



2009 ASSEMBLY BILL 905

March 26, 2010 – Introduced by Representative SHERMAN, cosponsored by Senator JAUCH. Referred to Joint Committee on Finance.

1 **AN ACT to renumber** 77.52 (14) (am) and 77.53 (11) (b); **to renumber and**
2 **amend** 77.522 (1) (c) and 77.59 (9); **to amend** 77.51 (10m) (a) 3. a., 77.51 (11d),
3 77.52 (2) (a) 5. am., 77.54 (18), 77.58 (3) (a), 77.58 (4), 77.585 (1) (a), 77.585 (1)
4 (d), 77.982 (2), 77.991 (2), 77.9951 (2) and 77.9972 (2); **to repeal and recreate**
5 77.98; and **to create** 77.51 (1ag), 77.51 (9r), 77.52 (14) (am) 2., 77.52 (14) (am)
6 3., 77.522 (1) (c) 2., 77.522 (1) (c) 3., 77.522 (1) (c) 4., 77.53 (11) (b) 2., 77.53 (11)
7 (b) 3., 77.58 (2) (d) and 77.59 (9) (b) of the statutes; **relating to:** streamlined
8 sales and use tax agreement changes.

Analysis by the Legislative Reference Bureau

This bill makes technical corrections to the administration of sales and use taxes, consistent with the streamlined sales and use tax agreement.

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:

ASSEMBLY BILL 905**SECTION 1**

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

2 77.51 **(1ag)** “Advertising and promotional direct mail” means direct mail that
3 has the primary purpose of attracting public attention to a product, person, business,
4 or organization or to attempt to sell, popularize, or secure financial support for a
5 product, person, business, or organization.

6 **SECTION 2.** 77.51 (9r) of the statutes is created to read:

7 77.51 **(9r)** (a) “Other direct mail” means any direct mail that is not advertising
8 and promotional direct mail, regardless of whether advertising and promotional
9 direct mail is included in the same mailing. “Other direct mail” includes all of the
10 following:

11 1. Transactional direct mail that contains personal information specific to the
12 addressee, including invoices, bills, account statements, and payroll advices.

13 2. Any legally required mailings, including privacy notices, tax reports, and
14 stockholder reports.

15 3. Other nonpromotional direct mail, including newsletters and informational
16 pieces, that is delivered to existing or former shareholders, customers, employees, or
17 agents.

18 (b) “Other direct mail” does not include printed materials that result from
19 developing billing information or providing any data processing service that is more
20 than incidental, as defined in sub. (5), to producing the other direct mail.

21 **SECTION 3.** 77.51 (10m) (a) 3. a. of the statutes, as created by 2009 Wisconsin
22 Act 2, is amended to read:

23 77.51 **(10m)** (a) 3. a. The utensils are available to purchasers and the retailer’s
24 sales of prepared food under subds. 1. and 2., ~~soft drinks, and alcoholic beverages~~
25 ~~at an establishment~~ and 4., and food for which plates, bowls, glasses, or cups are

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1 necessary to receive the food, are more than 75 percent of the retailer's total sales at
2 that establishment of all food and food ingredients, as determined under par. (c).

3 **SECTION 4.** 77.51 (11d) of the statutes, as created by 2009 Wisconsin Act 2, is
4 amended to read:

5 77.51 **(11d)** For purposes of subs. ~~(1ag)~~, (1f), (3pf), and (9p) and ss. 77.52 (20)
6 and (21), 77.522, and 77.54 (51) and (52), "product" includes tangible personal
7 property, and items, property, and goods under s. 77.52 (1) (b), (c), and (d), and
8 services.

9 **SECTION 5.** 77.52 (2) (a) 5. am. of the statutes, as created by 2009 Wisconsin Act
10 2, is amended to read:

11 77.52 **(2)** (a) 5. am. The sale of prepaid calling services and intrastate,
12 interstate, and international telecommunications services, except interstate 800
13 services.

14 **SECTION 6.** 77.52 (14) (am) of the statutes, as created by 2009 Wisconsin Act
15 2, is renumbered 77.52 (14) (am) 1.

16 **SECTION 7.** 77.52 (14) (am) 2. of the statutes is created to read:

17 77.52 **(14)** (am) 2. An exemption certificate is received by the seller in good faith
18 if the certificate claims an exemption for which all of the following apply:

19 a. It was an exemption authorized by law on the date of the transaction in the
20 jurisdiction where the transaction is sourced.

21 b. It could be applicable to the property, item, good, or service being purchased.

22 c. It is reasonable for the purchaser's type of business.

23 **SECTION 8.** 77.52 (14) (am) 3. of the statutes is created to read:

24 77.52 **(14)** (am) 3. If the seller obtains the information described in subd. 2., the
25 seller is relieved of any liability for the tax on the transaction unless it is discovered

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1 through the audit process that the seller had knowledge, or had reason to know, at
2 the time such information was provided that the information relating to the
3 exemption claimed was materially false or the seller otherwise knowingly
4 participated in activity intended to purposefully evade the tax that is properly due
5 on the transaction. In order to enforce this subdivision, the state must establish that
6 the seller had knowledge, or had reason to know, at the time the information was
7 provided that the information was materially false.

8 **SECTION 9.** 77.522 (1) (c) of the statutes, as created by 2009 Wisconsin Act 2,
9 is renumbered 77.522 (1) (c) 1. and amended to read:

10 77.522 (1) (c) 1. The Except as provided in subd. 3., the sale of advertising and
11 promotional direct mail, including a sale characterized under the laws of this state
12 as the sale of a service when that service is an integral part of the production and
13 distribution of printed material that meets the definition of advertising and
14 promotional direct mail, is sourced to the location from which the advertising and
15 promotional direct mail is shipped, if the purchaser does not provide to the seller a
16 direct pay permit, an exemption certificate claiming direct mail, or other information
17 that indicates the appropriate taxing jurisdiction to which the advertising and
18 promotional direct mail is delivered to the ultimate recipients. If the purchaser
19 provides an exemption certificate claiming direct mail or direct pay permit to the
20 seller, the purchaser shall source the sales to the jurisdictions to which the
21 advertising and promotional direct mail is delivered to the recipients and pay or
22 remit, as appropriate, to the department the tax imposed under s. 77.53 on all
23 purchases for which the tax is due and the seller, in the absence of bad faith, is
24 relieved from liability for collecting such of all obligation to collect, pay, or remit the
25 tax on any transaction to which the direct pay permit or exemption certificate

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1 applies. If the purchaser provides delivery information indicating the jurisdictions
2 to which the advertising and promotional direct mail is to be delivered to the
3 recipients, the seller shall source the sale to those jurisdictions and collect and remit
4 the tax according to the delivery information provided by the purchaser and, in the
5 absence of bad faith, the seller shall be relieved of any further obligation to collect
6 tax on ~~any transaction~~ the sale of advertising and promotional direct mail for which
7 the seller has sourced the sale and collected tax pursuant to the delivery information
8 provided by the purchaser. ~~An exemption certificate claiming direct mail provided~~
9 ~~to a seller under this paragraph shall remain effective for all sales by the seller who~~
10 ~~received the exemption certificate to the purchaser who provided the exemption~~
11 ~~certificate, unless the purchaser revokes the exemption certificate in writing and~~
12 ~~provides such revocation to the seller.~~ If a transaction is a bundled transaction that
13 includes advertising and promotional direct mail, this subdivision only applies if the
14 primary purpose of the transaction is the sales of products or services that meet the
15 definition of advertising and promotional direct mail.

16 **SECTION 10.** 77.522 (1) (c) 2. of the statutes is created to read:

17 77.522 (1) (c) 2. The sale of other direct mail, including a sale characterized
18 under the laws of this state as the sale of a service when that service is an integral
19 part of the production and distribution of printed material that meets the definition
20 of other direct mail, is sourced under par. (b) 3. if the purchaser does not provide to
21 the seller a direct pay permit or an exemption certificate claiming direct mail. If the
22 purchaser provides an exemption certificate claiming direct mail or direct pay permit
23 to the seller, the purchaser shall source the sale to the jurisdictions to which the other
24 direct mail is to be delivered to the recipients and the purchaser shall pay or remit,
25 as appropriate, to the department the tax imposed under s. 77.53 on all purchases

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1 for which the tax is due and the seller, in the absence of bad faith, is relieved of all
2 obligation to collect, pay, or remit tax on any transaction to which the direct pay
3 permit or exemption certificate claiming direct mail applies.

4 **SECTION 11.** 77.522 (1) (c) 3. of the statutes is created to read:

5 77.522 (1) (c) 3. If advertising and promotional direct mail and other direct mail
6 are included in a single mailing, the sale of that mailing is sourced the same as a sale
7 of other direct mail.

8 **SECTION 12.** 77.522 (1) (c) 4. of the statutes is created to read:

9 77.522 (1) (c) 4. Transactions that include the development of billing
10 information or the provision of a data processing service that is more than incidental
11 to producing direct mail are not direct mail and are sourced under par. (b), but
12 transactions that include incidental data processing services are direct mail and are
13 sourced under this paragraph. For purposes of this subdivision, “incidental” has the
14 meaning given in s. 77.51 (5).

15 **SECTION 13.** 77.53 (11) (b) of the statutes, as created by 2009 Wisconsin Act 2,
16 is renumbered 77.53 (11) (b) 1.

17 **SECTION 14.** 77.53 (11) (b) 2. of the statutes is created to read:

18 77.53 (11) (b) 2. An exemption certificate is received by the seller in good faith
19 if the certificate claims an exemption for which all of the following apply:

20 a. It was an exemption authorized by law on the date of the transaction in the
21 jurisdiction where the transaction is sourced.

22 b. It could be applicable to the property, item, good, or service being purchased.

23 c. It is reasonable for the purchaser’s type of business.

24 **SECTION 15.** 77.53 (11) (b) 3. of the statutes is created to read:

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1 77.53 (11) (b) 3. If the seller obtains the information described in subd. 2., the
2 seller is relieved of any liability for the tax on the transaction unless it is discovered
3 through the audit process that the seller had knowledge, or had reason to know, at
4 the time such information was provided that the information relating to the
5 exemption claimed was materially false or the seller otherwise knowingly
6 participated in activity intended to purposefully evade the tax that is properly due
7 on the transaction. In order to enforce this subdivision, the state must establish that
8 the seller had knowledge, or had reason to know, at the time the information was
9 provided that the information was materially false.

10 **SECTION 16.** 77.54 (18) of the statutes, as affected by 2009 Wisconsin Act 28,
11 is amended to read:

12 77.54 (18) When the sale of a service or tangible personal property, including
13 or items, property, and goods under s. 77.52 (1) (b), (c), and (d), that was previously
14 exempt or not taxable under this subchapter becomes taxable, and the service or
15 tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d)
16 is furnished under a written contract by which the seller is unconditionally obligated
17 to provide the service or tangible personal property, or item, property, or good under
18 s. 77.52 (1) (b), (c), or (d) for the amount fixed under the contract, the seller is exempt
19 from sales or use tax on the sales price for services or tangible personal property, or
20 items, property, or goods under s. 77.52 (1) (b), (c), or (d) provided until the contract
21 is terminated, extended, renewed or modified. However, from the time the service
22 or tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or
23 (d) becomes taxable until the contract is terminated, extended, renewed or modified
24 the user is subject to use tax, measured by the purchase price, on the service or

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1 tangible personal property, or item, property, or good under s. 77.52 (1) (b), (c), or (d)
2 purchased under the contract.

3 **SECTION 17.** 77.58 (2) (d) of the statutes is created to read:

4 77.58 (2) (d) Except for a seller who uses a certified service provider, a seller
5 who registers through the streamlined sales tax governing board's central
6 registration system and indicates at the time of registration that it anticipates
7 making no sales into this state is not required to file a return in this state until such
8 time as it makes a taxable sale that is sourced to this state under s. 77.522. Once a
9 seller to which this provision applies makes a taxable sale that is sourced to this state
10 under s. 77.522, that seller is required to file a return that is due by the last day of
11 the month following the last day of the calendar quarter in which the sale occurred
12 and shall continue to file returns by the last day of the month following the last day
13 of each calendar quarter thereafter, unless the seller is notified in writing by the
14 department of a different filing frequency.

15 **SECTION 18.** 77.58 (3) (a) of the statutes, as affected by 2009 Wisconsin Act 28,
16 is amended to read:

17 77.58 (3) (a) ~~For~~ Except as provided in sub. (2) (d), for purposes of the sales tax
18 a return shall be filed by every seller. ~~For~~ Except as provided in sub. (2) (d), for
19 purposes of the use tax a return shall be filed by every retailer engaged in business
20 in this state and by every person purchasing tangible personal property, or items,
21 property, or goods under s. 77.52 (1) (b), (c), or (d), or services, the storage, use or other
22 consumption of which is subject to the use tax, who has not paid the use tax due to
23 a retailer required to collect the tax. If a qualified subchapter S subsidiary is not
24 regarded as a separate entity under ch. 71, the owner of that subsidiary shall elect
25 to either include the information for that subsidiary on the owner's return or file a

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1 separate electronic return for that entity. If a single-owner entity is disregarded as
2 a separate entity under ch. 71, the owner shall elect to either include the information
3 from the entity on the owner's return or file a separate electronic return for that
4 entity. If an owner that owns more than one entity that is disregarded as a separate
5 entity under ch. 71 elects to file a separate return for one of its disregarded entities,
6 the owner shall file separate returns for all of its disregarded entities. Returns filed
7 under this paragraph shall be signed by the person required to file the return or by
8 a duly authorized agent but need not be verified by oath.

9 **SECTION 19.** 77.58 (4) of the statutes is amended to read:

10 77.58 (4) The person required to file the return shall deliver the return together
11 with a remittance of the amount of the tax due to the office of the department or such
12 other place as the department designates in the manner and form prescribed by the
13 department.

14 **SECTION 20.** 77.585 (1) (a) of the statutes, as created by 2009 Wisconsin Act 2,
15 is amended to read:

16 77.585 (1) (a) In this subsection, "bad debt" means the portion of the sales price
17 or purchase price that the seller has previously reported as taxable under this
18 subchapter, and for which the seller has paid the tax, and that the seller may claim
19 as a deduction under section 166 of the Internal Revenue Code. "Bad debt" does not
20 include financing charges or interest, sales or use taxes imposed on the sales price
21 or purchase price, uncollectible amounts on tangible personal property or items,
22 property, or goods under s. 77.52 (1) (b), (c), or (d) that remain in the seller's
23 possession until the full sales price or purchase price is paid, expenses incurred in
24 attempting to collect any debt, debts sold or assigned to 3rd parties for collection, and
25 repossessed property or items.

ASSEMBLY BILL 905**SECTION 21**

1 **SECTION 21.** 77.585 (1) (d) of the statutes, as created by 2009 Wisconsin Act 2,
2 is amended to read:

3 77.585 (1) (d) A seller may obtain a refund of the tax ~~collected on~~ reported for
4 any bad debt amount deducted under par. (b) that exceeds the amount of the seller's
5 taxable sales as provided under s. 77.59 (4), except that the period for making a claim
6 as determined under s. 77.59 (4) begins on the date on which the return on which the
7 bad debt could be claimed would have been required to be submitted to the
8 department under s. 77.58.

9 **SECTION 22.** 77.59 (9) of the statutes, as affected by 2009 Wisconsin Act 2, is
10 renumbered 77.59 (9) (a) and amended to read:

11 77.59 (9) (a) If Except as provided in par. (b), if any person fails to file a return,
12 the department shall make an estimate of the amount of the sales price of the
13 person's sales, or, as the case may be, of the amount of the total purchase price of
14 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
15 (d), or taxable service sold or purchased by the person, the sale by or the storage, use,
16 or other consumption of which in this state is subject to sales or use tax. The estimate
17 shall be made for the period in respect to which the person failed to make a return
18 and shall be based upon any information which is in the department's possession or
19 may come into its possession. Upon the basis of this estimate the department shall
20 compute and determine the amount required to be paid to the state, adding to the
21 sum thus arrived at a penalty equal to 25% thereof. One or more such determinations
22 may be made for one or for more than one period. When a business is discontinued
23 a determination may be made at any time thereafter, within the periods specified in
24 sub. (3), as to liability arising out of that business.

25 **SECTION 23.** 77.59 (9) (b) of the statutes is created to read:

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1 77.59 (9) (b) If a seller is not required to register and obtain a permit under s.
2 77.52 (7) or 77.53 (9), but has registered and obtained a permit under s. 77.52 (7) or
3 77.53 (9) and has failed to timely file a return that is due, the department shall notify
4 the seller of the failure to file and provide the seller at least 30 days to file the return
5 prior to making the estimate described in par. (a), except that if the seller has a
6 history of not filing returns, or filing returns late, the department may make the
7 estimate under par. (a) without providing such notice.

8 **SECTION 24.** 77.98 of the statutes, as affected by 2009 Wisconsin Act 2, is
9 repealed and recreated to read:

10 **77.98 Imposition. (1)** A local exposition district under subch. II of ch. 229 may
11 impose a tax on the retail sale, except sales for resale, within the district's
12 jurisdiction under s. 229.43 of all of the following:

13 (a) Alcoholic beverages, as defined in s. 77.51 (1b), if the alcoholic beverages are
14 for consumption on the seller's premises.

15 (b) Candy, as defined in s. 77.51 (1fm).

16 (c) Prepared food, as defined in s. 77.51 (10m).

17 (d) Soft drinks, as defined in s. 77.51 (17w).

18 **(2)** The items described under sub. (1) (a) to (d) are not subject to tax if they
19 qualify for an exemption from the sales tax under s. 77.54 (1), (4), (7) (a), (7m), (9),
20 (9a), (20n) (b) or (c), or (20r).

21 **(3)** For purposes of sub. (1) (a), "premises" shall be broadly construed and shall
22 include the lobby, aisles, and auditorium of a theater or the seating, aisles, and
23 parking area of an arena, a rink, or a stadium, or the parking area of a drive-in or
24 an outdoor theater. The premises of a caterer with respect to catered meals or
25 beverages shall be the place where served.

ASSEMBLY BILL 905**SECTION 25**

1 **SECTION 25.** 77.982 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is
2 amended to read:

3 77.982 **(2)** Sections 77.51 (1f), (3pf), (9p), (12m), (14), (14g), (15a), and (15b),
4 77.52 (1b), (3), (4), (5), (13), (14), and (18), and (19) to (23), 77.54 (51) and (52), 77.58
5 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and
6 (12) to (15), and 77.62, as they apply to the taxes under subch. III, apply to the tax
7 under this subchapter. Section 77.73, as it applies to the taxes under subch. V,
8 applies to the tax under this subchapter.

9 **SECTION 26.** 77.991 (2) of the statutes, as affected by 2009 Wisconsin Act 2, is
10 amended to read:

11 77.991 **(2)** Sections 77.51 (12m), (14), (14g), (15a), and (15b), 77.52 (1b), (3), (4),
12 (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585, 77.59, 77.60,
13 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to the taxes under
14 subch. III, apply to the tax under this subchapter. Section 77.73, as it applies to the
15 taxes under subch. V, applies to the tax under this subchapter. The renter shall
16 collect the tax under this subchapter from the person to whom the passenger car is
17 rented.

18 **SECTION 27.** 77.9951 (2) of the statutes, as affected by 2009 Wisconsin Act 28,
19 is amended to read:

20 77.9951 **(2)** Sections 77.51 (3r), (12m), (14), (14g), (15a), and (15b), 77.52 (1b),
21 (3), (4), (5), (13), (14), (18), and (19), 77.58 (1) to (5), (6m), and (7), 77.522, 77.585,
22 77.59, 77.60, 77.61 (2), (3m), (5), (8), (9), and (12) to (15), and 77.62, as they apply to
23 the taxes under subch. III, apply to the fee under this subchapter. The renter shall
24 collect the fee under this subchapter from the person to whom the vehicle is rented.

