

CR 89-170

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

RECEIVED

MAR 15 1990
11:30am
Revisor of Statutes
Bureau

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to sales and use tax treatment of telecommunication services was duly approved and adopted by this department on March 15, 1990.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 14th day of March, 1990.

89-170



Mark D. Bugher
Secretary of Revenue

MDB:VLG:em
LEG/M010500D

5-1-90

February 19, 1990

ORDER OF THE DEPARTMENT OF REVENUE
REPEALING AND RECREATING RULES

The Department of Revenue adopts an order to repeal and recreate Tax 11.66 relating to the sales and use tax treatment of telecommunication services.

Analysis by the Department of Revenue

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(13)(p) and (14)(m), 77.52(2)(a)5 and 12 and (am), and 77.54(24), Stats.

SECTION 1. Tax 11.66 is repealed and recreated for the following reasons:

1. To reflect the repeal of sec. 77.52(2)(a)3 and 4, Stats., and the creation of sec. 77.52(2)(a)5, Stats., by 1989 Wisconsin Act 31, which provides that interstate telecommunication services originating in Wisconsin and charged to a subscriber or telephone in Wisconsin are subject to Wisconsin sales tax.
 2. To define terms not defined by statute so as to provide a uniform understanding and application of the new law.
 3. To reflect that flat rate periodic charges for interstate private line circuits are not taxable.
 4. To provide that an interexchange carrier whose access services are subject to Wisconsin sales tax does not include resellers, pursuant to Wisconsin Bell, Inc. v. Schneider Communications, Inc. v. Wisconsin Department of Revenue, 718380 Milwaukee County.
 5. To address FAX services, new to the telecommunications industry since this section was last revised.
 6. To describe two types of telecommunication services which are not taxable under s. 77.52(2)(a)5, Stats., as created by 1989 Wisconsin Act 31.
 7. To reflect that gross receipts from providing emergency "911" services are exempt, pursuant to 1987 Wisconsin Act 27.
 8. To improve format, style and readability per Clearinghouse rules.
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SECTION 1. Tax 11.66 is repealed and recreated to read:

Tax 11.66(title) TELECOMMUNICATION AND CATV SERVICES. (ss. 77.51(13)(p) and (14)(m), 77.52(2)(a)5 and 12 and (am) and 77.54(24), Stats.)

(1) DEFINITIONS. In this section:

(a) "Charged to a subscriber . . . located in this state" means that the charge for service which originates in Wisconsin accrues to a person who has agreed to satisfy that liability in exchange for access to or use of the service, and the billing document setting forth the obligation to pay for the telecommunication service is furnished, mailed, or delivered to a location in Wisconsin.

(b) "Charged to a . . . telephone located in this state" means that the obligation to pay for the cost of a transmission can be identified in the service provider's records as pertaining to a particular telephone number or to a telephone line, wire, microwave, or other transmission medium located in Wisconsin.

(c) "Telephone" includes any device which a customer uses to originate, transmit or receive voice, sound, vision, information, data or other material to, from, or over a telecommunication service provider's network.

(2) TAXABLE TELECOMMUNICATION SERVICES. Under s. 77.52(2)(a)5, Stats., interstate telecommunication services where the transmission begins in Wisconsin, other than services paid for by inserting coins in a coin-operated telephone, are subject to the sales or use tax, if:

(a) The service is charged to a subscriber located in this state.

Examples: 1) John Smith has a credit card from XYZ Corporation, which is an inter-LATA long distance telecommunications carrier. When John wants to place a long distance call from his home in Wisconsin he (1) dials XYZ Corporation's telephone number to access the carrier's systems, called Point of Presence, or POP, (2) enters his credit card number to identify himself as the party paying for the call and (3) then dials the destination number. The bill for John's call is mailed to his home in Wisconsin. In this circumstance, the telephone calls are charged to a subscriber in Wisconsin.

2) Harry Jones has chosen ABC Corporation as his inter-LATA long distance telecommunications carrier. Harry lives in Wisconsin in an area where the local exchange does not provide dial 1 equal access service to long distance carriers other than AT&T. When Harry wants to make a long distance call from his home in Wisconsin he (1) dials a number to access ABC Corporation's system, (2) enters his account number to identify himself as the party paying for the call and (3) then dials the destination number. The bill for Harry's call is mailed to his home in Wisconsin. In this circumstance, the telephone calls are charged to a subscriber in Wisconsin.

3) Corporation X has offices in Eau Claire, Wisconsin, and Minneapolis, Minnesota. All corporation X employees use credit cards issued by a telephone service provider in Minneapolis, which results in the calls being charged to a Minneapolis telephone number. However, the bills for payment of calls originating

in Wisconsin and made by employees assigned to the Eau Claire office are mailed by the service provider to the Eau Claire office. The calls were charged to a subscriber located in Wisconsin, since the bills were mailed to a subscriber at a location in Wisconsin. This is true regardless of the fact that the calls were charged to a telephone in Minneapolis.

(b) The service is charged to a telephone located in this state. Interstate telecommunication service charges are considered to be charged to a telephone located in Wisconsin regardless of whether the associated telephone number is identified on the billing document and regardless of where the billing document is mailed. These charges include:

1. Telephone calls or transmissions placed via dial 1 equal access systems. The service provider identifies the telephone number of the line from which the call originates and the charge for that call is added to the account of the person responsible to pay that charge.

Note: "Dial 1" and "equal access" are different terms which describe the same thing, namely the procedure by which a customer accesses the system or network of a long distance telecommunications service provider. Prior to the breakup of AT&T and the entrance of other common carriers, collectively OCC's, into the competitive market, a customer wanting to make a long distance call dialed 1 + area code + local exchange telephone number. Thus, the term "dial 1" access applies. Initially, customers of OCC's entering the market were required to go through the 3 step procedure described in Example #2 following paragraph (a). The Court, in part of the proceedings concerning the breakup of AT&T, ordered that OCC's be allowed to provide this same "dial 1" access procedure as AT&T. Thus, this procedure is also called "equal access."

Examples: 1) An employe of Corporation A located in Milwaukee, Wisconsin, places a telephone call to Corporation B in Minneapolis, Minnesota. The telephone bill does not identify the originating telephone number of Corporation A; however, the telephone company's backup records identify the call as originating in and taking place over telephone lines serving Corporation A. In this circumstance, the call is charged to a telephone located in Wisconsin.

2) Corporation C has offices in Milwaukee, Wisconsin, and Chicago, Illinois. Employees at Corporation C's Milwaukee office originate telephone calls to customers and others at various locations outside Wisconsin. The telephone calls are identifiable in the telephone service provider's records as originating in Milwaukee and taking place over telephone lines serving Corporation C's Milwaukee office. Because Corporation C's accounting office is in Chicago, Illinois, the telephone bill is mailed by the service provider to Corporation C's Chicago office. The service originated in Wisconsin and was charged to a telephone located in Wisconsin since the calls were identifiable as taking place over telephone lines serving Corporation C's Milwaukee office.

3) An employe of Corporation D initiates the transmission of data from Corporation D's office in Wisconsin to Corporation D's office in another state via a telecommunication service provider's facilities. The service provider's records and equipment identify the transmission as originating in and taking place over telephone lines or other transmission mediums serving Corporation D's office in Wisconsin. The service originated in and was charged to a telephone located in Wisconsin since the calls were identifiable as taking place over telephone lines or other transmission mediums serving Corporation D's Wisconsin office.

2. Telephone calls made from a location in Wisconsin other than the caller's own telephone for which the caller instructs the operator to charge the call to the caller's own telephone located in Wisconsin.

Example: A customer is away from her home telephone but wishes to place a long distance call from another location in Wisconsin. The customer requests that the charge for that call be included with other calls made from the caller's home or business phone in Wisconsin rather than appear on the bill of the person from whose telephone the call was placed.

3. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is also the dial 1 equal access service provider for the customer's telephone in Wisconsin, the credit card number is derived all or in part from the customer's telephone number and the charge for the call is made to the customer's account.

Example: Tom Edwards has a credit card from DEF Corporation, which is his dial 1 equal access telecommunication service provider. Tom's local telephone number is area code (608) 555-1234 and his credit card number is 608-555-1234-7777. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a telephone in this state, regardless of whether the telephone number or credit card account number appear on the bill and regardless of where the bill is mailed.

4. Telephone calls made from any location in Wisconsin by use of a credit card where the service provider issuing the credit card is not the cardholder's dial 1 equal access service provider, but where the cardholder's telephone is in Wisconsin and the telephone number is a part of the credit card account number.

Example: Ed Brown has a credit card issued by DEF Corporation but uses ABC Corporation as his dial 1 equal access service provider. Ed's local telephone number is area code (608) 555-4321 and his number on the credit card issued by DEF Corporation is 608-555-4321-8888. All long distance calls he makes from Wisconsin and which are charged to his credit card account are considered to be charged to a telephone in this state, regardless of whether the telephone number or account number appear on the bill and regardless of where the bill is mailed.

5. Service which originates in a local exchange that does not provide dial 1 equal access, but where the account number used to identify the customer is or contains the customer's telephone number as assigned by the local telephone company.

Example: Jill Green has chosen GHI Corporation as her inter-LATA long distance telecommunication service provider for her law office. Jill's office is in an area where the local exchange does not yet provide dial 1 equal access service to long distance carriers other than AT&T. When Jill wants to send data to an out-of-state client she 1) dials the access number called Point of Presence or POP number, of GHI Corporation's system, 2) enters her account number, to identify herself as the party paying for the call; the account number is 0555-9630 and her local telephone number is 555-9630, and 3) enters the area code and telephone number of her out-of-state client. All long distance service which originates in Wisconsin and which Jill charges to her account is considered to be charged to a telephone in this state, regardless of whether the account number or her telephone number appear on the bill and regardless of where the bill is mailed.

(3) OTHER TAXABLE COMMUNICATION SERVICES. Other communication services which are subject to the sales or use tax include:

(a) Two-way voice communication services over telephone or radio, commonly referred to as mobile telephone service.

(b) One-way paging service.

(c) Cable television system service, including installation charges.

(d) Transfers of services, commonly called "access services" to an interexchange carrier which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange.

(e) Facsimile, or FAX, transmission service.

(4) NONTAXABLE SERVICES. Gross receipts from the sale or charge for the following services are not taxable:

(a) Interstate or international telecommunication service if the service originates from another state or country or if the service originates in Wisconsin but is charged to a telephone located in another state or country and is not billed to a subscriber in this state.

(b) Basic or sophisticated emergency telephone system serviced provided by a telecommunication utility for which charges are levied pursuant to a county ordinance under s. 146.70(3), Stats.

(c) Access services, Measured Toll Service, or MTS, and Wide Area Transport Service, or WATS, services resellers purchase, repackage, and resell to customers.

(d) Interstate private line circuits, including tie lines and foreign exchange service, charged on a flat rate periodic basis which consist of a circuit or circuits dedicated to the use of that subscriber.

(e) Nonmechanical telephone answering services.

(5) PURCHASES BY PERSONS PROVIDING SERVICE. Persons engaged in the business of providing communications services are consumers, not retailers, of the tangible personal property used in providing those services. The tax applies to the sale of property to them. However, s. 77.54(24), Stats., exempts "apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals."

Note: The Dane County Circuit Court's decision of May 22, 1981 in Wisconsin Department of Revenue v. North-West Services Corporation and North-West Telephone Company held that a telephone company may purchase without tax tangible personal property leased or rented to customers in conjunction with an activity open to competition with others who are not public utilities.

Note to Revisor: The "Note" at the end of s. Tax 11.66 should be revised to read as follows:

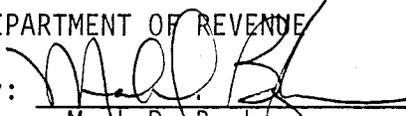
Note: The interpretations in s. Tax 11.66 are effective under the general sales and use tax law on or after September 1, 1969, except: (a) Chapter 39, Laws of 1975, effective July 31, 1975, expanded the telephone services subject to the tax to include "telephone services of whatever nature"; (b) Chapter 39, Laws of 1975, also imposed the tax on cable television service, effective October 1, 1975; (c) Chapter 317, Laws of 1981, imposed the tax on interstate telegraph and telephone service, effective May 1, 1982; (d) Access services provided to an interexchange carrier became taxable pursuant to 1985 Wis. Act 29, effective July 20, 1985; (e) "911" service became exempt on August 1, 1987, pursuant to 1987 Wis. Act 27; and (f) Telecommunication services originating in Wisconsin and charged to a subscriber in Wisconsin became taxable October 1, 1989, pursuant to 1989 Wis. Act 31.

The repeal and recreation contained in this order shall take effect on May 1, 1990, under the provisions of s. 227.22(2)(b), Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: March 14, 1990

DEPARTMENT OF REVENUE
By: 
Mark D. Bugher
Secretary of Revenue



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

March 15, 1990

Orlan L. Prestegard
Revisor of Statutes
30 West Mifflin Street, Suite 702
Madison, Wisconsin 53703

Re: Clearinghouse Rule 89-170

Dear Mr. Prestegard:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use tax treatment of telecommunication services.

These materials are filed with you pursuant to s. 227.20 (1), Wis. Stats.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. D. Bugher', written over a horizontal line.

Mark D. Bugher
Secretary of Revenue

MDB:VLG:bet
Enclosure
LEG/M010500B

cc: Douglas J. LaFollette, Secretary of State
Prentice Hall, Inc.
Commerce Clearinghouse, Inc.



State of Wisconsin ● DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET ● P.O. BOX 8933 ● MADISON, WISCONSIN 53708 ● 608-266-6466 ● FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugar
Secretary of Revenue

March 15, 1990

Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 89-170.

These materials are filed with you pursuant to s. 227.20, Wis. Stats.

Sincerely,

Mark D. Bugar
Secretary of Revenue

MDB:VLG:bet
Enclosure
LEG/M010500C

cc: Revisor of Statutes