpose or objective is to obtain the service rather than the property or goods, even  
9 though the property or goods may be necessary or essential to providing the service.

10 SECTION 40. 77.51 (5d) of the statutes is created to read:

11 77.51 (5d) "International telecommunications services" means  
12 telecommunications services that originate or terminate in ~~one state or~~ U.S. territory  
13 or possession and originate or terminate outside of ~~the state or~~ U.S. territory or  
14 possession.

*The United States,  
including the District of  
Columbia  
and any*

15 SECTION 41. 77.51 (5n) of the statutes is created to read:

16 77.51 (5n) "Interstate telecommunications services" means  
17 telecommunications services that originate in one state or U.S. territory or  
18 possession and terminate in a different state or U.S. territory or possession.

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

20 77.51 (5r) "Intrastate telecommunications services" means  
21 telecommunications services that originate in one state or U.S. territory or  
22 possession and terminate in the same state or U.S. territory or possession.

23 SECTION 43. 77.51 (6m) of the statutes is renumbered 77.51 (5m).

24 SECTION 44. 77.51 (7) of the statutes is repealed and recreated to read:

1           77.51 (7) (a) "Lease or rental" means any transfer of possession or control of  
2 tangible personal property for a fixed or indeterminate term and for consideration  
3 and includes:

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

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

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

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

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

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

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

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

5           **SECTION 45.** 77.51 (7g) of the statutes is created to read:

6           77.51 (7g) "Load-and-leave" means delivery to a purchaser by using a tangible  
7 storage media that is not physically transferred to the purchaser.

8           **SECTION 46.** 77.51 (7k) of the statutes is created to read:

9           77.51 (7k) "Mobile wireless service" means a telecommunications service for  
10 which the origination or termination points of the service's transmission,  
11 conveyance, or routing are not fixed, regardless of the technology used to transmit,  
12 convey, or route the service. "Mobile wireless service" includes a telecommunications  
13 service provided by a commercial mobile radio service provider.

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

15           77.51 (7m) "Mobility-enhancing equipment" means equipment, including the  
16 repair parts and replacement parts for the equipment, that is primarily and  
17 customarily used to provide or increase the ability of a person to move from one place  
18 to another; that may be used in a home or motor vehicle; and that is generally not  
19 used by a person who has normal mobility. "Mobility-enhancing equipment" does  
20 not include a motor vehicle or any equipment on a motor vehicle that is generally  
21 provided by a motor vehicle manufacturer.

22           **SECTION 48.** 77.51 (8m) of the statutes is created to read:

23           77.51 (8m) "Nine hundred service" means an inbound toll telecommunications  
24 service purchased by a subscriber that allows the subscriber's customers to call the  
25 subscriber's prerecorded announcement or live service. "Nine hundred service" does



1 not include any charge for collection services provided by the seller of the  
2 telecommunications services to the subscriber or for any product or service the  
3 subscriber sells to the subscriber's customers. A "nine hundred service" is  
4 designated with the "900" number or any other number designated by the federal  
5 communications commission.

6 **SECTION 49.** 77.51 (9) (a) of the statutes is amended to read:

7 77.51 (9) (a) Isolated and sporadic sales of tangible personal property, specified  
8 digital goods, additional digital goods, or taxable services where the infrequency, in  
9 relation to the other circumstances, including the sales price and the gross profit,  
10 support the inference that the seller is not pursuing a vocation, occupation or  
11 business or a partial vocation or occupation or part-time business as a vendor of  
12 personal property, specified digital goods, additional digital goods, or taxable  
13 services. No sale of any tangible personal property, specified digital goods, additional  
14 digital goods, or taxable service may be deemed an occasional sale if at the time of  
15 such sale the seller holds or is required to hold a seller's permit, except that this  
16 provision does not apply to an organization required to hold a seller's permit solely  
17 for the purpose of conducting bingo games and except as provided in par. (am).

18 **SECTION 50.** 77.51 (9) (am) of the statutes is amended to read:

19 77.51 (9) (am) The sale of personal property, other than inventory held for sale,  
20 previously used by a seller to conduct its trade or business at a location after that  
21 person has ceased actively operating in the regular course of business as a seller of  
22 tangible personal property, specified digital goods, additional digital goods, or  
23 taxable services at that location, even though the seller holds a seller's permit for one  
24 or more other locations.

25 **SECTION 51.** 77.51 (9p) of the statutes is created to read:

1           77.51 (9p) "One nonitemized price" does not include a price that is separately  
2 identified by product on a binding sales document, or other sales-related document,  
3 that is made available to the customer in paper or electronic form, including an  
4 invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement,  
5 a periodic notice of rates and services, a rate card, or a price list.

6           **SECTION 52.** 77.51 (9s) of the statutes is created to read:

7           77.51 (9s) "Paging service" means a telecommunications service that transmits  
8 coded radio signals to activate specific pagers and may include messages or sounds.

9           **SECTION 53.** 77.51 (10) of the statutes is amended to read:

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

19          **SECTION 54.** 77.51 (10d) of the statutes is created to read:

20          77.51 (10d) "Prepaid calling service" means the right to exclusively access  
21 telecommunications services, if that right is paid for in advance of providing such  
22 services, requires using an access number or authorization code to originate calls,  
23 and is sold in predetermined units or dollars that decrease with use in a known  
24 amount.

25          **SECTION 55.** 77.51 (10f) of the statutes is created to read:

1           77.51 (10f) "Prepaid wireless calling service" means a telecommunications  
2 service that provides the right to utilize mobile wireless service as well as other  
3 nontelecommunications services, including the download of digital products  
4 delivered electronically, content, and ancillary services, and that is paid for prior to  
5 use and sold in predetermined dollar units whereby the number of units declines  
6 with use in a known amount.

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

8           77.51 (10m) (a) "Prepared food" means:

- 9           1. Food and food ingredients sold in a heated state.
- 10           2. Food and food ingredients heated by the retailer, except as provided in par.
- 11           (b).
- 12           3. Food and food ingredients sold with eating utensils that are provided by the  
13 retailer of the food and food ingredients, including plates, knives, forks, spoons,  
14 glasses, cups, napkins, or straws. In this subdivision, "plate" does not include a  
15 container or packaging used to transport food and food ingredients. For purposes of  
16 this subdivision, a retailer provides utensils if any of the following applies:
- 17           a. The utensils are available to purchasers and the retailer's sales of prepared  
18 food under subs. 1. and 2., soft drinks, and alcoholic beverages at an establishment  
19 are more than 75 percent of the retailer's total sales at that establishment, as  
20 determined under par. (c).
- 21           b. For retailers not described under subd. 3. a., the retailer's customary practice  
22 is to physically give or hand the utensils to the purchaser, not including plates,  
23 glasses, or cups that are necessary for the purchaser to receive the food and food  
24 ingredients and that the retailer makes available to the purchaser.

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

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

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

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

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

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

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

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

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

1           b. A denominator that includes all food and food ingredients, including  
2 prepared food, candy, dietary supplements, and soft drinks, but not including  
3 alcoholic beverages.

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

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

12           3. For a retailer whose percentage determined under subd. 1. is greater than  
13 75 percent, an item sold by the retailer that contains 4 or more servings packaged  
14 as 1 item and sold for a single price does not become prepared food simply because  
15 the retailer makes utensils available to the purchaser of the item, but does become  
16 prepared food if the retailer physically gives or hands utensils to the purchaser of the  
17 item. For purposes of this subdivision 3. a., serving sizes are based on the  
18 information contained on the label of each item sold, except that, if the item has no  
19 label, the serving size is based on the retailer's reasonable determination.

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

23           b. Except as provided in subds. 2. and 3., if a retailer sells food items that have  
24 a utensil placed in a package by a person other than the retailer and the person's  
25 primary classification in the 2002 North American Industry Classification System,

1 published by the federal office of management and budget, is manufacturing under  
2 subsector 311, the utensils are not considered to be provided by the retailer.

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

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

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

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

21 77.51 (10r) "Prewritten computer software" means any of the following:

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

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

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

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

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

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

12 77.51 (10s) "Private communication service" means a telecommunications  
13 service that entitles the customer to exclusive or priority use of a communications  
14 channel or group of communications channels, regardless of the manner in which the  
15 communications channel or group of communications channels is connected, and  
16 includes switching capacity, extension lines, stations, and other associated services  
17 that are provided in connection with the use of such channel or channels.

18 **SECTION 60.** 77.51 (11d) of the statutes is created to read:

19 77.51 (11d) "Product" includes tangible personal property, specified digital  
20 goods, additional digital goods, and services.

21 **SECTION 61.** 77.51 (11m) of the statutes is created to read:

22 77.51 (11m) "Prosthetic device" means a device, including the repair parts and  
23 replacement parts for the device, that is placed in or worn on the body to artificially  
24 replace a missing portion of the body; to prevent or correct a physical deformity or  
25 malfunction; or to support a weak or deformed portion of the body.

1           **SECTION 62.** 77.51 (12) (a) of the statutes is amended to read:

2           77.51 (12) (a) Any transfer of title, possession, ownership, enjoyment, or use  
3 by: cash or credit transaction, exchange, barter, lease or rental, conditional or  
4 otherwise, in any manner or by any means whatever of tangible personal property,  
5 specified digital goods, or additional digital goods for a consideration;

6           **SECTION 63.** 77.51 (12) (b) of the statutes is amended to read:

7           77.51 (12) (b) A transaction whereby the possession of property, specified  
8 digital goods, or additional digital goods is transferred but the seller retains the title  
9 as security for the payment of the price.

10          **SECTION 64.** 77.51 (12m) of the statutes is created to read:

11          77.51 (12m) (a) "Purchase price" means the total amount of consideration,  
12 including cash, credit, property, and services, for which tangible personal property,  
13 specified digital goods, additional digital goods, or services are sold, leased, or rented,  
14 valued in money, whether paid in money or otherwise, without any deduction for the  
15 following:

16           1. The seller's cost of the property, specified digital goods, or additional digital  
17 goods 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



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

6 5. Installation charges.

7 6. The value of exempt tangible personal property, specified digital goods, or  
8 additional digital goods if the exempt tangible personal property, specified digital  
9 goods, or additional digital goods are sold as a bundled transaction that includes  
10 taxable tangible personal property, specified digital goods, or additional digital goods  
11 and sold by the seller as a single product or piece of merchandise.

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

13 1. Discounts, including cash, terms, or coupons, that are not reimbursed by a  
14 3rd party, except as provided in par. (c); that are allowed by a seller; and that are  
15 taken by a purchaser on a sale.

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

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

23 4. Delivery charges for direct mail.

24 5. In all transactions in which an article of tangible personal property is traded  
25 toward the purchase of an article of greater value, the amount of the purchase price

1 that represents the amount allowed for the article traded, except that this  
2 subdivision does not apply to any transaction to which subd. 7. or 8. applies.

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

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

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

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

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

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

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

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

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

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

18           **SECTION 65.** 77.51 (12p) of the statutes is created to read:

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

21           **SECTION 66.** 77.51 (13) (a) of the statutes is amended to read:

22           77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale  
23 is mercantile in nature, of tangible personal property, specified digital goods, or  
24 additional digital goods, or a service specified under s. 77.52 (2) (a).

25           **SECTION 67.** 77.51 (13) (b) of the statutes is amended to read:

1           77.51 (13) (b) Every person engaged in the business of making sales of tangible  
2           personal property, specified digital goods, or additional digital goods for storage, use  
3           or consumption or in the business of making sales at auction of tangible personal  
4           property, specified digital goods, or additional digital goods owned by the person or  
5           others for storage, use or other consumption.

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

7           77.51 (13) (c) When the department determines that it is necessary for the  
8           efficient administration of this subchapter to regard any salespersons,  
9           representatives, peddlers or canvassers as the agents of the dealers, distributors,  
10          supervisors or employers under whom they operate or from whom they obtain the  
11          tangible personal property, specified digital goods, or additional digital goods sold by  
12          them, irrespective of whether they are making the sales on their own behalf or on  
13          behalf of such dealers, distributors, supervisors or employers, the department may  
14          so regard them and may regard the dealers, distributors, supervisors or employers  
15          as retailers for purposes of this subchapter.

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

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

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

22          77.51 (13) (e) A person selling tangible personal property, specified digital  
23          goods, or additional digital goods to a service provider who transfers the property in  
24          conjunction with the selling, performing or furnishing of any service and the  
25          property is or goods are incidental to the service, unless the service provider is

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

2 This subsection does not apply to sub. (2).

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

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

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

10 77.51 (13) (k) As respects a lease, any person deriving rentals from a lease of  
11 tangible personal property, specified digital goods, or additional digital goods  
12 situated in this state.

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

14 77.51 (13) (m) A person selling tangible personal property, specified digital  
15 goods, or additional digital goods to a veterinarian to be used or furnished by the  
16 veterinarian in the performance of services in some manner related to domestic  
17 animals, including pets or poultry.

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

19 77.51 (13) (n) A person selling household furniture, furnishings, equipment,  
20 appliances or other items of tangible personal property, specified digital goods, or  
21 additional digital goods to a landlord for use by tenants in leased or rented living  
22 quarters.

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

24 77.51 (13) (o) A person selling medicine drugs for animals to a veterinarian.

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

1           **SECTION 76.** 77.51 (13g) (intro.) of the statutes is amended to read:

2           77.51 (13g) (intro.) Except as provided in sub. (13h), “retailer engaged in  
3 business in this state”, ~~unless otherwise limited by federal statute,~~ for purposes of  
4 the use tax, means any of the following:

5           **SECTION 77.** 77.51 (13g) (c) of the statutes is created to read:

6           77.51 (13g) (c) Any retailer selling tangible personal property or taxable  
7 services for storage, use, or other consumption in this state, unless otherwise limited  
8 by federal law.

9           **SECTION 78.** 77.51 (13r) of the statutes is amended to read:

10          77.51 (13r) Any person purchasing from a retailer as defined in sub. (13) shall  
11 be deemed the consumer of the tangible personal property, specified digital goods,  
12 additional digital goods, or services purchased.

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

14          77.51 (13rm) “Retail sale” or “sale at retail” means any sale, lease, or rental  
15 for any purpose other than resale, sublease, or subrent.

16          **SECTION 80.** 77.51 (13rn) of the statutes is created to read:

17          77.51 (13rn) “Ringtones” means digitized sound files that are downloaded onto  
18 a device and that may used to alert <sup>the</sup> customer with regard to a communication.  
19 “Ringtones” includes MP3 or musical tones, polyphonic tones, and synthetic music  
20 mobile application format tones, but does not include ring-back tones.

21          **SECTION 81.** 77.51 (14) (intro.) of the statutes is amended to read:

22          77.51 (14) (intro.) “Sale”, ~~“sale, lease or rental”, “retail sale”, “sale at retail”, or~~  
23 ~~equivalent terms include~~ includes any one or all of the following: the transfer of the  
24 ownership of, title to, possession of, or enjoyment of tangible personal property,  
25 specified digital goods, additional digital goods, or services for use or consumption

1 but not for resale as tangible personal property, specified digital goods, additional  
2 digital goods, or services and includes:

3 SECTION 82. 77.51 (14) (a) of the statutes is amended to read:

4 77.51 (14) (a) Any sale at an auction in respect to tangible personal property,  
5 specified digital goods, or additional digital goods which is sold to a successful bidder.  
6 ~~The proceeds from, except the sale of property or goods~~ sold at auction which is bid  
7 in by the seller and on which title does not pass to a new purchaser ~~shall be deducted~~  
8 ~~from the gross proceeds of the sale and the tax paid only on the net proceeds.~~

9 SECTION 83. 77.51 (14) (b) of the statutes is amended to read:

10 77.51 (14) (b) The furnishing or distributing of tangible personal property,  
11 specified digital goods, additional digital goods, or taxable services for a  
12 consideration by social clubs and fraternal organizations to their members or others.

13 SECTION 84. 77.51 (14) (c) of the statutes is amended to read:

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

17 SECTION 85. 77.51 (14) (d) of the statutes is repealed.

18 SECTION 86. 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4.

19 SECTION 87. 77.51 (14) (h) of the statutes is amended to read:

20 77.51 (14) (h) A transfer for a consideration of the title or possession of tangible  
21 personal property, specified digital goods, or additional digital goods which ~~has~~ have  
22 been produced, fabricated, or printed to the special order of the customer or of any  
23 publication.

24 SECTION 88. 77.51 (14) (i) of the statutes is repealed.

25 SECTION 89. 77.51 (14) (j) of the statutes is amended to read:

1           77.51 (14) (j) The granting of possession of tangible personal property, specified  
2 digital goods, or additional digital goods by a lessor to a lessee, or to another person  
3 at the direction of the lessee. Such a transaction is deemed a continuing sale in this  
4 state by the lessor for the duration of the lease as respects any period of time the  
5 leased property is situated in this state, irrespective of the time or place of delivery  
6 of the property to the lessee or such other person.

7           **SECTION 90.** 77.51 (14) (k) of the statutes is repealed.

8           **SECTION 91.** 77.51 (14) (L) of the statutes is repealed.

9           **SECTION 92.** 77.51 (14g) (a) of the statutes is amended to read:

10          77.51 (14g) (a) The transfer of property, specified digital goods, or additional  
11 digital goods to a corporation upon its organization solely in consideration for the  
12 issuance of its stock;

13          **SECTION 93.** 77.51 (14g) (b) of the statutes is amended to read:

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

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

18          77.51 (14g) (bm) The contribution of property, specified digital goods, or  
19 additional digital goods to a limited liability company upon its organization solely in  
20 consideration for a membership interest;

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

22          77.51 (14g) (c) The transfer of property, specified digital goods, or additional  
23 digital goods to a corporation, solely in consideration for the issuance of its stock,  
24 pursuant to a merger or consolidation;

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



1           77.51 (14g) (cm) The transfer of property, specified digital goods, or additional  
2 digital goods to a limited liability company, solely in consideration for a membership  
3 interest, pursuant to a merger;

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

5           77.51 (14g) (d) The distribution of property, specified digital goods, or  
6 additional digital goods by a corporation to its stockholders as a dividend or in whole  
7 or partial liquidation;

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

9           77.51 (14g) (e) The distribution of property, specified digital goods, or  
10 additional digital goods by a partnership to its partners in whole or partial  
11 liquidation;

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

13           77.51 (14g) (em) The distribution of property, specified digital goods, or  
14 additional digital goods by a limited liability company to its members in whole or  
15 partial liquidation;

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

17           77.51 (14g) (f) Repossession of property, specified digital goods, or additional  
18 digital goods by the seller from the purchaser when the only consideration is  
19 cancellation of the purchaser's obligation to pay the remaining balance of the  
20 purchase price;

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

22           77.51 (14g) (g) The transfer of property, specified digital goods, or additional  
23 digital goods in a reorganization as defined in section 368 of the internal revenue  
24 code in which no gain or loss is recognized for franchise or income tax purposes; or

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

1           77.51 (14g) (h) Any transfer of all or substantially all the property, specified  
2           digital goods, or additional digital goods held or used by a person in the course of an  
3           activity requiring the holding of a seller's permit, if after the transfer the real or  
4           ultimate ownership of the property or goods is substantially similar to that which  
5           existed before the transfer. For the purposes of this section, stockholders,  
6           bondholders, partners, members or other persons holding an interest in a  
7           corporation or other entity are regarded as having the real or ultimate ownership of  
8           the property or goods of the corporation or other entity. In this paragraph,  
9           "substantially similar" means 80% or more of ownership.

10           **SECTION 103.** 77.51 (14r) of the statutes is repealed.

11           **SECTION 104.** 77.51 (15) of the statutes is repealed.

12           **SECTION 105.** 77.51 (15a) of the statutes is created to read:

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

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

23           1. The sale of building materials, supplies, and equipment to owners,  
24           contractors, subcontractors, or builders for use in real property construction

1 activities or the alteration, repair, or improvement of real property, regardless of the  
2 quantity of such materials, supplies, and equipment sold.

3 2. Any sale of tangible personal property, specified digital goods, or additional  
4 digital goods to a purchaser even though such property or goods may be used or  
5 consumed by some other person to whom such purchaser transfers the tangible  
6 personal property or goods without valuable consideration, such as gifts, and  
7 advertising specialties distributed gratis apart from the sale of other tangible  
8 personal property, specified digital goods, additional digital goods, or service.

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

15 **SECTION 106.** 77.51 (15b) of the statutes is created to read:

16 77.51 (15b) (a) "Sales price" means the total amount of consideration, including  
17 cash, credit, property, and services, for which tangible personal property, specified  
18 digital goods, additional digital goods, or services are sold, leased, or rented, valued  
19 in money, whether received in money or otherwise, without any deduction for the  
20 following:

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

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

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

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

4           b. If a shipment includes property that is subject to tax under this subchapter  
5 and property that is not subject to tax under this subchapter, the amount of the  
6 delivery charge allocated to the property that is subject to tax under this subchapter  
7 based on the total sales price of the property that is subject to tax under this  
8 subchapter as compared to the total sales price of all the property or on the total  
9 weight of the property that is subject to tax under this subchapter as compared to the  
10 total weight of all the property.

11          5. Installation charges.

12          6. The value of exempt tangible personal property, specified digital goods, or  
13 additional digital goods, if the exempt tangible personal property, specified digital  
14 goods, or additional digital goods are sold as a bundled transaction that includes  
15 taxable tangible personal property, specified digital goods, or additional digital goods  
16 and sold by the seller as a single product or piece of merchandise.

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

18           1. Discounts, including cash, terms, or coupons, that are not reimbursed by a  
19 3rd party, except as provided in par. (c); that are allowed by a seller; and that are  
20 taken by a purchaser on a sale.

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

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

4           4. Delivery charges for direct mail.

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

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

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

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

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

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

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

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

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

12 4. Any of the following also applies:

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

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

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

23 **SECTION 107.** 77.51 (17) of the statutes is amended to read:

24 77.51 (17) "Seller" includes every person selling, leasing, or renting tangible  
25 personal property, specified digital goods, or additional digital goods or selling,

1 performing, or furnishing services of a kind the ~~gross receipts~~ sales price from the  
2 sale, lease, rental, performance, or furnishing of which ~~are~~ is required to be included  
3 in the measure of the sales tax.

4 **SECTION 108.** 77.51 (17m) of the statutes is repealed and recreated to read:

5 77.51 (17m) "Service address" means any of the following:

6 (a) The location of the telecommunications equipment to which a customer's  
7 telecommunications service is charged and from which the telecommunications  
8 service originates or terminates, regardless of where the telecommunications service  
9 is billed or paid.

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

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

18 **SECTION 109.** 77.51 (17w) of the statutes is created to read:

19 77.51 (17w) "Soft drink" means a beverage that contains less than 0.5 percent  
20 of alcohol and that contains natural or artificial sweeteners. "Soft drink" does not  
21 include a beverage that contains milk or milk products; soy, rice, or similar milk  
22 substitutes; or more than 50 percent vegetable or fruit juice by volume.

23 **SECTION 110.** 77.51 (17x) of the statutes is created to read:

24 77.51 (17x) "Specified digital goods" means digital audio works, digital  
25 audiovisual works, and digital books. For purposes of this subchapter, the sale of or

## SECTION 110

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

4 SECTION 111. 77.51 (18) of the statutes is amended to read:

5 77.51 (18) "Storage" includes any keeping or retention in this state of tangible  
6 personal property, specified digital goods, or additional digital goods purchased from  
7 a retailer for any purpose except sale in the regular course of business.

8 SECTION 112. 77.51 (20) of the statutes is amended to read:

9 77.51 (20) "Tangible personal property" means all tangible personal property  
10 of every kind and description that can be seen, weighed, measured, felt, or touched,  
11 or that is in any other manner perceptible to the senses, and includes electricity,  
12 natural gas, steam and, water, and also leased property affixed to realty if the lessor  
13 ~~has the right to remove the property upon breach or termination of the lease~~  
14 ~~agreement, unless the lessor of the property is also the lessor of the realty to which~~  
15 ~~the property is affixed. "Tangible personal property" also includes coins and stamps~~  
16 ~~of the United States sold or traded as collectors' items above their face value and~~  
17 ~~computer programs except custom computer programs~~ prewritten computer  
18 software, but does not include ~~digital books~~ <sup>specified</sup> goods

19 SECTION 113. 77.51 (21) of the statutes is amended to read:

20 77.51 (21) "Taxpayer" means the person who is required to pay, collect, or  
21 account for or who is otherwise directly interested in the taxes imposed by this  
22 subchapter, including a certified service provider.

23 SECTION 114. 77.51 (21m) of the statutes is amended to read:

24 77.51 (21m) "Telecommunications Internet access services" means sending  
25 messages and information transmitted through the use of local, toll and wide-area



1 telephone service; channel services; telegraph services; teletypewriter; computer  
2 exchange services; cellular mobile telecommunications service; specialized mobile  
3 radio; stationary two-way radio; paging service; or any other form of mobile and  
4 portable one-way or two-way communications; or any other transmission of  
5 messages or information by electronic or similar means between or among points by  
6 wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.  
7 ~~“Telecommunications services” does not include sending collect telecommunications~~  
8 ~~that are received outside of the state.~~

9 **SECTION 115.** 77.51 (21n) of the statutes is created to read:

10 **77.51 (21n)** “Telecommunications services” means electronically transmitting,  
11 conveying, or routing voice, data, audio, video, or other information or signals to a  
12 point or between or among points. “Telecommunications services” includes the  
13 transmission, conveyance, or routing of such information or signals in which  
14 computer processing applications are used to act on the content’s form, code, or  
15 protocol for transmission, conveyance, or routing purposes, regardless of whether  
16 the service is referred to as a voice over Internet protocol service or classified by the  
17 federal communications commission as an enhanced or value-added service.  
18 “Telecommunications services” does not include any of the following:

19 (a) Data processing and information services that allow data to be generated,  
20 acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic  
21 transmission, if the purchaser’s primary purpose for the underlying transaction is  
22 the processed data.

23 (b) Installing or maintaining wiring or equipment on a customer’s premises.

24 (c) Tangible personal property.

25 (d) Advertising, including directory advertising.

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

2 (f) Telecommunications internet access service.

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

8 (h) Ancillary services.

9 (i) Digital products delivered electronically, including software, music, video,  
10 reading materials, or ring tones.

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

12 77.51 (21p) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco,  
13 and any other item that contains tobacco.

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

15 77.51 (21s) "Transferred electronically" means accessed or obtained by <sup>the</sup> purchaser by means other than tangible storage media.

17 **SECTION 118.** 77.51 (22) (a) of the statutes is amended to read:

18 77.51 (22) (a) "Use" includes the exercise of any right or power over tangible  
19 personal property, specified digital goods, additional digital goods, or taxable  
20 services incident to the ownership, possession or enjoyment of the property, goods,  
21 or services, or the results produced by the services, including installation or  
22 affixation to real property and including the possession of, or the exercise of any right  
23 or power over tangible personal property, specified digital goods, or additional digital  
24 goods by a lessee under a lease, except that "use" does not include the activities under  
25 sub. (18).

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

2           77.51 (22) (b) In this subsection “enjoyment” includes a purchaser’s right to  
3 direct the disposition of property, specified digital goods, or additional digital goods,  
4 whether or not the purchaser has possession of the property or goods. “Enjoyment”  
5 also includes, but is not limited to, having shipped into this state by an out-of-state  
6 supplier printed material which is designed to promote the sale of property, specified  
7 digital goods, additional digital goods, or services, or which is otherwise related to  
8 the business activities, of the purchaser of the printed material or printing service.

9           **SECTION 120.** 77.51 (22) (bm) of the statutes is created to read:

10          77.51 (22) (bm) In this subsection, “exercise of any right or power over tangible  
11 personal property, specified digital goods, additional digital goods, or taxable  
12 services” includes distributing, selecting recipients, determining mailing schedules,  
13 or otherwise directing the distribution, dissemination, or disposal of tangible  
14 personal property, specified digital goods, additional digital goods, or taxable  
15 services, regardless of whether the purchaser of such property or goods or services  
16 owns or physically possesses, in this state, the property, goods, or services.

17          **SECTION 121.** 77.51 (24) of the statutes is created to read:

18          77.51 (24) “Value-added non-voice data service” means a service in which  
19 computer processing applications are used to act on the form, content, code, or  
20 protocol of the data provided by the service and are used primarily for a purpose other  
21 than for transmitting, conveying, or routing data.

22          **SECTION 122.** 77.51 (25) of the statutes is created to read:

23          77.51 (25) “Vertical service” means an ancillary service that is provided with  
24 one or more telecommunications services and allows customers to identify callers

1 and to manage multiple calls and call connections, including conference bridging  
2 services.

3 **SECTION 123.** 77.51 (26) of the statutes is created to read:

4 77.51 (26) "Voice mail service" means an ancillary service that allows a  
5 customer to store, send, or receive recorded messages, not including any vertical  
6 service that the customer must have to use the voice mail service.

7 **SECTION 124.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a) and amended  
8 to read:

9 77.52 (1) (a) For the privilege of selling, licensing, leasing or renting tangible  
10 personal property, including accessories, components, attachments, parts, supplies  
11 and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the  
12 gross receipts sales price from the sale, license, lease or rental of tangible personal  
13 property, including accessories, components, attachments, parts, supplies and  
14 materials, sold, leased or rented at retail in this state, as determined under s. 77.522.

15 **SECTION 125.** 77.52 (1) (b) of the statutes is created to read:

16 77.52 (1) (b) For the privilege of selling at retail coins and stamps of the United  
17 States that are sold or traded as collectors' items above their face value, a tax is  
18 imposed on all retailers at the rate of 5 percent of the sales price from the sale of such  
19 coins and stamps.

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

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

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

2           77.52 (1) (d) For the privilege of selling, licensing, leasing, or renting specified  
3 digital goods or additional digital goods at retail, regardless of whether the  
4 purchaser has the right to permanently use such goods or whether the purchaser's  
5 right to access or retain such goods is not permanent, at retail a tax is imposed upon  
6 all retailers at the rate of 5 percent of the sales price from the sale, license, lease or  
7 rental of such goods.

8           **SECTION 128.** 77.52 (2) (intro.) of the statutes is amended to read:

9           77.52 (2) (intro.) For the privilege of selling, licensing, performing or furnishing  
10 the services described under par. (a) at retail in this state, as determined under s.  
11 77.522, to consumers or users, a tax is imposed upon all persons selling, licensing,  
12 performing or furnishing the services at the rate of 5% of the gross receipts sales price  
13 from the sale, license, performance or furnishing of the services.

14           **SECTION 129.** 77.52 (2) (a) 5. a. of the statutes is renumbered 77.52 (2) (a) 5. and  
15 amended to read:

16           77.52 (2) (a) 5. The sale of intrastate, interstate, and international  
17 telecommunications services, except interstate 800 services subject to 4 USC 116 to  
18 126, as amended by P.L. 106-252, that either originate or terminate in this state;  
19 except services that are obtained by means of a toll-free number, that originate  
20 outside this state and that terminate in this state; and are charged to a service  
21 address in this state, regardless of the location where that charge is billed or paid;  
22 and the sale of the rights to purchase telecommunications services, including  
23 purchasing reauthorization numbers, by paying in advance and by using an access  
24 number and authorization code, except sales that are subject to subd. 5. b,

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1 telecommunications Internet access services, and ancillary services, not including  
2 detailed telecommunications billing services.

3 SECTION 130. 77.52 (2) (a) 5. b. of the statutes is repealed.

4 SECTION 131. 77.52 (2) (a) 5m. of the statutes is amended to read:

5 77.52 (2) (a) 5m. The sale of services that consist of recording  
6 telecommunications messages and transmitting them to the purchaser of the service  
7 or at that purchaser's direction, but not including those services if they are merely  
8 an that are taxable under subd. 5. or services that are incidental, as defined in s.  
9 77.51 (5), element of to another service that is not taxable under this subchapter and  
10 sold to that the purchaser of the incidental service and is not taxable under this  
11 subchapter.

*5A specified digital goods, and additional digital goods*

12 SECTION 132. 77.52 (2) (a) 10. of the statutes is amended to read:

13 77.52 (2) (a) 10. Except for services provided by veterinarians and except for  
14 installing or applying tangible personal property that, subject to par. (ag), when  
15 installed or applied, will constitute an addition or capital improvement of real  
16 property, the repair, service, alteration, fitting, cleaning, painting, coating, towing,  
17 inspection, and maintenance of all items of tangible personal property unless, at the  
18 time of that the repair, service, alteration, fitting, cleaning, painting, coating,  
19 towing, inspection, or maintenance, a sale in this state of the type of property  
20 repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or  
21 maintained would have been exempt to the customer from sales taxation under this  
22 subchapter, other than the exempt sale of a motor vehicle or truck body to a  
23 nonresident under s. 77.54 (5) (a) and other than nontaxable sales under s. 77.51  
24 (14r) juvenile 77.522 or unless the repair, service, alteration, fitting, cleaning,  
25 painting, coating, towing, inspection, or maintenance is provided under a contract

7 INSERT 46-3

3A *specified digital goods, or additional digital goods*

1 that is subject to tax under subd. 13m. The tax imposed under this subsection applies  
2 to the repair, service, alteration, fitting, cleaning, painting, coating, towing,  
3 inspection, or maintenance of items listed in par. (ag), regardless of whether the  
4 installation or application of tangible personal property related to the items is an  
5 addition to or a capital improvement of real property, except that the tax imposed  
6 under this subsection does not apply to the original installation or the complete  
7 replacement of an item listed in par. (ag), if that the installation or replacement is  
8 a real property construction activity under s. 77.51 (2).

9 **SECTION 133.** 77.52 (2) (a) 13m. of the statutes is created to read:

10 77.52 (2) (a) 13m. The sale of contracts, including service contracts,  
11 maintenance agreements, and warranties, that provide, in whole or in part, for the  
12 future performance of or payment for the repair, service, alteration, fitting, cleaning,  
13 painting, coating, towing, inspection, or maintenance of tangible personal property,  
14 unless the sale, lease, or rental in this state of the property to which the contract  
15 relates is or was exempt, to the purchaser of the contract, from taxation under this  
16 subchapter.

17 **SECTION 134.** 77.52 (3m) of the statutes is repealed.

18 **SECTION 135.** 77.52 (3n) of the statutes is repealed.

19 **SECTION 136.** 77.52 (4) of the statutes is amended to read:

20 77.52 (4) It is unlawful for any retailer to advertise or hold out or state to the  
21 public or to any customer, directly or indirectly, that the tax or any part thereof will  
22 be assumed or absorbed by the retailer or that it will not be added to the selling price  
23 of the property, specified digital goods, or additional digital goods sold or that if added  
24 it, or any part thereof, will be refunded. Any person who violates this subsection is  
25 guilty of a misdemeanor.

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1           **SECTION 137.** 77.52 (6) of the statutes is repealed.

2           **SECTION 138.** 77.52 (7) of the statutes is amended to read:

3           77.52 (7) Every person desiring to operate as a seller within this state who  
4 holds a valid certificate under s. 73.03 (50) shall file with the department an  
5 application for a permit for each place of operations. Every application for a permit  
6 shall be made upon a form prescribed by the department and shall set forth the name  
7 under which the applicant intends to operate, the location of the applicant's place of  
8 operations, and the other information that the department requires. The Except as  
9 provided in sub. (7b), the application shall be signed by the owner if a sole proprietor;  
10 in the case of sellers other than sole proprietors, the application shall be signed by  
11 the person authorized to act on behalf of such sellers. A nonprofit organization that  
12 has gross receipts a sales price taxable under s. 77.54 (7m) shall obtain a seller's  
13 permit and pay taxes under this subchapter on all taxable gross receipts sales prices  
14 received after it is required to obtain that permit. If that organization becomes  
15 eligible later for the exemption under s. 77.54 (7m) except for its possession of a  
16 seller's permit, it may surrender that permit.

17           **SECTION 139.** 77.52 (7b) of the statutes is created to read:

18           77.52 (7b) Any person who may register under sub. (7) may designate an agent,  
19 as defined in s. 77.524 (1) (ag), to register with the department under sub. (7), in the  
20 manner prescribed by the department.

21           **SECTION 140.** 77.52 (12) of the statutes is amended to read:

22           77.52 (12) A person who operates as a seller in this state without a permit or  
23 after a permit has been suspended or revoked or has expired, unless the person has  
24 a temporary permit under sub. (11), and each officer of any corporation, partnership  
25 member, limited liability company member, or other person authorized to act on



1 behalf of a seller who so operates, is guilty of a misdemeanor. Permits shall be held  
2 only by persons actively operating as sellers of tangible personal property, specified  
3 digital goods, additional digital goods, or taxable services. Any person not so  
4 operating shall forthwith surrender that person's permit to the department for  
5 cancellation. The department may revoke the permit of a person found not to be  
6 actively operating as a seller of tangible personal property, specified digital goods,  
7 additional digital goods, or taxable services.

8 SECTION 141. 77.52 (13) of the statutes is amended to read:

9 77.52 (13) For the purpose of the proper administration of this section and to  
10 prevent evasion of the sales tax it shall be presumed that all receipts are subject to  
11 the tax until the contrary is established. The burden of proving that a sale of tangible  
12 personal property, specified digital goods, additional digital goods, or services is not  
13 a taxable sale at retail is upon the person who makes the sale unless that person  
14 takes from the purchaser ~~a~~ an electronic or a paper certificate, in a manner  
15 prescribed by the department, to the effect that the property digital good or service  
16 is purchased for resale or is otherwise exempt, ~~except that no certificate is required~~  
17 ~~for sales of cattle, sheep, goats, and pigs that are sold at an animal market, as defined~~  
18 ~~in s. 95.68 (1) (ag), and no certificate is required for sales of commodities, as defined~~  
19 ~~in 7 USC 2, that are consigned for sale in a warehouse in or from which the~~  
20 ~~commodity is deliverable on a contract for future delivery subject to the rules of a~~  
21 ~~commodity market regulated by the U.S. commodity futures trading commission if~~  
22 ~~upon the sale the commodity is not removed from the warehouse~~ the sale of tangible  
23 personal property <sup>and</sup> that ~~is~~ exempt under s. 77.54 (7), (7m), (8), (10), (11), (14), (14b),  
24 (15), (17), (20n), (21), (22b), (30), (31), (32), (35), (36), (37), (42), (44), (45), and (46),  
25 except as provided in s. 77.54 (30) (e) and (f).

specified digital goods, and additional digital goods

1           **SECTION 142.** 77.52 (14) (a) (intro.) and 1. and (b) of the statutes are  
2 consolidated, renumbered 77.52 (14) (a) and amended to read:

3           77.52 (14) (a) The certificate referred to in sub. (13) relieves the seller from the  
4 burden of proof only if any of the following is true: ~~1. The certificate is taken in good~~  
5 ~~faith the seller obtains a fully completed exemption certificate, or the information~~  
6 ~~required to prove the exemption, from a person who is engaged as a seller of tangible~~  
7 ~~personal property or taxable services and who holds the permit provided for in sub.~~  
8 ~~(9) and who, at the time of purchasing purchaser no later than 90 days after the date~~  
9 ~~of the sale of the tangible personal property, specified digital goods, additional digital~~  
10 ~~goods, or services, intends to sell it in the regular course of operations or is unable~~  
11 ~~to ascertain at the time of purchase whether the property or service will be sold or~~  
12 ~~will be used for some other purpose. (b) except as provided in par. (am). The~~  
13 ~~certificate under sub. (13) shall not relieve the seller of the burden of proof if the seller~~  
14 ~~fraudulently fails to collect sales tax, solicits the purchaser to claim an unlawful~~  
15 ~~exemption, accepts an exemption certificate from a purchaser who claims to be an~~  
16 ~~entity that is not subject to the taxes imposed under this subchapter, if the subject~~  
17 ~~of the transaction sought to be covered by the exemption certificate is received by the~~  
18 ~~purchaser at a location operated by the seller in this state and the exemption~~  
19 ~~certificate clearly and affirmatively indicates that the claimed exemption is not~~  
20 ~~available in this state. The certificate referred to in sub. (13) shall be signed by and~~  
21 ~~bear the name and address of provide information that identifies the purchaser, and~~  
22 ~~shall indicate the general character of the tangible personal property or service sold~~  
23 ~~by the purchaser and the basis for the claimed exemption and a paper certificate~~  
24 ~~shall be signed by the purchaser. The certificate shall be in such form as the~~  
25 department prescribes by rule.

1           **SECTION 143.** 77.52 (14) (a) 2. of the statutes is repealed.

2           **SECTION 144.** 77.52 (14) (am) of the statutes is created to read:

3           77.52 (14) (am) If the seller has not obtained a fully completed exemption  
4 certificate or the information required to prove the exemption, as provided in par. (a),  
5 the seller may, no later than 120 days after the department requests that the seller  
6 substantiate the exemption, either provide proof of the exemption to the department  
7 by other means or obtain, in good faith, a fully completed exemption certificate from  
8 the purchaser.

9           **SECTION 145.** 77.52 (15) of the statutes is amended to read:

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

23          **SECTION 146.** 77.52 (16) of the statutes is amended to read:

24          77.52 (16) Any person who gives a resale certificate for property, specified  
25 digital goods, additional digital goods, or services which that person knows at the

1 time of purchase is not to be resold by that person in the regular course of that  
2 person's operations as a seller for the purpose of evading payment to the seller of the  
3 amount of the tax applicable to the transaction is guilty of a misdemeanor. Any  
4 person certifying to the seller that the sale of property, specified digital goods,  
5 additional digital goods, or taxable service is exempt, knowing at the time of  
6 purchase that it is not exempt, for the purpose of evading payment to the seller of the  
7 amount of the tax applicable to the transaction, is guilty of a misdemeanor.

8 **SECTION 147.** 77.52 (19) of the statutes is amended to read:

9 77.52 (19) The department shall by rule provide for the efficient collection of  
10 the taxes imposed by this subchapter on sales of property, specified digital goods,  
11 additional digital goods, or services by persons not regularly engaged in selling at  
12 retail in this state or not having a permanent place of business, but who are  
13 temporarily engaged in selling from trucks, portable roadside stands, concessions at  
14 fairs and carnivals, and the like. The department may authorize such persons to sell  
15 property, specified digital goods, or additional digital goods or sell, perform, or  
16 furnish services on a permit or nonpermit basis as the department by rule prescribes  
17 and failure of any person to comply with such rules constitutes a misdemeanor.

18 **SECTION 148.** 77.522 of the statutes is created to read:

19 **77.522 Sourcing.** (1) GENERAL. (a) In this section:

20 1. "Direct mail form" means a form for direct mail prescribed by the  
21 department.

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

7  
18 INJURY  
52-17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

4 (e) The sale of a postpaid calling service occurs at the location where the signal  
5 of the telecommunications service originates, as first 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 (f) The sale of a prepaid calling service or a prepaid wireless calling service  
10 occurs at the location determined under sub. (1) (b), except that, if the service is a  
11 prepaid wireless calling service and the location cannot be determined under sub. (1)  
12 (b) 1. to 4., the prepaid wireless calling service occurs at the location determined  
13 under sub. (1) (b) 5. c. or at the location associated with the mobile telephone number,  
14 as determined by the seller.

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

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

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

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

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

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

11           (j) If the location of the customer's service address, channel termination point,  
12 or place of primary use is not known, the location where the seller receives or passes

13 ~~the~~ the signal shall be considered, for purposes of this section, the customer's service  
14 address, channel termination point, or place of primary use.

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

20           (b) The sale of tangible personal property by a retail florist who takes an order  
21 from a purchaser occurs at the location where the retail florist takes the order, if the  
22 retail florist forwards the order to another retail florist who is at a location other than  
23 the location of the florist who takes the order and who transfers the tangible personal  
24 property to a person identified by the purchaser.

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

hands  
off  
hands  
passes

1           **SECTION 149.** 77.523 (title) of the statutes is repealed.

2           **SECTION 150.** 77.523 of the statutes is renumbered 77.59 (9p) (a) and amended  
3 to read:

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