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

in 2-10-09

Don't Gen

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

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

This bill adopts the substantive provisions of the 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).

This bill also imposes sales and use taxes on specified digital goods and additional digital goods. "Specified digital goods" are digital audio works, digital audiovisual works, and digital books. "Additional digital goods" means video greeting cards sent by electronic mail, finished artwork, periodicals, and video or electronic games. Under the bill, the sale of specified digital goods or additional digital goods that are transferred electronically to the purchaser are exempt from the sales and use taxes, if the sale of the goods in tangible form is exempt from the sales and use taxes.

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.

all such items
if all such items are transferred electronically

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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 76.07 (4g) (b) 8. Determine transport-related revenue by adding public service
22 revenue allocated to this state on the basis of routes for which the company is
23 authorized to receive subsidy payments, mutual aid allocated to this state on the
24 basis of the ratio of transport revenues allocated to this state to transport revenues
25 everywhere in the previous year, in-flight sales allocated to this state as they are

1 allocated under s. ~~77.51 (14f)~~ 77.522 and all other transport-related revenues from
2 sales made in this state.

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

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

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

12 77.51 (1a) (a) "Additional digital goods" means all of the following, if they are
13 transferred electronically:

- 14 1. Greeting cards.
- 15 2. Finished artwork.
- 16 3. Periodicals.
- 17 4. Video or electronic games.

18 (b) For purposes of this subchapter, the sale of or the storage, use, or other
19 consumption of a digital code is treated the same as the sale of or the storage, use,
20 or other consumption of any additional digital goods for which the digital code
21 relates.

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

23 77.51 (1b) "Alcoholic beverage" means a beverage that is suitable for human
24 consumption and that contains 0.5 percent or more of alcohol by volume.

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

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

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

6 77.51 (1f) "Bundled transaction" means the retail sale of 2 or more products,
7 not including real property and services to real property, if the products are distinct
8 and identifiable products and sold for one nonitemized price. "Bundled transaction"
9 does not include any of the following:

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

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

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

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

22 (d) A transaction that includes taxable and nontaxable products, if the seller's
23 purchase price or the sales price of the taxable products is no greater than 10 percent
24 of the seller's total purchase price or sales price of all the bundled products, as
25 determined by the seller using either the seller's purchase price or sales price, but

1 not a combination of both, or, in the case of a service contract, the full term of the
2 service contract.

3 (e) The retail sale of taxable tangible personal property, or items, property, or
4 goods under s. 77.52 (1) (b), (c), or (d) and tangible personal property, or items,
5 property, or goods under s. 77.52 (1) (b), (c), or (d) that is exempt from the taxes
6 imposed under this subchapter, if the transaction includes food and food ingredients,
7 drugs, durable medical equipment, mobility-enhancing equipment, prosthetic
8 devices, or medical supplies and if the seller's purchase price or the sales price of the
9 taxable tangible personal property, or items, property, or goods under s. 77.52 (1) (b),
10 (c), or (d) is no greater than 50 percent of the seller's total purchase price or sales price
11 of all the tangible personal property, or items, property, or goods under s. 77.52 (1)
12 (b), (c), or (d) included in what would otherwise be a bundled transaction, as
13 determined by the seller using either the seller's purchase price or the sales price,
14 but not a combination of both.

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

16 77.51 (1fm) "Candy" means a preparation of sugar, honey, or other natural or
17 artificial sweetener combined with chocolate, fruit, nuts, or other ingredients or
18 flavorings in the form of bars, drops, or pieces. "Candy" does not include a
19 preparation that contains flour or that requires refrigeration.

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

21 77.51 (1n) "Computer" means an electronic device that accepts information in
22 digital or similar form and that manipulates such information to achieve a result
23 based on a sequence of instructions.

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

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

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

4 77.51 (1pd) "Computer software maintenance contract" means a contract that
5 obligates a vendor of computer software to provide a customer with future updates
6 or upgrades to computer software, computer software support services, or both.

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

8 77.51 (1r) "Conference bridging service" means an ancillary service that links
9 2 or more participants of an audio or video conference call and may include providing
10 a telephone number, but does not include the telecommunications services used to
11 reach the conference bridge.

12 **SECTION 29.** 77.51 (2) of the statutes is amended to read:

13 77.51 (2) "Contractors" and "subcontractors" are the consumers of tangible
14 personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) used
15 by them in real property construction activities and the sales and use tax applies to
16 the sale of tangible personal property or items, property, or goods under s. 77.52 (1)
17 (b), (c), or (d) to them. A contractor engaged primarily in real property construction
18 activities may use resale certificates only with respect to purchases of tangible
19 personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) which
20 the contractor has sound reason to believe the contractor will sell to customers for
21 whom the contractor will not perform real property construction activities involving
22 the use of such tangible personal property or items, property, or goods under s. 77.52
23 (1) (b), (c), or (d). In this subsection, "real property construction activities" means
24 activities that occur at a site where tangible personal property or items, property, or
25 goods under s. 77.52 (1) (b), (c), or (d) that is are applied or adapted to the use or

1 purpose to which real property is devoted is are affixed to that real property, if the
2 intent of the person who affixes that property is to make a permanent accession to
3 the real property. In this subsection, “real property construction activities” ~~de~~ does
4 not include affixing to real property tangible personal property or items, property,
5 or goods under s. 77.52 (1) (b), (c), or (d) that remains remain tangible personal
6 property after ~~it is~~ they are affixed.

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

8 77.51 (2k) “Delivered electronically” means delivered to a purchaser by means
9 other than by tangible storage media.

10 **SECTION 31.** 77.51 (2m) of the statutes is created to read:

11 77.51 (2m) “Delivery charges” means charges by a seller to prepare and deliver
12 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
13 (d), or services to a location designated by the purchaser of the tangible personal
14 property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services,
15 including charges for transportation, shipping, postage, handling, crating, and
16 packing.

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

18 77.51 (3c) “Detailed telecommunications billing service” means an ancillary
19 service that separately indicates information pertaining to individual calls on a
20 customer’s billing statement.

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

22 77.51 (3n) “Dietary supplement” means a product, other than tobacco, that is
23 intended to supplement a person’s diet, if all of the following apply:

24 (a) The product contains any of the following ingredients or any combination
25 of any of the following ingredients:

- 1 1. A vitamin.
- 2 2. A mineral.
- 3 3. An herb or other botanical.
- 4 4. An amino acid.
- 5 5. A dietary substance that is intended for human consumption to supplement
- 6 the diet by increasing total dietary intake.
- 7 6. A concentrate, metabolite, constituent, or extract.

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

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

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

15 77.51 (3p) "Digital audiovisual works" means a series of related images that,
16 when shown in succession, impart an impression of motion, along with
17 accompanying sounds, if any, and that are transferred electronically. "Digital
18 audiovisual works" includes motion pictures, musical videos, news and
19 entertainment programs, and live events, but does not include video greeting cards
20 or video or electronic games.

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

22 77.51 (3pa) "Digital audio works" means works that result from the fixation
23 of a series of musical, spoken, or other sounds that are transferred electronically,
24 including prerecorded or live music, prerecorded or live readings of books or other

1 written materials, prerecorded or live speeches, ringtones, or other sound recordings
2 but not including audio greeting cards sent by electronic mail.

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

4 77.51 (3pb) "Digital books" means works that are generally recognized in the
5 ordinary and usual sense as books and are transferred electronically. "Digital books"
6 includes any literary work, other than a digital audio work or digital audiovisual
7 work, that is expressed in words, numbers, or other verbal or numerical symbols or
8 indicia, if the literary work is generally recognized in the ordinary and usual sense
9 as a book, work of fiction or nonfiction, or a short story, but does not include
10 newspapers or other news or information products, periodicals, chat room
11 discussions, or blogs.

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

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

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

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

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

4 77.51 (3pd) "Direct mail" means printed material that is delivered or
5 distributed by the U.S. postal service or other delivery service to a mass audience or
6 to addressees on a mailing list provided by or at the direction of the purchaser of the
7 printed material, if the cost of the printed material or any tangible personal property
8 or items, property, or goods under s. 77.52 (1) (b), (c), or (d) included with the printed
9 material is not billed directly to the recipients of the printed material. "Direct mail"
10 includes any tangible personal property, or items, property, or goods under s. 77.52
11 (1) (b), (c), or (d) provided directly or indirectly by the purchaser of the printed
12 material to the seller of the printed material for inclusion in any package containing
13 the printed material, including billing invoices, return envelopes, and additional
14 marketing materials. "Direct mail" does not include multiple items of printed
15 material delivered to a single address.

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

17 77.51 (3pe) "Directory assistance" means an ancillary service that provides
18 telephone numbers or addresses.

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

20 77.51 (3pf) "Distinct and identifiable product" does not include any of the
21 following:

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

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

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

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

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

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

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

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

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

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

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

24 77.51 (3pn) "Eight hundred service" means a telecommunications service that
25 allows a caller to dial a toll-free number without incurring a charge for the call and

1 is marketed under "800," "855," "866," "877," or "888" toll-free calling, or any other
2 number designated as toll-free by the federal communications commission.

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

4 77.51 (3po) "Electronic" means relating to technology having electrical, digital,
5 magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

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

11 (a) Drawings.

12 (b) Paintings.

13 (c) Designs.

14 (d) Photographs.

15 (e) Lettering.

16 (f) Paste-ups.

17 (g) Mechanicals.

18 (h) Assemblies.

19 (i) Charts.

20 (j) Graphs.

21 (k) Illustrative materials.

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

23 77.51 (3rn) "Fixed wireless service" means a telecommunications service that
24 provides radio communication between fixed points.

25 **SECTION 47.** 77.51 (3t) of the statutes is created to read:

1 77.51 (3t) “Food and food ingredient” means a substance in liquid,
2 concentrated, solid, frozen, dried, or dehydrated form, that is sold for ingestion, or
3 for chewing, by humans and that is ingested or chewed for its taste or nutritional
4 value. “Food and food ingredient” does not include alcoholic beverages or tobacco.

5 **SECTION 48.** 77.51 (4) of the statutes is repealed.

6 **SECTION 49.** 77.51 (5) of the statutes is amended to read:

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

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

17 77.51 (5d) “International telecommunications services” means
18 telecommunications services that originate or terminate in the United States,
19 including the District of Columbia and any U.S. territory or possession and originate
20 or terminate outside of the United States, including the District of Columbia and any
21 U.S. territory or possession.

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

23 77.51 (5n) “Interstate telecommunications services” means
24 telecommunications services that originate in one state or U.S. territory or
25 possession and terminate in a different state or U.S. territory or possession.

1 **SECTION 52.** 77.51 (5r) of the statutes is created to read:

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

5 **SECTION 53.** 77.51 (6m) of the statutes is renumbered 77.51 (5m) and amended
6 to read:

7 77.51 (5m) For purposes of s. ~~77.54 (48)~~ 77.585 (9), “Internet equipment used
8 in the broadband market” means equipment that is capable of transmitting data
9 packets or Internet signals at speeds of at least 200 kilobits per second in either
10 direction.

11 **SECTION 54.** 77.51 (7) of the statutes is repealed and recreated to read:

12 77.51 (7) (a) “Lease or rental” means any transfer of possession or control of
13 tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or
14 (d) for a fixed or indeterminate term and for consideration and includes:

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

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

- 21 1. A transfer of possession or control of tangible personal property or items,
22 property, or goods under s. 77.52 (1) (b), (c), or (d) under a security agreement or
23 deferred payment plan, if such agreement or plan requires transferring title to the
24 tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or
25 (d) after making all required payments.

1 2. A transfer of possession or control of tangible personal property or items,
2 property, or goods under s. 77.52 (1) (b), (c), or (d) under any agreement that requires
3 transferring title to the tangible personal property or items, property, or goods under
4 s. 77.52 (1) (b), (c), or (d) after making all required payments and after paying an
5 option price that does not exceed the greater of \$100 or 1 percent of the total amount
6 of the required payments.

7 3. Providing tangible personal property or items, property, or goods under s.
8 77.52 (1) (b), (c), or (d) along with an operator, if the operator is necessary for the
9 tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or
10 (d) to perform in the manner for which it is designed and if the operator does more
11 than maintain, inspect, or set up the tangible personal property or items, property,
12 or goods under s. 77.52 (1) (b), (c), or (d).

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

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

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

22 77.51 (7g) "Load-and-leave" means delivery to a purchaser by using a tangible
23 storage media that is not physically transferred to the purchaser.

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

1 77.51 (7k) "Mobile wireless service" means a telecommunications service for
2 which the origination or termination points of the service's transmission,
3 conveyance, or routing are not fixed, regardless of the technology used to transmit,
4 convey, or route the service. "Mobile wireless service" includes a telecommunications
5 service provided by a commercial mobile radio service provider.

6 **SECTION 57.** 77.51 (7m) of the statutes is created to read:

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

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

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

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

1 77.51 (9) (a) Isolated and sporadic sales of tangible personal property, or items,
2 property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services where the
3 infrequency, in relation to the other circumstances, including the sales price and the
4 gross profit, support the inference that the seller is not pursuing a vocation,
5 occupation or business or a partial vocation or occupation or part-time business as
6 a vendor of personal property, or items, property, or goods under s. 77.52 (1) (b), (c),
7 or (d), or taxable services. No sale of any tangible personal property, or items,
8 property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable service may be deemed
9 an occasional sale if at the time of such sale the seller holds or is required to hold a
10 seller's permit, except that this provision does not apply to an organization required
11 to hold a seller's permit solely for the purpose of conducting bingo games and except
12 as provided in par. (am).

13 **SECTION 60.** 77.51 (9) (am) of the statutes is amended to read:

14 77.51 (9) (am) The sale of personal property or items, property, or goods under
15 s. 77.52 (1) (b), (c), or (d), other than inventory held for sale, previously used by a
16 seller to conduct its trade or business at a location after that person has ceased
17 actively operating in the regular course of business as a seller of tangible personal
18 property, or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable
19 services at that location, even though the seller holds a seller's permit for one or more
20 other locations.

21 **SECTION 61.** 77.51 (9p) of the statutes is created to read:

22 77.51 (9p) "One nonitemized price" does not include a price that is separately
23 identified by product on a binding sales document, or other sales-related document,
24 that is made available to the customer in paper or electronic form, including an

1 invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement,
2 a periodic notice of rates and services, a rate card, or a price list.

3 **SECTION 62.** 77.51 (9s) of the statutes is created to read:

4 77.51 (9s) "Paging service" means a telecommunications service that transmits
5 coded radio signals to activate specific pagers and may include messages or sounds.

6 **SECTION 63.** 77.51 (10) of the statutes is amended to read:

7 77.51 (10) "Person" includes any natural person, firm, partnership, limited
8 liability company, joint venture, joint stock company, association, public or private
9 corporation, the United States, the state, including any unit or division of the state,
10 any county, city, village, town, municipal utility, municipal power district or other
11 governmental unit, cooperative, unincorporated cooperative association, estate,
12 trust, receiver, personal representative, any other fiduciary, any other legal entity,
13 and any representative appointed by order of any court or otherwise acting on behalf
14 of others. "Person" also includes the owner of a single-owner entity that is
15 disregarded as a separate entity under ch. 71.

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

17 77.51 (10d) "Prepaid calling service" means the right to exclusively access
18 telecommunications services, if that right is paid for in advance of providing such
19 services, requires using an access number or authorization code to originate calls,
20 and is sold in predetermined units or dollars that decrease with use in a known
21 amount.

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

23 77.51 (10f) "Prepaid wireless calling service" means a telecommunications
24 service that provides the right to utilize mobile wireless service as well as other
25 nontelecommunications services, including the download of digital products

1 delivered electronically, content, and ancillary services, and that is paid for prior to
2 use and sold in predetermined dollar units whereby the number of units declines
3 with use in a known amount.

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

5 77.51 (10m) (a) "Prepared food" means:

6 1. Food and food ingredients sold in a heated state.

7 2. Food and food ingredients heated by the retailer, except as provided in par.

8 (b).

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

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

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

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

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

1 1. For purposes of par. (a) 2. and 4., 2 or more food ingredients mixed or
2 combined by a retailer for sale as a single item, if the retailer's primary classification
3 in the North American Industry Classification System, 2002 edition, published by
4 the federal office of management and budget, is manufacturing under subsector 311,
5 not including bakeries and tortilla manufacturing under industry group number
6 3118.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 77.51 (10n) "Prescription" means an order, formula, or recipe that is issued by
21 any oral, written, electronic, or other means of transmission and by a person who is
22 authorized by the laws of this state to issue such an order, formula, or recipe.

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

24 77.51 (10r) "Prewritten computer software" means computer software,
25 including prewritten upgrades, that is not designed and developed by the author or

1 other creator to the specifications of a specific purchaser. The combining of 2 or more
2 "prewritten computer software" programs or prewritten portions of computer
3 software does not cause the combination to be other than "prewritten computer
4 software." "Prewritten computer software" includes software designed and
5 developed by the author or other creator to the specifications of a specific purchaser
6 if it is sold to a person other than the specific purchaser. For purposes of this
7 subsection, if a person modifies or enhances computer software of which the person
8 is not the author or creator, the person is the author or creator only of the person's
9 modifications or enhancements. "Prewritten computer software" or a prewritten
10 portion of computer software that is modified or enhanced to any degree, with regard
11 to a modification or enhancement that is designed and developed to the specifications
12 of a specific purchaser, remains "prewritten computer software," except that if there
13 is a reasonable, separately stated charge or an invoice or other statement of the price
14 given to the purchaser for the modification or enhancement, the modification or
15 enhancement is not "prewritten computer software."

16 **SECTION 69.** 77.51 (10s) of the statutes is created to read:

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

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

1 77.51 (11d) For purposes of subs. (1f), (3pf), and (9p) and ss. 77.52 (20) and (21),
2 77.522, and 77.54 (51) and (52), “product” includes tangible personal property, and
3 items, property, and goods under s. 77.52 (1) (b), (c), and (d), and services.

4 **SECTION 71.** 77.51 (11m) of the statutes is created to read:

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

9 **SECTION 72.** 77.51 (12) (a) of the statutes is repealed and recreated to read:

10 77.51 (12) (a) Any transfer of title, possession, ownership, enjoyment, or use
11 by: cash or credit transaction, exchange, barter, lease or rental, conditional or
12 otherwise, in any manner or by any means whatever of tangible personal property
13 or items, property, or goods under s. 77.52 (1) (b), (c), or (d) for a consideration,
14 including any transaction for which a person’s books and records show the
15 transaction created, with regard to the transferee, an obligation to pay a certain
16 amount of money or an increase in accounts payable or, with regard to the transferor,
17 a right to receive a certain amount of money or an increase in accounts receivable.

18 **SECTION 73.** 77.51 (12) (b) of the statutes is amended to read:

19 77.51 (12) (b) A transaction whereby the possession of property, or items,
20 property, or goods under s. 77.52 (1) (b), (c), or (d) is transferred but the seller retains
21 the title as security for the payment of the price.

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

23 77.51 (12m) (a) “Purchase price” means the total amount of consideration,
24 including cash, credit, property, and services, for which tangible personal property,
25 or items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services are sold,

1 licensed, leased, or rented, valued in money, whether paid in money or otherwise,
2 without any deduction for the following:

3 1. The seller's cost of the property or items, property, or goods under s. 77.52
4 (1) (b), (c), or (d) sold.

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

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

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

11 b. If a shipment includes property or items that are subject to tax under this
12 subchapter and property or items that are not subject to tax under this subchapter,
13 the amount of the delivery charge that the seller allocates to the property and items
14 that are subject to tax under this subchapter is based either on the total purchase
15 price of the property and items that are subject to tax under this subchapter as
16 compared to the total purchase price of all the property and items or on the total
17 weight of the property and items that are subject to tax under this subchapter as
18 compared to the total weight of all the property and items, except that if the seller
19 does not make the allocation under this subd. 4. b., the purchaser shall allocate the
20 delivery charge amount, consistent with this subd. 4. b.

21 5. Installation charges.

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

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

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

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

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

12 5. In all transactions in which an article of tangible personal property, an item
13 under s. 77.52 (1) (b), property under s. 77.52 (1) (c), or a good under s. 77.52 (1) (d)
14 is traded toward the purchase of an article, item, property, or good of greater value,
15 the amount of the purchase price that represents the amount allowed for the article,
16 item, property, or good traded, except that this subdivision does not apply to any
17 transaction to which subd. 7. or 8. applies.

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

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

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

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

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

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

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

18 4. One of the following also applies:

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

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

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

4 **SECTION 75.** 77.51 (12p) of the statutes is created to read:

5 77.51 (12p) "Purchaser" means a person to whom a sale of tangible personal
6 property is made or to whom a service is furnished.

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

8 77.51 (13) (a) Every seller who makes any sale, regardless of whether the sale
9 is mercantile in nature, of tangible personal property, or items, property, or goods
10 under s. 77.52 (1) (b), (c), or (d), or a service specified under s. 77.52 (2) (a).

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

12 77.51 (13) (b) Every person engaged in the business of making sales of tangible
13 personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) for
14 storage, use or consumption or in the business of making sales at auction of tangible
15 personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) owned
16 by the person or others for storage, use or other consumption.

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

18 77.51 (13) (c) When the department determines that it is necessary for the
19 efficient administration of this subchapter to regard any salespersons,
20 representatives, peddlers or canvassers as the agents of the dealers, distributors,
21 supervisors or employers under whom they operate or from whom they obtain the
22 tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or
23 (d) sold by them, irrespective of whether they are making the sales on their own
24 behalf or on behalf of such dealers, distributors, supervisors or employers, the

1 department may so regard them and may regard the dealers, distributors,
2 supervisors or employers as retailers for purposes of this subchapter.

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

4 77.51 (13) (d) Every wholesaler to the extent that the wholesaler sells tangible
5 personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) to a
6 person other than a seller as defined in sub. (17) provided such wholesaler is not
7 expressly exempt from the sales tax on such sale or from collecting the use tax on such
8 sale.

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

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

16 **SECTION 81.** 77.51 (13) (f) of the statutes is amended to read:

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

22 **SECTION 82.** 77.51 (13) (i) of the statutes is amended to read:

23 77.51 (13) (i) A person selling items, property, or goods under s. 77.52 (1) (b),
24 (c), or (d), materials, or supplies to barbers, beauty shop operators, or bootblacks for
25 use by them in the performance of their services.

1 **SECTION 83.** 77.51 (13) (j) of the statutes is amended to read:

2 77.51 (13) (j) A person selling items, property, and goods under s. 77.52 (1) (b),
3 (c), and (d), materials, and supplies to producers of X-ray films.

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

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

8 **SECTION 85.** 77.51 (13) (m) of the statutes is amended to read:

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

13 **SECTION 86.** 77.51 (13) (n) of the statutes is amended to read:

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

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

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

21 **SECTION 88.** 77.51 (13g) (intro.) of the statutes is amended to read:

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

25 **SECTION 89.** 77.51 (13g) (a) of the statutes is amended to read:

1 77.51 (13g) (a) Any retailer owning any real property in this state or leasing
2 or renting out any tangible personal property, or items, property, or goods under s.
3 77.52 (1) (b), (c), or (d), located in this state or maintaining, occupying or using,
4 permanently or temporarily, directly or indirectly, or through a subsidiary, or agent,
5 by whatever name called, an office, place of distribution, sales or sample room or
6 place, warehouse or storage place or other place of business in this state.

7 **SECTION 90.** 77.51 (13g) (b) of the statutes is amended to read:

8 77.51 (13g) (b) Any retailer having any representative, agent, salesperson,
9 canvasser or solicitor operating in this state under the authority of the retailer or its
10 subsidiary for the purpose of selling, delivering or the taking of orders for any
11 tangible personal property, or items, property, or goods under s. 77.52 (1) (b), (c), or
12 (d), or taxable services.

13 **SECTION 91.** 77.51 (13g) (c) of the statutes is created to read:

14 77.51 (13g) (c) Any retailer selling tangible personal property, or items,
15 property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services for storage, use,
16 or other consumption in this state, unless otherwise limited by federal law.

17 **SECTION 92.** 77.51 (13r) of the statutes is amended to read:

18 77.51 (13r) Any person purchasing from a retailer as defined in sub. (13) shall
19 be deemed the consumer of the tangible personal property, or items, property, or
20 goods under s. 77.52 (1) (b), (c), or (d), or services purchased.

21 **SECTION 93.** 77.51 (13rm) of the statutes is created to read:

22 77.51 (13rm) "Retail sale" or "sale at retail" means any sale, lease, or rental
23 for any purpose other than resale, sublease, or subrent.

24 **SECTION 94.** 77.51 (13rn) of the statutes is created to read:

regarding

1 77.51 (13rn) "Ringtones" means digitized sound files that are downloaded onto
2 a device and that may be used to alert the customer with regard to a communication.

3 "Ringtones" includes MP3 or musical tones, polyphonic tones, and synthetic music
4 mobile application format tones, but does not include ring-back tones.

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

6 77.51 (14) (intro.) "~~Sale~~", "~~sale, lease or rental~~", "~~retail sale~~", "~~sale at retail~~", or
7 ~~equivalent terms include~~ includes any ~~one or all~~ of the following: the transfer of the
8 ownership of, title to, possession of, or enjoyment of tangible personal property, or
9 items, property, or goods under s. 77.52 (1) (b), (c), or (d), or services for use or
10 consumption but not for resale as tangible personal property, or items, property, or
11 goods under s. 77.52 (1) (b), (c), or (d), or services and includes:

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

13 77.51 (14) (a) Any sale at an auction in with respect to tangible personal
14 property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) which is are sold
15 to a successful bidder. ~~The proceeds from, except the sale of tangible personal~~
16 ~~property, items, or goods~~ sold at auction which is are bid in by the seller and on which
17 title does not pass to a new purchaser ~~shall be deducted from the gross proceeds of~~
18 ~~the sale and the tax paid only on the net proceeds.~~

19 **SECTION 97.** 77.51 (14) (b) of the statutes is amended to read:

20 77.51 (14) (b) The furnishing or distributing of tangible personal property, or
21 items, property, or goods under s. 77.52 (1) (b), (c), or (d), or taxable services for a
22 consideration by social clubs and fraternal organizations to their members or others.

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

, but not including ringback tones or other digital audio files that are not stored on the purchaser's communication device

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

4 **SECTION 99.** 77.51 (14) (d) of the statutes is repealed.

5 **SECTION 100.** 77.51 (14) (g) of the statutes is renumbered 77.51 (15a) (b) 4. and
6 amended to read:

7 77.51 (15a) (b) 4. A sale of tangible personal property or items, property, or
8 goods under s. 77.52 (1) (b), (c), or (d) to a contractor or subcontractor for use in the
9 performance of contracts with the United States or its instrumentalities for the
10 construction of improvements on or to real property.

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

12 77.51 (14) (h) A transfer for a consideration of the title or possession of tangible
13 personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) which
14 has have been produced, fabricated, or printed to the special order of the customer
15 or of any publication.

16 **SECTION 102.** 77.51 (14) (i) of the statutes is repealed.

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

18 77.51 (14) (j) The granting of possession of tangible personal property or items,
19 property, or goods under s. 77.52 (1) (b), (c), or (d) by a lessor to a lessee, or to another
20 person at the direction of the lessee. Such a transaction involving tangible personal
21 property is deemed a continuing sale in this state ~~by the lessor for the duration of the~~
22 ~~lease as respects any period of time the leased property is situated in this state,~~
23 ~~irrespective of the time or place of delivery of the property to the lessee or such other~~
24 ~~person.~~

25 **SECTION 104.** 77.51 (14) (k) of the statutes is repealed.

1 **SECTION 105.** 77.51 (14) (L) of the statutes is repealed.

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

3 77.51 (14g) (a) The transfer of property or items, property, or goods 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 107.** 77.51 (14g) (b) of the statutes is amended to read:

7 77.51 (14g) (b) The contribution of property or items, property, or goods 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 108.** 77.51 (14g) (bm) of the statutes is amended to read:

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

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

15 77.51 (14g) (c) The transfer of property or items, property, or goods 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 110.** 77.51 (14g) (cm) of the statutes is amended to read:

19 77.51 (14g) (cm) The transfer of property or items, property, or goods 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 111.** 77.51 (14g) (d) of the statutes is amended to read:

23 77.51 (14g) (d) The distribution of property or items, property, or goods 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;