



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0377/P9

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DOA:.....Lillethun, BB0104 - Implementing the Main Street Equity Act
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 2-5-09
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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

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

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

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

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

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

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

6 **SECTION 2.** 46.513 of the statutes is repealed.

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

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

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

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

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

21 71.07 (5e) (b) *Filing claims.* Subject to the limitations provided in this
22 subsection and subject to 2005 Wisconsin Act 479, section 17, beginning in the first
23 taxable year following the taxable year in which the claimant claims ~~an exemption~~
24 a deduction under s. ~~77.54 (48)~~ 77.585 (9), a claimant may claim as a credit against
25 the taxes imposed under ss. 71.02 and 71.08, up to the amount of those taxes, in each

1 taxable year for 2 years, the amount of sales and use tax certified by the department
2 of commerce that resulted from the claimant ~~claimed as an exemption~~ claiming a
3 deduction under s. ~~77.54 (48)~~ 77.585 (9).

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

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

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

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

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

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

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

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

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

1 71.28 (5e) (c) 3. The total amount of the credits and ~~exemptions~~ the sales and
2 use tax resulting from the deductions claimed under s. 77.585 (9) that may be claimed
3 by all claimants under this subsection and ss. 71.07 (5e), 71.47 (5e), and ~~77.54 (48)~~
4 77.585 (9) is \$7,500,000, as determined by the department of commerce.

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

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

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

15 71.47 (5e) (c) 1. No credit may be allowed under this subsection unless the
16 claimant satisfies the requirements under s. ~~77.54 (48)~~ 77.585 (9).

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

18 71.47 (5e) (c) 3. The total amount of the credits and ~~exemptions~~ the sales and
19 use tax resulting from the deductions claimed under s. 77.585 (9) that may be claimed
20 by all claimants under this subsection and ss. 71.07 (5e), 71.28 (5e), and ~~77.54 (48)~~
21 77.585 (9) is \$7,500,000, as determined by the department of commerce.

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

23 73.03 (28e) To participate as a member state of the streamlined sales tax
24 governing board which administers the agreement, as defined in s. 77.65 (2) (a), and
25 includes having the governing board enter into contracts that are necessary to

1 implement the agreement on behalf of the member states, and to allocate a portion
2 of the amount collected under ch. 77 through the agreement to the appropriation
3 under s. 20.566 (1) (ho) to pay the dues necessary to participate in the governing
4 board. The department shall allocate the remainder of such collections to the general
5 fund.

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

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

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

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

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

21 73.03 (61) To do all of the following related to the Uniform Sales and Use Tax
22 Administration Act:

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

SECTION 17

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

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

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

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

21 (e) Maintain a database that is accessible to sellers and certified service
22 providers, as defined in s. 77.51 (1g), that indicates whether items defined in
23 accordance with the agreement, as defined in s. 77.65 (2) (a), are taxable or
24 nontaxable.

1 (f) Maintain a database that is accessible to sellers and certified service
2 providers, as defined in s. 77.51 (1g), and available in a downloadable format
3 approved by the governing board of the agreement, as defined in s. 77.65 (2) (a), that
4 indicates tax rates, taxing jurisdiction boundaries, and zip code or address
5 assignments related to the administration of taxes imposed under subchs. III and V
6 of ch. 77. The database shall be provided at no cost and be available to sellers and
7 certified service providers, as defined in s. 77.51 (1g), no later than the first day of
8 the month prior to the first day of the calendar quarter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **77.51 (1pd)** “Computer software maintenance contract” means a contract that
15 obligates a vendor of computer software to provide a customer with future updates
16 or upgrades to computer software, computer software support services, or both.

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

18 **77.51 (1r)** “Conference bridging service” means an ancillary service that links
19 2 or more participants of an audio or video conference call and may include providing
20 a telephone number, but does not include the telecommunications services used to
21 reach the conference bridge.

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

23 **77.51 (2k)** “Delivered electronically” means delivered to a purchaser by means
24 other than by tangible storage media.

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

1 77.51 (2m) "Delivery charges" means charges by a seller to prepare and deliver
2 tangible personal property, or items, property, or ~~works~~^{goods} under s. 77.52 (1) (b), (c), or
3 (d), or services to a location designated by the purchaser of the tangible personal
4 property, or items, property, or ~~works~~^{goods} under s. 77.52 (1) (b), (c), or (d), or services,
5 including charges for transportation, shipping, postage, handling, crating, and
6 packing.

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

8 77.51 (3c) "Detailed telecommunications billing service" means an ancillary
9 service that separately indicates information pertaining to individual calls on a
10 customer's billing statement.

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

12 77.51 (3n) "Dietary supplement" means a product, other than tobacco, that is
13 intended to supplement a person's diet, if all of the following apply:

14 (a) The product contains any of the following ingredients or any combination
15 of any of the following ingredients:

16 1. A vitamin.

17 2. A mineral.

18 3. An herb or other botanical.

19 4. An amino acid.

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

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

23 (b) The product is intended for ingestion in tablet, capsule, powder, soft-gel,
24 gel-cap, or liquid form, or, if not intended for ingestion in such forms, is not

1 represented as conventional food and is not represented for use as the sole item of
2 a meal or diet.

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

5 SECTION 32. 77.51 (3p) of the statutes is created to read:

6 77.51 (3p) "Digital audiovisual works" means a series of related images that,
7 when shown in succession, impart an impression of motion, along with
8 accompanying sounds, if any, and that are transferred electronically. "Digital
9 audiovisual works" includes motion pictures, musical videos, news and
10 entertainment programs, and live events, but does not include video greeting cards
11 or video or electronic games.

12 T INSERT 12-11 A&B SECTION 33. 77.51 (3pd) of the statutes is created to read:

13 77.51 (3pd) "Direct mail" means printed material that is delivered or
14 distributed by the U.S. postal service or other delivery service to a mass audience or
15 to addressees on a mailing list provided by or at the direction of the purchaser of the
16 printed material, if the cost of the printed material or any tangible personal property
17 or items, property, or ^{goods} works under s. 77.52 (1) (b), (c), or (d) included with the printed
18 material is not billed directly to the recipients of the printed material. "Direct mail"
19 includes any tangible personal property, or items, property, or ^{goods} works under s. 77.52
20 (1) (b), (c), or (d) provided directly or indirectly by the purchaser of the printed
21 material to the seller of the printed material for inclusion in any package containing
22 the printed material, including billing invoices, return envelopes, and additional
23 marketing materials. "Direct mail" does not include multiple items of printed
24 material delivered to a single address.

25 SECTION 34. 77.51 (3pe) of the statutes is created to read:

1 77.51 (3pe) "Directory assistance" means an ancillary service that provides
2 telephone numbers or addresses.

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

4 77.51 (3pf) "Distinct and identifiable product" does not include any of the
5 following:

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

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

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

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

15 77.51 (3pj) "Drug" means a compound, substance, or preparation, or any
16 component of them, other than food and food ingredients, dietary supplements, or
17 alcoholic beverages, to which any of the following applies:

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

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

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

24 **SECTION 37.** 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 38.** 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 39.** 77.51 (3po) of the statutes is created to read:

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

INJECT
14-14

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

16 77.51 (3rm) "Fixed wireless service" means a telecommunications service that
17 provides radio communication between fixed points.

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

19 77.51 (3t) "Food and food ingredient" means a substance in liquid,
20 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
21 for chewing, by humans and that is ingested or chewed for its taste or nutritional
22 value. "Food and food ingredient" does not include alcoholic beverages or tobacco.

23 **SECTION 42.** 77.51 (4) of the statutes is repealed.

24 **SECTION 43.** 77.51 (5) of the statutes is amended to read:

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

10 **SECTION 44.** 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 the United States,
13 including the District of Columbia and any U.S. territory or possession and originate
14 or terminate outside of the United States, including the District of Columbia and any
15 U.S. territory or possession.

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

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

20 **SECTION 46.** 77.51 (5r) of the statutes is created to read:

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

24 **SECTION 47.** 77.51 (6m) of the statutes is renumbered 77.51 (5m) and amended
25 to read:

1 77.51 (5m) For purposes of s. ~~77.54 (48)~~ 77.585 (9), "Internet equipment used
2 in the broadband market" means equipment that is capable of transmitting data
3 packets or Internet signals at speeds of at least 200 kilobits per second in either
4 direction.

5 **SECTION 48.** 77.51 (7) of the statutes is repealed and recreated to read:

6 77.51 (7) (a) "Lease or rental" means any transfer of possession or control of
7 tangible personal property or items, property, or ~~works~~ ^{goods} under s. 77.52 (1) (b), (c), or
8 (d) for a fixed or indeterminate term and for consideration and includes:

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

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

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

15 1. A transfer of possession or control of tangible personal property or items,
16 property, or ~~works~~ ^{goods} under s. 77.52 (1) (b), (c), or (d) under a security agreement or
17 deferred payment plan, if such agreement or plan requires transferring title to the
18 tangible personal property or items, property, or ~~works~~ ^{goods} under s. 77.52 (1) (b), (c), or
19 (d) after making all required payments.

20 2. A transfer of possession or control of tangible personal property or items,
21 property, or ~~works~~ ^{goods} under s. 77.52 (1) (b), (c), or (d) under any agreement that requires
22 transferring title to the tangible personal property or items, property, or ~~works~~ ^{goods} under
23 s. 77.52 (1) (b), (c), or (d) after making all required payments and after paying an
24 option price that does not exceed the greater of \$100 or 1 percent of the total amount
25 of the required payments.

1 3. Providing tangible personal property or items, property, or ~~works~~ *goods* under s.
 2 77.52 (1) (b), (c), or (d) along with an operator, if the operator is necessary for the
 3 tangible personal property or items, property, or ~~works~~ *goods* under s. 77.52 (1) (b), (c), or
 4 (d) to perform in the manner for which it is designed and if the operator does more
 5 than maintain, inspect, or set up the tangible personal property or items, property,
 6 or ~~works~~ *goods* under s. 77.52 (1) (b), (c), or (d).

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

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

15 **SECTION 49.** 77.51 (7g) of the statutes is created to read:
 16 77.51 (7g) "Load-and-leave" means delivery to a purchaser by using a tangible
 17 storage media that is not physically transferred to the purchaser.

18 **SECTION 50.** 77.51 (7k) of the statutes is created to read:
 19 77.51 (7k) "Mobile wireless service" means a telecommunications service for
 20 which the origination or termination points of the service's transmission,
 21 conveyance, or routing are not fixed, regardless of the technology used to transmit,
 22 convey, or route the service. "Mobile wireless service" includes a telecommunications
 23 service provided by a commercial mobile radio service provider.

24 **SECTION 51.** 77.51 (7m) of the statutes is created to read:

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

9 **SECTION 52.** 77.51 (8m) of the statutes is created to read:

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

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

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

goods
1 property, or ~~works~~ under s. 77.52 (1) (b), (c), or (d), or taxable service may be deemed
2 an occasional sale if at the time of such sale the seller holds or is required to hold a
3 seller's permit, except that this provision does not apply to an organization required
4 to hold a seller's permit solely for the purpose of conducting bingo games and except
5 as provided in par. (am).

6 **SECTION 54.** 77.51 (9) (am) of the statutes is amended to read:

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

14 **SECTION 55.** 77.51 (9p) of the statutes is created to read:

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

20 **SECTION 56.** 77.51 (9s) of the statutes is created to read:

21 77.51 (9s) "Paging service" means a telecommunications service that transmits
22 coded radio signals to activate specific pagers and may include messages or sounds.

23 **SECTION 57.** 77.51 (10) of the statutes is amended to read:

24 77.51 (10) "Person" includes any natural person, firm, partnership, limited
25 liability company, joint venture, joint stock company, association, public or private

1 corporation, the United States, the state, including any unit or division of the state,
2 any county, city, village, town, municipal utility, municipal power district or other
3 governmental unit, cooperative, unincorporated cooperative association, estate,
4 trust, receiver, personal representative, any other fiduciary, any other legal entity,
5 and any representative appointed by order of any court or otherwise acting on behalf
6 of others. "Person" also includes the owner of a single-owner entity that is
7 disregarded as a separate entity under ch. 71.

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

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

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

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

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

22 77.51 (10m) (a) "Prepared food" means:

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

25 (b).

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

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

10 b. For retailers not described under subd. 3. a., the retailer's customary practice
11 is to physically give or hand the utensils to the purchaser, except that plates, glasses,
12 or cups that are necessary for the purchaser to receive the food and food ingredients
13 need only be made available to the purchaser.

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

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

17 1. For purposes of par. (a) 2. and 4., 2 or more food ingredients mixed or
18 combined by a retailer for sale as a single item, if the retailer's primary classification
19 in the North American Industry Classification System, 2002 edition, published by
20 the federal office of management and budget, is manufacturing under subsector 311,
21 not including bakeries and tortilla manufacturing under industry group number
22 3118.

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

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

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

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

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

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

15 b. A denominator that includes all food and food ingredients, including
16 prepared food, candy, dietary supplements, and soft drinks, but not including
17 alcoholic beverages.

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

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

1 3. For a retailer whose percentage determined under subd. 1. is greater than
2 75 percent, an item sold by the retailer that contains 4 or more servings packaged
3 as one item and sold for a single price does not become prepared food simply because
4 the retailer makes utensils available to the purchaser of the item, but does become
5 prepared food if the retailer physically gives or hands utensils to the purchaser of the
6 item, except that plates, bowls, glasses, or cups necessary for the purchaser to receive
7 the food need only be made available to the purchaser. For purposes of this
8 subdivision 3., serving sizes are based on the information contained on the label of
9 each item sold, except that, if the item has no label, the serving size is based on the
10 retailer's reasonable determination.

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

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

19 5. For purposes of par. (a) 3., a retailer shall determine the percentage for the
20 retailer's tax year or business fiscal year, based on the retailer's data from the
21 retailer's prior tax year or business fiscal year, as soon as practical after the retailer's
22 accounting records are available, but not later than 90 days after the day on which
23 the retailer's tax year or business fiscal year begins. For a retailer with more than
24 one establishment in this state, a single determination under subd. 1. that combines
25 the information for all of the retailer's establishments in this state shall be made

1 annually, as provided in this subdivision, and apply to each of the retailer's
2 establishments in this state. A retailer that has no prior tax year or business fiscal
3 year shall make a good faith estimate of its percentage for purposes of par. (a) 3. for
4 the retailer's first tax year or business fiscal year and shall adjust the estimate
5 prospectively after the first 3 months of the retailer's operations if the actual
6 percentage is materially different from the estimated percentage.

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

8 77.51 (10n) "Prescription" means an order, formula, or recipe that is issued by
9 any oral, written, electronic, or other means of transmission and by a person who is
10 authorized by the laws of this state to issue such an order, formula, or recipe.

11 **SECTION 62.** 77.51 (10r) of the statutes is created to read:

12 77.51 (10r) "Prewritten computer software" means computer software,
13 including prewritten upgrades, that is not designed and developed by the author or
14 other creator to the specifications of a specific purchaser. The combining of 2 or more
15 "prewritten computer software" programs or prewritten portions of computer
16 software does not cause the combination to be other than "prewritten computer
17 software." "Prewritten computer software" includes software designed and
18 developed by the author or other creator to the specifications of a specific purchaser
19 if it is sold to a person other than the specific purchaser. For purposes of this
20 subsection, if a person modifies or enhances computer software of which the person
21 is not the author or creator, the person is the author or creator only of the person's
22 modifications or enhancements. "Prewritten computer software" or a prewritten
23 portion of computer software that is modified or enhanced to any degree, with regard
24 to a modification or enhancement that is designed and developed to the specifications
25 of a specific purchaser, remains "prewritten computer software," except that if there

1 is a reasonable, separately stated charge or an invoice or other statement of the price
2 given to the purchaser for the modification or enhancement, the modification or
3 enhancement is not "prewritten computer software."

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

5 77.51 (10s) "Private communication service" means a telecommunications
6 service that entitles the customer to exclusive or priority use of a communications
7 channel or group of communications channels, regardless of the manner in which the
8 communications channel or group of communications channels is connected, and
9 includes switching capacity, extension lines, stations, and other associated services
10 that are provided in connection with the use of such channel or channels.

11 **SECTION 64.** 77.51 (11d) of the statutes is created to read:

12 77.51 (11d) For purposes of subs. (1f), (3pf), and (9p) and ss. 77.52 (20) and (21),
13 77.522, and 77.54 (51) and (52), "product" includes tangible personal property, and
14 items, property, and ~~works~~ ^{goods} under s. 77.52 (1) (b), (c), and (d), and services.

15 **SECTION 65.** 77.51 (11m) of the statutes is created to read:

16 77.51 (11m) "Prosthetic device" means a device, including the repair parts and
17 replacement parts for the device, that is placed in or worn on the body to artificially
18 replace a missing portion of the body; to prevent or correct a physical deformity or
19 malfunction; or to support a weak or deformed portion of the body.

20 **SECTION 66.** 77.51 (12) (a) of the statutes is repealed and recreated to read:

21 77.51 (12) (a) Any transfer of title, possession, ownership, enjoyment, or use
22 by: cash or credit transaction, exchange, barter, lease or rental, conditional or
23 otherwise, in any manner or by any means whatever of tangible personal property
24 or items, property, or ~~works~~ ^{goods} under s. 77.52 (1) (b), (c), or (d) for a consideration,
25 including any transaction for which a person's books and records show the

1 transaction created, with regard to the transferee, an obligation to pay a certain
2 amount of money or an increase in accounts payable or, with regard to the transferor,
3 a right to receive a certain amount of money or an increase in accounts receivable.

4 **SECTION 67.** 77.51 (12) (b) of the statutes is amended to read:

5 *goods*
6 **77.51 (12) (b)** A transaction whereby the possession of property, or items,
7 property, or works under s. 77.52 (1) (b), (c), or (d) is transferred but the seller retains
8 the title as security for the payment of the price.

8 **SECTION 68.** 77.51 (12m) of the statutes is created to read:

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

14 1. The seller's cost of the property or items, property, or *goods* works under s. 77.52
15 (1) (b), (c), or (d) sold.

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

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

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

22 b. If a shipment includes property or items that are subject to tax under this
23 subchapter and property or items that are not subject to tax under this subchapter,
24 the amount of the delivery charge that the seller allocates to the property and items
25 that are subject to tax under this subchapter is based either on the total purchase

1 price of the property and items that are subject to tax under this subchapter as
2 compared to the total purchase price of all the property and items or on the total
3 weight of the property and items that are subject to tax under this subchapter as
4 compared to the total weight of all the property and items, except that if the seller
5 does not make the allocation under this subd. 4. b., the purchaser shall allocate the
6 delivery charge amount, consistent with this subd. 4. b.

7 5. Installation charges.

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

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

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

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

20 4. Delivery charges for direct mail, if the delivery charges for direct mail are
21 separately stated on the invoice, bill of sale, or similar document that the seller gives
22 to the purchaser.

23 5. In all transactions in which an article of tangible personal property, an item
24 under s. 77.52 (1) (b), property under s. 77.52 (1) (c), or a ~~work~~ ^{good} under s. 77.52 (1) (d)
25 is traded toward the purchase of an article, item, property, or ~~work~~ ^{good} of greater value,
^{good}

1 the amount of the purchase price that represents the amount allowed for the article,
2 item, property, or work traded, except that this subdivision does not apply to any
3 transaction to which subd. 7. or 8. applies.

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

11 7. Thirty-five percent of the purchase price, excluding trade-ins, of a new
12 manufactured home, as defined in s. 101.91 (11). This subdivision does not apply to
13 a lease or rental.

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

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

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

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

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

4 4. One of the following also applies:

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

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

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

15 **SECTION 69.** 77.51 (12p) of the statutes is created to read:

16 77.51 (12p) "Purchaser" means a person to whom a sale of tangible personal
17 property is made or to whom a service is furnished.

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

19 77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale
20 is mercantile in nature, of tangible personal property, or items, property, or works
21 under s. 77.52 (1) (b), (c), or (d), or a service specified under s. 77.52 (2) (a).

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

23 77.51 (13) (b) Every person engaged in the business of making sales of tangible
24 personal property or items, property, or works under s. 77.52 (1) (b), (c), or (d) for
25 storage, use or consumption or in the business of making sales at auction of tangible

goods

① personal property or items, property, or works under s. 77.52 (1) (b), (c), or (d) owned
2 by the person or others for storage, use or other consumption.

3 SECTION 72. 77.51 (13) (c) of the statutes is amended to read:

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

goods

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

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

goods

19 SECTION 74. 77.51 (13) (e) of the statutes is amended to read:

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

goods

items, or goods

goods

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

2 77.51 (13) (f) A service provider who transfers tangible personal property or
3 items, property, or works under s. 77.52 (1) (b), (c), or (d) in conjunction with but not
4 incidental to the selling, performing or furnishing of any service and a service
5 provider selling, performing or furnishing services under s. 77.52 (2) (a) 7., 10., 11.
6 and 20. This subsection does not apply to sub. (2).

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

8 77.51 (13) (k) ~~As respects~~ With respect to a lease, any person deriving rentals
9 from a lease of tangible personal property or items, property, or works under s. 77.52
10 (1) (b), (c), or (d) situated in this state.

goods

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

12 77.51 (13) (m) A person selling tangible personal property or items, property,
13 or works under s. 77.52 (1) (b), (c), or (d) to a veterinarian to be used or furnished by
14 the veterinarian in the performance of services in some manner related to domestic
15 animals, including pets or poultry.

goods

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

17 77.51 (13) (n) A person selling household furniture, furnishings, equipment,
18 appliances or other items of tangible personal property or items, property, or works
19 under s. 77.52 (1) (b), (c), or (d) to a landlord for use by tenants in leased or rented
20 living quarters.

goods

21 **SECTION 79.** 77.51 (13) (o) of the statutes is amended to read:

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

24 **SECTION 80.** 77.51 (13g) (intro.) of the statutes is amended to read:

1 77.51 (13g) (intro.) Except as provided in sub. (13h), "retailer engaged in
2 business in this state", ~~unless otherwise limited by federal statute~~, for purposes of
3 the use tax, means any of the following:

4 **SECTION 81.** 77.51 (13g) (a) of the statutes is amended to read:

5 77.51 (13g) (a) Any retailer owning any real property in this state or leasing
6 or renting out any tangible personal property, or items, property, or works under s.
7 77.52 (1) (b), (c), or (d), located in this state or maintaining, occupying or using,
8 permanently or temporarily, directly or indirectly, or through a subsidiary, or agent,
9 by whatever name called, an office, place of distribution, sales or sample room or
10 place, warehouse or storage place or other place of business in this state.

11 **SECTION 82.** 77.51 (13g) (b) of the statutes is amended to read:

12 77.51 (13g) (b) Any retailer having any representative, agent, salesperson,
13 canvasser or solicitor operating in this state under the authority of the retailer or its
14 subsidiary for the purpose of selling, delivering or the taking of orders for any
15 tangible personal property, or items, property, or works under s. 77.52 (1) (b), (c), or
16 (d), or taxable services.

17 **SECTION 83.** 77.51 (13g) (c) of the statutes is created to read:

18 77.51 (13g) (c) Any retailer selling tangible personal property, or items,
19 property, or works under s. 77.52 (1) (b), (c), or (d), or taxable services for storage, use,
20 or other consumption in this state, unless otherwise limited by federal law.

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

22 77.51 (13r) Any person purchasing from a retailer as defined in sub. (13) shall
23 be deemed the consumer of the tangible personal property, or items, property, or
24 works under s. 77.52 (1) (b), (c), or (d), or services purchased.

25 **SECTION 85.** 77.51 (13rm) of the statutes is created to read:

1 77.51 (13rm) "Retail sale" or "sale at retail" means any sale, lease, or rental
2 for any purpose other than resale, sublease, or subrent.

3 **SECTION 86.** 77.51 (13rn) of the statutes is created to read:

4 77.51 (13rm) "Ringtones" means digitized sound files that are downloaded onto
5 a device and that may be used to alert the customer with regard to a communication.
6 "Ringtones" includes MP3 or musical tones, polyphonic tones, and synthetic music
7 mobile application format tones, but does not include ring-back tones.

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

9 77.51 (14) (intro.) "Sale", "sale, lease or rental", "retail sale", "sale at retail", or
10 equivalent terms ~~include~~ includes any one or all of the following: the transfer of the
11 ownership of, title to, possession of, or enjoyment of tangible personal property, or
12 items, property, or works under s. 77.52 (1) (b), (c), or (d), or services for use or
13 consumption but not for resale as tangible personal property, or items, property, or
14 works under s. 77.52 (1) (b), (c), or (d), or services and includes:

15 **SECTION 88.** 77.51 (14) (a) of the statutes is amended to read:

16 77.51 (14) (a) Any sale at an auction ~~in~~ with respect to tangible personal
17 property or items, property, or works under s. 77.52 (1) (b), (c), or (d) which ~~is~~ are sold
18 to a successful bidder. ~~The proceeds from, except the sale of tangible personal~~
19 property, items, or works sold at auction which ~~is~~ are bid in by the seller and on which
20 title does not pass to a new purchaser ~~shall be deducted from the gross proceeds of~~
21 ~~the sale and the tax paid only on the net proceeds.~~

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

23 77.51 (14) (b) The furnishing or distributing of tangible personal property, or
24 items, property, or works under s. 77.52 (1) (b), (c), or (d), or taxable services for a
25 consideration by social clubs and fraternal organizations to their members or others.

1 **SECTION 90.** 77.51 (14) (c) of the statutes is amended to read:

2 77.51 (14) (c) A transaction whereby the possession of tangible personal
3 property is or items, property, or works under s. 77.52 (1) (b), (c), or (d) are transferred
4 but the seller retains the title as security for the payment of the price.

5 **SECTION 91.** 77.51 (14) (d) of the statutes is repealed.

6 **SECTION 92.** 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4. and
7 amended to read:

8 77.51 (15a) (b) 4. A sale of tangible personal property or items, property, or
9 works under s. 77.52 (1) (b), (c), or (d) to a contractor or subcontractor for use in the
10 performance of contracts with the United States or its instrumentalities for the
11 construction of improvements on or to real property.

12 **SECTION 93.** 77.51 (14) (h) of the statutes is amended to read:

13 77.51 (14) (h) A transfer for a consideration of the title or possession of tangible
14 personal property or items, property, or works under s. 77.52 (1) (b), (c), or (d) which
15 has have been produced, fabricated, or printed to the special order of the customer
16 or of any publication.

17 **SECTION 94.** 77.51 (14) (i) of the statutes is repealed.

18 **SECTION 95.** 77.51 (14) (j) of the statutes is amended to read:

19 77.51 (14) (j) The granting of possession of tangible personal property or items,
20 property, or works under s. 77.52 (1) (b), (c), or (d) by a lessor to a lessee, or to another
21 person at the direction of the lessee. Such a transaction is deemed a continuing sale
22 in this state ~~by the lessor for the duration of the lease as respects any period of time~~
23 ~~the leased property is situated in this state, irrespective of the time or place of~~
24 ~~delivery of the property to the lessee or such other person.~~

25 **SECTION 96.** 77.51 (14) (k) of the statutes is repealed.

1 **SECTION 97.** 77.51 (14) (L) of the statutes is repealed.

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

3 77.51 (14g) (a) The transfer of property or items, property, or works under s.
4 77.52 (1) (b), (c), or (d) to a corporation upon its organization solely in consideration
5 for the issuance of its stock;

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

7 77.51 (14g) (b) The contribution of property or items, property, or works under
8 s. 77.52 (1) (b), (c), or (d) to a newly formed partnership solely in consideration for a
9 partnership interest therein;

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

11 77.51 (14g) (bm) The contribution of property or items, property, or works
12 under s. 77.52 (1) (b), (c), or (d) to a limited liability company upon its organization
13 solely in consideration for a membership interest;

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

15 77.51 (14g) (c) The transfer of property or items, property, or works under s.
16 77.52 (1) (b), (c), or (d) to a corporation, solely in consideration for the issuance of its
17 stock, pursuant to a merger or consolidation;

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

19 77.51 (14g) (cm) The transfer of property or items, property, or works under s.
20 77.52 (1) (b), (c), or (d) to a limited liability company, solely in consideration for a
21 membership interest, pursuant to a merger;

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

23 77.51 (14g) (d) The distribution of property or items, property, or works under
24 s. 77.52 (1) (b), (c), or (d) by a corporation to its stockholders as a dividend or in whole
25 or partial liquidation;

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

2 77.51 (14g) (e) The distribution of property or items, property, or works under
3 s. 77.52 (1) (b), (c), or (d) by a partnership to its partners in whole or partial
4 liquidation;

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

6 77.51 (14g) (em) The distribution of property or items, property, or works under
7 s. 77.52 (1) (b), (c), or (d) by a limited liability company to its members in whole or
8 partial liquidation;

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

10 77.51 (14g) (f) Repossession of property or items, property, or works under s.
11 77.52 (1) (b), (c), or (d) by the seller from the purchaser when the only consideration
12 is cancellation of the purchaser's obligation to pay the remaining balance of the
13 purchase price;

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

15 77.51 (14g) (g) The transfer of property or items, property, or works under s.
16 77.52 (1) (b), (c), or (d) in a reorganization as defined in section 368 of the internal
17 revenue code in which no gain or loss is recognized for franchise or income tax
18 purposes; or

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

20 77.51 (14g) (h) Any transfer of all or substantially all the property or items,
21 property, or works under s. 77.52 (1) (b), (c), or (d) held or used by a person in the
22 course of an activity requiring the holding of a seller's permit, if after the transfer
23 the real or ultimate ownership of the property, items, or works is substantially
24 similar to that which existed before the transfer. For the purposes of this section,
25 stockholders, bondholders, partners, members or other persons holding an interest

goods

1 in a corporation or other entity are regarded as having the real or ultimate ownership
2 of the property, items, or works of the corporation or other entity. In this paragraph,
3 "substantially similar" means 80% or more of ownership.

4 SECTION 109. 77.51 (14r) of the statutes is repealed.

5 SECTION 110. 77.51 (15) of the statutes is repealed.

6 SECTION 111. 77.51 (15a) of the statutes is created to read:

goods

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

goods

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

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

goods

21 2. Any sale of tangible personal property or items, property, or works under s.
22 77.52 (1) (b), (c), or (d) to a purchaser even though such property, items, or works may
23 be used or consumed by some other person to whom such purchaser transfers the
24 property, items, or works without valuable consideration, such as gifts, and
25 advertising specialties distributed at no charge and apart from the sale of other

goods

1 tangible personal property, or items, property, or works under s. 77.52 (1) (b), (c), or
2 (d) or service. *goods*

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

9 **SECTION 112.** 77.51 (15b) of the statutes is created to read:

10 77.51 (15b) (a) "Sales price" means the total amount of consideration, including
11 cash, credit, property, and services, for which tangible personal property, or items,
12 property, or works under s. 77.52 (1) (b), (c), or (d) or services are sold, licensed, *goods*
13 leased, or rented, valued in money, whether received in money or otherwise, without
14 any deduction for the following:

15 1. The seller's cost of the property or items, property, or works under s. 77.52 *goods*
16 (1) (b), (c), or (d) sold.

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

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

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

23 b. If a shipment includes property or items that are subject to tax under this
24 subchapter and property or items that are not subject to tax under this subchapter,
25 the amount of the delivery charge that the seller allocates to the property and items

Jan 10

1 that are subject to tax under this subchapter is based either on the total sales price
2 of the property and items that are subject to tax under this subchapter as compared
3 to the total sales price of all the property and items or on the total weight of the
4 property and items that are subject to tax under this subchapter as compared to the
5 total weight of all the property and items.

6 5. Installation charges.

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

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

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

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

19 4. Delivery charges for direct mail, if the delivery charges for direct mail are
20 separately stated on the invoice, bill of sale, or similar document that the seller gives
21 to the purchaser. *good*

22 5. In all transactions in which an article of tangible personal property, an item
23 under s. 77.52 (1) (b), property under s. 77.52 (1) (c), or a *work* under s. 77.52 (1) (d)
24 is traded toward the purchase of an article, item, property, or *work* of greater value,
25 the amount of the sales price that represents the amount allowed for the article, item,

good
r

1 property, or work traded, except that this subdivision does not apply to any
2 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 sales price from the sale of the motor vehicle.
8 This subdivision applies only to the first motor vehicle purchased by a person after
9 receiving a refund under s. 218.0171 (2) (b) 2. b.

10 7. Thirty-five percent of the sales price, excluding trade-ins, of a new
11 manufactured home, as defined in s. 101.91 (11). This subdivision does not apply to
12 a lease or rental.

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

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

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

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

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

4 4. One of the following also applies:

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

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

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

15 **SECTION 113.** 77.51 (17) (intro.) of the statutes is amended to read:

16 77.51 (17) (intro.) "Seller" includes every person selling, licensing, leasing, or
17 renting tangible personal property or items, property, or works under s. 77.52 (1) (b),
18 (c), or (d) or selling, performing, or furnishing services of a kind the gross receipts
19 sales price from the sale, license, lease, rental, performance, or furnishing of which
20 are is required to be included in the measure of the sales tax, regardless of all of the
21 following:

22 **SECTION 114.** 77.51 (17m) of the statutes is repealed and recreated to read:

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

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

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

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

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

11 **SECTION 115.** 77.51 (17w) of the statutes is created to read:

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

16 **SECTION 116.** 77.51 (18) of the statutes is amended to read:

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

goods
, as affected by 2009 Wisconsin act... (this act),

21 **SECTION 117.** 77.51 (20) of the statutes is repealed and recreated to read:

22 77.51 (20) "Tangible personal property" means personal property that can be
23 seen, weighed, measured, felt, or touched, or that is in any other manner perceptible
24 to the senses, and includes electricity, gas, steam, water, and prewritten computer
25 software, regardless of how the software is delivered to the purchaser.

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1 **SECTION 118.** 77.51 (20) of the statutes is amended to read:

2 77.51 (20) "Tangible personal property" means all tangible personal property
3 of every kind and description and includes electricity, natural gas, steam and water
4 and also leased property affixed to realty if the lessor has the right to remove the
5 property upon breach or termination of the lease agreement, unless the lessor of the
6 property is also the lessor of the realty to which the property is affixed. "Tangible
7 personal property" also includes coins and stamps of the United States sold or traded
8 as collectors' items above their face value and ~~computer programs except custom~~
9 ~~computer programs~~ prewritten computer software, regardless of how it is delivered
10 to the purchaser.

11 **SECTION 119.** 77.51 (21) of the statutes is amended to read:

12 77.51 (21) "Taxpayer" means the person who is required to pay, collect, or
13 account for or who is otherwise directly interested in the taxes imposed by this
14 subchapter, including a certified service provider.

15 **SECTION 120.** 77.51 (21m) of the statutes is amended to read:

16 77.51 (21m) "Telecommunications and Internet access services" means
17 sending messages and information transmitted through the use of local, toll and
18 wide-area telephone service; channel services; telegraph services; teletypewriter;
19 computer exchange services; cellular mobile telecommunications service; specialized
20 mobile radio; stationary two-way radio; paging service; or any other form of mobile
21 and portable one-way or two-way communications; or any other transmission of
22 messages or information by electronic or similar means between or among points by
23 wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.
24 "Telecommunications and Internet access services" does not include sending collect
25 telecommunications that are received outside of the state.

1 **SECTION 121.** 77.51 (21m) of the statutes, as affected by 2009 Wisconsin Act
2 (this act), is renumbered 77.51 (5f) and amended to read:

3 **77.51 (5f)** ~~“Telecommunications and Internet access services”~~ means sending
4 messages and information transmitted through the use of local, toll and wide-area
5 telephone service; channel services; telegraph services; teletypewriter; computer
6 exchange services; cellular mobile telecommunications service; specialized mobile
7 radio; stationary two-way radio; paging service; or any other form of mobile and
8 portable one-way or two-way communications; or any other transmission of
9 messages or information by electronic or similar means between or among points by
10 wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.
11 ~~“Telecommunications and Internet access services”~~ does not include sending collect
12 ~~telecommunications that are received outside of the state~~ telecommunications
13 services to the extent that such services are taxable under s. 77.52 (2) (a) 5. am.

14 **SECTION 122.** 77.51 (21n) of the statutes is created to read:

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

24 (a) Data processing and information services that allow data to be generated,
25 acquired, stored, processed, or retrieved and delivered to a purchaser by an electronic

1 transmission, if the purchaser's primary purpose for the underlying transaction is
2 the processed data.

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

4 (c) Tangible personal property.

5 (d) Advertising, including directory advertising.

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

7 (f) Internet access services.

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

13 (h) Ancillary services.

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

16 **SECTION 123.** 77.51 (21p) of the statutes is created to read:

17 77.51 (21p) "Tobacco" means cigarettes, cigars, chewing tobacco, pipe tobacco,
18 and any other item that contains tobacco.

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

20 77.51 (21q) "Transferred electronically" means accessed or obtained by the
21 purchaser by means other than tangible storage media.

22 **SECTION 125.** 77.51 (22) (a) of the statutes is amended to read:

23 77.51 (22) (a) "Use" includes the exercise of any right or power over tangible
24 personal property, or items, property, or works under s. 77.52 (1) (b), (c), or (d), or
25 taxable services incident to the ownership, possession or enjoyment of the property,

① items, ~~works~~, or services, or the results produced by the services, including
 2 installation or affixation to real property and including the possession of, or the
 3 exercise of any right or power over tangible personal property, or items, property, or
 ④ works under s. 77.52 (1) (b), (c), or (d), by a lessee under a lease, except that "use" does
 5 not include the activities under sub. (18).

SECTION 126. 77.51 (22) (b) of the statutes is amended to read:

7 77.51 (22) (b) In this subsection "enjoyment" includes a purchaser's right to
 ⑧ direct the disposition of property or items, property, or ~~works~~ under s. 77.52 (1) (b),
 9 (c), or (d), whether or not the purchaser has possession of the property, items, or
 ⑩ works. "Enjoyment" also includes, but is not limited to, having shipped into this state
 11 by an out-of-state supplier printed material which is designed to promote the sale
 ⑫ of property, or items, property, or ~~works~~ under s. 77.52 (1) (b), (c), or (d), or services,
 13 or which is otherwise related to the business activities, of the purchaser of the
 14 printed material or printing service.

SECTION 127. 77.51 (22) (bm) of the statutes is created to read:

16 77.51 (22) (bm) In this subsection, "exercise of any right or power over tangible
 ⑰ personal property, or items, property, or ~~works~~ under s. 77.52 (1) (b), (c), or (d), or
 18 taxable services" includes distributing, selecting recipients, determining mailing
 19 schedules, or otherwise directing the distribution, dissemination, or disposal of
 ⑳ tangible personal property, or items, property, or ~~works~~ under s. 77.52 (1) (b), (c), or
 21 (d), or taxable services, regardless of whether the purchaser of such property, items,
 22 ~~works~~, or services owns or physically possesses, in this state, the property, items,
 23 ~~works~~, or services.

SECTION 128. 77.51 (24) of the statutes is created to read:

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

5 **SECTION 129.** 77.51 (25) of the statutes is created to read:

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

10 **SECTION 130.** 77.51 (26) of the statutes is created to read:

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

14 **SECTION 131.** 77.52 (1) of the statutes is renumbered 77.52 (1) (a) and amended
15 to read:

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

22 **SECTION 132.** 77.52 (1) (b) of the statutes is created to read:

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

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

3 SECTION 133. 77.52 (1) (c) of the statutes is created to read:

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

9 SECTION 134. 77.52 (1) (d) of the statutes is created to read:

10 77.52 (1) (d) A tax is imposed on all retailers at the rate of 5 percent of the sales
11 price from the sale, license, lease, or rental of digital audiovisual works at retail for
12 the right to use the digital audiovisual works on a permanent or less than permanent
13 basis and regardless of whether the purchaser is required to make continued
14 payments for such right.

15 (INSERT) SECTION 135. 77.52 (1b) of the statutes is repealed and recreated to read:

16 48-14 77.52 (1b) All sales, licenses, leases, or rentals of tangible personal property
17 or items, property, or ~~works~~ ^{goods} under sub. (1) (b), (c), or (d) at retail in this state are
18 subject to the tax imposed under sub. (1) unless an exemption in this subchapter
19 applies.

20 SECTION 136. 77.52 (2) (intro.) of the statutes is amended to read:

21 77.52 (2) (intro.) For the privilege of selling, licensing, performing or furnishing
22 the services described under par. (a) at retail in this state, as determined under s.
23 77.522, to consumers or users, regardless of whether the consumer or user has the
24 right of permanent use or less than the right of permanent use and regardless of
25 whether the service is conditioned on continued payment from the purchaser, a tax

1 is imposed upon all persons selling, licensing, performing or furnishing the services
2 at the rate of 5% of the ~~gross receipts~~ sales price from the sale, license, performance
3 or furnishing of the services.

4 **SECTION 137.** 77.52 (2) (a) 5. a. of the statutes is amended to read:

5 77.52 (2) (a) 5. a. The sale of telecommunications and Internet access services,
6 except services subject to 4 USC 116 to 126, as amended by P.L. 106-252, that either
7 originate or terminate in this state; except services that are obtained by means of a
8 toll-free number, that originate outside this state and that terminate in this state;
9 and are charged to a service address in this state, regardless of the location where
10 that charge is billed or paid; and the sale of the rights to purchase
11 telecommunications services, including purchasing reauthorization numbers, by
12 paying in advance and by using an access number and authorization code, except
13 sales that are subject to subd. 5. b.

14 **SECTION 138.** 77.52 (2) (a) 5. a. of the statutes, as affected by 2009 Wisconsin
15 Act ... (this act), is amended to read:

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

25 **SECTION 139.** 77.52 (2) (a) 5. am. of the statutes is created to read:

1 77.52 (2) (a) 5. am. The sale of intrastate, interstate, and international
2 telecommunications services, except interstate 800 services.

3 **SECTION 140.** 77.52 (2) (a) 5. b. of the statutes is repealed.

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

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

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

8 77.52 (2) (a) 5m. The sale of services that consist of recording
9 telecommunications messages and transmitting them to the purchaser of the service
10 or at that purchaser's direction, but not including ~~those services if they are merely~~
11 ~~an~~ that are taxable under subd. 5. or services that are incidental, as defined in s.
12 77.51 (5), element of to another service that is not taxable under this subchapter and
13 sold to that the purchaser of the incidental service and is not taxable under this
14 subchapter.

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

16 77.52 (2) (a) 10. Except for services provided by veterinarians and except for
17 installing or applying tangible personal property that, subject to par. (ag), when
18 installed or applied, will constitute an addition or capital improvement of real
19 property, the repair, service, alteration, fitting, cleaning, painting, coating, towing,
20 inspection, and maintenance of all items of tangible personal property or items,
21 property, or works under s. 77.52 (1) (b), (c), or (d), unless, at the time of that repair,
22 service, alteration, fitting, cleaning, painting, coating, towing, inspection, or
23 maintenance, a sale in this state of the type of property, item, or work repaired,
24 serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained
25 would have been exempt to the customer from sales taxation under this subchapter,

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1 other than the exempt sale of a motor vehicle or truck body to a nonresident under
2 s. 77.54 (5) (a) and other than nontaxable sales under s. ~~77.51 (14r)~~ 77.522 or unless
3 the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection,
4 or maintenance is provided under a contract that is subject to tax under subd. 13m.

5 The tax imposed under this subsection applies to the repair, service, alteration,
6 fitting, cleaning, painting, coating, towing, inspection, or maintenance of items listed
7 in par. (ag), regardless of whether the installation or application of tangible personal
8 property or items, property, or works under s. 77.52 (1) (b), (c), or (d) related to the *good*
9 items is an addition to or a capital improvement of real property, except that the tax
10 imposed under this subsection does not apply to the original installation or the
11 complete replacement of an item listed in par. (ag), if that installation or replacement
12 is a real property construction activity under s. 77.51 (2).

13 **SECTION 144.** 77.52 (2) (a) 11. of the statutes, as affected by 2007 Wisconsin Act
14 20, is amended to read: *good*

15 77.52 (2) (a) 11. The producing, fabricating, processing, printing, or imprinting
16 of tangible personal property or items, property, or works under s. 77.52 (1) (b), (c),
17 or (d) for a consideration for consumers who furnish directly or indirectly the
18 materials used in the producing, fabricating, processing, printing, or imprinting.
19 This subdivision does not apply to the printing or imprinting of tangible personal
20 property or items, property, or works under s. 77.52 (1) (b), (c), or (d) that results in
21 printed material, catalogs, or envelopes that are exempt under s. 77.54 (25) or (25m).

22 **SECTION 145.** 77.52 (2) (a) 13m. of the statutes is created to read:

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

1 performance of or payment for the repair, service, alteration, fitting, cleaning,
2 painting, coating, towing, inspection, or maintenance of tangible personal property
3 or items, property, or works under s. 77.52 (1) (b), (c), or (d), unless the sale, license, *goods*
4 lease, or rental in this state of the property, items, or works to which the contract
5 relates is or was exempt, to the purchaser of the contract, from taxation under this
6 subchapter.

7 *goods* **SECTION 146.** 77.52 (2m) (a) of the statutes is amended to read:

8 77.52 (2m) (a) With respect to the services subject to tax under sub. (2), no part
9 of the charge for the service may be deemed a sale or rental of tangible personal
10 property or items, property, or works under sub. (1) (b), (c), or (d) if the property,
11 items, or works transferred by the service provider is are incidental to the selling,
12 performing or furnishing of the service, except as provided in par. (b).

13 **SECTION 147.** 77.52 (2m) (b) of the statutes is amended to read: *goods*

14 77.52 (2m) (b) With respect to the services subject to tax under sub. (2) (a) 7.,
15 10., 11. and 20., all property or items, property, or works under s. 77.52 (1) (b), (c), or
16 (d) physically transferred, or transferred electronically, to the customer in
17 conjunction with the selling, performing or furnishing of the service is a sale of
18 tangible personal property or items, property, or works under s. 77.52 (1) (b), (c), or
19 (d) separate from the selling, performing or furnishing of the service.

20 **SECTION 148.** 77.52 (2n) of the statutes is repealed and recreated to read:

21 77.52 (2n) The selling, licensing, performing, or furnishing of the services
22 described under sub. (2) (a) at retail in this state, as determined under s. 77.522, is
23 subject to the tax imposed under sub. (2) unless an exemption in this subchapter
24 applies.

25 **SECTION 149.** 77.52 (3m) of the statutes is repealed.